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Our Ref: Ecocide (Scotland) Bill
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Enterprise And Communities
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Dear Mr Mountain MSP,

Ecocide (Scotland) Bill

I refer to your letter as the Convenor of the Net Zero, Energy and Transport Committee, of 11th November, 2025, seeking North Lanarkshire Council's views on how the Ecocide (Scotland) Bill might affect the fulfilment of our statutory functions as a local authority.

North Lanarkshire Council's response to this matter is provided in the attached Appendix.

I hope this information is of assistance

Yours sincerely,

Lorna Bowden
Planning and Place Manager

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APPENDIX

North Lanarkshire Council - Response to the Scottish Government Consultation on the Ecocide (Scotland) Bill

The local authority welcomes the opportunity to comment on the Ecocide (Scotland) Bill. We support the overarching aim of strengthening environmental protection but wish to highlight significant legal and operational uncertainties that could impact planning functions, development delivery, and enforcement responsibilities.

Our response addresses key areas of concern and provides recommendations to ensure clarity, proportionality, and effective implementation.

1. Consented or Licensed Activities

Current Position

The Ecocide (Scotland) Bill does not provide an explicit defence for harm caused by activities undertaken under planning permission or other regulatory consents (such as SEPA permits or NatureScot licences). This is a significant departure from section 40(6) of the Regulatory Reform (Scotland) Act 2014, which offers a defence for authorised harm. Under that Act, an offence is not committed where permission was granted under an enactment conferring power to authorise the act that resulted in environmental harm.

Stakeholder Views

Concerns about this omission have been widely raised. SEPA, in its response highlighted on page 7 of the SPICe Summary of Call for Views, stated that potential impacts on public bodies with consenting or licensing roles must be considered and that the scope of the offence must be very clear. SEPA noted that, comparatively, the Regulatory Reform (Scotland) Act provides a safeguard for authorised acts.

Many respondents expressed uncertainty about whether licensed or consented activities could constitute ecocide. Industry bodies such as Scottish Renewables and NFUS called for explicit safeguards or a due diligence defence to protect organisations that comply with regulatory standards. Without such clarity, there is a risk that organisations acting within consent conditions could still face liability because the offence does not require the act to be unlawful.

Implications for North Lanarkshire Council

It is concerning that only at this stage of scrutiny has the interpretation emerged that public bodies with planning or licensing functions could be exposed to criminal liability for ecocide. This interpretation has now been made known to local authorities, raising serious implications for planning authorities and officers.

Planning authorities and individual officers could face criminal liability for granting consent to developments that later cause “severe environmental harm.” Developers acting within consent conditions may also be exposed to liability, given that the offence does not require unlawfulness. This uncertainty could lead authorities to adopt a risk-averse approach, delaying or refusing major projects to avoid potential liability.

Recommendation

The Bill should clarify whether consented activities are exempt or define the circumstances where liability applies. Without this clarity, the risk of criminal exposure for public bodies and developers could significantly hinder investment and delivery of major projects.

2. Decision-Making and Liability

Issue:

The introduction of criminal liability for ecocide could significantly influence planning decisions. While the Bill applies to intentional or reckless harm, the interpretation of "recklessness" remains unclear. This creates uncertainty for planning authorities when assessing projects with complex or cumulative environmental impacts.

Stakeholder Views

Responses to the consultation reveal mixed perspectives on the recklessness standard. Some stakeholders argue that "recklessness" sets too high a bar for corporate liability, potentially limiting accountability. Others fear it could capture well-intentioned actors who face unforeseen circumstances despite compliance efforts. Alternative proposals include introducing a test for "knowledge of substantial likelihood of harm" or aligning the definition with EU concepts of "serious negligence." These suggestions aim to provide clarity and proportionality in applying the offence.

Implications for North Lanarkshire Council

If this interpretation stands, it may have a significant effect on decision-making and enforcement processes. There is a risk that decisions could be driven by efforts to reduce exposure to potential prosecution for actions beyond the Council's reasonable control, rather than being based on policy, material considerations, professional judgement, North Lanarkshire Council's Environment Pathway, and appropriate use of conditions.

This could lead to:

- Longer decision-making times as authorities consider how to mitigate liability risk.
- Adverse decisions on developments that currently have every reasonable expectation of being delivered and managed successfully.
- A need for enhanced environmental risk assessments, particularly for projects with long-term or cumulative effects (e.g., energy infrastructure, minerals, forestry).
- Increased demand for legal advice and a requirement for even more complex Environmental Impact Assessment (EIA) processes to demonstrate compliance and mitigate liability risk.
- A potential effect on development approvals if thresholds for "severe harm" remain ambiguous, resulting in delays or refusals of major projects.

Recommendation

If the Bill is enacted the Scottish Government should issue clear guidance on how ecocide risk should be factored into planning decisions. This guidance should include practical examples and thresholds to help authorities balance liability avoidance with sustainable development objectives.

3. Threshold of Harm

Bill Definition:

The Bill defines "severe environmental harm" as serious adverse effects that are either widespread or long-term—meaning irreversible or not naturally recoverable within 12 months. These terms are open to interpretation and create uncertainty for planning authorities.

