



BEFS WORKSHOP REPORT: SHEP – Scheduled Monument Consent

... held at the National Trust for Scotland Offices, 23rd May 2007

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Introduction

As part of the Historic Scotland (HS) series of consultations on the Scottish Historic Environment Policy (SHEP) documents, this BEFS/HS consultation workshop was an opportunity to bring together stakeholders to consider and comment on the draft SHEP policy document for 'Scheduled Monument Consent'.

The workshop was attended by ten stakeholders representing eight organisations (see appendix). HS was represented by Gordon Barclay, Head of Policy, Alan Rutherford and Tania Smith. The workshop was chaired by BEFS Vice-Chair and Head of Archaeology at the National Trust for Scotland, Robin Turner.

Introduction – Gordon Barclay, Historic Scotland.

Gordon Barclay recognised the value of BEFS consultation workshops, which in the past had provided the opportunity for helpful discussion, and where points of substance were made which impacted on the final policy documents.

Some background was given to the introduction of the SHEP series, which had resulted from an internal review of HS in 2003-4. One of the HS key performance targets for this year is to launch four SHEPs for consultation and/or in their final form. It is anticipated that SHEP 3 will be published soon and potentially the SHEPs on Scheduled Monument Consent and Properties in Care could be finalised by the end of the year.

The consultation for this SHEP closes on 22nd June 2007 after which an analysis of the responses will be compiled and published.

Introduction - Robin Turner, BEFS Vice Chair.

Robin Turner provided some wider context to the discussion. He noted that the new Scottish Administration is in favour of a full review of historic environment legislation. However, HS highlighted that such a review would take some time to implement. England and Wales waited 6 years for a review and the new legislation resulting from such will not now come into force until 2009-10.

Robin Turner then introduced the SHEP document on Scheduled Monument Consent indicating that it was a brief document which posed a series of questions requiring both general and detailed responses. The floor was asked for general comments which are detailed below.

Initial commentary on the document:

1. The conciseness of the SHEP consultation documents was welcomed.
2. HS was asked if there were any further sources of information relating to Scheduled Monument Consent that had not been included within the consultation document in Note 4. HS affirmed that all available source material was listed within the Notes section of the document apart from internal guidance which was available for HS staff.
3. HS was asked if there were any signs that Scotland would move towards a single designation approach. HS replied that Scotland was in the very early stage of stakeholder consultation and would wait and see how things work out in England.
4. HS was asked if the SHEP document should provide more detail on the cases of Scheduled Monument Consent (SMC) which had been refused, and on SMC applications which had been associated with a planning application. Such information would provide the reader with a better understanding of the SMC process. HS highlighted that in Notes 11 and 12 of the document, statistics were given informing the reader of the small numbers of applications turned down and the relatively small numbers of SMC applications associated with a planning application. HS invited participants to request (to Tania Smith) more detailed information; such information is also available in the HS annual report. The Historic Environment Audit was seen as an opportunity to provide more statistical information in the future.

The European Landscape Convention (ELC) is not included within the SHEP consultation document's list of main publications informing its development (Note 4). HS was asked how they propose to protect and define landscape and what their plans are to address this particular area of policy. HS noted that planning for this sector was still at an early stage but that the work of the Scottish Landscape Forum had resulted in a paper which had been presented to the Minister for Tourism, Culture and Sport. HS also noted that a SHEP considering the wider historic landscapes could be developed in the future. However, the Ancient Monuments and Archaeological Areas Act 1979 did not have a role in protecting landscapes.

It was suggested that reference to the ELC should be made as it continues to grow in influence and relevance.

It was reported by HS that NPPG14 on natural heritage (and landscape) is being revised. The Scottish Landscape Forum and the Executive Working Party are of the view that the profile of landscape needs to be raised and should not be considered as a mere annexe to the natural environment. An SPP (Scottish Planning Policy guidance) on landscape was suggested from the floor as an initial vehicle to raise the profile of landscapes.

5. HS was asked about the International Convention on the Law of the Sea and whether it should be listed within the SHEP. HS said that there was no intention to schedule any more marine archaeology as there were doubts about the effectiveness of the 1979 Act.

HS reported that the Historic Environment White Paper in England and Wales is looking at UK protection for the marine historic environment and should

result in better measures being put in place to safeguard marine archaeology. These would provide protection for submerged landscapes, wrecks, cargos and aircrafts. It is anticipated that this new legislation will come into effect in 2009-10 and will hold implications for future legislation to protect Scotland's marine archaeology.

Questions posed within the SHEP document and feedback received.

