

# INFRASTRUCTURE AND ORGANISATIONAL DEVELOPMENT

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**ORKNEY**  
ISLANDS COUNCIL

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Sir Edward Mountain MSP  
Convener The Net Zero, Energy and  
Transport Committee  
The Scottish Parliament  
Edinburgh  
EH99 1SP

28 November 2025

Dear Sir Edward

## **Net Zero, Energy and Transport Committee – Ecocide (Scotland) Bill**

Many thanks for the invitation sent to our Chief Executive regarding the work you are undertaking on the above Bill. I have been asked to provide a response to this request on behalf of Orkney Islands Council. This is set out below.

Thank-you for this opportunity to contribute to the work of the Committee, and please do let me know if we can provide anything further in due course.

Best wishes

Yours Sincerely

**Gavin Barr MRTPI**  
**Head of Planning and Regulatory Services**

**Orkney Islands Council**  
**Response to the Net Zero, Energy and Transport Committee**  
**Ecocide (Scotland) Bill**  
**28 November 2025**

**Q1 Consented or licensed activities:** The Bill does not provide an explicit defence for harm caused by activities that have been consented or licensed by a public authority (e.g. through planning permission, a SEPA permit, or a NatureScot licence). There is no explicit defence provided either for the operator (who holds a licence, planning consent, etc) or for a regulatory body or planning authority who issues the consent or licence. The Committee has heard evidence comparing this to the Regulatory Reform (Scotland) Act 2014, where defences along these lines are provided for (section 40(2) and 40(6) of that Act). Should the Bill clarify whether, and under what circumstances, acts carried out under consents or licences might still expose individuals or organisations, including public bodies with planning or licensing functions, to criminal liability for ecocide?

**OIC Response:** *Yes. If this is to proceed to legislation it is essential that it is clearly provided in the legislation that there can be no liability attached to consenting authorities or their officers post decision. For example, if a development is granted planning permission or marine works licences etc following completion of a competent EIA/HRA etc process (which would have included consultation with the relevant national environmental etc bodies); and based on best available information and assessment at that time; there must be no latent liability upon the consenting authority or officers should the development that is approved ultimately be associated with an Ecocide allegation/case. This must apply to discharge of conditions also, where appropriate information and evidence is provided at the point of discharge. It is critical that public/consenting authorities do not carry any liability after the point of decision making/discharge.*

**Q 2 Decision-making and liability:** How would the possibility of criminal prosecution for ecocide influence or change the approach taken by planning authorities in assessing and approving applications, particularly for major developments that could have long-term or cumulative environmental impacts?

**OIC Response:** *As noted above, unless there is sufficient clarity/safeguarding for the Council as Planning Authority/Environmental Health etc officers built into the Act there is a risk, that the Act will lead to increased risk to decision makers, adding delay and cost to the statutory processes as legal checks will be required to protect officers/Authority more routinely or even paralysis if officers are unwilling to sign a report due to risk of future un-foreseen personal or organisational liabilities*

**Q 3 Threshold of harm:** The Bill defines “severe environmental harm” as harm that has serious adverse effects and is either widespread or long-term (i.e. irreversible or not naturally recoverable within 12 months). Do you consider these thresholds sufficiently clear and workable in the context of planning assessments?

**OIC Response:** *We consider these thresholds to be inadequate for the purposes of the proposed Bill. They are similarly inadequate in the context of a planning assessment, although we are not sure why this question is being asked in the context of a planning assessment.*

*There would require to be some definition of “widespread”. What does “naturally recoverable” mean? Does it mean the environment reverting to its natural state before the harm occurred?*

*Further clarity is required on the thresholds for both developers and for the purposes of enforcement. An Orkney biosecurity example may be the deliberate or non-deliberate harm which could result from introducing rats to a rat-free island - of which there are several in Orkney. This event could be classed as 'reversible' and 'naturally recoverable within 12 months' if significant expense is incurred on an eradication project - with eradication efforts being most effective within 12 months. The questions is whether this would meet the threshold of harm as currently outlined. For Orkney such an incident could be significant and we would like assurance that the bill would come into effect in instances of this nature for Islands.*

For wider interest, here is an example of a public guide from New Zealand on visiting pest-free islands [Visiting pest free islands: Know before you go](#).

**Q 4 Cumulative impacts and course of conduct:** The Committee has heard differing views on how the definition of ecocide in the Bill might be considered to apply to cumulative harm arising over time from a course of conduct, as well as to single catastrophic-type incidents. From a planning perspective, is it clear how the Bill might apply to incremental harm, and how might this impact your consenting functions? If not, how could this be clarified?

**OIC Response:** *As per points 1 and 2 above, unless there is clarity of protection of officers and Planning Authorities/Environmental Health etc in the decision making process there could be substantial impact on planning process/reporting/decision making arising from a risk-averse approach to decision making. There would also be substantial additional resource/time cost risks arising from additional scrutiny/process requirements which would inevitable follow to secure officer/authority liabilities.*

**Q 5 Enforcement and investigation:** Section 9 of the Bill would extend investigatory powers under the Environment Act 1995 to cover the offence of ecocide, which may include local authorities as enforcing authorities. What implications might this have for your existing enforcement capacity, training, or coordination with SEPA and other agencies? In what circumstances do you envisage your organisation would be involved in responding to an 'ecocide-type' incident?

**OIC Response:** *It may not be appropriate for Orkney Islands Council to be an enforcement agency under the Bill. There may be too many instances of conflict of interest where the Council is the potential developer (with potential criminality under the terms of this Bill as drafted). Notwithstanding, significant resources would be required in respect of training for potential investigation of incidents and potential to have to commission specialist consultancy advice etc to build evidence base and to prosecute. This would need to be reflected in additional resources for authorities taking on any such roles, with consideration of both planning and environmental health team implications. Where there is no conflict of interest, there is the potential for working alongside other agencies, for example SEPA. It would be helpful if the Bill/Guidance could provide more detail on the proposed enforcement roles for local authorities and SEPA to ensure clarity.*