



Ruari Lean  
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London  
EC3A 8BE

13 December 2023

By email:

Dear Mr Lean,

**PLANNING ACT 2008**

**PROPOSED NON-MATERIAL CHANGE TO THE NORFOLK VANGUARD OFFSHORE WIND FARM DEVELOPMENT CONSENT ORDER 2022 - S.I. 2022/138**

1. I am directed by the Secretary of State for Energy Security and Net Zero (“the Secretary of State”) to advise you that consideration has been given to the application which was made by Norfolk Vanguard Limited and Norfolk Vanguard East Limited on 29 June 2023 (“the Application”) for changes which are not material to be made to the Norfolk Vanguard Offshore Wind Farm Order 2022 (“the Order”) under section 153 of, and Schedule 6 to, the Planning Act 2008 (“PA 2008”). On 3 March 2023, Norfolk Vanguard Limited transferred part of the benefit of the Order to Norfolk Vanguard East Limited. Therefore, for the purposes of paragraph 2(4) of Schedule 6 to PA 2008, Norfolk Vanguard Limited and Norfolk Vanguard East Limited are persons for whose benefit the Order has effect (“the Applicant”). This letter is the notification of the Secretary of State’s decision in accordance with Regulation 8 of the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 (as amended) (“the 2011 Regulations”).
2. The Order was made on 11 February 2022 and gave development consent for the construction, operation and maintenance of an offshore wind turbine generating station with a gross electrical output of up to 1,800 megawatts (“MW”) and up to 158 wind turbine generators (“WTGs”) and associated infrastructure (“the Development”). A non-material change (“NMC”) to the Order came into force on 29 September 2022 for the removal of the stated maximum gross electrical output capacity and a reduction in the maximum number of WTGs from 158 to 145.
3. The Applicant is seeking consent for a change to Part 3 (Requirements) of Schedule 1 (Authorised Project), in paragraph 16(18). The Secretary of State considers the Applicant erroneously referred to paragraph 15(18) in its Application but she considers that it is clear that the Applicant’s intention is to amend paragraph 16(18). The Applicant seeks to increase the number of underground cable ducts to be installed at landfall from two to four, to prevent the

cables from overheating. Each export cable bundle, comprising of two cables each for Norfolk Vanguard West and Norfolk Vanguard East respectively, will have to be separated into individual cables and, subsequently, into four cable ducts. The Applicant also seeks to increase the assumed number of reserve drills (defined as the process of drilling a narrow bore through which a duct will be installed) from one to two in case of drill failure.

### **Summary of the Secretary of State's decision**

4. The Secretary of State has decided under paragraph 2(1) of Schedule 6 of the PA 2008 to make a NMC to the Order to authorise the changes as detailed in the Application.
5. The Secretary of State has considered whether the Application is for a material or non-material change. In doing so, she has had regard to paragraph 2(2) of Schedule 6 to the PA 2008 which requires the Secretary of State to consider the effect of the change on the Order as originally made.
6. There is no statutory definition of what constitutes a 'material' or 'non-material' amendment for the purposes of Schedule 6 to PA 2008 and Part 1 of the 2011 Regulations.
7. So far as decisions on whether a proposed change is material or non-material, guidance produced by the Department for Communities and Local Government (now the Department for Levelling Up, Housing and Communities ("DLUHC")), entitled the "Planning Act 2008: Guidance on Changes to Development Consent Orders" (December 2015) ("the Guidance")<sup>1</sup>, makes the following points:
  - (a) given the range of infrastructure projects that are consented through the Planning Act 2008, and the variety of changes that could possibly be proposed for a single project, the Guidance cannot, and does not attempt to, prescribe whether any particular types of change would be material or non-material;
  - (b) however, there may be certain characteristics that indicate that a change to a consent is more likely to be treated as a material change. Four examples are given in the Guidance as a starting point for assessing the materiality of a proposed change, namely:
    - (1) whether an update would be required to the Environmental Statement ("ES") (from that at the time the Order was made) to take account of new, or materially different, likely significant effects on the environment;
    - (2) whether there would be a need for a Habitats Regulations Assessment ("HRA"), or a need for a new or additional licence in respect of European Protected Species ("EPS");
    - (3) whether the proposed change would entail compulsory acquisition of any land that was not authorised through the Order; and
    - (4) whether the proposed change would have a potential impact on local people and business (for example, in relation to visual amenity from changes to the size and height

