

REPORT

Boston Alternative Energy Facility

Written Summary of the Applicant's Oral Case at Issue
Specific Hearing on Environmental Matters (Part 1)

Client: Alternative Use Boston Projects Ltd

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HASKONINGDHV UK LTD.

Westpoint
Peterborough Business Park
Lynch Wood
Peterborough
PE2 6FZ
United Kingdom
Industry & Buildings
VAT registration number: 792428892

+44 1733 3344 55 T
info@uk.rhdhv.com E

W

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Author(s): BDB Pitmans

Drafted by: BDB Pitmans

Checked by: RHDHV specialists

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Approved by: Paul Salmon

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Glossary of Acronyms

Acronym	Definition
AQ	Air Quality
EA	Environment Agency
EfW	Energy from Waste
EGA	Expert Geomorphological Assessment
EP	Environmental Permit
ES	Environmental Statement
HRA	Habitats Regulations Assessment
LWA	Lightweight Aggregate Plant
NE	Natural England
NO _x	Nitrogen Oxides
OLEMS	Outline Landscape and Ecological Management Strategy
PEC	Predicted Environmental Contributions
PP	Protective Provisions
RDF	Refuse Derived Fuel
SPA	Special Protection Area

1 Introduction

- 1.1.1 This document summarises the case made orally by Boston Alternative Use Projects Limited (the Applicant) at the second Issue Specific Hearing (ISH2) on environmental matters, which took place virtually on 24 November 2021 in relation to the Boston Alternative Energy Facility project (the “Facility” or the “Proposed Development”).
- 1.1.2 Richard Marsh (RM) of BDB Pitmans represented the Applicant. Submissions on behalf of the Applicant were also made by:
- David Brew (DB) on estuarine processes,
 - Ian Dennis (ID) on surface water quality and drainage,
 - Alun McIntyre (AM) on air quality,
 - Chris Adnitt (CA) on marine and coastal ecology,
 - Digger Jackson (DJ) on ornithology, and
 - Paul Salmon (PS) on project detail, navigation matters and public rights of way.
- 1.1.3 In what follows, the Applicant’s submissions on the points raised follow the agenda for it ISH2 set out in the Examining Authority’s (ExA) agenda published on the Planning Inspectorate website on 16 November 2021 (EV4-002).

Table 1-1 Agenda items covered during Issue Specific Hearing 2

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 ISH2.
AGENDA ITEM 2 (The overarching Environmental Statement)		
<p>a)</p>	<p>It is noted that scour protection may or may not be required and that there would be habitat loss in the event that it was needed. Have the assessments and habitat loss calculations assumed a worst-case scenario of scour protection being required?</p> <p>Please could Natural England (NE) set out any outstanding concerns about potential effects of scouring.</p>	<p>RM confirmed that the worst-case scenario had been assumed in assessments and habitat loss calculations.</p> <p>RM explained that depending on river currents, scour protection may be required at both ends of the wharf (Figure 5.1 of the Environmental Statement (ES), document reference 6.3.2, APP-068). If scour protection is required, then detailed design will include consideration of the following options, with the key design principle being to minimise habitat loss:</p> <ul style="list-style-type: none"> • Articulated precast concrete mattress; • Grout injected fabric mattress; and • Individual stone/rock armour. <p>In order to assess the worst-case scenario for habitat loss it was assumed, for the ES, that scour protection will be needed and that the worst-case solution was required. The assessments and the habitat loss given in the Outline Landscape and Ecological Mitigation Strategy (OLEMS) document (document reference 7.4, APP-123) have therefore included the worst-case scenario for habitat loss.</p> <p><u>Natural England (NE) Additional Submission</u> (document reference EN010095-00863)</p> <p>RM noted that the Applicant appreciated recognition by the ExA that NE's submission was published late on the day before ISH2. As such, the Applicant proposed to respond initially to the comments and then respond either directly to NE or in writing at subsequent deadlines, as appropriate.</p>

Item	ExA Question / Context for discussion	Applicant's Response
		<p>DB provided initial comments on NE's submission.</p> <p>DB explained that the hard structures referred to are the protection afforded to the sloping revetment and the protruding pile structures behind the quay wall. Once the hard substrate has been installed, it is not expected to affect erosion elsewhere as there is a disconnect between flows. Flows over the hard area would not affect flows over adjacent areas.</p> <p>In respect of the piles behind the quay wall, the potential to change flow speed is restricted to the local area around the piles. The extent of the wakes created by the piles will be confined to a small area behind the deck.</p> <p>DB confirmed that any change to tidal currents that could induce scour would be localised and small in spatial scale. As such, DB explained that there is no added potential for scour outside the area where the protection of the sloping revetment will be.</p>
<p>b)</p>	<p>Please can the Applicant confirm the number of annual vessel movements per year, in relation to the vessels required to deliver the Refuse Derived Fuel (RDF) and export the aggregate, and provide an estimate of the annual number of additional pilot cutter movements above the current annual number. How have the additional pilot cutter movements been factored in in the assessments in the ES and Habitats Regulations Assessment (HRA)?</p>	<p>RM confirmed the figures found in Chapter 5 of the ES (document reference 6.2.5, APP-043), at paragraph 5.6.10. This details that there will be 9.2 Refuse Derived Fuel (RDF) deliveries per week, a total of 480 ships per annum. Paragraph 5.6.19 of Chapter 5 notes there will be 100 ships of aggregate exports per year.</p> <p>Overall, Section 5.6.20 of Chapter 5 Project Description (document reference 6.2.5, APP-043) notes a total of approximately 580 ships per year required (therefore 580 vessel movements inward and 580 vessel movements outward).</p> <p>RM confirmed that the figures in the ES do not include pilot cutter movements. Further information on pilot cutter movements is included in paragraph 4.3.16 of the Ornithology Addendum (document reference 9.13, REP1-026).</p> <p>One pilot cutter is sufficient for all but the most exceptionally busy high water period, with one cutter trip undertaken per tide. Exceptionally there may be two trips, however the tidal window is not long enough for three cutter trips.</p> <p>The cutters are certified for eight people, being two crew and six pilots. Due to tidal constraints, it is likely that the Pilots will be transported to the Facility by road to board vessels leaving the wharf.</p>

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		<p>RM confirmed that the Facility is therefore unlikely to increase the number of times pilot cutters move up and down The Haven over and above a normal day, notwithstanding that there will be an increase in absolute number of pilot vessels per year as more high tides will be used relative to current levels of usage.</p>
c)	<p>Please can the Environment Agency (EA) set out its specific concerns in relation to the Environmental Permit (EP) process and respond to the Applicant's response to comments made about the EP in its Relevant Representation (RR)</p>	<p>The EA confirmed that it was satisfied with the answers it had received to specific questions. Its outstanding concerns relate to the permissibility of the lightweight aggregate plant (LWA) in its current form and noise concerns.</p> <p>RM noted that the pre-application process for the permit is progressing well and that the issues have already been restricted to two key issues. The previous issues relating to Air Quality, as well as Noise and Visual Impact have been progressed.</p> <p>RM noted that in order for Development Consent to be granted, the Applicant needs to demonstrate that the Facility is of a type and nature that can be, in principle, regulated by the Environmental Permit (EP) Regulations. In doing so, the EP process would not be prejudiced and the EA providing its 'in principle' view would not amount to a pre-determination of the EP application, nor fetter the EA's ability to consent or refuse the EP application.</p> <p>In respect of the EA's two outstanding issues, the ES assessed the worst-case scenario for noise. As the pre-application process for permitting progresses, the Applicant agreed to continue to discuss these issues with the EA at their regular meetings.</p> <p>In respect of the LWA and carbon capture, RM acknowledged that there were outstanding matters to discuss. There is a commercial risk to the Applicant that it is not certain that an EP will be granted. The Applicant is not expecting confirmation that an EP will be granted, only a statement that the Facility is one that is, in principle, capable of being permitted.</p> <p>The Applicant is confident it can be agreed with the EA during the Development Consent Order (DCO) Examination that the Proposed Development is of a type and nature that can be, in principle, regulated under the Environmental Permitting Regulations.</p>

