

Dear Sirs

Able MEP: response to Able comments on relevant representations

Further to this matter, please see the attached document.

I should be grateful if you could confirm receipt.

Kind regards

David Harrison

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<<120703 Natural England response to Able's comment on relevant representations.pdf>>

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ABLE MARINE ENERGY PARK (AMEP)

Planning Inspectorate Reference: TR030001

NATURAL ENGLAND'S RESPONSE TO COMMENTS ON THE RELEVANT REPRESENTATIONS

1. INTRODUCTION

1.1 This document responds to the Applicant's comments on Natural England's Relevant Representations. It also responds to one point in East Riding of Yorkshire Council's Written Representations.

1.2 Natural England has continued to have meetings and teleconferences with the Applicant to advise on the DCO application and attempt to make progress on some of the outstanding issues raised in Natural England's Relevant Representations and Written Representations. Where progress has been made this is acknowledged in the response below.

1.3 Since the submission of Natural England's Written Representations, at the end of June the Applicant provided a large amount of supplementary analysis and information in the form of 47 supplementary reports and other documents. Some of the issues raised by Natural England have been addressed in part or wholly through the provision of further information or the undertaking of further analysis by the Applicant. Where relevant and where Natural England has had the opportunity to consider this information, these supplementary documents are referred to in the response below.

1.4 Natural England submitted comments on 23 July 2012 following the issue specific hearing on the draft DCO and DML. A Statement of Common Ground on the Applicant's Environmental Statement was agreed between the Applicant, the Environment Agency, the Marine Management Organisation and Natural England on 27 July 2012. Natural England is currently working on three Ecological Management and Monitoring Plans (EMMPs). Two EMMPs, relating to the marine and terrestrial environment, will shortly be provided to the Applicant in skeleton form. A third EMMP on compensatory measures cannot be progressed until Natural England has received further details of the compensation proposals, which are anticipated in the next few days. Where appropriate, Natural England's response makes reference to the above documents.

2. NATURAL ENGLAND'S RESPONSE TO APPLICANT'S COMMENTS ON THE RELEVANT REPRESENTATIONS

2.1 Proposed compensation site at Cherry Cobb Sands - Natural England Representation 1.18.1

Applicant's comments **60.2**

Natural England's response:

2.1.1 Natural England welcomes the Applicant's acknowledgement of the inherent uncertainty in its compensation proposals and the need for monitoring to determine the success or otherwise of the managed realignment site. As noted above, before Natural England can provide a skeleton Ecological Management and Monitoring Plan (EMMP) for the compensation site, it is essential that the Applicant provides details of the proposed compensation measures at Cherry Cobb Sands.

2.1.2 Natural England's position on the compensation site is set out in detail at paragraphs 8.6-8.28 of its Written Representations.

2.2 Disturbance to Humber Estuary SPA/ Ramsar waterbirds. Natural England relevant representation 1.18.2

Applicant's comments **60.3** and **60.4**

Natural England's response:

2.2.1 Natural England's view is that it is possible to mitigate disturbance to SPA/Ramsar waterbirds. The mitigation arrangements should be confirmed within a piling method statement which will be referred to within the Deemed Marine Licence and agreed and enforced by the MMO. The details of this are set out in the joint letter sent by the Environment Agency on 19 June 2012 at Appendix F of Natural England's Written Representations.

2.3 Designated site habitat loss; lack of proposed compensation for the SAC and Ramsar site. Natural England relevant representation 1.18.3

Applicant's comments **60.5, 60.6, 60.7, 60.8, 60.9**

Natural England's response:

2.3.1 Natural England has read the supplementary report EX10.6. This explains that whilst there will be a change in the sediment type and associated biotope and species distribution, the physiotype that will be affected covers over 5,700ha of the estuary. Natural England agrees that the impact resulting from the berthing pocket (0.04% of the physiotype) will not be significant. However, Natural England considers that further consideration needs to be given to the impact of dredging on the protected features of the site (discussed further at paragraph 2.12.1 below).

2.4 Mitigation for great crested newts (Area B). Natural England relevant representation 1.18.4

Applicant's comments **60.10**

Natural England's response:

2.4.1 The position over great crested newts has moved on since Natural England's Written Representations. Natural England received a second draft of the protected

species mitigation application from the Applicant, however further information is required before the 'Favourable Conservation Status' test can be agreed. This was communicated to the Applicant by Natural England's European Protected Species Licensing Team by an email of 24 July 2012. A response is awaited.

