

ExQ3	Question to:	Question:	East Suffolk Council response:
Bio.3 Biodiversity and ecology, terrestrial and marine			
Part 1 - General			
Bio.3.0	The Applicant, ESC, SCC, Suffolk Wildlife Trust	Protected species licensing, non-licensable method statements and the CoCP (Associated development, terrestrial ecology, section 6 epage 178 and following) - Code of Construction Practice. Doc 8.11 revision 5 submitted at Deadline 7-. Are ESC, SCC and SWT content with the amended CoCP and various non-licensable method statements? If not, what do they require? Do Natural England have any views in relation to these.	<p>As set out in our Deadline 8 response to the Construction Code of Practice (CoCP) [REP7-037], the CoCP still does not include any measures to control noise above the identified thresholds where impacts on bats are considered likely to occur. Sensitive areas include the proposed dark corridors and the boundaries of the site (particularly the southern site boundary alongside Kenton Hills and the boundaries adjacent to Ash Wood). As discussed at ISH10 the Applicant recognises the significant impacts which noise could have on bats and has committed to control this through measures in the construction plans (paragraph 1.4.35 of REP7-069). These controls must therefore be included in the CoCP. ESC understands that the Applicant intends to submit an updated CoCP at Deadline 8 to address this.</p> <p>With regard to the various non-licensable method statements, ESC has the following comments:</p> <p><u>MDS - Bats (Chapter 14 Appendix 14C.1B [APP-252])</u> Paragraph 1.3.36 of the non-licensable method statement in Appendix 14C.1B states that “A detailed Noise and Bat Monitoring Plan will be produced prior to work with the potential to disturb bats commencing.” As set out above in relation to the CoCP, ESC requests that the control measures required to prevent noise levels exceeding thresholds at which adverse impacts on bats are considered likely to occur are secured in the CoCP.</p> <p><u>MDS - Reptiles (Chapter 14 Appendix 14C2A [APP-252] and Appendix A of the Estate Wide Management Plan [REP7-076])</u> ESC understands that the Reptile Mitigation Strategy submitted to the Examination will be updated prior to construction and prior to any</p>

