

Application by Norfolk Boreas Limited for an Order Granting Development Consent for the Norfolk Boreas Offshore Windfarm Project

Issue Specific Hearing 1:	Draft Development Consent Order
Date:	13 November 2019 at 10.00am
Location:	The Kings Centre, King Street, Norwich, NR1 1PH

Requested Attendees

- The Applicant
- Norfolk County Council
- Breckland District Council
- Broadland District Council
- North Norfolk District Council
- Marine Management Organisation (MMO)

Purpose of the first draft Development Consent (dDCO) hearing

The main purpose of the first dDCO hearing is to undertake an examination of the dDCO Articles and Schedules. In particular, to:

- Clarify issues around how the dDCO is intended to work – what is to be consented, the extent of the powers and what requirements, provisions and agreements are proposed;
- Identify any possible issues of prevention, mitigation or compensation not yet covered by the dDCO;
- Establish or confirm the views of other Interested Parties as to the appropriateness, proportionality or efficacy of proposals.

PLEASE NOTE: THE AGENDA WAS DRAFTED AND PUBLISHED BEFORE RECEIPT OF THE UPDATED dDCO AND OTHER SUBMISSIONS DUE ON 4 NOVEMBER 2019. THE AGENDA RELATES TO THE APPLICATION dDCO [APP-020].

Agenda

1. Welcome, introductions, arrangements for the hearing

2. Scenarios in the dDCO

The Applicant will be asked to set out its intention regarding the two scenarios.

3. Articles of the dDCO

The Applicant will be asked to provide a brief overview of each Part of the dDCO with specific reference to the reasons for the drafting amendments made to the Articles in the updated dDCO submitted 4th November.

The ExA will then ask questions in respect of the dDCO powers, seeking responses from the Applicant and Interested Parties.

Interested Parties will also be invited to ask questions of clarification in relation to dDCO Articles.

4. Schedules of the dDCO

The Applicant will be asked to provide a brief overview of the Schedules of the dDCO, with specific reference to the reasons for the drafting amendments made in the updated dDCO submitted 4th November.

The ExA wishes to focus on:

- a) Schedule 1 - Authorised Project (including Part 3 Requirements);
- b) Schedule 15 – Arbitration Rules; and
- c) Schedule 16 – Procedure for Discharge of Requirements.

The ExA will ask questions in respect of the dDCO powers, seeking responses from the Applicant and other Interested Parties.

5. Deemed Marine Licences

The Applicant will be asked to provide an overview of Schedules 9-13 – Deemed Marine Licences, with specific reference to the reasons for the drafting amendments made in the updated dDCO submitted 4th November.

The ExA will ask questions in respect of the dDCO powers, seeking responses from the Applicant and other Interested Parties.

6. Consents, licences and other agreements including Transboundary matters

The ExA will request a progress update as well as an indicative timescale for finalising agreements including protective provisions (Schedule 17), permits and landowner agreements.

7. Any other business

Detailed points for dDCO Agenda on 13th November 2019

3. ARTICLES

Article 2: Interpretation

Definition of commence:

- I. The ExA understand that this definition follows the East Anglia 3 DCO. What are the implications of the included exclusions?
- II. Whether 'tree protection measures' should be added to the operations which can be carried out before commencement. (Also see comments on Requirements 18 and 24). Whether the erection of temporary amphibian or reptile fencing should be added – or if this is covered.
- III. What is the definition of 'remedial work'?
- IV. Is the flexibility afforded by the 'carve outs' for exempted works such as site clearance, demolition etc. justified? The Applicant is requested to clarify any impacts for these works so the ExA can consider whether they are justified and/or need to be controlled by requirements.

Definition of maintain:

- I. How this accords with 'maintenance of landscape' used in Requirements 18 and 19. Whether 'landscape maintenance' needs a separate definition.

Part:

- II. Whether the interpretations should include a meaning of part – whether part refers to a geographical part or whether 'part' could be replaced with alternative phrasing such as 'work no. xxx may not commence until..'. See also Requirement 17.

Phase:

- III. Whether the interpretations should include a meaning of phase – whether phase refers to temporal, geographical or both. See also Requirement 15 ...

