Appendix 5

Supplementary Guidance
Natural Heritage

Shetland
Local Development Plan 2012

LOCAL DEVELOPMENT PLAN

Shetland Islands Council

Contents

Introduction

1.1 The Shetland Local Development Plan (the Plan), together with any Supplementary Guidance, sets out the policies and criteria against which any planning application submitted in Shetland will be considered.

1.2 This Supplementary Guidance sets out detailed policy advice to help you meet the requirements of the Plan. It is therefore recommended that it be read in conjunction with the policies in the Plan and any other Supplementary Guidance relevant to the type of development proposed.

1.3 The purpose of this Supplementary Guidance (SG) is to expand on the policies:

- Planning Policy NH1 International & National Designations
- Planning Policy NH2 Protected Species
- Planning Policy NH3 Furthering the Conservation of Biodiversity
- Planning Policy NH5 Soils
- Planning Policy NH6 Geodiversity

Status of the Supplementary Guidance

1.4 This Supplementary Guidance reflects the policy advice given in Scottish Planning Policy, and will supplement the Shetland Islands Council's Local Development Plan.

1.5 This guidance will be adopted as Supplementary Guidance to the Shetland Islands Local Development Plan, giving it equal status.

The Precautionary Principle

1.6 Principle 15 of the Rio Convention on Environment and Development defines the Precautionary Principle, which should be at the heart of all decisions regarding the environment, and consequently natural heritage. The text of Principle 15 is as follows:

1.7 *"In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."*[1]

1.8 This principle will underpin all decisions regarding development proposals and their potential effects on natural heritage. This means that where the effects of a proposal are uncertain more information

[1] United Nations Conference on Environment & Development, 1992 (UNCED)

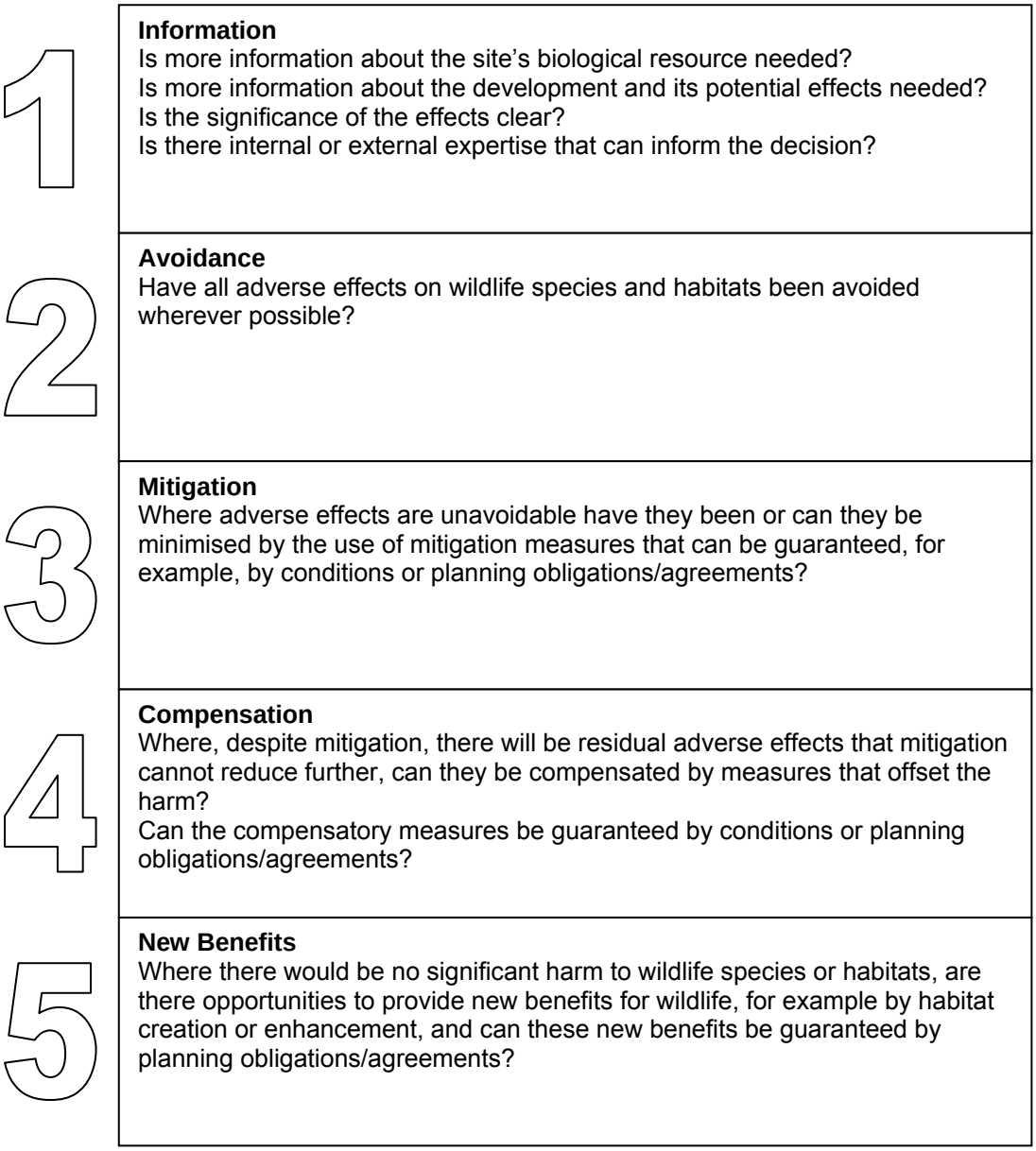
may be requested from an applicant. Where the effects are still uncertain it may be that consent for the proposal is refused.

The RTPI Five Point Approach

1.9 The five-point approach is outlined in the RTPI's Good Practice Guide: Planning for Biodiversity[2]. This is a systematic approach to planning decisions that ensures that these decisions contribute to biodiversity conservation.

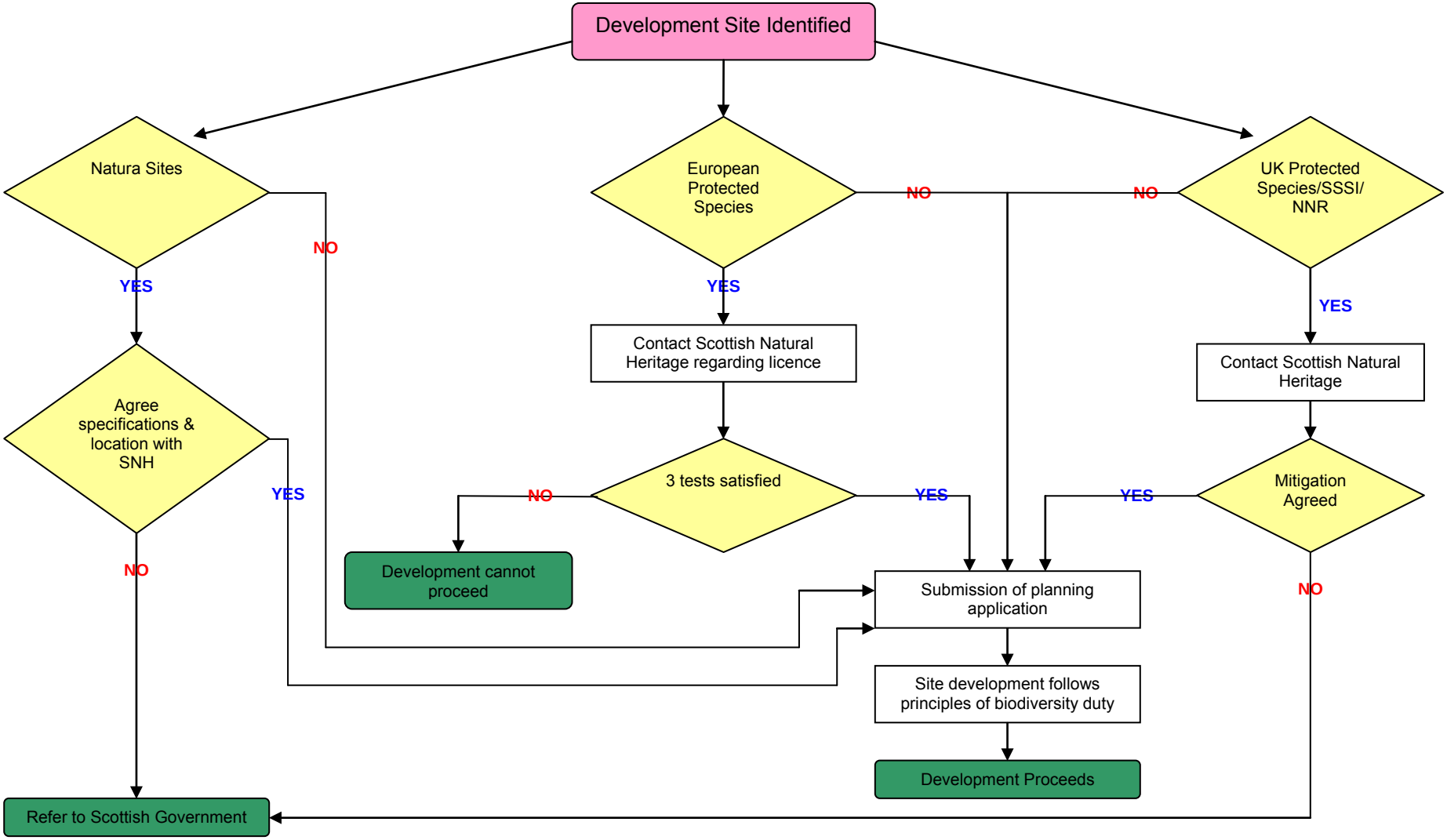
1.10 This approach was developed specifically for biodiversity related issues, however, it can be easily transferred to other aspects of natural heritage.

