



Planning for Nature: Development Management and Wildlife

Supplementary Guidance
Spring 2015

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Introduction

Purpose of this Guidance

This guidance sets out how the biodiversity (wildlife and habitats) and geodiversity (rocks, soils and fossils) of the West Lothian area will be taken into account when considering all development proposals. It aims to help **developers** fully consider the wildlife and habitat implications of proposals which need planning permission. The guidance will be a material consideration when local authority **development management officers** consider applications.

How to Use this Guidance

Applicants are encouraged to refer to this guidance at the **earliest** opportunity since it contains important information on potential wildlife and habitats requirements, constraints and opportunities for new development. Where relevant, applicants should seek **pre-application** advice from the planning authority to identify potential wildlife and habitats issues and avoid unnecessary delays in the planning process.

Scottish Natural Heritage (SNH) is a statutory consultee for certain developments that affect wildlife. It focuses on proposals that require an Environmental Impact Assessment (EIA) and those that could affect sites with a statutory nature conservation designation. Annex A sets out in more detail SNH's role in the planning system.

Key to Text Boxes:

Box 1: Habitats Regulations Appraisal (HRA)

When a developer considers...

Protected Species – Points to Remember:

- Consider as early as...

POLICY ENV 3

Development proposals within or affecting areas classified as existing...

Green boxes: Legislation – these boxes set out key processes to follow with regard to wildlife and legislation

Red boxes: Points to Remember

Blue boxes: Local Development Plan Policies

Further Information

Further relevant information with regard to planning, development, habitats and wildlife can be found on the following web sites:



<http://www.snh.gov.uk>



<http://www.westlothian.gov.uk>



<http://www.scotland.gov.uk>

Further general information about enhancing habitats and wildlife can be found at:



<http://scottishwildlifetrust.org.uk>



<http://www.centralscotlandgreennetwork.org>



<http://www.rspb.org.uk>

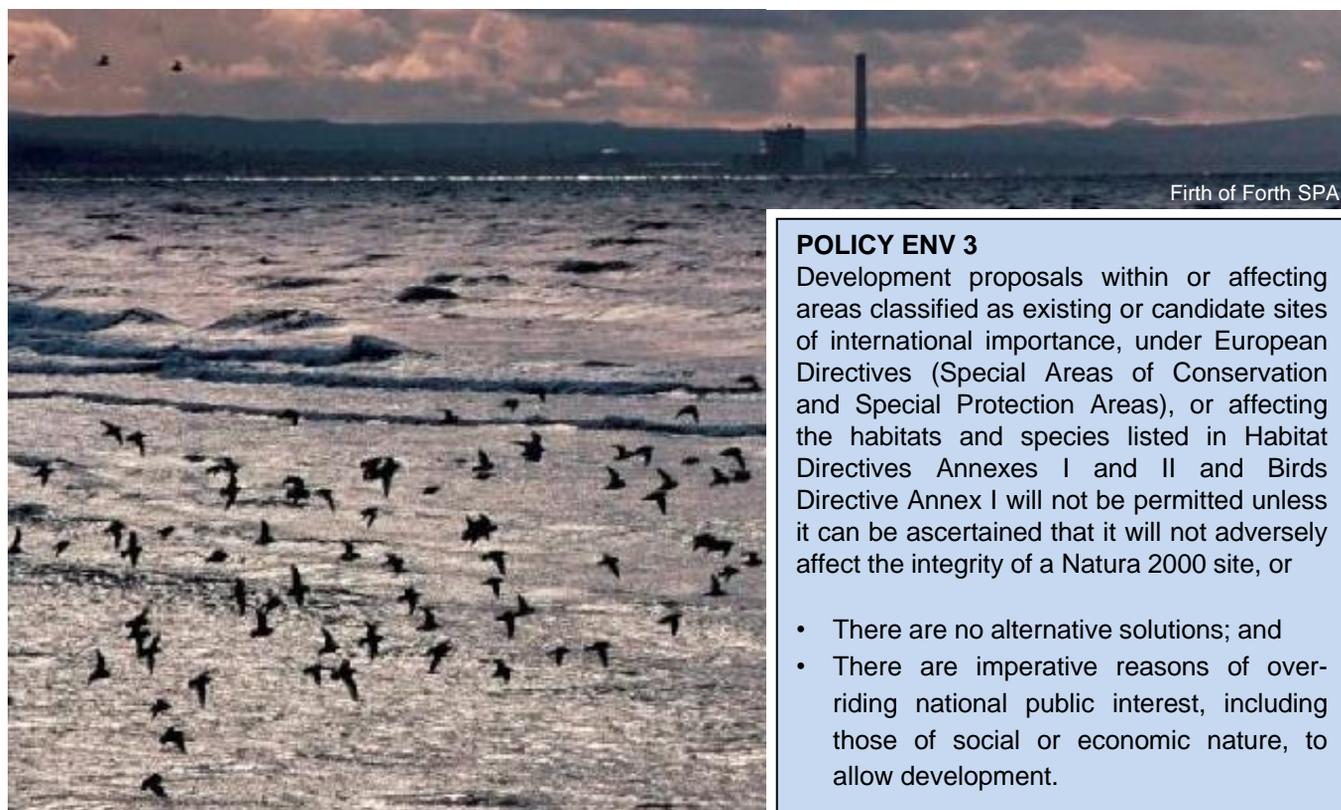
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POLICY CONTEXT AND DESIGNATED SITES

West Lothian Council encourages high quality development that contributes positively to the local environment. The council has a broad approach to conserving nature taking into account ecosystems and natural processes, as well as conserving designated or protected sites and species. There is a recognition of the importance of green networks, wetlands and areas of open space that help to maintain biodiversity and allow ecosystems and natural processes to provide multifunctional services such as flood control, pollution control and community wellbeing (e.g. amenity and recreation).

This chapter provides the policy context for decisions on developments that can affect wildlife and sets out key information about the designated sites in West Lothian.

There are a number of designated sites within West Lothian that carry statutory protection at the European, National (UK and Scottish) and West Lothian levels – these are referred to as international, national and local sites respectively. The West Lothian Local Plan 2009 policies ENV 3, ENV 4 and ENV 5 seek to ensure that protected habitats and species are considered appropriately when determining relevant planning decisions. Key legislation is summarised in Annex A.



International Sites

Internationally designated sites in West Lothian are shown in Figure 1. They have protection under European law and are commonly known as Natura 2000 sites (see Policy ENV 3). They comprise of:

- Special Areas of Conservation (SAC) – designated for their habitats and species under the EC Habitats Directive (92/43/EEC). In West Lothian we have Blawhorn Moss SAC north of Blackridge and Craigengar Moss SAC in the south west Pentlands; and
- Special Protection Areas (SPA) – designated for their birds under the EC Wild Birds Directive (2009/147/EC). Part of the Firth of Forth SPA is in West Lothian (Figure 1).

National Sites

Nationally designated sites in West Lothian are shown in Figure 1. They include Sites of Special Scientific Interest (SSSIs) which are notified for the special interest of their habitats, flora, fauna, geology or geomorphology. There are 16 SSSIs in West Lothian. There is also a National Nature Reserve (NNR) (Blawhorn Moss) which has habitats and species that are internationally important. Wildlife is managed very carefully consistent with encouraging public access and education.

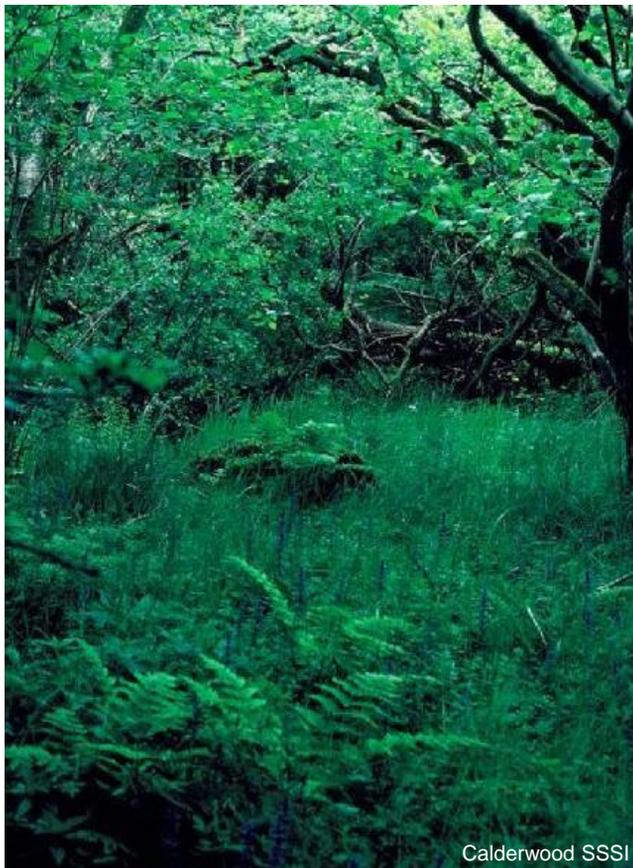
Development that affects a SSSI or NNR will only be permitted where:

- it will not adversely affect the integrity of the area or the qualities for which it has been designated, or
- any such adverse effects are clearly outweighed by social, environmental or economic benefits of national importance.

