

REPORT

Boston Alternative Energy Facility

The Applicant's Overall Summary of Case – Post-Examination

Client: Alternative Use Boston Projects Ltd.

Planning Inspectorate EN010095

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1 Introduction

- 1.1.1 This document has been prepared by Alternative Use Boston Projects Limited (the Applicant) in relation to the Boston Alternative Energy Facility (the Facility) Development Consent Order (DCO) application (the Application).
- 1.1.2 The Applicant submitted an Overall Summary of Case (document reference 9.103, REP10-019) at Deadline 10 that summarised the Applicant's case at the end of Examination.
- 1.1.3 Since the close of the Examination, in response to a number of requests by the Secretary of State (SoS) the Applicant has submitted additional material to support its case. This document sets out an update to the Applicant's Overall Summary of Case at Deadline 10, in the light of the evidence submitted following the close of the Examination. Where there has been no change to the information set out in the Deadline 10 document since the close of the Examination, this document provides a cross reference to the relevant section of that document.
- 1.1.4 The purpose of this document is to provide final position statements on key matters arising during the Examination and post-Examination period, focussing on those matters addressed in the post-Examination period. It does not seek to introduce new material or to raise any new issues. It signposts and reflects the material that has already been submitted to the Examination or to the Secretary of State following the close of the Examination.

1.2 Documents Submitted by the Applicant Since the Close of the Examination

1.2.1 In summary:

- In response to the letter issued by the Department for Business, Energy & Industrial Strategy (BEIS) on behalf of the SoS dated 14 October 2022 requesting further information (14 October Letter), the Applicant submitted the following documents:
 - The Applicant's response to the Secretary of State's letter of 14 October 2022 dated 11 November 2021 (document reference 9.107) (11 November Response); and
 - An updated Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures (clean) and (tracked) (document reference 9.30(3)).

- In response to the letter issued by BEIS on behalf of the SoS dated 25 November 2022 requesting further information (25 November Letter), the Applicant submitted the following document:
 - The Applicant's Response to Secretary of State's Letter of 25 November 2022 dated 9 December 2022 (document reference 9.108) (9 December Response).
- In response to the letter issued by BEIS on behalf of the SoS dated 10 January 2023 requesting further information (10 January 2023 Letter), the Applicant submitted the following documents in addition to this document:
 - A cover letter dated 10 March 2023;
 - A Without Prejudice Compensation Case for The Wash and North Norfolk SAC for Harbour Seals (document reference 9.110);
 - The Applicant's Response to Comments Raised by Natural England and the RSPB (document reference 9.111);
 - An updated version of the Outline Marine Mammal Mitigation Protocol (tracked and clean) (document reference 9.12(3));
 - An Addendum to the Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures (for The Wash SPA) (document reference 9.112);
 - An updated version of the Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures (tracked and clean) (document reference 9.30(4));
 - An updated version of the Outline Landscape and Ecological Mitigation Strategy (tracked and clean) (document reference 7.4(4));
 - An updated version of the draft DCO (tracked and clean) (document reference 2.1(7)); and
 - An updated version of the Validation Report (document reference 2.3(3)).
- Additionally, on behalf of the Applicant, BDB Pitmans submitted a letter to BEIS dated 5 January 2023 confirming the completion of an agreement between the Applicant, Environment Agency and the relevant landowner relating to the disapplication of environmental permits for flood risk activities in respect of the Facility.

1.3 Structure of this Document

1.3.1 The document is structured as follows:

- Section 2: compliance with relevant National Policy Statements (NPSs);
- Section 3: a summary of the need for and benefits of the Facility;
- Section 4: a summary of the residual adverse impacts of the Facility;
- Section 5: compulsory acquisition;
- Section 6: funding;
- Section 7: representations by interested parties; and
- Section 8: the planning balance in respect of the Facility.

1.3.2 This document concludes that having full regard to the relevant policies, the submissions set out below and the evidence submitted to the Examination and to the Secretary of State following the close of the Examination, the benefits of the Facility strongly outweigh its residual adverse impacts and consent should now be granted.

