

# REPORT

## **Boston Alternative Energy Facility**

### Second Report on Outstanding Submissions

Client: Alternative Use Boston Projects Ltd

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## Glossary of Acronyms

Term	Definition
<b>AEoI</b>	Adverse Effect on Integrity
<b>ASSI</b>	Areas of Special Scientific Interest
<b>AUBP</b>	Alternative Use Boston Projects Limited
<b>BNG</b>	Biodiversity Net Gain
<b>DCO</b>	Development Consent Order
<b>dML</b>	Deemed Marine Licence
<b>ES</b>	Environmental Statement
<b>HRA</b>	Habitats Regulations Assessment
<b>ISH2</b>	Issue Specific Hearing 2 (Environmental Matters)
<b>MMMP</b>	Marine Mammal Mitigation Protocol
<b>MMO</b>	Marine Management Organisation
<b>MOTH</b>	Mouth of The Haven
<b>NE</b>	Natural England
<b>OLEMS</b>	Outline Landscape and Ecological Mitigation Strategy
<b>RSPB</b>	The Royal Society for the Protection of Birds
<b>SAC</b>	Special Areas of Conservation
<b>SPA</b>	Special Protection Area
<b>SSSI</b>	Site of Special Scientific Interest
<b>UKWIN</b>	The United Kingdom Without Incineration Network

## 1 Introduction

1.1.1 This ‘Second report on outstanding Submissions’ is for the Boston Alternative Energy Facility (the Facility). This report is on behalf of Alternative Use Boston Projects Limited (the Applicant), to support the application for a Development Consent Order (DCO) (the DCO application) that has been made to the Planning Inspectorate under Section 37 of the Planning Act 2008 (the Act).

1.1.2 This report is the second report in response to question 2.1.0.6 of the Examining Authority’s Second Round of Written Questions (PD-010) which is as follows:

1.1.3 “Please provide responses to the following:

- ...Please provide a response to any unanswered points raised by IPs in DL2, 3 and 4 submissions.”

1.1.4 This report responds to any outstanding unanswered points that were not addressed by the Applicant at Deadline 5.

1.1.5 This report also responds to comments raised by Interested Parties at Deadline 5.

1.1.6 In order to assist the Examining Authority, we have provided a summary of all the documents submitted by Interested Parties at Deadlines 2, 3, 4 and 5 and whether a response is considered required and if so where it is provided (see **Table 1-1** to **Table 1-4**).

**Table 1-1 Outstanding Deadline 2 Submissions**

Stakeholder	Document	Response Status
Natural England	Natural England’s Comments on Habitats Regulations Assessment - Ornithology Addendum (REP2-045)	Responses to outstanding points are set out in <b>Table 2-1</b> .
RSPB	Comments on the Applicant’s response to the RSPB’s Relevant Representation (REP2-051)	Responses to outstanding points are set out in <b>Table 2-8</b>

**Table 1-2 Outstanding Deadline 3 Submissions**

Stakeholder	Document	Response Status
Natural England	Natural England’s Advice on BAEP Derogation Case - Alternatives and Compensation Measures (REP3-031)	Responses to outstanding points are set out in <b>Table 2-2</b>
RSPB	Comments on Responses to the Examining Authority’s First Written Questions (REP3-033)	Responses to outstanding points are set out in <b>Table 2-9</b> .

Stakeholder	Document	Response Status
	Summary of Comments on Issue Specific Hearing 2 (ISH2) (REP3-035)	A response was not required as RSPB's points were covered in their final response to the Ornithology Addendum (addressed in <b>Table 2-11</b> )

**Table 1-3 Outstanding Deadline 4 Submissions**

Stakeholder	Document	Response Status
RSPB	Response to the Applicant's Comments on our Written Representations submitted at Deadline 1 (REP4-025)	Responses to outstanding points are set out in <b>Table 2-10</b> .
	Final comments on the Ornithology Addendum (REP4-026/ REP4-027)	Responses to outstanding points are set out in <b>Table 2-11</b> .
	Comments on the Applicant's 'Without Prejudice' Derogation Case (REP4-028)	Responses to comments on the Assessment of Alternative Solutions were provided at Deadline 5 (document reference 9.63, REP5-008).  Responses to comments on the Compensation measures are provided below in <b>Table 2-12</b> .

**Table 1-4 Outstanding Deadline 5 Submissions**

Stakeholder	Document	Response Status
Environment Agency	Responses to Second Written Questions (ExQ2) (REP5-010)	A response is provided in the Comments on Interested Parties Responses to the Examining Authority's Second Written Questions report (document reference 9.66).
Marine Management Organisation (MMO)	Deadline 5 Submission (REP5-011)	Responses to outstanding points are set out in <b>Table 2-14</b> . Comments on the MMO's responses to the Examining Authority's Second Written Questions are set out at document reference 9.66.
Natural England	Cover Letter (REP5-012)	Comments on the Natural England's responses to the Examining Authority's Second Written Questions are set out at document reference 9.66.
	Appendix B3 Natural England's Advice on Ornithology Documents Submitted at Deadline 3 and 4 (REP5-013)	Responses to outstanding points are set out in <b>Table 2-3</b> .
	Appendix D3 Natural England's Advice on Outline Air Quality and Dust Management Plan [REP3-015] and Air Quality Deposition Monitoring Plan [REP4-016] (REP5-014)	Responses to outstanding points are set out in <b>Table 2-4</b> .

Stakeholder	Document	Response Status
	Deadline 5 Submission - Appendix E3 Natural England's Comments on Public Rights of Way (REP5-015)	Responses to outstanding points are set out in <b>Table 2-5</b> .
	Deadline 5 Submission - Appendix F3 Natural England's Comments on draft Development Consent Order (dDCO) [REP3-004] and Schedule of Changes [REP3-022] (REP5- 016)	Responses to outstanding points are set out in <b>Table 2-7</b>
	Deadline 5 Submission - Appendix J2 Natural England's Advice on Outline Landscape Ecological Mitigation Strategy (OLEMS) [REP3- 008] (REP5-017)	Responses to outstanding points are set out in <b>Table 2-6</b>
RSPB	Summary of the RSPB's position and key concerns regarding the Boston Alternative Energy Facility Development Consent Order (DCO) Application (REP5-018)	Responses to outstanding points are set out in <b>Table 2-13</b> .
	Deadline 5 Submission - Responses to Second Written Questions (ExQ2) (REP5-019)	Comments on the RSPB's responses to the Examining Authority's Second Written Questions are set out at document reference 9.66.
UKWIN	UKWIN response to applicant's REP 9.55 (REP4-020) (REP5-020)	Responses to outstanding points are set out in <b>Table 2-15</b> .



## 2 Responses to Unanswered Points

### 2.1 Natural England

Table 2-1 Natural England's Comments on Habitats Regulations Assessment - Ornithology Addendum (REP2-045)

No.	Comment	The Applicant's Response
1	<p><b>1. Impacts at development site</b></p> <p>1.1. At the development site there will be a loss of foraging habitat and roosting habitat as a consequence of the development. Of particular concern is the roost provision currently provided by two linked roost sites one on the development site. Redshank are site loyal and adopt set territories in the non-breeding season. Since previous submissions, the need to provide and manage the proposed alternative roost site with redshank-specific features and to undertake annual maintenance to secure the roost habitat has been acknowledged by the Applicant.</p>	<p>Noted by the Applicant. The updated Outline Landscape and Ecological Mitigation (OLEMS) (document reference 7.4, REP3-007) provided more information on the ongoing maintenance required to ensure the site is suitable for roosting and foraging.</p>
2	<p>1.2. Natural England notes that the habitat principles surrounding roost establishment are correctly characterised (para 4.3.5). However, documentation detailing how the site will be effectively managed for redshank is not due to be submitted until Deadline 2 (para 4.3.5). Furthermore, the replacement roost area is within the expected disturbance zone of vessels using the Haven to access the development site which may negate its efficacy as a roost (para 4.3.6). The bird surveys provided confirm that the area is subject to vessel disturbance (para 4.3.3; 6.1.34) and the report confirms that alternative provisions for redshank are being sought (para 4.3.7; 4.3.10). But these are yet to be submitted and therefore Natural England is unable to provide further advice on the significance of any impact.</p>	<p>The Applicant confirms that a schedule for in principle compensation has been provided at Examination Deadline 6, confirming the provisions being sought (appended to The Applicant's Responses to the Examining Authority's Commentary on the Draft Development Consent Order (dDCO), (document reference 9.58, REP5-005)). The updated OLEMS (document reference 7.4, REP3-007) provided further details for the adjacent roost area and the proposed works. While the replacement roost area is close to The Haven shipping channel, this proximity also helps maintain strong likelihood of uptake of the roost by individuals currently accustomed to the roost site where the wharf is proposed to be constructed. The replacement roost area will also upon expansion of rock areas contain a greater extent of the substrate favoured by redshank for roosting and remaining inconspicuous from potential sources of disturbance and predation. The Chapter 17 Marine and Coastal</p>

No.	Comment	The Applicant's Response
		<p>Ecology and Appendix 17.1 Update submitted at Deadline 5 (document reference 9.59, REP5-006) provided further assessment of energetics relating to disturbance potential at the adjacent roost site. The aggregate wharf, which is the closest part of the wharf to the roost site is only to be used by two vessels per week on average which would minimise any disturbance.</p>
3	<p>1.2.1. Whilst Natural England recognises that the risk to the Wash SPA is low if the mitigation is secured and proves suitable roosting habitat; significant doubt remains about the efficacy of the proposals. Without this security a conclusion of no AEoI cannot be concluded beyond all significant doubt as the scale of the impacts on the SPA remains unknown. This position will be reviewed in light of material expected to be submitted at Deadline 2.</p>	<p>The Applicant directs the respondent and other Interested Parties to the statements made within 'Chapter 17 Marine and Coastal Ecology and Appendix 17.1 Habitats Regulations Assessment Update' (document reference 9.59, REP5-006), submitted at Examination Deadline 5, that there is not a clear link that the redshank undergoing disturbance at the Principal Application Site are part of The Wash Special Protection Area (SPA)/ Ramsar/ Site of Special Scientific Interest (SSSI) population. As a result, there is no clear link to Adverse Effect on Integrity (AEoI) of the designated sites or their features as a result of disturbance to redshanks at this location and distance from the Designated Sites.</p> <p>The works proposed in the adjacent area are expected to provide suitable habitat for redshank, ruff and other waterbird species.</p>
4	<p><b>2. Impacts at the mouth of the Haven</b></p> <p>2.1 The area at the Mouth of the Haven supports a large number of roosting birds. In this area it is agreed that the risk is to roosting birds subject to disturbance by increased vessel traffic. Two types of effect are anticipated: (a) species displaced from roosts by vessel movements which relocate to alternative sites and (b) species where individual birds are subject to repeated disturbance as they do not relocate.</p>	<p>The Applicant confirms this.</p>

No.	Comment	The Applicant's Response
5	2.2 With reference to The Wash SPA Annex 1 non-breeding waterfowl assemblage some 29,395 birds of at least 22 species are at risk of exposure to disturbance with 20,208 birds of 22 species in the most sensitive area (Appendix A1 Table 2). This includes a number of 'key component' species i.e. those for which The Wash SPA is particularly important.	A response to this point is provided in the Deadline 5 Chapter 17 Marine and Coastal Ecology and Appendix 17.1 Habitats Regulations Assessment Update (document reference 9.59, REP5-006).
6	2.3 Although this area is subject to disturbance already, including visual disturbance by boats (para 4.3.18), this will be increased from approximately 75-80% of high tides to 100% of high tides for those species that relocate <sup>1</sup> in response to large vessel disturbance events (para 4.1.1); and by approximately 1160 events per annum (para 4.1.1) (from a baseline of 840 (para 4.3.17)) for those that return to the roosts and are subject to repeated disturbance. Natural England notes that despite current levels of disturbance these roosts are well used, suggesting that they are the preferred roosts when available.	The Applicant confirms that an additional 3.2 vessel movements per day (1.6 vessels x two movements) equates to approximately 1160 vessel movements per year if 100% of tides (and therefore days) are assumed to see this increase (3.2 x 365). It has been adopted as the worst-case scenario that this translates into an equivalent number of disturbance flights in bird species prone to repeated disturbance.
7	2.4 Of these the birds affected the majority of disturbed individuals abandon the roosts in response to vessel passage (e.g. para 6.1.7; 6.1.10; 6.1.14; 6.1.18; 6.1.24) and do not return for the rest of the high tide period. There are therefore two areas of potential AEoI of the site's conservation objectives. Firstly, to individual fitness as a consequence of increased energy expenditure; and secondly to the distribution objective as a consequence of the loss (as a result to disturbance events occurring on 100% of tides) of a significant roost.	A response to this point is provided in the Deadline 5 Chapter 17 Marine and Coastal Ecology and Appendix 17.1 Habitats Regulations Assessment Update (document reference 9.59, REP5-006). The assessment has considered these baseline behavioural responses which are highly likely to have been ongoing for many years and has assessed the potential for additional disturbance based on this.
8	2.5 In the current documentation [REP1-026] the risk of AEoI is considered without reference to the objectives (maintain vs restore) of individual species, or their individual energy balances and the loss of the Mouth of the Haven roost area permanently is not considered. <b>Natural England considers that an AEoI cannot be ruled out</b>	The Chapter 17 Marine and Coastal Ecology and Appendix 17.1 HRA Ornithology Addendum (document reference 9.13, REP1-026) provided a more detailed assessment of potential impacts on each sensitive species with regard to the conservation objectives. The waterbird assemblage was considered in the

<sup>1</sup> Please note that advice on impacts from numerous vessel transits on species which are more likely to be repeatedly disturbed and return to the preferred roost is provided in Relevant/Written Rep [RR-021]

No.	Comment	The Applicant's Response
	<p><b>beyond all reasonable scientific doubt for these impacts.</b> Natural England also notes that while consideration has been given to impacts on a number of individual species which form features of the site, no assessment is made of the Annex I non-breeding waterfowl assemblage as a feature in its own right of the Wash SPA.</p>	<p>same way in the Deadline 5 Chapter 17 Marine and Coastal Ecology and Appendix 17.1 Habitats Regulations Assessment Update (document reference 9.59, REP5-006).</p>
9	<p><b>3. Conclusion</b> 3.1 Natural England advises that, for a number of individual bird feature species and the non-breeding waterbird assemblage as a whole, an Adverse Effect on Integrity cannot be ruled out beyond reasonable scientific doubt for this matter. This position will be reviewed in light of additional material anticipated at Deadline 2.</p>	<p>Noted by the Applicant.</p>
10	<p>3.2 Natural England advises that, for redshank in particular, there will need to be an updated 'in-combination' HRA assessment on impacts at the development site and Mouth of Haven roosts as both areas of impact affect this species.</p>	<p>The Applicant considers that assessment of impacts at the Principal Application Site and the Mouth of the Haven (MOTH), in turn, was the correct approach to Appropriate Assessment of redshank as a feature of protected sites.</p> <p>The connectivity between the two sites for the species was (and remains) in doubt, as detailed in section 4 of the Deadline 5 Chapter 17 Marine and Coastal Ecology and Appendix 17.1 Habitats Regulations Assessment Update (document reference 9.59, REP5-006), therefore it is likely that only redshank at the MOTH are of relevance to Habitats Regulations Assessment (HRA). Redshank at the Principal Application Site received Appropriate Assessment as a precautionary step early on in the assessment process. In-Combination Effects of activities at the Principal Application Site and the MOTH are not considered likely to both impact a given individual redshank due to the unlikely level of connectivity between the sites; impacts at the two sites would relate to the same single Applicant project; and activities at the Principal Application Site may not be acting on birds forming part of the SPA population, all of which indicate</p>

No.	Comment	The Applicant's Response
		that the two sites are not required to be considered in an in-combination context.
11	<p>Table 1, additional comments</p> <p>In relation to Section 3.5.2: Natural England welcomes the additional survey data provided. While not representing two full years survey, as is best practise, the additional data does extend the surveyed period considerably and it now includes part of two winter seasons. Although we note that project specific data is not provided for the migratory periods.</p>	<p>The Applicant stresses that project specific data is provided for the months of spring waterbird migration and the survey area included the relevant waterbodies (The Haven adjacent to the Principal Application Site) for detecting them. Project specific data for the Autumn waterbird migration months was submitted at Deadline 3 (document reference 9.43, REP3-019). Migratory periods are covered at the MOTH by 'Changes in Behaviour...' observations when including reports for period Jan to Nov 2021 has been submitted at Deadline 6.</p>
12	<p>The Annex II non-breeding waterbird assemblage needs to be added to the scope of the assessment. The assemblage has both numeric and species diversity attributes.</p>	<p>A response to this point is provided in the Deadline 5 Chapter 17 Marine and Coastal Ecology and Appendix 17.1 Habitats Regulations Assessment Update (document reference 9.59, REP5-006).</p>
13	<p>In relation to Table 3.2: WeBS data updated to winter period 19/20 is now available that updates that presented in Table 3.2. While adoption of the most recent data is unlikely to materially change conclusions, it is best practise to use the most up to date data available.</p>	<p>WeBS data to the winter 2018/19 was the most contemporary WeBS data season for matching to the period of project-specific surveys, or for use in the assessment process, available at the time of assessment. The Applicant agrees that conclusions are unlikely to materially change under use of the most recent year of data and stands by its existing assessments.</p>
14	<p>In relation to sections 4.1.1 and 4.3.6: Natural England doesn't believe the approach to assessing impacts as set out in these paras. represents the worst-case scenario for the following reasons: -</p> <ul style="list-style-type: none"> <li>i. It is not possible to have 0.6 of a vessel. Therefore, if such an approach is to be used to assess potential impacts from vessels then the figures should be round up to the nearest whole vessel.</li> <li>ii. By averaging impacts across all navigable tides within a year, it fails to distinguish between the variation in total</li> </ul>	<ul style="list-style-type: none"> <li>i. The Applicant stresses that its use of decimalised values for vessels and vessel movements in assessment (which are the product of averaging as acknowledged in point ii) enables more accurate estimation of typical, i.e. average, daily rates of disturbance, about which the Applicant acknowledges there will be variation.</li> <li>ii. The Port of Boston confirm that commercial vessels generally arrive at evenly spaced intervals throughout the year, with a slight positive bias on spring tides (see Pilotage Statement para 2.1 submitted at Deadline 6).</li> </ul>

