

Norfolk Boreas Offshore Wind Farm Applicant's Response to the Examining Authority's Request for further information

Applicant: Norfolk Boreas Limited
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Photo: Ormonde Offshore Wind Farm

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Table of Contents

1	Compulsory Acquisition	5
2	Noise effects in Cawston	7
3	Statement of Common Ground with the MMO	10
4	Carbon Footprint Assessment	11

Glossary of Acronyms

AEol	Adverse Effect on Integrity
AOE	Alde Ore Estuary
CRM	Collision Risk Modelling
CSIMP	Cable Specification Installation and Monitoring Plan
DCO	Development Consent Order
dDCO	Draft Development Consent Order
DML	Deemed Marine Licence
EIFCA	Eastern Inshore Fisheries and Conservation Association (or Eastern IFCA)
ES	Environmental Statement
ExA	Examining Authority
FFC	Flamborough and Filey Coast
HHW	Haisborough, Hammond and Winterton
HRA	Habitats Regulations Assessment
IPMP	In Principle Monitoring Plan
m	Metres
MMO	Marine Management Organisation
NE	Natural England
NPS	National Policy Statement
RSPB	Royal Society for The Protection of Birds
SAC	Special Area of Conservation
SIP	Site Integrity Plan
SNCB	Statutory Nature Conservation Body
SoCG	Statement of Common Ground
SoS	Secretary of State
SPA	Special Protection Area

The Applicant's Response to the Examining Authority's Rule 17 Request for Information in regard to the Norfolk Boreas Application.

A Rule 17 request for further information was published on the 19 August 2020.

The Applicant has responded to each of the relevant questions, detailed in numerical order in Sections 1 to 3 of this document.

In Section 4 of this document the Applicant has provided a response to the previous Request for Further Information [PD-021] regarding net-zero and carbon footprints.

1 Compulsory Acquisition

Reference	Respondent:	Question:	Applicant's Response:
1.	Applicant	<p>The Mid-Norfolk Railway Preservation Trust is identified in the Book of Reference as being the Freehold Owner of Plot 33/06. This is described as “1400.22 square metres of land being disused railway track (North of bridge 1695), trees and shrubbery to the north of Northall Green, Norfolk.” [REP11-006]. The Book of Reference states that the type of interest sought is the acquisition of permanent new rights and the Statement of Reasons provides the Applicant’s justification for the use of Compulsory Acquisition powers, including paragraph 7.9.12 Major Crossings [REP5-007]. In the dDCO, Article 20 Compulsory Acquisition of Rights gives effect to Schedule 6 – Land in which only New Rights etc., may be acquired. Plot 33/06 is identified in this schedule [REP13-007].</p> <ol style="list-style-type: none"> 1. Provide further justification for compulsory acquisition of new rights in land (having regard to the guidance in Guidance Planning Act 2008: procedures for the compulsory acquisition of land including consideration of need, the compelling public interest case and alternatives) in relation to the issues raised in the representation from Mid-Norfolk Railway Preservation Trust [AS-079]. In so doing, detail the steps that are being taken to address the specific matters set out in s127 of PA2008 and to ensure that there is no detriment to the undertaking. The Applicant is reminded that if 	<ol style="list-style-type: none"> 1. Plot 33/06 is currently included for the purpose of acquisition of permanent new rights associated with work No.7 and the cable corridor. The description in the Book of Reference (BoR), will be updated to reflect the active nature of the railway and the reference to ‘disused’ will be removed. The updated BoR will be submitted in line with the examination timetable at Deadline 16. <p>The case for the compulsory acquisition powers has already been set out by the Applicant. The Applicant has sought to minimise the extent of the interests to be acquired and the impact on the landowner where rights are being acquired. In this balancing process the Applicant has had regard to the use of the land. Specifically for this land (and as with the crossing of other infrastructure – highways and Network Rail land), Plot 33/06 will be a trenchless crossing point with no surface works and therefore no interruption with the surface of the land and the operation of the railway. There will be no requirement to occupy the surface of the land. This position has been discussed with the landowner through correspondence with the Applicant’s Land Agent.</p> <p>The Applicant is intent on reaching an agreement with the Landowner (MNRPT). Formal Heads of Terms (HoTs) for an option agreement have been issued to MNRPT on the 18th May 2018. Discussions have been taking place between the Applicant and the landowner since July 2018. Correspondence in September 2018 between a Director of MNRPT and the Applicant’s land agents advised that they understood the principles of the project and saw no issue in signing the HoTs. It was also confirmed in correspondence that this would be a trenchless crossing and have no impact on the surface operations of the railway.</p>

