

# REPORT

## **Boston Alternative Energy Facility**

### Third Report on Outstanding Submissions

Client: Alternative Use Boston Projects Ltd

Planning Inspectorate  
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## Glossary of Acronyms

| Term         | Definition  |
|--------------|---|
| <b>DCO</b>   | Development Consent Order                               |
| <b>dML</b>   | Deemed Marine Licence                                   |
| <b>ES</b>    | Environmental Statement                                 |
| <b>ExQ2</b>  | Examining Authority's Second Written Questions          |
| <b>HMA</b>   | Habitat Mitigation Area                                 |
| <b>HRA</b>   | Habitats Regulations Assessment                         |
| <b>MMMP</b>  | Marine Mammal Mitigation Protocol                       |
| <b>MMO</b>   | Marine Management Organisation                          |
| <b>MOTH</b>  | Mouth of The Haven                                      |
| <b>NE</b>    | Natural England   |
| <b>NMP</b>   | Navigation Management Plan                              |
| <b>OCIMP</b> | Outline Compensation Implementation and Monitoring Plan |
| <b>OLEMS</b> | Outline Landscape and Ecological Mitigation Strategy    |
| <b>RSPB</b>  | The Royal Society for the Protection of Birds           |
| <b>SoCG</b>  | Statement of Common Ground                              |
| <b>SoS</b>   | Secretary of State                                      |
| <b>SPA</b>   | Special Protection Area                                 |
| <b>UKWIN</b> | The United Kingdom Without Incineration Network         |
| <b>VM</b>    | Vessel Movement   |

## 1 Introduction

- 1.1.1 This 'Third report on outstanding Submissions' is for the Boston Alternative Energy Facility (the Facility). This report is on behalf of Alternative Use Boston Projects Limited (the Applicant), to support 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).
- 1.1.2 This report responds to any outstanding comments raised by Interested Parties at Deadline 6.
- 1.1.3 In order to assist the Examining Authority, we have provided a summary of all the documents submitted by Interested Parties at Deadline 6 and whether a response is considered required and if so where it is provided (see **Table 1-1**).

**Table 1-1 Outstanding Deadline 6 Submissions**

| Stakeholder                          | Document  | Response Status  |
|--------------------------------------|---|--|
| Natural England                      | Deadline 6 Submission - Cover letter (REP6-038)   | Natural England's comments are noted. This document does not require a response from the Applicant.                                    |
|                                      | Deadline 6 submission Appendix H5 - BAEF NE Risk and Issues Log (REP6-039)  | Outstanding points are responded to below in <b>Table 2-1</b> .  |
| RSPB                                 | Deadline 6 submission - Cover letter (REP6-040)   | RSPB's comments are noted. This document does not require a response from the Applicant.   |
|                                      | Deadline 6 submission - Comments on Responses to the Examining Authority's Second Written Questions (ExQ2) (REP6-041)   | Outstanding points are responded to below in <b>Table 2-2</b> .  |
| Marine Management Organisation (MMO) | Deadline 6 submission - Comments on responses to Second Written Questions (ExQ2), comments on information submitted by the Applicant or Interested Parties, comments on upcoming submission of Statement of Common Ground (SoCG) (REP6-037) | The Applicant notes the MMO's Deadline 6 submission. Where relevant, outstanding points are responded to below in <b>Table 2-3</b> .   |
| UKWIN                                | Deadline 6 Submission - Comments on responses to Second Written Questions (ExQ2) (REP6-042)   | A response is provided in The Applicant's Response to UKWIN's Deadline 6 Submission (document reference 9.79) submitted at Deadline 7. |

