



THE PLANNING ACT 2008

THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES
2010

The Sizewell C Project

**Natural England's Comments on the *Examining Authority's Report on the
Implications for European Sites* [PD-053]**

Planning Inspectorate Reference: EN010012

12th October 2021

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1. Summary

- 1.1. Natural England advise that the Examining Authority's Report on the Implications for European Sites (RIES) [PD-053] is largely an accurate representation of the outstanding issues that The Sizewell C Project may have on European protected sites.
- 1.2. We have provided detailed comments on specific points for clarification, as well as updates on progress that has been made on these issues between ourselves and the Applicant since publication of the RIES below.

2. Detailed Comments

2.1. General

- 2.1.1. It is Natural England's advice that pushing any Habitats Regulations Assessment (HRA) conclusions for integral and inextricably linked elements of the project down the line into other consenting regimes beyond the Development Consent Order (DCO) raises the likelihood that cumulative and 'in combination' impacts in these regards may get missed/downplayed, and we wish to draw the Examining Authority's attention to this point.
- 2.1.2. For example, the current Water Supply Strategy proposes a mains pipeline to the site from the central/ northern Suffolk Water Resource Zone (WRZ). The environmental impacts of this pipeline have not yet been fully assessed through the HRA process. Neither have the interim solutions of a desalination plant as proposed through Change 19 [PD-050] (not considered within the RIES) and tankered water supply. Currently, the Applicant's position is 'no likely significant effects (LSE)' to any European sites from water use as stated in [REP7-073] and summarised in paragraph 3.2.55 of the REIS. Clearly, such works could lead to a LSE on those European sites already scoped into the HRA or European sites further afield through the pipeline works, abstraction of this magnitude and other associated works to facilitate it. The water supply is a fundamental component of the eventual operation of the project, and the potential impacts of its construction should be clearly assessed in accordance with sections 4.2 and 5.15 of National Policy Statement EN-1 (NPS EN-1), sections 3.7 and 3.9 of NPS EN-6 and paragraph 3.3.9 of the Planning Inspectorate's Scoping Opinion for the Proposed Sizewell C Nuclear Development (July 2019) [APP-169]. The same principle applies to, for example, potential impacts from chlorination and hydrazine on European sites. In that instance, the Applicant has referenced that Natural England would be further consulted on the Water Discharge Activity (WDA) permit and, within our Statement of Common Ground (SoCG) with them, lists "Permitting as relevant" as the mechanism for securing mitigation/ compensation measures in the DCO.

We previously provided advice on this in our Relevant Representations [RR-0878] (paragraph 2.3) and Written Representations [REP2-153] (paragraphs 3.12 – 3.15) which we reiterate at this time.

2.1.3. With such impact assessments not yet available, Natural England is unable to advise on whether or not these elements of the project proposals would have an AEoI of European sites at this time.

2.1.4. We also wish to reiterate that Natural England have advised the Applicant on HRA issues throughout our significant pre-application engagement with them between 2012 - 2020, including through the following statutory consultations under Section 42 of the Planning Act 2008:

- Natural England's response to the Stage 1 Consultation: Initial Proposals and Options for Sizewell C Proposed Nuclear Development (our ref: 71859, dated 6th February 2013);
- Natural England's response to the Sizewell C – Stage 2 Consultation: 23 November 2016 to 3 February 2017 (our ref: 202551, dated 2nd February 2017);
- Natural England's response to the Sizewell C – Stage 3 Consultation: 4th January 2019 to 29th March 2019 (our ref: 272181, dated 29th March 2019);
- Natural England's response to the Sizewell C – Stage 4 Consultation: 18th July 2019 to 27th September 2019 (our ref: 289446, dated 26th September 2019);

We have further reiterated this advice throughout pre-application workshops and document reviews facilitated by the Applicant. We do not therefore consider that HRA issues were addressed by the Applicant in sufficient detail at pre-application. Rather, we were provided with key information to review in this regard for the first time at formal submission of the application, and into the examination period during which time essential information which was omitted from the initial application was provided. Assurances from Natural England on many of the HRA issues were not therefore obtained before the application was submitted, contrary to the advice given in paragraph 4.2 of the Planning Inspectorate's advice note 10.

2.1.5. We agree with paragraph 3.3.6 of the RIES that there are a number of inconsistencies with regards to the Sweetman judgement¹ where the Applicant has concluded 'no LSE' in their shadow HRA but proposed mitigation measures.

¹ People Over Wind and Sweetman vs Coillte Teoranta (2018)

2.2. Terrestrial Ornithology

2.2.1 The creation of terrestrial non-wetland habitat as compensation for displaced marsh harriers is sub-optimal. Residual concerns about the extent of this experimental approach, however, are not deemed to constitute an impact as these can be addressed by a monitoring strategy and adaptive management. As part of this approach, the Applicant has already proposed additional marsh harrier habitat as compensation. The Applicant's original self-imposed constraint, however, which limited their area of search within hydrologically unsuitable locations for wetland creation, now appears to have been removed, yet the potential additional compensation is also terrestrial non-wetland which significantly reduces its ability to support other displaced bird species.

