

**ABLE MARINE ENERGY PARK – APPLICATION FOR NON-MATERIAL CHANGE
RESPONSE TO THE SECRETARY OF STATE’S LETTER DATED 28 OCTOBER 2020**

1. This is the response of Able (UK) Ltd (the Applicant) to the letter from the Secretary of State for Transport dated 28 October 2020 ('the Letter'). Despite the current position of the Secretary of State, the Applicant believes he should nevertheless grant the non-material amendment application (as a non-material amendment). It is believed that the Secretary of State (SoS) has failed to have regard to matters which are material to the decision and has given weight to matters that are simply not material to the subject matter of the application. The Applicant also proposes amendments to the application to give certainty regarding the development of Area A, and thus address the '*compelling reason*' cited at paragraph 39 of the Letter.
2. Relevantly also, in the two years since the application:
 - a) Wet grassland has actually been constructed at Halton Marshes in accordance with planning permissions PA/2016/649 and PA/2015/1264, both of which permit wet grassland on Halton Marshes;
 - b) Management Plans for the maintenance of the wet grassland have been approved by the local planning authority, following consultation with Natural England (NE), pursuant to Condition 9 of PA/2016/649 and Condition 48 PA/2015/1264.
3. It follows from the above that the granting of the Non-Material Change (NMC) would not involve any new development whatsoever; not that it ever did – its intent always was merely to remove the obligation on the Applicant to develop wet grassland at Mitigation Area A and oblige it to maintain the Halton Marshes Wet Grassland (HMWG) as mitigation for AMEP. However, for reasons of certainty, the Applicant further proposes to re-define the Order Limits so that development of Mitigation Area A is not permitted by the Order. The Applicant has also withdrawn planning application PA/2017/2141 which related to vehicle storage. With these amendments, the SoS can be certain that no physical change to the environment will occur as a consequence of the NMC.
4. Taking now, in turn, the issues raised in the Letter:

Consultations

5. **Paragraph 8** of the letter does not include reference to the fact that Natural England (NE) submitted a second response to PINS on 13 December 2018. This second response set out the position of NE with respect to the draft Terrestrial Environmental Management and Monitoring Plan (TEMMP) included at Appendix F of the Application Statement; namely that, '*Natural England are content to approve the TEMMP in principle*'. That response appears to remain unpublished on the PINS website.
6. **Paragraph 9** of the letter appears factually incorrect. On 29 April 2020, the SoS requested the Applicant provide an updated sHRA and at the same time, in the same letter, invited '*interested parties who provided responses to the consultation on the notice of the Application and who have questioned the adequacy of the information in the Applicant's updated Environmental Statement to set out the areas considered to be inadequate and, if possible, provide supporting evidence*'. On the face of it therefore, the SoS recognised that the responses that had been received included unsubstantiated assertions, otherwise there would be no point in this pointed request for '*evidence*'. In any event, both the Applicant and the other interested parties were given until 17 May 2019 to respond. Sheila Henley responded on 6 May, whilst NE and Associated British Ports (ABP) responded on 17 May. The Applicant submitted their sHRA on the same day as NE and ABP submitted their responses. It is therefore untrue to say that '*the Applicant provided an updated shadow HRA report on 17 May 2019 and comments on this were also provided by Natural England ("NE") and Clyde*'

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and Co LLP on behalf of Associated British Ports’, (underline added). So far as the Applicant is aware, neither of these parties has commented on the sHRA and it is also a matter of fact that ABP failed to evidence the various unsubstantiated assertions in their original response.

7. Also missing from this section, and not mentioned anywhere, is any reference to the external environmental advice procured by the DfT from an un-named party, sometime after April 2020 as mentioned in the DfT letter to BDB Pitmans dated 29 April 2020. On 19 June the DfT confirmed to BDB Pitmans that external environmental advice on the application had been received. This advice has not been published on the PINS website or made available to the Applicant at all. It is not therefore clear to what extent that advice received has given weight to un-evidenced claims in any responses.

Consultation Responses

8. **Paragraphs 11-15**

Given that the Applicant has withdrawn their planning application PA/2017/2141 and proposes to remove development rights pursuant to the DCO from Mitigation Area A, then no weight can be given to Dr Milner’s concerns, or those of C.Gen or C.Ro regarding development of that land.

9. **Paragraph 16-17**

With regard to the withdrawn objection of NLC, by withdrawing the objection it is obvious that NLC do not support the views expressed by a former employee. It is not clear what weight the SoS attributes to the withdrawn objection but it would seem unreasonable to give it any great weight.

10. **Paragraphs 18-19**

Despite ABP declaring at paragraph 1.8 of its response that it is not *‘basing its concerns on environmental or nature conservation issues,’* ABP’s response then proceeds to contain misleading environmental commentary. For example (and purely by way of example), paragraph 3.11 of their response dated 26 October 2018, states that:

‘relying on a purely factual understanding of the case as promoted by Able at the examination, we were led to understand that the location of the mitigation area was particularly important to the BTG, and some considerable consideration was given during the examination of the AMEP as to whether Halton Marsh was actually a suitable location to mitigate impacts to the BTGs’.

Despite the guise of a *‘factual understanding’*, ABP is conflating two separate issues, namely compensation for BTGs displaced by the quay and mitigation for the waterbird assemblage (and Curlew in particular) impacted by the loss of terrestrial fields that serve as FLL. The important fact is that Area A does not mitigate for the impacts of the development on BTG at all, so the discussions at the hearing relating to BTG use of Halton Marshes is irrelevant and misleading in the context of the NMC.

Similarly, at paragraph 3.12, the author quotes the paragraph 38(e) of SoS’s original HRA for AMEP dated 18 December 2013:

‘Natural England considers that there is a high level of uncertainty that the creation of wet grassland in this location will provide anything other than habitat of modest value for the high numbers of birds that will be displaced by the AMEP development, because the site is some distance from suitable mudflat used by BTG’

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At this point in the text of course the SoS is referring to compensatory measures and not mitigation for the loss of functionally linked land (FLL), so ABP simply misrepresent the facts.

As a final example, at paragraph 3.18, the ABP submission states:

'We are also concerned that the applicant appears to have failed properly to assess the impacts arising from the significant reduction in the overall size of the mitigation area as a result of its relocation. Both the NMA Application Statement and its covering letter state that Mitigation Area A comprises - "16.7 ha core area of wet grassland habitat surrounded by a 150m buffer strip". They fail to highlight, however, that Mitigation Area A is actually 47.8 hectares overall (of which the 16.7 hectares only forms part) and the operational buffer strip amounts to 4.5 hectares –these areas are clearly identified on the approved Indicative Landscape Masterplan (i.e. approved DCO application drawing AME-02007-A).'

This assertion, that the Applicant has shrunk the size of the mitigation site is particularly noted at paragraph 19 of the DfT’s Letter. It is however a completely bogus point. The governing criteria for the size of Area A is the core area, not the overall area, as the buffer merely protects the core area from disturbance. Natural England themselves calculated the core area and advised the buffer widths (refer to Appendix D of the Application Statement). In the NMC, the original core area of 16.7ha on AMEP has actually been increased to 20ha at Halton Marshes to provide an element of habitat banking **for the future total loss of FLL at Killingholme Marshes**. The remaining 32ha of core area at Halton Marshes are allocated for ALP mitigation and AMEP ‘over-compensation’.

ABP’s response is permeated by such flawed arguments and it is not clear to what extent the decision maker, or their environmental advisors whose advice has not been disclosed, has had regard to this unreliable information and to misrepresentations of the facts.

11. Paragraphs 20-22

There is no mention here of the potential benefit of a much larger habitat creation site mentioned in NE’s response.

At Annex 1 of this response is an explanation of the development of planning policy for FLL adjacent to the Humber Estuary SPA on the South Humber Bank. NE has already agreed that Halton Marshes will provide mitigation for the loss of FLL at Killingholme Marshes (Appendix D of the Application Statement, letter dated 28 October 2011, and also by agreeing to the North Lincolnshire Council’s HRA for HMWG included at Appendix C of the Application Statement).

The Applicant agrees that that it is for future applications to assess the impact of development of Mitigation Area A – as explained above there is no such existing application.

At Annex 2 of this response, there is an explanation of how the wet grassland at Halton Marshes (HMWG) came to be consented at various times, for separate projects, as mitigation for the loss of FLL at both Halton Marsh and Killingholme Marsh.

Consideration of the Materiality of the Proposed Change

12. Paragraphs 24-26

Environmental Statement

A review of the original ES is presented in the Planning Statement submitted with this application.

As approval of the NMC will merely result in agricultural land on Killingholme Marshes that was to be developed as Mitigation Area A remaining in agricultural use, the implications on the environment arising from approval of this NMC are very limited. To avoid any new or materially different likely significant effects arising from the NMC an equivalent mitigation site has already been constructed at Halton Marshes. As explained in response to paragraph 8 above, a draft TEMMP for the alternative site has already been agreed in principle between the Applicant and NE. The draft TEMMP addresses all the terrestrial habitats and species impacted by AMEP. The HMWG site is already being managed in accordance with the draft TEMMP and is already providing an area of enhanced FLL adjacent to the European site.

As explained above, the NMC now also seeks to amend the Order Limits to remove development consent from the parcel of land allocated for Mitigation Area A and so remove uncertainty in respect of its future use. In all other respects, the authorised and associated development consented under the AMEP DCO will remain unaltered.

The NMC does not give rise to new receptors as no development is being consented and no existing receptor is deprived of any benefit.

HRA

The fact that the SoS requested an sHRA on 29 April 2019, shows that the need to review an HRA is not in itself determinative of materiality, otherwise the application would have been refused at that hurdle.

It is also plainly not necessary to rehearse all of the arguments of the original HRA when parts of that assessment are plainly unaffected by the NMC. In particular, the need for, and provision of, compensation (paragraphs 21 *et seq*) is unaffected by the NMC which only impacts on mitigation. Therefore, it is only the mitigation measures that need to be reviewed.

To put it simply, the original HRA found no likely significant effect arising from the loss of FLL because enhanced wet grassland at Mitigation Area A fully mitigated the impact (AA paragraph 14). The sHRA finds likewise, that impacts on waterbirds due to the loss of FLL are mitigated by the development of enhanced habitat on existing FLL at Halton Marshes. Wet grassland has already been created at Halton Marshes so that there are no construction impacts to consider in relation to that land. Mitigation Area A will remain as agricultural land.

Compulsory Acquisition

The application involves no compulsory acquisition of any land.

Impacts on Local People

Local people will see no change in the environment as a consequence of the NMC being approved, or experience any change of amenity, because neither Mitigation Area A nor HMWG will be subject to any development consequential to the approval. Further, Mitigation Area A had no public benefit as access was not encouraged because of the potential for visitors to cause disturbance. Also, because the landscape of AMEP will be dominated by very tall structures, the low planting proposed around Mitigation Area A provided no screening benefit, so visual amenity

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in particular will be unaffected by the NMC. In respect of Hazeldene, the nearest residential receptor, the ES reported the visual impact to be ‘Major’, and it will remain so.