2 National Policy Statements

- 2.1.1 Section 104(2)(a) of the Planning Act 2008 (PA 2008) provides that the Secretary of State must have regard to any National Policy Statement (NPS) which has effect in relation to the proposed development. Further, section 104(3) states the Secretary of State must determine the application in accordance with relevant NPSs. The Applicant in section 2 of its Overall Summary of Case (document reference 9.103, REP10-019) set out how the Facility accords with the relevant NPSs for energy (NPS EN-1 and NPS EN-3).
- 2.1.2 There remains an unequivocal and urgent need for nationally significant energy infrastructure, particularly low carbon, renewable energy generation, including plant powered by the combustion of biomass and waste. NPS EN-1 creates a presumption in favour of granting consent for energy NSIPs (paragraph 4.1.2). The Applicant maintains that for the reasons set out in its Overall Summary of Case, the presumption of support for the Facility, as a means to provide secure, reliable and renewable energy infrastructure, is undeniable and this presumption should be given significant weight.

2.2 Draft Energy National Policy Statements (ENPSs)

- 2.2.1 As set out in the Deadline 10 Overall Summary of Case (document reference 9.103, REP10-019), the Applicant has also considered the recently consulted draft ENPSs (document reference 9.25, REP2-009). While the Applicant acknowledges that the draft ENPSs are not in force yet and as such compliance is not mandatory, the Applicant considers that the Facility's compliance with the draft ENPSs further strengthens the case for the consent of the Facility as the ENPSs are reflective of the government's position and attitude to new energy infrastructure. In particular, the Draft NPS EN-1 (BEIS, 2021a) at paragraph 3.3.8 sets out:

“Given the changing nature of the energy landscape, we need a diverse mix of electricity infrastructure to come forward, so that we can deliver a secure, reliable, affordable, and net zero consistent system in 2050 for a wide range of demand, decarbonisation, and technology scenarios”.

- 2.2.2 The Facility will provide a near-continuous and reliable supply of lower carbon energy to the National Grid, which will primarily be regulated by the throughput of waste as feedstock, and is not dependent on wind or solar conditions. This is consistent with aims of the current and draft NPS by contributing to the need for a diverse mix of technologies and fuel.

3 Need for the Facility and Benefits

3.1 Need for the Facility

- 3.1.1 The Applicant's Overall Summary of Case (document reference 9.103, REP10-019) at Deadline 10 set out the reasons why there is an undoubtedly strong need for the Facility. In particular, the urgent and substantial need for new energy generation infrastructure, with the desire for it to be renewable or low carbon, to achieve climate change targets established and made legally-binding under the Climate Change Act 2008. Since the close of the Examination the urgent need to bolster the UK's energy security and create a strong resilient domestic energy supply has been further enhanced with the substantial increase in domestic energy costs and issues arising from the current war in Ukraine. If the UK is to reduce energy bills in the long term, secure energy from a diverse range of technology sources is a necessity. The Facility provides another step towards the urgently needed diversification, decarbonisation and domestication¹ of electricity generation in the UK and will help to power Britain from Britain by supporting the UK's energy security and independence.
- 3.1.2 In addition to helping address the need for new energy generation infrastructure, the Facility provides significant waste management and carbon capture benefits.
- 3.1.3 The Facility will divert waste which is currently being disposed to landfill to produce energy. In 2019, 12.5 million tonnes of combustible waste was landfilled in the UK (approximately 10.5 million tonnes of which would be available to the Facility by virtue of its access to a network of UK supply ports). A further approximate 2.8 million tonnes of RDF and solid recovered fuel was exported internationally in 2019. The Facility will process up to 1.2 million tonnes of RDF as the feedstock to generate energy. The Facility has significant waste management benefits for the UK as it diverts waste intended for landfill up the waste hierarchy.
- 3.1.4 The Facility's contribution towards effective waste management in the UK also supports the UK's compliance with the proximity principle. By using UK waste, the Facility enhances the UK's self-sufficiency. This allows the UK to rapidly transition from dependence on energy from abroad.²
- 3.1.5 The Facility will incorporate two carbon capture recovery plants, despite there currently being no statutory requirement for Carbon Capture, Utilisation and

