

Norfolk Boreas Offshore Wind Farm Implications of any Secretary of State decision on the Norfolk Vanguard Offshore Wind Farm Application

Applicant: Norfolk Boreas Limited
Document Reference: ExA; AS-1.D3.V1
Deadline 3

Date: December 2019
Revision: Version 1
Author: Womble Bond Dickinson

Photo: Ormonde Offshore Wind Farm

Date	Issue No.	Remarks / Reason for Issue	Author	Checked	Approved
15/12/2019	01D	First draft for Deadline 3	WBD	JL/RS	
19/12/2019	01D	Final draft for Deadline 3	WBD	JL/RS	JL / RS



Table of Contents

1	Introduction	3
2	Secretary of State letter to Norfolk Vanguard	3
3	Conclusion.....	4
	Appendix 1: Letter from the Secretary of State to Norfolk Vanguard	6

1 Introduction

1. In accordance with the examination timetable at Annex A of the Planning Inspectorate's Rule 8 letter dated 19 November 2019, the Examining Authority (ExA) requested that Norfolk Boreas Limited (the Applicant) provides a response on the implications for the Norfolk Boreas Application of any Secretary of State decision on the Norfolk Vanguard Offshore Wind Farm application.

2 Secretary of State letter to Norfolk Vanguard

2. No decision has yet been taken by the Secretary of State on the Norfolk Vanguard Development Consent Order (DCO) application.
3. On 6 December 2019 the Secretary of State wrote to various interested parties (letter enclosed at Appendix 1) seeking updates or further information as appropriate.
4. The issues on which updates or further information were sought are:
 - Ornithology – mitigation to lessen or avoid any adverse effects on integrity of two SPAs, or alternatively evidence on alternatives, imperative reasons of overriding public interest and in-principle compensatory measures;
 - Haisborough Hammond and Winterton (HHW) SAC – mitigation to address potential effects of cable protection on SAC features, or alternatively evidence on alternatives, imperative reasons of overriding public interest and in-principle compensatory measures;
 - Proposed amended DML Condition on particle size;
 - Proposed piling methodologies and other construction techniques and a proposed amended DML Condition to address these;
 - In-combination water quality effects on harbour porpoise;
 - Proposed amended DCO Requirement on cumulative traffic movements at Cawston;
 - Proposed amended DCO Requirement on appearance of electrical equipment;
 - Trenchless crossings – whether there should be additions to the list of trenchless crossings – B1149 and Colby Road (Church Road);
 - Replacement period in landscaping scheme;

- Proposed amended DCO Requirement on timing of traffic management measures;
 - Proposed DCO amendment on non-standard construction hours;
 - Proposed DCO amendment on control of noise during operational phase;
 - Proposed amended DML Condition on notice of cable exposure; and
 - Proposed amended DML Condition on lighting and marking plan and operation and maintenance programme.
5. The deadline for responses to the Secretary of State's letter is Friday 28 February 2020. Comments will then be invited from interested parties within a further 28 days if appropriate.
 6. The Applicant will provide the ExA with a copy of Norfolk Vanguard's response to the Secretary of State's letter following submission.
 7. The Secretary of State's letter does not set a new deadline for a decision on the Norfolk Vanguard application. The letter states that a new deadline will be set "*as soon as possible once Parliament is in session*".
 8. The Applicant will provide a copy of the statement confirming the new deadline to the ExA once it is made available to the Applicant by the Secretary of State.
 9. The Applicant is also aware that on 17 December 2019 the Secretary of State agreed to a request to extend the period for Hornsea Project Three to respond to the Secretary of State's letter dated 27 September 2019. The Applicant understands that submissions are now due by 14 February 2020. The Secretary of State has also stated that it will be necessary to set a new deadline for a decision on the Hornsea Project Three application, and that this will be set as soon as possible. The Applicant will submit a copy of this letter to the ExA once it is available on the Planning Inspectorate's website.