Reference	Respondent:	Question:	Applicant's Response:
		<p>the objection is not withdrawn by the end of the examination, and the relevant statutory test is not met, the Secretary of State will be unable to authorise powers relating to that statutory undertakers land; if it is considered that the Mid Norfolk Railway Preservation Trust is <u>not</u> a statutory undertaker for the purposes of s127 full justification should be provided</p> <ol style="list-style-type: none"> 2. Confirm the position in relation to s138 and the necessity for interference 3. Notwithstanding whether or not the Mid-Norfolk Railway Preservation Trust is a statutory undertaker, consider whether protective provisions should be drafted and agreed for the benefit of Mid-Norfolk Railway Preservation Trust and how this might be achieved before Deadline 16. If not, why not. <p>Mid Norfolk Railway Trust is requested to:</p> <ol style="list-style-type: none"> 1. respond to the Applicant's comments by Deadline 15 (1 September). 	<p>Further correspondence between the respective parties' solicitors has been ongoing. In May 2019 MNRPT's solicitors stated that the instructions from their client were to agree in principal to the agreement, and both legal representatives are now negotiating the Option Agreement.</p> <p>The Applicant has also updated the Compulsory Acquisition Objections Schedule (CAOS) to include MNRPT. However following further engagement with the Mid-Norfolk Railway Preservation Trust, the Applicant understands that this representation has been withdrawn following an email from MNRPT to the Planning Inspectorate on the 24th August 2020.</p> <p>The Applicant accepts that s127 of the PA 2008 would apply to the Mid-Norfolk Railway Preservation Trust on the basis that they are empowered under section 5 of the Mid-Norfolk Railway Order 2001 to use the former British Railway Board's railway. The Applicant considers that such empowerment will satisfy section 8 of the Acquisition of Land Act 1981 which is applied to the definition of 'statutory undertaker' in PA2008.</p> <p>Notwithstanding the acceptance of this status the Applicant considers that, for the reasons set out above the Secretary of State can be satisfied that subsections 127(5) and (6) of PA2008 apply and that the nature and situation of the land are such that the rights required by the Applicant can be purchased without serious detriment to the carrying on of the Mid-Norfolk Railway Preservation Trust's undertaking. That is because the rights acquired will be exercised using trenchless methods and no surface works are required. This is the process proposed to be used for both the acquisition of the rights by agreement or in the absence of agreement using compulsory acquisition powers.</p>

Reference	Respondent:	Question:	Applicant's Response:
			<ol style="list-style-type: none"> 2. The Applicant does not consider that s138 of PA2008 is relevant to this application as there will be no extinguishment of a relevant right, nor removal of relevant apparatus as defined in s138 and the Applicant has not sought to include such rights in relation to the Mid Norfolk Railway Preservation Trust within the dDCO. 3. The Applicant is engaging positively with the Mid Norfolk Railway Preservation Trust and does not consider that protective provisions are required given that a requirement for a trenchless crossing under the railway is secured within Requirement 16(13)(o) of the dDCO (Wymondham to North Elmham Railway line at Dereham (Work No. 7)), as also shown on sheet 33 of the Works Plans (Document 2.4). As set out above, negotiations in respect of an Option Agreement are progressing positively, and the Applicant is confident that a voluntary negotiated agreement will be secured in due course. In addition, as also set out above, following further engagement with the Mid-Norfolk Railway Preservation Trust, the Applicant understands that this representation will be withdrawn prior to the close of the examination.

