



Department for  
Business, Energy  
& Industrial Strategy

[1 Victoria Street](#)  
[London SW1H 0ET](#)

T +44 (0) 20 7215 5000  
E [beiseip@beis.gov.uk](mailto:beiseip@beis.gov.uk)  
[www.beis.gov.uk](http://www.beis.gov.uk)

Mr Jake Laws  
Consents Manager  
Vattenfall Wind Power Ltd  
70 St Mary Axe  
London  
EC3A 8BE

Your ref: EN010079

11 February 2022

Dear Mr Laws,

**PLANNING ACT 2008: APPLICATION FOR DEVELOPMENT CONSENT FOR THE  
NORFOLK VANGUARD OFFSHORE WIND FARM**

**1. Introduction**

- 1.1. I am directed by the Secretary of State for Business, Energy and Industrial Strategy (“the Secretary of State”) to advise you that consideration has been given to the report dated 10 September 2019 of the Examining Authority (“the ExA”), comprising a panel of four examining Inspectors, Karen Ridge (Lead Member), Caroline Jones, Gavin Jones and Grahame Kean, who conducted an examination into the application (“the Application”) submitted on 8 June 2018 and received in full on 26 June 2018 by Norfolk Vanguard Limited (“the Applicant”) for a Development Consent Order (“the Order”) under section 37 of the Planning Act 2008 (“the 2008 Act”) for the Norfolk Vanguard Offshore Wind Farm and associated offshore and onshore development (“the Development”).
- 1.2. The Order would grant development consent for the construction and operation of an offshore wind farm with a generating capacity of up to 1,800 Megawatts (“MW”) with associated offshore and onshore development in the North Sea and in the County of Norfolk.
- 1.3. The Development as applied for would comprise:
  - construction and operation of up to 200 wind turbine generators;
  - up to two offshore electrical platforms;
  - up to two accommodation platforms;
  - up to two meteorological masts;
  - measuring equipment (LiDAR and wave buoys);
  - subsea array and fibre optic cables;

- interconnector cables;
  - export cables;
  - onshore transmission works at landfall;
  - onshore cable route, accesses, trenchless crossing technique;
  - directional drilling zones and mobilisation areas;
  - onshore project substation; and
  - extension to the Necton National Grid substation and overhead line modifications.
- 1.4. Subsequent to the Application being made, the Applicant proposed a number of changes to the Development including a reduction in the number of wind turbine generators to 180. In the wake of consultation with the Applicant and other parties after the receipt of the ExA's Report, the Applicant further reduced the maximum number of turbines that would form the Development to 158.
- 1.5. The proposed Development will use High Voltage Direct Current ("HVDC") transmission to conduct the electricity generated from the wind turbines to the onshore project electricity substation where it would be converted to High Voltage Alternating Current ("HVAC") before being transmitted to an existing National Grid electricity substation which would be extended to accommodate the additional equipment needed to allow the importation of the electricity.
- 1.6. Powers of compulsory acquisition for both land, and new and existing rights over land, are also sought by the Applicant to support the delivery of the project.

#### The planning history of the Norfolk Vanguard application

- 1.7. The Application was accepted for examination on 24 July 2018. The examination began on 10 December 2018 and was completed on 10 June 2019. The Secretary of State received the report containing the ExA's conclusions and recommendation on 10 September 2019.
- 1.8. The Secretary of State requested comments from the Applicant and Interested Parties on 6 December 2019<sup>1</sup> in respect of: Ornithology (the Flamborough and Filey Coast Special Protection Area and the Alde-Ore Estuary Special Protection Area); the Haisborough Hammond and Winterton Special Area of Conservation; sediment particle size; marine mammals (with regard to the potential use of Vibropiling and Blue Hammer foundation installation techniques); water quality; traffic management at Cawston: the appearance of electrical equipment; the addition of sites to the list of trenchless crossings; the replacement period in landscaping schemes; the timing of traffic management measures; non-standard construction hours; the control of noise during the operational phase of the Development; the time period for cable exposure notification; the lighting and marking plan and the operation and maintenance programme. Comments were requested by 28 February 2020. Consultation responses were subsequently published<sup>2</sup> and, as the Secretary of State considered that the information provided by the Applicant in response to those letters contained new environmental information, parties were given until 27 April 2020 to provide any additional comments. In order to fully consider the consultation responses, the statutory deadline for the Secretary of State's decision was originally extended from 10 December

<sup>1</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010079/EN010079-004198-NORV%20%E2%80%93%20Letter%20from%20Secretary%20of%20State%20-%20December%202019.pdf>

<sup>2</sup> [https://infrastructure.planninginspectorate.gov.uk/projects/eastern/norfolk-vanguard/?ipcsection=docs&stage=6&filter1=Secretary+of+State+Consultation&filter2=&date\\_type=published&from=29-04-2020&to=30-04-2020](https://infrastructure.planninginspectorate.gov.uk/projects/eastern/norfolk-vanguard/?ipcsection=docs&stage=6&filter1=Secretary+of+State+Consultation&filter2=&date_type=published&from=29-04-2020&to=30-04-2020)

2019 to 1 June 2020<sup>3</sup> and then extended again until 1 July 2020<sup>4</sup>. On 1 July 2020 the Secretary of State granted consent for the Application.

- 1.9. On 18 February 2021, the High Court of Justice handed down a judgment which quashed the development consent order (“the judicial review”)<sup>5</sup>. The Secretary of State notes in particular the finding of the judge that a decision on development consent for the first of two projects closely related in time and in close geographical proximity (such as Norfolk Vanguard and Norfolk Boreas) cannot be made without adequate consideration of the cumulative impacts in the overall planning balance. On 10 December 2021, the Secretary of State granted consent for the Norfolk Boreas offshore wind farm<sup>6</sup>. Given that Norfolk Boreas was the first of these two projects to be decided, the Secretary of State set out his conclusions on cumulative impacts as between Norfolk Boreas and Norfolk Vanguard as they arose in the consideration of individual topics. In redetermining the Norfolk Vanguard application the Secretary of State has taken care to ensure that his findings in relation to cumulative impacts made in the Norfolk Boreas decision letter are taken into account in this decision.
- 1.10. On 29 April 2021, the Secretary of State issued a consultation letter to all Interested Parties on both the Norfolk Vanguard and Norfolk Boreas applications requesting information following the judgment<sup>7</sup> with a deadline for responses of 20 May 2021.
- 1.11. Consultation letters were published on 5 July 2021<sup>8</sup>, with a deadline of 2 August 2021<sup>9</sup>, 11 August 2021<sup>10</sup>, with a deadline of 25 August 2021<sup>11</sup>, and 11 October 2021<sup>12</sup>, with a deadline of 8 November 2021, subsequently extended to 19 November 2021<sup>13</sup>.
- 1.12. The Secretary of State received responses to this consultation<sup>14</sup> along with responses to the 11 October Norfolk Vanguard consultation letter which argued that the two projects should be treated as one project rather than two separate applications and that a fresh, unified, application should be submitted for examination. The Secretary of State notes the conclusion of the judge that Norfolk Vanguard and Norfolk Boreas are properly considered as two

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<sup>3</sup> <https://questions-statements.parliament.uk/written-statements/detail/2020-01-23/HCWS57>

<sup>4</sup> <https://questions-statements.parliament.uk/written-statements/detail/2020-06-25/hcws315>

<sup>5</sup> *Pearce and Secretary of State for Business, Energy & Industrial Strategy and Norfolk Vanguard Limited* [2021] EWHC 326 (Admin) - <https://www.bailii.org/ew/cases/EWHC/Admin/2021/326.html>.

<sup>6</sup> <https://infrastructure.planninginspectorate.gov.uk/document/EN010087-002910>.

<sup>7</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010079/EN010079-004303-NORV-Re-Determination-Consultation-Letter-29-April-2021.pdf>.

<sup>8</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010079/EN010079-004364-NORV-Letter-from-Secretary-of-State-5-July-2021.pdf>

<sup>9</sup> Consultation responses can be viewed here:

<https://infrastructure.planninginspectorate.gov.uk/projects/eastern/norfolk-vanguard/?ipcsection=docs&stage=6&filter1=Re-determination&filter2=5+July+2021+Consultation+Responses>.

<sup>10</sup> [https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010079/EN010079-004388-NORV\\_Re-Determination\\_Consultation\\_Letter\\_11\\_August\\_2021.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010079/EN010079-004388-NORV_Re-Determination_Consultation_Letter_11_August_2021.pdf).

<sup>11</sup> Consultation responses can be viewed here:

<https://infrastructure.planninginspectorate.gov.uk/projects/eastern/norfolk-vanguard/?ipcsection=docs&stage=6&filter1=Re-determination&filter2=11+August+2021+Consultation+Responses>.

<sup>12</sup> [https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010079/EN010079-004402-NORV\\_Re-Determination\\_Consultation\\_Letter\\_11\\_October\\_2021.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010079/EN010079-004402-NORV_Re-Determination_Consultation_Letter_11_October_2021.pdf).

<sup>13</sup> Consultation responses can be viewed here:

<https://infrastructure.planninginspectorate.gov.uk/projects/eastern/norfolk-vanguard/?ipcsection=docs&stage=6&filter1=Re-determination&filter2=11+October+2021+Consultation+Responses>.

<sup>14</sup> <https://infrastructure.planninginspectorate.gov.uk/projects/eastern/norfolk-vanguard/?ipcsection=docs&stage=6&filter1=Re-determination&filter2=29+April+2021+Consultation+Responses>.

separate projects<sup>15</sup>, and in the light of that clear conclusion does not consider that this is necessary.

- 1.13. A number of the responses to the Secretary of State's consultation letter of 29 April 2021 requested that the re-determination of the Norfolk Vanguard project application should proceed by way of re-opening of the examination process. Having considered all the comments that had been submitted to him, the Secretary of State, while noting that it would be possible for him to re-open the examination into the Norfolk Vanguard development consent application, decided that the necessary re-determination of the application would proceed by way of written representations and explained this in his letter of 5 July 2021<sup>16</sup>.
- 1.14. Further consultation points raised were: that the Secretary of State did not have all the necessary information to assess the cumulative impacts; that the Norfolk Vanguard Environmental Statement needed to be updated; that the cumulative impacts of the cable routes of Norfolk Vanguard, Norfolk Boreas, Hornsea Project Three, and the Sheringham Shoal & Dudgeon extensions should be considered. It was argued that the strategy of co-location of the two substations, including the choice of Necton for a grid connection, along with alternative connection locations, should be reconsidered. Some parties stated that the use of documentation submitted for the Norfolk Boreas examination would be acceptable provided it met the minimum requirements in law, whereas others contended that the procedure proposed was not fit for purpose and that only including additional conclusions from the Norfolk Boreas examination was not sufficient. It was argued that the Norfolk Boreas ExA Report should be made available to all parties ahead of either decision being made.
- 1.15. The Secretary of State notes that the consideration of development consent applications submitted under the 2008 Act process is primarily based on written representations. The Secretary of State considers that based on the combination of the information in the Norfolk Vanguard Examination Library and the additional information he was able to obtain via the consultation process, he was able to consider cumulative impacts properly without a new examination. He considers that the written representation process provided an appropriate mechanism for Interested Parties to draw to his attention the details of any arguments about any relevant matters. He notes concerns expressed over the ability of the documents provided from the Norfolk Boreas examination to address the cumulative environmental effects of the projects but considers that the consultation exercises that he has conducted have given all Interested Parties the opportunity to scrutinise these documents and highlight any omissions which might affect conclusions on the cumulative impacts of the two projects.
- 1.16. Concern was expressed that representations made by Vattenfall at the Norfolk Boreas examination had argued that because Norfolk Vanguard had been consented Norfolk Boreas must also be consented. The Secretary of State has carefully considered these concerns. Whilst the Secretary of State consented the Norfolk Boreas project on 10 December 2021 he has not taken that fact into consideration as a point which would strengthen arguments for granting consent for Norfolk Vanguard. The Secretary of State has, however, considered the cumulative impacts of both projects together. Ultimately, however, the Secretary of State's decision on whether or not to grant consent for the Norfolk Vanguard application is one which has been considered on the planning merits of the Norfolk Vanguard application alone (whilst taking into account its cumulative impacts with other projects, including Norfolk Boreas).

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<sup>15</sup> At paragraph 128 of the judgment.

<sup>16</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010079/EN010079-004364-NORV-Letter-from-Secretary-of-State-5-July-2021.pdf>.

1.17. In determining the Norfolk Vanguard application, the Secretary of State has ensured that the responses to consultations undertaken for the Norfolk Boreas application have been scrutinised to identify whether they raise any issues for the re-determination of the Norfolk Vanguard application which have not been drawn to his attention through his consultations for the Norfolk Vanguard application. The Secretary of State has taken care to ensure, whilst treating the two projects separately, that their cumulative impacts are properly considered and mitigated for.

## 2. Summary of the ExA's Report and Recommendation

2.1. The ExA's Report of Findings and Conclusions and Recommendation to the Secretary of State ("the ExA Report") has already been published on the Planning Inspectorate's website<sup>17</sup>. The main features of the development proposals, as applied for, are set out in section 2 of the ExA's report. The ExA's findings are set out in sections 4 - 6 of the ExA Report, and the ExA's conclusions on the case for development consent, the request for compulsory acquisition powers and the terms of the Order are set out (respectively) at sections 7, 8, and 9.

2.2. The ExA's recommendation in section 10.3 (on page 376 of the ExA Report) is as follows:

*"10.3.1. For all of the above reasons, and in the light of its findings and conclusions on important and relevant matters set out in this Report, the ExA, under the Planning Act 2008 (as amended), recommends that the Secretary of State for Business, Energy and Industrial Strategy does not make the Norfolk Vanguard Offshore Wind Farm Order.*

*10.3.2. In the event that the Secretary of State concludes that it is appropriate to make the Norfolk Vanguard Offshore Wind Farm Order, the ExA recommends that the Secretary of State makes the Order in the form recommended at Appendix D."*

2.3. A total of 267 Relevant Representations (as defined in the Planning Act 2008) were received from statutory and non-statutory authorities, utility providers, Norfolk County Council, North Norfolk District Council, Broadland District Council, Breckland Council, local parish and town councils, local MPs, local organisations and local residents.

2.4. The principal matters considered by the ExA, as set out in the ExA's Report are:

- landscape and visual assessment;
- the historic environment;
- traffic and transport;
- socio-economic impacts;
- contamination and ground conditions;
- coastal change;
- flood risk and water resources;
- noise and vibration;
- air quality
- human health
- onshore ecology and ornithology
- land use
- commercial fisheries;
- shipping and navigation;
- aviation;

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<sup>17</sup><https://infrastructure.planninginspectorate.gov.uk/projects/eastern/norfolk-vanguard/>

- marine physical processes;
- substation safety issues (under ‘other considerations’);
- offshore biodiversity, biological environment and biodiversity; and
- findings and conclusions in relation to Habitats Regulations Assessment.

- 2.5. The ExA concluded that it could not rule out an adverse effect on the integrity of sites and species designated under the Habitats Regulations and recommended that cumulative impacts (from the proposed Development and other projects) on certain seabird species (separate from the impacts on the bird species from the Habitats Regulations sites) weigh against development consent being granted. (See the “Offshore Biodiversity, Biological Environment and Biodiversity” section below).
- 2.6. However, for all other matters raised during the Examination, the ExA’s view was that none was of such a magnitude either on its own or in-combination with other plans or projects to justify withholding consent. The ExA did consider that the proposed Development would have a number of adverse impacts during its construction and operation particularly in relation to landscape character effects at the site of the proposed substation at Necton and in relation to traffic impacts at Cawston but that the overall benefits of the proposed Development outweighed any harm.
- 2.7. Setting aside all seabird-related matters, the ExA’s overall conclusion was that the impacts of the proposed Development are not so great as to offset its significant benefits, particularly in respect of its contribution to the decarbonisation of the electricity generation sector. The Secretary of State notes, however, that aspects of that conclusion relating in particular to onshore cumulative impacts were found to be defective by the judge in the judicial review and has taken that into account in his reconsideration of the ExA’s conclusions.

### **3. Summary of the Secretary of State’s Decision**

- 3.1. The Secretary of State has decided under section 114 of the 2008 Act to make, with modifications, an Order granting development consent for the proposals in this Application. This letter is a statement of the reasons for the Secretary of State’s decision of the purposes of section 116 of the 2008 Act and the notice and statement required by regulations 31(2)(c) and (d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (“the 2017 Regulations”).

### **4. The Secretary of State’s consideration of the Application**

#### Need for the Development

- 4.1. The Planning Act 2008 sets out a process for decision-makers to follow in considering applications for nationally significant infrastructure projects (“NSIPs”). In the first instance, the decision-maker needs to consider whether the proposed NSIP is in accordance with the relevant National Policy Statement(s). The proposed Development is a ‘Nationally Significant Infrastructure Project’ (“NSIP”) as defined in sections 14 and 15 of the Planning Act 2008 by virtue of being an offshore generating station with a generating capacity of greater than 100MW.
- 4.2. Section 104 of the Planning Act 2008 sets out that decisions on nationally significant infrastructure projects where a national policy statement has effect must have regard to the relevant statement and any other matters that are both important and relevant to the decision. Any decision must be taken in accordance with the relevant national policy statement except where doing so would lead to a breach of the UK’s international obligations, lead to the Secretary of State being in breach of any duty imposed on him/her by or under

any enactment, be unlawful by virtue of any enactment, or where the adverse effects of a development outweighs its benefits (the last at section 104(7) of the Act).

- 4.3. National Policy Statements EN-1 (the Overarching National Policy Statement for Energy - "NPS EN-1") and EN-3 (the National Policy Statement for Renewable Energy Infrastructure – "NPS EN-3") set out a national need for development of new nationally significant electricity generating infrastructure of the type proposed by the Applicant. EN-1, in particular, sets out that the assessment of development consent applications should start with a presumption in favour of granting consent. The ExA noted the strong need case for renewable energy projects that was set out in NPS EN-1 and NPS EN-3 [ER 4.2.15]. The ExA also considered the onshore and offshore cables and substations against the tests set out in National Policy Statement EN-5 ("the National Policy Statement for Electricity Networks Infrastructure – "NPS EN-5") [ER 4.5.7].
- 4.4. The Secretary of State considers that the proposed Development is in accordance with the NPS EN-1, NPS EN-3 (and NPS EN-5) and benefits from the presumption in favour of electricity generating stations in general and in favour of offshore wind farm generating stations in particular. In addition, consenting this development would be consistent with government policy and will contribute to the delivery of low-carbon and renewable energy, ensuring a secure, diverse and affordable energy supply in line with legal commitments to "net zero" in the Paris Agreement under the United Nations Framework Convention on Climate Change and the Climate Change Act 2008 (as amended) and the need to address climate change.
- 4.5. The Energy White Paper, *Powering our Net Zero Future*, was published on 14 December 2020. It announced a review of the suite of energy NPSs but confirmed that the current NPSs were not being suspended in the meantime. The review of the energy NPSs is currently underway and draft versions of the documents have been published. Although these are in draft form and have not been designated, the Secretary of State considers them to be important and relevant for the purpose of Section 104 of the Planning Act 2008. As such, the Secretary of State has had regard to the draft energy NPSs in deciding the Application, except as specifically mentioned elsewhere in this letter but does not consider that there is anything contained within the drafts of the relevant NPS documents that would lead him to reach a different decision on the Application. The existing NPSs EN-1, EN-3 and EN-5 therefore remain the basis for the Secretary of State's consideration of the Application.

#### Consideration of Alternatives

- 4.6. The Applicant's consultation efforts and its consideration of alternatives (particularly in respect of cable landfall, the onshore cable route and the location of the grid connection for the proposed Development) were all raised by many Interested Parties to the Examination as sources of concern. The main focus for the discussion about alternatives was the cable route from Happisburgh to Necton and the siting of the project substation and an extension to the existing National Grid substation in the same general location (close to Necton) [ER 4.4.9 et seq.]. The Secretary of State notes that these concerns were repeated during the consultations undertaken as part of the re-determination process.
- 4.7. The ExA noted that concerns had been raised by many local people about the consultation process and the Applicant's failure to respond to ideas and worries that had been made as a result of the consultation [ER 4.4.9 et seq.]. The ExA also noted that eleven district and local councils and City and County Councils had confirmed that the Applicant's statutory duty to publicise and consult on the Application had been complied with [ER 4.4.18]. The ExA also noted that the Applicant had made changes to the Application proposal as a result of the consultation responses [ER 4.4.20]. The ExA concluded, therefore, that the consultation

undertaken by the Applicant was adequate and sufficient to comply with the requirements of the Planning Act 2008 [ER 4.4.20]. The Secretary of State sees no reason to disagree with the ExA on this matter.