Secretary of State Consideration

13. Paragraph 28-29

The gaps identified in the original ES and HRA assessment material have been addressed by the Applicant in this submission as summarised below.

Firstly, HMWG includes all the mitigation needed for the complete loss of FLL on Killingholme Marshes; Annex 1 contains a review of the strategic approach to FLL on the South Humber Bank agreed with the relevant stakeholders and incorporated into adopted planning policy.

Secondly, to remove all doubt in relation to the future use of the Mitigation Area A site, the Applicant proposes to amend the DCO, by adding at the end the definition of Order limits in Article 2 ‘with the exception of the former Mitigation Area A’, which is then defined by reference to a list of coordinates. The effect of this is that the parcel of land comprising Area A could not be developed under Article 5. Future development would then be considered on its merits at the time when any such proposals were submitted. This means that the NMC will not result in the loss of FLL within the boundary of Mitigation Area A. Leaving Area A as agricultural land is the change that is assessed in the revised Section 3 of the Application Statement submitted with this response.

Thirdly, the NMC application does not involve any development in the planning sense - the application is simply for the re-siting of Mitigation Area A to a fully consented habitat creation site that has already been lawfully built pursuant to a planning application made to North Lincolnshire Council and granted on 8 May 2017. Thus, there are no construction or operational impacts to consider. The HMWG site was in part designed to mitigate impacts on terrestrial habitat that would otherwise occur from the development of AMEP.

Before consenting the development of HMWG, North Lincolnshire Council, undertook a HRA (Appendix C of the Application Statement) and concluded that it was ‘possible to ascertain that the proposal will not have an adverse effect on the integrity of the Humber Estuary SPA and Ramsar Site alone or in combination with other plans or projects’. The in-combination assessment contained within the HRA included consideration of AMEP and Able Logistics Park (ALP, planning permission PA/2015/1264) and took account of Area A not being developed as wet grassland.

Finally, with regard to Planning Application PA/2017/2141; on 1 May 2019 the Applicant agreed with the planning authority to defer the determination of that application until after the SOSs decision on the NMC. However, and again to remove any uncertainty, planning application PA/2017/2141 has now been withdrawn. The Applicant does not rule out developing this land in the future, any such proposal having to undergo its own EIA and HRA, but currently there is therefore no development proposal for Area A that would require cumulative assessment with AMEP as part of this application.

14. Paragraph 30

As explained above, the Applicant proposes to amend the definition of the Order Limits.

15. Paragraph 31-32 (first instance)

With the proposed amendments explained above, it is clear that with the amended NMC, Mitigation Area A does not benefit from development powers under the DCO,

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and the withdrawal of planning application PA/2017/2141 means there is no active proposal to develop Mitigation Area A. The impact of leaving Mitigation Area A as agricultural land is assessed in the revised Section 3 of the Application Statement submitted with this response.

The Effect of Relocating Area A to HMWG

16. Paragraph 32 (second instance)

The SoS does not acknowledge, and may not be aware, that HMWG site has actually been constructed. The adverse environmental impacts of the construction were mitigated by conditions on planning permission PA/2016/649 and are now historic impacts and not ones that will be consequential to the approval of this NMC and are not therefore material to this application. The site is now functioning as wet grassland in compliance with all necessary legal consents and the wet grassland is part of the existing environmental baseline. Whether the NMC is approved or not, will not change the physical environment at Halton Marshes.

17. Paragraph 33

The impact of leaving Mitigation Area A as agricultural land is assessed in the revised Section 3 of the Application Statement submitted with this response.

18. Paragraph 34

HMWG is already no longer agricultural land, any effects of its loss have already taken place pursuant to the granting of planning permission PA/2016/649. Even before the approval of PA/2016/649, the conversion of Halton Marshes to wet grassland was previously consented following full EIA and HRA, pursuant to planning permission PA/2009/0600, and the subsequent permission PA/2015/1264 granted under s73 of the TCPA. The detailed proposals for wet grassland and its change of use to provide, *inter alia*, wet grassland mitigation for AMEP was also subject to HRA pursuant to PA/2016/649. In short, approval of the NMC application will have no impact on the physical environment at Halton Marshes.

19. Paragraph 35 First bullet:

As HMWG has been constructed there is no future construction disturbance to consider.

The reference to Marsh Harrier in minutes from 2013, is to a single record in an unreferenced ecological survey in 2005, over 15 years ago. The qualifying feature of the SPA is for breeding Marsh Harrier, and their breeding sites are generally upstream of HMWG (English Nature Research Report No. 547, p115). We reiterate that the site first obtained planning permission for EIA development in 2013 and has in fact already been developed as wet grassland. It is therefore self-evident that the NMC will not change the impacts on the Marsh Harrier as it provides for no new development at all. Nevertheless, and again to remove all doubt, the Applicant has considered the impact on Marsh Harrier further in the updated sHRA submitted with this response.

On 30 November 2016, Natural England approved the TEMMP for AMEP pursuant to Requirement 19(3) of the AMEP DCO. The approved TEMMP is based on Mitigation Area A being sited at Killingholme Marshes. It is noted that the HRA undertaken by the SoS when granting the DCO, relied on the provisions of this particular document stating that:

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9. The Secretary of State notes Natural England’s opinion that Mitigation Area A, taken with the management and monitoring measures to be agreed under the Terrestrial EMMP, is sufficient to avoid an adverse effect on the site integrity of the SPA (PR 10.68). He notes also the Panel’s view that the draft Terrestrial EMMP submitted at the end of the examination formed a firm basis for finalising measures that would fully mitigate the impacts on habitats and species of the AMEP development on land at North Killingholme (PR 10.76-78). Since the details of this and the other EMMPs have now been agreed between the applicant and Natural England, the Secretary of State is satisfied that the Terrestrial EMMP will ensure that the objectives of the mitigation measures relevant to the SPA (as well as other habitats and species) will be achieved.

No weight appears to have been given by the SoS so far, to the draft TEMMP that has also been agreed with NE and that is included in Appendix F of the NMC application. On 13 December 2018, NE wrote to the Planning Inspectorate stating that:

‘Natural England are content to approve the TEMMP in principle, however, the TEMMP cannot be formally approved prior to an amendment to the DCO to relocate the mitigation area being approved by the Secretary of State. It must also only be approved with agreement from the Environment Agency and North Lincolnshire Council, as per schedule 11, requirement 19(1) (sic) of the DCO.’

On this basis, the SoS has the same level of assurance that the draft TEMMP ‘would fully mitigate the impacts on habitats and species of the AMEP development on land at North Killingholme’; as he did when relying on TEMMPs ‘agreed between the Applicant and Natural England’ in the original HRA. It is surprising that this correspondence from NE is not actually posted on the AMEP PINS website, and that no mention of this ‘approval in principle’ is contained with the SoS’s letter. This is plainly a material consideration that should be given significant weight.

20. Paragraph 35 Second bullet

The potential for leachate and landfill gas to affect the Able Logistics Park (ALP) site, and the wet grassland that was consented by that permission was assessed within the ES submitted in support of planning application PA/2009/0600. Specifically, the ES stated that:

‘7.5.2 In the area surrounding the site there are a number of industrial developments which have the potential to impact on ground conditions. Offsite to the south is the Lindsey Oil refinery, where the risk of ground contamination is high; however, there is no interconnecting watercourse to act as a pathway for contaminants, so it is considered unlikely that any contamination which may be present at this site will impact on the proposed development. To the south east of the site, land immediately south of the disused brickworks has been used for waste disposal, so there is potential for landfill gas and leachate to migrate towards the site. The nearest proposed building to this waste disposal site is more than 350m away, and it will not feature any underground space. It is considered unlikely that landfill gas will have an impact. Much of the intervening land is proposed to be left as a natural surface which will prevent the accumulation of confined gas under the development.’

This conclusion remains valid.

21. Paragraph 35 Third bullet

Section 3 of the Application has been amended to make the assessment of cumulative impacts clear.

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The NMC does not consent any development but merely removes development powers from an area, potentially giving rise to a loss of benefit from the development when considering the NMC alone. Thus, the following approach is taken:

- the conclusions of the original ES for the project alone are first assessed in the light of the change. Where, alone, the NMC results in no change at all to the original assessment of a particular component (true in most cases), then no further cumulative impact is required as the original cumulative impact would remain valid and taken as the baseline for all subsequent EIA development;
- where any conclusions of the original ES for the project alone are no longer certain, such as for the loss of FLL, then the NMC is considered in combination with other projects. Because of the geographical location of Halton Marshes, because it has been built and because the only risk in combination with other projects relates to its potential disturbance, only three other developments are relevant to the NMC. These are: HMWG which is designed to negate the impacts of the NMC; ALP which has the potential to disturb species on, or displace them from, HMWG, and North Killingholme Power Project which is currently seeking a NMC to extend its timeframe for implementation by 5 years.
- Where either the alone or in-combination assessment is able to conclude no change to the original assessment, then there is no material change to the component assessed.

22. **Paragraph 35 Fourth bullet**

With the Applicant’s proposed change to the Order Limits, Mitigation Area A does not benefit from development powers under the DCO, and the withdrawal of application PA/2017/2141 means there is no active proposal to develop Mitigation Area A. The impact of leaving Mitigation Area A as agricultural land is assessed in the revised Section 3 of the Application Statement submitted with this response.

23. **Paragraph 38**

The environmental impact of leaving Mitigation Area A as agricultural land is assessed as of no significant impact in the revised Section 3 of the Application Statement submitted with this response. Approval of the NMC application will not change the existing and consented environment at Halton Marshes.

Conclusion

24. **Paragraph 39**

Given the changes to the application explained above, the compelling reasons given are no longer valid.

25. **Paragraphs 40-41**

As explained above, if approved, the NMC will give rise to no new environmental effects at Halton Marshes at all. The impact of leaving Mitigation Area A as agricultural land is assessed in the revised Section 3 of the Application Statement submitted with this response and are plainly not significant.

The Habitats Regulations Assessment

26. **Paragraph 42**

This paragraph appears factually incorrect, the Applicant has not provided ‘*the shadow assessment submitted to NLC ... for the HMWG site*’, no such document exists.

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27. **Paragraph 43**

Given the changes to the application explained above, there is no need for the in-combination assessment described. The sHRA has been revised to consider the revised details of the application.

28. **Paragraph 44**

It is not clear what document the SoS is referring to when he mentions '*the shadow assessment for the HMWG site*', as paragraph 42 refers to a document in the same terms but that document does not exist. Further, it is not clear whether or not the SoS has misunderstood the timeline of correspondence but, to the Applicant's knowledge, NE has not been consulted on the shadow HRA document submitted by the Applicant.

29. **Paragraphs 45-48**

Given the changes to the application explained above, the points raised are no longer valid. The sHRA has however been revised to reflect the revised details of the application.

30. **Paragraph 51:** Dr Milner's concern was about application PA/2017/2141, which has now been withdrawn.

