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**To:** [Norfolk Vanguard](#)  
**Cc:** [REDACTED]  
**Subject:** Re: Norfolk Vanguard Project - EN010079  
**Date:** 16 January 2019 14:47:21  
**Attachments:** [image003.png](#)  
[Norfolk Vanguard Letter Response to ExA.pdf](#)

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Dear Norfolk Vanguard Project Team,

Please find attached MCA's response to The Examining Authority's first written questions and requests for information, issued on 19 December 2018.

Kind regards

Helen



**Maritime &  
Coastguard  
Agency**

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Please note I currently work Tuesdays, Wednesdays and Thursdays.

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Your ref: 20012803  
Our ref: Norfolk Vanguard  
Offshore Windfarm Project  
(EN010079)

16 January 2019

Dear Sir/Madam

**Norfolk Vanguard Offshore Windfarm Project (EN010079)  
Examination Authority Questions**

The MCA's remit for offshore renewable energy development is to ensure that safety of navigation is preserved, and our search and rescue capability is maintained, whilst progress is made towards government targets for renewable energy. This includes our obligations under The United Nations Convention on the Law of the Sea.

In response to the Examination Authority's first written questions, issued on 19 December 2018, the MCA would like to comment as follows

<b>8.4</b>	<b>MCA</b>	In relation to the need for lighting and marking arrangements, are your concerns satisfied with the wording of the 'aids to navigation' condition 10 of Schedules 9 and 10 and condition 5 of Schedules 11 and 12 of the dDCO [APP-005]?
<p>No. Condition 10 of Schedules 9 and 10 and condition 5 of Schedules 11 and 12 are specific to Aids to Navigation and refer to Trinity House. It does not reflect the MCA requirements for lighting and marking arrangements which are detailed in MGN 543 Annex 5. The MCA would expect to see a Lighting and Marking Plan (LMP) as part of the post consent conditions which should include the following as detailed in MGN 543 Annex 5 SAR requirements:</p> <ol style="list-style-type: none"> <li>1) Clear and unique identification markings visible to surface craft and aircraft. Individual ID markings should conform to a "spreadsheet" layout, i.e. lettered on the horizontal axis, and numbered on the vertical axis. The ID marking should be sequential, aligned with 'SAR lanes' (line of orientation for search and rescue purposes) and to avoid confusion, the letters 'O' and</li> </ol>		



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'I' should not be used. The detail of this will depend on the shape, geographical orientation and potential future expansion of each OREI.

- 2) Hover reference marking of Wind Turbine blades; and
- 3) Aviation Hazard and aviation SAR Lighting of wind turbines

On this occasion, we would expect to see consistency with lighting and marking arrangements across East Anglia 3, Norfolk Vanguard East and West and Norfolk Boreas.

**8.7**

**Applicant, MMO, MCA and Trinity House**

Condition 14(1)(a) of the DMLs contained in Schedules 9 and 10 and Condition 9(1)(a) of the DMLs contained in Schedules 11 and 12 inclusive of the dDCO [APP-005] refers to the MMO, in consultation with Trinity House and the MCA, agreeing a design plan. Are you content with the arbitration procedures in this regard as set out in Article 38 and Schedule 14 of the dDCO?

No. Having carefully considered the relevant provisions of the DCO and the pertinent representations, the MCA agrees with the MMOs position for the reasons set out below; that the proposed arbitration provisions, being significantly different to previously used arbitration clauses, are inappropriate. The MCA therefore supports the MMO in advocating their removal from the DCO and the 4 DMLs.

As to the question at issue, the DCO seeks to apply the arbitration procedures to the MMOs decision to approve the design plan. Having considered the relevant provisions in the 4 DMLs, it appears that this is a regulatory decision for the MMO to take pursuant to the provisions of the DML (as the relevant statutory licensing and consenting body) and it is unsuitable for arbitration which typically is limited to disputes between the scheme promoter and 3<sup>rd</sup> parties (e.g. in relation to rights of entry or to install or maintain apparatus). Accordingly, and for the detailed reasons given by the MMO in its reps of 14<sup>th</sup> September 2018, we agree with the MMO and consider that arbitration is unsuitable for this regulatory decision of the MMO. Specifically, we agree with the MMO that:

- The significant proposed amendments to the model provisions on arbitration in the DCO go beyond providing greater scheme specific 'relevance' as is asserted by the applicant;
- It is inappropriate for such a MMO regulatory determination to be made subject to a binding arbitration process;
- Approval of a design plan is a technical determination for the MMO to make in its judgment and it is better placed to make such a technical determinations than an appointed arbitrator;
- The proposed arbitration provisions in the DCO effectively shift the decision making responsibility from the MMO (under the DML) to an independent arbitrator;
- Such a shift in decision making responsibility is arguably contrary to the purpose and intent of the statutory marine licensing regime in the Marine and Coastal Access Act 2009 ("2009 Act") and the statutory functions of the MMO;
- Agreeing that arbitration should apply in this case would create inconsistency between the approach taken by the MMO under