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<sup>1</sup> <https://www.gov.uk/government/publications/changes-to-development-consent-orders>

of buildings; impacts on the natural and historic environment; and impacts arising from additional traffic).

- (c) although the above characteristics indicate that a change to a consent is more likely to be treated as a material change, these only form a starting point for assessing the materiality of a change. Each case must depend on thorough consideration of its own circumstances.
8. The Secretary of State has considered the change proposed by the Applicant against the four matters set out in (1), (2), (3) and (4) above:
- (a) The Secretary of State notes that the information supplied by the Applicant supports the Applicant's conclusions that there are no new, or materially different, likely significant environmental effects from those assessed in the ES. Considering the analysis supplied by the Applicant and responses to the consultation, the Secretary of State has concluded that no update is required to the ES as a result of the proposed amendments to the Order.
- (b) In respect of the HRA, the Secretary of State has considered the nature and impact of the change proposed and is satisfied that there is no change to the conclusions of the HRA as a result of the proposed amendments and therefore a new HRA is not required. She is also satisfied that the proposed change does not require a new or additional licence in respect of EPS as the amendments sought are not anticipated to give rise to any new or different effects from an ecological perspective than those assessed for the original application.
- (c) In respect of compulsory acquisition, the Secretary of State notes that the proposed changes do not require any additional compulsory purchase of land.
- (d) In respect of impacts on local people and businesses, the Secretary of State notes that no changes are anticipated by the Applicant to the impacts already assessed in the ES.
9. The Secretary of State therefore concludes that none of the specific indicators referred to in the guidance, or other relevant considerations, suggest that the change considered in this letter is a material change.
10. Taking the information contained in the Application and responses received from consultees into account, the Secretary of State is therefore satisfied that the changes considered in this letter are not material and should be dealt with under the procedures for NMCs.

### **Consultation and responses**

11. On 15 June 2023, under regulation 7(3) of the 2011 Regulations, the Secretary of State consented to a reduced list of consultees which the Applicant had proposed. In accordance with the requirements of Regulation 7 of the 2011 Regulations specified parties from this reduced list of consultees, such as the local planning authority, were then notified of the Application by email on 4 July 2023.
12. The Applicant published a notice of the Application in accordance with Regulation 6 (publicising the application) of the 2011 Regulations (the "Regulation 6 notice") for two consecutive weeks in the local press (in Fishing News on 6 July 2023 and 13 July 2023 and in the Eastern Daily Press on 4 July 2023 and 11 July 2023) and made publicly available on the Planning Inspectorate's (PINS) website on 4 July 2023, such that there was an opportunity for anyone

not notified to also submit representations to PINS. The deadline for receipt of representations on the Application was 29 August 2023.

