

A585 Windy Harbour to Skippool Improvement Scheme

TR010035

7.27 Responses to Comments on the Applicant's Revised Draft DCO

APFP Regulation 5(2)(q)

Planning Act 2008

Infrastructure Planning (Applications: Prescribed
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The Infrastructure Planning
(Applications: Prescribed Forms and
Procedure) Regulations 2009

**A585 Windy Harbour to Skippool
Improvement Scheme**
Development Consent Order 20[]

**RESPONSES TO COMMENTS ON THE APPLICANT'S REVISED DRAFT
DCO**

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ABBREVIATIONS

Abbreviations contained within this document are listed below with an indication of their meaning in the context of this Scheme.

Abbreviation	Meaning
AAP	Area Action Plan
CA	Compulsory Acquisition
CEMP	Construction Environmental Management Plan
DCO	Development Consent Order
dDCO	Draft Development Consent Order
DML	Deemed Marine License
ES	Environmental Statement
ExA	Examiner appointed by the Secretary of State
FCHT	Fylde Coast Highways and Transport
FRA	Flood Risk Assessment
HE	Highways England
HM	Her Majesty's
IPCC	Intergovernmental Panel on Climate Change
MCAA 2009	Marine and Coastal Access Act 2009
MMO	Marine Management Organisation
PA 2008	Planning Act 2008
Rev	Revision
SoCG	Statement of Common Ground
TP	Temporary Possession

1 RESPONSES TO COMMENTS ON THE APPLICANT'S REVISED DRAFT DCO

- 1.1.1 The purpose of this document is to set out the responses to comments on the Applicant's revised dDCO received at Deadline 6.
- 1.1.2 These can be found in Table 1-1 below.

Table 1-1: Responses to Comments on the Applicant's Revised Draft DCO

Reference Number	Written Representations	Response to Written Representation
REP6-020	Fylde Borough Council	
REP6-020.1	Pages 40-43 of the draft Statement of Common Ground (SoCG) between the Applicant and Fylde Borough Council (FBC) submitted at deadline 2 (Rev 1.1 dated 7th May 2019, FBC document 2.3) contain a schedule of 12 amendments, additions and/or observations that FBC considered were required to make an earlier version of the draft Development Consent Order (dDCO) dated December 2018 (document labelled "Rev 1 – DCO Submission") acceptable.	Noted
REP6-020.2	<p>FBC is satisfied that the changes suggested in points 1, 2 and 4-12 of the SoCG have been addressed in the revised (deadline 5) version of the dDCO dated 9th August 2019 (including through revisions to the supporting documents mentioned therein). There are however, in FBC's view, two outstanding issues with the "landscaping" provisions set out in Schedule 2, Part 1, Requirement 5 of the revised dDCO as follows:</p> <p>1. For the reasons set out in its submissions at deadlines 2 (response reference 9.3 of FBC document 2.5) and 4 (FBC document 4.1), FBC maintains that the length of the rectification period specified in Requirement 5 (5) of the dDCO should be increased from 5 years to 10 years.</p> <p>2. The provision in Requirement 5 (5) of the dDCO relating to the size of any replacement planting to be introduced during the rectification period contradicts the strategy identified in Rev 3 of the Record of Environmental Actions and Commitments (REAC) submitted at deadline 5. Specifically, reference number 12J in Rev 3 of the REAC states that the Handover Environmental Management Plan (HEMP) will provide for "replacement planting for areas of significant loss [to] be undertaken on a basis of anticipated growth rates for that stock based on its original stock size and time passed as opposed to like for like replacement", rather than referring to replacement specimens being of "the same [...] size as that originally planted". The same provisions are set out in the Applicant's response to FBC's deadline 4 submission (response reference REP4-026.1 in document 7.23). Accordingly, the commitments in the REAC are not presently carried through to Requirement 5 (5) of the dDCO. FBC considers that Requirement 5 (5) of the dDCO should be reworded to read as follows (with the Council's changes highlighted in bold lettering):</p> <p><i>(5) Any tree or shrub planted as part of the landscaping scheme that, within a period of 10 years after planting, is removed, dies or becomes in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of a size and species which accords with the provisions for replacement planting identified in the approved HEMP, unless the Secretary of State, following consultation with the relevant planning authority on matters related to its function, gives consent to a variation.</i></p> <p>For the reasons given above, FBC consider that revisions are needed to</p>	<p>Noted</p> <p>1. For the reasons previously set out in response to Fylde's submissions at Deadline 2 the Applicant considers that 5 years remains an appropriate period of time for the rectification period. In summary the landscape mitigation planting measures are considered standard features and it is considered this period is sufficient to ensure that these have established without defects following planting. The Contractor responsible for the implementation of the Scheme will be responsible for the maintenance of the scheme and any defects which arise as a result of their implementation during this 5-year period.</p> <p>After this time soft landscape features within Highway England's land ownership will continue to be managed and maintained in accordance with a maintenance schedule (set out in a Handover Environmental Management Plan (HEMP)). The HEMP would set out the long-term management plan to ensure the mitigation levels are achieved by year 15, which is of critical importance to the reason these features are being implemented. This maintenance would be undertaken by Highways England maintaining authority.</p> <p>A 10-year rectification period is not standard practice and as set out above Highways England would consider that through the maintenance and management requirements that the requirements for a 10-year period are already provided to ensure the proportionate mitigation measures for the proposed development's effects, both establish and are appropriately maintained.</p> <p>2. We acknowledge this contradiction and propose / agree to the following amendment: <i>(5) Any tree or shrub planted as part of the landscaping scheme that, within a period of 5 years after planting, is removed, dies or becomes in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of at least the same species and size as that originally planted, or where significant loss occurs a size and species which accords with the provisions for replacement planting identified in the approved HEMP, unless the Secretary of State, following consultation with the relevant planning authority on matters related to its function, gives consent to a variation.</i></p>

