

11 May 2020

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Our ref:
VJR2/JT8/47583.36
Your ref:
EN010087

Dear Sirs

Norfolk Boreas Limited
Development Consent Order (DCO) application for Norfolk Boreas Offshore Wind Farm
Application Ref: EN010087

Deadline 11 Submissions

We write further to the Planning Inspectorate's Rule 8 letter dated 19 November 2019, the amended examination timetable dated 19 March 2020, and the further amended examination timetable dated 28 April 2020. In accordance with Annex A of the further amended examination timetable, we enclose the following in response to Deadline 11:

1. Comments on responses to the fourth round of written questions;
2. Final Note on Requirements and Conditions in the Development Consent Order (**DCO**);
3. Final Guide to the Application
4. Final Compulsory Acquisition Objections schedule
5. Final updated book of reference.

The Applicant refers the Examining Authority (**ExA**) to the Guide to the Application (Document Reference ExA.GtA.D11.V13 (Version 13)) for a full list of documents submitted by the Applicant at Deadline 11.

Final Draft Development Consent Order (DCO)

Whilst the Applicant recognises that the examination timetable asks for a Final draft DCO and Schedule of Changes at Deadline 11, following a review of the Deadline 10 submissions, the Applicant does not consider that any further changes are required to the draft DCO submitted at Deadline 10. The Applicant therefore refers the ExA to the draft DCO (document reference 3.1 (version 7)) (REP10-003 and REP10-004) along with the Schedule of Changes (REP10-030) submitted at Deadline 10 for final versions of these documents. The Applicant has, at the request of the Planning Inspectorate, submitted a Word version of the Deadline 10 dDCO with these Deadline 11 submissions.

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Validation of the DCO

The Applicant has been in correspondence with the validation service providers, who have advised that the DCO is too large to be validated through their online system. The Applicant has therefore had to submit the DCO for validation in four parts and the Applicant is pleased to enclose proof of validation (in four parts) within this letter as Appendix 1.

Final Statements of Common Ground (SoCGs)

The Applicant has provided a table below of the SoCGs requested by the ExA in the Rule 8 Letter, as well as any additional SoCGs. The Applicant has not submitted any SoCGs at Deadline 11 given that final versions have been submitted at previous deadlines; for ease of reference, the table outlines the date of the final SoCG as well as the relevant Examination Library Reference.

Statement of Common Ground	Status
Norfolk Boreas Anglian Water Service Limited Statement of Common Ground (Version 1)	December 2019, Final REP9-017
Norfolk Boreas Breckland Council Statement of Common Ground (Version 2)	20 April 2020, Final REP9-013
Norfolk Boreas Broadland District Council Statement of Common Ground (Version 4)	6 May 2020, Final REP10-036
Norfolk Boreas Chamber of Shipping Statement of Common Ground (Version 2)	20 April 2020, Final REP9-018
Norfolk Boreas Eastern Inshore Fisheries and Conservation Authority Statement of Common Ground (Version 3)	20 April 2020, Final REP9-019
Norfolk Boreas Environment Agency Statement of Common Ground (Version 4)	20 April 2020, Final REP9-020
Norfolk Boreas Highways England Statement of Common Ground (Version 2)	20 April 2020, Final REP9-021
Norfolk Boreas Historic England Statement of Common Ground (Version 1)	20 April 2020, Final REP9-022
Norfolk Boreas Marine Management Organisation Statement of Common Ground (Version 5)	20 April 2020, Final REP9-023
Norfolk Boreas Maritime and Coastguard Agency Statement of Common Ground (Version 4)	20 April 2020, Final REP9-024
Norfolk Boreas National Farmers Union Statement of Common Ground (Version 4)	6 May 2020, Final REP10-037

