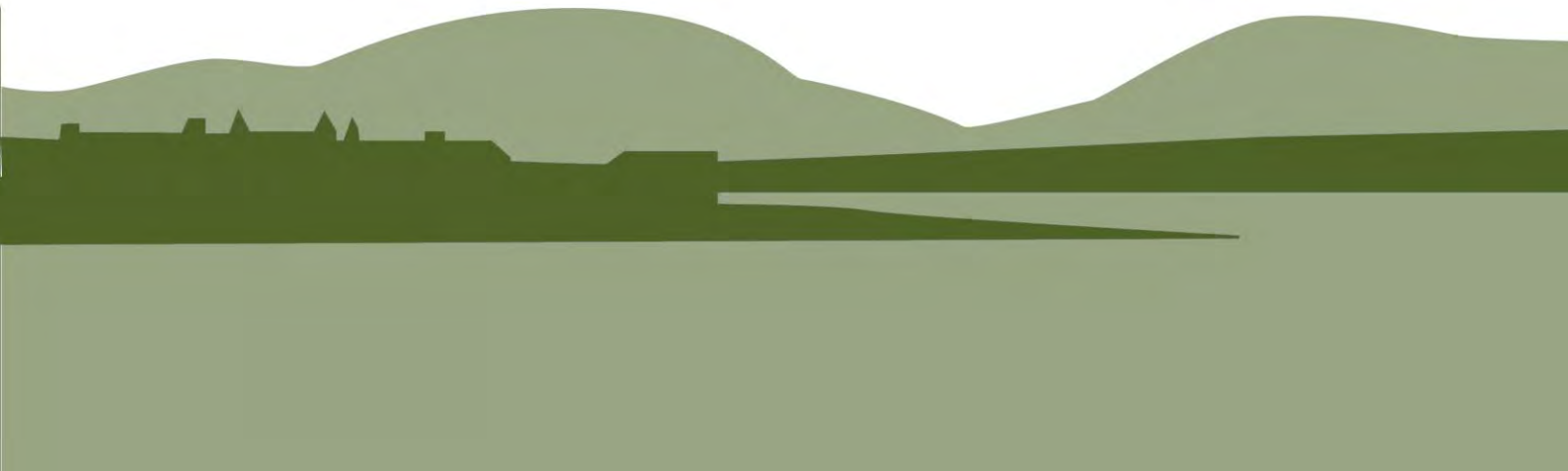


# Supplementary Guidance: Natural Environment



**MARCH 2017**



# Planning in Orkney

## Status of this Supplementary Guidance

The main planning document in Orkney is the **Orkney Local Development Plan** (the plan), which provides the policy framework and land allocations for dealing with planning applications efficiently and with certainty. All decisions on planning applications require that an appropriate balance is struck between the relevant development plan policies and other material considerations.

**Supplementary Guidance** is produced for given policy areas and subjects where a specific requirement is highlighted within the plan. It is the purpose of supplementary guidance to provide further information, policy and advice on complex planning matters and seeks to expand upon the core policies or land allocations in the plan. Supplementary guidance is always subject to full public consultation and is submitted to the Scottish Government prior to adoption. Once adopted, supplementary guidance has statutory weight in the determination of planning applications and forms part of the plan.

**Planning Policy Advice** (PPA) is prepared to provide further information and advice on policies and issues where a specific requirement to produce supplementary guidance has not been set out within the plan. Many Development Briefs for land allocations are set at this level, along with the majority of advice and information that is prepared for members of the public and Development Management. PPA is always subject to full public consultation and council approval prior to adoption and publication. Once adopted, PPA is a material planning consideration although it does not bear the same weight as the plan itself.

**Development Management Guidance** (DMG) is produced to provide advice on technical issues and the interpretation of given policies where a need arises. It is the intention of DMG to ensure a consistency of approach and to highlight the original intention/spirit of a policy where there is any ambiguity. DMG is also produced for less-complex land allocations to ensure a co-ordinated approach to development can be achieved - Conservation Area Appraisals and Conservation Statements are also set at this level within Orkney. Whilst DMG is not subject to public consultation, it is approved by Council prior to adoption and publication. As such, DMG is a material consideration in the determination of planning applications, which is considered to be the standing advice of the Local Planning Authority.

## Contacting the Council

Should you wish to discuss any aspect of this Supplementary Guidance, an Officer from Development Management will be available from 09:00 to 17:00, Monday to Friday to meet at the OIC Customer Services in Kirkwall or via telephone 01865873535.

[www.orkney.gov.uk](http://www.orkney.gov.uk)

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**Front and back page graphic:** View to Hoy Hills from Copland's Dock, Stromness. Graphic © iDesign from original photograph courtesy of Anne Flint.

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# 1. Introduction

## Purpose of this Guidance

- 1.01 The Council, through the Orkney Local Development Plan 2017 and its responsibilities to protect and enhance biodiversity, takes a broad approach to nature conservation, taking into account ecosystems and natural processes, as well as conserving designated sites and protected species. Along with Policy 9 Natural Heritage and Environment, this Supplementary Guidance seeks to protect Orkney's natural environment from the detrimental effects of development, ensuring the conservation of this rich natural heritage for the benefit of future generations.
- 1.02 This guidance accompanies Policy 9 Natural Heritage and Environment of the Orkney Local Development Plan 2017 and sets out additional information on natural heritage designations, protected species, the wider biodiversity, geodiversity, the water environment, peat and soils. It aims to help planning stakeholders fully consider the wildlife and environmental implications of proposals which require planning permission. The guidance will be a material consideration when local authority development management officers consider applications.

## How to Use this Guidance

- 1.03 Applicants are encouraged to refer to this guidance at the earliest opportunity as it contains important information on potential wildlife and habitat requirements, constraints and opportunities for new development. Where relevant, applicants should seek pre-application advice from the planning authority to identify and address potential issues and avoid unnecessary delays later in the planning process.
- 1.04 Section 2 of this Supplementary Guidance provides information on natural environment considerations in Orkney, providing the legislative setting, the relevant section of Policy 9 Natural Heritage and Environment of the Orkney Local Development Plan 2017 and further useful information.
- 1.05 Section 3 explains the requirement for site appraisal, ecological surveys and environmental assessment in the planning process.
- 1.06 Section 4 details how the design of development can support and enhance biodiversity, mitigation and enhancement.

## The Role of Scottish Natural Heritage

- 1.07 Scottish Natural Heritage (SNH) is a statutory consultee for certain developments that affect wildlife. It focuses on proposals that require an Environmental Impact Assessment and those that could affect sites with a statutory nature conservation designation. If a proposal has potential to affect a designated international or national site, Orkney Islands Council is required to consult SNH on the application. SNH also provides the Council with advice on protected species. For proposals with potential to affect local sites and the wider natural heritage within Orkney the

Council's Environment Officer will provide advice and support. Further information on the role of SNH is included in Appendix A.

### **The Role of the Scottish Environment Protection Agency**

- 1.08 The Scottish Environment Protection Agency (SEPA) is a key agency in the land use planning process in Scotland. In the context of Supplementary Guidance Natural Environment, SEPA provides formal environmental advice in relation to:
- Protection of the water environment (both surface water and ground water).
  - Protection of the marine environment (water and the benthic environment).
  - Promotion of sustainable waste management.
  - Flood risk
- 1.09 The agency is a statutory consultee for a number of types of development, including proposals that require an Environmental Impact Assessment; it also considers major developments as set out within the Town and Country Planning (Hierarchy of Developments)(Scotland) Regulations 2009.
- 1.10 Further information on the role of SEPA is included in Appendix B.

### **The Role of Marine Scotland**

- 1.11 Marine Scotland is a Directorate of the Scottish Government and is responsible for the integrated management of Scotland's seas, working closely with its key delivery partners SNH and SEPA.

