

Bishops Dal BESS

Preliminary Ecological Appraisal

BLANK PAGE

Issuing office

4 Riverside Studios | Newcastle Business Park | Newcastle Upon Tyne | NE4 7YL
T: 0191 303 8964 | W: www.bsg-ecology.com | E: info@bsg-ecology.com

Client	Bishops Dal Energy Storage Limited
Project	Bishops Dal BESS
Version	FINAL
Project number	P24-005

	Name	Position	Date
Originated	Adam Murphy	Ecologist	10 July 2024
Reviewed	Claire Dewson	Principal Ecologist	11 July 2024
Updated following client comments	Ian Heard	Principal Ecologist	04 October 2024
Approved for issue to client	Claire Dewson	Principal Ecologist	04 October 2024
Updated following client comments	Jacquelyn Grissom	Ecologist	22 October 2024
Updated following client changes	Claire Dewson	Principal Ecologist	08 January 2025
Approved for issue to client	Claire Dewson	Principal Ecologist	08 January 2025
Issued to client	Claire Dewson	Principal Ecologist	08 January 2025

Disclaimer

This report is issued to the client for their sole use and for the intended purpose as stated in the agreement between the client and BSG Ecology under which this work was completed, or else as set out within this report. This report may not be relied upon by any other party without the express written agreement of BSG Ecology. The use of this report by unauthorised third parties is at their own risk and BSG Ecology accepts no duty of care to any such third party.

BSG Ecology has exercised due care in preparing this report. It has not, unless specifically stated, independently verified information provided by others. No other warranty, express or implied, is made in relation to the content of this report and BSG Ecology assumes no liability for any loss resulting from errors, omissions or misrepresentation made by others.

Any recommendation, opinion or finding stated in this report is based on circumstances and facts as they existed at the time that BSG Ecology performed the work. The content of this report has been provided in accordance with the provisions of the CIEEM Code of Professional Conduct. BSG Ecology works where appropriate to the scope of our brief, to the principles and requirements of British Standard BS42020.

Nothing in this report constitutes legal opinion. If legal opinion is required the advice of a qualified legal professional should be secured. Observations relating to the state of built structures or trees have been made from an ecological point of view and, unless stated otherwise, do not constitute structural or arboricultural advice.

Contents

1	Introduction.....	2
2	Methods.....	3
3	Results.....	6
4	Recommendations.....	17
5	References	18
	Appendix 1: Figures.....	19
	Appendix 2: Photographs	20
	Appendix 3: Legislation and Scottish Planning Policy.....	23

1 Introduction

- 1.1 BSG Ecology was commissioned Bishops Dal Energy Storage Ltd. in February 2024 to undertake a preliminary ecological appraisal of farmland at Bishops Dal, near Coldstream, Scottish Borders. The appraisal considers land within the red line site boundary (thereon referred to as 'the Site') provided by the client.

Description of project

- 1.2 The client proposes to construct a battery energy storage system as well as associated infrastructure on the Site, including two access points.

Site description

- 1.3 The Site is approximately 13.20 hectares (ha) in size and is situated at central ordnance survey grid reference NT 79154 41293. The location of the Site is shown on Figure 1. The Site is agricultural land, consisting of arable fields, delineated by hedgerows and ditches, approximately 5.25 km north west of Coldstream.
- 1.4 The Site slopes gently to the north west towards a ditch separating it from a neighbouring field, with two proposed access tracks, one to the east and one to the west of the Site. Arable land dominates the wider landscape and a mixed plantation woodland is present to the south and west of the Site.
- 1.5 The Site is not subject to any nature conservation designations and the scheme lies within the Impact Risk Zones identified for Special Sites of Scientific Interest for the area, currently presented in Defra's interactive map (<https://magic.defra.gov.uk/MagicMap.aspx>).

Purpose of report

- 1.6 The aim of this appraisal is to provide baseline ecological information for the Site. This will be used to make a preliminary identification of ecological constraints and opportunities associated with the proposed project and identify the need for additional survey work to further evaluate impacts that may risk contravention of legislation or policy relating to protected species and nature conservation. Where necessary, preliminary avoidance, mitigation/compensation and or enhancement measures have been recommended.
- 1.7 This appraisal has been prepared with reference to best practice guidance published by the Chartered Institute for Ecology and Environmental Management (CIEEM, 2017; 2019) and as detailed in British Standard 42020:2013 Biodiversity - Code of Practice for Biodiversity and Development (BSI, 2013).

Personnel

- 1.8 The extended Phase 1 habitat survey was completed by Ecologist Adam Murphy of BSG Ecology. Adam has over five years experience working as a professional ecological consultant. In that time, he has completed numerous ecological appraisals and assessments in Scotland, England and Wales.
- 1.9 This report was prepared by Adam Murphy and Jacquelyn Grissom and reviewed by Principal Ecologists Claire Dewson MCIEEM and Ian Heard ACIEEM. Claire has more than 20 years' experience in the field of ecology, including time as both a professional consultant and local authority ecologist. She is experienced in conducting and reviewing ecological assessments for an array of application types. Ian has worked as an ecological consultant nearly 15 years and has extensive experience as a professional consultant and reviewer of ecological assessments.

Relevant Legislation and Policy

- 1.10 Legislation and planning policy, including local development plan policy, that may be relevant to this project is summarised in Appendix 3.

2 Methods

Desk study

- 2.1 A desk study was undertaken to identify sites designated for nature conservation, protected and notable habitats and species, and invasive non-native species relevant to the Site and the proposed development. A stratified approach was taken in defining the desk study area based on the likely zone of influence of the proposed scheme on different ecological receptors and an understanding of the maximum distances typically considered by statutory consultees.
- 2.2 The desk study identified internationally important wildlife sites¹ and nationally important statutory designated sites² within 10 km, non-statutory designated sites³, and protected and notable species and habitats within 2 km of the Site. The location of internationally and nationally important sites are presented in Figure 1, whilst Figure 2 presents non-statutory designated sites.
- 2.3 Records of protected, notable, and invasive species were obtained from The Wildlife Information Centre (TWIC). Relevant findings of the desk study for protected and other important species are presented in the relevant parts of this report in Section 3. Records were viewed critically to assist with the evaluation as opposed to relying on them as the sole basis for the evaluation; records may not always be reliable or reflect the true distribution of the species.
- 2.4 Ordnance Survey mapping, Scottish Forestry Open Data Portal, DEFRA's Magic Map (<https://magic.defra.gov.uk/MagicMap.aspx>) and publicly available aerial photography were also used to assess habitats and check for any features of potential interest.
- 2.5 A summary of key records provided by the desk study is presented in Results section of this report. All records have been used to inform the assessment of the potential for protected or otherwise notable species to be present at the Site to provide a preliminary view of the Site's ecological importance, but these are not presented in full in the report.

Field survey

Habitats

- 2.6 Habitats within the development area boundary were mapped in accordance with the Phase 1 habitat survey methodology (JNCC 2016) on 28 February 2024. Botanical species lists for each habitat were compiled and the survey was "extended" to include an assessment of the suitability of the habitats present for a range of protected species. Suitable features, evidence of protected species (such as footprints or droppings), or protected species themselves, were target noted.
- 2.7 Records for dominant and notable plants are provided, as are incidental records of birds and other fauna noted during the course of the habitat survey. The latter have been used to justify the potential presence of important ecological features where applicable.
- 2.8 The Site was also surveyed for the presence of invasive plant species as defined by Schedule 9 of the Wildlife and Countryside Act 1981 (as amended); however, detailed mapping of such species is beyond the scope of this commission and locations on the habitat plan are indicative only.
- 2.9 The survey was completed by Adam Murphy and Table 1 presents the details of the survey.

¹ **Internationally Statutory designations** include Special Areas of Conservation (SAC), Special Protection Areas (SPA) and Ramsar sites.

² **Nationally Statutory designations** include National Nature Reserves (NNR), Sites of Special Scientific Interest (SSSI) and Local Nature Reserves (LNR).

