

Sizewell C ISH10 – Biodiversity, 27 August 2021

Note of information for which written answers were requested by the Examining Authority at the ISH under Item 5 of the Agenda

This note is prepared and issued to assist especially the Applicant, Natural England, Environment Agency, and MMO in addressing the questions asked under agenda item 5.

It also includes a Procedural Decision, derived from item 6 of the agenda.

The responses are required by Deadline 7, that is to say on or before Friday 3 September 2021.

The Applicant gave oral responses when asked by the ExA at the ISH. The ExA has its own note of those. So as to bring all the information together in one place, the ExA asks the Applicant to record those oral responses in their response to this note. Please would the Applicant identify which material is the oral responses and if supplemental information is added, that should be identified as such.

Responses by Natural England, the Environment Agency, MMO, Applicant and any other responding IPs must be titled *ISH10 Agenda Item 5, response by [name of the responding IP]*. The numbering and lettering system below should be used. So the answer to the third question below (Please will the Applicant submit the Conservation Objectives for Plymouth Sound and Estuaries SAC to the Examination?) would be numbered: 5.a.3.

5. HRA issues

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

Throughout the Examination, there have been a number of representations questioning the conclusions of the applicant's screening assessment. This relates to the following European sites:

- Staverton Park and the Thicks, Wantisden SAC
- Plymouth Sound and Estuaries SAC
- Alde-Ore and Butley Estuary SAC
- Alde-Ore Estuary SPA
- Alde-Ore Estuary Ramsar
- Humber Estuary SAC



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- Minsmere to Walberswick Heaths and Marshes SAC
- Minsmere–Walberswick SPA
- Minsmere–Walberswick Ramsar
- Outer Thames Estuary SPA
- Benacre to Easton Bavents SPA

The ExA has produced a [table](#) which was issued during the hearing as an action point, listing the relevant European sites, qualifying features and potential impacts under dispute.

- 1) Please will the Applicant, Natural England, Environment Agency and other IPs who wish to do so complete the table, confirming their position.
- 2) Could the Applicant direct the ExA to where any such information to inform an appropriate assessment (if required) is included? Also at D7.
- 3) Please will the Applicant submit the Conservation Objectives for Plymouth Sound and Estuaries SAC to the Examination? Also at D7.

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

- 1) Please will Natural England set out in writing those European sites, and specifically which qualifying features, they still have concerns about with regards to the ability to conclude no adverse effects on integrity (AEoI). I've read the submission in lieu of attendance. A site by site list is needed.

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.

- 1) The two Management and Monitoring Plans in question are:

- "Monitoring and Mitigation Plan for Minsmere-Walberswick European Sites and Sandlings (North) European Site" (draft version at Deadline 2) [REP2-118], Revision 2 at Deadline 5 [REP5-105]; and
- "Monitoring and Mitigation Plan for Sandlings (Central) and Alde, Ore and Butley Estuaries European sites" Version 1 submitted at Deadline 5 [REP5-122].

At Deadline 6, Natural England [REP6-042] reiterated that they do not believe that the Minsmere Monitoring and Mitigation Plan and associated recreational disturbance mitigation strategies currently have the capacity to exclude AEoI beyond reasonable scientific doubt. NE confirmed that further work is required to the MMMP and identified a number of points for further consideration in the MMMP, including: the inclusion of verbal communications to workers (such as in inductions or as a toolbox talk) in addition to printed literature, to ensure these

vulnerable features are properly highlighted to workers; clarification with regards to the proposed creation and maintenance of firebreaks that have been proposed as a contingency measure at Westleton Heath, whether these are in addition to existing; and the provision of additional wardening resource for monitoring measures.

Please will the Applicant set out the oral response it made at ISH10

Please will Natural England respond in writing; and the MMO so far as within their remit.

Procedural point for the Applicant. There are two or more plans whose initial letters are MMMP. The Minsmere Monitoring and Mitigation Plan; and the Marine Mammal Monitoring Plan. The ExA asked if some consideration could be given to clarity and differentiation.

