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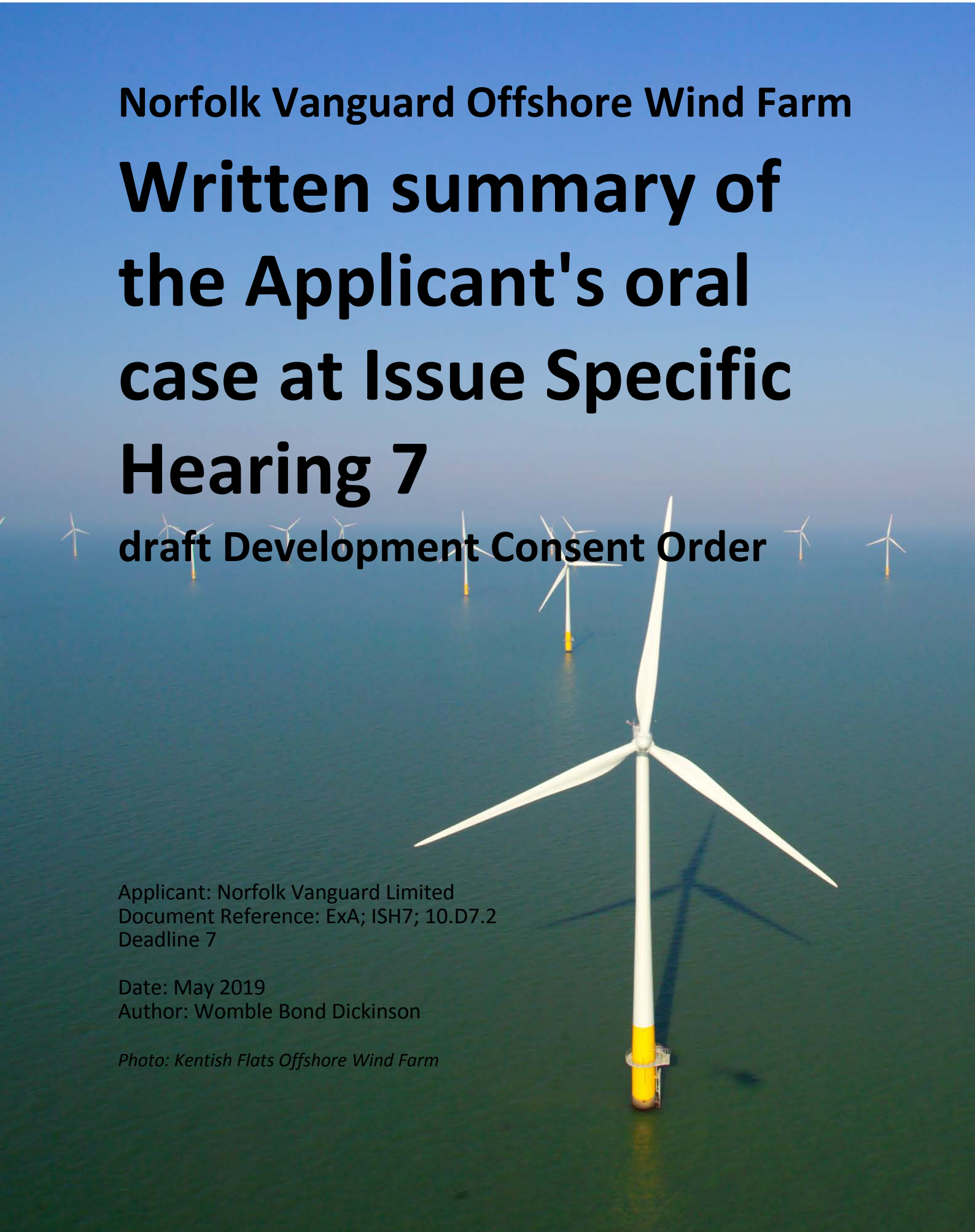
Norfolk Vanguard Offshore Wind Farm

Written summary of the Applicant's oral case at Issue Specific Hearing 7

draft Development Consent Order



Applicant: Norfolk Vanguard Limited
Document Reference: ExA; ISH7; 10.D7.2
Deadline 7

Date: May 2019
Author: Womble Bond Dickinson

Photo: Kentish Flats Offshore Wind Farm

Glossary

AEZ	Archaeological Exclusion Zone
dDCO	Draft Development Consent Order
DCO	Development Consent Order
DML	Deemed Marine Licence
ES	Environmental Statement
ExA	Examining Authority
HHW	Haisborough, Hammond andWinterton
IHO	International Hydrographic Organization
ISH	Issue Specific Hearing
MMO	Marine Management Organisation
MW	MegaWatt
NCC	Norfolk County Council
NNDC	North Norfolk District Council
OPEMP	Outline Project Environmental Management Plan
ORPAD	Offshore Renewables Protocol for Reporting Archaeological Discoveries
OWSI	Outline Written Scheme of Investigation
PPG	Planning Practice Guidance
SAC	Special Area of Conservation
SIP	Site Integrity Plan
WSI	Written Scheme of Investigation

