

This Report will be made public on 30 November 2010

Folkestone

Hythe & Romney Marsh
Shepway District Council



Report Number **C/10/42**

To: Cabinet
Date: 8 December 2010
Status: Key Decision
Corporate Director: Mark Parkinson - Communities
Cabinet Member: Councillor Hugh Barker – Planning and Community Safety

SUBJECT: DUNGENESS, ROMNEY MARSH AND RYE BAY – REVIEW OF INTERNATIONAL NATURE CONSERVATION DESIGNATIONS

SUMMARY: This report considers proposals by Natural England (NE) to:

- extend and rename the Dungeness to Pett Level Special Protection Area (SPA)
- designate land at Dungeness, Romney Marsh and Rye Bay SSSI as a “Ramsar Site”

NE has asked for the council’s response to its proposals by 13 December 2010 and aims to achieve acceptance and formal designation by the government during the spring of 2011. The government’s decision will be based on the scientific evidence presented to them by NE and NE has asked for the council’s comments on this evidence. NE has also invited comments on its social, environmental and economic impact assessment of its proposals, although it has said that any such comments on this assessment would not influence the government’s decision making.

Ecological consultants have been appointed to review the proposals and the implications of them for the council. Their report is expected to be completed in early December. This report to Cabinet summarises and draws initial conclusions which are chiefly that:-

- the scientific evidence stands general scrutiny
- the social economic and environmental impact assessment is inadequate and impacts on local communities and businesses are likely to be more negative than is suggested in the assessment
- designation would introduce new protective constraints leading to additional need for and costs in assessing the impacts of projects and plans against nature conservation interests
- the changes would have little impact on the council’s management of its own land within or in the vicinity of the proposed sites
- there may be some positive impacts in terms of green tourism and increased funding towards management of the designated sites and collaborative working with NE to achieve a sustainable balance between socio-economic and environmental needs

At the time of preparing this report the November 2010 meeting of the Full Council was due to consider a motion rejecting any need for these designations and calling for Natural England to work with the local population and businesses to find a more collaborative and integrated approach in preference to the prescriptive approach it is currently favouring. It is also anticipated that Full Council might resolve to make representations to Natural England and to Richard Benyon MP, Parliamentary under-secretary for Natural Environment and Fisheries, urging the adoption of a collaborative approach, without any extensions of the SPA or Ramsar areas.

REASONS FOR RECOMMENDATIONS:

Cabinet is asked to agree the recommendations set out below because:

- a) This would accord with the resolution of Full Council which concludes that the proposed extension and renaming of the Dungeness to Pett Level Special Protection Area and the establishment of the Ramsar site is unnecessary as the underlying aims of these designations would be more appropriately achieved through a "localism" and "Big Society" agenda approach involving collaboration between Natural England, local people and businesses.

RECOMMENDATIONS:

1. To receive and note report C/10/42.
2. To give delegated authority to the Corporate Director for Communities in consultation with the Cabinet Member for Planning and Community Safety to:
 - a. make a full response to Natural England objecting to the proposed designations as being unnecessary and harmful to the area's development as a sustainable community given that:
 - i. the entire area is included within a nationally protected Site of Special Scientific Interest (SSSI) with large parts of the SSSI also carrying ecological designations including a Special Area of Conservation, Special Protection Area, National Nature Reserve, and Local Nature Reserve;
 - ii. much of the area is already being managed to protect and enhance its wildlife value through positive working between Natural England, the council, other agencies and individuals including, for example, the Romney Marsh Countryside Partnership, RSPB, Kent Wildlife Trust and landowners and that a collaborative approach is more likely to result in gains for wildlife and the community;
 - iii. the introduction of an additional requirement for appropriate assessment will impose new costs on developers and the local planning authority and may restrict the area's attractiveness as a location for social and economic development to the disadvantage of a community which is recognised as being deprived;
 - iv. the designations may impose higher costs and limit the future scope of flood defence agencies to protect the area inland from inundation.
 - b. make a request to Natural England and Richard Benyon MP, Parliamentary under-secretary for Natural Environment and

Fisheries seeking a formal arrangement for Natural England to work with the local population and businesses to find a more collaborative and integrated approach towards supporting both nature conservation interests and the sustainable development of the local community in preference to the prescriptive approach proposed through this consultation.

