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To all Interested Parties

Our Ref: EN010005

Date: 25 October 2012

Dear Sir/Madam

Application for the proposed Triton Knoll Offshore Wind Farm located approximately 33km off the coast of Lincolnshire

Issue Specific Hearing and Open Floor Hearing

The attached agenda supersedes the version sent to Interested Parties on 24 October 2012 which detailed the incorrect venue for the Open Floor Hearing on Tuesday 13 November 2012. The Open Floor Hearing will be held at The Embassy Theatre, Grand Parade, Skegness, PE25 2UG.

Further to The Planning Inspectorate's letter of 1 October 2012 notifying you of the time, date and place of the forthcoming hearings that will be held in relation to the above application, please find attached an agenda for each of the planned hearings. These are:

- the Issue Specific Hearing relating to the draft development consent order and related matters scheduled for 6, 7 and 8 November 2012; and
- the Open Floor Hearing scheduled for 13 November 2012.

Please also be aware that a list of 'Further Examination Documents' has been published to the project webpage and is available to view here: <http://infrastructure.planningportal.gov.uk/wp-content/ipc/uploads/projects/EN010005/2.%20Post-Submission/Procedural%20Decisions/121024%20EN010005%20Further%20Examination%20Documents.pdf> and at the application deposit locations.

These are documents which the Examining Authority consider to be relevant to the Examination, and the list may be added to before its close.

Yours sincerely

Richard Price

Richard Price

Case Officer

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the Planning Inspectorate website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.



**Proposed Triton Knoll Offshore Wind Farm
Planning Inspectorate Case Ref: EN010005**

**HEARING AGENDAS:
ISSUE SPECIFIC AND OPEN FLOOR HEARINGS**

Infrastructure Planning (Examination Procedure) Rules 2010

This document sets out agendas for Issue Specific and Open Floor Hearings.

Participation in hearings

- All Interested Parties are invited¹ to attend the hearings.
- Each Interested Party is entitled to make oral representations at the hearings² (subject to the Examining authority's power to control the hearings).
- Interested Parties who have already indicated their wish to take part are listed in these agendas.
- Any further Interested Parties who wish to make oral representations at the hearings should **give notice to the Examining authority in writing by 5pm on Friday 2nd November 2012.**

Conduct and management of hearings

- The Planning Act 2008 provides that the Examining authority will probe, test and assess evidence through direct questioning of persons making oral representations at hearings. Except where identified in these agendas, questioning will be by the Examining authority, who will ensure participants have a fair chance to put their case and benefit from their entitlement to make oral representations³.
- The Examining authority will identify the matters to be considered at the start of each hearing.⁴
- These agendas are indicative and may be amended by the Examining authority.
- Oral representations (including those made in response to questions) must be based on the relevant or written representations

¹ Guidance for the examination of applications for development consent for Nationally Significant Infrastructure Projects, DCLG, 2010

² S91 & S93 Planning Act 2008 (PA2008)

³ S91 & 93 PA2008. Entitlement to participate is subject to the Examining authority's powers of control over the hearing.

⁴ Rule 14(2) The Infrastructure Planning (Examination Procedure) Rules 2010 (EPR)

made by the person by whom (or on whose behalf) the oral representations are made.⁵

- Where an agenda item includes matters, such as new amendments to the draft Order, which have not been the subject of any written representation to date and an Interested Party wishes to respond (including for example to provide an alternative wording), oral representations on new evidence may be made, but the Interested Party is requested⁶ to bring **six written copies of their intended representation**, for the benefit of the Examining authority and others taking part in the hearing.
- Where an agenda item refers to an amendment to the draft Development Consent Order, this is without prejudice to the Secretary of State's decision on whether or not an Order should be made.

HEARING ON THE SPECIFIC ISSUE OF THE DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

Venue: The Storehouse Conference Centre, North Parade, Skegness, PE25 1BY.

Date: Tuesday 6th November 2012, adjourning as required to Wednesday 7th and Thursday 8th November 2012.

Time: Registration commences at 9.30am.
Business commences at 10am on all hearing days.
Breaks will be taken during the hearing as directed from the Chair at convenient times, including at approximately 1pm for an hour each day.