Reference Number	Written Representations	Response to Written Representation
	Requirement 5 (5) of the dDCO to secure appropriate measures for the ongoing maintenance of any landscaping scheme in order that this will provide proportionate mitigation for the proposed development's significant visual effects on the surrounding landscape.	
REP6-020.3	<p>It is noted that an additional clause relating to "night-time working" has been inserted at Requirement 4 (2) (c) (ix) of the revised dDCO. This cross references details set out in the REAC which, under reference number 4AL to Rev 3 of that document, indicate the Applicant's expectation to operate 95 separate night working periods. This insertion was not discussed with FBC beforehand and raises the following issues:</p> <ol style="list-style-type: none"> 1. The term "night-time working" is not defined in the dDCO or the REAC (i.e. by reference to specified working hours). 2. The REAC fails to specify the locations where 65 of the 95 anticipated night working periods will occur. 3. Neither the dDCO nor the REAC clarify the nature of the operations that will take place during the 95 anticipated night working periods. <p>As a result of the above, FBC is unable to assess what effects the operations that the Applicant expects to carry out during the night working periods are likely to have on the amenity of surrounding occupiers, having particular regard to potential nuisances associated with noise disturbance and light pollution. In the absence of this information, FBC objects to the insertion of clause (ix) to Requirement 4 (2) (c).</p>	<p>A Section 61 will be applied for by the Contractor prior to construction. Night-time working hours, construction noise limits and locations of night-time works will all be defined within the application submitted to Fylde Borough Council. Note: The Environmental Statement Chapter 11: Noise and Vibration (document reference TR010035/APP/6.11) has undertaken worst case predictions from 23:00 to 07:00 in accordance BS5228.</p> <p>Light pollution would be controlled through Commitments already noted in the REAC (document reference TR010035/APP/7.3 – Rev 5) including Commitment 4G, 4H and 4AN.</p>
REP6-020.4	The Applicant submitted the document titled "7.23 Responses to Representations Received at Deadline 4" at deadline 5. The heading referenced "REP4-026.1" contains the Applicant's response to the comments made in FBC's deadline 4 submission (FBC document 4.1).	Noted
REP6-020.5	The Applicant's response does not state why the 10 year rectification period suggested by FBC is unjustified in the context of the specific circumstances and effects of the proposed development. Instead, it simply states that "the proposal by the Applicant is common practice" and refers to requirements in three other Development Consent Orders "which include either a 2-year or 5-year rectification period".	The rationale for highlighting previous highway schemes which have been granted a DCO and a number of which have now been fully implemented was to demonstrate a past precedent and what had previously been considered appropriate by the Planning Inspectorate, given this is the first DCO application FBC have been involved with.
REP6-020.6	While FBC acknowledges that the length of the rectification periods for the three schemes mentioned in the Applicant's response were no greater than 5 years, those schemes are not directly comparable with this development. In particular, the "A556 Knutsford to Bowdon Scheme" involved the construction of a link road between two motorways and occupies a different landscape setting to the Applicant's scheme, the works associated with the "M4 Junctions 3 to 12 Smart Motorway" comprised the conversion of an existing hard shoulder to a lane open to traffic and the "A14 Cambridge to Huntingdon Improvement Scheme" appears to be associated largely with the widening of an existing road rather than the construction of a new road in a landscape that is presently dominated by open countryside. Importantly, it is unclear whether the three highway projects mentioned in the Applicant's response relate to the same landscape typology, topography and	Whilst landscape features and characteristics are unique to individual locations it is considered there are a number of similarities specifically between this scheme and the A556 Knutsford to Bowdon Scheme. It is however acknowledged that the 2-year rectification period was lower than that proposed for this Scheme and therefore additional and more recent examples were also provided. The A556 scheme which is complete and operational involved the construction of a new bypass in a predominately agricultural landscape with notable mature woodlands, being located within open countryside. This Scheme is also in the context of wider designed parkland landscapes, with those at Dunham Massey and Tatton Park both designated as Grade II* listed Registered Parks and Gardens.

