DEVELOPMENT MANAGEMENT AND THE NATURAL HERITAGE

The purpose of this guidance is to support ‘Planning for Great Places’ through practical advice and direction to everyone who helps to deliver NatureScot’s Development Advice Service.

About this guidance

Scope

Planning for Great Places – Our Service Statement sets out how NatureScot will engage with developers and regulators in support of the Scottish Government’s purpose to create a more successful country, with opportunities for all to flourish. It applies to our involvement in the planning system and other regulatory systems relevant to development on land and at sea.

Note: Throughout, this guidance uses the term ‘Consenting Authority’ as shorthand for all statutory regulatory bodies that seek advice from NatureScot, including Planning Authorities, the Scottish Government, Marine Scotland, the Scottish Environment Protection Agency etc.
Contents

This guidance provides a brief summary of how Scotland regulates development, describes our role in those systems, sets out where we should focus our input and how we provide advice. It will help you to decide which type of response is appropriate in particular cases and provides model and suggested wording for presenting advice on impacts on some specific types of natural heritage resources. It consists of 5 separate elements as follows:

Part 1. Managing Development in Scotland
- Outlines the different regimes in which NatureScot provides advice to developers and consenting authorities
- Signposts further more detailed information

Part 2. NatureScot’s role in support of development and regulation
- Sets out our approach in the context of our customers’ expectations
- Explains NatureScot’s role at the different stages of the development process, from pre-application to post-application

Part 3. Providing advice – NatureScot’s position
- Describes the 5 response types and when and how to use them

Part 4. Providing advice - format, style and tone
- Guidance on writing advice

Part 5. Model and suggested wording for specific situations
- SPAs and SACs
- SSSIs
- NSAs
- Protected Species
- Nature Conservation Marine Protected Areas
- Priority Marine Features

Note for non-NatureScot readers: This guidance contains some links to documents on NatureScot’s intranet. If you would like to see any of these please use our online enquiries service.
Other essential guidance and reading

The Development Advice Service microsite\(^1\) contains links to comprehensive and up to date guidance.

NatureScot case officers, specialist advisers and managers delivering our Development Advice Service must be thoroughly familiar with the following:

- **Planning for Great Places – Our Service Statement**
  Sets out how NatureScot will engage with developers and regulators.

- **Scottish Planning Policy**
  SPP should be read and applied as a whole but pages 2-17, paragraphs 161-174, 193-253 are especially important for NatureScot.

- **NatureScot Writing Style Guide**
  Guidance on how to write clearly, helpfully and engagingly.

Most case officers, specialist advisers and managers engaged in our Development Advice Service will need to be familiar with the following (particularly those highlighted in bold):

- **Scotland’s Third National Planning Framework (NPF)**
  NPF contains material on each of Scotland’s seven distinctive cities and their surrounding regions, Scotland’s rural areas and towns and its coastal and island communities. It has three thematic sections on ‘A low carbon place’, ‘A natural, resilient place’ and ‘A connected place’.

  It also lists 14 National Developments. The NPF Action Programme has further information and updates on these and on further key actions.

- **European Site Casework Guidance\(^2\)**
  For advising on impacts on SPAs and SACs – Available as “Natura Casework Guide” on Intranet

- **Protected species licensing and the tests for a licence**
  It is important to understand our species licensing role when advising on development and protected species.

- **Identifying Natural Heritage Issues of National Interest in Development Proposals**
  This explains NatureScot’s approach to taking a position of objection, with particular emphasis on effects on natural heritage in the ‘wider countryside’.

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\(^1\) NatureScot intranet

\(^2\) NatureScot intranet
– NatureScot EIA handbook

– **NatureScot EIA Handbook for Staff**

  Comprehensive guidance on the Environmental Impact Assessment regime in Scotland.

– **Applying the balancing duty**

  Explains what NatureScot’s balancing duties are and how we apply them in planning and other casework (paragraphs 11-13, 40-50).

– **Placemaking and Green Infrastructure**

  Explains our role with respect to green infrastructure and place-making and helps you decide when you should provide advice on green infrastructure and place-making in relation to a piece of development management casework.

– **Onshore Renewable Energy FAQ**

  This document is a ‘live’ compilation of frequently asked questions and suggested text for responses on certain topics. It is maintained by the RECAs, quality assured by two Senior Casework Managers and endorsed by the Principle Advisor for Casework & Advice.

– **Local Authorities Handbook**

  Volume 1 contains comprehensive information of the Scottish planning system.

  Volume 4 contains comprehensive information on other relevant regulatory regimes.

Case officers, specialist advisers and managers engaged in advice on aquaculture will also need to be familiar with:

– **EIA Templates for Aquaculture**

  For giving scoping advice on aquaculture
PART 1. MANAGING DEVELOPMENT IN SCOTLAND

1.1 Introduction

Most of our development cases arise from the planning system but this guidance also applies to consultations asking for advice on the following:

- Environmental Impact Assessment screening and scoping
- Electricity generation projects (Electricity Act Section 36)
- Electricity transmission projects (Electricity Act Section 37)
- Coastal and Marine Development, including Coastal Protection
- CAR Licence
- Harbour Orders
- Railways and Tram works
- Road Orders
- Hazardous Substances consent
- Flood control
- Forest Design Plans, woodland creation and felling

You can find a summary of the legislative background and scope of consultations in Key Information 1 and full information on the legislation, processes and NatureScot’s role in NatureScot’s Local Authority Handbook1.

1.2 The Planning System

The planning system provides the framework for decisions about the use of land in our towns, cities and countryside. It makes possible consideration of the effects of development on its surroundings, where development should happen and where it should not. It comprises Development Planning, Development Management and Enforcement.

**Development Planning** encompasses the development plan and related supplementary guidance. Development plans are important because they set out the long term vision for change for the places they cover – they plan for where development should and shouldn’t happen. They are the foundation of the planning system and the basis for development management decisions.

**Development Management**, the focus of this guidance, is the process of deciding whether to grant or refuse planning permission. It covers the whole process of negotiation involved in ensuring that the right kind of development happens in the right place as envisaged by the development plan or other strategic plan. It provides an opportunity for people affected by new development to influence the decision. Planning Authorities may seek help from NatureScot when they need specialist advice on key aspects of development proposals as set out in Planning for Great Places – our Service Statement. It
may be mandatory for Planning Authorities to seek our advice; in other situations they may do so voluntarily.

### 1.3 Scottish Planning Policy

Scottish Planning Policy (SPP) is a statement of Scottish Government policy on nationally important land-use planning matters. It explains the purpose of planning, sets objectives for key parts of the system, and includes Principal Policies and Subject Policies on aspects of planning such as ‘A Low Carbon Place’ and ‘A Natural, Resilient Place’. As a statement of Ministers’ priorities, the content of the SPP is a material consideration that carries considerable weight.

### 1.4 National Planning Framework

Scotland's Third National Planning Framework (NPF) sets the context for development planning in Scotland and provides a framework for the spatial development of Scotland as a whole. It sets out the Government’s development priorities over the next 20-30 years and identifies national developments that support the development strategy. The NPF informs development and investment decisions of the Scottish Government, its agencies, planning authorities, private investors and other bodies.

Statutory Development Plans must have regard to the NPF and Ministers expect planning decisions to support its delivery. You should therefore be familiar with the NPF and in particular any national developments in your area.

### 1.5 Circulars, Planning Advice Notes (PANs) and other guidance

Circulars provide statements of the Scottish Government's policy and contain guidance on policy implementation through legislative or procedural change. PANs provide advice and information on technical planning matters.

Statements of Scottish Government policy, Designing Streets, Creating Places and Circulars have the same status in decision making as the SPP and NPF and may be material considerations in development plans and development management decisions.

### 1.6 The development hierarchy

All development proposals belong to one of the following categories:

- **National Developments** – those designated as such in the National Planning Framework. Most, if not all, national developments will require an Environmental Impact Assessment (EIA). The Scottish Parliament approves national developments in principle. Consequently, NatureScot will object to such developments only if we conclude that they will fail to pass a Habitats Regulations Appraisal under the terms of the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended).

- **Major Developments** – development of a class listed in the Schedule to The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 that meets or
exceeds the corresponding threshold or criterion set out in column 2 of the schedule. Most major developments will require an EIA.

- **Local Developments** – all development other than national developments and major developments. Some local developments will require an EIA.

### 1.7 Development management procedures

The category of a development in the hierarchy largely determines how a Planning Authority processes it, the level at which decisions are taken and the options open to appellants.

- **National Developments** – Only a Full Council has the authority to determine applications for National Developments.

- **Major Developments** – Planning Committees have authority to determine major applications, unless the Planning Authority deems it significantly contrary to the development plan in which case the Full Council must decide.

- **Local Developments** – Local developments may be determined by a Planning Committee, or by a Planning Officer if listed in the approved scheme of delegation.

Failed applicants may appeal any decision to Scottish Ministers except those made by Planning Officers which can only go to the Local Review Body and no further.

Detailed guidance is available in Scottish Planning Series Circular 3/2013: Development Management Procedures

### 1.8 Processing agreements

Processing agreements are a formal framework for project managing an application for a national or major development in order to establish a realistic timescale for determination that takes account of the amount of information required for decision-making. Scottish Government expects PA’s to facilitate processing agreements wherever practicable, but such agreements are entirely voluntary on the part of the applicant and the PA.

### 1.9 Design and access statements

Certain applications for planning permission must be accompanied by a statement explaining the design principles and concepts and, in certain circumstances, how issues relating to access for disabled people to the development have been dealt with.

Design and access statements should accompany all applications for national and major developments. Design statements should accompany applications for local development in National Scenic Areas and World Heritage Sites. They provide a key focus for our advice on the landscape impacts of major developments and we may be asked to advise on these at the pre-application stage.
PART 2. NATURESCOT’S ROLE IN SUPPORT OF DEVELOPMENT AND REGULATION

2.1 Meeting the expectations of our customers

We set out our role in our service statement – Planning for Great Places. This, together with the Scottish Economic Strategy, Scottish Planning Policy (2014) and the Scottish Regulators’ Strategic Code of Practice, is the context for our customers’ expectations.

We are committed to helping Scottish Government and Planning Authorities operate a modern planning system that is fast, inclusive, and supports sustainable economic growth.

The importance of our role is illustrated by the Scottish Economic Strategy, which features natural capital amongst its priorities and says that ‘protecting and enhancing this stock of natural capital, which includes our air, land, water, soil and biodiversity and geological resources is fundamental to a healthy and resilient economy’.

Our approach reflects the core values set out in Scottish Planning Policy (2014), namely:

– focus on outcomes, maximising benefits and balancing competing interests;
– play a key role in facilitating sustainable economic growth, particularly the creation of new jobs and the strengthening of economic capacity and resilience within communities;
– be plan-led, with plans being up-to-date and relevant;
– make decisions in a timely, transparent and fair way to provide a supportive business environment and engender public confidence in the system;
– be inclusive, engaging all interests as early and effectively as possible;
– be proportionate, only imposing conditions and obligations where necessary; and
– uphold the law and enforce the terms of decisions made.

We aim to help others to achieve the right development in the right place. To achieve this our advice will:

– help decision makers understand the impacts of development on our natural assets;
– enable others to achieve the right development in the right place (Good Practice 1);
– support high-quality development which maximises benefits to people and nature;
– help deliver a faster, more efficient planning & consenting process;
– help guide individual development proposals at an early stage;
– target proposals that could have impacts on Scotland’s natural heritage that raise issues of national interest;
– provide advice that is proportionate, enabling, clear and unambiguous; and
– complement that from other key agencies.

Our service aligns with the principles of better regulation and the requirements of the Scottish Regulators’ Strategic Code of Practice. Our advice and guidance will be:
- **Proportionate**: Our level of engagement and the scope and detail of our advice will be in proportion to the nature, scale and importance of the potential impacts a plan or proposal might have on the natural heritage.

- **Consistent**: This service statement provides the basis for delivering a national service locally. Our advice will be evidence-based and our approach and level of service will be consistent across Scotland.

- **Accountable**: We provide annual Planning Performance Reports to the Scottish Government detailing our contribution to the planning system. These are published on our website.

- **Transparent**: We publish the internal guidance that frames our advice on our website. Planning Authorities and the Scottish Government publish our advice on specific plans and proposals on their websites.

- **Targeted**: We will target our efforts on plans and proposals that could have impacts on Scotland’s natural heritage that raise issues of national interest.

2.2 Selective engagement

We are a statutory consultee on some developments and will engage with a small number of other cases that could, individually or in combination with others, raise natural heritage issues of national interest. We have set out our priorities for engagement in ‘How and when to consult NatureScot – a checklist’.

We will not provide advice in response to consultations that do not meet the criteria set out in the checklist above. We expect our customers to use relevant guidance on our website in cases that don’t meet the consultation criteria.

We will judge all consultations against the criteria below to decide on our response.

**Do the impacts closely approach or exceed levels that raise issues of national interest?**

We should only provide tailored advice where impacts of proposals are significant and closely approach or exceed levels that raise issues of national interest. Where impacts exceed levels that raise issues of national interest our response will normally be an objection. In cases where, after detailed consideration, we have decided that impacts closely approach but do not exceed levels that raise issues of national interest, we will provide advice only.

*There are two exceptions to this approach;*

1. We have agreed with Scottish Government that for all Electricity Act cases, NatureScot will advise Energy Consents Unit on impacts on:
   - Landscape and visual amenity
   - Birds in the wider countryside
   - Peatland and carbon-rich soil
   - Protected species (although this will increasingly be provided through standing advice)
This includes impacts which do not raise issues of national interest. The internal memos on the approach to consultations from ECU are on intranet A3121700 and intranet A3074282.

2. Agreed place-based priorities will sometimes be an exception. We will deliver most of our place-based advice through input to local development plans, masterplans and development briefs. The exception to this is where a development proposal (if permitted without changes/conditions) would significantly compromise objectives for nationally/ agreed spatial priorities and projects that are the focus of our place-based work.

Special arrangements apply to our engagement with development casework affecting National Parks

2.3 Our advice

In response to consultations, our first priority should be to identify the potential impacts on nature or landscapes that could raise issues of national interest. This is likely to be particularly applicable to EIA cases. For these, there may not be a particular aspect of nature that has triggered the consultation with us, but the impacts of the proposal may potentially affect a variety of interests which could be of national interest. In all cases, we should advise whether and how it is possible to avoid or mitigate any important priority impacts that have been identified.

When advising on a specific proposal, you should always check whether there is any land allocation in the Local Development Plan relevant to the proposed use of that site, and in addition, any representation that we have made on that site. Where there is an allocation, the principle of development is established and we should only advise on the detail of what is proposed in relation to any previous comment we made, rather than the principle of that type of development in that location.

2.4 Pre-application engagement

Good Practice Box 2.

Engagement with developers before they submit an application provides an opportunity to resolve potential problems early and help speed up decision-making. Such ‘upstream’ involvement is a key part of our contribution to a modernised planning system.

We might get involved in pre-application discussions through:

- a request from the prospective applicant
- an informal consultation from the planning authority
- a ‘pre-application with communities’ consultation initiated by a formal Proposal of Application Notice (PAN) – see below
- an EIA screening consultation from the planning authority
- an EIA scoping consultation from the planning authority
- a request to contribute to a processing agreement

At pre-application stage, we should limit our involvement to those cases that meet the threshold for formal consultation, as set out in ‘How and when to consult NatureScot – a checklist’. Our first priority
should be to identify the potential impacts on nature that trigger formal consultation with us and to further pinpoint potential impacts on nature and landscapes that could raise issues of national interest. At this stage developers will be keen to establish our likely position on the proposal. If it becomes apparent that the impacts of a proposal may raise natural heritage issues of national interest, we should tell the potential applicant at the first opportunity, indicating that we are likely to object if the effects are unavoidable or they cannot mitigate them satisfactorily.

