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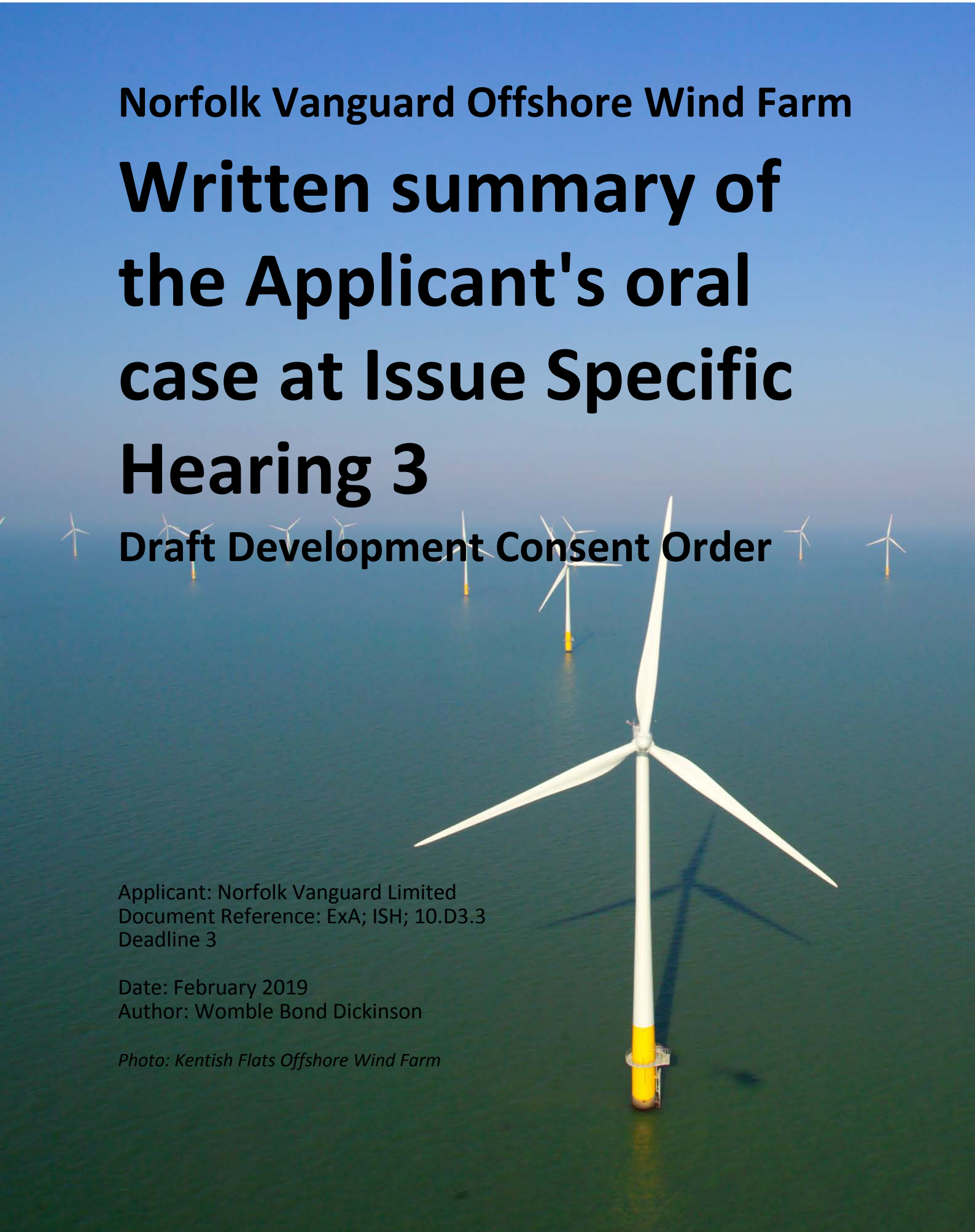
Norfolk Vanguard Offshore Wind Farm

Written summary of the Applicant's oral case at Issue Specific Hearing 3

Draft Development Consent Order



Applicant: Norfolk Vanguard Limited
Document Reference: ExA; ISH; 10.D3.3
Deadline 3

Date: February 2019
Author: Womble Bond Dickinson

Photo: Kentish Flats Offshore Wind Farm

Glossary

AC	Alternating Current
ADR	Air Defence Radar
dDCO	Draft Development Consent Order
DCO	Development Consent Order
DML	Deemed Marine Licence
ES	Environmental Statement
ExA	Examining Authority
HAT	Highest Astronomical Tide
HGV	Heavy Goods Vehicle
HVAC	High Voltage Alternating Current
HVDC	High Voltage Direct Current
ISH	Issue Specific Hearing
MMMP	Marine Mammal Mitigation Protocol
MMO	Marine Management Organisation
MoD	Ministry of Defence
NCC	Norfolk County Council
NFFO	National Federation of Fishermen's Organisation
NNDC	North Norfolk District Council
UXO	Unexploded Ordnance

Written Summary of Oral Submissions: Development Consent Order (DCO) Hearing

1. Introduction

1.1 Issue Specific Hearing 3 (**ISH**) on the draft Development Consent Order (**DCO**) for Norfolk Vanguard took place on 7 February 2019 at 10:00am at Blackfriars Hall, The Halls, St Andrew's Plain, Norwich, NR3 1AU.

