

Date: 29 August 2024
Your ref: EN070008



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Dear David Wallace

NSIP Reference: EN070008

Consultation: Examining Authorities Second Written Questions

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

Please find Natural England's responses to the Examining Authorities second written questions at **Annex A** below.

For any further advice on this consultation please contact the case officer Robbie Clarey and copy to consultations@naturalengland.org.uk.

Yours sincerely

Robbie Clarey
Planning & Environment Lead Adviser

Annex A – Natural England’s Responses to the Examining Authorities Second Written Questions

Question Reference	Question	Natural England response
2.8.2	<p>Biodiversity Net Gain (BNG)</p> <p>Given that BNG on NSIPs is not yet mandatory, provide any information you wish the ExA and the SoS to take into account as to why it is considered a Requirement is necessary for this project?</p>	<p>As stated, BNG is not a mandatory requirement for this project. However, where the intention of the project is to follow best practise and deliver BNG, Natural England consider it appropriate to secure this via a requirement in the DCO. Without this, the overall impact on biodiversity is uncertain.</p>
2.8.5	<p>Site of Special Scientific Interest (SSSI)</p> <p>In the Deadline 1 submission [REP1-079, Paragraph 3.3], there is concern raised that there could be unacceptable harm to the Humber Estuary SSSI. This was raised by the ExA during ISH3, to which the Applicant had no certain reply on the current position. Have the concerns been addressed by the Applicant or, if not, what specifically remains outstanding and how should the SoS consider such matters if unresolved come the close of the Examination?</p>	<p>The Humber Estuary SSSI nationally designated site features that are affected by this proposal are the same as the internationally designated site features. Please refer to the points in the ‘Internationally designated sites’ section of our Deadline 4 response dated 29 July 2024 [REP4-092] for ‘amber’ and ‘yellow’ issues, that also apply to the Humber Estuary SSSI.</p> <p>Natural England’s outstanding ‘amber’ concerns regarding the Humber Estuary SSSI are the same as our comments regarding the Humber Estuary SPA. This is outlined in comment NE16 in our Deadline 4 response dated 29 July 2024 [REP4-092].</p>
2.8.6	<p>Article 19 of the dDCO</p> <p>Applicant – With regard to the relationship of the construction works to the nearby SSSIs, how Article 19 would work in practice?</p> <p>Natural England – What would the implications be upon designated SSSI if not amended? What changes would you request are made to Article 19 to reassure you the integrity of the SSSI would be preserved?</p>	<p>Natural England understand that this article does not seek to disapply the requirement of the Wildlife and Countryside Act for statutory undertakers to seek Assent where works could impact a SSSI (section 28H). As such, any additional works to survey and investigate the land which could affect the integrity of a SSSI would still require a notice for Natural England’s Assent.</p>
2.12.1	<p>Report on the Implications on European Sites (RIES)</p>	<p>See Annex B below which contains NE’s responses to all</p>

