



Advice Note 11, Annex C – Natural England and the Planning Inspectorate

Introduction

Part 1 of the Planning Inspectorate Advice Note 11: “Working with Public Bodies” covers many of the generic points of interaction relevant to the Planning Inspectorate (the Inspectorate) and Public Bodies. This Annex C to Advice Note 11 helps applicants understand Natural England’s particular role in infrastructure planning under the Planning Act 2008 (PA2008). It explains:

- What is Natural England?
- What does Natural England do?
- Natural England’s role in Nationally Significant Infrastructure Projects
 - Environmental opportunities
 - Natural England’s engagement in the six NSIP stages
 - Environmental Impact Assessments (EIA)
 - Habitats Regulations Assessments (HRA)
 - Sites of Special Scientific Interest (SSSI)
 - Wildlife Licensing
 - Designated landscapes
 - Soils and best and most versatile agricultural land
- How to contact Natural England

This Annex will be kept under review and was updated in May 2018. The Planning Inspectorate and Natural England welcome feedback on the content of this Annex.

What is Natural England?

Natural England is a statutory nature conservation body (SNCB) established by the Natural Environment and Rural Communities Act 2006. (NERC Act) Natural England’s general 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 financed by the Department for the Environment Food and Rural Affairs (Defra) but is a Non-Departmental Public Body, which forms its own views based on the best scientific evidence available.

What does Natural England do?

Natural England works for people, places and nature, to enhance biodiversity, landscapes and wildlife in rural, urban, coastal and marine areas; promoting access, recreation and public well-being, and contributing to the way natural resources are managed so that they can be enjoyed now and by future generations.

Section 2 of the NERC Act provides that Natural England’s general 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.’ This includes:

- promoting nature conservation and protecting biodiversity;
- conserving and enhancing the landscape;
- securing the provision and improvement of facilities for the study, understanding and enjoyment of the natural environment;
- promoting access to the countryside and open spaces and encouraging open-air recreation; and
- contributing in other ways, to social and economic well-being through management of the natural environment.

Natural England is required to keep under review all matters relating to its general purpose, and to provide public authorities with advice where they request this.

Natural England's role in Nationally Significant Infrastructure Project's (NSIPs)

Natural England's remit, responsibilities and geographical extent in relation to NSIPs comprises

- Advice on impacts on protected nature conservation sites¹ and designated landscapes² within England and out to 12 nautical miles of the English coastline.
- Its role as the consenting and licensing body for protected species licensing in the terrestrial environment in England (this applies to all activities undertaken landward of the mean low water mark). [The Marine Management Organisation \(MMO\)](#) is responsible for licensing seaward of the mean low water mark.
- There may also be cross border situations where, dependent on the nature and location of the proposal, Natural England will have a joint duty regarding protected sites with Natural Resources Wales (NRW) or Scottish Natural Heritage (SNH).
- The Joint Nature Conservation Committee (JNCC) has delegated its role as the SNCB for **offshore renewable energy projects** (wave, wind and tide) in English offshore waters, outside 12nm, to Natural England. This means that all provision of advice on renewable energy projects in inshore and offshore waters, adjacent to England (0-200nm), is provided by Natural England rather than being split between JNCC and Natural England at the 12nm boundary.
- For NSIPs that are not renewable energy projects beyond 12 nautical miles of the English coastline, Natural England will support JNCC in the exercise of its duties under the Habitats Regulations, particularly when there are impacts on protected sites inside 12 nautical miles.
- Advice as a statutory consultee for development of 'best and most versatile' agricultural land and for the reclamation of minerals and waste sites to agriculture.
- Advice on any other issues within Natural England's statutory remit e.g. on green infrastructure or environmental enhancement opportunities.

¹ Special Protection Areas, Special Areas of Conservation, Ramsar Sites, Sites of Special Scientific Interest, Marine Conservation Zones

² National Parks, The Broads and Areas of Outstanding Natural Beauty

Natural England's main responsibilities relate to providing advice on EIA, the Habitats Regulations, the regulation of Sites of Special Scientific Interest (SSSI) under the Wildlife and Countryside Act 1981 (as amended) (WCA), as the licensing body in respect of protected species, and as a consultee in relation to development of best and most versatile agricultural land or mineral and waste site reclamation to agriculture and as an adviser on landscape matters.

