

PROPOSED ABLE MARINE ENERGY PARK

IPC REFERENCE: TR030001

STATEMENT OF COMMON GROUND

between

ABLE HUMBER PORTS LTD

and

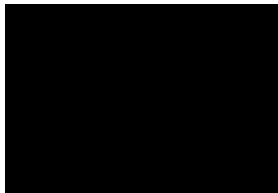
THE ROYAL SOCIETY FOR THE PROTECTION OF BIRDS (RSPB)

Final Version, dated 27th July 2012

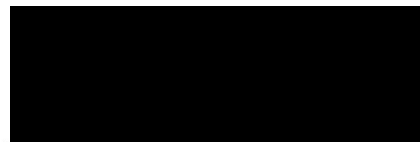
SIGNED on behalf of **Able Humber Ports Ltd**

SIGNED on behalf of **RSPB**

Signature



Signature



Position

DESIGN MANAGER

Position

In-house Solicitor

Date

27-7-12

Date

27 July 2012

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SECTION 1: INTRODUCTION AND SCOPE

Document Structure

1. This SoCG comprises two sections:

Section 1: Introduction and Scope

Section 2: Statement of Common Ground between AHPL and RSPB

General

2. On 12 January 2012 the Infrastructure Planning Commission ('IPC') accepted an application ('the application') that was submitted by Able Humber Ports Limited ('AHPL') for a Development Consent Order ('DCO') to construct and operate a harbour capable of handling over 5 million tonnes of material per year together with associated works.
3. The application incorporates the development of three geographically distinct areas.
 - a. A harbour and associated industrial development on the south bank of the Humber within the administrative area of North Lincolnshire ('AMEP').
 - b. An intertidal compensatory habitat site on the north bank of the Humber within the administrative area of East Riding of Yorkshire ('the compensation site').
 - c. A proposed wet grassland site at Old Little Humber Farm, also within the administrative area of the East Riding of Yorkshire ('OLHF').
4. This document is the statement of common ground ('SoCG') between AHPL and the RSPB on matters other than the impacts on the European Sites, Ramsar Site and their species and the requirements of the Conservation of Habitats and Species Regulations 2010 (as amended)(Habitats Regulations). The RSPB's involvement in this application is limited to matters affecting the SPA and the Ramsar site and their species, and the application of the Habitats Regulations.
5. The Infrastructure Planning (Examination Procedure) Rules 2010, defines a statement of common ground (SoCG) as, 'a written statement prepared jointly by the applicant and any interested party, which contains agreed factual information about the application'.
6. Section 87 of the Planning Act 2008 provides that when making any decision about how an application is to be examined, the Examining Authority must have regard to any guidance issued by the Secretary of State on how applications for development consent for nationally significant infrastructure projects ('NSIPs') are to be examined. In 2010, the Department for Communities and Local Government issued, 'Planning Act 2008: Guidance for the examination of applications for development consent for nationally significant infrastructure projects'. That guidance provides the following advice on the contents of an SoCG:

'63. The statement of common ground is a written statement prepared jointly by the applicant and the main objectors, setting out the agreed factual information about the application. A statement of common ground is useful to ensure that the

evidence at the examination focuses on the material differences between the main parties. Effective use of such statements is expected to lead to a more efficient examination process.

64. The statement should contain basic information on which the parties have agreed, such as the precise nature of the proposed infrastructure, a description of the site and its planning history. In addition to basic information about the application, agreement can often be reached on technical matters and topics that rely on basic statistical data. For example, traffic evidence can be simplified and the issues refined by agreeing matters such as traffic flows, design standards, and the basis for forecasting the level of traffic the application would generate. The topics on which agreement might be reached in any particular instance will depend on the matters at issue and the circumstances of the case.

65. As well as identifying matters which are not in real dispute, it may also be useful for the statement to identify areas where agreement is not possible. The statement should include references to show where those matters are dealt with in the written representations or other documentary evidence. Agreement should also be sought before the examination commences about the requirements that any order granted should contain.

66. How such agreement is reached will vary depending on the nature and complexity of the application and the matters at issue. Where there are only two or three major parties involved and the issues are fairly straightforward, the Examining authority might simply encourage the parties at the preliminary meeting to get together with a view to producing a statement of common ground containing agreed facts. For major applications a more formal arrangement may be necessary, particularly where several parties are expected to bring evidence of a technical nature to the examination.

