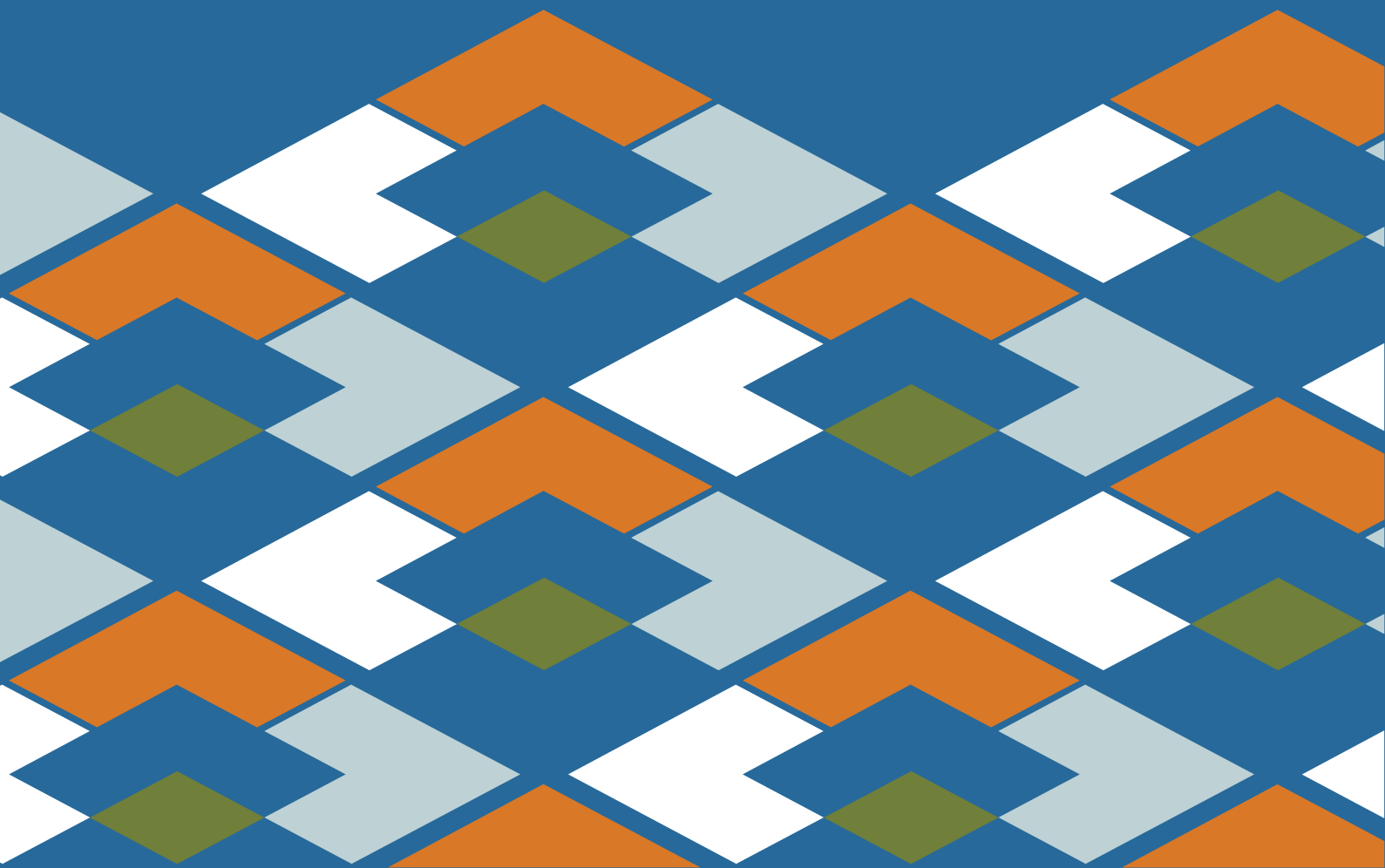




Midlothian Council

Nature Conservation Planning Guidance

2021



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1. Introduction

1.1 This guidance provides details of the statutory and non-statutory nature conservation sites in Midlothian and explains the process for identifying and designating potential new Local Biodiversity Sites. It also provides information on potential wildlife and habitat requirements, and constraints and opportunities for new development.

1.2 The purpose of this guidance is to help developers and others to identify the wildlife and habitat considerations which should inform development proposals. Links to further sources of detailed information are provided, but this is not a definitive guide to all wildlife and habitat matters, therefore expert advice should be sought wherever necessary.

1.3 Although the United Kingdom has left the European Union, the Scottish Parliament passed legislation to ensure that Scotland's nature will remain protected to the same standard as before. In addition, in the future, the Scottish Government has committed to maintain or exceed European Union environmental standards.

1.4 This planning guidance was adopted by Midlothian Council on 6th April 2021.

2 Designated Sites - Statutory

2.1 There are a number of designated sites within Midlothian that carry statutory protection at the European, national (UK and Scottish) and local levels. There are also locally important non-statutory sites that are designated and protected through the [Midlothian Local Development Plan](#) (MLDP 2017). Policies ENV 12 to ENV 15 of MLDP 2017 seek to ensure that protected habitats and species are considered appropriately when determining relevant planning applications. Key legislation is summarised in Appendix 1. A list of internationally, nationally and locally designated sites in Midlothian is provided in Appendix 2.

Internationally Important Sites

2.2 Sites in Midlothian designated for their international importance are shown in Figure 1. They have protection under European, United Kingdom and Scottish law and are commonly known as European sites. They comprise of:

- Special Areas of Conservation (SAC) which have been designated for their habitats and species under the EC Habitats Directive (92/43/EEC). The only SAC in Midlothian is Peeswit Moss SAC, north-west of Gladhouse Reservoir.
- Special Protection Areas (SPA) which have been designated for their bird species under the EC Wild Birds Directive (2009/147/EC). There are two SPAs in Midlothian – Gladhouse Reservoir and Fala Flow. Both of these sites are also Ramsar sites, classified under the Convention on Wetlands of International Importance.

[Policy ENV 12 Internationally Important Nature Conservation Sites of the Midlothian Local Development Plan 2017](#) provides planning policy protection for these sites in addition to international and national legislative and policy protection.

2.3 European sites (formerly referred to as Natura sites) represent the very best of Scotland's nature. These sites protect species and habitats shared across Europe, and the term “European sites” reflects that they were originally designated under European legislation. These sites include internationally important or threatened habitats and species.

2.4 In Scotland SACs and SPAs are given legal protection by the Habitats Regulations – these are the [Conservation \(Natural Habitats, &c.\) Regulations 1994](#) (as amended). The Habitats Regulations transpose the European directives into domestic law.