2.5 Biodiversity mitigation: breeding birds. Natural England relevant representation 1.18.5

Applicant's comments **60.11**

Natural England's response:

2.5.1 The total number of bird territories affected by the development is not agreed. The Applicant relies upon report EX11.16 (assessment update for breeding birds). The report adequately determines the diversity and number of breeding birds present. However it fails fully to assess the impacts.

2.5.2 The report divides the assessment into four areas, including an area of 122.4ha called "current industrial", it then proceeds on the assumption that there will be "[n]o change to the populations within the existing industrial areas" (paragraph 23). There is no basis for such an assumption. In fact there appear to be clear differences in the existing "industrial" use of the site (which includes areas of gravel, bare ground, arable and tall ruderals as well as ditches, hedgerows and smaller areas of abandoned arable land) and the proposed future use as a port facility. The additional landscape masterplan EX20.3 for the site does not show any open undeveloped areas remaining in the "current industrial" area.

2.5.3 These impacts could be offset through the provision of suitable onsite habitat creation and enhancement. Natural England has reviewed the additional landscape masterplan, however it cannot be agreed at present that it adequately achieves this. This issue could be resolved by agreeing suitable mitigation in the terrestrial Ecological Management and Monitoring Plan (EMMP).

2.6 Disturbance to birds on the intertidal habitat. Natural England relevant representation 2.1

Applicant's comments **60.12**

Natural England's response:

2.6.1 Natural England agrees that an area of the SPA and Ramsar site to the south of the quay will be adversely affected by disturbance during construction and operation and that mitigation for this is not possible. Therefore (subject to passing the tests of 'no alternatives' and 'imperative reasons of over-riding public interest') compensation is required. This does not remove the requirement for mitigation where it is possible, and details of suitable mitigation have been provided to the applicant in the joint letter sent by the Environment Agency on 19 June 2012.

2.7 Designated site habitat loss. Natural England relevant representation 2.2

Applicant's comments **60.13**

Natural England's response:

2.7.1 It is common ground that there will be direct and indirect habitat loss within the designated site boundary due to the proposed development. This habitat loss will affect the designated site features 1130 Estuaries; 1140 Mudflats and sandflats not covered by seawater at low tide; 1310 *Salicornia* and other annuals colonising mud and sand; 1330 Atlantic salt meadows (*Glauco-Puccinellietalia maritima*).

2.7.2 Natural England welcomes the clarification provided by the supplementary report EX11.23 (immediate habitat losses) and agrees with the figures presented.

2.7.3 Natural England has reviewed the supplementary report EX11.24 (medium and long term habitat losses). The medium and long term losses and gains presented in this report are based on modelled predictions and experience from HIT.

2.7.4 Natural England makes the following observations about report EX11.24. The tables indicate that changes to habitats within the designated site boundary should be subtracted from the figures for direct loss. For example, the figure provided for subtidal losses cannot be less than the 13.5ha direct loss as *changes* to habitats within the site boundary do not cancel out this impact.

2.7.5 As noted above Natural England is aware of work undertaken on behalf of the Environment Agency to assess long term losses of intertidal habitat in the estuary as a result of the development and intends to discuss this further with both the Environment Agency and the Applicant. Natural England notes that the Applicant refutes the work carried out by the Environment Agency and has instead selected a figure of 1ha loss; this requires clarification as it is not clear how the applicant has reached this 1ha figure.

2.7.6 Natural England is not able to agree this report without further information and clarification from the Applicant on the figures presented within the report. It is important that the extent of the impact is understood as fully as possible so that adequate compensation can be provided. In any event, because the medium and long term losses are based upon modelling, and there is an element of uncertainty associated with using modelling, monitoring will be required.

2.8 Construction and operational disturbance. Natural England relevant representation 2.3

Applicant's comments **60.14**

Natural England's response:

2.8.1 Natural England agrees that it is possible to mitigate disturbance to SPA/Ramsar waterbirds utilising the remaining intertidal habitat through a piling method statement.

