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**Final Submissions**  
**for the**  
**Royal Society for the Protection of Birds**  
**and Suffolk Wildlife Trust**

**Submitted for Deadline 10**  
**12 October 2021**

**Planning Act 2008 (as amended)**

**In the matter of:**

**Application by NNB Generation Company (SZC) Limited for an Order**  
**Granting Development Consent for**  
**The Sizewell C Project**

**Planning Inspectorate Ref: EN010012**  
**RSPB Registration Identification Ref: 20026628**  
**Suffolk Wildlife Trust Registration Identification Ref: 20026359**

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## 1. Deadline 10 Summary of Final Position

- 1.1. The RSPB and Suffolk Wildlife Trust raised a number of serious concerns about the potential impacts of the Application on designated sites and important species in our Written Representations<sup>1</sup>. Within our Written Representations<sup>2</sup> we also explained that 104,836 people had taken the Love Minsmere e-action, showing their support of these concerns, as raised in our Relevant Representations. Throughout the Examination, we have continued to raise these concerns, through both written and oral engagement with the Examination and in direct discussions with the Applicant. We are grateful to the Applicant for the significant progress towards resolution of some of these issues, including for natterjack toads, plans to mitigate potential recreational impacts of displaced visitors and construction workers and the plan to manage vessel movements to avoid impacts on red-throated diver but unfortunately some serious concerns remain, and we expand on these below:

### Outstanding areas of significant concern at the close of the Examination

- 1.1.1. Loss of 5.74 ha of Sizewell Marshes SSSI - we object to the principle of permanent land take from a SSSI do not agree the policy tests in EN-1 and EN-6 have been satisfied and do not agree that the justification not to deploy a triple span bridge to reduce the impact on SSSI are sufficient in relation to EN-1.
- 1.1.2. Concerns about the feasibility of the creation of fen meadow as compensation for loss of SSSI fen meadow.
- 1.1.3. Concern that compensatory fen meadow and wet woodland for loss of SSSI habitats will not be functional before loss occurs and will not be adequate to ensure the re-establishment of the invertebrates lost from these habitats.
- 1.1.4. Concern that additional impacts on Sizewell Marshes SSSI may arise from the approach to managing groundwater levels as this may have impacts on water chemistry affecting fen meadow habitats.
- 1.1.5. Concern that the method of monitoring change in groundwater within the SSSI is flawed and that the mitigation proposed is unlikely to work if the changes are significant.
- 1.1.6. Concern that the Coastal Processes Monitoring and Mitigation Plan has identified appropriate mitigation should additional impacts arise from the marine transport facilities and the CDO/FRR outfalls.
- 1.1.7. Compensatory wet habitats at Abbey Farm for foraging marsh harriers of the Minsmere-Walberswick SPA will not be provided and established in advance of impact meaning they will not effective during Phase 1 of construction and do not meet the legal/policy requirement for compensation to be functional in advance of impact.

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<sup>1</sup> Written Submission for the Royal Society for the Protection of Birds and Suffolk Wildlife Trust ([REP2-506](#))

<sup>2</sup> Section 8 (epage 197) of the Written Submission for the Royal Society for the Protection of Birds and Suffolk Wildlife Trust ([REP2-506](#))

- 1.1.8. Noise and visual disturbance impacts on breeding and wintering waterbirds on the Minsmere South Levels and Sizewell Marshes (both functionally-linked to the Minsmere-Walberswick SPA).
- 1.1.9. Concerns around effects of the cooling water system on distribution of fish prey for birds of the Minsmere-Walberswick, Outer Thames Estuary and Alde-Ore Estuary SPAs remain and the lack of an Acoustic Fish Deterrent to mitigate this impact.
- 1.1.10. The total impacts of the Application on marine ecology during construction, including from impacts of noise, lighting and vibration and sediment plumes arising from marine construction works and dredging. During operation, combined within-project impacts could arise from impacts on fish prey due to the thermal and chemical plumes, and from fish mortality and water quality effects from the cooling water system. In addition, potential impacts from discharges from the desalination plant, particularly should its use extend into commissioning or operation of the power station.
- 1.1.11. We do not agree that the Application can achieve Biodiversity Net Gain due to direct adverse impacts on Sizewell Marshes SSSI and its features and note our concerns around the feasibility of creating dry Sandlings grassland on post-construction soils

### Final Position

- 1.2. Given the significance of the concerns above, we remain of the position that the Application cannot be consented without significant harm to wildlife and the natural environment. In terms of the Habitats Regulations Assessment, we do not agree that *adverse effects on the integrity* can be excluded for the following sites and species:
  - 1.2.1. Breeding gadwall, shoveler, teal, marsh harrier<sup>3</sup> and little tern and non-breeding white-fronted goose, gadwall and shoveler of the Minsmere-Walberswick SPA.
  - 1.2.2. Non-breeding red-throated divers and breeding common and little terns of the Outer Thames Estuary SPA.
  - 1.2.3. Breeding Sandwich terns of the Alde-Ore Estuary SPA.
  - 1.2.4. Perennial vegetation of stony banks and Annual vegetation of drift lines of the Minsmere-Walberswick Heaths & Marshes SAC.
  - 1.2.5. The Minsmere-Walberswick Ramsar site - specifically criterion 1 - mosaic of marine, freshwater, marshland and associated habitats, complete with transition areas in between, criterion 2 nine nationally scarce plants and at least 26 red data book invertebrates, and the important assemblage of rare breeding birds associated with marshland and reedbeds.
- 1.3. As explained above, we also consider the loss of 5.74 ha of Sizewell Marshes SSSI to be unacceptable and that additional hydrological impacts on this SSSI may increase the area subject to permanent damage.
- 1.4. There remains issues with legal and policy requirements and considerations for example the cumulative, interproject, conservation objectives general duties considerations and in our view too much being left to be determined after the Examination (as discussed below). Although we

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<sup>3</sup> Noting that compensation is proposed for impacts on marsh harrier

have full confidence in the public bodies involved and are grateful for the inclusions of consultation requirements for the RSPB and SWT, ensuring there is sufficient detail and clarity now or feedback loop/adaptive management mechanisms in place for the ExA to be legally (and ecologically) confident in measures or mechanisms remains an issue especially when other landowners are involved.

- 1.5. Therefore, despite the progress made in some areas, the significance of these remaining concerns means that overall, our position is that the Application should not be consented.

## Responses to the Examining Authority's Requests for Further Information of 20<sup>th</sup> September 2021<sup>4</sup> and 6<sup>th</sup> October<sup>5</sup>

### 2. The ExA's further request for further information and written comments, 20<sup>th</sup> September

Annex C Biodiversity, Ecology and HRA

1. Please could the RSPB/SWT also expand on any outstanding concerns with the Applicant's assessment of cumulative/inter project<sup>6</sup> effects

*Within project effects*

- 2.1. We remain concerned about the assessment of and impacts arising from the total impacts of the Application, both directly and indirectly.
- 2.2. In particular we are concerned about the combination of potential marine impacts (in relation to fish prey) on birds of the Minsmere-Walberswick, Alde-Ore Estuary and Outer Thames Estuary SPAs. These impacts could arise during construction due to impacts of noise, lighting and vibration and sediment plumes arising from marine construction works and dredging. During operation, combined within-project impacts could arise from impacts on fish prey due to the thermal and chemical plumes, and from fish mortality and water quality effects from the cooling water system. We do not agree that these impacts have been properly assessed for the following reasons:
  - 2.2.1. Where we disagree with the level of significance attributed to single impacts, this means the impact when combined with others is also under-estimated.
  - 2.2.2. Where impacts considered insignificant alone are not considered further this disregards potential for additive and/or synergistic effects.
- 2.3. The recent addition of proposals for a desalination plant add to these concerns, particularly given the potential for discharges to add to marine impacts on fish prey for SPA birds should its use extend into the commissioning period (or into operation of the power station).

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<sup>4</sup> Examining Authority's Request for further information of 20<sup>th</sup> September 2021 ([PD-052](#))

<sup>5</sup> Examining Authority's Request for further information of 6<sup>th</sup> October 2021 ([PD-054](#))

<sup>6</sup> We note the helpful explanation within the RIES [[PD-053](#)] that cumulative and inter project effects are the "different elements of the Proposed Development and the total impacts of the project as whole." We wish to add that another important part of the requirements (both EIA and Conservation of Habitats and Species Regulations) is the consideration of this application with other projects and plans, known as the cumulative and in combination parts of the assessments and therefore have included those here to

- 2.4. In conclusion, we do not agree that *adverse effects on the integrity* of the Minsmere-Walberswick, Alde-Ore Estuary and Outer Thames Estuary SPAs can be excluded arising from the combined marine impacts of the Application alone.

*Cumulative effects (with other projects)*

- 2.5. We note our concerns around the lack of an adequate assessment of disturbance of red-throated diver arising from the Application cumulatively with offshore windfarm projects in the area. These concerns are set out in full in our Written Representations<sup>7</sup> and have not been addressed during the Examination.
- 2.6. We also raised the potential for cumulative noise effects from the Application with the Sizewell B relocated facilities project in our Written Representations<sup>8</sup>. The Applicant responded to this in its Comments at Deadline 6 on Submissions from Earlier Submissions and Subsequent Written Submissions to ISH1-ISH6<sup>9</sup> and we responded again at Deadline 7<sup>10</sup>. No further progress has been made since this point, hence the following concerns from our Deadline 7 response remain:

*“Reference is made to an assessment within the HRA for the relocated facilities works, however, the link provided to this reference does not work. The Environmental Statement for the relocated facilities works, which is before this Examination, does not contain details of this assessment. Based on the information provided it is therefore difficult to review these conclusions and our key concerns remain whether the relocated facilities work would result in additional seasons during which parts of Sizewell Marshes experience noise levels of over 65dB (for breeding birds) or 70dB (for wintering birds) or whether (if the relocated facilities works were delayed), additional areas of Sizewell Marshes would experience noise levels over these thresholds.”*

3. Do NE, the EA and the RSPB/SWT have any comments on the Applicant’s assessment of indirect impacts on breeding bittern from entrapment of eel as their prey species?

- 2.7. We raised concerns about impingement of eels in our Written Representations<sup>11</sup> as eels form an important food source for bittern of the Minsmere-Walberswick SPA. We note that the recent Draft Fish Impingement and Entrainment Monitoring Plan<sup>12</sup> proposes mitigation for eels through the provision of eel passes at Snape Maltings and Blythford Bridge (we assume this refers to Blythford Bridge), however, whilst these proposals may benefit the wider eel population, they will not have benefits for eel usage of the Minsmere area which may be affected by impingement and barrier effects. Therefore, in our view, the potential for indirect effects on bitterns of the Minsmere-Walberswick SPA which forage in the Minsmere reedbeds remains.

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<sup>7</sup> Paragraph 3.618-3.619 (epage 129) of the Written Submission for the Royal Society for the Protection of Birds and Suffolk Wildlife Trust ([REP2-506](#))

<sup>8</sup> Paragraph 3.358-3.359 (epage73) of the Written Submission for the Royal Society for the Protection of Birds and Suffolk Wildlife Trust ([REP2-506](#))

<sup>9</sup> Comments at Deadline 6 on Submissions from Earlier Submissions and Subsequent Written Submissions to ISH1-ISH6 ([REP6-025](#))

<sup>10</sup> Paragraph 6.23 (epage 23) of Comments on Other Submissions (submitted at Deadline 5 and 6) for the Royal Society for the Protection of Birds and Suffolk Wildlife Trust ([REP7-154](#))

<sup>11</sup> Paragraph 3.534 (epage 112) of the Written Submission for the Royal Society for the Protection of Birds and Suffolk Wildlife Trust ([REP2-506](#))

<sup>12</sup> 9.89 Draft Fish Impingement and Entrainment Monitoring Plan - Tracked Changes Version - Revision 2.0 ([REP8-111](#))



[4. Do the MMO, NE and the RSPB/SWT have any comments on the revised version of the Outline Vessel Management Plan submitted by the Applicant at Deadline 7 \[REP7-046\]?](#)

- 2.8. Our key concerns arising from previous iterations of the Outline Vessel Management Plan (OVMP), including that submitted at Deadline 7 (REP7-046), were that the monitoring proposed would not be sensitive or reliable enough to inform the need to move from a direct route for vessels to a mitigation route avoiding the SPA as far as possible and hence, in the absence of a commitment to use the mitigation routes from the outset, we did not agree that *adverse effects on the integrity* of the Outer Thames Estuary SPA could be excluded. Given the submission at Deadline 7 has already been superseded by a revised submission at Deadline 8<sup>13</sup>, our comments below apply to the latest version.
- 2.9. The revised OVMP submitted at Deadline 8 designates the mitigation routes (which maximise avoidance of the SPA) as the “preferred routes”, although it is stated that the current intention is that no vessel movements in winter will be required. Both of these points are welcomed. The revised Plan does however defer final decisions around monitoring and route choice until the event that winter vessel movements are required, by requiring the submission and approval of a Winter Vessel Management Plan (WVMP).
- 2.10. We welcome the commitment to consult the RSPB in the development of a WVMP, as stated in paragraph 2.1.1, and we support the principles of route selection explained in paragraph 3.1.3 (namely maritime safety, avoidance of the SPA as far as possible and the preferred use of shipping lanes), however, we are somewhat concerned that the revised OVMP does not formally commit now to use of the “preferred routes” during winter but rather moves final decisions around monitoring and mitigation of impacts on the red-throated diver population of the Outer Thames SPA to after the Examination and therefore outside the DCO consenting process.
- 2.11. We query whether it is possible to be confident that those routes designated as “preferred” at this stage would be those that are implemented in the WVMP, particularly noting paragraph 3.1.2 which states that routes other than the preferred routes “*may be used in the event that vessel movements along the preferred routes are considered not to be feasible for reasons such as maritime safety*” (emphasis added). This implies that factors other than safety will be considered in the decision as to whether to use preferred routes or not. We therefore question the reasons for deferring final route choice and monitoring options beyond the DCO process and whether it is possible to provide further certainty that impacts will be avoided, through further clarification of the commitment to the preferred routes.
- 2.12. We have discussed these issues with the Applicant and expect further progress within the Deadline 10 submissions including in particular a strengthened commitment to the route selection hierarchy and therefore the use of the preferred routes.

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<sup>13</sup> 9.65 Outline Vessel Management Plan - Tracked Changes Version - Revision 3.0 ([REP8-105](#))

### 3. The ExA's further request for further information and written comments, 6<sup>th</sup> October

#### Annex A Questions on Deadline 8 submissions

1. RSPB – D8 submission, Replies to the ExA's third written questions, para 1.4 states "In addition, it is our view that All protected species mitigation measures submitted to the Examination and contained within the protected species licence applications must be secured in the TEMMP and the CoCP and therefore also secured within the DCO via Schedule 2 Requirements 2 and 4". Why can the SofS not rely on licensing by Natural England and other licensing authorities?

