Heads of Planning Scotland

Edward Mountain MSP
Convener
Net Zero, Energy and Transport Committee

28th November 2025
Potential Impacts arising from the proposed Ecocide (Scotland) Bill

Dear Mr Mountain,

Thank you for your letter regarding the Ecocide (Scotland) Bill on the 11th of November 2025 requesting our views on how the Bill might affect the fulfilment of statutory functions of local authorities.

Heads of Planning Scotland (HOPS) is the representative organisation for senior planning officers from Scotland's local authorities and national park authorities. Due to the quick response time, we note that the issues identified below are only the initial thoughts of the HOPS chairs, and our organisation sees benefit in further discussion.

Consultation

Firstly, it is of concern that despite consultation being undertaken, it is clear from the consultation responses and analysis that local authorities and industry and professional bodies are largely unaware of this potential bill, only Glasgow City Council have responded, and there is little, if any, representation of professional or industry bodies who would be impacted by this bill. For example, there is no response noted from HOPS, Royal Environmental Health Institute of Scotland (REHIS), Society of Local Authority Lawyers and Administrators in Scotland (SOLAR) or from Convention of Scottish Local Authorities (COSLA). It is considered that this consultation was not widely publicised, and this can be seen from the types of responses received. We would encourage Net Zero, Energy and Transport Committee to ensure that relevant industry and professional bodies have input into the proposed bill.

Summary of proposals

The proposed bill would introduce a new criminal offence of "Ecocide" which is defined as causing severe environmental harm intentionally or recklessly. The offence would apply to individuals and organisations and there are no explicit exemptions for public authorities or consented/licensed activities.

Implications

Broadly, the rational for the bill is to be welcomed. Environmental harm that is wilful and neglectful should be statutorily protected and with this bill making such harm a criminal offence, it is a clear commitment to the protection of the natural environment.

The meaning of Environmental Harm for the purposes of the bill has the same meaning of Environmental Harm in the Regulatory Reform (Scotland) Act 2014 which sets out that one or more of the following must apply:

a) harm to the health of human beings or other living organisms
b) harm to the quality of the environment, including—(i) harm to the quality of the environment taken as a whole, (ii) harm to the quality of air, water or land, and (iii) other impairment of, or interference with, ecosystems
c) offence to the senses of human beings

d) damage to property, or (e) impairment of, or interference with, amenities or other legitimate uses of the environment.

The bill describes environmental harm as 'severe' if it has serious adverse effects and is either a) widespread or b) long term. Widespread means it extends beyond a limited geographical area to impact on an ecosystem or species or a significant number of human beings, either directly or indirectly. Long term means that it is irreversible or is unlikely to be reversed through a process of natural recovery within 12 months of the environmental harm occurring.

However, despite this broad support for the rational of the bill, clear areas of concern arise for a public authority. The bill, as presented, does not provide any statutory protection for harm arising from activities approved under planning permission, SEPA permits or NatureScot licenses. There is therefore a risk of criminal liability for operators acting under valid consents or authorities granting consents. Whilst it is assumed that there would be a high bar in terms of proving intentional or reckless harm, this still presents a risk to the decision-making process, and it is unclear as to how broadly the meaning of environmental harm could be interpreted under the new statutory offence.

A Planning Authority is likely to face heightened scrutiny and liability for development that could have long term or cumulative impacts. All planning applications currently consider impact on the environment, there is strong local and national policy framework in place and other legislation, such as EIA, exist. The impact of a development is considered during the assessment of an application. As with all planning decisions, it is for the decision maker to balance the negative impacts of the development with its positive impacts, with all decisions being taken in the longer-term public interest. It is unclear how this bill would interact with the decision-making process, but it would likely result in decision makers, both delegated and by members, taking a far more cautious approach. This could have a potentially chilling effect on development and economic growth if planning becomes overly precautionary. This may be at odds with other government agendas and growth aspirations.

It is conceivable that a planning application for a BESS, close to a river designated as a Special Area of Conservation (SAC) (either for salmonoid or freshwater pearl mussels) could leave a decision maker open to litigation or at least significant challenge during assessment. Under the bill, it could be argued in the event that either during construction where significant damage could be caused by a contractor to the designated area through a pollution event or alternatively spent fire water from a fire event entering the water course could cause significant environmental damage. This could leave the determining Planning Authority or the Fire Authority culpable under the measures proposed if the mitigation to address a fire event has not been constructed in accordance with the approved development. The focus of such legislation should be to penalise those who are responsible for the damage caused through negligence either during construction or for deviating from the agreed mitigation measures.

It is also unclear on what the implications of the bill would be on new/emergency technology such as hydrogen development and other consents such as S36 consents around BESS.

Enforcement

The bill provides that investigatory powers under the Environment Act 1995 would extend to cover ecocide offences. This would have an implication on a Council's Environmental Health function. There would be a resource and training implication arising from this and the bill does not appear to provide any indication on how this would be resourced. The assumption is that it would be for local authorities to resource this, putting further pressure on the Environmental Health service.

Whilst currently unclear, as there is potential liability for planning decision makers and there may be a requirement for Environmental Health regarding enforcement action, clarity would be required on what governance arrangements may need to be implemented to avoid any potential conflict as Environmental Health often sits either within the same service as planning or alongside them. As it is the Chief Planning Officer who discharges Planning functions under the Town and Country Planning (Scotland) Act 1997, their interaction with a Council's environmental health function would need to be considered.

Summary

The rational for the Ecocide bill is broadly welcomed and support is given to measures which criminalise wilful and neglectful environmental harm, however concerns arise as to the legal implications and governance issues for taking planning decisions and enforcement of the bill. Clear guidance on the meaning and interpretation of harm is required, and the bill is considered to increase the Council's exposure to litigation and planning delays without a clear regulatory framework. Clearer wording to reflect the intention of the bill would be welcomed and we would recommend that SOLAR are engaged. Whilst the aim of the bill is welcomed a more effective and welcomed measure would be to improve and increase the powers, resourcing and fines available to existing regulatory bodies such as SEPA and help act as a deterrent to secure the stated aims of the bill.

Yours sincerely
Christina Cox
Chair
Heads of Planning Scotland