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To:

Your Ref:

Our Ref: EN010087

Norfolk Boreas Limited  
National Grid plc  
Network Rail Infrastructure Limited  
Environment Agency  
All Interested Parties  
cc:

Date: 28 April 2021

Dear Sir or Madam,

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

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

**REQUEST FOR INFORMATION**

1. Following the completion of the Examination on 12 October 2020, the Examining Authority submitted a Report and Recommendation in respect of its findings and conclusions on the above application to the Secretary of State on 12 January 2021.
2. There are issues on which the Secretary of State for Business, Energy & Industrial Strategy (“the Secretary of State”) would be grateful if the parties identified in bold could provide updates or information as appropriate.
3. The Secretary of State will be conducting a separate consultation to consider the implications of the High Court judgment handed down on 18 February 2021 that quashed the Secretary of State’s decision of 1 July 2020 to grant development consent for the Norfolk Vanguard Offshore Wind Farm (“the Norfolk Vanguard project”). This judgment considered the assessment of cumulative landscape and visual impacts arising from the Norfolk Vanguard project and the Norfolk Boreas project. Because of the inter-relationship of the landscape and visual impacts of the two projects, these issues will be consulted on jointly by the Secretary of State. This consultation is without prejudice to that joint consultation. Interested Parties to the Norfolk Boreas project will be included in that consultation.

## **Additional environmental information**

### Alde-Ore Estuary Special Protection Area

4. In relation to the in-combination impacts on the lesser black-backed gull feature of the Alde-Ore Special Protection Area (SPA), and in addition to the In Principle Compensation Package submitted as part of the application, the **Applicant** is requested to provide the following information in consultation with Natural England:
- Details of any strategic compensation options considered;
  - Evidence of how any proposed compensation site(s) will be acquired/leased;
  - An implementation timetable for when the compensation measures will be delivered and achieve their objectives in relation to the first operation of the wind farm.

### Flamborough and Filey Coast Special Protection Area

5. In relation to in-combination impacts on the kittiwake, razorbill, gannet, and guillemot features of the Flamborough and Filey Coast SPA, the **Applicant** in collaboration with **Natural England** is requested to provide updated in-combination assessments for collision and/or displacement effects, with and without Hornsea Project Four Offshore Wind Farm, using:
- Natural England's advised assessment parameters; and
  - The latest project parameters and baseline ornithology survey data for Hornsea Project Three Offshore Wind Farm.
6. The **Applicant** is also requested to provide details of the following:
- Any modifications to the Norfolk Boreas project, that were not included at the time of the application or during the Examination, which could avoid or reduce adverse effects on the integrity of the site for the kittiwake, razorbill, and guillemot features; and
  - Compensation strategies for kittiwake, razorbill, and guillemot, produced in consultation with Natural England, other interested parties and, if an action is required on its part, Defra. The strategies should include, but not be limited to, the following information:
    - A description of the compensatory strategies proposed, accompanied by an explanation of how they will effectively compensate for the negative effects of the Norfolk Boreas project on the species, and how they will ensure that the overall coherence of the National Site Network is protected.
    - Confirmation of the selected site(s) for compensation strategies and details of how the site(s) will be acquired/leased. For kittiwake, this would include viable options for offshore artificial nest site creation.
    - An implementation timetable for when the compensation measures will be delivered and achieve their objectives in relation to the first operation of the wind farm.

- Details of any proposed routine maintenance and species population monitoring during the project lifetime, together with the funding mechanisms for their delivery.

### Haisborough, Hammond and Winterton Special Area of Conservation

7. The **Applicant** is requested to consider the letter published by Defra (February 2021), and provide details of alternative compensation strategies for the reef and sandbank features of the Haisborough, Hammond and Winterton Special Area of Conservation (SAC), which are produced in consultation with Natural England, other interested parties and, if an action is required on its part, Defra. The agreed compensation strategies should ensure that the overall coherence of the National Site Network is protected.

### **Potential cooperation agreement between Norfolk Boreas and Norfolk Vanguard**

8. **The Applicant** is asked to provide any further details which are available in respect of the proposed cooperation agreement between Norfolk Boreas Limited and Norfolk Vanguard Limited mentioned by the Applicant in its response to the Examining Authority's Written Question 2.9.3.4. **The Applicant** is asked to indicate how, if at all, the cooperation agreement is intended to address design issues for the Norfolk Boreas and Norfolk Vanguard projects at the Necton substation to ensure that the cumulative landscape and visual impacts are minimised.

