

REPORT TO: East Lothian Council

MEETING DATE: 11 September 2018

BY: Depute Chief Executive (Partnerships and Community Services)

SUBJECT: East Lothian Local Development Plan 2018: Update on Habitats Regulation Appraisal

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1 PURPOSE

- 1.1 To inform the Council that the Scottish Ministers have extended until 27 September 2018 the period for their final review of the local development plan the Council intends to adopt – i.e. the East Lothian Local Development Plan 2018 (ELLDP 2018) as Council decided on 29 May 2018;
- 1.2 To advise the Council:
- of the outcome of a recent European Court of Justice (ECJ) ruling in the case of *People Over Wind/Sweetman -v- Coillte Teoranta (Case C-323/17)* issued on 12 April 2018 and whether it has any effect on the Council's Habitats Regulations Appraisal (HRA) and Appropriate Assessment (AA) of the ELLDP 2018;
 - that in light of the above ECJ ruling, as a precautionary measure and in collaboration with Scottish Natural Heritage (SNH), a review of the ELLDP 2018 HRA Record (the document that 'records' the Council's approach to HRA and AA) has been completed;
 - that the outcome of the joint review with SNH of the ELLDP 2018 HRA Record and Appropriate Assessment is an Updated ELLDP 2018 HRA Record and Appropriate Assessment (as set out at Annex 1 of this Council Report).

For the avoidance of doubt, this review has not resulted in any change in the overall conclusions of the Habitats Regulations Appraisal or Appropriate Assessment - i.e. the East Lothian Local Development Plan 2018 will either have no likely significant effects on European sites, or will not adversely affect the integrity of European sites, either alone or in combination with other plans or

projects. Consequently, no changes to the ELLDP 2018 are required.

This Updated ELLDP 2018 HRA Record therefore confirms that the above ECJ ruling does not effect the content of ELLDP 2018 and SNH agrees with this conclusion;

- 1.3 To request that the Council agrees with and accepts the conclusions of the Updated ELLDP 2018 HRA Record including Appropriate Assessment (as set out at Annex 1 of this Council Report) before deciding whether to finally adopt the ELLDP 2018, in accordance with the Conservation (Natural Habitats, etc.) Regulations 1994 (Habitats Regulations);
- 1.4 To request that the Council agrees to submit the Updated ELLDP 2018 HRA Record including Appropriate Assessment to the Scottish Ministers for information only.

2 RECOMMENDATIONS

- 2.1 That the Council agrees with and accepts the outcome of its joint review with SNH of the ELLDP 2018 HRA Record including Appropriate Assessment as well as the findings of the Updated ELLDP 2018 HRA Record and Appropriate Assessment (as set out at Annex 1 of this Council Report) that has the full support of SNH;
- 2.2 That the Council, having taken account of and accepted the conclusion of the Updated ELLDP 2018 HRA Record and Appropriate Assessment (as set out at Annex 1 of this Council Report) in accordance with the Conservation (Natural Habitats, etc.) Regulations 1994, reaffirms that ELLDP 2018 should be adopted in the format the Council intends it to be adopted as the Council originally decided on 29 May 2018;
- 2.3 That the Council agrees to submit the Updated ELLDP 2018 HRA Record including Appropriate Assessment (as set out at Annex 1 of this Council Report) to the Scottish Ministers for information only.

3 BACKGROUND

- 3.1 The Council received the proposed LDP Report of Examination on 12 March 2018. The Town & Country Planning (Scotland) Act 2006 (as amended) requires that the Council submits the LDP it intends to adopt to the Scottish Ministers within three months of receiving the Report of Examination. On 29 May 2018, the Council decided by approving recommendation 2.4 and 2.5 of the relevant Council report that:
 - it intends to adopt the proposed LDP as modified following examination in public, namely the East Lothian Local Development Plan 2018 (ELLDP 2018);

- if the Scottish Ministers (following their period of review of the ELLDP 2018) provide clearance to the Council such that it may adopt the ELLDP 2018, on provision of such clearance from the Scottish Ministers the ELLDP 2018 would become constituted as the adopted East Lothian Local Development Plan 2018;
 - Only if the Scottish Ministers decide to issue a direction to the Council to modify the ELLDP 2018 would the ELLDP 2018, having been modified in accordance with any such direction, be returned to the Council to decide whether it will adopted the plan.
- 3.2 Having taken these decisions, the Council submitted the ELLDP 2018 to the Scottish Ministers for their final review on 7 June 2018.
- 3.3 The Scottish Ministers have now extended their review period until 27 of September 2018, as Section 20 of the Town & Country Planning (Scotland) Act 2006 (as amended) allows them to do.

The Habitats Regulations in Plan-making

- 3.4 The requirement for Habitats Regulation Appraisal (HRA) and Appropriate Assessment (AA) is set out in the Conservation (Natural Habitats, &c) Regulations 1994 (Habitats Regulations).
- 3.5 Broadly, HRA is an assessment mechanism that is used to assess the effects of plans and projects on international nature conservation objectives and a network of European Sites that are, or are in the process of being, designated to support those objectives. HRA is conducted by the competent authority (in this instance, East Lothian Council).
- 3.6 The term 'Habitats Regulation Appraisal' describes the whole process of considering whether a plan or project will give rise to likely significant effects (LSE) upon a European Site, deciding which European Sites should be considered, which aspects of a plan or proposal may give rise to LSE (known as 'screening'), and the subsequent Appropriate Assessment (AA) of the implications on these effects upon the integrity of European Sites.
- 3.7 Essentially, through HRA, all the elements of a plan need to be considered in case they would give rise to LSE, either alone or in combination with other projects and plans. Those elements of the plan that would generate LSE must be considered for their implications upon European Sites (either alone or in combination with other projects and plans) on that site's integrity. This is known as Appropriate Assessment.
- 3.8 Under the Habitats Regulations, the key 'test' for the Appropriate Assessment is that permission for a plan or project should only be given where it has been determined that it will not have, either alone or in combination with other projects or plans, an adverse effect upon the integrity of the European Site (AESI). Before making any decision, the Council should consult with Scottish Natural Heritage (SNH), the statutory conservation advisor and have regard to their advice.

- 3.9 During the stages of plan preparation the Council has followed published SNH guidance as well as case specific advice provided by SNH on how that guidance should be interpreted and applied in respect of the HRA of the ELLDP 2018. It has also drawn on advice published by the Scottish Government. **SNH has agreed at each stage of preparing the ELLDP 2018 that the Council's HRA and Appropriate Assessment work has been completed in a manner and has reached conclusions that would allow the ELLDP 2018 to be adopted whilst ensuring that the Council, in taking such a decision, would satisfy the requirements of the Habitats Regulations.**
- 3.10 The approach to HRA that the Council has followed in respect of the ELLDP 2018 is set out in the HRA Record (the document that 'records' the Council's approach and conclusions during the HRA). The purpose of the HRA Record for the ELLDP 2018 is to ensure the Council can explain how it completed the HRA work before taking decisions on the ELLDP 2018 during its developmental stages and at the point of adoption.
- 3.11 At proposed LDP stage and for the version of the proposed LDP as modified following Examination in Public the HRA work carried out by the Council **was in line with SNH guidance and advice and was also supported by SNH, as demonstrated via the relevant correspondence provided by SNH at both of these stages.**
- 3.12 **Importantly, the Habitats Regulations and SNH Guidance are clear that the approach to Habitats Regulations Appraisal, and if necessary Appropriate Assessment, is to be iterative – e.g. during plan-making the approach can continue to develop the HRA up to the point a final decision is taken to adopt a plan. This is to ensure the HRA is up-to-date at the point of a final decision to adopt a plan; it is at this key stage that the 'test' set out within the Habitats Regulations (as described at paragraph 3.9 above) must be fulfilled.**
- 3.13 Under the Habitats Regulations, there is no requirement to consult the public while the HRA is being carried out, only a requirement that the HRA Record once complete is available for public inspection. Overall, before an LDP can finally be adopted, a suitable up-to-date Habitats Regulation Appraisal, and if necessary Appropriate Assessment, must be in place. This is therefore also true in terms of how the Council must take its final decision to adopt the ELLDP 2018.
- 3.14 The SNH Guidance does not anticipate a situation when at a very late stage of LDP preparation a change in circumstance may prompt the Council as competent authority to review and update its HRA work including Appropriate Assessment, and thus the HRA Record, for a local development plan it intends to adopt.

ECJ Decision (Sweetman 2): Implications on HRA in Plan-making

- 3.15 The European Court of Justice (ECJ) ruling 2018 in the case of *People Over Wind/Sweetman -v- Coillte Teoranta (Case C-323/17)* on the 12th April 2018 has clarified how the Habitats Regulations should be interpreted and applied in the UK.
- 3.16 The issue in this ECJ case concerned the potential effects of laying a cable to connect a wind farm to the electricity grid on two Special Areas of Conservation for fresh water pearl mussels. As part of the HRA work for that project, at screening stage, it was considered that “*in the absence of protective measures, there is potential for the release of suspended solids into water bodies*”, but concluded that there would be no significant effect on the relevant European Sites and that Appropriate Assessment was not required. That view was reached because of “*the protective measures that [had] been built into the works design of the project*”.
- 3.17 The question that the Irish Court referred to the ECJ was “*whether, or in what circumstances, mitigation measures can be considered when carrying out screening for Appropriate Assessment under Article 6(3) of the Habitats Directive*”. In the final paragraph of the ECJ ruling it states that “*the Habitats Directive must be interpreted as meaning that, in order to determine whether it is necessary to carry out, subsequently, an Appropriate Assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site*”.
- 3.18 This ECJ judgement has clarified how the Habitats Regulations should be interpreted and applied in the UK. It appears to contradict previous rulings in the UK Courts, which have found in favour of considering mitigating measures when deciding whether Appropriate Assessment is required¹. It may therefore have implications for the SNH HRA Guidance and the advice SNH gave as the HRA and Appropriate Assessment work on the ELLDP 2018 was being undertaken, thus the outcome of that work that was agreed by SNH on 4 May 2018.
- 3.19 In respect of the ECJ ruling, a review of the ELLDP 2018 HRA Record was carried out in collaboration with SNH. This was done to ensure that the Council takes a precautionary approach, and to ensure the Council’s final decision to adopt the ELLDP 2018 (or not) would be based on up to date HRA work including Appropriate Assessment, thus to ensure that any such decision would be consistent with the Habitats Regulations, taking account of the above ECJ ruling.
- 3.20 During the Scottish Ministers final period for the review of the ELLDP 2018, the Council was copied into correspondence between Burness Paull, a firm of solicitors acting on behalf of Ashfield Land which has an interest in the land at Goshen Farm, by Musselburgh. That correspondence drew to

¹ R(Hart DC) v Secretary of State for Communities and Local Government [2008] EWHC 120 (Admin)

the attention of the Chief Planner at the Scottish Government the above ruling of the ECJ.

- 3.21 In order to ensure that the ‘test’ set out within the Habitats Regulations would be satisfied at the point the Council finally adopts the ELLDP 2018, the associated HRA and Appropriate Assessment work and HRA Record may need to be updated – e.g. should there be a need to take account of a wider change in circumstance, such as the ruling in the ECJ case of *People Over Wind/Sweetman -v- Coillte Teoranta (Case C-323/17)*.
- 3.22 In terms of the Habitats Regulations, there is no reason why an HRA Record cannot be reviewed after the Council has submitted the LDP it intends to adopt to the Scottish Ministers for their final review.

Findings of the Review of the ELLDP 2018 HRA Record

- 3.23 The review of the ELLDP 2018 HRA Record was carried out in collaboration with SNH in order to consider whether the above ECJ ruling has any effect on the content of the ELLDP 2018. The Updated ELLDP 2018 HRA Record, at paragraphs 2.70 – 2.76, further explains the context for the review of the original ELLDP 2018 HRA Record.
- 3.24 **The conclusion of the review of the ELLDP 2018 HRA Record is that the ECJ ruling does not have any effect on the content of the ELLDP 2018 and SNH agrees with this conclusion.** The review of the original ELLDP 2018 HRA Record, that has been agreed with SNH, does however indicate that the original ELLDP 2018 HRA Record should be updated in the following ways:
- Clarify the use of the term ‘mitigation’ and how it should be interpreted and has been applied when deciding whether Appropriate Assessment is required within the HRA Record;
 - As a precautionary approach, Proposal EGT1: Former Cockenzie Power Station Site and Proposal EGT3: High Voltage Energy Transmission Network have now been subject to Appropriate Assessment in the Updated ELLDP 2018 HRA work. These proposals were originally screened out of Appropriate Assessment owing to a lack of detail about the specific proposals that could come forward and hence identification of what the likely significant effects would be. In recognition that developments could give rise to likely significant effects, during the original HRA work the wording was amended to require HRA at project level, as part of normal policy development. Importantly, this was not an attempt to avoid Appropriate Assessment as some aspects of the effects of EGT1 (habitat loss) could be predicted and were included within the Appropriate Assessment of effects on the Firth of Forth Special Protection Area (SPA).
 - In addition, it was considered that the analysis undertaken of the effects of policies TOUR1, TOUR3, T3, DC6, CH9, WD1, WD2 and WD3 constituted an Appropriate Assessment of those proposals,

although this had not been explicitly stated within the original HRA Record. Accordingly, the Updated HRA Record has been amended to clarify this.

- 3.25 The effect of this review has been only to reaffirm the policy caveats that were originally included within proposals (before they were screened out of Appropriate Assessment in the original HRA work). This further Appropriate Assessment work undertaken as part of the Updated ELLDP 2018 HRA Record therefore validates the conclusions of the original HRA work.
- 3.26 Overall, the outcome of the review is that there is no effect on the content of the ELLDP 2018. The review has not resulted in any change in the overall conclusions of the Habitats Regulations Appraisal or Appropriate Assessment - i.e. the East Lothian Local Development Plan 2018 will have no likely significant effects on European sites, or will not adversely affect the integrity of European sites, either alone or in combination with other plans or projects; consequently no changes to the ELLDP 2018 are required.
- 3.27 However, since this updated HRA work and most importantly the Appropriate Assessment is the basis for demonstrating that the ELLDP 2018 is in accordance with the Habitats Regulations, before the Council takes its final decision to adopt the ELLDP 2018, it should agree with and accept the findings of the updated HRA work including Appropriate Assessment, as set out within the Updated HRA Record. In that context, the Council should also reaffirm its decision to adopt the ELLDP 2018 as approved on 29 May 2018.
- 3.28 For the avoidance of doubt, the Updated ELLDP 2018 HRA Record demonstrates that the ELLDP 2018 can be adopted as currently intended and be in accordance with the Habitats Regulations without modification.

Introducing the Updated ELLDP 2018 HRA Record

- 3.29 Once the ELLDP 2018 has been submitted to the Scottish Ministers, Section 20 of the Town & Country Planning (Scotland) Act 2006 (as amended) provides for the Scottish Ministers to provide clearance to the Council such that it may finally adopt the plan, or for the Scottish Ministers to direct that the Council make modifications to the plan before it may be adopted. Once the terms of any such direction have been fulfilled, the Council may adopt the plan and notify the Scottish Ministers that this has occurred.
- 3.30 The Council's decision on 29 May 2018 provided for a final decision of the Council to adopt the LDP in the event the Scottish Ministers issue a direction that the ELLDP 2018 be modified. However, the Council's decision on 29 May 2018 did not require a further decision of the Council to adopt the ELLDP 2018 if the Scottish Ministers provide clearance to the Council such that it may adopt the plan.

- 3.31 Nonetheless, it is still open to the Council to reconsider the terms of its decision on 29 May 2018 (specifically recommendation 2.5 of the relevant Council report that it agreed) such that, even if the Scottish Ministers do provide clearance to the Council to adopt the ELLDP 2018, the Council could decide that the adoption of the ELLDP 2018 would not be automatic on this.
- 3.32 Considering all of the above together, it is therefore important for the Council to decide either:
- that it agrees with and accepts the outcome of the Updated ELLDP 2018 HRA Record at Annex 1 of this report and in that context reaffirms its decision to adopt the ELLDP 2018 as it decided on 29 May 2018 – i.e. to continue to follow recommendation 2.5 of the associated Council Report; or
 - to revisit its decision on 29 May 2018, and specifically agrees not to follow recommendation 2.5 of the associated Council Report, and expressly makes provision for a further decision of the Council to be taken in respect of the adoption of the ELLDP 2018 even if the Scottish Ministers provide the Council clearance such that it may adopt the ELLDP 2018.
- 3.33 For the avoidance of doubt, it is still open to the Council to decide not to adopt the ELLDP 2018 unless and until the Council is satisfied that its HRA work including Appropriate Assessment is in accordance with the Habitats Regulations.
- 3.34 However, should the Council nonetheless agree with and accept the Updated ELLDP 2018 HRA Record including Appropriate Assessment as set out at Annex 1 of this report, the recommended next steps for LDP adoption are set out in the section below.

Recommended Next Steps for Adoption of the ELLDP 2018

- 3.35 It is recommended that before finally adopting the ELLDP 2018 the Council formally agrees with and accepts the findings of the Updated ELLDP 2018 HRA Record (as set out at Annex 1 of this Council Report).
- 3.36 In these circumstances, there would therefore be no need to revisit any part of the decision of 29 May 2018 that would allow for the ELLDP 2018 to be constituted and adopted on provision of clearance from the Scottish Ministers that provides for the Council to do this.
- 3.37 Additionally, although the Council is the competent authority in the context of the Habitats Regulations, it is recommended that the Updated ELLDP 2018 HRA Record and Appropriate Assessment, together with the relevant correspondence from SNH confirming this updated work is in accordance with the Habitats Regulations, be passed to Scottish Ministers for information only.

Other Matters

- 3.38 For the avoidance of doubt, the ELLDP 2018 is supported by a series of other supporting papers that are not affected by this issue and should remain as they are in support of the ELLDP 2018.

4 POLICY IMPLICATIONS

- 4.1 If adopted, the East Lothian Local Development Plan 2018 (ELLDP 2018) would replace the East Lothian Local Plan 2008, and together with the Strategic Development Plan for South East Scotland (SDP1) would become the statutory development plan for East Lothian.
- 4.2 The development plan provides the basis against which any planning decisions will be taken that affect East Lothian, in accordance with Section 25 of the Town & Country Planning (Scotland) Act 1997 (as amended). This includes the determination of planning applications and provides a basis against which the Council can seek developer contributions towards mitigating the impacts of new development within East Lothian.

5 INTEGRATED IMPACT ASSESSMENT

- 5.1 The original Integrated Impact Assessment that accompanied the proposed LDP (see Members' Library Ref: 159/16, August 2016 Bulletin) has been updated (see Members' Library Reference 76/18, 31 May 2018 Bulletin) following consideration of the recommended post-examination modifications to the proposed LDP. The subject of this report (the ELLDP 2018) has therefore also been through the Integrated Impact Assessment process and no significant negative impacts have been identified.

6 RESOURCE IMPLICATIONS

- 6.1 Financial – The growth resulting from the implementation of the adopted Local Development Plan will have significant implications for the Council and its wider Community Planning partners in respect of financial and other strategic plans. These implications continue to be a significant input to the budget setting process. The ELLDP 2018 and the draft Supplementary Guidance: Developer Contributions Framework provide for the development of additional capacity or new facilities/infrastructure so as to ensure that developers contribute towards these where appropriate. The cumulative impacts, mitigation interventions and high level costs and contribution requirements would be set out within the LDP Action Programme as well as the Supplementary Guidance: Developer Contributions Framework if these documents are adopted. Once adopted, they will help the Council to maximise recovery of required developer contributions, government grants and other contributions to help accommodate its own commitments within both capital and revenue forward planning. The Financial Strategy approved by the Council in

February 2018 signalled the future significance of the LDP although it was accepted that the vast majority of this would lie outwith the existing 3-year strategy period. Upon adoption of the LDP, there will be a clear imperative that the Council continues to refresh and extend the financial planning horizon, particularly in respect of the Council’s Capital Programme but also in anticipation of the associated revenue implications that will flow from any such investment.

- 6.2 The Planning Service budget includes for the Examination costs and cost for making post-examination modifications to the proposed LDP. Other services budgets may also be affected in concluding this work too.
- 6.3 Personnel - staff of the Planning Service and other services of the Council will be required to complete any further technical work required to address the subsequent stages towards adoption of the LDP, including in terms of the preparation of other planning policy documents as required, and to deliver the plan.

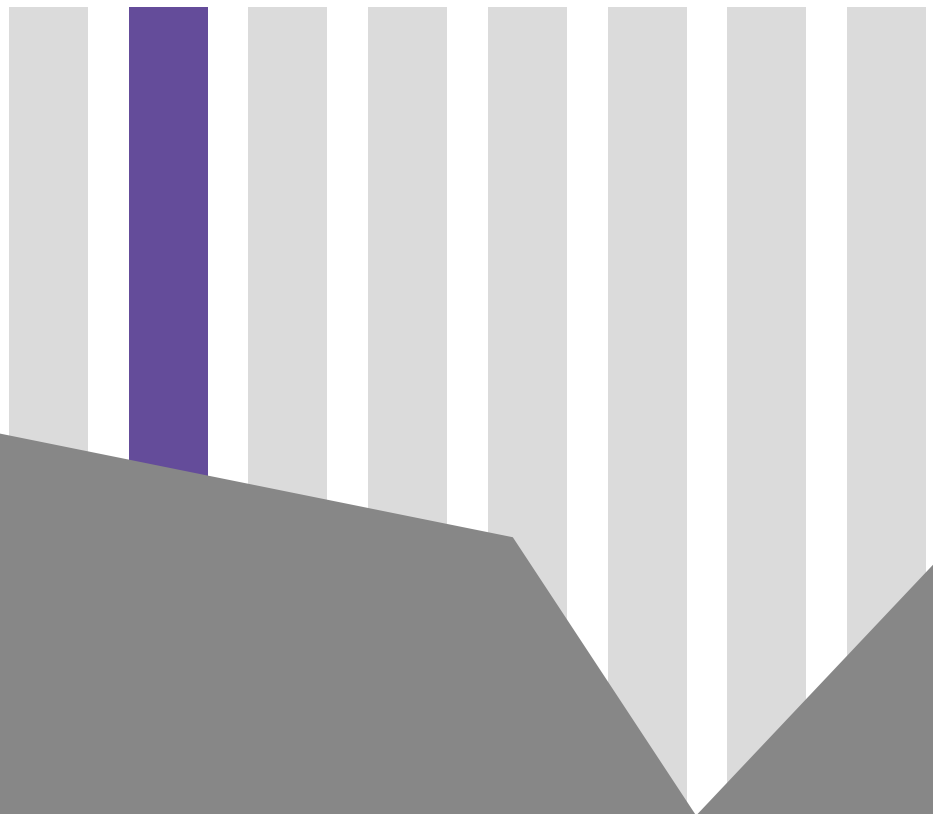
7 BACKGROUND PAPERS

- 7.1 Report to East Lothian Council from the Depute Chief Executive Partnerships and Community Services to East Lothian Council on 29 May 2018
- 7.2 East Lothian Local Development Plan Habitats Regulation Appraisal Record (Member’s Library Reference 71/18, May 2018 Bulletin).

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**updated habitats
regulations appraisal &
appropriate assessment**

23 August 2018



**East Lothian Council Local Development Plan
2018**
(as modified, post-examination)

Record of
Habitats Regulations Appraisal
&
Information for
Appropriate Assessment
(revised)

Sue Bell Ecology

for

East Lothian Council

**East Lothian Council Proposed Local Development Plan
Habitats Regulations Appraisal & Appropriate Assessment**

Version Control

Version Number	Date	Issued to:
1.1	05/08/2016	East Lothian Council
1.2	26/08/2016	East Lothian Council
1.11	25/04/2018	East Lothian Council & SNH
East Lothian Local Development Plan 2018	21/08/2018	East Lothian Council & SNH
	23/08/2018	East Lothian Council & SNH

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INTRODUCTION

Purpose of document

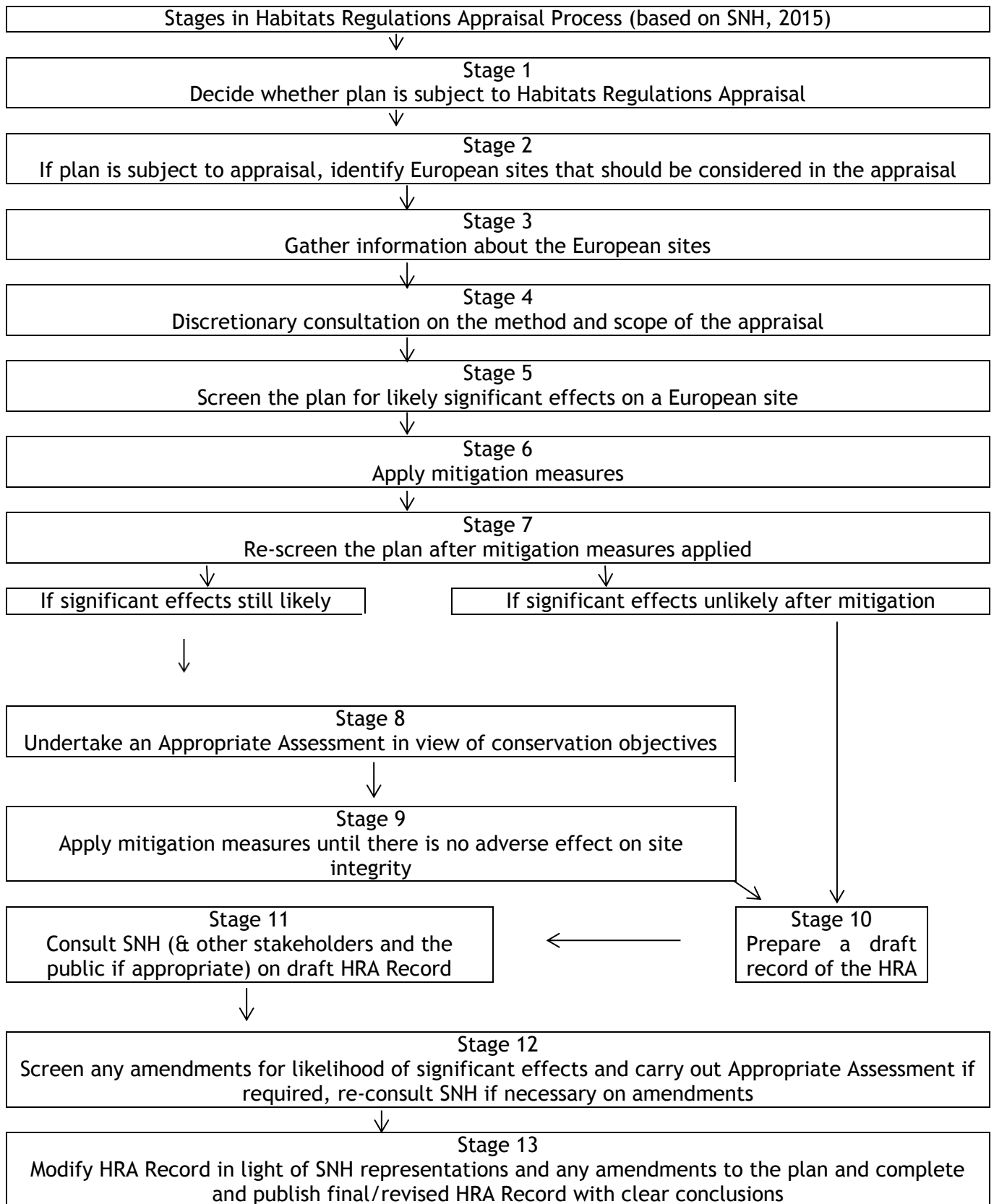
- 1.1 This document summarises information to underpin the Habitats Regulations Appraisal (HRA) and Appropriate Assessment (AA) of the East Lothian Council Local Development Plan (LDP) to be adopted by East Lothian Council. In line with the requirements of S48 (1) of The Conservation (Natural Habitats, &c.) Regulations 1994 this document identifies those elements of the plan which are considered likely to have significant effects on one or more European sites, either alone or in combination with other projects and plans. It also contains an Appropriate Assessment, which considers the implications of those effects on the integrity of the relevant European site. If the conclusions are formally approved by the Council, it will form the Council's Appropriate Assessment of the local development plan.
- 1.2 The conclusions of the Habitat Regulations Appraisal and Appropriate Assessment have been reviewed and updated following a ruling by the European Court of Justice in April 2018. Further details are provided in paragraphs 2.9 - 2.17.
- 1.3 The document has been prepared by Sue Bell, a Chartered Ecologist, on behalf of East Lothian Council, who are the competent authority for the adoption of the plan.

Habitats Regulations Appraisal and Appropriate Assessment

- 1.4 The requirement for Appropriate Assessment is set out in The Conservation (Natural Habitats, &c.) Regulations 1994 as amended¹, which implement Articles 6(3) and 6(4) of the Habitats Directive. Before giving consent to a project or plan that is not directly connected to the management of a European site, and which is considered to have a likely significant effect upon that site, a competent authority must consider the implications for the site in view of that site's conservation objectives. This is known as "Appropriate Assessment". The "test" is that permission for the project or plan should only be given where it has been determined that it will not have, either alone or in combination with other projects and plans, an adverse effect upon the integrity of the European site. Permission can only be granted for plans that have an adverse effect upon integrity if there are no alternative solutions, but there are imperative reasons of overriding public interest that mean the plan should proceed. Before making any decision, the competent authority should consult with Scottish Natural Heritage (SNH), the statutory nature conservation adviser.
- 1.5 The term "Habitats Regulations Appraisal" (HRA) is used to describe the whole process of considering whether a project or plan will give rise to likely significant effects upon a European Site, deciding which European sites should be considered, which aspects of the plan or proposals may give rise to likely significant effects (known as "screening"), and the subsequent Appropriate Assessment (AA) of the implications of these effects upon the integrity of the European Site. The process, which is described by SNH in guidance for Habitats Regulations Appraisal (SNH, 2015) can be sub-divided into 13 stages (see Figure 1.1). This document reports on stages 1 - 13 of the process.