1.2 A list of the Applicant's participants that engaged in the ISH can be located at Appendix 1 of this note.

1.3 The broad approach to the ISH followed the form of the agenda published by the Examining Authority (the **ExA**) on 29 January 2019 (the **Agenda**).

1.4 The ExA, the Applicant, and the stakeholders discussed the Agenda items in turn which broadly covered the areas outlined below.

	ExA Question / Context for discussion	**Applicant's Response**
AGENDA ITEM 3 (Consistency with the Environmental Statement)		
3(i)	The ExA asked the Applicant to explain and update on the changes to the parameters contained in the revised version of the draft DCO submitted at Deadline 2.	The Applicant explained the main changes to the parameters contained within the draft DCO (**dDCO**) as follows: (i) The reference to the maximum height of the centre line of the generator shaft forming part of the hub when measured from Highest Astronomical Tide (**HAT**) had been corrected to 198.5 metres (instead of 200 metres) at Requirement 2(1)(b). (ii) The maximum area of cable protection as well as the maximum volume of cable protection and total length of cables was now included at Requirement 5. (iii) Floating foundations were no longer required and have been removed from the detailed offshore design parameters at Requirement 6. (iv) Requirement 10(3) had been updated to clarify that in relation to any wave measurement buoys each foundation must not have a seabed footprint area (excluding scour protection) of greater than 150m² per buoy, and 300m² in total. (v) Requirement 11 had been updated to include a corrected figure for the total amount of scour protection which must not exceed 53,095,398m³ and a maximum area of scour protection had also been included, not to exceed 10,639,080m².

		The Applicant confirmed that where appropriate these updated and revised parameters had been carried through to Schedules 9 to 12 and therefore incorporated in the Deemed Marine Licences (**DMLs**) accordingly. However the Applicant also noted that as the DMLs related to specific assets, the figures included in the DMLs would relate to this rather than to specific areas of assessment. In addition, new parameters had been included to set a maximum for disposal of drill arisings in connection with any foundation drilling (which must not exceed 400,624m³) and the total length of cable and amount of cable protection across both generation DMLs and transmission DMLs. Finally a new Condition in relation to maximum hammer energy, which must not exceed 5,000kJ in the event that driven or part driven pile foundations are proposed to be used, had been included in the generation DMLs (Condition 14(1)(n)) and the transmission DMLs (Condition 14(1)(m)). The Applicant also referred to the Schedule of Changes to the draft DCO (ExA;DCOSchedule;10.D2.6) which had been submitted at Deadline 2 and provided details of changes made and the rationale for those changes which could be referred to for more detail. The Marine Management Organisation (**MMO**) noted that the changes were acceptable and in most part dealt with the MMO's outstanding concerns. However two matters remained outstanding in relation to: (1) Providing more detail on how the total disposal volumes could be broken down into different disposal activities; and (2) The number of cable crossings to be stated in the DMLs. In relation to point (1), the Applicant noted that in respect of sandwave levelling a separate volume had been included for disposal but that it was not possible to break the figures down into any further detail at this stage. The Applicant also considered that the relocation of boulders should not be treated as a disposal activity where the boulders were not brought to the surface prior to relocation. In relation to point (2), the Applicant's position was that it was not necessary to include a maximum number of cable crossings in the DMLs. The parameters secured for cable protection had been based on the parameters assessed in the ES. The Applicant also noted that the type and level of cable protection required would only be known prior to construction. Whilst the intention is to remove redundant cables, this would require the operator's consent and to the extent that the operator could not be found or would not consent to the cable's removal, cable crossings would be required. The Applicant did however note that this additional level of detail, including the number of cable crossings to be employed, would be agreed as part of the scour protection and cable protection plan ((Condition 9(1)(e) of the Transmission DMLs).
3(ii)	Should use of High Voltage Direct Current (**HVDC**) technology be secured in the dDCO	The Applicant summarised the points made at ISH1 in relation to onshore environmental matters in relation to the need to secure the use of HVDC technology in the dDCO. In short, the concerns raised by Interested Parties related to the additional infrastructure associated with the High Voltage Alternating Current (**HVAC**) technology as opposed to the nature of the Alternating Current (**AC**)

