

SCHEDULES

SCHEDULE 11

Article 54

ORNITHOLOGY COMPENSATION MEASURES

1. In this Schedule—

“addendum to the outline ornithological compensation implementation and monitoring plan” means the document certified by the Secretary of State as the addendum to the outline ornithology compensation implementation and monitoring plan for the purposes of this Order under article 47 (certification of documents, etc.);

“compensation addendum” means the document “Addendum to Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures (for The Wash SPA)” certified by the Secretary of State as the compensation addendum for the purposes of this Order under article 47 (certification of documents, etc.);

“compensation measures document” means the document “Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures” certified by the Secretary of State as the compensation measures document for the purposes of this Order under article 47 (certification of documents, etc.) as supplemented by the compensation addendum;

“hot commissioning of line 2 of Work No. 1A” means the first date on which waste is combusted to produce steam for more than 8 hours continuously in the second waste processing line of Work No. 1A during the commissioning phase of that line;

“OCIMP” means the ornithology compensation implementation and monitoring plan for the delivery of measures to compensate for the predicted disturbance to roosting, bathing and loafing waterbirds from The Wash SPA and Ramsar Site (and functionally linked habitat) as a result of the authorised development;

“OEG” means the Ornithology Engagement Group, which will include, as a minimum, the relevant statutory nature conservation body and the Royal Society for the Protection of Birds and which will oversee the implementation, management and monitoring of the compensation measures;

“outline ornithology compensation implementation and monitoring plan” means the document certified by the Secretary of State as the outline ornithology compensation implementation and monitoring plan for the purposes of this Order under article 47 (certification of documents, etc.);

“The Haven” means the part of the River Witham, known as The Haven; and

“The Wash SPA and Ramsar Site” means the site designated as The Wash Special Protection Area and The Wash Ramsar Site.

2. The authorised development may not be commenced until a plan for the work of the OEG has been submitted to and approved by the Secretary of State, following consultation with the members of the OEG. Such plan must include—

- (a) terms of reference of the OEG;
- (b) details of the membership of the OEG;
- (c) details of the schedule of meetings, timetable for preparation of the OCIMP and reporting and review periods;

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- (d) the dispute resolution mechanism; and
- (e) minutes from all consultations with the members of the OEG and copies of any written consultation responses from the OEG.

3. Following consultation with the OEG, the OCIMP must be submitted to and approved by the Secretary of State, following consultation with all members of the OEG and the local planning authority or authorities for the land containing the compensation measures, and the relevant statutory nature conservation body. The OEG must be consulted by the Secretary of State further as required during the approval process.

4. The OCIMP submitted for the approval of the Secretary of State must be substantially in accordance with the outline ornithology compensation implementation and monitoring plan as supplemented by the addendum to the outline ornithological compensation implementation and monitoring plan.

5. The OCIMP must include measures to compensate for the predicted disturbance to roosting, bathing and loafing waterbirds from The Wash SPA and Ramsar Site (and functionally linked habitat), must be based on the criteria set out in paragraph 3.5.5 of the compensation measures document, must contain the relevant matters set out in paragraph 4.10.4 of the compensation measures document and must include in particular—

- (a) details of location(s) where compensation measures will be delivered and the suitability of the site(s) to deliver the measures (including why the location is appropriate ecologically and likely to support successful compensation);
- (b) details of landowner agreements demonstrating how the land and/or rights have been or will be bought or leased and assurances that the land management will deliver the ecology objectives of the OCIMP;
- (c) details of designs of the compensation measures and how risks from avian or mammalian predation and unauthorised human access will be mitigated;
- (d) an implementation timetable for delivery of the compensation measures that ensures all compensation measures are in place prior to the impact occurring: for the compensation for disturbance by the increased number of vessels, the measures will be in place for at least two years prior to the hot commissioning of line 2 of Work No. 1A);
- (e) criteria for assessing the effectiveness of the compensation measures;
- (f) details of the proposed ongoing monitoring and reporting on the effectiveness of the measures, including: survey methods; success criteria; timescales for the monitoring and monitoring reports to be delivered; and details of the factors used to trigger alternative compensation measures and/or adaptive management measures;
- (g) details of any adaptive management measures;
- (h) provision for annual reporting to the Secretary of State, to include details of the use of each site by waterbirds (split into species accounts) to identify barriers to success and target the adaptive management measures. This will include an account of the number of birds using each site; evidence of birds roosting, foraging and bathing around high tide periods and any evidence of continued disturbance from vessels at the authorised development and at the mouth of The Haven;
- (i) details of the management and maintenance prescriptions and a maintenance schedule appropriate to the habitats to be created at each compensation location; and
- (j) minutes from all consultations with the OEG and copies of any written consultation responses from the OEG on matters relating to the development of the OCIMP.

6. The undertaker must implement the measures as set out in the OCIMP approved by the Secretary of State, unless otherwise agreed in writing by the Secretary of State following consultation

with all members of the OEG, the relevant statutory nature conservation body and the local planning authority or authorities. In particular—

- (a) for the compensation for disturbance by the increased number of vessels, no hot commissioning of line 2 of Work No. 1A may begin until two full years following the implementation of the relevant measures set out in the OCIMP have elapsed.

7. The undertaker must notify the Secretary of State of completion of implementation of the measures set out in the OCIMP.

8. Results from the monitoring scheme must be submitted at least annually to the Secretary of State and the relevant statutory nature conservation body and made publicly available. This must include details of any finding that the measures have been ineffective in creating suitable roosting site(s) to support any birds that have been displaced through disturbance by the increased numbers of vessels using The Haven as a result of the authorised development and, in such case, proposals to address this. Any proposals to address effectiveness must thereafter be implemented by the undertaker as approved in writing by the Secretary of State following consultation with the relevant statutory nature conservation body, the OEG and the local planning authority or authorities for the land containing the compensation measures.

9. Unless otherwise agreed in writing by the Secretary of State or unless the measures set out in the OCIMP have already been delivered, the undertaker must not commence construction of Work No. 1 until it has first—

- (a) provided a reasonable estimate of the cost of delivery of the compensation measures; and
- (b) put in place either—
 - (i) a guarantee in respect of the reasonable estimate of costs associated with the delivery of the compensation measures; or
 - (ii) an alternative form of security for that purpose,
that has been approved by the Secretary of State.

10. The compensation measures delivered under this Schedule must not be decommissioned without the written approval of the Secretary of State, following consultation with the relevant statutory nature conservation body and the OEG.

11. The OCIMP approved under this Schedule includes any amendments that may subsequently be agreed in writing by the Secretary of State, in consultation with the relevant statutory nature conservation body, the OEG and the local planning authority or authorities for the land containing the compensation measures. Any amendments to or variations of the approved OCIMP must be in accordance with the information set out in the compensation measures document and may only be approved where it has been demonstrated to the satisfaction of the Secretary of State that it is unlikely to give rise to any new or materially different environmental effects from those considered in the compensation measures document.

12. In the event of any conflict or inconsistency between the terms of the compensation measures document and the provisions of this Order, the provisions of this Order shall prevail.