



# The Sizewell C Project

## 9.91 HRA Signposting Document

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## 1 OVERVIEW

1.1.1 This HRA Signposting Document has been produced ahead of the ExA's production of the RIES report to assist the ExA and relevant stakeholders.

1.1.2 The HRA Signposting Document is structured as follows:

- Section 2: explains the structure of the Shadow HRA and explains how other information submitted to the examination should be considered in relation to the HRA. It includes a reference list to these documents.
- Section 3: summarises the approach to assessment and provides a summary of conclusions reached with key references.
- Section 4: sets out types of mitigation relied upon in the Shadow HRA assessments and clarifies how these measures are secured.
- **Appendix A:** sets out key legal principles which apply to HRA. It is hoped that this will provide further assistance with the production of the RIES report.



## 2 STRUCTURE OF THE SHADOW HRA AND SUPPORTING DOCUMENTS

2.1.1 A considerable amount of environmental assessment and analysis has been produced to enable the Secretary of State to undertake the required assessments under the Conservation of Habitats and Species Regulations 2017 ('Habitats Regulations'). The Applicant's main analysis can be found in the formal Shadow HRA and its addenda. These assessments have been supported by a number of other issue and site-specific reports which have been produced during the examination, often in response to queries from the ExA, Statutory Consultees and other Interested Parties. These documents are listed below with the Examination library references in order to assist the ExA with regards to where relevant information can be found.

2.1.2 All of the documentation relevant to the Shadow HRA has been prepared by appropriately qualified experts in accordance with the obligations of their professional bodies.

2.1.3 The formal Shadow HRA was submitted in May 2020 with the DCO Application. That assessment was based upon the Sizewell C Project as it was described and controlled at the point of application. During the examination, amendments to the design and controls have been made. At the points that change submissions were submitted to the examination, additional Shadow HRA submissions were made on the basis of the Sizewell C Project as designed and controlled at that point. The third Shadow HRA Addendum submitted at Deadline 7 is the final Addendum to the assessment and reflects the Sizewell C Project as it will be consented, if granted.

### a) The Formal Shadow HRA Report

2.1.4 The **Shadow Habitats Regulations Assessment Report** was submitted with the DCO Application and is made up of the following volumes:

- Volume 1: Stages 1 and 2 - Screening and Appropriate Assessment [[APP-145 to APP-149](#)].
- Volume 2: Stage 3 – Assessment of Alternative Solutions [[APP-150](#)].
- Volume 3: Stage 4 – Imperative Reasons of Overriding Public Interest (IROPI) [[APP-151](#)].
- Volume 4: Compensatory Measures [[APP-152](#)].

2.1.5 Following the submission of the Application with the accompanying Shadow HRA Report, a series of Addenda were submitted to the examination, as summarised below.

- 2.1.6 The **First Shadow HRA Report Addendum** [[AS-173](#)] was submitted in January 2021 and assessed 15 changes to the Application (Proposed Changes 1 to 15). The First **Shadow HRA Report Addendum** was accompanied by a series of Appendices: [[AS-174](#)]-[[AS-178](#)].
- 2.1.7 The **Second Shadow HRA Report Addendum** [[REP2-032](#)] was submitted in June 2021 to report an update to the calculations of potential change in recreational use of European sites by displaced visitors and construction workers and to assess the implications of this change on the assessment of recreational displacement.
- 2.1.8 SZC Co. identified three further proposed changes (Proposed Changes 16 to 18). These changes were accepted for examination by the Examining Authority in August 2021. The change request was not accompanied by a further Shadow HRA Addendum, rather with the **Covering Letter** [[REP5-002](#)] confirming that Proposed Changes 16 to 18 did not result in any changes to the Shadow HRA.
- 2.1.9 The **Third Shadow HRA Addendum** is submitted at Deadline 7 in relation to the fourth change application (Proposed Change 19) (Doc Ref. 5.10Ad3 Ch).
- b) [Additional Technical HRA Information submitted to the Examination](#)
- 2.1.10 In addition to the formal Shadow HRA Report (including Addenda) described in section 2a), a series of additional submissions, have been made by SZC Co. to the examination which are relevant to the HRA. These submissions, and their primary purpose, are summarised in **Table 2.1**. Some of the submissions provide further information on a number of different effect pathways and European sites and these are listed in chronological order in **Table 2.1**. However, sub-sections are provided in **Table 2.1** which list submissions that are relevant to a particular effect pathway or HRA issue where it is possible to do so.

Table 2.1 Summary of Additional Technical Submissions Relevant to the Shadow HRA

Examination Library Reference	Submission Document	Summary Of Key Content / Relevant Pathways And/ Or Signposting
<b>Submissions addressing various matters relevant to the Shadow HRA (excluding documents dealing exclusively with (i) recreational displacement and disturbance and (ii) marsh harriers, see later rows)</b>		
[ <a href="#">REP2-100</a> ]	Responses to the Examining Authority's	Part 2, Chapter 8 – responses to HRA questions raised by the ExA

Examination Library Reference	Submission Document	Summary Of Key Content / Relevant Pathways And/ Or Signposting
	First Written Questions (ExQ1)	
<a href="#">[REP3-042]</a>	Comments on Written Representations	<ul style="list-style-type: none"> <li>- Sections 10, 11.23 and 14.7 (recreational disturbance)</li> <li>- Section 11.2 (water supply strategy)</li> <li>- Section 11.3 (airborne pollution (operational combustion))</li> <li>- Section 11.4 (physical interaction between species and project infrastructure)</li> <li>- Section 11.5 (impediment to management practices)</li> <li>- Section 11.6 (cumulative and in-combination assessment)</li> <li>- Section 11.21, Section 14.5 and Section 14.6 (impacts from noise, light and visual disturbance)</li> <li>- Section 11.22 (changes to coastal processes)</li> <li>- Section 11.24 (impacts from intakes and outfalls)</li> <li>- Section 11.25 (impacts from the thermal plume)</li> <li>- Section 11.26 (impacts from the CDO)</li> <li>- Section 11.27 (impacts from the chemical plume)</li> <li>- Section 11.28 (impacts from drilling mud and bentonite)</li> </ul>
<a href="#">[REP5-112]</a>	Written Summaries of Oral Submissions made at ISH7: Biodiversity and Ecology Parts 1 and 2	<ul style="list-style-type: none"> <li>- Section 1.2 c (marsh harrier, including proposed compensatory measures at Upper Abbey Farm (including wetland) and discussion of the land at Westleton.</li> <li>- Section 1.2 d (disturbance/displacement effects on breeding and non-breeding waterbirds related to effects on functionally linked land).</li> <li>- Section 1.3 a to e – various matters related to marine ecological effects relevant to the Shadow HRA.</li> </ul>
<a href="#">[REP5-119]</a> and <a href="#">[REP5-120]</a>	SZC Co. Comments on Submissions from Earlier Deadlines (Deadlines 2-4)	<ul style="list-style-type: none"> <li>- Appendix K: Supplementary Response to Natural England's Written Representations.</li> <li>- Appendix L: Abbey Farm Compensation Site.</li> <li>- Appendix M: Response to RSPB and SWT on marsh harrier (note that the title page for this appendix incorrectly refers to marine birds, which is included in Appendix P (see below)).</li> <li>- Appendix N: Response to RSPB and SWT on evening noise and disturbance to birds.</li> <li>- Appendix P: Response to RSPB and SWT on marine ecology matters.</li> </ul>
<a href="#">[REP6-002]</a>	Written Submissions Responding to Actions Arising from ISH7:	<ul style="list-style-type: none"> <li>- Commitment in respect of the access route to the Minsmere reserve (section 1.8)</li> </ul>

