IS SCOTLAND PLANNING TO PRESERVE THE WORLD’S HERITAGE?

A CASE-STUDY IN THE HEART OF NEOLITHIC ORKNEY.

A Dissertation submitted for

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“Outstanding Universal Value means cultural and/or natural significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity. As such, the permanent protection of this heritage is of the highest importance of the international community as a whole.”

(UNESCO.2008:49)
Introduction

The author of this dissertation is presently employed by Orkney Islands Council (OIC) as the County’s Conservation and Heritage Planning Policy Officer. Prior to working in Local Government I read an undergraduate degree in Archaeology where I focused upon prehistoric Britain. This investigation represents a rare opportunity within which I am able to marry my previous archaeological studies, my work responsibilities and my current studies in Architectural Conservation.

Sites are inscribed upon the World Heritage List by UNESCO, under the auspices of the 1972 World Heritage Convention, following their successful nomination by a State Party. Although the UK Government is ultimately responsible for ensuring the terms of the Convention are met, the Scottish Government and local authorities have key roles to play in realising these aims. The recent legislative amendments to planning law in Scotland has been described by the Scottish Government as being “the most fundamental reform of the planning system in sixty years” (Scottish Government.2007b). This investigation will consider Scotland’s development planning framework, in particular the recent move toward a community-led approach to policy formulation, and will seek to ascertain whether or not it is possible to effectively reconcile the aims and objectives of this modernised system and the World Heritage Convention.

It is the intention of this study to explore the need for planning authorities to produce and adopt bespoke spatial planning policies in order to preserve the outstanding universal value (OUV) of cultural World Heritage Sites (WHS). Consideration will be given to the production of Scotland’s first WHS-specific supplementary guidance document in order to exemplify how land use policies
can alter as a result of the public consultation process and the author intends to thereafter suggest how best to resolve any issues identified during the investigation. Ultimately, the study will seek to establish whether the UK Government is able to effectively fulfil its duties as signatory to the World Heritage Convention following the recent planning reform in Scotland.

An overview of the existing legislation, policy and guidance relating to the World Heritage Convention takes place within the initial chapter of this report to ascertain what constitutes a cultural heritage site and how such sites may be inscribed upon the World Heritage List. Particular attention is paid within the first chapter to identifying the responsibilities of signatories to the World Heritage Convention, before the structure of the Scottish planning framework and the place of conservation within planning in Scotland are examined. This examination will focus primarily upon the measures that exist to preserve Scotland’s cultural heritage sites and will establish how WHS lie within the present framework.

Chapter Two concentrates specifically upon The Heart of Neolithic Orkney WHS and is split into two distinct sections. Part One identifies the characteristics of Orkney’s WHS, particularly with regards to the setting of the monuments, and seeks to demonstrate any effects of inscription upon the World Heritage List, before exploring the need to produce an updated supplementary guidance document seeking to preserve the OUV of the site. Part Two of the second chapter details the public consultation process followed by OIC to accord with the legislative requirements of the reformed Scottish planning system in seeking to adopt the WHS-specific guidance. After which, the representations made in response to the consultative draft are considered in order to demonstrate how interested parties can influence any planning policy which may ultimately be adopted.
Chapter Three considers the issues identified within the case-study at Chapter Two and examines how these relate to the wider Scottish context. This chapter also seeks to establish to what extent elements of the Scottish planning system have the potential to compromise the UK Government’s obligations regarding the World Heritage Convention and whether the reformed system and the Convention are compatible.

In seeking to establish whether or not the reformed planning system in Scotland enables the UK Government to fulfil its obligations as signatory to the World Heritage Convention, the legislative situations in England, Wales and Scotland were considered. The author acknowledges that at no time was the legislation specific to Northern Ireland, or any other British territory, considered during the investigation.
Chapter 1:

Legislative Background and Overview of Policy and Guidance

1.1 *International Conservation Charters, Recommendations and Conventions*

Throughout the Twentieth Century experts in conservation theory from the international community composed a series of conservation charters, conventions and recommendations relating to cultural heritage. Historic Scotland understands these documents as being a guide to good practice and having five main purposes:

\[
\begin{align*}
i. & \quad \text{to state the factors that make the built environment important to the wellbeing of society;} \\
ii. & \quad \text{to summarise the degree of international agreement on the way in which these factors should be acknowledged and protected by legal, social, and organisational mechanisms at governmental level;} \\
iii. & \quad \text{to set a code of ethics for the protection of the environment;} \\
iv. & \quad \text{to offer guidelines on the courses of practical action which are acceptable and unacceptable under that code of ethics and,} \\
v. & \quad \text{to define the terms used to describe these courses of action in order that no misunderstandings can occur and no false representation can knowingly be made.}
\end{align*}
\]

(Bell:1)

The forerunner of these charters was the Athens Charter of 1931, the “first international document outlining modern conservation policy” (Orbasli:21). The charter was rewritten at a conference in Venice by delegates from sixty-one countries who in 1964 successfully managed to produce a
document which has subsequently influenced conservation policy and practice around the world (Ibid:22). The recommendations of the Venice Charter saw the inception of the International Council on Sites and Monuments (ICOMOS), an international non-governmental organisation whose aim is to promote the theory, methodology and technology applied to the conservation, protection and promotion of the worth of monuments and historic areas (Ibid:77), and saw the founding of the International Conservation Movement (Orbasali:23). ICOMOS today has membership in excess of one hundred and ten countries and has a statutory responsibility to advise the UNESCO World Heritage Committee (ICOMOS2010a).

The charters, conventions and recommendations are produced primarily by UNESCO, ICOMOS and the Council of Europe. Within its Technical Advice Note (TAN) on International Conservation Charters, Historic Scotland recognise that “in the charters, the changing values of society have been mapped and the social implications of protecting sites and the benefits this can bring have been thoroughly explored.” They continue on to acknowledge that “together, the efforts of The Council of Europe, UNESCO and ICOMOS are leading the ethical and practical field and are giving an expert counterpoint to national legislation.” It is emphasised within the TAN that the message of the charters “forms the basis of current international conservation philosophy and define the established code of acceptable practice” (Bell:5).

It is expected that the good practice and conservation philosophy set out within the charters, conventions and recommendations be adopted by the world’s governments through their legislative frameworks. One UNESCO recommendation specifically states that:
“In each member state a national, regional and local policy should be drawn up, in conformity with the conditions of each state... with a view to safeguarding historic areas and their surroundings and adapting them to the frameworks of modern life. The policy thus laid down should influence planning at a national, regional or local level and provide guidelines for town-planning and regional and rural development planning at all levels”

(UNESCO.1976:7)

The Recommendation goes on to require that:

“Member states should adapt the existing provisions, or, where necessary, enact new laws and regulations, so as to secure the protection of historic areas and their surroundings taking into account the provisions contained in this chapter and in the following chapters. Laws concerning town and regional planning and housing policy should also be reviewed so as to coordinate and bring them into line with the laws concerning the safeguarding of the architectural heritage.”

(UNESCO.1976:9)

Whilst the conservation charters and recommendations represent internationally acknowledged good practice and ethical acumen, they are not legally binding and it is left to individual nations to legislate for the preservation of their own cultural heritage. Conventions, on the other hand, have been described by Hall as “hard international law” (Leask:22). This is not to say that the requirements of a convention apply directly on the ground in the lands of signatories, but they are international treaties to which certain obligations follow when a nation becomes a signatory. Of these conventions, the World Heritage Convention has been described as being “widely regarded as one of the most significant and successful heritage agreements” as it has been so widely ratified (Ibid:22).
1.2 UNESCO and the World Heritage Convention

Sites are inscribed upon the World Heritage List by the United Nations Educational, Scientific and Cultural Organisation (UNESCO) following their successful nomination by a State Party under the auspices of the Convention Concerning the Protection of the World Cultural and Natural Heritage (The World Heritage Convention), adopted by the General Conference of UNESCO at its seventeenth session in Paris on 16 November 1972. One of the five UNESCO Conventions relating to cultural heritage\(^1\), The World Heritage Convention came into force in 1976 when it had been formally ratified by twenty countries (Leask:6). Today the World Heritage Convention has been ratified by 186 individual States Parties and the World Heritage List contains some 878 sites in 145 Countries (UNESCO:2009:6) and this is surely due, at least in part, to the success of UNESCO’s World Heritage Mission, which seeks to:

- encourage countries to sign the World Heritage Convention and to ensure the protection of their natural and cultural heritage
- encourage States Parties to the Convention to nominate sites within their national territory for inclusion on the World Heritage List
- encourage States Parties to establish management plans and set up supporting systems on the state of conservation of their WHS
- help States Parties safeguard World Heritage Properties by providing technical assistance and professional training
- provide emergency assistance for WHS in immediate danger

\(^1\) The other Conventions are:
- support States Parties public awareness-building activities for World Heritage conservation
- encourage participation of the local population in the preservation of their cultural and natural heritage
- encourage international cooperation in the conservation of our world’s cultural and natural heritage

(Cited in: 800)

Cultural sites are defined within Article 1 of the World Heritage Convention as:

**Monuments:** architectural works, works of monumental sculpture and painting, elements or structures of an architectural nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science;

**Groups of Buildings:** groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;

**Sites:** works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view.

In order for a cultural site to be inscribed upon the World Heritage List, it must be demonstrated during the nomination process that it is of Outstanding Universal Value (OUV) (UNESCO.1972:Article1). A cultural site is defined as being of OUV within the current Operational Guidelines of the World Heritage Convention when one or more of the following criteria are met:
i) represent a masterpiece of human creative genius;

ii) exhibit an important interchange of human values, over a span of time or within a cultural area of the world, on developments in architecture or technology, monumental arts, town planning or landscape design;

iii) bear a unique or at least exceptional testimony to a cultural tradition or to a civilisation which is living or which has disappeared;

iv) be an outstanding example of a type of building, architectural or technological ensemble or landscape which illustrates (a) significant stage(s) in human history;

v) be an outstanding example of a traditional human settlement, land-use, or sea use which is representative of a culture (or cultures), or human interaction with the environment especially when it has become vulnerable under the impact of irreversible change;

vi) be directly or tangibly associated with events or living traditions, with ideas, or with beliefs, with artistic and literary works of outstanding universal significance.