Written Summary of Oral Submissions: ISH 7 – Draft Development Consent Order

1. Introduction

1.1 Issue Specific Hearing 7 (**ISH**) into the draft Development Consent Order (DCO) for Norfolk Vanguard took place on 25 April 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**) 18 April 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 (Schedule of changes)		
(i)	Schedule of Changes (16 April 2019)	The Applicant summarised the changes in version 4 of the draft DCO submitted on 16 April 2019 as follows: • amendments to the Crown Rights Article 42; • updates to parameters based on the removal of the 9MW turbine option and removal of floating foundations, including in relation to scour and cable protection figures, disposal figures and turbine spacing; • amendments to Requirement 17 regarding monitoring of ducts at landfall; • updates to Requirement 24 relating to post consent ecological surveys of previously un-surveyed areas, reflecting previous discussions with North Norfolk District Council (NNDC); • inclusion of a new Requirement 32 in respect of operational drainage; • inclusion of a new Requirement 33 in respect of skills and employment plans; • inclusion of red-throated diver mitigation in Condition 14(1)(d)(v) of the generation assets Deemed Marine Licences (DMLs);

		• updates to DML conditions to require mitigation in the event that piled foundations (as opposed to driven or part-driven pile foundations) are proposed; • updates to DML Condition 15 (Schedules 9 and 10) and Condition 10 (Schedules 11 and 12) in relation to timescales to request further information and for the Marine Management Organisation (MMO) to determine the application as soon as reasonably practicable; • correction of errors in Schedule 15; and • inclusion of protective provisions for the benefit of Orsted for Hornsea Project THREE in Schedule 16.
AGENDA ITEM 4 (Further information submitted relating to Hornsea Three)		
(i)	To note further information submitted by various parties relating to Hornsea Project Three and Thanet Extension draft DCOs (dDCO)	The Applicant noted that the MMO is considering matters relating to consistency between DMLs included in draft Orders for offshore wind farm projects including Hornsea Project Three and Thanet Extension and that the MMO will provide an update on this at Deadline 7. In relation to the standard navigation conditions, the Applicant requested the MMO, the Maritime and Coastguard Agency (MCA) and Trinity House to provide joint comments specifically on these conditions as currently drafted in the Norfolk Vanguard dDCO. The Applicant confirmed that it is willing to consider points relating to consistency if these are put forward by the MMO (in accordance with Action Point 3 from ISH7), but is currently satisfied that the DMLs are drafted appropriately considering the bespoke matters agreed for Norfolk Vanguard and the drafting conventions of a statutory instrument, which do not apply to Marine Licences.
AGENDA ITEM 5 (Proposed arbitration)		
(i) – (iii)	Wording from other examinations on arbitration and DML's. TH – Article 37 for Hornsea Project Three DCO in Appendix 6 Deadline 6 submission; Article 38 - deemed discharge process in DML's; Timescales for submission of plans.	The Applicant summarised the background to this matter and explained that, following Model Article 42, previous DCOs have applied the concept of arbitration to the MMO and relevant consultees. However, such arbitration mechanisms based on the model provision did not contain any structure, timings or outcomes so as to provide the detail of how the arbitration process would operate. The Applicant therefore inserted more detail on the timeframes and steps associated with the arbitration process. To this end, the MMO (and its consultees including Trinity House) made submissions that the arbitration Article should not apply to the MMO, and to determination of any matter under the DMLs in particular. The MMO are subject to an appeals process in respect of Marine Licences granted under Part 4 of the Marine and Coastal Access Act 2009 (MCAA 2009). Section 73 of the MCAA provides an appeals process for applicants of Marine Licences by way of the Marine Licensing (Licence Application Appeals) Regulations 2011 (the Appeal Regulations). However, that appeals process does not apply to any non-determination or refusal to approve

		conditions under a Marine Licence (or a DML) and, under Regulation 4 of the Appeal Regulations, is limited to appeals concerning: (1) the grant of a marine licence subject to conditions; (2) refusal to grant a marine licence; (3) the time period for which activities are authorised; and/or (4) the applicability of the licence conditions to transferees. Accordingly, if any determination under the DMLs is excluded from arbitration the only recourse to an undertaker is to seek judicial review of a decision made by the MMO. However, it is noted that in order to seek judicial review there must first be a decision by the MMO. To the extent that there has been no determination in relation to approval requested under a condition, this places the undertaker in a state of limbo where it has no remedy to move matters forward. Even if a decision has been made to refuse approval of a condition, which is therefore capable of judicial review, this is not an adequate remedy. The court would not be able to consider the merits of the determination, and to the extent that the decision had not lawfully been made. The remedy would be only to remit the decision back to the MMO for its re-determination. The MMO has referred to the grant of the Port of Tilbury (Expansion) Order 2019 (Tilbury 2 Order) as precedent that the MMO should not be subject to arbitration. It should be noted that the MMO has not been expressly excluded from the arbitration article in the Tilbury 2 Order, which states: *Arbitration* *60. Except where otherwise expressly provided for in this Order and unless otherwise agreed in writing between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.* This aside, the panel for Tilbury 2 recommended that an express condition applying arbitration in the DML should be removed, and this was not included in the final Tilbury 2 Order. The express condition stated as follows: *Arbitration* *27.—(1) Subject to condition 27(2) any difference under any provision of this licence must, unless otherwise agreed between the MMO and the licence holder, be referred to and settled by a single arbitrator to be agreed between the MMO and the licence holder or, failing agreement, to be appointed on the application of either the MMO or the licence holder (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.* *(2) Nothing in this condition 27 is to be taken, or to operate so as to, fetter or prejudice the statutory rights, powers, discretions or responsibilities of the MMO.*