Examination Library Reference	Submission Document	Summary Of Key Content / Relevant Pathways And/ Or Signposting
	Biodiversity and Ecology - Parts 1 and 2	- Various matters relating to marsh harrier compensatory habitat (see sub-section of this table below)
Doc Ref. 9.65(A)	Outline Vessel Management Plan	Outlines the vessel movements and routes and provides the strategy for planning the vessel movements to protect the Outer Thames Estuary Special Protection Area (SPA).
<a href="#">[REP6-024]</a>	Collision risk to birds	Note assessing the routing and height of power lines and pylons and the potential for collision risk to birds
<a href="#">[REP6-016]</a>	Consideration of potential effects on selected fish stocks at Sizewell	Assessing the effect of local prey depletion for bird and marine mammal qualifying features of European sites
Doc Ref. 9.72	Responses to the Examining Authority's Second Written Questions (ExQ2)	Part 2 – responses to HRA questions raised by the ExA
<b>Submissions relevant to the assessment of recreational displacement and disturbance</b>		
<a href="#">[REP2-100]</a>	Responses to the Examining Authority's First Written Questions (ExQ1)	Chapter 6: Amenity and Recreation (AR.1.3, AR.1.12) – the key elements of relevance to the Shadow HRA are further analysis of the possible recreational displacement and an explanation of the precautionary approach to the assessment.
<a href="#">[REP2-108]</a>	Responses to the Examining Authority's First Written Questions (ExQ1) – Volume 3 – Appendices Part 1 of 7	Chapter 6, Appendix 6A (Response to AR.1.12) – the key elements of relevance to the Shadow HRA are further analysis of the possible recreational displacement and an explanation of the precautionary approach to the assessment.
<a href="#">[REP3-046]</a>	Comments on Responses to Examining Authority's First Written Questions (ExQ1) - Volume 1 - SZC Co. Responses	Chapter 6 Amenity and Recreation (AR.1.12)
<a href="#">[REP3-047]</a>	Comments on Responses to Examining Authority's First Written Questions (ExQ1) - Volume 2 - Appendices	Appendix 6A
<a href="#">[REP5-112]</a>	Written Summaries of Oral Submissions made at ISH7: Biodiversity and Ecology Parts 1 and 2	Section 1.2 d (recreational displacement, including numeric scale of effect, monitoring and management proposals and SANG).

Examination Library Reference	Submission Document	Summary Of Key Content / Relevant Pathways And/ Or Signposting
<a href="#">[REP5-105]</a> v	Monitoring and Mitigation Plan for Minsmere – Walberswick and Sandlings (North)	-
<a href="#">[REP5-122]</a>	Monitoring and Mitigation Plan for Sandlings (Central) and Alde-Ore Estuary European Sites	-
<a href="#">[REP5-126]</a>	Aldhurst Farm Technical Note	-
Doc Ref. 9.94	Statement on Recreational Disturbance Numbers, to Present the Current Position of SZC Co., Natural England, the RSPB and Suffolk Wildlife Trust and the National Trust	Sets out the current positions of SZC Co., Natural England, the RSPB and Suffolk Wildlife Trust and the National Trust on the additional numbers of people who may visit European sites due to the construction of the Sizewell C Project, arising from displaced people and construction workers.
<b>Submissions relevant to compensatory habitat for marsh harrier</b>		
<a href="#">[APP-259]</a>	Volume 2 Main Development Site Chapter 14 Terrestrial Ecology and Ornithology Appendix 14C5 Marsh Harrier Mitigation Area Feasibility Report	Describes the compensatory habitat on the EDF Energy Estate (as it was at the time of Application)
<a href="#">[REP2-119]</a>	Marsh Harrier Compensation Area Design Update to Include Wetland	Describes the effects of the inclusion of wetland habitat components within the compensatory habitat on the EDF Energy Estate (i.e. an update to [APP-259])
<a href="#">[REP2-110]</a>	Responses to the Examining Authority's First Written Questions (ExQ1)	Appendix 7F (Bio.1.48) providing responses to various questions connected with marsh harrier, including whether there is a compelling case for the compulsory acquisition of the Westleton land in those circumstances, as set out in paragraphs 1.2.37 to 1.2.48 of REP2-110, and confidence in the success of replacement foraging areas for marsh harrier and the probabilities of success.
<a href="#">[REP3-053]</a>	Marsh Harrier Compensatory Habitat Report	Details the proposed approach to marsh harrier habitat provision on this additional land at Westleton.



Examination Library Reference	Submission Document	Summary Of Key Content / Relevant Pathways And/ Or Signposting
[REP6-002]	Written Submissions Responding to Actions Arising from ISH7: Biodiversity and Ecology - Parts 1 and 2	<p>Appendix B describes the sufficiency of compensatory measures for marsh harrier (cross-referred to from sections 1.5, 1.6 and 1.7 of [REP6-002], comprising:</p> <ul style="list-style-type: none"> <li>- Sufficiency of the compensatory habitat.</li> <li>- Monitoring proposals.</li> <li>- Land at Westleton.</li> <li>- How the compensatory habitat provision meets the tests of the Habitats Regulations.</li> </ul>
[AS-408]	Marsh Harrier Habitat Improvements Areas note	Submitted in response to a request from the Examining Authority at the Compulsory Acquisition Hearings Part 1 (18 August 2021). This describes the condition in section 122(2) of the Planning Act 2008 regarding compulsory acquisition of land, summarises SZC Co.'s and Interested Parties' views on whether the condition in section 122(2) has been satisfied and identifies what the Secretary of State should have regard to in deciding whether the proposed habitat constitutes sufficient compensation
Doc Ref 9.82	Written Submissions Responding to Actions Arising from ISH10: Biodiversity and Ecology (incorporating the response to Agenda item 5a of ISH10 at Appendix A (Doc Ref. 9.82))	<p>An analysis of the compensatory habitat in the EDF Energy Estate, and the provisional compensatory habitat at Westleton, in light of the requirements of the following relevant guidance and policy:</p> <ul style="list-style-type: none"> <li>• National Policy Statement (NPS) for Nuclear Power Generation (EN-6).</li> <li>• Defra guidance on 'Habitats regulations assessments: protecting a European site' (February 2021).</li> </ul>

## 3 SUMMARY OF SHRA ASSESSMENT

3.1.1 In line with the case-law, the assessments have used precautionary assumptions throughout. Recently the High Court has confirmed that the proper approach to uncertainty in any environmental assessment will be through the use of the precautionary principle. As stated by Mr Justice Jay: *‘the uncertainty is addressed by applying precautionary rates to variables, and in that manner reasonable scientific certainty as to the absence of a predicted adverse outcome will be achieved...’* (*R(Wyatt) v Fareham Borough Council* [2021] EWHGC 1434 (Admin) at [45]).

3.1.2 Some representors to the examination have sought to emphasise the lack of certainty which applies to the environmental assessments. However, those representations ignore the high degree of precaution which has been employed by SZC Co. throughout its assessments. The precautionary assumptions which underlie the assessments mean that there is scientific certainty that there will be no breach of the Habitats Regulations in relation to any of the European Sites.