Song Thrush Nest, SNH



## 2. Natural Environment Considerations

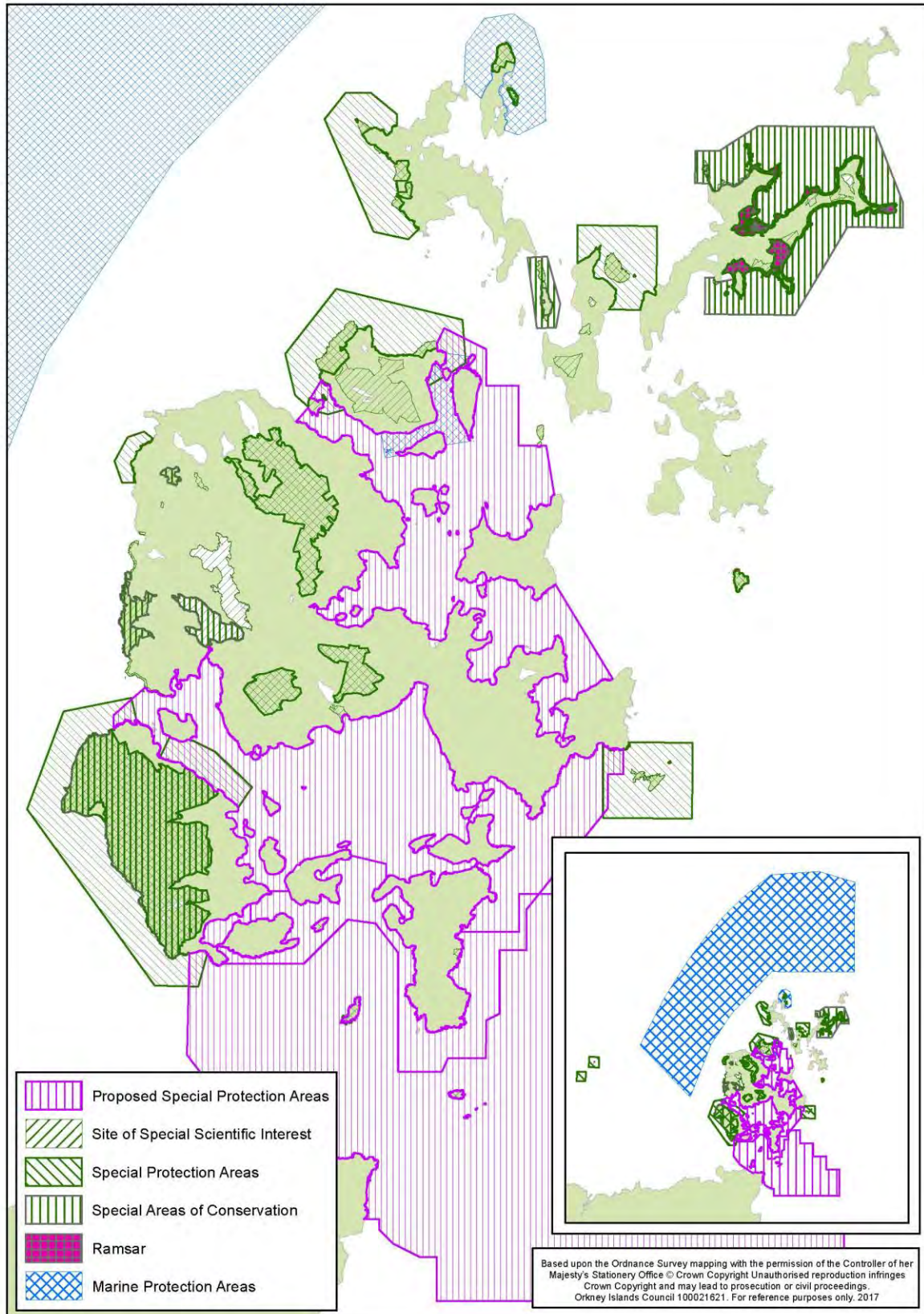
### Designated Sites

- 2.01 A number of designated sites within Orkney carry statutory protection at the European, UK and Scottish level and others are recognised for their importance in an Orkney context. These are referred to as international, national and local sites respectively. The Orkney Local Development Plan 2017 seeks to ensure that the habitats and species of these sites are considered appropriately when determining relevant planning decisions.
- 2.02 Internationally designated sites in Orkney are shown in Figure 1. They have protection under European law and are commonly known as Natura 2000 sites. These sites comprise Special Protection Areas (SPA) which are designated under the EC Wild Birds Directive (2009/147/EEC), as well as Special Areas of Conservation (SAC) for habitats and species which are designated under the Habitats Directive (92/43/EEC). Ramsar sites, designated under the Ramsar Convention on Wetlands of International Importance which came into force in 1975, are afforded the same policy protection as Natura sites.

#### **Policy 9A - Natural Heritage Designations: Internationally Designated Sites**

1. Internationally Designated Sites
  - i. Development likely to have a significant effect on a site designated or proposed as a Special Protection Area (SPA) or Special Area of Conservation (SAC), collectively known as Natura 2000 sites, individually or cumulatively and not directly connected with, or necessary to the conservation management of that site must be subject to an Appropriate Assessment in order to assess the implications for the site's conservation objectives.
  - ii. Development will only be permitted where the Assessment ascertains that:
    - a) it would not adversely affect the objectives of the designation or the integrity of the site; or
    - b) there is no alternative solution; and
    - c) there are imperative reasons of over-riding public interest, including those of a social or economic nature.
  - iii. A derogation is available where there are no alternative solutions; there are imperative reasons of overriding public interests, including those of a social or economic nature; and compensatory measures are provided to ensure that the overall coherence of the Natura network is protected.
  - iv. The international importance of Ramsar sites should also be appropriately protected.

**Figure 1 – International and National Natural Heritage Designations in Orkney**





- 2.03 The Scottish Government gives the same level of protection to both proposed SPAs and possible SACs which have been approved by Scottish Ministers for formal consultation.

### **Environmental Legislation 1: Habitats Regulations Appraisal (HRA)**

When a particular site is considered for development, it is necessary to establish, early on, whether the development proposal could impact on a Natura site. Proposals need not 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 any bird species that are qualifying interests of a designated site, but can feed in areas several kilometres away.

If a Natura site could be affected, the applicant must provide sufficient information to allow the planning authority (Orkney Islands Council) to determine whether there will be a Likely Significant Effect (LSE) on the qualifying interests of the Natura site. 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, 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.

If there will be a LSE, then the applicant will need to provide the planning authority with the relevant information to enable it to carry out an Appropriate Assessment.

The plan or project can only be consented if it can be ascertained that it would not adversely affect the integrity of the site. The planning authority must ensure the requirements of the Conservation (Natural Habitat, andc.) 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-and-hra/>

### **National Sites**

- 2.04 Nationally designated sites in Orkney are shown in Figure 1. They include Sites of Special Scientific Interest (SSSI) and Nature Conservation Marine Protected Areas (NC MPA) which are notified for the special interest of their habitats, flora, fauna, geology or geomorphology.
- 2.05 SSSIs are designated under the Nature Conservation (Scotland) Act 2004 and are protected by law. Many of Orkney's SSSIs are also designated as Natura 2000 sites.
- 2.06 NC MPAs are designated under the Marine (Scotland) Act 2010.

Stromatolites, Yesnaby



### **Policy 9A - Natural Heritage Designations: Nationally Designated Sites**

- i. Development that negatively affects a Site of Special Scientific Interest (SSSI) will only be permitted where:
  - a) the objectives of the designation and the overall integrity of the area will not be compromised; or
  - b) any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by social, environmental or economic benefits of national importance.
- ii. Development capable of affecting a Nature Conservation Marine Protected Area (NC MPA) will only be permitted where it can be demonstrated that:
  - a) there is no significant risk of hindering the achievement of the conservation objectives of the NC MPA; or
  - b) there is no alternative that would have a substantially lower risk of hindering the achievement of the conservation objectives of the NC MPA; and
  - c) the public benefit outweighs the risk of damage to the environment.

### **Local Sites**

- 2.07 Local Nature Reserves (LNR) are areas of locally important natural heritage, statutorily designated by the planning authority and managed by local authorities to give people opportunities to learn about and enjoy nature close to where they live. There is currently one LNR in Orkney at Mull Head in Deerness and there are plans to designate a further LNR at Happy Valley in Stenness.
- 2.08 Local Nature Conservation Sites (LNCS) are non-statutory sites and may be designated for their botanical, ornithological, geological or geomorphological interest, and often for a combination of these interests. Whereas statutory designations are afforded legal protection, non-statutory designations are protected through the implementation of specific planning policies.
- 2.09 Geological Conservation Review (GCR) sites represent the best and most representative geological and geomorphological features of Britain. Although most have statutory protection through designation as geological features in SSSIs, some remain as yet unprotected and are termed unnotified GCR sites. A number of unnotified GCR sites in Orkney are listed as LNCS.
- 2.10 The purpose of the LNCS designation is to alert planning stakeholders such as planners and developers to the presence of natural features of some merit. This gives an early indication of sensitivities that should be taken into account when planning a development. Annex 1 to this Supplementary Guidance provides maps and site statements for these designations.

- 2.11 The land-owner or manager's day-to-day management of the land is unaffected by its listing as an LNCS.

**Policy 9A - Natural Heritage Designations: Locally Designated Sites**

- i. Development likely to negatively affect a Local Nature Conservation Site (LNCS), Local Nature Reserve (LNR) or unnotified Geological Conservation Review (GCR) site will only be permitted where there is no feasible alternative location; and
  - a) mitigative measures will be satisfactorily implemented to ensure that it will not affect the integrity of the area or the qualities for which it has been designated; or
  - b) any such effects are clearly outweighed by social, environmental or economic benefits.

**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.

## Protected Species

### Overview of species protection

- 2.12 Most bird species and a wide range of wild animals and plants have general protection from deliberate damage or harm under national legislation. In addition to this, some species, such as otters, bats and cetaceans have special protection from disturbance and harm under European legislation, and are known as European Protected Species.
- 2.13 The following species benefit from varying levels of protection through environmental legislation:
- European Protected Species which are protected under Schedule 2 (animals) and 4 (plants) of the Habitats Regulations 1994 (as amended) – see **Environmental Legislation 2**.
  - Birds, animals and plants which are listed on Schedules 1, 5 and 8 respectively of the Wildlife and Countryside Act 1981 (as amended) – see **Environmental Legislation 3**.
  - Seals which are protected under the Marine (Scotland) Act 2010 – see **Environmental Legislation 4**.

**Policy 9B - Protected Species**

- i. Development likely to have an adverse effect on any protected species will not be permitted unless it can be justified in accordance with the relevant protected species legislation.
- ii. Where there is evidence to indicate that a protected species may be present on, or adjacent to, a development site and could be affected by the proposal, the Planning Authority may require an ecological survey and/or mitigation plan to be submitted with the planning application.

Bat, SNH



Hen Harrier, SNH





- 2.14 The presence of species with special protection, either on or near a proposed development site, is a material consideration in preparing development proposals as well as subsequent decisions on planning applications. Their presence rarely imposes an absolute block on development, however mitigation measures will often be necessary and this can affect the design, layout and timing of the works.
- 2.15 If there is potential for the development to lead to impacts on certain protected species that cannot be avoided through mitigation, it may be necessary to apply for a license from SNH or Marine Scotland before works can proceed, in order to prevent a possible offence being committed. See Section 6 for further guidance on species licenses.

### **Environmental Legislation 2: European Protected Species and Development.**

If there is potential for the development to lead to impacts on European Protected Species (EPS) that cannot be avoided through mitigation, a license may be required before works can proceed, in order to prevent a possible offence being committed (see Section 6 for further guidance on species licenses).

The SNH website provides detailed explanatory text about EPS licensing at:

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

### **Environmental Legislation 3: Birds and 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 to or destruction of nests or eggs, or disturbance to nesting birds. There is no system to licence development-related actions that would otherwise be an offence in relation to 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.

