



**The RSPB's comments on the Applicant's response to the  
ExA's commentary of the draft Development Consent Order  
(DCO) and Critique of draft DCO Schedule 11**

**for the  
Royal Society for the Protection of Birds**

**Submitted for Deadline 7**

**1 March 2022**

**Planning Act 2008 (as amended)**

**In the matter of:**

**Application by Alternative Use Boston Projects Limited for an  
Order Granting Development Consent for the  
Boston Alternative Energy Facility**

**Planning Inspectorate Ref: EN010095**

**Registration Identification Ref: 20028367**

## 1. Introduction

- 1.1 The RSPB is continuing to review the revised draft DCO submitted at Deadline 6 (8 February 2022). For Deadline 7 (1 March 2022), we have focussed on responding to the Applicant's comments on the ExA commentary (Table 1 below) and the draft Schedule 11 (Table 2 below). For ease of reference, we have included our brief comments from Deadline 5 on the ExA Commentary (REP5-018) as context for our detailed comments.

## 2. The RSPB's concerns with the draft Development Consent Order submitted at Deadline 5 (25 January 2022)<sup>1</sup>

- 2.1 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.
- 2.2 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.
- 2.3 We welcome the Examining Authority's commentary on the DCO<sup>2</sup> (11<sup>th</sup> January 2022) and will review the Applicant's responses, especially (Qu 3) on how any compensation measures proposed will be secured in the DCO if the Secretary of State determines that there is an adverse effect on integrity.
- 2.4 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.

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<sup>1</sup> [https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010095/EN010095-000910-Alternative%20Use%20Boston%20Projects%20Limited%20-%20Revised%20draft%20Development%20Consent%20Order%20\(DCO\)%201.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010095/EN010095-000910-Alternative%20Use%20Boston%20Projects%20Limited%20-%20Revised%20draft%20Development%20Consent%20Order%20(DCO)%201.pdf)

<sup>2</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010095/EN010095-000974-dCOs%20Commentary%20Boston%20BAEF%2011012022.pdf>

### 3. RSPB comments on the Applicant's Responses to the Examining Authority's Commentary on the Draft Development Consent Order (REP5-005)

Para ref	ExA Commentary wording	Applicant's response	RSPB comments
2.2.2	I note that the Applicant has referred to reaching Section 106 agreements (s 106) with the EA and the local planning authorities. I remind the parties that the six month period for Examination is a strict one and that I must issue my recommendation report along with any draft s 106 agreements (where appropriate) three months after completion of the Examination. In order for any agreement to be considered by me in determining the application, they need to be agreed and signed by the parties. I consider that it would assist the Examination if the Applicant produced a timetable detailing:	The Applicant is currently in discussions with both Lincolnshire County Council (LCC) and Boston Borough Council (BBC) in relation to a single section 106 (s.106) agreement which both Councils would be party to, along with the Applicant and (if required) Alchemy Farms Limited, as the freeholder of the land included within the Order Limits (with the exception of land which is Crown Estate)	<p>We welcome this clarity from the ExA regarding the timeline for determining the DCO application. We note, however, that additional ornithological surveys are being completed by the Applicant up to March 2022. We again repeat our concern that important additional information will be submitted at a very late stage to the Examination which will leave very limited time for interested parties to review and comment and help ensure the ExA has a full range of views on the implications of the additional information in respect of the impacts of the development on the various protected sites.</p> <p>We welcome the delivery of Biodiversity Net Gain measures, but we continue to have concerns that such measures are being conflated with compensation measures, as we have set out in our comments on the Applicant's draft in-principle compensation measures (REP4-028).</p>
2.2.3	<ul style="list-style-type: none"> <li>• each of the s 106 obligations proposed;</li> <li>• date for submission of draft s 106 agreements to Examination; and</li> <li>• proposed date for submission of final agreed version.</li> </ul>	<p>A summary of the obligations proposed in the s.106 agreement is provided below:</p> <ul style="list-style-type: none"> <li>• To provide apprenticeships in connection with the Facility;</li> <li>• To provide a local employment agreement;</li> <li>• To provide a scheme of interpretation along the diverted public right of way;</li> <li>• To provide a range of enhancements measures along the diverted public right of way;</li> <li>• To use reasonable endeavours to incorporate battery storage infrastructure within or alongside the Facility;</li> <li>• To use reasonable endeavours to consider the maximisation of carbon dioxide captured by the Facility and exported to local companies;</li> </ul>	