- 4.8. As far as the consideration of alternatives is concerned, the ExA notes that the Applicant set out its rationale for the choices it made about offshore and onshore locations for the proposed Development in 'Strategic Approach to Selecting a Grid Connection Point' document [ER 4.4.22]. As indicated above, the Applicant's decision-making on site locations came under a considerable degree of scrutiny during the examination with many views being expressed that an offshore ring main, which would consolidate a number of grid connections for wind farms proposed off the Norfolk and Suffolk coasts into a single connection point should be adopted for the Norfolk Vanguard, Norfolk Boreas and Hornsea Project Three projects. The Secretary of State received representations on this matter from Three Norfolk MPs (George Freeman, Jerome Mayhew and Duncan Baker).
- 4.9. The ExA also notes that there were suggestions from Interested Parties that it would be beneficial if the grid connection points for the proposed Development (at Necton) and for the proposed Hornsea Project Three (at the Norwich Main substation) could be exchanged between the projects [ER 4.4.13].
- 4.10. The ExA notes the Applicant's approach to site selection for the onshore and offshore elements of the projects and the part that was played by National Grid in narrowing down the range of options, particularly in respect of the onshore substation at Necton [ER 4.4.6 et seq.]. The ExA notes that the consideration of an offshore ring main is a strategic matter which involves many layers of interested organisations and is not, therefore, suitable for consideration by the ExA in a forum which is considering a development consent application for a single site [ER 4.4.26]. Similarly, the ExA concluded that suggestions about a grid connection exchange between the proposed Development and Hornsea Project Three were matters outside the scope of the Examination [ER 4.4.26].
- 4.11. In light of this position, the ExA's conclusion is that the Applicant did undertake a reasonable alternatives process in finalising its site options. The ExA also concludes [ER 4.4.33] that the *"SoS should also be aware of the strongly held views that, in view of the number of offshore wind farm projects coming forward in this region, there should be a strategic approach in terms of contributions towards the development of an offshore ring main"*.
- 4.12. The Secretary of State received a significant number of consultation responses arguing that account should be taken of the Offshore Transmission Network Review ("OTNR"), and additionally that the Secretary of State should either refuse the entire Development ahead of the outcome of the OTNR, to consent only the offshore elements so that a connection could be sought as a "Pathfinder" project through the OTNR or defer the application pending the outcome of the OTNR. As work on the OTNR has continued since the Examination closed the Secretary of State has considered this issue carefully.
- 4.13. In dealing with these responses the Secretary of State considers it helpful to set out the progress of the OTNR to date. On 24 August 2020 the Department of Business, Energy and Industrial Strategy and Ofgem published a joint letter "Increasing the level of coordination in offshore electricity infrastructure"<sup>18</sup>, inviting suggestions on how barriers to coordination of transmission assets could be overcome. Responses were published in a joint BEIS/Ofgem document on 18 December 2020, which identified three workstreams, the most important of which for the Development is "Early opportunities" which would "look at projects that are

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<sup>18</sup> <https://www.gov.uk/government/publications/increasing-the-level-of-coordination-in-offshore-electricity-infrastructure-beis-and-ofgem-open-letter>.



already in relatively advanced stages for development and consider whether there are changes to regulations that could allow them to take a more coordinated approach under the current regime.”<sup>19</sup>

- 4.14. The first formal consultation was conducted by Ofgem between 14 July and 8 September 2021. In relation to Early Opportunities the document was clear that “Ofgem’s proposals are focussed on facilitating coordination of offshore transmission infrastructure with an opt-in for developers, rather than enforcing coordination. We recognise that these projects are at an advanced stage of development where much of the detailed design and planning work has already been completed.”<sup>20</sup> It further notes “changes to ongoing projects especially those far along in the development process can carry substantial risk to project success.”<sup>21</sup> It continues “Therefore, the introduction of any form of coordination will be a balancing act between maintaining the pace of delivery required to meet 40GW by 2030 and introducing changes as soon as practically possible to maximise social, economic and environmental benefits”.<sup>22</sup> “Given the long lead times for constructing offshore wind farms, many project connecting ahead of 2030 are already in-flight and relatively advanced in their development. Introducing changes to such projects risks delaying them and carries contractual and commercial implications, and consequently might impact our ability to meet 2030 targets. The OTNR therefore seeks to strike the right balance between delivering coordination in how offshore wind is connected and maintaining the required pace of delivery to achieve Government ambitions.”<sup>23</sup>
- 4.15. In its response to the Secretary of State’s consultation letter of 5 July 2021 the Applicant set out its position in relation to the OTNR<sup>24</sup> and indicates that it considers that the Development is in a very late stage of development, but that it has been working with the Electricity System Operator (“ESO”) to explore Early Opportunities options which could be delivered within the project timelines and could be incorporated into the existing projects as defined by the parameters of the Norfolk Vanguard application, the existing regulatory frameworks, and using available technology. The Applicant has indicated that if other as yet unidentified offshore projects come forward within an appropriate timeframe there is a possibility that it may be possible to engineer some additional capacity into the Norfolk Vanguard project. The Secretary of State notes that the Applicant has chosen not to opt into the voluntary Early Opportunities workstream. He considers that this is a choice for the Applicant.
- 4.16. Whilst the OTNR is exploring early opportunities for coordination from projects connecting between 2025-2030, it is not intended to automatically apply to applications for development consent which are currently in the planning system, although any project which has a grid connection but has yet to secure both planning consent and a Contract for Difference is considered to be within scope of the OTNR Early Opportunities workstream<sup>25</sup>. Existing policy will continue to apply to such applications. The Secretary of State notes that NPS EN-3 states “When considering grid connection issues, the IPC should be mindful of the constraints of the regulatory regime for offshore transmission networks” [para 2.6.36]. The

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/949510/Open\\_Letter\\_Response\\_Final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/949510/Open_Letter_Response_Final.pdf).

<sup>20</sup> <https://www.ofgem.gov.uk/publications/consultation-changes-intended-bring-about-greater-coordination-development-offshore-energy-networks> at page 2.

<sup>21</sup> Paragraph 1.6.

<sup>22</sup> Paragraph 1.7.

<sup>23</sup> Paragraph 1.15.

<sup>24</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010079/EN010079-004383-Applicant's%20Response%20to%20the%20Requests%20for%20Additional%20Information.pdf> at section 2.3.

<sup>25</sup> National Grid Electricity System Operator Open Letter on the Offshore Transmission Network Review, 27 September 2021 - <https://www.nationalgrideso.com/document/211251/download>.

Secretary of State considers that the offshore transmission proposal for the Development has been brought forward in line with the existing regulatory regime. The Secretary of State considers that he should continue to assess the Development in line with current policy as set out in the NPSs.

- 4.17. After careful consideration the Secretary of State has concluded that refusing the entire Development on grid connection grounds or the onshore transmission element only would not be appropriate. The proposed onshore transmission element complies with the current policy and regulatory regime, and the OTNR does not require live applications to be deferred pending its outcome. The Secretary of State has balanced the substantial harm arising from landscape and visual issues against the substantial and pressing need for renewable electricity sources and considers that the latter should prevail. He does not consider that his decision should be deferred or that the onshore elements should be refused pending the outcome of the OTNR. The Secretary of State has therefore decided to accord limited weight to the OTNR against granting the Development.

#### Landscape and Visual Assessment

- 4.18. In light of the findings of the judge in the judicial review, the Secretary of State has carefully reconsidered the ExA Report, along with the further information provided through the consultation exercises undertaken for the re-determination process. For the avoidance of doubt the Secretary of State explicitly disagrees with the approach taken by the ExA to leave consideration of the cumulative impacts of the Norfolk Boreas project for consideration of that examination process [ER 4.5.102]. However, the Secretary of State notes the statement in the first sentence of this paragraph "... the Norfolk Boreas Offshore wind farm has been included in the Applicant's LVIA cumulative impact assessment ..." [ER 4.5.102] and therefore considers that the combination of the information provided to the examination coupled with information provided as part of the Norfolk Boreas examination and his own subsequent consultations provides sufficient information to consider the cumulative impacts adequately.
- 4.19. The Applicant assessed the potential visual impacts of the proposed Development in relation to the offshore wind farm itself, the onshore cable corridor and the substation and extension to an existing substation at Necton [ER 4.5.1]. Given their distance from the shore, the offshore wind farm areas were scoped out of the environmental assessment process under this heading [ER 4.5.3].
- 4.20. Paragraph 5.9.18 of NPS EN-1 sets out the following guidance for decision-makers:
- "All proposed energy infrastructure is likely to have visual effects for many receptors around proposed sites. The [Secretary of State] will have to judge whether the visual effects on sensitive receptors, such as local residents, and other receptors, such as visitors to the local area, outweigh the benefits of the project."*
- 4.21. NPS EN-1 and NPS EN-3 also set out that developers of Nationally Significant Infrastructure Projects should use good design wherever possible to mitigate any impacts on landscape and visual impacts. The need for good design is set out in the ExA's Report [ER 4.5.4 et seq.].
- 4.22. The National Planning Policy Framework sets out that policies and consent decisions should contribute and enhance the natural environment by recognising the intrinsic character and beauty of the countryside [ER 4.5.8].

- 4.23. The ExA also notes [ER 4.5.9 et seq.] that the relevant Development Plan policies for each of the local authorities which had an element of the proposed Development within its jurisdiction generally required that infrastructure should enhance or at least should not diminish landscape features.
- 4.24. The Applicant assessed the landscape, visual and cumulative impacts of the onshore components during construction, operation and decommissioning phases [ER 4.5.13]. The Assessment followed the principles set out in the Landscape Institute's Guidelines for Landscape and Visual Impact Assessment, Third Edition [ER 4.5.14]. The assessment groups potential impacts on landscape and visual receptors into four categories: physical effects, effects on landscape character, effects on views and cumulative effects [ER 4.5.16].
- 4.25. In respect of the impacts of the proposed substation works at Necton, there was a great deal of opposition from local councils, individuals and George Freeman MP who were concerned that the scale of the substation would be completely disproportionate to the size of the village (Necton) near to where it would be located, would only be partially disguised, and would be a significant visual blight. Some residents expressed frustrations at the content of the visualisations which rely on a Rochdale Envelope approach. [ER 4.5.18 et seq.]
- 4.26. Concerns were expressed about the removal of hedgerows and trees along the onshore cable route although agreement was subsequently reached about the inclusion of a suitable condition for replacement planting in any development consent order that might be issued [ER 4.5.24]. There were also concerns from residents of Happisburgh about the potential impact of the works at the landfall site of the offshore export cable [ER 4.5.26 and 4.6.25].
- 4.27. The ExA notes the continued opposition to the proposed onshore works throughout the examination process because of visual impact concerns and, other matters, such as the effects of lighting around the substation and extension on the character of the area [ER 4.5.27]. These issues were also raised in the Secretary of State's consultations during the redetermination.
- 4.28. The ExA noted concerns about the time period that should be allowed for replacement planting to take effect: the Applicant suggested five years while North Norfolk District Council sought a ten year period to ensure that in the event the vegetation planted did not take root, the Applicant would be required to make good any deficiencies [ER 4.5.28]. The Secretary of State's consultation letter of 6 December 2019 sought views on this matter<sup>26</sup>. In response, North Norfolk District Council re-stated the need for a 10 year period of remedial work to ensure that proposed vegetation had the chance to establish itself<sup>27</sup>. The Applicant's response was that it would not be able to undertake remedial work over a ten year period because it did not, by and large, have land access rights for plots of land for more than a five year period and it would not, therefore, be possible to work to a ten year period unless it could secure voluntary agreements with relevant landowners. Where that was the case, then the Applicant would work to a ten year window as secured in the Outline Landscape and Ecological Management Strategy and therefore secured through Requirement 18 of the DCO<sup>28</sup>. North Norfolk District Council made the point that this proposal was not secured in the development consent order and suggested additional wording for the order to ensure suitable coverage.

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<sup>26</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010079/EN010079-004198-NORV%20E2%80%93%20Letter%20from%20Secretary%20of%20State%20-%206%20December%202019.pdf>.

<sup>27</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010079/EN010079-004243-North%20Norfolk%20District%20Council%20-%20Response%20to%20SoS%20Consultation.pdf>.

<sup>28</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010079/EN010079-004211-ExA;%20WQ;%2011.D10.1%20Applicant's%20Response%20to%20Request%20for%20Information.pdf>.

- 4.29. The Secretary of State has decided to change the planting period to ten years in requirement 19 of the DCO in relation to planting and landscaping within the area of North Norfolk District Council. This is to ensure that the provisions of this Order reflect the requirements already set out in the Norfolk Boreas DCO.
- 4.30. The ExA notes [ER 4.5.34] that the substation buildings would have a height of 19 metres with lightning protection masts being 25 metres tall. The Applicant had prepared visualisations of the built structures on the basis of 25-metre-high buildings to represent the worst case 'Rochdale Envelope' of the substations. However, during the examination, the ExA asked the Applicant to produce revised visualisations to show more accurate representations of the building heights [ER 4.5.34].
- 4.31. The ExA carefully considered the position at Necton which would accommodate an extension to the existing National Grid substation as well as a new project substation. The ExA notes that the proposed infrastructure would introduce significant additions to the built environment and that there was no guarantee that it would be possible to screen it to avoid seeing it. The ExA further notes that the development at Necton would represent a material change to the landscape character and visual characteristics of this locality. [ER 4.5.35]
- 4.32. The ExA considered the extension of the National Grid substation and the removal of one overhead line pylon tower and its replacement with two towers each with a maximum height of 50 metres [ER 4.5.36 et seq.]. The ExA noted that the maximum height of the extension would be 15 metres and that it would more than double the floor area of the existing substation to cover in excess of 50,000 square metres [ER 4.5.37]. The ExA also considered the effect of highways access points at the substation extension and noted that the need to clear vegetation from these areas would increase the visibility of the infrastructure for road users along the A47 trunk road which passes within reasonable proximity of the extension to the National Grid substation [ER 4.5.39].
- 4.33. As far as the project substation was concerned, the ExA noted that the permanent footprint of the development would have dimensions of around 300 metres x 250 metres with a 20 to 25m break in existing hedgerows and trees from the onshore cable route and a break along the southern side of the A47 to accommodate the new access road junction [ER 4.5.41]. The Applicant had proposed that planting of trees and shrubs around some of the substation (including on top of a 2 metre high bund along its western edge) would mitigate the impacts to some extent although the degree of mitigation was not guaranteed. Assessments had, therefore, been based on precautionary growth rates. The Applicant has expressed an intention to implement mitigation planting at the start of the construction phase where possible, but the ExA has not assumed advanced planting in its assessment as this is not guaranteed [ER 4.5.43 et seq.].
- 4.34. In considering the effects on landscape of the two developments at Necton, the ExA notes that the substation location is not within any designated landscape areas [ER 4.5.46]. The ExA sets out that the landscape is typically rural with hedgerow framed roads and much of the area being productive farmland [ER 4.5.47]. The ExA further notes that the location or the proposed new project substation would benefit from existing hedgerow and plantations of trees which would help to reduce potential visual and landscape impacts although some of the hedgerows would be removed during construction and would be replaced once construction had finished [ER 4.5.49].
- 4.35. In respect of the extension to the existing substation at Necton, the ExA notes that the existing National Grid substation is a noticeable feature in the local landscape with the development being somewhat at odds with it [ER 4.5.50]. The ExA goes on to say that the extension to the substation would add to the impression of a large-scale energy development

in this locality [ER 4.5.50]. Road widening associated with the A47 access junction would require removal of roadside vegetation over a 300m length for a 24 month construction window which would open up roadside views of the development along the A47 [ER 4.5.51]. During construction of the new substation and the extension the effects on landscape character would be exacerbated by construction compound, running tracks, earthworks and other activities, and the effects would be felt in the medium term [ER 4.5.52]. The ExA took into account the existing Dudgeon substation and electricity pylons in the baseline, and considered that the landscape effects would fall within a smaller area of a larger whole when viewed in the context of the wider Landscape Character Area and considered that the effects would be further ameliorated as replacement planting became more established [ER 4.5.53]. The Secretary of State has considered these points and disagrees with the ExA – his reasons are set out below (the proportion of the Landscape Character Area in paragraph 4.60 and mitigation planting in paragraph 4.61).

- 4.36. The ExA notes that for many viewpoints in the village of Necton the views of the substations would be screened by vegetation and the undulating topography [ER4.5.58]. Similarly, in the small hamlet of Ivy Todd, there would be some partial views of the upper parts of the new substation from the gardens and properties on the north edge of the hamlet [ER 4.5.58]. The ExA concludes that the most significant impacts would be for local walkers and drivers on a short section of Ivy Todd Road and a section of the A47. The ExA's overall conclusion for Necton and Ivy Todd is that there would be no significant effects on the views of residents within those villages. [ER 4.5.60]
- 4.37. The ExA considered that the cumulative visual impacts of the substation and the substation extension should not be assessed from static viewpoints but rather as a person would move around the local area, experiencing a range or sequence of view [ER 4.5.61]. The ExA noted that there would be a number of journeys in the immediate locality of the Development where, at different points, both the new substation and the substation extension would be glimpsed or come into view in succession, and consequently there would be a cumulative effect on visual amenity in that the view would be conscious of two large-scale energy plants in the locality [ER 4.5.62]. However, the ExA concluded that these views would be localised and there would not be open view of the totality of the project, and that over time the mitigation planting secured by Requirement 18 would assist in ameliorating some of the effects [ER 4.5.62].
- 4.38. The underground onshore cable route would run 60km from Happisburgh on the Norfolk coast to Necton [ER 4.5.63]. The proposed works would also include the ducting within which any cables from the proposed Norfolk Boreas offshore wind farm would be laid in the event that it was consented and taken forward to development. The cable corridor would be 45 metres wide along its length and include room for four cable trenches, a temporary 'running track' (which allows construction equipment to move along the cable route – 6m wide in situ for a two-year period) and spoil heaps of the excavated earth. There would also be along the length of the cable route fourteen 'mobilisation areas' (each with an area of around 100m by 100m or 150m by 100m if combined with trenchless drilling compounds) and trenchless drilling compounds (up to 100m by 50m), and a total of 150 permanent jointing pits (every 800m of the cable route and a maximum area of 90m<sup>2</sup> and 2m deep) [ER 4.5.64]. At the end of the construction period, the land over the cable route would be re-instated [ER 4.5.65].
- 4.39. In addition, for the duration of the operation of the onshore cables, there would be link boxes (of 1.5m x 1.5m dimensions) set into the ground every 1.5km along the cable route. These would generally not be visible [ER 4.5.66].
- 4.40. In terms of the onshore cable route's impact on landscape character, the ExA notes that the flat landscape and the enclosed nature of the cable route means that there would be only limited visibility of the cable works [ER 4.5.68]. The ExA also notes that the short-term

duration of the works and the fact that they would be reversible would limit the significance of the impacts. [ER 4.5.68] However, the ExA draws attention to concerns from Broadland District Council in its Local Impact Report about the loss of hedgerows and trees in hedgerows along the cable route – particularly at road crossing points – and the effect this would have on landscape character [ER 4.5.69]. The North Norfolk District Council highlighted the proposed crossing point at Colby Road, north of Banningham, where the loss of the trees would result in a significant detrimental impact on the landscape character and visual amenity. The Council suggested that a trenchless crossing technique (where the cable route would be tunnelled underneath the road in question) should be utilised to avoid the loss of mature trees with a distinctive overhead canopy. The ExA agreed with the Council and the location in question has been added to the list of trenchless crossing points in the development consent order [ER 4.5.70]. The Secretary of State originally has considered this matter in light of consultation responses submitted to him as part of his consultations for the original decision and has decided that a trenched crossing would be appropriate at Colby. The Secretary of State notes that this issue was considered again at the Norfolk Boreas examination, and that agreement was reached between North Norfolk District Council and the Applicant on mitigation that would avoid a net loss of trees, with the Norfolk Boreas ExA recommending that a trenched crossing would be appropriate [Norfolk Boreas ER 5.4.61]. The Secretary of State expects that the final version of the Norfolk Vanguard Outline Landscape and Ecological Management Strategy that is submitted to him for certification will mirror the mitigation agreed for this crossing in the Norfolk Boreas Outline Landscape and Ecological Management Strategy.

- 4.41. The ExA also considered the potential impacts of the onshore cable route on two designated landscapes – Salle Park and Blickling Hall – which would lie quite close to the cable route. [ER 4.5.71] Both landscapes feature in Historic England’s Register of Parks and Gardens. The ExA concluded that the impacts on both landscape areas would be short term and reversible [ER 4.5.71 et seq.].
- 4.42. In concluding its assessment of the onshore cable route’s effect on landscape character areas, the ExA considered that, while there would be harmful impacts, these would be localised, limited in time, and temporary. The impacts on the designated landscapes mentioned above would not be significant. [ER 4.5.73]
- 4.43. The ExA noted that the loss of hedgerows and trees along the cable route would have some adverse effects on local residents and travellers using routes along the cable route until the mitigation planting had become more established [ER 4.5.75]. The ExA noted that in most instances losses would be limited to 20 to 25m breaks and that generally there would be some form of replacement or mitigation planting, and concluded that there would be moderate but localised harm to visual amenity [ER 4.5.77].
- 4.44. The ExA also looked at the potential visual impacts of the users of three designated footpaths along the onshore cable route – Wensum Way, Marriott’s Way and Paston Way. In respect of Wensum Way, the ExA notes the potential for significant detrimental visual effects along a 550 metre section of the path following removal of hedgerow and trees. Replacement planting would fill the gaps but it was estimated that it would take up to 20 years for the trees to reach their current maturity level. The ExA concludes, therefore that impacts would be moderate, localised and of medium-term duration [ER 4.5.78]. There would be impacts on Marriott’s Way but these would be limited, short term and reversible [ER 4.5.79]. Finally, the ExA considers that the onshore cable route would have limited impacts on Paston Way [ER 4.5.80]. Overall, the ExA concludes that Wensum Way would be subject to significant effects over localised sections but the other routes would not have significant effects [ER 4.5.80].

