

Heckington Fen Solar Park

EN010123

Statement of Common Ground with Triton Knoll OFTO Limited

Applicant: Ecotricity (Heck Fen Solar) Limited

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STATEMENT OF COMMON GROUND

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1. INTRODUCTION

This Statement of Common Ground (SoCG) has been prepared by Ecotricity (Heck Fen Solar) Limited (“the Applicant”) in conjunction with Triton Knoll (“TK”).

The proposed development comprises the construction, operation (including maintenance), and decommissioning of a ground mounted solar photovoltaic (PV) electricity generation and energy storage facility (hereafter referred to as “the Energy Park”), cable route to, and above and below ground works at, the National Grid Bicker Fen Substation (hereafter referred to as “the Proposed Development” (inclusive of Energy Park)) on land at Six Hundreds Farm, Six Hundreds Drove, East Heckington, Sleaford, Lincolnshire.

In the table (**Matters to be agreed**) below of this SoCG:

- “Agreed” indicates where the issue has been resolved, [and](#)
- ~~• “Not Agreed” indicates a final position of the parties that is not agreed, and~~
- “Under discussion” indicates where these points are the subject of on-going discussion wherever possible to resolve, or refine, the extent of disagreement between the parties.

It can be taken that any matters not specifically referred to in this SoCG are not of material interest or relevance and therefore have not been considered further. It is recognised however that engagement between all parties will need to continue due to their joint interest in matters arising from the Proposed Development.

The purpose of the SoCG is to identify the areas where the principal parties do not agree and remain in dispute. This will allow the Examination to focus on the most pertinent issues.

Impacts of the development

The parties agree that, with the exception of the impacts listed below under Matters To Be Agreed, the proposal includes mitigation measures that will reasonably and satisfactorily address all other substantive impacts of the proposal necessary to make the development acceptable in planning terms.

Notwithstanding the fact that mitigation measures to address the impacts listed below are yet to be agreed, it is agreed that these outstanding matters are capable of being addressed through the DCO requirements, Protective Provisions or side agreements to the DCO.

2. MATTERS TO BE AGREED

Reference and Status	Topic	TK’s Position	Applicant’s Position
1. Effects on operations			
1.1. Under Discussion <u>Agreed</u>	The offsite cable route crosses the Triton Knoll cable twice – once to the north of the A17, and once to the north of Bicker Fen Substation.	Protective provisions must be included for the benefit of Triton Knoll to ensure that the construction of the offsite cable route does not cause a serious detriment to Triton Knoll’s undertaking, for example through causing damage to the cable.	The Applicant has provided some indicative plans for crossing the cable, and these will be firmed up and subsequently agreed with Triton Knoll as part of the process secured under the protective provisions which have been included for the benefit of Triton Knoll as part of the final dDCO submitted as part of Deadline 5 (the "Protective Provisions-") .
1.2. Under Discussion <u>Agreed</u>	Access to the cable route and Bicker Fen Substation is required along the Triton Knoll access track, until it reaches Doubletwelves Drove and Bicker Drove.	Triton Knoll must have unfettered access over the Triton Knoll access track for the ongoing maintenance of the Triton Knoll project. This access is required at all times in the event of an emergency and for repairs etc. Triton Knoll could be in	The Applicant requires access for the construction of the cable route and substation extension (and during operation should a fault occur); accordingly, the Triton Knoll access track is within the Order Limits for the Proposed Development.

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		<p>breach of their licence obligations if they can’t access the site 24/7 and it could provide HSE issues too if there was ever an incident at their onshore substation.</p>	<p>This access would be utilised by the Applicant’s construction team and those associated with the development - for example National Grid.</p> <p><u>The parties are in negotiations for an option agreement and deed of easement in favour of the Applicant and its construction team to use the Triton Knoll access track (the "Option Agreement").</u></p> <p><u>A commercial agreement in principle has been reached and securing the Applicant's required access rights is now subject to the legal mechanisms of finalising and completing the Option Agreement.</u></p> <p><u>As part of the Option Agreement negotiations, the parties can look to agree terms to ensure the Applicant and its construction team's use of the Triton Knoll access track does not interfere with Triton Knoll's own use and/or puts it in breach of its licence obligations.</u></p> <p><u>In any event, the Protective Provisions which are now secured on the face of the dDCO in favour of Triton Knoll contain Paragraph 141 (Co-operation) which requires that:</u></p> <p><u>"[the Applicant] shall use its reasonable endeavours to co-ordinate the execution of any works (which are subject to [the] Protective Provisions) in the interests of safety and the efficient and economic execution of the authorised works and taking into account the</u></p>

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			<p><u>need to ensure the safe and efficient operation of Triton Knoll's undertaking"</u> <u>Additionally, Triton Knoll has the benefit of Paragraph 139 (Indemnity) in which the Applicant/undertaker agrees to indemnify Triton Knoll for any costs or losses which might be incurred by any interference to their use of the access track by the Applicant.</u></p>
<p>2. Drafting of the dDCO including Protective Provisions</p>			
<p>2.1. Under Discussion</p>	<p>The protective provisions accompanying the dDCO are agreed save for ongoing discussions around compulsory acquisition of rights within the Triton Knoll access track.</p>	<p>The Applicant has sought extensive rights over the existing access track which could cause serious detriment to Triton Knoll's undertaking through the proposed compulsory acquisition of rights over the existing access tack. This includes the ability to remove means of access within Class Right 2 and to restrict operations which may obstruct the Applicant in exercising the Class Right 2. If the access were removed or if Triton Knoll were prevented from taking access at any point then this could cause serious detriment to Triton Knoll's undertaking. This also includes the ability to take temporary possession of such plots</p>	<p>Whilst it is anticipated that compulsory acquisition will not be required and agreement can<u>will shortly</u> be reached with Triton Knoll, the Applicant requires the certainty that they can use the Triton Knoll access track <u>as an embedded mitigation measure for the Proposed Development.</u> For this reason, the Applicant needs to retain the ability to compulsorily acquire a right to use the track in the event that agreement cannot be reached with Triton Knoll. The<u>until such time that the Option Agreement referred to above has been completed (unless otherwise agreed).</u> <u>The Applicant and Triton Knoll have agreed protective provisions save for one paragraph which restricts the Applicant's ability to use</u></p>