Interested Parties involved

The following Interested Parties or their representatives have indicated they wish to make oral representations about the specific issue of the draft DCO and related matters:

- Mr Baker, Triton Knoll Offshore Wind Limited (applicant)
- Dr Yeadon, Interested Party
- Mr Broadbent, the Joint Nature Conservation Committee and Natural England
- Mr Dixon, North East Lincolnshire Council
- Ms. Aitken & Mr Gibson, Marine Management Organisation

In addition the Examining authority would welcome the participation of the following Interested Parties at this hearing:

⁵ Rule 14(3) EPR

⁶ Rule 17 EPR

- East Lindsey District Council in relation to items 2, 4.2 and 4.4
- Westminster Gravels Ltd in relation to item 4.3
- Maritime and Coastguard Agency in relation to item 4.10.

Lincolnshire County Council is not an Interested Party but has requested an opportunity to make oral representations. It is requested to notify the Examining authority of the items it wishes to take part in. A decision on participation will be made at the opening of the hearing.

Day 1 – 3 timetable follows

AGENDA

Day 1

- 1. WELCOME AND INTRODUCTION**
- 2. MATTERS RELATED TO THE PRINCIPLE OF WHETHER DEVELOPMENT CONSENT SHOULD BE GRANTED**
 - 2.1 ADEQUACY OF ASSESSMENT OF INDIRECT, SECONDARY AND CUMULATIVE IMPACTS: THE PROPOSED DEVELOPMENT WITH GRID CONNECTION ELEMENTS**
 - 2.1.1 Legal submissions on extent of need for indirect, secondary and cumulative impact assessment, including the concerns of JNCC/Natural England⁷
 - 2.1.2 Flooding impacts
 - 2.1.3 Land take, agricultural and tourism impacts
 - 2.1.4 Landscape, heritage and visual impacts
 - 2.1.5 Transportation and traffic impacts
 - 2.1.6 Socio-economic impacts on fishing interests
 - 2.1.7 Socio-economic impacts on gravel extraction interests
 - 2.1.8 Natural environment (habitats and species) impacts (with particular reference to any European Sites / Habitats Regulations)

⁷ The applicant and other Interested Parties are provided with the opportunity to make oral legal submissions at the Hearing, in summary form, on the extent to which assessment of the cumulative impacts of the grid connection works is relevant to the examination of this application. As for all other oral contributions speaking notes/summary supporting text may be provided to the Hearing in which case Interested Parties are requested to bring six copies (including any references to case law if/as appropriate).

2.2 MITIGATION OF CUMULATIVE IMPACTS AND ROLE OF ANY NECESSARY S106 AGREEMENT / UNILATERAL UNDERTAKING

Potential need, in general terms, for any Requirements, Conditions and/or Section 106 agreements or Unilateral Undertakings

2.3 THE CONSERVATION OF HABITATS AND SPECIES (AMENDMENT) REGULATIONS 2012

Implications of the amendment regulations for wild birds affected by the development.

2.4 LIKELIHOOD OF OBTAINING OTHER NECESSARY CONSENTS FOR PROPOSED DEVELOPMENT

2.4.1 Protected Species Licence under Conservation of Habitats and Species Regulations 2010

2.4.2 Marine Licence for spoil disposal and moorings under Marine and Coastal Access Act 2009

2.4.3 Safety Zones under Energy Act 2004

2.5 LIKELIHOOD OF GAINING CONSENTS FOR THE OTHER ELEMENTS OF THE PROPOSED DEVELOPMENT NECESSARY FOR IT TO BECOME OPERATIONAL

Consideration of any obvious reasons why consent would not ultimately be granted.

3. ADEQUACY OF ASSESSMENT OF AND IMPACTS UPON PROTECTED SPECIES AND MITIGATION OF IMPACTS

To include consideration of all identified protected species and habitats affected by the development but with particular attention to Sandwich Tern and Gannet.

3.1 EXAMINING AUTHORITY'S INTRODUCTION AND QUESTIONS

Introduction by the Examining authority and questions of clarification, including whether all relevant environmental information has been brought before the examination (for example the Statement of Common Ground on Ornithology refers to "a revised assessment" – page 7).

