



THE PLANNING ACT 2008

THE INFRASTRUCTURE PLANNING (ENVIRONMENTAL PROCEDURE RULES)  
2010

East Anglia THREE

**Schedule of Natural England's responses to Examining Authority's second  
round of written questions.**

**6<sup>th</sup> October 2016**

Question to:		Question:	Natural England's Answer at Deadline 2:
<b>ECMM</b>	<b>Ecology Offshore – Marine Mammals</b>		
ECMM16	Natural England (NE)	At the first Development Consent Order (DCO) Issue Specific Hearing (ISH) on 29 June 2016, Schedule 1 Part 3 Requirement 5 of the dDCO was discussed. The Applicant described footprints for foundation bases and that wider 4m diameter piles would be required for triangular bases with smaller 3.5m diameter piles for square bases, but the square bases would have a greater pile footprint. Can NE confirm that it is content with the temporal and spatial piling assessment, and that it is immaterial for EIA or HRA assessment whether 3.5m or 4m diameter piles are used in the way the Applicant proposes?	<p>Natural England was not present for the discussions pertinent to this question at the first DCO Issue Specific Hearing on 29th June 2016, and therefore cannot comment on the content of those discussions. .</p> <p>However, Natural England can confirm that we are satisfied with the piling assessment undertaken in the Environmental Statement. We are content that the worst case scenario of maximum hammer energy of 2,000KJ (as a proxy for 1,800KJ) for 3.5m jacket piles was assessed. Although 4m diameter piles are larger, fewer of them would be required. Therefore it is immaterial whether 3.5m or 4m diameter piles are used as the Applicant proposes. (See table 12.2 of Chapter 12 Marine Mammal Ecology for details).</p>
<b>EL</b>	<b>Ecology Onshore</b>		
EL9	NE	Is NE content that Schedule 1 Part 3 Requirement 21 of the dDCO submitted at Deadline 4 [REP4-003] sufficiently secures	Natural England's view is that restrictions on winter working are essential measures in relation to mitigating any potential impacts on wintering Brent Geese on the Deben Estuary SPA

Question to:		Question:	Natural England's Answer at Deadline 2:
		mitigation in relation to wintering Brent Geese?	We are content that the detail on the working restrictions is included in the Outline Landscape and Ecological Management Strategy (OLEMS). However, as agreed in the Statement of common ground we would suggest that the draft DCO includes a signpost to this particular element of the OLEMS.
<b>HRA</b>	<b>Habitats Regulations Assessment</b>		
HRA12	Applicant and NE	In Appendix 2 of Information for Habitats Regulations Assessment [APP-103] at paragraph 16, the Applicant refers to a NE and JNCC document (Natural England 2013). Could either party please provide this as an examination document?	After discussions with Natural England, the Applicant has confirmed that they will provide a copy of the requested document to the Examining Authority.
HRA13	All Interested Parties	The ExA invites responses related to the Applicant's assessment of effects on the Southern North Sea pSAC [REP4-016], the draft Site Integrity Plan (SIP) [REP4-013] and the drafting of Condition 13 of the dDMLs to secure the SIP [REP4-003 and 004].	Natural England has previously submitted comments on the draft In-Principle Site Integrity Plan at Deadline 4.  Natural England submitted comments on the Applicant's assessment of effects on the Southern North Sea pSAC at Deadline 4 and has subsequently had further discussions with the Applicant regarding the assessment. Following consultation with Natural England, we understand that the