It is much easier to secure mitigation and enhancement by getting it built into the proposal itself (as part of the application) than it is to secure such mitigation through conditions or agreements. This is because the primary purpose of conditions is to allow a planning authority to give permission to a proposal that they would otherwise have to refuse. We should not recommend conditions to secure improvements that are not critical to the decision to give planning permission, however desirable those improvements may be in terms of nature. Pre-application engagement therefore provides us with our best chance to influence the outcome to the benefit of the nature of Scotland.

Suggestions for mitigation and enhancement should always be proportionate to the potential scale of possible impacts, reasonable in relation to the scale of the development and realistic.

Key Information 2 sets out definitions of mitigation, enhancement and compensation.

Pre-application consultation with communities is mandatory for major and national developments. It is possible that prospective applicants may choose to consult us and other key agencies at the same time, but there are no statutory requirements to consult NatureScot at this stage. We should not get involved in the statutory consultation between developers and the community but if we do receive a ‘proposal of application notice’ the proposal becomes part of a formal process of consultation that the applicant must report on when they submit a planning application. If a potential applicant consults with us at this stage, you should inform them that any written advice we give would be part of the public record.

### 2.5 Pre-application engagement and Environmental Impact Assessment

At the screening stage, the competent authority decides whether a proposal requires an Environmental Impact Assessment (EIA). Most major and all national developments will require an EIA, but so will some local developments. We should normally reply to all such requests for advice related to this process, though we have prepared standing advice in relation to EIA screening for small-scale wind power. We should comment only on those impacts on which we are qualified to advise. Our role is to advise whether the proposal is likely to have any significant effects on the environment in order to inform the competent authority’s decision as to whether an EIA is required. Avoid giving an opinion of whether a proposal requires an EIA. There is one exception to this – when we are asked for screening advice on proposals subject to The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 (As Amended). In these cases NatureScot is required to give a view ‘on whether the proposed works are an EIA project’.
Scoping ensures that the Environmental Impact Assessment Report (EIA Report) focuses on the environmental issues and potential impacts that need the most thorough attention. Although there is no requirement for applicants to request advice on what the EIA should cover, it is good practice to do so. If an applicant requests that the competent authority adopts a scoping opinion, the competent authority must consult various bodies, including NatureScot. Effective scoping advice is crucial to avoiding delays and holding objections at the application stage. **A request for advice about the scope of an EIA is a key opportunity for us to help the applicant** by providing the information that decision-makers need in order to take proper account of the most significant impacts of a proposal on nature and landscapes.

For Section 36 applications - Our aim should be to ensure that developer and decision makers have the right information to make an informed decision regardless of whether we choose to disengage from making comment at later stages of the application.

We will:

- identify all the environmental effects that have the potential to be significant (have a critical influence on determination and conditions) and provide advice on the information, survey and assessment required to be able to consider these impacts properly
- refer to standing guidance as much as possible e.g. advise which protected species are likely to be present and direct developers to appropriate survey guidance
- offer detailed advice only when standing guidance is inadequate or inappropriate to the situation
- identify any issues which may lead to an NatureScot objection if they cannot be resolved
- advise which natural heritage issues the ES need not address because they will have little or no influence on the decision-making process.

You will find NatureScot’s **general scoping and pre-application advice** helpful.

It is important to decide now whether you need any specialist support with the proposal at any point in the development management process. **You should not wait for the application and EIA Report before calling on specialist advice.**

For aquaculture casework, we should provide screening and scoping advice in line with EIA templates for aquaculture.

2.6 A note on Freedom of Information

Any information submitted to NatureScot during pre-application discussions may be subject to a request under the Environmental Information (Scotland) Regulations 2004. **For this reason you should tell the prospective applicant that, although we are keen to receive information about the proposal at the pre-application stage, we cannot do so on the basis that we hold that information in confidence.**

Developers can take some steps to help us manage their information by separating out, and clearly marking, environmentally and (genuinely) commercially sensitive information. They can also provide us
with descriptions of the harm that would occur if their information was released. If you receive a request to see relevant information you should seek advice from NatureScot’s Information Officer in the Information and Cyber Security Team.

2.7 Processing agreements

Our main role is to help the PA and the applicant identify what information the applicant must submit with the application. On rare occasions, PAs may ask us to sign a processing agreement. We should be as helpful as possible in progressing processing agreements, but this does not mean that we should attempt to work to unrealistic timescales, especially where this could compromise the quality and professionalism of our response.

2.8 Natural heritage issues of national interest

We will consider objecting to a development proposal (or submitting a conditioned or holding objection) only when the impacts on nature and landscapes raise issues of national interest.

Determining the significance of the impacts of a proposal is relatively straightforward for cases involving nationally and internationally important protected areas — namely SSSIs, European sites, Ramsar sites, NSAs, NNRs and, to a lesser degree, National Parks, as the importance of the natural interest has already been identified. For cases not affecting these protected areas judgements are required, not only about the degree of impact, but also about the importance of the interest affected.

We now take a more risk-based approach than has previously been the case to all proposals that might affect protected areas. Cases can fall into one of three categories:

- Not straightforward to identify and/or mitigate adverse effects and therefore national interest – this requires a High/bespoke input
- Simple to identify and mitigate adverse effects with standard/straightforward measures - Medium input (we will develop standard wording/ standing advice to incorporate into some responses but some flexibility is required in trying to apply standardised wording to all scenarios)
- No substantive impacts expected (e.g. no LSE, clearly no effect on NSA integrity) – Low/standard input relying primarily on simple responses with standard wording

Identifying Natural Heritage issues of National Interest in Development Proposals will help you make these judgements. You should refer to this guidance whenever such issues arise, including when you are considering a conditioned objection or a holding objection.

2.9 Development requiring Environmental Impact Assessment

Competent authorities must consult with us on all Environmental Impact Assessment Reports (EIA Reports) produced as part of an EIA. In addition, we have indicated to Planning Authorities that we

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2 World Heritage and RAMSAR sites are also of national and international importance but we will very seldom, if ever, base our advice on these designations.
would like the opportunity to comment on all development proposals that require an EIA even though some of these consultations (on the proposal) will not be mandatory.

The starting point for our advice should be our scoping advice. This should have identified the most important natural heritage issues. Within this scope, the focus of our advice should be where nationally important natural heritage issues are identified through:

- significant impacts identified in the EIA Report
- impacts that have not been properly identified in the EIA Report
- impacts that have not been given sufficient weight in the EIA Report
- opportunities for mitigation/enhancement that have been missed

Note that S36 cases are an exception – Guidance is available in intranet A3121700 and intranet A3074282 and the issue is discussed in Section 2.2 of this Guidance.

We should not attempt to provide a systematic commentary on the quality of the EIA Report as an end in itself. Instead, we should focus on those elements of the EIA Report most relevant to our advice on the proposal. We should point out where an EIA Report has failed to answer key questions about the significant environmental effects of the proposal satisfactorily and what further information or assessment is required to answer those questions where nationally important interests are involved. If an EIA Report has made a competent assessment of the impacts then the length and detail of our response should reflect this. There is no point in describing and evaluating impacts at length if that is already accurately set out in the EIA Report.

Some developments require an EIA because of effects on aspects of the environment on which SEPA or Historic Environment Scotland will be best placed to comment, such as flooding, air quality or the historic environment. If the proposal does not raise significant issues in terms of landscape, public enjoyment, biodiversity or geodiversity, then a short response to the consultation may well be appropriate.

EIA guidance for NatureScot staff contains detailed advice on responding to EIA consultations.

2.10 Development that does not require Environmental Impact Assessment

There will be occasions where it will be appropriate to comment on nature and landscape issues additional to those that triggered the consultation, particularly where there may be significant impacts that the PA has missed. An example might be where a PA consults us because a proposal impacts on a NSA and it emerges that there could be impacts on a nearby European site that the PA hasn’t asked us about.

For the majority of cases we should focus on the issue that triggered the consultation. This means, for instance, that we shouldn’t comment on local landscape impacts in the wider countryside when advising on a proposal with possible impacts on Natura sites or a SSSI. Similarly, we shouldn’t comment on local impacts on biodiversity when advising on a development with impacts on an NSA.
Where we are a **statutory consultee for all applications**, e.g. Marine Licences, we should focus on the significant nature issues that meet our priorities for engagement in *How and when to consult NatureScot — a checklist*. Contact the consenting authority if it is not clear why they have consulted us.

### 2.11 Protected species – selective engagement

Consenting authorities should deal with routine protected species issues as part of their duty to comply with protected species legislation. **We do not have the remit or the resources to ‘police’ PA’s with respect to complying with protected species legislation.**

Consenting authorities should identify situations where it is appropriate to ask the applicant to carry out a survey, with reference to guidance on our [website](#). **We will normally only advise on development and protected species where species surveys and mitigation raise issues not already covered by our standing advice.**

### 2.12 A note on communications

When we have discussions with developers, these should normally take place with the consenting authority present. When this is not the case, we must make sure we keep them informed about any advice we might give the developer. As well as helping them know what is happening, it can help them have a better understanding of the important nature and landscape issues they will need to consider.

### PART 3. NATURESCOT’S POSITION

#### 3.1 The 5 positions

Our advice will always adopt one of five positions.

- A. No Comment
- B. Advice only
- C. Holding objection
- D. Conditioned objection
- E. Outright objection

This [Flowchart](#) will help you to decide which position NatureScot should adopt.

#### 3.2 Approval and sign-off

This [matrix](#) sets out the **minimum** level of authority needed in each situation but case officers and managers may wish to seek higher approval in particular circumstances.
### The level of approval required for each NatureScot position in a different contexts

<table>
<thead>
<tr>
<th>Context</th>
<th>No comment</th>
<th>Advice only</th>
<th>Holding objection</th>
<th>Conditioned objection</th>
<th>Outright objection</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SSSI, SPA, SAC, NSA</strong></td>
<td>Operations Officer</td>
<td>Operations Officer</td>
<td>Unit Manager (Operations Manager)</td>
<td>Unit Manager (Operations Manager)</td>
<td>Unit Manager (Operations Manager)</td>
</tr>
<tr>
<td><strong>NNR</strong></td>
<td>Operations Officer</td>
<td>Operations Officer</td>
<td>Unit Manager (Operations Manager)</td>
<td>Unit Manager (Operations Manager)</td>
<td>Director (Operations Manager)</td>
</tr>
<tr>
<td><strong>NC MPA</strong></td>
<td>Operations Officer</td>
<td>Operations Officer</td>
<td>Unit Manager (Operations Manager)</td>
<td>Unit Manager (Operations Manager)</td>
<td>Director (Operations Manager)</td>
</tr>
<tr>
<td><strong>National Park</strong></td>
<td>Operations Officer</td>
<td>Operations Officer</td>
<td>Unit Manager (Operations Manager)</td>
<td>Unit Manager (Operations Manager)</td>
<td>Unit Manager (Operations Manager)</td>
</tr>
<tr>
<td><strong>National Park (outside boundary)</strong></td>
<td>Operations Officer</td>
<td>Operations Officer</td>
<td>Unit Manager (Operations Manager)</td>
<td>Unit Manager (Operations Manager)</td>
<td>Director (Operations Manager)</td>
</tr>
<tr>
<td><strong>None of the above</strong></td>
<td>Operations Officer</td>
<td>Operations Officer</td>
<td>Unit Manager (Operations Manager)</td>
<td>Unit Manager (Operations Manager)</td>
<td>Director (Operations Manager)</td>
</tr>
</tbody>
</table>

3.3 Advice only
Targeted advice-only responses will be appropriate for most consultations. We expect decision makers to consider all of our advice, including standing advice, in determining planning applications, not just on those occasions where we have objected.

Do not use ‘Advice only’ responses...

- when proposals are likely to have a significant effect on the qualifying features of an SPA or SAC and you cannot conclude the proposal will have no “adverse effect on the integrity” (aes) on the site.
- where further measures are necessary to avoid natural heritage impacts of national interest. In these cases, we should issue a conditioned objection.
- where further information is required to confirm that natural heritage impacts of national interest will be avoided. In these cases, we should issue a holding or outright objection.

Advice-only responses must include:

- an assessment of the potential impact of the development proposal on nationally important nature and landscape issues.
- advice on the importance of those impacts.

Advice-only responses may also offer advice on mitigation and enhancement but we will not try to secure measures by conditions in advice-only letters. If we do, the consenting authority could interpret our advice as a conditioned objection.

Where there are significant opportunities to avoid, reduce, mitigate or compensate for the most important impacts and/or enhance nature, then we should provide advice on the measures necessary to achieve that. Present all your advice on mitigation, enhancement and compensation in an annex to the letter, unless it is very short and simple, along with requests for further information (Good Practice Box 3).

‘Advice only’ responses should not normally include requests for further information.

Exceptionally, requests for further information may be appropriate where discussions with the consenting authority and/or applicant have indicated that new information is likely to result in changes to the proposal and a significantly better outcome for the natural heritage. Even then though, the delays involved in getting the extra information must be proportionate to the potential benefits and the applicant must be happy to provide that information. Present all your requests for further information in an annex to the letter, along with advice on mitigation, enhancement and compensation (Good Practice Box 4).

3.4 Holding objection

Only use a holding objection where we have concluded that issues may be of national interest:
and

- information is required to resolve new issues that have emerged since pre-application discussion and that could not have been reasonably foreseen before the application was submitted
  
  or

  information which was requested at pre-application has not been provided to sufficiently remove the likelihood of an issue of national interest
  
  or

- information is required to resolve issues and we were not approached for pre-application discussions;

Do not use a holding objection:

- in order to ensure that every conceivable risk to the natural heritage has been ruled out. Often our own experience and professional knowledge will allow us to give definitive and reasonable advice based on the available information.

- if further information would be unlikely to remove an objection. It would be a waste of the applicant’s time and money to gather such information and an outright objection would be more appropriate.

Present all your requirements for further information in an annex to the letter, along with advice on mitigation, enhancement and compensation (Good Practice Box 4).

We can then reconsider our position once we have the information.
3.5 Conditioned objection

Use a conditioned objection when:

- you have concluded that mitigation is necessary to avoid impacts on nature and landscapes likely to raise issues of national interest. Each mitigation measure must be necessary to avoid an outright objection from NatureScot.

Do not use a conditioned objection

- To seek changes to a development proposal that are so fundamental in nature and scale that they would require the applicant to submit a new application. In these cases, an outright objection is more appropriate.
- Where the changes/mitigation needed would render the development unfeasible/unworkable, for economic or other reasons. Use an outright objection.

This position will often be appropriate for developments that could affect NSAs, SSSI and/or European sites.

You should establish with the consenting authority what might be reasonable and realistic before submitting our response especially where our proposed changes or conditions are substantial.

Key Information 2 sets out definitions of mitigation, enhancement and compensation.

Refer to Good Practice Box 5 for more guidance on use of conditions and agreements. Present all your advice on mitigation required in an annex to the letter, along with requests for further information (Good Practice Box 3).
3.6 Outright objection

Use an outright objection when:

- the proposal raises natural heritage issues of national interest (following NatureScot’s National Interest guidance). These cannot be avoided, or can only be avoided by changes to the proposal that would require (in the view of the planning authority) the applicant to submit a new planning application or render the proposal unfeasible/unworkable for economic or other reasons.

Do not use an outright objection:

- Where changes or mitigation can be secured that would satisfactorily address our advice. A conditioned objection would be more appropriate in this case.

You should express an outright objection simply by saying ‘NatureScot objects...’. Do not use variations of phrasing to establish NatureScot’s position. For instance, do not state that NatureScot ‘object in principle’ or use other such wording. This is to avoid confusion and to prevent others seeking to establish that some objections carry more weight than others.

