

Date: 25 August 2021  
Our ref: SIZE-SP004 / 20025411 (NE internal ref: 365597)  
Your ref: EN010012



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**BY EMAIL ONLY**

Dear Ms McKay

**EN010012 SIZE-SP004 Sizewell C Project Development Consent Order - Natural England's written submission to inform Issue Specific Hearing 10 (Biodiversity and Ecology) on Friday 27<sup>th</sup> August 2021 in lieu of our attendance**

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

As outlined in our email your authority on the 12<sup>th</sup> August 2021, Natural England are unable to resource attendance at the above hearing due to staff annual leave which we are unable to cover. As requested, **Annex I** of this letter constitutes Natural England's written submission to inform Issue Specific Hearing 10 (Biodiversity and Ecology) on Friday 27<sup>th</sup> August 2021 which we hope you find helpful. We will also review the transcript and/or recording of the hearing once available and follow up on any specific questions for Natural England using best endeavours.

For any queries relating to the content of this letter only, please contact Jack Haynes on [REDACTED].

Yours sincerely,

Jack Haynes  
Senior Adviser  
Norfolk & Suffolk Area Team

**Annex I – Natural England’s comments on the detailed agenda for Issue Specific Hearing 10 (ISH10) on Biodiversity and Ecology**

Agenda heading	Agenda tem	Natural England comments
<b>1. Welcome, introductions and arrangements for the Hearing</b>	Reference may be made to EN-1, EN-6, the Applicant’s and IPs’ responses to ExQ1, submissions at Deadlines 5 and 6 and other relevant submissions.	No comments at this stage
<b>2. Ecology – general and policy</b>	a. To understand and explore compliance (or otherwise) with EN-1 (applied by para 3.9.5 of EN-6), in particular: (i) para 5.3.5 (and Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System (ODPM 06/2005, Defra 01/2005)); (ii) para 5.3.13 and County Wildlife Sites; (iii) para 5.3.14 and deterioration in relation to Foxburrow Wood; (iv) para 5.3.5 and beneficial biodiversity; para 5.3.18 and opportunities for enhancement of habitats where practicable.	No comments at this stage
	b. To understand and explore compliance (or otherwise) with EN-6 Part II Annex A paras Sizewell C.8.59, C.8.63 and C.8.67 (pages 207 and following) and whether the Applicant’s proposals have sufficiently taken into account the issues identified in the Appraisal of Sustainability, and	No comments at this stage
	c. To be clear where the matters in a and b are addressed, brought together and discussed in the Application documentation	No comments at this stage
<b>3. Marine ecology</b>	a. Sabellaria spinulosa, in general and progress with a Sabellaria mitigation and monitoring plan which is awaited from the Applicant - see also Natural England’s position set out in their post-ISH7 submission [REP5-160] what DML conditions are proposed for mitigation and comments on likelihood of presence and need for compensation (see also MMO’s REP6-039] paras 1.3.6.6 and 1.3.7.6)	As is acknowledged, our position on this issue was outlined at the Issue Specific Hearing 7: Biodiversity and Ecology on the 16th July 2021 and summarised in our Written Summary of Oral Representations [REP5-160] which we submitted at Deadline 5 (our ref 361180, dated 23 <sup>rd</sup> July 2021).  Since then, the Applicant set up a meeting with Natural England on the 18 <sup>th</sup> August 2021 to discuss the mitigation and monitoring plan which we welcome. During that meeting, we advised on the

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		mitigation and monitoring measures that we would expect to be set out in the 'in-principle' plan, and which would have the best chance of success. We are yet to see a version of the 'in-principle' mitigation and monitoring plan but understand that the Applicant will submit this to the Examination at Deadline 7. We will review it for the first time once available and provide our revised position using best endeavours.
	b. To understand which issues considered at the Hinkley Point C water discharge permit acoustic fish deterrent appeal and in dispute are common to the Sizewell DCO application	No comments at this stage
	c. Eels Regulations; to understand the positions of the Environment Agency and Applicant in relation to compliance and entrainment monitoring – see the responses and exchanges on ExQ.Ma.1.0 and the Environment Agency's position generally on this	No comments
	d. Smelt – the Environment Agency's position in their Written Representation [REP2-135], summarised at Annex B, epage 74	No comments
	e. Alde & Ore – reduction in numbers of fish entering – to understand the Environment Agency's position in their written representation [REP2-135] summarised at Annex B epage 74	No comments
	f. Environmental permitting and the DCO; to understand the positions of the Environment Agency and Applicant in relation to the need for protective measures in the DCO – paragraph 11.5 of the Environment Agency's Relevant Representation [RR-0373]	No comments
	g. Impacts of bromoform and hydrazine on birds, both direct and indirect are raised by RSPB in their response to Ma.1.8.	No comments