	<p>The ExA have published the RIES at the same time as these ExQ2, and the RIES contains questions for both parties. Please address these questions separately.</p>	<p>RIES Questions.</p>
<p>2.12.2</p>	<p>Adverse Effect on Integrity (AEol)</p> <p>In response to first written questions [REP1-078] [REP1-079], NE stated that an AEol could be ruled out for all European sites except for the Humber Estuary Special Protection Area (SPA), Special Area of Conservation (SAC) and Ramsar designations. On the basis of information to date in the Examination:</p> <p>1) Can an AEol now be ruled out for all European sites? If not, why not? 2) Are derogations, including compensation, necessary for any of the European sites and their qualifying features? 3) Are NE satisfied that the mitigation measures being relied upon by the Applicant, to enable an AEol to be ruled out, are sufficiently secured either with the dDCO and/ or other controlling documents/ management plans?</p>	<p>1) An EAOI cannot be ruled out until:</p> <ul style="list-style-type: none"> - the final details of acoustic mitigation (NE16) are provided and agreed - the final details of Natterjack Toad Mitigation are provided and agreed (NE30) <p>2) Derogations & compensation are considered unlikely to be necessary. The two remaining outstanding issues are considered likely to be agreed subject to the final mitigation design.</p> <p>3) For all issues labelled 'green' and 'yellow' within our Deadline 4 response, NE are content that any required mitigation is suitably secured. The only outstanding issues are the final design of acoustic mitigation (NE16) and Natterjack toad Mitigation (NE30), this will need to be included within the CEMP, or otherwise secured within the dDCO.</p>
<p>2.12.3</p>	<p>Minor Issues Remaining?</p> <p>The Applicant stated during ISH3 that only five minor points remained with Natural England [REP4-052, Paragraph 1.2]. It was not explained in any detail what those points are and whether they could be resolved in the Examination. Provide as much detail as possible on these points.</p>	<p>At the time of ISH3, there were 6 issues outstanding:</p> <ul style="list-style-type: none"> - NE3 - NE6 - NE9 - NE12 - NE16 - NE24 <p>Following review of the latest version of the HRA following ISH3, but prior to Deadline 4, only issue NE16 remained. See our D4 response for Natural England's updated position on each of these issues. Issue NE30 was also added as a result of the presence of Natterjack Toad.</p> <p>As it stands, Natural England's understanding is that there</p>

		<p>are now only two HRA issues outstanding at this stage. These were outlined as ‘amber’ issues in our Deadline 4 response dated 29 July 2024 [RER4-092]:</p> <ul style="list-style-type: none"> - NE16: requests further clarity on the proposed mitigation for noise and visual disturbance to non-breeding birds within functionally linked. - NE30: requests further information on impacts to Natterjack Toad during construction.
<p>2.12.4</p>	<p>Natterjack Toads</p> <p>It has now been accepted that natterjack toad habitat will be directly impacted by the Proposed Development through mole drilling, cabling works and construction works at the Dune Valve Station [REP4-018]. The mitigation measures listed do however remain the same.</p> <p>Applicant – provide further assessment of the impacts on these species, knowing now that the species is present in close proximity to the construction works. Also set out clearly why and how the intended mitigation would remain effective.</p> <p>NE – set out clearly your position regarding natterjack toads in respect of whether harm would occur, whether mitigation is effective, whether works could proceed without causing harm in a Habitats Regulation Assessment (HRA)/ land designation context</p>	<p>Natural England concur with para 6.2.99 of the HRA, which states that the installation of electrical cabling to the Dune Valve has the potential to kill or injure Natterjack Toads within Viking Fields associated with the Humber Estuary Ramsar designation. Thus, there is potential for an LSE without mitigation.</p> <p>The mitigation proposals outlined in HRA paragraphs 7.3.55-57, include the installation of fencing to avoid damage to habitats likely to be used by Natterjack Toads, and a fingertip search by an ECoW immediately prior to construction.</p> <p>Natural England would advise that the installation of fencing may in itself cause harm to this species, and/or form a barrier to the movement of the species. As such, we would advise that the approach is amended to be based around a habitat manipulation approach. This would involve sensitively managing the habitat along the route of the cable installation prior to works (and prior to the Natterjack Toad Breeding Season) to reduce the likelihood of Natterjack Toad using the area, but where they are still able to commute across it. The fingertip search & presence of an ECoW would still be required.</p> <p>The habitat manipulation methods should reduce the likelihood of Natterjack Toads being present in the cable installation area. Where the fingertip search indicates no presence of Natterjack Toads, the construction work in this</p>