13. On 21 July 2023, the Secretary of State issued a letter to the Applicant requesting clarification on several separate points about the proposed Application. The Applicant responded in a letter on 27 July 2023. The Applicant then provided Regulation 7 Consultees with a copy of the letter from the Secretary of State and the Applicant's subsequent response. The letters were published on the Planning Inspectorate's website on 31 July 2023. The Secretary of State considers both methods of distribution aided Regulation 7 Consultees in their consideration of the Application before 29 August 2023 and allowed them at least 28 days to do so.
14. The Applicant submitted its Consultation and Publicity Report as required by Regulation 7A of the 2011 Regulations on 2 November 2023, which states that the Applicant has complied with all necessary steps set out in Regulations 6 and 7 of the 2011 Regulations in respect of stakeholder consultation and its public engagement approach. This was published on the PINS website on 20 November 2023.
15. A total of 8 responses were received from specified Interested Parties including National Air Traffic Service En-Route Safeguarding, Historic England, the Ministry of Defence, Norfolk County Council, North Norfolk District Council ("NNDC"), Broadland District Council and Eastern Inshore Fisheries and Conservation Authority, none of whom raised any objections to the Application.
16. Natural England ("NE") responded and raised some further questions for the Applicant on 29 August 2023 at the close of the window for comments on the Application. NE's submission was published on the PINS website with the other 7 representations on 31 August 2023. In the 29 August submission, NE raised the following points:
  - (1) NE requested confirmation from the Applicant that rock protection for cable protection will not be used.
  - (2) NE requested evidence to show whether an increase in the area and volume of cable protection would disrupt sediment transport in the near shore area.
  - (3) The Applicant was asked to clarify the diameter of the ducts.
  - (4) NE sought reassurance that the sensitivity of habitats affected by the increased area of impact from cable installation was being taken into consideration.
  - (5) The Applicant was asked to clarify the exact distance from the shore the cables would be unbundled.
17. The Applicant responded to these questions in an email sent to NE on 12 September 2023:
  - (1) The Applicant does not plan to use rock protection at landfall but, should it be required, the quantities would be controlled by the Order.
  - (2) As there will be no change to the area or volume of cable protection from that controlled by the Order, there will be no changes to the assessments made in the ES in regard to sediment transport.

- (3) The duct diameter would be 500mm to 600mm as 600mm would represent a worst-case scenario. Even the worst-case largest diameter would not change any impacts to those assessed within the ES.
- (4) The nearshore area was assessed in the ES as having a low magnitude of impact and, at worse, a medium sensitivity and so increasing the area of disturbance by 0.7% would not alter the significance of impact from minor adverse.
- (5) The exit points for the drills will be 750m to 1000m from the coast, and the cables will be unbundled a further 750m from the exit points. Therefore, the maximum distance the cables could become unbundled is 1750m from the coast. This remains within the constraints of the Order and the full details will be provided in several discharge documents required by the Order which NE will be consulted on.

18. NE responded to the Applicant in an email sent on 9 October 2023:

- (1) NE recognised that the amount of rock protection would not exceed the DCO but still prefers that alternatives be used to protect the cables at the exit pits. NE wishes environmental impacts to be minimised as will be the case when it is consulted on the Cable Specification Installation and Monitoring Plan (“CSIMP”).
- (2) NE requested further clarification on how the unbundled cable remained within the parameters of the original assessment on sediment transport summarised in the ES.
- (3) NE thanked the Applicant for the clarification that 600mm will be the worst-case scenario and raised no further questions on this.
- (4) NE thanked the Applicant for the clarification on the nearshore habitat and requested the same explanation be provided for the habitats in the vicinity of the onshore exit pit location.
- (5) NE thanked the Applicant for the clarification that the cables will be unbundled no more than 1750m from the coast and expected this to be included within any NMC permission.

19. The Applicant addressed NE’s remaining points in its Consultation and Publicity Statement which it emailed to NE ahead of its wider publication on 6 November 2023:

- (1) The Applicant supports NE’s desire to minimise environmental impacts, and this will be taken into account through the discharge of the CSIMP.
- (2) The Applicant wished to reassure NE that there will not be any increase in cable protection and so there will be no change in impacts to the original assessment (for sediment transport this is in Chapter 8 of the ES: Marine Geology Oceanography and Physical Processes). It is the Applicant’s preference to bury the cables where possible and this will be confirmed in detail with NE through the CSIMP.
- (3) The Applicant noted NE’s comment with no further issue.
- (4) The Applicant confirmed that there is low ecological value at the onshore pit locations and so the temporary impact to these ecological receptors was assessed

as negligible significance. The temporary impact will increase as a result of the NMC but the significance of impact will not change.

- (5) The Applicant notes that the Application's draft amendment Order does not contain any provision for extra conditions to control the point of unbundling from the coast as this is already secured within the associated Deemed Marine Licence ("DML") schedules of the Order in consultation with the Marine Management Organisation ("MMO") and NE.