The Secretary of State's Overall Conclusion

31. Given the changes proposed above, which are needed to provide certainty in respect of the possible environmental effects, the Applicant considers that there is no reason to regard the revised application as material. This is evidenced in the revised submissions which pursuant to the '*Planning Act 2008: Guidance on Changes to Development Consent Orders*', DCLG, December 2015 show that:

- the NMC gives rise to no new or materially different likely significant effects on the environment (refer to the Application Statement, Section 3);
- the original HRA relied on the opinion of NE that the TEMMP '*will ensure that the objectives of the mitigation measures relevant to the SPA ...will be achieved*' (paragraph 9, abstracted above, see response to para 35). Given that NE has confirmed agreement in principle to a TEMMP that includes for FLL to be located at Halton Marshes, then the SoS would actually be in exactly the same position when approving this NMC as he was when approving the original application. Further, the sHRA that accompanies this response reaches the same conclusion for the same reasons. The alternative habitat has been created and any disturbance from nearby projects is mitigated by conditions embedded in the respective planning permissions.
- No further compulsory acquisition is required, and
- Local people will see no change in the environment whatsoever as a consequence of the NMC being approved. Nor will local people experience any change to the amenity that has been previously assessed, because neither Area A nor HMWG will be subject to any development consequential to the approval. Local people will not experience any loss of benefit because to all intents and purposes, the mitigation site has no public benefit as access was not encouraged because of the potential for visitors to cause disturbance. Further, because the landscape of AMEP will be dominated by very tall structures, the low planting proposed around Area A provided no screening benefit, so visual amenity in particular will be unaffected by the NMC. In respect of Hazeldene, the nearest residential receptor, the ES reported the impact to be 'Major', and it will remain so.

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ANNEX 1: Functionally Linked Land (FLL)

This Annex briefly explains the historical development of the particular planning policy that has been adopted by North Lincolnshire Council for mitigating the loss of FLL on the South Humber Bank, so that development can proceed in step with nature conservation.

The HMWG site lies within an area of land known as the South Humber Gateway (SHG), located on the south bank of the Humber estuary. The SHG stretches from the outskirts of Grimsby to the East Halton Skitter, straddling the boundaries of North Lincolnshire and North East Lincolnshire councils, it covers almost 1,000 hectares – nearly four square miles – of development land. AMEP and the consented Able Logistic Park to the north lie within this area, see Figure 1.



Figure 1: The South Humber Gateway (SHG), or South Humber Bank Zone (SHBZ)

Because of the need to balance its economic importance to the region and the fact that it is functionally linked to the Humber Estuary SPA, it has long been recognised that a strategic approach is required to mitigating the adverse effects of developing the SHG on the waterbird assemblage that relies on terrestrial areas adjacent to the boundary of the European site. Indeed, the RSPB prepared a paper as long ago as February 2008 that argued against a piecemeal approach by developers to the loss of FLL in the SHG area and promoted a more strategic approach comprising large blocks of land. Specifically, the RSPB proposed at that time:

'Given the size and length of the SHBZ, a single mitigation site would not be appropriate. As a starting point it is likely that, as a minimum, three areas broadly located in the north, centre and south of the Zone, and within close proximity to the estuary would be required to ensure provision of feeding/roosting habitat within relatively easy reach of all intertidal areas along the South Humber Bank', (original emphasis, refer to Annex 1.1).

A strategic approach to mitigation for FLL was later agreed by all the relevant regulatory bodies who, in 2010 (at various dates) signed a Memorandum of Understanding to develop such an approach (Annex 1.2).

In 2011, during pre-application consultations with Natural England regarding AMEP, Natural England (NE) explained the emerging principles of the mitigation for FLL within the SHG to the Applicant, and the requirement for 4 x 50ha blocks (20ha core area + buffer) of wet grassland mitigation to be delivered within the SHG. NE also, in a letter dated 20 September 2011, noted that these mitigation areas were determined from 'South Humber Gateway INCA bird survey data and based on expert opinion from national Natural England and RSPB staff based on their knowledge and experience across the country', but that AMEP need only contribute according to its impact and NE calculated that to be 16.7ha

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of core area (Annex 1.3). This left a residual 3.3ha to be provided to fully mitigate for the loss of FLL on Killingholme Marshes.

In the same letter NE confirmed an alternative mitigation strategy was possible:

'Natural England also accepts that it is possible to mitigate for this impact by utilising land on Able's previous development site, ALP (Able Logistics Park. Note: Original consent reference PA/2009/0600, consented with revised conditions as PA/2015/1264). The option that was discussed in Peterborough was for the provision of a 20ha core area to partially mitigate for ALP and a 16.7ha core area to mitigate for AMEP – i.e. a 36.7ha core area. This would be surrounded by a 150m buffer, except adjacent to the seawall where a buffer of 50m was agreed if public access was screened (Note: This evidences that the site being discussed is the current site of the HMWG). To complete the mitigation for ALP, this option also requires a 20ha core area surrounded by 150m buffers where the adjacent land is unsecured, outside of the South Humber Gateway. The location of this offsite mitigation would be agreed with Natural England and would need to follow the principles of the South Humber Gateway. All of the land should be optimally managed as wet grassland'. (Notes added).

In time, a Strategic Plan for SHG was actually formulated and set out in, 'The South Humber Gateway Mitigation Strategy' (SHGMS) and it is this strategy that informs Policy SHBE-1 of North Lincolnshire Council's 'Housing and Employment Land Allocations Development Plan Document', (March 2016). This document forms Appendix 2A of the HRA for NLC's Development Plan Document. This particular policy covers the hinterland from Immingham to East Halton Skitter and the SHGMS records the following proposals for mitigation in this area:

'In North Lincolnshire, the majority of the area of waterbird mitigation is expected to be delivered through implementation of two large developments. The Able Logistics Park development (ref PA/2009/0600) already has planning permission. Conditions attached to that permission require the developer to carry out one of two options to deliver all of the waterbird mitigation required as a result of the loss of feeding, roosting and loafing habitat on Halton Marsh. Waterbird mitigation for the Able Marine Energy Park will deliver 16.7 hectares of wet grassland core habitat plus a wet grassland habitat buffer, representing the majority of the 20 hectares core habitat plus buffer required to mitigate fully for the loss of terrestrial habitat on Killingholme Marsh'. And;

In North Lincolnshire, options remain open about the delivery of the further 3.3 hectares of core habitat plus wet grassland habitat buffer that will be required to allow the development of the remaining land on Killingholme Marsh, which also supports significant numbers of curlew. Developers at the southern end of Killingholme Marsh may opt to create mitigation habitat in one of the following ways:

1. By adding to waterbird mitigation on Halton Marsh, through agreement with the landowners', (emphasis added).

Policy SHBE-1 emphasises that the land allocated for the loss of FLL is linked to two projects, AMEP and ALP, and that both had undergone HRA before being approved. However, the policy also emphasises that a flexible approach will nevertheless be adopted:

'Developers could bring forward other alternative mitigation proposals, of at least equivalent area to that agreed under the ALP and AMEP projects, provided that they have an evidence base sufficient to demonstrate the ability of such waterbird mitigation to contribute to the overall mitigation strategy and avoid Adverse Effects on the integrity of the SPA/Ramsar site. This approach will enable to keep Policy SHBE-1 flexible and give the policy longevity, without future cause to involve formal amendments to the DPD or possible DPD departure procedures. This will also enable precise areas for mitigation sites

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to be agreed by signatories to the Mitigation Strategy and will allow for any possible future changes (to the first Mitigation Strategy), which may occur as a result of managing, monitoring and future updated studies. In effect the Mitigation Strategy for North Lincolnshire will be a 'living document' that will provide continual updated robust evidence towards delivering and maintaining mitigation sites. There are options for waterbird mitigation/compensation to be provided beyond the boundaries of the SHB employment allocation as long as this does not affect the ability of the designated site to meet its conservation objectives. Other proposals which may come forward on the remainder of the SHB employment allocation (other than the proposed AMEP and ALP projects) will have to pass the tests of the Habitats Regulations.'

Therefore it is clear, and evidenced in various documents and correspondence, that the complete loss of FLL on Killingholme Marsh is fully mitigated by the provision of 20ha of core habitat with an appropriate buffer, all comprising wet grassland habitat and that the location of that habitat is flexible. Further, it has long been Natural England's view was that at least 16.7 ha could be located at Halton Marshes to mitigate for AMEP.

Annexes

Annex 1.1 – The South Humber Bank: Principles to Underpin a Strategic Approach, RSPB Paper, 2008

Annex 1.2 – South Humber Gateway Mitigation Strategy Memorandum of Understanding

Annex 1.3 – The South Humber Gateway Mitigation Strategy

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Annex 1.1

The South Humber Bank: Principles to Underpin a Strategic Approach, RSPB Paper, 2008



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The South Humber Bank: Principles to underpin a strategic approach

The RSPB's position:

- The RSPB wants to see truly sustainable development. Development can have a detrimental impact on biodiversity, but good development and positive planning can enhance places for people and wildlife. The RSPB wants the planning system to deliver the right development, in the right place, at the right time.
- The European Birds Directive requires Member States to classify as Special Protection Areas (SPAs) 'the most suitable territories' for species occurring on Annex I of the Directive and other regularly occurring migratory species. It is on this basis that the Humber Estuary has been classified as an SPA.
- Large numbers of SPA birds use and rely upon terrestrial areas adjacent to the estuary (including on the South Humber Bank Zone – 'the SHBZ'). As a starting point, the RSPB considers that parts of these terrestrial areas are of functional importance to the conservation of the SPA bird populations and are key to the integrity of the Humber Estuary for those populations. As such, these areas are necessary to meet the protective requirements of bird populations for which the Humber has been classified as an SPA, and form part of the 'most suitable territory'. They should therefore be included within the boundaries of the SPA.
- However, at present, the same paucity of data which causes delays and uncertainties for developers, planning authorities and other regulators means that the required standards of data needed to inform the identification and classification of such areas are not available. This is why, at the time of the last reclassification of the Humber Estuary as SPA, the only non-wetland terrestrial areas which were included within the boundaries of the SPA were fields at 'The Grues' to the north of the SHBZ where sufficient data to make the necessary judgements was available.
- In the long term, the RSPB wishes to see inclusion of any (as yet unidentified) parts of the terrestrial hinterland of the estuary which are key to the functional integrity of the SPA included within the SPA boundaries. This would provide more robust protection to the SPA bird populations, greater clarity for developers and decision makers and security of, and potential funding for, appropriate management of these areas in perpetuity.
- In the short to medium term, identification and classification of any such areas is not possible, and there is an urgent need to develop a strategic approach to development on the South Humber bank to both ensure the conservation of the SPA bird populations and to facilitate appropriate socio-economic development of the SHBZ.

- To these ends, the RSPB is keen to engage in the development of a strategic approach, and offers this paper as a contribution to this process.