- 3.1. Our comments were ensuring there is clarity between what the Applicant views as not requiring an EPS licence (and therefore not included within their applications to Natural England) and the avoidance and mitigation measures relied upon by the Applicant to reach that conclusion. For example mitigation for lighting and noise impacts to bat commuting routes and foraging areas are inadequate in the non-licensable method statement.
- 3.2. In our view it is not entirely clear whether the Applicant's conclusions about the effectiveness of those avoidance and mitigation measures are correct for example mitigation for lighting and noise impacts to commuting routes and foraging areas.
- 3.3. And supported by Natural England. We recognise that the Applicant is securing the non licensable method statements by way of the Code of Construction Practice, which in turn is secured by way of being a DCO requirement, please refer to para 6.1.6 of the CoCP<sup>14</sup>. However as we commented at Deadline 8<sup>15</sup> currently the documents listed do not contain or reference the additional mitigation measures submitted to the Examination for protected species.
- 3.4. Therefore these will need to be updated in order to do so and this is part of our concern. For example the Bat Non-licensable Method Statement listed does not appear to contain or reference all the additional mitigation measures submitted to the Examination.
- 3.5. In addition we believe that no letters of no impediment have been issued by Natural England<sup>16</sup> and therefore no reassurance the Examining Authority can have that licences will be granted. In the final SoCG<sup>17</sup> between the Applicant and Natural England we note the following in the September 2021 update column

*"Once Natural England have reviewed all of the updated licenses and the related material, it is suggested that new commentary is provided and SZC Co. can respond accordingly. SZC Co has suggested to Natural England that they advise ExA, prior to examination close, whether there are any fundamental reason why the relevant licences would not be granted, even if formal [Letters of No Impediment] are not available in this period."*

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<sup>14</sup> "6.1.6 This CoCP commits SZC Co. to compliance with non-licensable method statements and mitigation strategies. The DoO establishes an Ecology Working Group and any updates to these documents must be approved by the EWG."

<sup>15</sup> Comments on any additional information/submissions received by D7 [REP8-173](#) paragraphs 17.4-17.5

<sup>16</sup> We have asked the Applicant to confirm this is still the case as set out in its final SOCG with NE

<sup>17</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010012/EN010012-007593-updated%20SoCG.pdf>

- 3.6. Therefore, although we apologise for not being clearer in our Deadline 8 submissions, we believe there is still an issue and would recommend that the Examining Authority is very clear on which activities/offences are going to be licenced and which measures are there to avoid and mitigate potential offences occurring and be satisfied with the securing of those. We of course appreciate the separate role that Natural England will play in considering the licences applied for, noting that consideration will only be on the offences that those applications are made for, but this, in our view does not mean, that the decision-maker is entitled to take the view that simply because consent is required from some other responsible body that will be sufficient.
- 3.7. The question as to whether there is such adequate information in this case will no doubt be a question which the ExA and subsequently the Secretary of State, will wish to critically consider.

## Report on Implications for European Sites (RIES)

### 4. Comments on the Report on Implications for European Sites<sup>18</sup> (RIES)

- 4.1. We are grateful for the Examining Authority's coverage and representation of our position throughout the RIES and confirm that we are content with this, other than these brief additional comments below:
- 4.2. Paragraphs 4.2.29 to 4.2.49 set out the concerns of the RSPB/SWT and others with regard to the vegetated shingle qualifying features of the Minsmere to Walberswick Heaths and Marshes SAC and Ramsar site. We wish to confirm that the submissions at Deadlines 8 & 9 have not resolved the concerns of RSPB/SWT. Further discussions up to Deadline 10 have provided more reassurance that our concerns regarding particle size and the status of the vegetated shingle have been better understood by the Applicant, but we are yet to be provided with evidence that this will remove our concerns regarding potential for *adverse effects on integrity*. We also have not been provided with convincing evidence that mitigation works are feasible should impacts arise affecting the vegetated shingle being monitored through the CPMMP.
- 4.3. Paragraphs 4.2.53 to 4.2.93 describe the issues around recreational pressure and the progress made during the Examination around mitigation of potential impacts from visits to designated sites by construction workers and displaced visitors. We agree that this is an accurate representation of these discussions, but note that since publication of the RIES, the RSPB/SWT have discussed these issues further with the Applicant and expect further refinements to the Monitoring and Mitigation Plans and the proposals for informal greenspace to be included in the Deadline 10 submissions. We expect these refinements to include, for example, more explicit inclusion of stone curlew mitigation, further clarification regarding rapid deployment of urgently needed additional mitigation and acknowledgement of the potential need for additional little tern monitoring within the MMPs and management to avoid impacts on reptiles in the design of the proposed mountain bike trail in Kenton Hills. Should these refinements be secured at Deadline 10, we would be content with the mitigation proposed (although we note that our concerns around the displacement figures presented remains).

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<sup>18</sup> Report on Implications for European Sites ([PD-053](#))

- 4.4. Paragraph 4.3.9 explains that the RSPB/SWT could not agree that *adverse effects on integrity* could be excluded for the Minsmere-Walberswick SPA (and other sites). The features of the Minsmere-Walberswick SPA to which this concern relates should additionally include non-breeding white-fronted goose (which is covered in paragraphs 4.3.74 – 4.3.77).
- 4.5. We note paragraph 4.3.92 regarding the Outline Vessel Management Plan and can confirm that we have reviewed the revised Plan submitted at Deadline 8 and have been able to update our position accordingly. The revised OVMP designates the mitigation routes (which maximise avoidance of the SPA) as the “preferred routes”, although it is stated that the current intention is that no vessel movements in winter will be required. Both of these points are welcomed. We were concerned however, that the revised Plan defers final decisions around monitoring and route choice until the event that winter vessel movements are required, by requiring the submission and approval of a Winter Vessel Management Plan (WVMP) and questioned whether it is possible to provide further certainty that impacts will be avoided, through further clarification of the commitment to the preferred routes. We have recently discussed these issues with the Applicant and hope for further progress within the Deadline 10 submissions including in particular a strengthened commitment to the route selection hierarchy and therefore the use of the preferred routes.
- 4.6. Paragraph 4.3.161 discusses combined marine impacts from the project alone and states that, in relation to the Applicant’s comments on our Written Representations:
- “The RSPB/SWT [REP6-046] welcomed the Applicant’s response and confirmed it would update its position on all aspects of marine ornithology in its next SoCG; this is anticipated to be submitted at Deadline 8 (after publication of the RIES).”*
- 4.7. It should be noted that, in REP6-046<sup>19</sup>, we restated our concerns following the Applicant’s response, by saying that:
- “The Applicant’s response to this concern does not address our point that the potential for interactions should be covered through consideration of potential effects’ timelines and seasonality and a discussion of the consequences for the fitness and survival of the Minsmere-Walberswick, Alde-Ore Estuary and Outer Thames Estuary SPAs designation species. We therefore remain concerned that the large number of impacts considered minor by the Applicant, could add up to a significant effect on these populations when considered together (cumulatively).”*
- 4.8. Paragraph 4.6.8 sets out the RSPB/SWT’s position at Deadline 7 on those sites and species for which they did not agree that potential *adverse effects on integrity* could be excluded from the Proposed Development alone. We agree that this is an accurate representation of our position at that stage. Our position based on the submissions up to and including Deadline 9 and more recent discussions with the Applicant (including updates promised to e.g. the Outline Vessel Management Plan and the recreation Monitoring and Mitigation Plans) is that we do not agree that *adverse effects on integrity* can be excluded for these sites and species:
- Breeding gadwall, shoveler, teal, marsh harrier<sup>20</sup> and little tern and non-breeding white-fronted goose, gadwall and shoveler of the Minsmere-Walberswick SPA

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<sup>19</sup> Para. 14.15 (epage 32) of Comments on any additional information/submissions received by D5 ([REP6-046](#))

<sup>20</sup> Noting that compensation is proposed for impacts on marsh harrier

- Non-breeding red-throated divers and breeding common and little terns of the Outer Thames Estuary SPA
  - Breeding Sandwich terns of the Alde-Ore Estuary SPA
  - Perennial vegetation of stony banks and Annual vegetation of drift lines of the Minsmere-Walberswick Heaths & Marshes SAC
  - The Minsmere-Walberswick Ramsar site - specifically criterion 1 - mosaic of marine, freshwater, marshland and associated habitats, complete with transition areas in between, criterion 2 nine nationally scarce plants and at least 26 red data book invertebrates, and the important assemblage of rare breeding birds associated with marshland and reedbeds.
- 4.9. Paragraph 7.1.43 explains the RSPB/SWT's position that the timing of the wetland creation element of the proposed marsh harrier compensatory habitats at Abbey Farm should be brought forward to ensure these habitats are functional before construction commences. We wish it to be noted that we disagree with the Applicant's position that the wetland habitat will be functional once earthworks are complete as until reed is established it will require protection, which would be likely to mean that prey would not be accessible to marsh harriers until the reed is established, which would mean full functionality would not occur until at least 18 months into the construction period.

## Applicant's Deadline 8 and Deadline 9 submissions

### 5. Comments on Applicant's Deadline 8 and Deadline 9 submissions

[Draft Fen Meadow Plan - Tracked Changes Version<sup>21</sup>](#), [Draft Water Monitoring and Water Management Plan - Tracked Changes Version<sup>22</sup>](#) and [Fen Meadow Strategy - Tracked Changes Version<sup>23</sup>](#)

- 5.1. We continue to have significant concerns over the risk to Sizewell Marshes SSSI resulting from the Application .
- 5.2. For details we refer to the following submission by Friends of the Earth (Interested Party ID: 20025904) and their consultant experts (Mould D, Low R and Graham J) entitled, 'Deadline 10: FINAL WRITTEN SUBMISSION Review and summary comments on the ecohydrological aspects of the impacts of the proposed development on Sizewell Marshes SSSI, and the proposals for creation of compensatory fen meadow habitat.'
- 5.3. In synopsis, our most significant concerns relate to the impacts on water quality. The rare plant communities, specifically the M22 fen plant community within the SSSI, rely on a groundwater dominated hydrological regime. The proposed mitigation for Sizewell C development, in order to maintain water levels in the SSSI, will risk reducing groundwater influence with surface water from the ditches, which is of far poorer quality. We believe this risks impacting significant areas of SSSI to such an extent, that it would be very hard to mitigate.

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<sup>21</sup> 9.64 Draft Fen Meadow Plan - Tracked Changes Version - Revision 2.0 [REP8-104](#)

<sup>22</sup> 9.87 Draft Water Monitoring and Water Management Plan - Tracked Changes Version - Revision 2.0 [REP8-108](#)

<sup>23</sup> 6.14 Environmental Statement Addendum Volume 3 Environmental Statement Addendum Appendices Chapter 2 Main Development Site Appendix 2.9.D: Fen Meadow Strategy - Tracked Changes Version - Revision 2 .0 [REP8-063](#)

- 5.4. Whilst we refer to Friends of the Earth submission, we would like to specifically refer to the following remaining concerns:
- 5.4.1. The methodology of analysis means that it is impossible to know what proportion of surface water simply flows through the SSSI. It makes no assessment of contribution to the peat water balance. Therefore, the level of risk as a result of mitigating changes in levels, using water from the ditches, is impossible to determine;
  - 5.4.2. It is highly likely there will be delays in the construction schedule, which in turn could cause an increase in seasonal (summer) drawdown impacts. This has not been assessed within the model;
  - 5.4.3. We have concerns over the expertise underlying the Applicant's work. Specifically, Paragraph 1.4.7 of [REP8-104](#) which notes that *the predicted change relative to baseline conditions is smaller than the seasonal variation observed in peat groundwater levels*. This is a basic error and irrelevant when determining impact;
  - 5.4.4. The hydrological supporting conditions for the M22 fen meadow community are partly defined by the elevation of the water table relative to the ground surface, but the Applicant is monitoring, and has conducted the ecohydrological impact assessment, using shallow piezometric levels. These two variables potentially have very different values at a single location. Therefore we are still in a position where the whole ecohydrological impact assessment for M22 has been carried out using inaccurate data;
  - 5.4.5. Our main concern with the strategy for mitigating water table drawdown within the SSSI caused by the development, is that it will mean that a greater proportion of poor-quality surface waters needed to support water table elevation within the fen meadow; it is therefore, essentially, a concern over water quality. We are therefore strongly of the opinion that six-monthly water quality monitoring within the SSSI, as still appears in paragraph 3.3.7 of the Draft Water Monitoring and Management Plan<sup>24</sup> is clearly inadequate to address and manage our concerns, and we would like to see two-weekly monitoring, at least during the early development phase;
  - 5.4.6. Measurements of water levels within the peat, be it piezometric level or water table elevation, need to be expressed relative to a defined elevation within the micro-topography of the meadow surface. The micro-relief of the meadow surface (0.1 m) is of the same order as the guideline 0.15 m range for M22 fen meadow community, and therefore a defined and consistent metric for ground surface elevation in relation to each monitoring point is vital for accurate and consistent assessment of water level data;
  - 5.4.7. We are still unclear about nutrient concentrations in the inflowing surface waters, in terms of absolute values and temporal variation. This is a critical uncertainty, since the Applicant is proposing to increase the contribution of surface waters (over that of groundwater) to maintenance of water table elevation in the peat, which in turn supports the nutrient-sensitive M22 fen meadow plant community; and
  - 5.4.8. We would like to see a fully-calibrated groundwater-surface water model which is needed to determine potential effects on such a sensitive SSSI.

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<sup>24</sup> 9.87 Draft Water Monitoring and Water Management Plan - Tracked Changes Version - Revision 2.0 [REP8-108](#)

## 6. Draft Wet Woodland Plan<sup>25</sup>

- 6.1. We have not yet reviewed this plan in detail but we make some general comments below.
- 6.2. Wet woodland creation must not be to detriment of adjacent fen meadow creation. Although we welcome the plan will be provided for review by the Ecology Working Group (EWG) (paragraph 1.1.14) and a monitoring report will be submitted to the EWG on an annual basis (paragraph 2.7.5) and the Applicant following Natural England advice (paragraph 1.4.6) – we defer to Natural England on whether that advice has been fully followed.
- 6.3. We welcome both fallen and standing deadwood will be provided to represent the variety of niches available to the invertebrate communities in the woodlands at Sizewell Marshes SSSI (paragraph 2.5.5) and request those measures are also included for wet woodland creation at Benhall and Pakenham.
- 6.4. We also welcome an annual botanical assessment of the establishment of species in the area will be undertaken, including assessment of the presence of alder and grey willow in particular, as key wet woodland species (paragraph 2.7.2) but request more detail is provided and are willing to continuing working with the Applicant for the finalisation of its proposals and plans.
- 6.5. The proposals aim to deliver wet woodland up to 2.36ha plus 0.7ha on the MDS that is a ratio of 1:1 to compensate for permanent wet woodland loss at Sizewell Marshes SSSI (paragraph 4.1.4). If there are uncertainties over success, then a higher ratio would be appropriate.