- 4.45. There are a number of major and minor roads that run either alongside or across the onshore cable route [ER 4.5.81]. Some roads would be intersected by the onshore cable route and there is the potential for significant visual effects in such instances, but intervening boundary and other vegetation would limit the views and visibility on other roads, and the use of trenchless crossings on the A47, A140, A149, B1145 and Old Hall Road would help to reduce the visual impacts [ER 4.5.82]. The ExA also identified localised significant character effects where mobilisation areas would be visible from the roadside [ER 4.5.83 et seq.]. However, in general terms, the ExA considers that the impacts would be localised, time limited (for a two year period in some cases) and reversible [ER 4.5.84 et seq.].
- 4.46. The ExA considered the potential impacts of the offshore cable landfall to the south of Happisburgh on the Norfolk coast [ER 4.5.87 et seq.]. Construction works at Happisburgh would be inland rather than on the beach [ER 4.5.87]. The works would necessitate a 6m access track which would be required for 14 to 20 weeks and two 60 metre x 50 metre compounds within which two transition pits (15m by 10m) would be constructed [ER 4.5.88]. There would be no workings on the beach, and open access would be retained during construction [ER 4.5.87].
- 4.47. The ExA considered the impact of the landfall works on landscape character. While noting that the works would be visible within what is a largely agricultural landscape, the ExA concluded that any impact would be modest, temporary, and once the construction compound had been removed the landscape character area would be uncompromised [ER 4.5.90].
- 4.48. The ExA also considered the impacts of the landfall works on visual amenity and noted that some residents on the southern edge of Happisburgh and the northern edge of Eccles-on-Sea would experience a significant detrimental effect [ER 4.5.91]. It considered that although residents of Doggett's Lane in Eccles-on-sea would have some views of the work these would be at a greater distance and limited: when coupled with the temporary nature of these views and the likely reinstatement of the site, the ExA concluded that harm to visual amenity would not be significant [ER 4.5.92]. The ExA also notes that walkers along a section of the Norfolk Coastal Path would clearly notice the works which would be an unexpected intrusion in landward-facing views with a significant detrimental effect [ER 4.5.93]. The ExA refers to the significance of the impact but notes again that this would be limited to a short stretch of the Coastal Path during the construction phase and be reversible, although some residual impacts would remain until replacement planting became established [ER 4.5.94].
- 4.49. The ExA notes the proximity of the onshore cable route to the Norfolk Coast Area of Outstanding Natural Beauty (1.7km away at its closest point). The ExA considered that the distances between the edge of the AONB and the landfall and the onshore cable route, coupled with the intervening built form and vegetation, meant that there would be very limited glimpses of the work from the AONB [ER 4.5.95]. The onshore cable route travels within 1.2km of the Broads National Park, and the ExA noted that the primary statutory objective of its designation as a National Park is the conservation of the waterways. The ExA considers that there would be limited opportunity for inter-visibility given the intervening vegetation [ER 4.5.96]. Natural England was satisfied that there would be no adverse effects on the purposes of the designations of protected landscapes, including the Norfolk Coast AONB and The Broads National Park [ER 4.5.96].
- 4.50. The Applicant identified the potential for cumulative visual and landscape effects to arise in relation to the onshore cable route for the proposed Development and the onshore cabling works for the proposed Hornsea Project Three offshore wind farm. In particular, the crossing point for the two cable routes just outside the small town of Reepham in Norfolk. For a short stretch of the path, walkers along Marriott's Way would be able to see both sets of

construction works. However, the ExA notes that, while there would be some significant effects, they would be localised, be short term and be reversible. [ER 4.5.97 et seq.]

- 4.51. The Applicant also noted cumulative effects from the construction compounds for the proposed Development and the proposed Hornsea Project Three offshore wind farm which would be located close to the village of Oulton. The ExA considered that while the compounds were in relatively close proximity to each other the Norfolk Vanguard compound would be set back from a lightly trafficked rural lane. When coupled with the limited duration of the construction works the ExA concluded that there would be no materially harmful cumulative impacts on landscape character or visual amenity arising from them. [ER 4.5.100]
- 4.52. The ExA concluded that there would be limited and minor cumulative impacts on landscape character and visual amenity of Salle Park due to glimpsed views from the entrance, but that in combination with the Hornsea Project Three mobilisation area to the south of the south-west corner of the Park there would be no significant adverse effects because of the dense woodland enclosing the Park. [ER 4.5.101]
- 4.53. The ExA Report noted that, while the Applicant's Landscape and Visual Impact Assessment cumulative assessment included the proposed Norfolk Boreas offshore wind farm, it was not considered by the ExA because of the limited information available on that project. The ExA concluded, therefore, that this matter should be considered in the future as part of the examination of the development consent application for the Norfolk Boreas offshore wind farm. [ER 4.5.102] The judicial review found that this approach was unlawful. Consequently the Secretary of State has excluded consideration of the ExA's conclusion on this issue from his redetermination and undertaken further consultation (see the sub-section *Post-examination consultation* below) in order to allow him to reach a conclusion in relation to the likely cumulative landscape and visual impacts of the Norfolk Vanguard and Norfolk Boreas substations at Necton.
- 4.54. The ExA's Report also considers possible changes to the DCO to include new or modify old mitigation conditions in respect of landscape character and visual impact [ER 4.5.104 et seq.].
- 4.55. In redetermining the application the Secretary of State has put aside the overarching conclusions on landscape and visual impact reached by the ExA. The Secretary of State notes the following conclusions on individual points reached by the ExA: In respect of visual amenity, the ExA notes there would be localised but significant effects during construction along parts of the A47 trunk road and two minor roads [ER 4.5.111]. In terms of the onshore cable route and landfall location, there would be local but short term harm to landscape character which would not be significant [ER 4.5.112]. There would be significant but short term and reversible effects along some roads and footpaths [ER 4.5.112]. Considering all these matters in the whole, the ExA finds that the proposed Development would accord with the policy requirements of NPS EN-1 and NPS EN-2 and would not cause material harm to key characteristics of Norfolk County Council's relevant development plans and policy strategies covering the onshore cable route and the cable landfall [ER 4.5.113]. The ExA noted that the impacts of the proposed Development would be generally acceptable except in respect of the harm to visual amenity in relation to the substation works [ER 4.5.114]. The proposed Development would not, therefore, fully conform to relevant policies in Breckland Council's Core Strategy documents [ER 4.5.114].

#### *Post-examination consultation*

- 4.56. The Secretary of State has received a number of responses to his consultations. These have been considered carefully. The responses raised the following issues: the re-evaluation of



cumulative impacts should not be limited to landscape and visual impacts, but should include other issues such as noise and traffic; concerns about the likely effectiveness of any design review and the need for it to be fully independent. along with suggestions about what issues it should include (noise limitations, visualisations, water attenuation, cumulative impacts were suggested); concerns that the mitigation planting at the substation would not be effective for the majority of the lifespan of the project; the accuracy of the photomontages; that the use of bunding wide enough to accommodate tree planting should be reconsidered; whether the substation location would have been the same if environmental factors had been given greater weight; that detailed exterior designs of the combined substations should be submitted along with detailed impacts assessments of the along with detailed proposals for their mitigation; a lack of meaningful consultation with the local population in relation to substation siting; that the landscape and visual assessment should also include light and noise pollution during the construction, commissioning, operation and scheduled maintenance shutdowns cumulatively with the existing Dudgeon substation; that the reliance on the Norfolk Boreas Design and Access Statement (which predated the judicial review) was inappropriate as it was limited to subsidiary matters and that functionally non-negotiable elements of the Norfolk Vanguard project were already determined by the co-location decision and were not capable of being revisited. The Secretary of State also notes that Norfolk Vanguard Limited highlighted that the Environmental Statement submitted with the original application contained visual materials on the cumulative landscape and visual impacts from agreed viewpoints<sup>29</sup>, a point reiterated by Oulton Parish Council<sup>30</sup>.

- 4.57. Norfolk Vanguard highlighted a confidential draft Co-Operation Agreement between Norfolk Vanguard Limited, Norfolk Boreas Limited and Vattenfall Wind Power Limited<sup>31</sup>. As the Secretary of State has not been able to consider the scope or terms of the agreement he has not been able to take it into consideration in determining the Application.

#### *The Secretary of State's Conclusions*

- 4.58. The Secretary of State has carefully considered the ExA's Report in the light of the High Court judgment, and the responses that have been raised to his consultations. He has indicated above where he considers that these responses raise new issues. Based on the information now in front of him the Secretary of State has reached a number of conclusions in relation to the landscape and visual impacts of the Development.
- 4.59. The Secretary of State notes that the vast majority of the concerns about landscape and visual impacts related to the impacts that would arise from the construction and operation of the substations at Necton, either for the Norfolk Vanguard project alone or cumulatively with the Norfolk Boreas project.
- 4.60. The Secretary of State has considered the ExA's view that the impacts on a Landscape Character Area can be evaluated by the proportion of the area impacted by development. The Secretary of State disagrees with this approach as it risks diluting the significant harm that a proposal may have on one part of the area. The Secretary of State considers that the appropriate approach is to clearly understand the nature of the impacts, and then to take a view in relation to the proportion of the area impacted. In this case the cumulative visual impacts of four large substation buildings is so significant that they should be considered to

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<sup>29</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010079/EN010079-004341-Norfolk%20Vanguard%20Limited%20-%202020%20May%202021.pdf>

<sup>30</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010079/EN010079-004329-Oulton%20Parish%20Cocuil%20-%2018%20May%202021.pdf>

<sup>31</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010079/EN010079-004383-Applicant's%20Response%20to%20the%20Requests%20for%20Additional%20Information.pdf>

have a significant impact on the Landscape Character Area in their vicinity notwithstanding its wider extent.

- 4.61. The Secretary of State notes the concerns about the effectiveness of mitigation raised by Interested Parties. The Secretary of State agrees with the concerns raised by Interested Parties about the challenges of designing mitigation effectively in the absence of a detailed substation design and considers that the Applicant's rejection of various potential measures ahead of the completion of a detailed substation design is premature. In relation to mitigation planting, the Secretary of State notes that several responses to his Norfolk Boreas consultation letter of 9 July highlighted concerns about the effectiveness of screening planting around the existing Dudgeon substation at Necton<sup>32</sup>. The Secretary of State agrees that a conclusion that the mitigation planting is unlikely to be fully effective until 25 years into the operational life of the substation reflects an inadequate degree of mitigation<sup>33</sup>.
- 4.62. The Secretary of State has made a number of changes to the draft Development Consent Order (set out in detail in section 12 below) to ensure that the post-consent process ensures an effective independent design review, a robust design guide, and effective and ongoing mitigation measures to reduce the landscape and visual impacts of the Norfolk Vanguard project alone and cumulatively with the Norfolk Boreas project. Most of these changes reflect changes that the Secretary of State made to the Norfolk Boreas Development Consent Order. In the event that the development of both projects proceeds the details to be supplied in relation to the converter buildings for the substations under Requirement 16(4) must be supported by a statement illustrating how the details accord with the principles of the Onshore Project Substation Masterplan and have been informed by a strategic approach to mitigating cumulative impacts arising from the substation and the Norfolk Boreas substation. The details submitted must also include the outcome and recommendations from the early independent design review. In addition the Secretary of State has decided that it would be appropriate to modify Requirement 19 on aftercare for planting so that the obligation to replace dead or diseased trees, hedges or shrubs used to screen the onshore project substation will apply for the first 25 years of the Project's operational life to ensure that the adverse effects identified by the Applicant will continue to be mitigated for.
- 4.63. Despite the changes he has made, the Secretary of State is aware that the development of the substations at Necton (either of Norfolk Vanguard alone or cumulatively with Norfolk Boreas) will have significant adverse landscape and visual impacts. The Secretary of State has made a reassessment of the weight to be attributed to cumulative landscape and visual impacts against the existing baseline at Necton (i.e. the Dudgeon substation alone) and taking into account all the representations received from Interested Parties as summarised above. The Secretary of State concludes that it is appropriate to accord substantial weight against making the Order when considering the cumulative landscape and visual impacts against the existing baseline.

### The Historic Environment

- 4.64. The ExA notes that NPS EN-1 sets out the cultural heritage/historic environment issues that should be addressed by an Applicant for a development consent order in submitting its application for development consent and considered by the Secretary of State in determining any application [ER 4.6.2 et seq.]. The ExA specifically notes the presumption in favour of the conservation of designated heritage assets and that any significant impact on those

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<sup>32</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010087/EN010087-002917-NORB-Boreas-Decision-Letter.pdf> at paragraph 4.65.

<sup>33</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010079/EN010079-004383-Applicant's%20Response%20to%20the%20Requests%20for%20Additional%20Information.pdf>

assets should be weighed against the public benefit of the development in question [ER 4.6.5].

- 4.65. The Applicant assessed both the onshore and offshore areas covering the wind farm, export cable route, onshore cable route and substation locations. The Applicant's assessment for onshore areas showed that with one exception – the Blickling Conservation Area – that the area of the proposed Development and the proposed works would avoid direct physical impacts on designated heritage assets [ER 4.6.8].
- 4.66. The assessment of the impacts on the Grade I listed St Andrew's Church at Bradenham indicated while that the substation would be visible from a part of the churchyard, Historic England considered this would result in some residual harm albeit "less than substantial" [ER 4.6.21 and 4.6.37].
- 4.67. Changes to Cawston through highway mitigation measures would affect the character and appearance of the Cawston Conservation Area. In addition, there would be harm – identified as short term and reversible, once construction traffic had finished passing through Cawston [ER 4.6.12].
- 4.68. As far as offshore areas were concerned, the Applicant's study showed potential archaeological resources within the boundary of the proposed Development but noted that these could be avoided with mitigation, including micrositing of assets [ER 4.6.15 et seq.]. The Applicant's conclusion was that there would be no significant adverse impacts [ER 4.6.17].
- 4.69. Broadland District Council raised concerns about the impact that HGVs travelling along Cawston High Street might have on listed buildings in the Cawston Conservation Area. Cawston Parish Council and local people raised similar concerns. Broadland District Council welcomed some of the traffic control measures that would be put in place but had a concern about whether the widening of a footpath in the High Street would increase the risk of a listed building – Whitehouse Farm - being struck by passing vehicles. [ER 4.6.18]
- 4.70. North Norfolk District Council indicated the impacts from the proposed Development on heritage assets would be less than significant and the benefits of the proposed Development would outweigh any harm to those assets [ER 4.6.19].
- 4.71. Historic England was content that harm to Salle Park, Blickling Hall and the Blickling Conservation Area would be limited in duration and be less than substantial, and that any impacts could be mitigated by ensuring that the landscape is restored to its current or an enhanced condition [ER 4.6.22].
- 4.72. Residents of Happisburgh raised concerns about potential impacts on the Grade 2 listed Happisburgh Lighthouse and Cottages and on the Grade 2 listed Bradenham Hall. [ER 4.6.25]
- 4.73. There were no real concerns about the impacts of the proposed Development on offshore heritage assets (but see paragraph 4.76 below).
- 4.74. In its analysis of the above issues, the ExA notes [ER 4.6.28] that the need for a Written Scheme of Investigation to be put in place to inform mitigation strategies. There would also be engagement with the National Trust about its Blickling Estate and mitigations and archaeological activities that might be put in place [ER 4.6.30]. The ExA considers therefore, that matters relating to onshore and offshore archaeology have been satisfactorily addressed [ER 4.6.41 et seq.]. Further, the ExA notes the potential harm to the properties

and Conservation Areas outlined above, particularly on the Cawston Conservation Area (through an increase in HGV traffic through the village) and on St Andrew's Church at Bradenham (from the proximity of the substation). [ER 4.6.34 and 4.6.4.6.37 et seq.].

- 4.75. In reaching its conclusions, the ExA notes [ER 4.6.40 et seq.] NPS EN-1's presumption in favour of the conservation of heritage assets and notes the legal requirements placed upon it in considering applications for development consent where the setting of heritage assets might be affected. The ExA notes any impacts on onshore and offshore archaeology would be mitigated by measures in the Written Scheme of Identification that would need to be provided by the Applicant [ER 4.6.41]. There would be no impacts on the setting and heritage significance on the majority of onshore and offshore heritage assets [ER 4.6.43]. The ExA does consider that the setting of St Andrew's Church at Bradenham would not be preserved and this harm must be considered against the public benefit of the proposed Development [ER 4.6.44]. The Secretary of State notes that the cumulative impacts of the Norfolk Vanguard and Norfolk Boreas substations were considered by the Norfolk Boreas ExA [Norfolk Boreas ER 5.16.29 et seq.], which concluded that the cumulative impacts would be non-significant in EIA terms [Norfolk Boreas ER 5.16.35]. The ExA concludes that the public benefits of the proposed Development, in terms of the policy support in the National Policy Statements for renewable energy electricity generation, would outweigh the less than significant harm that is identified [ER 4.6.45]. The ExA concludes that the effect on the historic environment carries limited weight in the planning balance [ER 4.6.45].
- 4.76. The Secretary of State notes that on 8 November 2019, Historic England notified the Planning Inspectorate of the Designation Decisions under the Ancient Monuments and Archaeological Areas Act 1979 (as amended) for two vessels – The Seagull and Xanthe – lying off the Norfolk coast. The vessels had been added to the Schedule of Monuments after the close of the examination. The Secretary of State notes that the vessels are located close to the offshore cable route for the Development but that there are protocols and general mitigation measures proposed that would avoid any harm.
- 4.77. The Secretary of States notes the potential impacts on the historic environment and that weight is given to those impacts in relation to St Andrew's Church at Bradenham. The Secretary of State is aware that where there is an identified harm to a heritage asset he must give that harm considerable importance and weight and he does so in this case. However, in light of the public benefit of the Development, the Secretary of State agrees with the ExA that onshore archaeology and cultural heritage matters do not provide a justification not to make the Order.

### Traffic and Transport

- 4.78. The consideration of traffic and transport impacts arising from the proposed Development was a major issue through the Examination of the Application. The ExA noted that consideration of the impacts was made more difficult by the need to factor in the impacts arising from the proposed Hornsea Project Three offshore wind farm, the development consent application for which had not yet at that time been determined by the Secretary of State. The ExA also noted that discussions between the Applicant and relevant councils about traffic and transport impacts and mitigations were taking place throughout the examination process. [ER 4.7.1 et seq.]
- 4.79. The ExA noted the position set out in NPS EN-1 in relation to the information to be provided by the Applicant about traffic and transport assessments and mitigation measures to support an application and the way that information should be considered by the decision-maker [ER 4.7.4 et seq.]. The Applicant's methodology for traffic assessment and cumulative impacts was agreed with Highways England and Norfolk County Council [ER 4.7.12].

- 4.80. There was considerable discussion about the substation access points off the A47, with particular emphasis on the safety of vehicle movements both accessing the sites and using the road for other, non-construction, purposes [ER 4.7.18 et seq.]. The Applicant worked closely with Highways England and Norfolk County Council during the examination to address issues about access to the substation sites [ER 4.7.24 et seq.]. The ExA concluded that, with mitigation being set out in an Access Management Plan which would need to be agreed with the local planning authority in consultation with the relevant highways authority (Requirement 21 and 22 of the development consent order recommended by the ExA to the Secretary of State), the access arrangements are satisfactory [ER 4.7.31].
- 4.81. The B1145 road runs across Norfolk to link King's Lynn to Mundesley on the north east coast of the County [ER 4.7.32]. Part of the road runs through the village of Cawston [ER 4.7.32]. Concerns were expressed by the local parish council, local residents and Broadland District Council about the potential impacts of construction traffic related to the onshore cable route for the proposed Development – particularly in relation to the number of Heavy Goods Vehicles that would need to drive through the village along the B1145 [ER 4.7.37 et seq.]. The concerns were compounded because of the cumulative impact of vehicles associated with the construction of the onshore cable route for the proposed Hornsea Project Three offshore wind farm using the same road through the village [ER 4.7.37].
- 4.82. The concerns revolved around the level of Heavy Goods Vehicle traffic and whether the High Street at Cawston would be able to cope with the extra traffic [ER 4.7.37 et seq.]. There were also concerns about the impact of Heavy Goods Vehicle movement through Cawston on the village's Conservation Area and listed buildings on the High Street [ER 4.6.18 and 4.7.38]. During the examination, there were extensive discussions between various parties to try to address the issues, including the possibility of using a route that would avoid using the road through the village [ER 4.7.47].
- 4.83. The ExA noted the ongoing discussions in relation to mitigation proposals that the Hornsea Project Three developers had submitted to their examination [ER 4.7.46, 4.7.50 to 54]. The ExA also noted that the Applicant committed to reducing the number of the proposed Development's daily Heavy Goods Vehicle traffic movements through Cawston from a peak of 144 to 112 [ER 4.7.56]. The ExA set this in the context of 127 daily Heavy Good Vehicle movements for the Hornsea Project Three works [ER 4.7.60]. Norfolk County Council was of the view that it would be possible to produce a mitigation scheme for Cawston but that it needed more information to do so [ER 4.7.57]. However, there would be caps on the numbers of Heavy Good Vehicle movements using the Cawston route which would mean the peak flow would happen only over a limited period rather than throughout the construction phase [ER 4.7.56 and 4.7.62].
- 4.84. In considering the issues related to traffic impacts in Cawston, the ExA assessed two scenarios: one with the traffic related to the Hornsea Project Three included and one without. In the event that Hornsea Project Three did not proceed, then the ExA considered that the traffic impacts at Cawston would be acceptable subject to suitable mitigations being put in place. [ER 4.7.59] The ExA acknowledged the complications that arise in the event that a development consent for the Hornsea Project Three wind farm has been granted by the time the Secretary of State determines the Application. The ExA assessed the combined Heavy Goods Vehicle traffic that would use the road through Cawston and notes that on a worst case scenario there could be a maximum of 222 HGV movements associated with the two projects using the village every day. (The existing baseline HGV flow through the village would add another 100 plus vehicles to the traffic flow.) The ExA noted that there would be 34 HGV movements an hour through the village over the 12-hour construction working day – one every two minutes (or more frequently). [ER 4.7.58 et seq.]

