

SCOTTISH ENVIRONMENT PROTECTION AGENCY	Identifier: LUPS-GU15
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Planning guidance in relation to SEPA regulated sites and processes	Issue Date: 06/11/2013

1. Purpose and Scope

- 1.1 As Scotland's environmental regulator we administer a number of regulatory systems. We have to judge whether or not an application submitted under one of these environmental regulatory regimes meets the requirements of the law. If the application meets the legal requirements then we are legally obliged to issue a permit.
- 1.2 In line with [PAN 51](#) guidance, we need certain information about a development to be submitted with the planning application in order to be able to provide a view on whether the associated activity is potentially capable of being consented. The information we require in order to determine whether a process associated with a planning application can be authorised is different, but complementary, to the information we require to fulfil our role as statutory consultee of the town and country planning process.
- 1.3 This guidance note provides advice on how SEPA will respond to planning authorities when elements of a development will also be regulated by us or where a development proposal is in proximity to an existing regulated process. When we respond to such consultations we must advise the planning authority as to the potential consentability of the proposal under environmental regulation; this guidance provides advice on the information we need to enable us to come to a view on this issue at the planning stage.

2. SEPA's Approach

- 2.1 Land use planning and environmental regulation fall under different regimes but often are complementary. For most types of development it is for developers to decide when they submit their separate applications for planning permission and authorisation. When consulted on a planning application for a development, elements of which may also be regulated by us, we must consider the acceptability of the development itself in land use terms. This involves consideration of the sensitivity of the receiving environment, including adjacent land uses and potential regulation.
- 2.2 Pre-application engagement
We strongly encourage developers to engage in pre-application discussions with us. This will provide an opportunity to resolve potential issues regarding the consentability of a development proposal prior to the planning application stage and to set out to applicants the level and type of information we require.

3. Information Requirements

- 3.1 Our general information requirements for the different regulatory regimes are set out in Table 1 below. Additional advice on the information required for specific development types can be found in our [development-specific guidance](#) (i.e. hydropower, windfarms, and waste management).

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Table 1: Information Requirements

Pollution Prevention and Control (Scotland) Regulations 2012 (PPC 2012)

Information required by SEPA at planning stage:

- (a) A general description of the proposed process, techniques and technology choice.
- (b) EITHER – details of proposed processes, techniques and technologies, an assessment of environmental impact associated with technology choice, including the process of producing a detailed list of receptors, a description of potential impact on sensitive receptors, proposed mitigation measures and emissions standards to be achieved;
OR – demonstration that, assuming a worst-case scenario with sensitive receptors present, the development could reasonably achieve through existing technology agreed defined emissions standards.
- (c) A statement relating to potential for abnormal or unusual events (e.g. non-routine emissions), the frequency and expected duration of the events, and the potential impact on sensitive receptors, in order to demonstrate the suitability of the location. This is an important issue as some processes (through for example odour) are inherently challenging in terms of co-location with for example housing.
- (d) Where relevant, information required to ensure compliance with SEPA's Thermal Treatment of Waste Guidelines in terms of the efficiency of the plant and the acceptability in principle of the proposed heat plan.
- (e) Information relating to carbon capture readiness where the proposal relates to an Electricity Act Section 36 application for a thermal power station of >50MW.

New PPC Regulations came into force on 7 January 2013 which increase the scope of PPC Part A Regulation. These changes could also have significant impacts on the design of proposed plants, and we will inform applicants that it is advisable to consider current good practice during the design phase. In our planning responses we will signpost applicants to information on the new regulations which is available on our website [here](#).

Waste Management Licensing (Scotland) Regulations 2011

Information required by SEPA at planning stage:

- (a) All waste management proposals - a description of the site layout and design which demonstrates that the site is capable of accommodating the proposed development without resulting in unacceptable negative environmental impacts and is adequate for the activity proposed.
- (b) Energy from waste proposals – information to demonstrate that the proposal will comply with the Thermal Treatment of Waste Guidelines in terms of the efficiency of the plant and the acceptability in principle of the proposed heat plan.
- (c) Anaerobic digestion proposals – refer to Thermal Treatment of Waste Guidelines for detailed planning information requirements.

For detailed information and advice refer to [LUPS GU6](#) and the [Thermal Treatment of Waste Guidelines](#).

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Radioactive Substances Act 1993 (as amended) (RSA) and Contaminated Land (Scotland) Regulations 2005 (as amended)

Information required by SEPA at planning stage is provided in [LUPS GU3](#).