Stage:

- IV. Whether the interpretations should include a meaning of stage – whether stage refers to temporal or geographical distinctions; or both. Relevant for Requirements 15, 18, 20, 21, 23, 24, 25, 28, and the Outline Code of Construction Practice (OCoCP) and elsewhere.
- V. Whether the various plans secured by different requirements should be defined here (such as archaeological written scheme of investigation, code of construction practice, ecological management plan, landfall method statement, landscaping management scheme and others)

Article 6: Benefit of the Order

Transfer of Benefit concerns from MMO regarding mechanisms for two potential OWF developers working in close proximity; especially with regard to in-combination effects.

Article 11: Stopping up of streets

- I. Whether the powers are too widely drawn in 11(1) in terms of 'any street' and in terms of 'any other street' in 11(5)(b).
- II. What the meaning is of 'temporary' in this context.
- III. Whether there is a need for an article to include the power to alter the layout of streets.

Article 12: Access to works

12(2) confers deemed consent for means of access to works if the relevant planning authority does not notify the undertaker of its decision within 28 days. Whether local planning authorities and other Interested Parties who may be subject to this deemed consent time limit wish to comment.

Article 16: Authority to survey and investigate the land onshore

Whether it is likely that entry to land might be for purposes other than trial holes eg. excavation and/ or bore-holes, and if this should be stated in the article.

Article 35: Felling or lopping trees and removal of hedgerows

- I. Whether reference to Part 3 of the 1990 Act for the purposes of regulation 14 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012(b) is required.
- II. Whether it is necessary to confirm that the powers for lopping or felling trees or shrubs are limited to trees or shrubs within the Order Limits (as is stated for the hedgerows in 35(4)).
- III. Whether there should be a mechanism for notifying landowners of the intention to lop or fell trees or shrubs.
- IV. Whether this power over-rides (and whether it should over-ride) the mitigation set out in the OLEMS [APP-698] and elsewhere to reduce the working width of the cable corridor where hedgerows are crossed to 13m or 16.5m (for crossings at an angle).

Article 36: Trees subject to preservation orders.

Whether the inclusion of the date 28 February 2017 and the absence of a removal of trees subject to tree preservation orders (TPO) Schedule means that there were no trees subject to TPOs that would need removing, when assessment work was undertaken.

Article 37: Certification of plans

To note the need to ensure the final version refers to updated documents.

Article 38: Arbitration [and Schedule 15]

Consideration of concerns raised in relation to arbitration.

Article 39: Procedure in relation to certain approvals etc

Whether this article should also refer to Requirements 12, 19, 31 and 32.

Whether the list of organisations in 39(1) should also include government departments and other organisations specified in the Requirements.

4. SCHEDULES

a) Schedule 1 – Part 1 – Authorised Development

- I. How dDCO drafting could be improved to provide clarity in relation to the works that apply to the different scenarios, for example in relation to Associated Development.
- II. Whether transition pits should be included within the 'Authorised development' as described in Schedule 1 of the dDCO?

Work No. 12B:

in connection with Work Nos. 4C to 12B (c)

- I. Whether maximum heights for temporary office and welfare facilities should be given in the description of 'further associated development'
- II. Whether associated development only required under scenario 2 should be cited as such.

Part 3: Requirements

Requirement 15: Scenarios and stages of authorised development onshore

- I. Whether the title should include the word 'phase'.
- II. How parties can be certain of the meaning of 'commence' in the Norfolk Vanguard DCO, when currently only the final draft dDCO is in the public domain.
- III. Whether this cross reference should be considered at a later stage during examination.
- IV. Whether para (2) needs rewording to avoid use of the word commence (as defined in article 2 of this dDCO) when referring to scenarios 1 and 2. As proposed, those other operations specified in article 2's definition of commence could be started for scenario 2.
- V. Whether para (4) should refer to planning authorities in the plural and whether it should require the written scheme's approval by the relevant planning authorities. If so, should there be inclusion of a definition for 'relevant planning authorities'.