## 2 Responses to Unanswered Points

### 2.1 Natural England

**Table 2-1 Responses to Natural England's Risk and Issues Log - Deadline 6 (REP6-039)**

| No. | Comment  | The Applicant's Response  |
|-----|--|---|
| 3   | <p>Information regarding the route of 4 transects has been included at paragraph 5.1.3. of the updated OLEMS [REP3-008] and illustrated at Appendix 2 (drawing PB6934-RHD-01-ZZ-DR-4023). However, there are no details of any right bank transects. Is the Applicant intending to carry out this additional suggested transect? We note at 1.7 that the specific location and type of bird and/or bat box will be determined by a suitably qualified ecologist prior to the implementation of the final landscape mitigation planting scheme.</p> <p>Natural England have since noted in an email to the Applicant "The transect survey locations are acceptable, given these are focused on the most suitable areas for bats and further transect surveys are not considered necessary.</p> <p>It would be advisable to re-assess the suitability of the trees closer to the impacts to ensure their suitability has not change since the 2019 surveys (i.e. pre-commencement surveys)."</p> | <p>The right (eastern) bank of the River Haven was not included in the bat survey effort undertaken by the Applicant. This section of bank is not within the Application Site. Furthermore, and in combination with The Haven providing a buffer, no indirect or direct impacts were predicted to foraging/commuting bats (if present) along the right bank. Through the implementation of the appropriate mitigation measures for foraging/commuting bats and the proposed lighting requirements being designed in accordance with the BCT guidance, any potential indirect or direct impacts that may be experienced by foraging/commuting bats (if present) would be considered sufficiently mitigated and managed.</p> <p>As presented in the Outline Landscape and Ecological Mitigation Strategy (OLEMS) (document reference 7.4(1), REP3-007), the Applicant has committed to undertaking pre-construction surveys. This effort will include the checking on all previously recorded site conditions (including trees for their suitability to support roosting bats) to confirm that there have been no changes in site conditions since the previous surveys. The findings of the pre-construction survey effort will be presented in the final LEMS that will be submitted to discharge Requirement 6. Should there be any significant changes to baseline conditions observed during the pre-construction surveys, these will be communicated to</p> |

| No. | Comment  | The Applicant's Response  |
|-----|--|---|
|     |  | <p>stakeholders alongside an invitation to discuss any adaptations to the current mitigation measures, should they be required.</p>   |
| 4   | <p>Natural England Risk Log Comment: "Natural England queries if materials are to arrive by river would this be only during daylight hours to minimise light pollution affecting bat behaviour? If not, then the light pollution sections need updating to include potential light pollution from vessels."</p> <p>Natural England have since noted in an email to the Applicant: "We would still need clarification as regards vessels transiting at night and the potential impact on bats."</p> | <p>Considering that, on average 1.6 vessel movements per tide will be required for the Facility, some of this vessel movement will be during the hours of darkness and a summary of the vessels lighting is provided below.</p> <p>When navigating a ship at night either in the open ocean or in the confines of rivers, it is beneficial to have minimum light both on the bridge and on the fore deck. The bridge watchkeeper needs to maintain good 'night vision' and excessive light will be detrimental to that. In this regard this navigational safety consideration is commensurate with the need to avoid lightspill to any areas of habitat utilised by bats for foraging or commuting along the eastern bank.</p> <p>Some deck lighting is normally maintained on the after deck around the accommodation structure to allow crew access to fresh air and the after mooring station. This lighting is not of a nature that spills out from the vessel to any great degree.</p> <p>A directional light may be utilised to assist with close quarters manoeuvres. The use of deck lighting or searchlights is considered part of the navigational safety requirement for vessels but neither are likely to spill out on the opposite bank of The Haven when coming alongside the new wharf.</p> <p>Based on the transitory nature of the vessels navigating The Haven, the low number of predicted vessels during the hours of darkness, and the main use of directional lights for navigational safety with minimal lighting to spill over to the opposite bank the</p> |