2.8.2 However Natural England still has concerns over construction disturbance to North Killingholme Haven Pits (NKHP). In response, the Applicant refers to report EX11.25,

although this is recorded as “not used” so it is assumed that reference to report EX11.22 is intended. This report states that construction disturbance is not considered as piling noise will have the greatest effect on SPA/ Ramsar waterbirds. However, it has been determined that it is not possible to rule out an adverse effect due to piling noise and therefore mitigation is required. Therefore, whilst other types of construction noise may have a lesser effect than piling; this does not mean they have no effect at all. With regards to operational noise, the short report does not rule out a significant adverse impact from noise other than piling, but states that there is “a realistic expectation” that sufficiently low levels of noise could be achieved. However, there can be no certainty until mitigation for these potential impacts is included within the DCO or an acceptable agreed plan.

2.8.3 Natural England also still has concerns over operational disturbance to Area A. Natural England’s advice is that a 150m operational buffer between the core area and the development site is required, unless additional management activities within the buffer can be secured. The Applicant has agreed to manage activities within the buffer, it is therefore important that the details of any management commitments are clearly set out; Natural England has sought such details. However, while the opening sentence of report EX11.22 states “[t]his explanatory note describes the noise impact within the operational buffer by SPMTs [self-propelled mobile transporters] and cranes acting independently and the levels that would arise on the core mitigation area”, there is no further consideration of the operational buffer in the document.

2.9 In-combination impacts. Natural England relevant representation 2.4

Applicant’s comments **60.15**

Natural England’s response:

2.9.1 Natural England has not had the opportunity properly to review report EX44.1 (a 134 page document) and so is not in a position at this stage to provide further comments on in-combination impacts. Natural England will provide any comments to the Applicant as soon as it is in a position to do so.

2.10 Shadow HRA. Natural England relevant representation 2.5

Applicant’s comments **60.16**

Natural England’s response:

2.10.1 Natural England will work with the Applicant on a Statement of Common Ground to cover Habitats Regulations issues. Natural England has already agreed the tables that will be populated and undertaken a screening exercise. It is hoped to make further progress on this document during the next meeting of the parties on 8 August 2012.

2.11 Estuary biotope (habitats and species) characterisation. Natural England relevant representation 2.6

Applicant's comments **60.17**

Natural England's response:

2.11.1 Natural England agrees that report EX11.14 provides an adequate biotope map that illustrates the location and distribution of the dominant biotopes in the area.

2.12 Dredging. Natural England relevant representation 2.7

Applicant's comments **60.18**

Natural England's response:

2.12.1 Natural England does not agree with the conclusions on dredging in the report EX10.4 (impact of dredging on marine features and aquatic ecology). The report notes that loss of the current benthic community will be a permanent and significant effect of dredging, it also notes a loss of subtidal habitat. Given this, it is necessary to consider mitigation. The report concludes with a section on mitigation, but this appears to constitute good working practice rather than mitigation. It is therefore necessary to consider how the impacts of dredging can be reduced.

2.13 Hydrodynamic and sedimentary regime. Natural England relevant representation 2.8, 2.8.1, 2.8.2 and 2.8.3

Applicant's comments **60.19, 60.20, 60.21, 60.22 and 60.23**

Natural England's response:

2.13.1 The Applicant has provided a substantial amount of further information relating to impacts on the hydrodynamic and sedimentary regime, some of it entirely new. It is important that the proposal is carried out in accordance with the design as assessed in these reports.

2.13.2 Natural England's comments here relate to report EX8.7 (modelling of the final quay design, by JBA Consulting).

2.13.3 This detailed report adequately demonstrates that the final quay design does not result in increased bed shear stress which may have resulted in erosion at the area in front of North Killingholme Haven Pits.

2.13.4 The report also provides clear information on changes to the wave regime caused by the development which have the potential to impact on the designated sites and features within the estuary. Natural England was concerned about wave heights and the corresponding potential increase in erosion which may occur to the designated site if any increases in wave heights occurred. The report confirms that a small change is predicted locally at either end of the quay and also on the north bank of the estuary. These predicted changes are for extreme events from different wave directions. The predicted changes at either side of the quay are small, local and the report suggests that they will

be offset by predicted accretion which results from the sheltering effect of the quay. The predicted impacts on the north bank are also small. The report provides clear figures which cover both the area local to the development and the wider estuary to demonstrate that the predicted changes to waves are small and not anticipated to have significant impacts on designated features within the estuary.