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c) i)	<p>Please can the Applicant provide an update in respect of the potential need for an EP for discharge to surface water from excavations during construction</p>	<p>RM confirmed that should an EP for a surface water discharge activity be required during construction and/or operation, then the Applicant will apply for the appropriate EP and provide the relevant details of the activity within the application documents.</p> <p>In any event, RM confirmed that during normal weather conditions, water accumulating within excavations will be collected in surface tanks and fed to the soil mixing plant, in which cement would be added to soil and aggregates in order to engineer surcharge material to reuse around the site. Alternatively, it may also be headline treated and reused as harvested grey water, supplemented with fresh potable water if necessary.</p> <p>The Applicant will therefore request a discharge permit from Anglian Water to allow a nominal volume of pre-treated water to be discharged within Anglian Water's sewer, after flow measurement and pre-treatment using settlement ponds or temporary tanks to reduce solid material. This is on a just-in-case basis. Arisings from the treatment measures will be cleaned out before decommissioning takes place and the captured solids repurposed for use in landscaping.</p> <p>On this basis, the Applicant will not be required to discharge the arisings from dewatering during the construction phase into the surface drainage network during most weather conditions. However, during an extended heavy rain event, when the capacity of the surface tanks would otherwise be exceeded, it may be necessary to discharge surface water from excavations. In this scenario, the Applicant will follow the procedures set out in Section 11 of the Outline Code of Construction Practice (document reference 7.1, APP-120), paragraph 11.2.6 relating to site drainage. This includes that changes in surface water runoff would be discharged at a controlled rate in consultation with the Lead Local Flood Authority, Internal Drainage Board (IDB) and the EA. The controlled runoff rate would be equivalent to greenfield runoff rate. A surface and foul water management strategy will be implemented to minimise water within the construction areas and ensure ongoing drainage.</p> <p>The Applicant will apply for an EP for temporary de-watering from excavations on the basis that discharges could potentially occur over more than three consecutive months. However, this is unlikely to occur in reality.</p>

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		ID emphasised that in any event, dewatering would be made into the IDB-maintained surface water drainage network adjacent to the site and that there would not be any direct discharges into The Haven.
c) ii)	Please can the Applicant provide an update in respect of the progress of the legal agreement with the EA and the protective provisions to enable disapplication of the requirement to obtain an EP for flood risk activity	<p>RM confirmed that the Applicant and EA were in discussions about the protective provisions (PP). The EA agreed on 23 September 2021 to provide a tracked changes version of the PPs; this is expected imminently but has not yet been received.</p> <p>A draft of the associated legal agreement was provided to the EA on 27 October 2021 for review. The EA are considering this and will provide comments shortly.</p> <p>The Applicant was pleased to hear the EA's confirmation that there were they would no concerns at present.</p> <p>The Applicant will update the Examining Authority once the parties have concluded their discussions on these matters.</p>
d)	Can the EA confirm that management of the operational waste generated by the Proposed Development would be controlled through an EP?	Action Point: The Applicant will provide a written response to the EA's query about alternative treatment for materials in the absence of a permit for the LWA plant by Deadline 4.
e)	<p>Please can the Applicant provide an update in respect of the potential need for an EP for discharge to surface water from excavations during construction.</p> <p>Water Framework Directive (WFD)/ Marine ecology – Does the information set out in the Outline Surface Water Drainage Strategy submitted at D1, including the measures proposed to prevent</p>	<p>The ExA confirmed that the need for an EP for discharge to surface water from excavations during construction had been covered under a previous agenda point.</p> <p>RM welcomed the EA's agreement to further consider the updated deemed marine licence, submitted as schedule 9 of the draft DCO at Deadline 3. The Applicant considers this to satisfactorily address the measures proposed to prevent contamination from dredging. RM agreed that discussions with the EA would continue after this submission and the Applicant hopes to alleviate any remaining concerns.</p>

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	contamination resulting from discharges from the permanent site drainage system, address the EA's concerns in relation to impacts on marine and transitional waterbodies and saltmarsh?	
AGENDA ITEM 3 (Air Quality)		
a)	Can the Applicant explain if there are any mitigation measures which may be used to reduce impacts on Receptor 37?	<p>AM confirmed that there are mitigation measures that the Applicant can put in place in respect of Receptor 37. Some of these measures have been detailed in the Outline Construction Traffic Management Plan (document reference 7.2, APP-121), including the management of heavy goods vehicle (HGV) deliveries and movements during the construction phase. Car sharing for the workforce will be encouraged to minimise vehicles on the road network. In addition, the Applicant has committed to using the lowest emission HGV during the construction phase (Euro VI).</p> <p>The Outline Construction Traffic Management Plan also includes detailed traffic routing plans. Traffic movements from and to the south would not pass Receptor 37. It is not possible for HGVs approaching from the north or west to be re-routed wholly away from Receptor 37, however the movements from the north would not pass closely. The management plan will be further developed and refined during the design process of the Facility.</p> <p>By way of background, Receptor 37 is a residential property close to the road, within The Haven Bridge Air Quality (AQ) Management Area. It currently experiences levels of nitrogen oxides (NOx) pollution in excess of the UK AQ standard.</p> <p>The quantity of nitrogen dioxide added by construction traffic in the worst case year is $0.25 \mu\text{g m}^{-3}$, compared with the standard of $40 \mu\text{g m}^{-3}$. The Applicant has used the concentrations recorded in 2019 for the baseline in its assessment, this being the last year in which representative measurements are available due to the impact of the Covid-19 pandemic.</p> <p>In the worst case year, construction traffic adds a very small amount of nitrogen dioxide, 0.6% of the AQ standard. This is rounded to 1% in accordance with IAQM guidance to provide a moderate AQ impact.</p>

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		<p>Further measures will be applied, including the existing commitment to use only Euro VI-compliance HGVs, except in the case of a small number of specialist vehicles where compliance is not possible. These exceptions would be very small in relation to other traffic.</p>
b)	<p>Can NE outline measures which the Applicant could undertake to reduce risk of adverse effects from deposition on saltmarsh habitats?</p>	<p>AM advised that a degree of impact of nitrogen deposition on saltmarsh areas is directly related to emissions from the Energy from Waste (EfW) and the LWA plants and vessel emissions when delivering waste to the plant and, to a lesser extent, low level road transport movements during the operational stage of the plant.</p> <p>The nitrogen deposition effects from the Facility on the salt marsh areas are found in Table 14.35 of the ES Chapter 14 Air Quality (document reference 6.2.14, REP1-006). The results of the assessment show that the Predicted Environmental Contributions (PEC) are between 87.3% and 92.8% of the lower critical load limit for the habitat. There will be no exceedance of the lower critical load limit, even including emissions from the Facility.</p> <p>It is exceedance of the critical load level that has the potential for harmful effects. The applicant was hoping to obtain from NE what level of additional deposition they feel would be appropriate to not cause a potential increased risk of harm. However, the worst case scenario would be below the critical load range, and the Applicant is confident that an agreement can be reached with NE.</p> <p>The assumed worst case scenario includes emissions from the plants at 100% of the allowable limits. In practice, no EfW plant would operate at 100% of the limits during its lifetime as the operator and the EA would not be comfortable with that. Typical operating records of other EfW plants show they operate at 80% of the oxides of nitrogen emission limit and 16-20% of the ammonia emissions limit. This means that in practice, the emissions would be lower and have a lower impact than that predicted in the worst case assessment.</p> <p>The EA referred to diffusion tube monitoring to assess AQ impacts and verify impacts are below worst case levels.</p>