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		<p>pursuant to the Class Right 3. If temporary possession were taken at any point (to the exclusion of Triton Knoll's possession) then this could cause serious detriment to Triton Knoll's undertaking.</p> <p>Finally, this includes the ability to permanently override or extinguish private rights pursuant to the Class Right 4. If Triton Knoll's rights were permanently overridden or extinguished then this could cause serious detriment to Triton Knoll's undertaking.</p> <p><u>The Promoter makes the point that statutory undertakers should not be treated any differently to other landowners in respect of compulsory acquisition. Triton Knoll does not accept that this is the case, as it is afforded special protection through the Planning Act 2008 and any acquisition must not cause serious detriment to its undertaking. This is an additional test that must be satisfied in respect of Triton Knoll. Triton Knoll's position remains that the acquisition of broad rights over its</u></p>	<p><u>compulsory acquisition (CA) powers over Triton Knoll's access track. The Applicant has provided the Protective Provisions for Triton Knoll's benefit as part of Deadline 5 within Schedule 13 Part 12 of the DCO. These are the agreed form protective provisions but without the restriction on the Applicant's ability to use its CA powers over the access track for the reason outlined above. However, the parties are discussing a commercial side agreement alongside the Protective Provisions. The side agreement is agreed subject to the terms relating to the compulsory acquisition of the access track. In the latest draft side agreement, the Applicant has proposed a mechanism which secures that, once the Option Agreement has been completed, the parties agree that a modified version of the Protective Provisions will be construed as if appended to the DCO. This set of modified Protective Provisions will include the restriction on compulsory acquisition powers required by Triton Knoll (unless otherwise agreed) and which will take effect from the point the Option Agreement (for use of the TK access track) has been completed. In other words, once the land agreement is completed, the Applicant accepts</u></p>

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		<p><u>access remain inappropriate and could cause serious detriment. Triton Knoll’s position is that the protective provisions must include the following provision: “Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus of Triton Knoll or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of Triton Knoll otherwise than by agreement (such agreement not to be unreasonably withheld).”</u></p>	<p><u>the restriction on its CA powers unless otherwise agreed with Triton Knoll. Furthermore, the rights to use CA powers are a distinct and separate issue from the notion of public safety and/or serious detriment to Triton Knoll's undertaking. The two issues should not, in the Applicant's view, be conflated. Compulsory acquisition rights go to the heart of the viability case for the project because without these the Applicant could be ransomed by Triton Knoll. This in itself could put the delivery of the project at risk and create a dangerous precedent for all NSIPs where statutory undertakers claimed that they should be treated differently to any other landowner. Compulsory acquisition is therefore needed in order to ensure the deliverability of the project. In any event (regardless of the compulsory acquisition position), Triton Knoll will still be offered protections in the form of the protective provisions (included at Part 12 of Schedule 13 to the DCO). The protective provisions provide safeguards for Triton Knoll including with the following:</u></p> <ul style="list-style-type: none"> <u>the definition of "apparatus" (at paragraph 131) includes "access to apparatus" (ie the Triton Knoll access track);</u>

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			<ul style="list-style-type: none"> • <u>the Applicant must provide Triton Knoll with plans of its specified works (i.e. works in proximity to "apparatus") for approval by a Triton Knoll engineer prior to undertaking any works on the access track not less than 56 days before commencement of the works (paragraph 137, Schedule 13 Part 12);</u> • <u>Triton Knoll may require such modifications as reasonably necessary to protect its apparatus (i.e. access track) and to secure a proper and convenient means of access to its apparatus (paragraph 137(5), Schedule 13 Part 12);</u> • <u>The ability for Triton Knoll to require protective works and/or step in rights for Triton Knoll to undertake any works (at the Applicant's cost) (paragraph 137(7), Schedule 13 Part 12); and</u> • <u>The covenant on the Undertaker to ensure the position of equivalence for Triton Knoll in accessing its apparatus "no less effectively" (paragraph 142, Schedule 13 Part 12).</u> <p><u>Accordingly, the Protective Provisions provide adequate safeguards and the ability for Triton Knoll to approve plans and method statements. Therefore, the Applicant does not</u></p>

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			consider that such power the granting of the DCO would have a serious detriment on Triton Knoll's undertaking.

3. SIGNATORIES

The above SoCG is agreed between Ecotricity (Heck Fen Solar) Limited ("the Applicant") and Triton Knoll, as specified below.

Duly authorised for and on behalf of Ecotricity (Heck Fen Solar) Limited

Duly authorised for and on behalf of Triton Knoll

Name:	Laura White
Job Title:	Senior Development Manager
Date:	
Signature:	

Name:	
Job Title:	
Date:	
Signature:	