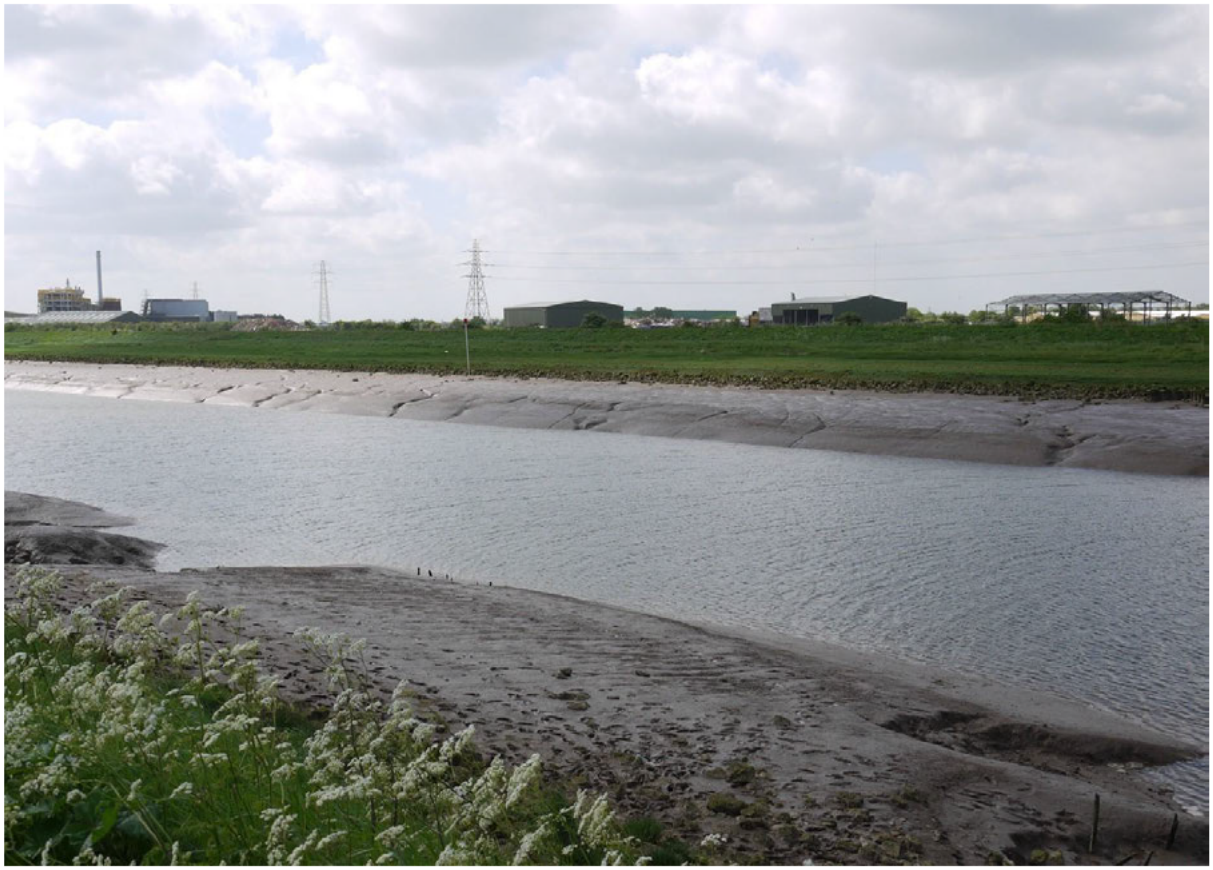
Boston Alternative Energy Facility



Statement of Common Ground between Alternative Use Boston Projects Ltd. and Marine Management Organisation

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Reviewer List

Name	Role
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Approvals

Name	Signature	Role	Date of Issue	Version
Paul Salmon	PS	RHDHV PM	19/10/21	0

Table of Contents

Table of Tables

Appendices

1 Introduction

1.1 Purpose of the Statement of Common Ground

1.1.1 This Statement of Common Ground (SoCG) has been prepared in respect of the Development Consent Order (DCO) application for the proposed Boston Alternative Energy Facility (the Facility) made by Alternative Use Boston Projects Limited (AUBP) to the Planning Inspectorate under section 37 of the Planning Act 2008 (Planning Act).

1.1.2 This SoCG does not seek to replicate information which is available elsewhere within the Application Documents. All documents are available on the Planning Inspectorate website.

1.1.3 The SoCG has been produced to confirm to the Examining Authority where agreement has been reached between the parties named in **Section 1.3**, and where agreement has not (yet) been reached. SoCGs are an established means in the planning process of allowing all parties to identify and so focus on specific issues that may need to be addressed during the examination.

1.1.4 It may be subject to further updates and revisions during the examination process.

1.2 Description of the Proposed Development

1.2.1 The Facility covers 26.8 hectares (ha) and is split in to two components: the area containing operational infrastructure for the Facility (the 'Principal Application Site'); and an area containing habitat mitigation works for wading birds (the 'Habitat Mitigation Area'). The Facility will generate power from Refuse Derived Fuel (RDF) with the 'thermal treatment' process for generating power converting the solid fuel into steam, which is then used to generate power using steam turbine generators. It will have a total gross generating capacity of 102 megawatts electric (MWe) and it will deliver approximately 80 MWe to the National Grid. The Facility will be designed to operate for at least 25 years, after which it may be decommissioned.

1.2.2 The Principal Application Site covers 25.3 ha and is located at the Riverside Industrial Estate, Boston, Lincolnshire. This site is next to the tidal River Witham (known as The Haven) and downstream from the Port of Boston. The Habitat Mitigation Area covers 1.5 ha and is located approximately 170 m to the south east of the Principal Application Site, encompassing an area of saltmarsh and small creeks at the margins of The Haven.

1.2.3 The main elements of the Facility will be:

- Wharf and associated infrastructure (including re-baling facility, workshop, transformer pen and welfare facilities);
- RDF bale storage area, including sealed drainage with automated crane system for transferring bales;
- Conveyor system between the RDF storage area and the RDF bale shredding plant, part of which is open and part of which is under cover;
- Bale shredding plant;
- RDF bunker building;
- Thermal Treatment Plant comprising three separate 34 MWe combustion lines and three stacks;
- Turbine plant comprising three steam turbine generators and make-up water facility;
- Air-cooled condenser structure, transformer pen and associated piping and ductwork;
- Lightweight aggregate (LWA) manufacturing plant comprising four kiln lines, two filter banks with stacks, storage silos, a dedicated berthing point at the wharf, and storage (and drainage) facilities for silt and clay;
- Electrical export infrastructure;
- Two carbon dioxide (CO_2) recovery plants and associated infrastructure;
- Associated site infrastructure, including site roads and car parking, site workshop and storage, security gate, and control room with visitor centre; and
- Habitat mitigation works for Redshank and other bird species comprising of improvements to the existing habitat through the creation of small features such as pools/scrapes and introduction of small boulders within the Habitat Mitigation Area.

1.3 Parties to this Statement of Common Ground

1.3.1 This SoCG has been prepared in respect of the Facility by (1) AUBP, and (2) the Marine Management Organisation (MMO), together the Parties.

1.3.2 **AUBP** is a privately-owned company, established for the purpose of securing development consent for the Facility and then developing and operating the Facility. The company team has been involved in industrial development at the site in Boston, Lincolnshire since 2004.

1.3.3 The **MMO** was established under the Marine and Coastal Access Act 2009 and is responsible for the licensing of construction works, deposits and removals in English inshore waters by way of a marine licence. The MMO is a statutory consultee under the Planning Act, 2008 (the 2008 Act) and advises on those aspects of a project that may have an impact on the marine area or those who use it. In the case of Nationally Significant Infrastructure Projects (NSIPs), the

2008 Act enables DCO's for projects which affect the marine environment to include a deemed marine licence (DML). Where a marine licence is deemed within a DCO, the MMO is the delivery body responsible for post-consent monitoring, variation, enforcement, and revocation of provisions relating to the marine environment.

1.4 Terminology

1.4.1 In **Table 3-1** in the Issues section of this SoCG:

a) "Agreed" indicates area(s) of agreement;
b) "Under discussion" indicates area(s) of current disagreement where resolution remains possible, and where parties continue discussing the issue to determine whether they can reach agreement by the end of the examination; and
c) "Not agreed" indicates a final position for area(s) of disagreement where the resolution of divergent positions will not be possible, and parties agree on this point.

1.4.2 It can be assumed that any matters not specifically referred to in the Issues section of this SoCG are not of material interest or relevance to the MMO and therefore have not been the subject of any discussions between the parties. As such, those matters can be read as agreed, only to the extent that they are either not of material interest or relevance to the MMO.

2 Overview of Previous Engagement

2.1.1 A summary of the meetings and correspondence undertaken between the Parties in relation to the Facility is outlined in **Table 2-1** below, this is also shown in **Appendix A**.

2.1.2 It is agreed that this is an accurate record of the key meetings and consultation undertaken between the Parties in relation to the issues addressed in this SoCG.

Table 2-1 Engagement activities between AUBP and the Marine Management Organisation

Date	Form of contact/correspondence	Key topics discussed and key outcomes
3 April 2019	Meeting	Meeting to discuss the scheme and potential impacts on the marine environment, including aspects of deemed marine licensing within the DCO.
6 August 2019	Letter from the MMO to AUBP	Section 42 response.
9 February 2021	Meeting	To provide a project update and to discuss the DML.

Date	Form of contact/correspondence	Key topics discussed and key outcomes
18 February 2021	Email from MMO to AUBP	Comments received on the draft DML.
18 June 2021	Letter from the MMO to the Planning Inspectorate	Relevant Representation
6 August 2021	Meeting	Meeting to run through MMO's Relevant Representation.
7 October 2021	Meeting	Meeting with MMO and Cefas to discuss letter received on 23rd September 2021.

3 Issues

3.1 Introduction and General Matters

3.1.1 This document sets out the matters which are agreed, not agreed, or are under discussion between the MMO and AUBP.

3.1.2 On 17 August 2021, the Examining Authority issued a letter under Section 88 of the Planning Act and Rules 4 and 6 of The Infrastructure Planning (Examination Procedure) Rules 2010 (known as the 'Rule 6 Letter'). Annex E of the Rule 6 Letter set out a request for SoCGs between AUBP and various parties, including the MMO. For the MMO the Rule 6 Letter advises that the following issues should be in the SoCG:

a) Deemed Marine Licence
b) Development Consent Order
c) Environmental Statement

3.1.3 The Rule 6 Letter also advises that all of the SoCGs should cover the Articles and Requirements in the draft Development Consent Order and that any Interested Party seeking that an Article or Requirement is reworded should provide the form of words which are being sought in the SoCG.

3.1.4 **Table 3-1** details the matters which are agreed, not agreed and under discussion between the Parties, including a reference number for each matter.

Table 3-1 Issues (as per MMO's Relevant Representation RR-008)

SoCG Reference	Document Reference	Topic	Marine Management Organisation's Comment	AUBP's Comments	Status
1.0 Development Consent Order (DCO) and Deemed Marine Licence (DML)					
MMO 1.1	2.1 Draft DCO (APP-005)	Wording of the DML	The MMO requested a number of changes to the wording of the DML as set out in section 3.1 of the MMO's Relevant Representation (RR-008)	The wording for the DML is under discussion between the parties but good progress has already been made to enable agreement to be reached as soon as possible. The principal outstanding issues relate to: -Specification of the volume of maintenance dredging; - The use of the word interfere in condition 5; - Wording of conditions relating to sampling and surveys; - The inclusion of a condition relating to a construction and environmental management plan or similar; and -Timescales	Under discussion

SoCG Reference	Document Reference	Topic	Marine Management Organisation's Comment	AUBP's Comments	Status
MMO 1.2	2.1 Draft DCO (APP-005)	DCO Comments	The MMO requested a number of changes to the wording and definitions in the DCO as set out in section 3.2 of the MMO's Relevant Representation (RR-008).	The wording of the DCO is under discussion between the parties but good progress has already been made to enable agreement to be reached as soon as possible. The principal outstanding issues relate to: -the wording of Article 19	Under discussion
2.0 Environmental Statement and Habitats Regulations Assessment (HRA)					
MMO 2.1	6.4.18 Appendix 17.1 Habitats Regulations Assessment (APP-111)	HRA and Nature Conservation	The MMO defers to Natural England with regard to the HRA and for impacts to any habitats or species, both terrestrial and marine. The MMO also defers to Natural England for all Nature Conservation related advice, both terrestrial and marine. (Paragraph 4.3 and 4.12 of the MMO's Relevant Representation).	Noted. AUBP are progressing discussions on such matters with Natural England, and other relevant stakeholders.	Agreed
MMO 2.2			The MMO considers that the Habitat Mitigation Area should be viewed as compensation not mitigation.	The HRA for the Facility has identified that there is no Adverse Effect on the Integrity (AEoI) on any National Network	Under discussion

SoCG Reference	Document Reference	Topic	Marine Management Organisation's Comment	AUBP's Comments	Status
			(Paragraph 4.3 of the MMO's Relevant Representation).	site. Additional information supporting this conclusion is being drafted for review by Natural England and others. Additional information will be submitted to the Examination to support the findings of the HRA. The Applicant considers habitat mitigation area is classed as "mitigation" because there is re-use of the rocks (that are used by roosting birds) from within the footprint of the dredging area into the adjacent area to provide the same habitat surface area within the overall roosting site. This proposed measure would provide enough habitat for the birds that are displaced from the dredge footprint. In addition, in a meeting with Natural England on 26 February 2021 it was noted that the Habitat Mitigation Area (HMA) could be 'mitigation' and it was noted that it would have to bring the impact down to an acceptable level. Implementation of the HMA would reduce the	

SoCG Reference	Document Reference	Topic	Marine Management Organisation's Comment	AUBP's Comments	Status
				impact to an acceptable level as discussed in Chapter 17 Marine and Coastal Ecology of the ES (document reference 6.2.17, APP-055).	
MMO 2.3	6.2.17 Chapter 17 Marine and Coastal Ecology (APP-055)	Marine and Coastal Ecology	The MMO sent the Applicant a document on 23rd September 2021 following consultation with their specialist advisors which addressed coastal processes, fisheries, shellfisheries, underwater noise, benthic ecology and dredge and disposal. The MMO advised these comments would be submitted as part of their Written Representations at Deadline 1. .	Responses to these comments will be provided in the Applicant's responses to Written Representations at Deadline 2.	Under discussion
MMO 2.4	6.4.12 Appendix 13.1 Water Framework Directive Compliance Assessment (APP-105)	The Water Environment	The MMO highlight that the Environment Agency are the lead authority for the Waste Framework Directive, Water Framework Directive and matters pertaining to flood risk and advice in relation to impacts to migratory fish species. (Paragraph 4.4 of the MMO's Relevant Representation).	Noted. We are in discussion with the Environment Agency regarding all their areas of responsibility including those identified by the MMO.	Agreed
MMO 2.5	6.2.8 Chapter 8 Cultural Heritage (APP-046)	Cultural Heritage	The MMO defers to Historic England for views on such matters. (Paragraph	Noted. We are in discussion with Historic England regarding such matters along with Boston	Agreed

SoCG Reference	Document Reference	Topic	Marine Management Organisation's Comment	AUBP's Comments	Status
			4.5 of the MMO's Relevant Representation).	Borough Council and Lincolnshire County Council.	
MMO 2.6	6.2.18 Chapter 18 Navigational Issues (APP-056)	Navigation	The MMO defers to navigation safety bodies and lighthouse authorities regarding impacts for navigational matters. (Paragraph 4.5 of the MMO's Relevant Representation).	Noted. We have received a relevant representation from the Maritime and Coastguard Agency who *inter alia* state that they will comment on any Marine Licence required via the MMO.	Agreed
MMO 2.7	2.1 Draft DCO (APP-005)	Mitigation	The MMO would like to note that any mitigation discussed in the ES must be secured through conditions in the DML. (Paragraph 4.2 and 4.11 of the MMO's Relevant Representation).	All mitigation set out in the ES relevant to the licensable marine area has been conditioned in the DML, with the exception of conditions relating to bathymetric monitoring surveys and sediment sampling, the wording for which is still under discussion between the parties.	Under Discussion
MMO 2.8	5.2 Planning Statement (APP-031) and 6.2.3 Policy and Legislation (APP-041)	Plans and Policies	The MMO notes that there is no reference to the East Inshore Marine Plan in the Environmental Statement project description. (Paragraph 4.6 of the MMO's Relevant Representation).	The East Inshore Marine Plan is referred to in Paragraph 6.79 – 6.80 of the Planning Statement and in Paragraph 3.4.44 – 3.4.45 of ES Chapter 3 (Policy and Legislation), submitted as part of the DCO application. Notwithstanding this the Applicant has agreed to submit a separate Marine Plan Policy Assessment at Deadline 1.	Agreed
3.0 Environmental Permit					

SoCG Reference	Document Reference	Topic	Marine Management Organisation's Comment	AUBP's Comments	Status
MMO 3.1	N/A		The MMO advises early and direct engagement with the Environment Agency on any Environmental Permit Requirement. (Paragraph 4.4 of the MMO's Relevant Representation).	We are in discussion with the Environment Agency on this matter.	Agreed.

4 Agreement of this Statement of Common Ground

4.1 Statement of Common Ground

4.1.1 This Statement of Common Ground has been prepared and agreed by the Parties.

Signed……
[NAME]
[POSITION]
on behalf of Alternative Use Boston Projects Limited
Date: [DATE]

Signed……
[NAME]
[POSITION]
on behalf of the Marine Management Organisation
Date: [DATE]

Appendix A Previous Engagement

Minutes

HaskoningDHV UK Ltd.
Industry & Buildings

Present:	Gary Bower, Abbie Garry, Chris Adnitt (RHDHV), Ed Walker and Alice Jamieson (MMO).
Apologies:	Click to enter "Apologies"
From:	Abbie Garry
Date:	03 April 2019
Location:	Marine Management Organisation (MMO), Lancaster House, Newcastle Upon Tyne NE4 7YJ
Copy:	
Our reference:	PB6934-RHD-01-ZZ-MI-E-1038
Classification:	Project related
Enclosures:	

Subject: **Boston Alternative Energy Facility – Meeting with MMO – 03/04/2019**

Number	Details	Action
1	**Introduction to Boston Alternative Energy Facility** The site is on the Riverside Industrial Estate in Boston, on The Haven, 8.3 km to the Wash. The site is allocated in the Lincolnshire Minerals and Waste Local Plan as an area for waste development and energy recovery. The Haven river bed is Crown Land up to Mean High Water Springs (MHWS). This site is advantageous because, the feedstock Refuse Derived Fuel (RDF) material will be brought in by ship; aggregate produced on site would be sent out by ship and there is also an on-site grid connection. Waste will be imported from east coast ports in the UK – for example, Leith, Grimsby and Tilbury. The feedstock RDF is household black bag waste which will come wrapped in plastic as bales. Damaged bales will not be accepted onto the ships and no damaged bales will be lifted off the ships onto site to prevent litter in The Haven. The bales will be stored in an external storage area and then conveyed to a Materials Handling Facility where the bales will be shredded. This separates out inert materials and metals which cannot go into the gasifier and these can be recycled. The Refuse Derived Fuel (RDF) is then conveyed to silos before it goes into the gasifiers. Gasification is a process where there is a limited oxygen environment and very high heat where the material cannot combust, but it is chemically converted into a synthetic gas which is then combusted in the next stage of the process. This reduces emissions and is more efficient than incineration.	

	There will be an export of 80MW of electricity to the grid. We will be taking some of the CO_2 from the gasification process to produce food grade CO_2 (such as for use in fizzy drinks). The gasification process produces ash as a by-product. This ash will be converted into a lightweight aggregate. Ships will take aggregate out. Sediment will be used as a binder with the ash, which will be taken from some of the port sediment. Some clay will also be imported via ship to be used as binder. The same ships that bring the clay in will take the aggregate out. It is anticipated that there will be 10 shipments of baled waste per week and two aggregate vessels. A berthing pocket will be created out of the main channel to prevent blocking the navigable channel. The wharf will be 400m and is anticipated to be a suspended deck format. The river is tidal, so shallow bottom boats will be used, which can sit on the sediment. The boats will be restricted to the high tide window (approximately 45 mins either side of high tide). The wharf will form part of the primary flood bank. The Environment Agency's Haven Banks project is increasing the level of the bank along the Haven to between 6.5-6.8 m, and so we will be maintaining the 6.8m flood defence. There will be three berths – two for receipt of RDF and one for exporting the aggregate and importing sediment and clay. The vessels are anticipated to be 100 m long, which is similar to other commercial vessels currently using The Haven. The length of ships allowed could increase after the Boston Barrier is added. Regarding site drainage there is currently an attenuation pond which provides surface water drainage capacity for the whole of the Riverside Industrial Estate. Some surface water is likely to discharge into the ditch network.	
2	**Current Development Consent Order (DCO) Timeline** Currently we are finalising the Preliminary Environmental Information Report (PEIR). And are looking to formally consult. We have already had two phases of community consultation in September 2018 and February 2019. We will be looking to have meetings with various stakeholders over the next few months. We are currently drafting the DCO and will be finalising the Environmental Statement (ES). The PEIR is close to the likely ES in terms of detail, to ensure that there are minimal revisions and is reasonably detailed. We are aiming for DCO submission at the end of September 2019.	

3	**Consultation and PEIR Assessment** *Stakeholder Meetings* RHDHV have used some of the data that the Environment Agency (EA) has from the Boston Barrier and have had meetings with the EA. The RDF delivery vessels; and the ships used to deliver clay or remove aggregate cannot turn in the river by the proposed wharf. The vessels will have to turn at the Port, either within the Port wet basin; or outside the Port entrance at the 'Knuckle' point. The former would take approximately 30 minutes, the latter 10-15 minutes. RHDHV have met with of the representatives of the Boston fishermen which was constructive. There may be an impact on the fishing fleets ability to pass the Port entrance if we turn the ships in the knuckle point outside the port. The Boston Barrier project has caused issues in terms of navigation constraints of the channel and recreational issues. Port of Boston have requested there is safe passage with commercial and fishing vessels, so the river will not be closed. RHDHV have met with Natural England to discuss any data that they have available and potential issues that they wish to see addressed. This includes information for the Habitats Regulations Assessment for the designated sites close to the proposed project site. Inshore Fisheries and Conservation Authority (IFCA) requirements provide time constraints of how much fishing can be done in a day, so delays which hold fishermen back until after midnight, could affect the fishermen's livelihood. There will be a deemed marine licence (DML) within the DCO. We are liaising with the Crown Estate currently. *PEIR data and assessments* The reception wharf is proposed to be a suspended deck design and will require capital dredging initially and then maintenance dredging – which will be from the land. The sediment from maintenance dredging can be used in the aggregate facility. The capital dredge material could also be used onshore. It will not be deposited off-shore For contaminated sediment testing we have looked back on EA data and the analysis of the samples. The metals are below Cefas level 2 and generally below Cefas level 1, and the hydrocarbons are generally between the Threshold Effect Level and the Probable Effect Level for the Canadian sediment quality guidelines. A full write up of the results will be provided in the PEIR and ES. The vibro-core data is not specific to this area however it is close by as it was taken for the Boston Barrier project and the results are quite	

	consistent throughout the site. Therefore, Royal HaskoningDHV propose that it is suitable for use in our assessment for the proposed wharf area. MMO agreed that this would be suitable. It would be outlined in the DML if vibro-cores would be required for monitoring during operation. The material will not be taken for disposal at sea as it is being used on land and so there are no issues with potential mobilisation of contaminants at a marine disposal site. The dredging will also be undertaken using a mechanical dredger, so there will be less slurry runoff than using a hydraulic dredger. MMO – concern over repeated berthing in the same location could create deeper pockets into the sediment that could release deeper contaminants of concern. Concern that disturbing deeper sediments could lead to a potential pathway to the SPA (the Wash) and Frampton Marshes. Potential for monitoring grab sampling to be required over time to make sure that levels don't exceed the relevant thresholds. The vessels will be using shore to ship power so that vessels aren't constantly running, which will reduce the impacts in terms of pollution. The proposals include for moving the bank back and will create a stable platform in front of the flood bank. At the narrow point of the river the bank may need to be cut back to maintain a safe distance from the berthing pocket to the centre of the navigable channel. The designed lifetime of the wharf will be as long as the wharf lasts as it will be over the primary flood defence. The Boston Alternative Energy Facility site will have a 25 year design life which will then be improved (retrofitted) to align with the emissions legislation, or decommissioned. The Applicant will take legal responsibility for the flood defence. The DCO will be drafted (including the DML) from now onwards and will strive to achieve basic Statements of Common Ground in place before submission, agreed in principle, where possible. RHDHV have had a meeting with Natural England (NE) and have been through the key issues. RHDHV have drafted a Habitats Regulations Assessment document which will be attached to the PEIR. RHDHV have completed geomorphological conceptual modelling. RHDHV have assessed impacts on migratory fish, it is considered that there will be limited impacts due to only small plumes. Piling for the suspended deck has been assessed via desk-based assessment for noise levels (have assessed worst case piling). Regarding marine mammals – they have haul out and breeding in the Wash, but not at the proposed site, so there is minimal impact. However, the HRA includes for any disturbance to marine mammals	**Action: EW to share Frog Island case reference.**

	as a result of the increase in the number of vessels during construction and operation. RHDHV have collated ornithological data from the British Trust for Ornithology (BTO) and the EA. The HRA will also include potential disturbance to birds from vessel movements during construction and operation. The narrow strip of salt marsh in front of the seawall is not extensively used. NE highlighted some rare species at the salt marsh and surveys from the EA and NE will be considered. MMO mentioned Frog Island 378 concrete receiving. Action: EW to share case reference. The Port of Boston mentioned that they did not want scour protection, of a type (e.g. rock armour) and in locations where its use could cause hull damage.	
4	**AOB** MMO are happy to wait to get the final PEIR. RHDHV to keep MMO updated on the drafting of the DML. MMO to send recent DCOs with DMLs and the latest Boston marine licence to RHDHV.	**Action: EW to send recent DCOs with DMLs and latest Boston Marine Licence.**

Marine Management Organisation

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Our reference: DCO/2019/00006

06 August 2019

By email only

Boston Alternative Energy Facility: Preliminary Environmental Information Report (PEIR) Consultation Section 42 Planning Act 2008

Thank you for your letter dated 19 June 2019, notifying the Marine Management Organisation (MMO) of "Alternative Use Boston's" intention to submit an application for development consent under the Planning Act 2008 (the 2008 Act). The Boston Alternative Energy Facility (the Project) is proposing to construct an alternative energy facility at Riverside Industrial Estate, Boston, Lincolnshire. The Riverside Industrial Estate is adjacent to the tidal River Witham (known as The Haven) and down-river from the Port of Boston. The Project is an energy recovery plant that will generate approximately 102 MWe (gross) of renewable energy, and will deliver approximately 80 MWe (net) to the National Grid. The energy recovery plant will be a gasification facility using refuse derived fuel (RDF) as the feedstock to generate energy.

