

[REDACTED]

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**From:** [REDACTED]  
**Sent:** 28 October 2015 07:22  
**To:** [REDACTED]  
**Cc:** Chief Planner; [REDACTED]  
**Subject:** FW: IMMEDIATERe: FoI - Whistleberry Road Hamilton - Reply - Draft from FoI - Clean

Just for wider information - note Peter's request not to issue the above FOI response in the meantime.

John

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**From:** Cabinet Secretary for Social Justice, Communities and Pensioners' Rights  
**Sent:** 27 October 2015 21:16  
**To:** [REDACTED]  
**Cc:** Cabinet Secretary for Social Justice, Communities and Pensioners' Rights; [REDACTED]  
**Subject:** IMMEDIATERe: FoI - Whistleberry Road Hamilton - Reply - Draft from FoI - Clean

Iain

Please DO not issue response. I will speak to you tomorrow am.

Thanks

P

Sent from social justice private office blackberry

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**From:** Cabinet Secretary for Social Justice, Communities and Pensioners' Rights  
**Sent:** Tuesday, October 27, 2015 03:40 PM  
**To:** [REDACTED]  
**Subject:** FoI - Whistleberry Road Hamilton - Reply - Draft from FoI - Clean

Revised – please use this version

<<FoI - Whistleberry Road Hamilton - Reply - Draft from FoI - Clean.doc>>

[REDACTED]

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**From:** [REDACTED]  
**Sent:** 28 October 2015 14:05  
**To:** [REDACTED]  
**Subject:** Emailing: SN00905



[REDACTED]



## Revocation of planning permission

Standard Note: SN/SC/905

Last updated: 22 May 2013

Author: Louise Smith

Section Science and Environment Section

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Planning permission vests development rights in the land, and the local planning authority has no power simply to withdraw a permission unilaterally. Once planning permission has been granted, then any revocation of the permission leaves the applicant able to claim compensation. The local planning authority has the power to revoke planning permissions under section 97 of the *Town and Country Planning Act 1990* (as amended).

The power in section 97 of the 1990 Act can only be used before the development is complete. After that date, a local planning authority can use a power to order discontinuance under section 102 of the Act. Confirmation by the Secretary of State is required under section 103. Again, there is a liability to pay compensation under section 115. The normal measure of compensation is the damage suffered in consequence of the order by depreciation of the value of an interest in the land or in minerals, or by being disturbed in the enjoyment of the land or minerals.

This note describes the circumstances in which either the local planning authority or the Secretary of State can revoke planning permission that has been granted by a local planning authority. It applies to England and Wales.

This information is provided to Members of Parliament in support of their parliamentary duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as being up to date; the law or policies may have changed since it was last updated; and it should not be relied upon as legal or professional advice or as a substitute for it. A suitably qualified professional should be consulted if specific advice or information is required.

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**Contents**

**1 The legal position 2**

**2 The position when planning permission was improperly granted 4**

**3 Power of the Secretary of State 4**

    3.1 Use of the power 4

**4 Examples of revocation 5**

**1 The legal position**

Planning permission vests development rights in the land, and the local planning authority has no power simply to withdraw a permission unilaterally. Once planning permission has been granted, then any revocation of the permission leaves the applicant able to claim compensation. The local planning authority has the power to revoke planning permissions under section 97 of the *Town and Country Planning Act 1990* (as amended). The wording of the section suggests considerable freedom for the local planning authority, but it is in practice strictly constrained:

**97 Power to revoke or modify planning permission**

- (1) If it appears to the local planning authority that it is expedient to revoke or modify any permission to develop land granted on an application made under this Part, the authority may by order revoke or modify the permission to such extent as they consider expedient.
- (2) In exercising their functions under subsection (1) the authority shall have regard to the development plan and to any other material considerations.
- (3) The power conferred by this section may be exercised—
  - (a) where the permission relates to the carrying out of building or other operations, at any time before those operations have been completed;
  - (b) where the permission relates to a change of the use of any land, at any time before the change has taken place.
- (4) The revocation or modification of permission for the carrying out of building or other operations shall not affect so much of those operations as has been previously carried out.
- (5) References in this section to the local planning authority are to be construed in relation to development consisting of the winning and working of minerals as references to the mineral planning authority.
- (6) Part II of Schedule 5 shall have effect for the purpose of making special provision with respect to the conditions that may be imposed by an order under this section which revokes or modifies permission for development—
  - (a) consisting of the winning and working of minerals; or
  - (b) involving the depositing of refuse or waste materials.

For opposed cases, section 98(1) states that "an order under section 97 shall not take effect unless it is confirmed by the Secretary of State". There is a liability to pay compensation, under section 107 of the Act, in respect of expenditure rendered abortive by the order and for any other loss or damage directly attributable to the revocation or modification.

Section 189 of the *Planning Act 2008* made changes to the 1990 Act in respect of entitlement to compensation in circumstances where planning permission granted by a development order or a local development order is withdrawn. The explanatory notes to the *2008 Act* set out how the system now works:

300. Section 189 inserts new subsections (2A) (3B), (3C), (3D), (5) and (6) into section 108 of TCPA 1990. Section 107 of TCPA 1990 sets out the entitlement to compensation where planning permission is revoked or modified. Section 108 extends this entitlement to compensation to circumstances where planning permission granted by a development order or a local development order is withdrawn. New subsection (2A) provides that where planning permission of a prescribed description granted by a development order or local development order is withdrawn by the issue of directions under powers conferred by that order, compensation would be payable only if an application for planning permission for development formerly permitted by that order is made within 12 months of the directions taking effect.

301. The effect of new subsections (3B) and (3C) is that, where planning permission granted by a development order is withdrawn, there will be no entitlement to compensation where the permission was granted for development of a prescribed description and is withdrawn in the prescribed manner, and notice of the withdrawal is published not less than 12 months or more than the prescribed period before the withdrawal takes effect. If development is started before the notice is published, compensation will be available unless the order in question contains provision permitting the completion of development.

302. Where planning permission granted by local development order is withdrawn, subsections (3B) and (3D) provide that there will be no entitlement to compensation where notice of the withdrawal is published not less than 12 months or more than the prescribed period before the withdrawal takes effect. If development is started before the notice is published, compensation will be available unless the order in question contains provision permitting the completion of development.<sup>1</sup>

The power in section 97 of the 1990 Act can only be used before the development is complete. After that date, a local planning authority can use a power to order discontinuance under section 102 of the Act. Section 102(1) provides the main power:

**102 Orders requiring discontinuance of use or alteration or removal of buildings or works**

(1) If, having regard to the development plan and to any other material considerations, it appears to a local planning authority that it is expedient in the interests of the proper planning of their area (including the interests of amenity)—

(a) that any use of land should be discontinued or that any conditions should be imposed on the continuance of a use of land; or

(b) that any buildings or works should be altered or removed,

they may by order—

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<sup>1</sup> *Planning Act 2008, Explanatory Notes*

- (i) require the discontinuance of that use, or
- (ii) impose such conditions as may be specified in the order on the continuance of it, or
- (iii) require such steps as may be so specified to be taken for the alteration or removal of the buildings or works,

as the case may be.

Confirmation by the Secretary of State is required under section 103. Again, there is a liability to pay compensation under section 115. The normal measure of compensation is the damage suffered in consequence of the order by depreciation of the value of an interest in the land or in minerals, or by being disturbed in the enjoyment of the land or minerals; and any person who carries out any works in compliance with the order is entitled to recover from the local planning authority any expenses incurred by him.

In July 2012 the Supreme Court ruled that when local planning authorities are deciding whether or not to revoke or modify a planning permission they are entitled to take into account the compensation they could have to pay.<sup>2</sup>

## **2 The position when planning permission was improperly granted**

The Sweet & Maxwell Planning Encyclopaedia notes that in cases where the planning permission may not have been properly granted in terms of procedure, it may be better financially for the local council to have the planning permission quashed at judicial review, rather than revoke the planning permission and have to pay compensation:

However, if a planning permission has been granted in a way that was improper and invalid, it may not be “expedient” for the local planning authority to commence revocation proceedings under this section and to pay compensation. The court may instead quash the permission on an application for judicial review, without liability to compensation. Such an application may be made by a person supported by the council, though the Court will in such a case have particular regard to the effect on third parties.<sup>3</sup>

The rules about bringing a judicial review are strict however and a claim must be made within legal time limits. In January 2013 it was reported that a leader of a council in Devon was refused a judicial review of planning permission granted by mistake after the application was lodged too late for judicial review proceedings. The council was left with a choice of paying an estimated £500,000 in compensation to formally revoke the planning consent it had granted, or to allow a supermarket to move into a retail park even though it was not considered to be needed in the area.<sup>4</sup>

## **3 Power of the Secretary of State**

### **3.1 Use of the power**

The local planning authority has the power to revoke planning permissions under section 97 of the 1990 Act, but this has to be confirmed by the Secretary of State. The Secretary of

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<sup>2</sup> For more information see Planning Portal, [Key ruling on revocation of planning permissions and costs](#), 2 August 2012 and [Supreme Court press summary](#), The Health and Safety Executive (Appellant) v Wolverhampton City Council (Respondent) [2012] UKSC 34, 18 July 2012

<sup>3</sup> *Sweet & Maxwell Encyclopaedia of Planning Law and Practice*, P97.04

<sup>4</sup> “Planning blunder leaves council facing stark choice” [Planning](#), 24 January 2013

State also has the power revoke planning permission under section 100 of the 1990 Act. If this is done the liability to pay compensation still falls on the local planning authority, as though it had made the revocation order. In March 2006, the then Planning Minister described the use of these powers:

**Yvette Cooper:** Local planning authorities have power under s97 of the Town and Country Planning Act 1990 to make an order revoking or modifying a planning permission, prior to it being implemented, where they consider it expedient to do so. They should have regard to the development plan and to any other material consideration. This is not a routine justification since the fact that planning permission was granted indicates that the development was considered acceptable at the time. If an order is opposed, it has to be confirmed by the Secretary of State before it can take effect.

The Secretary of State has power, under s100 of the Town and Country Planning Act 1990, to revoke or modify a planning permission granted by a local planning authority. Revocation or modification can only be made before a planning permission is implemented. The Secretary of State can use these powers as he thinks fit, after consultation with the local planning authority. Such intervention by the Secretary of State can only be justified in exceptional circumstances. However, the Secretary of State will generally use this power only if the original decision is judged to be grossly wrong, so that damage is likely to be done to the wider public interest.

Where orders come before the Secretary of State the decision will be taken only after considering the evidence by way of written representations, a hearing or a public local inquiry. The more controversial cases will almost inevitably go to inquiry.

Since 1997 the Secretary of State has used this power on 5 March 1998 to make a modification order to remove A1 retail use from outline planning permission for an industrial site granted by Alnwick district council and on 9 March 2000 to make a revocation and a modification order in respect of proposals for a factory outlet shopping village in an isolated location in Restormel, Cornwall.

The Office does not record representations received about the powers of the Secretary of State to revoke planning permissions.<sup>5</sup>

The revocation of a planning consent by the Secretary of State is most unusual. The Secretary of State already has a power for preventing consent being granted to major, controversial proposals with effects spreading beyond the local planning authority. That is the Secretary of State's power to call in an application to determine it himself. He is also able to recover to himself an appeal against rejection of a planning application.

#### **4 Examples of revocation**

It is fairly common for local planning authorities to revoke planning consent, subject to approval by the Secretary of State. These cases do not, however, normally cover recent consents. More often, they relate to old consents that have been started but not completed. There may be some good reason why the proposal that gained planning consent would now never be carried out. The local planning authority will have to pay some compensation but it may be worthwhile, in order to enable them to develop derelict land. Unopposed cases are normally approved, but opposed cases require a public inquiry.

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<sup>5</sup> HC Deb 16 March 2006 c2444W

In May 2008 planning permission was revoked for eleven dormant quarries in the Brecon Beacons national park.<sup>6</sup>

In 2007 the Peak District National Park Authority was allowed to revoke planning permission at two quarries without compensation for the operator or landowner.<sup>7</sup>

In 1993 Alnwick District Council granted planning permission to Northumberland Estates for a supermarket near Alnwick. A protest campaign was launched two years later when it emerged that Safeway had bought the land. Protestors feared that Safeway would close its existing branch in Alnwick and consolidate operations on the new site. The Secretary of State in 1997 (John Gummer) revealed that he proposed to revoke the permission. The council challenged the decision in the High Court but lost. Safeway submitted a claim for £4.6 million in compensation for the loss of its planning consent. The council feared that it might be bankrupted. However, in the end it was all settled amicably with the Duke of Northumberland buying back the land that he had sold to Safeway. Safeway agreed to forego £2.6 million of their compensation claim and accepted £2 million, which was paid by the council's insurers, Zurich Municipal.<sup>8</sup>

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<sup>6</sup> "Park quarries lose permits" *Planning*, 30 May 2008

<sup>7</sup> "National Park Authority allowed to revoke planning permission" *Planning*, 7 September 2007

<sup>8</sup> "Alnwick Relief as Safeway Settles Case", *Daily Telegraph*, 10 February 2000

[Redacted]

**From:** [Redacted]  
**Sent:** 28 October 2015 14:06  
**To:** [Redacted]  
**Subject:** IMMEDIATE: Ministerial involvement in Planning Decisions  
**Attachments:** Fol - Whistleberry Road Hamilton - Reply - Final version from PO.doc  
**Importance:** High

Hi. I've run Peter's proposed amendments past Stephen and am just awaiting a reply. Any thoughts on proposed changes appreciated.

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**From:** [Redacted]  
**Sent:** 28 October 2015 14:03  
**To:** [Redacted]  
**Subject:** IMMEDIATE: Ministerial involvement in Planning Decisions  
**Importance:** High

Hi Stephen.

See PO's request below. I've redrafted slightly in light of the request (see attached). We've found the oral PQ to which Mr McMahon has referred. It's a general question which doesn't refer specifically to this case. Further to your advice we think it may be worth providing a link to it as it was specifically referred to at the meeting with Mr Neil last night.

Although this doesn't really come within the scope of question and we just being helpful, I presume we don't have to cite regulation 6(1)(b) of the EIRs? (information publicly available)?

There's very little change but, could you cast a very quick eye over the proposed amendments (in red).

Regards

Iain

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**From:** [Redacted] **On Behalf Of** Cabinet Secretary for Social Justice, Communities and Pensioners' Rights  
**Sent:** 28 October 2015 09:39  
**To:** Cabinet Secretary for Social Justice, Communities and Pensioners' Rights; [Redacted]  
**Cc:** Chief Planner; [Redacted]  
**Subject:** IMMEDIATE: Ministerial involvement in Planning Decisions  
**Importance:** High

[Redacted]

[Redacted]

Grateful for a revised draft once a thorough search has been conducted of time when DM was Planning Minister.

The revised draft needs to be cleared by Mr Neil, DM and Alexander Anderson (for RL part). Jeanette should also be copied in.

Thanks and happy to discuss

Peter

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**From:** [REDACTED] **Behalf Of** Cabinet Secretary for Social Justice, Communities and Pensioners' Rights  
**Sent:** 26 October 2015 17:30  
**To:** [REDACTED]  
**Subject:** FW: Ministerial involvement in Planning Decisions

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**From:** [REDACTED] **On Behalf Of** Cabinet Secretary for Social Justice, Communities and Pensioners' Rights  
**Sent:** 15 September 2015 17:36  
**To:** [REDACTED]  
**Cc:** [REDACTED] Cabinet Secretary for Social Justice, Communities and Pensioners' Rights  
**Subject:** Ministerial involvement in Planning Decisions

Richard

Mr Neil has asked that I forward on this brief on Ministerial involvement in planning decisions.

Thanks

[REDACTED]  
PS/Alex Neil

T: [REDACTED]  
E: [planning.decisions@gov.scot](mailto:planning.decisions@gov.scot)

Councillor Monica Lennon

[REDACTED]



Our ref: Fol/15/01698  
28 October 2015

Dear Councillor Lennon

I refer to your request for information of 30 September 2015 under the Environmental Information (Scotland) Regulations 2004 (EIRs).

#### Your request

You asked the following questions:-

1. Please provide a copy of any correspondence in connection with a planning application/appeal at Whistleberry Road, Xpressway 725, Hamilton that was prepared by officials for Derek Mackay when he was Planning Minister.
2. Was Derek Mackay provided with an official briefing in relation to any press enquiries? The application was lodged in October 2013, so from that period onwards.
3. Was Derek Mackay, while Planning Minister, offered any advice by officials on his SNP website biographical entry which referred to his opposition to a 'toxic waste incinerator'?
4. What steps were taken to brief Alex Neil of the background to the planning application/appeal when he took over the Planning brief? What handover procedures are in place when there is a Ministerial reshuffle?
5. Was any correspondence exchanged between Derek Mackay and Councillor Lynn Adams in relation to the application/appeal?
6. Was any correspondence exchanged between Alex Neil and Councillor Lynn Adams in relation to the application/appeal?



7. Was any correspondence exchanged between Derek Mackay and Richard Lyle MSP?
8. What discussions took place between Alex Neil and Richard Lyle MSP during August and September 2015, either privately on the telephone or in writing?
9. Did Alex Neil at any time inform Richard Lyle MSP or Angela Crawley MP that the planning appeal 'never came across his desk' or words to that effect?
10. Did Alex Neil ever inform Richard Lyle MSP or Angela Crawley MP that if he had known about the planning appeal he would have reached a different decision?
11. Did Alex Neil inform Richard Lyle MSP that he would change planning procedures so that future Energy from Waste appeals would come before the Planning Minister?
12. Did Alex Neil inform Richard Lyle MSP that as 'people would seek to blame the Scottish Government anyway, he would see that decisions on incinerators/EfW plants would be taken by the Planning Minister in future' or words to that effect?
13. Did Alex Neil ever give Richard Lyle MSP the impression he was angry, furious or disappointed in the planning appeal decision?
14. Did Alex Neil ever say or give Richard Lyle MSP the impression he would make representations to SEPA should a PPC application be lodged? Did Alex Neil suggest or expressly communicate that he hoped a PPC application would be unsuccessful?
15. Have any discussions been held or correspondence exchanged between Richard Lochhead and any of the parties mentioned elsewhere in this enquiry in relation to the proposed development?
16. Did any meetings take place between the Chief Reporter and/or Chief Planner and Scottish Ministers in relation to the application/appeal?

### Response to your request

The answers to your questions are:-

1. I enclose a copy of a letter to Councillor Lynn Adams dated August 2013, a draft of which was provided to Mr Mackay by officials. I also attach a [link](#) to the Scottish Parliament website in relation to an oral parliamentary question raised by Michael McMahon MSP on 4 September 2013 for your information.
2. Derek Mackay was provided with no official briefing with regards to press enquiries in relation to the planning application/appeal.
3. Derek Mackay, whilst Planning Minister, was offered no advice by officials on his SNP website biographical entry which referred to his opposition to a 'toxic waste incinerator'.
4. The incoming Cabinet Secretary was provided with briefing on certain specific cases when he took over the planning brief. However, this did not include the appeal in relation to the Whistleberry Road application. Incoming Ministers are provided with general briefing on planning procedures and protocol. Advice on specific cases is then provided as and when required, e.g. when the Cabinet Secretary needs to be

informed about advice on a specific case or if he is required to make a decision in relation to the case.

5. There was one exchange of letters between Mr Mackay and Councillor Adams. Mr Mackay's reply is attached – see response to question 1 above.
6. There was no correspondence exchanged between Alex Neil and Councillor Lynn Adams in relation to the application/appeal.
7. No correspondence was exchanged between Derek Mackay and Richard Lyle MSP in relation to this particular application/appeal.
8. Mr Neil's private office e-mailed an advisory note on ministerial involvement in planning decisions to Richard Lyle for his information on 15 September 2015. I attach a copy of this e-mail for your information.
- 9.-14. Mr Neil has had no correspondence with Richard Lyle MSP or Angela Crawley MP about this planning appeal, changes to planning procedures in relation to Future Energy from Waste appeals, or decisions on incinerators/EfW plants.
15. No discussions have been held or correspondence exchanged between Richard Lochhead and any of the parties mentioned elsewhere in this request in relation to this proposed development.
16. A meeting was held between the Chief Planner and Mr Neil on 9 September 2015 during which this appeal was discussed. A meeting was held between the Chief Reporter and Mr Neil on 7 October 2015 during which this appeal was discussed. No minutes from these meetings were recorded.

While our aim is to provide information whenever possible, you will see from my answers above that the Scottish Government does not have the information you have requested in your questions 2 to 4, 6, 7, and 9 to 14, for the reasons set out in those answers. Therefore we must refuse these parts of your request under the exception at regulation 10(4)(a) of the EIRs (information not held). Under the terms of that exception, the Scottish Government is not required to provide information which it does not have.

This exception is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exception. We have found that, on balance, the public interest lies in favour of upholding the exception. While we recognise that there may be some public interest in information about the planning application/appeal at Whistleberry Road, Xpressway 725, Hamilton, clearly we cannot provide information which we do not hold.