Habitats Regulations Appraisal (HRA)

2.5 When a developer considers a particular site for development, they must establish early on whether any future development could impact on a European site. Where there may be a possible effect on a European site, the requirements of the Conservation (Natural Habitats etc.) Regulations 1994 (as amended) apply. Proposals do not need to be within a European site to affect its conservation

interests. Consideration must be given to any plan or project that has the potential to affect a European site, no matter how far away the site is from the proposed development. Therefore, proposals in Midlothian may need to consider effects on potential nature conservation designations outwith Midlothian.

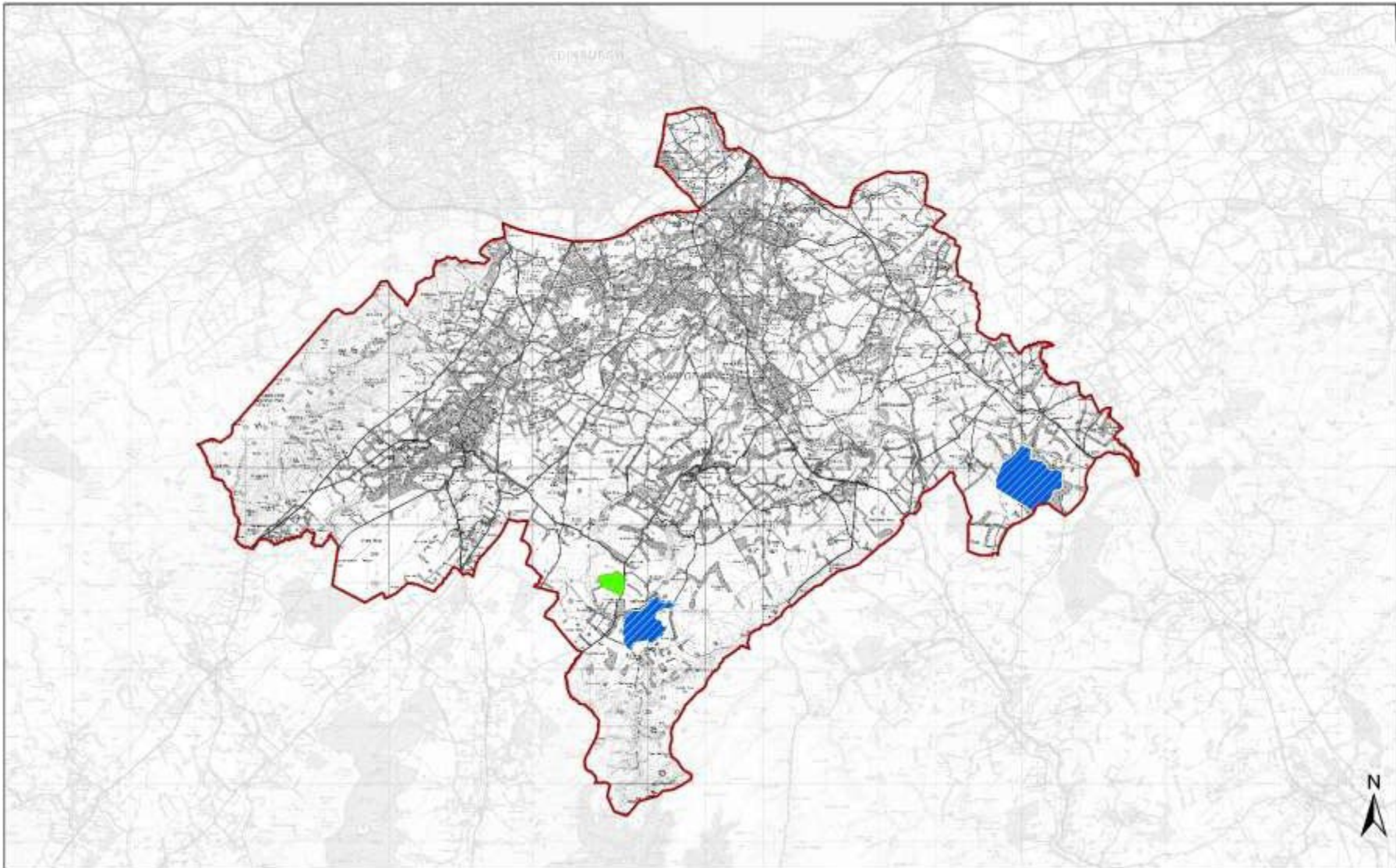
2.6 Under the Habitats Regulations (the term for the Conservation (Natural Habitats etc.) Regulations 1994 (as amended)), all competent authorities must consider whether any plan or project will have a “likely significant effect” on a European site. If so, they must carry out an “appropriate assessment”. This is known as Habitats Regulations Appraisal (HRA). A competent authority includes “any Minister, government department, public or statutory undertaker, public body of any description, or person holding a public office”. Local authorities are competent authorities in regard of planning applications. A competent authority must not authorise a plan or project unless it can show beyond reasonable scientific doubt, using appropriate assessment, that the plan or project will not adversely affect the integrity of a European site.

2.7 If a plan or project could affect a European site, either directly or indirectly, the applicant will need to provide sufficient information to allow Midlothian Council to determine whether there will be a Likely Significant Effect. If the Council concludes that there would be a Likely Significant Effect, the applicant will need to provide Midlothian Council with the information to enable it to carry out an appropriate assessment.

2.8 The word ‘likely’ in Likely Significant Effect should not be interpreted as ‘more probable than not’ but rather that the proposal is capable of having an effect on the European site and that this requires further consideration. Significance may be different for different sites so each case will be judged on its own merits.

2.9 In this situation, the plan or project can only be consented if it can be ascertained through appropriate assessment that it would not adversely affect the integrity of the European site. The competent authority (in this case Midlothian Council) must ensure that the requirements of the Conservation (Natural Habitats etc.) Regulations 1994 (as amended) are met before undertaking or permitting any project. If appropriate assessment is required, advice should be sought from NatureScot. More information on HRA can be found at [NatureScot](#).

Figure 1: Sites Designated for their International Importance - SAC (green) and SPA/Ramsar (blue)



Nationally Important Sites

2.9 Nationally designated sites in Midlothian are shown in Figure 2. 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 (or partly in) Midlothian:

