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Norfolk Vanguard Offshore Wind Farm

Applicant's Comments on the Examining Authority's draft DCO Schedule of Changes

Applicant: Norfolk Vanguard Limited
Document Reference: ExA; SoC; 10.D8.6

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Photo: Kentish Flats Offshore Wind Farm

THE APPLICANT'S COMMENTS ON THE EXAMINING AUTHORITY'S

SCHEDULE OF CHANGES TO THE DRAFT DEVELOPMENT CONSENT ORDER

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Contents			
Schedules	SCHEDULE 9 PART 5 — Procedure for Appeals SCHEDULE 10 PART 5 — Procedure for Appeals SCHEDULE 11 PART 5 — Procedure for Appeals SCHEDULE 12 PART 5 — Procedure for Appeals	Amendment consequential to Part 5 in each of Schedules 9, 10, 11 and 12	The Applicant agrees with this change and has amended the dDCO, as per the version submitted at Deadline 8, accordingly.
Articles			
2	—(1) In this Order… "the 2009 Act" means the Marine and Coastal Access Act 2009(n); "the 2011 Regulations" means the Marine Licensing (Licence Application Appeals) Regulations 2011(**a**); (a) S.I. 2011/934	Amendment consequential to Part 5 in each of Schedules 9, 10, 11 and 12	The Applicant agrees with the principle of an appeal process connected to a refusal or non-determination of a document submitted to the Marine Management Organisation (MMO) for approval under the Deemed Marine Licences (DMLs). This is considered essential for the reasons already explained by the Applicant during the course of the examination. The Applicant proposes to provide a position statement with the MMO at Deadline 9 which sets out the

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			Applicant's position in this respect as well as the alternative drafting options. In summary, the Applicant recognises that the drafting proposed by the ExA would be consistent with the drafting proposed by Hornsea Project Three (if the same approach is accepted by the Secretary of State) and that it would make use of the existing mechanism for appeals under the 2011 Regulations, with modified timescales. The Applicant welcomes the proposed modifications to the 2011 Regulations, which would ensure that (similar to the bespoke arrangements proposed by the Applicant) there is certainty as to timeframes for decision making. In summary, whilst the bespoke appeals process would offer consistency for determination of approvals under the Requirements and DML Conditions, the Applicant is content to include an appeals mechanism which adopts the modified 2011 Regulations in respect of DML approvals. The Applicant has therefore adopted the ExA's suggested drafting in the dDCO submitted at Deadline 8.
2	—(1) In this Order… "temporary stopping up of public rights of way plan" means the plan certified as the temporary stopping up of public rights of way plan by the Secretary of State for the purposes of this Order; "the tourism and associated business impact mitigation strategy" means the document certified as the tourism and associated business	To reflect suggested amendment by NNDC	The Applicant strongly opposes this change to the dDCO. The Applicant has submitted a 'Position Statement: North Norfolk District Council Requested Requirement to Address Perceived Tourism Impacts' (reference: ExA; AS; 10.D8.12) in support of the Applicant's position that a tourism mitigation strategy is not necessary, appropriate or reasonable in this case. In summary, there is no significant adverse impact on tourism identified in Chapter 30 Tourism and Recreation of the Environmental Statement (ES); NNDC have not provided any evidence of a perceived impact on tourism from offshore wind farm construction processes; the Applicant's evidence (submitted at Deadline 8 as referenced above) has shown that similar construction processes for other

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			offshore wind farm projects in North Norfolk have not resulted in any tourism impact (whether perceived or actual); the Applicant's Project already relies on significant embedded mitigation to minimise construction impacts to avoid such potential impacts; the Applicant's Project fully complies with National Policy Statement (NPS) EN1 and the National Planning Policy Framework (NPPF); the Applicant is not aware of any precedent for mitigation in respect of perceived tourism impacts (and indeed none has been advanced by NNDC); and the Examining Authority for Hornsea Project Three has not suggested that similar mitigation be included for that project in their schedule of changes to the dDCO despite, for that project, the landfall falling within the Norfolk Coast Area of Outstanding Natural Beauty (AONB), no commitment to a long Horizontal Directional Drill (HDD) at landfall, and no commitment to HVDC (and therefore the option of a HVAC booster station and a wider cable corridor). Accordingly, the Applicant maintains that the Requirement is not necessary or appropriate. In addition, the Applicant considers that the Requirement as currently drafted is not reasonable or enforceable in that there is no mechanism, either set in policy or agreed between the Applicant and NNDC which allows the quantum of any contribution to be calculated. Without this it cannot be said that such a contribution is fairly and reasonably related in scale and kind as it is not known what the contribution sought by NNDC will be, neither is this sufficiently precise. If NNDC had concerns as to perceived tourism impacts, then it might have been expected that a Supplementary Planning Document (SPD) which set out these concerns and, perhaps even more importantly, sets out an open and transparent evidence–based mechanism for calculating such contributions would have been adopted.