2 Noise effects in Cawston

Reference	Respondent:	Question:	Applicant's Response:
2	The Applicant and Broadland District Council	<p>There remains outstanding disagreement between the Applicant and Broadland District Council over whether significant adverse levels of noise could occur in Cawston during construction based on the cumulative impact assessment.</p> <p>The ExA is contemplating the inclusion of an additional requirement as follows:</p>	<ol style="list-style-type: none"> 1. The Applicant's position remains unchanged from that detailed in response to the ExA's fourth written questions [REP10-034] Q4.1.2.1 which confirms that the Applicant has used the available appropriate guidance and methodology to assess traffic noise impacts through Cawston, which had been previously agreed with Broadland District Council. The assessment undertaken on the potential noise effects associated with traffic through Cawston [REP8-028] did not identify any significant noise impacts. Therefore,

Reference	Respondent:	Question:	Applicant's Response:
		<p>Noise monitoring in Cawston</p> <p>X.__(1) <i>The relevant stage of the authorised development may not commence until for that stage written details of a noise impact monitoring and mitigation scheme for Cawston has been submitted to and approved by the relevant planning authority.</i></p> <p>(2) <i>The noise impact monitoring and mitigation scheme to include:</i></p> <ul style="list-style-type: none"> a) <i>baseline noise levels;</i> b) <i>the locations to be monitored and the methodology to be used to collect the required data;</i> c) <i>the periods over which noise will be monitored;</i> d) <i>the submission of survey data and interpretative report;</i> e) <i>a mechanism for the future agreement of mitigation measures, should they be required.</i> <p>(3) <i>The scheme approved under sub-paragraph (1) must be implemented by the undertaker in the event of Hornsea Three OWF being consented with an overlapping construction period.</i></p> <ol style="list-style-type: none"> 1. The Applicant and Broadland District Council are requested to give their opinion on the need and appropriateness of such an additional requirement. Both parties are invited to suggest without prejudice amendments to the wording if they wish. 2. If either party considers that a different approach such as the inclusion of wording in the Outline Traffic Management Plan (OTMP) under Section 5.6 would be more appropriate you are invited to suggest appropriate wording and locations in the OTMP for inclusion. 	<p>no further mitigation is necessary to reduce impacts to not significant in EIA terms. The Applicant has used a conservative approach in the assessment, basing predicted impact on the worst case peak flows. In addition, as set out in the Applicant's response to the ExA's fifth written questions [ExA.WQ-5.D14.V1] Q5.14.1.1.1 a commitment will be made to further reducing the cumulative HGV traffic flows through Cawston prior to construction, (as secured in the updated Outline Traffic Management Plan (document 8.8) Version 6, submitted at Deadline 14), which in turn will further reduce any potential associated noise effects.</p> <p>Notwithstanding the above, the Applicant is aware that Broadland District Council do have concerns regarding potential noise effects associated with road traffic through Cawston during the onshore construction works, particularly relating to the potential cumulative traffic flows with Hornsea Project Three. Therefore, the Applicant considers that the suggested commitment to a scheme of noise monitoring during the construction works, in the event that HP3 is consented and has an overlapping construction period, would be a suitable further measure to help alleviate the concerns raised.</p> <ol style="list-style-type: none"> 2. and 3. The Applicant considers that it would be most appropriate to secure this commitment in the OCoCP rather than in the OTMP or as an additional Requirement. This is because in accordance with Requirement 20 (2) (e) of the dDCO, Section 9 of the OCoCP sets out the control measures to be implemented for potential construction noise. As such the proposed monitoring would form part of the Construction Noise Management Plan (CNMP) developed as part of the final CoCP in consultation with Broadland District Council, which will be submitted to and approved by them prior to construction under Requirement 20. As such the Applicant has updated the