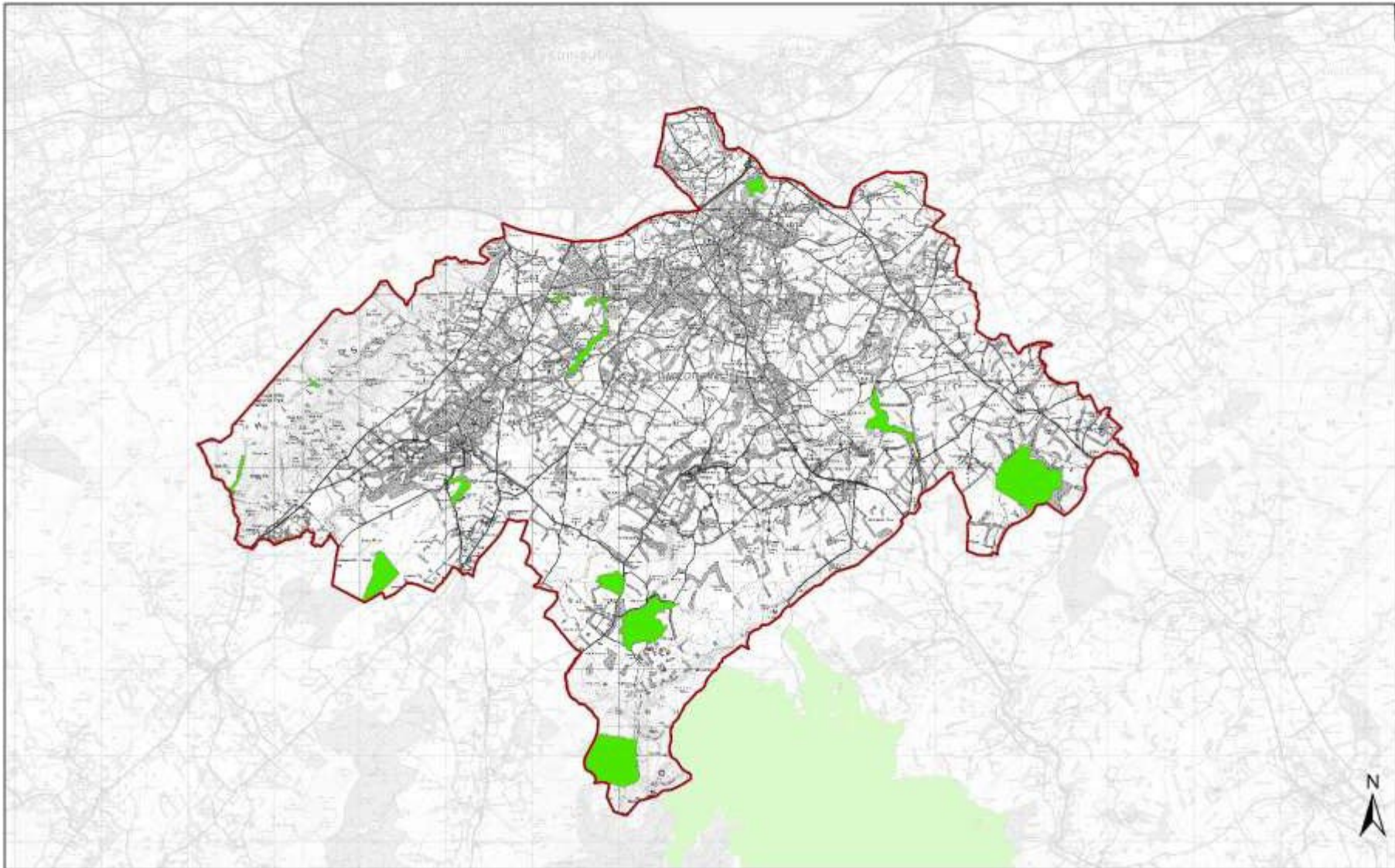
- Auchencorth Moss
- Bilston Burn
- Black Burn
- Carlops Meltwater Channels
- Crichton Glen
- Dalkeith Oakwood
- Dundriech Plateau
- Fala Flow (*also a Special Protection Area*)
- Gladhouse Reservoir (*also a Special Protection Area*)
- Habbies Howe – Logan Burn
- Hadfast Valley
- Hewan Bank
- Keith Water
- North Esk Valley
- Peeswit Moss (*also a Special Area of Conservation*)
- Roslin Glen

2.10 As stated in [MLDP 2017 Policy ENV 13 Nationally Important Nature Conservation Sites](#), development which would affect a nature conservation site of national importance, or any site which is proposed or designated as being of national importance during the lifetime of the Plan, will not be permitted unless it can be demonstrated that:

- The objectives of the designation and the overall integrity of the area will not be compromised, or
- 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 arising from the development.

The only sites of national importance currently designated in Midlothian are SSSIs. Midlothian does not currently have any National Nature Reserves, National Scenic Areas or National Parks.

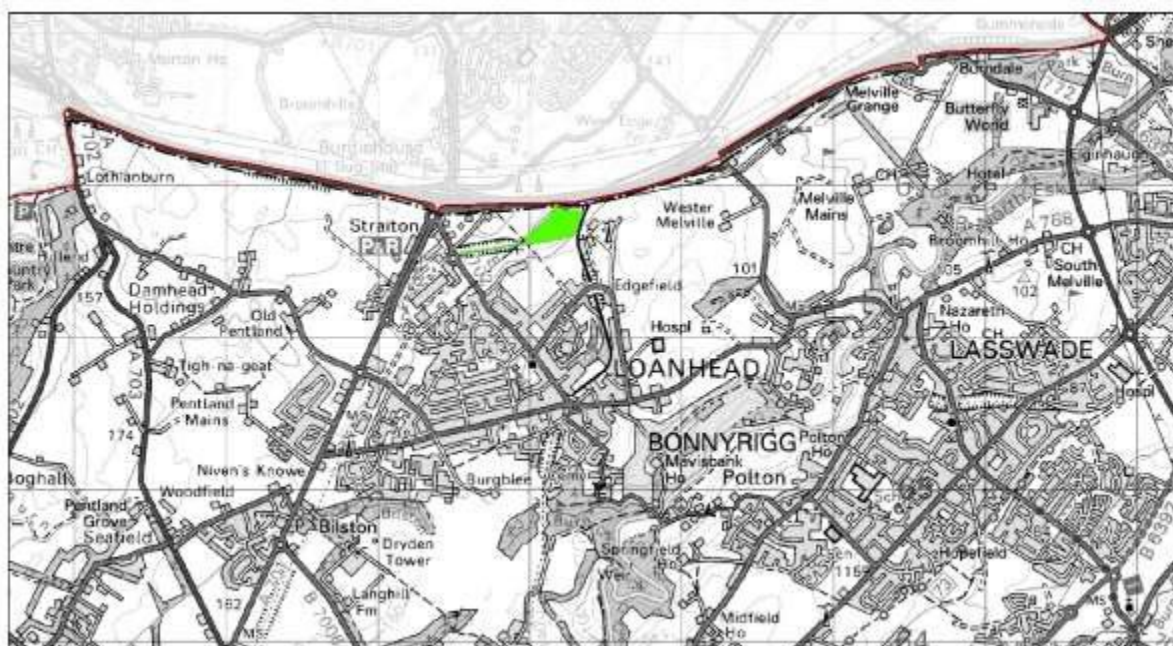
Figure 2: Sites of Special Scientific Interest



Locally Important Sites

2.11 Local Nature Reserves are areas of natural heritage that are locally important, and have been selected and designated by a local authority under the [National Parks and Access to the Countryside Act 1949](#). Midlothian has one Local Nature Reserve – Straiton Pond (see Figure 3).

