

REPORT

Boston Alternative Energy Facility

The Applicant's Responses to the Examining Authority's
Third Written Questions

Client: Alternative Use Boston Projects Ltd.

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Glossary of Acronyms

Term	Definition
AEOI	Adverse Effect on Integrity
APCr	Air pollution control residues
AUBP	Alternative Use Boston Projects Limited
BAT	Best Available Techniques
BFFS	Boston and Fosdyke Fishing Society
BNG	Biodiversity Net Gain
DCO	Development Consent Order
dML	Deemed Marine Licence
EA	Environment Agency
EfW	Energy from Waste
EP	Environmental Permit
ES	Environmental Statement
ExA	Examining Authority
EXQ3	Examining Authority's Third Written Questions
FBA	Furnace bottom ash
FLCP	Fishing Liaison and Co-Existence Plan
FLO	Fishing Liaison Officer
HRA	Habitats Regulations Assessment
IDB	Internal Drainage Board
IFCA	Inshore Fisheries and Conservation Authority
IPs	Interested Parties
IROPI	Imperative reasons of overriding public interest
LNR	Local Nature Reserve
LWA	Lightweight Aggregate
LWT	Lincolnshire Wildlife Trust
MMO	Marine Management Organisation
NE	Natural England
NH ₃	Ammonia
NMP	Navigational Management Plan
NO _x	Nitrogen oxides
NRA	Navigation Risk Assessment
OCIMP	Ornithology Compensation Implementation and Monitoring Plan

Term	Definition
OLEMS	Outline Landscape and Ecological Mitigation Strategy
PA	Planning Act
PoB	Port of Boston
QP	Quality Protocol
RSPB	The Royal Society for the Protection of Birds
SAC	Special Area of Conservation
SoCG	Statement of Common Ground
SoS	Secretary of State
SPA	Special Protection Area

1 Comments on Examining Authority's Written Questions

- 1.1.1 This 'Comments on Examining Authority's Third Written Questions' document for the Boston Alternative Energy Facility (the Facility) supports the application for a Development Consent Order (DCO) (the DCO application) that has been made to the Planning Inspectorate under Section 37 of the Planning Act 2008 (the Act) by Alternative Use Boston Projects Limited (AUBP) (the Applicant).
- 1.1.2 **Table 1-1** set out each of the Examining Authority's (ExA's) Written Questions issued on 15th February 2022 (ExQ3) along with the Applicant's response. Only the questions directed to the Applicant (in full or part) are answered.

Table 1-1 Responses to ExA’s Third Written Questions

ExQ3	Question is addressed to	Question	Applicant Response
1. General and Cross-topic questions			
Q3.1.0.4	The Applicant	Please respond to the RSPB’s comments regarding funding [REP6-041].	Please refer to the Applicant’s response to RSPB’s comments in the Third Report on Outstanding Submissions in Table 2-2 (document reference 9.78).
2. Air Quality and Emissions			
Q3.2.0.4	The Applicant, NE and EA	<p>Have the final numbers and locations of deposition monitoring locations been agreed with Natural England and the Environment Agency? If not, when is it expected that they will be agreed?</p> <p>If monitoring at these locations identifies significant effects, what measures will the Applicant use to reduce adverse effects and how would these measures be secured?</p> <p>Do NE/EA have any outstanding concerns regarding the Air Quality Deposition Monitoring Plan?</p>	<p>The Applicant is in regular dialogue with both Natural England and the Environment Agency and this matter will be the subject of discussion with a view to reaching agreement in principle by Deadline 8.</p> <p>The Applicant considers it highly unlikely that emissions of nitrogen oxides (NOx) and ammonia (NH₃) from the proposed Facility would be such as to bring about elevated ambient concentrations and nitrogen deposition rates that would constitute significant effects at any of the adjacent and more distant designated sites.</p> <p>As concluded from the information and data contained in the document ‘Comparison of Predicted Critical Load and Level Results Using Maximum Permissible Emissions Limits and Realistic Emission Scenarios’ (document reference 9.72, REP6-035), there are forecast to be no significant effects under worst-case Facility emission scenarios and a lesser degree of effects under typical emission scenarios.</p> <p>However, if ongoing monitoring at the designated sites</p>

ExQ3	Question is addressed to	Question	Applicant Response
			<p>were to indicate the potential for significant effects to arise (as a result of elevated ambient concentrations of NOx and/or NH₃ and nitrogen deposition), then an investigation would be initiated to identify the source(s) and cause(s) of these elevated results. The ongoing investigation and its results would be reported to both the Environment Agency and Natural England.</p> <ul style="list-style-type: none"> • Firstly, the records of continuous monitoring of the Energy from Waste (EfW) and lightweight aggregate (LWA) plant emissions would be examined to identify if there had been any periods of elevated emissions which could have been the source of the elevated ambient monitoring results. • Secondly, other potential sources of NOx and/or NH₃ emissions in the area that could have contributed to elevated levels at the designated sites would be investigated. Such other sources could include, for example increased levels of road traffic, agricultural activities, nearby industrial activity, unanticipated vessel movements, • Thirdly, the outcomes of the above investigations would be evaluated with the meteorological dispersion data for the relevant period(s), which would assist with identifying the spatial source(s) of the elevated measured levels. <p>In the event that the Facility is identified as being the</p>

ExQ3	Question is addressed to	Question	Applicant Response
			<p>source of the elevated measured levels at the designated sites, the Applicant considers that the appropriate course of action would be to identify technical amendments to the EfW and/or LWA plant emissions abatement systems to provide enhanced reduction of NOx and/or NH₃ emissions to atmosphere.</p> <p>The most appropriate method for securing these measures would be through an Improvement Condition, within the Environmental Permit, which would be issued by the Environment Agency to the facility operator.</p> <p>To provide further comfort, the Applicant is happy to commit to explicitly including the details of this investigation in the final Air Quality Deposition Monitoring Plan.</p> <p>The final Air Quality Deposition Monitoring Plan will form part of the Landscape and Ecological Mitigation Strategy. The Landscape and Ecological Mitigation Strategy is secured by Requirement 6 of the draft DCO (document reference 2.1(3), REP6-002). Requirement 6 ensures that no part of the authorised development may commence until the relevant strategy has been submitted to and approved by the relevant planning authority, following consultation by the undertaker with the Environment Agency, the relevant statutory nature conservation body, Lincolnshire Wildlife Trust and the Royal Society for the Protection of Birds. Requirement 6 also ensures that the Landscape and Ecological Mitigation Strategy would be substantially in accordance</p>