3.7 Applying the balancing duty

Whenever the impacts of a proposal raise unavoidable natural heritage issues of national interest, you should apply our balancing duty following the guidance and document this in the response letter. The exceptions to this are:

- Where we object (or similar appropriate wording) to a proposal because of impacts on European sites or where the proposal would be detrimental to the maintenance of Favourable Conservation Status (FCS) of a European Protected Species (EPS).

Letters should briefly reference that we have carried out our balancing duty. Suggested wording below.

We have considered other interests and taken them into account in reaching our conclusion on this proposal.

3.8 Accepting the principle of development but of a different scale and/or design

Where the application site could accommodate a development of a similar type/use-class but of a different scale or design without significant adverse impacts, then it may be helpful to indicate this in the conclusion of our response. However, only do this with the agreement of the consenting authority, since it would not be helpful to the applicant or the consenting authority to suggest a new proposal could be progressed if there are other good reasons why permission would be unlikely.

Suggested wording:

“Although we object to the proposal as currently submitted, it may be that a development of a different scale/design could be achieved without raising natural heritage issues of national
We would be happy to meet with the developer and the planning authority to discuss this further.”

3.9 No comment

Use this response when

- we receive an unsolicited, formal consultation that does not conform with the service we offer in our Service Statement – Planning for Great Places
- The consultation is within the service statement in relation to wider countryside EIA issues but does not raise significant natural heritage issues and is not Section 36 or 37 Electricity Act consultation.

A ‘no comment’ response does not mean that we support the application or that there are no significant impacts on the natural heritage for the consenting authority to consider. A development could have, for example, an impact on a small group of trees, a piece of green space or the landscape. However, in these cases we expect consenting authorities to be able to identify and address such impacts (and seek opportunities for enhancement or mitigation) without reference to us.

There are a number of tailored ‘no comment’ responses provided further on in part 5 of this Guidance, each designed for a different situation relating to the main reasons we will usually be consulted.

If you receive a consultation that does not appear to be relevant to our Service Statement you can seek further clarification or provide no comment wording such as that below

**Wording for No Comment/Not Service Level Statement Case** – circumstances differ so these are two possible suggestions. Use whatever wording best suits the circumstances, including variations of these.

“We do not intend to offer formal comment on this proposal as it falls below our threshold for consultation as outlined in our Service Statement at Planning for Great Places – Our Service Statement.

Further advice for planners and developers can be found on our website.

Or “Thank you for consulting us on the above application. We have no comments to make in this case.”

Do not use a ‘no comment’ response...
Where there could have been a credible link between the proposal and possible impacts on NSAs, SSSIs or European sites, but our assessment of the case is that no such link exists. In these circumstances, it is more helpful to planners and developers if we rule out such impacts explicitly.

What to avoid in ‘no comments’ responses

- Don’t be tempted to offer partial comment on a proposal or its impacts such as e.g. ‘bats may use nearby trees for roosting’, especially when there is no evidence to support such claims.
- Don’t include phrases such as ‘there are only local impacts’. These types of phrases can be easily misinterpreted and misrepresented, or will have the effect of encouraging further consultation.
- Nor should you suggest that there are some significant natural heritage issues, but that we’re not going to comment on them because ‘we don’t have the resources’. We have changed our approach so we focus on upstream engagement and on a smaller number of cases likely to have the biggest impacts. This is set down in our service statement - Planning for Great Places, which you may refer to, but we need not explain our approach every time we submit a no comment response.
- In some cases you may wish to state that “We fulfil our advisory role on many issues through the provision of standing advice on our website and do not expect to be consulted other than in exceptional circumstances not covered by the relevant standing advice”

**Important note.** If, for instance following a further request, we do offer some substantive advice on a development on which we have previously offered ‘no comment’ you must make it clear that the ‘no comment’ position is superceded and ask the customer to make our advice publicly available e.g. on their planning portal. This will ensure that the public are aware of our advice.

### 3.10 Non-planning casework – Use of “objections” or not

In applying this guidance to non-planning casework the consequences of an objection vary from those that apply in planning casework.

NatureScot have legal advice that sets out the statutory consequences of objections and representations from NatureScot in various statutory contexts e.g. The Electricity Act. In very few cases does an objection from NatureScot make it mandatory for Scottish Ministers to hold an inquiry or other procedure. Some modern legislation avoids giving specific weight to ‘objections’.

- The Marine (Scotland) Act 2010 does not discriminate between objections and other representations to marine licence consultations.
- The Rules of the Transport & Works (Scotland) Act 2007 provide that for most purposes representations shall be treated as objections. Whether or not the NatureScot consultation response uses the words “object” or “objection” would not therefore appear to be make any practical difference under this particular legislation.
Controlled Activities Regulations consultations

When we advise SEPA on applications for CAR licences we should use language that helps them take appropriate account of our advice. SEPA differentiate between ‘responses that raise issues (positive or negative) about the proposal’ and ‘those that only provide useful factual information, without passing comment’. Our advice should usually fall into the first category. The NatureScot CAR guidance\textsuperscript{1} intranet A2290181 will help you to decide when to provide advice and on what topics. You can find wording to use in Part 5 of this guidance.

This ensures that we have the opportunity to ask for the case to be decided by Scottish Ministers.

When SEPA consider that there are likely significant effects on qualifying features of European sites NatureScot have agreed to provide advice in a proforma provided by SEPA. We have also agreed that NatureScot will not offer an opinion on whether or not there is an impact on integrity, unless in exceptional circumstances. Do not use objection positions in response to CAR consultations.

SEPA will check that NatureScot agrees with their appropriate assessment. In exceptional circumstances NatureScot may decide that if SEPA conclude there is no impact on integrity there is a risk of failure to secure compliance with the requirements of the Directives. This represents a basic disagreement between the organisations and therefore you should escalate such differences to the Operations or Area Manager for action as soon as possible. Do not wait until your response has already been sent as discussion is required between NatureScot and SEPA to rectify the issue as soon as possible.

Forestry consultations

Scottish Forestry will

- Encourage a pro-active advisory role for Environment and Forestry Directorate of Scottish Government (ENFOR) bodies for forestry casework where they have a remit and have expressed a clear desire to comment on a forestry proposal backed up by an internal resolution procedure to resolve those cases unable to be agreed at a local (Conservancy) level.
- Accordingly, NatureScot, SEPA, and RPID no longer operate as formal consultees (as defined by previous forestry consultation regimes) but as SG partners with a key advisory role to ensure forestry approvals comply with other consent regimes and other key Scottish Government objectives.

Scottish Forestry can, of course, continue to refer disputed cases to Regional Advisory Committees and the Forestry Minister if they choose, but the process no longer requires this. Only use ‘Advice’ or ‘No Comment’ positions in advice to SF.

SF and NatureScot have agreed this new approach in our concordat.
3.11 A note on rebuttals and challenges

We may receive rebuttals or other challenges to our advice from a variety of sources, including developers, their consultants or 3rd parties, both in favour of and against development.

There will often be political sensitivities arising from such situations but it is important not to enter into exchanges of opinion or arguments that will not affect the substance of our advice. There is a danger of creating a sequence of rebuttal and counter-rebuttal that is time-consuming and unhelpful. If a proposal is examined at a hearing or inquiry, such exchanges will be presented as evidence. We must be very careful not to confuse or otherwise weaken our advice. Above all, we need to be consistent.

The Operations Manager will determine how we respond. Our response should normally be signed by whoever signed the original advice, unless we change our position so that it needs signing off at a more senior level. If we receive further rebuttal consult the Area/Activity Manager on how to respond.

Before you do anything with a rebuttal or other challenge, establish whether the correspondence has come via the consenting authority:

- if it hasn’t, copy it to the consenting authority and ask them if further clarification would be useful to their decision-making process – ensure this is recorded and copy the rebutter in.
- if it has, and the consenting authority haven’t asked for further advice, or you are unsure what they want, ask them if clarification would be useful to their decision-making process - ensure this is recorded and copy the rebutter in.

It is normally appropriate to respond directly to the consenting authority, copying the rebutter in. But use your judgement. Certainly, if the challenge amounts to a complaint you should correspond directly with the complainant, copying in the consenting authority if we think it would be useful to them. Refer to and follow NatureScot’s complaints procedure.

The following suggestions will help in producing the response

- Be concise;
- Correct factual errors;
- Clarify ambiguous or misleading advice;
- Consider any additional information provided or offered. Beware of raising expectations by accepting offers of further information that are unlikely to change our advice;
- Don’t stray from the key points we need to respond to and be as decisive as you can. Don’t leave loose ends or raise expectations that our advice may change without strong justification.
- Distinguish between differences in opinion and factual errors. Where the rebuttal is largely expressing opinion reply very briefly e.g. 'Thank you.... We consider that your letter doesn’t raise any new issues that require us to reconsider our advice issued on.... In line with our Service Statement we do not therefore intend to provide any more comment or advice prior to the case being determined....'
– Ask someone else to check your response before sending it.
Flowchart – which response type?

1. Receive formal consultation (or further information)
2. Do natural heritage impacts raise issues of national interest?
   - Yes
     - Can impacts be avoided?
       - Yes
         - Conditioned objection
       - No
         - Are these impacts on Natura sites?
           - Yes
             - Outright objection
           - No
             - Complete balancing duty proforma
   - No
     - Advice only response or no comment

---

2 Do not use objection positions for responses to CAR and forestry consultations.
Insufficient information to determine whether the proposal could have natural heritage impacts that raise issues of national interest

Was NatureScot engaged in pre-application discussions with the applicant?

Yes

No

Did NatureScot make a clear written request for the info. needed at the pre-application stage?

Yes

Outright objection²,³

No¹

Holding objection²,³

Notes:

¹ You should make every effort to identify necessary information at the pre-application stage. However, in practice, sometimes a holding objection needs to be used because a requirement for further information emerges later (e.g. as a result of surveys) that could not have been reasonably foreseen at the pre-application stage.

² In practice, it might be possible to get the information we need from applicants through informal contact/discussion, before we’re required to respond to the consultation. Where the applicant has agreed with the planning authority (in writing) to extend the deadline for determining the application (in order to gather the required information) an objection might not be needed.
PART 4. PROVIDING ADVICE

4.1 Format, style & and tone of written advice

All our advice should be:

- Enabling - focussed on solutions, presented in a helpful tone and supportive of government goals and purposes, whilst remaining aware of resource availability.
- Proportionate in length and detail to the importance of the potential impacts.
- Written in a style that supports our work and our values.

The tone of our advice should promote NatureScot as a respected, approachable, trustworthy and purposeful organisation. It should reflect our commitment to supporting sustainable economic growth and working with other interests to achieve this. The NatureScot Writing Style Guide intranet A3273201 will help you achieve this.

Use whatever communication medium (letter or email) is appropriate. Communicate our position(s) on the most important issues and give a very short summary of our grounds for taking this position. This should use very clear language and be accessible to the ‘general public’.

Bullet points are often helpful. You may also put our advice into context e.g. referring to earlier advice when important issues remain unresolved, and to make offers of further assistance if we can help to resolve outstanding problems. Put detailed advice in annexes unless it is simple and relates to just one or two issues.

If sending an electronic letter, this should be converted to pdf format before sending.

Responses to consultations on applications for planning permission (and other types of consent) must:

- Indicate whether we are objecting (outright, conditioned or holding) or simply providing advice only. Put your main point first.
- Describe the impacts of a proposal (Good Practice 6).
- Explain why those impacts and the natural heritage affected are important.
- Explain, if possible, how to avoid or mitigate the impact and enable the proposal to progress. Make it clear what we are advising the recipient to do.
- Make it clear when impacts are unavoidable.
- Clarify the status of our response. Indicate (where relevant) if, or if not, it might be necessary to notify Scottish Government before determination (Good Practice 7).
### 4.2 Components of a casework consultation response

<table>
<thead>
<tr>
<th><strong>Title (mandatory)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Base this on the title of the consultation letter. It should refer to:</td>
</tr>
<tr>
<td>• The relevant legislation (e.g. T&amp;C Planning (Scotland) Act 1997, sec 36 Electricity Act).</td>
</tr>
<tr>
<td>• The name and location of the development and the reference number of the application. Give enough information to enable any reader to identify the proposal.</td>
</tr>
<tr>
<td><strong>It should not</strong> include long descriptions of the proposal that is sometimes included within the title of the consultation letter.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Acknowledgement (mandatory)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>This <strong>short sentence</strong> refers to the proposal (in the title) and the date of the consultation. “Thank you for consulting us on the above proposal dated...”</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Summary (mandatory)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>The purpose of this section is to provide key information for the reader so that they have a clear understanding of the main elements of NatureScot’s advice. Put the most important issues first, clearly and simply.</td>
</tr>
<tr>
<td>State NatureScot’s position (conditioned objection, outright objection etc.) in relation to the proposal and, briefly, the grounds for that position.</td>
</tr>
<tr>
<td>This is not the place to set out the detail of impacts, mitigation measures or further information requirements. You should direct the reader to annexes for this unless our advice is very simple and relates to just one or two issues. <strong>Good Practice 6</strong> gives some suggestions for the wording of advice.</td>
</tr>
<tr>
<td>If necessary, indicate that we provide advice on other important issues elsewhere in the letter.</td>
</tr>
<tr>
<td><strong>Don’t</strong> list every impact on every natural heritage interest or our position in relation to that interest in this section, especially where there a large number of issues to address. This is likely to result in a confusing and repetitive letter. For instance where the issues regarding a European site and its underpinning SSSI are the same just refer to the European site issues in this part of the letter.</td>
</tr>
<tr>
<td><strong>Don’t</strong> repeat blocks of text throughout the letter and/or appendices – choose the appropriate place to state something and summarise if necessary to restate elsewhere in the letter.</td>
</tr>
</tbody>
</table>
Planning consultations: explain the effect our advice could have on the process of determining the application. This is a part of the summary, rather than a separate section/heading and will be appropriate for many responses. The purpose is to make it clear that our advice has an effect on the process of determining the application. The aim is to ensure PA’s understand the circumstances in which they may (or may not) need to notify Scottish Government. Good Practice 7 sets out some suggested wording on the status of our advice for a number of different scenarios. Do not include this text in responses to Scottish Government e.g. Energy Consents Unit or Marine Scotland.
### Background (optional)

The purpose of this section is to provide important contextual information and summarise our past involvement.

Do not say more than is necessary to achieve this or use this section to set out long descriptions of the proposal.

A short background section is needed for complex cases where there has been a long history of our involvement, especially when there are outstanding issues. Putting our advice into context can help the recipient and other readers to understand why we have adopted our position. You may refer to any pre-application involvement that we may have had and to any previous written correspondence with the developer or the decision-maker. If we have responded previously to the same application we must refer to our previous response/responses and clarify whether advice in the most recent response supersedes or is in addition to advice in previous responses.

### Appraisal of the impacts of the proposal and advice (optional – consider using annexes)

The purpose of this section is to:

- Describe and evaluate the impacts of the proposal, with the aim of answering key questions relevant to particular nature or landscape interests. What are the affected interests, why are they important and how are they affected?

- Give advice on how the development might be progressed or, if our position is outright objection, explain why the impacts are unavoidable.

### Conclusion (optional)

The purpose of this section is to set out what the implications of our advice might be in terms of taking the proposal forward and will be of most use in the more complex/contentious cases. For example you might suggest that further meetings might help to resolve issues, or indicate our willingness to help once further information is available. You should also provide details of who to contact (the lead officer) for any further information or questions. Where relevant include text to confirm we have exercised our balancing duty (see 3.7).

This section will often not be required. Take care to make sure that it is consistent with the cover letter and summary. Don’t just repeat the summary.