(UNESCO.2008:77)

Further to meeting the specific criteria relating to OUV, a cultural site must also meet the stringent conditions of authenticity and integrity as laid out within the Operational Guidelines and must have an adequate system of management in place (Ibid:78).

Following inscription on the World Heritage List, it is expected that the special characteristics of a particular site, including its levels of authenticity and integrity, will be maintained on a permanent basis by the State Party within who’s territory the WHS is located (Feilden & Jokilehto:9). The OUV of each WHS is preserved by its host State Party adhering to the ‘Operational Guidelines for
the Implementation of the World Heritage Convention’ (Leask:7). The Operational Guidelines were first drafted in 1977 and are reviewed on a regular basis (Orbasali:27). The current 2008 operational guidelines require that a Management Plan, which details how a site will be effectively managed and preserved following inscription be included as part of any nomination for inclusion within the World Heritage List. It has been observed that the need for assurance that the Management Plan has reached consensus with all stakeholders, including the local community, is a distinct step away from the “intellectual and elitist attitudes” prevalent during the early years of the Convention (Ibid:27) and this is reminiscent of the direction taken by the recent reform of the Scottish planning system as will be demonstrated below.

The Operational guidelines are a substantial document in their own right, with the current 2008 version of the text explaining the procedure for:

i. the inscription of properties on the World Heritage List and the List of World Heritage in Danger;

ii. the protection and conservation of World Heritage properties;

iii. the granting of assistance under the World Heritage Fund; and

iv. the mobilisation of national and international support in favour of the convention.

If a nation which is a signatory to the World Heritage Convention fails to provide adequate protection for a WHS, the site can be moved to the List of World Heritage in Danger or may be removed entirely from the World Heritage Lists if its OUV, authenticity or integrity is fundamentally compromised (Feilden & Jokilehto:10). Article 5 of the World Heritage Convention requires that:
To ensure that effective and active measures are taken for the protection, conservation and presentation of the cultural and natural heritage situated on its territory, each State Party to this Convention shall endeavour, in so far as possible, and as appropriate for each country:

a) to adopt a general policy which aims to give the cultural and natural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programmes;

b) to set up within its territories, where such services do not exist, one or more services for the protection, conservation and presentation of the cultural and natural heritage with an appropriate staff and possessing the means to discharge their functions;

c) to develop scientific and technical studies and research and to work out such operating methods as will make the State capable of counteracting the dangers that threaten its cultural or natural heritage;

d) to take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage; and

e) to foster the establishment or development of national or regional centres for training in the protection, conservation and preservation of the cultural and natural heritage and to encourage scientific research in this field.

(UNESCO.1972:Article 5)

The duties of States Parties to the World Heritage Convention are further clarified within the 2008 Operational Guidelines where they are described as having the responsibility amongst other things to:
i. ensure the identification, nomination, protection, conservation, presentation, and transmission to future generations of the cultural and natural heritage within their territory, and give help in these tasks to other States Parties that request it; and

ii. not take any deliberate measures that directly or indirectly damage their heritage or that of another State Party to the Convention.

(UNESCO.2008:15)

It has been suggested by Leask that a lack of legislative power to support the aims of the World Heritage Convention is of key importance, both at international and national level (Leask:15). This potentially enables individuals or corporations to carry out certain incompatible land uses and developments within or in the vicinity of World Heritage Sites. Unless legislation is put in place specific to the World Heritage Convention, as is the case with Australia and South Africa (Ibid:26-30), the existing conservation and planning laws and policies of individual territories form the framework through which WHS are preserved (Orbasali:68). This firmly puts the onus upon governments to ensure that effective policies and legislation are put in place to ensure that the requirements of the Convention are met. Whilst the content and effectiveness of such legislation will inevitably vary from nation to nation, the international conventions, charters and recommendations, described within section 1.1 above, contain information regarding conservation theory and best practice and should guide the formulation of legislation, policy and guidance.

1.3 The Scottish Planning Framework and Conservation in Planning

In order to establish whether the Scottish legislative system succeeds in fulfilling the obligations of the UK Government as signatories to the World Heritage Convention, an assessment of the development planning framework must take place. As is the case with arguably all things,
however, to fully appreciate or understand the nature of a concept, item or activity, one must become familiar with its origins and how it has evolved through time. An exploration of the emergence of cultural heritage conservation theory and practice in the UK, intended to better understand how conservation based legislation has arrived at its current state, can be found within Appendix One of this study.

The Scottish planning framework is the means through which the evolution and expansion of Scotland’s built form and land uses are managed. The Scottish Government defines the aims of the Scottish planning system as being:

- To set the land use framework
- To encourage good development
- To protect our natural and built heritage
- To create vibrant communities
- To develop sustainable places

(Scottish Government 2010a)

The primary legislation that governs planning in Scotland, which acts as a foundation for the entire planning framework, is the Town and Country Planning (Scotland) Act 1997. Conservation and heritage specific issues also fall to be considered within the Ancient Monuments and Archaeological Areas Act 1979 and The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

**The Town and Country Planning (Scotland) Act 1997**

The core Act within the Scottish planning system is the Town and Country Planning (Scotland) Act 1997. This Act details the statutory responsibilities of local authorities with regards to the
production of land use planning policies, which are considered by the local authority when determining any applications for planning permission to carry out proposed developments. Part 3, Section 26 of the Act defines development as:

“the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.”

Any proposed development that falls within this definition, which is not defined as ‘permitted development’ by Part 3, Schedule 1 of the Town and Country (General Permitted Development) (Scotland) Order 1992 as amended, would require planning consent and an application would need to be submitted to the local authority to be determined in accordance with the relevant local land use planning policies.

**The Ancient Monuments and Archaeological Areas Act 1979**

This Act, Part I of which applies to Scotland, England and Wales, places a duty upon Scottish Ministers to compile, maintain and publish a list of monuments that have legal protection owing to their national importance (Historic Scotland.2009:20). Monuments are defined within the Act as:

a) any building, structure or work, whether above or below the surface of the land, and any cave or excavation;

b) any site comprising, or comprising the remains of any such building, structure or work or of any cave or excavation;

c) any site comprising, or comprising the remains of, any vehicle, vessel, aircraft or other means of moveable structure or part thereof which neither constitutes nor forms part of any work which is a monument as defined within paragraph a) above;
d) any machinery attached to a monument shall be regarded as part of the monument if it could not be detached without being dismantled.

(UK Government.1979:Section 61(7))

In order to be scheduled, and to subsequently receive the statutory protection offered by the Act, a monument must comply with the above definition and may not include structures in use as a dwellinghouse or in ecclesiastical use (Historic Scotland.2009:21).

**The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997**

The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 sets out the legislative background and outlines the procedures relating to making alterations to elements of Scotland’s historic environment that are not Scheduled under the Historic Monuments and Archaeological Areas Act 1979. This Act defines the method by which individual buildings can be Listed as being of “special” architectural or historic merit and thereafter details those works which are restricted once formal Listing has taken place. The Act dictates that:

“no person shall execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised.”

(Scottish Government.1997b:6)

The key difference between an individual carrying out alterations to a Listed building as opposed to an unlisted building without consent is that the latter works are unauthorised and a retrospective application may be submitted to regularise them, whilst the former works are unlawful and any person carrying out such works to a Listed Building is deemed to be committing a criminal offence.
by virtue of Part 2, Chapter 1, Section 8 of the Act. Further to this, unauthorised works to an unlisted building will become immune to enforcement action through passage of time by virtue of Part 6, Section 124 of the Town and Country Planning Act (Scotland) 1997 whereas this can never be the case with unlawful works to listed buildings.

The importance attributed to Scotland’s built architectural heritage in this primary legislation is further emphasised within Part 1, Chapter 5, Section 53 of the Act which decrees that:

“If, with the intention of causing damage to a listed building, any relevant person does or permits the doing of any act which causes or is likely to result in damage to the building, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.”

The above extracts of the Act clearly demonstrate the value of listing in Scotland. Once a structure is listed, unauthorised works are outlawed and this alludes to the high regard in which the Scottish Government holds Scotland’s cultural heritage assets.

Further to the Act detailing the legislation surrounding listed buildings, Chapter 6, Part 2, Section 61 requires that:

(1) Every planning authority shall—

(a) from time to time determine which parts of their district are areas of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance, and

(b) designate such areas as conservation areas.
Once an area has been designated as a conservation area, Section 64 of the Act requires that special attention must be paid to preserving or enhancing its character and appearance and local authorities are encouraged within Section 117 of the Scottish Planning Policy (SPP) to carry out Conservation Area Appraisals. Conservation Area Consent is required to demolish any building within a conservation area and certain permitted development rights, as outlined within the Town and Country (General Permitted Development) (Scotland) Order 1992, such as the cleaning of stone or painting the external walls of a property, are retracted. In addition to the standard restrictions on permitted development rights that apply once a conservation area has been designated, the local authority has the option to further restrict these rights by removing any classes as defined within Article 3 of the Order, which it deems appropriate in order to effectively preserve the special character of the area. Such measures are taken under the auspices of Article 4 of the same legislation and are commonly known as an Article 4 Order.