ExQ3	Question is addressed to	Question	Applicant Response
			<p>with the outline landscape and ecological landscape mitigation strategy. The latest iteration of the outline landscape and ecological landscape mitigation strategy (document reference 7.4(1), REP3-007) makes reference to the Air Quality Deposition Monitoring Plan (document reference 9.51(1), REP6-027).</p>
Q3.2.0.17	The Applicant	Can the Applicant confirm what dust mitigation measures will be in place to ensure no adverse effects on the Havenside LNR?	<p>Havenside Local Nature Reserve (LNR) was identified as a key sensitive ecological receptor in the construction phase dust assessment carried out and reported at paragraph 14.7.7 in the Environmental Statement (ES) Chapter 14 (document reference 6.2.14(1), REP1-007).</p> <p>The mitigation measures that would be applied across the site to protect Havenside LNR from adverse dust effects are listed in Section 14.8 of the ES, paragraphs 14.8.1 to 14.8.6 (document reference 6.2.14(1), REP1-007).</p> <p>These mitigation measures are contained in the Outline Code of Construction Practice, in particular paragraph 9.2.5 (document reference 7.1, APP-120) and the Outline Air Quality and Dust Management Plan, in particular section 6.2 (document reference 9.39, REP3-015) would be applied across the site during the construction phase of the project (48 months). The mitigation measures and site controls to limit emissions of dust are applied at source, first, to prevent dust generation and second, to prevent transport beyond the site boundary towards sensitive human and ecological</p>

ExQ3	Question is addressed to	Question	Applicant Response
			<p>receptors, including Havenside LNR.</p> <p>Construction works that would take place in closest proximity to Havenside LNR include works to the dock wall for the Facility, the ground preparation and construction work for the LWA plant and more general overall site preparation and construction work.</p> <p>These dust mitigation measures are secured via the development consent order (document reference 2.1(3), REP6-002). The final Code of Construction Practice is secured by Requirement 11, Schedule 2 of the draft DCO. As explicitly set out in Requirement 11(3)(d) the final Air Quality and Dust Management Plan, which will detail air quality and dust monitoring and management measures during construction, will form part of the final Code of Construction Practice. The Applicant proposes to amend Requirement 11(3)(d) to add the following to the end of the paragraph: “that must be substantially in accordance with the outline air quality and dust management plan”. This will ensure the measures in the Outline Air Quality and Dust Management Plan are carried through to the final plan.</p> <p>Requirement 11 ensures that no part of the authorised development may commence until a code of construction practice for that part has been submitted to and approved by the relevant planning authority, following consultation by the undertaker with the Environment Agency and the relevant statutory nature conservation body.</p>

ExQ3	Question is addressed to	Question	Applicant Response
			<p>Requirement 11 also ensures that the final Code of Construction Practice would be substantially in accordance with the outline Code of Construction Practice. This secures that the mitigation measures in the Outline Code of Construction Practice will be incorporated into the final Code of Construction Practice.</p>
3. Environmental Statement			
Q3.3.0.2	The Applicant	Can the Applicant provide an update regarding the application to Anglian Water for potable water and foul water connections for its pre-enabling works?	<p>The Applicant has discussed the need for potable and foul water connections at its meeting with Anglian Water on 13 October 2021. An indicative list of foul water discharges has also been shared with Anglian Water on 3 November 2021.</p> <p>The Applicant intends to make formal applications for potable water and foul water connections at the detailed design stage (if required).</p> <p>The Applicant has set out its approach towards foul water in Table 13-7 to its ES (document reference 6.2.13, APP-051):</p> <p><i>“Foul drainage (e.g. from construction welfare facilities) will be collected through a mains connection to an existing mains sewer (if a suitable connection is identified as being available or a spur connection to the site can be implemented from an existing mains sewer line, following consultation with Anglian Water during</i></p>

ExQ3	Question is addressed to	Question	Applicant Response
			<p><i>the design process), or collected in a septic tank located within the development boundary and transported off-site for disposal at a licensed facility.... The preferred option will be determined post-consent during the design phase"</i></p>
Q3.3.0.6	The Applicant	<p>With regard to the note of the meeting between the EA and Applicant on 25 January 2022, can the Applicant provide details regarding an End of Waste Determination/ Quality Protocol which is required by the EA when considering the application for the Environmental Permit.</p>	<p>The Applicant has begun the process of preparing an application for an End of Waste Determination including consideration of Article 6 of the Waste Framework Directive (EU 2018/851), i.e., the tests the determination must satisfy, as well as the administrative process to be followed and the information required for an application, e.g., process inputs, use of the material, and environmental impacts.</p> <p>The End of Waste determination process is complex but, in summary, the following steps will be carried out:</p> <ul style="list-style-type: none"> • The beneficial effects of mixing of the furnace bottom ash (FBA) with air pollution control residues (APCr) will be justified. • A detailed explanation of the LWA process, the material and resource inputs and the point within the process at which the material ceases to be classified as a waste. • The benefits of introducing LWA product to the market, in place of virgin materials, will be justified. • The environmental safety and sustainability of the LWA product of the LWA product will have to be demonstrated conclusively. • This will involve a detailed comparison of the

ExQ3	Question is addressed to	Question	Applicant Response
			<p>LWA material properties with an appropriate virgin material comparator, to demonstrate that it can fulfil the same functions.</p> <p>A Quality Protocol (QP), which is published by the Environment Agency (these will henceforth be referred to as “Resource Frameworks”) sets out end of waste criteria for the production and use of a product from a specific waste type. Compliance with these criteria is considered sufficient to ensure that the fully recovered product may be used without undermining the effectiveness of the Waste Framework Directive and therefore without the need for additional waste management controls.</p> <p>In addition, the QP indicates how compliance may be demonstrated and points to good practice for the storage, handling, application and use of the fully recovered product. The Quality Protocol further aims to provide increased market confidence in the quality of products made from waste and so encourage greater recovery and recycling.</p> <p>In terms of a QP for the LWA product, this would contain the following necessary features:</p> <ul style="list-style-type: none"> • A detailed description of the physico-chemical properties that the LWA product must comply with, including chemical contaminants and their bio-availability and leaching behaviour. • A schedule of the tests that each batch of material must pass in order to demonstrate

ExQ3	Question is addressed to	Question	Applicant Response
			<p>compliance with the QP.</p> <ul style="list-style-type: none"> • Providing confidence to the end-user(s) that the LWA product is approved for appropriate use in defined applications. <p>At the present time, the current Quality Protocols are under review by the Environment Agency and will be revised into new documents, Resource Frameworks, in the coming year. Until this happens, the current QPs will apply. There is currently a QP for “Pulverised fuel ash and furnace bottom ash”, for which a review started in December 2021. However, this will need to be amended as the source materials in this QP are from the power generation sector, not the waste sector, but near-identical requirements and provisions will apply.</p>
3.1. Biodiversity, Ecology and Natural Environment (including Habitats Regulations Assessment (HRA))			
Q3.3.1.22	The Applicant	With reference to your suggestion [REP6-030] to submit an annotated version of NE’s risks and issues log, please would you submit this at Deadline 7.	The Applicant has provided a version of NE’s Risk and Issues log with commentary to the Examination at Deadline 7 – please see document reference 9.76.
Q3.3.1.23	The Applicant and EA	Please provide an update on a permit for the LWA plant. Please outline your proposals for dealing with this issue if a permit is not agreed by the close of the Examination.	<p>A permit for the LWA plant will not be secured before the close of Examination, but the Applicant is engaged with the Environment Agency to reach an agreement that the plant will potentially be permissible prior to close of Examination, as has been achieved for the EfW plant lines.</p> <p>The Applicant considers that the LWA Plant is permissible. The Applicant recognises that this is dependent upon an End of Waste Determination being successfully secured, and the permit application</p>

