

REPORT

Boston Alternative Energy Facility

Final Draft Section 106 Agreement (Clean)

Client: Alternative Use Boston Projects Ltd

Planning Inspectorate
Reference: EN010095

Document Reference: 9.100 (1)

Pursuant to: N/A

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Date: 07 April 2022



BOSTON BOROUGH COUNCIL

-and-

LINCOLNSHIRE COUNTY COUNCIL

-and-

ALTERNATIVE USE BOSTON PROJECTS LIMITED

-and-

ALCHEMY FARMS LIMITED

PLANNING OBLIGATION BY DEED OF AGREEMENT

under section 106 of the Town and Country Planning Act 1990 (as amended) and section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011 relating to land within the Riverside Industrial Estate, Boston, Lincolnshire.

DATE

2022

PARTIES

- (1) **BOSTON BOROUGH COUNCIL** of Municipal Buildings, West Street, Boston, Lincolnshire, PE21 8QR ("the Borough Council")
- (2) **LINCOLNSHIRE COUNTY COUNCIL** of County Offices, Newland, Lincoln, LN1 1YL ("the County Council")
- (3) **ALTERNATIVE USE BOSTON PROJECTS LIMITED** (Company Registration Number 11013830) whose registered office is situated at 26 Church Street, Bishops Stortford, Hertfordshire, CM23 2LY ("AUBP")
- (4) **ALCHEMY FARMS LIMITED** (Company Registration Number 04466718) whose registered office is situated at Willows Holt, Willows Lane, Sibsey, Boston, Lincolnshire, England, PE22 0TG ("the Owner")

INTRODUCTION

1. The Borough Council and the County Council are the local planning authorities for the purposes of the 2008 Act for the area in which the Site is situated.
2. The County Council is the local highway authority for the purposes of the Highways Act 1980 (as amended) for the area in which the Site is situated.
3. AUBP owns all the rights and interests and has financial and operational responsibility for the Application (as defined herein) in relation to the Project.
4. AUBP has submitted the Application to the Planning Inspectorate for development consent to construct and operate the Project. The Application was accepted for examination by the Planning Inspectorate on 23 March 2021. The Secretary of State is responsible for determining the Application.
5. The Owner owns the Land located within the Site registered at HM Land Registry under part of title numbers LL379861, LL245525; LL244638 and LL253590 shown for identification purposes only edged red on the plan at Appendix A.
6. The parties to this Deed have agreed to enter into this Deed in order to secure the development consent obligations contained in this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS

1. DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

Word or Phrase	Meaning
"1990 Act"	means the Town and Country Planning Act 1990 (as amended)
"2008 Act"	means the Planning Act 2008 (as amended)
"Additional Signage"	means additional signage on or near the Improved Footpath
"Application"	means the application for a development consent order under section 37 of the 2008 Act submitted to the Planning Inspectorate on 23 March 2021 and given reference number EN010095
"Apprenticeships"	means a Level 2 apprenticeship or above that is for under 25-year-olds as detailed in the National Apprenticeship Standards document (or such successor/replacement document) and "Apprentice" shall be construed accordingly
"Battery Storage Infrastructure"	means a system for storing commercial scale electrochemical energy produced directly from the Project, with subsequent release when required to the National Grid
"Biodiversity Net Gain Construction Period Contribution"	means the sum of up to £30,000 (thirty thousand pounds) to be paid by the Owner and/or AUBP to the Borough Council to be used for Biodiversity Net Gain Measures during the Construction Period of the Project as set out in Appendix C
"Biodiversity Net Gain Maintenance Contribution"	means the sum of up to £12,150 (twelve thousand one hundred and fifty pounds) to be paid annually by the Owner and/or AUBP to the Borough Council to be used for the Biodiversity Net Gain Measures during the Operational Phase of the Project as set out in Appendix C
"Biodiversity Net Gain Maintenance Measures"	means the Maintenance Measures set out in Appendix C

Word or Phrase	Meaning
“Biodiversity Net Gain Measures”	means the Measures set out in Appendix C
“Boston Waste Feedstock”	means suitable baled combustible wastes (i.e. Refuse Derived Fuel and commercial and industrial waste from which recyclables and non-combustible materials have been removed) which include a supplier bar code, arising within the County Council’s area (as the statutory Waste Disposal Authority) that could be accepted at the Site via water borne vessel
“CIL”	means the charge created pursuant to section 205 of the 2008 Act and Regulation 3 of the CIL Regulations and referred to as the Community Infrastructure Levy in those enactments
“CIL Regulations”	means the Community Infrastructure Levy Regulations 2010 (as amended)
“Commencement”	means the carrying out of a material operation as defined in section 155 of the 2008 Act comprised in the Project and the words "Commence" and "Commenced" and cognate expressions shall be construed accordingly
“Commencement Date”	means the date of Commencement of works pursuant to the Development Consent Order
“Construction Period”	means the period between the Commencement Date and the date when the temporary powers in the Development Consent Order to enable the Project to be constructed have ceased
“Contribution(s)”	means the financial contributions payable to the Councils under the terms of this Deed
“CO2”	means Carbon Dioxide captured from the operation of the Project
"Development Consent Order”	means the development consent order to be made pursuant to the Application
“Dispute”	means any dispute, issue, difference or claim as between the

Word or Phrase	Meaning
	parties in respect of any matter contained in or arising from or relating to this Deed or the parties' obligations and rights pursuant to it (other than in respect of any matter of law)
"Educational Bodies"	means Boston Technical College and any other educational organisation within the borough of Boston
"Environmental Statement"	means the environmental statement as defined within the Development Consent Order
"Expert"	means an independent person appointed in accordance with the provisions of clause 9 to determine a Dispute between the parties to this Deed
"EV"	means electric vehicle(s)
"Footpath Signage Contribution"	means the sum up to a maximum of £2,500 (two thousand five hundred pounds) to be paid by the Owner/AUBP to the County Council to be used for Additional Signage on the Improved Footpath during the Construction Period
"Implementation"	means the carrying out of a material operation as defined in section 56(4) of the 1990 Act and the words "Implement" and "Implemented" and cognate expressions shall be construed accordingly
"Improved Footpath"	means the sections of Public Rights of Way BOST/14/11 and BOST/14/9 as shown on Figure 1-1 of the Outline Public Right of Way Design Guide and Stopping Up Plan (Appendix D)
"Index"	means the BIS Index of Construction Prices and Costs or in each case of default of publication thereof, such substitute index as the parties may agree in accordance with clause 11
"Interest Rate"	means interest at 4% per annum above the Bank of England's base rate applicable at the Payment Date and references to "Interest" should be construed accordingly

Word or Phrase	Meaning
"Land"	means the land within the Site registered at HM Land Registry under part of title numbers LL379861, LL245525; LL244638 and LL253590 shown for identification purposes only edged red on the plan at Appendix A
"Local Business Opportunities"	means any secondary and indirect employment opportunities arising from the Project available to local business within the borough of Boston or surrounding areas or Lincolnshire such as local taxi companies, accommodation, local equipment hire and catering
"Local Employment Agreement"	means the agreement to be provided by the Owner and/or AUBP to the Borough Council as set out in the First Schedule of this deed
"Local Labour Target"	means a percentage of the labour force employed during the Construction Period or Operational Phase who will be resident in the borough of Boston or the surrounding area or Lincolnshire
"Local Supply Chain"	means suppliers of required goods and/or services who operate a business within or are connected to the borough of Boston or the surrounding area or Lincolnshire
"Monitoring Fee"	means the sum of £3,500 payable by the Owner and/or AUBP to the Borough Council to be used by the Borough Council for the purpose of monitoring and administering the implementation of the planning obligations in this Deed as set out in the First Schedule
"Natural England"	means the non-departmental public body, sponsored by the Department for Environment, Food & Rural Affairs, or such successor body
"Operational Phase/Operational Lifetime"	means the expected period of at least 25 years from the date of first operation of the facility the subject of the Project
"Order Limits"	means the limits shown on the works plans submitted as part of the Application, within which the authorised Project may be carried out
"Planning Inspectorate"	means the executive agency of the Department for Levelling Up,

Word or Phrase	Meaning
	Housing and Communities
“Project”	means the authorised development as defined in and as authorised by the Development Consent Order
“Requirement”	means a requirement of the Development Consent Order
“Secretary of State”	means the Secretary of State for Business, Enterprise and Industrial Strategy
“Site”	means the land edged red on the plan at Appendix B identified in the Development Consent Order or (as the context may require) any one or more of parcels described therein
“Stage”	means a stage of the Project as defined by the Development Consent Order
“Surface Enhancements Measures”	means minor regrading of the existing trodden surface by loosening and reconsolidating substrates to create an even running profile, removing hollows and pronounced changes in level and to provide a slight camber to aid surface drainage, where appropriate. The finished surface will be grass seeded and allowed to be worn and trodden as detailed in the Outline Public Right of Way Design Guide and Stopping Up Plan (Appendix D)
“Vegetation Enhancement Measures”	means the cutting back of existing overhanging and obstructive vegetation and the introduction of new native plant species that will enhance both biodiversity value and screening of views to existing and proposed industrial features, as appropriate, and as detailed in the Outline Public Right of Way Design Guide and Stopping Up Plan (Appendix D)
“Vegetation Management Inspection”	means an annual inspection of the Improved Footpath to identify any dead, dying or dangerous vegetation growth that overhangs or obstructs access on the Improved Footpath
“Working Day(s)”	means any day apart from Saturday, Sunday and any statutory bank holiday on which clearing banks are open in England for the

Word or Phrase	Meaning
	transaction of ordinary business

2. CONSTRUCTION OF THIS DEED

- 2.1 References to “Councils” shall mean both the Borough Council and the County Council.
- 2.2 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.3 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.4 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner.
- 2.5 Wherever more than one person is a party and/or where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually.
- 2.6 "Including" means including without limitation or prejudice to the generality of any preceding description defined term phrase or word(s) and "include" shall be construed accordingly.
- 2.7 Words denoting an obligation on a party to do any act or matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause permit or allow infringement of that restriction.
- 2.8 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it and "statutory requirement" shall be construed accordingly.
- 2.9 Reference to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Borough Councils the successors to their respective statutory functions and any duly appointed employee or agent of the Borough Councils or such successors.
- 2.10 Headings in this Deed are for convenience only and shall not be taken into account in its construction and interpretation.

2.11 References to “notice” shall mean notice in writing.

2.12 References to “including” shall mean including without limitation.

3. **LEGAL BASIS**

3.1 This Deed is made pursuant to section 106 of the 1990 Act section 111 of the Local Government Act 1972 section 1 of the Localism Act 2011 and all other enabling powers.

3.2 The covenants contained in the Schedules are development consent obligations (to the extent that they are capable of being so) for the purposes of section 106 of the 1990 Act and are enforceable by each of the Borough Council and the County Council as local planning authority or local highway authority as appropriate, and as a party to this Deed.

4. **CONDITIONALITY**

4.1 Subject to clauses 4.2 and 4.3, the parties agree that none of the terms or provisions in this Deed shall have operative effect unless and until:

4.1.1 the Development Consent Order has been duly made; and

4.1.2 the Construction Period has commenced,

with the exception of this clause 4 insofar as it relates to obligations in the Schedules that must be complied with prior to the commencement of the Construction Period, all of which shall have operative effect upon the making of the Development Consent Order and which shall have operative effect from the date of this Deed.

4.2 Where the Development Consent Order becomes the subject of any judicial review proceedings:-

4.2.1 until such time as such proceedings including any appeal have been finally determined, the terms and provisions of this Deed will remain without operative effect unless the Project has been Commenced

4.2.2 if following the final determination of such proceedings the Development Consent Order is quashed and, in the event that the court orders the Application to be remitted to the Secretary of State, the Application is subsequently refused, this Deed will cease to have any further effect and any money paid to the Councils pursuant to the Schedules and not spent or committed by the Councils (or such other person as the money has been paid to under this Deed) shall be repaid in full within 56 days of the final determination of such proceedings; and

4.2.3 if following the final determination of such proceedings the Development Consent Order is capable of being Commenced, then this Deed will take effect in accordance with the terms of the Development Consent Order.

4.3 Wherever in this Deed reference is made to the final determination of judicial review proceedings (or cognate expressions are used), the following provisions will apply:-

4.3.1 proceedings by way of judicial review are finally determined:-

- (a) when permission to bring a claim for judicial review has been refused and no further application may be made;
- (b) when the court has given judgment in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused;
- (c) when any appeal is finally determined and no further appeal may be made.

