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Dear Mr MacDonald

Managing Change in the Historic Environment

ALGAO:Scotland represents Local Authority and National Park archaeological services in Scotland and is part of the UK-wide organisation, ALGAO:UK. We welcome this opportunity to comment upon these Scottish Government consultation documents and offer the attached comments. We do not have comments on all of the guidance notes, as some of them do not cover our sphere of interest, but we have comments on the following:

Setting, Demolition, Interiors, Boundaries, Extensions, Micro-Renewables, Engineering Structures, and Walls.

In addition to our detailed comments on these guidance notes, I have also provided responses to your set questions below.

I trust these comments are of assistance in finalising the guidance notes. ALGAO:Scotland would be very happy to provide any further assistance as may be required to Historic Scotland in finalising the wording of the notes.

Yours sincerely

**Carol Swanson
Chair ALGAO:Scotland**

Consultation Questions

1. In what capacity are you involved, or have you previously been involved, with seeking advice on the Historic Built Environment (e.g. applicant, agent, amenity body, planner, etc)?

ALGAO: Scotland is a voluntary body, which represents the views of archaeologists employed by or for Scotland's local authorities.

2. Do you think the guidance notes present Scottish Minister's advice on the Historic Environment in a clear and consistent manner?

The notes are not as consistent as they might be. For example, sections on Archaeology and Recording have been included in some notes, but not in others where they should have been included. Our comments in this respect are set out in detail below. This matter is easily rectified and we have suggested where and how this might be done below.

3. What are your views on the layout and use of images of the guidance notes? It would be useful if you could consider:

- how easy the documents are to read?

The documents are easy to read but the language used is in some instances weak and it is not always clear who the intended audience is for the guidance notes. This is particularly true for the Setting guidance note. We provide more detailed comments on this below.

- are the documents accessible?

They are accessible for a professional audience. We cannot comment on accessibility for any other intended audience.

- do you think the images are appropriate for the issues they illustrate?

The illustrations are helpful in some respects, but in relation to the Setting guidance note we would prefer to see images illustrating good and bad practice. We comment on this in further detail below.

4. The 14 Guidance Notes replace guidance from the withdrawn Memorandum. What aspects of the Historic Environment should be considered for inclusion in an expanded series in the future?

Specific guidance on gardens and designed landscapes would be useful. We understand that a Guidance Note on Windfarms may be proposed and we would welcome that. We would be happy to discuss with Historic Scotland the production of specific archaeological guidance notes.

Setting Guidance Note Consultation Draft

We very much welcome the draft of a Setting guidance note. There has been a lack of guidance on Setting in Scotland for some time and we fully support the principle of this new Guidance Note. It will have an important role to play in respect of Public Local Inquiries, where the lack of national guidance on Setting has been an issue.

Although we fully endorse the principle of this Guidance Note, we feel there are a number of areas where the Note could be improved and we provide comments in this respect below divided under General and Detailed headings.

General Comments

It would be helpful if the Introduction to the guidance note could clarify the principal intended audience for the note. We read it as being largely intended as a guide for a professional audience involved in the development process – developers and their agents and the decision makers, such as the local authorities and their specialist advisors, but this is not as clearly set out as we would like to see. For example, the local authority role is mentioned in the Key Issues (1 and 6) but not the role of the local authorities is not elaborated in the body of the document. There is no reference to planning and development plan policies and the local authorities are not mentioned as sources of advice on the final page, other than their role in advising on the requirements to obtain consents. It would be helpful to have a statement within the Guidance Note that impact on setting is a matter for the local authorities to determine through the planning process. This statement appears in the SHEP at paragraph 3.13 in relation to Scheduled Monuments, but repeating it in this Guidance Note, or cross-referring to the SHEP, would greatly aid clarity, as the Note is being issued under the Historic Scotland logo. As the new guidance note will not be government policy, it may be that some local authorities will wish ultimately to develop Supplementary Policy Guidance on Setting as part of their Local Plans to provide more weight to the advice provided within the finalised guidance note.

The illustrations provided in the guidance note are useful in helping with the meaning of setting, but it would be good to see some examples of good (or even bad practice) either included within the Note, or as was suggested at the BEFS workshops on this draft Guidance Note, separately assembled as a web resource and cross-referred in the Note. It was also suggested at the BEFS workshops that a web-based resource of case law would be a useful adjunct to the Guidance Note, as there have been several Public Local Inquiries now where setting has been an issue and decisions have been issued. We support the suggestion of a web resource providing examples of practice and case law.