67. However, the duty of Examining authority is not simply to accept the statement of common ground or to react to the evidence presented. The role of the Examining authority is to ensure that all aspects of any given matter are explored thoroughly, especially with regard to the matters fundamental to the decision, rather than seemingly accepting the statement of common ground without question.

68. Consequently, the Examining authority should probe the evidence thoroughly if their judgment or professional expertise indicates that either.

- all of the evidence necessary for a soundly reasoned decision has not been put before them or,
- that a material part of the evidence they do have has not been adequately tested'

Pre-Application Consultation

7. Before submitting the application to the IPC, Able UK Ltd (acting on behalf of AHPL) held a number of consultation meetings with all three agencies; these are detailed in Table 1A and 1B below.

Table 1A: Meetings Held with the RSPB before the s42 consultation

Date	Present	Matters discussed
2010-11-16	NE, RSPB, HINCA	Ecology Consultation Meeting 3
2010-12-16	NE, RSPB, HINCA	Ecology Consultation Meeting 4

Table 1B: Meetings Held with the RSPB following the s42 consultation

Date	Present	Matters discussed
2011-02-01	NE, NLC, RSPB, HINCA	Ecology Consultation Meeting 5
2011-02-28	NE, NLC, RSPB, HINCA	Ecology Consultation Meeting 6
2011-03-17	NE, NLC, RSPB, HINCA	Ecology Consultation Meeting 7
2011-04-08	NE, RSPB, HINCA	Ecology Consultation Meeting 8
2011-05-03	NE, RSPB, HINCA	Ecology Consultation Meeting 9
2011-05-23	NE, NLC, RSPB, HINCA	Ecology Consultation Meeting 10
2011-06-17	NE, NLC, RSPB, HINCA	Ecology Consultation Meeting 11
2011-07-18	EA, NE, MMO, NLC, RSPB, HINCA	Multi-Agency AMEP Consultation
2011-08-09	NE, RSPB, HINCA	Ecology Consultation Meeting 12
2011-12-21	RSPB	Application presented as submitted
2012-04-17	RSPB, ERYC, Thorngumbald IDB	Old Little Humber Farm initial site meeting
2012-05-21	RSPB	Content of RSPB's RR discussed

Brief Description of the Site

The AMEP Site

8. The AMEP site, excluding the area of ecological mitigation, covers approximately 265 ha, of which approximately 120 ha is covered by existing consent for port related storage, 100 ha is existing arable land that will be developed for industrial use and 45 ha is reclaimed land from the estuary to provide a new quay. A further 48 ha of existing mixed arable land and permanent pasture will be converted to managed grassland to mitigate for the effects of the development on ecological receptors including birds that use the adjacent Humber Estuary SPA.

The Compensation Site

9. The Compensation Site is located on the north bank of the Humber Estuary, within the East Riding of Yorkshire, opposite the AMEP site and some 4 km to the south-west of Keyingham. A new flood defence wall will be constructed landward of the existing flood defence to create a new intertidal area encompassing 100 ha.

Old Little Humber Farm

10. The site is existing agricultural land and it is intended to develop it as wet roosting and feeding habitat for SPA bird species.

Brief Description of the Project

11. AMEP comprises a harbour development with associated land development, to serve the renewable energy sector. The harbour will comprise a quay of 1 279 m frontage, of which 1 200 m will be solid quay and 79 m will be a specialist berth. The harbour will be formed by the reclamation of intertidal and subtidal land within the Humber Estuary.

12. Associated development will include:

- dredging and land reclamation;
- the provision of onshore facilities for the manufacture, assembly and storage of wind turbines and related items;
- junction works to local roads and trunk roads;
- surface water disposal arrangements.

13. Ancillary matters will include:

- the diversion of two footpaths that run along the shore of the Humber, one on the south bank and one on the north bank;
- the conversion of a railway into a private siding;
- the interference with rights of navigation;
- the creation of a harbour authority;
- a deemed licence under section 66 of the Marine and Coastal Access Act 2009;
- the modification of public and local legislation; and

- the compulsory acquisition of land and rights in land and powers of temporary occupation of land to allow Able to carry out and operate the above development.

