



Planning to stop climate change in Scotland?

Opportunities for strategic climate litigation in Scotland's planning system

Ian Cowan, October 2020

Environmental Rights Centre for Scotland

www.ercs.scot

Environmental Rights Centre for Scotland

'A Scotland where every person's right to live in a clean and healthy environment is fully realised'

ERCS will assist members of the public and civil society to use the law to protect the environment, and engage in public education, research, advocacy and strategic litigation.

Our programmes:

- Advice, assistance and representation
- Public education
- Advocacy in policy and law reform
- Strategic public interest litigation

Opportunities for strategic climate litigation in Scotland's planning system

- In response to Scottish Government's new **National Planning Framework** and/or **Scottish Planning Policy**
- In response to a council's new **local development plan**, as approved by the Scottish Government
- In response to a **specific development proposal** granted planning permission by a council
- Town and Country Planning (Scotland) Act 1997 (as amended)

Planning etc. (Scotland) Act 2006

- The National Planning Framework is a spatial plan for Scotland.
- The National Planning Framework must contain
 - (a) a strategy for Scotland's spatial development, and
 - (b) a statement of what the Scottish Ministers consider to be priorities for that development.
- The National Planning Framework may describe particular developments and designate them as “**national developments**” (as opposed to “major developments” and “local developments”, which are the other two categories in the “hierarchy of developments”).

Third National Planning Framework (NPF3)

➔ 14 national developments

1. Former Ravenscraig steelworks ... including construction of new roads	8. National Long Distance Cycling and Walking Network
2. Dundee Waterfront ... including construction of new roads	9. High Speed Rail
3. Carbon Capture and Storage Network ... including construction of new or refurbishments to thermal generation power stations	10. Strategic Airport Enhancements at Prestwick Airport, Glasgow Airport, Edinburgh Airport, Aberdeen Airport, Inverness Airport
4. High Voltage Electricity Transmission Network	11. Grangemouth Investment Zone... including construction of new roads
5. Pumped Hydroelectric Storage	12. Freight Handling Capacity on the Forth ... including construction of new roads
6. Central Scotland Green Network	13. Aberdeen Harbour ... including construction of new roads
7. Metropolitan Glasgow Strategic Drainage	14. National Digital Fibre Network

How planning relates to Sc Gov's purpose

SG Purpose	To focus government and public services on creating a more successful country, with opportunities for all to flourish, through increasing sustainable economic growth.										
SG National Outcomes	The planning system and service contribute to all 16 National Outcomes										
SG National Plans, Policies & Strategies	Government Economic Strategy										
	Infrastructure Investment Plan										
	Scotland's Digital Future	Electricity & Heat Generation Policy Statements	2020 Challenge for Scotland's Biodiversity	Scottish Historic Environment Strategy and Policy	Housing Strategy	National Planning Framework & Scottish Planning Policy	Land Use Strategy	Low Carbon Scotland: Report of Proposals and Policies	National Marine Plan	Regeneration Strategy	National Transport Strategy
Planning Vision	We live in a Scotland with a growing, low carbon economy with progressively narrowing disparities in well-being and opportunity. It is growth that can be achieved whilst reducing emissions and which respects the quality of environment, place and life which makes our country so special. It is growth which increases solidarity – reducing inequalities between our regions. We live in sustainable, well-designed places and homes which meet our needs. We enjoy excellent transport and digital connections, internally and with the rest of the world.										
Planning Outcomes	Planning makes Scotland a successful, sustainable place – supporting sustainable economic growth and regeneration, and the creation of well-designed places.			Planning makes Scotland a low carbon place – reducing our carbon emissions and adapting to climate change.			Planning makes Scotland a natural, resilient place – helping to protect and enhance our natural and cultural assets, and facilitating their sustainable use.			Planning makes Scotland a connected place – supporting better transport and digital connectivity.	
National Planning	Scottish Planning Policy (SPP)										
	Principal Policies										
	Sustainability					Placemaking					
	Subject Policies										
	Town Centres	Heat and Electricity	Natural Environment		Travel						
	Rural Development		Green Infrastructure								
	Homes		Aquacultural								
Business & Employment	Zero Waste	Minerals		Digital Connectivity							
Historic Environment		Flooding & Drainage									
National Planning Framework (NPF)											
<i>Cities and Towns</i> <i>Rural Areas</i> <i>Coast and Islands</i> <i>National Developments</i>											
COMMUNITY PLANNING											
Strategic	Strategic Development Plans										
Local	Local Development Plans										
Site	Master Plans										

Scottish Planning Policy 2014

➤ **Outcome 2: A low carbon place** – reducing our carbon emissions ...

but ...

➤ **Outcome 4: A more connected place** – supporting better transport ...

“NPF3 reflects our continuing investment in infrastructure, to strengthen transport links within Scotland and to the rest of the world.”

Planning (Scotland) Act 2019 (1)

- ▶ The National Planning Framework must now also contain
 - (c) a statement about how the Scottish Ministers consider that **development** will contribute to
 - meeting the housing needs of people living in Scotland ... ,
 - improving the health and wellbeing of people living in Scotland,
 - increasing the population of rural areas of Scotland,
 - improving equality and eliminating discrimination,
 - meeting any **targets relating to the reduction of emissions of greenhouse gases, within the meaning of the Climate Change (Scotland) Act 2009**, contained in or set by virtue of that Act, and
 - securing positive effects for biodiversity,
 - (d) targets for the use of land in different areas of Scotland for housing, and ...

Planning (Scotland) Act 2019 (2)

➤ The National Planning Framework must now also contain (e) an assessment of the likely impact of **each proposed national development's** lifecycle greenhouse gas emissions on achieving **national greenhouse gas emissions reduction targets (within the meaning given in the Climate Change (Scotland) Act 2009),**

but...

➤ The National Planning Framework must have regard to an **infrastructure investment plan** published by the Scottish Ministers.

The Heathrow Judgment

- The Airports National Policy Statement (June 2018) for expansion at Heathrow and increased airport capacity in the south-east of England was unlawfully made, because the Secretary of State failed to consider the Paris Agreement, non-CO₂ warming impacts of aviation, and the effects of climate change beyond 2050.
- In respect of Paris, this breached statutory requirements
 - to take account of government policy, and
 - to contribute to sustainable development with particular regard to the mitigation (etc.) of climate change.
- Decision appealed to UK Supreme Court – judgment due soon.

Scottish Environment LINK's submission to National Planning Framework 4 (NPF4) Call for Ideas (1)

- Background: First Minister last year announced a climate emergency.
- LINK's focus is to contribute toward the development of policy measures that can help address the twin challenges of climate change and biodiversity loss in Scotland.

Scottish Environment LINK's submission to NPF4 Call for Ideas – to address climate change

- Cease licensing peat extraction for horticultural use.
- Repeal existing peat extraction licences by 2023.
- Restore peat extraction sites.
- Strengthened policies to protect against loss of ancient woodland and veteran trees.
- Ban on new fossil fuel developments.
- Ensure the full deployment of renewable energy.
- Favourable planning regime for renewable heating and heat networks.
- Favourable conditions for community energy generation.
- No approval for large biomass plants.
- Include and clarify the position of no support for unconventional oil and gas.
- Include a presumption against conventional onshore oil and gas extraction.

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Discussion

- How effective is a duty to include in the NPF
- a **statement** about how development throughout Scotland will contribute to meeting our greenhouse gas emissions reduction targets?
- an **assessment** of the likely impact of each proposed national development on meeting our greenhouse gas emissions reduction targets?