20. The correspondence between NE and the Applicant of 12 September 2023, 9 October 2023, and 6 November 2023 were all published on the PINS website on 30 November 2023.

21. The Secretary of State has considered the points raised by NE and responded to by the Applicant:

- (1) The Secretary of State notes and welcomes the Applicant's desire to minimise the environmental impacts of cable protection and not use rock protection where possible. The Secretary of State notes that NE is not actually required to be consulted on the CSIMP in Condition 9(1)(g) of Part 4 of Schedules 11 and 12 of the Order, contrary to the understanding of both NE and the Applicant. The Secretary of State notes that NE will be consulted on the Landfall Method Statement ("LMS") as required under Requirement 17 of Part 3 of Schedule 1 of the Order, and on the construction programme and monitoring plan as required under Conditions 13 and 14 of Part 4 of Schedules 11 and 12. Condition 17 of Part 4 of Schedules 11 and 12 provides that statutory nature conservation bodies should be consulted on cable protection post-construction. The Secretary of State notes that the Applicant and NE agree that NE should be consulted in relation to cable protection, and considers that it is open to the Applicant and NE to arrange any additional consultation should this be agreed between them. The Secretary of State is satisfied that relevant bodies will have sufficient opportunity to comment on the detailed design of the cable protection.
- (2) The Secretary of State is content that the maximum volume and area of cable protection will remain the same, as per document 8.16 of the Norfolk Vanguard Application, the Outline Scour Protection and Cable Protection Plan<sup>2</sup>, and that the Applicant will ensure that the protection at the exit pits will not exceed the original estimate. The Secretary of State is satisfied there will be no change in impacts to sediment transport from those assessed within the ES and that NE will have a further opportunity to comment on this through the LMS.
- (3) The Secretary of State notes that the drill and duct diameter will not exceed 600mm in the worst case and that NE accepts this explanation.

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<sup>2</sup> [https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010079/EN010079-003175-8.16%20\(version%203\)%20Scour%20Protection%20and%20Cable%20Protection%20Plan.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010079/EN010079-003175-8.16%20(version%203)%20Scour%20Protection%20and%20Cable%20Protection%20Plan.pdf)

- (4) The Secretary of State notes the impact to habitats at the onshore pit location will remain of negligible significance and that NE will have a further opportunity to comment on this through the LMS.
- (5) The Secretary of State notes the Applicant's assurance that the location of the unbundling of the cable will not exceed 1750m from the coast and also notes that the MMO will approve pre-construction plans including plans which detail the length and arrangement of all cables comprising Work Nos. 3, 4A and 4B in line with Condition 9(1)(a) of Schedules 11 and 12. The Secretary of State concludes it is not necessary to include a condition in this regard.
22. The Secretary of State therefore considers the Applicant has satisfactorily made available and addressed the matters raised by NE, and that there are no issues outstanding or unresolved.
23. The Secretary of State has taken account of all consultation responses received and does not consider that any further information needs to be provided by the Applicant or that further consultation is necessary in regard to this Application for a NMC.

### **Environmental Impact Assessment**

24. The Secretary of State has considered whether the Application would give rise to any new significant or materially different effects when compared to the assessment set out in the ES for the development authorised by the Order.
25. The Secretary of State is satisfied that the information provided by the Applicant is sufficient to allow her to determine the Application.
26. The Secretary of State has considered all relevant information provided and the comments of consultees. The Secretary of State agrees with the Applicant's conclusions that there will not be any new or materially different likely significant effects when compared to the effects set out in the ES for the development authorised by the Order and as such considers that there is no requirement to update the ES.
27. As there are no new significant environmental impacts as a result of the proposed change, the Secretary of State does not consider that there is any need for consultation on likely significant transboundary effects in accordance with Regulation 32 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

### **The Habitats Regulations**

28. The Secretary of State has considered the relevant requirements as set out in the Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations"). The Habitats Regulations require the Secretary of State to consider whether the Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on any site within the national site network, known as "protected sites". If likely significant effects cannot be ruled out, then an Appropriate Assessment must be undertaken by the Secretary of State, pursuant to Regulation 63(1) of the Habitats Regulations, to address potential adverse effects on site integrity. The Secretary of State may only agree to the Application (subject to Regulation 64) if she has ascertained that it will not adversely affect the integrity of a protected site.

