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c/o Norfolk Boreas and Norfolk Vanguard East Limited
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20 September 2022

Dear Mr Tarrant,

**PLANNING ACT 2008
APPLICATION FOR A NON-MATERIAL CHANGE TO NORFOLK BOREAS OFFSHORE
WIND FARM ORDER 2021 (S.I. 2021/1414)**

1. I am directed by the Secretary of State for Business, Energy and Industrial Strategy (“the Secretary of State”) to advise you that consideration has been given to the Application (“the Application”) which was made by Norfolk Boreas Limited & Norfolk Vanguard East Limited (“the Applicant”) on 25 April 2022 for changes which are not material to be made to the Norfolk Boreas Offshore Wind Farm Order 2021 (“the Order”) under section 153 of, and Schedule 6 to, the Planning Act 2008. This letter is the notification of the Secretary of State’s decision in accordance with regulation 8 of the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 (as amended) (“the 2011 Regulations”).
2. The original application for development consent under the Planning Act 2008 was granted consent on 10 December 2021 and gave development consent for the construction, operation, and maintenance of an offshore wind turbine generating station with a gross electrical output of 1,800 megawatts (“MW”) and up to 158 Wind Turbine Generators (“WTGs”) and associated infrastructure.
3. The Applicant is seeking consent for a change to the Order comprising of:
 - the removal of the stated maximum gross electrical output capacity;
 - a reduction in the maximum number of WTGs from 158 to 137.

Summary of the Secretary of State’s decision

4. The Secretary of State has decided under paragraph 2(1) of Schedule 6 to the Planning Act 2008 to make non-material changes (“NMCs”) to the Order, so as to authorise the changes as

detailed in the Application and to make two changes of his own to the Order. His own changes are to replace the postal address of the Defence Infrastructure Organisation currently included in the text of Requirement 13 alongside a change in location of the air defence radar from RRH Trimmingham to RRH Neatishead. This letter is notification of the Secretary of State's decision in accordance with regulation 8 of the 2011 Regulations.

5. The Secretary of State has given consideration to whether the Application is for a material or non-material change. In doing so, he has had regard to paragraph 2(2) of Schedule 6 to the Planning Act 2008 which requires the Secretary of State to consider the effect of the change on the Order as originally made.
6. There is no statutory definition of what constitutes a 'material' or 'non-material' amendment for the purposes of Schedule 6 to the Planning Act 2008 and Part 1 of the 2011 Regulations.
7. So far as decisions on whether a proposed change is material or non-material, guidance has been produced by the Department for Communities and Local Government (now the Department for Levelling Up, Housing and Communities ("DLUHC")), the "Planning Act 2008: Guidance on Changes to Development Consent Orders" (December 2015) ("the Guidance")¹, which makes the following points:
 - (a) given the range of infrastructure projects that are consented through the Planning Act 2008, and the variety of changes that could possibly be proposed for a single project, the Guidance cannot, and does not attempt to, prescribe whether any particular types of change would be material or non-material;
 - (b) however, there may be certain characteristics that indicate that a change to a consent is more likely to be treated as a material change. Four examples are given in the Guidance as a starting point for assessing the materiality of a proposed change, namely:
 - (1) whether an update would be required to the Environmental Statement ("ES") (from that at the time the Order was made) to take account of new, or materially different, likely significant effects on the environment;
 - (2) whether there would be a need for a Habitats Regulations Assessment ("HRA"), or a need for a new or additional licence in respect of European Protected Species ("EPS");
 - (3) whether the proposed change would entail compulsory acquisition of any land that was not authorised through the Order; and
 - (4) whether the proposed change would have a potential impact on local people and business (for example, in relation to visual amenity from changes to the size and height of buildings; impacts on the natural and historic environment; and impacts arising from additional traffic).
 - (c) although the above characteristics indicate that a change to a consent is more likely to be treated as a material change, these only form a starting point for assessing the materiality of a change. Each case must depend on thorough consideration of its own circumstances.
8. The Secretary of State has considered the change proposed by the Applicant against the four matters given in (1), (2), (3) and (4) above:

¹ <https://www.gov.uk/government/publications/changes-to-development-consent-orders>