		<p>area (including Mole Ploughing) is unlikely to cause an adverse effect on the Natterjack Toad population associated with the Ramsar Designation, and removes the likelihood of committing an offence under the Habitat Regulations.</p> <p>Nonetheless, there still remains a possibility of Natterjack Toads being present in the cable installation area. Where the DCO specifies that works must stop should Natterjack Toad be found during the ECoW fingertip search, until such a time as a mitigation licence is agreed, NE consider an adverse effect on the Natterjack Toad population associated with the Ramsar Designation could also be ruled out. In this scenario, licencing options are available; whilst Natural England cannot advise at this stage whether any licence would be issued, should the habitat manipulation method be used, any licence should only require the relocation of Natterjack Toads out of the working area, with no further complex mitigation or compensation necessary.</p> <p>Natural England have been in discussion with the applicant regarding Natterjack Toads, and have been advised that further survey will also be undertaken prior to construction. This is welcomed & would be necessary to inform a licence application should this be required.</p> <p>Where this mitigation approach is adopted and included within the CEMP, Natural England would have no further concern.</p>
2.12.5	<p>Acoustic Fencing</p> <p>Now that the Examination has moved on since the ExQ1 [PD-010, Q1.12.9], are NE content with 2.4- metre-high acoustic fencing, micro-sited by the Applicant, to be a sufficient mitigation?</p>	<p>As per comment NE16 in our Deadline 4 response dated 29 July 2024 [RER4-092] we still consider this issue to be outstanding. However, based on ongoing conversations with the Applicant, we are expecting that the next iteration of the mitigation proposal will address our concerns.</p>
2.12.6	<p>Pink-footed geese</p>	<p>Natural England considers that potential impacts to pink-</p>

	Now that the Examination has moved on since the ExQ1 [PD-010, Q1.12.10], are there any residual concerns about the assessment of or mitigation for this species?	footed geese have been sufficiently assessed in the shadow HRA [REP4-017]. We are expecting that the next iteration of the mitigation proposal will address any residual concerns.
2.12.7	Water Quality With regards to water quality impacts (and subsequent downstream effects into European designations and onto functionally linked land), the Applicant has provided a draft Bentonite Management Plan [REP4-012]. Do you have any concerns or additional observations from either a HRA or general perspective arising from this document?	Natural England have no further concerns regarding the draft Bentonite Management Plan.
2.12.8	Displacement At Deadline 1 [REP1-078], it was raised that displacement of curlew, lapwing, pink-footed geese and avocet could occur and required further exploration. Confirm whether this point has now been satisfactorily resolved or if concerns remain.	Natural England's concerns regarding displacement were specifically regarding curlew. As per our comment NE12 in our Deadline 4 response dated 29 July 2024 [RER4-092], we consider it would have been beneficial to have further justification around alternative land availability for curlew and potential impacts from displacement from known foraging areas, as per our original advice. However, further information on timing and duration of works has been provided. Based on the information provided, we agree with the assessment conclusion and consider this matter resolved.
2.12.9	Revised HRA Please state whether there are any significant concerns remaining following receipt of the revised HRA at Deadline 4 [REP4-018].	Our advice remains the same as per our comments in our Deadline 4 response dated 29 July 2024 [RER4-092].
2.13.1	Matters of common and uncommon ground Please set out clearly where you agree and where you disagree with the Applicant's summary positions on the Lincolnshire Wolds National Landscape. In relation to the National Policy Statements and the National Planning Policy Framework, frame your response as to whether there are any	Natural England's Deadline 4 (D4) response sets out our position with regard to the Lincolnshire Wolds National Landscape (LWNL); we are working with the applicant on the outstanding issues regarding issues NE29b and 29c. The statutory purpose of the Lincolnshire Wolds National

