



Sheringham Shoal and Dudgeon Offshore Wind Farm Extension Projects

The Applicant's Comments on National Trust's Deadline 7 Submission

Revision A

Deadline 8

July 2023

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1 The Applicant's Comments on National Trust Deadline 7 Submission

1. This document presents the Applicant's response to National Trust's Deadline 7 submission [REP7-107].

Table 1 The Applicant's comments to National Trust responses to the Examining Authority's Fourth Written Questions

ID	Question	National Trust Response	Applicant's Comment
Q4.1 General and Cross-topic Questions			
Q4.1.4 Miscellaneous			
Q4.1.4.1	<p>Statements of Common Ground</p> <p>a) Applicant, submit final signed SoCG with electronic signatures at D8.</p> <p>b) Relevant parties, submit at D8 your confirmation that the final signed SoCG submitted by the Applicant is the version agreed with you. You may do so, by attaching to your submission the copy of the SoCG that is agreed with you.</p>	<p>The deadline for the submission of the final SoCG is noted. The draft final version of the SoCG has not yet been shared by the Applicant or agreed with the National Trust.</p>	<p>The Final Statement of Common Ground with National Trust (Revision C) [document reference 14.21] has been submitted at Deadline 8.</p>
Q4.8. Compulsory Acquisition and Temporary Possession			
Q4.8.3 Special Land			
Q4.8.3.2	<p>NT Land</p> <p>ExA understands that there remains disagreement over whether there is a need for an easement in perpetuity [REP5-088], though reasoning for this has been provided to NT by the Applicant. Provide an update on progress with these negotiations and provide an explanation as to your position with regards the issue of the length of time the easement is requested for.</p>	<p>The Applicant and National Trust have reached an agreement in principle over the term of the easement and the details are being worked through.</p> <p>An Option Agreement and Deed of Easement for the requisite cables and access over and under Trust land has not yet been signed. Accordingly, the National Trust is unable to remove its objection until a signed agreement is in place.</p>	<p>The Applicant is clearly disappointed not to have been able to sign and complete the voluntary agreement with the National Trust prior to the close of Examination. The Applicant will continue to engage with the National Trust post Examination and is confident that it can reach agreement within the next 3 months in order for the National Trust to confirm removal of its objection direct to the Secretary of State.</p>
Q4.14. Habitats Regulation Assessment			
Q4.14.1 Effect of the Proposed Development on its own and In-combination with Other Plans and Projects			

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Q4.14.1.7	<p>Issue Specific Hearing 7 questions</p> <p>Firstly, refer to the agenda for ISH7 and then review the transcripts and recordings [EV- 092] to [EV-102]. Subsequently, please answer the following regarding the newly identified sandwich tern compensatory measures at Blakeney (rat eradication):</p> <ul style="list-style-type: none"> a) Does this compensatory measure have both merit and your support? b) Would this new measure at Blakeney offer suitable resilience and be of a suitable scale to cover for any mortality debt accrued whilst the Loch Ryan proposals are establishing? c) Is the measure sufficiently developed to carry weight in the decision-making process and reassure you that the harm caused by the Proposed Development would be offset? d) Any other comments regarding this compensatory measure that are important and relevant for the Examination? 	<ul style="list-style-type: none"> A) The proposed compensatory measures at Blakeney have both merit and the support of the National Trust, but only as a supplement to other compensation measures. In this context it is being referred to as a 'secondary' compensation measure, however, this is not a term used in any guidance and the status of this accordingly needs confirmation by statutory advisers. B) The National Trust acknowledges that the Sandwich Tern Compensation Document provides a high-level overview and outline details of the secondary compensation proposals for Blakeney and that the detailed plan will follow post consent, in consultation with the Sandwich Tern Compensation Steering Group. It is noted that the detailed plan will be included within the Sandwich Tern CIMP, secured within the provisions in Schedule 17, Part 1 of the Draft DCO (Revision J) and will need to be approved by the Secretary of State. <p>Predator control as part of normal site management has not been successful in effectively controlling rats at Blakeney to date. The development of methods beyond normal management through the compensation proposals will enhance resilience to the mortality debt accrued of the Sandwich Tern population at Blakeney in part, however, at this stage there is no certainty that such measures will be effective. There is a lot of detail yet to be</p>	<ul style="list-style-type: none"> A) No further comments B) No further comments C) No further comments D) The Applicant responded directly to the National Trust on these points by email dated 12th July 2023 as follows: <ul style="list-style-type: none"> • The timing controls within schedule 17 of the draft DCO are specific to the measures proposed within the CIMPs. The rationale for the timescales proposed is set out within Appendix 2 Sandwich Tern Compensation Document Revision B [document reference 5.5.2]. In addition, the Sandwich Tern – Quantification of Productivity Benefits Technical Note (Revision B) [REP3-091] provides further information on the anticipated productivity benefits to be afforded by the proposed measures and, as appropriate, consideration of implementation timelines. If there is an opportunity for strategic or collaborative measures to be substituted, that needs consent of the SoS. The SoS could impose a condition on that consent that imposes an appropriate timing control. That may be different than is set out within the dDCO (e.g. a financial contribution towards implementation of a long-term strategic measure). This flexibility needs to be maintained at this point, as it isn't possible to say with any clarity what the strategic/collaborative measure might be, particularly where it is anticipated that there

