

# The Highland Council

<b>Agenda Item</b>	<b>9</b>
<b>Report No</b>	<b>ECI/15/25</b>

**Committee:** Economy and Infrastructure

**Date:** 29 May 2025

**Report Title:** Biodiversity Enhancement and Compensatory Planting – Upfront Scheme Endorsement

**Report By:** Assistant Chief Executive - Place

## **1 Purpose/Executive Summary**

- 1.1 It is the case that developers, principally those delivering major and national infrastructure projects, are finding it challenging to timeously secure sufficient land to deliver their compensatory planting and/or biodiversity enhancement obligations post-planning permission. This is resulting in delays to project implementation and the delivery of sub-optimal environmental schemes.
- 1.2 This report asks the Economy & Infrastructure Committee to agree to the principle of the Council endorsing proposed biodiversity enhancement and compensatory planting schemes in advance of a specific planning permission being applied for. This approach will give developers confidence to enter into early agreements with landowners and land managers and to allow them to deliver upfront environmental improvements with the assurance that such schemes have been endorsed by the Council as being competent and compliant with relevant standards and criteria. It will also assist the Council in addressing and mitigating environmental impacts more effectively to maximise benefits and opportunities, fulfilling statutory obligations, and supporting the Council's commitment to sustainable development and biodiversity enhancement.
- 1.3 This report sets out a proposed charging mechanism for such schemes to ensure that the Council is appropriately funded and resourced to provide a bespoke service to developers in line with the Corporate Charging Policy. Delegated authority is sought by the Assistant Chief Executive – Place to conclude and enter into a Memorandum of Understanding with any developer seeking this service from the Council.

## 2 Recommendations

2.1 The Committee is asked to:-

- i. **Agree** the principle of upfront endorsement of sites allocated by developers for compensatory planting and biodiversity enhancement;
- ii. **Approve** a fee structure based on the Council's existing pre-application fee scale for major development proposals (being £5,000 - £10,5000) with fees sought at the upper end of the scale; and
- iii. **Delegate authority** to the Assistant Chief Executive – Place, following consultation with the Chair and Vice Chair of the Committee and the Chief Officer - Legal and Corporate Governance, to conclude, and thereafter enter into, a Memorandum of Understanding with developers seeking this service from the Council.

## 3 Implications

3.1 **Resource** – Implementation of this service will require officer time and resource to assess schemes as they come forward, attend meetings with the developer and other stakeholders and carry out site visits where required. An administration fee will be chargeable to developers to cover staff time to deliver this service.

3.2 **Legal** - The nature of the service being provided by the Council requires that the roles, responsibilities, and expectations of the applicant or their agents and the Council will be set out in a Memorandum of Understanding (MOU) in managing upfront compensatory planting and biodiversity enhancement schemes. The MOU will provide a framework to support the delivery of these schemes and ensure that they are competent and compliant with relevant policy and guidance.

The MOU will operate solely for the period up to when a scheme is 'drawn down' and incorporated as mitigation in a planning application or application for energy consent. At this point, the MOU will cease, and the statutory processes will apply. The distinction is important because the MOU will confer no obligation on officers or Planning Application Committees to accept an endorsed scheme as suitable mitigation for a specific development proposal.

Effective oversight and enforcement are critical to mitigating legal and reputational risks and ensuring that environmental impacts are appropriately addressed.

3.3 **Risk** - None identified. This will deliver positive and proactive management and enhancement of Highland's natural environment. Ecology and forestry officers will ensure all schemes are properly scrutinised and assessed against policy requirements, with endorsed schemes providing an environmental bank for the developer to 'draw down' from and deliver quickly and efficiently on their statutory obligations.

3.4 **Health and Safety (risks arising from changes to plant, equipment, process, or people)** – No implications.

3.5 **Gaelic** - No implications.

## 4 Impacts

- 4.1 In Highland, all policies, strategies or service changes are subject to an integrated screening for impact for Equalities, Poverty and Human Rights, Children's Rights and Wellbeing, Climate Change, Islands and Mainland Rural Communities, and Data Protection. Where identified as required, a full impact assessment will be undertaken.
- 4.2 Considering impacts is a core part of the decision-making process and needs to inform the decision-making process. When taking any decision, Members must give due regard to the findings of any assessment.
- 4.3 **Integrated Impact Assessment - Summary**
- 4.3.1 An Integrated Impact Assessment screening has been undertaken on 7 May 2025. The conclusions have been subject to the relevant Manager Review and Approval.
- 4.3.2 The Screening process has concluded that there is *no impact needed*. Members are asked to consider the summary in **Appendix 1** to support the decision-making process.