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(1) The Applicant's assessment of displacement to Red Throated Divers (RTD) of the Outer Thames Estuary SPA has assumed most of the deliveries to the BLF would occur between 31st March and 31st October; therefore, there would be little overlap with the period of the year in which RTDs are present within the SPA. The ExA notes that the Outline Vessel Management Plan identifies up to 200 landings to the temporarily BLF during winter. Please could the Applicant explain how this has been taken into account in the assessment of displacement/disturbance to RTD of the Outer Thames Estuary SPA? (2) The Applicant submitted an Outline Vessel Management Plan at Deadline 6 [REP6-027]. Do Natural England, the MMO or RSPB/SWT have any comments on the content of the plan? Does the plan alleviate concerns in relation to AEOI on RTD of the Outer Thames Estuary SPA?

e. HRA and marine mammals:

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

The ExA notes a draft MMMP was submitted at Deadline 3 and that the DML provides for a MMMP to be submitted to and approved by MMO.

1) To the Applicant: Please explain why the MMMP is not a certified document which the final MMMP should be based upon and therefore referred to in condition 40?



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2) To Natural England and MMO – do you have any specific comments on the contents of the MMMP?

3) To the MMO - At Deadline 5, the Applicant submitted a report entitled 'Underwater noise effect assessment for the Sizewell C revised marine freight options' (Revision 1) [REP5-124]. Does the MMO have any comments on this report?

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?

1) The MMO [REP2-121] explained that there are ongoing discussions between MMO, Natural England and the Applicant on the mitigation proposed for seals. Could the MMO, Natural England and the Applicant provide an update on these discussions and confirm whether this relates to seals of the Humber Estuary SAC and The Wash and North Norfolk SAC? Could Natural England and the MMO confirm their position in relation to AEOI of these sites?

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

1 Natural England only - NE [RR-0878] identified noise, light and visual disturbance of grey seals, harbour porpoise and common seal of the Humber Estuary SAC, SNS SAC and The Wash and North Norfolk Coast SAC which utilise the MDS as functionally linked land as a potential impact pathway where further information/assessment is required. Could Natural England confirm whether any of these matters are resolved, and whether any remain outstanding?

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]

1 In its RR [RR-0878], NE advised that the long term/permanent loss of foraging area within the SNS SAC would constitute an AEOI and that compensation for this loss of area should be proposed.

The Applicant has subsequently provided an updated assessment of prey species impingement [AS-173], [AS-238], [RE6-016] and concluded there would be no food-web effects to any qualifying features of European site.

Could Natural England provide an update on their position in relation to this issue?

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 a certified document

The ExA notes a draft Site Integrity Plan (SIP) was submitted at Deadline 2 and that the DML provides for a SIP to be submitted to and approved by MMO should impact piling be required.

1 The Applicant: please respond to NE's request to be a named consultee on the condition [REP5-159] and the MMO's comments [REP3-070a] that the condition requires further detail. Please explain why the SIP is not a certified document which the final SIP should be based upon and therefore referred to in condition 40(2)(c)?

2 To NE and MMO: do you have any specific comments on the contents of the SIP? NE – please provide an update of your position in relation to AEoI of the SNS SAC

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

Please note that this item was subject to extensive oral questioning and responses at ISH10. It is likely to be helpful to Natural England to read the transcript and watch / listen to the recording.

1 First, a comment mainly to the Applicant: the RSPB [REP6-046] commented at Deadline 6 that there are currently several reports with similar titles – the Marsh Harrier Mitigation Area Feasibility Report, which is updated by the Marsh Harrier Habitat Report, also the separate Marsh Harrier Compensatory Habitat Report. The latter report, which is currently the only one named in Requirement 14C, only refers to the Westleton potential habitat creation, not the main compensation area at Abbey Farm, and therefore as currently drafted new Requirement 14C is incomplete.

2 On Tuesday 23 August the Applicant submitted a "Note on Marsh Harrier Habitat" which has been allocated EL reference [AS-408] and was published on the examination website on 24 August 2021.

The ExA has again read Natural England's issue 27. The WR does not appear to add to the RR position. The ExA would summarise the Natural England position as follows. Please will the Applicant and Natural England confirm (or otherwise) the accuracy of the summary.

