

Application by Alternative Use Boston Projects Limited for Boston Alternative Energy Facility
The Examining Authority's written questions and requests for information (ExQ3)
Issued on 15 February 2022

The following table sets out the Examining Authority's (ExA's) written questions and requests for information – ExQ3.

Questions are set out using an issues-based framework derived from the Initial Assessment of Principal Issues provided as Annex C to the Rule 6 letter of 17 August 2021. Questions have been added to the framework of issues set out there as they have arisen from representations and to address the assessment of the application against relevant policies.

Column 2 of the table indicates which Interested Parties (IPs) and other persons each question is directed to. The ExA would be grateful if all persons named could answer all questions directed to them, providing a substantive response, or indicating that the question is not relevant to them for a reason. This does not prevent an answer being provided to a question by a person to whom it is not directed, should the question be relevant to their interests.

If you are responding to a small number of questions, answers in a letter will suffice. If you are answering a larger number of questions, it will assist the ExA if you use a table based on this one to set out your responses. An editable version of this table is available in Microsoft Word.

The Examination Library

References in these questions set out in square brackets (eg [APP-010]) are to documents catalogued in the Examination Library. The Examination Library can be obtained from the following link:

[https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010095/EN010095-000547-Boston%20\(AEF\)%20Examination%20Library%20\(pdf%20version\).pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010095/EN010095-000547-Boston%20(AEF)%20Examination%20Library%20(pdf%20version).pdf)

It will be updated as the Examination progresses.

Responses are due by Deadline 7: Tuesday, 1 March 2022.



Abbreviations used:

APCr	Air Pollution Control Residues	LCC	Lincolnshire County Council
Art	Article	LNA	Local Nature Reserve
BBC	Boston Borough Council	LSE	Likely Significant Effect
BFFS	Boston and Fosdyke Fishing Society	LWA	Lightweight Aggregate
D	Deadline	LWT	Lincolnshire Wildlife Trust
DCO	Development Consent Order	MCA	Maritime and Coastguard Agency
dDCO	Draft Development Consent Order	MMO	Marine Management Organisation
EA	Environment Agency	NE	Natural England
EN	Evidence Note	NMP	Navigational Management Plan
EP	Environmental Permit	NPS	National Policy Statement
ES	Environmental Statement	NRA	Navigation Risk Assessment
ExA	Examining Authority	OLEMS	Outline Landscape and Ecological Mitigation Strategy
FRA	Flood Risk Assessment	PHE	Public Health England
FRA	Flood Risk Assessment	RDF	Refuse Derived Fuel
HRA	Habitats Regulations Assessment	RR	Relevant Representation
IFCA	Inshore Fisheries and Conservation Authority	RSPB	Royal Society for the Protection of Birds
ISH	Interested Party	SPA	Special Protection Area
IP	Issue Specific Hearing		

Citation of Questions

Questions in this table should be cited as follows:

Question reference: issue reference: question number, e.g. ExQ3 1.0.1 – refers to question 1 in this table. Question numbers from previous Written Questions are maintained for consistency but prefixed Q3, to indicate the question is from ExQ3.



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ExQ2	Question to:	Question:
1. General and Cross-topic Questions		
Q3.1.0.1		No further question.
Q3.1.0.2		No further question.
Q3.1.0.3	The Applicant	No further question.
Q3.1.0.4	The Applicant	Please respond to the RSPB's comments regarding funding [REP6-041].
Q3.1.0.5	The Applicant	No further question.
Q3.1.0.6		No further question.
Q3.1.0.7	UKWIN	I note the Applicant's response to UKWIN's comments [REP5-009] and UKWIN's latest submission [REP6-042]. It would assist the ExA if UKWIN summarised their position on each of the main issues, in a similar way to Table 1-1 in REP5-009, highlighting the key differences with the Applicant's position.
Q3.1.0.8	Applicant	No further question.
Q3.1.0.9	LCC	With regard to your request for a new requirement in the dDCO in relation to the maximisation of captured carbon; is LCC satisfied with the Applicant's view that this be dealt with as a section 106 planning obligation [REP5—008]?
2. Air Quality and Emissions		
Q3.2.0.1		No further question.
Q3.2.0.2		No further question.
Q3.2.0.3		No further question.
Q3.2.0.4	The Applicant, NE and EA	<p>Have the final numbers and locations of deposition monitoring locations been agreed with Natural England and the Environment Agency? If not, when is it expected that they will be agreed?</p> <p>If monitoring at these locations identifies significant effects, what measures will the Applicant use to reduce adverse effects and how would these measures be secured?</p> <p>Do NE/EA have any outstanding concerns regarding the Air Quality Deposition Monitoring Plan?</p>

