

Scottish Government's consultation on the "Guidance on Planning Obligations and Good Neighbour Agreements - Draft for comments"

September 2025

About the Institute of Chartered Foresters

The Institute of Chartered Foresters (ICF) is the Royal Chartered body for Foresters and Arboriculturists in the UK. We have 2,300 members who practice forestry, arboriculture and related disciplines in the private and third sectors, central and local government, research institutions, universities and colleges throughout the UK. The Institute regulates standards of entry to the profession. It provides support to its members, guidance to professionals in other sectors, information to the public, and educational advice and training to students and tree professionals seeking to develop their careers in the forestry and arboriculture industry.

Our response

The ICF is responding to this consultation on behalf of its Scottish Biodiversity Metric working group.

It is proposed that in certain circumstances the obligation for developments to provide long-term biodiversity enhancements should be secured by s.75 agreements.

Context

Policy 3 (Biodiversity) forms a major and new element of National Planning Framework 4. In essence it says that "development proposals will contribute to the enhancement of biodiversity, including where relevant, restoring degraded habitats and building and strengthening nature networks and the connections between them."

For the top of the hierarchy of developments (Major Developments and EIA sites) it states that "development proposals for national or major development, or for development that requires an Environmental Impact Assessment 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.**"

Development proposals must show that "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.**"

Although there is not yet a Scottish Biodiversity Metric to quantify baseline and enhanced biodiversity, one is currently under development by NatureScot. The Institute of Chartered Foresters Scottish Biodiversity Metric working group is currently helping NatureScot to develop this for trees. Following the recommendations of a study for the Scottish Government in September 2023 led by SAC Consulting, the Scottish Metric is likely to take the form of a modified version of the English statutory Biodiversity Net Gain Metric. If so, this will allow the biodiversity enhancement content of development proposals to be quantified, including the use of temporal and risk factors to proposed new or enhanced habitats.

In some cases, these will be based on projections over (and beyond) a 30-year period after development is complete. As a last resort, in some cases the enhancements will be provided out with the application site or development area.

Assuring that these will be delivered over decades is clearly beyond the remit of conventional planning conditions that do not survive the development phase.

Standing advice is contained in NatureScot's *'Developing With Nature'* document, which states that -

“Even after the careful implementation of appropriate measures, **on-going management and future monitoring should be secured to ensure the intended enhancement is achieved in practice...** Addressing the nature crisis **requires measures to be retained for the long term (preferably in perpetuity), to deliver a lasting legacy.** How this will be done should be set out in the application.”

The planning obligations for the creation and long-term retention must survive the changes or fragmentation of ownership that often follow completion of developments, and should ensure that future maintenance and if necessary, replacement of new or enhanced habitats are adequately funded and they rest with clearly defined parties and their successors in title. Future incompatible use of replacement/enhancement sites must be prevented.

Without such guarantees, planning permission should not be granted, so that habitats are not lost without replacement or enhancement. At present, s.75 agreements are the best, if not only, public sector tool to prevent permission without provision and protection.

Proposals

In situations where planning permission would not be granted if it were not for guarantees about the provision of biodiversity enhancements, it is hereby suggested that they should be the subject of s.75 agreements. These should be clearly delineated, clearly defined and long-lasting, and could include effective prohibitions on the use of the habitat areas for any use's incompatible with establishment and maturation of habitats.

In the Draft Guidance

s. 13 After “... *for example to secure the provision of necessary infrastructure or affordable housing*” should be added “*or long-term biodiversity enhancements*”

s.21 After “... *to ensure those impacts are mitigated*” should be added “*and biodiversity enhancements endure*”



s.22(iii) after “... or to secure” add “*biodiversity enhancements*”

s.29 Amend “*mitigate the loss of, or the impact upon, some amenity or resource present on the site or in the area prior to the development,*” to “*mitigate or compensate for the loss of, or the impact upon, some habitat, amenity or resource present on the site or in the area prior to the development,*”

s.40 After s. 40 add s.40A “*It may be appropriate to restrict the future use of land set aside for habitat creation or enhancement so that the establishment and maturation of habitats is not compromised*”.

s.45 Amend from “*Two which relate particularly closely to planning obligations are Infrastructure First (Policy 18) and Quality Homes (Policy 16e) relating to affordable homes.*” To “*Three which relate particularly closely to planning obligations are Infrastructure First (Policy 18), Quality Homes (Policy 16e) relating to affordable homes and Biodiversity (Policy 3).*”

S.48 After s.48 add s.48A

“*Biodiversity*

“*Policy 3 sets out that -*

“*Local Development Plans:*

“*LDPs should protect, conserve, restore and enhance biodiversity in line with the mitigation hierarchy. They should also promote nature recovery and nature restoration across the development plan area, including by: facilitating the creation of nature networks and strengthening connections between them to support improved ecological connectivity; restoring degraded habitats or creating new habitats; and incorporating measures to increase biodiversity, including populations of priority species.*

“*Local development plans which habitats are considered to be irreplaceable and the relative biodiversity metric weighting that should be attached to offsite habitat replacement distant to any development, particularly out with the development plan boundary and mechanisms for securing cross-boundary obligations for these.*”

s.654 After “*other project management approaches*” add “*, biodiversity metrics*”

s.71 At the end of bullet point 4 amend “*Restrictions on the use or development of the land may continue to apply.*” to “*Restrictions on the use or development of the land and the need for ongoing management financial contributions or factoring charges for habitat management, maturation (and if necessary, renewal) may continue to apply.*”

s.77 After “*facilities*” add “*, biodiversity enhancements*”



In addition to the foregoing, further modifications to the Guidance might be needed in anticipation of Scottish Government biodiversity policy permitting the purchase of offsite biodiversity enhancement credits. The Government's position on these is not yet sufficiently clear for these proposals to be prescriptive about where and how they should be referred to in the Guidance.



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