1 BACKGROUND

1.1 Natural England (NE) has requested the Council's views regarding:-

- the extension (and some minor deletions) and renaming of the existing Dungeness to Pett Level Special Protection Area (SPA) under the Council Directive 2009/147/EC on the Conservation of Wild Birds
- the designation of part of the Dungeness, Romney Marsh and Rye Bay Site of Special Scientific Interest as a Ramsar site under the Convention on Wetlands of International Importance

1.2 NE's view is that the identified areas contain species and habitats which are internationally important. The central purpose of SPA and Ramsar designation is to conserve biodiversity. If the proposals are approved by government the habitats and species present in these areas will receive greater protection.

1.3 NE's consultation runs between the 16th September and 13th December 2010. On closure of the consultation NE will report the views gathered to the government, as represented by Department for the Environment Food and Rural Affairs (Defra), and will make final recommendations on the proposals. Government is expected to issue final decisions on the designations during spring 2011. Full consultation details can be viewed on http://www.naturalengland.org.uk/regions/south_east/ourwork/dungenessconsultation/default.aspx

1.4 In its consultation NE has requested comments relating specifically to:

- the scientific case for the proposals
- NE's assessment of the proposals' likely social, economic and environmental impacts

1.5 The council needs also to consider any effects which these designations might have regarding the district's future development generally, in the context of the council's responsibilities as a planning authority and as a landowner/manager.

1.6 The council also needs to make its response in the context of:-

- the Council's duty to conserve biodiversity under section 40 of the Natural Environment and Rural Communities Act 2006 which states "Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity."
- schedule 9 of the Countryside and Rights of Way (CRoW) Act 2000 which places a duty on public bodies to further the conservation and enhancement of SSSIs

- the legal requirements relating to the management and protection of SPAs as set out in The Conservation of Habitats and Species Regulations 2010, and Planning Policy Statement 9: “Biodiversity and Geological Conservation” which together set out the requirements for local planning authorities.
- 1.7 The proposed SPA and Ramsar sites are within the Dungeness, Romney Marsh and Rye Bay, and the Hastings to Pett Beach Sites of Special Scientific Interest (SSSIs) which cover 9,090ha and 293ha of land in Kent and East Sussex respectively. Only the Dungeness, Romney Marsh and Rye Bay SSSI lies within Shepway district. SSSI status identifies land as being nationally important for its natural heritage and confers special protection on this land through planning policy and by requiring landowners to seek consent from Natural England before carrying out certain “potentially damaging operations”.
- 1.8 The Dungeness, Romney Marsh and Rye Bay SSSI already includes land designated as:-
- the Dungeness to Pett Level SPA covering 1,479ha
 - 3223ha of land designated as a Special Area of Conservation (SAC) which has international importance
 - the nationally important Dungeness National Nature Reserve which covers 1,031ha
- 1.9 If Natural England’s proposals are confirmed the area of SPA will be increased by 2,570ha to cover 4,049ha. The proposed Ramsar site would cover 6,416ha of the SSSI. If confirmed the proposals would lead to the creation of one of the biggest SPA and Ramsar sites in the UK.