Alongside the above primary legislation, a suite of associated secondary legislation in the form of Regulations and Orders serve to define processes and methodologies that must be followed by local authorities in producing planning policies and in determining planning applications.

The Local Planning Framework

At a local level, Development Plans direct land use planning decisions. The Scottish Government require that a Development Plan should provide a clear vision of how the local environment should develop, and emphasise that they are the core documents against which planning applications are assessed for determination (SG 2010a). Section 10 of the SPP states that:

“Development plans guide the future use of land and the appearance of cities, towns and rural areas. They should indicate where development, including regeneration, should happen and where it should not.”
Development plans must be accessible to the communities they serve and should be concise and written in plain language.”

In producing Development Plans, local authorities should have regard to the statements of Scottish Government Policy as outlined within SPP, the National Planning Framework and Planning Circulars (Scottish Government 2010a: preamble). Within the Planning Series of documents produced by the Scottish Government, these are described as “considerations which may be taken into account when producing Development Plans and when determining applications” and are defined thus:

**Scottish Planning Policy** is the statement of the Scottish Government’s policy on nationally important land use planning matters.

**National Planning Framework** is the Scottish Government’s strategy for Scotland’s long term spatial development.

**Circulars**, which also provide statements of the Scottish Government’s policy, contain guidance on policy implementation through legislative or procedural change.

Aside from these documents, Planning Advice Notes, which provide information and advice on specific technical planning matters, are a valuable resource for local authorities.

**Planning and the Historic Environment**

The national steer on planning policy in relation to development affecting the historic environment can be found within the Scottish Planning Policy (SPP), and is supported by Planning Advice Note (PAN) 42 *Archaeology – The Planning Process and Scheduled Monument Procedures* and PAN 71 *Conservation Area Management*. The Scottish Government recommends that the policy in the SPP should be read in conjunction with the Scottish Historic Environment Policy (SHEP),
produced by Historic Scotland, which together provide the Government’s policy and advice on planning for the historic environment with the following principal aims:

- Encouraging a positive and proactive approach to managing change in the historic environment, enabling development and securing best viable use;
- Ensuring the special qualities of the historic environment are protected, conserved and enhanced. This should cover statutory and non-statutory designations, while recognising that the latter, such as archaeological remains, can be material consideration in the planning process.

(SG2010b)

**SPP and SPP23 – Planning and the Historic Environment**

Released during October 2008, Scottish Planning Policy 23 (SPP23) was the final and shortest lived Scottish Planning Policy Document produced before the release of the consolidated SPP in February 2010, which superseded a wide variety of earlier documents.

Section 17 of SPP23 referred directly to World Heritage Sites and provided the following concise overview:

*WHS are inscribed by UNESCO on the basis that they are cultural and/or natural heritage sites which have “outstanding universal value”, and have “authenticity” and “integrity”. The UK Government has overall responsibility for policy on WHS, but for sites in Scotland, responsibility for identifying and nominating individual sites, and ensuring they are properly protected, mainly through requiring that appropriate local frameworks are in place, lies with the Scottish Government. No additional statutory controls result from designation, but a specific policy within a clear planning policy framework, for example a local*
development plan or supplementary planning guidance, should be established to assist planning authorities
fulfil their key role in managing development within these sites.

In addition to the above, and of far greater significance, Section 45 of SPP23 required that:

Though no additional statutory controls result from world heritage designation, the impact of proposed
development upon the “outstanding universal value”, “authenticity” and “integrity” of a World Heritage
Site and its setting is a material consideration in determining planning applications.

The consolidation of several documents into a singe streamlined SPP invariably led to the
reduction of topic-specific content. This is exemplified in the reduction of SPP23 – Planning and
the Historic Environment from fifteen pages to fourteen paragraphs within the consolidated SPP.
That said, however, the element of the SPP that focuses upon WHS is similar in scale to that of
SPP23 with Sections 120 and 121 stating:

WHS are inscribed by UNESCO as cultural and/or natural heritage sites which are of outstanding
universal value. Planning authorities should protect WHS and their settings from inappropriate
development, including relevant policies in the development plan and setting out the factors that will be
taken into account when deciding applications for development proposals which may impact on a WHS.
The immediate setting of a WHS, important views, and other areas which are important to the site and its
protection, should be protected from inappropriate development. The setting of a WHS is the area around it
in which change or development may have an adverse impact on the WHS.

A statement of outstanding universal value is adopted by UNESCO when a site is inscribed, which provides
the basis for the effective protection and management of WHS. WHS management plans should be prepared
which summarise the significance of the site and set policies for the protection and enhancement of the site.
Planning authorities should consider incorporating the management plan into the development plan as supplementary guidance.

Although the updated advice in the SPP gives greater detail on what aspects of WHS local authorities should seek to protect within the Development Plan, it falls short in specifying that they are themselves material considerations in the determination of planning applications. Whilst this may seem to be a small issue when one considers the nature of the policies to be drafted in the production of the Development Plan, it is actually of fundamental importance as this study will demonstrate.

Scottish Historic Environment Policy

The Scottish Historic Environment Policy 2009 (SHEP) outlines Scottish Ministers commitment to Scotland’s historic environment and details how they expect planning authorities to “undertake their responsibilities for the historic environment in a pro-active and committed way through the development of appropriate policy frameworks and procedures and by using all local mechanisms available to them to manage it effectively” (Historic Scotland.2009:14).

The SHEP also explains the criteria for allocating both statutory heritage designations (scheduled monuments, Conservation Areas and Listed Buildings) and non-statutory heritage designations (Gardens and Designed Landscapes and Battlefields) and details the processes to be followed to obtain the appropriate consents that a particular designation necessitates.

The overarching steer of the SHEP is apparent at paragraph 1.8 of the document (bold taken from the SHEP):
**The protection of the historic environment is not about preventing change.** Ministers believe that change in this dynamic environment should be managed intelligently and with understanding, to achieve the best outcome for the historic environment and for the people of Scotland. Such decisions often have to recognise economic realities.”

(Historic Scotland.2009:6)

The ‘economic realities’ alluded to within this paragraph are of particular relevance, especially when one considers the consultation responses outlined within the case-study of Chapter Two. Although WHS are mentioned twice in passing throughout the SHEP, at no time are they given any particular status or policy guidance and it is as though, whilst they are acknowledged to exist, they are deemed to be akin to any other element of Scotland’s historic environment, it is left therefore to the specific guidance in the SPP regarding the production of ‘relevant policies’, as detailed above, to ensure the preservation of their OUV.

### 1.4 The Planning Etc (Scotland) Act 2006

The Planning Etc (Scotland) Act 2006 reforms Scotland’s primary planning legislation and has been described by the Scottish Government as being “the central part of the most fundamental reform of the planning system in sixty years” (Scottish Government.2007b). The Government anticipates that the reform will deliver a planning system which is:

- **Efficient:** up to date development plans to be at the heart of an efficient system that provides certainty for users and local people
- **Inclusive:** local people to be more involved in the decisions that shape the development of their communities
- **Fit for purpose:** with a clear sense of priorities, and to address different issues in different ways
**Sustainable:** development to contribute to economic growth that is sustainable. Planning will deliver sustainable development ensuring development is in the right place, and of, the right quality

(Scottish Government.2010c)

At the heart of the 2006 reform is the community-driven approach to policy formulation. This is evident in the need for repeated public and stakeholder consultation during the production of any Development Plan (Scottish Government.2006:Section 17 & 18) and in the production of supplementary guidance (Ibid:Section 22). All material considerations raised by consultees must be considered by local authorities and evidence that effective consultation has taken place, including details regarding how any comments received have been addressed in finalising any policies must be demonstrated to the Government (Ibid: Sections 18, 19 & 22).

PAN 81 *Community Engagement – Planning With People* details how communities should be properly engaged within the planning process and further reaffirms that:

“Scotland’s planning system is undergoing its most radical overhaul in 60 years. Scottish Ministers are determined to make the planning system more inclusive and accessible to people, with greater openness and accountability…”

(Scottish Government 2007a: preamble)

PAN 81 goes on to state that the *National Standards for Community Engagement*, developed on behalf of Communities Scotland, are ideally suited for use by planning authorities in Development Plan preparation (Ibid:37). The National Standards are:
1. **IN VolvemenT**: identify and involve the people and organisations who have an interest in the focus of the engagement.

2. **SUpport**: identify and overcome any barriers to involvement.

3. **P lanning**: gather evidence of the needs and available resources and use this evidence to agree the purpose, scope and timescale of the engagement and the actions to be taken.

4. **MethOdS**: agree and use methods of engagement that are fit for purpose.

5. **WOrking TOgerthEr**: agree and use clear procedures that enable the participants to work with one another effectively and efficiently.

6. **S haRing iNformAtion**: ensure that necessary information is communicated between the participants.

7. **WOrking wiTh othErS**: work effectively with others with an interest in the engagement.

8. **I mprovement**: develop actively the skills, knowledge and confidence of all the participants.

9. **F eedback**: feed back the results of the engagement to the wider community and agencies affected.

10. **M onItoring And eValuation**: monitor and evaluate whether the engagement achieves its purposes and meets the national standards for community engagement.

(Communities Scotland:6)

PAN 81 details how planning authorities can utilise the ‘Ten National Standards’ to ensure that effective consultation takes place that meets the requirements of the Planning Etc (Scotland) Act 2006 (Scottish Government.2007:38-45) in order that any proposed policies may ultimately be adopted.

