

REPORT

Boston Alternative Energy Facility

Applicant's Response to the Rule 17 Letter

Client: Alternative Use Boston Projects Ltd

Planning Inspectorate
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Table of Contents

1	Introduction	1
2	Compensation Sites	1
3	Seals	2
4	Draft Development Consent Order (dDCO) Schedule 11	3
	Appendix A1: Letter of Comfort and In Principle Compensation Land Parcels	5

1 Introduction

1.1.1 On 30 March 2022 the Examining Authority issued a Rule 17 letter to request further information from the Applicant as well as Natural England, RSPB and Lincolnshire Wildlife Trust. The following note provides responses to the questions directed towards the Applicant.

2 Compensation Sites

2.1.1 The Examining Authority notes *“In order to provide more certainty that the proposed in principle compensation measures are deliverable and can be secured please: i) provide a ‘letter of comfort’ from the landowners who have agreed in principle that their land may be used as compensatory sites; and ii) provide a plan that more clearly identifies the location of the proposed sites in relation to the application site and the European sites.”*

2.1.2 The Applicant provides a letter of comfort in relation to a site that has been agreed in-principle by the landowner for use as compensation (if required) that is approximately 7.3 ha just over 1 km from The Haven but less than 1 km from both the first field and from RSPB Frampton Marsh reserve (detailed in paragraph 4.7.3 of REP8-006) (referred to here as plot 1) and an adjoining additional 12 ha site (referred to here as plot 1a). Details of plot 1a are set out in section A1.2 of Appendix A1 of this document. The letter of comfort is accompanied by a plan of plot 1 and 1a, both can be found in Appendix A1 below.

2.1.3 In relation to the site that is approximately 19 ha and adjacent to The Haven, which is detailed in paragraph 4.7.2 of REP8-006 (referred to here as plot 2), discussions with that landowner are ongoing and a letter of comfort is not available at this time. Due to the commercially sensitive nature of those negotiations, the Applicant does not consider that it is appropriate at this point, to provide a plan or figure which explicitly identifies plot 2.

3 Seals

- 3.1.1 The Examining Authority notes *“In the absence of powers to enforce a vessel speed limit in The Haven to avoid/reduce collision risk for harbour seals please provide a joint statement on an agreed position on mitigation measures. If you are unable to arrive at a joint position, please confirm what your individual positions are.”*
- 3.1.2 The assessments provided in the Environmental Statement Chapter 17 Marine and Coastal Ecology (document reference 6.2.17, APP-055) and the Addendum to Environmental Statement Chapter 17 and Appendix 17.1 - Marine Mammals (document reference 9.14(1), REP9-020) do not indicate that there would be any significant impacts on marine mammals during construction or operation of the Proposed Facility. Additionally, the assessment in the Habitats Regulations Assessment (HRA) (Appendix 17.1 - Habitats Regulations Assessment (document reference 6.4.18, APP-111)) does not indicate that there would be an adverse effect on the integrity of The Wash and North Norfolk Coast Special Area of Conservation (SAC) due to increased vessel presence. The measures within the Outline Marine Mammal Mitigation Protocol (OMMMP) (document reference 9.12 (2) (REP7-003)) are therefore provided as a precautionary approach. The commitment to undertake best practice management measures and ensure all vessel activity is within current practices within the area would reduce any potential risk to harbour seals.
- 3.1.3 The Applicant is unable to commit to or enforce a strict vessel speed limit, as this is under the control of the Port of Boston. The Outline MMMP sets out that “vessel speeds of ‘as low a speed as reasonably practicable’ are to be encouraged within The Haven and The Wash” and “BAEF vessel speeds should be aimed to be below [10 knots]”, which will help reduce any potential impacts on marine mammals without imposing a set speed limit which is inconsistent with navigational safety requirements. These measures along with the other mitigation measures for marine mammals are secured Condition 17 of the DML which requires the approval of a final MMMP, which must be substantially in accordance with the Outline MMMP. Additionally, the Navigation Management Plan secured by Condition 14 of the DML will include measures for managing potential risks to marine mammals in accordance the approved MMMP.
- 3.1.4 All activities that are planned to be undertaken with regard to vessels are as per current vessel use in the area, such as vessel transit and anchorage. There is no evidence to indicate that the recent population decline in harbour seal in The

Wash area is related to vessel activity in the area. The Port of Boston have had no recorded instances of vessel collision with harbour seal.