No.	Comment	The Applicant's Response
	<p>numbers of vessels that could use different tides. Tidal height will vary and therefore disturbance impacts on the highest tides will be greater than the lowest tides as there will be a longer period of time when draught height would allow the larger vessels to use the navigation channel. On the highest tides therefore, up to 5 vessels would be the worst-case scenario (as defined in paragraph 4.1.1, p.24). Some tides will be lower and therefore fewer vessels could navigate The Haven.</p> <p>iii. It is not clear how many vessels movements at night will occur.</p> <p>Therefore, we advise that a more detailed assessment is required to identify the maximum number of vessels that could use any tide throughout a year. This year's tidal heights could be used as a proxy to help determine this. The total numbers of vessels on each tide can then be assessed against the maximum disturbance impact that this could generate. This is important to understand the variation in vessel movements across tides in any given month/yr. and how this could affect qualifying features of The Wash SPA/Ramsar. It would also enable an assessment of the proportion of tides that would be used by vessels at night.</p> <p>This more detailed assessment would then better enable the ecological consequences of the additional vessel movements to be assessed.</p>	<p>Vessels associated with the Facility will also be similarly spaced out evenly. The worst-case scenario of five vessels has been applied, as is appropriate, in section 7 of Environmental Statement (ES) Chapter 17 Marine and Coastal Ecology and Appendix 17.1 Habitats Regulations Assessment Update (document reference 9.59, REP5-006), specifically by applying additional vessel movements (relating to the project) on 100% of tides, equating to 5 vessels on tides where Port of Boston vessels are also present. It is not realistic to assume five vessels on 100% of tides under project scenarios as Port of Boston vessel traffic is expected to continue using 75-80% of tides as under baseline conditions, and project vessel movements will not be so frequent as to raise traffic to five movements on 100% of tides.</p> <p>iii. Throughout assessment the Applicant has assumed 75-80% use of high tides under baseline conditions irrespective of day or night, and 100% use of high tides by project related vessels thereby occupying evenly day and night high tides throughout the year. 'Project plus baseline' traffic will therefore vary between day and night mainly through the day-night pattern in Port of Boston vessel traffic. The worst case scenario has also assumed that disturbance also happens at night, although it may be that there is less likely to be disturbance at night.</p>
15	<p>In relation to Table 4.9 and Figure 4.1: Whilst this helps understand the trend in vessels movements over time, the impacts on the current population of The Wash SPA/Ramsar need to be considered against the current baseline levels of disturbance to ensure the conservation</p>	<p>The Applicant considers that this is already the case with the assessment completed to date and directs NE to ornithological submissions made during Deadlines including the Chapter 17 Marine and Coastal Ecology and Appendix 17.1 - HRA –</p>



No.	Comment	The Applicant's Response
	<p>objectives that are in place are met. That means that the current abundance and distribution of qualifying features of The Wash SPA/Ramsar must be maintained. Where an increase in vessel movements is proposed this must be assessed against the current population figures. Where no data exist to enable an assessment of impacts to be undertaken then it is essential that detailed site-specific and species-specific data are collected.</p>	<p>Ornithology Addendum (document reference 9.13, REP1-026) and Chapter 17 Marine and Coastal Ecology and Appendix 17.1 HRA Update (document reference 9.59, REP5-006).</p>
16	<p>In relation to section 4.3.9: Natural England advises that while redshank feed in water up to 8cm deep, where that foraging resource is distributed will vary according to site topography and water table drawdown levels. An optimal water body for redshank will have a varying depth, including areas that are greater than 8cm deep at high water levels and which consequently allows for foraging in different locations according to drawdown levels. This will need to be taken into account when designing any compensation measures.</p>	<p>Noted with thanks by the Applicant. This will be taken into account in the design of any required compensation measures.</p>
17	<p>In relation to Figure 4.2: Natural England advises that Figure 4.2 may be labelled to suggest it is a roost map, it is not, it is a WeBS sector map. Within the WeBS sector birds will not be distributed equally, most will be in localised roosts within the sector. These are generally smaller areas. Understanding the distribution of roosts within a sector and their exposure risk to disturbance is important.</p>	<p>The Applicant clarifies that the * symbol (asterisk) in the Figure is not to be read as a point location of aggregations of birds but as demarcating the polygon in which it lies as being a key WeBS Sector for bird numbers or density.</p> <p>The Applicant confirms it has not used WeBS data to produce finer or granular scale data erroneously.</p> <p>The Applicant also confirms that on-going winter bird surveys at The Haven include effort to precisely map locations of high tide roost sites, the data for which will be submitted in March 2022 with the aim of in-progress data submitted before this.</p>
18	<p>In relation to Table 5.1: The column titles suggest that the calculated percentage level of disturbance is based on the number of birds recorded as being displaced during the surveys as a proportion of WeBS counts. Natural England advises that this is incorrect as an</p>	<p>The Applicant stands by its methodology for the assessment. The methodology was intended to make use of WeBS data as counts of birds on the ground 'available' to be disturbed were not collected during 'Changes In Behaviour...' surveys of bird</p>

No.	Comment	The Applicant's Response
	<p>approach (unless the surveys reliably matched local WeBS populations). The analysis needs to look at the number of birds disturbed as a proportion of those recorded on the bird surveys and then consider what this proportion of the population looks like in comparison to WeBS counts from the survey area.</p> <p>For example, if there are 100 birds using the area (per WeBS) but only 10 are present when a survey is carried out and 5 are seen to be displaced, it is not appropriate to assess risk by comparing the 5 seen to the WeBS count 100, the 5 should be compared to the 10 and the resultant proportion compared to the 100. So, for example, because 50% of the observed birds (5 out of 10 who's reactions were observed were disturbed) of the 100 WeBS birds using the 50%, or 50 individual birds are likely to be displaced when all birds are present. The predicted actual impact of 50 birds is an order of magnitude greater impact on the SPA than the 5 birds actually witnessed being disturbed.</p> <p>Natural England seek clarification on whether this an erroneous understanding of the data being presented. In light of any changes the species to be taken forward to Appropriate Assessment may change.</p> <p>Natural England notes that a number of species not taken forward for Appropriate Assessment have high percentage of disturbance response e.g. curlew; bar-tailed godwit; dunlin; grey plover; knot; shelduck; wigeon etc. Given the site conservation objective target of maintaining or restoring the distribution of the qualifying features within the site. Natural England considers that impacts on these species should be considered further.</p>	<p>responses to vessels. The Applicant consequently seeks clarification from NE on what basis a 'high percentage of disturbance' response has been noted for the additional species.</p>
19	<p>In relation to sections 6.1.11 – 6.1.27: Natural England's view is that species-based interpretation of risk should factor in current population status, site trends, site objectives (as set out in the site's supplemental</p>	<p>The Applicant stands by its methodology and approach to assessment and species accounts therein. The Applicant does not consider the abandonment of the Mouth of The Haven roost</p>



No.	Comment	The Applicant's Response
	advice) and species-specific traits. We do not agree with the universal conclusion of 'not significant'. These species assessments also overlook the risk of the Mouth of Haven roost being lost completely due to increased disturbance and the impact of that on the conservation objective target of maintaining or restoring the distribution of the qualifying features within the site.	to be a realistic outcome given the high frequency with which large commercial vessels already transit The Haven per tide, per day and per year, under which conditions the roost continues.
20	In relation to section 6.1.37: This paragraph includes reference to impacts at the Mouth of the Haven in a section that is otherwise concerned with impacts at the development site. For redshank assessments of impact at both the development site and the Mouth of Haven need to be undertaken alone and then the two considered in-combination.	<p>Noted by the Applicant. 'MOTH' should read 'Principal Application' in this paragraph.</p> <p>The Applicant's position on in-combination assessment for redshank is given in response to point 10 above.</p>
21	In relation to section 6.1.40: Proposed measures to ameliorate impacts at the development site are not yet set out or secured. Therefore, we are unable to provided further conservation advice on this matter at this stage.	The measures to address the impacts on redshank through the works in the Habitat Mitigation Area are set out in the OLEMS (document reference 7.4, REP3-007). These measures are secured by Requirement 6 of the draft DCO (document reference (2.1(3))), which requires the approval of a Landscape and Ecological Mitigation Strategy that must be substantially in accordance with the OLEMS.
22	In relation to sections 6.1.56-6.1.57: Proposed measures to ameliorate impacts at the development site are not yet set out or secured. Therefore, we are unable to provided further conservation advice on this matter at this stage.	The measures to address the impacts on redshank through the works in the Habitat Mitigation Area are set out in the OLEMS (document reference 7.4, REP3-007) as are the proposed net-gain measures which include the habitat management to provide additional roosting habitat. These measures are secured by Requirement 6 of the draft DCO (document reference (2.1(3))), which requires the approval of a Landscape and Ecological Mitigation Strategy that must be substantially in accordance with the OLEMS (document reference 7.4, REP3-007).
23	In relation to Appendix A1 Table 2: Natural England notes that the data for the wider Mouth of Haven area indicates at least 22 species utilising the area with 22 species exceeding 1% of the SPA population and 15	The Applicant agrees regarding the wider MOTH's importance for waterbirds. (However, the on-going use of this area in presence of approximately daily commercial vessel traffic

No.	Comment	The Applicant's Response
	<p>species exceeding 5% of The Wash SPA population on occasion. In total over 29,395 individuals (over 7% of current Wash population) are recorded. <b>These figures demonstrate that the area is of high value for SPA species.</b></p>	<p>indicates that the site population is resilient to the presence of vessel traffic and the project will not introduce novel forms of disturbance, but an increase in numbers of vessels, which has been assessed. The future use of this area by birds will be further enhanced through net-gain measures which increase roosting habitat immediately adjacent to The Haven to act as additional or alternative habitat for waterbirds as set out in the OLEMS document (document reference 7.4, REP3-007)).</p>
24	<p>In relation to Appendix A1 Table 3: Natural England notes that the data for the most at risk part of the Mouth of Haven area indicates at least 22 species utilising the area with 19 species exceeding 1% of the SPA population and 14 species exceeding 5% of The Wash population on occasion. In total over 20,208 individuals (over 5% of current Wash population) are recorded. <b>These figures demonstrate that the area is of high value for SPA species.</b></p>	<p>The Applicant agrees regarding the localised MOTH site's importance for waterbirds of The Wash SPA. (However, the on-going use of this area in presence of approximately daily commercial vessel traffic indicates that the site population is resilient to the presence of vessel traffic and the project will not introduce novel forms of disturbance but an increase in vessel numbers which has been assessed. The future use of this area by birds will be further enhanced through net-gain measures which increase roosting habitat immediately adjacent to The Haven to act as additional or alternative habitat for waterbirds as set out in the OLEMS document (document reference 7.4, REP3-007)).</p>
25	<p>In relation to Appendix A1 Section 3.2: We note that knot and bar-tailed godwit are considered to have a surprisingly low population in the Mouth of Haven area, and it is suggested that vessel activity may already be impacting bird use of the area.</p>	<p>The Applicant highlights that WeBS Alerts have not been triggered for The Wash SPA population trends of knot or bar-tailed godwit (Woodward et al. 2019). While The Wash SPA is highlighted to be of possible increasing importance to the latter species, the species accounts confirm that the SPA population trend for bar-tailed godwit is tracking that for the wider (Anglian) region, while the SPA trend for knot is tracking the Anglian and British trends, and site-specific pressures or population decline are not apparent for either species.</p>

No.	Comment	The Applicant's Response
		(Woodward, I.D., Frost, T.M., Hammond, M.J., and Austin, G.E. (2019). Wetland Bird Survey Alerts 2016/2017: Changes in numbers of wintering waterbirds in the Constituent Countries of the United Kingdom, Special Protection Areas (SPAs), Sites of Special Scientific Interest (SSSIs) and Areas of Special Scientific interest (ASSIs). BTO Research Report 721. BTO, Thetford.)

**Table 2-2 Natural England's Advice on BAEF Derogation Case - Compensation**

No.	Comment	The Applicant's Response
1	Please see REP2-043 for Natural England's advice on the sufficiency of the Marine Mammals mitigation measures. Until this is considered further by the Applicant our advice on the significance of the impacts on Marine Mammals remains unchanged.	An updated Marine Mammal Mitigation Protocol has been submitted at Deadline 6 (document reference 9.12(1)).
2	Natural England advises that section need further clarification by including: - "...the loss of both priority saltmarsh and mudflat habitat"  "...and an increased level of disturbance to a wide range of SPA listed wader and wildfowl species (and SPA assemblage)" so not just Redshank.	The loss of priority habitat at the Principal Application Site is not part of the compensation package. The provision of replacement habitat for the birds using this area would be covered, should a decision be made that there was an Adverse Effect on Integrity (AEoI) on The Wash Special Protection Area (SPA), and this includes the loss of roosting habitat for the species using this area. The decision would also need to be made that the birds using this area of habitat were connected with the SPA.
3	"The remainder of The Haven is not known to support populations of roosting birds but..."  Natural England advises that the wording of this sentence is ambiguous. We advise that data of roosting Redshank along The Haven (beyond the Principal Application Area) has not been collected therefore the roosting status of this area is unknown. And therefore, it may not be the case that other roosting locations along the Haven are absent.	In our data collection exercise we reviewed a number of data sources to establish the presence of potentially sensitive locations for roosting birds. The intermediate area of The Haven was not identified as such in any of the reviewed data. This included the report produced by Natural England with respect to potential impacts relating to designation of this stretch of the coastal access route (England Coast Path: Sutton Bridge to Skegness: Natural England's Report to the Secretary of State: Overview, 2018) which identified (through data search and stakeholder consultation) sensitive areas for access, including

No.	Comment	The Applicant's Response
		<p>areas for roosting birds (including those using saltmarsh areas). The mouth of The Haven was identified (within the SPA boundary) but no areas were identified along the intermediate area of The Haven up to Boston. Natural England's assessment for potential significant impacts relating to recreational disturbance along The Haven was based on this information.</p> <p>The net gain/compensation measures proposed would however provide habitat for any birds using the mouth of The Haven, the intervening section of The Haven and the Application Site.</p>
4	<p>Natural England notes the Applicant recognise all scenarios for disturbance issues, which are captured separately, and whilst this is appropriate for HRA they may act in-combination as well as independently which will need consideration in any derogations case</p>	<p>Noted by the Applicant.</p>
5	<p>Natural England highlights that we are not in agreement with the Applicant in relation to the significance of the impacts.</p>	<p>Noted by the Applicant. Further information has been supplied to Natural England to enable a more detailed assessment to be made of the potential impacts. Two years data has been provided as requested for the overwintering, spring passage and breeding periods. One season of data has been provided for autumn passage. Assessment has been undertaken of all birds that are likely to be sensitive to increased vessel numbers as individual species and the waterbird assemblage as a whole. The Applicant considers that the impact of increased disturbance is not likely to have an adverse effect on integrity of the SPA for the reasons given in the reports submitted.</p>
6	<p>As per our Deadline 2 response, the addendums submitted by the Applicant do not address our concerns and therefore our advice remains unchanged.</p>	<p>Additional information has been submitted to address any outstanding concerns after Deadline 2.</p>
7	<p>Whilst separate to the derogations case, we highlight to the ExA that no details on biodiversity net gain (BNG) has been submitted - including the BNG calculations which take into account the priority</p>	<p>The BNG baseline calculation was included in the original OLEMS document (document reference 7.4, APP-123) and the updated OLEMS document (document reference 7.4(1), REP3-</p>

No.	Comment	The Applicant's Response
	saltmarsh and mudflat habitat that will be lost from the construction of the Wharf.	007). This took into account the worst-case scenario for loss of saltmarsh and mudflat during construction of the wharf.
8	Natural England is still awaiting further information on how the loss of priority saltmarsh and mudflat, which is supporting habitat for Annex I species, will be accounted for.	The habitat loss for SPA waterbirds is being mitigated through habitat enhancement of adjacent areas of saltmarsh. The loss of the habitat itself was considered to be of minor significance given its size and condition, however, net gain measures are proposed to remove debris from the saltmarsh within The Haven to restore saltmarsh habitat in the surrounding area.
9	Natural England advises that the proposed mitigation may be beneficial for birds, but it could have wider implications for habitats. Therefore, both direct and indirect impacts through loss and scouring of priority habitats needs to be thoroughly explored before this can be agreed as bird mitigation. And as with compensation measures consideration on ongoing management is required.	Direct and indirect impacts (including scouring) have already been assessed and included within the BNG calculation for the OLEMS documents (document reference 7.4, APP-123 and the updated OLEMS (document reference 7.4(1), REP3-007)). Ongoing management is also discussed on the updated OLEMS document (document reference 7.4(1), REP3-007).
10	Natural England also advises that the supporting habitat mitigation area is not spatially isolated from disturbance arising from boats accessing the site and utilizing the Haven. Measures to control disturbance and to ensure long term suitability have been added to the OLEMS. As we understand from REP1-026 (para 4.3.5) this document was to have been updated for Deadline 2.	The habitat mitigation area is proposed to support the birds that currently use this area and are therefore already subject to disturbance by vessel movements. The increased disturbance due to the vessels for the Facility has been taken into account in the Addendum to ES Chapter 17 and Appendix 17.1 Ornithology (document reference 9.13, REP1-026) and in the Chapter 17 and HRA update (document reference 9.59, REP5-006). BNG measures have also been proposed, together with long-term maintenance, to provide additional habitat for waterbirds using this area in the updated OLEMS (document reference 7.4(1), REP3-007).
11	Delivery of raw materials - we advise that further information and assessment is required of the Worst-Case Scenario (WCS) in terms of environmental impacts to understand the significance and therefore the risk of an Adverse Effect on Integrity. For example, in Natural England Submission AS-001 we set out the position in relation to scouring that	Once the hard substrate is installed and operational it is not expected to affect erosion elsewhere, because there is a disconnect of the flows interacting with it and the flows interacting with the opposite and adjacent banks. Flows over the hard area would not affect flows over the adjacent areas. The

No.	Comment	The Applicant's Response
	may or may not occur, before agreeing which impacts require compensation. [NB: Scouring is not an exclusive issue].	change in flows would be related to the change in tidal prism not the influence of the type of substrate across which they flow.
12	Once the Applicant has submitted an updated derogations case we will review and provide further advice on the ecological merits of the compensation measures and their adequacy in addressing our concerns.	Noted by the Applicant.
13	NE note a further Compensatory Measures Report will be submitted at Deadline 3. However, that report will not have taken into account comments provided by interested parties at Deadline 2. Therefore, there are risks that issues are not being addressed.	Noted, the updated Compensation Measures Document (document reference 9.30(1)) was submitted at Deadline 6.
14	Natural England agrees with the Applicant that it is challenging exploring options for providing compensation measures. Hence our standard best practice advice to all NSIPs (including this one) is to address this prior to application submission or at the latest prior to the start of examination.	This is being progressed through submission to find appropriate sites. Prior to submission it was anticipated that the RSPB would have some sites that would provide compensation that the Applicant could support. These were withdrawn after submission and so alternative sites have had to be investigated during the submission process.
15	Natural England advises that there is a hierarchy to providing compensation measures. Starting within same designated site. Please see DEFRA 2021 draft guidance on this matter	The Applicant is aware of the hierarchy and has approached Natural England regarding the potential for compensation within the same designated site. The Applicant was informed that this was not an option for this case, and this has been taken into consideration.
16	Natural England submits our checklist in relation to derogations case in Annex 1 to this Appendix.	The Applicant thanks Natural England for the checklist, which has been used to inform the compensation process.
17	Natural England notes that because the project design is still being refined, and further data and assessment is required, there may be significant impacts to different species/habitats which are not yet identified.	There are not anticipated to be any updates to the project design that would extend the worst case scenarios used in the assessments thereby changing the assessments that have been made.
18	Natural England acknowledges that the proposal has the potential to substantively reduce impact on redshank associated with the development site roosts if it is effective. However, Natural England	Long-term management and adaptive management is addressed in sections A1.2.9 and A1.3 of Appendix 1 to the OLEMS (document reference 7.4(1), REP3-007). The updated