### Valediction (mandatory) – “yours sincerely, faithfully etc”

Before the valediction you should add the following sentence for all cases

“The advice in this letter is provided by NatureScot, the operating name of Scottish Natural Heritage”

Include the name, title and position of the person authorising the letter. Do not add electronic signatures to letters sent by e-mail. This is because the consenting authority (in
line with the Data Protection Act) will then have to redact the signature before publishing it on their e-planning website.

### Annexes (optional but recommended)

Use annexes to **set out recommendations for mitigation and enhancement** (Good Practice Box 3) and **further information** (Good Practice Box 4).

Use annexes to provide detailed assessment of impacts, including:

- detailed explanation of European site impacts in relation to the specific European site ‘tests’, and
- detailed explanations of how we have assessed a proposal that affects protected species, in relation to the relevant ‘tests’ for a licence

You must ensure that the annexes do not contradict, or undermine in any way, the main body of the letter and our position. This is especially important for complex cases, where the letter may go through many edits by several different people.

**Important Note on Hyperlinks**: use these (when available) as an alternative to lengthy annexes to direct customers to generic/standard guidance on a particular topic. Hyperlinks in PDF documents must have the full URL address spelled out in full in the text of the letter. So, for example, to provide a link to detailed European legislative guidance you must write:


NOT

“See detailed legislative guidance”
PART 5. REQUIRED AND SUGGESTED DEVELOPMENT ADVICE WORDING

5.1 Introduction

This part of the guidance sets out a number of scenarios relevant to different natural heritage interests. For each scenario, there is a corresponding response type and some suggested or required wording.

The scenarios relate to the most common circumstances where proposals may affect key natural heritage interests. However, they cannot cover every conceivable circumstance you may encounter when advising on a piece of development management casework.

It is especially important that we respond in a consistent way when evaluating the impacts of proposals that affect European sites, NSAs, SSSIs and (where standing advice does not cover the issue) protected species. These sites and species have special legal protection and so it is particularly important that our advice enables the consenting authority and the developers to comply with the legislation and follow due process.

- Wording for advice on European sites
- Wording for advice on SSSIs
- Wording for advice on NSAs and National Parks
- Wording for advice on Protected species
- Wording for advice on Marine Protected Areas
- Wording for advice on Priority Marine Features

A note on Ramsar and World Heritage Sites and other designations

- **Ramsar** sites are of national and international importance but we will very seldom, if ever, base our advice on this designation. Ramsar sites in Scotland are protected through the SSSI system and European designations. Where a Ramsar feature corresponds to a SSSI feature it will be treated as a SSSI feature and where it corresponds to a European site feature it will be treated as a qualifying interest of that European site. You may wish to refer to Ramsar status in your advice to emphasise the location’s importance.

- **World Heritage Sites** are of national and international importance but we will very seldom, if ever, base our advice on this designation. You may wish to refer to WHS status in your advice to emphasise the location’s importance. Exceptionally we may give advice on landscape and visual impacts when these are important aspects of cultural WHS. You should seek advice from your Ops Manager in these circumstances.
• Other designations may be relevant to our advice particularly in being clear to all involved at pre-application stages what needs to be considered and assessed e.g. GCR sites, seal conservation areas, designated seal haul-outs etc. (you can access information on these on the NatureScot website).

**Controlled Activities Regulations consultations**

When we advise SEPA on applications for CAR licences we should use language that helps them take appropriate account of our advice. SEPA differentiate between ‘responses that raise issues (positive or negative) about the proposal’ and ‘those that only provide useful factual information, without passing comment’. Our advice should usually fall into the first category. The NatureScot CAR Casework Guidance will help you to decide when to provide advice and on what topics.

**Required wording for the summary section of our advice on CAR licence consultations where we want to continue to be informed on case progress**

‘We would like you to treat this advice as a ‘third party representation’ and give us the opportunity to consider your draft determination before you issue any licence.’

This ensures that we have the opportunity to ask for the case to be decided by Scottish Ministers. Do not use objection positions in advice to SEPA.

**CAR consultations and European sites**

When SEPA consider that there are likely significant effects on European site qualifying features they will consult NatureScot to seek our advice to help them undertake an Appropriate Assessment. NatureScot have agreed to provide that advice in a proforma provided by SEPA. We have also agreed that NatureScot will not offer an opinion on whether or not there is an impact on integrity, unless in exceptional circumstances. Do not use objection positions.

SEPA will check that NatureScot agrees with the appropriate assessment. In exceptional circumstances NatureScot may decide that if SEPA conclude there is no impact on integrity there is a risk of failure to secure compliance with the requirements of the Directives. Escalate such differences to the Operations or Area Manager.

**Forestry consultations**

Scottish Forestry and NatureScot have agreed this approach in our concordat.

Scottish Forestry will

• Encourage a pro-active advisory role for ENFOR bodies for forestry casework where they have a remit and have expressed a clear desire to comment on a forestry proposal backed up by an internal resolution procedure to resolve those cases unable to be agreed at a local (Conservancy) level.
• Accordingly, NatureScot, SEPA, and RPID no longer operate as formal consultees (as defined by previous forestry consultation regimes) but as SG partners with a key advisory role to ensure forestry approvals comply with other consent regimes and other key Scottish Government objectives.

Scottish Forestry can continue to refer disputed cases to Regional Advisory Committees and the Forestry Minister if they choose, but the process no longer requires this. Only use ‘Advice’ or ‘No Comment’ positions in advice to FCS.

SF and NatureScot have agreed this approach in our concordat.
Part 5a. Required and suggested wording for development advice - European sites

Our advice, and the wording used, will depend on the answers to three tests as defined in the Habitats Regulations.

1. Is the plan or project directly connected with or necessary to site management for nature conservation management purposes (and part of a fully assessed and agreed management programme)?
2. Is the plan or project likely to have a significant effect on the site?
3. Can it be ascertained that the plan or project will not adversely affect the integrity of the site?

The European Site Casework Guidance provides more detail on the consideration of proposals affecting SACs, SPAs and Ramsar sites and you should read it alongside this guidance.

Required wording for expressing our advice about impacts on European sites. This is mandatory and should always be included.

Introduce your appraisal of all advice on European sites:

- candidate SAC, designated SAC or classified SPA
- proposed SAC or SPA

Wording relevant to different scenarios (1-8) with regard to the European site tests and the corresponding advice type. Use it in your summary or appraisal (following the above text) as directed.

1a. Proposal is necessary for conservation management purposes
1b. Proposal not necessary for conservation management purposes
2. No likely significant effect
3. Insufficient information to determine whether likely significant effect
4. Likely significant effect - can be avoided
5a. Likely significant effect - will not adversely affect the integrity of the site
5b. Likely significant effect - information provided shows that effect on integrity can be avoided with changes/ mitigation
5c. Likely significant effect - appropriate assessment already carried out shows that the effect on integrity can be avoided with changes/ mitigation
6a. Likely significant effect but unknown effect on integrity - the competent authority is proposing to undertake its own appraisal
6b. Likely significant effect but unknown effect on integrity - NatureScot are proposing to carry out a scientific appraisal
7a. Likely significant effect and probable adverse effect on integrity - no appropriate assessment has been carried out

7b. Likely significant effect and probable adverse effect on integrity – NatureScot have carried out a scientific appraisal

8. Appropriate assessment has not demonstrated that there will not be an adverse effect on the integrity of the site

You should usually complete a European site proforma before you start writing the response letter. The completed proforma (rather than a draft letter) should be the means of agreeing the type of response to use except in very simple circumstances and cases. Our letter should summarise the detailed HRA reasoning regardless of whether a proforma is completed – it should be clear in our responses what our reasoning is in considering the tests required. **We have agreed, for information, to send copies of our European site proformas by separate e-mail to Scottish Government’s Energy Consents Unit and Marine Scotland’s Licensing Operations Team. Do not send them in the same e-mail as our advice.**

The following pages set out the required wording to be used in NatureScot responses. The key below explains the shading used for the different parts of these responses.

<table>
<thead>
<tr>
<th>KEY</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Conclusion of assessment</strong></td>
</tr>
<tr>
<td><strong>NatureScot position</strong></td>
</tr>
<tr>
<td><strong>Required wording</strong> indicates the wording you should use in the summary and/or appraisal section of your letter.</td>
</tr>
<tr>
<td><strong>Suggested wording regarding the ‘status’ of the response</strong> is provided to help you to explain to the Planning Authority (only) any implications for them in terms of how the application is determined. The aim is to ensure they understand the circumstances in which they may need to notify Scottish Government. This should usually go somewhere towards the front of the letter and/or in the conclusion.</td>
</tr>
</tbody>
</table>

Use this wording in all relevant European site responses to **introduce your appraisal** of effects on a candidate SAC, designated SAC or classified SPA. These sites have legislative protection:
Required wording – Appraisal

“The proposal [is within/ is close to/ could affect] Name of site [candidate Special Area of Conservation (cSAC) selected for its List qualifying interest(s)/ Special Area of Conservation (SAC) protected for its List qualifying interest(s)/ Special Protection Area (SPA) protected for its List qualifying interest(s)].

For large multi interest sites it is acceptable to summarise the interests (for example “A number of breeding bird species” “a number of upland habitats”) if the detailed information on qualifying interests is referred to in the main body of the letter. The paragraph below is required but could be placed in an Annex if the letter is becoming too long and unwieldy.

The site’s status means that the requirements of the Conservation (Natural Habitats, &c.) Regulations 1994 as amended (the “Habitats Regulations”) apply or, for reserved matters, The Conservation of Habitats and Species Regulations 2017. Consequently, Name of competent authority is required to consider the effect of the proposal on the [cSAC/SAC/SPA] before it can be consented (commonly known as Habitats Regulations Appraisal). The NatureScot website has a summary of the legislative requirements.

For Ramsar sites a Ramsar feature will corresponds to a SSSI feature and will be treated as a SSSI feature or it will correspond to a European feature and will be treated as a qualifying interest of that European site.

Only include the sentence below if a Ramsar feature may be affected and corresponds to qualifying interest of a Natura site.

Name of site Ramsar site may also be affected but the interests of this designation are fully addressed as part of the following consideration of the site(s).

Use this wording in all relevant European site responses to introduce your appraisal of effects on a proposed SAC or proposed SPA. These sites have policy protection:

Required wording – Appraisal

“The proposal [is within/ is close to/ could affect] Name of site [proposed Special Area of Conservation (pSAC) protected for its List qualifying interest(s)/ proposed Special Protection Area (pSPA) protected for its List qualifying interest(s)].

The Scottish Government has a policy of protecting such sites as if they were designated as set out in Scottish Planning Policy. The legal protection afforded to designated sites is set out in the Conservation (Natural Habitats, &c.) Regulations 1994 as amended (the “Habitats Regulations”) or, for reserved matters, The Conservation of Habitats and Species Regulations 2017. Consequently, Name of competent authority is required to consider the effect of the proposal on the [pSAC]...
/pSPA) before it can be consented (commonly known as a Habitats Regulations Appraisal). The NatureScot website has a summary of Scottish Government policy.
Wording relevant to different scenarios (1-8) with regard to the European site tests and the corresponding advice type. Use it in your summary or appraisal (following the above text) as directed.

You should only consider including wording related to scenario 1a and 1b if the applicant is claiming, or is likely to claim in the future, that the proposal is necessary for conservation management purposes.

### 1a. Proposal is necessary (in our view) for conservation management purposes

<table>
<thead>
<tr>
<th>NatureScot Position: Advice only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Required Wording – Appraisal</td>
</tr>
<tr>
<td>“It appears from the information available that in this case the proposal is [either/both] directly connected with [and/or] necessary for the conservation management of the site for its qualifying interest(s) list qualifying interest(s) in order to add objective of management. An appropriate assessment is not therefore required.”</td>
</tr>
</tbody>
</table>

### 1b. Proposal not necessary (in our view) for conservation management purposes

<table>
<thead>
<tr>
<th>Response position relates to one of the scenarios below (2-8).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Required Wording – Appraisal</td>
</tr>
<tr>
<td>“It appears from the information available, that in this case the proposal is not connected with or necessary for the conservation management of the site. Hence, further consideration is required.”</td>
</tr>
<tr>
<td>Continue letter with one of the responses below</td>
</tr>
</tbody>
</table>

Note: For the following scenarios (2-8), the proposal is not connected to conservation management of qualifying interest(s) and consideration has moved to the next HRA test

### 2. No likely significant effect

<table>
<thead>
<tr>
<th>NatureScot Position: Advice only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Required Wording – Appraisal</td>
</tr>
<tr>
<td>“Our advice is that it is unlikely that the proposal will have a significant effect on any qualifying interests either directly or indirectly. An appropriate assessment is therefore not required.”</td>
</tr>
</tbody>
</table>

Provide brief reasons to support this decision – this is particularly important for proposals within sites and for large-scale activities/proposals adjacent to sites
3. Insufficient information to determine whether likely significant effect. Proposal could have a significant effect on the qualifying interest(s) of a European site

For use in limited circumstances only – see European site Casework Guidance for further advice

Follow Good Practice Box 3 in presenting detailed advice on further information required.

**NatureScot Position:** Holding objection

**Required Wording – Summary**

“The proposal could affect internationally important natural heritage interests and **we therefore object to this proposal until further information is obtained from the applicant.** This is set out in our appraisal below [and Annex X]. Once this information has been provided we will be able to give this proposal further consideration."

**Required Wording – Appraisal**

“Our advice is that there is insufficient information to determine whether the proposal is likely to have a significant effect on **name of qualifying interest(s) of site.** In order for this to be determined, we recommend that the following additional information is obtained:”

Provide details or summary of the information required

[if required] “Annex X contains full details and reasoning for these requirements.”

**Suggested wording regarding the ‘status’ of the response** (Planning applications only)

“If the planning authority intends to grant planning permission against this advice without the requested information, you must notify Scottish Ministers.”

4. Likely significant effect that can be avoided

Follow Good Practice Box 2 in presenting detailed advice on changes/mitigation required.

**NatureScot Position:** Conditioned objection

**Required Wording – Summary**

“This proposal could be progressed with appropriate [changes/mitigation]. However, because it could affect internationally important natural heritage interests, **we object to this proposal unless it is [amended/made subject to conditions] so that the works are done strictly in accordance with the [changes/mitigation] detailed in our appraisal below [and Annex X].**"

**Required Wording – Appraisal**
“Our advice is that this proposal is likely to have a significant effect on name of qualifying interest(s) of site. Consequently, Name of competent authority is required to carry out an appropriate assessment in view of the site’s conservation objectives for its qualifying interest(s). If the proposal is carried out strictly in accordance with the following [changes/mitigation], it will no longer be likely to have a significant effect and an appropriate assessment will not be required.”

Provide details or summary of the changes/mitigation needed

[if required] “Annex X contains full details and reasoning of these recommendations.”

Suggested wording regarding the ‘status’ of the response (Planning applications only)

If the planning authority intends to grant planning permission against this advice without the suggested [changes/mitigation], you must notify Scottish Ministers.”

5a. Likely significant effect but information provided/assessment already carried out shows that it will not adversely affect the integrity of the site

NatureScot Position: Advice only

Required Wording – Summary

“There are natural heritage interests of international importance on the site, but our advice is that these will not be adversely affected by the proposal”

Required Wording – Appraisal

“Our advice is that this proposal is likely to have a significant effect on name of qualifying interest(s) of site. Consequently, Name of competent authority, as competent authority, is required to carry out an appropriate assessment in view of the site’s conservation objectives for its qualifying interest(s).