³ **Non-statutory sites** are designated by local authorities (e.g. Sites of Importance for Nature Conservation or/and Local Wildlife Sites).

Table 1: Habitat survey information

Date	Survey	Timing	Temperature	Wind Speed	Cloud Cover (Oktas ⁴)	Precipitation	Visibility
28/02/2024	Extended Phase 1	10:00 – 13:30	7°C	3	7	Nil	>2 km

Protected, notable and invasive species

- 2.10 The suitability of the Site for legally protected species was assessed on the basis of relevant desk study records combined with field observations from the habitat survey. The likelihood of the habitat(s) supporting protected and/or notable species was ranked on a scale from 'negligible' to 'present' as described in Table 2 below.
- 2.11 The preliminary assessment of habitat suitability for protected or notable species was based on professional judgement drawing on experience of carrying out surveys of a large number of rural sites and best practice survey guidance.

Table 2: Protected species assessment

Category	Description
Present	Presence confirmed by the current survey or by recent and/or desk study records.
High	Habitat present provides all of the known key requirements for a given species/species group. Local records are provided by desk study. The Site is within or close to a national or regional stronghold for a particular species. Good quality surrounding habitat and good connectivity.
Moderate	Habitat present provides some of the known key requirements for a given species/species group. Several desk study records and/or the Site are within known national distribution and with suitable surrounding habitat. Factors limiting the likelihood of occurrence may include small habitat area, barriers to movement and disturbance.
Low	Habitat present is of relatively poor quality for a given species/species group. Few or no desk study records. Presence cannot be discounted on the basis of national distribution, nature of surrounding habitats or habitat fragmentation.
Negligible	Habitat is either absent or of very poor quality for a particular species or species group. No desk study records. Surrounding habitat unlikely to support wider populations of a species/species group. Outside or peripheral to the known range of a species.

- 2.12 The findings of this assessment help establish the need for protected species surveys. Surveys may be required where a site is judged to be suitable for a particular species / species group even if that suitability is considered to be low - this is particularly the case where there the risk of contravening the relevant conservation legislation is unknown or cannot be quantified at this stage on the basis of the information available. However, in some cases there may be opportunities to ensure compliance with the legislation without further survey through project design or through precautionary measures prior to and during construction.

⁴ An okta is a unit of cloud cover, with each okta equating to 1/8 of the sky

Consideration of potential limitations

- 2.13 The survey was undertaken in February 2024. Whilst extended Phase 1 habitat surveys can be undertaken at any time of year, the optimal period is typically between May and August when most plant species are in flower and can be readily identified. Though the survey was undertaken outside this period, the weather conditions on Site were suitable for survey (i.e. no snow was on the ground to obscure the plant species present). Given the purpose of the report, which is a preliminary ecological appraisal including identification of habitat types, rather than the generation of comprehensive species lists; and given the context of the Site (arable land in cereal crop rotation) it is considered that sufficient botanical information was collected to accurately identify the habitats present.
- 2.14 No other potentially significant limitations were encountered during the extended Phase 1 habitat survey.

3 Results

Desk study

Statutory designated sites

- 3.1 The desk study revealed 17 statutory designated sites within 10 km of the Site. These include two Ramsar sites, two special areas of conservation (SAC), two special protection areas (SPA), and eleven sites of special scientific interest (SSSI). These sites and a summary of the reasons for their designation are presented below in Table 3. Sites are given in order of proximity to the development Site, closest first.

Table 3: Statutory sites within 10 km of the Site

Site name	Reason for designation	Distance and direction from Site
The Hirsell SSSI (Scotland)	The Hirsell Site of Special Scientific Interest (SSSI) is a large area of mixed plantation woodland, plantation, open water and riparian habitats along the Leet Water with some permanent grassland, located 1 km west of Coldstream. The site supports an outstanding assemblage of breeding and passage/wintering bird species. Breeding birds include kingfisher <i>Alcedo atthis</i>, yellow wagtail <i>Motacilla flava</i>, hawfinch <i>Coccothraustes coccothraustes</i>, goosander <i>Mergus merganser</i>, dipper <i>Cinclus cinclus</i>, sand martin <i>Riparia riparia</i>, water rail <i>Rallus aquaticus</i>, lesser whitethroat <i>Sylvia curruca</i>, pied flycatcher <i>Ficedula hypoleuca</i>, willow tit <i>Poecile montanus</i> and marsh tit <i>Poecile palustris</i>. Wintering bird species of note include goosander and whooper swan <i>Cygnus cygnus</i>, but also mallard <i>Anas platyrhynchos</i>, shoveller <i>Anas clypeata</i> and mute swan <i>Cygnus olor</i>.	1900 m east
River Tweed SSSI (Scotland)	The Tweed and its tributaries are clean river systems of high conservation and ecological value. Along the length of the river, the changes in plant species reflect the changing gradient of the river from torrent to slow flowing, and the change in the geology and nutrient status from nutrient-poor (oligotrophic) to nutrient-rich (eutrophic). The lower sections of the Teviot and also the Tweed, downstream of Kelso (below the confluence with the Teviot), are deeper and slower with a higher degree of deposition. The nutrient status of these sections is naturally high, reflecting the geology. Plants growing within the river increase in diversity but not abundance, possibly being limited by light penetration.	2200 m south

Site name	Reason for designation	Distance and direction from Site
	Species such as fennel pondweed <i>Potamogeton pectinatus</i> , shining pondweed <i>Potamogeton lucens</i> and spiked water-milfoil <i>Myriophyllum spicatum</i> , which are characteristic of the high nutrient status waters, are present but stream water-crowfoot <i>Ranunculus penicillatus</i> and river water-crowfoot <i>Ranunculus fluitans</i> dominate.	
River Tweed SAC (Scotland)	This SAC is designated for its river lamprey <i>Lampetra fluviatilis</i> , brook lamprey <i>Lampetra planeri</i> , sea lamprey <i>Petromyzon marinus</i> , otter <i>Lutra lutra</i> , Atlantic salmon <i>Salmo salar</i> populations and for the water courses of plain to montane levels with <i>Ranunculion fluitantis</i> and <i>Callitricho-Batrachion</i> vegetation.	2300 m south
Tweed Catchment Rivers – England: Lower Tweed and Whiteadder SSSI (England)	The site is of international importance for its estuary, intertidal mud and sandflats and its riverine floating vegetation communities often dominated by water-crowfoot <i>Ranunculus</i> species. It also supports internationally important populations of river lamprey <i>Lampetra fluviatilis</i>, sea lamprey <i>Petromyzon marinas</i>, Atlantic salmon <i>Salmo salar</i> and common otter <i>Lutra lutra</i>. The lower reaches of the Tweed and Whiteadder are nationally important examples of lowland rivers with minimal gradients in England, and rivers on rich geological strata in Scotland and northern England. The exposed river sediments are nationally important for their invertebrate assemblage. The site holds nationally important populations of wintering goldeneye <i>Bucephala clangula</i> and moulting mute swans <i>Cygnus olor</i>.	2400 m south
Redden Bank Lime Works SSSI (Scotland)	Redden Bank Lime Works Site of Special Scientific Interest (SSSI) is located between Kelso and Coldstream, north of the village of Hadden (Roxburgh). The site is situated alongside, and includes, an old disused railway and adjacent disused lime works quarry, which have re-vegetated with neutral and calcareous grassland communities. Of particular importance is the dry species-rich calcareous grassland, dependent upon outcropping Carboniferous Limestones, which supports an excellent range of lime-loving plants, many of which are locally rare or uncommon including salad burnet <i>Sanguisorba minor</i> (very rare in the Borders), small scabious <i>Scabiosa columbaria</i>, hoary plantain <i>Plantago media</i>, hairy violet <i>Viola hirta</i>, yellow oat-grass <i>Trisetum flavescens</i> and meadow oat-grass <i>Helictotrichon pratense</i>. It is also the only Scottish locality for the hybrid species of hairy violet and sweet violet <i>Viola odorata</i>.	4100 m south
River Tweed SAC (England)	See Tweed Catchment Rivers – England: Lower Tweed and Whiteadder SSSI citation.	5200 m east