		However, and to the extent that arbitration does not apply (which is unclear given the form of Article 60) it should be noted that the Tilbury 2 project is of a wholly different scale to an offshore wind farm. The Tilbury 2 project is for the development of a new port terminal and associated facilities. Offshore, only new berthing facilities are proposed. There is a 6 week period for the discharge of plans under the DML, which clearly emphasises the difference in scale and complexity of the schemes, given the 6 month period sought by the MMO for discharge of plans for offshore wind farm projects. Finally, the project is a transport project, not an energy project to which special considerations should apply as set out below. As acknowledged by the MMO in its Deadline 6 submissions, the undertaker is likely to incur significant costs in the event that there are delays to determination of conditions. In the case of energy applications, these costs are ultimately borne by the consumer in the cost of energy given that any risk to delivery will be reflected in a bid for contracts for difference. Given this, as well as the national benefits in relation to security of energy supply, it is therefore considered appropriate that nationally significant energy projects are treated differently to other marine licence applications. Whilst the Applicant appreciates the MMO's willingness to work with undertakers to determine conditions in timescales appropriate to their construction programmes, the MMO is not bound by a timetable and the Applicant is aware that the MMO's willingness may not always be possible in the future, particularly where the MMO's resource (or the resource of its statutory consultees) is limited. The Applicant acknowledges the points made on the MMO's ability to react flexibly to the needs of projects and their comment that this may no longer be possible if more rigid timescales are imposed on the MMO. However, the drafting proposed by the Applicant allows for an agreement to be reached for an extension of time to determine conditions. Further, if a clear timescale is imposed, this allows the Applicant to programme matters accordingly, and promotes a clear and fair process for all users of the MMO's service. This is considered preferable to the uncertainty of the existing approach. Notwithstanding the Applicant's view that the MMO should be subject to arbitration for the reasons previously identified, namely in response to ExA 20.109 and 20.110 submitted at Deadline 1 (ExA; WQ; 10.D1.3), the Applicant is keen to agree a pragmatic solution which is workable for the Applicant, the MMO and its statutory consultees. The Applicant therefore introduced a deemed discharge provision in version 3 of the dDCO in place of the arbitration article applying to the DMLs. The deemed discharge wording (at Condition 15 of Schedules 9 and 10 and Condition 9 of Schedules 11 and 12 of version 3 of the dDCO) ensured that the MMO was only required to determine the application once it received all necessary information to do so, and allowed for extensions to the period for determination to be agreed. Certain approvals were also excluded from the deemed approval mechanism. During submissions at ISH7, the Applicant recognised that the MMO would prefer a deemed refusal (rather than a deemed approval) mechanism. In this context, the Applicant explained that any such mechanism would need to be coupled with an appeals procedure to provide a fair and workable solution, and would only be acceptable to the Applicant on this basis. As set out above, the concept of an appeals process is not novel to the MMO and an appeals process already exists in respect of the grant or refusal of a Marine Licence (although not in relation to the discharge of conditions in a Marine Licence). As the Applicant explained, a bespoke appeal mechanism has already been included in the

		draft DCO for determination of Requirements by Article 39 of the dDCO, which applies Schedule 15 to discharging bodies such as the relevant planning authorities. This is based on the bespoke appeal procedure in Article 46 and Schedule 14 of the Hinkley Point C (Nuclear Generating Station) Order 2013. For the reasons that the Applicant has previously outlined, in particular with respect to the need for a swift and transparent decision making process, the Applicant considers that it is appropriate to apply a bespoke appeal mechanism for discharge of DML conditions in respect of nationally significant offshore wind projects. The Applicant proposes that the bespoke appeal process would follow a similar format to that applied under Schedule 15 of the dDCO in which the parties can refer a matter to the Secretary of State who will then appoint an appropriate person to determine the appeal. This concept follows that within Regulation 5 of the Appeal Regulations, which provides that the Secretary of State must appoint a person to determine the appeal. In light of the MMO's position that the DMLs should be capable of being read as a stand-alone document, the Applicant has included revised wording within a new Part 5 of the DMLs (Schedules 9 to 12) of the dDCO submitted at Deadline 7, which follows the structure of the DMLs in the Tilbury 2 Order. It should also be noted that, in order to address the MMO's previous concern that there should be an ability to extend the period for determination if agreed by the parties, the appeal mechanism relates to an actual refusal or non-determination, rather than a deemed refusal. The Applicant considers that this provides a reasonable, clear, open and transparent mechanism for all parties in the event of refusal or non-determination under the DML conditions, which accords with the principles of the Appeals Regulations and therefore current marine licensing practice. In proposing this mechanism, the Applicant has been cognisant of and dealt with all of the concerns of the MMO (and Trinity House), including through: • Expressly excluding the DMLs from the Arbitration article; • Including reference in the Arbitration article to the savings provision for Trinity House; • Enabling the undertaker and the MMO to agree an extension to the period for determination; • Increasing the period for the MMO to request further information from the undertaker to 2 months (as requested by the MMO); • Increasing the period for the MMO to determine the request once all information has been received to 4 months for all plans (i.e. a total of 6 months from submission of the application, and longer in the event that further information is requested by the MMO); and • Removal of the deemed approval provision. In relation to approaches to arbitration on other development consent applications for offshore wind farms currently at examination, the Applicant understands that Hornsea Project Three have sought arbitration as a