POLICY ENV 4

Development proposals within or affecting areas classified as sites of national importance, including National Nature Reserves and Sites of Special Scientific Interest, will not be permitted unless it can be demonstrated that:

- a) It will not compromise the objectives or integrity of the designation; or
- b) there is an overriding national public interest that outweighs the designation interest.



Calderwood SSSI

Box 1: Habitats Regulations Appraisal (HRA)

When a developer considers a particular site for development, there will be a need to establish early on whether any future development could impact on a Natura site. Proposals do not need to be within a Natura site to affect its conservation interests. Consideration must be given to any plan or project that has the potential to affect a Natura site, no matter how far away the site is from the proposed development.

An example is where a proposed development may affect birds that are part of the qualifying interest of a designated site, but can feed in areas several kilometres away. Therefore, the interest of the site could be affected even though the Natura site is outwith the development site or West Lothian Council area.

If a Natura site could be affected the applicant will need to provide sufficient information to allow West Lothian Council to determine whether there will be a Likely Significant Effect (LSE) on the qualifying interests of the Natura site. If there will be an LSE, then the applicant will need to provide West Lothian Council with the information to enable it to carry out an appropriate assessment.

LSE is any effect that may reasonably be predicted as a consequence of a plan or project that may affect the conservation objectives of the features for which the Natura site was designated, but excluding trivial or inconsequential effects. The word 'likely' should not be interpreted as 'more probable than not' but rather as a description of the existence of a risk of a significant effect.

The plan or project can then only be consented if it can be ascertained that it would not adversely affect the integrity of the site. The competent authority must ensure the requirements of the Conservation (Natural Habitats, &c.) Regulations 1994 as amended are met before undertaking or permitting any project.

More information on HRA can be found at the following link:

<http://www.snh.gov.uk/protecting-scotlands-nature/protected-areas/international-designations/natura-sites/habitats-regulations-appraisal/>

Statutory Designations	Non-Statutory Designations
<ul style="list-style-type: none"> • National Nature Reserves • Sites of Special Scientific Interest 	<ul style="list-style-type: none"> • Geological Conservation Review Sites

Local Sites

Statutory designations enjoy specific legal protection. Non-statutory designations are protected through the implementation of specific planning policies. The geological sites shown in Figure 2 are split into two categories based on a geodiversity review of West Lothian carried out by the British Geological Survey. These are those sites with geological features of great value considered worthy of interpretation and conservation and those with features of some value that may be worthy of interpretation and conservation. Locally designated sites in West Lothian are shown in Figure 2.



Cobbinshaw Moss SSSI and Cobbinshaw Reservoir Proposed Local Biodiversity Site

Statutory Designations

- Local Nature Reserves

Non-Statutory Designations

- Local Wildlife Sites
- Country Parks
- Regionally Important Geological Sites

POLICY ENV 5

There is a presumption against development affecting areas of regional or local importance, or their settings, unless it can be clearly shown that the objectives and integrity of the area will not be compromised or that the social or economic benefits to be gained from the development outweigh the conservation interest of the site. In addition, measures require to be included with such development to show that the conservation interest of a designated area has been safeguarded, enhanced and sustained, insofar as is possible. Designations are: Local Nature Reserves (LNR), Wildlife Sites (WS), peatland and Regionally Important Geological Sites (RIGS).

Designated Sites – Points to Remember:

- Take note of which designated sites may be affected by your proposals and how any effects may be avoided or mitigated
- Your site may not lie within an SPA or SAC but there may be functional connectivity. You will then need to consider whether effects might be generated on such sites even though they may be some distance from the proposed development

Further Information

More information on **international sites** can be found at the following links –

<http://www.snh.gov.uk/protecting-scotlands-nature/protected-areas/international-designations/>
<http://jncc.defra.gov.uk/page-1527>

More information on **national sites** can be found at the following links –

<http://www.snh.gov.uk/protecting-scotlands-nature/protected-areas/national-designations/>
<http://jncc.defra.gov.uk/page-1527>

More information on **local sites** can be found at the following link – <http://www.snh.gov.uk/protecting-scotlands-nature/protected-areas/local-designations/>
<http://jncc.defra.gov.uk/page-1527>

More information on **West Lothian Local Biodiversity Action Plan (LBAP)** can be found at the following link – <http://www.westlothian.gov.uk/media/2327/Planning-for-Biodiversity-Action-2005-2009/pdf/Planning-biodiversity-action2005-2009.pdf>

More information on **West Lothian geodiversity features** can be found at the following link – <http://nora.nerc.ac.uk/7429/1/CR06008N.pdf>

Figure 1: International and National Natural Heritage Designations in West Lothian

Key:

Designated Sites

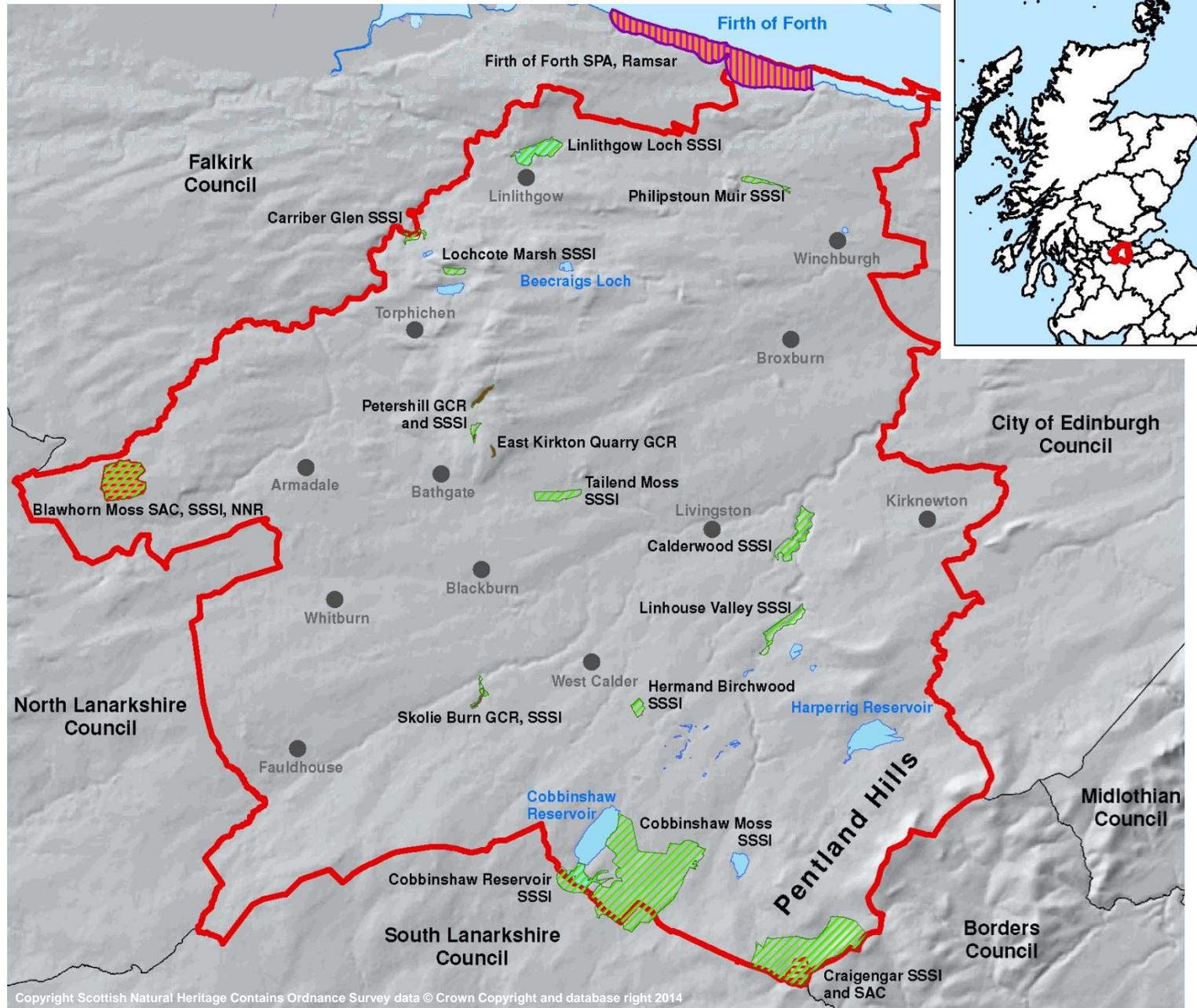
-  Ramsar Site
-  Special Protection Area (SPA)
-  Special Area of Conservation (SAC)
-  Site of Special Scientific Interest (SSSI)
-  National Nature Reserve (NNR)

Sites of National Importance

-  Geological Conservation Review (GCR) Site

Other Geographical Features

-  Open Water
-  West Lothian Council Boundary
-  Other Council Boundary
-  High Water Mark
-  Settlement



Exact site boundaries can be found at:
<http://gateway.snh.gov.uk/sitelink/>

Figure 2: Local Natural Heritage Designations in West Lothian

Key:

Designated Sites

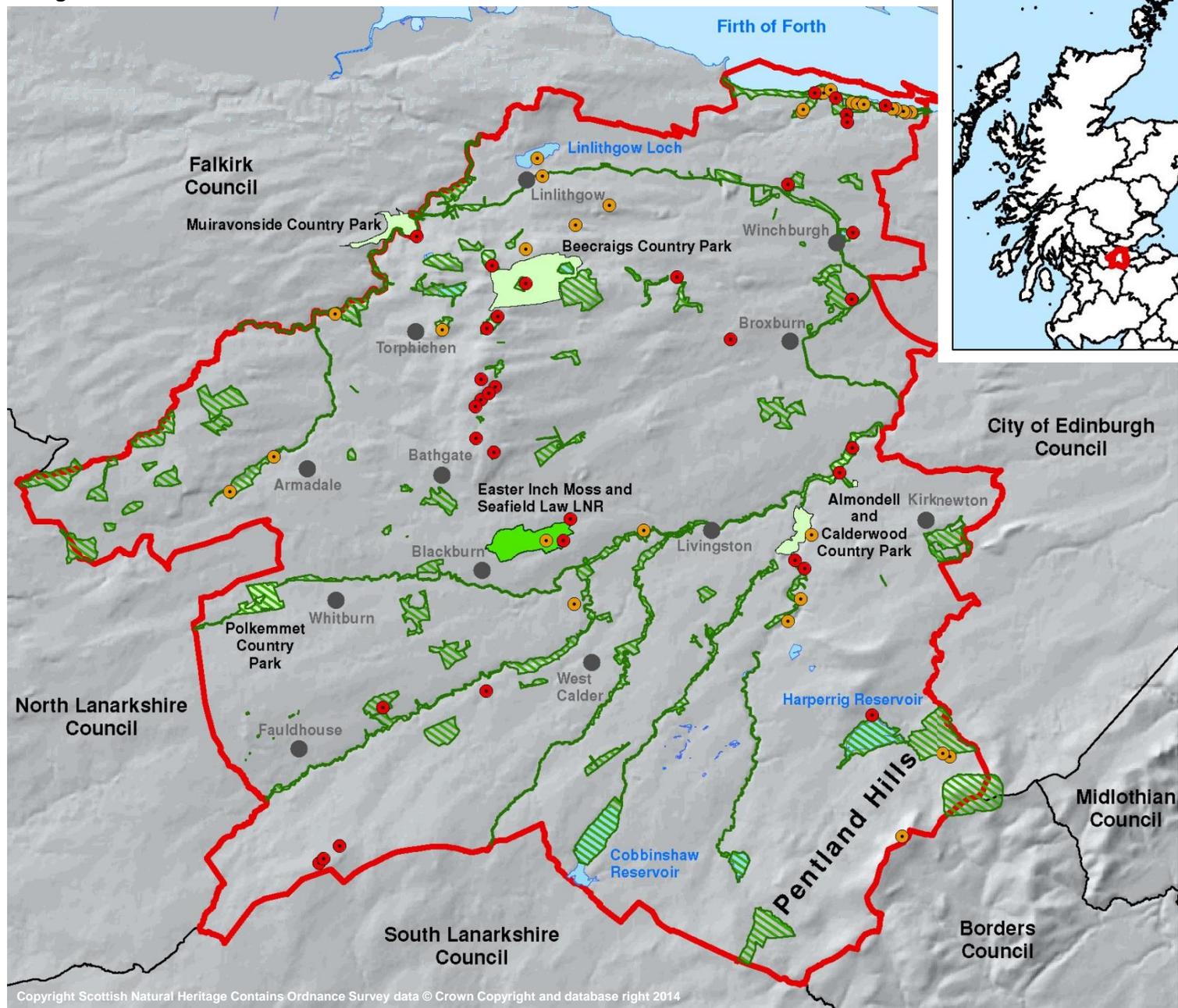
- Proposed Local Geodiversity Site of Great Value
- Proposed Local Geodiversity Site of Some Value
- Proposed Local Biodiversity Site
- Local Nature Reserve (LNR)
- Country Park

Other Geographical Features

- Open Water
- West Lothian Council Boundary
- Other Council Boundary
- High Water Mark
- Settlement

Further information on Local Geodiversity Sites can be found at: <http://nora.nerc.ac.uk/7429/1/CR06008N.pdf>

For exact site boundaries please contact: West Lothian Council (Planning Services)



3.

PROTECTED SPECIES IN WEST LoTHIAN

Protected Species

Most bird species and a wide range of wild animals and plants have general protection from deliberate damage or harm under the law. In addition to this, some species, such as otters and great crested newts have special protection from disturbance and harm under European legislation, and are known as European Protected Species (EPS).

A number of species, such as red squirrel, water vole and badger are protected under domestic legislation.

The species referred to in this guidance as species with special protection are as follows:

- European Protected Species (protected under Schedule 2 (animals) and 4 (plants) of the Habitats Regulations 1994 (as amended))
- Birds, animals and plants listed on Schedules 1, 5 and 8 (respectively) of the Wildlife and Countryside Act 1981 (as amended)
- Badgers (protected by the Badgers Act 1992 (as amended))

Some of the protected species commonly found in West Lothian are shown in Table 1, overleaf.

Figure 3: Protected Species – The Importance of Providing the Necessary Information