**1.6 Historic Environment (Amendment) (Scotland) Bill**

The Planning Etc (Scotland) Act 2006 serves to reform the Town and Country Planning (Scotland) Act 1997 and has only a minor direct impact on Scotland’s heritage-based primary legislation, the
most noteworthy being that it reintroduces that the partial demolition of a building in a
conservation area would require Conservation Area Consent (Scottish Government.2006:section
55).

The Historic Environment (amendment) (Scotland) Bill seeks to further amend the scope of
primary heritage legislation whilst preserving the core of the current system (HS2010a). Whilst the
Bill will update heritage legislation, in particular to increase fines for unlawful works and
increasing enforcement powers to align with the 2006 Act, there is no fundamental change to
Scotland’s heritage framework except for the expanding the 1979 definition of a ‘monument’ to
include:

“Any thing, or group of things, that evidences previous human activity.”

(Scottish Government.2010b:section14)
Chapter 2, Part 1:

Case Study - The Heart of Neolithic Orkney World Heritage Site

2.1.1 Overview of the WHS and the effects of inscription.

The Heart of Neolithic Orkney WHS comprises six archaeological sites on the West Mainland of Orkney, an island archipelago off the North East coast of Scotland: the settlement of Skara Brae, Maeshowe, the Stones of Stenness, the Watch Stone, the Barnhouse Stone, and the Ring of Brodgar and associated ritual and funerary monuments (figure 1). The Heart of Neolithic Orkney was formally inscribed onto the World Heritage List on 2nd December 1999, fulfilling four of the six criteria of outstanding universal value for cultural sites (Appendix Two).

The Neolithic represents arguably the most fundamental period of change ever to occur within the history of human society, it marks the end of humanity’s reliance upon solely hunting and gathering of foodstuffs and sees the origins of farming. The period has been described as being "characterised by the first major incidences of land clearance, animal husbandry, the demarcation of distinct territories,"
fixed settlements, major building projects and the production of ceramics” (Bradley:27-87). This fundamental shift toward mankind’s dominion over crops and domestic animals is reflected in the monumental architecture of the period itself effectively dominating the surrounding landscape, which had nurtured hunter gatherers for thousands of years.

The Neolithic village of Skara Brae has a remarkable history, having been rediscovered following the exposure of the site by a severe storm in the winter of 1850, after lying beneath the sands of Skaill Bay for thousands of years, having originally been occupied from circa 3100 to 2500 BC (Historic Scotland. 2005:138). The houses and associated buildings at Skara Brae remain largely intact, save for their roofs, and even include furniture such as beds, shelves, hearths and cooking areas (plate1).

The primary cause of harm to Skara Brae throughout the ages has been the relentless effects of costal erosion, with the high water line and vegetation retreating in the Bay of Skaill at approximately 0.2 metres per year (Rennie:4). Excavations of the site in the late 19th Century revealed that the north side of the settlement had already been lost to the sea (Historic Scotland.2008:9). The village was taken into the guardianship of H M Commissioners of Works in 1924, soon before the first works were carried out to create a seawall defence for the site and, in 1930, a metal and glass roof was fitted to house number seven in order to prevent further deterioration and to preserve the site for future generations (Historic Scotland.2005:138).

Unfortunately, certain other monuments comprising the WHS have suffered damage at the hands of not only the elements over the passing millennia but also of man. The Stones of Stenness is a
henge monument situated on a low lying peninsula between the lochs of Stenness and Harray. Captain W Mackay, a tenant farmer from Aberdeenshire, partially destroyed the stones (totally destroying the famous Odin Stone), which featured in factual and fictional writings from 1700 AD, in 1814 to dissuade tourists and sightseers from entering his land (Historic Scotland.2005:139), emphasising the need for statutory Acts to preserve cultural heritage such as exist today.

The monument was taken into state care in 1906 and the stones were re-erected shortly afterwards at the behest of Basil Stallybrass, within the recommendations of his report for the Society for the Preservation of Ancient Buildings (SPAB), with what has variously been described as a ‘dolmen’ or ‘sacrificial alter’ being erected at the heart of the circle (plate 2), influenced by early 19th Century interpretations of the site by antiquarians and in popular contemporary fiction (Historic Scotland.2005:139-140). It was finally decided to take down the dolmen in 1972, as there was no evidence that the stones would have been assembled in such a manner, exemplifying the marked evolution in accepted conservation practices throughout the Twentieth Century and reflected within the guidance found within the international conservation charters:

“The process of restoration is a highly specialised operation. Its aim is to preserve and reveal the aesthetic and historic value of the monument and is based on respect for original material and authentic documents. It must stop at the point where conjecture begins, and in this case moreover any extra work which is indispensable must be distinct from the architectural composition and must bear a contemporary stamp. The restoration in any case must be preceded and followed by an archaeological and historical study of the monument.”

(ICOMOS.1964:Article 9)
The Ring of Brodgar and associated monuments were taken into State care in 1906, following a survey of the site by SPAB, and works to re-erect the fallen stones commenced soon after (Historic Scotland.2005:140-41). Located less than one mile from the Stones of Stenness and the Ring of Brodgar, lies Maeshowe. Said to represent “the pinnacle of passage grave development embodying not only a massive expenditure of effort but also refined architectural technique and a sophisticated cosmology” (Cunliffe:165), the mound at Maeshowe is 35m across and over 7m high.

Due to its sheer scale, Maeshowe has attracted the attentions of man for as long as it has existed. In 1153, the monument was seemingly ransacked by Harald Maddadarson and a band of Norse Crusaders under the leadership of Earl Rognvald Kali (Historic Scotland.2005:141) and as a result contains the largest collection of 12th Century AD Norse runes to be found in one monument, carefully carved alongside the existing Neolithic carvings (Historic Scotland.2001:1.2.3). Throughout the following centuries, a number of further unsympathetic incursions into the monument took place by amateur archaeologists, antiquarians and even Cromwellian Soldiers before the monument was taken into State care in 1910 (Historic Scotland.2005:141-142).

Owing to the nature by which individuals generally attempted to gain access to tombs and burial mounds, usually by digging downward from their summit, high levels of damage have been caused to the ceiling of the Maeshowe’s main chamber in the past. Shortly after Petrie at al entered the tomb in 1861, Petrie claimed that the structure had been “secured as far as possible against dilapidation, by roofing it over in such a manner as to
distinguish between the original structure and the addition made for its preservation” (Foster. 2000), using painted brick to clearly differentiate between the old and the new (plate 3).

Following the acquisition of Maeshowe by the State, further works were initiated to preserve the monument following recommendations within the reports of Stallybrass on behalf of SPAB and WT Oldrieve who thereafter examined the monument. It was observed by the two that the Victorian repairs to the roof had “begun to permit water ingress to such a degree that the carvings within the tombs had become threatened and, despite the use of mortar, the Victorian ceiling was ultimately found to be less watertight than the original Neolithic corbelled roof” (Ibid). Works were finally completed to secure the roof in 1913 and a report by the Inspector of Ancient Monuments stated:

“The roof of the chamber is now watertight, and provision is made for ventilation, but the impervious nature of the stone of which the chamber is built causes a great deal of condensation in damp and misty weather. It does not, however, appear that the stone is in anyway suffering from the damp. The turf on the outer bank encircling the mound has been renewed where necessary and well pinned down with wide-mesh wire netting”

(from Foster.2000)

Since its 1999 inscription, there has been a resurgence of conservation efforts across the WHS. After extensive environmental monitoring of the conditions within house number seven at Skara Brae, experts conceded that the glass and metal roof, fitted as part of the 1930s
conservation scheme, should be removed due to the negative impact the artificial environment was having on the very archaeology it was installed to protect and in 2008, the roof was replaced with a lightweight timber structure supporting a hydroponic mat roof with planted sedum grass on top in order to create a more benign environment (Orkneyjar) (plate 4). Furthermore, a Bay of Skaill Coastal Erosion Working Group has been formed, of which the author is a member, in order to address the ever present threat of coastal erosion at Skara Brae with feasibility studies presently being carried out to establish the best way to tackle the problem in the longer term, whilst works to repair the early 20th Century seawall were carried out in 2009.

A further example of conservation work within the WHS, which has been carried out since inscription is the recent maintenance work at Maeshowe. Historic Scotland had been aware of significant moisture penetration within the main chamber of the monument since 1983 but little action had taken place despite concerns relating to the fabric of the tomb, particularly to the carvings within it (Foster:2000). In 1990 and 1995 the issue was raised again although it wasn’t until 2000, the year after inscription, when a decision was made to tackle the issue (Ibid), likely owning to the fact that the limited resources can be more readily channelled toward a high priority site, which is one of only five WHS in Scotland and a commitment to ensure its preservation has been made through both its Management Plan and the signing of an international convention.

It was assumed that the 1930s concrete roof at Maeshowe remained watertight and that water ingress was taking place at the section of disturbed ground between the concrete roof and the undisturbed mound (Ibid). A major problem faced by Historic Scotland related to the fact that the
precise location and extent of the 1930s concrete cap was unknown. In 2005 a geophysics team was commissioned to investigate the monument and to establish the extent of the concrete roof and associated field drain using non-intrusive means. Both the field drain and the concrete roof were identified successfully (Ovendon.2005a) and works were carried out to waterproof the monument in 2006 (plates 5 & 6).

