



**Comments on the Applicant's Without Prejudice Derogation
Case: Compensation Measures (REP8-005)**

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

Submitted for Deadline 10

7 April 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

Paragraph number	HRA wording	RSPB comments
1.1.2	This assessment of potential compensatory options provides information in support of Stage 4 (part 2) of the without prejudice Habitat Regulations Assessment (HRA) process for the Facility and identifies 'potential compensation measures' to provide additional or enhanced habitat for birds should this be required.	The focus of compensation is to provide for the waterbirds that will be disturbed and displaced, as well as account for the loss of supporting habitat (for roosting, foraging, bathing and loafing). Sufficient detail must be provided to demonstrate that such replacement habitat will address the ecological requirements for the different species affected and has been secured.
1.1.5	The key issues that have been assessed within Appendix 17.1: the HRA (document reference 6.4.18, APP-111) and the ornithology addendum to the HRA (Ornithology Addendum) (document reference 9.13, REP1-026) include the loss of habitat at the Principal Application Area for roosting redshank and an increased level of disturbance, both at the mouth of The Haven and at the Application Site, due to vessel numbers using The Haven during construction and operation. This is discussed further below. The remainder of The Haven is not known to support populations of roosting birds but there is the potential for some birds to use this area. This is discussed in the Ornithology Addendum.	Agreed, but the impacts are also in the context of the development actively displacing birds during construction and operation such that areas that could remain available for them to utilise will not be used due to visual and noise impacts. It remains unclear how this area of displacement is accounted for within the Applicant's assessments.
1.1.12	However, despite the additional information presented, there is the potential that the Interested Parties will continue to conclude that it is not possible to exclude AEOL. Notwithstanding the Applicant's position that there will be no AEOL of any designated site, this document is therefore produced on a without prejudice basis in order to address part 2 of Stage 4 of the derogation process (to provide compensation for the AEOL) and provides a review of a range of potential measures that could be adopted to compensate for the potential effects on the birds using The Wash SPA and Ramsar.	It will not be a surprise to the Applicant that based on the available information it is not possible for the RSPB to conclude no adverse effect on integrity of The Wash SPA and Ramsar. This has been the position maintained by all interested parties prior to the Examination. It was made clear to the Applicant at meetings in February 2021 that a derogation case should be developed. The Applicant chose to ignore the advice given at the time and resubmit in the full knowledge that the RSPB, Natural England, Lincolnshire Wildlife Trust and others still had outstanding concerns about the Application evidence.
1.1.14	The Chapter 17 Marine and Coastal Ecology and Appendix 17.1 Habitats Regulations Assessment Update (document reference 9.59, REP5-006) provided further information following additional investigation on the potential connectivity of the Principal Application Site and the birds using the SPA and Ramsar site. The	The RSPB highlighted why the Applicant's position is flawed with respect to the Application site not being functionally linked to The Wash SPA and Ramsar in our comments on response to Third Written Questions (REP8-029). We fundamentally disagree with the

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	<p>findings for this were that it is unlikely that there is a functional link between the habitats at the Application Site and the SPA and Ramsar sites. This was based on the requirement for functionally linked habitats for birds to: a) lie within reasonable flight distances; b) comprise suitable foraging/loafing/resting habitats; and, c) be large enough to realistically support 1% of a SPA /Ramsar population. For the 'without prejudice' derogation case, compensation habitat has however been provided based on the assumption that this is not accepted, and the Principal Application Site is considered to be functionally linked to the SPA and Ramsar site. The proposed net gain/compensation measures would provide habitat for any birds using the mouth of The Haven, the Application Site and the intervening area of The Haven.</p>	<p>criteria that the Applicant has used and have identified serious misinterpretation of the two core papers used to support their position.</p> <p>It is clear that features of The Wash SPA and Ramsar use The Haven, and can occur in significant numbers (i.e. over 1% of The Wash SPA and Ramsar populations). With respect to redshanks in particular, the available evidence (published and unpublished) shows that this species will move between roosting and feeding sites over distances at least 4km (which would allow them to access The Wash SPA and Ramsar in the Hobhole area) and much greater distances that would easily see them able to travel the c.7kms from the Application site to the mouth of The Haven.</p> <p>The need for compensation measures to be provided as part of the DCO application has been raised with the Applicant since June 2020 and reiterated at meetings in February 2021 (see above).</p>
1.1.15	<p>It should be noted that if compensatory measures are not required, the Applicant is still committed to undertake measures to provide a biodiversity net gain for the project, despite net gain not being a legal or policy requirement for Nationally Significant Infrastructure Projects (NSIPs) at this time.</p>	<p>We welcome the Applicant's commitment to deliver habitat that would benefit waterbirds and wider biodiversity. However, there still needs to be sufficient detail provided to demonstrate that the full suite of measures proposed by the Applicant will be deliverable.</p>
1.1.16	<p>If compensatory measures are required because the Secretary of State (SoS) decides that there is an AEoI then they would be secured through the Development Consent Order (DCO) via the Ornithology Compensation Measures Schedule (submitted as a draft within the draft DCO submitted at Deadline 6 (document reference 2.1(3)).</p>	<p>Whilst the DCO provides the mechanism to secure the compensation measures that have been set out by the Applicant, sufficient detail must be provided to demonstrate that the necessary land has been secured and that an appropriate design for the sites is in place. This is necessary to demonstrate that the measures proposed will be effective at delivering their intended ecological benefits and will protect the overall coherence of the National Site Network.</p>
1.2.3	<p>The construction period for the whole development, including pre-construction enabling works and commissioning, is anticipated to be up to 55 months, as per the Indicative Construction Programme (document reference 9.18, REP1-031).</p>	<p>The Construction Programme must set out the period when compensation measures will be created and monitored to demonstrate that they are fully functioning.</p>