No.	Comment	The Applicant's Response
	continues to have concerns relating to both terrestrial and water-based sources of disturbance; the need to secure long-term management; and the need for an adaptive management protocol in the event that measures are ineffective. These are not addressed in the existing OLEMS.	compensation document submitted at Deadline 6 (document reference 9.30(1)) also provides details of the adaptive management strategy to be implemented and would cover any issues relating to the compensation/net-gain sites and their achievement of the required objectives.
19	Natural England queries how far are the roosting rocks used by the redshanks (both existing rocks and those proposed to be moved from the Principal Application Area) from the channel edge where there will be increased vessel movements because of the proposed application?	There is a line of rocks that have been placed fronting the saltmarsh area. This line of rocks extends along into the Habitat Mitigation Area where the rocks will be moved to from the proposed dredging area. The rocks are in the upper intertidal zone and would not be within an area where vessels would be expected.
20	Natural England advises that this section does not pick up management of risk associated with the proposed replacement roost site, or risks to some other areas put forward in section 3.2.9 (and associated Table 3.1 and Figure 3.1) as potential compensation areas. Therefore, further consideration by the Applicant is required.	The site is not a replacement roost site, it is already used for roosting. The works are minimal for enhancing the roost site. No specific concerns have been raised by the Environment Agency with regard to the works in the Habitat Mitigation Area and flood risk and the Environment Agency would be able to consider such works via the protective provision with the Environment Agency.
21	<p>The statement presented here have two potential conflicts with the Conservation objectives for the Wash SPA:</p> <p>(1) energetic cost to birds, particularly in species that habitually return to the roost post-disturbance leading to loss of fitness and impacts on the abundance target; and (2) Conservation Objectives related to feature distribution and site function. Specifically, the site's roost network is diminished and loses integrity if Mouth of Haven is rendered unsuitable as a roost.</p>	The energetics of bird disturbance is discussed further in the Chapter 17 Marine and Coastal Ecology and Appendix 17.1 Habitats Regulations Assessment Update (document reference 9.59, REP5-006) including for species that habitually return to roost sites. The potential for impacts related to the conservation objectives were assessed in the Addendum to Chapter 17 and Appendix 17.1 HRA – Ornithology Addendum (document reference 9.13, REP1-026) and on the waterbird assemblage in the Chapter 17 marine and Appendix 17.1 HRA Update (document reference 9.59, REP5-006).
22	Natural England advises that the Applicant needs to have due regard for the Non-breeding Assemblage as a whole as a feature in its own right.	An assessment of the waterbird assemblage as a whole is included in the Chapter 17 Marine and Coastal Ecology and Appendix 17.1 HRA Update (document reference 9.59, REP5-

No.	Comment	The Applicant's Response
	<p>Of the listed species, the first two (lapwing; golden plover) are particularly at risk of population abundance objectives through increased energy expenditure as a result of repeated displacement as they return to the roost from which they were disturbed. But some more easily displace species such as black-tailed godwit (which is at the edge of its energetic capacity on the Wash in winter) may also be susceptible.</p> <p>The other species, those identified in the Ornithology Addendum document [REP1-036] and the assemblage as a whole are likely most at risk from re-distribution and roost site loss.</p>	<p>006). Lapwing and golden plover are included in this assemblage as they are not identified as SPA features as individual species. Black-tailed godwit is included in the species assessments in the Addendum to Chapter 17 and Appendix 17.1 HRA – Ornithology Addendum (document reference 9.13, REP1-026).</p>
23	<p>Natural England advises that roosts are most well utilized where they are surrounded by, or situated in, shallow water as this provides additional protection from terrestrial predators. Therefore, this should be taken into consideration by the Applicant when exploring compensation measures.</p>	<p>This has been taken into account for the compensation and BNG sites and is part of the checklist for sites, that such habitats could be created.</p>
24	<p>Natural England has some additional criteria for compensation roosts that should be considered (but not exclusively):</p> <ul style="list-style-type: none"> <li>• Located away from land-based or boat disturbance</li> <li>• Accommodate all key species</li> <li>• Have water as protective feature</li> <li>• Be difficult to access by terrestrial predators</li> <li>• Not have agricultural bird scarers nearby</li> </ul>	<p>The initial four criteria are already included in the search for sites. The fifth criteria would need to be discussed with the farmer(s) of the surrounding land to ensure that this was not an issue.</p>
25	<p>In the Ornithology Addendum [REP1-026], it was clarified (Appendix A1, Table 3) that the Mouth of Haven high tide roosts support at least 22 species with at least 19 of those exceeding 1% of the SPA population and 14 species exceeding 5% of the Wash population on occasion.</p>	<p>The compensation measures have considered the birds that use the site and have been observed to show significant disturbance reactions. The habitats proposed under the BNG /compensation site selection would provide habitat for these species alongside many other species that occur in the area. The sites would provide short sward grassland with scrapes or lagoons with</p>



No.	Comment	The Applicant's Response
	<p>In total over 20,208 individuals (over 5% of current Wash population) are recorded.</p> <p>While the species listed in in section 3.5.5 are broadly representative of the wider suite of species utilizing the area, appropriateness of compensation measures should be considered against their suitability and capacity to support this whole species suite and the numbers affected, not just those currently listed.</p>	<p>island within the lagoons. This diversity of habitats ensures maximum use by different species.</p>
26	<p>Natural England advises that compensatory feeding over high tide when birds are not securing enough food on the shellfish beds should not be confused with roost requirements (bare substrate, close to water being favoured).</p>	<p>The large vessels associated with the Facility will not be able to access The Haven outside of the high-water periods and so it is not expected that feeding on the shellfish beds would be affected.</p>
27	<p>Natural England doesn't agree that short-damp grassland provides a good roosting and foraging site for redshank. Short damp grassland provides foraging. Open areas with water around provide roosts.</p>	<p>The selection of sites includes for short-damp grassland for foraging and islands/scrapes for roosting.</p>
28	<p>Natural England does not agree that 47% or 20% are 'relatively infrequent'.</p> <p>Short pasture is satisfactory for roosts but so are bare flats and shallow water.</p>	<p>See response above.</p>
29	<p>Natural England advises that it is essential for the compensation measures to accommodate the full suite of species exposed to disturbance.</p>	<p>See response above for row 25.</p>
30	<p>Natural England advises that more information should be provided on the prison's objectives to determine if they are compatible with the requirement of the affected species.</p>	<p>The Applicant is not in a position to discuss the prison's objectives.</p>
31	<p>Option 1: Good potential to support SPA interest affected at Mouth of Haven.</p>	<p>Noted</p>
32	<p>Option 2: Potential for supporting species displaced at the development site if an undisturbed area is available. Unlikely to be suitable for Mouth of Haven Species.</p>	<p>Noted</p>

No.	Comment	The Applicant's Response
	<p>Havenside LNR - Some improvements to site fencing to restrict dog/people access to the areas of saltmarsh and grassland here might be welcomed - prior to the recent embankment works the fencing here was in poor condition. It is uncertain whether the fencing here was reinstated by the EA after completion of the works.</p>	
33	<p>Option 3: Potential for supporting species displaced at the development site if an undisturbed area is available. Unlikely to be suitable for Mouth of Haven Species.</p>	Noted
34	<p>Option 4: Natural England's default position is not to support this option as the implementation of compensation shouldn't be to detriment of another designated site feature.</p>	Noted and see response to row 15.
35	<p>Option 5: While beneficial, this is unlikely to meet roost site resource requirements.</p>	Noted but some of these measures could be included as BNG.
36	<p>Option 6: While beneficial, this is unlikely to meet roost site resource requirements.</p> <p>NE agree that it is essential to maintain the habitats long term, monitoring of the success of the compensation sites is necessary. This is essential to be HRA compliant and needs to cover (a) establishment issues and (b) long term maintenance issues e.g., habitat succession, habitat erosion, climate change impacts.</p> <p>Natural England advises a need to refer to the sites Conservation Objectives (COs) for the SPA:</p> <ul style="list-style-type: none"> <li>• The extent and distribution of the habitats of the qualifying features</li> <li>• The structure and function of the habitats of the qualifying features</li> </ul>	<p>Noted but some of these measures could be included as BNG.</p> <p>Noted and taken into consideration. The compensation sites have been investigated to provide sites that provide habitat for helping with the distribution of qualifying SPA features.</p>

No.	Comment	The Applicant's Response
	<ul style="list-style-type: none"> <li>The supporting processes on which the habitats of the qualifying features rely</li> <li>The population of each of the qualifying features, and,</li> <li>The distribution of the qualifying features within the site.</li> </ul> <p>Also, it would be good to consider SAC COs for saltmarsh and mudflat - for BNG areas.</p>	

**Table 2-3 Natural England's Comments on the Applicant's Ornithology documents submitted at Deadline 3 and 4 (REP5-013)**

No.	Comment	The Applicant's Response
1	<p>NE concurs with the conclusion of the survey that Ruff numbers in the survey areas (and therefore proximity of the development site) are significant and that impacts on ruff should be considered alongside impacts on redshank in this area.</p> <p>Ruff need to be considered in the HRA specifically when assessing impacts on the SPA from the development at the development site (in addition to mouth of Haven concerns).</p> <p>It is the view of NE that interventions to manage risk to redshank in this area are likely to also support the ecological needs of ruff.</p>	<p>Ruff have been considered specifically within HRA assessment for the Principal Application Site as well as the mouth of The Haven, in that the SPA feature of which they are a component, the non-breeding Waterbird Assemblage of The Wash SPA, has received HRA appropriate assessment for both locations, within paragraphs 6.1.27-6.1.30 of the HRA Ornithology Addendum (document reference 9.13, REP1-026) and section 5 of HRA Ornithology Update (document reference 9.59, REP5-006).</p> <p>The Applicant agrees that measures for redshank are also very likely to support ruff.</p>
2	<p>Piling represents the highest risk activity as it is generally the loudest activity on site. Restriction to the June-Sept piling window will limit exposure to Annex I over-wintering birds but not Annex I passage birds. However, SPA birds are unlikely to be as stressed by other factors such as weather conditions and prey availability during this period. Therefore, we remain supportive of the mitigation measure if it can be appropriately secured in the DCO/dML or a named plan.</p>	<p>The restriction on piling between June to September (inclusive) is secured by Condition 13 of the Deemed Marine Licence contained in Schedule 9 of the draft DCO (document reference 2.1(3)), which provides that the piling method statement approved by the MMO must include:</p> <p>“details on the timing of piling activities throughout the year to ensure they are undertaken during non-sensitive</p>

No.	Comment	The Applicant's Response
		periods for overwintering birds and juvenile fish (being June – September inclusive)".
3	Natural England queries how this mitigation measure will be secured and if this mitigation measure has been included in the in-combination risk assessment?	The 250 m Monitoring Zone for birds around construction noise/visual sources of disturbance is set out in the OLEMS (document reference 7.4(1), REP3-007), which is secured by Requirement 6 of the draft DCO (document reference (2.1(3)), which requires the approval of a Landscape and Ecological Mitigation Strategy that must be substantially in accordance with the OLEMS (document reference 7.4(1), REP3-007). With regard to the measure being included in the in-combination assessment, the Applicant would be grateful if NE could clarify why this measure would need to be included in the in-combination assessment.
4	NE agrees with this approach but advises that disturbance will be driven more by sound levels than distance. The Applicant needs to ensure that disturbing noise levels are not anticipated to persist more than 250m from the point source. If they extend more than 250m (see comments on 2.1.2 below) then the survey area will need to increase to reflect this.	The 250m zone has been derived following review of the Environment Agency monitoring results where they concluded that the 500m zone that they used would be more appropriately set at 250m.
5	NE agrees that, subject to the above caveat, this is a pragmatic and adaptive approach to managing risk. Adoption of this surveillance and adaptive management of risk should be conditioned into the consent on the face of the DCO/dML or in a named plan.	The 250 m Monitoring Zone for birds around construction noise/visual sources of disturbance is set out in the OLEMS (document reference 7.4(1), REP3-007), which is secured by Requirement 6 of the draft DCO (document reference (2.1(3)), which requires the approval of a Landscape and Ecological Mitigation Strategy that must be substantially in accordance with the OLEMS (document reference 7.4(1), REP3-007).
6	NE welcomes the recognition of ruff as well as redshank as a species of concern at the development site and concurs with this assessment. However, further work is required to ensure that the impacts are avoided, reduced, mitigated and where that is not possible compensated for. Please see NE advice on significance of impacts.	Noted by the Applicant.

No.	Comment	The Applicant's Response
7	Noted. NE awaits this information at Deadline 5. Until then our advice remains unchanged.	The Applicant directs NE to section 4 of HRA Ornithology Update (document reference 9.59, REP5-006).
8	Text identifies 60dB as an appropriate threshold, but table identifies >55dB as threshold (redshank and mallard). NE accepts that >55dB is an acceptable, and precautionary, screening threshold.	Noted by the Applicant.
9	NE accepts that during the daytime no piling construction noise disturbance is unlikely to be detrimental at the roost site and over most foraging areas.	Noted by the Applicant.
10	<p>NE considers that piling activity is likely to be disturbing to both birds using the mitigation roost area and foraging.</p> <p>NE considers that managing this activity to the months of June - September as identified at 1.1.1 will reduce risk to key species as will the adaptive management provisions identified at 1.1.1.</p> <p>NE considers it important that these safeguards are in place while this activity is ongoing. Therefore, an outline mitigation management plan is required prior to consent with a condition that the final plan is agreed in consultation with NE prior to the works commencing. This is to be secured in the DCO/dML.</p>	<p>Piling activity in the intertidal area is controlled through the piling method statement required under Condition 13 of the Deemed Marine Licence contained in Schedule 9 of the draft DCO (document reference 2.1(3)). This requires the approval by the MMO of a piling method statement in consultation with NE as the relevant statutory nature conservation body. It must include "details on the timing of piling activities throughout the year to ensure they are undertaken during non-sensitive periods for overwintering birds and juvenile fish (being June – September inclusive)".</p> <p>The adaptive management (the 250m monitoring zone) measures apply to all construction activities (both within the licensable marine area covered by the DML those outside of that) so are secured within the OLEMS which applies the whole of the authorised development. The OLEMS is secured by Requirement 6 of the draft DCO (document reference (2.1(3)), which requires the approval of a Landscape and Ecological Mitigation Strategy that must be substantially in accordance with the OLEMS.</p> <p>There is therefore no need to submit a separate outline mitigation management plan as these measures are secured in the DCO/DML.</p>

No.	Comment	The Applicant's Response
11	NE notes that the 450m zone of risk is greater than the 250m identified in 1.1.1 and advises that the 450m zone is the correct one for the application of the adaptive management.	The Applicant acknowledges the rationale for applying such a distance. However, given the low expected counts of waterbirds in the local area in general during the restricted period for piling, the Applicant suggests it may make little difference from a 250 m zone as to whether adaptive management is triggered.
12	NE accepts that at night time no piling construction noise disturbance is unlikely to be detrimental at the roost site and foraging areas.	Noted by the Applicant.
13	NE accepts that operation noise disturbance is unlikely to be detrimental at the roost site. Some disturbance may occur affecting foraging areas and best practise would see these point source areas being managed to reduce noise levels e.g., through adoption of noise screens around the point sources. It should be noted that these noise levels risk permanent loss unlike the similar noise levels identified at 1.1.2 (construction no piling) as those are temporary. Therefore, we advise that further commitments to mitigation measures as set out above are required by the Applicant to ensure that the impacts are further minimised. Once agreed this should be secured in the DCO/dML or as part of a named plan.	The Applicant confirms that there is limited use for noise screens in the project circumstances. During operation, the point sources close to The Haven could not be screened as they originate from the meeting point of vessel and facility at the wharf(s) and so need to be un-fenced on at least two sides out of four. The point sources on the facility itself, where noise screens could be deployed, are further from The Haven and are the minority cause of noise that reaches The Haven.

**Table 2-4 Natural England's Comments on the Applicant's Outline Air Quality and Dust Management Plan [REP3-015] and Air Quality Deposition Monitoring Plan [REP4-016] (REP5-014)**

No.	Comment	The Applicant's Response
1	NE requests that the Applicant provides further clarification on what is meant by 'permitted levels'.	The term "permitted levels" in the first bullet point of section 1.1 in REP4-016 (re-issued at Deadline 5 as REP5-014) refers to the BAT-AELs which specify the maximum allowable emission concentrations of contaminants in flue gases emitted from energy from waste plants. For NOx and ammonia, specifically mentioned in the text, these emission concentrations are 120 mg Nm <sup>-3</sup> and 10 mg Nm <sup>-3</sup> , respectively.