### a) Coastal, Freshwater and Terrestrial Habitats

3.1.3 The assessment is set out in **chapter 7** of the **Shadow HRA Report** [[APP-145](#)] (and updated as required for certain European sites through the first and second **Shadow HRA Addendum** [[AS-173](#)] and [[REP2-032](#)], and the third **Shadow HRA Addendum** (submitted at Deadline 7) (Doc Ref. 5.10Ad3 Ch).

3.1.4 Seven designated sites with coastal, freshwater and terrestrial habitat qualifying features were screened into Stage 2: the Appropriate assessment. The designated sites are listed below:

- Alde, Ore and Butley Estuaries SAC.
- Alde-Ore Estuaries Ramsar site (habitat features).
- Benacre to Easton Bavents Lagoons SAC.
- Dew’s Ponds SAC.
- Minsmere to Walberswick Heaths and Marshes SAC.
- Minsmere-Walberswick Ramsar site (habitat features).
- Orfordness to Shingle Street SAC.

3.1.5 For each of these sites, the Shadow HRA concludes no adverse effect on the integrity of the site in view of its relevant qualifying features and/or conservation objectives, either alone or in-combination with other plans and projects.

b) Birds

3.1.6 The assessment is set out in **chapter 8** of the **Shadow HRA Report** [[APP-145](#)] and (and updated as required for certain European sites through the first and second **Shadow HRA Addendum** [[AS-173](#)] and [[REP2-032](#)], and the third **Shadow HRA Addendum** (submitted at Deadline 7) (Doc Ref. 5.10Ad3 Ch).

3.1.7 Eleven designated sites with bird qualifying features were screened into Stage 2: the Appropriate assessment. The designated sites are listed below:

- Alde-Ore Estuary SPA.
- Alde-Ore Estuary Ramsar site.
- Benacre to Easton Bavents SPA.
- Deben Estuary SPA.
- Deben Estuary Ramsar site.
- Minsmere-Walberswick SPA.
- Minsmere-Walberswick Ramsar site (bird features)
- Outer Thames Estuary SPA
- Sandlings SPA.
- Stour and Orwell Estuaries SPA.
- Stour and Orwell Estuaries Ramsar site.

3.1.8 For all sites except the Minsmere-Walberswick SPA and the Minsmere-Walberswick Ramsar site, the assessment concludes no adverse impact on the integrity in view of its relevant qualifying features and/or conservation objectives.

3.1.9 The assessments of the Minsmere-Walberswick SPA and the Minsmere-Walberswick Ramsar site conclude that it is not possible to discount the possibility of an adverse effect on the marsh harrier breeding population

occurring as a consequence of noise and visual disturbance from the construction of the Sizewell C power station. With the exception of this effect, no other adverse effects on marsh harrier, or any other species are predicted, either alone or in-combination with other plans and projects. However, an adverse effect on the integrity of the Minsmere-Walberswick SPA and the Minsmere-Walberswick Ramsar site cannot be excluded due to the potential effect on breeding marsh harrier.

- 3.1.10 In response to this conclusion, SZC Co. prepared Stage 3 (Assessment of Alternative Solutions) and Stage 4 (Imperative Reasons of Overriding Public Interest) information. This is set out in **Volumes 2 [APP-150] and 3 [APP-151]** of the **Shadow HRA Report**. Further, SZC Co. set out appropriate compensatory habitat to offset potential adverse effects on the breeding marsh harrier population of the SPA and Ramsar site in **Volume 4** of the **Shadow HRA Report [APP-152]**.

c) Marine Mammals

- 3.1.11 The assessment is set out in **chapter 9** of the **Shadow HRA Report [APP-145]** (and updated as required through the **Shadow HRA Addendum [AS-173]**, and the third **Shadow HRA Addendum** (submitted at Deadline 7) (Doc Ref. 5.10Ad3 Ch).

- 3.1.12 Three designated sites with marine mammal qualifying features were screened into Stage 2: the Appropriate assessment. The designated sites are listed below:

- Humber Estuary SAC.
- Southern North Sea SAC (SNS SAC).
- The Wash and North Norfolk Coast SAC.

- 3.1.13 For each of these sites, the Shadow HRA concludes no adverse effect on the integrity of the site in view of its relevant qualifying features and/or conservation objectives, either alone or in-combination with other plans and projects.

d) Migratory Fish

- 3.1.14 The assessment is set out in **chapter 10** of the **Shadow HRA Report [APP-145]** (and updated as required through the **Shadow HRA Addendum [AS-173]**, and the third **Shadow HRA Addendum** (submitted at Deadline 7) (Doc Ref. 5.10Ad3 Ch).

- 3.1.15 Eleven designated sites were screened into Stage 2: the Appropriate assessment in the Shadow HRA Report **[APP-145]**, with an additional two



sites screened in for twaite shad and an additional 17 sites screened in for river lamprey in the **Shadow HRA Addendum** [\[AS-173\]](#).

- 3.1.16 For each of these sites, the Shadow HRA concludes no adverse effect on the integrity of the site in view of its relevant qualifying features and/or conservation objectives, either alone or in-combination with other plans and projects.

## 4 MITIGATION OVERVIEW

4.1.1 SZC Co. has ensured that mitigation has only been relied upon where its provision and effectiveness is ‘certain’ (Dutch Nitrogen Cases C-293/10 and C-294/17). To this end, **Table 4.1** below sets out the types of mitigation measures relied upon and how they are secured.

4.1.2 Where necessary SZC Co. has ensured that it has fully consulted relevant stakeholders in the design of any mitigation measures. One obvious example are the Mitigation and Management Plans which have been produced to address potential impacts which may arise as a result of recreational displacement and the recreation of SZC’s workforce. These have been developed through close collaboration with the National Trust, the RSPB, Natural England, Suffolk Wildlife Trust and East Suffolk Council, with Forestry England also consulted.

4.1.3 Some of the conclusions in the sHRA have relied upon the provision of certain mitigation measures. This is made clear in the text of the sHRA and its addenda. SZC Co. has made sure that the mitigation relied upon has been secured. In order to assist the ExA, **Table 4.1** below sets out the types of mitigation measures which have been relied upon and how each type of mitigation is secured.

Table 4.1: HRA packages of mitigation and securing mechanisms

Package of Mitigation	How measures are secured
Piling Methodology	<ul style="list-style-type: none"> <li>• <b>Table 10.1, Table 11.1, Table 12.1 Part B, Code of Construction Practice (CoCP) (Doc. Ref 8.11(D)) (Requirement 2)</b> - Piling will be carried out in compliance with EA guidance and JNCC 2010 Guidelines. Where feasible, piling will be avoided during periods of high water and where possible, impact piling will be avoided and soft-start procedures and a hydrohammer will be used. Piling for the BLFs will only occur outside of 1 May to 31 August.</li> <li>• <b>Construction Method Statement (CMS) (Doc Ref. 6.3 3D(B)) (Rqt. 8)</b> – the description of how construction will be carried out includes details of the types and sequencing of piling which is required for various elements of the design. The specific piling methodology to the BLFs is described in para 3.1.84-3.1.90.</li> <li>• <b>DML Para 4 (Doc. Ref 8.11(D))</b> restricts the number and types of piles permissible for each of the licenced activities which require them.</li> <li>• <b>DML Cdt. 24</b> requires drill or vibro piling to be used as standard with percussive piling only if required to drive a pile to</li> </ul>