Requirement 16: Detailed design parameters

- I. Whether this requirement contains enough detail on which the future approvals can be based.
- II. Whether more detail on the design approach for the buildings and surroundings than that contained in the Design and Access Statement [APP-694, section 5.3.3] should be secured in the dDCO.
- III. Whether the details of the substation required by the Outline Landscape and Ecological Management Strategy (OLEMS) [APP-698, paras 65 to 67], secured in Requirement 18 should be consolidated in one place with those set out in Requirement 16.
- IV. How the discrepancies in para (4), between the Design and Access Statement [APP-694] and the dDCO and the ES need to be rectified.
- V. Explain the different 'existing ground levels' in para (8) and the reference to paragraph (8) in para (10); or whether the reference is to para (9).
- VI. Whether limits should be contained in this requirement to restrict all but the converter halls to a maximum height of 13m, based on the description of the substation in the ES [APP-218, para 346]. The Design and Access Statement [APP-694, Table 4.3] should also accord with the ES.
- VII. Whether any design parameters for link boxes should be set in this requirement.
- VIII. Whether the maximum sizes of temporary compounds (mobilisation areas and their compounds and the cable logistics area) which are set out in the ES should be secured in this Requirement.

Requirement 17: Landfall method statement

Whether there should be a requirement in the dDCO for sea defences around the cabling at landfall in response to various Relevant Representations, in particular Norfolk County Council's [RR-037], and concerns regarding cliff erosion in Happisburgh.

Requirement 18: Provision of landscaping

- I. How to resolve the timing of approvals and implementation with the article 2 definition of 'commence', in connection with sub para (2)(d) details of trees to be removed, details of trees and hedgerows to be retained and their protection measures – which might be required prior to 'commencement'.
- II. Whether the intention is to submit the Landscaping Management Strategy (LMS) as one complete document for approval or in parts.
- III. Whether para (1) should refer to approval by the relevant planning authorities (in the plural) as the OLEMS refers to agreeing standards with Breckland District Council and Norfolk County Council.
- IV. Whether sub para (2)(a) should set out more planting types than trees, such that it is clear that grass and ground flora areas are also covered.
- V. Whether sub para (2)(d) should also secure an auditable system for compliance with approved protection measures.

- VI. Is it correct that under scenario 1, the existing trees to be removed surveys would have been undertaken by Norfolk Vanguard [APP-698 para 141]? Or does this refer only to areas of woodland?
- VII. How are hedgerow trees considered? Under R18 or under R24? How does this relate to article 35 (Felling or lopping of trees and removal of hedgerows) and Schedule 14?
- VIII. Whether sub para (2)(f) should also refer to opportunities for advance planting. If so whether a definition of 'advance planting' should be provided in article 2.
- IX. Whether sub para (2)(h) gives enough detail about the maintenance operations and duration to be included for approval by the relevant local planning authority. And whether it should refer to an aftercare period as set out in the OLEMS.
- X. How to resolve discrepancies between the description of what the landscape management scheme (LMS) would include as set out in R18 and that in the OLEMS, which includes sustainable drainage design and guidance on materials and colour of the substations [APP-698, para 65]. (Refer to comments under R16)
- XI. Whether the agreed procedure for joint annual inspection of all planting areas set out in the OLEMS should be included as a sub para of R18 (2).
- XII. Whether reference should be made to the adoption of all Norfolk Vanguard mitigation planting as set out in the OLEMS [APP-698, para 141] for scenario 1.

Requirement 19: Implementation and maintenance of landscaping

To explain why para (2) needs to be 'agreed in writing' rather than approved by the relevant planning authority in the context of Requirement 30?

Requirement 20: Code of Construction Practice

- I. Whether contact details of the Agricultural Liaison Officer [APP-692, Appendix B] should be added to the list of details to be submitted prior to commencement.
- II. Whether relevant local authority should approve pre-commencement site work and preparation and if so, how.
- III. Whether the OCoCP should include details on controlling dust during construction (particularly on parts of the route that are in close proximity to homes and businesses),
- IV. Whether the effect on private water supply needs to be given further consideration in this requirement.

Requirement 23: Archaeological written scheme of investigation

- I. To consider the National Trust's request in its RR [RR-084] to be named in connection with the Blickling Estate as a consultee along with Norfolk County Council and Historic England in Requirement 23.

