

The Highland Council

Agenda Item	6
Report No	ECI/56/2023

Committee: Economy and Infrastructure

Date: 16 November 2023

Report Title: Draft Biodiversity Planning Guidance

Report By: Executive Chief Officer Infrastructure, Environment & Economy

1 Purpose/Executive Summary

- 1.1 This report presents draft Biodiversity Planning Guidance (BPG). The BPG is intended for use by the Planning Authority, applicants and agents to ensure the consistent and proportionate implementation and interpretation of National Planning Framework 4 (NPF4) Policy 3.
- 1.2 The BPG aims to provide certainty and clarity for applicants and agents and sets out what supporting information is required to be submitted to demonstrate the conservation, restoration and enhancement of biodiversity as required by NPF4 Policy 3.

2 Recommendations

- 2.1 Members are asked to **agree** that the draft Biodiversity Planning Guidance (BPG) is released for minimum 4 weeks public consultation.

3 Implications

- 3.1 **Resource** – to secure positive effects for biodiversity (as one of the six statutory outcomes of the Planning (Scotland) Act 2019) and deliver the biodiversity requirements set out in NPF4, it is recognised that there will be resource implications. A 2-year FTE planning ecology post was recruited in December 2022 (via the Transformation Programme), and this has allowed the service to start to react to the implications of NPF4 in respect of biodiversity, albeit primarily in relation to major applications. This is, however, only a limited-term solution and a more permanent arrangement will need to be considered in due course. This is currently the subject of a separate resources paper.

Allocating financial compensation payments (from both off-site offsetting and energy generation projects) may carry a resource implication and as such a management fee will be included in payments taken to offset any cost to the Council.

- 3.2 **Legal** – the Council has a statutory duty under the Planning (Scotland) Act 2019 (which underpins NPF4) to secure positive effects for biodiversity. The BPG, although not a statutory part of the Local Development Plan, sets out how the Council will deliver that statutory requirement in a consistent, transparent and equitable manner.
- 3.3 **Community (Equality, Poverty, Rural and Island)** – the BPG has been prepared to, wherever possible, ensure that biodiversity compensation and enhancements take place on site or close to the development area so that local communities affected by the development will benefit from the compensation/enhancement. This will ensure that the Council support the conservation, restoration and enhancement of biodiversity in all communities across Highland. Where developers opt to pay financial contribution payments to offset enhancement obligations the Council may use this funding to assist local communities to deliver nature-positive projects in their local area.

Furthermore, it is envisaged that biodiversity enhancement and the delivery, management and monitoring of enhancement schemes will encourage the creation of new jobs in local communities, many of which will be highly skilled and well paid, for example, general ecologists, peatland ecologists, hydrologists and engineers, arborists, specialists in remote-sensing and natural flood management.

- 3.4 **Climate Change / Carbon Clever** – the twin climate and nature crises are interlinked and reinforcing; a decline in biodiversity will exacerbate the climate crisis, and a changing climate will accelerate the rate of biodiversity loss. By implementing the BPG to secure positive effects for biodiversity (as required by the Planning (Scotland) Act 2019 and policies of NPF4) the Council will make a significant and meaningful contribution to net zero and nature restoration targets and align with the Council's declaration of a Climate and Ecological Emergency.
- 3.5 **Risk** – There are no anticipated risks associated with the adoption of the BPG. As per 3.1, appropriate resourcing will be required to ensure biodiversity measures are properly and efficiently assessed to support the timeous determination of planning applications; to ensure developers receive consistent and proportionate advice on biodiversity from specialist officers; and that the Council capitalise on opportunities to deliver nature recovery across Highland to benefit its communities whilst making a significant contribution to tackling climate change.
- 3.6 **Health and Safety (risks arising from changes to plant, equipment, process, or people)** – No implications.
- 3.7 **Gaelic** – Gaelic titles, headings and sub-headings will be added throughout in line with Council's Gaelic policy.

4 Background and Context

- 4.1 Securing positive effects for biodiversity is one of six statutory outcomes introduced by the Planning (Scotland) Act 2019. National Planning Framework 4 (NPF4) rebalances the planning system so that climate and nature recovery are the primary guiding principles for all plans and decisions. Improving biodiversity is a cross-cutting theme that runs throughout NPF4.

- 4.2 Policy 3 provides the primary framework for delivering on biodiversity. Policy 3 seeks to 'protect biodiversity, reverse biodiversity loss, deliver positive effects from development and strengthen nature networks.' Policy 3a applies to all development proposals and requires all development to enhance biodiversity including, where relevant, restoring degraded habitats and building and strengthening nature networks. Nature-based solutions should also be integrated. Policy 3d also applied to all development, and requires any adverse impacts on biodiversity, nature networks and the natural environment to be minimised through careful planning and design making taking into account reversing biodiversity loss, safeguarding ecosystem services, enhancing nature networks and maximising potential for restoration.
- 4.3 Policy 3c relates specifically to proposals for local development and requires proposals to include appropriate and proportionate measures to conserve, restore and enhance biodiversity.
- 4.4 Policy 3b applies to proposals for national, major and EIA development. It states that such development 'will only be supported where it can be demonstrated that the proposal will conserve, restore and enhance biodiversity, including nature networks so they are in a demonstrably better state than without intervention. This will include future management.' Proposals must clearly demonstrate how they have met all of the following criteria:-
- i. the proposal is based on an understanding of the existing characteristics of the site and its local, regional and national ecological context prior to development, including the presence of any irreplaceable habitats;
 - ii. wherever feasible, nature-based solutions have been integrated and made best use of;
 - iii. an assessment of potential negative effects which should be fully mitigated in line with the mitigation hierarchy prior to identifying enhancements;
 - iv. significant biodiversity enhancements are provided, in addition to any proposed mitigation. This should include nature networks, linking to and strengthening habitat connectivity within and beyond the development, secured within a reasonable timescale and with reasonable certainty. Management arrangements for their long-term retention and monitoring should be included, wherever appropriate; and
 - v. local community benefits of the biodiversity and/or nature networks have been considered.
- 4.5 NatureScot have recently released Developing with Nature guidance that specifically relates to Policy 3c (local development). This gives applicants guidance on biodiversity enhancement measures that may be suitably implemented to discharge the requirement to deliver demonstrable benefits for nature and is referred to where relevant throughout the BPG. Scottish Government have yet to produce guidance to support the implementation of Policy 3b (national and major development), although it is expected to be forthcoming in due course.
- 4.6 The Council's BPG details *how* the Council will implement Policy 3 and gives applicants and their agents clarity and certainty by providing detailed guidance on what information is required to support applications, in accordance with the mitigation hierarchy, and in what circumstances. It also covers what is expected with regard to enhancement, and outlines options for applicants with regard to enhancement both on and off site, including biodiversity offsetting.