### Your right to request a review

If you are unhappy with this response to your request, you may ask us to carry out an internal review of the response, by writing to:

Kenneth Hogg  
Director for Local Government and Communities  
Scottish Government  
3H-07 North

Victoria Quay, Edinburgh EH6 6QQ  
www.scotland.gov.uk



Victoria Quay  
Edinburgh  
EH6 6QQ

Or by e-mail to: [REDACTED]

Your review request should explain why you are dissatisfied with this response, and should be made within 40 working days from the date when you received this letter. We will complete the review and tell you the result, within 20 working days from the date when we receive your review request.

If you are not satisfied with the result of the review, you then have the right to appeal to the Scottish Information Commissioner. More detailed information on your rights is available on the Commissioner's website at: [www.itspublicknowledge.info](http://www.itspublicknowledge.info).

Yours sincerely

[REDACTED]

[REDACTED]

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**From:** [REDACTED]  
**Sent:** 28 October 2015 15:58  
**To:** zzzCabinet Secretary for Social Justice, Communities and Pensioners' Rights 2014 to 2016  
**Cc:** Chief Planner; [REDACTED]  
**Subject:** Note on revocation and compensation  
**Attachments:** South Lanarkshire Council - revocation and compensation powers#2.docx

Peter

As requested, here is a note on revocation and compensation. I understand Mr Neil is due to discuss with John tomorrow.

Regards

Rosie

[REDACTED] Planning Decisions | Planning & Architecture | Scottish Government | [REDACTED]



## **REVOCAION OF PLANNING PERMISSION – NOTE ON COMPENSATION**

### **Revocation powers**

1. Planning permission vests development rights in the land, and a planning authority has no power simply to withdraw a permission unilaterally. Once planning permission has been granted (whether by the planning authority or by a reporter under delegated powers or by Scottish Ministers themselves), then any revocation of that permission leaves the applicant able to claim compensation.
2. The planning authority has the power to revoke or modify a planning permission under Section 65 of the Town and Country Planning (Scotland) Act 1997. This power can only be used before the development in question is complete, after which point there are other powers available to require discontinuance of the use (which would also be subject to compensation claims).
3. For opposed cases, i.e. where there is an objection to a planning authority's revocation order, the order must be confirmed by Scottish Ministers before it can take effect. With the exception of consensual cases, for example, where the applicant's interest in the land has changed and they are content to revoke the consent, most revocation orders are likely to be subject to objection by the applicant himself and therefore require Ministerial sign-off.
4. Under Section 68 of the 1997 Act, Scottish Ministers also have powers to revoke (or modify) planning permission, subject to consultation with the relevant planning authority. These would also be subject to compensation claims.

### **Compensation**

5. Section 76 of the 1997 Act provides for compensation to be paid in relation to the revocation or modification of any permission. This relates to either type of revocation order i.e. by the planning authority or by Scottish Ministers. Compensation is payable by the planning authority (on a claim being made) for expenditure incurred in carrying out work which is rendered abortive by the revocation or modification, or loss or damage sustained which is directly attributable to the revocation or modification. The latter includes depreciation in the value of the land as a result of the revocation of planning permission.
6. In July 2012, the Supreme Court ruled that when planning authorities are deciding whether or not to revoke or modify a planning permission, they are entitled to take into account the amount they are likely to pay. The level of compensation, therefore, may be a material consideration in a making a decision on whether or not to issue a revocation order and, even if a proposal is not acceptable in planning terms, a revocation order might not be progressed if the level of compensation was likely to be prohibitive.
7. Mr Neil may recall a recent planning authority revocation order at Hagmill Crescent, Coatbridge which Scottish Ministers refused to confirm. The order related to the approval under delegated powers by officers of planning permission for a change of use from industrial use to a recycling centre. North Lanarkshire Council

members moved to issue the revocation order due to concerns about local impacts from the development. As an indication, the applicant in this case suggested that compensation for revocation might be in the order of £1.5m. However, this was never substantiated as the proposal was considered acceptable in planning terms and the order was refused by Scottish Ministers.

8. Where a planning authority issues a revocation order, it will be liable for the payment of compensation. The relevant planning authority is also responsible for paying compensation where Scottish Ministers make the order. This would be a significant factor in deciding whether or to issue such an order. For this reason and in order to respect planning authorities' own role in making decisions in their area, Ministers should exercise the power to issue a revocation order only in exceptional circumstances. Planning authorities themselves have the ability to issue such orders where they have concerns about the proper planning of their area (albeit they need to be confirmed by Scottish Ministers if they are opposed).

Planning & Architecture  
October 2015

## **ANNEX – relevant extracts from legislation**

### **Variation, revocation and modification powers**

Section 65 and Section 68 of the Town and Country Planning Act provide-

#### **65 Power to revoke or modify planning permission.**

(1) If it appears to the planning authority that it is expedient to revoke or modify any permission to develop land granted on an application made under this Part, the authority may by order revoke or modify the permission to such extent as they consider expedient.

(2) In exercising their functions under subsection (1) the authority shall have regard to the development plan and to any other material considerations.

(3) The power conferred by this section may be exercised—

(a) where the permission relates to the carrying out of building or other operations, at any time before those operations have been completed;

(b) where the permission relates to a change of the use of any land, at any time before the change has taken place.

(4) The revocation or modification of permission for the carrying out of building or other operations shall not affect so much of those operations as has previously been carried out.

(5) Part II of Schedule 3 shall have effect for the purpose of making special provision with respect to the conditions which may be imposed by an order under this section revoking or modifying permission for development consisting of the winning and working of minerals or involving the depositing of refuse or waste materials.

#### **68 Revocation and modification of planning permission by the Secretary of State.**

(1) If it appears to the Secretary of State that it is expedient that an order should be made under section 65, he may himself make such an order.

(2) Such an order made by the Secretary of State shall have the same effect as if it had been made by the planning authority and confirmed by the Secretary of State.

(3) The Secretary of State shall not make such an order without consulting the planning authority.

(4) Where the Secretary of State proposes to make such an order he shall serve notice on the planning authority.

(5) The notice shall specify the period (which must not be less than 28 days from the date of its service) within which the authority may require an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

(6) If within that period the authority so require, the Secretary of State shall, before making the order, give the authority such an opportunity.

(7) The provisions of this Part and of any regulations made under this Act with respect to the procedure to be followed in connection with the submission by the planning authority of any order under section 65, its confirmation by the Secretary of State and the service of copies of it as confirmed shall have effect, subject to any necessary modifications, in relation to any proposal by the Secretary of State to make such an order by virtue of subsection (1), its making by him and the service of copies of it.

(8) Part II of Schedule 3 shall have effect in relation to orders made by the Secretary of State by virtue of subsection (1) as it has effect in relation to orders made by the planning authority under section 65.

### **Compensation powers**

Section 76 of the Town and Country Planning (Scotland) Act 1997 provides-

#### **76.— Compensation where planning permission revoked or modified.**

(1) Where planning permission is revoked or modified by an order under [section 65](#), then if, on a claim made to the planning authority within the prescribed time and in the prescribed manner, it is shown that a person interested in the land—

- (a) has incurred expenditure in carrying out work which is rendered abortive by the revocation or modification, or
  - (b) has otherwise sustained loss or damage which is directly attributable to the revocation or modification,
- the planning authority shall pay that person compensation in respect of that expenditure, loss or damage.

(2) For the purposes of this section, any expenditure incurred in the preparation of plans for the purposes of any work, or upon other similar matters preparatory to it, shall be taken to be included in the expenditure incurred in carrying out that work.

(3) Subject to subsection (2), no compensation shall be paid under this section in respect of—

- (a) any work carried out before the grant of the permission which is revoked or modified, or
- (b) any other loss or damage arising out of anything done or omitted to be done before the grant of that permission (other than loss or damage consisting of depreciation of the value of an interest in land).

(4) In calculating for the purposes of this section the amount of any loss or damage consisting of depreciation of the value of an interest in land, it shall be assumed that planning permission would be granted—

- (a) subject to the condition set out in [Schedule 12](#) for any development of a class specified in [paragraph 1](#) of [Schedule 11](#);
- (b) for any development of a class specified in [paragraph 2](#) of [Schedule 11](#).

(5) In this Part any reference to an order under section 65 includes a reference to an order under the provisions of that section as applied by [section 71\(3\)](#) and [paragraph 1\(2\)](#) of [Schedule 8](#).

## **Regulations covering claims for compensation**

Regulation 4 of the Town and Country Planning (General) (Scotland) Regulations 1976 (SI 1976/2022) prescribe how and by when a claim must be made (see below). A claim for compensation must be made to the planning authority within 6 months but this period could be extended by the Scottish Ministers

Regulation 4 uses the old section numbers – section 153 of the 1972 Act is now section 76 of the 1997 Act.

Regulation 4 provides-

4.— (1) A claim for compensation made to a planning authority under sections 153, 154, 158, 159, 166, 176 or 201 of the Act, or a purchase notice served on a planning authority under sections 169, 177, 178 or 180 of the Act shall be in writing and shall be served on that authority by delivering it at the offices of the authority or by sending it by prepaid post.

(2) The time within which any such claim or notice as is mentioned in paragraph (1) of this regulation shall be served shall be—

- (a) in the case of a claim for compensation, 6 months, and
- (b) in the case of a purchase notice, 12 months,

from the date of the decision in respect of which the claim or notice is made or given:

Provided that the period may be extended by the [Scottish Ministers] in any particular case.

[Redacted]

---

**From:** [Redacted]  
**Sent:** 28 October 2015 16:46  
**To:** Cabinet Secretary for Social Justice, Communities and Pensioners' Rights  
**Cc:** Chief Planner; [Redacted];  
Communications Social Justice; [Redacted];  
[Redacted];  
**Subject:** RE: Line - Hamilton Whistleberry Road Waste Plant  
**Attachments:** FMQ - Incinerator briefing.docx

Peter

Please see attached, as requested,

Lyndsey

---

**From:** [Redacted] **On Behalf Of** Cabinet Secretary for Social Justice, Communities and Pensioners' Rights  
**Sent:** 28 October 2015 13:13  
**To:** [Redacted] Cabinet Secretary for Social Justice, Communities and Pensioners' Rights  
**Cc:** Chief Planner; [Redacted] Communications Social Justice; [Redacted]  
**Subject:** RE: Line - Hamilton Whistleberry Road Waste Plant

Rosie

Mr Neil would like an FMQ brief as a local member may raise this as a constituency question. Can you please reference the attached within the brief.

Thanks  
Peter

---

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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[REDACTED]

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[REDACTED]

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**From:** [Redacted]  
**Sent:** 28 October 2015 10:48  
**To:** [Redacted]  
**Cc:** Chief Planner; [Redacted] Communications Social Justice;  
[Redacted]  
**Subject:** RE: Line - Hamilton Whistleberry Road Waste Plant

Lesley  
Content from a Planning & Architecture Division perspective.  
Rosie

---

**From:** [Redacted]  
**Sent:** 28 October 2015 10:21  
**To:** [Redacted]  
**Cc:** Chief Planner; [Redacted] Communications Social Justice;  
[Redacted]  
**Subject:** Line - Hamilton Whistleberry Road Waste Plant

Hi Lindsay, Jeanette

The Hamilton Advertiser has asked us to respond to criticism of Mr Neil over the handling of the Whistleberry Road decision as he was at a meeting about it last night.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Thanks  
Lesley

[Redacted]  
Media Manager: Communications Smarter/ Fair Work: [Redacted]  
Tell us how to make Scottish education even better: [www.engageforeducation.org](http://www.engageforeducation.org)

---

**From:** [Redacted]  
**Sent:** 28 October 2015 09:46  
**To:** Communications Smarter  
**Subject:** Hamilton Advertiser: 2 inquiries - UWS and Alex Neil

Hi

Please see two inquires below. [REDACTED]. One regarding Alex Neil.

I would appreciate a response on both these issues by 1pm today. We are on deadline today. Apologies for the short notice, both issues have just been raised with me this morning.

Thanks

[REDACTED]

With regards to Alex Neil:

He was in Hamilton last night for a non-public meeting with councillors and some local campaigners who are unhappy with a waste processor approved for Whistleberry Road in Hamilton. The council turned down the application but it was approved by a Scottish Government appointed reporter in August. The campaign group had written to Mr Neil asking why he did not intervene and stop the waste processor being approved.

[REDACTED]

I am looking for a response from Alex Neil on this.

--



Senior Reporter

## WHITEHILL INCINERATOR, HAMILTON

Local concern about the planning consent for a Waste Processing and Resource Recovery Facility, at Whistleberry Road, Hamilton which was granted by Ministers on appeal, under delegated powers, on 14 August 2015.

### TOP LINES

- **As the final decision has been taken by Ministers, under delegated powers, Ministers cannot offer specific comments on the decision.**
- Direct Ministerial involvement in planning appeals is generally very limited and decisions are mainly delegated to a reporter, of the Scottish Government's Directorate for Planning and Environmental Appeals (DPEA), as an efficient means of handling appeals
- Appeals can be 'recalled' to be determined by Ministers themselves, but this would only be considered where issues raise matters of genuine national concern or where there is a connection with another Ministerial case, for example a Section 36 energy consent.

[REDACTED]

█

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█

█

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█

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** 04 November 2015 08:51  
**To:** zzzCabinet Secretary for Social Justice, Communities and Pensioners' Rights 2014 to 2016  
**Cc:** zzzMinister for Housing and Welfare 2012 to 2016; zzzMinister for Local Government and Community Empowerment 2014 to 2016; [REDACTED] Chief Planner; [REDACTED] Communications CSSE; [REDACTED]  
**Subject:** RE: Line to clear by Wednesday am - Hamilton Advertiser: Waste processor, Whistleberry Road, Hamilton

Thanks this has now issued (with the removal of the word today).

Gillian

---

**From:** Cabinet Secretary for Social Justice, Communities and Pensioners' Rights  
**Sent:** 04 November 2015 07:58  
**To:** [REDACTED]  
**Cc:** Minister for Housing and Welfare; Minister for Local Government and Community Empowerment; [REDACTED] Chief Planner; [REDACTED] Communications Social Justice; [REDACTED] Cabinet Secretary for Social Justice, Communities and Pensioners' Rights  
**Subject:** Re: Line to clear by Wednesday am - Hamilton Advertiser: Waste processor, Whistleberry Road, Hamilton

Donna,

Mr Neil is content.

Thanks

Louise

Sent from social justice private office blackberry

---

**From:** [REDACTED]  
**Sent:** Tuesday, November 03, 2015 06:13 PM  
**To:** Cabinet Secretary for Social Justice, Communities and Pensioners' Rights  
**Cc:** Minister for Housing and Welfare; Minister for Local Government and Community Empowerment; [REDACTED] Chief Planner; [REDACTED]; [REDACTED] Communications Social Justice; [REDACTED]  
**Subject:** RE: Line to clear by Wednesday am - Hamilton Advertiser: Waste processor, Whistleberry Road, Hamilton

Apologies Peter – could Mr Neil consider this version

[REDACTED]

[REDACTED]

Thanks, Gillian

---

**From:** [REDACTED]  
**Sent:** 03 November 2015 17:41  
**To:** Cabinet Secretary for Social Justice, Communities and Pensioners' Rights  
**Cc:** Minister for Housing and Welfare; Minister for Local Government and Community Empowerment; [REDACTED]  
[REDACTED] Chief Planner; [REDACTED];  
[REDACTED] Communications Social Justice; [REDACTED]  
**Subject:** Line to clear by Wednesday am - Hamilton Advertiser: Waste processor, Whistleberry Road, Hamilton

Peter,

To see the attached news release and letter to South Lanarkshire Council from Richard Lyle calling on SLC to use its powers to act on the Whistleberry Road waste processor.

Grateful if the Cab Sec could please confirm he is content with this line.

[REDACTED]

The deadline is tomorrow morning.

Thanks, Gillian

**From:** [REDACTED]  
**Sent:** 03 November 2015 14:46  
**To:** [REDACTED]  
**Subject:** Hamilton Advertiser: Waste processor, Whistleberry Road, Hamilton

Hi Gillian

I have been contacted by Richard Lyle MSP regarding a waste processor in Whistleberry Road, Hamilton.

It was approved by a Scottish Government appointed reporter in August.

When Alex Neil was in Hamilton last week he said he found out about it too late to use his power of recall.

Richard Lyle has now been in touch to say if South Lanarkshire Council call it in then the government can refuse it. He will be calling on the government to do that. I have attached his press release and letter to the leader of the council on this issue.

I'm looking for a government response on this today if possible.

Thanks  
Julie Gilbert  
[REDACTED]

--  
Julie Gilbert  
Senior Reporter

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[Redacted]

**From:** [Redacted] on behalf of zzzCabinet Secretary for Social Justice, Communities and Pensioners' Rights 2014 to 2016  
**Sent:** 05 November 2015 14:19  
**To:** [Redacted] Chief Planner; [Redacted]  
**Subject:** FW: Waste Processing and Resource Recovery Facility at Whistleberry Road, Hamilton

---

**From:** [Redacted]  
**Sent:** 05 November 2015 14:18  
**To:** [Redacted]  
**Subject:** Waste Processing and Resource Recovery Facility at Whistleberry Road, Hamilton

Dear [Redacted]

I acknowledge receipt of your email sent on behalf of Alex Neil MSP, together with his letter of 3 November 2015, addressed to the Chief Executive. Mr Neil's correspondence is receiving attention and a response will be sent to him in due course.

Regards

Pauline

[Redacted]  
**Administration Officer**  
**Administration and Legal Services**  
**Finance and Corporate Resources**  
**South Lanarkshire Council**  
**Council Offices, Almada Street, Hamilton ML3 0AA**  
**Tel no.** [Redacted]  
**Fax no.** [Redacted]  
**email** [Redacted]  
**Council Website [www.southlanarkshire.gov.uk](http://www.southlanarkshire.gov.uk)**

\*\*\*\*\*

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## BACKGROUND NOTE FOR S40-04816

James Kelly (Scottish Labour) is MSP for Rutherglen. This question is in connection with the planning application for a Waste Processing and Resource Recovery Facility, at Whistleberry Road, Hamilton, South Lanarkshire. The application was granted by Ministers on appeal, under delegated powers, on 14 August 2015.

[REDACTED]

At a meeting in Hamilton on Tuesday 27th October Cllr Monica Lennon contended that Ministers have powers to revoke the Reporter's decision under section 68 of the 1997 planning act. Whilst this is technically correct, under section 65 of the same act, planning authorities have the same powers for revoking a consent granted for a planning application. In either case, this can only take place after an application has been granted permission and can only be used before the development in question is complete. Where consent is revoked, whether by planning authorities or Scottish Ministers', compensation would be payable by the planning authority – as result these powers are very rarely used. Mr Neil wrote to the Council on the 3 November 2015 to ask whether it intends to pursue revocation of the permission using its powers under the planning act. The Council has now advised that at this time it does not propose to revoke the consent. Richard Lyle has also written to the Council, to request that they exercise their revocation powers.

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** 04 December 2015 14:34  
**To:** [REDACTED]  
**Subject:** Hamilton incinerator  
**Attachments:** Revocation draft letter - Hamilton Incinerator.docx

Hi.

Updated draft based on CS letter. Should be fine, but have a swift peruse.

|

[REDACTED] | Assistant Planning Decisions Manager | Planning & Architecture | Scottish Government | [REDACTED]

General Planning Decisions enquiries can also be directed to: [planning.decisions@gov.scot](mailto:planning.decisions@gov.scot)



## Hamilton Incinerator

Thank you for your e-mail/letter of ..... to the Cabinet Secretary for Social Justice, Communities and Pensioners' Rights in relation to the planning application for a Waste Processing and Resource Recovery Facility, at Whistleberry Road, Hamilton, South Lanarkshire. As you are aware, this application was granted by Ministers on appeal, under delegated powers, on 14 August 2015.

I acknowledge your concerns and note your request for clarification about Scottish Ministers position in relation to the revocation of this planning permission. While Scottish Ministers have similar powers to planning authorities to revoke a consent, under section 68 of the of the 1997 planning act, Ministers must also act reasonably.

The reporter appointed to determine the appeal did so in accordance with the development plan, taking into account all representations made by parties involved in this appeal and his decision notice gave detailed consideration to the issues raised. Having regard to the development plan, the reporter considered that the determining issues in this appeal were whether there was a need for the proposal, and whether it would have acceptable effects on the living conditions of nearby residents; the historic environment; the green network; and nature conservation interests.

Ministers are also mindful of the fact that any compensation due to be paid would be payable by the planning authority, even if Ministers' were to revoke the consent. Such compensation is likely to be significant, and would have the potential to affect budgets for other local authority services.

Revocation powers are, therefore, used sparingly and Ministers will exercise the power to issue a revocation order only in exceptional circumstances. In light of the above, Scottish Ministers have considered requests to revoke this planning permission but do not propose to use their revocation powers in this case.

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** 07 December 2015 10:27  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Hamilton

Graeme

You asked for a line on Hamilton incinerator in case it comes up at ops meeting

In response to a further request for a meeting to discuss revocation, Mr Neil wrote to South Lanarkshire Councillors on 25 November confirming that

- Scottish Ministers do not propose to use their revocation powers in this case; and
- Having already met with local representatives to discuss the process, he does not consider a further meeting would be beneficial.

