

Norfolk Boreas Offshore Wind Farm Applicant's Comments on Deadline 7 Submissions

Applicant: Norfolk Boreas Limited
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Author: Royal HaskoningDHV

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Glossary of Acronyms

AEoI	Adverse Effect on Integrity
DCO	Development Consent Order
dDCO	Draft Development Consent Order
DML	Deemed Marine Licences
dDML	Draft Deemed Marine Licence
EIA	Environmental Impact Assessment
ES	Environmental Statement
ExA	Examining Authority
HHW	Haisborough, Hammond and Winterton
HRA	Habitats Regulations Assessment
IPMP	In Principle Monitoring Plan
Kj	Kilojoules
MMO	Marine Management Organisation
MoU	Memorandum of Understanding
NE	Natural England
NSIP	Nationally Significant Infrastructure Project
OASIS	Online Access to the Index of Archaeological Investigations
OMP	Operations and Maintenance Plan
OOOMP	Outline Offshore Operations and Maintenance Plan
OWF	Offshore Wind Farm
SAC	Special Area of Conservation
SIP	Site Integrity Plan
SNCB	Statutory National Conservation Bodies
SoCG	Statement of Common Ground
SoS	Secretary of State
UK	United Kingdom
UXO	Unexploded Ordnance
WSI	Written Scheme of Investigation

1 Applicant's Comments on Deadline 7 Submissions

1. This document contains the Applicant's comments on submissions by Interested Parties at Deadline 7 of the Norfolk Boreas Examination.

1.1 REP7-037 Cawston Parish Council

Summary of Submission	Applicant's Comments
<p>REP7-037 shares the results of a survey of residents / recent residents, carried out on 14 – 15 March by Cawston Parish Council via email and social media.</p> <p>Cawston Parish Council received 25 responses to their survey, and the submission includes a summary of quantitative and qualitative responses to the questions posed.</p>	<p>The Applicant notes the survey undertaken on behalf of Cawston Parish Council (14-15 March). Cawston PC received 25 responses to their survey, and the submission includes a summary of quantitative and qualitative responses to the questions posed.</p> <p>On review of the responses presented, the Applicant notes a number of general themes that characterise residents' evaluation of the baseline environment:</p> <ul style="list-style-type: none"> • Pedestrian conflict with vehicles; • High speeds through Cawston Village Centre • Cars parking on pavements; and • Risk to children walking to/from school. <p>The consistent tone from responses presented is that the concerns of pedestrians relating to existing conditions would be exacerbated by the introduction of additional construction HGVs related to the Norfolk Boreas and Hornsea Project Three Offshore wind farm projects, and consequently, perceived risks to pedestrian safety will be greatly increased.</p> <p>These issues are recognised and addressed in detail within The Revised Cawston Highway Intervention Scheme Technical Note [REP4-016] and the Revised Cawston Highway Intervention Scheme Road Safety Audit Decision Log (RSADL) [REP5-055] which includes the Road Safety Audit.</p> <p>In addition, the Applicant's Deadline 7 Submission - Applicant's Comments on Deadline 6 Submissions and Other Submissions [REP-016] provides evidence of the effectiveness of 20mph Zones in improving road safety.</p> <p>It appears from the residents' responses that the scope of the Highway Intervention Scheme (HIS) and overall package of measures to mitigate the issues raised are not clearly understood by residents.</p>

Summary of Submission	Applicant's Comments
	<p>The Applicant was able to respond to a number of the queries and clarify some key benefits of the HIS during the ASI through Cawston High Street. [REP7-017] Norfolk Boreas Limited Deadline 7 Submission - Applicant's Responses to the Examining Authority's Third Round of Written Questions sets out the Applicant's understanding that NCC have no further objections to the HIS and the scheme can be considered finalised</p> <p>The Applicant has committed to ongoing engagement throughout pre-construction and construction phases of the project should it be consented and proceed to construction. An important remit of this ongoing engagement will be to ensure potentially affected parties, know what works are planned where and when, and understand the mitigation in place to limit any temporary impacts as far as possible. There will also be opportunities for two way dialogue so that any appropriate local suggestions which can further mitigate impacts and allay residents' concerns, that can be accommodated, might also be considered.</p>
<p>Cawston PC supports the requests from Norfolk CC and the District Councils that this deadline be extended to the end of April and urging the ExA to extend the examination period.</p>	<p>The Applicant notes the requests raised by Local Authorities and some interested parties to delay the Examination by a period of three months, as well as concerns raised by those parties that it may not be possible to meet the deadlines set in the revised timetable issued on 19 March 2020. Whilst the actions required in the outstanding deadlines fall primarily on the Applicant, the Applicant recognises the difficulties which face all those participating in the Examination as a result of Covid 19 and will assist parties wherever possible. Whilst the Applicant is able to meet the revised Examination deadlines, where the Examining Authority exercises its discretion to accept late submissions the Applicant is also willing to be flexible to respond to late submissions as soon as practicable. As the Examination was front loaded, many of the issues which were capable of resolution have now been resolved and where matters cannot be resolved, the parties' respective final positions are already known and clearly set out. Therefore the Applicant is also of the view that any remaining issues can be dealt with in writing within the time still available before the close of the Examination on 12 May 2020. In the Applicant's view, it is also important that where Examinations</p>

Summary of Submission	Applicant's Comments
	<p>can proceed fairly to completion without any delay, as in this case, this should be encouraged to aid recovery of the economy post Covid 19. The implications of delays on renewable energy projects are also significant given the need for a timely consenting decision to enable bidding into the next CfD auction (as currently timetabled for 2021) and to meet the policy imperatives of contributing to decarbonisation during the 2020s.</p>

1.2 REP7-038 Norfolk County Council

Summary of Submission	Applicant's Comments
<p><u>Question:</u> Proposed disapplication of secondary consent, in relation to drainage: The Applicant provides an explanation in [AS-024] table 15 item 5 for the proposed disapplication under dDCO Article 7 (3) of secondary/ additional consents, with reference to representations by Water Management Alliance [RR-104] and by Norfolk CC [RR-037]. Are parties content? If not, why not?</p> <p><u>Their Response:</u> The planning inspector is asking if we are happy with the explanation and are content with the order removing (disapplying) the requirement for the various consents for an in-principle consent with detailed plans etc. submitted and approved as required by schedule 17 part 7 and requirement 25 of the DCO. Not content: We previously stated that the project appears to include numerous trenched watercourse crossings (31), with one trenched crossing of the main Wendling Beck watercourse, also designated as a main river by the Environment Agency, and a trenched watercourse crossing of the Blackwater Drain main river. Where the proposals involve works to any ordinary watercourse a consent will be required. The number of these, where applicable, should be determined and applications for block, or phased</p>	<p>The DCO provides for approval of detailed plans in the protective provisions for the Environment Agency and the relevant drainage authorities in Schedule 17. Schedule 17, Part 7 provides control mechanisms to govern the interaction, such as the need for the Applicant to submit plans for approval prior to constructing the relevant works together with a process for the drainage authority to request further measures to safeguard flood defences and avoid damage to the watercourse, at the cost of the developer.</p> <p>In addition Requirement 25 of the DCO states that crossing, diversion and subsequent reinstatement of any designated main river or ordinary watercourse may not commence until a scheme and programme for any such crossing, diversion and reinstatement in that stage has been submitted to and, approved by the relevant planning authority in consultation with Norfolk County Council, the Environment Agency, relevant drainage authorities and Natural England.</p> <p>The Water Management Alliance have confirmed that they are comfortable with the disapplication and the provision made under Schedule 17 Part 7, please refer to their submission at Deadline 7 [REP7-065].</p> <p>The Environment Agency have not raised any concerns over the disapplication of the additional consent, with only one outstanding point of detail on the</p>

Summary of Submission	Applicant's Comments
<p>consents should be made to the appropriate authority, including the flood and water management team at Norfolk County Council or the Internal Drainage Board.</p> <p>7 (3) states that the following provisions do not apply – section 23 of the land drainage act? – replaced by approval of plans – is approval of a plan a sufficient control mechanism? The LLFA would request some information as a consent application.</p> <p>Schedule 17 part 7 – 71 – plans to be submitted within 28 days - we would normally ask for 8 weeks to approve – these should address reasonable requirements we may make for protection of any drainage work - does this adequately cover requirements in place of a consent? - consent is a reasonable requirement. If all standard crossings, then maybe sufficient – need evidence of number and method. The work required would be the same as that to apply for a consent – process the same -no need to duplicate – just consent required.</p> <p>EA not consulted on this question ? But main rivers to be crossed.</p> <p>IDB – concerns regarding effect on Bylaws 3 & 28</p> <p>As the LLFA do not regulate and maintain ordinary watercourses, Article 15(3) of the draft DCO does not apply unless we are the riparian owners.</p>	<p>protective provisions remaining, which is being progressed through the statement of common ground.</p> <p>The Applicant also notes that the matter of Article 15 and Requirement 25, which also contain the same provisions as that included in the draft Norfolk Vanguard Order, were agreed with NCC during the Norfolk Vanguard examination, as reflected in the SoCG submitted at Deadline 9 of the NV examination. The Norfolk Vanguard applicant also made changes to the Norfolk Vanguard dDCO at Deadline 4 to address comments from NCC on the process connected to Article 15 and the protective provisions for the protection of drainage authorities; these changes have been reflected in the Applicant's dDCO.</p>

