

Date: 18 December 2024
Our ref: ID20049401
Your ref: **EN070009**



The Planning Inspectorate

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By email only, no hard copy to follow

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Dear Sir/ Madam

NSIP Reference Name / Code: H2 Teesside/EN070009
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The Examining Authority's second written questions and requests for information (ExQ2)
Examining Authority's submission deadline 18 December 2024

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.

Natural England is pleased to provide our answer to the Examining Authority's Second Written Questions within the annex appended to this letter.

Natural England hopes our Deadline 5 answers are helpful and we will continue to work collaboratively with the Applicant to try and resolve the matters provided below.

For any further advice on this consultation please contact the case officer [REDACTED] ([REDACTED]@naturalengland.org.uk) and copy to consultations@naturalengland.org.uk.

Yours faithfully

Northumbria Area Team

Annex 1: Natural England comments in response to ExQ2

Natural England’s response to the Examining Authority’s (ExA’s) first written questions/questions reference ExQ2 with a deadline of 18 December 2024

ExQ2	Question to:	Question:
3. Air Quality and Emissions		
Q 2.3.6	Applicant and NE	<p>At NE9, [REP2-072], NE raised the issue of construction dust assessment and monitoring and the potential significant/ adverse effect on the Teesmouth and Cleveland Coast Site of Special Scientific Interest (SSSI)/ Special Protection Area (SPA)/ Ramsar. The ExA notes at NE9 [AS-039], NE does not agree that measures designed for protection of human health would automatically protect sensitive ecosystems, given the different mechanisms of impact and the differential proximity.</p> <p>The Applicant’s response in NE9 [AS-039] is human receptors are generally more sensitive to dust than ecosystems because of particulates in atmosphere that can be breathed into the lungs. In contrast, for ecosystems the main concern of dust is coating of vegetation (i.e. much larger than the particles that can be breathed into the lungs). The Applicant therefore considers measures that will control dust emissions to such an extent that small particulate release is minimised will be sufficient to prevent significant dust coating of vegetation. Indeed the Applicant’s Framework Construction Environmental Management Plan (CEMP) [REP2-011]*, at Section 9, sets out that one of the main aims of the monitoring regime is vegetation protection and advises this is set out in the Framework CEMP. The Applicant further states noting the above, and the commitment to consult with NE on the effectiveness of any proposed measures (including monitoring) in reducing effects on designated sites (see Table 7-2 of the Framework CEMP [REP2-011]*) and it considers this matter to be closed. Firstly, the ExA would ask the Applicant whether its reference to Table 7-2 of the Framework CEMP [REP2-011]* (Surface Water, Flood Risk and Water Resources) is correct or whether the correct reference should be Table 7-1 (Air Quality)?</p>

ExQ2	Question to:	Question:
		<p>Secondly, the ExA would ask NE:</p> <ol style="list-style-type: none"> 1. Does it have any further comments or observation in relation to the mitigation and enhancement measures set out in Table 7-1 Air Quality of the Framework CEMP [REP2-011]*? 2. Does it agree with the Applicant’s assessment and conclusions with respect of the sensitivity of ecosystems to dust emissions referred to above and agree with the Applicant that this matter should now be considered closed. 3. Do you consider that the provisions for the monitoring of vegetation set out in Section 9 the framework CEMP [REP2-011]* to be adequate and sufficient. <p>* The ExA notes the Applicant submitted Revision 2 of the Framework CEMP at DL3 (Examination Library reference [REP3-003]).</p> <p>1) Natural England welcomes the proposed mitigation measures in Table 7-1; however, we note that in addition to using generic methods of dust suppression, Non-Road Mobile Machinery is to be located <i>'where possible' 'away from sensitive boundaries or receptors'</i>. We advise that priority is placed on these assets to be located away from sensitive boundaries and ecological receptors to reduce air quality impacts on designated sites. Furthermore, our concern with the generic measures on dust suppression in the framework CEMP (e.g. Table 7.1 in the CEMP) is that there is no means of ensuring they actually prevent impacts of dust on adjacent habitats. For example, the applicant advises that sand and aggregates should be stored in bunded areas, but if there is evidence they are escaping/ blowing/ being entrained from the bunded areas there is no commitment to ensure this is prevented/ solved. Similarly, there is commitment to water suppression and “regular cleaning” to control mud and dust – but no guidance provided on what to do if this is not sufficient in preventing impacts, or, for example, what level of cleaning is sufficient. Phrases such as <i>“where practicable/ possible”</i> also do not give ultimate weight to avoiding the impact. This is why we would require monitoring and a method in place to prevent impacts where they</p>