Environmental opportunities

Natural England will seek opportunities for positive environmental outcomes from major infrastructure developments. NSIPs can make a significant contribution to delivering the environmental ambition in the Government's [25 Year Environment Plan](#) (25YEP). This aims to deliver an environmental net gain through development and infrastructure.

We can help applicants and the Examining Authority to better understand and value the benefits derived from the natural environment ('natural capital'). We may advise on opportunities to secure positive environmental benefits from NSIPs. Priorities include delivering high quality, multi-functional green infrastructure, establishing more coherent and resilient ecological networks and providing and enhancing habitats for protected species. We can also advise on approaches and metrics that enable projects to achieve biodiversity net gain, as set out in the National Planning Policy Framework and the recent and developing National Policy Statements, and on approaches to achieving wider natural capital gains.

Natural England will input into all phases of the PA2008 process as required, focusing mainly on pre-application, and examination. The main roles and responsibilities of Natural England under the 2008 Act fall into the following categories:

- as one of the prescribed consultees under section 42 of the 2008 Act that applicants are required to consult before submitting a NSIP application³
- as one of the consultation bodies that the Inspectorate must consult before adopting a scoping opinion in relation to any Environmental Impact Assessment (EIA)⁴ and as a prescribed consultee for the environmental information submitted pursuant to the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.
- as a statutory party in the examination of Development Consent Order (DCO) applications⁵
- as a SNCB under the Conservation of Habitats and Species Regulations 2017 (Habitats Regulations) or the Conservation of Offshore Marine Habitats and Species Regulations 2017 (Offshore Regulations) in respect of Habitats Regulations Assessment (HRA) .
- as a consenting and licensing body/authority in respect of protected species and operations likely to damage the protected features of SSSIs pursuant to the Wildlife

³ Under s. 42(a) Planning Act 2008 and Schedule 1 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended), at: http://infrastructure.planningportal.gov.uk/wp-content/uploads/2009/08/uksi_20092263_en.pdf .

⁴ Under Regulation 10 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017

⁵ Under s. 88(3) (c) and s.102(ca) Planning Act 2008 and the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015.

and Countryside Act 1981 (as amended) (WCA 1981)⁶ and in relation to European protected species under the Habitats Regulations.

- As a prescribed consultee under the Marine and Coastal Access Act (2009) for proposals within the area of the English territorial sea capable of affecting, other than insignificantly, any of the protected features of a Marine Conservation Zone (MCZ) or any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent.

Natural England engagement in the six NSIP stages

Pre-application

Natural England is a prescribed consultee under the 2008 Act and secondary legislation made under it. Its input is vital in the pre-application process in cases where there are likely to be significant impacts on the natural environment and desirable where there are opportunities to deliver environmental net gain. Natural England encourages applicants to begin pre-application consultations at the earliest possible time and with as much detail as possible.

Early engagement with Natural England is very important because Natural England's advice (including on appropriate surveys and investigations) will enable applicants to give appropriate consideration to the environmental effects of an NSIP as the application is developing. The applicant has a duty to have regard to any consultation responses it receives⁷ under sections 42, 47 and 48 of the 2008 Act. Matters concerning EIA, HRA, SSSIs and wildlife licensing should all be addressed during pre-application and are set out in more detail below.

Natural England encourages Applicants to take advantage of the [Discretionary Advice Service \(DAS\)](#) which is offered to provide non-statutory advice related to development proposals. We will not usually charge for s42 consultations and during Examination. Our terms and conditions can be downloaded from the above link.

To assist the applicant during the pre-application stage Natural England will continue to work closely with fellow Defra statutory environmental bodies (e.g. the Environment Agency or the MMO) when considering issues which cut across our various statutory responsibilities.

Acceptance

If matters relating to Natural England's involvement are not fully resolved in the pre-application stages Natural England will still engage with developers during the acceptance stage and advice is likely to be chargeable (see above re DAS advice).