Helen

[REDACTED] | Planning Performance | Planning & Architecture | Scottish Government | [REDACTED]



[REDACTED]

---

**From:** [REDACTED]  
**Sent:** 29 June 2016 17:25  
**To:** Minister for Local Government and Housing  
**Cc:** Chief Planner; [REDACTED]  
**Subject:** Meeting with Monica Lennon MSP (Scottish Labour) 30 June 2016  
**Attachments:** Letter from Alex Neil MSP 25 November 2015.pdf; Waste - Oral Parliamentary Question - S5O-00070 - Follow up meeting - Briefing - 30 June 2016#3.doc

PS Minister for Local Government and Housing

Ben, as discussed please find attached a briefing in advance of the meeting with Monica Lennon MSP tomorrow.

Kind regards

[REDACTED] | Principal Planner | Planning & Architecture | Scottish Government | [REDACTED]



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## Meeting with Monica Lennon MSP (Scottish Labour)

<b>Date and Time of Engagement</b>	30/06/2016 13.30-45
<b>Where</b>	Parliament T3.22
<b>Key Message</b>	An independent review of the planning system has recently reported, to which Ministers are yet to respond.  Decision on review of Scottish Planning Policy needs to be taken in view of wider system reforms emerging from the review which noted that zero waste is an important matter but was not subject to a specific recommendation for change.
<b>Who</b>	You offered to meet in response to oral PQ S5O-00070
<b>Why</b>	Mrs. Lennon remains concerned about the approval in 2015 (on appeal) of a waste incinerator in her constituency, she expressed disappointment in Parliament that Scottish Planning Policy is not being reviewed.
<b>Official Support Required</b>	Simon Bonsall Planning and Architecture Division – National Policy Team  07980 338830
<b>Media Handling</b>	N/A  Although please note that there is an active campaign website relating to the incinerator.
<b>Dress code</b>	N/A
<b>Greeting Party and specific meeting point on arrival (if at a non SE Building)</b>	N/A
<b>Specific entrance car/parking arrangements</b>	N/A
<b>Briefing contents</b>	Annex A – Key points / Lines to Take Annex B – Relevant correspondence Annex C – Note of Interest

## Annex A – Key Points / Lines to Take

### Key points

- We consider that the Scottish Planning Policy approach is proportionate but robust.
- We cannot comment on the merits of particular decisions made by reporters.
- The matter of revocation was raised with the planning authority last year, they have not indicated that they intend to revoke the permission and neither do Ministers. Mrs Lennon was advised of this position on 25 November 2015, in her role as a local Councillor by Alex Neil MSP
- Applications for waste incineration facilities tend to be of significant concern for communities.

### Whitehill Incinerator, Hamilton Key points

- As is usual practice with appeal decisions where wider interest or controversy is anticipated, once the appeal process had been completed, Scottish Ministers were advised by DPEA of the decision, shortly before its publication. A note was sent to Ministers on 12 August, which confirmed the decision of the reporter to allow the appeal, and indicated that the decision would be made public on 14 August.
- The appeal was submitted to Scottish Ministers on behalf of Clean Power Properties Ltd and Muse Developments Ltd against the decision to refuse planning permission by South Lanarkshire Council.
- The reporter appointed to determine the appeal did so on the basis of written submissions made by all parties, a hearing session to consider noise effects and two visits to the site.
- The reporter concluded that the proposal satisfies almost all requirements of the development plan and that any conflict is of a minor nature and outweighed by the benefits of the scheme.
- A decision made by Ministers, on a planning appeal, is final unless successfully challenged in Court. The 6 week period for appeal to Court of Session ran until 25 September 2015. No legal challenge was lodged during that time.
- There were 535 letters of representation in relation to the proposed development including objections from Michael McMahon MSP and Margaret Mitchell MSP. The local councillor, Monica Lennon has actively campaigned against the proposal, claiming Ministers should have stepped in to block the decision. The then Cabinet Secretary for Social Justice, Communities and Pensioners' Rights attended a meeting in Hamilton on Tuesday 27<sup>th</sup> October where Councillor Lennon was present.

### Sensitivity

Waste treatment through incineration is highly sensitive for communities, as is evidenced by the strength of feeling expressed at this proposal.

Following the activity related to this case Alex Neil MSP confirmed that any appeals on incinerators will be brought to the attention of Ministers to allow them to consider making the final decision themselves, rather than Reporters. This process remains in place, although you have had an initial discussion with the Chief Planner on the topic.

## **Recalling planning decisions**

Planning appeals made to Scottish Ministers are mainly delegated to a member of the Scottish Government's Directorate for Planning and Environmental Appeals (a reporter) for decision. This is an efficient means of handling appeals that do not raise issues of national importance.

Appeals can be 'recalled' to be determined by the Scottish Ministers themselves. Recall would only be considered where issues raise matters of genuine national concern or where there is a connection with another Ministerial case, for example a Section 36 energy consent. The Scottish Ministers may either accept or reject the reporter's recommendation, and they may either uphold or dismiss the appeal.

## **LINES TO TAKE**

### **Scottish Planning Policy / Planning Review**

Published in 2014 after extensive engagement, we have no intention of reviewing Scottish Planning Policy at this time.

As the detail of our response to the recommendations of the independent review panel is worked up we will consider the implications of that for planning policy.

Scottish Ministers will respond to the independent review of the planning system in due course

The report of the independent review panel notes that the zero waste agenda is critical but the topic isn't subject to a specific recommendation for change.

### **Whitehill/Hamilton Incinerator**

You were advised by Mr. Neil MSP in his then capacity as Cabinet Secretary for Social Justice, Communities and Pensioners' Rights on 25 November 2015 that contact had been made with South Lanarkshire Council, who indicated that they did not propose to revoke the consent.

You were also advised in the same letter that Ministers did not propose to use their revocation powers in this case and that position has not changed.

### **Siting of waste management facilities**

Scottish Planning Policy Paragraph 190 is clear that planning authorities should consider the need for buffer zones between dwellings or other sensitive receptors and some waste management facilities. As a guide appropriate buffer distances may be:

- 100m between sensitive receptors and recycling facilities, small-scale thermal treatment or leachate treatment plant.
- 250m between sensitive receptors and operations such as outdoor composting, anaerobic digestion, mixed waste processing, thermal treatment or landfill gas plant; and
- Greater between sensitive receptors and landfill sites.

These are not mandatory fixed distances and we do not believe that they should be. Each planning application is considered in terms of the development plan and its merits.

### **Impact and management of waste management facilities**

In terms of how we deal with waste, the Scottish Government has introduced some of the most ambitious measures in the UK, and our position in relation to the thermal treatment of waste is clear, in that it does have a role to play in delivering our zero waste policy, albeit that it will be a limited one.

The Scottish Government attaches the highest importance to protecting and improving the health and wellbeing of communities and individuals. A wide range of independent, expert scientific and medical studies have examined the evidence of impacts on public health from modern incinerators. These have concluded that the relative health impact associated with the operation of a modern incinerator is very low.

The Zero Waste (Scotland) Regulations 2012 include measures to prevent separately collected recyclable materials being incinerated. In addition, the regulations include measures to ensure that metals and hard plastic are removed from residual (black bag) waste prior to incineration. These combined measures will significantly reduce the volume of waste available for thermal treatment in the future.

Our zero waste policy has the waste hierarchy at its core. In effect this means that prevention, reuse and recycling must always be prioritised over recovery (including energy from waste and incineration) and finally disposal. Whilst waste incineration processes do have a role to play in dealing with material which cannot be recycled, it will be a limited one.

The Scottish Environment Protection Agency has a wide range of enforcement powers in the event of any breach of the permit conditions. These include suspension or revocation of the permit and/or the submission of a report to the Procurator Fiscal.

██████████  
Planning and Architecture Division  
Extn: ██████████  
29 June 2016

## **Annex B – Relevant Correspondence**

Letter from Alex Neil MSP to Councilor Monica Lennon and others, 25 November 2015 - Provided separately as an attachment within the covering e-mail.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted]

---

**From:** [Redacted]  
**Sent:** 30 June 2016 14:25  
**To:** Minister for Local Government and Housing  
**Cc:** Chief Planner; [Redacted]  
**Subject:** RE: Meeting with Monica Lennon MSP (Scottish Labour) 30 June 2016

PS Minister for Local Government and Housing

Marissa,

During the meeting with Monica Lennon MSP today (which Richard Lyle MSP attended) the Minister committed to write to both MSPs to clarify the processes that are in pace around notification of application pant planning applications to Ministers and to confirm the position taken by previous Ministers on revocation of the Whitehill consent.

The Minister noted that there is correspondence between South Lanarkshire Council and Ministers which would be reviewed in drafting the letter.

The Minister did not accept an invitation to visit the site.

The Minister was clear that any revocation of planning permission would be for South Lanarkshire Council in the first instance, noting the point raised that the Council would need to gain agreement form Ministers for any revocation to come into effect.

The Minister requested a letter to be drafted by the middle of next week. We'll provide that to you once it is complete.

Regards

[Redacted]

---

**From:** [Redacted]  
**Sent:** 29 June 2016 17:25  
**To:** Minister for Local Government and Housing  
**Cc:** Chief Planner; [Redacted]  
**Subject:** Meeting with Monica Lennon MSP (Scottish Labour) 30 June 2016

PS Minister for Local Government and Housing

Ben, as discussed please find attached a briefing in advance of the meeting with Monica Lennon MSP tomorrow.

Kind regards

[Redacted] Principal Planner | Planning & Architecture | Scottish Government | [Redacted]





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## BACKGROUND NOTE FOR S5O-00070

### Key Points

- We consider that the Scottish Planning Policy approach is proportionate but robust.
- Scottish Planning Policy Paragraph 180 is clear that development plans should enable investment in a range of technologies and industries to maximise the value of secondary resources and waste to the economy.
- Modern waste management infrastructure is designed and regulated to high standards.
- Each planning application is considered on the basis of the development plan and on the merits of the proposal.
- We cannot comment on the merits of particular decisions made by reporters.

### Whitehill/Hamilton Incinerator

Mrs Lennon has supported community opposition to an energy from waste plant in the Whitehill area of Hamilton which was rejected locally and approved by Ministers on appeal on 14 August 2015. That decision is locally controversial. Mrs Lennon has started a change.org petition which asks the Scottish Government to revisit its policies on Energy from Waste 'to ensure communities are afforded maximum protection.' Whilst this appears to have 1088 supporting signatures it does not appear to have been lodged with the Public Petitions Committee.

We understand Mr Lyle was involved in the Whitehill/Hamilton incinerator case and does not agree with the decision.

Four PQs have previously been asked about this development:

- James Kelly MSP 'To ask the Scottish Government what consideration it has given to calling in the planning application relating to the Whitehill incinerator.'
- Michael McMahon MSP 'To ask the Scottish Government whether it supports the decision by the reporter to uphold the appeal by Clean Powers Properties in relation to a planning application for an incinerator at Whistleberry Road, Hamilton.'
- John Wilson MSP 'To ask the Scottish Government, in light of the reported proximity to homes and schools, for what reason its reporter approved Clean Powers Properties' application to build an incinerator in Hamilton.'
- John Wilson MSP 'To ask the Scottish Government what consideration its reporter gave to the reported over 540 objections to the proposal from the public to Clean Powers Properties' application to build an incinerator in Hamilton.'

The then Cabinet Secretary for Communities, Social Security and Equalities Alex Neil MSP met with local representatives on 27 October 2015 and wrote to South Lanarkshire Council on 3 November 2015, who confirmed that it did not intend to revoke the planning permission (the planning authority would be liable for a claim for compensation should it revoke the permission). Similarly the Scottish Government does not intend to take action to revoke the consent, which would also make the planning authority liable for any compensation claim from the developer.

Although there is the option for interested parties to challenge a planning decision to the Court of Session within 6 weeks of the decision being made, no such challenge was made.

## **Scottish Planning Policy**

Published in 2014 after extensive engagement, we have no intention of reviewing Scottish Planning Policy at this time.

## **Planning Appeals**

Planning appeals made to Scottish Ministers are mainly delegated to a member of the Scottish Government's Directorate for Planning and Environmental Appeals (a reporter) for decision. This is an efficient means of handling appeals that do not raise issues of national importance. Appeals can be 'recalled' to be determined by the Scottish Ministers themselves. Recall would only be considered where issues raise matters of genuine national concern or where there is a connection with another Ministerial case, for example a Section 36 energy consent. The Scottish Ministers may either accept or reject the reporter's recommendation, and they may either uphold or dismiss the appeal.

Following the Whitehill/Hamilton decision, in late 2015 the then Cabinet Secretary with responsibility for planning, Alex Neil MSP, wrote to Monica Lennon in her capacity as councillor, setting out the available powers. The letter noted that arrangements had been put in place to ensure that in future, appeals relating to proposed incinerators will be brought to Ministers' attention to allow them to consider making a final decision on an appeal, rather than reporters. The letter also noted that whilst Ministers have similar powers to planning authorities to revoke a consent, they must in doing so act reasonably. In this case the Reporter had taken into account all representations and given detailed consideration to the issues raised. The Cabinet secretary also noted that revocation of a consent could lead to compensation being payable by the local authority.

[REDACTED]

**From:** [Redacted]  
**Sent:** 06 July 2016 11:37  
**To:** Minister for Local Government and Housing  
**Cc:** [Redacted]  
**Subject:** FW: Meeting with Monica Lennon MSP (Scottish Labour) 30 June 2016  
**Attachments:** Incinerator MSP Letter - July 2016.doc; FMQ Whitehill Incinerator Hamilton - July 2016.docx; Letter from Alex Neil MSP 25 November 2015.pdf; Letter from Alex Neil - 19 November 2015.pdf; Letter from Mr Neil - 3 November 2015.doc; Joint statement on Whitehill Incinerator.pdf; Letter from South Lanarkshire Council - 16 November 2015.pdf

PS Minister for Local Government and Housing

Further to your meeting with Monica Lennon and Richard Lyle regarding the Whistleberry Road Incinerator, please find attached the letter you requested and background correspondence related to the case. Please get in touch if you require any further information.

Kind regards

[Redacted]

[Redacted] | Senior Planner | Planning Decisions | Planning & Architecture | Scottish Government | [Redacted]



The Year of Innovation, Architecture and Design 2016, running from 1 January to 31 December, is a celebration of Scotland's beautiful built heritage, culture and environment, alongside the contemporary and cutting-edge designs of today.  
#IAD2016

## Minister for Local Government and Housing

Kevin Stewart MSP

T: 0300 244 4000

E: [scottish.ministers@gov.scot](mailto:scottish.ministers@gov.scot)



Monica Lennon MSP & Richard Lyle MSP

By email to: [Monica.Lennon.msp@parliament.scot](mailto:Monica.Lennon.msp@parliament.scot) ,

[Richard.Lyle.msp@parliament.scot](mailto:Richard.Lyle.msp@parliament.scot)

July 2016

Further to our meeting on 30 June 2016, I am writing to clarify Scottish Ministers' position on incinerator/energy from waste proposals.

In a cross party letter dated 25 November 2015, Mr Neil specified that he had put in place arrangements to ensure that future appeals relating to proposed incinerators would be brought to Scottish Ministers' attention, to allow them to consider whether they wish to make the final appeal decision rather than allowing this to be made by reporters. This is still the current position. Officials in Planning and Architecture Division routinely monitor new cases with the Planning and Environmental Appeals Division (DPEA) for any relevant appeals.

Scottish Ministers do have a general power to intervene by calling in any planning application for their own determination. In practice though, Ministers will exercise this power very sparingly, recognising and respecting the important role of local authorities in making decisions on the future development of their areas. It is not Ministers' intention to call in all planning applications relating to incinerator/energy from waste proposals.

Mr Neil's letter of 25 November noted that the reporter appointed to determine the Whistleberry Road incinerator appeal had done so in accordance with the development plan, taking into account all representations and that the reporter's decision notice gave detailed consideration to the issues raised. Mr Neil's letter also confirmed that Scottish Ministers did not propose to use their revocation powers in this case. I can confirm that there has been no change to Scottish Ministers' position with regard to revocation of this appeal decision.

**KEVIN STEWART**

Victoria Quay, Edinburgh EH6 6QQ  
[www.gov.scot](http://www.gov.scot)



## FMQ BRIEF – WHITEHILL INCINERATOR, HAMILTON

Local concern about the planning consent for a Waste Processing and Resource Recovery Facility, at Whistleberry Road, Hamilton, South Lanarkshire, which was granted by Ministers on appeal, under delegated powers, on 14 August 2015. As the final decision has been taken by Ministers, under delegated powers, Ministers cannot offer specific comments on the decision.

### Top Lines

- **In keeping with the vast majority of appeals dealt with by the Planning and Environmental Appeals Division of the Scottish Government, an independent reporter was appointed by Scottish Ministers to decide an appeal for a waste processing and resource recovery facility at Whistleberry Road, Hamilton.**
- The reporter issued his decision on 14 August 2015 granting permission for this development if certain conditions are fulfilled. **Scottish Ministers were advised of the decision shortly before publication when the appeal process was complete and there was no opportunity to exercise the power of recall.**
- **South Lanarkshire Council have the powers to revoke this planning decision** and the Cabinet Secretary wrote last year to the council to ask if it intended to use these powers. In all the circumstances, and particularly given that the **local authority would be liable for any compensation** paid which could be considerable, the Scottish Government has no intention of seeking revocation.

[REDACTED]

[REDACTED]

Councillors: Monica Lennon, Maureen Devlin, Anne Kegg, Jim McGuigan,  
Davie McLachlan  
MSPs: Richard Lyle, Michael McMahon, Margaret Mitchell  
MPs: Angela Crawley  
HERAG: Phil Sykes



25 November 2015

*Dear Councillor Lennon*

Thank you for your letter of 18 November 2015, received by email, requesting a meeting to discuss the Whistleberry Road incinerator, Hamilton. I wish to clarify the role of Scottish Ministers in this instance.

In keeping with the vast majority of appeals, the decision was made (in this case to grant permission) by an independent reporter appointed to do so. Ministers intervene in planning applications or appeals very rarely and only where a proposal raises issues of genuine national importance. The decision on this appeal was final, subject to the right of any aggrieved party to appeal to the Court of Session within 6 weeks of the date of the decision. No appeal was made to the court during that time.

As noted above, Ministerial involvement in planning appeals is generally very limited and decisions are mainly made by a reporter as the most efficient means of handling appeals. In discussion with the Chief Reporter I have put in place new arrangements to ensure that in future, appeals relating to proposed incinerators will be brought to Scottish Ministers attention. This will allow them to consider whether they wish to make the final appeal decision rather than allowing this to be made by reporters.

While Scottish Ministers have similar powers to planning authorities to revoke a consent, under section 68 of the of the 1997 planning act, Ministers must also act reasonably. The reporter appointed to determine the appeal did so in accordance with the development plan, taking into account all representations made by parties involved in this appeal and his decision notice gave detailed consideration to the issues raised. Having regard to the development plan the reporter considered that the determining issues in this appeal were whether there was a need for the proposal, and whether it would have acceptable effects on the living conditions of nearby residents; the historic environment; the green network; and nature conservation interests.

Furthermore Ministers are mindful of the fact that any compensation would be payable by the planning authority, even if Ministers were to revoke the consent. Such compensation is likely to be significant, and would have the potential to affect budgets for other local authority services.

Following our meeting on the 27 October 2015, where the issue of the use of section 65 of the planning act was raised by Councillors, I wrote to South Lanarkshire Council on 3rd November to invite the Council to confirm whether or not it proposed to take steps to revoke the permission using these powers. The Council's response addressed the way in which the planning issues had been considered in the appeal process, and indicated that the Council does not propose to revoke the consent at this time.

Revocation powers are used sparingly and Ministers will exercise the power to issue a revocation order only in exceptional circumstances. In light of all of the above, I confirm that Ministers do not propose to use their revocation powers in this case.

Having already met with local representatives to discuss the process, and given the above position, I do not think that a further meeting would be beneficial.



**ALEX NEIL**

**CC:** Chief Reporter, Scottish Government  
Leader of South Lanarkshire Council  
Chief Executive, South Lanarkshire Council  
Chief Executive, SEPA  
Cabinet Secretary for Rural Affairs and the Environment  
Muse Developments (or agent)  
Clean Power Properties (or agent)

Cabinet Secretary for Social Justice, Communities and Pensioners' Rights  
Alex Neil MSP

T: 0300 244 4000  
E: scottish.ministers@gov.scot



Margaret Mitchell MSP  
Scottish Parliament  
Edinburgh



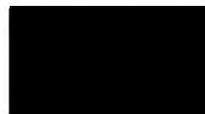
19 November 2015

*Dear Margaret*

Thank you for your email of 18 November 2015 requesting a meeting to discuss the Whistleberry incinerator.

As you know, I met with local representatives recently to discuss the process. I also wrote to South Lanarkshire Council on 3rd November to invite the Council to confirm whether or not it proposes to take steps to revoke the permission using its powers under section 65 of the planning act. The Council has advised that it does not propose to revoke the consent.

As such I do not think that a further meeting would be beneficial.