Question 1: Are there any other significant documents that should be listed here?

- Strategic Environment Assessment documentation. It is important in relationship to process as well as principle.
- European Landscape Convention.

Question 2: Is this a satisfactory statement of the purpose of the sustainable management of the historic environment and if not why not?

- One response was that the definition was well expressed. HS confirmed that it was a variant of the Brundtland definition on sustainable development; each variant being tailored to the particular circumstances.
- “... without *unnecessary* change or loss.” The word ‘unnecessary’ is ambiguous and doesn’t define the necessity for change.
- “.....and is passed on to future generations without unnecessary *change* or *loss*.” The words ‘change’ and ‘loss’ hold crucial meanings and merit further thought.
- It was stressed by a participant that the policy had to contain enough flexibility to negotiate the best outcome and that individual cases should be considered on their own merit. For instance, how would ‘unnecessary change or loss’ be interpreted in a court of law.
- Acknowledgement that the majority of consent applications are minor in nature. However it is the exceptions, the rare, that have to be handled through positive management.

Question 3: Is this the appropriate measure to use? If you do not believe it is, please explain why?

- “It is the value of the monument to the nation’s heritage that is the *primary* consideration in determining applications for Scheduled Monument Consent.” Is *primary* a strong enough word? Is it the only consideration? If there are other considerations, what are they and how are they in the national interest?
- The importance of ‘significance’ as a consideration in determining value, e.g. Burra Charter.
- It was reported by HS that ‘cultural significance’ was a determinant in SHEP 2 ‘Scheduling: protecting Scotland’s nationally important monuments’. However other tests were also undertaken in addition to the monument’s cultural significance to establish its ‘value’. These relate to regeneration potential/tourism.

Question 4: Are the criteria mentioned in 5.4 to 5.9 the correct ones? If not then why not?

Paragraph 5.4:

- In 5.4 the word ‘preserving’ should be replaced with ‘conserving’; that is conserving or retaining as much as possible.

- It was pointed out that often small scale interventions offer better value for long term conservation of the site; such as community groups carrying out a task.
- Within 5.4 it was suggested that there may be cases of awkward juxtaposition within what is culturally significant e.g. a scheduled tower house.
- An explicit statement supporting 'minimal intervention' should be fashioned and included within the document.

Paragraph 5.5:

- Within point 5.5 it was asked to whom should a proposed change to a monument be justified? It was suggested that greater public awareness and publicity surrounding Scheduled Monument Consent was required, perhaps in the same way that Listed Building Consents are advertised within the Edinburgh Gazette. There was a need for Scheduled Monument Consent to open out into the public realm so the public could respond to applications, similar to a third party right of appeal.
- It was observed that the new Planning System had opened up Central Government to a cultural change, putting greater emphasis on community engagement. It was felt that this shift was significant and that through the community planning process, the public had the ability to voice their opinions.
- Within 5.5, a question was asked about the mechanism for debate provided by HS to discuss the 'needs' of the monument during a Scheduled Monument Consent application. It was confirmed by HS that in any application the process should include early discussions between HS and the applicant.
- It was observed that the tone in 5.5 where it describes the need for the proposed process of change to be 'explicitly justified', might be viewed as authoritarian.
- A view was expressed that there could be a perceived lack of transparency and even-handedness in the way that an application is handled within HS.
- A monument's statement of significance should regularly be re-evaluated.

Paragraph 5.6:

- The concept of grading Scheduled Monuments was introduced but there was some resistance to this idea because the nature of monuments can often be obscured or unclear e.g. Marine Historic Environment. This would prevent a reliable system of categorisation as relevant information would not be available.
- In reply to a question about the application of the precautionary principle, HS indicated that this needs to be applied all the way through, and that detailed studies of significance can be commissioned. HS described the scheduling process as 'informed judgement'.

Paragraph 5.7:

- It was felt by the workshop that a clearer definition of 'public benefit' should be explored in relation to the broader legislation agenda currently held within the Scottish Executive.

Paragraph 5.8:

- The need for careful and sympathetic design which takes into account the setting of the monument should be highlighted. This is also relevant in the planning process.
- NPPG5 Archaeology and Planning 1994, a non-statutory advice document should be reviewed in order to highlight the importance of 'setting' within a planning application or Scheduled Monument Consent application.
- With regard to the General Permitted Development Order and the powers available to Local Authorities, it was considered important that LA's have an appropriate degree of knowledge relating to scheduled monuments and that the policies within Scheduled Monument legislation are integrated within local authority practice.