Para ref	ExA Commentary wording	Applicant's response	RSPB comments
		<ul style="list-style-type: none"> <li>• To provide a number of Electric Vehicle charging points at the Facility;</li> <li>• To undertake a range of Biodiversity Net Gain measures in the Boston area; and</li> <li>• To use reasonable endeavours to explore opportunities to accept and treat local waste feedstock.</li> </ul>	
2.3.2	Regarding the 'without prejudice' derogation case. Please explain how the compensation measures proposed will be secured in the DCO if the Secretary of State determines that there is an adverse effect on integrity?	In the event the Secretary of State determines there is an adverse effect on integrity, the Applicant has prepared on a without prejudice basis a draft schedule that would be added to the DCO to secure the compensation measures. A draft of this schedule is attached as Appendix 1 to this document.	Whilst the establishment of an Ornithology Engagement Group (OEG) would be essential, it is of serious concern that Appendix 1 focusses on the OEG that would apparently develop the detail regarding delivery and implementation of any required compensation measures post-determination. As we set out below in our comments on the draft Schedule 11, substantial work is needed now to ascertain any predicted adverse effects, identify and agree appropriate compensation measures that would meet the complex ecological requirements of the affected species and then demonstrate that such measures have been secured and are deliverable. All of this must be established as part of the DCO determination process and not after the fact. Our position on such an approach has been detailed in our Written Representation (REP1-060).  Whilst the proposed approach has been adopted for recent Offshore Wind Farm decisions, there are substantial differences with the Boston Alternative Energy Facility DCO application. The need for a derogation case was established at an early stage of discussions with the Applicant, with the RSPB's high-level comments on this provided 19 June 2020. The position of all environmental bodies has not changed. The Applicant actively chose to submit the DCO Application in the full knowledge that current DCO determination had established the need for a full derogation case to be
2.3.3		It requires the establishment of an Ornithology Engagement Group and the approval by the Secretary of State of an ornithology compensation implementation and monitoring plan for the delivery of measures to compensate for the predicted disturbance to waterbirds.	
2.3.4		This a similar approach to that taken to secure compensation measures in the made Hornsea Three Offshore Wind Farm Order 2020, the made Norfolk Boreas Offshore Wind Farm Order 2021 and the draft East Anglia TWO Offshore Wind Farm Order and the drafting of the schedule is based on the schedules included in those Orders.	

Para ref	ExA Commentary wording	Applicant's response	RSPB comments
			<p>provided as part of the application. We set this position out in our Written Representation (REP1-060).</p> <p>As was discussed with the Applicant at our first meeting in September 2019 and follow up communications in October 2019, there was a need to:</p> <ul style="list-style-type: none"> <li>• Establish the baseline understanding of waterbird use along the navigation channel to determine species affected.</li> <li>• Review the ecological requirements of the species affected to inform measures that could mitigate or compensate for adverse effects.</li> <li>• Where compensation is needed, appropriate land will be required to create habitat(s) at a suitable scale to compensate for lost roosting, foraging etc. Suitable sites will need to have appropriate water supply and management, and ensure disturbance could be effectively managed.</li> </ul> <p>The Applicant has had at least 12-18 months to seek to develop a comprehensive package of compensation options targeted to the needs of the impacted species that would address the above points. However, the Applicant chose to enter the Examination without any of this detail having been secured. This should not now be used as an excuse to defer substantial levels of necessary detail on the nature, scale, design and delivery of compensation measures to post-determination. Without such information it is not possible to have confidence that ecologically appropriate compensation has been identified and secured that will ensure the coherence of the National Site Network is protected.</p>