¹ Chatham House speech on greater energy independence; From: Department for Energy Security and Net Zero and The Rt Hon Grant Shapps MP; Published: 2 March 2023; available at: <https://www.gov.uk/government/speeches/chatham-house-speech-on-greater-energy-independence>

² Authored article: My five-point economic action plan for the G20; From: Prime Minister's Office, 10 Downing Street and The Rt Hon Rishi Sunak MP; Published: 14 November 2022; available at <https://www.gov.uk/government/speeches/my-five-point-economic-action-plan-for-the-g20>

Storage (CCUS) for Energy from Waste facilities. In addition to the well-established environmental benefits of CCUS, the significant CCUS benefits of the Facility promote resilience in the UK's CO₂ supply for food and associated industries. CO₂ is critical to UK food security provision. Shortages in food grade CO₂ impacted UK food sectors for several months in 2018. The UK Food & Drink sector's requirement in 2018 was 600,000 t/yr delivered via a small number of producers. The Facility will have capacity to contribute 240 t/day or 80,000 t/year of CO₂, with potential in the future to increase carbon capture and usage, subject to securing necessary permissions.

3.2 Benefits

3.2.1 The major benefits of the project are summarised in the Applicant's Overall Summary of Case (document reference 9.103, REP10-019) at Deadline 10. In addition to those benefits, the Secretary of State may wish to consider the additional benefits now included as part of the Without Prejudice Compensation Case for The Wash and North Norfolk SAC for Harbour Seals (document reference 9.110):

3.2.1.1 Funding of Harbour Seal Rehabilitation: The Applicant proposes to provide funding to the value of £10,000 per year throughout the operational lifetime of the Facility for the rehabilitation of harbour seals in The Wash, through a partnership with Skegness Natureland Seal Sanctuary. This equates to the successfully rehabilitation of approximately five seals per year for the operational lifetime of the Project. Should the DCO be granted, the Applicant would enter into a contractual funding arrangement with its proposed partner, Skegness Natureland.

3.2.1.2 Funding and Support of Research to Understand the Reasons for Population Decline and Threats: The Applicant has agreed to fund research up to the value of £10,000 per year for a period of three years, starting from commencement of construction period which is expected to be around 2025, should the DCO be granted. The Applicant has been in contact with the Sea Mammal Research Unit and Lincolnshire Wildlife Trust to investigate supporting their research in this field. The Applicant can provide assistance through financial contributions and / or by sharing AIS vessel data to be used alongside tagging of seals.

3.2.1.3 This funding would be provided as marine net gain should the Secretary of State determine compensation measures are not necessary for harbour seal.

4 Adverse Effects

4.1.1 In relation to the following residual effects as a result of the Facility, there has been no change in the Applicant's position or information provided since the close of the Examination. Therefore please refer to the following sections of the Applicant's Overall Summary of Case (document reference 9.103, REP10-019):

- Section 4.2 – Cultural Heritage
- Section 4.3 – Landscape and Visual Impact
- Section 4.4 – Noise and Vibration
- Section 4.5 – Contaminated Land, Land Use and Hydrogeology
- Section 4.6 – Terrestrial Ecology
- Section 4.9 – Marine Water and Sediment Quality
- Section 4.10 – Estuarine Processes
- Section 4.12 – Navigational Issues
- Section 4.13 – Traffic and Transport
- Section 4.14 – Socio-Economics (paragraphs 4.14.1-4.14.3)
- Section 4.15 – Climate Change
- Section 4.16 – Health Impact Assessment
- Section 4.17 – Waste
- Section 4.18 - Major Accidents and Risk Management

4.1.2 The following sections summarise the Applicant's position in relation to the residual effects as a result of the Facility where there has been additional information provided following the close of the Examination.