Planning History of the Site

The AMEP Site

14. The terrestrial areas of the application site includes land that has the benefit of extant planning consents for port related storage and land that has temporary consent as a lay-down area during the construction of a biomass fuelled power station, refer to Table 2.

Table 2 Extant Planning Consents within the AMEP Site

Planning Ref.	Location	Details	Status
PA/2010/1263	Land Off, Rosper Road, North Killingholme, DN40 3JP	Planning permission to construct a test foundation (12 x 12 m) and a tower (5 m diameter) with a total height of 67 m (approximately).	Granted 06/12/2010
PA/2008/1375	Area E, AHPF*, Rosper Road, North Killingholme, DN40 3JP	Planning permission to vary Condition 3 on application PA/2006/0039 dated 01/08/2007 (relating to low level shrubbery and hedging) to replace the words 'Within ten months of the permission...' to 'Prior to the commencement of operation...'	Granted 22/12/2008
PA/2008/0571	Area D1 & D2, AHPF*, Rosper Road, North Killingholme, DN40 3JP	Remove Condition 1 of planning permission 2004/1528 to make permanent the existing temporary consented use of vehicle storage and distribution, erect a single storey cabin, workshop and office building, raise ground levels to 3.1-4.0 m OD and surface with tarmac, install 3 m high electrified fencing with bird deflectors and erect 4 No. 30 m high lighting masts on land off Rosper Road.	Granted 22/12/2008
PA/2008/1428	Area G, AHPF*, Rosper Road, North Killingholme, DN40 3JP	Remove Condition 1 (no access to and egress from Haven Road) and Condition 2 (the use shall be discontinued before 31/12/2008) on planning permission PA/2004/1601.	Granted 19/12/2008
PA/2008/1401	Area B Able Humber Port Facilities, Rosper Road, North Killingholme, DN40 3JP	Planning permission to remove condition 1 on PA/2004/1528 (use to be discontinued on or before 31 December 2008) and condition 9 on PA/2002/1828 (site to have a permeable surface at all times) in connection with use of land for vehicle distribution and storage.	Granted 18/12/2008
PA/2007/0101	Area C, AHPF*, Rosper Road, North Killingholme, DN40 3JP	Planning permission to tarmac the 22.11 ha site for port-related external storage, to include the construction of 2 workshop buildings, a modular office building, a modular security building, construction of a wash pad wash bay and associated staff and visitor car parking and install a 3 m high security fencing, lighting towers and a sewage treatment plant.	Granted 16/01/2008
PA/2005/0562	Area D, AHPF*, Rosper Road, North Killingholme, DN40 3JP	Planning permission to construct a port related storage facility including erection of various buildings, construction of car parking, erection of lighting towers and 2.4 m high electrified security fencing.	Granted 14/11/2006

Planning Ref.	Location	Details	Status
DECC 01.08.10.04/43 9C	West of the MOD Tank Farm	Construction and operation of a biomass fuelled generating station at South Killingholme, near Immingham	Granted 10/08/2011

The Compensation Site and Old Little Humber Farm

15. There is one extant planning consent within the Old Little Humber Farm but none in the Compensation Site. Details of this and other nearby planning applications approved in the last 15 years are described in Table 3.

Table 3: Extant Planning Consents within and near the Compensation Site (Source: ERYC Public Access for planning applications website)

Planning Ref.	Location	Details	Status
08/01993/STP LFE	Humber Gateway onshore installation	Cross country cable from Easington to Saltend	Granted
96/61327/PLF	8 Cherry Cobb Sands Burstwick East Riding of Yorkshire HU12 9JU	Erection of an attached domestic garage.	Granted
98/00205/PLF	New House Farm Cherry Cobb Sands Road Burstwick East Riding of Yorkshire HU12 9JX	Erection of a general purpose agricultural storage building.	Granted
04/02377/PLF	Little Humber Farm Thorngumbald Road Paull East Riding of Yorkshire HU12 8AY	Erection of a replacement dwelling (renewal of planning permission 98/02287/PLF)	Granted
05/02858/PLF	Thorn Marsh Cottage Bellcroft Lane Thorngumbald East Riding Of Yorkshire HU12 9JR	Erection of a single and two storey extension	Granted
11/02438/OHL	OHL Replacement North West Of Little Humber Farm Newlands Lane Paull East Riding Of Yorkshire	Erection of 2no. additional poles for overhead line	No objections

Summary with reference to Environmental Statement

16. The project comprises Schedule 1 development in accordance with Regulation 2(1) of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) (the EIA Regulations). Accordingly, the application to the IPC in respect of AMEP included an Environmental Statement (ES) and the ES referred to in this SoCG is the document

accepted by the IPC on 12 January 2012. In addition further Supplementary Environmental Information (SEI) was submitted to the Examining Authority on 29 June and made available the RSPB.