Pre-examination

If an application is accepted for examination and there are outstanding issues of importance to the natural environment, Natural England is likely to notify the Examining authority that it wishes to be an interested party⁸ and provide detailed relevant representations. We will then be able to engage with applicants for example on new technical information.

⁶ Natural England's advice should be sought by developers prior to them carrying out works on or affecting a SSSI and in the case of owners and occupiers there is a requirement to notify and gain consent, prior to carrying out, or allowing to be carried out, works on or affecting a SSSI.

⁷ Section 49 of the Planning Act 2008.

⁸ Under section 89(2A)(b) of the Planning Act 2008

Examination

Where Natural England engages in the examination we aim to focus on providing written representations to update our earlier relevant representations. We will seek only to engage in relevant hearings in those complex cases where we have significant outstanding issues of high risk to the environment.

Recommendation and Decision

Where matters are not all resolved at Examination the sponsoring Government Department may come to us with queries through written consultation. During the decision making period any consultation with Natural England must be made public.

Post Decision

Natural England will engage in post consent activities such as where requirements are discharged or where we are consulted on variations, permits and licences. We will discuss cost recovery arrangements needed for this stage preferably before application.

Environmental Impact Assessment

Natural England has a statutory role as a consultation body under the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017. Where an applicant has requested a scoping opinion from the Inspectorate in relation to a proposed EIA development, Natural England will be consulted by the Inspectorate in relation to the information they consider should be included in the environmental statement.⁹

Part 1 of Advice Note 11, and Inspectorate Advice Notes 3, 7 and 9, set out detailed advice on the EIA under the PA2008 regime and emphasise the importance of early consultation with Natural England.

Habitats Regulations Assessment

The Habitats Regulations place a responsibility on competent authorities (including the relevant Secretary of State where they are a 'decision maker') to consult the appropriate nature conservation bodies when carrying out an 'appropriate assessment' of the implications of an application for European sites¹⁰. For European sites in England, this means Natural England must be consulted and provide advice to the relevant competent authority if an NSIP is likely to have a significant effect on them. The Examining authority (ExA) will ask Natural England to provide its comments on the evidence that arises during the examination; the comments will be incorporated in or referred to in a Report on the Implications for European Sites (RIES) that will be submitted to the Secretary of State with the ExA's Report and Recommendation.

⁹ Regulation 8 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended).

¹⁰ The term 'European site' is formally defined in regulation 8 of the Habitats Regulations. It includes Special Protection Areas (SPA), which are classified under the Birds Directive, and Sites of Community Importance (SCIs) and Special Areas of Conservation (SAC), which are designated under the Habitats Directive. SACs and SPAs in marine or intertidal areas are European Marine Sites. Outside English territorial waters, SACs are designated as European Offshore Marine Sites (EOMS). Together they form the European Union-wide **Natura 2000** network. A full list of UK sites is available at <http://jncc.defra.gov.uk/page-4>. SPA, SAC, EOMS, listed Ramsar sites, candidate SAC and proposed SPA are all referred to as 'European sites'. Note, however that a distinction is made between European Sites and European Offshore Marine Sites in the wording of the Habitats Regulations.

The Inspectorate strongly encourages the earliest possible liaison between applicants and Natural England, particularly where a European and/or Ramsar site or European Protected Species, or other protected species, may be affected by a proposed development. This will allow any relevant issues to be identified and if possible resolved at the pre-application stage. The Inspectorate has issued their own advice on Habitats Regulations Assessments [here](#).

For projects which may affect a European Site, applicants for NSIPs located in England, or both England and Wales, are able to request the agreement of Evidence Plans with Natural England. The aim is to set out the evidence needed in order to satisfy the legislative requirements and to agree how it will be collected and assessed. The aim of this approach is to ensure there is sufficient information available to enable the relevant Secretary of State to undertake a Habitats Regulations Assessment (including any appropriate assessment) if required. This approach (if followed) can reduce uncertainty at acceptance and save time in the examination. Natural England's experience is that this is a very valuable process, especially when started at an early stage in project design. It will engage with applicants in this way via the DAS. More information can be found [here](#) and applicants should approach Natural England if they are interested in agreeing an Evidence Plan.