| No. | Comment  | The Applicant's Response   |
|-----|--|--|
|     |  | <p>potential impact to foraging/commuting bats is predicted not to be significant.</p>   |
| 11  | <p>Natural England advises that there should be a secured commitment to under take preconstruction surveys for all protected species which will need to be discharged by the Local Planning Authority in consultations with the relevant SNCB.</p> | <p>Paragraphs 7.2.1 and 7.2.2 of the OLEMS (document reference 7.4(1), REP3-007) states that <i>“Although no evidence of species such as badgers, water voles and otters have been recorded within the Principal Application Site, due to the mobility of these species and that suitable habitat for these species is present within the Principal Application Site, pre-construction surveys for these species will be undertaken. These surveys will be undertaken by a suitably qualified ecologist, at the appropriate time of year and in accordance with industry guidance.</i></p> <p><i>The pre-construction survey results will be used to inform species-specific ecological mitigation measures (including any licence requirements), which will be included within the final LEMS prepared post-consent to discharge Requirement 6 of the draft DCO. Copies of all pre-construction survey reports will be appended to the final LEMS.”</i></p> <p>The Applicant has committed to undertaking pre-construction surveys and as outlined above, this commitment is secured via the OLEMS and Requirement 6, which requires the approved LEMS to be substantially in accordance with the OLEMS. The relevant SNBC is listed as a consultee on Requirement 6.</p> |



## 2.2 RSPB

**Table 2-2 Responses to RSPB’s Deadline 6 Submission: Comments on Responses to the Examining Authority’s Second Written Questions (ExQ2) (REP6-041)**

| No.      | Comment  | The Applicant’s Response   |
|----------|--|--|
| Q2.1.0.4 | <p>The Applicant indicates funding will be available to ensure habitat is “...in place and available before the operational phase when the potential impacts that may require compensation would take effect”. This is not acceptable for a number of reasons:</p> <ul style="list-style-type: none"> <li>• The first impacts will arise during the construction phase, not the operational stage. Therefore, relevant compensation measures must be in place and fully functional (see next point) before construction occurs.</li> <li>• Relevant policy and guidance (Defra and European Commission) makes clear that compensation measures should be fully functional before damage occurs in order to ensure the coherence of the National Site Network is protected. In practical terms this means sufficient time must have elapsed between establishment of the compensation measure(s) and becoming fully functional <u>before</u> damage occurs. This will vary dependent on the habitat type and local conditions e.g. for wet grassland it may take between 5-7 years to become functional and longer to become fully functional.</li> <li>• To establish this timeline, it is necessary to have sufficient detail on the specific package of compensation measures to determine if the chosen locations and ecological designs are capable of delivering the ecological functions required and how long it will take to reach the fully functioning stage at each location. Such detail has not been made available by the applicant to date. We note that this has been common practice on such compensation packages since the mid-2000s.</li> <li>• In the absence of this detail, it is almost</li> <li>• impossible to assess the Applicant’s statement that sufficient</li> </ul> | <p>Firstly, the Applicant notes that Defra’s guidance document “Habitats regulations assessments: protecting a European site” (published 24 February 2021) provides that “Compensatory measures should usually be in place and effective before the negative effect on a site is allowed to occur.” The European Commission’s guidance document “Managing Natura 2000 sites – The provisions of Article 6 of the ‘Habitats’ Directive 92/43/EEC” (published 2018) provides that “as a general principle, a site should not be irreversibly affected by a project before the compensation is in place. However, there may be situations where it will not be possible to meet this condition. For example, the recreation of a forest habitat would take many years to ensure the same functions as the original habitat negatively affected by a project. Therefore, best efforts should be made to ensure that compensation is in place beforehand and, in the case this is not fully achievable, the competent authorities should consider extra compensation for the interim losses that would occur in the meantime”. Therefore the guidance focuses on measures being effective before the effect takes place with recognition that that may not always be possible and where it is not possible additional compensation may be required to cover interim losses.</p> <p>An updated compensation document was submitted at Deadline 6 (document reference 9.30(1), REP6-025) that provides further details of the proposed compensation sites. This document outlines the timescale for compensation in Paragraph 9.1 which</p> |

