

Highland Council  
Glenurquhart Road  
Inverness  
IV3 5NX

23 February 2024

Dear Highland Council,

### **Response to The Highland Council draft Biodiversity Planning Guidance**

I am writing on behalf of Scottish Renewables in response to the Highland Council Biodiversity Planning Guidance. While we are encouraged by the Highland Council's interest in protecting biodiversity, this guidance is problematic in a number of key ways.

- This guidance is based off of the DEFRA Metric, which has been determined by the Scottish Government is not fit for purpose in Scotland. Research by SRUC, commissioned by the Scottish Government, on measuring biodiversity in Scotland found that the DEFRA metric is unsuitable for use in Scotland and the Chief Planner's Office has tasked NatureScot with creating a modified metric appropriate for use in Scotland. In the absence of an appropriate, nationally adopted approach in Scotland, the Scottish Government has been clear that the DEFRA metric should not be used.
- A number of important terms have been misused throughout this guidance, and many terms have not been defined, creating confusion and ambiguity.
- Efforts to charge renewable energy developers above and beyond statutory requirements or agreements through the Onshore Wind Sector Deal are inappropriate and we discourage the Highland Council from pursuing these efforts. Developers already provide significant community benefit that communities within the Highlands benefit from.

We encourage the Highland Council to look at renewable energy developers as partners in restoring habitat. Many developers go above and beyond planning requirements for habitat restoration and are key partners across Scotland in restoring peatlands to meet peatland restoration and net zero goals.

Developers use qualified, independent professionals across a range of disciplines to develop the research and data used to plan developments and to restore and monitor habitat. Using these independent, credentialed professionals to do this work is one of the ways developers provide credible data and research to the public and regulators.

Scottish Renewables looks forward to working with you to resolve these problems and providing additional information to help inform the discussion.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Amundson', with a stylized flourish at the end.

Megan Amundson  
**Senior Policy Manager | Onshore Wind & Consenting**  
**Scottish Renewables**

The Highland Council has released for consultation new Biodiversity Planning Guidance that will support the implementation of cross-cutting biodiversity policies as set out in National Planning Framework 4.

## **CONSULTATION QUESTIONS**

### **Section 1 – Introduction**

#### **Do you have any comments on Section 1?**

Scottish Renewables is encouraged by the Highland Council's commitment to protecting and enhancing the biodiversity of the Highlands. Given that we face twin climate and biodiversity crises, it's important to note that the Council cannot protect biodiversity if it is not also focused on reducing carbon emissions.

A major goal of NPF4 was to rebalance the planning system, to ensure our planning system addresses the twin climate and biodiversity crises. To deliver this goal, NPF4 recognises and supports the need to significantly increase renewable energy developments. It sets out clearly that protecting biodiversity requires a flexible approach. Neither biodiversity efforts nor renewable energy projects can be implemented in a vacuum and must be delivered in tandem. Competing guidance that creates undue barriers to siting renewable energy projects conflicts with the goals of NPF4.

We agree on the goal of fair and transparent guidance. However, the guidance laid out here is largely based on NatureScot draft guidance 'Advising on peatland, carbon-rich soils and priority peatland habitats in development management', published in June 2023. This draft guidance has been determined as not fit for purpose by the Scottish Government's Peatland Expert Advisory Group (PEAG), and NatureScot has agreed that it should be replaced by guidance produced by the PEAG.

The Highland Council approach also incorporates the DEFRA biodiversity metric. Research by SRUC, commissioned by the Scottish Government, on measuring biodiversity in Scotland found that the DEFRA metric is unsuitable for use in Scotland and the Chief Planner's Office has tasked NatureScot with creating a modified metric appropriate for use in Scotland. In the absence of an appropriate, nationally adopted approach in Scotland, the Scottish Government has been clear that the DEFRA metric should not be used.

To that end, this guidance is based on draft peatland guidance that is not fit for purpose and a biodiversity metric that is not suitable for use in Scotland. It is also contrary to the guidance being developed by the Chief Planner's Office to support the delivery of NPF4. As such, it is our position that the Highland Council's biodiversity strategy must be re-written to ensure it is fit for purpose and aligned with national guidance on NPF4.

## **Section 2 – Policy Content**

### **Do you have any comments on Section 2?**

There are wording omissions in this section with the potential to significantly impact interpretation.

NPF4 Policy 3 section:

- Policy 3a is missing 'contribute' to the enhancement of biodiversity and the end of the sentence is missing 'and the connections between them'.
- The phrase 'where possible' is missing from the section where it says nature-based solutions should also be integrated.

Policy 3c should state (excluding "individual" householder development).