2.13.5 The report also provides confidence that the compensation site will not result in wider impacts to the hydrodynamics of the estuary. However, this work will need to be updated if significant changes are made to the compensation proposal that invalidates any of the assumptions used for the modelling.

2.13.6 Finally, the report assesses the impacts on estuary hydrodynamics of placing inerodible material from the development into a licensed disposal site. This is the first time this impact has been assessed. The placing of material in the disposal site will impact on wave direction. There is the potential for changes to wave direction to result in erosion of intertidal areas on the north bank of the estuary; the modelling predicts that this will manifest as the formation of drainage channels within the mudflat. The report notes that “a change to intertidal area and volume of sediment would be unlikely”, however no quantification of the scale of change is provided. This therefore results in an uncertainty in the scale of this impact. Modelling suggests that placing only half of the material in the disposal site would reduce this impact, so it may be appropriate to restrict the material that can be deposited at this licensed site.

2.14 The results of hydrodynamic modelling. Natural England relevant representation 2.9

Applicant's comments **60.24**

Natural England's comments:

2.14.1 Natural England is grateful for the clarification from the Applicant. It is hoped that it is accepted that the focus of any Habitats Regulations assessment should be the conservation objectives of the protected site, rather than sea level rise.

2.15 Compensation at Cherry Cobb Sands. Natural England relevant representation 2.10

Applicant's comments **60.25**

Natural England's response:

2.15.1 Natural England has set out at length its concern about the proposed compensatory measures. The Applicant refers to report EX35.10, although this is recorded as “not used” so it is assumed that the intended reference is to report EX28.1 (interim report on modelling for Cherry Cobb Sands).

2.15.2 Natural England welcomes the supplementary work that has been included within report EX28.1 to try and gain an understanding of the design that will allow the

compensation site to meet its required targets. However the report shows that the compensation designs modelled to date do not provide sustainable mudflat over the long term.

2.15.3 The report discusses two different designs of the compensation site which have been modelled. The first predicts that there will be only 41ha of mudflat (from a starting figure of 97ha) after the five years. The second predicts there will be 43ha of mudflat (from a starting figure of 92ha) after the five years. In both cases the quantity of mudflat is expected to decline further as time progresses, and no quantified predictions after the five years have been provided. These modelled predictions do not provide 2:1 compensation or even 1:1 compensation over the medium or long term. It is also noted that there are uncertainties associated with the modelling of $\pm 20\%$.

2.15.4 Section 7.1 of the report relates to management interventions to enhance mudflat development. As discussed previously with the Applicant, Natural England's position is that physical management interventions and the use of chemicals or biological controls to control the development of saltmarsh that have been mooted by the Applicant are highly unlikely to be acceptable options within this sensitive marine environment. Natural England would urge the Applicant to focus on designing an optimal scheme for the development of sustainable mudflat. Allowing coastal processes to function naturally are always the best way to manage the coastline.

2.15.5 Natural England's position is that the designs modelled to date would not provide adequate compensation to maintain the coherence of the Natura 2000 network. It is understood that this is not disputed by the Applicant. Natural England is aware that Black and Veatch are producing a second interim design report and will provide further comments once there has been the opportunity to consider this work.

2.16 Loss of terrestrial habitat utilised by SPA/ Ramsar birds. Natural England relevant representation 2.11

Applicant's comments **60.26**

Natural England's response:

2.16.1 As set out at Table 5.1 in Natural England's Written Representations, this is no longer an issue. This is because it is accepted that the SPA birds will be able to utilise arable land adjacent to the managed realignment site created as compensatory intertidal habitat.

2.17 Bats, south bank development site. Natural England relevant representation 2.13.1

Applicant's comments **60.27**

Natural England's response:

2.17.1 Natural England agrees with the conclusions of report EX11.19 (bat surveys: supplementary note). The bat surveys show that there is a low likelihood of bats roosting on the development site. However, as the possibility of bats roosting in trees to be felled during site clearance works cannot be excluded it is important that surveys are carried out prior to felling works and that if roosting bats are recorded then a bat mitigation licence is applied for and issued in order to allow the works to proceed.

2.17.2 Natural England agrees that the landscaping proposals within the additional landscape masterplan (report EX20.3) will enhance foraging opportunities for bats.

