

Mr Max Wiltshire
The Planning Inspectorate
National Infrastructure Planning
Temple Quay House
2 The Square
Bristol
BS1 6PN

Our ID ref: 20028344
Your ref: EN010095
Date: 4 October 2021

Dear Mr Wiltshire

Planning Act 2008 – Section 88 and The Infrastructure Planning (Examination Procedure) Rules 2010
Application by Alternative Use Boston Projects for an Order Granting Development Consent for the Boston Alternative Energy Facility

Thank you for allowing the Environment Agency to make oral representations at the Preliminary Meeting held on 28 September 2021.

The purpose of this letter is to provide our written submission on issues listed under Deadline B of the Examination Timetable, namely:

- a) a written summary of those oral representations made at Preliminary Meeting Part 1, including our response to matters raised;
- b) comment on the Applicant's draft Accompanied Site Inspection (ASI) itinerary;
- c) to make a request to reserve the right to be heard orally at the Preliminary Meeting Part 2.

Summary of those oral representations made at Preliminary Meeting Part 1

Agenda Item 3 – Initial Assessment of Principal Issues

The Environment Agency considers the key issues identified are appropriate. However, we would ask that the water quality issues are addressed as part of Item 7 – Habitats, ecology and nature conservation – instead of as part of Item 13 – Flood Protection. We believe this is appropriate as the water quality issues are more closely connected with the impacts on inter-tidal habitats and hydro-morphological coastal change than with flood risk issues.

We also request that odour is added as part of the heading for Item 10 – Noise, lighting, dust and vibration. The nature of the proposals mean that the impact and management of odour during the operation of the facility may be a significant issue for the Examining Authority and Secretary of State to consider.

Agenda Item 4 – Draft Examination Timetable

We are concerned that some of the issues raised by the application are unlikely to be resolved during the proposed timetable. In particular, we are concerned that we have yet to start formal pre-application discussions with the applicants regarding their Environment Permit for the operation of the site. This will be a site of High Public Interest (HPI) and will require extensive external consultation and is likely to take up to 12 months to determine. Some of the principal issues identified for the application (including air quality, noise, lighting, dust, vibration and odour) are also issues which will need to be addressed in an Environmental Permit application. Until a permit application has been submitted and determined, the Environment Agency will not be able to confirm to the Examining Authority and Secretary of State that the proposal will be acceptable and deliverable.

We note the applicant's response to this point was that there is no legal requirement for an applicant to apply for a permit alongside a Development Consent Order application. Although this is correct, it is strongly recommended (not only by the Environment Agency but also in the Planning Inspectorate's Advice Note Eleven, Annex D) that parallel tracking of such applications is undertaken, as permit assessments can provide useful information, which can inform the Examining Authority's recommendation to the Secretary of State. Permit application determinations need to be at an advanced stage in order for us to be able to comment on the likelihood of a permit being granted. Although enhanced pre-application talks are to commence in October, as parallel tracking has not been pursued it is unlikely that we will be able to comment on any detailed technical matters raised during the Examination.

We are also concerned that formal proposals for the works to the flood defences have not been submitted to us. It is likely we are going to require the Applicant to enter into a bespoke legal agreement with us regarding these works and we will be unable to remove our objection on flood risk grounds until an appropriate mechanism for approving the works has been secured – whether that be through our existing Environmental Permit route or the inclusion of Protective Provisions. Reaching agreement on such issues can take considerable time and we anticipate it is unlikely they will be completed within the 6 month Examination period.

In response to this point, the Applicant raised an example of the Able Marine Energy Park DCO application flood defence legal agreement not being finalised until several months following the close of the Examination. We would not support using such an example as acceptable practice under the Planning Act process, which is intended to ensure frontloading and the early resolution of important matters. Following such an example will not facilitate a smooth Examination process or assist with timely decision making.

We also note the applicant's letter to you of 14 September setting out a list of additional documents and an intention to submit these at Deadline 1 (19 October 2021). Under the current timetable, comments on Deadline 1 submissions have to be submitted by Deadline 2 (11 November 2021). This will be a substantial amount of information for us to review in a period of 16 working days – assuming documents are made available on the day following submission. We are pleased that the Applicant is acknowledging that this additional information is needed, but it is a significant omission on their part and will have a bearing on how the application is examined. The Examination process is to resolve issues arising from the Environmental Statement, it is not a mechanism for resolving numerous omissions and inadequacies.

We would, therefore, suggest that Part 2 of the Preliminary Meeting is postponed to enable these additional submissions to be made and properly consulted upon. This is the course of action that the Examining Authority took for the Thurrock Flexible Generation Plant, revising the timetable and only proceeding with the Examination when all the information required to complete the application was actually received. We suggest the postponement should be a minimum of 3 months.

We are also entering the time of year when the likelihood of severe weather events increases, and the limited staff resources available to the Environment Agency can be diverted from day to day work to deal with flood incidents at short notice. In such circumstances, we may find it difficult to fully participate in the Examination process and it may be that the assistance we will be able to give the Examining Authority will be limited. In the interests of fairness to all parties it is essential that there is an opportunity to try and resolve as many outstanding issues as possible prior to the Examination commencing.

Statement of Common Ground

We will continue to work with the Applicant to provide you with an initial Statement of Common Ground (SoCG) for Deadline 1, but given the volume of outstanding information we feel it will be limited in detail, and therefore in its value to you, at this Deadline. We also note your request for 3 further iterations of the SoCG at Deadlines 4, 6 and 8 – which again, will be resource intensive and these may be put to better use resolving outstanding issues.

Applicant's draft Accompanied Site Inspection (ASI) itinerary

It is recommended that the proposed wharf site is viewed at low tide to gain a full appreciation of this intertidal area. If the accompanied site visit proceeds on 17 November 2021, low tide will be at 12:17, so this area would be partially visible during the route 3 visit, and fully visible when on route 6. Representatives of the Environment Agency will be pleased to attend the ASI to answer any questions the Examining Authority may have.

Preliminary Meeting Part 2

Should the Examining Authority decide to proceed with Part 2 of the Preliminary Meeting on 7 October 2021, we request the right to be heard orally, particularly in respect of Item 7, in response to the Examining Authority's remarks about written submissions received for Procedural Deadline B. We would be grateful if the meeting joining details could be forwarded to myself and Joanne Biott, the same attendees as for Part 1.

Should you require any further information or wish to discuss these matters further, please contact me on the number below.

Yours sincerely

Annette Hewitson
Principal Planning Adviser

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