

## NOT PROTECTIVELY MARKED

Mr Leigh  
Department for Business, Energy and Industrial Strategy  
1 Victoria Street  
London.  
SW 1H 0ET

5<sup>th</sup> May 2022

Dear Mr Leigh,

**Application EN010012 for The Sizewell C Project by NNB Generation Company (SZC) Limited (SZC Co.) – Supplementary information in relation to breeding marsh harriers within the EDF Sizewell Estate**

I write on behalf of NNB Generation Company (SZC) Limited (“the Applicant”) to advise you of a recent factual development of relevance to the forthcoming determination of its application for a development consent order to authorise the construction and operation of a new nuclear power station at Sizewell in Suffolk.

As you will be aware, one of the issues that is addressed in the application material and was considered during the examination of the application is the potential for impacts on marsh harriers. Surveys carried out by the Applicant this spring have recorded a pair of marsh harriers nesting in an area of Sizewell Marshes SSSI that would be permanently lost to construct Sizewell C, if consented. This is the first time breeding marsh harriers have been recorded in Sizewell Marshes SSSI since annual surveys of the site began 25 years ago.

In addition, breeding marsh harriers have been recorded within the replacement reedbed habitat that the Applicant has created at Aldhurst Farm, as they have done over the past few years.

Breeding marsh harrier are a qualifying feature of the adjacent Minsmere – Walberwick Special Protection Area (SPA) and Ramsar site.

In view of the absence of breeding marsh harrier from Sizewell Marshes SSSI until now and only very recent nesting activity at Aldhurst Farm, the Shadow Habitats Regulations Assessment (HRA) [APP-145] and Shadow HRA Addendum [AA-173] do not assess potential direct impacts on marsh harriers nesting outside of the SPA and Ramsar site. Rather, their focus is to assess disturbance from construction activities to breeding marsh harriers that forage over the functionally-linked Minsmere South Levels and Sizewell Marshes SSSI, but nest within the SPA and Ramsar site. This distinction is important and the assumption to date that nesting is effectively confined to the SPA and Ramsar site has not been challenged by Interested Parties, in particular Natural England and the RSPB.

However, in response to the recent breeding activity outside of the SPA and Ramsar site, we have prepared a further Shadow HRA Addendum (May 2022) to address this additional impact pathway that now exists, that is to say direct impacts due to habitat loss and/or disturbance on marsh harriers nesting within the main development site, the retained parts of Sizewell Marshes SSSI and/or Aldhurst farm. This document is submitted as “Attachment A”. The updated assessment concludes that the recent breeding activity does not change the outcome of the Shadow HRA, that is to say that it remains the case that the potential for adverse effects is limited to the potential displacement of birds from functionally linked foraging

## NOT PROTECTIVELY MARKED

habitat, these effects being addressed via the creation of compensatory foraging habitat on former arable land.

The Applicant has also considered whether there are any implications for assessment of likely significant environmental impacts in the Environmental Statement [APP-224]. Whilst for the same reasons as set out above the Environmental Statement does not specifically contemplate marsh harriers breeding within Sizewell Marshes SSSI, it was noted in Table 14.23 that there was evidence of breeding within Aldhurst Farm. The assessment considered impacts on breeding birds for example at Paragraph 14.12.20 of [APP-224] which states “ ... habitat suitable for foraging **and breeding** birds would be lost within the site as a result of the proposed development. Loss of habitat can affect birds directly **by removing habitat required for nesting** and for foraging (leading to a reduction in breeding populations and breeding success); **and indirectly through habitat fragmentation** potentially making the remaining habitat patches too small to support viable **breeding** or wintering populations (requiring bird populations to travel further afield to find resources such as food and nesting sites). (**Emboldened text for emphasis**).

The ecological impact assessment was undertaken separately for each receptor, including breeding marsh harrier, for which it was concluded that impacts would be **significant (moderate adverse)**, due primarily to potential noise, visual and recreational disturbance to foraging marsh harriers within Sizewell Marshes SSSI. The Applicant does not consider that the assessment, or the conclusions reached, are sensitive to occasional breeding of marsh harriers within Sizewell Marshes SSSI.