#### 4. Critique of draft Schedule 11 – Ornithology Compensation Measures (REP6-002 (clean version) & REP6-003 (tracked changes))<sup>3</sup>

Para/Clause ref	Draft DCO wording	RSPB comments
1	Ornithology Compensation Measures—(1) In this Schedule—	<p>The impact of the DCO facility will cause increased disturbance and also result in the loss of habitat. Collectively, these will result in:</p> <ul style="list-style-type: none"> <li>• Loss of roosting habitat</li> <li>• Loss of foraging habitat</li> <li>• Displacement from areas of The Haven for roosting, foraging, bathing and loafing.</li> </ul> <p>All of these factors need to be appropriately addressed within the DCO wording. The present draft wording fails to reflect the breadth of adverse effects on integrity.</p>
1	“OCIMP” means the ornithology compensation implementation and monitoring plan for the delivery of measures to compensate for the predicted disturbance to waterbirds from The Wash SPA [(and functionally linked habitat)] as a result of the authorised development.;	<p>This should also reference the habitat loss to ensure all impacts of the development are captured.</p>
1	“OEG” means the Ornithology Engagement Group;	<p>To ensure the purpose of the OEG is clearly defined, we request the following text be added at the end:</p> <p>“...which will oversee the implementation, management and monitoring of the compensation measures in perpetuity”.</p>
1	“ornithology compensation plan” means the document “Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures” certified by the	<p>The draft Ornithology Compensation Plan (as submitted at Deadline 2) was not fit for purpose for the reasons set out in the RSPB’s comments at Deadline 4 (REP4-028). We do not consider the updated Ornithology Compensation Plan submitted at Deadline 6 (REP6-026) to be fit for purpose either and we will provide more detailed comments on this in future submissions.</p>

<sup>3</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010095/EN010095-001031-Alternative%20Use%20Boston%20Projects%20Limited%20-%20Revised%20draft%20DCO%201.pdf>

Para/Clause ref	Draft DCO wording	RSPB comments
	<p>Secretary of State as the ornithology compensation plan for the purposes of this Order under article 47 (certification of documents, etc.); and</p>	<p>Critical to development of an adequate Ornithology Compensation Plan that can form the basis for Schedule 11 is acknowledgement and agreement by the Applicant of the adverse effects on integrity on The Wash SPA and Ramsar site. This includes a proper understanding of the different waterbird species affected, the ecological functions that any compensation would need to replace and habitat measures that address those ecological functions in full. Given the diversity of waterbird species predicted to be affected by this scheme, this will require careful consideration of how best to meet their complex needs. Any Ornithology Compensation Plan should set these out in full so that there is a proper audit trail for the OEG to refer to. It is important to remember that this document will form the basis for developing the OCIMP which in turn will govern the implementation and oversight of the compensation measures for many decades and so must be clearly set out so that those not involved at this current stage understand the rationale underpinning the compensation measures.</p> <p>It is likely to require the provision of different habitat types, possibly at multiple locations. Each potential compensation site will require detailed ecological assessment to determine if it is capable of providing the ecological functions required.</p> <p>Without acceptance of this, it is not possible for the Ornithology Compensation Plan's scope to be properly established in terms of the type, nature and principles of compensation measures required to ensure the coherence of the National Site Network have been secured and can be properly implemented by the Applicant.</p> <p>It is evident from the comments of the RSPB, Natural England and the Lincolnshire Wildlife Trust that the nature conservation bodies do not consider the OCP is currently fit for purpose.</p> <p>An "In Principle" compensation plan does not mean an "outline" compensation plan. It must contain sufficient detail to satisfy both the Examining Authority and the Secretary of State that the resulting compensation measures have been secured legally financially and will be effective ecologically and will, if implemented properly, protect the coherence of the National Site Network in respect of the SPA/Ramsar features affected.</p>