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			<p>demonstrating that the proposed LWA Plant complies with the relevant BAT Conclusions and Emission Limits as well as addressing the matters raised by the Environment Agency during the 25 January 2022 meeting.</p> <p>Following the meeting between the Applicant and the Environment Agency on 25 January 2022, the Applicant is developing a roadmap, which will be agreed with the Environment Agency, for progression of the End of Waste determination and Quality Protocol/Resource Framework for the LWA product. This will proceed in parallel with the overall Environmental Permit application process for the Facility.</p>
Q3.3.1.24	Applicant	Does the Applicant expect to make any further progress with the compensation proposals and intend to submit any further updates to the derogation package prior to the close of the Examination?	The Applicant is continuing to refine the in-principle derogation package and an updated version will be submitted at Deadline 8. Specifically, it will include information to show what benefits the potential compensation sites would provide including an overview of the features to be included and the number and species of birds the compensation sites could support, along with locational information (within the bounds of commercial confidentiality) and a timeline for implementation of the compensation measures will be provided. The Applicant reserves the right to update any of the submitted in-principle derogation documents and cannot rule out other updates before the end of the examination.
Q3.3.1.25	Applicant	Please could the Applicant provide an updated version of the HRA screening and integrity	The HRA Screening and Integrity Matrices submitted at

ExQ3	Question is addressed to	Question	Applicant Response
		matrices to reflect the latest position, including a tracked changes version, and tracked changes versions of the HRA matrices submitted at D3 and D5.	<p>Deadline 5 (document reference 9.42(1), REP5-003) include track changes. These changes are restricted to Tables A17-1-1-1, A17-1-2-1, A17-1-2-2 and A171.2.3. The Deadline 5 submission updates the equivalent document from Deadline 3 (document reference 9.42, REP3-018) which did not contain tracked changes.</p> <p>The Applicant maintains its position as set out in the Deadline 5 submission (document reference 9.42(1), REP5-003) regarding these matrices and no additional submissions are therefore required.</p>
Q3.3.1.27	Applicant	Can the Applicant confirm when in March the final winter bird surveys will be completed and whether the reports will be submitted to the Examination in sufficient time to allow IPs to review and comment on them prior to the close of the Examination.	The Applicant confirms that final winter bird surveys are scheduled for the first week of March to enable time to analyse and report, and that data inclusive of the March survey visits will be analysed and submitted to Examination by Deadline 9 at the latest. The Applicant will strive to submit the information at Deadline 8 in order to give IPs sufficient time to comment, if possible
Q3.3.1.29	The Applicant	<p>HRA process</p> <p>Where adverse effects cannot be ruled out, the HRA Regulations provide for the possibility of a derogation which allows plans or projects to be approved provided three tests are met:</p> <ol style="list-style-type: none"> 1. There are no feasible alternative solutions to the plan or project which are less damaging; 2. There are imperative reasons of overriding public interest (IROPI) for the plan or project to proceed; and 	The Applicant is confident that the information provided to date satisfies the derogation tests. Notwithstanding the Applicant's position that there will be no Adverse Effect on Integrity (AEOI) of any designated site (see document reference 6.4.18, APP-111), the Applicant has provided a Without Prejudice Habitats Regulations Assessment Derogation Case: Assessment of Alternative Solutions (document reference 9.28, REP2-011) which sets out that there are no feasible alternative solutions which are technically possible, with the exception of the option to use larger operational vessels for RDF with a minimum 3,300 tonne capacity (paragraph 10.1.3, document reference 9.28, REP2-

ExQ3	Question is addressed to	Question	Applicant Response
		<p>3. Compensatory measures are secured to ensure that the overall coherence of the national site network is maintained.</p> <p>I would draw the attention of the Applicant to the recent Decision Letter in respect of the Norfolk Boreas Offshore Windfarm dated 10 December 2021; in particular paragraph 5.13 which states the following: <i>“...the ExA could not recommend compensatory measures for the Secretary of State to consider because it did not have sufficiently detailed proposals for compensation. It therefore recommended that the Secretary of State should seek further information from the Applicant regarding alternative solutions or compensatory measures. The Secretary of State notes that the development consent process for nationally significant infrastructure projects is not designed for consultation on complex issues, such as HRA, to take place after the conclusion of the examination. he wishes to make it clear that, in order to maintain the efficient functioning of the development consenting regime, he may not always request post-examination representations on such matters, indeed it should be assumed that he will not do so, and he may therefore make decisions on such evidence as is in front of him following his receipt of the ExA’s Report.”</i></p>	<p>011). However, it is the Applicant’s view that this alternative solution is unlikely to change the view expressed by Natural England (NE), the Royal Society for the Protection of Birds (RSPB) and the Lincolnshire Wildlife Trust (LWT), that this alternative solution would (in their opinion) be less damaging to the Wash SPA and Ramsar site and The Wash and North Norfolk Coast SAC as there would continue to be daily vessel movements and the need for a wharf at the Facility (see paragraph 10.1.3- 10.1.4 (document reference 9.28, REP2-011).</p> <p>In the event that the Secretary of State (SoS) disagrees with the Applicant and determines that there may be AEOI, and where there is no alternative solution, the scheme could proceed on the basis that the Applicant has demonstrated there are imperative reasons of overriding public interest (IROPI) which are set out in the Without Prejudice Habitats Regulations Assessment Derogation Case: Imperative Reasons of Overriding Public Interest (IROPI) Case (document reference 9.29, REP2-012). Paragraph 2.2.2 (document reference 9.29, REP2-012) sets out the premise of the IROPI argument in respect of the proposed development which includes for example, an urgent need for electrical energy, an urgent need for waste management and the need for lower carbon transportation which is key for maintaining public safety and human health. These (and other imperative reasons) are explained in more detail in Sections 3-7 of REP2-012 (document reference 9.29). It is the Applicant’s view that the proposed development</p>

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		<p>The ExA notes that the information contained in REP6-025 contains limited detail on the proposed compensation package, identifies a reduced number of compensation site options to that in the previous version of the document [REP2-013], and does not include a figure that depicts the location of the newly identified compensation site options. Please can the Applicant set out how the information provided to date satisfies the derogation tests and identify the location of the additional options. In so doing, to provide clear references from the Examination Library as to which documents address these matters.</p> <p>Natural England, the RSPB, The Lincolnshire Wildlife Trust and any other IPs are invited to comment.</p>	<p>has long term benefits which are imperative and overriding, and that there is a public interest in it proceeding despite the effects alleged by NE (and other Interested Parties) on the conservation objectives of The Wash SPA and Ramsar and The Wash and North Norfolk Coast SAC (notwithstanding the Applicant's Stage 2 no AEOI conclusion) (paragraph 2.2.3 of document reference 9.29, REP2-012).</p> <p>The Applicant has submitted a Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures, the most recent version at Deadline 6 (document reference 9.30(1), REP6-025), which sets out the compensatory measures and how they are secured to ensure that the overall coherence of the national site network is maintained. It is noted that the Examining Authority (ExA) considers the updated Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures (document reference 9.30(1), REP6-025) 'contains limited detail on the proposed compensation package, identifies a reduced number of <i>compensation site options to that in the previous version of the document and does not include a figure that depicts the location of the newly identified compensation site options</i>'. The Applicant seeks to address each of these points in turn, including explaining how the compensatory measures would be secured.</p> <p>The Applicant is confident that the level of detail provided for the compensatory measures to date is</p>