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			In short, the Applicant has submitted substantial evidence which shows there is no tourism impact which arises from the Project and, in any event, it would be wholly unreasonable to require mitigation by way of an unquantified financial payment with no agreed or adopted mechanism for its calculation post consent.
5(3) to 5(6)	(3) The undertaker must consult the Secretary of State before making an application for consent under this article by giving notice in writing of the proposed application ~~and the Secretary of State shall provide a response within four weeks of receipt of the notice~~. (4) The Secretary of State must consult the MMO before giving consent to the transfer or grant to another person of the whole or part of the benefit of the provisions of the deemed marine licences. (5) The Secretary of State must consult National Grid before giving consent to the transfer or grant to a person of any or all of the benefit of the provisions of this Order (excluding the deemed marine licences referred to in paragraph (2) above) (6) ~~The Secretary of State must determine an application for consent made under this article within a period of eight weeks commencing on the date the application is received by the Secretary of State, unless otherwise agreed in writing with the undertaker~~. *Subsequent sub-paragraphs renumbered accordingly*	The issue of whether it would be appropriate for a decision of the Secretary of State relating to the transfer of the benefit of the Order to be subject to arbitration has been explored in the examination. The ExA has sought evidence in relation to the justification for the approach suggested by the Applicant.	The Applicant understands that the dDCO reference in this case is to Article 6(3) and Article 6(6). In the first instance, it should be noted that this drafting does not relate to arbitration, and that the Applicant has already amended the dDCO to specifically exclude the Secretary of State from the arbitration article (see Article 38(2) of the dDCO). The drafting concerned in Article 6(3) and 6(6) seeks only to require the Secretary of State to determine an application for consent to transfer the benefit of the DCO within reasonable timescales. Similar drafting has been included in more recently drafted, but not yet made, DCOs for Hornsea Project Three and Thanet Extension Offshore Wind Farm. However, for those projects, the option of arbitration in respect of Secretary of State decisions has been retained and, in the case of Thanet Extension, a separate appeals mechanism for disputes with the Secretary of State has been included. The Applicant considers that any decision in relation to the inclusion of arbitration/ an appeal mechanism for disputes with the Secretary of State should be applied consistently across offshore wind farm Orders. In relation to the inclusion of timescales for determination under this article, for any project of national significance, it is important to ensure expedition of process when obtaining necessary approvals under the DCO. The transfer of benefit article, as with many other articles, requirements and conditions contained within the dDCO, should necessarily be subject to reasonable timeframes

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			by which an application should be determined. Without any reasonable timeframe for determination of such an application, there is no ability for the Applicant to control when the benefit of the DCO may be transferred and there is no legal imperative, or timeframe incentive, for the Secretary of State to determine such an application. The Applicant is concerned that the removal of this drafting could lead to uncertainty and delay. As the ExA will be aware, if the Applicant (or any Applicant for an offshore wind farm project) wished to transfer the Project to another company, expedition and timing is absolutely critical in ensuring that the transfer can properly take place. Any delay in being able to transfer the consent could affect bankability, commercial attractiveness and ultimately the value of the Project as a whole. Any such delay could for example, and depending on the stage of the project at which the transfer takes place, also impact on the Contracts for Difference (CfD) bidding process or on meeting CfD milestones. The Applicant considers that the principle of the drafting is reasonable and should therefore remain. However, if considered more appropriate, the Applicant is willing to align the timeframes within the two paragraphs and allow the Secretary of State 8 weeks to provide an initial response to the consultation under paragraph (3). It should be noted in this context, that the pre-application consultation required under paragraph (3) offers a mechanism for early engagement and allows the Secretary of State sufficient time to be consulted on the proposals before the application is subsequently submitted for determination. The determination period (a further 8 week period) will only run once the application is received by the Secretary of State under paragraph (6).

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			In total, this allows the Secretary of State sixteen weeks to consult on, and subsequently, determine the application for a transfer of benefit. This allows certainty to the Applicant but also affords the Secretary of State sufficiently reasonable time to ensure that the transfer can take place following adequate consultation. The dDCO submitted at Deadline 8 has been amended accordingly.
37(1)	(z) the outline skills and employment strategy (aa) the Development Principles (8.23); and (bb) the tourism and associated business impact mitigation strategy (8.24).	To reflect suggested amendment by NNDC	The Applicant strongly opposes this change to the dDCO. The Applicant has submitted a 'Position Statement: North Norfolk District Council Requested Requirement to Address Perceived Tourism Impacts' (reference: ExA; AS; 10.D8.12) in support of the Applicant's position that a tourism mitigation strategy is not necessary, appropriate or reasonable in this case. In summary, there is no significant adverse impact on tourism identified in Chapter 30 Tourism and Recreation of the Environmental Statement (ES); NNDC have not provided any evidence of a perceived impact on tourism from offshore wind farm construction processes; the Applicant's evidence (submitted at Deadline 8 as referenced above) has shown that similar construction processes for other offshore wind farm projects in North Norfolk have not resulted in any tourism impact (whether perceived or actual); the Applicant's Project already relies on significant embedded mitigation to minimise construction impacts to avoid such potential impacts; the Applicant's Project fully complies with NPS EN1 and the NPPF; the Applicant is not aware of any

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			precedent for mitigation in respect of perceived tourism impacts (and none has been advanced by NNDC); and the ExA for Hornsea Project Three has not suggested that similar mitigation be included for that project in their schedule of changes to the dDCO despite, for that project, the landfall falling within the Norfolk Coast Area of Outstanding Natural Beauty (AONB), no commitment to a long HDD at landfall, and no commitment to HVDC (and therefore the option of a HVAC booster station and a wider cable corridor). Accordingly, the Applicant maintains that the Requirement is not necessary or appropriate. In addition, the Applicant considers that the Requirement as currently drafted is not reasonable or enforceable in that there is no mechanism, either set in policy or agreed between the Applicant and NNDC which allows the quantum of any contribution to be calculated. Without this it cannot be said that such a contribution is fairly and reasonably related in scale and kind as it is not known what the contribution sought by NNDC will be, neither is this sufficiently precise. If NNDC had concerns as to perceived tourism impacts, then it might have been expected that a Supplementary Planning Document (SPD) which set out these concerns and, perhaps even more importantly, sets out an open and transparent evidence–based mechanism for calculating such contributions would have been adopted. In short, the Applicant has submitted substantial evidence which shows there is no tourism impact which arises from the Project and, in any event, it would be wholly unreasonable to require mitigation