3 Conclusion

10. Accordingly, both Hornsea Project Three and the Norfolk Vanguard applications await determination, and the position is no different to that presented by the Applicant during the November issue specific hearings. Namely that until the Applicant and the ExA know the basis on which these applications are determined, and the conclusions on relevant impacts, it is too early to establish the implications of any decisions for the Norfolk Boreas examination.
11. The Applicant considers that, from the perspective of the Norfolk Boreas examination, it is unfortunate that determination of the Norfolk Vanguard application has been delayed as this may potentially prevent the ExA, the Applicant,

and the Norfolk Boreas stakeholders from being able to focus on those aspects which are specific to the Norfolk Boreas application, in order to reduce duplication of time and effort for all parties concerned.

Appendix 1: Letter from the Secretary of State to Norfolk Vanguard



Department for
Business, Energy
& Industrial Strategy

1 Victoria Street
London
SW1H 0ET

Email: beiseip@beis.gov.uk
Web: www.gov.uk/beis

To:

Norfolk Vanguard Limited
Natural England
Marine Management Organisation
Norfolk County Council
Broadland District Council
North Norfolk District Council
Necton Parish Council

Your Ref:
Our Ref: EN010079

Date: 6 December 2019

Dear Sir or Madam,

Planning Act 2008 and The Infrastructure Planning (Examination Procedure) Rules 2010

Application by Norfolk Vanguard Limited (“the Applicant”) for an Order granting Development Consent for the proposed Norfolk Vanguard Offshore Wind Farm and associated offshore and onshore infrastructure (“the Norfolk Vanguard project”)

REQUEST FOR INFORMATION AND NOTIFICATION OF THE SECRETARY OF STATE’S DECISION TO SET A NEW DATE FOR DETERMINATION OF THE APPLICATION

1. Following the completion of the examination on 10 June 2019, the Examining Authority submitted a Report and Recommendation in respect of its findings and conclusions on the above application to the Secretary of State on 10 September 2019. In accordance with section 107 of the Planning Act 2008, the Secretary of State has three months to determine the application.
2. There are several issues on which the Secretary of State would be grateful if the parties identified in bold could provide any updates or information as appropriate. Additional comments from any interested parties on these points will also be considered. The issues are grouped by topic heading.

Request for information

Ornithology

3. In relation to in-combination impacts on the qualifying kittiwake feature of the Flamborough and Filey Coast Special Protection Area (“SPA”) and the qualifying lesser black-backed gull feature of the Alde-Ore Estuary SPA, the **Applicant**, in consultation with **Natural England** as necessary, is invited to provide information on any mitigation, not discussed during the Examination, which could lessen or avoid any adverse effects on the integrity of these sites.
4. In addition, or alternatively, **the Applicant**, in consultation with **Natural England** as necessary, is invited to provide evidence as to:
 - whether there are any feasible alternative solutions to the Norfolk Vanguard project which could avoid or lessen any adverse effects on the integrity of these sites;
 - any imperative reasons of overriding public interest for the Norfolk Vanguard project to proceed; and
 - any in-principle compensatory measures proposed to ensure that the overall coherence of the network of Natura 2000 sites is protected.
5. Compensatory measures should, if possible, be agreed by Natural England as at least sufficient, to offset the potential residual harm to the features of the Natura 2000 sites. In order that the Secretary of State can consider fully the application, the Applicant is requested to provide as much information as possible to explain the compensatory measures proposed and the feasibility of those measures. Details of the steps required to implement the compensation and proposed timescales to establish the compensatory measures should also be provided. Where disagreement remains between the parties on the assessment and quantification of an impact, compensation proposals should be provided for a range of scenarios.