- II. How Ørsted's suggestion [RR-102] to manage archaeological impacts, if required where the cable corridors cross with Hornsea Three by adopting a consistent approach to targeted geophysical survey and trial trenching through a consistent approach to (Archaeological) Written Schemes of Investigation (WSI) being agreed with the relevant authorities prior to commencement of the consented works where the cables cross could be secured in the dDCO? Would the Requirement need to add a Hornsea Three party to those consulted in para (1)?
- III. Whether the dDCO adequately cover requirements for WSI regarding the intertidal zone, including needs for consultation with MMO?
- IV. How is it proposed within the dDCO to secure all mitigation measures included in the outline Archaeological Written Schemes of Investigations (offshore)?

Requirement 24: Ecological management plan

Whether para (3) should also refer to previously un-surveyed areas and surveyed areas for which existing surveys have time expired.

Requirement 25: Watercourse crossings

- I. The EA's RR-095 notes that Norfolk Vanguard (NV) committed to site-specific water crossing plans, but the Boreas OCoCP does not. The ExA notes that dDCO requirement 25 'Watercourse crossings' does commit to a 'scheme and programme for any such crossing, diversion and reinstatement'.
- II. Whether site-specific watercourse crossing plans need to be required in the Norfolk Boreas OCoCP as well as in Requirement 25.

Requirement 26: Construction hours

Further explanation of the approach to determining construction hours and the implications of altering these in locations near to sensitive receptors.

Requirement 31: Amendments to approved details

Whether the provisions in this requirement for amendments and variations are justified.

Requirement 32: Operational drainage plan

How have allowances for climate change been considered and does the flood risk assessment take account of UK Climate Projections 2018 (UKCP18)?

Other requirements

- I. Whether there should be a requirement covering reinstatement, for areas used temporarily during construction.

- II. Applicant's response to Norfolk County Council RR-037 request to work with National Grid to feed electricity into local transmission; whether there is precedence; whether such an arrangement should be secured in the dDCO.

b) Schedule 15 – Arbitration Rules

- I. Is there a definition in the dDCO for 'the Arbitrator' and if so, where?
- II. MMO concerns highlighted in Section 2.1 of RR-069 relating to timescales for discharge document submission; and to an appeal process related to applications for discharge of conditions.

c) Schedule 16 – Procedure for discharge of Requirements

Concerns of interested parties in relation to the discharge of requirements.

5. Schedules 9-13 Deemed Marine Licences

- I. NE raises a number of concerns in its relevant rep [RR-099]. These concerns will be reviewed in the light of comments on relevant representations submitted by the Applicant and other Interested Parties on 4th November at the ISH on 14th November.
- II. The MMO raises a number of concerns in its relevant rep [RR-069]. These concerns will be reviewed in the light of comments on relevant representations submitted by the Applicant and other Interested Parties on 4th November including:
 - i. concurrent piling both within the project and between Norfolk Boreas and Norfolk Vanguard (underwater noise effects) with consideration inclusion of a cooperation condition between potential Offshore Windfarm developers working in close proximity especially with regard to in-combination effects; recommendation of DCO/DML amendment for a worst-case scenario if more than one pile is to be installed within a 24-hour period [Schedules 9-13 Condition 21];
 - ii. the implication that new cable protection works are considered, by the Applicant, to be licenced for deployment at any time during the operation of the works; and [RR-069 2.1.33 to 39] requirement for new cable protection and foundation replacement during operations to be separately licenced [Schedules 9-13 Condition 22]];
 - iii. request for removal of the process in [Schedules 9-13 Part 5 Procedure for Appeals];
 - iv. 6 instead of 4 month timescale for submission of discharge documents [Schedules 9-13 condition 15(5)]; and
 - v. appeal process related to applications for discharge of conditions. [Schedules 9-13 Conditions 14 and 15].

6. CONSENTS, LICENSES AND OTHER AGREEMENTS

- I. Consideration of Norfolk County Council proposal that funds could be made available for the benefit of the resident and business communities affected by construction activities [RR-037].

- II. Progress in agreeing Protective Provisions including Cadent Gas Limited; National Grid and EA.
- III. How the Informative Note requested by The Coal Authority [RR-005] should be addressed in the dDCO.