It is noted that the Environmental Statement [APP-224] also states at paragraph 14.12.22 that “To mitigate for the loss of habitat within Sizewell Marshes SSSI (and provide alternative wetland habitat), primary mitigation measures to create replacement 2km of ditches and 5.4ha of reedbed and open water habitat have already been implemented at Aldhurst Farm”. The recent survey record of marsh harriers breeding there every year since 2019 serves to demonstrate the effectiveness of this mitigation.

As part of this same exercise, the Applicant has also considered whether the mitigation and control measures that have already been proposed under the draft DCO (having regard to the environmental information) would remain appropriate and adequate in circumstances where marsh harrier continue to breed within Sizewell Marshes SSSI, or indeed Aldhurst farm, during the construction phase of the Project.

In relation to land within the main development site, paragraph 1.4.4 of the Code of Construction Practice [REP10-072] secured by draft DCO Requirement 2 commits the Applicant to the following controls:

- All vegetation removal must be supervised by (the) ECoW and must have regard to the breeding birds and any additional measures that may be defined in a relevant protected species licence or mitigation strategy; and
- If a protected species or signs of a protected species are found within the active construction site, the ECoW must be contacted immediately to advise on the appropriate course of action.

In addition, the Terrestrial Ecology Monitoring & Mitigation Plan (TEMMP) secured under Draft DCO Requirement 4 commits the Applicant to carry out annual breeding bird surveys on land in the vicinity of the main development site. Details are provided in Table 3.1 ‘Sizewell Marshes SSSI – Monitoring of Retained Areas’, which specifically include a requirement for surveys of Sizewell Marshes SSSI and Aldhurst Farm. These measures would ensure that any Marsh Harriers nesting within the relevant areas would be identified and appropriate adaptive measures taken in response. The survey results and adaptive measures would need to be agreed with the Ecology Working Group and Environmental Review Group established under Schedule 11 of the Deed of Obligation.

## NOT PROTECTIVELY MARKED

Marsh harrier are also protected under the Wildlife and Countryside Act 1981 (as amended) making it an offence to intentionally take, damage or destroy a nest whilst in use or being built. They are also listed under Schedule 1 of the Act, making it an offence to intentionally or recklessly disturb the birds whilst nest building or at a nest containing eggs or young, or to disturb the dependent young. One of the main purposes of the measures identified above is to ensure that no such offence is committed, and this would apply equally in relation to Marsh harriers.

For those reasons, the Applicant considers that the mitigation and control mechanisms that have already been proposed and secured remain appropriate and adequate to address the potential impact.

Yours sincerely,



Carly Vince  
Chief Planning Officer, SZC Co.

**Encl. Attachment A**

c.c. Siân Evans – Planning Inspectorate

**NOT PROTECTIVELY MARKED**

## **ATTACHMENT A**





# The Sizewell C Project

## 5.10 Shadow Habitats Regulations Assessment Addendum (May 2022)

---

Revision: 1.0  
Applicable Regulation: Regulation 5(2)(e)  
PINS Reference Number: EN010012

---

May 2022



---

## CONTENTS

1	ASSESSMENT OF EFFECTS OF THE SIZEWELL C PROJECT ON THE MINSMERE-WALBERSWICK SPA AND RAMSAR SITE BREEDING MARSH HARRIER POPULATION: IMPLICATIONS OF RECENT NESTING ON FUNCTIONALLY LINKED LAND .....	1
1.1	Background .....	1
1.2	The potential for adverse effects .....	4
1.3	Conclusions.....	6



# 1 ASSESSMENT OF EFFECTS OF THE SIZEWELL C PROJECT ON THE MINSMERE-WALBERSWICK SPA AND RAMSAR SITE BREEDING MARSH HARRIER POPULATION: IMPLICATIONS OF RECENT NESTING ON FUNCTIONALLY LINKED LAND