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			by way of an unquantified financial payment with no agreed or adopted mechanism for its calculation post consent.
Requirements			
2	2.- (1) … (e) subject to sub-paragraph (2) have a draught height of less than 22 metres from MHWS;. (2) (a) the number of wind turbine generators [in Norfolk Vanguard East] with a draught height of less than [ ]m from MHWS comprised in the authorised project must not exceed [ ]. (b) the number of wind turbine generators [in Norfolk Vanguard West] with a draught height of less than [ ]m from MHWS comprised in the authorised project must not exceed [ ]. *Subsequent sub-paragraphs renumbered accordingly*	To reflect suggestions made by NE and RSPB if required following application of further collision risk model(s)	As per the Applicant's Additional Submission dated 14 May 2019 (Collision Risk Modelling Update for increase in draught height (document reference: ExA;AS;10.D7.5.2)), the Applicant has agreed to an increase in draught height of 5 metres from 22 metres to 27 metres. This applies to all wind turbine generators across Norfolk Vanguard East and Norfolk Vanguard West. Accordingly, the Applicant has amended Requirement 2(e) of the dDCO submitted at D8 to refer to a draught height of not less than 27 metres from MHWS.
2	~~(3) The total number of wind turbine generators must be apportioned between Norfolk Vanguard East and Norfolk Vanguard West (rounded to the nearest whole number) in accordance with the following formula –~~ ~~(a) two thirds of the total number of wind turbine generators in Norfolk Vanguard West and one third of the total number of wind turbine generators in Norfolk Vanguard East; or~~ ~~(b) half of the total number of wind~~	To allow for flexibility between the minimum and maximum parameters	The Applicant agrees with the proposed drafting and that it allows flexibility within the parameters assessed. Accordingly, the Applicant has adopted this proposed drafting in Requirement 3 (together with Condition 3 in the Generation DMLs (Schedule 9-10)), in the dDCO submitted at Deadline 8.

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	~~turbine generators in Norfolk Vanguard West and half of the total number of wind turbine generators in Norfolk Vanguard East~~. 3.—(1) The total number of wind turbine generators forming part of the authorised project must not exceed 180 and shall be configured such that at any time: (a) No more than two-thirds of the total number of wind turbine generators (rounded to the nearest whole number) must be located in Norfolk Vanguard West; and (b) No more than one half of the total number of wind turbine generators (rounded to the nearest whole number) must be located in Norfolk Vanguard East.		
17(1)	(1) No stage of the onshore transmission works may commence until for that stage a code of construction practice has been submitted to and approved by the relevant planning authority, in consultation with Norfolk County Council, the relevant statutory nature conservation body and the Environment Agency.	To ensure that nature conservation interests are fully considered in the CoCPs.	The Applicant understands that the DCO reference in this case is to Requirement 20. The Applicant notes that Natural England has not requested an amendment of this nature. It will be a matter for the relevant planning authority to determine who should be consulted on the approval of the final Code of Construction Practice (CoCP). However, it should be noted that the Outline CoCP (OCoCP) (document 8.01) requires the Applicant to agree the final version of the Invasive Species Management Plan (required pursuant to Requirement 20(2)(m)) (see Section 5 of the OCoCP) with Natural England. The Applicant is keen to ensure that Natural England's resources are used in the most effective way and, as the Invasive Species Management

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			Plan is the only matter of relevance to Natural England in the OCoCP and there is already a commitment to agree this plan with Natural England, it would seem unnecessary to consult them on the entire OCoCP in this particular case. The Applicant therefore does not consider it necessary to amend Requirement 20.
18	(2) The landscaping management scheme must include details of proposed hard and soft landscaping works appropriate for the relevant stage, including— … (d) details of existing trees to be removed (~~d~~ e) details of existing trees and hedgerows to be retained with measures for their protection during the construction period; (~~e~~ f) retained historic landscape features and proposals for restoration, where relevant; (f g) implementation timetables for all landscaping works; (~~g~~ h) proposed finished heights, form and gradient of earthworks; and (~~h~~ i) maintenance of the landscaping;	To ensure better understanding of tree removal proposed and consequent replanting considered necessary under this Requirement	The Applicant agrees with the principle of this suggested change and has amended the dDCO, submitted at Deadline 8, accordingly.
19(2)	(2) Any tree or shrub planted as part of an approved landscaping management scheme that within a period of ~~five~~ ten years after planting, is removed, dies or becomes, in the opinion of the	To reflect likely timescales for planting to become established in this locality.	No evidence has been presented that a 10 year maintenance period is required in the Broadland and Breckland administrative areas and it is not therefore reasonable to increase the maintenance period to 10 years in these areas. The evidence for a 10 year maintenance