2.18 Badgers, Cherry Cobb Sands. Natural England relevant representation 2.13.2

Applicant's comments **60.28**

Natural England's response:

2.18.1 Natural England agrees that the loss of foraging habitat for badgers can be mitigated by creating new habitat alongside Cherry Cobb Sands; in due course the details of this can be set out in the Ecological Management and Monitoring Plan governing the compensation site. The mitigation measures suggested at section 5 of report EX35.13 should also be included.

2.18.2 Natural England understands that the Applicant is in the process of considering a licence application.

2.19 North bank compensation site. Natural England relevant representation 2.15

Applicant's comments **60.29**

Natural England's response:

2.19.1 As set out at Table 5.1 in Natural England's Written Representations, this is no longer an issue. Natural England has agreed that the loss of the 500m avenue of trees will not have a significant effect on local bat populations because the trees are not suitable as roosting habitat.

2.20 Landscape masterplan. Natural England relevant representation 2.16

Applicant's comments **60.30**

Natural England's response:

2.20.1 Natural England has reviewed the additional landscape masterplan EX20.3 and broadly agrees with the mitigation proposed for water voles and bats; however further clarification is required on the statement that water vole habitat will be increased.

2.20.2 At paragraph 2.5.3 above it is noted that further on-site mitigation may be required to offset the impact upon breeding birds. In addition information and/or clarification is

required to determine whether the on-site mitigation is sufficient. For example, the strips of habitat that are mapped between compartments within the development site are described as tree belts, avenues of trees, hedgerows, scrub, rough grassland and enhanced ditch corridors: it is not possible to provide all of these habitats in one location.

2.20.3 In relation to mitigation Area A, the masterplan refers to 2-6m wide unmanaged strips being created at the edges of the area to provide habitat for species including grey partridge, tree sparrow, linnets and reed bunting. However, Area A must be optimally managed as wet grassland for curlew and therefore should be grazed with cattle. It will not be possible to create unmanaged strips of vegetation along field boundaries as cattle will graze throughout the area. In order to provide the mitigation necessary to offset impacts on breeding birds Natural England suggests that suitable areas throughout the development site are planted with a mix of wild flowers, herbs and legumes. In addition, a small number of managed areas should be sown with a biannual farmland granivore seed mix and left unharvested over-winter to provide food for farmland birds. These are matters for further discussion; Natural England will provide further information to the Appellant and hopes to resolve these issues through the terrestrial ecological management and monitoring plan (EMMP).

2.21 Old Little Humber Farm. Natural England relevant representation 2.17

Applicant's comments **60.31**

Natural England's response:

2.21.1 Natural England agrees that additional landscaping can be carried out at Cherry Cobb Sands to provide permanent mitigation for the loss of terrestrial habitat. Ideally this area and the new floodbank should also be sown with a mix of wildflowers, herbs and legumes favoured by wintering and breeding farmland birds.

2.22 Monitoring Cherry Cobb Sands Managed Realignment Site. Natural England relevant representation 3.1.1

Applicant's comments **60.32**

Natural England's response:

2.22.1 Natural England welcomes the Applicant's agreement to the inclusion of the Ecological Management and Monitoring Plans (EMMPs) within the DCO. As noted above, outlines of the terrestrial and marine EMMPs will shortly be provided to the Applicant. Further details are necessary before an equivalent compensation plan can be prepared.

2.23 Old Little Humber Farm. Natural England relevant representation 3.1.2

Applicant's comments **60.33**

Natural England's response:

2.23.1 The Applicant refers to report EX35.11, although this is recorded as “not used” so it is assumed that reference to report EX28.2 (Old Little Humber Farm: wet grassland creation (etc)) is intended. Natural England maintains serious concerns about the ability of Old Little Humber Farm to deliver functional habitat for displaced SPA/Ramsar waterbirds. Foraging birds require abundant soil invertebrates and roosting birds require low islands surrounded by water. These wet conditions will have to be created at the driest time of year to support the most significant numbers of displaced birds, passage black-tailed godwits. The predicted water budget to enable these conditions to be created purely through rain water appears to Natural England to be very optimistic. In addition, banks are required to cover the utilities pipelines and this will create 12 smaller compartments within the site which will create edge effects and reduce sightlines. These banks and the proposed water storage areas in the northern section will not function as wet grassland and therefore the remaining area of functional wet grassland habitat is estimated to represent approximately 50% of the site area. It is expected that there will be further discussion with the Applicant about these issues and the issues raised in Natural England’s Written Representations (paragraph 8.19).