## 7. Wet Woodland Strategy - Tracked Changes Version<sup>26</sup>

- 7.1. We remain of the firm view that compensation habitat should be functional before habitat loss occurs<sup>27</sup>, compensation should be as close as possible to the lost habitats<sup>28</sup> and are concerned the proposed compensation will not be adequate to ensure the re-establishment of the invertebrates lost from these habitats.

## 8. Lighting Management Plan<sup>29</sup>

- 8.1. **We are very concerned that paragraph 1.3.22 notes Bridleway 19 must remain as a green corridor with no fixed lighting unless it is required for safety purposes.** This seems to negate the mechanisms above securing the dark corridor for bats. We request clarification of how this sits with the dark corridors and a mechanism for keeping this area dark.
- 8.2. We note paragraph 1.3.43 notes *Where task lighting is used in close proximity to dark corridors, low light areas or site boundaries, the approval of the EcOW will be sought, in accordance with the procedure outlined in the CoCP.*

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<sup>25</sup> 9.108 Draft Wet Woodland Plan ([REP8-129](#))

<sup>26</sup> 9.8 Wet Woodland Strategy - Tracked Changes Version - Revision 2.0 ([REP8-091](#))

<sup>27</sup> Comments on Other Submissions (submitted at Deadline 5 and 6) ([REP7-154](#)) Section 9

<sup>28</sup> Written Submission for the Royal Society for the Protection of Birds and Suffolk Wildlife Trust [REP2-506](#) paragraph 3.87-3.88

<sup>29</sup> 6.3 Volume 2 Main Development Site Chapter 2 Description of the Permanent Development Appendix 2B of the Environmental Statement: Lighting Management Plan - Tracked Changes Version - Revision 3.0 ([REP8-051](#))

8.3. We repeat our concerns that no assessment has been made or mitigation proposed for the potential effects of lighting on red-throated divers of the Outer Thames Estuary SPA through disturbance and displacement. The potential effects of lighting of the BLFs should also be considered along with other project impacts (such as vessel disturbance) in an assessment of the total disturbance displacement impacts on red-throated diver arising from the Application, both alone and in-combination with offshore windfarm projects.

## 9. Updated Mitigation Route Map incorporating the amendments shown in the Mitigation Route Map Third Addendum Revision 1<sup>30</sup>

9.1. We note that the Monitoring and Mitigation Plan for the Alde-Ore Estuary and Sandlings (Central) is missing from the Mitigation Route Map – this should be included.

## 10. Terrestrial Ecology Monitoring and Mitigation Plan<sup>31</sup>

### Monitoring for marsh harrier habitat establishment

10.1. As raised in our response at Deadline 6<sup>32</sup> to the previous version of the TEMMP, we are concerned at the lack of clarity regarding what happens if marsh harriers do not use the compensation site as expected or if the required levels of prey uplift are not achieved. We are disappointed that Tables 2.1 and 3.3 only identifies replacement planting should habitats fail to establish as a potential intervention. No alternative measures are identified at this stage in case it should be demonstrated through monitoring that harrier activity or prey levels are not sufficient to show that the compensatory habitats are functioning adequately. Given our concerns around the likely prey uplift on the dry habitats in particular, this means it is not possible in our view to have confidence that the compensatory habitats will function at the required level.

10.2. We also have concerns (as previously raised in our Deadline 8 response) around the Targets and Effectiveness measures included in Table 2.1:

*“The target is to ensure that foraging activity for marsh harriers on the EDF Energy estate is not materially different than at present such that productivity of breeding marsh harriers of the SPA is maintained.”*

10.3. To be consistent with targets within Natural England’s Supplementary Advice on Conservation Objectives for the Minsmere-Walberswick SPA marsh harrier feature<sup>33</sup>, references to foraging activity and productivity are not enough; targets regarding geographical extent of foraging habitat and the need to minimise significant disturbance should also be included.

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<sup>30</sup> 8.12 Updated Mitigation Route Map incorporating the amendments shown in the Mitigation Route Map Third Addendum Revision 1 - Revision 6.0 ([REP8-086](#))

<sup>31</sup> Terrestrial Ecology Monitoring and Mitigation Plan ([REP8-089](#))

<sup>32</sup> Paragraph 1.8 (epage 6) of Comments on any additional information/submissions received by D5 ([REP6-046](#))

<sup>33</sup> [Natural England Supplementary Advice on Conservation Objectives \(SACOs\) - Minsmere-Walberswick SPA](#), please note once webpage opened you have to tick which species and then ask it to show attributes and targets for selected features



10.4. We are grateful to the Applicant for sharing their proposed final version of the TEMMP to be submitted at Deadline 10. Unfortunately, a number of changes we have requested have not been made including the following from our Deadline 6<sup>34</sup> and Deadline 8<sup>35</sup> submissions:

10.4.1. Table 2.1 still states – “The target is to ensure that foraging activity for marsh harriers on the EDF Energy estate is **not materially different** than at present such that productivity of breeding marsh harriers of the SPA is maintained.” (emphasis added) and wish to repeat our concerns re different phrases being used for commitments such as this. Although we welcome the changed language in Table 3.3 to “in accordance with”.

10.4.2. Table 2.1 and Table 3.3 also fails to include a reference to DCO Schedule 2 Requirement 14C (now Requirement 27)<sup>36</sup> where we hope a lot of the detail in the TEMMP will be incorporated into the Marsh Harrier Compensation Implementation Plan (as part of that DCO requirement) thus reducing any potential confusion and ensuring both the requirement for and the monitoring of the compensation is contained within the same plan.

10.4.3. Table 3.3 appears to have only one potential intervention and no reference to the additional compensation habitat proposed, as mentioned above we hope all this will be more clearly set out in the required Implementation Plan but for now both the language and cross referencing continues to be a concern.

10.4.4. Table 2.1 and 3.3 both fail to include consideration of the Conservation Objectives for this species and, as discussed above, should reference the targets to maintain the geographical extent of foraging habitat and minimise significant disturbance.

### Waterbirds

10.5. We have also previously raised concerns<sup>37</sup> that, whilst Table 2.1 in the TEMMP confirms that monitoring of waterbirds will be undertaken and should it: “*Determine any changes in usage of the Minsmere South levels by breeding [and non-breeding] waterbirds as a result of construction of Sizewell C*” then “*Further boundary screening and or other approaches to noise reduction and visual disturbance to lessen any apparent impacts and to maintain populations.*”, it is our view that the initial and additional measures proposed will not mitigate potential effects as no evidence has been provided as to where these measures could be deployed or to what extent they would reduce noise and visual disturbance, particularly as some of that disturbance is likely to originate from plant operating at height. We note that no further updates have been proposed regarding this issue and this concern therefore remains.

### Bats Table 4.4: Bat Monitoring (Construction and Operation)

10.6. **We note some of the measures are vague and we request more certainty:**

10.6.1. Construction Y1 to Y12 – roosts

We note noise and light monitoring must be undertaken during the bat roost surveys and *Further consideration will be given to how additional noise and light monitoring*

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<sup>34</sup> epage 5 – 7 of RSPB/SWT’s Deadline 6 Comments on Other Submissions (submitted at Deadline 5) ([REP6-046](#))

<sup>35</sup> epage 21 – 23 of RSPB/SWT’s Comments on any additional information/submissions received by D7 ([REP8-173](#))

<sup>36</sup> The Applicant has helpfully shared with us the final version of the DCO schedule 2 and therefore we have tried to include new requirement numbering within this final submissions

<sup>37</sup> epage 20 of RSPB/SWT’s Comments on any additional information/submissions received by D7 ([REP8-173](#))

*can be used at other times to determine whether interventions are required (epage 53). This is very vague and we request more certainty.*

10.6.2. Construction Y1 to Y12 - commuting routes

We note construction static locations will be matched with pre-construction location *where possible* (epage 57). Matching construction with pre-construction locations is important to obtain a meaningful comparison.

- 10.7. Potential interventions notes *Should it be found that certain routes are not being used or overall there is substantial reduction in the permeability of the site to bats, a number of interventions are possible. - Additional planting can be utilized to enhance the connectivity of routes; - Movable potted vegetation can be used to reduce the gaps in the vegetation during construction* (epage 57). This does not provide certainty. We request more certainty.

Roosts

- 10.8. The TEMMP does not appear to include the specific requirement removed from the latest version of the oLEMP Table 6.3 to replace lost or damaged bat boxes (already shared via email).

## 11. Estate Wide Management Plan<sup>38</sup>

- 11.1. We welcome the Applicant has addressed our initial comments submitted at Deadline 8<sup>39</sup> in the updated Estate Wide Management Plan (EWMP) also submitted at Deadline 8. Having had time to fully review the EWMP we now provide further comments.

- 11.2. We are concerned the plan does not fully explain the approach to creation and management of bat habitat proposed by the Applicant<sup>40</sup>:

*The most important element of the mitigation approach to bats will be to ensure these new habitats are available to bats from the earliest opportunity. Some habitats of value have already been created. In addition, where practicable there will be some transplantation of existing trees where this is viable, the planting of new tree lines of fast growing native species and an acceptance that such mitigation is aimed at the short term with longer term mitigation such as planting of other species of tree as a second phase of mitigation. **This approach will be defined explained in the EWMP** (emphasis added) which is being developed which will further explain the habitats across the EDF Energy estate and explains how these will be managed. The EWMP will be submitted to examination.*

- 11.3. We request clarification.

- 11.4. We also note the plan does not include habitat creation or management for protected species other than reptiles or any other specific measures for biodiversity enhancement. In our view the EWMP should include specific measures for bats, other protected species and biodiversity enhancement.

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<sup>38</sup> Estate Wide Management Plan [REP8-110](#)

<sup>39</sup> RSPB & SWT Comments on other submissions (submitted at previous deadlines) [REP8-120](#)

<sup>40</sup> Applicant Comments at Deadline 7 on Submissions from Earlier Deadlines and Subsequent Written Submissions to ISH1-ISH6 - Appendices Part 1 of 3 [REP7-060](#)

## 12. Outline Landscape and Ecology Management Plan - Tracked Changes Version<sup>41</sup>

12.1. We request the Applicant confirms how the oLEMP and LEMP sit with DCO requirement 14(1)

*14 Main development site: Landscape works*

*(1) No part of Work 1A must be commenced until an advanced landscape scheme, including an implementation timetable, has been submitted to and approved by ESC. The advanced landscape scheme must be implemented as approved.*

*(2) Within six months of Unit 1 or Unit 2 comprising Work No. 1A(a), whichever is earlier, commencing operation a landscape and ecology scheme for the landscape restoration area shall be submitted for approval by East Suffolk Council. The landscape and ecology scheme must be prepared in general accordance with the detailed design principles set out in chapter 5 and chapter 8 of the Main Development Site Design and Access Statement, and must include details of proposed landscape and ecology works, including—*

*(vii) a landscape and ecology management plan which will be prepared in general accordance with the measures set out in the Outline Landscape and Ecology Management Plan.*

*(2) The landscape and ecology restoration works must be carried out and maintained in accordance with the approved landscape and ecology scheme referred to in paragraph (1) and in accordance with appropriate British Standards.*

12.2. We understand the oLEMP provides the framework for the LEMP and this is secured by a requirement within Schedule 2 of the Draft DCO. Schedule 22 Article 80 Certified Documents refers to the oLEMP version 1 and we note this should be version 3.

12.3. The oLEMP construction phase management proposals (Table 6.1) and proposed management outline proposals for newly created habitats (Table 6.2) detail measures that will take place pre and during construction. Please could the Applicant clarify how the oLEMP measures to be undertaken during construction will be secured.

12.4. Paragraph 1.1.8 of the oLEMP notes *Those areas outside of the main development site, but within the Estate, are covered by existing management plans, as described in Section 3.4* but this section has been removed from this version and this information is also not included in the Estate Wide Management Plan. Please could the Applicant clarify where the information on existing management plans is detailed.

12.5. We also query why bat boxes (FE5) have been removed from Table 6.3 and do not appear to be included within the TEMMP.

12.6. We have repeatedly expressed our concerns that temporary land-take within the SSSI will become permanent damage and requested evidence-based measures for protection and restoration of areas of 'temporary' land-take however the Applicant continues to believe this is not necessary and therefore not proposed any additional measures. We are very concerned

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<sup>41</sup> Outline Landscape and Ecology Management Plan - Tracked Changes Version [REP8-077](#)

that Table 6.2 (MFR1) of the oLEMP<sup>42</sup> still notes method statements will be provided post consent and the re-instatement plan and won't be provided until the LEMP

*Areas of habitat within the temporary construction area for the SSSI crossing in the Sizewell Marshes SSSI, which cannot be protected during construction, will be reinstated following construction completion. A detailed re-instatement plan must be included within the LEMP and method statements for works in temporary landtake areas of the SSSI must be submitted and approved by East Suffolk Council pursuant to Requirement 12D of the dDCO.*

- 12.7. Whilst we welcome this is now secured in requirement 12D of the dDCO (now 21 in final D10 DCO) we still consider method statements and a detailed re-instatement plan should be submitted to the Examination for consideration by the Examining Authority as requested in our Written Representations<sup>43</sup> and interested parties to seek to provide confidence that temporary loss will not become permanent damage.
- 12.8. Also the Applicant has still not provided evidence to demonstrate how dry Sandlings grassland can be achieved on post-construction soils<sup>44</sup>.