4.2 Surface Water, Flood Risk and Drainage Strategy

4.2.1 The Applicant's overall position in relation to Surface Water, Flood Risk and Drainage Strategy remains as set out in section 4.7 of the Applicant's Overall Summary of Case (document reference 9.103, REP10-019). However, following the close of the Examination, the Applicant, the Environment Agency and the relevant landowner entered into an agreement relating to the disapplication of environmental permits for flood risk activities in respect of the Facility. This was confirmed in the letter submitted to the BEIS by BDB Pitmans on behalf of the Applicant dated 5th January 2023. The Environment Agency confirmed that it withdrew its objection to the disapplication of environmental permits for flood risk

activities in the “Update on position from the Environment Agency” dated 5 January 2023.

4.3 Air Quality

4.3.1 The Applicant’s overall position as to air quality impacts has not changed since that set out in section 4.8 of the Applicant’s Overall Summary of Case (document reference 9.103, REP10-019). However, the Applicant has provided additional information on air quality impacts as they relate to the Habitats Regulations Assessment in its 25 November Response in response to information provided by Natural England. Further detail is set out in section 4.6.3 - 4.6.4 below.

4.3.2 Additionally, the Applicant notes the Environment Agency in its ‘Response to the Secretary of State for Business, Energy and Industrial Strategy’s letter dated 14 October 2022’ confirmed in relation to air quality: “*We are broadly satisfied with the type of evidence provided by the applicant regarding air quality, but we are unable to pre-determine any permit application, should one be made.*”

4.4 Marine and Coastal Ecology

4.4.1 The main potential impacts arising from the construction period are habitat loss/alteration, increased suspended sediment concentrations and increased noise and vibration caused by piling and ship movements. For the operational phase, the key potential impacts are changes in vessel traffic and movement leading to increased ship wash, underwater noise, visual disturbance to birds and collision risk with marine mammals. Within the ES, residual effects for both construction and operation are considered to be negligible to minor adverse.

4.4.2 Notwithstanding the Applicant’s assessment that there will be negligible to minor adverse effects with the mitigation proposed in the Application and during the Examination, the Applicant in its 11 November Response set out a number of ‘without prejudice’ additional mitigation measures and/or enhancements to the existing proposed mitigation measures to reduce disturbance effects to bird species of The Wash SPA and to reduce collision risk impacts to the harbour seals of The Wash and North Norfolk Coast SAC in response to a requests for such information in the 14 October Letter. These measures have been proposed on a ‘without prejudice’ basis should the SoS determine they are necessary.

4.4.3 In response to a request in the 14 October for the Applicant to “*explain whether it considers that an updated assessment of impacts to harbour seal is required to account for an appropriate worst-case scenario, in light of its inability to enforce vessel speed limits*”, the Applicant in its 11 November Response confirmed the impact assessments on harbour seals were based on worth-case assumptions

with the assessments having placed no reliance on vessel speeds.

4.4.4 Additionally, following further engagement with Natural England, the Applicant has proposed additional ‘without prejudice’ mitigation measures to further mitigate the impact on harbour seals as a result of the Facility. These are set out in The Applicant’s Response to Comments Raised by Natural England and the RSPB during the second consultation response (document reference 9.111). These measures are being put forward on a purely precautionary basis to address Natural England’s concerns as the Applicant’s assessment of effects does not indicate such measures are necessary. Appendix A of doc ref 9.111 sets out correspondence with Natural England from 6th March 2023, within which they conclude, “Natural England welcomes the proposals presented by the Applicant and agrees that the measures proposed would offset any losses of Annex II Harbour Seals from the Wash and North Norfolk Coast SAC, thus removing an AEoI.”

4.4.5 Overall, the Applicant considers the ES assessment, including additional submissions, is sufficient to demonstrate there will be no significant residual effect on marine and coastal ecology receptors.