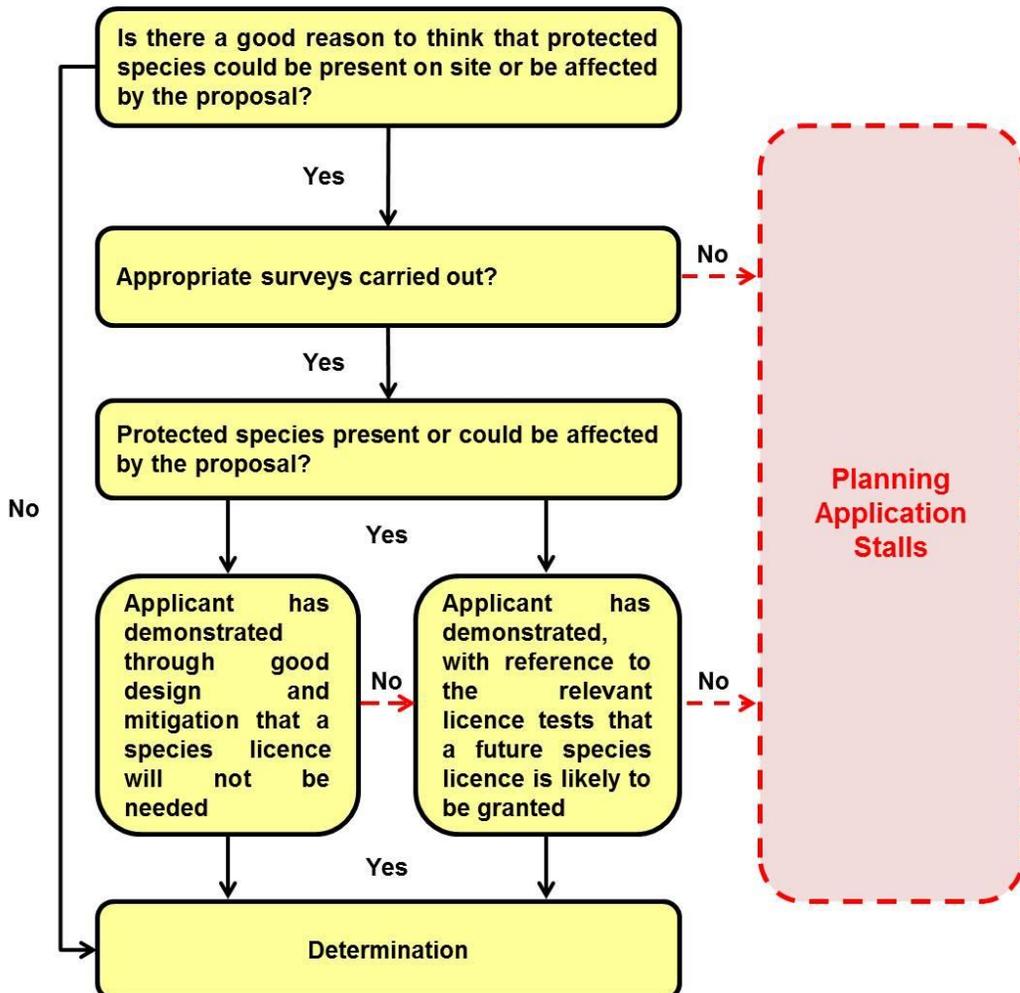


Table 1: Examples of Protected Species in West Lothian

Species	Typical Habitat	Protective Legislation	European Protected Species	UK Protected Species
Animals				
Natterer's bat (<i>Myotis nattereri</i>)	Farmland, Woodland, old trees, old buildings	All protected by: <ul style="list-style-type: none"> Habitats Directive 92/43/EEC Conservation (Natural Habitats &c) Regulations 1994 Conservation of Habitats and Species Regulations 2010 Wildlife and Countryside Act 1981 (as amended) 	✓	
Daubenton's bat (<i>Myotis daubentonii</i>)	Farmland, Wetlands, Woodland, old buildings, bridges, caves		✓	
Common Pipistrelle bat (<i>Pipistrellus pipistrellus</i>)	Farmland, Woodland, old buildings, roofs, lofts		✓	
Soprano Pipistrelle bat (<i>Pipistrellus pygmaeus</i>)	Farmland, Woodland, old buildings, roofs, lofts		✓	
Brown long-eared bat (<i>Plecotus auritus</i>)	Farmland, Woodland, old trees and caves		✓	
Otter (<i>Lutra lutra</i>)	Lochs, rivers and marshes		✓	
Great crested newt (<i>Triturus cristatus</i>)	Wetlands		✓	
Badger (<i>Meles meles</i>)	Woodland, Farmland	<ul style="list-style-type: none"> Protection of Badgers Act 1992 		✓
Water vole (<i>Arvicola terrestris</i>)	Wetlands	<ul style="list-style-type: none"> Wildlife and Countryside Act 1981 (as amended) 		✓
Red squirrel (<i>Sciurus vulgaris</i>)	Woodland			✓
Birds				
Breeding birds (such as: Kingfisher (<i>Alcedo atthis</i>), Barn owl (<i>Tyto alba</i>), Peregrine (<i>Falco peregrinus</i>) and Hen harrier (<i>Circus cyaneus</i>))	Full range of habitats (such as: wetlands, farmland, old farm buildings, steadings, moorland, open country)	<ul style="list-style-type: none"> Wildlife and Countryside Act 1981 (as amended) 		✓



The presence on or near a site of species with special protection is a critical consideration in preparing development proposals and subsequent decisions on planning applications. Their presence rarely imposes an absolute block on development, however mitigation measures will often be necessary (see Section 5) and this can affect the design, layout and timing of the works.

A licence from SNH will be needed for works which would constitute an offence involving species with special protection (see Section 7 for more details on licensing). Remember, this may still be needed for works which do not need a planning application.

It is vital that adequate survey work is carried out in good time to understand the site and determine the presence or absence of these species (see Section 4 for more details on survey work requirements).

Applicants will usually need to seek expert ecological advice (see Page 11) at an early stage to determine the likely presence of protected species and the likely impact on them of any proposed development. Examples of development activities together with illustrative protected species that may be affected is provided in Table 2 below.

Table 2: Development Activities that may Affect Protected Species

Examples of Development Activities		European Protected Species	UK Protected Species
<ul style="list-style-type: none"> Developments adjacent to or affecting ponds and other watercourses 		<ul style="list-style-type: none"> Otter Great crested newt 	<ul style="list-style-type: none"> Water vole Breeding birds (such as kingfisher)
<ul style="list-style-type: none"> Barn and rural building conversions (especially unoccupied, stone-built buildings) 		<ul style="list-style-type: none"> Bats 	<ul style="list-style-type: none"> Breeding birds (such as swallow, house martin and barn owl)
<ul style="list-style-type: none"> Alterations (or demolitions) to the roof spaces of buildings in particular churches/chapels, institutions, schools Development affecting caves, mines, tunnels, cellars and exposed rock faces, bridges, culverts, chimneys, kilns and ice houses and/or any other structures within 200m of water or woodland 		<ul style="list-style-type: none"> Bats 	<ul style="list-style-type: none"> Breeding birds (such as swift, swallow, house martin, starling, house sparrow and barn owl)
<ul style="list-style-type: none"> Developments affecting woodland, hedgerows, lines of trees and scrub 		<ul style="list-style-type: none"> Otter Bats 	<ul style="list-style-type: none"> Badger Red squirrel Breeding birds
<ul style="list-style-type: none"> Developments affecting old and veteran trees and trees with a girth over 1.5m, or containing obvious holes including any felling or lopping 		<ul style="list-style-type: none"> Bats 	<ul style="list-style-type: none"> Breeding birds (such as barn owl)
<ul style="list-style-type: none"> Developments affecting derelict land, brown-field sites, railways and land adjacent, grassland and allotments 		<ul style="list-style-type: none"> Bats 	<ul style="list-style-type: none"> Breeding birds (such as barn owl)
<ul style="list-style-type: none"> Developments affecting quarries, cliff faces and gravel pits 			<ul style="list-style-type: none"> Breeding birds (such as peregrine falcon)
<ul style="list-style-type: none"> Developments (such as wind farms) affecting open farmland, moorland and forestry sites in hilly, upland, exposed areas 		<ul style="list-style-type: none"> Bats Otter 	<ul style="list-style-type: none"> Red squirrel Badger Breeding birds (such as hen harrier)

Protected Species – Points to Remember:

- Consider as **early as possible** whether protected species are present on sites for development – ideally **before** the land is bought and the **planning application made**
- If the presence of a protected species is suspected, the applicant **must inform** the Council
- The supporting evidence and survey work should be carried out by a **suitably qualified ecologist**

4.

SITE APPRAISAL AND ECOLOGICAL SURVEYS

Initial Site Appraisal

Whatever development you are hoping to carry out you must ensure that you understand the characteristics of the site, including any possible wildlife and habitat significance. The extent to which ecological surveys and appraisals are required will depend on the scale, nature and location of the proposal. It may be that an initial site audit is sufficient but depending on the findings you may need to carry out further surveys for particular species or in relation to a particular habitat. For instance, if there is a watercourse on the site this could provide habitat for protected species and will need more detailed surveys.

A typical site audit should:

- highlight any designations in or near to the site;
- identify potential important habitats (mature trees, woodland, hedgerows, ponds or watercourses);
- identify if protected species are likely to be in or near the site;
- give an indication of the ecological data required for progressing a planning application; and
- recommend if more detailed surveys will be necessary.

A checklist guide of questions to consider and the next steps to take within a site audit is provided in Annex C.

Where an important species or habitat has been identified on site, planning applications must be supported by an appropriate level of information.

At the time of submitting a planning application, applicants need to provide the following:

1. As appropriate, information on specific habitats, plants, animals and geology and possibly the surrounding area, including its sensitivity, significance and value.
2. An assessment of any potential effect of the development on these features.
3. If adverse effects are expected, then details of proposed mitigation measures by the developer to avoid or minimise these effects.
4. If there is unavoidable damage or disturbance then proposals should be included to compensate for losses.
5. Identify if there may be licensing requirements and with reference to the relevant licence tests, demonstrate that a future species licence is likely to be granted.



Painted Lady butterfly



Preliminary site works in woodland



Badger exclusion works

It is essential to understand your site and consider the constraints and opportunities that wildlife and habitats may have on your development at an early stage. Helpful information including species records and habitat maps may be obtained from a number of sources including:

- Scottish Natural Heritage Information – www.snh.gov.uk/snhi
- The Wildlife Information Centre for the Lothians and Borders – <http://www.wildlifeinformation.co.uk>
- The National Biodiversity Network Gateway – <http://data.nbn.org.uk>

Site surveys and assessments should be undertaken by a suitably qualified and experienced ecologist. A list of qualified ecologists can be found in the Chartered Institute of Ecological and Environmental Management (CIEEM) Professional Directory at: <http://www.cieem.net/members-directory>.

Good practice also indicates that for most significant developments (e.g. a development covering several hectares) an Ecological Impact Assessment (EclA) would be required. If necessary the EclA should adopt the methodology of (CIEEM). Surveys for other natural heritage interests such as geology, geomorphology and soils should also be undertaken by a suitably qualified and experienced person (see CIEEM Directory).



Box 2: Environmental Impact Assessment (EIA)

Environmental Impact Assessment (EIA) is a statutory process which identifies the environmental effects (both negative and positive) of certain development proposals. EIA only applies to those developments that are likely to have a significant environmental effect by virtue of factors such as its nature, scale or location. These are identified under Schedule 1 and Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011. If in doubt about whether your development qualifies for EIA, contact the planning authority for a screening opinion.

More information on EIA can be found at the following links:

- <http://www.snh.gov.uk/planning-and-development/environmental-assessment/eia/>
- PAN1/2013 – <http://www.scotland.gov.uk/Resource/0043/00432581.pdf>

Appropriate Timing of Surveys

The timing of any ecological surveys is important to consider at an early stage as they often need to be carried out at certain times of year. A survey calendar indicating the most appropriate time of year to undertake surveys for various species and habitats is provided in Table 3 overleaf.