Haisborough, Hammond and Winterton SAC

Site Integrity Plan

6. The Applicant has stated that up to 5% of the cable length within the Haisborough, Hammond and Winterton Special Area of Conservation (“SAC”) may require cable protection. Throughout the Examination, Natural England maintained a position that cable protection is not appropriate within the Haisborough, Hammond and Winterton Special Area of Conservation (“SAC”). The Secretary of State understands that both parties are agreed that a commitment by the Applicant to follow a Site Integrity Plan (“SIP”) approach would facilitate the identification of a final mitigation solution prior to construction. However, it is not clear whether any mitigations solutions currently exist. The **Applicant**, in consultation with the **Marine Management Organisation** and **Natural England** as necessary, is invited to provide information on the specific mitigation solutions that would address the potential effects of cable protection on the SAC features. In the absence of any identifiable mitigation measures, the **Applicant**, in consultation with **Natural England**, may wish to consider the provision of evidence as to:

- whether there are any feasible alternative solutions to the Norfolk Vanguard project which could avoid or lessen any adverse effects on the integrity of these sites;
- any imperative reasons of overriding public interest for the Norfolk Vanguard project to proceed; and
- any in-principle compensatory measures proposed to ensure that the overall coherence of the network of Natura 2000 sites is protected.

Particle Size Condition

7. At deadlines 8 and 9 of the Examination, Natural England advised the Examining Authority that changes to sediment distribution and composition can be minimised by securing the Applicant's commitment to ensure particle size of the deposited material matches the disposal site. In view of Natural England's advice, the Secretary of State invites comments from **Natural England, the Marine Management Organisation** and the **Applicant** on the inclusion of the following subsection (g) within Condition 3(1) of Schedules 11 and 12 of the DCO (Applicant's preferred DCO submitted at Deadline 9):

“Taken together with works authorised and proposed to be constructed pursuant to licences 1 and 2 (transmission)— disposal activities within the Haisborough, Hammond and Winterton Special Area of Conservation Site must not take place until the Marine Management Organisation has confirmed that the particle size composition of the disposal material is within 95% similarity to the particle size composition of the seabed at the disposal location.”

Marine Mammals

Vibro Piling and ‘blue hammer’

8. At the second Issue Specific Hearing and the subsequent written summary the Applicant provided details of other construction techniques that were being trialled including vibro-piling and the ‘blue hammer’ that are construction techniques which use vibration and hydro power respectively.
9. In view of possible use of vibro piling and ‘blue hammer’ construction techniques, the **Applicant**, in consultation with **Natural England** as necessary, is invited to provide information on the likely noise levels associated with these techniques. In addition, the Secretary of State invites comments from **Natural England, the Marine Management Organisation** and the **Applicant** on the inclusion of the following amended conditions in the DCO (Applicant's preferred DCO submitted at Deadline 9):
 - **Condition 14(1)(f) of Schedules 9 and 10, and Condition 9(1)(f) of Schedules 11 and 12.** *In the event that piled foundations or any other construction method that may have an impact on marine mammals, such as vibro-piling or ‘blue hammer’, are proposed to be used, a marine mammal mitigation protocol, in accordance with the draft marine mammal mitigation protocol, the intention of which is to prevent injury to marine mammals and following current best practice as advised by the relevant statutory nature conservation bodies.*

- **Condition 14(1)(m) of Schedules 9 and 10, and Condition 9(1)(l) of Schedules 11 and 12.** *In the event that piled foundations or any other construction method that may have an impact on marine mammals, such as vibro-piling or ‘blue hammer’, are proposed to be used, a site integrity plan which accords with the principles set out in the in principle Norfolk Vanguard Southern North Sea Special Area of Conservation Site Integrity Plan, and which the MMO is satisfied would provide such mitigation as is necessary to avoid adversely affecting the integrity (within the meaning of the 2017 Regulations) of a relevant site, to the extent that harbour porpoise area protected feature of that site.*

Water Quality

10. The Applicant’s Information for the Habitats Regulations Assessment document assesses the effect of changes to water quality on harbour porpoise from the Project alone, but it is noted that an assessment of this effect in-combination with other plans and projects has not been provided. The **Applicant**, in consultation with **Natural England** as necessary, is invited to provide information on this matter to inform the Secretary of State’s HRA.