ExQ3	Question is addressed to	Question	Applicant Response
			<p>sufficient to enable the ExA and, in turn, the SoS to have confidence that the measures can be delivered and are secured. It is important to remember that compensation measures have been proposed entirely without prejudice to the Applicant's position that there is no risk of AEOL. The degree of detail which can be provided at this stage should be commensurate with the level of agreement on whether AEOL arises and, if it does, agreement on the nature and scale of the compensation to be provided. This is because these aspects will need to be reflected in land or commercial agreements and applications for permissions or consents (if any) required to deliver the compensation measures. In any event, this level of detail is not reasonably required by the SoS in order to conclude that the compensation measures proposed are deliverable and can be secured and thus the derogation test met. The Applicant has continued to progress the compensation proposals as far as possible, to give the ExA and Interested Parties confidence that compensatory measures could be delivered and secured in the event they are required by the SoS. However, to provide the ExA and Interested Parties with further comfort, the Applicant proposes to submit further information in the form of an updated Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures at Deadline 8. This will provide further detail as noted above in the Applicant's response to question 3.3.1.24.</p> <p>The reduction in the number of sites noted in the</p>

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			<p>updated Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures (document reference 9.30(1), REP6-025) is partially due to the nature of the shortlisting process. As set out in paragraph 1.3.2 the Applicant had been in discussions with the RSPB regarding potential for opportunities for habitat gain within the RSPB reserves near the mouth of The Haven (Freiston Shore reserve and Frampton Marshes reserve) prior to the start of the examination. However, the RSPB informed the Applicant shortly before the examination commenced that those opportunities no longer existed. The Applicant has also been in contact with Her Majesty's Prison North Sea Camp, Boston about potential opportunities. However, as set out in paragraphs 1.3.5-1.3.6 it has been determined that there is insufficient space available to create suitable habitat. It is anticipated that the compensation sites listed in Table 3-1 would be suitable, particularly given the previous successes within the RSPB Reserves, of converting agricultural land in the local area to bird habitat. The Applicant will provide further justification in support of this position at Deadline 8. If further survey work (completed after the AEOI decision is made) determined those sites were not suitable or that further sites were required, the Applicant would undertake further site selection in accordance with the process set out in section 4 of the updated Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures (document reference 9.30(1), REP6-025).</p>

ExQ3	Question is addressed to	Question	Applicant Response
			<p>The ExA has requested the Applicant '<i>identify the location of the additional options</i>'. Due to the commercially sensitive nature of the ongoing negotiations with landowners of the proposed sites, the Applicant does not consider that it is appropriate at this point, to provide a plan or figure which explicitly identifies these sites. Instead, the Applicant will provide the ExA with a Figure at Deadline 8 which illustrates the search areas which the Applicant has used to identify these prospective sites. This, when considered in combination with the details of the shortlisted sites provided in Section 3.5 of the updated Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures (document reference 9.30(1), REP6-025), which includes details of the prospective sites size (in hectares) and approximate distance from a set point (i.e. the mouth of The Haven), should provide the ExA and Interested Parties with a fairly clear indication of the site locations. Furthermore, the Applicant anticipates, subject to the progression of commercial negotiations, to be able to provide a figure identifying the exact site locations at a later Examination deadline. The Applicant notes that on the Norfolk Vanguard and Norfolk Boreas DCO applications, the identification of the specific sites for compensatory measures was not required for the SoS to make its decision to grant those DCOs. The Applicant considers that the level of detail it has provided in the without prejudice compensation case is reasonable and comparable to the level of detail provided by applicants</p>

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			<p>in other DCO examinations who presented a without prejudice HRA derogation case.</p> <p>The derogation test requires the necessary compensatory measures can be secured. The draft Development Consent Order (DCO) (document reference 2.1(3), REP6-002) secures the compensation measures (habitat creation) (if required) via the without prejudice draft Schedule 11 (<i>Ornithology Compensation Measures</i>) to the draft DCO, which provides the mechanisms to ensure the compensation measures will be delivered. This includes the approval of an Ornithology Compensation Implementation and Monitoring Plan (OCIMP), by the SoS, which must include, amongst other details, details of location(s) where compensation measures will be delivered and the suitability of the site(s) to deliver the measures (including why the location is appropriate ecologically and likely to support successful compensation); and details of landowner agreements demonstrating how the land will be bought or leased and assurances that the land management will deliver the ecology objectives of the OCIMP.</p>
Q3.3.1.30	The Applicant	It is unclear whether the Applicant considers that the proposed biodiversity net gain works to the Havenside Local Nature Reserve (LNR) would additionally enable the LNR to function effectively as a compensation site. Please can the Applicant confirm its position.	It is not intended that the works on the Havenside LNR would act as compensation unless compensation is required for loss of saltmarsh outside of the SPA, at the Proposed Application Site. If there is a need to compensate for the loss of saltmarsh then the debris removal from saltmarsh along The Haven would allow areas of saltmarsh that are currently affected by debris

ExQ3	Question is addressed to	Question	Applicant Response
			to be reinstated. There is currently a high level of debris on the saltmarshes along The Haven and clearance of this would benefit the habitat. Otherwise, this aspect of the work proposed would remain as Biodiversity Net Gain (BNG).
Q3.3.1.33	The Applicant	In order to provide sufficient confidence in the effectiveness of the proposed compensation measures please could the Applicant provide an outline version of the Ornithology compensation implementation and monitoring plan to the Examination.	An outline plan for the proposed compensation measures is provided in Section 5 of the updated Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures submitted at Deadline 6 (document reference 9.30(1), REP6-025). This included monitoring studies, and adaptive management (should it be needed), that would be implemented as part of the compensation package. The Applicant feels that the information provided is commensurate with the details of the proposed compensation (if such is required) where further details will be detailed once sites are absolutely agreed and secured and more firm details can then be provided in compliance with Section 5 of REP6-025. However, to provide comfort to the ExA and IPs, the Applicant has prepared an Outline Ornithology Compensation Implementation and Monitoring Plan (document reference 9.81). The Outline Plan is based on that submitted following the Secretary of State's minded to approve letter on the Hornsea Three Offshore Wind Farm Order 2020. The Applicant notes that the submission of an outline compensation implementation and monitoring plan was not required in order to make a determination on either The Norfolk Boreas Offshore Wind Farm Order 2021 or The Norfolk Vanguard Offshore Wind Farm Order 2022.