Site name	Reason for designation	Distance and direction from Site
Lennel, Charley's Brae SSSI (Scotland)	The site is designated for its geological interest.	5800 m east
Campfield Kettle Hole SSSI (England)	Campfield Bog has formed in an elongated basin and is thought to be similar in origin and vegetation history to the nearby Barelees Pond, though it lacks the clear vegetation zoning of the latter. The deep peat soils of the basin support an expanse of carr woodland, the main species present being birch <i>Betula sp.</i> of various age classes with occasional Scot's pine <i>Pinus sylvestris</i>. On the woodland floor is a sparse cover of bog-mosses <i>Sphagnum spp.</i>, and hare's-tail cotton grass <i>Eriophorum vaginatum</i> with numerous tussocks of purple moor-grass <i>Molinia caerulea</i> and wavy hair-grass <i>Deschampsia flexuosa</i>.	7300 m southeast
Lintmill Railway Cutting SSSI (Scotland)	The site is designated for its geological interest.	7500 m northwest
Barelees Pond SSSI (England)	Barelees Pond is a deep pool between low hills, possibly originating as a 'kettle-hole' from the melting of a detached block of ice in late glacial times, and now becoming filled by the accumulation of peat from vegetative growth. The vegetation zones of the central island, now wooded, illustrate these processes in detail.	8200 m east
Din Moss – Hoselaw Loch Ramsar (Scotland)	Din Moss – Hoselaw Loch Ramsar site is located on the northern slopes of the Cheviot Hills in southern Scotland. Hoselaw Loch is a mid-attitude loch that is surrounded by Din Moss, an area of raised bog with associated lagg fens. It is one of the most complete examples of raised mire in this area of Scotland. Din Moss – Hoselaw Loch Ramsar site qualifies under Ramsar Criterion 6 by regularly supporting 1% or more of the individuals in a population of waterbirds: Pink-footed goose <i>Anser brachyrhynchus</i> (an average of 1,650 individuals, over 1% of the Eastern Greenland/Iceland/UK biogeographic population), and Greylag goose <i>Anser anser</i> (an average of 3,500 individuals, over 3% of the Iceland/UK/Ireland biogeographic population).	9200 m south
Din Moss – Hoselaw Loch SPA (Scotland)	This site qualifies under Article 4(2) as a wetland of international importance for migratory species. It provides a roost for an average of 1,650 pink-footed geese (over 1% of the Icelandic breeding population) and 3,500 greylag geese (over 3% of the Icelandic-breeding population).	9200 m south

Site name	Reason for designation	Distance and direction from Site
Din Moss -Hoselaw Loch SSSI (Scotland)	The south-west part of the site, Din Moss, is one of the largest and most intact areas of raised bog in the Scottish Borders. The central expanse of the raised bog is dominated by heather and bog mosses (<i>Sphagnum</i> species) surrounded on two sides by vestiges of a lagg-fen and burn with associated alder, birch and willow carr. Hoselaw Loch is a shallow, eutrophic (naturally nutrient-rich) loch lying at mid altitude (approximately 180 metres above sea level). The open water of the loch supports a limited but characteristic range of aquatic vegetation including spiked water-milfoil <i>Myriophyllum spicatum</i> and amphibious bistort <i>Persicaria amphibia</i>. The loch margins support a thin belt of emergent vegetation including reeds <i>Phragmites</i> and bulrush <i>Typha</i> species.	9200m south
Greenlaw Moor Ramsar (Scotland)	Greenlaw Moor Ramsar site qualifies under Ramsar Criterion 6 by regularly supporting 1% or more of the individuals in a population of waterbirds: Pink-footed goose (1987/1988 to 1991/1992, an average peak of 14,200 individuals, 7% of the Eastern Greenland/Iceland/UK biogeographic population).	9900 m north west
Greenlaw Moor SPA (Scotland)	Greenlaw Moor qualifies under Article 4.2 by regularly supporting, in winter, an internationally important population of pink-footed goose <i>Anser brachyrhynchus</i>, with in the five-year period 1987/88 to 1991/92 an average peak count of 14,200 individuals (7% of the British wintering population and total Icelandic/Greenlandic breeding population). As well as its importance for pink-footed goose, the site is also of interest for its overall assemblage of wintering waterfowl including the Annex 1 species whooper swan and barnacle goose <i>Branta leucopsis</i> as well as greylag goose, wigeon <i>Anas strepera</i>, teal <i>Anas crecca</i>, mallard, shoveler, pochard <i>Aythya ferina</i>, tufted duck <i>Aythya fuligula</i>, goldeneye <i>Bucephala clangula</i> and goosander. The site is also of interest, in summer, for its diverse assemblage of breeding waterfowl, including the Annex 1 species golden plover as well as teal, mallard, shoveler, tufted duck, ruddy duck <i>Oxyura jamaicensis</i>, redshank <i>Tringa totanus</i>, curlew <i>Numenius arquata</i> and snipe <i>Gallinago gallinago</i>. The Annex 1 species merlin <i>Falco columbarius</i> and short-eared owl breed on the site and the Annex 1 species peregrine <i>Falco peregrinus</i> regularly occurs in winter	9900 m north west

Site name	Reason for designation	Distance and direction from Site
Greenlaw Moor SSSI (Scotland)	The site is designated for its combination of raised bog habitats, breeding bird assemblage and wintering pink-footed goose population as well as its geological interest. Bedshiel Kaims form a distinctive esker ridge to the north and west and have impeded the drainage outflow from the south resulting in a well developed example of confined raised bog, Dogden Moss. The flora of this bog is typical, though modified by human management. There is a good range of bog and other mosses and liverworts, including <i>Sphagnum imbricatum sensu lato</i> which is unusual at such an eastern low-rainfall locality. Greenlaw Moor SSSI is notified for its breeding bird assemblage which includes waders and other species such as golden plover <i>Pluvialis aprinaria</i>, red grouse <i>Lagopus lagopus</i>, short eared owl <i>Asio flammeus</i> and black grouse <i>Lyrurus tetrix</i> all of which are partly dependent on the very extensive area of open heather moor which slopes gently eastwards from Dogden Moss to an altitude of 285m on Kyles Hill. The bird assemblage is enhanced by species typical of the other habitats within the SSSI: open water, raised bog and the woodland at Kyles Hill and Scots pine scattered across the east of the site. This and the variety of open habitats and scattered Scots pine support a diverse range of upland and woodland breeding bird species, including several Schedule 1 species.	9900 m northwest
Hareheugh Craigs SSSI (Scotland)	The site is designated for its geological interest.	9950 m west

Non-statutory designated sites

- 3.2 The desk study provided information on six non-statutory designated sites within 2 km of the Site, including five Scottish Borders Local Biodiversity Sites (LBS) and one proposed LBS. These sites are summarised in Table 4. Sites are given in order of proximity to the development site, closest first.

Table 4: non-statutory sites within 2 km of the Site

Site name	Reason for designation	Distance and direction from Site
Lithtillum Wood and Horse Bog (proposed LBS)	No citation was available at the time of compiling the report as the site is currently only a proposed LBS. However, from satellite imagery it appears that the site hosts mixed woodland habitats, streams and a small loch.	475 m to the southeast
Bishops Bog LBS	Designated for its semi-natural broad leaved woodland, hedgerows and swamp communities. Notable species mallard, yellowhammer <i>Emberiza citronella</i> , barn swallow <i>Hirundo rustica</i> , common grasshopper warbler <i>Locustellas naevia</i> , spotted flycatcher <i>Muscicapa striata</i> , lapwing <i>Vanellus vanellus</i> .	520 m to southwest
Birgham Wood LBS	Designated for its mixed woodland habitats on a former sandy moorland with fen area and pond. Notable species include barn owl <i>Tyto alba</i> , great marsh-bedstraw <i>Galium palustre</i> , corn mint <i>Mentha arvensis</i> , common wintergreen <i>Pyrola minor</i> , wild pansy <i>Viola tricolour</i> and red squirrel <i>Sciurus vulgaris</i> .	950 m to south
Leet Water – Leitholm to Chaterpath LBS	Designated for its semi natural broadleaved woodland, poor semi-improved grassland, rivers and burns. These habitats host lapwing, European eel <i>Anguilla anguilla</i> , brown trout <i>Salmo trutta</i> , badger <i>Meles meles</i> and red squirrel.	950 m to northeast
Hirsel Woods LBS	Designated for its fine mature woodland habitat with many oak <i>Quercus sp.</i> and yew <i>Taxus baccata</i> .	1550 m to east
Eccles Pools LBS	Designated for its mixed woodland habitats and ponds.	1750 m to west

Habitat inventories

Ancient woodland

- 3.3 No areas of woodland within a 2 km radius of the Site appear on the Ancient Woodland Inventory (Scottish Forestry Open Data Portal, 2024).