- 4.7 The BPG has been benchmarked with other local authority biodiversity policies from across Scotland and has been written with input from planning officers.
- 4.8 The BPG brings the Council in line with most other Scottish Local Authorities who already have well established biodiversity guidance for planning officers, applicants and agents, and who already routinely require ecological information to support planning applications. The guidance will enable the Planning Authority to take a consistent, fair, transparent, proportionate and balanced approach to enabling biodiversity to be conserved, restored and enhanced whilst recognising that specialist in-house ecological advice will not be readily available for the majority of applications.

5 Content and Key Points

Local Development

- 5.1 Local development is required to comply with NPF4 Policy 3c. The BPG divides local-scale development into two categories: development proposals less than 0.5 hectares, and development proposals greater than 0.5 hectares.
- 5.2 Development proposals of less than 0.5 hectares, typically applications for c.1-4 houses, make up the significant majority of planning applications received in Highland (c.86%). The BPG proposes a light-touch approach with the onus on the applicant to evidence in a supporting statement that the development will conserve, restore and enhance biodiversity. Unless protected species or designated sites are within or immediately adjacent to the development site no ecological survey or assessment will be required. It is expected that in the majority of cases no specialist Council ecological advice will be provided with the planning case officer assessing the suitability of the information and enhancement measures proposed.
- 5.3 Development proposals between 0.5 and 2 hectares (c.11% of all planning applications) will require to be supported by an ecological assessment and will be expected to deliver a minimum 10% biodiversity enhancement.

A specialist Council officer will support the planning officer for applications of this scale and assess the proposal to ensure that the baseline information is accurate, that the mitigation hierarchy has been applied and enhancement measures proposed are suitable and proportionate. Appropriate conditions (or legal agreements where applicable) will be recommended to secure biodiversity compensation/mitigation and enhancement.

Major, National and EIA-scale Development

- 5.4 Applications of this scale are required to comply with NPF4 Policy 3b. Policy 3b requires the applicant to provide *significant* biodiversity enhancements but the policy does not quantify what constitutes 'significant'. The BPG requires a minimum 10% enhancement (potentially increased if development impacts locally protected areas, for example Ancient Woodland, Local Nature Conservation Sites, Local Nature Reserves etc). This will ensure consistency across decisions, that enhancement schemes are proportionate to the scale and nature of the development, that all developments are treated equally and fairly, and will provide certainty for developers, who are currently unclear what level and scale of enhancement the planning authority requires to meet the policy tests.

5.5 Supporting the ambition outlined in the Highland Indicative Regional Spatial Strategy, the Council have committed to safeguarding, enhancing and internationally celebrating the area's unique natural heritage. The IRRS identifies Highland as a special case for investment and coordination to safeguard, restore and enhance our natural environment to meet local and national priorities.

As such and reflecting the scale of natural resources and assets available and being utilised across Highland by energy generation projects we will explore a financial contribution from renewable energy developments to help address the ecological emergency as part of the ongoing development of the Community Wealth Building Strategy and associated Action Plan.

Off-site Offsetting

5.6 On site biodiversity compensation and enhancements are strongly preferred. However, we are already seeing applications where applicants are unable to deliver a proportion of their biodiversity compensation or enhancement requirements on site. For such cases, to ensure that biodiversity enhancement is realised in full, and that the developer is still able to discharge their duty in relation to NPF4, the BPG provides three off-site options:-

- compensation and enhancement is delivered on land within the control of the developer but outwith the development area;
- a third-party offset provider/broker is used to deliver biodiversity compensation and enhancement, off-site; or
- the developer pays the Highland Council a financial compensation payment in exchange for the Council taking on the responsibility for securing the delivery of the biodiversity compensation or enhancement.

5.7 Where a developer opts to pay the financial compensation payment to the Council this will discharge the developer's duty to deliver biodiversity compensation and enhancement and the Council will deliver it on their behalf. Although some on site enhancement will be expected, this may be a useful option for applicants where they are unable to identify land to compensate for biodiversity lost and/or undertake enhancement.

The Council may deliver such enhancement on its own estate by supporting and providing added benefit to existing projects, for example:-

- contributing to ongoing flood protection/flood alleviation schemes, improving the green to grey ratio and providing additional capital to implement natural flood management schemes that develop nature-based solutions to issues of sea level rise, coastal erosion and flooding;
- contributing funding to Council developments to add further improvements and benefits for biodiversity beyond any approved enhancement proposals to make the Council an exemplar in incorporating nature-based solutions, nature networks and other biodiversity enhancements into development;
- managing ash dieback (removing trees in and around Council properties and estates) and replanting with resilient species; or
- funding biodiversity improvements on Council land in partnership with other services or as part of other improvement projects, for example:-

- urban re-wilding (i.e. creation of rain gardens, urban tree planting, planting biodiversity valuable plants (such as rock rose, lavender), planting low growing herb plant species and green walls) to realise urban biodiversity benefits whilst also mitigating climate change by reducing urban heating, water surface run off and flooding;
- provision of green and blue infrastructure on new and existing transport infrastructure and active travel routes;
- Invasive non-native species removal on and around Council properties and developments; or
- fund the replacement of amenity grasslands with low growing herb/plant species in partnership with Communities and Place, resulting in reduced maintenance burdens.

In the event such Council projects are not available, or financial compensation payments result in a surplus of funds available, it is proposed to continue a community grant scheme (similar in scope to the existing Nature Restoration Fund) to enable partners and stakeholders (including local communities, community woodlands, environmental NGOs etc) to access funding for local biodiversity enhancement projects.