Norfolk Boreas National Association of Producer Organisations in Dutch Demersal Fisheries (VisNed) and National Federation of Fishermen's Organisations (NFFO) Statement of Common Ground (Version 3)	20 April 2020, Final REP9-025
Norfolk Boreas Natural England Statement of Common Ground (Version 4)	6 May 2020, Final REP10-038
Norfolk Boreas Natural England (Offshore Ornithology) Statement of Common Ground (Version 4)	6 May 2020, Final REP10-039
Norfolk Boreas Norfolk County Council Statement of Common Ground (Version 3)	20 April 2020, Final REP9-015
Norfolk Boreas North Norfolk District Council Statement of Common Ground (Version 4)	6 May 2020, Final REP10-040
Norfolk Boreas Royal Society for the Protection of Birds Statement of Common Ground (Version 4)	6 May 2020, Final REP10-041
Norfolk Boreas Royal Yachting Association Statement of Common Ground (Version 1)	August 2019, Final REP9-027
Norfolk Boreas The Wildlife Trusts Statement of Common Ground (Version 4)	20 April 2020, Final REP9-030
Norfolk Boreas Trinity House Statement of Common Ground (Version 4)	20 April 2020, Final REP9-028
Norfolk Boreas Whale and Dolphin Conservation Statement of Common Ground (Version 2)	20 April 2020, Final REP9-029
Norfolk Boreas Orsted Hornsea Project Three Statement of Common Ground (Version 4)	20 April 2020, Final REP9-026

The Applicant considers that significant progress has been made with stakeholders. To the extent that any matter remains unresolved with the parties identified above (of which there are only a few) the Applicant considers that these are matters of principle for the Secretary of State to consider in the decision making process.

BT cable crossing agreement

At Deadline 10 [REP-001] the Applicant reported that the Applicant has signed an out of service cable agreement with BT Subsea and DTAG to remove offshore cables located within the HHW SAC. The Applicant also explained within REP10-001 that the Applicant was very close to signing an agreement with BT Subsea and TDC on the remaining two cables. The Applicant is now pleased to report that the parties have completed this second agreement to allow the Applicant to cut and remove the remaining two cables located within the HHW SAC.

Given that the agreement completed on the same day as Deadline 11 (11 May 2020), the Applicant has not had the opportunity to update (and re-validate) the DCO to reflect the reduction in cable protection parameters for the export cable within the HHW SAC, or to update document 8.20 and document 8.16. However, for ease of reference, included at Appendix 2 is an extract of the relevant updates which would be required in the DCO should the Secretary of State consider it appropriate to include these changes. Alternatively, if the Secretary of State would find it helpful to receive updated documents showing the reduced areas and volumes of cable protection then the Applicant can submit these in due course. In any event, the updated cable protection figures can be included in final versions of document 8.20 and document 8.16, which must be submitted to the Marine Management Organisation for approval prior to offshore licensed activities.

Derogation Case

As the Applicant outlined in its Deadline 7 cover letter [REP7-001], consultation with Natural England informed the Applicant's in principle derogation case at Deadline 7 [REP7-024]. However, it was agreed that the derogation case would be submitted in draft until Natural England had the opportunity to review and comment upon it. Natural England provided comments on the in-principle derogation case at Deadline 9, to which the Applicant responded at Deadline 10 [REP10-033]. The Applicant does not consider that any of the comments raised by Natural England, or other stakeholders, require any updates to the in-principle derogation case and, accordingly, the Applicant has re-submitted REP7-024 as a final document without the draft watermark.

National Policy Statements

Section 104(3) of the Planning Act 2008 provides that the decision maker should determine this application in accordance with NPS's EN-1, EN-3 and EN-5, except to the extent that one or more of the matters set out in Section 104(4) to 104(8) apply. The Planning Statement (APP-693) which accompanied the application concludes that the application accords fully with those NPSs (see sections 2.2 and 4.1).

There is renewed urgency for renewable energy projects to be brought forward to ensure that the UK can meet the Climate Change Act 2008 (2050 Target Amendment) Order 2019. This amendment, which came into force on the 27 June 2019, introduced a target for 100% reduction in greenhouse gas emissions (against 1990 levels) in the UK by 2050 (net zero). Given the urgent need for such infrastructure, EN-1 makes clear that the SoS should start with a presumption in favour of granting consent to applications for energy NSIPs unless any more specific and relevant policies set out in the relevant NPS clearly indicate that consent should be refused (paragraph 4.1.2).