ExQ3	Question is addressed to	Question	Applicant Response
Q3.3.1.35	The Applicant	It is stated in paragraph 3.5.9 of REP6-025 that if the compensation sites listed in Table 3-1 were found not to be suitable further searches would be carried out. When will such decisions be made and how would it be ensured that the compensation sites would be in place prior to impacts occurring?	<p>It is anticipated that the compensation sites listed in Table 3-1 (document reference 9.30(1), REP6-025) would be suitable, particularly given the previous successes within the RSPB Reserves, of converting agricultural land in the local area to bird habitat. Decisions over any additional sites would be made if more intrusive surveys on the proposed land are undertaken (following the decision process for AEol) and find that the sites are not feasible for the proposed uses (for example soil type is not conducive to holding the water level).</p> <p>The without prejudice draft Schedule 11 (<i>Ornithology Compensation Measures</i>) to the draft DCO ensures that the compensation sites would be in place prior to the impacts occurring. This includes the approval of an Ornithology Compensation Implementation and Monitoring Plan (OCIMP), by the SoS, which must include, amongst other details, details of location(s) where compensation measures will be delivered and the suitability of the site(s) to deliver the measures (including why the location is appropriate ecologically and likely to support successful compensation); and details of landowner agreements demonstrating how the land will be bought or leased and assurances that the land management will deliver the ecology objectives of the OCIMP. Additionally the OCIMP must include “an implementation timetable for delivery of the compensation measures that ensures all compensation measures are in place prior to the impact occurring (e.g. [for dredging and construction impacts to the habitat</p>

ExQ3	Question is addressed to	Question	Applicant Response
			<p>within Work No. 4 the measures will be in place prior to any dredging or construction works on the intertidal habitat and] for the compensation for disturbance at the mouth of The Haven the measures will be in place prior to operation of the authorised development).”</p> <p>Paragraph 4 of the Schedule provides that no part of the authorised development may begin operation until the implementation of the measures set out in the OCIMP.</p>
Q3.3.1.37	The Applicant	Please can the Applicant confirm that Table 4-1 is incorrectly titled and relates to comments made by the RSPB about birds using The Haven rather than the presence of common tern.	Table 4-1 in the Chapter 17 Marine and Coastal Ecology and Appendix 17.1 Habitats Regulations Assessment Update (document reference 9.59, REP5-006) is incorrectly labelled and does in fact relate to comments made by the RSPB about birds using The Haven.
Q3.3.1.38	The Applicant	It is stated in REP5-006 that that the proposed net gain/compensation measures would provide alternative habitat for any birds that were displaced by any additional disturbance along the central part of The Haven. Please can the Applicant explain how this can be assumed in the current absence of detailed information on the compensation site options and the number and species of birds that any compensation site could accommodate.	There are no known habitat areas that would provide roosting sites along the intermediate area of The Haven. The sensitivity of the intermediate areas of The Haven have been assessed using anecdotal evidence from local bird counters with in-depth local knowledge, and existing levels of information that were gained from review of other assessments, including that from Natural England (2018, Appraisal of Possible Environmental Impacts of Proposals for England Coast Path (The Wash: Sutton Bridge to Gibraltar Point)), where they assessed areas that could be sensitive to disturbance by walkers using the England Coast Path. The SPA areas, fields adjacent to the SPA and RSPB reserves were discussed in Natural England’s appraisal document but there was no discussion of areas along

ExQ3	Question is addressed to	Question	Applicant Response
			<p>the remainder of The Haven. There was no additional evidence provided to show any areas of sensitivity along this stretch. However, the potential compensation sites include one site that is mid-way along The Haven between the SPA and the Principal Application Site and would therefore provide an additional area of habitat for any species that do use this area.</p>
<p>4. Compulsory Acquisition, Temporary Possession and Other Land or Rights Considerations</p>			
<p>Q3.4.0.2</p>	<p>The Applicant</p>	<p>Summarise the case for Compulsory Acquisition and Temporary Possession (referring to relevant references in the Examination Library) indicating how the following matters are addressed:</p> <ul style="list-style-type: none"> a) whether the purposes for which the compulsory acquisition powers are sought comply with statutory and policy tests under s122 of PA 2008 and DCLG Guidance related to procedures for the compulsory acquisition of land; b) how Article 1 and Article 8 of the First Protocol to the European Convention on Human Rights has been considered; and c) Having regard to section 122(3) of the PA 2008, whether there is a compelling case in the public interest for the compulsory acquisition in relation to: <ul style="list-style-type: none"> i. The need in the public interest for the project to be carried out. ii. The private loss to those affected by compulsory acquisition. 	<p>The Examining Authority should note that compulsory acquisition and temporary possession powers are only sought in respect of land in unknown ownership. The Applicant has taken a number of steps to identify the owners, including erecting and maintaining site notices on the requisite plots, however no legal owner has come forward. The Applicant has however learnt that a neighbouring landowner may hold presumed riparian rights over plot 3 (subject to temporary possession). The Applicant has written to this interest holder inviting them to take part in the examination and will add their details to the next iteration of the Book of Reference.</p> <p>In summary, without the compulsory acquisition powers, there would be insufficient certainty about the Applicant's ability to deliver the Proposed Development within the necessary timescales. The Applicant therefore requires such powers to be included in the DCO, notwithstanding the Applicant's efforts to identify the owners of the relevant plots (with the intention of then negotiating the acquisition of the necessary interests in land by agreement).</p>

ExQ3	Question is addressed to	Question	Applicant Response
			<p>(a) Section 5 of the Statement of Reasons sets out the Applicant's justification for powers of compulsory acquisition.</p> <p>In summary, Section 122 of the PA 2008 provides that a DCO which includes compulsory acquisition powers may be granted only if the conditions in sections 122(2) and 122(3) of the PA 2008 are met.</p> <p>In accordance with the statutory conditions and guidance, the Statement of Reasons sets out:</p> <ul style="list-style-type: none"> • that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored – this is dealt with in paragraphs 5.10 - 5.15; • that the proposed interest in the land is for a legitimate purpose and is necessary and proportionate – this is dealt with in paragraphs 5.16 - 5.20; • that the Applicant has a clear idea of how it intends to use the land which it is proposing to acquire – this is dealt with in paragraphs 5.21 - 5.23 and Appendix 1 to the Statement; • that there is a reasonable prospect of the requisite funds becoming available – this is dealt with in paragraphs 5.24 - 5.25 and in the Funding Statement (APP-009); and • the justification for interfering with the human rights of those with an interest in the land

ExQ3	Question is addressed to	Question	Applicant Response
			<p>affected – this is dealt with in paragraphs 5.26 - 5.27 and in section 8 of the Statement.</p> <p>(b) The Applicant has considered human rights in section 8 of its Statement of Reasons.</p> <p>Briefly, Article 1 of the First Protocol to the Convention protects the right of everyone to the peaceful enjoyment of possessions. Article 8 protects the right of the individual to respect for his private and family life, his home and his correspondence. Both Articles are qualified rights. For Article 1, no one can be deprived of possessions except in the public interest and subject to the conditions provided by national and international laws. For Article 8, no interference is permitted except those in accordance with the law and necessary in the interests of, inter alia, national security, public safety or the economic well-being of the country. Any interference should be proportionate.</p> <p>The Applicant considers that there would be very significant public benefits arising from the DCO, if it is made. That benefit can only be realised if the scheme can be implemented through acquisition and temporary possession. The Applicant has concluded that the significant public benefits outweigh the effects of the DCO upon persons who own property in the Order limits such that there would not be a disproportionate interference with their Article 8 and Article 1, First Protocol rights</p>