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ExQ2	Question to:	Question:
Q3.2.0.5	The Applicant	No further question
Q3.2.0.6 - Q3.2.0.15		No further questions.
Q3.2.0.16	NE	Do NE agree with the conclusions provided in the Applicant's document at D6 'Comparison of Predicted Critical Load and Level Results Using Maximum Permissible Emissions Limits and Realistic Emission Scenarios' [REP6-035] that although the in-combination NOx and ammonia concentrations remain above 1% of the respective Critical Levels at all sites; due to the total PEC values being well below (i.e., less than 75% of) the Critical Levels, it is considered unlikely that significant effects would occur?
Q3.2.0.17	The Applicant	Can the Applicant confirm what dust mitigation measures will be in place to ensure no adverse effects on the Havenside LNR?
3. Environmental Statement		
Q3.3.0.1		No further question.
Q3.3.0.2	The Applicant	Can the Applicant provide an update regarding the application to Anglian Water for potable water and foul water connections for its pre-enabling works?
Q3.3.0.3		No further question.
Q3.3.0.4		No further question.
Q3.3.0.5		No further question.
Q3.3.0.6	The Applicant	With regard to the note of the meeting between the EA and Applicant on 25 January 2022, can the Applicant provide details regarding an End of Waste Determination/ Quality Protocol which is required by the EA when considering the application for the Environmental Permit.
Q3.3.0.7		No further question.
Q3.3.0.8		No further question.
Q3.3.0.9		No further question.
Q3.3.0.10		No further question.
Q3.3.0.11		No further question.

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ExQ2	Question to:	Question:
Q3.3.0.12		No further question.
Q3.3.0.13		No further question.
Q3.3.0.14	Natural England	Do NE have any outstanding concerns in relation to light spillage across the estuary during hours of darkness, and the impacts this may have on European smelt larvae?
Q3.3.0.15		No further question.
Q3.3.0.16		No further question.
Q3.3.0.17		No further question.
Q3.3.0.18		No further question.
Q3.3.0.19	MMO and Port of Boston	Are the MMO and the Port of Boston satisfied with the Applicant's position regarding vessel speed as stated in their Comments on Interested Parties Responses to the Examining Authority's Second Written Questions [REP6-030], and if not please detail specific reasons?
3.1 Biodiversity, Ecology and Natural Environment (including Habitats Regulations Assessment (HRA))		
Q3.3.1.1		No further question.
Q3.3.1.2		No further question.
Q3.3.1.3		No further question.
Q3.3.1.4		No further question.
Q3.3.1.5		No further question.
Q3.3.1.6		No further question.
Q3.3.1.7	NE, RSPB, LWT	In light of the additional information provided to the Examination to date on features of the designated sites that may be affected by the Proposed Development, please could NE, the RSPB and LWT specify the qualifying features of The Wash SPA, The Wash Ramsar site, The Wash SSSI, and The Wash and North Norfolk Coast SAC on which they consider there would be an adverse effect alone and those on which they consider that there would be an adverse effect in combination. Please identify the location at which those species may be affected, ie the application site, the mouth of The Haven or along The Haven. This could be presented in tabular form for ease.