		current (e.g. cable relay station and increased number of cables requiring an increased land take). The Applicant noted that: (1) The Environmental Statement (**ES**) does not assess this additional infrastructure; (2) The Order limits do not include the additional land which would be required to construct and operate the additional infrastructure; (3) The works description contained within the dDCO does not consent the additional infrastructure which gives rise to the concerns (e.g. the cable relay station and the additional number of cables which would be required); (4) Therefore, to the extent that the additional infrastructure was subsequently proposed as part of an HVAC solution, this would require a material amendment to the DCO on the basis that new environmental impacts would need to be assessed, additional land take would be required, and significant local concern would be raised; (5) AC cables are required offshore, as well as between the onshore substation and the existing National Grid substation extension, and this needs to be permitted within the dDCO; and (6) If technological advancements enable the future use of an HVAC system within the parameters assessed and secured by the dDCO, use of HVAC technology should not be restricted. In summary, the Applicant's position maintains that because the dDCO does not consent the additional infrastructure required for HVAC it is not necessary to restrict this through a Requirement or further secure the use of a HVDC system within the works description. In response to further comments from North Norfolk District Council (**NNDC**), and whilst the Applicant did not disagree that HVDC currently provided a more efficient technology, the Applicant considered that choice of the cabling solution, provided it fell within the parameters assessed and within the bounds of the infrastructure consented under the dDCO, was a matter for the Applicant alone to determine.
AGENDA ITEM 4 (Proposed arbitration procedures)		
(i)	The ExA asked how the process of appointment of an arbitrator would be dealt with	The Applicant referred to Article 38(1) which stated that an arbitrator would be agreed by the parties in the first instance or if the parties failed to agree would be appointed by the Secretary of State. Article 38(2) provided for circumstances where the matter at arbitration related to a difference with the Secretary of State. In such a case, if an arbitrator could not be agreed, the Centre for Effective Dispute Resolution would appoint an arbitrator. Similarly under Article 38(3) if the Secretary of State failed to make an appointment within 14 days of a referral, either party could refer appointment to the Centre for Effective Dispute Resolution.

(ii)	The Applicant's proposed arbitration approach as set out in Articles 6 and 38 and Schedule 14 of the dDCO	The Applicant noted that its Responses to the ExA's Written Questions (ExA; WQ; 10.D1) and the Applicant's Comments on Responses to the ExA's First Written Questions (ExA; WQR; 10.D2.3) had set out the Applicant's position in relation to arbitration. In summary: (1) The response to **Q20.12** dealt with arbitration generally and specifically in relation to application to differences with the Secretary of State; (2) The response to **Q20.32** dealt with the application of the arbitration article in relation to the DMLs. (3) The response to **Q20.109** dealt with the application of the arbitration article to Natural England and the approach taken on Triton Knoll Offshore Wind Farm and Burbo Bank Extension by the relevant Panels of examiners and the Secretary of State not to exclude Natural England from the effect of the arbitration provisions; and (4) The response to **Q20.110** dealt with the Applicant's approach to arbitration generally and specifically in relation to its application to the MMO. In response to matters raised by the MMO, the Applicant made the following points: (1) Section 120 of the Planning Act 2008, by reference to paragraph 1 of Schedule 5, prescribes that submission of disputes to arbitration may be included in a DCO. The Applicant noted that Section 120 was not qualified or conditioned and that it did not exclude any party. (2) An arbitration article was included in the Model Provisions at Article 42, which applies to any difference and all parties under the DCO. Whilst the Model Provisions are no longer in force, the Applicant confirmed its understanding that the Planning Inspectorate was updating its guidance on drafting DCOs in this regard; the Applicant explained that the Model Provisions provided a useful starting point. The Applicant also noted that the arbitration article has been included in previous offshore wind farm DCOs in the same form as that contained within the Model Provisions. The Applicant referred to its response to Q20.110 which dealt with the Model Provisions in further detail. Following the close of ISH3, the Applicant became aware that the Planning Inspectorate's revised Advice Note AN13 (version 3) was issued in February 2019. In relation to the Model Provisions it states: *"Model provisions"* *2.11 Model provisions were set out in the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (SI 2009/2265). They included provisions which could be common to all NSIPs, others which relate to particular infrastructure development types, in particular railways and harbours, and model provisions in respect of requirements. The Localism Act 2011 removed the requirement for the decision-maker to have regard to the prescribed model provisions in deciding an application for development consent.*

		2.12 Model provisions were intended as a guide for developers in drafting orders, rather than a rigid structure, but aided consistency, and assisted developers to draft a comprehensive set of lawful provisions. *2.13 There is no longer a requirement to submit a tracked changed version of the draft DCO which compares the wording against The Infrastructure Planning (Model Provisions) (England and Wales) Order 2009.* (3) The Applicant considered that the drafting of the arbitration article in the Model Provisions lacks certainty and that it was appropriate to include a clear procedure to deal with disputes. The Applicant's proposed changes to the arbitration article contained within the Model Provisions seek only to clarify the process and do not fundamentally change the principle of including the arbitration article, as applied within previous DCOs. (4) It is appropriate that Nationally Significant Infrastructure Projects have a swift and clear process for the resolution of disputes, and this reflects the guidance in AN15 as set out in the Applicant's response to Q20.12. (5) Whilst the MMO referred to their appeals process for Marine Licensing, the Applicant considered that this process may need to be specifically applied to the DMLs in order to take effect. This was the approach which had been taken in relation to appeals relating to discharge of requirements under the DCO, for which separate provisions had been included within Schedule 15 to the dDCO. Accordingly, the Applicant considers that disputes of this nature will not be bound by the arbitration article as an alternative mechanism has been provided. (6) Therefore, and to the extent that the arbitration process did not apply to the MMO or determination of matters under the DMLs, any disputes would need to be dealt with by way of judicial review. The Applicant's view was that judicial review was not a suitable alternative mechanism; it is costly and time consuming for all parties and not appropriate for Nationally Significant Infrastructure Projects, and particularly for offshore wind projects in the context of meeting Contract for Difference milestones. (7) The MMO noted that it was not able to comply with the confidentiality arrangements provided for at paragraph 7 of Schedule 14 however the Applicant responded that this had been amended in the dDCO submitted at Deadline 2 to allow for disclosure in compliance with legislative rules, functions or obligations on either party. (8) The MMO also stated that the application of the arbitration provision had not previously been considered in any detail by the Examining Authority or the Secretary of State. However the Applicant referred to two previous offshore wind farm DCO decisions where the arbitration provision had been considered in the context of its application to Natural England. The Applicant referred to its response to Q20.109 where this was dealt with in further detail. The Applicant explained that Natural England had been excluded from the arbitration article in the draft DCO for the Burbo Bank Extension Offshore Wind Farm, but following the Secretary of State's decision that Natural England should not be excluded from the