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	The Applicant's reply only addresses indirect effects. To understand the Applicant's position	
<b>4. Terrestrial ecology</b>	a. Fen meadow proposals, including Pakenham – to understand in particular Natural England's position on need, quantum and the likelihood of success	<p>Our position on this issue in terms of the need for and quantum of compensatory habitat for that which would be destroyed from Sizewell Marshes Site of Special Scientific Interest (SSSI) was covered comprehensively in Issue 49 of our Relevant Representation [RR-0878] (our ref: 306236, dated 30<sup>th</sup> September 2020), Written Representation [REP2-153] (our ref: 350822, dated 2<sup>nd</sup> June 2021) and Initial Statement of Common Ground (SoCG) between the Applicant an Natural England [REP2-071] (dated June 2021).</p> <p>It was also outlined at the Issue Specific Hearing 7: Biodiversity and Ecology on the 15<sup>th</sup> July 2021 and summarised in our Written Summary of Oral Representations [REP5-160] which we submitted at Deadline 5.</p> <p>In terms of the likelihood of success, the Applicant submitted some compensation site feasibility studies (643 pages) at Deadline 3 (24<sup>th</sup> June 2021) which we are in the process of reviewing with our specialists alongside the Fen Meadow Plan (231 pages) which was submitted by the Applicant at Deadline 6 (6<sup>th</sup> August 2021). Once we have completed this review, we will provide our updated position using best endeavours.</p> <p>We note that the Fen Meadow Plan remains an outline plan with the full scope of the works to be provided after 12 months of water data collection at each site. Consequently, we would like to reiterate to the Examining Authority that there remains a high degree of uncertainty on the likely success of delivery. This reflects the difficulty of establishing Fen Meadow M22 habitat and we welcome any further steps taken by the Applicant to reduce uncertainty.</p>
	b. Wet woodland	Our position on this issue in terms of the compensatory habitat for that which would be destroyed from Sizewell Marshes SSSI was

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		<p>covered comprehensively in Issue 50 of our Relevant Representation [RR-0878], Written Representation [REP2-153] and Initial Statement of Common Ground [REP2-071].</p> <p>This issue was not discussed at the Issue Specific Hearing 7: Biodiversity and Ecology on the 15<sup>th</sup> July 2021 but we provided a summary of our position in our Written Summary of Oral Representations [REP5-160] which we submitted at Deadline 5.</p> <p>We are unable to anticipate from this agenda item what the focus of discussion is likely to be on this issue but will review the transcript and/or recording of the hearing when available and follow up on any specific questions for Natural England using best endeavours.</p>
	<p>c. Designated sites including County Wildlife Sites, Foxburrow Wood and veteran trees</p>	<p>Our positions on these issues were covered in Issues 21 (veteran trees), 22 (County Wildlife Sites) and 53 (Foxburrow Wood ancient woodland) of our Relevant Representation [RR-0878], Written Representation [REP2-153] and Initial Statement of Common Ground [REP2-071].</p> <p>These issues were not discussed at the Issue Specific Hearing 7: Biodiversity and Ecology on the 15<sup>th</sup> July 2021 but we provided a summary of our position in our Written Summary of Oral Representations [REP5-160] which we submitted at Deadline 5.</p> <p>We are unable to anticipate from this agenda item what the focus of discussion is likely to be on these issues but will review the transcript and/or recording of the hearing when available and follow up on any specific questions for Natural England using best endeavours.</p>
	<p>d. Protected species including bats and progress with draft licence submissions to Natural England – see also their response in their post-ISH7 submission [REP5-160]</p>	<p>Our position on this issue was covered comprehensively in Issues 10, 37, 52 and 54-62 of our Relevant Representation [RR-0878], Written Representation [REP2-153] and Initial Statement of Common Ground [REP2-071].</p>
	<p>e. District licensing – changes and effects</p>	