Under items 3.2 to 3.7 the Examining authority will allow a representative of the applicant and of JNCC/Natural England) to ask questions of their corresponding representatives and to make opening and closing summaries.

Beginning of questioning by Interested Parties

3.2 OPENING SUMMARIES

JNCC / Natural England followed by applicant

3.3 COMPARATIVE METHODOLOGIES FOR COLLISION RISK MODELLING OF ORNITHOLOGICAL IMPACTS

- to include definition and application of the precautionary principle in relation to Sandwich Tern as compared with its application in relation to Gannet and Harbour Seal

Questions by JNCC / Natural England followed by questions by the applicant

3.4 CALCULATION OF POPULATION VIABILITY THRESHOLDS FOR POTECTED SPECIES

- to include the degree of application of the precautionary principle

Questions by JNCC / Natural England followed by questions by the applicant

3.5 IMPACTS ON PROTECTED SPECIES

Questions by JNCC / Natural England followed by questions by the applicant

3.6 MITIGATION OF IMPACTS ON PROTECTED SPECIES

Questions by JNCC / Natural England followed by questions by the applicant

3.7 CLOSING SUMMARIES (if required)

No evidence in chief is required. Evidence to be examined at the Hearings has already been provided in Parties' Relevant and Written Representations and in responses to the Examining authority's Questions. Not more than one witness each for each topic for the applicant and for JNCC / Natural England is expected to appear. Five minutes for each opening and closing summary is likely to be sufficient and all intervening questioning should be concluded within a period of one hour.

End of questioning by Interested Parties

3.8 CLARIFICATIONS AND MITIGATION

3.8.1 Consideration of remaining assessment issues, impacts upon avifauna and mitigation to include consideration of mitigation of impacts on Sandwich Terns through:

At source mitigation:

- monitoring as secured by draft Condition 9
- number and/or design of turbines and parameters of the Rochdale envelope
- exclusion zones

- a 'maximum collision risk mortality' Requirement (as applied by the Secretary of State for Energy and Climate Change to a permission Decision Letter for Dudgeon East Wind Farm, 32 km off Cromer⁸)

Off-site mitigation:

- measures to secure enhanced breeding / population success including predator and disturbance control
- other habitat enhancement and funding for habitat enhancement

3.8.2 Consideration of impacts and any outstanding mitigation required for other species, including consideration of a protocol to give notice of piling to other developments with the aim of co-ordinating and minimising adverse impacts upon Harbour Seals as may be necessary.

Day 2 onwards

Examining authority's questioning

4. THE DRAFT ORDER

4.1 MITIGATION OF ORNITHOLOGICAL IMPACTS AND AMENDMENTS REQUIRED

Consideration of the need for any further amendments to the DCO (in particular to the definition of the authorised development in Part 1 of Schedule 1 and in Paragraph 2 of Part 1 of Schedule 2) to secure mitigation of ornithological or other protected species impacts.

4.2 MITIGATION OF ONSHORE IMPACTS OF THE DEVELOPMENT

Consideration of new Requirements in view of the limited assessment of onshore impacts that has been carried out, for example:

“Assessment and mitigation statement for onshore secondary, indirect and cumulative impacts

nn. *No authorised development shall commence until the following have been submitted to and approved in writing by the relevant planning authority:*

- (1) *an assessment of the onshore secondary, indirect and cumulative impacts of the authorised development, including landscape, flooding, heritage and visual, transportation and traffic, agricultural and natural environment impacts and including but not limited to those impacts set out in the Environmental Statement certified under Article 11 of this Order, and*

⁸ <https://www.og.decc.gov.uk/EIP/pages/projects/DudgeonDecision.pdf>

- (2) *to the extent that any mitigation will affect on land a statement of the measures to be taken to mitigate these impacts specifying the means and dates by which the measures shall be progressed and by which they shall be completed and the authority by which they shall be deemed to have been completed.*

Assessment and mitigation statement for offshore secondary, indirect and cumulative impacts

nx. *No authorised development shall commence until the following have been submitted to and approved in writing by the Marine Management Organisation:*

