

REPORT

Boston Alternative Energy Facility

Applicant's Response to Secretary of State's Letter of
24th April 2023

Client: Alternative Use Boston Projects Ltd.

Planning Inspectorate EN010095

Reference:

Document Reference: 9.114

Pursuant to: N/A

Reference: PB6934-ZZ-XX-RP-Z-4132

Status: Final/0.0

Date: 15 May 2023



Table of Contents

1	Purpose of this Report	1
2	Without Prejudice Compensation for The Wash Special Protection Area	1
2.1	Introduction	1
2.2	Response to RSPB's Suggested Amendments to the DCO	5
2.3	Response to Natural England's Comments on Compensation Measure DCO Requirements for Delivery Prior to Construction Works	17
2.4	Clarification on Corporation Point	18
2.5	Confirmation of Plot 1A (Eastern Boundary of Wyberton Roads (South))	18
2.6	Summary	19
3	Air Quality	21
3.1	Introduction	21
3.2	Response to: "A quantification of the loss of agricultural land as a result of the proposed Alternative Energy Facility (AEF), and how this will affect any existing emission profile" and "It is also unclear how the undertaking of compensation measures which may result in the loss of agricultural has been taken into account"	21
3.3	Response to: "A justification of using the "grid average" background concentration to inform the Predicted Environmental Concentration (PEC) at the protected sites"	25
3.4	Overall Conclusions on Air Quality	28
4	Impacts on Priority Habitats	29
5	Waste Policy	30
5.1	Introduction	30
5.2	UKWIN Representation of 2nd March 2023	30
6.2	UKWIN Representation of 11th April 2023	32
6.3	Summary	34
7	Additional Responses to Information Received at Third Information Request	36
7.2	RSPB	36
7.3	Natural England	42

Tables

Table 2-1 Responses to RSPB's comments (Section 3 of the Response Document)	6
Table 3-1 Parameters Used in the Quantification of Airborne Emissions of NOx and NH3 From Agricultural Use	21
Table 3-2 Quantities of NOx and Ammonia Generated from Inorganic Fertiliser Application Over the Site Area per annum	23
Table 3-3 Quantities of NOx Generated from Organic Fertiliser Application Over the Site Area	23
Table 3-4 Quantities of NOx and Ammonia Generated from Inorganic Fertiliser Application Over the Compensation Areas Per Annum	24
Table 3-5 Quantities of NOx Generated from Organic Fertiliser Application Over the Compensation Areas Per Annum	24
Table 3-6 The Predicted Environmental Concentration at The Wash SAC Using Background Deposition Rates for Short Vegetation	26
Table 6-1 Responses to RSPB's comments (Sections 1 - 2 of the Response Document)	37

1 Purpose of this Report

- 1.1.1 This document is submitted in response to the letter issued by the Department for Energy Security and Net Zero (DESNZ) on behalf of the Secretary of State (SoS) dated 24 April 2023 (“the April DESNZ letter”) with regard to the Boston Alternative Energy Facility (the Facility). The SoS’s letter requests responses from the Applicant (Alternative Use Boston Projects Limited) in relation to a limited number of questions. The Applicant’s response is provided below within **Sections 2 - 7**.
- 1.1.2 In addition to this response the Applicant has also submitted the following updated documents at the same deadline which are referred to in this response:
- Addendum to Without Prejudice Habitats Regulations Derogation case: Compensation measures (for the Wash) (Tracked) (document reference 9.112(1)) (clean and tracked); and
 - Air Quality Deposition Monitoring Plan (document reference 9.51(2) (clean and tracked).

2 Without Prejudice Compensation for The Wash Special Protection Area

2.1 Introduction

- 2.1.1 Section 2 of this document provides responses to paragraph 5 of the April DESNZ letter, which states:

“In response to the third information request, and in view of Natural England and the RSPB’s concerns regarding the ecological merits and deliverability of The Wash Special Protection Area (“SPA”) compensatory measures, Natural England² considers that “controls should be put in place potentially through DCO requirements, which ensure that compensation measures are sufficiently delivering prior to construction works commencing” in the event that the Secretary of State were minded to grant consent. The RSPB also proposes amendments to the draft Development Consent Order (DCO). The Applicant is invited to respond to Natural England and the RSPB’s comments, specifically:

- *The RSPB’s suggested amendments (Section 3) to the DCO.*
 - *The Applicant is invited to suggest alternative amendments it considers may provide the assurance which Natural England consider necessary.”*
- 2.1.2 Previous comments from Natural England (page 4-5 (dealing with pages 28-30 [points 59-62] of schedule 11 Paras 3-6) of Natural England’s Deadline 9

Submission - Appendix F6 – Comments on draft Development Consent Order (DCO) [REP8-003] and Schedule of Changes to draft DCO [REP8-016] (document reference REP9-061)) confirmed that the timescale of two years before operation was acceptable and adequate to ensure the creation of suitable habitat for birds to use the proposed compensation sites. Their wording was as follows:

“The proposals submitted by the applicant effectively produce two timing requirements, one linked to dredge works which is prior to works and the other linked to operation which is 2 years prior to ‘hot operation’. Natural England had originally advised a period of 4 years would be required. However, subsequent to the review of the RIES and the updated compensation proposals we consider that a period of 2 years is sufficient. However, as detailed above in response to para 1 of the compensation schedule, we have concerns on the adequacy of the definition of ‘hot operation’ to identify the correct point at which to mark the end of the 2 year period. Further, we note the complication that has been added by including a dual timing requirement with the compensation for dredging being required simply prior to the impact. Given the compensation required for both is the same and will no doubt be completed as part of one works package, we consider that, for the avoidance of confusion, it would be best to use 2 years prior to operation or ‘hot operation’ alone. Given the timing this will also mean the compensation will have been in place a minimum of around 18 months prior to the dredging works and as the dredge works only form a small part of the impact Natural England considers this sufficient security for this aspect of the works.”

- 2.1.3 The Applicant recognises, as is implied by Natural England’s comment above, that there may be two separate potential impacts (although the Applicant maintains that there will be none) that may occur at different times, namely the habitat loss at the Principal Application Site and the potential for disturbance to SPA birds during construction, and the disturbance to SPA species due to operational vessels.
- 2.1.4 The measures proposed to mitigate impacts to SPA birds during construction are: the Habitat Mitigation Area, providing additional roosting areas (which would be in place and available prior to construction occurring); together with fencing of the construction area (which would be in place prior to construction commencing); the condition for no piling to take place during overwintering periods¹; and restrictions on dredging for sensitive environmental periods around fish movements.² These measures, together with monitoring of the behaviour of birds during construction with incorporated adaptive monitoring and management, should ensure that no

¹ Draft DCO at paragraph 13(2)(c) of Schedule 9 (Deemed Marine Licence)

² Draft DCO at paragraph 12(2)(c)(iv) of Schedule 9 (Deemed Marine Licence)

significant disturbance occurs.

- 2.1.5 Regarding the operational impacts, the worst-case timetable for the In-Principle Compensation Sites indicates that the construction of the compensation works would be completed at least two years prior to hot commissioning of Line 2 (see Figure 4-3 of the Without Prejudice HRA Derogation Case – Compensation Measures (document reference 9.30(4)) as set out in paragraph 5(d) of Schedule 11 (Ornithology Compensation measures) of the draft Development Consent Order (document reference 2.1(7)). The compensation (if determined by the SoS as being required) would need to be effective when the potential negative effect arises. For the purposes of the without prejudice compensation case, the Applicant has taken a conservative and precautionary approach to this matter. The basis of the date when the impact may arise is set out comprehensively in paragraph 4.8.9 of the Without Prejudice HRA Derogation Case – Compensation Measures (document reference 9.30(4)) document.
- 2.1.6 This timeline for development of the compensation features is highly conservative and allows 20 months lead-in time prior to construction of the habitats (for permits and design together with agreement with the Ornithology Engagement Group (OEG) on the plans), 12 months for construction of the habitats and two years for subsequent adaptive management/development to ensure functional habitats. As each element is based on a conservative time estimate, it is highly likely that there will be additional time between completion of the habitat creation works and hot commissioning of Line 2 (the point determined through robust impact assessment to relate to any impact arising).
- 2.1.7 The wording provided by Natural England in its Deadline 9 response Appendix F6 (document reference REP9-061) would have the effect of increasing the habitat development time by an additional four months. The Applicant strongly considers that there is no justification to link the completion of the two year adaptive management period of these sites with the commencement of Hot Commissioning (i.e. hot commissioning of Line 1). However, if the SoS properly considers that there is justification for such a linkage the Applicant would accept that position and restriction.
- 2.1.8 Natural England’s most recent ‘compensation timing’ suggestions (i.e. to “*ensure that compensation measures are sufficiently delivering prior to construction works commencing*” or that compensation measures should be fully functioning prior to works commencing) are not considered to be feasible, or justified by evidence. The wording proposed is arbitrary and provides for no clear milestone or end point. ‘Fully functioning’ infers that the habitats are being used by birds already, but the habitats may not be used until any actual impact occurs (should an impact in fact

occur which causes displacement of the birds from their existing alternative roosting sites). Therefore, it will not be possible to determine whether the sites are delivering compensation or are 'fully functional' until the impact occurs. The habitats will be constructed and have been developing for a minimum of two years; Natural England previously considered this proposal acceptable at Deadline 9 of the Examination. The Applicant would (if required) expect to progress the compensation works in accordance with **paragraph 2.1.7** above.