- 3.1.5 While Natural England have stated there to be anecdotal evidence of harbour seals interacting in a negative manner with vessels within The Wash (particularly pups) (Natural England Deadline 1 Submission (REP1-057) and Natural England Deadline 2 Submission (REP2-043)), Natural England have not been able to provide any evidence to support this, despite that evidence being requested by the Applicant (Response to the Marine Management Organisation (MMO) and Natural England's queries regarding Marine Mammals and Fish (document reference 9.49, REP4-014)). The Applicant has undertaken the assessments on the best available information, taking a precautionary approach, and as stated above, have concluded that there is no potential for adverse effect on the integrity of the site. In addition, the Applicant have asked Natural England on a number of occasions what management measures they would request in order to provide them assurance that the harbour seal population will not be affected (Issue Specific Hearing 2; Fifth Report on Outstanding Submissions (document reference 9.99 (REP9-033)), and Natural England have not been able to provide an answer. Therefore, the Applicant stands by the current management measures as outlined in the OMMMP.

4 Draft Development Consent Order (dDCO) Schedule 11

- 4.1.1 The Examining Authority notes: *“REP9-033 states that dDCO Sch 11 paragraph 11 provides that “Unless otherwise agreed in writing by the Secretary of State, the compensation measures in place for habitat loss as a result of the construction of Work No. 4 must be maintained following the decommissioning of Work No. 4, unless the intertidal habitat is reinstated to an acceptable condition to enable waterbirds to return to use this area for roosting.” How would it be determined that the intertidal habitat had been sufficiently restored and who would be involved in the decision?”*
- 4.1.2 In response to the Examining Authority's question, the Applicant has amended paragraph 11 of Schedule 11 of the draft DCO (document reference 2.1(6)) as follows:

[(1) Unless otherwise agreed in writing by the Secretary of State in writing, the compensation measures in place for habitat loss as a result of the construction of Work No. 4 must be maintained following the decommissioning of Work No. 4 and any routine maintenance and adaptive management measures and monitoring must continue whilst the measures are in place.

(2) Sub-paragraph (1) does not apply where the Secretary of State, in consultation with the relevant statutory nature conservation body, determines based on monitoring data submitted by the undertaker that the intertidal habitat lost as a result of the construction of Work No. 4 has been restored following the decommissioning of Work No. 4 to provide a similar habitat as was present prior to the works being carried out that has the potential to be used by roosting and foraging birds.] ~~unless the intertidal habitat is reinstated to an acceptable condition to enable waterbirds to return to use this area for roosting.~~

- 4.1.3 These amendments clarify that the Secretary of State in consultation with the relevant statutory nature conservation body would make the determination based on monitoring data submitted by the undertaker that the intertidal habitat had been restored to a condition similar to that which existed prior to the construction of the wharf. The purpose of paragraph 11 is to give the Applicant the option to decide whether to maintain the works in the Habitat Mitigation Area on an ongoing basis or to restore the habitat lost as a result of the works to the pre-development baseline level suitable for roosting and foraging. If the undertaker decided its preference was to undertake restoration works, then it would monitor the restored habitat until it is shown to provide a similar habitat as was present prior to the works (i.e. mudflat (with restored rocks along the upper intertidal area of the mudflat to provide roosting sites) and saltmarsh habitat (i.e. the presence of saltmarsh vegetation on the upper tidal area that could develop to mid-marsh over time) that has the potential to be used by roosting and foraging birds. These results would then be submitted to the Secretary of State for determination under sub-paragraph (2).
- 4.1.4 The Applicant notes that it has amended condition 27 of the Deemed Marine Licence in Schedule 9 of the draft DCO to include in square brackets similar wording to paragraph 11 of Schedule 11 to be included in the DCO in the event the Secretary of State determines the habitat loss as a result of Work No. 4 does not constitute an adverse effect on integrity. This ensures the works in the Habitat Mitigation Area are maintained (unless the habitat lost is suitably restored) irrespective of whether the Secretary of State determines the works are mitigation or compensation measures. The Applicant has also deleted sub-paragraph (3) of Requirement 22 of Schedule 2 as the restoration works would be within the jurisdiction of the MMO as they are to land below MHWS.

Appendix A1

Letter of Comfort & In Principle Compensation Land Parcels



A1.1 Introduction

A1.1.1 As requested by the Examining Authority's Rule 17 letter dated 30 March 2022 (PD-015), the Applicant provides a letter of comfort in relation to plot 1, a site that has been agreed in-principle by the landowner for use as compensation (if required) that is approximately 7.3 ha just over 1 km from The Haven but less than 1 km from both the first field and from RSPB Frampton Marsh reserve (detailed in paragraph 4.7.3 of REP8-006) and plot 1a, an adjoining additional 12 ha site, detailed in section A1.2 below. The letter of comfort is accompanied by a plan of plot 1 and 1a in Figure 1.