The SNH website provides more detailed guidance on birds and development at:

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

#### Environmental Legislation 4: Seals and Development.

On the 1 February 2011 it became an offence to kill, injure or take a seal at any time of year except to alleviate suffering or where a license has been issued to do so by Marine Scotland. The method of killing or taking seals is detailed in licenses issued and regular reporting is required. Under the Marine (Scotland) Act 2010 it is also an offence to intentionally or recklessly harass seals at significant haul-out sites when these have been designated. A map indicating the locations of designated seal haul outs in Orkney is available on the Scottish Government website at <http://www.gov.scot/Resource/0045/00454617.pdf>

A topic sheet providing further information on designated haulout sites is available at <http://www.gov.scot/Resource/0045/00456005.pdf>

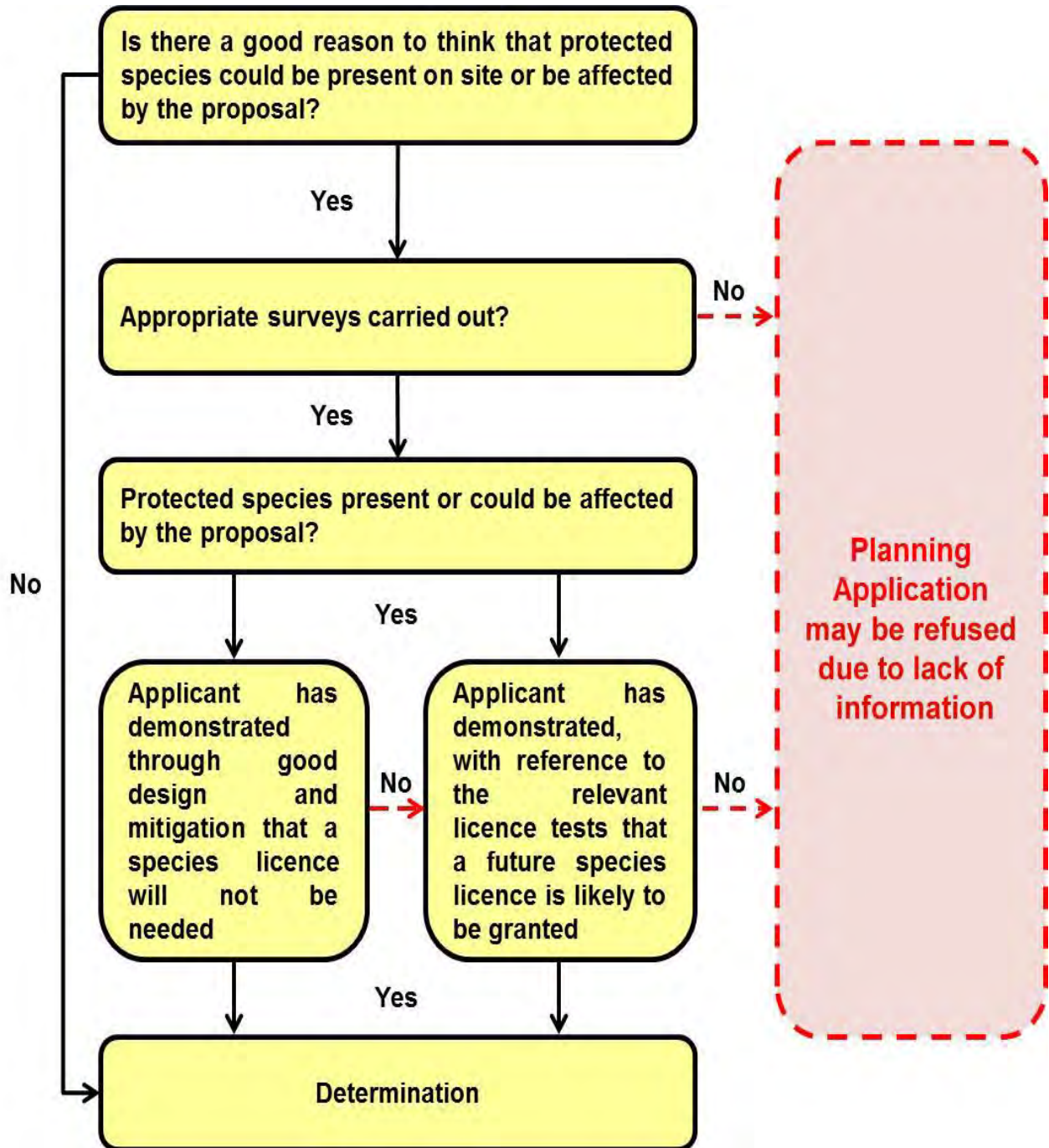
The Conservation (Natural Habitats, andc.) Regulations 1994 (as amended) also prohibits certain methods of catching or killing seals.

- 2.16 **Figure 2** highlights the importance of providing the necessary information to support a planning application. **Table 1** lists protected species that are found in Orkney, along with the relevant protective legislation.
- 2.17 Examples of development activities, together with illustrative protected species that may be affected are provided in **Table 2**.

Grey Seal Pup, [derrenfoxphotography.com](http://derrenfoxphotography.com)



Figure 2: Protected species – the importance of providing the necessary information





**Table 1: Protected species in Orkney**

Species	Typical habitat type	Protective legislation	European Protected Species	UK Protected Species
European otter.	Lochs, burns, ditches, wetlands, moorland & coastal habitats.	Habitats Directive 92/43/EEC.	✓	
All species of bats: e.g. common pipistrelle, Nathusius' pipistrelle and Brown long-eared bat, found in Orkney	Woodland, old buildings, roofs, lofts, tunnels and caves.	Conservation of Habitats and Species Regulations 2010.	✓	
All cetacean species, i.e. all whales, dolphins & porpoises.	Marine and coastal habitats.	Wildlife and Countryside Act 1981 (as amended).	✓	
All species of marine turtle.		Conservation (Natural Habitats &c) Regulations 1994 and 2010	✓	
Seals i.e. Harbour seal, Grey seal.	Full range of habitats, e.g. wetlands, dune & links, farmland, moorland, coasts & cliffs, open country, quarries, old farm buildings and steadings.	Marine (Scotland) Act 2010.		✓
Breeding birds.		Wildlife & Countryside Act 1981 (as amended), see Schedule 1 Part 1.		✓
Birds that may not be intentionally or recklessly harassed at any time, e.g. Hen harrier, White-tailed eagle.		Wildlife and Countryside Act 1981 (as amended), see Schedule 1A.		✓
Birds whose habitually used nests are protected at all times, e.g. White-tailed eagle.		Wildlife and Countryside Act 1981 (as amended) see Schedule A1.		✓



**Table 2: Development activities that may affect protected species**

Examples of development activities.	European Protected Species.	UK protected species.
Barn and rural building conversions (especially unoccupied, stone-built buildings).		Breeding birds e.g. swallow, house martin.
Alternations or demolitions to the roof spaces of buildings, in particular churches/chapels, schools		Breeding birds e.g. swallow, house martin.
Development affecting caves, tunnels, cellars and/or any structures within 200m of water or woodland.		Breeding birds e.g. swallow, house martin.
Developments including felling or lopping, affecting old and veteran trees with a girth over 1.5m, or containing obvious holes.		Breeding birds.
Development affecting woodland, lines of trees and scrub, derelict land, brownfield sites and grassland.		Breeding birds.
Developments, e.g. windfarms, affecting open farmland, moorland and hilly exposed areas.		Breeding birds, e.g. hen harrier.
Developments adjacent to or affecting lochs, ponds, burns and other watercourses.		Breeding birds.
Developments in the coastal and marine environment, e.g., aquaculture.		Seals.
Development affecting quarries and cliff faces.		Breeding birds, e.g. peregrine falcon.

**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.

If survey confirms the presence of a protected species, then likely impact on the species must be fully considered before the planning application can be determined to enable the requirements of the species to be factored into the design of the development.

**Further information**

Access to species license application forms can be found at <http://www.snh.gov.uk/protecting-scotlands-nature/species-licensing/forms-and-guidance/application-forms/>

**Wider Biodiversity and Geodiversity**

- 2.18 Natural heritage is not confined to designated sites or protected species. Countryside features may provide wildlife corridors or stepping stones linking one habitat to another; they may also be illustrative of the physical forces and processes which have acted over time to shape landscapes as we see them today. Many geomorphological features in Orkney have helped create the conditions for certain habitats to develop – examples include the formation of saline lagoons behind coastal ayres and shingle banks. Certain habitats, for example coastal sand dunes, shingle banks and saltmarshes, help protect against coastal erosion and flood risk and have an ongoing role in helping communities adapt to climate change and rising sea levels. Habitats such as these are highly vulnerable to disturbance.
- 2.19 The purpose of this policy is to ensure that wider biodiversity and geodiversity interests are considered in all planning decisions and, where necessary, appropriate protection and enhancement measures are implemented through the planning process.

The Alter, South Ronaldsay





### Policy 9C - Wider Biodiversity and Geodiversity

- i. All development proposals must seek to avoid damage to, or loss of, biodiversity and geodiversity, and should enable the maintenance of healthy ecosystems, as well as natural features and processes which provide important services to communities e.g. coastal protection, flood risk mitigation or carbon storage.
- ii. All development proposals should have due regard for priority habitats and species identified in the UK Biodiversity Action Plan, the Scottish Biodiversity List, the list of Priority Marine Features and the Orkney Local Biodiversity Action Plan. Where possible, new development should incorporate benefits for biodiversity, and avoid further fragmentation or isolation of habitats.
- iii. Where there is evidence to indicate that a priority habitat or species may be present on, or adjacent to, a development site and could be affected by the proposal, the Planning Authority may require an ecological survey and/or mitigation plan to be submitted with the planning application.