No.	Comment	The Applicant's Response
2	Natural England would welcome the inclusion of modelling outputs in this section to support text.	We have calculated the NOx and ammonia concentrations and nitrogen deposition levels that would be expected at the designated sites under realistic emissions of NOx and ammonia from the energy from waste and lightweight aggregate plants and these have been included in tabular form in the Technical Note submitted at Deadline 6 (document reference 9.72).
3	Natural England queries if the Applicant has up to date modelling of the 'realistic' scenario to reflected likely emissions? This should be included within the HRA AA.	Please see response to row 2 above.
4	Whilst dust impacts during construction are considered at Havenside LNR; what about on the area of saltmarsh being used for the Habitat Mitigation Area? This needs to be considered.	The mitigation measures to control, manage and minimise effects of dust upon designated sites around the proposed Facility are implemented on the construction site and not at the Habitat Mitigation Area. The mitigation measures are therefore both generic and specialised, depending upon the nature of the construction activities being carried out at any specific time during the construction period. In particular, specialised and targeted measures will be implemented on those areas of the site which (a) are closest to nearby designated sites and (b) where dust emissions might be expected to arise. There are no practical measures that can be implemented on the designated sites themselves; it is a matter of reducing dust generation at source.
5	The assessment states that the minor adverse impact identified will be dealt with by monitoring. However, Natural England advises that this is not mitigating the adverse impact and does not negate the impact to sensitive features. What will monitoring be looking to identify? If a significant change occurs, what actions will be taken?	As we have advised previously, a minor adverse air quality impact is not considered, in EIA terms, to be significant. Therefore, no additional mitigation measures in respect of emissions to atmosphere from the energy from waste and lightweight aggregate plants are deemed necessary. The monitoring proposed in the Air Quality Deposition Monitoring Plan (REP5-014) has been incorporated, in discussion and agreement with the Environment Agency, in order to provide confirmation of the modelled effects. As, in reality, the deposition rates of nitrogen will be lower than those forecast in the ES Chapter 14 Air Quality

No.	Comment	The Applicant's Response
		(document reference 6.2.14 REP1-006), it is highly unlikely that a significant change would be recorded, as that would require an increase from a minor adverse impact to a moderate adverse impact, which would not occur.
6	Natural England notes that Table 14-30 presents values during operational phase for The Wash with in-combination contributions of all pollutants above 1% of the relevant annual mean Critical Loads/ Levels. Therefore, we query how impacts will be mitigated for?	As we have advised previously, whilst the results in Table 14-30 do indicate a greater than 1% of the lower Critical level and Load range contribution from the proposed Facility, alone and in-combination, the in-combination PEC levels range from 2% to 63% of the lower Critical Load ranges and Critical Levels. A contribution above 1% of the Critical Load or Critical Level does not automatically mean that there is a significant effect; the effect is not insignificant. The PECs are well below the Critical Levels and lower Critical Load ranges and are not, in EIA terms, considered, therefore, to be significant. In addition, with reference to the response above to Point 5, the actual project alone and in-combination contributions, resulting from emissions at realistic operating levels, will be lower than those reported in Table 14-30 of ES Chapter 14 Air Quality (document reference 6.2.14 REP1-006) and, accordingly, effects will be lower, and the PECs will be lower. No mitigation is therefore considered to be required.
7	"The Facility was not predicted to lead to any significant effects during its operation which would require mitigation measures. As the Facility would be required to operate under the conditions of its Environmental Permit, this is considered to be an adequate mechanism to ensure that significant impacts are not experienced." Natural England queries what mitigation is suggested for designated sites? Only mention monitoring of stacks.	Please refer to response above to row 6.



**Table 2-5 Natural England's Comments on Public Rights of Way (REP5-015)**

No.	Comment	The Applicant's Response
6	<p><b>The replacement of an existing Public Right of Way</b>            In the Outline Design Guide and Stopping Up Plan [REP3-017] the Applicant has provided further details of the alternative route including enhancement and interpretation measures.            Natural England acknowledges that the proposed enhancement measures for the diversion would result in significant improvements to the surfacing, boundary treatments and signage of the existing path. The proposed seating and interpretation boards would also enhance the enjoyment of this stretch of footpath. We therefore accept that the proposed alternative route suggested by the Applicant would be an appropriate replacement to the existing Public Right of Way and have no objection.</p>	<p>The Applicant notes and welcomes Natural England's acceptance of the proposed alternative route.</p>
7	<p><b>The replacement of the England Coastal Path route</b>            The Marine and Coastal Access Act 2009 places a duty on the Secretary of State and Natural England to secure a long-distance walking trail around the open coast of England.            Part 9 of the Act aims to improve public access to, and enjoyment of, the English coastline by creating clear and consistent public rights along the English coast for open-air recreation on foot. It allows existing coastal access to be secured and improved and new access to be created in coastal places where it did not already exist.</p>	<p>Noted.</p>
8	<p>Natural England therefore needs to ensure that access to the 'coast' must be restricted in the smallest possible way which is our reasoning for suggesting an alternative route as discussed above.</p>	<p>This point is noted. The change in the proposed England Coast Path is only of the order 200m and we would contest that access to the coast is deviated only minimally, and the change will not affect the user experience of the coast to any significant degree, whilst providing an improved footpath in the vicinity of the Facility, acting as the southern gateway for walkers to Boston. The rationale for not accommodating Natural England's proposed route were presented at the Issue Specific Hearing as</p>

No.	Comment	The Applicant's Response
		documented in document reference 9.47, REP3-023 and the Applicant's position has not changed.
9	Whilst we understand the reasons put forward by the Applicant for not favouring this suggested alternative, Natural England suggests that none of the reasons are necessarily a consideration for the ECP. Landowner permission is not needed to establish the ECP route. Removal of natural vegetation to facilitate the route is acceptable, and security concerns are only a concern if the route was within the curtilage of a building.	The Applicant maintains its position from Issue Specific Hearing 2 on this matter (document reference 9.47, REP3-023).
10	Natural England therefore advises that whilst the section of footpath involved is small (200m), it provides direct access to coast and would therefore uphold the aims of the England Coast Path. We would therefore maintain our suggested alternative route which directly follows the coast.	We note Natural England's position on this matter and refer to the answers provided above.

**Table 2-6 Natural England's comments on the Applicant's Outline Landscape and Ecological Mitigation Strategy (OLEMS) [REP3-008] (REP5-017)**

No.	Comment	The Applicant's Response
Executive Summary	Natural England queries which version of the biodiversity metric will be used? Version 3 of the calculator should be considered as the calculations for intertidal habitats has been amended to reflect the value of the habitat and complexity in creation - it is likely that using Version 3 would influence the number of intertidal units (total net change). This information should be presented here so that a full assessment can be made. We would request that the updated calculation is undertaken ahead of DCO approval.	Version 2 of the biodiversity metric was used for the initial calculation, and as stated in the update to the OLEMS (document reference 7.4(1), REP3-007) in paragraph A1.6.2 this version will continue to be used for the calculation. This is an acceptable approach according to current guidance for use of the updated Metric.
1.1.8	As per previous comments, Natural England advises that enhancement for the benefit of ornithological features shouldn't be to the detriment of priority habitats and a balance will need to be achieved.	The Applicant agrees with this statement however, it is also recognised that the saltmarsh in the Proposed Application Site is also affected by coastal squeeze and is subject to succession to higher level marsh and potentially to scrub vegetation as a


No.	Comment	The Applicant's Response
		result. The works proposed would benefit the ornithological features and may also be designed to benefit the priority habitats by reducing the scrub development to some extent.
1.1.8	The bullet points for habitat mitigation do not mention re- profiling the bank within the saltmarsh. However, it is included in other sections there we advise this is amended accordingly.	This will be amended in any subsequent versions of the OLEMS.
A1.1.3	Natural England advises that although the area available to roost will be the same, there will be a loss of one of the two roosts in the area. If birds are displaced from one roost, there will be no alternative site. Careful monitoring, with adaptive management applied in the event of displacement from the roost, will be necessary	Monitoring will be undertaken of the use of the habitat mitigation area to continue to provide roosting habitat for the numbers of birds that have been observed to use this area. In addition, alternative roost sites are being proposed as either compensation or net gain sites.
A1.1.5	"With piling restrictions in place to avoid overwintering periods any noise impacts on waterbirds using The Haven and the habitats along The Haven are minimised." Natural England advises that impacts may be minimised by the approach, but they will not be eliminated. Also, it should be noted that during piling the risk zone extends to 450m not the 250m appropriate at other times.	The monitoring proposed to ensure that impacts are minimised would include adaptive management of the measures to reduce impacts. The distance proposed is based on previous surveys undertaken within The Haven during noisy activities and also on peer reviewed mitigation toolkit as discussed in paragraph A1.4.2 of the OLEMS update (document reference 7.4(1), REP3-007).
A1.2.1	Natural England advises the created roost habitat will need to be maintained long term to ensure it remains fit for purpose. In addition, we advise that optimal roosts are protected by water which limits risks from terrestrial predators. A useful document covering artificial roost design can be found at: <i>[document link removed by PINS]</i> .	Ongoing maintenance was discussed in the update OLEMS document ((document reference 7.4(1), REP3-007 Paragraph A1.2.9) where it stated that "Ongoing monitoring and maintenance of the Habitat Mitigation Area will be undertaken by the Applicant, for as long as the wharf structure is present, in order to ensure that the scrapes reinstated/created would continue to be available for foraging."
Plate A1-3	Plate A1-3 Mitigation measures proposed for the Habitat Mitigation Area - NE notes that the plan is to "decrease the gradient of the bank" Natural England requests that more details on this method / area is provided as we are concerned that this will increase visual disturbance to birds using the saltmarsh from the footpath?	The outline plans for the habitat mitigation area would be developed in discussion with NE, RSPB and the Environment Agency. The proposals for the gradient of the bank were designed to improve the sighting for the birds roosting in this area. If this is not considered to be the case, then it is not essential to undertake this work. This can be discussed and

No.	Comment	The Applicant's Response
	<p>We also note proposals to "Flatten/ remove the old bank "are included. As above more details on this have been requested previously - in terms of method used, the volume of material, length of bank (extent) etc. But they are not included. There could be impacts to existing saltmarsh, but if done well there are opportunities to restore/ create more low-middle marsh saltmarsh in the Habitat Mitigation Area.</p> <p>Natural England queries if the removal of this bank influence visual and noise disturbance to birds using the saltmarsh (from the footpath and also from The Haven Channel).</p>	<p>agreed prior to any works taking place as part of the detailed development of the measures. Likewise with the flattening or removal of the old bank. If works are possible that would provide opportunities for restoring/creating more low-middle marsh and this was considered to be beneficial then this could be considered as part of the works.</p> <p>The bank is low and will not provide any significant level of protection from ambient noise in The Haven. The removal of the bank is being undertaken to improve sightlines so birds are more confident in using the area as they will be able to spot predators easier. This is considered an important aspect for roosting.</p>
A1.2.2	<p>The introduction of these mitigation features are not expected to have any adverse impacts in themselves as the works are relatively minor.</p> <p>As noted above, the removal of the old bank and decrease the gradient of the bank could impact the existing saltmarsh.</p>	Noted and see response to the comment above.
A1.2.2	Improvements to the quality of the saltmarsh, which is being squeezed between The Haven and the seawall along The Haven, reduces the extent of zonation that can occur within the saltmarsh and is considered by NE to be an unqualified statement. The question remains what BAEP will do and how will it be secured.	The plan for the marsh area and the placement of additional roosting rocks is shown in the plans on plate A1-3 of the OLEMS document (document reference 7.4(1), REP3-007) however, as noted above in the response, the final plans would be developed in discussion with NE and RSPB to ensure that the works provide benefits to the habitat and the birds using this area. The works are secured by Requirement 6 of the draft DCO (document reference 2.1(3)), which requires the approval of a Landscape and Ecological Mitigation Strategy that must be substantially in accordance with the OLEMS.
A1.2.2	Works will ideally be undertaken outside the nesting bird season as well - i.e. August and September. And therefore, further mitigation may be required for delivery of any mitigation measure.	Noted by the Applicant

No.	Comment	The Applicant's Response
A1.2.3	Natural England advises that calculations on how much material will be generated from this are required - as could be a significant amount in terms of the bank removal which is likely to increase the significance of the impact.	See response to the comments above, if the removal of the bank causes a significant impact and is not considered to give a net benefit then it would not be undertaken. This would be resolved through detailed discussions with NE and RSPB (and the Environment Agency) as outlined above.
A1.2.4	As per previous comment further details on this activity are required.	Noted and see responses above. The detail for the works would be determined through discussion with the Environment Agency, NE and RSPB.
A1.2.7	NE advises that it is best practice for project specific data to be collected by the Applicant.	The Applicant has collected an extensive amount of data to inform the assessment process. This data has been made available to the stakeholders.
A1.2.9	It remains unclear what the frequency of the post-construction surveys will be and who will be consulted on them after the initial years of post-construction monitoring.	As with any adaptive monitoring and management strategy the frequency and methodology for monitoring and management is adapted following the analysis and review of results from each survey. The frequency of monitoring and any management would therefore be agreed based on the results of the initial annual surveys. This paragraph commits to monitoring and management of the mitigation area for as long as the wharf structure is present to ensure that the habitat would continue to be available.
A1.4.1	Please be advised that there is likely to be impacts to Annex I birds during the passage period April- May and August - October of any given year. But a consent window of 1st April - 30th September of any given year is consistent with sustainable development consents in The Wash, to allow for a feasible construction window. A condition or requirement should be included within the DCO or dML to ensure this important mitigation occurs.	The June to September construction window for piling activities is secured by Condition 13 of the Deemed Marine Licence contained in Schedule 9 of the draft DCO (document reference 2.1(3)), which provides that the piling method statement approved by the MMO must include: "details on the timing of piling activities throughout the year to ensure they are undertaken during non-sensitive periods for overwintering birds and juvenile fish (being June – September inclusive)".
A1.4.2	NE advises that monitoring is not mitigation and outline	The management measures proposed would be as follows: If birds were feeding, loafing or roosting without being disturbed (i.e. no flight response or 'heads-up') then works could

No.	Comment	The Applicant's Response
	management measures should be agreed now to minimise the impacts and give the SoS confidence that the project will not adverse effect/significantly impact designated site features.	continue. If there was a disturbance response by a significant number of SPA feature bird species, then works would be stopped. Works could restart once the birds had moved outside the buffer or observations indicated that they were content to remain at their original location. The OLEMS will be updated to reflect this at a later deadline.
A1.4.2	Natural England advises that during piling operations, the risk zone from operations is greater than the 250m proposed and may be as much as 450m. Therefore, the assumption should be that during piling operations the monitoring will need to extend to 450m until the response of birds is established.	The 250m zone has been derived following review of the Environment Agency monitoring results where they concluded that the 500m zone that they used would be more appropriately set at 250m.
A1.5.1	NE notes that this section doesn't specify what the next steps will be if a threshold is breached.	Please refer to responses within Table 19, specifically for Rows 5, 6 and 7.
A.1.5.4	Natural England's comments provided on Chapter 17 and any associated addendums are still relevant here and haven't be addressed.	Comments on Chapter 17 and associated addendums have been addressed in the specific responses within the other tables in this document.
A1.6.2	NE have requested use of Version 3 for the intertidal areas in previous comments - this remains outstanding.	Guidance for the use of the metric says that if Version 2 has already been used for calculations that it is accepted that Version 2 can continue to be used.
A1.7.1	Proportion of saltmarsh loss in The Haven equates to 5.5%; proportion of mudflat loss in Haven equals 4.2%.	Noted. The loss is also given in context of the saltmarsh in Lincolnshire which is 0.02%. It is also recognised that any loss of saltmarsh is not desirable which is why net gain measures are proposed to restore other areas of saltmarsh in The Haven by removing debris, as this is acknowledged as an issue in this area.
A1.7.3	At narrowest point 15m (to southern end)- but at widest (northern end) up to 40m wide.	It is not shown where the transects cover in the northern end and there is grass and scrub encroachment on the marsh at the northern end such that saltmarsh vegetation is limited.



No.	Comment	The Applicant's Response
		
A1.7.3	<p>Although this area of saltmarsh is not SPA, it is functionally linked land (providing supporting function to SPA species).</p>	<p>It is not confirmed that this area is functionally linked land. Investigations relating to the distance from the SPA boundary show that it is unlikely that it is functionally linked land. This has been reported in the Chapter 17 Marine and Coastal Ecology and Appendix 17.1 HRA Update (document reference 9.59, REP5-006).</p>

No.	Comment	The Applicant's Response
A1.7.3	NE continues to disagree with 'poor' saltmarsh classification by Applicant - see annexes below.	Noted. Explanations as to why the Applicant considers the saltmarsh in this area to be of poor condition, which is in line with Environment Agency monitoring results, are provided in the updated OLEMS report (document reference 7.4, REP3-005).
A1.7.9	<p>Picking up litter / debris is not actually increasing the area of saltmarsh.</p> <p>Clarity is needed on what debris will be removed and how. And whilst plastic and wood rubbish is acceptable; plant litter should not be removed.</p> <p>Also, on the next high tide rubbish is likely to be redeposited across the saltmarsh again and will accumulate in the strandline as shown in the images. Therefore, we query how frequently litter will be removed?</p>	<p>Removal of debris from the saltmarsh releases an area of saltmarsh that is otherwise covered and therefore negatively affected by the debris. There is a considerable amount of debris items present on the saltmarsh as shown in the photographs taken along The Haven and as reported in the various reports as referenced in the updated OLEMS report (document reference 7.4, REP3-005 paragraph A1.7.9). It is agreed that plant material is not considered to be debris. The debris to be removed would be plastic and fabric debris and removal would only be undertaken if it is achieved without damaging the saltmarsh vegetation.</p> <p>The debris would be removed from the site and disposed of appropriately so would not then be present to be re-deposited. It is acknowledged that additional debris will come ashore but the original debris removal would have removed the amount present.</p>
A1.7.13	NE notes that there is no mention of ongoing maintenance/management over the lifetime of the project	The maintenance of the Habitat Mitigation Area is discussed in Paragraph A1.2.9 of the document (document reference 7.4, REP3-005). Paragraph A1.7.13 refers to the ongoing work that would be necessary to secure and design the works.
Annex 1	<p><b>Poor saltmarsh quality is classified as</b></p> <p>1) <i>Evidence of artificial intervention widespread and clearly affecting habitat quality and/or processes</i></p> <p>In relation to the proposed wharf location - while we agree the saltmarsh width is narrow (but not as narrow as stated) with coastal</p>	The discussion of the quality of the saltmarsh is addressed in the updated OLEMS report (document reference 7.4(1), REP3-005). The saltmarsh has been classified as of poor quality in a number of different documents (referenced in the OLEMS update paragraph A1.7.3. The Applicant would query why this has never been challenged or changed during the periods of monitoring for the Environment Agency work by Natural England.