5. **OWNER/AUBP'S DEVELOPMENT CONSENT OBLIGATIONS**

5.1 The Owner and AUBP covenant with the Councils to perform:-

5.1.1 the development consent obligations contained in the Schedules One to Six; and

5.1.2 any other obligations which are not development consent obligations contained in the Schedules pursuant to section 111 of the Local Government Act 1972 and all other powers so enabling, in each case so far as they relate to the Owner's land interests in the Land from time to time.

5.2 The Councils each covenant with the Owner and AUBP to perform the obligations on their respective parts contained in Schedules Seven and Eight.

5.3 The parties agree that the development consent obligations contained in this Deed are intended to bind the Land and is enforceable against any person corporate or otherwise deriving title through or under the Owner in respect of the Land or any part or parts thereof as if that person had been an original covenanting party to this Deed.

6. **RELEASE**

The Owner and AUBP and their successors in title and those deriving title from them shall, upon disposing of the whole or any part of their respective interests in the Land, be released from all obligations in this Deed in relation to that interest or the relevant part thereof (as the case may be) but without prejudice to the rights of the parties in relation to any antecedent breach of those obligations.

7. FURTHER PLANNING PERMISSIONS AND DEVELOPMENT CONSENT ORDERS

- 7.1 Nothing in this Deed shall be construed as prohibiting or limiting the rights of the Owner or AUBP to use or develop any part of the Site in accordance with and to the extent permitted by a certificate of lawful use, planning permission, development consent order or other statutory authority other than the Development Consent Order granted either before or after the date of this Deed.
- 7.2 If the Development Consent Order expires or is revoked prior to the Commencement Date then this Deed shall forthwith determine and cease to have effect and the Councils will forthwith cancel all entries made in their respective registers of local land charges in respect of this Deed.

8. CERTIFICATES OF COMPLIANCE

- 8.1 The Councils (as appropriate) will upon request by the Owner and/or AUBP certify compliance or partial compliance (as and if appropriate and subject to payment of the Councils' (as appropriate) reasonable legal and professional fees) with the provisions of this Deed and if so requested by the Owner and/or AUBP will (as and if appropriate and subject to payment of the Councils' (as appropriate) reasonable legal and professional fees) execute a deed of release or partial release from the relevant provisions of this Deed and promptly register the same in the register of local land charges maintained by the Councils (as appropriate).
- 8.2 Where the Councils (as appropriate) are obliged to execute a deed of release or partial release pursuant to clause 8.1, the other parties to this Deed shall enter into such deed to the extent necessary to effect such release or partial release.

9. RESOLUTION OF DISPUTES

- 9.1 In the event of any Dispute arising between the parties then the parties will attempt to resolve that Dispute amicably including holding a meeting attended by at least one representative from each party.
- 9.2 If the parties are unable to resolve the Dispute amicably pursuant to clause 9.1, one party may by serving notice on all the other parties (the "Notice") refer the Dispute to an Expert for determination.
- 9.3 The Notice must specify:-
- 9.3.1 the nature, basis and brief description of the Dispute;
 - 9.3.2 the clause or paragraph of this Deed pursuant to which the Dispute has arisen; and

9.3.3 the proposed Expert.

9.4 In the event that the parties are unable to agree whom should be appointed as the Expert within 10 Working Days after the date of the Notice then either party may request the President of the Law Society to nominate the Expert at their joint expense, and the parties shall request that such nomination shall be made within 10 Working Days of the request, and any failure for such nomination to be made within 10 Working Days shall entitle any party to withdraw from the process of appointing an Expert and to refer the Dispute to the courts of England and Wales instead.

9.5 The Expert shall act as an expert and not as an arbitrator and his decision will (in the absence of manifest error) be final and binding on the parties hereto and at whose cost shall be at his discretion or in the event that he makes no determination, such costs will be borne by the parties to the Dispute in equal shares.

9.6 The Expert will be appointed subject to an express requirement that he reaches his decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 20 Working Days from the date of his appointment to act or such other timescale as may be advised in writing by the Expert having regard to paragraph 9.7 below.

9.7 The Expert will be required to give notice to each of the said parties inviting each of them to submit to him within 10 Working Days written submissions and supporting material and will afford to each of the said parties an opportunity to make counter submissions within a further 5 Working Days in respect of any such submission and material.

10. **NOTICES**

10.1 Any notice, consent or approval required to be given under this Deed shall be in writing and shall be sent to the address and marked for the attention of the persons identified below or instead to such other persons as may be substituted for them from time to time.

10.2 Any such notice must be delivered by hand or by pre-paid Special Delivery post and shall conclusively be deemed to have been received:-

10.2.1 if delivered by hand, on the next Working Day after the day of delivery; and

10.2.2 if sent by Special Delivery post and posted within the United Kingdom, on the day 2 Working Days after the date of posting.

10.3 The address for service of any such notice, consent or approval as aforesaid shall:-

10.3.1 in the case of service upon the Borough Council be at its address given above or such other address for service as shall have been previously notified in writing to the

other parties and any such notice shall be marked for the attention of Assistant Director – Planning & Strategic Infrastructure, Boston Borough Council;

- 10.3.2 in the case of service upon the County Council be at its address given above or such other address for service as shall have been previously notified in writing to the other parties and any such notice shall be marked for the attention of Head of Planning, Lincolnshire County Council, County Offices, Newland, Lincoln LN1 1YL;
- 10.3.3 in the case of service upon AUBP be at its address given above or such other address for service as shall have been previously notified in writing to the other parties and any such notice shall be marked for the attention of the Power Station Manager c/o Alternative Use Boston Projects Limited, 26 Church Street, Bishop's Stortford, Hertfordshire, England, CM23 2LY;
- 10.3.4 in the case of service upon the Owner be at its address given above or such other address for service as shall have been previously notified in writing to the other parties and any such notice shall be marked for the attention of Alan Thompson, Director of Alchemy Farms Limited.

11. INDEXATION

Subject to the terms of this Deed, where any obligation in this Deed is expressed to require the Owner and/or AUBP to pay, provide or make available any sum of money (whether by way of a Contribution or otherwise), the amount to be paid, provided or made available shall be adjusted by reference to changes in the relevant Index in accordance with the following formula:-

$$\text{Amount Payable} = \text{Sum} \times (\text{Index at Payment Date} / \text{Index at today's date})$$

where:-

"Amount Payable" is the amount of money required to be paid;

"Sum" is the amount of the Contribution or other sum of money stated in this Deed;

"Index at Payment Date" is the relevant Index last published before the Payment Date;

"Index at today's date" is the relevant Index last published prior to the date the Development Consent Order is made; and

"Payment Date" means the date required for the payment of a Contribution pursuant to this Deed.

12. INTEREST

- 12.1 Where any obligation in this Deed is expressed to require the Owner and/or AUBP to pay any sum of money, interest at the Interest Rate shall be payable in addition to the sum of

money itself calculated from the due date of the Contribution to the date on which the sum of money is actually paid.

- 12.2 Where the Owner and/or AUBP has paid, provided or made available any sum of money and the sum or sums have not been applied as required or within the agreed timescale then the sum or sums to be refunded shall be returned to the Owner and/or AUBP inclusive of Interest calculated in accordance with clause 12.1.

13. NOTICE OF WORKS

- 13.1 The Owner and/or AUBP shall notify each of the other parties to this Deed:-

13.1.1 At least one month prior to the Commencement Date, of the anticipated date of Commencement of works pursuant to the Development Consent Order (which obligation shall apply again if Commencement Date does not occur on the notified date);

13.1.2 within seven days of the actual Commencement Date; and

13.1.3 within two weeks of the day on which the Construction Period ends.

- 13.2 The Owner and/or AUBP shall give written notice to the Councils within five Working Days of the Owner and/or AUBP paying, providing or making available to any third party any sum(s) of money required to be paid, provided or made available pursuant to this Deed.

14. COMMUNICATIONS

- 14.1 The communications teams for the Councils the Owner and the AUBP will coordinate external communications on behalf of the Councils with the Owner and AUBP's communications team in accordance with a protocol agreed between the Owner, AUBP and the Councils PROVIDED THAT once communications material associated with a project or activity funded by contributions from the Owner and/or AUBP have been produced in accordance with the protocol, the Owner and/or AUBP shall have the right to include information in its future communications without the need for approval by the other parties to this Deed.

- 14.2 The parties agree that where particular mitigation works, projects or benefits are funded from any of the Contributions secured under this Deed:-

14.2.1 The Owner/AUBP shall have the right to be acknowledged as having funded such works, projects or benefits;

- 14.2.2 The Owner/AUBP branding and/or corporate images or logos shall be included (at the discretion of the Owner/AUBP) in literature, publicity material related to, and/or fixed at the site of such works, projects or benefits;
- 14.2.3 The Owner/AUBP shall have the right to be involved in publicity activities relating to such works, projects or benefits in consultation with the Councils.

15. **COMMUNITY INFRASTRUCTURE LEVY**

The parties hereby acknowledge and agree that:-

- 15.1 this Deed has been negotiated and agreed on the assumption that liability to CIL does not arise in respect of any of the development authorised by the Development Consent Order because such development is situated in an area for which no charging schedule is in effect on the date of this Deed and no charging schedule is anticipated to be in effect in relation to such development on the day the Development Consent Order is made;
- 15.2 were liability to CIL to arise in respect of any of the development authorised by the Development Consent Order, then (subject to the conditions in CIL Regulation 55 having been complied with or satisfied and subject to this clause 15.2 not fettering the discretion of the Borough Councils under CIL Regulation 55) CIL Regulation 55 would be applicable where the aggregate cost of complying with the development consent obligations in this Deed is greater than the chargeable amount payable in respect of such development.

16. **VAT**

- 16.1 If this Deed or anything contained in it gives rise to a taxable supply for VAT purposes by the Councils to the Owner/AUBP then the Councils shall use all reasonable endeavours to recover the VAT in the first instance.
- 16.2 If this Deed or anything contained in it gives rise to a taxable supply for VAT purposes by the Councils to the Owner/AUBP then, subject to the Councils complying with clause 16.1, the Owner/AUBP shall pay to the relevant Council or third party an amount equal to the VAT chargeable in addition to and at the same time as any payment or the provision of any other consideration for such supply upon provision of a valid VAT invoice addressed to AUBP.

17. **APPROVALS**

Where any approval, agreement, consent, confirmation or an expression of satisfaction is required under the terms of this Deed such approval, agreement, consent, confirmation or expression of satisfaction shall be given in writing and shall not be unreasonably withheld or delayed.

18. **COUNCILS' POWERS**

Nothing in this Deed shall fetter the respective statutory rights, powers or duties of the Councils.

19. **GOOD FAITH**

The parties agree with each other to act reasonably and in good faith in the discharge of the obligations contained in this Deed.

20. **RIGHTS OF THIRD PARTIES**

It is not intended that any person who is not a party to this Deed shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

21. **JURISDICTION**

21.1 This Deed including its construction, validity, performance and enforcement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

21.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

22. **COUNTERPARTS**

This Deed may be executed in any number of counterparts, each of which is an original and all of which may together evidence the same agreement.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

FIRST SCHEDULE

MONITORING FEES, LOCAL LABOUR AND APPRENTICESHIPS PROVISIONS

1. MONITORING FEES

- 1.1 The Owner and/or AUBP shall pay the Monitoring Fee to the Borough Council one month prior to the anticipated Commencement Date.

2. APPRENTICESHIPS

- 2.1 Unless otherwise agreed with the Borough Council, the Owner and/or AUBP or its contractors shall deliver Apprenticeships from the Educational Bodies, the exact number to be agreed between the Borough Council, the Owner/AUBP and the relevant Educational Bodies during the Construction Period of the Project.

- 2.2 The Apprenticeships to be delivered pursuant to paragraph 2.1 shall:

2.2.1 be accredited Apprenticeships as defined in the National Apprenticeship Standards (or, with the agreement of the Borough Council and the Educational Bodies, any subsequent scheme which replaces this);

2.2.2 include the cost of wages (to be aligned with a living wage) support training costs, college release and the provision of tools and equipment necessary for the relevant Apprenticeship;

2.2.3 be specifically targeted for the benefit of persons attending the Educational Bodies;

2.2.4 be provided within the workforce employed by the Owner/AUBP or within the workforce employed by the contractors or sub-contractors procured or appointed by the Owner and/or AUBP; and

2.2.5 comply with guidance from the Institute for Apprenticeships (or any subsequent organisation which replaces this) regarding the delivery of accredited Apprenticeships.

- 2.3 The Owner and/or AUBP or its contractors shall:

2.3.1 provide sufficient work placement for the Apprenticeships to be delivered under this Deed;

2.3.2 procure that each apprentice completes the relevant full Apprenticeship programme; and

2.3.3 use reasonable endeavours to engage with multiple Educational Bodies in the borough of Boston.