A1.1.2 In relation to plot 2, discussions with that landowner are ongoing and a letter of comfort is not available at this time. Due to the commercially sensitive nature of those negotiations, the Applicant does not consider that it is appropriate at this point, to provide a plan or figure which explicitly identifies plot 2.

A1.2 Additional Area of Land

A1.2.1 The Applicant's last update of the Without Prejudice Derogation Case: Compensation Measures at Deadline 8 (document reference 9.30(2), REP8-006), initially shortlisted agricultural fields adjacent to and alongside The Haven as outlined in section 4.7, plots 1 and 2. This section described plot 2, a field of approximately 19 ha (hectares) adjacent to The Haven, and plot 1, another field of approximately 7.3 ha just over 1 km from The Haven but less than 1 km from both plot 2 and RSPB Frampton Marsh reserve. The Applicant's case at Deadline 8 detailed how the area of land, when combined with appropriate design, initial landscaping and management and adaptive management, could deliver and surpass the required in-principle compensation in terms of scale, bird activities supported (roosting, foraging, loafing) and numbers of individuals supported.

A1.2.2 Following submission of the updated Compensation Measures document to the Examination, an additional parcel of land has been secured in principle which is outlined here, we shall refer to this as plot 1a.

A1.2.3 Plot 1a is approximately 12 ha immediately to the east of plot 1, as shown in Figure 1. As is the case with plot 1, plot 1a is currently and recently of arable agricultural land use with a significant proportion of its boundary composed of drainage ditches, and a minority length of its boundary composed of rural road. Plot 1a is within 1 km of The Haven and The Wash Special Protection Area (SPA)/Ramsar site/Site of Special Scientific Interest (SSSI) boundary and also adjacent to the RSPB's Frampton Marsh reserve. The opportunity afforded for wetting the site through means such as blocking of drainage ditches at this land parcel is high and similar to the aforementioned land parcels. The acquisition of plot 1a and plot 1, in summary, creates the likely prospect of securing two sites each of approximately 19 ha of continuous open habitat with minimum trees or tall

boundary, for the primary or sole purpose of in-principle compensation of waterbird species and assemblage of The Wash SPA/Ramsar site if the Secretary of State determines compensation is required.

A1.2.4 As a result of the additional land secured in-principle at plot 1a, the scale of land acquisition for compensation is more favourable than previously suggested in other application documents, and the compensation described in principle in submissions to Examination to date is likely to be exceeded.

*Home Farm, Revesby
Sherriffs Farm, Revesby Bank
Mareham
Hakerley Bridge Farm, Frithville
Wheatstheaf Farm, New Bolingbroke*

*Salmonby House Farm, Salmonby
Roads Farm, Frampton
Wragg Hall Farm, Carrington
High Ferry Farm, Sibsey*

*Ulyatts Farm, Amber Hill
Manor Farm, East Keal
Fox Covert Farm, Market Rasen
Bells Farm, Old Leake*

*Park Lane Farm, Swineshead
The Royal Oak Pub,
Eresby Farm, Spilsby
Ivy House Farm, East Kirkby*

