



Heads of Planning Scotland Energy and Resources Sub-Committee

# **Position Statement on the Role of Environmental Clerk of Works within the Planning System**

Endorsed by



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# Purpose of the Position Statement

The Position Statement seeks to:

1. define the role and remit of Environmental Clerks of Works;
2. identify the benefits of this role in implementing environmental mitigation and enhancement securing through planning consents;
3. establish best practice in terms of resourcing and managing the role within developments;
4. develop a standardised planning condition template;
5. establish consistent and transparent reporting mechanisms to consenting and regulatory bodies; and
6. identify further actions and capacity building required to support the implementation of this Position Statement.

The Environmental Clerk of Works Working Group has considered the nature of the issues, known best practice, current and historical challenges and emerging issues and sought to identify what further actions are needed to address potentially significant environmental risks associated with the failure to implement environmental mitigation and enhancement within developments.

Effective implementation of environmental mitigation and enhancement is essential if we are to address the climate and nature crises. We have well-established design and planning processes, backed up by strong planning policy to deliver this. For these to succeed we need effective on-site implementation, long term maintenance and management, and appropriate monitoring to be delivered in practice.

Many developments propose environmental mitigation, and now enhancement, with regulators and developers committing considerable time and investments to secure these. It has been recognised for some time by Planning Authorities, statutory agencies, professional bodies and developer interests that the implementation of projects on the ground is failing to deliver the required environmental mitigation and enhancement.

A key tool in assessing and monitoring the on-site implementation of planning conditions is the role of an Environmental Clerk of Works (EnvCoW). In recent years, the Association of Environmental Clerk of Works (AECOW) has sought to engage stakeholders as they consider that the role of an EnvCoW may not be fully understood and/or under-utilised by Consenting Authorities and appointed in ways that undermine the potential benefits of an EnvCoW. AECOW presented to the HOPS Climate Change, Energy and Resources Sub-Committee outlining their remit to further promote a better understanding of the EnvCoW role within the planning system. Following this the Working Group was formed with the aim of providing a guidance note on the general role of an EnvCoW and, specifically when and why it should be used within the planning system.



The Working Group found that there was confusion in relation to the role of EnvCoW in relation to other Environmental Specialists including Ecological Clerk of Works which are often specialised and have different responsibilities. It was agreed that a Position Statement would be developed setting out the role of an EnvCoW, what it is not, when it should be employed within the planning system and the rationale behind its use. It was also agreed an example condition may also provide further clarity in the use of EnvCoW by Planning Authorities (Appendix A).

It was considered that as AECOW were also in discussions with other bodies about other consenting regimes the paper should focus solely on providing clarity on the EnvCoW role and its use within the Planning System whilst recognising there will be some interaction with other regulatory bodies.



# Planning Policy

National Planning Framework 4 (NPF4) marks a step change in the need to address the climate and nature emergencies when determining planning applications. It contains a number of policies that will result in increased environmental mitigation and enhancement being secured within planning consents. A selection of these include:

- Policy 2 Climate mitigation and adaptation;
- Policy 3 Biodiversity;
- Policy 4 Natural Places;
- Policy 5 Soils;
- Policy 6 Forestry, woodland and trees;
- Policy 20 Blue and green infrastructure;
- Policy 22 Flood risk and water management.

Securing the positive planning policy context for addressing the climate and nature crises has been an essential first step. We now need to follow through by ensuring effective on-site implementation delivers its ambition.

The Scottish Government states that the “...*successful implementation and delivery of NPF4, over its lifetime, is of crucial importance. This will rely on a number of delivery partners and stakeholders, working together, to make this happen.*” A key aspect of this is securing the on-site implementation of any proposed environmental mitigation and enhancement.

It is evident from the Working Group’s research that there is a lot of good work being undertaken around the country by individual planning authorities and at national level to address many of these issues. However, it is also apparent that there is a general lack of skills, knowledge and expertise in planning authorities in this field and an absence of clear advice to assist practitioners. The Position Statement is the initial attempt at providing a consolidated guidance/best practice note on the subject.