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		<p>Currently, pre-construction works (November 2022 to August 2023) have an indicative 10-month period to complete and the Habitat Mitigation works are scheduled to take an indicative 7-months (January to July 2023; REP1-031). There is no timetable included for Compensation Measures which are separate from both these pieces of work. We have highlighted that it can take up to five years for habitats to be created and ecologically functioning (REP7-032). Ecologically functioning compensation measures must be in place prior to harm occurring in order to protect the coherence of the National Site Network.</p> <p>For example, Clause 5d of the dDCO Schedule 11 states that: <i>“d) 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 habitat loss as a result of the construction of 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 by the increased number of vessels, the measures will be in place for at least two years prior to the hot commissioning of line 2 of Work No. 1A);”</i></p> <p>Given compensation measures will need to be created and functioning prior to June 2023 (based on the indicative construction timeline) the construction timeline does not accommodate the delivery of the compensation measures. The timeline for delivery of the compensation measures will be further extended given the need for planning permission to be granted and all relevant consents secured. We note Boston Borough Council have highlighted that the RSPB needed to secure planning permission for our habitat creation projects along The Haven in their letter at Deadline 7 (REP7-021) and</p>

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		as we highlighted in our Deadline 7 submission (REP7-032). A realistic construction timeline must be provided that incorporates compensation measures delivery that ensures they are fully ecologically functional before damage. This is in order to protect the coherence of the National Site Network.
1.2.3	The construction of the wharf would involve the removal of intertidal habitat comprising approximately 1 ha of saltmarsh and 1.5 ha of mudflat from within The Haven (but outside of the SPA, SAC and Ramsar site).	Whilst direct habitat loss has been calculated by the Applicant, we have seen no evidence that any consideration has been made of the area around the works that will indirectly be lost to foraging waterbirds due to construction and operation activities. This additional area of habitat needs to be calculated and included in the compensation measures calculations.
1.2.5	The Application Site also includes a habitat mitigation area which involves relocation of the rocks used by roosting redshank and other bird species from one area of the existing roosting site (that would be lost) to another (that remains and would be far enough from the wharf area to avoid disturbance from vessels berthing).	<p>We continue to have concerns about the 'Habitat Mitigation Area', as we have detailed in our Deadline 7 submissions (REP7-030). The Applicant does not appear to have considered the impact of vessels moving up The Haven (at speeds over 6 knots and up to approximately 12 knots, as set out in the Marine Mammal Mitigation Strategy and highlighted in our Deadline 8 cover note (REP8-028)).</p> <p>No measures have been outlined regarding the management measures that would be implemented to keep dogs and people away from the mitigation area. Our position remains that this measure is best considered as compensation given outstanding uncertainties over its effectiveness.</p>
1.2.19	The proposed increase in cargo vessel numbers should be considered in the context of the number of current and historical vessel movements. This has varied considerably over the last 26 years between approximately 800 and 400 vessels per year, as shown in Figure 1-1 . The Port has been operational since before the SPA was designated, certainly back to 1918 when there were higher numbers of vessels (approximately 1000) visiting per year (Port of Boston, pers com.).	We have addressed this in earlier submissions (REP4-026). Any conclusions regarding the ability of The Haven to accommodate increased vessel movements must be based on the current ecological importance.
1.3.1	This Compensatory Measures Report presents an outline of each measure together with next steps required to progress each measure which will need to be	As highlighted in our comments on the draft DCO Schedule 11 (REP7-031), the Compensatory Measures Report must not be so