2. PROPOSED AMENDMENTS TO THE DUNGENESS TO PETT LEVEL SPECIAL PROTECTION AREA

- 2.1 The Dungeness to Pett Level SPA was designated in August 1999. Natural England proposes to extend the area of SPA to 4,049 ha and to rename it the Dungeness, Romney Marsh & Rye Bay SPA. The map and citation at Appendix 1 set out NE’s justification of the proposal.
- 2.2 Within Shepway district new areas of SPA are proposed on land at locations including:-
- Walland Marsh and Fairfield
 - The beach and intertidal areas between Romney Warren/St Mary’s Bay and Dungeness
 - Lade Pit - the water filled gravel pit west of Romney Sands Holiday Park/east of Lydd London Ashford Airport
 - Land in the vicinity of Halfway Bush at Denge Beach and Boulderwall Farm Denge Marsh
 - The water-sports centre at Dengemarsh Road Lydd
 - Lydd Ranges
 - Water filled pits between Scotney Court and Dering Farm west of Lydd town

- 2.3 The extended SPA would include land owned/leased by the council at:
- The foreshore between Dungeness and St Mary's Bay
- 2.4 Appendix 1 includes NE's citation for the SPA. This sets out the evidence supporting the designation and explains that the SPA has been selected on the basis of the presence of large numbers of certain species of birds. The bird counts supporting this evidence were undertaken by organisations such as the RSPB and the Dungeness Bird Observatory.

3. PROPOSED RAMSAR SITE

- 3.1 Ramsar sites are wetlands of international importance, designated under the Ramsar Convention, an international agreement which provides for the conservation and good use of wetlands and was ratified by the UK Government in 1976. Other Ramsar sites in Kent include, for example, Stodmarsh; the Swale; Thanet Coast and Sandwich Bay. Examples of Ramsar sites elsewhere in England include the New Forest; Lindisfarne; The Wash; the North Norfolk Coast, and Poole Harbour.
- 3.2 Ramsar sites are designated on the government's behalf by the Department for Environment Food and Rural Affairs (DEFRA) on the recommendation of NE. NE's selection of Ramsar sites is guided by criteria set out in the Convention. Sites can be considered suitable for designation under two broad groups of criteria:-
- Group A. Sites containing representative, rare or unique wetland types
 - Group B. Sites of international importance for conserving biological diversity
- 3.3 Within these broad groups are a number of other qualifying criteria which can be used to demonstrate suitability for designation based on the presence of habitats and species.
- 3.4 While the government's obligations under the Ramsar Convention are met through the Wildlife and Countryside Act 1981 (as amended) as a matter of policy the government also require that Ramsar sites are afforded the same protection and management as SPAs and SACs.
- 3.5 Within the existing bounds of the Romney Marsh & Rye Bay SSSI NE propose the designation of a Ramsar site with a total area of 6,416ha. The map and citation at Appendix 2 illustrate the proposal.
- 3.6 Within the district the Ramsar site would include land at/in the vicinity of:-
- Romney Warren
 - Walland Marsh, Fairfield and the Dowels/Snargate
 - The beach and intertidal areas between Romney Warren/St Mary's Bay and Dungeness
 - Land to the east and south of Lydd Airport
 - Land at Denge Beach and Boulderwall Farm, Denge Marsh
 - The water-sports centre at Dengemarsh Road Lydd
 - Lydd Ranges

- The water filled pits between Scotney Court and Dering Farm west of Lydd town
- 3.7 The Ramsar site would include land owned/leased by the council at:-
- Lydd Airport
 - Romney Warren
 - The foreshore between St. Mary's Bay and Dungeness
- 3.8 Natural England proposes designating the Ramsar site on the basis that the site qualifies because it:-
- contains representative, rare, or unique examples of natural or near-natural wetland types
 - supports threatened ecological communities
 - regularly supports 20,000 or more waterbirds
 - regularly supports 1% of the individuals in the populations of two waterbird species in any season