B BUSH & SONS

HOME FARM, REVESBY, BOSTON, LINCOLNSHIRE, PE22 7NU



Dear Sir/ Madam

18.03.22

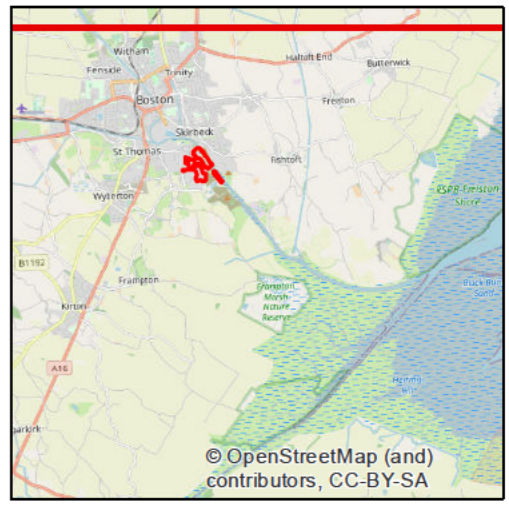
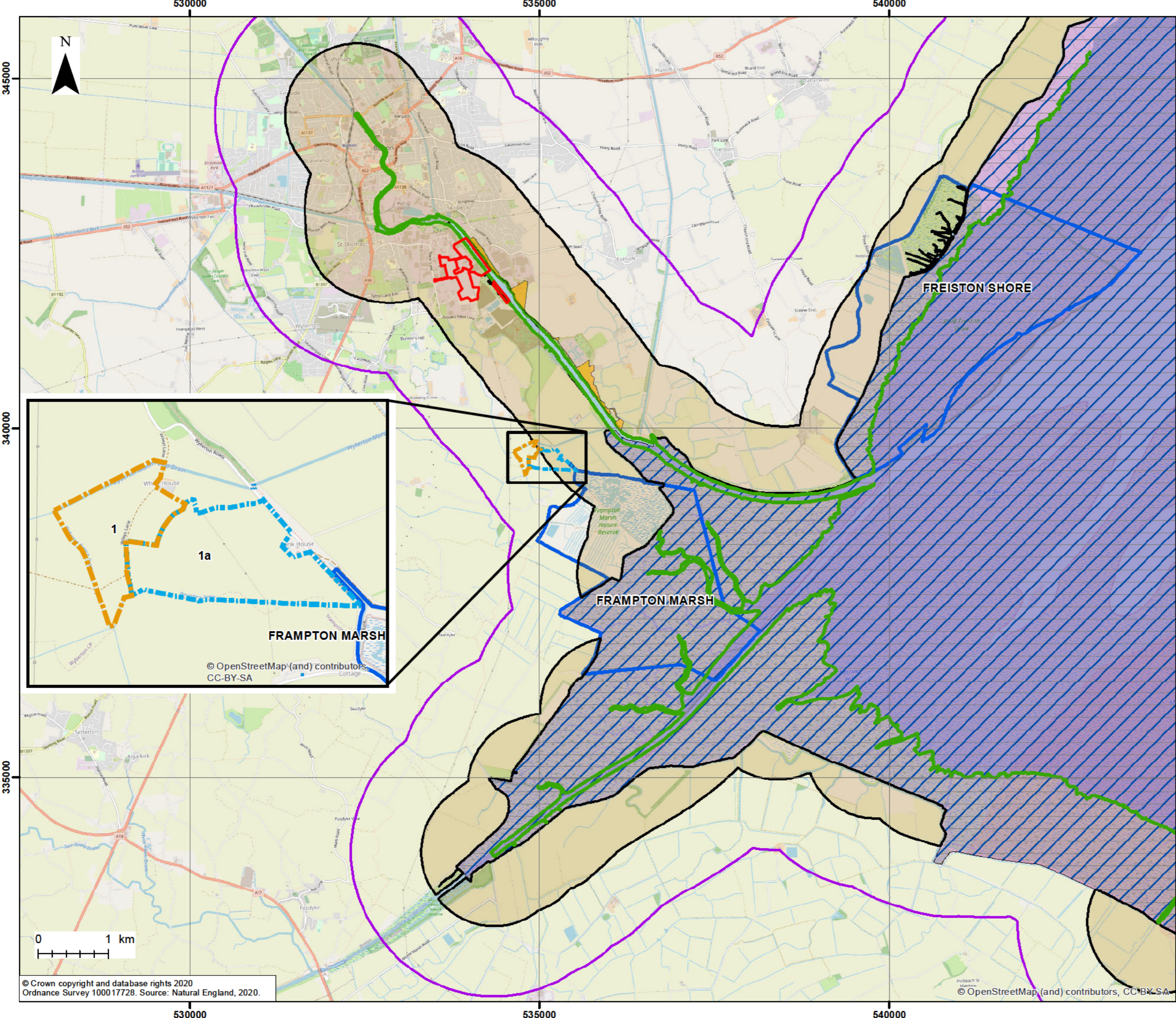
RE MITIGATION LAND - FRAMPTON

We would consider our land at Frampton, shown on the attached plan, for use in mitigation for wildlife in connection with Alternative Use Boston Project Development Consent Order.

Yours faithfully



Bryan Jeffrey Bush



Key

- Order limits
- Habitat Mitigation Area

In-Principle Compensation Land Parcels

- 1
- 1a
- Havenside Local Nature Reserve
- Mean High Water
- 2km Buffer
- 1km Buffer
- RSPB Reserve
- The Wash SPA
- The Wash SSSI
- The Wash Ramsar

0	07/04/22	For Submission	MP	AG	PS
REV	DATE	DESCRIPTION	BY	CHK	APP

REVISIONS

CLIENT

**ALTERNATIVE USE
BOSTON PROJECTS LTD**

PROJECT

**BOSTON
ALTERNATIVE ENERGY FACILITY
ENVIRONMENTAL FACILITY**

TITLE

**IN-PRINCIPLE COMPENSATION
LAND PARCELS - PLOT 1 AND 1A
FIGURE 1**

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