17. In accordance with Schedule 4 of the EIA Regulations, the ES provides:

'(a) description of the likely significant effects of the development on the environment, which should cover the direct effects and any indirect, secondary, cumulative, short, medium and long- term, permanent and temporary, positive and negative effects of the development, resulting from:

(a) the existence of the development;

(b) the use of natural resources;

(c) the emission of pollutants, the creation of nuisances and the elimination of waste,

and the description by the applicant of the forecasting methods used to assess the effects on the environment.'

18. The potential for likely significant effects of the project were initially identified by AHPL in a Scoping Report accepted by the IPC on 13 September 2010. The IPC subsequently issued their Scoping Opinion on 27 October 2010 following consultation prescribed consultees. It is agreed, nevertheless, that the Scoping Opinion does not limit the effects of the project that are to be considered and that all likely significant effects need to be assessed.

19. Chapters 1-3 of the ES provide a brief introduction to the project, the EIA process and the overall planning framework relating to the application. Since the completion of the ES, national planning policy has changed significantly with the publication of the National Planning Policy Framework. This publication, inter alia, revoked all Planning Policy Statements and Planning Policy Guidance documents.

20. Chapters 4-6 of the ES provide, respectively: a detailed description of the project; an explanation of why the project is needed and a review of the alternative sites considered by the applicant.

21. Chapters 7-24 of the ES report on the significant environmental effects of the proposed development on the south bank of the River Humber, while Chapters 31-43 report on the significant effects of the proposed development on the north bank of the river. Each chapter of the ES addresses a specific environmental issue and provides:

d. A review of the specific planning policy context relating that the topic;

e. A record of the existing baseline conditions;

f. Identification of the receptors that are likely to be affected by the proposed development;

g. An assessment of the impact of the development alone on the receptors taking into account baseline conditions;

h. An assessment of the impact of the development cumulatively with the impacts of other projects that are not yet implemented but for which planning permission has been granted, or other projects for which an application for consent has been submitted.

- i. Proposed mitigation measures where the impact of the development when added to the baseline is sufficient to have an effect on a receptor that is significant.
22. 'Baseline' in this document means the assessment of the current situation at each location, excluding the SPA, SAC or Ramsar site. 'Impact' means the impact of the construction and operation of AMEP, excluding any impacts on the SPA, SAC or Ramsar site and the compensation site. 'Receptor' is any component of the environment (population, flora, fauna, water, air, soil, geology, geomorphology, heritage and landscape), whether specifically protected by statute or not. 'Mitigation' means the measures that are proposed in the ES to reduce the impacts to a lower level than would otherwise occur, excluding any mitigation measures required due to impacts on the SPA, SAC or Ramsar site.
23. For each chapter of the ES, the RSPB has identified the issues relevant to its objection to this application in Table 4 below. For chapters marked 'no interest', then the RSPB has not considered the information those chapters contain due to it not being central to the RSPB's objection for this particular application but it does not mean that the RSPB agrees with the contents of those chapters.
24. The structure of the SoCG that follows, then considers each relevant chapter of the ES in turn.

Table 4: Environmental Issues Relevant to RSPB

ES Chapter	Relevant Environmental Issues
	The RSPB
Volume 1 AMEP	
1: Introduction	<i>Interest maintained – no specific issues</i>
2: Environmental Assessment Process	<i>No Interest</i>
3: Planning Policy and Context	<i>No Interest</i>
4: Project Description	<i>No Interest</i>
5: Need for the Development	<i>No Interest</i>
6: Choice of Site	<i>No Interest</i>
7: Geology, Hydrogeology, Ground Conditions	<i>No interest</i>
8: Hydrodynamic and Sedimentary Regime	<i>Interest maintained</i>
9: Water and Sediment Quality	<i>Interest maintained</i>
10: Aquatic Ecology	<i>Interest maintained</i>
11: Terrestrial Ecology and Birds	<i>Interest maintained</i>
12: Commercial Fisheries	<i>No interest</i>
13: Drainage and Flood Risk	<i>No interest</i>
14: Commercial and Recreational Navigation	<i>No interest</i>
15: Traffic and Transport	<i>No interest</i>
16: Noise and Vibration	<i>No Interest</i>
17: Air Quality	<i>No Interest</i>