To help you do this we advise that based on the [information provided/appraisal carried out to date], our conclusion is that the proposal will not adversely affect the integrity of the site. The appraisal we carried out considered the impact of the proposals on the following factors:

Give sufficient details of the main issues to allow the competent authority to decide whether or not they can agree with our appraisal: this should be based on the details in the proforma
### 5b. Likely significant effect but information provided/assessment already carried out shows that the effect on integrity can be avoided with changes/ mitigation

<table>
<thead>
<tr>
<th>NatureScot Position: Conditioned objection</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Required Wording – Summary</strong></td>
</tr>
<tr>
<td>“This proposal could be progressed with appropriate [changes/mitigation]. However, because it could affect internationally important natural heritage interests, we object to this proposal unless it is [amended/made subject to conditions] so that the works are done strictly in accordance with the [changes/mitigation] detailed in our appraisal below [and Annex X].”</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Required Wording – Appraisal</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>“Our advice is that this proposal is likely to have a significant effect on name of qualifying interest(s) of site. Consequently, Name of competent authority, as competent authority, is required to carry out an appropriate assessment in view of the site’s conservation objectives for its qualifying interest(s). To help you do this, we advise that the basis of the [information provided/appraisal carried out to date], if the proposal is carried out strictly in accordance with the following [changes/mitigation], our conclusion is that the proposal will not adversely affect the integrity of the site.”</td>
</tr>
</tbody>
</table>

Provide detail or summary of the changes/mitigation needed

[if required] “Annex X contains full details and reasoning of these recommendations.

The appraisal we carried out considered the impact of the proposals on the following factors:”

Give sufficient details of the mains issues to allow the competent authority to decide whether or not they can agree with our appraisal: this should be based on the details in the proforma

**Suggested wording regarding the ‘status’ of the response** (Planning applications only)

If the planning authority intends to grant planning permission against this advice without the suggested [changes/mitigation], you must notify Scottish Ministers.”
5c. Likely significant effect but appropriate assessment already carried out shows that the effect on integrity can be avoided with changes/mitigation

**NatureScot Position**: Conditioned objection

**Required Wording – Summary**

“This proposal could be progressed with the [changes/mitigation] identified in the appropriate assessment by name of competent authority and dated xxx. Although we agree with this assessment, because it could affect internationally important natural heritage interests, we object to this proposal unless it is [amended/made subject to conditions] so that the works are done strictly in accordance with the recommendations in the assessment.

**Required Wording – Appraisal**

“Our advice is that this proposal is likely to have a significant effect on name of qualifying interest(s) of site. On the basis of the appropriate assessment carried out by name of competent authority we consider that an adverse effect on integrity can be avoided through the [changes/mitigation] recommended.”

Provide detail or summary of the changes/mitigation needed

**Suggested wording regarding the ‘status’ of the response** (Planning applications only)

If the planning authority intends to grant planning permission against this advice without the suggested [changes/mitigation], you must notify Scottish Ministers.”

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6a. Likely significant effect but unknown effect on integrity and the competent authority is either proposing to undertake its own appraisal or to contract out to a third party to undertake on their behalf

**NatureScot Position**: Holding objection

**Required Wording – Summary**

“The proposal could affect internationally important natural heritage interests and we therefore object to this proposal until further information is provided. We will be able to give further consideration to this proposal once you have carried out your appraisal of this/these effects.”

**Required Wording – Appraisal**

“Our advice is that this proposal is likely to have a significant effect on name of qualifying interest(s) of site. Consequently, Name of competent authority, as competent authority, is required to carry out an appropriate assessment in view of the site’s conservation objectives for is qualifying interest(s). This assessment should include an appraisal of the following:”
Give specific details of factors to be covered, highlighting the likely significant effect and how this may affect the qualifying interests and making special reference to the conservation objectives

“Once this appraisal has been carried out we will be able to give further consideration to this proposal before the appropriate assessment is finalised”

**Suggested wording regarding the ‘status’ of the response** (Planning applications only)

If the planning authority intends to grant planning permission against this advice without the requested information, you must notify Scottish Ministers.”

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<table>
<thead>
<tr>
<th>6b. Likely significant effect but unknown effect on integrity and we are proposing to carry out a scientific appraisal which will then be used by the competent authority to inform their appropriate assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>NatureScot Position:</strong> Holding objection</td>
</tr>
<tr>
<td><strong>Required Wording - Summary</strong></td>
</tr>
<tr>
<td>“The proposal could affect internationally important natural heritage interests and we therefore object to this proposal until further information is provided. This will enable us to carry out an appraisal of these effects and help you determine this proposal.”</td>
</tr>
<tr>
<td><strong>Required Wording – Appraisal</strong></td>
</tr>
</tbody>
</table>
| “Our advice is that this proposal is likely to have a significant effect on name of qualifying interest(s) of site. Consequently, Name of competent authority, as competent authority, is required to carry out an appropriate assessment in view of the site’s conservation objectives for its qualifying interest(s). To help you do this, we propose to carry out an appraisal to inform your appropriate assessment.

To enable us to carry out this appraisal, the following information is required:” |
| Provide detail or summary of the information required |
| [if required] “Annex X contains full details and reasoning of these requirements. Once this information has been provided, we will be able to give further consideration to this proposal” |
| **Suggested wording regarding the ‘status’ of the response** (Planning applications only) |
| If the planning authority intends to grant planning permission against this advice without the requested information, you must notify Scottish Ministers.” |
## 7a. Likely significant effect and probable adverse effect on integrity but no appropriate assessment has been carried out

<table>
<thead>
<tr>
<th><strong>NatureScot Position</strong>: Outright objection</th>
</tr>
</thead>
</table>

### Required Wording – Summary

“The proposal could affect internationally important natural heritage interests and we therefore object to this proposal.”

### Required Wording – Appraisal

“Our advice is that this proposal is likely to have a significant effect on name of qualifying interest(s) of site. Consequently, Name of competent authority, as competent authority, is required to carry out an appropriate assessment in view of the site’s conservation objectives for its qualifying interest(s). This assessment should include an appraisal of the following:

Give specific details of factors to be covered highlighting the likely significant effect

“Once this appraisal has been carried out, we can advise further. However, on the basis of information currently available it is unlikely that Name of competent authority will be able to ascertain that there will be no adverse effect on the integrity of the site.”

Provide details highlighting where an adverse effect on integrity may be expected or where it is not currently possible to ascertain that there will be no adverse effect.

### Suggested wording regarding the ‘status’ of the response (Planning applications only)

If the planning authority intends to grant planning permission against this advice you must notify Scottish Ministers”
### 7b. Likely significant effect and probable adverse effect on integrity and we have carried out a scientific appraisal to enable us to respond to the consultation

<table>
<thead>
<tr>
<th>NatureScot Position:</th>
<th>Outright objection</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Required Wording – Summary</strong></td>
<td>“The proposal could affect internationally important natural heritage interests and we therefore object to this proposal.”</td>
</tr>
</tbody>
</table>
| **Required Wording – Appraisal** | “Our advice is that this proposal is likely to have a significant effect on name of qualifying interest(s) of site. Consequently, Name of competent authority, as competent authority, is required to carry out an appropriate assessment in view of the site’s conservation objectives for its qualifying interest(s). Our appraisal of the effect of the proposal on site integrity is as follows:”

Give specific details of factors covered highlighting where an adverse effect on integrity is expected or where it is not possible to ascertain that there will be no adverse effect.

“On the basis of current information, and for the reasons given above, it is unlikely that Name of competent authority will be able to conclude that there will be no adverse effect on the integrity of the site.” |

| Suggested wording regarding the ‘status’ of the response (Planning applications only) | If the planning authority intends to grant planning permission against this advice you must notify Scottish Ministers” |

### 8. Appropriate assessment has not demonstrated that there will not be an adverse effect on the integrity of the site

<table>
<thead>
<tr>
<th>NatureScot Position:</th>
<th>Outright objection</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Required Wording – Summary</strong></td>
<td>“The proposal could affect internationally important natural heritage interests and we therefore object to this proposal.”</td>
</tr>
</tbody>
</table>
| **Required Wording – Appraisal** | “In our view, the assessment has not ascertained that the integrity of the site will not be adversely affected and we therefore object to the proposal.”

Give specific details of factors covered highlighting where an adverse effect on integrity is expected or where it is not possible to ascertain that there will be no adverse effect. |

| Suggested wording regarding the ‘status’ of the response (Planning applications only) | |

---
If the planning authority intends to grant planning permission against this advice you must notify Scottish Ministers”

Part 5b. Suggested wording for development advice - Sites of Special Scientific Interest

Our advice on proposed developments and SSSIs will depend on the criteria established in Scottish Planning Policy (212):

Development that affects...a SSSI....should only be permitted where...

- the objectives of designation and the overall integrity of the area will not be compromised; or  
- any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by social, environmental or economic benefits of national importance.

In addressing these criteria we should consider:

- impacts on the natural features of a site (direct and indirect)  
- the extent to which impacts of a development might affect the condition of the site’s natural features  
- the permanence of the impacts  
- impacts in combination with other proposals or activities, and  
- our balancing duty.

Some important concepts involved here are

- **Objectives of designation.** The SSSI selection guidelines states that the purpose of SSSIs is – “to safeguard the diversity and geographic range of habitats and species throughout Great Britain, within which the viable populations of all our threatened native species will be represented; as well as the full range of natural, near-natural and semi-natural ecosystems” (para 2.7). We must consider how notified sites contribute to representing the diversity and geographic range of Scotland’s, the UK’s and Member States’ natural features.

- **Overall integrity of the area.** The concept of ‘wholeness’ is important. The SSSI selection guidelines also relate this to ecological coherence, and this is at both the site level and also a wider network/landscape scale. The integrity of a multi-feature site is dependent on all features being undamaged and in favourable condition. The loss of small scale discrete geographical areas of interest or a specific species component would have the potential to affect integrity even though the effects are discrete. There is also a cumulative impact to such small scale effects which could impact in integrity.

- **Compromised.** This is not the same as damaged, but can relate to things like habitat structure and function, species use of the site etc. Compromised interests will be identified through site condition monitoring, and so the impact of any development on feature condition can be considered in addition. Elements such as permanence of effects and likely recovery are important to consider. As
this relates to the integrity of the area, the conclusions of all of these considerations need to be framed in terms of this integrity, and not simply as ‘feature X will become unfavourable and will not recover’.

- **Significant adverse effects.** We can identify the adverse effects but determining significance is always harder, and this will be the judgement call of our specialists and area staff along with senior staff, who are likely to be involved in cases where this assessment needs to be made.

Assessing impacts against the SPP criteria is a complex issue and you should consider seeking input from your Managers and from colleagues in Protected Areas if the judgment is not straightforward.

Wording relevant to different scenarios (1-5) and the corresponding advice type. Use it in the summary of your advice.

1. No adverse effects on site integrity/natural feature(s)
2. Temporary adverse effects on site integrity/natural feature(s) which will recover within one growing/breeding season without intervention.
3. Uncertain effects on site integrity/natural feature(s) - further information required
4. Adverse effects on site integrity/natural feature(s) - require mitigation to avoid effect/ ensure recovery within one growing/breeding season.
5. Adverse effects on site integrity/natural feature(s) – mitigation will not avoid effects/ ensure recovery within one growing/breeding season.

The following pages set out suggested wording for NatureScot responses. The key below explains the shading used for the different parts of these responses.

<table>
<thead>
<tr>
<th>KEY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conclusion of assessment</td>
</tr>
<tr>
<td>NatureScot position</td>
</tr>
<tr>
<td>Suggested wording that you could use in the summary and/or appraisal section of your letter.</td>
</tr>
<tr>
<td><strong>Required wording regarding the ‘status’ of the response</strong> is provided to help you to explain to the Planning Authority (only) any implications for them in terms of how the application is determined. The aim is to ensure they understand the circumstances in which they may need to notify Scottish Government.</td>
</tr>
</tbody>
</table>
**GUIDANCE**

1. The objectives of designation and the overall integrity of the area will not be compromised

<table>
<thead>
<tr>
<th>NatureScot Position: Advice only</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Suggested wording</strong></td>
</tr>
<tr>
<td>“There are natural heritage interests of national importance on the site, but these will not be affected by the proposal.”</td>
</tr>
</tbody>
</table>

2. Temporary negative effects on the objectives of designation and the overall integrity of the area which will recover within a reasonable period of time without intervention.

<table>
<thead>
<tr>
<th>NatureScot Position: Advice only</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Suggested wording</strong></td>
</tr>
<tr>
<td>“There are natural heritage interests of national importance on the site, but the effects on these interests are likely to be temporary in nature and recoverable.”</td>
</tr>
</tbody>
</table>

3. Not possible to assess effects on the objectives of designation and the overall integrity of the area without further information

<table>
<thead>
<tr>
<th>NatureScot Position: Holding Objection</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Suggested wording</strong></td>
</tr>
<tr>
<td>“There are natural heritage interests of national importance on the site, which could be affected by the proposal. We require further information (detailed below) to determine if the proposal will affect the integrity of the SSSI. We therefore object to the proposal until the further information detailed below is obtained from the applicant and considered by the Planning Authority. We will comment further once the additional information is available.”</td>
</tr>
</tbody>
</table>

**Required wording regarding the ‘status’ of the response**

“If the planning authority intends to grant planning permission against this advice without the requested information, you must notify Scottish Ministers.”
4. Impacts with adverse effects on the objectives of designation and the overall integrity of the area that require mitigation to ensure recovery within a reasonable period of time, or impacts that require mitigation to avoid such damage.

**NatureScot Position:** Conditioned Objection

**Suggested wording**

“This proposal could be progressed with [changes/mitigation] measures. However, the proposal could adversely affect natural heritage interests of national importance, and we therefore object to it unless it is made subject to the measures set out below.”

**Required wording regarding the ‘status’ of the response**

“If the planning authority is minded to grant planning permission without the changes/conditions recommended above the case must be notified to Scottish Ministers.”

5. Impacts result in adverse effects on the objectives of designation and the overall integrity of the area that cannot be avoided by mitigation. The area cannot recover within a reasonable period of time, even with mitigation.

**NatureScot Position:** Outright objection

**Suggested wording**

“We therefore object to this proposal as it will result in unavoidable adverse effects on natural heritage interests of national importance.”

**Required wording regarding the ‘status’ of the response**

If the planning authority intends to grant planning permission against this advice you must notify Scottish Ministers.”
Notes on SSSI advice

Decision-makers sometimes struggle to understand why small losses to a site are important and you should therefore take care to explain this in simple terms.

The following concepts are important here:

- All parts of a SSSI collectively assume “special interest”. This is why damage to one small bit of the site affects the site’s ‘integrity’ or ‘wholeness’.
- Damage to any one feature cannot rationally be justified by the survival of the larger fraction since, once begun, there are no logical stopping points. The setting of arbitrary limits to incursion would undermine the credible basis for SSSI selection.

Longevity of adverse impacts is important. When a feature can recover within one breeding or growing season, with or without intervention, NatureScot need not object, unless conditionally to ensure sufficient mitigation is adopted.

NatureScot’s balancing duty applies to advice on SSSIs. National developments and others with substantial public benefits may take many years to complete. In these cases, it might be reasonable to accept some permanent or temporary adverse effects on integrity or damage to the natural features of a site. In these circumstances it would be reasonable to expect the developer to provide measures to secure swift recovery once the construction was completed and/or put in place measures that would compensate for the temporary loss of favourable condition for the duration of the construction, preferably in an area close to the site.

Where natural features are already in unfavourable condition our advice should promote recovery.
Part 5c. Suggested wording for development advice – National Scenic Areas & National Parks

When dealing with National Park casework you should familiarise yourself with our arrangements over roles in casework with the relevant Park. Our advice on proposed developments affecting National Scenic Areas and National Parks will depend on the criterion established in SPP (212):

- Development that affects...a NSA/NP....should only be permitted where...the objectives of designation and the overall integrity of the area will not be compromised.

