

REPORT

Boston Alternative Energy Facility

Written Summary of the Applicant's Oral Case at Issue
Specific Hearing on draft Development Consent Order

Client: Alternative Use Boston Projects Ltd

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Glossary of Acronyms

Acronym	Definition
APA	Asset Protection Agreement
BBC	Boston Borough Council
CEMP	Construction Environmental Management Plan
DCO	Development Consent Order
DML	Deemed Marine Licence
EA	Environment Agency
EfW	Energy from Waste
ES	Environmental Statement
ExA	Examining Authority
LCC	Lincolnshire County Council
MMO	Marine Management Organisation
SoCG	Statement of Common Ground
WPD	Western Power Distribution

1 Introduction

- 1.1.1 This document summarises the case made orally by Alternative Use Boston Projects Limited (the Applicant) at the first Issue Specific Hearing on the draft Development Consent Order (ISH1), which took place virtually on 23 November 2021 in relation to the Boston Alternative Energy Facility project (the “Facility” or the “Proposed Development”).
- 1.1.2 Richard Marsh (RM) and Sophie Reese (SR) of BDB Pitmans represented the Applicant.
- 1.1.3 In what follows, the Applicant’s submissions on the points raised follow the agenda for the ISH1 set out in the Examining Authority’s (ExA) agenda published on the Planning Inspectorate website on 16 November 2021.

Table 1-1 Agenda items covered during Issue Specific Hearing 1

Item	ExA Question / Context for discussion	Applicant's Response
AGENDA ITEM 1 (Welcome, introductions and arrangements for the hearing)		
		No questions of an introductory or preliminary nature were raised by the Applicant or by other attendees at the ISH1.
AGENDA ITEM 2 - Purpose of the Issue Specific Hearing		
		No questions related to the purpose of ISH1 were raised by the Applicant or by other attendees at the ISH1.
AGENDA ITEM 2 - Purpose of the Issue Specific Hearing		
		No questions related to the purpose of ISH1 were raised by the Applicant or by other attendees at the ISH1.
AGENDA ITEM 3 - Applicant to update on recent changes to draft DCO at Deadline 1.		
		<p>RM explained that a number of changes (70) were made to the draft DCO at Deadline 1, 19 October 2021, to address matters raised in relevant representations and address minor errors and make updates to reflect the latest drafting in other DCOs.</p> <p>These changes are detailed in the change schedule [REP1-003]. RM noted that key changes would be discussed under other agenda items. RM also noted that a revised version of the draft DCO would be submitted at Deadline 3, which will include further changes.</p>
AGENDA ITEM 4 - Articles		
a)	The ExA will be seeking confirmation from the Applicant on whether the Articles are agreed, and if not, which specific Articles remain unagreed and the reasons for this.	RM detailed the Articles that parties made representations on in their relevant and written representations. RM noted that where a party has not raised any issues with an Article the Applicant has taken that to mean it is agreed.

Item	ExA Question / Context for discussion	Applicant's Response
		<p>RM stated he would flag any further corrections or amendments that will be made to the version of the draft DCO to be submitted at Deadline 3 (6 December), noting that there is the possibility of further amendments being identified between now and Deadline 3.</p> <p>Definitions RM flagged there is ongoing discussion, with the Applicant, Lincolnshire County Council (LCC) and Boston Borough Council (BBC), in relation to the definition of “relevant planning authority”. In the original version of the draft DCO, the “relevant planning authority” was defined as BBC. However, this was changed in the Deadline 1 version to the statutory definition, which in default would be LCC.</p> <p>RM noted that there are ongoing discussions on whether the discharge of requirements should be split between LCC and BBC. RM proposed that a separate meeting between the Applicant, LCC and BBC should be set up to discuss and progress the exact division of labour.</p> <p>Post-hearing note: The Applicant has had a meeting with BBC to discuss the requirements that BBC have indicated a preference to discharge. The Applicant will continue discussions with BBC and LCC.</p> <p>Article 7 The Environment Agency (EA) in its relevant representation [RR-013] noted that it was “unclear as to the interpretation of Article 7(1)(c), and we would be grateful for further clarification.”</p> <p>The Applicant submitted at Deadline 2 updated Works Plans [REP2-027], to show the maximum 20 metre lateral limit of deviation in respect of the boundary between two numbered works as set out in Article 7(1)(c) – see sheets 9-15. There is no lateral limit of deviation for any boundary with Work No. 1A(iv) (EfW plant emissions stacks), any boundary with Work No. 2(d) (Lightweight Aggregate (LWA) Facility emissions stacks) and any boundary with Work No. 4 (Wharf). The Applicant has provided these works plans to the EA and this appears to have been sufficient clarification.</p>