The problem:

- Almost the entire remaining area of open land on the South Humber Bank, from East Halton Skitter in the north to Grimsby in the south, is allocated for development in the existing local plans for North and North East Lincolnshire. The allocated area is hereafter referred to as the 'South Humber Bank Zone' (SHBZ).
- It is known that large numbers of waterbirds (which are part of the populations and assemblage for which the Humber Estuary is designated as an Special Protection Area (SPA) and Ramsar site) use and rely upon inland areas on the south Humber bank. Species using the area in particularly high or significant numbers include golden plover, lapwing curlew and ruff. The functional purposes for which these inland areas are used vary between species, but include both roosting and feeding activity.
- Development within this area results in the loss of available feeding and roosting habitat.
- Functional loss within this area is likely to constitute an adverse effect on the integrity of the Humber Estuary SPA and Ramsar site. This is because the loss of this resource is likely to result in significant reductions in the number of birds that the estuary can support; the loss of nearby inland feeding and roosting areas is likely to lead to reductions in the numbers of birds using the intertidal areas of the South Humber Bank.
- In the context of these issues, and in the face of high levels of development pressure in the SHBZ it is becoming increasingly difficult to assess the impacts of individual developments on the bird populations of the Humber Estuary SPA and Ramsar site (as required under the Habitats Regulations 1994 (as amended), leading to delays and uncertainty for individual developers. At the same time, the local authorities on the South Humber Bank are in the process of developing Local Development Frameworks, within which the allocation of land for development will be reviewed. These strategic plans must also be subject to assessment of their effects on the SPA and Ramsar bird populations under the Habitats Regulations, necessitating a strategic assessment of future development in the SHBZ.
- It is therefore essential (from a legal, ecological and socio-economic point of view) that a strategic approach be taken to ensure that the birds – and the integrity of the Humber Estuary SPA and Ramsar site – are protected, and that delays and uncertainties for developers are reduced.
- It is important to note that, over time, the problems currently being experienced in the SHBZ are likely to be replicated elsewhere on the Humber Estuary.

The desired solution:

- A strategic review of the allocation of land on the South Humber bank, based on the best available scientific information.

- The resulting allocations should make all necessary provision for the SPA and Ramsar birds, and provide a clear framework for future development in the area. However, it is essential to note that this approach will address only those issues associated with the loss of feeding and roosting habitat used by SPA and Ramsar birds. Other ecological issues and material considerations (for example noise and visual disturbance effects on SPA and Ramsar birds in adjacent areas, discharges to the estuary which may affect the Humber Estuary Site of Special Scientific Interest (SSSI), SPA, Ramsar site and/or candidate Special Area of Conservation (cSAC), protected species and local community issues) will still need to be addressed on a case-by-case basis. Revised allocations will also need to take full account of the Humber Flood Risk Management Strategy and its implications for the South Humber Bank area, and should be secured in the medium to long term through the Local Development Frameworks currently being developed in both North and North East Lincolnshire.
- Avoidance of key areas used by large numbers of SPA birds and provision of strategic mitigation will reduce uncertainty in relation to development, but will not remove the need to assess the impacts of individual developments on the features of the SPA and Ramsar site (both alone and in combination with other plans and projects) under the Habitat Regulations, and mitigation areas will have to be allocated against individual developments on the basis of their impacts.
- Within the generic allocations, the mitigation requirements associated with any given development will need to be assessed and allocated against an established mitigation resource. Clearly some form of 'balance sheet' system will be required to audit, monitor and review this process.
- Solutions developed for the SHBZ should be seen as developing best practice for estuary-wide application.

Information requirements:

- The review of land allocations in the SHBZ, identification of key areas used by large numbers of SPA birds, and design of strategic mitigation must be based on the best available scientific information and should be informed by, and benefit from, the lessons learnt from comparable projects which have been undertaken elsewhere. Key specific information requirements are:
 - A thorough understanding of the legislative drivers for this work (primarily under the Habitats Regulations, 1994 (as amended)) and of key messages and learning points from similar projects undertaken elsewhere. Work already commissioned by Natural England from David Tyldesley should assist in this regard;
 - Recent and comprehensive waterfowl survey data for the full extent of the SHBZ over a minimum duration of one full year, to provide an assessment of the current levels of use of the Zone by SPA birds, and of how those species and individuals are using the area. The work already underway, led by the Humber Industry and Nature Conservation Association (HINCA), and funded by Yorkshire Forward and the local planning authorities (North and North East

Lincolnshire) has begun to address this need. A single year's data is arguably insufficient as inter-annual variation in bird numbers and movements, can be considerable. Additional data will therefore be required. However, given the urgent imperative for action, it seems appropriate to proceed based on one year's data as long as the interpretation of this information is sufficiently precautionary to take account of the risks inherent in this approach;

- An analysis of the current and required carrying capacity of the SHBZ, and recommendations for criteria to ensure that mitigation allocations are appropriate to meet the requirements of bird populations for which the SPA and Ramsar site were designated and which use the intertidal areas of the South Humber Bank. This work will need to be based on the comprehensive survey data described above, and on WeBS high and low tide count data for the intertidal areas of the South Humber Bank. (Account will need to be taken of those areas where this data inaccurate or incomplete – for example the key Pyewipe WeBS sector has not been counted since 2003). This work will also involve a review of work undertaken elsewhere looking at relevant aspects of bird ecology and behaviour. This will need to cover a range of factors including habitat preferences, roosting densities, flight line and scanning requirements, and requirements in relation to the proximity of feeding areas to roosting areas and vice versa. This work has now gone out to tender with potential contractors.

PRINCIPLES TO UNDERPIN A STRATEGIC APPROACH

NB: The following principles are an attempt outline the requirements for a strategic review of land allocation within the SHBZ in general, and mitigation design in particular, and to give a broad picture of what a final solution is likely to look like. Once all necessary information and analysis has been undertaken, it should be possible to expand on each of the principles below to develop some clear guidelines/criteria for the review and for mitigation identification and design.

GENERAL PRINCIPLES:

- 1). **Continued unmitigated development of the areas of the SHBZ allocated for development will cause adverse effects** on the integrity of the Humber Estuary SPA and Ramsar site.
- 2). **It is highly unlikely that all adverse effects can be mitigated** (i.e. by provision and management of alternative areas for feeding/roosting) **outside the SHBZ**. This is due to the size of the Zone and limitations on how far waders and wildfowl can move between feeding and roosting locations before they are displaced from an area and/or decline in condition and experience increased mortality rates. Therefore, **a review of allocations within the South Humber Bank must provide mitigation areas within the SHBZ.**

- 3). Given the size and length of the SHBZ, **a single mitigation site would not be appropriate.** The number, location, sizes and management of mitigation areas will be informed by the information and analyses outlined above. As a starting point it is likely that, **as a minimum, three areas broadly located in the north, centre and south of the Zone, and within close proximity to the estuary would be required** to ensure provision of feeding/roosting habitat within relatively easy reach of all intertidal areas along the South Humber Bank.
- 4). The data currently available suggests that the majority of fields within the SHBZ are subject to some level of use by SPA birds, although the levels of use vary significantly. However, some will be far from optimal, while factors such as cropping regimes mean that otherwise well-suited fields will only be available for limited periods throughout the year. Therefore, **the combined total area of mitigation habitat required to support the birds currently using the SHBZ is likely to be smaller than the combined area of the fields currently used, provided that that mitigation is appropriately located, designed and managed.**
- 5). **There are likely to be areas within the SHBZ used by such high numbers of birds that their loss would alone or in combination with other development in the area constitute an adverse effect on the integrity of the Humber Estuary SPA and Ramsar site** (or have an impact of such magnitude that the possibility of adverse effects could not be excluded). **Development of these areas should be avoided, as mitigation for the loss of these areas (i.e. measures to avoid adverse effects) would, at best, be difficult and expensive to achieve. Equally such areas will probably not be suitable for the provision of mitigation habitat for development elsewhere in the SHBZ,** as areas used by large numbers of birds are likely to be at, or close to, their carrying capacity and therefore incapable of supporting additional birds. These areas may provide appropriate core areas for mitigation provision, subject to the creation of additional areas of appropriate habitat.
- 6). There will also be some areas of the South Humber Bank which are used regularly by low numbers of SPA birds and/or occasionally used by large numbers of birds. **Such patterns of use may indicate those areas that, subject to appropriate management, could support higher levels of regular use and may be suitable for mitigation. Such patterns of use may also indicate those areas where development might avoid adverse effects on the Humber SPA and Ramsar site when considered alone, but would be unlikely to do so when considered in combination with other plans and projects. Therefore such areas may be appropriate for development only where sufficient mitigation land to avoid those affects is provided.**
- 7). Some areas of the SHBZ will not be used by SPA birds. Subject to their surroundings (and consideration of other material considerations such as noise and visual disturbance to birds on adjacent areas, protected species, landscape and non ecological issues) these may be where development is most

appropriate, and may indicate that these areas are not suitable for the creation of mitigation habitat. However, where mitigation is desirable, this should be considered on a case-by-case basis, as lack of use by SPA birds may be a product of current cropping regimes etc rather than of the location per se.

8). **In summary, a review of the allocation of land within the SHBZ should aim to identify areas falling into three distinct categories:**

- **Protection areas** - Subject to such high levels of use by SPA birds that they should be avoided by developers and are not appropriate for mitigation (but may provide valuable core areas for the mitigation provision, subject to the creation of additional appropriate habitat). These areas are likely to be amongst those most suitable for inclusion within the SPA boundary in the future.
- **Mitigation areas** – Factors such as current low levels of use, location, hydrology and/or proximity to ‘protection areas’ (see above) indicate that appropriate management would increase levels of bird usage
- **Potential development areas** – ‘The rest’. Areas subject to low levels of use (or no use) by SPA birds which are either not needed for, or inappropriate for use as mitigation areas.

NB: The balance between these three categories – and particularly between ‘potential development’ and ‘mitigation’ areas - cannot be determined until sufficient information and analysis has been compiled. In reality, it is likely that a large percentage of the land area on the South Humber Bank will fall into a fourth category, with the potential to be either developed (subject to the provision of mitigation areas to support the birds present), or used as mitigation. There is therefore likely to be some degree of flexibility in the assignment of these areas for either potential development or mitigation.

MITIGATION DESIGN PRINCIPLES:

- 9). **Area (combined):** The mitigation habitat required for continued development of the SHBZ (together with the ‘protection areas’) will need to be sufficient to support the needs (primarily feeding and roosting) of the birds using the inland areas of the South Humber bank and adjacent intertidal areas. This will need to be determined on the basis of the carrying capacity work described above. If significant declines in the numbers and/or species using the South Humber Bank area in recent years are identified, measures may be necessary to support higher than the current numbers of birds. Decisions about habitat type and management within mitigation areas may have a significant effect upon both the size of individual mitigation areas and the total area required, as a result of the implications for seasonal availability and the habitat preferences of target species (see 14. below).
- 10). **Areas (individual):** The size of individual mitigation areas will need to take account of a range of factors, such as the species and numbers of birds to be accommodated and the preferred roosting densities and scanning requirements of those species. (For example current data suggests that golden plover require minimum scanning distances of 200m. Therefore, a mitigation area to

support 1000 Golden plover will need to be large enough to support those birds at their preferred feeding and roosting densities plus a minimum of a 200m buffer around the perimeter of that area). The size of individual mitigation areas will also need to take account of the need to create viable management units for the purposes of ongoing habitat management (see 15. below).

