

**NORTH LINCOLNSHIRE COUNCIL HOUSING AND EMPLOYMENT LAND
ALLOCATIONS DPD REVISED SUBMISSION DRAFT (APRIL 2014)**

STATEMENT OF COMMON GROUND

Between

NORTH LINCOLNSHIRE COUNCIL

And

NATURAL ENGLAND (NE) (Respondent ID: 565541)

**ROYAL SOCIETY for the PROTECTION OF BIRDS (RSPB) (Respondent ID:
759184)**

LINCOLNSHIRE WILDLIFE TRUST (LWT) (Respondent ID: 842759)

In respect of:

Representation References:

565541/01/435/SHBE1/LC/Unsound	842759/45/229/4.27/3
759184/01/456/SHBE1/3	842759/46/230/4.31/3
759184/02/504/SHBE1/3	842759/47/231/4.32/NS
759184/03/505/SHBE1/3	842759/51/235/4.35/3
842759/44/228/SHBE1/3	842759/49/233/3.34/3

Signatures

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Regeneration, North Lincolnshire Council

David Knight, Natural England

Helen Byron, Royal Society for the Protection of
Birds

Paul Learoyd Chief Executive Lincolnshire Wildlife
Trust

This Statement of Common Ground (SoCG) has been prepared to identify areas of agreement between Natural England (NE), Royal Society for the Protection of Birds (RSPB), Lincolnshire Wildlife Trust (LWT) and North Lincolnshire Council (NLC) on matters relating to the council's Housing and Employment Land Allocations Revised Submission Draft DPD (April 2014) and representations submitted by NE, RSPB and LWT.

1 Background

- 1.1 This SoCG relates to one representation made by Natural England, three representations made by the Royal Society for the Protection of Birds and six representations made by the Lincolnshire Wildlife Trust to the council's Proposed Housing and Employment Land Area DPD Revised Submission (April 2014). These are summarised below:

Natural England

565541/01/435/SHBE1/LC/Unsound

Royal Society for the Protection of Birds

759184/01/456/SHBE1/3

759184/02/504/SHBE1/3

759184/03/505/SHBE1/3

Lincolnshire Wildlife Trust

842759/44/228/SHBE1/3

842759/45/229/4.27/3

842759/46/230/4.31/3

842759/47/231/4.32/3

842759/51/235/4.35/3

842759/49/233/4.34/3

- 1.2 North Lincolnshire Council's overview of the representations received and included in this SoCG is as follows.

It is clear from the comments received from Natural England (NE), Royal Society for the Protection of Birds (RSPB) and the Lincolnshire Wildlife Trust that there are many similar points raised and that it is right for the Council to treat all three authorities and organisations together in one SoCG. The Council believe that from the comments received from NE, RSPB and LWT that agreement can be made on many, if not all of the issues raised. These issues will be addressed in the following paragraphs. The representations can be summarised as issues with the Council's response in the following paragraphs.

Meetings have been held on 16th October and 18th November 2014 between North Lincolnshire Council (Spatial Planners and ecologist), NE, RSPB and LWT. It was agreed at these meetings to set out this SoCG so that each issue of the representations is summarised followed by a response from North Lincolnshire Council. The ten representations have been divided into fourteen (14) issues. The outcome of the issues has resulted in the proposed changes listed in section 3 of this SoCG. It was clear from this meeting that the Council should be able to get agreement on all the issues raised in the representations submitted by NE, RSPB and LWT.

- 1.3 **Issue 1 – Has Policy SHBE1 in the Revised Submission H&ELADPD been assessed appropriately under the Habitats Regulations Assessment?**

- 1.3.1 **Natural England and RSPB's issue can be summarised as follows:**

The supporting Habitat Regulations Assessment (HRA) assesses a previous iteration of Policy SHBE1 and does not assess the amended Policy SHBE1 and is therefore not compliant with Regulation 102 of the Conservation of Habitats and Species Regulations 2010 (as amended)

- 1.3.2 **North Lincolnshire Council Response**

The Council agree that there appears to be a discrepancy between Policy SHBE1 that was assessed under the Habitat Regulations Assessment (HRA) and the final Policy SHBE1 included in the Housing and Employment DPD. The drafting of Policy SHBE1 has been an iterative process over a period of time due to the complicated issues the site poses. It seems that an earlier draft of Policy SHBE1 has been assessed under the HRA by North Lincolnshire Council and reviewed by Natural England, but the correct waterbird mitigation, as currently agreed within the North Lincolnshire area of the South Humber Bank, has been indicated on Inset 57. These waterbird mitigation sites have been assessed under the HRA to the H&ELADPD. It is agreed that the revised Policy SHBE-1 requires the Habitats Regulations Assessment to be updated and Appendix 2 of the HRA has been revised accordingly to ensure that SHBE-1 will have no adverse effect on the integrity of the Humber Estuary SPA, SAC or Ramsar site.

1.4 Issue 2 – What Status is the Mitigation Strategy?

1.4.1 Natural England's and RSPB's issue can be summarised as follows:

The delivery of SHBE1 relies on a completed Mitigation Strategy (waterbirds) as agreed by the Inspector's report to the North Lincolnshire Council Core Strategy (May 2011), and for the mitigation sites to be delineated in the Housing and Employment Land Allocation DPD. The Mitigation Strategy should inform the H&ELADPD SHBE1 allocation in the pre-allocation stage. SHBE1 clearly outlines that development of the allocation will have to comply with the waterbird mitigation. Natural England welcomes the mitigation strategy included within the Habitat Regulation Assessment but since it has not been agreed by the SHB Ecology Group nor NLC itself. Natural England is not sure what status can be applied to this Mitigation Strategy. The Mitigation Strategy should be finalised and formally approved by these bodies in order to ensure an effective sound policy.