	<p>significant policy conflicts that would otherwise prevent the grant of a Development Consent Order.</p>	<p>Landscape is to conserve and enhance the area's natural beauty. This is underpinned by national planning policy as set out in NPS EN-1 (see paragraph 5.10.7)</p> <p>National Policy Statement EN-1 5.10.32 states: <i>'When considering applications for development within National Parks, the Broads and AONBs the conservation and enhancement of the natural beauty should be given substantial weight by the Secretary of State in deciding on applications for development consent in these areas.'</i></p> <p>Para 5.10.7 also states: <i>'For development proposals located within designated landscapes the Secretary of State should be satisfied that measures which seek to further purposes of the designation are sufficient, appropriate and proportionate to the type and scale of the development'</i>.</p> <p>Public bodies have a duty to seek to further the statutory purposes of designation in carrying out their functions (under section 245 of the Levelling Up and Regeneration Act 2023). This duty also applies to proposals outside the designated area but impacting on its natural beauty.</p> <p>Natural England have set out in Annex C our comments regarding the Applicant's summary positions on the Lincolnshire Wolds National Landscape & highlighted relevant policy.</p> <p>Overall, Natural England's final position is pending the further information requested as detailed in our DL4 response.</p>
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Annex B – Natural England’s Response to Questions within the Examining Authorities Report on the Implications for European Sites.

Question Reference	Question	Natural England Response
RIESQ2	<p>To the Applicant and NE - The ExA requests that the Applicant and NE provide information to confirm what are the five issues the Applicant consider are outstanding (as detailed in paragraph 1.2 of [REP4-052])</p>	<p>At the time of ISH3, there were 6 issues outstanding:</p> <ul style="list-style-type: none"> - NE3 - NE6 - NE9 - NE12 - NE16 - NE24 <p>Following review of the latest version of the HRA following ISH3, but prior to Deadline 4, only issue NE16 remained. See our D4 response for Natural England’s updated position on each of these issues. Issue NE30 was also added as a result of the presence of Natterjack Toad.</p> <p>As it stands, Natural England’s understanding is that there are now only two HRA issues outstanding at this stage. These were outlined as ‘amber’ issues in our Deadline 4 response dated 29 July 2024 [RER4-092]:</p> <ul style="list-style-type: none"> - NE16: requests further clarity on the proposed mitigation for noise and visual disturbance to non-breeding birds within functionally linked. - NE30: requests further information on impacts to Natterjack Toad during construction.
<p>RIESQ4 - 2.2.10 / NE30 / EXQ 1.12.7</p>	<p>To NE and the Applicant – Please provide an updated assessment and a conclusion on whether there is the potential for LSE when mitigation is not taken into account. Where an LSE cannot be excluded please provide the information needed to support an appropriate assessment including an assessment of effects, any mitigation that is required and how this is to be secure</p>	<p>Natural England concur with para 6.2.99 of the HRA, which states that the installation of electrical cabling to the Dune Valve has the potential to kill or injure Natterjack Toads within Viking Fields associated with the Humber Estuary Ramsar designation. Thus, there is potential for an LSE without mitigation.</p> <p>The mitigation proposals outlined in HRA paragraphs 7.3.55-57, include the installation of fencing to avoid damage to habitats likely to be used by Natterjack Toads, and a fingertip search by an ECoW immediately</p>