- 2.20 The UK Biodiversity Action Plan identifies a range of habitats and species which are considered 'priorities for conservation'. Those which are found in Scotland are included in the Scottish Biodiversity List, along with a number of priority habitats and species which are absent or infrequent in other parts of the UK. When considering the likely effects of a development on the wider biodiversity, developers are encouraged to refer to the Orkney Local Biodiversity Action Plan (LBAP) which lists the priority habitats and species that are found in Orkney. The Orkney LBAP 2002 and its recent revisions can be accessed from the OIC website at <http://www.orkney.gov.uk/Service-Directory/L/Local-Biodiversity-Plan.htm>
- 2.21 Priority Marine Features are habitats and species which are considered to be marine nature conservation priorities in Scottish Waters. Further information, along with a list of PMFs is available from the SNH website at <http://www.snh.gov.uk/protecting-scotlands-nature/priority-marine-features/priority-marine-features/>
- 2.22 Information on Geological Conservation Review sites in Orkney can be found at the following link: <http://jncc.defra.gov.uk/default.aspx?page=4177andauthority=UKM45>

### The Water Environment

- 2.23 The Council has a duty as a responsible authority under the Water Framework Directive and the Water Environment and Water Services Act (2003) to protect, improve and promote the sustainable use of the water environment which, in Orkney, includes groundwater, burns, ponds, lochs, estuaries, coastal waters (to 3 nautical miles) and wetlands, including Groundwater Dependent Terrestrial Ecosystems.

- 2.24 Key objectives of the River Basin Management Plan (RBMP) for the Scotland River Basin District 2015-2027 are that water bodies achieve good water quality and overall status, and also that there is no deterioration in current status. The purpose of this policy is to ensure that new development is consistent with the sustainable management of Orkney's water environment and supports delivery of RBMP objectives.

#### **Policy 9D - The Water Environment**

- i. In accordance with the River Basin Management Plan for Scotland River Basin District 2015/2027, development proposals should seek to protect and, where possible, improve the water environment (rivers, streams, lochs, groundwater, estuaries, coastal waters (to 3 nautical miles) and wetlands including Groundwater Terrestrial Ecosystems). Where this is not possible, it must be clearly demonstrated that the development:
  - a) will avoid causing deterioration in the water quality or overall status of water bodies and, for any water body currently not achieving good status, will not prevent it from being able to achieve good status in the future.
  - b) includes the management and/or enhancement of existing habitats and, if appropriate, the creation of new habitats.
  - c) will not significantly affect water quality, flows and sediment transport, either during construction or after completion. Where a development proposal is located adjacent to the water environment, and a bank-side (waterside) location is not essential to the proposal, an appropriate buffer zone between the development and the water body should be included, within which development should be avoided.
- ii. There is a presumption against unnecessary culverting and engineering activities in the water environment.

- 2.25 The siting and design of development should be informed by the natural flow paths of water through the site. New development, including drainage systems, which would adversely impact on a water body, will generally not be supported.

- 2.26 All planning applications for proposals involving engineering activities in or adjacent to a water body must be accompanied by sufficient information to enable a full assessment to be made of the likely impacts of the development on the water environment.



## Environmental Legislation 5: The Water Environment and Development

In line with the requirements of The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (CAR) General Binding Rules (GBRs) appropriate SuDS should be provided for both the development and the construction phase. In addition, as per the SuDS Manual (C753) which may be accessed at [http://www.susdrain.org/resources/SuDS\\_Manual.html](http://www.susdrain.org/resources/SuDS_Manual.html), run off should be controlled by appropriate source control measures.

Proposed engineering works within the water environment may require authorisation under The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (as amended). Further guidance is available on the Engineering section of the SEPA website at <http://www.sepa.org.uk/regulations/water/engineering/> and in the CAR Practical Guide which may be accessed at [http://www.sepa.org.uk/media/34761/car\\_a\\_practical\\_guide.pdf](http://www.sepa.org.uk/media/34761/car_a_practical_guide.pdf).

Discharges to land or the water environment require authorisation under The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (as amended). Further guidance is available on the water section of the SEPA website at <http://www.sepa.org.uk/regulations/water/>

- 2.27 The installation of private waste water drainage systems such as septic tanks and soakaways, as well as surface water treatment systems, should be appropriately designed and sited to maximise efficient operation and avoid causing adverse impact on the water environment. It should be noted private waste water drainage systems will only be acceptable where it is not feasible to connect to a public sewer. Please refer to SEPA guidance on Waste water drainage at <http://www.sepa.org.uk/media/143338/lups-gu19-planning-guidance-on-waste-water-drainage.pdf>
- 2.28 As part of the Water Framework Directive, it is imperative that areas used for the abstraction of drinking water known as Drinking Water Protected Areas, are protected from any risks that could cause deterioration of the water quality. Developers are responsible for determining any risk to drinking water protected areas and for ensuring that all appropriate measures are taken to avoid deterioration in water quality.
- 2.29 New developments should also seek to include measures to enable a reduction in water usage.
- 2.30 The establishment of an appropriate development-free buffer zone between a development and a water body is an effective way of helping protect the water body and its bank-side habitats, and can also mitigate against flood risk to the development. When determining the width of a buffer zone, issues such as the type of water body, flood risk and climate change mitigation, pollution control and the presence of sensitive habitats and/or species should be taken into consideration. Further guidance on waterside buffer zones is provided in the SEPA publication 'Planning guidance on the Water Framework Directive, including river basin planning' which may be accessed at <http://www.sepa.org.uk/media/143208/lups->

[gu7-planning-guidance-on-the-water-framework-directive-including-river-basin-planning.pdf](#)

## Peat and Soils

- 2.31 Layers of peat underlie large areas of Orkney, including its moorland hills and peatland basins, where they represent important sinks and storage areas for carbon, as well as a valuable resource for the regulation of water storage and water purification. Peatlands can be significant sites for archaeology, and their moorland habitats support protected species such as the hen harrier and red throated diver. Orkney's fertile soils support a vibrant agricultural industry and also play an important role in water regulation and carbon storage.
- 2.32 With the most significant pressures on peat and soils being identified as climate change and the loss of stored carbon through disturbance, the purpose of this policy is to minimise any negative impact of development on Orkney's peat and soils, and protect their ability to store carbon, filter and buffer pollutants and maintain resilience to high intensity rainfall events.

### Policy 9E - Peat and Soils

- i. Development on areas of peat or carbon-rich soils will only be permitted where:
  - a) it has been clearly demonstrated that there is no viable alternative;
  - b) an acceptable assessment of the likely effects of the development on carbon dioxide emissions has been undertaken and submitted; and
  - c) the economic and social benefits of the development clearly outweigh any potential detrimental effects on the environment, including likely carbon dioxide emissions.
- ii. Where development on peat or carbon-rich soil is permitted, the Council may ask for a peatland management plan to be submitted which is supported by an appropriate peat survey and clearly demonstrates how the unnecessary disturbance, degradation and erosion of peat and soils will be avoided and, where this is not possible, minimised and mitigated.
- iii. New areas of commercial peat extraction will only be permitted where it can be demonstrated that:
  - a) it is an area of degraded peatland which has been damaged by human activity and has low conservation value and, as a result, restoration is not possible; or
- iv. The applicant must submit a method statement, and, where necessary, a soil management plan, in support of any application.

### Peatland management plans

- 2.33 A map providing the most up to date information on the location of carbon-rich soils, deep peat and priority peatland in Orkney may be accessed from the SNH website at <http://www.snh.gov.uk/planning-and-development/advice-for-planners-and-developers/soils-and-development/cpp/>. The map indicates areas where a more detailed site specific peatland survey is likely to be required to support any planning application.
- 2.34 Where preparation of a peatland management plan is necessary, consideration should be given to the likely impacts on peat and carbon-rich soils at all stages of the proposed development. To assist in preparing the management plan, developers are advised to refer to '*Developments on Peatland: Guidance on the Assessment of Peat Volumes, Reuse of Excavated Peat and the Minimisation of Waste*' which may be accessed from the Scottish Government website at <http://www.gov.scot/Resource/0045/00455955.pdf>.
- 2.35 Measures to restore and protect damaged peatland should be detailed in the management plan. As appropriate, these may include:
- The storage and re-laying of any peatland vegetation that would be removed to make way for the development.
  - The blocking of drainage channels in order to retain water and create the physical conditions that will encourage the formation of new peat.

### Soil management

- 2.36 Most forms of built development require a degree of ground excavation which generates quantities of soil that may require onsite storage prior to its use for landscaping or, alternatively, may be moved offsite. When considering ground excavation and the storage of soils, developers should address the following issues:
- During wet weather, stockpiles of bare soil are vulnerable to erosion and may pose a risk to nearby watercourses. Conversely in dry, windy conditions, blown soil can lead to airborne dust problems.
  - Where the excavated soil cannot be fully accommodated within the landscaping scheme, options may include the transfer of surplus soil to another location or, alternatively, its disposal to a landfill site.
- 2.37 During the construction phase, vehicle traffic can cause compaction, leading to soil sealing which reduces its ability to regulate water storage, a factor which has ongoing potential to cause localised flooding, in particular during high intensity rainfall events.
- 2.38 Invasive non-native species may be present on site (see section 2.40 onwards for further information).
- 2.39 All construction works should be undertaken according to best practise as outlined in relevant Pollution Prevention Guideline Notes (PPG Notes). The notes are available on SEPA's website at <https://www.sepa.org.uk/regulations/water/guidance/>. Best

practice advice relating to pollution prevention can also be found on the planning section of SEPA's website.

- 2.40 In addition an exemption from the Waste Management Licensing (Scotland) Regulations 2011 may be required from SEPA. Further details are available on the 'Activities exempt from waste management licensing' section of the SEPA website and in the regulatory guidance 'Promoting the sustainable reuse of greenfield soils in construction'.