- (1) *an assessment of the offshore secondary, indirect and cumulative impacts of the authorised development, including landscape, heritage and visual, transportation and traffic, fishing and marine uses and natural environment impacts and including but not limited to those impacts set out in the Environmental Statement certified under Article 11 of this Order, and*
- (2) *to the extent that any mitigation will affect the offshore environment, a statement of the measures to be taken to mitigate these impacts specifying the means and dates by which the measures shall be progressed and by which they shall be completed and the authority by which they shall be deemed to have been completed.*

Authorised development in accordance with mitigation statements

ny. *No authorised development and no licensed activities shall commence and no new phase of the authorised development or licensed activities shall commence except insofar as mitigation measures have been completed or otherwise satisfactorily progressed in accordance with the mitigation statements approved under Requirements nn(2) and nx.(2) to the satisfaction of the authority specified therein."*

4.3 GRAVEL EXTRACTION SAFETY EXCLUSION AREA

Consideration of the need for a safety exclusion area and for the following draft new Requirement and/or amendment to the Works Plans, for example:

"Southern exclusion zone

nn. No wind turbine generator, HVDC substation, collector substation, combined substation, meteorological station or cabling or other works forming part of the authorised development shall be erected or laid within 2000metres of the Humber Region Licensed Marine Aggregate Dredging Area 440."

4.4 LAYOUT, DESIGN DRAWINGS AND DESIGN REVIEW

Consideration of the need to clarify that the Conditions of the Deemed Marine Licence will be satisfied prior to the commencement of the authorised development (rather than of "works") and of the need to establish the layout and design of the development and other matters, prior to commencement.

Two alternative solutions are provided as examples by the Examining authority, Option A would be a Requirement and B a Condition of the Deemed Marine Licence, the intent of both is to secure compliance as a condition of the authorised development commencing. Option B necessitates fewer changes to the draft Order as applied for. (The options would make the authorised development, but not the other licensed activities, subject to a requirement for plans/design drawings etc.)

Either Option A

New Requirement

"Design drawings

n1. No phase of the authorised development shall commence until design drawings including the proposed layout of the authorised development at a scale no greater than 1:1250 showing the location of any archaeological exclusions zones and of any other exclusions zones, elevations of the authorised development or relevant phase thereof at a scale no greater than 1:1250 and a plan and elevations of any Wind Turbine Generator, HVDC substation, collector substation, combined substation, meteorological station and of any other structure forming part of the authorised development or relevant phase thereof at scales of no greater than 1:100, have been submitted to and approved in writing by the Marine Management Organisation.

n2.—(1) The authorised development shall be carried out in accordance with the design drawings unless otherwise approved in writing by the Marine Management Organisation.

(2) Where any alternative details are approved pursuant to this requirement those details shall be deemed to be substituted for the corresponding approved design drawings set out above.

(3) The authorised development may deviate laterally from the lines or situations of the authorised development shown on the design drawings to any extent not exceeding x metres to allow for micrositing.⁹

(4) The authorised development may deviate vertically from the levels of the authorised development shown on the design drawings—

(i) to any extent not exceeding x metres upwards; or

(ii) to any extent downwards as may be found to be necessary or convenient,

provided that no part of the authorised development shall exceed the detailed Design Parameters at Requirement 3."

With consequential amendments made to simplify the requirements of Condition 9 of the DML.

Or Option B

Amendments to Part 2 Schedule 2 of the draft DCO: Deemed Marine Licence: Conditions

Consideration of amendments below and of any further amendment such as would permit any particular necessary licensed activity to proceed without being subject to these Conditions.

Schedule 2 Part 1 – Licensed Marine Activities

Paragraph 2.

(1)(b) After "works" insert the words: "set out in (2) below"

2(2) Delete the first line and insert "The works referred to in (1)(b) above comprise:"

Schedule 2 Deemed marine Licence Part 2 Conditions

Condition 9.

(1) Delete "The licensed activities or"

⁹ Submissions are invited for the appropriate tolerance for micrositing, with examples of their use elsewhere.

