



**ENVIRONMENTAL HEALTH and PLANNING SERVICES'
LIAISON PROTOCOL**

October 2016

VERSION 2

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1 Introduction and Aims

- 1.1 This protocol deals with liaison arrangements between the Planning and Environmental Health Services, and in particular details the roles and responsibilities of the Environmental Health and Planning Services. The protocol arose from an Improvement Project held in 2015 which identified the need to improve liaison arrangements between the Services. The objective of the protocol is to ensure both Services adopt a consistent approach, that appropriate policies and procedures are in place, and that performance improves. The protocol has been agreed by both Services and will be subject to regular review.

2 Background

- 2.1 An Improvement Project was undertaken in 2015, with the aim of improving performance in relation to Environmental Health responses to planning consultations. A number of issues had been identified prior to the project that required addressing:
- Time taken by Environmental Health to respond to consultations required to improve
 - Clarify and establish processes used by Environmental Health in dealing with consultations
 - Review process by which Environmental Health communicates with applicants/agents/consultants
 - Improve communication between Planning and Environmental Health pre application, during consultation period, and at decision making point
 - Ensure consistency of approach by Planning and Environmental Health
 - Improve format and content of Environmental Health responses to Planning
- 2.2 The project addressed all the above points, and amongst the outcomes, the Project Team recommended that a protocol be in place to ensure staff follow a consistent approach.
- 2.3 In view of the specialist nature of the topic, Planning consult the Contaminated Land team separately from the wider Environmental Health Service. This protocol covers Contaminated Land as well as the wider Environmental Health Service.

3 Roles and Responsibilities

- 3.1 The primary purpose in Planning consulting other council services and external bodies is to ensure that, where appropriate, all potential issues relating to the environmental health function are considered through the Planning system and in order to ensure compliance with the appropriate Development Plan administered by the Council.
- 3.2 The objective of the Environmental Health Service in dealing with consultations is to assess proposed developments in terms of their potential impact upon members of the public and the environment, make appropriate recommendations, ensure a consistent approach is adopted, and that consultations are dealt with timeously.

3.3 Protection of amenity/statutory nuisance. TO BE DONE

4 Consultation Process

4.1 The Planning Service will engage with the Environmental Health Service as early in the planning process as feasible (including pre-application) to encourage front loading of the process and to encourage the use of both pre-application discussions and also Processing Agreements.

4.2 Consultations:

The Planning Service will consult the Environmental Health Service in the following circumstances:

- Developments of national significance.
- Major developments.
- New domestic developments where private water supply is to be used.
- Developments with the potential to have a significant negative environmental impact adversely impact the public and environment e.g. noise, odour, air quality.
- Developments under the Use Classes Order i.e. 3, 5, 6, 7, 11.
- Developments with the potential to suffer a significant environmental impact from existing developments, e.g. proposed dwellings near existing commercial premises, dwellings near intensive livestock units/slurry storage.
- Windturbines
- Biomass, including CHP/other combustion processes.
- Anaerobic digestion and other heat recovery processes with potential for air/odour/noise issues.
- Micro- generation of electricity
- Agricultural Buildings needing planning permission within 400 metres of a dwelling
- Any new dwellings or building converted to a dwelling within 400metres of an approved turbine.

4.3 In addition, the Environmental Health Service will check the weekly planning application lists and advise Planning of applications, other than those in 4.2 above, that should be passed to Environmental Health for consultation. Such applications will be identified within the same week of the list being published and responses will be returned within 14 days, as per consultations mentioned in 4.1 above.

4.4 The Planning Service will consult the Contaminated Land (CL) team in the following circumstances:

- Where CL records indicate that the site is potentially contaminated
- Notwithstanding the above where the Planning Service considers that the site may have a history of contamination
- Where there is a site history which has involved contaminated land previously

4.5 The CL team will check the weekly planning application list and advise Planning of applications that should be passed to them. Such applications will be identified within the same week of the list being published and responses will be returned within 14 days, as per consultations mentioned in 4.4 above.