Figure 1.1: A Five Point Approach to Planning Decisions for Biodiversity



[2] Royal Town Planning Institute, 1999, *Good Practice Guide: Planning for Biodiversity*, RTPI, London

Figure 1.2: Designated Sites and Protected Species and Development



Definitions

Natural Heritage	Represents those aspects of the environment that have had little influence from man. This can include biodiversity, geodiversity and landscape
Biodiversity	The variety of life, both between different species and their habitats and within species in the form of genetic variation
Geodiversity	The variety of rocks, minerals, fossils, landforms, sediments and soils, together with the natural processes that form them
Ramsar Site	These are sites protected under the Ramsar Convention (The Convention on Wetlands of International Importance, especially as Wildfowl Habitat, 1971). The Ramsar Convention was adopted in 1971 and came into force in 1975 and is named after the town of Ramsar in Iran
Special Area of Conservation (SAC)	These sites are defined in the EU Directive 92/43/EEC on *The Conservation of Natural Habitats and of Wild Fauna and Flora,* known as the Habitats Directive. The purpose of the designation protects habitats listed in Annex I and species listed in Annex II of the Directive. The legislative basis in the UK is The Conservation (Natural Habitats, &c.) Regulations 1994, as amended (the Habitats Regulations). Along with Special Protection Areas (SPA) they form the Natura 2000 network of sites
Special Protection Area (SPA)	These sites are defined in EU Directive 2009/147/EEC on The Conservation of Wild Birds (The Birds Directive). These sites safeguard habitats of migratory birds and certain particularly threatened and vulnerable species (Annex I species). The Directive is implemented through The Conservation (Natural Habitats, &c.) Regulations 1994, as amended
National Scenic Area (NSA)	This designation is for areas defined as having outstanding scenic interest. The primary purpose is to conserve and enhance the natural beauty of the landscape. The designation has a statutory basis under The Planning Etc. (Scotland) Act 2006
Site of Special Scientific Interest (SSSI)	These are sites that are designated for their nature conservation value, for either biological or geological/physiographic interest. They are a UK

	designation and the legislative basis for them is the Nature Conservation (Scotland) Act 2004
European Protected Species (EPS)	Species protected under the Habitats Regulations 1994 (as amended in Scotland)
Local Biodiversity Action Plan (LBAP)	LBAP are the local response to the UK Government's National Action Plans for threatened habitats and species, contributing to national targets as well as local ones
Scottish Biodiversity List	The Scottish Biodiversity List is a list of animals, plants and habitats that Scottish Ministers consider to be of principal importance for biodiversity conservation in Scotland.
UK Biodiversity Action Plan (UKBAP)	The UK Biodiversity Action Plan (UK BAP) was published back in 1994, and was the UK Government's response to the Convention on Biological Diversity (CBD). The UK BAP described the biological resources of the UK and provided detailed plans for conservation of these resources.

Policies Covered by this Supplementary Guidance

NH1 International and National Designations

Any development proposal that is likely to have a significant effect on an internationally important site, (Special Area of Conservation (SAC), Special Protection Areas (SPA) or Ramsar Sites) and is not directly connected with or necessary to the conservation management of that site will be subject to an assessment of the implications for the site's conservation objectives. Development that could have a significant effect on a site will only be permitted where:

- An appropriate assessment has demonstrated that it will not adversely affect the integrity of the site, or
- There are no alternative solutions, and
- There are imperative reasons of over-riding public interest that may, for sites not hosting a priority habitat type and/or priority species, be of a social or economic nature.

Development that affects a National Scenic Area (NSA), National Nature Reserve (NNR) or a Site of Special Scientific Interest (SSSI) will only be permitted where:

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

NH2 Protected Species

Where there is good reason to suggest that a species protected under the Wildlife and Countryside Act 1981 (as amended), Annex IV of the Habitats Directive or Annex 1 of the Birds Directive is present on site, or may be affected by a proposed development, the Council will require any such presence to be established. If such a species is present, a plan should be provided to avoid or mitigate any adverse impacts on the species, prior to determining the application.

Planning permission will not be granted for development that would be likely to have an adverse effect on a European Protected Species unless the Council is satisfied that:

- The development is required for preserving public health or public safety or for other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment; and
- There is no satisfactory alternative; and

- The development will not be detrimental to the maintenance of the population of the European Protected Species concerned at a favourable conservation status in their natural range.

Planning permission will not be granted for development that would be likely to have an adverse effect on a species protected under Schedule 5 (animals) or 8 (plants) of the Wildlife and Countryside Act 1981 (as amended) unless the Council is satisfied that:

- Undertaking the development will give rise to, or contribute towards the achievement of, a significant social, economic or environmental benefit; and
- There is no satisfactory solution.

Planning permission will not be granted for development that would be likely to have an adverse effect on a species protected under Schedules 1, 1A or A1 (birds) of the Wildlife and Countryside Act 1981 (as amended), unless the Council is satisfied that:

- The development is required for preserving public health or public safety; and
- There is no other satisfactory solution.

Applicants should submit supporting evidence for any development meeting these criteria, 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.

The Council will apply the precautionary principle where the impacts of a proposed development on natural heritage are uncertain but potentially significant. Where development is constrained on the grounds of uncertainty, the potential for research, surveys or assessments to remove or reduce uncertainty should be considered.

NH3 Furthering the Conservation of Biodiversity

Development will be considered against the Council's obligation to further the conservation of biodiversity and the ecosystem services it delivers. The extent of these measures should be relevant and proportionate to the scale of the development.

Proposals for development that would have a significant adverse effect on habitats or species identified in the Shetland Local Biodiversity Action Plan, Scottish Biodiversity List, UK Biodiversity Action Plan, Annexes I and II of the Habitats Directive, Annex I of the Birds Directive (if not included in Schedule 1 of the Wildlife and Countryside Act) or on the ecosystem services of biodiversity, including any cumulative impact, will only be permitted where it has been demonstrated by the developer that;

- The development will have benefits of overriding public interest including those of a social or economic nature that outweigh the local, national or international contribution of the affected area in terms of habitat or populations of species; and
- Any harm or disturbance to the ecosystem services, continuity and integrity of the habitats or species is avoided, or reduced to acceptable levels by mitigation.

NH5 Soils

Development will only be permitted where appropriate measures are taken to maintain soil resources and functions to an extent that is considered relevant and proportionate to the scale of the development.

Proposals that will have an unacceptable effect on soil resources and functions will only be permitted where it has been demonstrated that:

- The development will have benefits of overriding public interest including those of a social or economic nature that outweigh the local, national or international contribution of the affected area in terms of its soil functions;
- Any harm or disturbance to the soil resources and functions is avoided or reduced to acceptable levels by suitable mitigation.

Evidence of the adoption of best practice in the movement of, storage, management, reuse and reinstatement of soils must be submitted along with any planning application. For certain scales of development a soil management plan will be required. This should demonstrate that risks to soils, such as unnecessary disturbance, degradation and erosion have been avoided.

NH6 Geodiversity

Development will only be permitted where appropriate measures are taken to protect and/or enhance important geological and geomorphological resources and sites, including those of educational or research value.

Proposals that will have an unavoidable effect on geodiversity will only be permitted where it has been demonstrated that:

- The development will have benefits of overriding public interest including those of a social or economic nature that outweigh the local, national or international contribution of the affected area in terms of its geodiversity;
- Any loss of geodiversity is reduced to acceptable levels by mitigation, and a record is made prior to any loss.

For certain scales of development where a soil management plan is required, reference should also be made to geodiversity on site.

Note:

Policy NH4 Local Designations is supported by:

- Local Nature Conservation Sites Supplementary Guidance
- Local Landscape Areas Supplementary Guidance

Policy NH7 Water Environment is supported by:

- Flooding & Drainage Supplementary Guidance

Sources of Further Information

Shetland Biological Records Centre

www.shetlandbrc.co.uk

The Shetland Biological Records Centre collects and collates biological records from around Shetland. The Shetland Biological Records Centre is an important source of information for potential developers as they can provide information based upon Ordnance Survey six-figure grid references. They can also provide information and advice on surveys and also on many of the Local Nature Conservation Sites (see Policy NH3 Local Designations and Supplementary Guidance on Local Nature Conservation Sites).

Scottish Natural Heritage

www.snh.gov.uk

Scottish Natural Heritage is the Scottish Government's advisor on matters of natural heritage. Their purpose is to:

- Promote care for and improvement of the natural heritage;
- Help people enjoy it responsibly;
- Enable greater understanding and awareness of it; and
- Promote its sustainable use, now and for future generations.