	Relevant Environmental Issues
ES Chapter	The RSPB
18: Historic Environment	<i>No interest</i>
19: Light	<i>No Interest</i>
20: Landscape and Visual Impact	<i>No interest</i>
21: Socio-Economics	<i>No interest</i>
22: Aviation	<i>No interest</i>
23: Waste	<i>No interest</i>
24: Health	<i>No interest</i>
Volume 2 The Compensation Site and Old Little Humber Farm	
25: Introduction	<i>No Interest</i>
26: The Environmental Assessment Process	<i>No Interest</i>
27: Planning and Policy Context	<i>No Interest</i>
28: Description of the Development	<i>Interest maintained</i>
29: Need for the Development	<i>Interest maintained</i>
30: Choice of Site	<i>Interest maintained</i>
31: Geology and Ground Conditions	<i>Interest maintained</i>
32: Hydrodynamic and Sediment Regime	<i>Interest maintained</i>
33: Water and Sedimentary Quality	<i>Interest maintained</i>
34: Aquatic Ecology	<i>Interest maintained</i>
35: Terrestrial Ecology	<i>Interest maintained</i>
36: Drainage and Flood Risk	<i>No Interest</i>
37: Traffic and Transport	<i>No Interest</i>
38: Noise	<i>No Interest</i>
39: Air Quality	<i>No Interest</i>
40: Historic Environment	<i>No Interest</i>
41: Landscape And Visual Impact	<i>No Interest</i>
42: Socio-Economics	<i>No Interest</i>
43: Waste	<i>No Interest</i>
44: In-Combination Impacts	<i>Interest maintained</i>

SECTION 2: STATEMENT OF COMMON GROUND BETWEEN AHPL AND RSPB

Introduction

25. The RSPB has confirmed that its commentary on the Application is restricted to the impacts of AMEP on the SPA and Ramsar site and their species, and the required mitigation, compensation and monitoring requirements associated with those impacts. In this context, several topics are extracted from the application documents which are the focus of this Statement of Common Ground. Because these topics range across several chapters of the ES, they are addressed on a topic-by-topic basis instead of reflecting the structure of the ES.
26. Reference is made to the volume of supplementary information submitted by the applicant as part of its responses to Relevant Representations on 29 June 2012 – this includes clarification and explanatory material in support of the ES submitted with the application, addressing issues raised by consultees in their initial responses to the application as submitted.
27. This Statement of Common Ground is restricted to the content of the Environmental Statement, and excludes the shadow Habitats Regulations Assessment submitted as part of the application package. The sHRA will be subject of a separate SoCG between the applicant, the Environment Agency, the Marine Management Organisation and Natural England, on which the RSPB will be invited to comment. The RSPB's concerns regarding the sHRA will be addressed at that stage.

Breeding Birds

28. The RSPB has not considered the impacts to breeding birds from this application and therefore cannot agree or disagree with the content of the ES in this regard, having not reviewed the relevant applicable documentation.

Direct loss of terrestrial feeding and roosting areas for SPA birds

29. The agreement of the RSPB to the text set out in paragraphs 30-36 below is limited to the extent of information and assessment set out in the ES for the Application. The RSPB reserves its right to comment on, and if it wishes, object to, the implications of this text for the sHRA exclusive of this document.

The Baseline

30. The SPA assemblage use fields within the terrestrial areas of the development site for roosting and feeding.
31. It is agreed that the survey effort has been sufficient to characterise the use of the terrestrial areas of the site by the SPA assemblage; the most frequent user of the site is the curlew which is regularly present in numbers that exceed 1% of the curlew population on the SPA and Ramsar site. There is only limited use of the fields by other species that form part of the SPA assemblage.

Impacts

32. It is agreed that the construction and operation of AMEP will result in a permanent loss of functionally-linked terrestrial habitat used by SPA birds (principally curlew) for feeding and roosting. It is agreed that this constitutes an impact on the European site that can be mitigated.