Resource will be required to facilitate/deliver projects and as such a management fee will be set to offset any costs to the Council.

- 5.8 Applicants will also be able to secure offsite biodiversity compensation and enhancement on other land that they control, or via a third-party broker or provider. Details are set out in the BPG, and such enhancements will be secured using either planning conditions or legal agreements.

6 Next Steps

- 6.1 Following committee approval, the BPG will be released for a minimum 4-week public consultation. Any comments received will be given due consideration and an updated BPG will be presented to members for adoption at the next available Economy and Infrastructure (E&I) Committee.
- 6.2 Gaelic headings and subheadings will be added throughout. Minor and/or non-material changes may be made to the text prior to consultation.

Designation: Executive Chief Officer Infrastructure, Environment & Economy

Date: 2 October 2023

Author: Andrew Puls, Environment Team Leader

Background Papers: None

Appendices: Appendix 1 - *Draft* Biodiversity Planning Guidance

Highland Council

Draft Biodiversity Planning Guidance

July 2023

Section 1 - Introduction

- 1.1. The global climate emergency and the nature emergency are twin reinforcing crises, the actions we take to address each are fundamental to our wellbeing and survival. Biodiversity in Scotland is in crisis due not only to the effects of climate change, but also changes in land use, over-exploitation, invasive non-native species and habitat fragmentation.
- 1.2. In 2019 the Council declared a Climate and Ecological Emergency and in 2022 signed the Edinburgh Declaration joining c.300 governments, cities and local authorities across the world in signalling our intent to tackle the global nature crisis.
- 1.3. Securing positive effects for biodiversity is one of six statutory outcomes introduced by the Planning (Scotland) Act 2019. National Planning Framework 4 (NPF4) rebalances the planning system so that climate and nature recovery are the primary guiding principles for all plans and decisions. Improving biodiversity is a cross-cutting theme which runs throughout NPF4.

Who is this guidance for?

- 1.4. This guidance is aimed at developers, agents, architects and their consultants. The guidance explains the approach that is required by the Highland Council to deliver biodiversity enhancement through the planning system.
- 1.5. This guidance has been prepared to support the application of NPF4. It is intended to be used in conjunction with relevant national and local policy and planning guidance, including NatureScot's Developing with Nature Guidance where applicable.
- 1.6. The intention is that this guidance will ensure a fair, transparent and consistent assessment for all proposed developments.

Section 2 - Policy

National Planning Framework 4 (NPF4)

- 2.1 *Policy 1* sets out an intention to encourage, promote and facilitate development that addresses the global climate emergency and nature crisis; it makes clear that, when considering all development proposals, significant weight will be given to the global climate and nature crises. *Policy 3* sets out an intention to protect biodiversity, reverse biodiversity loss, deliver positive effects from development and strengthen nature networks. Although *Policy 3* provides the primary framework for biodiversity (see 2.3), nature and biodiversity is a cross-cutting theme that runs through many NPF4 policies.
- 2.2 Other relevant NPF4 policies include:
- *Policy 4* protects and enhances natural heritage
 - *Policy 5* protects and enhances soils (including peatland)
 - *Policy 6* provides protection to trees with a focus on ancient woodland and biodiversity value.
 - *Policy 9* highlights the protection of natural features on brownfield land
 - *Policy 10* recognises the sensitivities of coastal areas.
 - *Policy 14* seeks to bring nature into the design of cities, towns, streets and spaces
 - *Policy 20* promotes the expansion and connectivity of blue and green infrastructure.

[NPF4 Policy 3](#)

- 2.3 *Policy 3a* and *Policy 3d* apply to all development proposals (including householder development and aquaculture). *Policy 3a* requires all development to enhance biodiversity including, where relevant, restoring degraded habitats and building and strengthening nature networks. Nature-based solutions should also be integrated. *Policy 3d* requires any adverse impacts on biodiversity, nature networks and the natural environment to be minimised through careful planning and design making taking into account reversing biodiversity loss, safeguarding ecosystem services, enhancing nature networks and maximising potential for restoration.
- 2.4 *Policy 3c* requires that proposals for local development (excluding householder development) **will include** appropriate measures to conserve, restore and enhance biodiversity. Measures should be proportionate to the nature and scale of development.
- 2.5 *Policy 3b* states that proposals for national, major and EIA development **will only be supported** where it can be demonstrated that the proposal will **conserve, restore and enhance biodiversity**, including nature networks so they are in a **demonstrably** better state than without intervention. This will include future management. Proposals should clearly demonstrate how they have met all of the following criteria:
- i. the proposal is based on an understanding of the existing characteristics of the site and its local, regional and national ecological context prior to development, including the presence of any irreplaceable habitats;
 - ii. wherever feasible, nature-based solutions have been integrated and made best use of;
 - iii. an assessment of potential negative effects which should be fully mitigated in line with the mitigation hierarchy prior to identifying enhancements;
 - iv. significant biodiversity enhancements are provided, in addition to any proposed mitigation. This should include nature networks, linking to and strengthening habitat connectivity within and beyond the development, secured within a reasonable timescale and with

reasonable certainty. Management arrangements for their longterm retention and monitoring should be included, wherever appropriate; and

- v. local community benefits of the biodiversity and/or nature networks have been considered.

Highland-wide Local Development Plan

Policy 58 Protected Species

- 2.6 *Policy 58* requires a protected species survey to be carried where there is good reason to believe that a protected species may present on site or be affected by a proposed development.
- 2.7 The policy covers European Protected Species, protected birds and other protected animals and plants.

Policy 59 Other protected species

- 2.8 *Policy 59* ensures detrimental effects on species listed in Annexes II and V of the EC Habitats Directive, priority UKBAP and HNBAP species and species included in the Scottish Biodiversity List will be avoided through the use of conditions and agreements.