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		<p>It was also outlined at the Issue Specific Hearing 7: Biodiversity and Ecology on the 15<sup>th</sup> July 2021 and summarised in our Written Summary of Oral Representations [REP5-160] which we submitted at Deadline 5. This included likely timescales for review.</p> <p>Our licencing team are still in the process of reviewing those applications which have been submitted to date and are therefore not in a position to issue any Letters of No Impediment (LoNIs) to the ExA at this time.</p>
	f. SSSI crossing (including landscape and visual aspects)	<p>Our position on this issue was covered comprehensively in Issue 48 of our Relevant Representation [RR-0878], Written Representation [REP2-153] and Initial Statement of Common Ground [REP2-071]. This was in terms of less damaging alternative options with respect to Sizewell Marshes SSSI, optimisation of the currently proposed design (if justified) to minimise SSSI impacts and AONB design considerations.</p> <p>It was also outlined at the Issue Specific Hearing 7: Biodiversity and Ecology on the 15<sup>th</sup> July 2021 and summarised in our Written Summary of Oral Representations [REP5-160] which we submitted at Deadline 5.</p> <p>Further information was provided by the Applicant at Deadline 5 [REP5-010] on the optimisation of the currently proposed crossing design to minimise SSSI impacts to invertebrates. We have reviewed this document and are satisfied that the commitment to increase the soffit height of the crossing to &gt;6m and reduce the width to 15m after the construction period minimises impacts to acceptable levels in terms of impacts to the SSSI invertebrates from the crossing itself.</p>
	g. Biodiversity net gain – the effect of the new metric and assessment of SSSIs	<p>Our position on this issue was covered comprehensively in Issue 23 of our Relevant Representation [RR-0878], Written</p>

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		<p>Representation [REP2-153] and Initial Statement of Common Ground [REP2-071].</p> <p>This issue was not discussed at the Issue Specific Hearing 7: Biodiversity and Ecology on the 15<sup>th</sup> July 2021.</p> <p><b>The new metric</b></p> <p>Biodiversity Net Gain (BNG) must be measured using a recognised biodiversity metric. The metric should be used to calculate before and after habitat value in terms of 'biodiversity units' to ensure net gains are measurable. In 2019 Natural England published a beta biodiversity metric (the Biodiversity Metric 2.0) which can be used for all terrestrial and intertidal habitat types. The biodiversity metric 2.0 was updated in 2021 with the Biodiversity Metric 3.0 which will be the metric that all developments covered by the BNG requirement in the Environment Bill will legally need to use. We typically advise that users of the previous Biodiversity Metric 2.0 should continue to use that metric (unless requested to do otherwise by their client or consenting body) for the duration of the project it is being used for, as they may find that the biodiversity unit values metric 2.0 generates will differ from those generated by Biodiversity Metric 3.0.</p> <p><b>Assessment of SSSIs</b></p> <p>BNG does not replace existing requirements for dealing with direct or indirect SSSI impacts. It does not replace existing legal habitat or species requirements and should not be applied to compensate for impacts on irreplaceable habitat features. Only the non-notified features of SSSIs and other sites designated for their biodiversity interest are eligible for inclusion as a delivery component of a BNG outcome. This is because there are legislative routes to require enhancements to designated features to secure favourable condition.</p>