## 1.1 Background

### a) Assessment and nesting occurrence as determined in the shadow Habitats Regulations Assessment

1.1.1 The potential effects of the construction and operation of the Sizewell C Project (subsequently referred to as ‘the Project’) on European designated sites have been assessed in the shadow Habitats Regulations Assessment (HRA) [APP-145] and shadow HRA Addendum [AS-173]. This includes consideration of the potential effects on the breeding marsh harrier population which is a qualifying feature of the Minsmere-Walberswick Special Protection Area (SPA) and Ramsar site, as assessed at sections 8.8d) and 8.9 for the SPA and Ramsar site, respectively. Further consideration of the potential effects on this SPA population is presented in paragraphs 4.3.52 – 4.3.69 of the Report on the Implications for European Sites [PD-053].

1.1.2 The Minsmere-Walberswick SPA (and Ramsar site) lies to the north of the main development site for the Project. Along most of its length, the northern boundary of the main development site is separated from the SPA by distances of between several hundred metres to more than a kilometre, although the eastern part of the SPA is adjacent to this boundary for a short distance (Figure 4.1 in the shadow HRA [APP-145]). The shadow HRA [APP-145] focussed the assessment on the known marsh harrier nest sites in the Minsmere reedbed, which is within the SPA and beyond the distance at which most potential effects from the Project are considered likely to occur<sup>1</sup>. While the ES acknowledged that a breeding territory had been established within the new reedbed creation area at Aldhurst Farm, this was not deemed relevant to the shadow HRA given its location outside the SPA and Ramsar site and given that it was (at the time) a single breeding occurrence. Thus, in terms of the potential for effects on the SPA marsh

<sup>1</sup> Noting that for the increased recreational disturbance effect pathway, which has the potential to manifest at greater distances from the main development site, other factors (notably the management and control of visitors) meant that effects on nesting birds are highly unlikely.

harrier population, attention was focussed on the use of functionally linked habitat outside the SPA (and in closer proximity to the main development site) for foraging and the extent to which the Project could (potentially) affect this. This focus is apparent from the Report on the Implications for European Sites [PD-053], which does not refer to the potential for effects to occur at the marsh harrier nest sites.

- 1.1.3 The shadow HRA [APP-145] concluded that noise and visual disturbance associated with construction of the main development site could result in the displacement of marsh harriers from functionally linked foraging habitat in the Sizewell Marshes and, to a lesser extent, the Minsmere South Levels. On the basis of a number of highly precautionary assumptions, such displacement was considered to have the potential to lead to an adverse effect on the SPA marsh harrier population, with this being addressed through the creation of compensatory foraging habitat on former arable land within the EDF Sizewell estate to the north of the main development site, adjacent to the SPA. This compensatory habitat includes both terrestrial and wetland components. The terrestrial habitat creation has already been substantially completed and is described in SZC **On-site Marsh Harrier Compensatory Habitat Strategy** (September, 2021) [REP10-128]. The additional wetland habitat is to be created between mid-August 2022 and February 2023 as outlined in SZC Co.'s response to the Secretary of State's letter of 18<sup>th</sup> March 2022. Requirement 27 of the dDCO requires a marsh harrier implementation plan in general accordance with [REP10-128] to be agreed with East Suffolk Council, following consultation with Natural England, before commencement.

b) The occurrence of nesting marsh harriers outside the SPA

- 1.1.4 It has recently become apparent that marsh harriers have started to nest in reedbed habitats which are outside the Minsmere-Walberswick SPA (and Ramsar site) and within, and in the vicinity of, the main development site for the Project. Since 2019 nesting activity has been recorded in the new reedbeds created by SZC Co. at Aldhurst Farm to help compensate for the unavoidable permanent loss of 5.74ha of Sizewell Marshes SSSI needed to build Sizewell C. Nesting activity has, for the first time, also been recorded within Sizewell Marshes SSSI in the current (2022) breeding season. While there is also reedbed habitat within the SSSI that is



**NOT PROTECTIVELY MARKED**

potentially suitable to support nesting marsh harrier, to date there is no other known breeding activity in the SSSI based on 25 years' monitoring<sup>2</sup>.