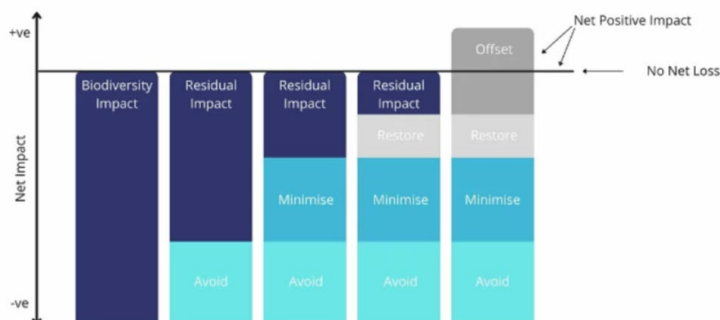
Policy 60 Other Important Habitats and Article 10 Features

- 2.9 *Policy 60* will ensure that significant harm to the ecological function and integrity of Article 10 Features (i.e. nature networks) and Other Important Habitats is avoided through the use of conditions and agreements. These include:
 - Habitats listed in Annex I of the EC Habitats Directive;
 - Habitats of priority and protected bird species (see Glossary);
 - Priority habitats listed in the UK and Local Biodiversity Action Plans;
 - Habitats included on the Scottish Biodiversity List.

Section 3 - Core Principles

3.1 There are a number of commonly used and widely applied 'principles' that should be followed so that biodiversity and nature recovery are an integral part of any development proposal. These are set out in NatureScot's Developing with Nature Guidance and are applicable to all development of any type and scale. These principles are summarised below.

Apply the mitigation hierarchy



Avoid

3.2 Remove the impact on biodiversity at the outset. This is important on all development sites but especially where a site includes protected/priority habitats and/or protected species and species of conservation concern, including those listed on the UKBAP or HNBAP.

Minimise

3.3 If complete avoidance of the ecological resource is not possible then the loss of the habitat should be minimised as far as practicable. Mitigation may be incorporated into the design to reduce the development impact.

Compensate/Restore

3.4 Compensate for habitats lost to development that cannot be avoided or restore degraded habitats.

Offset

3.5 If the ecological resources within the site cannot be avoided and compensation for habitats lost to development cannot be delivered on site, then offsetting the impact may be considered – this is the least preferred option. Offsetting can be delivered using one or a combination of 3 options, discussed in more detail in Section 5:

- Financial compensation payment
- Off-site biodiversity enhancement and any compensation/restoration required
- Third-party offset provider/broker

Consider biodiversity from the outset

3.6 Opportunities to protect and enhance biodiversity should be considered at the project inception stage; this is a core design consideration and will inform the layout, siting and design.

3.7 Early consideration will help to avoid impacts on important habitats and species, enable biodiversity benefits to be fully integrated into the development and help ensure the smooth determination of the proposal without time and cost implications of having to reconsider the scope, design and layout of a development.

- 3.8 The development site must not be cleared in whole or in part prior to carrying out the ecological assessment – where pre-emptive site clearance has taken place the site will be assessed on its preclearance state and the precautionary principle will be applied. Reinstatement of cleared habitat may be required.

Develop or Strengthen Nature Networks

- 3.9 Individual measures should not be considered in isolation. Functional connectivity of habitat across a development site and connecting with existing habitat outwith a development site boundary is of paramount importance. Habitat connectivity is important for most species and helps build nature networks, avoiding the creation of isolated and disconnected pockets of biodiversity.

Incorporate Nature-based Solutions

- 3.10 Nature-based solutions, such as sustainable drainage systems (SuDS), green roofs, street trees and green spaces provide a good solution to a range of issues including extreme temperatures, noise, water quality and poor amenity. It is important that nature-based solutions should be nature-rich in order to maximise biodiversity benefits.

Prioritise on-site enhancement before off-site delivery

- 3.11 Biodiversity enhancement is *in addition* to mitigation and compensation/restoration measures and should, wherever possible, take place within the development site. This ensures development areas do not become nature poor to the detriment of both people and nature.
- 3.12 Off-site offsetting is a least preferred option but can be justified where it is not possible to deliver sufficient on-site compensation/restoration and enhancement, or where significantly better outcomes can be achieved elsewhere.
- 3.13 Off-site offsetting, when appropriate, should be carried out as close as possible to the development site, to reduce the loss of biodiversity in the local area. The deficit in on-site enhancement should be ‘over-compensated’ for by delivering a greater level of off-site enhancement, the scale of which should increase the further from the development site that off-site measures are delivered (see Enhancement x Distance Multiplier below). Where off-site offsetting itself detrimentally impacts the off-site’s existing biodiversity, this should also be accounted for in the scale of enhancement delivered. Off-site offsetting should be clearly evidenced and secured for the long term.

<u>Enhancement x Distance Multiplier</u>	
1-25km	x 1
25-50km	x 1.5
50-75km	x 2
75-100km+	x 2.5

Take a place-based and inclusive approach

- 3.14 Enhancement measures will seek to restore and enhance habitats and species appropriate to the location of the site and its surroundings.

Ensure long term enhancement is secured

- 3.15 Biodiversity enhancement measures will require ongoing management and future monitoring. Management and maintenance plans (including funding arrangements where applicable) will be required to support development proposals.

Additionality

3.16 Enhancement which has previously been secured through other mechanisms, for example where an existing legal obligation is in place or where environmental improvements would have been likely to happen in the absence of the proposal, will not be considered enhancement for the purposes of meeting the NPF4 policy tests.

Section 4 - Development

Householder Development

- 4.1 Householder development is the development of an existing dwelling house, or development within the curtilage of a dwelling house for those living there, that requires a planning application.
- 4.2 NPF4 Policy 3a and 3d apply to householder development.
- 4.3 Small-scale householder development can easily incorporate features that will be of benefit to nature and applicants are encouraged to apply the principles and measures set out in NatureScot's [Developing with Nature guidance](#).

Local Development

- 4.4 Local development is development of less than 50 homes or sites where the total area is less than 2 hectares.
- 4.5 NPF4 Policy 3a, 3c and 3d applies to local development. Major or national development or development that requires an Environmental Impact Assessment is considered differently and using Policy 3b (see 4.31).
- 4.6 Applicants are required to refer to and follow NatureScot's [Developing with Nature guidance](#) which provides detailed guidance on securing positive effects for biodiversity from local development.
- 4.7 Local development is divided into two categories based on scale, and this will determine how the Council will assess ecological impacts and enhancement requirements:
 - Small-scale local development. This includes development sites with an area of 0.5 hectare or less (a typical development of 1-4 houses, for example). This covers the majority of planning applications in Highland.
 - Medium/large-scale local development. This includes development sites with an area equal to or greater than 0.5 hectares.