Information on designated sites can be found at:

http://gateway.snh.gov.uk/sitelink/

Scottish Environment Protection Agency

The Scottish Environment Protection Agency (SEPA) is Scotland's environmental regulator. Their main role is to protect and improve the environment. SEPA regulate activities that can cause harmful pollution and by monitoring the air, land and water quality. They also regulate the keeping and use, and the accumulation and disposal, of radioactive substances.

www.sepa.org.uk

Royal Society for the Protection of Birds

The Royal Society for the Protection of Birds is a charity that works for the conservation of wild birds, other wildlife and the places they live.

www.rspb.org.uk

Biodiversity Action Plans

UK Biodiversity Action Plan http://jncc.defra.gov.uk/page-5155

Scottish Biodiversity Strategy
http://scotland.gov.uk/Publications/2004/05/19366/37239

Living Shetland: Shetland's Local Biodiversity Action Plan
www.livingshetland.org.uk

Biodiversity Planning Toolkit

The Biodiversity Planning Toolkit is a versatile online resource aimed at helping users incorporate biodiversity into the planning system and new development.

http://www.biodiversityplanningtoolkit.com

Scottish Biodiversity Forum

The Scottish Biodiversity Forum is a partnership of parties with an interest in biodiversity. Within this structure there are a number of groups that co-ordinate biodiversity in Scotland and feed into the Scottish Biodiversity Strategy.

http://www.biodiversityscotland.gov.uk/

Scotland's Environment

This website brings together information on Scotland's environment in one place. The site provides straightforward descriptions of the state of Scotland's environment and key messages that highlight the progress made in protecting it.

http://www.environment.scotland.gov.uk/

The Millennium Ecosystem Assessment

The Millennium Ecosystem Assessment assessed the consequences of ecosystem change for human well-being and the scientific basis for action needed to enhance the conservation and sustainable use of those systems and their contribution to human well-being.

www.maweb.org

Geopark Shetland

The Geopark Shetland website provides useful information on the Geopark and on the geology of Shetland.

www.geoparkshetland.org.uk

Internationally Important Sites

4.1 This chapter of the Natural Heritage SG will cover the requirements of policy **NH1 International & National Designations** with regard to internationally important sites.

Definitions

Ramsar Site	These are sites protected under the Ramsar Convention (The Convention on Wetlands of International Importance, especially as Wildfowl Habitat, 1971). The Ramsar Convention was adopted in 1971 and came into force in 1975 and is named after the town of Ramsar in Iran
Special Area of Conservation (Special Area of Conservation)	These sites are defined in the EU Directive 92/43/EEC on *The Conservation of Natural Habitats and of Wild Fauna and Flora,* known as the Habitats Directive. The purpose of the designation protects habitats listed in Annex I and species listed in Annex II of the Directive. The legislative basis in the UK is The Conservation (Natural Habitats, &c.) Regulations 1994, as amended (the Habitats Regulations). Along with Special Protection Areas (SPA) they form the Natura 2000 network of sites
Special Protection Area (Special Protection Area)	These sites are defined in EU Directive 2009/147/EEC on The Conservation of Wild Birds (The Birds Directive). These sites safeguard habitats of migratory birds and certain particularly threatened and vulnerable species (Annex I species). The Directive is implemented through The Conservation (Natural Habitats, &c.) Regulations 1994, as amended
Habitats Regulations Appraisal	This is the overall process of determining whether a proposal is likely to have significant effects on a European site. The HRA ensures compliance with the Habitats Directive and includes Appropriate Assessment where a proposal is determined to have likely significant effects
Appropriate Assessment	This is assessment that is required under the Habitats Regulations, when a plan or project affecting a Natura 2000 site: • Is not connected with management of the site for nature conservation; and • Is likely to have a significant effect on the site either alone or in combination with other plans

	or projects It is one stage of the Habitats Regulations Appraisal, and not all proposals undergoing HRA will reach the stage of Appropriate Assessment, as some may be deemed to have no likely significant effects.
Natura 2000	The collective term for SPAs, SACs and Ramsar sites

Legislative & Policy Framework

Ramsar Convention 1971 (The Convention on Wetlands of International Importance, especially as waterfowl habitat)
Council Directive 79/409/EEC (updated to 2009/14/EC) on the Conservation of Wild Birds (known as the Birds Directive)
Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna & Flora (known as the Habitats Directive)
The Conservation (Natural Habitats &c.) Regulations 1994, as amended

Habitats Regulations Appraisal

4.2 Any proposal that has the potential to affect an internationally important site will be subject to Habitat Regulations Appraisal, under The Conservation (Natural Habitats &c.) Regulations 1994, as amended.

4.3 The emphasis for the Habitats Regulations Appraisal will be on objectively demonstrating, with supporting evidence, that:

- There will be no significant effects on a Natura 2000 site; or
- There will be no adverse effects on the integrity of a Natura 2000 site; or
- There are no alternatives to the proposal; or
- There are compensation measures that maintain or enhance the overall coherence of the Natura 2000 network.

4.3 As the competent authority under the Regulations, the Council will undertake this appraisal. However, the applicant must provide such information that may reasonably be required for the purposes of the assessment.

4.4 Information that may be required in order to under take the Habitats Regulations Appraisal includes:

- Size, scale, are, land-take, etc.;
- Physical changes that will flow from the proposal (e.g. excavation, piling, dredging etc.);
- Resource requirements (e.g. water abstraction);
- Emissions and waste (disposal to land, air or water);
- Transportation requirements;

- Duration of construction, operation, decommissioning, etc.;
- Distance from a Natura 2000 site or key features of the site;
- Cumulative impacts with other projects or plans.

4.5 Stage 1: Screening
The process that identifies the likely effects on a Natura 2000 site of a proposal, either alone or in combination with other projects or plans, and considers whether these effects are likely to be significant.

4.6 Stage 2: Appropriate Assessment
The consideration of the impact on the integrity of the Natura 2000 site of the proposal, either alone or in combination with other projects or plans, with respect to the site's structure and function and its conservation objectives. Additionally, where there are adverse impacts, an assessment of the potential mitigation of those impacts

4.7 Stage 3: Assessment of alternative solutions
The process that examines alternative ways of achieving the objectives of the proposal that avoid adverse impacts on the integrity of the Natura 2000 site

4.8 Stage 4: Assessment where no alternative solutions exist and where adverse impacts remain
An assessment of the compensatory measures where, in light of the assessment of imperative reasons of overriding public interest, it is deemed that the proposal should proceed.

Imperative Reasons of Overriding Public Interest

4.9 The Council, as Competent Authority, needs to make their decision by balancing the objectives of the Natura 2000 site with any imperative reasons of overriding public interest. This should be determined taking in to account the following considerations:

a. The public interest must be overriding: therefore not every kind of public interest of a social or economic nature will be sufficient, in particular when seen against the weight of the interests protected by the Regulations.
b. The public interest is only overriding if it is long-term: short-term benefits are insufficient to outweigh the long-term conservation interests protected by the Regulations.

4.10 In the case of priority habitats and species, the overriding public interest can only be for reasons of public health or safety or of overriding beneficial consequences for the environment.