# Definition of an EnvCoW And What It Is Not

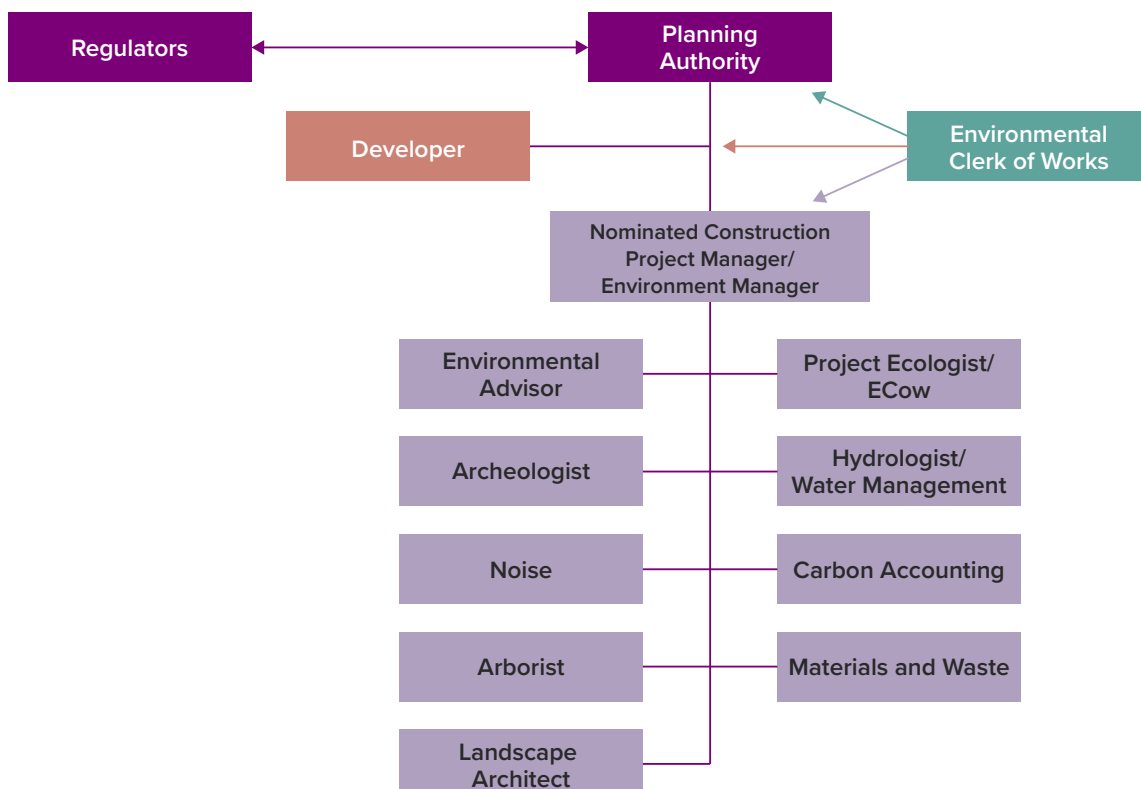
An EnvCoW is defined as:

***“An environmental professional that is responsible for monitoring, and reporting, environmental compliance”.***

An EnvCoW’s role is therefore solely to monitor and report on environmental compliance during the construction phase of a development project. An EnvCoW will report on either the ongoing compliance of the works or where compliance is not being carried out.

An EnvCoW is not responsible for delivering or ensuring compliance and it is not empowered to issue instructions onsite, or design or implement mitigation or enhancement. The project delivery team is entirely responsible for meeting the project’s environmental obligations. This is achieved through engaging with Environment Manager’s, Environmental Advisors, Environmental Engineers, Ecological Clerk of Works/Project Ecologists or other technical specialist roles (see Figure 1).

Figure 1: Example of Recommended Project Organisational Structure



Whilst sometimes referenced as part of the mitigation set out within an Environmental Impact Assessment Report, the EnvCoW role is monitoring and reporting only and is not involved in the design, or implementation of any mitigation. An EnvCoW is for independent monitoring and reporting and is not part of the project team. The suggested model planning condition below makes this distinction clear to the developer if utilising an EnvCoW through a planning permission.