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		<p>AM clarified that normal best practice was to undertake a minimum 6 month baseline monitoring period before a facility became operational, with monitoring continuing after for comparison.</p> <p>Action point: The Applicant agreed to consider the implementation of this monitoring.</p> <p>Post-hearing note: The Applicant will submit an Outline Air Quality Deposition Monitoring Plan at Deadline 4.</p>
AGENDA ITEM 4 (Biodiversity, Ecology and Natural Environment (including HRA))		
a)	<p>Please can the Royal Society for the Protection of Birds (RSPB) state to what extent the addendums to Chapter 17 of the ES and the HRA included in the Applicant's D1 submissions and the D2 updated Outline Landscape and Ecological Mitigation Strategy (OLEMS) and 'Without Prejudice' Habitats Directive Derogation Case address its concerns, and identify unresolved areas of concern.</p>	<p>RM noted that the RSPB advised that full comments would be submitted in writing at Deadline 4. The Applicant will respond to these in writing where appropriate. RM and CA noted that more detail can and will be provided during the examination as part of ongoing discussions with interested parties.</p>
b)	<p>Please can NE state whether they consider on the basis of the Applicant's submissions, including the additional bird survey data, to D1 and D2 that the 250m buffer zone for ruff and redshank is appropriate.</p>	<p>CA advised that the 250m buffer zone was based on EA guidance previously deemed appropriate for their monitoring at the same geographical site (The Haven) during geotechnical investigation works undertaken along The Haven and within RSPB reserves. This is site specific data used to establish zones. The 250m zone is considered adequate for a buffer zone as, in the monitoring outlined above for the EA, disturbance was localised to within 100m (and mostly 50m) of the noise zone. <i>Cutts et al (2013)</i> provides data in relation to disturbance thresholds and the 250m zone is also consistent with that document.</p> <p>Monitoring will be developed as an adaptive management strategy, ensuring it will be flexible to take account of any concerns over monitoring not meeting the original objectives.</p>

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		<p>The Applicant has looked at potential mitigation for noise during construction. Mitigation has already been put forward for very noisy activities, such as not piling during the overwintering period. The Applicant will develop thresholds in line with the EA monitoring.</p> <p>Action: The Applicant confirmed that thresholds, in line with the EA's monitoring results and include the management measures. This data would be included in the OLEMS.</p> <p>Post-hearing note: The Applicant has submitted the OLEMS at Deadline 3, with document reference 7.4(1). The thresholds are contained in section A1.4.</p>
c)	<p>Following the submission of the ES/ HRA addendums at D1, containing additional information on cumulative/in combination effects do NE, the Marine Management Organisation (MMO) or any other IPs have any outstanding concerns about the scope of the cumulative/ in combination assessments?</p>	<p>RM advised, in response to NE's submission, that Appendix 17.1 HRA (document reference 6.4.18, APP-111) at section A17.5 covers in-combination effects and notes that 'in some circumstances it may be appropriate to include plans and projects not yet submitted to a competent authority for consideration but for which sufficient detail exists on which to make judgments on their impact on the protected site'. The list of plans and projects that have the potential to give rise to an in-combination effect were presented in Table A17-5 of that document.</p> <p>In respect of specific projects that were noted by the RSPB:</p> <ul style="list-style-type: none"> • The ground investigation works related to the Boston Barrier are historic works that have been completed. • The Haven Banks Flood Defence Scheme is due for completion in 2021. • The proposed route of the England Coast Path is acknowledged, however it forms part of the baseline assessment as it uses existing footpaths. Additionally, it is proposed that this Path is being diverted along existing footpaths through the Riverside Industrial Estate and there is no change in the footpath adjacent to the Habitat Mitigation Area. • Schemes from within the South-East Lincolnshire Local Plan have been considered where sufficient detail exists. • The review of projects with a potential for in-combination effects included shipping and discharges into The Haven where relevant. • The supplementary information for The Wash Special Protection Area (SPA) was used to determine other activities that are causing disturbance pressures, including people using footpaths and predators using trees and scrub in the area.

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		<p>The cumulative and in-combination assessment includes all plans and projects that were known of at the time of the assessment and the Applicant submits that it is adequate and fit for purpose.</p> <p>CA further confirmed that the Applicant will be looking at both recreation and predation pressures when looking at compensation sites in order to ensure that they would provide adequate compensation. Recreation pressures formed part of the baseline used in the assessment process.</p>
d)	<p>Please can NE confirm whether it is satisfied that the Applicant has identified all of the relevant European sites and features in the HRA?</p>	<p>RM confirmed, in response to NE's written submission, that the HRA at paragraph 6.4.18 of Appendix 17.1 (document reference APP-111) provides details of all sites considered to have potential routes to be affected by any of the proposed activities. All features of the sites were considered in terms of their potential for likely significant effect. This is documented in the HRA Integrity Matrices for The Wash SPA, The Wash and North Norfolk Coast Special Area of Conservation (SAC) and for The Wash Ramsar site.</p> <p>The HRA Ornithology addendum (ES Chapter 17 Marine & Coastal Ecology and Appendix 17.1 Habitats Regulations Assessment – Ornithology Addendum (document reference 9.13, REP1-026)) provided additional analysis of data on features within the SPA, including water bird assemblage (please see paragraphs 6.1.46-6.1.55). This provided detail on key species identified as being potentially vulnerable to disturbance.</p> <p>Spring passage birds were already included within the survey work and have been included in the assessments already undertaken. Additional survey data has been collated for autumn passage birds and will be submitted at Deadline 4.</p> <p>Action point: The Applicant will respond in writing to NE's comments in due course and outline assessment for assemblage for the HRA once completed.</p> <p>Post-hearing note: The Applicant confirms that it will respond in writing to NE's comments as appropriate and the outline assessment for assemblage for the HRA. The autumn passage bird survey data has been submitted at Deadline 3.</p> <p>The RSPB queried whether the ports from which fuel would be coming, and any sites along the route of vessels, should be included within the HRA.</p>