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ExQ2	Question to:	Question:
Q3.3.1.8		No further question.
Q3.3.1.9		No further question.
Q3.3.1.10		No further question.
Q3.3.1.11		No further question.
Q3.3.1.12		No further question.
Q3.3.1.13		No further question.
Q3.3.1.14		No further question.
Q3.3.1.15		No further question.
Q3.3.1.16		No further question.
Q3.3.1.17		No further question.
Q3.3.1.18		No further question.
Q3.3.1.19		No further question.
Q3.3.1.20		No further question.
Q3.3.1.21		No further question.
Q3.3.1.22	The Applicant	With reference to your suggestion [REP6-030] to submit an annotated version of NE's risks and issues log, please would you submit this at Deadline 7.
Q3.3.1.23	The Applicant and EA	Please provide an update on a permit for the LWA plant. Please outline your proposals for dealing with this issue if a permit is not agreed by the close of the Examination.
Q3.3.1.24	Applicant	Does the Applicant expect to make any further progress with the compensation proposals and intend to submit any further updates to the derogation package prior to the close of the Examination?
Q3.3.1.25	Applicant	Please could the Applicant provide an updated version of the HRA screening and integrity matrices to reflect the latest position, including a tracked changes version, and tracked changes versions of the HRA matrices submitted at D3 and D5.
Q3.3.1.26		No further question.

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ExQ2	Question to:	Question:
Q3.3.1.27	Applicant	Can the Applicant confirm when in March the final winter bird surveys will be completed and whether the reports will be submitted to the Examination in sufficient time to allow IPs to review and comment on them prior to the close of the Examination.
Q3.3.1.28		No further question.
Q3.3.1.29	The Applicant	<p>HRA process</p> <p>Where adverse effects cannot be ruled out, the HRA Regulations provide for the possibility of a derogation which allows plans or projects to be approved provided three tests are met:</p> <ol style="list-style-type: none">1. There are no feasible alternative solutions to the plan or project which are less damaging;2. There are imperative reasons of overriding public interest (IROPI) for the plan or project to proceed; and3. Compensatory measures are secured to ensure that the overall coherence of the national site network is maintained. <p>I would draw the attention of the Applicant to the recent Decision Letter in respect of the Norfolk Boreas Offshore Windfarm dated 10 December 2021; in particular paragraph 5.13 which states the following:</p> <p><i>"...the ExA could not recommend compensatory measures for the Secretary of State to consider because it did not have sufficiently detailed proposals for compensation. It therefore recommended that the Secretary of State should seek further information from the Applicant regarding alternative solutions or compensatory measures. The Secretary of State notes that the development consent process for nationally significant infrastructure projects is not designed for consultation on complex issues, such as HRA, to take place after the conclusion of the examination. he wishes to make it clear that, in order to maintain the efficient functioning of the development consenting regime, he may not always request post-examination representations on such matters, indeed it should be assumed that he will not do so, and he may therefore make decisions on such evidence as is in front of him following his receipt of the ExA's Report."</i></p>

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ExQ2	Question to:	Question:
		<p>The ExA notes that the information contained in REP6-025 contains limited detail on the proposed compensation package, identifies a reduced number of compensation site options to that in the previous version of the document [REP2-013], and does not include a figure that depicts the location of the newly identified compensation site options. Please can the Applicant set out how the information provided to date satisfies the derogation tests and identify the location of the additional options. In so doing, to provide clear references from the Examination Library as to which documents address these matters.</p> <p>Natural England, the RSPB, The Lincolnshire Wildlife Trust and any other IPs are invited to comment.</p>
Q3.3.1.30	The Applicant	It is unclear whether the Applicant considers that the proposed biodiversity net gain works to the Havenside Local Nature Reserve (LNR) would additionally enable the LNR to function effectively as a compensation site. Please can the Applicant confirm its position.
Q3.3.1.31	NE and the RSPB	Please could NE and the RSPB respond to the Applicant's view that the application site ('Area A') and adjacent area ('Area B') are not functionally linked to the SPA and Ramsar site, notwithstanding that it has been assumed for the purposes of the derogation case that they are functionally linked.
Q3.3.1.32	NE and the RSPB	Please could NE and the RSPB confirm whether they consider that the Ornithology Compensation Measures set out in Schedule 11 of the dDCO adequately secure the proposed compensation measures.
Q3.3.1.33	The Applicant	In order to provide sufficient confidence in the effectiveness of the proposed compensation measures please could the Applicant provide an outline version of the Ornithology compensation implementation and monitoring plan to the Examination.
Q3.3.1.34	NE and the RSPB	In light of the Applicant's references in REP6-025 to the proposed Habitat Mitigation Area (HMA) and statement that options for compensation will be required in the event that it was determined that there would be an AeOI, please could NE and the RSPB confirm whether they consider the HMA would constitute a mitigation or a compensation measure according to the Habitats Regulations, and provide their view of its effectiveness accordingly.
Q3.3.1.35	The Applicant	It is stated in paragraph 3.5.9 of REP6-025 that if the compensation sites listed in Table 3-1