### Invasive Non-Native Species

- 2.41 Many species of non-native plants have been introduced to Scotland over time. Some are invasive and cause serious problems especially if they spread to the natural environment, where they represent a threat to biodiversity by out-competing 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 plant species in Orkney are:

- Japanese knotweed (*Fallopia japonica*).
- Himalayan balsam (*Impatiens glandulifera*).
- Salmonberry (*Rubus spectabilis*).

- 2.42 Salmonberry is a major issue in Orkney where it already represents a significant threat to natural vegetation, in particular Upland Willow Scrub which is identified as a locally important habitat in the Orkney Local Biodiversity Action Plan.

Japanese Knotweed, OIC





## Environmental Legislation 6: Non-Native Species and Development

The Wildlife and Natural Environment (Scotland) Act 2011 has introduced measures to deal with non-native species. Under the terms of the Act it is an offence for any person to plant, or otherwise cause to grow any plant in the wild at a place outwith its native range. If, through the planning application process, invasive non-native species are found to be present on the site, the developer must ensure through containment, eradication or removal as controlled waste that they do not spread from the site.

- 2.43 The Scottish Government has also produced a Non-Native Species Code of Practice that will help those developing land that contains these plants (Japanese knotweed and Himalayan balsam) to understand their legal responsibilities. For more information see [www.scotland.gov.uk/publications/2012/08/7367](http://www.scotland.gov.uk/publications/2012/08/7367)
- 2.44 Additionally further information on non-native species and their effects on the natural environment is available from the SNH website at <http://www.snh.gov.uk/protecting-scotlands-nature/protected-species/non-native-species/>
- 2.45 The most likely ways in which invasive non-native species may be introduced to a development site is through soil contaminated with seed or root material. If soil is moved from or introduced to a site, the planning authority will require a Construction Environmental Management Plan. If a development is responsible for the introduction of an invasive non-native species, whether within or outwith the site, the developer must remove the species and dispose of material appropriately.
- 2.46 Japanese knotweed and Himalayan balsam are classed as controlled waste. Plant waste of these species may only be disposed of at facilities which are licensed to accept controlled waste. It should not be deposited in garden waste skips at recycling centres, as fragments of root and stem can easily withstand the composting process. Developers should seek advice on the disposal of invasive non-native species which is available on the Scottish Environment Protection Agency (SEPA) website at: <http://www.sepa.org.uk/environment/biodiversity/invasive-non-native-species/> This webpage includes a Frequently Asked Questions section which describes how to identify non-native species; what to do about them; and the regulations and responsibilities that surround tackling non-native species.
- 2.47 Salmonberry is also resistant to composting and should be treated similarly.

Sundew, [derrenfoxphotography.com](http://derrenfoxphotography.com)





## 3. Site Appraisal and Ecological Surveys

### Initial Site Appraisal

- 3.01 When planning a development it is essential to 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. An initial site audit may be sufficient; however, dependent on the findings, it may be necessary 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 such as otter, and will need more detailed surveys.
- 3.02 A typical site audit should:
- Highlight any natural heritage designations in or near to the site.
  - Identify potential important habitats.
  - Identify any protected species that are likely to be in or near the site.
  - Give an indication of the ecological data required for progressing a planning application.
  - Recommend any detailed surveys that will be necessary.
- 3.03 A checklist guide of questions to consider and the next steps to take within a site audit is provided in **Appendix C**.
- 3.04 Where an important natural heritage feature has been identified on site, planning applications must be supported by a suitable level of information and applicants may be asked to submit information from the following list, as appropriate:
- Information on specific habitats, species and/or geology and possibly the surrounding area, including its sensitivity, significance and value.
  - An assessment of any potential effect of the development on these features.
  - Details of proposed mitigation measures, if adverse effects are expected.
  - Proposals to compensate for losses due to unavoidable damage or disturbance.
  - Confirmation of any licensing requirement and, with reference to the relevant license tests, evidence that a future species license is likely to be granted.
- 3.05 It is essential to understand the development site and consider any constraints and opportunities relating to the natural heritage at an early stage. Helpful information, including species records, may be obtained from a number of sources including:
- Orkney Wildlife Information and Records Centre: <http://www.orkneylibrary.org.uk/OBRC/html/contact.htm>.
  - The National Biodiversity Network Gateway: <http://data.nbn.org.uk>.
  - Scottish Natural Heritage Information: <http://snh.gov.uk/snh>.
- 3.06 Site surveys and assessments, including surveys for other natural heritage interests such as geology, geomorphology and soils 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>

- 3.07 Good practice also indicates that for the most significant developments, e.g. a development covering several hectares, an Ecological Impact Assessment (EclA) would be required, adopting the methodology of CIEEM. For some developments this may form part of a wider Environmental Impact Assessment.

#### **Environmental Legislation 7: Environmental Impact Assessment (EIA).**

Environmental Impact Assessment (EIA) is a statutory process which identifies the environmental effects (both positive and negative) of certain development proposals. EIA only applies to those developments that are likely to have a significant effect by virtue of factors such as their 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/>

PAN 1/2013 – <http://www.scotland.gov.uk/Resource/0043/00432581.pdf>

- 3.08 Where the development proposal has potential to affect environmentally sensitive areas, the Council may require the developer to appoint an Ecological Clerk of Works to provide advice on, and monitoring of, construction activities.

#### **Appropriate Timing of Surveys**

- 3.09 The possible requirement for ecological surveys is important to consider at an early stage as they often need to be carried out at certain times of year. A calendar indicating the most appropriate times to undertake surveys for various species and habitats in Orkney is provided in **Table 3**.
- 3.10 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.
- 3.11 In some circumstances surveys for certain species and habitats may be required over more than one season, and possibly covering periods measured in years. Examples include developments potentially affecting Natura sites or surveys to assess 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, further surveys may be required before the application can be determined or the development is started.
- 3.12 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.



### Timing of Ecological Surveys – Points to Remember:

- Consider which surveys may need to be done as early as possible.
- Discuss survey requirements with planning authority.
- Where proposals could affect a SSSI or a Natura site, consult with SNH prior to submitting the planning application.
- Make sure species surveys are carried out in optimal weather conditions where possible.
- Highlight survey limitations where necessary.

### Further information

3.13 If sufficient information is provided to support an application this can lead to delays in the planning determination process or, alternatively, the application may be refused.

3.14 Further information on survey and assessment methods may be found on the following websites:

- CIEEM Guidelines for Survey methodology - <http://www.cieem.net/publications>
- SNH - <http://www.snh.gov.uk/about-scotlands-nature/wildlife-and-you/>
- SEPA - [Guidance on Assessing the Impacts of Development Proposals on Groundwater Abstractions and Groundwater Dependent Terrestrial Ecosystems](#)
- SNIFFER - [WFD95: A Functional Wetland Typology for Scotland](#)

**Table 3: Ecological survey calendar**

Target.	Jan.	Feb.	Mar.	Apr.	May.	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.
<b>Habitat and vegetation.</b>	No habitat surveys.	Phase 1 only	Phase 1 only	Phase 1 only	Detailed habitat assessment surveys Phase 1 and NVC.	Detailed habitat assessment surveys Phase 1 and NVC.	Detailed habitat assessment surveys Phase 1 and NVC.	Detailed habitat assessment surveys Phase 1 and NVC.	Phase 1 only.	No habitat surveys.	No habitat surveys.	No habitat surveys.
	Mosses and lichens surveys.	Mosses and lichens surveys.	Mosses and lichens surveys.	Mosses and lichens surveys.	Mosses and lichens surveys.	Mosses and lichens surveys.	Mosses and lichens surveys.	Mosses and lichens surveys.	Mosses and lichens surveys.	Mosses and lichens surveys.	Mosses and lichens surveys.	Mosses and lichens surveys.
	No other detailed plant surveys.	No other detailed plant surveys.	No other detailed plant surveys.	No other detailed plant surveys.	No other detailed plant surveys.	No other detailed plant surveys.	No other detailed plant surveys.	No other detailed plant surveys.	No other detailed plant surveys.	No other detailed plant surveys.	No other detailed plant surveys.	No other detailed plant surveys.
<b>Bats.</b>	Inspection of hibernation roosts (difficult).	Inspection of hibernation roosts (difficult).	Limited activity.	Limited activity.	Summer roost emergence surveys and activity surveys (internal inspection of roof-spaces possible April – October).	Summer roost emergence surveys and activity surveys (internal inspection of roof-spaces possible April – October).	Summer roost emergence surveys and activity surveys (internal inspection of roof-spaces possible April – October).	Summer roost emergence surveys and activity surveys (internal inspection of roof-spaces possible April – October).	Limited activity.	Inspection of hibernation roosts (difficult).	Inspection of hibernation roosts (difficult).	Inspection of hibernation roosts (difficult).
<b>Birds*.</b>	Winter species.	Winter species.	Breeding birds/ migrant species.	Breeding birds/ migrant species.	Breeding birds.	Breeding birds.	Breeding birds.	Breeding birds low activity**.	Migrant species.	Migrant species.	Migrant species.	Winter species.
<b>Otters.</b>	Limited by vegetation cover and weather conditions rather than seasons.											
<b>Fish.</b>	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.											
<b>Seals.</b>	While counts of haul-outs can be done year round, seasonal usage varies. Standard survey periods are for harbour seals during their August moult and for grey seals this period coincides with the breeding season which extends from September to early December. Further information is available at <a href="http://www.snh.gov.uk/docs/A585082.pdf">http://www.snh.gov.uk/docs/A585082.pdf</a>											
	Recommended period for survey.			Sub-optimal period for survey.			Surveys not possible.					