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	relevant planning authority, seriously damaged or diseased must be replaced in the first available planting season with a specimen of the same species and size as that originally planted unless a different species is otherwise agreed in writing with the relevant planning authority.		period submitted by NNDC related to unfavourable growing conditions specific to North Norfolk. In addition, evidence for a 10 year maintenance period has only been presented by NNDC for 'trees', and not shrubs. The Applicant has committed to micrositing the onshore cable route to avoid individual trees in hedgerows where possible – the widths of the hedgerow crossings are reduced from 45m to 20m to achieve this. As the cable corridor is narrowed to the extent required for the cables, it is not possible to re-plant trees at these crossing points (due to the potential for tree roots to damage the cables) and only hedgerows will be reinstated. However, there may be opportunities to replace trees within the Order limits but outside of the permanent operational easement area. The Applicant has now committed, subject to landowner agreement, to replacing trees as close as practicable to the location where they were removed, outside of the permanent operational easement and subject to landowner agreement. In addition, but also subject to landowner agreement, the Applicant will commit to 10 years of post-planting maintenance for replaced trees within North Norfolk. This has been captured within an update to the Outline Landscape and Ecological Management Strategy (OLEMS) (DCO document 8.7) which will be submitted at Deadline 9. However, it should be noted that as the replacement and maintenance of trees in NNDC's area would be outside of the narrowed cable corridor and subject to landowner agreement, it is not appropriate to secure this by way of requirement and this does not alter the Applicant's position that the DCO requirement should refer to a 5 year maintenance period. As no evidence has been presented by NNDC that the maintenance period for shrubs should be longer than 5

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			years, it is considered appropriate to retain a 5 year maintenance period in the requirement for NNDC's administrative area.
20(2)	(2) The code of construction practice must accord with the outline code of construction practice and include details, as appropriate to the relevant stage, on— … (d) construction noise and vibration (including the use of low noise reversing warnings on vehicles and temporary acoustic barriers);	To reflect concerns of NNDC	The Applicant agrees with the principle of this change but the Applicant considers that the detail should be included within the OCoCP rather than within the Requirement. The Applicant will therefore submit an amended OCoCP at Deadline 9 accordingly.
26	(2) Outside the hours specified in paragraph (1), construction work may be undertaken for essential activities including but not limited to— ~~(a) continuous periods of operation that are required as assessed in the environmental statement, such as concrete pouring, drilling, and pulling cables (including fibre optic cables) through ducts;~~ ~~(b)~~ delivery to the onshore transmission works of abnormal loads that may otherwise cause congestion on the local road network; ~~(c)~~ works required that may necessitate the temporary closure of roads; ~~(d) onshore transmission works requiring trenchless installation techniques;~~ ~~(e)~~ onshore transmission works at the landfall; ~~(f)~~ commissioning or outage works associated with the extension to the Necton National	The ES does not consider continuous periods of operation as referred to in sub-paragraph (a) other than at landfall, nor does it consider the impact of onshore transmission works requiring trenchless installation outside of the normal working hours.	The Applicant has submitted a document titled 'Consideration of potential impacts related to continuous periods of operation referred to in Requirement 26(a) and 26(d)' (document reference: ExA;AS;10.D8.6) at Deadline 8 in order to provide the ExA with confidence that the impacts of such works will not have significant effects following, where necessary, the application of enhanced mitigation. As noted in the document, this enhanced mitigation is already secured through the OCoCP. Given this, there is no reason to restrict hours of working for these essential construction activities. It should also be noted that it is essential for these additional working hours to apply for these particular construction activities as they must be completed in one continuous period (see ExA;AS;10.D8.6 for a further explanation in relation to this). For these reasons paragraphs (a) and (d) have not been deleted from the dDCO submitted at Deadline 8. The Applicant has no objection to including new paragraph (5) of Requirement 26 (restricting crushing and screening works at mobilisation areas), and this has been included in the updated dDCO submitted at Deadline 8.

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	Grid substation comprised within Work No. 10A; ~~(g)~~ commissioning or outage works associated with the overhead line modification works comprised within Work No. 11 and Work No. 11A; ~~(h)~~ electrical installation; and ~~(i)~~ emergency works. ***[re-number sub-paragraphs accordingly]*** (5) No crushing or screening works must take place at any time on any of the mobilisation areas, without the prior written consent of the relevant local authority.		
34	(1) No part of Works No. 4C or Work No. 5 within the District of North Norfolk may commence until such time as a tourism and associated business impact mitigation strategy has been submitted to and approved in writing by North Norfolk District Council. (2) The tourism and associated business impact mitigation strategy referred to in sub-paragraph (1) must include: (a) Details of a contribution to be paid by the undertaker to Tourism Information Centres, Visit North Norfolk, Visit Norfolk and any other relevant organisations supporting and promoting tourism in North Norfolk; (b) Details of a method by which the contribution by the undertaker in (a) will be apportioned to the above	Agreement reflects suggestion made by NNDC	The Applicant strongly opposes this change to the dDCO. The Applicant has submitted a 'Position Statement: North Norfolk District Council Requested Requirement to Address Perceived Tourism Impacts' (reference: ExA; AS; 10.D8.12) in support of the Applicant's position that a tourism mitigation strategy is not necessary, appropriate or reasonable in this case. In summary, there is no significant adverse impact on tourism identified in Chapter 30 Tourism and Recreation of the Environmental Statement (ES); NNDC have not provided any evidence of a perceived impact on tourism from offshore wind farm construction processes; the Applicant's evidence (submitted at Deadline 8 as referenced above) has shown that similar construction processes for other offshore wind farm projects in North Norfolk have not resulted in any tourism impact (whether perceived or actual); the