- 11). **Location:** Mitigation areas must be located within appropriate distances of both the intertidal areas of the south Humber bank, other mitigation/protection areas, and the 'potential development areas' currently used by SPA birds. Their proximity to existing and proposed developments will also need to be considered, to allow for sufficient buffering of noise and visual disturbance impacts. To maximise their potential (and make as efficient use as possible of their area) mitigation sites should ideally be contiguous/near contiguous to the Humber flood banks, and should be linked to these areas and to each other by green corridors and flight paths
- 12). **Availability and suitability:** Potential mitigation areas must be available for use by the target species in the required numbers, in the right conditions, prior to development commencing. Factors to consider here include the potential carrying capacity of these areas, (ie; how many extra birds can be accommodated), and their suitability in relation to the desired management. (For example, wet grassland can only be created where the existing topography, geology and hydrology can support this habitat, and the viability of managing land under an appropriate arable rotation may be affected by factors including the proximity of farm enterprises and access for agricultural machinery.
- 13). **Accessibility:** Mitigation areas must be accessible to the birds they are to support. In addition to their location relative to other feeding and roosting areas, it is essential that there are clear and un-obscured flight paths of sufficient width between mitigation areas and other locations used by the target birds such as relevant areas of intertidal along the south Humber Bank. It is also essential that several flight lines, heading in different directions in and out of each mitigation area, are available, as due to the risk of predation by birds of prey, waders and wildfowl are unlikely to use areas with a single entry and exit route. Mitigation areas in open environments are preferable and likely to be significantly more effective than those partially enclosed by tall buildings and roads etc.
- 14). **Timing:** As stated above, as a minimum, the mitigation area required for any development must be ready to support SPA birds before that development commences. From an economic and ecological point of view, provision of mitigation well in advance of loss to development is preferable. This provides net habitat gain in the short term and allows for good quality new habitat to develop before it is 'needed'. Where mitigation is provided simultaneously with a loss, the lag time for the development of new habitat and unavoidable uncertainty about how well the mitigation area will work are likely to increase the area of mitigation required under the Habitats Regulations (which require a precautionary approach). Where mitigation is provided in advance of

development, and a sufficiently long run of post-establishment monitoring data allows its efficacy to be assessed, the reduced levels of uncertainty may result in smaller mitigation areas being required.

- 15). **Habitat type and management:** Habitat type and management within mitigation areas should ensure that the needs of all target species are met, and that the potential of mitigation measures is maximised. Decisions about habitat type and management may significantly influence the area of mitigation habitat required (see 9.above). These need to be made according to the preferences of the species being catered for, and whether the habitat is for feeding, roosting, or both. A mixture of habitats (either within or between mitigation areas) such as wet grassland (ideally cattle-grazed), and spring-sown arable with winter stubbles is likely to be most appropriate. It will be essential that the arrangements put in place to secure mitigation provide not only for the creation of mitigation areas, but also for the funding and oversight of their ongoing management, including liaison with land managers, and provision for remedial works should these be identified as necessary through long-term monitoring (see 16. below).
- 16). **Efficacy:** Once an assessment of the number and species of SPA birds that need mitigation areas has been made, these will have to be translated into criteria and objectives for the selection, management and performance of these areas. It is essential that adequate monitoring is undertaken to assess the development and subsequent management and use of these areas, and to inform the process of allocation of mitigation areas to individual developments on the basis of their impacts. It will be essential to know how the mitigation areas are functioning and the numbers and species of SPA birds they are supporting. This will also allow periodic review of the mitigation provision and its implications for development. For example, under-performing mitigation areas may necessitate changes to site management or the creation of additional mitigation areas before all areas identified for development can be developed. Clearly, adoption of a precautionary approach in the determination of the area of mitigation land required will significantly reduce the risk of this latter situation arising. Here it should also be noted that all statutory bodies (including planning authorities) have duties not only to protect, but also to enhance designated sites and biodiversity, and as such should seek net gains (rather than merely no net loss) through the provision of mitigation habitat.
- 17). **Durability:** Arrangements for the ownership and management of mitigation measures must be secured in perpetuity. For those areas that qualify, SPA classification may be the most effective means of securing this in the longer term.

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Annex 1.2

South Humber Gateway Mitigation Strategy Memorandum of Understanding

Memorandum of Understanding for the Delivery of the South Humber Gateway Strategic Mitigation



South Humber Gateway Mitigation Group
June 2010

Memorandum of Understanding for the Delivery of the South Humber Gateway Strategic Mitigation

1. Introduction

- 1.1 The South Humber Gateway (SHG) is located on the south bank of the Humber estuary. It stretches from the outskirts of Grimsby to the East Halton Skitter. Straddling the boundaries of North Lincolnshire and North East Lincolnshire councils, the SHG is one of the most exciting strategic development locations in the whole of the Yorkshire and Humber region. Covering almost 1,000 hectares – nearly four square miles – of development land it is attracting significant global interest and unprecedented levels of investment. Major investments under way or planned are estimated to be worth almost £2billion. If all goes to plan, upwards of 15,000 new quality jobs will be created over the next 10 years. The SHG already provides 27 per cent of the UK's refinery capacity and is home to the UK's busiest ports complex and one of the world's largest Combined Heat and Power (CHP) plants. Together with its sister Port of Grimsby, Immingham is the UK's largest port by tonnage.
- 1.2 At the same time an estimated 175,000 birds visit the estuary every winter, the Humber is one of the top six estuaries for migratory birds in the UK and one of the top ten in Europe. The estuary forms an essential link in a chain of wetland sites creating what is known as the East Atlantic Flyway, stretching from the Arctic Circle to southern Europe and Africa, via the estuaries of North West Europe. The Humber supports internationally important populations of a number of bird species (containing more than one per cent of the Western European non-breeding population) which are attracted by the plentiful food supplies of the salt-marsh and mudflats; often moving inland to roost and feed. In recognition of its value for biodiversity the Humber Estuary has been designated for its national, European and international importance. The Humber Estuary and the populations of wild birds it supports are afforded special protection being designated at national and international levels. The estuary includes several Sites of Special Scientific Interest and is designated as a Special Area of Conservation¹, Special Protection Area and Ramsar site. As such, the estuary and its special features are covered by The Conservation of Habitats and Species Regulations 2010 (the "Habitats Regulations") (SI No. 2010/490).
- 1.3 Large numbers of SPA/Ramsar birds rely upon terrestrial areas adjacent to the estuary for roosting, loafing and foraging especially at high tide and these areas are therefore of functional importance to the conservation of the SPA/Ramsar bird populations.
- 1.4 The purpose of this MoU is to demonstrate the commitment of the signatories to cooperative working to establish a mechanism which aims to highlight and resolve the potential conflicts within the South Humber Gateway between the need to realise the national economic benefits of the estuary related opportunities and the need to protect the environmental assets of the area in accordance with the applicable legislative obligations. The main output of the collaboration between key stakeholders is to work to produce, adopt and implement a framework (the Delivery Plan) to address the considerable ecological and economic demands on the SHG.

¹ The strategic mitigation is being developed to address potential impact on the SPA and Ramsar features therefore potential impacts on the SAC will not be addressed by the proposed Delivery Plan

2. Background

- 2.1 Approximately 80 per cent of the SHG falls within the North Lincolnshire Council boundaries, with the remaining 20 per cent in the North East Lincolnshire Council area. The Killingholme Marshes area is of vital importance to the future development of the SHG, given its proximity to the deep-water channel – the last undeveloped deep-water channel in the UK. Following extensive studies, negotiations are at an advanced stage with landowners and Yorkshire Forward to develop the land. Consequently, there are a number of major planning applications in the system for large-scale industrial and commercial development on both the Killingholme Marshes and East Halton Marshes. Combined, this total area of land represents the major part of the employment allocation within the North Lincolnshire Council boundaries. At the same time, in North East Lincolnshire there are a number of approved planning applications for major bio-energy businesses and also plans for the EuroParc 4 development.
- 2.2 It is recognised that a large proportion of the planned developments on the SHG could contribute positively to the climate change and sustainability agenda in the following areas: carbon capture and storage, biomass and wind energy, especially that associated with the Round 3 announcement made by the Government. In addition, the flow of trade through the SHG should have less of an environmental impact overland given its central UK location, low-congestion and excellent rail links.
- 2.3 The Regional Economic Strategy and the Local Development Frameworks of North Lincolnshire Council and North East Lincolnshire Council all recognise the SHG’s strategic economic importance for the Hull and Humber Ports City Region and the wider Yorkshire and Humber Region and the considerable environmental value of the area. Sustainable development of the SHG will bring with it major employment and Gross Value Added (GVA) benefits for the whole of the Hull and Humber Ports City Region, and indeed regionally and beyond.
- 2.4 All parties to this Memorandum of Understanding are committed, in a spirit of cooperation and transparency, to successfully resolving the challenge of unlocking the unprecedented economic potential of the SHG for the Hull and Humber Ports Region whilst securing the protection and enhancement of a world-class environment. The economic and environment challenges are viewed as inextricably linked.
- 2.5 If successful, the SHG’s Delivery Plan will provide the necessary framework to fulfil some of the nature conservation requirements of the Humber Estuary SPA and Ramsar site, specifically addressing mitigation needs arising from direct land take from development within the South Humber Bank Employment Allocation². Although the SHG zone is not in the designated SAC area, any potential impacts on the SAC as a result of development will also need to be addressed. The Delivery Plan will also create clarity and confidence that the impact of direct land take from within the South Humber Gateway can be mitigated both inside and outside the SHG zone. Such an approach will enable the emerging LDF’s to allocate this area for the future estuary related activity and identify a clear framework for potential investors. Of particular value is that the Delivery Plan will work towards a strategic approach across the two unitary councils, in place of an ad hoc site-by-site approach to mitigation.
- 2.6 The signatories to the Memorandum of Understanding are the key organisations responsible for the development of the Delivery Plan, while those responsible for development are also committed to working cooperatively to safeguard and maintain the integrity of the Designated Site to support the delivery of sustainable development of the area. All the signatories agree to a strategic approach to delivery, believing this avoids a piecemeal approach and creates the necessary clarity and confidence, essential for both conservation bodies and developers/investors. The signatories also recognise that to achieve this requires their continued commitment to explore and examine strategic options to develop and implement the Delivery Plan through a transparent approach. The signatories further recognise that planning positively for wildlife reduces ad hoc loss and compromise, speeds decision-making and reduces the cost and time of submitting and resolving planning applications for estuary-based development.