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	undertaken through consultation with landowners, NE, the RSPB, LWT and the Environment Agency, amongst others.	'outline' as to provide no detail to enable conclusions to be made about the effectiveness of proposed compensation measures.
1.3.2	Discussions were held with the RSPB and NE on 13th October 2020 to determine the potential for opportunities for habitat gain within the RSPB reserves near the mouth of The Haven (Freiston Shore reserve and Frampton Marshes reserve). These discussions focussed on the Applicant's desire for the project to achieve a net gain for biodiversity. Potential opportunities for habitat management were identified at the time, although not confirmed. However, later (September 2021) the RSPB informed the Applicant that these opportunities no longer existed as they had alternative funding for the proposed projects within the RSPB reserves to create additional lagoons for birds within the RSPB reserves around the mouth of The Haven.	The RSPB clearly stated in our Relevant Representations submitted on 18 June 2021 (RR-026), that no compensation measures could be created on our reserves. The Applicant therefore had several months prior to the pre-examination meetings to progress work on the Compensation Measures. We provided comments on this point at Deadline 7 (REP7-031) and in in our comments on the RIES (REP9-065).
1.3.4	Furthermore, on review of the ES and HRA, RSPB and NE reached a conclusion that (in their opinion) AEOI could not be excluded for The Wash SPA and Ramsar site. As a consequence of that position, opportunities for providing compensatory measures have been sought (on a without prejudice basis) and these are identified within this report.	The position of the RSPB and Natural England has not changed since conversations in February 2021 with the Applicant on the resubmission of the DCO.
2.1.5	It is however recognised that it may not always be possible to compensate with a 'like-for-like' habitat or to compensate within the same designated site. As outlined above, following discussion with Natural England, it has been concluded that it is not possible to provide habitat within the same designated sites.	<p>Compensation measures should be provided that will provide for the ecological requirements of the species and habitats affected. The starting point is normally with the habitat that has been adversely affected and is not available to the impacted species. In certain circumstances and following careful expert ecological assessment, for some species a different habitat could be considered to deliver the required roosting or foraging function.</p> <p>Given the challenges of re-creating ecological functions of established habitat that will be lost, compensation measures should normally be provided on a greater than 1:1 ratio.</p>
2.1.6	It is also recognised that compensation should not be used to address issues that are causing designated habitats or species to be in an unfavourable condition. This is the responsibility of the UK Government.	The RSPB agrees that compensation measures should be <u>additional</u> to those measures necessary to maintain or restore designated

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		<p>habitats and species at favourable condition. This is in line with EC guidance on compensation measures:</p> <p>“Compensatory measures should be additional to the actions that are normal practice under the Habitats and Birds Directives or obligations laid down in EU law”</p> <p>(EC (2018)¹, section 5.4.1)</p>
2.1.7	Ideally, compensation should be in place prior to the predicted effect taking place.	<p>As stated above, the requirement is for compensation measures to protect the coherence of the National Site Network for the species and habitats adversely affected. This is why it is expected that compensation should be in place and fully ecologically functional before the predicted adverse effect(s) occur. In this way, there will be no loss of coherence.</p> <p>This is clear and long-standing guidance on the timing of compensation measures in relation to damage. It points to a failure on behalf of the applicant to plan the construction timetable alongside that for the design, delivery and implementation of fully functional compensation measures in order to protect the coherence of the National Site Network.</p> <p>We set out in our comments on the DCO Schedule 11 (REP7-031) that delivery of compensation measures must be prior to harm occurring to ensure the coherence of the National Sites Network is maintained.</p>
3.1.1	In the event that the Secretary of State determines that AEOI cannot be excluded, then it is expected (based on the comments received to date from NE, RSPB and	We continue to have concerns about waterbirds out to the Port of Boston anchorage area, for which no data have been collected or assessment carried out. We have set out our detailed comments on

¹ EC (2018) Managing Natura 2000 sites – The provisions of Article 6 of the ‘Habitats’ Directive 92/43/EEC (21/11/18) C(2018) 7621 final.