Item	ExA Question / Context for discussion	Applicant's Response
		<p>Natural England in its Comments on the Draft DCO and Schedule of Changes to Draft DCO [REP2-044] requested clarification be provided on the maximum extent of the limits of deviation. The Applicant considers the updated Works Plans submitted at Deadline 2 now clearly show the extent of the maximum lateral limits of deviation.</p> <p>Action: Applicant to seek written confirmation that Natural England is content with the updated Works Plans.</p> <p>Post-hearing note: The Applicant has asked Natural England for this confirmation on 3 December 2021.</p> <p>Additionally, the Applicant will be making a minor amendment to sub-paragraph (c) of Article 7 to add the words “up to” to make clear that deviating by less than 20 metres is also acceptable.</p> <p>Article 19 The Marine Management Organisation (MMO) in its relevant representation [RR-008] stated that it considered the use of “interfere” in sub-paragraph (e) of Article 19(1) was too vague and flexible and should be more specific.</p> <p>In the Applicant’s Comments on Relevant Representations [REP1-035], it was noted that Article 19 is based on article 16 of the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Order 2016, which also included “interfere with” and no issues were raised as to that wording in the examination of that DCO. The Applicant considers the wording used is appropriate.</p> <p>The MMO have not raised this in its written representations or Deadline 2 submission so it is assumed that the Applicant’s response was sufficient, but will clarify this with the MMO and seek to get this confirmed. There may be some additional wording in schedule 9 (Deemed Marine Licence (DML)) which may provide further comfort.</p> <p>Action: Applicant to clarify with the MMO if they are content with the use of “interfere” now that precedent has been provided.</p>

Item	ExA Question / Context for discussion	Applicant's Response
		<p>Post-hearing note: The MMO confirmed on 3 December 2021 that they are content with the use of the word "interfere" in Article 19.</p> <p>Article 22 The EA in its Relevant Representation [RR-013] at paragraph 3.14 requested that Article 22 be amended so that it does not apply to works that would affect the EA's flood defence structures.</p> <p>The Applicant is willing to consider this amendment, but has requested in its comments on relevant representations that the EA provide an example of a made DCO where flood defence structures have been similarly excluded, as the amendment does not appear to be precedented. The Applicant noted that it awaits the example.</p> <p>Article 41 At Deadline 1, the Applicant amended article 41(1) to include the disapplication of parts of the Water Resources Act 1991 which had inadvertently been not included despite being referred to in the Explanatory Memorandum [APP-006].</p> <p>In its Deadline 2 submission [REP2-038], the EA noted the amendment and is "currently reviewing which local byelaws this may relate to and will provide further advice to the ExA once we have considered whether any further Protective Provisions are required should they be disappplied by the DCO."</p> <p>The Applicant is content to engage with the EA on any protective provisions that may be required to enable the disapplication of any relevant Water Resources Act byelaws.</p>
b)	Any submissions from Interested Parties.	<p>RM welcomed comments made by BBC which confirmed that the definition of 'relevant planning authority' was being considered.</p> <p>RM also welcomed comments from the EA which supported the Applicant's position and committed to progressing conversations surrounding the drafting of the draft DCO.</p>
AGENDA ITEM 5 - - Schedule 8 – Protective Provisions		