2 The Employment Allocation in the relevant emerging LDF’s and currently adopted Unitary plans.

- 2.7 The signatories agree that the Delivery Plan, and the mechanisms identified and agreed to implement it, will be outlined in the North Lincolnshire and North East Lincolnshire Core Strategies with mitigation areas identified in the Allocations Development Plan Document (DPD) and will be subject to assessment under the Habitats Regulations



3. Objectives

- 3.1 The signatories to this Memorandum of Understanding agree to work cooperatively and transparently to safeguard and maintain the integrity of the Designated Sites while enabling the sustainable development of the area. The signatories agree to the following objectives:
1. To identify strategic conservation mitigation options through an agreed Delivery Plan, which will form part of the Local Development Frameworks for both North Lincolnshire and North East Lincolnshire Council.
 2. To ensure that the Delivery Plan and the emerging LDFs comply with the Habitat Regulations and are subject to the relevant Regulations 61, 62 and 66
 3. To examine the need and nature of Strategic Environmental Assessment for the LDFs
 4. To acknowledge that both the LDF and Delivery Plan for strategic mitigation will be delivered over a period of time and work together to establish these timescales with agreement over what will need to be delivered to meet environmental requirements.
 5. To identify implementation and financial mechanisms for utilising the strategic mitigation that provide a clear process for development to address the issue of direct land take of areas used by SPA and Ramsar birds within the SHG
 6. To ensure the Delivery Plan takes into account the implementation of the approved Humber Estuary Flood Risk Management Strategy and subsequent reviews, recognising that there are intertidal issues

7. To agree that a Draft Interim Strategy may be helpful in establishing a staged approach as an output of the first stage of work
8. To agree that mitigation areas identified by the Delivery Plan and associated LDF Allocations documents will be delivered both within the SHG Employment Allocation zone and in close proximity outside this zone, as currently adopted.
9. To meet the requirements of PPS9 to build in biodiversity to all developments.
10. To examine and agree the evidence base to support the development and implementation of the Delivery Plan, including Identifying the location and extent of existing critical land areas for avifauna – identified through bird survey work.
11. To agree the area where the Delivery Plan will operate, supported by an agreed evidence base, including optimal management guidelines and basic design principles to ensure that mitigation areas function appropriately
12. To agree the basis for the ownership and management of mitigation sites, how contributions are worked out and methods of making contributions (S106 agreements/ CIL etc) as well as how they will be used and how mitigation sites will be managed and by whom.
13. To agree requirements for monitoring and review of the Delivery Plan and the mitigation areas.
14. To share data and to work together to ensure that data are interpreted in a consistent manner by developers and regulators



4. EU Habitats Directive

4.1 In order to ensure that the Delivery Plan complies with the Habitats Regulations, the signatories agree that:

1. Delivery of mitigation will be based on alone and in combination effects of developing the SHG on the Humber SPA/Ramsar, but will combine to support a strategic approach to economic development and mitigation in the estuary zone.
2. The Delivery Plan doesn't necessarily negate the need for an Appropriate Assessment at development control stage for individual developments; however the Delivery Plan should assist the AA process by identifying potential mitigation.
3. The Delivery Plan will inform the assessment under the Habitats Regulations for the LDFs for North Lincolnshire and North East Lincolnshire councils.
4. Mitigation sites will be safeguarded in perpetuity with appropriate management regimes



5. Mitigation

5.1 In order that strategic mitigation fulfils its requirements under the Habitats Regulations, signatories agree:

1. That the land will need to be managed specifically for the SPA/Ramsar birds that are impacted by development.
2. To identify mitigation areas based on evidence of the totality of potential development within the specified zone and possible in-combination effects outside the immediate zone. This will identify the maximum development (worst case scenario) and therefore required mitigation.

3. To explore and identify methods and options for land acquisition and shared strategic delivery of mitigation.
4. To consider the options for acquiring mitigation land and how developers may buy into it.
5. To determine timescales and any phasing to secure habitat
6. To consider multi-functionality of sites (where still consistent with SPA/Ramsar requirements) including opportunities for accessible green space, acknowledging that if multiple uses are pursued, it may result in additional mitigation land requirements to allow for additional buffers etc
7. To review progress on a regular basis to ensure continued compliance with the Habitat Regulations

6. Signatories

6.1 The following organisations are signatories to this Memorandum of Understanding

Organisation	Officer Title	Signature	Date
Yorkshire Forward	Executive Director Environment		05.05.10
Natural England	Regional Director		06.05.10
Environment Agency	Area Manager		14.08.10
RSPB	Acting Regional Director		05.07.10
Lincolnshire Wildlife Trust	Chief Executive		17.06.10
North East Lincolnshire Council	Leader		12.07.10
North East Lincolnshire Council	Chief Executive		13.07.10
North Lincolnshire Council	Leader		26.07.10
North Lincolnshire Council	Chief Executive		02.08.10

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Annex 1.3

The South Humber Gateway Mitigation Strategy

The South Humber Gateway Mitigation Strategy

Executive Summary

The South Humber Gateway (SHG) is located on the south bank of the Humber estuary in northern Lincolnshire. Covering an area of approximately 1,000 hectares it represents one of the largest potential development areas in the UK. In recent years there has been significant development interest in the area particularly from the emerging renewable energy industry on the Humber.

The area is immediately adjacent to the Humber Estuary which is recognised for its importance for wildlife at both national and international levels. The Humber Estuary is designated as a Special Area of Conservation, a Special Protection Area, a Ramsar site and a Site of Special Scientific Interest. These designations mean that great care is required when undertaking works which may result in negative impacts on the wildlife interest features of the Estuary. A potential conflict therefore exists between the need to develop the South Humber Gateway's economic potential for the benefit of the national economy and the legal obligation to ensure that its wildlife is protected.

This document sets out a mechanism which will resolve the potential conflicts within the South Humber Gateway. Details on the background to the strategy and the principles upon which it is founded are set out below. High level details of the mitigation measures that have been agreed, including their management and monitoring, are also provided. More detail on the specific arrangements for delivery within the areas of North Lincolnshire Council and North East Lincolnshire Council will be laid out in delivery plans for each Council.

Part I – The Strategy

Context

The South Humber Gateway (SHG) (Map 1) stretches from the outskirts of Grimsby to the East Halton Skitter on the South Bank of the Humber Estuary. Straddling the boundaries of North Lincolnshire and North East Lincolnshire councils, the SHG is one of the most exciting strategic development locations in the UK. Covering almost 1,000 hectares of development land it is attracting significant global interest and unprecedented levels of investment. Major investments under way or planned are estimated to be worth almost £2billion. If all goes to plan, upwards of 15,000 new quality jobs will be created over the next 10 years. The SHG already provides 27 per cent of the UK's refinery capacity and is home to the UK's busiest ports complex and one of the world's largest Combined Heat and Power (CHP) plants. Together with its sister Port of Grimsby, Immingham is the UK's largest port by tonnage.

At the same time an estimated 175,000 birds visit the estuary every winter, the Humber is one of the top six estuaries for migratory birds in the UK and one of the top ten in Europe. The estuary forms an essential link in a chain of wetland sites creating what is known as the East Atlantic Flyway, stretching from the Arctic Circle to southern Europe and Africa, via the estuaries of North West Europe. The Humber supports internationally important populations of a number of bird species (containing more than one per cent of the Western European non-breeding population) which are attracted by the plentiful food supplies of the salt-marsh and mudflats; often moving inland to roost and feed. In recognition of its value for biodiversity the Humber Estuary has been designated for its national, European and international importance. The Humber Estuary and the populations of wild birds it supports are afforded special protection being designated at national and international levels. The estuary includes several Sites of Special Scientific Interest (SSSI) and is designated as a

Special Area of Conservation (SAC)¹, Special Protection Area (SPA)² and Ramsar site. As such, the estuary and its special features are covered by The Conservation of Habitats and Species Regulations 2010 (the “Habitats Regulations”) (SI No. 2010/490) as amended.

Map 1. The South Humber Gateway industrial land allocation



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Not to Scale

A significant amount of effort has been expended on establishing the fact that large numbers of SPA birds rely upon terrestrial areas adjacent to the estuary for roosting, loafing and foraging especially at high tide. A suite of ecological surveys funded by the former regional development agency, Yorkshire Forward, North and North East Lincolnshire Councils, the Environment Agency and the RSPB and managed by Humber INCA (now Humber Nature Partnership) has established that these areas are of functional importance to the conservation of the SPA bird populations. Details of wintering and migratory wader surveys carried out to date are included in Box 1.

Much of the early survey information was used by consultants to carry out a field-by-field study of usage of the South Humber Gateway by waterbirds at that time (Mott Macdonald 2009). Fields that had supported at least 1% of the Humber population of given waterbird species on at least one survey visit were flagged as being potentially important in supporting the waterbird assemblage of the Humber Estuary SPA. 454 hectares of such fields were identified across the SHG in North and North East Lincolnshire. However this resource was clearly highly variable, with some fields only being used on a few occasions, and other fields being used regularly by significant numbers of one or more species. Habitats used varied from arable crops that might only be used at certain stages of growth or vegetation height to areas of permanent pasture that might be used more predictably from year to year.

¹ This strategy is being developed to address impacts on the SPA and Ramsar features. All other ecological issues will therefore still need to be assessed as part of the planning application process, for example impacts on the SAC, protected species and locally designated habitats.

² All future references to the SPA should also be taken as reference to the Ramsar designation unless otherwise stated.

Box 1. South Humber Gateway wintering and migratory bird surveys

- North Lincolnshire (allocated land) - January 07 - March 07. Weekly surveys on a field by field basis by Nyctea Consultants. Attached to this there were further targeted surveys during April 07 and May 07 to identify field usage by passage curlew, ruff and whimbrel.
- North Lincolnshire (allocated land) - July 07 - March 08. Weekly surveys on a field by field basis by Nyctea Consultants.
- North East Lincolnshire (allocated land plus additional area both North and South of A180) - November 2007 - March 2007. Weekly surveys on a field by fields basis by IECS.
- North East Lincolnshire (allocated land plus additional land both North and South of A180) - late July 2008 - November 2008. Weekly surveys on a field by field basis by Nyctea Consultants.
- North Lincolnshire (north and west of East Halton Skitter) - Jan 2009 - Mar 2009. Weekly surveys on a field by field basis by Nyctea Consultants.
- North Lincolnshire (north and west of East Halton Skitter) - August 2009 - March 2010. Weekly surveys on a field by field basis by Nyctea Consultants.
- Entire area (allocated land within North and North East Lincolnshire and area north and west of east Halton Skitter) - August 2010 - March 2011. Weekly surveys on a field by field basis by Nyctea Consultants.

The development of all or most of the SHG area is likely to lead to a significant loss of this supporting terrestrial habitat and it is not possible to conclude that an adverse effect on the integrity of the SPA will be avoided.

It has been determined that the most effective course of action in the SHG is to identify large areas of land which can be used to mitigate against the loss of land currently used by waders. In order to deliver this strategic mitigation, a South Humber Gateway Ecology Group was formed comprising local authorities, landowners and both statutory and non-statutory conservation bodies. It has been tasked with the production of this mitigation strategy.