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		<p>Action point: The Applicant will consider the concerns raised by the RSPB in relation to the routes taken by vessels bringing waste to the Facility and will confirm whether it considers any further assessment work is required.</p> <p>The RSPB advised that some data appears to be missing or incorrectly identified within the addendum, in particular with respect to the common tern feature of The Wash SPA and Ramsar site. RSPB advised that it would make this available through a standard data request.</p> <p>Post-hearing note: The Applicant has requested this data, which was previously not known about, from the RSPB to inform the HRA. Once the data has been provided the Applicant will assess the potential for Likely Significant Effect on common terns.</p> <p>Digger Jackson (DJ) on behalf of the Applicant queried whether common tern were breeding inside or outside of the designated site.</p> <p>The RSPB clarified that the common tern were breeding on the edge of The Wash SPA, but that the location and relationship with The Wash SPA boundary could not be confirmed without consulting colleagues.</p> <p>RM advised that this was new information in respect of the common tern and the proposed assessment of wider ports. The Applicant does not acknowledge that the work completed to date is inadequate. The Applicant is happy to continue its dialogue with the RSPB and ascertain if further work is required.</p>
e)	Please can the Applicant indicate when it is anticipated that the Marine Mammal Addendum will be updated in respect of risk to seals from vessels in anchorage area and provided to the Examination	In respect of the specific question of the risk to seals within the anchorage area, the Applicant understands that the concern is regarding the use of Dynamic Positioning of vessels. Dynamic Positioning is an accurate method of maintaining and checking vessels' positions and is used only on specialist vessels (e.g. cable and pipe layers, drill ships, rock dumping and some passenger vessels). Dynamic Positioning is used by these vessels in order to hold their position in carrying out their work; where the Dynamic Positioning system automatically maintains the vessel's position and heading using specialist propellers and thrusters to counter the forces of wind, tide and current.

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		<p>Dynamic Positioning systems are not generally fitted to cargo vessels. The harbour master for the Port of Boston has confirmed that no vessels calling at the port have these systems onboard. Therefore, there is no risk to seals as a result of cargo vessels using dynamic positioning being present in the anchorage area, and there is no requirement to update the marine mammal addendum in this respect.</p>
f)	<p>Please can NE and other IPs confirm if they are satisfied that the ES/ HRA addendums provided by the Applicant at D1 provide sufficient information on the potential impacts of the Proposed Development on the conservation objectives of the European sites and the condition of their features</p>	<p>RM advised that as NE were not present at the hearing, it was not possible to take things further at this time. The response from NE does reveal an outstanding issue to deal with.</p> <p>RM re-confirmed the action that the Applicant will respond in writing to NE's comments, received at Deadline 2, relating to the addendum documents.</p> <p>Post hearing note: a response to NE's comments on the addendums will be provided at Deadline 5.</p>
g)	<p>Have NE provided their Habitat Mitigation Area vegetation survey results to the Applicant? Which documents does the Applicant anticipate may need to be updated as a result and when would updated versions, as necessary, be provided to the Examination?</p>	<p>RM advised, in response to NE's written submission, that there remains a disagreement as to the status of the saltmarsh.</p> <p>CA welcomed the summary of species found during NE's survey of the saltmarsh. However, there is no detail about where the quadrats were taken within the saltmarsh areas and which species were recorded in each area and in particular which species were recorded within the area of saltmarsh that would be lost during construction works. NE has also suggested that the saltmarsh should be classified as of moderate quality rather than poor quality.</p> <p>Post-hearing note: The survey data has been provided by NE on 24 November 2021.</p> <p>A change to the condition of the saltmarsh to moderate quality would require an update to the OLEMS document (Outline Landscape and Ecological Mitigation Strategy (document reference 7.4, APP-123)). The biodiversity net gain baseline would also need to change. However, this would be contrary to the categorisation of 'poor' that the saltmarsh has previously been given in all of the monitoring reports produced for the EA.</p> <p>The classification of poor was based on monitoring reports that were produced for the EA in 2011 (Jacobs), 2016 (EA) and 2017 (Holden). The references are provided within the ES – Chapter 17 – Marine and Coastal Ecology (document reference APP-055). The</p>

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		<p>2017 document states "Under the Water Framework Directive, the saltmarsh ecological status is assessed based on its extent, zonation and species diversity. In both the 2011 and 2014 surveys Jacobs (2012) and EA (2016) stated that using this criteria they defined the saltmarsh in the area of the Boston Barrier Project as poor quality. The limited extent, low diversity and negligible zonation are the reasons for classifying this saltmarsh as poor quality (Jacobs, 2012; EA, 2016). The 2017 surveys of the saltmarsh in the Witham estuary also confirmed the conclusion that the saltmarsh habitat in this area can be classified as poor quality".</p> <p>RM reconfirmed that the Applicant will respond to NE's comments as appropriate.</p>
h)	<p>Can the IPs state whether they agree with the justification for a maximum vessel speed of six knots and with the assessment of the potential effects provided by the Applicant at D1</p>	<p>CA advised, in response to NE's written submission, that a reduction in vessel speed is one of the key measures that can be put in place in order to reduce the risk of collision to marine mammal species.</p> <p>There is a higher risk of collision to fatally injure mammals from vessels travelling at higher speeds, due to the increased level of impact. This relationship between vessels speeds and lethality of collision is species dependant, as it is strongly related to body size. As well as reducing the potential for lethal injury, a reduction in vessel speeds also reduces the number of collision events, as individuals are more likely to have the ability and time to move out of the way with vessels travelling at lower speed. Seals are agile mammals, giving them the opportunity to move out of the way, and therefore reducing the potential for collision with vessels.</p> <p>Where there is a presence of vessels, the reduction in vessel speed is a preferred method for reducing collision risk, as stated by the International Whaling Commission and the International Maritime Organisation</p> <p>Where vessel speed restrictions have been in place at 10 knots, a reduction in lethal collisions of marine mammals with vessels has been found, and the restrictions were effective (with no collisions with vessels following the introduction of a vessel speed limit in a highly sensitive area for whale species). In addition, a study into the impact of ice-breaking vessels on phocid seals found that the predicted probability of collision was significantly increased with increasing vessel speed; at a speed of 4 knots or less, the</p>

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		<p>potential for collision was very low, with the potential for collision increasing significantly from 6 knots or higher.</p> <p>The mitigation measure originally put forward was to reduce vessel speeds to 4 knots, however further information has been received which means that this restriction would not be possible to undertake safely for all vessels. This is due to the need for larger vessels to navigate at a speed of at least 6 knots in order to have sufficient engine power to navigate safely through The Wash and The Haven.</p> <p>This information provides detail as to why the vessel speed limit of 6 knots is considered sufficient to significantly reduce the potential for collision risk with harbour seal. There is no indication that a reduction to 4 knots would result in a further reduction to that risk, whilst it does cause safety and manoeuvrability concerns to vessels. The evidence suggests that any speed of below 6 knots provides a significantly decreased potential for collision.</p> <p>If NE remain in disagreement with this mitigation technique, the Applicant requests that NE provides detail on what mitigation it considers would be adequate.</p>
AGENDA ITEM 5 (Further questions arising from D1 and D2 submissions)		
a)	Please can NE & the Applicant expand on their positions in respect of disturbance to birds at high tide	<p>DJ advised that the issue is split over three areas. The Applicant believes that it is sensible to break down the issue of high tide bird disturbance by vessels using The Haven into three geographical areas, and that each of these should be considered largely separately, though of course there will be links and commonality between them.</p> <p>The three geographical areas differ greatly in their importance to birds, connectivity to the SPA/SSSI and the extent to which they will be affected by the proposed project. The three areas are: the vicinity of the mouth of The Haven (MOTH), where it enters The Wash; the vicinity of the wharf development site (Principal Application Site) at the Boston end, and the central part of the channel. The potential for vessel disturbance is by far the greatest, in terms of numbers of birds potentially affected, at the MOTH. This is also the part that lies within the SPA/Ramsar/SSSI boundary. For these reasons, following the principle of proportionality, the Applicant has focussed their attention on quantifying and assessing vessel disturbance in the mouth of The Haven area. The Applicant believes that the vicinity of the Principal Application Site is the area of next most importance with respect to</p>

