specifically

Protected species & the planning process

A summary for planning staff in greater Glasgow
September 2011

Protected species in/around greater Glasgow

1. European Protected Species
2. water voles
3. badgers

What are EPS?

otters

no EPS plants in your area

bats

great crested newts

Where are EPS found in this area?

Gr
ne

What is their habitat?

- Annex to our 2008 Service Statement

- phone us!
  0141 951 4488

EUROPEAN PROTECTED SPECIES (EPS).

The species below receive a high level of protection under the EC Habitats Directive which is transposed into domestic legislation by the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended). Please note that any consent granted without appropriate consideration of EPS *in advance* could result in a breach of the Habitats Regulations.

SPECIES.	DISTRIBUTION AND ADDITIONAL INFORMATION.	HABITAT TYPE.								
		Woodland	Trees and scrub	Buildings and other structures (including tunnels)	Grassland	marshy grassland.	bogs and mosses.	Water courses	Lochs, ponds and standing water.	Riparian habitats.
Bats (all species).	Widespread. Bats can live within new or old buildings, mature trees and ivy clad trees. Trees are notoriously difficult to survey as evidence of bats is often hidden by foliage or is inaccessible to surveyors. Precautionary methods of demolishing buildings or mature trees are recommended if surveys reveal no bat presence but potential roost sites. Linear natural features, such as hedgerows and watercourses, can be used as commuting corridors for bats and the removal of these could disturb access to feeding. Lofts, soffit boards, window sills and window cladding are just some of the places roosting bats can be found so before any work takes place on a building a survey for bats should be carried out. Indigenous trees are more likely to provide a suitable roosting area for bats in both summer and winter. SNH can advise further if required. www.bats.org.uk/pages/professional_guidance.html	✓	✓	✓	foraging	foraging	foraging	foraging	foraging	foraging
Otters *lutra lutra*.	Widespread. Found by clean rivers, lochs and other water courses.. Otter shelters and holts may be as frequent as every 150m or as infrequent as every 2km along a watercourse. Surveys should be a minimum of 100m upstream and downstream from the development area . There must be at least a 30m buffer zone between a known shelter/couch and a development site. Shelters can be hollows within tree roots or even a depression at the edge of the river bank. www.snh.org.uk/publications/on-line/wildlife/**otters**/planning.asp							✓	✓	✓
Great Crested Newts *Triturus cratatus*.	This species inhabits a wide range of habitats, including quarries, industrial and 'brown-field' sites, within which it favours large ponds with abundant weeds and no fish. Great crested newts (gcn) take refuge under logs and stones etc outwith a pond. This should therefore be considered when looking at the footprint of a development boundary. This newt is considerably larger than the common newt and palmate. www.snh.org.uk/speciesactionframework/saf-greatcrestednewt.asp					✓			✓	✓

Where to find out more about EPS

- SNH website www.snh.gov.uk/eps
- Biodiversity Planning Toolkit **
- National Biodiversity Network http://data.nbn.org.uk/
- Local records centres
- Local interest groups (bats, badgers, raptors etc)]
- SNH Area office for site/species specific information

Legal protection

It is a STRICT LIABILITY OFFENCE to…

- **damage or destroy a breeding site or resting place**

…of an animal EPS

Also,

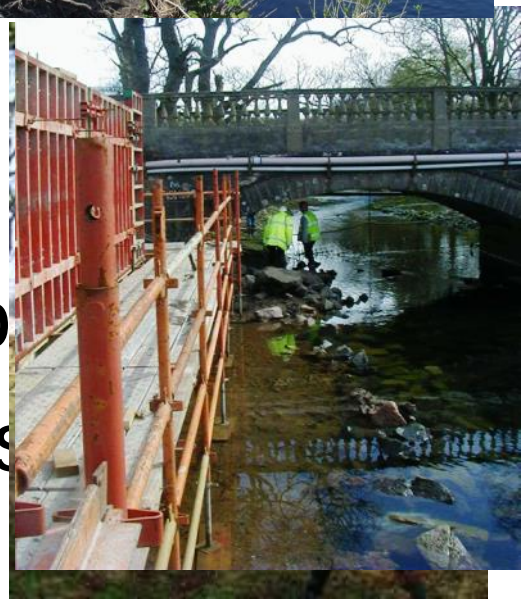
It is an offence deliberately or recklessly to …

- disturb an animal while it is occupying a structure or place used for shelter or protection
- obstruct access to a breeding site or resting place
- capture, injure, kill, harass

etc

…but such actions CAN be licenced by SNH

EPS relevant to what development types?