- 2.4 In the event that an Apprentice resigns from (or fails to complete) an Apprenticeship programme required under paragraph 2.1 the Owner and/or AUBP or its contractors shall use reasonable endeavours to re-provide a replacement Apprenticeship within three calendar months of that Apprentice withdrawing from the programme to ensure completion of the Apprenticeships required under paragraph 2.1.

3. **LOCAL EMPLOYMENT AGREEMENT**

- 3.1 Prior to Commencement of the Project, the Owner and/or AUBP or its contractors shall provide the Borough Council's Economic Growth Function and Planning Team with a Local Employment Agreement, to provide details of:
- 3.1.1 forecasting details of trades or occupational areas offering opportunities during the Construction Period and Operational Phase;
 - 3.1.2 at least two months' notice of Apprenticeship vacancies;
 - 3.1.3 reasonable endeavours to achieve a Local Labour Target of 15%;
 - 3.1.4 reasonable endeavours to incorporate the Local Supply Chain during the Construction Period and Operational Phase and reporting on performance in incorporating the Local Supply Chain;
 - 3.1.5 reasonable endeavours to promote Local Business Opportunities at the Site locally
 - 3.1.6 the minimum number of Apprenticeships which will be provided over the life of the Project;
 - 3.1.7 One year following the commencement of the Construction Period the Owner and/or AUBP or its contractors will provide annually an update to the Borough Council in relation to its progress in respect of its obligations within the Local Employment Agreement and for the avoidance of doubt this obligation shall continue annually through the Operational Phase, PROVIDED THAT in undertaking the above obligations in this paragraph 3 of the First Schedule the Owner and/or AUBP shall not be required to breach any domestic or international law.

SECOND SCHEDULE

SCHEME OF INTERPRETATION

1. The Owner and/or AUBP covenants with the Borough Council as follows:
 - 1.1 To provide interpretation signage and details of future maintenance of the interpretation signage as part of the proposed enhancements for the Improved Footpath as set out in the Outline Public Right of Way Design Guide and Stopping Up Plan (see Appendix D) which will be finalised in agreement with the Borough Council, the County Council and Natural England prior to the commencement of the Construction Period.
 - 1.2 Following completion of the agreed works pursuant to paragraph 1.1 above to maintain the interpretation signage and enhancements throughout the Construction Period and Operational Phase in accordance with the agreed details
 - 1.3 To use reasonable endeavours to encourage the contractor to consider opportunities for a community hub to be located in Boston town centre as an alternative location to the Site during the Construction Period and to support community engagement with the Project.

THIRD SCHEDULE
PUBLIC RIGHTS OF WAY

1. The Owner and/or AUBP covenants with the County Council as follows:
 - 1.1 To pay the Footpath Signage Contribution to the County Council for the Additional Signage, before the Commencement of the Construction Period.
 - 1.2 The Footpath Signage Contribution is to be agreed between the Owner and/or AUBP and the County Council in advance of the Additional Signage being ordered.
 - 1.3 To improve and maintain the Improved Footpath which falls within the Order Limits, including consideration of the removal or relocation of tall palisade fencing where appropriate, with the aim of the Improved Footpath being a useable footpath surface with a width varying between 1.2 metres and 1.8 metres subject to conditions.
 - 1.4 To use all reasonable endeavours to negotiate the repositioning of the existing tall palisade fencing which borders the sections of the Improved Footpath which are outside the Order Limits. This obligation is limited to:
 - 1.4.1 the period of eighteen months from the date of the Commencement of the Project, after that time, if the Owner and/or AUBP have been unable to successfully negotiate the repositioning of all relevant fencing with all of the relevant landowners, the Owner's and/or AUBP's obligation ceases;
 - 1.4.2 the Owner's /AUBP's costs for undertaking such negotiations is limited to £80,000 (eighty thousand pounds), including VAT;
 - 1.4.3 if the repositioning of the existing tall palisade fencing which borders the sections of the Improved Footpath which are outside the Order Limits has not been successfully negotiated and implemented within 12 months of the Commencement of the Project then the Owner/AUBP shall provide a written report on progress to the County Council.
 - 1.5 To undertake Surface Enhancements Measures on the Improved Footpath within twelve months from the Commencement Date.
 - 1.6 To undertake Vegetation Enhancement Measures on the Improved Footpath within twelve months from the Commencement Date.
 - 1.7 To undertake a Vegetation Management Inspection annually throughout the Construction Period and Operational Phase commencing a year after the Vegetation Enhancement

Measures have been completed and to supply a copy of the report to County Council within 10 Working Days of the Inspection.

- 1.8 Prior to the Commencement of the Construction Period to provide gateway features at various points along the Improved Footpath as indicated on Figure 2-1 of the Outline Public Right of Way Design Guide and Stopping Up Plan (Appendix D) up to a maximum cost of £5,000 (five thousand pounds).
- 1.9 Prior to the Commencement of the Construction Period to provide two benches, one at either end of the Improved Footpath as indicated as indicated on Figure 2-1 of the Outline Public Right of Way Design Guide and Stopping Up Plan (Appendix D) and to thereafter maintain in accordance with the details as set out in Appendix D.

DRAFT

FOURTH SCHEDULE

CLIMATE CHANGE AND RENEWABLE ENERGY

1. The Owner and/or AUBP covenants with the Borough Council in respect of this Schedule and covenants with the County Council in respect of paragraph 1.2 and 1.3 only as follows:
 - 1.1 To use reasonable endeavours to consider opportunities to incorporate Battery Storage Infrastructure within or alongside the Site, subject to the demand existing for such and provided that such incorporation shall not require the Owner/AUBP to seek an amendment to the Development Consent Order.
 - 1.2 To use reasonable endeavours to consider opportunities regarding the maximisation of CO2 captured from the Site to local carbon-using companies, subject to the demand for such and provided that any such use shall not give rise to any new or different significant environmental effects compared with those reported in the Environmental Statement.
 - 1.3 To provide a report to the Borough Council and the County Council every five years setting out the steps it has taken to fulfil the reasonable endeavours obligation in 1.2 above.
 - 1.4 To provide employees or workers connected to the Project and prior approved visiting members of the public with access to at least two EV charging points within the visitor's car park on the Site from the Operational Phase of the Project, subject to reasonable user conditions. Users of the EV charging points will be required to pay the appropriate fees for the use of the EV charging points, as determined by the relevant service provider.
 - 1.5 The location of the EV charging points within the Site shall be determined by the Owner/AUBP but will be in located in an area of the Site accessible by the public and for the avoidance of doubt the approved use of the EV charging points by any users shall not give rise to any public right(s) of way or interest in land in respect of the Site.

FIFTH SCHEDULE

BIODIVERSITY

2. The Owner and/or AUBP covenants with the Borough Council as follows:
 - 2.1 Within three months of the Commencement Date to pay the Biodiversity Net Gain Construction Period Contribution to the Borough Council to enable the Borough Council to undertake the Biodiversity Net Gain Measures during the Construction Period.
 - 2.2 To pay the Biodiversity Net Gain Maintenance Contribution to the Borough Council annually, for up to 25 years to enable the Borough Council to undertake the Biodiversity Net Gain Maintenance Measures during the Operational Phase of the Project. The first payment to be made within three months of commencement of the Operational Phase, and annually thereafter.

SIXTH SCHEDULE

LOCAL FEEDSTOCK

1. The Owner and/or AUBP covenants with the Borough Council as follows:
 - 1.1 The Owner and/or AUBP covenants with the Borough Council to use reasonable endeavours to explore opportunities to accept and treat Boston Waste Feedstock at the Site once the Operational Phase has Commenced, subject to commercial contracts and provided that any such use would not give rise to any new or different significant environmental effects compared with those reported in the Environmental Statement or breach any provisions of the Development Consent Order or any associated agreements or undertakings.

DRAFT

SEVENTH SCHEDULE

BOROUGH COUNCIL COVENANTS

1. The Borough Council covenants with the Owner and/or AUBP as follows:
 - 1.1 To use all the Contributions payable by the Owner and/or AUBP under the terms of this Deed for the purposes specified in this Deed unless otherwise agreed in writing with the Owner and/or AUBP.
 - 1.2 That following written request from the Owner and/or AUBP the Borough Council covenants that it will pay to the party that made that relevant payment such amount of any payment made to the Borough Council under this Deed which has not been expended at the date of such written request together with Interest which has accrued on the balance after deduction of tax (where required) and any other sum required to be deducted by law provided always that no such request will be made prior to the expiry of five years of the date of receipt of the final instalment of a relevant Contribution by the Borough Council of such payment. Any Contribution or part of a Contribution which the Borough Council has unconditionally contracted to expend prior to the date of receipt of such written request shall be deemed to have been expended by the Borough Council prior to that date. If capital works have been carried out then commuted sums for maintenance will not be returnable under this paragraph.
 - 1.3 To provide to the Owner and/or AUBP such evidence, as the Owner and/or AUBP shall reasonably require in order to confirm the expenditure of the sums paid under this Deed upon a written request by the Owner and/or AUBP or other party/entity such request not to be made more than once in any year.

Discharge of Obligations

2. At the written request of the Owner and/or AUBP the Borough Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.

EIGHTH SCHEDULE

COUNTY COUNCIL COVENANTS

1. The County Council covenants with the Owner and/or AUBP as follows:
 - 1.1 To use all the Contributions payable by the Owner and/or AUBP under the terms of this Deed for the purposes specified in this Deed unless otherwise agreed in writing with the Owner and/or AUBP.
 - 1.2 That following written request from the Owner and/or AUBP the County Council covenants that it will pay to the party that made that relevant payment such amount of any payment made to the County Council under this Deed which has not been expended at the date of such written request together with Interest which has accrued on the balance after deduction of tax (where required) and any other sum required to be deducted by law provided always that no such request will be made prior to the expiry of five years of the date of receipt of the final instalment of a relevant Contribution by the County Council of such payment. Any contribution or part of a contribution which the County Council has unconditionally contracted to expend prior to the date of receipt of such written request shall be deemed to have been expended by the County Council prior to that date. If capital works have been carried out then commuted sums for maintenance will not be returnable under this paragraph.
 - 1.3 To provide to the Owner and/or AUBP such evidence, as the Owner and/or AUBP shall reasonably require in order to confirm the expenditure of the sums paid under this Deed upon a written request by the Owner and/or AUBP such request not to be made more than once in any year.

Discharge of Obligations

2. At the written request of the Owner and/or AUBP the County Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.

Executed as a Deed by)
THE COMMON SEAL of)
BOSTON BOROUGH COUNCIL)
was affixed in the presence of)

Authorised signatory

Witness

Executed as a Deed by)
THE COMMON SEAL of)
LINCOLNSHIRE COUNTY COUNCIL)
was affixed in the presence of)

Authorised signatory

Witness

Executed as a Deed by)
ALTERNATIVE USE BOSTON)
PROJECTS LIMITED)
acting by a director and witnessed)

Director

Witness

Name (in block capitals)

