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Joint land use planning working arrangements for SEPA and SNH	

1. Purpose

1.1 This instruction note has been prepared to ensure that:

- SEPA and SNH work together prior to responding to planning consultations where there is a joint interest;
- Advice from SEPA and SNH to customers is complementary and avoids areas of overlap or conflict

2. Background

2.1 An external audit of SEPA and SNH planning responses in 2008 found that any overlap in the advice given in consultation responses was relatively infrequent. It did however occur within three areas:

- flood risk
- biodiversity
- protection of the water environment

SEPA and SNH are committed to improving the clarity and quality of advice they give to planning authorities in responding to planning consultations. In order to achieve this, we have put in place a new approach to dealing with cases where we have a joint interest in the three main areas listed above. For further information see Appendix 1

Planning authorities and other key stakeholders will be informed of these arrangements and the instruction note will be reviewed after one year of adoption.

3. Joint Working Arrangements - Principles

3.1 In responding to consultations from planning authorities, SEPA and SNH have agreed the following five key principles –

1. SNH will not comment on flood risk. If SNH has any concerns in respect of flood risk it will discuss the matter with SEPA for SEPA to consider including in its response. SNH may include in its responses any matters relating to coastal geomorphology (e.g. impact on natural coastal processes of coastal works, including in relation to inundation).

2. SNH will lead on cases that could affect a designated site with a water dependent qualifying feature(s) (see Note 1). SEPA will, on request from SNH, provide input to this (e.g. in advising on appropriate mitigation measures). Where SEPA has any concerns on these matters it will raise these with SNH rather than include them in SEPA's response.

3. SNH and SEPA will liaise where a planning application raises issues in relation to species with special protection (see Note 2) to ensure a complementary response or responses. For example, if two responses are provided, SEPA's response will focus on the functional and support aspects of the river ecosystem. SNH's response will focus on the conservation status of the species.

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4. SEPA will provide comments on water dependent ecological interests that are not qualifying features within a designated site or do not relate to a species with special protection. Such casework is not likely to have required a separate consultation by the planning authority with SNH. SEPA may however wish to make reference in its letter to [SNH's website](#) for further advice for planners and developers.

5. SEPA will provide comments on green networks in relation to the delivery of River Basin Management Planning measures and the aims of the Flood Risk Management (Scotland) Act 2009. However, where SNH is the responsible authority for River Basin Management Plan measures, it will comment on green networks in relation to River Basin Management Planning. SNH will provide comments on green networks in relation to the maintenance and enhancement of habitat networks, landscape enhancement and climate change with respect to species adaptation.

3.2 Further details on the underpinning of these key principles can be found in Appendix 2.

4. Joint Working Arrangements - Practice

4.1 Figure 1 and Figure 2 set out the liaison arrangements that SEPA operational and SNH area staff should follow to observe the above principles. These allow for circumstances where a planning authority may have consulted both SEPA and SNH on an application, or where they may have consulted just one of the agencies.

4.2 These arrangements relate purely to land use planning and Electricity Act consultations and do not relate for example to a regulatory matter administered by SEPA (e.g. CAR licensing).

4.3 Further details on contact arrangements can be found in Appendix 3.

4.4 Where agreement cannot be reached between local SNH area staff and local SEPA staff, a planning response should not be submitted to the Planning Authority. Instead, the specific issues should be escalated through management for resolution to avoid contradictory or overlapping consultation responses. In SNH, this escalation will be, in the first instance, to the Senior Casework Manager responsible for the particular geographical areas. In SEPA, it will be to the Planning Unit Manager liaising with appropriate management of technical work areas. Further escalation will be necessary if agreement cannot be reached. It may be that, very occasionally, due to different legislative drivers, corporate agreement cannot be reached, but every effort should be made to find a solution. Once agreement has been met then the agreed planning response(s) should be submitted to the Planning Authority.

These arrangements will be jointly reviewed after one year of adoption.

Notes:

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1. Designated Sites

These are –

- Sites of Special Scientific Interest
- National Nature Reserves
- Special Areas of Conservation
- Special Protection Areas
- Ramsar sites
- National Scenic Areas

2. Species with Special Protection

These are European Protected Species under the Conservation (Natural Habitats, &c.) Regulations 1994 as amended (e.g. otter, great crested newt), animals and plants under Schedules 5 and 8 respectively of the Wildlife and Countryside Act 1981 as amended (e.g. fresh water pearl mussel, water vole) and badgers under the Protection of Badgers Act 1992.