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ExQ2	Question to:	Question:
		were found not to be suitable further searches would be carried out. When will such decisions be made and how would it be ensured that the compensation sites would be in place prior to impacts occurring?
Q3.3.1.36	NE and LWT	Do NE and LWT consider that the mitigation set out in the updated Outline Marine Mammal Mitigation Protocol [REP6-020] would be sufficient to avoid impacts on harbour seal?
Q3.3.1.37	The Applicant	Please can the Applicant confirm that Table 4-1 is incorrectly titled and relates to comments made by the RSPB about birds using The Haven rather than the presence of common tern.
Q3.3.1.38	The Applicant	It is stated in REP5-006 that that the proposed net gain/compensation measures would provide alternative habitat for any birds that were displaced by any additional disturbance along the central part of The Haven. Please can the Applicant explain how this can be assumed in the current absence of detailed information on the compensation site options and the number and species of birds that any compensation site could accommodate.
4. Compulsory Acquisition, Temporary Possession and Other Land or Rights Considerations		
Q3.4.0.1		No further question.
Q3.4.0.2	The Applicant	<p>Summarise the case for Compulsory Acquisition and Temporary Possession (referring to relevant references in the Examination Library) indicating how the following matters are addressed:</p> <p>a) whether the purposes for which the compulsory acquisition powers are sought comply with statutory and policy tests under s122 of PA 2008 and DCLG Guidance related to procedures for the compulsory acquisition of land;</p> <p>b) how Article 1 and Article 8 of the First Protocol to the European Convention on Human Rights has been considered; and</p> <p>c) Having regard to section 122(3) of the PA 2008, whether there is a compelling case in the public interest for the compulsory acquisition in relation to:</p> <p>i. The need in the public interest for the project to be carried out.</p> <p>ii. The private loss to those affected by compulsory acquisition.</p>
Q3.4.0.3	The Applicant	Provide a detailed, track change update of the Compulsory Acquisition Objections contained in the land negotiations tracker [REP3-014] in relation to the status of negotiations.

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ExQ2	Question to:	Question:
Q3.4.0.4	The Applicant	Explain in detail the approach taken to identify Category 3 Parties [REP3-005] including the steps taken to keep this information up to date during the course of the Examination.
5. Draft Development Consent Order (dDCO)		
Q3.5.0.1		No further question.
Q3.5.0.2	The Applicant	Please provide an update on outstanding matters still requiring agreement, on the Protective Provisions included in Schedule 8 of the draft DCO (dDCO) for statutory undertakers affected by the proposal.
Q3.5.0.3		No further question.
Q3.5.0.4		No further question.
Q3.5.0.5	The Applicant	Reference MMO's comment 2.2 [REP6-037]; please provide details of proposals for any mitigation secured through the HRA to be included within the conditions on the deemed marine licence (DML).
Q3.5.0.6	The Applicant	Reference MMO's comment 2.4 [REP6-037] regarding the ornithological mitigation and monitoring plan; please answer the MMO's request for confirmation of how this document will be secured and wording agreed.
6. Contaminated Land and Waste		
Q3.6.0.1		No further question.
7. Health		
Q3.7.0.1		No further question.
8. Historic Environment		
Q3.8.0.1 – Q2.8.03		No further question.
9. Landscape and Visual		
Q3.9.0.1		No further question.
Q3.9.0.2		No further question.