A major recent factor to arise at the WHS is the dramatic increase in people visiting the sites. Surveys for Visit Scotland show visitor numbers have increased by 30% since the sites were inscribed, which have the unfortunate side effect of having a negative impact on these sensitive outdoor monuments due to footfall erosion (Card:428). With the increased visitor numbers, tighter measures have been put in place to redirect visitors from the most threatened areas in the form of restricted access arrangements and increased controls in the forms of temporary rope fences being put in place to direct the movements of tourists at specific times. It has also been necessary to relocate and significantly expand the car park for the Ring of Brodgar, the new arrangements themselves arguably having a significant impact upon the setting of the monument, a fact which was raised in the consultation detailed within Part Two of this Chapter.

2.1.2 The Setting of the WHS

The Heart of Neolithic Orkney WHS is the smallest and most closely defined WHS in the UK (Atkins:4), concentrated in two distinct geographical centres with Skara Brae located on the North West coast of Orkney’s West Mainland and the remaining monuments sited some five miles to the South East (figure 1).
The WHS does not exist in isolation, and one of the defining aspects of the Heart of Neolithic Orkney WHS has been identified as being its "topographical, archaeological, perceptual and experiential relationships with the surrounding physical and archaeological landscapes" (Ibid: 4). The WHS lies in a large, open loch basin which is one of the most sensitive landscapes in Scotland, falling within the Hoy and West Mainland National Scenic Area.

Whilst the settlement of Skara Brae was likely strategically sited to take advantage of locally available natural resources, it is seemingly the case that the landscape setting of the remaining component parts of the WHS was integral to their construction, it being highly unlikely that their positioning is either accidental or incidental. Henge monuments throughout the UK are usually located in large natural bowls and are often sited between bodies of water such as rivers, lakes or lochs (Ibid: 4) and the clear sweeping views from the Orkney henge monuments to the horizon is a welcome characteristic of the WHS that imparts a feeling of centrality within the wider landscape.

One of the most significant factors regarding the Maeshowe monument is the manner in which it interacts with the passage of the seasons and the surrounding landscape. The monument is constructed in such a way that the entrance passage, the inner-chamber and its associated internal standing stones align to the midwinter setting sun. At midwinter, the rays from the sun shine along the passageway and light the floor to the rear wall of the inner chamber as it dips beneath the horizon (Foster.2006:18). Due to the extreme northerly location of Maeshowe, rather than the sun sink vertically into view from above the entrance, it slides horizontally into view from the left. The massive unbroken slab that stretches almost the entire length of the passage (Plate 7), where the sun shines during this phenomenon is...
slowly illuminated by golden light that stretches along the length of the stone before reaching the inner chamber. This megalith was seemingly intentionally chosen with this particular event in mind as the opposite passage wall, along which the Sun does not shine, is composed of a number of smaller stones as opposed to an individual monolith, indicating the levels of thought and planning that went in the design of the monument by its architects. It has been suggested that “in lining up sacred places with the movements of heavenly bodies, people were seeking to make them part of the natural order of things, thereby legitimising them within an ancient landscape” (Pryor:253).

The importance of the passing seasons cannot be overlooked in a Neolithic context as, in knowing when the days would once again begin to lengthen, prehistoric communities could effectively manage foodstuffs and plan for the coming growing season. This is especially pertinent in Orkney where the passage of the seasons is felt particularly strongly when the hours during the day where the sun rises above the horizon are reduced to only five at the height of winter.

It is impressive that Maeshowe is orientated to take advantage of the midwinter solar event, but what is arguably of equal significance is the fact that at midwinter the sun sets behind the imposing Hoy Hills to the southwest. These hills are visible across the whole of Orkney and from Scotland and they must have been of exceptional significance to the architects of Maeshowe. This significance is emphasised by the fact that the monument is specifically sited so precisely in a location to capture an event featuring the Earth’s most prominent celestial body at such an important point in the annual cycle interacting with Orkney’s most prominent landmark.

Whilst the immediate topography of certain Neolithic monuments has previously been demonstrated to inevitably influence their orientation (Scarre:87), the fact that Maeshowe is sited
on flat land within a natural amphitheatre serves to demonstrate that the architects specifically intended to site it and align it in the manner that they did and that the immediate local conditions did not influence or necessitate the specific orientation as is the case at a number of contemporary Orkney monuments (West:7). Furthermore, the Barnhouse Stone, another component of the WHS, is sited upon the line that can be traced from the entrance of Maeshowe to the point where the midwinter sun sets in the distance. This not only would appear to demonstrate that Maeshowe and related contemporary structures were intentionally sited in their specific location with care and consideration, having regard to the wider surrounding landscape, but also demonstrates their creator’s understanding of cosmological events and the passing of the seasons and this is fundamental to the understanding of the WHS.

2.1.3 Establishing a need for Supplementary Guidance

Whilst the World Heritage Convention, ratified by the UK government in 1984, defines the types of sites which can be inscribed onto the World Heritage List and describes how they may be identified, protected and preserved, as described at section 1.2 above, it has been demonstrated that no additional statutory controls result from inscription in Scotland. The sites that make up the WHS in Orkney are designated as Scheduled Ancient Monuments and are therefore protected by the Ancient Monuments and Archaeological Areas Act 1979, with any works that would be carried out directly to the scheduled area thereby requiring Scheduled Monument Consent from Scottish Ministers. Although the monuments themselves are protected by the above legislation, it falls to the local planning authority to control any development outwith the scheduled areas.

Section 99 of the 2008 WHS Operational Guidelines emphasise that the “delineation of boundaries is an essential requirement in the establishment of effective protection of nominated properties...”
The Guidelines go on to state that “wherever necessary for the proper conservation of the property, an adequate buffer zone should be provided” (UNESCO.2008:103):

“For the purposes of effective protection of the nominated property, a buffer zone is an area surrounding the nominated property which has complimentary legal and/or customary restrictions placed on its use and development to give an added layer of protection to the property. This should include the immediate setting of the property, important views and other areas or attributes that are functionally important as a support to the property and its protection.”

(Ibid:104)

At the time of nomination in 1998, two layers of buffer zone were proposed for the Heart of Neolithic Orkney: an Inner Buffer Zone (IBZ) and an Outer Buffer Zone (OBZ). The IBZ was aligned with the existing Brodgar and Stenness Rural Conservation Area, parts of the lochs of Harray and Stenness Site of Special Scientific Interest, the Stenness Loch Special Area of Conservation and the scheduled area at Skara Brae, whilst the OBZ encompassed the Hoy and West Mainland National Scenic Area and the curtilage of the ‘A listed’ Skaill House (Appendix 3). It was identified as an urgent aim of the first WHS Management Plan that OIC should review the implications of World Heritage Status in forthcoming Structure and Local Plans (Historic Scotland.2001:3.2.3).

Owing to the fact that the OBZ of the WHS, as proposed during nomination, was linked to arbitrary designations that were in existence prior to nomination, it could feasibly be argued that they had no specific link to the monuments themselves or how they were intended to relate to the wider landscape and were not therefore fit for purpose. The very nature of the Heart of Neolithic Orkney OBZ appears therefore to have raised two distinct problems. Firstly, it could legitimately...
be argued that large scale developments sited outwith the area could not directly be controlled under WHS specific spatial planning policies since the allocated area does not relate effectively to the landscape setting of the WHS and, secondly, applicants seeking planning consent would potentially have valid grounds of appeal against any refusals to issue planning permission by the Planning Authority as the OBZ was never scientifically researched or justified and could therefore potentially be judged to be insubstantial.

In response to the above issues, Scottish Natural Heritage and Historic Scotland commissioned a report entitled ‘Landscape Studies of The Heart of Neolithic Orkney World Heritage Site’, which sought to:

1. define the setting of the WHS;
2. provide guidance on if, how and where new development can best be accommodated assessing both landscape and visual impacts;

(Tyldesley:summary)

Amongst the outputs of the study was the “identification of an area within which development is likely to have an impact upon the WHS” (OIC.2002a:95). This area was identified within Tyldesley’s report as defining the intermediate setting of the WHS (Tyldesley:9) and was determined by the intermediate Zones of Visual Influence (ZVI) of the monuments (Ibid:13). It was suggested by Tyldesley that any “individual new buildings, structures, roads or other human scale or larger developments within this ‘Intermediate Setting’ would affect the WHS” (Ibid:14).

Policy SP/B2 of the OIC Structure Plan 2001, the first incidence of a specific policy relating to the WHS in Orkney, states that:
"The Council will ensure that any development likely to have any adverse impact upon the WHS or its ZVI as identified in the Local Plan will not be permitted."

(OIC.2001:28)

At the time of the Structure Plan’s adoption in 2001, the Orkney Local Plan 2000 was at public consultation. Although the draft Plan had been composed and released for consultation prior to the inscription of the Heart of Neolithic Orkney on the World Heritage List, the final Written Statement, published in February 2002, included a WHS-specific policy that responded to consultation responses received (OIC.2002b:84-85), utilising Tyldesley’s intermediate ZVI within the proposals map (OIC.2002a:95).

Whilst Policy SP/B2 is still a material consideration in the determination of applications for planning consent, the Orkney Local Plan 2004, which was ultimately adopted in lieu of the Orkney Development Plan 2000, contains policy LP/B1, which likewise uses Tyldesley’s Intermediate ZVI within the associated proposals map (Appendix 4) and repeats the policy laid out within the 2002 Written Statement word for word:

“The WHS and its ZVI, as identified on the Local Plan Proposal Map, will normally be preserved. Development that would adversely affect this area will normally be refused. Any significant development proposals affecting the site or its ZVI will require formal environmental assessment to ensure their impacts and implications for the longer term are fully evaluated”.

(OIC.2002a:95/OIC.2004:100)

It was further acknowledged within the text accompanying the policy that “larger scale developments such as massive, high or conspicuous structures outwith the ZVI may also impact
upon the WHS and the intrinsic qualities of the ZVI, and these will be considered accordingly” (OIC.2004:101) but was not included directly within the policy itself.