[Small-scale local development \(development less than 0.5ha\)](#)

Survey requirements

- 4.8 Unless located within or adjacent to a protected area or in an area that may be suitable for protected species, development of this scale will not require ecological survey to support an application.
- 4.9 Applicants are encouraged to use the Wildlife Assessment Check¹ tool to understand the biodiversity baseline of a development site, the results of which can be used to support an application.
- 4.10 Where the proposed development site is located within or adjacent to a protected area a Preliminary Ecological Appraisal (PEA) will be required. Such sites include:
 - Site of Special Scientific Interest² (SSSI)

¹ Partnership for Biodiversity in Planning [Wildlife Assessment Check](#)

² [NatureScot Site Link](#)

- Special Area of Conservation (SAC) ³
- Special Protection Area (SPA) ⁴
- RAMSAR sites ⁵
- Annex 1 and priority habitats including peatland, coastal grassland, coastal dune systems or wet heathland^{6 7}
- The Flow Country proposed World Heritage Site (pWHS)⁸
- Ancient woodland and Tree Preservation Orders⁹
- Any locally designated nature sites including Local Nature Conservation Sites (LNCS) and Local Nature Reserves (LNR).¹⁰

4.11 Where the proposed development includes or is located within proximity of habitat/s suitable for protected species, Protected Species Surveys will be required. The Wildlife Assessment Check⁶ and/or Development Triggers for Protected Species Survey (Appendix 2) can be used to find out what protected species may be present. NatureScot will advise on further assessment required for protected areas and any licencing requirements for protected species.

4.12 A list of ecological consultants and surveyors can be found at [here](#).

Enhancement Requirements

4.13 Whilst the development must include measures to conserve, restore and enhance biodiversity, a set biodiversity enhancement percentage increase is not required for this scale of development. Equally, there is no requirement to use a Biodiversity Net Gain Metric, although it may be a useful tool to clearly demonstrate how a development proposal will enhance biodiversity.

4.14 Biodiversity enhancement measures (which are *additional* to any mitigation or compensation/restoration required) will be delivered on site where possible and should be incorporated into the design. They will:

- Take account of the site location and opportunities it provides for enhancing biodiversity
- Consider the character and scale of development
- Consider the maintenance and management of biodiversity measures
- Take cognisance of the distinctiveness and scale of the biodiversity damaged or lost
- Demonstrate a balance between time required to deliver biodiversity benefits and risks or uncertainty in achieving them.

4.15 NatureScot's [Developing with Nature guidance](#) and forthcoming Highland Council area specific enhancement guidance contain useful information to identify appropriate measures to enhance biodiversity.

³ [NatureScot Site Link](#)

⁴ [NatureScot Site Link](#)

⁵ [NatureScot Site Link](#)

⁶

⁷ [Highland Nature Biodiversity Action Plan 2021 to 2026](#)

⁸ The Flow Country proposed [World Heritage Site boundary](#)

⁹ [Interactive Tree Preservation Order \(TPO\) map](#)

¹⁰ There is one Local Nature Reserve at Merkinch, Inverness. There are currently no LNCS in Highland.

4.16 If the ecological resources within the site cannot be avoided, minimised or the impacts compensated/mitigated on site and/or biodiversity enhancement measures cannot be delivered on site despite iterative design, biodiversity off-setting will be required – see Section 5.

Information required to support a planning application

4.17 The information supporting a planning application must provide evidence and confidence that the development includes appropriate measures to conserve, restore and enhance biodiversity. All development proposals of this scale must be supported by statement that will:

- Detail how the mitigation hierarchy and other core principles (Section 3) have been applied.
- With reference to existing habitats and landuse present on the application site, detail what measure(s) will be included to deliver positive effects for biodiversity.
- Provide plans that clearly show existing and retained biodiversity and the location and nature of all biodiversity enhancements proposed.
- Briefly detail the future management and monitoring arrangements for biodiversity enhancements.

4.18 It is strongly recommended that the template included in NatureScot's [Developing with Nature guidance](#) (Annex C) is used as a basis for the statement, completing all relevant sections.

Medium/Large-scale local development (development equal to or greater than 0.5ha and less than 2ha)

Survey requirements

4.19 Ecological Impact Assessment (EclA) undertaken by a suitably qualified ecologist¹¹ will be required to provide a baseline assessment and support development proposals of this scale. The EclA should be proportionate to the site, scale and complexity of the development. Surveys should be undertaken at an appropriate time of year and in compliance with NatureScot professional advice guidance¹². Reporting will be completed to professional CIEEM standards¹³.

4.20 A desk study must be undertaken and will include data from the NBN atlas and local recording groups, including Highland Biological Recording Group. If ornithology records and required these should be obtained from organisations such as the RSPB Scotland and/or local raptor groups.

4.21 Ecological survey will cover the entire development site and incorporate an appropriate buffer. Protected Species Surveys are normally only valid for 12-18 months and if older may require to be refreshed. Habitat surveys are typically valid for longer periods.

4.22 An initial PEA of the site will identify the need for any further surveys that must be conducted and included within the EclA. All potentially affected designated sites, priority habitats and protected/priority/UKBAP or HNBAP¹⁴ species will be considered within the report.