- 2.1.9 Once the habitat creation measures are undertaken it is expected, based on professional opinion, that birds would start to use the area within a few months. This is considered likely as the margins of the ploughed fields are already being used by species such as curlew (as evidenced in surveys supporting Appendix B of the Addendum to Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures (for The Wash SPA) (document reference 9.112(1))). Once farming activity has ceased and groundworks have been carried out to make the site more attractive to birds it is expected that birds would use the area relatively quickly (birds can be expected to be using the site within the first few months, whilst other species would be expected to use the sites once the vegetation/wetland habitat has had time to establish over the two-year period). Assessments undertaken to investigate the topography relative to water levels (described in Appendix A of the Addendum to Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures (for The Wash SPA) (document reference 9.112(1))) has shown that the sites already have low-lying areas (many from previous creek systems), some with existing ephemeral water features.
- 2.1.10 Further support for the feasibility of the proposed compensation sites was also provided in the recent submission from the Applicant (Appendix A of the Addendum to Without Prejudice HRA Derogation Case – Compensation Measures (for The Wash SPA) (document reference 9.112(1))).
- 2.1.11 Work previously undertaken to investigate the topography of each potential compensation site in relation to the water levels to show that it would be feasible to create wetland areas has been updated for the current submission deadline (document reference 9.112(1)) to show the results for Corporation Point. It confirms that wetland creation is also feasible in this area.
- 2.1.12 The potential additional roosting area around the mouth of The Haven (discussed in the Addendum to Without Prejudice HRA Derogation Case – Compensation Measures (for The Wash SPA) (document reference 9.112(1))) could be completed relatively quickly (subject to agreement with Natural England in relation to potential for Likely Significant Effect and/or agreement that the works are

undertaken for the benefit of the designated site, albeit the SPA). This would provide additional habitat for birds even earlier than other compensation sites.

2.1.13 As outlined in previous documents, it should also be noted that if disturbance to birds in this area is determined by SoS to have an Adverse Effect on Integrity (AEoI), and that the existing alternative roosting sites used by the birds when the first vessel moves through The Haven are not providing suitable locations, any requirement for compensatory actions should recognise the level of impact that occurs during the baseline situation.

2.2 Response to RSPB's Suggested Amendments to the DCO

2.2.1 **Table 2-1** addresses RSPB's comments on responses submitted on 10th March 2023 with regard to the RSPB's suggested amendments to the DCO, as requested in paragraph 5 of the April DESNZ letter.

Table 2-1 Responses to RSPB's comments (Section 3 of the Response Document)

No.	Paragraph No. in RSPB Response	Comment	The Applicant's Response
3. The need to agree and secure compensation measures in advance of any development taking place			
1.	3.1	The RSPB and other interested parties consider there to be significant outstanding issues with the Applicant's DCO application. This includes a lack of detail and certainty that the Applicant's compensation package will address the identified adverse effects on The Wash SPA/Ramsar. The RSPB's position remains that the project should therefore be refused.	Noted by the Applicant, responses are provided to individual points below.
2.	3.2	However, should the Secretary of State be minded to approve the project there must be strong safeguards in place to ensure that no development can take place until compensation measures are fully functional.	Noted by the Applicant, responses are provided to individual points below.
3	3.3	The Applicant has set out in paragraph 4.1.10 (p.46) of their Compensation Measures document that they will create an Ornithology Engagement Group (OEG) to oversee delivery of the Ornithology Compensation Implementation and Monitoring Plan (OCIMP). Our detailed comments on the Final Development Consent Order (REP10-042) set out a number of areas where detail on the OEG and OCIMP should be strengthened. For ease of reference our key points were:	Responses are provided to individual points below.
4		Compensation for roosting redshanks and other waterbirds at the Application site need to be fully functioning before construction starts (comment on Clause 18 of the Deemed Marine Licence, pp.2-5; REP10- 042). Construction operation will impact on birds foraging in close proximity to the	The Applicant maintains its position that there is no compensation requirement during the construction period for disturbance and displacement of waterbirds. To summarise, construction noise during the waterbird wintering period has been rigorously assessed, as presented in the Environmental Impact Assessment and the Habitats Regulations Assessments and various measures have been

No.	Paragraph No. in RSPB Response	Comment	The Applicant's Response
		Application site. This displacement effect must be addressed, not just the loss of roosting area.	<p>proposed to mitigate the potential impacts. For example, construction activities are restricted to not include piling during overwinter, thereby avoiding direct disturbance during the noisiest activities. For roosting birds, at high tide periods when construction phase vessel movements would occur, the potential affected area is the reduced intertidal zone, and associated numbers of roosting birds will already have access to the Habitat Mitigation Area (which will be established prior to construction works commencing). Fencing would also be established around the construction area to minimise visual disturbance. Adaptive monitoring and management is also proposed to be in place to ensure no significant effects occur on the birds using the site during construction works (see Outline Landscape and Ecological Mitigation Strategy (document reference 7.4(4))). This monitoring and adaptive management follows that undertaken for the Environment Agency Ground Investigation works undertaken along The Haven during overwinter 2019 that adequately mitigated noisy activities (as discussed in Appendix A1, section A1.4, of the Outline Landscape and Ecological Mitigation Strategy (document reference 7.4(4))).</p> <p>At low tide, the intertidal habitat available for foraging in adjacent areas of The Haven is extensive and modelled construction noise (not including piling as above) does not exceed levels [precautionarily] associated with waterbird disturbance (Cutts <i>et al.</i> 2013) on The Haven (Noise Modelling and Mapping Relating to Bird Disturbance at the Principal Application Site (document reference 9.50, REP4-015)).</p> <p>It is therefore considered that the proposed measures will be in place prior to the construction activity (habitat mitigation area and fencing)</p>

No.	Paragraph No. in RSPB Response	Comment	The Applicant's Response
5		<p>The purpose of the OEG must be strengthened. We recommended adding the following text to Clause 11: <i>"...which will oversee the implementation, management and monitoring of the compensation measures in perpetuity"</i> (comment on Clause 1 of Schedule 11, pp.6- 7; REP10-042). This amendment would ensure the OEG has a key function in ensuring that all necessary measures are in place before any damaging activities that could impact on features of The Wash SPA/Ramsar commence</p>	<p>or, where necessary (seasonal restrictions and adaptive monitoring and management), will be in place during the construction activity.</p> <p>The Applicant notes the recommendation made by RSPB. Under this scenario the Applicant highlights that the OEG must operate on a clear, legally-agreed definition of when a measure is considered implemented, with the Applicant's recommendation that this be defined when a landscape design underlying a given measure has been constructed or landscaped and agreed maintenance is in place.</p> <p>Schedule 11 to the latest draft DCO already contains provisions considered by the Applicant to ensure that the compensation measures are fully implemented and that OEG plays a key role. Those provisions include that:</p> <ol style="list-style-type: none"> 1. the OEG is consulted on the Ornithology Compensation Implementation and Monitoring Plan (OCIMP) prior to submission to the Secretary of State for approval and the OEG shall consulted further as required during the OCIMP approval process (paragraph 3 of Schedule 11 to the dDCO); 2. the undertaker must implement the measures as set out in the approved 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 (paragraph 6 of Schedule 11 to the dDCO); 3. the undertaker must notify the Secretary of State of completion of implementation of the measures set out in the approved OCIMP (paragraph 7 of Schedule 11 to the dDCO); and

No.	Paragraph No. in RSPB Response	Comment	The Applicant's Response
			<p>4. results from the (at least) annual monitoring scheme must be submitted to the Secretary of State and the relevant statutory nature conservation body and made publicly available. Any proposals to address the effectiveness of the measures must be implemented by the undertaker as approved by the Secretary of State in consultation with the relevant statutory nature conservation body (paragraph 8 of Schedule 11 to the dDCO.</p> <p>As has been previously outlined, the provisions of Schedule 11 in relation to the role of an OEG-type body and the mechanics of the approval process for an OCIMP-type 'bird compensation measures' document are preceded by schedule 14 to the Hornsea Three Offshore Wind Farm Order 2020. The Applicant is strongly of the view that the current provisions of Schedule 11 to the dDCO are sufficiently adequate and robust to ensure that the compensation measures (should these be decided by the Secretary of State to be necessary) are appropriately approved, implemented, monitored and revised and with an appropriate level of input by the OEG and statutory nature conservation body.</p>
6		<p>Concerns that significant detail regarding the development needed to be set out pre-consent (for example, our comments on Clauses 3, 5, and 12 of Schedule 11; REP10-042). If consented, there will need to be ongoing discussions to resolve the outstanding issues, which will be a key function of the OEG.</p>	<p>Noted by the Applicant. The Applicant confirms that it expects the OEG to be a critical party in aiding the detailed design of successful compensation measures (should these be decided by the Secretary of State to be necessary).</p>