Figure 3: Local Nature Reserve



2.12 As stated in [MLDP Policy ENV14 Regionally and Locally Important Nature Conservation Sites](#), development which could affect the nature conservation interest of any sites or wildlife corridors of regional or local conservation importance, or any other site which is proposed or designated as of regional or local importance during the lifetime of the Plan, will not be permitted unless the applicant can show that:

- The development has been sited and designed to minimise damage to the value of the site and includes measures that will appropriately compensate for any damage which cannot be avoided; or
- The public interest (including those of a social or economic nature) to be gained from the proposed development can be demonstrated to clearly outweigh the nature conservation interest of the site.

3 Local Biodiversity Sites

3.1 The biodiversity value of Midlothian is also recognised and safeguarded at the local level through a system of non-statutory designation of Local Biodiversity Sites (LBS). The Midlothian LBS system was established in 2008 following the recommendations in the [Guidance on Establishing and Managing Local Nature Conservation Site Systems in Scotland](#) (2006). Since the Midlothian LBS system was established over 60 sites have been designated (see Figure 4 and Appendix 2). These sites have been identified to support national and local priorities, and to support features of local character and distinctiveness.

3.2 In addition to designated Local Biodiversity Sites, there are also a small number of proposed Local Biodiversity Sites (pLBS). These are sites considered to have some merit as a LBS but have not yet been formally assessed and designated. The status as pLBS does however provide protection through the policies of the Midlothian Local Development Plan 2017.

3.3 As stated in [MLDP 2017 Policy ENV14 Regionally and Locally Important Nature Conservation Sites](#), development which could affect the nature conservation interest of any sites or wildlife corridors of regional or local conservation importance, or any other site which is proposed or designated as of regional or local importance during the lifetime of the Plan, will not be permitted unless the applicant can show that:

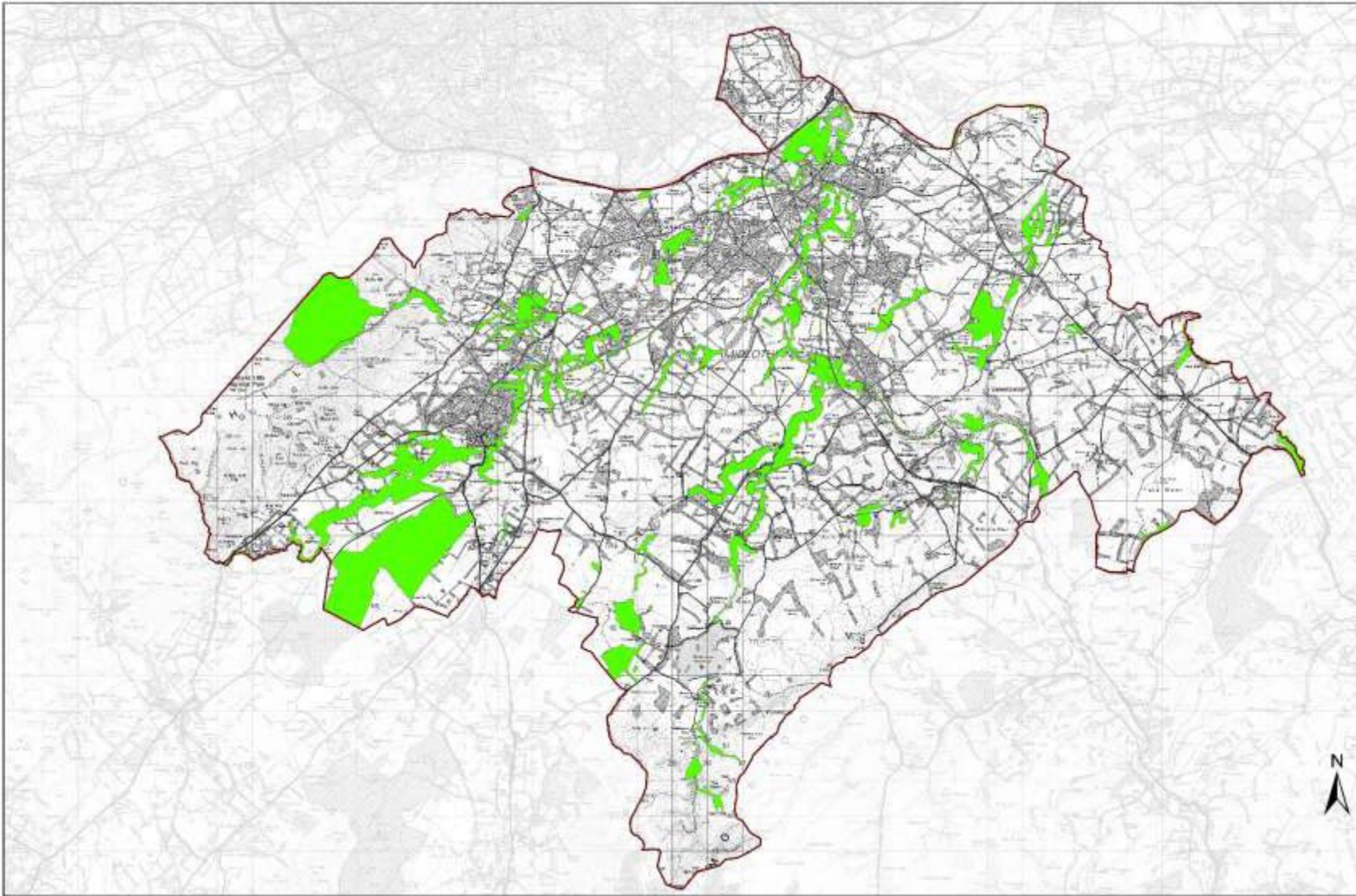
- The development has been sited and designed to minimise damage to the value of the site and includes measures that will appropriately compensate for any damage which cannot be avoided; or
- The public interest (including those of social or economic nature) to be gained from the proposed development can be demonstrated to clearly outweigh the nature conservation interest of the site.

Local Biodiversity Site Designation

3.4 The methodology used for assessing potential Local Biodiversity Sites and reviewing designated sites was developed by the Council in partnership with The Wildlife Information Centre (TWIC) and the Local Biodiversity Site Steering Group. The methodology contains criteria for assessing the biodiversity value of sites, and incorporates social factors into the assessment.

3.5 The Local Biodiversity Site Steering Group oversees the identification of site selection criteria, site selection and the review and monitoring of designated sites. The Steering Group is chaired by an officer of Midlothian Council. Other members include a representative from TWIC and recognised experts in different aspects of biodiversity in Midlothian and the Lothians.

Figure 4: Local Biodiversity Sites and Potential Local Biodiversity Sites



- 3.6** Potential Local Biodiversity Sites (pLBS) are identified in the following ways:
- Identification as part of a review and assessment of available data or survey work;
 - Identification of potential sites by TWIC as a result of data collated, surveyed and assessed by them; or
 - A proposal by Midlothian Council, TWIC or another member of the LBS Steering Group.

