

# MORGAN OFFSHORE WIND PROJECT: GENERATION ASSETS

## Annex 4.2 to Response to Hearing Action Point 11: Decision Letter of Triton Knoll Offshore Wind Farm Order 2013

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Image of an offshore wind farm

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**Prepared by:**

**Prepared for:**

**RPS**

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Your ref:  
Our ref: 12.04.09.04/173C

11 July 2013

Dear Mr Hain

**PLANNING ACT 2008  
APPLICATION FOR THE PROPOSED TRITON KNOLL OFFSHORE WIND  
FARM ORDER**

**I. Introduction**

1.1. I am directed by the Secretary of State for Energy and Climate Change (the "Secretary of State") to advise you that consideration has been given to the report of Panel of Examining Inspectors forming the Examining Authority ("the Panel"), Gideon Amos, Jim Claydon and Rynd Smith, who conducted an examination ("Examination") into the application (the "Application") dated 31 January 2012 by Triton Knoll Offshore Wind Farm Limited ("TKOWFL") for a Development Consent Order ("the Order") under section 37 of the Planning Act 2008 ("the 2008 Act").

1.2. The Examination of the Application began on 23 July 2012 and was completed on 21 January 2013. The Examination was conducted on the basis of written evidence submitted to the Panel and discussed at Open Floor hearings held in Skegness on 6, 7, 8 and 13 November 2012.

1.3. The Order, if made, would grant development consent for the construction and operation of the Triton Knoll Offshore Wind Farm situated on the bed of the North Sea approximately 33km off the coast of Lincolnshire and 46km off the coast of Norfolk, and situated within the UK's Renewable Energy

Zone designated for energy production. The proposed wind farm would consist of up to 288 wind turbines with a capacity of up to 1,200MW.

1.4 Enclosed at **Annex A** to this letter is a copy of the Panel's report and annexed Errata Sheet (Ref. EN01005) of corrections agreed by the Panel prior to a decision being made. References in this letter to the report are to the report subject to those corrections. The Panel's findings and conclusions are set out in section 5 of the report, and its recommendation is at section 6.

## **II. Summary of the Examining Authority's report and Recommendations**

2.1. The Panel's report included their findings and conclusions on the following 11 principal issues:

- impacts of the infrastructure connection elements;
- European Sites and protected species impacts;
- species and habitats protected by other law and policy;
- fish and fishing impacts;
- landscape, seascape and visual impacts;
- historic environment impacts;
- impacts on the marine aggregates industry;
- shipping, operational, navigational safety and lighting impacts;
- socio-economic and transportation impacts;
- design and phasing; and
- other important and relevant impacts.

2.2. The Panel's recommendation is as follows:

*“6.0.1 The Panel concludes that making the attached Order would be in accordance with National Policy Statements EN-1 and EN-3 and would also be in accordance with the Marine Policy Statement, relevant emerging Marine Plans, the development plan and other relevant policy, all of which have been taken into account by the Panel in this Report.*

*6.0.2 The Panel concludes that making the attached Order, with requirements for onshore consents and a traffic management plan, would fully take into account the Local Impact Report from East Lindsey District Council [LIR1].*

*6.0.3 The Panel finds that all potential transboundary impacts have been assessed, have been made known to the relevant EEA [European Economic Area] states and would be appropriately mitigated were the recommended Order to be made.*

6.0.4 *The Panel concludes that in making the attached Order, the SoS [Secretary of State] would be fulfilling his duties under the relevant EU Directives as transposed into UK law by regulation, as well as the biodiversity duty under the NERC [Natural Environment & Rural Communities] Act, subject to Habitat Regulation Assessment.*

6.0.5 *Whilst the SoS is the competent authority under the Offshore Habitat Regulations, the Panel finds that in its view the proposal would not adversely affect European Sites, species or habitats and the Panel has taken this finding into account in reaching its recommendation.*

6.0.6 *Some matters within representations related to the merits of policy set out in a national policy statement. In accordance with s87(3) of the PA2008 these matters have been disregarded. In regard to all other representations however, the Panel found no relevant matters of such importance that they would individually or collectively lead to a different recommendation to that below.*

6.0.7 *The Panel concludes that making the attached Order would not lead the United Kingdom to be in breach of any of its international obligations, nor lead the SoS to be in breach of any duty imposed on him under any enactment, and would not be unlawful by virtue of any enactment. It also finds that the adverse impact of the proposal would not outweigh its benefits, nor does it find there is any condition prescribed for deciding the application other than in accordance with the relevant National Policy Statements.*

6.0.8 *For all the above reasons and in the light of the Panel's findings and conclusions on important and relevant matters set out in this Report, **the Panel recommends the Secretary of State for Energy and Climate Change to make the Triton Knoll Offshore Wind Farm Order in the form set out at Appendix E.***

### **III. Secretary of State's decision on and consideration of the Application**

3.1. **The Secretary of State has decided under section 114 of the 2008 Act to make with modifications an Order granting development consent for the proposals in the Application.** A copy of the Order is attached at **Annex B** and the Habitats Regulations Assessment is attached at **Annex C**.