¹ Part IVA (regulations 48 & 49)

Figure 1.1: Stages in Habitats Regulations Appraisal
(Taken from SNH, 2015)



APPROACH

Chronology

- 2.1 The approach has broadly followed the stages and methods set out in “*Guidance for HRA of plans published by SNH*” (2015). The reporting matrices included in Appendix C of that Guidance have been referred to and adapted to meet the presentational needs of this document.
- 2.2 East Lothian Council commenced discussions with SNH during preparation of the Main Issues Report. At that time the need for Habitats Regulation Appraisal was confirmed (Stage 1 - see Figure 1.1), there was discussion about the list of European sites that should be considered in the appraisal (Stage 2 - see Figure 1.1), and some preliminary gathering of information about these sites (Stage 3 - see Figure 1.1).
- 2.3 Following publication of a consultation draft of the local development plan, further work on screening these sites against the policies and proposals in the plan was completed (Stages 3 - 5 - see Figure 1.1). A progress report, which summarised the results of the screening, was produced and issued to SNH for comment (May 2016). A meeting was held with SNH in July 2016 to discuss the progress report. There was broad agreement with the approach that was being taken, including the European sites and proposals that had been screened into the process.
- 2.4 The local development plan was further amended, in the light of technical work relating to infrastructure and transport. Changes to policies and proposals were screened as part of the Habitats Regulation Appraisal (Stages 5 - 7 - see Figure 1.1) and those proposals identified as having likely significant effects, either alone or in combination with other policies and plans, were subjected to an Appropriate Assessment of their implications for European sites (Stage 8), which included the application of mitigation measures (Stage 9).
- 2.5 East Lothian Council approved the proposed Local Development Plan on 6th September 2016. This was accompanied by a draft Habitats Regulation Appraisal record, which incorporated the findings of the Appropriate Assessment and was used in consultations with SNH (stages 10 & 11, see Figure 1.1). The document was also made available to the public.
- 2.6 Following receipt of representations from the public and statutory agencies, on the proposed local development plan, it was subject to examination by Scottish Ministers, who identified a number of modifications to the proposed plan. These modifications were re-screened and the record of the Habitats Regulations Appraisal amended to take account of any changes required to the Appropriate Assessment as a result of those modifications (see paragraphs 2.58 - 2.67 for further details).
- 2.7 In line with stage 12 of Figure 1.1, prior to the plan being presented to East Lothian Council for adoption, SNH was consulted on the revised record of the Habitats Regulations Appraisal. In its response (letter dated 4th May 2018), SNH indicated that it agreed “*with the Council’s conclusion that the various elements of the plan will either have no likely significant effects on European sites, or will not adversely affect the integrity of European sites, either alone or in combination with other plans or projects.*”

- 2.8 On 29th May 2018, East Lothian Council, approved the East Lothian Local Development Plan 2018 and submitted the plan to Scottish Ministers stating its intention to adopt that plan on 7th June 2018.
- 2.9 In April 2018, the European Court issued a judgement in the case of *People over Wind, Peter Sweetman v Coillte Teoranta*². This concluded that measures intended to avoid or reduce the harmful effects of a project or plan should not be considered when deciding whether an Appropriate Assessment was required. Although the judgement was issued in relation to a project, the ruling also referred to plans. This ruling appears to differ from stage 6 of SNH's Guidance, which allows for application of 'mitigation' measures (defined in the guidance as measures to avoid, cancel or reduce the effects of a plan on a European site) as part of the iterative process of screening the proposals.
- 2.10 The potential implications of the European Court ruling became apparent after East Lothian Council had submitted the local development plan (and accompanying record of the Habitats Regulations Appraisal and Appropriate Assessment) to Scottish Ministers. However, it was decided to undertake a review of the way in which mitigation had been applied in the case of the East Lothian Local Development Plan to ensure that it complied with the ruling. Informal advice was sought from SNH during the review process. SNH was also formally consulted on the updated Habitats Regulations Appraisal record (stage 12).
- 2.11 In undertaking this review and updating the Habitats Regulations Appraisal record (including Appropriate Assessment), it was recognised that although the Council had resolved to adopt the plan, it had not yet received authorisation from Scottish Ministers to do so and consequently no formal decision to constitute the East Lothian Local Development Plan could or had yet occurred. That is, if the review identified that changes were required to the local development plan these could be made prior to Scottish Ministers authorising adoption and the plan being implemented, in line with the requirements of S48(1) of the habitats regulations.
- 2.12 Further details of the findings of the review are set out in paragraphs 2.70 - 2.76.
- 2.13 [Identification of European sites](#)
The Habitats Regulations Appraisal needs to consider all the European sites which are potentially affected by a plan, but should keep the assessment proportional to the likelihood of significant effects and avoid excessive data gathering about sites that are not likely to be affected (SNH, 2015).
- 2.14 The SNH Guidance (2015) includes advice on criteria for identifying European sites potentially affected. East Lothian Council identified thirteen European sites that should potentially be considered in the Habitats Regulations Appraisal of the Local Development Plan. These were:
- Firth of Forth SPA
 - Forth Islands SPA
 - Imperial Dock Lock, Leith, SPA
 - Isle of May SAC
 - Firth of Tay and Eden Estuary SAC
 - Berwickshire and North Northumberland Coast SAC
 - River Teith SAC
 - Moray Firth SAC

² Case C-323/17

Firth of Forth and St Andrews Bay Complex dSPA
River Tweed SAC
Fala Flow SPA
Greenlaw Moor SPA
Gladhouse Reservoir SPA

2.15 Since the draft Habitats Regulations Appraisal record was prepared, one site, the Outer Firth of Forth and St Andrews Bay Complex, has moved from draft to proposed Special Protection Area status. The amended change in status did not make a material change to the findings of the appraisal as draft sites are treated in the same manner as proposed sites.

2.16 Background information about each of the 13 sites was collated and considered in the context of the likelihood of connectivity pathways between policies and proposals in the proposed local development plan and the qualifying interests (QI) of each European site (see Appendix A).

Qualifying Interests

2.17 Qualifying Interests (QI) are the features of international importance that have led to the designation of a European site. These may be habitats and/or species. A list of the Qualifying Interests for each European site considered during the screening stage is included in Appendix A. The effects of the local development plan upon the Qualifying Interests are a central part of the screening and Appropriate Assessment process.

Proposed local development plan policies and proposals

2.18 The Habitats Regulations Appraisal has been conducted alongside development of the East Lothian Local Development Plan (LDP). The initial screening was carried out against version 1.5 of that plan, which was presented to Councillors in November 2015. The evolving versions of the proposed plan have been re-screened, and the Habitats Regulations Appraisal record has been updated to reflect any changes in proposals, including as a result of the examination of the plan by Scottish Ministers. It has subsequently been updated following a review prompted by the European Court ruling in April 2018.

2.19 The proposed East Lothian Local Development Plan contains both policies and spatial proposals.

2.20 Over one hundred policies are included in the proposed local development plan, which deal with a variety of topics. Many of these policies are not location-specific, but some are linked to particular geographic locations e.g. proposals for expansion of schools.

2.21 The list of spatial proposals within the proposed local development plan covers three types of site:

- Allocations included within the previous East Lothian Local Plan, which have not yet been developed. For these sites, the principle and nature of development has already been agreed, and these sites were subject to Habitats Regulation Appraisal as part of the previous plan.
- Allocations included in the Housing Land Audit 2015 and other sites that have come forward as “windfall” sites, and for which planning applications have been received and approved. In many cases these sites have already been built or are at an advanced stage of development. These sites will have been considered for Habitats Regulation Appraisal.

- New allocations that have not been included in previous local plans. These have been subject to initial screening through the Strategic Environmental Assessment process, including discussion with SNH, but now require consideration within the Habitats Regulation Appraisal process.

Screening for effects

- 2.22 Screening describes the process of identifying which aspects of a plan - either alone or in combination with other policies and plans - need to be considered further for Appropriate Assessment (SNH, 2015).
- 2.23 Each of the policies and spatial proposals in the proposed local development plan has been screened to identify those that may give rise to likely significant effects (LSE) on each of the European sites considered in the appraisal. This process has also identified policies/proposals that will not give rise to LSE on their own, but which will result in Minor Residual Effects (MRE) and hence require consideration for cumulative effects within the local development plan and in combination with other policies and plans.
- 2.24 For the screening phase, there is a low threshold for identification of LSE. Effects are considered likely if they cannot be ruled out on the basis of objective information^{3,4}.
- 2.25 The screening method has followed the approach recommended in the SNH Guidance (2015). This is a sequential approach, whereby policies and proposals are assigned to one of the following seven categories:
- 1 = General Policy Statements
 - 2 = Projects referred to in, but not proposed by, the plan
 - 3a = Elements of the plan with no LSE on the European Site as they are intended to protect the natural or built environment
 - 3b = Elements of the plan with no LSE on the European Site as they do not in themselves lead to development or other change.
 - 3c = Elements of the plan that make provision for change, but there is no link or pathway between them and the qualifying interests of a European Site.
 - 3d = Elements of the plan that make provision for change, but there is not likely to be a significant effect, but may give rise to Minor Residual Effects.
 - 3e = Elements of the plan for which effects cannot be determined as the nature and location of any effects is unknown owing to the general nature of the plan.
- 2.26 Those policies/proposals assigned to categories 1, 2, 3a, 3b, 3c and 3e have been screened out from further consideration for effects upon a particular European Site. Elements of the plan that meet criterion 3d have been retained for consideration of cumulative and in combination effects.
- 2.27 Where a policy in the proposed local development plan relates to specific locations e.g. for expansion of schools, then the screening is of the individual locations, rather than the policy as a whole.
- 2.28 As noted above, the spatial proposals include some allocations that were included within the previous East Lothian Local Plan, and some sites that have come forward for development since the previous Local Plan was approved (“windfall”

³ EC, 2000. Section 4.4.2

⁴ The Waddenzee ruling - European Court of Justice Case C-127/02 dated 7th September 2004

sites). These sites have been considered to have been subjected to screening of their effects in their own right and so are only considered for cumulative or in combination effects i.e. they are considered to potentially fall into category 3d - having MRE. New allocations that have not been identified previously have been screened for both LSE and MRE.

- 2.29 New proposals and policies with a spatial dimension have been added during the development of the local development plan and one site was added as a result of the examination of the plan by Scottish Ministers. Each new proposal that has a spatial element has been screened as it has been added to the plan. One site within the proposed plan (Howe Mire - numbered MH13 in previous iterations of this record) was removed during the examination of the plan, but has been retained within this record to provide an audit trail of decisions.

Screening criteria

- 2.30 In order for there to be a LSE there must be an impact pathway between the policy/proposal and a European Site. Appendix A includes a list of the impact pathways identified for each of the European sites.
- 2.31 A number of criteria have been developed to assist in identifying impact pathways for some of the European sites. A precautionary approach has been taken to developing these criteria, to ensure that policies and proposals are not screened out at too early a stage.

Firth of Forth SPA

- 2.32 A full list of potential impact pathways is included in Appendix A. Based on this analysis, the key impact pathways for the Firth of Forth SPA include:
- Disturbance of qualifying interests at inland roost/feeding sites.
 - Disturbance of qualifying interests at the coast.
 - Changes to water quality or coastal processes.
- 2.33 The qualifying interests (QI) of the Firth of Forth SPA are a number of seabird and waterfowl species. Whilst many of these spend all their time at the coast or in the sea, some species are known to use areas of suitable habitat at inland sites as high tide roost sites, or feeding areas. These are: pink-footed goose, and six wader species - curlew, lapwing, grey plover, golden plover, redshank and oystercatcher. Criteria to identify inland areas that may be used by these species have been developed and used in other Habitats Regulation Appraisal involving the Firth of Forth (e.g. Falkirk Council, Clackmannanshire Council) and agreed with SNH. These criteria are based on published research into the distances that species will travel to reach inland roosts and the types of habitat that are suitable for foraging and roosting.
- 2.34 The distribution of qualifying interests around the Firth of Forth is based on research, which was commissioned by SNH and dedicated goose surveys organised by East Lothian Council.
- 2.35 Data about the use of inland areas around the whole of the Forth Estuary were collected by the British Trust for Ornithology (BTO) in association with BirdWatch Ireland and the Scottish Ornithologists' Club as part of surveys for the Bird Atlas 2007-11. Data were collected either from 10-km squares or tetrads (2 x 2 km squares). Wader species were mapped within about 5 km, or three tetrads from the coast, whilst pink-footed geese were mapped within approximately 20 km of the coast, or two to three 10 x 10 km squares of the coast. Each tetrad was visited

at least twice over the four winter period 2007/08 to 2010/11. These visits occurred in November-December and January-February. Observers could make additional visits if they chose. The counts provide a snapshot in time, and do not provide an indication as to the frequency with which particular sites are used. As these data are provided on a tetrad basis, they do not pinpoint the precise location from which birds were recorded. Some tetrads may also overlap the coast, thus the counts may be a representation of coastal high tide roost sites (already considered through the WeBS data), rather than inland sites.

- 2.36 For the screening exercise, no distinction was made between different habitat preferences of the species that use inland sites; potentially suitable habitat is defined as areas of grassland (all types) or agricultural fields (all cropping regimes). Land use has been assessed from aerial photographs available through Google maps.
- 2.37 The criteria that have been applied to identify spatial proposals that may have an effect are:
- 2.38 Waders (i.e. curlew, redshank, oystercatcher, grey plover, golden plover, lapwing):
- the site is within 5 km of the coast⁵; and
 - the site lies within a tetrad from which that qualifying species has been recorded; and
 - the site appears, based on aerial photographs, to contain potentially suitable habitat.
- 2.39 Small sites (< 3 ha)⁶ in the middle of urban areas have been excluded, as the qualifying interest species favour wide views in order to scan for predators. Some other sites within or adjacent to urban areas have been screened out for species known to be sensitive to disturbance: grey plover, golden plover and lapwing.
- 2.40 Pink-footed goose:
- the site lies within c. 20 km of the coast; and
 - the site lies within a 10 km square/ tetrad from which the qualifying species has been recorded; and
 - the site appears, based on aerial photos, to contain open areas of suitable habitat that are at least 6 ha in size (or combined with adjacent open areas will reach this size).
- 2.41 The East Lothian LDP will result in an expansion in housing stock to accommodate an increasing population. This in turn will increase the level of recreation undertaken, and consequently a potential elevation in the level of disturbance of qualifying interests at roosting and feeding sites, particularly those at the coast. To provide a broad indication of those housing developments that might give rise to elevated levels of coastal recreation, published research into participation in outdoor recreation has been reviewed. Surveys of visits to the outdoors have shown that the greatest proportion are carried out within 2 miles (equivalent to 3.2 km) of home (40%), and 2 - 5 miles (equivalent to 3.2 - 8 km) of home (34%)⁷. Based on these figures it has been decided to use a broad criterion of housing

⁵ Although some species of wader, e.g. Golden Plover, will travel further inland, a distance of 5 km has been selected for this study.

⁶ RSPB, undated

⁷ TNS, 2014

developments within 5 km of the coast, to identify those considered as potentially contributing to recreational activity at the coast. This distance has been measured in a direct line from the boundary of the development to the closest area of coast, and has not, for the screening assessment, taken account of the actual travel distance using roads/footpaths or access points to the coast.

- 2.42 The proposals were also reviewed to identify whether they would lead to changes in coastal water quality as a result of changes to sewage treatment or introduction of untreated discharges. None of the proposals will lead to the need to upgrade existing or install new sewage treatment works to meet quality standards.

Fala Flow and Gladhouse Reservoir SPAs

- 2.43 Pink-footed goose is the qualifying interest at both of these European sites. Whilst the sites are located beyond the boundary of East Lothian, as noted above, pink-footed goose is known to travel up to 20 km between roosting and feeding sites. Maps of feeding areas associated with these roost sites have been published⁸. These maps have been used to assist in the identification of known feeding areas close to spatial proposals included in the local development plan.

Screening for cumulative and “in combination” effects with other policies and plans

- 2.44 The cumulative effects of all the policies and plans that give rise to MRE within the proposed East Lothian LDP have been considered. This has involved, for example, considering whether the loss of individually small areas of habitat of potential value to wader species that are a qualifying interest of the Firth of Forth SPA might give rise cumulatively to a LSE as a result of the total area of habitat lost.
- 2.45 Some of the development sites were allocated by previous local plans or form part of the established housing or economic land supply or are windfall proposals that have planning permission. Housing and economic developments on previously undeveloped land have been considered for cumulative effects in relation to habitat loss. Housing developments have also been considered for cumulative effects in relation to recreational use of the coast.
- 2.46 A similar approach has been carried out to consider the total effect of changes arising from the proposed East Lothian LDP and other policies and plans. Individual policies or groups of policies that have been identified as having MRE upon a European site have been screened with the MRE arising from other plans or projects to see if they would act “in combination” to have an LSE upon that European site.
- 2.47 Plans that should be considered for the potential of “in combination” effects are defined in SNH’s Guidance as:
- a) The incomplete parts of projects that have been started but which are not yet completed.
 - b) Projects given consent but not yet started.
 - c) Projects that are subject to applications for consent.
 - d) Projects that are subject to outstanding appeal procedures.
 - e) Any known unregulated projects that are not subject to any consent.
 - f) Ongoing projects subject to regulatory reviews, such as discharge consents or waste management licenses.

⁸ Mitchell, 2012

- g) Development that has recently been completed, but where any residual effects may not form part of the environmental baseline.
 - h) Policies and proposals that are not yet fully implemented in plans that are still in force.
 - i) Draft plans that are being brought forward by other public bodies and agencies.
- 2.48 The list of other projects and plans that should be considered for ‘in combination’ effects has been kept under review during the plan preparation process, and has been updated following the examination of the proposed plan.
- 2.49 Several of the other plans considered for “in combination” effects have been subject to their own Habitats Regulation Appraisal. Some of these provide clear conclusions on aspects of the plan that give rise to MRE and hence need to be screened in to the “in combination” assessment. However, some plans do not provide a clear list of MRE. In these cases, a judgement was made as to whether there would be MRE arising from the project.
- Appropriate Assessment**
- 2.50 Those proposals identified as having a LSE, either alone or in combination with other policies or plans, require an Appropriate Assessment.
- 2.51 There is no prescribed approach or method for an Appropriate Assessment. The “test” is that the plan will not have an adverse effect upon the integrity of a European site. “Integrity” of a site is defined by the Scottish Government as *“the coherence of its ecological structure and function, across its whole area, which enables it to sustain the habitat, complex of habitat and/or the levels of populations of the species for which it was classified.”*⁹ It is judged in terms of the conservation objectives that are set for each European site.
- 2.52 The degree of certainty of conclusions is summarised in the SNH Guidance. This quotes a Court of Session ruling from 1998, which concluded that it is not possible to state an absolute guarantee that there would be no adverse effect on integrity. The competent authority should identify the potential risks, so far as they may be reasonably foreseeable, in the light of such information as can reasonably be obtained, and put in place a legally enforceable framework with the aim of preventing the risks from materialising¹⁰.
- 2.53 The Appropriate Assessment is based on existing survey information, reference to published research into the effects of particular activities on qualifying interests, and expert judgement. Data sets that were used during the broad-brush screening stage have been re-analysed together with other existing data sets.
- 2.54 Information about the distribution and numbers of qualifying interests of the Firth of Forth is provided through the Wetland Bird Survey (WeBS). Core counts are carried out for lengths of the coast once monthly at high tides, when birds are most easily counted at roosts. Low tide counts are also made for lengths of coast, but these differ to the lengths used during the core counts. Low tide counts are made in at least one winter every six years, with up to four counts being made

⁹ Scottish Government Circular 6/1995 (Revised June 2000) “Habitats and Birds Directives”.

¹⁰ WWF-UK Ltd and RSPB v Secretary of State for Scotland *et al.* 1999. 1 C M L R 1021 (1999) Env LR 632. Court of Session, Edinburgh 28th October 1998

during the winter period. Core count and Low Tide data have been obtained from BTO.

- 2.55 The screening exercise focussed upon spatial proposals for areas of agricultural land or grassland, which were larger than 6 ha in size and were located within tetrads from which pink-footed goose had been recorded. The Appropriate Assessment has drawn on additional information sources to determine which areas are actually used by geese. Surveys of feeding sites have been carried out since 2010 by East Lothian Council Ranger Service and volunteers from the Scottish Ornithologists' Club and others. Data comprise *ad hoc* records, biased towards fields visible from main roads; and more systematic surveys of the areas north-west of Haddington and from the Garleton Hills (autumn 2015). Goose numbers are categorised as Low (up to 299 geese), moderate (300 - 399 geese); High (1000 - 2999 geese; and very high (>3000 geese). These thresholds were based on proportions of the average UK goose population between 2006 and 2011 (approximately 300,000). Data are available as grid references. Maps of goose feeding areas have also been produced^{11,12,13}.
- 2.56 Assessment of effects of recreation at the coast has drawn on published survey information about visits to the countryside, and use of the John Muir Way.
- 2.57 The Appropriate Assessment has considered the implications for European sites of the likely significant effects of proposals within the East Lothian Local Development Plan, both alone and in combination with other projects and plans. Effective and enforceable measures to avoid adverse effects on site integrity have been identified as part of the Appropriate Assessment, which is consistent with stage 9 of Figure 1.1.
- [Changes to the Habitats Regulations Appraisal record and information for the Appropriate Assessment](#)
[Changes arising from the Examination of the plan](#)
- 2.58 Scottish Natural Heritage was consulted on the draft Habitats Regulation Appraisal Record, which accompanied the proposed local development plan submitted to Scottish Ministers for Examination. Under Section 48 (3) of the Conservation (Natural Habitats &c.) Regulations 1994, East Lothian Council, as the competent authority, is required to have regard to these representations. Overall, SNH considered the proposed plan met the requirements of the Habitats Regulations.
- 2.59 Scottish Natural Heritage submitted representations concerning the proposed plan as a whole to Scottish Ministers during the examination process. These, together with all representations, were considered by the Reporter as part of the examination of the proposed plan. The examination report contained a number of recommended modifications for the plan.
- 2.60 Recommendations contained in examination reports are largely binding, other than in certain circumstances. The Town & Country Planning (Grounds for Declining to Follow Recommendations) (Scotland) Regulations 2009 allows the planning authority not to follow the Reporter's recommendations when doing so would be incompatible with Part IVA of the Conservation (Natural Habitats &c.) Regulations 1994.

¹¹ Mitchell, 2012

¹² Brown & Brown, 2011

¹³ Brown, & Brown, 2009

- 2.61 All the modifications arising from the examination of the plan have been screened for likely significant effects on European sites, both alone and in combination with other projects and plans. This has included reviewing whether there are additional projects and plans that have been developed since the original Habitats Regulations Appraisal was conducted. This document and supporting spreadsheets have been updated to reflect these modifications.
- 2.62 For the purposes of the Habitats Regulations Appraisal, the most significant modifications were the removal of allocation MH13 Howe Mire from the proposed plan and the addition of a new housing allocation site at Dunbar (subsequently labelled DR12 Land at Newtonlees Farm, Dunbar). Two allocations in Tranent (TT15 and TT16) were also removed. In addition, proposals and spatial allocations aimed at safeguarding extensions to cemeteries were removed from the proposed plan and there were also some modifications relating to education provision.
- 2.63 There is one proposed modification contained within the examination report, which has not been incorporated *verbatim* into the revised plan. In its representation to the proposed plan, the RSPB requested that any reference to sites designated under the Habitats Directive in the ‘*Energy Generation, Distribution & Transmission*’ section of the plan should be broadened to refer to both the Habitats and Birds Directives. The Reporter accepted this request and recommended that the plan be modified accordingly.
- 2.64 Implementation of the Habitats Directive in the UK is via the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) - usually referred to as the ‘Habitats Regulations’. In terms of the requirements to consider the need for Appropriate Assessment, the Habitats Regulations apply to both Special Protection Areas identified under the Birds Directive and Special Areas of Conservation identified under the Habitats Directive. In addition, the Habitats Regulations extend these requirements to include *proposed* areas as well as those which have been designated. Together, these sites which are designated or identified as potentially to be designated are defined within the Habitats Regulations as ‘European sites’ (also known as Natura 2000 sites).
- 2.65 There is a concern, particularly in the light of the UK Government’s decision to leave the European Union, that the modified wording proposed by RSPB and accepted during the examination could be interpreted as only applying to fully designated sites. To ensure that the wording is compatible with Part IVA of the Habitats Regulations, the proposed modification has been further amended to refer to European sites, rather than the Directives. As noted above, the term ‘European Sites’ is defined within the Habitats Regulations as applying to both proposed and designated sites under the Habitats and Birds Directives. Consequently, it is considered that this would address the intention of the modification proposed within the examination report and would retain the broad approach required by UK law, rather than potentially restricting the requirement to only those sites that have been fully designated.
- 2.66 The modifications at examination have resulted in some amendments to the numbering of proposals between this and previous versions of the Habitats Regulations Appraisal record. The removal of site MH13 Howe Mire has resulted in the subsequent re-numbering of proposals MH14 - MH16. Thus, MH14 Land at Whitecraig South is now MH13 Land at Whitecraig South; MH15 Land at Whitecraig North is now MH14 Land at Whitecraig North; and MH16 Whitecraig Primary School

Expansion Land is now MH15. Removal of proposals for Development Frameworks has resulted in the re-numbering of proposal MH18 Levenhall to MH16 Levenhall.

- 2.67 In addition, the examination recommended removal of proposal OS5 - Provision of Burial Space. Consequently, proposals OS6 - Allotment Provision and OS7 - Allotment Sites have been re-numbered OS5 and OS6 respectively.
- 2.68 This document has also taken account of new information which was not available at the time that the previous document was produced. In particular, the findings of a wintering bird survey of 32 of the spatial allocations¹⁴ included within the plan¹⁵. The survey, which was commissioned by East Lothian Council, focused on those sites identified as holding potentially supporting habitat within tetrads from which Qualifying Interests had been recorded during the BTO survey. The purpose of the survey was to provide additional information about the presence of Qualifying Interests at sites, to remove uncertainty from the Appropriate Assessment. As this survey was commissioned prior to the examination of the proposed plan, the site allocations use the reference numbering of the proposed plan.
- 2.69 As noted in paragraph 2.7, East Lothian Council sought the advice of SNH on the updated Habitats Regulations Appraisal report incorporating the Appropriate Assessment. SNH agreed with the findings of the Appropriate Assessment.
- Changes arising from the review following the European Court ruling**
- 2.70 Following the publication of the European Court ruling identified in paragraph 2.9, a review was conducted of the Habitats Regulations Appraisal record. The review considered whether the modification of policy wording in the proposed plan (stage 6) represented mitigation in the sense that it was used in the European Court ruling (i.e. measures to avoid or reduce the harmful effects) or whether it formed part of the iterative plan-making process. It also considered whether the modified policy wording had resulted in a failure to carry out an Appropriate Assessment of some proposals that should have been subject to such an assessment. Informal advice from SNH was also sought on these points.
- 2.71 There is no single prescribed method defining the format and content of an Appropriate Assessment. Although the SNH Guidance sets out screening and Appropriate Assessment in a series of sequential steps, it also recognises that it is an iterative process: *“At any stage, as soon as likely significant effects are identified, the plan-making body should look to introduce measures to eliminate or reduce them. To carry weight, such mitigation should preferably be included in the policy wording where policies are distinguishable from other text, or in the text of the plan where policies are not distinguished from other text. However, if there are doubts about the efficacy of such measures, it is likely to be necessary to consider these as part of the Appropriate Assessment. This is because the plan-making body will not have been able to exclude the risk of a significant effect on a European site on the basis of objective information.”*¹⁶

¹⁴ Sites surveyed were: BW2, DR6, EGT1, MH1, MH2, MH3, MH4, MH7, MH8, MH9, MH10, MH12, MH13, MH14, MH15, NK5, NK7, NK8, NK9, NK10, PS1, TT1, TT2, TT3, TT4, TT7, TT8, TT11, DR2, DR5, DR7. N.B. Sites numbered MH13 - MH15 in this document relate to sites numbered MH14 - MH16 in the bird survey report. They were re-numbered following the examination of the proposed plan, which recommended removal of a site: MH13 Howe Mire.

¹⁵ 3E Services Limited, 2017

¹⁶ P. 26, SNH Guidance

- 2.72 This iterative process, which can require obtaining more information or analysis in order to understand and characterise the effects on European sites, combined with no single definition of what constitutes an Appropriate Assessment, can lead to a lack of clear distinction between where screening ends and Appropriate Assessment begins.
- 2.73 Previous versions of the Habitats Regulations Appraisal record identified a number of policies, which had been re-worded to remove any uncertainty about their effects. Although some of these re-worded proposals had been subjected to Appropriate Assessment, the review highlighted that the document did not make it clear whether this re-wording was part of the normal iteration of policy development, represented simple clarifications at screening stage to remove uncertainty about effects, or had been added as part of the ‘Appropriate Assessment’ in order to conclude that there would be no adverse effects on site integrity.
- 2.74 As a result of the review, this document sets out more clearly the nature and sequence of the appraisal process. In doing so, it sets out the Appropriate Assessment of the effects of individual policies as well as the Appropriate Assessment of the cumulative effects of policies.
- 2.75 SNH has been consulted on this revised record.
- 2.76 The review has not resulted in any change in the overall conclusions of the Habitats Regulations Appraisal or Appropriate Assessment i.e. that the proposals within the East Lothian Local Development Plan will either have no likely significant effects on European sites, or will not adversely affect the integrity of European sites, either alone or in combination with other plans or projects. Consequently no changes to the proposed local development plan are required.

