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**Subject:** Application by Norfolk Vanguard Limited for an Order granting development consent for the Norfolk Vanguard Offshore Wind Farm - Deadline 4 response by Network Rail Infrastructure Limited [ADDGDD-Live.FID2847791]  
**Date:** 13 March 2019 18:12:38

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Dear Madam or Sir

Network Rail Infrastructure Limited's (**Network Rail**) Deadline 4 response to the ExA's Further Written Questions, which were published on 27 February 2019, is as follows.

### **ExAQ 20.141 - Response by Network Rail**

Using the ExA's numbering:

#### **1. Protective provisions for the benefit of Network Rail**

While progress has been made with the Applicant in relation to some of the protective provisions to be included in Part 5 of Schedule 16 to the Development Consent Order (**Order**) since the submission of Network Rail's Written Representations [REP1-063], several points of difference remain. Network Rail and the Applicant are continuing to discuss these points of difference and Network Rail is hopeful that all matters can be resolved before 28 March, the date reserved for the ISH into the draft Order.

We list below the key issues to be resolved between the parties. This not an exhaustive list as we do not include the more minor points of difference and Network Rail will update the ExA as necessary with a full list in advance of ISH5 if these remain unresolved.

- i) Paragraph 51 - this provision requires the Applicant to obtain consent from Network Rail before exercising a number of powers under the Order in relation to Network Rail, including the exercise of compulsory purchase powers in respect of Network Rail property.  
  
Network Rail cannot agree to protective provisions that allow the Applicant to exercise Order powers in respect of Network Rail land without Network Rail's consent. We therefore require that the full list of Order powers that may affect Network Rail property be included. This list is included in the protective provisions at Appendix 1 to Network Rail's Written Representations [REP1-063].
- ii) Paragraphs 53(2) and 56(3) - in relation to the matters for which Network Rail shall be compensated, Network Rail must be compensated for all losses arising from the construction of the specified works, without qualification. Where Network Rail is able to control costs, such as Network Rail's own expenses, Network Rail agrees that such costs should be "reasonably" incurred. This is reflected in Network Rail's protective provisions. However, where losses arise from the Applicant's development, Network Rail, as a public body, must recover any losses in full.
- iii) Paragraph 62(3) - similarly, Network Rail cannot be liable for any loss or loss of profits arising from the construction or use of the authorised development and Network Rail requires this paragraph to be amended, as set out in Appendix 1 to the Written Representations [REP1-063].
- iv) Arbitration - Network Rail has proposed to the Applicant that some new wording be included in the protective provisions, regarding an arbitration timetable, to ensure that in the event of a dispute being referred to arbitration, any

timetable agreed between the parties or set by the arbitrator will take into account Network Rail's clearance process, and other engineering, regulatory and stakeholder consents, including NR governance procedures, which may need to be sought by Network Rail during the course of the arbitration.

## **2. Property and asset protection agreements**

Negotiations with the Applicant are ongoing with regards to the other documents referred to in paragraph 2.9 of Network Rail's Written Representations [REP1-063], namely the draft easement, the framework agreement and the asset protection agreements. Network Rail anticipates that these documents will be progressed significantly over the coming weeks and we will update the ExA with regards to these negotiations at the next appropriate Deadline.

The final matter referred to in Network Rail's Written Representations requiring further consideration relates to the potential for electro-magnetic interference to be emitted from the authorised development (paragraph 2.11 of REP1-063). Network Rail is assessing whether there is an impact for Network Rail in this regard and hopes to have the results of this assessment in advance of ISH5.

Yours faithfully

Addleshaw Goddard LLP

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