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Subject: NNDC Deadline 4 Submission
Date: 13 March 2019 14:00:37
Attachments: [NNDC Deadline 4 Submission 13 March 2019.pdf](#)

Dear Examining Authority,

Please find attached the Norfolk Vanguard Deadline 4 response from North Norfolk District Council (INTERESTED PARTY REF: 20012882).

Please could you confirm receipt of this document.

Kind Regards

Geoff Lyon
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North Norfolk District Council
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**NORTH
NORFOLK
DISTRICT
COUNCIL**

Norfolk Vanguard Offshore Wind Farm

DEADLINE 4 SUBMISSIONS

NORTH NORFOLK DISTRICT COUNCIL

(INTERESTED PARTY REF: 20012882)

MAR 2019

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1. Introduction

1.1. These are North Norfolk District Council's Deadline 4 Submissions.

1.2. The following material is provided with these submissions:

- NNDC response to the ExA's Further Written Questions
- Update on Statement of Common Ground between the Applicant and NNDC
- Updated Position in respect of Ten Year replacement planting condition

2. NNDC response to the ExA's Further Written Questions

2.1. NNDC have provided written responses to the ExA's Further Written Questions (issued 27 Feb 2019). Questions responded to include:

- **Q10.5;**
- **Q14.28;**
- **Q16.42;**
- **Q18.33;**
- **Q18.34;**
- **Q19.29;**
- **Q20.124;**
- **Q20.131;**
- **Q20.132;**
- **Q20.133;** and
- **Q22.47**

2.2. Copies of responses to these questions are attached in tabular form within **Appendix 1.**

3. Update on Statement of Common Ground between the Applicant and NNDC

- 3.1. NNDC have worked with Vattenfall to take forward the Statement of Common Ground (SoCG) with many areas now agreed. There are some areas where further discussion is required and one area which is not agreed relating to impact on tourism.
- 3.2. Vattenfall have indicated that the latest copy of the SoCG will be provided to the ExA at Deadline 4 (*Rep1-SOCG-17.1 Norfolk Vanguard SOCG with North Norfolk DC 07D*).

4. Updated Position in respect of Ten Year replacement planting condition

- 4.1. NNDC have evidenced why a ten year rather than a five-year replacement planting period should be applied to the Norfolk Vanguard DCO under requirement 19 (2). The further evidence to support this request was submitted by NNDC to the examination at Deadline 3.
- 4.2. Similar evidence was presented to the Examining Authority (ExA) for Ørsted Hornsea Project Three (HP3) and, in the ExA's schedule of changes to the draft Development Consent Order for HP3 (issued 26 Feb 2019), the ExA in that DCO have now indicated that they are minded to recommend a ten-year replacement planting period. A copy of the ExA's schedule of changes to the draft Development Consent Order is attached at **Appendix 2** – Requirements 8 and 9 relate to Landscaping with the ExA indicating that the suggested change from five to ten years is intended '*to reflect likely timescales for planting to become established in this locality*'. A copy of the HP3 draft DCO Requirements at Schedule 1 Part 3, produced by the applicant prior to the ExA amendments, is attached at **Appendix 3** for context.

- 4.3. Given that the NSIP schemes for Hornsea Project Three and Vattenfall Vanguard are of a similar type and both affect areas of North Norfolk, it is important that there is general consistency in respect of the approach of the ExA to key issues including the maintenance period for replacement planting.

- 4.4. NNDC would therefore invite the ExA to take a similar approach to Norfolk Vanguard as is being taken by the ExA for Ørsted Hornsea Project Three to ensure a general consistency across similar topic areas for NSIP schemes.

13 March 2019

Appendix 1 –NNDC response to the ExA’s Further Written Questions

Examining Question No.	Who needs to respond	Question	North Norfolk District Council Response
10.5	Applicant/NNDC	<p>Clarification Note on Landfall 24-hour vehicle requirements: the Applicant asserts that any 24-hour working which may be needed at the landfall will be agreed with the relevant planning authority in advance of construction in accordance with requirement 26 DCO. However requirement 26 provides that 'outside the hours specified in paragraph (1), construction work may be undertaken for essential and non-intrusive activities, including but not limited to.....(c) onshore transmission works at the landfall.....'</p> <p>Please comment on whether or not requirement 26 would offer any limitation upon or sufficient control in relation to the hours of working for landfall transmission works.</p>	<p>All construction work outside of agreed hours (other than emergency works set out at item k)) needs to be agreed in writing in advance with the relevant planning authority.</p> <p>It is not clear at this stage what that process of agreement would entail but it is assumed that it would fall under the framework set out in Schedule 15 (but with the amendments proposed by NNDC at Deadline 3).</p> <p>NNDC would welcome early engagement on proposed activities and mitigation measures so as to avoid the potential for any adverse impacts, with particular reference to daily start up and shut down activities - Requirement 26 (2)(h).</p>
14.28	NNDC	Having Regard to the Applicant's post hearing submissions [REP3-003] on the mitigation measures for	NNDC are disappointed that the Applicant considers no replacement trees are to be provided within the NNDC authority area. In respect of replacement planting, it is the expectation of NNDC

Examining Question No.	Who needs to respond	Question	North Norfolk District Council Response
		<p>the impacts of hedgerow removal and proposed replacement measures, do you wish to comment further? (n.b it is not necessary to address the question of the appropriate maintenance period).</p>	<p>that where trees are to be removed along the cable route (for example, where removal cannot reasonably be avoided), these should be replaced within reasonable proximity as part of the Provision of Landscaping (DCO Requirement 18) and appropriately managed as part of the Implementation and Maintenance of Landscaping (DCO Requirement 19) for a period of ten years after planting.</p> <p>NNDC would also welcome further clarification as to who will manage and maintain landscape mitigation planting</p>
16.32	Applicant, NNDC	<p>Please provide an update on your discussions regarding the potential options for Cart Gap sea wall.</p>	<p>NNDC welcomes the Applicant's statement in the SoCG that they are <i>'open to discussing the feasibility of providing spoil to NNDC post-consent, should NNDC wish to proceed with seeking a licence to infill the Cart Gap seawall'</i>.</p> <p>Given the added potential for re-use of spoil to reduce overall traffic movements, NNDC would be happy to work with the Applicant and relevant land owners to take forward this opportunity. This could be secured within the final DCO either as part of the CoCP (as part of Soil Management, as a Construction Method Statement or as part of the Site and Excavated Waste Management (with a specific new topic covering re-use of clean spoil)) or other relevant documents to be determined between the parties.</p>