		arbitration article in the Triton Knoll Offshore Wind Farm Order, this exclusion was subsequently removed. The Applicant referred to paragraph 7.3 of the Secretary of State's decision letter for Triton Knoll Offshore Wind Farm and also to the Examiner's Report in connection with the Burbo Bank Extension Offshore Wind Farm at paragraph 7.45 and 7.46 in this respect. In response to the points made by Trinity House, the Applicant made the following points: (1) The Applicant considered that to the extent that the matter in dispute would prejudice or derogate from any of the rights, duties or privileges of Trinity House then the saving provision at Article 41 would apply and the arbitration article would not be applicable to Trinity House. (2) The Applicant noted that the key references to Trinity House under the dDCO related to: (i) DML Condition 10(1) where Trinity House could direct that the undertaker exhibit lights, marks and aids to navigation or take such other steps to prevent danger to navigation; (ii) DML Condition 10(5) where the undertaker was required to lay down marker buoys or exhibit lights and take other steps for preventing danger to navigation as directed by Trinity House; and (iii) DML Condition 11(1) where Trinity House could direct the colour of structures at specific heights forming part of the authorised project. (3) The Applicant considered that as all these matters related to Trinity House's duties to prevent danger to navigation these matters would not be subject to arbitration by virtue of the saving provision at Article 41. Other matters contained within the DML related to notification to Trinity House and consultation with Trinity House and therefore would not necessarily be a matter of difference with Trinity House to be settled by arbitration. (4) The Applicant considered it unlikely in that context that the saving provision would not apply to Trinity House, although it was possible that it may apply in certain circumstances where the matter in question would not prejudice or derogate from Trinity House's rights duties or privileges. The Applicant confirmed it was willing to consider additional drafting suggested by Trinity House to clarify the application of the arbitration provision to Trinity House in this respect.
AGENDA ITEM 5 (Articles)		
(i)	Article 2: Definition of "Onshore Transmission Works"	The Applicant confirmed that the definition of "Onshore Transmission Works" had been amended in the revised dDCO submitted at Deadline 2. The Applicant agreed to consider further the drafting of the definition to specifically restrict the reference to further associated development to that development listed at paragraphs (a) to (p) and (a) to (b) in the description of the authorised development at Schedule 1 Part 1 (after the Works descriptions and before paragraph 2).

	Article 2: Definition of "Maintenance"	The Applicant explained that two definitions of maintenance had been included within the dDCO – one in relation to the DMLs which dealt with maintenance in the context of offshore works and one at Article 2 of the dDCO which dealt with maintenance in the context of both the offshore and onshore works, given that the DCO articles related to both offshore and onshore matters. The Applicant explained that inspect, upkeep, repair, adjust and alter all fell within the definition of maintenance without restriction. The Applicant also explained that the definition allowed the Applicant to remove, reconstruct and replace, but only where this related to the following: (i) ancillary works in Part 2 of Schedule 1 (ii) cables (iii) component parts of wind turbine generators, offshore electrical substations, accommodation platforms, meteorological masts and onshore transmission works. The Applicant also explained that removal, reconstruction and replacement of foundations and buildings associated with the onshore project substation was expressly excluded from the definition. The Applicant provided examples of maintenance such as where a cable fault occurred during operation of the project, in which case the damaged section of the cable would need to be 'removed and replaced' as described in Chapter 5 Project Description of the ES.
	Article 2: Definition of "Undertaker"	The Applicant noted that Article 6(9) stated that the definition of "Undertaker" would include references to transferees or lessees, save in relation to certain paragraphs of Article 6. It was considered appropriate to extend the definition of "Undertaker" within Article 6 given the exception set out at Article 6(9) to the paragraphs stated therein. The Applicant noted that previous DCOs had defined "Undertaker" in the same manner.
(ii)	Article 7: Temporary Possession	The Applicant noted that there were no comments on the proposed drafting of Article 7 by the Interested Parties.
(iii)	Article 11: Temporary Stopping Up of Streets	The Applicant explained that an amendment had been made to Article 11 in the revised dDCO submitted at Deadline 2 to refer to a temporary working site as opposed to a mobilisation area, which term had a specific definition under the dDCO. The Applicant explained that where streets were temporarily stopped up it would be necessary to lay down certain materials to facilitate the stopping up and the subsequent duct laying operations. This would be limited to the immediate works and those connected with the temporarily stopping up of the particular street. In those circumstances the Applicant considered it would not be possible to

