



**Alternative Use Boston Projects  
Boston Alternative Energy Facility Order**

**Planning Inspectorate Reference: EN010095**

**Written Representations by  
the Environment Agency  
Unique Reference Number: 20028344**

**19 October 2021**

Submitted on behalf of the  
Environment Agency by:  
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## **1.0 The Environment Agency's Role**

- 1.1 On 17 June 2021 the Environment Agency made Relevant Representations (RR-013) to the proposal by Alternative Use Boston Projects (the Applicant) to construct a 120MWe energy generating facility and associated development (the Project) on the south-west bank of the Boston Haven. The purpose of these Written Representations is to provide an update on the summaries contained in our Relevant Representations.

## **2.0 Scope of these representations**

- 2.1 These Written Representations contain an overview of the project issues, which fall within our remit. They are given without prejudice to any future detailed representations that we may make throughout the examination process. We may also have further representations to make if supplementary information becomes available in relation to the project.
- 2.2 Unless otherwise stated the objections, comments and requests made in our Relevant Representations remain in place.

## **3.0 Flood Risk**

### *Disapplication of Environmental Permitting (England and Wales) Regulations 2016 in relation to a flood risk activity permit*

- 3.1 We are in discussions with the applicant to agree a form of wording for the protective provisions supported by a bespoke legal agreement to ensure that the proposed works will be carried out in a way that ensures an appropriate level of flood protection now and into the future. We will not be in a position to remove our objection until both these issues have been resolved. At this point in time we cannot give our consent under s150 Planning Act 2008 to disapplication of the flood risk permitting regime.

### *Flood Risk Assessment (FRA)*

- 3.2 We have had further discussions with the applicant regarding the content of the FRA (APP-106, Document 6.4.13, Environmental Statement Appendix 13.2) as set out in paragraph 3.8 of our Relevant Representations. Whilst they have agreed to provide further information on these matters we have not yet received sufficient information to confirm that the development will be safe from flooding.
- 3.3 We require details of finished site levels including assessment of any impact on the flow of water over the site. The applicant has indicated to us that approximately 0.5 m of surface material will be removed and replaced with 0.8 m of surcharged material across the main site. This gives a net gain of 0.3m over the whole site. We require further assessment of the impact on flood risk to third parties through the displacement of flood waters.

- 3.4 Notwithstanding paragraphs 13.1.127 to 13.1.133 of the FRA (APP-106), we do not consider that the impacts of flooding on any critical infrastructure within the site has been adequately considered. We require further clarification about what aspects of the development are considered critical, and what mitigation measures are in place to protect them. We recommend that any features considered to be critical infrastructure should be raised above the predicted flood level to ensure it is protected in the event of a flood.
- 3.5 We therefore maintain that the development does not pass the Exception Test as set out in Paragraph 5.7.16 of the Overarching National Policy Statement for Energy (EN-1), or the requirements of 5.8.18 of the Draft Overarching National Policy Statement for Energy in that it has not reduced flood risk overall.
- 3.6 We note the applicant's assessment in their letter 'Boston Alternative Energy Facility: Geomorphology' to the Environment Agency (1<sup>st</sup> October 2021) that the increase in ship movements will result in an increase in ship wash in the Witham Haven. The applicant has assessed that the time ship wash affects intertidal mudflats will increase from 0.15% to 0.37% of the overall wave impact. Whilst we accept that this overall increase is small relative to the impact of natural wind-waves, we remain concerned that the combination of changes to the system dynamics through the creation of the wharf, the introduction of dredging and the increase in ship movements may result in increased erosion to the flood defences immediately opposite the site and to saltmarsh and mudflat habitats in the Haven (see paragraph 4.4 below).
- 3.7 We therefore request that the applicant provides further evidence of how the impacts of these changes have been assessed specifically in relation to erosion of both mudflats and saltmarsh in the area and any consequent impacts on the stability of existing flood defences.

#### **4.0 Compliance with the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017**

- 4.1 Since submitting our Relevant Representations we have had further discussions with the applicant, Natural England, RSPB, Lincolnshire Wildlife Trust and Marine Management Organisation regarding the need to compensate for the loss of saltmarsh and mudflat habitats in the Witham Haven.
- 4.2 To date no proposals have come forward which fully address our concerns regarding the loss of habitat and the impact on marine ecology. We therefore maintain our objection to the proposals as we do not have sufficient evidence to show they are compliant with the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 as they may lead to a deterioration of the ecological

status of the Witham Haven waterbody.