4. CONSEQUENCES OF DESIGNATION

- 4.1 Designation of SPA and Ramsar sites is intended to reflect and conserve the areas' diversity of wildlife and habitat. In its consultation NE has asked for comments on:-
- the scientific case for the proposals
 - NE's own assessment of the proposals' likely social, economic and environmental impacts
- 4.2 As the local planning authority it is also prudent to consider the impacts of these designations in the context of:-
- the implications for the council as local planning authority
 - the council as landowner/manager
 - the specific major development proposals of the expansion of London Ashford Airport and the possible development of a nuclear power station at Dungeness – "Dungeness C"
 - coastal defence
 - positive impacts
- 4.3 **Scientific case.** The scientific case for designation is central to the government's final decision as to whether or not to confirm NE's proposals. NE's intention to establish a Ramsar site and to extend the existing SPA has been known for some while and it is clear that NE has compiled a thorough evidence base over a long period which in general demonstrates that the areas would fit the criteria for SPA and Ramsar site designation.
- 4.4 **NE's social, economic and environmental impact assessment.** While all decision-making regarding the identification and consideration of these designations has to be made on the basis of scientific evidence alone NE has undertaken an assessment of the likely social, economic and environmental impacts of these designations being confirmed. The assessment's purpose is to inform the government of the impacts of the proposals as a Ramsar site but is not aimed at informing the decision about

whether to designate the site, which is based solely on scientific evidence. The assessment can be viewed on.

http://www.naturalengland.org.uk/Images/impact_assessment_tcm6-21541.pdf

- 4.5 Therefore although the council's views on the impact assessment are unlikely to change the government's decision as to whether or not the areas should be designated, they will serve to highlight the very real social and economic issues that exist in the local community. In the local context there are major concerns regarding the fragility of the area's local economy, including its dependence on a nuclear power sector which appears set to decline over the next 8 to 13 years with the closure of B station. The introduction of further measures to protect the natural environment could be seen as further constraining the area's ability to develop economically and socially e.g. by introducing additional burdens on business through the need for surveys, assessment, mitigation etc. In the case of the council's lobbying for a new power station at Dungeness, nature conservation issues remain a key issue and the imposition of additional designations will require further work to demonstrate that a new power plant can be built without adversely affecting the integrity of the additional international sites.
- 4.6 NE's impact assessment gives little detailed consideration to the proposals' possible socio-economic consequences but does state in the context of impact on small firms "Natural England is unable to completely rule out the possibility that small firms may be disproportionately impacted upon as a result of the proposed designations, which would result in a greater proportion of the existing SSSIs being given an international designation."
- 4.7 The impact assessment also suggests that "There may also be some small positive benefits... arising from the increased wildlife tourism potential of the area."
- 4.8 These benefits and disbenefits have not been quantified and given the sensitivity of the local economy it is considered that in this respect the impact assessment has been carried out inadequately.
- 4.9 **Implications for the council as local planning authority.** Should NE's proposals be confirmed the main impacts on the council as local planning authority are expected to arise from the Conservation of Habitats and Species Regulations 2010. The regulations require that projects and plans likely to have a significant effect on, and which are not directly connected with or necessary to the management of "European" sites for their wildlife value, are subject to an "appropriate assessment" of the implications for that site.. This requirement placed on the decision maker (i.e the local planning authority) applies to projects and plans both within and outside of such sites where a significant impact is expected. In the planning context this requirement applies to both planning applications and the development of planning policy including the Local Development Framework. The requirement also applies to projects and plans outside of the planning system.