Figure 4.1 Habitats Regulations Appraisal

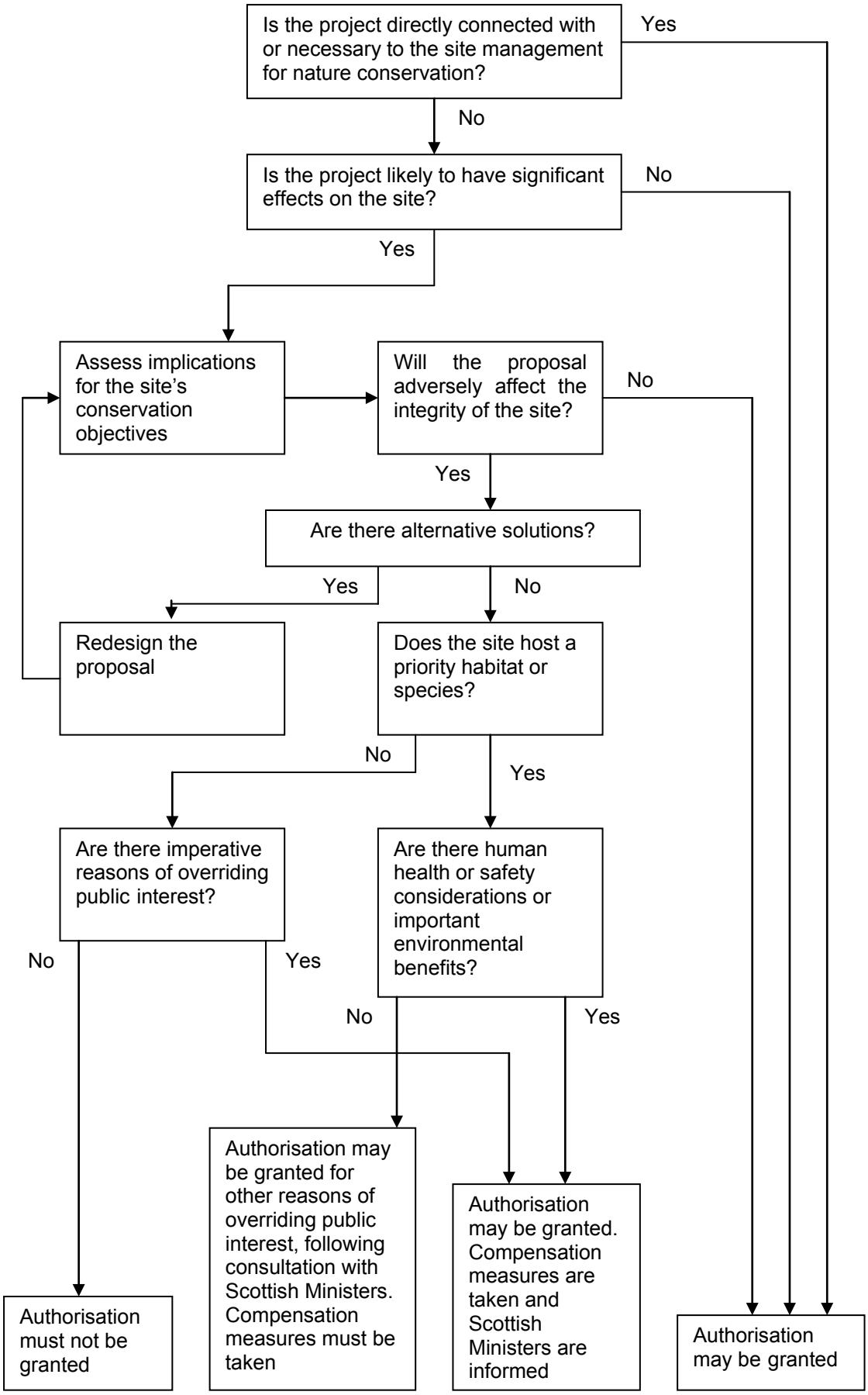


Figure 4.2 Habitats Regulations Appraisal, Stage 1: Screening

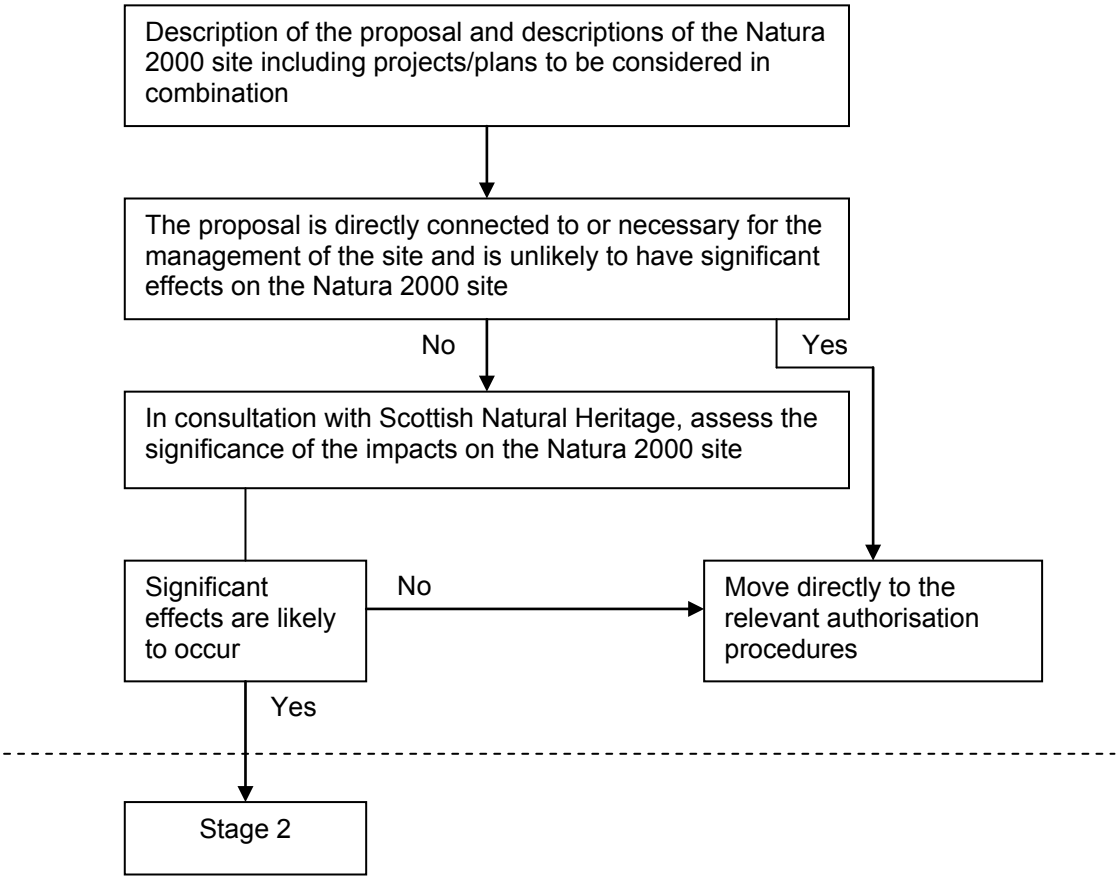


Figure 4.3 Habitats Regulations Appraisal Stage 2: Appropriate Assessment

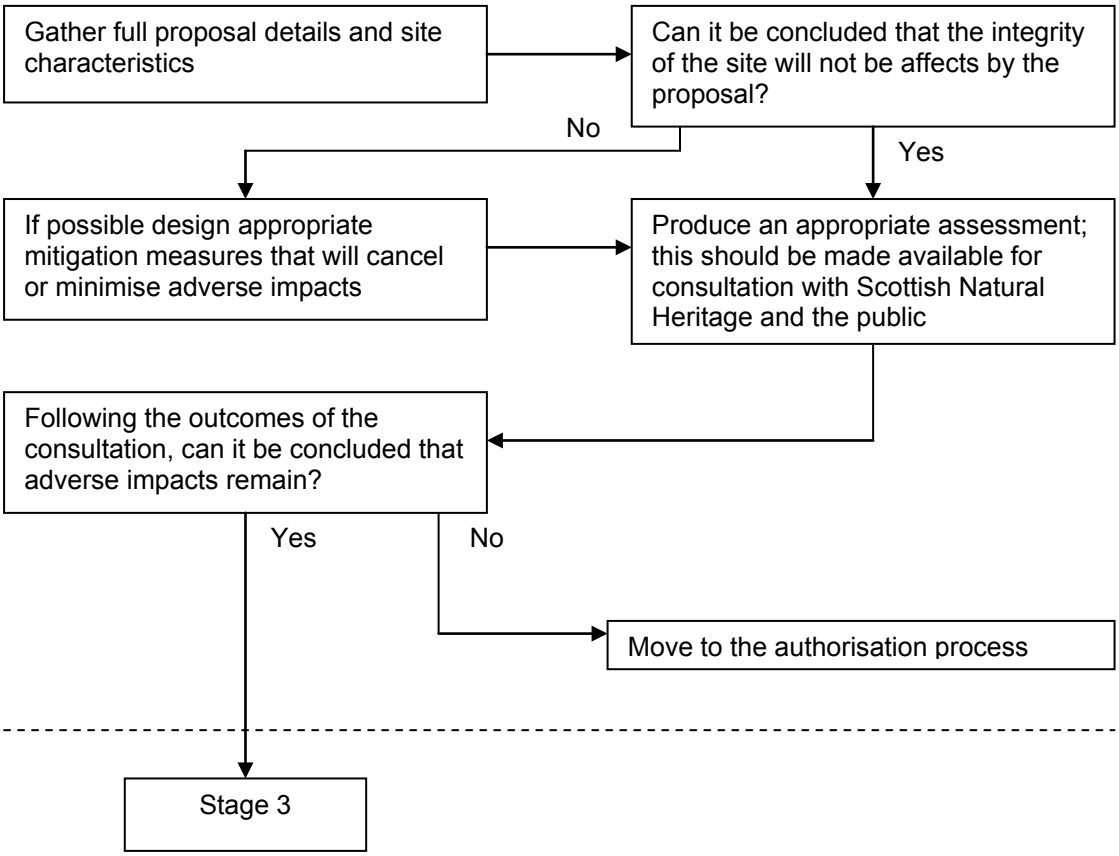


Figure 4.4 Habitats Regulations Appraisal Stage 3: assessment of alternative solutions