- 1.1.5 The locations of the above nesting areas are approximately 3.5km (at Aldhurst Farm) and 2.5km (at Sizewell Marshes SSSI) from the marsh harrier nesting area in the Minsmere reedbeds within the SPA and, as such, are sufficiently close to be regarded as having the potential to be functionally linked with the SPA population. Given the pattern of regular use of the Aldhurst Farm reedbed by nesting marsh harrier as observed over recent years (see below), including the current (2022) breeding season, and the occurrence of a breeding pair in 2022 in Sizewell Marshes SSSI, this is therefore SZC Co's revised assumption for the purposes of the sHRA.
- 1.1.6 The first nesting activity in Aldhurst Farm reedbeds was recorded in 2019, with observations suggesting that a single pair was nesting there. Subsequently, two females (believed to be associated with the same male<sup>3</sup>) were considered likely to have nested at Aldhurst Farm in 2020, with anecdotal evidence suggesting two pairs also nested there in 2021. In the current breeding season (2022) it appears that single females have established nests in Aldhurst Farm and Sizewell Marshes SSSI. The nesting activity in the current breeding season has been established during breeding bird surveys that are being undertaken by the Project. As in 2020, it appears that both of the current nesting attempts are associated with a single male.
- 1.1.7 The occurrence of this recent nesting activity on functionally linked land means that there is potential for direct habitat loss and disturbance associated with the Project to have effects on nesting marsh harrier, which represents a change to the conclusions reached in the shadow HRA [APP-145] in this regard (see above). Therefore, it is necessary to also consider whether the activities associated with the Project could result in adverse effects on the SPA population via effects (direct habitat loss and visual, noise and recreational disturbance) on the birds nesting on the functionally linked land at Aldhurst Farm and Sizewell Marshes SSSI. This assessment (both alone and in-combination with other plans and projects) is set out below.

<sup>2</sup> Breeding bird surveys of Sizewell Marshes SSSI have been carried out by Suffolk Wildlife Trust on behalf of Nuclear Generation Limited (part of EDF) on an annual basis since 1997

<sup>3</sup> Marsh harriers can be polygynous with a single male mating with multiple females and contributing to provisioning these females and the subsequent broods.

## 1.2 The potential for adverse effects

1.2.1 Marsh harriers nesting at Aldhurst Farm and the Sizewell Marshes are vulnerable to potential effects from the Project activities which, for example, could; (i) cause the nesting attempts to fail; (ii) temporarily displace nesting pairs from the sites (e.g. noise and visual disturbance during construction - see Figure 8A.1 in the shadow HRA Addendum [AS-173]); or (iii) cause permanent loss of the nesting habitat (i.e. for the current nesting attempt within the Sizewell Marshes SSSI).

1.2.2 There is, however, no potential for adverse effects to occur on the SPA population as a consequence of the recent nesting activity on functionally linked land. This is because the SPA population and the associated conservation objectives are not dependent on such nesting activity. The reasons for this are set out below in terms of (i) the potential for effects to arise on the SPA population and (ii) the historical dependence of the SPA population on the provision of nesting habitat on functionally linked land.

- Effects on the population nesting within the designated land: As described above, the potential for direct effects on nesting birds is limited to those using sites on functionally linked land, which would not affect the population nesting within the designated land. Thus, potential effects on birds using functionally linked land for nesting contrasts with the situation in relation to birds which nest within the SPA but may be displaced from foraging habitat on functionally linked land (because the latter situation could affect the population nesting within the SPA).

This aligns with the guidance on functionally linked land commissioned by Natural England, which recognises that assessments have to determine how critical the functional linkage is to the designated population and whether it is necessary to maintain or restore favourable conservation status of the qualifying feature<sup>4</sup>. This is particularly important where, as here, the SPA population is regarded as being in favourable condition (having a 'maintain' objective), with the most recently available estimate of 17 nests in 2018 (as detailed in Table 6.6 in the shadow HRA [APP-145]) being

<sup>4</sup> Chapman, C. and Tyldesley, D. (2016) Functional linkage: How areas that are functionally linked to European sites have been considered when they may be affected by plans and projects – a review of authoritative decisions. Natural England Commissioned Reports, No. 207.