2.24 Marine piling. Natural England relevant representation 3.1.3

Applicant’s comments **60.34**

Natural England’s response:

2.24.1 Natural England’s advice is that the mitigation for marine piling set out in the joint letter sent by the Environment Agency on 19 June 2012 is necessary to avoid an adverse effect on river lamprey. It is understood that the Applicant is considering these proposals.

2.25 Loss of SSSI soke dykes. Natural England relevant representation 3.2

Applicant’s comments **60.35**

Natural England’s response:

2.25.1 Natural England welcomes the Applicant’s proposal to create a new soke dyke behind the new flood defence.

2.26 Habitat improvements. Natural England relevant representation 3.3

Applicant’s comments **60.36**

Natural England’s response:

2.26.1 Natural England welcomes the Applicant’s agreement to improve the habitat at North Killingholme Haven Pits (NKHP), which is currently in unfavourable condition. These proposals may be referred to in the terrestrial Ecological Management and Monitoring Plan (EMMP), but as NKHP is outside the red line development boundary but

within the Applicant's ownership, separate arrangements may be necessary to secure them. Natural England will seek further clarification from the Applicant on what it proposes in this regard.

2.27 Little ringed plover. Natural England relevant representation 3.4

Applicant's comments **60.37**

Natural England's response:

2.27.1 Natural England welcomes the agreement from the Applicant to provide alternative gravel habitat for breeding little ringed plovers on the islands within North Killingholme Haven Pits. Again arrangements will have to be made so that this is secured.

2.28 Bats. Natural England relevant representation 3.5

Applicant's comments **60.38**

Natural England's response:

2.28.1 Natural England agrees with the conclusions in report EX11.19 (bat surveys), however, as noted at paragraph 2.17.1 above, it is important that further surveys are carried out prior to the felling of trees.

2.29 Water voles. Natural England relevant representation 3.6

Applicant's comments **60.39**

Natural England's response:

2.29.1 Natural England broadly agrees with the overall conclusions of the water vole survey (report EX11.29) and with the assessment of impacts.

2.29.2 Similarly, Natural England broadly agrees with the proposed mitigation as described in the additional landscape masterplan EX20.3. However, in order to confirm the statement that "through enhancement measures, there will be a net increase in suitable water vole habitat of approximately 450m" there is need for clarification of what these enhancement measures will involve, and evidence that the existing ditch network has considerable lengths of habitat unsuitable for water voles.

2.29.3 In the event that water voles need to be translocated to newly created ditches a licence under the Wildlife and Countryside Act 1981 will need to be obtained.

2.30 Badgers. Natural England relevant representation 3.7

Applicant's comments **60.40**

Natural England's response:

2.30.1 Natural England agrees with the Applicant's assessment of impacts on badgers on the south bank, and accepts that the proposed habitat improvements suggested in the Burkinshaw's Covert Conservation Management Plan Consultation Draft 2010 prepared by Humber Industry Nature Conservation Association (INCA) will provide sufficient foraging habitat to mitigate for any losses from the development site.

2.31 Mitigation Area A. Natural England relevant representation 3.8

Applicant's comments **60.41**

Natural England's response:

2.31.1 See comments at paragraphs 2.20.1-2.20.3, above.

2.32 Operational buffer. Natural England relevant representation 4.1

Applicant's comments **60.42**

Natural England's response:

2.32.1 See comments at paragraph 2.8.3, above.

2.33 Lighting. Natural England relevant representation 4.2

Applicant's comments **60.43**

Natural England's response:

2.33.1 Natural England has read supplementary report EX19.1 and accepts that lighting will not affect the remaining intertidal habitat. There is the possibility that there may be an increase in light levels at North Killingholme Haven Pits and therefore welcome the commitment in requirement 17 of Schedule 11 to the draft DCO that the LPA consult Natural England before approving the final lighting plans.

2.34 Grey seals. Natural England relevant representation 4.3

Applicant's comments **60.44**

Natural England's response:

2.34.1 Natural England advises that mitigation is required during marine piling works; this is set out in the joint letter sent by the Environment Agency on 19 June 2012.