Para/Clause ref	Draft DCO wording	RSPB comments
		<p>Therefore, significant revisions will be required to the OCP before it can form the basis of a certified document and any consent.</p> <p>The work described at section 4 of the draft OCP (Deadline 6; REP6-026) provides a starting point for such revisions. However, we note that this work would need to be completed and agreed with Interested Parties as adequate before the end of examination in order for the OCP to be considered fit for purpose.</p>
1	<p>“The Wash SPA” means the site designated as The Wash Special Protection Area</p>	<p>This should refer also to The Wash Ramsar site which is designated for similar reasons and which should be treated in the same way as SPAs and SACs in respect of the Habitats Regulations. We have identified the need for this in our Written Representations (REP1-059) and comments on the Ornithology Addendum (REP4-026). This is especially important to ensure that the appropriate consideration is given to species such as golden plover and ruff which are specifically referenced in the Ramsar citation (as set out in paragraph 3.50 of our Written Representations (p.30)). We also note Natural England’s position with respect to The Wash Ramsar site in their response to the second Written Questions at Deadline 5 (REP5-012), which supports the importance of ensuring The Wash Ramsar site is considered both during Examination and post-Examination.</p>
2	<p>The authorised development may not be commenced until a plan for the work of the OEG has been submitted to and approved by the Secretary of State. Such plan must include:</p> <ul style="list-style-type: none"> <li>(a) terms of reference of the OEG;</li> <li>(b) details of the membership of the OEG;</li> <li>(c) details of the schedule of meetings, timetable for preparation of the OCIMP and reporting and review periods; and</li> <li>(d) the dispute resolution mechanism.</li> </ul>	<p>We welcome the detail set out defining the role of the OEG. We request that key members of the group be named for clarity within the Schedule as part of the definitions. This should include the RSPB, Natural England and the Lincolnshire Wildlife Trust.</p>



Para/Clause ref	Draft DCO wording	RSPB comments
3	<p>Following consultation with the OEG, the OCIMP must be submitted to the Secretary of State for approval (in consultation with the relevant statutory nature conservation body). The OCIMP must be based on the principles for ornithological compensation set out in the ornithology compensation plan and include:</p>	<p>This clause states the OCIMP must be based on the principles set out in the OCP. However, the draft OCP contains no explicit reference to “principles” for ornithological compensation. Therefore, there is inherent ambiguity in the clause as currently worded.</p> <p>It is necessary to ensure that there is continuity between the Habitat Regulations Assessment conclusions, DCO Schedule 11 and the OCP. Therefore there needs to be a section in the OCP where the compensation requirements and principles are clearly laid out. We are reviewing potential principles to aid the ExA and will provide some suggestions at Deadline 9 (24 March 2022).</p>
3(a)	<p>details of location(s) where compensation measures will be delivered and the suitability of the site(s) to deliver the measures (including why the location is appropriate ecologically and likely to support successful compensation);</p>	<p>For the reasons set out above and in our detailed submissions (see our Written Representations; REP1-060), it is the RSPB’s considered view that this detail is required <u>before</u> the end of the examination, as it is critical to a determination as to whether the proposed compensation measure(s) will be capable of providing the ecological functions of the different waterbird species affected.</p> <p>Details on suitability of possible locations include:</p> <ul style="list-style-type: none"> <li>- Size and design of site</li> <li>- water supply and water level management</li> <li>- vegetation management</li> <li>- disturbance impacts and mitigation (from pedestrians and dogs in particular)</li> <li>- etc</li> </ul> <p>In practical terms, there are a significant number of ecological variables that need to be evaluated for any specific site to determine whether or not the proposed habitat creation and management will succeed. This is central to why the RSPB has been consistent in its request for detailed compensation proposals.</p> <p>The Applicant’s further information provided in the updated compensation measures document (REP6-026) does not add the level of detail outlined above and arguably underlines the need for more detailed site locations and plans to be provided prior to the end of the Examination.</p>