ALEX NEIL

**Cabinet Secretary for Social Justice, Communities and Pensioners' Rights**

Alex Neil MSP

T: 0300 244 4000

E: [scottish.ministers@scotland.gsi.gov.uk](mailto:scottish.ministers@scotland.gsi.gov.uk)



**The Scottish  
Government**  
Riaghaltas na h-Alba

Lindsay Freeland  
Chief Executive  
South Lanarkshire Council  
Almada Street Hamilton  
ML3 0AA



LEGACY 2014  
XX COMMONWEALTH GAMES  
SCOTLAND

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3 November 2015

I met with local members in Hamilton on the evening of Tuesday 27 October regarding the planning application for a Waste Processing and Resource Recovery Facility, at Whistleberry Road, Hamilton, which was granted by Scottish Ministers on appeal on 14 August 2015.

At this meeting South Lanarkshire Council members expressed strong interest in the planning consent being revoked. I am therefore writing to ask that you confirm whether or not it is the Council's position that it proposes to take steps to revoke the permission using its powers under section 65 of the Town and Country Planning (Scotland) Act 1997.

I look forward to your response in due course

Yours sincerely

**ALEX NEIL**



**Circulation list:**

Cabinet Secretary for Social Justice, Communities and Pensioners Rights  
Chief Planner, Scottish Government  
Chief Reporter, Scottish Government  
Leader of South Lanarkshire Council  
Chief Executive, South Lanarkshire Council  
Chief Executive, SEPA  
Cabinet Secretary for Rural Affairs and the Environment  
Muse Developments  
Clean Power Properties (or agent)

**Joint Statement****Opposition to development of incinerator, Whistleberry Road, Hamilton**

We, the undersigned, are united in our opposition to any form of incineration facility at the above site. We believe this to be the overwhelming view of local residents and we are seeking to represent and reflect their concerns to the best of our ability.

The community has campaigned against the development with dignity and integrity for over two years. Planning Officials at South Lanarkshire Council recommended the application be refused and on 28 May 2014 South Lanarkshire Council Planning Committee unanimously refused planning permission. We believe this was the right decision and on behalf of our constituents, all of us are committed to working together to defeat this development.

As the developer appealed this decision, the Scottish Government appointed an Inquiry Reporter to determine whether the appeal should be upheld or rejected. The Reporter upheld the appeal and planning permission was granted in August 2015.

We are encouraged that the Cabinet Secretary has since expressed regret for the circumstances surrounding the case, a matter which he has raised with the Chief Reporter. We believe the revocation provisions set out in Sections 65-68 of the Planning Act present a potential opportunity to remedy this regrettable situation.

We, the undersigned, are therefore calling on the Scottish Government and South Lanarkshire Council to work together to establish how best to implement these revocation provisions.

In order to progress this we are calling for a meeting to take place at the earliest opportunity between the Scottish Government represented by Cabinet Secretary for Social Justice, Communities and Pensioners' Rights, Alex Neil, and South Lanarkshire Council Leader Eddie McAvoy and supporting officials. Margaret Mitchell MSP has been nominated to act as chair.

We are copying this letter to the landowner and the developer to inform them of our strong opposition to the development and include SEPA for the same reason. We believe the site is not a suitable location for incineration processes due to its close proximity to residential properties, particularly the residences of the show people who have been badly let down by the appeal decision.

We look forward to working in partnership with the Scottish Government and South Lanarkshire Council towards revoking the planning permission and hope our request will be received in the constructive and collaborative spirit in which it is intended.

Yours sincerely

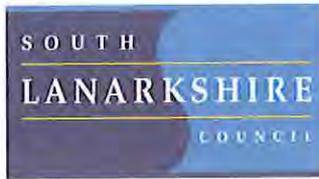
Councillors: Maureen Devlin, Anne Kegg, Monica Lennon, Jim McGuigan, Davie McLachlan

MSPs: Richard Lyle, Michael McMahon, Margaret Mitchell

MPs: Angela Crawley

HERAG: Phil Sykes

19 November 2015



Chief Executive Lindsay Freeland  
Chief Executive's Office

Mr. Alex Neil MSP  
Cabinet Secretary for Social Justice,  
Communities and Pensioners' Rights  
St. Andrew's House  
Regent Road  
EDINBURGH EH1 3DG

**Our ref:** LF/CB  
**Your ref:**  
**If calling ask for:** Lindsay Freeland  
**Phone:** [REDACTED]  
**Date:** 16 November 2015

Dear Alex,

I refer to your letter of 3 November 2015 regarding the planning consent for a Waste Processing and Resource Recovery Facility at Whistleberry Road, Hamilton and write to confirm the Council's position.

South Lanarkshire Council Planning Committee refused consent to Clean Power Properties Ltd for the erection of the energy recovery centre at Whistleberry Road, Hamilton. The developer appealed the decision to the Directorate for Planning and Environmental Appeals. David Bullya, Reporter was subsequently appointed by the Scottish Ministers to consider the appeal. The Reporter granted the appeal and granted planning permission.

The Appeal decision notice was issued on 14 August 2015. As there was a great deal of local political and public interest in this outcome, the Council carefully considered the decision notice and took external legal advice from a QC who concluded that there were no grounds for appeal in this case and therefore very poor prospects of success. No appeal was lodged. The deadline for lodging an appeal was 25 September 2015.

In addition to your letter of 3 November 2015, the Leader of the Council has also received a request from Richard Lyle MSP urging him to convene a meeting of South Lanarkshire Council as soon as possible for the purpose of revoking the planning permission granted for the development by the Inquiry Reporter in terms of Section 65 of the Town and Country Planning (Scotland) Act 1997.

As you know, Section 65 of the Town and Country Planning (Scotland) Act 1997 ("the Planning Act") allows Planning Authorities to revoke or modify a planning permission to such an extent as they consider expedient. However, this provision is very rarely used, mainly because of the liability to pay compensation as a result under Section 76 of the Planning Act. Under Section 76 where planning permission is revoked, then compensation is payable by the Planning Authority to any person interested in the land that has either incurred expenditure in carrying out work which is rendered abortive by the revocation or has otherwise sustained loss or damage which is directly attributable to the revocation. The compensation would have to be met from Council funds.

If/...

Floor 2, Council Offices, Almada Street, Hamilton ML3 0AA Telephone: 01698 454208 Fax: 01698 454275  
Text Phone: 01698 454039 Email: [pach.exec@southlanarkshire.gov.uk](mailto:pach.exec@southlanarkshire.gov.uk)



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If the Council were to consider exercising such a function, in reaching its decision, it must have regard to the development plan and any other material considerations and satisfy itself that the planning permission should be revoked. Public opposition by itself would be insufficient in law to justify revocation. The value of any liability for compensation is a consideration which the Supreme Court has held can also be taken into account given that Councils are custodians of the public purse and the compensation would be met from those public funds.

As previously stated, South Lanarkshire Council Planning Committee did initially refuse the application and in doing so, took account of its Planning Officers assessment that it did not comply with the development plan and that there were no other material considerations that would merit departing from the development plan in this instance, however, the Reporter overturned this decision on appeal. The Reporter, in coming to his decision, exercised his planning judgement based on the same development plan and material considerations.

There has been no change to the development plan and as far as the Council is aware, no change in planning circumstances since the date of the Appeal decision. Therefore, it is questionable whether on that basis, it could be considered "expedient" for the Council as Local Planning Authority to now revoke the consent having regard to the same development plan and material considerations.

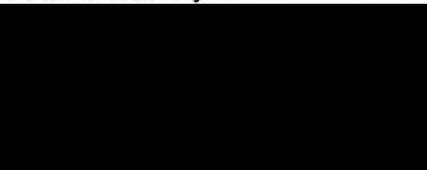
You will be aware that any revocation order can be opposed by the owner, lessee and occupier of the land and any other person who in their opinion will be affected by the order. If the order is opposed, the Scottish Ministers must give the person opposing the order and the planning authority the opportunity to be heard before a person appointed by them – that is, a Reporter (Section 66 of the Planning Act). It is then for the Scottish Ministers to confirm the order with or without modifications. A confirmed order can then still be challenged in the Court of Session.

Following on from the above, it is considered that if the Council were minded to seek a revocation order it is likely that any such order would be opposed bearing in mind the recent planning appeal decision. In turn, the matter would ultimately come before the Scottish Ministers to consider as was the case with the initial planning application. In these circumstances, it would therefore be more expedient for the Scottish Ministers to revoke the planning permission as provided by Section 68 of the Planning Act if they consider that there is a case for doing so. Such an approach would negate a two stage process and thereby bring the matter to a quicker conclusion for all concerned.

Given the above, I would advise that at this time, the Council has no proposals to exercise the powers under Section 65 of the Act.

I trust the above information clarifies the Council's position.

Yours sincerely



**Lindsay Freeland**  
**Chief Executive**

Minister for Local Government and Housing  
Kevin Stewart MSP



T: 0300 244 4000  
E: [scottish.ministers@gov.scot](mailto:scottish.ministers@gov.scot)

Monica Lennon MSP & Richard Lyle MSP  
By email to: [Monica.Lennon.msp@parliament.scot](mailto:Monica.Lennon.msp@parliament.scot),  
[Richard.Lyle.msp@parliament.scot](mailto:Richard.Lyle.msp@parliament.scot)

11 July 2016

*Dear Monica & Richard,*

Further to our meeting on 30 June 2016, I am writing to clarify Scottish Ministers' position on incinerator/energy from waste proposals.

In a cross party letter dated 25 November 2015, Mr Neil specified that he had put in place arrangements to ensure that future appeals relating to proposed incinerators would be brought to Scottish Ministers' attention, to allow them to consider whether they wish to make the final appeal decision rather than allowing this to be made by reporters. This is still the current position. Officials in Planning and Architecture Division routinely monitor new cases with the Planning and Environmental Appeals Division (DPEA) for any relevant appeals.

Scottish Ministers do have a general power to intervene by calling in any planning application for their own determination. In practice though, Ministers will exercise this power very sparingly, recognising and respecting the important role of local authorities in making decisions on the future development of their areas. It is not Ministers' intention to call in all planning applications relating to incinerator/energy from waste proposals.

In a letter to Scottish Ministers dated the 16th November 2015, South Lanarkshire Council's Chief Executive indicated that the Council did not propose to exercise its revocation powers at that time. Such powers, however, remain available to the Council.

Mr Neil's letter of 25 November noted that the reporter appointed to determine the Whistleberry Road incinerator appeal had done so in accordance with the development plan, taking into account all representations and that the reporter's decision notice gave detailed consideration to the issues raised. Mr Neil's letter also confirmed that Scottish Ministers did not propose to use their revocation powers in this case. I can confirm that there has been no change to Scottish Ministers' position with regard to revocation of the planning permission.

*Yours sincerely*



**KEVIN STEWART**

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** 02 March 2017 08:47  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** FW: FOI - C - land at Whistleberry Road - Kirsty- Louise Hunt

**Categories:** FOI

Hi

Can someone pick this up, register and acknowledge. EIR's again rather than FOI.

To note Monica Lennon's involvement, every chance this will end up PQ or other, so need to run reply by SPADS.

Thanks

David

---

**From:** [REDACTED]  
**Sent:** 02 March 2017 08:44  
**To:** [REDACTED]  
**Cc:** [REDACTED] Chief Planner  
**Subject:** RE: FOI - C - land at Whistleberry Road - Kirsty- Louise Hunt

Sorry Iain

Meant to add can you let us have anything that you have or nil return that may be covered by the request.

If anything that you have, that you don't wish released, can you give us normal exemption lines.

I suspect we will have to run this by SPADS/Ministers office given Monica Lennon is requesting and she has been active on this issue. Given this it would be helpful if you could let us know by end next week if you have any info.

Many thanks

David

---

**From:** [REDACTED]  
**Sent:** 02 March 2017 08:41  
**To:** [REDACTED]  
**Cc:** [REDACTED] Chief Planner  
**Subject:** RE: FOI - C - land at Whistleberry Road - Kirsty- Louise Hunt

Hi Iain

Yes one for us I'm afraid.

Thanks

David

---

**From:** [REDACTED]  
**Sent:** 01 March 2017 16:20  
**To:** [REDACTED]  
**Cc:** [REDACTED] Chief Planner  
**Subject:** FOI - C - land at Whistleberry Road - Kirsty- Louise Hunt

Hi David.

This FOI request has come into the Chief Planner's mailbox via Central Enquiries. As you will recall, we had some limited exchanges in relation to a request for Ministers to revoke the decision, but this appeal was dealt with entirely by DPEA and never recalled by Ministers.

Are you ok to take this request forward?

Iain

---

**From:** Chief Planner  
**Sent:** 27 February 2017 15:51  
**To:** [REDACTED]  
**Cc:** [REDACTED] Chief Planner  
**Subject:** FW: FOI - C - land at Whistleberry Road - Kirsty- Louise Hunt

All

Please see below FOI request which has come into the CP mailbox.

Please advise if I should cascade further

Jen

[REDACTED] Deputy Business Manager | Planning and Architecture | Scottish Government | [REDACTED]



---

**From:** Central Enquiry Unit  
**Sent:** 27 February 2017 15:33  
**To:** Chief Planner  
**Subject:** FOI - C - land at Whistleberry Road - Kirsty- Louise Hunt

Good afternoon,

The email enquiry below was received at the Central Enquiry Unit today.

I would be grateful if you would deal with this or forward it to the appropriate person / area of business.

*You may wish to acknowledge receipt of this email to the enquirer.*

Thank you

██████████

Ext ██████████

Central Enquiry Unit

Reminder: If this email contains a request for information please remember that the Scottish Government is required to respond to all requests for information including e-mails, within 20 working days of receipt in accordance with the Freedom of Information (Scotland) Act. Please refer to the [FOI Guidance](#).

All FOI requests received must be registered on the [FOI Tracker](#).

If the request is from a journalist, responses should be issued by the relevant communications team. Please ensure that you involve them throughout the process and also clear your draft response with SPADs and Ministers. Guidance on this is available at Steps 33 and 34 of the [Step-by-Step Guide to Handling FOI/EIRs Requests](#).

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**From:** Hunt K (Kirsty-Louise) [<mailto:Kirsty-Louise.Hunt@parliament.scot>]  
**Sent:** 27 February 2017 15:14

**To:** Central Enquiry Unit  
**Subject:** FOI Request

Dear Sir/Madam,

I would like to submit the following request under freedom of information and would be grateful if you could provide answers to the following:

1. To ask what discussions Scottish Government officials have had with parties about land at Whistleberry Road, Hamilton, ML3 0EG in the last five years.
2. To ask whether Scottish Government officials have met or communicated with Clean Power Properties Ltd or anyone acting on its behalf?  
If yes, please provide details of dates and locations of meetings, who attended and what was discussed.
3. Please provide details of any correspondence between Clean Power Properties Ltd, its representatives and Scottish Government officials, excluding any information that is already available on the DPEA or Scottish Government website.
4. To ask whether Scottish Government Ministers have met or communicated with Clean Power Properties Ltd or its representatives? If yes, please provide details of any correspondence as well as the dates and locations of any meetings, who was in attendance and what was discussed.
5. To ask whether Scottish Government Ministers have met or discussed with parties about land at Whistleberry Road, Hamilton, ML3 0EG in the last five years. Please provide details of any correspondence, as well as the dates and locations of any meetings, who was in attendance and what was discussed.

I would like the above information to be provided to me in electronic format, via email, and I understand that it is my right to receive your response within 20 working days of receipt of this email.

Thank you for taking the time to process this request and I look forward to hearing from you.

Yours faithfully,

Kirsty-Louise

**Kirsty-Louise Hunt**

Parliamentary Researcher | Office of Monica Lennon MSP

T: [REDACTED]

E: [REDACTED]

\*\*\*\*\*

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This email has been received from an external party and  
has been swept for the presence of computer viruses.

\*\*\*\*\*

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** 03 March 2017 16:43  
**To:** [REDACTED]  
**Subject:** FOI - C - land at Whistleberry Road - Kirsty- Louise Hunt

**Categories:** FOI

Ok thanks. Will do.

Iain

---

**From:** [REDACTED]  
**Sent:** 03 March 2017 16:37  
**To:** [REDACTED]  
**Subject:** RE: FOI - C - land at Whistleberry Road - Kirsty- Louise Hunt

Hi Iain

Just to let you know I have taken on this FOI, so happy for any information you have or any nil return to be sent to me directly.

Kind regards

Pauline

[REDACTED]

Planning and Environmental Appeals Division  
Telephone: [REDACTED]

Please note that I work part time and will only be in the office on Mondays, Tuesdays and Fridays.

 Follow us on Twitter for Appeal and Decision Updates



---

**From:** [REDACTED]  
**Sent:** 02 March 2017 08:47  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** FW: FOI - C - land at Whistleberry Road - Kirsty- Louise Hunt

Hi

Can someone pick this up, register and acknowledge. EIR's again rather than FOI.

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Many thanks

David

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**To:** [REDACTED]  
**Cc:** [REDACTED] Chief Planner  
**Subject:** RE: FOI - C - land at Whistleberry Road - Kirsty- Louise Hunt

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Thanks

David

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**Sent:** 01 March 2017 16:20  
**To:** [REDACTED]  
**Cc:** [REDACTED] Chief Planner  
**Subject:** FOI - C - land at Whistleberry Road - Kirsty- Louise Hunt

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Are you ok to take this request forward?

Iain

---

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**Sent:** 27 February 2017 15:51  
**To:** [REDACTED]  
**Cc:** [REDACTED] Chief Planner  
**Subject:** FW: FOI - C - land at Whistleberry Road - Kirsty- Louise Hunt

All

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Please advise if I should cascade further

Jen

[REDACTED] | Deputy Business Manager | Planning and Architecture | Scottish Government | [REDACTED]



---

**From:** Central Enquiry Unit  
**Sent:** 27 February 2017 15:33  
**To:** Chief Planner  
**Subject:** FOI - C - land at Whistleberry Road - Kirsty- Louise Hunt

Good afternoon,

The email enquiry below was received at the Central Enquiry Unit today.

I would be grateful if you would deal with this or forward it to the appropriate person / area of business.

*You may wish to acknowledge receipt of this email to the enquirer.*

Thank you

[REDACTED]

Ext [REDACTED]

Central Enquiry Unit

Reminder: If this email contains a request for information please remember that the Scottish Government is required to respond to all requests for information including e-mails, within 20 working days of receipt in accordance with the Freedom of Information (Scotland) Act. Please refer to the [FOI Guidance](#).

All FOI requests received must be registered on the [FOI Tracker](#).

If the request is from a journalist, responses should be issued by the relevant communications team. Please ensure that you involve them throughout the process and also clear your draft response with SPADs and Ministers. Guidance on this is available at Steps 33 and 34 of the [Step-by-Step Guide to Handling FOI/EIRs Requests](#).

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**From:** Hunt K (Kirsty-Louise) [<mailto:Kirsty-Louise.Hunt@parliament.scot>]

**Sent:** 27 February 2017 15:14

**To:** Central Enquiry Unit

**Subject:** FOI Request

Dear Sir/Madam,

I would like to submit the following request under freedom of information and would be grateful if you could provide answers to the following:

1. To ask what discussions Scottish Government officials have had with parties about land at Whistleberry Road, Hamilton, ML3 OEG in the last five years.
2. To ask whether Scottish Government officials have met or communicated with Clean Power Properties Ltd or anyone acting on its behalf?  
If yes, please provide details of dates and locations of meetings, who attended and what was discussed.
3. Please provide details of any correspondence between Clean Power Properties Ltd, its representatives and Scottish Government officials, excluding any information that is already available on the DPEA or Scottish Government website.

4. To ask whether Scottish Government Ministers have met or communicated with Clean Power Properties Ltd or its representatives? If yes, please provide details of any correspondence as well as the dates and locations of any meetings, who was in attendance and what was discussed.
5. To ask whether Scottish Government Ministers have met or discussed with parties about land at Whistleberry Road, Hamilton, ML3 0EG in the last five years. Please provide details of any correspondence, as well as the dates and locations of any meetings, who was in attendance and what was discussed.

I would like the above information to be provided to me in electronic format, via email, and I understand that it is my right to receive your response within 20 working days of receipt of this email.

Thank you for taking the time to process this request and I look forward to hearing from you.

Yours faithfully,

Kirsty-Louise

**Kirsty-Louise Hunt**

Parliamentary Researcher | Office of Monica Lennon MSP

T: [REDACTED]

E: [REDACTED]

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[REDACTED]

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**From:** [REDACTED]  
**Sent:** 06 March 2017 17:17  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: FOI - C - land at Whistleberry Road - Kirsty- Louise Hunt  
**Attachments:** Waste - Oral PQ - Meeting - Monica Lennon MSP - Richard Lyle MSP - Minute - 30 June 2016.obr

**Categories:** FOI

Pauline,  
I'm aware of one formal ministerial meeting on this (not with the developer).

For No 1/5: we would need to provide the note of a Ministerial meeting (objective link attached), but consideration against the FOI Act and consent of Ministers would be needed as it is not currently in the public domain. I don't think we need to provide the associated briefing as that does not address what was said at the meeting. Grainne, there is the follow up letter which would fall under No.5

The briefing related to the meeting seems to be entirely factual so if needed I suspect it is capable of release but we would need to consider it against the FOI rules and advise Ministers..