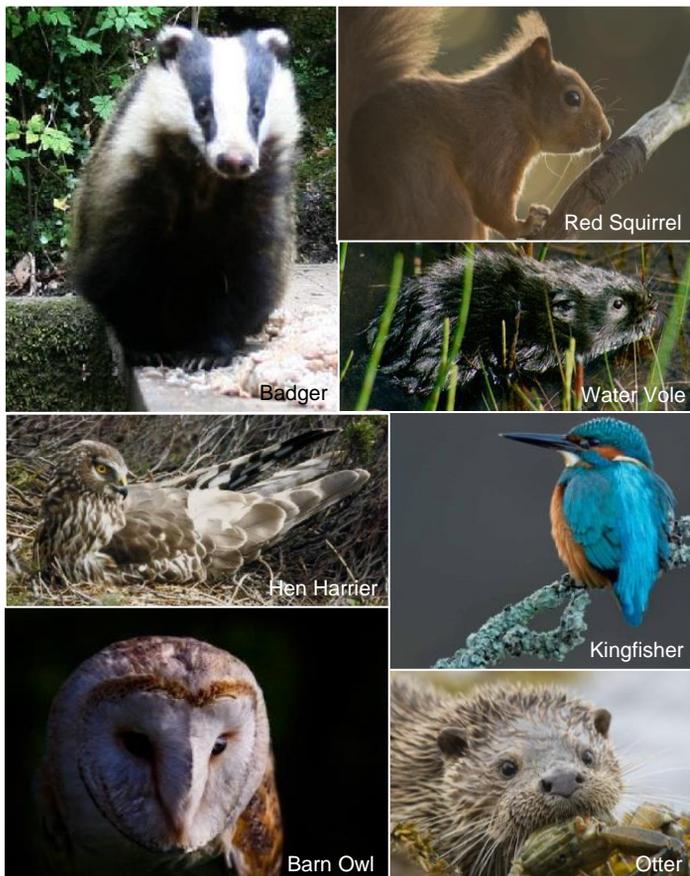
Species surveys are weather dependent so it may be necessary to delay a survey or to carry out more than one survey if the weather is not suitable. All constraints must be clearly reflected in the survey.

In some circumstances surveys for certain species and habitats may be required over more than one season, and possibly covering periods measured in years, for example developments potentially affecting Natura sites or bird flight patterns in relation to wind farm sites. If surveys have been carried out a significant amount of time before an application is made the council may require further surveys before the application can be determined or the development is started.

For mobile species that have the ability to expand their range and whose distribution may change over time pre-construction surveys may need to be done once consent is granted.



Protected Species Found in West Lothian:



Timing of Ecological Surveys – Points to Remember:

- Consider what surveys may need to be done as early as possible
- Discuss surveys with planning authority
- If you are dealing with a proposal that could affect a SSSI or a Natura site, then consult with SNH prior to submitting the planning application to the council
- Make sure species surveys are carried out at the optimum time of the year
- Ensure surveys are carried out in optimal weather conditions where possible
- Highlight survey limitations if necessary

Further Information

Further details may be found on the following web sites:

- CIEEM Guidelines for Survey Methodology – <http://www.cieem.org.uk/Publications.htm>
- SNH – <http://www.snh.gov.uk/about-scotlands-nature/wildlife-and-you>

Table 3: Ecological Survey Calendar

Target	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Illustration
Habitat and Vegetation	Phase 1 only			Phase 1 and NVC Detailed habitat assessment surveys				Phase 1 only (least suitable time) No other detailed plant surveys					
	Mosses and lichens No other detailed plant surveys			Mosses and lichens		No surveys for mosses and lichens		Mosses and lichens					
Badgers	Limited sett / bait surveys	Bait marking and sett surveys			Limited bait marking and sett surveys		Sett surveys			Limited sett / bait surveys			
Bats	Inspection of hibernation roosts (difficult)			Limited activity	Summer roost emergence surveys and activity surveys (internal inspection of roof-spaces possible throughout April-October)				Limited Activity	Inspections of hibernation roosts (difficult)			
Birds	Winter species		Breeding birds / migrant species		Breeding birds	Low activity		Migrant species		Winter species			
Great Crested Newts	Newts hibernating		Pond surveys for adults / terrestrial survey Egg surveys April-mid June Larvae surveys from mid-May				Habitat survey		Newts hibernating				
Reptiles	Reptiles Hibernating		Peak survey months are April and May		Reduce d basking time lowers effectiveness of refugia surveys		Peak survey month	Limited activity	Reptiles hibernating				
Red Squirrel	Optimum time		Breeding Den Surveys		Optimum time		Surveys possible, weather permitting						
Otters	Limited by vegetation cover and weather conditions rather than seasons												
Water Voles	Low activity	Initial habitat survey	Habitat and field signs / activity surveys. May be limited by vegetation cover and weather							Initial habitat survey	Low activity		
Fish	For coastal, river and stream-dwelling species, the timing of surveys will depend on the migration pattern of the species concerned Where surveys require information on breeding, the survey timings will need to coincide with the breeding period which may be summer or winter months depending on the species												

Key

Recommended period for survey
 Sub-optimal period for survey
 Surveys not possible

Table 4: Ecological Mitigation Calendar

Species	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Illustration	
Habitat and Vegetation	Planting and translocation		No mitigation for most species							Planting and translocation				
Badgers	Construction of artificial setts only (no disturbance of existing setts)							Exclusion from setts and destruction			Artificial sett construction only as per January			
Bats	Maternity roost works until mid-May				No maternity roost works				Maternity roost works from mid-September					
	Hibernation period		Hibernation roost works from mid-March							Hibernation period				
Birds	Clearance works		Nesting season (avoid ALL clearance works without a breeding bird survey)					Clearance works						
Great Crested Newts	Pond management only		Both terrestrial and aquatic trapping possible				Terrestrial trapping only				Pond management only			
Reptiles	Scrub clearance		Capture and translocation programmes and scrub clearance				Weather dependent, but likely to be sub-optimal due to temperatures		Capture and translocation	Scrub clearance				
Red Squirrel	Avoid all works in red squirrel habitat								Optimum time for works		Avoid all works in red squirrel habitat			
Otters	No seasonal constraints, however restrictions are likely during breeding season													
Water Voles	Avoid works in habitat		Trapping and exclusion		Avoid works (breeding season)				Trapping and exclusion		Avoid works in habitat			
Fish	Mitigation for the protection of watercourses is required at all times of year Mitigation for particular species will need to be timed so as to avoid their breeding season, this varies between species													

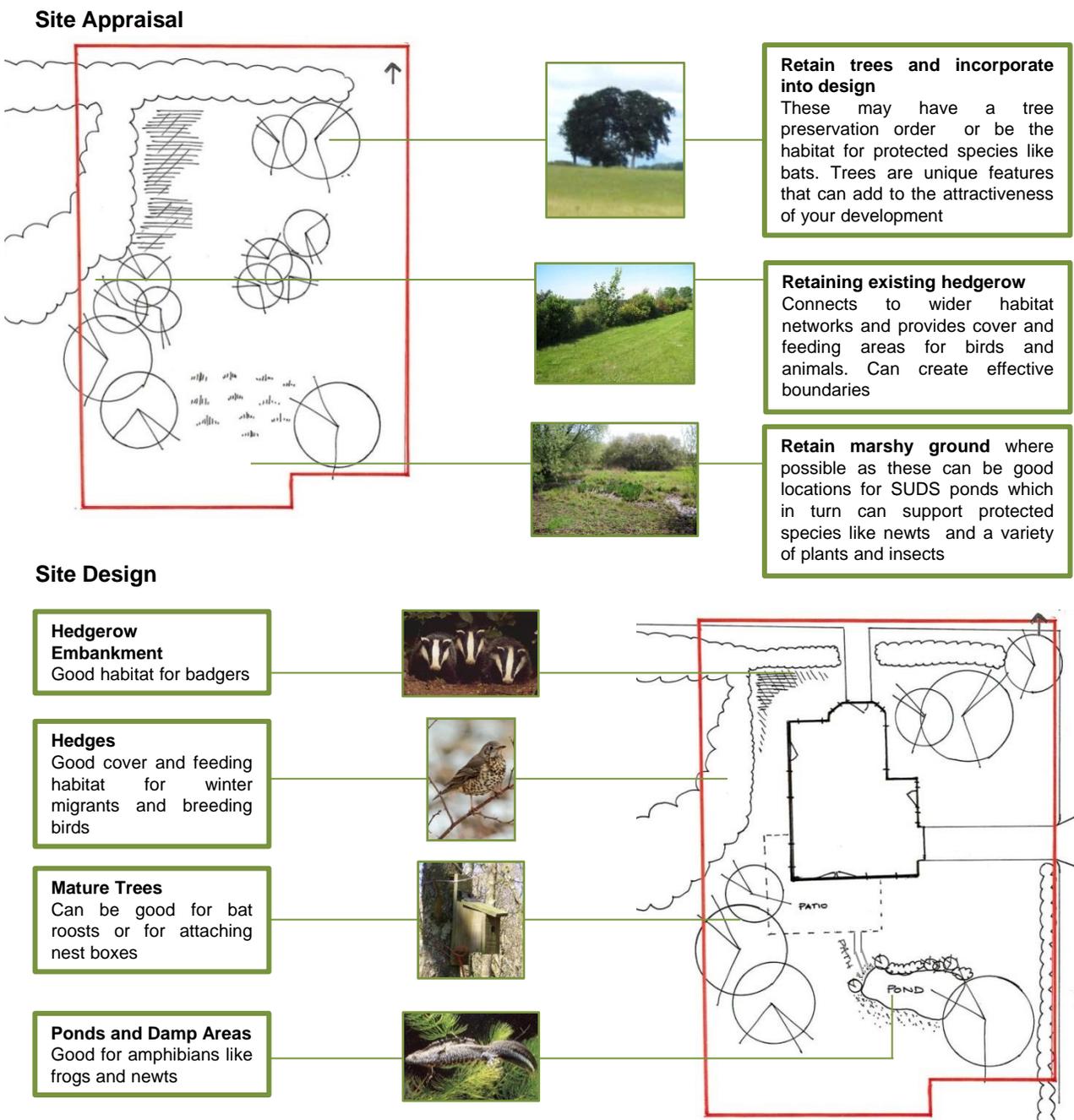
Key

Recommended period for mitigation
 Sub-optimal period for mitigation
 Mitigation not possible

Opportunities for enhancing wildlife and habitats within a site must be considered as part of the overall design of the project. It is often possible to combine biodiversity benefits with other site requirements. For instance, a pond as part of the site's Sustainable Urban Drainage System (SUDS) can provide a great habitat for a number of species as well as contributing to attractive open space. Features and habitats on site and in the surrounding area should be considered (see Figure 4).