Reference	Respondent:	Question:	Applicant's Response:
		<p>3. As the Applicant's current position is that there would not be a significant adverse effect, the Applicant is asked to provide without prejudice wording for at least one way (requirement or the OTMP) for inclusion in the Order to cover this point, should the ExA be minded to recommend the need for noise monitoring and mitigation in Cawston to the SoS.</p> <p>Both parties are requested to respond to each other's comments by Deadline 15.</p>	<p>OCoCP (Version 6, submitted at Deadline 14) to include the following commitment to noise monitoring in Cawston;</p> <p><i>9.2.3 Cawston Noise Monitoring</i></p> <p>145. <i>Concerns have been raised regarding potential noise effects associated with the cumulative HGV traffic flows with Hornsea Project Three through Cawston village. Therefore in the event that Hornsea Project Three is consented, and its main construction traffic through Cawston¹ overlaps with Norfolk Boreas, a scheme of noise impact monitoring will be undertaken. The scheme will be developed as part of the CNMP and submitted to and approved by Broadland District in accordance with DCO Requirement 20 (2) (e).</i></p> <p>146. <i>The noise impact monitoring scheme will include:</i></p> <ul style="list-style-type: none"> <i>a) Baseline noise levels;</i> <i>b) The locations to be monitored and the methodology to be used to collect the required data, in accordance with the available guidance²;</i> <i>c) The period over which the noise will be monitored;</i> <i>d) The submission of survey data and interpretative report;</i> <i>e) A mechanism for the future agreement of mitigation measures, should they be required.</i> <p>¹ In connection with the construction vehicles and the delivery of cable sections 9 & 10 (to the West of the village)</p> <p>²Design Manual for Road and Bridges, Sustainability & Environment Appraisal LA111 Noise and Vibration, Highways England 2019 and Calculation of Road Traffic Noise, Department of Transport, Welsh Office, 1988</p>

3 Statement of Common Ground with the MMO

Reference	Respondent:	Question:	Applicant's Response:
3	Applicant and MMO	<p>Under commercial fisheries in the SoCG between the Applicant and the MMO, there is a statement on cumulative impact assessment (CIA) as follows: <i>"The cumulative impact conclusions of negligible or minor significance are appropriate"</i>. [REP9-023, page 45].</p> <p>This appears to be inconsistent with the findings of the CIA [APP-245, Table 32.8] in which moderate adverse (and therefore significant) effects are predicted for certain commercial fisheries (Dutch, Anglo-Dutch and Belgian beam trawling and Dutch seine netting).</p> <p>The Applicant and the MMO are requested by Deadline 14 (25 August) to:</p> <ol style="list-style-type: none"> 1. provide an explanation for the apparent discrepancy and/ or update the SoCG if required. 2. Or if necessary, the Applicant is asked to provide an update to the CIA. 	<p>1. The SoCG with the MMO will be amended at Deadline 16 to reflect the discrepancy identified by the ExA. The statement within the SoCG will be amended as follows:</p> <p>The cumulative impact conclusions of negligible or minor significance are appropriate. These are negligible, minor adverse significance or within acceptable limits for the majority of impacts, the exceptions being impacts of loss or restricted access to traditional fishing grounds which, for Dutch beam trawlers, Dutch seine netters and UK beam trawlers (Anglo-Dutch), have been assessed as being of moderate adverse significance.</p> <p>And the position will remain agreed between the two parties.</p> <p>The MMO completed a full review of Chapter 14 Commercial fisheries [APP-227] prior to providing their relevant representation [RR-069] and are in agreement with the outcomes of the assessment. It should be noted that the conclusions of moderate adverse significance identified are primarily a result of the assessment taking account of the current proposals for closures to fishing within MPAs in the North Sea (in UK, Dutch and German waters), there is little certainty that all of the proposed closures will occur and therefore this is very much a worst case scenario.</p> <p>2. In accordance with the above no update to the CIA is considered necessary by either party.</p>

4 Carbon Footprint Assessment

In response to the previous Request for Further Information [PD-021] the Applicant has responded below:

Reference	Respondent:	Question:	Applicant's Response:
R17.1.31	The Applicant	In support of the 'zero net carbon' Climate Change Act 2008 (2050 Target Amended) Order 2019 Act made on 26 June 2019, the Applicant to provide a carbon footprint for the Proposed Development, separately providing carbon assessments for onshore and offshore facilities.	In response to the ExA's request (and notwithstanding the Applicant's position outlined at Deadline 13 [REP13-013]) the Applicant has undertaken a Greenhouse Gas Emissions (including Carbon) assessment for the Norfolk Boreas project. The report has been submitted to the Norfolk Boreas Examination at Deadline 14 (ExA.AS-3.D14.V1). The report identifies that overall, the construction operation and decommissioning of the Norfolk Boreas project could create approximately 1.9million tonnes of greenhouse gasses over the lifespan of the project. As well as the overall figures provided, the report also provides various breakdowns, including the onshore/offshore breakdown requested by the ExA. Using future estimations of the GHG intensity of the UK energy mix in 2027 the overall carbon payback of emissions from the Norfolk Boreas project are likely to be within 1 to 2 years of the project becoming operational.