RESULTS/CONCLUSIONS OF SCREENING

Results of initial screening and redrafting of policies

- 3.1 Following the initial screening exercise, the wording of a small number of proposals was found to be ambiguous, in that significant effects were not likely, but it was felt that the wording of the proposal could be modified to clarify both the meaning and effects of the proposal. To address these issues of uncertainty, the policies/proposals were re-drafted. Re-wording forms part of the normal process of developing proposals and policies for development plans. Whilst this re-drafting has been described as ‘mitigation’ in previous versions of this Habitats Regulations Appraisal record, it is not considered to be ‘mitigation’ as used in the European Court ruling, as the wording was not introduced to avoid or reduce harmful effects of the proposal, nor to avoid the need for Appropriate Assessment. The re-worded policies were screened for likely significant effects, and several were subject to Appropriate Assessment. To provide an audit trail of amendments, a list of policies that were re-drafted to remove ambiguity of effects are included in Appendix B, together with comments as to why that particular proposal was modified.

Summary of screening

- 3.2 Appendix C, provided as a separate Excel spreadsheet, is a summary screening matrix for each of the policies and proposals in the proposed local development plan. It shows the criterion under which different policies/proposals are excluded as having LSE on each of the European sites, and also identifies those policies/proposals that have been identified as having LSE alone and so require

Appropriate Assessment. It also identifies those policies/ proposals that have MRE and hence need to be considered for cumulative and in combination effects. As each European site has a different suite of qualifying interests and connective pathways, there is some variation between sites in the criterion under which some proposals have been screened out.

European sites

- 3.3 A description for the rationale for screening particular European sites in or out of further consideration is provided below.

Firth of Forth SPA

- 3.4 Policies and proposals were identified as having LSE alone or in combination with other projects and plans. Further details are provided in Tables 3.1, 3.2 and 3.3 and paragraphs 3.19 - 3.22 and 3.25. Table 3.1.

Forth Islands SPA

- 3.5 The qualifying interests are sea birds, who spend their time either nesting on the islands, feeding in the waters around the islands, or on migration. Pressures on qualifying interests at the site are linked to invasive species and inter-specific competition. Development brought forward under one proposal, EGT1: Land at Former Cockenzie Power Station has been identified as potentially having LSE. At this stage, there are no detailed proposals for the nature and scope of any development that may come forward under this proposal. However, given the coastal location of the site, there is a potential for effects on qualifying interests to arise from any development that altered the availability or quality of feeding habitat or prey for those species or created disturbance of qualifying species. There is also the potential for a further policy: EGT3 - Forth Coast Area of Co-ordinated Action to give rise to LSE, if it results in developments within the marine zone (which is by no means certain). None of the other policies or spatial proposals within the proposed East Lothian LDP has been identified as having a connective pathway to the European site and its qualifying interests. Consequently, Forth Islands SPA has been screened out of further consideration other than for proposal EGT1 and EGT3.

Imperial Dock, Leith SPA

- 3.6 No connective pathways between aspects of the proposed East Lothian LDP and the QI (breeding common terns) have been identified. The tern feeding areas are close to the SPA, and none of the proposals arising from the local development plan will have an influence on water quality or availability of prey in that area. Imperial Dock, Leith SPA has been screened out of further consideration.

Isle of May SAC

- 3.7 The qualifying interests are reefs and grey seals. Grey seals come ashore to breed and they feed within the Firth of Forth. None of the proposals within the proposed East Lothian LDP will influence land management or use at the haulout sites on the Isle of May. Development brought forward under one proposal, EGT1: Land at Former Cockenzie Power Station, has been identified as potentially having LSE. At this stage, there are no detailed proposals for the nature and scope of any development that may come forward under this proposal. However, given the coastal location of the site, there is a potential for effects on qualifying interests to arise from any development that altered the quality or availability of feeding habitat or prey for those species, or created disturbance. There is also the potential for a further policy: EGT3 - Forth Coast Area of Co-ordinated Action to give rise to LSE, if it results in developments within the marine zone (which is by no means certain). None of the other policies or spatial proposals within the

proposed East Lothian LDP has been identified as having a connective pathway to the qualifying interests. Consequently, Isle of May SAC has been screened out of further consideration other than for proposal EGT1 and EGT3.

Firth of Tay and Eden Estuary SAC

- 3.8 There are no connective pathways between the proposals of the East Lothian LDP and the habitats that form the qualifying interests of the SAC, owing to the distance between any effects arising from the plan and the SAC. The common seals, which are a qualifying interest of the SAC, do not haul out on the mainland of East Lothian. Development brought forward under one proposal, EGT1: Land at Former Cockenzie Power Station, has been identified as potentially having LSE. At this stage, there are no detailed proposals for the nature and scope of any development that may come forward under this proposal. However, given the coastal location of the site, there is a potential for effects on qualifying interests to arise from any development that altered the quality or availability of feeding habitat or prey for common seals, or resulted in disturbance of common seals, which are a qualifying interest of the European site. There is also the potential for a further policy: EGT3 - Forth Coast Area of Co-ordinated Action to give rise to LSE, if it results in developments within the marine zone (which is by no means certain). None of the other policies or spatial proposals within the proposed East Lothian LDP has been identified as having a connective pathway to the islands. Consequently, Firth of Tay and Eden Estuary SAC has been screened out of further consideration other than for proposal EGT1 and EGT3.

River Teith SAC

- 3.9 The River Teith SAC is located upstream of East Lothian. Qualifying interests of the River Teith SAC include migratory fish species that will pass the coastline of East Lothian. The only policies within the plan that could lead to development with effects on the estuarine environment are EGT1: Land at Former Cockenzie Power Station and EGT3: Forth Coast Area of Co-ordinated Action. At this stage, there are no detailed proposals for the nature and scope of any development that may come forward under this proposal. However, given the coastal location of the proposals, there is a potential for effects on qualifying interests to arise from any development that affected movement of the qualifying interest species during migration e.g. as a result of physical or chemical barriers. None of the other policies or spatial proposals within the proposed East Lothian LDP has been identified as having a connective pathway to the islands. Consequently, River Teith SAC has been screened out of further consideration other than for proposals EGT1 and EGT3.

Moray Firth SAC

- 3.10 The qualifying interests are subtidal sandbanks and bottlenose dolphin. Although the dolphins are considered resident within the Moray Firth, they do occur further south along the coast. Development brought forward under one proposal, EGT1: Land at Former Cockenzie Power Station has been identified as potentially having LSE. At this stage, there are no detailed proposals for the nature and scope of any development that may come forward under this proposal. However, given the coastal location of the site, there is a potential for effects on qualifying interests to arise from any development that altered the quality or availability of feeding habitat or prey for those species or resulted in disturbance of the dolphins. There is also the potential for a further policy: EGT3 - Forth Coast Area of Co-ordinated Action to give rise to LSE, if it results in developments within the marine zone (which is by no means certain). None of the other policies or spatial proposals within the proposed East Lothian LDP has been identified as having a

connective pathway to the islands. Consequently, Moray Firth SAC has been screened out of further consideration other than for proposal EGT1 and EGT3.

- 3.11 Outer Firth of Forth & St Andrews Bay Complex pSPA
The qualifying interests are seabird species that spend most of their time at sea. Some of these species also form a qualifying interest of the Firth of Forth SPA and Forth Islands SPA. Development brought forward under one proposal, EGT1: Land at Former Cockenzie Power Station has been identified as potentially having LSE upon qualifying interests. At this stage, there are no detailed proposals for the nature and scope of any development that may come forward under this proposal. However, given the coastal location of the site, there is a potential for effects on qualifying interests to arise from any development that altered the quality or availability of feeding habitat or prey for those species or which results in disturbance of those species. There is also the potential for a further policy: EGT3 - Forth Coast Area of Co-ordinated Action to give rise to LSE, if it results in developments within the marine zone (which is by no means certain). Consequently, the Outer Firth of Forth & St Andrews Bay Complex pSPA has been screened out of further consideration other than for proposal EGT1 and EGT3.

- 3.12 River Tweed SAC
A small portion of East Lothian lies within the catchment area of the River Tweed. As the qualifying interests of the SAC are reliant on good water quality, including low sediment levels, there could be a connective pathway between any development that leads to a change in the quantity and quality of run-off into Tweed or its tributaries. The location of the catchment area and nature of the land means that there are unlikely to be proposals for development within this area. Any applications are most likely to be linked to wind generation, tourism or telecommunications. The policy wording for telecommunications developments, coupled with the environmental protection policies within the East Lothian proposed LDP means that effects upon the River Tweed SAC will be avoided.

- 3.13 Guidance for windfarms within East Lothian has already been published, and subjected to a Habitats Regulation Appraisal and Appropriate Assessment. This concluded that adverse effects upon the River Tweed could be avoided by specifying appropriate mitigation measures at the project level. This conclusion has been reviewed through the Appropriate Assessment in relation to proposals WD1 - WD3.

- 3.14 Fala Flow SPA
The SPA lies beyond the boundary of East Lothian, but pink-footed goose, which are the QI, are known to use feeding areas within East Lothian. Policies and proposals were identified as having potential LSE alone or in combination with other projects and plans. See Tables 3.1 and 3.2 for further details.

- 3.15 Greenlaw Moss SPA
The SPA lies beyond the boundary of East Lothian. The feeding areas thought to be used by the QI associated with the SPA are not located within East Lothian. It is considered that there are no connective pathways between the proposals of the proposed local development plan and the QI of the SPA. It has been screened out of further consideration.

- 3.16 Gladhouse Reservoir SPA
The SPA lies beyond the boundary of East Lothian, but pink-footed goose, which is the QI, are known to use feeding areas within East Lothian. Policies and

proposals were identified as having potential LSE alone or in combination with other projects and plans. See Tables 3.1 and 3.2 for further details.

Policies/proposals which when considered alone are considered to have an LSE upon a European Site

3.17 Those proposals for which likely significant effects could not be ruled out are summarised in Table 3.1.

Table 3.1: LSE arising from proposals (alone) upon a named European Site.

Element of proposed East Lothian LDP giving rise to likely significant effect & nature of effect	European Site
EGT1 - availability and quality of feeding habitat or prey for qualifying interest species; disturbance of qualifying interests.	Firth of Forth SPA Forth Islands SPA Isle of May SAC Firth of Tay & Eden Estuary SAC River Teith SAC Moray Firth SAC Outer Firth of Forth & St Andrews Bay Complex pSPA
EGT3 - availability and quality of feeding habitat or prey for qualifying interest species; disturbance of qualifying interests.	Firth of Forth SPA Forth Islands SPA Isle of May SAC Firth of Tay & Eden Estuary SAC River Teith SAC Moray Firth SAC Outer Firth of Forth & St Andrews Bay Complex pSPA
TOUR1 - loss of habitat/ disturbance for qualifying interests	Firth of Forth SPA
TOUR3 - disturbance of qualifying interests	Firth of Forth SPA
T3 - loss of habitat/ disturbance of qualifying interests	Firth of Forth SPA
DC6 - loss of habitat/ disturbance of qualifying interests	Firth of Forth SPA
CH9 - loss of habitat/ disturbance of qualifying interests	Firth of Forth SPA
WD1, WD2, WD3 - effects on quantity/ quality of water entering the River Tweed	River Tweed SAC
WD1, WD2, WD3 - loss of habitat/ disturbance of qualifying interests, particularly pink-footed goose	Firth of Forth SPA Fala Flow SPA Gladhouse Reservoir SPA

Combinations of policies/proposals that have been considered for cumulative LSE upon a European Site

3.18 Those proposals within the East Lothian LDP that were identified individually as having MRE upon a European site have been re-screened for their cumulative effects upon those European sites.

- 3.19 Three European sites: Firth of Forth SPA, Fala Flow SPA and Gladhouse Reservoir SPA were identified as experiencing LSE as a result of the cumulative effects of proposals within the East Lothian proposed local development plan. Table 3.2 provides a summary of the nature of these LSE and the European Sites affected. Appendix D contains a detailed list of the combinations of proposals that have been identified as giving rise to these MRE and the qualifying interests affected.
- 3.20 The potential for LSE on the Firth of Forth SPA caused by cumulative disturbance from construction works at the coast has been considered. Three of the proposals within the local development plan could give rise to disturbance of qualifying interests at the coast:
MIN2: Safeguard Oxwellmains Limestone Quarry (MRE for curlew, golden plover, grey plover, lapwing, oystercatcher, redshank)
Sites in Table PS1:
Edinburgh Road (all QI)
West Seaside (all QI)
- 3.21 Oxwellmains Limestone Quarry is located close to the coast. It is already operational and recorded bird numbers in the vicinity of the site have been collected whilst the site is operational. It is at some considerable distance from the two housing sites. Any disturbance arising from the housing developments will be short-term and localised in nature. Much of the development has already taken place. Given the small-scale, localised nature of each cause of disturbance, it is concluded that there are no cumulative LSE.
- 3.22 Cumulative effects on water quality have also been considered. All proposed dwellings are to be connected to the existing sewerage network and none of the proposals will give rise to direct discharges into the marine or riverine environments. Consequently, it is concluded that there are no cumulative LSE on the Firth of Forth SPA as a result of pollution.

Table 3.2: LSE arising from cumulative effects upon a named European Site.

European Site	Nature of LSE identified from cumulative effects of elements of the proposed East Lothian LDP
Firth of Forth SPA	<ul style="list-style-type: none"> • Housing proposals within 5 km of the coast that could contribute to increased recreational use of the coast (see Appendix D, Table (a) for full list of proposals) • Loss of, or disturbance whilst using inland habitat of potential value as high tide roosting/feeding sites to qualifying interests (wader species) (see Appendix D, Table (a) for full list of proposals and QI affected). • Loss of, or disturbance whilst using, inland habitat of potential value as high tide roosting/feeding sites to qualifying interests (Pink-footed Goose) (see Appendix D, Table (a) for full list of proposals)
Fala Flow SPA	Disturbance of Pink-footed Goose or loss of Pink-footed Goose habitat (see Appendix D, Table (b) for full list of proposals)
Gladhouse Reservoir SPA	Disturbance of Pink-footed Goose or loss of Pink-footed Goose habitat (see Appendix D, Table (c) for full list of proposals).

In combination effects between MRE arising from proposed East Lothian LDP and other policies/plans

- 3.23 MRE arising from the East Lothian proposed LDP have also been considered for possible in combination effects with the MRE arising from other projects and plans. The list of other projects/plans considered for in combination effects is included in Appendix E.
- 3.24 A summary of the screening of in combination effects with other plans is provided in Table 3.3.
- 3.25 In combination LSE have been identified for a single European site; Firth of Forth SPA. Whilst other projects and plans do have MRE upon European sites, the proposed East Lothian LDP does not contribute MRE of the same nature upon those European sites. For example, the Clackmannanshire and Falkirk LDPs (amongst other plans) were identified as having MRE upon the River Teith SAC. However, no MRE upon the River Teith SAC have been identified as a result of proposals within the East Lothian proposed LDP.

Table 3.3: LSE arising from in combination effects with other projects & plans

European Site	Nature of Effect	Projects/plans acting in combination with East Lothian proposed LDP
Firth of Forth SPA	Loss of /disturbance whilst using inland habitat of potential value as high tide roost sites by qualifying interests.	City of Edinburgh Council LDP Falkirk Council LDP Clackmannanshire Council LDP Fife LDP Stirling Council LDP
	Loss of/ disturbance whilst using inland habitat of potential value to Pink-footed Goose.	Falkirk Council LDP Clackmannanshire Council LDP Stirling Council LDP
	Increased disturbance of QI at coast resulting from elevated levels of recreation associated with new housing developments.	Falkirk Council LDP Clackmannanshire Council LDP

Conclusions of screening

- 3.26 The elements of the plan that have been identified as giving rise to likely significant effects alone on the specified European sites are listed in Table 3.1. These have been subject to Appropriate Assessment.
- 3.27 Appropriate Assessment is also required of the cumulative effects listed in Table 3.2 of the combinations of proposals listed in Appendix D and of the effects listed in Table 3.3 that arise from the ‘in combination’ effects of the other projects and plans listed in that Table.
- 3.28 In order for the plan to progress these proposals/ combinations of proposals must not have an adverse effect upon the integrity of the listed European sites which is assessed in relation to their conservation objectives. Some of the proposals within the East Lothian proposed LDP have been brought forward from the previous Local Plan, and have already been subject to Appropriate Assessment. The findings of that previous assessment will be reviewed within the context of the new proposed plan as there may have been changes in background conditions since the previous assessment was made.

APPROPRIATE ASSESSMENT OF PROPOSALS, WHICH ON THEIR OWN HAVE BEEN IDENTIFIED AS GIVING RISE TO LIKELY SIGNIFICANT EFFECTS

EGT1 - Land at former Cockenzie Power Station

- 4.1 This proposal has been identified as having likely significant effects upon seven European sites: Firth of Forth SPA, Forth Islands SPA, Isle of May SAC, Firth of Tay & Eden Estuary SAC, River Teith SAC, Moray Firth SAC and Outer Firth of Forth & St Andrews Bay Complex pSAC. The potential connective pathways for effects on qualifying interests of each of these European sites are set out in Appendix A. In summary, the potential for effects from development under EGT1 arise from:
- proposals that would affect the quality or availability of feeding habitat/ availability of prey for qualifying interests (QI of Firth of Forth SPA - all species; Forth Islands SPA - especially terns; Isle of May SAC - grey seals; Firth of Tay and Eden Estuary SAC - common seals; Moray Firth SAC - bottlenose dolphins; Outer Firth of Forth & St Andrews Bay Complex pSPA - all species);
 - proposals that would lead to increased disturbance of qualifying interests at their breeding or feeding sites (QI of Firth of Forth SPA - all species; Forth

Islands SPA - all species; Isle of May SAC - grey seals; Firth of Tay and Eden Estuary SAC - common seals; Moray Firth SAC - bottlenose dolphins; Outer Firth of Forth & St Andrews Bay Complex pSPA - all species);

- proposals that would alter water quality (QI of Firth of Forth SPA - all species; Forth Islands SPA - all species; Isle of May SAC - grey seals; Firth of Tay and Eden Estuary SAC - common seals; River Teith SAC - all species; Moray Firth SAC - bottlenose dolphins; Outer Firth of Forth & St Andrews Bay Complex pSPA - all species); and
 - proposals that would introduce barriers to migration (QI of River Teith SAC).
- 4.2 In the absence of any specific information about the proposals that may come forward under this policy, it is difficult to be clear about the nature, extent, duration and magnitude of any effects and how these might influence the integrity of the relevant European site.
- 4.3 Scottish Government¹⁷ advice in relation to Habitats Regulations Appraisal, identifies that simple mitigation measures in the form of policy caveats, may be used to demonstrate no adverse effect on the integrity of any European site: *"In circumstances where a general policy has been screened as requiring further assessment, simple mitigation measures may be used (where applicable) early in the Appropriate Assessment stage, to very quickly demonstrate no adverse effect on the integrity of any European site. When used in this way, policy caveats can be viewed as part of the iterative plan making process and offer a straightforward means of addressing specific issues."* (paragraph 7). Such a caveat has been inserted into EGT1 to clarify that any proposal coming forward under this policy must first undergo a Habitats Regulation Appraisal of its implications for European sites.
- 4.4 The proposal includes a requirement for further Habitats Regulations Appraisal for developments under this policy. As part of the examination of the proposed plan, SNH proposed a modification to the policy wording, to make specific reference to the Habitats Regulations. This was accepted by the Reporter during the examination of the plan and has been incorporated into the plan.
- 4.5 The proposal would not have an adverse effect on any European site including Firth of Forth SPA, Forth Islands SPA, Isle of May SAC, Firth of Tay & Eden Estuary SAC, River Teith SAC and Outer Firth of Forth & St Andrews Bay Complex pSPA alone.
- 4.6 There is the potential for Minor Residual Effects in relation to loss of or disturbance to qualifying interests of the Firth of Forth SPA whilst using inland habitat of potential value as high tide roosting/ feeding sites. Paragraphs 5.31 - 5.93 set out the Appropriate Assessment of the 'in combination' effects of habitat loss on the Firth of Forth SPA.
- EGT3 - Forth Coast Area of Co-ordinated Action**
- 4.7 This proposal supports the principle of grid connections along the coast between Cockenzie and Torness, but at this stage there is an absence of any specific information about the proposals that may come forward under this policy, including whether these would only relate to terrestrial developments or involve works to the marine environment. Consequently, it is difficult to be clear about

¹⁷ Habitats Regulations Appraisal (HRA) Advice Sheet - Screening general policies and applying simple mitigation measures. Scottish Government. July 2012

the nature, extent, duration and magnitude of any effects and how these might influence the integrity of the relevant European site.

- 4.8 Any works, particularly in the marine environment, could give rise to likely significant effects upon seven European sites: Firth of Forth SPA, Forth Islands SPA, Isle of May SAC, Firth of Tay & Eden Estuary SAC, River Teith SAC, Moray Firth SAC and Outer Firth of Forth & St Andrews Bay Complex pSPA. The potential connective pathways for effects on qualifying interests of each of these European sites are set out in Appendix A and are similar to those identified in paragraph 4.1 in relation to proposal EGT1.
- 4.9 As set out for EGT1 in paragraph 4.3, a caveat was added to the policy to remove uncertainty.
- 4.10 During the examination of the proposed plan, two modifications were proposed and accepted by the Reporter: SNH proposed that the wording should clarify that whilst a Habitat Regulations Appraisal would be required, an Appropriate Assessment might not be needed in all cases; RSPB proposed amending reference to the Habitats Directive to references to the Habitats and Birds Directives.
- 4.11 The modification proposed by SNH has been made to the plan, but the modified wording proposed by RSPB and accepted by the Reporter has been reviewed, particularly in the light of the UK Government's decision to leave the European Union.
- 4.12 Implementation of the Habitats Directive in the UK is via the Conservation (Natural Habitats &c,) Regulations 1994 (as amended) - referred to as the Habitats Regulations. In terms of the requirements to consider the need for Appropriate Assessment, the Habitats Regulations apply to both SPAs identified under the Birds Directive and SACs identified under the Habitats Directive. More importantly, the requirements are extended to include areas identified as possible, draft and candidate sites for designation. Together, these sites which are designated, or identified as potentially to be designated are defined within the Habitats Regulations as 'European sites'.
- 4.13 To ensure that the revised wording is compatible with Part IVA of the Habitats Regulations, it has been modified to address the issue raised by RSPB and accepted by the Reporter, but by reference to European sites, rather than specific reference to the Habitats and the Birds Directives. It is considered that this amendment retains the broad approach required by UK law, rather than restricting the requirement to those sites that have been fully designated. This approach is considered to be consistent with the Town & Country Planning (Grounds for Declining to Follow Recommendations) (Scotland) Regulations 2009, which allows the Council not to follow the reporter's recommendations when doing so would be incompatible with Part IVA of the Conservation (Natural Habitats &c) Regulations 1994 (as amended).
- 4.14 With the modification of the wording, it is possible to conclude that the proposal will not have an adverse effect on any European site including Firth of Forth SPA, Forth Islands SPA, Firth of Tay & Eden Estuary SAC, River Teith SAC and Outer Firth of Forth & St Andrews Bay Complex pSPA either alone or in combination with other projects or plans.

- TOUR1, TOUR3, T3, DC6, CH9**
- 4.15 These five policies were subject to an iterative process of screening, assessment, modification and re-screening during the plan preparation process. As for EGT1 and EGT3, there are uncertainties about the types of development that may come forward under these proposals, and hence the nature, magnitude and duration of any effects. Table 4.1 sets out the source of likely significant effects and the assessment of the implications of these effects for site integrity. It is considered that, with the policy caveats included within the wording of the plan, it is possible to conclude that none of these proposals would result in an adverse effect on the integrity of any European site.

- WD1, WD2 and WD3**
- 4.16 These three proposals set out general criteria that will be used to assess the acceptability of either windfarms or individual turbines. Consequently, there is a lack of information about the precise location and characteristics of any development that would come forward. Table 4.1 sets out the source of likely significant effects and the assessment of the implications of these effects for the integrity of particular European sites. It is considered that, with the policy caveats included within the wording of the plan, it is possible to conclude that none of these proposals would result in an adverse effect on the integrity of any European site, either alone or in combination with other projects and plans.

Table 4.1: Appropriate Assessment of proposals, which on their own have been identified as giving rise to likely significant effects

Proposal	Appropriate Assessment
<p>TOUR1: Archerfield Estate, Direlton</p>	<p>This policy is carried forwards from the previous local plan, when it was previously subjected to Habitats Regulations Appraisal. It is a general policy statement in support of tourism as a use at Archerfield, and does not specify the nature and type of any new development that may arise from the policy. The policy relates to an area that is adjacent to the coast, and which lies in a tetrad where high numbers of two qualifying interests (pink-footed goose and curlew) have been recorded. Development consistent with the policy can be implemented without LSE to the Firth of Forth SPA. However, it is conceivable that other forms of tourism development could be brought forward that would give rise to LSE in the form of habitat loss or disturbance to qualifying interests. At this stage it is not possible to determine the nature and scale of any development. However, the addition of the policy caveat allows a conclusion to the Appropriate Assessment of no adverse effects on site integrity.</p>
<p>TOUR3: Dunbar Castle Vaults</p>	<p>This policy is carried forwards from the previous local plan, where it was screened out of the Habitats Regulation Appraisal. It is aimed at enabling access to the vaults under the castle, without promoting any particular form of development. The proposal is for a coastal location and a number of qualifying interest species of the Firth of Forth SPA have been recorded from the tetrad (pink-footed goose, curlew, Golden plover, Grey Plover, Lapwing, Oystercatcher and Redshank). Development consistent with the policy can be implemented without LSE to the Firth of Forth SPA. However, it is conceivable that other forms of tourism development could be brought forward that would give rise to LSE in the form of disturbance to qualifying interests. At this stage is it not possible to determine the nature and scale of any development that may be brought forward. The addition of the policy caveat allows a conclusion to the Appropriate Assessment of no adverse effects on site integrity.</p>
<p>T3: Segregated Active Travel Corridor</p>	<p>An indicative route has been produced, which broadly follows existing transport routes, and looks to avoid habitats used by qualifying interests of the Firth of Forth SPA (and possibly Fala Flow SPA). As the route has yet to be finalised, deviations from the proposed route will need to be screened for likely effects upon European sites. In its consultation response to the proposed plan, SNH indicated that subject to further details, the finalised route is unlikely to require Habitats Regulation Appraisal beyond screening stage. In the absence of precise details, it is not possible to identify the location of any effects. The addition of the policy caveat clarifying the criteria for proposals that would be acceptable, allows a conclusion to the Appropriate Assessment of no adverse effects on site integrity.</p>
<p>DC6: Development in the coastal area</p>	<p>This policy sets out general criteria to be met in order for development to be permissible within the coastal area. Given that much of the coastline adjoins the Firth of Forth SPA, there is potential for proposals in areas that are important high tide roost sites for Qualifying Interests, which could lead to habitat loss and/or disturbance. Consequently, there is uncertainty about the existence of significant effects. The addition of</p>

Proposal	Appropriate Assessment
	the policy caveat clarifying the criteria for proposals that would be acceptable, allows the Appropriate Assessment to conclude that there will be no adverse effects on site integrity.
CH9: High Street/Inch View, Prestonpans	<p>This policy is carried forwards from the previous local plan, when it was screened out as being a protective policy. This is a criteria-based policy, which sets out factors to be considered if development comes forward for a specific site, but does not on its own promote or enable development in these areas. The site is adjacent to the coast, and hence there is a potential connectivity to the Firth of Forth SPA. However, the site is very small, and is located within and adjacent to existing dwellings, limiting the nature and scale of any development that could occur and the potential to introduce additional disturbance. With the inclusion of the policy caveat, the Appropriate Assessment can conclude that there will be no adverse effect on site integrity from the proposal alone.</p> <p>The proposal has also been considered for ‘in combination’ effects with other elements of the plan that contribute to loss of high tide roost sites or disturbance of qualifying interests at high tide roost sites.</p>
WD1: Windfarms; WD2: Smaller scale wind turbine development; WD3: All Wind Turbines	<p>The plan is supported by a spatial framework for wind development, which has been subject to a separate habitat regulations appraisal process. Some of the areas identified as having potential for wind farm development occur within the catchment area of the River Tweed SAC. As the qualifying interests are reliant upon good water quality (including low levels of suspended solids), there would be a connective pathway between any development that resulted in changes to the quantity or quality of water entering the river. There is also the potential for connective pathways between wind turbines and birds, particularly pink-footed goose, which form a qualifying interest of the Firth of Forth SPA, Fala Flow SPA and Gladhouse Reservoir SPA. In the absence of details about individual proposals that may come forward, it is difficult to be definitive about the scale and location of any effects on these European sites.</p> <p>The three policies set out general criteria that will be used to assess the acceptability of applications for either windfarms or individual turbines. Effects on European sites are one of those criteria. The inclusion of this criterion means that it is possible to conclude that the proposals would not result in an adverse effect on the integrity of any European site.</p> <p>The policy wording referred to sites designated under the ‘Habitats Directive’, but did not mention sites identified under the ‘Birds Directive’. In the report of the examination of the proposed plan, the Reporter accepted the representation from RSPB that the proposal should be modified to indicate that it applies to sites identified under both the Habitats and Birds Directive.</p> <p>Following the examination, the proposed modified wording has been reviewed, particularly in the light of the UK Government’s decision to leave the European Union.</p> <p>Implementation of the Habitats Directive in the UK is via the Conservation (Natural Habitats &c,) Regulations 1994 (as amended) - referred to as the Habitats Regulations. In terms of the requirements to consider the</p>

Proposal	Appropriate Assessment
	<p>need for Appropriate Assessment, the Habitats Regulations apply to both SPAs identified under the Birds Directive and SACs identified under the Habitats Directive. More importantly, the requirements are extended to include areas identified as possible, draft and candidate sites for designation. Together, these sites which are designated, or identified as potentially to be designated are defined within the Habitats Regulations as 'European sites'.</p> <p>To ensure that the revised wording is compatible with Part IVA of the Habitats Regulations, it has been modified to address the issue raised by RSPB and accepted by the Reporter, but by reference to European sites, rather than specific reference to the Habitats and the Birds Directives. It is considered that this amendment retains the broad approach required by UK law, rather than restricting the requirement to those sites that have been fully designated. This approach is considered to be consistent with the Town & Country Planning (Grounds for Declining to Follow Recommendations) (Scotland) Regulations 2009, which allows the Council not to follow the reporter's recommendations when doing so would be incompatible with Part IVA of the Conservation (Natural Habitats &c) Regulations 1994 (as amended).</p>

APPROPRIATE ASSESSMENT IN RELATION TO CUMULATIVE EFFECTS ON FIRTH OF FORTH SPA

Housing proposals within 5 km of the coast that could contribute to increased recreational use of the coast

- 5.1 All new housing developments located within 5 km of the coast “as the crow flies” were identified during the screening exercise as potentially contributing to increased recreational use of the coast. This covers proposed housing sites in Musselburgh, Prestonpans, Tranent, Dunbar, North Berwick and the new Blindwells development.