- 4.85. The ExA was sceptical that the mitigation measures proposed by the Applicant in the scenario where both the proposed Development and the Hornsea Project Three projects constructed the onshore cable route at the same time would avoid a material harm to highway safety. [ER 4.7.66]. The ExA's rationale was that the narrowness of the roadway, the narrow footways, parked vehicles along the route and the volume of HGV traffic would impact on pedestrian and walker safety and increase the prospects of delays and blockages of the carriageway. [ER 4.7.70]
- 4.86. The ExA noted that Norfolk County Council was of the view that an acceptable mitigation scheme could come forward from the Applicant. The ExA disagreed with the Applicant and Norfolk County Council and considered that material revisions would be need to the mitigation measures to make the scheme acceptable. Accordingly, the ExA recommended to the Secretary of State that the Applicant should be made to secure a revised mitigation scheme "which considers each project in combination and the overall scheme context". [ER 4.7.72]
- 4.87. The Secretary of State consulted on this matter on 6 December 2019 seeking views on the inclusion of a provision in the development consent order that would provide additional mitigation for traffic impacts that might arise at Cawston in the event that both the proposed Development and the proposed Hornsea Project Three offshore wind farms were granted development consent<sup>34</sup>. Subsequently, the Secretary of State has granted consent to both the Hornsea Project Three and Norfolk Boreas wind farms. The Secretary of State considers that amendments should be made to the development consent order to require further mitigation measures to be agreed between the Applicant and relevant local authorities and this is reflected in requirements 21(4) and (5) of the final DCO.
- 4.88. The ExA also considered potential impacts on other sections of road that might be affected by traffic associated with the onshore works – The Street at Oulton (where there would be potential cumulative impacts from works that would be undertaken for the Hornsea Project Three offshore wind farm), the B1149 at Edgefield, the B1149 at Horsford, the B1436 at Felbrigg, a local road at Happisburgh, and Blickling Road close to the Blickling Estate. In these cases, the ExA considered that mitigation measures would satisfactorily remediate any significant harm. [ER 4.7.73 et seq.]
- 4.89. The ExA also considered the use by construction traffic for the proposed Development of a number 'sensitive junctions' along the A47 road and the cable crossing of the A47 at Scarning. In each, case the ExA noted agreement with the mitigation measures that would be put in place. [ER 4.7.101 et seq.]
- 4.90. The ExA recorded disagreement between the Applicant and Norfolk County Council over the need for trenchless crossings for the onshore cable route in respect of the A1067 and B1149 roads. Agreement was reached that trenchless crossing would be utilised in respect of the A1067. In contrast, there was considerable discussion about the best way for the onshore cable route to cross the B1149 north of Cawston which would be used by construction traffic for the onshore cable route for the proposed Development and the proposed Hornsea Project Three projects. Norfolk County Council was adamant that trenchless crossing techniques should be used while the Applicant sought to utilise its trenching option supported by changes to traffic management measures. The ExA's consideration of the issues led it to conclude that the B1149 should be subject to trenchless crossing for the onshore cable route. [ER 4.7.110 et seq.]

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<sup>34</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010079/EN010079-004198-NORV%20%E2%80%93%20Letter%20from%20Secretary%20of%20State%20-%206%20December%202019.pdf>

- 4.91. As a result of the above issues, the ExA made a number of suggestions to modify the development consent order that might be granted by the Secretary of State.
- 4.92. In its conclusion [ER 4.6.132 et seq.], the ExA pointed out that the construction of projects such as the proposed Development will always generate an increase in traffic movements – often Heavy Goods Vehicles. However, the ExA noted that the impacts would be acceptable subject to the adoption of suitable mitigation measures as set out in the development consent order submitted to the Secretary of State by the ExA.

#### *Post-examination consultation*

- 4.93. In a response to the Secretary of State's consultation letter of 11 October 2021 Cawston Parish Council highlighted that the bridges at Marriotts Way and Salle Beck on the B1145 had again been seriously damaged by traffic impacts with repairs necessitating road closures, and expressing concerns that this would be exacerbated if Norfolk Vanguard construction traffic is allowed to use this road. An Interested Party raised concerns about the cumulative impacts of construction traffic at Necton. In response to the Secretary of State's consultation letter of 11 October 2021 Oulton Parish Council raised concerns about the potential cumulative impacts with the proposed Dudgeon and Sheringham Shoal offshore wind farm extensions, highlighting concerns that the delays to the Norfolk Vanguard project increased the risk of in-combination traffic effects or a more protracted construction timeline. The Parish Council highlighted the potential for the main Dudgeon and Sheringham Shoal construction compound to be in Oulton, next to the main Hornsea 3 compound, and that this impact has been completely omitted. The Secretary of State has considered these concerns. He notes that the issue of bridge strikes was considered during the examination [ER 4.7.40 et seq.]. The Secretary of State notes that construction traffic access to the proposed substation sites would be from the A47 [ER 4.7.18 et seq.] rather than via Necton. The Secretary of State notes that the traffic impacts from the Dudgeon and Sheringham Shoal extensions are still uncertain as they depend upon the timings of those projects and they have yet to be submitted for examination: on this basis the Secretary of State considers that the mitigation of any potential cumulative impacts at Oulton should be dealt with as part of the application for development consent for those Projects. The Secretary of State notes the concerns that Oulton may be selected as the main construction compound, but also notes that it is one of several possible sites: the Secretary of State considers that this is too uncertain an issue to address in the present Application and that it is appropriate for the promoter of the Dudgeon and Sheringham extensions to deal with as part of that application for development consent.

#### *The Secretary of State's conclusions*

- 4.94. The Secretary of State acknowledges that the impacts of traffic and transport measures from the proposed Development on local people and their villages and ability to move around the local area are of concern to many parties potentially affected by them. It should also be noted that the impacts at any given location will be spread over many months. The Secretary of State notes that during the Norfolk Boreas examination that additional traffic management measures were agreed and secured in the Outline Traffic Management Plan. The Secretary of State considers that in the event that the Norfolk Vanguard project proceeds the Outline Traffic Management Plan and its daughter documents should contain all relevant mitigation measures from the Norfolk Boreas Outline Traffic Management Plan. In light of the ExA's conclusions, the responses to the Secretary of State's consultation and the inclusion of the traffic mitigation measures which are secured by the development consent order, the Secretary of State considers that the traffic and transport impacts of the Norfolk Vanguard project alone, or cumulatively with Hornsea Project Three, Norfolk Boreas, and the Dudgeon

and Sheringham Shoal extensions should not stop the grant of consent for the proposed Development.

### Socio-Economic Impacts

- 4.95. The main discussions about the potential socio-economic impacts of the proposed Development were about the potential for community benefits, job creation and the potential (adverse) impacts the project would have on tourism. The ExA noted that NPS EN-1 requires that applicants for development consent should make an assessment of socio-economic impacts and of the existing socio-economic setting. The ExA also notes that there were a number of local policies on socio-economics which also needed to be considered. [ER 4.8.1 et seq.]
- 4.96. The Applicant provided a socio-economic analysis of the impacts of the proposed Development. On employment opportunities, the Applicant estimated the proposed Development might create more than 1,000 FTE jobs during its construction and around 290 FTE during its operation: the jobs would generally be filled by workers from the East Anglian jobs market. The onshore cable route would employ between 250 and 420 people in the summers of 2022 and 2023. More generally, the Applicant was working with local businesses and representative bodies to look at local economic benefits arising from the proposed Development. On communities and community benefits, the ExA noted that there were strong local calls for a community fund to be set up but that the Applicant argued these were not directly related to planning issues and so should not be dealt with as part of the examination process. On tourism, the Applicant recorded moderate adverse short-term impacts in the vicinity of the landfall works (at Happisburgh) although there were claims that there would also be an impact on some holiday lets in the vicinity of the substations. [ER 4.8.10 et seq.]
- 4.97. North Norfolk District Council made strong representations during the examination about the potential harm that the proposed Development would have on the local tourist sector. The Council sought the inclusion of a Requirement in any development consent order that might be made to require the Applicant to contribute to organisations that aimed to boost local tourism to increase tourist footfall across the area. The Applicant disputed the rationale for such a requirement arguing that it was unnecessary and unlawful. [ER 4.8.25 et seq.]
- 4.98. In considering the various issues raised under the socio-economic heading, the ExA noted that the wording of the Council's proposed Requirement was not justified in light of the absence of any authoritative information that there would be an actual or perceived impact on tourism and the case has not, therefore, been made for its inclusion in a development consent order [ER 4.8.38 and 4.8.40]. In respect of the other socio-economic matters mentioned above, the ExA concluded that the jobs and skills package proposed by the Applicant would be capable of supporting the region's aspirations and achieving sustainable economic growth [ER 4.8.39].
- 4.99. The Secretary of State sees no reason to disagree with the ExA's conclusions in this matter.

### Contamination and Ground Conditions

- 4.100. This issue was a major concern for local people with particular focus on the possibility of residual impacts from the crash of a Royal Danish Air Force fighter plane in 1996 which came down in the vicinity of Necton, close to the proposed site of the substation and over part of the cable corridor.



- 4.101. In line with the requirements of NPS EN-1, the Applicant produced an assessment of potential risks from contaminated land. The Applicant's overall conclusion was that provided embedded and proposed mitigation measures were put in place, there would be only minor adverse effects arising from the proposed Development. [ER 4.9.6]
- 4.102. However, the crash site was not included in the Applicant's risk assessment – a matter of serious concern for local people. The particular concern for local people was the possibility that some of the remains of the plane and its various contaminants might remain below ground and could be disturbed by the construction work on the substation and onshore cable route. The concern covered the possibility that the crash site had not been cleared properly leaving radioactive contaminants, hydrazine (which is highly toxic and unstable), oil, and shards of carbon fibre in situ. One member of the public raised the possibility of a cancer cluster in the vicinity of the crash (although the cluster had not been investigated by Public Health England). [ER 4.9.14]
- 4.103. The Environment Agency ("EA") stated during the examination that it had not been established whether the land around the crash site was contaminated by radioactivity. The EA also said that based on the records kept by the RAF, there was little risk of contamination of water courses or aquifers and any impacts were likely to be localised and risks appeared to have been addressed and mitigated. The EA did not, therefore, see the need for a site investigation prior to the commencement of the development but stated that a discovery strategy should be in place during the works in case contamination was discovered. [ER 4.9.16]
- 4.104. Breckland District Council did not raise the possible contamination of the crash site in its Local Impact Report [ER 4.9.18]. However, once it had considered the documents submitted by Necton Parish Council about the crash site, it confirmed it had no reason to raise the risk level of the site [ER 4.9.18]. The Council was also content that the Applicant's commitment to produce a Contaminated Land and Groundwater Plan as part of its Code of Construction Practice was adequate to deal with potential contamination at the site [ER 4.9.18].
- 4.105. Other issues were raised under this heading which were generally agreed with the EA and other bodies. The possibility of subsidence occurring at a point on the B1145 road just outside Cawston because of the increase in Heavy Goods Vehicle movements. [ER 4.9.21]
- 4.106. The ExA acknowledges the concerns of local people about the potential for contamination of the land at the site of the plane crash. However, the ExA is satisfied that appropriate mechanisms for the discovery and remediation of any discoveries would be secured in a development consent order that might be granted by the Secretary of State. Other potential sources of contamination related to the proposed Development have been agreed with relevant bodies. As far as the possibility of subsidence related to construction traffic is concerned, the ExA notes that the Applicant will survey highways before and after construction and make good any damage that might occur. [ER 4.9.22 et seq.]
- 4.107. Overall, the ExA concludes that any adverse impacts would be mitigated by conditions in the development consent order. There would be no significant adverse impacts. These matters were satisfactorily considered during examination. The ExA considers, therefore, that the proposed Development would accord with NPS EN-1 and with the National Planning Policy Framework. [ER 4.9.32]
- 4.108. The Secretary of State acknowledges that the question of possible contamination at the crash site has generated strong feelings among people living in proximity to the site. However, the ExA's analysis of the issue is robust and mitigation would be put in place in

the event any contamination was discovered. The Secretary of State sees no reason to disagree, therefore, with the ExA's conclusion in this matter.

### Coastal Change

- 4.109. This was an important matter for residents of Happisburgh where cable landfall would be made in a context of an increasing rate of coastal erosion along that section of coastline [ER 4.10.5]. The matter was also of concern to North Norfolk District Council, Natural England and Happisburgh Parish Council and there were discussions throughout the examination about it [ER 4.10.10].
- 4.110. The Applicant made the case that its approach to horizontal drilling of the cable under the beach and cliffs adopted a conservative approach which took account of the retreat of the coast and cliff lines over time [ER 4.10.6 and 10.6.14]. The ExA considered that the proposed Development would not have any impact on the coastal erosion processes [ER 4.10.17]. The ExA was satisfied that the Applicant's design of the cable landfall at Happisburgh appropriately factored in coastal retreat and that mitigation measures including monitoring secured in the development consent order would require remediation in the event that the ducts could become exposed [ER 4.10.18].
- 4.111. The ExA concludes [ER 4.10.19] that the cable landfall as proposed would neither exacerbate coastal erosion nor be affected by it. The proposed Development would be in accord with the relevant provisions of NPS EN-1.
- 4.112. The potential impacts of the coastal landfall at Happisburgh on the eroding cliffs was raised by Interested Parties in response to the Secretary of State's consultation letter of 11 October 2021. The response raised concerns that this was an unresolved issue at the end of the Norfolk Vanguard examination. The Secretary of State has considered this point and has reviewed the subsequent Report from the Norfolk Boreas ExA. He notes that the concerns in relation to coastal erosion at this location was considered in detail [Norfolk Boreas ER 5.10.26 et seq.]. The Secretary of State notes that the Boreas ExA considered the cumulative impacts of both projects [Norfolk Boreas ER 5.10.39 et seq.] and that it concluded that there would not be a significant impact on marine and coastal processes and that there would not be a contribution change to coastal change in the area, even taking into account climate change during the project's operational life [Norfolk Boreas ER 5.10.42].
- 4.113. The Secretary of State sees no reason to disagree with this conclusion.

### Flood Risk and Water Resources

- 4.114. The ExA notes the policy requirement in EN-1 in relation to the potential impacts of national significant energy infrastructure projects on the water environment and the need for applicants to assess these impacts and for the decision-maker to consider them against a range of relevant issues (e.g. flood risk, requirements of the Water Framework Directive etc). [ER 4.11.1 et seq.]
- 4.115. The Applicant's assessment recorded that most of the proposed Development (including the onshore project substation and the extension to the National Grid substation) would lie within the low risk Flood Zone 1 designation, although some parts of the onshore cable route would be in areas with Flood Zone 2 and Flood Zone 3 designations. Various mitigations were proposed which would be secured by requirements in the development consent order. [ER 4.11.7 et seq.]

- 4.116. Norfolk County Council, as Lead Local Flood Authority initially had concerns about the design of the onshore substation and the wording of some of the proposed Requirements in the development consent order but was in agreement with the Applicant on these issues by the end of the examination. The Environment Agency also had concerns about certain aspects of the proposed Development. More specifically, there were concerns from members of the public and landowners about the possibility that all the onshore components of the proposed Development would increase the risk of flooding – with an existing flooding issue near Necton (in the vicinity of the onshore substations) being mentioned as a particular issue. [ER 5.11.14 et seq.]
- 4.117. In considering the issue, the ExA notes that the Applicant’s assessment methodology for flood risk and water resources was agreed with Norfolk County Council and the Environment Agency. The ExA also notes that various mitigation measures would be included in any development consent order that might be made. As far as the flooding near Necton was concerned, the ExA concludes that the drainage systems that would be put in place at the onshore substations would mean the presence of those structures would not exacerbate the existing risk of flooding. (The ExA determined that it would not be reasonable to require the Applicant to undertake repairs to the culvert that was causing the flooding.) [ER 4.11.17 et seq.]
- 4.118. The ExA concludes that, taking account of all relevant issues, it was unlikely the proposed Development would cause any significant impacts on flood risk or water resources. It continues that the proposed Development would accord with the requirements of NPS EN-1 and that this matter should not weigh against the development consent order being made. [ER 4.11.26]
- 4.119. In July 2021 the NPPF was updated and the policy in relation to flood risk set out from paragraph 159 was modified. The key change of relevance to the Development is the requirement that flood risk from all sources of flooding must be taken into account, set out in paragraph 161. The Secretary of State has reviewed this requirement against the requirement in paragraph 5.7.3 of Overarching National Policy Statement for Energy (EN-1) and notes that this already contains a requirement to take into account flood risk from all sources. Consequently, the Secretary of State is satisfied with the ExA’s conclusion that the flood risk assessment complies with the requirements of EN-1 already covers this requirement and that consequently there was no need to undertake consultation in relation to this policy change.

#### *Post-examination consultation*

- 4.120. In response to the Secretary of State’s consultations of 29 April 2021 and 11 October 2021 several Interested Parties raised concerns about potential flooding and surface water management issues at the Necton substations. These issues were also raised by Interested Parties in consultation responses ahead of the Norfolk Boreas decision.

#### *The Secretary of State’s conclusions*

- 4.121. The Secretary of State has considered these points carefully. He notes that this issue has been considered by the Norfolk Vanguard ExA [ER 4.11.20 et seq.] and the Norfolk Boreas ExA [Norfolk Boreas ER 5.7.69 et seq.]. Whilst noting the concerns of local residents he does not consider that the consultation responses raise new issues, and is satisfied that the Construction Surface Water and Drainage Plan to be developed to ensure the continuity of drainage around the substation under Requirement 20(2)(i) will address these issues. The Secretary of State sees no reason to disagree with the ExA’s position.

## Noise and Vibration

- 4.122. The topic heading covers the noise and vibration arising from the construction and operation of the onshore elements of the proposed Development. Airborne noise from the construction operation and decommissioning of the offshore wind farm element of the proposed Development were scoped out of the noise and vibration assessment [ER 4.12.3].
- 4.123. The ExA notes that NPS EN-1 highlights the adverse effect that excessive noise and vibration can have on human health and that development consent should not be granted unless significant impacts on health and quality of life can be avoided. NPS EN-5 refers to noise from substations and sets out that where an applicant has demonstrated that appropriate mitigation measures can be put in place then it should be possible for the decision-taker to give limited weight to residual noise impacts. [ER 4.12.4 et seq.]
- 4.124. The Applicant identified some areas where there would be significant noise impacts in a worst-case situation. However, it would be possible to mitigate those impacts to reduce them to negligible [ER 4.12.9]. It was noted that there was the possibility for 24-hour working, in particular at the cable landfall at Happisburgh [ER 4.12.10].
- 4.125. There were many concerns about the potential impact of the proposed Development's onshore elements particularly in respect of construction noise, noise and vibration from Heavy Goods Vehicle movements (especially at Cawston and Oulton where there would be considerable numbers of such movements because of the cumulative impacts of the proposed Development and the proposed Hornsea Project Three development) and noise from the operational substations. Residents of Necton had concerns about the potential impact of the construction of the substations near their village having experienced the impact of the construction of the substation that services the Dudgeon offshore wind farm. [ER 4.12.20 et seq.]
- 4.126. The ExA notes the range of concerns that have been expressed about the noise and vibration impacts of the proposed and acknowledges the adverse impacts that excessive noise and vibration can have on human health. However, the ExA also notes the extensive mitigation measures that would be put in place by the Applicant requiring approval from the relevant planning authorities to limit those impacts and considers that these measures will provide adequate safeguards for residents and others potentially affected by the construction and operation of the proposed Development. While there would be some minor adverse effects, the ExA concludes that impacts would be minimised and mitigated in accordance with the provisions of NPS EN-1 and, therefore, attract limited weight in the planning balance. [ER 4.12.31]

### *Post-examination consultation*

- 4.127. Responses to the Secretary of State's various consultations raised concerns about the noise levels at Ivy Todd, the fact that the Ivy Todd farmhouse has different noise levels for the ground and first floor, concerns about noise survey coverage (both location and duration), the need for better sound mitigation, and arguments that cumulative noise and vibration impacts from the construction and operation of the substations should be considered; and concerns that the operational noise of the substations will be greater for both projects together than one alone.
- 4.128. The Secretary of State notes the concerns raised in the consultation exercises but considers that the consultation responses do not provide reasons to disagree with the ExA's conclusion in this matter.

## Air Quality

- 4.129. The ExA notes that this heading covers air quality impacts from the construction and decommissioning of the onshore elements: the offshore elements and the onshore operational impacts were scoped out of the Applicant's assessment because they were negligible [ER 4.13.1].
- 4.130. NPS EN-1 sets out that large infrastructure projects can have adverse effects on air quality which may lead to impacts on health. Significant weight should be given to air quality issues in situations where a deterioration in air quality was likely to result or national air quality limits would be breached. [ER 4.13 1 et seq.]
- 4.131. The Applicant considered that air quality impacts could arise from the construction and decommissioning of the onshore works with the primary sources being dust and vehicle emissions [ER 4.13.8]. The Applicant had identified a suite of mitigation measures which would form part of an Air Quality Management Plan that would sit within a Construction Code of Practice which would be secured by a condition in the development consent order [ER 4.13.8]. The Applicant notes that the Swaffham Air Quality Management Area would be 1km south of the A47 road but anticipated that as no construction traffic would be going through Swaffham there would be no increase in pollution concentrations in the Air Quality Management Area [ER 4.13.9]. The Applicant's overall conclusion at the point of application was that the application of mitigation measures would mean any air quality impacts (for the project alone and in combination with other plans or projects) would not be significant [ER 4.13.12].
- 4.132. Emissions of dust from construction activities and emissions from vehicles engaged in those activities were raised as concerns by a number of Interested Parties to the examination including Cawston Parish Council (with concerns about pollution from vehicle movements) and Oulton Parish Council [ER 4.13.14 et seq.].
- 4.133. While noting concerns about adverse air quality impacts arising from the proposed Development, the ExA was satisfied that the Applicant had appropriately addressed air quality matters and that suitable mitigation would be put in place to limit any air quality impacts arising from the proposed Development. The ExA concludes that local air quality objectives would not be breached and predicted pollution levels would be below air quality objectives for all receptors. There would also be adequate mitigation for dust emissions. The ExA concludes that the proposed Development would be in accordance with NPS EN-1 and that air quality matters should not weigh against the development consent order being made. [ER 4.13.17 et seq.] The Secretary of State has no reason to disagree with the ExA's conclusions in this matter.