29. The Secretary of State has considered the information submitted in the Application and the comments of consultees and is satisfied that the proposed changes do not alter the conclusions set out in the Applicant's ES and the Secretary of State's HRA of the development consented by the Order, and therefore a new HRA is not required.

## **General Considerations**

### Equality Act 2010

30. The Equality Act 2010 includes a public sector equality duty. 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 Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic (e.g. age; sex, sexual orientation, gender reassignment; disability; marriage and civil partnerships;<sup>3</sup> pregnancy and maternity; religion or 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.

31. The Secretary of State has had due regard to the need to achieve the statutory objectives referred to in s149 of the Equality Act 2010 and is satisfied that there is no evidence that granting this Application will affect adversely the achievement of those objectives.

### Human Rights Act 1998

32. The Secretary of State has considered the potential infringement of human rights in relation to the European Convention on Human Rights, by the amended development. The Secretary of State considers that the grant of consent for this NMC would not violate any human rights as enacted into UK law by the Human Rights Act 1998.

### Natural Environment and Rural Communities Act 2006

33. The Secretary of State notes the "general biodiversity objective" to conserve and enhance biodiversity in England, section 40(A1) of the Natural Environment and Rural Communities Act 2006, and considers the application to be consistent with furthering that objective, whilst having also had regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992 when granting development consent. The Secretary of State is of the view that biodiversity has been considered sufficiently in this Application for an amendment to accord with this duty.

## **Secretary of State's conclusions and decision**

34. The Secretary of State has considered the ongoing need for the Development and considers that the project continues to conform with the policy objectives outlined in the Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Renewable Energy (EN-3). The need for the Development remains as set out in the Secretary of State's letter of 11 February 2022.

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<sup>3</sup> In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.



35. As such, for the reasons set out in the paragraphs above, the Secretary of State is satisfied that the Applicant's request is justified to prevent any overheating of the export cables and that the Applicant has demonstrated that the proposed changes will not result in changes to the impact conclusions of the ES that accompanied the original Norfolk Vanguard Offshore Wind Farm application.
36. The Secretary of State has considered the nature of the proposed changes, noting that the proposed changes to the Development would not result in any further environmental impacts and will remain within the parameters consented by the Order.
37. The Secretary of State notes that the review of the energy National Policy Statements ("NPSs") recently concluded with the newly designated NPSs published on 22 November 2023. The Secretary of State does not consider that there is anything contained within the newly designated NPSs that would lead her to reach a different decision.
38. For the reasons given in this letter, the Secretary of State considers that there is a compelling case for authorising the proposed changes to Part 3 (Requirements) of Schedule 1 (Authorised project), in paragraph 16(18) of the Order. The Secretary of State is satisfied that the changes requested by the Applicant are not material changes to the Order and has decided under paragraph 2(1) of Schedule 6 to the Planning Act 2008 to make a NMC to the Order to authorise the changes detailed in the Application.

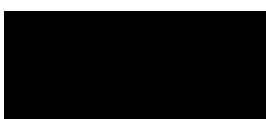
#### **Challenge to decision**

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

#### **Publicity for decision**

40. The Secretary of State's decision on this Application is being notified as required by Regulation 8 of the 2011 Regulations.

Yours sincerely,



John Wheadon

Head of Energy Infrastructure Planning Delivery

## ANNEX

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

Under section 118 (5) of the Planning Act 2008, a decision under paragraph 2(1) of Schedule 6 to the Planning Act 2008 to make a change to an Order granting development consent 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 Amendment Order as made is 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)