## **Section 3 – Core Principles**

### **Do you have any comments on Section 3?**

This guidance confuses the definitions of key terms--'offsetting' and 'enhancement'--that have specific ecological meaning, making this guidance inaccurate. The guidance also fails to define other terms like 'site' and 'cleared'. The lack of clear definitions and the inconsistent use of definitions makes this guidance confusing and open to wide interpretation.

In addition, it creates added burdens and barriers to development beyond statutory requirements.

### **Misunderstanding Offsetting and Enhancement**

This guidance misunderstands the terms 'offsetting' and 'enhancements', implying that all measures done off-site are offsetting, which is incorrect. If this were true, it would leave too much bias on where a site boundary is placed. Off-site compensation is not always offsetting.

Section 3.5 interprets compensation/offsetting incorrectly. (See CIEEM Guidelines for Ecological Impact Assessment '*Measures to address impacts and effects that will occur should therefore be referred to as compensation whether the compensation is located within or outside of the project site*'.)

Off-site compensation for habitats should not be considered a least preferred option. Not all developments can accommodate a solution on site, but they can still deliver a suitable off-site solution while delivering and contributing to the Scottish Government's energy targets. There is no justification for off-site compensation or enhancement having less weight than onsite enhancement. The guidance should be amended to take a more holistic view of habitat enhancement.

Sections 3.12 and 3.13 continue the confusion between 'offsetting' and 'enhancement'. The glossary at the end of Scottish Government's draft planning guidance for biodiversity makes clear that 'offsetting' measures are compensation, and that 'enhancement' is additional to offsetting/compensation measures. Offsetting should not be discussed under the heading of enhancement.

The diagram used in this section bundles 'offsetting' and 'biodiversity net benefits' together, which is inaccurate. These concepts should not be confused or conflated and should be shown separately.

Section 3.5 refers to a 'Third-party offset provider/broker'. Whilst this approach is available in England via the BNG legislative requirements, it is not yet available in Scotland.

### **Offsetting Multiplier**

Section 3.13 lays out a metric different from the DEFRA Metric guide, and it is unclear what evidence this new metric is based on. This numerical distance multiplier for off-site offsetting could make offsetting difficult or impossible if developers cannot secure land close to the development. Developers do not own the land on which they develop wind farms. Again, in the absence of a nationally accepted metric that is appropriate for Scotland, and considering the Scottish Government's position that the DEFRA Metric is not appropriate for use in Scotland, the Highland Council should not issue guidance on the use of biodiversity metrics until a new metric is accepted by the Scottish Government.

The requirement that all off-site enhancement be within the Council area is inconsistent with the reality that wind farm developers may not have access to land for off-site enhancement within the Council borders. It also strips Scotland of the ability to enhance biodiversity where needed, including protecting nature corridors and connecting fragmented habitat outside of the Council area. It may also be the case that all available land nearby has already been enhanced.

### **Consider biodiversity from the outset & nature networks**

Scottish Renewables fully supports the policies set out in NPF4 that development should include biodiversity enhancement. However, this guidance goes too far in creating rigidity around habitat protection and enhancement that is not reflected in current habitat management practice or the intention of NPF4.

Section 3.8 states that 'the development site must not be cleared'. This definition of 'cleared' could include forestry felling, which is a normal part of the management of this habitat.

Regarding section 3.9, it should be recognised that developers may not have the ability to enhance connectivity because they do not control the land on which they develop.

### **Prioritise on-site enhancement before off-site delivery**

Section 3.11 references the 'development site' and 'site' but these terms are not defined in the guidance. They could be interpreted to mean the lease boundary or the application boundary or something else entirely. Without clearly defined terms, this leaves the guidance open to interpretation and will not achieve the goal of ensuring the guidance is consistently applied.

### **Ensure long-term enhancement is secured**

Section 3.15 requires that biodiversity enhancement measures be ongoing with future monitoring tied to the life of the project and managed by the developer/operator. These measures should be in line with best practice across other nature improvement schemes.

### **Additionality**

Scottish Renewables has written to the Scottish Government's Chief Planner's Office to highlight the inaccurate use of the word 'additionality' in planning guidance (<https://www.scottishrenewables.com/publications/1510-sr-response-additionality-in-scottish-government-s-biodiversity-guidance>). We note that the same misuse of the term additionally is repeated in this draft guidance.

Onshore wind developers are a key partner with the Scottish Government and the Highland Council in restoring peat to meet our peatland restoration climate goals without using taxpayer money. To date, onshore wind developers have routinely undertaken more peatland restoration than the statutory requirement. However, this definition of additionality undermines developers' ability to undertake additional restoration that goes beyond the statutory minimum as it prevents landowners from being able to access peatland credits. If this is not amended, it will have the unintended consequence of undermining peatland restoration and pushing landowners towards using already over-stretched Government funded peatland restoration grants rather than utilising developer funding.