4.5 Socio-Economics

Public Rights of Way

4.5.1 In response to the request in paragraph 3.8 of the 14 October Letter “to provide a plan of Natural England’s suggested alternative to the proposed diversion route of the England Coast Path, as shown in Figure 1 of [REP2-047]”, the Applicant in its 11 November Response included as Figure 10 Natural England’s Alternative public right of way alignment. As set out in the Applicant’s 11 November Response the Applicant maintains its arguments set out in the Written Summary of the Applicant’s Oral Case at Issue Specific Hearing 2 (ISH2) on Environmental Matters (Part 1) (document reference 9.47, REP3-023) that Natural England’s proposed diversion is not appropriate or necessary, as summarised below:

- The provision of a new path would remove approximately 220m² of planting decreasing Biodiversity Net Gain and the effectiveness of screening of nearby views to the site;
- Noise from wharf operations along this proposed route would potentially cause the footpath not to be preferentially used; and
- Taking a footpath down this part of the site increases security risk which is key consideration for the Facility.

4.5.2 Therefore, the Applicant considers that the diversion along the Roman Bank is

appropriate, as per the DCO application.

4.6 Habitat Regulations Assessment

4.6.1 Since the close of Examination the requests for information have largely focussed on matters related to the Habitats Regulations Assessment, in particular as a result of:

- Air quality impacts on The Wash Special Protection Area (SPA) and The Wash Ramsar Site and The Wash and North Norfolk Coast Special Area of Conservation (SAC)
- Disturbance effects on bird species of The Wash SPA and The Wash Ramsar Site
- Increased collision risk to harbour seals in The Wash and North Norfolk SAC

4.6.2 The Applicant has provided further additional information in relation to the above matters which is summarised below.

Air Quality Impacts

4.6.3 Following the close of the Examination, the Secretary of State in their letter dated 14 October 2022 requested Natural England “to advise whether an adverse effect on integrity resulting from changes in air quality can be excluded and, if so, for which protected sites and features this advice applies, in light of the Applicant’s comments in [REP6-035] and otherwise.” In response Natural England submitted Updated Advice on Potential Air Quality Impacts dated 11 November 2022 which was well beyond the level of detail provided to the Applicant during the Examination of the DCO. Natural England concluded that it cannot advise that an adverse effect on integrity (AEoI) as a result of air quality can be excluded on the basis that insufficient information has been provided on the air quality impacts of the protected sites to be able to rule out such adverse effects.

4.6.4 The Applicant in its 25 November Response addressed the matters raised in Natural England’s response and provided additional information on air quality impacts as they relate to the Habitats Regulations Assessment to comprehensively respond to and rebut all the perceived issues that have been raised by Natural England. Based on the information presented in the Application, during the Examination and post-examination, the Applicant’s assessments demonstrate that emissions from the Facility would not result in an AEoI on integrity of the designated sites or any functionally linked habitats, either in its own right or given the small contribution to the cumulative effect of nitrogen deposition.

Bird Disturbance Effects

- 4.6.5 The Applicant through its submissions during the Examination has set out full justification for its conclusions that an Adverse Effect on Integrity (AEoI) of national network/Ramsar sites can be excluded, beyond reasonable scientific doubt.
- 4.6.6 If, however, the Secretary of State is minded to agree with Natural England that an AEoI cannot be excluded, the Applicant's view is that this is in large part due to the influence of bird disturbance from the existing (baseline) large commercial vessel movements, rather than being an effect of the Facility.
- 4.6.7 In the light of the comments from the Interested Parties, and although the Applicant maintains the position that the Facility will not have an AEoI, the Applicant has produced a without prejudice HRA Derogation Case, consisting of: Assessment of Alternative Solutions (document reference 9.28, REP2-011); IROPI (document reference 9.29, REP2-012); and Compensation Measures (document reference 9.30(1), REP6-025). This last document has involved developing potential compensation sites that could be used should a decision be made that an AEoI cannot be ruled out.
- 4.6.8 Following the close of the Examination, BEIS in its 14 October Letter requested further information regarding the without-prejudice proposed compensation sites for The Wash SPA. The Applicant in its 11 November Response provided detailed information in response to the request and outlined further details as to the proposed compensation sites, details to demonstrate the compensation measures are appropriately secured and an updated programme for the implementation of the compensation measures. This was supported by the submission of an updated Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures (document reference 9.30(3)).
- 4.6.9 Since the Applicant's 11 November Response the Applicant has continued to develop the potential compensation site options, which has included obtaining letters of comfort from a number of land owners. To provide an update on the progress since the previous submission and to respond to matters raised by Natural England and the Royal Society for the Protection of Birds (RSPB), the Applicant has prepared an Addendum to Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures (for The Wash SPA) (document reference 9.112). This provides further justification that the proposed compensation site options are suitable should they be required. Additionally, as a result of the delay to a decision being made on the Application, the Applicant has further updated the implementation programme in the Without Prejudice Habitats