The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (as amended) (CAR)

Information required by SEPA at planning stage:

- (a) A description of any works which will have an impact on the water environment e.g. discharges (including volume), abstractions, culverts and bank works to allow an assessment of the impacts on water quality, quantity and morphology and to minimise these impacts at the planning stage (e.g. through modifications in layout and route selection).
- (b) A list of sensitive receptors within the water environment (e.g. other water users, water dependent ecosystems) and the potential impact the proposed activities will have on them.
- (c) Where appropriate, details of the technologies and techniques that will be used in carrying out the works to give a reasonable indication if any adverse impact on the water environment can be satisfactorily mitigated.

The issues controlled under CAR and which therefore do not need to be addressed by planning conditions can be very extensive. They include compensation flows, quality and quantity of discharges and the design of engineering works within the water environment. Additional advice on the information required at the planning stage in relation to specific development types can be found in [LUPS-GU4 Planning guidance on windfarm developments](#) and [LUPS-GU18 Planning guidance on hydropower developments](#).

Derogation assessment and determination

SEPA is required to carry out a derogation assessment on any CAR application where proposals would have a significant adverse impact on the water environment i.e. breach an environmental standard, or cause deterioration in status of a water body, or prevent the future achievement of an objective in the River Basin Management Plan. This procedure is generally required for hydropower applications but is not limited to this type of development.

We consider that it would be inappropriate for a planning authority to approve a planning application prior to the derogation test being carried out by SEPA. This is because the planning authority is a Responsible Authority under the Water Environment and Water Services (Scotland) Act 2003. We will advise planning authorities to defer planning decisions on any development proposal where a CAR derogation will be required.

The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993 as amended by the Planning (Control of Major-Accident Hazards) (Scotland) Regulations 2009 and the Town and Country Planning (Hazardous Substances) (Scotland) Amendment Regulations 2010

We required information which will enable us to advise the planning authority of the likely tier of the proposal under these Regulations at the planning stage.

We will revisit this position in light of further regulatory changes in relation to COMAH.

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- 3.2 The above table represents the minimum information we require at the planning stage in order to assess whether there are fundamental issues which would prevent a consent being granted for the proposed development. We will, in our response, make it clear that additional information will be required at the environmental consent stage and that it will be at the developer's own commercial risk if they do not wish to provide this information at the planning stage. This may result in a development with planning permission being refused environmental consent or require an applicant to resubmit the planning application with an amended scheme to accommodate modifications required by environmental regulation.
- 3.3 In relation to environmental regulation, we will only use *objection due to lack of information* when proposals raise specific issues on which we need more detail to enable us to determine whether it is potentially capable of being consented. Requests for this information – and any objections that are made to support such requests - will relate to the broad principles of consent and not to the detail required for determination of the environmental consent.
- 3.4 Where additional information requests are made in our planning response, we will clearly explain what additional information is required and why we are asking for it.

4. Considering Regulatory Issues as they relate to planning

- 4.1 When consulted on a planning application that also requires an environmental consent our response, which will identify whether we can ensure an acceptable level of environmental and health protection through regulation, will normally conform to one of the options set out in Table 2: SEPA Response to Planning Consultations.
- 4.2 In formulating our response we will also provide comment on the following:
- (a) Whether we consider the location of the development to be acceptable in principle;
 - (b) Whether the sizing of the design and layout of the development is likely to be able to provide the space or height for commonly required regulatory requirements;
 - (c) Site specific advice identifying which matters we will regulate and therefore which will not require to be controlled by planning conditions;
 - (d) Those planning conditions which we consider are essential to the acceptability of the development (including any required to complement regulatory control).
- 4.3 In our planning responses, we will be clear about whether a proposal is potentially capable of being consented or not on the basis of the information submitted at the planning stage.

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Table 2: SEPA Response to Planning Consultations

No objection

We will:

- Confirm to the planning authority and the developer that a permit or licence is likely to be required for the activities set out in the planning application, identify which regulatory regime it is likely to fall under and which aspects of the proposal the permit / licence will control.
- Confirm that the proposal is potentially capable of being consented on the basis of the information submitted.
- Identify to the planning authority and the developer that there could be impacts on planning if the developer requires to alter the design in order to obtain a permit / licence at a later stage e.g. by increasing the height of a chimney or accommodating additional infrastructure in order to mitigate pollution. We will clearly identify to the planning authority and the developer that it will be at the developer's own commercial risk if these aspects are not addressed at the planning application stage.