Habitats of Principal Importance

Phase 1 habitat survey

- 3.4 The Site is entirely made up of agricultural land with hedgerows and ditches between.

Arable

- 3.5 The Site was spread over two arable fields (photographs 2 and 4), which appeared to be in cereal crop rotation at the time of survey. The fields were bare at the time of survey with no discernible field margins.

Hedgerows

- 3.6 Five hedgerows were present on the Site (photographs 1 and 6). Hedgerows 1 and 2 were located to the north west of the Site, either side of the proposed access track which joins the A697. Hedgerow 3 formed part of the western boundary of the Site. Hedgerow 4 made up a small part of the southern boundary of the Site. Hedgerow 5 formed the north eastern boundary of the Site, adjacent to the A697. All hedgerows were heavily managed, generally being kept below 3 m and free of gaps, with the exception of hedgerow 4 which contained several gaps along its entire length.
- 3.7 All hedgerows are dominated by hawthorn *Crataegus monogyna*, whilst hedgerows 4 and 5 also contain elder *Sambucus nigra*, ash *Fraxinus excelsior*, birch *Betula pendula*, gorse *Ulex europeus* and oak *Quercus robur* in limited numbers.

Ditch

- 3.8 A drainage ditch was noted as present on Site (photographs 3 and 5), delineating the borders of the two agricultural fields. The water level was relatively low at the time of survey with little aquatic vegetation, having been observed and largely choked with grasses and other terrestrial vegetation from the steep banks such as rough meadow grass *Poa trivialis*, cocksfoot *Dactylis glomera*, common dock *Rumex obtusifolius*, bramble *Rubus fruticosus* and spear thistle *Cirsium vulgare*.

Invasive non-native species

- 3.9 No invasive non-native plant species were recorded during the survey.

Protected, notable and invasive species

Badger

- 3.10 The habitats within the Site are suitable for commuting and foraging badger *Meles meles*. The arable habitats would be sub-optimal for the construction of outlier or annex setts and the levels of agricultural disturbance are considered likely to limit the suitability of the larger fields for sett creation.
- 3.11 The woodland habitats adjacent to the Site are considered suitable for sett creation.
- 3.12 No direct evidence of use of the Site by badger was detected during the survey.
- 3.13 One record of badger was returned by the desk study, a road casualty approximately 1 km from the main Site area.

- 3.14 Owing to the agricultural nature of the Site and limited hedgerow and other habitats, the Site is considered to offer **low** suitability for badger.

Bats

- 3.15 Twelve records of bats were returned by the desk study, all pertaining to single individuals in 2016 in the Birgham area. Five of these were common pipistrelle *Pipistrellus pipistrellus*, two were soprano pipistrelle *Pipistrellus pygmaeus*, three were *Myotis sp.*, with a single record for both noctule *Nyctalus noctule* and brown long-eared bat *Plecotus auritus*.
- 3.16 The Site is open and exposed with the ditch the only linear feature through the Site, with the remaining linear features only on the boundaries. The Site is therefore considered to be of low potential for foraging and commuting bats. The woodland directly adjacent to the south of the Site may provide more suitable, sheltered, vegetated habitat and bat activity is likely to be concentrated in these areas. Other bordering areas to the site are largely agricultural and unlikely to provide suitable habitat.
- 3.17 No structures or mature trees are present on the Site and the Site is considered to have no potential roost features for bats.
- 3.18 Overall, the Site is considered to offer **low** suitability for foraging and commuting bats and **negligible** suitability for roosting bats.

Birds

- 3.19 The desk study returned 759 records of birds within the last 10 years. Of these 65 records relate to birds listed on Schedule 1 of the Wildlife and Countryside Act (1981). These are listed below in Table 5.

Table 5: Schedule 1 Bird records returned by desk study

Scientific name	Common name	Number of records
<i>Tyto alba</i>	Barn owl	3
<i>Turdus pilaris</i>	Fieldfare	2
<i>Bucephala clangula</i>	Goldeneye	18
<i>Tringa ochropus</i>	Green sandpiper	3
<i>Tringa nebularia</i>	Greenshank	5
<i>Anser anser</i>	Greylag goose	9
<i>Falco subbuteo</i>	Hobby	1
<i>Alcedo atthis</i>	Kingfisher	2
<i>Pandion haliaetus</i>	Osprey	1
<i>Turdus iliacus</i>	Redwing	3
<i>Cygnus cygnus</i>	Whooper swan	18

- 3.20 The Site is not considered likely to support many of these species due to a lack of foraging and breeding opportunities. However, barn owl, fieldfare, greylag goose and redwing may utilise the Site on an occasional basis.
- 3.21 The Site is arable in nature and the desk study returned 135 records of species featured in the UK breeding bird farmland indicator species (JNCC). Records for birds from this species are presented in Table 6.

Table 6: Breeding bird farmland indicator species records from the desk study

Scientific name	Common name	Number of records
<i>Emberiza calandra</i>	Corn bunting	0
<i>Numenius arquata</i>	Curlew	0
<i>Chloris chloris</i>	Greenfinch	6
<i>Perdix perdix</i>	Grey Partridge	4
<i>Corvus monedula</i>	Jackdaw	0
<i>Falco tinnunculus</i>	Kestrel	18
<i>Vanellus vanellus</i>	Lapwing	20
<i>Linaria cannabina</i>	Linnet	10
<i>Emberiza schoeniclus</i>	Reed bunting	8
<i>Corvus frugilegus</i>	Rook	4
<i>Cygnus cygnus</i>	Skylark	9
<i>Sturnus vulgaris</i>	Starling	10
<i>Columba oenas</i>	Stock dove	2
<i>Passer montanus</i>	Tree sparrow	6
<i>Streptopelia turtur</i>	Turtle dove	0
<i>Sylvia communis</i>	Whitethroat	2
<i>Columba palumbus</i>	Woodpigeon	19

<i>Motacilla flava</i>	Yellow Wagtail	8
<i>Emberiza citrinella</i>	Yellowhammer	9

3.22 The Site holds little habitat for most breeding birds due to its agricultural nature. Breeding opportunities for species which nest in vegetation is limited to the hedgerows. The Site was not optimal for ground-nesting species at the time of survey as it remains in intensive crop production.

3.23 The Site is of an arable nature which can contribute to supporting aggregations of geese and other wildfowl. Including gull species. Such species may congregate away from nearby coastal areas at high tide to forage in winter months, especially if fields contain stubble. The Site is within 10 km of protected areas which are designated for wintering geese. The Site may therefore provide supporting habitat for wintering geese and gulls to roost.

3.24 The suitability of the Site for both breeding and wintering birds is considered to be **low**.

Great crested newt

3.25 No records of a *Triturus* sp. of newt were returned by the desk study and there are no ponds within 500 m of the Site.

3.26 The terrestrial habitats within the Site are not considered to be particularly suitable for great crested newt as they are dominated by arable land, which are regularly disturbed by farming activities. The suitability of the Site for great crested newt is considered to be **negligible**.