1.4.2 North Lincolnshire Council Response

The status of the Mitigation Strategy is that it remains as a "live document" as ongoing evidence in providing for mitigation sites in relation to SHBE1. This is confirmed in paragraph 4.33 of the H&ELADPD. This leaves the situation open for further Mitigation sites to be identified in both Council areas and eventually for one Mitigation Strategy to be applied to both Council areas. This will be used as an evidence document that will have the flexibility of being able to be updated as and when necessary without recourse to review a policy in the DPD or any future Local Plan. This in turn keeps the policy flexible and gives the policy longevity in that it will be informed by a continually updated evidence document. This issue is described in detail in paragraph 4.33 of the H&ELADPD. This approach was agreed between all parties at the meeting held on 16th October 2014.

The meeting held on 18th November 2014 between all parties agreed that after a short consultation within the Ecology Group that an overarching Mitigation Strategy should be drawn up to include high level principles to cover both Council areas in the South Humber Gateway. The Mitigation Strategy will include the overarching principles for the South Humber Gateway area followed by the two separate delivery strategies of North Lincolnshire Council and North East Lincolnshire Council areas and the document will be treated as a 'live' document due to the precise locations of the identified sites being flexible. This point is emphasised by different waterbird mitigation sites currently being identified for mitigation purposes. (see paragraph 3.3 in relation to planning process).

The Humber Nature Partnership is overseeing the drafting of the Mitigation Strategy in consultation with North Lincolnshire Council and North East Lincolnshire Council and the remaining members of the Ecology Group. The changes made to the Mitigation Strategy will be reflected in the formal HRA to the H&ELADPD Revised Submission and this will mean that Council approval has been given to these changes. The status of the current Mitigation Strategy is that it is live and provides the most up to date evidence for the provision of waterbird mitigation for the purposes of the HRA to the H&ELADPD. Once the H&ELADPD has been formally approved the Mitigation Strategy will be the relevant best available

evidence at a point in time as a 'live' document. However, it is clear that current new negotiations (separate from the H&ELADPD process) are progressing between the Council, Natural England and Able UK with regard to a different mitigation solution for AMEP and ALP and these decisions (should agreement be made) will be made through the planning process and will inform the 'live' Mitigation Strategy. It is clear that if AMEP and ALP do not progress it will be necessary to identify new mechanisms by which the strategic mitigation required in North Lincolnshire will be delivered. (see the last two paragraphs of 1.5.2 and the last two paragraphs of 3.3 of this SoCG for further reference to the process).

1.5 Issue 3 – Should the Mitigation Strategy represent one strategy covering all waterbird mitigation sites in both local authority areas of North Lincolnshire Council and North East Lincolnshire Council?

1.5.1 NE, RSPB and LWT issue can be summarised as follows.

Support for a strategic approach to waterbird mitigation is given but the delivery of the Mitigation Strategy has been split into two with one area relating to North Lincolnshire Council and the other area relating to North East Lincolnshire Council as a result of the different timescales of the two Local Authorities' Local Plans/LDFs. The intention of the Ecology Group formed under the South Humber Gateway Delivery Group was always to produce one Mitigation Strategy as stated by the Memorandum of Understanding (April 2010) and the mitigation has been calculated across the SHG as a whole- i.e. not for each LPA area.

1.5.2 North Lincolnshire Council Response

The support for a strategic approach to waterbird mitigation to ensure the integrity of the Humber Estuary nature conservation designation (European SPA, SAC, and international Ramsar site) is noted. How the Mitigation Strategy has evolved is important in explaining what the current position is in relation to the Mitigation Strategy.

The Mitigation Strategy was an initiative taken by North Lincolnshire Council in April 2008 in partnership with members of the South Humber Bank Development Group (formed in 2007 and later to be called the South Humber Gateway Group). North East Lincolnshire Council, other relevant organisations and private companies interested in the development of the South Humber Bank employment area completed the Group. A Board was appointed to oversee progress and decision making. The Ecology Group was formed as a sub group to arrive at solutions to address nature conservation issues at a strategic level so as to speed up decision making on planning applications to develop sites within the SHB employment area in both North Lincolnshire Council and North East Lincolnshire Council areas (i.e. to achieve an appropriate acceptable balance of economic development and ecology). The members of the Ecology Group included both Local Authorities, private companies, Humber Industrial & Nature Conservation Association (HINCA – now Humber Nature Partnership (HNP)), NE, RSPB, LWT and the EA. The Ecology Group commenced work on developing a waterbird Mitigation Strategy in April 2008. The original timetable was to produce solutions by 2010 as this was the deadline for the North Lincolnshire Core Strategy (North Lincolnshire Council were ahead of North East Lincolnshire Council in terms of producing planning policy documents). However, progress was slow and by April 2010 North Lincolnshire Council and partners signed up to a Memorandum of Understanding in order for the North Lincolnshire Core Strategy to progress.