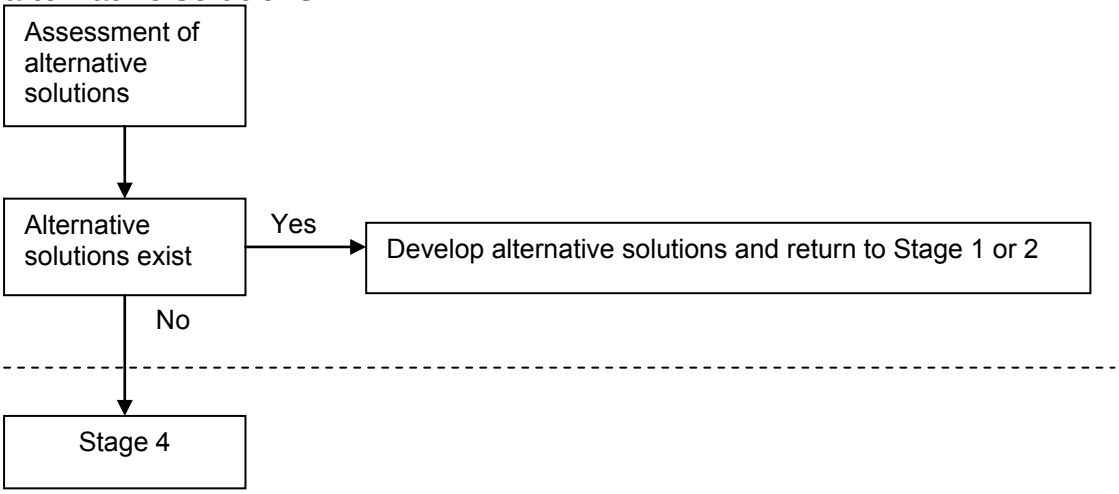
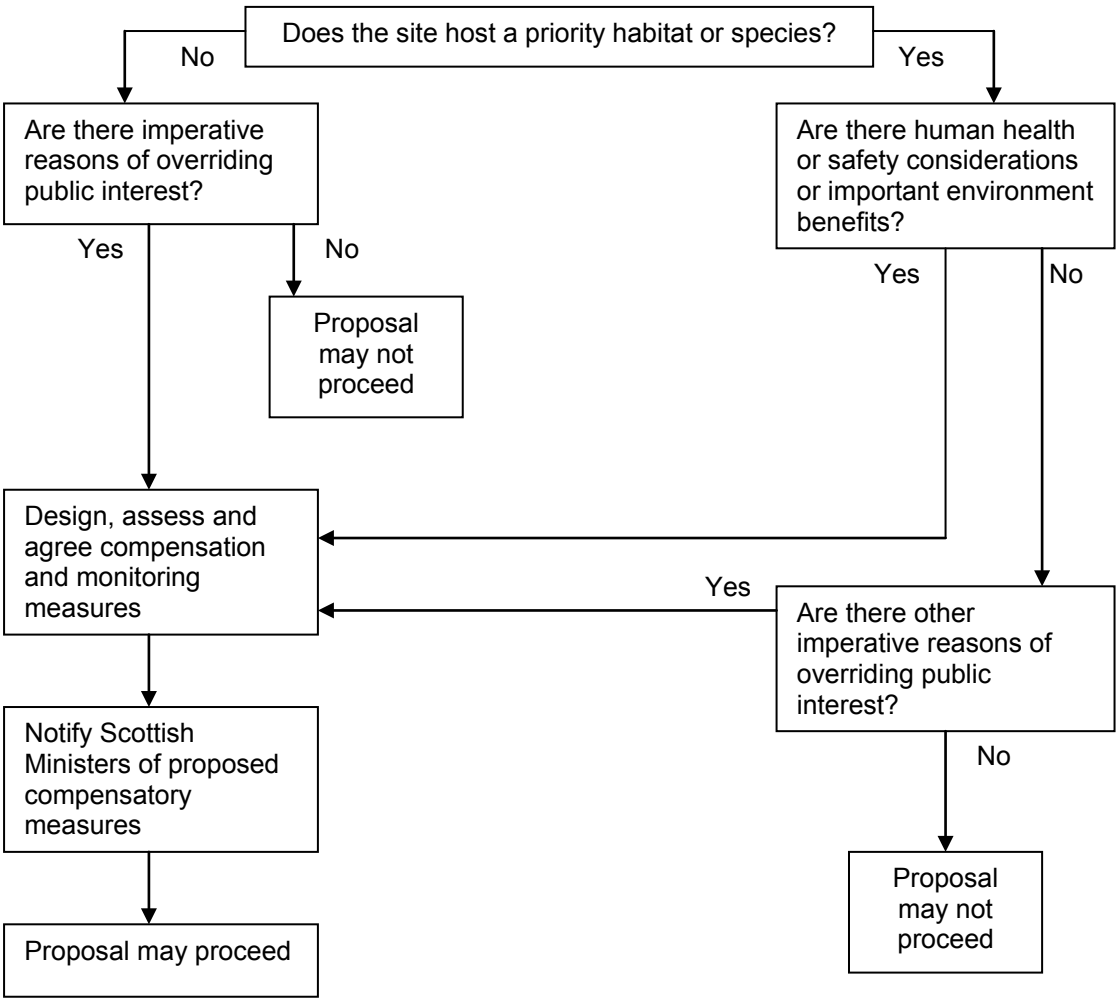


Figure 4.5 Habitats Regulations Appraisal Stage 4: Assessment where no alternative solutions exist and where adverse impacts remain



Sources of Further Information

Scottish Natural Heritage
http://www.snh.gov.uk/planning-and-development/environmental-assessment/habitat-regulations-appraisal/

European Commission, 2002, *Assessment of plans and projects significantly affecting Natura 2000 sites*, available at
http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/natura_2000_assess_en.pdf

Nationally Important Sites

5.1 This chapter of the Natural Heritage SG will cover the requirements of policy **NH1 International & National Designations** with regard to nationally important sites.

Definitions

National Scenic Area (NSA)	This designation is for areas defined as having outstanding scenic interest. The primary purpose is to conserve and enhance the natural beauty of the landscape. The designation has a statutory basis under The Planning Etc. (Scotland) Act 2006
Site of Special Scientific Interest (Site of Special Scientific Interest)	These are sites that are designated for their nature conservation value, for either biological or geological/physiographic interest. They are a UK designation and the legislative basis for them is the Nature Conservation (Scotland) Act 2004

Legislative & Policy Framework

Planning Etc. (Scotland) Act 2006 (Section 263A)
The Nature Conservation (Scotland) Act 2004
Scotland's Scenic Heritage, 1978

Considerations

5.2 The Council, as the Planning Authority is required to consult Scottish Natural Heritage on any application that may affect a Site of Special Scientific Interest, and their views are a material consideration in determining that application.

5.3 It should be noted that in some circumstances permitted development rights do not exist if the proposal is to be undertaken in a Site of Special Scientific Interest.

5.4 Within a National Scenic Area, for certain development types requiring planning permission, the Council is required to consult Scottish Natural Heritage. Details of these development types can be found on Scottish Natural Heritage's website.

5.5 There are certain activities that are normally 'permitted development' but who's permitted development status is withdrawn in a NSA, and which require a planning application and consultation with Scottish Natural Heritage. These development types can also be found on Scottish Natural Heritage's website.

5.6 There are also some activities that would not normally require planning permission, but do so in a NSA, but do not require statutory consultation with Scottish Natural Heritage. A list of these can be found at http://www.snh.gov.uk/protecting-scotlands-nature/protected-areas/national-designations/nsa/dev-control/

5.7 It should be demonstrated by a developer that any proposal that affects a Site of Special Scientific Interest or a National Scenic Area that appropriate measures to avoid adverse effects or mitigate adverse effects that cannot be avoided will be put in place to conserve the sites interest.

Sources of further information

Scottish Natural Heritage's information for planners and developers
http://www.snh.gov.uk/planning-and-development/

Scottish Natural Heritage's Sitelink is a database of designated sites in Scotland; here information can be found regarding the boundaries and citations of designated sites.
http://gateway.snh.gov.uk/sitelink/

Protected Species

6.1 This chapter of the Natural Heritage SG will cover the requirements of policy **NH2 Protected Species.**

Definitions

European Protected Species (EPS)	Species protected under the The Conservation (Natural Habitats &c.) Regulations 1994 (as amended in Scotland)

Legislation

Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna & Flora (known as the Habitats Directive)
The Conservation (Natural Habitats &c.) Regulations 1994, as amended in Scotland
The Wildlife & Countryside Act 1981 (as amended)
The Wildlife & Natural Environment (Scotland) Act 2011

Protected Species Legislation

6.2 Protected species legislation may seem complex and sometimes inappropriate when applying to small-scale sites or proposals, but there is no minimum size of development to which the legislation applies. The presence of these species does not automatically preclude development, but does trigger a sequence of procedures that must be followed.

6.3 An applicant must determine if protected species are likely to be on a site. An initial site audit should take place to determine any possible issues relating to protected species. If any of these species are present and they will be affected by the proposals then the applicant must develop a plan that includes changes to the development, methods for removing any impact and/or mitigation to minimise adverse effects.

6.4 It is also important to consider any licensing requirements for activities that may affect a protected species and ensure that the appropriate licences are in place before works commence. Planning permission will generally not be granted unless the proposal meets the licensing requirements.

European Protected Species

6.5 The most significant offence relating to protected species is to destroy or damage a breeding site or resting place of an EPS. The animal does not have to be presently using such a breeding site or resting place for an offence to be committed.

6.6 Being a 'strict liability' or absolute offence this means ignorance and lack of any intention to damage the breeding site/resting place is no defence against prosecution.