Para/Clause ref	Draft DCO wording	RSPB comments
3(b)	<p>details of landowner agreements demonstrating how the land will be bought or leased and assurances that the land management will deliver the ecology objectives of the OCIMP;</p>	<p>It is the RSPB's view that these should be made available to interested parties for scrutiny as part of the examination process in order to validate that any such agreements are consistent with the successful implementation of any compensation requirements.</p>
3(c)	<p>details of designs of the compensation measures and how risks from avian or mammalian predation and unauthorised human access will be mitigated;</p>	<p>For the reasons set out above (see comments on the definition of the Ornithology Compensation Plan) it is the RSPB's considered view that this critical information should be submitted to the examination for careful scrutiny by Interested Parties. It is central to being able to advise the Examining Authority and the Secretary of State as to whether any proposed compensation measures are capable of being implemented with a reasonable guarantee of success.</p> <p>By way of contrast, the RSPB is an experienced land manager and would not take on management of land without a detailed understanding of the land and the key ecological and other factors that will determine whether the land can be managed successfully to meet specified ecological objectives.</p> <p>Therefore, we consider the Applicant's approach is high risk. In essence it proposes taking on land it has not fully identified and/or secured, and to do so in the absence of a clear implementation and management plan based on a detailed understanding of the site's physical and ecological characteristics such that it would have a reasonable guarantee of successfully meeting the ecological requirements of the target SPA/Ramsar waterbird species. This also links to the comments we have made on the time needed to develop the site and ensure it is functioning prior to construction commencing and damage would occur (see comments on 3(d) below).</p> <p>In this context it becomes even more critical as the Secretary of State is being asked to approve a scheme that would result in damage to internationally important nature conservation interests on the basis of little or no information as to whether such damage is capable of being compensated for successfully and, if so, when by.</p>

Para/Clause ref	Draft DCO wording	RSPB comments
3(d)	<p>an implementation timetable for delivery of the compensation measures that ensures all compensation measures are in place prior to the impact occurring (e.g. [for dredging and construction impacts to the habitat within Work No. 4 the measures will be in place prior to any dredging or construction works on the intertidal habitat and] for the compensation for disturbance at the mouth of The Haven the measures will be in place prior to operation of the authorised development);</p>	<p>This is wholly inadequate and is highly likely to exacerbate the adverse effect on integrity of the scheme on SPA/Ramsar waterbirds by delaying the availability of fully functioning compensation habitat that meets their ecological requirements i.e. it will create an unnecessary and, critically, avoidable time lag.</p> <p>It is an established principle and practice that compensation measures should be implemented and ecologically functioning in advance of damage occurring in order to meet the legal obligation to protect the coherence of the National Site Network. The current drafting deliberately precludes this.</p> <p>The amount of time in advance such compensation provision should be made corresponds to the nature of the ecological requirements to be met for the different species impacted and the timescale over which the proposed compensation sites will take to develop to a point whereby they meet those ecological requirements. This is the reason why there is an urgent need for the Applicant to reach agreement on these issues and for interested parties to have critically evaluated any proposed compensation locations to determine if they are fit for purpose. The baseline conditions of each compensation site will determine the time it will take for the requisite quality habitat to develop in advance of damage. This requires detailed knowledge and assessment of each proposed compensation location.</p> <p>Each project's impacts are unique and therefore each needs to consider the ecological requirements of the species or habitats it will adversely affect before determining the length of time needed to implement compensation measures to ensure the overall coherence of the National Site Network is protected. As a guide, our experience is that freshwater lagoons may be functioning within 1-3 years of creation, saline lagoons within 2-4 years, and wet grassland potentially within 5-7 years. However, this will be dependent on a range of factors such as existing habitat use, nutrient loads, water availability and water control etc. These timings are provided as a guide only. It is likely that additional adjustments would be required and fully functioning habitat could take as long as 10-15 years to achieve their desired outcomes. This has to be fully factored into any delivery timetable in respect to the construction and operation of the scheme.</p>