No.	Paragraph No. in RSPB Response	Comment	The Applicant's Response
7		<p>The need for the OEG to confirm to the Secretary of State that all necessary measures are in place and functioning fully to enable construction to commence (comments on Clauses 4 and 6 of Schedule 11 ; REP10-042). We set out some amendments that we consider are necessary to strengthen this Clause. We provide our recommended amendments (underlined text) below and consider they are essential to ensure confidence that adverse effects on The Wash SPA/Ramsar will be addressed:</p> <p><i>“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.</i></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</u></p>	<p>See response to Question 4 above for measures necessary to reduce impacts during the construction phase.</p> <p>Within Natural England’s recent responses (Appendix B7 Comments on Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures (document reference REP9-058, point 24)) they have stated that:</p> <p><i>‘Natural England concurs with the view that two years should be allowed between site establishment and its need to provide compensation. Sites undergoing this type of restoration take time to establish and often require follow-up work after initial site establishment.’</i></p> <p>Paragraph 5(d) of Schedule 11 to the dDCO currently requires that the OCIMP must include:</p> <p><i>‘(d) an implementation timetable for delivery of the compensation measures that ensures all compensation measures are in place prior to the impact occurring ([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>The Applicant considers that the above requirement provides sufficient certainty and control to ensure that sufficient time exists for</p>

No.	Paragraph No. in RSPB Response	Comment	The Applicant's Response
		<p><u>implementation of the measures set out in the OCIMP have been implemented and are functioning fully functional.</u></p>	<p>habitat development. The current wording included within the dDCO requires a minimum of two years for the existence of the measures; Natural England previously agreed (at Deadline 9) that this was sufficient. The need for commencing all compensation measures prior to any works being undertaken at all might be valid if the works were new or particularly complicated with a high degree of uncertainty. Creation of wetland scrapes and ditches and planting of meadow vegetation are proven habitat creation measures and there are numerous examples nationally where such habitats have been created. For example, a site recently created by Suffolk Wildlife Trust (March 2022) at Snape Marshes (as reported at https://www.suffolkwildlifetrust.org/news/new-wetland-habitat-created-waders-snape-marshes) where five new scrapes were created within grazing marsh to provide suitable habitat for overwintering wildfowl and waders as well as targeting breeding wader species such as redshank and lapwing. This was reported to be hosting a variety of wetland bird species just a week after completion, including lapwing and redshank. It is acknowledged that this was in grazing marsh but does demonstrate that the birds found and used the site very quickly. Several organisations support the development of wetland scrapes and ditches as part of farming management, including the RSPB and Wildfowl and Wetlands Trust stating as such on their websites, with guidance on how such measures can be achieved: (https://www.rspb.org.uk/globalassets/downloads/documents/farming-advice/scrapecreationforwildlife_tcm9-255102.pdf and https://www.wwt.org.uk/discover-wetlands/wetlands/ditches-and-scrapes).</p>

No.	Paragraph No. in RSPB Response	Comment	The Applicant's Response
			<p>Specifically, with reference to the wording suggested by the RSPB, the Applicant comments as follow:</p> <ul style="list-style-type: none"> As a term, 'Fully functional' is considered highly ambiguous and provides no definitive end point. This is particularly so when the objective is to develop a natural system which, by its very nature, is continually going through stages of succession whereby the habitat and species using that habitat are continually changing. The mechanisms within paragraphs 6 and 8 of Schedule 11 to the dDCO have been constructed to require the approved measures to be implemented in the form approved and then for paragraph 8 to operate to allow the implemented measures to be reviewed and potentially adjusted throughout the operation of the proposed development. The Applicant considers that there is no reasonable justification to deviate from this approach, which aligns with that taken within schedule 14 to the Hornsea Three Offshore Wind Farm Order 2020. Natural England's most recent comment appears to contradict its previous advice that providing the measures 'two years before operation' is sufficient for the development of habitat (with the change to "hot operation" suggested in their previous comment). The Applicant has proceeded based on agreement that two years is considered sufficient and agreed that the habitat should be sufficiently developed within this timeframe. It is expected that the sites would be used by birds straight away, and this is considered to be likely bearing in mind that the margins of the ploughed fields

No.	Paragraph No. in RSPB Response	Comment	The Applicant's Response
			<p>are already being used by species such as curlew (as evidenced in surveys supporting Appendix B of the Addendum to Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures (for The Wash SPA) (document reference 9.112(1))). Once the farming activity has ceased and groundworks have been carried out to make the site more attractive to birds it is expected that this would happen relatively quickly with some birds using the site within a few months and others once the vegetation has had time to establish over the two-year period. The work undertaken to investigate the topography relative to water levels (as described in Appendix A of the Addendum to Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures (for The Wash SPA) (document reference 9.112(1)) has shown that the sites already have low lying areas (many from previous creek systems), some with existing ephemeral water features.</p> <ul style="list-style-type: none"> • Further to paragraph 2.1.7 above, whilst the Applicant does not consider that the evidence supporting linking the completion of the 2 years adaptive management period for the relevant compensation sites to the commencement of Hot Commissioning of Line 2) to be correct, if the SoS properly considers that there is justification for such a linkage then the Applicant would accept that position and restriction. • The Applicant queries how it would be possible to identify if the habitats are 'fully functional' in terms of bird usage prior to the 'impact' occurring.

No.	Paragraph No. in RSPB Response	Comment	The Applicant's Response
			<ul style="list-style-type: none"> • Even after the potential impact has occurred the birds using the existing roosting sites may elect not to use the new sites as they may in fact be content to stay at the existing roosting sites and to continue to use their current alternative roosting sites. The success of the mitigation and compensation will be reliant on the monitoring of bird numbers during construction and operation phases of the proposed development. This underpins the Applicant's introduction of adaptive monitoring and management strategies for both construction and operation. • Finally, the Applicant considers that the OEG has a vital role in the evolution of the OCIMP. However, it would not be appropriate for the OEG to be responsible for approving the OCIMP; that responsibility must sit solely with the SoS.
88		<p>We also recommended an amendment to Clause 5d that would ensure the OEG signed off a final version of the OCIMP before construction commenced (comment on Clause 5d of Schedule 11, pp.9-10; REP10- 042). This was deemed necessary given the significant amount of outstanding detail that needed to be resolved and to ensure confidence that appropriate compensation measures would be secured and delivered in advance of impacts on features of The Wash SPA/Ramsar. This amendment would also ensure that an appropriate timeline for delivery of the proposed development was in place (as discussed in Section 2 above). We consider this amendment (the underlined text) is essential to provide</p>	<p>The measures in place for reducing impacts during construction ensure that no significant impacts will occur during this period and would not constitute an Adverse Effect on Integrity of the SPA (Section A1.4 of Outline Landscape and Ecological Mitigation Strategy, document reference 7.4(4)). Firstly, the piling is restricted to avoid the overwintering period and secondly the Habitat Mitigation Area, which provides additional roosting habitat (the rocks that were present in the construction area will be moved across to adjacent areas) for any birds displaced during construction will be completed before construction commences. In addition to this, fencing will be erected around the construction site and monitoring and adaptive management will be in place during the construction works to ensure no disturbance to birds. The monitoring follows the method</p>

No.	Paragraph No. in RSPB Response	Comment	The Applicant's Response
		<p>the necessary confidence that the integrity of the National Sites Network would be maintained:</p> <p><i>“an implementation timetable for delivery of the compensation measures that ensures all compensation measures are in place and fully functioning prior to the start of construction, which will need to be confirmed by the OEG and provided in writing to the Secretary of State.”</i></p>	<p>successfully used by the Environment Agency to avoid disturbance when they undertook ground investigation works during the overwintering period.</p> <p>See above comments regarding the proposed wording for operation.</p> <p>The Applicant reiterates that the OEG has a vital role in the evolution of the OCIMP. However, it should not be responsible for confirming the Applicant's compliance in terms of implementing any compensation measures. The Applicant is confident that the dDCO contains sufficient controls to require the delivery of the measures (if required by the SoS). If there should be any non-compliance with the terms of Schedule 11 to the DCO, enforcement action could be taken against the undertaker.</p>
9		<p>We also recommended that that the OEG should have a key role in ensuring that any amendments to the OCIMP were appropriate (comment on Clause 12 of Schedule 11, pp.14-15; REP10-042). We still consider the amendment (the underlined text) is needed and provide our suggested wording below for ease of reference:</p> <p><i>“Any amendments to or variations of the approved OCIMP must be in accordance with the principles set out in the ornithology compensation plan <u>and 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</i></p>	<p>Noted by the Applicant. The Applicant expects the OEG to be a critical party in ongoing implementation and amendment of the OCIMP. Paragraph 12 of Schedule 11 to the dDCO provides that consultation with the relevant statutory nature conservation body by the SoS shall take place prior to the approval of any amendments to the OCIMP. This consultation requirement introduced by the Applicant already goes beyond the provisions of Schedule 14 to the Hornsea Three Offshore Wind Farm Order 2020. The Applicant does not believe that there is a reasonable justification for the OEG having an approval role in respect of amendments to the OCIMP; the SoS must be the relevant arbiter.</p>

No.	Paragraph No. in RSPB Response	Comment	The Applicant's Response
		<i>materially different environmental effects from those considered in the ornithology compensation plan."</i>	
10	3.4	We hope the suggested text above is helpful in order to ensure that suitable conditions will be in place to ensure the integrity of The Wash SPA/Ramsar is maintained should the Secretary of State be minded to consent the DCO application.	Noted by the Applicant.