6.7 Under legislation it is an offence to deliberately or recklessly:

- Capture, injure or kill a wild animal which is a European Protected Species (EPS);
- Capture or harass a wild animal or group of wild animals of EPS;
- Disturb such an animal while it is occupying a structure or place it uses for shelter or protection;
- Disturb such an animal while it is rearing or otherwise caring for its young;
- Obstruct access to a breeding site or resting place, or otherwise denying the animal the use of a breeding site or resting place;
- Disturb such an animal in a manner that is, or in circumstances which are, likely to significantly affect the local distribution or abundance of the species to which it belongs;
- Disturb such an animal in a manner that is, or in circumstances which are, likely to impair its ability to survive, breed or reproduce, or rear or otherwise care for its young;
- Take or destroy the eggs of such an animal;
- Disturb such an animal while it is migrating or hibernating;
- Disturb any dolphin, porpoise or whale (cetacean);
- Pick, collect, cut, uproot or destroy a wild plant of EPS.

6.8 If any of these activities are likely to happen on a development site then a Regulation 44 licence application must be made. If a licence is not granted for these activities then they cannot take place without breaking the law. It should be noted that SNH have been delegated the responsibility to issue these licences.

The Three Licensing Tests

6.9 If the development, even with mitigation, will require a licence to proceed and the Planning Authority is minded to grant planning permission then it must be satisfied that all three EPS licensing tests can be met before granting permission. If a development is likely to have a significant impact on an EPS this will be a material consideration in determining an application.

6.10 The circumstances in which licences may be granted are narrowly defined. All three of these tests must be satisfied for a licence to be issued. The Council is the competent body determining if these tests have been satisfied prior to any planning determination.

6.11 Firstly, the licence application must demonstrably relate to one of the purposes specified in Regulation 44(2). In the case of development, the purpose most likely to be relevant is that found at Regulation 44(2) (e). This purpose is defined as:

"... preserving public health or public safety or other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment".

6.12 If the application does not meet this requirement then a licence cannot be issued, and therefore planning permission cannot be granted.

6.13 If this test is passed then two further tests must be passed:

1. There is no satisfactory alternative (to the granting of a licence), and
2. That the action authorised will not be detrimental to the maintenance of the population of the European protected species concerned at a favourable conservation status in their natural range.

6.14 If all three tests are satisfied then planning permission can be granted and the applicant can apply for a Regulation 44 licence. Work cannot begin on site until a licence is granted; as such unlicensed work may be breaking the law.

Birds

6.15 All breeding birds and some animal species have protection at a GB level (animals under Schedule 5 and plants under Schedule 8) of the Wildlife and Countryside Act 1981, as amended by the Nature Conservation (Scotland) Act 2004. If a development is likely to have a significant impact on one of these species, it will be a material consideration in determining an application.

6.16 For animals, protection relates to intentional or reckless killing and injuring, disturbance and interference with places used for shelter or protection. In the legislation a lack of knowledge of the presence of species is NOT a defence against prosecution.

6.17 The Wildlife and Natural Environment Bill (Scotland) 2011 changed the licensing provisions for certain species covered in the Wildlife and Countryside Act 1981, as amended and the 'tests' applicable to them. These tests are:

- The development is required for preserving public health or public safety (for Schedule 1, 1A or A1 birds); or
- Undertaking the development will give rise to, or contribute towards the achievement of, a significant social, economic or environmental benefit (Species on Schedules 5 & 8); and
- There is no satisfactory alternative.

6.18 All breeding birds are protected under this legislation. Some of the illegal activities are listed below:

- Intentionally or recklessly kill, injure or take any wild bird;
- Intentionally or recklessly take, damage or destroy the nest of any wild bird whilst it is in use or being built;
- Intentionally or recklessly take or destroy the egg of any wild bird

6.19 Some of these species, those on Schedule 1, 1A and A1 of the WCA (1981) as amended, have greater protection, offences include:

- Intentionally or recklessly disturb any wild bird listed on Schedule 1 while it is nest building, or at a nest containing eggs or young; or
- Disturb the dependent young of such a bird.
- Additional protection is afforded to species listed on Schedule 1A, against intentional or reckless taking, damage, destruction or interference with a nest habitually used by such a species at any time of year.

Plants

6.20 Some plants (and lower plants such as mosses, liverworts and lichens) are protected under the Wildlife and Countryside Act (1981) (as amended in Scotland). Nearly all of them have a limited distribution. For these species it is an offence to intentionally or recklessly pick, uproot or destroy these plants.

6.21 By using the information from the Shetland Biological Records Centre, or the National Biodiversity Network or on the Botanical Society for the British Isles website fairly accurate information on known locations can be found at the 10 kilometre square resolution. However, just because there is no record of a species in an area does not mean that it isn't present.

Species Survey

6.22 Determining the presence of protected species on a development area, be they protected under European, GB or Scottish legislation, must go through the same initial information gathering and consideration process. Namely:

- Determining if they are present or use the development site;
- Determining if the development will adversely affect them;
- Determining if the development can be altered to avoid adversely affecting them or can be mitigated for.

By answering these questions, undertaking survey and drafting a mitigation plan, the course of action required will be determined.

6.23 If this process indicates protected species are present or likely to be present on the development site, then a detailed protected species survey should be undertaken by the applicant.

6.24 If the survey shows that there are no protected species on site or their presence is highly unlikely, then planning consent can be granted.

6.25 If protected species are found on site and will be affected by the development then a mitigation plan will be required to determine if the activity would meet the requirements of any licensing process.

Mitigation

6.26 If surveys show protected species are present on the site or using it some of the time then it must be determined if the development will adversely affect these species resting places, feeding or breeding sites. If there will be no adverse effects then consent may be granted but there may be conditions for protected species resurvey of the site prior to commencement of works to ensure the protected species status on the site has not changed. If there will be adverse effects then a mitigation plan must be prepared to minimise impacts of the development on the protected species to a level that will not require licensing before any consent can be granted.

6.27 If the impacts cannot be sufficiently mitigated, then the activity must be capable of being licensed if the proposed development is to be considered for planning consent. This consent has to be strictly conditional upon the agreed mitigation plan being implemented otherwise the conditions of the licence will not have been followed and an offence will have been committed.

6.28 Protected species are present on site, but they will be unaffected by development - consent can be granted. Justification for this will be required.

6.29 Protected species are present on site and they will be affected by the proposed development, but this can be mitigated against by altering the development so protected species will be unaffected by it. Consent can be granted; a suitable mitigation plan that can be licensed is required.

6.30 Protected species are present on site and they will be affected by the proposed development, but these affects cannot be mitigated. The next steps depend on the level of legal protection, namely is the species protected under European legislation or GB legislation. For EPS affected by this the Planning Authority must be confident in its opinion that a licence can be granted prior to granting any planning consent.

Further Information

Scottish Natural Heritage
http://www.snh.gov.uk/protecting-scotlands-nature/protected-species/

Furthering the Conservation of Biodiversity

7.1 This chapter of the Natural Heritage SG will cover the requirements of policy **NH3 Furthering the Conservation of Biodiversity**.

Definitions

Biodiversity	The variety of life; this can be the variability between species, within species and of ecosystems
Ecosystem Services	The outputs of ecosystems from which people derive benefits
UK Biodiversity Action Plan	The UK Government's response to the Convention on Biological Diversity. Identifies priority habitats and species and actions to conserve them
Scottish Biodiversity List	Aims to conserve biodiversity for the health, enjoyment and wellbeing of the people of Scotland now and in the future
Local Biodiversity Action Plan	Identify local priorities for biodiversity conservation

Legislative & Policy Framework

The Nature Conservation (Scotland) Act 2004
UK Biodiversity Action Plan
Scottish Biodiversity Strategy
Living Shetland: Shetland's Local Biodiversity Action Plan

The Biodiversity Duty

7.2 The Council has an obligation to further the conservation of biodiversity under The Nature Conservation (Scotland) Act 2004. This means that it will be a material consideration in determining planning applications. They must also have regard to any strategy designated under the Act, as well as the United Nations Convention on Biological Diversity (CBD).

The Ecosystem Approach & Ecosystem Services

7.3 The Ecosystem Approach is the principle method set out for achieving the goals of the 1992 Convention on Biological Diversity (CBD). The CBD describes the Ecosystem Approach as 'a strategy for the integrated management of land, water and living resources that promotes conservation and sustainable use in an equitable way'. It is a framework for assessing biodiversity and ecosystem services, and evaluating and implementing potential responses".

7.4 The Ecosystem Approach focuses decision-making away from sector specific or habitat-specific approaches and towards an integrated approach based on whole ecosystems, ensuring the value of ecosystem services is fully reflected.

7.5 Ecosystem Services are the outputs of ecosystems from which people derive benefits. Ecosystem services can be considered under the broad headings of:

- Provisioning services, e.g. food and fuel production;
- Supporting services, e.g. soil formation and the cycling of nutrients;
- Regulating services; e.g. climate regulation; and
- Cultural services, e.g. provision of opportunities for education and recreation.

UK Biodiversity Action Plan, Scottish Biodiversity Strategy & Local Biodiversity Action Plan

7.6 The UK Biodiversity Action Plan (UK BAP) was published back in 1994, and was the UK Government's response to the Convention on Biological Diversity (CBD). The UK BAP describes the priority habitats and species of the UK and provides detailed action plans for their conservation.

