

Midlothian Council Comments on Ecocide (Scotland) Bill

Midlothian Council Officer level response to letter dated 11.11.2025 from the Scottish Parliament's Net Zero, Energy and Transport Committee.

The comments are officer level and have not been endorsed by Midlothian Council.

Midlothian Council's responses are in red below the copied sections of the 11 November 2025 letter from the Scottish Parliament's Net Zero, Energy and Transport Committee to local authorities.

Midlothian Council is supportive in principle of the Ecocide (Scotland) Bill and the gravity and importance it gives to environmental protection. This is in line with and supports the principle of the Scottish Government's declared Climate Emergency.

Midlothian Council has responded to the questions raised in the letter and has given comments on the matters asked.

The Committee would welcome your views on how the Bill might affect the fulfilment of statutory functions of local authorities, particularly given their role in granting planning consents and enforcing environmental obligations at a local level. While the Bill is principally aimed at deterring and punishing the most serious cases of environmental damage, several aspects have potential implications for planning and development control. These include:

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?

Yes, the Bill/legislation needs to clearly clarify what 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. There needs to be clarity on what might be considered an offence, even if consent has been given for works to be undertaken (e.g. damaging work was undertaken which had not been consented).

An implication of this is that consents issued from local authorities will likely need to very clearly stipulate for what, and to what extent, consent has been issued by them. An issue with this is that unforeseen consequences may result, which would make the local authority or person carrying out the works potentially being liable under the terms of the act.

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?

A planning authority would need to be able to determine in its assessment of proposals, and information supporting them, whether ecocide would occur through their implementation. That may put pressure on the authority not to support such proposals, for fear of the ecocide occurring and the consequences for staff and the organisation itself.

Authorities will be more aware and likely to be more cautious in their assessments of proposals. However, authorities would still only assess the application before them. They would not pre-empt what may happen or what actions may occur, as that would be inappropriate. As currently when appropriate, with some applications cumulative impacts would be assessed. So in this regard, little might reasonably be expected to change.

It would make the local authority seek to ensure, as best it could, that it covered itself in the consents it issued, setting out in them, again as best it could, exactly what was being consented, including the scale and location of consented works.

The authorities would carry out their business in consenting in the usual manner, in order to comply with relevant legislation and policy, but likely be more clear as to what was consented, and the limits of the consent, rather than stating what was not consented.

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?

It is unlikely to be sufficiently clear as it is open to interpretation between different parties. It is though, however, very difficult to define and likely to be very hard to do so. This is a matter local authorities, and other agencies, would need to work with and come to positions on.

The definition of not being recoverable within 12 months is helpful, e.g. for the biodiversity loss from unauthorised tree felling, due to the fact trees take multiple decades to mature and it will take more than 12 months to compensate for the biodiversity loss of mature trees. Such examples are useful, but it is unlikely to be possible to create sufficient examples to cover the range and types of consents a local authority issues. Again, this is a matter government, local authorities, and other agencies, would need to work on, and with.

It would need to be decided at what scale ecocide happens, e.g. would it exclude all domestic properties, or what size of domestic property. Also in what locations ecocide would apply, eg urban areas, countryside etc., would need to be identified to help in the application of legislation on the matter.

Legislation would need to be clear if it applied to actions undertaken where no consent was required for the actions to be undertaken.

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?

Planning authorities will need to continue to assess proposals on their own merits. In that regard, incremental impacts would need to be assessed in the same manner as cumulative impacts and single catastrophic type incidents. Practice would therefore not necessarily change.

The difficulty with any assessment is coming to a position on the extent of the impact from a proposal and having the knowledge to be able to make that assessment, which local authorities may not possess.

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?

It would create resourcing and staffing issues for Councils to undertake further enforcement work. This would include training staff and having sufficient staff in place to be able to assess when ecocide, as defined by the legislation, had occurred and then having the resource to be able to take forward prosecution action. This work would be in addition to planning, and other, enforcement work currently undertaken by the local authority. As stated already the extent and location of damage to which the act would apply would need to be clarified.

The court system would need to have capacity to deal with extra cases coming forward through the legislation. For cases brought before them, the courts would also need to be able decide if there was a case to prosecute.

In the case of tree felling, the local authority will frequently not be the body that would need to pursue legal action on ecocide. The planning authority would have powers in relation to trees effected by a planning consent or tree preservation order. But it would be for Scottish Forestry to take action in all other instances, apart from domestic properties where a tree felling license is not required.

The legislation would need to be clear in what circumstances particular bodies are responsible for enforcement and taking action.

The Committee would be grateful if you could provide any views or evidence your organisation may have on these issues, including examples of how the Bill could interact with local planning, environmental assessment, or enforcement practice.

GB/MC 18/11/2025