The terminology used throughout the document requires revisiting. The use of “could”, and “can” are not as strong as “must” and “must be”. We would like to see the terminology in this respect made more robust, especially if it is intended for a professional audience. The term “structures”, which is used at various points throughout the Note also does not capture the range of historic environment assets, both designated and non-designated, which the Note is intended to cover, as it implies buildings or other built structures. We would prefer the term to be changed to “historic environment assets” or some other more neutral wording. “Features” suggested at the BEFS workshops as another possibility, as is “Places” as used in Key Issue 1.

Detailed Comments

Key Issues

- 1 The development control system is now known as the development management system.
- 2 The third bullet point should include the additional phrase “and the significance of such impacts” after “assess how any new development would impact upon this”.

3 The use of the phrases “property boundary” and “curtilage” both imply built structures. A more neutral phrase would better encompass all historic environment assets, for example, the word “boundary” on its own perhaps.

4 It would be useful to make clear that an objective written assessment should be prepared by an appropriately qualified professional consultant and that the assessment is intended to quantify the extent “and significance” of any detrimental impact.

What is Setting?

It is assumed that this section is intended to provide a definition of setting, one of the most contentious areas in some past development cases. The first paragraph of this section deals with the issue of the deliberate positioning of historic environment assets. This is only one aspect of an historic environment asset’s setting, and has been particularly controversial in some recent development cases, where undue weight has been attached to this aspect in assessing impacts for the developer. The mention of this aspect first within the paragraph also provides it with undue weight. We would prefer to see the definition of setting being the second and third paragraphs of this section only - “Setting can be thought of as a way in which a historic structure’s surroundings contribute to how it is experienced, understood and appreciated. Setting often extends beyond the immediate property boundary of a historic structure into the broader landscape”, provided the phrase “historic structures” is changed to a more neutral term as mentioned above in the General Comments. We further suggest that the phrase “can be thought of”, which is weak, should be changed to a more robust “is defined for the purposes of this guidance”. We feel that these two paragraphs would provide a good, simple definition of setting. Further elaboration of the meaning of setting is provided in the next section “What Contributes to Setting?” and we feel that this is the correct place to mention the matter of deliberate placing, amongst many other aspects.

What Contributes to Setting?

We are largely content that that this is a good checklist of the many aspects which comprise setting, adding only the deliberate placing factor from the What is Setting? section (see above). We suggest that in the second last sentence the phrase “and landscape” is added after “historic environment” to the sentence “The assessment of cultural significance must be rooted in a wider understanding of the historic environment”.

Assessing the Impact of New Development

Stage 1 identify the historic structures

The second paragraph of this section refers to “more distant structures” being included at the initial stages of identification, which can only be discounted after an assessment of setting has been made. It would be helpful to insert at this point for the benefit of developers and their agents that they may wish to consult with the local authorities and their specialist advisers for advice on the scope of what should be included within an assessment. In practice most developers and their agents will do this, but it would be beneficial to have it openly stated in the Guidance Note.

The last sentence of this section refers to “the engagement of a suitably qualified historic environment consultant to undertake this identification and assessment should be considered”. The best practice often involves the services of a landscape architect working in conjunction with an historic environment consultant. Either the wording needs to be made more general to include “appropriately qualified professional consultants”, or landscape architects should be specifically included along with historic environment consultants in this section. As mention is made of the broader landscape in the section What is Setting?, the latter is possibly the better solution. In addition “should be considered” is rather weak. It would be better to suggest that best practice would be to employ appropriately qualified professional consultants.

Stage 2 define and analyse setting

The use of the phrase “the setting and curtilage” in the second paragraph gives the impression that this guidance note may actually only be about listed structures – a confusion which exists in the terminology throughout the guidance note. An important matter is being raised here, but it may be misplaced in this section. It would be better to discuss issues of boundaries, curtilage and setting under the section What is Setting?, making the language more inclusive for all types of historic environment assets.

It may be worth adding that a development proposal may be an opportunity to improve the current setting of an historic environment asset and that this too should be defined and assessed along with the more negative aspects of impact..

Stage 3 assess the impact of new development

This section omits the critical factor in assessing impact – the need to assess the significance of any impact (none, minor, medium, major). The way the section is currently written it implies every impact however small on every historic environment asset needs to be assessed and could be a critical factor in decision making. This is not how assessment of setting impacts currently works in practice. The aim is to identify and assess the significant impacts and the degrees of that significance so that decision makers can take an informed decision based on the assessment. There needs to be an addition to this section to make this clear.

The phrase “can be a material consideration” in the first paragraph of this section is weak and should be reviewed to see if a more robust wording can be achieved.

Stage 4 valuation

This stage is currently missing from the guidance note but would be a useful adjunct to explain the role of the local authorities in the process (via development management and planning decisions), their role in valuing the assessment which is invariably produced by the prospective developer’s agents and therefore not always impartial, and the use of the assessment in decision making.