Planning Context

Key questions arise in applying these definitions:

- Does “widespread” mean impacts beyond site boundaries or across regional ecosystems?
- Recovery periods may conflict with mitigation measures typically imposed through planning conditions.
- Lack of clarity complicates Environmental Impact Assessment (EIA) scoping and cumulative impact assessments.

Stakeholder Views

SEPA and other respondents warned that “widespread” and “long-term” are vague and could capture more than intended, including events beyond the “1 in 20-year” threshold. Many recommended introducing spatial or population-based metrics and providing examples, such as entire river catchments or marine protected areas, to guide interpretation.

NGOs argued that the Bill should also cover harm caused by failure to act, not just active conduct—unlike section 40 of the Regulatory Reform (Scotland) Act, which includes omissions. This reflects a broader concern about accountability for environmental stewardship.

Recommendation

The Bill or accompanying guidance should provide clear criteria or illustrative examples for interpreting “widespread” and “long-term” harm. This will ensure consistency and predictability in planning decisions and reduce uncertainty for authorities and developers.

<u>4. Cumulative Impacts and Course of Conduct</u>

Issue

The offence may apply to harm arising from a course of conduct, not just catastrophic events. Planning authorities typically approve developments individually, but cumulative effects—such as multiple wind farms or aquaculture sites—could collectively meet the ecocide threshold.

Stakeholder Views

Many respondents highlighted uncertainty about whether cumulative harm or a course of conduct is covered by the Bill. SEPA and the Law Society flagged this as a major gap in the current drafting. Recommendations include explicitly stating that cumulative acts, including those by multiple actors, may amount to ecocide if thresholds are met, consistent with international definitions.

Implications for North Lanarkshire Council

This raises significant questions about shared liability among developers and planning authorities when cumulative harm occurs. It could require authorities to adopt a more strategic approach to cumulative impact assessment, going beyond current Environmental Impact Assessment (EIA) requirements. This would likely increase complexity and resource demands in planning processes.

Recommendation

The Bill should clarify whether cumulative harm from multiple consented projects could trigger liability and how responsibility would be apportioned. Accompanying guidance should include methodologies for cumulative impact assessment aligned with ecocide provisions to ensure consistency and fairness.

5. Enforcement and Investigation

Bill Provision

Section 9 of the Ecocide (Scotland) Bill extends Environment Act 1995 powers to ecocide, enabling SEPA, Scottish Ministers, and local authorities to investigate offences. These powers include entering premises, taking samples, and authorising others to act.

Stakeholder Views and Strategic Considerations

Stakeholders have raised significant concerns about the practical implications of extending investigative powers under the Bill. SEPA, Police Scotland, and the Crown Office and Procurator Fiscal Service (COPFS) highlighted resource constraints and the need for specialist expertise to manage complex ecocide investigations. UNISON added that protections for public sector staff must be strengthened, given potential threats from criminal actors during enforcement activities.

Beyond operational issues, respondents flagged broader strategic considerations. There is uncertainty about how the new offence will interact with existing legislation, particularly section 40 of the Regulatory Reform (Scotland) Act, which already addresses environmental harm. Mixed views emerged on whether a "defence of necessity" should be included—some fear it could be exploited for socio-economic arguments, undermining the Bill's intent.

Corporate liability was another key theme, with calls to align senior officer accountability with established principles of "consent, connivance or neglect." On penalties, there was broad support for strong sanctions, but stakeholders suggested turnover-based fines and mandatory publicity orders to ensure proportionality and deterrence.

Implications for North Lanarkshire Council

The Financial Memorandum accompanying the Bill indicates that SEPA will take the principal role in investigating and enforcing ecocide offences, with Police Scotland supporting in the early stages and the Crown Office and Procurator Fiscal Service providing oversight during investigations. It is therefore not envisaged that local authorities will assume significant new enforcement responsibilities.

However, if such responsibilities were introduced, North Lanarkshire Council would require:

- Additional training and resources (currently unavailable).
- Coordination protocols with SEPA and Police Scotland.
- Capacity to participate in complex investigations of major environmental incidents.
- New procedures for evidence gathering and inter-agency collaboration.

Recommendation

Assess capacity gaps and funding needs for enforcement. Strengthen joint protocols, ecological expertise, and whistleblower protections. Consider whether local authorities should have a formal investigative role or whether SEPA should lead. Guidance should also address interaction with existing law, corporate liability standards, and proportional penalty frameworks.

Conclusion

The local authority supports the principle of the Ecocide (Scotland) Bill but emphasises the need for clarity, proportionality, and adequate resourcing. We urge the Scottish Government to provide statutory definitions, guidance on consented activities, and funding for enforcement. However, we note that due to time constraints, this response has not allowed for the level of detailed consideration that the Bill warrants. There may therefore be additional issues and implications that have not been identified within this submission. We look forward to continued engagement to ensure the Bill achieves its objectives without unintended consequences for lawful development and community confidence.