### 13. Draft Deed of Obligation including Part 2 Annex U<sup>45</sup>

- 13.1. We are grateful to the Applicant for the further detail and provisions for example although limited to disputes we welcome the fast track escalation process now included within Schedule 17 (Governance) within the final version of the DoO and sharing that version with us last week and therefore the comments below take account of that final version.
- 13.2. We note that an updated version of the Minsmere-Walberswick and Sandlings (North) Monitoring and Mitigation Plan (MMP) has been appended to the Draft Deed of Obligation (see epage 36). We welcome the increased commitment to provide four new wardens (from two previously) as part of the mitigation for impacts on these sites. We have previously requested that the initial wardening resource was reviewed and, should it be confirmed that four posts would be provided as initial measures at Deadline 10 (as expected), we would be able to confirm that we would be content with the revised wardening provision.
- 13.3. The Alde-Ore Estuary and Sandlings (South) MMP is also appended to the Draft Deed of Obligation. We request that these are presented as standalone documents with tracked changes versions to aid review and further comment. However, we provide our comments on the issues we noted in our previous comments on the MMPs<sup>46</sup> below.
- 13.4. Outstanding issues to be addressed from the previous version of the Minsmere-Walberswick and Sandlings (North) MMP<sup>47</sup> and progress made in the latest version including within the DoO itself:

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<sup>42</sup> Outline Landscape and Ecology Management Plan - Tracked Changes Version [REP8-077](#)

<sup>43</sup> Written Representation [REP2-506](#) paragraph 3.5.9

<sup>44</sup> Written Representation [REP2-506](#) 3.809

<sup>45</sup> 8.17 Draft Deed of Obligation - Clean Version Part 2 of 2 ([REP8-087](#)) as formally submitted at Deadline 8, however we have taken account of the final version

<sup>46</sup> Comments on any additional information/submissions received by D5 ([REP6-046](#)) epages 13 and 14

<sup>47</sup> Monitoring and Mitigation Plan for Minsmere -Walberswick European Sites and Sandlings (North) European Site ([REP5-105](#))

- 13.4.1. Issue: Mitigation and monitoring of impacts on species and habitats other than those that are features of the European sites, as required by the EIA, including for example, stone curlew
- Progress: No further progress in the Deadline 8 submissions, but we expect that, following discussions with the Applicant, stone curlew will be more explicitly represented in the revised MMP to be submitted at Deadline 10.
- 13.4.2. Issue: Little terns should be included in the primary list of ‘species and habitats of concern’ and in the species monitored (covered in Table 4.3)
- Progress: Now included in Table 4.3 although concerns remain regarding reliance on data from volunteer groups and other organisations based on the Deadline 8 submissions, but following discussions with the Applicant, we expect that the potential for data gaps will be addressed in the Deadline 10 revision.
- 13.4.3. Issue: Consider need to streamline the process by which the need for additional mitigation measures would be agreed and implemented as far as possible so additional mitigation can be implemented before serious impacts occur.
- Progress: Concern remains based on the Deadline 8 submission, although we note the commitment to develop a plan to address this post-consent and expect further refinements to this within the Deadline 10 submissions.
- 13.4.4. Issue: Queried whether the initial resourcing of two wardens will be sufficient to also enable adequate coverage of all the tasks described in paragraph 5.3.1 and Table 5.1?
- Progress: Resolved through provision of four wardens (although note our request for clarity within the plan, explained above, which again we hope will be addressed within the deadline 10 submissions)
- 13.4.5. Issue: Proposals for alternative greenspace for construction workers should be developed
- Progress: Some further progress – see our comments on the Informal Recreation and Green Space Proposals<sup>48</sup>.
- 13.5. Outstanding issues to be addressed from the previous version of the Alde-Ore Estuary and Sandlings (Central) MMP<sup>49</sup> and progress made in the latest version:
- 13.5.1. Issue: Lack of mitigation and monitoring of impacts on species and habitats required by the EIA, e.g. the shingle beach between Aldeburgh and Thorpeness.
- Progress: Not addressed (although we note this would be addressed outside this plan)
- 13.5.2. Issue: Omission of the Orfordness to Shingle Street SAC – any increase in (non-permitted) access south of Slaughden could affect the vegetated shingle feature.
- Progress: The only change appears to be that vegetated shingle mitigation in Table 5.1 now states locations including “Beach frontage south of Aldeburgh” instead of “Beach frontage south of Aldeburgh, fronting the River Alde” – whilst,

<sup>48</sup> 9.11 Informal Recreation and Green Space Proposals - Revision 1.0 ([REP8-135](#))

<sup>49</sup> Monitoring and Mitigation Plan for Sandlings (Central) and Alde-Ore Estuary European Sites ([REP5-122](#))

we have been verbally informed that the Slaughden area is included within this scope, we request that this is clarified.

- 13.6. As noted above, we have discussed these issues with the Applicant and expect further progress within the Deadline 10 submissions.

## 14. Informal Recreation and Green Space Proposals<sup>50</sup>

- 14.1. We welcome in principle the proposals to provide some active outdoor recreation opportunities for construction workers, including provision of a new mountain bike skills trail within Kenton Hills, however, given the area proposed for this trail is adjacent to an area proposed for reptile mitigation<sup>51</sup> we request that details are provided as to how impacts on translocated reptiles (and adders in particular due to their sensitivity to disturbance) will be avoided. We have discussed this issue with the Applicant and expect that further commitments in this regard will be included in the Deadline 10 submissions.
- 14.2. We welcome the proposed additional improvements to signage, access and linking of routes for cyclists and pedestrians to improve opportunities outside designated sites. We consider that, whilst the amount of additional greenspace itself is limited given the level of impact likely, the proposals would now address the majority of concerns in relation to construction workers and displaced visitors, subject to the additional clarifications and commitments requested relating to Kenton Hills (and separately, regarding the wardening resource within the Minsmere-Walberswick and Sandlings (South) MMP – see comments above).

## 15. On-site Marsh Harrier Compensatory Habitat Strategy<sup>52</sup>

- 15.1. We note that this replaces the previous Marsh Harrier Habitat Report and the DCO requirement (was 14C<sup>53</sup> now 27) has been updated accordingly.
- 15.2. We welcome the greater clarity provided regarding the need to incorporate the design principles into the marsh harrier implementation plan, as explained in paragraph 3.2.4.
- 15.3. We welcome the commitment (in paragraph 4.1.6) to retain and manage the habitats within this plan into the operational period.
- 15.4. We remain concerned that the creation of the wetland during the first winter of the construction period will in effect lead to a reduction in compensatory habitat available to marsh harriers during one of the most significant (in terms of potential impacts on marsh harriers) construction phases. The reedbed would not provide harrier hunting opportunities for the first 1-2 years while the habitat is establishing (noting the need to protect reed to enable establishment). We therefore continue to request that creation of the wetland habitats is carried out before the main construction period commences to ensure that the compensatory habitat provision is adequate.

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<sup>50</sup> 9.11 Informal Recreation and Green Space Proposals - Revision 1.0 ([REP8-135](#))

<sup>51</sup> Compare Figure 2 on page 29 of [REP8-135](#) with Figure 14C2A.10 and 14C2A.13 (pages 11 and 14) in ES Volume 2 Main Development Site Chapter 14 Terrestrial Ecology and Ornithology Appendix 14C2A Reptile Mitigation Strategy Figures 14C2A.1 - 14C2A.18 ([APP-255](#))

<sup>52</sup> 9.16 On-site Marsh Harrier Compensatory Habitat Strategy - Tracked Changes Version - Revision 2.0 ([REP8-099](#))

<sup>53</sup> Requirement 14C (page 80) of the Draft DCO ([REP8-035](#))

## 16. Westleton Marsh Harrier Compensatory Habitat Strategy<sup>54</sup>

- 16.1. We note that this replaces the previous Marsh Harrier Compensatory Habitat Report and the DCO requirement (was 14C<sup>55</sup> now 27) has been updated accordingly.
- 16.2. We remain concerned about the likely effectiveness of this area as foraging habitat (should it be included) given the proposals for habitat management are more limited in scope than those at Abbey Farm and concerns about effective establishment in the required timescales. We have raised significant concerns about the predicted uplift in small mammal abundance achievable and the level of certainty regarding functionality of the habitats at Abbey Farm and consider that providing additional dry habitats will not address these effectiveness concerns.
- 16.3. As set out above in relation to the Updated TEMMP, there are additional concerns remaining and we hope that the marsh harrier implementation plan will take account of our comments and ensure they are addressed.

## 17. Draft Fish Impingement and Entrainment Monitoring Plan<sup>56</sup>

- 17.1. We welcome the ongoing discussions regarding monitoring and mitigation of fish impingement and entrainment impacts, although we note the Environment Agency's greater technical expertise on the details of this topic. We are however, concerned that mitigation addressed at impacts on fish populations directly may not benefit those bird species associated with designated sites (the Minsmere-Walberswick, Outer Thames Estuary and Alde-Ore Estuary SPAs) which may be affected indirectly through effects on their fish prey. We are concerned that it is possible that effects at the local level, which may not be detected and trigger mitigation under the current proposals (which are addressed at population level effects) may affect birds, particularly during the nesting season when birds are geographically constrained by their nesting location. We also note that the mitigation proposed does not appear to include measures for all the fish species which are important prey to SPA bird species. We therefore remain concerned about the potential to satisfactorily mitigate impacts on SPA birds without inclusion of an Acoustic Fish Deterrent in the mitigation proposals.

## 18. Drainage Strategy<sup>57</sup>

- 18.1. We welcome and support the concerns raised by Suffolk County Council<sup>58</sup> and East Suffolk Internal Drainage Board<sup>59</sup> regarding the proposed Drainage Strategy. The Strategy represents the primary mitigation to ensure that water discharge to the neighbouring Minsmere-Walberswick SPA, SAC, Ramsar and SSSI and Sizewell Marshes SSSI is controlled effectively and we need the concerns of SCC and East Suffolk ODB to be satisfactorily addressed to ensure that the neighbouring designated sites are adequately protected.

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<sup>54</sup> 9.35(A) Westleton Marsh Harrier Compensatory Habitat Strategy Tracked Changes Version ([REP8-102](#))

<sup>55</sup> Requirement 14C (epage 80) of the Draft DCO ([REP8-035](#))

<sup>56</sup> 9.89 Draft Fish Impingement and Entrainment Monitoring Plan - Tracked Changes Version - Revision 2.0 ([REP8-111](#))

<sup>57</sup> 6.3 Volume 2 Main Development Site Chapter 2 Description of the Permanent Development Appendix 2A of the Environmental Statement: Drainage Strategy - Tracked Changes Version - Revision 4.0 ([REP8-049](#))

<sup>58</sup> Pp5-25 Agenda item 5 Suffolk County Council Deadline 8 Submission - Post Hearing submissions including written submissions of oral case - Issue Specific Hearing 11 (14 September 2021) – (ISH11) Flooding, Water and Coastal Processes ([REP8-182](#))

<sup>59</sup> East Suffolk Internal Drainage Board Deadline 8 Submission - Post Hearing submissions including written submissions of oral case ([REP8-138](#))

- 18.2. We note that SCC have advised that resolving all issues ahead of the end of Examination will be a challenge and this indicates that our concerns regarding the efficacy of the drainage strategy as embedded mitigation to protect the designated sites could remain outstanding.
- 18.3. We note that item 2.1.4 (epage 17) retains the statement '*in order to maximise the **economic** benefit without compromising the sustainability of ecosystems.*' The Applicant's response at Deadline 6<sup>60</sup> to our previous concern relating to this stated: '*The inclusion of the word 'economic' is erroneous and will be removed at the next iteration fo (sic) the Strategy*' However, the word has not been removed from the two subsequent iterations of the Strategy. We request that this is amended for the avoidance of doubt.
- 18.4. We welcome recognition of the RSPB & SWT as stakeholders with an interest in design decisions (section 2.2.4 epage 18).
- 18.5. Plate 3.6 (epage 46) shows the reduced area for the Water Management Zone (WMZ) 1 detention basin to take account of Nattejack Toad hibernacula but 3.4.14 (epage 47) indicates that the size/shape may be required to change at detailed design stage and we require assurance that this is not allowed to impact on the toad habitat.

## 19. Water Monitoring and Water Management Plan<sup>61</sup>

- 19.1. We note that section 1.1.4 identifies this document as a Level 1 document, with Requirement 7 of the DCO requiring a water monitoring plan (a level 2 document) to be agreed. It goes on to state that the '*water monitoring plan must be developed in general accordance with the Main Development Site Water Monitoring and Response Strategy (Doc. Ref. 6.14 2.14(A)A) and this draft plan*' We note that the Water Monitoring and Response Strategy<sup>62</sup> is also a Level 1 document (section 1.1.2 onwards and with WMMP referred to in 1.1.3 as also level 1). We seek clarification that it is not intended to have two Level 1 documents above the Level 2 document due to the risk of confusion this may invite. We note that the Purpose of the WMMP (section 1.2) and the principles set out in 1.3.1 indicate that the WMMP should become the Level 2 document.

## 20. Coastal Defences Design Report<sup>63</sup>

- 20.1. We are grateful for clarification in section 3.7 that the re-aligned Sandlings Path will be accommodated in the new Northern Mound design. We note the cross sections provided (eg Fig 3-5, epage 15) illustrate the path on the construction side of the 'construction site security fence' and seek clarification that the fence will be removed prior to the path becoming accessible to the public. We also note therefore that there appears to be no separation between the path and the haul road and question whether this will be the case in operation or whether an additional barrier that has not yet been illustrated will be included?

<sup>60</sup> Response 2.7 (epage 190 -191) 9.63 Comments on Submission from Earlier Submissions and Subsequent Written Submissions to ISH1-ISH6 - Appendices - Revision 1.0 Appendix H from p185 of pdf ([REP6-024](#))

<sup>61</sup> 9.87 Draft Water Monitoring and Water Management Plan - Tracked Changes Version - Revision 2.0 ([REP8-108](#))

<sup>62</sup> 6.14 Environmental Statement Addendum, Volume 3 Environmental Statement Addendum Appendices, Chapter 2 Main Development Site, Appendix 2.14.A: Water Monitoring and Response Strategy - Revision 2.0 ([REP8-066](#))

<sup>63</sup> 9.13 Sizewell C Coastal Defences Design Report ([REP8-096](#))



20.2. Fig 3.3 illustrates the removal of the northern mound. The north east corner of the current northern mound perimeter fence is on RSPB land, as represented by the triangular extension extending beyond the red line boundary (identified on the plan below (fig x)). RSPB requires further clarification that there will be no impact on its land interests in this area.