Traffic Movements at Cawston

11. The Secretary of State is aware of concerns raised by local residents in respect of potential HGV movements along the B1145 (‘link 34’ in the Applicant’s Environmental Statement) road through Cawston both in relation to traffic movements potentially generated by the Norfolk Vanguard project on its own, but also in combination with traffic that might be generated by the proposed Hornsea Project Three Offshore Wind Farm (“H3”).
12. The Secretary of State notes that the Applicant submitted a revised Outline Traffic Management Plan at Deadline 8 of the Examination (Revision 3 of 30 May 2019) which included proposed measures for mitigating impacts from HGVs on Cawston (see link below).

<https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/EN010079/EN010079-003034-8.8%20Outline%20Traffic%20Management%20Plan.pdf>

13. The Secretary of State is aware that the Applicant submitted a “position statement” to the Norfolk Vanguard Examination at Deadline 9 which set out the respective positions of the Norfolk County Council and the Applicant with regard to “Unresolved Traffic Matters”. The position statement covered three topics: “Requested trenchless crossing of the B1149”; “Norfolk County Council – Link 34, B1145 Cawston – Highway Mitigation Measures”; and “The Street, Oulton – Highway Mitigation Measures” (see below).

[https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/EN010079/EN010079-003194-ExA;%20AS;%2010.D9.7%20Norfolk%20County%20Council%20Unresolved%20Traffic%20Matters%20Position%20Statement%20\(002\).pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/EN010079/EN010079-003194-ExA;%20AS;%2010.D9.7%20Norfolk%20County%20Council%20Unresolved%20Traffic%20Matters%20Position%20Statement%20(002).pdf)

14. The Secretary of State also notes that in the Statement of Common Ground between the Applicant and Norfolk County Council (submitted for Deadline 9), the Council states that its position on the B1145 Cawston – Highway Mitigation Measures, is that it *“believes a suitable access strategy can be produced that mitigates impact however..... the intervention scheme drawings and proposal before us are very much “work in progress”. In short, the scheme needs several changes, but we anticipate they will be amendments rather than a complete re-think”* (see below). This statement is also set out in the position statement mentioned above.

[https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/EN010079/EN010079-003193-Rep3%20-SOCG%20-15.1%20Norfolk%20Vanguard%20SoCG%20-%20NCC%20\(002\).pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/EN010079/EN010079-003193-Rep3%20-SOCG%20-15.1%20Norfolk%20Vanguard%20SoCG%20-%20NCC%20(002).pdf)

15. The Secretary of State notes from the above submissions that the Applicant and Norfolk County Council believe there is a reasonable expectation that an appropriate mitigation scheme could be brought forward for traffic movements at Cawston. However, the Secretary of State considers that it is not apparent from exchanges during Examination that these will be sufficient to offset any potential harm from in-combination traffic effects arising from the proposed Norfolk Vanguard project and H3 in the event that both were granted development consent.

16. The Secretary of State is considering whether it would be necessary to introduce an amendment to Requirement 21 of the last version of the ExA’s DCO (submitted at Deadline 9) to provide additional mitigation for cumulative impacts that might arise in the event that both the Norfolk Vanguard project and H3 developments are granted consent. The Secretary of State would be grateful for comments from the **Applicant, Norfolk County Council** and **Broadlands District Council** on the possible incorporation of the following wording into any development consent order that might be made in respect of the Norfolk Vanguard offshore wind farm:

“In circumstances where the Hornsea Project 3 DCO is made and development of the Hornsea Project 3 commences, and notwithstanding the requirement of sub-paragraph (a) of paragraph (1) above, the traffic management plan shall include, in respect of Link 34 as referred to in the Environmental Statement, revised details of a scheme of traffic mitigation which shall be submitted to, and approved in writing by, the relevant planning authority, in consultation with the highway authority.”

Appearance of Electrical Equipment

17. The Secretary of State notes some discussion during the Examination about mitigation for the potential visual impacts of certain onshore works proposed as part of the Norfolk Vanguard project. In particular, there was discussion about design mitigation for the proposed extension of the National Grid substation at Necton (Work 10A). The Secretary of State notes that work 10A is not specifically covered in the mitigation provisions of the Applicant’s proposed DCO as submitted at Deadline 9 of the Examination.