The Strategy is intended to create clarity and confidence that the impact of direct land take from within the South Humber Gateway can be mitigated inside the SHG. Such an approach is the only viable solution to enable the local authorities' emerging strategic planning documents to pass through their Habitats Regulations Assessments and allocate this area for future estuary related activity. This will identify a clear framework for potential investors needing to provide mitigation for their developments in the area. The strategy will establish a link between the approaches used across the two unitary authorities, in place of an ad hoc site-by-site approach to mitigation.

Within the Ecology Group, the survey work has been used to identify the actual area of land required by wintering and migratory birds in the SHG and from this a series of sites has been identified which can then be managed appropriately to meet those birds' requirements.

The actual mechanism for delivery of these sites is the subject of ongoing discussions and is likely to vary across the SHG. Part II of this document provides more information about delivery.

The scope of the strategy

Employment allocations in the SHG will lead to permanent loss of terrestrial habitat used by significant numbers of waterbirds for feeding, roosting and loafing. Development in this area could also lead to disturbance and displacement of birds from further habitat within 150 metres of the developed area. Such impacts may lead to the displacement of birds from the nearby designated intertidal habitat and thus will affect the conservation objectives of the Humber Estuary SPA. Therefore, Competent Authorities cannot record that such allocations would not have an adverse effect on the integrity (AEOI) of the Humber Estuary SPA, alone or in combination with other plans and projects, unless the associated policies deliver and secure an adequate area of well-managed wet grassland habitat for waterbirds as mitigation for this loss.

The South Humber Gateway Strategic Mitigation Strategy provides a mechanism to deliver large areas of waterbird mitigation habitat to ensure that there will be no AEOI on the Humber Estuary SPA due to the loss of terrestrial habitat in the SHG. It does not address other impacts on the Humber Estuary SPA, such as coastal squeeze, noise and visual disturbance of birds within the designated site boundary or polluting discharges. Individual developments are likely to require Habitats Regulations Assessments in respect of these effects. Delivering large areas of wetland habitat may be expected to have additional benefits for water voles, farmland birds, bats, landscape enhancement and the public enjoyment of nature. However, these benefits are not the main purpose of the Strategy.

The role of the strategy

Strategic Planning Documents are being prepared by the two Local Authorities; this includes both planning policies and land use allocations. These strategic documents need to be assessed against the Habitats Regulations. The existence of a Memorandum of Understanding (MoU) provides evidence to Inspectors that the requirements of the Regulations are being met within strategic planning and this Strategy provides further, necessary evidence that this is the case. Both the MoU and this Strategy have considerable value in this context as they mean that it is possible to demonstrate to an Inspector that the potential impacts on the SPA arising from the SHG Policies and Allocations can be adequately mitigated and that therefore the Policies and Allocations are deliverable. A strategic and collaborative approach will save considerable time and cost to the Local Authorities and to the other regulators (such as NE) and NGOs (Lincolnshire Wildlife Trust and RSPB) in the medium to long term.

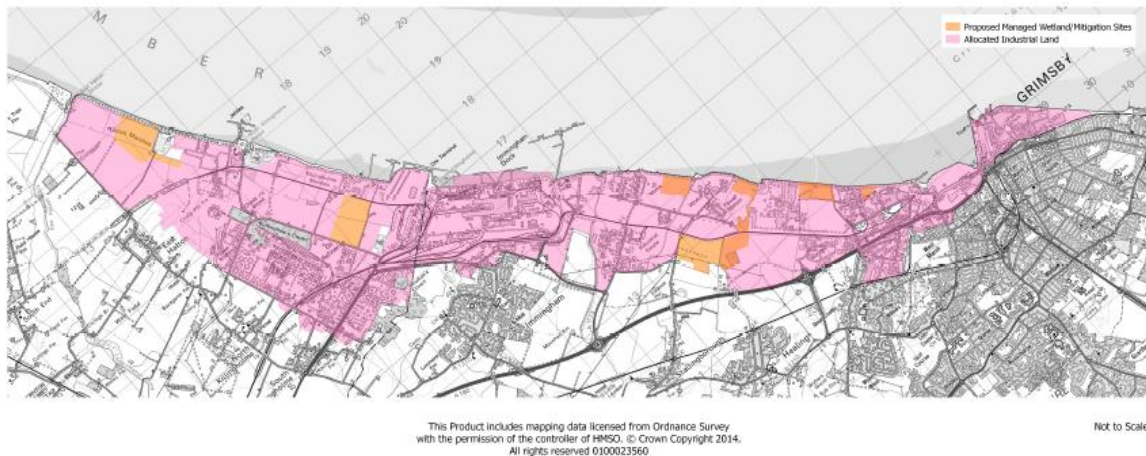
The strategy is also intended to simplify the Habitats Regulations Assessment process at the individual development level. Developers within the South Humber Gateway will be able to rely on the mitigation strategy as a means of delivering their mitigation requirements as identified during the planning process. If sufficient habitat has already been delivered in advance of a development coming forward any subsequent developers would be able to contribute to the strategy at a pre-determined rate to allow further habitat creation and subsequent management to be carried out.

The mitigation principles

The mitigation sites

Map 2 illustrates the current, likely sizes and locations of mitigation sites across the South Humber Gateway and the context of these in relation to the employment land allocations.

Map 2. Current proposals for mitigation sites in the South Humber Gateway



Nb. The precise locations of some of these sites is subject to final agreements with landowners

The details of these sites have been agreed upon by working to a set of principles which will ensure that the sites deliver the required function for wintering and migratory waders. These principles are summarised in Box 2. This process concluded that four 20ha blocks of core wetland habitat, each surrounded by 150m wetland habitat buffers, would be sufficient to offset the potential loss of proposed development land within the South Humber Gateway. These should be located in close proximity to key intertidal feeding areas. These criteria led to the identification of a requirement for two of the above blocks to be provided in North Lincolnshire and two within North East Lincolnshire. Further discussion relating to North East Lincolnshire led to agreement on an approach which will see the delivery of a number of sites smaller than the proposed buffered 20ha sites. These sites will provide a network of sites for birds which reflects how birds are currently using the area. Whilst some of these sites are too small to function as mitigation alone, they are ecologically functional as part of the suite of mitigation sites.

Box 2: South Humber Gateway mitigation principles

Area (combined): The mitigation habitat required for continued development of the SHG will need to be sufficient to support the needs of the birds using the inland areas of the South Humber bank and adjacent intertidal areas.

Areas (individual): The size of individual mitigation areas will need to take account of a range of factors, such as the species and numbers of birds to be accommodated and the preferred roosting densities and scanning requirements of those species.

Location: Mitigation areas must be located within appropriate distances of both the intertidal areas of the south Humber bank, other mitigation/protection areas, and the 'potential development areas' currently used by SPA birds.

Availability and suitability: Potential mitigation areas must be available for use by the target species in the required numbers, in the right conditions, prior to development commencing.

Accessibility: Mitigation areas must be accessible to the birds they are to support.

Timing: The mitigation area required for any development must be ready to support SPA birds before that development commences. This should be addressed by the development of a balance sheet which ensures that the available habitat resource and its ecological function for birds is maintained.

Habitat type and management: Habitat type and management within mitigation areas should ensure that the needs of all target species are met, and that the potential of mitigation measures is maximised.

Efficacy: It is essential that adequate monitoring is undertaken to assess the development and subsequent management and use of these areas, and to inform the process of allocation of mitigation areas to individual developments on the basis of their impacts.

Durability: Arrangements for the ownership and management of mitigation areas must be secured for the lifetime of the planning authorities' development plans. Beyond this period, it is expected that impacts (loss of functionally linked land) will remain, and that ongoing long-term management of the mitigation areas will continue to be required and must be secured by the Local Authorities. If these areas cannot be secured then sufficient alternative mitigation areas will be needed to address the impacts.

Source: Adapted from: RSPB, 2009. The South Humber Bank: Principles to underpin a strategic approach.

Part II – Delivering the Strategy

Parties to the Strategy

The following organisations have all been involved in the development of this strategy and are committed to ensuring its delivery:

- North Lincolnshire Council
- North East Lincolnshire Council
- Natural England
- Environment Agency
- RSPB
- Lincolnshire Wildlife Trust
- Humber Nature Partnership (formerly Humber INCA)

Due to the differing nature of both land ownership and development timetables in the two local authorities, very different approaches to the delivery of the required mitigation will be adopted in each local authority.

The Approach to Delivery in North Lincolnshire

In North Lincolnshire, the majority of the area of waterbird mitigation is expected to be delivered through implementation of two large developments. The Able Logistics Park development (ref PA/2009/0600) already has planning permission. Conditions attached to that permission require the developer to carry out one of two options to deliver all of the waterbird mitigation required as a result of the loss of feeding, roosting and loafing habitat on Halton Marsh. Waterbird mitigation for the Able Marine Energy Park will deliver 16.7 hectares of wet grassland core habitat plus a wet grassland habitat buffer, representing the majority of the 20 hectares core habitat plus buffer required to mitigate fully for the loss of terrestrial habitat on Killingholme Marsh.

Areas identified as mitigation for these projects has been accepted by Natural England as appropriate mitigation for the projects, and importantly, would also be acceptable mitigation for alternative development proposals covering the same development footprints. If alternative developments come forward that do not cover the same footprints, it will be necessary to identify new mechanisms by which the strategic mitigation required in North Lincolnshire will be delivered. However, the overall requirement for strategic mitigation in North Lincolnshire will remain and such alternative developments, and their associated mitigation, will need to be assessed against this requirement.

In North Lincolnshire, options remain open about the delivery of the further 3.3 hectares of core habitat plus wet grassland habitat buffer that will be required to allow the development of the remaining land on Killingholme Marsh, which also supports significant numbers of curlew. Developers at the southern end of Killingholme Marsh may opt to create mitigation habitat in one of the following ways:

1. By adding to waterbird mitigation on Halton Marsh, through agreement with the landowners.
2. By adding to Rosper Road Pools or AMEP mitigation land at Killingholme Marsh through agreement with landowners.

3. By adding to waterbird mitigation land identified in North East Lincolnshire, through agreement with the landowners, if it can be demonstrated that the distance between curlew intertidal habitat and curlew terrestrial habitat is consistent with the conservation objectives for the Humber Estuary SPA.
4. By providing waterbird mitigation land outside the South Humber Gateway if it can be demonstrated that the distance between curlew intertidal habitat and curlew terrestrial habitat is consistent with the conservation objectives for the Humber Estuary SPA and that the proposed mitigation is functional for curlew.

The optimal solution, ecologically, to delivery of the further 3.3 hectares of core habitat would be either of Options 1 or 2 above. Selection of either of these options would allow the Habitats Regulations Assessments for the associated developments to rely on the evidence base and assessments contained within this Strategic Mitigation Plan. The use of either Options 3 or 4 would require developers to develop their own evidence base to inform the Habitats Regulations Assessment and, potentially, greater requirements for mitigation habitat.