- 4.3 The Environment Agency has classified saltmarsh in the Witham based on surveys carried out in 2007, 2011 and 2016. We considered how much habitat has been lost, whether the saltmarsh extent is stable or changing, and the diversity of saltmarsh zones and taxa to assess the status of saltmarsh in a waterbody. Our surveys found that saltmarsh in the Witham contains diverse taxa and the extent has not decreased since the 2007 survey. However, we have classified saltmarsh as moderate status in the Witham because there has been significant historical saltmarsh loss and because most of the saltmarsh in the Witham is low-mid marsh, with only limited extents of other saltmarsh zones.
- 4.4 The capital dredging and wharf construction works would result in the direct permanent loss of intertidal saltmarsh and mudflat habitat. The applicant has not provided sufficient evidence to show they have also considered the risk of potential further intertidal habitat loss if changes arising from the project, such as to the tidal prism or the increase in vessel use, could result in an increase in bank erosion.
- 4.5 We therefore do not have confidence that the loss of saltmarsh caused during the construction phase, combined with the unquantified risk to saltmarsh during the operational phase would not cause a deterioration in saltmarsh status. The proposals would result in permanent habitat loss which would conflict with the objectives of the Anglian River Basin District River Basin Management Plan to preserve or restore habitats in this waterbody.
- 4.6 We note paragraph 5(3)(c) of the Draft DCO requires a scheme of long term management and monitoring of the proposed mitigation. We request that this paragraph is amended to include after monitoring:
- ‘, including a monitoring and adaptive management plan (including control measures) related to any impacts on other mudflat and saltmarsh habitats.’
- We consider this is necessary to avoid a deterioration in the ecological status of the waterbody as a direct result of the development.
- 4.7 Without further evidence we therefore disagree with the applicant’s conclusion that intertidal habitat loss would have negligible impacts in the Witham.

*Potential contamination from dredging activities*

- 4.8 Since submitting our Relevant Representations we have had further discussions with the applicant regarding the geomorphological assessments used to inform Chapters 15, 16 and 17 (APP-053, APP-054 and APP-055) of the Environmental Statement.

- 4.9 Notwithstanding the assurances given in paragraphs 17.8.41-7 of Chapter 17 Marine and Coastal Ecology (APP-055), we remain concerned that the DCO as currently proposed will not prevent potential contaminants from the dredging activities from entering into the controlled waters of the Haven.
- 4.10 Whilst the control measures proposed in paragraphs A13.7.2 and A13.7.3 of Appendix 13.1 to the Environmental Statement (APP-105, Water Framework Directive Compliance Assessment) are generally acceptable, we consider that a scheme of sampling, monitoring and an action plan (in the event that contaminants beyond agreed levels or previously unidentified are detected) is needed.
- 4.11 We therefore request that paragraph 9(1), Schedule 2, Part 1 of the DCO is amended to require the intrusive investigations be submitted to and approved by the relevant planning authority in consultation with the Environment Agency.
- 4.12 We also request that paragraph 9(2), Schedule 2, Part 1 of the DCO is amended to include the following wording after 'environmental statement':

'(2) The ground investigations carried out pursuant to sub-paragraph (1) must be substantially in accordance with a sampling plan that sets out the approach to sampling to gather sufficient data to undertake a generic quantitative risk assessment as set out in chapter 11 (contaminated land, land use and hydrogeology) of the environmental statement *and to assess the level of contaminants to be found in material to be removed and/or dredged from within Witham Haven* and the outcomes of the ground investigations must be taken into account in the preparation of the code of construction practice submitted pursuant to paragraph 10.'

- 4.13 We also request that paragraph 10(3)(n) Schedule 2, Part 1 of the DCO is amended to include the following wording after 'taken into account':

'...including a monitoring and action plan in relation to the potential release of contaminants into the watercourse;'

## **5.0 Waste Management**

- 5.1 We have discussed our concerns with the applicant and they have indicated that they will put forward proposals to address them.

## **6.0 Surface and Waste Water Management**

- 6.1 We have no further comments to make at this time.

## **7.0 Ground Water Contamination**

7.1 We have no further comments to make at this time.

## **8.0 Environmental Permit**

8.1 At the current time the Environment Agency has not received an application for an Environmental Permit for the operation of the proposed facility. Formal pre-application discussions have started, but there is no requirement for an application to be submitted within a particular timescale following these discussions. We are therefore unable to confirm whether or not we would grant a permit based on the development as proposed.

8.2 If an application is submitted it will be advertised and subject to public consultation in accordance with our guidance. We anticipate that an application could take a minimum of 10 months to determine from the date of submission but this could be longer based on the content of the application including the scale and complexity of the proposal.

8.3 In relation to items 8.1, 8.2 and 10.1 of the Statement of Common Ground between the Environment Agency and Alternative Use Boston Limited, until an Environmental Permit application has been received and the issues have been considered through our processes, we are not able to provide the Examining Authority or the applicant with any advice on whether these issues have been adequately addressed to secure an Environmental Permit.