Should a report of non-compliance be submitted to the Planning Authority or other regulatory bodies, it is not the role of the EnvCoW to take action beyond notifying the project delivery team and the responsibility remains with the Planning Authority or other regulatory bodies, to take Enforcement Action in relation to non-compliance.

The EnvCoW also does not fulfil the specific role of a Planning Monitoring Officer who monitor all aspects of the development in relation to a planning permission. The EnvCoW's remit is limited solely to environmental compliance. It is recommended that the EnvCoW reports to the Planning Monitoring Officer or equivalent within the Planning Authority to ensure that their roles complement each other and work together closely.





# The Benefits of the Use of EnvCoW in Planning

The EnvCoW system allows the independent gathering of compliance data to inform the Planning Authority if the project is being built in accordance with the environmental mitigation and enhancement, as approved, and reports any non-compliance, as well as any exceedance of the predicted impacts of the construction or planning permission (or other consenting regime). As the EnvCoW is a specialist in relation to environmental monitoring, the report of any non-compliance is expected to be clear in what the breach is, and its potential impacts, which allows the Planning Authority clarity in terms of assessing, and subsequently taking, proportionate action.

The EnvCoW provides information to the Planning Authority to enable the Planning Authority to determine whether they are the Competent Authority in terms of non-compliance or whether it would fall within the remit of another body, such as SEPA.

Research demonstrates that monitoring raises reputational concerns and consequently leads to more acceptable outcomes.<sup>1</sup> Independent compliance monitoring creates a feedback loop, for both the project, and stakeholders, including the Planning Authority. If reports are recorded on publicly available portal, industry and the impact assessment community, will be able to make informed assessments, and decisions, on the effectiveness of mitigation that has been implemented and compliance of the project, and about future projects.

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1 2016, Kratky, J, et al. *It Depends Who's Watching You: 3-D Agent Cues Increase Fairness*. Source: <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0148845>

# When an EnvCoW Should be Used in Planning

Currently there is no set guidance on the use of EnvCoW within the planning consenting process however with the increased requirement to address climate and nature within NPF4 this may change. It is considered that the use of EnvCoW should be discretionary and only be used when relevant. Whilst EnvCoWs would be funded by developers, the terms of employment and management need to be agreed in such a way that they ensure impartiality and transparency. For example, some Local Authorities pay for the EnvCoW services directly and then invoice the developer.

As outlined above, there are several benefits that the use of an EnvCoW can support Planning Authorities, but as with every planning condition (Circular 4/1998), the use of an EnvCoW must be considered to be:

- Necessary;
- Relevant to planning;
- Relevant to the development to be permitted;
- Enforceable;
- Precise;
- Reasonable.