Regulations Assessment Derogation Case: Compensation Measures document and submitted an updated version (document reference 9.30(4)) at the same time as this submission. This update to the Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures document also includes an update to the criteria in paragraph 3.5.5 of the document to incorporate criteria for the creation of a roost in the SAC should this option be pursued and determined to be acceptable.

- 4.6.10 The Applicant considers that it has clearly demonstrated that sufficient and appropriate compensatory measures can be delivered and can be secured by the DCO to provide additional habitat for waterbirds that may be displaced from their roosting locations during periods of high tide when additional vessels would transit The Haven.

Collision Risk to Seals

- 4.6.11 Throughout the Examination and post-Examination period the Applicant's maintained position is that there is no AEoI on any on any of the designated features, including harbour seal of The Wash and North Norfolk Coast SAC as a result of the Facility. In its 11 November Response, the Applicant outlined that it is considered over-precautionary to suggest that compensation measures are required when there is not expected to be an AEoI on The Wash and North Norfolk Coast SAC, and where extensive mitigation and management measures are already provided. Following further engagement with Natural England, the Applicant in its Response to Comments Raised by Natural England and the RSPB during the second consultation response (document reference 9.111) proposed a range of additional mitigation measures in accordance with those requested by Natural England (see Tables 2-1 and 2-2 of The Applicant's Response to Comments Raised by Natural England and the RSPB (document reference 9.111)).
- 4.6.12 As the SoS in its 10 January Letter requested details on proposed 'without prejudice' compensation measures relating to collision effects on seals, the Applicant has set out in the Without Prejudice Compensation Case for The Wash and North Norfolk SAC for Harbour Seals (document reference 9.110) 'without prejudice' compensation measures for impacts on harbour seals that could be brought forward if the SoS determined they were necessary but in any event are proposed to be brought forward by the Applicant as marine net gain. The Applicant has added to the draft DCO (document reference 2.1(7)) a new schedule to secure these measures whether they are provided as marine net-gain or compensation.

IROPI

4.6.13 Additionally, in its 14 October Letter, BEIS requested further information, beyond that already provided to the Examination, which may assist the Secretary of State in considering its without prejudice case with regards to Imperative Reasons of Overriding Public Interest (“IROPI”). The Applicant provides a response to this in Appendix B of its 11 November Response, which builds on the evidence presented in the previously submitted IROPI document (document reference 9.29, REP2-012). The Applicant considers that, should the SoS determine there is an AEOI, there are clearly IROPI for the proposed development to proceed. The Facility provides a public benefit which is essential and urgent by addressing the imperative needs for reliable and secure forms of electricity, waste management solutions which do not rely on landfill, and further, to the urgent need for reliable domestic sources of CO₂.

5 Compulsory Acquisition

5.1.1 The position in relation to compulsory acquisition remains as set out in section 5 of the Applicant’s Overall Summary of Case (document reference 9.103, REP10-019).

5.1.2 The Applicant considers there is a compelling case in the public interest for the Facility to be opened and that section 122 of the Planning Act is satisfied in respect of the relatively limited area of land subject to compulsory acquisition powers. The Applicant has the benefit of an option agreement over the main site but requires compulsory acquisition powers over land which remains in unknown ownership despite the Applicant’s diligent inquiry.