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	<p>LWT) that this would be due to at least one of the following potential reasons (as outlined in Section 1.1 above):</p> <ul style="list-style-type: none"> • Loss of wader roosting habitat at the Principal Application Site. • Vessel disturbance of waterbirds at the Principal Application Site. • Vessel disturbance of waterbirds at the mouth of The Haven. • Vessel disturbance of waterbirds along the middle stretches of The Haven. 	<p>this in reference to the Ornithology Addendum (REP4-026) and the species of concern in this area in Appendix 1 in our response to Third Written Questions (REP7-31).</p>
3.2.1	<p>The loss of habitat occurs about 3 km from the SPA boundary and as outlined above in Section 1.18 it is not considered likely that the redshank roosting and foraging at the Principal Application Site are actually part of the SPA population.</p>	<p>Please refer to our comments on paragraph 1.1.14 above.</p>
3.2.6	<p>However, should it [the Habitat Mitigation Area] still be determined that there is an AEOI then the HMA would provide compensation and no further compensation is considered to be necessary for roosting habitat loss at the Principal Application Site.</p>	<p>The RSPB considers the area for the alternative redshank roost and associated habitat works as compensation does not address the uncertainties that this would be an effective location. If an alternative roost is needed as compensation then an additional site will need to be identified for provision of the necessary ecological functions.</p>
3.3.1	<p>It is expected that the increase in vessel movements during operation (maximum numbers of vessels per year) would be up to two large vessel movements per high water tide period.</p>	<p>The additional vessels would result in up to 5 vessel movements per high tide. The worst-case scenario must take account of the full number of vessel movements per tide when considering the disturbance impact.</p>
3.3.2	<p>The area that is closest to the Habitat Mitigation Area is the aggregate wharf which is only predicted to be used by two vessels a week. Disturbance will therefore be relatively infrequent in this adjacent area once construction is completed. The operation of the Facility should be relatively constant and as such is not expected to disturb the birds using the area. Waders habituate to constant operations relatively well as can be seen by the number of waders that roost and forage in close proximity to port areas. In addition, the Habitat Mitigation Area has been designed to provide the additional habitat approximately 250m from the boundary of the Facility. This distance is expected to be sufficient to reduce disturbance</p>	<p>We disagree that activities can be considered “constant”. There will be activity when the vessels transit The Haven and then moor. There will then be activity during loading and unloading. Whilst it is indicated that it could take 15 minutes to turn a vessel there has been no information provided that sets out the length of time to moor, the length of time needed to unload RDF and the length of time needed to load aggregate. This needs to be provided to determine exactly what “constant” activity means and to understand whether habituation will even be possible. Habituation</p>

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	levels to an acceptable limit and is in line with the threshold distances for redshank as defined in the Waterbird Disturbance and Mitigation Toolkit	<p>will not be possible in relation to transiting vessels. There remains significant uncertainty on this issue.</p> <p>We also do not consider that sufficient evidence has been provided that a 250m distance from the Application site will address all disturbance impacts given vessels will pass by the 'Habitat Mitigation Area' both heading to and leaving the facility. We note that Natural England has requested further information to justify the 250m distance.</p>
3.4.3	<p>The HRA (document reference 6.4.18, APP-111) concluded no AEOI of The Wash SPA (either alone or in-combination with other plans and projects). What is clear from the survey data reported in the HRA and the Ornithology Addendum, is that there is already a level of disturbance during the baseline scenario that causes the majority of the SPA bird species to fly to alternative roosts during the high tide period when either large vessels or pilot vessels enter or leave The Haven. The increase of between 75 and 80% of days of disturbance to potentially 100% of days of disturbance is not expected to have an AEOI as there are clearly alternative roost sites that the birds are using when the large vessels transit The Haven. There are some species however that will return to the original roost site close to The Haven vessel transit area and would therefore be disturbed again during subsequent vessel movements. These are the birds that could most likely be affected by increased numbers of vessels.</p>	<p>The RSPB remains seriously concerned by the Applicant's position that because there is already disturbance then additional disturbance will not be an issue. We commented on this in our comments on the Ornithology Addendum (REP4-026) and our cover letter submitted at Deadline 8 (REP8-028).</p>
3.4.4	<p>The species that were considered to be most at risk of repeated disturbance (as detailed in the Ornithology Addendum Appendix A1) are:</p> <ul style="list-style-type: none"> • Golden plover (not a qualifying SPA species in its own right but part of the SPA waterbird assemblage feature); • Lapwing (not a named SPA species but part of the SPA assemblage); • Black-tailed godwit; • Dark-bellied brent goose; • Oystercatcher; • Turnstone; and 	<p>We have already highlighted that golden plover is a feature of The wash SPA in its own right. Irrespective, it is a feature of The Wash Ramsar, and must therefore be considered individually, and not just as part of The Wash SPA assemblage.</p>