(A) the Applicant cannot demonstrate no AEI of breeding harriers as a result of foraging concerns.

(B) As the precautionary principle / approach requires impact to be excluded and considering the problematic nature of the highly technical work that would be necessary for this assessment to be even attempted it was decided to look at the need for offsetting, i.e. compensation.

(C) "The applicant was unwilling to consider that if a Stage II Appropriate Assessment failed to exclude adverse effect on site integrity in the absence of



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sub-optimal terrestrial mitigation, following the successful completion of Stages III (no alternatives) and Stages IV (imperative reasons of overriding public interest) of an HRA, opportunities might then be sought elsewhere in order to create an optimal area of wetland habitat creation to secure the coherence of the network." The ExA is not clear what is meant here. In fact the Stage II AA did fail to exclude AEI. Please will Natural England clarify.

(D) Applicant developed an experimental approach to maximise prey species populations, which the ExA assumes is meant to refer to what has been created at Upper Abbey Farm – the N-S strips of prey habitat – BUT with an option for further habitat if the Marsh Harriers do not use it as predicted

(E) Then when the DCO application was made, the Applicant had reached "favourable conclusions on HRA Stages III and IV" – which the ExA assumes means the Applicant has concluded that (a) there are no alternatives and that (b) there are IROPI. The result of that according to the Natural England RR is to "facilitate the creation of optimal wetland habitat with additional biodiversity benefits, not only with potential to support marsh harriers, but also other species of breeding and non-breeding wetland birds. With minimal adaptations to habitat management, the original terrestrial area identified might instead help compensate for potential shortfalls in the approach towards Net Gain and terrestrial species of bird that Natural England has identified".

2) (i) The ExA asks for clarification. The wetland aspects of the Upper Abbey Farm marsh harrier area were not part of the Application but came in at D2. Natural England should please explain at D7 in writing.

2) (ii) - Natural England have said in their post-ISH7 written submission [REP5-160] epage 1, and the Applicant has drawn attention to this, that "The offer of additional compensatory habitat at Westleton will minimise residual concerns that the displacement of marsh harriers could result in an impact". The ExA seeks clarity on this. Do Natural England mean the concerns are eliminated or do they mean the Applicant has done its best to reduce the problem to the lowest possible level but that there are still residual concerns? "Minimise", may be being used in a slightly loose way so as to say that Natural England no longer have concerns; the word does not strictly mean that the issue no longer exists. Please will Natural England clarify their position, but in the meantime, it is worth asking the Applicant what they think Natural England mean. Please could the position be included in the final SoCG.

2) (iii) – Natural England go on in the same para to say that if the two points they have set out are satisfactorily dealt with they advise the risks can be adequately compensated for provided the plans and monitoring are robustly implemented: The ExA wishes to be clear on what those two points are. The ExA suggested at the ISH that they are that (I) Natural England want assurance the wetland creation element is feasible and (II) the wetland element of on-site habitat creation "should be in place prior to construction" with "You must put in place all the necessary legal, technical, financial and monitoring arrangements...Compensatory measures should usually be in place and effective before the negative effect on a site is allowed to occur".



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Is that the Applicant's understanding? What is Natural England's intention? In particular are they satisfied with the commencement of wetland creation at Abbey Farm in the first winter as currently proposed by the Applicant at ISH10; and with the legal, technical, financial and monitoring arrangements currently proposed.

2)(iv) If so, (III) will in the opinion of Natural England the current proposals for commencement of wetland creation in the first winter constitute being in place before construction so that in their opinion compensatory measures will be in place and effective before the negative effect is allowed to occur and (IV) please will the Applicant confirm there will be an absolute commitment on that, (in contrast to a "reasonable endeavours" commitment).

2) (v) Is the wetland to which they refer the wet woodland which the Applicant proposes in the Upper Abbey Farm area?

2) (vi) On the question of how the SofS decides whether the Westleton site is needed- 1.5 of the Applicant's document. HRA stages 1 and 2 – screening and appropriate assessment – say that adverse effect on integrity can't be excluded because of effects on the marsh harrier. Presumably that is without the on-site Upper Abbey Farm compensation but please confirm?