ExQ2	Question to:	Question:
		<p>are observed – including a trigger for temporary cessation of work in as much of the site area as necessary, for as long as is needed.</p> <p>2) Natural England notes the Applicant's assessment regarding the sensitivity of ecosystems. We do not agree that ecosystems are less sensitive than humans to dust emissions – particularly where the ecosystem receptors are immediately adjacent to the site boundary as in this case. The mechanism of damage is of course different, but it can still adversely affect the growth, photosynthesis and biochemistry of vegetation and any animal/ bird features that rely on this. Measures to prevent PM2.5 emissions reaching human receptors at a greater distance will indeed help to prevent dust impacts to the ecosystems, but it cannot be assumed they will be sufficient to entirely avoid them. However, subject to appropriate monitoring and a sufficiently robust management process in place we would accept this issue can be closed.</p> <p>3) It is unclear how the measures outlined in section 9 will ensure vegetation protection. How will monitoring be carried out and how frequently? What will the process be if dust is encroaching onto the protected areas? Will there be dust monitors in place to record dust outside the site boundary, or will monitoring be based on visual inspection – in which case how will an “acceptable” level of “dust-free” be recorded, or that the receptors are not adversely affected? Therefore, as there are no proposals for monitoring vegetation specifically, we cannot be sure they are adequate or sufficient to ensure dust from the site will not cause harm to the ecosystems in the protected sites.</p>
Q 2.3.7	NE	<p>The Applicant’s response to Q1.3.13 [REP2-021] is noted. The Applicant states “The Applicant has reviewed the citation for the Durham Coast SAC (Special Area of Conservation) which lists the qualifying features as “H1230 Vegetated sea cliffs of the Atlantic and Baltic coasts”. Coastal Dune Grasslands are not a qualifying feature of the Durham Coast SAC and therefore it was not included in the Report to Inform HRA (Document reference 5.10) [AS-016]. However, this was included in the modelled air quality assessment presented in Appendix 8B (Document reference 6.4.8) [APP-191] because it is listed as an interest feature on the Air Pollution Information System (APIS).”</p>

ExQ2	Question to:	Question:
		<p data-bbox="779 288 1980 355">The ExA would ask NE to confirm whether it is satisfied with the approach adopted by the Applicant and if not, why not.</p> <p data-bbox="779 416 2004 582">Both H2130 (Fixed coastal dunes with herbaceous vegetation (grey dunes)) and H1230 (Vegetated sea cliffs of the Atlantic and Baltic Coasts) are present at Durham Coast SAC. However, only the latter is a qualifying feature. Grey dunes are a feature present within the SAC boundary – and therefore listed on the JNCC spreadsheet which is the spreadsheet used to identify the features¹.</p> <p data-bbox="779 635 1993 901">APIS at present, however, does not distinguish between the qualifying features (Grade A, B and C in the spreadsheet) and the non-qualifying (Grade D) features that are not a reason for SAC selection at a particular site. Grade D features are habitats and species listed in the Annexes to the Directives, but are not designated features for the SAC, and no legal protection is afforded to them. Therefore, they would not require to be considered in the HRA. However, they are an important component of the ecosystem and underpinning SSSI (as indicated by the habitat types listed in the SSSI in APIS) so weight should be given to harm to them in the SSSI assessment.</p>
<p data-bbox="203 975 1984 1007">4. Habitat Regulations Assessment, Biodiversity, Ecology and Nature Conservation, including Ornithology and Marine Ecology</p>		
<p data-bbox="203 1090 304 1118">Q 2.4.1</p>	<p data-bbox="360 1090 405 1118">NE</p>	<p data-bbox="779 1090 1993 1321">NE is requested to provide a response to Q1.4.17 in the ExA’s ExQ1 [PD-008] regarding any outstanding concerns in the Applicant’s approach to the inclusion of Option A for the hydrogen distribution network connection, including how it proposes to secure the detail design and maintenance of the Cowpen Bewley Open Space Replacement Land. In providing its response, the ExA requests NE to have regard to the information submitted by the Applicant in its “Response to ExQ1 (HRA and Ecology) [REP2-022], Q1.4.17.</p>