Sites of Special Scientific Interest (SSSIs)

In relation to applications where there may be potential impacts on SSSIs both the Secretary of State and Natural England have duties under the WCA.

Under s.28(1), the Secretary of State or minister must notify Natural England before authorising the carrying out of operations likely to damage the special interest features of a SSSI. Under these circumstances 28 days must elapse before deciding whether to grant consent and the Secretary of State must take into account any advice received from Natural England, including advice on attaching conditions to the consent.

Natural England will give specific advice to applicants on the effects of the proposal on the special interest of any affected SSSIs when all the information is provided by applicants. It can also provide generic guidance and help on survey requirements. Applicants should seek to agree DCO requirements with Natural England, which may include measures for the protection of the SSSI, before the application is submitted to the Inspectorate. Natural England can provide advice to the decision-maker on any effects on the special interest of SSSIs.

Wildlife Licensing

Licensing of Protected Species

For all licensing matters, applicants should consult Natural England's [published guidance for the relevant species](#) and decide whether a mitigation licence is required. Applicants are able to use Natural England's charged [Pre-submission Screening Service \(PSS\)](#) for review of a draft wildlife licence application. This service can be used to receive early advice on all 3 licensing tests¹¹ (in relation to European protected species), before a Development Consent Order is granted. This service also extends to other protected species (such as badger, water vole), protected by domestic wildlife legislation.

¹¹ These tests are that there is "no satisfactory alternative" (Regulation 53 (9) (a) of the Habitats Regulations), that the activity authorised will not be "detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range" (Regulation 53 (9) (b) and that the licence is for a purpose specified in Regulation 53(1) which includes for "imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment."

This early assessment is undertaken so that the decision-maker under the PA2008 can have confidence that Natural England, as the statutory licensing authority, has considered the appropriate issues relating to protected species. In order to do this, Natural England will conduct a review, based on a **full draft licence application, in advance of** the formal submission of the NSIP application to the Inspectorate. The steps to be followed when submitting a draft licence application to Natural England, or for early engagement on protected species licensing matters are set out in Appendix I of this note.

Following the review of the draft licence application, Natural England will either: provide a Letter of No Impediment (LONI), explaining that based on the information reviewed to date, that it sees no impediment to a licence being granted in the future should the DCO be issued; or if there are licensing issues to address, these will be set out in writing for the applicant to resolve. Only when all matters are resolved, following review of a subsequent draft licence application, can a LONI be issued. Any LONI will be sent to the applicant to provide within the application for examination. Natural England will copy any correspondence to the Inspectorate.

The ExA will wish to be in a position by the end of the examination to report to the Secretary of State on the likelihood of any necessary protected species licence being obtained, Natural England encourages all applicants to enter into early discussion in pre-application to ensure that where possible LONIs can be submitted at the application stage. Advice from Natural England under DAS, early on in the process, can help to scope out or refine protected species issues well before a draft wildlife licence application is prepared.

Strategic protected species licensing

Where strategic approaches such as district licensing for great crested newts are used a LONI will not be required. The developer will need to provide evidence to the ExA on how and where this approach has been used in relation to the proposal which may include a quotation from Natural England. A certificate will be issued by the habitat delivery body when compensation habitats are available.

Designated Landscapes

As the statutory landscape advisor and statutory consultee on EIA development, Natural England provides advice to applicants and the ExA on the landscape impacts of NSIP proposals on designated landscapes (National Parks, the Broads, and Areas of Outstanding Natural Beauty). Natural England is not able to comment on wider landscape and seascape issues and applicants should obtain advice from local planning authorities and other local bodies. Its advice will focus on the impacts of NSIP proposals on the statutory purposes of these areas to conserve and enhance natural beauty. This will include consideration of the landscape and visual impacts on the setting of these areas.

