

## **Application by Alternative Use Boston Projects Limited for Boston Alternative Energy Facility**

### **The Examining Authority's Commentary on the draft Development Consent Order Issued on Tuesday 11 January 2022**

The following table sets out the Examining Authority's (ExA) commentary on the draft Development Consent Order (dDCO) for the application. It is based on the most recent versions of the dDCO available in the Examination which are:

- Deadline 3: Boston Alternative Energy Facility dDCO version 2 – clean [[REP3-003](#)]; and
- Deadline 3: Boston Alternative Energy Facility dDCO version 2 – tracked [[REP3-004](#)]; and

### **ExA commentary on draft Development Consent Order**

The Applicant's revised draft Development Consent Order (dDCO) was submitted at Deadline 3, 6 December 2021. I note that detailed discussions are on-going between the Applicant and Interested Parties, in particular the environmental bodies. In providing a commentary on the dDCO at this stage, I do not consider it appropriate to provide a commentary on those detailed discussions, as I expect those parties to satisfactorily conclude matters within the Examination timetable. Therefore, the ExA's commentary on the dDCO at this stage seeks to highlight areas where I am concerned that discussions may not have reached an agreed position between the parties by the close of the Examination. These will be particularly contentious issues which will require careful consideration in my recommendation report to the Secretary of State and it will therefore be important to ensure that the parties have prioritised those issues appropriately, seeking agreement where possible and as appropriate. Please note that the order of the commentary below is not indicative of the importance of the matter.

Responses are due by **Deadline 5: 25 January 2022**. Responses are requested from the Applicant on each point; Interested Parties (IPs) and Other Persons are requested to respond to each point relevant to them.

**Commentary:**

**1. Protective Provisions (PPs) and Environmental Permits (EPs).**

The Environment Agency (EA) has repeatedly highlighted the risk of the Applicant not having sufficient time to obtain sufficient surety EPs will be granted by the close of the Examination, and has repeatedly requested a delay in the Examination; at the Preliminary Meeting I did not agree to delay the Examination and highlighted to the Applicant the risk it was running of not obtaining agreement for the EPs. I also note that the Applicant is developing PPs where there is overlap with the matters contained in EPs, and potential EPs.

I consider that it would assist the Examination if the Applicant produced a timetable detailing:

- each of the EPs required;
- each of the PPs to be contained in the dDCO; and
- the timetable for drafting and agreeing each of the above.

**2. Section 106 agreements**

I note that the Applicant has referred to reaching Section 106 agreements (s 106) with the EA and the local planning authorities. I remind the parties that the six month period for Examination is a strict one and that I must issue my recommendation report along with any draft s 106 agreements (where appropriate) three months after completion of the Examination.

In order for any agreement to be considered by me in determining the application, they need to be agreed and signed by the parties. I consider that it would assist the Examination if the Applicant produced a timetable detailing:

- each of the s 106 obligations proposed;
- date for submission of draft s 106 agreements to Examination; and
- proposed date for submission of final agreed version.

**3. 'Without prejudice' derogation case**

Regarding the 'without prejudice' derogation case. Please explain how the compensation measures proposed will be secured in the DCO if the Secretary of State determines that there is an adverse effect on integrity?

**Commentary:**

**4. Boston and Fosdyke Fishing Society**

I note the Applicant's request to delay the Issue Specific Hearing on navigation and fishing matters until February 2022, which I accepted. A Statement of Common Ground (SoCG) with the Boston and Fosdyke Fishing Society was submitted at Deadline 2, 11 November 2021 [REP2-005], but no update was submitted at Deadline 4. Given the absence of detail regarding progress with the issues identified as 'under discussion' in the SoCG, please can the Applicant update the Examination on the following as well as the proposed timetable for resolving outstanding issues:

- navigational issues resulting from increased shipping;
- water quality and impacts on fisheries;
- proposed mitigation; and
- proposals for securing any conditions and mitigations in the dDCO.