Mitigation

33. It is agreed that this mitigation should be on the south Humber bank, adjacent to the development, in the location specified in the application documents as Mitigation Area A.
34. It is agreed that the size of Mitigation Area A (47.8ha in total, comprising a core area of 16.7ha and a buffer of 150m to the south, east and west, and 50m to the north supported by an operational buffer within the AMEP site) is sufficient and appropriate, on the basis that AHPL will ensure that the area to the north of Mitigation Area A within the developed land will be “quiet” – this will be secured through a Requirement of the DCO.
35. It is not agreed that Mitigation Area A is suitable and sufficient mitigation for terrestrial habitat loss for estuary birds arising from the AMEP development due to the appropriate detailed hydrological design and the development of a management plan with ecological function targets and details of the requirements of the operational buffer to the north having not been produced. The RSPB believes that this detail is required now for both the Examining Authority examination of the application and for the RSPB to consider their details. Until such time as the plans are produced the RSPB maintains its objection and concerns in relation to Mitigation Area A. The applicant agrees that the design and management plan as specified above are required for Mitigation Area A.
36. It is agreed that the details of the management of the site and its targets, and the constraints of the operational buffer, will be set out in an Ecological Management and Monitoring Plan for the site, which will be prepared in consultation with Natural England and the RSPB and secured by a Requirement of the DCO. The RSPB believes that this Plan must be part of the application documentation submitted to the Examining Authority as well as being approved by the relevant planning authority and Natural England. The RSPB believes that full details of these plans are needed now including the possible process that may be needed should either mitigation not work or monitoring shows that the impact is worse than predicted – apart from these limited circumstance the plans should not be evolving documents that can change. The applicant believes the preparation, agreement and implementation of the EMMP should be secured through a Requirement of the DCO.

Loss of intertidal feeding areas for SPA Birds

37. The agreement of the RSPB to the text set out in paragraphs 38-46 below is limited to the extent of information and assessment set out in the ES for the Application. The RSPB reserves its right to comment on, and if it wishes, object to, the implications of this text for the sHRA exclusive of this document.

The Baseline

38. The intertidal area of the development site comprises mudflat that is used as a feeding resource by the SPA assemblage when the habitat is exposed between high tides. A range of bird species feed on this resource.
39. High tide and low tide counts of both the Killingholme Marshes foreshore and Halton Marshes foreshore were undertaken by the Just Ecology in 2006/7 and are reported in Annex 11.6 of the ES. Through the tide bird counts of Killingholme Marshes foreshore were more recently undertaken by The Institute of Estuarine and Coastal Studies between April 2010 and April 2011; these survey results are included in Annex 11.9 of the ES.
40. The site specific surveys data supplemented the estuary wide low tide counts undertaken by English Nature in 1998/9 and 2003/4, which are reported in their Research Reports.
41. The RSPB does not agree that the existing suite of data, combined with the site specific survey effort, has been sufficient to characterise the use of the intertidal areas of the site by the SPA assemblage.

Impacts

42. The reclamation works that are necessary for the construction of AMEP will result in the loss of a significant food resource for the SPA bird assemblage. Displacing birds from the intertidal areas would result in them needing to use other parts of the SPA, which will result in increased competition, meaning they have to use less optimal feeding grounds. The RSPB believes that this could lead to enhanced mortality. Accordingly, The RSPB believes that this displacement could have an adverse impact upon the SPA assemblage and specifically upon the key autumn function of the important population of Black tailed godwits. This impact is a matter for the sHRA.
43. The RSPB believes that in addition, the loss of this area will result in the severing of key mudflat feeding areas from the adjacent roosting areas within North Killingholme Haven Pits. The impact of this 'severance' is a matter for the sHRA.

Indirect Impacts

44. The operation of AMEP has the potential to generate noise and create visual disturbance that could result in mudflat close to the quay losing its full functionality; that is birds are likely to use disturbed area less for feeding. A precautionary approach to assessing the area affected by disturbance is to assume (based on the IECS report '*Construction and Waterfowl: Defining Sensitivity, Response, Impacts and Guidance*' (2008)) that mudflat within 275 m of any operational activity is not used by any assemblage species at all.
45. Disturbing birds so that they are displaced from an intertidal area that they use for feeding would result in them needing to use other parts of the SPA, which are likely to be less optimal. Accordingly, disturbance could also have an adverse impact on the SPA assemblage and specifically on Black tailed godwits.