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		<p>vessel disturbance (again, in terms of the numbers of birds potentially affected and the degree of disturbance from construction and operational activities), and this has been a secondary focus of their attention. There is a lack of evidence that the central part of The Haven has more than negligible value to waterbirds, for example it is not included in the national waterbird counts (WeBS) and did not merit inclusion into The Wash SPA/SSSI at the time of designation. Furthermore, the central area was not identified as an area of concern for disturbance during the original stakeholder consultation phase. For all these reasons the Applicant has given less attention to the issue of vessel disturbance in the central part of The Haven. The Applicant recognises that there are data gaps regarding the importance (or lack thereof) of the central part of The Haven to waterbirds and has recently undertaken an initial survey of non-breeding birds there.</p> <p>Baseline study. The Applicant has demonstrated, through a programme of commissioned surveys, that under baseline conditions birds roosting at the MOTH (mostly shorebird species that are qualifying interests of the SPA, Ramsar and SSSI) are regularly disturbed by cargo vessels and pilot vessels transiting The Haven. These birds show small-scale behavioural responses. Typically, if birds are present at the roost site, the passing vessel causes all or some of them to take flight and they then either move to an alternative roost location up to a few hundred metres away, or, return to the original location a minute or so later, once the vessel has passed. The study also provided some evidence that relatively small and slow-moving vessels (such as fishing boats) elicit either no response from roosting birds or only a relatively mild response. Surveys have demonstrated that under baseline conditions, birds roosting at the Principal Application Site (mostly redshank, a qualifying interest of the SPA approx. 3km away, and assemblage-only waterbirds of the SPA such as ruff and gull species) are regularly disturbed by cargo, pilot and smaller vessels including fishing and recreation vessels transiting The Haven. Responses of birds are similar to that seen by birds at the MOTH.</p> <p>Thus, the baseline disturbance study has identified that, on most high tides, existing vessel traffic results in regular disturbance of moderate numbers of roosting birds. The baseline study has characterised and quantified this existing disturbance in terms of the species affected, the number affected, the frequency of disturbance events and the behavioural response (details in HRA Ornithology Addendum Appendix 1 and Section 6.1 (document reference 9.13, REP1-026)). The Applicant believes it is fair to state that before the commissioned study was undertaken, the magnitude of the existing vessel</p>

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		<p>disturbance that occurs at the MOTH was not fully appreciated by anyone (including NE and RSPB). Indeed, NE's Supplementary Conservation Advice for The Wash SPA (written in 2010) does not specifically identify vessel disturbance as an issue of concern.</p> <p>Fluctuating baseline. The disturbance study has characterised the baseline level of vessel disturbance at the MOTH and Principal Application Site over the past year, however it is clear that the baseline will fluctuate from year-to-year in line with variations in use of The Haven by vessels. This is relevant as it is known that the numbers of vessels using The Haven has varied considerably over time, reflecting economic activity at the Port of Boston. For example, the number of cargo vessels using The Haven each year in the 1980s was nearly twice that of the most recent years. It is considered likely that irrespective of whether the proposed Facility goes ahead there could be increases in vessel activity at the Port of Boston, and that this would lead to additional disturbance of birds roosting at the MOTH and along The Haven.</p> <p>Root cause of the problem. The fundamental issue that makes birds roosting at the MOTH vulnerable to vessel disturbance is the location and nature of the existing roost site there. This is focussed on a relatively small man-made area of stone revetment adjacent to the shipping channel (<50m from the centre of the channel) that effectively becomes an island at high tide. Thus, essentially by accident, previous human management related to the shipping channel has resulted in the formation of what is perceived by certain birds to be an ideal and thus highly attractive roost site. Unfortunately, it just so happens that this rocky revetment 'island' is extremely close to The Haven shipping route and thus it is inevitable that vessels pass very close (<100m), and sometimes disturb, the birds using it. There are no other roost sites of similar characteristics in this part of The Wash, there are alternatives, but these have a different character, for example non-island sites on the edge of saltmarsh. It is the Applicants position that a net gain solution could be found that reduces the existing vessel disturbance problem, and that such a solution would allow for additional vessel traffic along The Haven without causing additional bird disturbance, be it associated with the proposed Facility or other commercial activities. The Applicant believes that the provision of one of more alternative new roost sites close to the MOTH that is/are of equal or greater attractiveness to roosting birds is likely to successfully achieve this and could result in net gain also.</p>

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		<p>Assessment approach. The Applicant takes the position that the assessment of vessel disturbance should be based on the difference between the baseline and the predicted future level that would occur if the proposed Facility proceeds i.e., the predicted additional disturbance that can be attributed to the proposed project. The Applicant believes that the information from the commissioned surveys provides an adequate basis for predicating the amount of additional vessel disturbance that would occur due to the proposed Facility. The Applicant takes the position that the advice contained in the NE's Supplementary Conservation Advice to be relevant in determining whether additional disturbance from the proposed project will compromise the Conservation Objectives for The Wash SPA. In this regard the Applicant believes that the advice of what constitutes significant disturbance has particular relevance and has used this as the basis for the assessment presented in Appendix 1 of the HRA Ornithology addendum. The Applicant takes the position that it is not their responsibility to assess the baseline disturbance against the conservation objectives for The Wash (it is the responsibility of NE to monitor the condition of the SPA and take actions accordingly), indeed it is a basic principle of project environmental impact assessment that the baseline is accepted as the starting point for assessment.</p> <p>Assessment conclusions. Based on the assessment presented in Appendix 1 of the HRA addendum the Applicant takes the position that the additional disturbance by the proposed Facility would not compromise the conservation objectives of The Wash SPA. Nevertheless, the Applicant recognises that any additional disturbance is undesirable and would exacerbate the existing vessel disturbance problem. The Applicant is keen to play an active role through biodiversity net gain proposals in managing the existing problem in the way described, and thereby prevent the proposed Facility materially exacerbating the current vessel disturbance situation.</p> <p>The RSPB advised that roost sites will be located close to good feeding areas and other factors will also be considered. The RSPB was not aware of evidence to show that predation pressures are an issue at The Wash SPA, or in The Haven, or are a driver for where birds are roosting.</p> <p>DJ clarified that the vessel disturbance at MOTH is not confined to the area of rocks that are present at the MOTH but potentially occurs wherever the birds are roosting close to the channel. However, there is evidence that rocks are a location with a particularly high</p>