The MMO's role in Nationally Significant Infrastructure Projects

The MMO was established by the Marine and Coastal Access Act, 2009 (the 2009 Act) to make a contribution to sustainable development in the marine area and to promote clean, healthy, safe, productive and biologically diverse oceans and seas.

The responsibilities of the MMO include the licensing of construction works, deposits and removals in English inshore and offshore waters and for Welsh and Northern Ireland offshore waters by way of a marine licence[1]. Inshore waters include any area which is submerged at

[1] Under Part 4 of the 2009 Act

mean high water spring (MHWS) tide. They also include the waters of every estuary, river or channel where the tide flows at MHWS tide. Waters in areas which are closed permanently or intermittently by a lock or other artificial means against the regular action of the tide are included, where seawater flows into or out from the area.

In the case of Nationally Significant Infrastructure Projects (NSIPs), the 2008 Act enables Development Consent Orders (DCO) for projects which affect the marine environment to include provisions which deem marine licences[2].

As a statutory consultee under the 2008 Act, the MMO advises developers during pre-application on those aspects of a project that may have an impact on the marine area or those who use it. In addition to considering the impacts of any construction, deposit or removal within the marine area, this includes assessing any risks to human health, other legitimate uses of the sea and any potential impacts on the marine environment from terrestrial works.

Where a marine licence is deemed within a DCO, the MMO is the delivery body responsible for post-consent monitoring, variation, enforcement and revocation of provisions relating to the marine environment. As such, the MMO has a keen interest in ensuring that provisions drafted in a deemed marine licence (DML) enable the MMO to fulfil these obligations.

Further information on licensable activities can be found on the MMO's website[3]. Further information on the interaction between the Planning Inspectorate and the MMO can be found in our joint advice note[4].

MMO comments

The MMO has reviewed the consultation documents received on 19 June 2019 in consultation with our scientific advisors at Centre for Environment, Fisheries and Aquaculture Science (Cefas). Please find the MMO's comments provided below:

1. Observations

1.1. In general, the approach provided by the applicant is sufficient and has provided a comprehensive review of potential impacts.

1.2. The MMO generally agree with the proposed mitigation measures (paragraph 15.7.1), in particular (assuming the material is not highly contaminated):

1.2.1. The capital dredge volume is minimised by setting the quay wall closer to the channel without impacting on safe navigation during berthing operations; and

1.2.2. The use of a mechanical dredger (i.e., a land- or vessel-based long-reach excavator) to undertake the dredging works is considered suitable mitigation to reduce the potential for an increase in suspended sediment concentrations during

[2] Section 149A of the 2008 Act

[redacted]

[redacted]

dredging operations.

1.3. The PEIR has identified and adequately assessed potential cumulative and inter-related impacts. Further, the report states in paragraph 6.2.26, that "At the PEIR stage, a full CIA [Cumulative Impact Assessment] was not undertaken, as a definitive list of cumulative projects had not been agreed with stakeholders. A full CIA will be carried out for the Environmental Statement (ES), and the full list of plans or projects to be included in the CIA is being developed as part of on-going consultation with technical consultees".

The applicant has identified that the only other development that could have accumulative effect is the Boston Barrier Tidal Scheme. From our records the MMO agree that there are no other developments that should be assessed.

1.4. Whilst repeated barge grounding/floating is considered likely to disturb and release both sediments and contaminants into the marine environment, this impact is not likely to have a significant impact on physical and coastal processes due to the relatively small volumes of sediment involved and the limited spatial extent. Therefore no addition mitigation is warranted.

1.5. The capital dredge is anticipated to be approximately 140,000 to 150,000 cubic metres (m^3). In paragraph 16.7.14, the applicant states that this will result in an increase in the tidal prism of 85,250 m^3 adjacent to the facility, equivalent to an increase of 1.8% across the Haven. This will induce an increase in tidal velocities, with the potential to increase erosion as the system readjusts. Whilst this is not considered to have a major impact on physical and coastal processes within this already heavily modified site, it may have implications for habitats and/or flood defence.

1.6. The MMO observes that the particle size distribution (PSD) data presented has been collated from external data sources, with samples obtained throughout the Haven. Whilst these are not specific to the proposed site, given their local origin, the MMO are satisfied that they adequately represent the conditions likely to be found on site from physical and coastal processes perspective.

1.7. The MMO note that the following applications (MLA/2015/00052, MLP/2014/00239 and MLA/2011/00348) have taken samples within 600 metres (m) of the works, however please note that the most recent results are four years old and in line with OSPAR, new samples would be required.

2. Changes required

2.1. The Preliminary Environmental Impact Report (PEIR) has assessed the impacts of increased vessel traffic (ship wash) on the wave regime and concluded that "… *the increase in vessel traffic is unlikely to affect the intertidal mudflats and saltmarsh as the contribution of the overall erosion of these areas by locally-generated wind waves would significantly exceed the contribution from ship waves"*. Whilst the MMO agree that "*The contribution of wind waves in terms of frequency is much higher*", thereby

providing a source of persistent pressure, the waves generated by ship wash are considered likely to result in increased erosion. In addition, the PEIR does not explicitly state that the 150% increase in vessel movements is the result of additional vessels of similar size and speed to the existing stock, which would have implications for the energy profile of the additional vessels. The MMO recommend that the impact of ship wash is assessed in greater detail within the Environmental Impact Assessment (EIA) and Environmental Statement (ES). Whilst this is not considered to have a major impact on physical and coastal processes within this already heavily modified site, it may have implications for habitats and/or flood defence.

2.2. The current preferred structure is a suspended concrete deck, constructed on approximately 300 driven piles. The impact of these structures on patterns of erosion and accretion have not been considered in the PEIR and should be quantitatively considered within the EIA and ES.

2.3. The MMO notes that no target depth profile or maximum dredge depth has been provided. The MMO advise that these be included in the EIA and ES.

2.4. As part of the embedded mitigation, the report states that the works will "*Dispose of capital dredged sediment on land rather than at sea*" (paragraph 15.7.1) and that "*All* [capital and maintenance dredge material] *will be managed on land in accordance with the waste hierarchy*" (e.g., Table 15.2). No further information has been provided as evidence to support the statement that the waste hierarchy has been applied (e.g. whether potential marine beneficial re-use applications have been considered). The MMO advise that this information is included in the EIA and ES.

2.5. There is the potential for an adverse synergistic impact to occur during the operational phase as a result of increased tidal velocities (due to the capital dredge and resultant increase in the tidal prism) and wave energy (due to increased vessel movements). Combined, these pressures have the potential to result in elevated rates of erosion. Whilst this would not be expected to have a significant adverse impact in what is an already heavily modified system. The MMO recommend that an assessment is included in the final CIA.

2.6. Within the PEIR paragraphs 16.7.15 and 16.7.16 estimate the maintenance dredge volume at 1,643 cubic metres per year (m^3/yr). However, this is based on suspended sediment concentrations (SSC) of "*less than 100 [milligrams per litre] (mg/l)*", whilst Table 16.9 presents baseline SSC ranging between 210-1,790 mg/l, with an average of 545 mg/l 1 metre above the bed. Consequently, the maintenance dredge is considered to be an underestimate. The capital and maintenance dredge volumes require clarification. The total capital dredge volume is reported as generating 140,000 to 150,000 m^3 of material (e.g., paragraphs 16.7.4 and 15.7.17 respectively).The MMO advise that evidence of a more robust calculation of both capital and maintenance dredge volumes would be expected within the EIA and ES.

2.7. Whilst the applicant has used previous sampling regimes, only one set of raw data has been provided. The applicant should provide the raw results of all sampling regimes, including locations (either coordinates or as a map) to allow a robust review to be

undertaken. Figure 15.1 does not appear show all sediment samples and does not appear to relate to the results provided in Chapter 15.

2.8. The MMO require further information before we can advise on whether a sampling plan would be required. The applicant has stated that previous results have been used to inform the assessment, however in order to ascertain whether these could be used in lieu of new samples, the applicant should provide: The raw data of analyses, including when the samples were taken;

- The location of the samples (preferably the coordinates);
- Identification of which laboratory undertook the analyses to ensure they carry out analyses in line with the MMO guidance and to ensure the results are comparable with Cefas Action Levels.

The items highlighted in this letter should be considered in the initial scope of the EIA, however please note that this letter is not a definitive list of all ES/EIA requirements and other subsequent work may prove necessary.

3. Conclusions

3.1. The MMO reserves the right to make further comments on the Project throughout the pre-application process and may modify its present advice or opinion in view of any additional information that may subsequently come to our attention.

Your feedback

We are committed to providing excellent customer service and continually improving our standards and we would be delighted to know what you thought of the service you have received from us. Please help us by taking a few minutes to complete the following short survey ([redacted]

If you require any further information please do not hesitate to contact me using the details provided below.

Yours sincerely,
Lindsey Mullan
Marine Licensing Case Officer
[redacted]

Minutes

HaskoningDHV UK Ltd.
Industry & Buildings

Present:	Paul Salmon (PS) and Abbie Garry (AG) (RHDHV), Richard Marsh (RM) and Sophie Reese (SR) (BDB Pitmans), Lindsey Mullan (LM) and Katherine Blakey (KB) (MMO)
Apologies:	
From:	Abbie Garry
Date:	09 February 2021
Location:	Teams
Copy:	
Our reference:	PB6934-RHD-ZZ-XX-MI-Z-1068
Classification:	Project related
Enclosures:	

Subject: **Boston Alternative Energy Facility MMO Update Meeting**

Number	Details	Action
1	**Boston Alternative Energy Facility Description**	

AG gave a brief overview of the scheme, key points below:

- Energy from Waste development;
- Refuse Derived Fuel (RDF) supply from Materials Recycling Facility (MRF) residues dispatched from UK ports;
- RDF bales (wrapped in plastic) arrive via The Haven and are unloaded directly onto a conveyor for transfer to the bale shredding facility. There is also a temporary external storage area for contingency when the bunker is at capacity;
- Bales are split open in the bale shredding facility and RDF is transferred to a bunker;
- The feedstock is converted into energy using thermal treatment;
- There are two carbon dioxide (CO_2) recovery plants which will recover a proportion of the CO_2 to be used offsite in a range of industries such as food grade CO_2;
- 80 megawatts electric (MWe) will be exported to the National Grid via an on site grid connection and substation;
- Ash and air pollution control residues are produced as a by-product of the thermal treatment process and will be transferred to the Lightweight Aggregate (LWA) plant where it will produce aggregate, using dredged river sediment as a binder, or clay where this is not available; and
- The lightweight aggregate product will be removed by ship.

Number	Details	Action
	It was confirmed that consultation has been ongoing with the Port of Boston and that the vessels would be turning in the Port and that the Facility would not be a Harbour Authority. It was noted by LM that if sampling for contaminants is required then this would need to be considered. AG to confirm from the Estuarine Processes and Marine Water and Sediment Quality chapters. *Post-Meeting Note: It is confirmed from review of the Estuarine Processes and Marine Water and Sediment Quality chapters that no additional sampling will be required*. LM asked if there was a Waste Sourcing Statement. AG identified that a Fuel Availability and Waste Hierarchy Assessment had been completed and would be supplied with the DCO application.	
2	**Timescales for reviewing Deemed Marine Licence (DML)** MMO confirmed they would prefer to review the DML pre-submission and would allocate this to the case manager for a review by 19th February. RM noted that the Port of Boston had put in a licence variation for further disposal at sea and reiterated that there will be no disposal at sea of the sediment dredged as part of the Project.. LM mentioned she would double check if the licence variation would cause an impact.	MMO to review DML by 19th February.
	It was noted that the DML review should be on a broad basis and to include review of enforceable parameters. Noted that AG should provide an update of the figure of the DML co-ordinates.	AG to provide updated DML co-ordinates figure
	Next steps Mentioned that we have not yet started the Statements of Common Ground (SoCG) process and would like to start this as soon as the application is submitted. MMO confirmed they would be happy to use the Applicant's SoCG template. *Charges* MMO noted they have provided a small fee estimate for the meetings and actions.	

Number	Details	Action
	The DCO fee estimate for pre-application and application is estimated to be 200 MMO hours at £120 per hour, a total of £24,000 and 100 Cefas hours at £86 per hour, a totals of £8,600. However only the time used would be charged. The time as part of their statutory function would not be charged. Time would be billed monthly in arrears and would notify us if it needed increasing. It was noted by BPB Pitmans they were happy to meet MMO at any point to discuss the DML. SR asked if in particular the MMO could confirm if the Navigational Management Plan within Schedule 2 of the DCO should be within the DML. It was noted by MMO that there should have been consultation with Trinity House and the Maritime and Coastguard Agency. *Post-Meeting Note: to confirm both parties were sent a Section 42 letter but neither responded.* MMO confirmed they would come back to us with information about internal staffing and the identity of the new Case Manager for the project but LM and KB will continue to be involved. AG offered to provide Project Description ES Chapter to assist with briefing the new Case Manager.	MMO to confirm in their response AG to provide Project Description ES Chapter

Arbitration

The Marine Management Organisation (MMO) notes that arbitration provisions tend to follow model clauses and be confined to disputes between the applicant/beneficiary of the Development Consent Order (DCO) and third parties e.g. in relation to rights of entry or rights to install/maintain apparatus. The MMO does not consider that it was intended to apply such provisions to disagreements between the undertaker and the regulator, and strongly questions the appropriateness of making any regulatory decision or determination subject to any form of binding arbitration.

When the MMO was created by Parliament to manage marine resources and regulate activities in the marine environment, the Secretary of State delegated his/her functions to the MMO under the Marine and Coastal Access Act (MCAA) 2009. As both the role of the Secretary of State (in determining DCO applications) and the role of the MMO (as a regulator for activities in the marine environment) are recognised by the Planning Act 2008, the responsibility for the Deemed Marine Licence (DML) passes from the Secretary of State to the MMO once granted. The MMO is responsible for any post-consent approvals or variations, and any enforcement actions, variations, suspensions or revocations associated with the DML. It was not the intention of Parliament to create separate marine licensing regimes following different controls applied to the marine environment. In fact, one of the aims of the Planning Act 2008 is the provision of a 'one stop shop' for applicants seeking consent for a National Significant Infrastructure Project (NSIP). The new regime allows for the applicant to choose whether to include a DML issued under MCAA 2009 within the DCO provision, or apply to the MMO for a stand-alone licence covering all activities in the marine environment. In any case, it is crucial that consistency is maintained between DML granted through the provision of a DCO, and Marine Licences issued directly by the MMO independent of the DCO process.

It is the MMO's opinion that the referral to arbitration in situations where 'difference' may arise, is contrary to the intention of Parliament and usurps the MMO's role as regulator for activities in the marine environment.

Once the DCO is granted, the DML falls to be dealt with as any other Marine Licence, and any decisions and determinations made once a DML is granted fall into the regime set out in the MCAA 2009. Any decisions or actions the MMO carries out in respect of a DML should not be made subject to anything other than the normal approach under the MCAA 2009. To do so introduces inconsistency and potentially unfairness across a regulated community. In the case of any disagreement which may arise between the applicant and the MMO throughout this process, there is already a mechanism in place within that regime to challenge a decision through the existing appeal routes under Section 73 of MCAA 2009.

The MMO would like to highlight that the regulatory decisions, and indeed any challenges through the existing mechanisms should be publicly available and open to scrutiny. In many cases, members of the public or other stakeholders may wish to make representations in relation to post-consent matters. Ordinarily, their views would be considered by the MMO and they would have the opportunity to follow up and challenge the decision making e.g. through the MMO complaints process, by complaint to the Ombudsman, or by Judicial Review. A private arbitration to resolve post-consent disputes would reduce transparency and accountability.

STATUTORY INSTRUMENTS

202[ ] No. 0000

INFRASTRUCTURE PLANNING

The Boston Alternative Energy Facility Order 202[ ]

Made - - - - *202[ ]*

Coming into force - - *202[ ]*

CONTENTS

PART 4
SUPPLEMENTARY POWERS

PART 5
POWERS OF ACQUISITION AND POSSESSION OF LAND

PART 6
MISCELLANEOUS AND GENERAL

SCHEDULES

An application under section 37 of the Planning Act 2008(**a**) (the "2008 Act") has been made to the Secretary of State for an order granting development consent in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(**b**).

[The application has been examined by the Examining Authority appointed by the Secretary of State pursuant to Chapter 3 of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(**c**). The Examining Authority has submitted a report and recommendation to the Secretary of State under section 83(**d**) of the 2008 Act.]

[The Secretary of State has considered the report and recommendation of the Examining Authority, has taken into account the environmental information in accordance with regulation 4(**e**) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 and has had regard to the documents and matters referred to in section 104(2) of the 2008 Act.]

[The Secretary of State, having decided the application, has determined to make an order giving effect to the proposals comprised in the application on terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.]

In accordance with section 127(**f**) of the 2008 Act, the Secretary of State has applied the relevant tests and is satisfied that they have been met.

Accordingly, the Secretary of State, in exercise of the powers in sections 114, 115, 120, 122 and 123 of the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Boston Alternative Energy Facility Order 202[ ] and comes into force on [ ] 202[ ].

Interpretation

2.—(1) In this Order, unless otherwise stated—

"the 1961 Act" means the Land Compensation Act 1961(**g**);

"the 1965 Act" means the Compulsory Purchase Act 1965(**h**);

(**a**) 2008 c 29 The relevant provisions of the 2008 Act are amended by Chapter 6 of Part 6 of, and Schedule 13 to, the Localism Act 2011 (c 20)
(**b**) S I 2009/2264, amended by S I 2010/439, S I 2010/602, S I 2012/635, S I 2012/2654, S I 2012/2732, S I 2013/522, S I 2013/755, 2014/469, 2014/2381, 2015/377, 2015/1682, 2017/524, 2017/572 and S I 2018/378
(**c**) S I 2010/103, amended by S I 2012/635
(**d**) 2008 c 29 Section 83 was amended by paragraphs 35(2) and 35(3) of Schedule 13(1) and paragraph 1 of Schedule 25(20) to the Localism Act 2011 (c 20)
(**e**) S I 2017/572
(**f**) 2008 c 29 Section 127 was amended by section 23,(2)(a), 23(2)(b) and 23(2)(c) of the Growth and Infrastructure Act 2013 (c 27) and by paragraphs 64(2) of Schedule 13(1) to the Localism Act 2011 (c 20)
(**g**) 1961 c 33
(**h**) 1965 c 56

"the 1980 Act" means the Highways Act 1980(**a**);

"the 1981 Act" means the Compulsory Purchase (Vesting Declarations) Act 1981(**b**);

"the 1984 Act" means the Road Traffic Regulation Act 1984(**c**);

"the 1990 Act" means the Town and Country Planning Act 1990(**d**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**e**);

"the 2008 Act" means the Planning Act 2008(**f**);

"access and public rights of way plan" means the plan of that description certified by the Secretary of State as the access and public rights of way plan for the purposes of this Order under article 49 (certification of documents, etc.);

"address" includes any number or address used for the purposes of electronic transmission;

"AOD" means above ordnance datum;

"apparatus" has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act;

"authorised development" means the development described in Schedule 1 (authorised development) and any other development authorised by this Order or any part of it which is development within the meaning of section 32 (meaning of "development") of the 2008 Act;

"book of reference" means the document of that description certified by the Secretary of State as the book of reference for the purposes of this Order under article 49 (certification of documents, etc.);

"building" includes any structure or erection or any part of a building, structure or erection;

"carriageway" has the same meaning as in the 1980 Act;

"CHP statement" means the document of that description certified by the Secretary of State as the CHP statement for the purposes of this Order under article 49 (certification of documents, etc.);

"commence" means beginning to carry out any material operation, as defined in section 155 of the 2008 Act (which explains when development begins), comprised in or carried out for the purposes of the authorised development other operations consisting of pre-construction ecological mitigation, environmental surveys and monitoring, investigations for the purpose of assessing ground conditions (including the making of trial boreholes), receipt and erection of construction plant and equipment, installation of construction compounds, erection of a footbridge, erection of temporary viewing structure, temporary car parking, erection of construction welfare facilities, erection of any temporary means of enclosure, the temporary display of site notices or contractors' signage and notices and "commencement" and "commenced" are to be construed accordingly;

"commissioning" means the process of assuring that all systems and components of the authorised development or part of the authorised development (which are installed or installation is near to completion) are tested to verify that they function and are operable in accordance with design objectives, specifications and operational requirements of the undertaker and "commission" and other cognate expressions are to be construed accordingly;

"date of final commissioning" means the date on which the commissioning of Work No. 1A is completed as notified as such by the undertaker to the relevant planning authority pursuant to paragraph 20 of Schedule 2 (requirements);

(**a**) 1980 c 66
(**b**) 1981 c 66
(**c**) 1984 c 27
(**d**) 1990 c 8
(**e**) 1991 c 22
(**f**) 2008 c 29

"design and access statement" means the document of that description certified by the Secretary of State as the design and access statement for the purposes of this Order under article 49 (certification of documents, etc.);

"electronic transmission" means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means provided it is in an electronic form;

"environmental statement" means the document of that description certified by the Secretary of State as the environmental statement for the purposes of this Order under article 49 (certification of documents, etc.);

"flood risk activity" has the same meaning as in the Environmental Permitting (England and Wales) Regulations 2016(a);

"flood risk assessment" means the document of that description certified by the Secretary of State as the flood risk assessment for the purposes of this Order under article 49 (certification of documents, etc.);

"footpath" and "footway" have the same meaning as in the 1980 Act;

"highway" and "highway authority" have the same meaning as in the 1980 Act;

"indicative generating station plans" means the document of that description certified by the Secretary of State as the indicative generating station plans for the purposes of this Order under article 49 (certification of documents, etc.);

"land plans" means the plans of that description certified by the Secretary of State as the land plans for the purposes of this Order under article 49 (certification of documents, etc.);

"limits of deviation" means the limits of deviation referred to in article 7 (limits of deviation) shown for each numbered work on the works plans;

"maintain" in relation to the authorised development includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve to the extent that such works do not give rise to any materially new or materially different environmental effects than those identified in the environmental statement and "maintenance" and "maintaining" are to be construed accordingly;

"MHWS" means the highest level which spring tides reach on average over a period of time;

Commented [ML1]: The MMO advise expansion to Mean High Water Springs (MHWS)

"MMO" means the Marine Management Organisation;

"operational period" means the period from the date of final commissioning to the permanent cessation of the operation of Work No. 1A;

"Order land" means the land shown on the land plans which is within the Order limits and described in the book of reference;

"Order limits" means the limits of lands to be acquired or used permanently or temporarily shown on the land plans and works plans within which the authorised development may be carried out;

"outline landscape and ecological mitigation strategy" means the document of that description certified by the Secretary of State as the outline landscape and ecological mitigation strategy for the purposes of this Order under article 49 (certification of documents, etc.);

"outline code of construction practice" means the document of that description certified by the Secretary of State as the outline code of construction practice for the purposes of this Order under article 49 (certification of documents, etc.);

"outline construction traffic management plan" means the document of that description certified by the Secretary of State as the outline construction traffic management plan for the purposes of this Order under article 49 (certification of documents, etc.);

(a) S I 2016/1154

"outline lighting strategy" means the document of that description certified by the Secretary of State as the outline lighting strategy for the purposes of this Order under article 49 (certification of documents, etc.);

"outline written scheme of investigation" means the document of that description certified by the Secretary of State as the outline written scheme of investigation for the purposes of this Order under article 49 (certification of documents, etc.);

"owner", in relation to land, has the same meaning as in section 7(**a**) (interpretation) of the Acquisition of Land Act 1981;

"relevant planning authority" means the Boston Borough Council and any successor to its functions in relation to land in its area;

"requirements" means those matters set out in Schedule 2 to this Order;

"statutory undertaker" means any person falling within section 127(8) (statutory undertakers' land) of the 2008 Act and includes a public communications provider defined by section 151(1)(**b**) (interpretation of Chapter I) of the Communications Act 2003;

"street" means a street within the meaning of section 48 (streets, street works and undertakers) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes any footpath and "street" includes any part of a street;

"street authority", in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

"The Haven" means the part of the River Witham, known as The Haven;

"traffic authority" has the same meaning as in section 121A of the Road Traffic Regulation Act 1984;

"undertaker" means Alternative Use Boston Projects Limited (company number 11013830, whose registered office is at 26 Church Street, Bishop's Stortford, Hertfordshire, England, CM23 2LY) or any other person who for the time being has the benefit of this Order in accordance with articles 8 and 9 of this Order;

"watercourse" includes all rivers, streams, creeks, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

"works plans" means the plans of that description certified by the Secretary of State as the works plans for the purposes of this Order under article 49 (certification of documents, etc.).

(2) References in this Order to rights over land include references to rights to do or to place and maintain anything in, on or under land or in the airspace above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in this Order land.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work.

(4) All areas described in square metres in the book of reference are approximate.

(5) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the plans to which the reference applies.

(6) References in this Order to numbered works are references to the works numbered in Schedule 1.

(7) References to "Schedule" are, unless otherwise stated, references to Schedules to this Order.

(8) The expression "includes" is to be construed without limitation.

(9) References to any statutory body include any body's successor in respect of functions which are relevant to this Order.

(**a**) 1981 c 67 Section 7 was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c 34) There are other amendments to this section which are not relevant to this Order

(**b**) 2003 c 21

(10) References in this Order to "part of the authorised development" are to be construed as references to stages, phases or elements of the authorised development.

(11) References in this Order to the creation and acquisition of rights over land includes references to rights to oblige a party having an interest in land to grant those rights referenced in the Order, at the discretion of the undertaker, either—

(a) to an affected person directly, where that person's land or rights over land have been adversely affected by this Order, and, where that is the case, the rights referenced in the Order are to be granted for the benefit of the land in which that affected person has an interest at the time of the making of this Order; or

(b) to any statutory undertaker for the purpose of their undertaking.

PART 2

PRINCIPAL POWERS

Development consent granted by the Order

3.—(1) Subject to the provisions of this Order including the requirements in Schedule 2 (requirements), the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of this Order.

Maintenance of authorised development

4. The undertaker may at any time maintain the authorised development except to the extent that this Order or an agreement made under this Order provides otherwise.

Maintenance of drainage works

5.—(1) Nothing in this Order, or the construction, maintenance or operation of the authorised development under it, affects any responsibility for the maintenance of any works connected with the drainage of land, whether that responsibility is imposed or allocated by or under any enactment, or otherwise, unless otherwise agreed in writing between the undertaker and the person responsible.