2.3 Response to Natural England's Comments on Compensation Measure DCO Requirements for Delivery Prior to Construction Works

2.3.1 Natural England's response within their submission on 10th March is as follows:

“Natural England reflects that while there has been an extension to the determination phase for the BAEF, it is our view that there is insufficient time prior to determination to turn what is currently theoretical/high level proposals with no implementation design plan into compensation measures which are deliverable with any certainty of success in sufficiently offsetting the impacts to all species where an AEoI can't be excluded. The fundamental issues relate to the location not being secured and maintaining a 'wetland' with sufficient water. If this was to be through tidal egress this may be more effective and help address impacts to priority saltmarsh. However, that would require further consultation with the EA, MMO and Internal Drainage Boards for additional permits/licences with no guarantee of approval at this time. Therefore, due to the uncertainties in the ecological merits of the proposals, and risks associated with deliverability of any measures we advise that should the SoS be minded granting consent then controls should be put in place potentially through DCO requirements which ensure that compensation measures are sufficiently delivering prior to construction works commencing.

*We are also aware having spoken with the RSPB of the challenges they faced with creating successful bird habitats along the margins of The Wash at Freiston and Frampton and we do not envisage the implementation of the compensation for this project being any less challenging. **With no guarantee that the Applicant can deliver the required compensation we strongly advise that compensation must be delivering prior to the commencement of work.**”*

2.3.2 Notwithstanding that Natural England have previously agreed that two years was sufficient to create suitable habitat (see comments above) the Applicant would also seek to reinforce the point that the creation of new wetland and grassland habitats is not a new and untested process. There are numerous guidance documents and examples of habitat creation available, including those from the RSPB, Natural England, Wildfowl and Wetlands Trust, British Trust for Conservation Volunteers and the Wildlife Trusts. Encouragement for farmers to undertake such works is commonplace and the results of such projects show positive results for wildlife. If these works were untested or had a high degree of uncertainty then it would be understandable to have a long lead-in period but this is not the case. The Applicant will engage experienced and reputable

organisations to support them in the design, development and construction of the sites with appropriate communications maintained with the OEG to assist in directing the work.

- 2.3.3 The Applicant has provided additional information to support the plans for the compensation sites with respect to the water levels and potential for creating wetland habitat in the recent submission (Addendum to Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures (for The Wash SPA) (document reference 9.112(1)). That report has now been updated, for submission alongside this document (document reference 9.112(1)), to include the compensation site at Corporation Point. The investigative report concludes that it is feasible to create wetland habitat in these areas. These areas all have low lying areas, with some sites having existing ephemeral water features and historic creek systems within the boundaries already.
- 2.3.4 Tidal egress is not considered an option for these areas as the species that could be affected will equally make use of available freshwater wetlands for roosting and foraging.

2.4 Clarification on Corporation Point

- 2.4.1 In response to paragraph 6 of the April DESNZ letter the Applicant provides further clarification on inclusion of Corporation Point in Appendix A of the Addendum to Without Prejudice HRA Derogation Case – Compensation Measures (for The Wash SPA) (document reference 9.112(1)).
- 2.4.2 The absence of Corporation Point from Appendix A was an omission, and the Applicant provides an updated version of the Addendum to Without Prejudice HRA Derogation Case – Compensation Measures (for The Wash SPA) (document reference 9.112(1)) with updated Appendix A, within the current submission.

2.5 Confirmation of Plot 1A (Eastern Boundary of Wyberton Roads (South))

- 2.5.1 In response to paragraph 7 of the April DESNZ letter, the Applicant provides further clarification on the change in overall boundary of Wyberton Roads (South).
- 2.5.2 At time of completion of the Applicant's Response to the Rule 17 Letter (document reference 9.106, REP10-022) dated 07 April 2022, the land at Wyberton Roads (South) presented by the landowner as available for lease for compensation habitat was accurately summarised to include the 7.3 ha field (first described in Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures (document reference 9.30(2), REP8-006)) and the

adjoining 12 ha field to the east (a newer additional field available for lease, referred to as plot 1A). The availability of both fields, and outline of the overall site, changed at the decision of the landowner in March 2023, the week of completion of the Compensation Addendum (document reference 9.112(1)). The 12 ha field adjoining to the east was instead to be retained by the landowner on the basis of relative ease of agricultural production, and the field of approximately 7.5 ha adjoining to the west is instead offered. In summary, the change in overall site outline for Wyberton Roads (South) is the result of a landowner's commercial decision during the intervening period, and plot 1A is correctly indicated to be no longer available as compensation land.

- 2.5.3 The applicant confirms that the assessments in Appendix A of the Addendum to Without Prejudice Habitats Regulations Assessment Derogation Case – Compensation Measures (for The Wash SPA) (document reference 9.112(1)) do cover the most up to date boundaries which are shown on Figures 2-1 and 2-4.
- 2.5.4 The Field Survey Maps and Summaries from Compensation Sites (Appendix B of the Addendum to Without Prejudice Habitats Regulations Assessment Derogation Case – Compensation Measures (for The Wash SPA) (document reference 9.112) cover the areas of land correct to what was known to be available during DCO Examination. For Wyberton Roads (South) this comprises the original 7.3 ha footprint of the site first described at Deadline 8, although birds present in adjoining fields are shown in the field maps.
- 2.5.5 The correct boundaries for all proposed compensation land are shown in the Addendum to Without Prejudice Habitats Regulations Assessment Derogation Case – Compensation Measures (for The Wash SPA) (document reference 9.112) in figures 2-1 to 2-5.

2.6 Summary

- 2.6.1 The Applicant has set out responses to concerns raised by Natural England and RSPB concerns regarding ecology. The Applicant maintains their evidence-based position in that the proposed Facility will not have an Adverse Effect on Integrity (AEoI) of the identified designated sites. Should the Secretary of State's determination be that the proposed Facility would result in AEoI then additional work has been undertaken to reinforce and demonstrate the feasibility of the compensation measures offered (update to Addendum to Without Prejudice Habitats Regulations Assessment Derogation Case – Compensation Measures (for The Wash SPA) (document reference 9.112(1))). The Applicant has been unable to further engage with Natural England since receipt of the 24 April DESNZ letter due to Natural England's resourcing constraints, so has instead reinforced



its detailed justification for the approach to compensation and to the wording proposed within the dDCO to secure appropriate and successful compensation measures.

3 Air Quality

3.1 Introduction

3.1.1 The Applicant notes that Natural England's response on air quality of 10th March 2023 states "that substantial progress has been made towards being able to advise that an adverse effect on integrity (AEoI) as a result of air quality can be excluded", albeit that a few issues of concern remain. In regard to paragraph 8 of the April DESNZ letter the Applicant provides a response to Natural England's remaining concerns regarding Air Quality.

3.2 Response to: "A quantification of the loss of agricultural land as a result of the proposed Alternative Energy Facility (AEF), and how this will affect any existing emission profile" and "It is also unclear how the undertaking of compensation measures which may result in the loss of agricultural has been taken into account"

3.2.1 The Facility will result in 8.12 ha of land within the DCO boundary and 67.7 ha of compensation land being permanently taken out of agricultural use. As noted by Natural England in its updated advice on Air Quality (10th March 2023), there will be an associated reduction in localised emissions of ammonia (and, to a lesser extent, oxides of nitrogen (NOx)) and consequential nitrogen deposition.

3.2.2 In terms of how this reduction in agricultural activity may affect the local emissions profile, the Applicant has undertaken some indicative quantification of the airborne emissions of NOx and ammonia which would be removed as a result of the proposed land development. The information, factors and input data used and their source references are set out in **Table 3-1**.