Existing position

- 5.2 The East Lothian coastline is approximately 40 miles long¹⁸, of which around 75% is owned by East Lothian Council. Most of the coastline can be reached on foot, but activity is concentrated around the following main access points:

The 13 designated coastal car parks managed by the Council:

- Longniddry Bents Nos 1, 2 and 3.
- Aberlady Bay Local Nature Reserve.
- Gullane Bents.
- Yellowcraig.
- John Muir Country Park at Tynninghame Links, Linkfield and Shore Road.
- Skateraw.
- Whitesands.
- Barns Ness.
- Thorntonloch.

Access from towns and settlements, e.g.:

- Musselburgh;
- Port Seton;
- North Berwick; and
- Dunbar.

The Core path network:

- Aberlady.
- Gullane.
- Yellowcraig.
- North Berwick.
- Musselburgh.
- Longniddry.
- Prestonpans.
- Port Seton.
- Belhaven Bay.
- Dunbar.

- 5.3 There are no survey data quantifying the level of use of particular parts of the East Lothian coast, but it is possible to make some estimates of visitor activity based on other surveys that have been carried out.

- 5.4 It has been estimated that just over two-thirds (67%) of day-trips in East Lothian are made from people who live in the neighbouring areas of Edinburgh,

¹⁸ East Lothian Council, 2015.

Midlothian, West Lothian and Borders. This proportion has increased from 52% in 2003 and 59% in 2011¹⁹.

- 5.5 Nearly two-thirds (62%) of all visitors to East Lothian in 2015 included a trip to the beach as part of their visit²⁰. Whilst this is a slight decrease on the proportion of visitors who made a visit to the beach in 2011 (68%), there has been a significant increase in beach visits since 2003 when 48% of visits included a trip to the beach²¹. There has also been an increase in people undertaking activities such as water sports and bird watching²².
- 5.6 These figures support anecdotal reports that there has been an increase in use of the coastline, both in terms of numbers of users, and the times of day when the coast is used. There is also diversification of activities undertaken, with sports such as surfing and kite surfing gaining popularity.
- 5.7 The completion and branding of the John Muir Trail, which is a 134-mile coast-to-coast route running between Helensburgh in the west through to Dunbar on the east, has also acted to raise the profile of existing paths. Research suggests there were between 96,600 - 100,600 visits to the path between Brunstane Burn/ North Berwick/ Dunbar/ East Linton between November 2014 and October 2015²³.
- 5.8 The local development plan quotes figures from the Scottish census, showing that the population of East Lothian grew by just under 11% between 2001 and 2011.
- 5.9 Thus, it appears that there is significant and increasing use of the East Lothian coastline, attributable to increased participation in outdoor activities. There does not appear to be a linear relationship between the housing stock in East Lothian and levels of recreational use of the coast, as a substantial and increasing proportion of coastal visits appear to be made by people who are not resident in East Lothian. In consequence of this, SNH has advised that consideration of this activity may be better placed outside of the local development plan context.
- 5.10 All bird species that are a qualifying interest of the Firth of Forth SPA have been recorded in WeBS counts from at least part of the East Lothian coastline on at least one occasion during the five-year period winter 2009/10 to winter 2013/14 (see Appendix F, Table 1).
- 5.11 WeBS data are used to identify “Alerts” for species that have shown a major decline in numbers over the short-, medium-, and long-terms (5, 10 and up to 25 years respectively) and also since site-designation. Where declines exceed 50%, High-Alerts are issued and where declines lie between 25% and 50% Medium-Alerts are issued. Alerts have been issued for 17 of the qualifying interests (see Appendix F, Table 2). Site-specific pressures been identified as a likely cause for three species (Goldeneye, Red-breasted merganser and Golden plover), and possibly also for long-tailed duck²⁴.
- 5.12 The condition status of the qualifying interest features of the Firth of Forth SPA was last assessed by SNH in 2010. At that time, eleven species were Favourable

¹⁹ LJ Research, 2016

²⁰ LJ Research, 2016

²¹ LJ Research, 2016

²² LJ Research, 2016

²³ Stewart *et al*, 2016

²⁴ Cook, *et al*, 2013

Maintained; one species was Favourable Recovered; eight species were Favourable Declining; seven species were Unfavourable Declining; and the waterfowl assemblage was considered to be Favourable Declining. Recreation/disturbance was cited as a pressure for only two species; bar-tailed godwit and grey plover which were both assessed as in Favourable Declining condition in 2010.

- 5.13 Based on these two data sets, it appears that the status of the following species is of particular concern within the Firth of Forth, owing to site specific pressures:
- Goldeneye
 - Red-breasted merganser
 - Golden plover
 - Bar-tailed godwit
 - Grey plover.
- 5.14 Goldeneye and Red-breasted merganser are species associated with the sub-tidal area; they do not come ashore during the winter months and hence are not sensitive to increased recreational use of the shoreline, although they would be sensitive to water-based recreation. The declines in numbers of goldeneye (and scaup) on the Forth have been linked to improvements in sewage treatment, as feeding flocks were only recorded at outfalls where sewage continued to be discharged in large quantities.²⁵ It is concluded that these species will not be adversely affected by proposals in the local development plan.
- 5.15 Golden plover, Bar-tailed godwit and Grey plover are wader species that feed in the inter-tidal area, retreating to roosts both at the shore and inland at high tide. Consequently, these species are vulnerable to disturbance from coastal recreation. As noted in paragraph 5.12, SNH has identified recreation and disturbance as site-specific pressures within the Firth of Forth SPA for bar-tailed godwit and grey plover by SNH²⁶.
- Sensitivity to disturbance**
- 5.16 Quantifying and predicting the effect of disturbance²⁷ on the behaviour of individual birds is difficult. Variation between species and between individuals of the same species has been recorded. Weather conditions, food supply and condition of the bird also have an influence, as does the type of activity causing the disturbance. There are no agreed methods for relating the effects of disturbance of an individual bird upon its survival or breeding success, and the consequences of effects on an individual bird for the status of the population of that species.
- 5.17 Factors influencing the level of disturbance of shorebirds have been investigated on the Solent. Disturbance was determined by how people behaved and where they went, rather than the actual volume of use. In general terms, disturbance occurred when the activity was within 50 m of a bird, and activities within the intertidal zone were more likely to result in disturbance²⁸.
- 5.18 Dogs off the lead are a particular source of disturbance, responsible for 27% of disturbance events that involved major flight on the Solent²⁹. Walkers,

²⁵ Campbell, 1984

²⁶ SNH SiteLink website last viewed May 2016

²⁷ Defined as a change in behaviour of a bird

²⁸ Clarke, *et al*, 2012

²⁹ Clarke, *et al*, 2012

particularly those accompanied by dogs, were linked to the decline of some wader roost sites around the Moray Firth. The tendency of dog walkers to visit the same area once or twice a day, resulting in frequent disturbance was thought to be a reason for the decline in use of roosts³⁰. Swann (2007) noted that disturbance from just one person and dog could account for decreased use of some roosts.

- 5.19 It has been estimated that there has been an increase in the number of visits to the outdoors taken with a dog from 41% in 2003 to 48% in 2013/14³¹. Around half of visits to the John Muir Trail (between Brunstane Burn/ North Berwick/ Dunbar/ East Linton) included a dog, and this rose to nearly two-thirds (63%) of visits averaged over the full length of the trail during the winter³².
- 5.20 Table 5.1 shows the occurrence of the three wader species (Bar-tailed godwit, Golden plover, Grey plover) from different WeBS recording sections along the East Lothian coast. The most important area for Bar-tailed godwit is the section of coast between Eastfield to Musselburgh, where the five-winter mean of peak counts represents over 40% of the threshold level required for the site to qualify as of International importance. Aberlady and Gullane Bays; Port Seton to Craighielaw Point; and Tynninghame Estuary are also important areas. These same stretches of coastline are also important for Golden plover and Grey plover. Whilst access is possible to these lengths of coast, the footpaths are set back from the high tide mark, and in some areas there is limited access to the coast, and/or there are large areas of shore that are exposed at low tide. This means that there are areas that can be used by species that are likely to be at least 100 m from areas most used by people.

³⁰ Swann, 2007

³¹ TNS. 2014

³² Stewart *et al*, 2016

Table 5.1: Use of the East Lothian coast by wader species potentially at risk from recreational disturbance

Core Count Section	International importance of the site for each species expressed as the percentage of the international threshold in operation during 2013/14		
	Bar-tailed godwit	Golden plover	Grey plover
Eastfield to Musselburgh	42	3	2
Preston Grange to Port Seton	P	P	P
Port Seton to Craighelaw Point	14	1	2
Aberlady and Gullane Bays	36	7	N/A
Black Rocks to Eyebroughy			
Eyebroughy to Eelburn	2		
Eelburn to North Berwick Harbour			P
North Berwick to Tantallon	0	1	0
Tantallon to Ravensheugh Sands	2	0	1
Tynninghame Estuary	10	0	9
Winterfield to Barns Ness	N/A	N/A	N/A
East Barns to Dunglass	1	0	0

Discussion

- 5.21 Visitor numbers to the East Lothian coast appear to be growing at a rate unrelated to housing development within the Council area. There is anticipated to be a continued increase in numbers, but the greater proportion of this is likely to be visitors from outwith East Lothian.
- 5.22 Disturbance of birds appears to be related to the activities of users, rather than the numbers *per se*. The lengths of coast from which highest numbers of sensitive species have been recorded do include areas of shore which are less accessible, but there is a risk of disturbance to birds in these areas, particularly from unrestrained dogs. This risk is present, irrespective of whether or not the local development plan includes proposals for new housing allocations.
- 5.23 Against this background of rising numbers, and disturbance from existing use, it is difficult to be definitive about the additional disturbance that would arise from new housing brought forward under the local development plan. It is, however, possible to identify a series of mitigation measures that will ensure that the cumulative effects of disturbance from new housing will not have an adverse effect on the integrity of the Firth of Forth SPA. These may also act to reduce effects from existing disturbance.

Mitigation

- 5.24 Policy OS3 of the local development plan requires that developments of 20 or more dwellings must provide open space of at least 60 m² per dwelling. This includes the provision of natural green space, which provides suitable recreational opportunities close to home and links into the core path network. Provision of good quality recreational opportunities close to housing will reduce numbers visiting the coast.

- 5.25 East Lothian Council currently manages parking at key coastal access points. There are no plans to extend parking provision, which will act as a brake on an increase in visitors arriving by car.
- 5.26 Scottish Power is currently consulting on restoration proposals for two Lagoons at Levenhall Links (Lagoons 6 & 8)³³. This will result in the restoration (Lagoon 8) and creation (Lagoon 6) of areas of open water and grassland suitable for use by waders. These proposals are referred to in the East Lothian LDP, but are not proposed by the local development plan, although the principle of habitat improvement works in this area is supported by proposal MH16. They have consequently been considered for “in combination” effects with the local development plan. The effects of the proposals are considered to be beneficial for the qualifying interests.
- 5.27 Management of recreational use is an operational matter, which is not normally included within a local development plan. As noted in paragraph 5.9, research for this report has suggested that there is not a linear relationship between the levels of recreational use and housing numbers in East Lothian. Consequently, SNH has suggested that whilst there may be a need to consider management of recreational use, this may better be undertaken outside of the local development plan context. Nevertheless, in the interests of completeness, this report contains comments and observations relating to those measures that have already been identified to alleviate existing and projected increases in recreational disturbance.
- 5.28 On the Moray Firth, some wader species became habituated to people, but only where there was some form of physical barrier, such as a wall or ditch, which separated the activity from the roosting/feeding birds³⁴.
- 5.29 A study of existing visitor numbers and disturbance arising from these should be initiated. This information should be used to identify areas of coast where measures are required to reduce disturbance, such as through introduction of barriers, fences, ditches, or planting. The information can also be used to develop refuge areas of coast, which should remain free from disturbance.
- 5.30 Walking within the inter-tidal zone, particularly if accompanied by an unrestrained dog, can cause disturbance to birds. There is some evidence from the Dee Estuary that introducing a team of wardens to reduce disturbance had been successful, as numbers of waders increased, although the potential for recreational disturbance had also increased³⁵. A public awareness programme, which is aimed at minimising the disturbance of wintering birds, particularly from dog walkers, or other groups identified through the visitor activity survey, should be introduced.
- [Loss of, or disturbance whilst using inland habitat of potential value as high tide roosting/feeding sites to qualifying interests \(wader species\)](#)
- 5.31 Six QI of the Firth of Forth SPA have been identified as potentially using inland areas for roosting and feeding (curlew, redshank, oystercatcher, grey plover, golden plover, lapwing). The screening exercise identified areas of potential use

³³https://eastlothianconsultations.co.uk/policy-partnerships/levenhall-lagoons-consultation/consult_view

³⁴ Swann, 2007

³⁵ Kirby, *et al*, 1993

in terms of presence of open habitat within a certain distance from the coast, but did not take account of the individual habitat preferences of the different species. The tetrad data provided by SNH is based on limited survey visits, and hence should be treated with caution, as it provides a short snap-shot of use on potentially only a single date.

- 5.32 No records of known inland roost sites for any of the wader species were identified during this study, but this does not mean that none of the sites are used. However, given the level of bird survey work that occurs in East Lothian, principally for pink-footed goose, it seems reasonable to suppose that if particular areas were used on a frequent basis by large numbers of wader species, these sites would be known.

Curlew

- 5.33 The curlew is included on the Red list as a species of conservation concern in the UK and is identified as Near Threatened by the IUCN. The numbers of over-wintering curlew in Great Britain have been decreasing in the medium-term having previously peaked³⁶. Within the Forth, numbers of curlew have also declined, but the trend appears to be consistent with the British trend, suggesting that this is not linked to site-specific pressures. Declines are thought to be due to losses in breeding habitat³⁷.
- 5.34 The wintering populations of curlew around the Firth of Forth were assessed as in Favourable Maintained Condition in October 2010³⁸, with numbers at that time having doubled since 2000³⁹. The five-year (2010/11 - 2014/15) average number of curlew counted for the Forth Estuary is 2944 birds⁴⁰, which is greater than the population estimate of 1,928 at the time the SPA was classified⁴¹.
- 5.35 Curlew are widely distributed both around the shores of the Firth of Forth⁴² and around the East Lothian coastline. Within East Lothian, they were recorded from 10 of the 12 WeBS core count sections, 41 of the 48 Low Tide Count sectors (See Appendix E, Table 1) and all of the tetrads that cover the coast. The highest numbers recorded during the core counts (expressed as five year mean of annual peak numbers) were recorded from the Tynninghame Estuary. High numbers were also recorded from this area during the Low Tide counts and slightly further north on the coast near Scoughall, with highest numbers during Low Tide counts recorded from Aberlady Bay.
- 5.36 The coastal tetrads from which highest numbers (50+ birds) were recorded cover the coast between the River Esk in Musselburgh and Levenhall Links; between Port Seton and Aberlady; East and West of North Berwick; and around the Tynninghame Estuary and eastwards towards Dunbar. Only three tetrads that do not include any lengths of coast produced counts of 50+ birds. These tetrads cover the area around Direleton and Fenton Barns.
- 5.37 Whilst there are good count data showing the relative distribution of curlew around the coast, there is little information about the particular fields or open

³⁶ Cook *et al* 2013

³⁷ Robinson, *et al*, 2015

³⁸ SNH, SiteLink website, 2011 Last viewed May 2016

³⁹ SNH, 2011

⁴⁰ Frost *et al*, 2016

⁴¹ SNH, 2016

⁴² Clackmannanshire Council, 2013

areas which are used. In general terms, this species prefers to use high tide roost sites that are on fields or open areas just above the high tide mark and close to major feeding areas. Research has shown a preference for use of improved grassland on farmlands in winter⁴³ and permanent pasture. They will also use playing fields in urban areas.

- 5.38 The majority of proposals in tetrads from which curlew have been recorded are located in areas of tilled land (see Table 5.2), which is unlikely to be used by curlew, although this species has been recorded feeding on arable stubbles within the study area⁴⁴.
- 5.39 Some of the sites identified in Table 5.2, which appear to support grassland, are considered unsuitable for curlew because the areas of grassland are very small and interspersed with buildings (Whin Park/Cockenzie Business Centre & Mid Road Industrial Estate), or because the fields appear to be grazed by livestock (MH2 Land at Old Craighall Village, Musselburgh), or the area appears to be a mixture of grassland and ruderal vegetation (Belhaven Hospital Field), or the field is small and enclosed (Dunbar Station Field).
- 5.40 In addition, tilled land and/or grassland is found adjacent to some of the stations identified for platform lengthening (proposal T10). In its response to the draft Habitats Regulations Appraisal record which accompanied the proposed plan, SNH has indicated that it does not consider that connectivity to the Firth of Forth SPA is likely and to ensure that the proposed plan is proportionate the caveat in relation to Habitats Regulations Appraisal could be removed. However, the examination report of the proposed plan does not accept this recommendation, deferring to the Habitats Regulations Appraisal screening process. Consequently, it has been retained within this version of the Habitats Regulations Appraisal record. Nevertheless, it is accepted that the areas adjacent to existing stations are likely to be highly disturbed, making any suitable habitat of restricted value to curlew.
- 5.41 Three of the proposals have the potential to affect areas of permanent pasture, although the nature and scale of any effects is unclear at this stage.
- 5.42 Curlew may use the playing fields of Preston Lodge High School, Dunbar Grammar and North Berwick High school as high tide roosts.
- 5.43 Details of the extensions required at each of these schools are still being developed, but are unlikely to result in loss of the playing fields and hence would not represent a change beyond the current situation. Indeed, the North Berwick proposal will result in the use of new land, rather than loss of the existing playing fields.
- 5.44 Cockenzie Primary School was identified in the previous version of this report as also lying within a tetrad from which curlew have been recorded. However, it is not anticipated that proposal ED3 Part A (ii) would lead to a need to expand the existing school buildings, and hence loss of potential habitat. That is, it has been screened out of MRE for habitat loss.

⁴³ Gillings, *et al*, 2008

⁴⁴ 3E Services Ltd, 2017

- 5.45 The surveys of QI undertaken on behalf of East Lothian Council⁴⁵ recorded curlew from 10 of the spatial proposals included within the plan. These are identified in Table 5.2. This was a smaller number of sites than was predicted, based on the assessment of suitable habitat within tetrads from which curlew had previously been recorded.
- 5.46 Given:
- the habitat preferences of curlew in relation to the types of habitat that will be lost to development;
 - the small areas of *potential* habitat that may be affected;
 - the widespread distribution of curlew; and
 - the background of a Favourable Maintained population of curlew within the Firth of Forth SPA;
- it is concluded that there will be no adverse effects upon the curlew qualifying interest of the Firth of Forth SPA arising from the East Lothian LDP.
- Oystercatcher**
- 5.47 Oystercatcher is included on the Amber list of species of conservation concern in the UK and is identified as Near Threatened by the IUCN. The numbers of over-wintering oystercatchers in Great Britain have been decreasing over the medium-term⁴⁶ (Appendix F, Table 2). Declines in Scotland have been particularly pronounced, but the reasons for this are unclear⁴⁷.
- 5.48 The trend in oystercatcher numbers within the Firth of Forth appears to be tracking that of the region and British trends, suggesting that declines are part of a national trend rather than due to site-specific pressures. The wintering populations of oystercatcher around the Firth of Forth were assessed as in Favourable Maintained Condition in October 2010⁴⁸. The five-year (2010/11 - 2014/15) average winter numbers of oystercatcher counted for the Forth Estuary is 6,263 birds⁴⁹, which is lower than the population estimate of 7,846 at the time of classification⁵⁰.
- 5.49 Oystercatcher are widely distributed both around the shores of the Firth of Forth and the East Lothian Coast. Within East Lothian, they were recorded from 11 of the 12 WeBS core count sections, 44 of the 48 Low Tide Count sectors (See Appendix F, Table 1) and all of the tetrads that cover the coast. The highest numbers recorded during the core counts (expressed as five year mean of annual peak numbers) were recorded from the stretch of coast between Eastfield to Musselburgh, where the five-year mean peak numbers represented 64% of the number required for the site to qualify as of national importance (Appendix F, Table 3). The importance of this part of the coastline is also demonstrated by the Low Tide Counts; a count of 1090 birds was made along the stretch of coast between Joppa and Musselburgh. Low Tide Counts of over 100 birds were made for Aberlady Bay, Tynninghame Estuary and the coast between Longskelly Point and Cowton Rocks.
- 5.50 Counts within tetrads reflect the importance of the coast. The coastal tetrads from which highest numbers (150+ birds) were recorded cover the areas around

⁴⁵ 3E Services Ltd, 2017

⁴⁶ Cook *et al* 2013

⁴⁷ BTO press release, 2012

⁴⁸ SNH, 2011

⁴⁹ Frost, *et al*, 2016

⁵⁰ SNH, 2016

Musselburgh, Aberlady and Tynninghame Estuary. In addition, high numbers were recorded west of Dunbar. There are few records from tetrads that do not include any coast; fewer than 20 birds were recorded from tetrads around Direlton and Fenton Barns and from around Huntington.

- 5.51 Oystercatcher, like curlew, shows a preference for areas of grassland, particularly areas of well-established grassland⁵¹. Also, like curlew, the majority of proposals in tetrads from which oystercatcher have been recorded are located in areas of tilled land (see Table 5.2), which is unlikely to be used by oystercatcher.
- 5.52 Like curlew, some of the sites, which appear to support grassland, are considered unsuitable for oystercatcher because the areas of grassland are very small and interspersed with buildings (Whin Park/Cockenzie Business Centre), or because the fields appear to be grazed by livestock (MH2 Land at Old Craighall Village, Musselburgh), or the area appears to be a mixture of grassland and ruderal vegetation (Belhaven Hospital Road Field), or the field is small and enclosed (Dunbar Station Field) or receives a high level of disturbance (Gladsmuir Junction, Platform lengthening at Wallyford).
- 5.53 SNH's comments in relation to proposal T10 set out in paragraph 5.40 also apply to oystercatcher.
- 5.54 Three of the proposals have the potential to affect areas of permanent grassland, which may be used by oystercatcher: extension of Preston Lodge High School, Dunbar Grammar School and North Berwick High School. These sites have already been discussed in the context of their use by curlew (paragraphs 5.42 - 5.43) and the effects are considered to be similar. Conclusions are, therefore, similar to those reached for curlew. Likewise, Cockenzie Primary School has been removed from this iteration of the Habitats Regulations Appraisal record for the reasons already discussed in paragraph 5.44.
- 5.55 The surveys of QI undertaken on behalf of East Lothian Council⁵² recorded oystercatcher from four of the spatial proposals surveyed which are included within the plan and are listed in Table 5.2. These were MH1 Craighall, Musselburgh, MH12 Barbachlaw, Wallyford, NK5 Land at Ferrygate Farm North Berwick and EGT1 land at former Cockenzie Power Station. This was a smaller number of sites than was predicted, based on the assessment of suitable habitat within tetrads from which oystercatcher had previously been recorded as part of the BTO surveys.
- 5.56 Oystercatcher was only recorded once from each of MH1, MH12 and NK5, but was recorded in three months in greater numbers from EGT1. The higher numbers of oystercatcher recorded at this site are attributable to its coastal location. Any proposals at that site would be subject to a separate Habitats Regulation Appraisal.
- 5.57 Given:
- the habitat preferences of oystercatcher in relation to the types of habitat that will be lost to development;
 - the small areas of *potential* habitat that may be affected;

⁵¹ Heppleston, 1971

⁵² 3E Services Ltd, 2017

- the low recorded incidence of oystercatcher at the sites included within the plan;
- the widespread distribution of oystercatcher; and
- the background of a Favourable Maintained population of oystercatcher within the Firth of Forth SPA;

it is concluded that there will be no adverse effects upon the oystercatcher qualifying interest of the Firth of Forth SPA arising from the East Lothian LDP.

Redshank

- 5.58 Redshank is included on the Amber list of species of conservation concern in the UK⁵³. The numbers of redshank breeding and over-wintering in Great Britain have been declining⁵⁴ and there have been declines in the numbers of redshank over-wintering on Firth of Forth SPA (Appendix F, Table 2). These changes broadly follow the trend at the National level, but appear slightly above those at the Regional level⁵⁵, which suggests that conditions for this species within the Forth are deteriorating relative to other sites (SNH). However, the wintering populations of redshank around the Firth of Forth were assessed as in Favourable Maintained Condition in October 2010⁵⁶. The five-year average peak winter numbers of redshank counted for the Forth Estuary is 3,713 birds⁵⁷, which is slightly lower than the population of 4,341 at the time the site was classified as an SPA⁴⁸.
- 5.59 Redshank is widely distributed in low numbers around the shores of the Firth of Forth and the East Lothian Coast. It has been recorded from 9 of the 12 core count sections and 38 of the 48 Low Tide Count sections along the East Lothian coast (Appendix F, Table 3). The tetrad data suggests a limited occurrence of redshank from inland areas.
- 5.60 Highest numbers of redshank were recorded between Eastfield to Musselburgh during the core counts, and from the Tynninghame Estuary during Low Tide Counts. The tetrads from which the highest counts were obtained cover the coast near Musselburgh, Longniddry, and Aberlady Bay, suggesting that redshank distribution within East Lothian is closely associated with the coast itself.
- 5.61 The surveys of QI undertaken on behalf of East Lothian Council⁵⁸ recorded redshank from only one of the spatial proposals included within the plan - EGT1. Redshank was recorded on two occasions (October and November 2016) in low numbers (2 birds each time). This was a smaller number of sites than was predicted, based on the assessment of suitable habitat within tetrads from which oystercatcher had previously been recorded as part of the BTO surveys.
- 5.62 Any proposals for site EGT1 would be subject to a separate Habitats Regulation Appraisal.
- 5.63 Given:
- that distribution of redshank appears to be focussed on the coast;
 - the widespread distribution of redshank around the coast;

⁵³ SNH, 2016

⁵⁴ Robinson, 2016

⁵⁵ Cook, *et al*, 2013

⁵⁶ SNH, 2011 SiteLink website Last viewed May 2016

⁵⁷ Frost, *et al*, 2016

⁵⁸ 3E Services Ltd, 2017

- the small areas of *potential* inland habitat that may be affected;
- the low recorded incidence of redshank at the sites included within the plan; and
- the background of a Favourable Maintained population of redshank within the Firth of Forth SPA;

it is concluded that there will be no adverse effects upon the redshank qualifying interest of the Firth of Forth SPA arising from the East Lothian LDP.

Lapwing

- 5.64 Lapwing is included on the Red list as a species of conservation concern in the UK and has is identified as Near Threatened by the IUCN. The numbers of over-wintering and breeding lapwing in Great Britain have been decreasing⁵⁹. These declines are thought primarily to be due to losses in breeding habitat.
- 5.65 Numbers of Lapwing within the Firth of Forth have also declined in the medium-term having previously peaked⁶⁰. Whilst the trend in lapwing numbers within the Firth of Forth appears to be tracking that of the region and British trends, suggesting that declines are part of a national trend rather than due to site-specific pressures, the magnitude of the decline has been of a sufficient scale for BTO to trigger Alerts for this species for the medium and short-term and since the site was designated (Appendix F, Table 2). Whilst the trends at the site and regional level are similar, BTO reports that numbers of lapwing in the Firth of Forth are contributing to an increasing proportion of the regional totals. This suggests that conditions in the Forth must be fairly favourable for lapwing.
- 5.66 The wintering populations of lapwing around the Firth of Forth were assessed as in Favourable Maintained Condition in October 2010⁶¹. The five-year (2010/11 - 2014/15) average of wintering peak numbers of lapwing counted for the Forth Estuary is 2283⁶² birds, which is fewer than the population estimate of 4,148 birds at the time that the SPA was classified⁴⁸.
- 5.67 Lapwing are distributed widely around the shores of the Firth of Forth, but show a more restricted distribution along the East Lothian coast, being recorded from 7 of the 11 core count sections and only 8 of the 48 Low Tide count sections (Appendix F, Table 1). The tetrad data shows that lapwing records are focussed on the central and western part of the Council area. Moderate numbers (100+) of lapwing were recorded in tetrads lying between Aberlady in the West and Whitekirk in the East, and south towards Longniddry. Only one proposal, NK10 Aberlady West, is located within these tetrads. That proposal is for a site adjacent to the village, which is tilled land and so is likely to be of lower value for lapwing (see below).
- 5.68 To the west, Proposals MH1 - MH4 at Old Craighall, and MH9 Land at Wallyford, lie within tetrads from which moderate numbers (100+) of lapwings have been recorded. The majority of these proposals are for areas of tilled land.
- 5.69 Several of the proposals are located within tetrads from which low numbers of (20+) Lapwing have been recorded (See Table 5.2).