There may be an opportunity to enhance 'green networks', providing an attractive setting to new housing development whilst also benefiting West Lothian's wildlife and habitats. For more information on green infrastructure/networks, see Scottish Government's publication 'Green Infrastructure: Design and Placemaking' at: <http://www.scotland.gov.uk/Publications/2011/11/04140525/0>

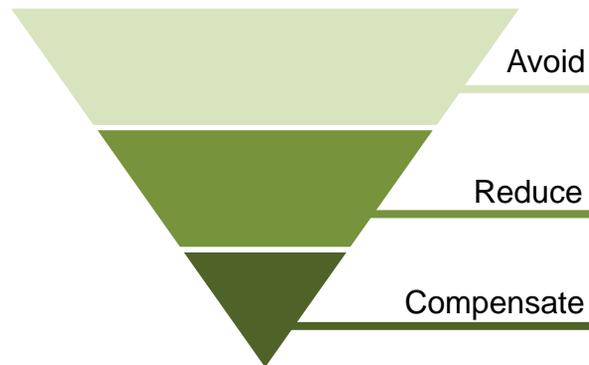
Figure 4: Utilising On-site Opportunities to Enhance Development Design



Mitigation

The mitigation hierarchy should apply when considering how to manage the risks of adverse impacts on wildlife and habitats (see Figure 5 below). Depending on what type of mitigation is proposed, it may be that there are certain times of the year when mitigation activities are inappropriate. An ecological mitigation calendar is provided in Table 4 (Page 14). Efforts should first be proposed to prevent or avoid impacts, if this is not possible then measures should be made to minimise and reduce any unavoidable impacts. The last resort should be some sort of compensation planting or habitat provision.

Figure 5: The Mitigation Hierarchy



Enhancement

Most developments are suitable for the incorporation of a range of measures for positive effects on wildlife and habitats. The planning authority will expect such measures to be proposed and then implemented if consent is given. These can be discussed at the pre-application stage (see Table 5 overleaf for examples of enhancing biodiversity within certain developments).

Management

On sites where wildlife features are retained or new habitats and features are created, appropriate ongoing management must be put in place to ensure long lasting benefits. This is likely to be part of the planning conditions placed on an application and subject to enforcement if necessary.

In these cases a management plan would be expected to be produced and submitted as part of the planning application. It should identify specific actions required for good management and include details of the phasing of the works.



The inclusion of a green roof in urban developments can provide habitats (such as meadows) that are attractive to bees and a range of other insects and birds.



The simple addition of nest boxes for birds and roost boxes for bats attached to mature trees, or even a wall on site will be beneficial.



The inclusion of a swift nest box in appropriate locations provides safe and protected nesting opportunities.

Good Design and Mitigation – Points to Remember

- Avoid any detrimental impacts on biodiversity or species through good design
- Incorporate into the design features that will enhance biodiversity
- Follow the mitigation hierarchy
- If appropriate, include a management plan

Table 5: Examples of Enhancing Biodiversity Within Different Developments

Development	Opportunities for Enhancing Habitat and Wildlife Interests	
<ul style="list-style-type: none"> Residential and business development 	<ul style="list-style-type: none"> Incorporate and manage existing habitat in green space requirement Create new features for wildlife in green spaces e.g. traditional orchards or woodland to meet LBAP targets, creation of wildlife pond and scrapes Create a network of green corridors e.g. plant hedges, long grass, wetland corridors, wildflower grasslands Design for sustainable drainage systems e.g. balancing ponds, reedbed systems Landscape with locally appropriate native species Incorporate bird and bat boxes in the design Consider green roofs Promote wildlife gardening amongst householders Investigate involving community groups and residents 	
<ul style="list-style-type: none"> Public open space and recreational features 	<ul style="list-style-type: none"> Create a network of green corridors Plant hedges Allow areas of grassland to grow long to encourage wildflowers Create wetland or pond areas Plant more trees 	
<ul style="list-style-type: none"> Smaller road schemes 	<ul style="list-style-type: none"> Mitigation measures to include under passes for otter, badger crossings etc. Create new habitats e.g. semi-natural grassland, woodland, and ponds Design for sustainable drainage systems e.g. swales, balancing ponds Creation of otter holt Conserve geological exposures Landscape and screen with locally appropriate native species Design in bat bricks, bird boxes etc. on bridges 	
<ul style="list-style-type: none"> Conversions of rural buildings 	<ul style="list-style-type: none"> Install barn owl box or provision of nest space Install swift box Incorporate other bird and bat boxes in the design 	
<ul style="list-style-type: none"> Windfarms 	<ul style="list-style-type: none"> Hydrological management for restoring or maintaining bogs (such as drain blocking) Restore appropriate habitats where possible Incorporate and manage existing habitat, species and geological exposures on unworked land 	

6.

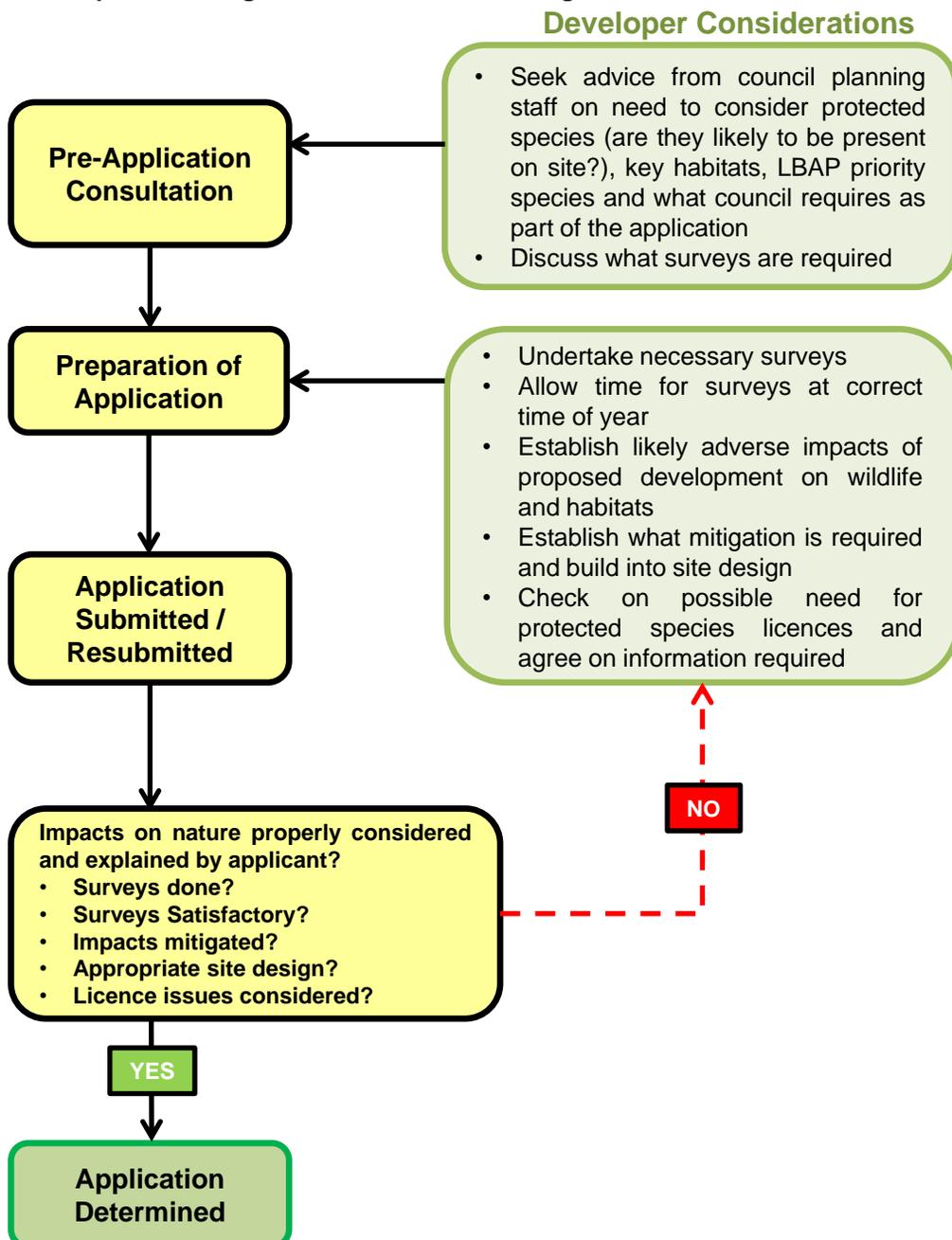
ASSESSMENT OF PLANNING APPLICATIONS

The design of any new any development should be based on a good knowledge of the site, including the habitats and species present on and adjacent to the site.