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	organisations; (c) Details of who will administer the strategy; Details of how the strategy will be funded including the cost of administration;		Applicant's Project already relies on significant embedded mitigation to minimise construction impacts to avoid such potential impacts; the Applicant's Project fully complies with NPS EN1 and the NPPF; the Applicant is not aware of any precedent for mitigation in respect of perceived tourism impacts (and none has been advanced by NNDC); and the Examining Authority for Hornsea Project Three has not suggested that similar mitigation be included for that project in their schedule of changes to the dDCO despite, for that project, the landfall falling within the Norfolk Coast Area of Outstanding Natural Beauty (AONB), no commitment to a long HDD at landfall, and no commitment to HVDC (and therefore the option of a HVAC booster station and a wider cable corridor). Accordingly, the Applicant maintains that the Requirement is not necessary or appropriate. In addition, the Applicant considers that the Requirement as currently drafted is not reasonable or enforceable in that there is no mechanism, either set in policy or agreed between the Applicant and NNDC which allows the quantum of any contribution to be calculated. Without this it cannot be said that such a contribution is fairly and reasonably related in scale and kind as it is not known what the contribution sought by NNDC will be, neither is this sufficiently precise. If NNDC had concerns as to perceived tourism impacts, then it might have been expected that a Supplementary Planning Document (SPD) which set out these concerns and, perhaps even more importantly, sets out an open and transparent evidence–based mechanism for calculating such contributions would have been adopted.

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			In short, the Applicant has submitted substantial evidence which shows there is no tourism impact which arises from the Project and, in any event, it would be wholly unreasonable to require mitigation by way of an unquantified financial payment with no agreed or adopted mechanism for its calculation post consent.
Deemed Marine Licences			
The following paragraph and condition numbers refer to Schedule 9. Where there are equivalent provisions in Schedules 10, 11 and 12 the same amendments would apply.			
Part 1	~~"the appeal parties" means the MMO, the relevant consultee and the undertaker;~~ ~~"business day" means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971~~;	Amendment reflects changes proposed to appeal procedure in Part 5	The Applicant agrees with the principle of an appeal process connected to a refusal or non-determination of a document submitted to the Marine Management Organisation (MMO) for approval under the Deemed Marine Licences (DMLs). This is considered essential for the reasons already explained by the Applicant during the course of the examination. The Applicant proposes to provide a position statement with the MMO at deadline 9 which sets out the Applicant's position in this respect as well as the alternative drafting options. In summary, the Applicant recognises that the drafting proposed by the ExA would be consistent with the drafting proposed by Hornsea Project Three (if the same approach is accepted by the Secretary of State) and that it would make use of the existing mechanism for appeals under the 2011 Regulations, with modified timescales. The Applicant welcomes the proposed modifications to the 2011 Regulations, which would ensure that (similar to the bespoke arrangements proposed by the Applicant) there is certainty as to timeframes for decision making. In summary, whilst the bespoke appeals process would

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			offer consistency for determination of approvals under Requirements and DML conditions, the Applicant is content to include an appeals mechanism which adopts the modified 2011 Regulations in respect of DML approvals. The Applicant has therefore adopted the ExA's suggested drafting in the dDCO submitted at Deadline 8.
Part 4 Condition 9(11)	(11) In case of damage to, or destruction or decay of, the authorised project seaward of MHWS or any part thereof including the exposure of cables the undertaker must as soon as possible and no later than 24 hours following the undertaker becoming aware of any such damage, destruction or decay, notify MMO, MCA, Trinity House, the Kingfisher Information Service of Seafish and the UK Hydrographic Office.	Amendment seeks to mitigate safety risks to fishing operations.	Whilst the Applicant is content to include reference to the Kingfisher Information Service of Seafish in the dDCO, it is not appropriate to deal with exposure of cables in this Condition. This is dealt with separately in Condition 9(12), and the requirements of Conditions 9(11) and 9(12) would conflict if both were to be included in the DMLs. The Applicant also understands that it is Trinity House's and the MCA's preference to deal with exposure of cables in a separate condition; the new Condition 9(12) was introduced (it previously formed part of Condition 9(11) but was amended to Condition 9(12)) following representations from Trinity House.
Condition 9(12)	(12) In case of exposure of cables on or above the seabed, the undertaker must within ~~five~~ three days following the receipt by the undertaker of the final survey report from the periodic burial survey, notify mariners by issuing a notice to mariners, the MMO and by informing Kingfisher Information Service of the location and extent of exposure.	Amendment reflects	The Applicant does not agree with the change to a three day timeframe. There is no precedent for this approach, nor any justification provided by the MMO or MCA as to why this period should be reduced from five days, which the Applicant already considers will be challenging to meet in view of the need to collate and review this data. The other equivalent timeframes in Condition 9 of the DMLs (i.e. Condition 9(6),(8), and (9)) include a five day period and so, in the interests of consistency and reasonableness, the Applicant does not agree with this change. However, the Applicant has no objection to sending copies of the notice to mariners to the MMO (and the MCA), and this Condition has been amended in the dDCO submitted at Deadline 8 to clarify that copies of all