1.3 REP7-039 The MMO Written response to Deadline 6

Summary of Submission	Applicant's Comments
<p><u>End of Construction</u></p> <p>The MMO has reviewed the Applicant's and Natural England's (NE) responses to written question 2.5.0.1 (REP5-045). The MMO has continued to have discussions with both the applicant and NE on this point and is considering further information provided by them.</p> <p>After further internal discussion the MMO does not believe that the conditions set out by the Applicant provide a clear enough confirmation to the MMO and relevant stakeholders (e.g. NE) of the point when construction is proposed to end.</p>	<p>The Applicant discussed the proposed condition with the MMO on Friday 3rd April 2020, setting out a number of concerns, particularly on the inclusion of the second sentence, which states " <i>From this date only activities defined as operations and maintenance can be conducted under this consent</i>". In summary:</p> <ul style="list-style-type: none"> As set out in the Applicant's responses to WQ2.5.0.1 [REP5-045], the DMLs already contain notification requirements (see Condition 9 of Schedules 9-10 and Condition 4 of Schedules 11-12 and Condition 3

Summary of Submission	Applicant's Comments
<p>The MMO has reviewed these conditions to see if they can be amended to include further confirmation and specifically include Natural England's concerns. However, as these conditions are for specific purposes, expanding them could actually impact on their intention and effectiveness.</p> <p>The MMO believes a standalone condition relating to the end of construction would ensure clarity for all of when Operation and Maintenance begins. The MMO propose the following condition:</p> <p>Schedule 9 Condition 9 (13) (and relevant conditions in Schedules 10-13)</p> <p><i>(13) The undertaker must notify the MMO of the completion of construction (within ten days) of completion of the licensed activities in order to ensure all relevant parties are aware of construction ending. From this date only activities defined as operations and maintenance can be conducted under this consent.</i></p>	<p>of Schedule 13). Therefore, there is no need to include a separate condition which would effectively duplicate this.</p> <ul style="list-style-type: none"> In any event, a separate notification element for the MMO is not considered necessary. The MMO should be able to make a case by case decision on whether construction has come to an end by observing whether the development has been completed in accordance with the approvals which the MMO has itself given in discharging the relevant conditions of the DML. The second part of the proposed condition has the potential for serious consequences, because the implication is that consent will lapse for any part of the development not constructed at the point the notice is served. There is no precedent for including such a condition in the DMLs. To the Applicant's knowledge such a condition has never been included in any deemed marine licence, any marine licence or any planning permission. For planning permissions, this would be governed by the separate regime under which planning permissions can be revoked (to the extent not completed), but revocation of planning permissions can only be justified in certain specified circumstances. In addition, compensation may be payable where loss is incurred as a result of the revocation. With this in mind, and noting that the MMO has a wide power to revoke a licence under section 72(3)(d) of the MCAA 2009, the Applicant considers that such a condition would not meet the tests set out in paragraph 55 of the National Planning Policy Framework (NPPF) (2019) and embedded in the NSIP regime through paragraph 4.1.7 and 4.1.8 of EN-1 (as explained further below). A condition which has such serious consequences in the event of, for example, the incorrect service of the notice, cannot be said to be 'reasonable in all other respects'. In proposing the condition, the MMO has not sought to justify its purpose, and the extent to which it meets the tests set out in paragraph 55 of the NPPF. Paragraph 55 of the NPPF states:

Summary of Submission	Applicant's Comments
	<p><i>"Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects."</i></p> <p>It is not clear to the Applicant, how or why the MMO considers the condition meets these tests. No explanation has been given as to why it is necessary; relevant to planning; and relevant to the development; or how it meets the tests of being enforceable, precise and reasonable in all other respects. The Applicant's clear position is that it is not necessary to attach such a condition to determine 'headroom' in the future, and if this is the MMO's only purpose in requiring such a condition, it would not meet the tests of being relevant to planning and relevant to the development – it does not, for example, secure any mitigation.</p> <ul style="list-style-type: none"> The extent to which such a condition would be enforceable is also questionable. If a development had completed construction but a notice had not been served, would the MMO seek to take enforcement action, and if so how and for what purpose? How would the MMO prove that construction had completed, and if they could prove this that would only serve to prove that the condition was not necessary in the first place. It would also be open to an undertaker not to fully construct the development, such that the condition would never become operative and would be of no effect. <p>The Applicant understands that the MMO is considering these matters and its position further. A meeting has been scheduled for 23rd April 2020 to discuss this further, and an update will be provided at Deadline 9.</p>
<p><u>Updating documents at the end of examination</u></p> <p>The MMO welcomes the addition of Schedule 18 and understands the Applicant will be providing an example at deadline 7. The MMO will provide comment on this at Deadline 8.</p>	<p>This was discussed further on 3rd April 2020 with the MMO, however no additional documents were identified during that call. A further call to discuss this issue has been scheduled for 23rd April 2020 and the MMO has agreed to provide the Applicant with further comments on Schedule 18 prior to that</p>

Summary of Submission	Applicant's Comments
<p>The MMO is still discussing what else could be required (including a table of parameters) with the Applicant and NE to come to agreement within Examination.</p>	<p>meeting. Therefore, the Applicant anticipates that any agreed changes can be incorporated in the final dDCO to be submitted at Deadline 10.</p>
<p><u>New Cable and Scour Protection</u></p> <p>The MMO discussed at Deadline 1 that a position statement was being produced in relation to New Cable or Scour Protection. The MMO believes that to maintain its ability to review each application on a case by case basis, and taking account of the specific circumstances of each case, providing a formal position statement would not be appropriate. However, the MMO has provided some general principles that will be used in assessing cable protection below.</p> <p>The MMO notes this is not an issue for the Norfolk Boreas Project as the Applicant has agreed that any new scour or cable protection would require a new marine licence and this has been confirmed in the Operations and Maintenance Plan.</p> <p>Any cable or scour protection which is proposed in areas where no such protection was employed during the construction phase of the wind farm is considered new cable or scour protection, and therefore cannot be properly considered to be a maintenance activity.</p> <p>Any new cable or scour protection must generally be consented through a separate marine licence and not through the Operation & Maintenance plan.</p> <p>In addition to this any separate marine licence for operation and maintenance should generally not include new cable or scour protection unless it is for maintenance of protection employed during the construction phase, and must generally be consented through a separate marine licence.</p> <p>For marine licence cable and scour protection applications that are not in marine protected areas in respect of benthic habitat features, the MMO may consider it appropriate to offer a long term licence of a maximum of 10 years.</p>	<p>The Applicant agrees with the MMO's pragmatic approach of assessing individual projects on their own merit.</p> <p>In the unlikely event that cable protection is required in new areas during the operation phase the Applicant would be required to apply for a new marine licence as per the MMO advice.</p>

Summary of Submission	Applicant's Comments
<p>For marine licence cable and scour protection applications that are in marine protected areas in respect of benthic habitat features, the MMO will generally require a separate marine licence to be in place for each and every individual campaign of scour and cable protection employed throughout the lifetime of the project.</p>	

1.4 REP7-041 The MMO Response to Norfolk Vanguard Secretary of State Letter dated 06 December 2019

- The Applicant notes this submission. The Applicant considers that all relevant information within this document has already been addressed through the Norfolk Boreas Examination and it raises no additional areas of disagreement.

1.5 REP7-043 Natural England's cover letter

- The Applicant notes that Natural England will "*endeavour to engage in SoCG*" for Deadline 8 however further correspondence with Natural England has highlighted that the earliest they will be able to engage with the Applicant is 10th April 2020 and therefore the next SoCG will be submitted for Deadline 9.
- The Applicant notes that Natural England will provide further advice to Norfolk Boreas on a range of matters including the In Principle Derogation case at Deadline 9. The Applicant welcomes this and will endeavour to take any advice into account in the final version submitted at Deadline 10.

1.6 REP7-044 Natural England DCO Documents Submitted at Deadline 5 and 6

Summary of Submission	Applicant's Comments
<p><u>Schedule of changes to the Draft DCO (Version 4)</u> Natural England welcomes the change, however notes that the minimum turbine size of 11.55MW should also be secured within the table.</p>	<p>Please see the Applicants response to written question Q3.2.1.3 subsection 2. [Applicant's Responses to the Examining Authority's Third Round of Written Questions REP7-017] for the Applicant's justification for why it is not appropriate to secure the minimum 11.55MW turbine size within the DCO.</p>
<p><u>3.1 Updated Draft DCO (Version 5)</u></p>	<p>See above</p>