- 4.10 To a large extent this would represent an extension of a situation currently dealt with by the council as the district already contains the Pett Level to Dungeness SPA and SACs at Dungeness, Folkestone to Etchinghill Escarpment and Parkgate Down. The government has recognised that the presence of European sites can generate additional cost burdens for planning authorities and has allocated the council £16,835pa during 2009/10 and 2010/11 as an area based grant to help offset these costs. Additional costs may also be incurred by developers through, for example, the preparation of surveys, assessments and mitigation measures. There is no commitment to continue this grant in the future.
- 4.11 An additional implication for the council as local planning authority is that following a site's confirmation as a European site, under regulation 63 of the Habitats Regulations, competent authorities are required to carry out a review of existing consents that may affect the site, and either affirm, modify or revoke the consent. This also extends, as a matter of policy to Ramsar sites. Where it is concluded that there would be an adverse effect on the integrity of the site modification or revocation of the consent has to be considered and this may have financial implications to the council in the form of compensation payable to the applicant. However, in cases where the modification or revocation is warranted, the Government will consider reimbursing local authorities where the costs are high, where the action taken was no more than necessary to remove the risk to the site and less costly alternatives have been fully explored.
- 4.12 **Landowner issues.** All land owned/managed by the council in the proposed areas is already designated as SSSI and has to be managed with the aim of maintaining its biodiversity. A list of potentially damaging operations applies to this land for which NE consent is required before such operations can take place. The council is working with NE and with the Romney Marsh Countryside Partnership and Kent Wildlife Trust to improve the management of these sites for their wildlife value through, for example, scrub control at Greatstone Dunes, pond and grassland management at Romney Warren Country Park.
- 4.13 It is not expected that the confirmation of the SPA and Ramsar site would create any additional burdens in terms of management and may open up new opportunities for external funding of such work.
- 4.14 **London Ashford Airport.** The council is currently preparing evidence for the forthcoming public inquiry in support of its resolution to grant planning permissions for the expansion of the airport. When determining the planning applications for the airport's expansion it was anticipated that NE would at some stage propose extending the existing SPA and designating a Ramsar site. In terms of the Ramsar site, it was assumed that the proposed Ramsar site would cover a much larger area than is currently proposed. On the assumption that NE would be consulting on a proposed extension to the SPA and on the proposed Ramsar site, the council requested the applicants to submit a "shadow" Statement to Inform an Appropriate Assessment which considered impacts over the proposed SPA extension and over a much larger area than is currently proposed for the Ramsar site.

- 4.15 Having considered this Statement to Inform an Appropriate Assessment, Full Council concluded that the airport's expansion would have no adverse impact on the proposed extension to the SPA and on the proposed Ramsar site. Accordingly, it is considered that NE's proposal for the extension to the SPA and the proposed Ramsar (particularly given that NE's current proposal for a Ramsar site covers a much smaller area than was originally thought likely) will not constrain the airport's proposed development.
- 4.16 **Dungeness "C"**. The previous government's Energy National Policy Statement excluded Dungeness as a potential site for a new nuclear power station largely on the grounds that NE had commented that such a development would be likely to have adverse impacts on nature conservation interests which could not be mitigated. The council's contrary view was that it was premature to exclude Dungeness on this basis and that it should be identified as a potential site for new nuclear development.
- 4.17 The current government's re-consultation on the Energy National Policy Statement also excludes Dungeness as a site for a new power station primarily on the grounds of potential damage to the integrity of the existing SAC. A separate report will be presented to cabinet in January 2011 detailing the government's latest proposals and seeking agreement of the council's response regarding the continued omission of Dungeness as a preferred site for a new nuclear power station.
- 4.18 With regards to the proposed SPA and Ramsar proposals neither area directly affects the anticipated footprint of the new nuclear plant as put forward by EDF. However, off-site impacts of any new power station would also need to be taken into account and the extension of the SPA together with the new designation of the Ramsar site are likely to increase the likelihood of adverse impacts needing to be mitigated or compensated for and in this way may hamper or prevent the development of a new power station at the site.
- 4.19 **Coastal defence**. The Ramsar designation includes the coastline from St. Mary's Bay through to Cliff's End, the only break being the protective shingle bank formed to the seaward side of the power station complex. Within Shepway the proposed SPA is in two main stretches:-
- between St Mary's Bay and a point east of beach Cottage on the Dungeness Estate at which intertidal sand/mudflats cease
 - from the lookout on the beach at the eastern edge of the MOD range and westwards towards Camber
- 4.20 With the exception of the bund in front of the power station this coastline is already within the Dungeness, Romney Marsh and Rye Bay Special Area of Conservation (SAC).
- 4.21 With regards to coastal defence planning this area is covered by the Beachy Head to South Foreland Shoreline Management Plan (SMP). The SMP explains that while the eastern part of the Ness between Dungeness

and Littlestone is accreting shingle and not considered to be at risk, the eastern section of Lydd Ranges has a relatively low standard of defence, the shingle ridge is currently estimated as having a 1 in 5 chance of failure in any one year, where the likely failure mode would be overtopping and breaching. The standard of protection will decrease over time if sea level rises as predicted.