7.7 The Scottish Biodiversity Strategy, "Scotland's Biodiversity: It's in Your Hands " aims to conserve biodiversity for the health, enjoyment and wellbeing of the people of Scotland now and in the future.

7.8 The Scottish Biodiversity List is part of the Scottish Biodiversity Strategy and is a list of animals, plants and habitats that Scottish Ministers consider to be of principal importance for biodiversity conservation in Scotland.

7.9 Local Biodiversity Action Plans (LBAP) translate national targets for species and habitats into effective action at the local level. These plans also identify local priorities for biodiversity conservation and work to deliver agreed actions and targets for local priority habitats and species.

Surveys, Avoidance and Mitigation

7.6 When assessing proposals for their effects on biodiversity it is useful to follow the RTPI's Five Point Approach. This approach is outlined in the introduction to this SG, but can be summarised in five-stage hierarchy:

- Ensure that there is sufficient information on the biodiversity of the site to enable decisions on the significance of any impacts to be made.

- Avoidance: have all adverse effects been avoided?
- Mitigation: have unavoidable impacts been minimised through mitigation measures?
- Compensation: has compensation for all impacts that remain after mitigation been included?
- Are there opportunities for new benefits to biodiversity?

7.7 For developments of certain types and scales it would be expected that any surveys for habitats and species protected by legislation would also include reference to the species protected under the policy NH3. It would be expected that this would include a determination the likelihood of a species presence, a habitat assessment and avoidance, mitigation and compensatory measures for any potential impacts. This could include:

- Maps showing biodiversity interest on site, determined through the use of appropriate data and expertise;
- Method statements for the preservation of biodiversity of interest;
- Opportunities for the enhancement of biodiversity;
- Restoration proposals relating to biodiversity; and
- Links to other relevant surveys undertaken on site.

Opportunities for Biodiversity Enhancement in New Development

7.8 It is also important to consider the potential for developments to positively impact upon biodiversity and wider natural heritage. Scottish Planning Policy advises that “planning authorities should seek benefits for species and habitats from new development”.

7.9 Proposals should include biodiversity enhancement opportunities. Different scales and types of development will provide different opportunities for biodiversity enhancement. These measures could include:

- Planting native species;
- Providing habitats for invertebrates;
- Providing habitats for birds;
- Drystone walls;
- Sustainable Urban Drainage Systems (SuDS), can provide a habitat for wetland plants and invertebrates;

In the case of larger scale developments, these measures could include:

- Incorporate features of natural habitats into open space;
- Habitat creation and restoration of existing habitats.

Sources of Further Information

UK Biodiversity Action Plan http://jncc.defra.gov.uk/page-5155

SBS http://www.biodiversityscotland.gov.uk/doing/framework/strategy/

LBAP www.livingshetland.org.uk

UK National Ecosystem Assessment http://www.maweb.org/en/index.aspx

Biodiversity Planning Toolkit

http://www.biodiversityplanningtoolkit.com/

Soils

8.1 This chapter of the Natural Heritage SG will cover the requirements of policy **NH5 Soils.**

Definitions

Soil	A biologically active mixture of weathered minerals, organic and inorganic compounds, living organisms, air and water, which provides the foundation for life in terrestrial ecosystems. Soil however is not merely the sum of these parts, but also a product of their interactions.
Soil function	The functions that soils can fulfil; these can include environmental, economic and societal benefits
Peat	Peat is an organic material that forms in the waterlogged, sterile, acidic conditions of bogs and fens. These conditions favour the growth of mosses, especially sphagnum. As plants die, they do not decompose. Instead, the organic matter is laid down, and slowly accumulates as peat because of the lack of oxygen in the bog
Topsoil	Upper layer of a soil profile, usually darker in colour and more fertile than the layer below (subsoil), and which is a product of natural biological and environmental processes
Subsoil	Weathered soil layer extending between the natural topsoil and the little weathered basal layer (e.g. geological parent material) below, or similar material within a landscaping project on to which topsoil can be spread. Subsoil usually has a lower organic matter and plant nutrient content than topsoil
Soil compaction	Over-compaction of subsoil or topsoil so that fine pores and the spaces between soil structure aggregates become closed and are unable to allow the passage of roots, water and air
Soil erosion	The detachment and movement of soil by the action of wind and flowing water
Soil sealing	Covering of the soil surface with an impermeable material

Legislative & Policy Framework

The EU Soil Framework Directive
The EU Waste Framework Directive
Environmental Protection Act 1990 (as amended)
Landfill (Scotland) Regulations 2003 (as amended)
The Waste Management Licensing (Scotland) Regulations 2011
The Scottish Soils Framework 2009

Soil as a Finite Resource

8.2 Soils are a continually evolving, living and dynamic medium responding to external pressures and management, some activities such as development or pollution can mean their recovery or reformation cannot take place within human timescales. One hectare of topsoil, the productive soil layer, can contain up to 5 tonnes of living organisms and because it can take more than 500 years to form a 2cm thickness[3]. This means that soils are a finite and non-renewable resource.

Soil Functions

8.3 Soils provide a wide range of environmental, economic and societal benefits. Soils are interlinked with air and water in such a way that they help regulate their quality. In particular, sustainable water management and soil management are intrinsically linked.

8.4 Soil functions include:

- **Providing the basis for food and biomass production**

- **Controlling and regulating environmental interactions – regulating water flow and quality:** soils play a vital role in storing, retaining and transforming contaminants and preventing their discharge to water courses, thus reducing diffuse pollution. Soils also play a key role in sustainable flood risk management. Soils retain water and reduce overland flow and thus provide a natural barrier to safeguard habitation.

- **Storing carbon and maintaining the balance of gases in the air:** peat, and other soils rich in organic matter, is a major sink and potential source of greenhouse gases. They contain the majority of the UK's reservoir of terrestrial carbon. Warmer climates and more intensive land use can increase the loss of carbon from soils to the atmosphere.

- **Providing valued habitats and sustaining biodiversity:** soils are a reservoir of huge biological diversity. Soils support a number of

[3] DEFRA, 2009, *Construction Code of Practice for the Sustainable Use of Soils on Construction Sites*, DEFRA, 2

terrestrial habitats of international significance and should be viewed as an integral part of those habitats and associated landscapes including blankets peatlands, montane habits and machair grasslands.

- **Preserving cultural and archaeological heritage:** soils provide a record of past environmental influences and climate as well as previous cultural influences on them. The also provide a protective cover for subsurface archaeological remains.

- **Providing raw material:** soils provide a direct source of minerals and other resources, such as peat, topsoil, sand and gravel. Fulfilling the role of raw material provision could lead to the destruction of soils, to the detriment of other soil functions.

- **Providing a platform for buildings and roads:** This function is different from the others in so far as once soil is used to fulfil a 'platform role'; it loses, to a large extent, its capacity to fulfil its multi-functional role in the environment. This role is in most cases connected with soil compaction and sealing, thereby reducing or destroying the ability of soils to provide environmental and ecological services.

Soil Management Plans

8.5 Having a soil management plan is an important part of ensuring soil sustainability. A soil management plan should include:

- Maps showing topsoil and subsoil types and areas to be stripped;
- Methods for stripping, stockpiling, respreading and improving the soils
- Haul routes
- Location and content of each soil stockpile
- Schedules of volumes for each material
- Expected after use for each material
- Who is responsible for supervising soil management

Key Considerations

8.6 Determine what soils are on site through a survey carried out by a suitably qualified soil scientist prior to commencement of works

8.7 Determine and describe the proposed methods for stripping topsoil; this should

a. Avoid environmental harm by ensuring beneficial reuse of topsoil, reducing the need to dispose of it to landfill; and
b. Avoid compaction of soils though inappropriate methods of removal

8.8 Determine and describe the proposed methods for stripping subsoil; this should

a. Avoid compaction of soils through inappropriate removal methods; and
b. Reduce costs through the prevention of need for remedial works.

8.9 Determine and describe the proposed methods for stockpiling of soils; this should

a. Avoid erosion of stockpiles through being overly step or unvegetated, which in turn may cause pollution through run-off; and
b. Contribute to site safety through appropriate construction

8.10 Determine and describe the proposed methods for spreading of soil during remediation; this should

a. Avoid environmental harm: soil that becomes over-compacted will not absorb rainwater, increasing the risk of muddy water running off into watercourses and causing pollution and breaching discharges consents; and
b. Reduce costs: Over-compacted soil will require remedial treatment, increasing project costs.

8.11 Determine and describe aftercare requirements; this should

a. Avoid environmental harm: compact, degraded, soils increase the risk of ponding and flooding;
b. Improve marketability of the site: waterlogging and anaerobism are the most common soil-related causes for plant failure on landscaping schemes, detracting from the appearance of a site; and
c. Reduce costs: Failed landscaping schemes can be expensive to remedy.

8.12 Determine how much and a plan for dealing with surplus soils after construction; this should

a. Protect natural resources: Soil is a finite resource that provides many functions apart from supporting vegetation; and
b. Reduce costs: Finding sustainable off-site uses will save the costs of taking surplus soil to tip or accommodating it on site.

Peat

8.13 As part of an Environmental Impact Assessment (EIA) it will be necessary to demonstrate that the extent of peat has been investigated. For smaller scale developments seeking approval out with

the EIA process, the overarching, general guiding principles of minimisation through design and practice are applicable[4].