Table 3-1 Parameters Used in the Quantification of Airborne Emissions of NOx and NH3 From Agricultural Use

Parameter	Value	Source
Area within the DCO boundary to be taken out of agricultural use	8.12 ha	Outline Landscape and Ecological Mitigation Strategy (document reference 7.4 (4))
Area for without prejudice compensation measures to be taken out of agricultural use	67.7 ha	Addendum to Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures

³ Natural England's updated advice on Air Quality 10.03.2023

Parameter	Value	Source
		(for The Wash SPA) (document reference 9.112(1))
The quantity of fertiliser typically applied per unit area	Within the DCO boundary (cereal crops): Inorganic fertiliser – 132.1 kg/ha Organic fertiliser – 3.0 kg/ha Within the compensation areas (general cropping): Inorganic fertiliser – 104.2 kg/ha Organic fertiliser – 2.9 kg/ha	Defra National Statistics – Fertiliser usage on farm, England 2021/22 ⁴
The average nitrogen content of fertiliser	<u>Inorganic fertiliser:</u> Ammonium nitrate – 35% N Ammonium sulphate and Diammonium Phosphate – 21% N Calcium ammonium nitrate – 27% N Urea – 46% N <u>Organic fertiliser:</u> Animal manure (cattle) and other organic fertilisers (inc compost) - 6 kg N per tonne Animal manure (pig) and other organic fertilisers (inc compost) – 7 kg N per tonne	Origin Fertilisers ⁵
Emission factors (in kg pollutant per kg of nitrogen applied) for the various fertiliser types which may be used	<u>Inorganic fertiliser:</u> Ammonium nitrate – 0.01 kg NOx/kg N, 0.02 kg NH ₃ /kg N Ammonium sulphate and Diammonium Phosphate – 0.01 kg NOx/kg N, 0.05 kg NH ₃ /kg N Calcium ammonium nitrate – 0.01 kg NOx/kg N, 0.02 kg NH ₃ /kg N Urea – 0.01 kg NOx/kg N, 0.13 kg NH ₃ /kg N <u>Organic fertiliser*:</u> Animal manure (cattle) – 0.0093 kgNOx/kg N Other organic fertilisers (inc compost) (cattle) – 0.0141 kgNOx/kg N Animal manure (pig) – 0.0082 kgNOx/kg N Other organic fertilisers (inc compost) (pig) – 0.0123 kgNOx/kg N	National Atmospheric Emissions Inventory (NAEI) ⁶
*The NAEI does not provide emission factors for ammonia for organic fertilisers		

⁴ <https://www.gov.uk/government/statistics/fertiliser-usage-on-farm-england/fertiliser-usage-on-farm-england-202122-statistics-notice#:~:text=The%20overall%20application%20rate%20of,British%20Survey%20of%20Fertiliser%20Practice.>

⁵ <https://www.originfertilisers.co.uk/nutrition-agronomy/nutrients/nitrogen/#:~:text=Nitrogen%20containing%20fertilisers%20include%20Ammonium%20Nitrate%20%2833-34.5%25%29%2C%20Urea,%2827%25%29%2C%20Origin%20Enhanced%20Nitrogen%20%2846%25%29%20and%20Sustain%20%2846%25%29%E2%80%8B>

⁶ <https://naei.beis.gov.uk/>

3.2.3 As shown in **Table 3-1** there are a number of variables relating to the types of fertiliser. As such, quantification was undertaken for a variety of fertiliser types to provide indicative context as to the range of emissions that may be expected. The results of this quantification are shown in **Table 3-2** for inorganic fertiliser and **Table 3-3** for organic fertiliser used on agricultural areas within the DCO order limits.

Table 3-2 Quantities of NOx and Ammonia Generated from Inorganic Fertiliser Application Over the Site Area per annum

Fertiliser type	Quantity of Fertiliser Used On Site Area (kg/y)	Quantity of N Applied Across Site Area (kg/y)	Kg Pollutant Generated per year	
			NOx	NH ₃
Ammonium Nitrate	1,073	370	3.05	6.99
Ammonium Sulphate and Diammonium Phosphate	1,073	225	1.85	10.47
Calcium Ammonium Nitrate	1,073	290	2.53	5.47
Urea	1,073	493	2.59	65.19

Table 3-3 Quantities of NOx Generated from Organic Fertiliser Application Over the Site Area

Fertiliser type	Quantity of Fertiliser Used On Site Area (kg/y)	Quantity of N Applied Across Site Area (kg/y)	Kg NOx Generated per year
Animal manure applied to soils (Cattle)	24	0.15	0.001
Other organic fertilisers applied to soils (including compost) (Cattle)	24	0.15	0.002
Animal manure applied to soils (Pig)	24	0.17	0.001
Other organic fertilisers applied to soils (including compost) (Pig)	24	0.17	0.002

3.2.4 As shown in **Table 3-2**, indicative annual emissions from inorganic fertiliser application across the 8.12 ha of arable land within the DCO order limits would be expected to be between 1.85 and 3.05 kg NOx and between 5.47 and 65.19 kg NH₃. As shown in **Table 3-3**, indicative annual NOx emissions from organic fertiliser application could range between 0.002 and 0.0014 kg. The quantification of emissions generated within the compensation areas are shown in **Table 3-4** for inorganic fertiliser and **Table 3-5** for organic fertiliser.

Table 3-4 Quantities of NOx and Ammonia Generated from Inorganic Fertiliser Application Over the Compensation Areas Per Annum

Fertiliser type	Quantity of Fertiliser Used On Compensation Areas (kg/y)	Quantity of N Applied Across Compensation Areas (kg/y)	Kg Pollutant Generated per year	
			NOx	NH ₃
Ammonium Nitrate	7,051	2,433	20.04	45.98
Ammonium Sulphate and Diammonium Phosphate	7,051	1,481	12.17	68.81
Calcium Ammonium Nitrate	7,051	1,904	16.64	35.99
Urea	7,051	3,244	17.01	428.56

Table 3-5 Quantities of NOx Generated from Organic Fertiliser Application Over the Compensation Areas Per Annum

Fertiliser type	Quantity of Fertiliser Used On Compensation Areas (kg/y)	Quantity of N Applied Across Compensation Areas (kg/y)	Kg NOx Generated per year
Animal manure applied to soils (Cattle)	195	1.17	0.011
Other organic fertilisers applied to soils (including compost) (Cattle)	195	1.17	0.016
Animal manure applied to soils (Pig)	195	1.36	0.011
Other organic fertilisers applied to soils (including compost) (Pig)	195	1.36	0.017

3.2.5 As shown in **Table 3-4**, indicative annual emissions from inorganic fertiliser application across the 67.7 ha of arable land within the DCO order limits would be expected to be between 12.17 and 20.04 kg NOx and between 35.99 and 428.56 kg NH₃. As shown in **Table 3-5**, indicative annual NOx emissions from organic fertiliser application could range between 0.011 and 0.017 kg.

3.2.6 The above mass emissions would cease from the onset of construction of the Facility, and this would have an effect on the localised emissions profile and associated background pollutant concentrations and deposition rates. The extent to which air pollutant concentrations and deposition rates are affected will depend on the dispersion of these emissions and the specific site in question. It is expected that the greatest benefit would occur in relation to the habitats closest to the agricultural areas lost as a result of the proposed development, where emissions of these pollutants would be less dispersed. Nevertheless, this 'loss' of

primary emissions associated with agricultural activities will accrue from commencement of the initial site enabling works, and will thereby provide some betterment to pollutant emissions loading upon the designated sites and habitats of concern.

3.2.7 The Applicant therefore considers that this point is resolved.

3.3 Response to: “A justification of using the “grid average” background concentration to inform the Predicted Environmental Concentration (PEC) at the protected sites”

3.3.1 As noted in Chapter 14 Air Quality of the Environmental Statement (ES) (document reference 6.2.14, APP-052), the background concentrations of nutrient nitrogen were obtained from the Air Pollution Information System (APIS) website (Centre for Ecology and Hydrology, 2023). For sites with a national or international designation (i.e. The Wash SPA and Ramsar site and The Wash and North Norfolk Coast SAC), APIS provides gridded background concentrations across the site area via an online mapping system. Since the ES for the proposed Facility was produced, background deposition rates are now provided at a 1 km resolution, whereas previously they were provided for 5 km grid squares. Background deposition data has also been updated to the latest three-year average (2018-2020).

3.3.2 It is confirmed that the ‘grid average’ deposition rates for The Wash were used in the assessment presented in Chapter 14 Air Quality of the ES (document reference 6.2.14, APP-052). As noted by Natural England, the grid average values take into consideration the effect of land uses with a lower deposition velocity than that which is applicable for saltmarsh. Using the ‘moorland’ deposition velocity for short vegetation, which is more precautionary, the resulting PEC value in relation to the relevant Critical Load is presented in **Table 3-6**. The Critical Loads presented below are those which were demonstrated in the Applicant’s Response to Secretary of State’s Letter of 25th November 2022 (document reference 9.108) to be the most appropriate, and to which Natural England has not raised any objections in its follow-up response (Natural England’s updated advice on Air Quality, 10th March 2023).

Table 3-6 The Predicted Environmental Concentration at The Wash SAC Using Background Deposition Rates for Short Vegetation

Designated Site	Process Contribution (PC) from the Facility (kgN ha ⁻¹ yr ⁻¹)	Critical Load for Saltmarsh (kgN ha ⁻¹ yr ⁻¹)	PC/ Critical Load (CL)	Incombination (IC) PC (kgN ha ⁻¹ yr ⁻¹)	IC PC/ CL	Revised Background Deposition (moorland) (kgN ha ⁻¹ yr ⁻¹)	Predicted Environmental Concentration (PEC) (kgN ha ⁻¹ yr ⁻¹)	PEC / CL
The Wash SAC	0.4	20	2.1%	0.4	2.1%	19.3	19.7	98.6%

3.3.3 As shown in **Table 3-6**, the total PEC value using the background deposition rate for short vegetation remains below the Critical Load for saltmarsh habitat. It should also be noted that the background deposition rate cited in the table is within the grid square at which the point of maximum impact of the Facility was predicted to occur, within the northernmost tip of the boundary of The Wash SAC. This is shown in **Plate 3-1**. However, it can also be seen that the background deposition rate reduces in the next grid square, likely due to the increased distance from the Boston urban area and any associated emissions, and therefore the total PEC concentrations set out in **Table 3-6** would occur only over a very small area. With increased distance from the Facility, the Process Contribution (PC) would also reduce, taking the total PEC further below the Critical Load.