Address

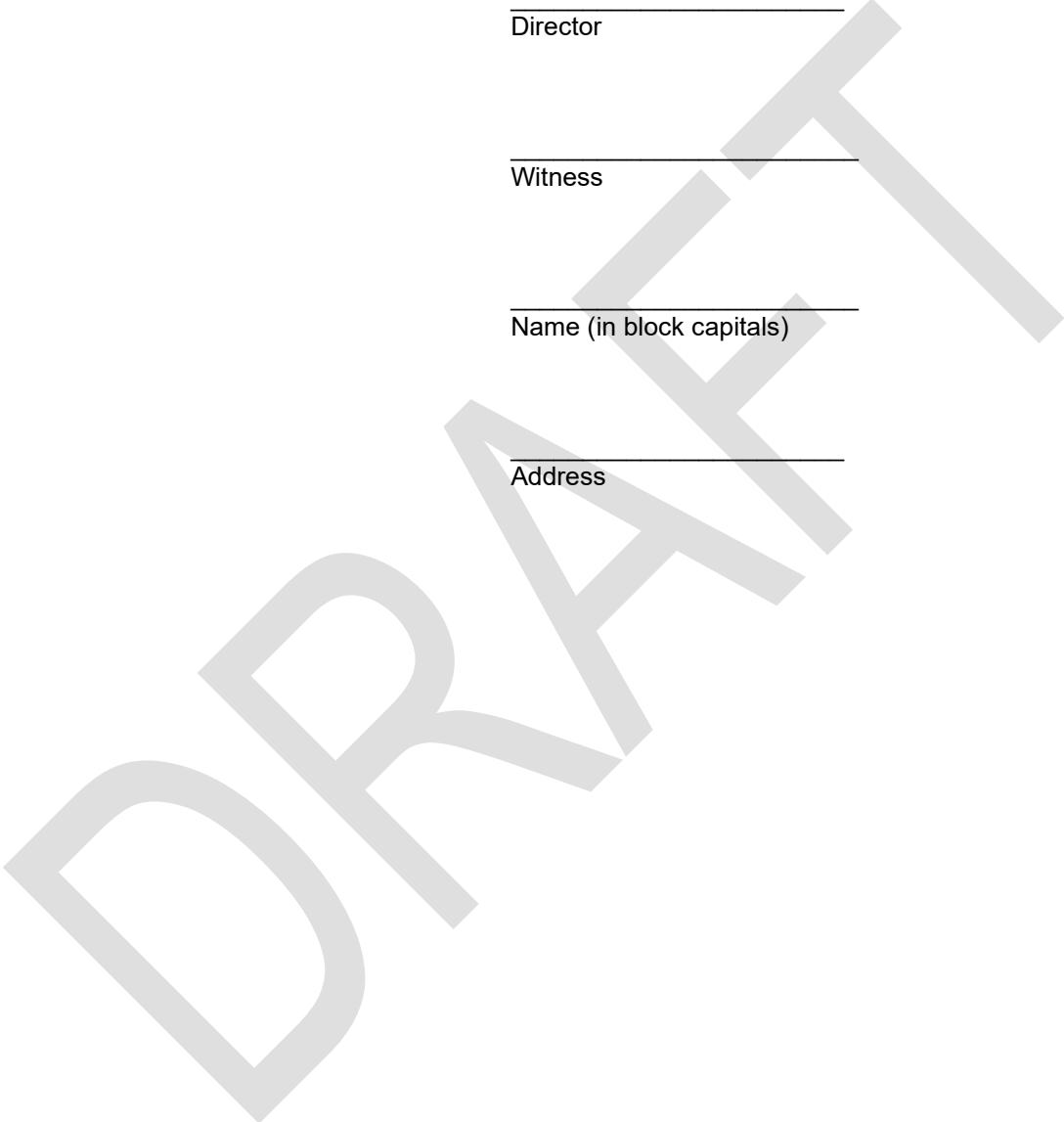
Executed as a Deed by)
ALCHEMY FARM LIMITED)
)
acting by a director and witnessed)

Director

Witness

Name (in block capitals)

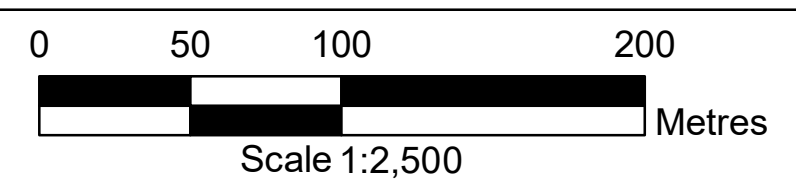
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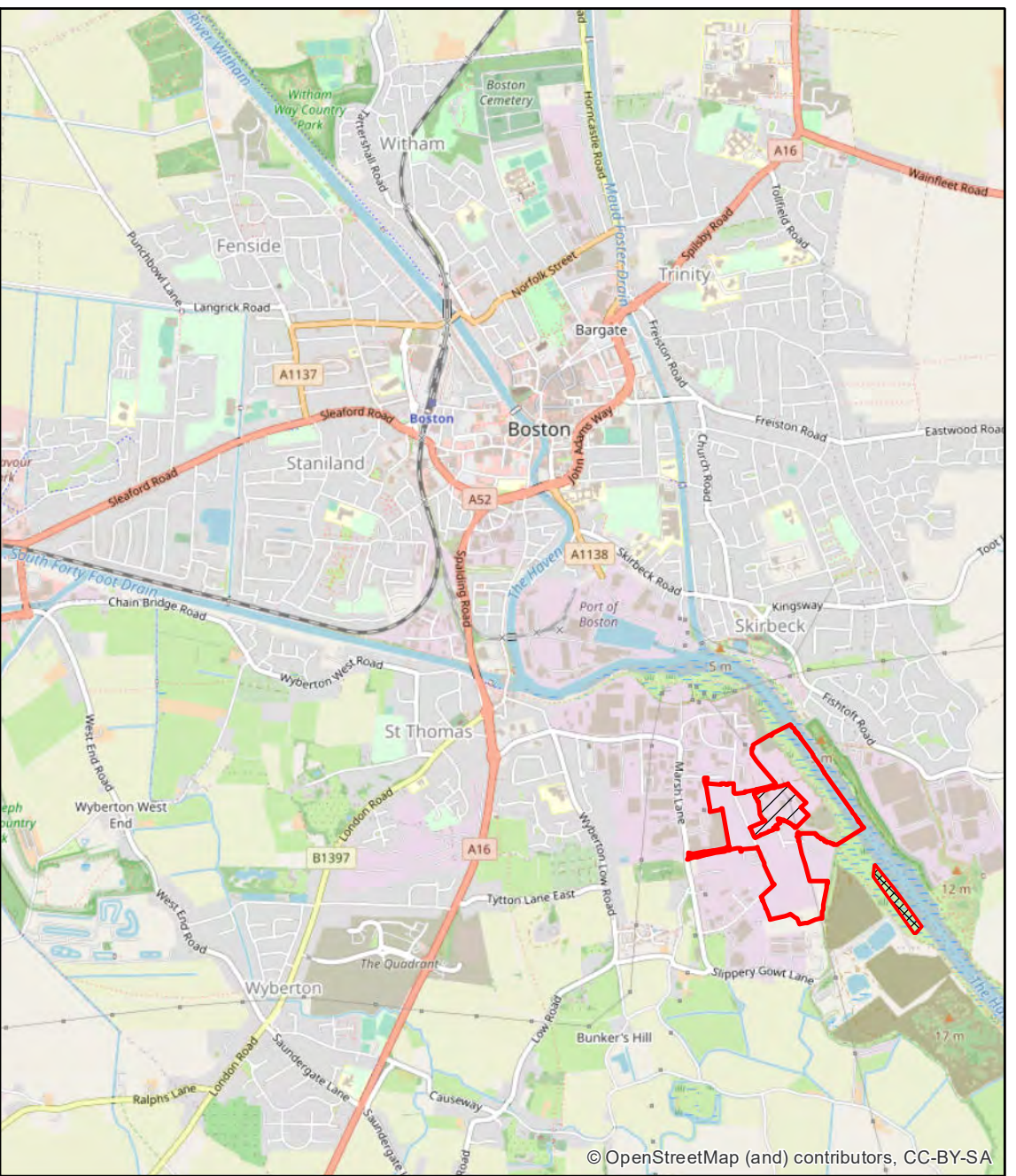
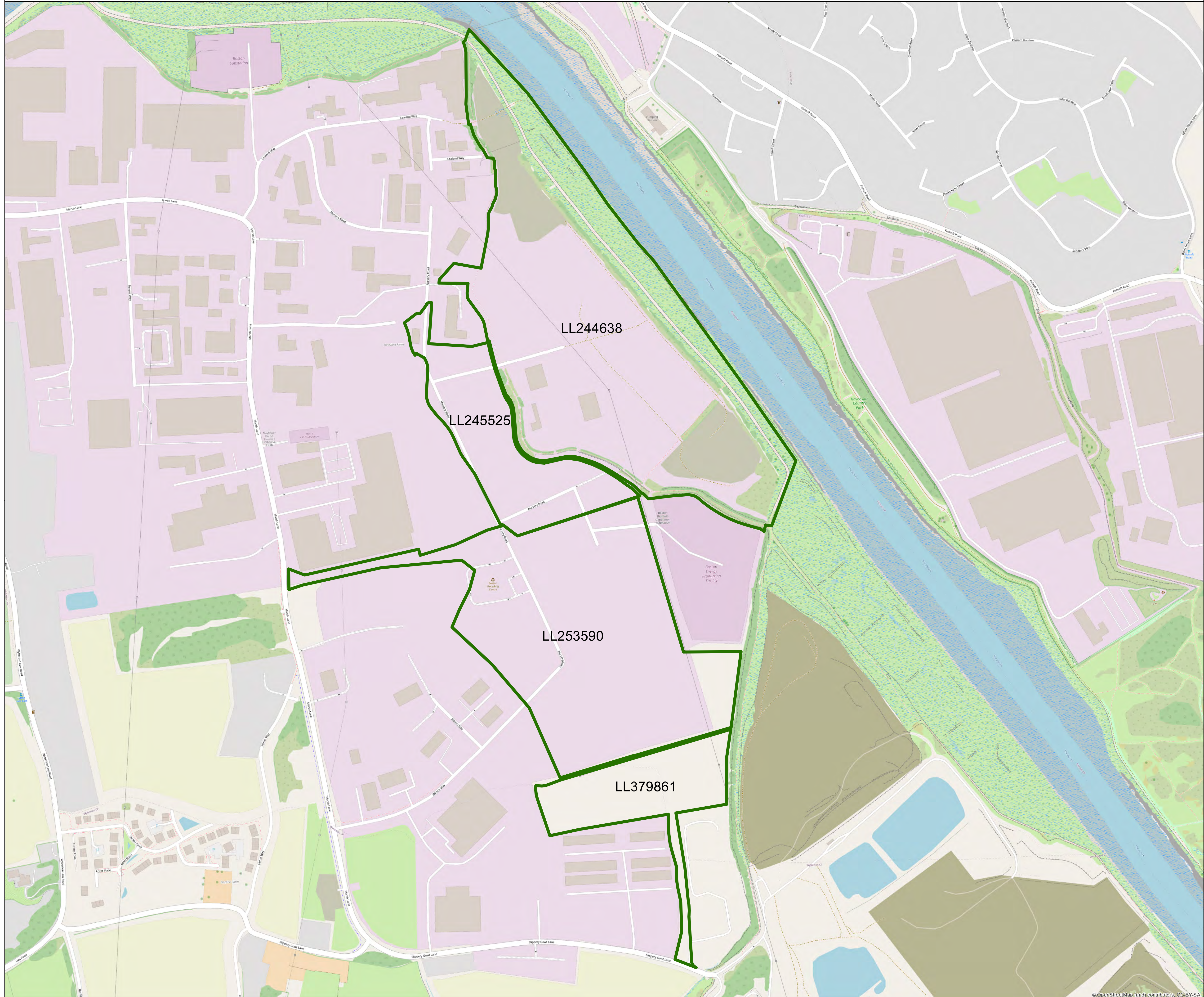
Appendix A

Plan





BOSTON ALTERNATIVE ENERGY FACILITY DEVELOPMENT CONSENT ORDER
Regulation 5(2)(o) - Section 106 Land Plans
Land Registry Original Extents - Appendix A
BOSTON BOROUGH COUNCIL Sheet 1 of 1



Key

Land Registry Plots


Royal HaskoningDHV
Enhancing Society Together

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 Website www.royalhaskoningdhv.com

APPLICANT **ALTERNATIVE USE
BOSTON PROJECTS LTD**

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REV	DATE	DESCRIPTION	BY	CHK	APP
1	07/04/22	For submission		MCP	AG PS
0	21/03/22	For submission		MCP	AG PS

TITLE **BOSTON ALTERNATIVE ENERGY FACILITY DEVELOPMENT CONSENT ORDER
Regulation 5(2)(o) - Section 106 Land Plan
Land Registry Original Extents - Appendix A
BOSTON BOROUGH COUNCIL Sheet 1 of 1**

