

**Application by Norfolk Vanguard Limited for an Order granting Development Consent for the Norfolk Vanguard Offshore Wind Farm**

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

**Issued on 9 May 2019**

<b>Ref</b>	<b>ExA's suggested changes</b>	<b>ExA's comments</b>
<b>Contents</b>		
Schedules	SCHEDULE 9 <b>PART 5 — Procedure for Appeals</b> SCHEDULE 10 <b>PART 5 — Procedure for Appeals</b> SCHEDULE 11 <b>PART 5 — Procedure for Appeals</b> SCHEDULE 12 <b>PART 5 — Procedure for Appeals</b>	Amendment consequential to Part 5 in each of Schedules 9, 10, 11 and 12
<b>Articles</b>		
2	—(1) In this Order... “the 2009 Act” means the Marine and Coastal Access Act 2009(n); <b>“the 2011 Regulations” means the Marine Licensing (Licence Application Appeals) Regulations 2011(a);</b> <hr/> (a) S.I. 2011/934	Amendment consequential to Part 5 in each of Schedules 9, 10, 11 and 12



Ref	ExA's suggested changes	ExA's comments
<b>Articles</b>		
2	<p>—(1) In this Order...</p> <p>“temporary stopping up of public rights of way plan” means the plan certified as the temporary stopping up of public rights of way plan by the Secretary of State for the purposes of this Order;</p> <p>“the tourism and associated business impact mitigation strategy” means the document certified as the tourism and associated business impact mitigation strategy by the Secretary of State for the purposes of this Order;</p>	To reflect suggested amendment by NNDC
5(3) to 5(6)	<p>(3) The undertaker must consult the Secretary of State before making an application for consent under this article by giving notice in writing of the proposed application <del>and the Secretary of State shall provide a response within four weeks of receipt of the notice.</del></p> <p>(4) The Secretary of State must 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 must consult National Grid before giving consent to the transfer or grant to a person of any or all of the benefit of the provisions of this Order (excluding the deemed marine licences referred to in paragraph (2) above)</p> <p>(6) <del>The Secretary of State must 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.</del></p> <p><i>Subsequent sub-paragraphs renumbered accordingly</i></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.
37(1)	<p>(z) the outline skills and employment strategy (8.22); <del>and</del></p> <p>(aa) the Development Principles (8.23); <del>and</del></p> <p><del>(bb) the tourism and associated business impact mitigation strategy (8.24).</del></p>	To reflect suggested amendment by NNDC



Ref	ExA's suggested changes	ExA's comments
<b>Requirements</b>		
2	<p>2.- (1) ... (e) <b>subject to sub-paragraph (2)</b> have a draught height of less than 22 metres from MHWS;.</p> <p><b>(2) (a) the number of wind turbine generators [in Norfolk Vanguard East] with a draught height of less than [ ]m from MHWS comprised in the authorised project must not exceed [ ].</b></p> <p><b>(b) the number of wind turbine generators [in Norfolk Vanguard West] with a draught height of less than [ ]m from MHWS comprised in the authorised project must not exceed [ ].</b></p> <p><i>Subsequent sub-paragraphs renumbered accordingly</i></p>	<p>To reflect suggestions made by NE and RSPB if required following application of further collision risk model(s)</p>
2	<p><del>(3) The total number of wind turbine generators must be apportioned between Norfolk Vanguard East and Norfolk Vanguard West (rounded to the nearest whole number) in accordance with the following formula—</del></p> <p><del>(a) two thirds of the total number of wind turbine generators in Norfolk Vanguard West and one third of the total number of wind turbine generators in Norfolk Vanguard East; or</del></p> <p><del>(b) half of the total number of wind turbine generators in Norfolk Vanguard West and half of the total number of wind turbine generators in Norfolk Vanguard East.</del></p> <p>3.—(1) The total number of wind turbine generators forming part of the authorised project must not exceed 180 <b>and shall be configured such that at any time:</b></p> <p><b>(a) No more than two-thirds of the total number of wind turbine generators (rounded to the nearest whole number) must be located in Norfolk Vanguard West; and</b></p> <p><b>(b) No more than one half of the total number of wind turbine generators (rounded to the nearest whole number) must be located in Norfolk Vanguard East.</b></p>	<p>To allow for flexibility between the minimum and maximum parameters</p>



