

Date: 22 May 2018
Our ref: Tilbury 2 Deadline 4 Response
Your ref: TR030003



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Dear Sir/Madam,

NSIP Reference Name / Code: Tilbury2
User Code: TR030003

Thank you for your consultation on the above dated the 8th of May 2018.

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.

Written Response to the Second Written Questions and Requests for Information

2.2.2

The Applicant is requested to provide an updated version of the Environmental Management and Compensation Plan ('EMCP') a week before the hearings scheduled for the end of June 2018, setting out in particular onsite and offsite mitigation and compensation for open mosaic on previously developed land, and how such sites are expected to be maintained beyond the commitment to 25 years.

Natural England notes the deadline set but would appreciate early sight of the EMCP if we are to be expected to comment on it in detail at the hearings scheduled for the end of June. We have held further discussions with the applicant regarding mitigation/compensation sites (including a phone conference on Wednesday 16th May) but as we have not yet been presented with specific proposals we have no further comments at this time.

2.7.1

NE, HE and Hist E are requested to provide their views on the Qualitative Cumulative Effects Analysis submitted by the Applicant at deadline 3 [REP3-027] a week before the hearings scheduled for the end of June 2018.

Natural England notes the deadline set and will provide a response in due course, by Tuesday 19th June, as far as possible.

2.11.1

Updated HRA at Deadline 4

The Applicant is requested to include in its updated HRA report to be submitted at deadline 4:

- **the implications of the CJEU judgement;**
- **whether habitat provision for lost functionally-linked habitat (ie saltmarsh and intertidal habitat) is relied on to reach the conclusions of the HRA;**
- **updated screening matrices, and**
- **where relevant, integrity matrices.**

Natural England notes the deadline for updated HRA as set out in the second written questions and the applicant has confirmed in conversations with Natural England that they now intend to proceed to an

'appropriate assessment'. Given our previous advice and the recent CJEU Sweetman judgement we consider this is the correct approach.

2.11.3

Functionally-linked Land ['FLL']. NE states in its deadline 3 submission [REP3-042] that case law establishes that functionally-linked land should receive equivalent protection. Would NE state the case law to which it is referring?

Natural England advises that Annex D to our Written Representations is relevant to this question. We draw your attention to the following case:

RSPB and others v Secretary of State and London Ashford Airport Ltd [2014 EWHC 1523 Admin]

Where it was found 'that while no particular legal status attaches to FLL, the fact that land is functionally linked to protected land means that the indirectly adverse effects on a protected site, produced by effects on FLL, are scrutinised in the same legal framework just as are the direct effects of acts carried out on the protected site itself. That is the only sensible and purposive approach where a species or effect is not confined by a line on a map or boundary fence. This is particularly important where the boundaries of designated sites are drawn tightly as may be the UK practice.'

Natural England considers the principles set out above to be common and best practice for Habitats Regulations casework and the presumption that functionally linked land should be treated within the same legal framework appears to be widely accepted in planning decisions. A high profile example of this is the Portsmouth Stadium decision issued by the Government Office for the South East on behalf of the Secretary of State for the Environment on the 14th of December 1994.

The above aside, Natural England's point in our deadline 3 submission is that land outside of the Special Protection Area boundary should not be automatically assumed to be of lesser value as there are many examples of non designated areas which are critical to the survival of mobile species.

**Natural England
22nd May 2018**