

# Title: National Planning Framework 4 (NPF4) update and implications for NatureScot’s approach to our engagement with the planning system and other regulators.

**Date: 22 June 2023**

|  |  |
| --- | --- |
| **Purpose:** | Decision |
| **How does this link with our corporate priorities of improving biodiversity or delivering nature-based solutions to climate change:** | A key part of our statutory responsibilities is our engagement as a statutory consultee in the planning system. It is essential this work is targeted to priority themes and issues. |
| **Summary:** | The paper presents the approach to our interaction with the planning system and other regulators, developed in response to NPF4. It provides a reminder of how we engage in the planning system; what has changed as a result of NPF4; where we are setting the bar for casework; and finally where there is still more work to do/uncertainty. |
| **Actions:** | Board to agree the approach proposed to our service. |
| **Recommendations:** | As outlined more fully below – this paper details the rationale behind our planning and regulation work where the Policy context has changed due to NPF4.  Board are asked to agree and note the rationale, risks and controls associated with continued engagement on   * Strategic plans and policies * Development Planning * Development Management * National Interest * The need to have measurable biodiversity enhancement |
| **Report Author(s):** | Darren Hemsley |
| **Sponsor:** | Robbie Kernahan |

## Purpose

1. This paper presents the approach to **engaging with the planning system and other regulators** developed in response to NPF4, setting out

* a reminder of how we engage in the planning system and other regulatory casework,
* what has changed as a result of NPF4,
* where we are setting the bar for planning and other regulatory casework, and
* where there is still more work to do/uncertainty.

**Action**

1. Board are asked to:

* Note and agree the proposed changes to our guidance and in particular reaffirm our approach in managing our engagement
* Reflect and discuss any key points of concern

**An introduction to the Planning System**

1. The two main parts of the planning system in Scotland are the development plan process, and development management.
2. Development management is the process of deciding planning applications and various other associated activities, including enforcement of planning controls. Development in Scotland is put into one of three categories; local, major or National. For National development the principle of development is already established within NPF4.
3. The law requires that development management decisions are made in accordance with the development plan unless material considerations require otherwise.

**Our Approach to the Planning System**

1. We are a statutory consultee for certain aspects of the planning system.
2. Our approach in dealing with the planning system is to front load as much as possible to strategic planning – to make sure that plans and policies are sufficiently clear and positive for nature, and that any spatial plans direct development to the right places.
3. At the highest tier this involves engaging and responding to consultations on national policies and strategies, such as NPF4, the new Local Development Plan Regulations and the Onshore Wind Policy Statement (OWPS) so that **the expectation of the whole regulatory system is geared toward benefiting nature**. Discussion below focuses on why we take this approach, and what has changed or will need to in our future approach. **It means that we do not need to engage with the bulk of development management cases, only those that are most important in relation to their impact on nature.** Many of the driving principles remain the same for us between the old system of NPF3/Scottish Planning Policy (SPP) and that of NPF4.

**Background and key headlines from NPF4**

1. NPF4 is a long term plan looking to 2045 that guides spatial development, sets out national planning policies, designates national developments and highlights regional spatial priorities.
2. NPF4 came into force on 13 February 2023. It replaces NPF3 and SPP published in 2014. Key headlines particularly relevant to our engagement include:

* **The climate and nature emergencies are placed at the heart of decision-making**, and will be given significant weight in all decisions.
* **NPF4 has an enhanced status in determining planning applications** as it is now part of the development plan (along with the Local Development Plan (LDP)) that decisions shall be in accordance with unless material considerations indicate otherwise (previously NPF4 was only a material consideration).
* **NPF4 uses much stronger language than its predecessors in its ambition and expectation that biodiversity will be a key consideration in all development**. This includes a requirement for all developments to contribute to the enhancement of biodiversity.
* **NPF4 gives strong support to all renewables, energy storage and transmission**, including where peatland and wild land interests are present.
* **Strategic Renewable Electricity Generation is now listed as one of the national developments** included in NPF4. The location for this national development is not defined but any development of “On and offshore electricity generation,   
  including electricity storage, from renewables exceeding 50 megawatts capacity” is classified as a national development. As are “New and/or replacement upgraded on and offshore high voltage electricity transmission”.
* **Landscape interests are given reduced consideration in NPF4** compared to that previously set out in SPP. There has been a significant weakening of policy safeguarding Wild Land Areas (WLA), particularly for developments outwith WLA.

1. It is important that NPF4 is read and understood as a whole, recognising that conflicts between individual policies are to be expected and will need to be weighed up in the planning balance.

**Our Approach to Development Planning (DP)**

1. Our aim is to engage in the earliest stages of Local Development Plan (LDP) production and work to ensure that the suite of policies for every Local Authority provide clear and positive consideration of our remit when any planning decision is made.
2. **We will need to help shape policies and guidance on considering the biodiversity emergency in our DP work, including the importance of 30x30, nature networks and the Scottish Biodiversity Strategy which** are woven through NPF4 policy but for which there is no specific policy mechanism. We consider that LDPs will need to do this work and have agreed that we (currently liaising directly with Fife and Perth and Kinross Councils) should draft proposed model policy to share with planning authorities if they decide they need nature network policy in their LDP.
3. **Risks/Controls -** It is likely thatearly consultations will show the direction of travel on nature networks but **evidence and detail will need to wait**. NatureScot needs an agreed approach to responding to this and will therefore discuss with Scottish Government, Heads of Planning Service and DPEA to ensure that they agree.