(2) In this article "drainage" has the same meaning as in section 72 (interpretation) of the Land Drainage Act 1991(**a**).

Operation of the authorised development

6.—(1) The undertaker is authorised to operate the generating station comprised in the authorised development.

(2) Other than as set out in this Order, this article does not relieve the undertaker of any requirement to obtain any permit or licence or any obligation under any legislation that may be required to authorise the operation of an electricity generating station.

Limits of deviation

7.—(1) The authorised development is to be carried out and maintained within the limits of deviation shown and described on the works plan and in carrying out the authorised development the undertaker may—

(**a**) 1991 c 59 The definition of "drainage" was substituted by paragraphs 191 and 194 of Schedule 22 to the Environment Act 1995 (c 25)

(a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans;

(b) to any extent downwards as may be necessary, convenient or expedient;

(c) in respect of any boundary between the areas of two numbered works deviate laterally by 20 metres either side of the boundary as shown on the works plans,

except that these maximum limits of deviation do not apply where it is demonstrated by the undertaker to the Secretary of State's satisfaction and the Secretary of State, following consultation by the undertaker with the relevant planning authority, certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(2) Part 2 (procedure for discharge of requirements) of Schedule 2 (requirements) applies to an application to the Secretary of State for certification under paragraph (1) as though it were an approval required by a requirement under that Schedule.

Benefit of this Order

8.—(1) Subject to paragraphs (2) and (3) and article 9 (consent to transfer benefit of the Order), the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to the works for which consent is granted by this Order for the express benefit of the owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

(3) Paragraph (1) does not apply to Work No. 3 for which the provisions of this Order have effect for the benefit of the undertaker, Harlaxton Engineering Services Limited and Western Power Distribution Plc.

Consent to transfer benefit of the Order

9.—(1) Subject to paragraph (4) the undertaker may—

(a) transfer to another person ("the transferee") all or any part of the benefit of the provisions of this Order (including any part of the authorised development) and such related statutory rights as may be agreed in writing between the undertaker and the transferee; or

(b) grant to another person ("the lessee"), for a period agreed between the undertaker and the lessee, all or any part of the benefit of the provisions of this Order (including any part of the authorised development) and such related statutory rights as may be agreed between the undertaker and the lessee.

(2) Where an agreement has been made in accordance with paragraph (1)(a) or (1)(b) references in this Order to the undertaker, except paragraph (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The consent of the Secretary of State is required for the exercise of the powers under paragraph (1) except where—

(a) the transferee or lessee holds a licence under section 6(**a**) (licences authorising supply, etc.) of the Electricity Act 1989; or

(b) the time limits for all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—

(i) no such claims have been made;

(ii) any such claims that have been made have all been compromised or withdrawn;

(**a**) 1989 c 29

(iii) compensation has been paid in final settlement of any claims made;

(iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or

(v) it has been determined by a tribunal or court of competent jurisdiction in respect of all claims that no compensation is payable.

(5) Where the consent of the Secretary of State is not required under paragraph (4), the undertaker must notify the Secretary of State in writing before transferring or granting all or any part of the benefit of the provisions of this Order and such related statutory rights referred to in paragraph (1).

(6) The notification referred to in paragraph (5) must state—

(a) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;

(b) subject to paragraph (7), the date on which the transfer will take effect;

(c) the powers to be transferred or granted;

(d) pursuant to paragraph (3), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and

(e) where relevant, a plan showing the works or areas to which the transfer or grant relates.

(7) The date specified under paragraph (6)(b) must not be earlier than the expiry of five working days from the date of the receipt of the notice.

(8) The notice given under paragraph (5) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

PART 3

STREETS

Street works

10.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) and may—

(a) break up or open the street, or any sewer, drain or tunnel under it;

(b) drill, tunnel or bore under the street;

(c) place apparatus in the street;

(d) maintain apparatus in the street, change its position or remove it; and

(e) execute any works required for or incidental to any works referred to in sub-paragraph (a), (b), (c) or (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) Where the undertaker is not the street authority, the provisions of sections 54 (notice of certain works) to 106 (index of defined expressions) of the 1991 Act apply to any street works carried out under paragraph (1).

Application of the 1991 Act

11.—(1) Works constructed or maintained under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 (street works in England and Wales) of the 1991 Act as major highway works if—

(a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (highway authorities, highways and related works) of that Act; or

(b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64(**a**) (dual carriageways and roundabouts) of the 1980 Act or section 184(**b**) (vehicle crossings over footways and verges) of that Act.

(2) In Part 3 (street works in England and Wales) of the 1991 Act, in relation to works which are major highway works by virtue of paragraph (1), references to the highway authority concerned are to be construed as references to the undertaker.

(3) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers conferred by this Order—

section 56(**c**) (power to give directions as to timing);

section 56A(**d**) (power to give directions as to placing of apparatus);

section 58(**e**) (restrictions on works following substantial road works);

section 58A(**f**) (restriction on works following substantial street works);

section 73A(**g**) (power to require undertaker to re-surface street);

section 73B(**h**) (power to specify timing etc. of re-surfacing);

section 73C(**i**) (materials, workmanship and standard of re-surfacing);

section 78A(**j**) (contributions to costs of re-surfacing by undertaker); and

Schedule 3A(**k**) (restrictions on works following substantial street works).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to any alteration, diversion or restriction of use of a street of a temporary nature by the undertaker under the powers conferred by article 13 (temporary closure, alteration, diversion and restriction of use of streets), whether or not the alteration, diversion or restriction constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act(**l**) referred to in paragraph (4) are—

section 54(**m**) (advance notice of certain works), subject to paragraph (6);

section 55(**n**) (notice of starting date of works), subject to paragraph (6);

section 57(**o**) (notice of emergency works);

section 59(**p**) (general duty of street authority to co-ordinate works);

section 60 (general duty of undertakers to co-operate);

section 68 (facilities to be afforded to street authority);

section 69 (works likely to affect other apparatus in the street);

(**a**) Section 64 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c 51) and section 168(2) of, and Schedule 9 to, the New Roads and Street Works Act 1991 (c 22)
(**b**) Section 184 was amended by sections 35, 37, 38 and 46 of the Criminal Justice Act 1982 (c 48); section 4 of, and paragraph 45(11) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c 11); and section 168 of, and paragraph 9 of Schedule 8 and Schedule 9 to, the New Roads and Street Works Act 1991
(**c**) Section 56 was amended by section 43 of, and Schedule 1 to, the Traffic Management Act 2004 (c 18)
(**d**) Section 56A was inserted by section 44 of the Traffic Management Act 2004
(**e**) Section 58 was amended by section 51 of, and Schedule 1 to, the Traffic Management Act 2004
(**f**) Section 58A was inserted by section 52 of the Traffic Management Act 2004
(**g**) Section 73A was inserted by section 55 of the Traffic Management Act 2004
(**h**) Section 73B was inserted by section 55 of the Traffic Management Act 2004
(**i**) Section 73C was inserted by section 55 of the Traffic Management Act 2004
(**j**) Section 78A was inserted by section 57 of the Traffic Management Act 2004
(**k**) Schedule 3A was inserted by section 52(2) of, Schedule 4 to, the Traffic Management Act 2004
(**l**) Sections 54, 55, 57, 60, 68 and 69 were amended by sections 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004
(**m**) As also amended by section 49(1) of the Traffic Management Act 2004
(**n**) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004
(**o**) As also amended by section 52(3) of the Traffic Management Act 2004
(**p**) As amended by section 42 of the Traffic Management Act 2004

section 75 (inspection fees);

section 76 (liability for cost of temporary traffic regulation); and

section 77 (liability for cost of use of alternative route),

and all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to a closure, alteration, diversion or restriction (as the case may be) required in a case of emergency.

Power to alter layout, etc., of streets

12.—(1) The undertaker may for the purposes of the authorised development permanently or temporarily alter the layout of or carry out any works in the street specified in column (1) of Part 1 or 2 of Schedule 4 (streets subject to alteration of layout) in the manner specified in relation to that street in column (2).

(2) Without prejudice to the specific powers conferred by paragraph (1), but subject to paragraphs (3) and (4), the undertaker may, for the purposes of constructing, operating or maintaining the authorised development alter the layout of any street within the order limits and, without limiting the scope of this paragraph, the undertaker may—

(a) alter the level or increase the width of any kerb, footway, cycle track or verge;

(b) make and maintain passing places.

(3) The undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.

(4) The powers conferred by paragraph (2) must not be exercised without the consent of the street authority.

(5) If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

Temporary closure, alteration, diversion and restriction of use of streets

13.—(1) The undertaker may, during and for the purposes of carrying out the authorised development, temporarily close, alter, divert, prohibit the use of or restrict the use of any street and may for any reasonable time—

(a) divert the traffic from the street; and

(b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without prejudice to the scope of paragraph (1), the undertaker may use any street temporarily closed, altered, diverted or restricted under the powers conferred by this article and within the Order limits as a temporary working site.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary closure, alteration, diversion or restriction of a street under this article if there would otherwise be no such access.

(4) Without prejudice to the generality of paragraph (1), the undertaker may temporarily close, alter, divert or restrict the use of the streets specified in column (1) of Schedule 5 (temporary closure, alteration, diversion and restriction of the use of streets) to the extent specified in column (2) of that Schedule.

(5) The undertaker must not temporarily close, alter, divert or restrict the use of—

(a) any street specified in paragraph (4) without first consulting the street authority; and

(b) any other street without the consent of the street authority, which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.

(6) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) Where the undertaker provides a temporary diversion under paragraph (4), the new or temporary alternative route is not required to be of a higher standard than the temporarily closed, altered, diverted or restricted street specified in Schedule 5.

(8) If a street authority which receives a valid application for consent under paragraph (5) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

Permanent stopping up of streets

14.—(1) Subject to the provisions of this article, the undertaker may, in connection with the construction of the authorised development, stop up the streets specified in column (1) of Schedule 6 (permanent stopping up of streets) to the extent specified and as described in column (2) of that Schedule.

(2) Where a street has been stopped up under this article—

(a) all rights of way over or along the street so stopped up are extinguished; and

(b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the street as is bounded on both sides by land owned by the undertaker.

(3) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) This article is subject to article 38 (apparatus and rights of statutory undertakers in stopped up streets).

Access to works

15.—(1) The undertaker may, for the purposes of the authorised development—

(a) form and layout the permanent means of access, or improve existing means of access in the location specified in Part 1 of Schedule 4 (streets subject to alteration of layout);

(b) form and layout the temporary means of access in the locations specified in Part 2 of Schedule 4 (streets subject to alteration of layout); and

(c) with the approval of the relevant planning authorities after consultation with the highway authority, form and lay out such other means of access or improve the existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) If a relevant planning authority which receives an application for consent under paragraph (1) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

Use of private roads

16.—(1) The undertaker may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with, the construction or maintenance of the authorised development.

(2) The undertaker must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of such compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Agreements with street authorities

17.—(1) A street authority and the undertaker may enter into agreements with respect to—

(a) the construction of any new street including any structure carrying the street, whether or not over or under any part of the authorised development;

(b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;

(c) the maintenance of any street or the structure of any bridge or tunnel carrying a street over or under the authorised development;

(d) any closure, alteration, diversion or restriction in the use of a street authorised by this Order;

(e) the construction in the street of any of the authorised development; or

(f) any such works as the parties may agree.

(2) Such an agreement may, without prejudice to the generality of paragraph (1)—

(a) make provision for the street authority to carry out any function under this Order which relates to the street in question;

(b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and

(c) contain such terms as to payment and otherwise as the parties consider appropriate.

Traffic regulation measures

18.—(1) Subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may, in so far as may be expedient or necessary for the purposes of, in connection with, or in consequence of the construction, maintenance and operation of the authorised development—

(a) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road; and

(b) make provision as to the direction or priority of vehicular traffic on any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(2) The undertaker must not exercise the powers under paragraph (1) of this article unless it has—

(a) given not less than four weeks' notice in writing of its intention so to do to the traffic authority in whose area the road is situated; and

(b) advertised its intention in such manner as the traffic authority may specify in writing within seven days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a).

(3) Any prohibition, restriction or other provision made by the undertaker under article 13 (temporary closure, alteration, diversion and restriction of use of streets) or paragraph (1) of this article has effect as if duly made by, as the case may be—

(a) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or

(b) the local authority in whose area the road is situated as an order under section 32 (power of local authorities to provide parking places) of the 1984 Act,

and the instrument by which it is effected is deemed to be a traffic order for the purposes of Schedule 7(**a**) (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004.

(**a**) 2004 c 18 There are amendments to this Act not relevant to this Order

(4) In this article—

(a) subject to sub-paragraph (b), expressions used in this article and in the 1984 Act have the same meaning; and

(b) a "road" means a road that is a public highway maintained by and at the expense of the traffic authority.

PART 4

SUPPLEMENTARY POWERS

Powers in relation to relevant navigations or watercourses

19.—(1) Subject to Schedule 10 (protective provisions), the undertaker may, for the purpose of or in connection with the carrying out and maintenance of the authorised development, regardless of any interference with any public or private rights—

(a) temporarily alter, interfere with, occupy and use the banks, bed, foreshores, waters and walls of a relevant navigation or watercourse;

(b) remove or relocate any moorings so far as may be reasonably necessary for the purposes of carrying out and of maintaining the authorised development;

(c) temporarily moor or anchor vessels and structures;

(d) construct, place, maintain and remove temporary works and structures within the banks, bed, foreshores, waters and walls of a relevant navigation or watercourse; and

(e) interfere with the navigation of any relevant navigation or watercourse,

in such manner and to such extent as may appear to it to be necessary or convenient.

(2) Except in the case of emergency, the undertaker must use reasonable endeavours to notify the owner of any mooring affected by the proposal to exercise the powers conferred by paragraph (1)(b) before the exercise of those powers.

(3) The undertaker must pay compensation to any person entitled to compensation under the 1961 Act who suffers any loss or damage from the exercise of the powers conferred by paragraph (1)(b).

(4) Any dispute as to a person's entitlement to compensation under paragraph (3), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

(5) In this article "relevant navigation" means the part of the River Witham, known as The Haven.

Discharge of water

20.—(1) Subject to sub–paragraphs (3) and (4), the undertaker may use any watercourse, public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(**a**).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs, whose consent may be given subject to

(**a**) 1991 c 56 Section 106 was amended by sections 43(2) and 35(8)(a) and paragraph 1 of Schedule 2 to the Competition and Service (Utilities) Act 1992 (c 43) and sections 99(2), (4), (5)(a), (5)(b),(5)(c) and 36(2) of the Water Act 2003 (c 37) and section 32, Schedule 3, paragraph 16(1) of the Flood and Water Management Act 2010 (c 29)

such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld or delayed.

(4) The undertaker must not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but approval must not be unreasonably withheld or delayed; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(6) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b)(**a**) of the Environmental Permitting (England and Wales) Regulations 2016.

(7) In this article—

(a) "public sewer or drain" means a sewer or drain which belongs to Homes England, the Environment Agency, a harbour authority within the meaning of section 57 (interpretation) of the Harbours Act 1964(**b**), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(**c**) have the same meaning as in that Act.

(8) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the undertaker of a decision within 28 days of receiving an application that person will be deemed to have granted consent or given approval, as the case may be.

Authority to survey and investigate the land

21.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or enter on any land which may be affected by the authorised development and—

(a) survey or investigate the land (including any watercourses, groundwater, static water bodies or vegetation on the land);

(b) without limitation to the scope of sub-paragraph (a), make any excavations, trial holes, boreholes and other investigations in such positions on the land as the undertaker thinks fit to investigate the extent or the nature of the surface layer, subsoil, ground water, underground structures, foundations, and plant or apparatus and remove soil and water samples and discharge water from sampling operations on to the land;

(c) without limitation to the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land, including making any excavations or trial holes on the land for such purposes; and

(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes and boreholes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

(a) must, if so required before or after entering the land, produce written evidence of their authority to do so; and

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(**a**) S I 2016/1154
(**b**) 1964 c 40
(**c**) 1991 c 57

(b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes are to be made under this article—

(a) in land located within the highway boundary without the consent of the highway authority; or

(b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld or delayed.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1(**a**) (determination of questions of disputed compensation) of the 1961 Act.

(6) If either a highway authority or street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—

(a) under paragraph (4)(a) in the case of a highway authority; or

(b) under paragraph (4)(b) in the case of a street authority,

that authority will be deemed to have granted consent.

(7) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

Protective work to buildings

22.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building or structure lying within the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

(a) at any time before or during the construction of any part of the authorised development in the vicinity of the building or structure; or

(b) after the completion of that part of the authorised development in the vicinity of the building or structure at any time up to the end of the period of 5 years beginning with the date of final commissioning.

(3) For the purpose of determining how the powers under this article are to be exercised the undertaker may enter and survey any building or structure falling within paragraph (1) and any land within its curtilage and place on, leave on and remove from the land and building any apparatus and equipment for use in connection with the survey.

(4) For the purpose of carrying out protective works under this article to a building or structure the undertaker may (subject to paragraphs (5) and (6))—

(a) enter the building or structure and any land within its curtilage; and

(b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building or structure but outside its curtilage, enter the adjacent land (but not any building erected on it) within the Order limits,

and if it is reasonably required, the undertaker may take possession, or exclusive possession, of the building and any land or part thereof for the purpose of carrying out the protective works.

(5) Before exercising—

(**a**) The functions of the Lands Tribunal under the 1961 Act are transferred to the Upper Tribunal under the Tribunals, Courts and Enforcement Act 2007 (c 15)

(a) a power under paragraph (1) to carry out protective works under this article to a building or structure;

(b) a power under paragraph (3) to enter a building or structure and land within its curtilage;

(c) a power under paragraph (4)(a) to enter a building or structure and land within its curtilage; or

(d) a power under paragraph (4)(b) to enter and take possession of land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building, structure or land not less than 14 days' notice of its intention to exercise that power and, in a case falling within sub-paragraph (a), (c) or (d) specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), 5(b) (5)(c) or (5)(d), the owner or occupier of the building, structure or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question of whether it is necessary or expedient to carry out the protective works or to enter the building, structure or land to be referred to arbitration under article 51 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building, structure or land in relation to which powers under this article have been exercised for any loss or damage arising to them by reason of the exercise of those powers.

(8) Where—

(a) protective works are carried out to a building or structure under this article; and

(b) within 5 years beginning with the date of final commissioning for that part of the authorised development in the vicinity of the building or structure it appears that the protective works are inadequate to protect the building or structure against damage caused by the construction, on operation or maintenance of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building or structure for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 10(2) (further provision as to compensation for injurious affection) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) must be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(11) In this article "protective works" in relation to a building means—

(a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building or structure by the construction, operation or maintenance of the authorised development; and

(b) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, operation or maintenance of the authorised development; and

(c) any works the purpose of which is to secure the safe operation of the authorised development or to prevent or minimise the risk of such operation being disrupted.

(12) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article, to the same extent as it applies to the compulsory acquisition of land under this order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

Felling or lopping of trees

23.—(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

(a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or

(b) from constituting a danger to persons using the authorised development; or

(c) from obstructing or interfering with the passage of construction vehicles to the extent necessary for the purposes of construction of the authorised development.

(2) In carrying out any activity authorised by paragraph (1) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Removal of human remains

24.—(1) In this article "the specified land" means the land within the Order limits.

(2) Before the undertaker carries out any development or works within the Order limits which will or may disturb any human remains in the specified land it must remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.

(3) Subject to paragraph (14), before any such remains are removed from the specified land the undertaker must give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—

(a) publishing a notice once in each of two successive weeks in a newspaper circulating in the relevant area of the authorised project; and

(b) displaying a notice in a conspicuous place on or near to the specified land.

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker must send a copy of the notice to the local authority.

(5) At any time within 56 days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

(6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—

(a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or

(b) removed to, and cremated in, any crematorium,

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

(7) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(8) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.

(9) If—

(a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or

(b) such notice is given and no application is made under paragraph (8) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or

(c) within 56 days after any order is made by the county court under paragraph (8) any person, other than the undertaker, specified in the order fails to remove the remains; or

(d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (10) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be reinterred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains in accordance with the terms of this article, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(11) On the re-interment or cremation of any remains under this article—

(a) a certificate of re-interment or cremation is to be sent by the undertaker to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and

(b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) is to be sent by the undertaker to the local authority mentioned in paragraph (4).

(12) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State for Justice.

(13) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(14) No notice is required under paragraph (3) before the removal of any human remains where the undertaker is satisfied—

(a) that the remains were interred more than 100 years ago; and

(b) that no relative or personal representative of the deceased is likely to object to the remains being removed in accordance with this article.

(15) In the case of remains in relation to which paragraph (14) applies, the undertaker—

(a) may remove the remains; and

(b) must apply for direction from the Secretary of State under paragraph (12) as to their subsequent treatment.

(16) In this article—

(a) references to a relative of the deceased are to a person who is a—

(i) husband, wife, civil partner, parent, grandparent, child or grandchild of the deceased; or

(ii) child of a brother, sister, uncle or aunt of the deceased;

(b) references to a personal representative of the deceased are to a person or persons who is the lawful executor of the estate of the deceased or is the lawful administrator of the estate of the deceased.

PART 5

POWERS OF ACQUISITION AND POSSESSION OF LAND

Compulsory acquisition of land

25.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate it, or as is incidental to it.

(2) This article is subject to paragraph (2) of article 28 (compulsory acquisition of rights and imposition of restrictive covenants), article 27 (time limit for exercise of authority to acquire land compulsorily) and paragraph (9) of article 35 (temporary use of land for carrying out the authorised development).

Compulsory acquisition of land – incorporation of the mineral code

26. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981(**a**) is incorporated in this order subject to the modification that for "the acquiring authority" substitute "the undertaker".

Time limit for exercise of authority to acquire land compulsorily

27.—(1) After the end of the period of five years beginning on the day on which this Order comes into force—

(a) no notice to treat may be served under Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act; and

(b) no declaration may be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 31 (application of the 1981 Act).

(2) The authority conferred by article 35 (temporary use of land for carrying out the authorise development) must cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights and imposition of restrictive covenants

28.—(1) Subject to paragraph (2) the undertaker may acquire compulsorily such rights over the Order land or impose such restrictive covenants affecting the Order land as may be required for any purpose for which that land may be acquired under article 25 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of the table in Schedule 7 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of existing rights and the benefit of restrictive covenants over land and the creation and acquisition of such new rights and the imposition of such new restrictive covenants as are specified in column (2) of the table in that Schedule.

(3) Subject to section 8 (other provisions as to divided land) and schedule 2A (counter-notice requiring purchase of land not in notice to treat) of the 1965 Act (as substituted by paragraph 5(8) of Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictive covenants)), where the undertaker creates or acquires a right over land or the benefit of a restrictive covenant, under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictive covenants) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in

(**a**) 1981 c 67

relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(5) In any case where the acquisition of new rights or the imposition of restrictive covenants under paragraph (1) or (2) is required for the purposes of diverting, replacing or protecting the apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to create and acquire such rights or impose such restrictive covenants to the statutory undertaker in question.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(7) Subject to the modifications set out in Schedule 8 the enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply in the case of a compulsory acquisition under this Order in respect of a right by the creation of a new right or imposition of a restrictive covenant as they apply to the compulsory purchase of land and interests in land.

Private rights

29.—(1) Subject to the provisions of this article, all private rights and restrictive covenants over land subject to compulsory acquisition under this Order are extinguished—

(a) as from the date of acquisition of the land by the undertaker whether compulsorily or by agreement; or

(b) on the date of entry on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act,

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights and restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or burden of the restrictive covenant—

(a) as from the date of acquisition of the right or benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement; or

(b) on the date of entry onto the land by the undertaker under section 11(1) (powers of entry) of the 1965 Act in pursuance of the right,

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights over land owned by the undertaker that are within the Order limits are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights.

(4) Subject to the provisions of this article, all private rights or restrictive covenants over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right or the imposition of a restrictive covenant under this Order is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) This article does not apply in relation to any right or apparatus to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 37 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) have effect subject to—

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the land or the acquisition or creation of rights over land or the imposition of restrictive covenants over or affecting the land;

(ii) the undertaker's appropriation of it;

(iii) the undertaker's entry onto it; or

(iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs do not apply to any right specified in the notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right or restriction in question is vested or belongs.

(8) If any such agreement as is referred to in paragraph (7)(b)—

(a) is made with a person in or to whom the right is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land include any right of way, trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support; and include restrictions as to the use of land arising by virtue of a contract, agreement or undertaking having that effect.

Power to override easements and other rights

30.—(1) Any authorised activity which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title from the undertaker or by any contractors, servants or agents of the undertaker) is authorised by this Order if it is done in accordance with the terms of this Order, notwithstanding that it involves—

(a) an interference with an interest or right to which this article applies; or

(b) a breach of a restriction as to the user of land arising by virtue of a contract.

(2) In this article "authorised activity" means—

(a) the erection, construction or maintenance of any part of the authorised development;

(b) the exercise of any power authorised by this Order; or

(c) the use of any land within the Order limits (including the temporary use of land).

(3) The interests and rights to which this article applies include any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by the virtue of a contract.

(4) Subject to article 53 (no double recovery), where an interest, right or restriction is overridden by paragraph (1), unless otherwise agreed, compensation—

(a) is payable under section 7 (measure of compensation in case of severance) or 10 (further provision as to compensation for injurious affection) of the 1965 Act; and

(b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—

(i) the compensation is to be estimated in connection with a purchase under that Act; or

(ii) the injury arises from the execution of works on or use of land acquired under that Act.

(5) Where a person deriving title under the undertaker by whom the land in question was acquired—

(a) is liable to pay compensation by virtue of paragraph (4); and

(b) fails to discharge that liability,

the liability is enforceable against the undertaker.

(6) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1) of this article.

Application of the 1981 Act

31.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of Act) for subsection (2) substitute—

> "(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.".

(4) In section 5(2) (earliest date for execution of declaration), omit the words from ", and this subsection" to the end.

(5) Omit section 5A(**a**) (time limit for general vesting declaration).

(6) In section 5B(**b**) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A" substitute "section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the five year period mentioned in article 27 (time limit for exercise of authority to acquire land compulsorily) of the Boston Alternative Energy Facility Order 202[ ]".

(7) In section 6 (notices after execution of declaration), in subsection (1)(b) for "section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981" substitute "section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008".

(8) In section 7 (constructive notice to treat), in subsection (1)(a), omit the words "(as modified by section 4 of the Acquisition of Land Act 1981)".

(9) In Schedule A1(**c**)(counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—

> "(2) But see article 33 (acquisition of subsoil or air-space only) of the Boston Alternative Energy Facility Order 202[ ], which excludes the acquisition of subsoil only from this Schedule.".