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	characteristics that are applicable to this scheme. Furthermore, and unlike any of the other projects mentioned in the Applicant's response, it should be noted that because the Windy Harbour scheme will occupy a coastal location that is exposed to salt and wind laden conditions, tree planting is more susceptible to failure than would be the case in sheltered, inland locations.	A 5-year rectification period has been set out in the DCO as the Applicant considers that this is an appropriate period of time to ensure the landscape mitigation planting measures (which are considered standard features) have established without defects following implementation. Within this period of time the planting stock will have had a minimum of four growing seasons in which defects arising from their implementation will likely have been identified by the ongoing monitoring of the Scheme. Acknowledging FBC concern with replacement planting towards the end of this rectification period, the Applicant has provided additional commitment (identified in Rev 3 of the Record of Environmental Actions and Commitments (REAC) submitted at Deadline 5, Commitment 12J) to ensure replacement planting is undertaken on a basis of anticipated growth rates within this rectification period.
REP6-020.7	It is an established principle of the planning system that each case should be considered on its individual merits. As the location, nature, scope, landscape context and effects of the three projects mentioned in the Applicant's response are not directly comparable with this development, it does not follow that simply adopting the same approach for this scheme without any site-specific justification for doing so represents a sound or robust solution. Accordingly, FBC maintains that the length of the rectification period specified in Requirement 5 (5) of the dDCO should be increased from 5 years to 10 years.	<p>FBC have previously advised that as a determining authority that it is common practice to seek a 10-year rectification period on applications within their borough, notably on residential schemes. The Applicant has previously sought information on the specifics of these conditions used on other developments however that information has not been provided by FBC to date. Whilst the establishment of previous rectification periods on other schemes and types of development should not determine the length of time for this scheme, as each development has its specific conditions and characteristics it is useful to understand what has previously been considered acceptable by FBC in this geographic location.</p> <p>FBC have clearly set out that their requirement for a 10-year rectification period is to ensure successful establishment of the landscape mitigation measures. As previously set out to FBC the rectification period proposed by the Applicant relates to the period of time the Contractor is responsible for the implementation of the Scheme and for the maintenance of the scheme, including rectifying any defects which arise as a result of their implementation. The Applicant considers this time period, appropriate to identify defects. After this time soft landscape features within the Applicant's land ownership will continue to be managed and maintained in accordance with a schedule (set out in a Handover Environmental Management Plan (HEMP)). The HEMP would set out the long-term management plan to ensure the mitigation levels are achieved by year 15. Maintenance and management would be undertaken by the Applicant's Maintenance Service Provider in perpetuity.</p>
REP6-021	Environment Agency	
REP6-021.1	We have reviewed revised dDCO, application document reference TR010035/APP/3.1 – Deadline 5 Draft (dated 9 August 2019) and, as requested, the Requirement for further detail in relation to the temporary compensatory flood storage scheme has been included (Requirement 14, page 48) with the wording that we have agreed with the Applicant's consultant, Arcadis.	Noted
REP6-021.2	Provided that the final version of the DCO includes Requirement 14, we consider that all outstanding flood risk matters have been resolved, insofar as it relates to our remit. This is reflected in the final Statement of Common Ground, application document reference TR010035/APP/8.3 – Rev 1 (July	Noted