		preferred option in the final version of the dDCO submitted as part of the Hornsea Project Three examination, which the Applicant has submitted at Deadline 7 in accordance with Action Point 1 (document reference: ExA; ISH7; 10.D7.16). Hornsea Project Three have, however, inserted alternative drafting for the event that arbitration is not recommended by the Examining Authority. The alternative approaches apply the Appeal Regulations under Article 38 of the Hornsea Project Three DCO but with shortened timeframes; and, in the further alternative, apply a deemed approval mechanism similar to the Applicant's drafting in Condition 15 (Schedule 9-10) of version 4 of the dDCO. The Thanet Extension project have also sought arbitration as a preferred approach within the dDCO submitted for the Thanet Extension project. The Applicant is aware that the Thanet Extension project have recently submitted a counsel's legal opinion (dated 29 April 2019) into their examination (at Deadline 5) as to why DMLs should be subject to the principles of arbitration and why the MMO (and Trinity House) should not be excluded from the operation of the arbitration article. To the extent that an appeal mechanism for refusal and non-determination is not considered appropriate, these legal submissions would apply equally to the Applicant's case for arbitration and are included in the Applicant's Deadline 7 submissions as document reference ExA; AS; 10.D7.23. There is obvious merit in ensuring that appropriate provisions relating to arbitration, and any related mechanisms for appeal/ deemed discharge in the DMLs, are applied consistently across any offshore wind DCOs granted in the future. In summary, and in order of preference, the Applicant would propose: • Inclusion of a bespoke appeal process for non-determination/ refusal to discharge DML conditions; • Inclusion of arbitration provisions, which expressly apply to DMLs; • Deemed approval of DML conditions; • Deemed refusal of DML conditions. Ultimately, which ever mechanism is preferred it is essential that the parties have certainty and clarity as to the approach to be adopted in the event that there is non-determination or refusal to discharge DML conditions, so that the construction and operation of nationally significant energy projects is not unreasonably or unnecessarily delayed. Accordingly, from the Applicant's perspective, the above submissions address Action Point 3 and 4 from ISH7.
AGENDA ITEM 6 (Articles)		
(i)	Article 15, discharge of water and works to watercourse. Typo, 15(2) (paragraph 1).	The Applicant noted the minor typing error, which will be addressed in the next version of the dDCO to be submitted at Deadline 7.

		Accordingly, the updates in the dDCO respond to Action Point 5 from ISH7.
(ii)	Article 37, timescales to submit final draft plans.	The Applicant agreed to provide an update at Deadline 7 on all certified documents listed at Article 37, including their status and relevant version number. The Applicant has submitted a revised version of the Note on Requirements and Conditions in the Development Consent Order (document reference 3.3) at Deadline 7, which responds to this matter and Action Point 6 from ISH7.
(iii)	Article 42, amendments to Crown rights.	The Applicant confirmed that the amendments included had been agreed with The Crown Estate and followed a similar form to the Crown rights article for the East Anglia THREE Offshore Wind Farm Order 2017.
AGENDA ITEM 7 (Requirements)		
(i)	Schedule 1, Part 3 (Requirements 2, 5, 6 and 11 re detailed offshore parameters): a. separation distances for WTG's and feasibility of layout;	The Applicant confirmed that it was feasible to devise a turbine layout which would meet the parameters of the DCO, particularly in relation to delivering the maximum number of turbines proposed with the required spacing, whilst adhering to the proposed revised split of turbines between Norfolk Vanguard East and Norfolk Vanguard West. The Applicant confirmed that a Requirement/DML condition relating to the revised turbine split across Norfolk Vanguard East and Norfolk Vanguard West would be included in the updated dDCO to be submitted at Deadline 7. Accordingly, the revised drafting in the dDCO responds to Action Point 7, 8 and 19 from ISH7.
	b. cable protection areas and volumes;	The Applicant noted that the MMO welcomed the changes made to the parameters and were content with the figures included, but proposed to check the figures again for completeness. In relation to the need to include a maximum figure for cable protection within the Haisborough Hammond and Winterton (HHW) Special Area of Conservation (SAC) on the face of the DML, the Applicant's position was that this was not necessary given that this figure is included in the HHW SAC Site Integrity Plan (SIP) (document reference 8.20). The MMO raised an additional point that cable protection cannot be deployed during operation and maintenance, save in relation to cable protection already deployed which may be moved or extended to the extent assessed in the Environmental Statement (ES). The Applicant agrees with this approach. The MMO suggested that the definition of 'maintain' in the DMLs should be amended to clarify this. The Applicant notes the MMO's position, but does not consider it necessary to amend the definition of maintain, which states: *"maintain" includes inspect, upkeep, repair, adjust and alter and further includes remove, reconstruct and replace (but only in relation to any of the ancillary works in part 2 of Schedule 1 (ancillary works), any cable and any component part of any wind turbine generator, offshore electrical substation, accommodation platform or*