| No. | Comment   | The Applicant's Response   |
|-----|---|--|
|     | <p>funding will be available to establish and maintain any compensation measures.</p> <ul style="list-style-type: none"> <li>In relation to this, we consider it necessary for the relevant security mechanism to protect the long-term funding to be set out now so that it is available for scrutiny during the examination, not at some post-consent stage</li> </ul> <p>We are also concerned by the suggestion that compensation habitat would not be maintained following decommissioning of the facility. We note there is no firm commitment whether the facility will be decommissioned. We note this statement has been included in the draft Schedule 11 of the DCO. We will respond further to this issue at Deadline 7 after we have reviewed the updated DCO (due to be submitted at Deadline 6).</p> | <p>details that “For the dredging and construction impacts to the habitat within the Principal Application Site the measures would need to be in place prior to any works on the intertidal habitat”. These measures include the works on the adjacent area to the Proposed Application Site (movement of rocks from the Principal Application Site and reinstatement of saltmarsh pools) which are relatively quick to implement and would be usable as soon as they are in place. For operational impacts (vessel disturbance) the compensation measures (off-site habitat creation) would be in place prior to the operation of the Facility. The Applicant proposes to update the compensation document at Deadline 8 to include an implementation schedule which will set out the timetable for implementing the measures to ensure they are functional prior to the impacts occurring.</p> <p>With regard to funding, the without prejudice draft Schedule 11 to the DCO provides at paragraph 6 that:</p> <p>Unless otherwise agreed in writing by the Secretary of State or unless the measures set out in the OCIMP have already been delivered, the undertaker must not commence construction of Work No. 1 until it has first—</p> <ul style="list-style-type: none"> <li>(a) provided a reasonable estimate of the cost of delivery of the compensation measures; and</li> <li>(b) put in place either— <ul style="list-style-type: none"> <li>(i) a guarantee in respect of the reasonable estimate of costs associated with the delivery of the compensation measures; or</li> <li>(ii) an alternative form of security for that purpose,</li> </ul> </li> </ul> |

| No. | Comment | The Applicant's Response   |
|-----|---------|--|
|     |         | <p>that has been approved by the Secretary of State.</p> <p>This mechanism ensures that funding will be in place for the delivery of the compensation measures. This is the same approach to funding that was found to be acceptable on the Norfolk Vanguard Offshore Wind Farm Order 2022 and the Norfolk Boreas Offshore Wind Farm Order 2021 and the Applicant considers that it is an equally acceptable approach to securing funding for the delivery of the compensation measures on this project.</p> <p>In relation to decommissioning, the without prejudice draft Schedule 11 to the DCO controls the decommissioning of the compensation measures and provides that "The compensation measures delivered under this Part must not be decommissioned without the written approval of the Secretary of State, in consultation with the relevant statutory nature conservation body". the updated compensation document submitted at Deadline 6 also includes a statement regarding habitat maintenance in paragraph 4.6.14 which states that "If the SoS determines the wharf site is a functionally linked habitat to the SPA, the measures to provide habitat for birds using the wharf site will be maintained following decommissioning of the wharf unless the intertidal habitat is reinstated to an acceptable condition to enable waterbirds to return to use this area for roosting." This is also reflected in Schedule 11. This approach recognises the fact that it may not be possible to reinstate the wharf site following decommissioning of the wharf and ensures in those circumstances that the HMA would be maintained following decommissioning.</p> |