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	2019), which was submitted at Deadline 4 (12 July 2019).	
REP6-022	Natural England	
REP6-022.1	Thank you for your consultation via the Rule 8 letter, on the above, dated and received by Natural England on 16 April 2019. Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.	Noted
	Comments on Applicant's first revised draft Development Consent Order (DCO).	
REP6-022.2	1.1 We have been in ongoing discussions with Highways England regarding the Requirements contained within the draft DCO for some time now and have failed to reach agreement.	Noted
REP6-022.3	1.2. Our concerns are set out below in detail.	Noted
REP6-022.4	1.3. Highways England have declined to make any changes to the draft DCO, for the reason that all the matters we raised, have been included within the draft Record of Environmental Actions and Commitments (REAC) document which is appended to the Outline Construction Environmental Management Plan (CEMP).	Further to the representations made by Natural England the Applicant proposes to amend the dDCO to include requirements that were sought by Natural England. Please refer to the points below.
REP6-022.5	1.4. Natural England is concerned that the various provisions in the draft REAC, which we have an interest in, are not currently included within the draft DCO as specific obligations that have compliance mechanisms and can be enforced if they are not implemented.	Noted
REP6-022.6	1.5. Therefore we have suggested that the draft DCO includes additional Requirements, and that some existing Requirements include more detail.	Noted
	1.6. Habitats Regulations Assessment Mitigation – Bird Mitigation Strategy.	
REP6-022.7	1.6.1 We acknowledge that the current draft DCO, Requirement 2 of Schedule 2 Part 4 secures the need for a Construction Environmental Management Plan (CEMP) which must reflect the mitigation measures set out in the draft Record of Environmental Actions and Commitments (REAC) however, Natural England does not consider that this adequately secures the mitigation included within the HRA which justifies the conclusion of no adverse effects on the integrity of European sites.	The Applicant proposes to reword Requirement 4(3) as follows: <i>(3) The construction of the authorised development must be carried out in accordance with the approved CEMP and any mitigation, monitoring and adaptive management measures contained in the approved CEMP must be implemented.</i>
REP6-022.8	1.6.2 We consider that the implementation of the HRA mitigation needs to be secured within the DCO in its own right.	The Applicant proposes to introduce a new requirement 7(6) as follows: <i>The undertaker must implement the Bird Mitigation Strategy prepared under requirement 4(2)(d)(i) at all times during construction of the authorised development unless otherwise agreed in writing by the Secretary of State following consultation with Natural England.</i>
REP6-022.9	1.6.3 Paragraph 4(3) of Schedule 3 to the draft DCO states: 'The construction of the authorised development must be carried out in accordance with the approved CEMP'.	Noted
REP6-022.10	1.6.4 Whilst this is fine in itself, some of the measures in the CEMP which Natural England is interested in, like management of cropping regime in fields and supplementary bird feeding, will not be part of "the authorised development" as these activities would not amount to 'development' for the purpose of the Order (as per s.32 of the Planning Act 2008). To address this, a new sub-paragraph should be inserted as (3A): '(3A) The undertaker must implement the mitigation, monitoring and	The Applicant proposes to reword Requirement 4(3) as follows: <i>(3) The construction of the authorised development must be carried out in accordance with the approved CEMP and any mitigation, monitoring and adaptive management measures contained in the approved CEMP must be implemented.</i>