National Parks, the Broads and AONBs are designated because they represent our finest landscapes and as such are highly sensitive to the impacts of new development. The National Planning Policy Framework and National Policy Statements set out the policy position as it relates to development within a National Park or AONB. There is a presumption that development within these areas will be refused other than in exceptional circumstances and where it can be demonstrated to be in the public interest. Major development should be assessed against certain criteria including the need for the development within the designated area and the scope for moderating its effect on the environment. Natural England will provide advice to help the determining authority apply this 'test'. Applicants should submit sufficient

information to inform this assessment.

Soils and best and most versatile agricultural land

Where significant development of agricultural land is demonstrated to be necessary, applicants should seek to use areas of poorer quality land in preference to that of higher quality, and protect soils during development. Natural England is the statutory consultee on certain [development proposals affecting agricultural land](#) which lead to (or are likely to lead to) the loss of 20 hectares or more of best and most versatile agricultural land (grades 1, 2 and 3a in the Agricultural Land Classification system) . In giving advice, Natural England will take into account the type of development, its likely long term effects and impact on soils. Under Schedule 5 of the Town and Country Planning Act 1990 (as amended) Natural England is also the statutory consultee for minerals and waste development where [restoration to agriculture is proposed](#). Natural England advises on whether agriculture is an appropriate afteruse; whether soil management and restoration proposals meet the required standards and aftercare conditions are appropriate.

How to contact Natural England

All NSIP consultations for Natural England should be addressed to Natural England's casework hubs at consultations@naturalengland.org.uk. Applicants should email eps.mitigation@naturalengland.org.uk if they do not have a nominated case officer for protected species licensing issues. If for any reason it is not possible to consult electronically, consultations should be sent to the postal address below:

Natural England Consultation Service
Hornbeam House
Electra Way
Crewe Business Park
Crewe Cheshire CW1 6GJ

Appendix I: NSIPs and Protected European Species Licensing Issues

This advice has been prepared to help developers and developers' consultant ecologists understand the process for engaging with Natural England about Nationally Significant Infrastructure Projects (NSIPs) and issues relating to European Protected Species (EPS). Please note that this advice will be kept under review and may from time to time be amended.

Whilst this advice is primarily aimed at developments where EPS are affected (i.e. those species listed under the Conservation of Habitats and Species Regulations (2017), the procedure as set out below also applies to NSIPs involving protected species not covered by European legislation (e.g. badgers, water voles, native white-clawed crayfish, Romans snails etc.).

Please also note that any reference to the '3 licensing tests' below is not applicable to those species.

References to 'you' below should be taken to refer to 'developer and/or developer's consultant ecologist' as appropriate.

Introduction

For NSIPs which involve EPS, Natural England offers services, some of which are chargeable (see Annex A), to provide you with early advice and opinion on your protected species proposals in relation to all three licensing tests¹² without a planning consent needing to be in place. This is undertaken so that the examining authority for NSIP applications under the PA2008, can have confidence that Natural England, as the relevant licensing authority, has considered the impacts relating to protected species in order to make a recommendation to the relevant Secretary of State.

In order to do this, Natural England needs to conduct an assessment, based on a **full draft mitigation licence application**, in advance of the formal submission to the Inspectorate. The steps to be followed when submitting the appropriate information, in respect of an NSIP project which has the potential to affect EPS, are set out below and in the Flow Chart on page 7.

Key message for NSIP developers and their ecological consultants:

¹² The three tests:

- the activity must be for a certain purpose (for example, for scientific research or in the public interest)
- there must be no satisfactory alternative that will cause less harm to the species
- the activity must not harm the long-term conservation status of the species (you may need to create new habitats to offset any damage)

Natural England strongly advises that developers engage at the earliest possible opportunity with Natural England should protected species licences be required.

We recommend that a draft licence application is generally* submitted at the pre- application stage to assist the examination process. You should be aware that if you choose to submit your DCO application to the Inspectorate without having resolved matters relating to licensing first then there is a significant risk that these issues may prevent your application proceeding past the application or examination stage. Please note that, in cases where a licence is required and the licensing team has not been appropriately consulted, in accordance with the process outlined below, Natural England cannot be held responsible for any delays experienced with regards to the progress of your DCO application or if the application is unsuccessful as a result of outstanding licensing issues.