4.22 At the power station it is imperative to defend the coastline and this is currently achieved through the use of a 1:10,000 year event shingle Tsunami bund combined with shingle recharge, which has involved taking shingle from east of the power station and depositing this on the coast to the west.

4.23 Both the National Grid (for the Power Station tsunami bund) and the Environment Agency (for their recharge operations) have had difficulties in taking forward a current planning application for further extraction because of the presence of the SAC and SSSI. Consequently there are concerns that while coastal defence projects may already require appropriate assessment the introduction of new international designations affecting this coastline are likely to require additional assessments to take account of the extended SPA and Ramsar site. This could, increase costs and further limit the ability of coastal defence agencies to respond effectively to climate change, potentially with adverse consequences for communities, land, and businesses in flood risk areas. While these outcomes are difficult to quantify they do not appear to have been taken into account fully in Natural England's Impact Assessment and to this extent the assessment could be criticised as being inadequate.

4.24 **Positive Impacts.** Should the proposals be confirmed it is anticipated that the key benefits would include:-

- additional protection to sites and species of international nature conservation importance, and potentially a strengthened case when bidding for external funding to support the costs of managing such sites, although it is clear that Natural England's own resources for such actions are declining
- increased awareness of the district as a destination for wildlife/green tourism with the potential for increasing visitor spend into the local economy

5. CONCLUSION

5.1 While there may be some minor benefits accruing in terms of green tourism and increased funding for wildlife management, it appears likely that the additional need for "appropriate assessment" for any projects or plans which will come with these new designations will impose new burdens and costs for the public and private sector. These new burdens could put a brake on the sustainable development of the local community. In this context Natural England's assessment of the social and economic impacts of the new designations appears to give these effects little weight and consequently the assessment is seen as being inadequate.

5.2 The scientific evidence on which the formal designation of these areas will ultimately rest does appear, in general, to be sound and difficult to challenge. However, the necessity for these designations and the extent to which they will add value to the ongoing management of these areas for the benefit of their wildlife is questionable, particularly as the whole area already benefits from SSSI status and other designations are in place for much of the SSSI including a Special Area of Conservation, Special Protection Area, a National Nature Reserve, a Local Nature Reserve, and a RSPB Reserve.

6. RISK MANAGEMENT ISSUES

6.1 A summary of the perceived risks follows:

| Perceived risk | Seriousness | Likelihood | Preventative action |
|---|-------------|------------|--|
| Council fails to respond within consultation period | High | Low | Work programme is timed to ensure that a full response is made to Natural England by 13 December 2010. |

7. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

7.1 Legal Officer's Comments (JC)

All relevant legal issues have been addressed in the main body of the report.

7.2 Finance Officer's Comments (MF)

The financial implications have been addressed in the main body of this report.

7.3 Diversities and Equalities Implications (DI)

There are no implications arising directly from this report.

8. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

Councillors with any questions arising out of this report should contact the following officer prior to the meeting

Report Author: David Illsley, Regeneration Officer

Telephone: 01303 853474

E-mail: dave.illsley@shepway.gov.uk

The following background documents have been relied upon in the preparation of this report:

None

Appendices:

1. Natural England Citations for proposed SPA and Ramsar sites
(Appendix 1a, NE Ramsar Citation, Appendix 1b, NE SPA Citation)
2. Natural England Impact Assessment
3. Designated areas of ecological importance – Summary
- 4, a), b) c) Proposal Maps

This page is intentionally left blank