Item	ExA Question / Context for discussion	Applicant's Response
<p>The ExA will be seeking confirmation on whether the Protective Provisions in Schedule 8 are agreed, and if not, which specific provisions remain unagreed and the reasons for this.</p>		
<p>a)</p>	<p>Part 1: electricity, gas, water and sewerage undertakers.</p>	<p>RM explained that the Applicant and Anglian Water are currently in discussions regarding a bespoke set of Protective Provisions for Anglian Water. The Applicant will update the Examining Authority once the parties have concluded their discussions on such. The Applicant does not anticipate any issues with this.</p> <p>The Applicant and Western Power Distribution (WPD) are also currently in discussions regarding an Asset Protection Agreement (APA) in lieu of protective provisions on the face of the DCO. RM confirmed that the Applicant would update the ExA as to progress with the APA.</p>
<p>b)</p>	<p>Part 2: operators of electronic communications code networks.</p>	<p>RM confirmed that no stakeholder has raised any issues in relation to these Protective Provisions</p>
<p>c)</p>	<p>Part 3: highways and traffic undertakers</p>	<p>RM flagged that LCC is the local Highway Authority in respect of the project and has raised no issues with these Protective Provisions.</p>
<p>d)</p>	<p>Part 4: Environment Agency</p>	<p>RM explained that the Applicant and the EA are in discussions regarding the Protective Provisions. The EA agreed at a meeting on 23 September 2021 to provide a tracked change version of the protective provisions.</p> <p>The Applicant is awaiting a tracked change protective provisions from the EA.</p> <p>The Applicant will update the Examining Authority once the parties have concluded their discussions on such.</p> <p>RM welcomed the EA's confirmation that initial comments should be expected in a couple of weeks and emphasised the Applicant's commitment to progressing the Protective Provisions and the corresponding side agreement.</p>
<p>e)</p>	<p>Part 5: drainage authorities</p>	<p>The Black Sluice Internal Drainage Board is the Drainage Authority, and the Applicant has confirmed to them that Protective Provisions in their favour are included in the draft DCO.</p>

Item	ExA Question / Context for discussion	Applicant's Response
AGENDA ITEM 6 – Schedule 1 – Authorised Development		
	Any submissions from the Applicant or IPs	<p>RM flagged that as far as the Applicant is aware none of the interested parties has any outstanding concerns regarding Schedule 1.</p> <p>RM noted that there are some minor points which will be amended for Deadline 3.</p> <p>The Applicant notes that Work No 3 will be amended to include the potential construction of an additional pylon. This pylon is referred to in paragraph 1.4.1 of the Electricity Grid Connection Statement (document reference 5.6, APP-035), paragraph 5.5.37 of Environmental Statement (ES) Chapter 5 Project Description (document reference 6.2.5, APP-043) and paragraph 9.7.1 of ES Chapter 9 Landscape and Visual Impact Assessment (document reference 6.2.9, APP-047).</p> <p>Whilst the need for an additional pylon cannot be determined at this point, i.e. that it is not 100% certain to be required, the environmental assessment has been undertaken on a worst-case basis which assumes that an additional pylon will be required, the assessment can be found in the ES chapters noted above.</p> <p>Work number 5(p) will also be amended to change the voltage of the transformers from 11kv to 33kv. This change in voltage has arisen as the design has been refined and will bring the voltage in the connecting cables better aligned with industry norms. This change will also help to extend the lifespan of the cables.</p>
AGENDA ITEM 7 – Schedule 2 – Requirements		
a)	The ExA will be seeking confirmation from the Applicant on whether the Requirements are agreed, and if not, which specific Requirements remain unagreed and the reasons for this.	For Schedule 2, RM explained that he would go through each of the Requirements and identify which Requirements remain unagreed and the reasons for this. Where no interested party has raised any issue with regards to a Requirement it is taken to be agreed. RM also explained that he would identify any further amendments that will be made at Deadline 3.

Item	ExA Question / Context for discussion	Applicant's Response
		<p>Requirement 1 (Definitions) and Requirement 2 (time limits) can be taken as agreed as no parties have raised any issues with regards to these, subject to comments made by LCC and BCC</p> <p>Requirement 3 (detailed design approval) In its relevant representation [RR-019] BBC requested approval of materials to be included in the detailed design of buildings. The Applicant is content to add a new additional requirement on the approval of details of the external appearance of permanent buildings and structures. This requirement is subject to further discussion with BBC and LCC.</p> <p>Requirement 4 (parameters of authorised development) RM explained that in response to the ExA's First Written Questions [PD-008], the Applicant confirmed in its Comments [REP2-008] that Requirement 4 will be amended at Deadline 3 so that the maximum length of the turbine building is 53 metres rather than 55 metres and a minimum height of 80 metres for the energy recovery stacks and light weight aggregate building stacks will be added.</p> <p>The Requirement is otherwise taken to be agreed.</p> <p>Requirement 5 (Landscape and ecological mitigation strategy) No interested parties have raised any issues as to the drafting of Requirement 5.</p> <p>However, the Applicant will amend the sub-paragraph (3)(e) to delete reference to the Environment Bank which was erroneously added.</p> <p>Requirement 6 (Archaeology) No interested parties have raised any issues as to the drafting of Requirement 6 and Historic England has agreed in its draft Statement of Common Ground (SoCG) with the Applicant [REP1-042] that the requirements relevant to Historic England's interest provide a suitable framework for securing the necessary and relevant environmental mitigation measures.</p> <p>Requirement 7 (Highway access)</p>