- 4.6 **Method of consultation and responses:**
Planning consult Environmental Health via the appropriate EH email box eg Buchan is eh.bu.planconsult@aberdeenshire.gov.uk.
- 4.7 The EH officer responds direct to Planning, including those applications where further information requires to be submitted by the applicant. The EH response template is found in Appendix 1.
- 4.8 **In cases where EH have insufficient information to support an application the presumption will be in favour of an objection.** In cases where the submission of further requested information is appropriate, this request is to go through Planning who will forward to EH any information subsequently received. EH can discuss aspects of the application directly with the applicant or agent if of a technical nature.
- 4.9 EH response to Planning will either be:-
- a) Recommend “**No Objection**” without any conditions
 - b) Recommend “**No Objection**” subject to conditions, with reference to the model conditions(see section 6)
 - c) **Objection**, specifying reasons.
- 4.10 Contaminated Land Team consultations will largely follow a similar procedure in terms of DM consultations and also in terms of the presumption in favour of an objection if insufficient information is submitted at the outset to allow Contaminated Land to support the development. However, CL Officers will liaise directly with the applicant/agent, but copy Planning Officers into all correspondence.
- 4.11 **Prior to proposed conditions being finalised the Planning Service will re-consult Environmental Health and Contaminated Land on applications for turbines, minerals, landfill, and all National and Major Developments.** The exception to this being where the relevant EH Team Manager has specifically requested in the initial consultation response to be consulted on the draft conditions or reasons for refusal. This is to ensure conditions are appropriate. **The timescale for responding is 5 working days from consultation and if no comments are received then this will be considered as being an acceptance.** The exception to this being where a Processing Agreement has been entered into and this PA allows for further time.
- 4.12 **Processing Agreements:**
Both Services will agree mutually acceptable timescales in respect of Processing Agreements and, in the event that Environmental Health cannot honour these on a case by case basis following submission of an application, the Environmental Health Team Manager shall liaise with the DM Team Manager over implications and timescales. This is in recognition that applications with PA are not formally included in statistics.

Link:

<http://www.aberdeenshire.gov.uk/planning/planning-applications/major-planning-applications/>

5 Policies/Guidance

5.1 The following guidance documents are available to EH and Planning staff detailing policy and procedures in relation to a range of topics:

- a) Turbines: www.aberdeenshire.gov.uk/environmental-protection/noise-pollution
- b) Water Supplies: see appendix 5.
- c) Noise: www.aberdeenshire.gov.uk/environmental-protection/noise-pollution
- d) Livestock buildings and slurry tanks: see appendix 6

6 Planning Conditions

6.1 Basic principles regarding use of planning conditions are contained in Circular 4/1998 and all conditions should only be applied as an alternative to a refusal. They must be essential and not merely “helpful”. All conditions must meet 6 tests set out by the Courts. They must be:

- 1. Necessary
- 2. Reasonable
- 3. Relevant to planning
- 4. Relevant to the development proposed
- 5. Precisely worded and
- 6. enforceable

6.2 Model Conditions are to be referred to when responding to Planning with recommended conditions, and used where appropriate. This will ensure a consistent approach. These Model conditions are not standard conditions and are to be adapted to the development in question. They are not a substitute for detailed scrutiny of an application and will not cover every circumstance that may arise. These Model Conditions are subject to regular review. Link:

<http://www.aberdeenshire.gov.uk/planning/planning-applications/advice-and-guidance/>

6.3 Occupancy

6.3.1 Historically “need” cases have been controlled by occupancy conditions. These conditions remain on older permissions until an application is approved under s42 to vary or remove these conditions. It is expected that any application under s42 to remove an occupancy condition will be treated “de novo” and assessed against policy in place at the time.

6.3.2 In the last few years government policy has been to resist the use of occupancy conditions. Planning policy still requires that an essential workers dwelling is justified on a need case and supplemented by an SAC (or similar) report. However when approved there will be no occupancy condition attached. It is accepted that this may lead to potential complaints in the future but, in planning policy terms it is anticipated that EH will not object to any needs case dwelling which, traditionally, are located close to the farm complex.