¹ <https://hub.jncc.gov.uk/assets/a3d9da1e-dedc-4539-a574-84287636c898>

ExQ2	Question to:	Question:
		<p>As the land at Cowpen Bewley Woodland Park falls outside of a statutory designated site, and does not support statutory designated site interest features, Natural England has no comment to make on any associated habitat losses. We advise that the Local Planning Authority Ecologist is consulted for advice on such losses.</p>
Q 2.4.2	NE	<p>NE is requested to provide an update on matters raised at NE2 of its Relevant Representation (RR) [RR-026], affecting its advice for impact pathways as detailed in NE3 to NE8 of that RR following the Applicant's submission of the Supplementary Ornithology Baseline Report [AS-036] and updated Report to Inform HRA [CR1-023]. NE is requested to confirm if this information addresses its concerns and, if not, what matters remain outstanding and what information is required to address these. It is requested to advise if it considers there would be a material difference in the assessment conclusions were the Applicant to follow its suggested method for assessing impacts to bird qualifying features of the SPAs.</p> <p>At present, it is our opinion that there is inadequate information to fully assess the impacts of the development on SPA bird populations, determine whether the proposed mitigation is sufficient and to inform the Habitats Regulations Assessment.</p> <p>Natural England is engaging with the Applicant to aid with their assessment of impacts on SPA birds during the construction and operational phases of the development. Overall, we are still awaiting information from the Applicant on noise and visual disturbance and loss of functionally linked land. Until we have this information, we are unable to advise on whether our concerns have been addressed or if further work or mitigation is required.</p> <p>This is an ongoing matter and to date work is still ongoing by AECOM but to date this has consisted of:</p>

ExQ2	Question to:	Question:
		<ol style="list-style-type: none"> 1. Production of a methodology to assess bird disturbance during the construction phase of the development – Natural England have advised the applicant on this and we are awaiting final results. The output of this assessment will inform the assessment of how SPA birds may be impacted across sectors during the construction phase of the works, and what the significance of this may be in relation to the SPA bird populations. 2. Detailed information on timings of works across sectors – the Applicant has provided Natural England with more detailed phasing of works across sectors, which is welcomed. 3. Information regarding noise and visual disturbance – Natural England is awaiting noise modelling of LaMax noise levels from the construction phase of the development, in addition to a technical note of noise and bird disturbance. Once we have this, we will be able to advise on whether this modelling is adequate to inform noise impacts on birds, and whether the proposed phasing of works and mitigation is sufficient. 4. We are still awaiting quantification of losses of functionally linked land – both temporary and permanent, to inform the assessment of impact of losses of functionally linked land on SPA birds, in addition to information on how soon temporary lost functionally linked land will be restored and available for birds.
Q 2.4.7	NE	<p>Can NE clarify if it's comments under [RR-026], NE28 and 29, relating to effects to the Teesmouth and Cleveland Coast SSSI from change to emissions to air, are relevant to the HRA (ie is it considered that these impacts could further affect the Teesmouth and Cleveland Coast SPA and Ramsar sites, underpinned by the SSSI) or are solely in the context of the Environmental Impact Assessment, and ES Chapters 8 [APP-060] and 12 [APP-064]. Please confirm if there has been any change in advice since [REP2-072] and, if so, on what basis.</p> <p>Comments at NE28 and NE29 were specifically relating to the underpinning SSSI, which is protected for the habitats as well as the bird features. However, the consideration in the HRA cannot consider impacts on the qualifying birds without consideration of impacts on their habitat – and comments made are therefore relevant – though also considered at our responses to the equivalent questions for the European designations (NE10 and NE11).</p>