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<p><b>5. HRA issues</b></p>	<p>a. The Applicant's HRA screening assessment – to seek clarification on specific European sites and qualifying features, with views also sought from Natural England and IPs to understand any outstanding differences between the Applicant and Natural England/IPs with regards to the conclusions of no likely significant effects</p>	<p>The European sites and qualifying features for which Natural England are not yet satisfied that either a likely significant effect (LSE) or adverse effect on integrity (AEoI) can be ruled out are the 'red' and 'amber' issues as set out in Parts I and II of our Written Representation [REP2-153], split by impact pathway, site and features.</p>
	<p>b. Summary or list of those European sites and qualifying features that Natural England do not currently agree with the Applicant's conclusion of no adverse effects on integrity</p>	<p>These were updated since the submission of our Relevant Representation [RR-0878] where this information was presented in the same format to allow tracking of issue resolution (i.e. those turned 'green') for European sites (and more widely).</p> <p>The Initial Statement of Common Ground [REP2-071] also follows the Part II format to allow tracking of issues to resolution beyond Written Representations, with those marked 'red' and 'amber' in the latest version those where we are not yet satisfied that either LSE or AEoI can be ruled out, for the reasons outlined in column D.</p>
	<p>c. HRA and recreational pressure on European sites - to understand the position of the Applicant and IPs, including Natural England, with regards to the proposed mitigation to avoid adverse effects on the integrity of European sites arising from recreational pressure, including progress on the two Management and Monitoring Plans and the securing of such measures</p>	<p>Our position on this issue was covered comprehensively in Issue 29 of our Relevant Representation [RR-0878], Written Representation [REP2-153] and Initial Statement of Common Ground [REP2-071].</p> <p>Our position was also outlined at the Issue Specific Hearing 7: Biodiversity and Ecology on the 15<sup>th</sup> July 2021 and summarised in our Written Summary of Oral Representations [REP5-160] which we submitted at Deadline 5.</p> <p>Since then, the Applicant set up a meeting with Natural England on the 30<sup>th</sup> July 2021 to discuss the Mitigation and Monitoring Plans which we welcome. We subsequently sent a detailed response to the Applicant on this on the 12<sup>th</sup> August 2021 (our ref: DAS/363894) which also reiterated that, in our expert opinion, a Suitable Alternative Natural Greenspace (SANG) is also required as part of the mitigation package to avoid an AEoI from increased recreational pressure on nearby European designated sites. We</p>



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		<p>understand that the Applicant will be submitting this response into the Examination in due course.</p>
	<p>d. Outer Thames Estuary SPA and red throated divers – to explore the assumptions made by the Applicant in their assessment and the Outline Vessel Management Plan with regards to the timings of vessel movements and how timing restrictions are secured. To seek comments from Natural England, the MMO, RSPB/SWT and IPs on the Outline Vessel Management Plan</p>	<p>Our position on this issue was covered comprehensively in Issue 27 of our Relevant Representation [RR-0878], Written Representation [REP2-153] and Initial Statement of Common Ground [REP2-071].</p> <p>Our position was also outlined at the Issue Specific Hearing 7: Biodiversity and Ecology on the 16th July 2021 and summarised in our Written Summary of Oral Representations [REP5-160] which we submitted at Deadline 5.</p> <p>Since then, the Applicant has submitted an Outline Vessel Management Plan to the Examination at Deadline 6 which we welcome. This is the first time that we have seen this plan, and we are currently reviewing it and will be providing our comments to the Examination at Deadline 7.</p>
	<p>e. HRA and marine mammals:</p> <p>i. Mitigation - to explore whether the draft Marine Mammal Monitoring Plan (MMMP) should be a certified document that the final MMMP should be based upon and therefore referred to in Condition 40 of the DML and certified. To seek the views of NE and MMO on the contents of the draft MMMP and the Applicant's 'Underwater noise effect assessment for the Sizewell C revised marine freight options' submitted at Deadline 5</p> <p>ii. Seals – to obtain an update on the discussions between the MMO, Natural England and the Applicant with regards to mitigation proposed for seals; for which European Sites is this relevant?</p>	<p>Our position on this issue was covered comprehensively in Issue 7, 17 &amp; 27 of our Relevant Representation [RR-0878], Written Representation [REP2-153] and Initial Statement of Common Ground [REP2-071].</p> <p>Our position was also outlined at the Issue Specific Hearing 7: Biodiversity and Ecology on the 16th July 2021 and summarised in our Written Summary of Oral Representations [REP5-160] which we submitted at Deadline 5.</p> <p>We have not had any further discussions with the Applicant regarding marine mammals since then. However, we are reviewing the Southern North Sea Special Area of Conservation SAC Site Integrity Plan (SIP) and will provide our comments at Examination Deadline 7. We advise that we need to be satisfied with the SIP before we offer a final conclusion on any potential AEol of the Southern North Sea SAC.</p>