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			notices must be provided to the MMO and the MCA within five days.
Condition 14(1)	(n) a lighting and marking plan (o) an operation and maintenance programme	Amendment reflects suggestion made by MCA	The Applicant does not consider that this suggested change is necessary. A lighting and marking plan is not considered necessary because there are adequate provisions included through Conditions 10 and 11 of the Generation DMLs (Schedule 9-10) and Condition 5 and 6 of the Transmission DMLs (Schedule 11-12) for the Applicant to agree lighting and marking arrangements with the MCA and Trinity House. The historic process for agreeing lighting and marking specifications for an offshore wind farm in English waters, including discharge of the Generation DML Conditions 10 and 11 and Transmission DML Conditions 5 and 6, includes the development of a lighting and marking plan. The Conditions themselves do not explicitly require a lighting and marking plan document to be produced, however this has historically been the route through which developers have discharged the associated Conditions. Given the number of stakeholders involved, and the guidance documents (including MGN 543 that the Applicant is already required to comply with) and requirements that exist for the development of lighting and marking for an offshore wind farm, it is the Applicant's position that the development of a lighting and marking plan should continue to be dealt with in the existing way. The lighting and marking plan required under Condition 10 and 11 of the Generation DML (and/or Condition 5 and 6 of the Transmission DML) will need to be maintained as a live document which allows for consultation with a number of stakeholders. Formalising this process would limit the ability to respond to consultation in a fluid manner, which is necessary in order to effectively meet guidance requirements whilst balancing the concerns of various stakeholders.

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			An operation and maintenance programme is already included and covered by Condition 9(1)(j) of the Generation DMLs and Condition 9(1)(j) of the Transmission DMLS which is to be in accordance with the outline offshore operations and maintenance plan (document reference: 8.11). These amendments are therefore not considered necessary. The Applicant has also discussed this matter with the MCA and the Applicant understands that, following consideration of the Applicant's position, the MCA are content with the current drafting on the basis that the required details are already secured in the DML conditions.
Condition 14(1)(e)	(ee) For the avoidance of doubt "distribution" in sub-paragraph (e) of this paragraph must include quantities in respect of each structure comprised in the offshore works and intended to be subject to scour and cable protection **[Condition 9 in each of Schedules 11 and 12 to be amended accordingly]**	To provide for certainty in the Scour Protection and Cable Protection Plan	The Applicant agrees with the principle of this drafting and has amended the dDCO, submitted at Deadline 8, accordingly. However, the Applicant considers that it is only necessary to refer to scour within the definition of distribution (rather than scour and cable protection). This reflects the intention of the parties, because only scour will be distributed in quantities around structures, and the Applicant has since discussed and agreed this matter with the MMO.
Condition 15(1)	—(1) Any archaeological reports produced in accordance with condition 14(h)(iii) ~~are to~~ must be agreed with the statutory historic body.	Amendment reflects drafting protocol	The Applicant does not consider that the suggested change reflects the intention of the parties, as outlined in the outline written scheme of investigation (offshore) (document reference 8.6). The Applicant has however amended the wording within the dDCO submitted at Deadline 8 to make it clear that the archaeological reports must be agreed with the MMO in consultation with the statutory historic body.
Condition 15(5)	5) Unless otherwise agreed in writing with the undertaker, the MMO must use reasonable endeavours to determine an application for	To reflect concerns of TH and provide certainty and consistency whilst	Delays in making requests for further information, or numerous successive requests for further information, can considerably delay and frustrate the approval of DML

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	approval made under condition 14 as soon as practicable and in any event within a period of ~~six~~ four months commencing on the date the application is received by the MMO. ~~or if the MMO reasonably requests further information to determine the application for approval, within a period of four months commencing on the date that the further information is received by the MMO. For the purposes of this paragraph (5), the MMO may only request further information from the undertaker within a period of two months from receipt of the application for approval.~~	preserving the possibility of extension of time by agreement	conditions. It is for this reason that the Applicant had sought to place a time limit on requests for further information. However, if the principle of appeal against non-determination (and refusal) is accepted, such that there is a clear and certain timeframe within which decisions must be made, the Applicant acknowledges that it is not essential to restrict requests for further information in order to prevent unnecessary and continuous extensions to determination. However, where there is no restriction on the ability to request further information, the Applicant agrees with the ExA that the time period for determination should remain at four months (subject to extension by agreement). This maintains flexibility, is consistent with existing/ previous decisions and provides certainty for all parties. The Applicant has therefore accepted the ExA's suggested drafting in the dDCO submitted at Deadline 8.
Condition 15(8)	~~(8) No part of the authorised scheme may commence until the MMO, in consultation with(8) the MCA, has given written approval of an Emergency Response Co-operation Plan (ERCoP) which includes full details of the plan for emergency, response and co-operation for the construction, operation and decommissioning phases of that part of the authorised scheme in accordance with the MCA recommendations contained within MGN543 "Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues" and has confirmed in writing that the undertaker has taken into account and, so far as is applicable to~~	Amendment reflects suggestion made by MCA	Whilst it is recognised that the Emergency Response Cooperation Plan (ERCoP) is a working document, and the Applicant therefore agrees that it is appropriate to amend the condition to ensure that the ERCoP can be updated throughout the lifetime of the Project, the Applicant does not consider that the MCA's suggested condition is an appropriate replacement. The MCA's amendments will require a Search and Rescue (SAR) checklist to be in place (in order to enable the MCA to confirm that appropriate recommendations have been met) in advance of commencement. However, the template for the required SAR checklist is currently a draft document created by the MCA which has yet to be agreed between the MCA, MMO and Nautical Offshore Renewable Energy Liaison Committee (NOREL). It should also be noted that any amendment to this condition will mean that it is no longer consistent with the same condition in the draft DCO for Hornsea Project Three. Notwithstanding this, the Applicant has proposed the following amendments to this condition in