| No.       | Comment  | The Applicant's Response  |
|-----------|--|---|
|           |  | <p>With regard to the disturbance impacts from vessels during operation, these impacts would cease to occur at the point the Facility is decommissioned. The Applicant therefore considers it would be appropriate to maintain the off-site habitat creation measures up to the point of decommissioning. However, any decision on decommissioning any of the compensation measures rests with the Secretary of State and the Applicant could not (under Schedule 11) decommission any of the compensation measures without the Secretary of State's approval.</p>  |
| Q2.1.0.8  | <p>We welcome the update on the additional submissions that will be made by the Applicant at Deadline 6. We will endeavour to review and respond to as much of the information as appropriate at Deadline 7 (15 March).</p>  | <p>Noted by Applicant</p>   |
| Q2.3.0.5  | <p>We note that Natural England has provided detailed comments on the extent of saltmarsh that would be affected by the Application (REP5-017), notably comments on paragraphs A1.7.1-A1.7.9 of the OLEMS. We support Natural England's position and consider additional work is needed to identify measures to compensate for losses of both saltmarsh and mudflat.</p> | <p>Noted by Applicant</p>   |
| Q2.3.0.19 | <p>This statement by the Applicant shows that there is no ability to adjust vessel speeds. This further supports the inability of the Applicant to apply mitigation measures to the speed of vessels, thus reinforcing the need for compensation measures to address impacts that cannot be mitigated.</p>   | <p>The speed of vessels requires compliance with navigational safety requirements from the Port of Boston who have jurisdiction for such matters in The Haven.</p> <p>The main impact relating to raised vessel speed is wave wash which rolls towards adjacent birds and aggregations in the wake of a vessel movement. The pilot boat undertakes the fastest journeys on The Haven in facilitating high tide navigation, and is responsible for most wave wash. However, both the pilot boat and wave wash in general have relatively low in occurrence across cases of disturbance recorded during baseline surveys.</p> |

| No. | Comment | The Applicant's Response  |
|-----|---------|---|
|     |         | <p>This is despite pilotage closely mirroring the rate of large vessel passage during each high tide.</p> <p>Of 142 'Changes In Waterbird Behaviour' entries (involving 34 vessel movements (VM)) for disturbance at the mouth of The Haven to November 2021,</p> <ul style="list-style-type: none"> <li>• 20 entries (9 VM) originated from wave wash of boats [16 (6 VM) of which concerned the pilot boat], compared to</li> <li>• 122 (28 VM) where disturbance related to proximity i.e. visual disturbance (mostly from large cargo vessels).</li> </ul> <p>Even among pilot boat disturbance records at the MOTH (37 entries concerning 13 VM), the 16 entries (6 VM) due to wave wash are exceeded by the 21 entries (8 VM) where disturbance was due to proximity/visual presence.</p> <p>In summary, the speed of vessels is often secondary to their visual presence in their capacity to disturb birds.</p> <p>Schedule 9 (Deemed Marine Licence) Part 14(1) (3) (e) of the DCO states that the Navigation Management Plan (NMP) for the Facility must include details of, "measures for managing disturbance to designated bird species developed in accordance with the process in the Navigation Management Planning Process: Risk to Birds" (document reference 9.70, REP6-033) Paragraph 3.1.1 of this document states that, "Opportunities for managing vessel movements so as to reduce vessel speed where appropriate" will be duly considered. It is therefore incorrect of the RSPB to state that there is no ability or mechanism to consider this factor. Provision is therefore duly</p> |