6.3.3 LDP policy is also more welcoming to development in the countryside in terms of reuse of previously developed land. That said before development can be approved it must be acceptable in terms of layout, siting and design. Where the land which has previously been developed is in close proximity to a potential source of pollution (noise, odour etc.) it is not unreasonable for EH to object.

7 Local Review Board/Appeals

7.1 In cases where either an application has been refused on advice, including from EH/CL, or where a condition advised by EH/CL has been appealed, or where an appeal has resulted from the non-determination from lack of EH response the relevant EH Team Manager will advise Mark Myles (or Maureen Corley) of their availability to attend an LRB meeting. They will contribute, in association with the relevant DM Staff, in the preparation of any appeal submissions and adhere to the deadlines set by DM.

8 Major Application Process

8.1 The relevant DM Team will identify consultees for attending Major Applications or Masterplan meetings. EH/CL will be present at each of these meetings unless previously intimated in writing to the relevant DM Member of staff that EH/CL has no objection to the proposals tabled and conditions will address any concerns. Relevant recommended conditions to be submitted to DM 5 working days before the date of the relevant meeting as advised in writing by DM. Link:
<http://www.aberdeenshire.gov.uk/planning/planning-applications/major-planning-applications/>

9 Non-Material Variations

9.1 S64 of the Town and Country Planning (Scotland) Act 1997 allows for permissions to be varied where the change proposed is non-material in nature (NMV). In terms of Council procedure some of these variations will require authority from the Chair and Vice Chair of the Area Committee.

9.2 In cases where the request does not need to be referred to the Chair and Vice Chair the Planning Service may consult with consultees with respect to any variation. A variation cannot be subject to different or additional conditions to that on the permission.

9.3 The NMV must not **materially alter** the substance of the approved permission and as such the following will **not be granted as a variation**

- a) Changes to a water supply where the approved supply is public **and a condition** requires that this public supply is used
- b) Proposals which are development in their own right
- c) Changes to ground levels

- 9.4 In cases where the Planning Service is satisfied that the request is non-material and further consultation is required the **EH Service will respond to the Case Officer within 10 working days** unless the relevant Service Team Managers have agreed an extension to this.
- 9.5 Turbines are considered under existing Non-Material Variation Guidance (Appendix 4) and where the Planning Service has a proposed NMV and require to consult Environmental Health the EH Service commit to responding to this consultation within 28 working days unless otherwise agreed in writing with the respective Team Managers.
- 9.6 In cases of Water Supply, where a public supply is approved by condition, this is not to be approved as a NMV. Where the applicant approaches the Council, EH will lead on the technical aspects of this with Planning inputting into the process side.
- 9.7 In conclusion requests for NMV will be given the same level of priority as planning applications and both Services agree to the timescale set out in this document.

10 Attendance at Area Committee and Infrastructure Services Committee

- 10.1 A Senior DM Planner or Team Manager always attends Area Committee and the preceding pre-meet.
- 10.2 A Team Manager and/or Senior Environmental Health Officer will attend Area Committee where requested by Committee Chair, Area Manager or where questions/comments are anticipated and requested by the DM TM or Senior Planner. The EH Team Manager or Senior EHO who is to attend the committee will liaise with the officer who submitted the consultation response and may ask for that officer to accompany him/her to the committee. Where there is more than one application with Environmental Health involvement, one officer will represent the Service and will liaise with relevant officers prior to the committee.
- 10.3 A Scientific Officer from the Contaminated Land team will attend Area Committee where requested by Committee Chair, or Area Manager, or where comments/questions are anticipated and attendance is requested by the DM TM or Senior Planner. The Officer that dealt with the application would normally attend. Where there is more than one application with Contaminated Land involvement one officer will represent the team and will liaise with the other team members prior to the committee.

11 Performance Monitoring

- 11.1 The Planning Service will provide regular monitoring reports, detailing time taken to respond to consultations. These reports provide an indication of the proportion of consultations responded to within 14 days, per Area and selected time period e.g. quarter or month. Performance will be reviewed at the regular EH/Planning Liaison Group meetings.
- 11.2 The Environmental Health and Planning Managers are responsible for ensuring the protocol is implemented by all staff.