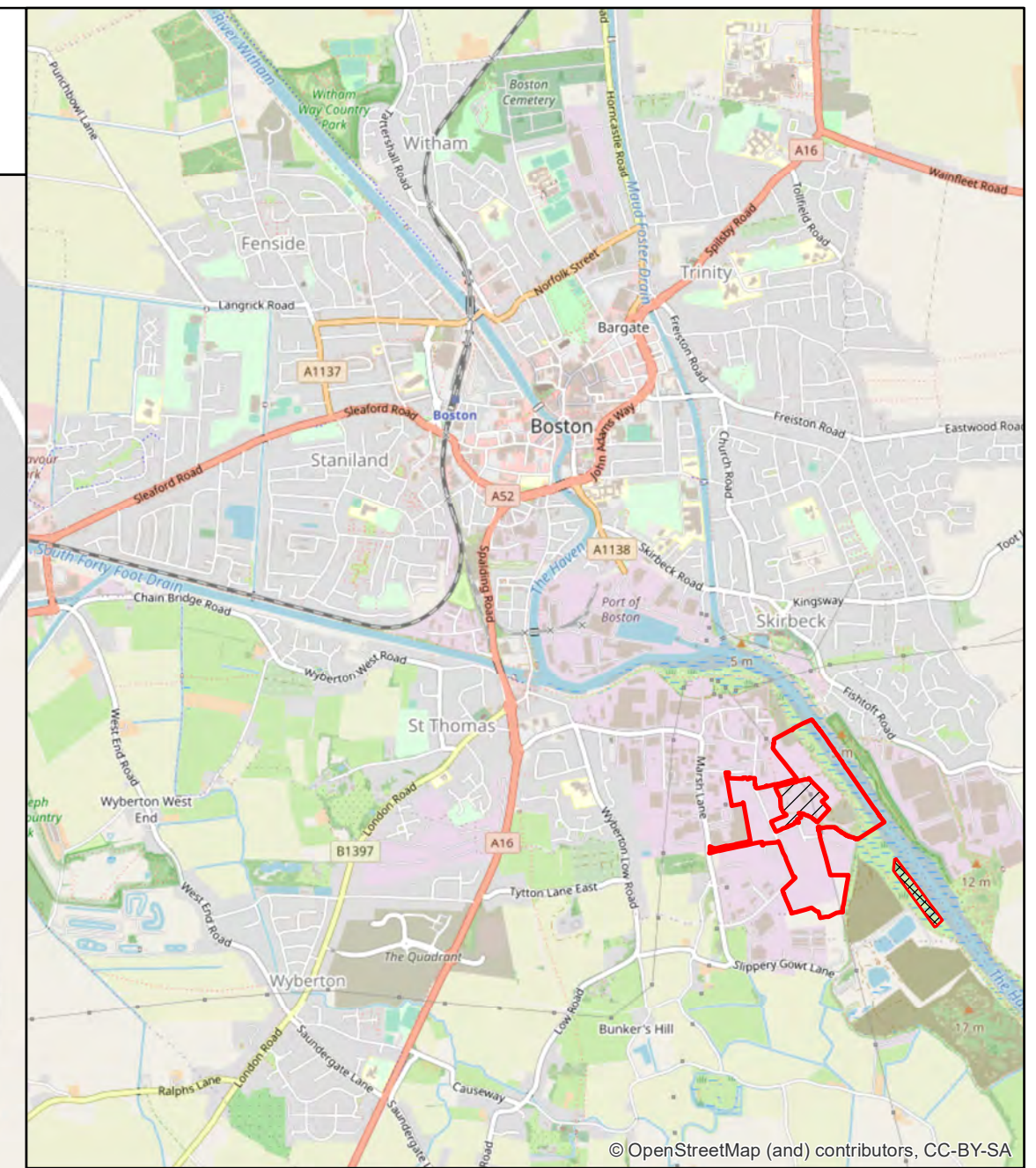
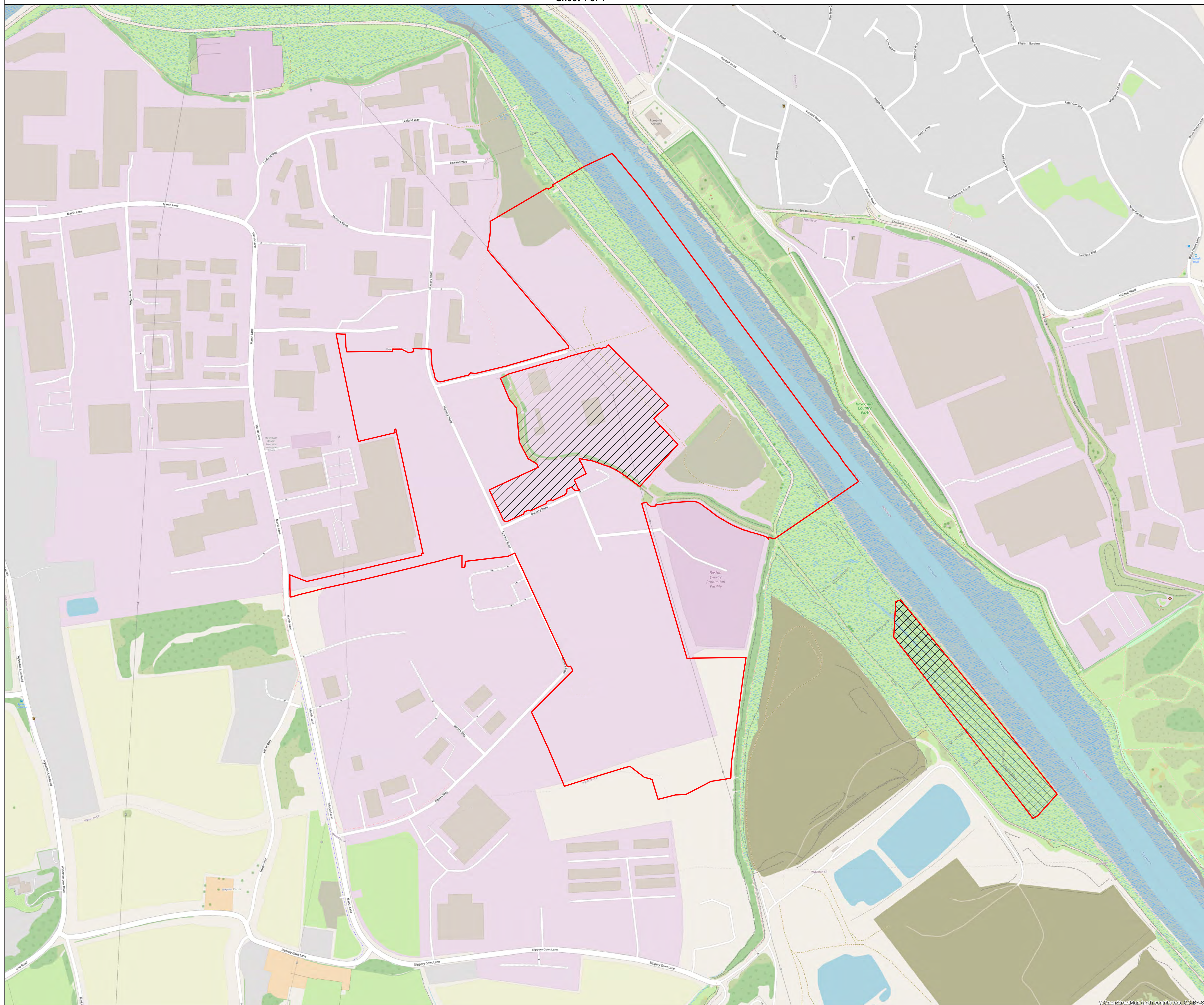
Application Number EN010095			
DRAWN MCP	CHECKED AG	APPROVED PS	
DATE 21/03/2022	SCALE @A1 1:2,500	REF PB6934	
DRAWING NUMBER PB6934-RHD-01-ZZ-DR-4039		STATUS S0	REVISION 1

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Appendix B

Location Plan





Key

- Order limits
- Habitat Mitigation Area
- Land outside Order limits



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LICENCE NUMBER. 100017728

REV	DATE	DESCRIPTION	BY	CHK	APP
0	19/03/21	For submission	JT	AG	PS

TITLE **BOSTON ALTERNATIVE ENERGY FACILITY DEVELOPMENT CONSENT ORDER Regulation 5(2)(o) - Location Plan BOSTON BOROUGH COUNCIL Sheet 1 of 1**

Application Number EN010095					
DRAWN	JT	CHECKED	AG	APPROVED	PS
DATE	19/03/2021	SCALE @A1	1:2,500	REF	PB6934
DRAWING NUMBER PB6934-RHD-01-ZZ-DR-4001			STATUS	REVISION	
			SO	0	

Appendix C

Proposed Biodiversity Net Gain Measures at Havenside Local Nature Reserve



Technical Note

HaskoningDHV UK Ltd.
Industry & Buildings

To: Boston Borough Council
From: Royal HaskoningDHV
Date: 11 February 2022
Our reference: PB6934-RHD-ZZ-XX-NT-Z-4089 V2
Checked by: Paul Salmon

Subject: Appendix C- Proposed Biodiversity Net Gain Measures at Havenside Local Nature Reserve

Appendix C

Table 1 Proposed Biodiversity Net Gain Measures

	BNG Option	Description of BNG Options	Proposed Location for BNG Measure	Timescales for BNG Measure	Estimate of BNG Measure
1	<p>Habitat reinstatement of overgrown freshwater habitat within the Havenside Local Nature Reserve (LNR). Pools located around the monument could have some clearance to open up the habitat (Table 3-1, Option 2, document reference 9.30, REP2-013).</p> <p>Measure mentioned on page 5 in Section 2.1, Area 2, in the Havenside LNR Five Year Management Plan 2005 -2010.</p>	<p>To provide additional habitat for waders, wildfowl and other wildlife. The distance from the footpath to the main area of cleared habitat would need to be maximised. As it is within the LNR, it is expected that dogs would be kept on leads and therefore disturbance minimised. To</p>	<p>Pools located around the monument</p>	<p>To be completed prior to or during year 1 of construction of the Facility</p>	<p>Varies according to extent (cap at £4,000)</p>

	BNG Option	Description of BNG Options	Proposed Location for BNG Measure	Timescales for BNG Measure	Estimate of BNG Measure
		include de-weeding and de-silting of ponds.			
2	Potential for habitat creation alongside The Haven on the north bank within the Havenside LNR (Table 3-1, Option 3, document reference 9.30, REP2-013)	To provide additional habitat for a wider variety of wildlife, including birds. The distance between any created habitat and the footpath would need to be maximised. As it is within the LNR, it is expected that dogs would be kept on leads and therefore disturbance minimised	North bank of The Haven within the Havenside LNR	To be completed prior to or during year 1 of construction of the facility	Varies according to extent (cap at £4,000)
Measures identified in the Havenside Local Nature Reserve Management Plan 2005-2010					
3	Litter and rubbish clearing on the saltmarsh (page 7, Section 4.1, paragraph 2)	Removing litter and rubbish along the foreshore and intertidal area that has been washed down river	Area 1 as shown in the Havenside LNR Five Year Management Plan (2.5 km possible bank length)	3 people for 1 week every 6 months for the operational life of the Facility (25 years)	£2,000 for staffing plus vehicle and equipment disposal cost of £1,000
4	Removing dumped soil and rubble (page 4, Section 2.1)	Removal of existing soil and rubble that provides no biodiversity benefit	Area 1 as shown in the Havenside LNR Five Year Management Plan	Completed during Year 1 of construction of the Facility	Varies according to extent (cap at £2,000)

	BNG Option	Description of BNG Options	Proposed Location for BNG Measure	Timescales for BNG Measure	Estimate of BNG Measure
5	Management of grassland in Area 1 of the Havenside LNR Five Year Management Plan (page 7, Section 4.1.1, paragraph 5)	Hay meadow cutting regime (mentioned in Section 4.1.1 of the Havenside LNR Five Year Management Plan)	Area 1 as shown in the Havenside LNR Five Year Management Plan	Annual cut in August for the duration of the operation of the Facility (25 years) 1 person for 2 days every 12 months	£500 per year
6	Removal of Invasive Non-Native Species (INNS) (page 9, Section 4.1.1, paragraph 4)	Spraying of Giant Hogweed and other INNS	Area 1 as shown in the Havenside LNR Five Year Management Plan	Annual spray regime every Spring 1 person for 2 days every 12 months	£500 per year
Other Potential Measures					
7	Surveys of flora and fauna to provide a better understanding of the local ecology	Information used to implement any management changes.	Area 2 (there is very little ecological information available about Area 2 but it is likely to be one of the	1 survey every 5 years for the duration of the operation of the Facility (25 years)	£750 per survey

	BNG Option	Description of BNG Options	Proposed Location for BNG Measure	Timescales for BNG Measure	Estimate of BNG Measure
			better areas for wildlife supporting birds)		
8	Improving existing habitat condition for amphibians and invertebrates	<p>Creation of ponds with a sunny aspect, suitable depth and amount of aquatic vegetation</p> <p>Creation of hibernation areas</p> <p>Continuity of sufficient and appropriate habitat over time</p> <p>Soil mounds and piles of dead wood to provide sheltering places for wintering invertebrates</p> <p>Wildflower planting - increase pollen and nectar sources like flower-rich margins or pollen and nectar plots</p> <p>Cluster of scrapes (with rough sloping edge) and wetland</p>	Scale and approach to be agreed dependent on more detailed plans		£3,000 initially for habitat creation and £1,000 per year for maintenance for the duration of the operation of the Facility (25 years)
Other Measures Identified by Boston Borough Council in February 2022					

	BNG Option	Description of BNG Options	Proposed Location for BNG Measure	Timescales for BNG Measure	Estimate of BNG Measure
9	Survey the Country Park to establish opportunities for BNG and calculate the BNG using metric 3.	N/A	Country Park	During Year 1 of Construction	£5,000
10	Write and consult on a new management plan that encompasses the needs of both designations.	<ul style="list-style-type: none"> ○ BNG management measures. ○ Removal of litter and dumped materials as required. ○ Management of invasive species. 	Country Park	During Year 2 of Construction	£7,000
11	Other measures such as signage to promote sensible dog walking and highlight the importance of the habitat being created.	N/A	Country Park	During Year 3 of Construction	£5,000

Note: The measures set out in this table may change dependant on the recommendations made in the new management plan to be compiled during year 2 of construction. Measures set out in this plan will supersede any outstanding measures set out in this table with the contribution from Alternative Use Boston Projects Ltd. Being no greater than that set out in this table.