Summary of Submission	Applicant's Comments
<p>Comment is captured within schedule of changes to draft DCO comment above.</p>	
<p>Note on Requirements Annex 1 Diagram 2. On the diagram showing Relationship of Pre-commencement Plans secured by DCO and DMLs, for the offshore section. Natural England considers that reference should be made here to the requirements to submit monitoring methodologies, including the new proposed plan for ornithological monitoring aims and objectives to be submitted</p>	<p>The Applicant will review the Note on Requirements and if considered necessary Annex 1 diagram 2 will be updated to include the 2 strands of the Ornithological monitoring plan. An Updated version of the Note on Requirements will be submitted at Deadline 9.</p>
<p>Schedule of mitigation. In relation to the operations and maintenance section of the table we wish to reiterate the comments we made on the updated CRM for Boreas alone regarding:</p> <ul style="list-style-type: none"> the suggested revision to the draft DCO wording that the Applicant suggested in that document to secure the mitigation and draught height (assuming this was included and still stands) and the need for clarification on points of reference used for hub heights, tidal offset and draught height (i.e. MHWS rather than HAT). 	<p>In response to WQ3.2.1.3 (REP7-017) the Applicant submitted further clarification on the DCO conditions which ensure the collision risk mitigation is secured, and this wording is already included in the schedule of mitigation (Version 3).</p> <p>The Applicant submitted clarification on sea level points of reference as used in the collision risk modelling at Deadline 7 (REP7-031).</p> <p>The Applicant does intend to submit an updated version of the Schedule of Mitigation at Deadline 9 however the Applicant does not consider any updates are required as a direct response to these comments.</p>
<p>8.1 Outline Code of Construction Practice Version 3</p>	
<p>Page 66, Paragraph 210: Appendix E - It is not clear how many hedgerow gaps will be required for vehicle access routes along the onshore cable. It is not clear how and when the impact of this will be assessed once the detailed design is completed, particularly in relation to impacts upon hedgerows of medium to high importance for Barbastelle.</p>	<p>The locations of the hedgerow gaps which need to be retained for vehicle access will not be identified until the detailed design stage when the locations of the jointing pits are identified. The list provided in Appendix E is just to identify those locations where the cable route installation may be crossed at an angle.</p> <p>The species-specific mitigation, including for bats, are detailed in the OLEMS and will be updated in line with the detailed design in the final Ecological Management Plan. Mitigation as agreed with Natural England with regards to bats and hedgerows are detailed in Sections 7.2, 9.2 and 9.7 of the OLEMS and includes, that:</p>

Summary of Submission	Applicant's Comments
	<p>A Hedgerow Mitigation Plan will be developed in consultation with Natural England prior to the removal of hedgerows. This mitigation plan will be included within the EcoMP (secured through DCO Requirement 24). This mitigation plan will detail the reinstatement approach for hedgerows removed during construction and the monitoring and maintenance requirements following hedgerow planting.</p>
<p>Page 56, Paragraph 175: We note the additional text added to Version 3 regarding emergency operations in SSSIs, and the Applicant's commitment to update the text to reflect the suggestions of Natural England for the next revision.</p>	<p>The text in Section 3 on emergency operations in the OCoCP (Version 4, submitted at Deadline 8) has been updated in accordance with the Natural England suggestion.</p>
<p>Page 45, Paragraph 142: Natural England note the additional text included with regards a preconstruction survey of each crossing location. Please can the Applicant clarify if pre construction surveys will include a phase 1 survey? We would also welcome the inclusion of the term ecological enhancements, to differentiate between flood risk and sediment management enhancements. Natural England would welcome further definition of post construction ecological monitoring to be included on the OCoCP, to include detail of what will be monitored and at what time intervals (we note that more detail was provided in the response to Ex WQ 2.15.0.11 but that this does not appear to have been incorporated into the DCO documents as yet.).</p>	<p>The Applicant can confirm that all unsurveyed areas, including watercourses, within the onshore project area will be subject to an Extended Phase 1 Habitat Survey prior to construction at the optimum time of the year, this is detailed in the OLEMS (see Section 9.4.3.1), secured through draft DCO Requirement 24.</p> <p>Section 11 of the OCoCP has been updated to state '<i>hydrological and ecological mitigation measures and enhancements</i>', an updated OCoCP has been submitted at Deadline 8 (Version 4).</p> <p>As stated in Section 11 of the OCoCP the details of any post-construction monitoring at watercourse crossings will be determined on a site specific basis as part of the development of the scheme and programme for watercourse crossings, produced under Requirement 25. The information provided in response to ExA Q2.15.0.11 are typical measures, however the exact measures cannot be confirmed until details of the baseline conditions and the type of watercourse crossing are known post-consent. However, the information provided in response to ExA Q2.15.0.11 has been included in Section 11 of the OCoCP (Version 4 submitted at Deadline 8).</p>
<p>With regards hedgerow removal the OCoCP should include criteria for determining 'poor weather' as stipulated in OLEMS para 94.</p>	<p>Reference has been added to section 3.3.1 of the OCoCP (Version 4, submitted at Deadline 8) that the criteria for determining poor weather will be stipulated in the final CoCP.</p>

Summary of Submission	Applicant's Comments
8.7 Outline Landscape and Ecological Management Strategy Version 3	
<p>Page 16:</p> <p>We welcome the inclusion of a commitment that all areas temporarily used during construction will be reinstated as soon as practically possible, we would welcome inclusion of text 'and ecologically enhanced where possible'.</p>	<p>The areas temporarily used during construction are predominately arable land which will be returned to its original use on completion of the works and as such does not provide suitable opportunities for enhancements to take place. An exception to this is in areas within the River Wensum floodplain where the Applicant has committed, in Section 11.1.2 of the OCoCP, that the River Wensum Restoration Strategy and River Wensum SAC conservation objectives will be considered during restoration and has been updated to indicate it will consider enhancements where possible in these areas, subject to the landowner agreement.</p>
<p>Page 40, Paragraph 25:</p> <p>We note that OLEMS was updated D1 Para 146 Page 45 to include 'adhere to standing advice regarding ancient woodland' and this has been marked as green in our risk and issues register. However this has not been reflected throughout the document and advise that text is also included such as 'a buffer of at least 15m and as informed by an arboricultural survey' within Route refinement page 14 and embedded mitigation para 125.</p>	<p>The additional text regarding ancient woodland has been added as requested at para 125 of the OLEMS (Version 4, submitted at Deadline 8). The text on page 14 under 'Route Refinement' is referring to the parameters used within the route refinement which for ancient woodland was 15m, however the mitigation of 'at least 15m and informed by an arboricultural survey' is secured in Section 7.8.2 para 125.</p>
8.8 Outline Traffic Management Plan Version 3	
<p>Welcome inclusion of para 74 in OTMP, advise that the Applicant include ES figure 26.5 as an Appendix to the OTMP to allow reference should the ES not be publicly available by the time of construction.</p>	<p>For completeness ES Figure 26.5 has been included in the OTMP (Version 4, submitted at Deadline 8).</p>
<p>This does not show the location of designated sites sensitive to air quality in relation to the traffic and HGV routes, either alone or in combination with other developments. Advise that the Applicant include ES figure 26.5 as an Appendix to the OTMP.</p>	<p>As above ES Figure 26.5 has been included in the OTMP (Version 4, submitted at Deadline 8).</p>
8.11 Outline Offshore Operations and Maintenance Plan (Version 3)	
<p>No further comment- the changes to this document have not resolved the final issue previously raised.</p>	<p>The Applicant is unsure what the Final issue is that Natural England is referring to. The Applicant has made changes within the OOOMP to address Natural England's concerns that it was not clear that cable protection installed during operation would be subject to an additional new Marine</p>

Summary of Submission	Applicant's Comments
	Licence. The Applicant also note that the MMO are satisfied that the updates made to the OOOMP address all of their concerns.
8.12 Offshore In Principle Monitoring Plan (Version 3)	
<p>Natural England advises that text such as that suggested below be included within conditions and linked to the IPMP.</p> <p>Pre construction monitoring condition Appropriate surveys of existing marine mammal activity required to test predictions in the environmental statement concerning key marine mammal interests of relevance to the authorised scheme.</p> <p>Post construction monitoring condition Appropriate marine mammal surveys required to test predictions in the environmental statement concerning key marine mammal interests of relevance to the authorised scheme.</p>	<p>The Applicant does not consider that a condition for monitoring of marine mammals in appropriate. Please see the Applicants response to written question Q3.2.0.1. [Applicant's Responses to the Examining Authority's Third Round of Written Questions REP7-017] which explains the Applicant's reasoning.</p>
8.15 Proposed Sediment Disposal Site, Site Characterisation Report (Version 3).	
<p>We welcome this document and the changes made in light of the reduced project design. We note that the new area for disposal is outside of 'benthic' designated sites, and is large so that Norfolk Vanguard and Boreas can use the area.</p>	<p>No further comment</p>
8.16 Outline Scour Protection and Cable Protection Plan (Version 3)	
<p>We welcome the revisions to the document to take into account the reductions in scour and cable protection. We have no further advice to that already provided in our previous responses.</p>	<p>No further comment</p>
Clarification Note on Ecological Enhancements	
<p>It is not clear how some of the commitments within this document are to be secured, for example, the watercourse crossing examples of enhancements that will be considered do not appear to be outlined in the OCoCP, or cross reference to the clarification note made. The Applicant should clarify where these commitments are secured.</p>	<p>The commitment to watercourse crossing enhancement where possible is secured in Section 11 of the OCoCP (Version 4, submitted at Deadline 8) with reference to the development of the scheme and programme for watercourse crossings, produced under Requirement 25:</p>

Summary of Submission	Applicant's Comments
	<p><i>'scheme and programme for each watercourse crossing, diversion and reinstatement, which will include site specific details regarding sediment management, pollution prevention measures, <u>any appropriate hydrological and ecological mitigation measures and enhancements.</u>'</i></p> <p>As indicated any enhancements will be determined on a site specific basis and detailed within the final scheme under Requirement 25.</p> <p>The ecological enhancements are secured in the relevant species specific sections of the OLEMS (Version 4, submitted at Deadline 8).</p>

1.7 REP7-045 Natural England Response to Applicant's Comments on Deadline 4 Submissions

5. The Applicant's response to REP7-045 is provided in a separate document which has been submitted at Deadline 8 (ExA.ASR-NE.D8.V1).