Mitigation

This section is rather short when compared to the others. It could usefully be extended to include phrases that point out that if the assessed impacts are of major significance, the whole principle of the proposed development may need to be revisited, rather than suggesting, as the section currently does, that the impacts can simply be minimised by appropriate screening or alteration of the proposal. It would also be useful to point out that such mitigation proposals as are possible should be part of an iterative design process and should be produced before the Stage 4 valuation by the decision makers. Mitigation should therefore be a sub-set of Stage 3.

Demolition Guidance Note

Our only comments in respect of this guidance note are in relation to the sections on Archaeology and Recording.

Archaeology

We welcome the statements in this paragraph that “It is possible that archaeological resources survive within or beneath a listed building or unlisted building in a conservation area. Planning authorities should seek to manage archaeological issues, such as recording or preservation in situ, through the use of conditions or agreements under Section 75 of the Town & Country Planning (Scotland) Act 1997.” We assume however that the audience for this Guidance Note is intended to be prospective developers as well as planning authorities, so we suggest that a further sentence is added as follows: “Advice on the archaeological sensitivity of any listed building or unlisted building in a Conservation Area can be obtained from the planning authority’s archaeological adviser.”

Recording

We note the references in this section to the statutory responsibility to provide the RCAHMS with a 3 month opportunity to make a record of all buildings where listed building consent or Conservation Area consent has been granted. We wish to point out that, although this opportunity is afforded to the RCAHMS, that body is not always in a position to make as detailed a record as may be required, especially if the building is large and complex. The planning authority may therefore impose a further condition on consent requiring the developer to secure a detailed record of the building in addition to the statutory requirement to afford access to the RCAHMS. This section should contain a statement to make clear to prospective developers that the planning authority may attach this further condition to consent.

Interiors Guidance Note

Our only comments in respect of this guidance note are in relation to the sections on Archaeology and Recording.

Archaeology

We welcome the statement that “Archaeological investigation of a building’s interior may be appropriate where there is potential for archaeological evidence including early fabric.” We assume however that the audience for this Guidance Note is intended to be owners and prospective developers as well as planning authorities, so we suggest that a further sentence is added as follows: “Advice on the archaeological sensitivity of any listed interior can be obtained from the planning authority’s archaeological adviser.”

Recording

We suggest an addition to this section to make clear that, if alterations to a listed interior raise the need for archaeological recording, the planning authority may attach a condition to consent requiring recording of the works of alterations, particularly where they may expose earlier fabric.

Boundaries Guidance Note, Extensions Guidance Note, Micro-Renewables Guidance Note, Engineering Structures Guidance Note, Walls Guidance Note

Boundaries

We wish to point out that some boundaries may be of archaeological value, for example, an illustration on page 4 of this guidance note depicts part of the Citadel wall in Ayr, built to protect Oliver Cromwell's garrison in the town. The Citadel was built on top of the site of Ayr Castle and incorporates the medieval church of St John. Any alterations to, or rebuild of, the Citadel wall could raise the need for archaeological recording. We therefore suggest that the General Principles for Alterations and Repair in this Guidance Note should contain sections on Archaeology and Recording as contained in the Demolition and Interiors guidance notes, making it clear that advice on archaeological sensitivity can be obtained from the planning authority's archaeological advisers and that a recording condition may be attached to consent for alterations or rebuild.

Extensions

We wish to point out that in some cases extensions to the ground plan of listed buildings can raise archaeological issues. This may be connected with the building itself, or former uses of the site. The latter may be particularly the case in Scotland's historic settlements. We suggest that this note too should have sections on Archaeology and Recording as suggested above for the Boundaries guidance note.

Micro-Renewables

There is concern in archaeological circles about the impact of ground source heat pumps on below ground archaeological resources, some of which may not be visible at the surface. We understand that in many cases planning consent (permitted development) may not be required for the installation of such a pump within the curtilage of a private dwelling. We therefore welcome the statement in the section on Heat Pumps about the need to avoid damage to underground archaeology. We would also however welcome some clarity in the Guidance Note about what is permitted development in this respect and what would require listed building consent.

Where re-use of historic water systems for hydro-electric generation is being proposed, there may be a requirement for archaeological advice and recording. We suggest as above for the Boundaries and Extensions guidance notes, the insertion of appropriate paragraphs about Archaeology and Recording.

Engineering Structures

Many engineering structures are also of archaeological interest and may require recording should alterations be proposed. We suggest the insertion of appropriate paragraphs on Archaeology and Recording within this guidance note as above.

Walls

We welcome the section on archaeology included in this guidance note but we suggest the addition of a reference to the planning authority's archaeological advisers as a source of advice about potential archaeological sensitivity. We also suggest addition of a section on Recording to this Guidance Note as any archaeological sensitivity arising from proposed alterations of walls, may be subject to a condition requiring recording.