A further study was commissioned by Historic Scotland in 2007 to describe the setting of the WHS, to consider its Buffer Zones and to make recommendations for their revision (Historic Scotland 2008a:12) to directly inform the Heart of Neolithic Orkney WHS Management Plan 2008-2013. A comprehensive analysis of the setting of the WHS was produced in the form of Atkins’ ‘The Heart of Neolithic Orkney WHS Setting Study’, which included attempts to define ‘setting’ and an analysis of key views and viewsheds in and around the WHS.

The 2008 – 13 Management plan revised the WHS buffer zones, as recommended by the Atkins Report (Atkins:38), to include a wider geographical area (Appendix 5) and produced a revised statement of OUV for submission to UNESCO for approval (Historic Scotland.2008a:15), which emphasised that:

“the relationships between the WHS and the wider physical landscape are critical to understanding the monuments and the intentions of their builders; and hence form part of the OUV of the WHS.”

(Ibid:16)

The need to establish WHS-specific policies in the emerging Orkney Local Development Plan, which are specifically designed to protect the site and its setting, was identified as a high priority by Historic Scotland in the publication of the revised Management Plan (Historic Scotland.2008b:8). Furthermore, it was suggested that, if necessary, OIC should develop supplementary guidance “which covers planning issues relevant to the WHS in advance of the
review of the Development Plan to improve clarity at an early stage taking cognisance of the Management Plan and expert study” (Ibid:9).

2.1.4 The Heart of Neolithic Orkney World Heritage Site Draft Supplementary Guidance

Following the adoption of the 2008-13 Management Plan, in October 2008, a decision was taken within OIC to produce WHS-specific supplementary guidance (OIC.2009:36). The reasons for this decision were twofold:

1. The emerging Orkney Local Development Plan is not anticipated to be adopted until 2012 (Ibid:1) and updated guidance is required in advance of this following the publication of the revised Management Plan.

2. Scottish Ministers expect Local Development Plans to be concise map-based documents that focus upon specific main proposals (Scottish Government.2009:11), which should be supported by supplementary guidance which provides greater detail on certain issues as required (Scottish Government.2008b:11) and this would result in WHS-specific supplementary guidance being a necessity owing to the specialised and comprehensive requirements of the policy.

Initial meetings between OIC’s Conservation and Heritage Planning Policy Officer, the County Archaeologist and an OIC Environmental Planner considered the settings studies that had been carried out in relation to the setting of the WHS (Tyldesley.2001, Atkins.2008) and sought to define the area to be considered by any WHS-specific supplementary guidance. Whilst it was accepted that the Buffer Zones identified by Atkins do indeed “encompass the immediate setting of the WHS and defines an area where development, of all types, has the potential to adversely alter
the setting of the WHS” (Atkins:38), it was felt that the ‘Sensitive Area’ as presented by Atkins (Ibid: figure 15), and included within the 2008 Management Plan (Historic Scotland.2008a:14) (Appendix 5), was not as inclusive as was necessary for the supplementary guidance to be effective.

It is clear that, aside from the immediate setting of the WHS encompassed by the buffer zones identified by Atkins and included within the updated Management Plan (Ibid:14), the most important aspect of how the WHS relates to the landscape lies with the largely unbroken ridgelines that surround the Brodgar and Stenness centre of the site. A series of sensitive ridgelines were identified by Atkins within the ‘Setting Report’ (Atkins: figure 9) and the majority of the other figures contained within the report, including the Sensitive Area figure, can be seen as an attempt to preserve these ridgelines when viewed from the WHS. Whilst Atkins’ ‘Sensitive Area’ goes some way to accomplishing this feat, the area as defined does not take account of offshore development and massive-scale development which also has the potential to interrupt the sensitive ridges even when sited outwith the demarked zone.

A decision was taken to create a two tier spatial planning policy for inclusion within the supplementary guidance which would utilise both the buffer zone and the sensitive ridgelines identified within the most recent Setting Study but would not follow the suggested policies and proposed structure for supplementary guidance as suggested by Atkins (Ibid:39-43). The aim of the policy would specifically be:

1) To ensure that high quality development, which is sympathetic and appropriate to the WHS and its setting can occur.
2) To ensure that development which will have a significant adverse impact on the Outstanding Universal Value of the World Heritage Site or its landscape setting does not occur.

The Supplementary Guidance was thereafter drafted by OIC’s Conservation and Heritage Planning Policy Officer and updates were provided to the WHS Management Board and Historic Scotland during the process. A copy of the Draft Guidance, which was approved for public consultation on 2 March 2010 can be found at Appendix 6.
Chapter Two, Part Two:

Draft WHS Supplementary Guidance Public Consultation

2.2.1 Consultation Method

The Scottish Government is clear in its requirements regarding the procedure for the adoption of any proposed supplementary guidance:

Before adopting supplementary guidance, authorities must first publicise it, giving a date before which representations may be made. Authorities must make people who may wish to comment aware of the guidance and give them an opportunity to comment. The authority must then consider any comments, and then send Scottish Ministers a copy of the guidance they wish to adopt. In addition, authorities must send Ministers a statement setting out the publicity measures they have undertaken, the comments they have received, and an explanation of how these comments were taken into account. After 28 days have elapsed, the authority may then adopt the guidance unless Scottish Ministers have directed otherwise.

(Scottish Government.2009:95)

In carrying out the consultation process with regards to the WHS supplementary guidance, attention was paid to the guidance issued by the Scottish Government in order that the document could legitimately be adopted. Details of the consultation were initially announced in the local press and radio through a Council press release and a formal notice in the local newspapers advising of the process. Details were also published on the Council website homepage with a link to the draft document (appendix 7). For those individuals without access to the internet, hard copies of the guidance were deposited for reference within the main public libraries at Stromness.
and Kirkwall and within the Council’s principal reception area at the ‘One Stop Shop’ in Kirkwall.

In order to ensure that interested members of the public had opportunity to comment on the document, a letter was sent to all 453 households with a postcode situated within the ‘Inner Sensitive Zones’ as defined by figure 1 of the draft guidance (appendix 8) and the Conservation and Heritage Planning Policy Officer gave a presentation detailing the content of the draft and the proposed policies to a public meeting of the Firth and Stenness Community Council prior to the formal launch of the consultation period (appendix 9).

In addition to the above, letters of consultation were sent to twenty-four key agencies and interested parties, including Historic Scotland, SNH, SEPA, Scottish Water, RSPB, UNESCO and ICOMOS UK making them aware of the draft guidance and how to access it. A further presentation was given by the Conservation and Heritage Planning Policy Officer during the consultation period to archaeologists, Council Officials and other interested parties within a conference/seminar at Orkney College, hosted by Historic Scotland, OIC and Orkney College’s Archaeology Department, which related specifically to the WHS.

A period of two months was given for interested parties to make formal representations for consideration before the responses were collated and any amendments to the draft guidance would take place.

### 2.2.2 Consultation Analysis

It was initially envisaged by the author that the requirement to consult the public in relation to the WHS guidance could result in the content of the document, prepared taking cognisance of the previously prepared settings studies and the revised WHS Management Plan, becoming diluted owing to representations from the local population and interested parties resulting to subsequent
amendments to the draft guidance. Whether or not it was a result of consultation fatigue, owing to the increased requirements for Councils in Scotland to consult on many aspects of policy inception, the level of responses was significantly lower than anticipated.

In total only eleven responses to the guidance were received, six of which were from members of the public with only one response a direct response from an individual living within the proposed ‘Inner Sensitive Zones’. In addition, two businesses submitted written representations regarding the guidance, along with three Public Agencies. Although the level of response at first appears low, the consultation regarding the revised WHS Management Plan received only a marginally greater response rate:

Table 1: Written Responses to the Draft WHS Supplementary Guidance

<table>
<thead>
<tr>
<th>Public Agencies</th>
<th>Business</th>
<th>Individuals</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 (27%)</td>
<td>2 (18%)</td>
<td>6 (55%)</td>
</tr>
</tbody>
</table>

Table 2: Written Responses to the WHS management Plan 2008 -13

<table>
<thead>
<tr>
<th>Public Agencies</th>
<th>Heritage Body</th>
<th>Amenity Group</th>
<th>Business</th>
<th>Environment Group</th>
<th>Individual</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 (18%)</td>
<td>1 (6%)</td>
<td>1 (6%)</td>
<td>4 (24%)</td>
<td>1 (6%)</td>
<td>7 (41%)</td>
</tr>
</tbody>
</table>

(Historic Scotland. 2008c:3.2)

Rather than a reaction seeking to amend the draft guidance, the majority of responses were relatively positive and the constructive input of many consultees was integrated into the fabric of the revised draft. A detailed account of all representations made in response to the consultative
draft document, and details of how each specific comment was addressed within the revised draft, is contained within the draft WHS supplementary guidance Consultation Report.

Upon the expiration of the consultation period, all comments received in response to the draft guidance were assessed by the Conservation and Heritage Planning Policy Officer. Key points made within the representations were noted, either in support or opposition to the content of the draft document, and a series of seventeen action points to amend specific elements of the draft, to clarify points within the text or to add further information were devised as a direct result of consultation.

It is evident from the sample comments reproduced within Table 3 below that the issues raised within the representations received were varied and that each response was influenced by the particular interests of the author. Of note are the comments from businesses with economic interests in the landscape surrounding the WHS. It is clear from the representations made that the landscape around the WHS, in particular the ‘Sensitive Ridgelines’ identified within the guidance, is seen as a valuable renewable energy resource and that the WHS is perceived to an extent as a constraint to realising the potential of this resource. One business went so far as to seek clarification on what scale of benefit or national interest a development would need to have to outweigh the heritage value of the WHS.