Helen, Grainne, Simon, are there any other details to provide?

Regards

[REDACTED] | Principal Planner | Planning & Architecture | Scottish Government | [REDACTED]



---

**From:** [REDACTED]  
**Sent:** 06 March 2017 16:57  
**To:** [REDACTED] (ENV)  
**Cc:** [REDACTED]  
**Subject:** RE: FOI - C - land at Whistleberry Road - Kirsty- Louise Hunt

No I haven't heard of it.

Sorry to add again to the email list but I wonder if Mike Berry in Zero Waste might have anything to add to the FOI.  
Debbie

---

**From:** [REDACTED]  
**Sent:** 06 March 2017 16:51  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: FOI - C - land at Whistleberry Road - Kirsty- Louise Hunt

Hi Pauline,

I have checked with Energy Consents colleagues and we do not hold information on this development.

Simon & Debbie – is this something that sounds familiar to you?

Many thanks

Lesley.

[REDACTED]  
Senior Case Officer | Energy Consents Unit  
Scottish Government  
4th Floor | 5 Atlantic Quay | 150 Broomielaw  
Glasgow | G2 8LU

Tel: [REDACTED]  
Email: [REDACTED]

To view our current casework please visit [www.energyconsents.scot](http://www.energyconsents.scot)

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**From:** [REDACTED]  
**Sent:** 03 March 2017 16:49  
**To:** [REDACTED]  
**Subject:** FW: FOI - C - land at Whistleberry Road - Kirsty- Louise Hunt

Lesley

Sorry to trouble you, if you're not the correct person to have a look at this, please pass on. I'm dealing with an FOI request, please see details below. I am not certain that ECDU will have anything of relevance to the request, but given the energy from waste nature of the development, I thought it better to cover all bases and send onto you for a look just in case. If possible, I would be grateful for a response with any information, or a nil response by next Friday 10 March.

Grateful for your attention to this matter.

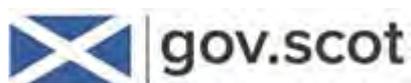
Kind regards

Pauline

[REDACTED]  
Planning and Environmental Appeals Division  
Telephone: [REDACTED]

Please note that I work part time and will only be in the office on Mondays, Tuesdays and Fridays.

 Follow us on Twitter for Appeal and Decision Updates



---

**From:** Hunt K (Kirsty-Louise) [<mailto:Kirsty-Louise.Hunt@parliament.scot>]  
**Sent:** 27 February 2017 15:14

**To:** Central Enquiry Unit  
**Subject:** FOI Request

Dear Sir/Madam,

I would like to submit the following request under freedom of information and would be grateful if you could provide answers to the following:

1. To ask what discussions Scottish Government officials have had with parties about land at Whistleberry Road, Hamilton, ML3 0EG in the last five years.
2. To ask whether Scottish Government officials have met or communicated with Clean Power Properties Ltd or anyone acting on its behalf?  
If yes, please provide details of dates and locations of meetings, who attended and what was discussed.
3. Please provide details of any correspondence between Clean Power Properties Ltd, its representatives and Scottish Government officials, excluding any information that is already available on the DPEA or Scottish Government website.
4. To ask whether Scottish Government Ministers have met or communicated with Clean Power Properties Ltd or its representatives? If yes, please provide details of any correspondence as well as the dates and locations of any meetings, who was in attendance and what was discussed.
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Thank you for taking the time to process this request and I look forward to hearing from you.

Yours faithfully,

Kirsty-Louise

**Kirsty-Louise Hunt**

Parliamentary Researcher | Office of Monica Lennon MSP

T: [REDACTED]

E: [REDACTED]

\*\*\*\*\*

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**From:** [REDACTED]  
**Sent:** 10 March 2017 16:03  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** FOI - C - land at Whistleberry Road - Kirsty- Louise Hunt  
**Attachments:** Letter from Alex Neil MSP - 25 November 2015.pdf; Oral PQ - S40-04816.docx  
**Categories:** FOI

Hi Pauline.

Further to your request, see below and attached:-

1. The only record of discussions I can find are:-

a) a non-public meeting conducted by Alex Neil in Hamilton on 27 October 2015 with the, then, Councillor Monica Lennon, various other Councillors and some local campaigners (I don't have a record of attendees). I don't believe that any record of the discussions was ever recorded and retained either. Tim Brian supported Mr Neil that evening.

b) There was also an oral PQ which could, loosely, be construed as 'discussions'. S4O-04816 on 19 November 2015 (see exchange attached). We provided a background note that we don't consider falls within scope and which we would not really want released in any case.

c) An earlier PQ (10 November 2015) from Michael McMahon MSP was a 'written' PQ (S4W – 28184), which I would suggest doesn't fall within the scope of the request.

2. We have no evidence of SG officials meeting or communicating with Clean Power Properties Limited.

3. We only have Mr Neil's letter of 25 November 2015 into which Clean Power Properties Limited were simply copied (attached). Ms Lennon will already have a copy as an original recipient.

4. No evidence of direct ministerial communications with Clean Power Properties Limited (other than that at 3 above).

5. No other evidence of Ministers meeting or discussing the case with parties (other than that at 1 a & b above).

Cheers

Iain

[REDACTED] | Assistant Planning Decisions Manager | Planning & Architecture | Scottish Government | [REDACTED]

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[REDACTED]

---

**From:** [REDACTED]  
**Sent:** 31 July 2017 14:11  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** MACCS 2017/0024039  
**Attachments:** S20170024039 - Margaret Halbert.pdf; F20170024039 - Margaret Halbert.doc

Hi Mandy.

Currently have a MACCS case in relation to an application for a proposed energy from waste facility at Whistleberry, so have drafted a reply.

Ms Halbert has asked why Ministers approved the last one (appeal PPA-380-2049). I have drafted something (in red), but would appreciate if you could cast an eye over it to see if it looks appropriate. It would also be good to include David Bullya's decision notice which would, effectively, answer her first question ( I'm presuming that reporters set out all the detail of the decision?).

It would also be good to offer a brief line on the processes involved if the application is again refused and appealed (I'll put in the red brackets).

The deadline is Monday (7 August), so anything this week would be good.

Cheers

Iain

[REDACTED] | Assistant Planning Decisions Manager | Planning & Architecture | Scottish Government | [REDACTED]

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From: [REDACTED]  
Sent: 07 July 2017 12:39:44  
To: [REDACTED]  
Subject: The Office of the First Minister: Explanation

Objection to application for Clean Power Ltd Incinerator at Whitehill, Hamilton  
planning application number HM/17/0260:

I am requesting an explanation regarding the above planning application. I am led to believe that Clean Power Properties were met with opposition to their original incinerator plans at the site of the former Craighead School in 2013 and a campaign was launched against the proposals. At that time, rightly, South Lanarkshire Council refused the application however a decision was taken by the Scottish Government Reporter in 2015 to overturn that<<http://www.dailyrecord.co.uk/news/local-news/waste-processor-anger-residents-want-6380323>>; I am requesting an explanation as to why the decision of our Local Authority was overturned. Recently Clean Power Properties have again submitted a new Proposal of Application Notice to South Lanarkshire Council and I am looking for the Scottish Government assurance that no decision will be yet again overturned to favour developers at the expense of residents in our community. I have lodged my objection to SLC and now submitting it, below to Scottish Government.  
Objection to application for Clean Power Ltd Incinerator at Whitehill, Hamilton  
planning application number HM/17/0260

I wish to note my own and my family's objection to the planning application from Clean Power Property for the waste energy site on the former Craighead School site in Hamilton. The objection regards to the application is based on several issues detailed below:

1. Proximity to property.

The site lies less than 50 meters from residential properties including my own and this makes the application in breach of the Scottish Governments agreed buffer zone for properties and operations of this type. To note, as you are probably aware, similar application was overturned in Perth due to the proximity to Perth prison. To allow the Craighead site to be used is implying that our community does not share the same rights as prisoners.

Furthermore, Whitehill is within the top 5% of areas of Scottish Index of Multiple Deprivation (SIMD) per Scottish Government statistics, this should not give developers the right to inflict more suffering on an area already facing so many challenges. Undoubtedly the increased noise, traffic and pollution will be a real threat to families in our communities.

I believe no such planning application would be made if the site in question was in close proximity to the more affluent areas within South Lanarkshire; indeed, in an area with such a diverse rural landscape, there are undoubtedly areas which would be more suited, far removed from residential properties. In addition, this could and most probably will have a negative impact on the costs of properties; again, residents bearing the brunt of this decision

2. Appearance

The cooling chimney is designed to sit at 95 meters tall; instead of the currently permitted 25 metre stack; apparently, needed due to the increased levels of nitrogen

dioxide. The question remains if the developers feels it is necessary to have a stack at this height, then exactly what harmful emissions are they expecting to come from the chimney; never mind they would be creating an eyesore for the local community

### 3. Transport

Apparently access to the site will be from a single-track road directly from an off ramp from the East Kilbride express way; the operation of this firstly would result in a significant increase of heavy trucks at this junction; using it daily; I suggest this junction is not suitable for this level of traffic. Further, it would result in even more traffic and delays on the East Kilbride express way and Raith interchange at peak times; albeit improved by recent roadworks.

### 4. Environmental

The site backs on to the Backmuir woodlands and nature reserve, for the area; this is the only access to green space that the community have it is well used by local people dog walkers as well as the local nursery using the woods for forest schooling and outdoor learning as part of the curriculum of excellence. This development would seriously put their activities at risk as well as endangering the environment of this historical woodlands which is home to a range of animals from foxes, rabbit' badgers and row deer. The woods are also home to several bat species and this has not been fully investigated by the developers.

I submit my objection and beseech the planning committee reject it in the first instance

Kind Regards  
Margaret Halbert

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E: [planning.decisions@gov.scot](mailto:planning.decisions@gov.scot)

Ms Margaret Halbert

[REDACTED]

Our ref: 2017/0024039

August 2017

Dear Ms Halbert

Thank you for your e-mail of 7 July 2017 to the First Minister attaching your objection to a proposed energy recovery facility at Whistleberry Road, Hamilton. I am replying on behalf of the First Minister.

I acknowledge your request for an explanation as to why the earlier planning application was approved. I would advise that the reporter appointed to determine the Whistleberry Road incinerator appeal did so in accordance with the development plan, taking into account all relevant information and representations. The reporter's decision notice, which I attach for your information, gives information about both the issues considered and the reasons for approval.

In relation to the current planning application, I should explain that the primary responsibility for dealing with planning applications and local planning matters rests with the local planning authority. Planning legislation requires that applications are determined by the planning authority in accordance with the development plan, unless material considerations indicate otherwise.

In reaching a decision on a planning application, the authority is expected to have regard to all material factors, including any environmental issues raised, consultations responses, for example from the Scottish Environment Protection Agency (SEPA) and any other representations received. As such, the authority will be obliged to take your objections into account at the appropriate time. It is also for the authority to determine what constitutes a material factor and what weight to attach to each material consideration.

As with any planning application, should South Lanarkshire Council refuse this current proposal, it remains open to the applicant to lodge an appeal within 3 months of issue of the formal decision. [ ]

Yours sincerely

**IAIN McLEOD**



[REDACTED]

---

**From:** [REDACTED]  
**Sent:** 02 August 2017 12:47  
**To:** [REDACTED]  
**Subject:** FW: MACCS 2017/0024039  
**Attachments:** S20170024039 - Margaret Halbert.pdf; F20170024039 - Margaret Halbert.doc; decision notice - dated 14 August 2015.pdf

Hi Iain

Further to below, my contribution included in above, tweaked the first bit a wee bit sorry, but feel free to shout at me!!

I have included an electronic version of the decision above because our website seems to be playing up and cant get a link just now.

Let me know if any queries, happy to look again if any concerns re wording.

Cheers  
Mandy

---

**From:** [REDACTED]  
**Sent:** 31 July 2017 14:11  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** MACCS 2017/0024039

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It would also be good to offer a brief line on the processes involved if the application is again refused and appealed (I'll put in the red brackets).

The deadline is Monday (7 August), so anything this week would be good.

Cheers

Iain

[REDACTED] | Assistant Planning Decisions Manager | Planning & Architecture | Scottish Government [REDACTED]

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The site backs on to the Backmuir woodlands and nature reserve, for the area; this is the only access to green space that the community have it is well used by local people dog walkers as well as the local nursery using the woods for forest schooling and outdoor learning as part of the curriculum of excellence. This development would seriously put their activities at risk as well as endangering the environment of this historical woodlands which is home to a range of animals from foxes, rabbit' badgers and row deer. The woods are also home to several bat species and this has not been fully investigated by the developers.

I submit my objection and beseech the planning committee reject it in the first instance

Kind Regards  
Margaret Halbert

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E: [planning.decisions@gov.scot](mailto:planning.decisions@gov.scot)

Ms Margaret Halbert

Our ref: 2017/0024039

August 2017

Dear Ms Halbert

Thank you for your e-mail of 7 July 2017 to the First Minister attaching your objection to a proposed energy recovery facility at Whistleberry Road, Hamilton. I am replying on behalf of the First Minister.

In terms of your first point, if it might help for me to clarify that the reporter appointed to determine the Whistleberry Road incinerator appeal did so in accordance with the development plan for that area, taking into account all relevant information before him including representations received from all parties. The reporter explains the extent and scope of his reasoning for granting planning permission, within the decision notice, a copy of which is attached for your convenience.

In relation to the current planning application, I should explain that the primary responsibility for dealing with planning applications and local planning matters rests with the local planning authority. Planning legislation requires that applications are determined by the planning authority in accordance with the development plan, unless material considerations indicate otherwise.

In reaching a decision on a planning application, the authority is expected to have regard to all material factors, including any environmental issues raised, consultations responses, for example from the Scottish Environment Protection Agency (SEPA) and any other representations received. As such, the authority will be obliged to take your objections into account at the appropriate time. It is also for the authority to determine what constitutes a material factor and what weight to attach to each material consideration.

As with any planning application, should South Lanarkshire Council refuse this current proposal, it remains open to the applicant to lodge an appeal within 3 months of issue of the formal decision. [The right to seek an appeal against a decision taken by a planning authority is an important element of the planning system. Each appeal is considered solely

on the merits and the facts as they relate to the proposal and the role of the reporter is to consider all the evidence before them and to carefully balance all the arguments to the case. Should an appeal be submitted, objectors will have the opportunity to make further comments to DPEA, and these, along with representations already made to the council at application stage are taken into account by the reporter.

I trust this clarifies the position.

Yours sincerely



## Appeal Decision Notice

T: 01324 696 400  
F: 01324 696 444  
E: [dpea@scotland.gsi.gov.uk](mailto:dpea@scotland.gsi.gov.uk)



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Decision by David Buylla, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-380-2049
- Site address: Whistleberry Road, Hamilton, ML3 0EG
- Appeal by Clean Power Properties Ltd and Muse Developments Ltd against the decision by South Lanarkshire Council
- Application for planning permission HM/13/0432 dated 10 October 2013 refused by notice dated 28 May 2014
- The development proposed: erection of an energy recovery centre (comprising an advanced conversion technology and anaerobic digestion facility comprising of a 8-12 MWe pyrolysis plant and a 2-3 MWe digestion facility) with an integrated education centre, access, landscaping and associated works
- Date of site visits by Reporter: 14 November 2014 and 3 August 2015
- Date of hearing session: 3 August 2015

Date of appeal decision: 14 August 2015

---

### Decision

I allow the appeal and grant planning permission subject to the 24 conditions listed at the end of this notice. Attention is also drawn to the four advisory notes there.

### Preliminary matters

The planning application was accompanied by an environmental statement dated 25 September 2013. This addressed the following issues: transport; air quality and odour; noise and vibration; landscape and visual amenity; ecology and nature conservation; water quality, hydrology and flood risk; soils, geology and contaminated land; and archaeology and cultural heritage.

Subsequently, planning permission was granted to use a nearby site for the storage and maintenance of fairground equipment and the siting of eight associated residential caravans. In this decision notice I have referred to this development, which has been implemented, as the caravan site. In order to assess potential effects on this new receptor, an addendum to the environmental statement was prepared on 16 January 2015. This presented additional assessment of air quality, noise and vibration and landscape and visual amenity effects. The additional environmental information was given statutory notification and publicity. Following the receipt of responses to this additional information and further written submissions from the appellant, the planning authority and SEPA, a hearing session was held to discuss noise effects.

On 29 June 2015, the South Lanarkshire Local Development Plan (the LDP) was adopted. This replaces the South Lanarkshire Local Plan 2009, which was part of the development plan when the planning authority refused planning permission for the proposal. However, the parties' original appeal submissions referred to what was then the proposed LDP and as the adopted LDP is no different to the proposed plan in respect of the issues that are relevant to this appeal, it has not been necessary to seek any further submissions from the parties on this matter.

On 1 July 2015 the Scottish Government published new planning advice on waste management (the 2015 planning advice). Further written submissions were invited from the parties on this new advice.

In reaching my conclusions on this appeal, I have had regard to the original environmental statement, the addendum to that statement and all representations received in response to these sources of environmental information, to all other written submissions that have been made and to the hearing session on noise effects.

## Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The development plan comprises the Glasgow and Clyde Valley Strategic Development Plan 2012 (the SDP), the South Lanarkshire Minerals Local Development Plan 2012 (which contains no policies relevant to this proposal), and the LDP. I am also required to have special regard to the desirability of preserving the nearby category A listed Bothwell Bridge and other nearby listed buildings, their setting and any special features of historic or architectural interest they possess, and to pay special attention to the desirability of preserving or enhancing the nearby Bothwell conservation area.
2. Having regard to the provisions of the development plan, the main issues in this appeal are whether there is a need for the proposal, and whether it would have acceptable effects on: the living conditions of nearby residents; the historic environment; the green network; and nature conservation interests.
3. The appeal site is vacant, brownfield land, which formerly accommodated a school. It extends to approximately 4.54 hectares and lies at the eastern edge of an established industrial and commercial area. To the south and east of the site is an area of woodland. To the north is the A725 East Kilbride Expressway, which connects with the M74 approximately 650 metres to the north east.
4. The site was allocated for industrial use in the former local plan and, in 2010, received planning permission in principle for a mixed use commercial and industrial development with a combined gross floorspace of 39,810 square metres. The SDP states that development proposals for waste management facilities will generally be acceptable in industrial and storage or distribution locations. The LDP identifies the site as an employment land use area.

5. Planning permission is sought to construct an energy recovery centre, which would generate 13 to 15 megawatts of electricity from non-recyclable waste. The appellant estimates that this is the equivalent of supplying the electricity requirements of approximately 15,000 homes. The process would also generate heat, which could be used by local businesses.

6. The facility would first autoclave and sort the waste to sterilise it and remove recyclable materials. It would then employ two processes for the conversion of waste into energy. The first is advanced conversion technology (ACT). This is a form of pyrolysis in which dried and sterilised biomass material from the autoclaving process is heated in an oxygen-free environment to create synthesis gas and charcoal. The synthesis gas would be used to power gas engines within the plant that would generate electricity for export to the National Grid. The second process is anaerobic digestion (AD), which would produce gas for powering the gas engines via the breakdown of biodegradable food waste. Most of the processes, together with offices and a visitor education area, would be contained within a building of approximately 5,710 square metres gross floorspace and a ridge height of 9 metres. The AD process would take place in four sealed tanks adjacent to the main building, each measuring five metres in height and with diameters of either 50 or 60 metres. The tallest elements of the proposal would be the pyrolysis stack, which would be 25 metres in height and the three gas engine flues, which would be grouped together to give the appearance of a single stack and which would also be 25 metres tall.

7. The proposed facility would operate 24 hours a day, seven days a week and would process approximately 195,000 tonnes of waste per year.

### *The need for the proposal*

8. In accordance with the European Waste Framework Directive, Scotland has adopted a zero waste policy. This is set out in the national Zero Waste Plan 2010 (the ZWP), which aims to minimise waste and to recognise the value in resources that would, in the past, have been sent to landfill. The Waste (Scotland) Regulations 2012 provide a legal framework for this policy. Annex B to the ZWP formerly set out land use policies in relation to waste. However, this has now been superseded by Scottish Planning Policy (SPP). The remainder of the ZWP remains an important material consideration in this appeal.

9. The third National Planning Framework (NPF3) recognises that waste is a resource and an opportunity rather than a burden. It requires the creation of a decentralised network of processing facilities and it expects planning authorities to work with the market to identify viable solutions and leave a sustainable legacy for future generations.

10. SPP sets out a series of policy principles for zero waste. Of particular relevance to the appeal proposal are the requirements: to support achievement of Scotland's zero waste targets (recycling 70% of household waste and sending no more than 5% of Scotland's annual waste arisings to landfill by 2025); and to help deliver infrastructure at appropriate locations, prioritising development in line with the waste hierarchy.

11. The 2015 planning advice confirms that the planning system has a role to play in moving towards Scotland's goal of a zero waste society. It advises that a network of waste management installations will be necessary to implement the Waste (Scotland)

Regulations 2012's measures to drive re-use and recycling and to treat biowaste. It also confirms that a goal of the ZWP is to recover electricity and / or heat from waste resources which cannot be reused or recycled.