2) (vii) – That is a judgment call for the SofS using the NPS criteria at para 7.5 of Annex A of EN-6. Please confirm Yes / no. So the SofS simply looks at what has been put in to the Examination. Please confirm Yes / no

2) (viii) – so the Applicant is asking the SofS to decide if the onsite provision is enough and ONLY to ask himself about Westleton if he thinks the onsite is not enough. Please confirm Yes / no. Is that also the Natural England position?

2) (ix) –Returning to the Natural England RR explanation "As the precautionary principle / approach requires impact to be excluded and considering the problematic nature of the highly technical work that would be necessary for this assessment to be even attempted (emphasis added) it was decided to look at the need for offsetting, i.e. compensation. Has the Westleton proposal been made because "highly technical work" has not been carried out? This question has a bearing on whether there is a compelling case in the public interest for compulsory acquisition.

g. HRA and migratory fish:

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

I am going to ask Natural England, Environment Agency, MMO and the Applicant to deal with the next question in writing.

(a) The ExA notes that there have been extensive discussions regarding the fish entrapment calculations. Could Natural England, the Environment Agency, the MMO and the Applicant advise on whether these issues have any bearing on

the consideration of indirect impacts of prey availability to SPA and SAC qualifying features?

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

(a) The Applicant has submitted a Technical Note on EAV and stock size (Appendix F of [REP6-024]). Could Natural England and the Environment Agency comment on this note and whether they agree with any of the EAVs and stock sizes assessed by the Applicant?

(b) In particular, the Applicant has explained that an EAV of 1 has been used for river lamprey and European eel and that this is the maximum theoretical number that could be applied. On this basis, could Natural England (and the Environment Agency where appropriate):

- Comment on whether it still has concerns about the EAV applied to river lamprey and European eel?
- Confirm its position in relation to AEoIs to river lamprey of the Humber Estuary SAC?
- Confirm its position in relation to breeding bittern of Minsmere-Walberswick SPA and Benacre to Easton Bavents SPA? (prey species matter). On this Natural England and the Environment Agency have both noted during the Examination that bittern feed on eels. They have therefore raised concerns that impingement of eels could then indirectly impact on breeding bittern of Minsmere-Walberswick SPA and Benacre to Easton Bavents SPA. So in relation to bittern: Given the clarification received that the Applicant used an EAV of 1 for European eel, can NE and the EA comment on whether this relieves their concerns for breeding bittern; specifically, do they have sufficient information to exclude an AEoI on breeding bittern of Minsmere-Walberswick SPA and Benacre to Easton Bavents SPA”.

(c) The EA [REP5-150] requested the Applicant to update the impingement assessment to include repeat spawning in the EAV calculations (i.e. follow the SPF model). Could the Applicant indicate the resource implications for this work to be undertaken and whether this could be completed before the end of Examination?

(d) (If they can do it): Could the Applicant clearly present the figures for its own model and that of the SPF. Please could the Applicant clearly identify assessments relevant to EIA, HRA and WFD.

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.



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(a) Do the Environment Agency and Natural England have any comments on the Applicant's report entitled 'Quantifying uncertainty in entrapment predictions for Sizewell C' [REP6-028]. Do you agree with the Applicant that without the LVSE intake heads, effects are below the thresholds that would trigger further investigation for potential population level effects?

Procedural decision

Item 6.d. of the agenda or ISH10 was The importance of using Examination Library references

1 Some IPs are referring to documents without using the Examination Library references. For example a reference to an SPP or BEEMS report by its number alone does not enable the ExA to find it readily. In addition some documents are themselves contained in the Applicant's composite documents, perhaps as one of several appendices or annexes. This makes it all the more important for the ExA to have the right EL reference, the paragraph number and the e-page number of the beginning of the document as well as the title of the document.

2 Please can the Applicant, where a document it submits consists of several reports or documents, take steps to show (preferably in the index to the composite document) the page numbers where each report or document begins. Earlier in the examination process, documents had hyperlinks which was helpful.