(10) References to the 1965 Act in the 1981 Act must be construed as references to that Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (as modified by article 32 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

Modification of Part 1 of the 1965 Act

32.—(1) Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1)(**d**) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4" substitute "section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 27 (time limit for exercise of authority to acquire land compulsorily) of the Boston Alternative Energy Facility Order 202[ ]".

(3) In section 11A(**e**) (powers of entry: further notices of entry)—

(a) in subsection (1)(a) after "land" insert "under that provision"; and

(b) in subsection (2) after "land" insert "under that provision".

(**a**) Inserted by section 182(2) of the Housing and Planning Act 2016 (c 22)
(**b**) Inserted by section 202(2) of the Housing and Planning Act 2016 (c 22)
(**c**) Inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016 (c 22)
(**d**) Inserted by section 202(1) of the Housing and Planning Act 2016 (c 22)
(**e**) Inserted by section 186(3) of the Housing and Planning Act 2016 (c 22)

(4) In section 22(2) (interests omitted from purchase), for "section 4 of this Act" substitute "article 27 (time limit for exercise of authority to acquire land compulsorily) of the Boston Alternative Energy Facility Order 202[ ]".

(5) In Schedule 2A(**a**) (counter-notice requiring purchase of land not in notice to treat)—

(a) for paragraphs 1(2) and 14(2) substitute—

"(2) But see article 33(3) (acquisition of subsoil or air-space only) of the Boston Alternative Energy Facility Order 202[ ], which excludes the acquisition of subsoil only from this Schedule."; and

(b) after paragraph 29 insert—

"PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 22 (protective work to buildings) or article 35 (temporary use of land for carrying out the authorised development) or article 36 (temporary use of land for maintaining the authorised development) of the Boston Alternative Energy Facility Order 202[ ].".

Acquisition of subsoil or air-space only

33.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or air-space over the land referred to in paragraph (1) of article 25 (compulsory acquisition of land) and paragraphs (1) and (2) of article 28 (compulsory acquisition of rights and imposition of restrictive covenants) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of or air-space over land under paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil only—

(a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;

(b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and

(c) section 153(4A) (reference of objection to Upper Tribunal: general) of the 1990 Act.

(4) Paragraphs (2) and (3) do not apply where the undertaker acquires a cellar, vault, arch, or other construction forming part of a house, building or manufactory.

Rights under or over streets

34.—(1) The undertaker may enter upon, appropriate and use so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised development or for any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) is not to apply in relation to—

(**a**) Inserted by Schedule 17(1) paragraph 3 to the Housing and Planning Act 2016 (c 22)

(a) any subway or underground building; or

(b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is to be entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised development

35.—(1) The undertaker may, in connection with the construction of the authorised development—

(a) enter on and take temporary possession of—

(i) the land specified in column (1) of the table in Schedule 9 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of the table in that Schedule;

(ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act and no declaration has been made under section 4 (execution of declaration) of the 1981 Act (other than a notice of entry or a declaration in connection with the acquisition of rights and/or the imposition of restrictive covenants only);

(b) remove any buildings, apparatus, fences, landscaping, debris and vegetation from that land;

(c) construct temporary works (including the provision of means of access) and buildings on that land; and

(d) construct any works on that land as are mentioned in Schedule 1 (authorised development).

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker is not required to serve notice under paragraph (2) where the undertaker has identified a potential risk to the safety of—

(a) the authorised development or any of its parts;

(b) the public; and/or

(c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practical in the circumstances.

(4) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

(a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of final commissioning of the authorised development; or

(b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of final commissioning of the authorised development unless the undertaker has, before the end of that period, served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or has otherwise acquired the land subject to temporary possession.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land unless otherwise agreed but the undertaker is not required to—

(a) replace a building removed under this article;

(b) restore the land on which any permanent works have been constructed under paragraph (1)(d);

(c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development; or

(d) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Any dispute as to the satisfactory removal of temporary works and restoration of land under paragraph (5) does not prevent the undertaker giving up possession of the land.

(9) Subject to article 53 (no double recovery) nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(10) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not precluded from acquiring—

(a) rights or imposing restrictions over any part of that land under article 28 (compulsory acquisition of rights and imposition of restrictive covenants); and

(b) any part of the subsoil of or airspace over (or rights in the subsoil of or airspace over) under article 33 (acquisition of subsoil or air-space only) or article 34 (rights under or over streets).

(11) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire the land or any interest in it.

(12) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(13) Nothing in this article prevents the taking of temporary possession more than once in relation to any land under paragraph (1).

Temporary use of land for maintaining the authorised development

36.—(1) Subject to paragraph (2), at any time during the maintenance period (as defined in paragraph (11)) relating to any part of the authorised development, the undertaker may—

(a) enter on and take temporary possession of any land within the Order limits if possession is reasonably required for the purpose of maintaining the authorised development;

(b) enter on any land within the Order limits for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and

(c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

(a) any house or garden belonging to a house; or

(b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker is not required to serve notice under paragraph (3) where the undertaker has identified a potential risk to the safety of—

(a) the authorised development or any of its parts;

(b) the public; and/or

(c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practical in the circumstances.

(5) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(6) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(7) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(8) Any dispute as to a person's entitlement to compensation under paragraph (7), or as to the amount of the compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(9) Nothing in this article affects any liability to pay compensation under section 10(2) (further provisions as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (7).

(10) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire the land or any interest in it.

(11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(12) In this article "the maintenance period" means the period of 5 years beginning with the date of final commissioning.

Statutory undertakers

37.—(1) Subject to the provisions of article 28(2) (compulsory acquisition of rights and imposition of restrictive covenants) and Schedule 10 (protective provisions), the undertaker may—

(a) exercise the powers conferred by article 25 (compulsory acquisition of land) and article 28 (compulsory acquisition of rights and imposition of restrictive covenants) in relation to so much of the Order land belonging to statutory undertakers;

(b) extinguish or suspend the rights of or restrictive covenants for the benefit of, and remove or reposition the apparatus belonging to, statutory undertakers on, under, over or within the Order land.

(2) Paragraph (1)(b) has no effect in relation to apparatus in respect of which article 38 (apparatus and rights of statutory undertakers in stopped up streets) of this Order applies.

Apparatus and rights of statutory undertakers in stopped up streets

38.—(1) Where a street is stopped up under article 14 (permanent stopping up of streets), any statutory undertaker whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 13 (temporary prohibition or restriction of use of streets) any statutory utility whose apparatus is under, in, on over, along or across the street may, and if reasonably requested to do so by the undertaker must—

(a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or

(b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

(a) the execution of the relocation works required in consequence of the stopping up of the street; and

(b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under paragraph (2)—

(a) apparatus of a better type, or greater capacity or of greater dimensions is placed in substitution for existing apparatus; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) is to be reduced by the amount of that excess.

(5) For the purposes of paragraph (4)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

(a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and

(b) the allowable costs are to be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

"relocation works" means work executed, or apparatus provided, under paragraph (2); and

"statutory utility" means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in this section 151(1) (interpretation) of the Communications Act 2003(**a**).

Recovery of costs of new connections

39.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 37 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 37 (statutory undertakers) any person who is—

(a) the owner or occupier of premises the drains of which communicated with the sewer; or

(b) the owner of a private sewer which communicated with that sewer,

is to be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 38 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this article—

"public communications provider" has the same meaning as in section 151(1) of the Communications Act 2003(**b**); and

"public utility undertaker" has the same meaning as in the 1980 Act.

Disregard of certain improvements, etc.

40.—(1) In assessing the compensation payable to any person on the acquisition from that person of any land or right over any land under this Order, the tribunal must not take into account—

(a) any interest in land; or

(b) any enhancement of the value of any interest in land by reason of any building erected, works carried out or improvement or alteration made on the relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the carrying out of the works or the making of the improvement or alteration as part of the authorised development was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) "relevant land" means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works constructed or the improvement or alteration made as part of the authorised development, directly or indirectly concerned.

(**a**) 2003 c 21
(**b**) 2003 c 21

Set-off for enhancement in value of retained land

41.—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to that person by reason of the construction of the authorised development.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 28 (compulsory acquisition of rights and imposition of restrictive covenants), the tribunal must set off against the value of the rights so acquired—

(a) any increase in the value of the land over which the new rights are required; and

(b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to that person by reason of the construction of the authorised development.

(3) The 1961 Act has effect, subject to paragraphs (1) and (2) as if this Order were a local enactment for the purposes of that Act.

PART 6

MISCELLANEOUS AND GENERAL

Disapplication of legislative provisions, etc.

42.—(1) The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction or maintenance of the authorised development—

(a) sections 23 (prohibition of obstructions, etc. in watercourses), 30 (authorisation of drainage works in connection with a ditch) and 32 (variation of awards) of the Land Drainage Act 1991(**a**);

(b) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991; and

(c) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(**b**) in respect of a flood risk activity only.

(2) The provisions of the Neighbourhood Planning Act 2017(**c**), insofar as they relate to temporary possession of land under this Order, do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction of the authorised development and, within the maintenance period defined in article 36(12) (temporary use of land for maintaining the authorised development) of this Order, any maintenance of any part of the authorised development.

(3) Section 25 of the Burial Act 1857(**d**) (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) does not apply to a removal carried out in accordance with article 24 (removal of human remains) of this Order.

(4) Despite the provisions of section 208 (liability) of the 2008 Act, for the purposes of regulation 6 of the Community Infrastructure Levy Regulations 2010(**e**) any building comprised in the authorised development is deemed to be—

(a) a building into which people do not normally go; or

(**a**) 1991 c 59
(**b**) S I 2016/1154
(**c**) 2017 c 20
(**d**) 1857 c 81
(**e**) S I 2010/948, amended by S I 2011/987; there are other amending instruments but none are relevant to this Order

(b) a building into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery.

Amendment of local legislation

43.—(1) The following local enactments and local byelaws, and any byelaws or other provisions made under any of those enactments or byelaws, are hereby excluded and do not apply insofar as inconsistent with a provision, of or a power conferred by, this Order—

(a) Boston Port and Harbour Act 1812(**a**);

(b) Witham Navigation and Drainage Act 1812(**b**);

(c) River Witham Outfall Improvement Act 1880(**c**);

(d) Boston Dock Act 1881(**d**);

(e) Land Drainage (Black Sluice) Provisional Order Confirmation Act 1925(**e**);

(f) The Boston Barrier Order 2017(**f**);

(g) Boston Dock Byelaws 1947; and

(h) Black Sluice Internal Drainage Board Complete Land Drainage Byelaws 1988.

(2) For the purpose of paragraph (1) a provision is inconsistent with the exercise of a power conferred by this Order if and insofar as (in particular)—

(a) it would make it an offence to take action, or not to take action, in pursuance of a power conferred by this Order;

(b) action taken in pursuance of a power conferred by this Order would cause the provision to apply so as to enable a person to require the taking of remedial or other action or so as to enable remedial or other action to be taken; or

(c) action taken in pursuance of a power or duty under the provisions would or might interfere with the exercise of any work authorised by this Order.

(3) Where any person notifies the undertaker in writing that anything done or proposed to be done by the undertaker or by virtue of this Order would amount to a contravention of a statutory provision of local application, the undertaker must as soon as reasonably practicable, and at any rate within 14 days of receipt of the notice, respond in writing setting out—

(a) whether the undertaker agrees that the action taken or proposed does or would contravene the provision of local application;

(b) if the undertaker does agree, the grounds (if any) on which the undertaker believes that the provision is excluded by this article; and

(c) the extent of that exclusion.

Planning permission, etc.

44.—(1) If planning permission is granted under the powers conferred by the 1990 Act for development any part of which is within the Order limits following the coming into force of this Order that is—

(a) not itself a nationally significant infrastructure project under the 2008 Act or part of such a project; or

(b) required to complete or enable the use or operation of any part of the development authorised by this Order,

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(**a**) 1812 c 105
(**b**) 1812 c 108
(**c**) 1880 c cliii
(**d**) 1881 c cxii
(**e**) 1925 c lxxi
(**f**) S I 2017/1329

then the construction, maintenance, use or operation of that development under the terms of the planning permission does not constitute a breach of the terms of this Order.

(2) Development consent granted by this Order is to be deemed as specific planning permission for the purposes of section 264(3) (cases in which land is to be treated as operational land for the purposes of that Act) of the 1990 Act.

(3) Development consent granted by this Order is to be treated as planning permission in accordance with Part 3 (control over development) of the 1990 Act for the purposes of Regulation 14 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012(**a**) and the Forestry Act 1967(**b**).

Application of landlord and tenant law

45.—(1) This article applies to—

(a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and

(b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) No enactment or rule of law to which sub–paragraph (2) applies is to apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

(a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

(b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or

(c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Defence to proceedings in respect of statutory nuisance

46.—(1) Where proceedings are brought under section 82(1) (summary proceedings by persons aggrieved by statutory nuisances) of the Environmental Protection Act 1990(**c**) in relation to a nuisance falling within paragraphs (c), (d), (e), (fb), (g) or (h) of section 79(1) (statutory nuisances and inspections therefor) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

(a) the defendant shows that the nuisance—

(i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the construction of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974(**d**); or

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(**a**) S I 2012/605
(**b**) 1967 c 10
(**c**) 1990 c 43 Section 82 was amended by section 103 of the Clean Neighbourhoods and Environment Act 2005 (c 16); section 79 was amended by sections 101 and 102 of the same Act There are other amendments not relevant to this Order
(**d**) 1974 c 40

(ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or

(b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) For the purposes of paragraph (1), compliance with the controls and measures described in the Code of Construction Practice approved under paragraph 10 of Schedule 2 to this Order will be sufficient, but not necessary, to show that an alleged nuisance could not reasonably be avoided.

(3) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Protective provisions

47. Schedule 10 (protective provisions) to the Order has effect.

Deemed marine licence

48. The marine licence set out in Schedule 11 (deemed marine licence) is deemed to have been issued under Part 4 of the 2009 Act for the licensed activities set out in Part 1, and subject to the licence conditions set out in Part 2, of that licence.

Certification of documents, etc.

49.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all documents and plans referred to in Schedule 12 (documents and plans to be certified) to this Order for certification that they are true copies of those documents.

(2) Where any plan or document set out in Schedule 12 requires to be amended to reflect the terms of the Secretary of State's decision to make the Order, that plan or document in the form amended to the Secretary of State's satisfaction is the version of the plan or document required to be certified under paragraph (1).

(3) A plan or document so certified is to be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

50.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

(a) by post;

(b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or

(c) with the consent of the recipient and subject to paragraphs (7) to (9), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(**a**) as it applies for the purposes of this article, the proper address of any person in relation to the

(**a**) 1978 c 30

service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address and otherwise—

(a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body, and,

(b) in any other case, the last known address of that person at that time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

(a) addressing it to that person by the description of "owner", or as the case may be "occupier" of the land (describing it); and

(b) either leaving it in the hands of the person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

(a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;

(b) the notice or document is capable of being accessed by the recipient;

(c) the notice or document is legible in all material respects; and

(d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of an electronic transmission by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

(a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

(b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than seven days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

(10) In this article "legible in all material respects" means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Arbitration

51. Except where otherwise expressly provided for in this Order and unless otherwise agreed in writing between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

Procedures in relation to approvals, etc., under Schedule 2

52.—(1) Where an application or request is submitted to the relevant planning authority, a highway authority, a street authority or the owner of a watercourse, sewer or drain for any consent,

agreement or approval required or contemplated by any other the provisions of the Order such consent, agreement or approval, if given, must be given in writing, such agreement not to be unreasonably withheld.

(2) Part 2 of Schedule 2 (procedure for discharge of requirements) has effect in relation to all consents, agreements or approvals granted, refused or withed in relation to the requirements set out in Part 1 of Schedule 2, and any document referred to in any requirement in that Part 1.

(3) The procedure set out in Part 2 of Schedule 2 has effect in relation to any other consent, agreement or approval required under this Order where such consent, agreement or approval is granted subject to any condition to which the undertaker objects or is refused or is withheld.

No double recovery

53. Compensation is not payable in respect of the same matter both under this Order and under any enactment, any contract or any rule of law.

Guarantees in respect of payment of compensation

54.—(1) The undertaker must not begin to exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any Order land unless it has first put in place either—

(a) a guarantee and the amount of that guarantee approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2); or

(b) an alternative form of security and the amount of that security approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2).

(2) The provisions are—

(a) article 25 (compulsory acquisition of land);

(b) article 28 (compulsory acquisition of rights and imposition of restrictive covenants);

(c) article 29 (private rights);

(d) article 34 (rights under or over streets);

(e) article 35 (temporary use of land for carrying out the authorised development);

(f) article 36 (temporary use of land for maintaining the authorised development); and

(g) article 37 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2) is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

Signed by the authority of the Secretary of State for Business, Energy and Industrial Strategy

Name
Head of Energy Infrastructure Planning
Date Department for Business, Energy and Industrial Strategy

SCHEDULES

SCHEDULE 1 Article 3

AUTHORISED DEVELOPMENT

A nationally significant infrastructure project as defined in section 14(1)(a) (nationally significant infrastructure projects: general) and section 15 (generating stations) of the 2008 Act being a generating station with a capacity of over 50 megawatts but below 300 megawatts and associated development under sections 115(1) and (2) (development for which development consent may be granted) of the 2008 Act comprising all or part of—

In the Borough of Boston, Lincolnshire

Work No 1 — Works to construct a power generation facility—

(a) **Work No. 1A** — an energy recovery facility with a capacity to process up to 1,200,000 tonnes of waste refuse derived fuel per calendar year including—

(i) fuel reception and storage facilities consisting of a bale shredding facility, solid fuel storage bunker, cranes and handling equipment;

(ii) up to three waste processing lines, each line including a feed hopper, ram feed, air cooled moving grates, a boiler and steam systems, combustion air systems and flue gas treatment facilities including air pollution control residues and reagent storage silos and tanks;

(iii) associated induced fans and emissions control monitoring systems per line;

(iv) one emission stack per line;

(v) a dedicated steam turbine connected to each line;

(vi) an integrated protection system and uninterruptable power supplies;

(vii) an air cooled condenser array;

(viii) connection from exhaust stacks from lines one and three to Work No. 1C for capture of carbon dioxide and return connection for waste exhaust gases; and

(ix) conveyors to transfer bottom ash and boiler ash to ash processing facility (Work No. 1B).

(b) **Work No. 1B** — an ash processing building with a capacity to process up to 200,000 tonnes of bottom ash and boiler ash per calendar year including—

(i) ash storage facilities to receive ash from Work No. 1A;

(ii) ash processing facilities to prepare ash for transfer to the lightweight aggregates facility (Work No. 2);

(iii) ferrous magnet system and storage for separated ferrous material;

(iv) solar photovoltaic panels on all or part of Work No.1B building roof including switchgear, inverters, transformers and permanent equipment for maintenance to deliver power to the authorised development; and

(v) conveyor system for transfer of processed ash and air pollution control residues to Work No. 2.

(c) **Work No. 1C** — two carbon dioxide processing units, consisting of a carbon dioxide processing unit, storage tanks, vehicle connection points; return connection to stack for lines one and three.

Work No. 2 — Works to construct a lightweight aggregate manufacturing facility with a capacity to process up to 300,000 tonnes of aggregate per calendar year including—

(a) storage silo facilities for lightweight aggregate processing lines;

(b) four processing lines; each line including a feed hopper, mixer units, trefoil kiln, and flue gas treatment facilities including air pollution control residues and reagent storage silos and tanks;

(c) associated induced fans and emissions control monitoring systems per line;

(d) two filter banks and two emission stacks;

(e) storage silos for storing manufactured lightweight aggregate pellets; and

(f) sealed storage pits, drainage and sump facilities for storing up to 190,000 tonnes of imported clay per calendar year, and up to 10,000 tonnes of sediment dredged from The Haven during maintenance dredging activities per calendar year for use in the lightweight aggregates manufacturing process.

Work No. 3 — Works to construct an electrical substation including on-site below ground trenches, ducting and jointing pits; and above ground structures including switchgear, and transformer, busbar sections, integrated protection scheme and uninterruptable power supplies; connection from power generation turbine facility (Work No 1A); and connection to 132kV pylon for export of power from the facility; and incoming connection point from the grid.

Work No. 4 — Works to construct a wharf facility with a capacity to receive up to 1,200,000 tonnes of waste refuse derived fuel and imported clay and sediment, and export up to 300,000 tonnes lightweight aggregates per calendar year including—

(a) 400m long wharf structure forming 7.2m A.O.D. flood defence line containing up to three berthing points and scour protection;

(b) cranes and refuse derived fuel bale handling equipment;

(c) two conveyor lines (both partially open for loading, then covered sections) to transfer waste refuse derived fuel bales to Works No. 1A, including thermal cameras;

(d) wharf ramp structure;

(e) bale contingency storage area;

(f) re-baling facility;

(g) bale quarantine area;

(h) conveyor and handling equipment for loading ships with manufactured aggregate;

(i) shore to ship power facility; and

(j) storage areas for mobile plant Equipment, including mobile cranes and forklift trucks.

Work No. 5 — Works to construct or install supporting buildings and facilities, including—

(a) diesel storage tanks;

(b) a process effluent storage tank;

(c) a demineralised water treatment plant;

(d) fire water tank(s), pump room(s) and fire protection facilities;

(e) control rooms;

(f) administration block(s) including welfare facilities;

(g) distributed control system;

(h) workshop(s) and associated stores;

(i) machinery storage facilities;

(j) security gatehouses and barriers;

(k) weighbridges;

(l) a heavy goods vehicle holding area;

(m) storage for on-site mobile equipment

(n) an external fuel container storage area;

(o) visitor centre;

(p) 11kv transformers to distribute power from Work No. 3; and

(q) emergency stand-by generator(s).

Work No. 6 — Works to construct and install supporting infrastructure, including—

(a) pipework (including flow/return pipework), cables, telecommunications, other services and associated infrastructure;

(b) site drainage, waste management, water, wastewater, other services and associated infrastructure;

(c) new or alteration to accesses, a vehicular access road and internal vehicular access road, vehicle turning, waiting and parking areas and site pedestrian access routes;

(d) a footbridge spanning along the Roman Bank to allow safe pedestrian passage over certain site roads; and

(e) operational vehicle parking.

Work No. 7 — Works to construct temporary construction compounds including—

(a) hard standing;

(b) vehicle parking;

(c) office accommodation block(s) and welfare facilities;

(d) new or alteration to accesses;

(e) concrete batching plant, generators, aggregates storage area and temporary aggregates conveyor from the wharf to the concrete batching plant; and

(f) construction areas.

In connection with and in addition to Work Nos. 1, 2, 3, 4, 5, 6 and 7 to the extent that it does not otherwise form part of those Work Nos., further associated development within the Order limits including—

(a) lighting infrastructure, including perimeter lighting columns;

(b) fencing, boundary treatment and other means of enclosure;

(c) signage;

(d) CCTV and other security apparatus;

(e) surface and foul water drainage facilities;

(f) potable water supply;

(g) new telecommunications and utilities apparatus and connections;

(h) hard and soft landscaping;

(i) biodiversity enhancement measures and environmental mitigation measures;

(j) works permanently to alter the position of existing telecommunications and utilities apparatus and connections;

(k) works for the protection of buildings and land; and

(l) site establishment and preparation works, including site clearance (including temporary fencing and vegetation removal), earthworks (including soil stripping and storage and site levelling) and excavations, the creation of temporary construction access points and the temporary alteration of the position of services and utilities apparatus and connections,

and such other buildings, structures, works or operations, and modifications to, or demolition of, any existing buildings, structures or works as may be necessary or expedient for the purposes of or in connection with the construction, operation and maintenance of the works in this Schedule 1, but only within the Order limits and insofar as they are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

SCHEDULE 2

Article 3

REQUIREMENTS

PART 1

REQUIREMENTS

Interpretation

1.—(1) In this Schedule—

"biodiversity units" means the product of the size of an area, and the distinctiveness and condition of the habitat it comprises to provide a measure of ecological value (as assessed using the Defra biodiversity off–setting metric);

"biodiversity off-setting scheme" means a scheme which will deliver biodiversity enhancements which must not be less than the off–setting value;

"Defra biodiversity off–setting metric" means the mechanism published by the Department for Environment, Food and Rural Affairs to quantify impacts on biodiversity, which allows biodiversity losses and gains affecting different habitats to be compared and ensures offsets are sufficient to compensate for residual losses of biodiversity; and

"off-setting value" means the net biodiversity impact of the authorised development, calculated using the Defra biodiversity off–setting metric, measured in biodiversity units.

(2) References in this Schedule to part of the authorised development are to be construed as references to stages, phases or elements of the authorised development in respect of which an application is made by the undertaker under this Schedule, and references to commencement of part of the authorised development in this Schedule are to be construed accordingly.

(3) References to details or schemes approved under this Schedule are to be construed as references to details or schemes approved in relation to a specified part of the authorised development, as the case may be.

Time limits

2. The authorised development must not commence after the expiry of five years from the date on which this Order comes into force.

Detailed design approval

3.—(1) The authorised development must be designed in detail and carried out in accordance with the design principles contained in the design and access statement and the preliminary scheme design shown on the indicative generating station plans, unless otherwise agreed in writing by the relevant planning authority, provided that the relevant planning authority is satisfied that any amendments to those documents showing departures from the preliminary scheme design would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(2) Where amended details are approved by the relevant planning authority under sub-paragraph (1), those details are deemed to be substituted for the corresponding indicative generating station plans and the undertaker must make those amended details available in electronic form for inspection by members of the public.

Parameters of authorised development

4. The elements of the authorised development listed in column (1) of the table below (design parameters) must not exceed the maximum dimensions and levels set out in relation to that element in columns (3) to (5) of that table.

(1) *Element of authorised development*	*(2)* *Work No.*	*(3)* *Maximum length (metres)*	*(4)* *Maximum width (metres)*	*(5)* *Maximum height (metres) from ground level unless stated*
Main energy recovery Facility buildings (3 No. units, dimensions per unit)	1A	105	35	45
Energy recovery stacks (3 No.)	1A(iv)	–	–	80
Turbine building	1A(v)	55	40	20
Air cooled condenser array	1A(vii)	65	45	30
Ash processing building	1B	70	30	32
Carbon dioxide recovery building	1C	30	20	15
Lightweight aggregates main building	2	75	40	45
Lightweight aggregates storage silos	2(a), 2(e)	6	6	25
Lightweight aggregates stacks (2 No.)	2(d)	–	–	80
Electrical substation	3	95	35	–
Wharf	4(a)	400	–	7.2 (AOD)
Supporting buildings and facilities (control room, visitor centre, workshops)	5	40	20	15

Landscape and ecological mitigation strategy

5.—(1) No part of the authorised development may commence until a landscape and ecological mitigation strategy for that part has been submitted to and approved by the relevant planning authority, following consultation by the undertaker with Natural England, Lincolnshire Wildlife Trust and the Royal Society for the Protection of Birds.