This understanding will help applicants to put forward development proposals that respond appropriately to the constraints and opportunities of a site, and to identify ways in which they can contribute to conserving and enhancing wildlife and habitats in addition to providing opportunities for people to experience nature close to where they live (see Section 5).

Key issues in the development management process with regard to wildlife and habitat considerations are summarised in Figure 6. Addressing the points raised in the chart below will help to ensure that the planning application process does not encounter unnecessary complications and delays.

Figure 6: The Development Management Process and Ecological Considerations



Wildlife and Habitat Considerations When Determining Planning Applications

As well as seeking to protect legally protected sites and species, the planning authority has a duty to protect, and where appropriate, enhance the wider biodiversity and geodiversity of West Lothian. Encouraging developers to maximise the opportunities for enhancing biodiversity are ways in which this duty can be delivered. This approach can also contribute to wider goals to improve green infrastructure and networks and encourage Local Biodiversity Action Plan priority species and enhance habitats and ancient woodland.



Swales, ponds, trees and permeable surfaces visually enhance hard surfaces and provide benefits to runoff and drainage

When considering planning applications the council will consider biodiversity and geodiversity in accordance with the following hierarchy of importance:

- International Sites and Protected Species;
- National Sites and Protected Species;
- Local Sites; and
- Other wider biodiversity and geodiversity interests including green networks.

Wildlife and Habitat Considerations in determining a Planning Application – Points to Remember:

- **Early design action:** ensure that wildlife and geological conservation forms a positive part of early development design rather than being an afterthought
- **Clarity of understanding:** ensure your development team have a clear understanding of the planning authority requirements concerning biodiversity and geological conservation
- **Provide sufficient information:** make sure your application does not get held up unnecessarily or refused because insufficient information on wildlife and habitats has been submitted

Licences for Protected Species

If it is discovered that there are potential impacts on protected species that cannot be avoided through mitigation then a licence may be required before works can proceed. This is in order to prevent a possible offence being committed. Licences will only be granted if strict tests are met.

SNH is responsible for the administration of most protected species licences in Scotland (except most marine species where Marine Scotland is the licensing authority). For some species in specific circumstances (see Boxes 3 to 5) licences can be issued which allow:

- disturbance for the purpose of development; or
- disturbance for the purpose of survey and research.

After obtaining planning permission, the developer may need to apply for various types of licence regarding protected species before work can start on site.

It is important to remember that planning permission does not affect or replace any need to obtain licences or permits required by other environmental protection legislation. See Boxes 3, 4, 5 and 6 for more specific information on protected species and licensing. A licence may be required for works that do not require planning permission, for instance, internal works to a building or those carried out under permitted development.

Box 3: European Protected Species (EPS) and Licensing Requirements

There are **three strict legal tests** which must all be passed before a licence can be granted.

In summary they are:

- **Test 1:** that there is a licensable purpose. SNH provides more detailed guidance on Test 1 at: <http://www.snh.gov.uk/docs/B896394.pdf>
- **Test 2:** that there is no satisfactory alternative; SNH provides more detailed guidance on Test 2 at: <http://www.snh.gov.uk/docs/B896418.pdf> and
- **Test 3:** that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range (the qualified ecologist should be able to provide advice on this or alternatively seek advice from SNH).

For more information on the three species licensing tests, the SNH website provides detailed explanatory text about these tests:

<http://www.snh.gov.uk/protecting-scotlands-nature/species-licensing/>

Box 4: Water Voles and Red Squirrels

It is possible to licence activities that could affect water voles and red squirrels for social, economic or environmental reasons. This could cover a range of activities including development. However, it is important to note that licences may only be issued for this purpose provided that:

- the activity authorised by the licence will contribute to significant social, economic or environmental benefit; and
- there is no other satisfactory solution.

SNH provides more detailed guidance on how to interpret these tests at:

<http://www.snh.gov.uk/docs/B896429.pdf>

Red squirrel



Box 5: Badgers

If you are planning any development works that could result in disturbance to badgers in their setts, or damage or obstruction to setts then you are likely to require a licence. Licences can be issued (for activities that would otherwise constitute an offence) under the Protection of Badgers Act 1992 (as amended) for the purpose of development. It is important to note that licences can only permit someone to 'interfere with a badger sett' for the purpose of development. It is not possible to licence removal, translocation or killing of badgers for the purpose of development.

SNH provides more detailed guidance on badgers, development and licensing:

<http://www.snh.gov.uk/protecting-scotlands-nature/species-licensing/mammal-licensing/badgers-and-licensing/dev>



Badger



Badger Sett



Barn Owl



Song Thrush nest

Box 6: Birds

It is not possible to licence actions that would otherwise be an offence in relation to wild birds, for the purpose of development. Most developments are unlikely to result in the intentional or reckless killing of wild birds, but if they are carried out during the breeding season then there could be a risk of damage or destruction of nests or eggs, or disturbance to nesting birds. Because there is no development licensing purpose for wild birds, this means that any development that could result in these actions should not proceed until the breeding season is over for these species.

SNH provides more detailed guidance on birds and development at:

<http://www.snh.gov.uk/protecting-scotlands-nature/species-licensing/bird-licensing/development-houses/>

Species Licensing – Points to Remember:

- Identify any needs for licensing as soon as possible
- Check out the SNH web site for all the information needed at:
www.snh.gov.uk/protecting-scotlands-nature/species-licensing
- Make sure the relevant licensing tests can be met for any protected species present
- Allow enough time in the project programme for the issuing of licences

Further Information

Access to species licence application forms can be found at:

www.snh.gov.uk/protecting-scotlands-nature/species-licensing/formsandguidance/guidance/

Invasive Non-Native Species

There are many species of non-native plants that have been introduced to Scotland over time which we enjoy in our gardens and countryside. However, a few are very invasive in the natural environment and cause serious problems. They out-compete our native plants for light, space and nutrients. The environmental damage caused by invasive non-native plants can be irreversible so it is important that they are controlled. The most common invasive species in West Lothian are:

- Japanese knotweed (*Fallopia japonica*)
- giant hogweed (*Heracleum mantegazzanum*); and
- Himalayan balsam (*Impatiens glandulifera*).



Japanese knotweed



Giant Hogweed



Himalayan Balsam

The Wildlife and Natural Environment (Scotland) Act 2011 (see Annex B) has introduced measures to deal with non-native species. If a survey shows these or other invasive non-native species are present on a site, the developers must remove them and ensure that they do not spread from the site. The most likely way in which invasive non-native species may be introduced to a development site is through soil contaminated with seed or root material.

If large volumes of soil are moved or introduced to a site, the planning authority will require a soil sustainability management plan. If a development is responsible for the introduction of an invasive non-native species, either within or outwith the site, then the developer will have to remove the species and dispose of material appropriately.

Japanese knotweed, giant hogweed and Himalayan balsam are regarded as controlled waste. Developers should seek advice on the disposal of these plants by referring to the Scottish Environment Protection Agency (SEPA) website, see www.sepa.org.uk and www.netregs.gov.uk

The Scottish Government has produced a Non-Native Species Code of Practice that will help those developing land that contains these plants to understand their legal responsibilities. For more information see: www.scotland.gov.uk/publications/2012/08/7367

ANNEX A
DEVELOPMENT AND THE ROLE OF
SCOTTISH NATURAL HERITAGE

When Scottish Natural Heritage (SNH) will be Consulted on Planning Proposals

SNH's main focus is on proposals that require an Environmental Impact Assessment (EIA) and/ or could affect sites with a statutory nature conservation designation.

West Lothian Council must consult SNH in the following cases:

- Those affecting designated and proposed European sites (Special Protection Areas (SPAs) and Special Areas of Conservation (SACs)) collectively known as Natura sites, and Ramsar sites;
- EIA scoping requests and Environmental Statements related to development proposals (see discretionary consultations below);
- Development proposals affecting Sites of Special Scientific Interest (SSSIs);
- Cases that involve the winning and working of peat for commercial purposes; and
- Cases that could have significant repercussions on major accident hazards.

West Lothian will also consult SNH on all applications for developments that require an EIA.

Discretionary Consultations

All other consultations are discretionary and West Lothian Council must choose whether or not to consult SNH. In the first instance, planning officers should talk through the case with SNH before sending a formal written consultation with regard to the following:

- Advice in relation to an EIA screening request;
- Where a recent survey (undertaken in relation to the proposal) shows that protected species could be affected, but the council is uncertain that the mitigation proposed by the applicant is sufficient to avoid an offence under relevant legislation; and
- Small scale renewables that meet the criteria for consultation with SNH, as set out in *Assessing small-scale wind energy proposals* <http://www.snh.gov.uk/docs/A669283.pdf>

SNH, Protected Species and Proposed Development

SNH have two separate but related functions with regard to protected species and development:

- Advisory function - the provision of advice (in line with our Service Statement) about the impacts of certain development proposal on protected species; and
- Licensing function – dealing with applications for licences for actions to be undertaken affecting protected species that would otherwise be illegal (referred to in this document as 'species licence').