For more information see SNH's web site at

<http://www.snh.gov.uk/protecting-scotlands-nature/protected-species/>

3. Natural heritage issue of national importance

Guidance on this is currently subject to review, but the current guidance can be found at <http://www.snh.gov.uk/docs/C271039.pdf>

Figure 1
Where SEPA is consulted on a planning application and there may be an interaction between SEPA's and SNH's responses

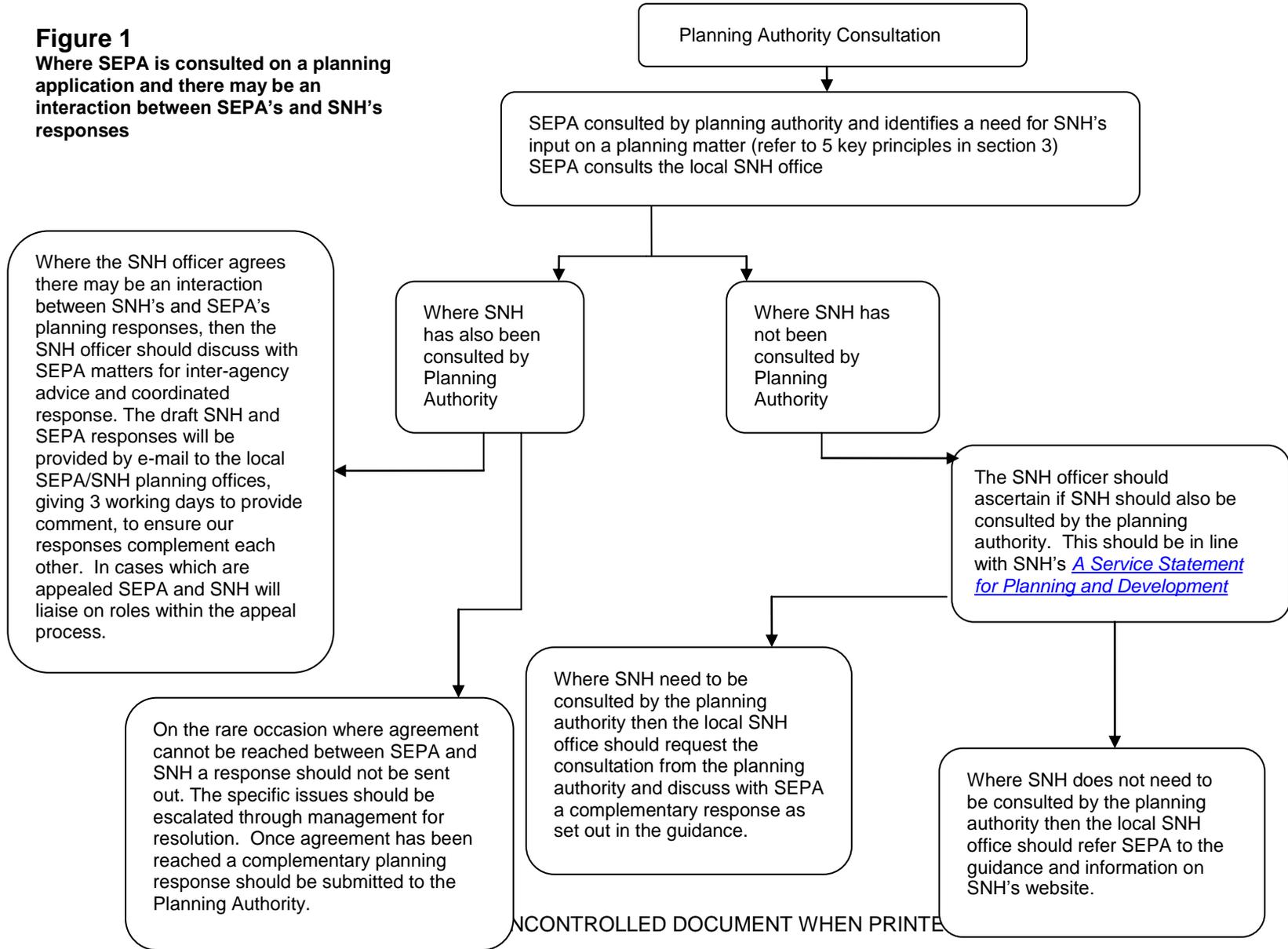
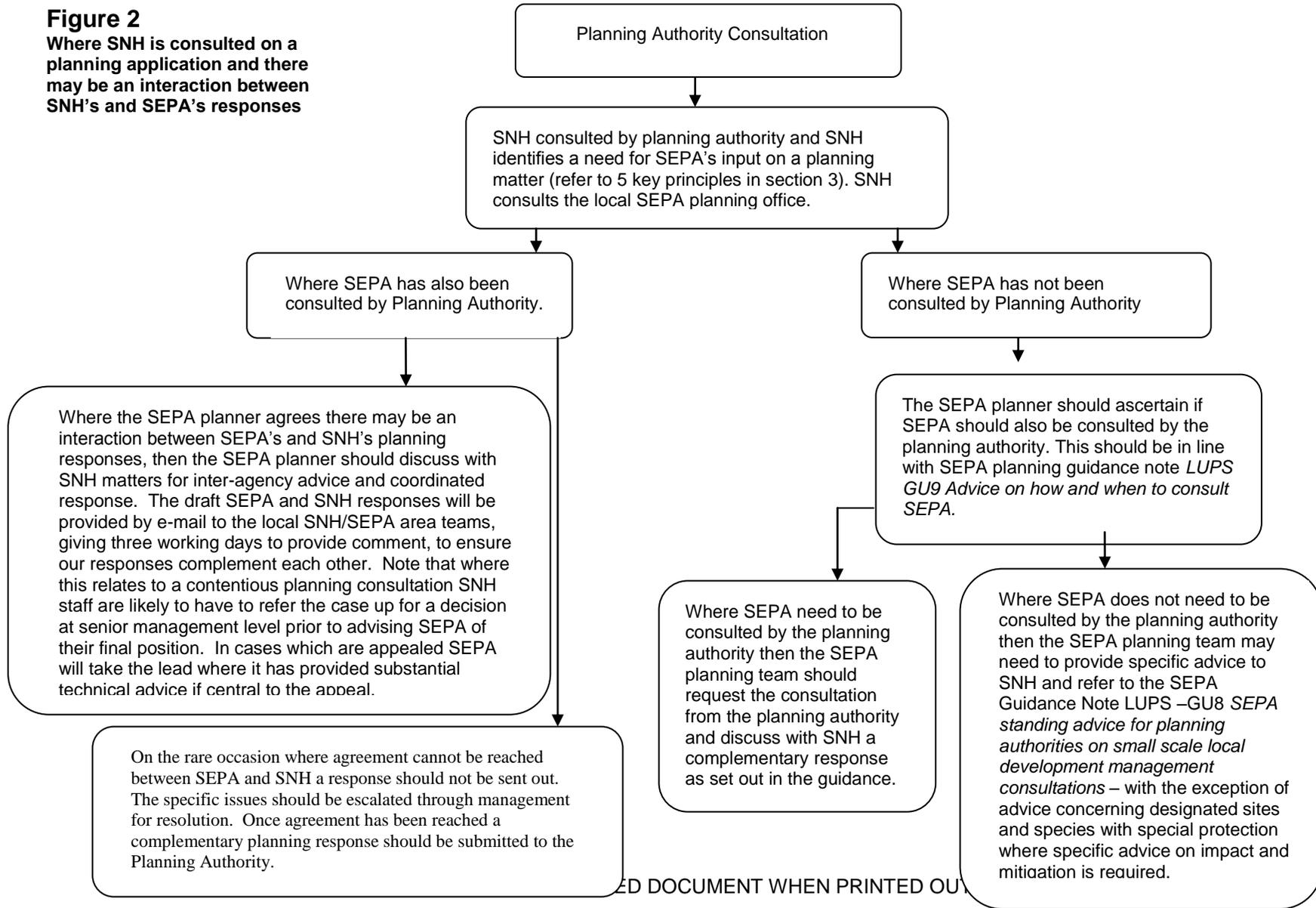