	<p>its design depth. Restrictions on carrying out on percussive piling are stated.</p> <ul style="list-style-type: none"> <li>• <b>DML Cdn. 40</b> requires a Marine Mammal Mitigation Protocol and site integrity plan to be approved by the MMO and the Marine Noise Registry and the MMO be kept informed before any impact piling can commence.</li> <li>• <b>Draft Marine Mammal Mitigation Protocol [REP3-019] (DML Cdn. 40)</b> – section 4 sets out the monitoring of the impact of piling on marine mammals and section 6 sets out the mitigation principles which will be complied with in relation to all piling activities. The Marine Mammal Mitigation Protocol must be in general accordance with the Draft Marine Mammal Mitigation Protocol.</li> <li>• <b>Draft Site Integrity Plan [AS-178] (DML Cdn. 4)</b> – section 3 requires a hydrohammer to be used where possible recognising that impact piling has been assessed. The Site integrity Plan must be in general accordance with the Draft Site integrity Plan.</li> <li>• <b>Draft Coastal Process Monitoring and Management Plan [REP5-059] (Rqt.7A and DML Cdn. 17)</b> – sets out monitoring on impacts arising from piling.</li> </ul>
Dredging Methodology	<ul style="list-style-type: none"> <li>• <b>Table 12.1 Part B CoCP</b> - plough or water injection dredging methods will be used for the BLFs and dredging for navigation access channel will be by plough dredge only. Dredging should be carried out within as small an area as reasonably practicable and maintenance dredging will be minimised.</li> <li>• <b>CMS (Rqt. 8)</b> – descriptions of the required dredging include restrictions on how it is carried out. Detail of the dredging and disposal for the offshore works is controlled by paras 3.3.21-3.3.27 this includes timings and volumes.</li> <li>• <b>DML Para 4</b> restricts dredging activities for licensable activities to specific coordinates listed in part 4 of the DML.</li> <li>• <b>DML Cdn. 35 – 37</b> requires information to be submitted to the MMO in advance of dredging and reporting required to the MMO. The information includes the methodology and programme.</li> <li>• <b>Draft Coastal Process Monitoring and Management Plan [REP5-059] (Rqt.7A and DML Cdn. 17)</b> – sets out monitoring of impacts arising from dredging.</li> </ul>
Drilling methodology	<ul style="list-style-type: none"> <li>• <b>CMS (Rqt. 8)</b> – descriptions of the required drilling include restrictions on how it is carried out. Detail of the drilling for the offshore works is controlled by paras 3.3.6- 3.3.13.</li> <li>• <b>DML Para 4</b> limits the amount of drilling in relation to the licensable works.</li> <li>• <b>DML Cdn. 48-48</b> requires information to be submitted to the MMO in advance of drilling and reporting required to the MMO. The information includes the methodology and programme.</li> </ul>

	<p>Drill arisings can only be deposited within the sites set out in Part 4.</p> <ul style="list-style-type: none"> <li>• <b>Draft Coastal Process Monitoring and Management Plan [REP5-059] Rqt.7A and DML Cdtm. 17</b> – sets out monitoring on impacts arising from drilling.</li> </ul>
Recreation measures	<ul style="list-style-type: none"> <li>• <b>Rights of way implementation plans (Rqt. 6A)</b> – these must be submitted to and approved by SCC before any new or diverted rights of way are commenced (Article 14). ROW cannot be closed until a diversion is in place. Implementation plans for the MDS must be in general accordance with the <b>Rights of Way Strategy</b> (Doc Ref. 6.3 15I(C)) and <b>section 7 Part B CoCP</b> and in accordance with the <b>ROW Plans</b>. Implementation plans for the ADs must be in general accordance with the <b>Associated Development Design Principles</b> (Doc Ref. 8.3(B)) and <b>section 7 Part C CoCP</b> and in accordance with the <b>ROW Plans</b>.</li> <li>• <b>Rights of Way Strategy</b> (Doc Ref. 6.3 15I(C)) (<b>Rqt 6A</b>) – sets out obligations to maintain and enhance specific rights of way through the construction and operation of Sizewell C. Specifically it sets out how the Coast Path will be managed.</li> <li>• <b>Rights of Way Plans (Rqt 6A, sch 5)</b> – prescribe which rights of way will be closed, diverted and created.</li> <li>• <b>Associated Development Design Principles</b> (Doc Ref. 8.3(B)) (<b>Rqt. 6A, 20, 212, 24</b>) – requires pedestrian routes to be provided, visual buffers for rights of way</li> <li>• <b>Table 6.1, part B, Section 7 Part B and C CoCP (Rqt.2)</b> – sets out obligations for diversions, provision of information and maintenance of rights of way.</li> <li>• <b>Section 4.7 CMS (Rqt 8)</b> – sets out the principle for minimising impacts on the ROW network.</li> <li>• <b>Estate Wide Management Plan</b> (Doc Ref. 9.88) (<b>Rqt 5C</b>) – requires the estate-wide vision to be delivered which includes maintaining rights of way across the estate.</li> <li>• <b>PROW Communications Plan and PROW Fund (DoO Sch 16)</b> – this plan and fund are to ensure that the public are aware of changes to the rights of way network and provides a fund to the Rights of Way Working Group to support initiatives to improve existing rights of way.</li> <li>• <b>Aldhurst Farm enhancement works (DoO sch 11)</b> – reasonable endeavours must be used to submit a planning application to the local planning authority for the Aldhurst Farm enhancement works.</li> <li>• <b>MMP for Minsmere – Walberswick and Sandlings (North) [REP5-105] (DoO sch 11)</b> – sets out initial mitigation measures and a monitoring regime for recreational use during the Sizewell C Project, with potential additional mitigation mitigation to be provided in response.</li> <li>• <b>MMP for Sandlings (Central) and Alde-Ore Estuary [REP5-122] (DoO sch 11)</b> – this MMP does not include initial</li> </ul>



	<p>mitigation, and the Shadow HRA concluded it was not required. This MMP sets out a monitoring regime for recreational use during the Sizewell C Project, with potential additional mitigation to be provided in response.</p>
Vessel management measures	<ul style="list-style-type: none"> <li>• <b>Table 12.1 Part B CoCP (Rqt.2)</b> – vessels will be under the control of the Harbour Master and unless in exceptional circumstances, must conform to the recommended speed restriction of &lt;10 knots.</li> <li>• <b>Outline vessel management plan</b> (Doc Ref. 9.65A) (<b>DML Cdt.31A</b>) – vessels must be managed in accordance with this plan which sets limits on vessels in different seasons and routing and sets out the monitoring of vessels and ecology that must be carried out.</li> <li>• <b>Construction Traffic Management Plan [REP2-054] (DoO sch 16)</b> – this plan controls the programme of AILs being delivered by sea to the BLFs.</li> </ul>
Drainage management measures	<ul style="list-style-type: none"> <li>• <b>Drainage Strategy [REP2-033] (Rqt. 5, 13A and 22)</b> – sets out how drains must be designed to minimise pollution and manage water.</li> <li>• <b>Section 2, Tables 10.1, 11.1, 12.1 Part B and C CoCP (Rqt. 2)</b> – set out measures which must be complied with relating to drainage including that potentially polluting materials must be stored at least 10 metres away from a watercourse, drainage channel or flood plain and that drainage system must include specific features like oil separators/interceptors.</li> <li>• <b>CMS (Rqt 8)</b> - section 3.4 sets out how drainage will be managed during construction for particular work and section 4.5 sets out the drainage principles which must be complied with throughout construction.</li> <li>• <b>Associated Development Design Principles</b> (Doc Ref. 8.3(B)) (<b>Rqt. 6A, 20, 212, 24</b>) – requires drainage designs to prevent pollution of local watercourses and the use of SuDS.</li> </ul>
Lighting management measures	<ul style="list-style-type: none"> <li>• <b>Section 1.1 Part B and C CoCP (Rqt.2)</b> – requires site layout and to minimise impacts from restricting light to ecological receptors and site lighting must be positioned to minimise intrusion on ecologically sensitive areas.</li> <li>• <b>CMS (Rqt 8)</b> – sets out specific lighting obligations through construction and Section 4.4 sets out the objectives of the lighting management across the Main development site.</li> <li>• <b>Section 1.3 Lighting Management Plan [APP-182] (Rqt. 9)</b> – sets required lighting levels during construction as well as the mitigation measures required to be complied with during the construction phase including buffer zones, bat corridors and lighting restrictions.</li> <li>• <b>Section 1.4 Lighting Management Plan [APP-182] (Rqt. 15)</b> – sets required lighting levels during operation as well as the mitigation measures required to be complied with during the operational phase..</li> </ul>

