

National Infrastructure Planning  
Temple Quay House  
2 The Square  
BRISTOL  
BS1 6PN

**HASKONINGDHV UK LTD.**

Mar borough House  
Marlborough Crescent  
Newcastle upon Tyne  
NE1 4EE  
United Kingdom

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██████████ E  
██████████ W

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Contact name: Paul Salmon  
Telephone: ██████████  
Email: ██████████

**Boston Alternative Energy Facility.  
Development Consent Order application reference: EN010095**

**Alternative Use Boston Projects Limited (the Applicant) Procedural Deadline B submission – the Applicant’s request to be heard orally at Preliminary Meeting (PM) 2 and response to matters raised orally at the PM1**

Dear Sir

**Introduction**

The Applicant wishes to register to be heard orally at the Preliminary Meeting (PM) Part 2 on 7 October 2021.

The Applicant is submitting this letter in response to the issues raised by the Environment Agency (EA) in their submission at Procedural Deadline A (PDA-003) and their oral submissions at the Preliminary Meeting Part 1 (PM1).

The Applicant notes that the EA initially requested, in their Procedural Deadline A letter dated 13 September 2021, an examination deferral of 6 months. In the PM1, they reduced their requested deferral to “3 months minimum”. The Applicant considers that a deferral of any duration would be unjustified for the reasons set out below.

The Applicant also addresses the reasons for deferral that were raised by the Royal Society for the Protection of Birds (RSPB) in their submission at Procedural Deadline A (PDA-004) and their oral submissions at the PM1.

## Environmental Permit Application

The EA states in its 13 September letter that it is concerned that pre-application discussions with the applicants regarding the Environment Permit (EP) for the operation of the site have not yet commenced. Further, that letter states:

*'Until an application has been submitted and determined, the Environment Agency will not be able to confirm to the Planning Inspector and Secretary of State that the proposals will be acceptable and deliverable.'*

The Applicant brings to the attention of the Examining Authority (ExA) that there is no legal, policy or guidance requirement for the EP application to be submitted at the same time as the DCO application, or indeed at a certain point of examination (notwithstanding that parallel applications are encouraged by guidance). Additionally, the suggestion made by the EA, that the permit application must have been 'determined' prior to the DCO examination is also not reflective of any legal requirement, nor policy recommendation, nor a reflection of what happens in practice.

The Applicant considers it key that it is a matter of fact that the Proposed Development cannot operate without the approval of the EA and the adherence to the eventual EP(s). There is no danger to interested parties, or the public, that the Proposed Development would not be adequately regulated when operating.

The planning and EP regimes are two separate regulatory regimes, and the EA can be relied upon to satisfactorily control relevant impacts within the scope of the EP regime. Guidance makes clear that if impacts will be considered in the permitting regime, then the ExA need not also consider them in the examination. The Overarching National Policy Statement for Energy (NPS EN-1), at paragraphs 4.10.2 and 4.10.3, states that the **"planning and pollution control systems are separate but complementary"**, and that, when considering an application for development consent, the Planning Inspectorate should **"work on the assumption that the relevant pollution control regime ... will be properly applied and enforced by the relevant regulator. It should act to complement but not seek to duplicate them"**. The Applicant is aware that impacts that are within the sole ambit of the EA may be still considered in examination when relevant to another overarching topic.

The NPS EN-1 also makes clear that consent should not be refused on the basis of pollution impacts unless it has good reason to believe that any relevant necessary operational pollution control permits, or licences will not subsequently be granted. Clearly, the Proposed Development, like many other energy facilities, produces environmental impacts that are within the type and nature that fall within the EP regime. Although, certain requirements may be imposed in any EP granted, there is no reason to believe that the requisite EPs would not be granted. The Proposed Development is using technologies and techniques that are established and proven such that it is possible to assume that an EP would be granted.

### *Collaboration between the Applicant and the EA*

As was relayed by the Applicant during the PM1, the Applicant has now commenced the pre-application process in respect of the EP application, utilising the Enhanced Pre-application Service. An EA Permitting Officer has been appointed and it is anticipated that the first meeting will take place in October 2021.

The Applicant is confident it can be agreed with the EA during the DCO Examination that the Proposed Development is of a type and nature that can be, in principle, regulated under the Environmental Permitting Regulations. In the event that the EA considers that it requires further environmental information in order to provide this 'in principle' view in respect of the development's permitability, the Applicant will seek to respond to reasonable requests during the examination period. The Applicant considers that such information can be provided without the need to formally submit an EP application at this precise time.

The Applicant is committed to ensuring that the EA is involved in the evolution of the Proposed Development following the grant of the DCO. The EA holds a significant role in the detailed design of the Proposed Development and the management plans under the current drafting of Schedule 2 of the draft DCO. It is noted that pursuant to the current draft DCO, the following management plans cannot be submitted for approval until consultation with the EA has taken place: Detailed design (requirement 3), Landscape and ecological mitigation strategy (requirement 5), Surface and foul water drainage strategy (requirement 8), Code of construction practice (requirement 10), Flood risk emergency plan (requirement 13).