In the course of the examination the Applicant has made multiple submissions to the ExA up to, and including, this Deadline 11. None of these submissions, or the submissions of other parties, alter the need case for energy NSIPs set out in EN-1 or the presumption in favour of granting consent for energy NSIPs. No other more specific or relevant policies indicate that consent should be refused. Nor do any potential adverse effects outweigh the potential benefits of the proposal.

EN-3 reiterates the basic assessment principle, as set out in EN-1, that the national need for energy infrastructure has already been demonstrated and acknowledges that offshore wind has the potential to form a considerable proportion of the UK's renewable energy generating capacity up to the year 2020 and beyond (see sections 2.2.1 and 2.2.2).

Policies specific to the process of EIA are presented within EN-3, covering a range of topics to which the decision maker will give due regard as part of the examination and determination process. Likewise EN-5 identifies technology specific considerations (see sections 2.2.2 and 2.2.3).

The Applicant considers that due regard has been given to all of these topics for the offshore and onshore components of the project both in the Environmental Statement and in the submissions made in the course of the examination, including responses to third party submissions; Statements of Common Ground; responses to the ExA's questions and Rule 17 letters; summaries of oral cases; further design development and additional mitigation proposals; and revisions to the draft DCO.

In particular, and in addition to the significant levels of embedded mitigation for the Project, which include a work front methodology to reduce construction impacts, the Applicant has, during the course of the Examination:

- Reached agreement with Norfolk County Council that the Highway Intervention Scheme is sufficient to mitigate construction traffic impacts of the Project through Cawston, both alone and cumulatively (noting that Hornsea Project Three, by way of a letter dated 11 May 2020, have also confirmed their agreement to the final version of the HIS from a cumulative perspective);
- Reached agreement with Highways England on all highways matters;
- Reached agreement with North Norfolk District Council on all matters save in relation to tourism impacts;
- Introduced substantial further design and consultation commitments at the onshore project substation, as secured through a Design Guide connected to the Design and Access Statement;
- Committed to significant further mitigation in the Outline Code of Construction Practice to address the concerns of stakeholders including the NFU and LIG;
- Reached agreement with the Local Planning Authorities and the Local Highway Authority on the form of the Requirements in the dDCO and on the level and detail of mitigation secured within the related certified plans;
- Reached agreement with National Grid, Cadent Gas and Network Rail on the protective provisions included in the dDCO;
- Agreed 83% of Heads of Terms with landowners, including the removal of an objection from the National Trust;
- Reduced the project design envelope and, following requests from both Natural England and the RSPB, secured mitigation to reduce collision impacts by 63% (herring gull and great black-backed gull), 64% (lesser black-backed gull), 72% (kittiwake), 73% (little gull) and 74% (gannet) [REP5-059] when compared with impacts at application submission;
- Secured significant further mitigation to reduce impacts on the HHW SAC, including the reduction of cable protection from the project design envelope and the decommissioning of cable protection; and
- Introduced an alternative condition (and associated Cable Specification, Installation and Monitoring Plan (CSIMP)) for the HHW SAC in response to concerns from Natural England and the MMO.

Suggestions have been put forward that there should be consideration of alternatives for delivery, including shared cable routes or an offshore ring main, and a commitment to HVDC transmission. Both Norfolk Boreas, and its sister project Norfolk Vanguard, have made an early commitment to HVDC transmission following feedback from pre-application statutory consultation and the projects have been planned strategically together to incorporate a shared cable route both onshore and offshore as well as integrated construction, such as advance provision of ducts by Norfolk Vanguard for installation of Norfolk Boreas onshore cables, in order to reduce impacts as far as practicable.

In the light of these matters, the Applicant remains firmly of the view that the application accords fully with the topic related policies set out in NPS's EN-3 and EN-5.

Habitats Regulations

The application was accompanied by Information to support a Habitats Regulations Assessment [APP-201] which concluded that there would be no adverse effect on the integrity of any European site as a result of the Project.