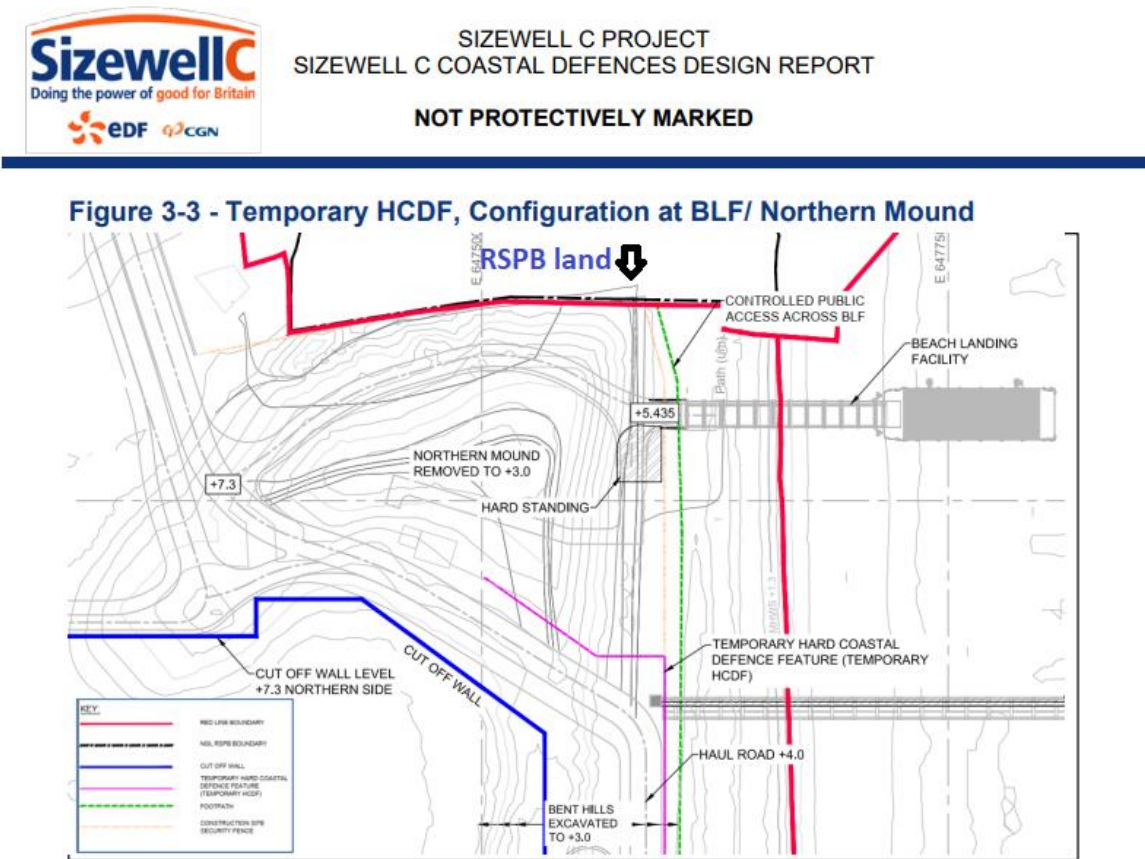


Fig x: Extension of current northern mound perimeter fence onto RSPB land

20.3. We welcome the statement in section 3.10.14 (epage 27) that the default position is that the SCDF will match the native particle size, although would prefer that this is more specific so that it cannot be interpreted as within native particle size as has been used previously to justify a coarser particle size and not fully reflect the range of particle size on the existing and adjacent beach frontages. This is particularly important as the TR544 report referenced in this section is Revision 3.0<sup>64</sup> which advocates for a coarser grain size and does not conclude that the default position is to match the native particle size.

20.4. We also note that the statement in 3.10.25 (epage 29) that *‘Once the SCDF is established, future recharge of the beach will be infrequent. Recharge is not expected to have any long-term impact on the established habitats and would occur in areas where vegetation is naturally lost, replenishing the sediment there and facilitating potential recolonisation of the supratidal habitat within the county wildlife site, just as currently happens after a storm event.’* is somewhat misleading, as no beach recharge currently occurs and the current CWs is maintained by natural processes without any recharge intervention. We remain concerned that

<sup>64</sup> 9.12 Preliminary Design and Maintenance Requirements for the Sizewell C Coastal Defence Feature - Revision 3.0 ([REP7-101](#))

the applicant has been unable to provide any examples of evidence from around the UK coast where beach recharge operations have provided beneficial effects for vegetated shingle. We note that more frequent recharge is anticipated close to the Beach Landing Facility (BLF) and therefore only tens of metres from the boundary with the Minsmere – Walberswick SAC, Ramsar and SSSI site. We note in section 3.10.20 confirmation that the *‘Coastal Processes Monitoring and Mitigation Plan (CPMMP) [REP5- 059], to be approved under DCO Requirement 7A and Marine Licence Condition 17, details the methods to monitor erosion of the SCDF and will define the levels at which recharge is required.’* Whilst section 3.10.21 states *‘The CPMMP would be periodically reviewed by the Marine Technical Forum (MTF) which is to be secured and funded through obligations in the draft Deed of Obligation’.* Our understanding is that the revision of the Terms of Reference for the MTF have been deferred until after the Examination ends and we remain concerned that the mechanism to ensure ongoing protection of the neighbouring Minsmere-Walberswick SAC, Ramsar and SSSI feature has not been adequately defined in relation to recharge and other mitigation activities.

- 20.5. Section 4.2.1 (epage 40) states that *‘Access to the foreshore from the Main Construction Area, to install the Temporary Sea Defences, is likely to be created via a limited excavation at the western toe of the Northern Mound and work around to the east.’* As per fig x above, the north east corner of the northern mound is situated on RSPB Minsmere. We are not sure how it is anticipated that works access will be achieved without more substantial removal of the northern mound than is indicated here.

## 21. Coastal Processes Monitoring and Mitigation Plan<sup>65</sup>

- 21.1. We note that for item 5 (epages 16 and 17) the spatial extent for monitoring the shoreline and longshore bar has been reduced from 1km to 500m either side. We would welcome further justification for this change, which increase our concern that threats to the Minsmere – Walberswick SAC, Ramsar, SSSI interest features to the north could be overlooked.
- 21.2. Section 1.2.4 (epage 24) repeats the misleading statement that *‘Supra-tidal shingle was also previously recorded on the Minsmere to Walberswick Heaths and Marshes SAC frontage but was destroyed (between 2010 and 2011) by natural coastal erosion.’* Although we accept that SSSI site unit 113 was lost to coastal erosion around this time, it is incorrect to imply that supra-tidal shingle has been lost from the Minsmere to Walberswick SAC frontage as a whole.

## 22. Rights of Way and Access Strategy<sup>66</sup>

- 22.1. We note the intention in section 4.4 to change the status of the Sandlings Path from permissive to PRoW. This should not cause an issue for RSPB if it is undertaken in conjunction with the intention in the Coastal Defences Design Report<sup>67</sup>, although we note that section 4.4 is not specific on this realignment, stating *‘A portion of the Sandlings Walk which is currently located on a permissive route through the EDF Energy Estate at Goose Hill (in the vicinity of the proposed access road to Sizewell C and crossing over the Sizewell Marshes Site of Special*

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<sup>65</sup> 6.14 Environmental Statement Addendum Volume 3 Environmental Statement Addendum Appendices Chapter 2 Main Development Site Appendix 2.15.A: Coastal Processes Monitoring and Mitigation Plan - Tracked Changes Version - Revision 3.0 ([REP8-068](#))

<sup>66</sup> 6.3 Volume 2 Main Development Site Chapter 15 Amenity and Recreation Appendix 15I of the Environmental Statement: Rights of Way and Access Strategy - Tracked Changes Version - Revision 5.0 ([REP8-056](#))

<sup>67</sup> Section 3.7 9.13 Sizewell C Coastal Defences Design Report ([REP8-096](#))

*Scientific Interest), would will be realigned to provide connectivity to the coast.’ RSPB would need to be consulted further should the proposal to upgrade the status of this path affect any section of the current permissive path on RSPB land.*

## 23. Bat Crossing Point Survey Report 2<sup>68</sup>

23.1. We detailed our concerns over the Bat Crossing Point Surveys Report 1<sup>69</sup> at Deadline 8<sup>70</sup> and whilst we welcome the Applicant has addressed some of those, our concerns on spatial coverage (paragraphs 18.3-18.6) and limited temporal coverage (paragraph 18.9) remain. For ease of reference those outstanding concerns are summarised below along with additional concerns from our review of survey report 2.

### Inadequate spatial coverage

23.2. We are concerned the failure to identify and monitor all commuting routes to be severed means the potential impact of the development on commuting bats will be underestimated and the mitigation will be inadequate. We request clarification and consideration of additional crossing point surveys at these locations:

23.2.1. Figure 1A shows only three crossing point locations for the main development site (MDS) and we request the Applicant clarifies how the crossing points were selected and explains why some significant commuting routes along hedgerows and treelines that will be severed are not included.

23.2.2. The commuting route between Nursery covert and Ash Wood<sup>71</sup> and some road crossings of Bridleway 19 are not included.

23.2.3. The surveys identified CP24 and CP25 as important commuting routes and concluded CP26 at the SSSI crossing is not an important commuting route although the updated bat impact assessment<sup>72</sup> shows an important commuting route at the SSSI crossing (at CP26).

23.2.4. Figure 1B shows the crossing point locations for the Sizewell link road. Crossing point surveys have not been undertaken at three hedgerows between CP20 and CP22 that will be severed by the road<sup>73</sup>. We also request clarification and consideration of additional crossing point surveys at these locations.

### Limited temporal coverage

23.3. We are concerned the limited temporal coverage, some of it at suboptimal times may have missed important commuting routes

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<sup>68</sup> Additional Ecology Survey Report [REP9-004](#)

<sup>69</sup> Additional Ecology Baseline Survey Reports Part 1 [REP7-027](#)

<sup>70</sup> RSPB & SWT Comments on any additional information/submissions received by D7 [REP8-173](#) section 18

<sup>71</sup> Volume 3 Chapter 2 Environmental Statement Addendum Terrestrial Ecology and Ornithology Appendices 2.9.A-2.9.D Part 1 of 2 [AS-208](#) Appendix 2.9.B Updated Bat Impact Assessment Figure 2.9.B.14

<sup>72</sup> Volume 3 Chapter 2 Environmental Statement Addendum Terrestrial Ecology and Ornithology Appendices 2.9.A-2.9.D Part 1 of 2 [AS-208 Appendix](#) 2.9B updated bat impact assessment paragraph 4.1.5

<sup>73</sup> Volume 6 Sizewell Link Road Chapter 7 Terrestrial Ecology and Ornithology Appendix 7A Ecological Baseline and Method Statements Annex 7A.1 [APP-463](#) Figure 7.4 TN9, H43, H48

23.3.1. Crossing points CP10, CP14, CP15 and CP16 not selected for further survey did not have two surveys within June-August and CP26 had two surveys within a week.

## Methodology

23.4. To assess the effectiveness of the proposed mitigation during and post construction the surveys must be carried out following the same methodology and at the same time of year as the pre-construction surveys as stated in the guidance referenced in Bat Crossing Point Surveys Report 1 which provides a best practice survey protocol and data analysis in Appendix G<sup>74</sup>

*A minimum of six 60 min dusk or dawn surveys should be carried out at each site, including at least three at dusk, to account for night to night variability in bat activity patterns. This should be repeated at each site at the same time each year before and during construction, and for a minimum of three years post-construction. The same number of dusk and dawn surveys must be completed each year to allow for accurate comparison. If possible, the same team of surveyors should conduct the repeat surveys to eliminate any variation due to observer bias. Longer surveys, running later into the night, may be necessary if vulnerable, woodland-adapted species are involved. If this is the case, all surveys conducted at a site must be of equal duration.*

*Surveys are best done June-August inclusive. May and September are acceptable, but bat activity may be lower than in other months and behaviour may not be typical of mid-summer. Annual repeats of surveys **must** be carried out at the same time of year at each site to avoid seasonal changes in bat activity.*

23.5. The surveys are not of equal duration (Appendix A) which will make accurate comparison difficult. That is a breach of the guidance<sup>75</sup>.

23.6. Some of the surveys were conducted in sub-optimal weather conditions and we welcome the Applicant only considering surveys in suitable weather conditions in the assessment against the threshold for further surveys (3.3.4). This limitation must also be considered in the final report after completion of the six surveys in 2021 and in the assessment of future survey results.

23.7. The Applicant should provide detailed methodology for surveys, data handling and analysis to ensure consistency pre, during and post construction. This is an important point because each crossing point has only 2-3 surveys in the optimal time June-August with many surveys in May and particularly September where activity may be lower and the surveys are not of equal duration. There is insufficient detail to have confidence in consistency. For example (i) the survey duration is not specified and the surveys are not of equal duration, (ii) 3.1.5 notes crossing points were surveyed once every month but the results in report 2 show that did not happen for all crossing points.

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<sup>74</sup> Berthinussen A & Altringham J (2015) WC1060 Development of a Cost Effective Method for Monitoring the Effectiveness of Mitigation for Bats Crossing Linear Transport Infrastructure, Defra [Defra, UK - Science Search](#) Appendix G [WC1060AppendixG pages 1-2](#)

<sup>75</sup> Berthinussen A & Altringham J (2015) WC1060 Development of a Cost Effective Method for Monitoring the Effectiveness of Mitigation for Bats Crossing Linear Transport Infrastructure, Defra [Defra, UK - Science Search](#) Appendix G [WC1060AppendixG page 2](#)

## Survey results

- 23.8. We welcome the survey results for crossing points taken forward for additional survey and request the Applicant provides survey results for the crossing points that were not taken forward.
- 23.9. Crossing point 13 met the threshold for additional surveys but Table 4-10 only presents the results for the first 2 surveys and we request the Applicant provides the full survey results. In the absence of full survey and applying the precautionary approach a bat hop-over should be installed at CP13 since it met the threshold for additional surveys.
- 23.10. We are concerned the Applicant does not propose to submit the final survey data to the Examination for scrutiny by the Examining Authority and interested parties (paragraph 1.1.2).

## TEMMP

- 23.11. The TEMMP includes crossing point surveys for the Sizewell link road and two village bypass only. We request the TEMMP is updated to include surveys of all crossing points at the main development site, Sizewell link road and two village bypass at the same time each year before and during construction, and for a minimum of three years post-construction using consistent methodology in accordance with the good practice guidance.

## 24. Responses to the ExA's Third Written Questions (ExQ3) Volume 1<sup>76</sup>

### HW.3.1 (epage 89)

- 24.1. With regard to the Applicant's discussion of stakeholder comments on the revised displacement figures submitted in the Statement on Recreational Disturbance Numbers<sup>77</sup>, we reiterate our position that the lower (Deadline 2) figures proposed are preferable to the revised figures because of the assumptions inherent in the revised approach about the respondent's preferences when they stated they would visit more than one site. As we explained in Appendix D (epage 25) of the Statement:

*"The key difference between the two approaches is around the treatment of those people who named more than one site to which they may be displaced. The first approach represents the worst-case scenario for each individual site as the calculations assume each site named receives the maximum number of visits. We do not support any approach which implies any kind of weighting (even an average) where a person has named more than one site as participants were not asked for their preferences nor about the proportion of time they would spend at each site and would have been unaware that their responses would be used in this way. Without information regarding preferences and weighting, we therefore do not agree that the approach in column 2nd-1 is appropriate in the context of Habitats Regulations Assessment as the level of precaution within this approach is unknown."*

- 24.2. We therefore do not agree that it is accurate to state that we have not engaged with the Applicant's case, as we have explained our reasons for disagreeing with it.

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<sup>76</sup> 9.97 Responses to the ExA's Third Written Questions (ExQ3) Volume 1 - SZC Co. Responses ([REP8-116](#))

<sup>77</sup> Statement on Recreational Disturbance Numbers ([REP7-087](#))

## 25. Comments on Earlier Deadlines and Subsequent Written Submissions to CAH1 and ISH8-ISH10<sup>78</sup>

25.1. We are responding to the Applicant's response to our written submissions at Deadline 6<sup>79</sup> and Deadline 7<sup>80</sup>.

### 2.9 Approach to Bats (Survey and Assessment)

25.2. 2.9.9 refers to a precautionary assessment. We note there is clear indication now that Upper Abbey Farm has hibernating barbastelle<sup>81</sup>. This again supports the use and need of a 25 metre buffer along Bridleway 19 to enable the precautionary approach and retain links to Minsmere. This is because the evidence is that barbastelle do not forage any closer than 25m to street lighting. Please refer to our Deadline 7 submission<sup>82</sup>.