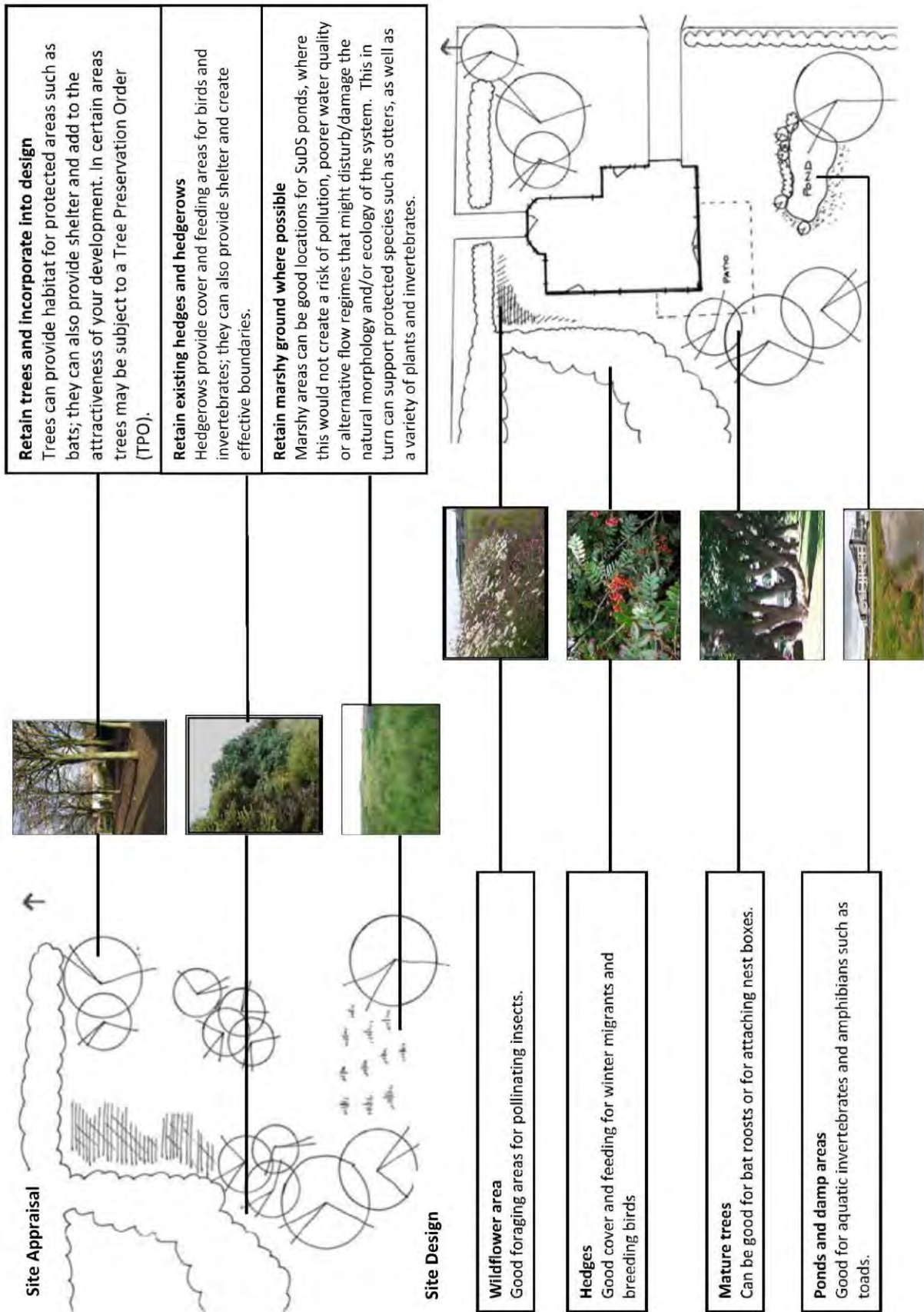
\*For certain species, e.g. breeding guillemots and tysties, the standard survey methods require that surveys are carried out during particular periods during the breeding season. Further guidance is available from the SNH website at <http://www.snh.gov.uk>  
 \*\*However, this period is particularly important for vantage point surveys for certain species e.g. red-throated diver

## 4. Good Design, Mitigation and Enhancement

- 4.01 Opportunities to enhance wildlife and habitats within a site should be considered as part of the overall design of the project. It is often possible to combine biodiversity benefits with other site requirements such as improved flood risk management and Sustainable Drainage Systems (SuDS). For instance a pond or wetland area can form part of the site's SuDS, providing new habitat for a number of species, as well as contributing to attractive and interesting open space. Other improvement works may include the re-naturalisation of canalised watercourses, as well as the removal of culverts and barriers to fish passage.
- 4.02 Where this would contribute to improvements to the status of water bodies, SEPA may be able to offer support and advice. Please see SEPA's Water Environment Hub at <http://www.sepa.org.uk/data-visualisation/water-environment-hub/?riverbasindistrict=Scotland> for information on water bodies, and contact [rbmp@sepa.org.uk](mailto:rbmp@sepa.org.uk) for further information. All proposed water improvement projects must include consideration of potential flood risk aspects.
- 4.03 Other features and habitats on site and in the surrounding area should be considered for their biodiversity value; these may include trees, hedges or areas of species-rich vegetation; the benefits of retaining these features are outlined in **Figure 3**.
- 4.04 There may also be opportunities to enhance 'green networks', providing an attractive setting to new housing development whilst also benefiting wildlife and habitats.



Figure 3: Utilising on-site opportunities to enhance development design





## Mitigation




- 4.05 The mitigation hierarchy should apply when considering how to manage the risks of adverse impacts on wildlife and habitats (see **Figure 4** below). Depending on what type of mitigation is proposed, there may be certain times of year when mitigation activities are inappropriate; an ecological mitigation calendar provided overleaf in **Table 4** highlights the most suitable times of year for undertaking ecological mitigation in Orkney. The primary aim of mitigation should be to prevent or avoid adverse impacts; if this is not possible then efforts should be made to minimise and reduce any unavoidable impacts. The last resort should take the form of compensation planting or habitat provision.

**Figure 4: The mitigation hierarchy.**



**Table 4: Ecological mitigation calendar**

Target	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
<b>Habitat and vegetation.</b>	Planting and translocation.		No planting or translocation.		No planting or translocation.		Planting and translocation.					
<b>Bats.</b>	Maternity roost works until early-May.		No maternity roost works.		Maternity roost works from mid-September.							
	Hibernation period.		Hibernation roost works from early May.		Hibernation period.							
<b>Birds.</b>	Clearance works.		Nesting season (avoid ALL clearance works without a breeding bird survey).		Clearance works.							
<b>Otters.</b>	No seasonal constraints, however restrictions are likely during breeding season.											
<b>Fish.</b>	Mitigation for the protection of watercourses is required at all times of year. Mitigation for particular species should be timed so as to avoid their breeding season, this varies between species.											
<b>Seals.</b>	Mitigation should be timed to avoid breeding and moulting seasons. The breeding season for harbour seals extends from June until July, with adult seals moulting throughout August. For grey seals the breeding / moulting season extends from September to early December. Further information is available at <a href="http://www.snh.gov.uk/docs/A585082.pdf">http://www.snh.gov.uk/docs/A585082.pdf</a>											

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

## Enhancement

- 4.06 Many developments are suitable for the incorporation of a range of measures for positive effects on wildlife and habitats. These can be discussed with the planning authority at the pre-application stage. **Table 5** sets out a range of examples for biodiversity enhancement within certain development.

## Management

- 4.07 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.
- 4.08 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.

### Good design and mitigation – point to remember:

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

Further information can be found in:

The SuDS Manual at [http://www.susdrain.org/resources/SuDS\\_Manual.html](http://www.susdrain.org/resources/SuDS_Manual.html)

Planning Policy Advice for Open Space which may be accessed at <http://www.orkney.gov.uk/Service-Directory/D/orkney-open-space-strategy.htm>

The Orkney Open Space Strategy (2014) which may be accessed at [http://www.orkney.gov.uk/Files/Planning/Development-and-Marine-Planning/Adopted\\_PPA\\_and\\_SG/OOSS\\_Vision\\_and\\_Action\\_Plan/OOSS\\_Vision\\_and\\_Action\\_Plan.pdf](http://www.orkney.gov.uk/Files/Planning/Development-and-Marine-Planning/Adopted_PPA_and_SG/OOSS_Vision_and_Action_Plan/OOSS_Vision_and_Action_Plan.pdf)

The Scottish Government's publication @Green Infrastructure: 'Design and Placemaking ' at <http://www.scotland.gov.uk/Publications/2011/11/04140525/0>



**Table 5: Examples of Biodiversity Enhancement Projects within Different Developments**

Development.	Opportunities for Enhancing Habitat and Wildlife Interests.
Residential and business development.	<p>Incorporate and manage existing habitat in green space requirement.</p> <p>Create new features for wildlife in green spaces, e.g. wildlife pond and scrapes.</p> <p>Create a network of green corridors, e.g. trees, hedges, long grass, ponds, wetland corridors and wildflower grassland, using appropriate native species.</p> <p>Design sustainable drainage systems, e.g. balancing ponds, reedbed systems.</p> <p>Incorporate bird and bat boxes in the design. Consider green roofs.</p>
Public open space and recreational features.	<p>Create a network of green corridors.</p> <p>Plant trees and hedges, using appropriate native species.</p> <p>Manage grassland to encourage wildflowers.</p>
Smaller road schemes.	<p>Design sustainable drainage systems, e.g. swales, balancing ponds.</p> <p>Landscape and screen with locally appropriate native species.</p> <p>Incorporate wildflower grassland in verges and manage appropriately.</p>
Conversions of rural buildings.	<p>Incorporate bird and bat boxes in the design.</p>
Windfarms	<p>Incorporate and restore/manage existing habitat where possible.</p> <p>Hydrological management for restoring or maintaining bogs, e.g. drain blocking.</p>