## Human Health

- 4.134. The examination considered impacts on human health in respect of the onshore works only as it was not considered there were any sensitive receptors in close enough proximity to the offshore works to trigger any human health impacts. [ER 4.14.1]
- 4.135. Large energy infrastructure projects have the potential to affect the health of people in their vicinity. The ExA notes that NPS EN-1 sets out that significant health impacts arising from those projects are likely to be subject to separate regulation which would constitute effective mitigation [ER 4.14.4]. It is unlikely, therefore, that health impacts would constitute a reason to refuse consent or require mitigation under the Planning Act 2008 [ER 4.14.4]. However, the decision-taker would need to consider health impacts when looking to set conditions relating to potential impacts [ER 4.14.4].

- 4.136. The ExA further notes that NPS EN-5 refers to electromagnetic fields generated by electric cables and their potential impacts on human health. While primarily an issue for overhead lines (the potential for electromagnetic fields is diminished by the undergrounding of electric cables), NPS EN-5 requires the decision-taker to be satisfied that any infrastructure proposal is in accordance with the International Commission on Non-Ionizing Radiation Protection (ICNIRP) Guidelines. NPS EN-5 concludes that where exposure to electromagnetic fields is within ICNIRP reference levels, then mitigation is unlikely to be required. [ER 4.14.5 et seq.]
- 4.137. The Applicant produced an assessment of potential health effects arising from the onshore elements of the proposed Development. With the implementation of mitigations, the assessment concluded that the health impacts on the general population would be negligible though with an increased potential for minor adverse effects on older people and those with existing health conditions. The assessment also looked at impacts from electromagnetic fields in light of guidelines from Public Health England which identified threshold above which there could be potential health effects. The Applicant concluded that the level of electromagnetic fields produced by the proposed Development even taking account of the potential impact of the cables for the Hornsea Project Three proposal, the level of electromagnetic fields would be well below the level set in the Public Health England Guidelines. [ER 4.4.11 et seq.]
- 4.138. Many Interested Parties, including Cawston Parish Council and Oulton Parish Council, raised concerns about the health impacts of the electromagnetic fields associated with the cabling. Several Interested Parties also raised concerns about the levels of stress that had been generated by the proposals for the proposed Development's onshore works. [ER 4.14.15 et seq.]
- 4.139. Public Health England decided not to register as an Interested Party for the proposed Development. [ER 4.14.18]
- 4.140. The ExA assessed the information provided by the Applicant and other parties. It concluded that the electromagnetic fields produced by the cabling for the proposed Development would be within the ICNIRP Guidelines and the in-combination effects at the crossing point for the Hornsea Project Three cabling would also meet those tests. In its conclusion, the ExA sets out that the electromagnetic fields would be within the levels in the ICNIRP Guidelines: the proposed development would, therefore, meet the requirement of NPS EN-5. Overall, the ExA also concluded that the proposed Development would not give rise to any significant mental or physical health impacts and would, therefore, comply with NPS EN-1. Health impacts should not, therefore, weigh against a development consent order being granted. [ER 4.4.19 et seq.] The Secretary of State sees no reason to disagree with the ExA's conclusions in this matter.

#### Onshore Ecology and Ornithology

- 4.141. The National Policy Statements provide extensive references to the considerations that the Applicant must address in framing applications for development consent for nationally significant energy infrastructure and that the decision-taker must weigh in the balance in considering whether to grant development consent. The National Planning Policy Framework takes a similar line. Relevant UK and European legislation and local development plans must also be considered. [ER 4.15.1 et seq.]
- 4.142. The Applicant submitted a wide range of documents as part of its Environmental Statement which formed part of its application. Potential impacts on a broad range of potentially affected flora and fauna were considered and mitigation measures were proposed. All statutory and non-statutory sites within the Order land have been avoided except for the River Wensum

Special Area of Conservation and Site of Special Scientific Interest which would be avoided by the use of trenchless crossing technique. There would be impacts on hedgerows with consequential impacts on bats. However, these were expected to be of temporary duration until the hedgerows were reinstated. [ER 4.15.10 et seq.]

- 4.143. The key matters considered during the Examination were: impacts on groundwater; bird features of sites of special scientific interest; the sand martin colony at Happisburgh Cliffs; nesting birds; monitoring; and, air quality and Felbrigg Wood Site of Special Scientific Interest [ER 4.15.32]. There were some concerns about whether enough ecological surveying had been carried out over some parts of the onshore cable route but the ExA considered that sufficient baseline information had been provided to allow an assessment of impacts to be undertaken [ER 4.15.48]. The ExA notes that all ecological management proposals put forward by the Applicant were set out in the Outline Landscape and Management Environmental Strategy and these would be further secured by inclusion in an Environmental Management Plan which would need to be approved by the relevant local planning authority in consultation with Natural England. The Environment Management Plan would be conditioned in the development consent order. In the event consent was granted, there would also be surveying of those areas which had not been covered in the Application process. [ER 4.15.52]
- 4.144. The ExA concludes that the mitigations proposed by the Applicant in its pre-Application consideration of alternative routes/locations for the proposed Development's onshore works and in any post-consent development consent order would avoid significant harm to onshore ecological interests. There would be some adverse impacts on bats through hedgerow loss but these would be short term in nature. In general, relevant policy considerations have been met and the Assessment Principles set out in NPS EN-1 have been followed. [ER 4.15.46 et seq.]

#### *Post-examination consultation*

- 4.145. After the close of the Examination, the Secretary of State was informed that the cable corridor would pass through a Natural England ("NE") Nature Recovery Project ("NRP") at Dillington Hall and that work on the project would commence well before the cable route construction<sup>35</sup>. In the consultation letter of 11 October 2021<sup>36</sup>, the Applicant and NE were asked to provide information on any implications this may have for the Application and to state whether the conclusions of the EIA remain valid. The Applicant explained that the draft DCO and outline documents to be certified contain commitments to ensure that the habitats present ahead of construction are fully considered and that mitigation and reinstatement is agreed based on those pre-construction conditions, in consultation with NE and affected landowners and that consequently no further commitments specifically relating to the NRP need to be secured<sup>37</sup>. NE has confirmed that the NRP has been aware of the proposed cable route since its conception and had incorporated this into the design of the project; the acceleration of the delivery of the project meant that the landowners and NE will need to work closely with the Applicant to ensure that this accelerated program and associated change in the underlying land use is fully considered in the construction, but NE was confident that the Outline Code of Construction Practice and the Outline Landscape Environmental Management Scheme

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<sup>35</sup> [https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010079/EN010079-004401-Post%20Recommendation%20Submission%20-%20Dillington%20Hall%20Estate\\_Redacted.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010079/EN010079-004401-Post%20Recommendation%20Submission%20-%20Dillington%20Hall%20Estate_Redacted.pdf)

<sup>36</sup> [https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010079/EN010079-004402-NORV\\_Re-Determination\\_Consultation\\_Letter\\_11\\_October\\_2021.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010079/EN010079-004402-NORV_Re-Determination_Consultation_Letter_11_October_2021.pdf)

<sup>37</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010079/EN010079-004420-Applicant's%20Response%20to%20the%20Request%20for%20Additional%20Information.pdf>

should be sufficient to ensure that necessary mitigation is consulted upon and approved prior to the works<sup>38</sup>.

## *Conclusions*

4.146. The Secretary of State has considered the information about the NRP and considers that it does not affect the conclusions reached by the ExA. He agrees with the ExA's conclusions on terrestrial biodiversity, biological environment, and ecology and gives little weight to them in the planning balance.

## Land Use

4.147. The National Policy Statements for Energy set out that nationally significant energy infrastructure projects should aim to minimise impacts on best quality agricultural land (classified as Grade 1, 2 and 3a under the Agricultural Land Classification ("ALC")) and should instead use land of poorer quality (Grade 3b, 4 and 5 under the ALC). NPS EN-1 also requires developers to consider and minimise effects on uses of land including for recreational purposes.

4.148. The Applicant set out that the majority of the land that would be used by the onshore works was agricultural land with Grade 1 to 4 classification under the ALC though mainly between Grades 2 and 3. The onshore project substation would be located in ALC Grade 3 land. An assessment of impacts without mitigation measures in place ranged from 'no impact' to 'moderate adverse' (at the extension to the National Grid substation extension). There would also be impacts of moderate adverse significance on land drainage systems during construction of the proposed Development and the Hornsea Project Three proposal. As far as impacts on recreation are concerned, the Applicant states that tourist sites have been avoided for onshore works. However around 45 public rights of way would be intersected by the onshore works. There were also potential impacts in the coastal area where cable landfall would be made. The Applicant has committed to working with Norfolk County Council to ensure any impacts are temporary across the full range of the project. The updated Statement of Common Ground between the Applicant and Norfolk County Council showed that all matters relating to recreation had been agreed. [ER 4.16.7 et seq.]

4.149. At the end of the examination, the only outstanding matters related to concerns by the National Farmers Union about certain compulsory acquisition matters (considered elsewhere) and potential impacts on farmland. In respect of the latter, the Applicant amended its Outline Code of Construction Practice to address the issues. [ER 4.16.37 et seq.]

4.150. In considering these matters, the ExA notes that, while there would be impacts on agricultural land these would be set in the context of occurring over a very small proportion of agricultural land of similar grade within Norfolk and generally being of temporary duration [ER 5.16.45]. The ExA noted that the construction and operation of the onshore substation would result in permanent loss of higher grade agricultural land, but that this should not be assessed as significant as it accounts for a small percentage of the agricultural resource in Norfolk [ER 4.16.50.] The ExA notes agreements would be in place with affected parties to minimise impacts, including with the developer of the proposed Hornsea Project Three offshore wind farm [ER 4.16.51]. On recreational impacts, the ExA is satisfied that mitigation measures, including horizontal directional drilling where necessary to cross heavily used public rights of

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<sup>38</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010079/EN010079-004444-EN010079%20374820%20Norfolk%20Vanguard%20Annex%208%20NE%20advice%20on%20all%20other%20matters.pdf>



way and the advertising of alternative routes while rights of way were closed by construction activity would mitigate impacts [ER 4.16.54 et seq.].

- 4.151. The ExA considered that the Development would not undermine the provision of high quality open space or sports or recreation facilities [ER 5.16.57], and that appropriate mitigation measures would be taken to address potential adverse effects on coastal access, National Trails and other rights of way [ER 4.16.61]. Where the development would impinge upon best and most versatile agricultural land that the Applicant had sought to minimise the impacts on it by seeking to use land in areas of poorer quality wherever possible, and that the effects on soil quality have been identified and sought to be minimised via mitigation measures; and that where the project would replace best and most versatile agricultural land this was justified in light of the limited extent to which such land would be taken [ER 4.16.58 and 60].

#### *Post-examination consultation*

- 4.152. An Interested Party raised concerns about the impact of cable trenching in Norfolk should be assessed as a cumulative impact with multiple other projects. The Secretary of State considers that this issue only arises in areas where cables are in close proximity to each other. Consequently he considers that the Norfolk Vanguard and Norfolk Boreas cables should be considered cumulatively, as should the cable crossings between these projects and Hornsea Project Three and the Dudgeon and Sheringham Shoal extensions. The Secretary of State notes that the cable crossing with Hornsea Project Three has been considered [ER 4.14.22 and 4.14.27 et seq. and Norfolk Boreas ER 5.3.73 et seq.] and that no issues of concern were highlighted. The Secretary of State also notes that the Applicant has assessed the potential cumulative impacts of the proposed cable crossing with the Dudgeon and Sheringham Shoal projects and has concluded that there would be no cumulative impacts on any onshore EIA topic (see paragraph 8.4 below).

#### *The Secretary of State's conclusions*

- 4.153. Taking into consideration the additional information listed in the preceding paragraph, the Secretary of State sees no reason to disagree with the ExA's conclusion in this matter.

#### Commercial Fisheries

- 4.154. The ExA notes that the Applicant identified some impacts on commercial fishing interests arising from the offshore cabling and wind farm elements of the proposed Development ranging from 'negligible' to 'minor adverse' for vessel from the UK and other countries. (There would be minor adverse impacts for UK beam trawlers and UK inshore fishing vessels.) [ER 4.17.4]
- 4.155. A number of concerns about the proposed Development were raised by UK (the National Federation of Fishermen's Organisations – "the NFFO") and foreign representatives of fishing interests [ER 4.17.6 et seq.]. One of the NFFO's concerns was the possibility of floating wind turbines being used for the wind farm but the Applicant discounted this option [ER 4.17.9]. The NFFO was also concerned about the likely spacing of wind turbines as this would affect the sort of fishing activity that might take place within the wind farm area [ER 4.17.12]. The Applicant indicated it would be able to increase the spacing of turbines within the wind farm array because of a reduction (to 180) in the number of turbines that would be deployed [ER 4.17.13]. The ExA notes that the Applicant's proposed increase in spacing would still not meet the NFFO's desired spacings [ER 4.17.13]. (The Applicant has further revised down the number of turbines that would be deployed – now proposed as a maximum of 158).

- 4.156. Further concerns were expressed by fishing representative organisations about areas of the North Sea being closed to specific fishing activities and the cumulative impact the closures and the proposed Development would have on the activities of fishermen [ER 4.17.17 et seq.]. As a result, the Applicant amended its assessment of potential impacts and concluded that for certain activities carried out by Dutch or Anglo-Dutch fishing vessels, the cumulative impact would be of 'moderate adverse' significance which was greater than first predicted [ER 4.17.19].
- 4.157. In considering commercial fisheries, the ExA notes that some commercial fishing activity would be possible with the wind farm array [ER 4.17.26]. The ExA also notes that the proposed closure of areas of the North Sea to fishing activity would have an impact, but that given the relevant designations had not yet been made, only limited weight could be given to the impact this might generate [ER 4.17.27].
- 4.158. In conclusion, the ExA notes that at the close of the Examination, there was still disagreement between the NFFO and VisNed (the Dutch fishing representative organisation) about whether fishing would be possible within the wind farm array [ER 4.17.30]. The ExA concludes that while some commercial fishing would be possible, there would be an impact from the proposed Development combined with the closure of areas to fishing activity [ER 4.17.30]. The ExA considers that the requirements of NPS EN-1 and NPS EN-3 have been met [ER 4.17.31]. The Secretary of State has no reason to disagree with the ExA's conclusion on this matter.

#### Shipping and Navigation

- 4.159. NPS EN-3 sets out very clearly the nationally significant energy infrastructure projects should avoid or minimise disruption or impacts on commercial shipping interests. The NPS states that consent should not be granted for proposed developments if doing so would cause interference to the use of recognised sea lanes essential to international navigation.
- 4.160. The Applicant undertook an assessment of the potential impacts of the proposed Development (offshore cabling and wind turbines) on navigation and shipping. The conclusion was that potential impacts would be tolerable with mitigation [ER 4.18.5 et seq.]. Mitigation was offered as part of the design of the wind farm and cabling route [ER 4.18.8 and 4.18.25].
- 4.161. The ExA notes that most issues that formed the basis of disputes between the Applicant and a small number of parties were agreed before the close of the Examination [ER 4.18.20 et seq.]. The outstanding issues were the timing of notification by the Applicant that a buried electric sub-sea cable had become exposed on the seabed (which had been raised as an issue by the Maritime and Coastguard Agency) and safety concerns raised by the NFFO and VisNed [ER 4.18.22 et seq.]. The ExA concludes that the timing of notification should be three business days rather than the five days as proposed by the Applicant and that mitigations in the proposed development consent order would provide suitable mitigation for safety concerns [ER 4.18.27]. The ExA states the proposed Development would not conflict with the relevant provisions of NPS EN-3 [ER 4.18.28].
- 4.162. The Secretary of State consulted on the proposed amendment to the notification period for seabed cable exposure<sup>39</sup>. In response, the Applicant<sup>40</sup>, the Marine Management

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<sup>39</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010079/EN010079-004198-NORV%20%E2%80%93%20Letter%20from%20Secretary%20of%20State%20-%206%20December%202019.pdf>.

<sup>40</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010079/EN010079-004211-ExA;%20WQ;%2011.D10.1%20Applicant's%20Response%20to%20Request%20for%20Information.pdf>.

Organisation<sup>41</sup> and the Maritime and Coastguard Agency<sup>42</sup> indicated they had reached agreement that three days was an acceptable period of time from the time when the exposure was discovered. Wording for a development consent order was provided and this has been included in the DCO. Consultation discussions also covered further points in relation to the trigger for the notification to mariners and the timeframe for sending copies of notices to the MMO and MCA. Agreement has been reached on all these matters.

## Aviation

- 4.163. The ExA sets out that NPS EN-1 and NPS EN-3 provide a robust framework for applicants and decision-takers to work within terms of the potential impacts of nationally significant energy infrastructure projects on aviation interests. In particular, the ExA notes that NPS EN-1 states that development consent should not be granted if the development in question would impede the safe and effective use of defence assets or have adverse impacts on civil aviation infrastructure [ER 4.19.2 et seq.].
- 4.164. The Applicant assessed that apart from potential interference with defence and aviation radar systems, the worst case scenarios assessed with appropriate mitigation would produce impacts that are not significant. [ER 4.19.20]
- 4.165. The key issues for consideration during the examination were the potential impacts on the Ministry of Defence's Air Defence ("MOD") Radar at Trimmingham (a village on the Norfolk coast) and the National Air Traffic Services ("NATS") Primary Surveillance Radar ("PSR") at Cromer [ER 4.19.26 et seq.]. During the examination, the MOD agreed wording about suitable mitigation for inclusion in any development consent order that might be made and removed its objection to the proposed Development as long as that wording was used [ER 4.19.34]. As far as the potential impacts on the NATS PSR were concerned, NATS and the Applicant discussed a contractual agreement to put in place mitigation measures for the PSR. By the close of the Examination, no agreement had been signed [ER 4.19.39]. However, NATS wrote to the Planning Inspectorate on 6 November 2019 to indicate it would remove its objection to the proposed Development subject to the inclusion of specific wording in any development consent order that might be made to mitigate impacts on the PSR.
- 4.166. The ExA was satisfied that subject to suitable wording being included in any development consent order that might be granted by the Secretary of State, aviation impacts would be satisfactorily addressed and thus meet the policy tests in NPS EN-1 [ER 4.19.48 et seq.]. The Secretary of State sees no reason to disagree with the ExA's conclusion in this matter.

## Marine Physical Processes

- 4.167. The ExA notes the Applicant considered the potential impacts of the proposed Development to be negligible on its own and minor adverse in combination with other plans or projects [ER 4.20.4 et seq.]. The Applicant produced an updated Outline Scour Protection and Cable Protection Plan during the Examination which took account of changes to the proposed Development, including the reduction in turbine numbers from 200 to 180. The total amount of scour protection would be specified in any development consent order that might be granted [ER 4.20.6].
- 4.168. The MMO agreed with the methodology used by the Applicant and to the conclusions it reached in relation to project alone and in-combination impacts [ER 4.20.7]. However,

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<sup>41</sup> [https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010079/EN010079-004206-MMO\\_EN010079-004198-reponse-to-SOS-letter-Final\\_Redacted.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010079/EN010079-004206-MMO_EN010079-004198-reponse-to-SOS-letter-Final_Redacted.pdf).

<sup>42</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010079/EN010079-004205-Maritime%20%20Coastguard%20Agency%20-%20Response%20to%20SoS%20Letter.pdf>.

Natural England disagreed with some of the conclusions on assessment of impact. Natural England was also concerned that material dredged from the seabed should be deposited with other seabed material of similar size. Natural England also had concerns about the fact that the area of scour protection had not been specified by the Applicant and about the extent of cable protection within the Haisborough Hammond and Winterton Special Area of Conservation [ER 4.20.8].

- 4.169. In considering the issues raised during the Examination, the ExA noted concerns about the volume of inert material that would be disposed of material and how it would be monitored but was satisfied that conditions in the development consent order would address these issues [ER 4.20.13 et seq.]. One outstanding issue was the particle size of deposited material. Here the ExA follows the view of Natural England and considers that a suitable condition should be included in the development consent order [4.20.10 - 11, and 4.20.17 et seq.]. The ExA proposed a form of words but was not able to consider the formulation with the Applicant so recommended that the Secretary of State should do so [ER 4.20.18]. The Secretary of State, therefore, sought comments on the proposed working in his letter of 6 December 2019<sup>43</sup>.
- 4.170. The Applicant considers that the practicality (for any industry) of sampling all dredged sediment and areas within the disposal site in order to determine 95% similarity is unfeasible<sup>44</sup>. There would be limitations in the extensive sampling of dredged sediment. The Applicant understands that both Natural England and the MMO share these concerns. The Applicant further noted that the disposal principles in the Site Integrity Plan ensure appropriate sediment disposal which must be agreed with the MMO in consultation with Natural England and so a 95% condition is not considered necessary, or achievable.
- 4.171. While the ExA concludes that, subject to the inclusion of the 'particle condition' in any development consent order that might be made, there would be no reason to withhold consent [ER 4.20.20], the Secretary of State considers that the Applicant's position as set out above is acceptable.

#### Other Considerations

- 4.172. The ExA notes [ER 4.21.2 et seq.] that representations were received from Interested Parties who were concerned that the onshore substations might be the target of terrorism or be a fire risk. The ExA considered these matters and concluded that there was little evidence that a terrorist attack is foreseeable and that the design of the substations would meet health, safety and other regulatory matters [ER 4.21.5]. The ExA concluded that these were not matters that weigh against consent being granted [ER 4.21.6].
- 4.173. The ExA also notes representations about the potential impacts of the onshore works on property values but states that this is not a planning matter and cannot be taken into account in the planning process [ER 4.21.7].