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	adaptive management measures contained in or provided for by the approved CEMP, in accordance with the approved CEMP.'	
REP6-022.11	1.6.5 The CEMP is required by paragraph 4(2)(a) of the Schedule to "reflect the mitigation measures set out in the REAC". The word "reflect" is potentially ambiguous; reflections can be more or less faithful or distorted. It would be preferable to use the word "incorporate" or "include" rather than "reflect", at least in relation to bird mitigation.	The Applicant proposes to amend requirement 4(2)(d) to say that the management plans will be in accordance with the REAC.
	1.7. Bats and endoscope survey.	
REP6-022.12	1.7.1 To comply with the letter of no impediment issued for bats (on 03.06.19), an additional Requirement should be added to require an endoscope survey of Skippool Bridge (B5) prior to demolition (when bats are likely to be active).	The Applicant proposes to introduce two new requirements 7(4) and 7(5);
REP6-022.13	1.7.2 This survey would comprise (as a minimum), an endoscope survey of all the features having some potential to be used by bats, more likely in an opportunistic manner. If the results of the survey show bats are present and a protected species licence is required, further survey work would be required and subsequently sufficient mitigation and compensation measures will need to be provided.	<i>(4) Prior to demolition of Skippool Bridge the undertaker must carry out an endoscope survey of the features on the bridge which have the potential to be used by bats. If the results of the survey show that bats are present and a protected species licence is required, no further work shall be undertaken to the bridge until a written scheme of investigation and mitigation has been prepared.</i>
REP6-022.14	1.7.3 We have previously suggested that this could be included in Schedule 2, Part 1 Requirements, 7. Protected Species.	<i>(5) The undertaker must implement the written scheme prepared under sub-paragraph (4) immediately and construction in the area specified in the written scheme must not recommence until any necessary licences are obtained to enable mitigate measures to be implemented.</i>
	1.8. Agricultural Land Classification (ALC) / Soil Survey.	
REP6-022.15	1.8.1 As mentioned in paragraph 3.14.5 of our written representations, a Requirement should be added under Schedule 2, for an Agricultural Land Classification (ALC) / Soil survey to be undertaken prior to construction works commencing, and that survey should be submitted to Natural England for comment before the Requirement is discharged.	The Applicant proposes to introduce a new requirement 15: <i>Soil Survey and Mitigation Plan</i>
REP6-022.16	1.8.2 This survey will then inform the development of the soil management plan prior to construction.	<i>(1) No part of the authorised development is to commence until an agricultural land classification and soil survey has been undertaken and a soil mitigation plan has been prepared and has been submitted and approved in writing by the Secretary of State following consultation with Natural England.</i>
	1.9. Soil Management Plan	
REP6-022.17	1.9.1 As mentioned in paragraph 3.14.6 of our written representations, an additional Requirement should be added under Schedule 2 for the creation of a soil mitigation plan (as per the National Policy Statement for National Networks paragraph 5.179). This should be produced following the completion of the ALC / soil surveys and submitted to Natural England for comment before the Requirement is discharged. If found acceptable, the project should proceed in accordance with the approved mitigation.	<i>(2) The undertaker must implement the soil mitigation plan prepared under sub-paragraph (1) during construction of the authorised development.</i>
	1.10 Soil Resource Plan	
REP6-022.18	1.10.1 As mentioned in paragraph 3.15.4 of our written representations, we note the commitment to producing a Soil Resource Plan as part of the outline CEMP, which is already included in the draft DCO under Schedule 2, Part 1, 4.(2)(d), however, more detail should be included within the Requirement to say that the Plan should be written prior to construction and submitted to Natural England for comment before the Requirement is discharged.	The requirement already provides that the Applicant will prepare the plan as part of the CEMP and that the CEMP must be approved prior to commencement of construction. The Applicant will consult with Natural England on the same before it is submitted to the Secretary of State for approval.
	1.11 Detail around plans and strategies	
REP6-022.19	1.11.1 As mentioned in paragraph 3.15.3 of our written representations, Under Schedule 2, Part 1, 4.(2)(d), we consider that more detail is needed,	