			<p>reptile translocation and the updated strategy will be agreed with the Ecology Working Group (EWG) (as per paragraph 1.13 of [REP7-076]).</p> <p>ESC has made comments on the Reptile Mitigation Strategy in Appendix A of the EWMP [REP7-076] in our Deadline 8 submission. We are broadly satisfied with the principle of the reptile mitigation measures proposed; however, we note that many of the translocation receptor sites have already been colonised by small populations of reptiles. It must therefore be ensured that this is accounted for during the translocation exercise to ensure that sufficient capacity is available at the receptor sites.</p> <p><u>MDS - Great Crested Newts [Appendix 2.9.C2 of AS-209]</u> No comment.</p> <p><u>MDS - Fish and Aquatic Invertebrates (Part B, Appendix A of the CoCP [REP7-037])</u> No comment, detailed comments on mitigation for these receptors is deferred to Natural England and the Environment Agency.</p> <p><u>Northern Park and Ride - Bats [Annex 7A.6A of APP-364]</u> No comment.</p> <p><u>Northern Park and Ride - Reptiles [Annex 7A.6B of APP-364]</u> No comment.</p> <p><u>Southern Park and Ride - Bats [Annex 7A.5A of APP-395]</u> No comment.</p> <p><u>Southern Park and Ride - Reptiles [Annex 7A.5B of APP-395]</u> The final bullet point of paragraph 1.3.10 includes reference to potentially moving any reptiles which are encountered to receptor areas</p>
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			<p>on the Main Development Site. Given the distance between the Southern Park and Ride and the MDS it is not considered that translocating animals to the MDS would be appropriate, they must be retained within the vicinity of the Southern Park and Ride, as close as possible to where they were found.</p> <p><u>Two Village Bypass - Bats [Annex 7A.6A of APP-426]</u> No comment.</p> <p><u>Two Village Bypass - Great Crested Newts [Annex 7A.6B of APP-426]</u> No comment.</p> <p><u>Two Village Bypass - Otters [Annex 7A.6C of APP-426]</u> No comment.</p> <p><u>Two Village Bypass – Reptiles [Annex 7A.6D of APP-426]</u> The final bullet point of paragraph 1.3.10 includes reference to potentially moving any reptiles which are encountered to receptor areas on the Main Development Site. Given the distance between the Two Village Bypass and the MDS it is not considered that translocating animals to the MDS would be appropriate, they must be retained within the vicinity of the Two Village Bypass, as close as possible to where they were found.</p> <p><u>Sizewell Link Road - Bats [Annex 7A.6A of APP-462]</u> No comment.</p> <p><u>Sizewell Link Road - Reptiles [Annex 7A.6B of APP-462]</u> The final bullet point of paragraph 1.3.10 includes reference to potentially moving any reptiles which are encountered to receptor areas on the Main Development Site. Given the distance between parts of the Sizewell Link Road and the MDS it is not considered that translocating</p>
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			<p>animals to the MDS would be appropriate, they must be retained within the vicinity of the Sizewell Link Road, as close as possible to where they were found. The exception to this is potentially at the eastern end of the Link Road where it enters the MDS.</p> <p><u>Freight Management Facility - Bats [Annex 7A.4A of APP-524]</u> No comment.</p> <p><u>Freight Management Facility - Reptiles [Annex 7A.4B of APP-524]</u> The final bullet point of paragraph 1.3.10 includes reference to potentially moving any reptiles which are encountered to receptor areas on the Main Development Site. Given the distance between the Freight Management Facility and the MDS it is not considered that translocating animals to the MDS would be appropriate, they must be retained within the vicinity of the Freight Management Facility, as close as possible to where they were found.</p> <p><u>Green Rail Route - Reptiles [Annex 7A.6B of APP-556]</u> The final bullet point of paragraph 1.3.10 includes reference to potentially moving any reptiles which are encountered to receptor areas on the Main Development Site. Given that there is some separation between the Green Rail Route and the MDS it may not be appropriate to translocate animals to the MDS. Preferably they should be retained within the vicinity of the Green Rail Route, as close as possible to where they were found. Although dependent on the number of animals encountered translocation to an MDS receptor area may be appropriate.</p>
Bio.3.1	Natural England, MMO	A number of questions were raised seeking information and input from Natural England and MMO during ISH10. Those at agenda item 5 were published by the ExA on 31 August 2021 following ISH10 and a note of	

		<p>the times at which other questions relevant to them were raised was sent to them later. For ease of reference, the ExA sets out those points below. Please will Natural England and the MMO respond at Deadline 8. In the event that their D7 responses or submissions in lieu of attendance have covered these points to their satisfaction, please will they state where, with EL references, paragraph and electronic page numbers.</p>	
Bio.3.2	Natural England, MMO	<p>Agenda item 3.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] (page 21 of 21) 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 1.3.7.9). Q(a) Where is the mitigation and monitoring plan, is Natural England content with it, likewise MMO Q(b) Natural England say three locations for intakes; Are there not two intakes of which the northernmost avoids SS as it is not on reef. Southernmost has to be on reef, does it not? What is the third? Was it a candidate rejected? (The Applicant clarified there are two heads per intake and three potential locations.) Q(c) Will there be a condition in the DML requiring mitigation of any effects on SS? And also will an in principle monitoring and mitigation plan be submitted</p>	