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<sup>43</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010079/EN010079-004198-NORV%20%E2%80%93%20Letter%20from%20Secretary%20of%20State%20-%206%20December%202019.pdf>.

<sup>44</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010079/EN010079-004211-ExA;%20WQ;%2011.D10.1%20Applicant's%20Response%20to%20Request%20for%20Information.pdf>.

Offshore Biodiversity, Biological Environment and Ecology [see also Habitats Regulations Assessment section below]

*Benthic ecology, fish and shellfish ecology*

- 4.174. The Applicant categorised the residual effects of the Development on benthic and intertidal ecology as mainly being ‘minor adverse’, with some others either having a ‘negligible’ or ‘no impact’. The embedded mitigation proposed in ES Chapter 10 includes avoiding the Cromer Chalk Beds MCZ, avoiding cable crossings where possible, using long horizontal directional drilling, using a HVDC solution to minimise the number of export cables and volume of cable protection and micrositing within the offshore cable route to avoid Annex I reef and sandbank features as far as possible. No further mitigation beyond the embedded mitigation was proposed [ER 5.1.12].
- 4.175. The main areas of disagreement on benthic habitats related to the impacts of cable installation and cable protection on *Sabellaria spinulosa* (“*S. spinulosa*”) reefs.
- 4.176. NE stated that it would want to see all Annex I reef avoided and there was a degree of disagreement between NE and the Applicant relating to the scope for micrositing around reef within the overall offshore cable route. Both parties agreed that it should be possible to microsite around *S. spinulosa* reef in the nearshore section of the offshore cable corridor, but NE considered that there is more uncertainty beyond 12nm [ER 5.1.17]. The Eastern Inshore Fisheries Conservation Authority (“EIFCA”) requested that all possible efforts be made to microsite the cable route within the cable corridor to avoid Restricted Area 36, which is one of the proposed Byelaw Areas that would coincide with the offshore cable corridor [ER: 5.1.18].
- 4.177. NE did not agree that there would be no permanent loss of *S. spinulosa* reef, particularly due to the potential use of cable protection. The impact significance conclusions reached by the Applicant of ‘minor adverse’ for the Development alone were also not agreed with by NE [ER 5.1.20]. EIFCA disputed the Applicant’s assertions that the two proposed fisheries byelaw areas did not currently contain *S. spinulosa* reef, based on its review of NE’s modelled data, acoustic data and ground truthing data together with an assessment of raw video data supplied by the Centre for Environment, Fisheries and Aquaculture Science (“Cefas”) [ER:5.1.22].
- 4.178. The ExA stated that micrositing is likely to be possible within 12nm of landfall and may be possible beyond that, and it is justifiable that the precise extent of Annex I habitat would be assessed closer to the time of construction to inform micrositing. The ExA considered that the Applicant had submitted evidence which demonstrates that if micrositing is not possible and construction does impact areas of reef, that recovery would occur to a degree and therefore adverse effects would be temporary and reversible. The ExA concluded that harm to Annex I habitat features could not be ruled out, but was of the view that due to the mitigation measures to be implemented, that the Development would not give rise to significant residual effects on fish and shellfish ecology, and benthic and intertidal ecology [ER:5.1.29 et seq.]. The Secretary of State considers that, despite the mitigation measures secured, residual effects on Annex I sandbank and reef features of the Haisborough, Hammond and Winterton SAC cannot be ruled out and this is considered further in section 5 below (Habitats Regulations Assessment).

*Marine mammals*

- 4.179. There was a general consensus among Interested Parties of the appropriateness of the EIA methodology used, although The Wildlife Trusts (“TWT”) and Whale and Dolphin

Conservation (“WDC”) expressed concerns about the sensitivity and magnitude of criteria used by developers to assess the impacts of noise on marine mammals. The Marine Management Organisation (“MMO”) and NE were content that there would be a sufficient degree of certainty in the Draft Marine Mammal Mitigation Protocol (“MMMP”) and the In Principle Site Integrity Plan (“SIP”) [ER: 5.2.38]. The ExA was also of the view that this would provide a framework for future mitigation [ER: 5.2.38 et seq.].

- 4.180. Both the MMO and NE were content that the Development alone would not give rise to any significant adverse impact, however, NE did not agree with the conclusion of the cumulative impact assessment. TWT also did not agree with the cumulative impacts predicted by the Applicant due to concerns that commercial fishing should not be included in the baseline for assessment. WDC did not agree with the conclusions for the Development alone and cumulatively for the predicted effects of noise on marine mammals [ER: 5.2.40].
- 4.181. The ExA was satisfied that the impacts of the Development alone would be acceptable subject to appropriate mitigation being implemented as outlined in the draft MMMP and updated in the final MMMP. The ExA also recognised the need for careful management between potential developers, and the MMO in consultation with NE, to avoid overlapping offshore construction projects which could impact marine mammals. The ExA was content that the MMMP and SIP provided an appropriate framework for cumulative impacts and mitigation measures to be considered and approved [ER:5.2.42].
- 4.182. The ExA concluded that the Development is policy compliant in relation to the impacts on marine mammals and this matter does not weigh against the DCO being made [ER: 5.2.44]. The Secretary of State sees no reason to disagree with the ExA’s conclusion on this matter.

#### *Offshore ornithology*

- 4.183. Several disagreements on ornithological methodologies for Environmental Impact Assessment (“EIA”) remained between Natural England, the Royal Society for the Protection of Birds (“RSPB”) and the Applicant at the end of the Examination. These issues centred on the level of precaution that should be applied to Environmental Impact Assessment which led to Interested Parties arriving at different conclusions on the significance of impacts on seabird populations. Natural England and RSPB considered that the cumulative effect of the proposed Development and other projects would be moderate adverse for key populations of red-throated diver, guillemot, razorbill, kittiwake, gannet and great black-backed gull. In contrast, the Applicant’s calculations led to a conclusion of minor adverse effects for these populations. Natural England and RSPB’s conclusions equate to significant impact in EIA terms, and noting the conservation status for some of these species, the ExA agreed with this conclusion [ER: 5.3.30 et seq.].
- 4.184. A significant cumulative effect on these populations would weigh against the Order being made as it would not conform with NPS-1. However, in view of the Development’s small contribution to the cumulative numbers, the Secretary of State believes that, on balance, this issue should not prevent the granting of a development consent order in respect of proposed Development. The Secretary of State has considered the precautionary nature of the RSPB and NE positions. It should be noted that some of these receptors are also qualifying features for protected sites. Where this is the case, they are considered further in section 5 below (Habitats Regulations Assessment) and when weighing the overall planning balance.

## **5. Habitats Regulations Assessment**

- 5.1. The Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”) and the Conservation of Offshore Marine Habitats and Species Regulations 2017 (“the

Offshore Regulations”) aim to ensure the long-term conservation of certain species and habitats by protecting them from possible adverse effects of plans and projects.

- 5.2. The Habitats Regulations and the Offshore Habitats Regulations provide for the designation of sites for the protection of habitats and species of international importance. These sites are called Special Areas of Conservation (“SACs”). They also provide for the classification of sites for the protection of rare and vulnerable birds and for regularly occurring migratory species within the UK and internationally. These sites are called Special Protection Areas (“SPAs”). SACs and SPAs together form part of the UK’s National Site Network.
- 5.3. The Convention on Wetlands of International Importance 1972 (“the Ramsar Convention”) provides for the listing of wetlands of international importance. These sites are called Ramsar sites. Government policy is to afford Ramsar sites in the United Kingdom the same protection as sites within the National Site Network (collectively with SACs and SPAs referred to in this decision letter as “protected sites”).
- 5.4. In the UK, the Habitats Regulations apply as far as the 12nm limit of territorial waters. Beyond territorial waters, the Offshore Habitats Regulations serve the same function for the UK’s offshore marine area. Following the UK’s departure from the European Union, these domestic regulations continue to apply. The Secretary of State notes the Application covers areas within and outside the 12nm limit, so both sets of Regulations apply.
- 5.5. Regulation 63 of the Habitats Regulations provides that: *“...before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in-combination with other plans or projects), and (b) is not directly connected with or necessary to the management of that site, [the competent authority] must make an appropriate assessment of the implications for that site in view of that site’s conservation objectives.”*
- 5.6. And that: *“In the light of the conclusions of the assessment, and subject to regulation 64 [IROPI], the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).”*
- 5.7. Regulation 28 of the Offshore Habitats Regulations contains similar provisions: *“Before deciding to undertake, or give any consent, permission or other authorisation for, a relevant plan or project, a competent authority must make an appropriate assessment of the implications of the plan or project for the site in view of that site’s conservation objectives.”*
- 5.8. And that: *“In the light of the conclusions of the assessment, and subject to regulation 29 [IROPI], the competent authority may agree to the plan or project only if it has ascertained that it will not adversely affect the integrity of the European offshore marine site or European site (as the case may be).”*
- 5.9. The Habitats Regulations require that, where the project is likely to have a significant effect (“LSE”) on any such site, alone or in-combination with other plans and projects, an appropriate assessment (“AA”) is carried out to determine whether or not the project will have an adverse effect on the integrity of the site in view of that site’s conservation objectives.
- 5.10. Where an adverse effect on the integrity of the site cannot be ruled out, the Habitats Regulations provide for the possibility of a derogation which allows such plans or projects to be approved provided three tests are met:

- There are no feasible alternative solutions to the plan or project which are less damaging.
  - There are “*imperative reasons of overriding public interest*” (“IROPI”) for the plan or project to proceed.
  - Compensatory measures are secured to ensure that the overall coherence of the national site network is maintained.
- 5.11. The above tests, which are also set out in the Offshore Habitats Regulations, must be interpreted strictly and developments which may result in an adverse effect on the integrity of a protected site can only be authorised once the above tests have been met. The complete process of assessment is commonly referred to as a Habitats Regulations Assessment (“HRA”).
- 5.12. The HRA which accompanied the Secretary of State’s decision of 1 July 2020 to grant development consent for the Development has been set aside following the High Court judgement handed down on 18 February 2021 that quashed the Secretary of State’s decision. The Secretary of State subsequently took steps to redetermine the Development.
- 5.13. The Secretary of State decided to revisit the conclusions of the HRA in relation to the Alde-Ore SPA, the Flamborough and Filey Coast SPA, and the Haisborough, Hammond and Winterton SAC. In his letter dated 5 July 2021, the Secretary of State requested further information from the Applicant and Interested Parties which included further details of mitigation and compensation strategies for these protected sites. In addition, a further letter dated 11 August 2021 requested updates to collision risk and PVA modelling as well as updated bird mortality figures for Hornsea Project Three and additional evidence for the recovery of sandbanks from levelling.
- 5.14. The Secretary of State received a response to his consultation letter of 11 October 2021 on behalf of 85 Norfolk Parish and Town Councils arguing that it was unsatisfactory that offshore ornithology, which was not pertinent to the judicial review, had been reopened, and expressing concerns that issues at Necton had hardly been touched upon at all, with concerns that the redetermination had not been conducted in accordance with normal practices of public law and procedural fairness. The Secretary of State notes that in response to his letter dated 29 April 2021, Natural England advised that the conclusions of the HRA should be addressed in light of the Hornsea Project Three determination and further information requirements which were requested by the Secretary of State in the Norfolk Boreas consultation. The Royal Society for the Protection of Birds and The Wildlife Trusts raised the same concerns in their respective consultation responses. For these reasons the Secretary of State considered it necessary to reconsider the conclusions of the HRA. His considerations in relation to the impacts of the substations at Necton have been set out in detail in section 4 above and are not repeated here.
- 5.15. Following these consultation exercises the Secretary of State received a letter from Mulbarton Parish Council arguing that the East Anglia ONE North, East Anglia TWO and Hornsea Project Four offshore wind farms should be included in the in-combination assessments. Due to the uncertainty around the final parameters of some future projects, the Secretary of State considers that the impacts of collision and displacement on birds should be limited to offshore wind farms that are operational, under-construction, consented, or in determination and, as such, only plans or projects which are at these stages of development were included in the cumulative assessment.



- 5.16. The Secretary of State's HRA is published alongside this letter. The following paragraphs, which summarise the HRA, should be read alongside the HRA which is the full statement of the Secretary of State's consideration of these matters.
- 5.17. The Secretary of State has carefully considered the information presented before and during the Examination, including the Report on the Implications for European Sites, the Environmental Statement, representations made by Interested Parties, and the ExA's Report itself. He considered that the Development had the potential to have an LSE on 19 European sites when considered alone and in-combination with other plans or projects. These sites are listed below:
- Alde-Ore Estuary SPA and Ramsar site
  - Breydon Water SPA and Ramsar site
  - Broadland SPA and Ramsar site
  - Flamborough and Filey Coast SPA
  - Greater Wash SPA
  - North Norfolk Coast SPA and Ramsar site
  - Outer Thames Estuary SPA
  - Haisborough, Hammond and Winterton SAC
  - Humber Estuary SAC
  - Norfolk Valley Fens SAC
  - Paston Great Barn SAC
  - River Wensum SAC
  - The Broads SAC
  - Southern North Sea SAC
  - The Wash and North Norfolk Coast SAC
- 5.18. The Secretary of State has undertaken an appropriate assessment in respect of the conservation objectives of the sites to determine whether the Development, either alone or in-combination with other plans or projects, will result in an adverse effect on the integrity of the above sites.
- 5.19. The Secretary of State has considered the available information, including the mitigation measures secured through the DCO and DMLs, and has concluded that the Development will not have an adverse effect on integrity on the following sites:
- Breydon Water SPA
  - Breydon Water Ramsar site
  - Broadland SPA
  - Broadland Ramsar site
  - Greater Wash SPA
  - North Norfolk Coast SPA
  - North Norfolk Coast Ramsar site
  - Outer Thames Estuary SPA
  - Humber Estuary SAC
  - Southern North Sea SAC
  - The Wash and North Norfolk Coast SAC
  - Norfolk Valley Fens SAC
  - Paston Great Barn SAC
  - River Wensum SAC
  - The Broads SAC

#### Consideration of Further Tests under the Offshore Habitats Regulations

- 5.20. The Secretary of State cannot rule out an adverse effect on integrity beyond reasonable scientific doubt in relation to:
- Impacts on the lesser black-backed gull feature of the Alde-Ore Estuary SPA and Ramsar site, from the Project in-combination with other projects.

- Impacts on the kittiwake feature of the Flamborough and Filey Coast SPA, from the Project in-combination with other projects.
  - Impacts on the Annex 1 sandbank and reef features of the Haisborough, Hammond and Winterton SAC from the Project alone and in combination with other projects.
- 5.21. The Secretary of State has therefore reviewed the Development in the context of Regulations 29 and 36 of the Offshore Habitats Regulations to determine whether it can be consented. References to Regulations 29 and 36 below should be construed as including consideration of the equivalent provisions (Regulations 64 and 68) in the Habitats Regulations if applicable.
- 5.22. Consent may only be given under Regulation 29 where no alternative solutions to the project are available which are less damaging to the affected European site and where Regulation 36 is satisfied.
- 5.23. Regulation 36 requires the appropriate authority to secure any necessary compensatory measures to ensure that the overall coherence of the National Site Network is protected.
- 5.24. In accordance with guidance on the application of HRA published by the Planning Inspectorate (Advice Note 10) and Defra (2021)<sup>45</sup>, the Secretary of State reviewed the Development following a sequential process, considering:
- Alternative solutions to the Development that have been sought;
  - Whether there are IROPI for the Development to proceed; and
  - Compensation measures proposed by the Applicant for ensuring that the overall coherence of the National Site Network is protected, have been assessed.

### Alternative Solutions

- 5.25. The objectives for the Development are:
- To contribute to enhancing the security of the UK's energy supply by providing UK-produced renewable energy as required by National Policy Statement ("NPS") EN-1.
  - To provide low-cost energy to the UK consumer.
  - To contribute to the UK's drive to meeting carbon reduction commitments.
  - To contribute to the Offshore Wind Sector Deal and the Government's targets to reach 30GW and 40GW respectively of installed offshore wind capacity by 2030.
  - To contribute to the UK's industrial strategy and global leadership in the development of offshore wind projects resulting in socio-economic benefits at a UK and East Anglia/Norfolk level.
  - To help to create a positive legacy for Norfolk and East Anglia facilitating socio-economic development.
- 5.26. In accordance with guidance published by Defra, the Secretary of State does not consider the development of alternative forms of energy generation to meet the objectives for the

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<sup>45</sup> <https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site>

Development. Alternatives to the Development considered by the Secretary of State are consequently limited either to Do Nothing or alternative wind farm projects.

5.27. The alternative wind farm solutions considered are:

- Alternative locations in the UK.
- Repowering existing offshore wind farms.
- Use of previously identified infrastructure sites.
- Consenting of other large-scale infrastructure.
- Alternative offshore cable corridors.
- Alternative design solutions.
- Seasonal restrictions on turbine operation.
- No cable protection in the Haisborough, Hammond and Winterton SAC.

5.28. Having identified the objectives of the Development and considered all alternative means of fulfilling these objectives, for the reasons set out in the HRA, the Secretary of State is satisfied that no alternative solutions are available.

#### Imperative Reasons of Overriding Public Interest

5.29. A development, having an adverse effect on the integrity of a protected site may proceed (subject to a positive conclusion on alternatives and provision of any necessary compensation) if the project must be carried out for IROPI. The Secretary of State has therefore considered whether the Development is required for IROPI.

5.30. The Secretary of State is satisfied that there are imperative reasons of overriding public interest for the Development to proceed subject to adequate compensatory measures being implemented.

5.31. In arriving at his conclusion, the Secretary of State has reviewed how the Development provides a public benefit which is essential and urgent despite the harm to the integrity of three protected sites that will result from the Development alone or in combination with other operational, consented, or planned projects.

5.32. The conclusion is predicated by the principal and essential benefit of the Development as a significant contribution to limiting the extent of climate change in accordance with the objectives of the Climate Change Act 2008. The consequences of not achieving those objectives would be severely detrimental to societies across the globe, including the UK, to human health, to social and economic interests and to the environment.

5.33. The need to address climate change is the principal tenet behind the Climate Change Act 2008, and subsequently published NPSs for Energy (EN-1), Renewable Energy Infrastructure (EN-3) and Electricity Networks (EN-5) provide a framework for delivering the UK's international commitments on climate change.

5.34. Measures set out in the NPSs have been given further impetus to reflect evolving understanding of the urgency of actions to combat climate change, including the legally

binding commitment to reduce greenhouse gas emissions to net zero by 2050, made in July 2019.

- 5.35. The Government's decarbonisation strategy to achieve this commitment relies on contributions from all sectors delivered through multiple individual projects implemented by the private sector. The Government has also set up schemes to facilitate the deployment of such projects and to provide the public with value for money, such as via the Contracts for Difference scheme.
- 5.36. The Government anticipates that decarbonisation will lead to a substantially increased demand for electricity as other power sources are at least partially phased out or transformed. Simultaneously the supply of electricity must decarbonise. This will require the establishment of a reliable and secure mix of low-carbon electricity sources, including large-scale development of offshore wind generation.
- 5.37. Offshore wind generation schemes can only be developed through the mechanism put in place by The Crown Estate for leasing areas of the seabed in a structured and timely way. Projects, like the Development, which make a significant contribution to meeting the target capacity in the timeframe required are therefore both necessary and urgent.

### Compensatory Measures

- 5.38. On the 6 December 2019, following Examination and prior to his decision to grant development consent for the proposed Development, the Secretary of State requested the Applicant to provide in-principle compensatory measures for the kittiwake feature of the Flamborough and Filey Coast SPA and the lesser black-backed gull feature of the Alde-Ore Estuary SPA which had not been submitted during Examination<sup>46</sup>.
- 5.39. The Alde-Ore Estuary SPA in-principle compensatory measures plan provided by the Applicant in response proposed to enhance the breeding success of lesser black-backed gull within part of the SPA. This would be achieved by enclosing 4 ha of suitable nesting habitat with fencing to exclude mammalian predators. The scale of the enclosure could support thousands of pairs, which would over-compensate for the predicted 2.6 birds per year that the Development is predicted to kill through collisions. The fencing would be managed in future years to maintain its integrity. Furthermore, the Applicant would fund a coordinator role to facilitate a stakeholder working group reviewing the factors affecting the status of the lesser black-backed gull population and any proposals for conservation measures. The strategy also includes monitoring the effectiveness of the compensation and updating them as required.
- 5.40. The Flamborough and Filey Coast SPA in-principle compensation measures for kittiwake proposed the construction of artificial nest sites to increase the productivity of kittiwake in the southern North Sea. The Applicant calculated that a structure measuring 30m by 8m would accommodate 200 pairs of kittiwakes, which in turn would produce around five times the 21 birds predicted to be killed through collision mortalities per year.
- 5.41. The Haisborough, Hammond and Winterton SAC in-principle compensation measures for the loss of the Annex 1 sandbank and reef features proposed an extension of the SAC where areas of sandbank and reef features stretch beyond the boundaries of the SAC, or the designation of other suitable habitat. This would be achieved through an agreement with NE, Joint Nature Conservation Committee ("JNCC") and Defra and providing support to the

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<sup>46</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010079/EN010079-004198-NORV%20%E2%80%93%20Letter%20from%20Secretary%20of%20State%20-%206%20December%202019.pdf>

statutory bodies to progress the designation. The Applicant would also provide ongoing support during the formal consultation process to the SNCBs, probably through funding a post for several years.