5.2 Statutory Undertakers

5.2.1 No statutory undertakers object to the scheme.

5.3 Crown Land

5.3.1 As set out in the Applicant’s Overall Summary of Case (document reference 9.103, REP10-019), the Crown Estate provided consent pursuant to s135(2) of the Planning Act 2008 directly to the Planning Inspectorate on 6 April 2022. A copy of the letter provided by the Crown Estate was enclosed at Appendix C to the 11 November Response.

6 Funding

- 6.1.1 The position as to funding remains as at set out in section 6 of the Applicant's Overall Summary of Case (document reference 9.103, REP10-019). The Applicant intends to fund the Project via a combination of commercial debt and additional equity. The Applicant has assessed the Authorised Development and is, based on its experience in this sector and work on previous schemes, confident that it will be commercially viable, enabling it to be funded as required if development consent is granted. This includes the funding of compensation associated with the limited compulsory acquisition under the DCO along with the funding of any of the 'without prejudice' compensatory measures set out in the Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measure (document reference 9.30(3)) including the Addendum to Without Prejudice Habitats Regulations Assessment Derogation Case: Compensation Measures (for The Wash SPA) (document reference 9.112) and the Without Prejudice Compensation Case for The Wash and North Norfolk SAC for Harbour Seals (document reference 9.110) whether they are required by the SoS or provided by the Applicant as net gain measures.

7 Interested Parties

- 7.1.1 Where appropriate the views, comments and position of various interested parties are referred to in the previous sections of this report.
- 7.1.2 At the close of the Examination, the Applicant had entered into a number of Statements of Common Ground (SoCGs). These were set out in the Applicant's Overall Summary of Case (document reference 9.103, REP10-019) at Deadline 10.
- 7.1.3 Following the close of the Examination the Applicant has continued to engage with the Environment Agency and Natural England in respect of the outstanding issues set out in the SoCGs (document reference 8.2(3), and document reference 8.11(1), respectively).

7.2 Environment Agency

- 7.2.1 With regard to the Environment Agency (EA), as set out in paragraph 4.2.1 the Applicant and the Environment Agency entered into a side agreement which resolved the remaining outstanding point in relation to flood risk and the Environment Agency subsequently withdrew its objection to the disapplication of environmental permits for flood risk activities.
- 7.2.2 The Applicant welcomes confirmation from the EA that it is broadly satisfied with the type of evidence provided by the Applicant for air quality.
- 7.2.3 The Applicant acknowledges that the EA are unable to pre-determine any environmental permit application. There is no legal, policy or guidance requirement for an environmental permit to be approved prior to the grant of a DCO and it is common for such matters to be left to detailed design (post grant of DCO). The Applicant intends to apply for the necessary permits, and work closely with the EA to obtain such permits, at the detailed design stage should the DCO be granted.
- 7.2.4 The only remaining outstanding point relates to the loss of habitat (saltmarsh in particular) where the EA has advised that it maintains its objection '*until such time as Natural England confirm that the proposed scheme of mitigation/compensation is suitable*' (Update on Environment Agency Position, REP10-034).

7.3 Natural England

- 7.3.1 Following the close of the Examination the Applicant has sought to engage with Natural England to resolve any outstanding issues. Despite attempts by the

Applicant to engage with Natural England on a number of environmental topics, post-Examination engagement has been limited to mitigating the impacts on harbour seals. As set out in paragraph 4.4.4, Natural England set out a number of mitigation measures that if implemented would avoid an adverse effect on integrity for harbour seals. The Applicant responded to Natural England via email on 17 February 2023 and provided a technical report addressing Natural England's suggested mitigation measures. Table 22 of the Applicant's Response to Comments Raised by Natural England and the RSPB (document reference 9.111) sets out which measures the Applicant has agreed to include as additional mitigation to address Natural England's concerns and these have been included in an updated tracked change and clean version the Outline Marine Mammal Mitigation Protocol (document reference 9.12(3)).