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		<p>defined, including timing, scale and longevity.</p> <p>The Trust therefore cannot be certain that the proposals at Blakeney will provide suitable resilience whilst Loch Ryan is being established. Further advice should be sought from Natural England on this point.</p> <p>C) The Applicant shared Appendix 2: Sandwich Tern Compensation Document (NNC SPA (Blakeney Point) Predator Management Only) (dated June 2023) with the National Trust on 23rd June 2023. Subsequently, a meeting was held on 30th June 2023. The National Trust, Natural England and RSPB have provided the applicant with comments on this document. At the time of writing, the Applicant has not provided a revised document/final draft for the National Trust to review due to the short timescales.</p> <p>The measure is being developed at speed. Expert input and review are required to further develop the measure. We anticipate further work will be undertaken after the examination has closed.</p> <p>We defer to Natural England, as statutory consultee, to advise as to whether the measure is sufficiently developed to offset harm.</p> <p>D) At the time of writing the National Trust has not seen or reviewed the final Sandwich Tern Compensation Document.</p>	<p>will be changes in legislation and policy through the Energy Bill.</p> <ul style="list-style-type: none"> In relation to National Trust as a named consultee, the Applicant's position is that there is a distinction between the National Trust and the other parties that the SoS consults when deciding whether or not to approve the CIMP. The relevant SNCB (being Natural England) is consulted as they have a statutory advisory role under the Habitats Regulations. The MMO, Planning Authorities and Marine Scotland are consulted as the authorities that would be responsible for granting any consents that the compensation measures required to be developed. In giving advice to the SoS, those parties are all acting on the basis of a statutory role and under statutory duties. That would not be the case for the National Trust and so we would not support proposing this amendment in this instance – although this doesn't change the Applicant's commitment to continued engagement and consultation with National Trust including as members of the STCSG (National Trust is named as a core member of this group in the Compensation Document) and, in the case of Blakeney, the proposed Expert Panel.

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		<p>There is not a formal agreement in place between the Applicant and the National Trust for the resources needed to help develop/deliver the compensation package at Blakeney at this stage, and the proposal needs further work with the Applicant, the National Trust, Natural England and RSPB. The National Trust are, however, willing to work with all parties to progress the proposal. Other factors impacting on Sandwich Tern populations and productivity need to be considered alongside the predation control measure, including HPAI (avian flu) which makes populations more vulnerable to other pressures.</p> <p>Optimal compensation measures to offset harm to Sandwich Terns caused by the proposed development such as local or landscape scale habitat creation or enhanced prey availability have not been proposed.</p> <p>The Applicant has advised the National Trust that the proposed compensation measures at the Farne Islands are still included in Sandwich Tern Compensation Document. The National Trust wishes to reiterate concerns raised in previous submissions that it does not consider that these would result in additionality or that they are deliverable.</p> <p>The National Trust would also like to comment on the wording of the draft DCO, as set out below. These comments were also sent to the Applicant on 7th July 2023.</p>	

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		<p>Para 4 of Part 1 of Schedule 17 of the draft DCO submitted at Deadline 6 (REP6-002) sets out what is to be included in the CIMP as measures for, and so as to improve, nesting habitat and restoration of lost breeding. It is noted that sub-paras 4(1) (i)(j) and (k) do make provision for the promotor(undertaker) to pay a financial contribution in lieu of undertaking compensation measures, or, alternatively, to establish compensation measures by a third party, or to collaborate with a third party to provide such measures. It is also noted that these substituted measures do require either the consent of the SoS following consultation with the STCSG or any financial sum being agreed with Defra again after consultation with the STCSG. This would therefore appear to give the Trust some control over what is agreed and/or the terms of any consent to any alternative measures being given.</p> <p>If such alternative compensation measures are agreed/consented, then this will potentially release the promotor(undertaker) from implementing the measures as set out in the CIMP itself.</p> <p>The National Trust's concern is that at the end of Para 6 of Part 1 of the Schedule it states "In particular, no operation of any turbine forming part of the authorised development may begin until the measures set out in the Sandwich Tern CIMP have been implemented". This restriction now</p>	

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		<p>appears to be set aside if the promotor (undertaker) elects to proceed under the provisions of sub paras 4(1)(i)(j) and (k).</p> <p>Therefore, whilst the promotor (undertaker) may have been released from implementing the measures set out in the CIMP itself, the Trust considers that there should still be a requirement that the turbines cannot begin until the measures set out in the CIMP have been implemented, even if this needs to be done by a third party and not the promotor.</p> <p>The National Trust also notes that the draft DCO, Schedule 17, Part 1, Para 3 sets out "Following consultation with the STCSG the Sandwich Tern CIMP must be submitted to the Secretary of State for approval, in consultation with the local planning authority, the MMO, Marine Scotland (where relevant) and the relevant statutory nature conservation body". Given that Sandwich Tern compensation measures are proposed on National Trust land at Blakeney Point, we consider that the National Trust should be named as a consultee in this part of the DCO if consent is granted.</p>	
Q4.14.1.8	<p>Derogation case in the round</p> <p>Whilst the SoS, as the competent authority, is to secure compensatory measures (as required), the ExA must be confident that the overall package of compensatory measures are taken to ensure the coherence of the NSN is</p>	<p>This is a matter for Natural England. Accordingly, the National Trust defers to their advice.</p>	No further comments

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	<p>protected. To this extent, we would like to hear the final positions of the parties as to whether the derogations case, with the compensatory measures, as a whole, is justified and would ensure that the coherence of the NSN is maintained. Refer to any legislation, guidance and national policy as necessary.</p>		