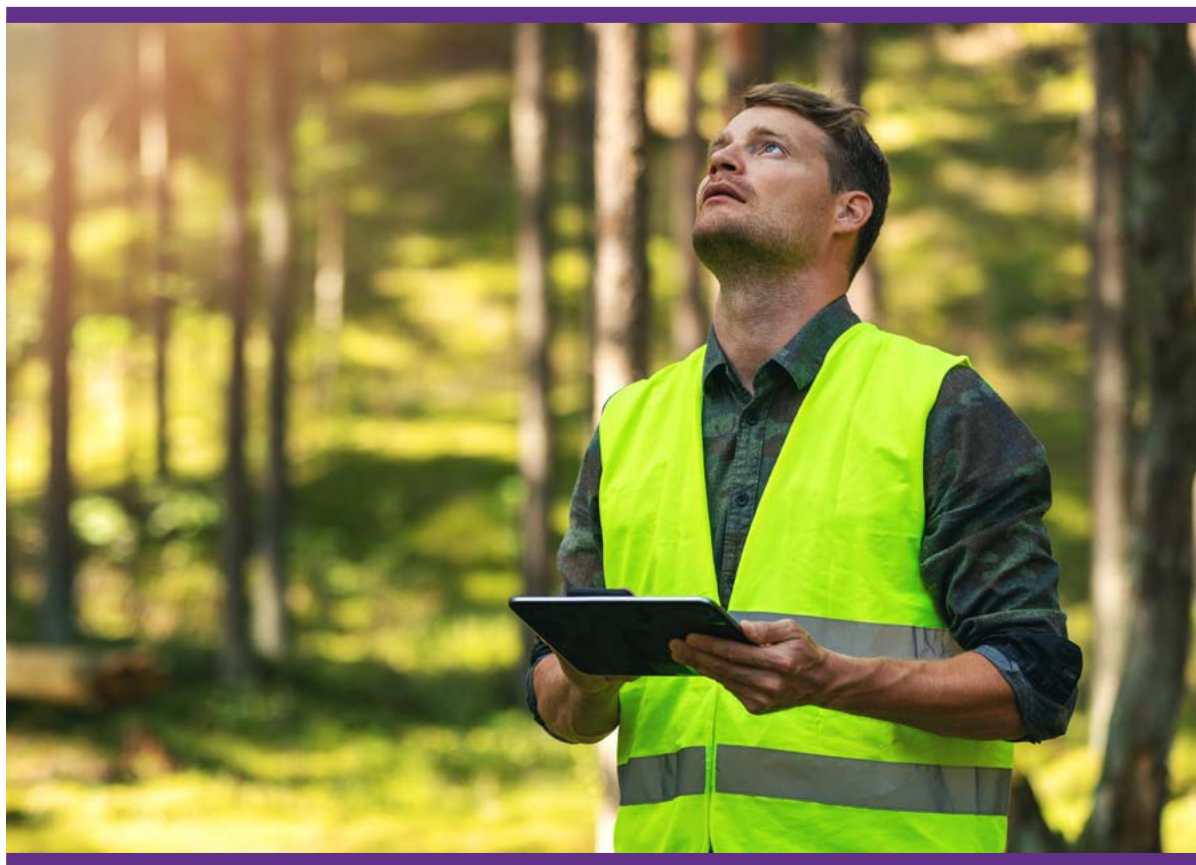
It is expected that a planning officer would apply judgement on the proportionality of an EnvCoW, this guidance suggests that when two or more of the following regulatory regimes/permits apply during the construction phase, an EnvCoW should be considered to monitor the developments compliance to them. It is suggested that Planning Permission would be the first regulatory requirement and therefore other, second regulatory regimes may include:

- Licence under The Water Environment (Controlled Activities) (Scotland) Regulations 2011;
- Protected species mitigation licence (or the potential to require);
- Pollution Prevention and Control Permit;
- Applications under Section 36/37 of the Electricity Act 1989;
- Roads (Scotland) Act 1984.

In terms of applications under the Electricity Act, it is suggested that an EnvCoW condition should be imposed on the Deemed Planning Permission part of the consent, so it is within the remit of the Planning Authority. The suggested condition wording in Appendix 1 is based on an Energy Consents Unit model condition.

Other considerations for when to utilise an EnvCoW may relate to a site's location within or adjacent to an area designated for its ecological importance where the planning permission has been predicated on specific construction methods to minimise any impact to the integrity of the designation.

Whilst not all EIA developments would definitely benefit from an EnvCoW, again, given the planning permission would be predicated on specific construction methods to minimise environmental impact, it is suggested that an EnvCoW should be considered on a case-by-case basis and a precautionary approach should be taken in determining this.



# Reporting Process

The EnvCoW will report to the Consenting Body(s) and the project simultaneously at least once a month but more frequently during high risk activities or on larger or more sensitive sites, so that if non-compliance is reported, action can be carried out in a timely manner to limit any potential impacts.

EnvCoW reports should be sent to the Planning Authority and any other Consenting Authority at the same time as the contractor / developer, and be uploaded to the publicly available eplanning system as per the normal discharge of planning conditions. This ensures the reports are public, so a fair and transparent feedback loop is created for all parties involved.

As with any breach or non-compliance of planning permission, it is for the Planning Authority to consider the appropriate course of action as set out within Circular 10/2009 Planning Enforcement.

To target a proportional approach to onsite presence, it is suggested that the applicant shall provide the Planning Authority with a programme of construction related activities, the EnvCoW and the Planning Authority shall then identify high risk activities and the duration, and frequency, of the EnvCoW site visits.

The EnvCoW and the Planning Authority shall agree the frequency of visits, but as a guide, a minimum of one EnvCoW visit every week is required increasing to daily visits during high-risk activities as identified in the programme provided.