| No.       | Comment  | The Applicant's Response  |
|-----------|--|---|
|           |  | made to take full account of ornithology and consider vessel speed in development of the NMP.   |
| Q2.3.1.21 | We provided our latest comments on the draft SoCG and a list of key issues that should form the focus of the SoCG to the Applicant on 7 February 2022. Our understanding is that the Applicant now aims to submit a draft SoCG at Deadline 7 and we will continue to review further iterations.  | Noted by Applicant.   |
| Q2.3.1.24 | We welcome an updated derogation case from the Applicant and will review and provide comments, as appropriate, at Deadline 7 (15 March).   | Noted by Applicant.   |
| Q2.3.1.27 | <p>We welcome an updated derogation case from the Applicant and will review and provide comments, as appropriate, at Deadline 7 (15 March).</p> <p>Whilst additional information may be helpful, it is unclear when the new survey data will be provided. The final survey is due in March 2022. It is not clear when in March the final survey will be conducted. Whilst results have been requested within a week of the final survey, there is no indication whether these additional data will have been analysed in any way. Deadline 7 (15 March) is only seven working days from Deadline 8 (24 March), with only two weeks until the close of the Examination at Deadline 9 (7 April). It is unclear what expectations there will be on interested parties to review and comment on these additional data at this late stage.</p> <p>It is also unclear what data will have been collected on disturbance to waterbirds along this route or what benefit could be gained from a one-off survey effort in the middle reaches of The Haven. This is important as no variation between years will be possible, the current winter has been relatively mild and a year-round survey over two years is the standard that is required.</p> | <p>Noted by Applicant regarding the comments due for Deadline 7.</p> <p>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 reported to Examination by Deadline 8.</p> <p>The sensitivity of the intermediate areas of The Haven have been assessed using anecdotal evidence from local bird counters and existing levels of information that were gained from review of other assessments, including that of 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 but there was no discussion of areas along the remainder of The Haven. There was no additional evidence to show any areas of sensitivity along this stretch.</p> |

| No.              | Comment   | The Applicant's Response   |
|------------------|---|--|
|                  | <p>We note the Applicant has not sought to gather any additional evidence between the mouth of The Haven and the Port of Boston anchorage area.</p>   | <p>As discussed above, the Applicant has gathered a considerable amount of survey information for the area of the Proposed Application Area and the adjacent area. In addition, the data from Wetland Bird Surveys was gathered for any sectors that were counted along The Haven, including the Land Fill lagoon area. This data has all been presented in various reports and discussed in detail at meetings that have included the RSPB.</p>   |
| <p>Q2.3.1.28</p> | <p>The Applicant's response does not commit to Deadlines for responding to outstanding issues. At this stage in the Examination it is critical to understand how the Applicant intends to use the remaining time; this has not been addressed in the Applicant's response.</p> <p>We have set out a summary of our position at Deadline 5 (REP5-018) and this has not changed.</p>  | <p>The Applicant is responding to outstanding issues as soon as possible following receipt of such issues. The Applicant is currently working on an updated OLEMS document and further work on the survey data being collected, as discussed above.</p>  |
| <p>Q2.10.0.1</p> | <p>Whilst the Applicant refers to the precedent that has been set by the Boston Barrier project, we note that the evidence base has now moved on and highlighted the greater importance of The Haven to waterbirds than was previously known. As a consequence, sufficient detail of the Navigation Management Plan must be provided to enable it to be considered as part of the HRA process. We will review the Applicant's additional submissions at Deadline 6 and provide further comments, as appropriate, at Deadline 7.</p> | <p>A Technical Note for Navigation Management and Ornithology (document reference 9.7, REP6-033) sets out the process to be followed, and topics to be covered, in developing the Navigation Management Plan (NMP) in lieu of a draft NMP and with due regard to the potential impacts on designated bird species. This document provides confidence that appropriate weight and consideration will be given to ornithology (specifically in relation to birds associated with the designated sites) in the development of the NMP. This document can therefore be viewed very positively with regard to the Habitats Regulations Assessment (HRA) process.</p> <p>The Applicant recognises the need to ensure that the NMP is based on relevant information. The NMP will be a live document subject to update and the development process is set</p> |