And insert at the beginning the words: *"No part of the works at paragraph 2(2) of Part 1 Licensed Marine Activities, of this Schedule, nor"*

Delete *"not"*

Delete *"insofar"*

(1)(a) Before the word *"plan"* insert *"design"*. After the word plan insert the words *"at a scale of no greater than 1:1250"*

After (1)(a)(ix) insert:

"(x) the proposed layout of the works set out at paragraph 2(2) of Part 1 Licensed Marine Activities, of this Schedule, including all exclusion zones"

After (1)(a) insert new:

"(b) Design drawings including elevations of the scheduled works at a scale no greater than 1:1250 and a plan and elevations of any Wind Turbine Generator, HVDC substation, collector substation, combined substation, meteorological station and of any other structure forming part of the scheduled works at scales of no greater than 1:100.

(c) A design review as proposed in the certified Environmental Statement has been submitted to and approved in writing by the Marine Management Organisation."

And re-letter existing sub-conditions (b) and (c) etc as necessary.

Schedule 2 Deemed Marine Licence Part 2 Conditions
Condition 10.

(2) Insert after "Condition 9" the words:

", except that subject to condition 10(3) below the works set out at paragraph 2(2) of Part 1 of this Schedule may deviate to any extent from the lines and situations set out on the design plan and design drawings vertically to any extent not exceeding x metres and laterally to any extent not exceeding y metres,"

At end insert new (3):

“(3) no part of this Schedule authorises any part of authorised development extending beyond the Detailed Design Parameters at Requirement 3.”

4.5 CHEMICALS DRILLING AND DEBRIS

Consideration of the absence of a definition of ‘best environmental practice’ and of the following amendment to the application draft DCO as an alternative to the applicant’s proposed amendment:

Schedule 2 Part 2 DML Conditions

Condition 7.

(2) Delete all and insert: *“Unless otherwise agreed in writing by the MMO the undertaker shall ensure that any coatings and any treatments are suitable for use in the marine environment and are used in accordance with guidelines approved either by the Health and Safety Executive or by the Environment Agency Pollution Prevention Control Guidelines.”*

4.6 REPORTING OF ENGAGED AGENTS CONTRACTORS AND VESSELS

Consideration that it could be held that Condition 11 is likely to be unenforceable due its vagueness and consideration of the example amendment below such that notifications continue from commencement of, and throughout, and apply consistently to, the licensed activities.

Schedule 2 Part 2 DML Conditions

Condition 11.

11.—(1) At the beginning insert *“Following the commencement of any licensed activities...”* and delete *“as soon as reasonably practicable”*

11.—(1) (a) After the word *“activities”* insert *“within seven days of appointment”*

11.—(1) (b) Delete *“during construction of the authorised scheme”*

4.7 CONSTRUCTION AND PRE AND POST CONSTRUCTION MONITORING

Consideration of the wording of draft Conditions 13, 14 and 15 that state that the applicant shall only “submit” details for approval by the MMO (rather than any requirement that the details be approved by

the MMO), and refers to them being “agreed” but only “subject” to the applicant’s proposals.

Consideration that it could be held therefore that draft Conditions 13, 14 and 15 secure nothing beyond that already secured by draft Condition 9(1)(b), which in contrast does serve to secure the MMO’s approval of all construction and pre and post construction surveys referred to therein. Consideration also of the fact that draft Condition 9(1)(f)(vii) makes no mention of any Marine Mammal Mitigation Protocol(MMMP) which is therefore not secured by the draft DCO despite a reference to it in draft Condition 14(2), which does not secure the delivery of any MMMP.

Given that it could be held that 13, 14 and 15 do not secure any specific mitigation, consideration of whether draft Conditions 13, 14 and 15 are necessary, or precise or enforceable¹⁰.

The applicant and MMO are invited to consider securing those construction and pre and post construction monitoring measures that are necessary in draft Condition 9(1)(b), to agree a properly worded 9(1)(b)(iii) removing its circular referencing and to consider dispensing with the remainder of 13, 14 and 15, which comprises advisory text likely to be considered inappropriate within the Order.

4.8 ARCHAEOLOGY

Consideration of amendments proposed by the applicant on the advice of English Heritage.

*Deemed Marine Licence, **Condition 9(1)(b)(iii):***

“proposed pre-construction surveys, baseline report format and content, construction monitoring, post-construction monitoring and related reporting in accordance with conditions 9(h), 13, 14 and 15.”