12. The 2015 planning advice refers to the latest (2011) SEPA figures on the additional operational waste management infrastructure capacity that is required in order to meet the ZWP targets. For Glasgow and the Clyde Valley, there is an identified requirement for an additional waste management capacity of 1,050,000 tonnes. From that total figure, 765,000 tonnes of additional capacity is required to manage source-segregated recyclables and 285,000 tonnes of capacity to manage unsorted waste.

13. The planning authority notes that updates to published waste capacity figures are not being provided annually, despite the expectations of SPP. It argues that, as SEPA's waste data sources use 2011 figures and do not account for consented but non-operational facilities, it is reasonable to deduct from the identified capacity, subsequent waste management infrastructure that has been granted planning permission. It refers to three sites in North Lanarkshire, two sites in Glasgow, and a site in South Lanarkshire that it has calculated have a combined annual unsorted waste handling capacity of 820,000 tonnes. This is well in excess of the identified capacity shortfall. The authority accepts that required capacity figures are not to be regarded as a cap and that an absence of need would not, on its own, be a reason not to grant planning permission. However, it contends that the absence of a pressing need for the proposed facility is an important factor to bear in mind when deciding whether permission should be granted despite the adverse effects that it says the proposal would cause.

14. The appellant is critical of the authority's approach because the existence of planning permission does not guarantee that a facility will be built. The appellant notes that until facilities are constructed, they make no contribution towards an integrated and adequate network of facilities. Using SEPA's Scottish Waste Data Interrogator 2012, the appellant calculates that in South Lanarkshire and the Wider Glasgow and Clyde Valley Region, there is a heavy reliance on landfill for household waste, with nearly 63% sent to landfill. It argues that this provides further evidence of the need for additional waste management infrastructure in the region.

15. In support of its argument that only operational facilities should be taken into account, the appellant refers to the clear statement in Annex B to the Zero Waste Plan that capacity assessments should be based on built rather than consented facilities. However, Annex B has now been superseded by SPP. This requires planning authorities to be mindful of the need to achieve the all-Scotland operational capacity, but contains no explicit instruction to rely only on constructed rather than consented capacity. I understand the appellant's argument that obtaining planning permission for a development proposal does not mean it will be completed immediately or even at all. A range of factors, particularly an up to date commercial viability assessment of a particular scheme would need to be completed before a decision to commence construction could be made. It would also be necessary to obtain consent under the Pollution Prevention and Control (Scotland) Regulations 2012 (the PPC). Nevertheless, I do not agree that one can ignore the existence of extant planning permissions when considering the issue of capacity and need. The appellant has not provided any convincing evidence to support its assertion that only

one of the consented facilities in the region will be built, and I conclude that it is reasonable to assume that a greater number of facilities will be built within the short to medium term.

16. On that basis, the shortfall in regional waste management capacity is likely to become rather less significant than the 2011 SEPA figures would suggest, regardless of whether this appeal is allowed. Indeed, it would appear possible that the identified regional shortfall for source-segregated waste might be met entirely using facilities that have already been approved. When considering the provision of an integrated and adequate network of waste management facilities within the region therefore, I have given only limited weight to the benefits of the appeal proposal. However, the clear instruction in SPP is that planning authorities should generally facilitate growth in sustainable resource management and should not regard capacity figures as a cap. Therefore, as the planning authority accepts, this factor alone does not provide a reason to refuse planning permission.

17. Turning to the national picture, it is clear from the evidence, which the planning authority has not refuted, that there remains a significant shortfall in the national provision of waste management infrastructure. The planning authority argues that the adequacy of provision at a national level is more relevant to a consideration of the capacity for specialist forms of waste and that everyday waste that is generated across the country and which the proposed facility would handle, should be treated close to source, thereby avoiding the adverse environmental consequences of long distance transportation. On that basis, it contends that an assessment of local capacity requirements is more appropriate when considering whether there is a need for the proposed facility.

18. While SPP recognises the desirability of managing waste in the nearest appropriate installation, it reminds planning authorities of the need to achieve the all-Scotland operational capacity in waste management infrastructure and makes it clear that, while a significant shortfall of waste management infrastructure exists, emphasis should be placed on need over proximity. It also confirms that the achievement of a sustainable strategy may involve waste crossing planning boundaries. I therefore regard the national shortfall in capacity as an issue that supports the appeal proposal.

19. The first assessment criterion in LDP Policy 18 requires an assessment of the contribution a waste management proposal would make towards delivering both the national annual waste management capacity required to meet the targets set out in the ZWP, and an integrated and adequate network of waste management facilities. This requires consideration to be given to the adequacy of the capacity at both a national and a more local level.

20. I conclude that the proposal would make a valuable contribution towards the significant national shortfall in the provision of waste management infrastructure. And until such time as waste management sites that have planning permission become operational, its potential to contribute to the waste management requirements of the Glasgow and Clyde Valley region can also be afforded a small degree of additional weight. The proposal can therefore draw support from the first criterion of LDP Policy 18 and is in accordance with national policy and guidance.

### *Effect on local residents*

21. The appellant's environmental statement and addendum considered potential effects on local residents in terms of transport related effects, air quality and odour, noise and vibration and visual amenity issues. In respect of all potential sources of adverse effect for nearby residents (including those living in the caravan site) the appellant concludes there would be no significant adverse effects. I consider the impact on local residents below. I have considered likely effects on all local residents, but have paid particular attention to residents of the caravan site as these are by far the closest to the appeal site (the nearest caravan being approximately 83 metres from the waste reception area in the proposed building).

22. The planning authority is critical of the proposal for being within 250 metres of residential property, a figure which it contends is given significance in SPP. However, paragraph 191 of SPP advises planning authorities to consider the need for buffer zones between dwellings and other sensitive receptors and some waste management facilities. It does not indicate that buffer zones are necessary in all cases. For operations such as are proposed here, SPP suggests, as a guide, that an appropriate buffer distance might be 250 metres. However, it is necessary to consider each proposal on its merits and a separation distance of 250 metres cannot be regarded as mandatory. I do not therefore regard the absence of a 250 metre buffer from residential property a significant consideration in my assessment of this proposal.

23. Paragraph 188 of SPP advises planning authorities to confine their consideration of waste installation proposals to an assessment of whether they would constitute an appropriate use of the land and to leave the regulation of the installations to the Scottish Environment Protection Agency (SEPA), which licenses such installations under the PPC. PAN 51 and PAN 63 confirm that the planning system should operate separately from environmental licencing regimes and that PPC licensing should be accepted as adequate and suitable for public health protection. It is clear therefore that there are limits to the extent to which I should seek to regulate things such as noise emissions and air quality effects, given that such matters are more appropriately regulated through the PPC licence, which the appellant would have to obtain from SEPA, should I allow this appeal. By the same token, the views of SEPA on the acceptability of the proposal in these terms and its potential consentability under PPC are of great importance.

24. Considerable concern has been expressed by local residents over potential adverse effects on public health due to emissions of pollutant gases and dust from the site itself (during construction and operation) and as a result of traffic congestion, bearing in mind the close proximity of residential areas, three schools, a food factory and a leisure centre. However, the appellant has investigated these issues in great detail and none of the agencies that are responsible for public protection has raised any objection over the emissions the proposal would generate. The council's environmental health team, the roads authority and Transport Scotland all raised no objections to the proposals, indicating that significant adverse effects on local residents are not predicted. Following the receipt of additional information and subject to certain conditions, SEPA also confirmed that it is satisfied with the proposals. Taking all matters into account, there is no evidence from which I could reasonably conclude that the proposal would, either directly or indirectly, lead to significant adverse air quality effects.

25. Turning to the issue of noise, the appellant first measured the baseline conditions by surveying noise levels over a 24 hour period on the southern site boundary. This location was chosen so as to avoid an excessive influence from road traffic noise. The survey found a daytime background noise level of 48.5 dB  $L_{A90T}$ , which represents the level of noise exceeded for 90% of the time. When expressed as the equivalent continuous ambient noise level, which takes into account intermittent sources such as traffic, this was 60 dB  $L_{AeqT}$ . During the night, the measured background levels were 39.1 dB  $L_{A90T}$  and 53.3 dB  $L_{AeqT}$  for these two indices.

26. The appellant considered likely noise effects during the construction period using BS 5228:2009 'Code of practice for noise and vibration control on construction and open sites.' The appellant points out that BS 5228 effectively accepts that it might be necessary to accept temporary noise effects during the construction period that have a moderately significant adverse effect. Construction related noise at the caravan site is predicted by the appellant (on a worst-case basis) to range from 61.8 dB  $L_{AeqT}$  during the construction of the above ground elements of the buildings to 69.8 dB  $L_{AeqT}$  during piling works. Without mitigation, the appellant categorises this as a moderate noise effect. Mitigation for construction related noise, which could be incorporated within a construction environmental management plan to be secured by a planning condition, would involve ensuring that all equipment was well maintained, that plant and vehicle speeds within the construction site were restricted and that consideration was given to temporary screening around noisy plant. The appellant predicts that such measures should reduce noise levels by 10 dB(A). On this basis, the appellant predicts that noise effects during construction would be reduced to a negligible level. Both the planning authority and SEPA accept that noise during the construction period would not have a significant adverse effect.

27. During the operational phase, the noise emitted from the site requires to be considered using BS 4142:2014 'Methods for rating and assessing industrial and commercial sound.' This requires a comparison to be made between the measured or predicted sound level from the source in question immediately outside a dwelling, known as the specific noise level, with the background noise level. Where the noise contains irregularities (as would be the case with the appeal proposal), a correction is added to the specific noise level to obtain the rating noise level. BS 4142 confirms that the significance of a noise effect depends not only on the margin by which the rating noise level exceeds the background noise level, but also the context in which the sound occurs.

28. The appellant initially identified seven key operational noise sources, ranging from vehicles moving within the site to the gas engines. It subsequently looked in greater detail at the different noise generators within the proposed building and at the external noise sources such as chillers and the flare. Measurements were taken from a similar facility at West Bromwich in England, which SEPA considers to be more reliable than relying on manufacturers' data. The sum total of internal noise sources was calculated to be 87.2 dB(A). That for external equipment was 75 dB(A). Calculations were then made for the sound reducing effects of the proposed building, based on its size and materials of construction and the position of doors and other openings and for the attenuating effects of distance.

29. The effects of external equipment would not be continuous, as equipment such as the flare would only be in use approximately 16 times per year for approximately two hours each time. If all such equipment were operating simultaneously, the noise level at the caravan site would be 27.6 dB(A) and even when added to the other noise sources, would have a negligible noise effect.

30. Delivery vehicle noise (which would only occur during the day) was calculated from a measurement at a similar facility in the UK where the vehicle was found to emit 78.8 dB(A) at a distance of 5 metres. This would result in a noise level of 33.8 dB(A) at the caravan site. The planning authority raised concern that 128 vehicle movements per day along an access road that is close to, and is used by, residents of the caravan site, would adversely affect the amenity of its residents. However, I agree with SEPA that, even in conjunction with other noise sources, this is unlikely to have more than a negligible effect in terms of noise impact. I also find that, bearing in mind the existing character of the area, the very short section of the access road that would be used by vehicles attending the proposed site, and the relatively low level of vehicle movements involved, there is no likelihood of delivery vehicles causing any other form of significant detriment to local residents' living conditions.

31. Turning to noise emissions from internal operations, the appellant used BS EN ISO 12354-4:2000 and ISO 9613-2:1996 to calculate the radiated sound power levels from the proposed building. These took account of the noise attenuating effects of the building's construction, which would incorporate double-skinned walls and other design features to minimise sound breakout. The appellant accepts that at times when the building's roller shutter doors were open (which would be for multiple periods of 30 seconds during the day) and at night, noise emissions from the building would be sufficiently above background noise levels that mitigation would be required in order to reduce the effect on residents of the caravan site to an insignificant level. Adding together all of the operational noise sources, the appellant predicts that, during the day and with the doors open, there would be a rating level at the caravan site (including a +6 dB tonal penalty) of 53.3 dB(A), which is 4.8 dB(A) above the background noise level of 48.5 dB(A). The appellant predicts the cumulative noise effect during night time hours (when the doors would not be opened) to be 44.4 dB(A), which is 5.3 dB(A) above the background level.

32. In order to provide mitigation the appellant proposes a 4 metre bund / fence combination between the development and the boundary with the access road to the caravan site. It is predicted that the effect of this mitigation would be up to a 10 dB(A) noise reduction at the caravans, which would reduce the effect at the caravan site to a low / negligible adverse effect under the terms of BS 4142. SEPA and the planning authority accept that this is a reasonable assumption because the proposed noise barrier would entirely block line of sight between the proposed building and the caravans. SEPA welcomes the appellant's commitment to retaining the services of an acoustic consultant during the construction period so as to ensure that best practice was followed. SEPA also welcomes the appellant's commitment to carrying out additional noise abatement measures at source (for example through the fitment of acoustic enclosures) in the event that building performance was not as good as predicted. I accept that subject to these safeguards, which SEPA confirmed would be PPC requirements, one can be confident that noise emissions from the building would not have any significant adverse effects on any residential neighbour.

33. The appellant points out that the nature of the business operated by residents of the caravan site involves vehicle maintenance and potential late night and early morning movements of large vehicles. As such it could be argued that sensitivity to noise might be reduced. However, SEPA did not rely upon this factor in reaching its conclusion that noise effects would be acceptable and that the proposal would be consentable under the PPC and it is not an issue to which I have attached significant weight.

34. The appellant also pointed out that it appears that certain pre-commencement planning conditions on the caravan site have not been satisfied. However, the planning authority has given no indication that it regards the caravan site as unauthorised or that, even if it were, it would be expedient to take enforcement action. I have assumed for the purposes of determining this appeal that the caravan site is an authorised and long-term sensitive receptor.

35. Taking all matters into account, I am satisfied that the proposal would have an acceptable impact on local communities and would cause no significant individual or cumulative local environmental effects. It can therefore draw support from criteria ii), iv), vii) and viii) of LDP Policy 18 and from SPP.

#### *Effect on the historic environment*

36. The proposal could potentially cause both direct effects on buried archaeology and wider (indirect) effects on the historic environment.

37. The site lies within the historic battlefield site of Bothwell Bridge and was also formerly occupied by Auchinraith House a property of probably late eighteenth century origin, which was demolished in the 1940s. However, Historic Scotland considers it unlikely that the site on which construction works are proposed contains significant undiscovered artefacts from the battle due to the significant level of subsequent building (and demolition) work that has taken place on site. Any buried remains of Auchinraith House would be unaffected by the proposal, as that part of the site would remain as woodland. Overall, Historic Scotland is satisfied that there would not be more than a minor direct effect on buried archaeology and the planning authority has not disagreed with this view. I agree with these conclusions and also agree that an archaeological investigation condition would ensure that any discovered archaeology was dealt with in an appropriate manner.

38. Turning to indirect historic environment effects, the planning authority considers the proposal would detract from Bothwell Bridge historic battlefield site and from the setting of the category A listed Bothwell Bridge. It acknowledges that the harm this would cause might not be sufficient on its own to justify the refusal of planning permission. However, in combination with other adverse effects it has identified, it is considered to be unacceptable. It notes that historic battlefields and A listed buildings are classified as Category 2 Areas in table 6.1, which accompanies Policy 15 of the LDP. Policy 15 states that features listed in Table 6.1 will be protected from adverse impacts. As the appellant's own advisor and Historic Scotland acknowledge there would be an adverse effect on these heritage assets, the planning authority contends the proposal must be contrary to this policy. For the same reason, the authority concludes that the proposal is also contrary to SPP.

39. There are two other listed buildings within 500 metres of the site: the category B listed gate piers on Bothwell Road and the category B listed Bothwell Obelisk. However, I agree with the planning authority that the only listed building that could potentially be affected by the proposed development is Bothwell Bridge. The nearest edge of Hamilton Palace historic garden and designed landscape is immediately to the east of the site and Bothwell conservation area is approximately 250 metres to the north. However, due to the topography and existing screening, I agree with the planning authority that there would be no effect on these historic assets.

40. With regard to the effect on the setting of the listed Bothwell Bridge, the planning authority acknowledges that, due to tree screening, only the top five metres of the proposed flues would be visible from the bridge. However, it predicts that greater visibility might be possible in winter months when there was reduced foliage. It contends that the proposed development would have an industrialising effect on views to the west from the listed bridge, to the detriment of its setting.

41. I accept the planning authority's submission that in the winter, more than the uppermost five metres of the flues is likely to be visible. However, I do not agree that this would cause any material harm to the setting of this historic asset. The visual context within which the proposed development would be seen is already clearly influenced by modern, man-made features including busy roads and commercial and industrial premises. The proposed flues would be taller than surrounding townscape features but would not materially alter the visual context within which the bridge was experienced and would not therefore significantly detract from its setting.

42. As the site lies within the historic battlefield, there will inevitably be some indirect effect on that designated feature. However, as with the setting of the listed bridge, it is important to recognise the modern day context within which the proposed development would be built, in which the battlefield is experienced as part of an urbanised environment. Bearing that in mind, I agree with Historic Scotland that the proposals would not have a significant impact on the cultural significance of the battlefield.

43. I disagree with the planning authority that LDP Policy 15 expects all harm to Category A listed buildings and historic battlefield sites to be avoided. For Category 2 areas, the policy states that development will be permitted where the objectives of the designation and the overall integrity of the area can be shown not to be compromised following the implementation of any mitigation measures. It goes on to state that any significant adverse effects must be clearly outweighed by social or economic benefits of national importance. For these types of asset therefore, a degree of harm (below that which would compromise the objectives of the designation and the overall integrity of the area) can take place before the proposal must be found to be in conflict with Policy 15. And even significant harm might be acceptable under the terms of this policy, provided that it could be justified. For the reasons set out above, I agree with the appellant and with Historic Scotland that the adverse effect on these assets would not be significant. I am satisfied therefore that there is no conflict with LDP Policy 15 or with criterion iii) of LDP Policy 18, which requires, among other things, that there is no significant impact on any built heritage features.

44. The Natural and Historic Environment supplementary guidance requires development to be sensitive to and to respect the character and appearance of listed buildings and their setting and to avoid significant adverse impact on historic battlefields.

For the reasons I have set out above, I am satisfied there is no conflict with these requirements.

45. I also do not accept that SPP requires all harm (and not just significant harm) to listed buildings to be avoided. The planning authority is correct that paragraph 141 of SPP states that a listed building should be protected from demolition or other work that would adversely affect it or its setting. However, that needs to be read in the context of the remainder of that paragraph, which reiterates the statutory test that special regard must be given to the importance of preserving and enhancing the building, its setting and any its special features. This does not require that preservation of these features (which the authority considers synonymous with the avoidance of any harm) is required in all cases, merely that special regard is given to the importance of that objective. I have given this issue the special regard it requires and conclude that the national interest of these heritage assets would be affected to a sufficiently small degree that there would be no conflict with SPP.

#### *Effect on the green network*

46. The site lies within the River Clyde corridor, which the planning authority states is identified in the SDP as a green network spatial priority. However, the appellant points out that diagram 13 in the SDP, which defines the green network spatial priorities, does not include all of the River Clyde corridor. Instead it identifies 14 locations, where environmental, social, access and regeneration elements are integrated. The appeal site is not within or close to any of those locations. The LDP defines the green network as a series of high quality connected greenspace, which delivers a range of multiple benefits. SPP expects the planning system to protect, enhance and promote green infrastructure, including open space and green networks, as an integral component of successful placemaking.

47. The planning authority's concern is that the proposal would adversely affect the function of the green network by reducing the connectivity between habitats as a result of the proposed buildings and site fencing.

48. Diagram 3 of the SDP sets out indicative forms of development of land that is designated as part of the green network, which would be consistent with the SDP's spatial strategy. These include green infrastructure, woodland creation and a range of other land uses that encourage biodiversity or informal recreation. The list is not to be regarded as exhaustive. However, the appeal proposal, which involves the construction of a significant amount of built development and the removal of established trees, is so inconsistent with the types of development that are envisaged that I am satisfied that the proposal is in conflict with this aspect of the SDP's spatial strategy.

49. When considering the implications of this conflict, it is necessary to bear in mind that, because it lies at the western edge of the undeveloped area with a road and commercial premises immediately to the west and with the busy A725 separating it from open land to the north, the site occupies something of a corner location, which reduces the role it plays in providing habitat connectivity across the wider green network. I am satisfied therefore that the proposal would not threaten the connectivity of the green network along the River Clyde or along the Park Burn river corridor to the south. For Hamilton, the Green Network and Greenspace supplementary guidance attaches particular importance to the wooded

river valley corridors that provide a strong landscape setting for the built environment, significant biodiversity value and links with the wider countryside.

50. The SDP requires proposals that do not accord with its spatial strategy to be subject to a sustainable location assessment, as set out in SDP Diagram 4. This assesses the proposal against a series of criteria including: climate change; low carbon economy; sustainable transport; green network; water environment; network of centres; and low carbon energy. I consider each of these issues below.

51. With regard to climate change, the proposal would minimise the city region's development footprint as it would re-use a previously developed site. It would also assist in minimising the city region's carbon footprint by reducing emissions of greenhouse gases from landfill.