**Our Approach to Development Management (DM) Casework**

1. Our engagement in development management cases focuses on issues of national importance where there is a likelihood that it may be in the national interest for us to engage. This includes the **statutory designations** within our remit and a small subset of wider countryside issue criteria primarily relating to;

* population level species impacts
* nationally significant habitat impacts such as on peatland
* specific wider countryside landscape criteria (which has included wild land)

1. As a result of NPF4 these criteria have been reviewed to reflect the new Policy context.
2. We object only in those few cases where we feel there is an impact on national interest that have not been appropriately mitigated, and where the use of an objection has weight. We explicitly do not object to cases dealing with SEPA’s or Forestry Scotland’s regulatory roles, and our responses are provided as advice.
3. For nationally and internationally important designations, the national interest is clear and Heads of Operations have delegated authority to take forward objections. For “wider countryside” (bullet points above at 15) cases careful consideration is required at Director level and in many cases the Director may call a National Interest panel meeting to discuss the case before authorising an objection.
4. A proportion of cases require us to lodge holding (requiring further information) or conditioned (requiring measures to be put in place) objections. These allow us to make sure the measures required to mitigate and safeguard nature are in place. The majority of conditioned objections are straightforward measures required to safeguard European sites. There were 90 conditioned objections and 37 holding objections in 2022/23.
5. Outright objections, where our advice is simply that a development cannot mitigate the effects on nature to an acceptable level, are rare. There were 16 outright objections in 2022/23.
6. Outright objections can lead to referral to Ministers to ensure the issues we have raised are given due consideration. This can also potentially involve us engaging in Inquiries being held on behalf of Ministers, with a high resource demand.

**Biodiversity**

1. For species and habitats (including peatland) of outstanding conservation importance our approach will remain largely as set out in our Guidance on [Identifying Natural Heritage Issues of National Interest in Development Proposals](https://snhintranet.snh.gov.uk/node/987). Proposals with significant implications for the conservation status of species and habitats at the national level may merit an objection.
2. NPF4 introduces a **new requirement for all developments to contribute to the enhancement of biodiversity through Policy 3 on Biodiversity**. Scottish Government is committed to preparing guidance on this policy. In the short to medium term it is not anticipated that we will raise an objection solely on the grounds that a proposal has not adequately addressed this requirement. We are not the arbiters of biodiversity enhancement and decisions on it remain with the decision maker. Our engagement on the issue will be targeted at strategic guidance and plans rather than all development management. Our development management work on enhancement must focus primarily on those issues which we already identify as of national interest and in such cases we are likely to comment on enhancement measures as part of our engagement.
3. At the pre-application and scoping stage we will make developers aware of the biodiversity enhancement requirement – early advice is available on the [Planning and development: Enhancing biodiversity page](https://www.nature.scot/professional-advice/planning-and-development/planning-and-development-advice/planning-and-development-enhancing-biodiversity) of the NatureScot website. For development proposals for national, major or other EIA development there is a requirement for proposals to demonstrate that they have met a number of criteria, including providing significant biodiversity enhancement. For local developments, measures to conserve, restore and enhance biodiversity should be in accordance with national and local guidance. National guidance includes our [Developing with Nature](https://www.nature.scot/doc/developing-nature-guidance) publication. There will be further action to raise awareness of the biodiversity enhancement requirements and build capacity.
4. Policy 3 intended outcome is that biodiversity is enhanced and better connected including through strengthened nature networks and nature based solutions. We have already published [*Developing with Nature*](https://www.nature.scot/doc/developing-nature-guidance)guidance to support delivery of Policy 3(c)., This requires that “*proposals for local development should only be supported if the application includes ‘appropriate measures’ to enhance biodiversity, in proportion to the nature and scale of development*.”
5. We will be involved in supporting SG’s development of further guidance on Policy 3. It is expected that this will need to address SG’s ambition for development to enhance biodiversity, restoring degraded habitats, building and strengthening nature networks and integrating nature-based solutions so that major applications leave nature in a demonstrably better state.
6. We are also engaging with the ongoing work on the biodiversity metric that SG is taking forward and are aware that this area may require changes to our approach as NPF4 enactment approach evolves.
7. ***Our Approach*** We cannot deal with the biodiversity enhancement measures of every development management case, so we will continue to focus on only those issues raising issues of national interest. However on those cases, how the development proposes to deal with enhancement will be a fundamental aspect of our involvement in the case. **If the significant impacts of a proposal on habitats and species are such that we would normally expect to object, then discussion of the required enhancement proposals will be an important part of our consideration for such a case.**