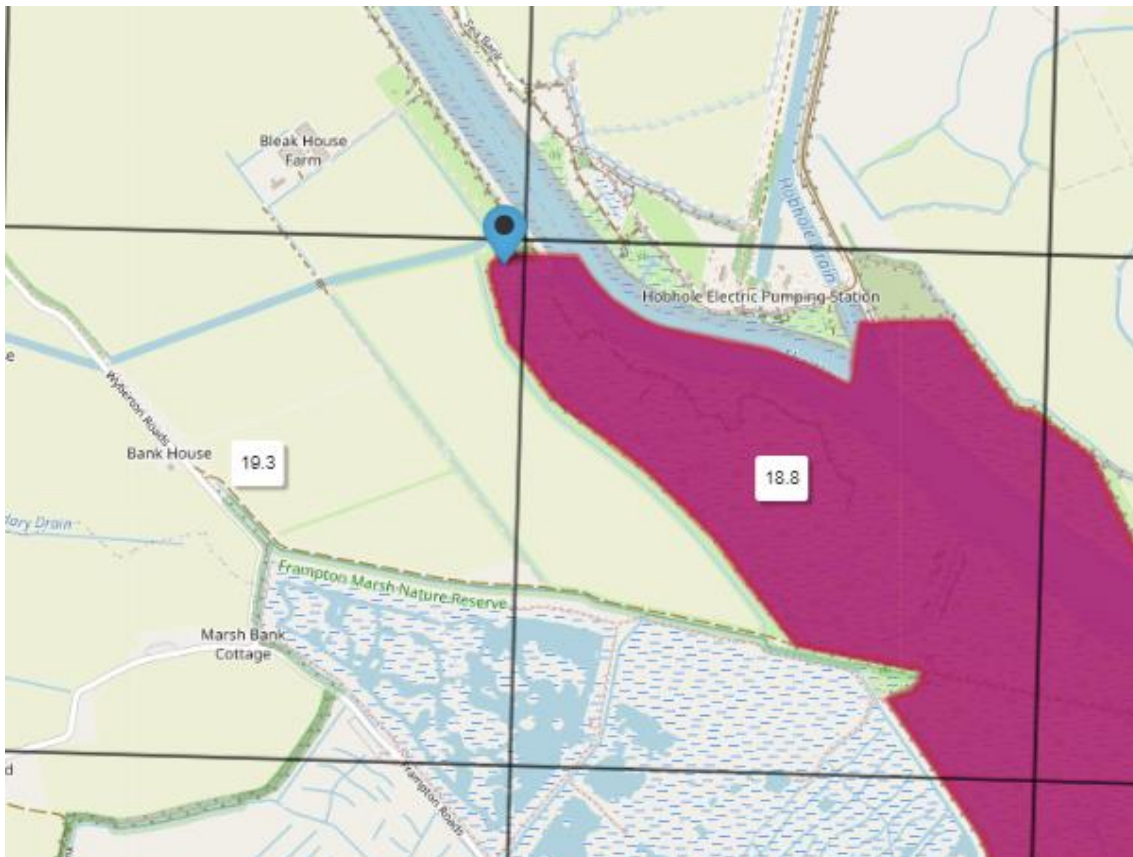


Plate 3-1 The Point of Maximum Impact of the Facility (blue pin) within The Wash SAC (shown in pink) and the Gridded Background Deposition Rates for Short Vegetation

3.3.4 For the other sites cited in Natural England's response to which this query applies (Havenside Local Nature Reserve, Slippery Gowt Sea Bank Local Wildlife Site (LWS), South Forty Foot Drain LWS, the Habitat Mitigation Area, and other areas of priority saltmarsh in The Haven), the functionality was not available on APIS to display gridded data across areas outwith nationally or internationally designated sites (the map function has since been updated to include all areas). As such, the background deposition rates for these additional sites as reported in Section 14.7 of Chapter 14 Air Quality of the ES (document reference 6.2.14, APP-052) were obtained by entering the grid reference of the point of maximum impact of the Facility within each area into the 'location search' tool on APIS. To obtain the required deposition rate, the user must enter the habitat type in question (in this instance 'coastal saltmarsh' was selected). The resulting nitrogen deposition rates that are provided by APIS using this method take into account the appropriate deposition velocity for the habitat type selected (i.e. 'moorland'). As such, the deposition rates reported in Chapter 14 Air Quality of the ES (document reference 6.2.14, APP-052) for these sites are habitat-specific and are therefore considered to be appropriate.

3.3.5 Given the above, there is no change to the conclusions of the assessment presented within the Applicant's Response to Secretary of State's Letter of 25th November 2022 (document reference 9.108) and no adverse effect on integrity in respect to air quality and deposition would occur. The Applicant therefore considers that this point is resolved.

3.4 Overall Conclusions on Air Quality

3.4.1 The Applicant has set out responses to Natural England's outstanding concerns regarding air quality. The additional information provided shows that there is predicted to be an 'offsetting' of emissions generated by the Facility based on land being taken out of agricultural use, and that the previous conclusions of the assessment remain valid. The Applicant therefore considers that the outstanding air quality concerns raised are now resolved.

4 Impacts on Priority Habitats

- 4.1.1 In response to paragraph 9 of the April DESNZ letter the Applicant provides a response to Natural England's response from 10th March 2023 in relation to priority habitats as follows:

“It is unclear to Natural England how impacts to priority habitats will be avoided and/or reduced from the proposed activities including creating areas to provide Ornithological mitigation. If the SoS is minded to grant consent then we request that ‘implementation plans’ must be provided by the Applicant and signed off by the competent authority in consultation with Natural England prior to works commencing.”

- 4.1.2 In response to this comment the Applicant has confirmed several times in previous submissions that the works to be undertaken to enhance the saltmarsh area for birds would also be expected to enhance the saltmarsh vegetation areas, and that such works would not be undertaken without prior agreement with Natural England. This is discussed further in the Final Report on Outstanding Submissions (document reference 9.104, REP10-020) which confirms that *“The Applicant has agreed that any changes to the banks, and the other works within the saltmarsh, would be discussed and agreed fully with stakeholders (which includes NE and RSPB), as outlined in the OLEMS document (document reference 7.4 (2), REP7-037) in Appendix A, Paragraph 1.2.5.”* Currently, this area of saltmarsh experiences coastal squeeze, whereby it is being squeezed between the seawall behind and the edge of the intertidal which is, and will continue to be, affected by sea-level rise. Over time the saltmarsh is likely to become dominated by more terrestrial grasses and scrub. The saltmarsh in this general area, and most of the length along The Haven is also affected by the presence of debris. Works that could be undertaken include some clearance of vegetation to create more salt pan areas (a natural feature of saltmarshes) and clearance of debris, both of which could enhance the saltmarsh habitat. The Applicant would also reiterate that this area of saltmarsh has regularly been described as currently being of ‘poor quality’ in the Environment Agency monitoring reports.

5 Waste Policy

5.1 Introduction

5.1.1 The responses provided below are in response to paragraph 10 of the April DESNZ letter which states:

The Applicant is invited to respond to the emails from UKWIN sent to the Planning Inspectorate on 2 March 2023 and 11 April 2023.

5.2 UKWIN Representation of 2nd March 2023

5.2.1 UKWIN sets out that operational incineration capacity in combination with other residual waste management approaches will exceed potential supply of feedstock with implications for both the extant versions of National Policy Statements (NPS) EN-1 and EN-3 and the emerging draft EN-1 and EN-3. The Applicant comments as follows:

Incineration Capacity

5.2.2 UKWIN provides its operational update on extant consented and operational Energy from Waste (EfW) plants. The Applicant notes that some further EfW projects may have entered the construction phase since submission of the Application although these have not increased the overall current EfW processing capacity and will not divert material from landfill until operational.

5.2.3 Although additional EfW capacity will become fully operational in the coming years following commissioning, the Applicant recognises and the Secretary of State will also note that existing ageing plant will cease operating as they are challenged to meet current regulatory standards and upgrading becomes uneconomical.

6 The Applicant has previously provided detailed information to the Examination (Fuel Availability and Waste Hierarchy Assessment (document reference 5.8, APP-037) and Addendum (document reference 9.5, REP1-018)) which demonstrates that there would not be an overcapacity of waste treatment through EfW due to the consenting of the proposed development. In accordance with paragraph 3.7.7 of the draft NPS-EN3, the Applicant, through the Fuel Availability and Waste Hierarchy Assessment and Addendum, has fully demonstrated that the Facility will not compete with greater waste prevention, re-use, or recycling, or result in over-capacity of EfW waste treatment at a national or local level. This position remains unchanged in the time that has elapsed since the close of the Examination.