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	in particular, for the plans which haven't yet been written eg: • When each plan should be written, finalised and agreed by, • Details around what the plan should contain (could include some of the detail included in the REAC), • Details of any additional requirements as a result of the plan ie. Consultation with Natural England to agree management strategy.	The timescales when each plan would be written would be determined by the Contractor. An additional commitment has been included within the REAC (Commitment 1U) to state ' <i>Once appointed the contractor would confirm to Natural England details of when each relevant environmental control plan will be written, finalised and agreed by</i> '.
REP6-022.20	1.11.2 This would make it clear which plans are required prior to construction and what level of information is expected.	Details of what the plans need to contain are within the OCEMP and REAC. Requirement 4(2)(d) will be amended to state that the management plans will be in accordance with the REAC. It should be noted that the requirement already provides that the Applicant will prepare the plans as part of the CEMP and that the CEMP including the plans will be approved prior to commencement of the authorised development. The Applicant is further required to consult with Natural England on the draft plans before they are submitted to the Secretary of State for approval.
REP6-022.21	1.11.3 We note that some detail has now been included within the draft REAC however, we consider that this doesn't go far enough and is still not clear as to what would be expected in each document and when.	
REP6-022.22	1.11.4 We feel this is especially important given the limited timescales given to the Secretary of State when discharging these requirements (under Schedule 2, Part 2, paragraphs 15(2) and 16(2)).	
	1.12 General comment	
REP6-022.23	1.12.1 We have raised this point before, but the draft DCO hasn't been amended in-line with our previous comments.	
REP6-022.24	1.12.2 Under Schedule 2, Part 1, 1. Interpretation, the reference numbers quoted are wrong and the legislation now needs to be listed 'as amended': "European protected species" has the same meaning as in regulation 40 42 (European protected species of animals) and 44 46 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2017 (as amended) (b);'	The reference numbers for the legislation outline has been amended in accordance with the Natural England's representation.
	2 Comments on any additional information/submissions received by D5 – Record of Environmental Actions and Commitments (REAC).	
REP6-022.25	2.1 We have the following comments and suggestions with regards to the contents of the draft REAC.	Noted
REP6-022.26	2.2 Similar to the whole of section 4, Row 4X is worded inappropriately in the conditional tense rather than the imperative. It also leaves some room for doubt about what measures would be required.	Commitment 4X within the Record of Environmental Actions and Commitments (document reference TR010035/APP/7.3 – Rev 5) has been updated to include the following text and submitted at Deadline 7: <i>'During the construction phase an adequate area of temporary, alternative habitat shall be provided to mitigate for potential disturbance or displacement effects on the SPA/ Ramsar site qualifying species - pink-footed geese, lapwing and curlew, in accordance with detailed specifications, methods and timescales that shall be contained in the Bird Mitigation Strategy forming part of the CEMP to be approved pursuant to paragraph 4(2)(d)(i) of Schedule 2 to the DCO, which must be in accordance with the outline Bird Mitigation Strategy appended to the Outline CEMP. Management of the temporary habitat shall thereafter be varied or supplemented where this has been determined appropriate in accordance with a monitoring and adaptive management protocol which must be contained in the approved CEMP and which shall be enforceable in accordance with the process to be contained in the approved CEMP. Adaptive management may include any or all of supplementary feeding, retention of crop stubble, cutting hedgerows and managing crop</i>