- (1) The Secretary of State notes that the information supplied supports the Applicant's conclusions that there are no new, or materially different, likely significant effects from those assessed in the Environmental Statement. He also considers that equivalent changes proposed to the Norfolk Vanguard Development Consent Order will not result in an in-combination effect altering the conclusions of that Environmental Statement. In light of the analysis supplied by the Applicant and responses to the consultation that have raised no concerns regarding environmental issues, the Secretary of State has, therefore, concluded that no update is required to the Environmental Statement as a result of the proposed amendment to the Order.
 - (2) In respect of the HRA, the Secretary of State has considered the nature and impact of the change proposed and is satisfied that there is not likely to be a significant effect on any protected sites either alone or in combination with any other plans or projects as a result of the proposed change and therefore an Appropriate Assessment is not required. He is also satisfied that the proposed change does not bring about the need for a new or additional licence in respect of EPS as the amendments sought are not anticipated to give rise to any new or different effects from an ecological perspective than those assessed for the original application.
 - (3) In respect of compulsory acquisition, the Secretary of State notes that the proposed changes do not require any additional compulsory purchase of land.
 - (4) In respect of impacts on local people and businesses, the Secretary of State notes that no changes are anticipated by the Applicant to the impacts in relation to seascape and landscape and visual, commercial fisheries, and shipping and navigation and therefore the proposed amendment will not affect local onshore or offshore stakeholders already assessed in the Environmental Statement.
9. The Secretary of State therefore concludes that none of the specific indicators referred to in the guidance, or other relevant considerations, suggests that the changes considered in this letter is a material change.
 10. The Secretary of State is therefore satisfied that the changes considered in this letter are not material and should be dealt with under the procedures for NMCs.

Consultation and responses

11. In advance of submitting, the Applicant wrote to stakeholders inviting comments on the NMC Application. These included the Broadland District Council, Defence Infrastructure Organisation ("DIO"), Eastern Inshore Fisheries & Conservation Authority ("EIFCA"), Historic England, Marine Management Organisation ("MMO"), Ministry of Defence ("MoD"), National Air Traffic Services ("NATS") En-Route Safeguarding, Oil and Gas Authority, Natural England ("NE"), The Crown Estate ("TCE") and Trinity House, the Royal Society for Protection of Birds ("the RSPB"), VisNED and North Norfolk District Council, National Federation of Fishermen's Organisations ("NFFO").
12. The Applicant publicised the Application in accordance with regulation 6 of the 2011 Regulations, the Application was also published for two successive weeks in the local press (Fishing News (28 April 2022 and 5 May 2022) and Eastern Daily Press (26 April 2022 and 3 May 2022)) and copies of the regulation 6 notice and the Application were made publicly available on the Planning Inspectorate's ("PINS") website, such that there was an opportunity for anyone not notified to also submit representations to the Planning Inspectorate.

13. An update to 1,700 registered interested parties was also issued (e-shot) from the Applicant's project pages on their own website.
14. Representations were received from: Broadland District Council, DIO and MOD, EIFCA, Historic England, MMO, NATS En-Route Safeguarding, NE, The Crown Estate and Trinity House. No responses were received from the Royal Society for Protection of Birds (RSPB), VisNED and North Norfolk District Council. The Secretary of State's responses to the issues raised by consultees are outlined in the following paragraphs:

Natural England

15. Natural England reviewed the proposed changes and advised that providing the changes are in strict accordance with the details of the application, it can exclude the risk that the non-material change application will have a significant effect on any Special Area of Conservation ("SAC"), Special Protection Area or Ramsar site, either individually or in combination with other plans or projects. NE consider an Appropriate Assessment of the implications of this proposal on the site's conservation objectives should not be required. It had no further comments or concerns.

Broadland District Council

16. Broadland District Council had no comments to make in respect of the application.

Eastern Inshore Fisheries and Conservation Authority ("EIFCA")

17. EIFCA's core remit pertains to the management of inshore fisheries to support the conservation objectives for the Haisborough, Hammond & Winterton Special Area of Conservation ("HHW SAC"), which the export cable corridor passes through. EIFCA do not consider that the removal of the maximum export capacity limit will affect their remit to protect designated Marine Protected Area features from fisheries damage.
18. However, it notes that the cable route passes through areas of sandy and coarse sediment (which are designated sub-features of the subtidal sandbanks HHW SAC feature) both within the HHW SAC and further inshore which are typically colonized by burrowing fauna of worms, crustaceans, bivalve molluscs and echinoderms (JNCC 2022). These habitats provide important breeding and nursery grounds for young commercially important fish, including European plaice (*Pleuronectes platessa*), common dab (*Limanda limanda*), and sandeel (*Ammodytes spp.*) (Natural England 2018). EIFCA is concerned about the potential impacts of electromagnetic fields ("EMF") created by the Norfolk Boreas cables on both commercial and non-commercial species, and how these impacts may increase due to the increased power transmission resulting from the removal of cable export limits. It considers that export cables have higher EMF emissions (compared to inter-turbine cables), and whilst it dissipates within 10m of the source, the Application documents do not explain how the removal of the export limit may affect the levels of EMF emitted by the export cables. EIFCA recommend that the applicant considers undertaking appropriate modelling to calculate the likely EMF emitted from the export cables in the absence of an export limit and/or consider regularly monitoring power transmission from the wind farm and EMF transmission to better understand the relationship between power transmission, cable material and EMF.