<p>DMLs granted through the provisions of a DCO under the PA 2008 and marine licences issued direct by the MMO contrary to the purpose and intent of the statutory scheme for marine licensing; and</p> <ul style="list-style-type: none"> <li>○ Should the applicant disagree with the MMOs technical determination on the design plan then there are already dispute resolution mechanisms available to it which are: <ul style="list-style-type: none"> <li>▪ the MMOs internal complaints procedure,</li> <li>▪ complaint to the Ombudsman; and</li> <li>▪ Ultimately via an action for Judicial Review in the usual way under the usual public law principles</li> </ul> </li> </ul>		
<b>20.94</b>	<b>Applicant</b>	<p><i>Condition 16 requires a post construction survey of the seabed to be submitted to the MCA. This appears to be very similar to the requirements of Condition 20. Is there a need for a separate condition?</i></p>
<p><i>Although this question is not directed at MCA, we would like to comment as follows:</i></p> <p>The MCA requirements for hydrographic surveys are detailed in section 6 of MGN 543 and in the guidelines for Offshore Developers, including the post construction guidelines. These can be found at the bottom of the following link: <a href="https://www.gov.uk/guidance/offshore-renewable-energy-installations-impact-on-shipping">https://www.gov.uk/guidance/offshore-renewable-energy-installations-impact-on-shipping</a></p> <p>On the understanding that these guidelines are followed, we would have no concerns. If possible, the MCA would also like to be involved in the determination of the 'pre-established periodicity' when this is decided. We would therefore suggest the DCO refers to:</p> <p><b>Pre-Construction requirements:</b> The undertaker must conduct a swath bathymetric survey to IHO Order 1a of the <u>site and its immediate environs extending to 500m outside</u> of the authorised project area. The survey shall include all proposed cable routes.</p> <p>This should fulfil the requirements of MGN 543 and its supporting 'Hydrographic Guidelines for Offshore Developers', which includes the requirement for the full density data and reports to be delivered to the MCA and the UKHO for the update of nautical charts and publications. This must be submitted as soon as possible, and no later than [three months] prior to construction. The Report of survey must also be sent to the MMO.</p> <p><b>Post-construction requirements:</b> The undertaker must conduct a swath bathymetric survey to IHO Order 1a of the <u>installed export cable route</u> and provide the data and survey report(s) to the MCA and UKHO. The MMO should be notified once this has been done, with a copy of the Report of Survey also sent to the MMO, as per above guidelines.</p>		
<b>20.103</b>	<b>Maritime and Coastguard Agency</b>	<p>The dDML's refer to Emergency Response &amp; Co-operation Plans. Are you proposing an amendment in respect of a SAR checklist to be agreed before construction starts to include the requirement for an</p>

		approved Emergency Response Co-operation Plans (ERCOP)? If so please clarify what part of the dDCO and/or DML's you consider should be amended and provide your proposed wording.
<p>The MCA would like schedules 9 Condition 15 (5), schedule 10 Condition 15 (5) and schedule 11 condition 10 (5) amended as follows:</p> <p>No part of the authorised project may commence until the MMO has received a SAR checklist containing all the required elements from Annex 5 of MGN 543 "Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response" which have been agreed with the MCA. The agreed checklist must be updated throughout the lifecycle of the project.</p> <p>The checklist must include an agreement to supply the MCA with an Emergency Response Co-operation Plan (ERCoP), maintained to the satisfaction of the MCA, at least three months before construction commences.</p>		
<b>20.105</b>	<b>MCA</b>	Justify your proposal for linear progression of the construction programme with reference to any adverse effects of disparate construction sites across the development area, and the need for an agreed construction plan to be in place ahead of any works commencing, explaining how the dDCO/DML's should be amended.
<p>The MCA spends a lot of time working with developers to ensure a minimum of two lines of orientation as part of the windfarm layout. Multiple lines of consistent orientation provide alternative options for vessel passage planning, and we know that by far the safest way to navigate through a windfarm is when the turbines are in straight lines, with multiple lines of orientation, which gives a clear line of sight of entry and exit. Vessels may transit a windfarm through choice or they may unexpectedly find themselves in the vicinity of the offshore windfarm in poor conditions or in an evolving emergency situation, and two lines of orientation would make navigation through the windfarm much safer.</p> <p>In addition, all search and rescue patterns are essentially linear in that they are composed of patterns of (normally parallel) straight lines to ensure that a search-area is covered to a consistent 'coverage factor'. Therefore, nonlinear OREI layouts may not necessarily provide an effective and 'safe' search-unit environment if SAR helicopters have to operate at low altitude e.g. because straight-line paths cannot be flown without encountering physical obstacles on a desired track.</p> <p>Therefore, this request is to help ensure that during construction, due consideration is given to the safety of navigation and our Search and Rescue obligations. MCA would have concern about any large gaps which could cause difficulty regarding aids to navigation/buoyage; outliers/dangerously protruding turbines or any other construction scenario which could impact vessels and SAR.</p>		

We would therefore like to see the plans for construction showing how the developer intends to build the site; for example, in a phased approach, so we can consider any potential safety of navigation implications.

We suggest that the pre-construction plans and documentation include the requirement for the Design Plan to detail how the construction/phased construction will take place, which should be in writing, and submitted to the MMO for approval. Such approval may only be granted following consultation by the MCA and TH and any such other advisors or organisations as may be required at the discretion of the MMO. The design plans would then also include those points listed as part of conditions 9 of Schedule 11 and condition 14 of Schedule 9.

<b>20.107</b>	<b>MCA</b>	Clarify what amendment is proposed to the dDCO/DML's to ensure that consented cable protection works do not compromise existing and future safe navigation. Does the Applicant accept the MCA's request to specify a maximum of 5% reduction in surrounding depth referenced to Chart Datum?
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MCA standard condition for all cable and pipeline related marine licence applications is that any consented cable/pipe protection works must ensure existing and future safety navigation is not compromised, accepting a maximum of 5% reduction in surrounding depth referenced to chart datum. The 5% is our trigger point for initiating conversations with the developers regarding any compromise in navigation safety, and whether the risk is suitably mitigated in those specific areas when the depth has changed significantly.

A Marine Licence under the Marine and Coastal Access Act 2009 will likely be required for any rock dumping/cable protection and MCA would be consulted. MCA would then apply our standard condition as above and therefore this may not need to be addressed in the DCO if I understand correctly.

Yours faithfully,

Helen Croxson  
OREI Advisor  
Maritime and Coastguard Agency