Reptiles

3.27 No records of reptiles were returned by the desk study.

3.28 The Site is not considered likely to support reptiles due to the intensive agricultural nature of the land. The arable fields and short field margins are unlikely to provide sufficient cover or foraging opportunities for reptiles. No records of reptiles were returned by the desk study. Overall, the suitability of the Site for reptiles is considered to be **negligible**.

Otter

3.29 There are two ditches within the Site, though these are of poor suitability to support otter *Lutra lutra*. The water flow of these ditches was very low at the time of survey and is unlikely to increase considerably throughout the year, making these poor for foraging. Tree cover along these ditches is low and they remain relatively exposed, reducing their attractiveness for otter to use these ditches for shelter and commuting.

3.30 The majority of terrestrial habitats within the Site are not suitable for otter as they are open and exposed, offering little opportunity for resting or shelter. The woodland outside the Site boundary to the south is more suitable for the species, which is linked to a small stream and the small Lithillum Loch via woodland, offering potential opportunities for holt creation.

3.31 No records of otter were returned by the desk study.

3.32 Otter may commute through the Site but the overall suitability of the habitats on Site to support otter is considered **negligible**.

Other notable species

3.33 The desk study did not return any records for red squirrel *Sciurus vulgaris* and habitat on Site is not considered suitable for the species. The mixed woodland to the south of the Site may be broadly suitable for the species.

- 3.34 The habitats within the Site are suitable for brown hare *Lepus europaeus*. Twelve records of brown hare were returned by the desk study, though no direct evidence was recorded during the survey.
- 3.35 The habitats are not considered to be particularly suitable for hedgehog *Erinaceus europaeus* due to the levels of agricultural disturbance and lack of cover within the fields, the hedgerows could offer some suitability. A single record of hedgehog was returned by the desk study.
- 3.36 The desk study did not return any records of water vole *Arvicola amphibius* and the ditches on Site are considered to be unsuitable due to the very low water levels and lack of riparian vegetation

Invasive non-native species

- 3.37 No invasive non-native animal species were recorded within the Site.

Species scoped out of consideration

- 3.38 White-clawed crayfish *Austropotomobius pallipes*, and migratory fish species are scoped out of consideration due to a lack of suitable habitat within the Site.

4 Recommendations

- 4.1 Based on the results of the extended Phase 1 habitat survey and desk study, the Site is not considered to support irreplaceable habitats or priority habitats, The Site is unlikely support protected species such as, bats badgers, otters or reptiles and amphibians.
- 4.2 Breeding birds and wintering birds surveys have not taken place to date. Due to the agricultural nature of the Site the habitats are considered suitable to support a range of bird species of varying conservation importance that are dependant upon farmland habitats (see Table 6). Many birds considered to indicators of a farmland bird assemblage have suffered population and range declines across the UK and are listed in the Birds of Conservation Concern (BoCC) as red and amber list species.
- 4.3 Species that could be dependant upon the Site during the breeding season include as skylark *Alauda arvensis*, yellowhammer *Emberiza citrinella*, grey partridge *Perdix perdix*, reed bunting *emberiza schoeniculus* and corn bunting *Emberiza calandra*. Grey partridge are specifically listed as a Species of Conservation Concern (SoCC) in the Scottish Borders Council LBAP.
- 4.4 Surveys of breeding birds are recommended to characterise the breeding bird assemblage present on Site. In order to facilitate a robust impact assessment and provision of appropriate mitigation and/or compensation measures. In line with current guidance six survey visits would be undertaken between March and July 2025. One of the six surveys would be completed in the evening to characterise the breeding bird community in more depth and record any nocturnal species that may be present.
- 4.5 The Site also has potential wintering bird interest. In addition to resident farmland breeders, waders and flocks of geese such as pink-footed geese *Anser brachyrhynchus* could utilise the Site for foraging and roosting over winter. as well as skylark and other farmland species including yellowhammer, grey partridge, and curlew *Numenius arquata*. Curlew are specifically listed as a Species of Conservation Concern (SoCC) in the Scottish Borders Council LBAP.
- 4.6 Wintering bird surveys are therefore recommended to characterise the over winter bird assemblage present on Site. In line with current guidance and to support a robust impact assessment and provision of appropriate mitigation and/or compensation measures four survey visits would be undertaken between November 2024 and February 2025 .
- 4.7 Given the sites location in the Scottish borders, it could support flocks of birds on passage specifically species such as pink-footed geese. Passage surveys would form an extension of the Wintering birds surveys following the same methodology, but being undertaken in March and April 2025.
- 4.8 Should any hedgerows need to be removed this should be done outside of the breeding bird season (Mar-Aug inclusive) to avoid direct disturbance to potential nests. If this is not possible a nesting bird check will need to be carried out by a suitably qualified ecologist prior to any works commencing.
- 4.9 The biodiversity value of the Site can be enhanced and it is understood that a Biodiversity Gain Plan is to be produced along with a Habitat Management and Monitoring Plan to facilitate the creation and management of new habitats and features.
- 4.10 A full Ecological Impact Assessment (EcIA) is recommended to support the planning application for this development. An EcIA will describe the methods, results, and limitations of the works undertaken, which will then be used to present an evaluation and impact assessment of the proposals, based on established guidance. An EcIA is generally considered the minimum level of reporting on assessment and mitigation to support a planning application of this sort.

5 References

Bird Survey & Assessment Steering Group. (2023). Bird Survey Guidelines for assessing ecological impacts, v.1.1.1.1. <https://birdsurveyguidelines.org> [July 2024]

CIEEM (2017). Guidelines for Preliminary Ecological Appraisal. Second edition. Chartered Institute of Ecology and Environmental Management, Winchester.

CIEEM (2019) Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater, Coastal and Marine version 1.1. Chartered Institute of Ecology and Environmental Management, Winchester.

JNCC (2016). Handbook for Phase 1 Habitat Survey. Joint Nature Conservation Committee, Peterborough.

JNCC (2023). UKBI - C5. Birds of the wider countryside and at sea. Accessed July 2024: <https://jncc.gov.uk/our-work/ukbi-c5-birds-of-the-wider-countryside-and-at-sea/>

Scottish Borders Council (2016). Local Development Plan. Accessed July 2024: https://www.scotborders.gov.uk/downloads/file/2017/ldp_-_volume_1_policies

Scottish Forestry. Open Data Portal. Accessed July 2024: <https://open-data-scottishforestry.hub.arcgis.com/>