Residual waste feedstock for the Jet Zero Strategy and SAF

- 6.1.1 With respect to the Government's Jet Zero Strategy / Sustainable Aviation Fuel (SAF) mandate, UKWIN highlights three waste to SAF projects that received financial support under the associated Advanced Fuels Fund and then draws conclusions with respect to the effect of such projects such that together with co-incineration and waste incinerators will increasingly be competing for waste feedstock. UKWIN further calculates that well over two million tonnes of waste seem likely to be required to produce the SAF.
- 6.1.2 The Applicant recognises the importance of the Government's Jet Zero Strategy launched in July 2022 that will contribute to reducing carbon emissions to meet net zero by 2050. SAF can be produced from a variety of feedstocks, including wastes, as recognised by the Government's Department for Transport's recent consultation on the *Pathway to net zero aviation: Developing the UK sustainable aviation fuel mandate* (Department for Transport, 2023).
- 6.1.3 Existing UK operational plants producing SAF divert waste cooking oil and other waste derived oils to produce this fuel. These waste streams are not targeted by EfW plant as bulk fuel. Other waste streams may form part of the potential feedstock for future plants, although it is likely that they will not rely fully on combustible wastes that will be processed in the Proposed Facility. We consider UKWIN's estimates of the potentially required solid waste element to be over-simplified, and where this does in the future make up part of the feedstock mix it is likely to be a much smaller proportion.
- 6.1.4 The Applicant supports moves to develop SAF but is of the view that the SAF projects generally are very much at an early stage in their development and unproven at scale and there is no guarantee that this new technology and associated development will come forwards with the certainty suggested. SAF facilities will have to make their own case and be justified in planning terms. Additionally, UKWIN's calculations are untested with respect to assumptions and methodology and should not be afforded any weight.

Residual waste reduction

- 6.1.5 UKWIN have highlighted future Government targets to reduce residual waste in 2042, highlighting that the UK would exceed EfW capacity in that year (19 years from now) if targets were met. This assumes all existing EfW facilities remain fully operational. The Applicant considers that a proportion of existing plant is likely to cease operations in the medium term as EfW facilities come to the end of their planned operating lives.

6.1.6 The Applicant has put forward data in the Addendum to Fuel Availability and Waste Hierarchy Assessment (document reference 9.5, REP1-018) that includes meeting all current recycling targets and has allowed for such quantities in presenting the amount of residual waste considered available to the Proposed Facility throughout the UK.

6.2 UKWIN Representation of 11th April 2023

6.2.1 UKWIN makes further comments in its representation dated 11th April 2023 in the light of the Government's March 2023 consultation on revised National Policy Statements (NPSs) including EN-1 and EN-3.

Light Weight Aggregate Plant

6.2.2 The Applicant notes that UKWIN has raised "conflicting evidence at the Examination" on the potential mixing or co-treatment of bottom ash. The Applicant rejects this assertion. This matter relates to environmental permits which are not being pursued as part of the DCO application and are a matter for post DCO consent, at detailed design stage. The Secretary of State should note that pre-application discussions with the Environment Agency (EA) have already taken place on permitting for the Lightweight Aggregate (LWA) plant. The EA made clear in their Deadline 5 submission, [REP5-010] that mixing of hazardous waste and non-hazardous waste is generally not permitted by the Environmental Permitting Regulations. The Applicant commented on the EA's representation at Deadline 6 [REP6-030] and made clear that it had agreed to prepare a permitting roadmap for the LWA plant.

6.2.3 UKWIN presents extracts from the draft National Policy Statements (NPSs), including the revised draft EN-3 on Renewable Energy Infrastructure relating to Biomass and waste combustion impacts. These documents remain in draft form and subject to change; they are currently being consulted on for a second time following an initial consultation commencing in November 2021.

Draft Energy NPSs and the Waste Hierarchy

6.2.4 UKWIN in its response maintains that there are issues relating to the waste management function of the plant, and its potential impact on the waste hierarchy. The Government launched a consultation on updates to revised draft NPS EN-3 on the 30th March 2023. It is however important to be reminded that the expression of current government policy is set out within the current, designated NPSs, and therefore the proposal falls to be considered primarily under the policies in the relevant NPSs (EN-1 and EN-3). Emerging draft National Policy Statements are potentially capable of being important and relevant matters in the decision-making

process, but the extent to which they are relevant is a matter for the relevant Secretary of State to consider with regard to the specific circumstances of each DCO application.

- 6.2.5 The need for renewable and low carbon energy generation is clearly expressed and is a cornerstone of the Government's policy towards energy generation. This need has continued to grow and is even more pronounced due to the need to achieve energy stability, energy security and Net Zero. NPS EN-1 is however very clear that it is not for the proposal to demonstrate, nor the examination to test, this need.
- 6.2.6 The proposal is both an energy generation and waste treatment facility. There is no extant policy requirement within NPS EN-1 or EN-3 to demonstrate a need for the waste treatment element of the proposal. However, the Applicant has provided significant analysis and detailed information to unambiguously demonstrate that the Facility will not result in over-capacity of EfW waste treatment at a national or local level and that the proposal accords with the waste hierarchy (draft DCO requirement 18 which requires the submission, approval and implementation of a waste hierarchy scheme provides additional security on this issue), which aligns with emerging policy set out within the current revised draft NPS EN-3 which is now the subject of further consultation.
- 6.2.7 The Application (including by the Applicant's Fuel Availability and Waste Hierarchy Assessment report (document reference 5.8, APP-037), and The Applicant's Response to UKWIN's Comments (at deadline 5) (document reference 9.64, REP5-009) has robustly demonstrated that the operation of the Facility would be in accordance with the waste hierarchy in that it would move the management of the UK's residual municipal wastes, away from landfill and up to recovery in the hierarchy.
- 6.2.8 The proposal falls to be considered under the policies in the relevant extant NPSs (EN-1 and EN-3). The Applicant stated its position on policy in its response (document reference 9.64, REP5-009) and has demonstrated in its responses that the Facility will not undermine the waste hierarchy. Refuse Derived Fuel (RDF) is waste which would be disposed of to landfill but has subsequently been processed so that it is compatible as fuel. The proposal will only accept RDF (a residual waste)- and will not therefore divert waste from recycling, reuse or prevention.
- 6.2.9 Within its response UKWIN highlights emerging policy text within EN-3 (2023) concerning 'Factors Influencing site selection and design' and sub-heading of 'Waste treatment capacity' (paragraphs 3.7.6 to 3.7.7). Whilst the recent draft EN-3 (2023) does not define 'over-capacity', the Applicant has unambiguously

demonstrated the Facility will not result in over-capacity in the waste management aspect of the proposal. The proposal accords both with extant NPS EN-1 and NPS EN-3 and also the emerging revised NPS EN-1 and EN-3. The revisions to NPS EN-1 and EN-3 do not impact on that compliance.

6.2.10 UKWIN reflects on the Government’s March 2023 response to the previous consultation, in relation to “biomass and energy from waste” noting, amongst other extracts, that that *‘it is not the government’s intention to propose limits on any new electricity infrastructure that can be consented in accordance with the energy NPSs’*. Also, *‘Some respondents also expressed a view that additional EfW capacity was urgently required, whilst others expressed a conflicting view that there is over-capacity for EfW and called for a moratorium’*.

6.2.11 From the Government’s response to consultation to the draft EN-3, it is clear that there is no prospective or actual moratorium on new EfW capacity. Furthermore, paragraph 3.7.29 of revised draft EN-3 (2023), states that *‘Applicants must ensure EfW plants are fit for the future, do not compete with greater waste prevention, re-use, or recycling and do not result in an over-capacity of EfW waste treatment provision at a local or national level’*. The Applicant welcomes the inclusion of the *‘fit for the future’* text; the Facility will be a state-of-the-art, multi-purpose facility that helps solve a multitude of waste- and energy-related issues. It will:

- divert a significant amount of post-recycled refuse derived fuel from landfill and export to foreign markets;
- export a significant amount of clean energy to the grid;
- be carbon-capture ready, incorporating two carbon dioxide recovery plants.
- incorporate a lightweight aggregate facility to convert ‘waste’ products from the primary EfW process into useful materials for the construction industry; and
- have the potential to export heat to local heat users during operation.

6.2.12 Accordingly, the Applicant asserts that the Facility is undeniably ‘fit for the future’.

6.3 Summary

6.3.1 The Applicant has already demonstrated during the Examination (Fuel Availability and Waste Hierarchy Assessment (document reference 5.8, APP-037) and Addendum (document reference 9.5, REP1-018)) that the Facility would not result in over-capacity and nor would it harm the waste hierarchy.



6.3.2 The Applicant confirms its view that the Facility fully accords with Government policy, including the designated versions of NPSs EN-1 and EN-3 and the current revised draft NPSs EN-1 and EN-3 (which may be designated at some point in the future in their current or amended states).

7 Additional Responses to Information Received at Third Information Request

7.1.1 In response to paragraph 4 of the April BEIS letter responses are provided below to additional information received at the third information request.

7.2 RSPB

7.2.1 **Table 7-1** provides responses to RSPB's comments on within Section 1 and 2 of their response on the 10th March "Updated summary of the RSPB's position and key concerns regarding the Boston Alternative Energy Facility DCO Application".