(2) The landscape and ecological mitigation strategy approved under sub-paragraph(1) must be substantially in accordance with—

(a) the outline biodiversity and landscape mitigation strategy as it relates to the land landward of Mean Low Water Springs; and

(b) the mitigation measures set out in chapter 17 (marine and coastal ecology) of the environmental statement as it relates to the land seaward of Mean Low Water Springs.

(3) The landscape and ecological mitigation strategy approved under sub-paragraph (1) must include details of—

(a) mitigation measures required to protect protected habitats and species, non–statutory designated sites and other habitats and species of principal importance during the construction of the authorised development;

(b) mitigation measures required to protect protected habitats and species, non–statutory designated sites and other habitats and species of principal importance during the operation of the authorised development;

(c) the results of the Defra biodiversity off-setting metric together with the off-setting value required, the nature of such off-setting and evidence that the off–setting value provides for the required biodiversity compensation, risk factors (including temporal lag) and long term management and monitoring;

(d) the site or sites on which the compensation off–setting required pursuant to (c) will be provided together with evidence demonstrating that the site or sites has/have been chosen in accordance with the prioritisation set out in the outline landscape and ecological mitigation strategy;

(e) certified copies of the completed legal agreements with the Environment Bank securing the site or sites identified in (d) and which demonstrate that the off–setting value will be paid to the Environment Bank within 10 days of approval of the landscape and ecological mitigation strategy to enable enactment of the biodiversity off-setting scheme and the biodiversity off–setting management and monitoring plan as approved in the landscape and ecological mitigation strategy; and

(f) any hard and soft landscaping to be incorporated within Work Nos. 1, 2, 3, 4, 5 and 6 including location, number, species, size of any planting and the management and maintenance regime for such landscaping.

(4) The landscape and ecological mitigation strategy must be implemented as approved under sub-paragraph (1).

Archaeology

6.—(1) No part of Work Nos. 1, 2, 3, 4, 5 and 6 may commence until for that part a written scheme of investigation, reflecting the relevant mitigation measures set out in the outline written scheme of investigation has been submitted to and approved by the relevant planning authority.

(2) Works Nos. 1, 2, 3, 4, 5 and 6 must be carried out in accordance with the scheme referred to in sub-paragraph (1), unless otherwise agreed by the relevant planning authority.

Highway access

7.—(1) No part of Work No. 7 may commence until written details of the siting, design and layout of any new temporary means of access to a highway in that part, or any alteration to an existing means of access to a highway in that part has been submitted to and approved by the relevant planning authority, following consultation by the undertaker with the relevant highway authority.

(2) The highway accesses must be constructed or altered as approved under sub-paragraph (1).

(3) The undertaker must not exercise the power in article 14(1) (permanent stopping up of streets) unless and until a plan showing the layout for the termination of the street (as specified in columns (1) and (2) of Schedule 6) has been submitted to and approved by the relevant planning authority.

Surface and foul water drainage

8.—(1) No part of the authorised development may commence until for that part a surface water drainage strategy has been submitted to and approved by the relevant planning authority, following consultation with the Environment Agency, lead local flood authority and relevant internal drainage board on matters related to their function.

(2) The strategy submitted for approval must be substantially in accordance with the information set out in the flood risk assessment.

(3) The surface water and drainage strategy must be implemented as approved under sub-paragraph (1) and maintained throughout the operation of the authorised development unless otherwise agreed with the relevant planning authority.

Ground conditions and ground stability

9.—(1) No part of the authorised development may commence until intrusive geotechnical and geo-environmental phase investigations have been carried out.

(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 undertaker a generic quantitative risk assessment as set out in chapter 11 (contaminated land, land use and hydrogeology) of the environmental statement 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.

Code of construction practice

10.—(1) No part of the authorised development may commence until a code of construction practice for that part has been submitted to and approved by the relevant planning authority.

(2) The code of construction practice submitted for approval must be substantially in accordance with the outline code of construction practice to the extent that it is applicable to that part and must reflect the mitigation measures set out in the register of environmental actions and commitments (Application Document 7.6).

(3) The code of construction practice under sub-paragraph (1) must include the following—

(a) the construction and phasing programme;

(b) liaison procedures;

(c) complaints procedures;

(d) an air quality and dust management plan detailing air quality and dust monitoring and management measures during construction;

(e) construction noise and vibration monitoring and management measures;

(f) a site waste management plan detailing sustainable site waste management measures;

(g) a soil management plan detailing measures to ensure the temporary storage of soils and other material of value will be in accordance with best practice;

(h) details of screening and fencing to be installed during construction;

(i) a materials management plan detailing measures to ensure the safe storage of excavated materials during construction;

(j) a pollution prevention and incident response plan detailing measures to prevent and control the spillage of oil, chemicals and other potenitally harmful liquids;

(k) a health and safety plan, including details of how health and safety risks are to be identified and managed during construction;

(l) a surface and foul water drainage plan including measures for the protection of surface and groundwater during construction;

(m) an artificial light emissions management plan;

(n) details of how the outcomes of the ground investigations carried out pursuant to paragraph 9 have been taken into account;

(o) measures to ensure the restoration of site following completion of construction; and

(p) appropriate procedures to address any unexploded ordnance that may be encountered.

(4) All construction works must be undertaken in accordance with the approved code of construction practice.

Construction hours

11.—(1) Construction works relating to the authorised development must not take place on Sundays, bank holidays nor otherwise outside the hours of 0800 to 2000 hours on Monday to Saturday (with the option of 0700 to 1900).—

(2) The restrictions in sub-paragraph (1) do not apply to construction works where these—

(a) are carried out within existing buildings or buildings constructed as part of the authorised development;

(b) are carried out with the prior approval of the relevant planning authority;

(c) are associated with an emergency; or

(d) are associated with slip form working.

(3) In this requirement "emergency" means a situation where, if the relevant action is not taken, there will be adverse health, safety, security or environmental consequences that in the reasonable opinion of the undertaker would outweigh the adverse effects to the public (whether individual classes or generally as the case may be) of taking that action.

Construction traffic management plan

12.—(1) No part of the authorised development may commence until a construction traffic management plan for that part has been submitted to and approved by the relevant planning authority, following consultation by the undertaker with the relevant highway authority).

(2) A construction traffic management plan must be substantially in accordance with the outline construction traffic management plan and must include the following (as applicable for the part of the authorised development to which the construction traffic management plan relates)—

(a) construction vehicle routing plans in respect of both workers and deliveries;

(b) proposals for the scheduling and timing of movements of delivery vehicles including details of abnormal indivisible loads;

(c) site access plans;

(d) where practicable, proposals for temporary diversions of any public rights of way;

(e) measures to ensure the protection of users of any footpath within the Order limits which may be affected by the construction of the authorised development;

(f) proposals for the management of junctions to and crossings of highways and other public rights of way;

(g) a construction logistics plan;

(h) a procedure for reviewing and updating the construction traffic management plan;

(i) a construction worker travel plan, including details of the likely number of worker vehicle movements and the management of workforce parking; and

(j) appropriate procedures to provide for a vehicle booking management system.

(3) The construction traffic management plan submitted pursuant to sub–paragraphs (1) amd (2) must be accompanied by a statement and associated junction appraisals (as defined in the outline construction traffic management plan) demonstrating how the likely construction traffic impacts identified in the environmental statement are addressed through the measures contained in the construction traffic management plan.

(4) The construction traffic management plan submitted pursuant to sub–paragraphs (1) and (2) that relates to Work Nos. 1, 2, 3, 4, 5, 6 and 7 must be accompanied by a pre-condition highway survey (as defined in the outline construction traffic management plan).

(5) The construction traffic management plan and any updated construction traffic management plan submitted following any review must be implemented as approved by the relevant planning authority.

Flood risk emergency plan

13.—(1) No part of the authorised development may commence until a flood risk emergency plan has been submitted to and approved by the relevant planning authority, following consultation by the undertaker with the Environment Agency, Black Sluice Internal Drainage Board and the Lead Local Flood Authority.

(2) The flood risk emergency plan must include—

(a) procedures to receive flood warnings (including communication lines to cover shift patterns and / or staff leave), and closure of or evacuation of the authorised development with sufficient lead time to ensure no personnel or vehicles are left within the Order limits during times of a flood warning; and

(b) identification of areas of emergency refuge to be located above the modelled breach flood depths.

(3) The flood risk emergency plan must be implemented as approved by the relevant planning authority.

Navigation management plan

14.—(1) No part of Work No. 4 may commence until for that part a navigation management plan has been submitted to and approved by the relevant planning authority, following consultation with the Port of Boston.

(2) The navigation management plan must include details of—

(a) the construction timelines;

(b) the potential risks to navigation;

(c) communication measures;

(d) measures for managing potential risks to marine mammals;

(e) measures for managing potential biosecurity risks; and

(f) how each stage of the construction process will be managed to ensure a minimal impact on the safety of navigation in The Haven.

(3) The navigation management plan must be implemented as approved by the relevant planning authority.

Operational lighting scheme

15.—(1) No part of Work Nos. 1, 2, 3, 4 and 5 may commence until a written scheme for the management and mitigation of operational external artificial light emissions for that part has been submitted to and approved by the relevant planning authority.

(2) The written scheme must be substantially in accordance with the outline lighting strategy.

(3) The scheme for the management and mitigation of operational external artificial light emissions must be implemented as approved under sub-paragraph (1).

Community benefits

16.—(1) No part of the authorised development may commence until a plan detailing arrangements to promote employment, skills and training development opportunities for local residents during construction and employment opportunities during operation of the authorised development has been submitted to and approved by the relevant planning authority.

(2) The approved plan must be implemented and maintained during the construction and operation of the authorised development unless otherwise agreed with the relevant planning authority.

Phasing of construction and commissioning of Work Nos. 1 and 2

17.—(1) Subject to sub–paragraph (2), no part of the authorised development may commence until a phasing programme setting out the commencement of construction and the anticipated start of commissioning and the anticipated date of final commissioning for each of Work Nos. 1 and 2 has been submitted to and approved by the relevant planning authority.

(2) The phasing programme must provide for the anticipated date of final commissioning of Work Nos. 1 and 2 as soon as reasonably practicable. The phasing programme must be implemented as approved by the relevant planning authority.

Waste hierarchy scheme

18.—(1) Prior to commissioning, the undertaker must submit to the relevant planning authority for approval a scheme, which sets out arrangements for maintenance of the waste hierarchy in priority order and which aims to minimise recyclable and reusable waste received at the authorised development during the commissioning and operational period of the authorised development (the "waste hierarchy scheme").

(2) The waste hierarchy scheme must include details of—

(a) the type of information that must be collected and retained on the sources of the residual waste after recyclable and reusable waste has been removed;

(b) the arrangements that must be put in place for ensuring that as much reusable and recyclable waste as is reasonably possible is removed from waste to be received at the authorised development, including contractual measures to encourage as much reusable and recyclable waste being removed as far as possible;

(c) the arrangements that must be put in place for ensuring that commercial suppliers of residual waste operate a written environmental management system which includes establishing a baseline for recyclable and reusable waste removed from residual waste and specific targets for improving the percentage of such removed reusable and recyclable waste;

(d) the arrangements that must be put in place for suspending and/or discontinuing supply arrangements from commercial suppliers who fail to retain or comply with any environmental management systems;

(e) the arrangements that must be put in place for the provision of an annual waste composition analysis undertaken by the undertaker, with the findings submitted to the relevant planning authority within one month of the sampling being undertaken; and

(f) the form of records that must be kept for the purpose of demonstrating compliance with (a) to (e) and the arrangements in place for allowing inspection of such records by the relevant planning authority.

(3) The waste hierarchy scheme must be implemented as approved under sub-paragraph (1).

Control of operational noise

19.—(1) Prior to commissioning of any part of Works Nos. 1, 2, 3 and 4 a written noise monitoring scheme must be submitted to and approved by the relevant planning authority, such scheme must specify—

(a) each location from which noise is to be measured;

(b) the method of noise measurement, which must be in accordance with British Standard 4142:2014 +A1:2019;

(c) the maximum permitted levels of noise at each agreed monitoring location must not exceed the defined limits to demonstrate compliance with government and local policy on noise;

(d) provision requiring the undertaker to take noise measurements as soon as possible following a reasonable request by the relevant planning authority and to submit the measurements to the relevant planning authority as soon as they are available; and

(e) a definition of the circumstances that constitute an emergency for the purposes of sub-paragraphs (2)(a), (3) and (5).

(2) The level of noise at each monitoring location must not exceed the maximum permitted level specified for that location in the scheme, except—

(a) in the case of an emergency (as defined in the noise monitoring scheme);

(b) with the prior approval of the relevant planning authority; or

(c) as a result of steam purging or the operation of emergency pressure relief valves or similar equipment of which the undertaker has given notice in accordance with sub–paragraph (3).

(3) Except in the case of an emergency, the undertaker must give the relevant planning authority 48 hours' notice of any proposed steam purging or operation of emergency pressure relief valves or similar equipment.

(4) So far as reasonably practicable, steam purging and the operation of emergency pressure relief valves or similar equipment may only take place—

(a) between 0900 and 1700 hours on weekdays (excluding bank holidays); and

(b) between 0900 and 1300 hours on Saturdays (excluding bank holidays).

(5) Where the level of noise at a monitoring location exceeds the maximum permitted level specified for that location in the approved scheme because of an emergency—

(a) the undertaker must, as soon as possible and in any event within two business days of the beginning of the emergency, submit to the relevant planning authority a statement detailing—

(i) the nature of the emergency;

(ii) why it is necessary for the level of noise to have exceeded the maximum permitted level;

(b) if the undertaker expects the emergency to last for more than 24 hours, it must inform local residents and businesses affected by the level of noise at that location of—

(i) the reasons for the emergency; and

(ii) how long it expects the emergency to last.

Notice of start of commissioning and notice of date of final commissioning

20.—(1) Where practicable, notice of the intended start of commissioning of Work No. 1A must be given to the relevant planning authority prior to such start and in any event within seven days from the date that commissioning is started.

(2) Within seven days of completing final commissioning of Work No. 1A, the undertaker must provide the relevant planning authority with notice of the date upon which such commissioning was duly completed.

Combined heat and power

21.—(1) On the date that is 12 months after the date of full commissioning for Work No. 1A, the undertaker must submit to the relevant planning authority for its approval a report ("the CHP review") updating the CHP statement.

(2) The CHP review submitted and approved must—

(a) consider whether opportunities reasonably exist for the export of heat from numbered Work 1A; and

(b) include a list of actions (if any) that the undertaker is reasonably required to take (without material additional cost to the undertaker) to increase the potential for the export of heat from Work No. 1A.

(3) The undertaker must take such actions as are included, within the timescales specified, in the approved CHP review.

(4) On each date during the operation of Work No. 1A that is five years after the date on which it last submitted the CHP review or a revised CHP review to the relevant planning authority, the undertaker must submit to the relevant planning authority for its approval a revised CHP review.

(5) Sub-paragraphs (2) and (3) apply in relation to a revised CHP review submitted under sub-paragraph (4) in the same way as they apply in relation to the CHP review submitted under sub-paragraph (1).

Decommissioning

22.—(1) Within 24 months of the permanent cessation of the operation of Work Nos. 1 and 2 details of a scheme for the restoration and aftercare of the land for Work Nos. 1. 2, 3, 5 and 6 must be submitted to and approved by the relevant planning authority and in consultation with the Environment Agency in relation to the matters in sub-paragraph (3).

(2) The scheme must include details of structures and buildings to be demolished or retained, details of the means of removal of materials following demolition, phasing of demolition and removal, details of restoration works and phasing thereof.

(3) The scheme must also identify provision for the ongoing maintenance and aftercare of Work No. 4, which will remain in situ to maintain the appropriate level of flood defence.

(4) The scheme as approved under sub-paragraph (1) must be implemented in accordance with the phasing set out therein.

Amendments to approved details

23.—(1) With respect to the documents certified under article 49 (certification of documents, etc.) the parameters specified in the table in paragraph 4 and any other plans, details or schemes which require approval by the relevant planning authority pursuant to any requirement (together "Approved Documents, Plans, Parameters, Details or Schemes"), the undertaker may submit to the relevant planning authority for approval any amendments to the Approved Documents, Plans, Parameters, Details or Schemes and following any such approval by the relevant planning authority the Approved Documents, Plans, Parameters, Details or Schemes are to be taken to include the amendments approved by the relevant planning authority pursuant to this paragraph.

(2) Approval under sub-paragraph (1) for the amendments to Approved Documents, Plans, Parameters, Details or Schemes must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

Electricity generation cap

24.—(1) The authorised development must not generate more than 300 megawatts unless otherwise agreed by the relevant planning authority provided that the relevant planning authority is satisfied that any increase would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(2) References in Schedule 1 (authorised development) to 300 megawatts are to be construed as references to any electricity cap approved under sub-paragraph (1).

Tonnage caps

25.—(1) The total amount of—

(a) waste to be received at Work No. 1A and Work No. 4 must not exceed 1,200,000 tonnes per calendar year;

(b) bottom ash and boiler ash processed at Work No. 1B must not exceed 200,000 tonnes per calendar year; and

(c) aggregate to be processed at Work No. 2 and received at Work No. 4 must not exceed 300,000 tonnes per calendar year,

unless otherwise agreed by the relevant planning authority provided that the relevant planning authority is satisfied that any increase would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(2) References in Schedule 1 (authorised development) to any tonnage amount are to be construed as references to any tonnage amount approved under paragraph (1).

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under Part 1

26.—(1) Where an application has been made to a relevant planning authority for any consent, agreement or approval required by a requirement (including consent, agreement or approval in respect of part of a requirement) included in this Order, the relevant planning authority must give notice to the undertaker of its decision on the application within a period of eight weeks beginning with—

(a) the day immediately following that on which the application is received by the relevant planning authority;

(b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 27 (further information); or

(c) such longer period as may be agreed between the parties.

(2) Subject to sub-paragraph (3), in the event that the relevant planning authority does not determine an application within the period set out in sub-paragraph (1), the relevant planning authority is taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) In determining any application made to the relevant planning authority for any consent, agreement or approval required by a requirement contained in Part 1 of this Schedule, the relevant planning authority may—

(a) give or refuse its consent, agreement or approval; or

(b) give its consent, agreement or approval subject to reasonable conditions,

and where consent, agreement or approval is refused or granted subject to conditions the relevant planning authority must provide its reasons for that decision with the notice of its decision.

Further information

27.—(1) In relation to any part of an application made under this Schedule, the relevant planning authority has the right to request such further information from the undertaker as it considers necessary to enable it to consider the application.

(2) If the relevant planning authority considers that further information is necessary and the requirement concerned contained in Part 2 of this Schedule does not specify that consultation with a consultee is required, the relevant planning authority must, within ten business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the requirement concerned contained in Part 1 of this Schedule specifies that consultation with a consultee is required, the relevant planning authority must issue the application to the consultee within five business days of receipt of the application, and notify the undertaker in writing specifying any further information requested by the consultee within five business days of receipt of such a request.

(4) If the relevant planning does not give the notification within the period specified in sub-paragraph (2) or (3) it (and the consultee, as the case may be) is deemed to have sufficient information to consider the application and is not entitled to request further information without the prior agreement of the undertaker.

Register of requirements

28.—(1) The undertaker must, as soon as practicable following the making of this Order, establish and maintain in an electronic form suitable for inspection by members of the public a register of those requirements contained in Part 1 of this Schedule that provide for further approvals to be given by the relevant planning authority.

(2) The register must set out in relation to each such requirement the status of the requirement, in terms of whether any approval to be given by the relevant planning authority has been applied for or given, providing an electronic link to any document containing any approved details.

(3) The register must be maintained by the undertaker for a period of 3 years following completion of the authorised development.

Appeals to the Secretary of State

29.—(1) The undertaker may appeal to the Secretary of State if—

(a) the relevant planning authority refuses an application for any consent, agreement or approval required by—

(i) a requirement and any document referred to in any requirement in Part 1 of this Schedule; or

(ii) any other consent, agreement or approval required under this Order, or grants it subject to conditions to which the undertaker objects;

(b) the relevant authority does not give notice of its decision to the undertaker within the period specified in paragraph 26(1) or grants it subject to conditions;

(c) having received a request for further information under paragraph 27(1) the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application;

(d) having received any further information requested, the relevant authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application; or

(e) the relevant planning authority issues a notice further to sections 60 or 61 of the Control of Pollution Act 1974(**a**).

(2) The appeal process applicable under sub-paragraph (1) is as follows—

(a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or determination, or (where no determination has been made) the expiry of the decision period as determined under paragraph 26;

(b) the undertaker must submit to the Secretary of State a copy of the application submitted to the relevant planning authority and any supporting documents which the undertaker may wish to provide ("the appeal documents");

(c) the undertaker must on the same day provide copies of the appeal documents to the relevant planning authority and the requirement consultee (if applicable);

(d) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to consider the appeal ("the appointed person") and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for their attention should be sent;

(e) the relevant planning authority and the requirement consultee (if applicable) must submit any written representations in respect of the appeal to the appointed person within 10 business days beginning with the first day immediately following the date on which the appeal parties are notified of the appointment of the appointed person and must ensure

(**a**) 1974 c 40

that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;

(f) the appeal parties must make any counter-submissions to the appointed person within 10 business days beginning with the first day immediately following the date of receipt of written representations pursuant to sub-paragraph (d); and

(g) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.

(3) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal, the appointed person must as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(4) Any further information required under sub-paragraph (3) must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person.

(5) The appeal parties may submit written representations to the appointed person concerning matters contained in the further information.

(6) Any such representations must be submitted to the appointed person and made available to all appeal parties within 10 business days of the date mentioned in sub-paragraph (3).

(7) On an appeal under this paragraph, the appointed person may—

(a) allow or dismiss the appeal; or

(b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not) and may deal with the application as if it had been made to the appointed person in the first instance.

(8) The appointed person may proceed to a decision on an appeal taking into account such written representations as have been sent within the relevant time limits and in the sole discretion of the appointed person such written representations as have been sent outside the relevant time limits.

(9) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

(10) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(11) Any consent, agreement or approval given by the appointed person pursuant to this paragraph is deemed to be an approval for the purpose of Part 1 of this Schedule as if it had been given by the relevant planning authority.

(12) The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) does not affect or invalidate the effect of the appointed person's determination.

(13) Except where a direction is given under sub-paragraph (14) requiring some or all of the costs of the appointed person to be paid by the relevant authority, the reasonable costs of the appointed person must be met by the undertaker.

(14) On application by the relevant authority or undertaker, the appointed person may give directions as to the costs of the appeal and as to the parties by whom such costs are to be paid.

(15) In considering whether to make any such direction as to the costs of the appeal parties and the terms on which it is to be made, the appointed person must have regard to the relevant Planning Practice Guidance published by the Ministry for Housing, Communities and Local Government or such guidance as may from time to time replace it.

Anticipatory steps towards compliance with any requirement

30. If before the coming into force of this Order the undertaker or any other person has taken any steps that were intended to be steps towards compliance with any provision of Part 1 of this Schedule, those steps may be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

Interpretation of Part 2 of Schedule 2

31. In Part 2 of Schedule 2—

"the appeal parties" means the relevant planning authority, the requirement consultee and the undertaker;

"business day" means a day other than a Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971(**a**); and

"requirement consultee" means any body named in a requirement which is the subject of an appeal as a body to be consulted by the relevant authority in discharging that requirement.

(**a**) 1971 c 80

SCHEDULE 3

Article 10

STREETS SUBJECT TO STREET WORKS

(1) *Authority*	*(2)* *Streets subject to street works*
Boston Borough Council	Nursery Road (private road)
	Callen Road (private road)
	Bittern Way (private road)

SCHEDULE 4

Article 12

STREETS SUBJECT TO ALTERATION OF LAYOUT

PART 1

PERMANENT ALTERATION OF LAYOUT

(1) *Street subject to alteration of layout*	*(2)* *Description of alteration*
Bittern Way (private road)	Secure site exit for HGV only – left turn only (works forming part of Work No. 5(j)) between points A and B on the access and rights of way plan.

PART 2

TEMPORARY ALTERATION OF LAYOUT

(1) *Street subject to alteration of layout*	*(2)* *Description of alteration*
Marsh Road	Works for the provision of temporary accesses (works forming part of Work No. 7) at the point marked Construction Access Point 1 on the access and rights of way plan.

SCHEDULE 5

Article 13

TEMPORARY CLOSURE, ALTERATION, DIVERSION OR RESTRICTION OF THE USE OF STREETS

(1) *Street subject to temporary prohibition or restriction of use*	*(2)* *Extent of temporary prohibition or restriction of use of streets*
BOST/14/9	Length of footpath to be temporarily closed between the points marked TC2 to TC3 on the access and rights of way plan to install and facilitate the construction of Work No. 6(d).
BOST/14/11	Length of footpath to be temporarily closed between the points marked TC1 to TC2 on the access and rights of way plan to install and facilitate the construction of Work No. 6(d).

SCHEDULE 6

Article 14

PERMANENT STOPPING UP OF STREETS AND PUBLIC RIGHTS OF WAY

(1) *Highway to be stopped up*	*(2)* *Extent of stopping up*
BOST/14/4	Footpath to be stopped up between the points marked ST1 to ST3 on the access and rights of way plan.
BOST/14/10	Footpath to be stopped up between the points marked ST3 to ST4 on the access and rights of way plan.
BOST/14/5	Footpath to be stopped up between the points marked ST3 to ST2 on the access and rights of way plan.

SCHEDULE 7

Article 28

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

(1) *Number of plot shown on the land plans*	*(2)* *Rights etc. which may be acquired*

SCHEDULE 8

Article 28

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF NEW RESTRICTIVE COVENANTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or restrictive covenant as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(**1**) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 5—

(a) for "land is acquired or taken from" substitute "a right or restrictive covenant over land is purchased from or imposed on"; and

(b) for "acquired or taken from him" substitute "over which the right is exercisable or the restrictive covenant enforceable".

3.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1961 has effect subject to the modification set out in paragraph 2(2).

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act, after "if" substitute—

"(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 8 to the Boston Alternative Energy Facility Order 202[ ]);

(b) the acquiring authority is subsequently required by a determination under paragraph 27 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 8 to the Boston Alternative Energy Facility Order 202[ ]) to acquire an interest in the land; and

(c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.".

Application of Part 1 of the 1965 Act

4. Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 32 (modification of Part 1 of the 1965 Act)) to the acquisition of land under article 25 (Compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right under article 28 (compulsory acquisition of rights and imposition of restrictive covenants)—

(a) with the modifications specified in paragraph 5; and

(b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(a) are as follows.