Examining Question No.	Who needs to respond	Question	North Norfolk District Council Response
			<p>If the Applicant is prepared to commit to this option, NNDC would be willing to take forward the required licenses to enable this to happen. This will benefit both parties, in terms of cost saving for the Applicant, fewer traffic movements transporting material offsite and an increase in clean spoil to help slow down the rate of coastal change.</p>
<p>18.33</p>	<p>Applicant/Relevant Planning Authorities</p>	<p>Horizontal Directional Drilling is not proposed at the crossings of two further Norfolk Trails, the Wensum Way and Weaver’s Way, nor the majority of the crossing points of the general Public Rights of Way (PRoW) network.</p> <p>Do you agree that the County Council as the Highways Authority should be the relevant local authority to agree the management of PRoW’s including the Trails network?</p>	<p>Whilst it is of concern that trenchless crossing techniques are not being used to cross the Weavers way near to Aylsham (Blickling Road and Silvergate) given the popularity of this area for tourists in connection with Blickling Hall, this is outside of NNDC’s jurisdiction and is therefore a matter for Broadland District Council (BDC). The same applies to any effect on the Wensum Way, which is also in BDC’s area.</p> <p>Public Rights of Way (PRoW) are already a function of the County Council and therefore it would make sense that they should be the relevant local authority to agree the management of PRoWs including the trails network. The alternative would be for District LPAs to carry out the function but most LPAs would need to consult the County Council PRoW team for advice in any event. It would therefore cut the bureaucratic burden for the Applicant and likely reduce the potential for delay in discharging requirements if the County Council were the relevant authority.</p>

Examining Question No.	Who needs to respond	Question	North Norfolk District Council Response
18.34	NNDC, Happisburgh PC	Are you content with the measures proposed by the Applicant to ensure that the commitment not to use the beach car park is enforced, as outlined in the Applicant's response to ExQ1 11.32 at Deadline 1?	<p>As previously set out by NNDC, the land is owned by NNDC and leased to Happisburgh Parish Council and used as a car park and public open space.</p> <p>As it is understood that Vattenfall are not intending to use the site, issues of enforcement and monitoring would not be applicable.</p> <p>In any event, Requirements 20 and 21 of the draft DCO (referred to by the Applicant in their response to ExQ1 11.32) should provide the mechanism to discourage use by traffic associated with the proposal.</p> <p>Failing this, it may be possible for the Applicant to come to an arrangement with NNDC/Happisburgh PC should the potential use of this car park be considered agreeable to all parties.</p>
19.29	Applicant, NCC, RPAs	In the Applicant's response to NCC's LIR [REP2-005] you state that the decision to establish a Community Benefit Fund (CBF) would be made post Financial Investment Decision (FID) and the potential for a CBF is outwith the DCO consenting regime and therefore wider community benefits should not	<p>Policy EN7 of the NNDC Core Strategy is the relevant development plan policy. It provides: "Large scale renewable energy proposals should deliver economic, social, environmental or community benefits that are directly related to the proposed development and are of reasonable scale and kind to the local area."</p> <p>The reasoned justification §3.3.37 addresses the potential for offshore wind development to provide community benefits. It refers to one of the</p>

Examining Question No.	Who needs to respond	Question	North Norfolk District Council Response
		<p>be taken into account when determining the application.</p> <p>If a development plan policy relating to the provision of a community benefit appears to you to be relevant to development proposed within the Order limits what is your view as to the applicability of the policy in light of the DCO consenting regime? Please list any such policies.</p>	<p>foundational documents dealing with community benefits (Delivering Community Benefits from Wind Energy Development', a report for the Renewables Advisory Board and DTI, May 2007), which was the relevant document when the Core Strategy was drafted.</p> <p>North Norfolk District Council have assumed that development plan policies carry some, albeit limited weight in the NSIP decision making process forming a material planning consideration, the weight to be applied being a matter for the decision maker.</p> <p>As an NSIP proposal where National Policy Statement has effect (relevant NPS includes EN-1, EN-3 and EN-5), Part 6, Chapter 5 Section 104(2) of the Planning Act 2008 sets out what the Secretary of State must have regard to in deciding the application. This includes, inter alia, (a) the relevant NPS, (b) any local impact report and (d) any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State's decision.</p> <p>NNDC has set out its position on matters affecting North Norfolk in the Local Impact Report submitted at Deadline 1 and through subsequent oral submissions at relevant Issue Specific Hearings and through further submissions at Deadline 3. The most recent iteration of the SoCG to be submitted at Deadline 4 highlights those areas where further</p>

Examining Question No.	Who needs to respond	Question	North Norfolk District Council Response
			<p>discussion is required with the Applicant to clarify matters including one area of disagreement in relation to impacts on the tourism economy in North Norfolk.</p> <p>Impact on the tourism economy is one area where a Community Benefit Fund may need to be secured within the DCO and where it may be considered by the ExA and Secretary of State to be both important and relevant to ensure that such impacts, particularly at construction phase, are properly managed and/or mitigated. This is so given that it is NNDC's position that there is still the potential for adverse impacts on the tourism economy despite the controls proposed to be put in place through various DCO requirements. Accordingly, in the language of policy EN7, such a Community Benefit Fund would be "directly related to the proposed development".</p> <p>If the Secretary of State considers it both important and relevant that a Community Benefit Fund is secured as part of the proposal, then he is perfectly entitled to take that into account, whether or not the matters relate back to a development plan policy. This is the flexibility given by section 104(2)(d) of the 2008 Act.</p> <p>If the ExA is considering making a CBF part of the Development Consent Order, it will be important for all parties to understand the basis for this</p>