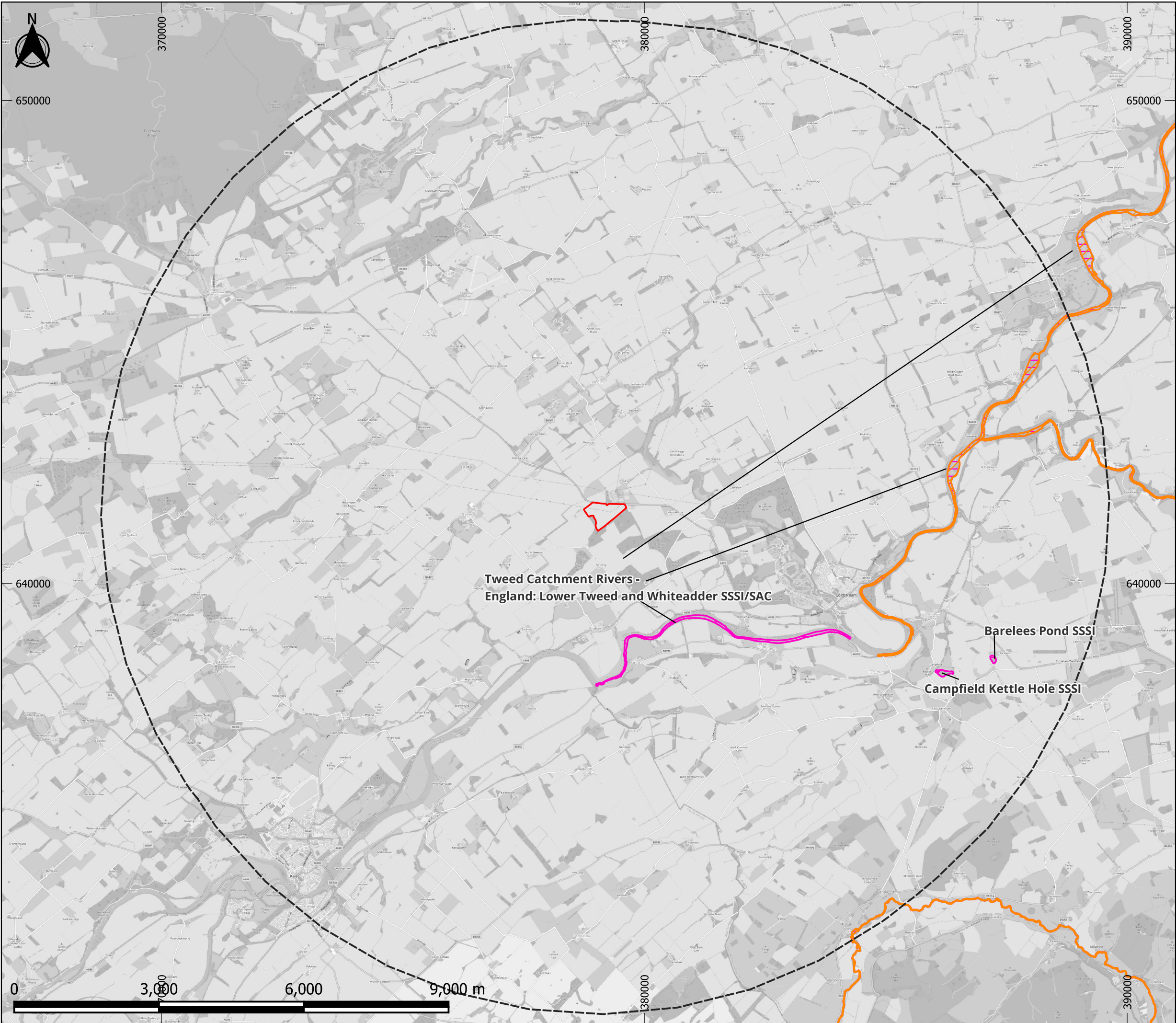
Appendix 1: Figures

(overleaf)

Figure 1: Statutory designated sites within 10 km

Figure 2: Non-statutory designated sites within 2 km

Figure 3: Extended Phase 1 habitat survey



- Legend
- Special Areas of Conservation
 - Sites of Special Scientific Interest
 - Site boundary
 - 10km Buffer

BSG | ecology

OFFICE: NEWCASTLE
T: 0191 303 8964

JOB REF: P24-005

PROJECT TITLE
BISHOPS DAL BESS

DRAWING TITLE
Figure 1: Statutory Designated Sites

DATE: 04/03/2024 CHECKED: AM SCALE: 1:75,000
DRAWN: CF APPROVED: AM VERSION:1.0

Copyright © BSG Ecology

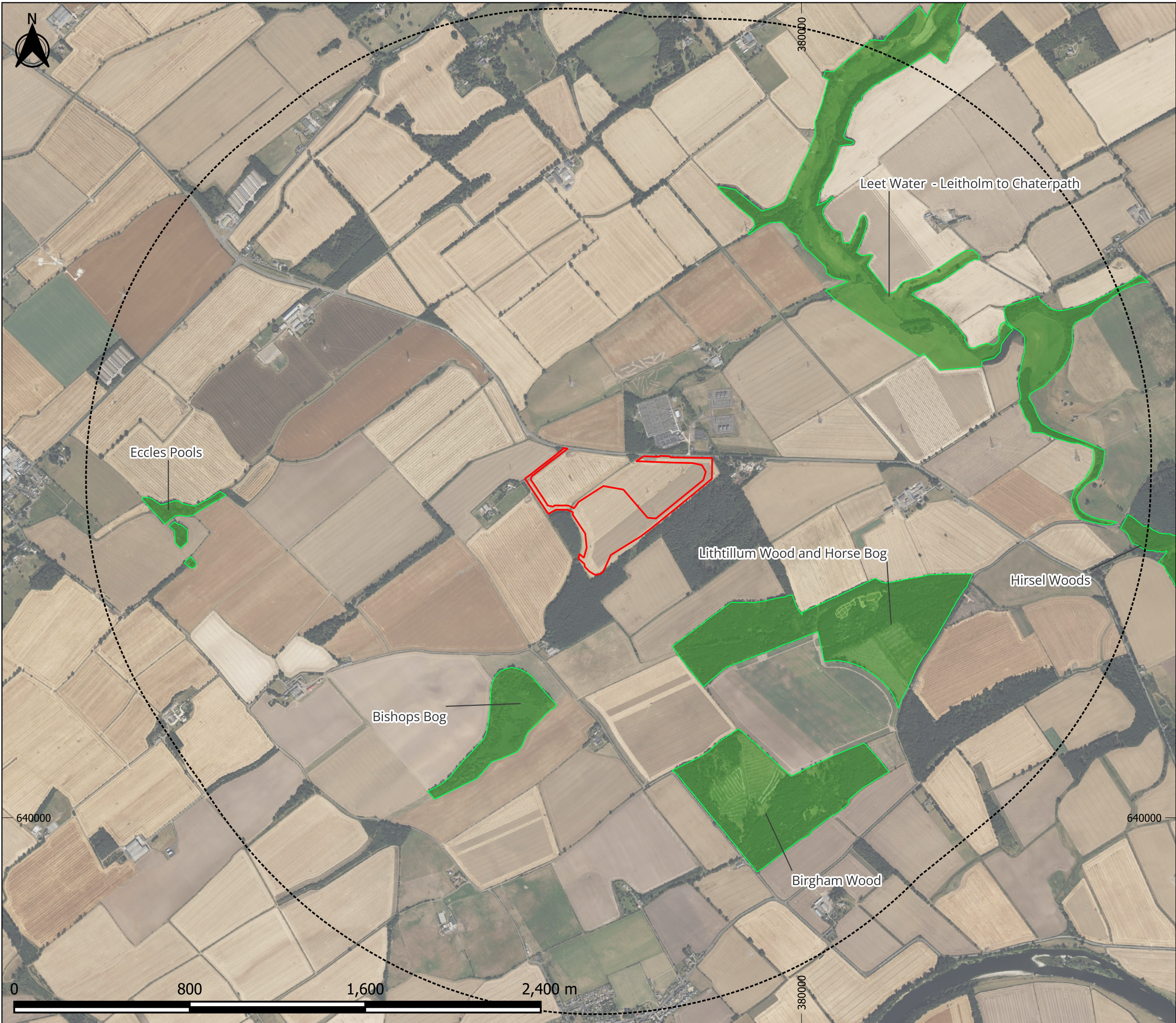
No dimensions are to be scaled from this drawing and are to be checked on site.
Area measurements for indicative purposes only.

This drawing may contain: Ordnance Survey material by permission of Ordnance Survey on behalf of the Controller of His Majesty's Stationery Office © Crown Copyright 2024. All rights reserved. Reference number: AC0000818663

© OpenStreetMap contributors. Available under the Open Database Licence.