1.8 REP7-046 Natural England Response to Applicant's Responses to Examining Authority's Further Written Questions

6. The Applicant's response to REP7-046 is provided in a separate document which has been submitted at Deadline 8 (ExA.ASR-NE.D8.V1).

1.9 REP7-047 Natural England Deadline 7 Submission - Advice on Norfolk Boreas Updated Cumulative (EIA) and In-Combination (HRA) Collision Risk Offshore Ornithological Assessment

7. The Applicant's comments to the points raised by Natural England on this submission has been presented on ExA.AS-3.D8.V1: Combined Response to Natural England's Ornithology Submissions.

1.10 REP7-048 Natural England Deadline 7 Submission-Updated Ornithology Advice

8. The Applicant's comments to the points raised by Natural England on this submission has been presented on ExA.AS-3.D8.V1: Combined Response to Natural England's Ornithology Submissions.

1.11 REP7-050 Natural England Response to Updated Habitat Regulations Assessment Screening and Integrity Matrices

9. The Applicant will respond to Natural England’s comments on the screening and integrity matrices when the Applicant comments on the RIES at Deadline 9.

1.12 REP7-051 Natural England Comments on the Applicant's Haisborough Hammond and Winterton SAC Position Paper

10. [...] Denotes which paragraph of the position paper Natural England refers to.

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<p>[Para 2] Natural England notes that the Applicant appears not to take into account, or wish to address, Natural England’s Position Statement regarding the proposed site integrity plan for the HHW SAC, dated 20th January 2020 [REP4-041]. Natural England wishes to repeat the concerns and legal issues raised in that document.</p>	<p>Although Natural England’s position statement regarding the proposed HHW SAC SIP [REP4-041] is not specifically mentioned in this list the Applicant has taken into account Natural England’s Position on the SIP throughout the position paper. Natural England summarised their position paper during ISH4 and within their document entitled Evidence provided by Natural England at Issue specific hearing 4 of the Norfolk Boreas Examination Offshore Effects including the draft Development Consent Order [REP4-043]. These documents are referenced throughout the Norfolk Boreas position paper.</p>
<p>[Para 3] Natural England accepts that SACs are not exclusion zones. However, SACs protect natural habitat types of international conservation interest and benefit from the highest levels of legal protection afforded to conservation sites. The concept of <i>de minimis</i> is not found in the relevant law or guidance and the correct approach is to consider the existence, or not, of adverse effects on the integrity of the site, rather than whether adverse effects are large or small. If it cannot be shown that the proposal will not have an adverse effect on site integrity it should only be allowed if the Article 6.4 derogations route (IROPI, alternatives, compensatory measures) is followed. Small adverse effects or uncertain effects on site integrity can be accommodated by the derogations route, as the scale of compensatory measures should relate to the scale of harm.</p>	<p>The net effect of Natural England’s current advice regarding the “area to be managed as reef” for <i>Sabellaria</i> (that any potential impact, however small, temporary and unlikely, means that AEoI cannot be ruled out) is for the HHW SAC to be an exclusion zone for any form of development for decades, i.e. until such time as fisheries management measures are in place and recovery of <i>Sabellaria</i> reef has been demonstrated through monitoring.</p> <p>The Applicant used the concept of <i>de minimis</i> in the position paper as it is stated in Natural England’s advice note regarding consideration of small scale habitat loss within Special Areas of Conservation (SACs) in relation to cable protection [REP1-057] that:</p> <p><i>Whilst there are no hard and fast rules or thresholds, in order for Natural England to advise that there is no likelihood of an adverse effect the project would need to demonstrate the following [amongst other points]:</i></p> <p>1).....</p>

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	<p>2).....</p> <p>3) That the scale of loss is so small as to be <i>de minimis</i> alone and/ or</p> <p>Furthermore, the Applicant have used the <i>de minimis</i> concept advised by Natural England in the context of demonstrating that there would be no AEoI. Therefore, the Applicant has followed Natural England's own guidance and has applied the concept in the correct way.</p> <p>Whilst not enshrined in law, there are precedents for considering that a small, temporary impact on part of an Annex I habitat within a SAC (including with a 'restore' objective) is not sufficiently significant as to be considered an adverse effect on the integrity of a site overall. If that were not the case, all proposed developments where very small, temporary potential effects could not be ruled out without any doubt would have to go through the derogation process. For example the Hornsea 2 development within the Humber SAC was consented without recourse to the Article 6.4 derogation route. It was determined that temporary disturbance and loss of Annex I mud and sandflats and <i>Salicornia</i> (both with 'restore' targets) during construction of 4.62% alone, or 1.83% in combination, did not result in an AEoI as the habitats had high recovery potential¹. The current proposal has been assessed to have a much smaller potential effect (0.023% of the habitat subject to temporary disturbance in the worst case scenario) on an area of <i>potential</i> Annex I reef which has a high recovery potential.</p> <p>Other examples include those presented in section 5.2.3 of the Applicant's Assessment of Additional Mitigation in the Haisborough, Hammond and Winterton Special Area of Conservation (Version 2) [REP6-019] which are:</p> <ul style="list-style-type: none"> • Walney Extension 0.41% • Hinkley Point C 0.05%; and • Kentish Flats Extension 0.003%

¹ <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010053/EN010053-002079-Habitats%20Regulation%20Assessment>

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<p>[Para 8] Please note that the conservation objectives that the Applicant quotes are the higher level objectives for the site, and therefore very briefly stated. More detail can be found in Natural England's conservation advice package.</p>	<p>The formal Conservation Objectives for the site, the Supplementary Advice on Conservation Objectives and the Advice on Operations in relation to both reef and sandbank features (available from the Natural England Designated Sites web pages) have been consulted, referred-to and referenced in documents throughout the application process, for example in Section 4 of the HHW SAC SIP [REP6-011] and section 4.2.1 [REP6-019].</p>
<p>[Para's 10 to 14] Please see Natural England's relevant representation [RR-099] where concerns about the Envision assessment report are set out.</p> <p>It is important to note that all areas of natural <i>Sabellaria spinulosa</i> reef are protected equally. This ought to include areas where it is considered likely that new reef will form. It is in this way that the conservation objective "to restore" is pursued.</p> <p>Further, as Natural England has previously explained, the term "priority areas" has no place in this analysis. No area of reef is more important than any other. This term has arisen in the course of considerations of where the greatest potential for reef recovery exists and does not describe areas of reef that are of special importance.</p> <p>The fisheries management measures in question seek to protect <i>Sabellaria spinulosa</i> reef (both existing and future) from damage by trawled fishing gear. Natural England believes it inappropriate to allow activities that hinder the objectives of these management measures, at least until such time as the effectiveness (or not) of the measures has been monitored and determined.</p> <p>The latter point can be expressed in terms of conservation: it is not sensible to try to prevent harm (albeit of uncertain extent) with one hand while allowing harm (albeit limited) with the other. The same point can be expressed in administrative terms: if it is considered appropriate to affect the fishing industry it ought to be inappropriate to permit another industry to undermine any resulting benefit (albeit in a limited way). The purpose of the fisheries management measures is to improve reef condition and not to create headroom to allow small areas of reef to be harmed.</p>	<p>The Applicant responded to Natural England's concerns on the mapping undertaken by Envision in the Applicant's comments on Relevant Representations (see Rows 12 to 17 in Table 5 [AS-024]).</p> <p>Damage to areas where there is evidence of current or prior presence of reef will be avoided where possible through micrositing during installation. However, the totality of the area mapped as "area to be managed as reef" does not equate to actual evidence of 'reef' presence, either existing or where there is evidence for its presence at some time in the past and it might therefore be restored through preventing activities that cause disturbance or loss. The areas to be managed as <i>S.spinulosa</i> reef equates to 88.3km² which would far exceed that of actual or potential area of <i>S.spinulosa</i> reef. To put this in context the SAC Selection Assessment², which found the reef to be in good condition, predicted that the reef coverage was in the region of 0.9km² and the Natura2000 data form, 2010³ put the figure at 0.88km². Whilst this figure potentially contained a slight under estimate in one area where reef occurred, there is still an order of magnitude between the size of the area of reef predicted when the site was designated and the areas to be managed as <i>S.spinulosa</i> reef.</p> <p>The EIFCA and MMO fisheries management measures apply (or will apply) to only a small proportion of the "area to be managed as reef" within the 6-12nm zone of HHW SAC. In terms of conservation, it is not equitable to allow fisheries activities (or other activities) to potentially affect some of the "area</p>

