



Place Services Directorate

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Committee Clerk
Net Zero, Energy and
Transport Committee
The Scottish Parliament
Edinburgh
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Email:

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Dear Sir / Madam,

Clackmannanshire Council's welcomes the opportunity to provide comments to the Net Zero, Energy and Transport Committee on the **Ecocide (Scotland) Bill**.

The Council's Place Services encompasses the Council's statutory functions in Planning, Environmental Health, Roads Authority, Land Services, Flooding, Infrastructure Projects, and Housing Development Control. Additionally, the Service leads on the Council's Climate Challenge and Net Zero Works, including Regional Energy Masterplan and Local Heat & Energy Efficiency Strategy. Collectively, these functions play a central role in delivering infrastructure, supporting sustainable development, and protecting the local environment.

While the Council fully supports the overarching aim of the Bill; to deter and address the most serious forms of environmental harm, we wish to highlight several areas of concern where the Bill, as currently drafted, could create significant uncertainty and unintended consequences for local authorities acting within their statutory duties.

1. Consented or Licensed Activities

The Bill does not appear to provide an explicit defence for activities carried out under statutory consents or licences, including planning permissions, Roads Construction Consents, flood protection works authorised under the Flood Risk Management (Scotland) Act 2009, or permits and licences issued by SEPA or NatureScot.

This raises serious concerns that local authorities, or their contractors, could face allegations of ecocide for actions undertaken lawfully and in good faith under these consents.

Many Council-led or approved projects—such as road improvement schemes, flood alleviation works, housing developments, and open space management—can involve unavoidable short-term environmental disturbance. These are subject to

environmental assessment and mitigation, often delivering long-term environmental benefits.

Without clear statutory defences, there is a risk that:

- Officers, elected members, or public bodies could be exposed to criminal liability despite acting within the law;
- Decision-making could become risk-averse, delaying or deterring essential public infrastructure projects.

We therefore recommend that the Bill explicitly confirm that acts carried out under lawful statutory consents or in the exercise of statutory duties are not subject to prosecution under the offence of ecocide, provided they are undertaken responsibly and with due regard to environmental protection.

2. Decision-Making and Liability

The prospect of criminal liability for ecocide could have a significant chilling effect on planning and infrastructure decision-making.

Local authorities are already required to balance environmental, social, and economic considerations when assessing applications or delivering public projects. The potential for retrospective criminalisation of decisions made following due process could undermine confidence in the planning system and disincentivise investment in housing, transport, and climate adaptation projects.

The negative consequence of such approach, with the threat of being accused of “ecocide” may mean planners seeking Environmental Impact Assessments (EIA), in the absence of detailed guidance, much more often, including in applications that would not normally seek such assessments for fear of liability. This puts a cost on the developer to produce such assessment, causes delays, and will mean that in some cases small planning authorities such as ours would need to buy in more often external expertise to assess the EIA.

Planning should only be liable if it failed to properly consult and/or failed to take the comments of these consultees fully into account in the assessment of the application and the recommendation.

In a world where we are constantly being told to speed up processes and decision making, the threat of “ecocide” would probably have the opposite effect.

Clackmannanshire Council would therefore welcome guidance and reassurance that:

- Reasonable professional judgement exercised within statutory frameworks will not attract liability; and
- The offence of ecocide will apply only where there is clear intent or recklessness, not where environmental effects arise as an unavoidable consequence of essential public works undertaken with mitigation and oversight.

3. Threshold of Harm

The Bill defines “severe environmental harm” as harm that has serious adverse effects and is either widespread or long-term (not naturally recoverable within 12 months).

From a practical perspective, this threshold may be difficult to apply consistently in the context of planning and infrastructure delivery:

- Natural recovery cycles often exceed 12 months, even where impacts are moderate or fully mitigated.
- The definition does not easily distinguish between temporary, managed disturbance and genuinely irreversible damage.

We suggest that the Bill or accompanying guidance should clarify that the “severe” threshold considers proportionality, reversibility, and overall public benefit, ensuring that legitimate projects with net-positive environmental outcomes are not exposed to unnecessary risk.

4. Cumulative Impacts and Course of Conduct

The treatment of cumulative or incremental environmental harm under the Bill is unclear, for example, heat networks and energy efficiency measures often involve phased implementation. The Bill’s potential application to incremental harm over time could require new modelling and monitoring frameworks, adding complexity and cost.

Planning authorities routinely assess cumulative effects through Environmental Impact Assessment (EIA) and Local Development Plans. However, it is uncertain whether a series of lawful developments, each individually mitigated, could be interpreted collectively as causing ecocide over time.

Clackmannanshire Council would welcome clarification that:

- Cumulative harm will only engage liability where a demonstrable pattern of intentional or reckless disregard for environmental harm exists; and
- Individual planning or consenting decisions taken in line with due process and statutory guidance cannot be retrospectively criminalised.

5. Enforcement and Investigation

Section 9 of the Bill extends investigatory powers under the Environment Act 1995 to include ecocide, potentially involving local authorities as enforcing bodies.

While the Council supports a robust enforcement framework, current local capacity is already stretched across multiple environmental and regulatory responsibilities (e.g. waste enforcement, planning enforcement, roads maintenance, and flood risk management).

If local authorities are to have a formal role in investigating ecocide offences, this would necessitate:

- Additional resources, training, and legal support;
- Clear delineation of responsibilities between SEPA, Police Scotland, and local authorities; and
- Guidance on when and how councils would be expected to respond to potential “ecocide-type” incidents.

We recommend that SEPA act as the lead investigatory authority, with local authorities providing specialist input where relevant.

6. Overall Observations

Clackmannanshire Council supports the principle of strengthening environmental protection through criminal law. However, we are concerned that, without clearer definitions and safeguards, the Bill could expose local authorities and their officers to unwarranted liability and could unintentionally delay or deter essential public works. We therefore respectfully suggest that the Committee consider:

- Inserting statutory defences for lawful actions undertaken under consent or statutory duty;
- Providing statutory guidance on the application of intent and recklessness tests; and
- Ensuring adequate resourcing and coordination for any new enforcement responsibilities.

In Summary:

Clackmannanshire Council remains committed to protecting and enhancing the natural environment while delivering sustainable infrastructure and housing. The Council would welcome ongoing engagement with the Scottish Parliament and the Scottish Government to help refine the Bill and associated guidance to ensure it is effective, proportionate, and workable in practice. As without clear guidance and statutory defences, it risks creating legal uncertainty, project delays, and resource strain, which could hinder the Council’s and importantly the Country’s ability to meet its climate emergency commitments.

I trust that the above is of assistance to the Committee.

Yours sincerely

Kevin Wells
Strategic Director: Place

Cc: Councillor Scott Harrison, Spokesperson for Place Services