ExQ3	Question is addressed to	Question	Applicant Response
			<p>It is worth noting that, despite the attempts of the Applicant, it has been unable to identify the owner of the minor plots subject to compulsory acquisition.</p> <p>Finally, the proposed development will not conflict with Convention rights and will be proportionate in that there is a compelling case in the public interest for the proposed development which outweighs the impact on individual rights. In this context, it is relevant that those affected will be entitled to compensation.</p> <p>(c) Please see paragraphs 5.28 – 5.41 (inclusive) of the Statement of Reasons where the Applicant has set out the compelling case in the public interest for the limited compulsory acquisition proposed.</p>
Q3.4.0.3	The Applicant	Provide a detailed, track change update of the Compulsory Acquisition Objections contained in the land negotiations tracker [REP3-014] in relation to the status of negotiations.	A tracked change update of the of the Compulsory Acquisition Objections contained in the land negotiations tracker has been submitted at Deadline 7 (document reference 9.38(1)).
Q3.4.0.4	The Applicant	Explain in detail the approach taken to identify Category 3 Parties [REP3-005] including the steps taken to keep this information up to date during the course of the Examination.	<p>As set out in the Applicant’s Statement of Reasons [APP-008], the following approach was taken towards identifying Category 3 parties:</p> <p><i>“6.15 Identification of Category 3 persons was initially undertaken at the early stages of development of the Facility, in order to inform the design of the Facility and preparation of the application.</i></p> <p><i>6.16 In order to identify potential Category 3 persons who may be entitled to make a claim pursuant to</i></p>

ExQ3	Question is addressed to	Question	Applicant Response
			<p><i>section 10 of the CPA 1965, a desk-based assessment was carried out to identify properties with a potential claim. In addition, site visits were used in order to assess properties for potential claims which were not identified from the desk-based assessment.</i></p> <p><i>6.17 In assessing potential claimants under Part I of the LCA 1973, physical factors and the impact of the Scheme were considered, including proximity to the Order limits.</i></p> <p><i>6.18 The Applicant's land referencing team were provided with guidance from environmental specialists involved in the compilation of the noise chapter of the ES (chapter 10) (Document No 6.2.10). This guidance was based on the likely significant effects arising from the proposed development. For example, the noise assessments had regard to information available at that time regarding:</i></p> <p><i>6.18.1 Background noise levels; and</i> <i>6.18.2 Distances to receptors.</i></p> <p><i>6.19 Based on the above information, professional judgement was used to ascertain whether a person may have a relevant claim for compensation, based on a worst-case assessment. Following an assessment by the Applicant's environmental consultants, it was established that there were no parties which would or might be able to claim under Part 1 of the Land Compensation Act 1973. This is confirmed in Part 2b of</i></p>

ExQ3	Question is addressed to	Question	Applicant Response
			<p><i>the Book of Reference (Document Reference 3.3).</i></p> <p><i>6.20 Following the initial non-contact methods above, persons identified as having an interest in the land or a potential claim were issued with a letter and claim were issued a letter with a plan describing the extent of the Proposed Development, and a questionnaire requesting return of information about their interests in the land.</i></p> <p><i>6.21 The Applicant’s land referencing team regularly review information held at HM Land Registry and will continue to refresh their data as the DCO application progresses.”</i></p> <p>Since the start of examination, the Applicant land referencing team have periodically reviewed information at HM Land Registry, carried out site inspections, and erected site notices on land with unknown owners.</p> <p>The Applicant will submit an updated Book of Reference in accordance with the examination timetable at Deadline 9.</p>
5. Draft Development Consent Order (dDCO)			
Q3.5.0.2	The Applicant	Please provide an update on outstanding matters still requiring agreement, on the Protective Provisions included in Schedule 8 of the draft DCO (dDCO) for statutory undertakers affected by the proposal.	<p>Western Power Distribution (WPD)</p> <p>The Applicant and WPD have been in discussions regarding an Asset Protection Agreement. The terms of that Agreement have been finalised and will be executed by the parties in due course. That Agreement will include references to amended Protective</p>

ExQ3	Question is addressed to	Question	Applicant Response
			<p>Provisions to be read as if they were in the draft DCO but will not be incorporated into the draft DCO.</p> <p>Anglian Water Draft protective provisions for the benefit of Anglian Water were included at Part 6 to Schedule 8 to the draft DCO, submitted at Deadline 3 (document reference 2.1(2), REP3-003). The Applicant can confirm that these protective provisions have been agreed.</p> <p>Environment Agency [Since the ExA's First Written Questions, the EA has provided comments on the protective provisions and the Applicant has responded to those comments. The Applicant and the EA have met to discuss the protective provisions and the vast majority of matters are now agreed. The outstanding matters are set out in row 12.1 of the updated Statement of Common Ground (SoCG) with the EA submitted at Deadline 6 (document reference 8.2(2), REP6-008) . The outstanding matters on protective provisions relate to the scope of the definition of drainage work; addition of "reasonable" before expenditure in paragraph 5(5); appropriateness of the exclusion in paragraph 6(5)(b); and amendments to reflect the existing condition of the Roman Bank (although this is likely to be addressed through the legal agreement rather than protective provisions). . The Applicant hopes to reach an agreement on these matters with the EA shortly.</p> <p>Black Sluice IDB</p>

ExQ3	Question is addressed to	Question	Applicant Response
			The Applicant met with Black Sluice IDB on 24 January 2022. At this meeting, Black Sluice confirmed that they were content with the protective provisions.
Q3.5.0.5	The Applicant	Reference MMO’s comment 2.2 [REP6-037]; please provide details of proposals for any mitigation secured through the HRA to be included within the conditions on the deemed marine licence (DML).	All mitigation (including any recommended in the HRA) has already been secured by appropriate conditions in the DML or Requirements in Schedule 2.
Q3.5.0.6	The Applicant	Reference MMO’s comment 2.4 [REP6-037] regarding the ornithological mitigation and monitoring plan; please answer the MMO’s request for confirmation of how this document will be secured and wording agreed.	It is Natural England who sought the inclusion of an ornithological mitigation and monitoring plan and the Applicant provided a response to this point in Table 2.7 of the Applicant’s Second Report on Outstanding Submissions (document reference 9.68, REP6-032). In summary, the Applicant does not consider that the submission of a distinct “ornithological mitigation and monitoring plan” is necessary as all of the ornithological mitigation measures are already secured within the DCO/DML - please refer the Second Report on Outstanding Submissions for details on where relevant mitigation measures are already secured. The majority are set out in Appendix 1 to the OLEMS, which is secured by Requirement 6 to the draft DCO (document reference 2.1(3), REP6-002), which requires the approval of a Landscape and Ecological Mitigation Strategy which must be substantially in accordance with the OLEMS. There is therefore no need for the submission of a distinct ornithological mitigation and monitoring plan. The MMO has confirmed to the Applicant via email that “if all of the measures related to ornithological mitigation are included within the OLEMS then we are content for this to submitted in place of a