Figure 2
Where SNH is consulted on a planning application and there may be an interaction between SNH's and SEPA's responses



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Appendix 1

SEPA's and SNH's roles in development management casework

- A1.1 This guidance develops the detail of the principles agreed at SEPA's Agency Board (28 October 2008) and takes into account SEPA's Position Statement on Biodiversity, "[How SEPA delivers its biodiversity duties](#)" (7 June 2010) and the Corporate Management Team-approved "[Delivering SEPA's functions to protect wetlands](#)" MT (08) 45 (16 June 2010).
- A1.2 It also reflects SNH's re-aligned approach to development management casework, as set out in the [Service Statement for Planning and Development](#) published in December 2011 (revised version). This includes more selective engagement by SNH in consultations from planning authorities. SNH will continue to be consulted on proposals affecting designated sites (see Note 1), those subject to Environmental Impact Assessment, and proposals affecting species with special protection (see Note 2) where a licence under the relevant legislation may be required. There is a need for co-ordinated working as necessary between SNH and SEPA on such cases, to ensure SNH has access to SEPA's expertise on the water environment. Elsewhere SNH has indicated to planning authorities that it does not wish to be consulted unless there is potential for a natural heritage issue of national importance to be raised (see Note 3). Therefore in many cases it is anticipated that proposals affecting general biodiversity and ecosystems interests would not be the subject of consultation with SNH, but would be considered by the planning authority with reference to guidance on SNH's web site.
- A1.3 The two agencies are continuing to work to clarify roles and activities in areas such as biodiversity, climate change and soils. However, due to the inter-dependency of natural resource interests, the difficulty of exactly tying down definitions such as biodiversity, ecological interests and ecosystem services, and the complexity of legislative and policy drivers to protect such interests, it would be counter-productive to define exactly the remit of each body in every possible scenario when responding to planning consultations. Instead, a practical working arrangement is set out in the guidance which ensures that each body delivers on its responsibilities whilst providing an effective, complementary and solution-orientated service.
- A1.4 The SEPA Agency Board on 28 October 2008 agreed a programme of role resolution in relation to which issues SEPA comments on in a planning context with other key agencies. This included a SEARS-type planning arrangement with SNH to address biodiversity and that SNH should no longer comment on flood risk. Until further resolution of key issues such as climate change, SEPA responses would deal with the following issues:
- a) Protection of people, property and infrastructure from flood risk.
 - b) Promotion of sustainable waste management.
 - c) Protection of the water environment (both surface water and ground water)
 - d) Risks to the environment or human health arising from development on or near radioactively contaminated land and on or near a designated Part IIA Special Site.

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- e) Protection of the marine environment
- f) Good air quality.
- g) Noise and odour in relation to processes regulated by SEPA (protection of residential amenity, sensitive receptors).
- h) Potential consentability under SEPA's regulatory regimes (show stoppers only).

A1.5 Since that time, there has been progress in many areas in defining planning roles. A good example of this can be found in the Aquaculture Taskforce Protocol which sets out the issues on which SEPA and SNH, amongst other statutory consultees, will respond in aquaculture developments. This has been welcomed by Scottish Government, planning authorities and industry - http://www.sepa.org.uk/planning/fish_farming.aspx

A1.6 There is a duty on SEPA to further the conservation of biodiversity, and specific duties with regard to habitats dependent upon the water environment. Section 1(1) of the Nature Conservation (Scotland) Act 2004 states that: "It is the duty of every public body and office-holder, in exercising any functions, to further the conservation of biodiversity so far as it is consistent with the proper exercise of those functions". Under The Environment Act 1995 (Section 32) SEPA, in considering any proposals relating to its functions (which must include its planning consultative role), shall have regard to (amongst other things) the desirability of conserving and enhancing the natural heritage of Scotland and to take into account any effect which the proposals would have on the natural heritage of Scotland. Moreover, without prejudice to Section 32, Section 34(2) places a duty on SEPA "to such extent as it considers desirable, generally to promote - (a) the conservation and enhancement of the natural beauty and amenity of inland and coastal waters and of land associated with such waters; and (b) the conservation of flora and fauna which are dependent on an aquatic environment." There are also considerable Water Framework Directive requirements re water environment dependent habitats. The Water Framework Directive and transposing legislation (WEWS Act) requires SEPA to protect the water environment. This includes all surface waters (lochs, rivers), groundwater and those wetlands that are dependent upon surface or ground water bodies. Protecting the water environment from significant damage and, thus, water dependent biodiversity, is a fundamental requirement of WFD implementation.