Ref	ExA's suggested changes	ExA's comments
<b>Requirements</b>		
17(1)	(1) No stage of the onshore transmission works may commence until for that stage a code of construction practice has been submitted to and approved by the relevant planning authority, in consultation with Norfolk County Council, <b>the relevant statutory nature conservation body</b> and the Environment Agency.	To ensure that nature conservation interests are fully considered in the CoCPs.
18	(2) The landscaping management scheme must include details of proposed hard and soft landscaping works appropriate for the relevant stage, including— ... <b>(d) details of existing trees to be removed</b> <del>(d-e)</del> details of existing trees and hedgerows to be retained with measures for their protection during the construction period; <del>(e f)</del> retained historic landscape features and proposals for restoration, where relevant; <del>(f g)</del> implementation timetables for all landscaping works; <del>(g h)</del> proposed finished heights, form and gradient of earthworks; and <del>(h i)</del> maintenance of the landscaping;	To ensure better understanding of tree removal proposed and consequent replanting considered necessary under this Requirement
19(2)	(2) Any tree or shrub planted as part of an approved landscaping management scheme that within a period of <del>five</del> <b>ten</b> years after planting, is removed, 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 a different species is otherwise agreed in writing with the relevant planning authority.	To reflect likely timescales for planting to become established in this locality.
20(2)	(2) The code of construction practice must accord with the outline code of construction practice and include details, as appropriate to the relevant stage, on— ... <b>(d) construction noise and vibration (including the use of low noise reversing warnings on vehicles and temporary acoustic barriers);</b>	To reflect concerns of NNDC



Ref	ExA's suggested changes	ExA's comments
<b>Requirements</b>		
26	<p>(2) Outside the hours specified in paragraph (1), construction work may be undertaken for essential activities including but not limited to—</p> <p><del>(a) continuous periods of operation that are required as assessed in the environmental statement, such as concrete pouring, drilling, and pulling cables (including fibre optic cables) through ducts;</del></p> <p>(b) delivery to the onshore transmission works of abnormal loads that may otherwise cause congestion on the local road network;</p> <p>(c) works required that may necessitate the temporary closure of roads;</p> <p><del>(d) onshore transmission works requiring trenchless installation techniques;</del></p> <p>(e) onshore transmission works at the landfall;</p> <p>(f) commissioning or outage works associated with the extension to the Necton National Grid substation comprised within Work No. 10A;</p> <p>(g) commissioning or outage works associated with the overhead line modification works comprised within Work No. 11 and Work No. 11A;</p> <p>(h) electrical installation; and</p> <p>(i) emergency works.</p> <p><b><i>[re-number sub-paragraphs accordingly]</i></b></p> <p><del>(5) No crushing or screening works must take place at any time on any of the mobilisation areas, without the prior written consent of the relevant local authority.</del></p>	<p>The ES does not consider continuous periods of operation as referred to in sub-paragraph (a) other than at landfall, nor does it consider the impact of onshore transmission works requiring trenchless installation outside of the normal working hours.</p>
34	<p><del>(1) No part of Works No. 4C or Work No. 5 within the District of North Norfolk may commence until such time as a tourism and associated business impact mitigation strategy has been submitted to and approved in writing by North Norfolk District Council.</del></p> <p><del>(2) The tourism and associated business impact mitigation strategy referred to in sub-paragraph (1) must include:</del></p> <p><del>(a) Details of a contribution to be paid by the undertaker to Tourism Information Centres, Visit North Norfolk, Visit Norfolk and any other relevant organisations supporting and promoting tourism in North Norfolk;</del></p> <p><del>(b) Details of a method by which the contribution by the undertaker in (a) will be apportioned to the above organisations;</del></p> <p><del>(c) Details of who will administer the strategy;</del></p> <p><del>(d) Details of how the strategy will be funded including the cost of administration;</del></p>	<p>Amendment reflects suggestion made by NNDC</p>



- |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |
|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
|  | <p>(e) Details of how any monies unspent are to be returned to the undertaker;</p> <p>(f) Details of marketing campaigns (including funding) to be run in order to market North Norfolk in advance of, during and after construction works have been completed for Norfolk Vanguard for the purpose of generating tourist footfall and spend.</p> <p>(3) The tourism and associated business impact mitigation strategy must be implemented as approved.</p> |  |
|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|