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	<ul style="list-style-type: none"> • Redshank. 	
Table 3-1	Habitat loss (saltmarsh and mudflat) to wharf construction at Principal Application Site	<p>The estimated area affected at the Application site is based on the “<i>Area of wharf construction as in Application</i>”. This does not account for the indirect impact of construction and operation activities that have the potential to affect waterbird use of the area around the Application site. We recommend a buffer be applied to calculate the additional area affected and this be added to the Applicant’s calculations for the amount of habitat needed to be delivered to compensate for lost foraging.</p> <p>For example, using the indicative wharf location from the Application documents and buffering by 250m (the distance that the Applicant has considered, as set out in REP7-037), direct and indirect impacts could potentially cover a 10.3ha area (see Appendix 1 in our Response to the Rule 17 Questions submitted at Deadline 10 that illustrates this point). This is nearly nine times greater than the area used by the Applicant to base the scale of its compensation measures on. We do not provide this as a definitive area that should be provided, but to illustrate that the extent of habitat required to account for lost roosting and functioning is likely to be greater than currently set out by the Applicant. This issue remains unresolved and must be agreed prior to any consent being given.</p>
Table 3-1	Vessel disturbance at the mouth of The Haven	<p>The Applicant has identified that up to 7000 birds could be affected by disturbance as vessels enter The Haven. This would be greater than 1% of The Wash SPA and Ramsar waterbird assemblage.</p> <p>We note that an area has been identified of 1.4ha that relates to the birds roosting on the south bank of The Haven opposite the Cut End Bird hide. We do not agree that this is the only area, as different states of tide allows birds to remain present in front of the Cut End bird hide. It is difficult to assess from the earlier surveys where birds</p>

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		<p>were roosting, but for example, black-tailed godwits would not be using the rocks associated with the roost site on Frampton North 27 WeBS Sector. Given that vessel movements will affect a wider area, we query whether a greater area needs to be included in the Applicant's compensation measures calculations, with further justification needed why only the area identified in Table 3-1 will be provided.</p>
3.5.1	<p>Measures for compensation to address the potential AEOI are provided on an 'in principle' without prejudice basis. However, as good practice, the Applicant has committed to provide some of these measures regardless of the decision, in order to provide a biodiversity net gain for the project.</p>	<p>We welcome the Applicant's commitment to deliver biodiversity net gain measures. However, any measures put forward need to demonstrate that they will be successful. For example, how will the Applicant ensure that there will be sufficient water to create and maintain the required habitats?</p>
3.5.3	<p>Sites have been sought that would meet the objectives of providing additional habitat for birds displaced by vessel disturbance and habitat loss outlined above, and habitat requirements for the key bird species. The options for developing a network of sites that would provide habitat for waterbirds that could be affected by disturbance from vessels using The Haven, ranging from adjacent to the Haven to 1 km distant from The Haven, have been investigated more fully with regard to their potential to meet the required objectives as set out in Paragraph 3.5.4. The location of the proposed Facility in relation to the SPA and, the RSPB reserves is shown on Figure 3-1. Contact has been made with the owners/managers of the sites in all cases to ensure that the options are securable.</p>	<p>Simply stating that contact has been made with landowners and land can be secured is not sufficient. We set out our position on this in our submissions at Deadline 7 (REP7-031 and REP7-032).</p>
3.5.4	<p>The conservation objectives supplementary conservation advice guidance produced by NE (Natural England 2021a) contains targets and information that has relevance to the potential compensation measures. Two targets of relevance that apply to all The Wash SPA qualifying interest wader species are:</p> <ul style="list-style-type: none"> • "Maintain a vegetation structure of key roost sites dominated by bare ground or a short sparsely-vegetated sward;" and • "Maintain the area of open and unobstructed terrain around roosting and feeding sites." 	<p>We also highlight that there is a target to reduce disturbance for all features. The Applicant needs to demonstrate how such sites will ensure disturbance around newly created sites will be effectively managed.</p>