Para/Clause ref	Draft DCO wording	RSPB comments
		<p>We note that the Secretary of State for BEIS addressed the issue of time lag in his decisions regarding Hornsea Three and Norfolk Boreas offshore wind farms, albeit in the specific circumstances of those cases.</p>
3(e)	<p>details of the proposed ongoing monitoring and reporting on the effectiveness of the measures, including: survey methods; success criteria; adaptive management measures; timescales for the monitoring and monitoring reports to be delivered; and details of the factors used to trigger alternative compensation measures and/or adaptive management measures;</p>	<p>We support this in principle. However we consider it necessary for agreement on these issues to be reached prior to any consent i.e. before the end of the examination.</p> <p>Given the difficult history of this application in respect of the carrying out of relevant survey work, the RSPB strongly recommends that a draft monitoring and reporting plan is submitted before the end of the examination in sufficient time for interested parties to comment and, ideally, reach agreement.</p> <p>However, it is reliant on proper knowledge of the proposed compensation measures and locations to ensure the various requirements are appropriately targeted.</p> <p>The identification of appropriate adaptive management measures will be dictated by the nature of each compensation location, its objectives and associated ecological design in order to know what is within the bounds of practical measures which can be taken to address any likely problems.</p> <p>In the absence of this critical information (see comments above and in our other written submissions), a commitment to the future identification of “adaptive management” becomes a promise of “jam tomorrow” as there is no ecological foundation upon which it can be based and by which interested parties and the Secretary of State can judge whether any adaptive management will be feasible in practice and in situ.</p>
3(f)	<p>details of any adaptive management measures;</p>	<p>See 3(e) above.</p>
3(g)	<p>provision for annual reporting to the Secretary of State, to include details of the use of each site by waterbirds (split into species accounts) to identify barriers to</p>	<p>The RSPB suggests the following amendment to the wording to ensure that the annual reports are made publicly available. At end add:</p>

Para/Clause ref	Draft DCO wording	RSPB comments
	success and target the adaptive management measures. This would include the number of birds using the site; evidence of birds roosting, foraging and bathing around high tide periods and any evidence of continued disturbance from vessels.	<p>“...Reports to have been reviewed and agreed by the OEG and to be made available for public scrutiny.”</p> <p>This is on the basis that the compensation measures are to ensure the overall coherence of the National Sites Network and therefore the monitoring of success of such measures should be made available to the public as Natural England does with all its protected sites monitoring.</p>
3(h)	details of the compensation site(s) maintenance schedule; and	<p>We recommend this be amended to ensure it is appropriately targeted at the development of a management plan for the compensation site(s). The following text should be added:</p> <p>“details of the management and maintenance prescriptions and schedule appropriate to the suite of habitats to be created at each compensation location.”</p> <p>This should comprehensively set out the management plan (to cover 5+ years at a time) for each compensation location required and be reviewed annually and for as long as the compensation is required. The management plan should clearly state what the objectives are, how they are going to be met, with any specific management needed, and what monitoring is required to inform management etc. The resource requirements, including an indication of staffing resources, needed to deliver the management plan will be essential to ensure it will be effectively delivered.</p>
3(i)	minutes from all consultations with the OEG.	<p>We suggest rephrasing this, given that any consultation responses from members of the OEG will be in writing. Our suggested wording is:</p> <p>“minutes from all meeting with the OEG and copies of any written consultation responses from the OEG on matters relating to the development of the OCIMP.”</p>
4	The undertaker must implement the measures as set out in the OCIMP approved by the Secretary of State, unless otherwise agreed in writing by the Secretary of State in consultation with the relevant statutory nature conservation body and no part of the authorised development may begin	<p>See the RSPB’s comment under 3(d) above in relation to the timing of delivery of fully functioning compensation in order to protect the coherence of the National Site Network.</p> <p>We therefore propose an amendment to the draft wording set out here:</p>