No.	Comment	The Applicant's Response
	sea defence limiting landward extent; our observations show that there are multiple vegetation zones present/ veg communities present and clearly functioning as saltmarsh.	.
Annex 1	<p>2) <i>Zonation visibly compromised, a few species dominate</i></p> <p>Natural England disagrees as per NE's survey 2021 which identified several NVC communities from upper to low-marsh as present including the typically under-presented community on The Wash SM16; species-diversity at the wharf locations is surprisingly high.</p>	
Annex 1	<p>3) <i>Vegetation structure is uniform across the whole area</i></p> <p>Natural England disagrees as the varied communities have produced a varied veg structure at the works locations</p>	
Annex 1	<p>4) <i>Creeks are artificially straightened</i></p> <p>Not Applicable as no creeks present in this section of saltmarsh.</p>	
Annex 1	<p>5) <i>Widespread evidence of algal mats smothering saltmarsh vegetation</i></p> <p>No algae present, no indication of pollution or run-off</p>	
Annex 1	<p>6) <i>Non-native or invasive species are dominant throughout the area under consideration and any surrounding habitat</i></p> <p>Natural England advises that none are present – note <i>Spartina anglica</i> is not now classified as a non-native species]</p>	
Annex 1	<p><b>For a Moderate classification</b></p> <p>1) <i>One or more non-native species have a significant presence in some parts of the area under consideration</i></p>	

No.	Comment	The Applicant's Response
	<p>Natural England advises that non-native species are not present as a significant proportion of sward.</p>	
Annex 1	<p>2) <i>Indicators of poor condition are present</i></p>	
Annex 1	<p>3) <i>Zonation of vegetation is not clearly visible. Some zones dominated by just one or more tall species OR vegetation too tightly grazed and forming short, uniform sward in patches</i></p> <p>During NE survey 2021 we observed varied species, communities and vegetation structure</p>	
Annex 1	<p>4) <i>Immediate area under consideration is connected with a wider area of saltmarsh that is 'Moderate' or better condition</i></p> <p>Natural England advises that the Wharf area is connected to wider areas of saltmarsh, namely the proposed Habitat Mitigation Area.</p>	
Annex 1	<p>5) <i>Processes appear to be functioning despite presence of artificial structures on edge of marsh</i></p> <p>In relation to the proposed wharf location – while we agree the saltmarsh width is narrow (but not as narrow as stated) with coastal sea defence limiting landward extent; our observations show that there are multiple vegetation zones present/ veg communities present and clearly functioning as saltmarsh</p>	
Annex 2	<p><b>Zones and NVC communities recorded in Wharf area by Natural England 20212</b></p> <p>Low-Marsh - SM11 <i>Aster tripolium</i> var. <i>discoideus</i> salt-marsh community;</p> <p>Low-Marsh - SM13a <i>Puccinellia maritima</i> salt-marsh community, sub-community with <i>Puccinellia maritima</i> dominant;</p>	

No.	Comment	The Applicant's Response
	<p>Low-Marsh - SM13d <i>Puccinellia maritima</i> salt-marsh community, <i>Plantago maritima</i>-<i>Armeria maritima</i> sub-community;</p> <p>Mid-upper marsh - SM16c <i>Festuca rubra</i> salt-marsh community, <i>Festuca rubra</i>-<i>Glaux maritima</i> sub-community;</p> <p>Upper-transitional - SM24 <i>Elymus pycnanthus</i> salt-marsh community</p>	

**Table 2-7 Natural England's Comments on dDCO [REP3-004] and Schedule of Changes [REP3- 022] (REP5-016)**

No.	Comment/Recommendation	The Applicant's Response
Summary	<p><b>Summary</b></p> <p>Natural England has advised within Appendix B3 that a range of ornithological mitigation and monitoring need to be secured within the DCO/DML. We would suggest that this mitigation and monitoring would best be secured through inclusion of an ornithological mitigation and monitoring plan, with an outline plan being submitted into examination as early as possible. Additionally, we wish to highlight that within Appendix J2 we have asked for the inclusion of a construction window as a separate DCO/dML condition outside of the OLEMS. This is due to the need to ensure that this key mitigation occurs and to avoid any ambiguity or confusion prior to construction.</p>	<p>Please refer to the specific responses to the comments on Appendix B3, which identifies where each mitigation measure is secured. All the ornithological mitigation measures are already secured within the DCO/DML. The majority are set out in Appendix 1 to the OLEMS, which is secured by Requirement 6 of the draft DCO (document reference 2.1(3)), which requires the approval of a Landscape and Ecological Mitigation Strategy that must be substantially in accordance with the OLEMS. There is therefore no need for the submission of a distinct ornithological mitigation and monitoring plan.</p> <p>The June to September construction window for piling activities is secured by Condition 13 of the Deemed Marine Licence contained in Schedule 9 of the draft DCO (document reference 2.1(3)), which provides that the piling method statement approved by the MMO must include: "details on the timing of piling activities throughout the year to ensure they are undertaken during non-sensitive periods for overwintering birds and juvenile fish (being June – September inclusive)".</p>

No.	Comment/Recommendation	The Applicant's Response
<p>1 (Article 7)</p>	<p><b>Comment</b> The Applicant has confirmed the maximum limits are 20m for most works, however for three work items (Work No. 1A(iv) (EfW plant emissions stacks), any boundary with Work No. 2(d) (LWA Facility emissions stacks) and any boundary with Work No. 4 (Wharf)) there are no lateral limits of deviation.</p> <p><b>Recommendation</b> Natural England notes that we have received clarification. We are content with the limit of deviation for all works except those with no lateral limit of deviation which remain as per our response of REP2-044. With regard to Works No 4 (Wharf). Natural England queries if the MMO have any comments on the acceptability of the limits of deviation and if the deemed Marine Licence could accommodate lateral changes?</p>	<p>Work Nos 1A(iv), 2(d) and 4 have no lateral limits of deviation meaning the locations of those works are fixed and must be constructed in the locations shown for those works on the works plans. This means Article 7(1)(a) does not apply to those three works as they do not have limits of deviation shown on the works plans. This is subject to the exception provided for in Article 7(1) of the draft DCO which allows the limits of deviation to be exceeded in limited circumstances with the approval of the Secretary of State, following consultation with the relevant statutory nature conservation body and Environment Agency.</p> <p>Additionally, the parts of Work No. 4 which are licensable marine activities under the DML are constrained by paragraph 4(2) of the DML, which sets out the coordinates within which the undertaker may engage in the licensed activities.</p>
<p>3 (Schedule 9 Part 1 Para 1)</p>	<p><b>Comment</b> The Applicant has updated the definition of commence. The new definition does not have too many issues. However, they have included taking boreholes as part of the works excluded from the definition of commencement. Boreholes might need some mitigation depended on methodology.</p> <p><b>Recommendation</b> Natural England notes the updated wording for commencement. We have concerns regarding the inclusion of boreholes, works which may require some mitigation for environmental impacts.</p>	<p>To clarify trial boreholes were included in the version of the draft DCO when the application was submitted. They were not a new addition. The wording in the definition is "investigations for the purpose of assessing ground conditions (including the making of trial boreholes)".</p> <p>The main impact that could occur from trial boreholes is opening up new pathways for pollution to affect groundwaters and/or enter The Haven. This potential impact was assessed in Chapter 11 Contaminated Land, Land Use and Hydrogeology (document reference 6.2.11, APP-049) which concluded 'minor adverse' significance and no mitigation was therefore proposed or required. The Applicant therefore considers that the inclusion of trial boreholes as part of the investigations for the purposes of assessing ground conditions prior to commencement is appropriate. The use of trial boreholes as part of those</p>

No.	Comment/Recommendation	The Applicant's Response
		<p>investigations is standard practice and are necessary in order to be able to prepare the scheme to deal with contaminated land which is required prior to commencement under Requirement 10 of the draft DCO.</p>

## 2.2 RSPB

**Table 2-8 RSPB's Comments on the Applicant's response to the RSPB's Relevant Representation (REP2-051)**

No.	Comment	The Applicant's Response
4	<p>This does not address the fact that meetings are being proposed by the Applicant with no regard to how they fit with the examination timetable. This makes it difficult, if not, impossible for interested parties to engage effectively.</p> <p>With respect to completion of work to reach conclusions by the end of the examination, we have identified substantial areas of work that still need to be completed to conclude no adverse effect on integrity of The Wash SPA/Ramsar beyond reasonable scientific doubt. We consider there is insufficient time available to address all the data deficiencies. We disagree with the Applicant's position</p>	<p>Since Deadline 2 there have been several updates submitted to provide additional work in order to address RSPB's comments.</p>
83	<p>No definitive statement that small vessels will not be needed at the wharf area. This needs to be clarified.</p>	<p>All deliveries of Refuse Derived Fuel (RDF), the import of clay and export of Lightweight Aggregate will use commercial scale vessels as set out on the ES. No tugs, tenders or other small vessels are envisaged using the wharf.</p>
88	<p>If looking at assessing links between weather and bird abundance over time, the WeBS data would provide the best available data set. We recommend these data be compared to draw conclusions about impacts of weather on bird numbers on The Wash.</p>	<p>Noted by the Applicant. The assessments undertaken to date considered the latest available WeBS data and research was undertaken on the effects of bad weather on bird population numbers and is discussed within Addendum to Chapter 17 and Appendix 17.1 HRA – Ornithology Addendum (document reference 9.13, REP1-026).</p>

**Table 2-9 Summary of Comments on Responses to the Examining Authority’s First Written Questions (REP3-033)**

No.	Comment	The Applicant’s Response
Q3.0.5	<p>The Applicant’s response suggests that there is a possibility that scour protection will be required. In order to understand the worst-case implication of the development with respect to habitat loss and impacts on waterbirds and other wildlife using The Haven, it would seem appropriate to base any habitat loss calculations on scour protection being required. There is uncertainty conveyed in the Applicant’s response and we recommend that calculations for compensatory habitat creation should include the area that would be impacted by scour protection if required. A range of habitat loss could be presented as a way to address the differences in opinion at this stage.</p>	<p>Potential habitat loss due to scour protection was included within the calculation as a worst-case scenario. This is reported in the OLEMS document (document reference 7.4(1), REP3-007).</p>
Q3.0.6	<p>The RSPB is currently satisfied with the information set out by the Applicant with respect to the evidence provided on the number of vessels required for the facility as currently planned. We will continue to keep this under review as new evidence/information is provided.</p> <p>However, we note the uncertainty that the Environment Agency has with respect to the Lightweight Aggregate Plant and whether this infrastructure would be possible to permit (as discussed at the Issue Specific Hearing 2). If the Lightweight Aggregate Plant could not be constructed, would this have any implications for additional vessel movements? We consider this issue important to resolve as it could have implications for the conclusions of the Habitats Regulations Assessment.</p>	<p>If the Lightweight Aggregate Plant were not included as part of the overall Facility vessels would not be required to import any clay binding material or export the lightweight aggregate product. The ash and Air Pollution Control residues however would still need to be exported. This would result in approximately 28 fewer vessels per year attending the Facility with maximum vessel numbers (associated with the Lightweight Aggregate Facility) reducing from 100 to 72.</p>
Q3.1.1	<p>We note the Applicant’s response and will review the proposals against the criteria we have set out within our Written Representation (Section 13, pp.110-120; REP1-060). Where measures are put forward they must demonstrate the ecological requirements that will be met. For example, whilst debris</p>	<p>The removal of debris relates to debris from sources other than the proposed Facility (which would be removed as best practice anyway). There is a considerable amount of debris collected on the saltmarshes along The Haven which is unsightly but also has an ecological consequence. Plastics can prevent growth of</p>



No.	Comment	The Applicant's Response
	<p>clearance will remove plastics, the Applicant must demonstrate how this is not simply best practice management for such a facility.</p> <p>We also note that there has been no consideration of the beneficial use that could be made of arisings from dredging operations. There may be areas around The Haven and The Wash that are eroding and the material could be used to help restore areas. We recommend more consideration be given to a nature-based use for any arisings. The beneficial re-use of dredged material is reviewed in the following report produced by the RSPB, ABPmer and other coastal consultants... We recommend the Applicant consider how arisings from the dredging could be used to support habitat creation and restoration.</p> <p>We will review the updated OLEMS and provide comments in future submissions.</p>	<p>vegetation, prevent use of the area covered by other associated species and also degrade very slowly, eventually forming microplastics which can be taken up by fish and birds.</p> <p>The dredge arisings will be utilised within the facility to convert into the lightweight aggregate. The volume of material is relatively small, and the majority would be removed via machinery on the landside of the facility (which reduces the potential for navigation issues) and therefore is less likely to be feasible for ongoing use in coastal areas.</p>

**Table 2-10 Response to the Applicant's Comments on our Written Representations submitted at Deadline 1 (REP4-025)**

No.	Comment	The Applicant's Response
6.2	<p>We are also concerned that further survey may continue to be submitted during the Examination. We seek clarity on additional survey and assessment information that will be submitted by the Applicant and the implications of this for the examination timeline. Interested parties will need sufficient time to review and respond, as well as meet any additional requests made by the Examining Authority.</p>	<p>Noted by the Applicant.</p>

No.	Comment	The Applicant's Response
	<p>We note the additional information provided by the Applicant on the Havenside Local Nature Reserve. However, it is not clear if this includes The Haven channel. It will also not include the southern bank of The Haven.</p> <p>We note that the information cited is from 2005 and is therefore not based on the current distribution or abundance of waterbirds. We refer to the CIEEM Advice note on "The lifespan of ecological reports &amp; surveys" that was released in 2019<sup>2</sup>. This states that where surveys are 18 months to three years old that (emphasis added):</p> <p><i>"A professional ecologist will need to undertake a site visit and may also need to update desk study information (effectively updating the Preliminary Ecological Appraisal) and then review the validity of the report, based on the factors listed below. Some or all of the other ecological surveys may need to be updated. The professional ecologist will need to issue a clear statement, with appropriate justification, on:</i></p> <ul style="list-style-type: none"> <li><i>• The validity of the report;</i></li> <li><i>• Which, if any, of the surveys need to be updated; and</i></li> <li><i>• The appropriate scope, timing and methods for the update survey(s).</i></li> </ul> <p><i>The likelihood of surveys needing to be updated increases with time, and is greater for mobile species or in circumstances where the habitat or its management has changed significantly since the surveys were undertaken. Factors to be considered include (but are not limited to):</i></p> <ul style="list-style-type: none"> <li><i>• Whether the site supports, or may support, a mobile species which could have moved on to site, or changed its distribution within a site...;</i></li> </ul>	

No.	Comment	The Applicant's Response
	<ul style="list-style-type: none"> <li>• Whether there have been significant changes to the habitats present (and/or the ecological conditions/functions/ecosystem functioning upon which they are dependent) since the surveys were undertaken, including through changes to site management...;</li> <li>• Whether the local distribution of a species in the wider area around a site has changed (or knowledge of it increased), increasing the likelihood of its presence...</li> </ul> <p>For surveys that more than three years old, CIEEM state that:</p> <p><i>"The report is unlikely to still be valid and most, if not all, of the surveys are likely to need to be updated (subject to an assessment by a professional ecologist, as described above)."</i></p> <p>We therefore question the validity of the Havenside Local Nature Reserve Management Plan to justify a lack of importance of parts of The Haven for waterbirds.</p>	
7.12-7.13	<p>It is not clear whether offloading and loading of vessels would occur around low tide. These activities would involve use of cranes and would generate noise and visual disturbance. Such activity will have an effect on foraging birds. This is particularly true if activity happens at night and there is no understanding of the behaviour of waterbirds on The Haven at night. We request clarity from the Applicant on the activity that would be taking place whilst vessels are present at the wharf to better inform levels of noise and visual disturbance that could occur at low tide.</p>	<p>Discharge of vessels once arrived at the wharf will preferentially take place during daylight hours. However, over the year and taking day/night cycles into account, even with the higher cyclical rates of electric cranes compared with traditional diesel driven units to aid unloading, some evening and night time working will occur at times. It is estimated that vessel discharge will be around 10-12 hours, which would require working around low tide periods.</p> <p>The Applicant has allowed for the vessels to be shore powered to minimise noise and emissions which put the new facility in the top environmental tiers alongside Antwerp, Bremerhaven, Hamburg, Haropa Port &amp; Rotterdam who have implemented the EU Directive</p>

No.	Comment	The Applicant's Response
	<p>We also request information on nocturnal bird activity to understand waterbird sensitivity on The Haven and how they might behave around activity at the wharf.</p>	<p>on deployment of alternative fuels infrastructure (2014/94/EU) fully.</p> <p>Vessel movements have been assessed on a worst-case basis, assuming disturbance occurs during hours of darkness. The RSPB previously raised nocturnal-period surveys of bird behaviour in its Written Representations paragraph 6.3, as data collected in an ideal scenario, i.e. as a 'nice to have' rather than fundamentally expected data as part of project-specific surveys of the baseline. The Applicant responded within '9.22 Applicant's Comments on Written Representations' (document reference REP2-006) specifically in response to 7.77 as well as response to 6.3 and 2.10.</p> <p>An assessment of disturbance from lighting at night is provided in the Chapter 17 Marine and Coastal Ecology and Appendix 17.1 HRA Update (document reference 9.59, REP5-006).</p> <p>An assessment of noise</p>
<p>fuels infrastructure</p>	<p>Whilst there are no local targets for different areas within The Wash, birds that are displaced from one area of The Wash have to go somewhere else and that will obviously increase competition at the site they move to and therefore reduce the overall carrying capacity of The Wash. The loss of a roosting or feeding area also reduces the resilience of the SPA by reducing the number of potential alternative feeding/roosting areas that birds can use in different weather/tide conditions or if there is disturbance or low food supply elsewhere.</p>	<p>The birds that would be displaced to alternative roosting areas are already displaced to these alternative sites during the baseline situation. Their movement and ongoing distribution around the site will not therefore be a new phenomenon.</p>
<p>7.98,</p>	<p>Where there is an identified adverse effect on integrity of The Wash SPA/Ramsar site, then measures will need to be considered with all relevant stakeholders to identify actions to</p>	<p>We note that there is a target to reduce disturbance within the whole of The Wash SPA (within Natural England's Supplementary Information package (updated in March 2021)). We would</p>

No.	Comment	The Applicant's Response
	<p>maintain and restore qualifying features. The fact that such increase could occur in the future is not justification to consent a plan or project that could give rise to an adverse effect on integrity on The Wash SPA/Ramsar site, or exacerbate pressures causing deterioration. This is counter to the purpose of Habitats Regulations to avoid adverse effects on the integrity of SPAs (and Ramsar sites) and would not be acceptable.</p>	<p>welcome discussion on what is being implemented in order to achieve this and the potential for either net-gain and/or compensation measures to feed into this to provide additional benefits. The assessment has not been based on the fact that increases could occur in the future to levels that have been recorded in the past, or that this would be acceptable. The assessment is based on the repeated nature of increased disturbance and the potential for this to affect the conservation objectives. The previous vessel data is provided as facts to show what has happened historically.</p>
7.101	<p>Whilst predation risk is factor that can affect waterbirds, there is no evidence presented by the Applicant that predation risk is a significant factor affecting waterbird use of the navigation channel from the application site to the Port of Boston anchorage area. There is also no evidence provided to indicate what predators the Applicant considers to be a problem along The Haven. Understanding whether the predator is, for example, domestic cats, birds of prey, foxes, otters, badgers, stoats or mink (not an exhaustive list), will identify any management measures that would be appropriate to address any problem that may exist. No such information has been provided by the Applicant.</p> <p>No connection is made by the Applicant to demonstrate that predation risk has any relevance to the key issues identified by the data collected by the Applicant that need to be addressed. Whilst management of predation risk may be important when considering the location and design of new habitat, the relative importance of predation risk as a key pressure impacting on roosting and foraging waterbirds along The Haven and its approaches must be set in the context of other activities that are</p>	<p>The data for the Mouth of The Haven disturbance surveys (submitted for Deadline 6 (document reference 9.71)) show the issue with regard to disturbance by birds of prey with some of the counts affected by this such that no, or very low numbers of, birds were observed due to the presence of birds of prey.</p>

No.	Comment	The Applicant's Response
	<p>causing disturbance. For example, how important is predation risk when compared to disturbance from vessel movements or recreational activities?</p> <p>Whilst we are happy to discuss the issue further with the Applicant more detail is needed to understand their proposed vegetation management plans, where they consider this would be appropriate and their justification for progressing such work.</p>	
7.105	<p>The lack of WeBS sectors along The Haven cannot be taken as evidence of a lack of birds being present along the entirety of The Haven. This is not appropriate because it is of similar intertidal habitat present in The Wash which is relied upon by the significant number of internationally important waterbird populations, is functionally linked to The Wash and connects the development site to The Wash via a linear corridor that waterbirds would be expected to feed, roost and/or transit along.</p> <p>The designation of the WeBS sectors may also have been a pragmatic decision to align with The Wash SPA/Ramsar/SSSI boundary. There are a significant number of count sectors in The Wash (21 count sectors with each of these divided into multiple sub-sectors) and some take more than one counter. It is difficult to find enough counters for the Core sections, so a degree of prioritisation will have been required when establishing the survey areas.</p> <p>Whilst the area along the whole of The Haven is not designated, this should also not be taken as having low importance for waterbirds. This has been reflected by the surveys undertaken adjacent the application site. Currently there is no information to support the Applicant's position that there are no other areas of</p>	Noted by the Applicant.