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4.5.4	The initial scoping exercise has resulted in two sites moving through to the short-listing stage. They are described in paragraphs 4.7.2 and 4.7.3. The Applicant has made contact with the landowners to commence initial commercial discussions, while procedures are in place to identify other locations that may become available to ensure that the best available sites are considered.	See comments under paragraph 3.5.3 above. This does not meet the requirement for securing compensation measures.
4.6.1	The Applicant will continue to progress the site selection process and will continue to shortlist sites. Discussions with landowners have commenced and are at an advanced stage. The next stage will be to conclude detailed discussions and to negotiate commercial agreements. In advance of final purchase due diligence on the sites will be undertaken to ensure they are free from any restrictions for development or subject to historical land uses or archaeology that may preclude development. The shortlist of sites within the search zones may evolve over time, as discussions progress with stakeholders such as statutory nature conservations bodies, interested parties, Local Planning Authorities (LPAs) and local groups, as further local knowledge and information comes to light.	<p>We are concerned that discussions about securing land are being taken but without any detail of the land being investigated. As highlighted in previous submissions at Deadline 7 (REP7-031, the RSPB would not acquire land without having determined that there were no barriers to delivering the required habitat and species requirements. There remain many outstanding concerns about the Applicant’s approach and there continues to be no detail regarding site plans to assess if they would work and deliver the required ecological functions.</p> <p>We also refer the Examining Authority to our detailed answer on this and related issues in our other Deadline 10 submission entitled “D10 RSPB comments on the Fifth Report on outstanding submissions.”</p> <p>Specifically, the sub-section entitled “<i>Paragraphs 4.6.3-4.6.7: timeline to secure, develop and implement compensation</i>” on pages 6-8.</p>
4.6.4	The Applicant will secure a term or option duration that secures the land for the operational lifetime of Facility and any decommissioning stage and will seek to secure the maximum flexibility to deliver the sites in a timely manner and for the duration required by the conditions of the DCO.	We have previously highlighted that land secured as compensation must be secured in perpetuity. Any compensation habitat should be created and maintained with the expectation that it would become part of the National Site Network. This is necessary to maintain the integrity of the NSN. We set this out in comments at Deadline 7 (see REP7-032, section 4 (Critique of draft Schedule 11), with particular reference to comments on paragraphs 7 and 8).
4.6.8	If however, through detailed design it was determined a structure was required or it was considered to be a change of use, the Applicant would engage with the local	This is the level of detail required pre-consent. These considerations have significant implications for the viability of the compensation

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	planning authority(s) to obtain such a planning permission and early screening will take place to confirm such matters.	and the construction timetable, which does not include the compensation measures. We have highlighted that planning permission has been required for all significant habitat creation work at Frampton Marsh and Freiston Shore previously, so it is likely to apply in this case. Boston Borough Council have confirmed this (REP7-021). Assessments of current ecological importance (e.g. ornithology interest, European Protected Species such as water voles and bats) and other considerations (e.g. hydrology and archaeology) will be required for the sites identified. These will require a minimum of two-years' worth of data to assess. It is not clear how the Applicant can address these significant outstanding issues in the time remaining within the Examination.
4.6.10	If any offsite compensation measures trigger the need to obtain an environmental permit for a flood risk activity, the Applicant would apply to the Environment Agency for that permit and the impacts on flood defences would be assessed at that time. The same would apply to any other environmental permits required.	
4.6.11	If there is a need for any water drainage or abstraction this would be discussed with the Internal Drainage Board to ensure that the quality and quantities did not have an adverse effect on other users or stakeholders.	<p>We also refer the Examining Authority to our detailed answer on this and related issues in our other Deadline 10 submission entitled "D10 RSPB comments on the Fifth Report on outstanding submissions."</p> <p>Specifically, the sub-section entitled "<i>Paragraphs 4.6.3-4.6.7: timeline to secure, develop and implement compensation</i>" on pages 6-8.</p>
4.6.15	The Applicant's consultants have assisted the Applicant in identifying the costs that may be required to construct and maintain such compensation and the Applicant has made provision so that funding will be available at the required time to ensure the establishment and success of such measures. Notably, this includes ensuring that compensatory measures are in place and available before the operational phase when the potential impacts that may require compensation would take effect. No issues in relation of funding of any required compensation are therefore present from the Applicant's standpoint, and such costs are considered to be financially feasible.	We highlight that the point when harm will occur is at the construction phase. Compensation measures will need to be in place and functioning prior to the predicted harm occurring, including due to construction activities. We have previously commented on this issue in our Deadline 7 submissions (REP7-031 and REP7-032).
4.7.1	Landowners are amenable (in principle) to renting out land parcels on a renewable long term (c. 30 years to include construction of the compensation features plus	Please see comments above about the need for compensation sites to be secured and maintained in perpetuity.