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

(a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or

(b) the land over which the right is or is to be exercisable, or the restriction is to be enforceable.

(3) For section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

"**7.** In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.".

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

(a) section 9(4) (refusal to convey, failure to make title etc.);

(b) paragraph 10(3) of Schedule 1 (persons without power to sell their interests);

(c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and

(d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11(powers of entry) of the 1965 Act is modified to secure that, where the acquiring authority has served notice to treat in respect of any right or restriction, as well as the notice of entry required by subsection (1) of that section (as it applied to compulsory acquisition under article 25), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A (powers of entry: further notices of entry), 11B (counter-notice requiring possession to be taken on specified date), 12 (unauthorised entry) and 13 (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

(6) Section 20 (tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 32(4) is also modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, or enforce the restriction imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A (counter–notice requiring purchase of land not in notice to treat) to the 1965 Act substitute—

"SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1.—(1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house,

building or factory and have not executed a general vesting declaration under section 4 (execution of declaration) of the 1981 Act as applied by article 30 (application of the 1981 Act) of the Boston Alternative Energy Facility Order 202[ ] in respect of the land to which the notice to treat relates.

(2) But see article 33(3) (acquisition of subsoil and airspace only) of the Boston Alternative Energy Facility Order 202[ ] which excludes the acquisition of subsoil only from this Schedule.

2. In this Schedule, "house" includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory ("the owner") may serve a counter-notice requiring the authority to purchase the owner's interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of twenty-eight days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

(a) withdraw the notice to treat,

(b) accept the counter-notice, or

(c) refer the counter-notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of three months beginning with the day on which the counter-notice is served ("the decision period").

7. If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

(a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or

(b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

(a) the effect of the acquisition of the right or the imposition of the covenant,

(b) the use to be made of the right or covenant proposed to be acquired or imposed, and

(c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

13. If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of six weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.".

SCHEDULE 9

Article 35

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) *Number of plot shown on land plans*	*(2)* *Purpose for which temporary possession may be taken*
1, 3, 6, 11, 18a	Temporary use to facilitate construction for Work No. 7 and other development necessary for the authorised development that takes place within the Order land.

SCHEDULE 10

Article 44

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker concerned.

2. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means—

(a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(**a**)), belonging to or maintained by that undertaker;

(b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part 1 of the Gas Act 1986(**b**) for the purposes of gas supply;

(c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and

(d) in the case of a sewerage undertaker—

(i) any drain or works vested in the undertaker under the Water Industry Act 1991(**c**); and

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4)(**d**) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreement to adopt sewers, drains or sewage disposal works at a future date) of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"functions" includes powers and duties;

"in", in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

"plan" includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed;

"utility undertaker" means—

(**a**) 1989 c 29

(**b**) 1986 c 44 A new section 7 was substituted by section 5 of the Gas Act 1995 (c 45), and was further amended by section 76 of the Utilities Act 2000 (c 27)

(**c**) 1991 c 56

(**d**) Section 102(4) was amended by section 96(1)(c) of the Water Act 2003 (c 37) Section 104 was amended by sections 96(4) and 101(2) of, and Part 3 of Schedule 9 to, the Water Act 2003 and section 42(3) of the Flood and Water Management Ac t2010 (c 29) and section 11(1) and (2) of, and paragraphs 2 and 91 of Schedule 7 to the Water Act 2014 (c 21)

(e) any licence holder within the meaning of Part 1 of the Electricity Act 1989;

(f) a gas transporter within the meaning of Part 1 of the Gas Act 1986;

(g) a water undertaker within the meaning of the Water Industry Act 1991; and

(h) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

On street apparatus

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Apparatus in stopped up streets

4.—(1) Where any street is stopped up under article 14 (permanent stopping up of streets), any utility undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 7 or the power of the undertaker to carry out works under paragraph 9.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 13 (temporary closure, alteration, diversion and restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

5. The undertaker, in the case of the powers conferred by article 22 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Acquisition of land

6. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

7.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (6).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility

undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed the utility undertaker must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 51 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 51, and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) If the utility undertaker in question fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal works under sub-paragraph (2) within 28 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved.

(8) For the avoidance of doubt, any such "deemed consent" under sub-paragraph (7) does not extend to the actual undertaking of the removal works, which remains the sole responsibility of the utility undertaker or its contractors.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 51 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

9.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any

apparatus the removal of which has not been required by the undertaker under paragraph 7(2), the undertaker must submit to the utility undertaker in question a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

Expenses and costs

10.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 7(2).

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 51 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 5 or 7(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

(a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and

(b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the undertaker,

(c) by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by a utility undertaker on behalf of the undertaker or in accordance with a plan approved by a utility undertaker or in accordance with any requirement of a utility undertaker or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless the utility undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(4) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Cooperation

12. Where in consequence of the proposed construction of any part of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 7(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker's undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

13. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

14. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

15. In this Part of this Schedule—

"the 2003 Act" means the Communications Act 2003(**a**);

"electronic communications apparatus" has the same meaning as in the electronic communications code;

"the electronic communications code" has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(**b**);

"electronic communications code network" means—

(a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 (application of the electronic communications code) of the 2003 Act; and

(b) an electronic communications network which the undertaker is providing or proposing to provide;

"electronic communications code operator" means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

"infrastructure system" has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and

"operator" means the operator of an electronic communications code network.

16. The exercise of the powers conferred by article 37 (statutory undertakers) is subject to Part 10 (undertaker's works affecting electronic communications apparatus) to the electronic communications code.

17.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other reasonable expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(**a**) 2003 c 21
(**b**) See section 106 Section 106 was amended by section 4(3) to (9) of the Digital Economy Act 2017 (c 30)

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 51 (arbitration).

(5) This Part of this Schedule does not apply to—

(a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or

(b) any damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

(6) Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF HIGHWAYS AND TRAFFIC UNDERTAKERS

18.—(1) The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and the relevant highway authority.

(2) In this Part of this Schedule—

"highway" means any highway of which the relevant highway authority is the highway authority;

"plans" includes sections, designs, drawings, specifications, soil reports, staging proposals, programmes, calculations, methods of construction, risk assessments and details of the extent, timing and duration of any proposed occupation of any highway and "approved plans" means plans approved or deemed to be approved or settled by arbitration in accordance with the provisions of this Part of this Schedule;

"property of the relevant highway authority" means any apparatus or street furniture of the relevant highway authority affixed to or placed under any highway; and

"the relevant highway authority" means the highway authority for the area in which the highway to which the provisions of this Part of this Schedule is situated.

(3) Wherever in this Part of this Schedule provision is made with respect to the approval or consent of the relevant highway authority, that approval or consent must be in writing and subject to such reasonable terms and conditions as the relevant highway authority may require.

(4) In exercising the powers conferred by this Order in relation to any highway the undertaker must have regard to the potential disruption of traffic which may be caused and must seek to minimise such disruption so far as is reasonably practicable.

(5) The undertaker must not, without the consent of the relevant highway authority, construct any part of the works authorised by this Order under and within 50 metres of the surface of any highway which comprises a carriageway except in accordance with plans submitted to, and approved by, the relevant highway authority; and if within 28 days after such plans have been submitted the relevant highway authority has not approved or disapproved them, it is deemed to have approved the plans as submitted.

(6) In the construction of any part of the said works under a highway no part of it shall, except with the consent of the relevant highway authority, be so constructed as to interfere with the provision of proper means of drainage of the surface of the highway or be nearer than two metres to the surface of the highway.

(7) The undertaker must not under the powers conferred by or under this Order without the consent of the relevant highway authority, acquire or enter upon, take or use whether temporarily or permanently or acquire any new rights over any part of any highway, including subsoil beneath the surface of any highway.

19.—(1) Before commencing the construction of, or the carrying out of any work which involves interference with a highway, the undertaker must submit to the relevant highway

authority for its approval plans, drawings and particulars (in this paragraph referred to as "plans") relating thereto, and the works must not be carried out except in accordance with the plans submitted to, and approved by, the relevant highway authority.

(2) If within 28 days after the plans have been submitted the highway authority has not approved or disapproved them, it is deemed to have approved the plans as submitted.

(3) Any officer of the relevant highway authority duly appointed for the purpose may at all reasonable times, on giving to the undertaker such notice as may in the circumstances be reasonable, enter upon and inspect any part of the works authorised by this Order which—

(a) is in, over or under any highway, or

(b) which may affect any highway or any property of the relevant highway authority,

during the carrying out of the work, and the undertaker must give to such officer all reasonable facilities for such inspection and, if the officer is of the opinion that the construction of the work is attended with danger to any highway or to any property of the relevant highway authority on or under any highway, the undertaker must adopt such measures and precautions as may be reasonably practicable for the purpose of preventing any damage or injury to the highway.

20.—(1) The undertaker must not alter, disturb or in any way interfere with any property of the relevant highway authority on or under any highway, or the access thereto, without the consent of the relevant highway authority, and any alteration, diversion, replacement or reconstruction of any such property which may be necessary may be made by the relevant highway authority or the undertaker as the relevant highway authority thinks fit, and the expense reasonably incurred by the relevant highway authority in so doing must be repaid to the relevant highway authority by the undertaker.

(2) If within 28 days after a request for consent has been submitted the relevant highway authority has not given or refused such consent, it is deemed to have consented to the request as submitted.

21. The undertaker must not remove any soil or material from any highway except so much as must be excavated in the carrying out of the works authorised by this Order.

22.—(1) If the relevant highway authority, after giving to the undertaker not less than 28 days' notice (or, in case of emergency, such notice as is reasonably practicable) of its intention to do so, incurs any additional expense in the signposting of traffic diversions, in the diversion of footpaths, in the taking of other measures in relation thereto, or in the repair of any highway by reason of the diversion thereto of traffic from a road of a higher standard, in consequence of the construction of the works authorised by this Order, the undertaker must repay to the relevant highway authority the amount of any such expense reasonably so incurred.

(2) An amount which apart from this sub-paragraph would be payable to the relevant highway authority by virtue of this paragraph in respect of the repair of any highway must, if the highway fell or would have fallen due for repair as part of the maintenance programme of the relevant highway authority at any time within ten years of the repair being carried out by the undertaker, so as to confer on the relevant highway authority financial benefit (whether by securing the completion of overdue maintenance work for which the relevant highway authority is liable or by deferment of the time for such work in the ordinary course), be reduced by the amount which represents that benefit.

23.—(1) The undertaker shall not, except with the consent of the relevant highway authority, deposit any soil or materials, or stand any plant, on or over any highway so as to obstruct or render less safe the use of the highway by any person, or, except with the like consent, deposit any soil or materials on any highway outside a hoarding, but if within 28 days after request for it any such consent is neither given nor refused it is deemed to have been given.

(2) The expense reasonably incurred by the relevant highway authority in removing any soil or materials deposited on any highway in contravention of this paragraph must be repaid to the relevant highway authority by the undertaker.

24. The undertaker must not, except with the consent of the relevant highway authority, erect or retain on or over a highway to which the public continues to have access any scaffolding or other structure which obstructs the highway.

25. The undertaker must, if reasonably so required by the relevant highway authority, provide and maintain to the reasonable satisfaction of the relevant highway authority, during such time as the undertaker may occupy any part of a highway for the purpose of the construction of any part of the works authorised by this Order, temporary bridges and temporary ramps for vehicular or pedestrian traffic over any part of the works or in such other position as may be necessary to prevent undue interference with the flow of traffic in the highway.

26.—(1) Where any part of any highway has been broken up or disturbed by the undertaker and not permanently stopped up or diverted, the undertaker must make good the subsoil, foundations and surface of that part of the highway to the reasonable satisfaction of the relevant highway authority, and must maintain the same to the reasonable satisfaction of the relevant highway authority for such time as may reasonably be required for the permanent reinstatement of the highway

(2) The reinstatement of that part of the highway must be carried out by the undertaker to the reasonable satisfaction of the relevant highway authority in accordance with such requirements as to specification of material and standards of workmanship as may be prescribed for equivalent reinstatement work by regulations made under section 71 of the New Roads and Street Works Act 1991(**a**).

27. If any damage to any highway or any property of the relevant highway authority on or under any highway is caused by, or results from, the construction of any work authorised by this Order or any order or omission of the undertaker, its contractors, agents or employees whilst engaged upon such work, the undertaker may, in the case of damage to a highway, make good such damage to the reasonable satisfaction of the relevant highway authority and, where the undertaker does not make good, or in the case of damage to property of the relevant highway authority, the undertaker must make compensation to the relevant highway authority.

28. The fact that any act or thing may have been done in accordance with plans approved by the relevant highway authority does not (if it was not attributable to the act, neglect or default of the relevant highway authority or of any person in its employ or its contractors or agents) exonerate the undertaker from any liability, or affect any claim for damages, under this Part or otherwise.

29. Any difference arising between the undertaker and the relevant highway authority under this Part of this Schedule (other than in difference as to the meaning or construction of this Part of this Schedule) shall be resolved by arbitration under article 51 (arbitration).

PART 4

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

30. The following provisions shall apply for the protection of the Agency unless otherwise agreed in writing between the Applicant and the Agency.

31. In this Part of this Schedule—

"the Agency" means the Environment Agency;

"the Applicant" means the undertaker or any transferee under article 8 of this Order;

"construction" includes execution, placing, altering, replacing, relaying and removal and excavation and "construct" and "constructed" shall be construed accordingly;

"drainage work" means any main river and includes any land which provides or is expected to provide flood storage capacity for any main river and any bank, wall, embankment or other

(**a**) 1991 c 22

structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

"existing permit" means any environmental permits, whether granted before or after the coming into force of this Order, or otherwise granted over the Order limits;

"the fishery" means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, spawning ground, habitat or food of such fish;

"main river" means all watercourses shown as such on the statutory main river maps held by the Agency and the Department for Environment Food and Rural Affairs including any structure or appliance for controlling or regulating the flow of water in or out of the channel;

"permitted activity" means any work or operation which requires an environmental permit for waste operation in accordance with the Environmental Permitting (England and Wales) Regulations 2016(**a**);

"plans" includes sections, drawings, specifications, calculations and method statements;

"specified work" means so much of any work or operation authorised by this Order as is in, on, under, over or within 8 metres of a drainage work or is otherwise likely to—

(a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;

(b) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;

(c) cause obstruction to the free passage of fish or damage to any fishery;

(d) affect the conservation, distribution or use of water resources; or

(e) affect the conservation value of the main river and habitats in its immediate vicinity;

(f) "waste operation" means recovery or disposal of waste, which for the avoidance of doubt includes landfill; and

"watercourse" includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, basins, sewers and passages through which water flows except a public sewer.

32.—(1) Before beginning to construct any specified work, the Applicant must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 42.

(3) Any approval of the Agency required under this paragraph—

(a) must not be unreasonably withheld or delayed;

(b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been requested by the Agency for approval;

(c) in the case of a refusal, accompanied by a statement of the grounds of refusal; and

(d) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

33.—(1) Before beginning to construct a permitted activity, the Applicant must submit the following details to the Agency for approval—

(a) such details as the Agency reasonably requires to grant consent for the permitted activity; and

(**a**) S I 2016/1154

(b) such other reasonable requirements of the Agency as agreed between the parties.

(2) The permitted activity must be carried out in accordance with the approval of the Agency.

(3) As from the date on which the authorised development is commenced any conditions of an existing permit granted under the Environmental Permitting (England and Wales) Regulations 2016(**a**) (or any predecessor regulations or enactment) which relate to land within the Order limits or land adjacent to the Order limits cease to have effect to the extent they are inconsistent with the authorised development or, in respect of a permitted activity, an approval under paragraph (1).

(4) Any approval of the Agency required under this paragraph—

(a) must not be unreasonably withheld or delayed;

(b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been requested by the Agency for approval; and

(c) in the case of a refusal, must be accompanied by a statement of the grounds of refusal.

(5) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (4)(b).

34. Without limiting paragraph 32, the requirements which the Agency may have under that paragraph include conditions requiring the Applicant, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

(a) to safeguard any drainage work against damage; or

(b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

35.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 34, must be constructed—

(a) without unreasonable delay in accordance with the plans approved under this Schedule; and

(b) to the reasonable satisfaction of the Agency,

and the Agency shall be entitled by its officer to watch and inspect the construction of such works.

(2) The Applicant must give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If the Agency reasonably requires, the Applicant must construct all or part of the protective works so that they are in place prior to the construction of any specified work.

(4) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Schedule, the Agency may by notice in writing require the Applicant at the Applicant's own expense to comply with the requirements of this part of this Schedule or (if the Applicant so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(5) Subject to sub-paragraph (6) and paragraph 40, if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (4) is served upon the Applicant, the Applicant has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their

(**a**) S I 2016/1154

implementation, the Agency may execute the works specified in the notice and any expenditure incurred by the Agency in so doing shall be recoverable from the Applicant.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency shall not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined in accordance with paragraph 42.

36.—(1) Subject to sub-paragraph (5) the Applicant must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the Applicant for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the Applicant is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the Applicant to repair the drainage work, or any part of such drainage work, or (if the Applicant so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the specified work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to sub-paragraph (4) and paragraph 40, if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the Applicant, the Applicant has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is reasonably necessary for such compliance and any expenditure reasonably incurred by the Agency in so doing shall be recoverable from the Applicant.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency shall not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 42.

(5) This paragraph does not apply to—

(a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of the Order from doing so; and

(b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part provided that any obstruction is removed as soon as reasonably practicable.

37. Subject to paragraph 40, if by reason of the construction of any specified work or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the Applicant to the reasonable satisfaction of the Agency and if the Applicant fails to do so, the Agency may make good the impairment or damage and recover any expenditure incurred by the Agency in so doing from the Applicant.

38. If by reason of construction of the specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the Applicant must provide such alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction as soon as reasonably practicable of the Applicant becoming aware of such obstruction.

39.—(1) The Applicant must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

(a) the construction of any specified work; or

(b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the Applicant requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) Subject to paragraph 40, if within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the Applicant fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and any expenditure reasonably incurred by the Agency in so doing shall be recoverable from the Applicant.

(4) Subject to paragraph 40, in any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the Applicant any expenditure incurred in so doing provided that notice specifying those steps is served on the Applicant as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

40. The Applicant must make reasonable compensation to the Agency in respect of all direct costs, charges and expenses which the Agency may reasonably incur —

(a) in the examination or approval of plans under this Part of this Schedule;

(b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and

(c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

(2) Prior to granting approval under paragraphs 33 and 34, Agency shall inform the Applicant of the costs it expects to reasonably incur in granting approval.

41. The Applicant is responsible for and shall make reasonable compensation to the Agency for all costs and direct losses not otherwise provided for in this Part of this Schedule which may be reasonably incurred or suffered by the Agency by reason of—

(a) the construction of any specified works comprised within the authorised works; or

(b) any act or omission of the Applicant, its employees, contractors or agents or others whilst engaged upon the construction of the authorised works.

(2) For the avoidance of doubt, in sub-paragraph (1)—

"costs" includes reasonably incurred—

(a) expenses and charges;

(b) staff costs and overheads;

(c) legal costs; and

"losses" includes physical damage.

(3) The Agency must give to the Applicant reasonable notice of any such claim or demand and no settlement or compromise shall be made without the agreement of the Applicant which agreement shall not be unreasonably withheld or delayed.

(4) The fact that any work or thing has been executed or done by the Applicant in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the Applicant from any liability under the provisions of this Part of this Schedule.

42. Any dispute arising between the Applicant and the Agency under this part of this Schedule must, if the parties agree, be determined by arbitration under article 51 (arbitration), but must otherwise be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor and the Secretary of State for Transport or its successor acting jointly on a reference to them by the Applicant or the Agency, after notice in writing by one to the other.

PART 5

FOR THE PROTECTION OF DRAINAGE AUTHORITIES

43. The provisions of this Part have effect for the protection of the drainage authority unless otherwise agreed in writing between the undertaker and the drainage authority.

44. In this Part of this Schedule—

"construction includes execution, placing, altering, replacing, relaying and removal; and "construct" and "constructed" must be construed accordingly;

"drainage authority" means in relation to an ordinary watercourse, the drainage board concerned within the meaning of section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991(**a**);

"drainage work" means any ordinary watercourse and includes any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence in connection with an ordinary watercourse which is the responsibility of the drainage authority;

"ordinary watercourse" has the meaning given by section 72 (interpretation) of the Land Drainage Act 1991;

"plans" includes any information reasonably required by the drainage authority including location details, grid references, sections, drawings, specifications, assessments and method statements;

"specified work" means any of the following works carried out in relation to any ordinary watercourse—

(a) erecting any mill dam, weir or other similar obstruction to the flow of the watercourse, or raising or otherwise altering any such obstruction;

(b) the construction or alteration of a bridge or other structure;

(c) erecting a culvert in the watercourse; or

(d) altering a culvert in a manner that would be likely to affect the flow of the watercourse.

45.—(1) Before commencing construction of a specified work, the undertaker must submit to the drainage authority plans of the specified work and such further particulars available to it as the drainage authority may within 14 days of the submission of the plans reasonably request.

(2) The undertaker must not commence construction of the specified work until approval, unconditionally or conditionally, has been given as provided in this paragraph.

(3) A specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority or determined under paragraph 53.

(4) Any approval of the drainage authority required under this paragraph—

(a) must not be unreasonably withheld or delayed;

(b) is deemed to have been given if it is neither given nor refused within 28 days of the submission of the plans for approval, or submission of further particulars (where required by the drainage authority under sub-paragraph (1)) whichever is the later; and

(c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work, ordinary watercourse or for the prevention of flooding.

(5) Any refusal under this paragraph must be accompanied by a statement of the reasons for refusal.

46. Without limiting paragraph 45, the requirements which the drainage authority may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified

(**a**) 1991 c 59

work (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

(a) to safeguard any drainage work against damage by reason of any specified work; or

(b) to secure that the efficiency of any drainage work for flood defence and land drainage purposes is not impaired, and that the risk of flooding is not otherwise increased, by reason of any specified work.

47.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 4, must be constructed—

(a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule; and

(b) to the reasonable satisfaction of the drainage authority, and an officer of the drainage authority is entitled to watch and inspect the construction of such works at all reasonable times and on reasonable notice.

(2) The undertaker must give to the drainage authority—

(a) not less than 14 days' notice in writing of its intention to commence construction of any specified work; and

(b) notice in writing of its completion not later than 7 days after the date of completion.

(3) If the drainage authority reasonably requires, the undertaker must construct all or part of the protective works so that they are in place before the construction of the specified work to which the protective works relate.

(4) If any part of a specified work or any protective work required by the drainage authority is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the drainage authority may by notice in writing require the undertaker at the undertaker's expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is agreed, to restore the site to its former condition to such extent and within such limits as the drainage authority reasonably requires.

(5) Subject to sub-paragraph (6), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the drainage authority may execute the works specified in the notice and any reasonable expenditure incurred by it in so doing is recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the drainage authority must not except in an emergency exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined in accordance with paragraph 53.

48.—(1) Subject to sub-paragraph (5), the undertaker must from the commencement of the construction of the specified work until the date falling 12 months from the date of completion of the specified work maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation on land held by the undertaker for the purpose of or in connection with the specified work, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the drainage authority, the drainage authority may by notice in writing require the undertaker to repair and restore the work, or any part of the work, or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed), to remove the specified work and restore the site to its former condition, to such extent and within such limits as the drainage authority reasonably requires.

(3) Subject to sub-paragraph (4) and paragraphs 50 and 51 if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the drainage authority may do what is reasonably necessary for such compliance and may recover any reasonable expenditure reasonably incurred by it in so doing from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the drainage authority must not except in a case of emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 53.

(5) This paragraph does not apply to—

(a) drainage works which are vested in the drainage authority, or which the drainage authority or another person is liable to maintain and is not prevented by this Order from so doing; and

(b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule provided that any obstruction is removed as soon as reasonably practicable.

49. Subject to paragraphs 50 and 51 and sub-paragraph 48(5)(b), if, by reason of the construction of a specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes or land drainage is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker as soon as reasonably practicable to the reasonable satisfaction of the drainage authority and, if the undertaker fails to do so, the drainage authority may make good the impairment or damage and recover from the undertaker the expense reasonably incurred by it in doing so.

50. The undertaker must make reasonable compensation for costs, charges and expenses which the drainage authority may reasonably incur in—

(a) the examination or approval of plans under this Part of this Schedule; and

(b) inspecting the construction of the specified work or any protective works required by the drainage authority under this Part of this Schedule; and

(c) subject at all times to receiving the prior written approval of the undertaker, in carrying out any surveys or tests by the drainage authority which are reasonably required in connection with the construction of the specified work.

51.—(1) Without limiting the other provisions of this Part, the undertaker must make reasonable compensation to the drainage authority from all claims, demands, proceedings, costs, damages, expenses or loss, which may be made or taken against, recovered from, or incurred by, the drainage authority by reason of—

(a) any damage to any drainage work;

(b) any raising or lowering of the water table in land adjoining the authorised project or any sewers, drains and watercourses; or

(c) any flooding or increased flooding of any such lands,

caused by the construction of any specified work or any act or omission of the undertaker, its contractors, agents or employees whilst engaged on the specified work.

(2) The drainage authority must give to the undertaker reasonable notice of any such claim or demand, and no settlement or compromise may be made without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

(3) The fact that any act or thing may have been done by the drainage authority on behalf of the undertaker or in accordance with a plan approved or deemed to have been approved by the drainage authority or in accordance with any requirement of the drainage authority or under its supervision does not, subject to sub-paragraph (4), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless the drainage authority fails to carry out and execute the

works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.

(4) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or loss to the extent that it is attributable to the act, neglect or default of the drainage authority, its officers, servants, contractors or agents.

52. The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the drainage authority or to its satisfaction does not (in the absence of negligence on the part of the drainage authority, its officers, contractors or agents), relieve the undertaker from any liability under this Part.

53. Any dispute arising between the undertaker and the drainage authority under this Part is to be determined by arbitration under article 51 (arbitration).

SCHEDULE 11

Article 48

DEEMED MARINE LICENCE

PART 1

INTRODUCTION

Interpretation

1.—(1) In this licence—

"the 2009 Act" means the Marine and Coastal Access Act 2009(**a**);

"authorised development" has the meaning given in paragraph 5;

"business day" means a day other than a Saturday or Sunday, which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971(**b**);

"licence holder" means Alternative Use Boston Projects Limited or any transferee under article 9 (consent to transfer of benefit of Order) of the Order;

"licensed activity" means any activity described in Part 2 of this licence;

"harbour authority" means the Port of Boston Authority;

"the Haven" means the area defined at paragraph 5(2);

"the marine area" has the meaning given to 'UK marine area' in section 42 of the 2009 Act;

"MHWS" means the highest level which spring tides reach on average over a period of time;

"MMO" means the Marine Management Organisation;

"the Order" means the Boston Alternative Energy Facility Development Consent Order 202[ ].