The North Lincolnshire Core Strategy had a short examination in public in 2011 and was adopted by the Council in June 2011. Policy CS12 of the Core Strategy is the relevant Policy that addresses the South Humber Bank Employment site. The intention at the time was to delineate the final agreed waterbird mitigation sites (as stated in section d) of Core Strategy CS12) in the H&ELADPD. The current agreed mitigation sites have been indicated on Inset 57 of the H&ELADPD and the current Mitigation Strategy for North Lincolnshire is included as an Appendix in the HRA of the H&ELADPD. The work on the North Lincolnshire Mitigation Strategy and the work of the Ecology Group as a whole to achieve an overall Mitigation Strategy for the South Humber Bank employment areas in both North Lincolnshire Council and North East Lincolnshire Council areas is supported by the Council. The Mitigation

Strategy will be treated as a “live document” which has informed policy making and will provide evidence to feed into the planning application process. This latter point is confirmed in paragraph 4.33 of the H&ELADPD.

The reason for creating a procedure for a Mitigation Strategy to be produced was originally to help speed up the planning system by shortening the time of pre-application discussions and to give developers a thorough understanding of what would be required with regard to waterbird mitigation in the South Humber Bank area. The fact that North Lincolnshire Council have negotiated with a major developer and Natural England regarding the provision of mitigation sites and achieved planning permissions on a high majority of the SHBE1 site without an approved Mitigation Strategy, is proof that a Mitigation Strategy is not an absolute for delivery of development. The timetable of delivery of a Mitigation Strategy has been much longer than originally forecasted, meanwhile developer planning applications and the formulation of planning policy have been much quicker processes. However, it is the view of the Council that a Mitigation Strategy will prove helpful as an evidence document that will inform Policy SHBE-1 (provided it remains as a document that robustly informs the planning process with up to date evidence). This is likely to help shorten the planning process in the future.

The Ecology Group meetings are continuing with the aim of achieving an overall Mitigation Strategy for the South Humber Bank covering both Council areas. This is confirmed in paragraph 4.35 of the H&ELADPD.

After the Ecology Group had discussed an agreed way forward for the Mitigation Strategy on 18th November 2014 the meeting held afterwards between all parties agreed that after a short consultation within the Ecology Group that an overarching Mitigation Strategy should be drawn up to include high level principles to cover both Council areas in the South Humber Gateway. The Mitigation Strategy will include the overarching principles for the South Humber Gateway area followed by the two separate delivery strategies of North Lincolnshire Council and North East Lincolnshire Council areas and the document will be treated as a ‘live’ document due to the different options for waterbird mitigation sites currently being identified. Able UK are currently negotiating a different solution to waterbird mitigation to that shown (as indicated) on Inset 57 and in the HRA thereby emphasising that the precise locations of the identified sites may be flexible and why the Mitigation Strategy is a ‘live’ document showing the best available evidence at any point in time.

The Humber Nature Partnership is overseeing the drafting of the Mitigation Strategy in consultation with North Lincolnshire Council and North East Lincolnshire Council and the remaining members of the Ecology Group. The changes made to the Mitigation Strategy will be reflected in the formal HRA to the H&ELADPD Revised Submission and on formal adoption by the Council post Examination, this will mean that Council approval has been given to the current Mitigation Strategy. Inset 57 indicates the latest position on waterbird mitigation before the outcome of the new negotiation with Able UK which commenced earlier in 2014 and is ongoing. As an example of the Mitigation being a ‘live’ document, should these new mitigation proposals come forward as a planning application the planning process will make the decision and if favourable this decision will inform the Mitigation Strategy.

The Council understands that if Able UK did not develop AMEP and ALP and alternative developments come forward that do not cover the same footprint as AMEP and ALP, 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 (identified in the Mitigation Strategy) will remain and such alternative developments, and their associated mitigation, will need to be assessed against this requirement. Although this scenario is recognised by the Council, it considers that it is very likely that AMEP and ALP will progress, particularly as Able UK have commenced preliminary works with regard to AMEP. (see also paragraph 3.3 in relation to planning process). It is agreed between all parties to update the Mitigation Strategy as one overall ‘live’ strategy to cover both Council areas and to include the overarching principles followed by the two delivery mechanisms in each Council area.

1.6 **Issue 4 – Has the Council complied with the Duty to Co-operate with regard to the South Humber Gateway Mitigation Strategy?**

1.6.1 **NE and RSPB issues can be summarised as follows.**

Natural England believes it is compliant with the Duty to Cooperate (in line with their involvement since May 2008) but if the Mitigation Strategy is not progressed North Lincolnshire Council and North East Lincolnshire Council may fail on the Duty to Cooperate with regard to the cross boundary relationship with respect to the Humber Estuary designated sites. It is crucial that both Councils commit to adopt their Mitigation Strategies and recognise their links between them.

1.6.2 **North Lincolnshire Council Response**

The Duty to Cooperate is a legal duty which requires local authorities to work together effectively on strategic cross boundary planning matters. This does not necessarily mean that agreement has to be made but it includes engaging constructively, actively and on an ongoing basis in relation to planning of sustainable development, including constructive engagement during the preparation of a plan. It is clear that from the above paragraphs 1.4.2 and 1.5.2 of this SoCG that North Lincolnshire Council have complied with all these elements of the Duty to Cooperate process in working towards a Mitigation Strategy for waterbirds in relation to SHBE1.