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	operation of the Facility itself) lease with the Applicant amenable to entering in to arrangements for securing these sites once a DCO decision has been made.	
4.7.2	<p>The site that is adjacent to The Haven provides a suitable site for creating shallow, non-tidal, freshwater lagoons surrounded by short sward grassland, with islands within the lagoons for roosting by intertidal-feeding birds such as redshank and ruff. This site is approximately 1.2km from the boundary of The Wash SPA and 1.3km from the proposed Application Site. In this way it is a little over the target range of 1km but due to its size could attract and provide a suitable site for many of the waterbird species using both the Proposed Application Site and The Haven both outside and within the SPA. Field surveys to examine the site report that The Haven at this location has two small tidal lagoons (on the seaward side of the sea wall) which are used regularly by birds but are likely to have limited use as a high tide roost site due to proximity to the navigation route of large vessels. The site, on the landward side of the sea wall/coastal footpath, is large (approximately 19 ha) and could provide a suitable site with careful design and management to ensure that disturbance from the coastal footpath is minimised through existing, and potentially planted, low level shrub vegetation to break up the skyline. This would ensure that birds can roost far enough from The Haven to minimise disturbance from the vessel movements, whilst maintaining an open vista for birds that require this, such as redshank. This area is currently arable land with a relatively new drainage ditch within. The drainage ditch has been used to split the field into two, with the south section currently grassland most likely for silage, and the north section arable.</p>	<p>Whilst this sounds promising, there is no agreement secured, there is no detail of how this site would be developed and there are no consents secured to allow this development to take place. This detail is required pre-consent.</p>
4.7.3	<p>The site that is further from The Haven is closer to the RSPB reserve at Frampton Marshes and would therefore have good connectivity for birds using this area. It is proposed that this site could provide suitable habitat in particular for lapwing and golden plover. This area is currently used for arable production and is approximately 7.3 ha. There are drainage ditches surrounding the site which indicate that the site is likely to be naturally a wetter area and it has no footpaths around the site. There are electricity pylons and wires running north-south within 100 m west of the site boundary so a buffer would be placed around such areas</p>	

Paragraph number	HRA wording	RSPB comments
	when designing the key areas to be used by birds. This site could be planted with short sward grassland maintained as foraging habitat with wetter areas of marshy grassland where the water table is naturally higher. There is also potential for providing scrapes and islands.	
Table 4-1		The table lists a range of species and habitats that could be provided through the acquisition of fields along The Haven. However, detailed plans are needed to show that these are appropriate and can effectively be implemented and maintained. Much of this currently seems aspirational and needs to have more certainty that these measures can be delivered. This will only come from detailed assessments of the sites and confirmation that, most importantly, a sufficient quantity of water can be provided year-round to maintain the sites and without compromising important wildlife areas nearby.
4.8	Time scale for Compensation Sites	
4.8.3	No additional permits or surveys will be required in relation to work on this area due to these works being included within the DCO application and Environmental Statement. The Applicant can rapidly move to detailed design and a construction method statement (which will be consulted on). As set out in paragraph 3.2.5 (above) and paragraph 5.5.42 of the Project Description (document reference 6.2.5, APP-043) the works are relatively minor in scope and require a low tech approach to construction using a long reach excavator which may be brought to this site on a floating barge (to avoid impacts on the saltmarsh or effects on Public Rights of Way) and a small workforce using hand tools. Such work is of the type undertaken by conservation volunteers or small, specialist companies and would be overseen by an Ecological Clerk of Works (ECoW). The works are unlikely to take longer than a week (weather and tide dependant).	
4.8.4	Planning permission <i>may</i> be required for these locations and there is the potential for other permits (e.g. Protected species, Flood Risk Activity Permit, abstraction/discharge etc.). Baseline desk-based research and surveys will be undertaken to assist with any applications and to understand the existing nature of the sites and also to inform the detailed design.	We refer the Examining Authority to our detailed answer on the issue of requiring planning permission (and related issues) in our other Deadline 10 submission entitled "D10 RSPB comments on the Fifth Report on outstanding submissions." Specifically, the sub-