Historic England (HE)

19. Historic England has advised that the proposed changes are within the consented envelope that was assessed within the Environmental Statement (ES) and that no change to these parameters is proposed as part of the Non-Material Change application or associated Deemed Marine Licence variations.
20. HE has considered the information provided within Tables 1 and 2 within the Norfolk Boreas Offshore Wind Farm DCO Non-Material Change Supporting Statement (Reference:

PB5640.008.0015; Date: April 2022; Revision: Version 1) and are prepared to accept the explanation provided that there will be no changes to the foundations' sizes or in the installation methods from those previously assessed within the ES. HE therefore has no further comment or other advice to offer.

Marine Management Organisation

21. The MMO has no objection to the amendments proposed in the application. It notes that the non-material change will necessitate an application to the MMO to vary the deemed marine licenses (DMLs), (Schedules 9 and 10 of the DCO), for which it has received a separate request to vary the DMLs on 25 April 2022 and is currently processing.

NATS Safeguarding

22. NATS consider that the proposed reduction in turbine numbers does not alter its position and it will continue to work with the Applicant in respect of the mitigation measures required to support the scheme.

The Crown Estate

23. The Crown Estate has no objection to this application.

Trinity House

24. Trinity House confirmed that it has no objection to the NMC application.

Defence Infrastructure Organisation / Ministry of Defence

25. The MOD has reiterated concerns presented during the Examination; however, the NMC Application will not change these concerns. The DIO notes that due to the fact that the air defence radar at Trimingham is to be moved to Neatishead and that the Defence Infrastructure Organisation Safeguarding has a new head office address, it has requested that Requirement 13 is updated accordingly.

The Applicant's response

26. The Applicant provided additional information in response to the EIFCA's comments. The Applicant has confirmed that the proposed removal of the limit on export capacity will not result in an increase in voltage of the export cables as consented and will not result in changes to the impact conclusions of the Norfolk Boreas ES. Further, the proposed change would not result in changes to installation methods from those assessed within the ES, which include embedded mitigation against possible impacts of EMF effects. The Secretary of State notes that the Applicant considers that any potential effects will be highly localised, affecting a small proportion of fish and shellfish habitats within the offshore cable corridor and within a maximum of a few metres of the final cable routes. As the sensitivity of the benthic ecology receptors is considered to be negligible, regular monitoring of the power transmission from the wind farm and EMF transmission is considered to be unnecessary.

Environmental Impact Assessment

27. The Secretary of State has considered whether the Application would give rise to any new significant or materially different effects when compared to the effects set out in the Environmental Statement for the development authorised by the Order.
28. The Secretary of State is satisfied that the information provided by the Applicant is sufficient to allow him to make a determination on the Application.
29. The Secretary of State has considered all relevant information provided and the comments of consultees, including the Applicant's response to the EIFCA which confirmed there would

be no increase in voltage of the export cables as consented and consequently that there would be no increase in the EMFs generated by the cables. The Secretary of State agrees with the Applicant's conclusions that there will not be any new or materially different likely significant effects when compared to the effects set out in the Environmental Statement for the development authorised by the Order and as such considers that there is no requirement to update the Environmental Statement.

30. As there are no new significant environmental impacts as a result of the proposed change, the Secretary of State does not consider that there is any need for consultation on likely significant transboundary effects in accordance with regulation 32 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

Habitats

31. The Secretary of State has considered the relevant and important policies in respect of the United Kingdom's obligations as set out in the Conservation of Offshore Marine Habitats and Species Regulations 2017 ("the Offshore Habitats Regulations"). The Offshore Habitats Regulations require the Secretary of State to consider whether the Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on a protected site, as defined in the Habitats Regulations. If likely significant effects cannot be ruled out, then an Appropriate Assessment must be undertaken by the Secretary of State, pursuant to regulation 28(1) of the Offshore Habitats Regulations, to address potential adverse effects on site integrity. The Secretary of State may only agree to the Application if he has ascertained that it will not adversely affect the integrity of the protected sites within the National Site Network.
32. The Secretary of State has considered the information submitted in the Application and the comments of consultees and is satisfied that the proposals do not alter the conclusions set out in the Applicant's Environmental Statement and the Habitats Regulations Assessment for the Order and the Application will not have a likely significant effect on any protected sites within the National Site Network and no Appropriate Assessment is therefore required.