*Subsequent Requirement number(s) renumbered accordingly*



Ref	ExA's suggested changes	ExA's comments
<b>Deemed Marine Licences</b>		
	<i>The following paragraph and condition numbers refer to Schedule 9. Where there are equivalent provisions in Schedules 10, 11 and 12 the same amendments would apply.</i>	
Part 1	<del>“the appeal parties” means the MMO, the relevant consultee and the undertaker;</del>  <del>“business day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971;</del>	Amendment reflects changes proposed to appeal procedure in Part 5
Part 4 Condition 9(11)	(11) In case of damage to, or destruction or decay of, the authorised project seaward of MHWS or any part thereof <b>including the exposure of cables</b> 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, <b>the Kingfisher Information Service of Seafish</b> and the UK Hydrographic Office.	Amendment seeks to mitigate safety risks to fishing operations.
Condition 9(12)	(12) In case of exposure of cables on or above the seabed, the undertaker must within <del>five</del> <b>three</b> days following the receipt by the undertaker of the final survey report from the periodic burial survey, notify mariners by issuing a notice to mariners, <b>the MMO</b> and by informing Kingfisher Information Service of the location and extent of exposure.	Amendment reflects suggestion made by MCA
Condition 14 (1)	<del>(n) a lighting and marking plan</del> <del>(o) an operation and maintenance programme</del>	Amendment reflects suggestion made by MCA
Condition 14(1)(e)	<del>(ee) For the avoidance of doubt “distribution” in sub-paragraph (e) of this paragraph must include quantities in respect of each structure comprised in the offshore works and intended to be subject to scour and cable protection</del>  <b>[Condition 9 in each of Schedules 11 and 12 to be amended accordingly]</b>	To provide for certainty in the Scour Protection and Cable Protection Plan
Condition 15(1)	—(1) Any archaeological reports produced in accordance with condition 14(h)(iii) <del>are to</del> <b>must</b> be agreed with the statutory historic body.	Amendment reflects drafting protocol
Condition 15(5)	(5) Unless otherwise agreed in writing with the undertaker, the MMO must use reasonable endeavours to determine an application for approval made under condition 14 as soon as practicable and in any event within a period of <del>six</del> <b>four</b> months commencing on the date the application is received by the MMO. <del>or if the MMO reasonably requests further information to</del>	To reflect concerns of TH and provide certainty and consistency whilst preserving the possibility of



	<del>determine the application for approval, within a period of four months commencing on the date that the further information is received by the MMO. For the purposes of this paragraph (5), the MMO may only request further information from the undertaker within a period of two months from receipt of the application for approval.</del>	extension of time by agreement
Condition 15(8)	<p><del>(8) No part of the authorised scheme may commence until the MMO, in consultation with (8) the MCA, has given written approval of an Emergency Response Co-operation Plan (ERCoP) which includes full details of the plan for emergency, response and co-operation for the construction, operation and decommissioning phases of that part of the authorised scheme in accordance with the MCA recommendations contained within MGN543 “Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues” and has confirmed in writing that the undertaker has taken into account and, so far as is applicable to that part of the authorised scheme, adequately addressed MCA recommendations contained within MGN543 “Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues” and its annexes. The ERCoP and associated guidance and requirements must be implemented as approved, unless otherwise agreed in writing by the MMO in consultation with the MCA. The document must be reviewed at least annually or whenever changes are identified, whichever is sooner, and any proposed changes must be submitted to the MMO in writing for approval, in consultation with MCA.</del></p> <p>(8) No part of the authorised project may commence until the MMO, in consultation with the MCA, has confirmed in writing that the undertaker has taken into account and, so far as is applicable to that stage of the project, adequately addressed all MCA recommendations as appropriate to the authorised project contained within MGN543 "Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues" and its annexes.</p>	Amendment reflects suggestion made by MCA
Condition 18	<del>(2)(b) “a high-resolution full sea floor coverage swath-bathymetry survey to include a 100% coverage that meets the requirements of IHO(b) S44ed5 Order 1a, and side scan sonar, of the area(s) within the Order limits in which it is proposed to carry out construction works and disposal activities under this licence;”</del>	To reflect HE requirements to the extent they surpass IHO(b) S44ed5 Order 1a and provide certainty over extent of works affected
Condition 20	<del>2(e) a bathymetric survey to monitor the effectiveness of archaeological exclusion zones identified to have been potentially impacted by construction works. The data shall be analysed by an accredited archaeologist as defined in the offshore written scheme of investigation required under condition 14(h).</del>	Amendment reflects suggestion by HE