Item	ExA Question / Context for discussion	Applicant's Response
		<p>LCC as the Highways Authority has not raised any concern with the drafting of Requirement 7. It is therefore taken as agreed.</p> <p>Requirement 8 (Surface water drainage) As noted previously the Outline Surface Water Drainage Strategy will be updated at Deadline 3 to include 'foul water' as requested by the EA. Requirement 8 (Surface water drainage) will therefore be updated to refer to 'foul water' where necessary. These amendments should address the point raised by the Environment Agency in its Relevant Representation [RR-013] that the strategy should include foul water.</p> <p>No other issues have been raised by any other interested parties in relation to Requirement 8.</p> <p>Requirement 9 (Contamination) The Applicant made fairly substantial amendments to Requirement 9 at Deadline 1 in order to better reflect the wording of other recently made DCOs and to address the Environment Agency's concerns relating to landfill gas.</p> <p>The EA in its written representation [REP1-051] sought amendment to Requirement 9 to "assess the level of contaminants to be found in material to be removed and/or dredged from within Witham Haven".</p> <p>As set out in the Applicant's Comments on Written Representations [REP2-006] the Applicant is liaising with the MMO regarding the inclusion of a condition in the Deemed Marine Licence relating to the sampling of dredged material and it is considered this would be a more appropriate place to address the EA's concerns, rather than by amending Requirement 9 in Schedule 2 to the draft DCO.</p> <p>The MMO advised in its Deadline 2 submission [REP2-040] that in relation to sampling requirements it will "provide suggested condition wording for this at following deadlines". RM noted that SR would discuss this further on agenda item 9.</p> <p>Unless the EA has any concerns with this approach, it is considered that the drafting of Requirement 9 can be taken as agreed.</p>

Item	ExA Question / Context for discussion	Applicant's Response
		<p>Requirement 10 (code of construction practice) There are no outstanding issues in relation to the drafting of Requirement 10 so this can be taken as agreed.</p> <p>Requirement 11 (Construction hours) No interested parties have raised any issues as to the drafting of Requirement 11 so it has been taken to be agreed.</p> <p>Requirement 12 (construction traffic management plan) Natural England in its Comments on the Draft DCO and Schedule of Changes to Draft DCO [REP2-044] submitted at Deadline 2 requested that it be consulted in relation to paragraph (2)(d) "where practicable, proposals for temporary diversions of any public rights of way". The Applicant agrees to this amendment and will update the requirement in the version submitted at Deadline 3.</p> <p>Requirements 13 (flood risk emergency plan), 14 (community benefits), 15 (Phasing of construction and commissioning of Work Nos. 1 and 2) and 16 (Operational lighting scheme) RM confirmed that there are no outstanding issues in relation to the drafting of Requirements 13, 14, 15 and 16 so these Requirements can be taken to be agreed.</p> <p>Requirement 17 (Operational vehicle movements) As outlined earlier Requirement 17 was added to Schedule 2 at Deadline 1 to address matters raised by LCC in its relevant representation [RR-014] and in post application consultation meetings, namely to include a restriction on the delivery of waste via the road network and the inclusion of an operational worker travel plan that includes measures to encourage the use of sustainable modes of transport by employees.</p> <p>The Applicant awaits any further response from LCC on the drafting of this Requirement.</p> <p>Requirements 18 (Waste hierarchy scheme), 19 (control of operational noise), 20 (notice of start of commissioning and notice of date of final commissioning) and 21 (Combined heat and power)</p>