		<p>prior to construction.</p> <p>Natural England would advise that the installation of fencing may in itself cause harm to this species, and/or form a barrier to the movement of the species. As such, we would advise that the approach is amended to be based around a habitat manipulation approach. This would involve sensitively managing the habitat along the route of the cable installation prior to works (and prior to the Natterjack Toad Breeding Season) to reduce the likelihood of Natterjack Toad using the area, but where they are still able to commute across it. The fingertip search & presence of an ECoW would still be required.</p> <p>The habitat manipulation methods should reduce the likelihood of Natterjack Toads being present in the cable installation area. Where the fingertip search indicates no presence of Natterjack Toads, the construction work in this area (including Mole Ploughing) is unlikely to cause an adverse effect on the Natterjack Toad population associated with the Ramsar Designation, and removes the likelihood of committing an offence under the Habitat Regulations.</p> <p>Nonetheless, there still remains a possibility of Natterjack Toads being present in the cable installation area. Where the DCO specifies that works must stop should Natterjack Toad be found during the ECoW fingertip search, until such a time as a mitigation licence is agreed, NE consider an adverse effect on the Natterjack Toad population associated with the Ramsar Designation could also be ruled out. In this scenario, licencing options are available; whilst Natural England cannot advise at this stage whether any licence would be issued, should the habitat manipulation method be used, any licence should only require the relocation of Natterjack Toads out of the working area, with no further complex mitigation or compensation necessary.</p> <p>Natural England have been in discussion with the applicant regarding Natterjack Toads, and have been advised that further survey will also be undertaken prior to construction. This is welcomed & would be necessary to inform a licence application should this be required.</p>
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		Where this mitigation approach is adopted and included within the CEMP, Natural England would have no further concern.
RIESQ6 - 2.2.17 / EXQ 1.12.15	To NE and the Applicant – Please provide any further comments in relation to this matter.	Natural England’s advice on this matter remains unchanged since our Written Representations & response to the Examiners First Written Questions (REP2-041).
RIESQ7 - 3.1.1 / NE12	To NE and the Applicant – The ExA notes that paragraph 7.3.11 refers to pipe laying works taking place between April and July, which appears to be within the nesting bird season and contrary to commitments in the CEMP [REP4-027] and Operational Phase Mitigation [REP2-014] in relation to avoiding nesting bird season for some elements of the Proposed Development. Can the Applicant and NE provide further information on this matter, in particular in relation to whether any restrictions on timings of works are required for the pipe laying where these are in proximity to functionally linked land.	<p>Natural England has not reviewed the assessment of impacts to breeding birds (and any associated mitigation), except where species are features of a nationally/internationally designated site. The CEMP only appears to indicate a restriction on timing of works at one location for the protection of Hobby (Mitigation Reference Number B32), which are not a feature of the Humber Estuary SPA/Ramsar.</p> <p>We understand that potential impacts from the pipe laying works to Humber Estuary SPA birds during construction have been assessed in the HRA and advise that any mitigation measures relied upon in the HRA should be adequately secured. Conversations with the Applicant are ongoing regarding the suite of mitigation measures proposed for disturbance to functionally linked land during construction (NE16).</p> <p>The shadow HRA [REP4-017] states in paragraph 7.3.11 that the main pipe laying works are predominantly planned between April and July. Paragraph 7.3.32 states periods of noisy construction activity will be approximately 20 days in duration in any one area.</p> <p>The HRA conclusions do not appear to rely upon the timing of works outside the breeding season for birds associated with the SPA/Ramsar. However, we advise that for clarity, the Applicant provides clarification on whether there are any seasonal restrictions required to support the HRA conclusions and how mitigation for disturbance to SPA birds using functionally linked land interacts with mitigation for breeding birds under the Wildlife and Countryside Act 1981. It is noted that this information may be provided in the applicant’s response to this question.</p>

<p>RIESQ8 - 3.1.5 / NE16</p>	<p>To NE and the Applicant – Please provide any further comments on this matter.</p>	<p>As per comment NE16 in our Deadline 4 response dated 29 July 2024 [RER4-092] we still consider this issue to be outstanding. However, based on ongoing conversations with the Applicant, we are expecting that the next iteration of the mitigation proposal will address our concerns.</p>
<p>RIESQ9 - 3.1.5 / NE16</p>	<p>To NE – Please confirm what information is required in relation to mitigation measures and triggers for implementation</p>	<p>Natural England have been engaging with the Applicant on this matter. We welcome the indicative locations for noise mitigation has now been provided. However, we have suggested that this could be refined, using bird data and project knowledge of potentially disturbing works, to identify specific locations for acoustic fencing or topsoil bunding. In relation to triggers, we have suggested that pre-application survey data and pre-construction survey data can both be used to inform the likely presence/absence of SPA birds.</p>

Annex C – Natural England’s Response to Q2.13.1: Comments regarding the Applicant’s summary positions on the Lincolnshire Wolds National Landscape.