⁵⁹ Robinson, 2016

⁶⁰ Cook *et al* 2013

⁶¹ SNH, 2011

⁶² Frost, *et al*, 2016.

- 5.70 Research in south-east England showed that lapwings only used less than half of the available fields and that they showed a preference for larger fields (>15 ha)⁶³. Lapwings may use both cultivated land and areas of grassland. The Atlas of Wintering Birds states that between November and February the density of lapwing in many areas is higher on grassland than on agricultural land, although the species mainly roosts on cultivated land, especially plough land⁶⁴. Gillings and Fuller⁶⁵ suggest that flocks will feed on cultivated land during the early part of the winter, and then may switch to grassland during late to mid-winter in response to cold weather. A quarter of all lapwing records in a national survey were from cereal crops and grass, but less than 10% of birds were associated with stubbles⁶⁶.
- 5.71 Height of vegetation also seemed to influence choice, with lapwings avoiding cereal fields where the blade height was greater than 110 mm.
- 5.72 Cultivated land appears to be important for lapwings, and areas of such habitat will be lost to some of the developments in the Musselburgh/Wallyford area (e.g. MH1, MH10 - MH11).
- 5.73 The tetrad data provides an indication of the general area that was used at the time of the survey, but is based on limited information and is not site-specific. There are no data to indicate which fields are used, and whether these are used consistently between years. The cropping regime, which is independent of the local development plan, will have an important influence on the suitability of fields, and may vary between years.
- 5.74 Bird survey data to support Habitats Regulation Appraisal of outline proposals for sites MH9 and MH10 has been completed⁶⁷. One lapwing was recorded on the site, and a flock of 20 birds were seen in flight to the south of the A1. Low numbers of curlew (10) were also recorded. It was concluded that the proposals would not have an adverse effect upon the Firth of Forth SPA.
- 5.75 To meet the test of the Appropriate Assessment, mitigation has been built into the local development plan to remove any uncertainty about the cumulative effects on lapwings arising from loss of potential inland habitat in the west of East Lothian. This comprises:
- Inclusion of proposal MH16, which promotes habitat creation and enhancement measures for land to the east of Levenhall; and
 - Inclusion of need to conduct project-specific Habitats Regulation Appraisal of larger development proposals in e.g. MH1, MH9, and MH10.
- 5.76 Proposal MH16 promotes habitat creation to the east of Lagoon 6. This area, which is outwith the SPA boundary, will be managed for the benefit of qualifying interests of the SPA, and will act to offset any loss of wader habitat. Works proposed here are additional to habitat measures currently being developed by Scottish Power. The improvement of supporting habitat outwith the boundary of an SPA which is designed to offset any loss of other supporting habitat outwith

⁶³ Mason & Macdonald, 1999

⁶⁴ Lack, 1986

⁶⁵ Gillings & Fuller, 1999

⁶⁶ Gillings & Beaven, 2004

⁶⁷ BCM Environmental Services Ltd, 2009; Rudd, 2015

the boundary of the same SPA has been supported as mitigation by a High Court ruling⁶⁸.

- 5.77 A requirement for Habitats Regulation Appraisal (and Appropriate Assessment if necessary) has been included in a number of the allocations. These all meet the three “tests” for delegation of assessment to a lower tier of planning, as set out in paragraph 4.2 of this report. None of the allocations is thought to have LSE alone, but there is some uncertainty about cumulative effects, which cannot be addressed within the local development plan. This uncertainty arises from a lack of precise knowledge about the use of particular areas by qualifying interests and details of the proposals. Effects can be predicted in a more meaningful way at the masterplan level, and will be informed by bird survey data. Flexibility is available, in terms of how the site is laid out.
- 5.78 Although work to inform a Habitats Regulation Appraisal has already been submitted for proposals at MH9 and MH10, the requirement for Habitats Regulations Appraisal has been retained in case new proposals are brought forward.
- 5.79 The comments made by SNH in relation to proposal T10, as described in paragraph 5.40, also apply to Lapwing.
- 5.80 The surveys of QI undertaken on behalf of East Lothian Council⁶⁹ only recorded lapwing from one of the spatial proposals included within the plan - PS1. Highest numbers were recorded in October and declined over the subsequent months. This represents a smaller number of sites than was predicted, based on the assessment of suitable habitat within tetrads from which oystercatcher had previously been recorded as part of the BTO surveys.
- 5.81 Given:
- That suitability of field use is influenced by cropping regime (which is beyond the control of the local development plan);
 - that use of sites included within the plan by lapwing appears to be lower than predicted; and
 - the background of a Favourable Maintained population of lapwing within the Firth of Forth SPA and that lapwing within the Forth are contributing to an increasing proportion of the regional population; and
 - the measures set out in paragraph 5.77
- it is concluded that there will be no adverse effects upon the lapwing qualifying interest of the Firth of Forth SPA arising from the East Lothian local development plan.
- Golden Plover**
- 5.82 The numbers of Golden Plover over-wintering in Great Britain have been decreasing in the short-term having previously peaked. Numbers over-wintering in Scotland have also decreased, as have numbers over-wintering on the Firth of Forth SPA. This has resulted in the BTO issuing Alerts for this species for the short- and medium-terms and the period since designation (Appendix F, Table 2). The trend of decline within the Forth appears to be similar to that of the Scottish declines, but not the British trend. Numbers in the Forth represent a declining

⁶⁸ Hargreaves v Secretary of State for Communities and Local Government, Wyre Borough Council, Cornwall Light and Power Company Ltd (2011) EWHC 1999 (2nd August 2011)

⁶⁹ 3E Services Ltd, 2017

proportion of the Scottish numbers, which suggests that site-specific pressures may be affecting this species.⁷⁰ However, the wintering population of Golden Plover around the Firth of Forth SPA were assessed as in Favourable Maintained Condition in October 2010. The five-year (2010/11- 2014/15) average of wintering peak numbers of Golden Plover counted for the Forth Estuary is 1072 birds⁷¹, which is fewer than the estimated population of 2,949 birds at the time of classification of the SPA (SNH, 2016).

- 5.83 Golden Plover have been recorded from 9 of the 12 Core Count sections and 13 of the 48 Low Tide Count sections (Appendix F, Table 1). Areas of the coast from which the highest numbers of Golden Plover have been recorded during the Core Counts are between Eastfield to Musselburgh and Preston Grange to Port Seton, and Aberlady Bay. During Low Tide counts, the highest numbers have been recorded sites in Aberlady Bay and Gosford Sands. There is a known golden plover roost at Musselburgh ash lagoons⁷².
- 5.84 Golden plover are often found associated with lapwing⁷³, and there is a large overlap in habitat use by these species⁷⁴. Whilst there is a preference for grassland, particularly permanent, arable land, especially plough land, is often preferred for roosting⁷⁵. Golden plovers show a greater preference for cereals than lapwings, but avoid cereal fields where the blade height exceeds 9 mm⁷⁶.
- 5.85 Grassland is the main habitat for only three of the proposals within tetrads from which golden plover have been recorded, and at least two of these areas are unlikely to be suitable for golden plover owing to their size and their proximity to human disturbance (Station Road Field, and proposals to extend the railway platform in Dunbar).
- 5.86 Golden plover have also been recorded from tetrads in the west of East Lothian (inland from Musselburgh), which also supported lapwings. As noted for lapwings, although effects on these species arising from the cumulative loss of habitat from developments is considered unlikely, mitigation as set out in paragraphs 5.75 - 5.77, has been included within the LDP to remove any uncertainty over effects. In addition, the comments made by SNH in relation to proposal T10, as described in paragraph 5.40, also apply to Golden plover.
- 5.87 The surveys of QI undertaken on behalf of East Lothian Council⁷⁷ did not record golden plover in any of the spatial proposals included within the plan, although 32 individuals were recorded flying over NK5 in November 2016. This was a smaller number of sites than was predicted, based on the assessment of suitable habitat within tetrads from which golden plover had previously been recorded as part of the BTO surveys.
- 5.88 Given:
- the small number of areas of *potential* inland habitat that may be affected;

⁷⁰ Cook, *et al*, 2013

⁷¹ Cook, *et al*, 2013

⁷² East Lothian Council. Undated.

⁷³ Fuller in Lack, 1986

⁷⁴ Mason & Macdonald, 1999

⁷⁵ Fuller & Lloyd, 1981

⁷⁶ Mason & Macdonald, 1999

⁷⁷ 3E Services Ltd, 2017

- the low recorded incidence of golden plover at the sites included within the plan; and
- the background of a Favourable Maintained population of golden plover within the Firth of Forth SPA; and
- the measures set out in paragraph 5.77

it is concluded that there will be no adverse effects upon the golden plover qualifying interest of the Firth of Forth SPA arising from the East Lothian LDP.

Grey Plover

- 5.89 Grey plover is included on the Amber list as a species of conservation concern in the UK. The numbers of Grey plover that over-winter in Great Britain have been stable in the short-term having previously declined. Numbers of this species over-wintering within Scotland and on the Firth of Forth SPA have been decreasing in the medium-term having previously peaked. This has led the BTO to issue Alerts for the short- and medium-terms and the period since designation (Appendix F, Table 2). The trend on the site appears to be tracking the Scottish trend, although not the British trend. The proportion of Scottish birds found on the Forth is declining suggesting that site-specific pressures may be affecting this species⁷⁸.
- 5.90 The wintering populations of Grey Plover around the Firth of Forth were assessed as in Favourable Declining Condition in October 2010⁷⁹. Game or fisheries management; recreation/disturbance; and natural events, were identified as site pressures on this species. The five-year (2010/11 - 2014/15) average numbers of Grey Plover counted for the Forth Estuary is 271 birds⁸⁰, which is fewer than the population estimate of 724 at the time the SPA was classified⁸¹.
- 5.91 Grey plover has an almost exclusively coastal distribution within East Lothian. It has been recorded in low numbers from 9 of the 12 Core Count Sections and from 28 of the 48 Low Tide Count Sections (Appendix F, Table 1). Highest numbers in Core Count sections have been recorded from the Tynninghame Estuary, and highest Low Tide Counts have been recorded from Gosford Sands. The tetrads from which the highest numbers were recorded are close to Musselburgh and Tynninghame Bay. As none of the proposals will affect coastal locations, it is concluded there will be no adverse effects upon the integrity of the grey plover qualifying interest of the Firth of Forth SPA arising from loss of potential inland habitat.
- 5.92 The surveys of QI undertaken on behalf of East Lothian Council⁸² did not record any grey plover from any site.
- 5.93 Given:
- that distribution of grey plover appears to be focussed on the coast;
 - the small areas of *potential* inland habitat that may be affected;
 - that no grey plover were recorded from sites within the proposed plan
- it is concluded that there will be no adverse effects upon the grey plover qualifying interest of the Firth of Forth SPA arising from the East Lothian LDP.

⁷⁸ Cook, *et al*, 2013

⁷⁹ SNH, 2011

⁸⁰ Frost, *et al*, 2016

⁸¹ SNH, 2016

⁸² 3E Services Ltd, 2017

- Loss of, or disturbance whilst using, inland habitat of potential value as high tide roosting/feeding sites to qualifying interests (pink-footed goose)
- 5.94 Pink-footed goose is included on the Amber list of birds of conservation concern. The migratory populations of pink-footed goose around the Firth of Forth were assessed as in Favourable Maintained Condition in October 2010⁸³.
- 5.95 Aberlady Bay is one of two significant roosts on the Firth of Forth (the other being Skinflats). The birds disperse to inland feeding sites during the day, which means they can be under-recorded during WeBS core and low tide counts. Broadly speaking, goose activity is concentrated north of the A1, extending roughly north and east from Longniddry. Particularly high concentrations have been recorded between Longniddry and Aberlady; in the area north of Coates Farm; and inland from Gullane, Dirlton and North Berwick.
- 5.96 Use of fields by pink-footed goose is influenced by the cropping regime and changes throughout the winter in response to food availability. They will feed on a variety of crops including stubble fields, potato remains, beet remains, grass, and winter-sown cereals⁸⁴. Researchers have shown that there can be a preference for stubble fields in the autumn and early winter and grassland later in the winter⁸⁵. In East Lothian, peak numbers of pink-footed goose are recorded in the autumn and preferred foodstuff is spilt grain in stubble fields, with unharvested potatoes being an important secondary foodstuff, especially around Aberlady⁸⁶. Pink-footed geese tend to use fields close to the roost sites first, moving further away as the food supply becomes depleted, or they are disturbed. Disturbance plays a significant role in the choice of feeding sites; geese prefer to use fields away from roads⁸⁷.
- 5.97 Goose feeding records collected by East Lothian Council have been compared with the spatial locations within the proposed East Lothian LDP. Five of the spatial proposals coincide or lie close to records for pink-footed geese use.
- 5.98 There is a single record from October 2011 of 800 pink-footed geese feeding on stubble at NT446758. This lies within the area allocated for PS1 Longniddry. This site appears to be one of the most westerly feeding sites recorded and there are no other records of goose feeding from nearby. Consequently, the site is not considered to be an important feeding area.
- 5.99 There is a single record of 90 pink-footed geese feeding on grass to the north-west (NT584772) of DR8 Pencraig Hill, East Linton, which dates from February 2013. The site is located towards the southern recorded range of feeding sites. As it has only been used on a single occasion by a small number of geese, it is not considered an important feeding area.
- 5.100 There are three proposals within Gullane, which overlap or lie adjacent to known pink-footed geese feeding areas:
- NK7 Saltcoats, Gullane:
 - NK8: Fenton Gait East, Gullane
 - NK9: Fenton Gait South, Gullane

⁸³ SNH, 2011

⁸⁴ Gill, 1996

⁸⁵ Stenhouse, 1996; Bell, 1988

⁸⁶ Cranswick, 1992

⁸⁷ Gill, 1996

- 5.101 Between 500 and 2000 geese were recorded on one day in October 2015 from various locations around NT490824 and NT491821. The northernmost of these locations lies within the southern boundary of NK7 Saltcoats. There are other feeding records to the south and east of the site.
- 5.102 The most recent surveys commissioned by East Lothian Council⁸⁸ recorded pink-footed goose flying over seven of the sites included within the local development plan. These were three of the sites identified above (PS1, NK7 and NK9) and BW2, TT1, TT3 and TT4. No records of feeding geese were made during the survey.
- 5.103 Looking at the distribution of feeding records, it appears that the area to the east and south of Gullane is one of the main feeding areas for pink-footed goose. The westward extent of this feeding area may be influenced by disturbance from the edge of the village. The proposed developments, particularly NK7, would result in the loss of a field used for feeding and also bring disturbance closer to the feeding area. This is predicted to reduce the attractiveness of this area to foraging geese.
- 5.104 The loss of a single field is not considered to be sufficient to influence the survival of geese to the extent that it would have an adverse effect upon the integrity of the Firth of Forth SPA. This is particularly the case given the background of goose populations being in favourable condition, and the fact that the use of particular fields will vary depending on the cropping regime.
- 5.105 There is some uncertainty about the level of disturbance that would result cumulatively from the three proposals (NK7, NK8, NK9) and whether this would result in a decline in goose numbers or use of the area leading to an adverse effect upon the integrity of the Firth of Forth SPA. The quality of food available and the closeness of the feeding areas to the roost site will act as a powerful draw to the geese. Many birds, including geese, will tolerate “predictable” movements along roads and paths, but are less tolerant of pedestrians walking through fields.
- 5.106 To remove uncertainty about effects, mitigation has been included within the local development plan. Habitats Regulation Appraisal and Appropriate Assessment will be required for proposals NK7, NK8 and NK9. This is required to consider, in particular, the cumulative effect of development of all three allocations. It is considered that this mitigation meets the test set out in paragraph 4.3 of this report. The project-level Appropriate Assessment will be informed by surveys of goose use and feeding behaviour in the area. There is flexibility and scope for inclusion of mitigation to reduce effects, for example, through planting visual barriers between the developments and the feeding areas. There is also scope, if necessary, for developers to identify mitigation measures such as supplementary feeding or habitat improvements off-site to offset any increase in disturbance or loss of feeding areas. Provision of habitat improvement measures outwith the boundary of an SPA to offset effects to other habitat outwith the boundary of the same SPA can be considered as mitigation⁸⁹.
- 5.107 There are some additional pink-footed goose records from grid references that are within a few hundred metres of proposed spatial allocations, but these are

⁸⁸ 3E Services Ltd, June 2017

⁸⁹ Hargreaves v Secretary of State for Communities and Local Government, Wyre Borough Council, Cornwall Light and Power Company Ltd (2011) EWHC 1999 (2nd August 2011)

separated from the proposed sites by major landscape features such as the A1 and the A199 and so are not considered to contribute to cumulative effects.

- 5.108 An Appropriate Assessment was carried out to accompany the Blindwells Development Framework⁹⁰. Low numbers of pink-footed goose were seen to fly over the site, and some goose droppings were found by the pond. However, it was concluded that the site was not important for this species, and that the proposals would not have an adverse effect upon the integrity of the pink-footed goose qualifying interest of the Firth of Forth SPA.

⁹⁰ Scott Wilson, 2010

Table 5.2: Wader species recorded from tetrads containing spatial allocations, and associated habitat (determined through examination of aerial photos and images on google maps)

N.B. the presence of a species within a tetrad is NOT necessarily an indication that birds use habitat within the proposal area; factors such as disturbance or management may make the site unattractive.

The assessment of habitat is based on interpretation of aerial photographs on google.

Following production of the proposed local development plan, East Lothian Council commissioned surveys of some sites for QI⁹¹. A note of any QI recorded is included within the comments column below.

Spatial allocation	Habitat	Curlew	Oystercatcher	Redshank	Grey Plover	Golden Plover	Lapwing	Included in survey of QI ¹ ?	Comments
ED2 Part A: Preston Lodge High School	Permanent improved grassland	✓	✓	✓		✓	✓		Site considered too disturbed to support golden plover & lapwing
ED6 Part A: Dunbar Grammar	Permanent improved grassland	✓	✓	✓	✓	✓	✓		Site considered too disturbed to support golden plover, grey plover & lapwing
ED7 Part A North Berwick High School expansion	Permanent improved grassland	✓	✓	✓	✓				Site considered too disturbed to support grey plover
ED7 Part Bii Law Primary School additional campus land	Permanent grassland	✓	✓	✓	✓				Site considered too disturbed to support grey plover
T3: Segregated Active Travel Corridor	Various	?	?	?	?	?	?		Route passes through various habitats and many tetrads

⁹¹ 3E Services Ltd, 2017

Spatial allocation	Habitat	Curlew	Oystercatcher	Redshank	Grey Plover	Golden Plover	Lapwing	Included in survey of QI ¹ ?	Comments
T9: Larger Station Car Parks									
Musselburgh	Tilled land	✓	✓	✓		✓	✓		
Longniddry	Tilled land	✓	✓	✓	✓	✓	✓		
T10: Platform lengthening ⁹²									
Musselburgh	Tilled land	✓	✓	✓		✓	✓		
Wallyford	Permanent grassland/ Tilled land	✓	✓	✓		✓	✓		
Prestonpans	Tilled land/ grassland	✓				✓	✓		
Longniddry	Tilled land	✓	✓	✓	✓	✓	✓		
Dunbar	Grassland	✓	✓	✓	✓	✓	✓		
T11: Safeguard Land for improvements to Musselburgh Station	Tilled land	✓	✓	✓		✓	✓		
T15: Old Craighall A1 (T) Junction improvements	Tilled land	✓	✓	✓		✓	✓		
T17: A1(T) Interchange Improvements									
Salter's Road	Tilled land		✓				✓		
Bankton Junction	Tilled land/ woodland						✓		
Gladsmuir junction	Mainly tilled land, some		✓						

⁹² SNH has indicated in its response to the proposed plan that connectivity to the Firth of Forth SPA is not likely and to be proportionate this should be removed as generating a likely significant effect. However, during the examination of the proposed plan the Reporter recommended that it should stay.

Spatial allocation	Habitat	Curlew	Oystercatcher	Redshank	Grey Plover	Golden Plover	Lapwing	Included in survey of QI ¹ ?	Comments
	permanent grassland								
MH1. Craighall, Musselburgh	Mainly tilled land. Small area of grassland & scrub	✓	✓	✓		✓	✓	✓	Oystercatcher: 1 flying over site February 2017
MH2: Land at Old Craighall Village, Musselburgh -	Grazed grassland	✓	✓	✓		✓	✓	✓	No QI recorded during 2016 - 2017 survey
MH3: Land at Old Craighall Junction South West, Musselburgh -	Tilled land	✓	✓	✓		✓	✓	✓	No QI recorded during 2016 - 2017 survey
MH4: Land at Old Craighall Junction, Musselburgh -	Scrub/ disturbed land	✓	✓	✓		✓	✓	✓	No QI recorded during 2016 - 2017 survey
MH7. Pinkie Mains (intensification) Musselburgh	Tilled land	✓			✓	✓	✓	✓	Curlew: 33 feeding December 2016; 18 feeding January 2017;
MH8. Levenhall, Musselburgh -	Tilled land	✓	✓	✓		✓	✓	✓	No QI recorded during 2016 - 2017 survey
MH9. Land at Wallyford -	Tilled land		✓			✓	✓	✓	Site under construction so no QI recorded during 2016 - 2017 survey
MH10. Land at Dolphingstone -	Tilled land	✓	✓	✓		✓	✓	✓	Parts of site subject to

Spatial allocation	Habitat	Curlew	Oystercatcher	Redshank	Grey Plover	Golden Plover	Lapwing	Included in survey of QI ¹ ?	Comments
									construction, so no QI recorded during 2016 - 2017 survey
MH12. Barbachlaw, Wallyford	Tilled land	✓	✓	✓		✓	✓	✓	Curlew: 21 November 2016; 3 feeding December 2016; 3 feeding February 2017 Oystercatcher: 1 feeding February 2017
MH13. Land at Whitecraig south	Tilled land	✓						✓	No QI recorded during 2016 - 2017 survey
MH14. Land at Whitecraig North -	Tilled land	✓	✓	✓				✓	No QI recorded during 2016 - 2017 survey
PS1. Longniddy South	Tilled land	✓	✓	✓	✓	✓	✓	✓	Curlew: 16 feeding October 2016; 8 feeding November 2016; Lapwing: 118 roosting October 2016; 72 roosting; November 2016; 1 feeding January 2017
Sites listed in Table PS1:									

Spatial allocation	Habitat	Curlew	Oystercatcher	Redshank	Grey Plover	Golden Plover	Lapwing	Included in survey of QI ¹ ?	Comments
Mid Road Industrial Estate	Partially developed/ small grassland areas/ ruderal vegetation	✓				✓	✓		
Whin Park/Cockenzie Business Centre	Partially developed/ small grassland areas	✓	✓	✓	✓	✓	✓		
BW1. Blindwells new settlement	Tilled land/ wetland	✓	✓ ⁹³	✓	✓ ⁸⁹	✓ ⁸⁹	✓ ⁸⁹		
BW2. Safeguarded Blindwells Expansion Area	Tilled land	✓	✓	✓	✓	✓	✓	✓	Curlew: 31 feeding November 2016; 25 feeding December 2016;
TT1. Housing at Windygoul South, Tranent (& TT2)	Tilled land					✓		✓	No wader QI recorded during 2016 - 2017 survey
TT4. Lammermoor Terrace, Tranent	Tilled land	✓				✓	✓	✓	Curlew: 1 curlew recorded roosting in October 2016
TT7. Macmerry North -	Tilled land		✓			✓	✓	✓	No QI recorded during 2016 - 2017 survey
TT11. Elphinstone West -	Tilled land					✓		✓	Site lies within a tetrad from which golden plover has

⁹³ Species not recorded during species surveys to inform an Appropriate Assessment to accompany the development framework for Blindwells⁹³.

Spatial allocation	Habitat	Curlew	Oystercatcher	Redshank	Grey Plover	Golden Plover	Lapwing	Included in survey of QI ¹ ?	Comments
									been recorded, but owing to the proximity of the site to the urban edge, this site has been screened out for this species. No QI recorded during 2016 - 2017 survey
DR2. Hallhill North, Dunbar -	Tilled land	✓	✓	✓	✓	✓	✓	✓	No QI recorded during 2016 - 2017 survey, but curlew recorded nearby.
DR5. Land at Newtonlees, Dunbar -	Tilled land	✓	✓	✓	✓	✓	✓	✓	Site under construction so no QI recorded during 2016 - 2017 survey.
DR6. Beveridge Row Belhaven, Dunbar	Tilled land	✓	✓	✓	✓	✓	✓	✓	Curlew: 2 recorded feeding November 2016. Habitat - rough grassland.
DR7. Land at Spott Road, Dunbar -	Tilled land	✓	✓	✓	✓	✓	✓	✓	No QI recorded during 2016 - 2017 survey
DR11. St John's Street, Spott	Tilled land	✓	✓						

Spatial allocation	Habitat	Curlew	Oystercatcher	Redshank	Grey Plover	Golden Plover	Lapwing	Included in survey of QI ¹ ?	Comments
DR12. Land at Newtonlees Farm, Dunbar	Tilled land. Planning permission granted	✓	✓	✓	✓	✓	✓		Site added during examination of proposed plan
Sites listed in Table DR1									
Station Road Field	Grassland	✓	✓	✓	✓	✓	✓		
Belhaven Hospital Road Field	Grassland/ruderal	✓	✓	✓	✓	✓	✓		
NK1. Mains Farm, North Berwick	Tilled land	✓	✓	✓	✓		✓		
NK3. Gilsland, North Berwick	Tilled land	✓	✓	✓	✓				
NK4. Land at Tantallon Road, North Berwick	Tilled land	✓	✓	✓	✓				
NK5. Land at Ferrygate Farm, North Berwick	Tilled land	✓	✓	✓	✓		✓	✓	Curlew: 25 feeding December 2016; 38 feeding January 2017 Oystercatcher: 21 feeding January 2017 Golden plover: 32 flying over site November 2016
NK8. Fenton Gait East, Gullane	Tilled land	No data	No data	No data	No data	No data	No data	✓	No QI recorded during 2016 - 2017 survey. Habitat was rank grassland, with

Spatial allocation	Habitat	Curlew	Oystercatcher	Redshank	Grey Plover	Golden Plover	Lapwing	Included in survey of QI ¹ ?	Comments
									low suitability for QI.
NK9. Fenton Gait South, Gullane	Tilled land	No data	No data	No data	No data	No data	No data	✓	Curlew: 3 feeding January 2017
NK10. Aberlady West	Tilled land		✓	✓			✓	✓	Curlew: 16 feeding November 2016; 14 feeding December 2016; 16 feeding January 2017; 4 feeding February 2017
EGT1. Land at former Cockenzie Power Station	Amenity grassland, rough grassland, buildings & site of dismantled power station	✓	✓	✓		✓	✓	✓	Curlew: 1 feeding December; 1 feeding February Oystercatcher: 2 roosting November; 24 feeding January; 32 feeding February Redshank: 2 roosting October; 2 roosting November

Note:

1: Site was surveyed for presence of Qualifying Interest species during winter 2016 - 2017. See 3E Services Ltd, 2017

Table 5.3: Proposals for which wording was amended following Appropriate Assessment to remove uncertainty over effects

Policy	Reason
MH1: Land at Craighall, Musselburgh	To provide certainty in the Appropriate Assessment of the cumulative effects of loss of potentially supporting habitat for qualifying interests of the Firth of Forth SPA (curlew, oystercatcher, redshank, golden plover, lapwing).
MH9: Land at Wallyford & MH10: Land at Dolphingstone	To provide certainty in the Appropriate Assessment of the cumulative effects of loss of potentially supporting habitat for qualifying interests of the Firth of Forth SPA (oystercatcher, golden plover, lapwing, curlew, redshank).
NK7: Saltcoats, North Berwick; NK8: Fenton Gait East, Gullane; NK9: Fenton Gait South, Gullane.	To provide certainty in the Appropriate Assessment of the cumulative effects of loss of potentially supporting habitat for qualifying interests of the Firth of Forth SPA (principally pink-footed goose).

FALA FLOW SPA AND GLADHOUSE RESERVOIR SPA

- 6.1 Maps showing the feeding areas used by pink-footed goose associated with Fala Flow SPA and Gladhouse Reservoir SPA are available (Mitchell, 2012).
- 6.2 Few of the mapped feeding areas for pink-footed goose that are a qualifying interest of Gladhouse Reservoir SPA are within East Lothian, and these overlap with feeding areas mapped for Aberlady Bay. Based on the scale of maps that are available, it does not appear that any of the proposals within the East Lothian LDP are for locations mapped as feeding areas for pink-footed geese that roost at Gladhouse Reservoir.
- 6.3 It has been suggested that pink-footed geese roosting at Fala Flow SPA, disperse to feeding sites within 5 km of the site⁹⁴, although other maps suggest that the northern extent of the feeding area may extend into East Lothian⁹⁵. These feeding areas overlap with sites identified as feeding areas for geese that roost at Gladhouse Reservoir and Aberlady Bay. Based on the scale of maps, the only proposal within the local development plan that has been identified as lying within the mapped feeding areas is PS1 Longniddry. Effects of loss of this area have been considered in paragraph 5.98.
- 6.4 It is concluded that the proposals will not have an adverse effect upon the integrity of the pink-footed goose qualifying interest of Fala Flow SPA or Gladhouse Reservoir SPA.