25.3. 2.9.12 - We would argue the approach is generic in the sense that the use of percentages means it is only relative abundance of rare species that is looked at, rather than actual.

25.4. 2.9.12-2.9.25 - Again there is reference to the buffer and use of 25m by barbastelle – this is needed, especially given that the mitigation for sensitive areas, such as Ash wood, is 5m high fencing and it is well known that barbastelle roost and forage at higher levels than this.

25.5. 2.9.26 Whilst it is good that some attempt has been made to survey roost in the SSSI triangle, it is likely that the paucity of data reflects an underrepresentation. Therefore, more roost provision is required to take this into account.

25.6. 2.9.32 notes *The habitats and the management thereof are secured via the oLEMP (Doc Ref. 9.2(B)) and the EWMP (Doc Ref. 9.88(A)) under Requirements 14 and 5C of the dDCO (Doc Ref. 3.1(I)) respectively*. Our concerns over suitability and accessibility of Aldhurst Farm, marsh harrier compensation area and Studio Fields have not been addressed<sup>83</sup>.

25.7. 2.9.34 *'There is evidence that lactating females of a number of bat species have reduced foraging ranges, mainly due to the requirement for them to return to suckle dependant young on a regular basis. There is evidence of this behaviour with barbastelle bats'* We agree and this supports the point we are trying to make. What effect will the development site's barrier effect have as a result of this reduced flying ability and what mitigation is being provided?

And in 2.9.37 *Since the original assessment of impacts on bats, further information around habitat corridors, lighting impacts and noise mitigation has been provided within the Lighting Management Plan (Doc Ref. 6.3 2B(B)), CoCP (Doc Ref. 8.11(E)) and TEMMP (Doc Ref. 9.4(B)). SZC Co now confirms that with these new measures and others that are described above, the impact of habitat fragmentation on barbastelles will be minor adverse (not significant)*. We query where is the updated bat impact assessment to justify this?

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<sup>78</sup> Comments on Earlier Deadlines and Subsequent Written Submissions to CAH1 and ISH8-ISH10 ([REP8-120](#))

<sup>79</sup> Comments on any additional information/submissions received by D5 [REP6-046](#)

<sup>80</sup> Comments on Other Submissions (submitted at Deadline 5 and 6) [REP7-154](#)

<sup>81</sup> Additional Ecology Survey Report (September 2021) [REP8-061](#) paragraph 2.3.4

<sup>82</sup> RSPB & SWT Comments on Other Submissions (submitted at Deadline 5 and 6) [REP7-154](#) paragraph 6.5

<sup>83</sup> Comments on Other Submissions (submitted at Deadline 5 and 6) [REP7-154](#) paragraph 6.10

## 2.13 SSSI Crossing

- 25.8. 2.13.4 We welcome the reduction in size of loss of SSSI from 6.52 to 5.74 ha and the temporary loss from 3.02 to 1.99. However, we remain of the view that ‘temporary’ loss is very likely to be permanent damage due to the prolonged use of bog matting to protect the fen meadow during the temporary works. We are concerned that anything more than a couple of weeks may risk long term damage.

## 2.8 White-fronted Geese Survey Report

- 25.9. We have reviewed the Applicant’s response to our previous comments<sup>84</sup> on the White-fronted Geese Survey Report<sup>85</sup> and note that the Applicant’s conclusions that the majority of goose movements were related to longer range overflights rather than roosting overflights are based on one year of data and are not in agreement with our local observations<sup>86</sup> over a period of years. Our concerns regarding potential noise impacts on non-breeding white-fronted geese of the Minsmere-Walberswick SPA therefore remain.

## 26. Response by SZC Co. to RSPB's Comments at Deadline 8<sup>87</sup>

- 26.1. We welcome the Applicant’s response to our queries around the potential for additive noise effects arising from the desalination plant when combined with other sources of construction noise and the potential for this to affect birds of the Minsmere-Walberswick SPA using the functionally-linked Minsmere South Levels and Sizewell Marshes SSSI.
- 26.2. We note the Applicant asserts that additional effects (over and above those of the original assessment) are not predicted while the desalination plant is in its initial location in the Main Construction Area during Phases 1 and 2 of construction, however, the figures provided do not include combined noise levels for this initial location, only those arising from the desalination plant alone. Based on the figures which are provided, we consider that it is necessary to assess the combined noise effects of the desalination plant and other sources of construction noise (daytime and night-time) whilst the plant is in its initial location on the marine environment, including on little terns of the Minsmere-Walberswick SPA and all features of the Outer Thames Estuary SPA.

## 27. Written summaries of SZC Co.’s submissions at Issue Specific Hearing 11<sup>88</sup>

### 1.6 Agenda Item 6: Water Monitoring and Response Water

#### [Outstanding issues relating to the Water Monitoring and Response Strategy](#)

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<sup>84</sup> epage 19 of the RSPB/SWT Comments on any additional information/submissions received by D5 ([REP6-046](#))

<sup>85</sup> White-fronted Geese Survey Report ([REP5-125](#))

<sup>86</sup> See paragraph 8.8 (epage 20) of RSPB/SWT Comments on any additional information/submissions received by D5 ([REP6-046](#))

<sup>87</sup> 9.115 Response by SZC Co. to RSPB's Comments at Deadline 8 ([REP9-024](#))

<sup>88</sup> Deadline 8 Submission - 9.100 Written Summaries of Oral Submissions made at Issue Specific Hearing 11: Flooding, Water and Coastal Processes [REP8-121](#) section 1.6 (epage 13)

- 27.1. We do not agree with the Applicant. Please refer to our Deadline 8 submission<sup>89</sup> and the Deadline 8 submission from Friends of the Earth experts<sup>90</sup>.

## Other submissions submitted at Deadline 7

### 28. Written Submissions Responding to Actions Arising from Issue Specific Hearing 10: Biodiversity, Ecology and HRA (27<sup>th</sup> August 2021)<sup>91</sup>

#### 1.9 Fen Meadow

- 28.1. Paragraph 1.9.1 states *A note on the habitat multiplier requested by Natural England and the identification of the additional land at Pakenham is contained at Appendix F to the Written Submissions Arising from CAH1 Part 1 (Doc Ref. 9.74).*
- 28.2. The reference is incorrect. We eventually located the document at Appendix E to Written Submissions Responding to Actions Arising from Compulsory Acquisition Hearing 1 Part 1 (Doc Ref 9.76).
- 28.3. We note that 8.13 ha of habitat areas across the fen meadow three sites will be the focus of the habitat creation works, such that the delivery of 4.14ha of fen meadow habitat can be ensured. We refer to the concerns over the proposed compensation sites in the Deadline 7 submission from Friends of the Earth experts<sup>92</sup>.

#### 1.12 Bats and draft licences

- 28.4. Paragraph 1.12.2 notes:

*The width of the bridleway corridor was determined using aerial photography and by measuring its width from the outside edge of the hedgeline on the western edge to the outside edge of the opposite hedgeline on the east edge at six locations. These measured widths from south to north were 31m, 19m, 35m, 23m, 25m, and 19m giving an average width of the bridleway corridor, including hedgelines of 25.3m.*

- 28.5. A 10m buffer from the centre of the bridleway will be narrower than the width of the bridleway so in reality there is no buffer at all. We reiterate our view that the buffer should be at least 25m, taken from the outside edge of the hedge line to the location of the source of the light and noise<sup>93</sup>

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<sup>89</sup> Summary of Oral Contributions to Issue Specific Hearings 11, 12 and 14 ([REP8-172](#)) section 6

<sup>90</sup> Post hearing submissions including written submissions of oral case - Expert Comments on ISH11 ([REP8-269](#))

<sup>91</sup> Written Submissions Responding to Actions Arising from Issue Specific Hearing 10: Biodiversity, Ecology and HRA (27 August 2021) ([REP7-073](#))

<sup>92</sup> Suffolk Coastal Friends of the Earth Post Hearing submissions including written submissions of oral case - written submission of oral case (ISH10) with expert comments ([REP7-234](#))

<sup>93</sup> RSPB & SWT Comments on Other Submissions (submitted at Deadline 5 and 6) [REP7-154](#) paragraph 6.5 and RSPB & SWT Summary of Oral Submissions at ISH10 Biodiversity and Ecology [REP7-153](#) paragraph 2.11 (epage 5)



## 29. Comments at Deadline 7 on Submissions from Earlier Deadlines and Subsequent Written Submissions to ISH1-ISH6 – Appendices Part 1<sup>94</sup>

### Appendix D Planting phasing strategy

- 29.1. The strategy does not appear to include advance or early planting in key bat areas detailed in Appendix E ESC Response to the applicant’s response on bat impacts raised in the LIR. We request clarification.

## 30. Further comments on the Draft Noise Monitoring and Management Plan - Main Development Site - Revision 2.0<sup>95</sup>

- 30.1. The Applicant does not appear to have addressed the comments in paragraphs 8.1 to 8.3 of our Deadline 7 submission<sup>96</sup>.

### Figure A.1 – Barrier (Noise) Location Plan

- 30.2. It is concerning there appears to be no screening along the northern edge of Kenton Hills and Nursery Covert, despite proximity of barbastelle roosts and foraging/commuting and the noise (and light) spill into these areas. Whilst accepting a 5m screen will never mitigate all impacts we would expect some screening in these locations. It is possible the Applicant believes the proposed earth bund will act as the screen. If this is the case, this needs to be made clear and justified. Again, the same point applies with reference to the relative height: barbastelle roost, commute and forage above 5m and hence there is expected to be considerable residual effect despite screening that does not appear to have been accounted for.

### Figure B.1 – Indicative Monitoring Location Plan

- 30.3. It appears the plan has been primarily driven by anthropogenic led concerns. We question why there is no monitoring for and adjacent to key areas such as Kenton Hills, southern end of Bridleway 19, around much of Ash Wood, nor at the SSSI crossing.

### Figure C.1 - ES baseline monitoring location plan

- 30.4. There are baseline monitoring locations within Kenton Hills (MS16) and Nursery Covert (MS17). We request baseline and construction monitoring at the barbastelle roosts and foraging/commuting areas in those areas. As raised previously, there needs to be another point between MS22 and MS14 and on Kenton Hills boundary opposite the rail laydown area i.e. west of MS15.

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<sup>94</sup> Comments at Deadline 7 on Submissions from Earlier Deadlines and Subsequent Written Submissions to ISH1-ISH6 - Appendices Part 1 of 3 [REP7-060](#)

<sup>95</sup> Draft Noise Monitoring and Management Plan - Main Development Site - Revision 2.0 ([REP7-048](#))

<sup>96</sup> RSPB & SWT Comments on Other Submissions (submitted at Deadline 5 and 6) [REP7-154](#) section 8

## Legal

### 31. Legal Submissions

- 31.1. As set out in detail in our Written Representations<sup>97</sup> along with (we hope) some helpful background – pages 17-18, 158 to 175 with additional commentary on for example the general legal duties within Deadline 8 there are several legal provisions that must be complied– we have kept these submissions as short as possible but hope the ExA will re-read the pages within our Written Representations for further fuller background. Please note that if a particular legal issue is not covered in these submissions this does not necessarily mean that all our concerns are resolved but we have decided it is more helpful to purely focus on the priority areas.
- 31.2. Once again we are grateful to the Applicant for all the engagement with them starting (on some issues) ten years ago particularly the many meetings we have had recently and all the additional measures, requirements and controls they have put in place during the Examination and providing us with their Deadline 10 submissions in advance so account could be taken of them<sup>98</sup>. However as we have always stated (including within the majority of our submissions) we have concerns over the legal controls and compliance with key environmental legislation.
- 31.3. We thought it helpful to set out (in summary) again the remaining points taking account of further changes to both the DCO and the Deed of Obligations as well as the documents to which they tie down or refer to.

#### [The Conservation of Habitats and Species Regulations 2017<sup>99</sup>](#)

- 31.4. As set out in detail (pages 162 – 165 Written Reps) our key remaining concerns focus on those summarised above in the Summary of Final Position at the start of these submissions.

#### [SPA and SAC Conservation Objectives](#)

- 31.5. Paragraph 4.25, Written Reps, explains SPAs' Conservation Objectives are a vital part of a site's protection and the Integrity Test when considering whether to grant consent for a plan or project – see Habitats Regulations reg 63(1).
- 31.6. As set out in the headline words at the start of all Conservation Objectives: SPAs contribute to the national and international "conservation status" of the species<sup>100</sup> with the Objectives ensuring the site is maintained or restored as appropriate, and contributes to achieving the protection required<sup>101</sup> in an enduring way. It would be inconsistent with the purposes of the protection and the role of SPAs to have SPA Conservation Objectives (or the interpretation of them) aiming for lower bird species populations.
- 31.7. In addition they must contribute towards the management objectives of the National Sites Network, as set out in regulation 16A, including:

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<sup>97</sup> Written Submission for the Royal Society for the Protection of Birds and Suffolk Wildlife Trust ([REP2-506](#))

<sup>98</sup> We have tried to ensure we have checked every point in the final DoO, DCO Sch 2 as well as various plans e.g. the TEMMP, but ask for the ExA (and the Applicant's) forgiveness if we have missed a point or two

<sup>99</sup> ExA ref 1.6

<sup>100</sup> Please see points below on the management objectives of the National Sites Network and the requirements for both SPAs and SACS to ensure that the species are maintained and/or restored across their natural range

<sup>101</sup> The SPA generic Conservation Objectives <http://publications.naturalengland.org.uk/file/4811128974868480>

- (a) the importance of SACs and SPAs
- (b) the importance of the sites for the coherence of National Site Network;
- (c) the threats of degradation or destruction (including deterioration and disturbance of protected features) to which the sites are exposed; and
- (d) in the case of migratory bird species, the importance of their breeding, moulting and wintering areas and staging points along their migration routes.

And therefore ensuring any potential harm is mitigated or compensated must include consideration of the SPAs conservation objectives and the Network’s management objectives. We are continuing to work with the Applicant on the wording within the various mitigation plans to ensure it is consistent with these objectives<sup>102</sup> and will continue to do so after the Examination. However as covered above (and on numerous occasions within ISH and our submissions) it is the legal and ecological certainty that is key for the ExA consideration and recommendations and the SoS decision.

31.8. Currently we believe the consideration of the SPAs Conservation Objectives within:

- (a) Mitigation Measures including their targets and objectives and triggers for any additional measures that may be required.
- (b) Compensation Requirements including targets and objectives for them and triggers for any additional measures that may be required.