It is clear that there exists extreme contrast in public opinion regarding how the landscape surrounding the WHS should be managed. On one hand, two representations from individuals strongly opposed any development across the majority of Orkney’s West Mainland while, on the other hand, one individual sought a regime more accommodating of new development. It is important to acknowledge that not one response stated that there should be no restriction on
development within the ‘Inner Sensitive Zones’ or even the ‘Wider Landscape Setting’ of the WHS as defined by the document.

Table 3: Sample comments extracted from consultation report

<table>
<thead>
<tr>
<th>Respondent</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Key Agency ‘A’</td>
<td>We consider that the Guidance deals with the historic environment and the ‘setting’ issues of the WHS reasonably well but we would recommend that the landscape character and visual amenity of the WHS are also included.</td>
</tr>
<tr>
<td>Business ‘A’</td>
<td>I do agree with the thrust of the objectives and very much with the insertion of the word ‘significant’ when identifying adverse impacts. This is essential in allowing useful debate during planning assessment, as an unqualified reference to adverse impacts is too restrictive and capable of being seized by any opposition to stifle progress.</td>
</tr>
<tr>
<td>Business ‘A’</td>
<td>The key message from this respondent is that the final guidance document should be assertive about how OIC will treat Orkney’s best interests alongside the demands of WHS regimes.</td>
</tr>
<tr>
<td>Business ‘B’</td>
<td>The role and involvement of Historic Scotland, in conjunction with the OIC as well as any other consultees, such as any civic amenity societies on Orkney and the involvement of ICOMOS, is not explicit in the document. The necessary consultation to one or all of these consultees will have time and cost implications on development proposals. A more detailed consideration of the necessary stages envisaged for developments likely to affect the WHS, the Inner Sensitive Zones and the Wider Landscape Setting with its sensitive, significant ridgelines needs to be set out.</td>
</tr>
<tr>
<td>Business ‘B’</td>
<td>There is no reference to the approach to development of overriding interest or benefit that could outweigh adverse effects on the WHS and its OUV – i.e. how large a benefit or national interest would there have to be before OIC would consider proposals that impact upon the OUV of the WHS, the setting of one or all of the Scheduled Monuments in the Inner Sensitive Zone or Wider Landscape etc.</td>
</tr>
<tr>
<td>Individual ‘A’</td>
<td>I have now read the consultative draft of the WHS guidance and I do not have any problems with it. I know that the proof will be in the enactment, but it seems to me to be a comprehensive document with good intentions.</td>
</tr>
<tr>
<td>Individual ‘B’</td>
<td>The figures set out in Appendix 2 to the draft are welcome as aids to the considerations of applications for development and in particular WHSSPG5 should be the yardstick for consideration of applications for development in the area shown. There should be a presumption against development in that area. Anything less would erode the overriding principles.</td>
</tr>
<tr>
<td>Individual ‘B’</td>
<td>It is important that the Policy as set out in Section 6 is clear and precise. As such it is vital that there is no erosion of the overriding principles by the use of the word “significant” in the context of negative impact on the OUV by developments. Likewise “in a sympathetic and appropriate manner” in the context of delivery of developments should be avoided. The use of words and phrases such as these can only introduce a dangerous subjective test which will result in arguments which will not assist the principles which must be safeguarded.</td>
</tr>
<tr>
<td>Individual ‘C’</td>
<td>I own land on one of the sensitive ridgelines overlooking the Ring of Brodgar, which offers one of the most spectacular vistas in Orkney, and to most it would be the perfect site for a contemporary building, one which could showcase OIC as being at the forefront of contemporary design in partnership with the environment.</td>
</tr>
</tbody>
</table>
One particular response highlighted the general confusion that was experienced within the public consultation for the revised Management Plan (Historic Scotland.2008c:21) regarding buffer zones and the actual extent of the WHS boundary and it is clear that there is a need to give greater explanation within the revised document as to where the boundaries of the WHS end and where the buffer begins.

One individual living within the vicinity of the WHS commented on the need to provide a pedestrian link between the monuments within their response. This emphasises the manner in which members of the public understandably link development planning (i.e. the formulation of land use planning policies) and physical planning and the realising of development. Whilst the provision of a pedestrian link falls outwith the scope of the draft supplementary guidance, it being purely a decision making tool and guidance document for those seeking to develop within the area covered by the policy, it is an objective of the WHS Management Plan to provide such a pathway and the potential value of a consolidated Management Plan/supplementary guidance document as encouraged by the SPP, which would serve to reduce confusion and add weight to the standing of the Management Plan as it stands, begins to emerge. This method of strategic spatial planning is somewhat akin to development briefs and the production of a document that lies between supplementary guidance to support a specific policy in the Local Development Plan and a strategic document akin to a development brief, with the focus and content of the WHS Management Plan, is potentially achievable if adequate resources and specialist input is present.

After analysing the representations made in response to the consultative draft of the guidance, a revised version was produced. Whilst it was not feasible to integrate all comments and suggestions made by consultees into the final draft document, owing to conflicting opinions or legislative constraints, each issue raised was specifically addressed within the consultation report and
participation statement that was prepared as supporting documentation to accompany the final
draft of the guidance to Full Council in Orkney in November 2010 and consultees were given
feedback on how their comments were addressed. Should the revised draft receive the approval of
the Council, then it will be sent to the Scottish Government, along with the supporting
documentation, in order that it may be adopted by OIC initially as supplementary planning
guidance, where it will be a material consideration in the determination of applications under the
Orkney Local Plan 2004, before ultimately being adopted as supplementary guidance to the
emerging Orkney Local Development Plan, where it will have as much weight as the plan’s core
policies.

The Participation Statement and Consultation Report relating to the draft guidance will become a
public record document in November 2010 and will be available to view through OIC’s
Development Planning and Regeneration Team or to download via the internet via the Council’s
website at: www.orkney.gov.uk
Chapter 3:

World Heritage in Scotland.

3.1 – What Can Be Learnt From The Heart of Neolithic Orkney?

It is clear that inscription on to the World Heritage List has had a marked impact upon the monuments that comprise the Heart of Neolithic Orkney WHS. Maintenance and repair works to the monuments are carried out with limited delay and a Management Board, Coastal Erosion Working Group and an Access and Interpretation Working Group meet regularly to address issues facing the WHS and to seek to deliver the aims of the WHS Management Plan. It is apparent that the profile of Orkney has been significantly heightened since inscription with increased visitor numbers an indicator of this. The benefits to the monuments themselves, and arguably for the economy of Orkney through increased tourism, resulting from WHS designation are largely positive.

The process of producing Scotland’s first supplementary guidance document relating to a WHS has raised a number of issues regarding the compatibility between the Scottish legislative framework and the obligations of the UK Government as signatories to the World Heritage Convention and has identified important factors to be considered in the production of any future policies, guidance and primary legislation. The author had initially envisaged that the reformed Scottish planning system would fundamentally compromise the integrity of any supplementary guidance document relating to such a specialised field, but these fears have proved unfounded. However, certain issues and trends identified within the small-scale response to the Orkney WHS consultation should be borne in mind in the future.
The specialist input from Key Agencies in response to the consultative draft document was of great benefit, especially in clarifying concepts such as ‘setting’ and ‘landscape’. Furthermore, the comments from businesses and individual members of the public highlighted the need to explain the background and fundamental points concerning the terminology relating to World Heritage such as OUV, authenticity and integrity in order that any guidance document would be understandable to those referring to it.

The reformed Scottish planning system seeks to put local communities in charge of their own land use planning policies and the mechanisms by which guidance is produced supports this governmental aim in placing a requirement upon the local authority to consult. The range of consultation responses received during this exercise demonstrates how individuals and businesses appear to make representations based upon their own specific needs and goals. A further factor to consider regards the potential that an impasse may be reached regarding a representation when a draft document ultimately reaches Council for approval where the process has the potential to falter or fail. If this local-level of political representatives do not approve a supplementary guidance document then the options for progression can become severely limited. This could result in the requirement for a new document being drafted for re-consultation and would depend entirely upon the local authority in question having the resources and will to commit to such a project. Local public and political support is therefore of fundamental importance to the production of any Development Plan or supplementary guidance policy.

Another interesting issue to arise in the Orkney consultation was the question regarding the level of benefit a proposal would need to generate before an approval would be granted by the local Council for a development that would have a significant impact upon the OUV of the WHS. Although this question may seem outlandish initially, the ‘economic realities’ which the SHEP
advises must be recognised when managing change in the historic environment, referred to within
Chapter One, suddenly become a stark reality warranting serious consideration.

The final factor, which is of fundamental importance to The Heart of Neolithic Orkney, surrounds
the issue of establishing the setting and buffer zones of a WHS. Confusion in public circles as to
the extent of Orkney’s WHS, and what restrictions are in place regarding its immediate setting and
the wider landscape, was shown to exist in the consultation responses received. Being the most
closely-defined WHS in the UK, the scheduled areas of the monuments themselves comprise the
entirety of the WHS. Ironically perhaps, this results in the WHS guidance not actually considering
potential development proposals within the WHS, as these are governed by Scheduled Monument
Consent, but addressing solely the manner in which the WHS interacts with its setting.

It could be argued that a far wider area should be designated as WHS in Orkney, especially when
the statement of OUV within the revised Management Plan states that “the relationships between
the WHS and the wider physical landscape are critical to understanding the monuments and the
intentions of their builders; and hence form part of the Outstanding Universal Value of the WHS”
and the Operational Guidelines require that, in the case of cultural properties being inscribed on
the World Heritage List, “boundaries should be drawn to include all those areas and attributes
which are a direct tangible expression of the OUV of the property” (UNESCO.2008:100).