| No.       | Comment  | The Applicant's Response   |
|-----------|--|--|
|           |  | <p>out in REP6-033 . Paragraph 4.3.14 of this document makes it clear that updates can occur due to, “yearly reviews of ornithological monitoring data and any subsequent recommendations” as well as “proposals put forward by the Environment Agency, Natural England, BFFS or the RSPB”. A commitment to monitoring and reporting is also made.</p> <p>Sufficient confidence is therefore provided that the future navigation of vessels will take full account of key ornithological requirements within The Haven and The Wash and any new ornithology data that becomes available, thereby not just relying on information informing from the Boston Barrier development.</p> <p>In his third written questions the Examining Authority has requested the Applicant to submit an Outline NMP (or at least a full template and proposal of how it will be completed). A NMP Template has been submitted at Deadline 7 (document reference 9.80) and provides the requested, sufficient detail on this document.</p> |
| Q2.15.0.1 | With respect to compensatory habitat, future flooddefence requirements should be considered when identifying compensation sites and developing site plans. Sufficient space will need to be left to ensure that the scale of any compensation habitat will not be reduced due to future flood defence needs. | The potential for affecting flood risk has been considered for the development of potential compensation sites. All sites where construction works are involved (as opposed to clearance of debris which may be used for compensation if necessary) are currently behind the seawall. The works would be fully discussed with the Environment Agency to ensure no issues relating to flood defence needs.  |



## 2.3 MMO

**Table 2-3 Responses to MMO’s Deadline 6 submission - Comments on responses to Second Written Questions (ExQ2), comments on information submitted by the Applicant or Interested Parties, comments on upcoming submission of Statement of Common Ground (SoCG) (REP6-037)**

| No. | Comment  | The Applicant’s Response   |
|-----|--|--|
| 2.2 | The MMO would like to remind the applicant that any mitigation secured through the HRA will need 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.   |
| 2.4 | The MMO note Natural England has requested an ornithological mitigation and monitoring plan (OMP) to be submitted into examination as early as possible. The MMO will review this document when provided and will provide any comments where necessary. The MMO support the inclusion of a condition to secure the OMP. The MMO await confirmation if submission of this document as a post consent review will be included within the DCO or the DML. If it is to be condition within the DML, the MMO will expect further discussion around the wording of this condition. | Please see response to Q3.5.0.6 in the Applicant’s Comments on the ExA’s Third Written Questions (document reference 9.75) submitted at Deadline 7.  |
| 2.5 | Natural England have requested the inclusion of a construction window as a separate DCO/DML condition outside of the Outline Landscape and Ecological Mitigation Strategy. The MMO agree with this approach.   | The construction windows for dredging and piling are already set out in conditions in the DML (conditions 12 and 13 respectively).   |
| 2.6 | The MMO note that in point 1 of the “Detailed Comments Table”, Natural England have queried whether the MMO have any comments on the acceptability of the limits of deviation and if the DML could accommodate lateral changes. The MMO will provide further comment surrounding this at Deadline 7.   | Noted. The Applicant wishes to reiterate that there are no limits of deviation for Work No. 4 (the wharf) so it must be constructed in the location shown on the Works Plans (document reference 4.3(1), REP2-026). The parts of Work No. 4 that are covered by the DML are further constrained by the limits in condition 4(2) and 4(3) of the DML. |
| 3.2 | The applicant requested the removal of the piling restriction, preventing impact piling works from July – September. The MMO has reviewed the further justifications submitted by the applicant, and would be happy with the removal of the condition  | In relation to these points the Applicant has been in discussions with the MMO regarding these points and has agreed that the following amended wording will be included in the next iteration of the DML/DCO submitted to the examination (at Deadline 8):  |