		provide an exhaustive list of what might be included in a temporary working site and that this should be given its plain meaning. The Applicant noted that this was the approach taken in other made DCOs.
(iv)	Article 41: Trinity House	This was dealt with under Agenda Item 4: Proposed arbitration procedures
(v)	Article 8	NNDC questioned whether it would be necessary for the Undertaker to comply with the Requirements of the DCO in order to benefit from the defence to a nuisance provided at Article 8(1)(a)(ii), which applied to the construction or maintenance of the authorised project where the nuisance could not reasonably be avoided. The Applicant accepted that to the extent that the construction works were not undertaken in accordance with the Requirements, and specifically Requirement 26, the Applicant would not be entitled to rely on Article 8(1)(a)(ii) as a defence to a nuisance. The Applicant's understanding of Article 8(1)(a)(ii) is that it provides a defence to a nuisance where there is compliance with relevant requirements.
AGENDA ITEM 6 (Schedule 1, Part 3, Requirements)		
(i)	Requirement 2: Draught height	As per the Applicant's response to Q20.177 (ExA; WQR; 10.D2.3) and in response to a query from the ExA about the draught height (i.e. the gap between the lower rotor tip and the sea surface) secured for the East Anglia THREE wind farm and its applicability to Norfolk Vanguard, the Applicant noted that since the predicted collision risks for Norfolk Vanguard are already very low and do not generate significant impacts on the relevant populations, it is not considered that an increase in the draught height is appropriate or relevant mitigation for Norfolk Vanguard.
(ii)	Requirement 5: Cable protection, area of impact	The Applicant clarified the errors which had been made in the original figures included in Requirement 5 and confirmed that the corrected figures had now been inserted into the revised version of the dDCO submitted at Deadline 2.
(iii)	Requirement 11: Scour protection	The Applicant considered it more appropriate to define the total area of scour protection (as opposed to the area of scour protection per turbine) as the Environmental Statement had assessed scour protection on this basis. The ExA also asked whether the amendments made to the scour protection figures in the dDCO should be updated in light of the increased number of piles proposed for the offshore electrical platforms in the Change Report. The Applicant confirmed that no further amendments were required to the dDCO because the worst case scenario related to gravity anchors for floating foundations.
(iv)	Requirement 12: Ministry of Defence (**MoD**) requirements to maintain defence aviation safety	The Applicant explained that some amendments to the Requirement had been agreed with the MoD, which enabled the MoD to require lighting considered necessary for aviation safety which was not captured by the Air Navigation Order and also to provide that such lighting should remain operational for the life of the authorised development. The Applicant noted the Examining Authority's comments as to whether timescales for complying with any direction should be included and agreed to consider this with the MoD and

		subsequently update the drafting of the Requirement as appropriate for the revised version of the dDCO to be submitted at Deadline 4.
(v)	Requirement 13: Requirement to secure technical mitigation for impacts on Air Defence Radar (**ADR**) (MoD request)	The Applicant explained that there was a two stage process for agreeing mitigation under Requirement 13. The mitigation would be approved by the Secretary of State following consultation with the MoD, and following this the mitigation would be implemented. The ExA questioned whether it would be appropriate to include reference to timescales for implementation of the approved mitigation. The Applicant confirmed that this would be detailed in the Radar Mitigation Scheme, but agreed to consider with the MoD whether the drafting could be clarified in this respect. The Applicant agreed to include any appropriate revisions in the revised dDCO to be submitted at Deadline 4.
(vi)	Requirement 14: Decommissioning programme	The Applicant confirmed that the decommissioning programme to be submitted under Requirement 14 would be submitted prior to commencement of the offshore works. The intention for doing so was to assure the Secretary of State that the approach to decommissioning was clear at the outset. This is the standard approach for offshore wind farm DCOs and was included on the East Anglia Three DCO. The decommissioning plan would be reviewed subsequently during the operation of the authorised development and prior to decommissioning.
(vii)	Requirement 16: Existing ground levels and definition of "Electrical Equipment"	The Applicant noted that the definition of existing ground levels had been included within Requirement 16: (i) At Requirement 16(8) in relation to Work No. 8A; (ii) At Requirement 16(10) in relation to Work No. 10A; and (iii) At Requirement 16(16) in relation to Work No. 11. The Applicant did not consider that it was appropriate to include a definition of electrical equipment. The intention was that the Requirement should cover all external electrical equipment contained within the fenced compound, and therefore all electrical equipment which was not included within the onshore project substation buildings. In that context, it was not considered necessary, or appropriate, to define this by reference to an exhaustive list.
	Requirement for trenchless installation techniques	Norfolk County Council (**NCC**) considered that Requirement 16(17) should not contain a closed list of crossings for trenchless installation techniques. NCC considered that the Traffic Management Plan allowed for trenchless installation techniques to be used in other locations and this should be acknowledged in Requirement 16(17). The Applicant explained that Requirement 16(17) was intended to ensure that trenchless installation techniques were used in those locations where this had been assessed in the ES as part of the embedded mitigation. Further, Requirement 16(17) did not preclude the use of trenchless installation techniques in other locations, to the extent that this was subsequently agreed with NCC through the Traffic Management Plan.