Examining Question No.	Who needs to respond	Question	North Norfolk District Council Response
			<p>conclusion as it will frame the terms of reference and extent of any CBF to be secured within the Development Consent Order. It is possible that a CBF addressing specific impacts could be secured through the DCO while a more general CBF could be negotiated outside of the DCO process.</p> <p>North Norfolk District Council have assumed, based on other recent DCOs, that discussions regarding any CBF (other than those matters designed to address direct impacts of the proposal) would be undertaken outwith the NSIP process. Further clarification setting out the ExA position on this matter would be of assistance.</p> <p>NNDC will look to commence a dialogue with Vattenfall as soon as reasonably practicable outside of the DCO process on a range of Community Benefits it wishes to secure.</p>
20.124	RPA's	In light of the Applicant's stance at the ISH3 regarding Article 11 [REP3-005] and the temporary stopping up of streets, that it would not be possible to provide an exhaustive list of what might be included in a temporary working site and that this should be given its plain meaning, please confirm	<p>North Norfolk District Council would defer to the advice of Norfolk County Council as Highway Authority on this matter.</p> <p>However, NNDC would welcome early engagement on proposed activities, duration of works and mitigation measures so as to avoid the potential for any adverse impacts.</p>

Examining Question No.	Who needs to respond	Question	North Norfolk District Council Response
		whether you are content with that approach and if not why not.	
20.131	Relevant Planning Authorities	Please consider and comment on the response of the Applicant in ISH3 [REP3-005] as to construction hours set out in R26 and inform the ExA of any further concerns and consequential proposed amendments to R26.	<p>In respect of HGV deliveries/arrivals, there needs to be a clear procedure in the eventuality of missed booking slots so that HGVs do not wait near to noise sensitive receptors.</p> <p>NNDC would welcome early engagement on proposed activities and mitigation measures so as to avoid the potential for any adverse impacts, with particular reference to daily start up and shut down activities - Requirement 26 (2)(h).</p>
20.132	Applicant Relevant Planning Authorities	What is understood by the term “non-intrusive” and is it intended to exclude activities that would have some limited but adverse impact? Is there merit in separating out the “essential” and “non-intrusive” activities in R26?	<p>NNDC consider that this matters does need to be clarified, particularly as the term ‘intrusive’ could be interpreted as:</p> <ul style="list-style-type: none"> • either physical construction works; or • having and adverse impact on noise sensitive receptors <p>Further clarification is required on what is considered to be ‘essential’ and ‘non-intrusive’ so that there is certainty in any final DCO decision.</p>
20.133	NNDC	Have you considered, following ISH3, alternatives to the wording of R26(2) and if	NNDC would be happy to consider alternative wording once the issues identified above are clarified by the Applicant in respect of Questions 20.131, 20.132 and 10.5.

Examining Question No.	Who needs to respond	Question	North Norfolk District Council Response
		so please provide any alternative wording proposed?	
22.47	NFU/LIG Applicant NCC NNDC	Are you satisfied that it has been shown how exactly construction of the different cables will take place at the crossing point, with the Orsted development in two phases and the Vanguard and Boreas proposed developments? Please provide reference to submitted documents as appropriate.	The Crossing point of the Norfolk Vanguard/Norfolk Boreas and Ørsted Hornsea Project Three schemes is outside of NNDC's area and is therefore a matter for comment by Broadland District Council and other relevant parties.

**Appendix 2 – Examining Authority for Ørsted Hornsea
Project Three schedule of changes to the draft
Development Consent Order**



Application by Orsted Hornsea Project Three (UK) Ltd for an Order granting Development Consent for the proposed Hornsea Project Three Offshore Wind Farm

The Examining Authority's schedule of changes to the draft Development Consent Order

Issued on 26 February 2019

Ref	ExA's suggested changes	ExA's comments
Articles		
5(3) to 5(6)	<p>(3) The undertaker shall consult the Secretary of State before making an application for consent under this article by giving notice in writing of the proposed application and the Secretary of State shall provide a response within four weeks of receipt of the notice.</p> <p>(4) The Secretary of State shall consult the MMO before giving consent to the transfer or grant to another person of the whole or part of the benefit of the provisions of the deemed marine licences.</p> <p>(5) The Secretary of State shall determine an application for consent made under this article within a period of eight weeks commencing on the date the application is received by the Secretary of State, unless otherwise agreed in writing with the undertaker.</p> <p>(6) Where the Secretary of State is minded to refuse an application for consent made under this article and notifies the undertaker accordingly, or the Secretary of State fails to determine the application for consent under this article within the period prescribed in paragraph (5), the undertaker may refer the matter for determination in accordance with article 37 (arbitration).</p> <p><i>Subsequent sub-paragraphs renumbered accordingly</i></p>	<p>The issue of whether it would be appropriate for a decision of the Secretary of State relating to the transfer of the benefit of the Order to be subject to arbitration has been explored in the examination. The ExA has sought evidence in relation to the justification for the approach suggested by the Applicant.</p>
37	<p>(1) Any difference under any provision of this Order, other than matters within (2) or unless otherwise provided for, shall be referred to and settled in arbitration in accordance with the rules at Schedule 13 of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of</p>	<p>The issue of whether it would be appropriate for</p>