In addressing this criterion, consider the following:

- What are the nature, magnitude, significance and duration of adverse impacts?
- Is the proposal likely to have a significant impact on the landscape character of the NSA?
- Is the proposal likely to result in significant visual impacts on views from within the NSA?
- Is the proposal likely to have a significant impact on the special qualities of the NSA?
- Is the proposal likely to undermine the objectives for the area? (The general objective of NSA designation is to ensure the conservation of the landscape character and special qualities of the area, but this has been set out in more detail for some NSAs in a NSA management strategy).

Our advice should consider NSA Special Qualities Reports, NSA Management Strategies and relevant Landscape Character Assessments where they exist.

Wording relevant to different scenarios (1-4) and the corresponding advice type. Use it in the summary of your advice.

1. No significant adverse effects (advice only)
2. Not possible to assess the significance of the adverse effects (holding objection)
3. Adverse effects on the integrity/special qualities of the area - can be avoided by mitigation (conditioned objection)
4. Adverse effects on the integrity/special qualities of the area - unavoidable (outright objection)

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3 NB. This table relates to development that falls into the categories of development referred to in The Town and Country Planning (Notification of Applications) (National Scenic Areas) (Scotland) Direction 1987. These categories are (i) schemes for five or more houses, flats or chalets except for those within towns or villages for which specific proposals have been made in an adopted local plan, (ii) sites for five or more mobile dwellings or caravans, (iii) all non residential developments covering more than 0.5 ha, excluding agricultural and forestry developments, (iv) all buildings and structures over 12 metres high (including agricultural and forestry developments), (v) all vehicle tracks (including those for agriculture) except where these form part of an afforestation proposal which has been agreed by the planning authority, (vi) all local authority roadworks outside present road boundaries costing more than £100k.
The following pages set out suggested wording for NatureScot responses. The key below explains the shading used for the different parts of these responses.

<table>
<thead>
<tr>
<th>KEY</th>
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<tbody>
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<tr>
<td></td>
<td>Suggested wording</td>
</tr>
<tr>
<td></td>
<td>Suggested wording regarding the ‘status’ of the response</td>
</tr>
</tbody>
</table>

Suggested wording that you could use in the summary and/or appraisal section of your letter.

**Suggested wording regarding the ‘status’ of the response** is provided to help you to explain to the Planning Authority (only) any implications for them in terms of how the application is determined. The aim is to ensure they understand the circumstances in which they may need to notify Scottish Government. This should usually go somewhere towards the front of the letter and/or in the conclusion.

### 1. The objectives of designation and the overall integrity of the area will not be compromised

**NatureScot Position:** Advice only

**Suggested wording**

“*The proposal will not have an adverse effect on the integrity of the [insert name of NSA/NP] or the objectives of the designation.*”

### 2. Not possible to assess effects on the objectives of designation and the overall integrity of the area without further information

**NatureScot Position:** Holding objection

**Suggested wording**

“*There is insufficient information to determine whether the proposal will have significant adverse effects on the special qualities of the [insert name of NSA/NP] such that the objectives of the designation and overall integrity of the area would be compromised. We therefore object to this proposal until the further information detailed below is obtained from the applicant. We will comment further once the additional information is available.*”

**Suggested wording regarding the ‘status’ of the response**

“*If the planning authority intends to grant planning permission against this advice without the requested information, you must notify Scottish Ministers.*”
### 3. Adverse effects on the objectives of designation and the overall integrity of the area but those impacts can be avoided by mitigation.

**NatureScot Position:** Conditioned Objection

**Suggested wording**

“The proposal as currently submitted will have significant adverse effects on the special qualities of the [insert name of NSA/NP] such that the objectives of the designation and overall integrity of the area would be compromised. Significant effects could be avoided by incorporating the [changes/ mitigation] measures as set out above/below. We therefore object to this proposal unless it is made subject to these changes/ mitigation measures.”

**Suggested wording regarding the ‘status’ of the response**

If the planning authority intends to grant planning permission against this advice without the suggested [changes/ mitigation], you must notify Scottish Ministers.”

### 4. Adverse effects on objectives of designation and the overall integrity of the area are unavoidable.

**NatureScot Position:** Outright Objection

**Suggested wording**

“This proposal will have significant adverse effects on the special qualities of the [insert name of NSA/NP] such that the objectives of the designation and overall integrity of the area would be compromised. We therefore object to this proposal.”

**Suggested wording regarding the ‘status’ of the response**

If the planning authority intends to grant planning permission against this advice, you must notify Scottish Ministers.”
Part 5d. Suggested wording for development advice – Protected Species

The law gives all wild birds and many plant and animal species general protection from deliberate or reckless damage or harm and gives some species additional special protection from disturbance under domestic legislation.

This section of the guidance is relevant to casework involving the following:

- Badgers - Protection of Badgers Act 1992 (as amended)
- Protected Species (EPS) (Schedules 2 & 4 of the Habitats Regulations 1994 (as amended))
- Birds, Animals and Plants listed on Schedules 1, 5 and 8 (respectively) of the Wildlife and Countryside Act 1981 (as amended)

We have two distinct but related functions with regard to development management and protected species:

- Advisory function - the provision of advice about the impacts of a development proposal on protected species.
- Licensing function - the granting (or refusing) of applications for a licence to permit actions affecting protected species that would otherwise be illegal.

We will deliver these functions in a way that will minimise conflict between planning decisions and licensing decisions. Our aim is to avoid situations where developers secure planning permission but cannot obtain a species licence to enable the development to proceed. As a result, there will be situations when it is important to consult with NatureScot Licensing team and ensure that where we provide bespoke advice it is consistent with our licensing advice i.e. when a licence may be required and there is doubt over whether an action is licensable.

In terms of our advisory function, we should aim to provide detailed advice only at a point where our standing advice does not cover a scenario or issue raised by developer or planning authority.

Suggested response wording for any species queries

We fulfil our advisory role on protected species through the provision of standing advice and do not expect to be consulted other than in exceptional circumstances not covered by the relevant standing advice available at Planning and development: protected animals and Planning and development: birds. Where a licence from NatureScot will be required by the applicant before they can proceed with the development you would need to satisfy yourself, that the licensing tests set out in those regulations are likely to be met before an application can be approved. If not, you could risk being unable to make practical use of any planning permission or committing an offence. You should consider the need for species licences as part of any development and contact licensing@nature.scot regarding any licence application.
Further Notes on Protected Species

For more information on species licensing, the tests for a licence and licensing purposes.

The role of Planning Authorities and developers

PA’s and developers should normally deal with routine protected species issues without reference to us, as part of their duty to comply with protected species legislation. They should (where relevant):

- Identify situations where a survey is needed, with reference to guidance on our website (preferably at the pre-application stage)
- Ensure a species survey is carried out before the application is determined or, preferably, before the application is submitted
- Put a species protection plan in place (if species are found to be present)
- Ensure that offences in relation to protected species (and therefore the need for a licence) are avoided through good mitigation
- Where the need for a licence cannot be avoided, assess the likelihood of the application being able to satisfy the tests for that licence
- Determine the planning application, ensuring that any relevant species protection plan (and additional mitigation to satisfy the licensing tests) is secured and enforced

Our advice to planners and/or developers in the standing guidance includes (where appropriate):

- A brief explanation of their statutory duties with regard to protected species (using hyperlinks to detailed guidance on our website)
- A description of the impacts proposals should consider on protected species and an explanation of why those impacts are important
- Advice on mitigation measures that can often be applied to avoid the need for a licence
- A overview on whether a licence will be required to carry out certain types of development
- Links to guidance on how to apply for a licence
- Advice on the likelihood (with reference to relevant ‘tests’) that a licence will be granted

Permanent and unavoidable adverse impacts on the population and distribution of species with special protection (best expressed as ‘detrimental to their Favourable Conservation Status’) are issues of national interest. In these cases, it may be appropriate to object to a proposal in line with the guidance in Identifying Natural Heritage issues of National Interest in Development Proposals.

The concept of Favourable Conservation Status (FCS) is described in our licensing guidance. It is important to note that FCS is assessed at the scale of the species’ natural range, with range in the Atlantic biogeographic region being most relevant to Scottish species.
Part 5e. Suggested wording for development advice – Nature Conservation Marine Protected Areas (NC MPA)

Our advice, and the wording used, will depend on the answers to two tests set out in the Marine (Scotland) Act 2010.

1. Is the proposal capable of affecting, other than insignificantly, the protected features of the MPA?
2. Does the proposal result in a significant risk of hindering the achievement of the conservation objectives of the MPA?

**Required wording for expressing our advice about impacts on NC MPAs. This is mandatory and should always be included.**

Guidance Notice 55: Development Management and Marine Protected Areas provides more detail on the consideration of proposals affecting NC MPAs and you should read it alongside this guidance.

**Use this wording in all relevant responses** to introduce your appraisal of effects on a:

- designated NC MPA
- possible NC MPA

**Wording relevant to different scenarios (1-8) with regard to the NC MPA tests and the corresponding advice type.** Use it in your summary or appraisal (following the above text) as directed.

- 1. Not capable of affecting protected features
- 2. Capable of affecting protected features, but insignificantly
- 3. Insufficient information to determine whether the activity is capable of affecting, other than insignificantly, the protected features
- 4. Capable of affecting protected features, other than insignificantly - effect can be avoided
- 5. Capable of affecting, other than insignificantly, the protected features - no significant risk of hindering the achievement of the conservation objectives
- 6. Capable of affecting, other than insignificantly, the protected features - significant risk of hindering the achievement the conservation objectives - can be avoided with changes/mitigation
- 7. Capable of affecting, other than insignificantly, the protected features - further information required to determine whether there is a significant risk of hindering the achievement the conservation objectives
- 8. Capable of affecting, other than insignificantly, the protected features - significant risk of hindering the achievement the conservation objectives
The following pages set out the required wording to be used in NatureScot responses. The key below explains the shading used for the different parts of these responses.

**KEY**

<table>
<thead>
<tr>
<th>Conclusion of assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>NatureScot position</td>
</tr>
<tr>
<td>Required wording indicates the wording you should use in the summary and/or appraisal section of your letter.</td>
</tr>
</tbody>
</table>

**Suggested wording regarding the ‘status’ of the response** is provided to help you to explain to the regulatory authority any implications for them in terms of how the application is determined. The aim is to ensure they understand the circumstances in which they may need to notify Scottish Government. This should usually go somewhere towards the front of the letter and/or in the conclusion. It should not be used in responses to MS LOT or Transport Scotland.

---

Use this wording in all responses to introduce your appraisal of effects on a designated Nature Conservation MPA. These sites have legislative protection.

**Required wording - Appraisal**

“The proposal [lies within/is close to] Name of site Nature Conservation Marine Protected Area (NC MPA) selected for its List protected feature(s).

The site’s status means that the requirements of the Marine (Scotland) Act 2010 apply. Consequently, Name of regulatory authority is required to consider the effect of the proposal on the NC MPA before it can be consented.

---

Use this wording in all responses to introduce your appraisal of effects on a possible MPA. These sites have policy protection.

**Required wording - Appraisal**

“The proposal [lies within/is close to] Name of site possible Marine Protected Area (pMPA) selected for its List protected feature(s).

The Scottish Government has a policy of protecting such sites as if they were designated as set out in the Marine Protected Areas Management Handbook. The legal protection afforded to designated NC MPAs is set out in the Marine (Scotland) Act 2010. Consequently, Name of regulatory authority is required to consider the effect of the proposal on the possible MPA before it can be consented.
## 1. Not capable of affecting protected features

**A. Advice only**

**Required Wording NC MPA response 1 – Appraisal**

“Our advice is that the proposal is not capable of affecting the protected features of [Insert name of the possible MPA/MPA] either directly or indirectly. Further assessment is therefore not required.”

[Provide brief reasons to support this decision – this is particularly important for proposals within sites and for large-scale activities/proposals adjacent to sites]

## 2. Capable of affecting protected features, but insignificantly

**A. Advice only**

**Required Wording NC MPA response 2 - Appraisal**

“Our advice is that the proposal is capable of affecting the protected features of [Insert name of the possible MPA/MPA]. However, these effects are insignificant. Further assessment is therefore not required.”

[Provide brief reasons to support this decision – this is particularly important for proposals within sites and for large-scale activities/proposals adjacent to sites]

## 3. Insufficient information to determine whether the activity is capable of affecting, other than insignificantly, the protected features

**B. Holding objection**

**Required Wording NC MPA response 3 – Summary**

“The proposal could affect nationally important natural heritage interests and we therefore object to this proposal until further information is obtained from the applicant. This is set out in our appraisal below [and Annex X]. Once this information has been provided we will be able to give this proposal further consideration.”

**Required Wording NC MPA response 3 – Appraisal**

Required Wording -“Our advice is that there is insufficient information to determine whether the proposal is capable of affecting, other than insignificantly, the protected features of [Insert name of the possible MPA/MPA]. In order for this to be determined, we recommend that the following additional information is obtained:”

---

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| Provide details or summary of the information required. |
| Suggested wording regarding the ‘status’ of the response (Planning applications only) |
| “If the regulatory authority intends to grant planning permission against this advice without the requested information, you must notify Scottish Ministers.” |
| Do not include where the regulatory authority is Marine Scotland or Transport Scotland. |

| 4. Capable of affecting protected features, other than insignificantly, but effect can be avoided |
| C. Conditioned objection |
| Required Wording NC MPA response 4 – Summary |
| “This proposal could be progressed with appropriate [changes/mitigation]. However, because it could affect nationally important natural heritage interests, we object to this proposal unless it is [amended/made subject to conditions] so that the works are done strictly in accordance with the [changes/mitigation] detailed in our appraisal below [and Annex X]. |
| Required Wording NC MPA response 4 – Appraisal |
| “Our advice is that this proposal is capable of affecting, other than insignificantly, [Name protected features] of [Insert name of the possible MPA/MPA]. Consequently, [Insert name of regulatory authority] is required to carry out an assessment to determine if there is a significant risk of hindering the achievement of the conservation objectives. If the proposal is carried out strictly in accordance with the following [changes/mitigation], it will no longer be capable of affecting, other than insignificantly, the protected features and no further assessment of impacts on the MPA is required.” |
| Provide details or summary of the changes/mitigation needed |
| [if required] “Annex X contains full details and reasoning of these recommendations.” |
| Suggested wording regarding the ‘status’ of the response (Planning applications only) |
| “If the regulatory authority intends to grant planning permission against this advice without the suggested [changes/mitigation], you must notify Scottish Ministers” |
| Do not include where the regulatory authority is Marine Scotland or Transport Scotland. |
5. Capable of affecting, other than insignificantly, the protected features, but information provided/assessment carried out shows there is no significant risk of hindering the achievement of the conservation objectives

<table>
<thead>
<tr>
<th>A. Advice only</th>
</tr>
</thead>
</table>

### Required Wording NC MPA response 5 – Summary

“There are natural heritage interests of national importance on the site which could be affected by this proposal, but in our view, there is no significant risk of hindering the achievement of the conservation objectives.

### Required Wording MPA response 5 – Appraisal

“Our advice is that, this proposal is capable of affecting, other than insignificantly, [Name protected features] of [Insert name of the possible MPA/MPA]. Consequently, [Insert name of regulatory authority] is required to carry out an assessment to determine if there is a significant risk of hindering the achievement of the conservation objectives.

