

ECOCIDE (SCOTLAND) BILL

South Ayrshire Council Response

The following are the views of Planning Service Officers at South Ayrshire Council with regards to the potential implications for planning and development control highlighted in the letter to the Chief Executive of South Ayrshire Council from Edward Mountain MSP, Convener of the Net Zero, Energy and Transport Committee, dated 11th November 2025.

Overview of the proposed Ecocide (Scotland) Bill

The proposed bill seeks to introduce a new criminal offence – Ecocide. Ecocide is considered to have taken place if a person or organisation causes ‘severe environmental harm’ through intentional or reckless actions/inactions.

For the purposes of the legislation environmental harm has the same meaning as in section 17(2) of the Regulatory Reform (Scotland) Act 2014:

- (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

It is considered ‘severe’ if it –

- (i) Has serious adverse effects, and
- (ii) Is either –
 - (A) Widespread, or
 - (B) Long-term.

It is considered ‘widespread’ if it extends beyond a limited geographic area, to impact upon an ecosystem or species or a significant number of human beings, either directly or indirectly.

It is considered ‘long-term’ if it is irreversible or is unlikely to be reversed through a process of natural recovery within 12 months of the environmental harm occurring.

Consented or licensed activities

In the letter to the Chief Executive of South Ayrshire Council it is asked if *the Bill should 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?*

Yes, the Bill should clarify whether, and under what circumstances, acts carried out under consents or licences might still expose individuals or organisations to criminal liability for ecocide.

As the bill is currently proposed the definition of environmental harm is sufficiently broad to potentially include a number of planning permissions under the crime of ecocide. It is unclear how the meaning will be interpreted in practice, with the risk that already consented planning proposals fall foul of the statutory offence with all involved parties being caught up in a net and penalised.

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?

The possibility of criminal prosecution for ecocide would likely result in decision makers taking a more precautionary approach. With the meanings and definitions being as they are proposed quite broad it is unclear how these will be interpreted; the extreme result would be that many applications for major developments may not be approved, with knock on effects on housing and economic development. Planning applications are determined on balance, with impacts of developments considered during the assessment of an application where negative impacts are weighed against positive impacts.

The existing national policy framework as well as local policies include strong regulations on environmental impact, as well as policies on biodiversity net-gain. The proposed Bill does not for example, take into consideration any potential compensating or off-setting with regards to the environment. For example, a large housing development would result in long-term harm to the quality of land and potentially air, and probably result in impairment or interference with ecosystems. It is not clear in the Bill, how a development would compensate for this. This would result in the development either being refused, or place all involved at risk of prosecution should it be approved.

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?

While ‘long-term’ is relatively clear the term ‘widespread’ is less so. Examples of ‘limited geographic area’ would be helpful to understand more what this entails, and whether ‘widespread’ is considered to be different for different types of harm.

Equally when the proposed bill states that harm is considered severe if it has ‘serious adverse effects’, it would be helpful if a threshold for ‘serious’ could be defined.

If these meanings or definitions cannot be included in the Bill, training will be required for decision makers to help identify when harm becomes unacceptable under the proposed Bill.

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?

From a planning perspective it is not clear how the Bill might apply to incremental harm. There is no mention of cumulative harm or incremental harm in the Bill. Would the potential

incremental harm be only from the development itself over the long term, or would it be from the development and any adjacent uses, how would it be measured/what projected harm would be considered a threshold for refusal?

With regards to consenting functions, assessments of this nature would likely need to be carried out by specialists, either internal or external, as planning officers would unlikely have the training necessary to determine adequacy of submitted documents/evidence.

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?

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 Council Services.

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 rationale for the Ecocide Bill is generally supported with regards to criminalising intentional or reckless harm to the environment. However, there are concerns with regards to the legal implications and governance issues for taking planning decisions and enforcement of the proposed Bill. The Bill would likely increase the Council's exposure to litigation, as well as result in planning delays without a clear regulatory framework. Further clarity is required with regards to the meanings and interpretations of terms highlighted above.