Enhancement Requirements

4.23 The preference is for biodiversity enhancement measures to be delivered on site.

¹¹ [Finding a Consultant | CIEEM](#)

¹² www.nature.scot/professional-advice/planning-and-development/planning-and-development-advice

¹³ CIEEM [Guidelines for Ecological Report Writing](#)

¹⁴ [Highland Nature Biodiversity Action Plan 2021 to 2026](#)

- 4.24 A minimum 10% biodiversity enhancement is required although a higher percentage may be expected where development impacts a locally protected area¹⁵. Whilst developers are not required to use a Biodiversity Net Gain Metric to demonstrate 10% enhancement the use of such is strongly recommended to help justify the type and extent of biodiversity enhancement measures proposed.
- 4.25 The EclA (or accompanying Habitat Management Plan) will identify opportunities for enhancing biodiversity on the site and will include appropriate plans, drawings and statements demonstrating how the identified opportunities will be delivered to their maximum potential. Enhancement is required *in addition* to any mitigation or restoration required. Where opportunities identified in the EclA (or Habitat Management Plan) are not incorporated in the development, the reasons for this should be clearly set out.
- 4.26 NatureScot's [Developing with Nature guidance](#) and forthcoming Highland Council area specific enhancement guidance contain useful information to identify appropriate measures to enhance biodiversity.
- 4.27 If the ecological resources within the site cannot be avoided, minimised or the impacts compensated/mitigated on site and/or biodiversity enhancement measures cannot be delivered on site despite iterative design, biodiversity off-setting will be required – see Section 5.

Information required to support a planning application

- 4.28 The information supporting a planning application must provide evidence and confidence that the development includes appropriate measures to conserve, restore and enhance biodiversity. All development proposals of this scale must be supported by an EclA that will:
- Detail how the mitigation hierarchy and other core principles (Section 3) have been applied.
 - Set out the site's current baseline ecological resource, the impact of development on this, the mitigation proposed and residual impacts.
 - With reference to the site's baseline ecological resource, detail what measure(s) will be included to deliver positive effects for biodiversity, in addition to any mitigation or compensation/restoration required.
 - Provide plans that clearly show existing and retained biodiversity and the location and nature of all biodiversity enhancements proposed.
 - Detail the future management and monitoring arrangements for biodiversity enhancements – this may be included in a Habitat Management Plan for larger-scale local developments.
- 4.29 The proposed development must take full account of the mitigation and enhancement recommendations made in the EclA with mitigation and enhancement measures clearly marked on all plans.

Monitoring/Reporting requirements

- 4.30 In most cases monitoring reporting will be required for year 2, year 3 (depending on particular circumstances and context) and thereafter every 5 years. This will be secured through a planning condition or legal agreement. It will be important to secure who is responsible for the production of the reports and what details they will contain. The Planning Authority may take on the responsibility of the monitoring at our discretion and at an agreed cost to the developer.

¹⁵ Protected areas that may require a higher percentage of biodiversity enhancement include WHS, Category 1a Ancient Woodland, LNCS, LNR etc.

Major, National and EIA-scale Development (Interim)

- 4.31 This section (from 4.31 to 4.44) is currently *interim guidance* pending detailed guidance on Policy 3b from Scottish Government at which point this section may be updated.
- 4.32 NPF4 Policy 3a, 3b and 3d applies to this scale of development. Major development is defined [here](#).
- 4.33 Policy 3b states that ‘*Development proposals for national or major development, or for development that requires an Environmental Impact Assessment (EIA) will only be supported where it can be demonstrated that the proposal will conserve, restore and enhance biodiversity, including nature networks so they are in a demonstrably better state than without intervention. This will include future management.*’
- 4.34 At the time of publication, national guidance on the implementation of Policy 3b is yet to be produced and NPF4 does not specify a particular assessment approach or methodology to be used. The requirements below set out the Council’s *interim* position in relation to Policy 3b and what it expects developers to deliver in relation to the conservation, restoration and enhancement of biodiversity.

Survey requirements

- 4.35 Ecological survey undertaken by a suitably qualified ecologist will be required to provide a baseline assessment and support development proposals of this scale. Survey should be undertaken at an appropriate time of year and in compliance with NatureScot professional advice guidance¹⁶. Reporting will be completed to professional CIEEM standards¹⁷.
- 4.36 Ecological survey will cover the entire development site and identify designated sites, protected species, habitats and LBAP species and include an appropriate buffer. Survey reports will cover all relevant species and habitats, be carried out at the correct time of year and according to best practice. All surveys recommended in the initial PEA will have been conducted.

Enhancement Requirements

- 4.37 The applicant must be able to demonstrate how biodiversity will be left in a *demonstrably better state* than before intervention and provide significant biodiversity enhancements.
- 4.38 A minimum 10% biodiversity enhancement is required although a higher percentage may be expected where a development impacts a locally protected area¹⁸. Developers are strongly encouraged to use a Biodiversity Net Gain Metric to demonstrate 10% enhancement. This will help justify the type and extent of biodiversity enhancement measures proposed.
- 4.39 The preference is for biodiversity enhancement measures to be delivered on site.
- 4.40 The EclA or EIA will identify opportunities for enhancing biodiversity on site and will include appropriate plans, drawings and statements demonstrating how the identified opportunities will be delivered to their maximum potential. Enhancement is required *in addition* to any

¹⁶ www.nature.scot/professional-advice/planning-and-development/planning-and-development-advice

¹⁷ CIEEM [Guidelines for Ecological Report Writing](#)

¹⁸ Protected areas that may require a higher percentage of biodiversity enhancement include WHS, Category 1a Ancient Woodland, LNCS, LNR etc.

mitigation or compensation/restoration required. Where opportunities identified in the EclA or EIA are not incorporated in the development, the reasons for this should be clearly set out.

- 4.41 If the ecological resources within the site cannot be avoided, minimised or the impacts compensated/mitigated on site and/or biodiversity enhancement measures cannot be delivered on site despite iterative design, biodiversity off-setting will be required – see Section 5.

Information required to support a planning application

- 4.42 The EclA/EIA will demonstrate how the proposed development has met all of the following requirements of Policy 3b:

- i. the proposal is based on an understanding of the existing characteristics of the site and its local, regional and national ecological context prior to development, including the presence of any irreplaceable habitats;
- ii. wherever feasible, nature-based solutions have been integrated and made best use of;
- iii. an assessment of potential negative effects which should be fully mitigated in line with the mitigation hierarchy prior to identifying enhancements;
- iv. significant biodiversity enhancements are provided, in addition to any proposed mitigation. This should include nature networks, linking to and strengthening habitat connectivity within and beyond the development, secured within a reasonable timescale and with reasonable certainty. Management arrangements for their long term retention and monitoring should be included, wherever appropriate; and
- v. local community benefits of the biodiversity and/or nature networks have been considered.