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		<p>sensitivity to vessel disturbance and particularly high attractiveness to roosting birds. This is not to underplay the importance of other nearby locations.</p> <p>Predation risk is one of many factors that determines a good roost site for shorebirds. Proximity to food sources is also of paramount importance. There would be no point providing an alternative roost site if it was not near to food resources (e.g. mud flats). The concept of a small island is probably deeply embedded in a shorebird's psyche as a being good high tide roosting place, and this is likely to be linked to reduced predation risk, especially from mammal predators. Small islands are thus naturally attractive to roosting birds.</p>
b)	<p>Please can the Applicant indicate when the errata (errors and corrections) document in respect of habitat loss will be provided to the Examination.</p>	<p>RM queried whether the ExA was referring to the OLEMS document or the HRA Matrices.</p> <p>The OLEMS document is proposed to be updated for Deadline 3. However, the Applicant is awaiting the results of the NE survey that was undertaken on 7 September 2021 (post-hearing note: data was provided after the hearing) to clarify the classification of the saltmarsh, so the update may need to be delayed. NE provided a summary within its written representation but has not provided the full survey data.</p> <p>In respect of the HRA matrices, no habitat loss is expected to take place within designated site boundaries and the level of impact of wharf construction habitat loss on waterbird foraging and roosting at the Application Site, once the Habitat Mitigation Area is implemented, is considered to be low (Ornithology Addendum paragraphs 4.3.4-4.3.10 (document reference 9.13, REP1-026)), therefore habitat loss is not included in the HRA screening and integrity matrices.</p> <p>The ExA confirmed that this question refers to the Applicant's response to RR1-035, specifically the Applicant's response to NE's item 75. This response states that the Applicant will prepare the errata document for Examination in relation to saltmarsh and mudflat loss.</p> <p>Action Point: RM and CA confirmed that the updated OLEMS will provide the final figures for habitat loss. This does include the worst-case scenarios for scour protection and was included in the previous OLEMS document but will be confirmed.</p>

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		<p>Post-hearing note: The survey data was provided immediately after the hearing by NE and the Applicant has submitted an updated OLEMS at Deadline 3 (document reference 7.4(1)). The final figure (in hectares of surface area) for habitat loss (split into mudflat and saltmarsh and including worst case scenario loss for scour protection) is at A1.1.</p>
c)	<p>In respect of any potential mitigation requirements for effects on terrestrial and aquatic invertebrates, when does the Applicant intend to provide such information to the Examination?</p>	<p>RM referred to A12.12.30 of the Extended Phase 1 Habitat Survey Report (Appendix 12.1, document reference 6.4.11, APP-104) and paragraph 12.7.36 of the ES Chapter 12 on Terrestrial Ecology (document reference 6.2.12, APP-050). The areas of grassland, scrub, trees and woodland within the Facility was noted as potentially supporting, albeit limited, common species of terrestrial invertebrates.</p> <p>As presented in the ES Chapter 12, the level of importance assigned to invertebrates (terrestrial and aquatic) is low, the magnitude of impact is low and therefore the overall significance of the impact is minor. No further surveys are proposed to be undertaken by the Applicant. This position has been agreed with NE as per their relevant representation of the 18 June 2021.</p> <p>As stated in the Extended Phase 1 Habitat Survey report (Appendix 12.1, document reference 6.4.11, APP-104), mitigation measures had been identified as being required during the construction and operational phases of the Facility to minimise impacts to invertebrate populations.</p> <p><u>Terrestrial Invertebrates</u></p> <p>The main methods for mitigation for terrestrial invertebrates are ensuring best practice during construction, minimising habitat loss and fragmentation and management of the operational phase of the Facility. The submitted mitigation measures will:</p> <ul style="list-style-type: none"> • Avoid and/or reduce mortality of terrestrial invertebrate species during construction by using best practice. • Minimise habitat loss by fencing off areas outwith the working areas. • Minimise the effects of habitat fragmentation by maintaining or creating corridors to link habitats (Illustrative Landscape Plans (document reference 4.4, APP-014)). • Minimise pollution and disturbance. • Where possible manage habitats for terrestrial invertebrates

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		<p>During construction works, the Principal Contractor will adhere to the EA's best practice guidelines with regards to preventing pollution incidents of waterbodies and/or terrestrial habitats. Construction phase mitigation will include the installation of drainage systems to divert and manage runoff into drains and/or other waterbodies in order to avoid contamination of waterbodies. Storage of chemicals will be set back at least 30m from any watercourse and secondary containment will be provided to prevent pollution incidents from occurring.</p> <p>During operation of the Facility, the installation of a safe drainage system has been incorporated into the Facility design to prevent runoff into the surrounding vegetation.</p> <p>Other mitigation measures are set out in ES Chapter 12, including the reinstatement/creation of suitable habitat for invertebrate species that have been incorporated into the Facility design. These measures include a varied planting regime comprising scrub fringes such as hawthorn, field maple, blackthorn and ivy, which provide sheltered elevated temperatures for invertebrates, foraging areas for predatory wasps, and nectar and pollen for flower-dependent invertebrates.</p> <p>Paragraph 9.1.6 of the OLEMS (document reference 7.4, APP-123), sets out that log pile refuges (ensuring no fire risk) for terrestrial invertebrates (and other species) will be created using the dead wood that arises from tree felling works. These log pile refuges will be allowed to decay to provide habitat and ground cover for terrestrial invertebrate species.</p> <p>The OLEMS forms the basis for the final Landscape and Ecological Mitigation Strategy which will be prepared and submitted by the Principal Contractor prior to the commencement of construction activities associated with the Facility and is secured by Requirement 5 of the draft DCO (document reference 2.1(1), REP1-003).</p> <p><u>Aquatic Estuarine Invertebrates</u> There is no proposed mitigation for the benthic marine invertebrates because the loss of the species associated with the intertidal habitat loss was not considered to be significant as part of the Environmental Impact Assessment.</p>

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d)	<p>Please can the Applicant and NE provide an update on discussions about the diversion of the English Coast Path and the potential need for information to be provided to inform an appropriate assessment</p>	<p>PS requested two figures be put on screen to assist in identifying the footpaths being referenced:</p> <ul style="list-style-type: none"> • ES Figure 5.3 (Public Footpath Closures (document reference 6.3.2, APP-068)) , and then • NE's Deadline 2 submission (Further NE Advice in Relation to the Alignment of the England Coast Path (ECP) (REP2-047) Page 2) NE <p>Part 9 of the Marine and Coastal Access Act 2009 ("the 2009 Act") aims to improve public access to, and enjoyment of, the English coastline by creating clear and consistent public rights along the English coast for open-air recreation on foot. It allows existing coastal access to be secured and improved and new access to be created in coastal places where it did not already exist (NE, 2013).</p> <p>The England Coast Path (ECP) in the area around the Facility is not currently designated therefore any changes proposed due to the Facility will affect the future designation of the ECP. The proposed Facility will require changes to the proposed ECP route due to the inability to keep the proposed route aligned, and in close proximity to The Haven along BOST/14/4 and BOST/14/5, where these routes will be permanently stopped up due to the presence of the wharf.</p> <p>The proposed re-routing of the ECP utilises the Public Right of Way (PRoW) running down the Roman Bank along BOST/14/11 and BOST/14/9 as identified in ES Figure 5.3 (Public Footpath Closures (document reference 6.3.2, APP-068)) (the proposed route).The proposed route increases the distance of this section of the proposed route from approximately 950m to approximately 1100m and moves users away from the low water mark by a maximum of 350m. There is an approximate 200m section at the northern end of the proposed re-route that NE has suggested an alternative route for and consideration of this is discussed later in my response.</p> <p>The Applicant has been in discussion with Lincolnshire County Council (as the Highway Authority responsible for public rights of way), Boston Borough Council and NE on the improvements to this route to ensure it is as attractive and safe as possible. An Outline Public Rights of Way Design Guide will be submitted to the Examination at Deadline 3 and as set out at yesterday's hearing on the DCO the Applicant is considering the most</p>