A joint cross boundary working group, as described above, continues to work on producing a final (first agreed) Mitigation Strategy from a base date of April 2008. The Council's response to the previous question in paragraph 1.5.2 above gives a summary of the Council's involvement with North East Lincolnshire Council and various partners since 2008. It was agreed by all parties at the meeting held on 16th October that North Lincolnshire Council should amend the Mitigation Strategy so as to show the updated position. The Mitigation Strategy will therefore include the overarching principles for the South Humber Gateway area followed by the two separate delivery strategies of North Lincolnshire Council and North East Lincolnshire Council areas and the document will be treated as a 'live' document due to the precise locations of the identified sites being flexible. This point is emphasised by different waterbird mitigation sites currently being identified for mitigation purposes. (see paragraph 3.3 in relation to planning process). In addition, North Lincolnshire Council and North East Lincolnshire Council held a meeting on cross boundary issues, including the issues about the South Humber Employment area in both Council areas (a record of this meeting is included in the H&ELADPD evidence base).

1.7 **Issue 5 – Does the third bullet point of Policy SHBE1 need amendment or deletion, as it is highly likely that the existing wording will have an adverse effect on the integrity of the Humber Estuary nature conservation designation (European SPA, SAC, and international Ramsar site)?**

1.7.1 **NE, RSPB and LWT issues can be summarised as follows.**

Policy SHBE1 and its supporting text have been altered since the Council had consulted with Natural England on its Revised Draft in October 2013. Natural England support the first bullet point in Policy SHBE1 but object to the third bullet point of this policy because it has the potential to overly promote port facilities and requires port facilities within the designated site boundary (including jetties and quays) for its delivery. Consequently this new policy wording will require an assessment under the Habitat Regulations and it will not be possible to ascertain that there will be no adverse effect on the integrity of the Humber Estuary designated sites from new port facilities leading to the IROPI process to determine whether the plan can proceed. The third bullet point should therefore be removed from Policy SHBE1.

The RSPB and LWT request/suggest that the third bullet point of Policy SHBE1 be deleted or be replaced with the following words:

“Allow for the potential future development of port facilities, including jetties and quays, along the Humber Estuary frontage between Immingham Port and the Humber Sea Terminal which will be required to meet the tests of the Habitats Regulations.”

1.7.2 North Lincolnshire Council Response

The third bullet point of SHBE1 is intended to reflect the importance of the SHBE1 employment allocation as being uniquely located with flat topography adjacent a deep water channel and offering special advantages in terms of creating new port facilities on land that amounts to one of the last undeveloped deep water estuaries in Europe. It provides a unique opportunity for the economy of North Lincolnshire and the Humber area to create high value and substantial employment opportunities on a transformational scale. The first and second bullet points clearly state what is allowable provided the tests of the Habitats Regulations are met. The second bullet point emphasises maximising the site’s strategic offer related to creating major employment, high job densities and inward investment, but requires amendment to reflect the Council’s intent.

The Council agrees that the third bullet point does not meet its intended objective and it should therefore be deleted and replaced with words that reflect the Council’s intent. The suggestions of new wording by the RSPB and LWT in their representations are noted but these suggestions do not reflect the Council’s intent. The third bullet point of SHBE-1 will therefore be deleted and new words will be inserted into the second bullet point emphasising the employment maxims whilst protecting against isolated piecemeal development within the site along the Humber Estuary frontage between the Port of Immingham and the Humber Sea Terminal. It is agreed that this amendment is a minor change and will be recorded in Schedule B of the Minor Changes to the H&ELADPD.

It was agreed by all parties at the meeting of 16th October 2014 that the existing third bullet point of Policy SHBE1 should be deleted and new words be incorporated into the second bullet point to reflect the Council’s intent. Some suggestions were made as to appropriate wording for this issue and the Council have taken on board the advice given by the RSPB to delete bullet point three and incorporate new words with bullet point two (for clarification purposes these new words will not be the words originally suggested by RSPB and LWT in their representations as agreed at the 16th October 2014 meeting. These new words are shown in this SoCG at paragraph 3.5. Paragraph 4.29 of the H&ELADPD of the supporting text will not have to be amended. It is agreed that this amendment is a minor change and will be recorded in Schedule B of the Minor Changes to the H&ELADPD.

1.8 **Issue 6 – Is the phrase in the introductory paragraph of Policy SHBE1 “vital that this natural asset is developed” inappropriate and should it be deleted?**

1.8.1 NE’s issue can be summarised as follows.

The reference to “vital that this natural asset is developed” should be removed because economic growth should be balanced against the need to protect and enhance the natural environment.

1.8.2 North Lincolnshire Council’s Response

It is agreed with Natural England that the phrase “natural asset” in the last sentence of the first paragraph of Policy SHBE1 is not appropriate as the term can be confused with the term “nature conservation” when it is actually describing the economic assets of the site. The Council therefore agree to delete the word “natural” from this sentence. This approach was agreed at the meeting of 16th October 2014. It is agreed that this amendment is a minor change and will be recorded in Schedule B of the Minor Changes to the H&ELADPD.

1.9 **Issue 7 – Is it important to reflect the latest agreed position in paragraph 4.35 of the H&ELADPD and the North Lincolnshire Mitigation Strategy at Appendix 2 of the HRA, on the further 3.3 hectares of core habitat plus wet grassland habitat buffer that is still**

required to be provided in relation to future developer proposals at the southern end of the SHBE1 allocation at Killingholme Marsh?