Mitigation

46. The loss of intertidal mudflat by direct loss and by disturbance cannot be mitigated for within the designated sites and sufficient compensatory habitat will have to be secured to ensure the coherence of the Natura 2000 network of sites subject to the *passing* of the relevant derogation tests as set out in regulation 62 Habitats Regulations.

Disturbance to SPA birds caused by Percussive Piling Noise

47. The RSPB has not considered this issue and therefore cannot agree or disagree with the content of the ES in this regard, having not reviewed the relevant applicable documentation.

North Killingholme Haven Pits (NKHP) SSSI – Disturbance

48. The relevance of these issues for the SPA and Ramsar Site part of NKHP relates specifically to the sHRA and is not included in the scope of this SoCG. The RSPB has not considered the SSSI on its own and therefore cannot agree or disagree with the content of the ES in this regard having not reviewed the relevant applicable documentation.

Managed Realignment Site – Loss of terrestrial habitat for SPA Assemblage

Baseline

49. The applicant believes that the existing use of the site as a high tide roost for the SPA assemblage has been established from a series of bird surveys undertaken between August 2010 and March 2011; these surveys are recorded in Annex 35.4 of the ES. The primary use of the terrestrial habitat by the SPA assemblage is for roosting.

Direct Impacts

50. The applicant's understanding of the effect of the loss of roosting habitat that is currently provided by the Compensation Site has been assessed and is reported in Annex G of the sHRA. A supplementary report EX 35.12 – CCS Disturbance, provides further details of the surrounding habitat and existing levels of disturbance. As the principal value of the site is for roosting, and given the widespread availability of similar habitat in the locality (and the likely permanence of that habitat), there will be no significant impact upon the SPA assemblage.

The RSPB Position

51. The RSPB believes that this is a matter relating specifically to the sHRA and does not wish to comment on the contents of the ES in this regard.

Construction disturbance to birds within the designated site

52. The RSPB has not considered this aspect of the application and therefore cannot agree or disagree with the content of the ES in this regard having not reviewed the relevant applicable documentation.

Habitat Loss within the Humber Estuary

53. The agreement of the RSPB to the text set out in paragraphs 54-57 below is limited to the extent of information and assessment set out in the ES for the Application. The RSPB reserves its right to comment on, and if it wishes, object to, the implications of this text for the sHRA exclusive of this document.
54. It is agreed that direct physical loss of estuarine habitat will occur within the Humber Estuary as a result of the Application. Functional loss of habitat may also arise due to disturbance during the operation of the development.
55. Indirect changes to habitat will also arise as a consequence of-
- a local change in the sedimentary regime to the north and south of AMEP as changes to estuary process result in new patterns of accretion and erosion.
 - Process changes throughout the estuary that give rise to long term geomorphological adjustment and changes in the ratio of sub-tidal to intertidal habitat. The specific process changes are addressed in the section of this SoCG relating to Chapter 8 of the ES.
56. The RSPB believes that this is a matter relating specifically to the sHRA and does not wish to comment on the contents of the ES in this regard.

Areas of Disagreement

57. Further to what is set out above, the RSPB does not agree –
- That ES and SEI describes fully all relevant baseline information and likely effects arising from the application for example the existing suite of data, combined with the site specific survey effort, has not been sufficient to characterise the use of the intertidal areas of the site by the SPA assemblage
 - That the proposed mitigation measures are suitable sufficient and appropriate due to the lack of information provided on:
 - What is being proposed including design and workability
 - Any accompanying management measures and targets
 - Any monitoring being proposed

58. The RSPB believes that all this information was needed when the application was submitted, and is needed now to ensure that full account can be made of it when considering this application both for the Examining Authority as well as the objectors to the application. In the absence of this information the RSPB has to continue to object to the majority of mitigation and compensation aspects of the Applicant's proposal.
59. Further detail of the RSPB's disagreement is set out in its Written Representation. The applicant will respond to this separately from this SoCG.

Areas where agreement is still sought

60. Notwithstanding the above, the applicant and the RSPB seek agreement on the content of the detailed design and EMMPs proposed for Mitigation Area A, Cherry Cobb Sands and Old Little Humber Farm. Agreement will continue to be sought as these plans develop.