Projection: OSGB 1936/British National Grid - EPSG 27700

Sources: © Natural England



- Legend
- Locally Designated Sites
 - Site boundary
 - 2km from site boundary

BSG | ecology

OFFICE: NEWCASTLE
T: 0191 303 8964

JOB REF: P24-005

PROJECT TITLE
BISHOPS DAL BESS

DRAWING TITLE
Figure 2: Locally designated sites within 2 km

DATE: 30/07/2024
DRAWN: CS

CHECKED: AM
APPROVED: AM

SCALE: 1:16,500
VERSION:1.0

Copyright © BSG Ecology

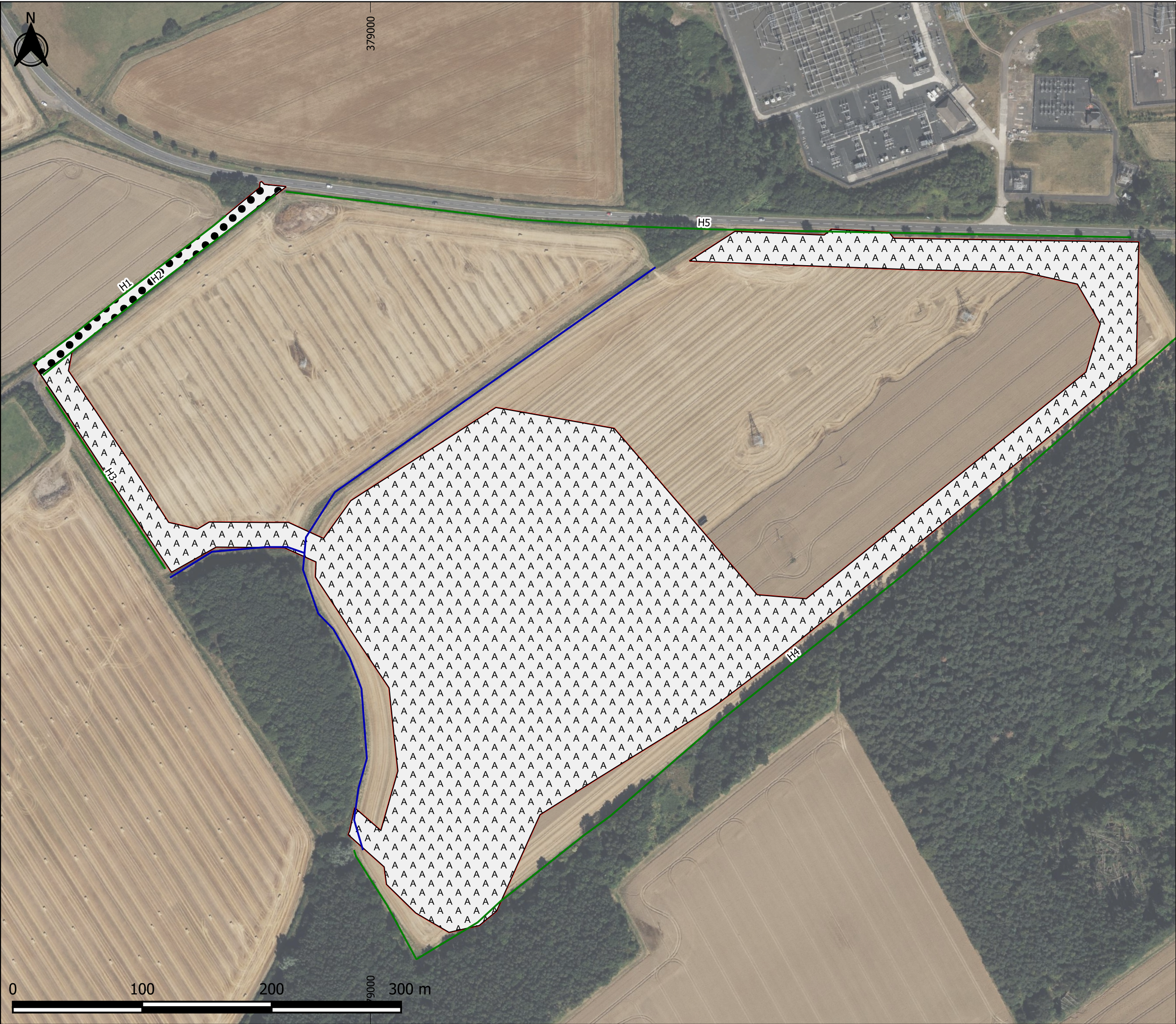
No dimensions are to be scaled from this drawing and are to be checked on site.
Area measurements for indicative purposes only.

This drawing may contain: Ordnance Survey material by permission of Ordnance Survey on behalf of the Controller of His Majesty's Stationery Office © Crown Copyright 2024. All rights reserved. Reference number: AC0000818663

© OpenStreetMap contributors. Available under the Open Database Licence.

Projection: OSGB 1936/British National Grid - EPSG 27700

Sources: © Natural England



- Legend
- Intact hedge - species-poor
 - Running water
 - Cultivated/disturbed land - arable
 - Bare ground
 - Site boundary



OFFICE: NEWCASTLE
T: 0191 303 8964

JOB REF: P24-005

PROJECT TITLE
BISHOPS DAL BESS

DRAWING TITLE
Figure 3: Phase 1 Habitat Map

DATE: 30/07/2024	CHECKED: AM	SCALE: 1:2,800
DRAWN: CS	APPROVED: CD	VERSION:1.0

Copyright © BSG Ecology

No dimensions are to be scaled from this drawing and are to be checked on site.
Area measurements for indicative purposes only.

This drawing may contain: Ordnance Survey material by permission of Ordnance Survey on behalf of the Controller of His Majesty's Stationery Office © Crown Copyright 2024. All rights reserved. Reference number: AC0000818663

Aerial Photography © Bing. Microsoft Bing Maps screen shot reprinted with permission from Microsoft Corporation.

Projection: OSGB 1936/British National Grid - EPSG 27700

Sources: BSG Ecology survey data

Appendix 2: Photographs

(overleaf)



Photograph 1: Hedgerows 1 and 2



Photograph 3: Ditch which is overgrown with terrestrial vegetation



Photograph 2: Field margin which will form the northern access track



Photograph 4: Arable field which constitutes the bulk of the Site



Photograph 5: Ditch where culvert it proposed



Photograph 6: Hedgerow 5

Appendix 3: Legislation and Scottish Planning Policy

Policy 4 states:

Development proposals which by virtue of type, location or scale will have an unacceptable impact on the natural environment, will not be supported.

Development proposals that are likely to have a significant effect on an existing or proposed European site (Special Area of Conservation or Special Protection Areas) and are not directly connected with or necessary to their conservation management are required to be subject to an “appropriate assessment” of the implications for the conservation objectives.

Development proposals that will affect a National Park, National Scenic Area, Site of Special Scientific Interest or a National Nature Reserve will only be supported where:

The objectives of designation and the overall integrity of the areas will not be compromised; or

Any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by social, environmental or economic benefits of national importance.

All Ramsar sites are also European sites and/or Sites of Special Scientific Interest and are extended protection under the relevant statutory regimes.

Development proposals that affect a site designated as a local nature conservation site or landscape area in the LDP will only be supported where:

Development will not have significant adverse effects on the integrity of the area or the qualities for which it has been identified; or

Any significant adverse effects on the integrity of the area are clearly outweighed by social, environmental or economic benefits of at least local importance.

The precautionary principle will be applied in accordance with relevant legislation and Scottish Government guidance.

Development proposals that are likely to have an adverse effect on species protected by legislation will only be supported where the proposal meets the relevant statutory tests. If there is reasonable evidence to suggest that a protected species is present on a site or may be affected by a proposed development, steps must be taken to establish its presence. The level of protection required by legislation must be factored into the planning and design of development, and potential impacts must be fully considered prior to the determination of any application.

Development proposals in areas identified as wild land in the Nature Scot Wild Land Areas map will only be supported where the proposal:

- i. will support meeting renewable energy targets; or,
- ii. is for small scale development directly linked to a rural business or croft, or is required to support a fragile community in a rural area.

The Scottish Borders Local Development Plan (LDP2) adopted on 22 August 2024

The following local plan policies are all potentially relevant to the proposed development:

Policy EP1: International Nature Conservation Sites and Protected Species

- Development proposals which will have a likely significant effect on a designated or proposed European site, which includes all Ramsar sites, are only permissible where an appropriate assessment has demonstrated that it will not adversely affect the integrity of the site. Where proposals could adversely affect the integrity of the site, they will only be permissible where:
- there are no alternative solutions, or
- there are imperative reasons of overriding public interest including those of a social or economic nature; and

- compensatory measures are provided to ensure that the overall coherence of the Natura network is protected. Development proposals that are likely to have an adverse effect on species protected by legislation will only be supported where the proposal meets the relevant statutory tests. If there is reasonable evidence to suggest that a protected species is present on a site or may be affected by a proposed development, steps must be taken to establish its presence. The level of protection required by legislation must be factored into the planning and design of development, and potential impacts must be fully considered prior to the determination of any application.