	<p>arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.</p> <p>(2) Where the referral to arbitration under paragraph (1) relates to a difference with the Secretary of State, in the event that the parties cannot agree upon a single arbitrator within the specified time period stipulated in paragraph (1), either party may refer to the Centre for Effective Dispute Resolution for appointment of an arbitrator. Any matter for which the consent or approval of the Secretary of State or the Marine Management Organisation is required under any provision of this Order shall not be subject to arbitration.</p> <p>(3) Should the Secretary of State fail to make an appointment under paragraph (1) within 14 days of a referral, the referring party may refer to the Centre for Effective Dispute Resolution for appointment of an arbitrator.</p>	<p>a decision of the Secretary of State relating to the transfer of the benefit of the Order to be subject to arbitration has been explored in the examination. The ExA has sought evidence in relation to the justification for the approach suggested by the Applicant. The amendment reflects submissions made by the MMO.</p>
38(4)	<p>(4) Where the MMO refuses an application for approval under condition 13 of Part 2 of Schedule 11 or condition 14 of Part 2 of Schedule 12 and notifies the undertaker accordingly, or the MMO fails to determine the application for approval within four months commencing on the date the application is received by the MMO, the undertaker may by notice appeal against such a refusal or non-determination and the 2011 Regulations shall apply subject to the modifications set out in paragraph (5).</p>	<p>The question of whether it would be appropriate for conditions under these DMLs to be treated differently from conditions under other marine licences which are not subject to an appeal mechanism under the 2011 Regulations has been explored in the examination.</p>



38(5)	<p>(5) The 2011 Regulations are modified so as to read for the purposes of this Order only as follows —</p> <p>(a) For regulation 4(1) (appeal against marine licensing decisions) substitute — “A person who has applied for approval under condition 13 of Part 2 of Schedule 11 or condition 14 of Part 2 of Schedule 12 of the Hornsea Three Offshore Wind Farm Order 20[] may by notice appeal against a decision to refuse such an application or a failure to determine such an application.”</p> <p>(b) For regulation 7(2)(a) (contents of the notice of appeal) substitute — “a copy of the decision to which the appeal relates or, in the case of non-determination, the date by which the application should have been determined; and”</p> <p>(c) In regulation 8(1) (decision as to appeal procedure and start date) for the words “as soon as practicable after” there is substituted the words “within the period of [2] weeks beginning on the date of”.</p> <p>(d) In regulation 10(3) (representations and further comments) after the words “the Secretary of State must” insert the words “within the period of [1] week”</p> <p>(e) In regulation 10(5) (representations and further comments) for the words “as soon as practicable after” there is substituted the words “within the period of [1] week of the end of”.</p> <p>(f) In regulation 12(1) (establishing the hearing or inquiry) after the words “(“the relevant date”)” insert the words “which must be within [14] weeks of the start date”.</p> <p>(g) For regulation 22(1)(b) and (c) (determining the appeal—general) substitute — “(b) allow the appeal and, if applicable, quash the decision in whole or in part; (c) where the appointed person quashes a decision under sub-paragraph (b) or allows the appeal in the case of non-determination, direct the Authority to approve the application for approval made under condition 13 of Part 2 of Schedule 11 or condition 14 of Part 2 of Schedule 12 of the Hornsea Three Offshore Wind Farm Order 20[].”</p> <p>(h) In regulation 22(2) (determining the appeal—general) after the words “in writing of the determination” insert the words “within the period of [12] weeks beginning on the start date where the appeal is to be determined by written representations or within the period of [12] weeks beginning on the day after the close of the hearing or inquiry where the appeal is to be determined by way of hearing or inquiry”.]</p>	<p>The question of whether it would be appropriate for conditions under these DMLs to be treated differently from conditions under other marine licences which are not subject to an appeal mechanism under the 2011 Regulations has been explored in the examination.</p>
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41	<p>41.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—</p> <p>(a) belonging to Her Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;</p> <p>(b) belonging to Her Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or</p> <p>(c) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.</p> <p>(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.</p> <p>(3) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and is deemed to have been given in writing where it is sent electronically.</p>	<p>It is not possible to “take” Crown land and the DCO cannot authorise this. The word is therefore superfluous and potentially confusing.</p>
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Ref	ExA's suggested changes	ExA's comments
Requirements		
8	<p>8.—(1) No phase of the connection works may commence until for that phase a written landscape plan and associated work programme (which accords with the outline landscape plan and outline ecological management plan) has been submitted to and approved by the relevant planning authority in consultation with the relevant SNCBs and the Historic Buildings and Monuments Commission for England.</p> <p>(2) The term commence as used in requirement 8(1) shall include any onshore site preparation works.</p> <p>(3) The landscape plan must include an implementation timetable and must be carried out as approved. The landscape plan must include details of— (a) surveys, assessments and method statements as guided by BS 5837 and the Hedgerows Regulations;</p>	<p>Amendment reflects suggestion made by NNDC, BDC and SNDC.</p>



	<p>(b) location, number, species, size and planting density of any proposed planting;</p> <p>(c) cultivation, importing of materials and other operations to ensure plant establishment;</p> <p>(d) existing trees and hedges to be retained with measures for their protection during the construction period;</p> <p>(e) implementation timetables for all landscaping works.</p> <p>(4) The landscape plan must be carried out as approved.</p>	
9	<p>9.—(1) All landscape works must be carried out in accordance with the landscape plans approved under requirement 8 (provision of landscaping), and in accordance with the relevant recommendations of appropriate British Standards.</p> <p>(2) Any tree or shrub planted as part of an approved landscape plan that, within a period of five-ten years after planting, is removed by the undertaker, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased must be replaced in the first available planting season with a specimen of the same species and size as that originally planted unless otherwise approved in writing by the relevant planning authority.</p>	To reflect likely timescales for planting to become established in this locality.
17(1)	<p>(1) No phase of the any works landward of MLWS may commence until for that phase a code of construction practice (which must accord with the outline code of construction practice) has been submitted to and approved by the relevant planning authority, in consultation with the Environment Agency, the relevant SNCBs, the relevant highway authority and, if applicable, the MMO.</p>	To ensure that nature conservation interests are fully considered in the CoCPs.
23	<p>23.—(1) Within three months of the cessation of commercial operation of the connection works an onshore decommissioning plan must be submitted to the relevant planning authority for approval unless otherwise agreed in writing by the relevant planning authority.</p> <p>(2) The relevant planning authority must provide its decision on the The onshore decommissioning plan required under requirement 23(1) shall be approved by the relevant planning authority within three months of submission of such plan unless otherwise agreed in writing by the relevant planning authority and the undertaker.</p> <p>(3) The decommissioning plan must be implemented as approved unless otherwise agreed in writing by the relevant planning authority.</p>	Amendment seeks to avoid pre-judging the decision of the relevant planning authority.