### **Applicant's proposed submissions at Deadlines 1 and 2**

In relation to the EA's oral submission that additional time is required for it to review the documents that the Applicant intends to submit at Deadlines 1 and 2 (Deadline 1 and 2 Information), the Applicant considers that the volume of documents is comparable to that submitted during other DCO examinations and statutory bodies such as the EA would be expected to engage in respect of such submissions throughout examination.

The EA at PM1 referred to the Thurrock Flexible Generation Plant Project (Thurrock) in the context of a deferral to a DCO examination. The Applicant considers that the situation in Thurrock is not comparable to the examination of the Boston Alternative Energy Facility (BAEF) DCO; the submission of the BAEF Deadline 1 and 2 Information does not warrant any delay in commencing the examination.

In Thurrock, following Part 1 of their Preliminary Meeting, the ExA considered there were a number of omissions in the environmental statement and therefore decided that further information was required, and a delay of three months was necessary for the Applicant to prepare the information and publicise it. For the BAEF DCO, the Deadline 1 and 2 information addresses matters raised by various interested parties in their relevant representations, additional information has not been requested by the ExA at this stage and nor did any interested party make a request at PM1 for further information to be submitted beyond the Deadline 1 and 2 information.

The Applicant believes that these documents are evidence of its willingness to consider the opinions of third parties and hopes that these submissions offer some assurance in relation to the queries raised. The Applicant considers the examination period to be a collaborative period of the DCO regime, and is committed to considering the viewpoints of all interested parties that participate. The Applicant does not consider it appropriate to delay examination, as a consequence of the Applicant's serious consideration of representations submitted.

### **Update on flood defence agreement**

In relation to concerns raised by the EA regarding the Applicant's proposed works to the flood defences, the Applicant provided the information requested by the EA on 1 October 2021. Additionally, a meeting was held with the EA on 23 September 2021 where it was agreed that the Applicant and Environment Agency would progress with amendments to the protective provisions and a legal agreement to contain appropriate provisions for the protection of flood defence infrastructure during the construction and operation of the Proposed Development. The Applicant is confident that an agreement with the EA can be reached on flood risk by the end of the draft examination timetable as set out in the Rule 6 Letter.

### **Habitats Regulations Derogation Case**

The Applicant notes that the RSPB raised whether the examination of the Proposed Development could be paused or if the Applicant could submit a draft in-principle derogation case. The Applicant recognises that Natural England (NE) also raised when a draft in-principle derogation case would be submitted. The Applicant, as stated in its Procedural Deadline A submission (PDA-002), intends to submit at Deadline 2 a 'without prejudice' Habitats Regulations Derogation Case (HRDC). The Applicant considers that this submission will give RSPB, NE, and any other interested parties, sufficient time to review and provide comments, which the Applicant will give due consideration to. The Applicant notes that RSPB helpfully confirmed at the PM1 their approval of the Applicant's intention to submit its HRDC at Deadline 2.

The Applicant also notes that there have been a number of meetings with RSPB and NE regarding their relevant representations and discussions are ongoing. RSPB and NE are also a part of the Marine Ecology Topic Group that meets monthly to discuss work being done by the Applicant on marine ecology and matters raised by the stakeholders. The Applicant is committed to ensuring that views raised by RSPB and NE are carefully considered and that discussions continue to be constructive.

### **Conclusion**

The Applicant notes that NPS EN-1, section 3.3, makes it clear that there is an urgent need for new electricity generating capacity within all of the classes of Nationally Significant Infrastructure Project (NSIP) energy development to which it relates. The Proposed Development would be able to help facilitate this unmet demand. There is therefore a public interest element in ensuring that NSIP applications such as this are dealt with expeditiously, unless there is reasonable justification to proceed otherwise. The Applicant for the reasons set out in this letter does not consider the arguments raised by the EA warrant delaying the examination of the Proposed Development. The Applicant notes that the PM1 was initially scheduled for 7 September 2021, the Applicant agreed to delay the PM1 by 3 weeks to allow extra time for discussions with third parties, particularly NE. The Applicant provided this flexibility as it recognised that, on balance, furthering agreement would benefit the Proposed Development. In this case, we do not consider that a delay is necessary; the six-month examination period provides more than enough time for the issues to be adequately considered.

The Applicant continues to have involved discussions with the EA to ensure that the Proposed Development is developed in the optimum way. The Applicant has committed, through the drafting of the DCO, to ensuring the EA is able to shape the design of the Proposed Development and has ensured that

the EA are involved in the detailed design process and the design of various environmental management plans.

Yours faithfully,

**For and on Behalf of HaskoningDHV UK Ltd**



**Paul Salmon**  
Technical Director,  
Industry & Buildings