(2) Unless otherwise specified, all geographical co-ordinates given in this licence are in latitude and longitude degrees and minutes to two decimal places.

2.—(1) Except where otherwise indicated, the main point of contact with the MMO and the address for email and postal returns and correspondence are as follows—

(a) Marine Management Organisation, Marine Licensing Team, Lancaster House, Hampshire Court, Newcastle upon Tyne, NE4 7YH; Tel. – 0300 123 1032, Fax – 0191 376 2681, Email – marine.consents@marinemanagement.org.uk or such replacement contact details as are notified to the licence holder in writing by the MMO;

(b) The MMO Local Office – Marine Management Organisation, MMO Beverley Office, Room 13, Ground Floor, Crosskill House, Mill Lane, Beverley, HU17 9JB; Tel. – 0208 026 0519, Email –beverley@marinemanagement.org.uk or such replacement contact details as are notified to the licence holder in writing by the MMO.

(2) The contact details for the MMO Marine Pollution Response Team are Tel. (during office hours) – 0300 200 2024, Tel. (outside office hours) – 07770 977 825 or 0845 051 8486 and Email – dispersants@marinemanagement.org.uk, or such replacement contact details notified to the licence holder in writing by the MMO.

(a) 2009 c 23
(b) 1971 c 80

Commented [ML2]: Please consider the following:
"the Haven" means so much of the Haven, as is within he UK marine area.
Please also consider including within the DML a definition of "commence/commencement" and "maintenance". They have been defined in the DCO, but not in the DML. This has caused past issues particularly where maintenance activity is concerned.

Commented [ML3]: As above

(3) Unless otherwise stated in writing by the MMO, all notices required by this licence to be sent by the licence holder to the MMO must be sent by email.

PART 2

LICENSED ACTIVITIES

3. Subject to the licence conditions in Part 4 of this licence, this licence authorises the licence holder (and any agent, contractor or subcontractor acting on its behalf) to carry out any licensable marine activities under section 66(1) (licensable marine activities) of the 2009 Act which—

(a) form part of, or are related to, the authorised development; and

(b) are not exempt from requiring a marine licence by virtue of any provision made under section 74 (exemption specified by order) of the 2009 Act.

4. The activities set out in this Part may be carried out by the licence holder as if licenced under the 2009 Act.

5.—(1) In this licence, "authorised development" means—

(a) the construction of a suspended deck wharf structure, forming 7.2m A.O.D flood defence line wall, containing three berthing points and tie-in to the existing flood defence;

(b) creation by dredging, use and maintenance of a berthing pocket within the following parameters:

Commented [ML4]: As above, please consider a definition.

Table 1

Dimension	*Parameter*
Length	570m ±5%
Width	110m ±5%
Depth	-3.5m OD ±5%
Area to be dredged	62,700 m2±10%
Volume of material to be removed	225,000m3±10%

(c) the construction and maintenance of scour protection;

(d) construction of piles and pile caps within The Haven supporting piers and fendering;

(e) the construction of fendering within The Haven;

(f) the construction of a mooring within The Haven;

(g) the implementation of appropriate lighting to ensure safe operation of the wharf;

(h) the construction of a drainage system for the wharf;

(i) the implementation of shore to ship power;

(j) activities to—

(i) alter, clean, modify, dismantle, refurbish, reconstruct, remove, relocate or replace any work or structure;

(ii) carry out excavations and clearance, deepening, scouring, cleansing, dumping and pumping operations;

(iii) use, appropriate, sell, deposit or otherwise dispose of any materials (including liquids but excluding any wreck within the meaning of the Merchant Shipping Act 1995(a)) obtained in carrying out any such operations;

(iv) remove and relocate any vessel or structure sunk, stranded, abandoned, moored or left (whether lawfully or not);

(a) 1995 c 21

(v) temporarily remove, alter, strengthen, interfere with, occupy and use the banks, bed, foreshore, waters and walls of The Haven;

(vi) construct, place and maintain works and structures; and

(vii) provide lighting, signage and aids to navigation,

(k) other works and development—

(i) to provide or alter embankments, foundations, retaining walls, drainage works, outfalls, pollution control devices, pumping stations, culverts, wing walls, fire suppression system water tanks and associated plant and equipment, lighting and fencing; and

(ii) to alter the course of, or otherwise interfere with, navigable or non-navigable watercourses;

(l) such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the construction, maintenance, operation or use of the authorised development, including—

(i) maintenance dredging; and

(ii) other works to mitigate any adverse effect of the construction, maintenance and operation of the works or to benefit or protect any person or premises affected by the construction, maintenance and operation of the works; and

(m) activities to carry out works and development of whatever nature, as may be necessary or expedient for the purposes of, or for purposes associated with or ancillary to, the operation and maintenance of the authorised development; and

(n) any other development within the meaning of section 32 (meaning of "development") of the 2008 Act that is authorised by the Order.

(2) The license holder (and any agent, contractor or subcontractor acting on its behalf) may engage in the licensed activities in the area bounded by Table 2 in this paragraph and more particularly shown on the works plans, to the extent that they fall below MHWS at the time the licensed activities are carried out.

Table 2

Point Reference	*Easting*	*Northing*
DP01	534289.711000	342260.128000
DP02	534168.677241	342181.781948
DP03	534186.659851	342242.491799
DP04	533845.617735	342661.592680
DP05	533947.150000	342716.200000

PART 3

ENFORCEMENT

6. Any breach of this licence does not constitute a breach of the Order but is subject to the enforcement regime in Chapter 3 of Part 4 of the 2009 Act.

PART 4

CONDITIONS

General conditions

7. The conditions set out at paragraphs 7 to 20 of this Schedule are licence conditions.

8. For such of the licensed marine activities that involve the construction, alteration or improvement of works in or over the sea or under the sea bed, the conditions below apply to any person who for the time being owns, occupies or enjoys any use of those works.

9. The licence holder must notify the MMO at the earliest opportunity of any change to the information upon which the granting of this licence was based.

10.—(1) The licence holder must notify the HM Coastguard (mailto:nmoccontroller@hmcg.gov.uk) prior to commencement of any licensed activities.

(2) The MMO must be sent a copy within 7 days of the issue of the notification in paragraph (1).

11.—(1) The Licence Holder must ensure that local mariners and fishermen's organisations are made fully aware of all licensed activities through a local notice to mariners issued at least 5 days before the commencement of the works.

(2) The notice to mariners must be updated and re-issued at fortnightly intervals during construction activities and within 5 days of any planned operations and copies of all notices shall be provided to the MMO.

Distribution of copies

12.—(1) The licence holder must ensure that a copy of this licence and any subsequent revisions or amendments is given to all agents, contractors and sub-contractors, as well as to all Masters of all vessels and transport managers involved.

(2) The licence holder must keep a copy of this license available for inspection at its registered address and any site office location at or adjacent to a construction site.

Prior approval of Licenced Activities

13.—(1) The licence holder must submit details of a licenced activity to the MMO for approval in accordance with the procedure in Part 5, following consultation with the harbour authority, at least 6 weeks prior to the commencement of the licenced activity.

(2) Unless otherwise agreed by the MMO in writing, the details in sub-paragraph (1) must include—

(a) the details of the person responsible for the carrying on of the licensed activity;

(b) a programme of works including the timings, duration and the location of the licensed activity;

(c) the method statement to be employed by the licenced holder in carrying out the licenced activity;

(d) contractor and vessel details;

(e) plans and sections;

(f) details of where the licensed activity was assessed in the Environmental Statement;

(g) details of materials to be placed in or removed from the marine area;

(h) environmental mitigation measures;

(i) monitoring measures.

(3) The licenced activity must be carried out in accordance with the approval of the MMO

Commented [ML5]: The MMO may consult other bodies in the approval of licensed activities which may be worth capturing here

Piling

Commented [ML6]: Will any piling monitoring be undertaken?

14.—(1) The licence holder must submit a piling method statement to the MMO for approval in accordance with the procedure in Part 5, following consultation with the Environment Agency and Natural England, at least 6 weeks prior to the commencement of any operations consisting of piling.

(2) Unless otherwise agreed by the MMO, the method statement must include the following—

(a) the use of pile pads and pile shrouds at all times;

(b) soft start procedures to be followed;

(c) marine mammal observation during high tide (within 100 metres of the pile being driven) and the cessation of piling while any marine mammals are within this zone;

(d) details on the timing of piling activities throughout the year to avoid the periods of maximum abundance of the sensitive species; and

(e) details of the anticipated spread of piling activity throughout a working day.

(3) Percussive piling must only be carried out in accordance with the relevant piling method statement.

Concrete and cement

15.—(1) Waste concrete, slurry or wash water from concrete or cement activities must not be discharged, intentionally or unintentionally, into the marine environment.

(2) Concrete and cement mixing and washing areas must be contained and sited at least 10 metres from any watercourse or surface water drain.

Coatings and treatment

16. The licence holder must ensure that any coatings and any treatments are suitable for use in the marine area and are used in accordance with either guidelines approved by the Health and Safety Executive or the Environment Agency.

Spills, etc.

17. The licence holder must—

(a) store, handle, transport and use fuels, lubricants, chemicals and other substances so as to prevent releases into the marine area, including bunding of 110% of the total volume of all reservoirs and containers;

(b) report any spill of oil, fuel or chemicals into the marine area to the MMO Marine Pollution Response Team, the harbour master and the Maritime and Coastguard Agency within 12 hours of the spill occurring; and

(c) store all waste in designated areas that are isolated from surface water drains and open water and are bunded.

Removal of temporary structures etc.

18. The licence holder must remove all equipment, temporary structures, waste and debris associated with the licensed activities within 30 business days of the completion of those activities, unless otherwise agreed in writing by the MMO.

Commented [ML7]: The MMO prefer 10 business days

Dropped objects

19. All dropped objects must be reported to the harbour authority using the Dropped Object Procedure Form within six hours of the licence holder becoming aware of an incident. On receipt of the Dropped Object Procedure Form, the harbour authority may require relevant surveys to be carried out by the licence holder (such as side scan sonar), and the harbour authority may require obstructions to be removed from the seabed at the licence holder's expense, if it is reasonable to do so. The local MMO office must receive a copy of this notification no later than 24 hours after submission.

Notice of completion of licenced activity

20. The licence holder must inform the MMO in writing no more than 10 business days following the completion of the last licenced activity.

Commented [ML8]: Both the Marine Licensing team and the Coastal Office should be informed

PART 5

PROCEDURE FOR THE DISCHARGE OF CONDITIONS

Meaning of "application"

21. In this Part, "application" means a submission by the licence holder for approval of—

(a) details of the licenced activity under paragraph 13; and

(b) a piling method statement under paragraph 14.

Further information regarding application

22.—(1) The MMO may request in writing such further information from the licence holder as is necessary to enable the MMO to consider the application.

(2) If the MMO does not make a request under sub-paragraph (1) within 20 business days of the day immediately following that on which the application is received by the MMO, it is deemed to have sufficient information to consider the application and is not entitled to request further information after this date without the prior agreement of the licence holder.

Commented [ML9]: The MMO disagree in principle as requests for further information may arise from consultation

Determination of application

23.—(1) In determining the application the MMO may have regard to—

(a) the application and any supporting information or documentation;

(b) any further information provided by the licence holder in accordance with paragraph 21; and

(c) such matters as the MMO reasonably thinks are relevant.

(2) Having considered the application the MMO must—

(a) grant the application unconditionally;

(b) grant the application subject to conditions as the MMO thinks fit; and

(c) refuse the application.

(3) In determining an application, the MMO may discharge its obligations under sub-paragraph (2)(a), (b) or (c) separately in respect of a part of the application only, where it is reasonable to do so.

Notice of determination

24.—(1) Subject to sub-paragraph (2) or (3), the MMO must give notice to the licence holder of the determination of the application within 30 business days of the day immediately following that on which the application is received by the MMO, or as soon as reasonably practicable after that date.

Commented [ML10]: The standard determination time within the MMO is 13 weeks

Commented [ML11]: As above

(2) Where the MMO has made a request under paragraph 22, the MMO must give notice to the licence holder of the determination of the application no later than 30 business days of the day immediately following that on which the further information is received by the MMO, or as soon as reasonably practicable after that date.

(3) The MMO and the licence holder may agree in writing a longer period of time for the provision by the MMO of a notice under sub-paragraph (1) such period to be no more than 40 business days from the day immediately following that on which the application is received.

Commented [ML12]: Consider the following wording from the Great Yarmou h 3rd river crossing "Where the MMO determines it is not reasonably practicable to make a determination pursuant to sub-paragraph (1) or (2) in 13 weeks, it must notify the licence holder as soon as reasonably practicable and provide confirmation in writing of the intended determination date." https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010043/TR010043-001028-uksi_20201075_en.pdf

(4) Where the MMO refuses the application the refusal notice must state the reasons for the refusal.

(5) Where the notice is not given by the MMO in accordance with sub-paragraph (1) or (2) the application is deemed to have refused.

Arbitration

25.—(1) Subject to the condition in sub-paragraph (2), any difference under any provision of this licence must, including a refusal of an application pursuant to paragraph 23(2)(c), unless otherwise agreed between the MMO and the licence holder, be referred to and settled by a single arbitrator to be agreed between the MMO and the licence holder or, failing agreement, to be appointed on the application of either the MMO or the licence holder (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

(2) Nothing in paragraph 24(1) or 24(2) is to be taken, or to operate so as to, fetter or prejudice the statutory rights, powers, discretions or responsibilities of the MMO.

Commented [ML13]: The MMO do not consider it should be subject to arbitration. See attached text.

PART 6

CHANGES TO THE LICENCE

26.—(1) In the event that the licence holder wishes to undertake the licensed activity contrary to the conditions of this licence, it must inform the MMO at the earliest opportunity and request a variation to the conditions of this licence.

(2) The licence holder must not carry out any licensed activity contrary to the conditions of this licence until a variation to the licence has been approved by the MMO pursuant to its powers under section 72(3) of the 2009 Act.

(3) The MMO will grant the variation to this licence within 30 business days of the day immediately following that on which the variation was requested, subject to the licence holder providing updated details of the licenced activity pursuant paragraph 13 and adequately justifying the requested variation to the reasonable satisfaction of the MMO.

Commented [ML14]: As above, the MMO consider this should be 13 weeks, which may be subject to delay

SCHEDULE 12

Article 49

DOCUMENTS AND PLANS TO BE CERTIFIED

(1) *Document name*	*(2)* *Document reference*	*(3)* *Revision number*
Access and public rights of way plans	4.5	0.0
Book of reference	3.3	0.0
CHP statement	5.7	0.0
Design and access statement	5.3	0.0
Environmental statement	Volume 1, 6.2 Volume 2, 6.3 Volume 3, 6.4	0.0
Flood risk assessment	6.4.13	0.0
Indicative generating station plans	4.9	0.0
Land plans	4.2	0.0
Outline landscape and ecological mitigation strategy	7.4	0.0
Outline code of construction practice	7.1	0.0
Outline construction traffic management plan	7.2	0.0
Outline lighting strategy	7.5	0.0
Outline written scheme of investigation	7.3	0.0
Works plans	4.3	0.0

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for, and authorises Alternative Use Boston Projects Ltd ("AUBP") (referred to in this Order as the undertaker) to construct, operate and maintain a generating station with a capacity of over 50 megawatts but below 300 megawatts.

The Order also permits the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

A copy of the documents referred to in Schedule 12 (documents and plans to be certified) to this Order and certified in accordance with article 49 of the Order (certification of documents, etc.) may be inspected free of charge during working hours at the offices of AUBP, 25 Priestgate, Peterborough PE1 1JL.

STATUTORY INSTRUMENTS

202[ ] No. 0000

INFRASTRUCTURE PLANNING

The Boston Alternative Energy Facility Order 202[ ]

BDB Pitmans LLP
Solicitors and Parliamentary Agents
One Bartholomew Close, London EC1A 7BL
[Master DCO: 22359803.01 — 26.11.20]
[Working Copy: 22387655.01 — 26.11.20]

Marine Management Organisation

Marine Licensing
Lancaster House
Hampshire Court
Newcastle upon Tyne
NE4 7YH

[redacted]

Project Team
Planning Inspectorate
BostonAlternativeEnergyFacility@planninginspectorate.gov.uk
By email only

Your reference:
EN010095
Our reference:
DCO/2018/00012

18 June 2021

Dear Sir/Madam,

Planning Act 2008: Boston Alternative Energy Facility (BAEF)

Relevant Representation

The Marine Management Organisation ("MMO") did not receive notice under Section 56 (S56) of the Planning Act 2008 ("the 2008 Act") that the Planning Inspectorate ("PINS") had accepted an application made by Boston Alternative Energy Facility (BAEF) (the "Applicant") for a Development Consent Order ("DCO") until later than the day of acceptance. As such, this document comprises the MMO's initial comments in respect of the DCO Application in the form of a relevant representation following consultation with our local MMO office. Further technical comments from the MMO will be forthcoming at future deadlines following consultation with our scientific advisors as The Centre for Environment, Fisheries and Aquaculture Science (Cefas).

This is without prejudice to any future representation the MMO may make about the DCO Application throughout the examination process. This is also without prejudice to any decision the MMO may make on any associated application for consent, permission, approval or any other type of authorisation submitted to the MMO either for the works in the marine area or for any other authorisation relevant to the proposed development.

Yours faithfully,

[redacted]

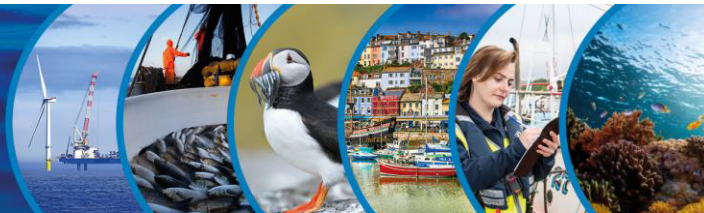
Katherine Blakey
Marine Licensing Case Officer

[redacted]

Copies:

[redacted]

Contents



1. The Role of the MMO

The MMO was established by the Marine and Coastal Access Act, 2009 (the "2009 Act") to contribute to sustainable development in the marine area and to promote clean, healthy, safe, productive, and biologically diverse oceans and seas.

The responsibilities of the MMO include the licensing of construction works, deposits and removals in English inshore and offshore waters and for Northern Ireland offshore waters by way of a marine licence[1]. Inshore waters include any area which is submerged at mean high water spring ("MHWS") tide. They also include the waters of every estuary, river, or channel where the tide flows at MHWS tide. Waters in areas which are closed permanently or intermittently by a lock or other artificial means against the regular action of the tide are included, where seawater flows into or out from the area. The MMO is an interested party for the examination of DCO applications for Nationally Significant Infrastructure Projects ("NSIPs") in the marine area.

As a prescribed consultee under the Planning Act, 2008 (the "2008 Act"), the MMO advises developers during pre-application on those aspects of a project that may have an impact on the marine area or those who use it. In addition to considering the impacts of any construction, deposit, or removal within the marine area, this also includes assessing any risks to human health, other legitimate uses of the sea and any potential impacts on the marine environment from terrestrial works.

In the case of NSIPs, the 2008 Act enables DCO's for projects which affect the marine environment to include provisions which deem marine licences ("DML")[2]. Where a marine licence is deemed within a DCO, the MMO is the delivery body responsible for post-consent monitoring, variation, enforcement, and revocation of provisions relating to the marine environment. As such, the MMO has a keen interest in ensuring that provisions drafted in a DML enable the MMO to fulfil these obligations.

Alternatively, developers can look to have the marine elements of NSIP's consented via a marine licence under Part 4 of the 2009 Act. The MMO is the Licensing Authority for the purpose of Part 4 of the 2009 Act, and is also responsible for post-consent monitoring, variation, enforcement, and revocation of provisions relating to the marine environment. Where a marine licence is sought under Part 4 of the 2009 Act for an NSIP, the MMO will engage with PINS throughout the DCO process to ensure that NSIPs are considered in their entirety, and do not conflict with any licence issued under Part 4 of the 2009 Act.

The MMO is responsible for post-consent monitoring, variation, enforcement, and revocation of provisions relating to the marine environment of consents issued under both Acts. Further information on licensable activities can be found on the MMO's website[3]. Further information on the interaction between PINS and the MMO can be found in our joint advice note[4].

[redacted]

2. The Proposed Development

The DCO Application is for the construction, operation and maintenance of an 'Energy from Waste' (EfW) plant which will have a generating capacity of approximately 102 megawatts electric (MWe) delivering 80 MWe to the National Grid, including an electrical connection, a new site access, and other associated development (together 'the Proposed Development') on land at or near Riverside Industrial Estate, Bittern Road, Boston, Lincolnshire ('the Application Site').

The Facility would comprise the following main elements:

- a wharf and associated infrastructure (including re-baling facility, workshop, transformer pen and welfare facilities);
- a Refuse Derived Fuel (RDF) bale contingency storage area, including sealed drainage, with automated crane system for transferring bales;
- conveyor system running in parallel to the wharf between the RDF storage area and the RDF bale shredding plant. Part of the conveyor system is open and part of which is under cover (including thermal cameras);
- bale shredding plant;
- RDF bunker building;
- thermal treatment plant comprising three nominal 34 MWe combustion lines (circa 120 megawatts thermal (MWth)) and associated ductwork and piping, transformer pens, diesel generators, three stacks, ash silos and ash transfer network; and air pollution control residues (APCr) silo and transfer network;
- turbine plant comprising three steam turbine generators, make-up water facility and associated piping and ductwork;
- air-cooled condenser structure, transformer pen and associated piping and ductwork; • Lightweight Aggregate (LWA) manufacturing plant comprising four kiln lines, two filter banks with stacks, storage silos for incoming ash, APCr, and binder material (clay and silt), a dedicated berthing point at the wharf, silt storage and drainage facility, clay storage and drainage facility, LWA workshop, interceptor tank, LWA control room, aggregate storage facility and plant for loading aggregate / offloading clay or silt;
- electrical export infrastructure;
- two carbon dioxide (CO_2) recovery plants and associated infrastructure, including chiller units;
- associated site infrastructure, including site roads, pedestrian routes, car parking, site workshop and storage, security gate, control room with visitor centre and site weighbridge; and
- habitat mitigation works for Redshank and other bird species comprising of improvements to the existing habitat through the creation of small features such as pools/scrapes and introduction of small boulders (Habitat Mitigation Works) within the Habitat Mitigation Area.

The MMO's interest in this project is mainly regarding the wharf and habitat mitigation works, including any associated infrastructure as well as any impacts to the UK marine area as described in Section 42 of the 2009 Act.

3. Draft Development Consent Order and Deemed Marine Licences

3.1. Schedule 9 - Deemed Marine Licence (DML)

3.1.1. With regard to Part 1 (1) 'Interpretation' – "maintain" includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve to the extent that such works do not give rise to any materially new or materially different environmental effects than those identified in the environmental statement and "maintenance" and "maintaining" are to be construed accordingly. The MMO advises that our interpretation of 'maintenance' means the upkeep or repair an existing structure or asset wholly within its existing three-dimensional boundaries. 'Alteration' or 'improvement' means to change an existing structure or asset so that it differs in character from that which already exists. Therefore, the MMO request that the interpretation in the DML is brought in line with our interpretation as the regulator.

3.1.2. With regard to Part 1 (1) 'Interpretation' – the MMO note that the term 'licence holder' has been used. The MMO has moved away from 'the licence holder' on standard marine licences and advise that this phrase be replaced when referenced with 'the undertaker'. We recommend this is used in future iterations of the draft DML.

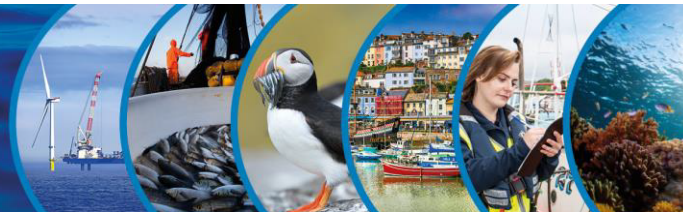
3.1.3. With regard to Part 1 (1) 'Interpretation' – 'Mean High Water Springs' is abbreviated to 'MHW'. The MMO note that this may be a typographic error as later the abbreviation used is 'MHWS'.

3.1.4. With regard to Part 1 (2) 'Contact details' – MMO advise that the Applicants are expected to submit returns and/or copy of notifications as default via the online web portal, the 'Marine Case Management System' (MCMS). Therefore, the MMO suggest the inclusion of the following wording: '*All notifications must be sent by the undertaker to the MMO must be sent using the MMO's Marine Casement Management System (MCMS) web portal.'*

3.1.5. With regard to Part 2 (3) (a) – states "form part of, or are related to, the authorised development". It is the understanding of the MMO that the authorised development is outlined in Part 2 (5) so request the wording is simply amended to 'the authorised development'.

3.1.6. With regard to Part 2 (5) Table 1 – the MMO request that specific separate information is provided regarding the volume (cubic metres) of the initial capital dredge and a volume for maintenance dredging (for the lifetime of the project and an annual maximum). In addition, the MMO request that the method for capital and maintenance dredging be specified. The MMO note that further comments on dredging matters will be provided at future deadlines

3.1.7. With regard to Part 2 (5) (j) 'authorised development' activities to alter, , remove, relocate, or replace any work or structure, the wording is too vague and flexible here. The MMO requires that the wording is more precise and not left open to interpretation. The MMO would also add that these activities do not



include the removal, relocation or detonation of ordinance. Should detonation of ordinance be required, the MMO request a separate Marine Licence applications is made.

3.1.8. With regard to Part 2 (5) (k) 'other works and development; - notes 'to provide or alter embankments, foundations, retaining walls, drainage works, outfalls, pollution control devices, pumping stations, culverts, wing walls, fire suppression system water tanks and associated plant and equipment, lighting and fencing; and… to alter the course of, or otherwise interfere with, navigable or non-navigable watercourses'. The MMO recommends engagement with the Maritime and Coastguard Agency and Trinity House in the first instance in regard to navigation. It is also advisable that you engage with nearby harbour authorities.

3.1.9. With regard to Part 4 (7) 'conditions' – the MMO advise that this point may not be required.

3.1.10. With regard to Part 4 'conditions' – the MMO advise that all conditions listed in this part must meet the MMO's five tests for condition wording. The MMO's five tests are that conditions must be: Necessary; Precise; Enforceable; Reasonable; Relate to the activity or development.

3.1.11. In relation to point 3.1.10 above – the MMO advise that the conditions for (10) notification of HM Coastguard and (11) local notice to mariners are updated to ensure notifications must be provided at least 5 days prior to commencement and a copy of the notification provided (via MCMS) within 24 hours of issue.