		The Applicant suggested that the extent to which trenchless installation techniques should be used for certain crossings not included in Requirement 16(17) was a matter more appropriately discussed at a subsequent ISH once the further traffic assessments had been completed and the traffic flows were established. However, the Applicant also noted that it may not be appropriate to include such a Requirement where this would require the use of land outside of the current Order limits.
(viii)	Requirement 19: Maintenance period for trees and shrubs	The Applicant noted that this had been discussed at ISH1 in relation to onshore matters. The Applicant raised an additional point noting that as NNDC's administrative area was affected by the onshore cable route only, the Requirement which applied to NNDC's administrative area would relate to replacement of hedgerows as opposed to replacement of trees. On this basis, 5 years of post-planting monitoring is considered to be appropriate across the entire route and, in particular, for planting within NNDC's boundary. The Outline Landscape and Ecological Management Strategy (OLEMS) (document reference 8.07) sought to mitigate impacts by avoiding trees where possible through micrositing and, in any event, trees could not be replanted over the cable route.
(ix)	Requirement 20: Code of Construction Practice	The Applicant explained their preference for NCC to take the lead in discharging Requirement 20, dealing with the Code of Construction Practice, in consultation with other relevant planning authorities. However, NCC, NNDC and Broadland District Council indicated that this approach was not supported by them. The Applicant confirmed it had no objection to consulting NCC under Requirement 20 in the event that NCC were not willing to take the lead in dealing with discharge of the Requirement. In any event, the Applicant explained that the definition of 'relevant planning authority' and the reference to 'that stage', required more than one Code of Construction Practice to be submitted for approval where a stage straddled local planning authority boundaries, such that no further amendments would be required in this regard. The Applicant noted the ExA's comments in relation to the extent to which pre-commencement works were adequately secured, and agreed to consider whether any further revisions to the dDCO should be proposed at Deadline 4 accordingly. The Applicant confirmed it would consider including reference to 'vibration' at requirement 20(2)(e). The Applicant also explained its preference for NCC to take the lead in relation to discharge of: (i) Requirement 21 (in relation to traffic matters); (ii) Requirement 22 (in relation to highway accesses); (iii) Requirement 23 (in relation to the archaeological written scheme of investigation); and (iv) Requirement 25 (in relation to watercourse crossings). The Applicant proposed further discussions be held with NCC accordingly.

(x)	Requirement 21 and Requirement 22: NNDC's request for substitution of "shall" for "must"	The Applicant noted that the modern statutory drafting conventions sought to avoid the use of "shall" which suggested some uncertainty as to whether this was a statement of future intent. This is supported by the Planning Inspectorate's guidance for Drafting Development Consent Orders (AN15) which states at paragraph 3.3: *"avoid use of the words 'shall' or 'will' (because of ambiguity over whether they are an imperative or a statement of future intention);"* The Applicant noted that NNDC agreed to withdraw the point on that basis.
(xi)	Requirement 21: Outline Traffic Management Plan, Outline Travel Plan, Outline Access Management Plan arrangements	The ExA questioned whether Requirement 21 secured pre-commencement mitigation referred to in the relevant plans. The Applicant agreed to consider this further and update the dDCO, as necessary, for Deadline 4.
(xii)	Requirement 22: Means of access	No discussions were held in relation to this matter.
(xiii)	Requirement 23: Definition of "Commence"	The ExA questioned whether Requirement 23 secured that pre-commencement archaeological investigations would be undertaken accordance with the Written Scheme of Investigation. The Applicant referred to Requirement 23(5) which specifically applied the Written Scheme of Investigation to pre-commencement archaeological investigations. The Applicant considered that this adequately covered the point
(xiv)	Requirement 26: Construction hours	The Applicant considered that it was not necessary to define "construction work" as the reference to construction work in Requirement 26(1) would cover all construction work save for those types of construction work set out at Requirement 26(2). The intention of Requirement 26(2) was to list essential continuous periods of operation and to list activities which would be non-intrusive and could therefore be carried out outside of the hours for construction specified at Requirement 26(1). The Applicant explained that in relation to movement of Heavy Goods Vehicles (**HGVs**), the construction Traffic Management Plan will include a process for pre-booking delivery slots, and that HGVs would only be allowed into the site in accordance with such a booking. Suppliers will be required to manage their HGV arrival time to coincide with their booking slot, or would be turned away from site. In relation to Requirement 26(2)(h), daily start up or shut down outside of the specified construction hours, this was intended to allow activities in connection with good practice site management and safety measures. It would include, for example, personnel arriving to site in advance of shift start time, undertaking daily site health and safety inspections and the provision of tool box talks. This will ensure that the site is open and