No.	Comment	The Applicant's Response
	<p>The Haven that are important for waterbirds. The Wash SPA/Ramsar/SSSI were designated on the basis of the evidence on waterbird numbers and distribution at the time. However, since then our understanding of the importance of functionally-linked land (i.e. areas outside the SPA that the birds use at certain times) upriver and in terrestrial habitats has improved. In addition, the available evidence is showing that bird numbers and distributions have changed over time and this may mean that areas outside of The Wash SPA/Ramsar/SSSI boundary are now more important as functionally linked land. This does not mean such areas are less important and do not warrant detailed surveys. Indeed, such areas are likely more important to survey to ensure that the latest evidence is being used to assess impacts on qualifying features of The Wash SPA/Ramsar/SSSI based on their current abundance and distribution. This is supported by the findings of the Applicant's surveys adjacent the application site where such significant numbers of birds were unknown until the data were collected.</p>	
Appendix 3	<p>We agree the need to have clarity on the conservation targets for qualifying features of The Wash SPA/Ramsar and SSSI.</p> <p>For black-tailed godwits, the population size at designation was 260. Since that time, the number of non-breeding black-tailed godwits in the UK has increased. This is documented in 'The Status of UK SPAs in the 2000s: the Third Network Review.' Between 1980-2010, the long-term trend for the UK has been a 614.3% increase and a short-term increase of 66.7% based on WeBS data. Whilst numbers have increase on The Wash in line with the national increases, there has also been a WeBS Alert for black-tailed godwit indicating that site-specific pressures can have a limiting effect on this species. A full understanding of the</p>	Noted with thanks by the Applicant.



No.	Comment	The Applicant's Response
	species for which adverse effects cannot be ruled out must be provided that also includes a full ecological assessment given that black-tailed godwits have been identified as being in energy deficits during the winter. We will continue to work with the Applicant and Natural England to clarify the position on the species potential significance of increased disturbance on qualifying interest features of The Wash SPA/Ramsar/SSSI.	

**Table 2-11 RSPB's final comments on the Ornithology Addendum (REP4-026/REP4-027)**

No.	Comment	The Applicant's Response
2.11	<p>Inadequate viewshed from the mouth of The Haven to assess disturbance on part of The Wash SPA/Ramsar/SSSI</p> <p>The surveys conducted at the mouth of The Haven have provided a helpful insight into the species that are present and their behaviour around the vessels using the channel. They demonstrate that the area is important for qualifying features of The Wash SPA/Ramsar and that disturbance occurs from the current vessel movements. However, we do not consider that they provide a full data set for assessing the impact of disturbance.</p>	<p>Noted by the Applicant. Please see the response to 2.12 (below) with regard to the viewshed.</p> <p>The Applicant considers that the 'Changes In Waterbird Behaviour...' surveys at the MOTH provide a full data set for assessing impact of disturbance on the basis of the characteristics the RSPB response outlines that they capture (species present, behavioural responses, evidence of baseline disturbance), and especially once combined with count and distribution data (from WeBS and site-specific surveys) for the MOTH (predominantly WeBS), and the Principal Application Site (based on many project-specific surveys). The analysis in the Ornithology Addendum, in particular Appendix A1, carries out this combination (document reference 9.13, REP1-026).</p>
2.12	A specific limitation is that the surveys were conducted looking out onto The Wash from the hide at Tabs Head (Figure 3). This gives a 180° view onto The Wash. However, this does not allow for observations of vessel movements to be observed along The Haven. This is compounded by having only one surveyor carrying out the observations, as additional surveyors would be	The Applicant confirms that the angle of viewshed is as mapped by the RSPB. Surveys at this location are indicated by their written methodology section to have focused on observing bird responses at a) known major roost site(s) at the Mouth of The Haven (MOTH), to b) scheduled vessel movements, in order to identify typical responses, and flight times or distances, of different

No.	Comment	The Applicant's Response
	<p>required to make observations in front and behind the hide. This means that the area of The Wash SPA/Ramsar up to Hobhole could not be observed during these surveys.</p>	<p>species (feature or assemblage) for which The Wash SPA is designated.</p> <p>Disturbance between the MOTH and Hobhole Drain was observed elsewhere in the reports from these surveys (e.g. 20 Mar 2021) by following the vessel up The Haven. Further surveys over winter 2021/22 have focused on quantifying bird numbers and responses on this section between Hobhole and the MOTH. This data will be available in March 2022.</p>
2.13	<p>These are fundamental concerns with the survey approach given the number of sectors that support significant numbers of qualifying features of The Wash SPA/Ramsar, yet no data have been collected to understand the disturbance effect from vessels using the navigation channel through and past these sectors (Figure 4). Whilst the surveys provide useful information, they cannot provide a complete understanding of the effect of vessel movements on qualifying features of The Wash SPA/Ramsar. This is essential to ensure that all areas that could support qualifying features of The Wash SPA/Ramsar are fully understood to know where features roost and forage, the pressures that they face along The Haven and out into The Wash, and how they respond to vessels and other disturbance pressures. It will not be possible to draw robust conclusions in the HRA where such evidence does not exist.</p>	<p>In our data collection exercise we reviewed a number of data sources to establish the presence of potentially sensitive locations for roosting birds. The intermediate area of The Haven was not identified as such in any of the reviewed data. This included the report produced by Natural England with respect to potential impacts relating to designation of this stretch of the coastal access route (England Coast Path: Sutton Bridge to Skegness: Natural England's Report to the Secretary of State: Overview, 2018) which identified (through data search and stakeholder consultation) sensitive areas for access, including areas for roosting birds (including those using saltmarsh areas). The mouth of The Haven was identified (within the SPA boundary) but no areas were identified along the intermediate area of The Haven up to Boston. Natural England's assessment for potential significant impacts relating to recreational disturbance along The Haven was based on this information</p> <p>The Applicant directs RSPB to the response to 2.12, and additionally the surveys over winter 2021/22 also include effort to identify precise locations of high tide roost sites on The Haven and their responses or vulnerability to vessel-based disturbance.</p>

No.	Comment	The Applicant's Response
		<p>The WeBS data that was reviewed for disturbance issues within The Wash were for the count sectors that RSPB identified in their Relevant Representation (document reference RR-024, attachment 1) to provide information for the assessment of disturbance by additional shipping associated with the BAEF development. Various information sources for disturbance issues were reviewed for the areas into The Wash for the various reports that have been compiled (as referenced in the submitted reports). This includes the supplementary information for the SPA which includes advice on specific operations that could affect birds, including commercial vessels and potential for disturbance.</p>
2.14-2.15	<p><u>Lack of assessment of the approaches to The Haven</u></p> <p>In our Written Representations, we have identified that there is a lack of data to identify the baseline disturbance levels to qualifying features of The Wash SPA/Ramsar around the Port of Boston anchorage area and the approaches to The Haven. The surveys conducted to date have only observed behaviour changes in waterbirds a relatively small area close to the mouth of The Haven. Figure 5 shows the indicative area of the anchorage area and the navigation channel used by vessels accessing or leaving The Haven. We have buffered it by 800m to be consistent with the observed displacement of birds at the mouth of The Haven to show the extent of the area for which no baseline data exists to rigorously assess the impact that current levels of vessel movements have within The Haven. This is important to assess the current impact that this activity is having on the abundance and distribution of qualifying features of The Wash SPA/Ramsar.</p>	<p>The Applicant confirms that records of birds in The Wash outside the MOTH, and responses of birds to vessel movements within The Wash close to the MOTH, are captured in the 'Changes In Waterbird Behaviour' surveys conducted at Tabs Head (document reference 9.71). The area over which observations have been collected represents the approximate area of The Wash viewable by land-based surveyors. The Applicant acknowledges that boat-based surveys have been suggested in submissions by the Interested Party but mainly at the more recent Examination Deadlines.</p> <p>The Applicant thanks RSPB for identifying relevant WeBS sectors which may provide baseline data - five years of recent data are available for at least some of the named sectors. Outside of The Haven and immediate surroundings of the approach to The Haven, the vessels would be anchoring within a recognised anchorage area and heavily used navigation routes. The impacts of anchoring and vessel movements within this area where the increase in vessel numbers is small compared to the baseline</p>

No.	Comment	The Applicant's Response
	<p>Figure 5 also identifies that there are additional WeBS sectors along the navigation channel leading to the anchorage area that could be impacted by disturbance from vessel movements. We recommend that the data for these additional WeBS sectors be obtained and included in revised assessments of potential impacts both of baseline activity and during construction and operation of the facility.</p>	<p>usage are not expected to result in a significant impact on bird species using the area. The supplementary information for The Wash SPA produced by Natural England, provides information on potential impacts of operations relating to the baseline situation and this was reviewed in order to provide baseline information for the various assessments.</p> <p>The Applicant maintains its position that its assessments have been appropriately carried out and advises it will not be providing revised versions of the full assessments i.e. the EIA and HRA.</p>
2.16	<p>The wider area of interest will also mean that additional qualifying features of The Wash may be disturbed by vessel movements and will need to be considered within the HRA. Large numbers of common scoter and eider may be present and additional species may be present. No information has been provided or collected to inform the abundance and distribution of qualifying features of The Wash SPA/Ramsar over the entire area that vessel disturbance could occur and is a significant concern for any conclusions being drawn about the appropriateness of the Application.</p>	<p>Noted by the Applicant.</p> <p>As outlined in the original HRA (6.4.18 ES Appendix 17.1 Habitats Regulations Assessment, document reference APP-111) paragraph A17.6.133, the project vessel traffic (during operation) is estimated to represent an increase of only 5.3% to The Wash vessel traffic levels, whereas the increase to vessel traffic on The Haven (138%) is considerably larger. Assessment therefore focuses on The Haven where, as identified by the RSPB, birds and vessels are also brought into closer proximity due to narrow nature of the channel. Initial consultation and scoping of designated sites placed emphasis on intertidal habitats and species that were roosting around high water and focus on land-based surveys.</p>
2.22	<p>We consider that observers could have been deployed on vessels using The Haven to monitor what features of The Wash SPA/Ramsar/SSSI occurred along the entirety of The Haven and out to the anchorage area and how they behaved in the presence of the vessel. There is not enough time during the</p>	<p>The Applicant agrees that boat-based surveys would provide (or would have provided) access to a greater proportion of the wider area highlighted by the RSPB in 2.16, but that boat-based surveys carry additional issues not as apparent in land-based surveys</p>

No.	Comment	The Applicant's Response
	<p>examination to gather a suitable amount of evidence, as surveys will need to cover all seasons and for a minimum of 2 years to account for annual variations.</p>	<p>such as a greater likelihood of influencing bird distribution and a low vantage point height for detecting birds.</p> <p>The land-based approach was agreed at the time of designing the survey.</p>
<p>2.23-2.24</p>	<p><u>Failure to collect two full years of ornithological data</u></p> <p>We note that Section 3.4 of the addendum stresses that, with respect to the mouth of The Haven, "...observation sessions have been completed over two winter seasons: November to March of winter 2019/20, and January to March of winter 2020/21." Whilst some data have been collected in both winters, this is not the same as data over two full years. No data were collected for October to December 2020. Limited survey effort of the autumn and spring passage periods have also been completed. Observations completed between May and July 2021 amounted to three surveys and did not account for late July and August when significant numbers of features such as common tern are known to occur from the WeBS data presented by the Applicant (see Section 3(m) below for more comments on how common terns have failed to be adequately assessed in the HRA).</p> <p>We therefore disagree that two winters worth of data has been collected, or that two full years of ornithological data have been collected. This would appear an unusual situation for a Nationally Significant Infrastructure Project and especially one that could have an adverse effect on integrity to sites within the National Site Network.</p>	<p>Noted by the Applicant.</p> <p>The Applicant maintains their position from Deadline 1 that two breeding and two wintering seasons of surveys were scheduled and carried out with curtailment of the survey programme only within the latter winter. Spring passage is recognised by the Applicant as important for survey coverage, with the Ramsar citation highlighting waterbird species whose annual peak is in this period. Therefore, the survey area of Breeding Bird Surveys was purposely designed to include The Haven adjacent to the Principal Application Site to ensure waterbirds were surveyed during these visits as waterbird species' passage period falls within these survey months. The Applicant acknowledges that autumn survey coverage has not comprised two seasons.</p>

No.	Comment	The Applicant's Response
2.25	<p><u>WeBS data identify data gaps and highlight the need for additional surveys to be conducted along The Haven</u></p> <p>Figure 4-2 of the addendum (p.39) presents maps showing data for the key species identified for assessment in the HRA (dark-bellied brent goose, black-tailed godwit, oystercatcher, redshank, turnstone, lapwing and golden plover). The maps show that significant numbers of these species have been recorded, with some of the highest counts in sectors that could not have been observed from the Tabs Head hide (Figure 3 above). Figure 4-2 also highlights where no data or counting effort for each of the species has been undertaken. Many of these areas cover the area from Hobhole to the mouth of The Haven and should have been used to help inform where additional site-specific ornithological assessment should have been carried out to inform the Environmental Statement and the supporting HRA.</p>	<p>While the RSPB is correct that the sectors are outside the viewshed of an observer whilst in the Tabs Head hide, survey effort has been directed towards observing disturbance due to vessels moving upstream to the Principal Application Site through following the vessel on foot (e.g. on 20 Mar 2021), and no disturbance response was noted in birds that were not on The Haven itself, as is the case with many of these WeBS sectors. Winter surveys currently underway on the intervening stretch of The Haven between Principal Application Site bird survey area B and the MOTH include observation of these WeBS sectors, precisely locating high tide roosts and recording responses of birds present in these sectors to vessels and recreation e.g. walkers and dogs. These surveys will be reported on in March 2022.</p>
2.28	<p><u>Lack of surveys at night to assess bird distribution and behaviour</u></p> <p>Whilst we welcome the information that has been collected on the behaviour of birds in the presence of vessels, all such observations have been made during daylight. There is no information provided to understand how birds are using The Haven at night. This is necessary to determine if there are any diurnal and nocturnal differences in the way waterbirds use The Haven and the area of The Wash out to the anchorage area. For example:</p> <ul style="list-style-type: none"> <li>• How many birds are roosting along The Haven during the day and at night, where, and does their distribution and abundance vary through a 24-hour period?</li> </ul>	<p>While both the Applicant and the RSPB have acknowledged the literature indicating differences in habitat use and, more broadly, range size at night compared to daytime in waders such as redshank, there has been little scope for or discussion of a focus on nocturnal survey work. The Applicant advises that no nocturnal surveys are planned.</p> <p>The RSPB previously raised nocturnal-period surveys of bird behaviour in its Written Representations paragraph 6.3, as data collected in an ideal scenario, i.e. as a 'nice to have' rather than fundamentally expected data as part of project-specific surveys of the baseline. The Applicant responded within '9.22 Applicant's Comments on Written Representations' (document reference REP2-006) specifically in response to 7.77 as well as response to 6.3 and 2.10.</p>

No.	Comment	The Applicant's Response
	<ul style="list-style-type: none"> <li>• How many birds forage along The Haven during the day and at night, where, and does their distribution and abundance vary through a 24-hour period?</li> <li>• How do birds respond to disturbance at night? Do responses differ from daytime responses?</li> </ul>	
2.45-2.46	<p><u>Concern about the Applicant's approach to assessing impacts from vessel movements</u></p> <p>We do not consider this approach to assessing impacts represents the worst-case scenario.</p> <p>Firstly, it is not possible to have 0.6 of a vessel. Therefore, if such an approach is to be used to assess potential impacts from vessels then the figures should be round up to the nearest whole vessel.</p>	<p>The Applicant directs the reader to its response to equivalent NE comment in <b>Table 2-1</b> row 14.</p>
2.47	<p>Fundamentally, however, this approach to averaging impacts across all navigable tides within a year will fail to distinguish between the variation in total numbers of vessels that could use different tides. Tidal height will vary and therefore disturbance impacts on the highest tides will be greater than the lowest tides as there will be a longer period of time when draught height would allow the larger vessels to use the navigation channel. On the highest tides therefore, up to 5 vessels would be the worst-case scenario (as defined in paragraph 4.1.1, p.24). Some tides will be lower and therefore fewer vessels could navigate The Haven.</p>	<p>The Applicant directs the reader to its response to equivalent NE comment in <b>Table 2-1</b> row 14.</p>
2.48	<p>We request that a more detailed assessment be carried out to identify the maximum number of vessels that could use any tide throughout a year. The total numbers of vessels on each tide can then be assessed against the maximum disturbance impact that this could generate. This is important to understand the annual</p>	<p>The Applicant directs the reader to its response to equivalent NE comment in <b>Table 2-1</b> row 14</p>



No.	Comment	The Applicant's Response
	<p>variation in vessel movements across tides and how this could affect qualifying features of The Wash SPA/Ramsar. It would also enable an assessment of the proportion of tides that would be used by vessels at night (see Section 2(i) above). This more detailed assessment would then better enable the ecological consequences of the additional vessel movements to be assessed.</p>	
2.49	<p>The additional vessel number dataset out in Table 4-9 (p.38) and Figure 4-1 (p.37) of the addendum is helpful in understanding the trend over time. The overall trend is a reduction in vessel numbers, with c.60% fewer vessels using The Haven than in 1918. Since 1996, a c.50% reduction in vessel numbers is shown. This represents a significant reduction in disturbance that could enable more birds to use The Haven. The historic importance is noted but impacts on the current population of The Wash SPA/Ramsar have to be considered against the current baseline levels of disturbance to ensure the conservation objectives that are in place are met. That means that any reduction in the current abundance and distribution of qualifying features of The Wash SPA/Ramsar need to be maintained. Where an increase in vessel movements is proposed this must be assessed against the current population figures. Where no data exist to enable an assessment of impacts to be undertaken then it is essential that detailed site-specific and species-specific data are collected.</p>	<p>The Applicant directs the reader to its response to equivalent NE comment in <b>Table 2-1</b> row 14.</p>
2.57	<p><u>Approach taken to the Habitats Regulations tests</u> Paragraph 5.3.2 of the addendum (p.42) does not appear to address the full tests set out in the Habitats Regulations. The HRA has to consider whether impacts from the Application alone or in-combination with other projects/activities and plans would avoid an adverse effect on integrity of The Wash SPA/Ramsar</p>	<p>The HRA has considered whether impacts either alone or in-combination with other projects/activities and plans would avoid an adverse effect on integrity.</p>