#### Consultation during Redetermination of the Development

- 5.42. In February 2021, Defra confirmed that extending designated sites or creating new site designations as compensatory measures for a development would not comply with the legislation, because the selection of site designations must be based on scientific evidence<sup>47</sup>.
- 5.43. In his letter dated 5 July 2021, the Secretary of State invited the Applicant to provide details of compensation strategies for the Annex I reef and sandbank features of the Haisborough, Hammond and Winterton SAC with consideration of the letter published by Defra during the redetermination of the Development, and to provide further evidence to support the proposed compensatory measures for the SAC and SPAs. This included a request for confirmation of the locations of the kittiwake and lesser black-backed gull compensation measures, and evidence that land at the proposed locations could be acquired or leased. The Secretary of State also requested, in his letter dated 11 August 2021, the Applicant to provide updates to in-combination kittiwake collision mortalities with updated bird mortality figures for Hornsea Project Three, updates to PVA modelling and additional evidence for the recovery of sandbanks from levelling
- 5.44. In response to these requests, the Applicant provided additional information regarding the compensation measures including the details of the locations for delivering the compensation measures; programmes for the implementation of the compensation measures, and habitat maintenance; and details of the monitoring measures to assess the success of the compensation measures.
- 5.45. The Applicant also provided evidence that land could be leased for the implementation of the kittiwake and lesser black-backed gull compensation measures, at Lowestoft and within the Alde-Ore Estuary SPA, respectively. This information addressed the key concerns of the Secretary of State, NE and the Royal Society for the Protection of Birds (“RSPB”) on the deliverability of the compensation measures at the preferred sites.
- 5.46. Furthermore, taking into account the advice received from NE that the draft of Schedule 17 of the Order put forward by the Applicant would not result in compensatory measures being in place in appropriate timescales with respect to the impacts arising, the Secretary of State has ensured that the compensation measures, for kittiwake and lesser black-backed gull, are delivered four full breeding seasons prior to the operation of any turbine and that the compensation sites will continue to be maintained and managed beyond the lifespan of the Development if they are occupied by nesting birds. This will be achieved through the addition of new conditions in Schedule 17 of the Order.
- 5.47. Finally, the Secretary of State has requested that for both the kittiwake and lesser black-backed gull compensation measures, a Steering Group will be created to inform the final implementation plans.
- 5.48. With regards to compensating for the adverse effects to the Annex 1 habitats within Haisborough, Hammond and Winterton SAC, the Applicant confirmed that it proposed to

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<sup>47</sup> Defra (2021). *Defra Letter Ref: 210225*.

undertake marine debris removal within the SAC, together with an awareness campaign to reduce the risk of more debris entering the marine environment.

- 5.49. NE advised that it did not consider that the removal of marine debris and an awareness campaign would provide compensation for the predicted impacts of the Development on the SAC, because the presence of marine debris is not impeding the conservation status of the site. Furthermore, NE was concerned that the debris removal activities could cause further damage to the Annex 1 habitats.
- 5.50. The Secretary of State notes that marine debris could degrade the SAC through the abrasion and smothering of benthic habitats; the dislodging of organisms and seabed features; and from polluting the marine environment with micro-plastics arising from the disintegration of plastic debris<sup>48</sup>. He therefore considers that the removal of marine debris will improve the condition of the SAC by reducing the risk of damage to benthic habitats, including reefs. The removal of debris will also expose the underlying substrates and allow the recovery of endemic epifaunal communities. Furthermore, removing a source of anthropogenic pollution will reduce adverse pressures on the biological assemblages. The Secretary of State therefore concludes that such measures could contribute to the conservation objectives of the SAC by restoring the extent and distribution of qualifying natural habitats, and the habitats of the qualifying species; and restoring the structure and function of qualifying natural habitats, and the habitats of qualifying species.
- 5.51. The Secretary of State is aware that an assessment of the sensitivity of sandbanks and reefs to marine debris has not been undertaken for Haisborough, Hammond and Winterton SAC<sup>14</sup>. The Secretary of State therefore proposes that a Benthic Steering Group is established to identify areas of debris within the SAC which, if removed, would support the restoration of these habitats. Should the total area of debris identified be less than what is required to compensate for the impacts of the Development, then in accordance with Defra's guidance<sup>49</sup> on compensation measures and pursuant to the adaptive management provisions in Part 3 of Schedule 17 of the Order, further debris removal could be undertaken at alternative protected sites to benefit other reef and sandbank features within the National Site Network.
- 5.52. Furthermore, to address the specific concerns of NE regarding the potential of marine debris removal measures to damage benthic habitats, the Secretary of State has set out a suite of conditions around the implementation of these measures, including the engagement of a Benthic Steering Group who will inform the methods for the marine debris removal and prepare a detailed implementation plan.
- 5.53. Finally, no offshore cable installation works in the Haisborough, Hammond and Winterton SAC will be permitted until the implementation plan has been approved in writing by the Secretary of State (in consultation with the MMO and NE) and the removal of the required area of marine debris to compensate for the impacts of the Development has taken place or equivalent agreed measures have been implemented. The Secretary of State notes the representations made by the Applicant to the effect that it would be unfair to require any compensation before it is known whether damage to the SAC actually occurs, but considers that this is necessary given the uncertainty that arises from the information before him.

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<https://designatedsites.naturalengland.org.uk/Marine/FAPMatrix.aspx?SiteCode=UK0030369&SiteName=Haisborough&SiteNameDisplay=Haisborough%2c+Hammond+and+Winterton+SAC&countyCode=&responsiblePerson=&SeaArea=&IFCAAarea=&NumMarineSeasonality=>

<sup>49</sup> <https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site>

5.54. This additional information together with the conditions provide confidence that suitable measures to compensate for the impacts of the Development on the National Site Network can be secured.

### Conclusions

5.55. Having considered the additional information presented to him, the Secretary of State is able to conclude that appropriate compensation measures can be secured and delivered through the DCO as set out in Schedule 17 and that the requirements of the derogation provisions under the Habitats Regulations and Offshore Habitats Regulations have been met.

5.56. The Secretary of State has noted the Applicant's concerns in relation to the implications of potential reduced impacts of "as built" versus "as consented" projects<sup>50</sup>. The Secretary of State notes that the Applicant has not furnished detailed information to address this point, but considers that to address this concern going forward it is appropriate to include a requirement in this and future Orders that the Applicant (and future applicants) must provide details of the final "as built" scheme at which point a further licence would be required for additional construction. This reflects the text proposed in paragraph 2.29.2 of the draft National Policy Statement for Renewable Energy Infrastructure (EN3)<sup>51</sup>.

### Transboundary Assessment

5.57. The Secretary of State notes that the French Biodiversity Agency participated in the Examination because of the potential impacts of the proposed Development on birds from two sites in French waters designated under the Habitats Directive. The Agency requested the inclusion of those sites in any cumulative impact assessment carried out by the Applicant and that the turbines should be stopped during peak bird migration through the wind farm site. In response, the Applicant stated that any impacts on birds would be negligible. These comments were put to the Agency but it did not respond. The ExA did not consider that the proposed Development, either alone or in combination with any other projects, would give rise to any significant effects on the French sites (or any other transboundary sites) but suggested the Secretary of State might want to consider whether any further information was needed from the Agency. The Secretary of State considers that no further information is needed in relation to this matter. Further details can be found in the Habitats Regulations Assessment.

### Marine and Coastal Assess Act 2009 ("MCAA")

5.58. The Secretary of State notes that the ExA considered the potential impact of the Development on the Cromer Shoal Chalk Beds Marine Conservation Zone. The ExA notes that the embedded mitigation measures in the Application mean the offshore cable route avoids the Cromer Shoal Chalk Beds. The Secretary of State does not consider that there is any evidence of adverse impacts arising from the Development on the Cromer Shoal Chalk Beds Marine Conservation Zone.

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<sup>50</sup> Applicant's Response to the Request for further information (June 2021) [ExA.PD.D19.V1] at pages 10-11 <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010087/EN010087-002826-Applicants%20Response%20to%20the%20Request%20for%20Further%20Information.pdf>

<sup>51</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1015236/en-3-draft-for-consultation.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1015236/en-3-draft-for-consultation.pdf)

## 6. Consideration of Compulsory Acquisition and Related Matters

- 6.1. The Applicant is seeking powers for the Compulsory Acquisition of land, rights over land and related matters including temporary possession. The Applicant is seeking those powers, “*to acquire compulsorily land and interests and other related powers to support the delivery of the Project*”.
- 6.2. The Planning Act 2008, together with related case-law and guidance, provides that compulsory acquisition can only be granted if certain conditions are met. Under section 122 of the Planning Act compulsory acquisition may only be authorised if:
- the land is required for the development to which the consent relates, or
  - it is required to facilitate or is incidental to that development; or
  - it is replacement land which is to be given in exchange for the Order land under sections 131 or 132 of the Planning Act; and
  - there is a compelling case in the public interest.
- 6.3. In connection with this:
- The land required to be taken must be no more than is reasonably required and be proportionate;
  - there must be a need for the project to be carried out;
  - all reasonable alternatives to compulsory acquisition have been explored;
  - the applicant has a clear idea of how it intends to use the land and can demonstrate that funds are available to pay for the acquisition; and
  - they are satisfied that the purposes stated for the acquisition are legitimate and sufficient to justify the interference with the human rights of those affected.
- 6.4. The ExA notes that the Applicant submitted a number of documents with its application to support the request for compulsory acquisition powers [ER 8.3.4 et seq.]. The powers sought were set out in the development consent order that the Applicant submitted with its application for development consent [ER 8.3.15 et seq.]. The ExA considered a broad range of matters related to the request for compulsory acquisition powers and asked a considerable number of questions during the Examination [ER 8.5.1 et seq.].
- 6.5. One of the issues covered was whether the ducting related to the proposed Norfolk Boreas offshore wind farm could be classed as ‘Associated Development’ as defined in the Planning Act 2008 and thus be subject to compulsory acquisition powers [ER 8.7.1 et seq.]. The ExA considered relevant legislation (the Planning Act 2008) and guidance (“DCLG Guidance on Associated Development Applications for Major Infrastructure Projects” which was issued in 2013) before concluding that ‘Boreas ducting’ could be classified as Associated Development and would, therefore, benefit from the compulsory acquisition powers that the Applicant sought [ER 8.7.3 et seq.]. The Secretary of State agrees with this conclusion.
- 6.6. Prior to and during the Examination, the Applicant sought to make some minor changes to the Application and to the compulsory acquisition requirements which were accepted by the ExA suitable for consideration during Examination [ER 8.8.1 et seq.].
- 6.7. The Applicant provided a Funding Statement to explain how the acquisition of land would be funded [ER 8.9.1]. The Statement confirmed that the Applicant’s parent company would provide sufficient funds to cover any requests for compensation arising from the acquisition of land and rights, the creation of new rights and from statutory blight where compensation is claimed [ER 8.9.2]. The ExA sought further information from the Applicant about the overall cost of the proposed Development [ER 8.9.4]. In response, the Applicant indicated that the



owner of the parent company – Vattenfall AB – was 100% owned by the Swedish state and that necessary funding would be made available as required [ER 8.9.5]. However, specific costs of the project were not provided [ER 8.9.5]. The Applicant further stated that it would not seek to implement the development consent order or exercise any of the powers in it until Final Investment Decision had been reached [ER 8.9.8].

- 6.8. There were a considerable number of objections to the grant of compulsory acquisition powers over certain plots of land although many were withdrawn before the end of the Examination [ER 8.10.1 et seq.].
- 6.9. Provisions in the Planning Act 2008 permit developers of nationally significant infrastructure projects to extinguish or relocate the rights of Statutory Undertakers where the Secretary of State is satisfied that the use of those powers is necessary for the project in question [ER 8.11.1]. The ExA notes discussions between the Applicant and a number of Statutory Undertakers with interests that were subject the request for compulsory acquisition powers [ER 8.11.4 et seq.]. In most cases, the parties reached agreement over the interests that were sought and/or any protective provisions that would be included in any development consent order that might be granted. The exception was the discussion with Network Rail which was not concluded at the close of the Examination with Network Rail maintaining its objection [ER 8.11.17 et seq.]. Notwithstanding this position, the ExA concluded that the powers sought by the Applicant in relation to Statutory Undertakers were necessary to carry out the proposed Development and that the relevant Planning Act provisions had been met [ER 8.11.19]. The Secretary of State notes that Network Rail subsequently wrote to him to withdraw its objection. The revised protective provisions that were included in the original Order have been retained in the latest version. In light of this, the Secretary of State agrees with the ExA's conclusions in this matter.
- 6.10. 'Crown Land' is also subject to special provisions under the Planning Act 2008 – the interests in Crown Land cannot be compulsorily acquired but third party interests can be. In the case of the proposed Development such land is held by The Crown Estate ("TCE") only. (Highways England owns land interests affected by the proposed Development but these are not technically Crown Land although they are treated as though they are [ER 8.13.8].) Consent has been granted by TCE under section 135(1) of the Planning Act 2008 in respect of Crown land on the foreshore. The consent is conditional on TCE being consulted if any variation to the Order is proposed which could affect other provisions of the Order subject to sections 135(1) and or 135(2) of the Planning Act 2008, and the inclusion of amendments to the development consent order [ER 8.13.6 et seq.]. These amendments were included in the development consent order that was submitted to the Secretary of State by the ExA and are incorporated into the development consent order that that the Secretary of State will make.
- 6.11. 'Open Space Land' was also considered by the ExA in relation to the Applicant's compulsory acquisition requests with relevant land plots on the beach at Happisburgh and the Marriott's Way long distance path [ER 8.13.9 et seq.]. The Open Space Land is owned by a number of interests including individuals but also Norfolk County Council and North Norfolk District Council [ER 8.13.12]. The ExA notes that trenchless crossing techniques would be used to install cables and ducting under the Open Space Land so that it should not be affected by the proposed Development [ER 8.13.13]. The Open Space Land would, therefore, be no less advantageous than it was before for its owners, occupiers, tenants, members of the public etc. [ER 8.13.15].
- 6.12. The proposed Development would use National Trust land which, in the absence of an agreement between the parties, would only be permitted under a Special Parliamentary Procedure [ER 8.13.16]. The ExA notes that the National Trust and the Applicant were

discussing agreement during the Examination but that these had not concluded by the time the Examination closed: the Trust was still, therefore, formally objecting to the use of its land [ER 8.13.1 et seq.]. However, the Secretary of State notes that the National Trust wrote on 25 September 2019 to withdraw its objection.

- 6.13. The ExA notes that there were still a number of issues outstanding at the close of the Examination but that considered that these had been satisfactorily addressed [ER 8.14.1 et seq.].

### Human Rights

- 6.14. As far as human rights in relation to the proposals for compulsory acquisition and temporary possession of land and rights over land are concerned, the ExA is satisfied that: the Examination ensured a fair and public hearing; any interference with human rights arising from implementation of the proposed Development is proportionate and strikes a fair balance between the rights of the individual and the public interest; and that compensation would be available in respect of any quantifiable loss [ER 8.15.4 et seq.]. The Secretary of State sees no reason to disagree with the ExA's conclusion that there is no disproportionate or unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998.

### Overall Conclusion on Compulsory Acquisition

- 6.15. Because the ExA concluded that development consent should not be granted, it consequently considered that the compelling case in the public interest for the land to be acquired compulsorily had not been made out [ER 8.18.1]. However, it was mindful that the Secretary of State might conclude that development consent should be granted and so examined the case for Compulsory Acquisition and Temporary Possession on that basis [ER 8.18.2]. The Secretary of State considers that relevant legislation and guidance relating to compulsory acquisition and temporary possession have been followed by the Applicant and that, given his overall consideration that development consent for the proposed Development should be granted, there is a compelling case in the public interest to grant compulsory acquisition and temporary possession powers to facilitate the Development.

## **7 Other Matters**

### Representations Received Following the Close of Examination

- 7.1. In addition to the responses that were submitted to the Secretary of State in the wake of the 6 December 2019 consultation, a number of other parties made representations about the proposed Development. Many of these covered ground considered during the Examination and a large number sought the deferral of a decision on the proposed Development pending the consideration of proposals that might come forward as part of any offshore ring main project. These matters are considered in the letter above.
- 7.2. However, other matters were raised which fall outside the scope of the ExA's consideration and these are set out below.
- 7.3. A member of the public wrote to suggest that the Secretary of State should seek to move the site of the Necton substations to a new site in the vicinity to lower its visual impact. However, the proposed location would need to be subject to a new application for consent. In the original decision letter, the Secretary of State considered that there was no need for an alternative location where he and the ExA considered that the existing proposal is acceptable. As part of the redetermination process the Secretary of State has considered this

point afresh and no longer relies upon the views of the ExA as to the suitability of the Applicant's proposed substation site. However, the Secretary of State notes the test in NPS EN-1 para 4.43, and considers that because the proposal was vague and inchoate, was not identified in sufficient detail to allow appropriate consultation and development of a suitable evidence base, nor with evidence of suitability, that it is not appropriate to consider it further.

- 7.4. A member of the public wrote on behalf of Happisburgh REACT to highlight a cliff collapse on the coastline near Happisburgh, worried about the instability of the coastline along the section of coast near to where the export cable landfall would be located. The Secretary of State notes these concerns, but also notes that coastal erosion along the section of the Norfolk coastline was considered during the Examination and that the ExA concluded that the proposed Development would neither cause nor be at risk from coastal erosion.

#### Matters raised during the redetermination process which were not considered during the Examination

- 7.5. In response to the Secretary of State's consultation letter of 5 July 2021 the Applicant provided detailed information in relation to the potential cumulative impacts with the proposed Dudgeon and Sheringham Shoal Extension projects<sup>52</sup> which published their Preliminary Environmental Impact Report ("PEIR")<sup>53</sup> on 29 April 2021. It noted that only preliminary and draft information was available, but considered that although Norfolk Vanguard is included in the Cumulative Impact Assessment that the contribution offshore would be extremely small, and that the PEIR concluded no significant cumulative impacts with Norfolk Vanguard for any onshore EIA topics either localised at the cable crossing or wider effects associated with construction such as traffic. The Applicant also concluded that there would be no likely significant cumulative effects for any of the onshore EIA topics<sup>54</sup>.
- 7.6. In responses to the Secretary of State's consultation letter of 11 October 2021 it was noted that there was no carbon impact assessment provided, and that the embedded carbon and greenhouse gases from the extraction, refinement and manufacture of the elements of the project, along with the emissions from the construction (including emissions from trenching and excavation of arable land, and loss of greenhouse gas absorption capacity from farming, plants and trees), operation, maintenance and decommissioning should be considered. On 3 December 2021 the Applicant provided the Secretary of State with an additional submission which assesses the carbon footprint of the Development<sup>55</sup>. This assessment used the same methodology as had been applied for the Norfolk Boreas project. The Applicant made it clear that due to the similarities between the two assessments that comments provided by interested parties in relation to the Norfolk Boreas carbon footprint assessment can be relied upon when considering the Norfolk Vanguard assessment. Although the offshore cable route would be 400km (as opposed to Norfolk Boreas's 500km), the embedded greenhouse gases and emissions from duct installation activities and road vehicle movements would be greater than for Norfolk Boreas. The development is anticipated to have a total of 1,936,895 tonnes CO<sub>2e</sub> for carbon and greenhouse gas emissions, compared with the anticipated 1,939,031 tonnes for Norfolk Boreas. The Applicant estimates a carbon payback of emissions within 1 to 2 years from when Norfolk

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<sup>52</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010079/EN010079-004386-Updated%20information%20on%20cumulative%20and%20in-combination%20effects%20with%20the%20Dudgeon%20and%20Sheringham%20Shoal%20Extension%20Project%20s.pdf>

<sup>53</sup> <https://dudgeonoffshorewind.co.uk/extensionproject/PEIRSummary.php>

<sup>54</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010079/EN010079-004383-Applicant's%20Response%20to%20the%20Requests%20for%20Additional%20Information.pdf>

<sup>55</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010079/EN010079-004452-Norfolk%20Vanguard%20Limited%20Additional%20Submission%20December%202021.pdf>

Vanguard starts to produce electricity for the UK grid. The Secretary of State has no reason to disagree with this assessment, and notes that there is no requirement to assess individual applications in terms of carbon emissions against carbon budgets and that the NPSs recognise that offshore wind is an important source of low carbon electricity generation.

## **8. Secretary of State's Conclusions and Decision**

- 8.1. The Secretary of State notes that the ExA determined that consent should not be granted for the proposed Development because of potential impacts on habitats and species afforded protection under habitats legislation. In determining that it was not possible on the basis of the information available to it to rule out an adverse effect on the integrity of two protected sites – the Flamborough and Filey Coast Special Protection Area and the Alde-Ore Estuary Special Protection Area – the ExA concluded that the proposed Development would not be in accordance with NPS EN-1 and could not therefore be granted consent.
- 8.2. However, in other respects, the ExA concluded that, while there would be impacts arising from the proposed Development across a range of issues (including on local landscape and traffic and transport), those impacts were not of such significance or would be mitigated to such a degree as to be sufficient to outweigh the substantial benefits that would derive from the development of a very large, low carbon, infrastructure project. (The ExA noted that if the conclusion on Habitats-related issues was set aside then in all other matters the proposed Development would be in accordance with the National Policy Statements and national policy objectives. This conclusion was subject to some clarification on specific points, including mitigation proposals.) However, as a result of the judicial review the Secretary of State has set aside the ExA's views on the impacts on landscape and visual effects and has considered this issue afresh.
- 8.3. As is set out elsewhere in this letter, in light of the ExA's Report to the Secretary of State and the requirement to redetermine the Application, the Secretary of State consulted a range of parties including the Applicant about the habitats-related issues (taking account of other schemes that have now been consented and the consequential effects on in-combination impacts), the onshore cumulative impacts that were the main subject of the judicial review and other relevant matters that had been raised in the ExA's Report.
- 8.4. On habitats, further information on potential bird and benthic impacts were submitted such that the Secretary of State concludes that it is not possible to rule out an adverse effect on the integrity of the Flamborough and Filey Coast Special Protection Area, the Alde-Ore Estuary Special Protection Area and the Haisborough, Hammond and Winterton Special Area of Conservation.