52. With regard to the low-carbon economy, the proposal would support new environmental technology and would create employment and investment in a low-carbon process.

53. The appeal site is accessible via public transport, in accordance with the sustainable transport criterion.

54. As set out above, the proposal would not be supportive of the green network. However, its design is such that adverse effects on that network would be minimised.

55. With regard to the water environment, there would be no adverse flood risk or water quality implications from the proposal.

56. The network of centres criterion is inapplicable to a proposal of this type.

57. Finally, the proposal would satisfy the low-carbon energy criterion because it would contribute to the development of green energy and the implementation of low-carbon technology.

58. Diagram 4 also requires consideration to be given to demand-side aspects, as these might be a supporting factor when considering whether to grant planning permission to a proposal that did not follow the SDP's spatial strategy. As set out above, some (albeit limited) weight should be attached to the need for this facility.

59. The proposal satisfies almost all of the assessment criteria in SDP Diagram 4 and with regard to the issue where it does not perform well (its effect on the green network) I am satisfied that any harm would be of only localised effect. I conclude therefore that the site should be regarded as a sustainable location for the proposed development. I am also satisfied, as I set out above, that the evidence of need (particularly at a national level) is sufficiently strong to offer some additional support to the proposal.

60. LDP Policy 14 requires all development proposals to safeguard the local green network and to identify opportunities for enhancement or extension. The partial loss of priority greenspace is only to be permitted where, among other things, there would be local compensatory provision of at least equal quality and accessibility. Some of the site is

identified as priority greenspace in the supplementary guidance and I have assumed that it is to this designation, rather than that in the SDP (which does not apply to this site), that this policy relates. On that basis, the appeal proposal's incorporation of replacement tree planting provides some mitigation for the proposed tree removal, but does not satisfy the requirement for compensatory provision.

61. SPP requires the planning system to protect, enhance and promote green infrastructure including green networks and, among other things, prevent fragmentation. As set out above, when considering that part of the green network that is within the appeal site, the proposals would not satisfy these requirements.

62. Drawing all matters together, I find that there is a degree of conflict with the development plan and with one aspect of SPP, due to the loss of green infrastructure and the resultant detriment to the green network. When deciding whether this should be accepted, I have not given any weight to fact that the authority previously granted planning permission in principle to a much larger development scheme on the appeal site. This is because I must assess the current proposal on its own merits. Nevertheless, I find that the harm that the proposal would cause to the green network as a whole is very limited and I have had regard to that conclusion in deciding whether planning permission should be granted in spite of the development plan conflict.

#### *Effect on nature conservation interests*

63. The planning authority's concerns over nature conservation issues are due to the harmful substances that the proposed installation would emit and the resultant detriment that it believes would be caused to Hamilton Low Parks Site of Special Scientific Interest (SSSI) and the Black Muir Plantation Site of Importance for Nature Conservation (SINC).

64. The appellant's environmental statement acknowledges that, even after the clean-up processes it proposes to incorporate into the development, the emissions from the proposed facility would contain nitrogen dioxide, carbon monoxide, sulphur dioxide, PM10 and PM2.5 particulate matter, benzene, hydrogen chloride and trace metals. However, it predicts that there would be only a negligible to minor adverse effect on the SSSI and SINC, which would be a result of nutrient nitrogen deposition. A planning condition is proposed, which would require the installation of an ammonia slip catalyst to address this.

65. The planning authority contends that this acknowledged harmful impact, despite being of negligible to minor significance, brings the proposal into conflict with LDP Policy 15, because that policy commits the council to seeking to protect important sites from adverse impacts resulting from development. I do not agree with that assessment. SSSIs are Category 2 sites in Table 6.1 and SINC's fall within Category 3. For such assets, Policy 15 states (for Category 2 sites) that, following mitigation, development will be permitted where the objectives of the designation and the overall integrity of the area can be shown not to be compromised and (for Category 3 sites) where there would be no significant adverse impact. All of the available evidence, which neither the planning authority or any agency with nature conservation responsibility has refuted, confirms that the effects on these nature conservation interests would not be significant and would not threaten the objectives of the designation and the overall integrity of the area. The proposal is not therefore in conflict with LDP Policy 15. It also satisfies the requirements of the Natural and

Historic Environment supplementary guidance to avoid adversely affecting the integrity of a designated SSSI or compromising the objectives of a locally designated area.

### *Other matters*

66. Many local residents are concerned that large vehicles delivering waste to the proposed facility and taking recyclable material away would be harmful to road safety, would cause congestion and generate harmful levels of emissions. However, the proposal would add only approximately 1% to morning and evening peak traffic flows on the A725 and the appellant is willing to carry out site access improvements specified by the roads authority. I agree with Transport Scotland, the roads authority and SEPA that the impact of additional traffic generated by the proposed development would have no significant effects on traffic congestion, road safety or on the living conditions of local residents.

67. Some concern has been expressed over the effect the proposal would have on the local landscape / townscape character and / or upon valued views. The appellant addressed these issues in the environmental statement and, in terms of the effect on caravan site residents, in the addendum to that statement. No specific assessment of the proposed noise fence / bund was made in those documents, as this was a late addition to the scheme. However, sufficient details of the height and location of this feature were provided for me to assess its likely environmental effects. Because of the existing and proposed tree screening within and adjacent to the site, I am satisfied that the proposed four metre high barrier would not be visually prominent and would be compatible with the established townscape character, in which large, modern structures are a common feature.

68. The appellant estimates that the proposal would create 150 jobs during the construction period and 34 full time jobs once operational (excluding those employed in delivering waste to the site). This is a positive aspect of the scheme to which some weight should be given.

69. The waste hierarchy prioritises the prevention of waste generation. Where this is not possible, it lists other solutions in descending order of desirability as: reuse; recycling; energy recovery; and, as a last resort, waste disposal. This has significant implications for all forms of development and not just for proposals that are specifically designed to deal with waste arisings. SEPA's Thermal Treatment of Waste Guidelines 2013 provide a practical framework for applying the waste hierarchy in that they only permit waste to be used for energy generation where this would not impede waste re-use or recycling or efforts to prevent the production of waste in the first place.

70. Some opponents to the proposal allege that the appeal proposal would undermine more favourable options for waste such as reuse or recycling, contrary to the requirements of the waste hierarchy. The appellant contends the proposal is supported by the waste hierarchy because it would (through the initial autoclaving and waste sorting stages) ensure that all suitable material was recycled and then would recover energy from the remainder which would, in the absence of the proposed facility, have gone to landfill. I agree that the proposal would in fact be supportive of the waste hierarchy and with the wider aspirations of the Zero Waste Plan

## Conclusions

71. Taking all matters into consideration, I conclude, for the reasons set out above, that despite the localised adverse effect on the green network and consequent development plan conflict, this is an appropriate location for the proposed development. I find that adverse effects on local residents would not be significant and would be more than compensated for by the positive aspects of the proposal, which would include its contribution to reducing greenhouse gas emissions, its employment benefits and its contribution to Zero Waste Plan targets. Direct and indirect effects on heritage assets would be minimal. The development would therefore preserve the character and appearance of the conservation area, nearby listed buildings and their setting.

72. I conclude that the proposal satisfies almost all requirements of the development plan and that where there is conflict, this is of a minor nature and is outweighed by the positive aspects of the scheme.

73. I have not imposed all of the conditions that the planning authority requested, as some would have introduced a degree of duplication of the controls that would be exercised by SEPA under the PPC. This could have created confusion and (on the basis that SEPA's powers to regulate environmental effects under PPC are both wide ranging and effective) would have been unnecessary. In reaching that conclusion, I had regard to SEPA's objections to such duplication of controls. Bearing in mind the evidence I heard at the noise effects hearing session, and the need to ensure that efficient 24 hour operations are not undermined, I have adopted the appellant's rather than the planning authority's proposed restrictions on site deliveries in condition 8. I am satisfied from the evidence that these would not threaten the living conditions of any local resident.

*David Buylła*

Reporter

## Approved drawings

CPPL-09/00-01 – Site Location Plan  
 CPPL-09/10-02 – Proposed Site Layout with Aerial Photography  
 CPPL-09/20-01 – Proposed Section 1  
 CPPL-09/10-01 – Proposed Site Layout  
 CPPL-09/20-02 – Proposed Sections 2 (Extended)  
 CPPL-09/05\_01 – Existing Site Sections  
 CPPL-09/10-06 – Proposed Floor Plan (Levels 00 & 01) Office, Education & Reception Areas  
 CPPL-09/10-05 – Proposed Plan Roof Level  
 CPPL-09/30-01 – Proposed Elevations 1  
 CPPL-09/30-02 – Proposed Elevations 2  
 CPPL-09/10-03 – Proposed Floor Plan Level 00  
 CPPL-09/10-04 – Proposed Floor Plan Level 01

## Conditions

1. Except as may otherwise be agreed in writing by the planning authority, the development hereby approved shall be implemented in accordance with the approved drawings.

*(Reason: to ensure that the development is carried out in accordance with the approved details.)*

2. No development shall commence until the following details have been submitted to and approved in writing by the planning authority:

- the design and location of all boundary treatments including walls and fences and the proposed noise fence / bund;
- the landscaping proposals for the site, including details of existing trees and other planting to be retained together with proposals for new planting specifying number, size and species of all trees and shrubs.

*(Reason: in the interests of the appearance of the development, local biodiversity, the amenity of local residents and the Green Network.)*

3. No development shall commence on site until a full site-specific Construction Environmental Management Plan (CEMP) is submitted to and approved in writing by the planning authority. The CEMP should incorporate detailed pollution avoidance and mitigation measures for all construction elements potentially capable of giving rise to pollution including issues relating to the construction of the building, impacts on hydrogeology and disposal of contaminated land. Specifically the statement should address the following, and the construction of the development should be carried out in accordance with the agreed details:

- How contaminated land will be dealt with, treated and disposed of as necessary;
- Details of how disturbance to groundwater will be minimised, including any de-watering proposals;
- Details of the storage of construction fuels, materials, raw materials and by-products;
- Temporary SUDS measures;
- Dust mitigation measures;
- Noise mitigation measures.

*(Reason: to minimise the potential impacts from construction works.)*

4. Prior to commencement of development, a schedule of materials and finishes (including samples of such finishes where requested) for all components of the development, including ground surfaces and boundary enclosures shall be submitted to and approved in writing by the planning authority prior to the materials and finishes being used in the development. The materials and finishes used in the development shall accord with the schedule and samples so approved.

*(Reason: in the interests of amenity and in order to retain effective planning control.)*

5. All construction works carried out on site must be carried out in accordance with the current BS 5228-1:2009+A1:2014 Code of practice for noise and vibration control on

construction and open sites. All site activities, including the transportation of materials to the site, and all audible activities during the construction phase of the development hereby approved shall be limited to Monday to Friday 08.00 hours to 19.00 hours and Saturday 8.00 hours to 13.00 hours. For avoidance of doubt, no transportation of materials to the site or audible activities shall take place on Sundays. All unless otherwise agreed in writing by the planning authority. The nominal noise limit attributable to site operations during the construction phase at any noise sensitive properties within the vicinity of the site, shall not exceed 65dB LAeq over any one hour period.

*(Reason: in order to retain effective control of the development and to minimise adverse impact on the local amenity of the area.)*

6. Prior to the commencement of development, the developer shall submit a noise management plan for the written approval of the planning authority. The noise management plan shall set out additional measures to mitigate and minimise noise generated by the facility and timescales associated with their implementation. For avoidance of doubt, the noise management plan shall, as a minimum, consider the plant configuration, layout and materials of construction such that all the appropriate preventative techniques are taken against noise pollution in particular through the application of the best available techniques. Such techniques shall include but will not be limited to:

- The building envelope (walls, roof and door) should be of a “composite” rather than single skin metal cladding;
- Natural light panels and non-acoustic louvered ventilation should be avoided;
- The location of external cooling plant, diesel generator and turbine house should be positioned to take maximum advantage of any barrier effects (from site buildings) between the source and the most sensitive residential receptors; and
- The specification of reversing alarms for any vehicle delivering waste to the site or removing recyclable materials shall be of a type that minimises effects on nearby properties.

The recommendations shall be implemented within approved timescales, to the satisfaction of the planning authority.

*(Reason: to minimise the impact of noise generated by site operations and to ensure that adequate monitoring is undertaken.)*

7. No development shall commence until a detailed scheme of dust and air quality monitoring and mitigation has been submitted to and approved in writing by the planning authority. Thereafter the site operator shall abide by the terms of the approved monitoring and mitigation scheme unless otherwise agreed in writing with the planning authority. This monitoring and mitigation scheme shall provide details of:

- A dust management plan;
- Mitigation measures;
- Location of monitoring points;
- Monitoring frequency;
- Details of equipment to be used and experience of monitoring staff;
- A programme of implementation;
- Frequency of reporting the results to the planning authority;

- The process and steps to be taken in the event of a complaint regarding dust.

*Reason: to minimise dust nuisance resulting from the operations and to enable the planning authority to monitor the development and to ensure that it is carried out in accordance with the terms of this consent.)*

8. No deliveries or export of waste or other material shall take place outwith the hours of 07.00 hours to 22.00 hours weekdays and 08.00 hours to 15.00 hours on Saturdays. For avoidance of doubt, no deliveries or export of waste or other material shall take place on Sundays. All unless otherwise agreed in writing by the planning authority.

*(Reason: in order to retain effective control of the development and to minimise adverse impact on the local amenity of the area.)*

9. No development shall commence until details of a permanent wheel washing facility, including its proposed location, have been submitted to and approved in writing by the planning authority. The approved wheel washing facility shall be installed and fully operational prior to the acceptance of any waste on site and shall be retained in good working order for the duration of waste management operations on site. All HGVs shall pass through the operational wheel washing facility prior to entering the public road.

*(Reason: to prevent mud and deleterious material being carried out onto the public road.)*

10. The operator of the waste management facility shall at all times be responsible for the removal of mud or other materials deposited on the public road by vehicles entering or leaving the site.

*(Reason: to prevent mud and deleterious material being carried out onto the public road.)*

11. Prior to works commencing on the construction of the facility, the road improvements set out on Drawing CP014-001 Rev B, shall be fully implemented to the satisfaction of the planning authority.

*(Reason: in the interests of road safety.)*

12. Prior to the construction of the waste management facility, a visibility splay of 4.5 metres by 120 metres looking right from the junction of Back Avenue with Whistleberry Road shall be created and this shall be maintained free from any obstruction to visibility at all times whilst the site is used for the purposes of waste management activities.

*(Reason: in the interests of road safety.)*

13. All internal roads shall be a minimum of 6 metres in width, with a 2 metre wide footway location on at least one side of the road and a 2 metre wide verge on the other side, as required.

*(Reason: to ensure adequate provision is made for the safe passage of vehicles and pedestrians within the site.)*

14. Car parking provision shall be laid out in accordance with drawing CPPL-09/10-01, and the car parking bays shall be a minimum of 5.0 metres in length by 2.5 metres wide.

*(Reason: to ensure adequate parking provision is provided within the site.)*

15. No development hereby approved shall commence until the developer has secured the implementation of a programme of archaeological works in accordance with a written

scheme of investigation which has been submitted by the applicant and approved in writing by the planning authority. Thereafter the developer shall ensure that the programme of archaeological works is fully implemented and that all recording and recovery of archaeological resources within the development site is undertaken to the satisfaction of the planning authority.

*(Reason: in the interests of archaeology.)*

16. Not more than six months prior to the commencement of development, prestart checks shall be carried out to the satisfaction of the planning authority. The pre-start checks will investigate the presence of the following species on site and within an agreed buffer:

- Bats
- Badgers
- Reptiles
- Otters

and shall set out appropriate mitigation measures and an implementation programme, as required, which shall be carried out to the satisfaction of the planning authority.

*(Reason: in the interests of protected species.)*

17. All mitigation measures, recommendations and requirements set out in the following documents shall be implemented in full:

- Environmental Statement - Appendix 16 – Ecological Appraisal – May 2013
- Environmental Statement - Appendix 16 – Bat Activity Report – May 2013
- Environmental Statement - Appendix 16 – Preliminary Bat Report – June 2013
- Environmental Statement - Appendix 16 – Reptile Survey – June 2013

*(Reason: in the interests of protected species.)*

18. Prior to the commencement of works on site, a report prepared by a suitably qualified pest control contractor shall be submitted for written approval of the planning authority. The report shall set out mitigation measures to ensure bird and rodent activity as a result of the development is adequately controlled and shall consider the use of preventative measures wherever possible. Once approved, these measures shall be implemented to the satisfaction of the planning authority within timescales set out in the report and approved in writing by the planning authority.

*(Reason: to minimise nuisance, littering and pest problems to nearby occupants.)*

19. The loading and unloading of all waste carrying vehicles visiting the premises shall take place indoors, unless otherwise agreed in writing with the planning authority.

*(Reason: in the interests of amenity and in order to retain effective planning control.)*

20. The office accommodation hereby approved shall be used solely in connection with the use of the site as a recycling and energy recovery facility, to the satisfaction of the planning authority.

*(Reason: in the interests of amenity and in order to retain effective planning control.)*

21. The site and the surrounding land shall be kept clear of litter to the satisfaction of the planning authority and no waste shall be stored outdoors.

*(Reason: to minimise nuisance, littering and pest problems to nearby occupants.)*

22. No development shall commence on site until full details of an ammonia slip catalyst have been submitted to and approved in writing by the planning authority. The details shall include a full specification of the ammonia slip catalyst, updated predicted emission levels from the facility as a result of the installation of the ammonia slip catalyst and a further assessment of the impact of the facility on local air quality and locally designated sites. The ammonia slip catalyst shall thereafter be installed (and maintained as required) in accordance with the approved specification prior to importation of any waste to the facility to the satisfaction of the planning authority.

*(Reason: in the interests of air quality and designated sites.)*

23. Prior to the commencement of operations the noise fence / bund at the south west corner of the site, approved under the terms of condition 2 above, shall be constructed to the satisfaction of the planning authority. Within six months of the site being in operation a noise assessment shall be carried out and submitted to the planning authority demonstrating the noise levels experienced by nearby sensitive receptors. In the event that these noise levels show that the development hereby approved is operating outwith the limits set within the Pollution Prevention and Control Permit, details of further mitigation works to resolve this matter, and a timetable for their implementation, shall be submitted to the planning authority for its written approval, within two months of the date on which the noise assessment was originally submitted, and these mitigation measures shall thereafter be implemented, in accordance with the timetable approved.

*(Reason: to ensure that the noise fence / bund is effective.)*

24. The hard and soft landscaping approved pursuant to condition 2 above shall be completed to the written satisfaction of the planning authority within the first planning season following the facility first becoming operational. For a period of five years from the date of planting, any tree or shrub within the landscaping scheme which dies, is removed or becomes seriously diseased or damaged shall be replaced with a similar specimen in the first planting season following that problem first being identified.

*(Reason: in the interests of the visual amenity of the area.)*

### Advisory notes

1. **The length of the permission:** This planning permission will lapse on the expiration of a period of three years from the date of this decision notice, unless the development has been started within that period (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).

2. **Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).

3. **Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)).

4. **Display of notice:** A notice must be displayed on or near the site while work is being carried out. The planning authority can provide more information about the form of that notice and where to display it (See section 27C of the Town and Country Planning (Scotland) Act 1997 Act (as amended) and Schedule 7 to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013).



[Redacted]

---

**From:** [Redacted]  
**Sent:** 11 July 2016 15:11  
**To:** [Redacted]  
**Subject:** RE: Revocation letter

Grainne

With regard to the reference to power to revoke remaining available to the Council, that is the case so long as the requirements of section 63(3) have been met, ie the operations for which planning permission has been granted have not been completed or the use to which the planning permission relates has not taken place. I don't know if they have in this case.

[Redacted]

Regards

Olive

[Redacted]  
Scottish Government Legal Directorate  
Commercial and Business Services  
Victoria Quay G-B  
Edinburgh

Telephone [Redacted]

**This correspondence is from the Scottish Government Legal Directorate. To the extent that it may contain legal advice, it is legally privileged and therefore may be exempt from disclosure under the Freedom of Information (Scotland) Act 2002 or the Environmental Information (Scotland) Regulations 2004.**

[Now online: Right first time - the Scottish Government's practical guide to decision-making and the law](#)

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**From:** [Redacted]  
**Sent:** 08 July 2016 15:00  
**To:** [Redacted]  
**Subject:** Revocation letter

Olive – as discussed, hopefully this isnt as complicated as it sounds. I've attached the background on revocation powers which should help.

In the attached letter, the Minister has asked that we make it clear that the Council still have the power to revoke if they wish. I think we have expressed this in the most neutral way possible in the lines highlighted. I'm seeking your advice because Ministers are giving a view on powers available to the Council. But I believe this information to be correct.

The Minister wants the draft back by cop Monday, so grateful if you could get back to me with your thoughts by then.