² file:///C:/Users/303922/Downloads/HHW-sad_tcm6-21630.pdf

³ <https://jncc.gov.uk/jncc-assets/SAC-N2K/UK0030369.pdf>

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	<p>to be managed as reef” such as those located in the south west of the HHW SAC (see Figure 1 of the Applicant's position paper [REP-057]) which are not protected by management measures and yet to insist that any potential small and temporary impact from the current proposal in the worst case scenario might result in an AEol.</p>
<p>[Para 13] Our advice remains unchanged in relation to difficulties in the ability to microsite we set this out in RR-099 and Deadline 5 [REP5-078] and [REP5081].</p>	<p>As demonstrated in the Applicant's Clarification Note - Optimising cable routeing through the HHW SAC [REP4-022] the Applicant is confident that micro siting will be possible. It should be noted that as set out in the position paper [REP5-057] the areas to be managed as <i>S.spinulosa</i> reef are only areas where Natural England have high confidence that the existing reef will increase in extent if the recurring impact from bottom towed fishing gear ceases in these areas.</p>
<p>[Para 16] Please note that there is a difference in the approach taken by the EIFCA and MMO/Defra for fisheries management. Natural England agrees that there is a higher level of precaution included in the beyond-6nm fisheries management that is not present within 6nm. However, it should be noted that due to BREXIT the areas to be managed beyond 6nm are likely to change with the EU Common Fisheries Policy (CFP) no longer applying to the UK. However, Natural England would advise that fisheries management areas will still be required beyond 6nm, especially in in areas where <i>Sabellaria spinulosa</i> reef has been observed on a more regular basis. Therefore, Natural England's future advice is likely to be similar to that previously provided and could include new areas and/or involve a series of smaller areas including the more heavily fished area to the South East of the site.</p> <p>The Applicant identifies three areas of uncertainty in relation to Natural England's approach to the protection of <i>Sabellaria spinulosa</i> reef, and “areas to be managed as reef” (namely areas where it is appropriate to pursue the “restore” objective). In relation to each of these three topics, Natural England accepts that is has taken a precautionary approach, as the law requires it to. Natural England does not accept that multiple separate “layers” of precautionality necessarily equates to over-precautionality when combined into a single analysis. Each topic must be looked at on its own merits.</p>	<p>The Applicant notes Natural England's advice on how BREXIT may affect the extent of future fisheries management areas in the offshore zone of the SAC, however the point is still relevant that any fishing restrictions (regardless of if or when they will be implemented (see paragraph 16c of the position paper [REP5-057])) are unlikely to result in a large change in fishing pressure as the current levels of fishing are extremely low.</p> <p>The “area to be managed as reef” represents a compilation of records of reef and <i>Sabellaria spinulosa</i> biotopes (which do not always represent reef habitat) from a number of points over time combined with areas where acoustic data indicate likely presence of reef. It also includes large areas of coarse sediments of the type on which <i>Sabellaria</i> is known to settle but where reef has not previously been recorded. In its entirety, it does not represent areas of known reef or where reef has been recorded in the past (see points above in relation to the size of the areas to be managed as <i>S.spinulosa</i> reef compared to the original SAC selection assessment). The Applicant accepts that this is the extent of the evidence currently available on which Natural England must base their advice, but in doing so, the limitations of the evidence need to be taken into account.</p>

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<p>Regarding the extent and distribution of reef: Natural England has taken a precautionary approach on the basis of the evidence to hand, which is no more than a snap-shot at one point in time, but it can do no more nor less than this. As mentioned, in order to have regard to the objective of restoring the site to favourable condition it is necessary to protect not only existing reef, but also areas where it is likely to return.</p> <p>Regarding the spatial extent and impact of fishing: it is acknowledged that there is a lack of information, and that current fishing activity may be low. However, <i>Sabellaria spinulosa</i> reef is known to attract other biodiversity, including species important to the fishing industry (this being one of the reasons why it is so highly protected), and fishing activity changes over time and space. Moreover, it should be noted that the level of fishing pressure is not necessarily a good measure of the extent of harm caused, since the first pass of a trawl over <i>Sabellaria spinulosa</i> reef does more harm than subsequent passes. Natural England feels that its precautionary approach to this topic, which is based on the best available evidence and which influences the size of the areas it feels should be protected, is entirely appropriate in view of the desired outcomes.</p> <p>Regarding the recover objective: as above, the current (not well understood) level of fishing activity is (in the absence of controls) no guide to future levels. It is known that <i>Sabellaria spinulosa</i> reef has been and can be impacted by anthropogenic activities that are occurring within the site, therefore it is probable that this habitat is being suppressed by those activities and that the “restore” objective is compromised by those activities.</p> <p>Natural England wishes to stress that the approach that it takes in this case is consistent with its approach in all other plans or projects affecting this SAC.</p>	<p>There is no evidence that <i>Sabellaria spinulosa</i> reef formerly occupied the entire “area to be managed as reef” identified by Natural England [see Figure 1 in Annex 2.3 of RR-099] nor that it is likely to do so in the future. The Applicant has committed to avoid the placement of cable protection in the priority areas to be managed as <i>S.spinulosa</i> reef (which is the vast majority of the areas to be managed as <i>S.spinulosa</i> reef presented in Figure 1 of annex 2.3 of RR-099] and also to avoid cable installation where possible in any areas where new reef is identified through pre-construction surveys. The only exception to this is if new reef has developed right across the cable corridor on areas of natural substrate (as opposed to artificial substrate such as pipelines), and in this situation the Applicant would take the shortest possible route through the reef to reduce the impacted area. In this situation the Applicant argues that recovery of reef would be demonstrated, and the potential very small temporary disturbance identified due to cable installation would affect an even smaller percentage of the habitat within the site.</p> <p>The Applicant does not disagree that the first pass of a trawl is likely to cause more damage than subsequent passes. However, it is the repeated long-term nature of the damage caused by trawling that is thought to prevent rapid recovery of reef from fishing activities. Average intensity of bottom trawling in the North Sea has been assessed as 1.25 times per year, with the eastern parts of the HHW SAC trawled between 0.1 and 10 and western parts between 0.1 and 0.5 times per year. If the interval between trawling events is less than the life span of relevant organisms, the seabed integrity, and therefore the biological community it supports, will be compromised (Eigaard et al. 2017). The potential disturbance as a result of cable laying would be short term in any one location, and much shorter than the lifespan of <i>Sabellaria spinulosa</i>, which is 2-5 years. The recoverability of <i>Sabellaria spinulosa</i> is very high, including to likely temporary pressures that might arise from the proposal such as substratum loss and physical disturbance (Jackson & Hiscock 2008) and it is a very common species. Recovery of any newly established <i>Sabellaria</i> reef that could potentially be damaged in this scenario would therefore be highly likely to be rapid.</p>

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<p>[Para 17] As set out in RR-099 Natural England is advising that fisheries management areas are required to exclude fisheries pressures to aid <i>Sabellaria spinulosa</i> reef recovery in particular areas and we need to be consistent across industries. Whilst it is recognised that the impacts are different in scale both spatially and temporarily between fisheries and cable installation; we advise that the competent authorities BEIS and EIFCA undertake an Appropriate Assessment to consider the impacts in-combination. This would allow consideration to be given to means of avoiding interactions in byelaw areas.</p> <p>Please see advice provided at Deadline 4 [REP4-041], where Natural England discussed recoverability after disturbance. Even if/where the conservation objective is to “maintain” rather than “restore” there would still need to be mitigation measures to fully avoid AEol and Natural England does not accept that the areas of reef involved are de minimis. Yes, they are small when expressed as a percentage of site area and actual or potential areas of reef within the site, but HHW is a large site and any loss of protected habitat is a matter of significance. The expression “death by a thousand cuts” is sometimes used in the context of conservation and is relevant here. Natural England fully accepts that the Applicant’s proposals will not have a large (or medium sized) effect on the integrity of the HHW, but if they occur without compensatory measures they will amount to a cut.</p>	<p>The Applicant does not believe that there is any justification for treating different industries in the same way given they have different impacts (as set out above) and are regulated differently.</p> <p>The expression “death by a thousand cuts” in a conservation context has been used in relation to physical loss of habitat, not to temporary disturbance where recovery is very likely (e.g. numerous small slipways and jetties, each of insignificant area, but in combination over time resulting in significant physical loss of coastal habitat).</p> <p>As set out above, the Applicant maintain that there is precedent for projects with a small area of disturbance and high recoverability such as would be seen for <i>S.spinulosa</i> reef to receive consent.</p>
<p>[Para 18] With regards the potential to microsite export cables to avoid Reef, Natural England draws attention the words “If this is possible”.</p>	<p>As the Applicant has maintained throughout the Examination, the words 'where possible' have been included to allow for the hypothetical situation posed by Natural England where the entire 2km or more width of the cable corridor is spanned by <i>S.spinulosa</i> reef and therefore it would not be possible to completely avoid all reef. As detailed within the Applicant's HHW SAC position paper [REP5-057], the Applicant does not consider this a likely situation to arise, and as described in the Information to Support HRA Report [APP-201] should this occur the extent of <i>S.spinulosa</i> reef would be so great that the effect of the project would be small enough to rule out AEol.</p>
<p>[Para 19, 20] The fact that the fisheries management measures are not yet in place doesn't remove the need to protect Annex I reef or hinder its recovery in those areas</p>	<p>The Applicant does not dispute that fisheries management measures could protect Annex I reef from future fishing activity. The Applicant's point is that even if these measures took effect prior to construction their enactment</p>