## **Section 4 – Development**

**The Highland Council have committed to safeguarding, enhancing and internationally celebrating the unique natural heritage of our area. 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 – this includes the vision to halt biodiversity loss by 2030 and reverse biodiversity declines by 2045. As such and reflecting the scale of natural resources and assets available and being utilised across Highland by, for example, energy generation projects we would seek to engage with large-scale developers to secure a financial contribution to assist the Council and its stakeholders in meeting these challenging targets, addressing the ecological emergency and reversing biodiversity loss. This will form part of the ongoing development of the Community Wealth**

**Building Strategy and associated Action Plan and will be in addition to the developer's existing requirements under NPF4 to deliver biodiversity enhancement.**

**Developers would be encouraged to commit to this voluntary contribution in their planning submission, EIA or socio-economic assessment, which can be reported as part of their community wealth building strategy.**

Do you agree that an additional voluntary financial contribution of £1,000 per MW (of the design maximum capacity) per annum for the lifetime of the project should be sought from energy generation projects (with comparable contributions sought from other large-scale projects including electricity transmission projects, infrastructure associated with on and off-shore wind developments, hydrogen etc) to provide the necessary resource to assist Highland and its communities in tackling the ecological emergency and achieving the national and local target to halt biodiversity loss by 2030 and reverse biodiversity declines by 2045?

**Yes/  No**

In September 2023, the Scottish Government and the onshore wind sector signed the Scottish Onshore Wind Sector Deal (SOWSD). The SOWSD was that output of an 18-month process of consultation and dialogue with multiple stakeholders including Heads of Planning Scotland, the Chief Planner's Office, the Energy Consents Unit, Local Energy Scotland and NatureScot. The Deal sets out 63 commitments that will ensure we deliver upon our collective ambition of 20GW of onshore wind in Scotland by 2030 whilst delivering maximum benefit to Scotland. The Sector Deal covers the actions developers are expected to take to deliver socio-economic, community and biodiversity benefits.

As there is already a nationally agreed set of commitments that resulted from an extensive consultative process, we do not agree that the Highland Council should be seeking to arbitrarily establish additional requirements without similar levels of consultation and dialogue.

**Do you have any comments on Section 4?**

As per our answers to previous questions, this section of the guidance continues to include mis-used terms and requires amending. This section also references the DEFRA Metric, which the Chief Planner's Office has deemed inappropriate for use in Scotland.

#### **Guidance on enhancement**

The major projects section (4.32–4.46) is considered interim guidance until Scottish Government guidance is produced, at which point change may occur. This poses potential

difficulties in trying to define enhancement for a major development against changing guidance, which creates a lack of certainty for developers.

The Highland Council should consult on any area specific enhancement guidance (4.14) it produces, to ensure such guidance is based on the expertise of individuals experienced in delivering developments that deliver enhancement.

### **Assessment criteria**

In section 4.10, there is a requirement to undertake a PEA on medium/large scale local developments (between 0.5ha and 2 ha) located within or adjacent to protected areas. However, 'adjacent' is not defined, making it unclear how far this would extend or how this is agreed upon. And the list of 'protected areas' includes habitat types that are not designated or mapped anywhere, making it difficult to know if any development site falls under these criteria. One of the footnotes for this category is also blank.

Section 4.11 leaves significant room for interpretation of 'protected species' and the 'proximity of habitat' in relation to a development.

### **Setting levels of enhancement**

This guidance requires a minimum 10% enhancement, which is derived from the DEFRA Metric, and its use is deeply flawed in this context. The Scottish Government have indicated in their 'Biodiversity: draft planning guidance' (November 2023) that no specific threshold for enhancement will apply, and the Highland Council should move forward accordingly, in line with Scottish Government.

### **Monitoring**

This guidance requires monitoring for years 2, 3, and thereafter every 5 years for medium/large scale local developments (between 0.5ha and 2 ha). The guidance does not provide a maximum period given, leaving the end date up to interpretation. This rigid approach does not consider the ecological reality on the ground: monitoring frequencies depend on what you are monitoring and the intended objectives you are monitoring against.

Scottish Renewables strongly opposes any effort by the Council to take on monitoring responsibilities or charge for the cost of reviewing reports. Renewable energy developers take great pride in the habitat restoration work they do. Developers use qualified, independent professionals across a range of disciplines to develop the research and data used to plan developments and to restore and monitor habitat. Using these independent, credentialed professionals to do this work is one of the ways developers provide credible data and research to the public and regulators.