3.1.12. With regard to Part 4 (13) 'detailed of licensed activity' – the MMO advise that the inclusion of 'licensed activities must not commence until written approval is provided by the MMO' and suggest the inclusion of 'unless otherwise agreed' to part 3 of this article to allow for the Applicant to update elements of the submission. The MMO advise that consultation with Natural England and the Environment Agency may also be required.

3.1.13. With regard to Part 4 (14) 'piling' – the MMO advise the inclusion of 'licensed activities must not commence until written approval is provided by the MMO' and suggest the inclusion of 'unless otherwise agreed' to part 3 of this article to allow for the Applicant to update elements of the submission.

3.1.14. With regard to Part 4 'conditions' – the MMO request the following conditions are included: *'Any oil, fuel or chemical spill within the marine environment must be reported to the MMO Marine Pollution Response Team within 12 hours using the details provided in Part 1 (2) (2).*

3.1.15. In addition to the above and in connection with 5.2 of this response, the MMO recommend that the following conditions may be required in Part 4:

- *Percussive piling must only be conducted between May to September, inclusive (to avoid the overwintering period for birds).*

  Condition wording would be subject to agreement with Natural England in their capacity as the SNCB. The MMO welcome engagement with both the Applicant and Natural England to determine the most suitable condition wording.

- *Soft-start procedures must be used to ensure incremental increase in pile power over a set time period until full operational power is achieved. The soft-start duration must be a period of not less than 20 minutes. Should piling cease for a period greater than 10 minutes, then the soft start procedure must be repeated. The MMO will confirm the exact requirements at future deadlines pending consultation with our scientific advisors and liaison with Natural England.*

- Sampling will be required throughout the lifetime of the project to ensure contamination levels remain stable. As sample plan may be required every 3-5 years. *The MMO will confirm the exact requirements at future deadlines pending consultation with our scientific advisors.*

- *No disposal of dredge arisings below MHWS. All waste must be disposed of on land.*

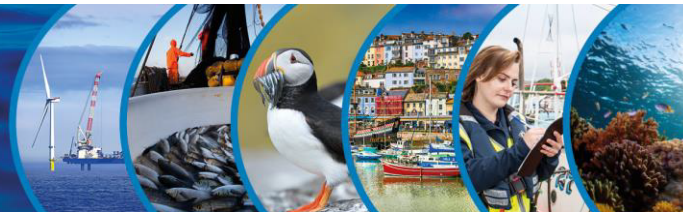
- *No dredging activities must be undertaken between March to June, inclusive (to avoid the sensitive migratory period for juvenile fish). The MMO will confirm the exact requirements at future deadlines pending consultation with our scientific advisors and engagement with Natural England.*

- *Bathymetric surveys should be undertaken every six months during the construction period. This would support early warning of erosion and/or deposition exceeding predictions. Bathymetric surveys should also be undertaken during the early operation of the wharf, to monitor sedimentation in the berthing areas and quantify the future requirement for maintenance dredging)*. The MMO will provide suggested condition wording following consultation with Cefas.

- *Best practice regarding marine mammals (such as an observer on board each vessel, looking out for marine mammals) and slow speed (max. 4 knots) to be kept for all vessels.*

- *A Construction Environmental Management Plan (CEMP) and a pollution response plan should be provided. The MMO will provide suggested condition wording following consultation with our advisors.*

- *The MMO will require a decommissioning plan. The MMO will provide suggested condition wording following consultation with our advisers.*



- *The MMO will require a Written Scheme of Investigation for heritage impacts. The MMO will provide suggested condition wording following engagement with Historic England.*

3.1.16. With regard to Part 5 (22) 'Further information regarding application' and (24) 'Notice of Determination' - The MMO do not consider it acceptable to place determination periods/timeframes as this impacts the MMO's ability to consult with technical/statutory consultees, regulate marine activities and protect the marine environment, and request that these timeframes are removed.

3.1.17. With regard to Part 6 (25) (2) 'changes to this licence' – please note that if granted and there is the need for a substantive change (outside of what was assessed in the Environmental Statement) then it is likely that a new marine licence application will be required.

3.1.18. With regard to Part 6 (25) (3) 'changes to this licence' – the draft states that "*The MMO will grant the variation to this licence within 13 weeks from the day immediately following that on which the variation was requested, or as soon as reasonably practicable, subject to the licence holder providing updated details of the licenced activity in accordance with paragraph 13 and adequately justifying the requested variation to the reasonable satisfaction of the MMO*". Please note that the MMO do not find this acceptable as it impacts our ability as a regulator to protect the marine environment and request that this is removed. The MMO endeavours to provide a determination on 90% of applications within 13 weeks but there is no guarantee that this determination when granted will be positive.

3.2. Development Consent Order (DCO) Comments

3.2.1. With regard to Part 6 (47) 'miscellaneous and general' – the MMO note that the reference for licence conditions in this article is Part 2, however from review of the DML the conditions are listed under Part 4 of the Schedule 9.

3.2.2. With regard to Part 4 (19) 'supplementary powers', the MMO observe the inclusion of supplementary powers. Owing to the manner in which the MMO received the S56 notice further comment will be provided on this at future deadlines.

3.2.3. <u>Part 4 - Preliminary – interpretation</u>

With regard to "maintain" in relation to the authorised development, alter, remove, and improve; the wording is too vague and flexible here. The MMO requires that the wording is more precise and not left open to interpretation. The MMO would also add that these activities do not include the removal, relocation, or detonation of ordinance.

3.2.4. <u>Part 4 – supplemental powers</u>

With regard to 19.—(1) Subject to Schedule 10 (protective provisions temporarily alter, interfere with, occupy, and use the banks, bed, foreshores,

waters and walls of a relevant navigation or watercourse;

(e) interfere with the navigation of any relevant navigation or watercourse,

The MMO note that the word ‘interfere’ is used. The MMO consider that this wording is too vague and flexible and should be more specific.

3.2.5. Arbitration

46. Subject to article 50 (procedure in relation to approvals, etc., under Schedule 2) and except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, any difference under any provision of this Order must be referred to and settled by a single (a) 1978 c. 30. 36 arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

The MMO notes that arbitration provisions tend to follow model clauses and be confined to disputes between the applicant/beneficiary of the DCO and third parties e.g. in relation to rights of entry or rights to install/maintain apparatus. The MMO does not consider that it was intended to apply such provisions to disagreements between the undertaker and the regulator, and strongly questions the appropriateness of making any regulatory decision or determination subject to any form of binding arbitration.

When the MMO was created by Parliament to manage marine resources and regulate activities in the marine environment, the Secretary of State delegated their functions to the MMO under the 2009 Act. As both the role of the Secretary of State (in determining DCO applications) and the role of the MMO (as a regulator for activities in the marine environment) are recognised by the 2008 Act, the responsibility for the Deemed Marine Licence (DML) passes from the Secretary of State to the MMO once granted. The MMO is responsible for any post-consent approvals or variations, and any enforcement actions, variations, suspensions, or revocations associated with the DML.

It was not the intention of Parliament to create separate marine licensing regimes following different controls applied to the marine environment. One of the aims of the 2008 Act is the provision of a ‘one stop shop’ for applicants seeking consent for a National Significant Infrastructure Project (NSIP). The new regime allows for the applicant to choose whether to include a DML issued under the 2009 Act within the DCO provision or apply to the MMO for a stand-alone licence covering all activities in the marine environment. In any case, it is crucial that consistency is maintained between DML granted through the provision of a DCO, and Marine Licences issued directly by the MMO independent of the DCO process.

It is the MMO’s opinion that the referral to arbitration in situations where ‘difference’ may arise, is contrary to the intention of Parliament and usurps the MMO’s role as regulator for activities in the marine environment.

Once the DCO is granted, the DML falls to be dealt with as any other Marine Licence, and any decisions and determinations made once a DML is granted fall into the regime set out in the 2009 Act. Any decisions or actions the MMO carries out in respect of a DML should not be made subject to anything other than the normal approach under the 2009 Act. To do so introduces inconsistency and potentially unfairness across a regulated community. In the case of any disagreement which may arise between the applicant and the MMO throughout this process, there is already a mechanism in place within that regime to challenge a decision through the existing appeal routes under Section 73 of the 2009 Act.

The MMO would like to highlight that the regulatory decisions, and indeed any challenges through the existing mechanisms should be publicly available and open to scrutiny. In many cases, members of the public or other stakeholders may wish to make representations in relation to post-consent matters. Ordinarily, their views would be considered by the MMO and they would have the opportunity to follow up and challenge the decision making e.g. through the MMO complaints process, by complaint to the Ombudsman, or by Judicial Review. A private arbitration to resolve post-consent disputes would reduce transparency and accountability.

Regarding appeals, the MMO draws attention to the position on Norfolk Vanguard Offshore Wind Farm DCO. The Examining Authority (ExA) recommendation on Schedules 9 to 12, Part 5 – procedure for appeals concluding in paragraph 9.4.42 is outlined as follows:

> "*There is no substantive evidence of any potential delays to support an adaptation to existing procedures to address such perceived deficiencies. To do so would place this particular Applicant in a different position to other licence holders*."

Similarly, the Hornsea Three Offshore Wind Farm ExA Recommendation report states under the 'Alternative dispute resolution methods in relation to decisions of the MMO under conditions of the DMLs' section, in paragraphs 20.5.27 – 20.5.29:

> "*We agree with the MMO on this point. The process set out in the Marine Licensing (Licence Application Appeals) Regulations 2011 does not cover appeals against decisions relating to conditions. Whilst it would be possible to amend those regulations under PA2008, the result would be to create a DML which would be different to other marine licences granted by the MMO. We recommend that the Applicant's alternative drafting in Articles 38(4) and 38(5) is not included in the DCO. (…) We have commented above that the scale and complexity of the matters to be approved under the DMLs is a strong indicator that those matters should be determined by the appropriate statutory body (the MMO). In our view an approach whereby matters of this magnitude would be deemed to be approved as a result of a time period being exceeded would be wholly inappropriate. Notwithstanding the exclusion of European sites, this approach would pose unacceptable risks to the marine environment and navigational safety.*

We recommend that the Applicant's alternative drafting is not included in the DCO."

There is no compelling evidence as to why the Applicant in the case of BAEF should be an exception to the well-established rules and treated differently to any other Marine Licence holder.

4. Environmental Statement (ES)

4.1. The MMO note that the Applicant has referenced past MMO responses and has provided updates regarding the actions they have taken to address these matters. The MMO welcomes this approach, however the MMO has not been able to review these in detail with our technical specialist due to the limited time provided. The MMO will revert in future responses.

4.2. The MMO would like to note that any mitigation discussed in the ES must be secured through conditions in the DML. As noted above the MMO's five tests are that conditions must be: Necessary; Precise; Enforceable; Reasonable; Relate to the activity or development.

4.3. The MMO defer to Natural England as the SNCB regarding the Habitats Regulation Assessment (HRA) and for impacts to any habitats or species, both terrestrial and marine. The MMO note that the Applicant has included a Habitat Mitigation Area within the application to 'mitigate' the loss of foraging area. It is the opinion of the MMO case team that this is not mitigation and should be viewed as a compensation. Compensatory measures if used must be proven to be effective and must be secured as part of the DCO. The MMO recommend direct engagement by the Applicant with Natural England as SNCB on these matters.

4.4. The MMO wish to highlight that the Environment Agency are the lead authority for the Waste Framework Directive, Water Framework Directive and matters pertaining to flood risk. The MMO also refer to the Environment Agency for advice in relation to impacts to migratory fish species. It is the understanding of the MMO that Environmental Permits will be required for this scheme. The MMO advise early and direct engagement with the Environment Agency on these matters.

4.5. The MMO looks to Historic England re: heritage impacts and whether mitigation needs to be secured via the DML. Given the size, location, and the nature of the proposal the MMO seeks the views of navigation safety bodies and lighthouse authorities regarding impacts (including cumulative) for navigational matters. If any mitigation is required, then the MMO would look to secure this via the DML.

4.6. The MMO notes that there is no reference to the East Inshore Marine Plans in the Environmental Statement project description. The MMO advise that a Marine Plan policy assessment is undertaken for this project. The MMO welcomes engagement with on the applicant on this matter should they require any further advice.

4.7. The MMO is aware that both Natural England and the Environment Agency have concerns regarding the evidence provided within the ES, particularly around the scale of assessment. The MMO understand that Natural England and the Environment Agency consider there is substantive reasoning to delay the start of examination until such time further assessment can be provided, with ample time to review this. The MMO support Natural England and the Environment Agency in this position as we are aware this is likely to have implications for the DCO/DML conditions and the requirement thereof.

4.8. Further, the Applicant issued notice of S56 to the MMO via post to headquarter offices without electronic notification. Given the experience of the past year in which working from home has become the norm the MMO consider this an oversight on the part of the Applicant. In line with current Government advice the Marine Licensing team will continue to practice working from home and so the MMO request all future correspondence is issued to us electronically.

4.9. As noted above this method of consultation has meant the MMO could not engage our scientific advisors for substantive comment. The MMO hopes to provide a fuller response in future.

4.10. The MMO wish to take this opportunity to remind the Applicant of their responsibility to ensure that they are complying with legislation regarding protected species (e.g. the Wildlife and Countryside Act, 1981). Further guidance regarding protected species and wildlife licensing is available on the MMO's website, link here: [redacted]

4.11. The MMO would like to note that any mitigation discussed in the ES must be secured as conditions in the DML.

4.12. The MMO defer to Natural England as the Statutory Nature Conservation Body (SNCB) for all Nature Conservation related advice, both terrestrial and marine.

4.13. The MMO note that our previous advice has been addressed within Chapter 17 'Marine and Coastal Ecology'. The MMO will review and provide further comment at a later date following consultation with our specialist advisors.

Minutes

HaskoningDHV UK Ltd.
Industry & Buildings

Present:	Paul Salmon (PS), Abbie Garry (AG) (Royal HaskoningDHV), Sophie Reese (SR) (BDB Pitmans), Lindsey Mullan (LM) and Katherine Blakey (KB) (Marine Management Organisation (MMO)).
Apologies:	
From:	Abbie Garry
Date:	6th August 2021
Location:	Teams
Copy:	
Our reference:	PB6934-RHD-ZZ-XX-MI-Z-1079
Classification:	Project related
Enclosures:	

Subject: **Boston Alternative Energy Facility MMO Meeting 06.08.21**

Number	Details	Action
1	**Introduction**	
	LM noted that there would be a replacement, Joe Wilson, for the Senior Management Role. The case manager will also be replaced.	
	LM noted CEFAS' response is due to the MMO by the 15th September so would anticipate this could be shared with us by the 24th September.	
	PS noted that the first Preliminary Meeting is on the 28th September and due to the meetings being virtual there likely be a second PM in early October, with examination beginning after this (however currently awaiting the Rule 6 letter).	
	PS mentioned there is a marine ecology topic and invited CEFAS to be a part of that group if necessary.	LM to ask CEFAS for an earlier response and ask if they would be interested in the marine ecology topic group.
	LM noted she would ask CEFAS if they could provide any information sooner and would ask them about the marine ecology topic group.	
	PS confirmed that the Planning Inspectorate (PINS) has suggested that examination will be virtual with the exception of one in person open floor hearing.	
2	**MMO Relevant Representation (RR)**	
	SR ran through the MMO's RR, for the full RR please see here.	
	3.1.1.	

Number	Details	Action
	SR noted that for point 3.1.1. we would like to keep the drafting as “maintain” as this is very similar to the wording in the Eggborough Gas Fired Generating Station and the same as a large number of Development Consent Orders (DCOs). SR noted that with regards to “improve” this could be in reference to improvements of technology over time. The definition is also limited that the works do not give rise to any materially new or different environmental effects. LM noted that the wording of “materially new or materially different” environmental effects is stringent enough to keep the wording “maintain”. 3.1.2. SR noted they have changed “licence holder” to “undertaker”. 3.1.3. SR mentioned the typographical error for Mean High Water Springs has been amended. 3.1.4. SR noted the changes had been made with regards to contact details, but the wording has been tweaked slightly to “Unless otherwise stated in writing by the MMO, all notifications required by this licence must be sent by the undertaker to the MMO using the MMO’s Marine Case Management System (MCMS) web portal.”. LM suggested adding the MCMS to the interpretation section. 3.1.5. SR noted that with regards to the wording of Part 2 (3) (a), the wording needs to remain as a single sentence and is the same wording included in recent deemed marine licences (DMLs). LM noted that this is acceptable in principle, but LM to confirm in writing. 3.1.6 SR noted this point would need to be discussed as there were various approaches in different DMLs, with some providing detail within the DML and some leaving it to the details of licenced activities submitted to the MMO for approval. LM noted they wanted to be clear on the volumes but it makes it difficult to change in the future. LM mentioned that we could state that this is the maximum volume “unless otherwise agreed	

Number	Details	Action
	with the MMO" in case we needed further quantities. LM noted she would agree with this with CEFAS in terms of what that would mean for sampling.	LM to agree sampling with CEFAS.
	AG noted that for the maintenance dredging there was quite a range of predicted dredge arisings so it would be difficult to provide a value for the DML.	
	LM noted that we could provide the values for capital, but maintenance would be more difficult.	
	LM to consider this further and discuss with CEFAS. LM noted we should consider the wording we would prefer.	LM to discuss with CEFAS on the approach to dredging methodology in the DML.
	PS noted that we would not need to model however we are currently looking at 0.5m of sedimentation over a year. PS noted that if CEFAS had a strong view on modelling we would need to know this very soon.	
	AG mentioned MMO's request for the method of capital and maintenance dredging, and although we do have some details we would like to leave a level of flexibility for the contractor.	
	PS noted that maintenance dredging would be done by the Port of Boston (PoB) and in line with their current pre-approved methods.	
	AG noted that in terms of the capital dredge although we don't have the specific methodology the Environmental Statement (ES) does define specific mitigation measures which would be in place. *Post meeting note: see the Register of Environmental Actions and Commitments (document reference 7.6, APP-125).*	
	PS noted that it is currently planned that there would be a long reach excavator from land side, with re-use of material on site as backfill.	
	LM noted that if the Port are undertaking the maintenance dredging that would be licenced under their current consenting regime or under their powers as a harbour master to dredge.	
	LM noted that re-use of material is fine, but would need to use the OSPAR returns mechanism if for any reason there was water injection for dredging.	

Number	Details	Action
	LM noted that if we don't currently have the details we could have a dredging plan to be agreed in writing with the MMO post consent.	
	SR noted we could include some further wording in the condition which is currently in the draft DML.	SR to update wording of the condition on dredging methodology.
	3.1.7. SR noted that they have added some wording that the activities need to be within the Haven and within the Order limits and have added the requested wording regarding ordnances.	
	LM noted the word "modify" should reflect the definition of "maintain" in that any modifications would have to be within the assessed limits of the ES.	
	SR noted she would review the wording of this, and consider updating the text.	SR to review wording of 'modify'.
	3.1.8. SR noted we have been engaging with the Maritime and Coastguard Agency (MCA) and Trinity House. And MCA provided a standard response. SR noted we have also consulted with the PoB who have reviewed the DML wording and were happy with it from a navigation perspective.	
	3.1.9. SR confirmed that Part 4 (7) "conditions" has been taken out as suggested.	
	3.1.10. This is noted.	
	3.1.11 SR noted the notices for timescales for notices to mariners would be updated as requested.	
	3.1.12. SR noted that for Part 4 (13) details of licenced activities has been added in. Natural England and Environment Agency haven't requested to be a consultee for this specific requirement, so this hasn't been included.	
	3.1.13.	

Number	Details	Action
	SR mentioned that with regards to Part 4 (14) “piling” this has been updated as requested with a slight change to the suggested wording. LM agreed with the amended wording. 3.1.14. SR noted that with regards to conditions of oil/ fuel/ chemical spillage, there is condition 16 to report any spill to the harbour master and MCA within 12 hours which captures this. LM confirmed that this is acceptable. 3.1.15. *Percussive piling* SR noted that with regards to percussive piling and timescales between May to September, the wording currently notes avoiding maximum abundance for sensitive species which covers off birds and fish. LM stated that periods should be defined or the condition wouldn’t be enforceable and noted DML conditions need to meet the five tests. SR noted we would consider this and confirm. *Soft start procedures* SR noted condition 13/14 provides that the method statement should include soft start procedures to be followed. The specific details would be included in the method statement for the MMO to approve. LM confirmed this was acceptable. *Monitoring and sample plans* SR mentioned condition 12/13 provides that details of monitoring measures will need to be submitted to the MMO. SR noted if sampling was something CEFAS requested then we could add this in. LM noted that when there is an ongoing dredge element there would usually be a sampling plan for 3-5 years. PS asked that if we defer the maintenance dredging to the PoB, as it would be under their licence, do we need to make that clear in any documentation? LM noted delimiting everyone’s responsibilities.	SR to consider wording for percussive piling timescales.

Number	Details	Action
	LM noted they would get in touch with PoB to understand their consents. PS requested an update if the MMO do get in touch with the PoB. *Dredging and juvenile fish* LM noted if PoB's consent is different to this requirement, then it may become immaterial. SR noted that the dredging will be in accordance with the Marine Ecology chapter of the ES which sets out the requirement for avoiding sensitive periods for fish. LM noted that the Port's maintenance dredging for the Facility would need to be in line with the timing requirements set out in the DML. *No disposal of dredge arisings below MHWS.* SR noted that the DML does not include disposal below MHWS. AG noted that any dredgings required by the Facility would be taken and any additional would be disposed at sea under the PoB's licence. SR noted the PoB's licence would need to be varied if the licence doesn't cover the sufficient capacity. *Bathymetric surveys* SR asked if the MMO has any specific wording on bathymetric surveys. LM noted she will speak to CEFAS on bathymetric surveys. AG noted that 0.5m sedimentation rate and statement on bathymetric surveys is within the estuarine processes chapter. *Best practice measures for marine mammals* SR noted this is captured by the environmental mitigation measures within Chapter 17 which sets out that there should be a marine mammal observer and also the speed limit. There is also a Navigation Management Plan (NMP) as a requirement of the DCO which also covers the marine mammal observer on board and also part of the piling method statement. SR noted the NMP is a requirement in the DCO and would be discharged by the local authority.	LM to contact PoB on understanding their consents. LM to update PS once contacted PoB. LM to speak to CEFAS on wording for bathymetric surveys.

Number	Details	Action
	LM noted they would want to see some sort of condition as the NMP would usually come to the MMO who would then consult with the MCA/ Trinity House. LM noted it could be in both the DCO and the DML.	
	SR noted it would make sense to put it in the DML instead with the MMO as the discharging authority.	SR to move NMP from Schedule 2 to DML in Schedule 9.
	CEMP and Pollution Response SR noted there is a CoCP with pollution response but questioned if there was something specific required in the DML.	
	LM noted it would be necessary within the DML in terms of a CEMP and pollution response plan.	LM to provide any specific wording relating to CEMP and Pollution response.
	SR noted wording would be added but requested if there was any specific wording for the MMO to provide it.	
	Decommissioning Plan SR noted that there is no plan to decommissioning the wharf infrastructure as it will be a permanent structure as part of the flood defence structure.	SR to update wording of DML.
	LM confirmed that if we aren't decommissioning then wouldn't need this plan.	
	Written Scheme of Investigation (WSI) SR noted there is a requirement in the DCO which covers the WSI and it is being covered with the relevant stakeholders so asked if we wanted to cover anything specific in the DML.	
	LM noted this is within some of the offshore wind farms and so would provide an example to SR.	LM to provide example to SR of offshore WSI from an offshore wind farm.
	PS noted there is a meeting w/c 9th August to cover heritage and will cover off in meeting with heritage stakeholders.	
	SR noted the wharf construction is covered by the WSI so might be a single document which would work for both onshore and offshore.	
	3.1.16 SR noted with regards to Part 5 (22) on not placing timeframes on further information, the wording was updated previously and was updated to reflect the wording in the Great Yarmouth Third River Crossing. The MMO retains a level of flexibility by the	

Number	Details	Action
	inclusion of "as soon as reasonably practicable" whilst still providing timeframes to work towards. LM noted that for the offshore wind farm projects at the moment timeframes might affect the MMO's ability to properly regulate. But will confirm with the legal team. LB noted their KPI of 13 weeks determination. SR noted there might not be agreement and will discuss internally on our position. 3.2.1, 3.2.2 and 3.2.3 SR noted an error in terms of the draft DCO which has been corrected and noted that "maintain" is constrained by the wording on no "materially new or materially different environmental effects". 3.2.4 SR noted the wording "interfere" was taken from the M4 motorway junctions 3-12 smart motorway. LM noted wanted to confirm what "interfere" meant in the context of the DML. 3.2.5 Arbitration SR noted with regards to Article 50, the article has been amended to include the "for avoidance of doubt" wording from Hornsea Three. *Environmental Statement* SR noted the East Inshore Marine Plan is covered in Chapter 3 Policy and Legislation *(paragraphs 3.4.44 and 3.4.45),* (document reference 6.2.3, APP-041), within each relevant ES chapter and within the Planning Statement *(paragraphs 6.79 - 6.81 and Appendix 1)* (document reference 5.2, APP-031).	LM to confirm MMOs position. SR to discuss position on timeframes and confirm with MMO.
3	**AOB** PS noted that if any priority concerns from CEFAS could be brought forward early that would be important, particularly if extra work is required. SR noted we are expecting the Rule 6 letter on the 17th August and will have further timeframes after that. *Post meeting note, the Rule 6 letter is here.*	

Number	Details	Action
	SR noted the SoCG will be reviewed and sent back to MMO with a draft to be submitted at the beginning of examination.	BDB Pitmans to return draft SoCG to MMO.

Appendix B Glossary

Term	Abbreviation	Explanation
Habitat Mitigation Area		A 1.5 ha located approximately 170 m to the south east of the Principal Application Site, encompassing an area of saltmarsh and small creeks at the margins of The Haven where habitat mitigation works will be provided.
Habitats Regulations Assessment	HRA	A Habitats Regulations Assessment (HRA) refers to the several distinct stages of Assessment which must be undertaken in accordance with the Conservation of Habitats and Species Regulations 2017 (as amended) and the Conservation of Offshore Marine Habitats and Species Regulations 2017 (as amended) to determine if a plan or project may affect the protected features of a habitats site before deciding whether to undertake, permit or authorise it.
National Site Network		Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) in the UK no longer form part of the EU's Natura 2000 ecological network. The 2019 Regulations have created a national site network on land and at sea, including both the inshore and offshore marine areas in the UK.
Principal Application Site	N/A	A 25.3 hectare site where the industrial infrastructure will be constructed and operated. It is neighboured to the west by the Riverside Industrial Estate and to the east by The Haven.