In the case of onshore matters, Natural England agree that there is no adverse effect on the integrity (AEol) of European sites.

In the case of offshore ornithology, Natural England agree that there will be no AEol from the project alone [REP4-040 and REP7-048]. During the course of the Examination, in responding to requests from Interested Parties including Natural England, the Applicant has removed the 10MW and 11MW turbine option (resulting in a reduction in the maximum number of turbines from 180 to 158 turbines), and increased minimum draught heights which substantially reduced collision risks (as noted above). Following this Natural England agreed that the only species for which they could not rule out in-combination AEol (when Hornsea Projects Three and Four are omitted) were kittiwake from the Flamborough and Filey Coast SPA and lesser black-backed gull from the Alde-Ore Estuary SPA. Natural England now advise that the contribution of the Project to in-combination effects is small when compared with other projects [REP9-045]. This is notwithstanding Natural England's acknowledgement that there is also 'some headroom' [REP6-049], and the Applicant's position that Natural England's overly precautionary methods of assessment lead to conclusions which are highly improbable [REP2-035, and REP4-014]. In fact, the level of in-combination impact on lesser black-backed gull remains well below the in-combination total predicted for the consented Galloper Wind Farm [REP7-026] and the Project's contribution to total in-combination kittiwake collision risk is comparable with the scale of impact for the consented East Anglia Three Wind Farm, for which Natural England advised "*while not de minimis, is so small as to not materially alter the significance or the likelihood of an adverse effect on the integrity of the SPA*" [REP8-016]. Indeed, on a per megawatt basis, Norfolk Boreas' impacts are an order of magnitude lower than for most North Sea offshore wind farms consented in the last seven years.

Whilst it has not been possible to reach agreement with Natural England on the level of impact to the Haisborough, Hammond and Winterton (HHW) Special Area of Conservation (SAC), following the securing of further mitigation at Deadline 10 Natural England have advised "*However, we do acknowledge that as this mitigation is now appropriately secured the risk of an AEol has been significantly reduced*" [REP10-064, Q4.8.3.2]. Natural England raised concerns that *Sabellaria spinulosa* reef is ephemeral and that it may recover to such an extent that micro-siting during installation of the export cable cannot avoid it. However, for the ephemeral *Sabellaria spinulosa* reef feature, the worst case scenario has been assessed using the best information currently available and there can be high confidence that this assessment will not change prior to construction, notwithstanding the introduction of fisheries management measures. Therefore, no AEol can be concluded. The Applicant also proposed a Site Integrity Plan (SIP) to provide the MMO and Natural England with a mechanism to ensure that the position presented by the Applicant at the consenting stage had not changed at the point of installation of the export cable. However, concerns were raised by Natural England and the MMO as to the appropriateness of such a mechanism. Accordingly, the Applicant has proposed an alternative condition (and associated Cable Specification, Installation and Monitoring Plan (CSIMP)) which seeks to secure all mitigation for the HHW SAC in the usual way. Both the MMO and Natural England have confirmed that should the Secretary of State conclude that there is no AEol, the CSIMP would be their preferred approach to securing mitigation for the HHW SAC [REP10-038] [REP9-023]. Natural England have also questioned whether the sandbank and reef features will recover following disturbance caused during construction and maintenance of the export cables. The Applicant has, during the examination proposed further mitigation measures, the latest of which was proposed at Deadline 10 [REP10-026 / REP10-029], to promote the recovery of both features. When the further mitigation measures as secured by the Applicant are taken into account the maximum potential impact to the sandbank and reef features of the HHW SAC are temporary, inconsequential, and any impacts as a result of cable protection are fully within the guidelines of NE's advice note regarding consideration of small scale habitat loss within SACs [REP1-057]. This level of impact is comparable with (or less than) the scale of Annex I habitat loss on a number of other European sites for which AEol was ruled out and development consent granted [REP10-033].