Proposing a Local Biodiversity Site

3.7 Site proposals are initially assessed by the Chair of the Steering Group, with advice from TWIC, to identify which sites should progress to formal assessment. The Steering Group will be consulted on what, if any, additional information such as survey work is required. If there is potential for the site to be designated as a Local Biodiversity Site it will be added to the list of proposed sites (pLBS). Where sites are not taken forward, the reasons will be explained. Records of all proposed sites are retained by TWIC. As stated in paragraph 3.3 of this guidance, sites listed as proposed LBS will be afforded protection through policy ENV 14 Regionally and Locally Important Nature Conservation Sites of the Midlothian Local Development Plan (2017).

Site Survey and Collation of Data Prior to Assessment of Proposed Sites

3.8 Existing data on potential sites will be collated by TWIC and, provided that sufficient data is available, an assessment will be made by them. For an assessment to take place there must be a recent (created in last 5 years) plant list. Additional species records are also valuable. Additional habitat data, where available either from a local biodiversity site survey, National Vegetation Classification (NVC) or other sources, will be used to complement the Phase 1 Habitat data for Midlothian¹. Where there is insufficient data, the site will require survey prior to assessment. Surveying of proposed sites will be prioritised by the LBS Steering Group according to available resources.

3.9 Site surveys commissioned for proposed sites should follow the methodology agreed by the Steering Group. The survey methodology is available from Midlothian Council. In brief, where Local Biodiversity Site surveys are commissioned they should include:

- Establishing site boundaries;
- A Phase 1 Habitat Survey;
- Target notes on key features including the presence of protected species; and
- A botanical survey of the site and other species recording.

¹ The Phase 1 survey provides a record of the semi-natural vegetation and wildlife habitat across an area. The habitat classification is based broadly on vegetation, augmented by reference to topographic and substrate features, particularly where vegetation is not the dominant component of the habitat.

Notification of Landowners, Managers and Occupiers

3.10 Prior to surveys of Local Biodiversity Sites and potential Local Biodiversity Sites, efforts will be made to inform landowners, managers and occupiers of the purpose of the survey. There will be opportunities to comment or ask questions at this point in the process. Collected data will be made available and landowners, managers and occupiers will be notified of the outcomes of the subsequent assessment. Details of protected species will not be published.

Site Selection Criteria

3.11 The site selection criteria for determining if sites should become a Local Biodiversity Site are:

- Species status – this is an assessment of the combination of the rarity of the species and its association with the site. Species with local/national status, species with statutory protection and species included in Biodiversity Plans (Scottish Biodiversity List, UKBAP or LBAP) are considered alongside their status on the site (e.g. are they resident, are there significant populations etc.);
- Species diversity – this refers to the number of different species found on a site. In most instances this will be based on the vascular plant list for the site and compared against an expected value for each broad habitat type;
- Habitat importance – this considers habitat rarity, naturalness and extent as a single criterion;
- Connectivity to habitat network or corridor – this takes into account the wider landscape context of the site, in the context of relevant habitats;
- Biodiversity feature – this allows for extra weighting to be given to sites that have species biodiversity features not fully taken into account in other criterion such as the presence of great crested newt populations, bat roosts etc.; and
- Social factors - an assessment is made of the site's value for enjoyment, value for education and community involvement and its contribution to landscape quality. The score allocated for the social factors is only taken into consideration for designating a site as a LBS if a site's biodiversity value/score is considered to be borderline for it qualifying as a LBS. This means a site cannot be designated as a LBS on social criteria scores alone. The site requires to possess sufficient biodiversity merit to meet at least the borderline score level for becoming an LBS. This is in line with national guidance on local nature conservation sites (see paragraph 3.1).

Site Assessment and Designation

3.12 Site assessment reports are generated by TWIC for scrutiny by the Local Biodiversity Site Steering Group. The reports comprise:

- A detailed assessment of the site against the six site assessment criteria;
- Details of available data used;

- A proposed site boundary map;
- Phase 1 habitat maps of the site (including an area at least 50m outwith the proposed boundary);
- A habitat connectivity map; and
- Any other relevant supporting information.

3.13 From this information the LBS Steering Group will determine if:

- Adequate data is available for the assessment to be valid;
- The criteria have been applied consistently;
- There are any anomalies or outstanding matters; and
- The site boundaries include all areas of substantive biodiversity value.

3.14 Once the Steering Group is satisfied with the assessment, or has made any necessary adjustments, the site assessment will be approved or modified and the site's status recorded. Once the Steering Group has identified a site as a Local Biodiversity Site, the site is recognised as a designated LBS by Midlothian Council. TWIC will then:

- Where possible, notify landowners, managers and occupiers of the Steering Group's decision;
- Add the full details of the site to the LBS Register and digital layer of LBS boundaries;
- Provide a copy of the updated LBS Register and digital boundaries to Midlothian Council.

3.15 Where a site is proposed that has already been assessed (and failed) in the previous two years, the site will not be reviewed unless the LBS Steering Group considers that substantial new information is available.

Rolling Re-survey and Assessment

3.16 The target is for every Midlothian LBS to be re-assessed at least every 10 years, or as close to this target as resources allow. Where substantial change has occurred at a site then the reassessment may happen in a shorter timeframe.

3.17 Members of the Midlothian Local Biodiversity Site Steering Group are volunteers with relevant experience and knowledge. Requests to join the Steering Group should be made to Midlothian Council, and will be considered by the existing Steering Group members. New members will be expected to be qualified ecologists and/or botanists with significant relevant experience including wildlife recording.

4. Protected Species

4.1 Most bird species and a wide range of wild animals and plants have general protection from deliberate damage or harm under UK law. A number of species (referred to as UK Protected Species) have special protection under the [Wildlife and Countryside Act 1981](#) (species listed in Schedules 1, 5 and 8) and the [Badgers Act 1992](#) (as amended by the [Wildlife and Natural Environment \(Scotland\) Act 2011](#)).

4.2 In addition to this, some species such as otters and great crested newts have special protection from disturbance and harm under European legislation and the [Habitats Regulations 1994](#) (species listed in Schedules 2 and 4). These are known as European Protected Species (EPS).

4.3 More information about legislative protection of species is available from [NatureScot](#). Information about licensing of activities affecting protected species is provided in Section 6 of this planning guidance.

4.4 The presence of a protected species on or near a site is a critical consideration in the planning, design and implementation of development proposals, and in the development management and development planning processes. The presence of protected species rarely imposes an absolute block on development but mitigation measures will usually be necessary and this will affect the design, layout and timing of works. The list below identifies examples of development activities which are most likely to potentially affect European and UK protected species;

- Developments adjacent to or affecting ponds and other watercourses;
- Barn and rural building conversions (especially unoccupied stone built buildings);
- Alterations (or demolitions) to the roof spaces of buildings, in particular churches/chapels, institutional buildings, schools or development affecting caves, mines, tunnels, cellars and exposed rock faces, bridges, culverts, chimneys, kilns and ice houses, and/or any structures within 200m of water or woodland;
- Developments affecting woodland, hedgerows, lines of trees and scrub;
- Developments affecting old and veteran trees with a girth over 1.5m, or containing obvious holes including any felling or lopping;
- Developments affecting derelict land, brownfield sites, railways and land adjacent, grasslands and allotments;
- Developments affecting quarries, cliff faces and gravel pits; and
- Developments (such as wind farms) affecting open farmland, moorland and forestry sites in hilly, upland and exposed areas.