1.9.1 NE, RSPB and LWT issue can be summarised as follows.

The Ecology Group and North Lincolnshire Council should formally adopt the following proposed amendment to paragraph 4.35 of the H&ELADPD

“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. In order to maintain ecological functionality, it will be necessary for this buffered 3.3 hectares of land to be added to existing mitigation or an existing wildlife site. Developers may opt to create mitigation habitat in accordance with the North Lincolnshire Mitigation Strategy and the wider Strategic Mitigation Strategy that covers the whole of the South Humber Bank area.”

1.9.2 North Lincolnshire Council Response.

The Council had consulted with the Ecology Group on this issue before drafting Policy SHBE1 and understood that the words included in both documents mentioned in the representations reflected the latest position of the Mitigation Strategy. However at the meeting of 16th October 2014 all parties discussed this issue and it was agreed that the Council should update the position by amending paragraph 4.35 of the H&ELADPD and the North Lincolnshire Mitigation Strategy at Appendix 2 of the HRA. It was agreed by all parties at the meeting that the currently unidentified 3.3 hectares of core habitat plus wet grassland habitat buffer could not currently be identified and therefore cannot be indicated on Inset 57 of the H&ELADPD or in the North Lincolnshire Mitigation Strategy (Appendix 2 of the HRA). However, it was also agreed that the issue still needs to be resolved (with all parties including land owners) and any reference to it in the DPD and Appendix 2 (Mitigation Strategy) of the HRA should relate to a flexible position and the word “necessary” suggested by the NE and the RSPB was “too strong a reference” and instead the word “preferred should be used. The proposed amendment is shown in section 3 of this SoCG. It is agreed that this amendment is a minor change and will be recorded in Schedule B of the Minor Changes to the H&ELADPD.

1.10 Issue 8 – Is the word “compensation “ inappropriate in paragraph 4.37?

1.10.1 NE’s issue can be summarised as follows.

The word “compensation” should be removed from paragraph 4.37 because the word has a specific meaning under the Habitat Regulations and is not appropriate unless it is not possible to ascertain that there will be no adverse effect on site integrity and the plan seeks to make a case under the IROPI procedure and there are no alternatives.

1.10.2 North Lincolnshire Council Response

The Council have no issue with this point and it was agreed between all parties at the meeting of 16th October 2014 to delete the symbol “ / “ and the word “compensation” from paragraph 4.37 of the H&ELADPD. It is agreed that this amendment is a minor change and will be recorded in Schedule B of the Minor Changes to the H&ELADPD.

1.11 Issue 9 – Should the delivery of the waterbird mitigation be clarified within the SHBE allocation, particularly in relation to the two planning permissions given to Able UK?

1.11.1 NE and RSPB’s issue can be summarised as follows.

NE state that It is unclear whether the necessary mitigation is deliverable and this should be clarified. This should accurately address the mitigation proposed in the two planning permissions given to Able UK (Able Logistics Park and Able Marine Energy Park).

RSPB state that the Mitigation Strategy does not replicate the planning permissions and conditions given to Able UK for the Able Logistics Park and the Able Marine Energy Park. RSPB quote numerous conditions from these planning permissions and wording from the Memorandum of Understanding (April 2010). In conclusion RSPB consider that the following proposals to address the soundness of the H&ELADPD are necessary.

- 1) Correction of the Able Logistics Park planning permission condition numbers within the Mitigation Strategy document.
- 2) Clarification of how both the mitigation and compensation will be delivered on Halton Marshes in a manner that remains compliant with both the Habitats Regulations and the planning permission for the Able Logistics Park.

1.11.2 North Lincolnshire Council Response

Natural England and RSPB question whether the deliverability of strategic waterbird mitigation sites is possible under the Able Logistics Park and Able Marine Energy Park permissions. The Ecology Group has agreed that these sites inform the majority of the Mitigation Strategy in North Lincolnshire. The fact is that two planning permissions exist and Natural England have been in prolonged negotiations with the Council and Able UK in reaching agreement on planning conditions with respect to the ecology issues. The planning permissions including their relevant conditions in respect to delivering ecology mitigation are live permissions and the council expect the developments to be delivered in accordance with these permissions or any other planning permissions that may be given on further acceptable mitigation options. It is understood that Able UK have started development of the AMEP site in September 2014 and Able UK are currently in negotiations in relation to another mitigation option.

All parties agreed at the meeting of 16th October 2014 that the delivery of the mitigation proposed in the two Able UK planning permissions (ALP and AMEP) is a matter for Able UK in relation to the implementation of planning conditions and that the Council will ensure compliance with these conditions. It was agreed by all parties to cover this issue appropriately by amending the wording in the Mitigation Strategy, through agreement with future Ecology Group meetings.

1.12 **Issue 10 – Should the Local Nature Partnership still be referenced in paragraph 4.48?**

1.12.1 **NE's issue can be summarised as follows.**

The Local Nature Partnership has been removed from the list of partners and only refers to the SHB Mitigation Strategy partnership. This strategy affects the Humber Estuary as a whole and it should be brought to the attention of the Local Nature Partnership.

1.12.2 **North Lincolnshire Council Response**

Natural England state that the reference to the Local Nature Partnership (LNP) in paragraph 4.48 has been removed from an earlier draft of the implementation section of SHBE1 and that the reference should either be reinstated or at the least the LNP should be notified because the LNP covers issues in the whole of the River Humber area.