	<ul style="list-style-type: none"> <li>• <b>Associated Development Design Principles</b> (Doc Ref. 8.3(B)) (<b>Rqt. 6A, 20, 212, 24</b>) – requires 10 metre buffers zones and includes specific requirements on lighting and columns to minimise light spill.</li> </ul>
Noise management measures	<ul style="list-style-type: none"> <li>• <b>Section 3 Part B and C CoCP (Rqt. 2)</b> – sets out the construction practices that must be complied with the to manage noise in relation to specific activities. A <b>Main Development Site Noise Monitoring and Management Plan</b> (Doc Ref. 9.68(A)) and an Associated Development Noise Monitoring and Management Plan will be submitted to ESC for approval.</li> <li>• <b>CMS (Rqt. 8)</b> – sets out where specific activities will be done in a certain way to reduce the noise impacts and where acoustic fences or landscape bunds will be required to attenuate noise levels. These are shown on the <b>Main Development Site Construction Parameter Plans</b> <a href="#">[REP2-008]</a>.</li> <li>• <b>Associated Development Design Principles</b> (Doc Ref. 8.3(B)) (<b>Rqt. 6A, 20, 212, 24</b>) – specific measures to reduce noise including buffer zones, close-boarded fencing and selection of machinery.</li> </ul>
Dust management measures	<ul style="list-style-type: none"> <li>• <b>Section 4 Part B and C CoCP (Rqt. 2)</b> – sets out the construction practices that must be complied with the to manage dust in relation to specific activities. A Dust Monitoring and Management Plan will be submitted to ESC for approval.</li> </ul>
Control of pollution measures	<ul style="list-style-type: none"> <li>• <b>Section 3.1 and 4.6 Part A and section 2, Table 9.1, 10.1, 11.1 and 12.1 of Part B and C CoCP (Rqt. 2)</b> – industry standard measures and pollution incident controls will be put in place to control pollution. Specific measures are also set out.</li> <li>• <b>Associated Development Design Principles</b> (Doc Ref. 8.3(B)) (<b>Rqt. 6A, 20, 212, 24</b>) – requires drainage designs to prevent pollution of local watercourses.</li> </ul>
Water levels management measures	<ul style="list-style-type: none"> <li>• <b>Para 3.1.10-3.1.28 CMS (Rqt 8)</b> – set out how the realignment of Sizewell Drain and Leiston Drain must be carried out.</li> <li>• <b>Water monitoring plan (Rqt. 7)</b> – this must be produced in general accordance with the <b>Water Monitoring and Response Strategy</b> <a href="#">[AS-236]</a> and the <b>Draft Water Monitoring Plan</b> (Doc Ref. 9.87). It will set out the required monitoring of water levels.</li> </ul>
Estate management measures	<ul style="list-style-type: none"> <li>• <b>Estate Wide Management Plan</b> (Doc Ref. 9.88) (<b>Rqt 5C</b>) – requires the estate-wide vision to be delivered which includes maintaining rights of way across the estate.</li> </ul>

## 5 COMPENSATION OVERVIEW

5.1.1 As stated above, the mitigation in **Table 1** is relied upon in the sHRA to conclude that there will be no adverse impact on the integrity of any of the European Sites. The sHRA has concluded that such an adverse impact could not be ruled out due to potential impacts on the foraging of Marsh Harriers in relation to the Minsmere-Walberswick SPA. It is necessary for SZC Co. to provide compensation for this impact. This ‘Marsh Harrier Compensation’ is secured by the following mechanisms:

- **Marsh harrier implementation plan (Rqt 14C)** – must be approved before any part of Work No.1A can commence. It must be in general accordance with the **Marsh Harrier Habitat Report [REP2-119]** and, if Westleton is included, the **Marsh Harrier Compensatory Habitat Report [REP3-053]**. These Reports set out what will be done to the land to make it suitable compensation.
- **Implementation plan (DoO sch9)** – marsh harrier habitat improvement works are defined as key mitigation and the delivery of these works is shown on the **Implementation Plan [REP2-044]**.
- **Habitats bond (DoO sch 11)** – a bond will be put in place to provide for the cost of the completion of the marsh harrier habitat improvement works if SZC Co fails to.

## APPENDIX A: THE LEGAL CONTEXT

### A.1. Overview

A.1.1. This note has been produced in order to set out the legal context for the ExA's consideration of issues under the Habitats Regulations 2017. At various points during the examination, interested parties have referred to the legal authorities and guidance. The note relates the law to specific points of consideration within the SZC HRA. It is hoped that this will provide further assistance with the production of the RIES report.

A.1.2. It is structured as follows:

- Status of the Directive and ECJ Caselaw following Brexit
- The Legal Tests under the Habitats Regulations
- The Precautionary Approach
- The Appropriate Assessment
- The Advice of Statutory Consultees
- Regulation 63(4) - IROPI

### A.2. Status of the Directive and ECJ Caselaw following BREXIT

A.2.1. As of 1 January 2021 the United Kingdom left the European Union. The European Union (Withdrawal) Act 2018 ('the Withdrawal Act'), ss2-7 governs the role which legislation derived from European Legal Instruments continues to have in the UK.

A.2.2. The Habitats Directive and Birds Directive do not in themselves have any status under domestic law, however both the Habitats Directive (Council Directive 92/43/EEC) and the Birds Directive (Council Directive 2009/47/EC) are transposed into English and Welsh law by the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations'). The Habitats Regulations continue to have effect by virtue of section 2 of the Withdrawal Act.

A.2.3. Further, decisions of the ECJ made prior to 31 December 2020 continue to have effect in the UK by virtue of section 3 of the Withdrawal Act. At present, those decisions may only be departed from by the Supreme Court and Court of Appeal and not any lower tribunal. Decisions of the ECJ made after 31 December 2020 are to be treated as 'persuasive authority' (i.e. not binding but carrying weight) (see s6 Withdrawal Act).

#### a) Amendments to the Habitats Regulations Relevant to Brexit

A.2.4. The Habitats Regulations were amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 ('the 2019 Amendment Regulations') to ensure that the Habitats Regulations are 'fit for purpose' following Brexit. A number of the changes involve transferring



functions from the European Commission to the appropriate authorities in England and Wales. The basic obligations of the competent authorities have not changed.