## 5 Background and Context

- 5.1 The Highland Council has statutory duties to ensure developers deliver compensatory planting and biodiversity enhancement schemes under several key legislative frameworks. The Nature Conservation (Scotland) Act 2004, as amended by the Wildlife and Natural Environment (Scotland) Act 2011, requires the Council to further the conservation of biodiversity in all its functions. Additionally, under the Town and Country Planning (Scotland) Act 1997 (as amended), the Council, where it is the determining authority (as opposed to Scottish Ministers for energy consent applications), must regulate development to mitigate environmental impacts, including requiring compensatory planting to offset woodland loss and securing biodiversity enhancements through planning conditions, and where appropriate Section 75 agreements. The Climate Change (Scotland) Act 2009 further obligates the Council to support ecosystem restoration and resilience, including the enhancement of natural habitats to address climate and biodiversity crises. Together, these duties mandate the Council to ensure that consented developments contribute positively to biodiversity and deliver compensatory measures when losses occur.
- 5.2 Towards the end of 2024, SSEN approached the Council to request that we consider whether a protocol could be agreed for the upfront delivery of biodiversity enhancement and compensatory planting to provide more time to identify land and enter into legal agreements with landowners/land managers, thereby reducing the potential for projects to be delayed to accommodate arrangements to meet required biodiversity enhancement and compensatory planting obligations. It would also provide more certainty around the delivery of environmental improvements. This scheme is not, however, only applicable to SSEN. The upfront endorsement of such schemes may attract wider interest as it offers the same range of economic and environmental opportunities to all developers and may be of particular interest to those delivering other national infrastructure projects and developers delivering large-scale and/or multiple projects across the Highland area.

- 5.3 It has been recognised for some time that the short timeframe available following the granting of planning permission and project implementation makes it challenging for developers to maximise opportunities to deliver biodiversity enhancement and compensatory planting. For example, sourcing suitable land and entering into land management agreements with landowners can be difficult and time consuming. This is not only potentially delaying commencement of approved developments but is resulting in sub-optimal and often piecemeal environmental schemes that are difficult to implement and do not provide the level of benefit that would have been achievable if a more strategic approach was adopted, especially where this could result in landscape-scale improvements.
- 5.4 Developers are currently reluctant to enter into early agreements with landowners without assurances that the Council would accept those schemes as suitable to mitigate and offset relevant impacts. By the Council endorsing such schemes developers would have the confidence they seek to make significant upfront investment in large scale schemes, with the understanding that these would be endorsed by officers so as to enable developers to put them forward as mitigation to offset impacts of specific development proposals.
- 5.5 A key component of the proposed scheme is a Memorandum of Understanding (MOU) between the Council and the developer. This will establish a framework for developers and their agents to submit to the Council details of a proposed compensatory planting or biodiversity enhancement scheme for endorsement in advance of a formal planning application. Schemes will be expected to be delivered in accordance with specific requirements, criteria and policy and will be subject to review by a Steering Group to ensure consistency, compliance, and alignment with relevant statutory and policy objectives. The Steering Group would comprise the developer, Council officers and other stakeholders as and when appropriate (for example, Scottish Forestry and NatureScot).
- 5.6 Where schemes are assessed by officers and meet the required standards and fulfil policy requirements, they would be considered 'endorsed.' These would thereafter be considered competent compensatory planting/biodiversity enhancement schemes that the developer could 'draw down' from to provide mitigation for specific development proposals. This ensures compliance with statutory and policy obligations relating to compensatory planting and biodiversity enhancement, as required by legislation, the development plan, Scottish Government's policy on the Control of Woodland Removal and the Scottish Government Draft Planning Guidance: Biodiversity.
- 5.7 The approach is intended to simplify the allocation of compensatory measures against development proposals, promoting efficiency and consistency. Other important benefits, both environmental and procedural, may include:-
- a) Encourage the creation of large, landscape-scale schemes at a strategic level. These will deliver far greater environmental benefits than the piecemeal planting and/or enhancement on small and often isolated areas of land that is often delivered after permission has been granted.
  - b) Avoid delays in implementation of environment enhancements, with schemes being established well in advance of permissions being issued thereby generating more benefits (natural, carbon and economic) earlier and over a longer period of time.
  - c) 'Over-deliver' environmental improvements, as not all of an implemented scheme may be allocated to a particular development.

- 5.8 Note that ‘endorsed’ schemes only confer that a scheme is compliant with relevant requirements. It does not confer that it is appropriate mitigation to offset impacts of a specific development – this will be determined separately as part of the planning process. The allocation of endorsed compensatory planting/biodiversity enhancement schemes remains subject to potential modifications in cases where planning applications are determined by the Planning Applications Committees or by Scottish Ministers. This ensures that the process remains flexible and responsive to site-specific considerations and decision-making requirements.
- 5.9 To support transparency and effective monitoring, developers will be required to provide the Council with GIS shapefiles that show the approved compensatory planting or biodiversity enhancement schemes and how they have been allocated against consented developments. This data will allow tracking by the Council of compensatory measures and ensure that all allocated areas are documented accurately. This system will enhance the Council's ability to monitor the implementation of these schemes and ensure they are delivered in compliance with the endorsed scheme requirements.

## **6 Administration Fee**

- 6.1 The above process will have resource implications for the Planning Service, Environment Team and other key officers across the Council. A figure, likely to be based on the Council’s existing pre-application fee scale for major development proposals (i.e. £5,000 - £10,5000 with fees sought at the upper end of the scale) will be agreed as part of the MOU to ensure full recovery of all associated costs.