		to the examination as suggested by MMO at para 1.3.6.6? When?	
Bio.3.3	Natural England, MMO	Agenda item 3.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; and who was involved? (Please will the MMO and Natural England take into account the Applicant's response at ISH10 and its post-ISH10 submissions in replying.	
Bio.3.4	Natural England	Agenda item 4.a Fen meadow proposals, including Pakenham – to understand in particular Natural England's position on need, quantum and the likelihood of success ExA As Natural England are not able to be here today, the ExA is going to put this question to the Applicant to ask for their understanding of Natural England's position and their reply, and also so that Natural England can speak for themselves in writing at Deadline 7. The ExA has their note in lieu of attendance. The policy in EN1 para 5.3.11 is not normally to grant where there is a likely adverse effect on an SSSI, and that where after mitigation there is an AE on a site's notified special interest features an exception can be made where benefits outweigh impacts on the site as a SSSI and on the national network of SSSIs. You are taking 0.4something ha of fen meadow, call it 0.5 ha. (a) That, it seems to me, is the Natural England position on need. Q (b) Please will you explain to me fairly,	

		<p>putting it in the best light, how Natural England justify the total land take at Halesworth, Benhall and Pakenham put together. Q (c) What made the Applicant think at the time of the Application in May 2020 that Halesworth and Benhall alone would be sufficient? And Q(d) why at Deadline 5, 23 July, would Natural England describe the possibility of success thus: “To summarise, our advice is that creating compensatory habitat of the same quality to that which will be destroyed will be extremely difficult, if not impossible”. It was said by Mr Lewis for the Applicant at CAH1 Part 1 that this was a hangover from an earlier stage in the Examination. Is that it right. It was their clearly stated view at D5, 23 July. Q(e) Will the Applicant explain to its position but only in so far as it needs to add to anything it said at CAH1 Part 1. The ExA notes that the AoS of EN6, at para 5.13 says: There is potential for habitat creation within the wider area in order to replace lost ‘wet meadows’ habitats of the Sizewell Marshes SSSI but it may not be possible to fully compensate for losses to this habitat ... develop and ecological mitigation and management plan to minimise the impacts”. Does the Applicant draw an comfort from this or rely it? There is a question there also for Natural England – does this para allow for some failure of fen meadow recreation, and how in the light of it is the fen meadow at Pakenham justified?</p>	
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		Q(f) Is the money for the Fen Meadow Contingency Fund yet agreed?	
Bio.3.5	Natural England	Agenda item 4.e District licensing – changes and effects Q(a) The ExA’s understanding is that it is only for newts and has no separate statutory basis. But in the absence of Natural England, please can ESC tell us if we are right or not and explain what difference it makes? (See also Natural England Blog post of 11 Dec 2020.)	
Bio.3.6	Natural England	Agenda item 4.g Biodiversity net gain – the effect of the new metric and assessment of SSSIs Q(a) To the Applicant – (i) what are you intending to do in relation to Metric 3.0? (ii) If you are putting something in, when will we get it? (iii) The ExA notes that at the Natural England website it is stated 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”. Does the Applicant wish to say in relation to that? Please will Natural England comment.	
Please answer the following questions in the event that the change request for the desalination plant is accepted			
Bio.3.7	Natural England, MMO	The ExA understands that Natural England and the MMO did not respond to the consultation. Please will they both set out their responses to the proposed changes?	

Bio.3.8	Applicant	The Applicant explains that the intake screen and pipework would require periodic shock chlorination, which would be flow controlled and angled inwards to prevent chlorine emissions to the environment. Why does the outfall pipe not also need chlorination or treatment?	
Bio.3.9	Applicant	Fourth ES addendum Bk 6 6.18 Vol 1. At para 3.9.13 it is said that environmental design and mitigation measures have been secured by Reqt 8. Is that a reference to the Construction Method Statement and if so to which parts and paragraphs? If not, please state how Reqt 8 does in fact secure this as the only other documents referred to in Reqt 8 are parameters plans.	
Bio.3.10	Applicant	Same document. At para 3.9.142 effects on commercial fishing are considered. It is stated that “A review of the commercial fishing off Sizewell and the wider area is provided in Volume 2, Appendix 22F of the ES [APP-323]. Shore-based observations suggest that most fishing near the proposed BLF is carried out by potting and trawling vessels”. Should the reference to the BLF be to the salination plant intake and outfall headworks?	
Bio.3.11	Applicant	Same document. Does para 3.9.157 relate to and therefore be headed Benthic-pelagic and pelagic larvae sensitivity? It is currently simply “sensitivity”.	
HRA.3 Habitats Regulations Assessment			
HRA.3.0	The Applicant	Marine Water Quality	