		meteorological mast described in Part 1 of Schedule 1 (authorised development) not including the alteration, removal or replacement of foundations), to the extent assessed in the environmental statement; and "maintenance" is construed accordingly" It is clear from this definition that construction of new cable protection in new areas is not permitted within the definition of maintain. Notwithstanding this, for clarity, the Applicant has amended the outline Offshore Operations and Maintenance Plan (document reference 8.11 version 2) to address the MMO's concern, and the updated plan is submitted at Deadline 7. This responds to Action Point 12 from ISH7. In relation to the MMO's request for inclusion of a condition on 'Reporting of cable protection', the Applicant noted that the MMO agreed that if this condition was to be included the wording in condition 14(1)(e) which states, *"which must be updated and resubmitted for approval if changes to it are proposed following cable laying operations"*, should be deleted. On this basis, the Applicant is content with the changes proposed and has updated the dDCO submitted at Deadline 7 accordingly. Accordingly, the updates to the dDCO respond to Action Point 10 from ISH7.
	c. WTG seabed footprint areas	The Applicant noted that the MMO welcomed the changes made to the parameters and were content with the figures included, but proposed to check the figures again for completeness.
	d. scour protection	The Applicant noted that amendments had been included to Condition 14(1)(e) of the generation asset DMLs and Condition 9(1)(e) of the transmission asset DMLs to specifically refer to the need for the final scour protection and cable protection plan to accord with the outline scour protection and cable protection plan, which was certified under Article 37. The conditions had also been updated to require the plan to deal with distribution of scour and cable protection. The Applicant's position is that as the DML conditions specifically require that the final plan must accord with the outline plan it is not necessary to include the level of detail sought by the MMO on the face of the DMLs. Provided the figures contained within the plan are fixed as a worst case (which is the position here) the worst case cannot be changed without a variation of the DMLs; if it was changed the final plan would not be in accordance with the certified outline plan as the relevant condition requires. Therefore, and in accordance with Action Point 9 and 13 from ISH7, the Applicant does not consider it necessary to further amend Condition 14(1)(e) or Condition 9(1)(e) to include a breakdown of scour protection figures on the face of the DMLs. Following post hearing discussions with the MMO, the Applicant confirmed that the outline scour protection and cable protection plan would also be updated to refer to both volume and area of scour and cable protection, and the updated plan would be submitted at Deadline 7.
	e. consistency with DMLs	Please see the Agenda item 4 above.
(ii)	R16 – List of trenchless crossings. Assessments for	The Applicant is confident that the results of the outstanding assessments will be available before Deadline 8. The Applicant does not consider it appropriate to open the closed list of trenchless crossings in Requirement 16.

	A1067 and B1149 – Norfolk County Council (NCC) proposals for DCO wording if assessments ongoing at end of examination. Status of technical note for Deadline 8 (30 May) setting out highway crossing method for each discrete site and rationale.	New trenchless crossings will have environmental impacts which may not fall within the scope of the assessments undertaken in the Environmental Statement (ES). For example, if a trenchless crossing was required for the B1149, this would have an effect on the peak traffic flows such as for Link 32 and Link 36. An access to a trenchless crossing compound would also be required directly onto the B1149 (it is also noted that Norfolk County Council (NCC) have previously expressed concern as to whether a direct access onto the B1149 would be acceptable). In addition, new trenchless crossings may require additional land outside of the Order limits. It would therefore not be appropriate to include a Requirement which could only be implemented if third party land could be secured. Subject to clarifying environmental impacts and any additional land requirements, and in the event that the outstanding assessments are not available, the Applicant considers that it would be possible to include a specific trigger for the requirement for a trenchless crossing within Requirement 16. This trigger would operate to require a trenchless crossing in the event that the results of the assessments conclude specific findings. For example, the further assessment work being undertaken for the A1067 relates to traffic flows. If traffic flows above a defined level are established it can be concluded that a trenchless crossing would be appropriate in that location. Equally, if traffic flows are below the specified level, and hence the original assessment remains valid, it can be concluded that a trenchless crossing would not be required. For the B1149, the concern relates to whether the pavement laboratory will conclude that it is possible to reinstate the B1149 to an adequate standard follow open cut trenching. Therefore, the trigger in this case would require a trenchless crossing only in the event that the pavement laboratory concluded that reinstatement was not possible following open cut trenching. Alternatively, if it is concluded that reinstatement is possible a trenchless crossing would not be required in this location. The Applicant considers that such triggers would provide sufficient clarity to all parties such that no dispute should then arise as to whether or not a trenchless crossing is required in these specific locations. In the event that NCC do not agree to the triggers referred to above, the Applicant confirmed that its preference is for the ExA to reach a conclusion as to the need for trenchless crossings in these locations and to report on this in its recommendation to the Secretary of State accordingly.
(iii)	R17 – Landfall method statement, monitoring of cables and ducts at landfall.	The Applicant noted that the amendments to Requirement 17 had been agreed with NNDC.
(iv)	R19 – 10/5 year replacement planting period and replacement tree planting.	The Applicant agreed to amend the next version of the dDCO, to be submitted at Deadline 7, to include the wording, "unless a different species is otherwise agreed in writing with the relevant planning authority" at the end of Requirement 19(2). Accordingly, the wording in the updated dDCO responds to Action Point 14 from ISH7.
(v)	R20 – Code of construction practice (any outstanding	The Applicant noted that the parties were content with the drafting of Requirement 20. The ExA raised a question in relation to Requirement 22 (Highway accesses) and the extent to which