IN COMBINATION EFFECTS BETWEEN MRE ARISING FROM EAST LOTHIAN PROPOSED LDP AND OTHER POLICIES/PLANS

- Loss of /disturbance whilst using inland habitat of potential value as high tide roost sites by qualifying interests.*
- 7.1 Wading birds that are a qualifying interest of the Firth of Forth SPA are found at various locations around the Forth coastline. These species will tend to use inland roost sites that are close to their main coastal feeding areas, to reduce energy expenditure during the winter. Each of the local development plans listed in Table 6.1 will result in the loss of small areas of potential habitat for qualifying interests, although there is limited information as to whether any of these areas are used. In combination effects would only be anticipated if the scale of loss of habitat within one local authority area acted to displace birds to use high tide roost sites within an adjoining local authority.
- 7.2 The scale of loss of potential habitat for wader species was discussed in paragraphs 5.31 - 5.93. There is limited information as to whether any of these sites are actually used by any of the qualifying interests, and the majority of sites are considered to probably be unsuitable, owing to their habitat. Surveys of some of the sites undertaken on behalf of East Lothian Council, suggest that fewer sites may be used by qualifying interest species than predicted⁹⁶. However, even under a “worst case” scenario, no displacement of waders to inland roosting sites beyond the boundary of East Lothian is anticipated. It is concluded there will be no adverse effects upon the integrity of the Firth of Forth SPA.

⁹⁴ Brown & Brown, 2011

⁹⁵ Mitchell, 2012

⁹⁶ 3E Services Ltd, 2017

- Loss of/ disturbance whilst using inland habitat of potential value to Pink-footed Goose.
- 7.3 The proposals will not result in any displacement of feeding geese to neighbouring local authority areas. There will be no adverse effects upon the integrity of the Firth of Forth SPA.
- Increased disturbance of QI at coast resulting from elevated levels of recreation associated with new housing developments.
- 7.4 MRE were identified for three qualifying interest species as a result of recreational use of the coast: Golden plover, bar-tailed godwit and grey plover. Golden plover and bar-tailed godwit were also identified as receiving MRE from proposals arising from the Falkirk LDP⁹⁷, but were not identified as sensitive to disturbance from proposals arising from the Clackmannanshire LDP⁹⁸. The scale of the combined residual effects arising from each plan will not result in adverse effects upon the integrity of the Firth of Forth SPA.

CONCLUSIONS OF APPROPRIATE ASSESSMENT

- 8.1 The “test” of effects on integrity is made by reference to the Conservation Objectives of a European Site. The Conservation Objectives for European sites considered during the Appropriate Assessment were set out in Appendix A.
- 8.2 With the inclusion of the mitigation measures outlined above, it can be concluded that the proposals within the East Lothian LDP will not have an adverse effect upon the integrity of the:
- Firth of Forth SPA;
 - Forth Islands SPA;
 - Firth of Tay & Eden Estuary SAC;
 - River Teith SAC;
 - Moray Firth SAC;
 - Outer Firth of Forth & St Andrews Bay Complex pSPA;
 - Fala Dam SPA; and/or
 - Gladhouse Reservoir SPA
- either alone or in combination with other projects and plans.

⁹⁷ Falkirk Council, 2015

⁹⁸ Clackmannanshire Council, 2013

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Qualifying Interests	Condition Status	Conservation Objectives	Site Pressures	Connectivity pathways, vulnerability & potential effects of plan	Conclusions
Lesser black-backed gull (<i>Larus fuscus</i>) Puffin (<i>Fratercula arctica</i>) Razorbill (<i>Alca torda</i>)* Roseate tern (<i>Sterna dougallii</i>) Sandwich tern (<i>Sterna sandvicensis</i>) Shag (<i>Phalacrocorax aristotelis</i>) Seabird assemblage *indicates seabird assemblage qualifier only	Favourable Maintained Favourable Maintained Favourable Maintained Unfavourable Declining Unfavourable Declining Unfavourable Recovering	<ul style="list-style-type: none"> Population of the species as a viable component of the site Distribution of the species within site Distribution and extent of habitats supporting the species Structure, function and supporting processes of habitats supporting the species No significant disturbance of the species 	(guillemot, kittiwake, razorbill)	qualifying interests at their breeding or feeding sites.	
Imperial Dock Lock, Leith SPA					
Breeding populations: Common tern <i>Sterna hirundo</i>	Favourable Maintained	To avoid deterioration of the habitats of the qualifying species (listed below) or significant disturbance to the qualifying species, thus ensuring that the integrity of the site is maintained; and To ensure for the qualifying species that the following are maintained in the long term: <ul style="list-style-type: none"> Population of the species as a viable component of the site Distribution of the species within site Distribution and extent of habitats supporting the species Structure, function and supporting processes of habitats supporting the species No significant disturbance of the species 	None identified	The SPA lies to the west of East Lothian. Potential connective pathways are: <ul style="list-style-type: none"> Proposals that would affect the quality of feeding habitat/ availability of prey for common terns (e.g. effects on sediment levels). 	Include within screening exercise
Isle of May SAC					
Grey seal <i>Halichoerus grypus</i> Reefs	Favourable Maintained Favourable Maintained	To avoid deterioration of the qualifying habitat thus ensuring that the integrity of the site is maintained and the site makes an appropriate contribution to achieving favourable conservation status for each of the qualifying features; and To ensure for the qualifying habitat that the following are maintained in the long term: <ul style="list-style-type: none"> Extent of the habitat on site Distribution of the habitat within site Structure and function of the habitat 	Presence/changing extent of invasive non-native species & water management water Dependant Pressure-morphological alteration (Reefs)	The SAC lies offshore from East Lothian. Potential connective pathways are: <ul style="list-style-type: none"> Proposals that will have an effect on the grey seals, which are a qualifying feature of the SAC; Proposals that would lead to changes in water quality or habitat structure of the reefs. 	Include within screening exercise.

Qualifying Interests	Condition Status	Conservation Objectives	Site Pressures	Connectivity pathways, vulnerability & potential effects of plan	Conclusions
		<ul style="list-style-type: none"> Processes supporting the habitat Distribution of typical species of the habitat Viability of typical species as components of the habitat No significant disturbance of typical species of the habitat 			
Firth of Tay and Eden Estuary SAC					
Estuaries Intertidal mudflats and sandflats Subtidal sandbanks Common seal <i>Phoca vitulina</i>	Not assessed Favourable Maintained Favourable Maintained Unfavourable Declining	<p>Habitats: To avoid deterioration of the qualifying habitats thus ensuring that the integrity of the site is maintained and the site makes an appropriate contribution to achieving favourable conservation status for each of the qualifying features; and</p> <p>To ensure for the qualifying habitats that the following are maintained in the long term:</p> <ul style="list-style-type: none"> Extent of the habitat on site Distribution of the habitat within site Structure and function of the habitat Processes supporting the habitat Distribution of typical species of the habitat Viability of typical species as components of the habitat No significant disturbance of typical species of the habitat. <p>Species: To avoid deterioration of the habitats of the qualifying species or significant disturbance to the qualifying species, thus ensuring that the integrity of the site is maintained and the site makes an appropriate contribution to achieving favourable conservation status for each of the qualifying features; and</p> <p>To ensure for the qualifying species that the following are maintained in the long term:</p> <ul style="list-style-type: none"> Population of the species as a viable component of the site 	<p><u>Recreation/disturbance</u> (common seal)</p> <p><u>Game/fisheries management</u> (Intertidal mudflats and sandflats)</p>	The SAC boundary lies over 20 miles to the north of East Lothian. Potential connective pathways are: <ul style="list-style-type: none"> Proposals that could have an effect on common seals, which are a qualifying interest of the SAC. 	Include within screening exercise.

Qualifying Interests	Condition Status	Conservation Objectives	Site Pressures	Connectivity pathways, vulnerability & potential effects of plan	Conclusions
		<ul style="list-style-type: none"> • Distribution of the species within site • Distribution and extent of habitats supporting the species • Structure, function and supporting processes of habitats supporting the species • No significant disturbance of the species 			
Berwickshire and North Northumberland Coast SAC					
Large shallow inlets and bays Intertidal mudflats and sandflats Reefs Sea caves Grey seal <i>Halichoerus grypus</i>	Not assessed Not assessed Not assessed Favourable Maintained Favourable Maintained	<p>Habitats: To avoid deterioration of the qualifying habitats thus ensuring that the integrity of the site is maintained and the site makes an appropriate contribution to achieving favourable conservation status for each of the qualifying features; and</p> <p>To ensure for the qualifying habitats that the following are maintained in the long term:</p> <ul style="list-style-type: none"> • Extent of the habitat on site • Distribution of the habitat within site • Structure and function of the habitat • Processes supporting the habitat • Distribution of typical species of the habitat • Viability of typical species as components of the habitat • No significant disturbance of typical species of the habitat <p>Species: To avoid deterioration of the habitats of the qualifying species or significant disturbance to the qualifying species, thus ensuring that the integrity of the site is maintained and the site makes an appropriate contribution to achieving favourable conservation status for each of the qualifying features; and</p> <p>To ensure for the qualifying species that the following are maintained in the long term:</p> <ul style="list-style-type: none"> • Population of the species as a viable component of the site 	No negative pressures	The eastern boundary of East Lothian lies less than 20 miles from the northern boundary of the SAC. Potential connective pathways are: <ul style="list-style-type: none"> • Proposals that would have an effect on grey seals, which are a Qualifying Interest of the SAC. 	Include within screening exercise.

Qualifying Interests	Condition Status	Conservation Objectives	Site Pressures	Connectivity pathways, vulnerability & potential effects of plan	Conclusions
		<ul style="list-style-type: none"> • Distribution of the species within site • Distribution and extent of habitats supporting the species • Structure, function and supporting processes of habitats supporting the species • No significant disturbance of the species 			
River Teith SAC					
River lamprey <i>Lampetra fluviatilis</i> Brook lamprey <i>Lampetra planeri</i> Sea lamprey <i>Petromyzon marinus</i> Atlantic salmon <i>Salmo salar</i>	Favourable Maintained Favourable Maintained Unfavourable Declining Unfavourable recovering	<p>To avoid deterioration of the habitats of the qualifying species or significant disturbance to the qualifying species, thus ensuring that the integrity of the site is maintained and the site makes an appropriate contribution to achieving favourable conservation status for each of the qualifying features; and</p> <p>To ensure for the qualifying species that the following are maintained in the long term:</p> <ul style="list-style-type: none"> • Population of the species, including range of genetic types for salmon, as a viable component of the site • Distribution of the species within site • Distribution and extent of habitats supporting the species • Structure, function and supporting processes of habitats supporting the species • No significant disturbance of the species 	<p><u>Forestry operations</u> (salmon, brook lamprey, river lamprey, sea lamprey)</p> <p><u>Invasive species</u> (salmon)</p> <p><u>Water quality</u> (salmon, brook lamprey, river lamprey, sea lamprey)</p> <p><u>Water management</u> (flow regulation, abstraction, point source pollution) (brook lamprey, river lamprey, sea lamprey)</p>	<p>The SAC lies approximately 60 km (measured along the course of the Forth) to the west of East Lothian. Some of the Qualifying Interests are migratory and will pass the shores of East Lothian. Potential connective pathways are:</p> <ul style="list-style-type: none"> • Proposals that will alter water quality; • Proposals that will act as barriers to migration. 	Include within screening exercise.
Moray Firth SAC					
Subtidal sandbanks Bottlenose dolphin <i>Tursiops truncatus</i>	Favourable Maintained Favourable Recovered	<p>Habitats:</p> <p>To avoid deterioration of the qualifying habitat thus ensuring that the integrity of the site is maintained and the site makes an appropriate contribution to achieving favourable conservation status for each of the qualifying features; and</p> <p>To ensure for the qualifying habitat that the following are maintained in the long term:</p>	No negative pressures	This site is located in excess of 100 miles as the crow flies from East Lothian, and significantly further by sea. Whilst Bottlenose dolphin is a mobile species, there are few reports of this species within the Firth of Forth ⁹⁹	No further screening required.

⁹⁹ Thompson, 2011. Thompson, P. M., Cheney, B., Ingram, S., Stevick, P., Wilson, B. & Hammond, P. S. (Eds). 2011. Distribution, abundance and population structure of bottlenose dolphins in Scottish waters. Scottish Government and Scottish Natural Heritage funded report. *Scottish Natural Heritage Commissioned Report No. 354*

Qualifying Interests	Condition Status	Conservation Objectives	Site Pressures	Connectivity pathways, vulnerability & potential effects of plan	Conclusions
		<ul style="list-style-type: none"> • Extent of the habitat on site • Distribution of the habitat within site • Structure and function of the habitat • Processes supporting the habitat • Distribution of typical species of the habitat • Viability of typical species as components of the habitat <p>No significant disturbance of typical species of the habitat</p> <p>Species: To avoid deterioration of the habitats of the qualifying species or significant disturbance to the qualifying species, thus ensuring that the integrity of the site is maintained and the site makes an appropriate contribution to achieving favourable conservation status for each of the qualifying features; and</p> <p>To ensure for the qualifying species that the following are established then maintained in the long term:</p> <ul style="list-style-type: none"> • Population of the species as a viable component of the site • Distribution of the species within site • Distribution and extent of habitats supporting the species • Structure, function and supporting processes of habitats supporting the species • No significant disturbance of the species 			
Outer Firth of Forth and St Andrews Bay Complex cSPA					
Red-throated diver <i>Gavia stellata</i> Slavonian grebe <i>Podiceps auritus</i> Little gull <i>Larus minutus</i> Common tern <i>Sterna hirundo</i> Arctic tern <i>Sterna paradisaea</i> Common eider <i>Somateria mollissima</i> Long-tailed duck <i>Clangula hyemalis</i> Common scoter <i>Melanitta nigra</i> Velvet scoter <i>Melanitta fusca</i> Goldeneye <i>Bucephala clangula</i> Red-breasted merganser <i>Mergus serrator</i>	Not assessed	Under development	Not Known	This is a new marine site designated for species that spend most/all of their time at sea. Potential connective pathways are: <ul style="list-style-type: none"> • Proposals that will alter water quality; • Proposals that will create disturbance/changes to habitat quality offshore. 	

Qualifying Interests	Condition Status	Conservation Objectives	Site Pressures	Connectivity pathways, vulnerability & potential effects of plan	Conclusions
Northern gannet <i>Morus bassanus</i> Manx shearwater <i>Puffinus puffinus</i> Razorbill <i>Alca torda</i> Atlantic puffin <i>Fratercula arctica</i> European shag <i>Phalacrocorax aristotelis</i> Black-legged kittiwake <i>Rissa tridactyla</i> Common guillemot <i>Uria aalge</i> Black headed gull <i>Chroicocephalus ridibundus</i> Common gull <i>Larus canus</i> Herring gull <i>Larus argentatus</i>					
River Tweed SAC					
Rivers with floating vegetation often dominated by water-crowfoot Atlantic salmon <i>Salmo salar</i> Brook lamprey <i>Lampetra planeri</i> Otter <i>Lutra lutra</i> River lamprey <i>Lampetra fluviatilis</i> Sea lamprey <i>Petromyzon marinus</i>	Unfavourable No Change Favourable Maintained Unfavourable No Change Favourable Maintained Unfavourable No Change Unfavourable No Change	Habitats: To avoid deterioration of the qualifying habitat (listed below) thus ensuring that the integrity of the site is maintained and the site makes an appropriate contribution to achieving favourable conservation status for each of the qualifying features; and To ensure for the qualifying habitat that the following are maintained in the long term: <ul style="list-style-type: none"> • Extent of the habitat on site • Distribution of the habitat within site • Structure and function of the habitat • Processes supporting the habitat • Distribution of typical species of the habitat • Viability of typical species as components of the habitat • No significant disturbance of typical species of the habitat Species: To avoid deterioration of the habitats of the qualifying species or significant disturbance to the qualifying species, thus ensuring that the integrity of the site is maintained and the site makes an appropriate contribution to achieving favourable conservation status for each of the qualifying features; and	<u>Agricultural operations</u> (salmon) <u>Climate change</u> (salmon) <u>Invasive species</u> (salmon) <u>Over-grazing</u> (salmon) <u>Water management</u> (abstraction, morphological alteration, point source pollution, diffuse source pollution) (salmon) <u>Water management</u> (morphological alteration, point source pollution, flow regulation, diffuse source pollution, abstraction) (brook lamprey) <u>Forestry operations</u> (otter) Recreation/disturbance (otter) <u>Water management</u> (morphological alteration, flow regulation, diffuse source pollution, abstraction, point source pollution) , (river lamprey) <u>Water quality</u> (river lamprey) <u>Invasive species</u> (rivers with floating vegetation)	A small part of the Tweed catchment lies within the boundary of East Lothian. Potential connective pathways are: <ul style="list-style-type: none"> • proposals that would alter water quality in the Tweed catchment; • proposals that would influence ability of migratory and mobile QI (e.g. otter) to use headwaters of tributaries of the Tweed. 	Include within screening exercise.

Qualifying Interests	Condition Status	Conservation Objectives	Site Pressures	Connectivity pathways, vulnerability & potential effects of plan	Conclusions
		<p>To ensure for the qualifying species that the following are maintained in the long term:</p> <ul style="list-style-type: none"> • Population of the species, including range of genetic types for salmon, as a viable component of the site • Distribution of the species within site • Distribution and extent of habitats supporting the species • Structure, function and supporting processes of habitats supporting the species • No significant disturbance of the species 			
Fala Flow SPA					
Pink-footed goose <i>Anser brachyrhynchus</i>	Favourable Maintained	<p>To avoid deterioration of the habitats of the qualifying species or significant disturbance to the qualifying species, thus ensuring that the integrity of the site is maintained; and</p> <p>To ensure for the qualifying species that the following are maintained in the long term:</p> <ul style="list-style-type: none"> • Population of the species as a viable component of the site • Distribution of the species within site • Distribution and extent of habitats supporting the species • Structure, function and supporting processes of habitats supporting the species • No significant disturbance of the species 	No negative pressures	<p>Site lies outwith the boundary of East Lothian. The qualifying interests have been recorded as foraging within East Lothian¹⁰⁰. Potential connective pathways are:</p> <ul style="list-style-type: none"> • Loss of foraging areas. 	Include within screening exercise.
Greenlaw Moor SPA					
Pink-footed goose <i>Anser brachyrhynchus</i>	Favourable Maintained	<p>To avoid deterioration of the habitats of the qualifying species or significant disturbance to the qualifying species, thus ensuring that the integrity of the site is maintained; and</p> <p>To ensure for the qualifying species that the following are maintained in the long term:</p>	No Negative Pressures	<p>Site lies outwith the boundary of East Lothian. The qualifying interests have not been recorded as foraging within East Lothian¹⁰¹.</p>	No potential connectivity, screened out of further consideration.

¹⁰⁰ Mitchell, 2012

¹⁰¹ Mitchell, 2012

Qualifying Interests	Condition Status	Conservation Objectives	Site Pressures	Connectivity pathways, vulnerability & potential effects of plan	Conclusions
		<ul style="list-style-type: none"> • Population of the species as a viable component of the site • Distribution of the species within site • Distribution and extent of habitats supporting the species • Structure, function and supporting processes of habitats supporting the species • No significant disturbance of the species 			
Gladhouse Reservoir SPA					
Pink-footed goose <i>Anser brachyrhynchus</i>	Unfavourable Declining	<p>To avoid deterioration of the habitats of the qualifying species or significant disturbance to the qualifying species, thus ensuring that the integrity of the site is maintained; and</p> <p>To ensure for the qualifying species that the following are maintained in the long term:</p> <ul style="list-style-type: none"> • Population of the species as a viable component of the site • Distribution of the species within site • Distribution and extent of habitats supporting the species • Structure, function and supporting processes of habitats supporting the species • No significant disturbance of the species 	Water management - flow regulation	<p>Site lies outwith the boundary of East Lothian. The qualifying interests have been recorded as foraging within East Lothian¹⁰². Potential connective pathways are:</p> <ul style="list-style-type: none"> • Loss of foraging areas. 	Include within screening exercise.

¹⁰² Mitchell, 2012

APPENDIX B: POLICIES WHICH WERE RE-WORDED AS PART OF POLICY ITERATION TO AVOID AMBIGUITY

Policy	Reason
<p>T9: Larger Station Car Parks; T10: Platform lengthening; T11 Safeguarding of land for Musselburgh “Parkway” station; T12 Railway Station Safeguarding at East Linton</p>	<p>These policies relate to allowing expansion of public transport links. Whilst these would probably be situated adjacent to existing developments, no boundaries have yet been defined. The areas safeguarded for development may extend into areas of potentially suitable habitat for up to seven of the Qualifying Interests of the Firth of Forth SPA, but these areas are unlikely to be used by qualifying interests owing to their proximity to disturbance. Nevertheless, the wording of the proposal was modified during the plan preparation stage to clarify the criteria for proposals that would be acceptable by linking it directly with the requirements of policy NH1.</p> <p>In relation to policy T10 SNH has indicated in its response to the proposed plan that connectivity to the Firth of Forth SPA is not likely and to be proportionate this should be removed. However, during the examination of the proposed plan the Reporter recommended that it should stay.</p> <p>Whilst these policies were not identified as contributing to likely significant effects alone, T9 - T11 were subject to Appropriate Assessment as contributing to cumulative effects on qualifying interests (wader species) resulting from the loss of areas of potential supporting habitat for those species. T12 is considered to be beyond the range for use by qualifying wader species. T9 - T12 were subject to Appropriate Assessment as contributing to cumulative effects on pink-footed goose as a result of loss of inland roost sites.</p>
<p>T13: East Coast Main Line: Four Track Section, New Rail Station and Vehicular Overbridge</p>	<p>This proposal allows for the expansion of the capacity of the rail network. An indicative location has been identified, but this has not yet been fixed with sufficient certainty to allow a meaningful assessment. The proposal was amended during the plan preparation process to clarify the criteria for proposals that would be acceptable, by linking it directly with requirements of policy NH1. In the absence of the modification it could have been screened out as (3e) = ‘Elements of the plan for which effects cannot be determined as the nature and location of any effects is unknown owing to the general nature of the plan.’</p>
<p>T14: Longniddry-Haddington Route Safeguard</p>	<p>This proposal safeguards the cycle-walkway, but also allows for the feasibility of using the route to be altered for public transport use, including supporting infrastructure to be explored. Provision of a replacement cycle-walkway would be required if the existing route were to be used for public transport. The existing use is not likely to have significant effects upon the qualifying interests of the Firth of Forth SPA. However, if the route is to be used for public transport, it is not known where the replacement cycle-walkway would be located, or the nature or location of any supporting infrastructure and whether these locations would be in areas of supporting habitat for the QI of the Firth of Forth SPA. The proposal could have been screened out as (3e) = ‘Elements of the plan for which effects cannot be determined as the nature and location of any effects is unknown owing to the general nature of the plan.’ However, the proposal was modified during the plan preparation process to clarify the range of criteria that would apply to the assessment of the feasibility of any proposals brought forward under this policy.</p>

Policy	Reason
T15: Old Craighall A1(T) Junction Improvements	This policy allows for changes to the road layout to facilitate development in the area, subject to feasibility studies. The proposal was modified as part of the drafting process to include consideration of Habitats Regulations Appraisal as one of the feasibility criteria. Whilst the proposal was identified as not giving rise to likely significant effects alone, it has been identified as contributing to loss of habitat potentially used by qualifying interests of the Firth of Forth and subject to an appropriate assessment.
T17: A1(T) Interchange Improvements	This policy allows for upgrades of existing junctions, or contributions to these. It is not clear at this stage what would be required in terms of the upgrade, and what land, if any, would be required. There are agricultural fields adjacent to some of the junctions. During the drafting process the need to include consideration of effects on European sites was included as part of the wider feasibility assessment that is required by the proposal. The use of fields adjacent to the junctions as supporting habitat for qualifying interests of the Firth of Forth SPA is reduced through disturbance from the road, but is mainly influenced by cropping regime, which can vary annually. Whilst the proposals were identified as not giving rise to likely significant effects alone, they have been identified as contributing to loss of habitat potentially used by qualifying interests of the Firth of Forth and subject to an Appropriate Assessment.
T18: Land Safeguard for Trunk Road Interchange at Adniston and Eastern Tranent By-pass	As for T17.
DC4: New Build housing in the Countryside	This is a criteria-based policy that allows new housing in the countryside. At this stage it is difficult to know where proposals might be located. There is potential for proposals in areas that are important high tide roost sites for Qualifying Interests, but there is no information on the likelihood of a) sites being identified in areas used by qualifying interests; or b) the significance of any effects of such proposals. Consequently, the proposal was modified during the plan preparation process to clarify the criteria for proposals that would be acceptable, by linking it directly with requirements of policy NH1. In the absence of the modification it could have been screened out as (3e) = 'Elements of the plan for which effects cannot be determined as the nature and location of any effects is unknown owing to the general nature of the plan.'
DC5: Housing as enabling development	This is a criteria-based policy that allows new housing in the countryside, if it enables other benefits. There is potential for proposals in areas that are important high tide roost sites for Qualifying Interests, but there is no information on the likelihood of a) sites being identified in areas used by qualifying interests; or b) the significance of any effects of such proposals. Consequently, the proposal was modified during the plan preparation process to clarify the criteria for proposals that would be acceptable, by linking it directly with requirements of policy NH1. In the absence of the modification it could have been screened out as (3e) = 'Elements of the plan for which effects cannot be determined as the nature and location of any effects is unknown owing to the general nature of the plan.'

Policy	Reason
MIN9: Supporting Information	The policy sets out the information that may be required to support applications for mineral extraction.

APPENDIX C: SUMMARY OF SCREENING OF POLICIES/PROPOSALS IN THE PROPOSED LDP AGAINST EUROPEAN SITES.

Appendix C is provided as a separate spreadsheet containing two worksheets:

Summ screen edit: This sheet provides a summary of the screening conclusions for each proposal within the East Lothian LDP for Likely Significant Effects (alone) upon each of the European sites. Screening criteria have followed those set out in SNH's guidance for Appropriate Assessment of local plans (SNH, 2015). The reasons for screening out particular proposals are indicated using the following numbering system:

1 = General Policy Statements

2 = Projects referred to in, but not proposed by, the plan

3a = Elements of the plan with no LSE on the European Site as they are intended to protect the natural or built environment

3b = Elements of the plan with no LSE on the European Site as they do not in themselves lead to development or other change.

3c = Elements of the plan that make provision for change, but there is no link or pathway between them and the qualifying interests of a European Site.

3d = Elements of the plan that make provision for change, but there is not likely to be a significant effect, but may give rise to Minor Residual Effects.

3e = Elements of the plan for which effects cannot be determined as the nature and location of any effects is unknown owing to the general nature of the plan.

Proposals marked in red are considered to have LSE on the relevant European site.

Proposals marked in brown are those that have Minor Residual effects and hence require consideration for cumulative effects within the plan, or in combination effects with other projects and plans

Further explanation of the criteria used in screening is provided in Section 2 of the Habitats Regulation Appraisal record.

MRE Cuml effects: This sheet lists those proposals that have been identified to have Minor Residual Effects and need to be considered cumulatively and in combination with other projects and plans for Likely Significant Effects upon European sites.

Proposals marked in red are considered to have LSE on the relevant European site. Proposals marked in orange are considered to have MRE, and hence require screening for cumulative and in combination effects.