We will not:

- Conclusively confirm that a permit / licence will be required unless this has already been established through pre-application discussions.
- Require planning conditions for aspects of the proposal which will be covered by environmental regulation.

Objection in principle as the proposal is not potentially capable of being consented.

We will:

- Identify any planning-related constraints where we would be unlikely to grant a permit / licence due to the inability to mitigate risks arising from the location of the development (e.g. flood risk, proximity to sensitive receptors, air quality, impacts on water dependent ecosystems, impacts on water quality).
- Identify where we do not consider that we can ensure an acceptable level of environmental and health protection through regulation and that we do not consider that these issues can be addressed through modifications to the proposal or application of planning conditions.

Objection due to lack of information

We will:

- Object in order to obtain information which is **fundamental to planning considerations** and where not enough information has been provided to address any serious concerns we have as to whether the impacts of the proposal can be satisfactorily mitigated at the proposed location. This may for example include where insufficient information has been submitted on the proximity of sensitive receptors which would call into question whether the proposal is consentable.
- Highlight to the developer that additional advice on likely information requirements for

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hydropower, windfarms and waste management proposals is provided in our development-specific guidance.

Objection unless modification to the development

We will:

- Identify where design modifications are required in order for a proposal to be consentable.
- Provide clear and helpful advice about what modifications are required for the objection to be removed e.g. where we anticipate that a stack height greater than that indicated on the planning application will be required for permitting purposes or where extra space will be required for additional infrastructure to meet permitting requirements (for example for heat off-take pipes for an energy from waste facility).

We will not:

- Require planning conditions to cover aspects which will be covered by environmental regulation.

Objection unless condition(s) attached. Representation to be considered as an objection if any of these will not be attached

We will:

- Identify to the planning authority those aspects of the proposal which will not be controlled by environmental regulation and which therefore require to be controlled through planning conditions.

We will not:

- Require planning conditions for aspects of the proposal which will be covered by environmental regulation.

- 4.4 Our responses will clearly state that any view expressed by us at the planning stage will be without prejudice to the decision made in respect of the corresponding application for regulatory consent and is based on the information available in the consultation.

5. Proposals requiring Environmental Impact Assessment (EIA)

- 5.1 When commenting on applications for development subject to EIA and which will also be regulated by us, we encourage the approach set out in PAN 51 which states that "*it is good practice to use the Environmental Statement to provide all the technical information required for all permissions and licences, not just the planning permission*". This can avoid duplication of effort for the applicant by utilising the Environmental Statement to collate all the information required at an early stage.
- 5.2 This, however, is not a requirement and provided that sufficient information has been submitted to enable SEPA to come to a view about the issues set out in Table 1 and that the planning authority has ensured that sufficient information has been submitted

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to meet EIA requirements we will not object in order to obtain technical information which relates solely to regulatory requirements.

- 5.3 Where we do receive the technical information required for all permissions and licences we will screen the information for any clear constraints and advise the planning authority in normal planning timescales about whether the proposal is potentially capable of being consented.

6. Design considerations

- 6.1 Some issues are relevant to both planning and environmental regulation, but for different reasons; ideally, matters such as technology choice can be resolved by the submission of sufficient information at the planning application stage. However, if the applicant does not wish to submit this information and the issue is not one on which SEPA advises, then we will not make comment. Instead we will make the risks inherent in not providing this information clear to both the planning authority and the developer. It is the developer's own commercial risk if at a later regulatory stage changes to a proposal are required that necessitate a further planning application.

7. Development in proximity to SEPA regulated sites

- 7.1 We consider that decisions on development proposals such as housing close to regulated sites should be made with full knowledge of the potential interaction between the two. There are many examples of sensitive development being permitted close to regulated processes that result in requirements for tighter and more expensive controls for the businesses concerned in order to avoid nuisance. The developments can also lead to long term complaints in relation to – for example – odour and noise. This in turn results in disproportionate use of SEPA resources to resolve such problems, which would not have arisen had the decision to place new development close to the source been taken in full awareness of the likelihood of impact on people.
- 7.2 We will provide to planning authorities, on request, information on the location and nature of such regulated processes and the technical standards to which they operate.
- 7.3 As this is a matter on which the planning authority must make an informed decision we will not object to a development proposal in this situation. We will, in such circumstances, recommend that planning authorities consult the operator of the regulated site as the licence holder also has a responsibility to make representations to the planning authority.

8. Health Impact Assessment (HIA)

- 8.1 Emissions which could impact upon health are entirely under the control of our regulatory powers and can be restricted to acceptable levels which can be determined following HIA at the environmental regulatory stage.