It is also a fact, however, and could therefore be legitimately argued that the buffer zones as
defined by the revised Management Plan also accord with the Operational Guidelines of the World
Heritage Convention in that they give an added layer of protection to the property, specifically in
preserving the setting of the monuments along with key views (Ibid:104). It is a medium priority
objective of the 2008 -13 WHS Management Plan to review the actual boundaries of the WHS
a comprehensive study should be in place for any WHS which is seeking to produce defendable land use planning policies intended to effectively preserve its OUV.

3.2 – Issues and Solutions

Scotland presently has five World Heritage Sites within its territory\(^2\), each being unique in nature and having its own individual values and threats which are governed by the Scottish planning framework and, in the case of scheduled sites, the UK’s Ancient Monuments and Archaeological Areas Act 1979. As the World Heritage Convention was not ratified by the UK Government until 1984, the 1979 Act relating to archaeology predates the inscription of any UK sites on the World Heritage List, and it has likewise been demonstrated within this study that, WHS are not included within the Town and Country Planning legislation of Scotland.

Whilst WHS have recently worked their way into the General Permitted Development Order of England (UK Government.2008:2(3)(b)), this is not yet the case in Scotland. If the Scottish Government were to restrict the permitted development rights of individuals within WHS in a similar manner to England, this would surely result in the adoption of WHS-specific supplementary guidance becoming less likely to succeed. This would be a result of adding to any negative perceptions existing within local communities who are themselves ultimately responsible,

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\(^2\) The five World Heritage Sites in Scotland are:

i. St. Kilda
ii. The Old and New Towns of Edinburgh
iii. New Lanark
iv. The Heart of Neolithic Orkney
v. The Antonine Wall
through their comments and the decisions of their democratic representatives, for adopting land-use planning policies in Scotland following the 2006 reform.

The reformed Scottish planning system places the onus of ensuring that Scotland’s World Heritage is effectively protected in accordance with the World Heritage Convention and its Operational Guidelines in the hands of local authorities. Whilst the Scottish Government is clear within the SPP that policies should be included in the Local Development Plan which serve to effectively protect WHS, their setting and important views from inappropriate development, there is no longer the caveat that WHS and their setting are actually a material consideration in the determining of planning applications. This is a small but fundamental change brought about by the inception of the consolidated SPP and it can justifiably be perceived as a dangerous amendment to the planning framework of Scotland. Should an application for a development proposal be submitted to a local authority prior to the adoption of an associated supplementary guidance document, then only the streamlined core policies of the Local Development Plan could presently be considered in the determination of the application. Whilst WHS such as New Lanark and The Old and New Towns of Edinburgh would be able to take further policy guidance from the relevant conservation area appraisals and statutory designations in existence, this would not be the case in Orkney where buffer zones and important views were concerned and likewise for applications sited within the visual envelope of key locations along the Antonine Wall.

The consultation process in Orkney emphasises the overlap between WHS Management Plans and supplementary guidance. It is clear that the lines are blurred as to where the responsibilities of one document may end and the other begins and this can vary from WHS to WHS. Much of the background material within one is duplicated within the other and the value of achieving a single consolidated document as envisaged by the SPP (Scottish Government.2010a:121) is fully
appreciated by the author. The fundamental issue in realising this aspiration is the specialised nature of both documents and in coordinating the development of a Management Plan which meets the legislative requirements of the planning system, and the aims and ambitions of the local populous and Council, whilst retaining the impartiality of a specialised conservation agency such as Historic Scotland at all times recognising what is most appropriate for the WHS.
Conclusion:

This study has demonstrated the reliance placed by the 2006 planning reform upon local authorities to produce their own policies and guidance to preserve the OUV of WHS. This results in a risk that inappropriate developments, which may compromise the OUV of a WHS, would be wholly achievable if a local authority is unable, or unwilling, to commit the necessary time and resources toward producing and adopting effective WHS-specific supplementary guidance. In England, there is not a fundamental reliance upon local guidance being produced, as it is not the sole means of preserving a WHS outside of those powers granted by primary legislation relating to statutory designations such as scheduled monuments, listed buildings and conservation areas as detailed in Chapter One. In order to ensure that the requirements of the World Heritage Convention are effectively met, it is still the case in England that:

“the OUV of a WHS indicates its importance as a key material consideration to be taken into account by the relevant authorities in determining planning and related matters and by the Secretary of State in determining cases on appeal or following call in.”

(UK Government.2009:8)

The Ancient Monuments and Archaeological Areas Act 1979, relevant to England, Scotland and Wales, only offers statutory protection to scheduled monuments and archaeological sites as described in Chapter One, and WHS comprise a wide variety of heritage assets including dwellinghouses and churches (along with natural sites which are not considered within this study). It is therefore clear why it was not considered appropriate to update The Act following ratification to make reference to the World Heritage Convention, or to make WHS, and ideally their buffer
zones, a material consideration in the determination of land use planning applications, thereby ensuring consistency across the UK. It is logical that the Planning Acts should address the preservation of WHS, owing to their focus upon land use and development, but this has led to inconsistency in content, approaches and strategies across the UK’s individual home nations.

In the absence of a UK wide policy it falls to the Scottish Government to ensure that its primary legislation and guidance provides adequate protection for the WHS in their territory. Following Australia’s ratification of the World Heritage Convention, the Commonwealth Government enacted overarching WHS-specific primary legislation in reaction to state-level planning decisions made by Tasmania (Leask:26-30) and broad comparisons could be drawn between this example and the situation in the UK but it is unlikely that any overarching WHS-specific legislation will be adopted by the UK Government.

If either the SPP, or the SHEP, were amended to reinstate the fact that WHS, their settings, and ideally their buffer zones, are material considerations in the determination of planning applications, as was previously the case within the now superseded SPP23, it would enable the Scottish legislative system to reinforce the UK Government’s commitment to the World Heritage Convention and achieve consistency with the English and Welsh approach. It would seem that the Historic Environment (Amendment) Scotland Bill, referred to in Chapter One, is a missed opportunity to finally update primary legislation to recognise the World Heritage Convention.

To conclude positively, the suggestion within the SPP that WHS Management Plans be adopted by local authorities as supplementary guidance is a worthwhile idea and deserves more consideration as it is the most realistic manner by which Scotland’s WHS can be effectively preserved. The most formidable obstacle with such a measure lies in the composition of the document. Such a
requirement could not be mandatory at present since it is currently Historic Scotland that composes Scotland’s WHS Management Plans and it would contradict the whole ethos of the reformed Scottish planning system if a Government Agency were seen to be writing the local policies of any particular authority. Likewise, if the writing of the Management Plan fell to the local authority, the same issues regarding resources, consultation and negotiating the local democratic framework would exist as is presently the case with supplementary guidance. Of key importance is striking an appropriate balance between the Management Plan and Development Plan supplementary guidance and striving ideally to incorporate each into the other, with the supplementary guidance comprising a chapter or Appendix within a Management Plan or vice versa.

It remains to be seen whether or not the UK Government is able to effectively fulfil its obligations as signatory to the World Heritage Convention following the Scottish planning reform. This will only become apparent following the successful adoption of effective supplementary guidance documents for each of Scotland’s WHS that are proved to be able to tackle the threats particular to the OUV of each individual WHS.
Bibliography


Communities Scotland. 2009. *The National Standards for Community Engagement*


Foster, S. 2006. *Maeshowe and the Heart of Neolithic Orkney*. Historic Scotland


Historic Scotland. 2009. Scottish Historic Environment Policy

ICOMOS. 1964. International Charter for the Conservation and Restoration of Monuments and Sites (The Venice Charter 1064)

ICOMOS. 1990. Charter for the Protection and Management of the Archaeological Heritage


OIC. 2001. The Orkney Structure Plan 2001

OIC. 2002a. The Orkney Local Plan Finalised Draft Written Statement February 2002

OIC. 2002b. The Orkney Local Plan Consultation Report February 2002

OIC. 2004. The Orkney Local Plan 2004 Written Statement

OIC. 2009. The Orkney Local Development Plan Main Issues Report


Scottish Government. 2010b. *Historic Environment (Amendment) (Scotland) Bill*

Tydesley, David. 2001. *Landscape Studies of the Heart of Neolithic Orkney World Heritage Site.* Scottish Natural Heritage Report Number F00LA01A

UNESCO. 1976. Recommendation concerning the Safeguarding and Contemporary Role of Historic Areas


Web sources:

HS 2010a (accessed on 17 August 2010) –
http://www.historic-scotland.gov.uk/index/heritage/environmentbill/whatisthebill.htm

ICOMOS2010a (accessed on 31 August 2010) –
http://www.international.icomos.org/world_heritage/icomoswh_eng.htm

Orkneyjar (accessed on 18 August 2010) –

SG 2010a (accessed on 13 July 2010) –
www.scotland.gov.uk/Topics/Built-Environment/planning/National-Planning-Policy
IS SCOTLAND PLANNING TO PRESERVE THE WORLD’S HERITAGE?
A CASE-STUDY IN THE HEART OF NEOLITHIC ORKNEY WORLD HERITAGE SITE

SG 2010b (accessed on 16 August 2010) –
http://www.scotland.gov.uk/Topics/Built-Environment/planning/National-Planning-Policy/themes/historic

SG 2010c (accessed on 17 August 2010) –
http://www.scotland.gov.uk/Topics/Built-Environment/planning/modernising/progress#a1