



The Boston Alternative Energy Facility
Case Team
National Infrastructure Planning
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(Email only)

MMO Reference: DCO/2019/00006
Planning Inspectorate Reference: EN010095
Identification Number: 20028136

25 January 2022

Dear Sir or Madam,

Planning Act 2008 – Application by Alternative Use Boston Projects, for an Order Granting Development Consent for the Boston Alternative Energy Facility

Deadline 5 Submission

On 20 April 2021, the Marine Management Organisation (the “MMO”) received notice under section 56 of the Planning Act 2008 (the “PA 2008”) that the Planning Inspectorate (“PINS”) had accepted an application made by Alternative Use Boston Projects Limited (the “Applicant”) for determination of a development consent order for the construction, maintenance and operation of the proposed Boston Alternative Energy Facility (BAEF) (the “DCO Application”) (MMO ref: DCO/2019/00006; PINS ref: EN010095).

The Applicant seeks authorisation for the construction, operation and maintenance of an ‘Energy from Waste’ (EfW) plant which will have a generating capacity of approximately 102 megawatts electric (MWe) delivering 80 MWe to the National Grid, including an electrical connection, a new site access, and other associated development (together the Proposed Development) on land at or near Riverside Industrial Estate, Bittern Road, Boston, Lincolnshire (Application Site).

Due to the short deadline between Deadline 3 (6 December 2021) and Deadline 4 (13 December), the MMO only provided initial comments on the responses submitted for Deadline 3 from the Applicant and other Interested Parties, including the draft Development Consent Order (dDCO). This document provides further comments on responses submitted at Deadline 3 as well as comments on the Deadline 4 submissions.

The MMO received a Rule 8 letter on 14 October 2021. In response to this letter, the MMO submits the following:

- 1. Comments on the revised draft DCO**
- 2. Responses to Second Written Questions**
- 3. Responses to ExA’s commentary on the draft DCO**

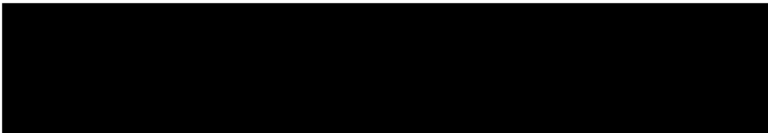
4. **Comments to any information submitted by the Applicant or Interested Parties at Deadline 4**
5. **Notification of wish to have future correspondence electronically**

This written representation is submitted without prejudice to any future representation the MMO may make about the DCO Application throughout the examination process. This representation is also submitted without prejudice to any decision the MMO may make on any associated application for consent, permission, approval or any other type of authorisation submitted to the MMO either for the works in the marine area or for any other authorisation relevant to the proposed development.

Yours faithfully




Emma Shore
Marine Licensing Case Officer



Copies to:

Christie Powell (MMO) – Case Manager: 

Joseph Wilson (MMO) – Senior Case Manager:


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1. Comments on the revised draft DCO

Table 1 – MMOs comments on the revised draft DCO submitted at Deadline 3

Provision	DCO Rev 2.1(2) Date 6 December 2021	MMO Deadline 5 Comments
Art 9	Consent to transfer the benefit of the Order	There is currently no requirement for the MMO to be consulted in relation the transfer of the benefit of the Order, including the deemed marine licence (DML) under Article 9(1). A provision of this nature is key in DCOs, and the MMO suggest the following wording be inserted in Article 9: <i>“The Secretary of State must consult the MMO before giving consent under paragraph (1).”</i>
Work No. 4(a)	7.2m A.O.D	A.O.D should be changed to AOD.
	SCHEDULE 9	
1(1)	“Commence”	The MMO note that this definition has been expanded and are content with the change.
1(1)	“undertaker”	The MMO note the inclusion of further details under ‘undertaker’ and are content with these insertions.
3		Applicant’s comments The Applicant has previously stated that no other marine licenses reviewed contained the suggested wording at (c) <i>“do not give rise to any new or different environmental effects to those assessed in the environmental information”.</i> The MMO does not consider the use of ‘materially’ as appropriate, and as an Organisation the MMO continues to resist this wording in DCO/DML applications as it has become apparent that this would allow a developer to go outside of