**Note for large linear schemes (pipelines, cables, etc) from our experience it is preferable for the route to have been agreed before submitting a draft great crested newt licence application so the draft information, particularly in relation to survey and impacts, are clear and understood. Submission should still be at the earliest opportunity to ensure that any issues which require resolution are dealt with in a timely fashion well in advance of the examination stage.*

Step 1 Is a licence required? Informal engagement with Natural England

You should consult Natural England's [published guidance for the relevant species](#) and decide whether a mitigation licence is required. If you decide that a licence is required you should start to develop the mitigation scheme which should follow Natural England's published guidance for the relevant species. Although optional, to avoid any unforeseen problems arising further along in the process, you are encouraged to engage as early as possible with Natural England. If you do not have a nominated case officer at Natural England for your project then for licensing purposes, please use the following email contact:

- eps.mitigation@naturalengland.org.uk: mark your email 'NSIP – informal engagement' *-with the name of the NSIP project, and the species concerned, in the email subject header*. This will enable Natural England to coordinate, advise and oversee NSIP licensing issues through the correct channels. Once an application is accepted it will be overseen by
- the relevant Natural England Area Team.

Natural England can provide informal advice about licensing issues at any time or, through free general advice at the initial stage can outline what information is needed to facilitate this informal pre-application discussion further.

Natural England aims to provide this general or initial advice on licensing requirements over the telephone within five working days. If, however detailed pre-licence application advice is requested (e.g. for a teleconference or meeting), this will be provided through DAS in accordance with published timescales

For particularly complex cases, when the Natural England team is experiencing high workloads, or where a site visit is considered necessary for advice to be given, Natural England will contact you to discuss when it will be possible to provide a view on the case.

At this stage in the process, no full assessment of the Method Statement¹³ will take place. Depending on the level of risk or opportunities presented through the mitigation, a teleconference or face to face meeting may be appropriate to discuss matters in detail.

Step 2 – Draft licence application submitted to Natural England

For Natural England's officer to provide pre-submission screening advice on the acceptability of the proposed licence application and mitigation, applicants should, as soon as the proposals are sufficiently advanced and that the mitigation proposals take account of the final design,:

- Prepare a full draft licence application including :
 - An application form,
 - Method Statement and maps/figures together with a proposed Work Schedule (which should be Specific, Measurable, Achievable, Realistic and Time-limited (“SMART”), and
 - Reasoned Statement¹⁴.
- Email it to eps.mitigation@naturalengland.org.uk, marked ‘NSIP – Draft licence application’ with the NSIP name and species concerned included in the email header.

When preparing the application form documents for submission, the guidance on naming files and using folder structures as set out in the ‘Key message’ in section 16 of the ‘How to get a licence’ document should be followed.

When submitting draft application documents by paper or electronically, the guidance within the application form and the ‘How to get a licence’ document (section 16) should be followed (eg documents over 5MB in size should be submitted to Natural England on CD rather than by email). A link to Natural England's file compression guidance is provided below. Applicants are advised to reduce the size of their application pack when submitting by email as far as possible.

Please note that, in terms of the three licensing tests set out under Part 5 of the Conservation of Habitats and Species Regulations (2010) as amended (“Habitats Regulations”), it will not be possible for Natural England to consider that these tests have been fully met, in respect of any NSIP, until the Secretary of State has granted the DCO. However, a full assessment of your draft application, including the Reasoned Statement and supporting evidence, will be undertaken in advance of the DCO being granted, in accordance with the terms of Natural England's pre-submission screening

¹³ A [Method Statement](#) shows what impact an activity will have on protected species and whether their favourable conservation status will be maintained.

¹⁴ This document is used by our EPS Advisers to assess whether the Purpose and No Satisfactory Alternative tests have been met. It requires you to set out your views and provide evidence to demonstrate that the proposed activity meets one of the prescribed purposes. In addition, evidence is required to demonstrate that there is no satisfactory alternative to undertaking the activity, with lesser impacts on the species, as proposed in the licence application.

advice, so as to determine whether the appropriate level of detail has otherwise been provided (please see Flow Chart at the end of this document).