	matters)	reinstatement of any temporary means of access was secured. The Applicant agreed to confirm this in post hearing written submissions. Paragraph 53 of the Outline Access Management Plan states: "Apart from the onshore project substation, all other project access points are temporary and following completion of construction would be reinstated to their former state unless otherwise agreed with the relevant local authority." However, for clarity the Applicant proposes to amend Requirement 22 to require details of reinstatement measures, where relevant, to be submitted in the final Access Management Plan to be approved. The updated wording within the dDCO therefore responds to Action Point 15 from ISH7.
(vi)	R24 – Post-consent ecological surveying of previously un-surveyed areas.	The Applicant confirmed that the additional wording had been requested by NNDC and that NNDC had agreed to the changes proposed.
(vii)	New Requirement 32. Operational drainage plan for substation works.	The Applicant noted that some minor amendments had been requested by NCC, which also required the operational drainage plan to be approved before commencement of the associated landscaping and drainage works as well as the onshore substation and National Grid extension works. An amendment referring to Work No. 8B and Works Nos. 10B and 10C would be included in the next version of the dDCO to be submitted at Deadline 7. The updated wording within the dDCO therefore responds to Action Point 16 from ISH7.
(viii)	New Requirement 33. Skills and employment strategy and submission of outline SES.	The Applicant noted NCC's agreement to the drafting of new Requirement 33 and confirmed that the outline Skills and Employment Strategy would be submitted at Deadline 7. The Applicant has submitted the outline Skills and Employment Strategy at Deadline 7 (document reference 8.22), which responds to Action Point 17 from ISH7.
AGENDA ITEM 8 (DMLs)		
(i)	Conditions relating to design parameters. To include consideration of relation between Conditions, project envelope and the submitted Offshore Ornithology: Deterministic CRM for revised layout scenarios, positing a revised project design.	Please see Agenda item 7(i) above. The Applicant noted the possible discrepancy in the DMLs when referring to IHO Order 1a and agreed to check the position and update the dDCO as necessary for Deadline 7. The Applicant has included revised drafting within the dDCO submitted at Deadline 7, which responds to Action Point 22 from ISH7. The reference now reads as follows *'IHO S44ed5 Order 1a'.* The specific edition of Order 1a has been referred to without reference to any replacement as the Applicant considers that it is necessary to have the certainty of complying with a current, known edition or Order 1a. In any event, the In Principle Monitoring Plan (document reference 8.12 (version 2)) incorporates and secures requirements from Order 1a.

(ii)	Disposal Site" locations and references. Typos [site disposal] Schedule 9, Part 3, 1(d) and Part 4, Condition 12 (5) [typo]; Schedule 10, Part 3, 1(d) and Part 4, Condition 12(5) [typo]; Schedule 11, Part 3, 1(d) and Part 4, Condition 7(5) [typo]; Schedule 12, Part 3, 1(d) and Part 4, Condition 7(5) [typo]	The Applicant noted the typing errors and agreed to amend these in the next version of the dDCO to be submitted at Deadline 7. Accordingly, the amendments to the dDCO submitted at Deadline 7 responds to Action Point 20 from ISH7.
(iii)	Schedules 9 and 10, Condition 14 - including new Condition 14(d) (vi): nature of procedures to minimise disturbance to red-throated diver. [Best practice measures for operational vessel movements through the Greater Wash Special Protection Area (SPA) or Outer Thames Estuary SPA]	The Applicant noted that the new wording was based on the wording included in the East Anglia THREE Order for red-throated diver mitigation. The Applicant has also updated the Outline Project Environmental Management Plan (OPEMP) (document reference 8.14) to refer to the relevant best practice measures and reference the outline plan in Condition 14(1)(d) and 9(1)(d) of the DMLs. The updated OPEMP is submitted at Deadline 7 along with the updated version of the dDCO, which accordingly responds to Action Point 28 from ISH7.
(iv)	Schedules 9 and 10, Condition 15(4), and Schedules 11 and 12, Condition 10(4) – amendments affecting MMO	Please see agenda item 5 above.
(v)	Schedules 9, 10, 11, 12, amendments proposed by Historic England	The Applicant explained its position in relation to the three specific matters outlined by Historic England in its Deadline 6 submission. 1. Schedules 9 and 10, conditions 14(h)(vii) *"implementation of the Offshore Renewables Protocol for Reporting Archaeological Discoveries as set out by The Crown Estate including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised scheme"* The Applicant responded that this is generally covered by Condition 14(h)(vii), save in relation to the specific reference to the Offshore Renewables Protocol for Reporting Archaeological Discoveries (ORPAD). However, this is more particularly dealt with in paragraphs 9 and 10 of the Outline Written Scheme of Investigation