Para/Clause ref	Draft DCO wording	RSPB comments
	operation until the implementation of the measures set out in the OCIMP.	<p>“The undertaker must implement the measures as set out in the OCIMP approved by the Secretary of State, unless otherwise agreed in writing by the Secretary of State in consultation with the relevant statutory nature conservation body.</p> <p><u>Construction and no part of the authorised development may not begin until the OEG has agreed that the measures set out in the OCIMP to compensate for the adverse effects on The Wash SPA/Ramsar site arising from the loss of roosting and foraging habitat at the Application site have been implemented and are fully functional.</u></p> <p><u>Operation of the authorised development may not begin until the OEG has agreed that the measures set out in the OCIMP to compensate for the adverse effects on The Wash SPA/Ramsar site arising from displacement from areas of The Haven for roosting, foraging, bathing and loafing until the implementation of the measures set out in the OCIMP have been implemented and are functioning fully functional.”</u></p>
5	The undertaker must notify the Secretary of State of completion of implementation of the measures set out in the OCIMP.	No comment
6	<p>Unless otherwise agreed in writing by the Secretary of State or unless the measures set out in the OCIMP have already been delivered, the undertaker must not commence construction of Work No.1 until it has first—</p> <ul style="list-style-type: none"> <li>(a) provided a reasonable estimate of the cost of delivery of the compensation measures; and</li> <li>(b) put in place either— <ul style="list-style-type: none"> <li>(i) a guarantee in respect of the reasonable estimate of costs</li> </ul> </li> </ul>	<p>See the RSPB’s comment under 3(h) above in relation to the evidence needed to demonstrate that effective delivery of fully functioning compensation in order to protect the coherence of the National Site Network will be secured.</p>

Para/Clause ref	Draft DCO wording	RSPB comments
	<p>associated with the delivery of the compensation measures; or (ii) an alternative form of security for that purpose,</p> <p>that has been approved by the Secretary of State.</p>	
7	<p>The compensation measures delivered under this Part must not be decommissioned without the written approval of the Secretary of State, in consultation with the relevant statutory nature conservation body.</p>	<p>Given that any compensation measures are to maintain the integrity of The Wash SPA/Ramsar, any habitat created should be developed to a standard that enables it to become a formal component of those sites and the National Site Network to ensure compliance with regulation 68, Conservation of Habitats and Species Regulations 2017 (as amended), which requires that compensation be secured to ensure the overall coherence of the national Sites Network. We therefore do not agree that compensation measures can be “decommissioned” after a defined period of time, rather, such measures should be maintained in perpetuity.</p>
8	<p>[Unless otherwise agreed in writing by the Secretary of State, the compensation measures in place for habitat affected by the construction and operation of Work No 4 must be maintained following the decommissioning of Work No. 4, unless the intertidal habitat is reinstated to an acceptable condition to enable waterbirds to return to use this area for roosting.]</p>	<p>See the RSPB’s comment under 7 above given the need to demonstrate that compensation measures are secured in perpetuity in order to protect the coherence of the National Site Network.</p>
9	<p>The OCIMP approved under this Schedule includes any amendments that may subsequently be agreed in writing by the Secretary of State, in consultation with the relevant statutory nature conservation body. Any amendments to or variations of the approved OCIMP must be in accordance with the principles set out in the ornithology</p>	<p>We consider that any proposed changes should not only be following consultation with members of the OEG, but also with their agreement to ensure changes made following the Examination and decision-making process at least have the members of the OEG actively involved and able to say ‘no’ if proposals are not acceptable. This will also enable the OEG to provide assurance to the Secretary of State regarding the merits of any changes and are based on the best available evidence and will be ecologically appropriate.</p> <p>Therefore we suggest the following amendment:</p>

Para/Clause ref	Draft DCO wording	RSPB comments
	<p>compensation plan and may only be approved where it has been demonstrated to the satisfaction of the Secretary of State that it is unlikely to give rise to any new or materially different environmental effects from those considered in the ornithology compensation plan.</p>	<p>“Any amendments to or variations of the approved OCIMP must be in accordance with the principles set out in the ornithology compensation plan and <u>following consultation with and the agreement of the OEG</u> and may only be approved where it has been demonstrated to the satisfaction of the Secretary of State that it is unlikely to give rise to any new or materially different environmental effects from those considered in the ornithology compensation plan.”</p>
10	<p>In the event of any conflict or inconsistency between the terms of the waterbird compensation plan and the provisions of this Order, the provisions of this Order prevails.</p>	<p>No comment</p>