Appendix D

Outline Public Rights of Way Design Guide and Stopping Up Plan



REPORT

Boston Alternative Energy Facility

Public Rights of Way – Outline Design Guide and
Stopping Up Plan

Client: Alternative Use Boston Projects Ltd.

Planning Inspectorate EN010095

Reference:

Document Reference: 9.41(1)

Pursuant to: APFP Regulation: 5(2)(q)

Reference: PB6934-ZZ-XX-RP-Z-4042

Status: Final/1.0

Date: 15 March 2022





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Document title: Boston Alternative Energy Facility

Document short title: Public Rights of Way – Outline Design Guide and Stopping Up Plan

Reference: PB6934-ZZ-XX-RP-Z-4042

Status: 1.0/Final

Date: 15 March 2022

Project name: Boston Alternative Energy Facility

Project number: PB6934

Author(s): Mike Estell

Drafted by: Mike Estell and Paul Salmon

Checked by: Abbie Garry

Date: 15/03/22

Approved by: Paul Salmon

Date: 15/03/22

Classification

Project related

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1 Introduction

1.1.1 This report has been compiled in relation to the Boston Alternative Energy Facility (the Facility) and has been prepared by DRaW (UK) Ltd on behalf of Alternative Use Boston Projects Limited (the Applicant) to support the application for a Development Consent Order (DCO), made to the Planning Inspectorate under Section 37 of the Planning Act 2008 (the 2008 Act).

1.1.2 DRaW (UK) Ltd are landscape architects with expertise in design and delivery of recreational facilities, country parks and countryside access schemes that include strategic planning and delivery of footpath, bridleway and cycleway networks.

1.1.3 The report addresses matters raised in Representations from stakeholders and forms part of a response to the Written Question made by the Examining Authority of the Planning Inspectorate, specifically question Q12.0.6:

'Please provide detailed assessment of the proposals for permanently closing Public Rights of Way and the mitigation proposed, paying particular note to the detailed points raised in Boston BC's RR [RR-019]'.

1.1.4 This report summarises the existing Public Rights of Way (PRoW) network with the primary purpose of the report being to provide outline guidance for measures to help mitigate the effects of proposed footpath stopping up and for the enhancement of the specific, retained sections of footpath that will provide the necessary diversion.

1.1.5 Appendix A of this report provides information on the proposed principles, approaches and mitigation relating to the managing of the stopping up of PRoW.

1.2 Existing Public Rights of Way

1.2.1 Existing PRoWs are illustrated in **Figure 1-1** along with their unique identifiers (e.g. BOST/14/2). All affected PRoW are footpaths; there are no bridleways. There are two named, long distance footpaths within, and in proximity to the Facility:

- Macmillan Way (shown in orange); and
- The Cross Britain Way (shown in blue).

1.2.2 In addition, the Sustrans National Cycle Network Route 1 (North Sea Cycle Route- shown in purple) follows existing roads to the west of the Facility.

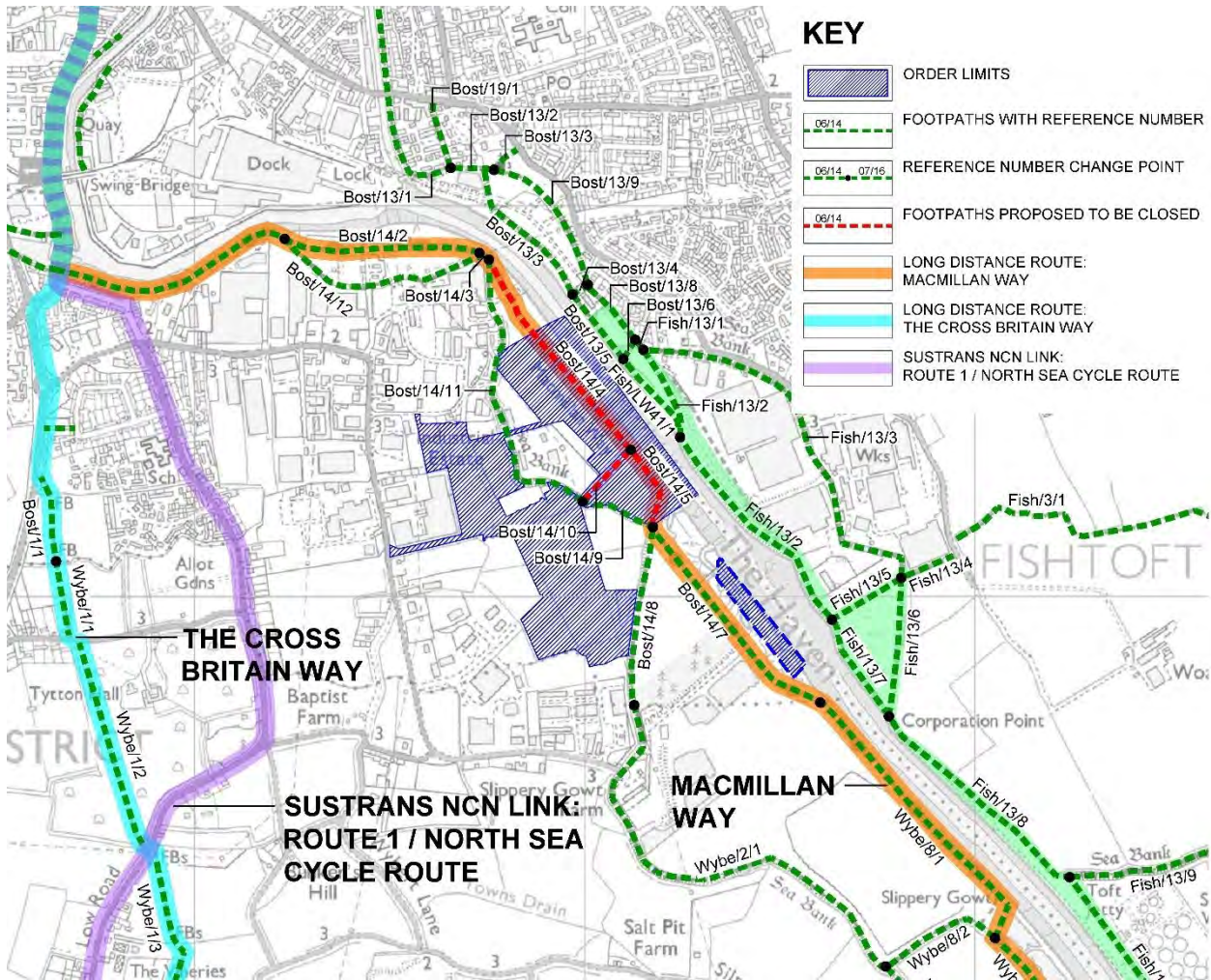


Figure 1-1 Existing Public Rights of Way

1.2.3 An additional consideration is the proposed England Coast Path (ECP). The publication ‘Coastal Access, Natural England’s Approved Scheme’ (2013) outlines the methodology for implementation of the ECP, driven by Part 9 of the Marine and Coastal Access Act 2009 (2009 Act). The 2009 Act aims to improve public access to, and enjoyment of, the English coastline by creating clear and consistent public rights along the English coast for open-air recreation on foot. The Natural England publication states¹:

‘Section 296 of the of the 2009 Act places a duty on Natural England and the Secretary of State to use their powers to secure twin objectives:

- The first objective is to secure a route around the whole of the English coast, which the 2009 Act refers to as “the English coastal route”. This route is an approved mapped line, rather than a physical path.

¹ Coastal Access Natural England’s Approved Scheme 2013, page 7, para 1.2.2

- The second objective is to secure an associated “margin” of land for the public to enjoy, either in conjunction with their access along the route line, or otherwise. This legal duty on Natural England and the Secretary of State is known in the 2009 Act as “the Coastal Access Duty”.



Figure 1-2 England Coast Path – Stretch Progress, 11th November 2021

(Section 49; Sutton Bridge to Skegness, status: Proposals published but not yet determined)

1.2.4 Natural England’s current published proposal², (**Figure 1-2**) shows the ECP following the Macmillan Way where it passes through the Principal Application site. The implementation programme for the Sutton Bridge to Skegness ECP stretch is that the alignment is agreed with the Secretary of State in 2022 with the path opening in 2023.

1.3 Proposed DCO Application Changes to Public Rights of Way

1.3.1 The Access and Rights of Way Plan (document reference 4.5, APP-015) and Environmental Statement **Figure 5.3** (document reference 6.3.23, APP-068) submitted in support of the DCO application illustrate the proposed stopping up of footpaths. During construction and operational stages, footpaths Bost/14/4, Bost/14/10 and Bost/14/5 would be permanently closed (illustrated in **Figure 1-1** as dashed red lines), which equates to approximately 1.1km of footpath. Appendix

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1032572/coastal-access-england-map.pdf

A provides information on outline measures relating to the permanent and temporary stopping up of PRow.

- 1.3.2 The proposed stopping up of Bost/14/4 and Bost/14/5 directly affects the Macmillan Way and the proposed future alignment of the ECP. The proposed diversion for route closures (including Macmillan Way) is along existing footpaths Bost/14/9 and Bost/14/11 which follow the route of the Roman Bank (Sea Bank), as identified on **Figure 1-3**. A fenced public footbridge will be provided across an existing gap in the Roman Bank.
- 1.3.3 Should the DCO application be granted in advance of the decision to approve the Sutton Bridge to Skegness ECP stretch, it would be the responsibility of Natural England to publish a Variation Report to show the ECP alignment following the proposed diversion along footpaths Bost/14/9 and Bost/14/11. The variation would be subject to Secretary of State approval.

1.4 Condition of existing footpaths to be used as the diversion route

- 1.4.1 A site walkover and assessment (including a photographic record) of the sections of footpath for proposed use as permanent diversions was made in September 2021. The findings of that assessment are summarised below.



Figure 1-3 Proposed footpath diversion (yellow dot) along existing footpaths that follow the Roman Bank (Sea Bank)

- 1.4.2 The 'Roman Bank' earthwork is recorded as a non-designated heritage asset of local historical and archaeological interest. Also known as 'Sea Bank', the bank is associated with a known bank that has been traced extending into Norfolk, forming an early sea wall. Documentary research suggests it could be of Anglo-Saxon origin, although no archaeological evidence has been found for this within the local area (paragraph 8.6.4, document reference 6.2.8, APP-046).
- 1.4.3 The Cultural Heritage Desk Based Assessment (ES Appendix 8.1, document reference 6.4.3, APP-096) identifies that the earthwork is currently poorly dated and understood. The settings assessment undertaken as part of the Cultural Heritage Desk Based Assessment concludes that the current setting of the asset does not add to, and is in fact detrimental to, the significance of the asset. Currently, the section of the bank within the Application Site is poorly visible and has no linked views to other heritage assets (paragraph A8.11.25, document reference 6.4.3, APP-096).
- 1.4.4 The relatively constant level of the Roman Bank provides a comfortable walking

route, without pronounced changes in gradient. The bank comprises of relatively steep sided slopes and a narrow top section of slightly varying width, averaging approximately 1.2m. The height of the bank also varies between approximately 2m and 3m in relation to adjoining ground levels.

1.4.5 The walkover of footpaths Bost/14/9 and Bost/14/11 revealed the following points to note:

- Existing paths are relatively 'clear' to traverse, most likely due to recent clearance undertaken to accommodate the current path diversions arising from The Haven Banks Improvement Scheme and the closure of The Haven riverside paths (part of the Environment Agency's Boston Combined Strategy).