		(OWSI)(document reference 8.6), including the specific reference to ORPAD. The Applicant's view was that it was more appropriate to refer to ORPAD in the OWSI given the potential for this reference to change in the future. Following the hearing, the Applicant informed Historic England of this position and Historic England has responded to say that it understands the Applicant's position and has no further comment to offer. 2. Schedules 9 and 10, condition 18(2)(a) *" a high-resolution full sea floor coverage swath bathymetric survey to include a 100% coverage that meets the requirements of IHO S44ed Order 1a, and side-scan sonar survey of the area(s) within the Order limits within which it is proposed to carry out construction works and disposal activities under this licence"* The Applicant responded that wording which mirrored the wording contained in IHO S44ed5 Order 1a had been included in Condition 18(2)(a). Given this and also given that the details of the survey must be agreed with the MMO in consultation with Historic England through the production of the final Written Scheme of Investigation (WSI), the Applicant did not consider it necessary to amend Condition 18(2)(a). In relation to disposal activities, the Applicant commented that it did not see the relevance of this to potential archaeological impacts and that it proposed to ask Historic England why this had been included. Following the hearing the Applicant informed Historic England of its position, and Historic England has responded to say that it understands the Applicant's position and has no further comment to offer. The Applicant also asked Historic England why it had included reference to disposal activities in its proposed wording. On this point, Historic England has responded to say that inclusion of reference to disposal activities is a matter for the Applicant and that it is not relevant for Historic England to comment further on this point. 3. Schedules 9 and 10, Condition 20(2)(e) *" a bathymetric survey to monitor the effectiveness of archaeological exclusion zones identified to have been potentially impacted by construction works. The data shall be analysed by an accredited archaeologist as defined in the offshore written scheme of investigation required under condition 14(h)"* The Applicant noted that this would be a new condition to be included in the generation asset DMLs. The Applicant's position was that this was not necessary on the basis that monitoring of Archaeological Exclusion Zones (AEZ)s was referred to in the In Principle Monitoring Plan (document 8.12) which also states, "*The principal mechanism for delivery of monitoring is through agreement on the offshore Written Scheme of Investigation (WSI)".* Following the hearing the Applicant informed Historic England of its position, and Historic England has responded to say that notes the explanation provided by the Applicant and has no further comment to offer. The above submission, together with the post hearing discussion with Historic England, addresses Action Point 21 from ISH7 and no further amendments are proposed to the dDCO in this respect.
(vi)	Schedules 9 and 10, Conditions 19(4), 20(2)(d) - marine traffic monitoring strategy.	The Applicant noted that the wording requested by Trinity House had been included in Conditions 19(4) and 20(2)(d) of the generation asset DMLs.

(vii)	Inclusion of maximum noise limits drilling/piling/vibration effects.	The Applicant noted that the parties did not require any further amendments to the DML conditions in relation to maximum noise limits or drilling/piling/vibration effects.
AGENDA ITEM 9 (Schedule 15 – discharge of Requirements)		
(i)	Update / outstanding concerns	The Applicant noted that there was a minor error which had not been corrected at paragraph 2(3), which should refer to 10 business days. This would be corrected in the next version of the dDCO to be submitted at Deadline 7. The wording in the revised dDCO therefore addresses Action Point 23 from ISH7.
AGENDA ITEM 10 (Schedule 16 – Protective provisions)		
(i)	To note current position relating to National Grid, Cadent Gas and others.	The Applicant confirmed that matters are progressing with National Grid, Cadent and Network Rail, and that it is expected that all outstanding matters will be resolved by the close of the Examination. The Applicant agreed to progress matters as far as possible by Deadline 7 and, to the extent that all outstanding matters had been agreed, to include any updates to the protective provisions in the dDCO submitted at Deadline 7.
(ii)	New Part 8. Protective provisions for the benefit of Ørsted Hornsea Project Three (UK) Ltd.	The Applicant confirmed that the protective provisions included for the benefit of Ørsted Hornsea Project Three (UK) Ltd were reciprocal and had been included for the benefit of Norfolk Vanguard in the dDCO for Hornsea Project Three. The Applicant was asked whether a definition of "thermal interaction" should be included as referred to in paragraph 87(5). In response, (and addressing Action Point 25 from ISH7), given the reciprocal nature of the protective provisions, the Applicant does not consider it appropriate to change the form of the protective provisions. The Applicant also notes that a corresponding definition has not been included in the Hornsea Project Three DCO.
AGENDA ITEM 11 (Other dDCO matters (i.e. tourism))		
	Evidence relating to impacts of proposal on tourism and suggested wording for new Requirement.	The Applicant explained that there was a fundamental disagreement with NNDC as to whether the proposed development would give rise to tourism impacts which required mitigation. The matters which NNDC raise in their Deadline 6 submission do not affect the conclusions of the ES set out in ES Chapter 30 Tourism and Recreation, specifically: section 30.7.5.4 *Disruption to onshore coastal tourism and recreational assets*; section 30.7.5.5 *Visual impacts of construction activity to tourism and recreational receptors*; section 30.7.5.6 *Reduction of tourist accommodation availability due to non-resident workforce*; section 30.7.5.7 *Obstruction or disturbance to inland tourism and recreation assets*; and section 30.7.5.9 *Traffic increase (and associated disturbance to tourism).* The Applicant's firm view is that there are no such impacts. In addition, the Applicant also has significant concerns in relation to the drafting of the proposed Requirement.