It was agreed by all parties at the 16th October 2014 meeting that the Humber Nature Partnership have continued the role of Humber INCA and that text be added to paragraph 4.48 should refer to the Humber Nature Partnership (HNP) (formerly Humber Industrial and Nature Conservation Association - HINCA). The HNP will be involved in the implementation of nature conservation in and around the Humber Estuary, including at the SHBE1 allocation. It is agreed that this amendment is a minor change and will be recorded in Schedule B of the Minor Changes to the H&ELADPD.

1.13 **Issue 11 – Is there confusion regarding mitigation sites shown in the red line map at the beginning of the SHBE1 section of the Employment Chapter and what is shown on Inset 57?**

1.13.1 **LWT issue can be summarised as follows.**

Clarification is required regarding the mapping of waterbird mitigation sites. The red line map at the beginning of the SHBE1 section does not include waterbird mitigation and there should be proper reference in the section (preamble text and Policy SHBE1) to where the mitigation sites have been notated (Inset 57). "Inset 57" should be inserted in the text and Policy SHBE1 where relevant.

1.13.2 **North Lincolnshire Council Response**

The red line boundary on the map at the beginning of the SHBE1 section is intended to indicate the employment site and is not the formal allocation proposals plan. Inset plan 57 is the proposals map and this indicates (not allocates) the currently known waterbird mitigation sites together with other known formerly designated sites of nature conservation, Associated British Ports operational Port area etc. The potential waterbird mitigation site at Halton Marshes is shown within the allocated employment site because this area may be developed as an option in place of waterbird mitigation (provided off-site mitigation is provided for (this is unknown at this time), in line with the ALP planning permission.

It should be noted that the H&ELADPD is a document produced under the Local Development Framework and is not a Local Plan under the NPPF. This DPD should therefore only show the employment allocation in normal circumstances, but as the waterbird mitigation is a part of delivery of the employment allocation (and its delivery is more complicated than usual) the Council agree that it is reasonable to indicate the known mitigation sites on Inset plan 57 and this has been done on Inset plan 57. Inset 57 will not change in respect of this representation.

However, this representation has raised an issue of a lack of consistency in how the employment sites are shown in the text. All parties at 16th October 2014 meeting therefore agreed, for the reason of consistency that the red line boundary will be deleted and the same area shall be coloured purple in line with all the other employment allocations shown within the Employment chapter. The Council also agree to add a sentence at the end of paragraph 4.34 to reference that "Waterbird mitigation sites are indicated on Inset 57." Policy SHBE1 bullet point 5 already references the indicated waterbird sites on Inset 57 but the Council propose to remove the references to "A" and "B" as there is no need for such a reference – they are referenced as sites at Halton and Killingholme Marshes in the bullet point and the additional "letter" references are considered redundant.

All parties agreed to make these changes at the 16th October 2014 meeting. It is agreed that these amendments are minor changes and will be recorded in Schedule B of the Minor Changes to the H&ELADPD.

1.14 **Issue 12 – Should a request for an Environmental Impact Statement or a request for an ecological assessment be referenced in Policy SHBE1?**

1.14.1 **LWTs issue can be summarised as follows.**

LWT recommend the addition of a criterion to Policy SHBE1 to require an Environmental Impact Assessment or at the very least an ecological assessment.

1.14.2 **North Lincolnshire Response**

A very early draft of Policy SHBE1 included a reference to the need for an EIA. It was clear from the 16th October 2014 meeting that all parties agreed that Policy SHBE1 should include reference to the requirement of an ecology survey because the Habitats Regulations does not include all the nature conservation requirements on this site. The Council has no issue with this request and agrees to insert this reference in Policy SHBE1. This action is also consistent with other Policies of the H&ELADPD (where appropriate). It is agreed that this amendment is a minor change and will be recorded in Schedule B of the Minor Changes to the H&ELADPD.

1.15 **Issue 13 – Is the Station Road, South Killingholme Local wildlife Site (LWS) correctly identified on Inset 57?**

1.15.1 **LWTs issue can be summarised as follows.**

LWT wished for the removal of the Station Road Field LWS from the development allocation (i.e. not to be included as development land).

1.15.2 **North Lincolnshire Council Response**

This issue did cause some confusion at the 16th October meeting. The Station Road site was not shown in the North Lincolnshire Local Plan as a SINC It later became a LWS so it could not be saved under the NLLP Policy. Inset 57 of the H&ELADPD incorrectly shows the Station Road LWS as a saved NLLP Policy. This issue has been resolved and agreed with LWT by deleting the saved NLLP Policy notation and showing the Station Road LWS as not a saved Policy LC4 of the NLLP, but to indicate it separately on Inset 57 as a LWS (but not allocated as the H&ELADPD is not a Local Plan). This will create a different notation on Inset 57 (i.e. amendment will be made on the map itself and the legend to reflect this position).

This representation also led to a short discussion on the other LWSs within the SHBE1 site. All these sites are saved in the NLLP under the term Sites of Importance for Nature Conservation (SINCs) and recorded as such in the legend of Inset 57. It was agreed that all the remaining saved NLLP saved SINCs within the SHBE1 site have all been reassessed since the NLLP was adopted and renamed as LWSs. All parties therefore agreed to reference this point within the legend of Inset 57 by inserting in brackets after SINCs “Local Wildlife Sites”. It is agreed that these amendments are minor changes and will be recorded in Schedule B of the Minor Changes to the H&ELADPD.