## **7 Next Steps**

- 7.1 If the Committee agrees to the recommendations in this report, the terms of the MOU will be finalised, an administration fee agreed, and mechanisms established to support its delivery. This will include setting up a steering group to review and endorse proposed schemes, finalising systems for the submission and allocation of GIS shapefiles and ensuring that applicants are fully informed of their responsibilities under the framework.
- 7.2 Additionally, the Council will establish monitoring and reporting structures to track the progress of approved schemes and their alignment with planning permissions. Regular reports on the progress and implementation of the scheme will be presented to the Committee to ensure transparency, accountability, and alignment with the Council’s statutory and policy objectives. These updates will provide an ongoing opportunity to evaluate the scheme’s effectiveness and address any challenges that may arise during its implementation.

Designation: Assistant Chief Executive - Place

Date: 7 May 2025

Author: Andrew Puls, Environment Team Leader  
Arlene Gibbs, Principal Solicitor

Background Papers: None

Appendices: Appendix 1 – Integrated Impact Assessment

# Integrated Impact Assessment Screening

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## About proposal

**What does this proposal relate to?** Introduction of a new service

**Proposal name:** Biodiversity Enhancement and Compensatory Planting – Upfront Scheme Endorsement

**High level summary of the proposal:** Seeking agreement of the principle of the Council endorsing upfront environmental enhancement schemes that can be 'drawn down' by a developer at a later date to provide mitigation/enhancement for development proposals.

**Who may be affected by the proposal?** Highland Council residents - compensatory planting or biodiversity enhancement schemes will be taking place across the Highland area

**Start date of proposal:**

**End date of proposal:**

**Does this proposal result in a change or impact to one or more Council service?** Yes

**Which Council services will be impacted by this proposal?** Place

**Does this relate to an existing proposal?** No

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**Service:** Place

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## Responsible officer details

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**Sign off date:** 2025-05-07

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# Equalities, poverty, and human rights

## Protected characteristics

Select what impact the proposal will have on the following protected characteristics:

**Sex:** No impact

**Age:** No impact

**Disability:** No impact

**Religion or belief:** No impact

**Race:** No impact

**Sexual orientation:** No impact

**Gender reassignment:** No impact

**Pregnancy and maternity:** No impact

**Marriage and civil partnership:** No impact

**Protected characteristics impact details:** None - the proposal is to seek agreement from Committee that the Council can endorse biodiversity enhancement and compensatory planting schemes being delivered upfront and in advance of a planning application.

## Poverty and socio-economic

What impact is the proposal likely to have on the following?

**Prospects and opportunities:** No impact

**Places:** No impact

**Financial:** No impact

**Poverty and socio-economic impact details:** None - the proposal is to seek agreement from Committee that the Council can endorse biodiversity enhancement and compensatory planting schemes being delivered upfront and in advance of a planning application.

## Human rights

**Which of the below human rights will be affected by this proposal?**No human rights will be affected

**What impact do you consider this proposal to have on the human rights of people?**No impact

**Human rights impact details:** None - the proposal is to seek agreement from Committee that the Council can endorse biodiversity enhancement and compensatory planting schemes being delivered upfront and in advance of a planning application.

## **Equalities, poverty and human rights screening assessment**

**What impact do you think there will be to equalities, poverty and human rights?** No impact

**Is a Full Impact Assessment required?** No

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## **Children's rights and wellbeing**

**What likely impact will the proposal have on children and young people?** None

**Which of the below children's rights will be affected by the proposal?** No children's rights will be affected

**Explain how the children's rights selected above will be affected:** None - the proposal is to seek agreement from Committee that the Council can endorse biodiversity enhancement and compensatory planting schemes being delivered upfront and in advance of a planning application.

## **Children's rights and wellbeing screening assessment**

**What impact do you think there will be to children's rights and wellbeing?** No impact

**Is a Full Impact Assessment required?** No

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## **Data protection**

**Will your proposal involve processing personal data?** No

## **Data protection screening assessment**

**What change will there be to the way personal data is processed?** No personal data will be processed

**Is a Full Impact Assessment required?** No

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## **Island and mainland rural communities**

**Does your proposal impact island and mainland rural communities?** Yes

**Could people in island and mainland rural communities be affected differently?** No

**Have any negative impacts been identified?** No

## **Island and mainland rural communities screening assessment**

**What impact do you think there will be to island and mainland rural communities?** Minor differences

**Is a Full Impact Assessment required?** No

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## Climate change

**Does the proposal involve activities that could impact on greenhouse gas emissions (CO<sub>2</sub>e)?** No

**Does the proposal have the potential to affect the environment, wildlife or biodiversity?** Yes

**Does the proposal have the potential to influence resilience to extreme weather or changing climate?** Yes

**Provide information regarding your selection above:** The proposal is to seek agreement from Committee that the Council can endorse biodiversity enhancement and compensatory planting schemes being delivered upfront and in advance of a planning application. This should result in larger landscape scale environmental schemes being delivered across Highland on an accelerated timescale with associated positive environmental outcomes.

## Climate change screening assessment

**Have you identified potential impact for any of the areas above or marked any as not known?** Yes

**Is a Full Impact Assessment required?** No