- demolitions
- conversions, especially farm
- felling of (semi-)mature trees
- works to watercourses
- works near vegetated waterco
- works affecting ponds & their s

As a planning officer, what do I need to do? (non-EIA)

- determine if EPS are relevant
- at pre-app discussion stage, check developer has considered EPS
- once application submitted, ensure survey reports are included

If EPS are relevant , ensure applicant knows -

- what surveys are required – and when
- survey report must predict: any potential impacts?

NO

✳ no further consideration needed ✳

YES

species protection plan should accompany the application

You must fully consider EPS before granting permission, even PiP

Suspensive conditions? NO

- serious risks for developer - offence may be committed; permission unuseable; cost / delay
- re-survey maybe required (after 6 – 18 months), but use advisory note to applicant
- if certain that re-survey will be required, applicn must include a ‘Re-Survey & Protect’ plan

Should you formally consult SNH?

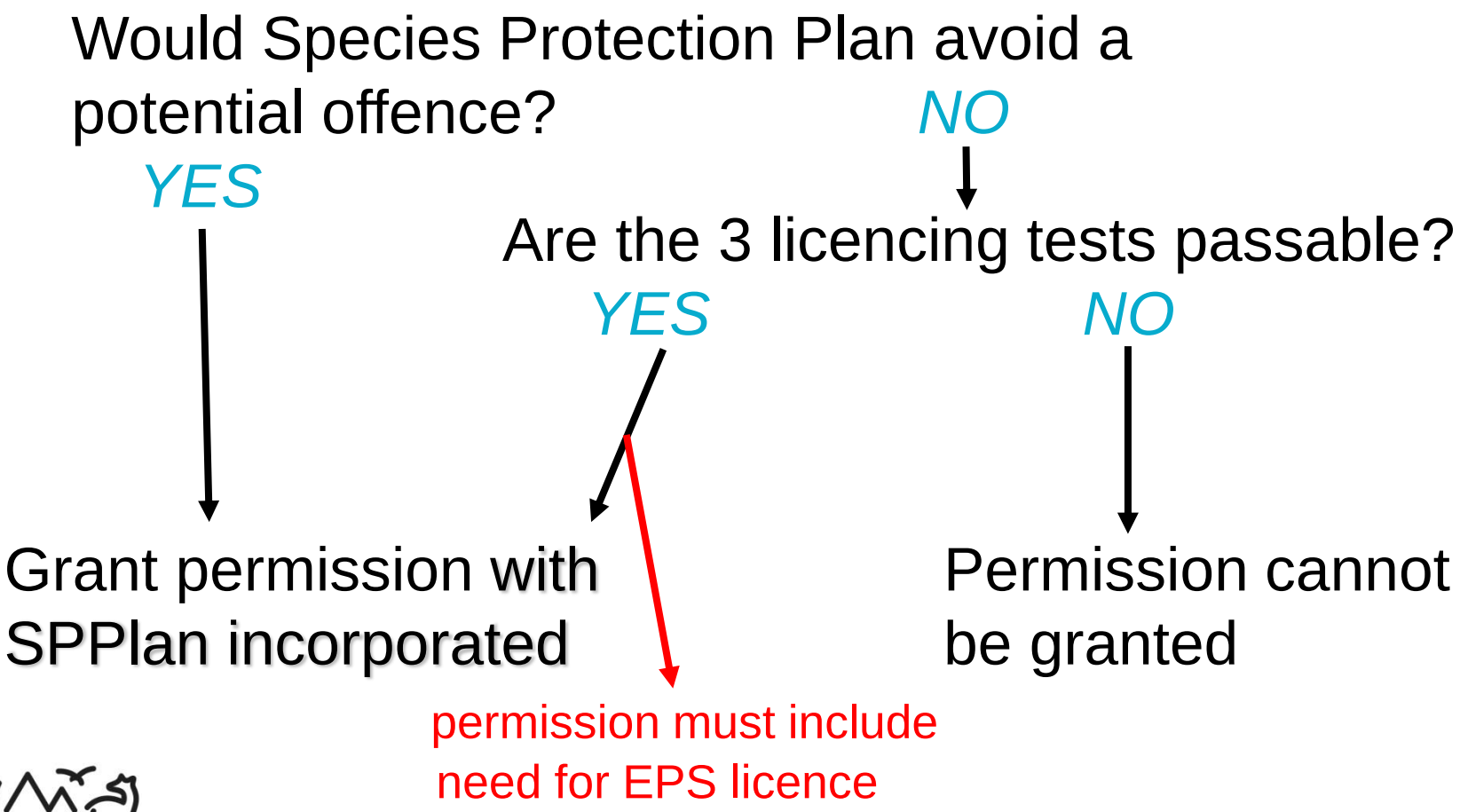
where a survey shows species present on site, but PAs are uncertain that the proposed mitigation [including licencing] is sufficient to avoid an offence