*Deemed Marine Licence, **Condition 9(1)(h)(vi):***

“archiving of archaeological material, inclusive of any completed and agreed archaeological reports produced through the WSI which are to be deposited by the licensee within a public archive in accordance with the OASIS (Online AccesS to the Index of archaeological investigationS’) system.”

*Deemed Marine Licence, **Condition 13(2)(b):***

“a high resolution swath-bathymetric survey and side scan sonar survey of the area(s) within the Order limits in which it is proposed to carry out construction works, including a 500m buffer around the site of each works and inclusive of seabed anomalies or sites of historical or archaeological interest that lie within that 500m buffer.”

¹⁰ Department of the Environment Circular 11/95

4.9 PHASING OF THE DEVELOPMENT

Consideration of the need to establish what is meant by “phase” as referred to in the draft Order and provision for the phases of the development to be as agreed by the MMO.

Part 1 of Schedule 2 - Marine Licence:

Paragraph 1. Interpretation

After the line beginning ‘ “the Order limits means” ’, insert the words:

“ “phase” means an element or elements of the scheduled works and of the licensed activities to be carried out over a duration of no more than x months¹¹ ”

Part 2 of Schedule 2 Conditions of Deemed Marine Licence

Condition 9. Pre-construction plans and documentation

(1) (b) After (iii) insert:

“(iv) each phase of the authorised scheme and licensed activities; the elements, activities and constituent parts of the works or activities within each phase and the dates within which each phase shall be carried out and by which it shall be completed.”

Part 3 of Schedule 1 Offshore safety management

Requirement 8

For reasons of consistency in the use of the word:

Delete “*phases*”

4.10 OFFSHORE SAFETY MANAGEMENT

Consideration of the need to secure the mitigation for commercial fisheries and shipping set out in Chapters 8 and 10 of Volume 2 of the ES.

Requirement 8

--(1) After the word “*System*” insert the words:

¹¹ Submissions are invited on the maximum duration of works which can be deemed a “phase”

"including the specification of a shipping construction and operational transit corridor, provision for the safety marking and protection of fishing gear, provision for a vessel monitoring and traffic co-ordination and reporting system, for the fitting of Automatic Identification System (AIS) to all wind farm vessels, for training for wind farm vessel crews, provision of a system to enable AIS/Very High Frequency communication within the vicinity of the authorised development, and"

4.11 PIPELINE CROSSING AND EMF RISK

Consideration of proposed new Requirement to secure public safety matters relating to pipeline crossings for example:

New Requirement: Pipeline Crossing

"nn. All pipeline and cable crossings shall meet the relevant statutory undertaker's safety standards."

4.12 ARBITRATION

Consideration of an alternative appointer of the arbitrator. For example:

Article 12

Delete *"decision maker"* and insert *"President of the Institution of Civil Engineers"*

OPEN FLOOR HEARING

Venue: The Embassy Theatre, Grand Parade, Skegness, PE25 2UG.

Date: Tuesday 13th November 2012.

Time: Registration commences at 9.30am.
Business commences at 10am.

The following Interested Parties indicated they wished to make oral representations about the application at an Open Floor Hearing:

- Mr Baker, Triton Knoll Offshore Wind Ltd (applicant)
- Mr Dixon, North East Lincolnshire Council
- Mrs Yeadon, Interested Party
- Mr Tame, National Farmers' Union
- Dr Yeadon, Interested Party

Lincolnshire County Council is not an Interested Party but has requested an opportunity to make oral representations, it is requested to notify the Examining authority of the items it wishes to take part in and a decision will be made at the opening of the Hearing.

AGENDA

Breaks will be taken during the Hearing as directed from the Chair at convenient times, including lunchtime each day.

1. WELCOME AND INTRODUCTION

2. ORAL REPRESENTATIONS

2.1 Mr Dixon

2.2 Mrs Yeadon

2.3 Mr Tame

2.3 Dr Yeadon

2.4 Other Oral Representations (if any)

Participants are provided with up to five minutes speaking time, after which the Examining authority may choose to ask questions.