Question to:	Question:		Natural England's Answer at Deadline 2:
			<p>Applicant will now be undertaking further assessment work to be submitted at Deadline 6. It is also Natural England's intention to submit comments on the updated assessment at Deadline 6.</p> <p>Natural England is satisfied that the drafting of condition 13 adequately secures the Site Integrity Plan.</p>
HRA20	NE	The approach proposed by the Applicant in relation to the draft SIP leaves detailed mitigation to be determined post-consent. Is NE satisfied that this approach meets the requirements of the Habitats Directive?	<p>Natural England is satisfied that the approach taken by the Applicant will be sufficient to avoid an adverse effect on the integrity of the Southern North Sea pSAC. In order to meet the requirements of the Habitats Directive, the Secretary of State, acting as the relevant competent authority, must be satisfied that mitigation measures aimed at minimising or removing the negative impacts of the plan or project are secured. Natural England considers the SIP to be a pragmatic approach to the present status of the pSAC. While the full details of mitigation are not currently presented in the SIP, Natural England is confident that the SIP provides a pathway to appropriate mitigation measures, the fine detail of which will be subject to further approval by MMO, acting as the then relevant competent authority, in consultation with Natural England. This will happen before the development can</p>

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			proceed, in accordance with the requirements of the Habitats Directive.
<b>CL</b>	<b>Construction onshore</b>		
CL11	Environment Agency, NE, Local Planning Authorities (LPAs)	Please comment on the acceptability of the amendments to Schedule 1 Part 3 Requirement 13(2) in the dDCO (Landfall method statement) [REP4-004].	<p>Natural England welcomes the amendments that have been made to Schedule 1 Part 3 Requirement 13(2) in the dDCO as they ensure that consideration is given to ongoing monitoring and maintenance of the project infrastructure over the lifetime of the project..</p> <p>However, this amendment does highlight potential issues for managing any infrastructure left in situ beyond the lifetime of the project. Natural England advises that this will need to be considered at the time of decommissioning.</p>
<b>DCO</b>	<b>Draft Development Consent Order (dDCO)</b>		
DCO1	Applicant, LPAs, NE and other agencies with an interest in securing mitigation	<b>Article 2(1) – “Commence”</b> Further to the discussion of this definition at the first DCO ISH [PD-005 Annex F at pg iv], the most recent version of the dDCO [REP4-003-4] still contains a broad range of terrestrial operations that can take place before formal commencement, defined as:	Natural England supports the Examining Authority's question and probing of this issue. However, Natural England acknowledges that it is for the Applicant to find a solution. With regards the amended wording that the Applicant provides, it is for the LPAs to comment when they have it. We

Question to:	Question:	Natural England's Answer at Deadline 2:
	<p><i>'site clearance, demolition work, archaeological investigations, environmental surveys, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements...'</i></p> <p>Later in the dDCO, there are Requirements which provide for the approval of plans or documents that are relevant to such operations; for example Requirement 20 (archaeology) provides that:</p> <p><i>'20.—(1) No stage of the connection works may commence until for that stage a written scheme of archaeological investigation (which accords with the outline written scheme of investigation (onshore)) has, after consultation with Historic England and Suffolk County Council, been submitted to and approved by the relevant planning authority.'</i></p> <p>As a consequence of the drafting in Article 2(1), it is still possible that 'archaeological investigations' could be carried out before formal commencement. As currently drafted, there is nothing to ensure that the written scheme of archaeological investigation has to have been approved before the start of 'archaeological investigations' that are carried out before formal</p>	<p>will also comment on it if we have any concerns.</p>

Question to:	Question:	Natural England's Answer at Deadline 2:
		<p>commencement, or to prevent pre-commencement works from having an uncontrolled adverse effect on archaeological assets.</p> <p>Similar considerations apply to elements of Requirements 11, 13, 14, 16, 17, 18, 19, 21, 22, 23, 24, 27, 28 and 29 all of which require the approval of a plan or document before commencement. These relate to documents such as the ecological management plan, the code of construction practice and the traffic management plan, or protection and mitigation for European protected species, again protecting or managing significant assets or outcomes from adverse effects.</p> <p>a) The Applicant is asked to propose a change to the drafting of Article 2(1) to ensure that pre-commencement works are not exempted from the operation of relevant plans and documents, or to explain more clearly why such a change is not required.</p> <p>b) LPAs are asked to respond to the Applicant's proposals at (a) above by Deadline 6 in the Examination timetable.</p>