Item	ExA Question / Context for discussion	Applicant's Response
		<p>No representations were made in relation to Requirements 18, 19, 20 and 21 and can therefore be taken to be agreed.</p> <p>Requirement 22 (Decommissioning) The Applicant wishes to clarify the position in relation to decommissioning of Work No. 4, the wharf. The Applicant can confirm that the suspended wharf structure and other infrastructure on the wharf will be decommissioned at the end of its operational life. However, the flood defence structure will remain in situ. Accordingly, the Applicant will amend Requirement 22 to include the decommissioning of Work No. 4 (excluding any parts of Work No. 4 that are covered by the decommissioning plan approved under the deemed marine licence). This was explained in greater detail by SR under agenda item 9</p> <p>The Applicant will add to the deemed marine licence the approval of a decommissioning plan for the parts of Work No. 4 that are within the licensable marine area, excluding the flood defence structure which will remain in situ.</p> <p>Additionally, the EA raised in its relevant representation [RR-013] that Requirement 22 was not sufficient to ensure that the flood defences are adequately maintained following the decommissioning of the plant. The EA considers that a legal agreement will be required prior to consent being granted to ensure proper maintenance and aftercare. The Applicant can confirm that maintenance has been included in the draft agreement with the EA, the terms of which remain subject to discussion.</p> <p>Requirements 23 (Amendments to approved details), 24 (electricity generation cap) and 25 (tonnage cap) No representations were made in relation to Requirements 23, 24 and 25 and it has therefore been taken to be agreed.</p> <p>Potential New Requirement – Public Rights of Way Design Guide At Deadline 3, the Applicant is submitting an Outline Public Rights of Way Design Guide. This will outline improvement measures to the existing public right of way network in the vicinity of the facility. The Applicant is considering the most appropriate mechanism to secure this; either through a requirement or via a section 106 planning obligation.</p>

Item	ExA Question / Context for discussion	Applicant's Response
		<p>Action: The Applicant to consider how to secure the Outline Public Rights of Way Design Guide.</p> <p>Post-hearing action: The Applicant is proposing that the guide should be secured via a section 106 agreement with the relevant planning authority.</p> <p>Part 2 (Procedure for discharge of requirements) RM re-iterated that Part 2 is still under discussion with BBC. RM noted that LCC confirmed in its draft SoCG with the Applicant that LCC agrees to the procedures of discharging conditions.</p> <p>RM acknowledged comments made by the EA, BBC and LCC.</p> <p>In response to the EA RM noted that the word “substantially” would remain in requirements 5 and 8 in the version to be submitted at Deadline 3, agreed to consider the monitoring of the impact of the Scheme on saltmarsh and noted SR would address the monitoring action plan, in relation to requirement 10, at agenda item 9.</p> <p>Post-hearing Note: The Applicant provided an explanation for the use of “substantially” in its response to relevant representations at Deadline 1 (REP1-035) at row 50 on page 21.</p> <p>Action point: The Applicant to consider the monitoring of the impact of the Scheme on saltmarsh</p> <p>Post-hearing Note: The Applicant has considered this suggestion and will submit an Outline Air Quality Deposition Monitoring Plan at Deadline 4.</p> <p>In response to BBC, RM confirmed that providing BBC discharging powers over requirements 5, 6, 9, 10 , 12 , 14 , 15, 16, 17, 19-24 and the potential new public rights of way requirement 26 would continue to be discussed.</p> <p>Action point: The Applicant will continue to discuss the discharge of these requirements with BBC.</p>

Item	ExA Question / Context for discussion	Applicant's Response
		<p>Post-hearing Note: The Applicant discussed this request with BBC at a meeting on 25 November 2021. The Applicant is scheduling a meeting with both BBC and LCC to finalise the discharging powers of each authority.</p> <p>RM agreed to consider requests from LCC, in relation to requirements 6, 17, 24 and 25 and around carbon capture.</p> <p>Action point: Consider including details of measures imposed if any significant archaeological remains are found.</p> <p>Post-hearing note: The Applicant will continue to discuss this point with the cultural heritage stakeholders, and has arranged a meeting on 6 January 2022, to agree an appropriate approach.</p> <p>Action point: The Applicant to consider whether any movements intended to be made by barge may be able to use the road.</p> <p>Post-hearing note: The Applicant would like to clarify that this point relates to daily operational HGV movements, of which 30 are predicted to be required including 12 associated with the carbon recovery plant (see paragraph 19.7.116 of the Chapter 19 of the ES (document reference 6.2.19, APP-057)). The Applicant will further clarify this point with LCC directly.</p> <p>Action point: Consider inserting wording similar to requirement 18(f) into requirements 24 and 25.</p> <p>Post-hearing note: The Applicant has added this wording to the draft DCO submitted at Deadline 3.</p> <p>Action point: Consider a new requirement, similar to requirement 21, which relates to carbon capture.</p> <p>Post-hearing note: The Applicant will address this issue via the section 106 agreement.</p>