		ready to accept deliveries promptly from 7am. Such activities would only be permitted to the extent that they were considered 'non-intrusive'.
(xv)	Requirement 29: Verification of cessation of onshore transmission works	The Applicant confirmed that it intended to revise the dDCO so that Requirement 29(1) applied to Work No. 4B as well as the onshore transmission works. The Applicant explained that, in practice, the relevant planning authority would be aware of the proposals for decommissioning at an early stage as it would be necessary to obtain planning permission for certain elements of the decommissioning, such as the removal of the onshore project substation, and this would need to be environmentally assessed accordingly. Notwithstanding this, the Applicant agreed to consider whether it would be appropriate to notify the relevant planning authority of cessation of commercial operations and also to consider including reference to the timing for implementation of the decommissioning plan at Requirement 29(2). Any revisions would be included in the revised dDCO to be submitted at Deadline 4 accordingly.
(xvi)	Requirement 31: Discharge of Requirements	The Applicant noted that the process included in Schedule 15 applied the timescales for discharge of conditions included within the Town and Country Planning regime, and the period of eight weeks was therefore considered appropriate. The Government's Planning Practice Guidance[1] sets out the importance of not delaying implementation and delivery of development post consent, stating as follows: *"How long should it take for a local planning authority to discharge a planning condition?* *Development that is ready to proceed should not be held back by delays in discharging planning conditions. In most cases where the approval is straightforward it is expected that the local planning authority should respond to requests to discharge conditions without delay, and in any event within 21 days. Where the views of a third party such as a statutory consultee are required to discharge a condition, every effort should be made to ensure that the 21 day requirement can still be met.* *The local planning authority must give notice to the applicant of its decision within a period of 8 weeks from the date the request was received, or any longer period agreed in writing between the applicant and local planning authority. If no extension of time is agreed for discharging the condition after 12 weeks, the local planning authority must return the fee to the applicant without further delay along with a decision on the request.* *It should be noted that this timeframe and the return of fees does not apply to prior approval procedures under Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, or where the request relates to a reserved matter, which should be subject to a reserved matters application.*

[1] Paragraph: 034 Reference ID: 21a-034-20140306: https://www.gov.uk/guidance/use-of-planning-conditions

		Where an applicant has concerns about the timeliness of the local planning authority in giving notice of its decision, a deemed discharge may be available under article 28 of the Town and Country Planning (Development Management Procedure) (England) Order 2015. *Paragraph: 034 Reference ID: 21a-034-20140306"* The Applicant considers that the principle of minimising delays post consent is even more important in the context of delivering Nationally Significant Infrastructure Projects, and particularly for offshore wind projects in the context of meeting Contract for Difference milestones. It should be noted that the process for discharge of requirements in the dDCO follows the process applied in the Hinkley Point C (Nuclear Generating Station) Order 2013 (see Schedule 14). As such, the Applicant does not agree that it is appropriate to extend the period for discharge on grounds that Nationally Significant Infrastructure Projects may be more complex than developments consented under the Town and Country Planning regime. In relation to timing for deemed consent under the Articles of the DCO, the Applicant noted that this was consistent with deemed consent where prior approval notifications are required under, for example, the Town and Country Planning (General Permitted Development) (England) Order 2015. In addition, a deemed discharge period of 28 days was considered appropriate for the Triton Knoll Electrical System Order 2016 (see Article 12(8) which also relates to discharge of water). More generally, NCC has accepted that the 28 day deemed discharge period is appropriate in relation to deemed consent under Article 12 of the dDCO relating to access to works (see NCC's response to Q20.20 of the ExA's first written questions (document reference: ExA; WQR; 10.D2.3)). The Applicant is of the view that provisions relating to discharge of water should not be treated any differently to the remainder of the relevant requirements. References to 28 days in the Articles of the dDCO were therefore also considered appropriate by the Applicant, especially considering the importance of avoiding delay to Nationally Significant Infrastructure Projects.
AGENDA ITEM 7 (Schedules 9, 10, 11 and 12 – Deemed Marine Licences)		
(i)	Transfer of Benefit	The Applicant understands that whilst it may be possible to transfer part of a DML, the MMO may only take enforcement action against the DML as a whole. For example, the MMO may suspend or revoke a DML, but the Applicant understands that the MMO has no power to suspend or revoke part of a DML (e.g. that part which has been transferred). This has influenced the Applicant's approach to drafting the DMLs, which provide separate DMLs for the generation and transmission assets of Norfolk Vanguard given that the transmission assets are required to be transferred to an Offshore Transmission Owner (OFTO) in due course. As the works for Norfolk Vanguard may be completed in up to 2 phases, and given that the OFTO transfers must take place within 12 months of commissioning, separate DMLs for each potential phase of works have also been included. This results in up to 2 DMLs for the generation assets and up to 2 DMLs for the transmission assets.