Figure 1-4 Current (September 2021) temporary footpath closures

- Existing surfaces (trodden ground) appear well drained, consolidated and firm underfoot. There are occasional rabbit burrows, steep footpath cambers and rutted sections.
- Paths do not appear well used and the grass surfaces are not worn. Site observation supports the apparent limited use of the path network to the west of The Haven. This contrasts with path usage to the east of The Haven where walkers, joggers and other users can frequently be observed. (Please note pedestrian usage is based upon casual site observation, not technical survey).

- Permanent 2m high security fencing prevents access onto footpath Bost/14/10 from the Roman Bank path Bost/14/9. Footpath Bost/14/12 (north of the Principal Application site) does not appear to exist on the ground. Lack of access to both footpaths demonstrates further support that there is a limited desire generally for footpath usage west of The Haven.



Figure 1-5 Footpath Bost/14/12 does not appear to exist on the ground (view looking west from the northern end of footpath BOST/14/11)

- Sections of footpath BOST/14/11 are often hemmed in both sides by 2m high palisade security fencing. The 'gap' between fences often forms a very narrow corridor that is oppressive in character, evoking a strong sense of being 'trapped'. Existing security fencing in close proximity to the existing path (either one or both sides) is a significant source of visual intrusion and blights the pedestrian experience.

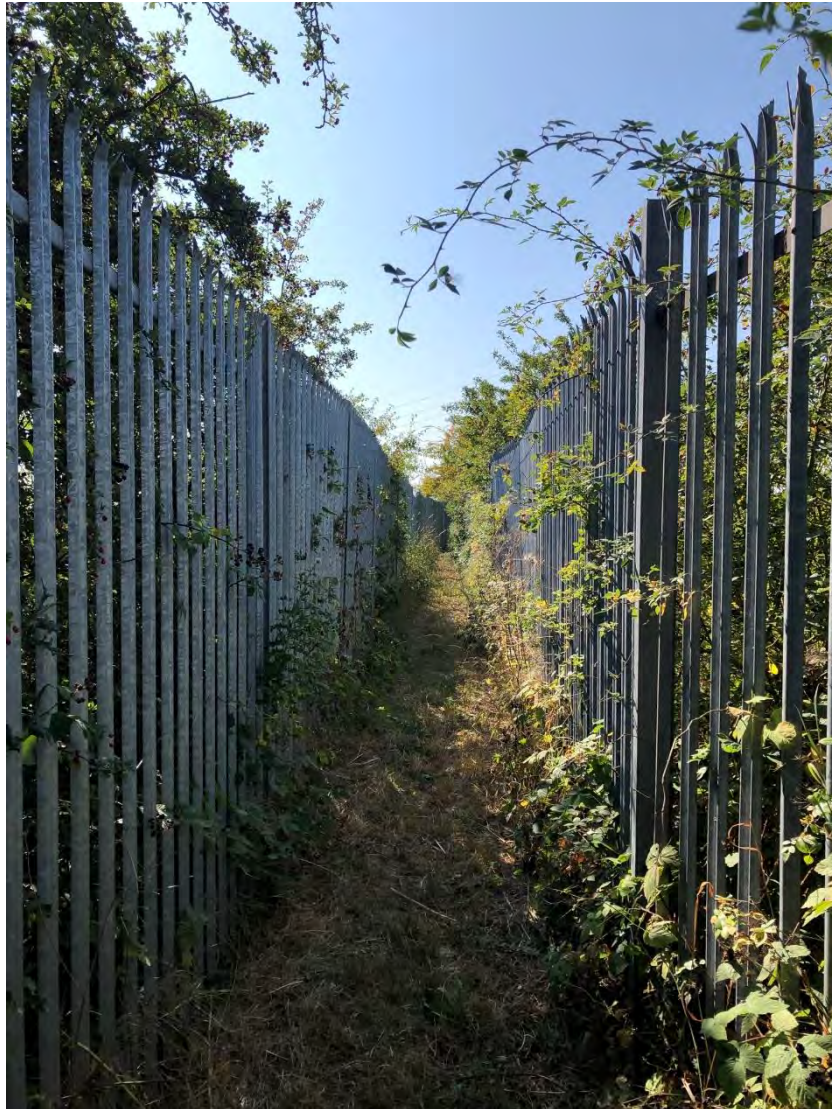


Figure 1-6 Tall security fencing either side of existing the footpath BOST/14/11 creates narrow, oppressive spaces



Figure 1-7 Broken sections of fencing and general sense of neglect along the path.

- Views into neighbouring service yards and industrial facilities are often poor quality, with noise and activity affecting perceptual character.
- Vegetation overhangs and encroaches in certain areas. Basal stems to woody species are often located directly on the edge of the path. Recent clearance appears to have made some improvement, but limited footpath usage has allowed nettles, tall ruderals and brambles to quickly encroach upon the path.



Figure 1-8 Overhanging branches and vegetation encroachment on footpath BOST/14/11

- Existing vegetation is generally appropriate to the area, comprising of native species with some habitat value and visual diversity.
- The meandering alignment of the existing footpaths (BOST14/11 and BOST/14/9), encroaching vegetation and fence lines, often creates ‘blind’ corners with limited forward visibility.



Figure 1-9 Limited forward visibility on footpath BOST14/11

- Fly tipping where footpath BOST/14/11 adjoins the unnamed road off Nursery Road lends a sense of neglect.



Figure 1-10 Fly tipping on footpath Bost/14/11 alongside the unnamed road off Nursery Road

- There is no waymarking signage or demarcation. Informal approaches from the adjacent industrial park and other locations are almost entirely anonymous with no visual reference.



Figure 1-11 Approaches onto footpath Bost/14/11 off Lealand Way

Informal access points to the footpath are untidy and anonymous.





Figure 1-12 Access onto footpath Bost/14/11 from the lane off Nursey Road

- Sections of path that are unfenced and enclosed by mixed species of trees and shrubs are pleasant to negotiate and screen or filter views to neighbouring development.



Figure 1-13 Unfenced sections of footpath BOST/14/9 and framed views out.

1.5 Consultation

- 1.5.1 Two virtual meetings were held with officers of Boston Borough Council, Lincolnshire County Council and Natural England, on 31st August and 27th September 2021. The meetings were specifically to address concerns raised by these stakeholders in relation to the proposed DCO application works to stop up footpaths Bost 14/4, Bost 14/5 and Bost 14/10 and the future development of the footpath diversion.
- 1.5.2 The proposed future strategy for the footpath diversion, as outlined in this report, has been informed by consultation with the various stakeholders, both in writing and in these meetings.

2 Proposed Enhancement of the Diversion Footpath

2.1 Overview

- 2.1.1 The proposed permanent stopping up of existing footpaths along the west bank of The Haven lends significant importance to the provision of a suitable north-south alternative footpath, that is both attractive and safe to use.
- 2.1.2 Cultural and heritage assets are important factors. The Haven is a gateway to Port of Boston and town, providing an essential historical trading route that remains to this day. The Haven was the scene of the first attempt of the Scrooby Pilgrims to leave England in 1607; an event commemorated downstream at the Pilgrims Father Memorial. The proposed footpath diversion along the Roman Bank adds depth to cultural and heritage links. Recreational use of the river is a more recent aspect, but further adds to the vitality and diversity of The Haven corridor.
- 2.1.3 Proposals outlined below form additional mitigation (to the predicted effects of the Facility) to those identified in the Environmental Statement's Landscape and Visual Impact Assessment (document reference 6.2.9, APP-047).

2.2 Aims and Objectives

- 2.2.1 The Applicant proposes a package of remedial and enhancement measures to the existing footpaths Bost 14/9 and Bost 14/11 (illustrated in **Figure 1-3** with a yellow dashed line), which will form the permanent diversion route. These will aim to:
- Provide an attractive, safe and accessible footpath corridor that forms a southern gateway to Boston; and

- Enhance and add value to the experience of using these footpaths by increasing awareness of the historic and natural environment and connection between the Principal Application site, the river and the town.

2.2.2 The aims will be met through the funding and / or direct implementation of the enhancements (see Section 2.3 below) outlined in the following sections. The package of remedial and enhancement measures will be secured through the section 106 agreement under negotiation between the Applicant, Lincolnshire County Council and Boston Borough Council, in consultation with Natural England.

Accessibility

2.2.3 The relatively constant level of the Roman Bank provides a comfortable walking route, without pronounced changes in gradient. Proposed footpath enhancement will have particular regard in further improving accessibility to persons with mobility impairment. Proposed measures will avoid use of gates, stiles, barriers and steps. Where practicable and / or necessary, inclines will be graded to avoid slopes exceeding 1 in 20 steepness.

2.2.4 This objective will strive to most fully conform with the Equality Act 2010 and Countryside and Rights of Way Act 2000, the latter places a legal duty on highway authorities to consider people with mobility problems and visual impairment when authorising structures on public footpaths and bridleways.

Boundary treatments

2.2.5 Existing tall palisade security fencing alongside footpaths within the Principle Application site, will either be removed in its entirety or relocated by the Applicant. The objective will be to both physically and visually, 'open up' the footpath corridor, making as discreet as possible any subsequent views to relocated security fencing. The Applicant will also make best endeavours to negotiate the re-positioning of security fencing alongside sections of footpath (BOST/14/11) that lie outside of the Principle Application site and are not, therefore within the Applicants control.

2.2.6 At certain locations alongside footpaths, timber post and rail fencing may be required to make safe potential fall hazards; for example, where the path abuts steep downward slopes or crosses culverts and other vertical sided features. Use of such fencing will be kept to a minimum.

2.2.7 Careful consideration of potential effects to existing vegetation, ecology and the Roman Bank will be required, and a working methodology developed for any on-site works.

Proposed surface finishes

- 2.2.8 Proposed enhancement measures will be restricted to remediation of the existing trodden surface. Works will include minor regrading of the existing surface by loosening and reconsolidating substrates to create an even running profile, remove hollows and pronounced changes in level and to provide a slight camber to aid surface drainage.
- 2.2.9 The finished surface will be grass seeded and allowed to be worn and trodden. This approach will align with the specification set by the Environment Agency for ongoing works to footpaths along The Haven (in relation to The Haven Banks Improvement Scheme).
- 2.2.10 Given that the footpath traverses the top of the Roman Bank, the aim will be to maximise the usable width of a reinstated footpath but avoid excavation / regrading or other works that may unnecessarily affect the heritage asset. The aim will be to create a usable footpath surface of average 1.2m width but this may be wider or slightly narrower subject to conditions.

Proposed management of existing vegetation and proposed planting

- 2.2.11 Management of existing vegetation alongside the Roman Bank and within the Principal Application site, is described in the Outline Landscape and Ecological Mitigation Strategy (paragraphs 4.1.4 and 10.7.1, document reference 7.4, APP-123). In essence, management works will include the cutting back of overhanging and obstructive vegetation and the introduction of new native species that will enhance both biodiversity value and screening of views to existing and proposed industrial features, as appropriate.
- 2.2.12 Proposed measures will be based upon detailed site work and include removal of woody species that physically encroach upon the desired path surface, management of vegetation to both improve forward visibility and provide a sense of 'openness' along the path. The required subtlety of works will achieve screening of certain views, whilst creating outward, framed views.
- 2.2.13 The proposal assumes that management objectives and prescriptions described within the Principal Application Site will be rolled out and implemented along the full extent of the footpath diversion.

Signage

- 2.2.14 Local highway authorities are responsible for erecting and maintaining way marks, fingerposts and other signs along footpaths and rights of way. This statutory signage provision, to be made by Lincolnshire County Council (as the highways

authority), will aid navigation and the use of the paths and as part of any legal mechanism to secure the required improvements (e.g. section 106 agreement) appropriate funding will be included for the provision of signage. Measures to further enhance the user experience are outlined below.



Figure 2-1 Signage, gateways and seating

Interpretation signage

2.2.15 Interpretation signage will be introduced at key locations, as indicated on **Figure 2-1**. Interpretation features will highlight:

- the historical context of the setting, The Haven and heritage assets, in particular the Roman Bank;
- any archaeological findings and artifacts revealed during development of the Facility and footpath diversion;
- the future contribution of the Facility to energy production and to Boston town; and

- the ecology and ornithology of The Haven.

2.2.16 The Applicant will engage with Boston educational establishments in the design and presentation of interpretation material.

Gateways

2.2.17 Key access points onto the proposed footpath diversion will be highlighted by the use of distinct ‘gateway’ features, the proposed location of these is indicated on **Figure 2-1**. These will take the form distinct visual artworks, suited to the robust industrial character of the area and with reference to historical or maritime themes.

Seating

2.2.18 Seating will be provided at either end of the enhanced footpath diversion. The design and location of seating will be subject to agreement.