Paragraph number	HRA wording	RSPB comments
4.8.5	Conceptual design will commence once some of the survey results have been received. A 10 month design period has been allowed in full recognition of the potential complexities of water, habitat and species management that arises on projects of this type, noting the need to potentially manage water levels and the range of habitats set out Table 4-1 . The Applicant will engage with the OEG through the process of developing the design for the compensation sites.	<p>section entitled “<i>Paragraphs 4.6.3-4.6.7: timeline to secure, develop and implement compensation</i>” on pages 6-8.</p> <p>In addition, it is our practical experience that the planning permission process itself (for a well-prepared proposal) would take between 6-12 months. However, this is preceded by substantive work as described in the section referred to above</p>
4.8.6	The programme is based on a worst case situation where planning permission is required. Following a period of determination of any planning applications and other permits the construction will take place from April 2024 to February 2025 (i.e. over 11 months).	
4.8.7	Disturbance (leading to AEOI) is not predicted during the construction phase of the scheme where peak weekly vessel numbers will not exceed five (paragraph 18.7.51 of ES Chapter 18 Navigational Issues (document reference 6.2.3, APP-055). This equates to 260 vessels per year.	Additional vessel movements will exacerbate any baseline disturbance and will not overcome the Conservation Objective to reduce disturbance levels. We therefore do not agree that the compensation measures need only be in place once the facility becomes operational.
4.8.8	Given the above points the Applicant is certain the compensation sites for disturbance which could lead to AEOI will be effective and functional by the time that such negative effects could occur.	Given our outstanding concerns about the level of detail provided by the Applicant and their proposed timeline, we cannot agree that it can be certain that compensation measures would be “effective and functional” at the point harm would start to occur.
Figure 4-3		<p>We refer the Examining Authority to our detailed answer on matters related to the timeline in our other Deadline 10 submission entitled “D10 RSPB comments on the Fifth Report on outstanding submissions.” Specifically, the sub-section entitled “<i>Paragraphs 4.6.3-4.6.7: timeline to secure, develop and implement compensation</i>” on pages 6-8.</p> <p>Our key comment here is to point out the <u>very high risk approach</u> proposed by the Applicant in Figure 4-3 to acquire compensation land <u>before</u> carrying out the detailed due diligence we have described in the sub-section referred to above.</p>

Paragraph number	HRA wording	RSPB comments
		<p>Buying land <u>before due diligence</u> is wrong we argue. This is because the subsequent baseline assessments we have described could (and often does) identify factors that would cause the whole project to be unviable and therefore that would be the end of the investigation of the suitability of a site. In this context, it would mean the purchased site would not be viable as a compensation measure.</p>
4.9.1	<p>The compensation sites will require ongoing maintenance and adaptive management to ensure that they are able to support the waterbirds for which the sites are designed throughout the duration of the operation of the Facility. This will include, as a necessity, monitoring of biotic and abiotic characteristics of the sites, and control of water level (potentially of water quality), vegetation growth and sward height, and stage of succession e.g., suppression of reed or scrub growth. The means by which to carry out the above necessary measures, such as confirmation of water sources and reserves, water abstraction licenses or design-in of any water control system, will be in-built to the design work and associated permissive regimes applied for. Due to the range of natural processes and events that can act on open habitat in a freshwater, estuarine or coastal setting, management will necessarily be adaptive and iterative with regular updates required to the short-term and long-term management plan. In acknowledgement that non-breeding waterbird features of The Wash SPA may be present in any calendar month, the suitability of compensation sites will be required to be maintained all year round. In addition, if compensation is required for the Facility in relation to habitat loss in the wharf site, then this would need to be maintained in perpetuity or until the original habitat is reinstated and functioning as a roost site for waterbirds in the same way as in the baseline situation.</p>	<p>The text comprehensively outlines the factors that the Applicant has to consider with design of habitats and ongoing maintenance. This detail needs to be provided pre-consent to ensure there are no barriers to taking forward any of the Applicant’s proposed compensation sites (which have yet to be fully identified for scrutiny).</p> <p>We also note that compensation will be maintained in perpetuity yet lease agreements would only be for 30 years. Clarity is needed on what the Applicant’s expectations regarding “in perpetuity” are. As we have noted above, it is expected that compensation sites will be designated as part of the National Site Network and therefore they should be maintained in perpetuity.</p>
4.10	Further steps for development of compensation options	<p>This highlights the significant amount of work that is needed to secure sites, develop detailed plans and ensure that the sites would be developed in such a way as to deliver the ecological requirements of the species and habitats affected. This detail is to be deferred to the OCIMP. We have highlighted why this is not an acceptable approach in previous submissions (REP7-032).</p>
5	Monitoring and Review Process for Compensation Sites	

Paragraph number	HRA wording	RSPB comments
5.1.4	<p>The potential aspect that may require further management is with regard to the disturbance potential from people and dogs. This may require additional fencing or barriers to be placed to reduce disturbance levels.</p>	<p>We have highlighted the lack of information gathered by the Applicant to understand the impact of recreational pressures on areas of The Haven. This is fundamental to understand the effectiveness of compensation sites and the measures needed to ensure that they are successful. Fencing has been a measure that has been discussed at meetings and is deemed essential to ensure impacts from dogs, people and other activities are kept away from sites to be used by birds. This is especially important in areas that are not wardened. It is not clear when fencing or other appropriate barriers have not been incorporated into the Applicant's plans at this stage and further highlights the importance of knowing the location of potential compensation sites and ensuring that the appropriate management measures are being considered pre-consent. This is also important as it could have implications for the funding being made available by the Applicant.</p>