To help you do this we advise that, based on the [information provided/ appraisal carried out to date], our conclusion is that the proposal will not result in a significant risk of hindering the achievement of the conservation objectives of the MPA. The appraisal we carried out considered the impact of the proposals on the following factors:

Give sufficient details of the main issues to allow the regulatory authority to decide whether or not they can agree with our appraisal: this should be based on the details in the proforma

You may wish to carry out further appraisal before completing your assessment.”
6. Capable of affecting, other than insignificantly, the protected features, but information provided/assessment carried out shows significant risk of hindering the achievement the conservation objectives can be avoided with changes/mitigation

<table>
<thead>
<tr>
<th>C. Conditioned objection</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Required Wording NC MPA response 6 — Summary</strong></td>
</tr>
<tr>
<td>“This proposal could be progressed with appropriate [changes/mitigation]. However, because it could affect nationally important natural heritage interests, we object to this proposal unless it is [amended/made subject to conditions] so that the works are done strictly in accordance with the [changes/mitigation] detailed in our appraisal below [and Annex X].”</td>
</tr>
</tbody>
</table>

| **Required Wording NC MPA response 6 — Appraisal** |
| “Our advice is that this proposal is capable of affecting, other than insignificantly, [Name protected Features] of [Insert name of the possible MPA/MPA]. Consequently, [Name of regulatory authority] is required to carry out an assessment to determine if there is a significant risk of hindering the achievement of the conservation objectives. We advise that, on the basis of the [information provided/ appraisal carried out to date], our conclusion is that if the proposal is carried out strictly in accordance with the following [changes/mitigation], then the proposal will not result in a significant risk of hindering the achievement of the conservation objectives of the MPA.

Provide detail or summary of the changes/ mitigation needed.

[if required] “Annex X contains full details and reasoning of these recommendations.

The appraisal we carried out considered the impact of the proposals on the following factors:

Give sufficient details of the main issues to allow the competent authority to decide whether or not they can agree with our appraisal: this should be based on the details in the proforma

You may wish to carry out further appraisal before completing your assessment.”

| **Suggested wording regarding the ‘status’ of the response (Planning applications only)** |
| “If the regulatory authority intends to grant planning permission against this advice without the suggested [changes/mitigation], you must notify Scottish Ministers” |

*Do not include where the regulatory authority is Marine Scotland or Transport Scotland.*
7. Capable of affecting, other than insignificantly, the protected features. Further information required to determine whether there is a significant risk of hindering the achievement the conservation objectives

B. Holding objection

Required Wording NC MPA response 7 - Summary

“The proposal could affect nationally important natural heritage interests and **we therefore object to this proposal until further information is obtained from the applicant.** This is set out in our appraisal below [and Annex X]. Once this information has been provided we will be able to give this proposal further consideration.”

Required Wording MPA response 7 – Appraisal

“Our advice is that this proposal is capable of affecting, other than insignificantly, [Name protected features] of [Insert name of the possible MPA/MPA]. Consequently, [Name of regulatory authority] is required to carry out an assessment to determine if there is a significant risk of hindering the achievement of the conservation objectives.

We advise that there is insufficient information to determine whether the proposal will result in a significant risk of hindering the achievement of the conservation objectives of [Insert name of the MPA] In order for this to be determined, we recommend that the following additional information is obtained:

Provide details or summary of the information required.

Suggested wording regarding the ‘status’ of the response (Planning applications only)

“If the regulatory authority intends to grant planning permission against this advice without the requested information, you must notify Scottish Ministers”

*Do not include where the regulatory authority is Marine Scotland or Transport Scotland.*
8. Capable of affecting, other than insignificantly, the protected features. NatureScot’s assessment has concluded that there is a significant risk of hindering the achievement of the conservation objectives.

**D. Outright objection**

**Required Wording NC MPA response 8 — Summary**

“The proposal could affect nationally important natural heritage interests and we therefore object to this proposal.”

**Required Wording NC MPA response 8 — Appraisal**

“Our advice is that this proposal is capable of affecting, other than insignificantly, [Name protected features] of [Insert name of possible MPA/MPA]. Consequently, [Name of regulatory authority] is required to carry out an assessment to determine if there is a significant risk of hindering the achievement of the conservation objectives.

We advise that, on the basis of the [information provided/appraisal carried out to date], the proposal will result in a significant risk of hindering the achievement of the conservation objectives of the MPA. The appraisal we carried out considered the impact of the proposals on the following factors:

**Give specific details of factors covered highlighting where there is a significant risk of hindering the achievement of the conservation objectives.**

**Suggested wording regarding the ‘status’ of the response (Planning applications only)**

“If the regulatory authority intends to grant planning permission against this advice you must notify Scottish Ministers”

*Do not include where the regulatory authority is Marine Scotland or Transport Scotland.*
Part 5f. Suggested wording for development advice – Priority Marine Features

The PMF Guidance Notice provides more detail on the consideration of proposals and you should read it alongside this guidance. Please contact an adviser in Coastal & Marine Ecosystems Unit for advice on assessing effects on PMFs.

Use this wording in all relevant responses to introduce your appraisal of effects on PMFs. No comment responses should be drafted to fit the circumstances of the case as suggested at page 20.

Wording relevant to different scenarios (1-5) and the corresponding advice type. Use it in your summary or appraisal (following the above text) as directed.

1. Insufficient information to complete impact assessment - could potentially raise issues of national interest.
2. Significant impact on the PMF(s) that raises issues of national interest - can be mitigated with conditions / modifications.
3. Significant and unavoidable impact on the PMF(s) that raises issues of national interest.
4. Significant impact on the PMF(s) - without raising issues of national interest - recommend mitigation.
5. Significant and unavoidable impact on the PMF(s) - without raising issues of national interest.

The following pages set out the model wording to be used in NatureScot responses. The key below explains the shading used for the different parts of these responses.

<table>
<thead>
<tr>
<th>KEY</th>
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</thead>
<tbody>
<tr>
<td>Conclusion of assessment</td>
</tr>
<tr>
<td>NatureScot position</td>
</tr>
<tr>
<td><strong>Suggested wording</strong> that you should use in the summary and/or appraisal section of your letter.</td>
</tr>
<tr>
<td>Use this wording for all responses other than No Comment to introduce your appraisal of effects on PMFs. These features do not have legislative protection, but the basis for protection of their national status across Scottish waters is included in the National Marine Plan.</td>
</tr>
<tr>
<td>---</td>
</tr>
<tr>
<td><strong>Suggested wording</strong></td>
</tr>
<tr>
<td>“The proposal may impact Priority Marine Features (PMFs). &lt;Name of regulatory authority&gt; should consider the effect of the proposal on the PMF(s) before it can be consented.”</td>
</tr>
</tbody>
</table>
1. Insufficient information to complete impact assessment, but could potentially raise issues of national interest.

<table>
<thead>
<tr>
<th>NatureScot position:</th>
<th>Holding objection</th>
</tr>
</thead>
</table>

**Suggested Wording**

“There is insufficient information to complete an impact assessment for PMFs. The proposal could have a significant impact on the national status of a PMF(s). We therefore object to the proposal until further information is provided and considered by the regulatory authority. We will comment further once the additional information is available. Our appraisal below [reference section/annex] provides further information.”

2. Significant impact on the PMF(s) that raises issues of national interest, but can be mitigated with conditions / modifications.

<table>
<thead>
<tr>
<th>NatureScot position:</th>
<th>Conditioned objection</th>
</tr>
</thead>
</table>

**Suggested Wording**

We advise that the proposal would have a significant impact on the national status of a PMF(s), but may be mitigated through conditions / modifications. We therefore object to the proposal unless it is made subject to the following conditions... Our appraisal below [reference section/annex] provides further information.”
3. Significant and unavoidable impact on the PMF(s) that raises issues of national interest.

**NatureScot position:** Outright objection

**Suggested Wording**

“We advise that the proposal would have unavoidable significant impact on the national status of a PMF(s). We therefore object to the proposal. Our appraisal below [reference section/annex] provides further information.”

4. Significant impact on the PMF(s), but without raising issues of national interest. We recommend that the impact(s) may be mitigated with conditions / modifications.

**NatureScot position:** Advice only

**Suggested Wording**

“We advise that the proposal would have a significant impact on PMF(s) at a regional scale, but would not impact upon the national status of the PMF(s). We recommend measures to reduce the impacts. Our appraisal below [reference section/annex] provides further information.”

"It is for the relevant authority to determine, within the context of its own policies, whether conditions are necessary to secure the mitigation set out below."

5. Significant and unavoidable impact on the PMF(s), but without raising issues of national interest.

**NatureScot position:** Advice only

**Suggested Wording**

“We advise that the proposal would have a significant impact and unavoidable impact on PMF(s) at a regional scale, but would not impact upon the national status of the PMF(s). Our appraisal below [reference section/annex] provides further information.”
### Key Information 1 – Legislation Summary

<table>
<thead>
<tr>
<th>Topic &amp; Legislation</th>
<th>Extent</th>
<th>Source</th>
<th>Stat/Non Stat</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Coast protection</strong></td>
<td>• All works except emergency works, repairs and maintenance</td>
<td>Coast Protection Authority (all coastal Local Authorities)</td>
<td>Statutory</td>
</tr>
<tr>
<td>Coast Protection Act 1949 (Part I)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Local Authorities Handbook Vol. 4. Section 2.5</td>
<td></td>
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</tbody>
</table>

**Note:** Coast protection in Scotland is the responsibility of the landowner but is controlled by the Scottish Ministers and Coast Protection Authorities (CPAs), under the Coast Protection Act 1949 (Part I). All coastal local authorities are CPAs. The CPAs, however, also have ‘permissive’ (discretionary) powers to undertake certain coast protection works. Thus, the CPA will be a regulatory body in schemes brought forward by private landowners, or may be both regulator and developer for their own schemes. All new coast protection works above the Mean Low Water Mark of Spring Tides (MLWS - the lower line of the shore on OS maps) need planning permission, although some will receive deemed planning permission through local authority development procedures or through authorisation by Scottish Ministers.

<table>
<thead>
<tr>
<th>Topic &amp; Legislation</th>
<th>Extent</th>
<th>Source</th>
<th>Stat/Non Stat</th>
</tr>
</thead>
</table>
| **Marine development** | • Deposits of substances or objects  
• Constructing, altering and improving works  
• Removing objects and substances from the seabed  
• Dredging  
• Deposit and use of explosives  
• Incineration | Marine Scotland | Statutory |
<p>| Marine (Scotland) Act 2010 | | | |
| Local Authorities Handbook Vol. 4. Section 2.2 | | | |</p>
<table>
<thead>
<tr>
<th>Marine fish farms</th>
<th>Planning Authorities</th>
<th>Non Statutory (unless SSSI)</th>
<th>Most EIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Planning etc. (Scotland) Act 2006</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Local Authorities Handbook Vol. 4. Section 2.3</td>
<td></td>
<td></td>
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</tr>
<tr>
<td></td>
<td>• Marine fish farms</td>
<td></td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Harbours</th>
<th>Transport Scotland</th>
<th>Non Statutory (unless SSSI/European site)</th>
<th>Most EIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harbours Act 1964</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Local Authorities Handbook Vol. 4. Section 2.7</td>
<td>• New harbours (Harbour Empowerment Orders)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Works in existing harbours (Harbour Revision Orders)</td>
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</tr>
</tbody>
</table>

**Note:** Any works authorised in an HEO / HRO that constitute development are granted planning permission automatically by the TCP (General Permitted Development) Order.

Marine licence consents under the Marine (Scotland) Act 2010 will in addition be required for deposits and works on the sea bed (including dredging and deposit of dredgings) and in respect of safety for navigation. Consent under CPA 1949 would be required for works that may comprise or affect coast protection works (Scottish Ministers or local authority).

The 42 day period for lodgement of any objections from the date specified in the notice of application for a Harbour Empowerment or Revision Order (or from the date on which Transport Scotland consults NatureScot) should be strictly observed. You should assume that a time extension will not be possible, even when it is an EIA development, because this 42 day period is set by statute.
**Electricity generation**  
Electricity Act 1989 Section 36  
Local Authorities Handbook Vol. 4. Section 4.2  
- Generating stations over 50 MW in capacity  
  - Energy Consents  
  - Unit of Scottish Government  
  - Non Statutory (unless SSSI)  
  - Most EIA

**Electricity transmission**  
Electricity Act 1989, Section 37  
Local Authorities Handbook Vol. 4. Section 4.3  
- New overhead power lines (>20kV)  
  - Energy Consents  
  - Unit of Scottish Government  
  - Non Statutory (unless SSSI)  
  - Many EIA

---  
**Important – Read** Electricity Transmission Casework - roles of Senior Casework Managers and Operations staff

**Gas pipelines**  
Gas Act 1986  
Local Authorities Handbook Vol. 4. Section 4.6  
- Underground gas pipelines  
  - Energy Consents  
  - Unit of Scottish Government  
  - Non Statutory  
  - Many EIA

**Oil pipelines**  
Pipe-Lines Act 1962  
Local Authorities Handbook Vol. 4. Section 4.7  
- Oil pipelines greater than 16km long  
  - Energy Consents  
  - Unit of Scottish Government  
  - Non Statutory  
  - Many EIA
<table>
<thead>
<tr>
<th><strong>Oil and gas extraction</strong></th>
<th><strong>Water Environment</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Petroleum Act 1998</td>
<td>The Water Environment (Controlled Activities) (Scotland) Regulations 2011</td>
</tr>
<tr>
<td>Local Authorities Handbook Vol.4. Section 4.8</td>
<td>Local Authorities Handbook Vol.4. Section 5.3</td>
</tr>
</tbody>
</table>

- Onshore and offshore oil and gas extraction
- Activities liable to cause pollution of the water environment;
- Abstraction of water from the water environment;
- Construction, alteration or operation of impounding works in surface waters or wetlands;
- Building, engineering, or other works: in inland water other than groundwater, or wetlands, or in the vicinity of inland water or wetlands, and likely to have a significant adverse effect on the water environment;
- Artificial recharge or augmentation of groundwater;
- Direct or indirect discharge, and any activity likely to cause a direct or indirect discharge, into groundwater of any hazardous substance or other pollutant; and

**Department of Energy and Climate Change (DECC) | SEPA**

**Non Statutory | Non Statutory**

**Most EIA | **

Planning practice guidance for onshore oil and gas
Any other activity which directly or indirectly has or is likely to have a significant adverse impact on the water environment.

**Important – Read** NatureScot Instruction Notice: Water Framework Directive - Controlled Activities Regulations

<table>
<thead>
<tr>
<th>Flood works</th>
<th>Local Authorities</th>
<th>Statutory</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flood Risk Management (Scotland) Act 2009</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Local Authorities Handbook Vol.4. Section 5.5</td>
<td></td>
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</tr>
</tbody>
</table>

**Important – Read** NatureScot Instruction and Guidance Note on Flood Risk Management Act (February 2015)

<table>
<thead>
<tr>
<th>Hazardous substances</th>
<th>Planning Authorities</th>
<th>Statutory</th>
</tr>
</thead>
<tbody>
<tr>
<td>Town And Country Planning (Hazardous Substances) (Scotland) Regulations 2015</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Local Authorities Handbook Vol.4. Section 8.26</td>
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</table>

<table>
<thead>
<tr>
<th>Roads</th>
<th>Non Statutory</th>
<th>Many EIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Roads (Scotland) Act 1984</td>
<td>Transport Scotland (Trunk Roads)</td>
<td></td>
</tr>
<tr>
<td>Local Authorities Handbook Vol.4. Section 9.2</td>
<td>Local Authorities (Other roads)</td>
<td></td>
</tr>
<tr>
<td>Railways etc.</td>
<td>Transport and Works (Scotland) Act 2007</td>
<td>Local Authorities Handbook Vol.4. Section 9.3</td>
</tr>
</tbody>
</table>
Key Information 2. Mitigation, compensation and enhancement

**Mitigating measures** (or mitigation) avoid or reduce adverse impacts of the proposal.

- Mitigating measures (or mitigation) may modify the design, construction or operational phases to avoid or reduce adverse impacts of the proposal. Mitigation can involve measures such as changes to the layout of the proposal to avoid sensitive areas, the use of particular construction techniques to minimise impacts on important habitats and species or changes to the timing of construction or operation of the development to avoid disturbance to breeding birds.