### **Funding for compulsory acquisition**

9. The Secretary of State notes that the Applicant did not disclose specific values in relation to funding for potential compulsory acquisition liabilities. **The Applicant** is asked to explain how the financial liabilities relating to compulsory acquisition will be funded in the event that they exceed the £6.8m cap set in Clause 4.4 of the Funding Agreement between Norfolk Boreas Limited and Vattenfall AB dated 10 March 2020 submitted to the Examination at Deadline 7.

### **Protective Provisions**

10. The Secretary of State notes that the Applicant stated that Protective Provisions with several parties had been agreed by the close of Examination but that the affected parties had not confirmed this to the Examining Authority. The Secretary of State requests the following parties confirm whether they have agreed Protective Provisions with the Applicant:

- **National Grid plc;**
- **Network Rail Infrastructure Limited;**
- **The Environment Agency.**

11. **Responses to the questions above are requested by 23.59 on Friday 28 May 2021. If parties consider that this is insufficient time to provide the necessary information, they are requested to contact the Secretary of State as soon as**

**possible, giving an indication of which elements they require additional time for and the length of time that they consider will be required. The Secretary of State will then consider if a time extension will be permitted.**

12. Due to COVID-19, responses on the information requested above should be submitted by email only to: [NorfolkBoreas@planninginspectorate.gov.uk](mailto:NorfolkBoreas@planninginspectorate.gov.uk)
13. Responses will be published on the Norfolk Boreas project page of the National Infrastructure Planning website:  
<https://infrastructure.planninginspectorate.gov.uk/projects/eastern/norfolk-boreas/>  
as soon as possible after **28 May 2021**.
14. This letter is without prejudice to the Secretary of State's consideration of whether to grant or withhold development consent for the Norfolk Boreas project. Nothing in this letter is to be taken to imply what the eventual decision might be or what final conclusions the Secretary of State may reach on any particular issue which is relevant to the determination of the application.

Yours faithfully

*Gareth Leigh*

Gareth Leigh

Head of Energy Infrastructure Planning



Department  
for Environment  
Food & Rural Affairs

**Mike Rowe**  
**Director of Marine and Fisheries**

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Emily Bourne  
Director, Energy Development & Resilience  
BEIS  
By email

February 2021

Dear Emily,

1. Thank you for your letter of 1 February. Defra is fully committed to Government's commitment to deliver net zero. Our Offshore Wind Enabling Actions Programme has been established to ensure that deployment is achieved in an environmentally sustainable way, therefore enabling the Government to both achieve Net Zero and address the biodiversity crisis.
2. We are keen to work with BEIS to find appropriate approaches to develop project-level and strategic compensation in the marine environment, recognising that the marine environment is a complex system and at present derogations are novel in this context. We want to address both the climate crisis and make sure our marine environment is properly protected. We are keen that this does not delay offshore wind deployment but we recognise that failure to fully consider environmental impacts at an early stage risks projects being delayed and puts at risk the 40GW by 2030 target.
3. We welcome the opportunity to comment on the possible compensatory measures proposed by the Applicant for the Norfolk Boreas offshore wind farm. We discuss alternative options further at paragraphs 21 and 22 below.
4. You explained that the Applicant's "preferred approach ... is an extension to the Haisborough Hammond Winterton SAC which would be delivered by Natural England and Defra (in consultation with the JNCC). An alternative compensatory measure of fisheries management - a reduction of intrusive fishing methods in the HHW SAC - is also proposed by the Applicant although the Applicant does not propose to progress this option."
5. You asked Defra to: "provide its position on whether, in the event that the Secretary of State for BEIS were to conclude that derogation of the Habitats Regulations was necessary in respect of HHW SAC, it would support and therefore be prepared to work

to deliver either (or both) of the compensation proposals set out above in respect of the Norfolk Boreas application”.

6. If the Secretary of State for BEIS, as competent authority, was to conclude that the Norfolk Boreas development could be justified for imperative reasons of overriding public interest, we note that the relevant regulations will be regulations 64 and 68 of the Conservation of Habitats and Species Regulations 2017 (as amended) and regulations 29 and 36 of the Conservation of Offshore Marine Habitats and Species Regulations 2017 (as amended) respectively. The wording of regulation 36(2) provides that “The appropriate authority [the Secretary of State] must secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.”
7. We have fully considered your request and set out our response below.