		NE has identified concerns regarding water quality impacts to numerous European sites, resulting from bentonite breakout [RR-0878][REP2-153]. At Deadline 3, the Applicant [REP3-042] committed to updating the CoCP to include information to address this point, but this was not addressed in the CoCP submitted at Deadline 7 (Revision 5). Can the Applicant update the CoCP to address this matter?	
HRA.3.1	Applicant	Impacts to breeding birds (including marsh harriers) The Applicant has explained [Doc. 9.71, HRA.2.8] that the works to create the new wetland habitats in the proposed marsh harrier compensatory habitat area on the EDF Energy Estate ('the MHCHA') would not be undertaken in February-October, to avoid impacts on breeding birds (including marsh harriers) and that this would be secured in a future update to the CoCP. This is not reflected in the CoCP submitted at Deadline 7 (Revision 5). Can the Applicant update the CoCP to address this matter, or otherwise explain how this commitment is secured in the dDCO?	
HRA.3.2	Applicant	Marsh harrier compensatory habitat area on the EDF Energy Estate ('the MHCHA') The Applicant has stated that the new wetland habitats proposed as part of the MHCHA would be created in the first winter of the construction phase following the grant of any DCO (currently estimated to be winter 2022-2023) [REP2-088, NV1] [REP6-002] [Doc.	

		9.71, HRA.2.8]. The Applicant has confirmed this is an “absolute commitment” in [Doc. 9.85] submitted at Deadline 7. How is this specific commitment secured in the dDCO (or other legal mechanism)?	
HRA.3.3	Applicant	<p>Land at Westleton</p> <p>a) The Applicant does not appear to have proposed specific monitoring measures relevant to marsh harrier on the land at Westleton, although the Marsh Harrier Compensatory Habitat Report for the Westleton land [REP3-053] confirms that “...the status of the habitats will be monitored by the SZC Co. land management team seasonally to ensure appropriate management is undertaken”. Could the Applicant confirm whether it intends to undertake monitoring at Westleton and if so, provide any further details and confirm how this is secured? b) Regarding provision 12.1 of the Deed of Obligation ('Habitats Bond') (Rev 7) submitted at Deadline 7, are the Local Authority bound to delivery of the Marsh Harrier Compensatory Habitat Report in line with Requirement 14C of the dDCO in the situation of a "Default Event"?</p>	
HRA.3.4	Applicant	Minsmere Monitoring and Mitigation Plan (MMP) [REP5-105] The Applicant has confirmed at Deadline 7 [Doc 9.73] that measures proposed by NE in [REP6-042] to mitigate impacts from construction workers are acceptable and can be reflected in the	

		MMP. Can the Applicant update the MMP accordingly?	
HRA.3.5	Applicant	Additional mitigation for recreational pressure Can the Applicant provide an update with regards the discussions on the further access improvements in the local area, as referenced in Doc 9.73, Appendix A - Response to NE, RSPB/SWT responses to Deadline 6?	
HRA.3.6	Natural England	Re. Question CG.2.6 of ExQ2 [PD-034] In NE's response to Question CG.2.6 of ExQ2 at Deadline 7, NE requested "...that the ExA defer our input to Part 3 of Examiner's questions, when we will aim to provide a response by Deadline 8". Can NE please provide its response to Question CG.2.6 of ExQ2 [PD-034].	
HRA.3.7	Natural England	Southern North Sea (SNS) SAC (Marine mammals) (Physical interaction with project infrastructure – collision) NE's RR [RR-0878] highlighted the risk of collision to mobile species including from marine vessel activity, capital dredging, piling and drilling works. Subsequently, NE [REP2-153] confirmed it had no further concerns regarding physical interaction between project infrastructure and marine mammals. Can NE please confirm what information resolved their concerns?	