ExQ3	Question is addressed to	Question	Applicant Response
			distinct ornithological mitigation and monitoring plan.” The MMO has requested approval of the final LEMS via the DML in relation to any works below Mean High Water Springs (MHWS). The Applicant has advised the MMO that it will add a condition to the DML giving the MMO the approval of the parts of the LEMS that relate to any activities below MHWS. This will be included in the next iteration of the DCO submitted to the Examination at Deadline 8.
10. Navigation/fishing issues			
Q3.10.0.17	BFFS (or legal representative) and The Applicant	I note from the Applicant’s response to my second written question Q2.10.0.5 [REP5-004] that the BFFS had misgivings regarding the Navigation Risk Assessment (NRA), and that there were resourcing issues for the BFFS in reviewing this document. Please provide an update on progress with agreeing the NRA.	We understand that BFFS have commissioned a specialist navigational company (Marico Marine) to undertake an independent review of the NRA and, we understand, their report will be submitted to BFFS during the week commencing 21 st February 2022. It is therefore likely that this review will be submitted to the Examination at Deadline 7, and the Applicant awaits sight of the Marico Marine review document for its considered response.
Q3.10.0.18	The Applicant	I note that you have advised that the Navigation Management Plan (NMP) will be produced post-consent; please submit at Deadline 7 (1 March) an Outline NMP (or at least a full template and proposal of how it will be completed). Please also provide details of how the NMP post-consent will be secured and who will be the discharging authority. I will expect the IPs to comment on, or agree, the Outline NMP before end of Examination.	A template NMP has been produced in conjunction with the Port of Boston (document reference 9.80). The template sets out the requirement for the NMP, the documents that will inform it, the proposed structure for the NMP and an overview of the anticipated content of each section. The requirement for the NMP is provided for by condition 14 of the Deemed Marine Licence, at Schedule 9 (Deemed Marine Licence) to the Draft Boston Alternative Energy Facility Development Order.

ExQ3	Question is addressed to	Question	Applicant Response
			<p>14(4) states “<i>The undertaker must not commence the licenced activities until the MMO has approved in writing the submitted navigation management plan.</i>”</p> <p>The NMP development process is set out in Section 1.4 of the template NMP (document reference 9.80) which states that the NMP will be a live document updated as required (this may include monitoring of impacts) to respond to change (during construction and operation of the BAEF). Material updates to the NMP will follow a similar development process to that set out in Section 1.4.</p>
Q3.10.0.19	The Applicant and the BFFS	Given the resourcing issues noted by the BFFS; are there any further steps the Applicant could take to assist the BFFS in their participation in this Examination?	<p>The Examining Authority will be aware of the costs guidance from the Department for Communities and Local Government: <i>Awards of costs: examinations of applications for development consent orders (July 2013)</i>. This guidance makes clear that all parties are normally expected to meet their own costs. However, the Applicant has, as a gesture of goodwill, agreed to pay towards BFFS’s legal representative’s costs. The Applicant has done so in order to help reach an agreement with BFFS, paying towards their time spent on the SoCG as well as other meetings with the Applicant. Given that BFFS are objecting to the scheme, it would not be reasonable to expect the Applicant to contribute to other costs.</p> <p>The Applicant has always made clear that it is available to discuss BFFS’s concerns. Once BFFS have carried out a review of the NRA, the Applicant welcomes further discussions with them.</p>

ExQ3	Question is addressed to	Question	Applicant Response
			<p>The Applicant would also draw BFFS's attention to the representations made by the Port of Boston, who are the statutory harbour authority, particularly the pilotage statement (document reference 9.73, REP6-036) which sets out how the Port will deal with vessel movements in the Haven.</p>
Q3.10.0.20	The Applicant	<p>Has consideration been given to the appointment of a Fishing Liaison Officer (FLO)? If so, where and how could this be secured in the DCO? If not, why not?</p>	<p>FLOs are used during a variety of offshore operations, including oil and gas installation works, seismic surveys, and renewable energy operations, where interactions at fishing grounds will occur. FLOs liaise between fishing vessels and those undertaking marine operations, using local knowledge and fisheries experience to encourage co-operation and help ensure operations run smoothly and efficiently. FLOs are essential in areas of intensive fishing activity, aiming to minimise disturbance to both the developer's vessels and fishermen. For example, FLOs provide information on static fishing gear, and determine the location and amount of gear involved – this can help prevent entanglement and possible damage or time loss.</p> <p>The interaction of the project with the BFFS relates wholly to potential navigation interactions within, or near, the mouth of The Haven. Such interaction will be managed by reference to the Navigation Management Plan (NMP) which is required by the DCO. The NMP will set out communication methods to manage these transit periods, and ensure significant delays are not experienced by either party. It is not therefore considered that a FLO is required. However, as part of</p>

ExQ3	Question is addressed to	Question	Applicant Response
			<p>the NMP a dedicated senior member of staff within the Applicant team will be designated as the point of contact with the BFFS. The Applicant understands the need to liaise closely with the BFFS affording the opportunity for feedback and lessons learned to be applied to the NMP as required.</p>
Q3.10.0.21	The Applicant	<p>Has consideration been given to the inclusion of a Fishing Liaison and Co-Existence Plan (FLCP) in the DCO? If not, why not?</p>	<p>FLCPs have become one of a range of management documents associated notably with large-scale offshore wind farm DCOs. Such documents set out the agreed understanding on accommodating the needs of both the developer and fishing interests and normally contain information such as:</p> <ul style="list-style-type: none"> - Communication protocols, roles and responsibilities; - Fisheries related mitigation measures; and - Details for managing any project interactions with fisheries. <p>The Facility does not directly affect any fishing ground through the provision of infrastructure within any fisheries area and is located approximately 7.5 km from the mouth of The Haven and therefore distant from such grounds. The project is not competing for space within, or near, any fishing ground thus no permanent or temporary exclusion from any such grounds will take place due to project activities (construction, operation or decommissioning).</p> <p>The area of interaction between the project and the fishing fleet is constrained to the BFFS vessels and there is no need for a wider document to assist in</p>

ExQ3	Question is addressed to	Question	Applicant Response
			managing fishing fleets from different ports or after different target species. The interaction of the project with the BFFS relates wholly to potential navigation interactions within, or near the mouth of The Haven. Such interaction will be managed by the Navigation Management Plan (NMP) which is required by the DCO. Given the focus of this document on managing safe and efficient navigation there is no need to complicate the management system by introducing further documents which would serve no purpose above and beyond that served by the NMP. The Applicant would not want to introduce multiple documents for managing navigation as this may cause unnecessary confusion and is not required.
Q3.10.0.22	The Applicant	Please would the Applicant submit an updated SoCG with the BFFS.	No further progress has been made with BFFS and the SoCG remains as that provided at Deadline 2 (document reference 8.9, REP2-005). Note that the Applicant is awaiting the BFFS's consultant's review of the Navigation Risk Assessment (NRA) submitted to the Examination. Once that review has taken place, we hope that further engagement will take place between the Applicant and the BFFS.
Q3.10.0.23	The Applicant	Which Inshore Fisheries and Conservation Authority has jurisdiction in this location? Have they been consulted? If so, provide details. If not, why not?	The Eastern Inshore Fisheries and Conservation Authority (IFCA) has jurisdiction within this location. Eastern IFCA have been included within consultation throughout the pre-application process. Eastern IFCA provided comments on the Preliminary Environmental Information Report which were considered and responded to within Table 17.2 of Chapter 17 Marine and Coastal Ecology of the ES (document reference