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	<p>iii. Noise, light and visual disturbance - To understand NE's view with regards to the information requested in respect of noise, light and visual disturbance of grey seals, harbour porpoise and common seal of the Humber Estuary SAC, Southern North Sea SAC and The Wash and North Norfolk Coast SAC utilising the MDS as functionally linked land</p> <p>iv. Southern North Sea SAC – to seek the views of NE further to the Applicant's updated assessment of prey species impingement [AS-173], [AS-238] [REP6-016]</p> <p>v. Draft Site Integrity Plan (SIP) – to seek the views of NE, MMO and IPs on the draft SIP and to explore how secured and whether this should be certified document</p>	<p>Natural England agree with the Applicant's assessment that there will be no AEoI of the Humber Estuary SAC and The Wash and North Norfolk Coast SAC due to noise, light and visual disturbance.</p> <p>We are currently reviewing the revised 'SPP103 Consideration of potential effects on selected fish stocks at Sizewell' [REP6-016] and will be providing our comments on this updated report at Examination Deadline 7.</p>
	<p>f. Marsh harrier compensatory measures – to explore the proposed compensatory measures, including the additional habitat proposed at Westleton and how these are secured through the DCO with reference to the certification of documents, and to explore Natural England's reasons leading to Westleton being proposed</p>	<p>Our position on this issue was covered comprehensively in Issue 27 of our Relevant Representation [RR-0878], Written Representation [REP2-153] and Initial Statement of Common Ground [REP2-071].</p> <p>Our position was also outlined at the Issue Specific Hearing 7: Biodiversity and Ecology on the 15th July 2021 and summarised in our Written Summary of Oral Representations [REP5-160] which we submitted at Deadline 5.</p> <p>We welcome the level of engagement from the Applicant on this issue and are currently awaiting responses from them on the feasibility of the wetland creation element of the compensation proposals at Abbey Farm, and the timing of its delivery. In terms of the additional habitat at Westleton, we are in the process of reviewing the 'Note on Marsh Harrier Habitat' document which was submitted by the Applicant into the Examination on the 24<sup>th</sup> August 2021 and will provide an updated position based on that using best endeavours.</p>

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	<p>g. HRA and migratory fish2:</p> <p>i. Prey species – to seek clarification regarding the relationship between the fish entrapment calculations and indirect impacts of prey availability to SPA and SAC qualifying features; to explore which European sites and qualifying features this applies</p> <p>ii. Equivalent Adult Values (EAV) and stock size – to seek views on the Applicant’s Technical Note on EAV and stock size (Appendix F of [REP6-024]); and to explore the EA’s response at Deadline 5 [REP5-150] with regards to an updated impingement assessment to include repeat spawning in the EAV calculations</p> <p>iii. Entrapment uncertainty report – to seek the views of the EA and NE on the Applicant’s report entitled ‘Quantifying uncertainty in entrapment predictions for Sizewell C’ [REP6-028] and in particular on whether without the LVSE heads effects are below thresholds which would trigger further investigation for potential population level effects.</p>	<p>Our position on this issue was covered comprehensively in Issues 22 and 30 of our Relevant Representation [RR-0878], Written Representation [REP2-153] and Initial Statement of Common Ground [REP2-071].</p> <p>Our position was also outlined at the Issue Specific Hearing 7: Biodiversity and Ecology on the 16<sup>th</sup> July 2021 and summarised in our Written Summary of Oral Representations [REP5-160] which we submitted at Deadline 5.</p> <p>Natural England have not had any further discussions with the Applicant since then regarding migratory fish or any supporting assessments. However, we note that the Applicant has submitted the ‘Acoustic Fish Deterrent report’ [REP5-123] and ‘SPP116 Quantifying Uncertainty in Entrapment Predictions for SZC’ [REP6-028], as well as revising ‘SPP103 Supplementary Information on Fish Assessments’ [REP6-016].</p> <p>We are reviewing these new and updated assessments and will use best endeavours to provide our comment on them at Examination Deadline 7.</p>
<p><b>6. Timescale for the submission of further documents and the use of the Examination Library</b></p> <p>a. What further documents (not revisions) are envisaged?</p> <p>b. What further revisions are envisaged?</p> <p>c. When will they be submitted?</p> <p>d. The importance of using Examination Library references</p>		<p>No comments</p>
<p><b>7. Close of hearing</b></p>		