4.5 Developers must consider as early as possible whether protected species are, or may be, present on or near the site – ideally before the land is purchased and the planning application submitted. If the presence of a protected species is suspected, the applicant must inform the Council’s Planning Service when submitting a planning application (or as soon as it is suspected, if an application has already been submitted). The supporting evidence and survey work should be carried out by a suitably qualified and experienced ecologist.

5. Ecological Assessment and Mitigation

5.1 This section outlines Midlothian Council's expectations for the consideration of wildlife and habitats by applicants from initial site appraisal to post construction.

Development Site Survey and Assessment

5.2 The extent to which ecological assessment is required will depend on the scale, nature and location of a development proposal. Whatever development is proposed, applicants must ensure that they understand the development site's characteristics, including any possible wildlife and habitat significance. 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) Registered Practices Directory at [CIEEM Registered Practices Directory](#).

5.3 In order for the potential impacts of a development to be understood it is necessary first to survey the proposed development site, undertaking an initial site survey. This survey should:

- Highlight any internationally, nationally or locally designated sites are in or near to the development site, or may be affected by the development;
- Identify potentially important habitats (mature trees, woodland, hedgerows, ponds or watercourses) in or near to the development site;
- Identify if protected species are likely to be in or near the development site;
- Evaluate the sensitivity, significance and value of the identified species and habitats; and
- Identify any further surveys which need to be undertaken.

A checklist of questions to consider and the next steps to take within an initial site survey is provided in Appendix 3. Helpful information including species records and habitats maps may be obtained from a number of sources including:

- [NatureScot Information Hub](#)
- [The Wildlife Information Centre \(TWIC\)](#)
- [National Biodiversity Network Atlas](#)

5.4 An ecological assessment is formed by the initial site survey and any additional detailed surveys required for the site. The ecological assessment should be carried out at the very beginning of the development process, prior to site design, so that presence of sensitive species and habitats can be taken into account during the design of the development, allowing avoidance measures or the need for mitigation to be carefully integrated into the design.

5.5 At the time of submitting a planning application, applicants should provide the following information:

- The initial site survey/ecological assessment (see 5.3 & 5.4 above);
- An assessment of any potential direct and indirect impacts of the development (during and post construction) on the features identified in the initial site survey/ecological assessment;
- Proposed enhancement, avoidance, mitigation or compensation measures, including method statements where appropriate; and
- Identify potential licensing requirements, and with reference to the relevant licence test, demonstrate that a future species licence is likely to be granted.

Survey Timing

5.6 The timing of ecological surveys is important to consider at an early stage as they often need to be conducted at certain times of year. A survey calendar indicating the most appropriate time of year for undertaking surveys for various species and habitats is provided in Table 1. Information about bird breeding dates in Scotland can be found [here](#). The timing of relevant ecological surveys should also be taken into account when submitting a planning application to avoid unnecessary delays because decisions on applications cannot be made until the necessary information is available.

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

5.8 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 development potentially affecting European sites or bird flight patterns in relation to wind farm sites. Species surveys have a limited lifespan, therefore if a significant amount of time has passed since a survey was carried out then it may not remain valid. In such circumstances, 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.

5.9 Further details about the timing of surveys can be found at [Nature.scot](#) and [CIEEM](#) (Guide to Ecological Surveys and their Purpose).

Ecological Mitigation

5.10 Ecological mitigation in its broadest sense includes avoidance, mitigation and compensation measures. Avoidance means measures taken to avoid adverse impacts completely, like adjusting the layout of a scheme so that areas of high nature conservation value are not destroyed, or altering the timing of works so that

the site is left undisturbed during sensitive times such as the breeding season. Mitigation means measures taken to reduce adverse impacts, such as using pollution interceptors to minimise pollution of watercourses, screens to reduce visual disturbance to birds or tunnels under roads to allow wildlife to pass from one side to the other. Compensation means measures taken to offset the damage caused by a development where avoidance and mitigation are not possible, for example by creating new habitat or enhancing existing habitat.

5.11 The mitigation hierarchy should apply when considering how to manage the risks of adverse impacts on wildlife and habitats (see Figure 5). 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 form of compensation planting or habitat provision.

Figure 5: The Mitigation Hierarchy



5.12 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 2.

Management Plans

5.13 On sites where wildlife features are retained or new habitats and features are created, appropriate on-going management must be put in place to ensure long lasting benefits. This is likely to be part of the conditions placed on a planning consent and will be 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.

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Table 1: Ecological Survey Calendar

TARGET	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
Habitat & 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		Reduced 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

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Table 2: Ecological Mitigation Calendar

TARGET	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
Habitat & 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 dependant, 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 habitats		Trapping and exclusion		Avoid works (breeding season)				Trapping and exclusion		Avoid works in habitats		
Fish	Mitigation for the protection of watercourses is required at all times of year												

NOTE: 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
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6. Licensing Requirements

6.1 If development may have potential impacts on protected species that cannot be avoided through mitigation, then a licence from NatureScot may be required before work can proceed. This may apply even where planning permission is not required for the works, for example for internal works. Granting of planning permission does not affect or replace the need to obtain licences or permits required by other environmental protection legislation. To proceed with works without a licence may be an offence.

6.2 NatureScot is responsible for the administration of most protected species licensing in Scotland, with the exception of most marine species which are the responsibility of Marine Scotland. More information is provided at [Species Licensing](#).

6.3 For European Protected Species there are three strict legal tests which must all be passed before a licence can be granted. In summary they are:

1. There is a licensable purpose;
2. There is no satisfactory alternative; and
3. 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.

6.4 It is possible to license activities that could affect water voles and red squirrels for social, economic and environmental reasons. This could cover a range of activities including development. Licences may only be issued if:

- The authorised activity will contribute to significant social, economic or environmental benefit: and
- There is no other satisfactory solution.

6.5 If development works could result in disturbance to badgers in their setts, or damage or obstruction to setts, a licence will be required. Licences can only permit someone to “interfere with a badger sett”. It is not possible to license removal, translocation or killing of badgers for the purpose of development. NatureScot provides guidance at [NatureScot](#).

6.6 It is not possible to license 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 powers 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. NatureScot provides more detailed guidance on birds and development at [NatureScot](#).

Invasive Non-Native Species

6.7 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 Midlothian are:

- Japanese Knotweed (*Fallopia japonica*);
- Giant Hogweed (*Heracleum mantegazzanum*); and
- Himalayan Balsam (*Impatiens glandulifera*).