It is anticipated that this remaining waterbird mitigation land can be delivered employing conventional planning obligations, without the need to create complex habitat banking mechanisms to govern the phasing, funding and delivery of habitat as may be required elsewhere in the South Humber Gateway.

The Approach to Delivery in North East Lincolnshire

In North East Lincolnshire, the Local Authority is working with The Environment Bank developing a means of securing the management of the identified mitigation land. This involves negotiation with relevant landowners and the identification of the most appropriate means of securing the management of the land. This may be by land purchase, long term lease or other legal agreements with landowners.

Whilst details of the precise means of delivery are being negotiated at this stage, North East Lincolnshire Council is committed to the adoption of a strategic approach to the issue of waterbird mitigation in line with the approach described in this strategy and will continue to work with the members of the Ecology Group on this basis.

Management

To mitigate impacts of development within the SHG, the most appropriate land use for foraging, loafing and roosting wintering and passage waterbirds is considered to be wet grassland in the SHG, optimally managed at the appropriate times of year for the necessary numbers of the target species.

The main target species within the SHG include, but are not exclusive to curlew, black-tailed godwit, ruff, whimbrel, golden plover and lapwing. Their specific ecological requirements vary between and even within species. The function required of the wet grassland habitat will also vary between different times of year and under different environmental conditions. Optimally managed wet grassland should be designed to optimise foraging, loafing and roosting opportunities for the target species in the required numbers.

Optimally managed mitigation land must be supported by appropriate legal and financial instruments which secure the design, implementation and ongoing management of the area. A site-specific conservation management plan which sets out how optimal management will be delivered, managed and monitored must also be in place for each site. Features to be considered in the design of each site-specific management plan should include:

- Ditches & water features
- Water supply
- Water level management
- Sward
- Sight lines
- Access
- Disturbance

Monitoring the effectiveness of the mitigation

In order to demonstrate the effectiveness of the mitigation measures once they have been delivered it is essential to have robust data on the bird usage for the mitigation areas. Within North Lincolnshire monitoring is required as a condition of major planning applications. The approach to monitoring in North East Lincolnshire is as yet unclear but is expected to be similar.

Factors to be considered when designing a monitoring programme include:

- timing of bird monitoring including seasonal timing, frequency of counts, tidal state during counts, starting points and end points
- reporting standards, including format of annual reports, interim reports and measures to be derived from the raw data
- measures of favourable condition with reference to bird populations and assemblages using the created wetland mitigation areas,
- mechanisms for implementing any necessary remedial measures

There are likely to be benefits in the adoption of a single monitoring programme across both Local Authority areas, however if this is not possible, the use of comparable monitoring methods and standards will ensure that the effectiveness of the mitigation across the SHG can still be assessed. The results of monitoring will be reviewed by members of the South Humber Gateway Ecology group which will continue to meet to monitor its delivery and the effectiveness of the mitigation.

Conclusion

The South Humber Gateway Mitigation Strategy sets out an approach which will ensure that feeding and roosting habitat for waterbirds can be provided and maintained to mitigate for the loss of such habitat to development. The two interdependent delivery approaches, for North and North East Lincolnshire will set out adequate requirements to enable development aspirations to be met throughout the SHG, whilst ensuring that there will be no adverse effect on the integrity of the Humber Estuary SPA / Ramsar site due to the loss of feeding and roosting habitat.

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ANNEX 2

Wet Grassland at Halton Marshes

This Annex explains the historic consents for the development of wet grassland at Halton Marshes.

The development of 32ha of wet grassland at Halton Marshes together with an appropriate buffer was first consented under PA/2006/0600 in 2013 and with revised conditions under PA/2015/1264, both following EIA and HRA, plan abstract below.



Figure 2: Consented development of 32ha of core wetland habitat + Buffer on Halton Marshes which provides mitigation for the whole of the ALP development (PA/2015/1264)

In 2014 the Secretary of State for Transport granted consent for Able Marine Energy Park (AMEP) which, *inter alia*, required a 38ha field at the norther end of Halton Marshes to be provided as further overcompensation for the adverse effects of the AMEP scheme. AMEP also constituted EIA development and the cumulative and in-combination assessment for AMEP fully considered the combined effects of AMEP with, *inter alia*, PA/2009/0600 which was the relevant consent in place at the time of the AMEP consent.

The combined need to provide further overcompensation at Halton Marshes, as well as up to 32ha of wet grassland on Halton Marshes to mitigate for ALP (20 ha of which could be provided off site) led the Applicant to consult with Regulators on a combined scheme for the whole of Halton Marshes. In doing so, the Applicant was exploring the flexible approach to mitigating for FLL on the South Humber Bank that was becoming embedded in planning

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policy. The Applicant discussed such a scheme extensively with the relevant regulators and was open about its purpose, namely, and in part, to mitigate for the complete loss of FLL on Killingholme Marshes. In this respect the application documents for HMWGS were very clear and specifically stated as follows, in line with pre-application discussions with Natural England:

'3.2.1 *The HMWGS provides 52ha of core area, amalgamating the objectives of the three approved schemes:*

- *ALP Option 2*

12 of the 32 hectares of core area required under ALP Option 2 will be provided in the HMWGS. As part of a much larger core area (52ha in total) this will facilitate implementation of Phase 1 of the ALP;

- *AMEP Mitigation Area A*

The 16.7ha core area of AMEP Mitigation Area A will be relocated to the HMWGS, and increased (by 3.3ha) to 20ha of core area, so providing mitigation for the development of the current site of Mitigation Area A and any further development on Killingholme Marshes;

- *AMEP Further Overcompensation*

A further 20ha of core area will be provided by delivering the AMEP Further Overcompensation scheme for the Black-tailed godwit.' (Underline added).

Subsequently, the application was subjected to HRA (refer to Appendix C of the Planning Statement supporting the NMC application), and the record of the assessment is equally clear that it was assessing a project that proposed to mitigate for the complete loss of FLL on Killingholme Marsh. Specifically, the introduction states:

'2.1 *PA/2016/649 is a planning application to create habitat, primarily wet grassland, at Halton Marshes. The habitat is required primarily to provide for passage and wintering waterbirds displaced by the Able Logistics Park (ALP) and Able Marine Energy Park (AMEP) projects. Although the project is required as mitigation and compensation under the Habitats Regulations, the delivery of the project itself could cause noise and visual disturbance of waterbirds. It is also important to ensure that the project will fully deliver the mitigation and compensation requirements of the other projects. For these reasons, an appropriate assessment is required'.* (Underline added).

And later,

'4.6.1 *As proposed by Able UK, the HMWGS provides 52ha of core area, amalgamating the objectives of the three approved schemes. One the functions of the Habitats Regulations Assessment is to determine whether the proposal will meet the following objectives:*

- *ALP Option 2*

12 of the 32 hectares of core area required under ALP Option 2 will be provided in the HMWGS. As part of a much larger core area (52ha in total) this will facilitate implementation of Phase 1 of the ALP;

- *AMEP Mitigation Area A*

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The 16.7ha core area of AMEP Mitigation Area A could be relocated to the HMWGS, and increased (by 3.3ha) to 20ha of core area, so providing mitigation for the development of the current site of Mitigation Area A and any further development on Killingholme Marshes;

- *AMEP Further Overcompensation*

A further 20ha of core area could be provided for the future delivery of the AMEP Further Overcompensation scheme for the Black-tailed godwit.’ (Underline added).

The HRA considered other projects in combination including AMEP and concluded that:

7.3.2 PA/2016/649 has been designed with the intention that in the future, the 16.7ha core area of AMEP Mitigation Area A could be relocated to the HMWGS, and increased (by 3.3ha) to 20ha of core area, so providing mitigation for the development of the current site of Mitigation Area A and any further development on Killingholme Marshes.

7.3.3 In October 2011, Natural England wrote to the applicant, indicating that provision of mitigation habitat within the ALP area would enable the impact of the loss of feeding and roosting habitat from Killingholme Marshes to be mitigated (Letter dated 28 October, Appendix 4).

7.3.4 The South Humber Gateway Strategic Mitigation Strategy, referenced in the North Lincolnshire Core Strategy and Housing and Employment Allocations Development Plan Documents indicates that wet grassland mitigation habitat should be delivered both on Killingholme Marsh and Halton Marsh. However, it does also describe the potential for some of the mitigation requirement relating to Killingholme Marsh to be delivered at Halton Marsh.

7.3.5 The Housing and Employment Allocations Development Plan Document (adopted March 2016) includes the following supporting text for allocation SHBE-1 “South Humber Bank”:

7.3.5.1 “The preferred alternative locations for waterbird mitigation at Halton Marsh and Killingholme Marsh have been indicated on Inset 57. The current locations for waterbird mitigation have been arrived at through the Mitigation Strategy Group assessing the best available evidence.

7.3.5.2 Developers could bring forward other alternative mitigation proposals, of at least equivalent area to that agreed under the ALP and AMEP projects, provided that they have an evidence base sufficient to demonstrate the ability of such waterbird mitigation to contribute to the overall mitigation strategy and avoid Adverse Effects on the integrity of the SPA/Ramsar site. This approach will enable to keep Policy SHBE- 1 flexible and give the policy longevity, without future cause to involve formal amendments to the DPD or possible DPD departure procedures.”

7.3.6 This gives policy support for the approach described in the 2011 Natural England letter. Within the Habitats Regulations Assessment of The Housing and Employment Allocations Development Plan Document, Policy SHBE-1. was assessed as follows:

7.3.6.1 “With these safeguards, Policy SHBE-1 will have no adverse effect on the integrity of the Humber SPA and Ramsar site in terms of disturbance to and permanent loss of terrestrial habitat supporting feeding, roosting and loafing SPA/Ramsar waterbirds.”

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7.3.7 *The area proposed for HMWGS lies about 4km from AMEP Area A and a similar distance from the intertidal habitat at Killingholme frontage that will remain following the AMEP development. A search of the readily available literature suggests that wintering curlews will readily commute such a distance between estuaries and inland fields or between foraging sites (A.S. Holmes in Cramp (ed.) 1983, Wilson 1973, Bainbridge and Minton 1978 and Tasker & Milsom 1979 in Townshend 1981). Inter-refuge distances of around 3-6 km have been proposed for other wader species, such as grey plover and dunlin (Rehfishch et al. 1993).*

7.3.8 *Taking into account Natural England advice and the recorded commuting distances for curlew, it is reasonable to conclude that the mitigation for loss from Killingholme Marsh of feeding, roosting and loafing habitat for curlew, that would have been provided by Area A, can effectively be delivered by the provision of 20 hectares of core habitat, along with appropriate buffers at HMWGS.’ (underline added).*

Therefore, the HRA undertaken by North Lincolnshire Council before they consented HMWG, already provided to the Secretary of State in Appendix C of the Application Statement, considered the re-siting of Area A to HMWG in the context of AMEP being built and also the total loss of all FLL on Killingholme Marsh. HMWG was granted planning permission for its intended purpose on 8 May 2017 and was subsequently constructed in 2018, photographs of the completed scheme are included in re-submitted sHRA accompanying this NMC.