- 4.43 A Habitat Management Plan is required to detail the enhancement, compensation/restoration management prescriptions and monitoring strategies – this will include any off-site offsetting where this has been agreed with the Planning Authority. For non-EIA developments the Planning Authority may take on the responsibility of the monitoring at our discretion and at an agreed cost to the developer.

- 4.44 The proposed development must take full account of the mitigation and enhancement recommendations made in the EclA with mitigation and enhancement measures clearly marked on all plans.

Renewable Development - in Addition to the above

- 4.45 Biodiversity mitigation and enhancement will be incorporated into the design, construction, operation, and restoration stages and include a habitat management plan.

- 4.46 All enhancement measures proposed will be relevant for the species and habitats in Highland and complement measures in the UKBAP¹⁹ and Highland HNBAP²⁰.

- 4.47 The Council have committed to safeguarding, enhancing and internationally celebrating our unique natural heritage and the Indicative Regional Spatial Strategy identifies Highland as a special case for investment and coordination to safeguard, restore and enhance our natural environment to meet local and national priorities.

- 4.48 As such and reflecting the scale of natural resources and assets available and being utilised across Highland by energy generation projects we would seek to engage with renewable energy developers and seek a financial contribution to assist the Council in addressing the ecological

¹⁹ [UK BAP | JNCC - Adviser to Government on Nature Conservation](#)

²⁰ [Highland Nature Biodiversity Action Plan 2021 to 2026](#)

emergency. This will form part of the ongoing development of the Community Wealth Building Strategy and associated Action Plan.

4.49 This financial contribution would make a meaningful and wide-ranging contribution to nature recovery, halting and reversing biodiversity decline, restoring degraded and lost habitat and improving habitat connectivity and strengthening nature networks. The financial contribution would also give developers the opportunity to demonstrate commitment to tackling biodiversity loss within local Highland communities.

Section 5 - Biodiversity Off-site Offsetting

What is Biodiversity Off-site Offsetting, when can it be considered and how is it calculated?

- 5.1 Off-site offsetting is where the ecological resources within the site cannot be avoided, minimised or the impacts mitigated or compensated on site and/or biodiversity enhancement measures cannot be delivered on site despite iterative design, biodiversity off-setting will be required.
- 5.2 It is expected that a high percentage of biodiversity compensation and enhancement is delivered on site. However, where all the biodiversity enhancement cannot be delivered on site, despite iterative design or the minimum 10% enhancement threshold (where applicable) cannot not be met on-site, biodiversity offsetting is required to make up any shortfall.
- 5.3 There are three main ways in which off-site offsetting can be delivered:
 - The developer pays the Highland Council a financial compensation payment in exchange for the Council taking on the responsibility for securing the delivery of the biodiversity compensation and enhancement, off-site – see 5.12.
 - Compensation and enhancement is delivered on land within the control of the developer but outwith the development area – see 5.16.
 - A third-party offset provider/broker is used to deliver biodiversity compensation and enhancement, off-site – see 5.21.
- 5.4 If a developer proposes a financial compensation payment or to use an offset provider/broker to deliver compensation or enhancement, the Biodiversity Net Gain (BNG) metric¹¹ *must* be used to calculate the residual biodiversity value of a site and quantify what is required to deliver an appropriate level of enhancement.
- 5.5 Off-site offsetting may include enhancing existing habitat (including the removal or control of invasive non-native species), creating new habitats and strengthening nature networks. It may also include delivering or contributing to existing landscape-scale projects or projects that are creating or enhancing key habitats and species as identified as a priority for action in the UKBAP and HNBAP²¹.

Biodiversity Net Gain (BNG) Metric

- 5.6 A Scottish biodiversity metric is currently being researched by Scottish Government, but until this is available the most up-to-date version of the Biodiversity Net Gain (BNG) Metric (as developed by DEFRA)²² will be used²³.
- 5.7 This BNG metric includes detailed guidance on how to complete the metric as well as habitat conditioning assessment protocols. Although developed by Natural England it is applicable and transferable to a Scottish context.

²¹ [Highland Nature Biodiversity Action Plan 2021 to 2026](#)

²² [The Biodiversity Net Gain Metric 4.0](#)

²³ If an applicant proposes to utilise an alternative metric this must be justified and agreed with the Planning Authority in advance.

- 5.8 The BNG metric requires the input of the area of each individual habitat (or length of hedgerow or waterbody), habitat condition, distinctiveness and strategic significance. This information is also required for the post-development site for habitats retained, restored and created. Three risk multipliers are also added to the post-development habitats to account for temporal risk, spatial risk and the difficulty in establishing new habitats.
- 5.9 The metric will calculate the biodiversity units (value) for each habitat type and calculate the percentage biodiversity change of the site following development.
- 5.10 Biodiversity units will be used to calculate the biodiversity offsetting.
- 5.11 Some habitats such as peatland and some woodlands are designated as being irreplaceable habitats or those with very high distinctiveness. Losses and deterioration of irreplaceable or very high distinctiveness habitat cannot be accounted for through this metric. In these cases, and if the development was feasible, bespoke compensation and enhancement measures will be required.

Financial Compensation Payment

- 5.12 In cases where on-site enhancement is not possible and it would not be suitable to deliver off-site compensation and enhancement – or where small and/or isolated enhancements may deliver enhancements of limited value – the developer can opt to pay a financial compensation payment to the Council. The Council will then take on the responsibility for delivering biodiversity compensation and enhancement within the Highland Council area.
- 5.13 In some cases, this option may offer distinct advantages to both the developer and biodiversity, especially on smaller-scale sites. I.e. the payment discharges the developers statutory responsibility, removes the need to identify additional land and negates long term management and maintenance responsibilities, and the Council can use the payment to help facilitate the delivery of larger conservation projects that will provide significant benefits for biodiversity, as opposed to small and potentially isolated pockets of enhancement.
- 5.14 The financial contribution will be based on each biodiversity unit as calculated by the biodiversity metric to cover the cost of land, enhancement measures, long term management and monitoring. The value of each unit will be set at the current market rate (currently rates in England range from 9k-45k) and will be subject to regular review.
- 5.15 The Council could deliver offset biodiversity compensation and enhancement in a number of ways:
- Through management of areas of existing Council land to benefit biodiversity.
 - Through purchasing land specifically for the purpose of achieving biodiversity enhancement.
 - Through working with partner organisations.
 - Through working with landowners.