		<p>what was assessed, provided that it is broadly similar, which we do not consider accords with the requirements of the EIA regime.</p> <p>It is to be noted that this process has moved away from model provisions, and that the drafting of both the DCO and the DML contained within is an iterative process, and although existing orders, such as those referenced by the Applicant provide a useful illustration of provisions, each order is drafted in response to the individual and specific circumstances and requirements and the MMO are not bound by the wording of previous orders.</p> <p>It should further be noted that the Orders referred to by the Applicant commenced examination in 2018 and September 2019 respectively, and considerable time has passed since these orders were initially drafted.</p>
4(1)(j)	“Article 19(1)”	The MMO would like to seek clarification to which Act or Order this relates.
4(1)(k)		The MMO would like to seek further explanation from the applicant of the use of ‘materially’ new or different.
4(2)	“works plans”	Further clarification is required as to what ‘works plans’ refers to and whether we should expect them to be a schedule to the Order.
8		The term ‘licence holder’ should now read as ‘undertaker’.
9		On line 3, after ‘ <i>this licence</i> ’ the MMO request that “ <i>and subsequent revisions or amendments</i> ” be inserted.
12(1)		<p>The MMO recommend that on first instance Construction Environmental Management Plan is defined as ‘CEMP’ and that this acronym is then adopted throughout the DML.</p> <p>Please see comments below relating to 15(2) and 16(3) and 17(3) – The MMO recommend an amendment to the final phrase of 12(1) in line with the other provision.</p>
12(2)(a)		The provision to provide details of the person responsible for the carrying on of the licensed activity has been deleted, but there is no alternative provision included to provide these details. The MMO suggest that this should be reviewed.

12(2)(b)	The MMO note that the terms ‘works’ and ‘activities’ have been referred to in the DML. For certainty and consistency, the MMO recommended that these are replaced with ‘licensed activity/activities’.
12(2)(b)(i)	The MMO requests further clarification as to what “ <i>plan to be used during the works</i> ” means.
12(2)(b)(ii)	The word “ <i>licensed</i> ” should be inserted before ‘ <i>activities</i> ’.
12(2)(b)(iii)	Further clarification on the use of the term ‘ <i>programme</i> ’ should be provided and whether this refers to the plan or the licensed activities.
12(c)	This provision should include details of the volume of material to be removed for both capital and maintenance dredged material.
13	As per point 4.6 of this response, the MMO request the inclusion of a condition stating, ‘ <i>Should piling works be able to be completed, the works must start from 1 July onwards and must be completed by 30 September inclusive to avoid the end of the smelt migratory season</i> ’.
13(1)	<p>The reference to Part 5 should now be a reference to Part 4.</p> <p>The word “written” should be inserted before “approval” on line 2.</p> <p>The MMO recommend that drill or vibro piling is to be used as a standard and suggested worded has been provided below:</p> <p><i>20.—(1) Drill or vibro piling must be used as standard, with percussive piling only used if it is required to drive a pile to its design depth and drill or vibro piling has been unsuccessful. If percussive piling is necessary, soft-start procedures must be used to ensure incremental increase in pile power over a set time period until full operational power is achieved.</i></p> <p><i>(2) The soft-start duration must be a period of not less than 20 minutes.</i></p> <p><i>(3) Should piling cease for a period greater than 10 minutes then the soft start procedure must be repeated.</i></p>
14(1)	<p>The reference to Part 5 should now be a reference to Part 4.</p> <p>“In writing” should be inserted after “(PAD)” on line 2.</p> <p>The word “written” should be inserted before “approval” on line 2.</p>

14(3)(f)		There is an additional full stop at the end of the provision to be deleted.
15(2), 16(3) & 17(3)		There is an inconsistency of language between 15(2) and 16(3) and 17(3). The MMO suggest that 17(3) be redrafted to correct this.
15(1)		“In writing” should be inserted after “plan” on line 1. The word “written” should be inserted before “approval” on line 2
16(1)		The reference to Part 5 should now be a reference to Part 4. “In writing” should be inserted after “plan” on line 1. The word “written” should be inserted before “approval” on line 2
16(3)		The MMO question whether this should refer to ‘licensed activities’ rather than ‘construction activities’.
18(1)		The MMO recommend that the phrase “ <i>to minimize the risk of run off entering a watercourse</i> ” be inserted at the end of the provision.
19		On line 2 “ <i>marine area</i> ” should instead be “ <i>marine environment</i> ” to ensure consistency.
20(c)		Following ‘ <i>designated areas that are</i> ’ the MMO suggest replacing the remainder of the provision with “ <i>contained and sited at least 10 metres from any watercourse or surface water drain to minimise the risk of runoff entering a watercourse.</i> ” <i>(d) The containment required under sub-paragraph (3) must be appropriate to the material and include bunding of 110% of the total volume of all reservoirs and containers.”</i>
22		The MMO request that this provision is changed from ‘ <i>The MMO must receive notification</i> ’ to “ <i>the MMO require a dropped object form to be submitted</i> ”.
23(1)		On Line 2 after “ <i>submitted</i> ” the MMO recommend inserting “ <i>in writing</i> ”.
24		The heading for this provision should be amended to “Reporting of impact sound to the Marine Noise Registry” 24(1) “impact” should be specified before driven and part-driven