Item	ExA Question / Context for discussion	Applicant's Response
<p>AGENDA ITEM 8 – Schedules 3 (streets subject to street works); 4 (streets subject to alteration of layout); 5 (temporary closure, alteration, diversion and restriction of the use of streets); 6 (permanent stopping up of streets and public rights of way); 7 (land for which temporary possession may be taken).</p>		
<p>a)</p>	<p>Part 1: electricity, gas, water and sewerage undertakers.</p>	<p>No interested parties have made any representations on Schedules 3, 4, 5, 6 and 7.</p> <p>RM noted that at Deadline 3, Schedule 3 will be amended to refer to LLC in the first column rather than BBC, as LCC is the Highways Authority.</p> <p>It was also noted that Schedule 7 will be amended at Deadline 3 to refer to 'Order limits' rather than 'Order land'. This correction is required as the Temporary Possession is for the benefit of the whole site, not just the Order land (the land being acquired compulsorily).</p>
<p>AGENDA ITEM 9 – Schedule 9 – Deemed Marine Licence</p>		
		<p>SR first noted that the MMO in its written representation [REP1-056] set out a number of amendments to the drafting of the deemed marine licence (or DML). The Applicant will amend the DML at Deadline 3 to incorporate these amendments or include alternative wording that would address the MMOs concerns. The only points of difference in relation to those amendments relate to the 30 day timeframe for the request of further information under condition 25 and the 13 week timeframe to give notice of a determination under conditions 27 and 28, which I will elaborate on later.</p> <p>The MMO in its Deadline 2 submission [REP2-040] advised at paragraph 1.1 that it will defer further substantial comments until after review of the Deadline 3 submission. Given the potential for further comments, the Applicant considers it is best to assume the entire DML remains under discussion. The Applicant would be grateful if the MMO could advise at Deadline 4, whether each condition is agreed or if further amendments are required.</p> <p>Therefore, rather than setting out specific items that are unagreed, SR detailed the changes that will be made at Deadline 3 and any outstanding matters.</p> <p>Condition 1 (interpretation)</p>

Item	ExA Question / Context for discussion	Applicant's Response
		<p>The MMO in its written representation [REP1-056] set out a number of amendments to Condition 1. The Applicant will make the suggested amendments in the version of the draft DCO to be submitted at Deadline 3.</p> <p>The Applicant considers that a further amendment should be made to the definition of commence so it is consistent with that included in the Order, with some minor amendments to take out pre-commencement activities that are no applicable to works in the licensable marine area such as temporary car parking. The Applicant will include this amendment in the draft DCO to be submitted at Deadline 3.</p> <p>Part 2 – licenced activities The MMO in its written representation [REP1-056] requested a number of amendments to Part 2 (paragraph 4.37). The Applicant will include amendments at Deadline 3 to address the MMO's concerns. This includes adding reference to Work No. 4 in paragraph 5 and the addition of wording to make clear that the ancillary or related works approved under paragraphs (j) to (n) must not give rise to any materially new or materially different effects than those assessed in the environmental statement. Further amendment will be made to link through to article 19(1) will ensure that works done under those powers are captured in DML and therefore done pursuant to conditions.</p> <p>General conditions (Conditions 7 -11) The MMO in its written representations [REP1-056] set out a number of amendments to Conditions 7 to 11. As set out in the Applicant's comments on written representations submitted at deadline 2, the Applicant will amend these conditions to address the matters identified by the MMO.</p> <p>Condition 12 (Prior Approval of Licensed Activities) The MMO in its Deadline 2 submission [REP2-040] requested further amendments to this condition, namely:</p> <ul style="list-style-type: none"> • The programme of works should include: <ul style="list-style-type: none"> • A planned timetable for each activity as outlined in paragraphs 4 and 5 • Timings for mobilisation of plant, and for deliveries by sea • A plan for notifying the MMO of the commencement and cessation of activities and phases of activities