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	~~that part of the authorised scheme, adequately addressed MCA recommendations contained within MGN543"Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues" and its annexes. The ERCoP and associated guidance and requirements must be implemented as approved, unless otherwise agreed in writing by the MMO in consultation with the MCA. The document must be reviewed at least annually or whenever changes are identified, whichever is sooner, and any proposed changes must be submitted to the MMO in writing for approval, in consultation with MCA.~~ (8) No part of the authorised project may commence until the MMO, in consultation with the MCA, has confirmed in writing that the undertaker has taken into account and, so far as is applicable to that stage of the project, adequately addressed all MCA recommendations as appropriate to the authorised project contained within MGN543 "Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues" and its annexes.		the dDCO submitted at Deadline 8 in order to address the MCA's concerns: *"No part of the authorised scheme may commence until the MMO, in consultation with the MCA, has given written approval of an Emergency Response Co-operation Plan (ERCoP) which includes ~~full~~ details of the plan for emergency, response and co-operation for the ~~construction, operation and decommissioning phases of that part of the~~ authorised scheme in accordance with the MCA recommendations contained within MGN543 "Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues" and has confirmed in writing that the undertaker has taken into account and, so far as is applicable~~, to that part of the authorised scheme,~~ adequately addressed MCA recommendations contained within MGN543 "Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues" and its annexes. The ERCoP and associated guidance and requirements must be implemented as approved, unless otherwise agreed in writing by the MMO in consultation with the MCA. ~~The document must be reviewed at least annually or whenever changes are identified, whichever is sooner, and any proposed changes must be submitted to the MMO in writing for approval, in consultation with MCA."~~* The revised wording also keeps the condition in line with the principles (including use of an ERCoP) from previously as made Orders such as the East Anglia Three DCO.
Condition 18	(2)(b) "a high-resolution full sea floor coverage swath-bathymetry survey to include a 100% coverage that meets the requirements of IHO(b)	To reflect HE requirements to the extent they surpass IHO(b) S44ed5 Order 1a	As the Applicant explains in its Comments on Deadline 6 Written Submissions (document reference: ExA; Comments; 10.D7.20), the Applicant's original wording

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	S44ed5 Order 1a, and side scan sonar, of the area(s) within the Order limits in which it is proposed to carry out construction works and disposal activities under this licence;"	and provide	mirrors the requirements of the IHO S44ed Order 1a and is therefore considered appropriate. The Applicant also notes that the details of the survey must be agreed with the MMO in consultation with Historic England through the production of the final Offshore Written Scheme of Investigation (WSI) and therefore the Applicant maintains that it is not necessary to include the precise details on the face of the DCO. With regards to the addition of "disposal activities", the Applicant maintains that the commitments made within the Outline WSI (offshore) (document 8.6) allow for any appropriate requirement for monitoring to be considered and agreed with the MMO in consultation with Historic England post-consent. The Applicant has discussed this position with Historic England and Historic England stated that *"We appreciate the explanation provided to us and we have no further comment to offer".* Therefore, it is the Applicant's understanding that Historic England accept the Applicant's position and that there is no justification for this change.
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).	Amendment reflects suggestion by HE	As the Applicant explains in its Comments on Deadline 6 Written Submissions (document reference: ExA; Comments; 10.D7.20), monitoring of Archaeological Exclusion Zones (AEZ)s is referred to in the In Principle Monitoring Plan (document 8.12) which also states that "*The principal mechanism for delivery of monitoring is through agreement on the offshore Written Scheme of Investigation (WSI)*". The Applicant therefore maintains that this requirement is also already suitably secured and does not require to be noted on the face of the DMLs. The Applicant has discussed this position with Historic England and Historic England stated that *"We note the*

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			explanation provided and we have no further comment to offer". Therefore, it is the Applicant's understanding that Historic England accept the Applicant's position and that there is no justification for this change.
Schedule 10, Part 3, paragraph 2(1)	Work No. 1 (phase ~~1~~ 2)	To reflect authorised works under the licence	The Applicant agrees with this suggested change and has amended the dDCO, submitted at Deadline 8, accordingly.
Schedule 12, Part 3, paragraphs 2(1) – (4)	Work No. 2 (phase ~~1~~ 2) Work No. 3 (phase ~~1~~ 2) Work No. 4A (phase ~~1~~ 2) Work No. 4B (phase ~~1~~ 2)	To reflect the authorised works under the licence	The Applicant agrees with this suggested change and has amended the dDCO, submitted at Deadline 8, accordingly.
Schedules 9-12, Part 5 Appeal Procedure			
Part 5 Procedure for appeals	~~23. The undertaker must submit to the Secretary of State, a copy of the application submitted to the MMO and any supporting documentation which the undertaker may wish to provide ("the appeal documentation").~~ ~~24. The undertaker must on the same day provide copies of the appeal documentation to the MMO and any relevant consultee.~~ ~~25. As soon as is practicable after receiving the appeal documentation, but in any event~~	To provide for an appeal procedure broadly consistent with existing statutory processes and consistent with similar DCO's	The Applicant agrees with the principle of an appeal process connected to a refusal or non-determination of a document submitted to the Marine Management Organisation (MMO) for approval under the Deemed Marine Licences (DMLs). This is considered essential for the reasons already explained by the Applicant during the course of the examination. The Applicant proposes to provide a position statement with the MMO at deadline 9 which sets out the Applicant's