12 Complaints / Enforcement

1. Upon notification of an issue which may involve both Planning & Environmental Health, relevant officers will discuss at the earliest opportunity how to proceed with an investigation, and which Service will take the lead.
2. Site specific circumstances will dictate the response from each Service. Investigations require to be co-ordinated to ensure accurate and appropriate advice is provided to complainants and other relevant persons or bodies.
3. Services require to agree on correspondence, from acknowledgement to resolution, to be issued, by whom and by when.
4. Investigations will determine the most appropriate course of action to be taken.
5. Appendix 7 provides a process diagram covering the investigation of noise complaints in relation to windturbines. The process is likely to apply to other types of complaints although not all steps in the diagram will be applicable.

13 Review

- 13.1 The protocol will be subject to discussion at each meeting of the Planning/ Environmental Health Liaison Group. It will be reviewed annually. Any amendments to the protocol must be agreed by the Planning/ Environmental Health Liaison Group.

Appendices:

1. EH Response Template
2. Organogram of Environmental Health Structure
3. Organogram of Planning Structure
4. NMV for Windturbines
5. Water Supplies
6. Livestock units
7. Turbine Complaint Process



PLANNING CONSULTATION

RECOMMENDATION: **No Objection/Objection subject to conditions/Objection**
(delete as appropriate)

APPLICATION REF: **APP/**
CASE OFFICER:
PROPOSAL:
LOCATION:
APPLICANT:
AGENT:
DATE RECEIVED BY EH:

Please find the following observations:

Recommendation:

(Senior) Environmental Health Officer (Team Manager)

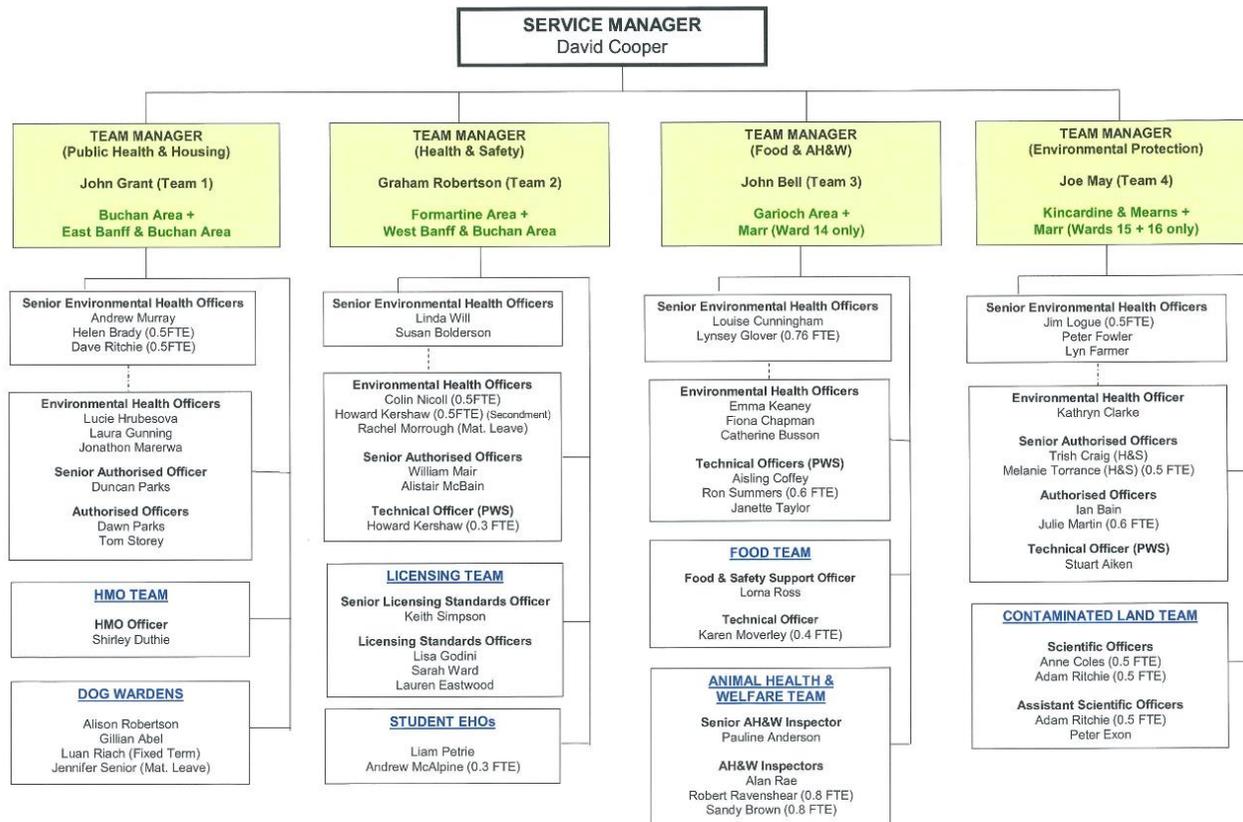
Date:

Please note that the above observations do not include consideration of contaminated land issues. The Scientific Officer, (Infrastructure Services) Environmental Health will report separately to the Planning Officer on such matters.

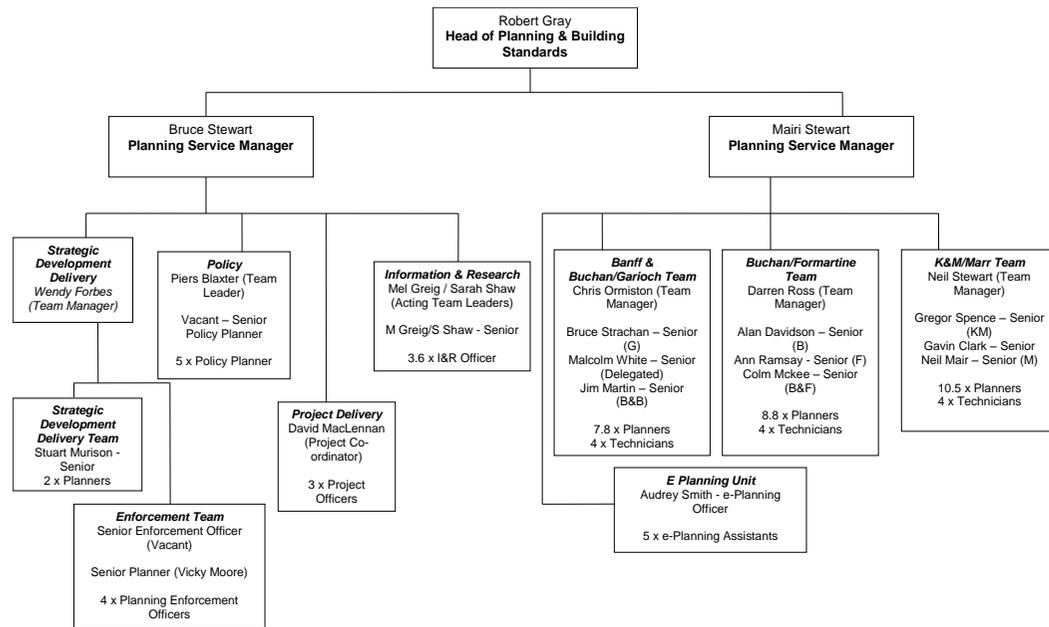
If you have difficulty reading this document please contact

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ENVIRONMENTAL HEALTH STRUCTURE – April 2016



APPENDIX 3



NMVs/Amendments to Turbines

For turbines already consented:

If the turbine is changed and the height is NOT increased we would re-consult Environmental Health to check this is not a noisier machine than what has consent. If noise levels can still comply with the condition on the approval then we can treat as a NMV if we also consider that visually the turbine is of similar character.

If committee needs to also go to Local Members & Chair.