18. The Secretary of State is considering whether to amend Requirement 16(9) of the Applicant's proposed DCO in the following terms:

"The external electrical equipment comprised in Work No. 10A (the external appearance of which shall have been approved in writing by the relevant planning authority prior to commencement of its construction) must not exceed a height of 15 metres above existing ground level."

19. The Secretary of State asks the **Applicant, Norfolk County Council** and **Necton Parish Council** for their views on the proposed amendment.

Additions to Trenchless Crossings

20. The Secretary of State is aware that there was consideration during the Examination of the extent of the requirements for trenchless crossing to be utilised in a number of locations along the onshore export cable route. In particular, the Secretary of State notes that at the end of the Examination, there was disagreement between the Applicant and North Norfolk District Councils and Norfolk County Council about whether two particular sections of the local road network – along the B1149 and on Colby Road (Church Road), north of Banningham – should be added to the list of trenchless crossings as set out in Requirement 16 of the Applicant's proposed development consent order as submitted to the Examination for Deadline 9.

21. The Secretary of State would be grateful for the views of the **Applicant, Norfolk County Council** and **North Norfolk District Council** on this proposal.

Replacement Period in Landscaping Scheme

22. The Secretary of State notes discussion during the Examination about the duration of any planting period, with ten year and five-year periods being proposed by North Norfolk District Council and the Applicant respectively. While it appears from the Statement of Common Ground prepared by North Norfolk District Council and the Applicant that there was agreement on a ten year planting period, the Secretary of State notes that Requirement 19(2) of the proposed DCO submitted by the Applicant for Deadline 9 of the Examination sets a five year period for remedial planting.

23. The Secretary of State would be grateful for comments from **North Norfolk District Council** and the **Applicant** on whether the ten-year period is agreed as a provision in any DCO that might be made by the Secretary of State.

Timing of Traffic Management Measures

24. The Secretary of State notes the importance of the consideration of traffic and transport issues during the Examination of the Application. The Secretary of State is, therefore, considering amending Requirement 21(2) of the development consent order submitted by the Applicant for Deadline 9 of the Examination, as follows:

“The plans approved under paragraph (1) must be implemented ~~upon~~ prior to commencement of the relevant stage of the onshore transmission works.”

25. The Secretary of State would be grateful for comments from the **Applicant, Broadlands District Council** and **Norfolk County Council** on the proposed revision.

Non-standard Construction Hours

26. The Secretary of State notes that there was consideration during the Examination of how mitigation for impacts arising from non-standard construction hours might be given effect. The Secretary of State notes the provision made by the Applicant in its proposed DCO submitted at Deadline 9 for such mitigation. However, the Secretary of State considers that the following amendment should be made to the proposed DCO in the following terms:

“Save for emergency works, ~~the timing and duration~~ full details, including but not limited to type of activity, vehicle movements and type, timing and duration and any proposed mitigation, of all essential construction activities under paragraph (2) and undertaken outside of the hours specified in paragraph (1) must be agreed with the relevant planning authority in writing in advance, and must be carried out within the agreed time.”

27. The Secretary of State would be grateful for comments from the **Applicant** and **North Norfolk District Council** on the proposed amended wording.

Control of Noise During Operational Phase

28. The Secretary of State notes the concerns expressed during the Examination of the Application about noise impacts at the proposed substation for the project both during the operation and maintenance of the infrastructure. The Secretary of State is considering whether an amendment to proposed DCO submitted by the Applicant at Deadline 9 of the Examination should be made to cover an event where agreed noise levels have been breached. The Secretary of State’s proposed amendments are as follows:

“Control of noise during operational phase and during maintenance

1.—(1) The noise rating level for the use of Work No. 8A and during maintenance must not exceed 35dB $L_{Aeq, (5\text{ minutes})}$ at any time at a free field location immediately adjacent to any noise sensitive location.

(2) The noise rating level for the use of Work No. 8A and during maintenance must not exceed 32 dB $L_{Leq(15\text{ minutes})}$ in the 100Hz third octave band at any time at a free field location immediately adjacent to any noise sensitive location.