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<p>where it has been found to most regularly occur i.e. areas likely to be included in the fisheries management.</p> <p>The draft DCO allows a long window for construction and it cannot be said that both fisheries management measures will not be in place before the relevant works start. It cannot be said that, in the timescales realistically involved, <i>Sabellaria spinulosa</i> reef will not have formed to an extent that makes micro-siting impossible.</p>	<p>would not necessarily lead to an increase in the extent of <i>S. spinulosa</i> reef to the scale suggested, as the evidence indicates little or no fishing by trawling in these areas.</p>
<p>[Para 21, 22, 23] As recognised by the Applicant, Natural England doesn't believe that disturbance and recovery of Annex I reef following cable installation has been demonstrated. The evidence presented by Pearce et al. related to the establishment of <i>Sabellaria spinulosa</i> reef on areas of disturbed ground, but not where it was previously. The Applicant asserts that, if the whole cable corridor were to be blocked by <i>Sabellaria spinulosa</i> reef, it would take the shortest possible line through that blockage. It is too soon to make this assertion, as ground conditions and other features that are still poorly understood and could prevent this. It is therefore too early to say that whatever route is found through the cable corridor will be essentially neutral in effect, because that route has not yet been mapped.</p> <p>And, as mentioned above, and in Natural England's Position Statement of 20th January 2020 [REP4-041], de minimis adverse effect on integrity is not a recognised concept. Any adverse effects on the integrity of the SAC, having regard to the conservation objectives for the SAC, should be dealt with via the Article 6.4 derogations route, even if small.</p>	<p>As detailed within the Information to support HRA Report [APP-201] Pearce et al 2014 demonstrated rapid development of <i>Sabellaria</i> reef within the Thanet windfarm development site "The <i>S. spinulosa</i> reefs in the southern sector increased in extent by 0.42 km²" between 2007 (pre-construction) and 2012 (post-construction), which provides good evidence that reef structures would recover following short term disturbance. That high likelihood of rapid recovery, combined with low likelihood of damage to a very small area of potential reef habitat leads to the conclusion of no adverse effect on the integrity of the site overall in relation to <i>Sabellaria</i> reef habitat.</p>
<p>[Para 24] The aggregates dredging industry seeks to avoid areas of Annex I reef, so the evidence base for the Applicant's assertion is not large. See also the comment on Pearce et al, above.</p>	<p>The marine aggregates industry operates almost entirely in areas where <i>Sabellaria</i> as a species is abundant and reef is likely to develop (coarse and mobile sandy sediments) as they seek to extract those same sediments. Whilst the industry do seek to avoid areas of established reef, they (through the Marine Aggregate Levy Sustainability Fund 2002-2011) have also carried out specifically targeted research including investigating recovery of biological communities, including <i>Sabellaria</i> reef, following aggregate extraction (e.g. Pearce et al 2007 and 2014).</p>

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<p>[Para 29] Natural England repeats its views about the concept of de minimis [REP4-041],</p>	<p>As above, Natural England's advice on small scale effects [REP1-057] states that:</p> <p><i>"Whilst there are no hard and fast rules or thresholds, in order for Natural England to advise that there is no likelihood of an adverse effect the project would need to demonstrate the following [amongst other points]:</i></p> <p>1).....</p> <p>2).....</p> <p>3) <i>That the scale of loss is so small as to be <u>de minimus</u> alone and/ or"</i></p>
<p>[Para 32] Natural England welcomes the reduction in the quantity of cable protection estimated to be required and appreciates the work and thinking that has gone into this. However, it is noted that the amount of cable protection that will actually be required can only be known once, or shortly before, cable laying starts.</p>	<p>The Applicant has undertaken significant assessment, including the interim cable burial report (Appendix 2 of HHW SAC control documents 8.20) and is confident of the commitment to no more than 5% of cable protection within the SAC, noting this report recognises that, given the known ground conditions, it could be possible to bury all of the export cable within the HHW SAC.</p>
<p>[Para 34] Please see Natural England's position on impacts on <i>Sabellaria spinulosa</i> reef from the placement of rock armouring [RR-099].</p>	<p>The Applicant is aware of Natural England's position and this is reflected within the position paper (see paragraph 14).</p>
<p>[Para 37] The fact that SACs are not exclusion-zones has been commented on above. Those comments are repeated here.</p> <p>HHW SAC is not in favourable condition – it has lost Annex I <i>Sabellaria spinulosa</i> reef from areas where, in a less damaged site, Natural England would expect to find it. Sites of this sort are subject to natural change, which includes recovery from damage. The Applicant's cable routing proposals are based on the current snap-shot data and (much as those proposals have been made in absolute good faith and in a very positive spirit) they may not hold good by the time the work starts. Natural England would find it helpful to see how the cable routing proposals were actually devised to take into account the presence of Annex I reef.</p> <p>In relation to possible areas where cable protection might be required, please see Natural England's deadline 4 and 5 responses [REP4-038, REP4-041, REP4-043, REP5-</p>	<p>During the selection of the offshore cable corridor (see Chapter 4 site selection and Assessment of Alternatives of the ES [APP-217] and signing of the agreement for lease in 2016, it was not considered appropriate or possible, due to its ephemeral nature, to consider the location and extent of Annex I reef as at that time data of the resolution required to do this was not available. Furthermore, concerns regarding the avoidance of Annex I reef were not raised during consultations with nature conservation stakeholders at this time. Therefore the Applicant took the approach of defining a wide corridor of between 2km and 4.7km within which micro-siting around sensitive features would be possible.</p> <p>The Applicant then undertook detailed survey of the offshore cable corridor to support the EIA.</p>

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<p>078, REP5-081] concerning the importance of areas in-between protected features for the functioning of those features. In relation to the <i>de minimus</i> assertion made at para. 37 d., please see Natural England's small-scale loss position RR-099.</p>	
<p>[Para 40 and Appendix 1] The Applicant's new commitment to the use of no cable protection in the area "to be managed as <i>Sabellaria spinulosa</i> Annex I reef" further demonstrates the Applicant's helpful approach. However this commitment must necessarily be qualified by observing that until closer to the date of the work it cannot be known how much cable protection will actually be required for operational and safety reasons, and by noting that the agreement of the MMO to allow this commitment to be reduced will, as a matter of law, require a fresh Appropriate Assessment and the application of the law requiring certainty of no AEoI.</p> <p>[Para 44] Whilst Natural England agrees with the Applicant that <i>Sabellaria spinulosa</i> is a widespread species within the North Sea and that it is only when it forms a cohesive 'reef' structure does it become of conservation importance, we do not agree that <i>Sabellaria spinulosa</i> (even in potential reef form) is Annex I reef when located on artificial substrate. As set out in Natural England Relevant Representations [RR-099] the SNCBs consider the establishment of <i>Sabellaria spinulosa</i> reef on artificial substrate as not "counting" towards favourable condition of the feature and/or site. This is because it is not a replacement for Annex I <i>Sabellaria spinulosa</i> reef on natural site sediment as set out at the time of designation and within the conservation advice package for the site.</p>	<p>The Applicant wish to clarify that, as discussed with Natural England the commitment is to, <u>not</u> place cable protection within the two areas which Natural England referred to as "top priority sites" within Appendix 2.2 of its Relevant Representation [RR-099]. These are the two areas presented as darker purple in Figure 5.1 of the outline HHW SIP [REP6-011] and Figure 4.1 of the outline HHW SAC CSIMP [REP6-017]. Natural England have since highlighted that these should be referred to as the areas where they have the greatest confidence that reef could recover. The Applicant has attached a caveat to this commitment stating that it will be made "<i>unless otherwise agreed with the MMO in consultation with Natural England</i>". This is to allow for the fact that reef may not establish in these areas as predicted and therefore Natural England may no longer regard these as priority areas.</p> <p>Furthermore the Applicant has only committed to not placing cable protection in priority areas to be managed as <i>S.spinulosa</i> reef as they currently stand and should the shapefiles underpinning these areas be altered by Natural England then the commitment would only relate to those areas covered by the current shapefiles. As stated above the Applicant has completed significant assessment to identify where cable protection is more likely to be required (Appendix 2 and Appendix 3 of the HHW SAC control documents [REP6-011 and REP6-017]) and therefore is able to make the commitment to avoid the currently identified areas to be managed as <i>S.spinulosa</i> reef.</p>
<p>[Para 46] Natural England agrees that we can't currently determine if and when recovery has occurred. This will need to be reviewed over the following years, considering best available evidence.</p> <p>Natural England queries the assertion that, if <i>Sabellaria spinulosa</i> reef were to recover to the extent of making up 6% of the HHW SAC, it could be said to have exceeded the</p>	<p>In order to judge recovery, an original state and a target state need to be defined. Whilst there is no formal figure for extent of reef within the HHW SAC, either now or in the past, the extent at designation (Natura2000 data form⁴, 2010) for <i>Sabellaria</i> reef was given as 0.88km² or 0.13% of the site. If</p>