### *The Secretary of State's Conclusions*

- 8.5. Because of the three relevant NPSs (Overarching National Policy Statement for Energy (EN-1), National Policy Statement for Renewable Energy Infrastructure (EN-3), and National Policy Statement for Electricity Networks Infrastructure (EN-5)), the Secretary of State is required to determine this application against section 104 of the Planning Act 2008. Section 104(2) requires the Secretary of State to have regard to:
  - (a) any Local Impact Report (within the meaning given by section 60(3)),
  - (b) any matters prescribed in relation to development of the description to which the application relates, and

(c) any other matters which the Secretary of State thinks are both important and relevant to the decision.

- 8.6. The Secretary of State notes that the energy NPSs continue to form the basis for decision-making under the Planning Act 2008 and that the ExA noted the strong need case for renewable energy projects set out in NPS EN-1 and EN-3 [ER 4.2.15]. The Secretary of State considers, therefore, that the ongoing need for the Development is established as it is in line with the national need for offshore wind as part of the transition to a low carbon economy, and that granting the Order would be compatible with the Climate Change Act 2008 as amended.
- 8.7. The Secretary of State notes that various onshore mitigation measures were agreed during the Norfolk Boreas examination that would also be relevant to the Norfolk Vanguard application. The Secretary of State considers that where additional measures have been agreed in Norfolk Boreas documents which will be certified that these should be reflected in Norfolk Vanguard documents supplied for certification and has modified the Order to secure this.
- 8.8. After reviewing the ExA Report, the Secretary of State has reached the following conclusions on the weight of other individual topics to be taken forward into the planning balance: traffic and transport – medium weight against; socio-economic impacts – limited positive weight; contamination and ground conditions – no weight; coastal change – no weight; flood risk and water resources - no weight; noise and vibration – limited weight against ; air quality – no weight; human health – no weight; onshore ecology and ornithology – limited weight against; land use – limited weight against; commercial fisheries – limited weight against; shipping and navigation - no weight; aviation – no weight; marine physical processes – limited weight against; major accidents and disasters (including terrorism) – very little weight against; offshore biodiversity, biological environment and ecology – medium weight against.
- 8.9. The Secretary of State has set aside the ExA's conclusion on landscape and visual effects and considers that there should be substantial weight against granting the Order in respect of those effects. In particular, this conclusion takes account of the significant cumulative landscape and visual effects when compared against the existing baseline.
- 8.10. In relation to the historic environment, the Secretary of State has noted the risk that the slight visibility of the onshore project substations would have an indirect effect on the setting of the Church of St. Andrew Bradenham and accords that risk considerable importance and weight despite the conclusion of the Norfolk Boreas ExA that any cumulative adverse effects would be non-significant in EIA terms following mitigation. But in light of the public benefits of the proposed Development, the Secretary of State considers that matters relating to onshore archaeology and cultural heritage do not provide a justification not to make the Order.
- 8.11. Following his consideration of the various submissions relating to the potential for the OTNR to provide an alternative onshore grid connection for the Development (see paragraphs 4.12 to 4.17 above). The Secretary of State has decided to accord limited weight to the OTNR against granting the Development.
- 8.12. The Secretary of State has considered all the merits and disbenefits of the Development, including the substantial weighting he has now accorded to cumulative landscape and visual impacts and the considerable importance and weight he has accorded to heritage impacts, and concluded that, on balance, the substantial benefits of the Development, in particular in terms of its contribution of 1.8GW of renewable electricity to the urgent need to decarbonise the electricity supply, outweigh its negative impacts.

## **9. Equality Act 2010**

- 9.1. The Equality Act 2010 includes a public sector equality duty (“PSED”). This requires a public authority, in the exercise of its functions, to have due regard to the need to (a) eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Planning Act 2008; (b) advance equality of opportunity between persons who share a relevant protected characteristic (e.g. age; gender; gender reassignment; disability; marriage and civil partnerships<sup>56</sup>; pregnancy and maternity; religion and belief; and race.) and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 9.2. In considering this matter, the Secretary of State (as decision-maker) must pay due regard to the aims of the PSED. This must include consideration of all potential equality impacts highlighted during the Examination. There can be detriment to affected parties but, if there is, it must be acknowledged and the impacts on equality must be considered.
- 9.3. The ExA notes that the Applicant considered that no protected interests had been identified during its diligent enquiry exercise [ER 8.16.2]. The ExA also notes that there were no representations submitted by Interested Parties which directly referenced PSED [ER 8.16.3]. However, a few of the submissions did contain information about personal characteristics related to age or disability [ER 8.16.3 et seq.]. The ExA, while noting that there would be a minor adverse impact on older people, those living with existing health conditions and those living in deprived areas [ER 4.14.11], considered the information that had been provided did not show any evidence of differentiated or disproportionate impacts on individuals or groups with protected characteristics that would not be felt by others who shared those characteristics [ER 8.17.6].
- 9.4. The Secretary of State has no reason to disagree with the ExA’s conclusion in this matter.

## **10. Natural Environment and Rural Communities Act 2006**

- 10.1. The Secretary of State has considered his duty in accordance with section 40(1) of the Natural Environment and Rural Communities Act 2006, where he is required to have regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting development consent.
- 10.2. The Secretary of State is of the view that the ExA’s report, together with the environmental impact analysis, considers biodiversity sufficiently to inform the Secretary of State in reaching the decision to grant consent to the proposed Development.

## **11. Climate Change Act and the Net Zero Target**

- 11.1. On 2 May 2019, the Climate Change Committee recommended the UK reduce greenhouse gas emissions by net zero by 2050. This was proposed to deliver on the commitments the UK made by signing the Paris Agreement in 2016. On 26 June 2019, following advice from the Committee on Climate Change, Government announced a new carbon reduction ‘net zero’ target for 2050 which resulted in an amendment to the Climate Change Act 2008 by the Climate Change Act (2050 Target Amendment) Order 2019 requiring the UK to reduce net carbon emissions by 2050 from 80% to 100% below the 1990 baseline.

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<sup>56</sup> In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

- 11.2. The Secretary of State notes that the National Policy Statements continue to form the basis for decision-making under the Planning Act 2008. The ExA was unable to consider this matter as it occurred after the close the Examination. However, the ExA did conclude that *“the strong policy support for renewable energy generation and the benefits of the scheme in terms of the large-scale generation of renewable energy and its contribution to sustainable development objectives, substantially outweigh the limited harms which have been set out above. When considered as a whole the ExA concludes that the Proposed Development would be in accordance with all of the relevant NPSs.”* [ER 10.2.10]
- 11.3. The Secretary of State notes the substantial contribution that the Development would make towards meeting the national need demonstrated by the Overarching National Policy Statement for Energy (EN-1) and the substantial contribution it would make towards the delivery of renewable energy, ultimately assisting with the decarbonisation of the economy.
- 11.4. The Energy White Paper, *Powering our Net Zero Future*, was published on 14 December. It announced a review of the suite of energy NPSs but confirmed that the current NPSs were not being suspended in the meantime. The relevant energy NPSs therefore remain the basis for the Secretary of State’s consideration of the Application.
- 11.5. The Secretary of State does not consider that the amendment to the Climate Change Act 2008 has lessened the need for renewable energy generation and that the Development is, therefore, still in accordance with the NPSs in that respect.

## **12. Modifications to the draft Order by the Secretary of State**

- 12.1. Following consideration of the draft Order provided by the ExA, the Secretary of State has made the following modifications to the Order:
- a. Amendments to the definitions in Article 2(1) (Interpretation):
    - i. limiting the definition of “authorised development” to the description in Part 1 of Schedule 1;
    - ii. inclusion of definitions for “converter building” and “OPS Masterplan” (see details at paragraph j(i) below); and
    - iii. amendments to the definitions of “Hornsea Three Offshore Wind Farm Development Consent Order” and “Norfolk Boreas Development Consent Order” and omission of definition of “Norfolk Boreas offshore wind farm”.
  - b. Amendments to Article 5 (Power to maintain authorised project) to clarify that the undertaker has the power to maintain (rather than construct and maintain) the authorised project under this article. The power to carry out the development is given by Article 3.
  - c. Amendments to Article 6 (Benefit of the Order) to remove the power for Vattenfall to transfer the benefit of the Order within the Vattenfall group without seeking the Secretary of State’s approval or otherwise meeting the requirements for not needing consent.
  - d. Amendments to Article 15 (Discharge of water and works to watercourses) to clarify the notice period for providing consent or approval for the discharge of water into any watercourse, public sewer or drain or undertaking works to watercourses. An equivalent amendment was made in para 73(3)(b) of Schedule 16 (Protective Provisions).
  - e. Amendments to Article 26 (Temporary use of land for carrying out the authorised project) to make a distinction between the requirements for different types of land at paragraph (3). Also, to remove the term “temporary” and to add a sub-paragraph for mitigation works at

paragraph (4). It appears that only those works specified in the sub-paragraphs of Article 26(4) are to remain after the undertaker gives up temporary possession and the removal of the term “temporary” confirms this.

- f. Amendments to Article 37 (Certification of plans etc) to include the following additional documents: the outline Norfolk Vanguard Haisborough, Hammond, and Winterton Special Area of Conservation Site Integrity Plan; the Onshore Project Substation Masterplan; the Alde-Ore Estuary Special Protection Area (SPA) – In Principle Compensation; the Haisborough, Hammond and Winterton Special Area of Conservation (SAC) – In Principle Compensation; and the Flamborough and Filey Coast Special Protection Area (SPA) – In Principle Compensation. New provisions at Article 37(2)-(4) to ensure that the Outline Landscape and Ecological Management Strategy, the Outline Traffic Management Plan and other documents to be certified (where relevant) include additional mitigations that were agreed during the Norfolk Boreas examination.
- g. Amendments to Article 38 (Arbitration) to remove the power of the referring party to refer to the Centre for Effective Dispute Resolution for appointment of an arbitrator where the Secretary of State fails to make an appointment under Article 38 within 14 days of a referral.
- h. The inclusion of a provision for service of documents at Article 43 (Service of Notices).
- i. The inclusion of a provision to give effect to Schedule 17 (Compensation to protect the coherence of the national site network) at Article 45 (Compensation to protect the coherence of the national site network).

### **Schedule 1**

- j. Amendments to Schedule 1 (Authorised Project) (and the accompanying definitions in Article 2(1) (Interpretation)) to reduce the landscape and visual impacts of the Norfolk Vanguard project alone or cumulatively with the Norfolk Boreas project. These are:
  - i. The inclusion of a new definition for the “OPS Masterplan” (the Onshore Project Substation Masterplan) in Article 2(1) (Interpretation) (as referred to at paragraph [a] above).
  - ii. Amendments to Requirement 15 of Part 3 to clarify that the compulsory acquisition powers may not be exercised until notification has been submitted to the relevant planning authority detailing whether the onshore transmission works will be constructed in one or two phases.
  - iii. Amendments to Requirement 16 of Part 3 to provide that the design details to be supplied to the local planning authority in relation to the substation must: (a) be supported by a statement illustrating how these details: (i) accord with the principles of the OPS Masterplan and; (ii) have been informed by a strategic approach to mitigating cumulative impacts arising from the substation and the Norfolk Boreas onshore project substation; and (b) have been subject to an the early independent design review.
  - iv. Amendments to Requirement 19 of Part 3 to provide that any trees, hedges or shrubs:
    - used to screen the onshore project substation (and/or the Norfolk Boreas onshore project substation) that need to be removed due to damage or disease within a period of 25 years after planting, must be replaced; and



- planted as part of an approved landscaping management scheme within the district of North Norfolk that need to be removed due to damage or disease within a period of ten years after planting, must be replaced.

Plus, consequential amendment to Article 27 (Temporary use of land for maintaining authorised project) to clarify the length of the maintenance period for temporary use of land for these purposes.

- k. Amendments to Requirement 14 of Part 3 to address offshore decommissioning in respect of the proposed cable protection in the Haisborough, Hammond and Winterton Special Area of Conservation. In particular, the inclusion of a requirement for the undertaker to submit: a decommissioning feasibility study (on the proposed cable protection); a method statement (for recovery of cable protection); and a monitoring plan (to monitor the recovery of the area impacted by cable protection), to the Secretary of State no later than 4 months prior to each deployment of cable protection in the Haisborough, Hammond and Winterton Special Area of Conservation (unless otherwise agreed in writing by the Secretary of State). The amendments also include a prohibition on the deployment of cable protection until the Secretary of State (in consultation with the MMO and the Statutory Nature Conservation Body) approves the above-referenced documents.
- l. Amendment to Requirement 16 of Part 3 to provide for a trenchless crossing at the B1149 (and consequential changes later in the Order).
- m. Amendment to Requirement 21 of Part 3 to provide for traffic management following the making of development consent for the Hornsea Project Three and Norfolk Boreas Wind Farms.
- n. Amendment to Requirement 27(3) of Part 3 to include an obligation for measurements to be submitted to the relevant planning authority no later than 28 days following completion to confirm that the rating level of operational noise emissions do not exceed the levels specified in the Order, including details of any remedial works and a programme of implementation should the emissions exceed the stated levels.

### **Schedule 7**

- o. Inclusion of paragraph 3 in Schedule 7 (Modification of compensation and compulsory purchase enactments for creation of new rights) to modify section 5A(5A) of the Land Compensation Act 1961 and amendments to the modified Schedule 2A to the Compulsory Purchase Act 1965 substituted pursuant to paragraph 6.

### **Schedules 9 to 12**

- p. The following amendments made to Schedule 9 (Deemed Licence under the 2009 Act – Generation Assets (Licence 1 – Phase 1)) and Schedule 10 (Deemed Licence under the 2009 Act – Generation Assets (Licence 2 – Phase 2)):
  - i. at paragraph 12 (Chemicals, drilling and debris) of Part 4 inclusion of obligation for the undertaker to provide a null return to the MMO in the event that no material has been disposed of under the licences during the reporting period;
  - ii. amendment to paragraph 14(l) (Pre-construction plans and documentation) of Part 4 to clarify the requirements and timings for ornithological monitoring (and consequential amendment to paragraph 18 (Pre-construction monitoring and surveys) and paragraph 20 (Post construction));

- iii. inclusion of paragraph 23 (Completion of construction) of Part 4, which requires the undertaker to submit a close out report to the MMO and the relevant statutory nature conservation body, after which no further construction under the relevant marine licence can take place.
- q. The following amendments made to Schedule 9, Schedule 10, Schedule 11 (Deemed Licence under the 2009 Act – Transmission Assets (Licence 1 – Phase 1)) and Schedule 12 (Deemed Licence under the 2009 Act – Transmission Assets (Licence 2 – Phase 2)):
- i. removal of appeals procedure (previously, Part 5) and consequential change to conditions;
  - ii. clarification of the Licenced Marine Activities in Part 2 to deal with amendments to, or variations from, the approved plans; and
  - iii. amended procedure following identification of the exposure of subsea cabling in Part 4.
- r. In Schedule 11 and Schedule 12 inclusion of sub-paragraph 15(2)(c) (Post construction) requiring that the post-construction surveys must (unless otherwise agreed with the MMO) have due regard to the need to undertake or contribute to any marine mammal monitoring.

#### **Schedules 14 to 17**

- s. Amendments to Schedule 14 (Arbitration Rules) to provide at paragraph 1(2) that parties will first use their reasonable endeavours to settle a dispute amicably through negotiations undertaken in good faith by the senior management of the parties. Any dispute which is not resolved amicably by the senior management of the parties within 20 business days of the dispute arising, or such longer period as agreed in writing by the parties, shall be subject to arbitration in accordance with the terms of the schedule. Amendments to paragraph 7 to provide that any arbitration hearing and documentation shall be open to and accessible by the public.
- t. Amendment to paragraph 3 of Schedule 15 (Procedure for discharge of Requirements) to provide that where the Secretary of State has to appoint a person as part of the appeals process, they will have 28 rather than 20 days to do so.
- u. Amendments to the definitions of ‘specified works’ in paragraphs 13 and 29 of Schedule 16 (Protective Provision) to include references to safe working.
- v. Inclusion of new Schedule 17 (Compensation to protect the coherence of the national site network) to ensure that appropriate compensation measures can be secured and delivered in accordance with the requirements of the Habitats Regulations. These amendments can be summarised as follows:
- i. Part 1 (Flamborough and Filey Coast SPA: Delivery of measures to compensate for kittiwake loss): provision for a kittiwake steering group and inclusion of a requirement for a plan for their work to be submitted and approved by the Secretary of State before the authorised development commences. Inclusion of a requirement to consult the kittiwake steering group on the kittiwake implementation and monitoring plan. Removal of the conditionality for the construction of artificial nest structures and inclusion of a requirement that the wind farm cannot begin to operate until four full breeding seasons following the implementation of the compensatory measures for kittiwake have elapsed.

Amendments to the list of requirements for the kittiwake implementation and monitoring plan, for example details of landowner agreements demonstrating how the land will be bought or leased, details of the design of the artificial nest structures and the implementation timetable, details of the factors used to trigger alternative compensation measures and/or adaptive management measures, details for annual reporting to the Secretary of State (to include details of the number of birds colonising the site), details of how natal dispersal and colony interchange with the FFC kittiwake colony should be investigated and minutes of consultations with the kittiwake steering group. Inclusion of a requirement for the undertaker to notify the Secretary of State of completion of implementation of the measures. As part of the annual submission of monitoring reports to the Secretary of State, the inclusion of a requirement for details of any finding that the measures have been ineffective to be included together with proposals to address this. Inclusion of a requirement that the nest structures shall be maintained beyond the operational lifetime of the authorised development if they are colonised.

- ii. Part 2 (Alde-Ore Estuary Special Protection Area: Delivery of measures to compensate for the loss of lesser black-backed gull): provision for a lesser black-backed gull steering group and inclusion of a requirement for a plan for their work to be submitted and approved by the Secretary of State before the authorised development commences. Inclusion of a requirement to consult the lesser black-backed gull steering group on the lesser black-backed gull implementation and monitoring plan. Removal of the conditionality for the predator control measures and inclusion of a requirement that the wind farm cannot begin to operate until four full breeding seasons following the implementation of the compensatory measures for lesser black-backed gull have elapsed. Inclusion of a list of requirements for the lesser black-backed gull implementation and monitoring plan, for example details of landowner agreements demonstrating how the land will be bought or leased, details of the design of the predator control fencing and details of any other habitat management measures, the implementation timetable and minutes from consultations with the lesser black-backed gull steering group. Inclusion of a requirement for the undertaker to notify the Secretary of State of completion of implementation of the measures. As part of the annual submission of monitoring reports to the Secretary of State, the inclusion of a requirement for details of any finding that the measures have been ineffective to be included together with proposals to address this. Inclusion of a requirement that the predator control fencing shall be maintained beyond the operational lifetime of the authorised development if the site is colonised.
- iii. Part 3 (Haisborough, Hammond and Winterton Special Area of Conservation: Delivery of measures to compensate for cable installation and protection): Provision for a benthic steering group who will shape and inform the scope and delivery of the benthic implementation and monitoring plan and inclusion of a requirement for a plan for their work to be submitted and approved by the Secretary of State before the authorised development commences. Inclusion of a requirement to consult the steering group on the benthic implementation and monitoring plan. Requirement for the undertaker to meet and report to the steering group at least annually. Removal of the conditionality for the compensatory measures and a requirement for them to be provided in advance (i.e. no cable installation works within the SAC may be commenced unless the required area of marine debris removal has been completed). Inclusion of a list of requirements for the benthic implementation and monitoring plan, for example: to provide details of the location, nature and size of material to be removed from the SAC; to provide for a programme of works for the marine debris removal; to provide success criteria, adaptive management measures, details of alternative search areas if the required area of marine debris cannot be recovered from the SAC itself and details of further marine

debris removal that might be carried out if the actual effects of cable installation and protection are greater than anticipated; to provide details of a programme for delivery of education, awareness and facilities to limit further marine debris; to provide details of how all impacts to protected reef habitats within the SAC will be avoided where possible alongside other mitigations relating to cable installation and maintenance; and to provide details of the locations for the disposal of dredged material (and evidence that the disposal mechanism will allow sediment to be retained within the sandbank system and avoid impacts to other features, particularly reef habitats). As part of the annual submission of monitoring reports to the Secretary of State, the inclusion of a requirement for details of any finding that the measures have been ineffective to be included together with proposals to address this.

12.2. In addition to the above, the Secretary of State has made various changes to the draft Order which do not materially alter its effect, including changes to conform with the current practice for drafting statutory instruments and changes in the interests of clarity and consistency.

### **13. Challenge to decision**

13.1. The circumstances in which the Secretary of State's decision may be challenged are set out in the Annex to this letter.

### **14. Publicity for decision**

14.1. The Secretary of State's decision on this Application is being publicised as required by section 116 of the Planning Act 2008 and regulation 31 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

14.2. Section 134(6A) of the Planning Act 2008 provides that a compulsory acquisition notice shall be a local land charge. Section 134(6A) also requires the compulsory acquisition notice to be sent to the Chief Land Registrar, and this will be the case where the order is situated in an area for which the Chief Land Registrar has given notice that they now keep the local land charges register following changes made by Schedule 5 to the Infrastructure Act 2015. However, where land in the order is situated in an area for which the local authority remains the registering authority for local land charges (because the changes made by the Infrastructure Act 2015 have not yet taken effect), the prospective purchaser should comply with the steps required by section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015) to ensure that the charge is registered by the local authority.

Yours sincerely

**Gareth Leigh**  
**Head of Energy Infrastructure Planning**

## ANNEX

### LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order is published. The decision documents are being published on the date of this letter on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/eastern/norfolk-vanguard/>

**These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655).**