Any increase in height could make the turbine visible to radar, usually the MOD / NATS / BAA state when they respond at what height they have assessed the proposal. This is why even a small increase would normally require a new application. Also neighbours may be more concerned with a larger turbine.

General rules for NMV requests

Acceptable amendment limits:

- Up to 10% reduction in height to tip
- Up to 10% reduction in blade diameter

Unacceptable amendments:

- Any increase in blade diameter
- Any increase in height to tip
- Any greater than 10 % reduction in height to tip
- Any greater than 10 % reduction in blade diameter

For those undetermined:

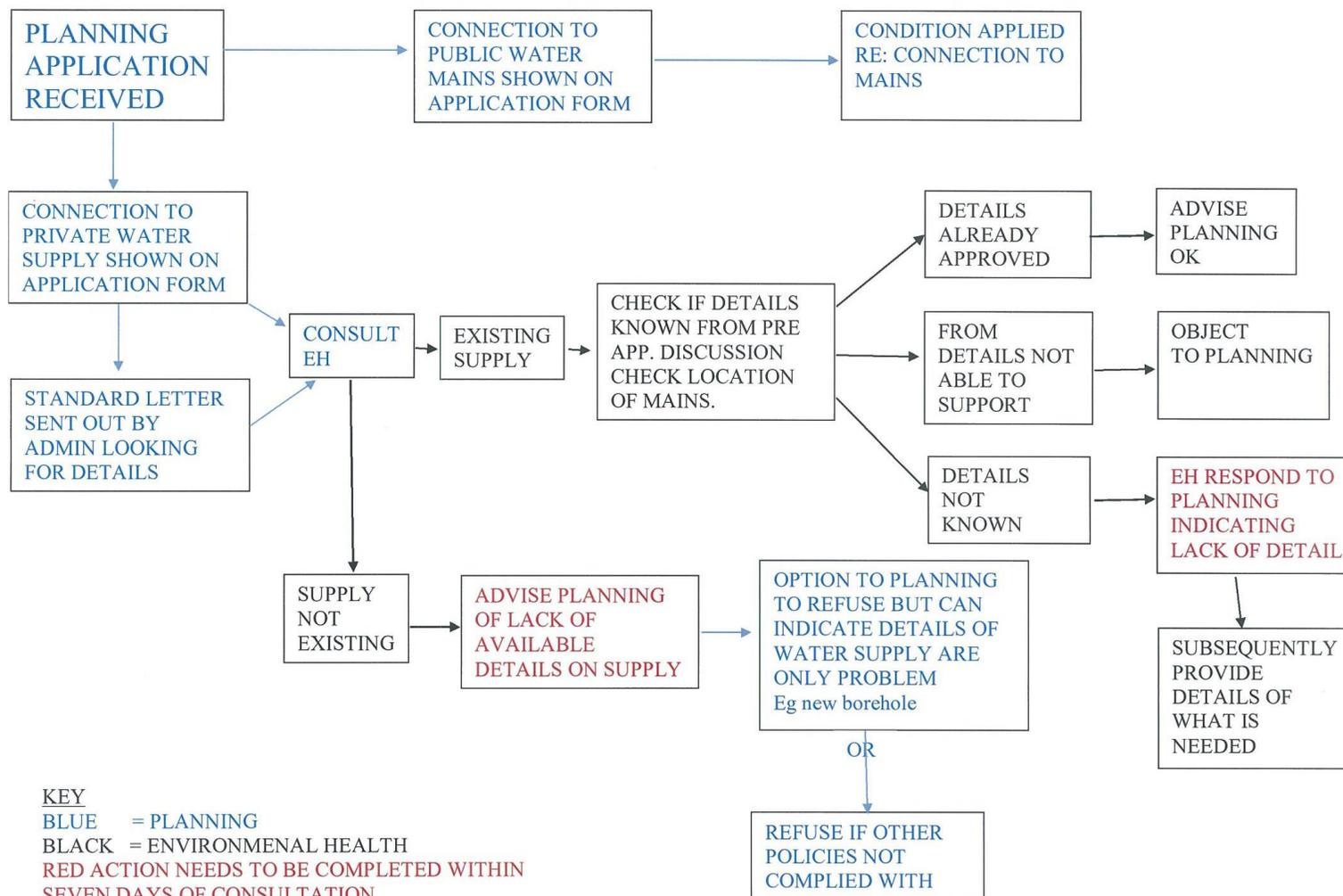
We can accept a reduction on the number of turbines. Usually this is to resolve an objection e.g. Aviation or noise. Would not routinely need re-advertised depending on the number of reps.