2.35 Footpath diversion. Natural England relevant representation 4.4

Applicant's comments **60.45**

Natural England's response:

2.35.1 Natural England agrees that the public footpath should be located at the landward toe of the new floodbank to minimise disturbance to SPA/Ramsar waterbirds utilising the compensation site. Natural England welcomes the commitment to secure this through Article 17 of the draft DCO.

2.36 The land adjacent to North Killingholme Haven Pits. Natural England relevant representation 4.5

Applicant's comments **60.46**

Natural England's response:

2.36.1 Natural England welcomes the Applicant's suggestion that existing conditions relating to an operational buffer should be retained by a suitable requirement in the draft DCO. Natural England is yet to see any details of this proposal and would welcome the opportunity to comment.

2.37 Schedule 11 Requirements – Ecological Mitigation. Natural England relevant representation 5.1

Applicant's comments **60.47**

Natural England's response:

2.37.1 Natural England welcomes the Applicant's agreement to the suggestion that the Ecological Management and Monitoring Plans (EMMPs) be included as requirements in the draft DCO, which was reiterated and developed at the issue specific DCO hearing on 12 July 2012.

2.38 Schedule 11 Requirements – European Protected Species. Natural England relevant representation 5.2

Applicant's comments **60.48**

Natural England's response:

2.38.1 Natural England accepts the Applicant's suggestion that the wording of the requirement can be amended to state "no development at all, *other than tidal works*" – given that only terrestrial works are anticipated to affect European Protected Species.

2.39 Schedule 11 Requirements – Nationally Protected Species. Natural England relevant representation 5.3

Applicant's comments **60.49**

Natural England's response:

2.39.1 Natural England agrees that nationally protected species can be adequately included within the terrestrial Ecological Management and Monitoring Plan (EMMP). However, this does not preclude that if necessary the Applicant will have to obtain a licence from Natural England in due course.

2.40 Schedule 11 Requirements – Nationally Protected Species. Natural England relevant representation 5.4

Applicant's comments **60.50**

Natural England's response:

2.40.1 It was agreed at the hearing on 12 July 2012 that the provision of compensatory measures should be included as an additional requirement in the draft DCO and Natural England has suggested preliminary wording for this in its representations dated 23 July 2012.

3. COMMENTS on OTHER PARTIES WRITTEN REPRESENTATIONS

3.1 East Riding of Yorkshire Council

3.1.1 The Written Representations made by East Riding of Yorkshire Council (the Council) suggest that two new definitive public rights of way should be made around the proposed managed realignment site at Cherry Cobb Sands: one along the base of the new embankment, as proposed by the Applicant, and one along the top of the new floodbank with a limitation that that would allow this route to be closed during sensitive times of the year. The Council also proposes that the existing footpath should be retained along the redundant floodbank to the south east.

3.1.2 Natural England is concerned by these suggestions which would result in a public footpath around much of the compensation site. As set out at section 11.9 of the 27 July 2012 Statement of Common Ground, it is recognised that walkers, particularly those with dogs, can cause disturbance to birds, indeed the recent work undertaken by Footprint Ecology on behalf of the Humber Estuary Management Scheme includes amongst its recommendations "measures to limit impacts of disturbance at realignment sites such as Paull through screening, routing of paths around the base of the embankment on the inland side etc". The Paull Holme Strays environmental monitoring report dated March 2009 also states "[a]nthropogenic disturbance is a significant pressure on the function of the intertidal area for waterfowl usage, being significantly bounded by public rights of way ... This has considerable implications for breeding colonies on the site and should be addressed with management initiatives to reduce the daily impacts on the bird assemblage that effectively reduces the area of PHS available for bird activity". Natural England therefore wishes to highlight that there is a risk that the compensation site may not meet its compensation objectives if the public footpath causes disturbance.

3.2.3 The Council refers to Natural England's draft scheme for coastal access and the preference for routes to follow higher ground to offer fine views over estuaries; Natural England believes this may be achieved at Cherry Cobb Sands through the provision of a number of bird hides on top of the new floodbank, which will allow people to view the site and the wider estuary without causing disturbance to the SPA/Ramsar waterbirds.

3.2.4 The Applicant is only promoting a footpath along the landward toe of the new flood defence; as set out above there are good reasons for restricting the diverted footpath to that route.

Natural England
3 August 2012