Off-site offsetting on developer-controlled land

- 5.16 Off-site compensation and enhancement is the delivery of biodiversity compensation/ enhancement on land outwith the development site but within the long-term control of the developer. Until a Scottish metric has been implemented, the Council strongly recommend the use of the BNG metric²⁴ to support such proposals.

²⁴ [The Biodiversity Net Gain Metric 4.0](#)

- 5.17 In most cases it is expected that land identified for off-site compensation and enhancement should be located close to the development site. As per Developing with Nature guidance, the further away from a development off-site enhancement is proposed, the greater the scale of the enhancement is expected, and as per the Enhancement x Distance Multiplier in Section 3.13. In all cases off-site enhancement will be delivered within the Highland Council area.
- 5.18 For off-site compensation and enhancement to be accepted, the developer must be able to demonstrate control of the land, either through land ownership or a long-term lease of a *at least* 30 years.
- 5.19 Areas identified for off-site compensation and enhancement will require ecological survey to establish the ecological value of the site, provide a baseline assessment and determine if the off-site area is suitable for the biodiversity compensation and enhancement measures proposed. This is critical as habitats of ecological value must not be damaged for compensation and enhancement measures, for example it would not be acceptable to plant native woodland on a species rich grassland.
- 5.20 In development proposals where a Habitat Management Plan has not been developed a long-term management and monitoring plan will be required. An offsetting site will need to have been secured prior to the determination of a planning application along with the means by which it will be managed, monitored and reported on, which will be agreed by the Council, including arrangements for providing information on progress to the Council.

Off-site offsetting secured via a third-party provider/broker

- 5.21 A reputable offset provider or broker may be used to purchase the required offsetting biodiversity units.
- 5.22 The Biodiversity Net Gain (BNG) metric²⁵ *must* be used to calculate the residual biodiversity value of the development site and quantify what is required for the third-party to deliver an appropriate level of enhancement.
- 5.23 This could also include off-site offsetting as part of a partnership with other stakeholders, including other developers, where land has been identified to deliver a large-scale cohesive enhancement.
- 5.24 It is expected that the provider/broker will deliver off-site compensation and enhancement as close to the development site as possible. As per Developing with Nature guidance, the further away from a development off-site enhancement is proposed, the greater the scale of the enhancement is expected, and as per the Enhancement x Distance Multiplier in Section 3.13. In all cases off-site enhancement will be delivered within the Highland Council area.
- 5.25 Details of the proposed provider/broker will be required, as well as the proposed site for the offset and accompanying surveys which show the biodiversity baseline and demonstrate that the required compensation and enhancement can be delivered.
- 5.26 Where a developer sources an offsetting site through an offset provider or broker the details will have been secured prior to planning application determination along with the means by which it will be managed, monitored and reported on, which will be agreed by the Council, including arrangements for providing information on progress to the Council.

²⁵ [The Biodiversity Net Gain Metric 4.0](#)

5.27 **Note:** The HC takes no responsibility for any interaction with a broker and this is undertaken at the applicant's own risk.

Section 6 - Planning Decisions, Conditions and Legal Agreements

6.1 The decision to grant planning permission is dependent on a range of considerations. A planning application may not be approved where:

- Inadequate information is submitted with regards to demonstrating biodiversity enhancement.
- if better outcomes are achievable for biodiversity but a developer will not engage in iterating the design following the mitigation hierarchy.
- if (even after iterating the design following the mitigation hierarchy) biodiversity enhancement is not achievable through the proposals on site and the applicant is unwilling to accept necessary pre-commencement conditions relating to biodiversity or sign a legal agreement for biodiversity off-setting.

6.2 Planning conditions may need to be applied to planning decisions to secure the submission of information and the carrying out of particular actions.

6.3 There is often also a need to use legal agreements as well as or instead of planning conditions because planning conditions:

- Are not appropriate for securing financial contributions;
- May not be able to applied outside of the development site;
- May be limited in their scope in other ways.

Appendix 1 – Protected Species

Some species are given legal protection as their populations have suffered catastrophic declines. This protection means it may be illegal to kill, injure or capture birds or animals or to pick or damage certain wild plants.

Internationally protected species are called European Protected Species (EPS) and are protected under the Habitats Regulations 1984 (as amended). These species are:

- Bats (all species)
- Otter
- Beaver
- Wildcat
- Great Crested Newt
- Dolphins

Nationally protected species are protected under the Wildlife and Countryside Act 1981. These species are:

- Water vole
- Fresh water Pearl Mussel
- Red squirrel
- Pine marten
- Hare
- Slender niad
- Adder
- Slow worm
- Breeding birds

Badgers are protected under the Badger Act.

[Licencing](#)

If protected species are found on the proposed development site it may be possible to obtain a licence from NatureScot to undertake works that would otherwise be illegal.

Proposals for Development that will trigger a Protected Species Survey	Species affected for which a survey will be required													
	Bats	Barn owls	Breeding Birds	Gt Crested Newts	Otters	Red Squirrel	Water vole	Badger	Reptiles	Amphibians	Plants	Pine Marten	Sch 1 Birds (divers, eagles etc.)	Freshwater Pearl Mussel
Proposals affecting gravel pits or quarries and natural cliff faces and rock outcrops with crevices, caves or swallets	X		X						X				X	
Major proposals (for residential >10 dwellings or >0.5has, for non-residential >1000m2 or >1ha) within 500m of a pond or minor proposals within 100m of a pond				X										
Proposals affecting or within 200m of rivers, streams, canals, lakes or other aquatic habitats	X		X	X	X		X			X	X		X	X
Proposals affecting derelict land (brownfield sites), allotments and railway land			X	X				X	X	X				
Proposed development affecting any buildings, structures, feature or locations <u>where protected species are known to be present</u>	X	X	X	X	X	X	X	X	X	X	X	X	X	X

Table adapted from Local Requirements for Biodiversity validation checklist (ALGE June 2007)