

## Consultation: Draft Scottish Historic Environment Policy – The Marine Historic Environment

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Planning Committee  
15 May 2008

### 1 Purpose of report

- 1.1 To recommend the Council's response to the Historic Scotland consultation on the Scottish Historic Environment Policy on the Marine Historic Environment.

### 2 Summary

- 2.1 The Scottish Government's Scottish Historic Environment Policy on the Marine Historic Environment provides a holistic approach to the designation of assets and the active management of these. It is appropriate and does not raise issues of concern for the Council as local planning authority.

### 3 Main report

#### Introduction

- 3.1 The Scottish Historic Environment Policy (SHEP) series sets out Scottish Ministers' policies for the historic environment. They are a response to the review of Historic Scotland in 2004–05 which recommended that an 'Executive endorsed policy statement for the historic environment in Scotland should be developed in consultation with stakeholders'.
- 3.2 SHEP 1 *Scotland's Historic Environment* set out strategic policy for the historic environment. It provided the framework for more detailed policies that inform the day-to-day work of a range of organisations that have a role and interest in managing the historic environment. Other SHEPs deal in more detail with established areas of policy and are intended to bring together and explain existing policy, while providing an opportunity for public comment on a range of

policy and some operational issues. They are intended to sit alongside and complement the Scottish Planning Policy series and other relevant Ministerial policy documents. They are also intended to be relevant documents in the statutory planning, Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA) processes.

- 3.3 This draft Scottish Historic Environment Policy (SHEP) paper invites responses by 30 May 2008 on Scottish Ministers' policies for the marine historic environment. The SHEP builds on many of the principles defined in Historic Scotland Operational Policy Paper HP6 *Conserving the Underwater Heritage*. This SHEP should also be considered in the context of an extensive consultation carried out in 2004–05 by the Department of Culture Media and Sport (DCMS) and the Devolved Administrations, *Protecting the Marine Historic Environment, Making the System Work Better*. Responses to this and extensive scoping work resulted in proposals for new legislation to protect the marine historic environment as set out in March 2007 in a White Paper, *Heritage Protection*.

#### **Definition**

- 3.4 Scotland's marine zone extends from mean high water to the limit of territorial waters (12 nautical miles or 22.2 km), encompassing tidal rivers, estuaries and firths, as well as inshore waters close to land and waters far offshore. Material evidence relating to Scotland's historical association with the sea includes submerged former terrestrial sites, and the wrecks of ships and aircraft.

#### **The Legal and Administrative Context**

- 3.5 Jurisdiction for historic environment matters in Scotland's territorial waters out to 12 nautical miles rests with Scottish Ministers. In the 'Scottish zone' of waters adjacent to Scotland (between 12 and 200 nautical miles in places), such jurisdiction remains with the UK Government. The scope of the Planning Acts stops at the low water mark but harbours and lighthouses which are sometimes or partly below the sea can be statutorily listed.
- 3.6 The Crown Estate owns almost the entire seabed below Mean Low Water, much of the foreshore (the inter-tidal zone) and approximately half of the beds of estuaries and tidal rivers in the United Kingdom. As a landowner (as opposed to a regulatory planning authority) the Crown Estate grants leases, licences and consents for works and activities on the foreshore and underwater.

#### **Proposals for Scottish Ministers' Policy on the Marine Historic Environment**

- 3.7 Scottish Ministers wish to work towards a marine historic environment that is better-defined and recorded, safeguarded and a protection regime underpinned by effective legislation which can identify and safeguard Scotland's most important marine historic assets.

- 3.8 Decisions to apply statutory protection to the most important marine historic assets will follow the consistent application of clear criteria, and assets from all parts of Scottish territorial waters will be considered equally worthy and designation. Decisions on designation will be made on the basis of liaison with the key stakeholders, field assessment, and the best evidence available. Beneficial stewardship will be applied to key marine historic assets *in situ* where these are threatened by degradation or complete loss. A policy of preservation by investigation should be pursued to assist the recovery of archaeological or architectural data when these sites cannot be saved. Activities directed at underwater cultural heritage will avoid the unnecessary disturbance of the wider marine environment.
- 3.9 Scottish Ministers consider that the 2004–05 consultation *Protecting the Marine Historic Environment, Making the System Work Better* and responses to it make a sound case for new legislation to facilitate the reasoned management of change, promote the good management of marine historic assets, and encourage wider public understanding of and access to the marine historic environment in Scotland.

#### **New Legislation**

- 3.10 New legislation is proposed for England, Wales and Northern Ireland. To simplify administrative procedures across boundaries at sea, Scottish Ministers propose to seek broadly parallel legislation, albeit tailored for Scotland's needs, embedded within proposals for a Scottish Marine Bill. The effects of this new legislation will be to:
- broaden the range of marine historic assets that can be designated to include vessels and aircraft, the remains of these and sites believed to be their burial locations; built structures; archaeological sites and elements of human-altered landscapes now inundated; scatters of artefacts, whether originally found on dry land or cargoes from ships; and deposits of human or animal bone.
  - enable designation to be made on the basis of 'national' criteria, so that these criteria can be used for all 'archaeological sites and monuments of national importance' on land and at sea.
  - set out a range of operations that might affect the marine historic environment and over which the legislation would exercise control. If applied to a particular asset, these operations would be unlawful unless a licence from Scottish Ministers had been obtained.
  - require documentation in a designation order of the objectives of designation and a list of operations that would be prohibited, restricted under certain conditions, or disappplied, and why these decisions had been made. The focus of disapplication would be to ensure that non-damaging seabed activities would not be unreasonably prohibited or the subject of burdensome licensing; set out mechanisms for consultation in advance of

designation with owners and others with an interest in the marine historic asset; government departments with responsibility for marine management; the Maritime and Coastguard Agency; any new Marine Management Organisations that may emerge (e.g. from Marine Bills); the Crown Estate; any relevant local planning authority, port or harbour authority, fisheries management or nature conservation body.

- establish powers of interim protection which would enable Scottish Ministers to protect the asset and vary levels of control from the start of any consultation period until a designation decision had been made.
- provide for voluntary agreements with owners, others with a legal interest in the asset, and with third parties who may have a legitimate interest, for example in managing or making accessible a designated marine historic asset.
- establish appeal procedures against licensing decisions via public local inquiry;
- require means, for making designation information and guidance widely available.
- provide Scottish Ministers with powers to spend money on the operation of the designation and consent system, and the management of designated sites.

3.11 It is not the intention of Scottish Ministers significantly to increase the number of designated marine historic assets, rather to improve the effectiveness of the legislation used. The scope of this proposed legislation would be from the Mean High Water tidal Spring mark to 12 nautical miles. Scottish Ministers would retain powers to extend terrestrial designation to a limited distance out to sea to take account of marine historic assets that cross the tidal boundary. Assets in the area of overlap could be designated by whichever legislation best met the needs and circumstances of each site.

## **4 Financial Implications**

4.1 This report does not result in any financial implications for the Council.

## **5 Conclusions**

5.1 The holistic approach to the marine historic environment, the broad perspective for the designation of assets and the emphasis on active management proposed in the SHEP are appropriate. They do not raise issues of concern for the Council as local planning authority.

## 6 Recommendations

- 6.1 It is recommended that the Committee approves this report as its response to the Historic Scotland Scottish Historic Environment Policy on the Marine Historic Environment.



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<b>Appendices</b>	None
<b>Contact/tel</b>	Jack Gillon 0131 469 3634
<b>Wards affected</b>	City-wide
<b>Background Papers</b>	Draft Scottish Historic Environment Policy, The Marine Historic Environment, The Scottish Government