ExQ2	Question to:	Question:
		<p>However, it may be that changes to the designated features of the SSSI could result in harm to the habitat features without adversely affecting the integrity of the SPA/ Ramsar. This could occur if the area of habitat affected is not used/ never would be used by the qualifying birds, or any pollution-induced changed would not affect how the birds used it. The EIA would therefore require a separate assessment to that in the HRA.</p>
Q 2.4.9	NE	<p>The ExA notes the comments of the Marine Management Organisation (MMO) in its DL4 submission [REP4-026], where it notes that to reduce the impact to the Teesmouth and Cleveland Coast SPA for Horizontal Directional Drilling (HDD) operations any pipe stringing area for HDD operations will be established a minimum of 30 metres away from the boundary of the SPA. The MMO defers to NE on whether this is an appropriate distance. As such the ExA would ask NE whether 30 metres is an acceptable distance from the SPA for such operations and if not what distance NE considers is acceptable, together with evidence justifying its position.</p> <p>At this time Natural England have no comment to make regarding a specific distance that pipe-stringing should be undertaken with regards proximity to the SSSI/SPA. It is our advice that the pipe-stringing activity should be considered as part of the HDD works (Natural England representations NE5 to NE7) and expect any associated impacts to be appropriately assessed and mitigated for.</p>
14. Socio-economics and Land use, including Human Health and Major Accidents and Disasters		
Q. 2.14.5	Applicant/NE	<p>NE in its RR [RR-026], as repeated in its WR [REP2-072] states at ‘NE Key Issue Ref: NE35 <i>“Whilst NE accepted that there is no mitigation for the permanent loss of agricultural land due to permanent development, appropriate mitigation to prevent the potential loss of BMV (Best and Most Versatile) land, including the restoration of disturbed land to the baseline ALC (Agricultural Land Classification) Grade, should be set out in the assessment. This would require a detailed ALC survey of the pipeline routes to inform appropriate restoration. For all areas of agricultural land subject to</i></p>

ExQ2	Question to:	Question:
		<p><i>temporary and permanent loss, in which Post-1988 ALC survey information is not available, an ALC survey should be undertaken...”</i></p> <p><i>The Applicant response to NE35 is set out in its ‘Responses to NE’s RR’ [REP1-007], where the Applicant advised “BMV land across the Proposed Development boundary is limited, with the majority of the Main Site and Connection Corridors classified as Urban and Non-Agricultural. A small portion of the Hydrogen Pipeline Corridor north of the River Tees has land classified as Grade 3, 4 and 5. As a worst case scenario Grade 3 land, at the Cowpen Bewley Replacement Land, is assumed to be Grade 3a, making it BMV land for the purposes of the assessment presented in Chapter 10: Geology, Hydrogeology and Contaminated Land [APP-062]. Taking into account the above, the Applicant does not propose to undertake supplementary ALC surveys of the Proposed Development Site at this time. However, the Applicant recognises the need for careful soil management and handling. The framework CEMP (current version [REP3-004] will be amended to include the production of a Soils Management Plan (SMP), included as part of the Final CEMP, produced prior to construction.”</i></p> <p>Considering the above:</p> <ul style="list-style-type: none"> <i>i. Can the Applicant confirm or signpost the mechanism which will be used to ensure the inclusion of SMP as part of the Final CEMP.</i> <i>ii. Does the NE have any comments or observation on the Applicant’s approach and assessment of BMV land across the Proposed Development boundary, as set out above.</i> <i>iii. Does NE have any comments or observation in regard to the Applicants revised ALC maps submitted at DL2 [REP2-017] (ES, Volume II, Figure 10-19 Agricultural Land Classification Rev.1)?</i> <p>(ii) Natural England notes that the Applicant has not undertaken ALC surveys to quantify the losses of Best and Most Versatile land but has used provisional ALC to inform impacts on soils. Natural England notes that in the absence of more detailed soil data they are treating all Grade 3 soils as Grade 3a - this is stated to be 2ha in size in Chapter 10 of the ES.</p>

ExQ2	Question to:	Question:
		<p>Natural England has no specific comments to make on this approach but would like to direct the ExA to our guidance on agricultural land and development² when considering if this is an appropriate approach to take considering the scale and location of the BMV land losses associated with the development.</p> <p>(iii) Natural England has no comment on the updated ALC Maps.</p>

² <https://www.gov.uk/government/publications/agricultural-land-assess-proposals-for-development/guide-to-assessing-development-proposals-on-agricultural-land>.