Ref	ExA's suggested changes	ExA's comments
Deemed Marine Licences		



	<i>The following paragraph and condition numbers refer to Schedule 11. Where there are equivalent provisions in Schedule 12 the same amendments would apply.</i>	
Paragraph 10	<p>10.—(1) Any difference under any provision of this licence, unless otherwise provided for, shall be referred to and settled in arbitration in accordance with the rules at Schedule 13 of the Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.</p> <p>(2) Where the referral to arbitration under paragraph (1) relates to a difference with the Secretary of State, in the event that the parties cannot agree upon a single arbitrator within the specified time period stipulated in paragraph (1), either party may refer to the Centre for Effective Dispute Resolution for appointment of an arbitrator.</p> <p>(3) Should the Secretary of State fail to make an appointment under paragraph (1) within 14 days of a referral, the referring party may refer to the Centre for Effective Dispute Resolution for appointment of an arbitrator.</p>	The amendment reflects submissions made by the MMO.
Condition 7(11)	(11) In case of damage to, or destruction or decay of, the authorised project seaward of MHWS or any part thereof including the exposure of cables the undertaker must as soon as possible and no later than 24 hours following the undertaker becoming aware of any such damage, destruction or decay, notify MMO, MCA, Trinity House, the Kingfisher Information Service of Seafish and the UK Hydrographic Office.	Amendment seeks to mitigate safety risks to fishing operations.
Condition 14(2)	<p>(2) The design plan required by condition 13(1)(a) shall be prepared by the undertaker and approved determined by the MMO in accordance with the Development Principles, save where a material change in circumstances requires amendment of one or more of them, in which case—</p> <p>(a) the undertaker or MMO may amend the relevant Development Principle(s) following consultation with the MCA and Trinity House; and</p> <p>(b) an application for approval of the design plan shall be determined in accordance with the amended Development Principles—</p> <p>(i) as agreed between the MMO and undertaker; or</p> <p>(ii) determined in accordance with [article 37 (arbitration) OR article 38 (requirements, appeals, etc.)] of the Order.</p>	The Development Principles are important to navigational safety and to the effectiveness search and rescue operations. If they are relied upon by the Secretary of State in deciding whether to confirm the Order, it may be inappropriate for them



		to be changed subsequently. Amendment seeks to avoid pre-judging the decision of the MMO.
Condition 14(4)	<p>(4) Where the MMO is minded to refuse an application for approval made under condition 13 and notifies the undertaker accordingly, or the MMO fails to determine the application for approval under condition 13 within the period prescribed in sub-paragraph (3), the undertaker may refer the matter for determination in accordance with [article 37 (arbitration) OR article 38 (requirements, appeals, etc.)] of the Order.</p> <p><i>Subsequent sub-paragraph renumbered accordingly</i></p>	The amendment reflects submissions made by the MMO.
Condition 14(5)	<p>(5) The licensed activities must be carried out in accordance with the approved plans, protocols, statements, schemes and details approved under condition 13, unless otherwise agreed in writing by the MMO.</p>	The ExA seeks confirmation that the approved plans and protocols etc would apply during the operational phase of the development.
Condition 18(3) and (4)	<p>(3) The results of the initial noise measurements generated in accordance with condition 18(2)(a) must be provided to the MMO within 6 weeks of the completion of installation of the fourth foundation of each foundation type for the MMO to determine whether any further noise monitoring shall be required. OR</p> <p>(4) The results of the initial noise measurements monitored in accordance with condition 18(2)(a) must be provided to the MMO within six weeks of the installation of the first four piled foundations of each piled foundation type. The assessment of this report by the MMO will determine whether any further noise monitoring is required. If, in the opinion of the MMO in consultation with Natural England, the assessment shows significantly different impact to those assessed in the environmental statement or failures in mitigation, all piling activity must cease until an update to the MMMP and further monitoring requirements have been agreed.</p>	In the interests of protecting the integrity of the Site of Community Interest.



Ref	ExA's suggested changes	ExA's comments
Schedule 13 – Arbitration Rules		
6	<p>(1) The costs of the Arbitration shall include the fees and expenses of the Arbitrator, the reasonable fees and expenses of any experts and the reasonable legal and other costs incurred by the parties for the Arbitration.</p> <p>(2) Subject to sub-paragraph (3), the Arbitrator will award recoverable costs on the general principle that each party should bear its own costs.</p> <p>(3) The Arbitrator may depart from the general principle in sub-paragraph (2) and make such other costs award as it considers reasonable where a party has behaved unreasonably as defined within the National Planning Practice Guidance or such other guidance as may replace it.</p> <p>(1) Subject to sub-paragraph 3, the Applicant/Undertaker shall bear the reasonable fees and expenses of the Arbitrator.</p> <p>(2) Subject to sub-paragraph 3, the general principle is that each party shall bear its own costs of the arbitration (such as the fees and expenses of any experts and any legal costs).</p> <p>(3) The Arbitrator has the power (on application by one of the parties) to make a costs award against a party which has behaved unreasonably during arbitration and this unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense. An award may include the reasonable fees and expenses of the Arbitrator (or any part thereof) and/or the reasonable and proportionate costs of the innocent party (or any part thereof).</p>	Amendment reflects suggestions made by NE.