In short, the Applicant remains firmly of the view that the project will not give rise to an adverse effect on the integrity of any European site, either alone or in-combination with other projects or plans. Notwithstanding this, should the Secretary of State conclude that there is an adverse effect on integrity, the Applicant, entirely without prejudice to its position, has prepared a comprehensive derogation case including in-principle compensation measures [REP7-024], the suitability of which compensation measures have been endorsed by Natural England [REP9-048].

We would be grateful if you could kindly confirm safe receipt.

Yours faithfully

Womble Bond Dickinson (UK) LLP

APPENDIX 1 – PROOF OF VALIDATION

Chloe Ryder

From: no-reply@publishing.legislation.gov.uk
Sent: 07 May 2020 18:20
To: Chloe Ryder
Subject: Internet - VALIDATION SUCCESS: SI Validation for
PART1TheNorfolkBoreasOffshoreWindFarmDCO.doc (5 Warnings)

Dear Ms Ryder,

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Please note: Your document contains 5 warnings which may indicate an error, it is good practice to check and correct these.

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Chloe Ryder

From: no-reply@publishing.legislation.gov.uk
Sent: 07 May 2020 17:20
To: Chloe Ryder
Subject: Internet - VALIDATION SUCCESS: SI Validation for
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Chloe Ryder

From: no-reply@publishing.legislation.gov.uk
Sent: 09 May 2020 13:13
To: Chloe Ryder
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From: no-reply@publishing.legislation.gov.uk
Sent: 10 May 2020 16:33
To: Chloe Ryder
Subject: Internet - VALIDATION SUCCESS: SI Validation for
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Dear Ms Ryder,

Thank you for submitting your document 'PART4TheNorfolkBoreasOffshoreWindFarmDCO.doc' for validation.

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APPENDIX 2: CABLE PROTECTION UPDATED DRAFTING

Reduced cable protection parameters

- (A) In Schedule 1, Part 3, Requirement 5(2), replace "311,836m³" with "308,236m³" as follows:

" 5.— (1)...

(2) The total volume of cable protection must not exceed ~~311,836~~ 308,236m³ "

- (B) In Schedule 1, Part 3, Requirement 5(3), replace "590,086m²" with "586,086m²" as follows:

" 5.— (1)...

(3) The total area occupied by cable protection must not exceed ~~590,086m²~~ 586,086m²; and "

- (C) In Schedule 1, Part 3, Requirement 5(4) Work No.4A and 4B (export cable), replace "72,836m³" with "69,236m³" and replace "128,086m²" with "124,086m²" as follows:

Work	Length	Cable protection (m ³)	Cable protection (m ²)
Work No. 1(e and f) (array)	600 kilometres	198,500 m ³	389,000 m ²
Work No. 3A (interconnector link)	90 kilometres	17,000 m ³	34,000 m ²
Work No. 3B (project interconnector)	180 kilometres	41,000 m ³	74,000 m ²
Work No. 4A and 4B (export cable)	500 kilometres	72,836 69,236m ³	128,086 124,086m ²

- (D) In Schedule 11 and 12, Part 4, Condition 2, Work No. 4A and 4B (export cable) replace "72,836m³" with "69,236m³" and replace "128,086m²" with "124,086m²" as follows

" 2. The total length of the cables and the area and volume of their cable protection must not exceed the individual distributions set out in Table 2 of the outline scour protection and cable protection plan and must not exceed the following—

Work	Length	Cable protection (m ³)	Cable protection (m ²)
Work No. 3A (Interconnector link)	90 kilometres	17,000 m ³	34,000 m ²
Work No. 4A and 4B (export cable)	500 kilometres	72,836 69,236m ³	128,086 124,086m ²

- (E) In Schedule 11 and 12, Part 4, Condition 3(1)(f) replace "28,000m²" with "24,000m²" and replace "17,200m³" with "13,600m³" as follows:

" (f) in the Haisborough, Hammond and Winterton Special Area of Conservation, the total area of cable protection must not exceed ~~28,000~~ 24,000m² and the total volume of cable protection must not exceed ~~17,200~~ 13,600m³; "