## 5. Assessment of Planning Applications Affecting Natural Heritage Interests

- 5.01 When assessing planning applications the council has a statutory duty to “further the conservation of biodiversity”, as prescribed in the Nature Conservation (Scotland) Act 2004. This means that, as well as seeking to conserve legally protected sites and species, the authority also has a duty to protect and, where appropriate, encourage the enhancement of the wider biodiversity of Orkney. It will therefore seek to prevent further fragmentation or isolation of habitats and will encourage developers, where possible, to maximise the opportunities for enhancing biodiversity.
- 5.02 All new development will be assessed for its effect on the natural heritage, taking into account the nature and level of importance of natural features. Key factors include:
- The nature and scale of the development and its impact on the natural feature.
  - Fragmentation of existing habitats and habitat networks.
  - Proposed mitigation or compensation measures.
  - Proposed measures for enhancement.
  - Potential for the development to lead to cumulative adverse impacts in conjunction with other developments.
- 5.03 When making planning decisions the Council will consider biodiversity and geodiversity in accordance with the following hierarchy of importance:
1. International Sites and Protected Species.
  2. National Sites and Protected Species.
  3. Local Sites.
  4. Other wider biodiversity and geodiversity interests.
- 5.04 The design of any new development should be based on a good knowledge of the site, including the habitats and species present on or 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. It will also enable them to identify ways in which they can contribute towards conserving and, where possible, enhancing wildlife and habitats.
- 5.05 Information relating to each of Orkney’s international and national sites is provided on the Scottish Natural Heritage website, through its Sitelink facility which may be accessed at <http://gateway.snh.gov.uk/sitelink/index.jsp>. Planning applications will be assessed in terms of their likely effects on the qualifying features of these sites, as well as the effectiveness of any mitigation measures that have been identified to avoid significant adverse effects on these features and overall site integrity.
- 5.06 Annex 1 of this Supplementary Guidance contains site statements for the suite of Local Nature Conservation Sites. Each statement includes a site description



identifying the special wildlife, habitats or landforms that are present on site, as well as Phase 1 habitat maps. This information will be used to assist the determination of planning applications for proposed developments within a LNCS and, where necessary to identify mitigation measures that will avoid or minimise adverse effects on identified special habitats, landforms and wildlife.

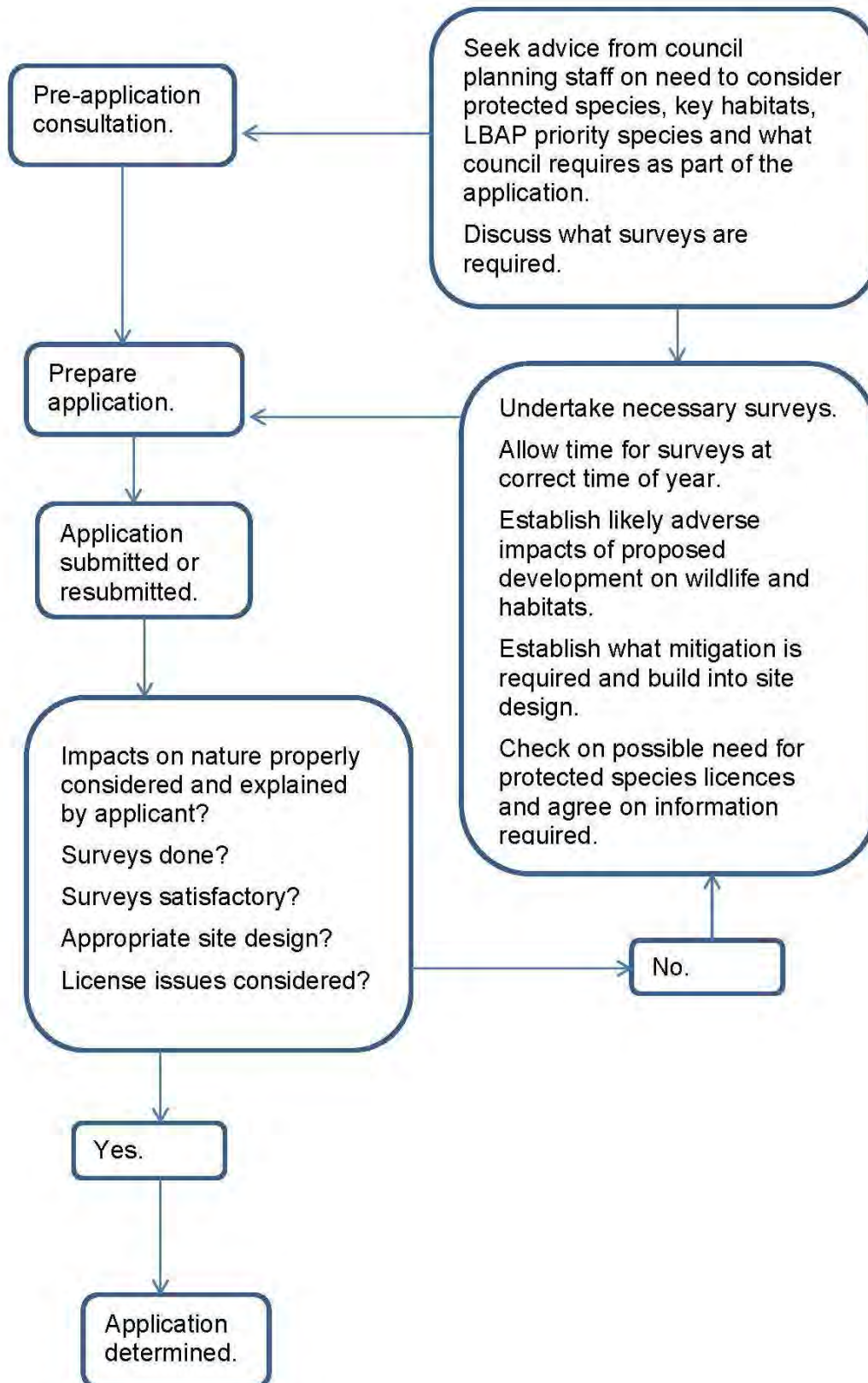
- 5.07 Key wildlife and habitat issues considered during the development management process are summarised in **Figure 5**. Addressing these points will help ensure that the planning application process does not encounter unnecessary complications and delays.

Northern Marsh Orchid, Sydney Gauld





Figure 5: Ecological Considerations in the Development Management Process



**Wildlife and habitat considerations in determining a planning application – points to remember:**

**Early design action:** ensure that wildlife and/or geological conservation forms a 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.

## 6. Species licensing requirements

- 6.01 Scottish Natural Heritage is responsible for all wildlife licensing in Scotland, with the exception of some areas of licensing for seals and cetaceans which fall under the remit of Marine Scotland. Detailed protected species guidance, including application forms, is provided on the SNH website [www.snh.gov.uk](http://www.snh.gov.uk)
- 6.02 After obtaining planning permission, the developer may need to apply for various types of license regarding protected species before work can start on the site.
- 6.03 For some species, in specific circumstances, licenses can be issued which allow:
- Disturbance for the purpose of survey and research.
  - Disturbance for the purpose of development.
- 6.04 See **Environmental Legislation 8** for more specific information on European Protected Species and licensing. It is important to remember that planning permission does not affect or replace any need to obtain licenses or permits required by other environmental protection legislation. A license may also be required for works that do not require planning permission, for example internal works to a building or those carried out under permitted development.
- 6.05 European Protected Species known to be present in Orkney and its coastal waters include otter, bat species, cetaceans (dolphins, porpoises and whales) and marine turtles.

### **Environmental Legislation 8: European Protected Species (EPS) and licensing requirements.**

For any development which could impact on a European protected Species the following three tests must all be passed before a license can be granted:

Test 1: that there is a licensable purpose. More detailed guidance on Test 1 is available at <http://www.snh.gov.uk/docs/B896394.pdf>.

Test 2: that there is no satisfactory alternative; More detailed guidance on Test 2 is available at <http://www.snh.gov.uk/docs/B896418.pdf>.

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).

The SNH website provides further detailed explanatory text about these tests at:

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

- 6.06 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. Applicants will usually need to seek expert ecological advice at an early stage to determine the likely presence of protected species and the likely impact on them of any proposed development. Supporting evidence for any development affecting European Protected Species must be submitted with the planning application, demonstrating

both the need for the development and that a full range of possible alternative courses of action have been properly examined and none found to acceptably meet the need identified.

**Species licensing – points to remember:**

- Identify any needs for licensing as soon as possible.
- Check out the SNH website for all the information needed at <http://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 licenses.



Otter, SNH





# Appendix A: How and When to Consult Scottish Natural Heritage

## Checklist

Scottish Natural Heritage (SNH) welcomes consultations (including pre-application consultations) in relation to development proposals that meet one or more of the criteria below. Darker shaded boxes denote statutory consultations.

Please send the consultation to the relevant SNH Area Mailbox or, for marine energy consultations to [marineenergy@snh.org.uk](mailto:marineenergy@snh.org.uk) If you're uncertain about whether to consult SNH, please phone the relevant SNH office to discuss.

Nature	√
Development affecting European sites: Special Protection Areas (SPA), Special Areas of Conservation (SAC) and candidate sites.	
Development affecting Sites of Special Scientific Interest (SSSI).	
Cases that involve the winning and working of peat for commercial purposes.	
Development affecting protected species where the mitigation measures proposed by the applicant are not sufficient to avoid an offence under the relevant legislation. Note: Do not consult SNH prior to surveys being carried out or (where relevant) mitigation plans being submitted unless a licence is required for your survey.	
Development affecting Geological Conservation Review sites (GCR sites).	
Development that could adversely affect priority peatland and carbon rich soil (category 1 and 2 in Scotland's Carbon & Peatland Map (2015)).	
Development presenting a significant risk of hindering the achievement of the conservation objectives of a Nature Conservation Marine Protected Area (MPA) or the purpose of a Research & Demonstration MPA.	
Landscape	
Development in National Scenic Areas (NSAs) that meet the criteria in the TCP (Scotland) NSA Direction 1987.	
Development outside an NSA (or inside an NSA but below the threshold requiring statutory consultation as set out above) that could adversely affect the integrity of the NSA or the qualities for which it has been designated.	
Development that could adversely affect the qualities of a Wild Land Area.	
Environmental Impact Assessment.	
Scoping requests and environmental statements received in connection with a development proposal that requires an environmental impact assessment (EIA) Note: In practice SNH is also consulted on the associated development	

proposal.	
Other	
Marine licence applications.	
Licences for exploration of, production from and decommissioning of oil and gas fields within the 12 nautical mile territorial sea limit.	
Hazardous substances consents and cases that could have significant repercussions on major accident hazards.	