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		<p>appropriate mechanism to secure this; either through a requirement or via a section 106 agreement.</p> <p>Consideration of Additional Footpath Along Northern Boundary of the Facility As part of these discussions and as set out in NE's Deadline 2 submission (Further NE Advice in Relation to the Alignment of the England Coast Path (ECP) (REP2-047) Page 2) NE an additional footpath has been suggested to connect the footpath along the Roman Bank at the northern boundary of the Facility with the footpath along the bank of The Haven. This would reduce the permanent stopping up of approximately 220m of footpath and introduce a new path of up to 110m.</p> <p>There would be two options for this new path (i) within the Order limit for the facility and (ii) just outside of the Order limit. Any new path within the Order limit would result in the required security fencing around the operational Facility being moved by approximately 2m (dependant on any final path specification). The landscape proposals for the Facility include provision of native species woodland along this northern boundary (see Illustrative Landscape Plans (document reference 4.4, APP-014 or REP2-033) Sheet 1). The provision of a new path here would remove approximately 220m² of planting (2m x 110m) and would decrease the terrestrial Biodiversity Net Gain within the Application Site and potentially reduce the effectiveness of screening of nearby views of the site (notably the bale storage area). Whilst the Applicant does not consider that removal of this planting would significantly affect the impacts on either terrestrial ecology or landscape/visual impact there are clearly negative aspects to provision of a path in this area to be considered. The Applicant would also consider that noise from wharf operations along this proposed route would potentially cause the footpath not to be preferentially used. A new footpath located outside of the Order limit would require agreement with the landowner and we do not believe this would be forthcoming as this area is available for business use, noting that a new tenant has taken up residence on some of the land between BOST/14/11 (Roman Bank) and The Haven and not all of the land which seems available on mapping is now free. Additionally, taking a footpath down this part of the site increases security risk which is another key consideration. The fencing along the northern boundary of the Facility will be 2.9m high with barbed wire at the top, confirming to International Ship and Port Facility Security (ISPS) Code 2004. This substantial fencing is required to secure the wharf area in line with internationally accepted port security guidance and</p>

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		<p>provision of a path directly outside of this boundary would cause the Applicant concern from a security perspective.</p> <p>Footpath along the Roman Bank The Roman Bank is associated with a known bank that has been traced extending into Norfolk, forming an early sea wall. Documentary research suggests it could be of Anglo-Saxon origin. The meandering alignment of the path is a direct reflection of the historical requirement for a flood defence; this creates variety and interest for the walker but also adds depth to the heritage association which is an area identified for particular interpretation by Boston Borough Council. Proposed enhancements will improve access to, and experience of the Roman Bank, with beneficial effect to its setting.</p> <p>The proposed footpath diversion along the Roman Bank has a number of practical benefits. The relatively constant level of the bank provides a comfortable walking route, without pronounced changes in gradient. Recent works to create a shallow graded ramp onto the northern end of the bank, will improve access from The Haven footpath and provide a natural, flowing route between the two paths. The side slopes of the bank support established native species of trees and shrubs that provide seasonal interest, shelter along the route and filter views to neighbouring development.</p> <p>While the Proposed Route may reduce coastal access if the land between the Proposed Route and the coast is considered excepted land as defined in Part 1 of the Countryside and Rights of Way Act (2000), the Applicant considers it as the most suitable route for the reasons set out previously and any constraint on access to the coast is negligible as the difference in routing is only approximately 200m over an approximate 6km length where the proposed ECP route follows The Haven from Boston town centre to where it deviates away from its waterside route at Wyberton Marsh Pumping Station.</p> <p>Given the above considerations a new footpath is not to be included within the DCO Application and the re-routing of the England Coast Path along BOST/14/11 (following the Roman Bank) remains as per the DCO Application.</p> <p>Habitats Regulations Assessment The Applicant notes that there is a requirement to consider the new proposed ECP alignment within the projects Habitats Regulations Assessment (HRA), as confirmed in an</p>

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		<p>email from Natural England to the Applicant's consultants in October 2010. Now that the proposed optional footpath as suggested by NE has been ruled out of the project description the Applicant will ensure consideration of the proposed route (which is as per the DCO application) is included in an updated HRA to be submitted to the Examination (i.e. as an update to Appendix 17.1 – Habitats Regulations Assessment, document reference 6.4.18, APP-111).</p> <p>Conclusion The realignment of the proposed ECP over an approximate 1km length will utilise an existing PRow. This route will be subject to a range of improvement measures as set out in the Outline PRow Design Guide to ensure it is an attractive and usable part of the proposed ECP including historical and other interpretation. The alternative route suggested by NE has been considered and discounted due to factors such as the removal of landscape planting, security concerns and landowner permissions. The Proposed Route is deliverable and only deviates by 200m from the proposed NE alternative and any constraint on access to the coast is considered negligible.</p> <p>Post-hearing note: Information relating to any Likely Significant Effect is contained in the HRA Screening and Integrity Matrices (document reference 9.42) submitted at Deadline 3.</p>
e)	Please can the Applicant update ES Chapter 17 to include an assessment of effects of the Proposed Development on breeding redshank, identified as a feature of The Wash Site of Special Scientific Interest (SSSI).	<p>RM advised that the Applicant's position is that there is no impact on breeding redshank.</p> <p>DJ confirmed that the Proposed Development is not anticipated to have any impact on breeding redshank as no impact route has been identified. Baseline surveys found that this species does not breed at the Principal Development Site, which is the only area that would be affected by habitat changes.</p> <p>Management undertaken elsewhere, such as to provide new roost sites, will need to take into account existing breeding redshank (should they be present locally). However, this is not likely to present a serious obstacle as the size of new roost sites will be relatively small (less than one hectare), whilst a redshank territory is typically several hectares in extent.</p>

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		<p>It is also valuable to consider the ecology of breeding redshanks and why birds are not likely to be seriously affected by vessel disturbance. During the breeding season (approximately mid-March to mid-July), redshank largely change habitat. Redshank that over-winter on The Wash generally move to areas of breeding habitat up to a few 100km away. These are mostly located in eastern England, but also further afield in NW England and Scotland. Breeding habitats include lowland wet grassland, saltmarsh, and traditionally managed rushy upland pastures. Locally, habitats within and around The Wash do provide habitat for some breeding redshank.</p> <p>The Wash SSSI includes extensive areas of saltmarsh but does not include appreciable areas of other types of redshank breeding habitats. Lowland wet grassland is also used for breeding locally (e.g., at the RSPB reserves) but these areas are outside The Wash SSSI boundary. When breeding, redshank are loosely territorial and individual birds will largely confine their activities to their territory. The territories of local breeding birds will be approximately evenly spread across suitable breeding habitat. Breeding individuals may feed on intertidal mud during the low tide period if this is present within or close to (a few hundred meters) of their breeding territory. Breeding individuals are not anticipated to gather at high tide roost sites, so would not be affected by vessel disturbance along The Haven.</p> <p>DJ confirmed there is negligible potential for additional vessel movements to disturb breeding redshank.</p> <p>Action Point: RM advised that an update to ES Chapter 17 to clarify the above position will be provided at Deadline 4.</p> <p>Post-hearing note: The Applicant confirms that a technical note will be produced outlining the position with regard to breeding redshank that will be submitted at Deadline 5. It is considered that a technical note will provide more clarity than updating the chapter.</p>
f)	Estuarine processes - Please can the EA confirm whether they remain of the view that an Expert Geomorphological Assessment is required, and if so, provide	DB advised that the Applicant was not aware that the EA's Expert Geomorphological Assessment (EGA) comment was related to the in-combination effect of the EA's Deadline 2 submission.