End of schedule

Appendix 3 - Applicant for Hornsea Project Three's draft DCO Requirements (prior to the ExA amendments)

PART 2

ANCILLARY WORKS

1. Works within the Order limits which have been subject to an environmental impact assessment recorded in the environmental statement comprising—

- (a) temporary landing places, moorings or other means of accommodating vessels in the construction and/or maintenance of the authorised development;
- (b) marking buoys, beacons, fenders and other navigational warning or ship impact protection works; and
- (c) temporary works for the benefit or protection of land or structures affected by the authorised development.

PART 3

REQUIREMENTS

Time limits

1. The authorised project must commence no later than the expiration of seven years beginning with the date this Order comes into force.

Detailed offshore design parameters

2.—(1) The total number of wind turbine generators comprised in the authorised project must not exceed 300 and a total rotor swept area of 9km².

(2) Subject to sub-paragraph (3), each wind turbine generator forming part of the authorised project must not—

- (a) exceed a height of 325 metres when measured from LAT to the tip of the vertical blade;
- (b) exceed a rotor diameter of 265 metres;
- (c) be less than 34.97 metres from LAT to the lowest point of the rotating blade; and
- (d) be less than one kilometre from the nearest wind turbine generator in all directions.

(3) The reference in sub-paragraph (2)(d) to the location of a wind turbine generator is a reference to the centre point of that wind turbine generator.

(4) Wind turbine generator foundation structures forming part of the authorised scheme must be one of the following foundation options: monopile foundation, mono suction bucket foundation, jacket foundation or gravity base foundation.

(5) No wind turbine generator—

- (a) jacket foundations employing pin piles forming part of the authorised project shall have a pin pile diameter of greater than four meters; and
- (b) monopile foundation forming part of the authorised project shall have a diameter greater than 15 metres.

(6) The total seabed footprint area for wind turbine generator foundations must not exceed—

- (a) 435,660 square metres excluding scour protection; and
- (b) 1,623,182 square metres including scour protection.

3.—(1) The total number of offshore electrical installations and offshore accommodation platforms shall not exceed 21, and shall consist of no more than—

- (a) 12 offshore type 1 substations;
- (b) four offshore type 2 substations;
- (c) four offshore HVAC booster stations;

- (d) six offshore subsea HVAC booster stations; and
 - (e) three offshore accommodation platforms.
- (2) The dimensions of any offshore type 1 substations forming part of the authorised project must not exceed—
- (a) 90 metres in height when measured from LAT;
 - (b) 100 metres in length; and
 - (c) 100 metres in width.
- (3) The dimensions of any offshore type 2 substation forming part of the authorised project must not exceed—
- (a) 110 metres in height when measured from LAT;
 - (b) 180 metres in length; and
 - (c) 90 metres in width.
- (4) The dimensions of any offshore HVAC booster station forming part of the authorised project must not exceed—
- (a) 90 metres in height when measured from LAT;
 - (b) 100 metres in length; and
 - (c) 100 metres in width.
- (5) The dimensions of any offshore subsea HVAC booster station forming part of the authorised project must not exceed—
- (a) 15 metres in height when measured from the seabed;
 - (b) 50 metres in length; and
 - (c) 50 metres in width.
- (6) The dimensions of any offshore accommodation platform forming part of the authorised project must not exceed—
- (a) 64 metres in height when measured from LAT;
 - (b) 60 metres in length; and
 - (c) 60 metres in width.
- (7) Any bridge located between any offshore substation or accommodation platform shall be no longer than 100 metres.
- (8) Offshore accommodation platform foundation structures forming part of the authorised project must be one of the following foundation options: monopile foundations, mono suction bucket foundations, jacket foundations, or gravity base foundations.
- (9) Offshore installation foundation structures forming part of the authorised scheme must be one of the following foundation options—
- (a) for offshore type 1 substations, offshore HVAC booster stations and offshore subsea HVAC booster stations either monopile foundations, mono suction bucket foundations, jacket foundations, gravity base foundations, jacket foundations or box-type gravity base foundations; and
 - (b) for offshore type 2 substations, either monopile foundations, mono suction bucket foundations, jacket foundations, gravity base foundations, jacket foundations, box-type gravity base foundations, pontoon gravity base 1 foundations, or pontoon gravity base 2 foundations.
- (10) No offshore installation or offshore accommodation platform—
- (a) jacket foundation employing pin piles forming part of the authorised project shall have a pin pile diameter of greater than 4 metres; and
 - (b) monopile foundation forming part of the authorised project shall have a diameter greater than 15 metres.

(11) The total seabed footprint area for offshore accommodation platform foundations must not exceed—

- (a) 8,836 square metres excluding scour protection; and
- (b) 28,628 square metres including scour protection.

(12) The total seabed footprint area for offshore electrical installation foundations must not exceed—

- (a) 138,900 square metres excluding scour protection; and
- (b) 267,900 square metres including scour protection.

4. The total volume of scour protection for wind turbine generators, offshore accommodation platforms and offshore electrical installations shall not exceed 2,709,673 cubic metres.

5.—(1) The number of cable circuits shall not exceed six.

(2) The total length of the cables comprising Work No. 1(c) shall not exceed 830 kilometres.

(3) The total length of the cables comprising Work Nos. 2(c), 2(d) and 3(d) shall not exceed 1,371 kilometres.

(4) The total volume of cable protection (excluding cable crossings) shall not exceed 2,201,000 cubic metres with a maximum footprint of 1,540,700 square metres.

(5) The total volume of cable protection associated with cable crossings shall not exceed 784,875 cubic metres with a maximum footprint of 747,500 square metres.

(6) The total number of the cable crossings must not exceed 44 unless otherwise agreed with the MMO.

Phases of authorised development

6.—(1) The authorised development may not be commenced until a written scheme setting out the phases of construction of the authorised project has been submitted to and approved by the relevant planning authority, in relation to the connection works, or the MMO, in relation to works seaward of MHWS.

(2) The phases of construction referred to in sub-paragraph (1) shall not exceed two, save that each phase may be undertaken in any number of stages as prescribed in the written scheme.