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	~~within 20 business days of receiving the appeal documentation, the Secretary of State must appoint a person and forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person's attention should be sent.~~ ~~26. The MMO and any relevant consultee must submit written representations to the appointed person in respect of the appeal within 20 business days of the date on which the appeal parties are notified of the appointment of a person under paragraph 25 and must ensure that copies o f their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person.~~ ~~27. The appeal parties must make any counter-submissions to the appointed person within 20 business days of receipt of written representations pursuant to paragraph 26 above.~~ ~~28. The appointed person must make his decision and notify it to the appeal parties, with28. reasons, as soon as reasonably practicable. If the appointed person considers that further information is necessary to enable him to consider the appeal he must, as soon as practicable, notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.~~		position in this respect as well as the alternative drafting options. In summary, the Applicant recognises that the drafting proposed by the ExA would be consistent with the drafting proposed by Hornsea Project Three (if the same approach is accepted by the Secretary of State) and that it would make use of the existing mechanism for appeals under the 2011 Regulations, with modified timescales. The Applicant welcomes the proposed modifications to the 2011 Regulations, which would ensure that (similar to the bespoke arrangements proposed by the Applicant) there is certainty as to timeframes for decision making. In summary, whilst the bespoke appeals process would offer consistency for determination of approvals under Requirements and DML conditions, the Applicant is content to include an appeals mechanism which adopts the modified 2011 Regulations in respect of DML approvals. The Applicant has therefore adopted the ExA's suggested drafting in the dDCO submitted at Deadline 8.

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	~~29. Any further information required pursuant to paragraph 28 must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person. Any written representations concerning matters contained in the further information must be submitted to the appointed person, and made available to all appeal parties within 20 business days of that date.~~ ~~30. O~~ ~~(b) reverse or vary any part of the decision of the MMO (whether the appeal relates to(2) that part of it or not),~~ ~~and may deal with the application as if it had been made to the appointed person in the first instance. 31. The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the time limits prescribed, or set by the appointed person, under this paragraph.~~ ~~32. The appointed person may proceed to a decision even though no written representations have been made within those time limits, if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.~~ ~~33. The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought~~		

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	~~by a claim for judicial review.~~ ~~34. If an approval is given by the appointed person pursuant to this Schedule, it is deemed to be an approval for the purpose of Part 4 of Schedule 9 as if it had been given by the MMO. The MMO may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) may not be taken to affect or invalidate the effect of the appointed person's determination.~~ ~~35. Save where a direction is given pursuant to paragraph 36 requiring the costs of the35. appointed person to be paid by the MMO, the reasonable costs of the appointed person must be met by the undertaker.~~ ~~36. On application by the MMO or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the Planning Practice Guidance on the award of costs or any guidance which may from time to time replace it.~~ (1) Where the MMO refuses an application for approval under condition 14 *[condition 9 in Schedules 11 and 12]* and notifies the undertaker		

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	accordingly, or fails to determine the application for approval in accordance with condition 15 *[condition 10 in Schedules 11 and 12]* the undertaker may by notice appeal against such a refusal or non-determination and the 2011 Regulations shall apply subject to the modifications set out in paragraph (2) (2) The 2011 Regulations are modified so as to read for the purposes of this Order only as follows— In regulation 6(1) (time limit for the notice of appeal) for the words "6 months" there is substituted the words "4 months". (b) For regulation 4(1) (appeal against marine licensing decisions) substitute— "A person who has applied for approval under condition 15 of Part 4 of Schedule 9; condition 15 of Part 4 of Schedule 10; condition 10 of Part 4 of Schedule 11; or condition 10 of Part 4 of Schedule 12 to the Norfolk Vanguard Offshore Wind Farm Order 201[ ] may by notice appeal against a decision to refuse such an application or a failure to determine such an application." (c) For regulation 7(2)(a) (contents of the notice of appeal) substitute— "a copy of the decision to which the appeal relates or, in the case of non-determination, the date by which the application should have been		

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	determined; and ” (d) In regulation 8(1) (decision as to appeal procedure and start date) for the words “as soon as practicable after” there is substituted the words “within the period of [2] weeks beginning on the date of”. (e) In regulation 10(3) (representations and further comments) after the words “the Secretary of State must” insert the words “within the period of [1] week” (f) In regulation 10(5) (representations and further comments) for the words “as soon as practicable after” there is substituted the words “within the period of [1] week of the end of”. (g) In regulation 12(1) (establishing the hearing or inquiry) after the words “(“the relevant date”)” insert the words “which must be within [14] weeks of the start date”. (h) For regulation 18(4) substitute— “Subject to paragraphs (1) and (3), each party should bear its own costs of a hearing or inquiry held under these Regulations.” (i) For regulation 22(1)(b) and (c) (determining the appeal—general)		

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	substitute— "(b) allow the appeal and, if applicable, quash the decision in whole or in part; (c) where the appointed person quashes a decision under sub-paragraph (b) or allows the appeal in the case of non-determination, direct the Authority to approve the application for approval made under condition 15 of Part 4 of Schedule 9; condition 15 of Part 4 of Schedule 10; condition 10 of Part 4 of Schedule 11; or condition 10 of Part 4 of Schedule 12 to the Norfolk Vanguard Offshore Wind Farm Order 201[ ]." (j) In regulation 22(2) (determining the appeal—general) after the words "in writing of the determination" insert the words "within the period of [12] weeks beginning on the start date where the appeal is to be determined by written representations or within the period of [12] weeks beginning on the day after the close of the hearing or inquiry where the appeal is to be determined by way of hearing or inquiry"		