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Appendix 2

Rationale for key principles of joint SEPA-SNH working

1. Designated sites and species with special protection

- A2.1 As set out in SEPA's Position Statement on Biodiversity (7 June 2010) "SNH has a clear lead on biodiversity and nature conservation policy, science and advice roles at national, regional and local levels, supporting the Scottish Government". Where SNH requires SEPA planning input, for example in relation to a designated site (see Note 1) with water related interests, then the SNH officer concerned should contact the local SEPA planning service office (see Appendix 3). Where required the SEPA planning officer will then consult internal experts such as hydrogeologists or wetland ecologists.
- A2.2 Where SEPA planning staff have concerns relating to a designated site or species with special protection (see Note 2) then they should contact the local SNH office (see Appendix 3) so that SNH can consider the issue when formulating their planning response. SEPA planning staff should **not** comment on notified interests or qualifying features of designated sites or species with special protection within the SEPA planning response to the planning authority. SEPA may however provide comments on water dependent features which are within designated sites but are not qualifying features. For example it would be appropriate for SEPA to provide comments on water features within a SSSI designated for geological features. Likewise, for example there will be times when SEPA will provide comments on the functional and support aspects of a river ecosystem which supports a species with special protection, such as freshwater pearl mussel. In these cases, SEPA and SNH should submit separate planning consultation responses but liaison should ensure comments are complementary prior to despatch of responses.
- A2.3 Mitigation advice provided to SNH by SEPA will be based upon generic best practice and supplemented with site specific considerations where appropriate. This may include water quality/pollution mitigation measures for development proposals affecting species with special protection or where a designated site is involved. SNH could also ask for technical advice from SEPA's local Operations teams with regard to the content of water quality protection or pollution prevention plans.
- A2.4 The importance of SNH's role in relation to responses on development proposals affecting designated sites (see Note 1) is set out in [The Town and Country Planning \(Notification of Applications\) \(Scotland\) Direction 2009](#). Where SNH advises a planning authority that a development may adversely affect a designated site and objects, but the planning authority are minded to grant permission, or where SNH recommends conditions which the planning authority does not propose to attach, the application must be notified to Scottish Ministers for possible referral to them. Where a case is called-in or appealed and SEPA has provided substantial technical support, SEPA should attend the hearing to provide expert evidence.

2. Water dependent ecological interests including wetlands

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- A2.5 SEPA has specific duties to protect water dependent ecological interests. These relate to all features of the water environment such as watercourses, lochs, groundwater, wetlands fed by surface water and groundwater such as fen. Where regulation is involved, these duties are discharged through its regulatory function. In planning responses, however, consideration needs to be given to ensuring that a mechanism discharging this duty is in place.
- A2.6 The SEPA CMT-approved paper "Delivering SEPA's functions to protect wetlands" MT (08) 45 (16 June 2010) requires SEPA to take a co-ordinated approach with SNH at the planning stage in relation to wetland interests. As set out above, where wetlands, or any other water dependent ecological interest such as a river, are a qualifying feature within a designated site (see Note 1) SNH will act as lead agency and SEPA will, on request from SNH, provide input to SNH responses, discharging its duties in this manner. Where SEPA staff have concerns relating to a designated water dependent ecological interest, they should contact the local SNH office so that SNH can consider the issue when formulating their planning response.
- A2.7 When SEPA is consulted in relation to proposals impacting upon water dependent ecological interests, including wetlands, lochs and rivers, but the consultation does not relate to a designated site or species with special protection, then SNH is unlikely to be also consulted. On these occasions, SEPA will discharge its duties through either its regulatory control or the planning response, seeking input in the normal way from Operations teams and, for example, wetland specialists. If SEPA takes this forward through a planning response, it shall liaise where appropriate with SNH who may for example refer SEPA staff to information on SNH's website.

3. Flood risk

- A2.8 SEPA will provide flood risk advice to planning authorities in line with the SEPA Interim Position Statement on Planning and Flooding. SNH will not address flood risk in its own planning consultation responses except to the extent that natural habitats or geomorphological processes may be affected by possible coastal inundation. Where SNH does have a particular issue it wishes to raise in a flood risk context, it will contact the local SEPA planning team so that they can consider this when formulating their response to the planning authority.

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Appendix 3

Details for SEPA-SNH liaison arrangements

- A3.1 For SNH liaising with SEPA, SEPA's planning service should be contacted. Further details can be found at <http://www.sepa.org.uk/planning.aspx>. SEPA's planning service draws advice from SEPA's internal specialists, including Operations teams. Operations teams are required to respond to planning service consultations within 5 working days for planning consultations and 10 working days for environmental impact assessment consultations in accordance with LUPS-SLA EPI Service Level Agreement. The Service Level Agreement is currently under review and so the current timescales may change.
- A3.2 For SEPA liaising with SNH, contact should be made with the local SNH area offices. Further details can be found at <http://www.snh.gov.uk/about/ab-hq.asp>. Local SNH area officers draw advice from SNH's internal specialists.
- A3.3 The arrangements in this guidance note relate purely to land use planning and Electricity Act consultations. Where an SNH inquiry relates to a regulatory matter administered by SEPA (e.g. CAR licensing), SEPA's local Operations regulatory team should be contacted. Contact details for SEPA's Operations teams can be found at <http://apps.sepa.org.uk/map/index.html>.