Is lacking. In respect of point (iv), as set out in para 4.25 of the RSPB’s Written Representations, an SPA’s Conservation Objectives are a vital part of a site’s protection and of the assessment exercise under regulation 63. The RSPB would also reiterate, in that context, the consideration by Sullivan L.J. as to the approach to the integrity question, and its relationship to the SPA Conservation Objectives, in *R (on the application of the RSPB) v The Secretary of State for Environment Food and Rural Affairs* [2015] EWCA Civ 227; [2015] Env LR 24 at [5-7] by reference to C-258/11 *Sweetman v An Bord Pleanála* [2013] 3 CMLR 16, and what was said by AG Sharpston at AG54-56 endorsed by the Court at para 39 of its judgment, set out at para 4.32 of the RSPB’s Written Representations.

#### [Principles for Undertaking an Appropriate Assessment](#)

31.9. Again as set out in detail in our Written Representations – there are several important principles helpfully summarised in the Court of Appeal judgment in *R (on the application of Mynydd v Gwynt Ltd) v Secretary of State for Business, Energy and Industrial Strategy* [2018] EWCA Civ 231.<sup>103</sup> We wish to focus on three key principles here including the other important caselaw referenced below:

*“(4) The question for the authority carrying out the assessment is: “What will happen to the site if this plan or project goes ahead; and is that consistent with maintaining or restoring the favourable conservation status of the habitat or species concerned?”: Sweetman v An Bord Pleanála (Case C-258/11); [2014] PTSR 1092, Advocate General at [50].*

<sup>102</sup> Please note these discussions can of course continue after the end of the examination as long there are sufficient references now for the ExA to have confidence this has and will continue to be covered

<sup>103</sup> [Mynydd Y Gwynt Ltd, R \(on the application of\) v Secretary of State for Business Energy and Industrial Strategy \[2018\] EWCA Civ 231 \(22 February 2018\) \(bailii.org\)](#)

(5) *Following assessment, the project in question may only be approved if the authority is convinced that it will not adversely affect the integrity of the site concerned. **Where doubt remains, authorisation will have to be refused:** Waddenzee at [56-57].<sup>104</sup>*

(6) *Absolute certainty is not required. **If no certainty can be established, having exhausted all scientific means and sources it will be necessary to work with probabilities and estimates, which must be identified and reasoned:** Waddenzee, Advocate General at [107] and [97], endorsed in Champion at [41] and by Sales LJ in Smyth v SoS for CLG [2015] EWCA Civ 174 at [78] (“Smyth”).*

(7) *The decision-maker must consider **secured** mitigation and evidence about its **effectiveness:** Commission v Germany (Case C-142/16) at [38].*

(8) *It would require some **cogent explanation if the decision-maker had chosen not to give considerable weight to the views of the appropriate nature conservation body:** R (Hart District Council) v SoS for CLG [2008] EWHC 1204 (Admin) at [49].” (emphasis added)*

- 31.10. It is worth adding to this helpful review that an appropriate assessment requires all aspects of the project which could affect the site, its species and its conservation objectives must be identified in the light of the best scientific knowledge in the field.<sup>105</sup> The competent authority, “taking account of the conclusions of the appropriate assessment of the implications...for the site concerned, in the light of the conservation objectives, are to authorise such activity only if they have made certain that it will not adversely affect the integrity of the site”. That is the case where no reasonable scientific doubt remains as to the absence of such effects<sup>106</sup>.
- 31.11. And by reference to C-258/11 Sweetman v An Bord Pleanála judgment at [44]<sup>107</sup> - the assessment “cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned” – and C-461/17 Holohan v An Bord Pleanála per AG Kokott at [30]<sup>108</sup> – The assessment must “unequivocally demonstrate why the protected habitat types and species are not adversely affected.”
- 31.12. One such example is the consideration of noise and visual disturbance effects on breeding and non-breeding waterbirds (notably gadwall and shoveler, also non-breeding white-fronted goose) of the Minsmere-Walberswick SPA. Given the predicted levels of displacement of these species (for example, 11% of the SPA breeding gadwall population) from land which has been accepted by the Applicant as functionally-linked to the SPA, we do not consider it is possible to avoid the conclusion that “**doubt remains**” regarding adverse effects on integrity (point 5 above). We also do not consider that the mitigation provided for in the TEMMP, namely that additional screens and bunding would be provided should monitoring detect an impact, is sufficient and no evidence has been provided as to where these could be deployed or to what extent this would reduce noise and visual disturbance, particularly as some of that disturbance

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<sup>104</sup> We welcome the Applicant’s early acceptance of potential adverse effects on Marsh Harriers and therefore their focus being on proposing compensation areas and measures however for other SPA species (as discussed above) this is key

<sup>105</sup> [Waddenzee CJEU Case-127/02; \[2004\] ECR-7405 \(Judgment\) at \[61\]](#)

<sup>106</sup> Waddenzee [59]

<sup>107</sup> [C-258/11 Sweetman v An Bord Pleanála \(Judgment\)](#)

[C-258/11 Sweetman v An Bord Pleanála \(Opinion of Advocate General Sharpston\)](#)

<sup>108</sup> [C-461/17 Holohan and Others v An Bord Pleanála \(Opinion of Advocate General Kokott\)](#)

[C-461/17 Holohan and Others v An Bord Pleanála \(Judgment\)](#)

is likely to originate from plant operating at height. We therefore do not agree that it is possible for the decision-maker to fully consider “**secured** mitigation and evidence about its **effectiveness**” (as set out in Mynydd v Gwynt point 7 above). We also note that Natural England’s position<sup>109</sup> is that adverse effects on the integrity of the Minsmere-Walberswick SPA arising from this impact cannot be excluded and note that “**considerable weight**” should be given to these views in line with point 8 above.

#### Site Integrity

- 31.13. The approach to the integrity question and its relationship to the SPA Conservation Objectives was explained in R (RSPB) v Defra and BAe [2015] EWCA Civ 227<sup>110</sup> at [5-7]. It referred to the ECJ case of Sweetman<sup>111112</sup> which established that in judging integrity:

*“it is the essential unity of site that is relevant....referring to the continued wholeness and soundness of the constitutive characteristics of the site concerned. The integrity that is to be preserved must be that “of the site”....which has been designated having regard to the need to maintain the habitat in question at (or to restore it to) a favourable conservation status.... the constitutive characteristics... that will be relevant are those in respect of which the site was designated and their associated conservation objectives. Thus, in determining the whether the integrity of the site is affected the essential question the decision-maker must ask is “why was this particular site designated and what are its conservation objectives?”*

- 31.14. Therefore, the removal or disturbance of any part of the site and its supporting habitat will make the populations for which the sites are designated more vulnerable, less able to recover and unable to achieve the Conservation Objectives.

#### Functionally linked land

- 31.15. We welcome the consideration of functionally linked land<sup>113</sup> consistent with the NE Guidance and previous decisions regarding functionally linked populations (Chapman and Tyldesley, 2016<sup>114</sup>), but this is not consistently applied for all SPA species. As the NE Guidance clearly explains<sup>115</sup> in the 12 SPA cases, 7 relating to the marine environment and seabirds:

*“In all cases the decision maker recognised the potential importance of functionally linked land or sea and that it should be treated as part of the Habitats Regulations Assessment.”*

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<sup>109</sup> epage 10 of Natural England’s Written Summary of Oral Representations made at Issue Specific Hearing 7: Biodiversity and Ecology on 15th and 16th July 2021 ([REPS-160](#))

<sup>110</sup> [The Royal Society for the Protection of Birds v The Secretary of State for Environment Food and Rural Affairs & Ors \[2015\] EWCA Civ 227 \(18 March 2015\) \(bailii.org\)](#)

<sup>111</sup> Sweetman v An Bord Pleanála (Case C-258/11)

<sup>112</sup> and what was said by AG Sharpston in her Opinion (AG 54-56) endorsed by the Court at para 39 of its judgment, set out at para 4.32 of the RSPB’s Written Representations

<sup>113</sup> The Applicant first acknowledge possible functional linkage in para 8.8.359 of the Shadow HRA Report Volume 1: Screening and Appropriate Assessment Part 1 of 5 ([APP-145](#)) The RSPB issues are summarised in Para. 1.2.6 (epage 7) of RSPB/SWT’s Transcript of Oral Contribution to Issue Specific Hearing 7 (ISH7) Parts 1 and 2 on Biodiversity and Ecology ([REPS-164](#))

<sup>114</sup> Chapman, C. & Tyldesley, D. (2016) Functional linkage: How areas that are functionally linked to European sites have been considered when they may be affected by plans and projects - a review of authoritative decisions. Natural England Commissioned Reports, Number 207

<sup>115</sup> See in particular electronic page 9 (unfortunately there are no page numbers in this part of the report and review of previous decisions report pages 29 -40

31.16. Again, with reference to waterbirds (breeding and non-breeding gadwall and shoveler, also non-breeding white-fronted goose) of the Minsmere-Walberswick SPA, the Applicant has acknowledged the functional linkage of those parts of these populations using the Minsmere South Levels and Sizewell Marshes to the SPA, but has also used this as a justification for ‘downgrading’ these potential impacts. For example, paragraph 8.8.363 of the Shadow HRA states in relation to breeding gadwall that:

*“...it is the case that the potentially displaced birds may be functionally linked to the SPA, as opposed to being from the designated population. Thus, the predicted displacement of breeding pairs would not act to reduce the size of the designated SPA population.”*

31.17. The use of this argument in the Applicant’s conclusion that *adverse effects on the integrity* of this SPA can be excluded (arising from noise and visual disturbance of waterbirds) represents a serious gap in both the assessment and consideration of possible effects on the SPA species including whether mitigation measures are required and possible. The use of this argument in the Applicant’s conclusion that *adverse effects on the integrity* of this SPA can be excluded (arising from noise and visual disturbance of waterbirds) represents a serious gap in both the assessment and consideration of possible effects on the SPA species including whether mitigation measures are required and possible.

31.18. Our concerns remain on both the mechanism by monitoring will be reviewed including the time that may be required for the process to be completed as well as the membership of those groups as set out in detail below, and the trigger points and effectiveness of any additional measures that can be deployed.

#### Mitigation measures

31.19. The need for ecological certainty was recognised in R (Champion) v North Norfolk District Council and another [2015] UKSC 52<sup>116</sup> at [60], where the effectiveness of the mitigation measures proposed allowed the Supreme Court to determine, despite a procedural defect, that the decision should not be quashed. The information already available for the mitigation measures being sufficient and the lack of any concerns against their effectiveness is clear in the following paragraph:

*“60 This was not a case where the environmental issues were of particular complexity or novelty. There was only one issue of substance: how to achieve adequate hydrological separation between the activities on the site and the river. It is a striking feature of the process that each of the statutory agencies involved was at pains to form its own view of the effectiveness of the proposed measures, and that final agreement was only achieved after a number of revisions. It is also clear from the final report that the public were fully involved in the process and their views were taken into account. It is notable also that Mr Champion himself, having been given the opportunity to raise any specific points of concern not covered by Natural England before the final decision, was unable to do so. That remains the case. That is not to put the burden of proof on to him, but rather to highlight the absence of anything of substance to set against the mass of material going the other way.”*

31.20. For example although further measures are proposed for SPA species, we do not believe for some (for example waterbirds) these will be effective (as set out above)

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<sup>116</sup> [R \(on the application of Champion\) \(Appellant\) v North Norfolk District Council and another \(Respondents\)](https://www.supremecourt.uk/cases/r-champion-v-norfolk-district-council-and-another) ([supremecourt.uk](https://www.supremecourt.uk))

### Compensation measures

31.21. Any and all necessary compensation measures must be secured to ensure the overall coherence and protection of the National Sites Network<sup>117</sup> (consideration of the management objectives for the National Sites Network (as set out above) must be part of these considerations).

### *Marsh Harrier Compensation*

31.22. As set out in detail in our previous submissions and summarised above we continue to have concerns about the ability of the marsh harrier compensation area to achieve functionality and although bringing forward the creation of the wet habitat would assist, overall effectiveness of the compensation proposed continues to be of concern.

31.23. In addition as repeated above (and in our D8 submissions<sup>118</sup>) it is vital that the targets, monitoring of effectiveness and possible further interventions take account of the Conservation Objectives and SPA National Sites Network management objectives.

### General Legal Duty

31.24. As set out in our Deadline 8 submissions in relation to regulation 10 Conservation of Habitats and Species Regulations 2017<sup>119</sup> we are disappointed to note that the Applicant has not cover this as requested. As Natural England v Julian Edward Warren [2019] UKUT 300 (AAC)<sup>120</sup> at [34], makes clear:

*“Regulation 10 imposes specific duties in relation to wild bird habitats having regard to the requirements of the Wild Birds Directive”.*

31.25. In our view consideration of the Regulation 10 Duty differs from consideration of the Biodiversity and SSSI duties since it imposes even more specific duties in respect of habitats for wild birds. And therefore is not the same as having regard to issues of conservation (the Biodiversity Duty) and the more specific requirement to take reasonable positive steps in respect of SSSI features. This is due to the need to have specific regard to the statutory criteria in Regulation 10(3) including a duty to achieve a specific result, that being the preservation, maintenance and reestablishment of a sufficient diversity and area of habitat for wild birds in the United Kingdom. It is concerned with outcomes. Therefore it should be considered on its own.

31.26. Without specific information from the Applicant as to who the Secretary of State can comply with this duty, we continue to believe it will not be possible to do so.

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<sup>117</sup> Formerly known as the Natura 2000 Network

<sup>118</sup> REP8-173 Royal Society for the Protection of Birds (RSPB) Deadline 8 Submission - Comments on any additional information/submissions received by D7 para 7.32 to 7.42

<sup>119</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010012/EN010012-007725-DL8%20-%20RSPB%20-%20Comments%20on%20any%20additional%20information%20submissions%20received%20by%20D7.pdf> epage 11 - Reg 10 must take such steps as consider appropriate in exercise of their function to 10(3) preserve, maintain and re-establish sufficient diversity and areas of habitats for wild birds to maintain the population of bird species) including by means of the upkeep, management and creation of such habitat, as appropriate.  
10(7) Appropriate account must be taken of economic and recreational matters.  
10(8) In addition Comp authorities must use all reasonable endeavours to avoid any pollution or deterioration of wild bird habitats.

<sup>120</sup> [Natural England v Julian Edward Warren](https://www.bailii.org/uk/ut/ut01/ut0100300.html) [2019] UKUT 300 (AAC) (bailii.org).

## Environmental Impact Assessment (EIA) Requirements

- 31.27. As set out in Section 4 of our Written Submissions <sup>121</sup>(pages 158-175), there are several key parts of the EIA requirements.
- 31.28. Below we provide short further submissions in support of the points set out in our Written Representations, made during ISH and subsequent submissions and to update and confirm our final position, in light of further documentation which has been, and continues to be, received from the Applicant.