No.	Comment	The Applicant's Response
	beyond reasonable scientific doubt. The approach to the HRA must be to meet this specific test.	
2.58-2.59	<p>Paragraph 5.3.2 of the addendum (p.42) states that "...Non-breeding waterbirds designated as features of The Wash SPA or as part of the non-breeding waterbird assemblage were considered to potentially experience a Likely Significant Effect if they were present at the Application Site in numbers exceeding 1% of their population within The Wash SPA."</p> <p>This approach to the HRA fails to appreciate that the test of Likely Significant Effect must consider, on a precautionary basis, whether the project is likely to have a significant effect on the SPA, either alone or in combination with other plans or projects. We provide more detail on the tests of the Habitats Regulations in Section 3d below and Section 8 of our Written Representation.</p>	<p>The Applicant stresses that any local population occurring at the Principal Application Site in numbers equivalent to 1% of the population recorded within The Wash SPA, represents an aggregation of considerably less than 1% of the SPA population as some (perhaps 'all') birds will be birds using only the local area and <b>not forming part of the SPA population</b>. In such instances, or where there are smaller numbers of each species, the Applicant argues that the potential for activities to impact on the SPA populations or assemblage abundance or distribution becomes unlikely and therefore should not be considered to face a likely significant effect.</p>
2.60	<p>In this instance, that there has not been sufficient data presented for The Haven or the navigation channel out to the anchorage area to have an accurate understanding of:</p> <ul style="list-style-type: none"> <li>• The abundance of qualifying features of The Wash SPA/Ramsar that use the area along the whole of the navigation channel throughout the year.</li> <li>• The distribution of qualifying features of The Wash SPA/Ramsar that use the area along the whole of the navigation channel throughout the year.</li> <li>• The impact of additional recreational activities and other projects and plans operating in and around the navigation channel that are also impacting on the qualifying features of The Wash SPA/Ramsar.</li> </ul>	<p>Position noted by the Applicant.</p>
2.61-2.62	<p>The Applicant's own surveys have recorded qualifying features of The Wash SPA/Ramsar at the application site that include: ringed plovers, dunlins, lapwings, turnstones, redshanks,</p>	<p>The Applicant stresses that ringed plover, lapwing, cormorant, mallard, black-headed gull, herring gull, lesser black-backed gull and great black-backed gull on The Haven at the Principal</p>

No.	Comment	The Applicant's Response
	<p>oystercatchers, black-tailed godwits, bar-tailed godwits, curlews, grey plovers, cormorants, mallards, shelducks, black-headed gulls, herring gulls, lesser black-backed gulls and great black-backed gulls. This demonstrates that these features are all present on The Haven and therefore there is potential for them to be impacted by vessel movements. There is therefore a likely significant effect on these features. Consequently, all the qualifying features of The Wash SPA/Ramsar that have been recorded along the navigation channel must be considered in the Appropriate Assessment of the HRA. Only where there is appropriate evidence to demonstrate that qualifying features are not present should they be scoped-out of the assessment, as we set out in section 3d above.</p> <p>[Recommendation: ] A revised list of species that are screened-in to the assessment be provided and the assessments revised.</p>	<p>Application Site are subject to Appropriate Assessment as they are part of the non-breeding waterbird assemblage of The Wash SPA which has received Appropriate Assessment.</p> <p>The Applicant clarifies that dunlin, turnstone, oystercatcher, black-tailed godwit, curlew, grey plover and shelduck (features of The Wash SPA) have not received Appropriate Assessment for impacts at the Principal Application Site because counts have recorded these birds only infrequently in very small numbers and furthermore only a subset of the recorded numbers (perhaps none) form part of The Wash SPA population.</p>
2.63	<p><u>Disagreement with species that have been scoped out of the Appropriate Assessment</u></p> <p>We are concerned that species being screened out of the appropriate assessment based on limited data, as set out in Section 2(o) above.</p>	<p>Position noted by the Applicant.</p> <p>The Applicant maintains their position from Deadline 1, that data used in screening is sufficient and has not relied solely on project-specific survey data but also BTO WeBS Core Counts data.</p>
2.67	<p><u>Failure to assess the importance of The Haven area of The Wash using the latest WeBS data</u></p> <p>Whilst we welcome the inclusion of the 2013/14 to 2018/19 WeBS data in the addendum, a more recent data set is available to assess the importance of The Haven area of The Wash and trends in bird numbers. The 2014/15 to 2019/20 data are available and show that for some species there continue to be declines in numbers of some species using The Haven area, for</p>	<p>See Applicant's response to NE in <b>Table 2-1</b> row 13 above.</p>

No.	Comment	The Applicant's Response
	<p>example, dark-bellied brent goose and turnstone. We recommend revising the HRA to include the latest WeBS data.</p>	
<p>2.68</p>	<p><u>Failure to include an assessment of The Wash Ramsar within the HRA</u></p> <p>Paragraph 5.1.2 (pp.40-41) of the addendum recognises the need to consider The Wash Ramsar alongside The Wash SPA with regards assessments of impacts to ornithological features within the HRA. However, it does not appear that appropriate consideration of The Wash Ramsar and its qualifying features has been considered within the appendix to the addendum. We request clarity on how The Wash Ramsar has been taken into consideration throughout the HRA. This is important, as there may be additional features that are features of The Wash Ramsar but have not yet been included as part of The Wash SPA. This would be particular the case for ruff, which is also an Annex 1 species and therefore requires year-round protection across its range.</p>	<p>The Applicant confirms that all features of The Wash Ramsar also feature in the SPA and so were screened in or out for Appropriate Assessment under assessment of the SPA. An HRA matrix was completed for The Wash Ramsar site in the original HRA and updated at Examination Deadline 3 (document reference 9.42, REP3-018) (with a copy showing tracked changes submitted at Deadline 5 (document reference 9.42(1), REP5-003).</p>
<p>3.1-3.2</p>	<p><u>Disagreement with the approach taken to the Habitats Regulations tests</u></p> <p>Section 2.4 of the addendum appendix (p.82) does not appear to address the full tests set out in the Habitats Regulations. The HRA has to consider whether impacts from the Application alone or in combination with other projects/activities and plans would avoid an adverse effect on integrity of The Wash SPA/Ramsar beyond reasonable scientific doubt. The approach to the HRA must be to meet this specific test.</p> <p>The language used with the HRA is not specific to the Habitats Regulations and therefore risks applying a less strict or rigorous</p>	<p>The Applicant confirms receipt of the information outlined by RSPB in sections 8 and 10 within its Written Representation at Deadline 1. The Applicant stands by their process for Habitat Regulations Assessment, and stresses that the Ornithology Addendum should be read in tandem with the original HRA (6.4.18 ES Appendix 17.1 Habitats Regulations Assessment, document reference APP-111) in order to view the full breadth of assessment of impacts.</p>

No.	Comment	The Applicant's Response
	<p>approach than is required. We set out the approach that we expect to be followed within Sections 8 and 10 of our Written Representation. Section 2.4 of the addendum appendix simply asks if "Is the additional disturbance likely to cause impacts on SPA qualifying interests..." This is inadequate.</p>	
3.3	<p>The addendum appendix (section 2.4) then sets out 3 questions that the Applicant considers need to be addressed in the HRA. We are continuing to review the full addendum and anticipating making further representation on this issue in future submissions, however, the approach outlined by the Applicant is flawed by the limited approach that is being taken and the limited data collected to understand the full ecological importance of this area of The Wash.</p>	<p>Position noted by the Applicant.</p>
3.7	<p>The phrase "not anticipated" reflects the lack of evidence to enable conclusions that no adverse effects on features of The Wash SPA/Ramsar can be concluded beyond reasonable scientific doubt.</p>	<p>The Applicant confirms that use of 'not anticipated' here indicates a predicted absence of impact.</p>
3.8	<p>The phrases "materially change" and "materially affect" are not Habitats Regulations terminology and create ambiguity of the Applicant's position. It must be clearly set out whether the Applicant considers [an] adverse effect on integrity of The Wash SPA/Ramsar will or will not be avoided. The use of such a phrase reflects the lack of evidence available to demonstrate that it is not possible to conclude that there will not be an adverse effect on integrity of The Wash SPA/Ramsar beyond reasonable scientific doubt based on the currently available evidence.</p>	<p>The Applicant confirms that use of 'not materially change/affect' here equates to 'change/effect will be negligible'.</p>
3.9-3.11	<p><u>Disagreement of the definition of the 'Local Area'</u></p> <p>In Section 2(b) above we have set out why it is not realistic to consider impacts on features of The Wash SPA/Ramsar over only a small proportion of The Haven. Consequently, any</p>	<p>Position noted by The Applicant.</p> <p>The Applicant maintains their position at Deadline 1 and stands by their use of this geographic scale which was primarily defined for</p>

No.	Comment	The Applicant's Response
	<p>assessment should be based on the navigation channel from the Application site out to the Port of Boston anchorage area.</p> <p>We agree with the parts of Section 2.2 that recognise that the ecological requirements of the qualifying species of The Wash SPA/Ramsar must be considered when determining the area over which impact assessment should take place. However, despite this statement there is no site-specific evidence or species-specific evidence used to inform the area to assess; the Applicant simply states the 'Local Area' will be defined as the WeBS sectors for which data have been obtained.</p> <p>This is an unrealistic approach as vessel movements occur along the whole of the navigation channel and as such will cause disturbance to waterbirds along the entire route. Whilst the actual scale of disturbance will vary from species to species, seasonally and even spatially along the navigation channel, no evidence has been collected to demonstrate an understanding of how qualifying features of The Wash SPA/Ramsar use The Haven and the navigation channel out to the anchorage area. A greater area should be used for the impact assessment such as that shown in Figure 1.</p>	<p>determining quantified levels of importance of The Haven ('Local Area') comparatively, based on WeBS Core Count data.</p>
3.12-3.13	<p><u>Disagreement of the definition of the 'Mouth of The Haven'</u></p> <p>In Section 2(b) above, we have set out why it is not realistic to consider impacts on features of The Wash SPA/Ramsar over only a small proportion of The Haven. Consequently, any assessment should be based on the navigation channel from the Application site out to the Port of Boston anchorage area.</p>	<p>Position noted by The Applicant.</p> <p>The Applicant maintains their position at Deadline 1 and stands by their use of this geographic scale which was primarily defined for determining quantified levels of importance of the MOTH comparatively, based on WeBS Core Count data.</p>

No.	Comment	The Applicant's Response
	<p>There is no justification in Section 2.3 to explain why a selection of the WeBS sectors have been used to define a very small area impacted by vessel movements. There is no benefit to assess such a small area, as it is unrealistic for disturbance from vessel movements to only impact qualifying features of The Wash SPA/Ramsar in this limited area. Vessel movements occur along the whole of the navigation channel and as such will cause disturbance to waterbirds along the entire route. Whilst the actual scale of disturbance will vary from species to species, seasonally and even spatially along the navigation channel, no evidence has been collected to demonstrate an understanding of how qualifying features of The Wash SPA/Ramsar use The Haven and the navigation channel out to the anchorage area. A greater area should be used for the impact assessment such as that shown in Figure 1.</p>	
<p>3.14-3.15</p>	<p><u>Disagreement with the approach to screening</u></p> <p>We disagree with the approach outlined in the addendum appendix to screening and do not consider it is compatible with the Habitats Regulations tests.</p> <p>Section 3 (p.85) of the addendum states that “It is necessary to prioritise the qualifying interests and focus the assessment on those that have greatest potential to be affected.” This is a fundamental misapplication of the Habitats Regulations tests.</p>	<p>The Applicant stands by its approach to undertaking screening for assessment and is unaware of equivalent concerns from NE as the statutory conservation body covering this Application.</p>
<p>3.16-3.17</p>	<p>As stated in paragraph 8.26 (p.89) of our Written Representation, an appropriate assessment requires all aspects of the project which could affect the site, its species and its conservation objectives to be identified in the light of the best scientific knowledge in the field. The competent authority, “taking account of the conclusions of the appropriate assessment of the</p>	<p>The Applicant confirms receipt of the key steps outlined by RSPB within its Written Representation at Deadline 1. The Applicant stands by their process for Habitat Regulations Assessment, and stresses that the Ornithology Addendum should be read in tandem with the original HRA (6.4.18 ES Appendix 17.1 Habitats</p>



No.	Comment	The Applicant's Response
	<p>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.</p> <p>In paragraph 8.21 (p.87) of our Written Representation we set out the key steps in the Habitats Regulations process, namely:...</p>	<p>Regulations Assessment, document reference APP-111) in order to view the full breadth of assessment of impacts.</p>
3.18	<p>With respect to Step 2, a decision regarding whether a likely significant effect may occur must be taken on a precautionary basis. The English and Welsh Court of Appeal in R (on the application of Mynydd v Gwynt Ltd) v Secretary of State for Business, Energy and Industrial Strategy [2018] EWCA Civ 231 has recently set out the following principles for appropriate assessments under Regulation 63(1) referring to other important caselaw in this area:</p> <p><i>"(1) The environmental protection mechanism in Article 6(3) is triggered where the plan or project is likely to have a significant effect on the site's conservation objectives: Landelijke Vereniging tot Behoud van de Waddenzee v Staatsscretaris van Lanbouw (Case C-127/02) [2005] All ER (EC) 353 at [42] ("Waddenzee").</i></p> <p><i>(2) In the light of the precautionary principle, a project is "likely to have a significant effect" so as to require an appropriate assessment if the risk cannot be excluded on the basis of objective information: Waddenzee at [44].</i></p> <p><i>(3) As to the appropriate assessment, "appropriate" indicates no more than that the assessment should be appropriate to the task in hand, that task being to satisfy the responsible authority that the project will not adversely affect the integrity of the site</i></p>	<p>Noted by the Applicant. The Applicant stands by its approach to undertaking screening for assessment and is unaware of equivalent concerns from NE as the statutory conservation body covering this Application.</p>

No.	Comment	The Applicant's Response
	<i>concerned. It requires a high standard of investigation, but the issue ultimately rests on the judgement of the authority: R (Champion) v North Norfolk District Council [2015] UKSC 52; [2015] 1 WLR 3710, Lord Carnwath at [41] ("Champion")."</i>	
3.20, 3.24	<p><u>Disagreement with the screened-in species</u></p> <p>We agree with the species that have been screened into the appropriate assessment but disagree that an appropriate process has been followed. This has resulted in an incomplete list of species that are likely to be significantly affected by vessel movements (as we discuss in Section 2(o) and 2(p) above).</p> <p><u>Disagreement with the screened-out species</u></p> <p>We disagree with the approach taken by the Applicant to screen-out species that are likely to be significantly affected by vessel movements (as we discuss in Section 2(o) and 2(p) above).</p>	Please see response to 3.18 above.

**Table 2-12 RSPB's comments on the Applicant's 'Without Prejudice' Derogation Case (REP4-028) (note comments on Alternatives were provided at Deadline 5 (document reference 9.63, REP5-008)).**

No.	Comment	The Applicant's Response
3	<p><u>IROPI</u></p> <p>Given the RSPB's concerns with the Applicant's approach to alternative solutions, the RSPB has no comments, at this time, to make on the Imperative Reasons of Overriding Public Interest that have been presented by the Applicant.</p>	Noted by the Applicant
4.1	The RSPB has set out its approach to assessing compensation proposals in section 10 of its main written submission (paragraphs 10.9-10.24 in REP1-060). Below, we summarise	The compensation sites have been assessed based on guidance produced by Defra and Natural England.

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	some of the key elements of that approach before setting out our initial comments on the applicant's compensation proposals.	
4.2	These are necessarily initial comments, as it is the RSPB's view that there is still substantive work to be done to agree the nature and scale of predicted adverse effects on integrity. This additional work is critical to inform discussions on: • What ecologically effective compensation for those impacts could comprise? • What options should be considered to provide such compensation? • The detailed consideration of possible locations and designs to implement ecologically effective compensation with a reasonable guarantee of success.	The guidelines used above do provide information to inform discussion on the 3 points outlined by RSPB.
4.3	At Table 12 in REP1-060, we set out the criteria for designing compensatory measures: Targeted – appropriate to the impact(s) predicted and refer to the structural and functional aspects of site integrity and habitats/species affected. Clear objectives and success criteria must be set out. Effective – based on the best scientific knowledge alongside specific investigations for the location where the measures will be implemented. Measures where no reasonable guarantee of success should not be considered. The most effective option(s) with the greatest chance of success must be chosen. Page 6 of 13 Technical feasibility – design must follow scientific criteria and evaluation, taking into account the specific requirements of the ecological features to be reinstated. Extent – directly related to the quantitative and the qualitative aspects inherent to the elements of integrity that are likely to be impaired, along with an estimated effectiveness of the measure(s). Ratios need to be used where they make ecological sense and will help secure a successful outcome by providing more of something. Simply multiplying capacity to address uncertainty is not appropriate, as it risks giving a false level of confidence. Location – located in areas	The compensation sites that are proposed have been assessed based on a number of criteria as described in the updated Compensation Report (document reference 9.30(1)). This includes the points listed by RSPB. The level of detail provided for the sites at this stage is limited by the amount of work that can be undertaken on sites that have not yet been secured (this would not occur unless a decision was made for the project to go ahead following the DCO process).