8.14 Furthermore, it is necessary to show:

- How, through site investigation and iterative design, the proposed development has been structured and designed to minimise, so far as reasonably practicable, the quantity of peat that will be excavated;
- That volumes of peat anticipated to excavated by the proposed development have been considered; and
- How excavated peat will be managed.

Prevention and Reduction through Design

8.15 Where possible position site infrastructure in areas of shallower peat or design appropriate engineering solutions to avoid and/or minimise the excavation of peat.

8.16 Minimise infrastructure that could impact upon peat.

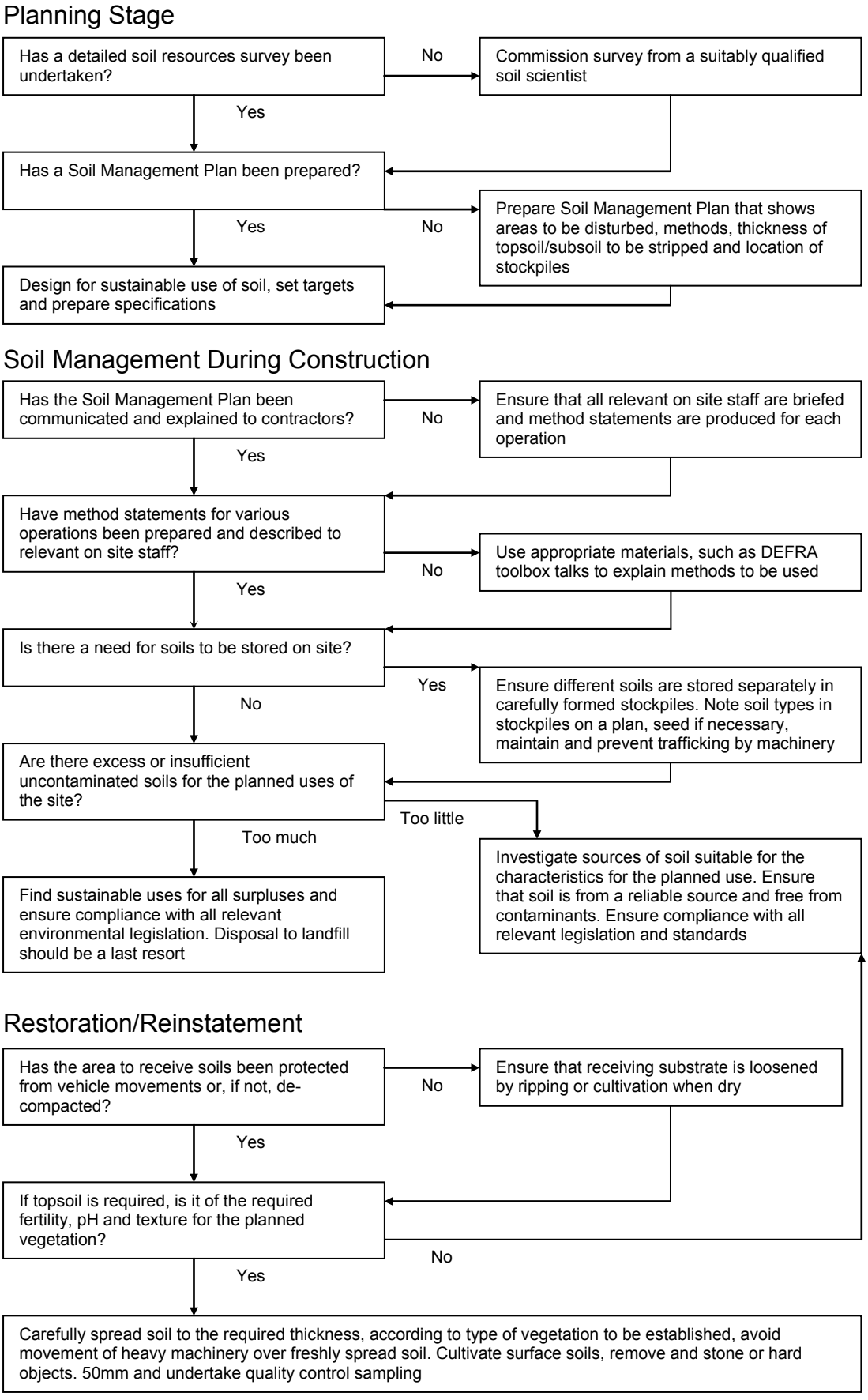
8.17 Minimise the detriment to peat if excavation cannot be fully avoided.

8.18 Prevent peat displacement from the development of borrow pits.

8.19 Only re-use peat where it is suitable for the identified and required use.

[4] Scottish Renewables & Scottish Environment Protection Agency, 2012, Developments on Peatland: Guidance on the assessment of peat volumes, resuse of excavated peat and the minimisation of waste

Figure 3.1: Soil Management Flowchart



Sources of Further Information

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Other information on soils available at:
http://www.sepa.org.uk/land.aspx
http://www.snh.gov.uk/land-and-sea/managing-the-land/soils/

Geodiversity

9.1 This chapter of the Natural Heritage SG will cover the requirements of policy **NH5 Geodiversity**.

Definitions

Geodiversity	The variety of rocks, minerals, fossils, landforms, sediments and soils, together with the natural processes that form them

Legislative & Policy Framework

Scotland's Geodiversity Charter, June 2012

Supporting Ecosystem Services

9.2 Geodiversity has an important role to play in ensuring that the natural environment continues to provide important ecosystem services. Geodiversity contributes to the following ecosystem services:

- Provisioning services: fresh water (surface and ground water), mineral resources (including oil and gas, renewable energy);
- Regulating services: carbon sequestration and climate regulation, regulation of erosion and natural hazards, such as flooding;
- Supporting services: soil formation, geomorphological processes, terrestrial and marine habitats;
- Cultural services: aesthetic values, landscape character, resources for recreation and outdoor activities, tourism and education and lifelong learning.

9.3 The loss of geodiversity or its mismanagement, as a consequence of factors such as unsustainable development, changing land use or climate change, presents real threats to biodiversity and can result in significant economic and social costs. Conversely, the sustainable management of geodiversity can have positive economic, social, cultural and educational benefits. It is a misconception that geodiversity is robust enough not to require management and protection.

Considering Geodiversity

9.4 Take into account geodiversity on site and try and work with natural processes and landforms.

9.5 Maintain geodiversity on site, and seek information and advice to aid understanding of ways to manage geodiversity during development and during site restoration.

Geodiversity Plans

9.6 For developments of a certain type and scale it may be necessary to provide a Geodiversity Plan to accompany a planning application. This could include:

- Maps showing geodiversity on site, determined through use of appropriate data and expertise
- Method statements for the preservation of geodiversity of interest
- Restoration proposals relating to geodiversity

9.7 Ensure links are made with any Soil Management Plans produced for the development.

9.8 Take into account any management to mitigation, compensation and enhancement measures that may have been developed.

Sources of Further Information

Scottish Geodiversity Forum

The Scottish Geodiversity Forum aims to promote Scotland's Geodiversity, and seeks to widen the profile of Geodiversity and to influence national and local policies. It is the Scottish national forum for geoconservation groups, geoparks and other related organisations and interested individuals. The forum promotes the role and value of geodiversity in education, community involvement and health, the development of tourism and the wider economy.

www.scottishgeology.com
www.scottishgeodiversityforum.org

Geopark Shetland

http://www.geoparkshetland.org.uk/

Other relevant legislation

Environmental Impact Assessment

The first three principles of furthering the conservation of biodiversity on development sites are generally accepted steps in Environmental Impact Assessment as detailed in 1985 European Council Directive (No.85/337/EEC) "on the assessment of the effects of certain public and private projects on the environment". The Environmental Impact Assessment (Scotland) Regulations (Scottish Statutory Instrument 1999 No. 1) transpose the EIA Directive as amended into Scottish planning law there has been a further update to these regulations in 2011.

Strategic Environmental Assessment

SEA aims to ensure environmental protection and sustainable development by requiring an assessment of the environmental effects of plans and programmes, to be carried out by public bodies, as they are being developed. It is a key component of sustainable development, establishing new procedures for protecting the environment and extending opportunities for participation in public policy decision-making.

The EU Environment Liability Directive

The Environmental Liability (Scotland) Regulations 2009 transposed the EU Environmental Liability Directive 2004/35/EC (ELD) of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage.

This Directive enshrines a framework of environmental liability based on the “polluter/damager pays” principle and the stated aim is to prevent and remedy environmental damage.

This Directive defines ‘significant’ environmental damage in terms of:

- Biodiversity - protected species and natural habitats listed in the Birds and Habitats Directives where this has significant adverse effects on reaching or maintaining favourable conservation status
- Water bodies - any damage that significantly and adversely affects the status or ecological potential of a water body as defined under the Water Framework Directive
- Public Health - To land where public health is at 'significant’ risk of being adversely affected

These defined types of environmental damage may occur singly or in combination on a particular site. The Regulations do not replace any existing laws therefore ordinary day-today activities/accidents should continue to be dealt with under existing legislation.