		The Applicant notes that any requirements should adhere to the tests set out in paragraph 55 of the National Planning Policy Framework (NPPF) (2019). The Applicant is of the view that it does not meet the tests, that it is: • necessary; • relevant to planning and; • to the development to be permitted; • enforceable; • precise and; • reasonable in all other respects. It should be noted that, as the Applicant explains in relation to NNDC's response to Q19.29 (ExA;FurtherWQ;10.D5.2), the Overarching National Policy Statement for Energy (EN-1), through paragraph 4.1.7 and 4.1.8 adopts these tests in the consideration of whether requirements or development consent obligations should be imposed. In particular, compensation is not considered necessary to mitigate impacts identified in the ES and, as such, is not relevant to planning or the development to be permitted. Further, the Requirement is not sufficiently precise and does not set out appropriate parameters to enable it to be enforceable. Given the lack of parameters, particularly the level of compensation which may be required, it cannot be considered reasonable. The Applicant also has a particular concern that the Requirement is directed towards the payment of compensation, and whether this is appropriate in the context of the advice set out in the Planning Practice Guidance (PPG) which states: *"No payment of money or other consideration can be positively required when granting planning permission. However, where the 6 tests will be met, it may be possible to use a negatively worded condition to prohibit development authorised by the planning permission until a specified action has been taken (for example, the entering into of a planning obligation requiring the payment of a financial contribution towards the provision of supporting infrastructure)."* Whilst the Applicant acknowledges that the draft Requirement is negatively worded, the Applicant's view is that it does not meet the PPG tests. Further, the Applicant is not aware of any local policy which supports NNDC's position. To the extent that NNDC propose that this matter can be dealt with through a section 106 Agreement, the Applicant's position would not change. The compensation which NNDC wishes to secure does not meet the tests set out Regulation 122 of the Community Infrastructure Levy Regulations 2010 that it is: (a) necessary to make the development acceptable in planning terms; (b) directly related to the development; and

		(c) fairly and reasonably related in scale and kind to the development. In particular, compensation is not necessary to mitigate any impacts identified in the ES; it would not be possible for claimants to prove that compensation was required as a direct result of the development; and there is no quantum of compensation specified so that it can be said that the compensation sought is fairly and reasonably related in scale and kind to the development. The Applicant also confirmed that no other section 106 Agreements are proposed for the project.
	Other outstanding matters	The Applicant noted that a Requirement to mitigate impacts on the Cromer radar would be included as a new Requirement 34 in the dDCO submitted at Deadline 7 (which accordingly responds to Action Point 26 from ISH7). The Applicant was endeavouring to reach agreement on the form of the new Requirement with NATS prior to inclusion in the dDCO.
AGENDA ITEM 12 (Other miscellaneous items)		
(i)	Clarification of "other facilities required for construction purposes" in definition of "mobilisation area"	The Applicant referred to the definition of "mobilisation area" as provided in the dDCO as follows: *"mobilisation area" means an area associated with the onshore transmission works including hard standings, lay down and storage areas for construction materials and equipment, areas for spoil, areas for vehicular parking, bunded storage areas, areas for welfare facilities including offices and canteen and washroom facilities, workshop facilities and temporary fencing or other means of enclosure and areas for other facilities required for construction purposes;* With respect to the specific reference to '*other facilities required for construction purposes'* noted within the definition, the Applicant provided examples of amenities to support construction purposes such as wheel wash facilities or vehicle maintenance areas. The Applicant was asked to consider whether crushing and screening of materials such as road stone could be undertaken in the mobilisation area, and agreed to confirm the position in written submissions. The Applicant can confirm that this activity will not be undertaken within the mobilisation areas and such processes and associated machinery have not been assessed within the ES. Section 25.4.1.1.2 of Chapter 25 Noise and Vibration of the ES outlines the construction noise sources associated with temporary works areas and Section 5.5.4 of Chapter 5 Project Description of the ES which provides details on the purpose and use of the mobilisation area. The Applicant's response to Q11.27 of the Examining Authority's First Written Questions (ExA; WQ; 10.D1.3) explains how the mobilisation area would operate, what materials would be stored and what activities would take place. These activities, as assessed in the ES, are captured within the definition of mobilisation area within the dDCO. It is considered appropriate to retain the reference to *"other facilities required for construction purposes"* because it

		is not possible to include an exhaustive list of the activities which might occur at the mobilisation area. However, the activities permitted by the works description at the mobilisation area are restricted by reference to activities which would fall within the scope of works assessed by the environmental statement. In particular, Part 1 of Schedule 1 of the dDCO describes the further associated development permitted in connection with Work Nos 4C to 12, and at paragraph (k) this refers specifically to *"working sites and mobilisation areas in connection with the construction of the authorised development"*. The preceding text states, *"and in connection with such Work Nos. 4C to 12 and to the extent that they do not otherwise form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement, including…"* (our underlining). Accordingly, and in response to Action Point 27 from ISH7, the Applicant does not consider it necessary to restrict the definition of "mobilisation area" to the scope of that assessed in the ES because this is already restricted in Part 1 of Schedule 1.
(ii)	"Registrar General" in Article 17(11)(a)	The Applicant explained that Article 17 is taken from the Model Provisions, which does not include a definition of Registrar General. The Applicant is aware that the Article was also included in the Knottingley Power Plant Order 2015, with no Registrar General definition. The Applicant explained that Registrar General was a specific post held following appointment by the Queen on the Prime Minister's recommendation, and served as the Director of the General Register Office for births, deaths and marriages in England and Wales. The Applicant can also confirm that the position of Registrar General was created by the Births and Deaths Registration Act 1836 which states as section II: *"II. General Registry Office to be provided in London or Westminster.* *And be it enacted, That it shall be lawful for His Majesty to provide a proper Office in London or Westminster, to be called "The General Register Office," for keeping a Register of all Births, Deaths, and Marriages of His Majesty's Subjects in England, and to appoint for the said Office under the Great Seal of the United Kingdom a Registrar General of Births, Deaths, and Marriages in England, and from Time to Time at Pleasure to remove the said Registrar General, and appoint some other Person in his Room."* The Applicant understands that the position is currently held by Mark Thompson who was appointed on 24 August 2015. Given the term relates to a specific post created by statute the Applicant does not consider it necessary to define the term within the dDCO.

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.**