***Risks/Controls***

1. This targeted approach relies on expertise and resource being available within planning authorities and Energy Consents Unit (ECU) (who regulate Electricity Act cases such as large windfarms on behalf of Scottish Ministers) to deal with more standard proposals, which we know is not always the case and has risk associated with it in terms of delivery of the Policy at the scale of our ambition.
2. The absence of a common agreed approach to ‘measuring’ biodiversity in order to better define the enhancement required of developers to leave biodiversity in a “*demonstrably better state*” remains a significant concern to developers, consultants and planning authorities. SG has commissioned consultants to explore the possibility of developing a Scottish Biodiversity metric (of potential relevance wider than planning), which has just been finalised. Scottish Government has formed a Technical Advisory Group to consider the findings and take forward guidance for delivery. Work will be required from us on any proposed approach in order to move the policy delivery forward. Our staff are engaged and will continue to push the ambition.
3. In the absence of an agreed approach, both Planning Authorities and developers have been exploring potential options. Reflecting its relatively long development and scientific underpinning, several are based on the Defra metric that has been developed in support of England’s statutory requirement for development to deliver a 10% uplift in biodiversity. There are some issues with the Defra metric’s application in Scotland, which are being reviewed by the SG research. The general absence of an agreed common approach to measuring biodiversity enhancement is a concern. There is a high risk of uncertainty about what enhancement is required to be delivered, inconsistency across Scotland, wasted effort on establishing the approach to be used, and ultimately a lack of confidence that the policy objective is being delivered. We initially need to monitor this, to continue to advocate the step change required and indicated by the rhetoric of NPF4.
4. We are however closely involved in liaising with SG in beginning to work up the approaches and guidance which will be used; pursuing with SG the need for consideration and development of a metric; increasing our understanding of how a revised DEFRA metric might work in Scotland; and working with the Key Agencies Group on capacity raising for councillors.

**Landscape and Wild Land Areas**

1. Landscape interests outwith National Scenic Areas and National Parks are given limited consideration in NPF4.

There has been a significant change to policy relating to Wild Land Areas (WLA), and there is no longer an explicit recognition of their national importance. The policy position has changed from:

* providing some safeguards to WLAs from all development within them, with some consideration to be given to impacts from development outwith, to be weighed in the overall planning balance; to
* a policy permitting any development within WLAs which supports renewable energy targets or small scale development linked to a rural business or fragile community (but no other development), and no significant consideration to be given to impacts from development outwith, to be weighed in applying NPF4 as a whole.

***Our approach***

1. **For development proposals affecting landscape designations (including National Parks) or relevant proposals within Wild Land Areas.**

We will continue to advise on impacts on the qualities of these areas in relevant circumstances (i.e. the National Parks deal with impacts from within their boundaries themselves), **or landscape interests**

1. NatureScot continues to recognise the value of these landscape interests. In a limited number of cases where landscape and visual impacts are particularly significant, we are likely to continue to consider that these impacts may raise issues of national interest that may merit an objection.

A revised single landscape criterion to be used in our consideration of whether landscape and visual impacts raise issues of national interest is currently in preparation.

***Risks/Controls***

1. There is a clear risk with the wild land policy that its practical application becomes overly complex for all involved and may fail to protect our most sensitive landscapes. We need to keep a watching brief on this and reflect any difficulties to SG colleagues.

**Renewables and Energy Infrastructure**

1. As noted above the increased importance given to delivering renewables and energy infrastructure and the pace required to do so means that there are substantial pressures around our service. There are also opportunities to deliver for nature at scale. We are engaged with the industry and Scottish Government including within initiatives such as the Onshore Wind Sector Deal which aims to agree ways in which consenting can be speeded up whilst retaining all the ambition of NPF4.
2. The large scale and the often remote locations of these developments mean that there is a strong likelihood of effects on nature and involvement in renewables casework is high for us. We have reached a point where the “easy” locations for renewables have been given permission and broadly speaking, built out. New development is increasingly likely to need to mitigate effects on internationally and nationally important nature. The combination of this and the increased targets for renewables mean increased pressure for staff resource to deliver our role and hard choices on prioritisation. We are working with SG, ECU and the industry on this to be very clear over what we can and cannot engage on.
3. There are also a number of opportunities associated with this which we should attempt to seize in ensuring that the sector clearly commits and are able to deliver on combating the biodiversity emergency in tandem with the climate emergency
4. Biodiversity enhancement works at scale from the industry having the potential to help deliver on the SBS, 30x30 and nature networks. We need to engage both at the strategic level and on the most important individual cases to ensure we get the best result.

**Balancing Duty**

1. For all cases (apart from cases involving European sites) where we have decided that impacts raise issues of national interest, consideration of our balancing duty will be required before we decide on our position. This is particularly relevant to cases involving renewable energy generation, storage and associated infrastructure, many of which are now categorised as national development. In applying our balancing duty we will also have to take into consideration the significant weight given to the nature crisis by NPF4 and the policy intent to protect biodiversity, reverse biodiversity loss, deliver positive effects from development and strengthen nature networks.

**Recommendations**

1. Board is asked to endorse the rationale, risks and controls associated with continued engagement on;

* Strategic plans and policies
* Development Planning
* Development Management
* National Interest issues
* Work with Scottish Government on measurement requirements for biodiversity enhancements.