**NOT PROTECTIVELY MARKED**

slightly above the citation population size of 15 females (recorded pre-1991)<sup>5</sup>.

Furthermore, the SPA population has fluctuated in size over the years (e.g. up to 31 nests were recorded in 2007 - Table 6.6 in the shadow HRA [APP-145]) and the extent of reedbed nesting habitat within the SPA has not declined, with much of it being actively managed to ensure its suitability for key nesting species, such as marsh harrier<sup>5</sup>. This further demonstrates that the designated land provides sufficient nesting habitat to maintain the population at or above the citation level and avoid deterioration from its current level, and that the SPA population is not dependent on functionally linked land for nesting.

- Absence of historical dependence of the designated population on functionally linked land for nesting: As described above, the records of nesting activity at Aldhurst Farm and the Sizewell Marshes derive from recent years only (i.e. 2019 - 2022). Aldhurst Farm has been subject to a wetland habitat creation scheme, which was completed in 2015/16 [REP5-126]. Prior to this it was arable farmland. Whilst the recent marsh harrier nesting activity is testament to the success of the habitat creation, and the speed at which it has matured, it is clear that prior to the wetland habitat creation scheme at Aldhurst Farm, the land had little or no potential to provide supporting nesting habitat for the SPA population (noting that the SPA has been designated since 1991). The current breeding activity in Sizewell Marshes SSSI is the first that has been recorded in the SSSI in 25 years of monitoring.

As explained above, it is self-evident that land within the SPA provides sufficient nesting habitat to maintain the population at or above the citation level and avoid deterioration from its current level, so that the SPA population is not considered to be dependent on nesting habitat on functionally linked land outside the designated site. This assessment is further supported by the fact that such nesting activity is almost entirely limited to recently created nesting habitat.

- 1.2.3 These conclusions apply equally to 'Project alone' and the 'Project in-combination' assessments because the SPA population and associated conservation objectives are not dependent on the nesting activity within the functionally linked land.

<sup>5</sup><https://designatedsites.naturalengland.org.uk/Marine/SupAdvice.aspx?SiteCode=UK9009101&SiteName=mins mere&SiteNameDisplay=Minsmere-Walberswick+SPA&countyCode=&responsiblePerson=&SeaArea=&IFCAAarea=>

---

## 1.3 Conclusions

- 1.3.1 The assessment of the potential effects of the Project on the Minsmere-Walberwick SPA (and Ramsar site) breeding marsh harrier population was undertaken on the basis that nesting by marsh harrier was limited to the reedbed habitats within the designated site. Recent nesting activity by marsh harriers on land which is outside, but functionally linked to, the SPA (and Ramsar site) means that it is necessary to also consider whether the conclusions reached in the shadow HRA [APP-145] of no effect on site integrity in respect of breeding marsh harrier remain valid.
- 1.3.2 The SPA population is not dependent on the nesting habitat on functionally linked land and such nesting habitat has only been created recently or has never previously been recorded being used (in 25 years of monitoring). It is therefore evident that this recent nesting activity by marsh harriers does not affect the conclusions of the shadow HRA [APP-145]. This is the case for both the 'Project alone' and the 'Project in-combination' assessments.
- 1.3.3 Thus, in relation to the Minsmere-Walberswick SPA (and Ramsar site) breeding marsh harrier qualifying feature, it remains the case that the potential for adverse effects is limited to the potential displacement of birds from functionally linked foraging habitat due to noise and visual disturbance during construction (with this effect being addressed via the creation of compensatory foraging habitat on former arable land within the EDF Sizewell estate to the north of the main development site, adjacent to the SPA). Therefore, the conclusions reached in the shadow HRA [APP-145] are unaffected by the recent nesting activity on functionally linked land.