West Lothian Council will identify situations where it is appropriate to ask the developer to carry out a survey and (where relevant) submit a mitigation plan. Developers will be expected to demonstrate either that a species licence is not required or that one is likely to be able to be granted.

West Lothian Council will consult SNH where:

- It is uncertain that the mitigation proposed by an applicant will mean that a species licence is not required, or
- It does not consider it likely (with reference to the relevant licence tests) that a licence will be able to be granted by SNH to enable a planning permission to be used.

For further information on the service that planning authorities and other stakeholders can expect from SNH in relation to advice on planning and development proposals please see *A Service Statement for Planning and Development* (<http://www.snh.gov.uk/docs/A498949.pdf>).

ANNEX B
LIST OF RELEVANT LEGISLATION

List of Relevant Legislation

There are European Directives, UK implementing Regulations and Acts of Parliament and Scottish Regulations that need to be considered by councils for the protection and enhancement of wildlife and habitats. These obligations have a significant influence on shaping policy. The following is a list of the more relevant:

Legislation Name	Legislation Summary	Legislation Web-link
European and International		
Habitats Directive 92/43/EEC	Requires Special Areas of Conservation (SACs) to be designated for habitats and species listed on Annex I and II of the Directive and outlines the protection afforded to these sites. Outlines species protection provisions, including those for species commonly known as European Protected Species. Transposed into law in Scotland by the Conservation (Natural Habitats, &c.) Regulations 1994 as amended	http://ec.europa.eu/environment/nature/legislation/habitatsdirective/
Birds Directive 2009/147/EC	Protects all wild birds, their nests, eggs and habitats within the European Community. It gives member states of the European Union the power and responsibility to classify Special Protection Areas (SPAs) to protect birds which are rare or vulnerable in Europe, as well as migratory birds which are regular visitors	http://ec.europa.eu/environment/nature/legislation/birdsdirective/
(Ramsar) Convention on Wetlands of International Importance	Outlines protection of internationally important wetland sites protecting wildfowl habitat	http://www.ramsar.org
UK		
Wildlife and Countryside Act 1981 (as amended)	Chief mechanism for providing legislative protection of wildlife in Great Britain. Transposes Birds Directive and 'Bern Convention' into national law	http://www.legislation.gov.uk
Protection of Badgers Act 1992	Makes it a serious offence to injure or take a badger, or to damage or interfere with a sett unless a licence is obtained from a statutory authority (SNH)	http://www.legislation.gov.uk
Conservation (Natural Habitats, &c.) Regulations 1994 as amended	Transposed the Habitats Directive into national law	http://www.legislation.gov.uk
Conservation of Habitats and Species Regulations 2010	Transposes the Habitats Directive into law in England and Wales. Also applies to reserved matters	http://www.legislation.gov.uk
Scottish		
Environmental Impact Assessment (Scotland) Regulations 1999	Outlines the instances where and protocol for carrying out an EIA	http://www.legislation.gov.uk
Nature Conservation (Scotland) Act 2004	Outlines measures designed to conserve biodiversity and protect and enhance the biological and geological natural heritage of Scotland	http://www.legislation.gov.uk

Legislation Name	Legislation Summary	Legislation Web-link
Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011	Outlines compulsory conditions for supporting a planning application with an EIA report. Updates some, but not all, of the EIA (Scotland) Regulations 1999	http://www.legislation.gov.uk
The Wildlife and Natural Environment (Scotland) Act 2011	Creates a new regime for regulating invasive and non-native species	http://www.legislation.gov.uk

ANNEX C
INITIAL SITE AUDIT CHECKLIST

Initial Site Audit Checklist

This checklist can help when undertaking a site audit. If you decide to use it, it will give an indication of the ecological data that will be required for a development site, as well as highlighting the important designations, habitats and species to be considered during the design and planning process.

Note: In some cases further survey requirements may be identified following consultations with Council staff and/or SNH.

Consideration	Tick if it applies	If Yes then:	Done
Does the site include all or part of a statutorily designate site e.g. SPA, SAC, SSSI?	<input type="checkbox"/>	Consult Scottish Natural Heritage and Local Council for more information	<input type="checkbox"/>
Is there a nearby statutorily designated site e.g. SPA, SAC, SSI nearby that may be impacted by the development?	<input type="checkbox"/>	Consult Scottish Natural Heritage and Local Council for more information	<input type="checkbox"/>
Does the site include all, part of, or impact on, a nearby non-statutory designated site i.e. a Local Biodiversity Site?	<input type="checkbox"/>	Consult Local Council to determine under what circumstances, if any, development might be acceptable and the ecological data required	<input type="checkbox"/>
Does all or part of the site form a wildlife corridor or 'stepping stone' linking two or more other areas of ecological value?	<input type="checkbox"/>	Assess ecological impact of development on the site and adjacent areas of habitat, and identify possible mitigation	<input type="checkbox"/>
		If No then:	Done
Has a Phase 1 Habitat Survey been undertaken in order to help define the key habitats on site?	<input type="checkbox"/>	Consider undertaking a Phase 1 Habitat Survey at the earliest opportunity	<input type="checkbox"/>
Does the site include any of the following habitats (based on Phase 1 Habitat Survey):			
Mature trees (individuals or small stands)?	<input type="checkbox"/>	Survey for:	<input type="checkbox"/>
		<ul style="list-style-type: none"> • Bats • LBAP Species 	
		Check for:	
		<ul style="list-style-type: none"> • Tree Preservation Orders • Conservation Area designation 	
		Undertake:	
		<ul style="list-style-type: none"> • Tree survey (species, location, ground spread, age, height) 	
Woodland?	<input type="checkbox"/>	Survey for:	<input type="checkbox"/>
		<ul style="list-style-type: none"> • Bats • Breeding Birds • Red Squirrels • Badgers • LBAP Species 	
		Undertake:	
		<ul style="list-style-type: none"> • Phase II Habitat Survey 	
Hedges?	<input type="checkbox"/>	Survey for:	<input type="checkbox"/>
		<ul style="list-style-type: none"> • Determine if the hedge is of particular ecological value i.e. species rich • Breeding Birds • LBAP Species 	

Consideration	Tick if it applies	If Yes then:		Done
Rivers, streams or wet ditches?	<input type="checkbox"/>	Survey for:	<ul style="list-style-type: none"> • Otters • Water Voles • Salmon • LBAP Species 	<input type="checkbox"/>
		Undertake:	<ul style="list-style-type: none"> • Ecological Impact Assessment 	
Ponds, pools or lochs?	<input type="checkbox"/>	Survey for:	<ul style="list-style-type: none"> • Great Crested Newts • Water Voles • LBAP Species 	<input type="checkbox"/>
		Undertake:	<ul style="list-style-type: none"> • Ecological Impact Assessment 	
Wetland or bog?	<input type="checkbox"/>	Survey for:	<ul style="list-style-type: none"> • LBAP Species 	<input type="checkbox"/>
		Undertake:	<ul style="list-style-type: none"> • Phase II Habitat Survey on vegetated areas • Ecological Impact Assessment 	
Long / rough grassland?	<input type="checkbox"/>	Survey for:	<ul style="list-style-type: none"> • LBAP Species 	<input type="checkbox"/>
		Undertake:	<ul style="list-style-type: none"> • Phase II Habitat Survey • Ecological Impact Assessment 	
Bings / spoil tips / rock faces?	<input type="checkbox"/>	Survey for:	<ul style="list-style-type: none"> • Young's helleborine (on wooded bings) • LBAP Species 	<input type="checkbox"/>
		Undertake:	<ul style="list-style-type: none"> • Phase II Habitat Survey on vegetated areas • Ecological Impact Assessment 	
Brownfield?	<input type="checkbox"/>	Survey for:	<ul style="list-style-type: none"> • Invertebrates 	<input type="checkbox"/>
Heath (heather)?	<input type="checkbox"/>	Survey for:	<ul style="list-style-type: none"> • LBAP Species 	<input type="checkbox"/>
		Undertake:	<ul style="list-style-type: none"> • Phase II Habitat Survey • Ecological Impact Assessment 	
Buildings / barns?	<input type="checkbox"/>	Survey for:	<ul style="list-style-type: none"> • Bats • Barn Owls • Nesting Birds • LBAP Species 	<input type="checkbox"/>
Scrub?	<input type="checkbox"/>	Survey for:	<ul style="list-style-type: none"> • LBAP Species 	<input type="checkbox"/>
		Undertake:	<ul style="list-style-type: none"> • Phase II Habitat Survey • Ecological Impact Assessment 	
Coastal sand, mudflat, lagoons or saltmarsh?	<input type="checkbox"/>	Survey for:	<ul style="list-style-type: none"> • LBAP Species 	<input type="checkbox"/>
		Undertake:	<ul style="list-style-type: none"> • Phase II Habitat Survey • Ecological Impact Assessment 	

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