(3) Work No. 8A must not commence operation until a scheme for monitoring compliance with the noise rating levels set out in paragraphs (1) and (2) above has been submitted to and approved by the relevant planning authority. The scheme must include identification of suitable monitoring locations (and alternative surrogate locations if appropriate) and times when the monitoring is to take place to demonstrate that the noise

levels have been achieved after both initial commencement of operations and six months after Work No. 8A is at full operational capacity. *Such measurements shall be submitted to the relevant planning authority no later than 28 days following completion to confirm the rating level of operational noise emissions do not exceed the levels specified in subparagraphs (1) and (2), including details of any remedial works and a programme of implementation should the emissions exceed the stated levels.*

(4) *The monitoring scheme must be implemented as approved.*”

29. The Secretary of State would be grateful, for the views of the **Applicant, Norfolk County Council** and **North Norfolk District Council** on the proposed changes to the development consent order.

Part 4 Condition 9(12) of Schedules 9 and 10, and Condition 4(12) of Schedules 11 and 12 – notice of cable exposure

30. The Secretary of State notes that during the Examination there was a disagreement between the MMO and the Maritime and Coastguard Agency on the one side and the Applicant on the other about the timescale within which notification of damage to buried cables offshore should be provided by the Applicant.

31. The Secretary of State is considering whether to amend the Applicant’s proposed DCO submitted at Deadline 9 in the following way:

“Delete ‘five days’ and replace with ‘three days’.”

32. The Secretary of State would be grateful for comments from the **Applicant**, the **Marine Management Organisation** and the **Maritime and Coastguard Agency** on the proposed change.

Conditions 14(1) and 9(1) of Schedules 9 and 10, and Condition 9(1) of Schedules 11 and 12 – lighting and marking plan and operation and maintenance programme

33. The Secretary of State notes that during the Examination there was a disagreement between the Maritime and Coastguard Agency and the Applicant about when a Lighting and Marking Plan and an Operation and Maintenance Programme should be submitted by the Applicant to the Maritime and Coastguard Agency. The Secretary of State would be grateful for comments from the **Applicant** and the **Maritime and Coastguard Agency** on the following amendment to the Applicant’s proposed DCO submitted at Deadline 9:

Add: “(n) a lighting and marking plan.” and “(o) an operation and maintenance programme.”

The deadline for responses is 23.59 on Friday, 28 February 2020.

34. Responses on the information requested above should be submitted by email to: NorfolkVanguard@planninginspectorate.gov.uk .

35. Please also send any hard copy response to the Norfolk Vanguard Offshore Wind Farm Team, Secretary of State for Business, Energy and Industrial Strategy, c/o the Planning Inspectorate, 3D Eagle Wing, Temple Quay House, Temple Quay, Bristol, BS1 6PN. If you will have difficulty in submitting a response by the consultation deadline, please inform the Project Team as soon as possible. An explanation of the reasons for this should also be provided.

36. Responses will be published on the Norfolk Vanguard Offshore Wind Farm project page of the National Infrastructure Planning website as soon as possible after 28 February 2020:

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

37. Comments will then be invited from interested parties within a further 28 days on the above matters only (if appropriate). The Secretary of State will then consider the responses and information received in reaching a decision on the Application.

New Deadline

38. In order to allow time for the steps above to be taken, the Secretary of State will be setting a new deadline for a decision on the Application. A statement confirming the new deadline for a decision will be made to the House of Commons and the House of Lords in accordance with section 107(7) of the Planning Act 2008 as soon as possible once Parliament is in session.

39. This letter is without prejudice to the Secretary of State's decision whether or not to grant development consent for the Norfolk Vanguard project, and nothing in this letter is to be taken to imply what the eventual decision might be or what final conclusions the Secretary of State may reach on any particular issue which is relevant to the determination of the application.

Yours faithfully

Gareth Leigh

Gareth Leigh
Head of Energy Infrastructure Planning