- A.2.5. As a result of the 2019 Amendment Regulations the SACs and SPAs in the UK no longer form part of the European Union’s Natura 2000 ecological network. The 2019 Amendment Regulations have created a national site network (‘NSN’) which includes existing SACs and SPAs and any new SACs and SPAs designated under the Regulations.

b) Ramsar Sites

- A.2.6. Ramsar Sites do not form part of the NSN and are not covered by the Habitats Directive or Habitats Regulations.

- A.2.7. It is Government policy in paragraph 176(b) of the National Planning Policy Framework that listed Ramsar sites ‘should be given the same protection as habitats sites’.

A.3. The Legal Tests under the Habitats Regulations

- A.3.1. The tests to be applied are found within Regulations 63 and 64 of the Habitats Regulations. The key parts of Regulation 63 state:

*“(5) In the light of the conclusions of the [appropriate] assessment, and subject to regulation 64, the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).*

*“(6) In considering whether a plan or project will adversely affect the integrity of the site, the competent authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which it proposes that the consent, permission or other authorization should be given.”*

- A.3.2. Regulation 64 addresses proposals where there is an adverse effect on integrity but that there are considerations of overriding public interest (‘IROPI’). SZC Co relies upon this regulation in relation to potential impacts upon breeding marsh harrier leading to a potential adverse impact on the integrity of the Minsmere-Walberswick SPA and Minsmere-Walberswick Ramsar site. Key parts state:

*“(1) If the competent authority is satisfied that, there being no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest (which, subject to paragraph (2), may be of a social or economic nature), it may agree to the plan or project*

NOT PROTECTIVELY MARKED

*notwithstanding a negative assessment of the implications for the European site or the European offshore marine site (as the case may be).*

*(2) Where the site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in paragraph (1) must be either –*

*(a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment; or*

*(b) any other reasons which the competent authority, having due regard to the opinion of the appropriate authority, considers to be imperative reasons of overriding public interest.”*

A.3.3. Each of these tests is explored below

c) Regulation 63 – Adverse Impact on Integrity

A.3.4. The term ‘integrity’ is not defined in the legislation. The EC Guidance on Art.6 of the Habitats Directive (2019) defines integrity as follows:

A.3.5. “It is clear from the context and from the purpose of the Directive that the ‘integrity of a site’ relates to the site’s conservation objectives (see point 4.6.3 above). For example, it is possible that a plan or project will adversely affect the site only in a visual sense or only affect habitat types or species other than those listed in Annex I or Annex II for which the site has been designated. In such cases, the effects do not amount to an adverse effect for purposes of Article 6(3).

A.3.6. In other words, if none of the habitat types or species for which the site has been designated is significantly affected then the site’s integrity cannot be considered to be adversely affected. However, if just one of them is significantly affected, taking into account the site’s conservation objectives, then the site integrity is necessarily adversely affected.

A.3.7. This is supported by the Court in its ruling in case C-258/11, paragraph 48: ‘Article 6(3) of the Habitats Directive must be interpreted as meaning that a plan or project not directly connected with or necessary to the management of a site will adversely affect the integrity of that site if it is liable to prevent the lasting preservation of the constitutive characteristics of the site that are connected to the presence of a priority natural habitat whose conservation was the objective justifying the designation of the site in the list of SCIs, in accordance with the directive. The precautionary principle should be applied for the purposes of that appraisal. The logic of such an interpretation would also be relevant to non-priority habitat types and to habitats of species.

A.3.8. The expression ‘*integrity of the site*’ shows that the focus is here on the specific site. Thus, it is not allowed to destroy a site or part of it on the

basis that the conservation status of the habitat types and species it hosts will anyway remain favourable within the European territory of the Member State.

- A.3.9. As regards the connotation or meaning of ‘*integrity*’, this clearly relates to ecological integrity. This can be considered as a quality or condition of being whole or complete. In a dynamic ecological context, it can also be considered as having the sense of resilience and ability to evolve in ways that are favourable to conservation.
- A.3.10. The ‘*integrity of the site*’ can be usefully defined as the coherent sum of the site’s ecological structure, function and ecological processes, across its whole area, which enables it to sustain the habitats, complex of habitats and/or populations of species for which the site is designated.
- A.3.11. A site can be described as having a high degree of integrity where the inherent potential for meeting site conservation objectives is realised, the capacity for self-repair and self-renewal under dynamic conditions is maintained, and a minimum of external management support is required.
- A.3.12. When looking at the ‘*integrity of the site*’, it is important to take into account a range of factors, including the possibility of effects materialising in the short, medium and long-term.
- A.3.13. **The integrity of the site involves its constitutive characteristics and ecological functions. The decision as to whether it is adversely affected should focus on and be limited to the habitats and species for which the site has been designated and the site’s conservation objectives.”** (underlining added)
- A.3.14. It is clear from the guidance that the emphasis is on the ability of the site to sustain populations of the species for which the site is designated. Clearly, an impact which would prevent any of the protected sites from sustaining, say, the population of Twaite shad for which it is designated would fail the test.
- A.3.15. In *Sweetman v An Bord Pleanála (Case C-258/11) [2013] 3 CMLR* Advocate General Sharpston considered the integrity test. She stated:  
*“54. Notwithstanding those linguistic differences, it seems to me that the same point is in issue. It is the essential unity of the site that is relevant. To put it another way, the notion of “integrity” must be understood as referring to the continued wholeness and soundness of the constitutive characteristics of the site concerned.*  
*55. The integrity that is to be preserved must be that “of the site”. In the context of a natural habitat site, that means a site which has been designated having regard to the need to maintain the habitat in question at (or to restore it to) a favourable conservation status. That will be*

*particularly important where, as in the present case, the site in question is a priority natural habitat.*

*56. It follows that the constitutive characteristics of the site that will be relevant are those in respect of which the site was designated and their associated conservation objectives. Thus, in determining whether the integrity of the site is affected the essential question the decision-maker must ask is “why was this particular site designated and what are its conservation objectives?” In the present case, the designation was made, at least in part, because of the presence of limestone pavement on the site – a natural resource in danger of disappearance that, once destroyed, cannot be replaced and which it is therefore essential to conserve.”*

A.3.16. It is clear that when considering the issue of ‘*integrity*’ the decision maker must consider the impact upon the site as a whole.

#### A.4. The Precautionary Approach

A.4.1. The Secretary of State must be satisfied that the Regulation 63(5) test is met ‘*beyond reasonable scientific doubt*’.

A.4.2. A party alleging that there was a risk that cannot be excluded on the basis of objective information must produce credible evidence that there was a real, as opposed to hypothetical risk, that must have been considered: *Boggis v. Natural England [2009] EWCA Civ 1061* at paragraph 37.

A.4.3. Whilst the decision-maker must be clear beyond reasonable scientific doubt that project will not adversely affect the integrity of the European Sites, that does not mean that absolute certainty is required in relation to every single factor contributing to that judgment (see *Holgate J in R(oao Keir) v Natural England [2021] EWHC 1059 (Admin)* at [40]-[41]). Therefore, although the Secretary of State must be satisfied beyond reasonable scientific doubt that the project will not adversely affect the integrity of a European Site he may consider the likelihood of various matters as part of that overall judgment. In other words, he need not be ‘certain’ of every single factor which contributes to the overall judgment.