Reference Number	Written Representations	Response to Written Representation
		<i>rotation. Further detail is provided within the Bird Mitigation Strategy appended to the Outline CEMP (document reference TR010035/APP/7.2)'.</i>
REP6-022.27	2.3 Row 4X should be reworded along the following lines: 'During the construction phase an adequate area of temporary, alternative habitat shall be provided to mitigate for potential disturbance or displacement effects on the SPA/ Ramsar site qualifying species - pink-footed geese, lapwing and curlew, in accordance with detailed specifications, methods and timescales that shall be contained in the Bird Mitigation Strategy forming part of the CEMP to be approved pursuant to paragraph 4(2)(d)(i) of Schedule 2 to the DCO, which must be in [full] accordance with the outline Bird Mitigation Strategy appended to the Outline CEMP. Management of the temporary habitat shall thereafter be varied or supplemented where this has been determined appropriate in accordance with a legally enforceable monitoring and adaptive management protocol which must be contained in the approved CEMP. Adaptive management may include any or all of supplementary feeding, retention of crop stubble, cutting hedgerows and managing crop rotation. Further detail is provided within the Bird Mitigation Strategy appended to the Outline CEMP (document reference TR010035/APP/7.2).'	As above.
REP6-022.28	2.4 Row 4AI states: 'Bird monitoring would be undertaken during the construction phase of the Scheme. Specifically looking at the response of targeted bird species; pink-footed geese, lapwing, curlew and little egret to the alternative temporary habitat provided. This is to ensure the mitigation measures for the Scheme continue to be appropriate and effective. Further detail is provided within the Bird Mitigation Strategy appended to the Outline CEMP (document reference TR010035/APP/7.2 – Rev 1).'	<p>Commitment 4AI within the Record of Environmental Actions and Commitments (document reference TR010035/APP/7.3 – Rev 5) has been updated to include the following text and submitted at Deadline 7:</p> <p><i>'Bird monitoring shall be undertaken during the construction phase of the Scheme. Specifically, this shall monitor the response of targeted bird species; pink-footed geese, lapwing, curlew and little egret to the alternative temporary habitat provided to ensure the mitigation measures for the Scheme continue to be appropriate and effective. A monitoring and adaptive management protocol must be included as part of the Bird Mitigation Strategy that will be submitted as part of the CEMP to be approved pursuant to paragraph 4(2)(d)(i) of Schedule 2 to the DCO, to include:</i></p> <ul style="list-style-type: none"> <i>- the independence, expertise, experience and qualifications of persons conducting the monitoring;</i> <i>- questions and indicators to be addressed by the monitoring;</i> <i>- the locations, number, frequency and duration of surveys or observations;</i> <i>- methods;</i> <i>- data to be collected and the manner in which results are to be reported;</i> <i>- thresholds or criteria for recommending supplementary mitigation measures or different management of the birds and their habitat;</i> <i>- timescales for reporting;</i>