# Appendix B: How and When to Consult the Scottish Environment Protection Agency

## Checklist

The Scottish Environment Protection Agency (SEPA) welcomes consultations (including pre-application consultations) in relation to development proposals that meet one or more of the criteria set out below.

Type of development	Consult SEPA on:
National developments listed within the National Planning Framework.	All
Major development as set out within The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009.	All
Applications accompanied by Environmental Impact Assessment (EIA) unless it relates to wind turbines under 10 MW.	All
Development proposals where the planning authority is specifically seeking flood risk advice.	Developments with the exception of: <ul style="list-style-type: none"> <li>• Lower risk proposals that are covered in Appendix 2 of our standing advice for development.</li> <li>• Surface water flood risk issues where SEPA has developed specific consultation guidance.</li> </ul>
Proposals that include engineering works in the water environment.	Only those which are not covered by standing advice, e.g. <ul style="list-style-type: none"> <li>• Culverting for land gain, diversions, realignment, flood channels;</li> <li>• Applications solely for water engineering works; and</li> <li>• Water treatment works undertaken by Scottish Water.</li> </ul>
Mineral applications.	All, except those solely to a time extension.
Energy generation, e.g. windfarms and hydro schemes.	All above 10MW; all scales of hydro; all anaerobic digestion; all biomass.
Waste management applications.	All.
Cemetery developments.	All.
Fin fish applications	Do not consult us on new or repositioning of feed barges, but otherwise consult us on fin

Type of development	Consult SEPA on:
	fish applications. Consult us under the Town & Country Planning (General permitted Development) (Fish Farming) (Scotland) Amendment Order 2012 where the Scottish Government PDR Guidance advises consultation with SEPA, currently: <ul style="list-style-type: none"> <li>• Replacing an existing finfish cage or installing an additional cage and changes are being made to the benthic footprint; and</li> <li>• Adding longlines at a shellfish farm, but only if specific advice is required above that provided under our standing advice.</li> </ul>
Chemical storage which falls within Upper Tier of Control of Major Accident Hazards (amendment) Regulations 2005 (COMAH) or underground oil storage.	All.
Development on radioactive contaminated land and designated contaminated land Special Sites.	All.
Waste water: a) Proposals for private waste water systems within or adjacent to publicly sewered areas and waste water drainage consultation areas as shown on GIS. b) Proposals for private waste water systems within or adjacent to settlements of greater than 2000 population equivalent as agreed with planning authorities. c) Scottish Water waste water treatment works.	All.
Transport and infrastructure	Developments where the length of the proposed road, waterway or pipeline exceeds 4 kilometres.
Flood Protection Works under Section 56 of the Flood Risk Management (Scotland) Act 2009.	All.
Hazardous Substances Consents.	All.

# Appendix C: 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 any ecological data that will be required to support a planning application, as well as highlighting the important designations, habitats and species to be considered during the design and planning process.

Please note: In some cases further survey requirements may be identified following consultation with council staff and/or SNH.

Consideration.	Tick if applies.	If yes, then:	Done.
Does the site include all or part of a statutorily designated site, e.g. SPA, SAC, SSSI, Ramsar site, NC MPA?		Consult SNH and the planning authority for more information.	
Is there a nearby statutorily designated site nearby that may be impacted by the development?		Consult SNH and the planning authority for more information.	
Does the site include all, part of or impact on a non-statutory designated site, e.g. a Local Nature Conservation Site?		Consult the planning authority to determine whether or not development might be acceptable, and the ecological data required.	
Does all or part of the site form a wildlife corridor or 'stepping stone' linking two or more other areas of ecological value?		Assess ecological impact of development on the site and adjacent areas of habitat and identify possible mitigation.	
Does the site include any of the following habitats (based on Phase 1 Habitat Survey):			
Mature trees (individuals or small stands).		Survey for:	Bats and LBAP species. Breeding birds.
		Check for:	Tree preservation orders. Conservation Area designation.
		Undertake:	Tree survey (species, location, ground spread, age, height).



Woodland?		Survey for:	Bats. Breeding birds. Plant communities, using National Vegetation Classification (NVC) system.	
		Undertake.	Phase 2 Habitat Survey.	
Hedges?		Survey for:	Determine if the hedge is of particular ecological value, i.e. species rich Breeding birds. LBAP species.	
Streams or wet ditches?  Ponds, pools or lochs?		Survey for:	Otters. LBAP species. Breeding birds.	
		Undertake:	Ecological Impact Assessment.	
Wetland or bog?		Survey for:	Plant communities, using National Vegetation Classification (NVC) system. Breeding birds.	
		Undertake:	Phase 2 Habitat Survey on vegetated areas. Ecological Impact Assessment.	
Long / rough grassland?		Survey for:	Plant communities, using National Vegetation Classification (NVC) system. Breeding birds.	
		Undertake:	Phase 2 Habitat Survey. Ecological Impact Assessment	

Heath (heather)?		Survey for:	Plant communities, using National Vegetation Classification (NVC) system. Breeding birds.	
		Undertake:	Phase 2 Habitat Survey. Ecological Impact Assessment.	
Buildings / barns?		Survey for:	Bats. Breeding birds. LBAP species.	
Scrub?		Survey for:	Plant communities, using National Vegetation Classification (NVC) system. Breeding birds.	
		Undertake:	Phase 2 Habitat Survey. Ecological Impact Assessment.	
Coastal sand, mudflat, lagoons or saltmarsh?		Survey for:	Plant communities, using National Vegetation Classification (NVC) system. Breeding birds.	
		Undertake:	Phase 2 Habitat Survey. Ecological Impact Assessment.	
Coastal waters.		Survey for:	Priority Marine Features. Breeding birds.	
		Undertake:	Benthic habitat survey. Ecological Impact Assessment.	

## Appendix D 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	Web-link
<b>European and international</b>		
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.	<a href="http://ec.europa.eu/environment/nature/legislation/habitatsdirective/">http://ec.europa.eu/environment/nature/legislation/habitatsdirective/</a>
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.	<a href="http://ec.europa.eu/environment/nature/legislation/birdsdirective/">http://ec.europa.eu/environment/nature/legislation/birdsdirective/</a>
(Ramsar) Convention on Wetlands of International Importance.	Outlines protection of internationally important wetland sites protecting wildfowl habitat.	<a href="http://www.ramsar.org">http://www.ramsar.org</a>
Water Framework Directive 2000/60/EC	Protects, improves and promotes the sustainable use of the water environment. Commits European Union member states to achieve 'good status' of all ground and surface water bodies (rivers, lakes, transitional waters and coastal waters).	<a href="http://ec.europa.eu/environment/water/water-framework/index_en.html">http://ec.europa.eu/environment/water/water-framework/index_en.html</a>
<b>UK</b>		
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.	<a href="http://www.legislation.gov.uk">http://www.legislation.gov.uk</a>
Conservation (Natural Habitats, &c.) Regulations 1994 as amended.	Transposed the Habitats Directive into national law.	<a href="http://www.legislation.gov.uk">http://www.legislation.gov.uk</a>
Conservation of Habitats and Species Regulations 2010.	Transposes the Habitats Directive into law in England and Wales. Also applies in Scotland to reserved matters.	<a href="http://www.legislation.gov.uk">http://www.legislation.gov.uk</a>
<b>Scottish</b>		
Environmental Impact	Identifies Schedule 1 projects which	<a href="http://www.legislation.gov.uk">http://www.legislation.gov.uk</a>



Legislation name	Legislation summary	Web-link
Assessment (Scotland) Regulations 1999.	qualify for EIA and Schedule 2 projects which should be screened for EIA.  Sets out the protocol for carrying out an EIA.	<a href="http://www.legislation.gov.uk">v.uk</a>
Nature Conservation (Scotland) Act 2004.	Outlines measures designed to conserve biodiversity and protect and enhance the biological and geological natural heritage of Scotland.	<a href="http://www.legislation.gov.uk">http://www.legislation.gov.uk</a>
Wildlife & Natural Environment (Scotland) Act 2011	Sets out provisions governing the introduction of non-native species in Scotland.	<a href="http://www.legislation.gov.uk/asp/2011/6/pdfs/asp_20110006_en.pdf">http://www.legislation.gov.uk/asp/2011/6/pdfs/asp_20110006_en.pdf</a>
Water Environment and Water Services (Scotland) Act 2003 (WEWS Act)	Transposes the WFD into Scottish legislation.	<a href="http://www.legislation.gov.uk/asp/2003/3/contents">http://www.legislation.gov.uk/asp/2003/3/contents</a>
Water Environment (Controlled Activities) (Scotland) Regulations 2011 (CAR) as amended	Apply regulatory controls over activities which may affect Scotland's water environment.	<a href="http://www.legislation.gov.uk/ssi/2011/209/contents/made">http://www.legislation.gov.uk/ssi/2011/209/contents/made</a>

Legislation name	Legislation summary	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	<a href="http://www.legislation.gov.uk">http://www.legislation.gov.uk</a>
The Wildlife and Natural Environment (Scotland) Act 2011	Creates a new regime for regulating invasive and non-native species	<a href="http://www.legislation.gov.uk">http://www.legislation.gov.uk</a>