General Considerations

Equality Act 2010

33. The Equality Act 2010 includes a public sector equality duty. This requires a public authority, in the exercise of its functions, to have due regard to the need to (a) eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited by or under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic (e.g. age; sex and sexual orientation; gender reassignment; disability; marriage and civil partnership;² pregnancy and maternity; religion or belief; and race) and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
34. The Secretary of State has had due regard to the need to achieve the statutory objectives referred to in section 149 of the Equality Act 2010 and is satisfied that there is no evidence that granting the changes considered in this letter will affect adversely the achievement of those objectives.

Human Rights Act 1998

35. The Secretary of State has considered the potential for the proposed changes to the Development to infringe upon human rights in relation to the European Convention on Human Rights. The Secretary of State considers that the grant of the changes considered

² In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

in this letter would not violate any human rights as enacted into UK law by the Human Rights Act 1998.

Natural Environment and Rural Communities Act 2006

36. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, has to have regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting development consent. The Secretary of State is of the view that the Application considers biodiversity sufficiently to accord with this duty.

Secretary of State's conclusions and decision

37. The Secretary of State has considered the ongoing need for the development. The Secretary of State notes that the Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Renewable Energy (EN-3) both set out that for the UK to meet its energy and climate change objectives, there is continuing need for new electricity generating plants of the type proposed by the Applicant. The Secretary of State considers, therefore, that the ongoing need for the project is established given the contribution it will make to securing energy supply. On 27 June 2019, following advice from the Committee on Climate Change, the UK Government announced a new carbon reduction 'net zero' target for 2050 which resulted in an amendment to the Climate Change Act 2008 (the target for the net UK carbon account for 2050 changed from 80% to 100% below the 1990 baseline). Additionally, the British Energy Security Strategy published on 7 April 2022 states that the UK Government intend to deliver up to 50GW of new offshore wind by 2030.
38. The Secretary of State notes that the energy National Policy Statements continue to form the basis for decision-making under the Planning Act 2008. The Energy White Paper, Powering our Net Zero Future, was published on 14 December 2020. It announced a review of the suite of energy National Policy Statements but confirmed that the current National Policy Statements were not being suspended in the meantime. The relevant energy National Policy Statements therefore remain the basis for the Secretary of State's consideration of the Application. The Secretary of State considers, therefore, that the ongoing need for the Development is established and that granting the non-material change would not be incompatible with the amendment to the Climate Change Act 2008.
39. The Secretary of State has considered the point raised by the EIFCA and the Applicant's response provided in Appendix 6 of their Regulation 7A document. The Secretary of State is satisfied that the Applicant's information demonstrates that the proposed changes will not result in changes to the impact conclusions of the Norfolk Boreas ES.
40. The Secretary of State has considered the nature of the proposed changes, noting that the proposed changes to the Development would not result in any further environmental impacts and will remain within the parameters consented by the Order.
41. For the reasons given in this letter, the Secretary of State considers that there is a compelling case for authorising the proposed changes to the Order with the amendments set out below. The Secretary of State is satisfied that the changes requested by the Applicant are not material changes to the Order and has decided under paragraph 2(1) of Schedule 6 to the Planning Act 2008 to make a NMC to the Order so as to authorise the changes detailed in the Application.

Modifications to the draft Order by the Secretary of State

42. In addition to the modifications to the draft Order submitted by the Applicant, the Secretary of State has made his own modification to the Order to reflect the fact that since the Order

was made, the air defence radar currently located at RRH Trimmingham will be relocated to RRH Neatishead and the Defence Infrastructure Organisation Head Office has been relocated. The Order has been amended accordingly.

Challenge to decision

43. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

Publicity for decision

44. The Secretary of State's decision on this Application is being notified as required by regulation 8 of the 2011 Regulations.

Yours sincerely,



Gareth Leigh
Head of Energy Infrastructure Planning Delivery

ANNEX

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 (5) of the Planning Act 2008, a decision under paragraph 2(1) of Schedule 6 to the Planning Act 2008 to make a change to an Order granting development consent can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order is published. The Amending Order as made is being published on the date of this letter on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/eastern/east-anglia-three-offshore-wind-farm/?ipcsection=docs&stage=7&filter1=Non-Material+Change&filter2=NMC+3>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655)