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ExQ2	Question to:	Question:
10.	Navigation/fishing issues	
Q3.10.0.1		No further question.
Q3.10.0.2		No further question.
Q3.10.0.3		No further question.
Q3.10.0.4		No further question.
Q3.10.0.5		No further question.
Q3.10.0.6		No further question.
Q3.10.0.7		No further question.
Q3.10.0.8		No further question.
Q3.10.0.9		No further question.
Q3.10.0.10		No further question.
Q3.10.0.11		No further question.
Q3.10.0.12		No further question.
Q3.10.0.13		No further question.
Q3.10.0.14		No further question.
Q3.10.0.15		No further question.
Q3.10.0.16	BFFS or their legal representative	Please provide details of the constitution and size of membership of the BFFS.
Q3.10.0.17	BFFS (or legal representative) and The Applicant	I note from the Applicant's response to my second written question Q2.10.0.5 [REP5-004] that the BFFS had misgivings regarding the Navigation Risk Assessment (NRA), and that there were resourcing issues for the BFFS in reviewing this document. Please provide an update on progress with agreeing the NRA.
Q3.10.0.18	The Applicant	I note that you have advised that the Navigation Management Plan (NMP) will be produced post-consent; please submit at Deadline 7 (1 March) an Outline NMP (or at least a full template and proposal of how it will be completed). Please also provide details of

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ExQ2	Question to:	Question:
		how the NMP post-consent will be secured and who will be the discharging authority. I will expect the IPs to comment on, or agree, the Outline NMP before end of Examination.
Q3.10.0.19	The Applicant and the BFFS	Given the resourcing issues noted by the BFFS; are there any further steps the Applicant could take to assist the BFFS in their participation in this Examination?
Q3.10.0.20	The Applicant	Has consideration been given to the appointment of a Fishing Liaison Officer (FLO)? If so, where and how could this be secured in the DCO? If not, why not?
Q3.10.0.21	The Applicant	Has consideration been given to the inclusion of a Fishing Liaison and Co-Existence Plan (FLCP) in the DCO? If not, why not?
Q3.10.0.22	The Applicant	Please would the Applicant submit an updated SoCG with the BFFS.
Q3.10.0.23	The Applicant	Which Inshore Fisheries and Conservation Authority has jurisdiction in this location? Have they been consulted? If so, provide details. If not, why not?
Q3.10.0.24	MCA	Have you been consulted by the Applicant in respect of the Navigational Risk Assessment? If so, please provide details of your response. If not, please confirm whether or not this is a matter over which you should be consulted.
Q3.10.0.25	Eastern / North-Eastern IFCA	Confirm whether you have been consulted by the Applicant regarding their application and whether you have any concerns?
Q3.10.0.26	Port of Boston	Please advise any navigational requirements from your point of view you consider that the Applicant should consider regarding the fishermen's interests by Deadline 7.
Q3.10.0.27	Port of Boston	<p>The Applicant identifies major adverse significance of effects to the fishermen resulting from the following operational impacts in delivering refuse derived fuel to the Boston Alternative Energy Facility [APP-056]:</p> <ul style="list-style-type: none"> • increase in the number of vessels using The Haven; and • the increased use of the turning circle. <p>Post mitigation the Applicant identifies moderate adverse residual effects to the fishermen resulting from the above impacts. What in your view would be appropriate mitigation of these effects?</p>

11. Noise and Vibration

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ExQ2	Question to:	Question:
Q3.11.0.1		No further question.
12. Planning Policy		
Q3.12.0.1		No further question.
Q3.12.0.2		No further question.
Q3.12.0.3		No further question.
Q3.12.0.4		No further question.
Q3.12.0.5		No further question.
Q3.12.0.6	NE	Are NE satisfied with the Applicant's position regarding realignment of the England Coast Path as stated in their Comments on Interested Parties Responses to the Examining Authority's Second Written Questions [REP6-030], and if not please detail specific reasons?
Q3.12.0.7		No further question.
13. Socio-economic Effects		
Q3.13.0.1 – Q2.13.0.3		No further questions.
14. Transportation and Traffic		
Q3.14.0.1 – Q2.14.02		No further questions.
15. Water Environment		
Q3.15.0.1		No further questions.
Q3.15.0.2		No further questions.
Q3.15.0.3	The Applicant	With regard to your responses concerning the surface water drainage system point no.6, page 44 [REP5-008]. Please confirm the status of agreement with the Lead Local Flood Authority and Black Sluice Internal Drainage Board and when this will be included in SoCGs?
Q3.15.0.4		No further questions.

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