Many thanks  
Grainne

[REDACTED] | Senior Planner | Planning Decisions | Planning & Architecture | Scottish Government [REDACTED]



The Year of Innovation, Architecture and Design 2016, running from 1 January to 31 December, is a celebration of Scotland's beautiful built heritage, culture and environment, alongside the contemporary and cutting-edge designs of today.  
#IAD2016

[Redacted]

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**From:** zzzCabinet Secretary for Social Justice, Communities and Pensioners' Rights 2014 to 2016  
**Sent:** 20 January 2016 12:30  
**To:** [Redacted]  
**Cc:** Chief Planner; [Redacted] Communications CSSE; [Redacted]  
**Subject:** Re: Lines to clear by 12:00 - Hamilton Advertiser - incinerator

Donna

Mr Neil is content to clear.

Thanks

Frances  
Sent from social justice private office blackberry

---

**From:** [Redacted]  
**Sent:** Wednesday, January 20, 2016 11:30 AM  
**To:** Cabinet Secretary for Social Justice, Communities and Pensioners' Rights  
**Cc:** Chief Planner; [Redacted] omunications Social Justice; Chief Planner; [Redacted]  
**Subject:** RE: Lines to clear by 12:00 - Hamilton Advertiser - incinerator

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted] | Media Manager | Communications Social Justice | The Scottish Government

[Redacted] | @scotgovfairer

---

**From:** [Redacted]  
**Sent:** 20 January 2016 11:02  
**To:** [Redacted]  
**Cc:** Cabinet Secretary for Social Justice, Communities and Pensioners' Rights; Chief Planner; [Redacted] Communications Social Justice; Chief Planner; [Redacted]

[REDACTED]  
**Subject:** RE: Lines to clear by 12:00 - Hamilton Advertiser - incinerator

[REDACTED]  
[REDACTED] | [Media Manager](#) | [Communications Social Justice](#) | [The Scottish Government](#)

[REDACTED] [@scotgovfairer](#)

---

**From:** [REDACTED]  
**Sent:** 20 January 2016 10:55  
**To:** [REDACTED]  
**Cc:** Cabinet Secretary for Social Justice, Communities and Pensioners' Rights  
**Subject:** RE: Lines to clear by 12:00 - Hamilton Advertiser - incinerator

---

**From:** [REDACTED]  
**Sent:** 20 January 2016 10:24  
**To:** Cabinet Secretary for Social Justice, Communities and Pensioners' Rights  
**Cc:** Minister for Housing and Welfare; Minister for Local Government and Community Empowerment; Communications Social Justice; Chief Planner; [REDACTED]  
**Subject:** Lines to clear by 12:00 - Hamilton Advertiser - incinerator

Frances

Hamilton Advertiser have approached us for a quote on another story they're doing around the pyrolysis plant. They are looking into the fact that the petition against the decision has now reached 1000 signatures, and that showmen who live on a caravan site near to the proposed plant site are worried.

For Mr Neil's information, the following quote from Cllr Monica Lennon is being used in the piece:

*Councillor Monica Lennon said: "When the Scottish Government approved the incinerator it breached its own guidance on siting in residential areas. I share the fury and concern of all my constituents, including the appalling impact on the showpeople, who were mentioned in the decision but not seen to be deserving of the 250m buffer zone the policy affords.*



[REDACTED]

---

**From:** [REDACTED]  
**Sent:** 26 November 2015 08:09  
**To:** [REDACTED]  
**Subject:** FW: C - Joint statement of opposition to Whitehill Incinerator - Monica Lennon  
**Attachments:** Joint statement on Whitehill Incinerator.pdf

Re Whitehill incinerator – request for Revocation from Councillors – being dealt with by Rosie

---

**From:** Central Enquiry Unit  
**Sent:** 19 November 2015 15:17  
**To:** Planning Decisions  
**Subject:** C - Joint statement of opposition to Whitehill Incinerator - Monica Lennon

Good afternoon

The email enquiry below was received at the Central Enquiry Unit today.

I would be grateful if you would deal with this or forward it to the appropriate person / area of business.

*You may wish to acknowledge receipt of this email to the enquirer.*

Thank you

[REDACTED]

Ext [REDACTED]

Central Enquiry Unit

**Reminder:** If this email contains a request for information please remember that the Scottish Government is required to respond to all requests for information including e-mails, within 20 working days of receipt in accordance with the Freedom of Information (Scotland) Act. [FOI Guidance](#) A leaflet '[How to Open Government](#)' is available for members of the public, the FOI unit recommend that you send a copy /link with your response.

**All FOI requests received must be registered on the FOI Tracker. Please click here to access the [FOI tracker](#) .**

If this correspondence relates to a complaint as defined in the [Complaints Handling Procedures](#) please remember that it needs to be dealt with in accordance with those procedures. Further advice on the [complaints handling process](#) is available on Saltire.



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**From:** [REDACTED]  
**Sent:** 19 November 2015 15:12  
**To:** Central Enquiry Unit; Chief Planner; DPEA; [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Joint statement of opposition to Whitehill Incinerator

- Circulation list:**  
Cabinet Secretary for Social Justice, Communities and Pensioners Rights  
Chief Planner, Scottish Government  
Chief Reporter, Scottish Government  
Leader of South Lanarkshire Council  
Chief Executive, South Lanarkshire Council  
Chief Executive, SEPA  
Cabinet Secretary for Rural Affairs and the Environment  
Muse Developments (or agent)  
Clean Power Properties (or agent)

On behalf of the signatories to the attached statement, I present this correspondence for your attention.

We looking forward to hearing from you in due course.

Regards

Monica Lennon

Councillor, Hamilton North and East  
Depute Chair of Housing and Technical Resources Committee

Tel: [REDACTED]

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Communications via the GSi may be automatically logged, monitored and/or recorded for legal purposes.

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**Circulation list:**

Cabinet Secretary for Social Justice, Communities and Pensioners Rights  
Chief Planner, Scottish Government  
Chief Reporter, Scottish Government  
Leader of South Lanarkshire Council  
Chief Executive, South Lanarkshire Council  
Chief Executive, SEPA  
Cabinet Secretary for Rural Affairs and the Environment  
Muse Developments  
Clean Power Properties (or agent)

**Joint Statement****Opposition to development of incinerator, Whistleberry Road, Hamilton**

We, the undersigned, are united in our opposition to any form of incineration facility at the above site. We believe this to be the overwhelming view of local residents and we are seeking to represent and reflect their concerns to the best of our ability.

The community has campaigned against the development with dignity and integrity for over two years. Planning Officials at South Lanarkshire Council recommended the application be refused and on 28 May 2014 South Lanarkshire Council Planning Committee unanimously refused planning permission. We believe this was the right decision and on behalf of our constituents, all of us are committed to working together to defeat this development.

As the developer appealed this decision, the Scottish Government appointed an Inquiry Reporter to determine whether the appeal should be upheld or rejected. The Reporter upheld the appeal and planning permission was granted in August 2015.

We are encouraged that the Cabinet Secretary has since expressed regret for the circumstances surrounding the case, a matter which he has raised with the Chief Reporter. We believe the revocation provisions set out in Sections 65-68 of the Planning Act present a potential opportunity to remedy this regrettable situation.

We, the undersigned, are therefore calling on the Scottish Government and South Lanarkshire Council to work together to establish how best to implement these revocation provisions.

In order to progress this we are calling for a meeting to take place at the earliest opportunity between the Scottish Government represented by Cabinet Secretary for Social Justice, Communities and Pensioners' Rights, Alex Neil, and South Lanarkshire Council Leader Eddie McAvoy and supporting officials. Margaret Mitchell MSP has been nominated to act as chair.

We are copying this letter to the landowner and the developer to inform them of our strong opposition to the development and include SEPA for the same reason. We believe the site is not a suitable location for incineration processes due to its close proximity to residential properties, particularly the residences of the show people who have been badly let down by the appeal decision.

We look forward to working in partnership with the Scottish Government and South Lanarkshire Council towards revoking the planning permission and hope our request will be received in the constructive and collaborative spirit in which it is intended.

Yours sincerely

Councillors: Maureen Devlin, Anne Kegg, Monica Lennon, Jim McGuigan, Davie McLachlan

MSPs: Richard Lyle, Michael McMahon, Margaret Mitchell

MPs: Angela Crawley

HERAG: Phil Sykes

19 November 2015

[Redacted]

**From:** [Redacted]  
**Sent:** 20 November 2015 11:14  
**To:** [Redacted]  
**Subject:** FW: Meeting- Incineration facility- Whistleberry Road  
**Attachments:** Meeting\_AGENDA\_WhistleberryRoadIncinerationFacility.docx

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**From:** [Redacted]  
**Sent:** 18 November 2015 14:26  
**To:** Cabinet Secretary for Social Justice, Communities and Pensioners' Rights  
**Subject:** FW: Meeting- Incineration facility- Whistleberry Road

For advice and reply draft please

---

**From:** [Redacted]  
**Sent:** 18 November 2015 09:33  
**To:** [Redacted]  
**Cc:** [Redacted]  
**Subject:** FW: Meeting- Incineration facility- Whistleberry Road

Dear Alex

At the most recent public meeting to discuss the Whistleberry incinerator, held on Wednesday 11<sup>th</sup> November 2015, I was tasked to contact you as the Cabinet Secretary for Social Justice, Communities and Pensioners Rights and Councillor Eddie McAvoy, Leader of South Lanarkshire Council, to request a meeting between yourself and Cllr. McAvoy and any relevant officials.

I was asked to chair this meeting which, apart my from opening and closing the meeting, would have only one other item on the agenda for discussion namely:  
The possibility of using revocation provisions in S65-68 of The Town and Country Planning (Scotland) Act 1997 in terms of the planned incineration facility at Whistleberry Road.

I confirm that Cllr McAvoy has agreed to the meeting and indicated that a Monday would be a convenient day for him to meet. If you also are agreeable to the meeting taking place, I'd be grateful if you would give an indication of dates that suit you.

As you will appreciate, it was hoped that this meeting could take place as soon as possible.

Best wishes

Margaret

\*\*\*\*\*

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# **Meeting- Proposed Incineration Facility, Whistleberry Road**

## **AGENDA**

1. Welcome
2. Discussion of revocation provisions in the Town and Country Planning (Scotland) Act 2007 regarding the proposed incineration facility at Whistleberry Road, Hamilton.
3. Close meeting

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** 20 November 2015 12:52  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Joint statement of opposition to Whitehill Incinerator - Monica Lennon  
**Attachments:** Joint statement on Whitehill Incinerator.pdf

Hi all.

In addition to this joint statement, we have another 5 individual letters in Marion's MACCS in-box requesting that the Cabinet Secretary invoke SMs powers of revocation. A good line would be appreciated once we have concluded our approach.

Cheers

I

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**From:** [REDACTED]  
**Sent:** 20 November 2015 06:54  
**To:** [REDACTED]  
**Subject:** FW: C - Joint statement of opposition to Whitehill Incinerator - Monica Lennon

Iain/

This was sitting in the planning decisions in-box used for notifications.

---

**From:** Central Enquiry Unit  
**Sent:** 19 November 2015 15:17  
**To:** Planning Decisions  
**Subject:** C - Joint statement of opposition to Whitehill Incinerator - Monica Lennon

Good afternoon

The email enquiry below was received at the Central Enquiry Unit today.

I would be grateful if you would deal with this or forward it to the appropriate person / area of business.

*You may wish to acknowledge receipt of this email to the enquirer.*

Thank you

[REDACTED]

Ext [REDACTED]

Central Enquiry Unit

**Reminder:** If this email contains a request for information please remember that the Scottish Government is required to respond to all requests for information including e-mails, within 20 working days of receipt in accordance with the Freedom of Information (Scotland) Act. [FOI Guidance](#) A leaflet '[How to Open Government](#)' is available for members of the public, the FOI unit recommend that you send a copy /link with your response.

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**From:** [REDACTED]  
**Sent:** 19 November 2015 15:12  
**To:** Central Enquiry Unit; Chief Planner; DPEA; [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Joint statement of opposition to Whitehill Incinerator

- Circulation list:**
- Cabinet Secretary for Social Justice, Communities and Pensioners Rights
  - Chief Planner, Scottish Government
  - Chief Reporter, Scottish Government
  - Leader of South Lanarkshire Council
  - Chief Executive, South Lanarkshire Council
  - Chief Executive, SEPA
  - Cabinet Secretary for Rural Affairs and the Environment
  - Muse Developments (or agent)
  - Clean Power Properties (or agent)

On behalf of the signatories to the attached statement, I present this correspondence for your attention.

We looking forward to hearing from you in due course.

Regards

Monica Lennon

Councillor, Hamilton North and East

Depute Chair of Housing and Technical Resources Committee

Tel: [REDACTED]

The original of this email was scanned for viruses by the Government Secure Intranet virus scanning service supplied by Vodafone in partnership with Symantec. (CCTM Certificate Number 2009/09/0052.) This email has been certified virus free.

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Communications via the GSi may be automatically logged, monitored and/or recorded for legal purposes.

\*\*\*\*\*

This email has been received from an external party and

has been swept for the presence of computer viruses.

\*\*\*\*\*

[Redacted]

**From:** [Redacted]  
**Sent:** 02 December 2015 12:45  
**To:** [Redacted]  
**Cc:** [Redacted]  
**Subject:** RE: Whitehill incinerator, Hamilton

Iain, we can assume that the answer is definitely no to revocation – Mr Neil signed off the letter that went to SLC last week. So you can work on replies on the basis of that letter. I take it you have a copy of it? Grainne would know where it is but I've done a major inbox cull today so I don't seem to have it, sorry.

R

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**From:** [Redacted]  
**Sent:** 02 December 2015 12:19  
**To:** [Redacted]  
**Cc:** [Redacted]  
**Subject:** Whitehill incinerator, Hamilton

Hi all.

I know we are awaiting further deliberations, but we have 5 individual MACCS cases requesting Ministers' revocation of planning permission for the Hamilton incinerator. The first 3 are for this Monday coming. I'm fine to issue these replies on the day, but just flagging up in case you still have actions in relation to deciding on our formal response and given working patterns over Thursday/Friday.

| [Redacted] | Assistant Planning Decisions Manager | Planning & Architecture | Scottish Government | [Redacted]

General Planning Decisions enquiries can also be directed to: [planning.decisions@gov.scot](mailto:planning.decisions@gov.scot)



[REDACTED]

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**From:** [REDACTED]  
**Sent:** 04 December 2015 10:20  
**To:** [REDACTED]  
**Subject:** FW: ORAL PQ Answers  
**Attachments:** s4o-04816.docx; s4o-04816\_backgroundnote.docx

See Grainne's background note for the reply to the MACCS cases

M

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**From:** pqt@scotland.gsi.gov.uk [mailto:pqt@scotland.gsi.gov.uk]  
**Sent:** 19 November 2015 12:01  
**To:** [REDACTED]  
**Subject:** ORAL PQ Answers

Please find attached, the answers to the ORAL PQs processed on 19/11/2015:-

S4O-04816

[REDACTED]

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**From:** [REDACTED]  
**Sent:** 04 December 2015 13:49  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Whitehall Incinerator  
**Attachments:** Revocation draft letter - Hamilton Incinerator.docx

Hi Jane.

We currently have 5 MACCS nearing deadlines querying, or asking Ministers' to revoke PP. I've done a draft which can be adapted to address the different letters.

However, it might be good to see the letter that Grainne drafted for Mr Neil that went back to the SLC. I recall seeing the original letter from the Council but, to my knowledge, neither myself or Marion were copied into a reply, so if you have access could you send on to me please?

In any case, could you have a swift peruse of what I have drafted so far to check that is seems appropriate.

Thanks

|  
[REDACTED] Assistant Planning Decisions Manager | Planning & Architecture | Scottish Government | [REDACTED]

General Planning Decisions enquiries can also be directed to: [planning.decisions@gov.scot](mailto:planning.decisions@gov.scot)



## Hamilton Incinerator

Thank you for your e-mail/letter of ..... to the Cabinet Secretary for Social Justice, Communities and Pensioners' Rights in relation to the planning application for a Waste Processing and Resource Recovery Facility, at Whistleberry Road, Hamilton, South Lanarkshire. As you are aware, this application was granted by Ministers on appeal, under delegated powers, on 14 August 2015.

I acknowledge your concerns and note your request for clarification about Scottish Ministers position in relation to the revocation of planning permission. I can confirm that Ministers' do have a power, under section 68 of the 1997 planning act, to revoke any planning permission. Planning authorities have similar powers of revocation under section 65 of the same act. Revocation can only take place after an application has been granted permission and can only be used before the development in question is complete.

If consent was to be revoked, whether by planning authorities or Scottish Ministers', there would be a requirement for compensation to be paid by the planning authority and this is a significant factor in any consideration of the use of revocation powers. In consequence, Ministers' would only consider using this particular power in exceptional circumstances. As a result, these powers are rarely used by Ministers'

I can confirm that Scottish Ministers' have received several requests to revoke this particular planning permission, have given due consideration to these requests, but do not propose to revoke the consent granted on 14 August.

[Redacted]

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**From:** [Redacted]  
**Sent:** 04 December 2015 14:16  
**To:** [Redacted]  
**Cc:** [Redacted]  
**Subject:** FW: Letter from the Cabinet Secretary for Social Justice, Communities and Pensioners' Rights Alex Neil MSP

Iain

Letter that issued is below.

H

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**From:** [Redacted]  
**Sent:** 25 November 2015 15:47  
**To:** [Redacted]  
**Subject:** FW: Letter from the Cabinet Secretary for Social Justice, Communities and Pensioners' Rights Alex Neil MSP

For info

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**From:** [Redacted] **On Behalf Of** Cabinet Secretary for Social Justice, Communities and Pensioners' Rights  
**Sent:** 25 November 2015 15:33  
**Subject:** Letter from the Cabinet Secretary for Social Justice, Communities and Pensioners' Rights Alex Neil MSP

Good-afternoon,

Please see attached letter from Mr Neil in relation to the Whistleberry Road incinerator.



Letter from Alex  
Neil MSP 25 Nov...

Kind regards,

[Redacted]

Assistant Private Secretary (Correspondence) to **Alex Neil MSP**  
Cabinet Secretary for Social Justice, Communities and Pensioners' Rights  
[Redacted] | [CabSecSJCPR@gov.scot](mailto:CabSecSJCPR@gov.scot) | [www.gov.scot](http://www.gov.scot)  
1W.11 | St Andrew's House | Regent Road | Edinburgh | EH1 3DG

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Councillors: Monica Lennon, Maureen Devlin, Anne Kegg, Jim McGuigan,  
Davie McLachlan  
MSPs: Richard Lyle, Michael McMahon, Margaret Mitchell  
MPs: Angela Crawley  
HERAG: Phil Sykes



25 November 2015

*Dear Councillor Lennon*

Thank you for your letter of 18 November 2015, received by email, requesting a meeting to discuss the Whistleberry Road incinerator, Hamilton. I wish to clarify the role of Scottish Ministers in this instance.

In keeping with the vast majority of appeals, the decision was made (in this case to grant permission) by an independent reporter appointed to do so. Ministers intervene in planning applications or appeals very rarely and only where a proposal raises issues of genuine national importance. The decision on this appeal was final, subject to the right of any aggrieved party to appeal to the Court of Session within 6 weeks of the date of the decision. No appeal was made to the court during that time.

As noted above, Ministerial involvement in planning appeals is generally very limited and decisions are mainly made by a reporter as the most efficient means of handling appeals. In discussion with the Chief Reporter I have put in place new arrangements to ensure that in future, appeals relating to proposed incinerators will be brought to Scottish Ministers attention. This will allow them to consider whether they wish to make the final appeal decision rather than allowing this to be made by reporters.

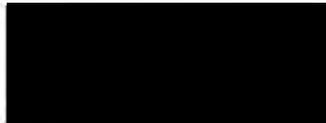
While Scottish Ministers have similar powers to planning authorities to revoke a consent, under section 68 of the of the 1997 planning act, Ministers must also act reasonably. The reporter appointed to determine the appeal did so in accordance with the development plan, taking into account all representations made by parties involved in this appeal and his decision notice gave detailed consideration to the issues raised. Having regard to the development plan the reporter considered that the determining issues in this appeal were whether there was a need for the proposal, and whether it would have acceptable effects on the living conditions of nearby residents; the historic environment; the green network; and nature conservation interests.

Furthermore Ministers are mindful of the fact that any compensation would be payable by the planning authority, even if Ministers were to revoke the consent. Such compensation is likely to be significant, and would have the potential to affect budgets for other local authority services.

Following our meeting on the 27 October 2015, where the issue of the use of section 65 of the planning act was raised by Councillors, I wrote to South Lanarkshire Council on 3rd November to invite the Council to confirm whether or not it proposed to take steps to revoke the permission using these powers. The Council's response addressed the way in which the planning issues had been considered in the appeal process, and indicated that the Council does not propose to revoke the consent at this time.

Revocation powers are used sparingly and Ministers will exercise the power to issue a revocation order only in exceptional circumstances. In light of all of the above, I confirm that Ministers do not propose to use their revocation powers in this case.

Having already met with local representatives to discuss the process, and given the above position, I do not think that a further meeting would be beneficial.



**ALEX NEIL**

**CC:** Chief Reporter, Scottish Government  
Leader of South Lanarkshire Council  
Chief Executive, South Lanarkshire Council  
Chief Executive, SEPA  
Cabinet Secretary for Rural Affairs and the Environment  
Muse Developments (or agent)  
Clean Power Properties (or agent)