Issue Ref	NE Response to Applicant’s Summary Position	Potential for Policy Conflict
NE29a – Assessment of Alternatives	Natural England note the provision of the updated rationale regarding the need to route the pipeline through the AONB. Our position regarding the impact of the proposals upon the landscape is reliant upon the outstanding information set out in our D4 response (issue 29b & 29c).	<p>NPS EN-1 para 5.10.32 states that “<i>when considering applications for development within National Parks, the Broads and AONBs the conservation and enhancement of the natural beauty should be given substantial weight by the Secretary of State in deciding on applications for development consent in these areas. The Secretary of State may grant development consent in these areas in exceptional circumstances. Such development should be demonstrated to be in the public interest and consideration of such applications should include an assessment of...</i>”</p> <p>This national planning policy sets a default of no development within a nationally designated landscape unless exceptional circumstances can be demonstrated.</p> <p>The applicant has provided their justification as to why there is no viable alternative to locating the scheme elsewhere or delivering it in a way that does not directly impact the National Landscape. We advise that the decision makers test the Applicants justification that this project fulfils the exceptional circumstances test.</p> <p>Natural England’s remit within the PINs process as a Statutory Nature Conservation Body as defined under the NERC Act 2006 (c 16) is as an adviser to the Examining Authority and the Secretary of State on all associated potential impacts of such a development, including those on nationally designated landscapes. Throughout the duration of this process, we neither object nor support an application but provide impartial, evidence-based advice on the levels of impacts to such sites, assessing whether all impacts have</p>

		been appropriately addressed within the Environmental Statements.
NE29b	<p>Natural England require confirmation of the outstanding information as set out in our D4 response to issues 29b & 29c, before forming a final position on impacts to the statutory purposes of the Lincolnshire Wolds National Landscape.</p> <p>NE have been working with the applicant and expect to receive this information soon. Where these points are satisfactorily addressed, NE would agree with the conclusions of the Applicant's impact assessment.</p>	<p>The statutory purpose of the Lincolnshire Wolds National Landscape is to conserve and enhance the area's natural beauty. This is underpinned by national planning policy as set out in NPS EN-1 (paragraph 5.10.7).</p> <p>NPS EN-1 para 5.10.32 includes the consideration of '<i>any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated</i>'. Thus the outstanding information set out in our D4 response, which relates to confirmation of the temporary nature of impacts, and securing the means of moderating these impacts, is relevant in the decision making process.</p>
NE29c	<p>Natural England refer to our D4 response to issue 29c. We require details regarding the timescale of works within the LWNL specifically, which is a relevant consideration within the applicant's assessment to moderate the impact of the scheme on the LWNL.</p>	<p>NPS EN-1 para 5.10.32 includes the consideration of '<i>any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated</i>'. Thus the outstanding information set out in our D4 response, which relates to confirmation of the temporary nature of impacts, and securing the means of moderating these impacts, is relevant in the decision making process.</p>
NE29d	<p>Natural England agree that, subject to the provision of outstanding information as noted in our D4 response, there are no potential impacts to the LWNL that are not fully reversible.</p>	<p>No significant policy conflict.</p>
NE29e	<p>Natural England acknowledge that in combination assessment with the Grimsby to Walpole project is not likely to be possible at this stage.</p>	<p>No significant policy conflict.</p>
NE29f	<p>Natural England agree that all visible infrastructure associated with the development has been considered within the ES.</p>	<p>No significant policy conflict.</p>

NE29g	Natural England agree that, subject to the provision of missing information as noted in our D4 response, that the route can be successfully reinstated.	No significant policy conflict.
NE29h	Natural England agree that, subject to the provision of missing information as noted in our D4 response, specifically regarding the hedgerow establishment and management plan securing monitoring and remedial works past the 5 year establishment period, that the route can be successfully reinstated.	No significant policy conflict.