Paragraph 5.9

- It was suggested by one participant that within an application for Scheduled Monument Consent, there should be a requirement for a conservation statement. The conservation statement would provide full descriptions of the physical, fabric, and design features of the monument which would form the basis for judgement within the application process. The conservation statement would provide 'full and explicit justification for change'.
- The production of a conservation statement could assist in the process of making decision-making more transparent within the application process.
- The view was expressed that conservation thinking is ultimately a subjective process but the use of conservation statements could provide a structure for a clear argument in the support of an application.
- The document should include the use of conservation planning as good practice, where appropriate, in 5.9.
- HS added that not all applicants want their applications to be made public; not all applications in relation to SMC are controversial and they are usually small. HS take a 'significance-based' approach which accepts that a hierarchy of decision-making is inevitable.

Question 5: Are the requirements set out in paragraphs 5.11 a-h adequate and are they expressed clearly? If not, what changes would you suggest and why?

General

- HS will consider adding a paragraph giving mention to conservation planning principles as good practice in appropriate circumstances.

Paragraph e

- Appropriate level of record keeping needs to be clear. Develop paragraph to include for public benefit.

Paragraph g

- There was concern from one participant about 'how a satisfactory track record' is established. HS felt that in modern contract driven archaeology this was much less of an issue.
- In response to the question of what assessment methodologies would be required, HS confirmed that this would be discussed at the pre-application

stage. Desk assessments would be undertaken on the monument or perhaps a full survey would be required. There was not one particular methodology for assessment although the Heritage Lottery Fund requirement of assessment was filtering through the system and an Environment Impact Assessment was required for archaeological grants focussing on heritage.

Other comments:

The need for a review of the Scheduled Monument Consent Application Form

The view was expressed that more guidance was required when making an application for Scheduled Monument Consent, so that those without the professional expertise, perhaps at community and local level, would become more empowered.

HS explained that the SMC application form, which is set down by statutory legislation from 1981, will be re-designed as part of an internal administration review within HS which is to be undertaken in addition to the ongoing process of reviewing and developing policy.

HS are very keen for organisations to submit their comments to HS outwith the workshop on what was required to assist in making the revised SMC form more accessible.

Amendments/Variations to Scope of Works under Scheduled Monument Consent

It was felt it would be helpful if HS could set out the procedure for amendments or variations to the scope of work already granted Scheduled Monument Consent. The present system does not define the procedure for this. HS indicated that currently any proposed minor changes to the original scope of works should be made in writing to HS who would consider giving approval. However if the scope of works changes significantly in nature then another application may have to be made and the appropriate Inspector would be notified.

Classes of Activity deemed to have consent

In response to a query seeking further explanation on the 'classes of activity that are deemed to have consent' contained within the document at Note 9, HS explained that a fuller explanation was available in the relevant legislation, which can be found at www.statutelaw.gov.uk.

Implementation (section 6)

One participant suggested that HS could include within the Scheduled Monument Consent policy document the targets and timescales for dealing with Scheduled Monument Consent. The Historic Environment Audit should also collect data on SMC applications.

In response to the question of whether this SHEP is a realistic record of where things are at present, HS felt that it was a 95% record of where we are ... but there is also potential for change.

Closing Remarks

In the Chairman's closing remarks he explained that a note of the workshop would be circulated to all participants and posted on BEFS website. He reminded participants that as part of the SMC consultation, individual representation can also be made directly to HS. The deadline for receipt of responses is Friday 22nd June 2007.

HS and all present were thanked by Robin Turner for their participation in the workshop.

BEFS WORKSHOP – SHEP Scheduled Monument Consent

Wednesday 23rd May 2- 4.30pm, NTS OFFICES

Attendance

Sebastian	Tombs	A+DS
Tom	Addyman	Addyman Archaeology
John	Gerrard	Association for the Protection of Rural Scotland
Eila	Macqueen	Council for Scottish Archaeology
Iain	Johnson	HEACS
Peter	Burman	National Trust for Scotland
Nina	Sobecka	National Trust for Scotland
Robin	Turner	National Trust for Scotland
Alex	Adamson	Scottish Civic Trust
James	Simpson	Simpson and Brown
Jen	Austin	Simpson and Brown
Gordon	Barclay	Historic Scotland
Allan	Rutherford	Historic Scotland
Tania	Smith	Historic Scotland
Fiona	Binning	BEFS
James	Henderson	BEFS
Sarah	Khorasani	Project Scotland/NTS

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- all the participants (as above);
- Historic Scotland and their staff;
- the Chair of this consultation, Robin Turner.

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