Schedule 10, Part 3, paragraph 2(1)	Work No. 1 (phase 1 2)	To reflect the authorised works under the licence
Schedule 12, Part 3, paragraphs 2(1) – (4)	Work No. 2 (phase 1 2) Work No. 3 (phase 1 2) Work No. 4A (phase 1 2) Work No. 4B (phase 1 2)	To reflect the authorised works under the licence



Ref	ExA's suggested changes	ExA's comments
<b>Schedules 9-12, Part 5 Appeal Procedure</b>		
Part 5 Procedure for appeals	<p><del>23. The undertaker must submit to the Secretary of State, a copy of the application submitted to the MMO and any supporting documentation which the undertaker may wish to provide (“the appeal documentation”).</del></p> <p><del>24. The undertaker must on the same day provide copies of the appeal documentation to the MMO and any relevant consultee.</del></p> <p><del>25. As soon as is practicable after receiving the appeal documentation, but in any event within 20 business days of receiving the appeal documentation, the Secretary of State must appoint a person and forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person’s attention should be sent.</del></p> <p><del>26. The MMO and any relevant consultee must submit written representations to the appointed person in respect of the appeal within 20 business days of the date on which the appeal parties are notified of the appointment of a person under paragraph 25 and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person.</del></p> <p><del>27. The appeal parties must make any counter submissions to the appointed person within 20 business days of receipt of written representations pursuant to paragraph 26 above.</del></p> <p><del>28. The appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable. If the appointed person considers that further information is necessary to enable him to consider the appeal he must, as soon as practicable, notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.</del></p> <p><del>29. Any further information required pursuant to paragraph 28 must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person. Any written representations concerning matters contained in the further information must be submitted to the appointed person, and made available to all appeal parties within 20 business days of that date.</del></p> <p><del>30. On an appeal the appointed person may—</del>  <del>(a) allow or dismiss the appeal; or</del>  <del>(b) reverse or vary any part of the decision of the MMO (whether the appeal relates to(2) that part of it or not);</del></p>	To provide for an appeal procedure broadly consistent with existing statutory processes and consistent with similar DCO’s



and may deal with the application as if it had been made to the appointed person in the first instance.

31. The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the time limits prescribed, or set by the appointed person, under this paragraph.

32. The appointed person may proceed to a decision even though no written representations have been made within those time limits, if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

33. The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

34. If an approval is given by the appointed person pursuant to this Schedule, it is deemed to be an approval for the purpose of Part 4 of Schedule 9 as if it had been given by the MMO. The MMO may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) may not be taken to affect or invalidate the effect of the appointed person's determination.

35. Save where a direction is given pursuant to paragraph 36 requiring the costs of the appointed person to be paid by the MMO, the reasonable costs of the appointed person must be met by the undertaker.

36. On application by the MMO or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the Planning Practice Guidance on the award of costs or any guidance which may from time to time replace it.

- (1) Where the MMO refuses an application for approval under condition 14 [condition 9 in Schedules 11 and 12] and notifies the undertaker accordingly, or fails to determine the application for approval in accordance with condition 15 [condition 10 in Schedules 11 and 12] 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 (2)
- (2) The 2011 Regulations are modified so as to read for the purposes of this Order only as follows—
  - (a) In regulation 6(1) (time limit for the notice of appeal) for the words “6 months” there is substituted the words “4 months”.



- (b) For regulation 4(1) (appeal against marine licensing decisions) substitute—  
“A person who has applied for approval under condition 15 of Part 4 of Schedule 9; condition 15 of Part 4 of Schedule 10; condition 10 of Part 4 of Schedule 11; or condition 10 of Part 4 of Schedule 12 to the Norfolk Vanguard Offshore Wind Farm Order 201[ ] may by notice appeal against a decision to refuse such an application or a failure to determine such an application.”
- (c) 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 ”
- (d) 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”.
- (e) 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”
- (f) 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”.
- (g) 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”.
- (h) For regulation 18(4) substitute— “Subject to paragraphs (1) and (3), each party should bear its own costs of a hearing or inquiry held under these Regulations.”
- (i) 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 15 of Part 4 of Schedule 9; condition 15 of Part 4 of Schedule 10; condition 10 of Part 4 of Schedule 11; or condition 10 of Part 4 of Schedule 12 to the Norfolk Vanguard Offshore Wind Farm Order 201[ ].”
- (j) 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”

*End of schedule*