APPENDIX D: LSE IDENTIFIED FROM CUMULATIVE EFFECTS OF POLICIES/PROPOSALS WITHIN THE PROPOSED EAST LoTHIAN LDP

(a) Firth of Forth SPA

LSE on qualifying interest features of the Firth of Forth SPA	Combinations of policies/proposals giving rise to cumulative LSE
<p>Proposals within 5 km of the coast that could contribute to increased recreational use of the coast</p>	<p> Polices/Proposals for coastal development: <u>Musselburgh allocations:</u> MH1. Craighall, Musselburgh MH2: Land at Old Craighall Village, Musselburgh MH3: Land at Old Craighall Junction, Musselburgh MH5: Former Edenhall Hospital Site, Musselburgh MH6: Pinkie Mains, Musselburgh MH7. Pinkie Mains (intensification), Musselburgh MH8. Levenhall, Musselburgh MH9. Land at Wallyford MH10. Land at Dolphingstone MH12. Barbachlaw Wallyford MH13. Land at Whitecraig south MH14. Land at Whitecraig North Sites in Table MH1: Brunton Wireworks Monktonhall Terrace Drumhoor Avenue Balcarres Road Drummohr House Salters Road Chalkieside Steading <u>Prestonpans allocations:</u> PS1. Longniddry South PS2. Land at Dolphingstone North, Prestonpans Sites listed within Table PS1: Edinburgh Road West Seaside Cockenzie House Seton East Steading <u>Blindwells</u> BW1. Blindwells new settlement BW2. Safeguarded Blindwells Expansion Area <u>Tranent Allocations</u> TT1. Housing at Windygoul South - Tranent TT4. Lammermoor Terrace, Tranent TT5. Bankpark Grove, Tranent TT7. Macmerry North TT9. Gladsmuir East TT11.Elphinstone West Sites listed in Table TT1: 73-77 High Street 22-24 Bridge Street North Elphinstone Farm Land to south Tranent Mains Farm Land at Elder Street </p>

LSE on qualifying interest features of the Firth of Forth SPA	Combinations of policies/proposals giving rise to cumulative LSE
	<p><u>Dunbar Allocations</u> DR1. Hallhill South West Dunbar DR2. Hallhill North, Dunbar DR4. Brodie Road, Dunbar DR5. Land at Newtonlees, Dunbar DR6. Beveridge Row Belhaven, Dunbar DR8. Pencraig Hill, East Linton DR10. Innerwick East DR11. St John’s Street, Spott DR12. Land at Newtonlees Farm, Dunbar Sites included within Table DR1: Abbeylands Abbeylands Garage Bayswell Road Coastguard site Assembly Rooms Station Road Field Belhaven Hospital Road Field Former Gasworks Belhaven Road Tynninghame Links Little Spott Pleasance Farm Dairy Cottage Thurston</p> <p><u>North Berwick Allocations</u> NK1. Mains Farm, North Berwick NK3. Gilsland, North Berwick NK4. Land at Tantallon Road, North Berwick NK5. Land at Ferrygate Farm, North Berwick NK6. Former Fire Training School, Gullane NK7. Saltcoats, Gullane NK8. Fentoun Gait East, Gullane NK9. Fentoun Gait South, Gullane NK10. Aberlady West NK11. Castlemains Direlton Sites in Table NK1: Direlton Court New Mains Camptoun Steading Kingston Farm</p>
Loss of, or disturbance whilst using, inland habitat of potential value as high tide roosting/feeding sites to qualifying interests (wader species)	ED2 Part A: Preston Lodge High School (MRE for curlew, oystercatcher, redshank) ED6 Part A: Dunbar Grammar (MRE for curlew, oystercatcher, redshank) ED7 Part A North Berwick High School expansion (MRE for curlew, oystercatcher, redshank) ED7 Part Bii Law Primary School (MRE for curlew, oystercatcher, redshank) T3: Segregated Active Travel Corridor (potentially all six wader species) T9: Larger Station Car Parks

LSE on qualifying interest features of the Firth of Forth SPA	Combinations of policies/proposals giving rise to cumulative LSE
	<ul style="list-style-type: none"> • Musselburgh (MRE for curlew, golden plover, lapwing, oystercatcher, redshank) • Longniddry (Located within PS1) (MRE for curlew, golden plover, grey plover, lapwing, oystercatcher, redshank) <p>T10: Platform lengthening¹⁰³</p> <ul style="list-style-type: none"> • Musselburgh (MRE for curlew, golden plover, lapwing, oystercatcher, redshank) • Wallyford (MRE for curlew, golden plover, lapwing, oystercatcher, redshank) • Prestonpans (MRE for curlew, golden plover, lapwing) • Longniddry (MRE for curlew, golden plover, grey plover, lapwing, oystercatcher, redshank) • Dunbar (MRE for curlew, golden plover, grey plover, lapwing, oystercatcher, redshank) <p>T11: Safeguard Land for improvements to Musselburgh Station (MRE for curlew, golden plover, lapwing, oystercatcher, redshank)</p> <p>T15: Old Craighall A1 (T) Junction improvements (MRE for curlew, golden plover, lapwing, oystercatcher, redshank)</p> <p>T17: Salter’s Road (MRE for golden plover, lapwing, oystercatcher)</p> <p>T17: Bankton Junction (MRE for lapwing)</p> <p>T17: Gladsmuir junction (MRE for oystercatcher)</p> <p><u>Musselburgh allocations</u></p> <p>MH1. Craighall, Musselburgh (MRE for curlew, lapwing, golden plover, oystercatcher & redshank)</p> <p>MH2: Land at Old Craighall Village, Musselburgh (MRE for curlew, lapwing, golden plover, oystercatcher, redshank)</p> <p>MH3: Land at Old Craighall Junction South West, Musselburgh (MRE for curlew, lapwing, golden plover, oystercatcher, redshank)</p> <p>MH4: Land at Old Craighall Junction, Musselburgh (MRE for curlew, lapwing, golden plover, oystercatcher, redshank)</p> <p>MH7. Pinkie Mains (intensification) Musselburgh (MRE for curlew, golden plover, grey plover, lapwing)</p> <p>MH8. Levenhall, Musselburgh (MRE for curlew, golden plover, lapwing, oystercatcher, redshank)</p> <p>MH9. Land at Wallyford (MRE for golden plover, lapwing, oystercatcher)</p> <p>MH10. Land at Dolphinstone (MRE for curlew, golden plover, lapwing, oystercatcher, redshank)</p>

¹⁰³ SNH has indicated in its response to the proposed plan that connectivity to the Firth of Forth SPA is not likely and to be proportionate this should be removed as generating a likely significant effect. However, during the examination of the proposed plan the Reporter recommended that it should stay.

LSE on qualifying interest features of the Firth of Forth SPA	Combinations of policies/proposals giving rise to cumulative LSE
	<p>MH12. Barbachlaw Wallyford (MRE for curlew, golden plover, lapwing, oystercatcher, redshank)</p> <p>MH13. Land at Whitecraig south (includes MH15) (MRE for curlew)</p> <p>MH14. Land at Whitecraig North (MRE for curlew, oystercatcher, redshank)</p> <p><u>Prestonpans allocations:</u></p> <p>PS1 Longniddry South (MRE for curlew, golden plover, grey plover, lapwing, oystercatcher, redshank)</p> <p>Sites listed within Table PS1:</p> <p><u>Blindwells</u></p> <p>BW1. Blindwells new settlement (MRE for curlew, golden plover, grey plover, lapwing, oystercatcher, redshank) - Habitats Regulation Appraisal been conducted, but not seen.</p> <p>BW2. Safeguarded Blindwells Expansion Area (MRE for curlew, golden plover, grey plover, lapwing, oystercatcher, redshank) - Habitats Regulation Appraisal been conducted, but not seen. Also, further Habitats Regulations Appraisal would be required as part of any Development Framework that is prepared for the site.</p> <p><u>Tranent Allocations</u></p> <p>TT1. Housing at Windygoul South - Tranent (includes TT2) (MRE for golden plover)</p> <p>TT4. Lammermoor Terrace, Tranent (MRE for curlew, golden plover, lapwing)</p> <p>TT7. Macmerry North (MRE for golden plover, lapwing, oystercatcher)</p> <p>TT11. Elphinstone West (MRE for golden plover)</p> <p><u>Dunbar Allocations</u></p> <p>DR2. Hallhill North, Dunbar (MRE for curlew, golden plover, grey plover, lapwing, oystercatcher, redshank)</p> <p>DR5. Land at Newtonlees, Dunbar (MRE for curlew, golden plover, grey plover, lapwing, oystercatcher, redshank)</p> <p>DR6. Beveridge Row Belhaven, Dunbar (MRE for curlew, golden plover, grey plover, lapwing, oystercatcher, redshank)</p> <p>DR7. Land at Spott Road, Dunbar (MRE for curlew, golden plover, grey plover, lapwing, oystercatcher, redshank).</p> <p>DR11. St John's Street, Spott (MRE for curlew, oystercatcher)</p> <p>Sites listed in Table DR1:</p> <p>Station Road Field (MRE for curlew, oystercatcher, redshank)</p> <p>Belhaven Hospital Road Field (MRE for curlew, oystercatcher, redshank)</p> <p><u>North Berwick Allocations</u></p> <p>NK1. Mains Farm, North Berwick (includes NK2) (MRE for curlew, grey plover, lapwing, oystercatcher, redshank)</p>

LSE on qualifying interest features of the Firth of Forth SPA	Combinations of policies/proposals giving rise to cumulative LSE
	<p>NK3. Gilsland, North Berwick (MRE for curlew, grey plover, oystercatcher, redshank) NK4. Land at Tantallon Road, North Berwick (MRE for curlew, grey plover, oystercatcher, redshank). NK5. Land at Ferrygate Farm, North Berwick (MRE for curlew, grey plover, lapwing, oystercatcher, redshank) NK10. Aberlady West (MRE for lapwing, oystercatcher, redshank) Any development coming forward under proposals EGT1 - Land at former Cockenzie Power Station and CH9 High Street/Inch View, Prestonpans would also contribute to loss of potential habitat.</p>
<p>Loss of, or disturbance whilst using, inland habitat of potential value as high tide roosting/feeding sites to qualifying interests (Pink-footed Goose)</p>	<p>T3: Segregated Active Travel Corridor T9: Larger Station Car Parks</p> <ul style="list-style-type: none"> • Musselburgh • Longniddry • Drem <p>T10: Platform lengthening¹⁰⁴</p> <ul style="list-style-type: none"> • Musselburgh • Wallyford • Prestonpans • Longniddry • Drem • Dunbar <p>T11: Safeguard Land for improvements to Musselburgh Station T12: Railway Station Safeguarding at East Linton (location of site is not clear, and there may not be any MRE as a result of this proposal) T17: A1 (T) upgrades - Salter's Road T17: A1 (T) upgrades - Bankton Junction T17: A1 (T) upgrades - Gladsmuir Junction T23: A198 Bankton & Meadowmill</p> <p><u>Musselburgh allocations</u> MH1. Craighall, Musselburgh MH2: Land at Old Craighall Village, Musselburgh MH6: Pinkie Mains, Musselburgh MH9. Land at Wallyford MH10. Land at Dolphingstone (includes MH11) MH11. New Secondary School Establishment (lies within land allocated for MH10) MH12. Barbachlaw Wallyford MH14. Land at Whitecraig North,</p> <p><u>Prestonpans allocations</u> PS1. Longniddry South</p> <p><u>Blindwells</u></p>

¹⁰⁴ SNH has indicated in its response to the proposed plan that connectivity to the Firth of Forth SPA is not likely and to be proportionate this should be removed as generating a likely significant effect. However, during the examination of the proposed plan the Reporter recommended that it should stay.

LSE on qualifying interest features of the Firth of Forth SPA	Combinations of policies/proposals giving rise to cumulative LSE
	BW1. Blindwells new settlement BW2. Safeguarded Blindwells Expansion Area <u>Tranent Allocations</u> TT1. Housing at Windygoul South - Tranent TT7. Macmerry North TT8. Macmerry Business Park East <u>Dunbar Allocations</u> DR2. Hallhill North, Dunbar DR8. Pencraig Hill, East Linton <u>North Berwick Allocations</u> NK1. Mains Farm, North Berwick NK3. Gilsland, North Berwick NK7. Saltcoats, Gullane NK8. Fentoun Gait East, Gullane NK9. Fentoun Gait South, Gullane Sites in Table NK1: Athelstaneford

(b) Fala Flow SPA

LSE on qualifying interest features of Fala Flow SPA	Combinations of policies/proposals giving rise to cumulative LSE
Disturbance of Pink-footed Goose or loss of Pink-footed Goose habitat	T3: Segregated Active Travel Corridor T9: Larger Station Car Parks: <ul style="list-style-type: none"> • Musselburgh • Longniddry T10: Platform lengthening: <ul style="list-style-type: none"> •Musselburgh •Wallyford •Prestonpans •Longniddry T11. Safeguard Land for improvements to Musselburgh Station <u>Musselburgh allocations</u> MH1. Craighall, Musselburgh MH2: Land at Old Craighall Village, Musselburgh MH6: Pinkie Mains, Musselburgh MH10. Land at Dolphingstone (includes MH11) MH12. Barbachlaw Wallyford <u>Prestonpans allocations</u> PS1. Longniddry South <u>Blindwells</u> BW1. Blindwells new settlement BW2. Safeguarded Blindwells Expansion Area <u>Tranent Allocations</u> TT1. Housing at Windygoul South - Tranent TT7. Macmerry North

(c) Gladhouse Reservoir SPA

LSE on qualifying interest features of Gladhouse Reservoir SPA	Combinations of policies/proposals giving rise to cumulative LSE
Disturbance of Pink-footed Goose or loss of Pink-footed Goose habitat	T9: Larger Station Car Parks: <ul style="list-style-type: none">• Musselburgh T10: Platform lengthening <ul style="list-style-type: none">• Musselburgh T11: Safeguard Land for improvements to Musselburgh station T12: Railway Station Safeguarding at East Linton <u>Musselburgh allocations</u> MH1. Craighall, Musselburgh MH2: Land at Old Craighall Village, Musselburgh MH3: Land at Old Craighall Junction South West, Musselburgh MH6: Pinkie Mains, Musselburgh MH9: Land at Wallyford MH10. Land at Dolphingstone MH12. Barbachlaw Wallyford

APPENDIX E. POLICIES/PLANS SCREENED FOR “IN COMBINATION” EFFECTS

Status of plans is defined as: a) the incomplete parts of projects that have been started but which are not yet completed; b) projects given consent but not yet started; c) projects that are subject to applications for consent; d) projects that are subject to outstanding appeal procedures; e) any known unregulated projects that are not subject to any consent; f) ongoing projects subject to regulatory reviews, such as discharge consents or waste management licenses; g) development that has recently been completed, but where any residual effects may not form part of the environmental baseline; h) policies and proposals that are not yet fully implemented in plans that are still in force; i) draft plans that are being brought forward by other public bodies and agencies

Plan/proposal	Status ¹⁰⁵	Main elements	Potential for in combination effects with MRE arising from proposed LDP	Screen
National Planning Framework 3	h	The National Planning Framework (NPF) sets the context for development planning in Scotland over the next 20-30 years and provides a framework for the spatial development of Scotland as a whole. It identifies 14 national developments to deliver the strategy. A Habitats Regulations Assessment and Appropriate Assessment were completed ¹⁰⁶ .	<p>The Appropriate Assessment of NPF3 identified 7 of the proposals as having potential MRE in respect of European sites considered during the Habitats Regulation Appraisal of the proposed East Lothian LDP. These were assessed for cumulative effects upon each of the European sites. The Appropriate Assessment concluded that none of the proposals, in combination would have LSE upon any of the European sites, but there may be MRE in respect of:</p> <ul style="list-style-type: none"> • <u>Berwickshire and North Northumberland coast SAC</u> - MRE on grey seals arising from disturbance (noise & vibration); increased sedimentation; physical damage to habitats/species through collision risk; loss of habitat under dredging spoil; and pollution from oil spills. • <u>Firth of Forth SPA</u> - disturbance from noise & vibration; tall structures causing changes to flight routes & collision risk; displacement of prey; increases in suspended solids & turbidity; loss of habitat; pollution from oil spills. • <u>Firth of Tay and Eden Estuary SAC</u> - MRE on harbour seal arising from disturbance (noise and vibration); reduced availability / displacement of prey or symbiotic species; increased sedimentation; damage to habitats and species through collision risk; loss of habitat under dredging spoil; pollution from oil spills. • <u>Firth of Tay and Eden Estuary SPA</u> - disturbance from noise & vibration; displacement of prey species; direct and indirect loss of habitat under structures and as a result of sedimentation. • <u>Forth Islands SPA</u> - disturbance from noise & vibration; tall structures causing changes to flight routes & collision risk; disturbance causing reduced availability / displacement of prey; increases in sedimentation & turbidity; loss of habitats under structures and as a result of sedimentation; pollution from oil spills. • <u>Imperial Dock, Leith SPA</u> - disturbance from noise & vibration; disturbance causing reduced availability / displacement of prey; increases in sedimentation & turbidity; loss of habitats under structures and as a result of sedimentation; pollution from oil spills etc. • <u>Isle of May SAC</u> - disturbance from noise & vibration; displacement of prey species; increases in suspended solids & turbidity; physical damage of habitats through increased vessel movements; loss of habitats under structures and as a result of sedimentation; pollution from oil spills etc. • <u>Moray Firth SAC</u> - disturbance from noise & vibration; displacement of prey species; loss of habitats under structures and as a result of sedimentation; physical damage of habitats through increased vessel movements; loss of habitats under structures and as a result of sedimentation; pollution from oil spills etc. • <u>River Teith SAC</u> - disturbance from noise & vibration; displacement of prey species; increases in suspended solids & turbidity; physical damage to habitats from hydrological changes; loss of habitats under structures and as a result of sedimentation; pollution from oil spills etc. 	In

¹⁰⁵ a) the incomplete parts of projects that have been started but which are not yet completed; b) projects given consent but not yet started; c) projects that are subject to applications for consent; d) projects that are subject to outstanding appeal procedures; e) any known unregulated projects that are not subject to any consent; f) ongoing projects subject to regulatory reviews, such as discharge consents or waste management licenses; g) development that has recently been completed, but where any residual effects may not form part of the environmental baseline; h) policies and proposals that are not yet fully implemented in plans that are still in force; i) draft plans that are being brought forward by other public bodies and agencies

¹⁰⁶ <http://www.gov.scot/Resource/0045/00453766.pdf> National Planning Framework 3 Habitat Regulations Appraisal Record The Scottish Government June 2014

Plan/proposal	Status ¹⁰⁵	Main elements	Potential for in combination effects with MRE arising from proposed LDP	Screen
SESPlan	h	The South East Scotland Plan (SESplan) is a Strategic Development Plan covering all land within the administrative boundaries of City of Edinburgh, East Lothian, Midlothian, Scottish Borders and the West Lothian Councils, and the southern half of Fife Council. The purpose of the Strategic Development Plan is to assess cross boundary issues between the six member authorities: housing, transport, employment, infrastructure and energy. The current plan was published in 2013 ¹⁰⁷ , with an accompanying Habitats Regulation Appraisal. Supplementary Housing Guidance was published in 2014 ¹⁰⁸ also with an accompanying Habitats Regulation Appraisal ¹⁰⁹ .	SESPlan sets out the strategic framework within which the East Lothian LDP is being developed. The Habitats Regulation Appraisal of SESPlan included, as mitigation, the need for Habitats Regulation Appraisal to be undertaken of each individual local development plan developed under the plan. Only potential LSE to be considered at the local scale were identified; no MRE of the plan were identified. Consequently, this plan as a whole, has been screened out of further consideration, although proposals that listed within it, may be screened in through individual local development plans.	Out
SESplan 2	i	An updated version of SESplan is in preparation.	A Habitats Regulations Appraisal has been conducted, which has concluded there are no Likely Significant Effects arising from the plan.	Out
Forth Estuary Local Flood Risk Management Plan	i	The Flood Risk Management Plan supplements actions contained in the Flood Risk Management Strategy prepared by SEPA. It sets out measures to be taken to reduce the effects of flooding within the Forth Estuary area, including timescales, funding resources and lead parties. It has been prepared by Edinburgh City Council as the lead authority for flood issues around the Firth of Forth ¹¹⁰ . It has an accompanying Habitats Regulation Appraisal ¹¹¹ .	The document is strategic in nature, and lacks detail. Further Habitats Regulation Appraisal and Appropriate Assessment will be required as proposals are developed. At this stage, there are no residual effects identified from the Habitats Regulation Appraisal/Appropriate Assessment for consideration "in combination" with the proposed local development plan.	Out
Fife Council LDP	i	This sets out spatial proposals and policies for Fife. A draft Habitats Regulation Appraisal ¹¹² is available.	The Habitats Regulation Appraisal concluded that two sites (KDY 039 Inverteil and MET 010 Fife Energy Park) had MRE and required an Appropriate Assessment of their "in combination" LSE upon the integrity of the Firth of Forth SPA. None of the other policies or proposals were considered to have MRE on a Natura 2000 site. The Appropriate Assessment of the "in combination" effects concluded that the mitigation applied to the proposals (including the need for scheme specific Appropriate Assessment) and the limited localised loss of intertidal habitat means that there would be no likely significant effect on the Firth of Forth SPA from loss of habitat but there would be a minor residual effect. As there is no anticipated loss of coastal habitat arising from the East Lothian proposed LDP, this has been screened out.	Out
City of Edinburgh Council LDP	i	This sets out spatial proposals and policies for Fife. A Habitats Regulation Appraisal has been prepared ¹¹³ .	The HRA concluded that there would be a cumulative MRE on certain QI of the Firth of Forth SPA arising from the loss of inland habitat of potential value as high tide roost sites.	In
Falkirk Council LDP	h	This sets out spatial proposals and policies for Falkirk. A Habitats Regulation Appraisal has been carried out ¹¹⁴ .	MRE upon the Firth of Forth SPA were identified in relation to The minor residual effects of the Proposed Plan in relation to: loss of habitat potentially used for feeding/roosting by waders and disturbance of waders; loss of inland habitat potentially used by pink footed geese and disturbance of pink footed geese; increased opportunities for access to and recreation along the coastline; significant recreational disturbance; disturbance or other effects during the construction period; and water pollution for loss of supporting inter-tidal habitat outwith the boundary of the SPA.	In

¹⁰⁷ SESPlan The Strategic Development Planning Authority for Edinburgh and South East Scotland. Strategic Development Plan 2013 <http://www.sesplan.gov.uk/assets/Strategic%20Development%20Plan%201/Strategic%20Developme/SESPlan%20Approved%20Plan%20%28Print%20Version%29.pdf> last viewed 25/04/2016

¹⁰⁸ SESPlan Supplementary Guidance Housing Land November 2014 <http://sesplan2.1cm.me.uk/assets/publications/Housing%20Land%20SG/Housing%20Land%20Supplementary%20Guidance.pdf> last viewed 25/04/2016

¹⁰⁹ SESplan Housing Supplementary Guidance HRA Record February 2014 <http://www.sesplan.gov.uk/assets/Strategic%20Development%20Plan%201/Strategic%20Developme/Housing%20Land%20Supplementary%20Guidance/Housing%20Land%20SG%20-%20Habitats%20Regulations.pdf> Last viewed online 25/04/2016

¹¹⁰ http://www.edinburgh.gov.uk/downloads/file/7455/draft_local_flood_risk_management_plan Last viewed 25/04/2016

¹¹¹ Forth Estuary Local Flood Risk Management Plan - HRA Screening Statement of Record, March 2016. http://www.edinburgh.gov.uk/info/20006/emergencies_safety_and_crime/1433/flood_risk_management_plan Last viewed 25/04/2016

¹¹² FIFE plan. Draft Habitats Regulations Appraisal: Environmental Report Annex 6 Fife Local Development Plan. Proposed Plan. October 2014. http://fife-consult.objective.co.uk/portal/fife_ldp/fifeplan_-_proposed_plan_-_env_rpt_v3/env_rpt_v3?pointId=1414278442733 Last viewed online 25/04/2016

¹¹³ Proposed Edinburgh Local Development Plan Draft Habitats Regulations Appraisal Record March 2013 http://www.edinburgh.gov.uk/downloads/file/131/habitats_regulations_appraisal_march_2013 Last Viewed 25/04/2016

¹¹⁴ Falkirk Council Falkirk Local Development Plan Habitats Regulations Appraisal Record May 2015 <https://www.falkirk.gov.uk/services/planning-building/planning-policy/local-development-plan/docs/supporting-docs/habitats-regulations-appraisal/01%20HRA%20Record.pdf?v=201508061424> Last viewed 25/04/2016

Plan/proposal	Status ¹⁰⁵	Main elements	Potential for in combination effects with MRE arising from proposed LDP	Screen
			MRE upon the River Teith SAC were identified in relation to deterioration of water quality for passage of QI; noise and vibration affecting passage of QI; sediment releases leading to deterioration in water quality for passage of QI; hydrodynamic alteration leading to affects upon passage of QI. MRE upon the Forth Islands SPA were identified in relation to significant disturbance of cormorants and shags arising from noise and vibration during construction; increased recreational opportunity at the coast; increased levels of coastal recreation; and increased shipping movements.	
Clackmannanshire Council LDP	h	This sets out spatial proposals and policies for Clackmannanshire. A Habitats Regulation Appraisal has been carried out ¹¹⁵ .	MRE upon the Firth of Forth SPA were identified in relation to loss of/disturbance to pink-footed goose at inland roost sites; loss of habitat/disturbance to qualifying wader species at inland roost sites; increased recreational disturbance at the coast. MRE upon the River Teith SAC were identified in relation to disturbance of qualifying species when passing adjacent to development site; and changes to water quality arising from pollution during construction.	In
Stirling Council LDP	h	This sets out spatial proposals and policies for Stirling. A Habitats Regulation Appraisal has been carried out ¹¹⁶ . An updated LDP has been subject to examination by Scottish Ministers.	MRE upon the Firth of Forth SPA were identified in relation to effects upon water quality arising from developments and disturbance of qualifying interests. MRE upon the River Teith SAC were identified in relation to effects upon water quality.	Out
West Lothian Local Development Plan Proposed Plan	i	This sets out spatial proposals and policies for West Lothian.	No LSE were identified. A Habitats Regulation Appraisal record has not been produced	Out
Borders Council Local Development Plan	h	This sets out spatial proposals and policies for the Borders. A Habitats Regulation Appraisal has been prepared ¹¹⁷ .	MRE upon the River Tweed SAC were identified in relation to the conservation objectives of the River Tweed SAC associated with material or discharges entering the water as a result of development. As none of the proposals within the East Lothian LDP have been identified as having MRE upon the River Tweed SAC this has been screened out.	Out
Midlothian Local Development Plan	i	This sets out spatial proposals and policies for the Midlothian area. A Habitats Regulation Appraisal is in preparation ¹¹⁸¹¹⁹ .	No LSE or MRE identified.	Out
Forth Replacement Crossing	a	Construction of a new vehicle crossing over the Firth of Forth. The project is part-way through implementation, and is likely to be fully operational at the time that the East Lothian Council LDP becomes operational.	The Forth Replacement Crossing will have MRE on the Firth of Forth SPA in relation to loss of inter-tidal habitat. As the East Lothian LDP does not result in loss of inter-tidal habitat, this has been screened out.	Out
National Renewables Infrastructure Plan	h	The National Renewables Infrastructure Plan (N-RIP) identifies the locations across Scotland with the most potential for manufacturing and construction operations associated with development of the offshore energy industry. The Forth Tay Cluster has been identified as a potential location for turbine manufacture, foundations, cables and installation.	The Plan does not in itself promote or define development to occur within the area. Whilst the general area of ports in the Forth and Tay areas are identified as having potential to support the offshore industry, N-RIP does not specify the location, nature or scale of development, and as such, is too general to be able to determine any likely significant effects upon European sites.	Out
Crystal Rig 3 Wind Farm	c	Extension of existing Crystal Rig windfarm to the north to include Wind farm up to 11 turbines and crane pads, tracks, and other ancillary infrastructure.	Appropriate Assessment undertaken. Mitigation has been included in plan. MRE upon River Tweed SAC. As there are no MRE on the River Tween SAC arising from the local development plan, there will be no in combination effects upon that European Site.	Out
Offshore windfarms, Firth of Forth	b	A number of windfarms have been consented for the Firth of Forth areas, which are known collectively as "the Forth and Tay Developments" (Nearth na Gaoithe, Inch Cape, Seagreen Alpha, Seagreen Bravo). Marine Scotland has undertaken a combined Appropriate Assessment of these windfarms individually and in combination. The scheme was originally consented by	Effects on seabird populations including puffins, gannets and kittiwakes were identified. However, the combined Appropriate Assessment concluded that the developments would not on their own or in combination with each other or other developments already licenced, adversely affect the integrity of a number of European sites: Buchan Ness to Collieston Coast SPA, Fowlsheugh SPA, Forth Islands SPA, St Abb's Head to Fast Castle SPA,	

¹¹⁵ Clackmannanshire Council proposed Local Development Plan Committee Draft August 2013 Habitat Regulations Appraisal Incorporating Appropriate Assessment

Draft October 2013 (v2.1) https://clackmannanshire.citizenspace.com/sustainability-team/local-development-plan/supporting_documents/Draft%20Habitat%20Regulations%20Appraisal.pdf Last viewed 25/04/2016

¹¹⁶ Habitats Regulations Appraisal September 2012 Proposed Stirling Local Development Plan http://www.stirling.gov.uk/_documents/temporary-uploads/economy,-planning- and -regulation/ldp-background-info/habitats-regulations-appraisal.pdf Last Viewed 25/04/2016

¹¹⁷ Habitats Regulations Appraisal Record Proposed Local Development Plan Scottish Borders Council March 2014 http://www.scotborders.gov.uk/downloads/file/8165/appendix_d_draft_habitats_regulations_appraisal_record Last Viewed 25/04/2016

¹¹⁸ http://midlothian-consult.objective.co.uk/portal/planningpolicy/mldp/mldp_pp_revised_er?pointId=1410255163689#section-1410255163689 Last Viewed 25/04/2016

¹¹⁹ <http://midlothian-consult.objective.co.uk/portal/planningpolicy/mldp/mldppp?tab=files> Last viewed 18/05/2016