⁴ <https://jncc.gov.uk/jncc-assets/SAC-N2K/UK0030369.pdf>

Submission	Applicant's Comments
<p>"restore" objective. In the absence of factors promoting unnaturally enhanced Annex I reef recovery all <i>Sabellaria spinulosa</i> reef recovery is to be welcomed as a natural phenomenon affecting a protected habitat.</p>	<p>it were to occur, an increase of 46 times its former extent to 6% (which also represents the maximum extent of likely habitat on which reef might form), would indicate more than significant recovery.</p>
<p>[Para 49, 50 and 52] Natural England repeats its previous comments in relation to an interim survey in 2020 to map the extent of <i>Sabellaria spinulosa</i>, AEol on Annex I Sandbanks, and cable protection [RR-099, REP1-057, REP3-023, REP4-038, REP4-041, REP5-081].</p>	<p>The Applicant has responded to Natural England's comments on the interim survey in the Applicant's Comments on Deadline 4 Submissions and Additional Submissions [REP5-051].</p>
<p>[Para 58] Please note that whilst Natural England recognises the commitment by the Applicant to reduce the impacts from sediment disposal, there is still a requirement to ensure that disposal is within areas of similar particle size.</p>	<p>The Applicant's position on this issue is presented in the Applicant's comments on Deadline 7 Submissions [ExA.WQR-3.D8.V1] specifically the Applicant's comment on the MMO's response to WQ3.2.0.2.</p>
<p>[Section 6] Natural England has concerns about (a) the practical suitability of the proposed Grampian condition and (b) the legality of the use of this condition. Please see Natural England's Position Statement dated 20th January 2020 [REP4-041]. These concerns remain and are repeated. It is for the Secretary of State to determine, on the basis of an Appropriate Assessment, whether the information provided by the Applicant actually supports the conclusion of no AEol. In making this judgement the decision maker will have to bear in mind that the evidence to hand is essentially snapshot and that things are likely to have changed during a realistic timescale.</p> <p>The Applicant points out that the purpose of the Grampian condition is to "verify previous assessments". Natural England responds to this by noting that there is a possibility that the condition's mechanism will not verify previous assessments, because previous assessments may be superseded by events. There is not "every prospect that the Grampian condition can be discharged in the timescales ..." – because there is some prospect that it can't.</p> <p>It is not appropriate to equate the use of the SIP process in this case to its use in the SNS SAC, in relation to the disturbance of marine mammals. In that case Natural England is sure that if works etc are suitably timetabled and carried out in the right way there will be no AEol. That certainty is based on confidence in existing technologies and mechanisms for ensuring sensitive timetabling. In this case the contingencies are greatly less knowable at this range.</p>	<p>The Applicant has now proposed two alternative conditions - one which relies on the HHW SIP and which requires the Applicant to satisfy the MMO (in consultation with Natural England) that there remains no AEol at the point of construction, and the other which continues to secure all the mitigation proposed in a Cable Specification, Installation and Monitoring Plan (CSIMP) and removes the Grampian condition as requested by Natural England (and the MMO). Further information is provided within section 6 of the Applicant's Haisborough Hammond and Winterton Special Area of Conservation Position Paper [REP5-057] and within the Applicant's comments on the MMO's response to WQ3.5.5.5 submitted at Deadline 8 (ExA.WQR-3.D87.V1).</p> <p>Neither approach seeks to defer Appropriate Assessment at the consenting stage. A full Information to support Habitats Regulations Assessment (HRA) Report has been provided with the application [APP-201] which concludes that there is no adverse effect on integrity (AEol). Whilst it is correct that the final number and precise route of the cable has yet to be determined, the information to support HRA [APP-201] and the assessment of additional mitigation in the HHW SAC (Version 2) [REP6-019] have been undertaken on the basis of a worst case scenario. The evidence for <i>Sabellaria</i> is not a snapshot, it is a compilation of evidence of spatial occurrence of reef over time, and interpretation of geophysical data, from which likely current and future extent can be established. The Applicant has also provided evidence which demonstrates that the extent of <i>S.spinulosa</i> reef within the export</p>

Submission	Applicant's Comments
<p>The proposal to use a Cable Specification, Installation and Monitoring Plan (CSIMP), which has to be submitted to and approved by the MMO, does not cure the problems of uncertainty. For legal purposes a future CSIMP will represent a plan or project that will have to be subjected to Appropriate Assessment during the process of approval by the MMO. Depending on circumstances existing at the time of submission of a CSIMP to the MMO the Appropriate Assessment is capable of concluding that AEoI will be caused, exactly as with the SIP process.</p> <p>To amplify this point: the proposed wording at para. 78 describes a process by which cable laying cannot commence until a plan for it has been submitted to and approved in writing by the MMO. This is a situation contemplated for by reg. 28 (1) of the Conservation of Offshore Habitats and Species Regulations 2017, which provides that “Before deciding to undertake, or given 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 [SAC] in view of that [SAC’s] conservation objectives”. By reason of reg. 5 of the 2017 Regulations the MMO is plainly a (or the) competent authority in this situation and the subject matter of a CSIMP is plainly a “relevant plan or project” for the purposes of reg. 28 (2) as all three of reg. 28 (2) (a), (b) and (c) are fulfilled. It therefore follows that on receipt of a CSIMP, and before it can approve it, the MMO will have to carry out its own appropriate assessment of the Applicant’s plan for specifying, installing and monitoring cables within the HHW SAC. It cannot be said that these things have received appropriate assessment at the time of the making of the DCO, because at that time the necessary details had not been specified.</p> <p>It may be that at the point of submission of a CSIMP it will indeed be possible to micro-site the cable in a manner that is neutral as to protected features, but the significant effect on the site cannot be ruled out, meaning that a full appropriate assessment will be unavoidable.</p> <p>If this mechanism for dealing with the uncertainties of future cable laying and protection is to be employed it is suggested that it be called a Cable Specification, Installation, Mitigation and Monitoring Plan, as mitigation measures will be a key part of it.</p>	<p>cable corridor is unlikely to change significantly before the point at which construction of the export cable will occur.</p> <p>In the event that it was considered necessary to undertake a further Appropriate Assessment at the point of discharge of the condition (if, for example, the position had significantly changed from that previously assessed – which the Applicant considers is unlikely to be the case for reasons previously stated [REP5-057]), the MMO as the regulatory body for marine activities would be the competent authority and therefore the appropriate body to conduct such an assessment. This is no different to the MMO's role in undertaking any other Appropriate Assessment which is required before arriving at any determination (i.e. the grant of a Marine Licence or any discharge of a Marine Licence condition) which may have an adverse effect on the integrity of a European site. This is an integral and usual part of the MMO's role as regulator of marine activities. This does not mean that Appropriate Assessment cannot also be carried out at the consenting stage, or that it is not possible to rule out AEoI at the consenting stage. This can be achieved by conducting the Appropriate Assessment at the consenting stage on a worst case basis (as has been done in this case).</p> <p>In the event that pre-construction surveys confirm that it is possible to microsite so as to avoid <i>S.spinulosa</i> reef (as the Applicant believes will be the case), then there would be no likely significant effect on the HHW SAC, and further Appropriate Assessment would not be required at the stage the condition is discharged. Indeed, provided the impacts are no greater than those assessed at the consenting stage (noting that the Applicant has undertaken the assessment on a worst case basis) there will be no requirement to undertake a further Appropriate Assessment at the point when the condition is discharged.</p>

Submission	Applicant's Comments
	<p>The Applicant would have no objection to amending the name of the final plan submitted to 'Cable, Specification, Installation, Mitigation and Monitoring Plan', but sees no reason to make this change pre-consent. Importantly, it appears that Natural England have no further comments on the detail contained within the plan.</p> <p>The Applicant has made multiple attempts to respond to and address all of Natural England's concerns regarding uncertainty on the potential extent of <i>S.spinulosa</i> reef, which is of course ephemeral in nature. The consequence of Natural England's position is to prevent all development in marine SACs that seek to protect <i>S.spinulosa</i> reef. As the Applicant has previously explained, the intention and purpose of an SAC is not to prevent future development. Further, Natural England's position goes against the concept of small scale loss in its own advice note [REP1-057]. This only serves to highlight Natural England's approach as being highly, and overly, precautionary.</p>
<p>[Appendix 1] Natural England notes that the contents of the Appendix 1 'Assessment of Additional Mitigation of HHW SAC' are the same as was submitted (28th February 2020) in response to the Secretary of State's request for further information letter for Norfolk Vanguard dated 6th December 2019.</p> <p>At the request of the Secretary of State all interested parties including Natural England are to provide our comments on the submitted documents by no later than 27th April 2020. Therefore, we are currently in the process of reviewing the documents and drafting our formal advice to Secretary of State. However, until that process has concluded we are unable to advise on whether or not that mitigation is sufficient for both projects. We will therefore provide our advice on Appendix 1 for Deadline 9 on 29th April 2020</p>	<p>The Applicant awaits Natural England's further advice and will endeavour to respond in the time available between Deadline 9 and Deadline 10.</p>
<p>[Appendix 2] Natural England believes that the document submitted at REP5 – 058 as Appendix 2 is the joint recommendation for North Norfolk Sandbanks and Saturn Reef Special Area of Conservation (NNSR SAC) and Haisborough Hammond and Winterton (HHW) SAC for fisheries proposals under the Common Fisheries Policies (CFP) beyond 6nm, which is a co-ordinated DEFRA document drafted by Natural England, Marine Management Organisation, Joint Nature Conservation Committee and DEFRA.</p>	<p>The Applicant can confirm that this is the Draft Joint Recommendation Paper and have referenced it as such in the position paper as Appendix 2 on page 43. The Applicant apologises if this is not clear in the submitted document itself.</p>

Submission	Applicant's Comments
<p>However, with the current cover page and no attribution to the authors this could be misconstrued as a Norfolk Boreas Ltd. document.</p> <p>Please note that all information relevant to the Norfolk Boreas project in relation to the CFP proposals has been provided by Natural England's in our relevant representation [RR-099]</p>	

1.13 REP7-052 Natural England Deadline 7 Submission - Updated Ornithology Collision Risk Modelling Advice

11. The Applicant's comments to the points raised by Natural England on this submission has been presented on ExA.AS-3.D8.V1: Combined Response to Natural England's Ornithology Submissions.