(3) The scheme must be implemented as approved.

Detailed design approval onshore

7.—(1) Construction of the connection works in either Work No.9 or Work No. 10 shall not commence until details of—

- (a) the layout;
- (b) scale;
- (c) proposed finished ground levels;
- (d) external appearance and materials;
- (e) hard surfacing materials;
- (f) vehicular and pedestrian access, parking and circulation areas;
- (g) minor structures, such as furniture, refuse or other storage units, signs and lighting; and
- (h) proposed and existing functional services above and below, ground, including drainage, power and communications cables and pipelines, manholes and supports;

relating to that work of the authorised project have been submitted to and approved in writing by the relevant planning authority.

(2) The details submitted under sub-paragraph (1) must be in accordance with the limits of deviation set out in the onshore limits of deviation plan and substantially in accordance with the design objectives and principles.

(3) The connection works in Works No.9 and 10 must be carried out in accordance with the approved details.

Provision of landscaping

8.—(1) No phase of the connection works may commence until for that phase a written landscape plan and associated work programme (which accords with the outline landscape plan and outline ecological management plan) has been submitted to and approved by the relevant planning authority in consultation with the relevant SNCBs and the Historic Buildings and Monuments Commission for England.

(2) The term commence as used in requirement 8(1) shall include any onshore site preparation works.

(3) The landscape plan must include an implementation timetable and must be carried out as approved.

Implementation and maintenance of landscaping

9.—(1) All landscape works must be carried out in accordance with the landscape plans approved under requirement 8 (provision of landscaping), and in accordance with the relevant recommendations of appropriate British Standards.

(2) Any tree or shrub planted as part of an approved landscape plan that, within a period of five years after planting, is removed by the undertaker, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased must be replaced in the first available planting season with a specimen of the same species and size as that originally planted unless otherwise approved in writing by the relevant planning authority.

Ecological management plan

10.—(1) No phase of the connection works may commence until for that phase a written ecological management plan (which accords with the outline ecological management plan and the relevant recommendations of appropriate British Standards) reflecting the survey results and ecological mitigation and enhancement measures included in the environmental statement has been submitted to and approved by the relevant planning authority in consultation with the relevant SNCBs and (where works have potential to impact wetland habitats) the Environment Agency.

(2) The onshore site preparation works may not commence until a written ecological management plan (which accords with the outline ecological management plan) for those works reflecting the survey results and ecological mitigation and enhancement measures included in the environmental statement has been submitted to and approved by the relevant planning authority in consultation with the relevant SNCBs; and

(3) The ecological management plan must include an implementation timetable and must be carried out as approved.

Highway accesses

11.—(1) Construction of any new permanent or temporary means of access to a highway, or alteration, or use of an existing means of access to a highway, shall not commence until an access plan for that access has been submitted to and approved by Norfolk County Council as the local highway authority.

(2) The access plan must include details of the siting, design, layout, visibility splays, access management measures and a maintenance programme relevant to the access it relates to.

(3) The highway authority must be consulted on the access plan before it is submitted for approval.

(4) The highway accesses (including visibility splays) must be constructed and maintained in accordance with the approved details.

Fencing and other means of enclosure

12.—(1) No phase of the connection works may commence until for that phase written details of all proposed permanent fences, walls or other means of enclosure of the connection works have been submitted to and approved by the relevant planning authority.

(2) Any temporary fences, walls or other means of enclosure must be provided in accordance with the outline code of construction practice.

(3) All construction sites must remain securely fenced in accordance with the code of construction practice at all times during construction of the relevant phase of the connection works.

(4) Any temporary fencing must be removed on completion of the relevant phase of the connection works.

(5) Any approved permanent fencing in relation to an onshore HVDC/HVAC substation or onshore HVAC booster station must be completed before that onshore HVDC/HVAC substation or onshore HVAC booster station is brought into use and maintained for the operational lifetime of the onshore HVDC/HVAC substation or onshore HVAC booster station.

Surface and foul water drainage

13.—(1) No phase of the connection works shall commence until for that phase written details of the surface and (if any) foul water drainage system (including means of pollution control) have, after consultation with the relevant sewerage and drainage authorities and the Environment Agency, been submitted to and approved by the lead local flood authority.

(2) The surface and foul water drainage system for each phase must be constructed and maintained in accordance with the approved details.

Contaminated land and groundwater scheme

14.—(1) No phase of the authorised development within the area of a relevant planning authority may be commenced until a scheme to deal with the contamination of any land (including groundwater) within the Order limits that is likely to cause significant harm to persons or pollution of controlled waters or the environment has been submitted to, and approved by, the relevant planning authority in consultation with the Environment Agency and, to the extent that the plan relates to the intertidal area, the MMO.

(2) The scheme must include an investigation and assessment report, prepared by a specialist consultant approved by the relevant planning authority, to identify the extent of any contamination and the remedial measures to be taken for that stage to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site.

(3) Such remediation as may be identified in the approved scheme must be carried out in accordance with the approved scheme.

Surface water

15.—(1) No part of the onshore HVDC/HVAC substation or onshore HVAC booster station shall commence until, in respect of that installation, a detailed surface water scheme has been prepared in consultation with the Environment Agency and Norfolk County Council and submitted to and approved in writing by Norfolk County Council.

(2) The detailed surface water schemes must accord with the outline code of construction practice and—

- (a) be based on sustainable drainage principles;
- (b) an assessment of the hydrological and hydrogeological context of the onshore HVDC/HVAC substation or onshore HVAC booster station, as applicable; and
- (c) include detailed designs of a surface water drainage scheme.

(3) Construction of the onshore HVDC/HVAC substation or HVAC booster station as applicable must be carried out in accordance with the approved scheme.

Onshore Archaeology

16.—(1) No phase of the connection works may commence until for that phase a written scheme of archaeological investigation (which must accord with the outline onshore written scheme of investigation) for Work Nos. 6 to 15 has been submitted to and approved by the relevant planning authority in consultation with Norfolk County Council and the Historic Buildings and Monuments Commission for England.