### **Marine Protected Areas: Purpose and Designations**

8. Defra is responsible for protecting and enhancing the marine environment, fulfilling objectives in Government’s 25 Year Environment Plan and commitments under the UK Marine Strategy to achieve “Good Environmental Status” in our waters.
9. The UK’s MPA network is one of our primary tools for protecting our marine environment and the only tool for protecting seabed habitats and species, some of which are important carbon stores. Defra’s Secretary of State has statutory responsibility for designating MPAs on the best available scientific evidence, following extensive consultation with key stakeholders. We substantially completed designations for the MPA network in 2019, following a decade long programme of work. The current designated sites are the most appropriate in terms of protecting the necessary species and habitats.
10. Special Areas of Conservation and Special Protected Areas (two types of MPAs) can **only** be designated on the basis of relevant scientific evidence, and there is no scope to take account of economic and social issues. The conservation objectives of such sites must achieve overall goals in relation to contributing to a favourable conservation status for relevant features across their natural range. It is unlikely that substituting other areas through new designation would meet these requirements.
11. It is Defra’s view that extending designated sites or creating new site designations on grounds other than the best available scientific evidence, for example as compensatory measures for a development, would not comply with the legislation. Therefore, we are unable to simply extend an SAC to provide appropriate compensation.
12. Were we to review the designations to consider whether it is appropriate, on the basis of the scientific evidence, to extend the SAC, the process would not be quick, and the outcome would be uncertain. The designation process for an MPA is complex and takes many years. The process differs slightly depending on the specific type of designation but in general will involve conducting surveys, collecting data and engagement with sea users, producing an impact assessment and undertaking a public consultation.

Experience to date suggests that it will take between three and five years to undertake the designation process and secure management measures on other activities by other regulators.

13. There is no guarantee that at the end of the designation process a site will be recommended for designation, and further work is required to put appropriate management measures in place. Therefore, compensation cannot be demonstrated (as required by the legislation) before construction, unless the development is significantly delayed. This approach could lengthen the consenting process and adversely affect Government's ambitions to deploy 40GW of offshore wind by 2050.
14. Given the very stringent statutory process, designation of new areas has an uncertain outcome, and the timescales and requirements involved mean that the Applicant would not be able to proceed with work on the development until the outcome is known.
15. We are also conscious that delivering new and extended designations, even where it could be possible, on a case by case basis will reduce the available construction space for other marine industries and future offshore wind developments to a significant degree.
16. We understand that Natural England, acting in their role as the Statutory Nature Conservation Body to the BEIS Secretary of State, has advised that new scientific evidence exists which suggests an extension to the HHW SAC could make an ecological contribution to the MPA network.
17. This advice was based on the ecological and scientific rationale for designation and does not take into account wider factors, which Defra, as the designating authority for MPAs, must consider in deciding whether such designations could be feasible. For the reasons set out above, our policy position is that we do not support the extension of MPAs as a compensatory measure at a project specific level.

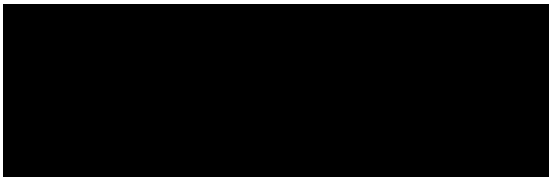
### **Fisheries Measures**

18. The Applicant makes reference to fisheries management measures in the form of a reduction of "intrusive fishing methods" as a possible compensatory measure for the Norfolk Boreas development. Currently the Applicant's proposal is unclear and so it is difficult to establish if these measures are additional to the Marine Management Organisation's fisheries management plans for offshore MPAs including HHW SAC.
19. Using fisheries management measures as compensation does not comply with the requirements set out in the legislation as removing one harmful activity (trawling) will not directly compensate for the adverse effects caused by another (the offshore wind development). However, reducing capacity in a way which could improve the environmental headroom available for all marine industries is an interesting concept and Defra is exploring policy options at a plan-level to increase marine carrying capacity.
20. Given the limited amount of detail on this proposal and noting that the Applicant does not plan to proceed with it, we are not able to support it at this stage.

## **Alternative compensation measures**

21. Defra recognises that it is difficult to identify compensation that will be effective in the offshore zone. We welcome the significant use of mitigation measures by the Applicant to avoid adverse effect where possible and in particular the restricted use of cable protection around reef areas in the site.
22. As the Government department with lead responsibility for MPA policy and designation,, Defra is uniquely placed to understand the interplay between the derogations process and wider environmental policy aims as well as the legal framework in which designations can be made. Early engagement with Defra on all developments where there may be environmental impacts will help ensure compensation measures are feasible and securable. We have given some thought to alternative compensatory measures for Norfolk Boreas specifically and we are keen to explore these in more detail with the Applicant and the Statutory Nature Conservation Bodies.

Yours sincerely,



Mike Rowe

Director, Marine & Fisheries