ExQ3	Question is addressed to	Question	Applicant Response
			<p>6.2.17, APP-055). Additionally, a meeting with Eastern IFCA took place on 22nd February 2022 to discuss aspects of the project that could in theory affect the inshore marine environment and sea fisheries. Following the meeting, links and further information was provided to Eastern IFCA. Draft minutes are provided in Appendix A below.</p>
15. Water Environment			
Q3.15.0.3	The Applicant	<p>With regard to your responses concerning the surface water drainage system point no.6, page 44 [REP5-008]. Please confirm the status of agreement with the Lead Local Flood Authority and Black Sluice Internal Drainage Board and when this will be included in SoCGs?</p>	<p>The Applicant has received comments on surface water flood risk from Lincolnshire County Council (LCC) as the Lead Local Flood Authority in an email dated 23rd February 2022. They note that,</p> <p><i>“Our remit is surface water flood risk. The site is immediately adjacent to the tidal Haven so the chances of the proposed development being at risk of surface water flooding or increasing surface water flood risk to neighbouring land and property are negligible. That said, this is a facility processing waste materials so any surface water run-off has the potential to cause pollution and therefore there is a surface water management train to capture and process surface water run-off before it goes off the site. I recall it goes into Black Sluice’s system before going out to sea so I suggest this is more a question for Black Sluice IDB to respond to.”</i></p> <p>The Applicant has agreed to add a new row to the SoCG with LCC, to be included in the final version submitted at Deadline 9 which will show agreement on</p>

ExQ3	Question is addressed to	Question	Applicant Response
			<p>this matter.</p> <p>Black Sluice IDB is still awaiting comments from the Environment Agency (EA) with regard to the Roman Bank, specifically in relation to a single pipe associated with the Sustainable Urban Drainage System which will be required to penetrate the bank (as shown in the Surface and Foul Water Drainage Strategy (REP 3-009)). The Applicant has sought to disapply the need to obtain an environmental permit for flood risk activities (i.e. works to the Roman Bank) and instead are including protective provisions for the benefit of the EA in the DCO. These protective provisions cover works to the Roman Bank and the EA will need to approve any works to the Roman Bank that may endanger the stability of, cause damage to, or reduce the effectiveness of that structure. This has been agreed with the EA and we are confident that Black Sluice IDB will respond positively once they receive a response from the EA. There is no SoCG with Black Sluice IDB, but the Applicant will submit any written communication from this organisation to the examination as evidence of their stance once received.</p>

Appendix A

Draft Minutes with Eastern IFCA

22nd February 2022



Minutes

**HaskoningDHV UK Ltd.
Industry & Buildings**

Present: Paul Salmon (PS) and Abbie Garry (AG) (Royal HaskoningDHV), Sam Williams (SW) and Richard Woosnam (RW) (Alternative Use Boston Projects Ltd), Judith Stoutt (JS) and Stephen Thompson (ST) (Eastern Inshore Fisheries & Conservation Authority (EIFCA))

Apologies:

From: Abbie Garry

Date: 22 February 2022

Location: Teams call

Copy:

Our reference: PB6934-RHD-ZZ-XX-MI-Z-1097

Classification: Project related

Enclosures:

Subject: **Boston Alternative Energy Facility EIFCA Meeting (Draft)**

Number	Details	Action
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1	Navigation	
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PS introduced the project and gave a brief overview of location, raw materials, energy output, carbon dioxide capture, and vessel movements.

ST asked where the vessels would be berthed.

PS confirmed the vessels would be within a berthing pocket.

ST asked if vessels would be anchoring in The Wash. PS confirmed they would be using the Boston anchorage in The Wash.

PS noted the pilotage statement and the Statement of Common Ground with the Port of Boston (the Port) have confirmed no significant impact to navigational risk and disruption to other user groups will be minimised.

PS described the Navigation Risk Assessment and the Navigational Management Plan which is a Port plan and will be developed in approval with the MMO and in consultation with the fishers.

PS noted that the Boston and Fosdyke Fishing Society have concerns and objections to the scheme and noted the new wharf which was requested but was discounted due to Habitat Regulations (vessel disturbance to birds) and consenting issues.

JS explained EIFCA's interest is in fishery stocks, their supporting environment, and fishing opportunity. JS asked whether there would be monitoring of vessel movements in operation, to ascertain whether the scheme does have impacts on fishing vessel navigation. PS noted the key is whether there are demonstrable impacts.

Number Details

PS noted the mitigation to be implemented in the NMP, which includes signage, AIS and communications.

With regards to vessel movements PS confirmed these would be approximately 2 hours either side of high tide and that vessels would be able to pass fishing vessels in the Haven.

PS confirmed that with regards to communications there would be a named liaison person at the Facility. PS also confirmed the NMP would be a live document and will be updated with lessons learnt/ monitoring.

SW highlighted that the scheme has been engaged with fishing representatives for a long time, and that the scheme does not want to be affecting livelihoods.

RW noted the project would also be built under the considerate constructor scheme which includes engagement with the community including the marine community.

Anchorage

JS noted the EIFCA's key concern is on the in-combination effects of anchorage on seabed habitats such as subtidal sand banks within the Wash and North Norfolk Coast Special Area of Conservation (SAC).

PS to confirm our position on this aspect. PS noted there had been no objection from Natural England relating to anchoring impacts on seabed habitats. He noted the Port is clear that this group of commercial vessels should not have undue burden, i.e. should not be treated any differently to other vessels using the Port. JS noted it is a general issue relating to commercial shipping anchorage, not just related to the Boston AEF scheme.

PS to confirm assessment on seabed habitats in anchorage area

JS noted the Shrimp Fisheries HRA which is here: <https://www.eastern-ifca.gov.uk/habitats-regulations-assessment-impacts-shrimp-fishery-wash-north-norfolk-coast-special-area-conservation/> ST explained this includes consideration of seabed impacts from shrimp trawling, and which has led to EIFCA developing mitigation to ensure this fishery does not have an adverse effect on SAC habitats.

JS noted EIFCA has developed a bylaw (currently awaiting Defra authorisation) to close 60 areas to towed, demersal fishing from the Humber to Happisburgh – including several areas in The Wash – to protect sensitive seabed habitats EIFCA's concern is that increased shipping associated with the scheme could adversely affect the habitats that EIFCA has protected from fishing impacts.

Number Details

Dredging

ST asked about monitoring of dredging.

PS noted contamination sampling was included within the DCO as agreed with the MMO and the EA.

JS asked if contaminants into shellfish had been considered. This had been another issue that EIFCA raised in our previous consultation response (2019).

Post meeting note: Eastern IFCA's comments on shellfish are considered and addressed on page 8 of this document:

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010095/EN010095-000729-Alternative%20Use%20Boston%20Projects%20Limited%20-%20Other-%20Additional%20Submissions%2010.pdf> (Appendix 14.5 - Human Health Risk Assessment (document reference 9.9, REP1-022))

AOB

ST noted they have not received a response to the comments submitted in September 2019. PS apologised that EIFCA had not been contacted and noted there had been staff changes.

Post meeting note: EIFCA's comments were responded to within the Marine and Coastal Ecology chapter here:

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010095/EN010095-000440-6.2.17.%20Chapter%2017%20Marine%20and%20Coastal%20Ecology.pdf> (document reference 6.2.17, APP-055). However an update will be provided where relevant to these responses.

JS noted it was probably too late in the examination process to develop a Statement of Common Ground, and although disappointed not to be contacted before the examination, EIFCA are pleased to engage at this stage and will input through letters and written responses on relevant matters.

Action

PS to provide link to the relevant DCO text

PS to provide an update on the response to EIFCA's points from the 2019 letter.