| No. | Comment  | The Applicant's Response   |
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|     | <p>if the following mitigation measures were secured:</p> <ul style="list-style-type: none"> <li>• Piling works are scheduled to be undertaken from 1st June to 30th September inclusive.<br/><i>Reason: To reduce the impact on migrating and spawning smelt.</i></li> <li>• Piling works must be undertaken between the hours of 8am and 8pm.<br/><i>Reason: To provide an extended period of quiet 'downtime' for fish movement and migration, particularly for those species with nocturnal habits.</i></li> <li>• No simultaneous piling to be carried out.<br/><i>Reason: To reduce the risk of cumulative impacts from noise on migrating fish.</i></li> <li>• No dredging should be undertaken from 1st March to 30th June inclusive.<br/><i>Reason: To protect juvenile smelt and sea trout, and adult smelt during the most sensitive migratory and spawning periods.</i></li> <li>• Soft start / ramp up procedures should be undertaken for all piling taking place below the water line.<br/><i>Reason: To enable fishes within the affected area to move away from the noise source and source of impact.</i></li> </ul> | <ul style="list-style-type: none"> <li>• Condition 12(2)(c)(iii): "provision that dredging activities must only be undertaken from 1 July to 28 February inclusive and the details on the timing of dredging activities throughout those months;"</li> <li>• Condition 13(2)(c): "provision that piling activities must only be undertaken between 1 June and 30 September and details on the timing of piling activities throughout those months;"</li> <li>• Condition 13(2)(d): "details of the anticipated spread of piling activity throughout a working day with piling permitted between the hours of 0800 to 2000 hours on Monday to Saturday (with the option of 0700 to 1900);"</li> <li>• Condition 13(2)(new e): "provision that no planned simultaneous piling will be carried out;"</li> </ul> <p>Regarding the point that "Soft start / ramp up procedures should be undertaken for all piling taking place below the water line. With the additional wording in para 2.4" the Applicant has advised the MMO via email that "the Marine Mammal Mitigation Protocol (MMMP) sets out the procedure for piling and the Outline MMMP submitted at Deadline 6 states at para 3.2.6 that "The soft-start and ramp-up procedure for piling, where is it technically possible taking into account final pile design (e.g. durations) will be conducted prior to any piling. Each piling event will commence with a hammer energy at as low as is reasonably practical, followed by a gradual ramp-up to full hammer energy. Note that, due to the very short expected piling times of five minutes or 15 minutes per pile (dependent on pile type), the full soft-start procedure as stated within the JNCC Piling Protocol (JNCC, 2010) may not be possible. However, the piling, where possible, would commence with hammer</p> |

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|     |  | <p>energies as low as is reasonably practical, with a ramp-up to full hammer energy for as long a period as is possible.” And at 3.2.7 “This procedure is only required where there has been no piling for the preceding 10 minutes (i.e. if piling continues at a new location within 10 minutes of a pile being installed, as is expected, then this soft-start and ramp-up protocol would not be required).” The Applicant has amended the Outline MMMP so that the protocol applies at low and high water. The Outline MMMP reflects what the MMO has requested in paragraphs 3.3 and 3.4 [of its Deadline 6 response]. The final MMMP is approved by the MMO under condition 17 and must be in accordance with the Outline MMMP. Condition 13 requires the piling method statement to include “measures for managing potential risks to marine mammals in accordance with the marine mammal mitigation protocol approved under condition 17.” This ensures that the soft start measures (which are effective for both marine mammals and fish) are secured. As the Applicant has advised previously, this is considered a more streamlined approach to securing this mitigation.” The MMO has advised via email that “The MMO are happy in principle with this approach, however we will confirm this at the next deadline.”</p> |
| 3.3 | <p>In addition, where possible, the MMO recommend that the Applicant undertakes piling at low tide whenever possible/practicable. If piling is undertaken in the ‘dry’, then soft-start procedures will not be necessary. These measures may help to reduce the total number of dangerous exposures to fishes in terms of auditory injury.</p> | <p>See response above.</p>  |
| 3.4 | <p>The recommended<sup>1</sup> soft-start period on commencement of piling is no less than 20 minutes. However, the Applicant has advised</p>  | <p>See response above.</p>  |

<sup>1</sup> Joint Nature Conservation Committee guidelines for minimising the risk of injury to marine mammals from geophysical surveys, August 2010.

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|     | that this may not be feasible in all circumstances. Therefore, we ask the Applicant to endeavour to undertake some form of gradual ramping up of power each time piling is carried out. If piling ceases for a period exceeding 10 minutes then a soft-start/ramp up should commence again. |                          |