The project should provide evidence to the Planning Authority that the EnvCoW findings have been addressed in a timely manner, to limit any potential impacts.



# Next Steps

Securing the role of EnvCoWs is an essential first step in supporting the successful implementation of planning consents whilst addressing the nature and climate challenges. This Position Statement aims to support Planning Authorities to do this.

In tandem with this, there are number of actions that Key Agencies and other bodies can take to help facilitate the work of EnvCoWs. These actions include:

- capacity building around the design and assessment of environmental mitigation and enhancement both within the development industry, planning authorities, contractors and other bodies;
- develop a programme of stakeholder communication and training events to promote this Position Statement and support its effective implementation;
- Statutory Consultees, Planning Authorities and other relevant organisations to provide guidance on the need for clear site plans and environmental information that can be referenced within schedules of mitigation and planning conditions thus enabling clear monitoring and enforcement during construction; and
- updating this position statement and other relevant guidance once the Scottish Government have determined how Policy 3 Biodiversity will be assessed and monitored in the long term. This includes the provision of detailed guidance on site visits, and reporting, frequencies, which will be contingent on nature and scale of developments, as well as defining low, medium, high risk construction activities.

These actions will be taken forward separately by the respective bodies.

# Conclusion

This Position Statement seeks to set out the role of an EnvCoW, how and when it should be employed within the planning system and the rationale behind its use. As practice evolves, we may seek to update this or for it to developed into wider government guidance. We recommend that Planning Authorities follow this guidance in the interim and we shall provide an update as required.

The Position statement has taken into account and incorporated, where appropriate, the views of those who responded to the consultation undertaken with Planning Authorities, NatureScot, SEPA and AECOW. We would like to thank everyone who made a contribution.

The Working Group would particularly like to express our appreciation for the input from AECOW and their willingness to continue working with HOPS to develop best practice.

The Working Group hope that the Position Statement provides a useful guidance note for practitioners in what is an incredibly complex and difficult area of planning activity.

The Position Statement is, by its nature, a work in progress and a statement of where we are at this moment in time. It is clear that additional work and research is required into monitoring the on-site implementation of environmental mitigation and enhancement and the guidance will be modified to take account of evolving best practice.



# Appendix A: Model Condition

## Environmental Clerk of Works

1. There shall be no Commencement of Development unless and until the terms of appointment of an independent Environmental Clerk of Works (“EnvCoW”) by the Company have been submitted to, and approved in writing by, the Planning Authority. The terms of appointment shall:
  - a. impose a duty to monitor compliance with the environmental commitments provided in the EIA Report, any micrositing under condition [10], the Construction and Environmental Management Plan approved under condition [13], the Habitat Management Plan approved under condition [18], [any species or habitat management plans identified in the EIA Report],<sup>2</sup> [and other plans approved under condition[s] ]<sup>3</sup> (“the EnvCoW works”);
  - b. require the EnvCoW to report to the nominated construction project manager, developer and Planning Authority any incidences of non-compliance with the EnvCoW works at the earliest practical opportunity;
  - c. require the EnvCoW to submit a monthly report to the construction project manager, developer and Planning Authority summarising works undertaken on site; and
  - d. Shall require a statement that the EnvCoW shall be engaged by the Planning Authority but funded by the developer.

The EnvCoW shall be appointed on the approved terms throughout the period from Commencement of Development to completion of construction works and post-construction site reinstatement works.

2. No later than 18 months prior to the Date of Final Generation or the expiry of this consent (whichever is the earlier), details of the terms of appointment of an EnvCoW by the Company throughout the decommissioning, restoration and aftercare phases of the Development shall be submitted to the Planning Authority for written approval.<sup>4</sup> The EnvCoW shall be appointed on the approved terms throughout the decommissioning, restoration and aftercare phases of the Development.

**Reason:** To secure effective and transparent monitoring of and compliance with the environmental mitigation and management measures associated with the Development during the construction, decommissioning, restoration and aftercare phases.

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2 Any such plans should be named.

3 Add any other relevant plans/schemes in the conditions, e.g. species protection plan, bird protection plan.

4 Consider if consultees are required.