We have also accepted changes to turbine heights as for NMV but for lower not higher turbines. Those of significant difference in character we may need a new application. We have accepted a drop of 100m – 85m as we required the amendment to make it acceptable. If we had insisted on a new application Members may have approved it looking bad. We accept amended designs in all other types of applications.

Re-consult as required. In each case ALWAYS with EnvH.

Site boundaries are usually so tight around the turbine position and track that any relocation of turbine is likely to be outwith the red line site (even if it is as result of a consultee request), shall require a new application and will require a fee.

PLANNING APPLICATION CONSULTATION PROCESS WATER SUPPLIES



APPENDIX 6

PLANNING CONSULTATIONS

LIVESTOCK BUILDINGS

Relevant legislation and guidance:

PAN39 Farm and Forestry Buildings: Planning Control-Agricultural and Forestry Developments.

Scottish Government Planning Circular 2 (Annexe E paragraph 2) (400 metre cordon sanitaire).

Code of Good Practice: Prevention of Environmental Pollution from Agricultural Activity.

1 Proposed new intensive livestock unit/farm:

- (a) If there is a dwelling within 400 metres of the proposed intensive livestock unit/farm, EH will recommend refusal on the grounds of likely impact by odour on residential properties. Planning will be advised that consideration can be given to the submission by the applicant of an odour assessment by a competent independent consultant, indicating appropriate mitigation measures. Planning have the option of submitting the assessment to SAC or another consultancy to assess the report, to provide confirmation that the proposed mitigation measures are such that the Council can be satisfied that there will be no adverse impact on residential properties, and can approve the application subject to appropriate conditions.
- (b) If a dwelling is more than 400 metres distant but EH are of the view that the proposed development may give rise to an adverse impact on residential properties, (e.g. a large scale development, or just over the 400 metres distance, topography), EH will recommend refusal and advise Planning that an odour impact assessment should be submitted, as per the above paragraph.

2 Expansion of an existing intensive livestock farm:

If there are dwellings within 400 metres of the proposed development, an odour impact assessment will require to be submitted, as per para 1 above. If EH do not consider that adequate mitigation measures are proposed the application will be recommended for refusal.

3 Proposed residential developments within 400 metres of an intensive livestock unit:

If the proposed residential development is to be within 400 metres of the intensive livestock unit, EH will recommend refusal of the application, on the grounds of

the likely odour impact on residents, and also the potential for statutory nuisance to occur which may have an adverse impact on the unit/farm operations.

4 Buildings housing cattle:

- (a) If buildings likely to house cattle are proposed, consideration will be given to the potential to impact upon residential properties (*only need to take account of those dwellings out with the ownership or control of the farm*). These buildings are not intensive livestock units and consequently the procedure above related to intensive livestock units does not apply. However, these buildings do have the potential to impact upon residential properties.
- (b) In general terms, EH will not object to these proposals. However, if the proposed building is to be within close proximity eg 50 metres, then consideration will be given as to whether the proposal is acceptable taking account of the size of the building, any existing similar buildings, management and mitigation measures. There needs to be a reasoned case put forward if the recommendation is to be one of refusal.

5 Slurry Stores:

- (a) If there are dwellings within 400 metres of a proposed slurry store, EH will recommend refusal, on the grounds of the likely odour impact on residents.
- (b) If a proposed dwelling is within 400 metres of a slurry store, EH will recommend refusal on the grounds of the likely odour impact on residents, and also the potential for statutory nuisance to occur which may have an adverse impact on the unit/farm operations.