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	<p>to the Examination details of the data that they consider to be missing.</p>	<p>In respect of the ES (which the Applicant believed the comment alluded to), the use of EGA is integral to the assessment of effects on each of the different estuarine processes (waves, currents, suspended sediment transport) and is not a technique that can be represented in a single supporting document. The EGA is embedded within each of the relevant assessments set out in Chapter 16 Estuarine Processes (document reference 6.2.16, APP-054), and is better suited to inclusion in the individual assessments rather than a separately presented EGA. Therefore, by reviewing the individual assessments within the Chapter the EGA supporting that section has also been reviewed - the evidence is built-in to the assessment of effects.</p> <p>The Applicant explained, in response to the EA's request for more detail on the in-combination effects, that the Applicant is in the process of completing a response to these.</p> <p>Action Point: The Applicant will submit a response to provide information on the in-combination effects of ship wash and capital dredging and operation (using an EGA approach) as a written response to the EA's Deadline 2 comments.</p> <p>Post-hearing note: The Applicant confirms that this response has been submitted as document reference 9.44 at Deadline 3.</p>
<p>g)</p>	<p>It is understood that the findings of the Navigation Risk Assessment (NRA) (and ES Ch 18) will inform the Navigational Management Plan (NMP), and that the NRA will be provided to the Examination at D2. There is no reference to the NRA in Schedule 9 or elsewhere in the dDCO. Please can the Applicant consider whether Schedule 9 should be amended to require that the NMP will be based on the NRA and ES Ch 18.</p>	<p>RM advised that this was covered in the DCO hearing on 23 November 2021. 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."</p> <p>Additionally, sub-paragraph (3)(f) of Condition 14 of the DML, Schedule 9 of the dDCO, will be amended to 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 The Haven is minimised as far as reasonably practicable." Both of these amendments are set out in the Applicants Comments on ExA's First Written Questions (REP2-008).</p>

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		<p>Action Point: The Applicant will submit an amended draft DCO and Schedule of Changes at Deadline 3.</p> <p>Post hearing-note: The Applicant confirms that an amended draft DCO and Schedule of Changes will be submitted at Deadline 3.</p>
h)	<p>It is noted that a significant effect is predicted on the fishing fleet. Please can the Applicant provide an update on discussions with the fishing fleet, and indicate when preparation of the outline NMP will begin and whether, and when if so, an outline version can be provided to the Examination.</p>	<p>PS advised that the fishing fleet at Boston is represented by the Boston and Fosdyke Fishing Association who the Applicant has been liaising with either directly or through their legal representative.</p> <p>ES Chapter 18 Navigational Issues (APP-056) sets out the impact assessment on the fishing fleet. A range of construction and operational impacts were assessed, and the assessment concluded that the increase in the number of vessels using The Haven and the turning circle as a result of the operation of the Facility, results in a residual impact to the fishermen of moderate adverse significance. The key mitigation measure identified was a Navigation Management Plan. Since the application was submitted the Port of Boston have stated that they will turn 50%, of the Facility's vessels in the Wet Dock (as shown on ES Figure 18.3 (APP-092)) reducing the usage of the turning circle and thereby reducing the impacts on the fishing fleet from that set out in the ES. The ES can therefore be regarded as assessing a worst case scenario in this respect.</p> <p>In recognition that there was a concern from the fishermen that the ES was not based on quantitative information the Applicant had a specific Navigation Risk Assessment undertaken and this was submitted at Deadline 2 (REP2-010) 9.27. Prior to that, on 29 September 2021, a meeting was held with the fishermen to inform the scope of the Navigation Risk Assessment (minutes are provided in Appendix A of the Statement of Common Ground with Boston and Fosdyke Fishing Society (REP2-005)).</p> <p>As well as being submitted at Deadline 2 the NRA has been issued to the fisherman directly along with a document that sets out the rationale for not including within the DCO application a relocation of the fishing wharf to the south of the Facility. This wharf relocation is something the fishermen had mentioned as their ideal mitigation, so it was appropriate that the Applicant reviewed the potential for this. The assessment indicated considerable consenting issues relating to locating another approximate 580m long</p>

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		<p>concrete wharf closer to The Wash SPA and Ramsar site and the difficulties therefore faced in complying with the Habitats Regulations. Additional consent risk was also identified in relation to other legal matters. This document has not been submitted to the Examination to date, but the Applicant is happy to do so if it would be useful.</p> <p>The fishermen are currently reviewing both documents and The Applicant has asked for a further in person meeting with them and their legal representative. We have suggested this takes place before Christmas, but we await the response from the fishermen's representative.</p> <p>Whilst the fishermen currently object to the proposals, consultation with them is taking place along with exchanges of documents and views on such documents.</p> <p>Navigation Management Plan The draft DCO 2.1(1) Draft Development Consent Order (clean) (REP-003) sets out the requirement for a Navigation Management Plan (NMP) in Schedule 9 (Deemed Marine Licence), Part 4, Condition 14. It sets out that the NMP should be submitted to the Marine Management Organisation (MMO) for approval at least 13 weeks prior to the commencement of any licenced activity, following consultation with the harbour authority (Port of Boston) and the EA.</p> <p>As stated in yesterday's DCO/DML hearing, and in response to the Examining Authority'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."</p> <p>Additionally, sub-paragraph (2)(f) of Condition 14 will be amended to 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 The Haven is minimised as far as reasonably practicable."</p>

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		<p>Both of these amendments are set out in the Applicants Comments on ExA's First Written Questions (REP2-008).</p> <p>There is no requirement within the draft DCO to provide an outline NMP and the Applicant notes that the MMO have not requested an outline NMP in their response to ExA's written questions at Deadline 2 (REP2-040) (see Table 1, row 1). The Port of Boston (as the statutory harbour authority with responsibility for navigation safety within The Haven) have also not requested an outline NMP to be submitted and their agreement on the NRA and NMP is provided in Table 3-1 of the Statement of Common Ground with The Applicant (REP2-003).</p> <p>In the Applicant's comments on the Examining Authority's First Written Questions (REP2-007, see Q10.0.9) it is stated that the measures within the NMP will be based on the findings of the Navigation Risk Assessment and a post-DCO consent risk workshop.</p> <p>With the submission of the Navigation Risk Assessment to the Examination (with proposed mitigation set out in Table 12.1), the need to further consult with the fishermen, and the expectation to undertake a risk workshop to inform the Navigation Management Plan we do not feel that there is merit in submitting an outline Navigation Management Plan during the Examination. Furthermore, this is not requested or expected by the MMO or the Port of Boston.</p>
AGENDA ITEM 6 (Any other environmental matters)		
		<p>United Kingdom Without Incineration Network (UKWIN) put forward various submissions relating to:</p> <ul style="list-style-type: none"> • The impact of the proposed development on the waste hierarchy and proximity principle; • The Applicant's imperative reasons of overriding public interest (IROPI) argument and Assessment of Alternative Solutions; and • Climate change impacts of the proposed development. <p>UKWIN confirmed that they would submit their representations in writing at Deadline 3.</p>

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		<p>RM advised that as was the first time that the Applicant was hearing much of UKWIN's submissions, the Applicant would respond in writing following the publication of UKWIN's written summaries.</p> <p>Action point: The Applicant will provide a response once UKWIN's written summaries have been provided at Deadline 3.</p> <p>Post-hearing note: The Applicant confirms that it will provide a written response to the UKWIN written submissions as appropriate after these have been received.</p>