3.2. The Secretary of State's consideration of the Panel's report is set out in the following paragraphs. His consideration of representations received after the close of the Examination is also set out below. All paragraph references, unless otherwise stated, are to the Panel's report ("ER") and references to

Requirements and Deemed Marine Licence (DML) conditions are to those in Part 3 of Schedule 1 and Part 1 of Schedule 2 to the Order.

3.3. Except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendations of the Panel as set out in its report, and the reasons for his decision are those given by the Panel in support of their conclusions and recommendations. This letter should therefore be read with the Annexes A, B and C. This letter with enclosed Annexes A, B and C constitutes both the statement of reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and the notice and statement required by regulation 23(2)(c) and (d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

3.4. In reaching this decision, the Secretary of State is satisfied that in the absence of any adverse effects which are unacceptable in planning terms, making the Order would be consistent with energy National Policy Statements EN-1 (Overarching NPS for Energy) and EN-3 (NPS for Renewable Energy Infrastructure), which set out a national need for development of new nationally significant electricity generating infrastructure of the type proposed by TKOWFL.

#### Impacts of the Infrastructure Connection Elements

##### The Application

3.5. The Secretary of State notes that the Application does not include subsea export cabling or onshore grid connection infrastructure, which would be subject to subsequent consenting applications [ER 1.0.4 & 2.4.1]. The adequacy of coverage of the grid connection in the Environmental Statement (ES) was raised during Examination by the Panel and interested parties, as there was no detailed proposal for a connection [ER 4.1.5]. TKOWFL's reason for this was that National Grid's (NG) prospective grid connection points changed during pre-application stage [ER 4.1.19] and it had taken the decision to proceed with the preparation of the ES and application with reference to an indicative grid corridor to avoid significant delay [ER 4.1.21].

3.6. The Secretary of State notes it was subsequently confirmed during Examination that TKOWFL was offered an onshore connection point at the Bicker Fen by National Grid and this was included in TKOWFL's indicative cable statement provided in support of the application [ER 4.1.21], which included an indicative 'Electrical Infrastructure Area of Search' extending from the proposed wind farm across the sea to the shore and across the south coast of Lincolnshire where it is approximately 15km in width. Whilst TKOWFL were unable to provide precise details of the route and only an indicative corridor at sea and on land to its preferred connection point at Bicker Fen, within this there were other optional areas of search for the landfall site for connecting cables [ER 4.4.1]. The Panel also considered it was clear that there remain other potential routes to Bicker Fen and alternatives to that point of connection with the National Grid [ER 5.1.4]. It is also noted that TKOWFL had not yet finalised

the nature of the cable connection (which could, for example, be alternating current (AC) or high-voltage direct current (HVDC)) and this choice would have implications for selection, siting and design of associated equipment and substations [ER5.1.3].

### Local Objections

3.7. Although not part of the Application, the Secretary of State notes that the Panel records that *“one of the most widely perceived concerns put before the Panel related to the choice and location of landfall sites and the manner in which a grid connection would be developed between landfall sites and the eventual connection to the national grid. Even though it was clear that grid connection proposals did not form part of the application, numerous representations were received relating to the possible effects of the onshore connection associated with this proposal.”* [ER 5.1.7]

3.8. The Secretary of State also notes that *“Residents, parish councils, local authorities and interest groups raised objections to the landscape and visual impact of overhead lines, cables and substations; the disruption to tourism and the rural economy by the construction of infrastructure, burying of cables and traffic; the impact on wildlife, heritage, human health and the tranquillity of the rural environment; as well as questioning the practicality of crossing miles of low lying, complex land drainage systems which exist in this part of Lincolnshire.”* [ER 5.1.8] These concerns are expanded in subsequent paragraphs in the Examining Authority’s report [ER 5.1.9 - 5.1.43].