A.4.4. The mere fact that there is uncertainty in an assessment will not mean that a development cannot be permitted. In *R(Wyatt) v Fareham Borough Council [2021] EWHC 1434 (Admin)* Mr Justice Jay stated:

*“45. ... Mr Jones came close to submitting that, because there was scientific uncertainty, no development could properly be permitted because deleterious impacts could not logically be excluded. But that is the whole point of the precautionary principle: the uncertainty is addressed by applying precautionary rates to variables, and in that manner reasonable scientific certainty as to the absence of a predicated adverse outcome will be achieved, the notional burden of proof being on the person advancing the proposal. The application of precautionary*

*values to relevant variables may well have been sufficient, without more; but a further cushion is provided by the application of a precautionary buffer.”*

- A.4.5. In *Wyatt* the Judge found a flaw in relation to one part of the calculation (which was not held to be precautionary) but found that the other inputs were sufficiently precautionary such that the assessment was precautionary overall (see paras 53-89).
- A.4.6. Therefore, uncertainty can be addressed through the use of precautionary assumptions within an appropriate assessment. Once uncertainty has been accounted for in this way it would be inappropriate to then continue to rely upon uncertainty in reaching a conclusion that an adverse effect on integrity cannot be excluded.
- A.4.7. *Mitigation*
- A.4.8. It is clear that where mitigation is relied upon to prevent an adverse impact to the integrity of a European Site, its delivery and effectiveness must be certain. See, for example, the opinion of the Advocate General in the ‘Dutch Nitrogen Cases’ (C-293/17 and C-294/17) where she stated: ‘126 ... , according to the Court’s case-law, it is only when it is sufficiently certain that a measure will make an effective contribution to avoiding harm to the integrity of the site concerned, by guaranteeing beyond all reasonable doubt that the plan or project at issue will not adversely affect the integrity of that site, that such a measure may be taken into consideration in the ‘appropriate assessment’ within the meaning of Article 6(3) of the Habitats Directive (see, to that effect, judgments of 26 April 2017, Commission v Germany, C 142/16, EU:C:2017:301, paragraph 38, and of 25 July 2018, Grace and Sweetman, C 164/17, EU:C:2018:593, paragraph 51).’<sup>1</sup>

## A.5. The Appropriate Assessment

- A.5.1. The appropriate assessment (which considers the impact) ‘*must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned*’ (*Sweetman and others v An Bord Pleanála (Case C-258/11) [2014] PTSR 1092*).
- A.5.2. In *Holohan v An Bord Plenala (C-461/17)* the ECJ held that an appropriate assessment ‘*must, on the one hand, catalogue the entirety of habitat types and species for which a site is protected, and, on the other, identify and examine both the implications of the proposed project for the species present on that site, and for which that site has not been listed, and the*

<sup>1</sup> The Dutch Nitrogen Cases were mentioned during ISH10. They are complex cases which mainly address issues of ‘headroom’ in the assessment of nitrogen. Their main relevance for this HRA are the Court’s confirmation of the need for mitigation to be certain in order for it to be relied upon.



*implications for habitat types and species to be found outside the boundaries of that site, provided that those implications are liable to affect the conservation objectives of the site’.*

## A.6. The Advice of Statutory Consultees

A.6.1. Although discussions are ongoing between SZC Co. and the statutory consultees, it may be that at the end of the examination the Secretary of State will need to decide between competing positions on some issues. It may be that one or other of the statutory bodies will argue that significant weight should be given to their position merely because they are a statutory consultee. However, the cases which have addressed this issue have not been in the context of a detailed examination process where there are opposing experts on both sides. The function of the Secretary of State will be to scrutinise and weigh the competing evidence. To give more weight to a statutory consultee in these circumstances would mean that the impartiality of the examination process would be compromised. But, in any event, it is clear that the advice of statutory consultees are not binding and does not need to be given significant weight if cogent reasons are given for departing from it (*R(Wealden) v SSCLG* [2017] EWHC 351).

A.6.2. Further, here there are issues upon which the statutory consultees disagree with one another. For example, the MMO agrees with the methodology which has been used by SZC Co. to calculate EAVs [REF]. The Environment Agency disagrees. This fact alone reveals that the Secretary of State will need to weigh up the competing positions and evidence underlying those positions rather than automatically giving weight to one view above another.

## A.7. Regulation 63(4) – IROPI

A.7.1. In order to satisfy the terms of regulation 63(4) it is clear that the decision-maker must have a proper understanding of the extent of the potential negative impact upon integrity. In *Commission v Italian Republic* (C-304/05) the ECJ stated:

*“83. ...Article 6(4) of Directive 92/43 can apply only after the implications of a plan or project have been studied in accordance with Article 6(3) of that directive. Knowledge of those implications in the light of the conservation objectives relating to the site in question is a necessary prerequisite for application of Article 6(4) since, in the absence thereof, no condition for application of that derogating provision can be assessed. The assessment of any imperative reasons of overriding public interest and that of the existence of less harmful alternatives require a weighing up against the damage caused to the site by the plan or project under consideration. In addition, in order to determine the nature of any compensatory measures, the damage to the site must be precisely identified (see also C-399/14, C387&388/15, C-142/16)”*

A.7.2. The EC Guidance *‘Managing Natura 2000 Sites’* states that in order to benefit from the ‘exception’ in Article 6(4) (which is transposed by Regulation 63(4)) it must be documented that:

1. the alternative put forward for approval is the least damaging for habitats, for species and for the integrity of the Natura 2000 site(s), regardless of economic considerations, and that no other feasible alternative exists that would not adversely affect the integrity of the site(s);
2. there are imperative reasons of overriding public interest, including *‘those of a social or economic nature’*;
3. all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected are taken. (page 57)

A.7.3. With regards to alternatives, the Natura 2000 guidance states:

*“In line with the need to prevent undesired impairment to the Natura 2000 network, the thorough revision and/or withdrawal of a proposed plan or project should be considered when negative effects on the integrity of a site have been identified. Thus, the competent authorities have to analyse and demonstrate the need of the plan or project concerned, considering the zero option too at this stage.*

*Subsequently, the competent authorities should examine the possibility of resorting to alternative solutions which better respect the integrity of the site in question. All feasible alternatives that meet the plan or project aims, in particular, their relative performance with regard to the site’s conservation objectives, integrity and contribution to the overall coherence of the Natura 2000 network have to be analysed, taking also into account their proportionality in terms of cost. They might involve alternative locations or routes, different scales or designs of development, or alternative processes.*

*As concerns the economic cost of the steps that may be considered in the review of alternatives, it cannot be the sole determining factor in the choice of alternative solutions (C399/14, paragraph 77). In other words, a project proponent cannot claim that alternatives have not been examined because they would cost too much.*

*In line with the principle of subsidiarity, it is for the competent national authorities to assess the relative impact of these alternative solutions on the site concerned. It should be stressed that the reference parameters for such comparisons deal with aspects concerning the conservation and the maintenance of the integrity of the site and of its ecological functions. In this phase, therefore, other assessment criteria, such as economic criteria, cannot be seen as overruling ecological criteria.*

*The absence of alternatives must be demonstrated, before proceeding with the examination of whether the plan or project is necessary for imperative reasons of public interest (Court ruling in Castro Verde case C-239/04 paragraphs 36-39).” (p.58)*

A.7.4. With regards to IROPI, the guidance states:

*“The concept of ‘imperative reason of overriding public interest’ is not defined in the Directive. However, Article 6(4) second subparagraph mentions human health, public safety and beneficial consequences of primary importance for the environment as examples of such reasons. As regards the ‘other imperative reasons of overriding public interest’ of a social or economic nature, it is clear from the wording that only public interests, irrespective of whether they are promoted either by public or private bodies, can be balanced against the conservation aims of the Directive. Thus, projects developed by private bodies can only be considered where such public interests are served and demonstrated.*

*This was confirmed by the Court in its ruling in case C-182/10, paragraphs 75-78: ‘An interest capable of justifying, within the meaning of Article 6(4) of the Habitats Directive, the implementation of a plan or project must be both ‘public’ and ‘overriding’, which means that it must be of such an importance that it can be weighed up against that directive’s objective of the conservation of natural habitats and wild fauna and flora. Works intended for the location or expansion of an undertaking satisfy those conditions only in exceptional circumstances. It cannot be ruled out that that is the case where a project, although of a private character, in fact by its very nature and by its economic and social context presents an overriding public interest and it has been shown that there are no alternative solutions. In the light of those criteria, the mere construction of infrastructure designed to accommodate a management centre cannot constitute an imperative reason of overriding public interest within the meaning of Article 6(4) of the Habitats Directive.’” (p.59)*

A.7.5. -and-

*“Having regard to the structure of the provision, in the specific cases the competent national authorities have to make their approval of the plans and projects in question subject to the condition that the balance of interests between the conservation objectives of the site affected by those initiatives and the above-mentioned imperative reasons weighs in favour of the latter. This should be determined according to the following considerations:*

*a) There must be an imperative reason for implementing the plan or project;*

*b) the public interest must be overriding: it is therefore clear that not every kind of public interest of a social or economic nature is sufficient, in*

*particular when seen against the particular weight of the interests protected by the Directive (see for instance recital 4, which refers to ‘Community’s natural heritage’);*

*c) in this context, it seems also reasonable to assume that the public interest can only be overriding if it is a long-term interest; short term economic interests or other interests yielding only short-term benefits for the society would not appear to be sufficient to outweigh the long-term conservation interests protected by the Directive.*

*As an example of what are considered imperative reasons of overriding public interest, the Court ruled, in a case concerning a large region (region of Thessaly in Greece), that: ‘Irrigation and the supply of drinking water meet, in principle, those conditions and are therefore capable of justifying the implementation of a project for the diversion of water in the absence of alternative solutions (C-43/10, paragraph 122)’ (pp.59-60)*

*“It is reasonable to consider that the ‘imperative reasons of overriding public interest, including those of social and economic nature’ refer to situations where plans or projects envisaged prove to be indispensable:*

- within the framework of actions or policies aiming to protect fundamental values for the citizens’ life (health, safety, the environment);*
- within the framework of fundamental policies for the State and the society;*
- within the framework of carrying out activities of an economic or social nature, fulfilling specific obligations of public service.*

*It is for the competent authorities to weigh up the imperative reasons of overriding public interest of the plan or project against the objective of conserving natural habitats and wild fauna and flora. They can only approve the plan or project if the imperative reasons for the plan or project outweigh its impact on the conservation objectives.” (p.60)*

**A.7.6.** Compensatory measures are not defined in the Habitats Regulations or the Habitats Directive. The EC Guidance states:

*“The compensatory measures constitute measures specific to a project or plan, additional to the normal duties stemming from the Birds and Habitats Directives. These measures aim to offset precisely the negative impact of a plan or project on the species or habitats concerned. They constitute the ‘last resort’ and are used only when the other safeguards provided for by the directive are exhausted and the decision has been taken to consider, nevertheless, a project/plan having a negative impact on the integrity of a Natura 2000 site or when such an impact cannot be excluded.” (p.62)*

**A.7.7.** The EC Guidance further states, with regards to ensuring overall coherence of the Natura 2000 network:

*“In order to ensure the overall coherence of Natura 2000, the compensatory measures proposed for a project should therefore: a) address, in comparable proportions, the habitats and species negatively affected; and b) provide functions comparable to those which had justified the selection criteria for the original site, particularly regarding the adequate geographical distribution. Thus, it would not be enough for the compensatory measures to concern the same biogeographical region in the same Member State. The distance between the original site and the place of the compensatory measures is not necessarily an obstacle as long as it does not affect the functionality of the site, its role in the geographical distribution and the reasons for its initial selection.” (p.64)*

A.7.8. Addressing the objective and general content of compensatory measures, the EC Guidance states:

*“In terms of the Birds Directive, compensation might for example include work to improve the biological value of an area, which is or will be classified, so that the carrying capacity or the food potential are increased by a quantity corresponding to the loss on the site affected by the project. Accordingly, the re-creation of a habitat favourable to the bird species concerned is acceptable provided that the created site is available at the time when the affected site loses its natural value.*

*Compensatory measures appropriate or necessary to offset the adverse effects on a Natura 2000 site (i.e. in addition to what is already required under the Directives) may consist of:*

- *habitat improvement in existing sites: improving the remaining habitat on the site concerned or restoring the habitat on another Natura 2000 site, in proportion to the loss due to the plan or project;*
- *habitat re-creation: creating a habitat on a new or enlarged site, to be incorporated into Natura 2000; or*
- *as described above, and in association with other works, proposing a new site of sufficient quality under the Habitats or Birds Directive and establishing/implementing conservation measures for this new site.” (p.65)*

A.7.9. The EC Guidance emphasises the compensation must be ‘targeted’:

*“Once the integrity of the site likely to be damaged and the actual extent of the damage have been identified, the compensatory measures must address these issues specifically, so that the elements of integrity contributing to the overall coherence of the Natura 2000 network are compensated for in the long term. Thus, these measures should be the most appropriate to the type of impact predicted and should be focused on objectives and targets clearly addressing the Natura 2000 elements affected. They must clearly refer to the structural and functional aspects of*



*the site integrity, and the related types of habitats and species populations that are affected...*

A.7.10. *As an example, in designing compensatory measures for species, there is a need to identify:*

- *the species adversely affected, their total numbers and the proportion of the total population(s) that these occur in;*
- *the principal function(s) of the habitats that will be adversely affected that the species depend on e.g. feeding, roosting, etc.;*
- *the measures needed to compensate for the damage to the habitat functions and species affected so that they are restored to a state that reflects the favourable condition of the area affected.” (p.67)*

A.7.11. With regards to the extent of compensation to be provided, the EC Guidance states:

*“The extent required for the compensatory measures to be effective is directly related to the quantitative and qualitative aspects inherent to the elements of integrity (i.e. including structure and functionality and their role in the overall coherence of the Natura 2000 network) likely to be impaired and to the estimated effectiveness of the measures.*

*Consequently, compensation ratios are best set on a case-by-case basis and must be initially determined in the light of the information from the Article 6(3) appropriate assessment and ensure ecological functionality. The ratios may then be redefined according to the results observed when monitoring the effectiveness, and the final decision on the proportion of compensation must be justified.*

*There is wide acknowledgement that ratios should be generally well above 1:1. Thus, compensation ratios of 1:1 or below should only be considered when it is shown that with such an extent the measures will be fully effective in reinstating structure and functionality within a short period of time (e.g. without compromising the preservation of the habitats or the populations of key species likely to be affected by the plan or project nor their conservation objectives).” (p.68)*