1.16 **Issue 14 – Should the requirement for a buffer strip adjacent Local Wildlife Sites be included as a new bullet point in Policy SHBE1?**

1.16.1 **LWTs issue can be summarised as follows.**

LWT recommend that the requirement of a 15 metre buffer strip adjacent local wildlife sites (site of nature conservation importance) should be reflected in Policy SHBE1.

1.16.2 **North Lincolnshire Council Response**

The Council have no issue with this request. This would be consistent with other relevant Policies in the DPD. All parties at the 16th October 2014 meeting agreed to this recommendation and it will be referenced as a separate bullet point in Policy SHBE1. It is agreed that this amendment is a minor change and will be recorded in Schedule B of the Minor Changes to the H&ELADPD.

2 Matter of Agreement

2.1 All parties agree to the outcome stated in the 14 issues (covering ten formal representations) in chapter 1 of this Statement of Common Ground (SoCG). The following main points are highlighted as follows:

- All parties to this SoCG support a strategic approach to mitigation in the SHG and will continue to effectively work as members of the jointly initiated Ecology Group.
- The SHBE1 section and Inset 57 should be amended to reflect the current position agreed in this SoCG.
- Amendments have been agreed to, to ensure that the Policy and supporting text, Inset 57 and the HRA will not lead to an adverse effect on the integrity of the Humber Estuary SAC, SPA or Ramsar site.

- The relevant parts of the amended Policy and Appendix 2 of the HRA should be re-screened under the HRA to ensure that there will be no adverse effect on the integrity of the Humber Estuary SPA, SAC or Ramsar site.
- The current position of the waterbird Mitigation Strategy is reflected in the HRA.
- The current agreed waterbird mitigation sites be indicated on Inset 57 of the H&ELADPD, but that the remaining North Lincolnshire mitigation area relating to the southern area of Killingholme Marsh be identified and agreed within the Ecology Group in the future.
- The status of the Mitigation Strategy, including the North Lincolnshire delivery section, is a 'live' evidence document that will include overall principles followed by two delivery strategies for North Lincolnshire and North East Lincolnshire. The delivery strategies will be dependent on type and scale of developments proposed and on this basis the delivery strategies will be informed by the planning system process. The future intention will be to get agreement on the Mitigation Strategy principles with all members of the Ecology Group. It will remain as a 'live' evidence document to support Policy SHBE1. The changes made to the Mitigation Strategy will be reflected in the formal HRA to the H&ELADPD Revised Submission and this will mean that Council approval has been given to these changes (after formal adoption by the Council). The Mitigation Strategy in the HRA and attached to this SoCG is considered to be the best and most up to date evidence at this point in time in producing a sound DPD. The identification of mitigation sites in North Lincolnshire in this current Mitigation Strategy are indicated as options based on the overall Mitigation Strategy principles in relation to AMEP and ALP.
- The aim is to produce one waterbird Mitigation Strategy for the South Humber Gateway. The Mitigation Strategy currently indicates options for waterbird mitigation known at this time in North Lincolnshire and North East Lincolnshire.
- All agreed points in this SoCG will be implemented and the Council will continue on an ongoing basis to work effectively on completing and delivering the wider area Mitigation Strategy for the South Humber Gateway.
- The delivery of the Able planning permissions, including planning conditions (AMEP and ALP) are a separate matter and will be addressed in the future by the applicant and all concerned parties as standard procedure. The Mitigation Strategy will cover the issue of delivery of mitigation sites and this should tie up with the planning consents, including the possibility of further mitigation options currently being considered in the planning process.
- The following proposed changes in section 3 reflect and build on these matters of agreement.

2.2 The changes in this Statement of Common Ground will be incorporated into the schedule B: Minor Changes to the H&ELADPD (Post Submission) and presented to the Inspector for his consideration.

3 Proposed Changes

3.1 The following changes to Policy SHBE1 and associated text within the SHBE1 section are proposed as follows:

Issue 1

3.2 The relevant parts of the amended Policy SHBE1 should be rescreened under the Habitats Regulations and an amended HRA be produced in relation to these amendments. The minor changes in this SoCG do not produce any adverse effects to the integrity of the Humber Estuary SPA, SAC or Ramsar site.

Issues 2 and 3

- 3.3 It is agreed by all parties at the meeting held on 16th October 2014 that the status of the Mitigation Strategy (included in Appendix 2 of the HRA to the H&ELADPD) is that it is a 'live' evidence document that will include overall principles followed by two delivery strategies for North Lincolnshire and North East Lincolnshire. The overall principles will provide a basis for the delivery strategies which will be dependent on type, scale and footprint of developments proposed. On this basis the delivery strategies will be informed by the planning system process. The future intention will be to get agreement on the Mitigation Strategy principles with all members of the Ecology Group. It will remain as a 'live' evidence document to support Policy SHBE1. The changes made to the Mitigation Strategy will be reflected in the formal HRA to the H&ELADPD Revised Submission and this will mean that Council approval has been given to these changes (after formal adoption by the Council). The Mitigation Strategy in the HRA and attached to this SoCG is considered to be the best and most up to date evidence at this point in time in producing a sound DPD. The identification of mitigation sites in North Lincolnshire in this current Mitigation Strategy are indicated in the delivery section for North Lincolnshire and Inset 57 of the H&ELADPD Revised Submission April 2014. These indicated mitigation sites currently identified may be different in the future due to the precise locations of the identified sites being flexible based on the overall Mitigation Strategy principles in relation to AMEP and ALP as agreed with the land owners.