6.8 The [Wildlife and Natural Environment \(Scotland\) Act 2011](#) 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 developer 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.

6.9 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 invasive non-native species, either within or outwith the site, then the developer will have to remove the species and dispose of material appropriately.

6.10 Japanese Knotweed, Giant Knotweed and Himalayan Balsam are regarded as controlled waste. Developers should seek advice on the disposal of these plants by referring to the [SEPA website](#) and [Netregs - Environmental Guidance for Business](#).

6.11 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 on this visit the [Scottish Government website](#).

7. Nature Friendly Development

7.1 Space for wildlife should be designed into new development. Nature friendly development means retaining and enhancing existing features such as ponds, wetlands, hedgerows, trees and woods, and connecting them with wildlife rich gardens, verges, amenity greenspace, cycle paths and footways. The result is a network of natural green and blue spaces and links in and through developments which are connected to the surrounding urban or rural landscape, contributing to wider ecological networks. The aim in Midlothian is for all aspects of the urban landscape to be designed to be nature friendly and to be an integral part of wider ecological networks.

7.2 The Midlothian Local Biodiversity Action Plan 2019-2024 identifies six priorities for action – pollinators; homes for wildlife; rivers, streams and ponds; invasive non-native species; people and nature; and protected sites and species. Many of the actions linked to these priorities can be delivered through development which is granted planning permission. The following actions will directly support the implementation of the Local Biodiversity Action Plan and should therefore be incorporated into development proposals:

- Include a wide variety of nectar rich planting in new developments and greenspaces and along active travel routes. All planting should be nectar rich, including shrubs. Native species are preferred in most circumstances. The aim is to provide a range of nectar sources year round, including night scented plants, to support a variety of pollinator species including butterflies, bumblebees and hoverflies;
- A variety of homes for wildlife including bird (e.g. swift) boxes, bat boxes, hedgehog hibernacula, amphibian hibernacula, bug hotels and brash piles should be provided as an integral part of landscaping scheme in locations suitable for the relevant species;
- Create and manage wildlife homes and routes as part of new developments, ensuring connections are made to neighbouring areas to provide opportunities for wildlife to move around;
- Boundary treatments should be permeable to small mammals. Hedges are the preferred option, but where fences or walls are required, mammal holes or tunnels should be provided to support the movement of wildlife;
- Maintain existing and create new ponds and wetlands, including SuDS ponds designed to enhance biodiversity and rain gardens, and wherever possible maximise the use of wet meadow grassland in drainage features;
- Increase the canopy cover in urban areas through appropriate tree planting;
- Protect and enhance existing hedgerows and create new native hedgerows within new developments;
- Integrate green walls, green roofs and green screens (for example ivy screens) into new development where possible; and
- Amenity grassland should incorporate species rich meadow grassland with a low impact mowing regime.

Appendix 1 – Key Legislation

There are European Directives, UK implementing Regulations and Acts of Parliament and Scottish Acts and Regulations that need to be considered in relation to the protection and enhancement of wildlife and habitats. These obligations have a significant influence on shaping policy. The following table contains a list of the most relevant pieces of legislation.

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 provisions, including those for species commonly known as European Protected Species. Transposed into law in Scotland by the Conservation (Natural Habitats etc.) Regulations 1994 as amended.	Habitats Directive
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.	Birds Directive
Ramsar (Convention on Wetlands of International Importance)	Outlines protection of internationally important wetland sites protecting wildfowl habitat.	www.ramsar.org
UK		
Wildlife and Countryside Act 1981 (as amended)	Chief mechanism for providing legislative protection of wildlife in Great Britain. Transposes the Birds Directive and Bern Convention into national law.	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 (NatureScot).	www.legislation.gov.uk
Conservation (Natural Habitats etc.) Regulations 1994 as amended	Transposes the Habitats Directive into national law.	www.legislation.gov.uk
Conservation of Habitats and Species Regulations 2010	Transposes the Habitats Directive into law in England and Wales.	www.legislation.gov.uk
Scottish		
Environmental Impact Assessment Regulations (various)	Outlines the instances where and protocol for carrying out an EIA.	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	www.legislation.gov.uk

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Legislation Name	Legislation Summary	Legislation web link
Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017	Outlines compulsory conditions for supporting a planning application with an EIA report. Updates previous regulations.	www.legislation.gov.uk
Wildlife and Natural Environment (Scotland) Act 2011	Creates a new regime for regulating invasive and non-native species.	www.legislation.gov.uk

Appendix 2 – List of Designated Sites

Statutory Designations

Location/Site	Grid Ref	Designation
Auchencorth Moss	NT 208552	SSSI
Bilston Burn	NT 270649 & NT 282648	SSSI
Black Burn	NT 235583	SSSI
Carlops Meltwater Channels	NT 174565	SSSI
Crichton Glen	NT 382606	SSSI
Dalkeith Oakwood	NT 337688	SSSI
Dundreich Plateau	NT 285489	SSSI
Fala Flow	NT 432586	SSSI/SPA/Ramsar
Gladhouse Reservoir	NT 299535	SSSI/SPA/Ramsar
Habbies Howe – Logan Burn	NT 184618	SSSI
Hadfast Valley	NT 388688	SSSI
Hewan Bank	NT 285646	SSSI
Keith Water	NT 439620 & NT 438623	SSSI
North Esk Valley	NT 154582	SSSI
Peeswit Moss	NT 288550	SSSI/SAC
Roslin Glen	NT 280633	SSSI
Straiton Pond	NT 282667	LNR

SSSI – Site of Special Scientific Interest

SPA – Special Protection Area

SAC – Special Area of Conservation

LNR – Local Nature Reserve

Non-statutory Designations

Location/Site	Grid Ref	Designation
Aikendean Glen	NT 322622	LBS
Arniston Estate Woodlands & River South Esk	NT 327603	LBS
Auchendinny Ponds & Glencorse Burn Wood	NT 254617	LBS
Auchendinny Wood	NT 255613	LBS
Beeslack Wood & Haughhead	NT 245613	LBS
Bellyford Burn West	NT 376689	LBS
Black Burn North	NT 236589	LBS
Black Hill	NT 190630	LBS
Black Springs	NT 190664	LBS
Bonnyrigg to Rosewell Disused Railway	NT 299663	LBS
Borthwick Glen	NT 375595	LBS
Brothershiels Marsh	NT 430572	LBS
Bush Estate & Glencorse Burn	NT 247636	LBS
Camp Hill	NT 356637	LBS
Carrington Mill Wood	NT 310590	LBS
Cockmuir Marsh	NT 263552	LBS
Costerton & Fala Woods (West)	NT 438625	LBS