(2) The term commence as used in requirement 16(1) shall include any onshore site preparation works.

(3) Any archaeological investigations must be carried out in accordance with the approved scheme.

(4) The archaeological site investigations and post investigation assessment must be completed for that phase in accordance with the programme set out in the written scheme of archaeological investigation and provision made for analysis, publication and dissemination of results and archive deposition secured for that phase.

Code of construction practice

17.—(1) No phase of the any works landward of MLWS may commence until for that phase a code of construction practice (which must accord with the outline code of construction practice) has been submitted to and approved by the relevant planning authority, in consultation with the Environment Agency, the relevant highway authority and, if applicable, the MMO.

(2) The term commence as used in requirement 17(1) shall include any onshore site preparation works.

(3) All construction works for each phase must be undertaken in accordance with the relevant approved code of construction practice.

Construction traffic management plan

18.—(1) No phase of the connection works may commence until written details of a construction traffic management plan (which accords with the outline construction traffic management plan) for that phase has been submitted to and approved by the relevant planning authority in consultation with the relevant highway authority.

(2) The term commence as used in requirement 18(1) shall include any onshore site preparation works.

(3) The construction traffic management plan for each phase must be implemented as approved for that phase.

European protected species onshore

19.—(1) No phase of the connection works may commence until final pre-construction survey work has been carried out to establish whether a European protected species is present on any of the land affected, or likely to be affected, by that phase of the connection works or in any of the trees to be lopped or felled as part of that phase of the connection works.

(2) Where a European protected species is shown to be present, the relevant part(s) of the connection works must not begin until, after consultation with the relevant SNCBs and the relevant planning authority, a scheme of protection and mitigation measures has been submitted to and approved by the relevant planning authority or a European protected species licence granted by Natural England.

(3) The connection works must be carried out in accordance with the approved scheme.

(4) In this Requirement, “European Protected Species” has the same meaning as in regulations 42 and 46 of the Conservation of Habitats and Species Regulations 2017(a).

Restoration of land used temporarily for construction

20. Any land landward of MLWS within the Order limits which is used temporarily for construction of the connection works and not ultimately incorporated in permanent works or approved landscaping, must be reinstated in accordance with such details as the relevant planning authority in consultation with, where appropriate, the MMO, and the relevant highway authority, may approve, as soon as reasonably practicable and in any event within twelve months of completion of the relevant phase of the connection works.

Control of noise during operational phase

21.—(1) Prior to commencement of licensed activities landward of MHWS, a noise management plan (NMP) for Work Nos. 9 and 10 shall be submitted to and approved by the relevant planning authority.

(2) The NMP must set out the particulars of—

- (a) the noise attenuation and mitigation measures to be taken to minimise noise resulting from Work Nos. 9 and 10, including any noise limits; and
- (b) a scheme for monitoring attenuation and mitigation measures provided under subparagraph (a) which must include—
 - (i) the circumstances under which noise will be monitored;
 - (ii) the locations at which noise will be monitored;
 - (iii) the method of noise measurement (which must be in accord with BS 4142:2014, an equivalent successor standard or other agreed noise measurement methodology appropriate to the circumstances); and
 - (iv) a complaints procedure.

(3) The NMP must be implemented as approved.

Local skills and employment

22.—(1) No phase of the connection works may commence until for that phase a skills and employment plan (which accords with the outline skills and employment plan) in relation to the authorised development—

- (a) within the boundaries of Norfolk County Council has been submitted to and approved by Norfolk County Council; and
- (b) within the boundaries of North East Lincolnshire Council has been submitted to and approved by North East Lincolnshire Council.

(2) The skills and employment plan described under requirement 22(1)(a) shall be prepared in consultation with Norfolk County Council, North Norfolk District Council, Broadland District Council, South Norfolk Council and the New Anglia Local Enterprise Partnership, or such other body as may be approved by Norfolk County Council.

(a) S.I. 2010/490

(3) The skills and employment plan described under requirement 22(1)(b) shall be prepared in consultation with Humber Local Enterprise Partnership, or such other body as may be approved by North East Lincolnshire Council.

(4) Each skills and employment plan shall identify opportunities for individuals and businesses based in the regions of East Anglia or the Humber to access employment opportunities associated with the construction, operation and maintenance of the authorised development.

(5) The skills and employment plans shall be implemented as approved.

Onshore decommissioning

23.—(1) Within three months of the cessation of commercial operation of the connection works an onshore decommissioning plan must be submitted to the relevant planning authority for approval unless otherwise agreed in writing by the relevant planning authority.

(2) The onshore decommissioning plan required under requirement 23(1) shall be approved by the relevant planning authority within three months of submission of such plan unless otherwise agreed in writing by the relevant planning authority and the undertaker.

(3) The decommissioning plan must be implemented as approved unless otherwise agreed in writing by the relevant planning authority.

Notification of generation of power

24. The undertaker shall notify the relevant planning authority and the MMO upon first generation of power from the authorised project not less than seven days after the occurrence of this event.

Requirement for written approval

25. Where the approval, agreement or confirmation of the Secretary of State, relevant planning authority or another person is required under a Requirement, that approval, agreement or confirmation must be given in writing.

Amendments to approved details

26.—(1) With respect to any requirement which requires the authorised project to be carried out in accordance with the details approved by the relevant planning authority or another person, the approved details must be carried out as approved unless an amendment or variation is previously agreed in writing by the relevant planning authority or that other person in accordance with subparagraph (2).

(2) Any amendments to or variations from the approved details must be in accordance with the principles and assessments set out in the environmental statement. Such agreement may only be given in relation to immaterial changes where it has been demonstrated to the satisfaction of the relevant planning authority or that other person that the subject matter of the agreement sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

(3) The approved details must be taken to include any amendments that may subsequently be approved in writing by the relevant planning authority or that other person.