The Council understands that if Able Uk did not develop AMEP and ALP and alternative developments come forward that do not cover the same footprint as AMEP and ALP, 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 (identified in the Mitigation Strategy) will remain and such alternative developments, and their associated mitigation, will need to be assessed against this requirement. Although this scenario is recognised by the Council, it considers that it is very likely that AMEP and ALP will progress, particularly as Able Uk have commenced preliminary works with regard to AMEP. Should the delivery model for waterbird mitigation change, if Able Uk were not to develop, the contribution of individual developers to the Mitigation Strategy would depend on the scale, type and footprint of development and this would be discussed in future negotiations with landowners, developers and nature conservation bodies. The process for doing this will be through the planning system, including the use of up to date and best available data with regard to waterbird mitigation site provision. The current Mitigation Strategy states what the basic overall requirement is for waterbirds and provided that this remains the most robust evidence, mitigation sites will be identified in compliance with this overall requirement. It will be the Ecology Group's remit to make sure that the Mitigation Strategy remains as robust evidence to inform the planning process.

Issue 4

- 3.4 Assuming that all agreed points in this SoCG are implemented the Council has complied with the legal duty to cooperate with all parties and will continue on an ongoing basis to work effectively on completing and delivering the Mitigation Strategy for the South Humber Gateway. This statement does not involve any direct changes to SHBE-1 but relates to Issues 2 and 3 in relation to producing a robust Mitigation Strategy for the South Humber Gateway in both North Lincolnshire and North East Lincolnshire. It will be the Ecology Group's remit to make sure that the Mitigation Strategy remains as robust evidence to inform the planning process.

Issue 5

- 3.5 The third bullet point of Policy SHBE1 – delete the third bullet point. Amend the second bullet point of Policy SHBE1 and re-draft new words to produce a second bullet point of Policy SHBE1 to read:

“The land within the site along the deep-water frontage of the Humber Estuary between the Port of Immingham and the Humber Sea Terminal has special locational characteristics and is unique, being one of the last undeveloped deep-water estuaries in Europe. New development is therefore required to maximise the potential for high value jobs and high job densities and

this part of the site will be safeguarded against piecemeal development proposals that do not meet these employment maxims.”

- 3.6 To give clarity to the amendment proposed in paragraph 3.4 of this Statement of Common Ground delete the phrase “Proposed development projects must” after the first bullet point of Policy SHBE-1.

Issue 6

- 3.7 Fifth sentence of the first paragraph of Policy SHBE1 – delete the word “natural” from the phrase “natural asset”.

Issue 7

- 3.8 Add a new sentence after the first sentence in paragraph 4.35 with the following words:

“In order to maintain ecological functionality, it will be preferred for this buffered 3.3 hectares of land to be added to existing mitigation or an existing wildlife site with appropriate habitat.”

Issue 8

- 3.9 Paragraph 4.37 – delete the word “/compensation” from the first sentence of this paragraph.

Issue 9

It is agreed that there will be no changes to the DPD on this issue but could be appropriately addressed in the Mitigation Strategy through future Ecology Group meetings..

Issue 10

- 3.10 Add a bullet point to paragraph 4.48 to read as follows:

“Humber Nature Partnership”

Issue 11

- 3.11 SHBE1 “red line” map at the beginning of the SHBE1 Policy section – delete the red line and replace with solid purple colouring consistent with all the employment maps in the Employment chapter.

- 3.12 Inset 57 Legend – delete the references “A” and “B” to Halton Marsh and Killingholme Marsh.

- 3.13 Fifth sentence of paragraph 4.32 – delete the words in the second half of this sentence as follows:

“... the plan SHBE1 (A- Halton Marsh and B Killingholme Marsh).”

And add words to the fifth sentence for it to read as follows:

“The preferred alternative locations for waterbird mitigation at Halton Marsh and Killingholme Marsh, have been indicated on Inset 57.”

- 3.14 Paragraph 4.34 – add a sentence at the end of this paragraph to read as follows:

“The current waterbird mitigation sites are indicated on Inset 57.”

Issue 12

- 3.15 Before the bullet point referencing “transport assessments” insert the following new bullet point:

“An ecological assessment will be required”

Issue 13

- 3.16 Inset 57 Legend – add words (in brackets) after Sites of Importance to Nature Conservation to read as follows:

“(Local Wildlife Sites)”

- 3.17 Inset 57 – Delete the reference to Station Road South Killingholme as a SINC to be saved under the North Lincolnshire Local Plan - Policy LC4. Add to Inset 57 (separate from the NLLP saved Policies under LC4) in the Legend above the saved LC4 SINC a notation “Station Road Local Wildlife Site” and notate the site on the plan differently to the LC4 sites.

Issue 14

- 3.18 After the eleventh bullet point of Policy SHBE1 (i.e. after reference to the SHB Landscaping scheme) add a new bullet point to read as follows

“Landscape buffering of at least 15 metres width around the local wildlife sites will be required”

Agreement to Proposed Changes

- 3.19 All parties agree that the changes proposed in this Statement of Common Ground being made to the South Humber Bank chapter, including Policy SHBE1 and Inset 57, in the Housing and Employment Land Area Revised DPD and the Mitigation Strategy at Appendix 2 of the HRA to the Housing and Employment Land Area DPD, addresses the objections raised in the ten representations made by Natural England, Royal Society for the Protection of Birds and the Lincolnshire Wildlife Trust to the council’s Proposed Housing and Employment Land Area DPD Revised Submission (April 2014).