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		- a protocol for enforcing the monitoring and, following receipt of the monitoring reports, for enforcing the changes to mitigation measures that will be implemented'.
REP6-022.29	<p>2.5 However, there is no protocol for monitoring in the Bird Mitigation Strategy. Unless this is rectified at this stage, we would propose changing the wording along these lines:</p> <p>'Bird monitoring shall be undertaken during the construction phase of the Scheme. Specifically, this shall monitor the response of targeted bird species; pink-footed geese, lapwing, curlew and little egret to the alternative temporary habitat provided to ensure the mitigation measures for the Scheme continue to be appropriate and effective. A monitoring and adaptive management protocol must be included as part of the Bird Mitigation Strategy that will be submitted as part of the CEMP to be approved pursuant to paragraph 4(2)(d)(i) of Schedule 2 to the DCO, to include:</p> <ul style="list-style-type: none"> - the independence, expertise, experience and qualifications of persons conducting the monitoring; - questions and indicators to be addressed by the monitoring; - the locations, number, frequency and duration of surveys or observations; - methods; - data to be collected and the manner in which results are to be reported; - thresholds or criteria for recommending supplementary mitigation measures or different management of the birds and their habitat; - timescales for reporting; - an enforceable protocol for binding determination, following receipt of the monitoring reports, of the changes to mitigation measures that will be implemented. <p>Further detail is provided within the Bird Mitigation Strategy appended to the Outline CEMP (document reference TR010035/APP/7.2 – Rev 1).'</p>	As above.
REP6-022.30	<p>2.6 Row 4AM is expressed in the conditional as "would". This should be re-worded as "shall". It also vaguely says "may" be necessary to cut hedgerows. The procedure for determining this should be dealt with in the monitoring/management protocol. We would therefore propose re-wording 4A along these lines:</p> <p>'Hedgerows between fields within the bird mitigation area would shall be cut short for the duration of the construction works (1 to 1.5m) (shown as green lines on Figure 2, Annex A within the Bird Mitigation Strategy appended to the Outline CEMP (document reference TR010035/APP/7.2))</p> <p>Hedgerows shall would be cut in late summer (August / September) of 2020 to avoid the bird nesting season, and to ensure that they are cut prior to the birds returning in autumn /winter. Detailed specifications and timescales shall be set out in the CEMP submitted pursuant to paragraph 4 of Schedule 2 to the DCO. It may be necessary to re-cut the hedgerows prior to second winter of the construction phase, which shall be considered and determined under the monitoring and adaptive management protocol forming part of the CEMP approved pursuant to paragraph 4(1) of Schedule 2 to the DCO.</p>	<p>Commitment 4AM within the Record of Environmental Actions and Commitments (document reference TR010035/APP/7.3 – Rev 5) has been updated to include the following text and submitted at Deadline 7:</p> <p><i>'Hedgerows between fields within the bird mitigation area shall be cut short for the duration of the construction works (1 to 1.5m) (shown as green lines on Figure 2, Annex A within the Bird Mitigation Strategy appended to the Outline CEMP (document reference TR010035/APP/7.2))</i></p> <p><i>Hedgerows shall be cut in late summer (August / September) of 2020 to avoid the bird nesting season, and to ensure that they are cut prior to the birds returning in autumn /winter. Detailed specifications and timescales shall be set out in the CEMP submitted pursuant to paragraph 4 of Schedule 2 to the DCO. It may be necessary to re-cut the hedgerows prior to second winter of the construction phase, which shall be considered and determined under the monitoring and adaptive management protocol forming part of the</i></p>

Reference Number	Written Representations	Response to Written Representation
	Following completion of the construction works, the hedgerows would shall be allowed to regenerate. Any significant gaps would shall be replanted to ensure the hedgerows are returned to their pre-construction state.'	<i>CEMP approved pursuant to paragraph 4(1) of Schedule 2 to the DCO.</i> <i>Following completion of the construction works, the hedgerows shall be allowed to regenerate. Any significant gaps shall be replanted to ensure the hedgerows are returned to their pre-construction state.'</i>
	3 Update on Bird Mitigation Strategy.	
REP6-022.31	3.1 We are still in discussions with Highways England regarding the Bird Mitigation Strategy and hope to provide formal comments on this revised document at the next appropriate deadline.	Noted. An updated Bird Mitigation Strategy has been submitted to Natural England for acceptance at Deadline 7.

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