Plan/proposal	Status ¹⁰⁵	Main elements	Potential for in combination effects with MRE arising from proposed LDP	Screen
		Scottish Ministers in 2014, but since that time has been subject to challenge by the RSPB. The Court of Session upheld the challenge in 2016, but this was subsequently successfully appealed by Scottish Ministers. In November 2017, the Supreme Court refused permission for RSPB to appeal the decision in the Inner Court of Session. At the time of writing, the scheme holds consent, but development has not commenced. In addition, new or modified proposals have been or are being developed for some of these schemes - see below.	Moray Firth SAC, Firth of Tay and Eden Estuary SAC, Isle of May SAC, Berwickshire & North Northumberland Coast SAC, River South Esk SAC, River Tay SAC, River Dee SAC, River Teith SAC or River Tweed SAC, provided that stated conditions are complied with. The Firth of Forth SPA was scoped out owing to a lack of connectivity between the QI and the developments.	
Neart na Gaoithe Offshore Windfarm	c	A revised design has been submitted in March 2018.	The Habitats Regulation Appraisal ¹²⁰ considered likely significant effects on Forth Islands SPA, Fowlsheugh SPA, St Abbs Head to Fast Castle SPA, Buchan Ness to Collieston Coast SPA, Outer Firth of Forth and St Andrews Bay complex SPA, Moray Firth SAC, Firth of Tay and Eden Estuary SAC, Isle of May SAC and Berwickshire Coast SAC. It did not identify any adverse effects on the integrity of any of these sites. SNH's comments on the Habitats Regulations Appraisal were not available at the time this report was produced. As this scheme post-dates production of the East Lothian LDP, and will require its own Habitats Regulations Appraisal, it will be required to consider any residual effects from the LDP.	Out
Inch Cape	c	A revised scheme is at pre-application stage.	The Habitats Regulation Appraisal for the revised scheme is not yet available. As this scheme post-dates production of the East Lothian LDP, and will require its own Habitats Regulations Appraisal, it will be required to consider any residual effects from the LDP.	Out
Seagreen Phase 1	c	Pre-application.	The Habitats Regulation Appraisal for the revised scheme is not yet available. As this scheme post-dates production of the East Lothian LDP, and will require its own Habitats Regulations Appraisal, it will be required to consider any residual effects from the LDP.	Out
ForthWind Offshore Wind Demonstration Project Methil	d	Proposal to construct, operate and decommission two offshore wind turbines, and their associated export cables on the north shore of the Firth of Forth at Methil in Scotland.	An updated Habitats Regulation Appraisal has been produced ¹²¹ , which considered LSE upon Forth Islands SPA; Firth of Forth SPA; and Outer Firth of Forth and St Andrews Bay Complex candidate SPA. The main types of effect considered were: collision with operational turbine blades; and disturbance/displacement during construction. It was concluded that there would be no adverse effects upon the integrity of any of these sites, but the nature and scale of any MRE was not identified. However, the QI considered are those associated with offshore areas, and no effects on these species have been identified as arising from the East Lothian LDP. Consequently, there are no in combination effects.	Out
ForthWind Offshore Wind Demonstration Array - Methil	b	Revised scheme pre-application.	The Habitats Regulation Appraisal for the revised scheme is not yet available. As this scheme post-dates production of the East Lothian LDP, and will require its own Habitats Regulations Appraisal, it will be required to consider any residual effects from the LDP.	Out
Inch Cape Onshore Transmission Works	c	Scheme for onshore works to support offshore windfarm developments. Application has been called in for determination by Scottish Ministers.	The Habitats Regulation Appraisal ¹²² has considered effects on Firth of Forth SPA and Outer Firth of Forth and St Andrews Bay SPA and concluded there would be no adverse effects on the integrity of either site.	Out
Levenhall Lagoons	e	Scottish Power is currently consulting on proposals to restore habitat at lagoon 8, and habitat improvements at lagoon 6.	One of the lagoons lies within the SPA and the other adjoins the boundary. The area is already known to be important for birds, including species that are a qualifying interest of the Firth of Forth SPA. The proposals will safeguard and expand the area of suitable habitat for these species.	In
Goshen development	c	A planning application in principle (17/00721/PPM) for mixed use development including up to 300 residential units, commercial use, associated access, infrastructure, roads, open space and SUDS schemes.	The site is within 2 km of the coast, so could contribute to increased recreational disturbance at the coast. Also, the site contains suitable habitat for QI of the Firth of Forth SPA. The planning application was supported by an Environmental Statement and consideration of effects on the Firth of Forth. This found that only low numbers of one QI	Out

¹²⁰

Pelagica Environmental Consultancy Ltd. & Cork Ecology Habitats Regulations Appraisal Report. March 2018. <http://www.gov.scot/Topics/marine/Licensing/marine/scoping/NnGRev2017> Last viewed 17th April 2017

¹²¹ ForthWind Offshore Wind Demonstration Project, Methil, Fife. Habitats Regulations Appraisal Addendum Ornithology 2B Energy & ForthWind April 2016. <http://www.gov.scot/Resource/0049/00498899.pdf> Last Viewed 26/04/2016

¹²² Inch Cape Onshore Transmission Works New Energy for Scotland OnTW Habitats Regulations Appraisal 2018. <https://pa.eastlothian.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=P4LTIAGNH3Y00> Last viewed 17/04/2018

Plan/proposal	Status ¹⁰⁵	Main elements	Potential for in combination effects with MRE arising from proposed LDP	Screen
			species (curlew) were recorded at the site and concluded that there were no likely significant effects on the Firth of Forth SPA.	
Tynningehame Links	c	Planning application (17/00856/P) for conversion and change of use of farm buildings and land to form 4 holiday lets, shop, restaurant, café, business use and car parking. Habitats Regulation Appraisal to be carried out.	Scheme could result in increased recreational disturbance at the coast. The scheme will be subject to its own Habitats Regulation Appraisal, which will need to consider the effects of the scheme in combination with this plan. Consequently, as this plan 'pre-dates' the scheme, it is not able to undertake any meaningful in combination assessment.	Out
North Berwick Golf Club	c	Application for refurbishment of existing coastal defence and new dune protection system (17/00767/PM).	Scheme adjacent to coast and could result in temporary disturbance of QI during construction. The environmental statement indicates that Habitats Regulation Appraisal may be required, but suggests there are no likely significant effects on the Firth of Forth SPA.	Out
Direlton Airfield	c	New runway & buildings.	The initial application was submitted in 2006. East Lothian Council commissioned David Tyldesley Associates ¹²³ to carry out work to enable ELC to conduct a Habitats Regulations Appraisal and Appropriate Assessment. The Habitats Regulation Appraisal and Appropriate Assessment could not conclude that the proposal would not have an adverse effect on the integrity of the Firth of Forth SPA or Forth Islands SPA. Nevertheless, the Council was minded to approve the application and sought the advice of Scottish Ministers, who have advised that the application should have been accompanied by an Environmental Impact Assessment. It is understood that a scoping opinion has been sought. Whilst the application is considered to be outstanding at this time, the nature of the proposals is such, that it is subject to its own Appropriate Assessment, and does not therefore need to be considered for in combination effects with the local development plan. N.B. The airfield proposals are not a component of the local development plan.	Out

¹²³ East Lothian Council Habitats Regulations Assessment of Planning Application Ref 06/00328/FUL Application made by East Lothian Aero Club for proposed airfield near Dirlton Final, 27th June 2011

APPENDIX F. TABLE 1: PRESENCE/ABSENCE OF QUALIFYING INTERESTS OF THE FIRTH OF FORTH SPA AROUND THE EAST LoTHIAN COASTLINE SUMMARISED DATA WINTERS 2009/10 TO 2013/14 (BASED ON WEBS DATA)

	Preferred habitat	Condition Status (as of 2010)	Core Count sections	Low tide 2003/04	Low tide 2009/10
Bar-tailed godwit	Intertidal	Favourable Declining	Eastfield to Musselburgh Preston Grange to Port Seton* Port Seton to Craighielaw Point Aberlady and Gullane Bays Eyebroughy to Eel Burn North Berwick to Tantallon Tantallon to Ravensheugh Sands Winterfield to Barns Ness* Tynningame Estuary East Barns to Dunglass	102; 107; 108; 110; 111; 112; 113; 114; 116; 117; 121; 127; 128; 129; 168; 169; 170; 172; 183; 187; 189; 192	168; 169; 170; 171; 172; 173
Common scoter*	Sub-tidal	Unfavourable Declining	Eastfield to Musselburgh Preston Grange to Port Seton* Port Seton to Craighielaw Point Aberlady and Gullane Bays Black Rocks to Eyebroughy Eel Burn to North Berwick Harbour* Eyebroughy to Eel Burn North Berwick to Tantallon Tantallon to Ravensheugh Sands Winterfield to Barns Ness Tynningame Estuary East Barns to Dunglass	102; 103; 104; 107; 112; 130; 131; 186	168; 170; 173
Cormorant*	All habitats	Favourable Maintained	Eastfield to Musselburgh Preston Grange to Port Seton Port Seton to Craighielaw Point Aberlady and Gullane Bays* Eel Burn to North Berwick Harbour Eyebroughy to Eel Burn North Berwick to Tantallon Tantallon to Ravensheugh Sands Winterfield to Barns Ness* Tynningame Estuary East Barns to Dunglass	102; 103; 104; 105; 106; 107; 108; 113;118; 126; 129; 130; 131; 168; 180; 181; 182; 183; 184; 185; 186; 189; 193	
Curlew*	Inter-tidal and non-tidal	Favourable Maintained	Eastfield to Musselburgh Preston Grange to Port Seton Port Seton to Craighielaw Point Aberlady and Gullane Bays* Black Rocks to Eyebroughy* Eyebroughy to Eel Burn* North Berwick to Tantallon Tantallon to Ravensheugh Sands Winterfield to Barns Ness* Tynningame Estuary East Barns to Dunglass	102; 103; 107; 108; 110; 111; 112; 113; 114; 115; 116; 117; 118; 119; 120; 121; 127; 128; 129; 130; 131; 166; 167; 168; 169; 170; 171; 172; 173; 180; 181; 182; 183; 184; 185; 187; 188; 189; 190; 191; 192; 193	168; 169; 170; 171; 172; 173
Dunlin*	Intertidal	Favourable Declining	Eastfield to Musselburgh Port Seton to Craighielaw Point* Aberlady and Gullane Bays* North Berwick to Tantallon	102; 107; 108; 110; 112; 121; 126; 127; 128; 129; 167; 168; 169; 170; 171; 172;	168; 169; 170; 171; 172

	Preferred habitat	Condition Status (as of 2010)	Core Count sections	Low tide 2003/04	Low tide 2009/10
			Tantallon to Ravensheugh Sands Winterfield to Barns Ness* Tynninghame Estuary East Barns to Dunglass	173; 183; 185; 187; 189; 192; 193	
Eider*	Sub-tidal	Favourable Declining	Eastfield to Musselburgh Preston Grange to Port Seton Port Seton to Craighielaw Point Aberlady and Gullane Bays Black Rocks to Eyebroughy Eel Burn to North Berwick Harbour Eyebroughy to Eel Burn North Berwick to Tantallon Tantallon to Ravensheugh Sands Winterfield to Barns Ness* Tynninghame Estuary East Barns to Dunglass	102; 103; 104; 105; 106; 107; 108; 110; 112; 113; 119; 121; 126; 127; 128; 129; 130; 131; 168; 169; 172; 173; 180; 181; 182; 183; 184; 185; 186; 187; 190; 192; 193	168; 169; 170; 172; 173
Golden plover	Intertidal & non-tidal	Favourable Maintained	Eastfield to Musselburgh Preston Grange to Port Seton Port Seton to Craighielaw Point Aberlady and Gullane Bays North Berwick to Tantallon Tantallon to Ravensheugh Sands Winterfield to Barns Ness* Tynninghame Estuary East Barns to Dunglass	102; 108; 113; 117; 118; 120; 121; 167; 168; 169; 170; 173; 180; 193	169; 173
Goldeneye*	Sub-tidal	Unfavourable Declining	Eastfield to Musselburgh Preston Grange to Port Seton* Port Seton to Craighielaw Point Aberlady and Gullane Bays North Berwick to Tantallon Tantallon to Ravensheugh Sands Winterfield to Barns Ness* Tynninghame Estuary East Barns to Dunglass	102; 103; 104; 105; 106; 107; 108; 113; 126; 127; 128; 129; 130; 180; 181; 182; 183; 184; 189; 190; 192; 193	169
Great crested grebe*	Sub-tidal	Unfavourable Declining	Eastfield to Musselburgh Port Seton to Craighielaw Point	102; 103; 104; 105; 107	
Grey plover*	Intertidal	Favourable Declining	Eastfield to Musselburgh Preston Grange to Port Seton Port Seton to Craighielaw Point Aberlady and Gullane Bays Eel Burn to North Berwick Harbour North Berwick to Tantallon Tantallon to Ravensheugh Sands Winterfield to Barns Ness* Tynninghame Estuary East Barns to Dunglass	102; 108; 113; 114; 116; 117; 119; 121; 126; 127; 128; 129; 130; 131; 168; 169; 170; 171; 172; 173; 180; 183; 184; 185; 187; 189; 192; 193	168; 169; 170; 171; 172; 173
Knot	Intertidal	Unfavourable Declining	Eastfield to Musselburgh Preston Grange to Port Seton* Port Seton to Craighielaw Point Aberlady and Gullane Bays* Eyebroughy to Eel Burn* North Berwick to Tantallon	102; 110; 112; 121; 130; 131; 168; 170; 171; 172; 173; 180; 182; 183; 185; 189; 192; 193	168; 169; 170; 171; 172; 173

	Preferred habitat	Condition Status (as of 2010)	Core Count sections	Low tide 2003/04	Low tide 2009/10
			Tantallon to Ravensheugh Sands Winterfield to Barns Ness* Tynninghame Estuary East Barns to Dunglass		
Lapwing*	Intertidal & non-tidal	Favourable Maintained	Eastfield to Musselburgh Port Seton to Craighielaw Point* Aberlady and Gullane Bays* North Berwick to Tantallon Tantallon to Ravensheugh Sands Winterfield to Barns Ness* Tynninghame Estuary	114; 119; 121; 167; 171; 172; 183; 187; 191; 192	170; 171
Long-tailed duck*	Sub-tidal	Unfavourable Declining	Eastfield to Musselburgh Preston Grange to Port Seton Port Seton to Craighielaw Point Aberlady and Gullane Bays Black Rocks to Eyebroughy Eel Burn to North Berwick Harbour Eyebroughy to Eel Burn North Berwick to Tantallon Tantallon to Ravensheugh Sands Winterfield to Barns Ness Tynninghame Estuary East Barns to Dunglass	102; 103; 104; 106; 107; 131; 186	168; 169; 170; 173
Mallard*	All habitats	Unfavourable Declining	Eastfield to Musselburgh Port Seton to Craighielaw Point* Aberlady and Gullane Bays* Eyebroughy to Eel Burn* Winterfield to Barns Ness* North Berwick to Tantallon Tantallon to Ravensheugh Sands Tynninghame Estuary East Barns to Dunglass*	102; 121; 126; 129; 167; 168; 169; 171; 172; 180; 181; 182; 183; 184; 185; 187; 189; 190; 192	169; 170; 171
Oystercatcher*	Intertidal	Favourable Maintained	Eastfield to Musselburgh Preston Grange to Port Seton Port Seton to Craighielaw Point Aberlady and Gullane Bays* Black Rocks to Eyebroughy Eel Burn to North Berwick Harbour* Eyebroughy to Eel Burn North Berwick to Tantallon Tantallon to Ravensheugh Sands Winterfield to Barns Ness* Tynninghame Estuary East Barns to Dunglass	102; 103; 104; 105; 106; 107; 108; 110; 111; 112; 113; 114; 115; 116; 117; 118; 119; 120; 121; 125; 126; 127; 128; 129; 130; 131; 167; 168; 169; 170; 171; 172; 173; 180; 181; 182; 183; 184; 185; 186; 187; 189; 192; 193	168; 169; 170; 171; 172; 173
Pink-footed goose	All habitats	Favourable Maintained	Eastfield to Musselburgh* Aberlady and Gullane Bays Black Rocks to Eyebroughy* North Berwick to Tantallon Tynninghame Estuary East Barns to Dunglass	172; 188	

	Preferred habitat	Condition Status (as of 2010)	Core Count sections	Low tide 2003/04	Low tide 2009/10
Red-breasted merganser*	Sub-tidal	Favourable Declining	Eastfield to Musselburgh Port Seton to Craigielaw Point Aberlady and Gullane Bays* Black Rocks to Eyebroughy Eyebroughy to Eel Burn North Berwick to Tantallon Tantallon to Ravensheugh Sands Winterfield to Barns Ness* Tynninghame Estuary East Barns to Dunglass	102; 103; 104; 107; 108; 113; 119; 127; 128; 129; 130; 168; 169; 173; 180; 181; 182; 183; 184; 185; 186; 187; 189; 192; 193	168; 170; 171; 173
Redshank	Intertidal & non-tidal	Favourable Maintained	Eastfield to Musselburgh Preston Grange to Port Seton Port Seton to Craigielaw Point Black Rocks to Eyebroughy Aberlady and Gullane Bays* Eyebroughy to Eel Burn North Berwick to Tantallon Tantallon to Ravensheugh Sands Winterfield to Barns Ness* Tynninghame Estuary East Barns to Dunglass	102; 103; 107; 108; 110; 111; 112; 113; 114; 115; 116; 117; 118; 119; 121; 126; 127; 128; 129; 130; 131; 169; 171; 172; 173; 180; 181; 182; 183; 184; 185; 186; 187; 188; 189; 190; 191; 192; 193	168; 169; 170; 171; 172; 173
Red-throated diver	Sub-tidal	Favourable Maintained	Eastfield to Musselburgh Preston Grange to Port Seton Port Seton to Craigielaw Point Aberlady and Gullane Bays Black Rocks to Eyebroughy Eyebroughy to Eel Burn North Berwick to Tantallon Tantallon to Ravensheugh Sands Winterfield to Barns Ness Tynninghame Estuary East Barns to Dunglass	106; 131; 186	168; 170; 173
Ringed plover*	Intertidal	Favourable Maintained	Eastfield to Musselburgh Preston Grange to Port Seton Port Seton to Craigielaw Point Aberlady and Gullane Bays* Black Rocks to Eyebroughy Eel Burn to North Berwick Harbour North Berwick to Tantallon Tantallon to Ravensheugh Sands Winterfield to Barns Ness* Tynninghame Estuary East Barns to Dunglass	102; 104; 105; 106; 108; 110; 112; 127; 128; 129; 169; 171; 172; 180; 181; 183; 192; 193	168; 169; 172
Scaup*	Sub-tidal	Unfavourable Declining	Eastfield to Musselburgh Winterfield to Barns Ness		
Shelduck	All habitats	Favourable Declining	Eastfield to Musselburgh* Port Seton to Craigielaw Point Aberlady and Gullane Bays* Eyebroughy to Eel Burn* Winterfield to Barns Ness* Tantallon to Ravensheugh Sands Tynninghame Estuary	103; 112; 169; 171; 172; 182; 183; 185; 188; 189; 192	168; 169; 170; 171; 172

	Preferred habitat	Condition Status (as of 2010)	Core Count sections	Low tide 2003/04	Low tide 2009/10
			East Barns to Dunglass		
Slavonian grebe	Sub-tidal	Favourable Declining	Eastfield to Musselburgh Port Seton to Craighielaw Point Aberlady and Gullane Bays Black Rocks to Eyebroughy Eyebroughy to Eel Burn Tynningame Estuary	102; 103; 106	168; 173
Turnstone	Intertidal	Favourable Maintained	Eastfield to Musselburgh Preston Grange to Port Seton Port Seton to Craighielaw Point Black Rocks to Eyebroughy Aberlady and Gullane Bays Eyebroughy to Eel Burn North Berwick to Tantallon Tantallon to Ravensheugh Sands Winterfield to Barns Ness Tynningame Estuary East Barns to Dunglass	102; 103; 104; 105; 107; 108; 110; 111; 112; 113; 114; 116; 118; 119; 120; 121; 125; 126; 127; 128; 129; 130; 131; 168; 169; 171; 172; 173; 180; 181; 182; 183; 184; 185; 187; 189; 192; 193	168; 169; 170; 171; 172; 173
Velvet scoter*	Sub-tidal	Favourable Maintained	Eastfield to Musselburgh Preston Grange to Port Seton Port Seton to Craighielaw Point Aberlady and Gullane Bays Black Rocks to Eyebroughy North Berwick to Tantallon Tantallon to Ravensheugh Sands	102; 103; 104; 105; 106	168; 170; 173
Wigeon*	All habitats	Favourable Recovered	Eastfield to Musselburgh Preston Grange to Port Seton* Port Seton to Craighielaw Point Aberlady and Gullane Bays* Tantallon to Ravensheugh Sands Winterfield to Barns Ness* Tynningame Estuary East Barns to Dunglass	102; 110; 112; 113; 114; 116; 121; 167; 169; 171; 172; 183; 185; 187; 189; 190; 192; 193	168; 169; 170; 171

APPENDIX F. TABLE 2: BTO SPECIES ALERTS FOR QUALIFYING INTERESTS OF THE FIRTH OF FORTH¹²⁴

Species	Short term	Medium term	Long term	Since classification	Possible Reasons
Wigeon					Broad-scale population trend
Mallard					Broad-scale population trend
Scaup					Occurs too infrequently at site to make interpretation of site trend meaningful
Eider					
Long-tailed Duck					Broad-scale population trend, but may be some site-specific pressures, poorly monitored.
Common scoter					Numbers have fluctuated in recent years & poorly monitored treat with caution.
Velvet scoter					Not well monitored, treat with caution
Goldeneye					Alerts likely to be due to site specific pressures
Red-breasted Merganser					Declining trends likely to be due to site specific pressures
Red-throated Diver					
Great Crested Grebe					May be broad-scale redistribution or broad regional pressures
Slavonian Grebe					
Cormorant					Broad-scale population trends
Oystercatcher					Declining numbers, but not sufficient to trigger alerts
Ringed Plover					As above
Golden plover					Site specific pressures
Grey Plover					Broad-scale redistribution or broad regional pressures

¹²⁴ Cook, A.S.C.P., Barimore, C., Holt, C.A., Read, W.J. and Austin, G.E. (2013). Wetland Bird Survey Alerts 2009/2010: Changes in numbers of wintering waterbirds in the Constituent Countries of the United Kingdom, Special Protection Areas (SPAs) and Sites of Special Scientific Interest (SSSIs). BTO Research Report 641. BTO, Thetford. <http://www.bto.org/volunteer-surveys/webs/publications/webs-annual-report>

Species	Short term	Medium term	Long term	Since classification	Possible Reasons
Lapwing					Broad scale population trends, conditions on site thought to be favourable.
Knot					Broad-scale redistribution or broad regional pressures
Dunlin					Broad scale population trends, conditions on site favourable
Bar-tailed Godwit					Difficult to interpret underlying trend, but site makes up increasing proportion of regional numbers suggesting environmental conditions remain relatively favourable and site is becoming increasingly important
Curlew					Some declines, not enough to trigger alert, site trend tracking Scottish & British trends
Redshank					Declines, but not enough to trigger alerts
Turnstone					Declines, but not enough to trigger alerts

APPENDIX F. TABLE 3. FIVE-WINTER (2009/10 - 2013/14) MEAN OF PEAK COUNTS EXPRESSED AS A PERCENTAGE OF THE INTERNATIONAL IMPORTANCE THRESHOLD (TAKEN FROM WEBS CORE COUNT DATA).

	Curlew	Oystercatcher	Lapwing	Grey Plover	Golden Plover	Redshank
Eastfield to Musselburgh	19%	64%	8%	10%	6%	22%
Preston Grange to Port Seton	1%	1%		2%	P	1%
Port Seton to Craigelaw Point	6%	15%	1%	10%	2%	6%
Aberlady and Gullane Bays	P	P	P	P	P	
Black Rocks to Eyebroughy		P		2%		2%
Eyebroughy to Eel Burn	P	2%				3%
Eel Burn to North Berwick Harbour		P		2%		2%
North Berwick to Tantallon	6%	5%	P	P	2%	
Tantallon to Ravensheugh Sands	10%	6%	2%	7%	P	3%
Tynninghame Estuary	35%	24%	1%	52%	P	
Winterfield to Barns Ness	P		P	P	P	P
East Barns to Dunglass	7%	5%		3%	P	5%
Totals	10	11	7	11	9	9

P - species present, but five-winter mean of peak counts is less than 1% of numbers required to qualify as of international importance



Scottish Natural Heritage Dualchas Nàdair na h-Alba

All of nature for all of Scotland
Nàdar air fad airson Alba air fad

Mr Andrew Stewart
John Muir House
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East Lothian EH41 3HA

Sent by email: astewart3@eastlothian.gov.uk

Date: 28 August 2018
Our ref: CPP152016 / A2709235

Dear Andy

East Lothian Local Development Plan (LDP) Reviewed Habitats Regulations Appraisal Record – August 2018

Thank you for sending us a copy of the reviewed and updated Habitats Regulations Appraisal (HRA) Record.

Background

The European Court of Justice passed judgement on *People Over Wind, Sweetman vs Coillte Teoranta* on 12 April 2018. The ruling concluded that “*in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site*”.

Screening Stage 6 (paragraphs 4.43 – 4.44) of our HRA Guidance (January 2015) sets out a process that is no longer appropriate in light of that ruling. For reference, paragraph 4.43 of our HRA Guidance advises that:

“Where likely significant effects have not been ruled out by the screening steps 1 – 3 in Stage 5, the plan-making body should consider whether there are any straightforward mitigation measures that could be incorporated into the plan, so that the plan can then be screened again through Stage 5, step 3.”

We understand that Scottish Government and East Lothian Council have been in receipt of correspondence relating to this ruling. To ensure that decisions are made based on correct and robust processes we have therefore provided advice to you on reviewing and updating the HRA Record of your Local Development Plan (LDP).

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Review of the HRA Record

In discussion with yourself and Sue Bell, our review of the finalised HRA Record (version 1.11, 25 April 2018) highlighted two specific policy proposals that are affected by the ECJ Judgement. They were *PROP EGT1: Land at Former Cockenzie Power Station* and *PROP EGT3: Forth Coast Area of Co-ordinated Action*. The finalised HRA Record (version 1.11, 25 April 2018) applied straightforward mitigation as set out at Screening Stage 6 of our HRA Guidance, removing them from the appropriate assessment and applying further text to the policies to ensure that HRA was undertaken at a stage when more information on site use was available. This approach was in keeping with our Guidance but, in light of the ECJ Judgement, we considered that the correct approach was to review PROP EGT1 and EGT3 and take them through to appropriate assessment.

The earlier approach, as described above, to assessing these policy proposals was based on the degree of uncertainty of use at the sites, particularly at the former Cockenzie Power Station site. The uncertainty aspect remains unchanged and our advice on the requirement for appropriate assessment was based on process followed.

We received the final reviewed version of the HRA Record on 23 August 2018. In that updated version, PROP EGT1 and EGT3 have been subject to appropriate assessment and other consequent changes have been made. These include:

- Reference to the ECJ Judgement, including its ruling and the effect on the HRA Record (paragraphs 2.9 – 2.12 of the 23 August 2018 HRA Record).
- Review of all proposals screened for likely significant effect, with changes made to address identified ambiguity and some additional proposals taken to appropriate assessment (paragraph 3.1 of the 23 August 2018 HRA Record).
- Update of Appendix B for summary of proposals taken through to appropriate assessment.

Our advice on the review

We agree with the changes made in the 23 August 2018 version and the rationale behind these changes.

In the case of PROP EGT1 and EGT3 we agree with the assessment that *“In the absence of any specific information about the proposals that may come forward under this policy, it is difficult to be clear about the nature, extent, duration and magnitude of any effects and how these might influence the integrity of the relevant European site.”* That uncertainty remains but, with the addition of the policy caveats, it is possible for the competent authority to conclude no adverse effect on site integrity. We are therefore content with the conclusions set out at paragraphs 4.5 and 4.14 that it is possible to conclude that these proposals will not have an adverse effect on the integrity of relevant European sites¹.

Effect on the Proposed Plan

We are aware that the LDP is with Scottish Government and that, when released back to the Council, your intention is to adopt as soon as possible. We believe it useful at this stage to advise that, having further considered the policy caveats during this review process, the existing caveats remain fit for purpose. The Proposed Plan clearly establishes a need for assessment when further information is available on proposed site use(s) for PROP EGT1 and EGT3 and it is clear that any proposal taken forward under those policies must undergo HRA in order to demonstrate no adverse effect on site integrity of the European sites identified in the HRA Record¹.

¹ Firth of Forth SPA, Forth Islands SPA, Firth of Tay & Eden Estuary SAC, River Teith SAC and Outer Firth of Forth & St Andrews Bay Complex pSPA.

Conclusion

The HRA Record of the LDP has been updated in a manner that we consider addresses potential issues arising from the ECJ Judgement on *People Over Wind, Sweetman vs Coillte Teoranta*. The changes made to individual elements of the HRA Record do not undermine the established position that the LDP, considered as a whole, will not have an adverse effect on the site integrity of relevant European sites either alone or in combination with other plans or projects.

If we can be of any other assistance, please do not hesitate to get in touch with me on 0131 316 2644 or at viv.gray@nature.scot.

Yours sincerely

Vivienne Gray
Planning Advisor
Planning & Renewables



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REPORT TO: East Lothian Council
MEETING DATE: 11 September 2018
BY: Chief Executive
SUBJECT: Appointment of Leader of the Opposition

2

1 PURPOSE

- 1.1 To advise the Council of the resignation of Councillor Brian Small as Leader of the Opposition, and to appoint a new Leader of the Opposition.

2 RECOMMENDATIONS

- 2.1 That the Council:
- approves the appointment of Councillor Jane Henderson as Leader of the Opposition, with immediate effect;
 - notes that, in accordance with the Scheme of Administration, Councillor Henderson will replace Councillor Small on the Petitions and Community Empowerment Review Committee and the Employee Appeals Sub-Committee; and
 - approves the appointment of Councillor Henderson to CoSLA Convention, replacing Councillor Small.

3 BACKGROUND

- 3.1 Councillor Brian Small has intimated that he wishes to relinquish his position as Leader of the Conservative Group and Leader of the Opposition with immediate effect. The Group has appointed Councillor Jane Henderson to replace Councillor Small as their Leader and, as the largest minority group, have nominated her as Leader of the Opposition.
- 3.2 In accordance with the Scheme of Administration, Councillor Henderson will replace Councillor Small on the Petitions and Community Empowerment Review Committee and Employee Appeals Sub-Committee.

- 3.2 Members are also asked to approve the appointment of Councillor Henderson to the CoSLA Convention, replacing Councillor Small.

4 POLICY IMPLICATIONS

- 4.1 None.

5 INTEGRATED IMPACT ASSESSMENT

- 5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy.

6 RESOURCE IMPLICATIONS

- 6.1 Financial – the new Leader of the Opposition will be designated Senior Councillor status, and will therefore see an increase in the annual allowance to £21,245. Councillor Small’s annual allowance will reduce accordingly to that of Ordinary Councillor, from £21,245 to £16,994. The Head of Council Resources has confirmed that this change can be accommodated within the existing budget.
- 6.2 Personnel – none.
- 6.3 Other – none.

7 BACKGROUND PAPERS

- 7.1 Minute of Meeting of East Lothian Council, 23 May 2017 – Item 4: Notification of Leaders of the Political Groups
- 7.2 Report to East Lothian Council, 23 May 2017 – Councillors’ Remuneration and Expenses
- 7.3 East Lothian Council Standing Orders

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