Item	ExA Question / Context for discussion	Applicant's Response
		<ul style="list-style-type: none"> • A plan for notifying the MMO of changes to the programme <p>The MMO has also requested the inclusion of a condition for a Construction Environmental Management Plan (or CEMP) and has provided suggested wording for such a condition.</p> <p>The Applicant considers there is considerable overlap between the matters included in the suggested CEMP condition and those in Condition 12 and the Applicant considers there may be benefit in merging the proposed CEMP condition with existing Condition 12 to form a singular CEMP condition. The Applicant will liaise with the MMO on this and include amended wording in the DML to be submitted at Deadline 3.</p> <p>SR also noted that the MMO suggested in its Deadline 2 submission (para 1.47) that for clarity the timing restrictions for dredging could be included as a condition within the DML. While this will be captured as part of the details of the licensed activities submitted under Condition 12, the Applicant is content to include a paragraph in Condition 12 or a new CEMP condition that specifies the timing restriction for dredging.</p> <p>Additionally, Natural England has requested to be consulted as part of the approval process under Condition 12. The Applicant is willing to add Natural England as a consultee to this condition or any merged CEMP condition that may replace it.</p> <p>Condition 13 (Piling) The MMO in its written representation [REP1-056] requested a couple of minor amendments to this condition which the Applicant will make at Deadline 3.</p> <p>Natural England in its Comments on the Draft DCO and Schedule of Changes to Draft DCO [REP2-044] requested justification for why the requirement for marine mammal observers had been removed in the version of the DCO submitted at Deadline 1. The Applicant can confirm that all mitigation for marine mammals has been included in the Marine Mammal Mitigation Protocol including the requirement for marine mammal observers, which is secured by new condition 17. Therefore, it was decided to remove the specific mitigation from the conditions and instead include a requirement for the piling method statement to include measures for managing potential risks to marine mammals</p>

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		<p>in accordance with the marine mammal mitigation protocol approved under paragraph 17. This streamlines the drafting of the conditions by including the detail in the protocol rather than the condition itself. The Applicant will seek confirmation from Natural England that this satisfies their query.</p> <p>SR also noted that MMO in its Deadline 2 submission [REP2-040] requested a number of mitigation measures to reduce impact on fish and that these measures be secured by conditions on the DML. The Applicant agreed to consider these measures</p> <p>Action: Applicant to consider measures to reduce the impact on fish.</p> <p>Post-hearing note: The Applicant has progressed this point and will submit a substantive response at Deadline 4.</p> <p>Condition 14 (Navigation Management Plan) SR noted this was moved to sit within the DML, at Deadline 1, at the request of the MMO.</p> <p>In response to the ExA's First Written Questions [PD-008], the Applicant will amend condition 14 to require that "The navigation management plan submitted for approval under sub-paragraph (1) must be informed by the assessment of risks to navigational safety in the navigational risk assessment and be substantially in accordance with the recommendations as to the management of vessel movements on the Haven as set out in the navigation risk assessment." This forms the link between the two documents to ensure the plan is informed by assessment.</p> <p>Additionally sub-paragraph (2)(f) will be amended so that it will include details on how each stage of the construction process and the operation of the authorised development will be managed to ensure a minimal impact on the safety of navigation in The Haven and (additionally) ensure that any delay or interference that may be caused to vessels which may be using Haven is minimised as far as reasonably practicable." Both of these amendments are set out in the Applicant's Comments on ExA's First Written Questions [REP2-008].</p> <p>Condition 15 (marine archaeology)</p>

Item	ExA Question / Context for discussion	Applicant's Response
		<p>The Applicant added Condition 15 at Deadline 1 at the request of the MMO and no issues have been raised with regards to its wording.</p> <p>Condition 16 (Marine Pollution contingency plan) The Applicant added Condition 16 at Deadline 1 at the request of the MMO.</p> <p>Natural England in its Comments on the Draft DCO and Schedule of Changes to Draft DCO [REP2-044] submitted at Deadline 2 requested to be consulted on this Condition. The Applicant is content to add the relevant statutory nature conservation body as a consultee for this condition and will do so in the version submitted at Deadline 3. Additionally, the Applicant proposes to amend sub-paragraph (2) of this condition to require the plan to “set out the undertaker’s assessment of the potential for litter derived from either vessels or from land based sources within the authorised development to enter the marine area and identify the management measures to be put in place.” In order to address any concerns as to litter entering the marine environment.</p> <p>Condition 17 (marine management protocol) Condition 17 was added at Deadline 1 to provide for the approval of a marine mammal management protocol that is in accordance with the outline marine mammal mitigation protocol. The Outline Protocol [REP1-025] was submitted at Deadline 1. This protocol draws together all the mitigation for marine mammal in one place and is cross referenced in the conditions previously discussed. While the MMO and Natural England have made representations as to the contents of the protocol no representations were made at Deadline 2 as to the wording of the condition.</p> <p>Conditions 18 (concrete and cement), 19 (coatings and treatment) and 20 (spills) These conditions will be updated in accordance with the suggested amendments set out in the MMO’s written representation. They are otherwise not the subject of any representations.</p> <p>Condition 24 (Notice of completion of licenced activity) There have been no representations made in relation to this condition.</p> <p>New conditions</p>