Policy EP2: National Nature Conservation Sites and protected Species

- Development proposals which are likely to have a significant adverse effect, either directly or indirectly, on a Site of Special Scientific Interest (SSSI), a National Nature Reserve (NNR), or nationally protected habitats or species will not be permitted unless:
- the objectives of the designation and the overall integrity of the site will not be compromised, or
- any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by social, environmental or economic benefits of national importance.

If there is evidence to suggest that a legally protected species is on site or may be affected by proposed development, steps must be taken to establish its presence. The level of protection afforded by legislation must be factored into the planning and design of the development. Any impacts will be fully considered in determination of the application. The developer will be required to detail mitigation, either on-site or off-site, of any damage that may be caused by development permissible under the exception criteria.

Policy EP3: Local Biodiversity and Geodiversity

- Details of these sites are set out within the Technical Notes: Local Biodiversity Sites and Local Geodiversity Sites.
- Development that would have an unacceptable adverse effect on Borders Notable Species and Habitats of Conservation Concern will be refused unless it can be demonstrated that the public benefits of the development clearly outweigh the value of the habitat for biodiversity conservation.
- Any development that could impact on local biodiversity through impacts on habitats and species should: a) aim to avoid fragmentation or isolation of habitats; and b) be sited and designed to minimise adverse impacts on the biodiversity of the site, including its environmental quality, ecological status and viability; and c) compensate to ensure no net loss of biodiversity through use of biodiversity offsets and ensure net gain as appropriate; and d) aim to enhance the biodiversity value of the site, through use of an ecosystems approach, with the aim of creation or restoration of habitats and wildlife corridors and provision for their long-term management and maintenance.
- Development that would adversely affect the interest of a local geodiversity site will only be permitted where: a) the objectives and integrity of the designation will not be compromised; or b) the damage is outweighed by the social, economic or environmental benefits gained from the development; and c) suitable mitigation will be secured.

Policy EP13: Trees, woodland and hedgerows

- The Council will refuse development that would cause the loss of or serious damage to the woodland resource unless the public benefits of the development clearly outweigh the loss of landscape, ecological, recreational, historical or shelter value. Any development that may impact on the woodland resource should:
- a) aim to minimise adverse impacts on the biodiversity value of the woodland resource, including its environmental quality, ecological status and viability; and b) where there is an unavoidable loss of the woodland resource, ensure appropriate replacement planting, where possible, within

the area of the Scottish Borders; and c) adhere to any planning agreement sought to enhance the woodland resource.

Scottish wildlife legislation

In Scotland wildlife is afforded protection via a range of legal instruments. The key Acts and Regulations, which have been taken into account throughout this assessment, are as follows:

- Conservation (Natural Habitats, &c.) Regulations 1994 (as amended)
- The Conservation of Habitats and Species Regulations 2017 (as amended)⁵
- Wildlife and Countryside Act 1981 (as amended)
- Nature Conservation (Scotland) Act 2004 (as amended)
- The Protection of Badgers Act 1992

European protected sites

In respect of European protected sites, any HRA required would be in accordance with the requirements of Regulation 48 of the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended in Scotland by the Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2019.

The Conservation of Habitats and Species Regulations 2017 only apply to specific reserved and devolved activities on land in Scotland, and in Scottish inshore waters, including for consents under sections 36 and 37 of the Electricity Act 1989.

Protection of Badgers Act 1992 (as amended)

The 1992 Act protects badgers and their setts. It has been amended by the Nature Conservation (Scotland) Act 2004 under Schedule 6 (26). In summary, offences under this legislation are:

- Wilfully taking, injuring or killing badgers
- Cruelty; selling and possession; marking and ringing
- Intentionally or recklessly interfering with a badger sett (interfering with a badger sett includes damaging or destroying a badger sett or any part of it, obstructing access to a sett, disturbing a badger whilst it is in a sett, or causing or allowing a dog to enter a badger sett)

European protected species

The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended in Scotland) transpose the EC Habitats Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora (Council Directive 92/43/EEC) into national law.

“European protected species” (EPS) are those which are present on Schedule 2 of the Regulations. They are subject to the provisions of Regulation 39. In summary, this legislation makes it an offence to:

- capture, injure or kill a wild animal EPS
- to disturb such an animal while it is occupying a structure or place it uses for shelter or protections
- to disturb such an animal while it is rearing or otherwise caring for its young
- to obstruct access to a breeding site or resting place of such an animal or to otherwise deny the animal use of the breeding site or resting place

⁵ In so far as they apply to Scotland, see Regulation 2 of 2017 Regulations for provisions relevant to Scotland.

- to disturb such an animal in a manner that is, or in circumstances which are, likely to significantly affect the local distribution or abundance of the species to which it belongs
- to disturb such an animal in a manner that is, or in circumstances which are, likely to impair its ability to survive, breed or reproduce, or rear or otherwise care for its young.

Although the law provides strict protection to these species, it also allows this protection to be set aside (derogation) through the issuing of licences. The licences in Scotland are currently determined by NatureScot for development works. In accordance with the requirements of the Regulations, a licence can only be issued where the following requirements are satisfied:

- that there is no satisfactory alternative, and
- that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.

Protected species - Wildlife and Countryside Act 1981 (as amended in Scotland)

Protected animals are listed on Schedule 5 of the Wildlife and Countryside Act 1981 (as amended in Scotland), (all EPS are also protected under the 1981 Act). In summary, this legislation makes it an offence to intentionally or recklessly:

- Kill, injure or take any wild animal listed on Schedule 5
- Damage, destroy or obstruct access to any structure or place which such an animal uses for shelter or protection or to disturb such an animal when it is occupying a structure or place for that purpose.

All nesting birds are protected under the Wildlife and Countryside Act 1981 (as amended in Scotland) which makes it an offence to intentionally kill, injure or take any wild bird or take, damage or destroy its nest whilst in use or being built, or take or destroy its eggs. In addition, it is an offence to disturb any wild bird listed on Schedule 1 of the act whilst it is building a nest or is in, on, or near a nest containing eggs or young, or whilst lekking; or to disturb the dependent young of any wild bird listed on Schedule 1.

Species and habitats of principal importance

Section 1 of the Nature Conservation (Scotland) Act 2004 states that 'It is the duty of every public body and office-holder, in exercising any functions, to further the conservation of biodiversity so far as is consistent with the proper exercise of those functions'. To assist with this objective Section 2(4) of the Act sets out the requirement to publish a list of flora and fauna considered to be of principal importance in Scotland.

The list required under Section 2(4) of the Act has now been published and includes a diverse range of habitats and species⁶. The measures required to protect these species and habitats are set out in the document 'Scotland's Biodiversity: It's in Your Hands - A strategy for the conservation and enhancement of biodiversity in Scotland' (Scottish Executive, 2004). Biodiversity Targets are outlined in the 'Strategic Plan for Biodiversity 2011-2020' (Scottish Government, 2013). The two documents together comprise the Scottish Biodiversity Strategy.

Protection of Badgers Act 1992 (as amended)

The 1992 Act protects badgers and their setts. It has been amended by the Nature Conservation (Scotland) Act 2004 under Schedule 6 (26). In summary, offences under this legislation are:

- Wilfully taking, injuring or killing badgers
- Cruelty; selling and possession; marking and ringing

⁶ The list is published at: <https://www.nature.scot/scottish-biodiversity-list>

- Intentionally or recklessly interfering with a badger sett (interfering with a badger sett includes damaging or destroying a badger sett or any part of it, obstructing access to a sett, disturbing a badger whilst it is in a sett, or causing or allowing a dog to enter a badger sett)