

██████████  
Senior Investigation Officer  
Environmental Standards Scotland  
Ìrean Àrainneachdail na h-Alba

**ENVIRONMENTAL**  
**Standards Scotland**  
Ìrean Àrainneachdail na h-Alba

██████████  
via email

21 March 2023

Dear ██████████

I would like to thank you for submitting ██████████ representation to ESS. I have given careful consideration to the points you have made in your representation, which I have understood as follows:

- ██████████ is concerned with the wording of Policy 4 of the recently-adopted Scottish Government's National Planning Framework 4 (NPF4).
- Policy 4 summarises the legal requirements regarding the protection afforded to European Sites within the planning system. It makes reference to requiring "appropriate assessments" for development proposals on European Sites, but does not include a summary of the legal restrictions on proceeding with a plan or proposal where the site's interests would be adversely affected.
- ██████████ are concerned if these requirements are not included in a document which will be a main reference for planning authorities, the public, and applicants under planning, then the protection of European Sites will be less robust.

In response to your representation, I have carried out preliminary research into NPF4; previous SG planning policies; the Habitats Regulations; and the roles of Local Authorities, NatureScot, and Scottish Ministers with respect to planning. I note the protection of

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European Sites in the context of the planning regime was considered in detail in ESS' Ramsar case (IESS.21.011, a case summary report [here](#)), which are related to the matters raised in your representation.

I have reviewed [REDACTED] concerns and the supporting information provided to assess whether Policy 4 of NPF4 indicates an issue with how environmental law has been implemented or applied by the Scottish Government (SG). This is focused on the significance of the omission from Policy 4 of what I will refer to collectively as the "restrictions to developing European Sites" (these being the requirements from the Habitats Regulations that where adverse effects to the site are anticipated or cannot be disproven, the development can only proceed if there are no alternative solutions, there are imperative reasons of overriding public interest, and compensatory measures are provided).

I consider that the outcome [REDACTED] seek (Local Authorities being issued guidance on how to interpret Policy 4b of NPF4) could be positively viewed as reinforcing the protections given to European Sites. However, for ESS to use of our investigation and/or enforcement powers we need to satisfy ourselves the matters are within our remit and meet our investigation criteria, in line with our strategic plan.

In my view, the matters raised pertain to environmental law and how a public authority implements environmental law. Therefore, I consider the matters fall within ESS' remit to investigate. Furthermore, I have not identified any alternate remedy for [REDACTED].

ESS' criteria for investigation requires consideration of several factors. The key factor evaluated in consideration of the representation is whether the matter arises from a significant or potentially significant incident concerning the environment. We have reviewed [REDACTED] concerns that Policy 4, as written, increases the risks of laws being incorrectly applied and damage occurring to European Sites. A situation which I would consider to demonstrate a "significant environmental incident" would be a site development of considerable scale (i.e., greater than single housing plots or extensions) inappropriately granted permission, allowing the development to damage protected species or habitats. Accordingly, I have assessed the perceived likelihood of this risk being realised, and whether this could be attributed to the wording of NPF4.

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As NPF4 is new, it would take time before any evidence would be available which would potentially link an inappropriately-permitted development to NPF4's wording. To assess future risks, I have taken consideration of legal requirements, wider issues, and the checks and balances in the current planning system. I note the following in summary of my review:

- The restrictions to developing European Sites remain as legally applicable for plans and projects which may impact European Sites, even if these are not fully summarised in NPF4.
- NPF4 highlights the need for appropriate assessments. NatureScot are statutory consultees for any site requiring an appropriate assessment, whose objections to any plans or projects on European Sites would elevate the matter to Scottish Ministers, who will be aware of the restrictions to developing European Sites. ESS has reviewed examples of NatureScot objections letters, which state that if the planning authority intends to grant planning permission against NatureScot's advice, the planning authority must notify Scottish Ministers.
- The evaluation of whether there is "overriding public interest" for European Sites is not undertaken by Local Authorities, but by Scottish Ministers (or the Secretary of State for some reserved matters), and Local Authorities are legally obliged to notify these parties if they propose to approve a plan or project on the basis of overriding public interest.
- Local Authority planning officials also must make reference to Local Development Plans (LDP) in their decision-making. While I have not carried out a comprehensive review, I note Highland Council's LDP does cite the restrictions to developing a European Site in Policy 57.
- The Coul Links development demonstrates the checks and balances of the planning system. This had appropriate assessments undertaken, NatureScot objected, and Scottish Ministers were called in to determine the application, which was refused over the risks the development posed to the interests of the protected sites. Scottish Ministers' decision notice for Coul Links notes that the Public Local Inquiry (PLI) reporters assessed that the development was not nationally important, and Scottish Ministers agreed with this assessment.

- Our work in the Ramsar case included a high-level review of all accessible online planning applications submitted in the last five years within 30 selected Ramsar sites (which are mostly co-designated as European Sites). Beyond Coul Links, no other development was identified where the appropriate assessments concluded negative impacts to protected interests would occur. Where the potential for negative impacts to interests were initially identified, it was typically through agreed mitigation strategies or restrictions given in planning conditions that the impacts would be managed and the developments were allowed to proceed. This indicates that proposed developments where appropriate assessments conclude that negative impacts to protected features will occur are a rarity. For a rare event such as this to also have all the decision-makers unaware of the restrictions to developing European Sites is, in my view, presently considered unlikely.

Due to the above, I do not consider the present likelihood of a significant environmental incident as high. Therefore, I have decided against formal investigation or intervention at this time.

Whilst I appreciate you may find it disappointing that we will not presently progress investigation work in response to your representation, I appreciate [REDACTED] bringing the matter to our attention. We would be re-willing to consider investigation if evidence becomes available in the future that the negative outcomes [REDACTED] are concerned about are occurring.

I would be happy to discuss this further with yourselves. Please do not hesitate to contact me if you have any questions or comments.

Yours sincerely,

[REDACTED]

[REDACTED]

Senior Investigation Officer

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