1.14 REP7-053 Natural England Risk and Issues Log

12. The Applicant is in discussions with Natural England regarding a number of points within their Issues and Risk log, especially for the ornithology sections where the Applicant considers that issues have been resolved and the log does not reflect this. However, the Applicant does not feel it necessary to provide detailed comments on the Risk and Issues log at this stage as areas of agreement and disagreement will be detailed within the joint Statements of Common Ground which NE and the Applicant are engaging on for submission at Deadline 9.

1.15 REP7-056 Necton Substation Action Group

Summary of Submission	Applicant's Comments
REP7-056 make a statement regarding the visibility of the proposed substation from Necton and Ivy Todd.	Please refer to the Applicant's response to WQ2.9.1.2 [REP5-045] where the Applicant discussed the view of the substation from both Necton and Ivy Todd.

1.16 REP7-057 Necton Substation Action Group

Summary of Submission	Applicant's Comments
REP7-057 comments on the accuracy of the photomontages, simulation and terrain model used by the Applicant.	Please refer to the Applicant's response to WQ2.9.1.3 [REP5-045] which provides details on the digital terrain models used within the photomontages.

1.17 REP7-059 Necton Substation Action Group

Summary of Submission	Applicant's Comments
REP7-059 comments on the proposed substation lighting.	Please refer to the Applicant's response to WQ2.9.0.1 [REP5-045], which details the mitigation and commitments that have been made for the lighting from the proposed substation.

1.18 REP7-060, REP7-061 and REP7-066 Necton Substation Action Group

Summary of Submission	Applicant's Comments
REP7-060, REP7-061 and REP7-066 are representations from the residents in Necton commenting on the comparative size of the proposed convertor buildings and providing 3D images of the convertor buildings.	Please refer to the Applicant's response to WQ2.9.4.1 [REP5-045] which sets out the Applicant's concerns regarding use of visualisations and models which are not in the correct context. This states that:

Summary of Submission	Applicant's Comments
	<p><i>Context is a critical and integral consideration in the assessment of the visual impacts of the onshore project substation. The visualisations from the twelve agreed viewpoints represent the proposed development in respect of its local context. The understanding and perception of scale relates to how the converter halls are seen in this context and is largely based on a comparison with the scale of the landform and other landscape features.'</i></p> <p><i>'By producing a visualisation in which the converter halls are placed in a context in which they would never be seen is misleading'.</i></p>

1.19 REP7-065 Water Management Alliance

Summary of Submission	Applicant's Comments
<p>REP7-065 confirms that they are happy with the bylaws which have been concluded with the Applicant. REP7-065 also states that through correspondence with the Applicant, it has been agreed that minor changes to the draft DCO will be made.</p>	<p>The Applicant welcomes the agreement with the Water Management Alliance and has updated the dDCO accordingly. The updated dDCO was submitted at Deadline 7 [REP7-003].</p>

1.20 REP7-067 Colin King

Summary of Submission	Applicant's Comments
<p>REP7-067 comments on the Applicant's comments on Deadline 5 submissions on REP5-091. REP7-067 comments on the baseline noise survey and the landscape visualisations carried out by the Applicant.</p>	<p>The Applicant addresses concerns on these matters in their comments on REP5-091 in Comments on Deadline 5 submissions [REP6-013].</p> <p>With regards to the landscape visualisations, SNH standards are applicable to visualisations for both settled and unsettled landscapes and present no bias in the representation of potential effects in either type of landscape.</p> <p>The extent to which the proposed development is visible is especially relevant in a sensitive settled landscape because the key receptors are local residents, road-users and walkers and is also especially relevant when</p>

Summary of Submission	Applicant's Comments
	<p>considering a large scale development because its visual influence can be notably reduced depending on the extent of existing or proposed screening. Observations in the field have been used to inform the written assessment.</p>

1.21 REP7-068 Margaret Woodall

Summary of Submission	Applicant's Comments
<p>REP7-068 discusses a recent crash on the A47 and raises concerns around extra traffic on the A47.</p>	<p>In the event of an accident or planned road closure, Highways England as the maintaining agent of the A47 have a duty of care to divert traffic onto roads of a similar nature. In the case of an A47 road closure, other 'A' roads within the area which are deemed suitable for the expected diverted traffic flows and vehicle class (HGVs etc) would be used as a diversion route.</p> <p>If a road closure were to occur on the A47 between the junction of the A1065 at Swaffam and the A1074 junction at Norwich, Highways England have identified a diversion route which would close the A47 at the above mentioned junctions and divert traffic onto the A1065, A148, A1067, A140 and the A1074 before re-joining the A47.</p> <p>In an emergency situation, such as resulting from an accident, the police will sometimes place a short term temporary local diversion until the official diversion route is implemented on the wider network.</p> <p>Should this occur during Norfolk Boreas HGV delivery period (7am to 7pm), then HGVs on route would be contacted by the contractor and told to follow the official Highways England diversion route, and thus this would not increase the amount of traffic on any emergency local diversion routes put into place.</p>

1.22 REP7-069 Necton Parish Council

Summary of Submission	Applicant's Comments
<p>REP7-069 Necton Parish Council has requested a delay in the Boreas Examination in response to measures in force to control the Covid19 pandemic.</p>	<p>The Applicant notes the requests raised by Local Authorities and some interested parties to delay the Examination by a period of three months, as well as concerns raised by those parties that it may not be possible to meet the deadlines set in the revised timetable issued on 20 March 2020. Whilst the actions required in the outstanding deadlines fall primarily on the Applicant, the Applicant recognises the difficulties which face all those participating in the Examination as a result of Covid 19 and will assist parties wherever possible. Whilst the Applicant is able to meet the revised Examination deadlines, where the Examining Authority exercises its discretion to accept late submissions the Applicant is also willing to be flexible to respond to late submissions as soon as practicable. As the Examination was front loaded, many of the issues which were capable of resolution have now been resolved and where matters cannot be resolved, the parties' respective final positions are already known and clearly set out. Therefore the Applicant is also of the view that any remaining issues can be dealt with in writing within the time still available before the close of the Examination on 12 May 2020. In the Applicant's view, it is also important that where Examinations can proceed fairly to completion without any delay, as in this case, this should be encouraged to aid recovery of the economy post Covid 19. The implications of delays on renewable energy projects are also significant given the need for a timely consenting decision to enable bidding into the next CfD auction (as currently timetabled for 2021) and to meet the policy imperatives of contributing to decarbonisation during the 2020s.</p>

1.23 REP7-070 Oulton Parish Council

Summary of Submission	Applicant's Comments
<p>REP7-070 Oulton Parish Council have gathered ten residents' responses to an open question regarding any "effects on local community" that they would like to comment on.</p>	<p>The Applicant notes and regrets the anxiety and worry reported by the ten individuals, quoted in Oulton Parish Council's submission. We note individuals attribute their anxiety to fear about potential impacts of our proposals, and those relating to other applications to which Oulton Parish Council's representation also refers. We consider proposed embedded mitigation documented in Outline Traffic Management Plan Section 4.3.1 (Version 4, submitted as Deadline 8) and Norfolk Boreas Limited Deadline 7 Submission - Applicant's Comments on Deadline 6 Submissions and Other Submissions [REP7-016] could provide reassurance to these parties with respect to our proposals</p> <p>The Applicant has committed to ongoing engagement throughout pre-construction and construction phases of the project should it be consented and proceed to construction. An important remit of this ongoing engagement will be to ensure potentially affected parties, know what works are planned where and when, and understand the mitigation in place to limit any temporary impacts as far as possible.</p>
<p>Oulton Parish Council notes the publication of letters from Norfolk County Council and three District Councils, all requesting a postponement of D7, and a further postponement of the end date of the whole examination. Oulton Parish Council urges the ExA to give serious consideration to this request, in light of the unprecedented circumstances in which all tiers of local government currently find themselves, with depleted resources and ever-expanding demands on their services.</p>	<p>The Applicant notes the requests raised by Local Authorities and some interested parties to delay the Examination by a period of three months, as well as concerns raised by those parties that it may not be possible to meet the deadlines set in the revised timetable issued on 20 March 2020. Whilst the actions required in the outstanding deadlines fall primarily on the Applicant, the Applicant recognises the difficulties which face all those participating in the Examination as a result of Covid 19 and will assist parties wherever possible. Whilst the Applicant is able to meet the revised Examination deadlines, where the Examining Authority exercises its discretion to accept late submissions the Applicant is also willing to be flexible to respond to late submissions as soon as practicable. As the Examination was front loaded, many of the issues which were capable of resolution have now been resolved and where matters cannot be resolved, the parties' respective final positions are already known and clearly set out. Therefore the Applicant</p>

Summary of Submission	Applicant's Comments
	<p>is also of the view that any remaining issues can be dealt with in writing within the time still available before the close of the Examination on 12 May 2020. In the Applicant's view, it is also important that where Examinations can proceed fairly to completion without any delay, as in this case, this should be encouraged to aid recovery of the economy post Covid 19. The implications of delays on renewable energy projects are also significant given the need for a timely consenting decision to enable bidding into the next CfD auction (as currently timetabled for 2021) and to meet the policy imperatives of contributing to decarbonisation during the 2020s.</p>

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