Figure 2-2 Examples of robust interpretation signage, gateways and seating

2.3 Implementation

- 2.3.1 Works within the Principal Application site will be undertaken by the Applicant. Works outside the Principal Application site will either be undertaken by the Applicant (subject to agreement) or the Applicant will commute funds as part of a section 106 agreement for the necessary works.

2.4 Summary

- 2.4.1 This report has identified issues relating to the existing footpath network that will form the permanent diversion following the proposed stopping up of footpaths Bost 14/4, Bost 14/5 and Bost 14/10.
- 2.4.2 Proposed remedial and enhancement measures will transform the existing footpaths and provide an attractive, safe and accessible footpath corridor that forms a vital southern gateway to Boston from the west side of The Haven. Proposed 'gateways', artwork and interpretation signage will bring distinct identity to the route.
- 2.4.3 Enhancements will improve accessibility to, and experience of, the Roman Bank, and will have a beneficial effect upon the setting of the bank. This will be further enhanced through proposed heritage interpretation for public information, including public outreach and the provision of interpretation signage. The Outline Written Scheme of Investigation (document reference 7.3, APP-122) includes provision for archaeological monitoring of the 'Roman Bank' during construction works (paragraphs 1.1.16 and 1.5.20-25, document reference 7.3, APP-122). Any excavation of the bank, under archaeological conditions, could allow for significant data to be gathered about the asset and hopefully elucidate its origin.
- 2.4.4 Proposed measures will complement existing landscape and ecological mitigation identified in the Environmental Statement but will also introduce wider, additional benefits for recreational opportunity and the interpretation and understanding of the historic importance of the area, The Haven river and future development.



Appendix

Appendix A: Outline Stopping up of Public Rights of Way Plan

A1.1 Introduction

A1.1.1 This appendix sets out the proposed principles, approaches and mitigation relating to the managing of the stopping up of PRow. Details of the PRow that require stopping up are set out in ES Chapter 19 Traffic and Transport (document reference 6.2.19, APP-057) and are summarised below. **Figure A1** identifies the PRow closures proposed.

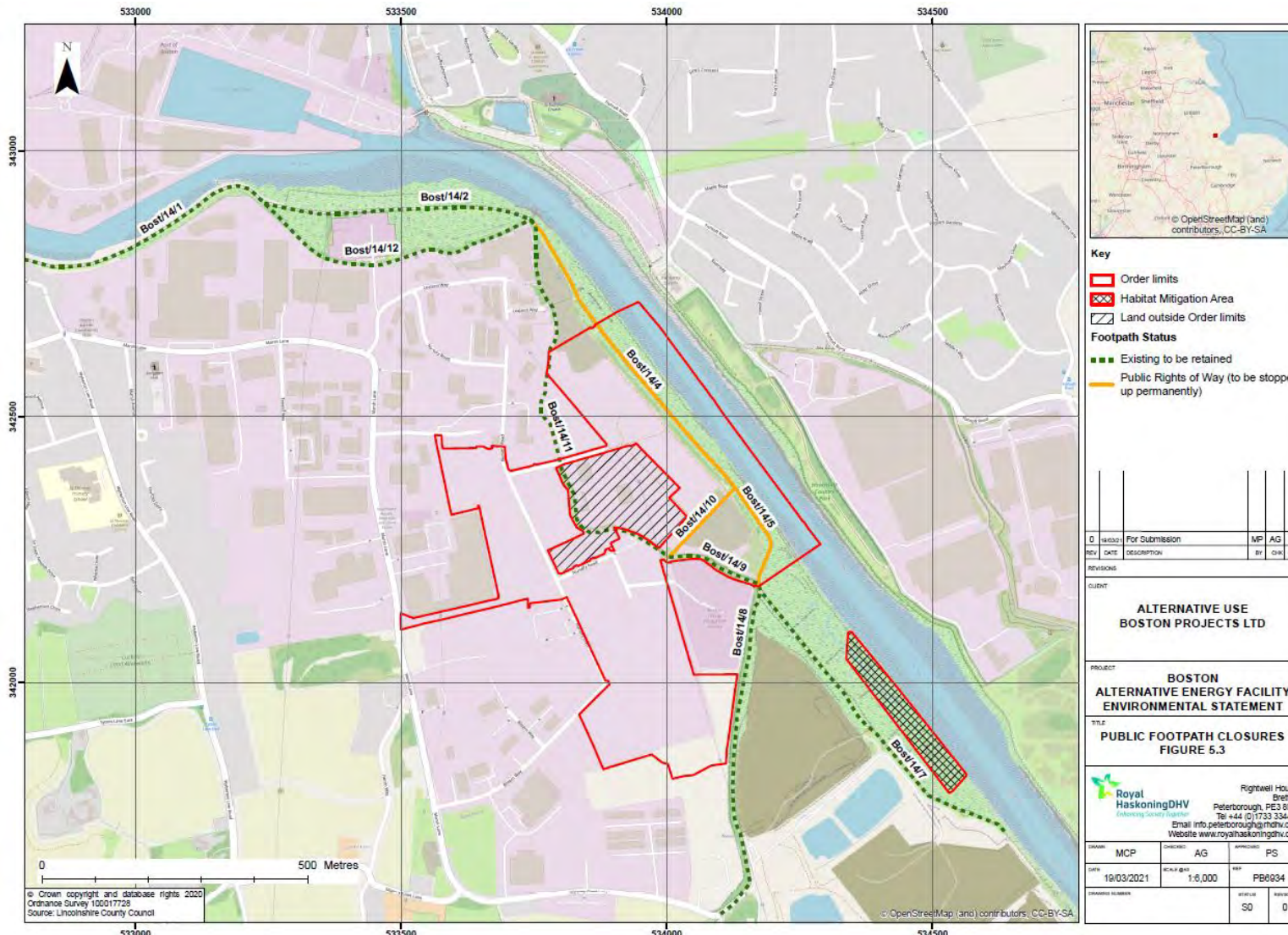


Figure A-1 Public Footpath Closures

A1.2 Purpose of this Outline Stopping Up Plan

A1.2.1 This outline PRoW Stopping Up Plan will inform the development of a final PRoW Stopping Up Plan to be agreed with Lincolnshire County Council (LCC) (as the Highways Authority responsible for PRoW) and Boston Borough Council (BBC) and Natural England (NE) prior to the construction of the Facility. The final plan will be secured through the section 106 agreement under negotiation between the Applicant, LCC and BBC. The final plan will include details on the measures set out in this document that require detailed planning or confirmation in relation to ensuring impacts are no greater than set out in the Environmental Statement and in-line with requirements from LCC, BBC and NE.

A1.3 Responsibility for implementation

A1.3.1 The responsibility for ensuring that measures set out in the detailed PRoW Stopping Up Plan are delivered rests with the Principal Contractor appointed to carry out the works; with LCC as the body responsible for enforcement.

A1.4 Details of PRoW Stopping Up

A1.4.1 During construction, the following footpath sections would be stopped up: BOST/14/4, BOST/14/10 and BOST/14/5. The stopping up would also affect the proposed ECP route which follows these footpaths, as does the Macmillan Way. The diversion for these route closures would follow BOST/14/11 and BOST/14/9 along the Roman Bank. Additionally, temporary stopping up of BOST/14/11 and BOST/14/9 will be required in order to construct a public footbridge over a gap in the Roman Bank and to implement other enhancement measures (see Section A1.6 – Temporary and Permanent Stopping Up).

A1.4.2 The diversion would affect pedestrians at two specific points. Firstly, the route of footpath section BOST/14/11 crosses over the unnamed spur road which served the former Mick George site, and which is within the Facility's Order limit. To mitigate and to allow pedestrians to safely cross over the unnamed spur road and continue their journey along BOST/14/11 traffic lights, barrier gates or banksmen will be provided at the spur road crossing-point to ensure safety of pedestrians crossing this road is maintained during construction.

A1.4.3 Secondly, pedestrians will be further affected because the route of footpath section Bost/14/11 at the intersection with Bost/14/9 is within the construction boundary of the Facility at an existing gap in the Roman Bank. Therefore, pedestrians would be routed to cross the site road within close proximity of construction traffic vehicles, thus decreasing the relative pleasantness of the

journey. Embedded mitigation is provided via a public footbridge which will be constructed early in the construction programme to provide access across the existing gap in the Roman Bank allowing for increased pedestrian safety when negotiating access over the construction site.

A1.5 Stopping Up of PROW 14 During Operation

A1.5.1 BOST/14/4, BOST/14/10 and Bost/14/5 will all be permanently stopped up. The diversion for these route closures would follow the Roman Bank along footpath sections BOST/14/11 and BOST/14/9.

A1.5.2 The diversion would affect pedestrian amenity because the route of footpath section BOST/14/11 at the intersection with BOST/14/9 is within the operational boundary of the Facility. Therefore, pedestrians would be routed close to the site roads within close proximity of operational site traffic vehicles, thus decreasing the relative pleasantness of the journey. Embedded mitigation is provided via a fenced public footbridge which will be constructed during construction and will provide access across the existing gap in the Roman Bank which will allow for increased pedestrian safety when negotiating access over the conveyor system.

A1.5.3 For outline details of improvements to BOST/14/11 and BOST/14/9 please see the main body of this report.

A1.6 Temporary and Permanent Stopping Up

A1.6.1 In order to maintain a north-south PRoW connection at all times during construction and operation. The stopping up will be implemented as per Table A 1.

Table A 1 Proposed Stopping Up

Temporary Stopping Up	<p>Temporary stopping up of BOST/14/11 and BOST/14/09 for construction of the public footbridge across a gap in the Roman Bank and for the provision of the final improvement works (as set out in outline in the main body of this report) will be required. To maintain the north-south PRoW access a temporary diversion will be created using BOST/14/4 and BOST/14/5 alongside The Haven.</p> <p>Detailed timings of such temporary stopping up will be provided in the final Stopping Up Plan but any individual (temporary) period of stopping up will not last for more than three months at one any one time, or six months in total over the whole construction period.</p>
Permanent Stopping Up	<p>Once the works to BOST/14/11 and BOST/14/09 set out above have been completed the permanent stopping up of BOST/14/4, BOST/14/10 and Bost/14/5 will take place and a permanent diversion along the Roman Bank will be implemented.</p>

A1.7 Management Measures

A1.7.1 A number of management measures will be enacted as part of the stopping up works as set out in **Table A 2**. The management measures will be secured via an appropriate legal mechanism (e.g. section 106 agreement).

Table A 2 Management Measures

Measure	Rationale
Provision of short-term diversion for temporary stopping up.	To ensure continued north-south continuity of the PRoW network (as per Section A1.4)
Temporary stopping up will not take place for any longer than three months at any one time, or for six months in total over the whole construction period. Where closures are required for longer periods due to unforeseen circumstances LCC and BBC will be informed in writing.	To ensure temporary closure and diversions are minimised
Provision of traffic lights, barrier gates or banksmen will be provided to monitor the crossing of BOST/14/11 by potential construction traffic using the unnamed spur road during the construction period.	To improve safety of PRoW users
Embedded mitigation is provided via a public footbridge which will be constructed early in the construction programme to provide access across the existing gap in the Roman Bank allowing for increased pedestrian safety when negotiating access over the construction site.	To ensure continuity of the north-south PRoW network and to provide a permanent route for the ECP and Macmillan Way.
Prior to any stopping up the Principal Contractor will undertake works in accordance with the measures established within the detailed PRoW Stopping Up Plan.	To manage the works in accordance with agreed and detailed plans.
A communication plan will be developed to ensure LCC, BCC and NE are kept informed of when and where works will be taking place.	To ensure key stakeholders and the general public are aware of the works and programme.
Appropriate media (signage/leaflets/notices) will be used to inform local residents, Parish Councils and user groups of temporary changes to the PRoW network arising from construction. Warning notices will be erected at key points where PRoW would be affected by the construction activities to make users aware of the construction working area. Signage will also show the closures and diversions in accordance with all legal requirements and advice from LCC. Appropriate local media, as agreed with LCC and BBC (such as a local newspaper), would also carry such information.	
A notice describing the temporary stoppage would be advertised two weeks in advance of the stoppage.	
LCC, BBC and relevant Parish Councils would be notified in advance (4 – 6 weeks) of any stopping-up of PRoW. The Principal Contractor will notify LCC, BBC and NE four weeks (minimum) of the intention to stop up any PRoW and advertise all alternative routes	

Measure	Rationale
<p>following any advice on such form of advertising from LCC. This will include:</p> <ul style="list-style-type: none">• Provision of a map showing the extent of the temporary stoppage and the alternative route; and• Confirmation that the alternative route across land in the developer's control is safe and fit for public use.	