### Environmental Impact Assessment

#### *The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017*

- 31.29. In our view the key remaining regulations are:

##### Regulation 5

*5(1) The environmental impact assessment (“the EIA”) is a process consisting of—*

*(a) the preparation of an environmental statement...by the applicant;*

*....*

*(2) The EIA must identify, describe and assess in an appropriate manner, in light of each individual case, the direct and indirect significant effects of the proposed development on the following factors—*

*(a) population and human health;*

*(b) biodiversity, with particular attention to species and habitats protected under [Habitats] Directive 92/43/EEC(14) and [Birds] Directive 2009/147/EC(15);*

*(c) land, soil, water, air and climate;*

*(d) material assets, cultural heritage and the landscape;*

*(e) the interaction between the factors referred to in sub-paragraphs (a) to (d).*

*(3) The effects referred to in paragraph (2) on the factors set out in that paragraph must include the operational effects of the proposed development, where the proposed development will have operational effects.*

*(4) The significant effects to be identified, described and assessed under paragraph (2) include, where relevant, the expected significant effects arising from the vulnerability of the proposed development to major accidents or disasters that are relevant to that development.*

##### Schedule 4, paragraph 7 – the Information to be included within the ES

*7. A description of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects on the environment and, where appropriate, of any proposed monitoring arrangements (for example the preparation of a post-project analysis). That description should explain the extent, to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and should cover both the construction and operational phases.*

##### Regulation 30. —Decision notices

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<sup>121</sup> The Written Submission for the Royal Society for the Protection of Birds and Suffolk Wildlife Trust ([REP2-506](#))



(1) Where ... (a) the Secretary of State has determined an application for an order granting development consent for EIA development; or  
(b) the relevant authority has determined a subsequent application,  
a notification of the decision must be given to the applicant (“the decision notice”) which must include the information specified in paragraph (2).

(2) The information is ... (b) if the decision is —

(i) to approve the application—

(aa) the reasoned conclusion of the Secretary of State... on the significant effects of the development on the environment, taking into account the results of the examination referred to, in the case of an application for an order granting development consent in regulation 21, and in the case of a subsequent application, in regulation 25;

(bb) where relevant, any requirements to which the decision is subject which relate to the likely significant environmental effects of the development on the environment;

(cc) a description of any features of the development and any measures envisaged in order to avoid, prevent or reduce and, if possible, offset, likely significant adverse effects on the environment; and

(dd) any monitoring measures considered appropriate by the Secretary of State or relevant authority, as the case may be; or

(ii) to refuse the application, the main reasons for the refusal.

31.30. Whilst there have been some substantial developments and progress since the start of the Examination, a number of concerns remain.

31.31. **Certainty** – of particular concern to us is what certainty there can be that effects assessed in the ES will not be exceeded – in particular, where effects have been assessed by reference to embedded mitigation, that that mitigation will be possible to provided, effective and the effects reported in the ES not exceeded. This has been addressed by the RSPB in a number of its submissions to the Examination – including at ISH 15.

31.32. In that context, we note with some concern the Applicant’s Response to the Examining Authority’s Commentary on the draft DCO<sup>122</sup> in which it stated that

*“2.2 There is no requirement in law or policy for a project to be constructed or to operate so as to ensure that the effects identified in the [EIA] are not exceeded” and “2.4 The legal duty is, therefore, limited to setting out what are considered to be the ‘likely’ effects as envisaged at the time of the application where they are anticipated to be ‘significant’, and to describe proposed mitigation measures for those ‘likely significant’ effects’.”*

31.33. Whilst that might be correct as far as it goes – i.e. as to the existence of an express requirement or legal duty in legislation or policy – it is not a complete answer to the question. The purpose of EIA is to ensure that a decision-maker, in deciding whether to grant consent for a project, does so having been properly informed as to its likely environmental consequences. That ‘purpose’ is expressly reflected in regulation 21 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017. In doing so, it must consider – and detail in its decision (see regulation 30(2)(b)(i)(cc)) – any measures envisaged to avoid, prevent or reduce and, if possible, offset likely significant effects on the environment.

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<sup>122</sup> The Applicant’s Response to the Examining Authority’s commentary on the DCO [PD-038] - Appendix B, epage 85 - paras 2.1 to 2.15 responding to the ExA

- 31.34. In deciding whether consent should be granted, the ExA, and subsequently the Secretary of State, will need to reach conclusions on the likely significant environmental effects of the proposed development.<sup>123</sup> The ExA and Secretary of State need to carefully consider what is proposed by way of mitigation; whether – and if so how – delivery of that mitigation is to be secured; the likely effectiveness of that mitigation; and following the feedback loop/adaptive management mechanisms whether following more measures being put in place unforeseen issues can be resolved.
- 31.35. It will ultimately be for the Secretary of State to decide, as a matter of planning judgment, whether he considers the likely significant effects of the project, having regard to the mitigation proposed (whether embedded, proposed or provided for by way of further measures) and whether he considers the potential effects would be sufficiently mitigated or controlled, with mitigation appropriately and effectively secured through the mechanisms provided for through the draft DCO and Deed of Obligation<sup>124</sup> or whether he considers that more needs to be done in order for him to conclude that the consent should be granted for the project.
- 31.36. We have provided some specific examples of our remaining concerns in this context.
- [SSSI permanent loss v temporary](#)<sup>125</sup>
- 31.37. We consider that the SSSI damage designated as “temporary loss” has a significant risk of becoming permanent damage. The proposals would result in around 3ha of temporary loss to the SSSI as a result of the construction of the SSSI crossing and the main development site. The majority of the mitigation over the SSSI which includes areas of fen will be provided by bog matting which will be laid down in order to reduce compaction of the SSSI. We believe the areas that it is going to be put over include fen habitat and there is the potential for permanent damage of the SSSI and that this has not been fully captured within the compensation package. The bog matting will be over the top of the fen for several months. Changes in light, oxygen, ammonia and carbon dioxide levels, may all potentially cause significant and lasting damage to some of the rarer plant communities.
- 31.38. As noted above within this D10 submission we welcome the reduction in size of loss of SSSI from 6.52 to 5.74 ha and the temporary loss from 3.02 to 1.99ha . However, we remain of the view that ‘temporary’ loss is very likely to be permanent damage due to the prolonged use of bog matting to protect the fen meadow during the temporary works. We are concerned that anything more than a couple of weeks may risk long term damage.
- 31.39. Also, we are concerned about the balance of groundwater and surface water given approximately 55% of the SSSI we believe is M22 habitat. Consequently there is further risk of a much greater area of fen habitat being permanently impacted.

[Fen Meadow Compensation](#)<sup>126</sup>

- 31.40. We are grateful to the Applicant for its proposals to create compensatory fen meadow habitat. While no scheme can be guaranteed to be successful, there is nevertheless a strong requirement for the Applicant to provide sufficiently detailed and researched proposals so that an outcome of success is considered highly likely – a process highlighted in ISH10 by the

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<sup>123</sup> Reg 21(1). This must be set out in the decision: reg 30(2)(b)(i)(aa)

<sup>124</sup> Including additional plans or controls provided for by the DCO

<sup>125</sup> Adapted from Summary of Oral Submissions at ISH10 Biodiversity and Ecology ([REP7-153](#)):

<sup>126</sup> From Friends of the Earth Final D10 Submissions

Examining Authority and described in his own words as “reasonable endeavours”. It is our opinion that the proposed fen habitat creation falls woefully short of this aim, both in scope and in requirements. Natural England raised concerns in their written statement for ISH10 regarding “the likelihood of success” of fen meadow compensation and it is our opinion that the current proposals, with the serious uncertainties we highlight, are more likely to be unsuccessful and therefore should not be relied upon with any confidence.

[Water mitigation strategy not fit for purpose](#)<sup>127</sup>

- 31.41. We are also especially concerned about the lack of water quality monitoring and the proposal for monitoring twice a year for the SSSI, a sensitive fen habitat, is not nearly enough. We would expect monthly monitoring as a minimum. Also, with regard the potential mitigation, in our view the real risk lies in water quality not water level. It might be possible to maintain water levels through an engineered solution but that will compromise the water quality that will then potentially impact on the SSSI. From what we can tell the mitigation actions are to do with grazing and hay cutting, theoretically to help reduce the influence of excessive nutrients which tends to benefit more common plants at the expense of rarer ones, but there is a huge amount of uncertainty that increased grazing or increased hay cutting will have any influence on a fen habitat that is suffering from very poor water quality. For further detail please refer to our comments on the Draft Water Monitoring and Water Management Plan above.
- 31.42. We would reiterate, in this context, the concern previously identified as to whether a requirement to ensure that mitigation measures are in place before the works which give rise to the effect (requiring mitigation) commence have predominately been secured through the draft DCO and/or draft Deed of Obligation.
- 31.43. There is much comfort in the DCO (with similar paras in the DML too) itself – starting with the Definitions <sup>128</sup>

*“environmental information” means the Environmental Statement and any information constituting “environmental information” as defined by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 relied upon by the Secretary of State in reaching a reasoned conclusion on the significant effects of the authorised development on the environment pursuant to regulation 21(1)(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017;*

*“Environmental Statement” means the document certified as such by the Secretary of State under article 80;*

- 31.44. The ES being a certified document<sup>129</sup> and also within Schedule 1 the following

*(q) such other works as may be necessary or expedient for the purposes of or in connection with the construction, operation and maintenance of the authorised development which do not give rise to any materially new or materially different environmental effects from those assessed as set out in the environmental information, except that this paragraph will not*

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<sup>127</sup> Adapted from our Post Hearing submissions including written submissions of oral case ([REP8-172](#))

<sup>128</sup> [REP8-036](#) NNB Generation Company (SZC) Limited Deadline 8 Submission - 3.1(I) Draft DCO Tracked Changes Version-Revision 10 against Revision 9, part 1 Clause 2 – Definitions

<sup>129</sup> [REP8-036](#) NNB Generation Company (SZC) Limited Deadline 8 Submission - 3.1(I) Draft DCO Tracked Changes Version-Revision 10 against Revision 9, part 1 Clause 2 – Definitions

apply to Work Nos. 3, 4A, 4B, 4D, 9, 10 or 13 once the decommissioning or restoration of those Works has commenced.

31.45. And finally in Schedule 2 <sup>130</sup>

*“(3) Where an approval of details or other document is required under the terms of any requirement or where compliance with a document contains the wording “unless otherwise approved” by the discharging authority, such approval of details or of any other document (including any subsequent amendments or revisions) or approval by the discharging authority is not to be given except in relation to changes or deviations where it has been demonstrated to the satisfaction of the discharging authority that the subject matter of the approval or agreement sought does not give rise to any materially new or materially different significant environmental effects to those assessed in the environmental information.*

31.46. As you know what we are concerned about is the environmental information that has been relied on to make the decision not being clearly set out and the whole of the ES being the *controlling* doc when it comes to the above safeguards. The ES is enormous and has been updated quite a few times including due to the Change Applications made.

31.47. We would note that there is some precedent for consents providing that environmental effects should not exceed those assessed in an Environmental Statement (compared to what we have here *“not give rise to any materially new or materially different significant environmental effects”*). We note, for example, that the deemed planning permission for non-scheduled works authorised under the High Speed Rail (London-West Midlands) Act 2017 does not apply if the development would *be likely to have significant effects on the environment*, it is not exempt development within the meaning of the EIA Regulations, and it has not been covered by an EIA in connection with the High Speed Rail (London-West Midlands) Bill.<sup>131</sup>

### Legal and Policy Conclusions

31.48. We believe there remains issues with legal and policy requirements and considerations for example the cumulative, interproject, Conservation Objectives, general legal duties considerations and in our view too much being left to be determined after the Examination (as discussed below). Although we have full confidence in the public bodies involved and are grateful for the inclusion of consultation provisions for the RSPB and SWT, what remains is ensuring there is sufficient detail and clarity now or feedback loop/adaptive management mechanisms in place for the ExA and Secretary of State to be legally (and ecologically) confident in measures or mechanisms especially when other landowners are involved.

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<sup>130</sup> [REP8-036](#) NNB Generation Company (SZC) Limited Deadline 8 Submission - 3.1(I) Draft DCO Tracked Changes Version- Revision 10 against Revision 9, Sch 2, Article 3, Requirements

<sup>131</sup> **S.20: Deemed planning permission**

(1) Planning permission is deemed to be granted under Part 3 of the Town and Country Planning Act 1990 for the carrying out of development authorised by this Act.

This is subject to the other provisions of this Act.

(2) Where development authorised by this Act consists of the carrying out of a work which is not a scheduled work, subsection (1) does not apply if—

(a) the development is likely to have significant effects on the environment by virtue of factors such as its nature, size or location,

(b) the development is not exempt development within the meaning of the Environmental Impact Assessment Regulations, and

(c) the development is not covered by an environmental assessment in connection with the High Speed Rail (London - West Midlands) Bill.

- 31.49. The requirements and the Examination are there to consider issues together and enable public participation. Concerns are in part due to the ability to change requirements in the future due to for example the DCO Schedule 2 including phrasing such as “in general accordance with” and correctly a mechanism for change also included. Although any changes will be restricted and comfort can be taken in the DCO requirements (as set out above) to ensure consent given does *“not give rise to any materially new or materially different significant environmental effects”* compared to what has been assessed along with e.g. the expert Ecology Working Group being established to review and advice. However, it is not suggested nor practical for there to be project as a whole consideration of every issue and currently for some species a lack of any further measures being practical or effective (as detailed above). Even if the Ecology Working Group makes recommendations, the Delivery and Implementation groups agree if not measures are possible or effective where next?
- 31.50. We also wish to repeat from our Written Reps<sup>132</sup> the weight of public objection to this application –
- 31.51. Between the 27 November 2020 and the 15 February 2021, both organisations ran a Love Minsmere e-action. We called on supporters who shared our summary of concerns (based on our Relevant Representations) regarding the Application’s potential negative impacts on nature, to sign our e-action and demonstrate how many people want to see RSPB Minsmere nature reserve, the protected and designated sites including Sizewell Marshes SSSI as well as the surrounding wildlife of the Suffolk coast protected.
- 31.52. In just 12 weeks, 104,836 people took our e-action and said they share our concerns over the Application’s potential harmful impacts on nature. We told these 104,836 people that we would represent their concerns in the examination by including reference to the e-action and the number of people that shared our concerns in our Written Representations.

And finally we continue to be grateful to the Applicant for the helpful engagement it has had with us, however it is worth noting that for some members of our team those discussions started ten years ago and therefore it is a great shame that so much has been submitted at such a late stage. The RSPB and SWT have tried to take account of all new information submitted by the Applicant during the Examination, however the quantity and length of submissions made especially in the last two months has made this virtually impossible. Therefore should any comments be on non updated versions of especially the mitigation, compensation monitoring and management plans we request the Examining Authority’s forgiveness.

**We are extremely grateful to the Examining Authority and all of the Planning Inspectorate Team that have enabled such a smooth running of this examination and their assistance to us throughout.**

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<sup>132</sup> The Written Submission for the Royal Society for the Protection of Birds and Suffolk Wildlife Trust ([REP2-506](#)) Section 8.