No.	Comment	The Applicant's Response
	<p>where option(s) will be most effective in maintaining the overall coherence of the National Site Network. Compensation measures should be as close to the area of impact as possible, while minimising the external pressures that may reduce the likelihood of success. Compensation measures proposed to benefit one SPA/SAC/Ramsar site feature must not result in damage to the integrity of any other SPA/SAC/Ramsar site and their features, or the integrity of any underpinning SSSI. Timing - must provide continuity in the ecological processes essential to maintain the structure and functions that contribute to the National Site Network. Compensation measures should be fully functional (that is, secured, designed and created) before any damage occurs. Long-term implementation – legal and financial security is required for the long-term implementation of option(s). These guarantees must be secured via an appropriate mechanism and in place prior to consent being granted. Robust financial guarantees are required to fund implementation, monitoring and any necessary remediation measures.</p>	
4.4	<p>Following Table 12, we then set out the level of detail we consider is required to be before an examination in order to enable proper scrutiny of any compensation proposals (paragraph 10.18-10.24 of REP1-060). At this stage, we do not consider the applicant has provided the necessary detail to enable proper scrutiny of its “compensation measures”.</p>	<p>The level of detail provided in the updated Compensation Report (document reference 9.30(1)) is determined by the amount of information and survey that can be completed without the sites having been secured, which as explained above, is not feasible prior to a decision being made on the project. A site walkover has been undertaken with consideration of the criteria to be required to provide compensation for the features of interest that could potentially be affected.</p>
4.5	<p>In Table 1 below, we have set out our initial comments on the outline compensation proposals provided by the Applicant in Table 3-1 of their ‘Without Prejudice’ Derogation Case – compensation document (REP2-013). At this stage, we do not consider these option(s) are fit for purpose and substantive work</p>	<p>The comments on the potential sites are welcomed by the Applicant and have been taken on board. The new sites proposed cannot at this time be identified on maps as they are not secured as yet (for the reasons stated above). The use of the fields owned by the prison are used by other species of birds and this was part</p>

No.	Comment	The Applicant's Response
	<p>is required by the Applicant to develop appropriate compensation measures tailored to the ecological requirements of the SPA/Ramsar site features for which adverse effects cannot be ruled out. We note here Defra's 2012 guidance (paragraph 35)4 : "If it is not possible to secure adequate compensatory measures, a derogation allowing the proposal to commence must not be granted."</p> <p>Comments have been provided by RSPB specifically on the sites originally identified for compensation/net gain sites.</p>	<p>of the consideration for this area. Whilst this area is not disregarded at this time for other possible measures that could provide net gain, the alternative proposed sites for larger scale works are agricultural fields currently used by local farmers. The sites provide different characteristics with one being much closer to The Haven and one being closer to the RSPB reserve of Frampton Marshes. They could therefore form part of a larger network of sites. The site closer to the RSPB reserve could provide habitat for lapwing and golden plover, amongst other waterbirds (the site was observed to support waterbirds within the ditches surrounding the field). The other site is adjacent to The Haven and thus would provide additional habitat for those species that prefer to be closer to the intertidal areas. Both sites are several hectares in size. The landowners have been approached and in principle are in agreement for long term leases of the fields. These sites could provide areas of lagoons or scrapes with islands and short damp grassland that could provide foraging habitat.</p> <p>The measures put forward for the Havenside LNR are more for biodiversity net gain and would help with the management of the site and increase the biodiversity interest of this area. The measure for debris removal was to restore areas of saltmarsh that are degraded through the presence of the debris. There are no proposed works within the designated sites. There is no option to undertake works to manage predation risk in the new document.</p>
5.1	<p>Having reviewed the Applicant's derogation case, we consider that it remains at a high-level and more detail is needed to demonstrate that conclusions of adverse effects on integrity of The Wash SPA/Ramsar can be adequately addressed.</p>	<p>Further details have been provided within the updated Compensation Report (document reference 9.30(1)).</p>
5.2	<p>We are concerned that at this stage the Applicant has provided an inadequate assessment of alternative options that would</p>	<p>Following comments from RSPB and UKWIN, the Applicant noted further information would be provided on reasoning to address the</p>

No.	Comment	The Applicant's Response
	<p>deliver public need whilst minimising the environmental impact for such a project. We have particularly noted the limited assessment of alternative locations that the Applicant has presented; this should not be limited to the Boston site only but include a wider UK assessment.</p>	<p>alternative locations point at Deadline 6. The Applicant stands by the objectives set out in the Without Prejudice Habitats Regulations Assessment Derogation Case: Assessment of Alternative Solutions (document reference 9.28, REP2-011) Table 5-1 of and therefore the screening out of the alternative locations option. However, in order to address RSPB and UKWIN's concerns, the Applicant will undertake further consideration and provide an update at Deadline 7.</p>
5.3	<p>Having reviewed the Applicant's submission on compensation, we consider the options proposed do not contain any detail on their location, scale or mechanism for delivery. Therefore, we are not yet in a position to understand if the ecological requirements of the species affected would be met by any of the proposed compensation options. They are not yet fit for purpose.</p>	<p>Further details have been provided within the updated compensation report (document reference 9.30(1)).</p>
5.4	<p>We also consider that there are additional options that could be appropriate to consider that the Applicant has not yet presented, such as consideration of more areas along The Haven that could be appropriate for habitat creation, subject to discussions with landowners. However, until the scale of displacement and habitat/ecological function loss is agreed this and any additional options to meet the species ecological requirements are uncertain at this time.</p>	<p>Additional options are now provided within the updated compensation report (document reference 9.30(1)).</p>
5.5	<p>Given this and the high-level nature of the information provided by the applicant on their 6 options, the RSPB is unable to make a meaningful assessment as to how each of the proposed measures might meet the compensation requirements. The starting point for meaningful discussion and assessment of compensation options is reaching agreement on the nature and scale of the ecological impacts on SPA/Ramsar species.</p>	<p>Agreed and further detail is provided (up to the point that is feasible at this stage) within the updated compensation report (document reference 9.30(1)).</p>

No.	Comment	The Applicant's Response
5.6	However, we have provided some high-level commentary to inform the Examining Authority and reserve the right to return to this topic.	The Applicant appreciates the comments and has worked to ensure that they are taken into account in the updated compensation report (document reference 9.30(1))

**Table 2-13 Summary of the RSPB's position and key concerns regarding the Boston Alternative Energy Facility Development Consent Order (DCO) Application (REP5-018)**

No.	Comment	The Applicant's Response
1.3	When considering the impact of disturbance on waterbirds using The Haven and its approaches, it must be recognised that The Haven river channel is narrow compared to other estuarine sites for which much disturbance research has been conducted. This will bring birds closer to disturbance sources with the result that visual and noise impacts could have a greater effect. This also adds to the importance of understanding waterbird behaviours during the day and night. It is therefore essential to have robust, site-specific evidence to base conclusions about bird disturbance.	The Applicant recognises that The Haven is effectively a working river or shipping channel rather than an open estuarine site and has completed assessments on such a basis. The Applicant has also recognised that waterbird responses to vessels are likely to have site-specific elements and has ensured project-specific surveys of waterbird responses to vessels of multiple types and sizes have been completed, both at the Principal Application Site and the mouth of The Haven (MOTH).
1.4	It should also be noted that disturbance assessments are typically based on visual effects, but understanding impacts is more complex. Fließbach et al. (2019) <sup>1</sup> provides a helpful summary, especially given species such as common scoter and eider are mentioned in the paper that are features of The Wash SPA/Ramsar that have not been fully assessed by the Applicant:	Shipping in The Wash, projected increase in The Wash vessel traffic, and significance of these factors to birds of The Wash SPA/Ramsar/SSSI including seaduck species have been considered in assessment from the original HRA onwards (6.4.18 ES Appendix 17.1 - Habitats Regulations Assessment, document reference APP-111) paragraph A17.6.28 to A17.6.31.
2.11	Given the inability to mitigate impacts from additional vessel movements, as the primary cause of disturbance is the presence of the vessels, additional compensation measures will be required. These will need to demonstrate that any alternative roosting, foraging, bathing and loafing areas created will accommodate features of The Wash SPA/Ramsar. This is necessary to demonstrate that adverse effects on integrity of The	The Applicant maintains its position from point of Application submission that the impact requiring mitigation is limited to habitat loss due to wharf construction, the mitigation planned is sufficient, and that no compensation measures are required. However, the Applicant has also completed a Without-Prejudice Derogation Case detailing areas of compensation and planned measures.



No.	Comment	The Applicant's Response
	Wash SPA/Ramsar will be avoided beyond reasonable scientific doubt.	Outline, updated and submitted at Deadline 6 (document reference 9.30).
2.15	Whilst we acknowledge that surveys out into this part of The Wash can be challenging, there has been no attempt to put observers on vessels using the navigation channel from the Port of Boston to the anchorage area to gather any data on bird numbers and their reaction to vessels.	See Applicant's response to Table 2-11 row 2.22 above.
3.1	We note the definition within Schedule 2, paragraph 1 of the "habitat mitigation area" as follows "the area shown on Figure 17.9 of the environmental statement" and the reference to this habitat mitigation area within the decommission requirements (Sch 2, requirement 23) but question why Schedule 2, requirement 6 makes no reference to it.	The works in the habitat mitigation area (HMA) are one component of a package of ecological mitigation measures that must be detailed in the landscape and ecological mitigation strategy (LEMS) under sub-paragraph (3)(a) and (b), as such it was not considered necessary to reference it specifically in the Requirement. The requirement for the approved LEMS to be substantially in accordance with the OLEMS ensures that that the works to the HMA will be detailed in the approved LEMS.
3.2	We refer you to our concerns with the current mitigation proposals (see paras 7.27 to 7.30 in our Written Representations (REP1-060), and para 2.1 to 2.13 above) and crucially what is not included or, in our view possible to mitigate. Although some of the details are set out within the Landscape and Ecological Mitigation Strategy requirements (Schedule 2, requirement 6), including our ability to be consulted on the Strategy before it is finalised, what is not before the Examination is the requisite details required for the Examining Authority to be certain ecologically, legally and financially as to the viability of mitigation and compensation.	The Applicant considers that sufficient details have been presented in the OLEMS to enable the ExA to make its recommendation and the SoS to make its determination.
3.3	We welcome the Examining Authority's commentary on the DCO (11th January 2022) and will review the Applicant's responses, especially (Qu 3) on how any compensation measures proposed	Please refer to the Applicant's Responses to the Examining Authority's Commentary on the Draft Development Consent Order (document reference 9.59, REP5-005), which sets out how

No.	Comment	The Applicant's Response
	will be secured in the DCO if the Secretary of State determines that there is an adverse effect on integrity.	compensation measures would be secured if the SoS determines there is an adverse effect on integrity.
3.4	We are very concerned that details are being left for later determination once the Examination process is concluded. It is important that sufficient information and certainty is provided now so that the Examining Authority can take into account measures proposed and have certainty that they will mitigate and/or compensation all potential effects on the protected sites and their species.	The Applicant considers that sufficient details have been presented in the OLEMS and through the various application and examination documents submitted by the Applicant to enable the ExA to make its recommendation and the SoS to make its determination. The use of outline plans as part of the DCO process is normal practice.

### 2.3 Marine Management Organisation (MMO)

Table 2-14 The MMO's Response to the Applicant's response to the MMO and NE's queries regarding Marine Mammals and Fish [REP4-014] (REP5-011)

No.	Comment	The Applicant's Response
4.6	<p>The MMO note that a full soft-start and ramp-up procedure of not less than 20 minutes, as suggested, may not be possible. Therefore, should piling works be able to be completed, the works should start from 1 July onwards and must be completed by 30 September, to avoid the end of the smelt migratory season.</p>	<p>With regard to the piling programme for the wharf this is confined to the period from June to September in order to protect ornithological receptors. It was originally to be May to September but in order to further minimise impacts on fish the Applicant agreed to amend the restriction on piling from June to September in the iteration of the DCO submitted to the examination at Deadline 6.</p> <p>As set out in the Indicative Construction Programme (document reference 9.18, REP1-031) the wharf piling is scheduled for four months from June to September. A one month overlap therefore exists with the smelt migration season. Given the above restrictions due to the requirement to avoid overwintering birds and the required four months required for piling some overlap is unavoidable.</p> <p>The Applicant has had a meeting with the MMO on 27<sup>th</sup> January 2022 and following this, sent a summary of the reasoning for the piling window to the MMO. The MMO have noted via email that if piling works are to be undertaken between June to September (inclusive) then specific mitigation should be secured within the DML. The Applicant is liaising with the MMO of the wording of this mitigation within the DML.</p>
4.7	<p>The MMO agree that restricting piling to low water would require the piling period to be extended from the current defined period, which would result in impacts on fish receptors being prolonged. Taking into account that soft-start procedures might not be fully</p>	<p>See above response.</p>

No.	Comment	The Applicant's Response
	followed at high water, providing the piling restriction period is amended (as per point 4.6), and secured as a licence condition within the DML, the MMO are content that the proposed works will not result in significant potential impacts on fish.	
4.8	The MMO note that a final Marine Mammal Mitigation Protocol (MMMP) will be developed in the post-consent period, once final piling design and methodologies are known, including the requirements for soft-start and ramp-up prior to piling. The MMO will review any updates to the MMMP at future deadlines or post-consent and provide further comments if necessary.	Noted.
4.9	The MMO are content that the timing restrictions on dredging works will afford protection during the migration periods of sea trout and adult smelt.	Noted.

## 2.4 UKWIN Response

**Table 2-15 UKWIN's response to the Applicant's response to UKWIN's oral submission at Issue Specific Hearing 2 on Environmental Matters [REP4-020] (REP5-020)**

No.	Comment	The Applicant's Response
1-15	Comments on National Policy Statements	<p>In response to paragraphs 1 to 15, see the Applicant's response (Document 9.64) to UKWIN's Deadline 3 comments on the Applicant's response to the ExA's written Question Q12.0.7 (REP3-036).</p> <p>In addition, at paragraph 11 (also paragraph 16 of its Deadline 1 submission) UKWIN is selective in that it omits to refer to the granting of DCO consent for Kemsley WK3 on 19th February 2021.</p> <p>With respect to the quotation taken from the Secretary of State's decision on the 'Application for the Wheelabrator Kemsley K3 Generating Station and Wheelabrator Kemsley North Waste to Energy Facility Order', Reference EN010083, the quotation to which UKWIN refers however must be read in full and then taken in the light of full context of the ExA report of 19th November 2020<sup>2</sup>.</p> <p>The full paragraph (4.41) is 'ExA sets out that, given the uncertainties in the Applicant's assessment of carbon benefits, the matter should carry little weight in the assessment of WK3 and WKN. However, the ExA notes that, while they are conjoined in the Application, there are differences between the two projects so</p>

<sup>2</sup> *Wheelabrator Kemsley Generating Station (K3) and Wheelabrator Kemsley North (WKN) Waste to Energy Facility Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for Department for Business, Energy & Industrial Strategy (2020)* <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/EN010083/EN010083-001012-EN010083%E2%80%93Final-Recommendation-Report.pdf>

No.	Comment	The Applicant's Response
		<p>that the 'environmental burden' of WKN should not apply to WK3. As far as the possibility of waste being diverted from landfill to fuel the two projects is concerned, the ExA considers that the projects would divert a significant proportion of waste from recycling rather than landfill.'<sup>3</sup></p> <p>The Proposed Development comprised two projects, in effect a hybrid application. The first is to increase the generating capacity of Wheelabrator Kemsley (WK3) generating station up to 75MW with a tonnage throughput of up to 657,000 tonnes per annum Project WK3). Secondly, Wheelabrator Kemsley North (WKN) would be a waste-to-energy generating station with a generating capacity of up to 42MW and an annual through put of up to 390,000 tonnes of waste (Project WKN). The Secretary of State (SoS) for Business, Energy and Industrial Strategy (BEIS) made a direction under Section 35 of the Planning Act 2008 to treat the Proposed Development as one for which development consent is required.</p> <p>In view of the generating capacity of the Project WK3, this was determined with respect to National Policy Statement EN-1 and EN-3 which had primacy. Project WKN was not considered to be an NSIP project, here primacy was given to the statutorily adopted development plan which included the Kent Minerals and Waste Local Plan.</p> <p>At 6.3.6 of the ExA report, in relation to Project WK3 the ExA concluded 'I find that it would generally accord with the waste hierarchy and would be of an appropriate type and scale so as not</p>

<sup>3</sup> Application for the Wheelabrator Kemsley K3 Generating Station and Wheelabrator Kemsley North Waste-to-Energy Facility Order (2021) <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010083/EN010083-001007-EN010083-Secretary-of-State-Decision-Letter.pdf> (paragraph 4.41)

No.	Comment	The Applicant's Response
		<p>to significantly prejudice the achievement of local or national waste management targets. Therefore, all harmful effects would be within the scope envisaged in the relevant NPSs as policy compliant.'</p> <p>At 6.3.12 of the ExA report in relation to WKN the ExA concluded that the WKN Proposed Development would be in conflict with key policies of the Kent Minerals and Waste Local Plan.</p> <p>Development Consent was approved for Project WK3, whereas Development Consent was refused for Project WKN.</p> <p>As for Project WK3, Alternative Use Boston Projects Ltd considers that it has demonstrated (need case and Waste Hierarchy Assessment report (document reference 5.8, APP-037)) that the proposed development, as a development designed to meet a need to treat national RDF waste (arriving at the Facility by water) that may otherwise be exported, accords with the waste hierarchy, would not significantly prejudice the achievement of local or national waste management targets, and would not result in an over capacity of EfW waste treatment facilities.</p>
16 - 18	Comments on The Applicant's Need Assessments/ Isocrone assumptions/ waste plans	<p>The Applicant has presented the most up to date waste data on those wastes being deposited in landfill in the UK. Detailed data on recycling rates for C&amp;I wastes are not available, as noted in the previous response REP4-020.</p> <p>The Applicant has used a 2-hour travel time in the <i>Addendum to Fuel Availability and Waste Hierarchy Assessment</i> (document reference 9.5, REP1-018) to define the waste catchment area that wastes could potentially be transferred to the indicative port</p>



No.	Comment	The Applicant's Response
		<p>locations and then transferred to the proposed Facility. All assumptions have been clearly stated in the report, the catchment areas allow the quantity of wastes within the areas to be defined. This provides a practicable method of defining a catchment in recognition that RDF is being transferred to port locations throughout the UK and is currently being exported overseas.</p>
19 – 23	<p>Comments on Greenhouse Gas emissions and Climate Change impacts – UKWIN calculation of carbon intensity of exported electricity</p>	<p>The Applicant has no further comments but notes that UKWIN used the upper end of the range of carbon and fossil carbon contents presented in 'Climate Change – Further Greenhouse Gas Emissions Analysis and Consideration of Waste Composition Scenarios' (document reference 9.6, REP1-019). As stated in The Applicant's Response to UKWIN submitted at Deadline 5 (document reference 9.64, REP5-009), the range of fossil carbon contents from 40 – 60% were considered to provide an indication of potential waste compositions that could be processed at the Facility, due to uncertainties in future Government policy and individual behaviours. Therefore, the adoption of the 60% fossil carbon content only presents the upper end of potential emissions from the Facility.</p>
24 – 27	<p>Comments on Greenhouse Gas emissions and Climate Change impacts – weight of carbon benefits or disbenefits</p>	<p>The Applicant maintains that the processing of waste at the Facility will result in lower levels of greenhouse gas emissions compared to existing waste treatment pathways, including landfill and export to Europe. In addition, the Facility will have the added benefit of providing a continuous and reliable source of 80MWe electricity to the UK grid.</p>