		<p>24(1)(b) This provision should specify that the undertaker should provide information on “exact” locations and “specific” dates.</p> <p>24(3)(a) the term Defra should either be Department for Food and Rural Affairs, or a definition included at Article 1(1)</p> <p>24(3)(b) after “2013” the MMO suggest deleting “or any updated information document” and instead inserting “<i>as amended, updated or superseded from time to time</i>”</p> <p>The term “JNCC” should either be Joint Nature Conservation Committee”, or be included at Article 1(1) with the definition ““JNCC” means the Joint Nature Conservation Committee”.</p> <p>The MMO recommend considering whether the definitions of Marine Noise Registry and Forward Look and Close Out are more appropriately included at Article 1(1) rather than in the body of this condition.</p>
27		References to ‘ <i>paragraphs</i> ’ should be references to ‘ <i>conditions</i> ’.
28		It is to be noted that this process has moved away from model provisions, and that the drafting of both the DCO and the DML contained within is an iterative process, and although existing orders, such as those referenced by the Applicant provide a useful illustration of provisions, each order is drafted in response to the individual and specific circumstances and requirements and the MMO are not bound by the wording of previous orders.
29		The MMO are of the opinion that this condition is not necessary as it is a restatement of the Marine and Coastal Access Act, and therefore it should be removed.
30 & 31		As previously advised, the MMO will not commit to issuing a decision within 13 weeks. The MMO request that the inclusion of this timescale is removed from the DML.

2. Responses to Second Written Questions

- 2.1. Q2.3.0.19 The MMO were in agreement with Natural England on the initial speed of 4 knots. The applicant has since stated that this is too low. The MMO request further information from the applicant and the harbour authority that shows a reasonable maximum vessel speed.

3. Responses to ExA's commentary on the draft DCO

- 3.1. The MMO has reviewed the Examining Authority's commentary on the draft DCO and has no comments to make on the points raised, further to the comments provided earlier in this response.

4. Comments to any information submitted by the Applicant or Interested Parties at Deadline 4

Updated Statement of Commonality of Statements of Common Ground (SoCG) – REP4-013

- 4.1. The MMO have reviewed the statements of common ground for other relevant bodies and maintains a watching brief on how these will be updated.

Statement of Common Ground between Alternative Use Boston Projects Ltd. and the MMO (provided via email)

- 4.2. The MMO note that the applicant has provided an updated version of the Statement of Common Ground between Alternative Use Boston and the MMO via email on 7 December 2021 and have the following comments to make.
- 4.3. With regard to Point 1.1 – Please refer to point 1 of this response "*Comments on the revised draft DCO*" for comments on the timescales referred to in the DML.
- 4.4. With regard to Point 2.2 – The MMO are content that the Habitat Mitigation Area be viewed as compensation and not mitigation.
- 4.5. With regard to Point 2.7 – The MMO confirm that this point can now be agreed following the inclusion of conditions related to bathymetric surveys and sediment sampling in the DML.

Response to the Marine Management Organisation (MMO) and Natural England's queries regarding Marine Mammals and Fish – REP4-014

- 4.6. The MMO note that a full soft-start and ramp-up procedure of not less than 20 minutes, as suggested, may not be possible. Therefore, should piling works be able to be completed, the works should start from 1 July onwards and must be completed by 30 September, to avoid the end of the smelt migratory season.

- 4.7. The MMO agree that restricting piling to low water would require the piling period to be extended from the current defined period, which would result in impacts on fish receptors being prolonged. Taking into account that soft-start procedures might not be fully followed at high water, providing the piling restriction period is amended (as per point 4.6), and secured as a licence condition within the DML, the MMO are content that the proposed works will not result in significant potential impacts on fish.
- 4.8. The MMO note that a final Marine Mammal Mitigation Protocol (MMMP) will be developed in the post-consent period, once final piling design and methodologies are known, including the requirements for soft-start and ramp-up prior to piling. The MMO will review any updates to the MMMP at future deadlines or post-consent and provide further comments if necessary.
- 4.9. The MMO are content that the timing restrictions on dredging works will afford protection during the migration periods of sea trout and adult smelt.

5. Notification of wish to have future correspondence electronically

- 5.1. The MMO wishes to receive all future correspondence electronically. Please can all correspondence be sent to the following:
 - Joseph Wilson, Marine Licensing Senior Case Manager -
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 - Christie Powell, Marine Licensing Case Manager -
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 - Emma Shore, Marine Licensing Case Officer –
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