Please ensure that the necessary documentary evidence, which supports the statements made within the Reasoned Statement in respect of the Purpose and No Satisfactory Alternative Tests, has been included. For projects of this scale, even though the required consents will not yet have been obtained, Natural England still expects there to be a sufficient amount of supporting evidence available (e.g. reports, studies etc.) which demonstrate the need for the development and other alternatives which have been considered and subsequently discounted as being less satisfactory. Please note that we will be unable to issue the 'letter of no impediment' until the appropriate level of information has been provided in respect of all three tests.

Step 3 – 'Letter of no impediment' or 'further information request' issued from Natural England

Within 30 working days, Natural England will either issue:

- 'a letter of no impediment' stating that it is satisfied in principle, in so far as it can make a judgement on the information reviewed, that the proposals presented comply with the 3 licensing tests, or
- a letter outlining why we believe the proposals currently do not meet licensing requirements and what further information is required. If further information is required, this is likely to result in the need for further advisory services under the pre-submission screening agreement of the revised draft licence application. It should be noted that time taken by you to provide any amended/enhanced/new information does not count towards the 30 working day customer standard target.

Correspondence on the draft applications and advice given will be copied to the Inspectorate.

The '**letter of no impediment**' will set out Natural England's advice against the three statutory licensing tests under Part 5 of the Habitats Regulations. You can use this letter to support your application to the Inspectorate; it will also be sent by Natural England to the Inspectorate. The letter will make clear that, on the basis of the species information and proposals presented to date, Natural England is satisfied in principle that the licensing tests are likely to be met when a formal application is submitted (on the basis that the information/evidence provided within the application remains the same), subject to the DCO being granted by the Secretary of State and subject to the caveats listed under clause 4 of the PSS terms and conditions (see link below). The letter will also draw attention to the fact that ecological conditions on the site may change over time. It is your (the developer's) responsibility to maintain sufficiently up to date survey information which is then made available to Natural England (along with any resulting amendments to the draft licence application) and the Inspectorate so that there is no delay in issuing the licence once the Secretary of State has granted the DCO.

Step 4 – Submission of the NSIP application to PINs for a Development Consent Order

After you have submitted the DCO application to the Inspectorate, along with the 'letter of no impediment' and associated mitigation proposals you should keep Natural England informed of progress to ensure that we remain aware of the likely timeframes so that we know when to expect the official application and can undertake a timely final mitigation licence decision. It is possible that the timetable of activities (which forms a legally enforceable part of the European Protected Species licence – see regulation 53(8)(c)(ii) of the Habitats Regulations) will require a final update if there has been any slippage in the agreed timings (see Step 5).