		The Applicant refers to its response to Q20.68 of the ExA's first written questions (document reference ExA; WQ; 10.D1.3) which explains that in the event that a transfer of benefit of the Order or DMLs takes place, the transferee will remain subject to the relevant obligations of the Order or DMLs. In particular, Article 6(9) provides that "the exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) or (2) are subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the Undertaker". In any event, where there is more than one operator of either the generation assets or the transmission assets it will be in both operators' interests to ensure that there is a clear set of principles for co-operation between the parties. This will be discussed and agreed as part of the commercial arrangements prior to any transfer taking place, with a collaboration/ co-operation agreement being entered into upon any transfer. The Applicant does not consider that it is appropriate for co-operation to be the subject of a condition in the DMLs given that the approach to co-operation will deal with confidential or sensitive commercial arrangements between the parties.
(ii)	Offshore electrical platform(s) having regard to Change Report	The Applicant noted the Interested Parties agreement to the updated parameters for the offshore electrical platforms as proposed in the Change Report.
(iii)	Condition 12(5) of Schedule 9 and 10, and Condition 7(5) of Schedule 11 and Schedule 12	The Applicant noted that the MMO's consideration of the disposal licence was being progressed. The ExA questioned whether Condition 12(5) could be clarified to provide that materials other than inert materials of natural origin must be screened out before the inert materials are disposed of at the site. The Applicant agreed to consider this further and, if necessary, update the revised dDCO at Deadline 4 accordingly.
(iv)	Condition 14(b)(iv) of Schedule 9 and 10, Condition 9(b)(iv) of Schedule 11 and 12	The Applicant referred to previous discussions in relation to notification periods during the offshore environmental Issue Specific Hearing (ISH2) and also the Applicant's responses to written questions (ExA; WQ; 10.D1.3). In summary, the Applicant's position was that the period of four months was an appropriate period for a Nationally Significant Infrastructure Project, which struck a balance between the need to discharge conditions promptly but with regard to the complexity of the matters to be considered. Notwithstanding this, the Applicant would endeavour to submit details prior to four months before commencement and in practice ongoing discussions were likely to be advanced well before that date in any event.
(v)	Condition 14(f) of Schedule 9 and 10 – Marine Mammal Mitigation Protocol (**MMMP**)	The Applicant confirmed that the MMMP only dealt with injury to marine mammals from pile driving. The Applicant noted that the MMO concurred with this approach and that injury arising from Unexploded Ordnance (**UXO**) detonation would be licenced separately and therefore dealt with through a separate MMMP in connection with UXO licensing.

AGENDA ITEM 8 (Schedule 16 – Protective Provisions)		
(i)	Schedule 16 – Protective Provisions	The ExA noted that correspondence had been received from National Grid, Cadent and Network Rail confirming that negotiations with the Applicant were progressing. The Applicant confirmed that this was the position.
AGENDA ITEM 9 (Any other dDCO matters including any items which are potentially missing)		
(i)	NCC's skills requirement	NCC reiterated their request for a skills requirement which they proposed should be included in the dDCO. As set out in the Applicant's response to Q19.21 of the ExA's first written questions (document reference ExA; WQ; 10.D1.3) the Applicant is working closely with local communities, communities of interest and stakeholders to explore means of local optimisation of supply chain, jobs and skills opportunities associated with the Project. It should be noted that the assessment contained in the ES (Chapter 31 Socio-economics) does not propose mitigation for any impacts arising in relation to skills and employment opportunities, and no adverse impacts were identified in this respect. In addition, the Applicant is not aware of any policy basis on which a skills requirement can be sought in circumstances where it is not necessary to include such a requirement to mitigate adverse impacts. Further, as set out in the Applicant's response to Q19.21 of the ExA's first written questions (document reference ExA; WQ; 10.D1.3), CfD eligibility requires Vattenfall to produce a Supply Chain Plan assessed and marked by the Secretary of State for Business, Energy and Industrial Strategy. Supply Chain Plans must give consideration as to how the Project will support skills, innovation and competition in the sector. Notwithstanding the above, the Applicant is willing to consider this matter further with NCC.
(ii)	NCC's surface water and drainage requirement	The Applicant noted that NCC had proposed a surface water and drainage requirement. The Applicant considered that, to the extent that this was not already dealt with by Requirement 20, it would be preferable to include any further detail in the outline Code of Construction Practice (document reference 8.01). The Applicant agreed to consider this further with NCC and update the outline Code of Construction Practice as appropriate.
(iii)	National Federation of Fishermen's Organisation (**NFFO**) request for DML conditions dealing with formal notifications	The NFFO requested specific conditions be included in the dDCO to deal with exposed cables and notification of this. The Applicant responded that the safety of cables was already covered by Condition 20(2) which dealt with monitoring of the cables and notification which was covered by Condition 9(9) and 9(11). The Applicant also considered that any further notifications and communications could be dealt with through the Fisheries Liaison and Co-existence Plan, but notwithstanding this agreed to consider the matter further

		with the NFFO and reflect any progress in the updated Statement of Common Ground to be submitted at Deadline 4.

APPENDIX 1: THE APPLICANT'S LIST OF APPEARANCES

1. **John Houghton**, Senior Counsel, **Womble Bond Dickinson**; and **Victoria Redman**, Partner, **Womble Bond Dickinson**

   Speaking on behalf of Norfolk Vanguard Limited:
   - In response to the Examining Authority's questions and for general advocacy

2. **Gemma Keenan**, Senior Marine Biologist/ Project Manager, Royal HaskoningDHV **(RHDHV)**

3. **Jon Allen**, Principal Environmental Consultant, **RHDHV**

4. **Andrew Hardcastle** Senior Power Engineering Consultant, **GHD**

5. **Rob Driver**, Grid Manager, **Vattenfall**

6. **Rebecca Sherwood**, Consents Manager, **Vattenfall.**