Table 7-1 Responses to RSPB’s comments (Sections 1 - 2 of the Response Document)

No.	Sub heading	Paragraph No. in RSPB Response	The Applicant’s Response
1. Introduction			
1.	Introduction	1.1 – 1.2	Noted by the Applicant.
2.	Submission summarising the RSPB’s position as of January 2022 (REP5-018)	1.3	The Applicant notes RSPB’s summary of its position at Deadline 5 (REP5-018) and accepts the summary as correct to that document. The submission received a responding Applicant submission at Deadline 6 (Second Report on Outstanding Submissions, (document reference 9.68, REP6-032)).
3.	Submissions summarising the RSPB’s position with respect to the Applicant’s Compensation measures (REP4-028 and REP10-043)	1.4 – 1.5	<p>The Applicant notes RSPB’s summary of its position at Deadline 4 (document reference REP4-028) and accepts the summary as correct to that document. The submission received applicant comments on Alternatives at Deadline 5 (document reference 9.63, REP5-008) and a full Applicant response at Deadline 6 (Second Report on Outstanding Submissions (document reference 9.68, REP6-032)).</p> <p>The Applicant notes RSPB’s summary of its position at Deadline 10 (document reference REP10-043) and accepts the summary as correct to that document. In response to the RSPB statement that their “detailed comments on the Habitats Regulations Assessment and the derogation case have not been addressed,” the Applicant acknowledges that no explicit and tabulated response to REP10-043 has been submitted. However, the Applicant highlights that its response to Secretary of State’s Letter of October 2022 Question 3.6, (Applicant’s Response to Secretary of State’s Letter of 14th October 2022, (document reference 9.107, section 2.8)), addressed concerns raised in this and other outstanding Deadline 10 documents from RSPB, as requested within the wording of Question 3.6 (“<i>[The Applicant] is requested to provide further information regarding the without-prejudice proposed compensation sites for The Wash SPA, with regard to concerns raised by Natural England and the RSPB, such as in [REP9-058, REP9-059, REP10-036] and [REP10-043, REP10-045, REP10-046] respectively which were outstanding at the end of Examination.</i>” The Applicant also submitted an updated version</p>

No.	Sub heading	Paragraph No. in RSPB Response	The Applicant's Response
			of its Without Prejudice HRA Derogation Case – Compensation Measures document (document reference 9.30(3)) as part of its response to REP10-043. The Applicant notes the RSPB's position which it maintains from Deadline 10.
4.	The RSPB's position on the Applicant's compensation package as set out in December 2022	1.6 – 1.9	The Applicant notes the RSPB's position dated 10 March 2023, and highlights that on this same date the Applicant submitted further information on its compensation package. This comprised: [update to] Without Prejudice HRA Derogation Case – Compensation Measures (document reference 9.30(4)) and Addendum to Without Prejudice Habitats Regulations Assessment Derogation Case – Compensation Measures (for The Wash SPA) (document reference 9.112). The Applicant maintains that its compensation package as laid out to date is sufficient to address an adverse effect on integrity of the SPA arising from the proposed development (should the Secretary of State decide that this is likely), and that the level of detail is appropriate given steering groups will not be convened until following the DCO decision.
5.	Additional factors affecting waterbird populations on The Wash since the Examination closed that may have a bearing on their favourable conservation status	1.10 – 1.11	The Applicant notes and welcomes the contribution of updates from The Wash by the RSPB, though recognises the population-level impacts are as yet unclear and data is still being gathered and analysed over one or more subsequent years.
2. Guidance on delivering wetland habitat to support roosting, foraging and bathing waterbirds associated with The Wash SPA/Ramsar			
6.	Introduction	2.1 – 2.2	Noted by the Applicant.
7.	Comments on the number of birds to be accommodated by compensatory habitat	2.3 – 2.7	In response to RSPB's paragraph 2.3, the Applicant confirms that the short, bulleted species list provided as a summary is valid but limited, and furthermore the compensation habitat along The Haven is considered adequate to address in-principle impacts on all other species outlined in Table 4-1 of Without Prejudice HRA Derogation Case – Compensation Measures (document reference 9.30(4)). The Applicant confirms its statement of aims summarised at RSPB paragraph 2.4.

No.	Sub heading	Paragraph No. in RSPB Response	The Applicant's Response
			<p>In response to RSPB's paragraph 2.5 statement, "A number of species associated with The Wash SPA/Ramsar have been identified...as foraging within close proximity to the Application Site...(REP1-060...REP4-026....REP5-018)...It does not appear that foraging redshanks, ruffs and other species will be compensated for in the current proposals," the Applicant summarises that across the three cited documents, the RSPB is referring to the following foraging species: ringed plover, dunlin, lapwing, turnstone, redshank, oystercatcher, black-tailed godwit, bar-tailed godwit, curlew, grey plover, ruff, little egret, cormorant, mallard, shelduck, black-headed gull, common gull, herring gull, lesser black-backed gull, and great black-backed gull. Without exception, these species are mentioned either by name or by higher taxonomic classification (gulls, herons) in Table 4-1 of Without Prejudice HRA Derogation Case – Compensation Measures (document reference 9.30(4)) which outlines foraging species likely to utilise habitat features and associated food resources at proposed compensation sites along The Haven. The Applicant maintains that the compensation package is adequate to address in-principle impacts on foraging individuals of the above species adjacent to the Principal Application Site. There is only a very minor loss of foraging habitat during construction and foraging habitat occurs all the way along both sides of The Haven.</p> <p>The content of RSPB paragraph 2.6 is noted by the Applicant.</p> <p>In response to RSPB's paragraph 2.7, the Applicant notes the RSPB's position but emphasises that the Applicant's calculations for scale and breadth of compensatory measures do consider The Wash SPA/Ramsar features using the navigation channel area between the Application Site and the Mouth of The Haven. These birds are included within Table 3-1 of Without Prejudice HRA Derogation Case – Compensation Measures (document reference 9.30(4)). In brief, the potential for Project disturbance within the navigation channel is limited to the highest tidal period of each day when vessels can</p>

No.	Sub heading	Paragraph No. in RSPB Response	The Applicant's Response
			<p>make transition along The Haven. The available intertidal habitat is very limited in this period (the estimated affected area is zero) and birds present during this tidal stage were small in number (high tide foraging, with no consistent high tide roosting) when surveys were conducted (at the peak of the wintering season Dec 2021-Mar 2022). Redshank and ruff were again the most prominent species in terms of high tide abundance relative to low tide abundance, and consistent presence across visits. Measures to accommodate those species (following assessment at the Principal Application Site and the Mouth of The Haven) will also accommodate any individuals from the intervening navigation channel. The compensation sites would provide a network of sites along The Haven.</p>
8.	Comments on the Applicant's criteria for identifying suitable compensatory habitat	2.8 – 2.10	<p>The Applicant confirms RSPB summary of criteria at paragraph 2.8, and notes and welcomes RSPB's broad agreement with criteria.</p> <p>The Applicant notes additional criteria suggested at paragraph 2.9, and highlights that planned compensation habitat does include islands (see Table 4-1 of Without Prejudice HRA Derogation Case - Compensation Measures (document reference 9.30(4)).</p> <p>The Applicant confirms that it is aware of the position of pylons relative to the compensation sites. Wetland habitat designed to attract and support waterbirds will not be situated below or adjacent to pylon and powerline routes.</p> <p>The Applicant has provided additional information within the last submission (which would not have been seen by RSPB prior to these comments) in the Addendum to Without Prejudice Habitats Regulations Assessment Derogation Case – Compensation Measures (for The Wash SPA) (document reference 9.112) which provides in its Appendix A the results of investigations into topography related to water levels. An update to this document is submitted with this response (document reference 9.112(1))</p>

No.	Sub heading	Paragraph No. in RSPB Response	The Applicant's Response
			and the update confirms that all proposed compensation measures are deliverable and are more than sufficient to adequately compensate if required by the Secretary of State.
9.	Comments on the potential costs for delivering suitable compensatory habitat	2.11 – 2.16	These costs are acknowledged by the Applicant and do not alter the Applicant's position on the delivery of the proposed measures.
10.	Comments on the Applicant's proposed timeline for delivery of the development	2.17 – 2.23	The Applicant notes RSPB's position which is dated 10 March 2023. On this same date an updated Project timeline was presented by the Applicant (Figure 4-3 of Without Prejudice HRA Derogation Case - Compensation Measures (document reference 9.30(4))). The Applicant has set its position out with regard to the programme for implementing the compensation measures for operational effects (if required) in paragraph 2.1.7 above.

7.3 Natural England

7.3.1 The following comment was also made by Natural England in their response on 10th March 2023:

“3) England Coast Path

Natural England notes that there are outstanding concerns in relation to potential implications to the England Coast Path. If the SoS is minded to grant consent then we request that an ‘implementation plan’ must be provided by the Applicant and signed off by the competent authority in consultation with Natural England prior to works commencing.”

7.3.2 The Applicant maintains its position on the routing of the proposed England Coast Path (known as the King Charles III England Coast Path from 10th May 2023) as set out and justified in the Applicant’s Written Summary of the Applicant’s Oral Case at Issue Specific Hearing on Environmental Matters (Part 1) (document reference 9.47, REP3-023).

7.3.3 The Applicant accepts that an Inception Plan (as requested by Natural England) will be provided by the Applicant and signed off by the competent authority (Lincolnshire County Council as the relevant Highways Authority) in consultation with Natural England prior to works commencing.