**Remedial or compensatory measures** offset or compensate for unavoidable residual adverse effects.

- Compensation has a specific meaning in relation to European sites. The Habitats Directive requires that where plans or projects that may have an adverse effect upon the integrity of a European site must be carried out for imperative reasons of over-riding public interest (IROPI), the Member State must take appropriate compensatory measures to ensure that the overall coherence of the European network is maintained. These judgements are primarily the responsibility of the competent authority and Scottish Government, not NatureScot and you must seek advice from Protected Places Unit before giving any advice on compensation in relation to European sites.

**Enhancement** is an increase in the environmental interest or quality of a site or area.

- This may result when adverse effects are limited in scope and scale, and the project includes improved management or new habitats or features, which improve upon the present habitats or features or their management. There is therefore a net or new benefit to the natural heritage.
Good Practice 1. Taking a positive approach and enabling development

It is very important for us to take an enabling approach when we advise developers and regulators on development proposals. Without being enabling we cannot contribute fully to Scottish Government’s purpose and the outcomes that flow from it. Nor can we meet our obligations under the Scottish Regulators’ Strategic Code of Practice. But what does this mean for you when you meet a developer? Are you expected to design out all the natural heritage impacts for them? May be you should just be really nice and avoid mentioning those awkward European site conservation objectives!

Of course not, but that leaves a lot of grey area to be uncomfortable about.

One way to think about enabling is to put ourselves in the customer’s shoes. What do they want? Apart from professionalism and objectivity they want us to be constructive and to understand, and respond to, their needs. We therefore need to focus on our attitude and communication - trying to establish a good rapport and gain people’s trust. We should start with an open mind to the possibility that development might be feasible in almost any situation and not rush to judgement. Let the developer know that we are interested in what they have to say and their aspirations.

This doesn’t mean that we hide problems, but should influence how we approach them. So perhaps instead of saying ‘…this is an SAC and it will be very difficult to build a track through it’ we could ask ‘…have you thought about how you can design access without a negative effect on the SAC? We don’t have an answer to every problem in our back pocket, but we can be clear about the required outcomes for the natural heritage. Think about it as turning negative propositions into positive ones. Then if we have to later say that ‘…actually in our experience this will be difficult to achieve’ the person listening already has the impression that we are interested in their ambitions and are not simply getting in the way.

We also need to think about when it might be especially important to be, and seen to be, enabling. Politics and perceptions are important and NatureScot should not appear obstructive or unnecessarily protectionist, especially when projects can deliver big and important public benefits that help achieve Scottish Government outcomes. In these cases we may need to put a special effort into helping enable development. We also need to think about our balancing duties. If someone comes along with a proposal to generate big social and economic benefits we do have a responsibility to help achieve these instead of just pointing out the hurdles people have to overcome.

None of this means that we should flinch from voicing messages that people might not want to hear. If there are natural heritage issues that might result in a NatureScot objection...
to a planning application or us making strong representations to other consenting bodies we must be clear about these.
### Good Practice 2. Pre-application engagement

**Do:**

**Be organised**

- Try to get the consenting authority to chair meetings with the relevant stakeholders, but don’t restrict discussions if they can’t participate. Where meetings do occur without the consenting authority present make sure that an update from the meeting is made available to them.

- Speak to the potential applicant to establish if and when they would like written advice and consider discussing the same question with the regulator.

**Set the context for the discussion**

- Explain that pre-application discussions are considered a legitimate part of the planning process and could be subject to freedom of information and/or environmental information regulations requests.

**Consider your advice & how we can enable development**

- Identify the potential issues as early as possible.

- Give an early indication of the likely impacts on the natural heritage, based on the available information, your own local knowledge and professional judgement.

- Identify the information (about the development and about the environment) needed to support an application so that we can advise the consenting authority effectively, allowing them to make an informed and speedy determination.

- Explain the importance of carrying out the required assessments.

- Direct potential applicants to relevant guidance and good practice on our website.

- Indicate as early as possible where we might object or make strong representations to consenting bodies.

**Follow up the discussion**

- Agree on a written record of the key points of any discussion, especially on the most important issues, the need for further information, and suggestions for mitigation. Share this with the consenting authority. If no written record exists, tell the consenting authority what has been discussed and agreed during discussion.
Find out what the potential applicant intends to do next in terms of the likely timing of any formal consultation with communities and/or submission of a planning application and/or EIA.

**Don’t:**

- Beat around the bush. An over-cautious approach to offering an opinion about the impacts of a proposal can be frustrating for planners and developers.
- Be afraid to note any issue raised during discussion and which will need follow up with a specialist adviser to obtain the required answer. (You should set a realistic timescale to do so with the applicant).
- Say anything to third parties (such as a community council) that you wouldn’t say to the potential applicant (and vice versa).
Good Practice 3. Advice on mitigation, modification and enhancement (including conditioned objections)

Get mitigation and modifications e.g. an agreed construction method statement ‘built into’ the application. This is a key aim of our involvement in pre-application discussions and should avoid the need for conditions.

Be clear about what we are asking for, the reason for our advice, how the advice relates to our position and the status of our advice. You should make it clear in the letter that we are asking for measures.

Collate all your detailed advice in an annex, unless the advice is very short and simple. In the annex, use the following structure (as required according to our position on each measure) as the basis for presenting your advice on mitigation and enhancement measures.

1. Mitigation that would allow us to withdraw the objection (or avoid adverse effects on protected areas when advising SEPA or SF)
2. Mitigation recommended to reduce or avoid adverse effects on the natural heritage
3. Recommendations to enhance the proposal

For each measure be clear about:

- What needs to be achieved – how the development will change or be managed differently e.g. a method statement to guide excavation, storage and replacement of peat surfaces
- The benefits for nature and landscapes – describe the expected reduction in impacts on the natural heritage and/or enhancements e.g. maximise the likelihood of successful and quick reinstatement of peatland habitat
- The status of our advice – if the consenting authority chooses not to follow our advice do they need to notify Scottish Ministers? (Good Practice Box 6).

Where a planning authority uses standard/model conditions and wishes us to make reference to these as appropriate in our responses, the following wording should be used beneath the description and justification for each measure:

- ‘This could be achieved by application of [Planning Authority’s name] standard condition xx.’
Good Practice 4. Requests for further information (including holding objections)

Our role is to encourage better proposals and enable quick decisions on planning applications based on good information.

Focus on the significant issues of national importance and try to avoid unnecessary delays. Our emphasis is on obtaining information to answer key questions about things that really matter.

Aim to ensure the developer and Planning Authority understand what information we need to inform our advice at an early stage. This is a key aim of our involvement in pre-application discussions and should avoid the need to request further information at the application stage.

Where essential information about the development or the environmental impacts is missing entirely, we should try to advise PA’s of this as soon as possible, preferably within 7 days, or within 14 days for major/EIA developments.

Be clear about what we are asking for, why we are asking for it, how the request relates to our position and the status of our advice.

Collate all your requests for further information in an annex, unless the advice is very short and simple. In the annex, use the following structure (as required according to our position on each measure) as the basis for presenting your requests for further information.

1. Further information that might allow us to withdraw the objection
2. Further information that would significantly improve our advice

For each measure be clear about:

1. What we are asking for – refer to existing good practice and/or survey methods e.g. a survey of the use of the development site by SPA birds [refer to guidance on website];

2. How our advice will be better and why we may be able to withdraw our holding objection – refer to uncertainty and risk e.g. we will be able to give better advice on the risks of displacement through disturbance, death through collision and loss of breeding habitat;

3. The status of our advice – if the PA chooses not to follow our advice do they need to notify Scottish Ministers? (Good Practice Box 6).
Good Practice 5. The Use of Conditions and Agreements

The purpose of conditions or legal agreements is to enable planning permission where it would otherwise be refused. They are not a means of delivering ‘best practice’ or recommendations. This is why we should not ask for conditions in advice-only letters. There may be occasions where we suggest changes or mitigation in ‘advice only’ letters and the consenting authority choose to achieve such measures using conditions. However, that is a decision for them, not us.

Where we are of the opinion that without certain changes or mitigation we would object to the proposal, we must express this as a conditioned objection. We should always ensure that the mitigation measures we are seeking are necessary, reasonable and practicable and we should always give a clear and precise reason for such measures. It may be helpful to discuss with the consenting authority which approach to securing mitigation would be appropriate in each case.

Where it is necessary to bind successors in title to mitigation measures which are incapable of being delivered by condition, for example where the mitigation sought is out with the development footprint, we might suggest that the Planning Authority seek a legal agreement with the developer, such as one under Section 75 of the Town & Country Planning (Scotland) Act 1997 (as amended).

Where the planning application incorporates the required mitigation e.g. a competent Construction Method Statement ‘stamped’ by the consenting authority as part of the approved details of the scheme, then it will not be necessary to lodge a conditioned objection. This is because the consenting authority will normally impose standard conditions requiring the developer to act in accordance with the approved application and accompanying plans. Where the mitigation is contained only in a related document (such as the supporting ES), then you should use a conditioned objection and reference the relevant parts of the ES which need to be applied. If you are in any doubt as to the precise status of mitigation proposals then you should contact the consenting authority and ask for clarification.

Don’t try to set out the actual detailed wording of conditions and expect the consenting authority simply to adopt our wording. Consenting authorities are best placed to devise conditions that comply with the various tests set out in government policy (precision, enforceability, reasonableness etc.) and secure the mitigation we have suggested. We should focus on clearly setting out what we want the conditions to achieve. Sometimes it might be appropriate to give a lot of detail on what is required (by when and by whom) and there will be occasions where we will need to liaise with the consenting authority to help them get the wording of the conditions right.
Good Practice 6. Presenting advice

We want readers, especially decision-makers, to understand the significance of the impacts and decide what this means for the development in terms of their plans and policies.

Our advice should focus on significant impacts on the most important natural heritage interests affected by the proposed development. It should describe, authoritatively, clearly and concisely:

- the likelihood that natural heritage resources would be lost or significantly damaged because of the development
- why this matters
- how these effects can be avoided or mitigated

Phrase your advice carefully and objectively. When we do not object, avoid language that might make the reader think either that you would prefer to object or that we support development that presents significant natural heritage issues. Use objective language and avoid words that a reader could construe as emotive. For example:

- Where we are not objecting, introduce our advice on the impacts of the proposed development by saying “We advise that...” or similar.
- Do not use the phrase “We do not object ...” as this can give the misleading impression that we are supportive, when we may not be. If we do support a development, say so explicitly.
- Do not “strongly advise” or advise that developments are “unacceptable”, or that we have “concerns” – “fundamental” or “serious” or otherwise. These can imply that we mean an objection when we are not objecting.

Here are some examples of the kind of language not to use when summarising our advice, along with alternative text:

<table>
<thead>
<tr>
<th>Recommended text:</th>
<th>Don’t say this:</th>
</tr>
</thead>
<tbody>
<tr>
<td>“We advise that a proposal of this scale cannot be accommodated in this sensitive coastal location without significant adverse effects on the landscape and visual amenity.”</td>
<td>“We advise that the proposal cannot be accommodated in this sensitive coastal location.”</td>
</tr>
<tr>
<td>“We advise that this development will result in significant adverse effects on the population of golden eagle in this area that cannot be avoided.”</td>
<td>“We have serious concerns about this proposal.”</td>
</tr>
<tr>
<td>“We advise that this proposal will cause significant adverse effects on the landscape character of this area that cannot be avoided.”</td>
<td>“We advise that this location is unsuitable for the proposed development.”</td>
</tr>
</tbody>
</table>

Our advice should refer to the available evidence, including Environmental Statements where relevant, for support and justification. Select material carefully so that our advice focusses on the key issues and is concise – it should be just sufficient to inform the eventual decision. Do not repeat or try to replace an Environmental Statement.
EIA provides some useful concepts to aid consideration of significance, and it may be useful to use these to support your judgements of significance. But use them judiciously, not slavishly, in advice.

- **Value of the resource** - an expression of the international, national, regional or local importance of landscape, habitats or species. Describing the scale of impacts e.g. as national, regional, or local, in our advice can be useful but we should be careful not to use such phrases in our advice loosely. Do not routinely describe impacts in this way - reserve this approach for situations where you can confidently refer to evidence to support them (e.g. impacts that would adversely affect the regional population of an important bird species).

- **Sensitivity of the resource** - a matter of expert and professional judgement taking account of factors including distribution, extent, trends, rarity and vulnerability to change.

- **Magnitude of impact** - scale e.g. extent, individuals affected, and duration. Timing may be important and whether or not effects are reversible.

- **Likelihood of impacts occurring and the level of confidence in magnitude.**

The same principles apply at pre-application and scoping. Whilst there will be less evidence at this stage, and our advice will normally be less definitive, we need to provide clear advice about the potential for significant adverse effects where possible, especially where these might lead to an NatureScot objection. In the latter case, we should let the developer know as soon as possible that we may object. If we are also involved in pre-application engagement with the decision maker, we should let them know too. Here is some example wording on how to do this.

- “Based on the information currently available, we consider that it is likely to be difficult to locate a wind farm at the proposed location without significant adverse landscape and visual effects on wild land and the NSA. It is therefore possible that we would object to this proposal. Our advice on any subsequent formal planning application will, however, take full account of the final proposal and information presented in an Environmental Statement (ES) as well as the cumulative situation at the time of submission, etc.”

Letting the developer know in the early stages of their project will allow them to consider our advice when assessing the risks and constraints for their development. It will also allow the decision-maker to provide appropriate advice in relation to their plans and policies.
Good Practice 7. The status of our response to Planning applications

This Good Practice Box is only relevant to our advice on Planning applications, not other regulatory regimes such as CAR, Marine Licence, S.36 or S.37 Electricity Act consultations.

In some circumstances, our response position on a planning application can influence:

- how and by whom an application is determined; and
- whether Scottish Ministers need to be notified.

Our response should therefore explain what the Planning Authority is obliged to do in particular circumstances.

The following sets out some suggested wording regarding the ‘status’ of our response in relation to a number of common scenarios:

Advice only responses

- ‘Advice only’ responses suggesting changes/ mitigation: "It is for the planning authority to determine, within the context of its own policies, whether conditions are necessary to secure the mitigation set out below."
- ‘Advice only’ responses requesting information: "It is for the planning authority to decide, within the context of its own policies, whether to request the further information suggested below to help them assess the impacts and to inform mitigation/ enhancement measures."

Objections to proposals affecting protected areas (notification to Scottish Ministers may be needed in certain circumstances):

- Holding objections: “If the planning authority intends to grant planning permission against this advice without the requested information, you must notify Scottish Ministers.”
- Conditioned objections: “If the planning authority intends to grant planning permission against this advice without the suggested [select one of the following] changes/ conditions/ mitigation, you must notify Scottish Ministers.”
- Outright objections: “If the planning authority intends to grant planning permission against this advice you must notify Scottish Ministers.”

‘Wider countryside’ objections (notification to Scottish Ministers not needed):
• Holding objections: “If the planning authority intends to grant planning permission against this advice without the requested information, there is no need to notify Scottish Ministers.”

• Conditioned objections: “If the planning authority intends to grant planning permission against this advice without the suggested [select one of the following] changes/ conditions/ mitigation, there is no need to notify Scottish Ministers.”

• Outright objections: “If the planning authority intends to grant planning permission against this advice there is no need to notify Scottish Ministers.”