- welcome to consult us on any uncertainty

SNH Service Statement 2011

- consultation often advisable on SPPlan – but not mandatory

IF the survey report predicts impacts:



The licensing system

- **SNH are the licensing authority (previously Scottish Govt for EPS)**
- **cannot issue licence if any planning permission required not obtained first**

The 3 EPS licensing tests

1. must be a legal purpose for the licence
2. must be no satisfactory alternative
3. must not be detrimental to ‘favourable conservation status’ of the species

Test 1 - Is it for a valid legal purpose?

- Has the licence applicant demonstrated that the proposed activity falls within Regulation 44?

  i.e. Reg 44(e) typically cited:
  "*preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature…*"

Test 2 - Is there a satisfactory alternative?

- Could the activity be done differently to avoid impact on EPS & need for licence?

  - timing, location, methods, design

Test 3 - Will the action be detrimental to maintenance of the species at 'favourable conservation status'?

The parameters for assessing FCS are -

- population
- range
- habitat for the species
- future prospects

Remember

- consider EPS fully before granting planning permission

- do not use suspensive conditions

Any questions on EPS?

Water voles – legal protection

It is an offence deliberately or recklessly to …

- damage, destroy or obstruct a W V burrow
- disturb a W V while it is in a burrow

Voles not protected – but LBAP Priority

NEW Licencing by SNH coming soon…

Water voles in planning

- We urge you to treat like EPS

  - but this is not strictly required

- suspensive conditions carry risks as with EPS

Badgers – legal protection

It is an offence to:

- damage or destroy any part of a badger sett
- obstruct access to a sett
- disturb a badger whilst it is in a sett

etc

But SNH can issue licences

Badgers in planning

- default: avoid suspensive conditions - though not strictly ruled out
- suspensive conditions carry additional risk: delay due to breeding season - Dec-Jun *inclusive*

Any questions on protected species in planning?

Case study

1. How would the EIA process determine whether species surveys are required?

2. Pretend this is non-EIA: what species surveys are required?

Case study

3. Report of bat survey says: trees have moderate roost potential, but activity survey (dawn/dusk) found no evidence of roosting.

   Can you determine whether this is adequate to grant permission? Why?

4. Report says: buildings have moderate roost potential, but not surveyed for activity because buildings will be retained.

   Now can you determine? Why?

Case study

5. Report of badger survey is submitted:
   - it is a desk study
   - it quotes from a largely overlapping survey in 2009, which found no badgers in area
   - it concludes no badgers present, therefore no further consideration

Can you determine whether this is adequate to grant permission? Why?

Case study

6. Otter survey found a couch (resting place) near the river at a location where a new SUDS outfall likely to be required.

   Survey report states that:

   - ample suitable habitat nearby
   - works would be appropriately overseen by ecologist
   - on this basis, if destruction of couch essential, this would not be detrimental to FCS

- Can you determine whether this is adequate to grant permission? Why?