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Location/Site	Grid Ref	Designation
Dalhousie Burn	NT 317634	LBS
Dalhousie Castle Estate	NT 310590	LBS
Dalkeith Estate	NT 336685	LBS
Edgelaw Reservoir	NT 300582	LBS
Erraid Wood	NT 247661	LBS
Ford Glen & Dewar Town Glen	NT 387643	LBS
Fullarton Water	NT 284572	LBS
Glencorse Reservoir & Glen	NT 222634	LBS
Gore Glen	NT 335616	LBS
Hare Moss & Auchencorth Moss	NT 212566	LBS
Hope Quarry	NT 404628	LBS
Kate's Cauldron	NT 464597	LBS
Linn Dean	NT 468591	LBS
Logan Burn	NT 174612	LBS
Loganlee Reservoir & Logan Burn	NT 196625	LBS
Mavisbank	NT 291653	LBS
Melville Estate & Melville Castle Estate	NT 312669	LBS
Middleton Lime Quarries (East)	NT 354574	LBS
Middleton Lime Quarries (West)	NT 342574	LBS
Milkhall Pond	NT 242573	LBS
Mount Lothian Quarry Ponds	NT 268561	LBS
Newbattle Woods	NT 334659	LBS
Penicuik House Estate	NT 219588	LBS
Penicuik Mill Lade & the River Esk to Esk Bridge	NT 242601	LBS
River North Esk: Drumbuie to Brunston Castle	NT 191575	LBS
River North Esk: Eskbank	NT 325673	LBS
River North Esk: Lasswade	NT 300658	LBS
River South Esk: Dalhousie Bridge to Lothian Bridge	NT 327641	LBS
River South Esk: Dundriech Plateau to Little Gladhouse	NT 296504	LBS
River South Esk: Little Gladhouse to Moorfoot	NT 298520	LBS
Rosebery Reservoir	NT 308557	LBS
Rosewell to Auchendinny Disused Railway	NT 271623	LBS
Roslin Glen Country Park	NT 266624	LBS
Roslin Moat & Curling Pond	NT 260634	LBS
Scroggy Brae	NT 165564	LBS
Shiel Burn Wood	NT 295622	LBS
Springfield Mill & The Maiden Castle	NT 287644	LBS
Straiton Pond	NT 282667	LBS
Stretchenden Wood	NT 377620	LBS
Temple Wood	NT 315579	LBS
Toxside Moss (North)	NT 276546	LBS
Toxside Moss (South)	NT 274534	LBS
Tyne Water & Preston Hall Estate Woodlands	NT 396661	LBS
Vogrie Country Park	NT 384633	LBS
Birky Side	NT 375602	pLBS

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Location/Site	Grid Ref	Designation
Middleton House Pond	NT 369582	pLBS
Tyne Water & Waverley Railway at Tynehead	NT 393590	pLBS
Waverley Railway – Gorebridge to Tynehead	NT 344613 – NT 390599	pLBS
Waverley Railway – Newbattle to Gorebridge	NT 328647 – NT 332621	pLBS

LBS – Local Biodiversity Site

pLBS – potential Local Biodiversity Site

Appendix 3 – Initial Site Survey Checklist

This checklist can help when undertaking an initial site survey. It gives 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. In some cases further survey requirements may be identified following consultations with Council staff and/or NatureScot.

CONSIDERATION	Y/N	IF YES THEN:	
Does the site include all or part of a statutory designated site (e.g. SPA, SAC, Ramsar, SSSI, LNR)?		Consult NatureScot and Midlothian Council for more information	
Is there a nearby statutory designated site (e.g. SPA, SAC, Ramsar, SSSI, LNR) that may be impacted by the development?		Consult NatureScot and Midlothian Council for more information	
Does the site include all, part of, or impact on a nearby Local Biodiversity Site?		Consult Midlothian Council to determine under what circumstances, if any, 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	
		IF NO THEN:	
Has a Phase 1 Habitat Survey been undertaken in order to help define the key habitats on site?		Consider undertaking a Phase 1 Habitat survey at the earliest opportunity	
Does the site include any of the following habitats? (based on Phase 1 Habitat Survey)			
Mature trees (individual or small stands)		Survey for	<ul style="list-style-type: none"> ▪ Bats ▪ Scottish Biodiversity List species
		Check for	<ul style="list-style-type: none"> ▪ Tree Preservation Order ▪ Conservation Area designation
		Undertake	<ul style="list-style-type: none"> ▪ Tree survey (species, locations, ground spread, age, height)
Woodland		Survey for	<ul style="list-style-type: none"> ▪ Bats ▪ Breeding birds ▪ Red squirrels ▪ Badgers ▪ Scottish Biodiversity List species
		Undertake	<ul style="list-style-type: none"> ▪ Phase II Habitat Survey
Hedges		Survey for	<ul style="list-style-type: none"> ▪ Determine if the hedge is of particular ecological value i.e. species rich ▪ Breeding birds ▪ Scottish Biodiversity List species
Rivers, streams or wet ditches		Survey for	<ul style="list-style-type: none"> ▪ Otters ▪ Water voles ▪ Salmon ▪ Scottish Biodiversity List species
		Undertake	<ul style="list-style-type: none"> ▪ Ecological Impact Assessment

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CONSIDERATION	Y/N	IF YES THEN:	
Ponds, pools or lochs		Survey for	<ul style="list-style-type: none"> ▪ Great Crested Newts ▪ Water Voles ▪ Scottish Biodiversity List species
		Undertake	<ul style="list-style-type: none"> ▪ Ecological Impact Assessment
Wetland or bog		Survey for	<ul style="list-style-type: none"> ▪ LBAP species
		Undertake	<ul style="list-style-type: none"> ▪ Phase II Habitat Survey on vegetated areas ▪ Ecological Impact Assessment
Long/rough grassland		Survey for	<ul style="list-style-type: none"> ▪ LBAP species
		Undertake	<ul style="list-style-type: none"> ▪ Phase II Habitat Survey on vegetated areas ▪ Ecological Impact Assessment
Bings/ Spoil tips/ rock faces		Survey for	<ul style="list-style-type: none"> ▪ Young's helleborine (on wooded bings) ▪ Scottish Biodiversity List species
		Undertake	<ul style="list-style-type: none"> ▪ Phase II Habitat Survey on vegetated areas ▪ Ecological Impact Assessment
Brownfield		Survey for	<ul style="list-style-type: none"> ▪ Invertebrates
Heath (heather)		Survey for	<ul style="list-style-type: none"> ▪ Scottish Biodiversity List species
		Undertake	<ul style="list-style-type: none"> ▪ Phase II Habitat Survey on vegetated areas ▪ Ecological Impact Assessment
Buildings/ barns		Survey for	<ul style="list-style-type: none"> ▪ Bats ▪ Barn Owls ▪ Nesting Birds ▪ Scottish Biodiversity List species
		Undertake	<ul style="list-style-type: none"> ▪ Phase II Habitat Survey on vegetated areas ▪ Ecological Impact Assessment
Scrub		Survey for	<ul style="list-style-type: none"> ▪ Scottish Biodiversity List species
		Undertake	<ul style="list-style-type: none"> ▪ Phase II Habitat Survey on vegetated areas ▪ Ecological Impact Assessment