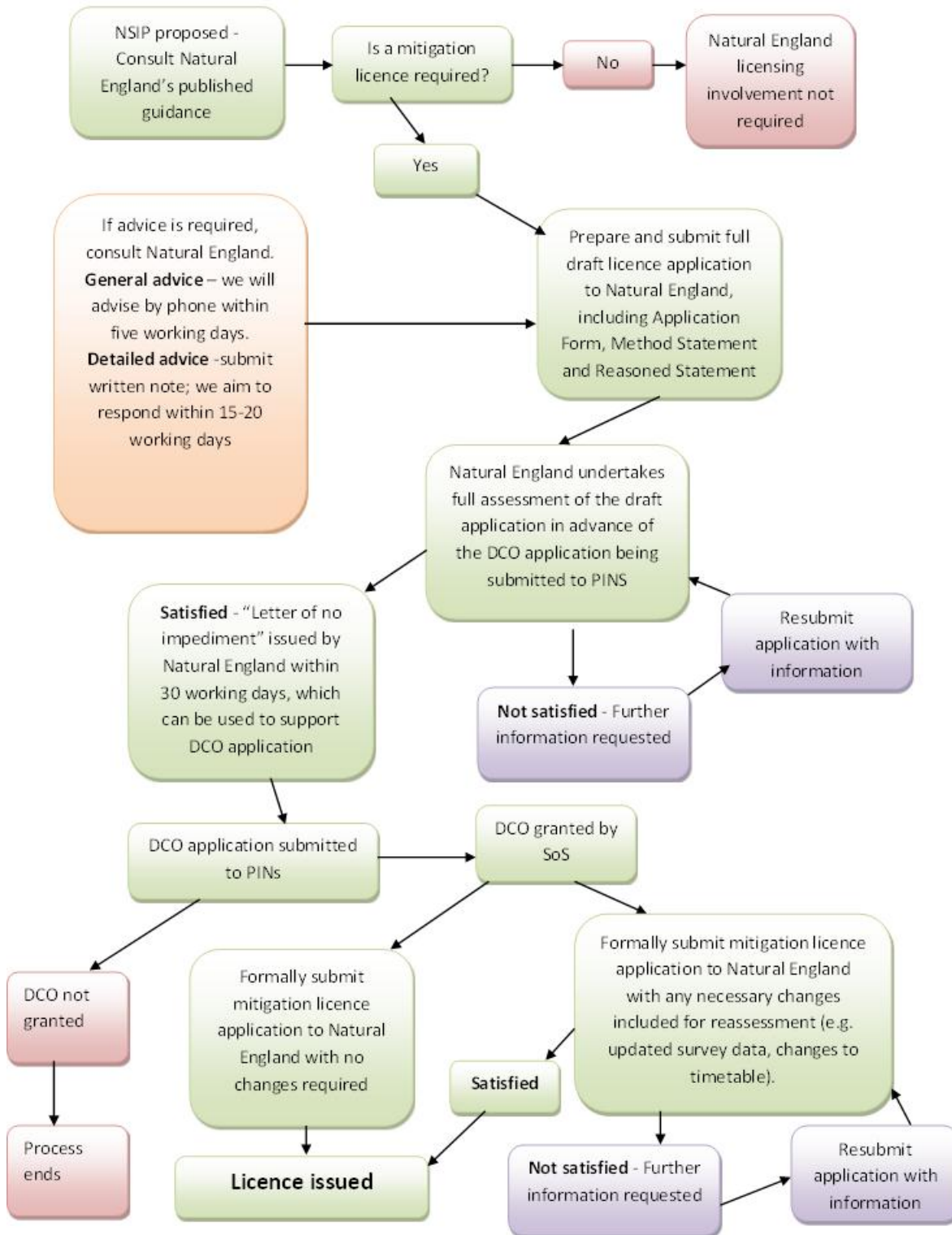
Step 5 - Natural England grant of a mitigation licence following the Development Consent Order being issued (note this step is not chargeable).

Once the DCO has been granted, you should formally submit the mitigation licence application to Natural England (following the submission process outlined in Step 2)), Natural England will grant a licence, provided the proposals and the situation on site either:

- Remain the same and the work schedule is still SMART (Specific, Measurable, Achievable, Realistic and Time-limited), or
- Have been suitably adjusted to enable Natural England to confirm that the mitigation proposals remain adequate (eg timings in the work schedule may change), or
- Take account of any further survey requirements, and reassessment of impacts etc, resulting from a significant delay between the issue of the 'letter of no impediment' and the DCO decision.

Please be aware that if changes are made to proposals or timings which do not enable us to meet the three tests we will issue a letter outlining why the proposals are not acceptable and what further information is required. These issues would need addressed before a licence can be granted. This will also be sent to the Inspectorate to keep them informed of any advice given by Licensing to you (the developer). Natural England does not expect any significant changes to be made to proposals agreed in principle at this stage.

Nationally Significant Infrastructure (NSIP) Licensing Guidance Process for NSIP developers



Useful links for preparing a draft application:

Please note that our advice is regularly updated. It is therefore advisable to use the latest versions available on Wildlife Management and Licensing .GOV.UK web-pages. Core guidance is listed below:

- [‘How to Get a Licence’](#). This gives an overview of the licensing process.
- <https://www.gov.uk/environmental-management/wildlife-habitat-conservation> gives useful links to species licence information
- Application forms web link: <https://www.gov.uk/wildlife-licences>
- [Pre-submission screening service](#)