- 7.3.2 Throughout the Examination and during the post-Examination consultation period, the Applicant has sought to address points raised by Natural England through the submission of various documents. However Natural England's position "*to only review updated chapters and plans*", which was only made clear at the end of Examination, has meant that despite the Applicant putting forward information to address Natural England's concerns, it has been difficult to resolve outstanding matters. As a result of Natural England not reviewing documents submitted, the Applicant does not consider Natural England's submissions and Issues and Risks Log to accurately reflect the Applicant's position and submission on such matters.

8 Planning Balance

8.1.1 Section 104(3) of the PA 2008 provides that the Secretary of State must decide the Application in accordance with any relevant NPS, except to the extent that one or more of the subsections in section 104 apply. These include, at sub-section (7), if the Secretary of State is satisfied that the adverse impact of the Facility would outweigh its benefits. The planning balance under sub-section (7) is not unconstrained and must be carried out subject to the presumption in section sub-section (3).³ The context for consideration of that planning balance is set out primarily in section 7 of the Planning Statement (document reference 5.2, APP-031) and in summary provides:

- NPSs EN-1 and EN-3 establish the urgent need for new renewable energy generation. Therefore, the need for the Facility has been demonstrated;
- NPS EN-1 requires that substantial weight be given to the contribution that the Facility would make towards satisfying the identified need;
- there is a presumption in favour of granting consent for the Facility; and
- the ExA and the Secretary of State then have to balance the Facility's residual adverse impacts against its benefits (as per EN-1 paragraph 4.1.3). The benefits of the Facility include the substantial weight that must be given to its contribution to satisfying the identified urgent need.

8.1.2 As evidenced by the residual adverse impacts of the Facility as set out in section 4 of this document, the Applicant considers that the potential adverse impacts of the Facility do not outweigh the substantial benefits that have been identified. As such, section 104(7) of the PA 2008 is not engaged in respect of the Facility and therefore the Application must be determined in accordance with the relevant NPSs and the presumption in favour of granting development consent applies.

³ R (on the application of AQUIND Ltd) v Secretary of State for Business, Energy and Industrial Strategy [2023] EWHC 98 (Admin) at [99] and [101]

9 Conclusion

- 9.1.1 In conclusion, there is an overwhelming case in favour of the grant of development consent given (amongst other things) the national need for the Facility. Inevitably, a major infrastructure project such as this will cause some potential adverse effects but those effects have been minimised and mitigated through careful design and a suite of control mechanisms secured through the DCO. The Applicant has provided significant ‘without prejudice’ additional mitigation measures to satisfy concerns from statutory bodies. The benefits of the project significantly outweigh its adverse effects and development consent should be granted.
- 9.1.2 The Applicant reiterates that the Facility makes no reliance on any public funding. It will support approximately 250 - 300 direct jobs during construction, including approximately 81 - 131 jobs for local residents. During operation, the Facility is expected to create 108 direct full time job opportunities, with 47 jobs filled by local residents. The project will constitute private, inward investment in UK energy infrastructure, consistent with the vision of an independent Global Britain. The entire risk relating to the success of the project is borne by the Applicant alone.

10 References

Overarching National Policy Statement for Energy (EN-1); July 2011; Department of Energy and Climate Change

National Policy Statement for Renewable Energy Infrastructure (EN-3); July 2011; Department of Energy and Climate Change

Draft Overarching National Policy Statement for Energy (EN-1); September 2021; (BEIS)

Chatham House speech on greater energy independence; From: Department for Energy Security and Net Zero and The Rt Hon Grant Shapps MP; Published: 2 March 2023; available at:
<https://www.gov.uk/government/speeches/chatham-house-speech-on-greater-energy-independence>

Authored article: My five-point economic action plan for the G20; From: Prime Minister's Office, 10 Downing Street and The Rt Hon Rishi Sunak MP; Published: 14 November 2022; available at
<https://www.gov.uk/government/speeches/my-five-point-economic-action-plan-for-the-g20>

R (on the application of AQUIND Ltd) v Secretary of State for Business, Energy and Industrial Strategy [2023] EWHC 98 (Admin)