Item	ExA Question / Context for discussion	Applicant's Response
		<p>A new condition will be added on the reporting of impact pile driving. The text for this condition is set out in the MMOs written representation.</p> <p>As explained earlier, a condition will be added on the submission and approval of a decommissioning plan for the Parts of Work No 4 that are within the licensable marine area. This will exclude the flood defence structure which will remain in situ and is the subject of a separate agreement with the EA.</p> <p>A condition relating to bathymetric surveys will also be added. The MMO in its Deadline 2 submission set out suggested wording of the condition, which the Applicant thanks the MMO for. The Applicant is considering this wording and will include a condition in the DML to be submitted at Deadline 3 based on this wording.</p> <p>A condition on the sampling of dredged material is still under discussion and the MMO advised in its Deadline 2 submission that it is currently considering what the suggested sampling requirements should be going forward, due to the disposal to land aspect of the project and that will be confirmed by Deadline 3. The Applicant will consider wording provided by the MMO. The Applicant will also liaise with the EA with regard to this sampling condition to ensure the matters raised in its written representation in relation to the sampling of dredged material are addressed.</p> <p>Natural England in its Comments on the Draft DCO and Schedule of Changes to Draft DCO [REP2- 044] noted that it considers a condition may be needed to ensure that the use of Dynamic Positioning Systems within the anchorage area is kept to a minimum and would welcome discussion with the Applicant, MMO and the navigational bodies on this issue. The Applicant agreed to consider Natural England's comments and stated they would address this point in more detail at the Issue Specific Hearing 2 .</p> <p>Part 5 – Procedure for the Discharge of Conditions</p> <p>The only matters that are still subject to discussion in Part 5 relate to the 30 day timeframe for the request of further information under condition 25 and the 13 week timeframe to give notice of a determination under conditions 27 and 28.</p>

Item	ExA Question / Context for discussion	Applicant's Response
		<p>The MMO in its relevant and written representations raised concerns about the inclusion of these timeframes. The Applicant in both its comments on the relevant representations and written representations addressed these points. The MMO has advised in its submission at Deadline 2 that it is currently considering the appropriateness of this timescale and will provide further comment following receipt of the updated DML at Deadline 3.</p> <p>SR noted that the Applicant's position with regards to these timeframes is detailed within the Applicant's comments on written representations [REP1-035] – page 111-112, row 26 and 28.</p>
<p>AGENDA ITEM 10 – Schedule 10 – Documents and Plans to be Certified</p>		
		<p>RM confirmed that no interested parties have made any representations on Schedule 10.</p> <p>The outline marine management mammal plan was added to Schedule 10 at Deadline 1.</p> <p>RM noted that at Deadline 3 the Navigation Risk Assessment will be added to schedule 10 and the Outline Surface Water Drainage Strategy will be updated to include foul water to read "Outline Surface and Foul Water Drainage Strategy".</p>
<p>AGENDA ITEM 11 – Any other matters in connection with the draft DCO</p>		
		<p>No other matters in connection with the draft DCO were raised by the Applicant or by other attendees at the ISH1.</p>
<p>AGENDA ITEM 12 – AOB</p>		
		<p>No questions relating to any other business were raised by the Applicant or by other attendees at the ISH1.</p>
<p>AGENDA ITEM 13 – Actions arising (including any procedural decisions if required) and next steps</p>		

Item	ExA Question / Context for discussion	Applicant's Response
		The Applicant agreed to submit a written summary of its oral submissions.
AGENDA ITEM 14 – Closing		
		The ExA closed the ISH1.