There is no justifiable reason for developers to pay the Council for carrying out its core responsibilities. We would strongly discourage the Council from creating requirements so



complicated that the Council cannot address their implementation and enforcement out of their existing budget.

### **Medium/Large scale local development**

Section 4.21 states that 'Protected Species Surveys are normally only valid for 12-18 months. However, this is not accurate. See <https://cieem.net/wp-content/uploads/2019/04/Advice-Note.pdf>, which states that some survey data may be valid for up to 3 years.

Previous advice provided by NatureScot on this matter includes, '*Species survey information needs to be sufficiently up to date when a planning application is submitted. Pre-application survey results normally remain valid for 2-3 years, or for two more survey periods after the survey was completed. If the application is going to be delayed beyond a third survey period, then it should be repeated in that third period to provide more recent information, unless it is reasonable to assume there has been no substantive change in number, distribution or activity of a species since the original survey.*'

### **Enhancement requirements**

Section 4.26 does not define 'ecological resource', creating ambiguity and leaving it open to interpretation. 'Ecological resource' could apply to anything.

Footnote 18 (referenced in section 4.39) uses 'etc' and is far too vague about which protected areas would require a higher percentage of biodiversity enhancement. This guidance should clearly and fully define these expectations.

### **Information required to support a planning application**

Section 4.43 needs to clarify that, at application, the requirement is for outlining biodiversity enhancement and mitigation only, in line with the requirements set out in NPF4. As is established practice, this guidance should make clear that full biodiversity enhancement and mitigation information is expected to be provided as the project reaches a more advanced stage.

### **Additional guidance for renewables only (4.47 – 4.51)**

Scottish Renewables encourages the Highland Council to look at renewable energy developers as partners in restoring habitat. Seeking to place financial obligations on renewable energy developers beyond statutory requirements and nation policy is entirely inappropriate and undermines the opportunity for collaboration. Many developers go above and beyond planning requirements for habitat restoration and are key partners across Scotland in restoring peatlands to meet peatland restoration and net zero goals.

## **Section 5 – Biodiversity off-site offsetting**

### **Do you have any comments on Section 5?**

This section continues to conflate 'offsetting' with 'enhancement', which is inaccurate.

It is unclear if renewable energy developers would support brokered or third-party enhancements as laid out in 5.3 and 5.15-5.21. As already stated, renewable energy developers take great pride in the habitat restoration work they do. They hire credible and credentialed third-party professionals to plan and monitor these works. Developers are not looking for ways to get out of habitat restoration requirements.

Even if developers were open to this option, the required use of the DEFRA Metric would undermine such efforts as the DEFRA Metric is inappropriate for use in Scotland.

Scottish Renewables also opposes requiring financial compensation where on-site enhancements cannot take place so that developers can discharge enhancement responsibilities (5.6-5.9). It is unclear what the Council's proposal is for enhancing habitat themselves would be, how it would be managed and implemented, and what accountability the Council would have to deliver on habitat restoration. There are situations where developers do not have access to land near the development on which to enhance habitat. Requiring developers to pay the Council rather than restore habitat elsewhere, potentially outside of the Highland Council area, is deeply problematic.

Requiring all off-site enhancement be delivered within the Highland Council (5.11) is unrealistic and would stop developers from restoring and enhancing habitat where it is needed most. Certainly, where developments are within immediate proximity to the border of neighbouring councils, it would be an unrealistic expectation that all habitat enhancement happen within the Highland Council.

## **Section 6 – Planning Decisions, Conditions and Legal Agreements**

### **Do you have any comments on Section 6?**

#### **Consenting**

Section 6.1 suggests the Highland Council may withhold consent if they consider that better outcomes are achievable for biodiversity but a developer 'will not engage in iterating the design following the mitigation hierarchy'. We are concerned that this language could allow for a disagreement between experts to hold up a project. There are many legitimate reasons why a developer cannot always commit to iterating site design for biodiversity. For example, moving turbines could reduce wind yield which could make the whole project financially inviable.

It is also unreasonable for the Council to withhold consent due to a single item. This approach is likely to be taken to PLI.

Scottish Renewables would discourage the Council from using legal agreements instead of or in place of planning conditions whenever possible (6.3), as advised consistently by the Scottish Government. Legal agreements are costly and time consuming. And since suspensive planning conditions can in fact be applied outside of the development site in all circumstances, additional legal agreements are unlikely to be necessary.

### **Section 7 - Appendices**

**Do you have any comments on Section 7?**

[No comments provided]