2.2.2 For a development of this scale, Natural England's position is that the information provided in the HRA is insufficient to exclude adverse effect on site integrity for breeding and non-breeding gadwall and shoveler in the absence of any compensation. Whilst the use of sub-optimal habitat has been addressed in relation to marsh harrier, it cannot support displaced SPA waterbirds that, unlike marsh harrier, cannot utilise non-wetland habitats. A single area of wetland habitat could support both marsh harriers and other waterbirds (in addition to other non-SPA wetland birds affected).

2.3. Marine Ornithology

2.3.1. Natural England advise that the issues discussed in the RIES regarding European sites designated for marine ornithology are an accurate reflection of representations made at the time.

2.3.2. However, since publication of the RIES, the Applicant has addressed our concerns and made sufficient alterations to Revision 3.0 outline Vessel Management Plan (oVMP) [REP8-106] that we advise that there will be no adverse effect on the integrity of overwintering red-throated diver in the Outer Thames Estuary Special Protection Area if this plan is secured in the Deemed Marine Licence (DML).

2.4. Marine Mammals

2.4.1. **Section 4.4.18** – Natural England advise that we no longer consider that compensation for the loss of foraging area is required, as the Applicant has demonstrated that any impacts can be adequately mitigated.

2.4.2. **Section 4.4.26** - A Site Integrity Plan (SIP) is used to ensure no AEoI of a site, not to demonstrate no impact as stated here. It is also only required to assess the plan or project in-combination with other plans or projects, not alone.

2.4.3. **Section 4.4.31** - To clarify, the issue is how multiple SIPs from multiple plans or projects will be managed alongside each other, which is yet to be resolved. For this reason, we cannot rule out an AEoI.

- 2.4.4. **Section 4.6.7** – While Natural England are unable to advise no AEoI on the Southern North Sea Special Area of Conservation (SAC), this is part due to a need for regulators to develop a mechanism to manage multiple SIPs.
- 2.4.5. **Annex 1** – Grey seal are not a feature of the Plymouth Sound and Estuaries SAC.
- 2.4.6. **Annex 2** – For clarity, Natural England are satisfied that there is no AEoI on either Grey seal from the Humber Estuary SAC, or harbour seal from the Wash and North Norfolk Coast SAC
- 2.4.7. Natural England are submitting comments on Revision 3.0 of the Southern North Sea SIP at Deadline 10. We advise that there are still outstanding issues with this SIP which we require to be addressed before we can conclude no AEoI to the Southern North Sea SAC.

2.5. Fish

- 2.5.1. Natural England advise that the issues discussed in the RIES regarding European sites designated for fish are an accurate reflection of representations made, and we have no further comment to add.
- 2.5.2. Additionally, no new information has been provided by the Applicant which has progressed any of the issues mentioned since the publication of the RIES.

2.6. Recreational Disturbance

- 2.6.1. Since the publication of the RIES the Applicant has produced significant further work on recreational disturbance.
- 2.6.2. Natural England welcomes the work the Applicant has undertaken to incorporate the advice that we have previously provided on this issue and consider that progress has been made in addressing that advice.
- 2.6.3. Despite some shortfalls in the Applicant's evidence base and our previously stated concerns, it is our advice that new information submitted at Deadline 8 has significantly progressed this issue.
- 2.6.4. Having reviewed the substantial new additions included in the Informal Recreation Strategy [REP8-135] and Monitoring and Mitigation packages [REP8-088], we advise that, in combination, the suite of mitigation measures already committed to are sufficient to avoid an AEoI on the Minsmere to Walberswick, Alde-Ore & Butley Estuaries and Sandlings European sites due to recreational disturbance.
- 2.6.5. It is there Natural England's updated position that impacts can be adequately mitigated, provided mitigation measures proposed through these documents are robustly secured and implemented. We advise that there is ongoing engagement with relevant stakeholders in the finalising and delivery of this strategy including local planning authorities, AONB Partnership, RSPB, National Trust and Natural England.

2.7. Air Quality

- 2.7.1. Natural England remain concerned on the increased deposition of nitrogen oxides (NOx) arising from diesel generators on the Minsmere to Walberswick European sites only.
- 2.7.2. The Applicant has gone some way towards assessing the impacts of the diesel generators for use during construction [APP-212 & APP-145] and the diesel generators which will be used for the temporary desalination plant [REP9-026]. However, these analyses were both done in isolation and fail to assess the cumulative impact of all diesel generators and any other sources of NOx from other sources.
- 2.7.3. The Minsmere to Walberswick SAC and SPA [Site Improvement Plan](#) specifically identifies air pollution from NOx and atmospheric nitrogen as a threat to the favourable condition of these sites.
- 2.7.4. While it is not the Applicant's responsibility to return these sites to favourable condition they are obligated as a section 28G body to ensure their actions do not interfere with the sites' conservation objectives.
- 2.7.5. Natural England's position is that the Applicant has not provided enough justification as to why increased NOx deposition over a number of years in close proximity to a site that already faces pressure from NOx will not interfere with its conservation objectives.

2.8. Physical Interaction

- 2.8.1 Since the publication of the RIES Natural England's concerns regarding pylons and collisions have recently been addressed by the Applicant through the proposed use of line markers as mitigation and carcass searches to monitor for impacts. The methodologies will need to be agreed, and necessary triggers to retrofit markers if they cannot be employed at the time of construction. Further information must therefore be provided by the Applicant before AEoI of the European designated sites via this impact pathway can be ruled out.