### Environmental Impact Assessment (EIA) and the adequacy of Environmental Statement

3.9. The Secretary of State notes that the adequacy of the ES to cover treatment of the effects from consequential development (connecting infrastructure) outside the Order application site and not provided for within the Order was raised by interested parties and the Panel during the Examination [ER 4.1.18]. He notes Natural England also questioned the degree to which it was possible to assess the whole proposal in the absence of clarity about the detail of the grid connection [ER 4.1.22]. The National Policy Statement for Renewable Energy Infrastructure EN-3 provides that where the precise location of cabling routes/substations is not known, a cabling/substation corridor should be identified and the EIA should assess the effects of including this infrastructure within that corridor [ER 4.1.24]. Overarching National Policy Statement for Energy EN-1 also clearly envisages that an applicant can proceed with a proposal without a firm grid connection offer, whilst noting that the commercial risks associated with taking such a step rests with the applicant alone, but in such circumstances the applicant needs to provide sufficient information to comply with EIA Directive 2011/92/EU<sup>1</sup>, including indirect,

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<sup>1</sup> Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment

secondary and cumulative effects, encompassing information on grid connections [ER 4.1.27].

3.10. It is accepted that Article 5.1 (a) and (b) of EIA Directive 2011/92/EU enable the requirement for EIA information to be limited to that *'which is relevant to a given stage of the consent procedure and to the specific characteristics of a particular project or type of project and of the environmental features likely to be affected'* [ER 4.1.25]. Similarly, Article 5.1(b) of the Directive enables the submitted information to be limited by the current state of knowledge. The EIA Directive is implemented in the UK by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009<sup>2</sup>. Regulation 2 and Schedule 4 of those Regulations provide that the information required here is limited to that which can be *"reasonably required"*, having regard *"in particular to current knowledge"* [ER 4.1.26].

3.11. The Secretary of State agrees with the Panel's broad conclusions on the environmental information submitted by TKOWFL and EIA process undertaken [ER 4.4.1 & 4.4.2] and also considers it is adequate for the purposes of his consideration of the Application and that sufficient information has been provided to enable him to fulfil his duties as competent authority under the Offshore Habitats Regulations<sup>3</sup>. He is also satisfied that it was not necessary or indeed possible for TKOWFL to submit detailed information about the anticipated grid connection for the proposal as part of the Application or to assess this in the supporting ES, given in particular that any grid connection will have to be the subject of subsequent approval(s) and assessment(s) [ER 4.4.1].

#### National Policy Statements and the Requirement for Mitigation of Indirect, Secondary and Cumulative Impacts

3.12. The Panel states that paragraph 4.9.3 of Overarching National Policy Statement EN-1 is clear that indirect, secondary and cumulative impacts should be assessed [ER 5.1.31], and the Secretary of State also agrees that paragraph 4.9.3 of EN1 requires that wherever possible, applications for new generating stations and related infrastructure should be contained in a single application. He also agrees that where applicants decide to put in an application that seeks consent only for one element but contains some information on the second, applicants should explain the reasons for the separate application. He also agrees applicants must ensure they provide sufficient information to comply with the EIA Directive including the indirect, secondary and cumulative effects, which will encompass information on grid connections.

3.13. The Secretary of State also agrees with the Panel's statement that in paragraphs 5.1.2 and 5.1.3 of EN-1 (which are generic statements about mitigation of adverse impacts) *"it is clear that the Secretary of State should*

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<sup>2</sup> As amended by SI 20011/2741 and SI 2012/635

<sup>3</sup> The Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007 as amended



*consider mitigation of such impacts through requirements and conditions” [ER 5.1.31].*

3.14. However, the Secretary of State notes the Panel has concluded that the ES provides adequate assessment of indirect, secondary and cumulative effects of the development and *“on grid connections to the extent necessary for this offshore proposal” [ER 4.1.30].* He also notes the Panel is satisfied that there are no obvious reasons why the connection elements of the project would be likely to be refused, given the applicant would be able to bring forward a number of alternative routes or solutions to those indicated and given the lack of any substantive evidence from relevant authorities on this matter [ER 5.1.43]. The Secretary of State considers that paragraph 4.9.3 of EN1 sets out the way in which decisions should be made where there is a secondary element to a development which has not been included in the application. It states that *“If this option is pursued, the applicant(s) accept the implicit risks involved in doing so, and must ensure they provide sufficient information to comply with the EIA Directive including the indirect, secondary and cumulative effects, which will encompass information on grid connections. The [Secretary of State] must be satisfied that there are no obvious reasons why the necessary approvals for the other element are likely to be refused. The fact that the IPC has decided to consent one project should not in any way fetter its subsequent decisions on any related projects.”*

3.15. The Secretary of State notes that the Panel found that issues of short-term construction and long-term visual, economic and environmental impacts could not be addressed directly in the Application because the applicant had been unable to accept a formal offer of grid connection [ER5.1.32]. Taking account of the representations received, the Panel also found that if the wind farm were consented without any requirements that would mitigate the likely impacts of the connection works, there were likely to be *“serious consequences for both local communities and landowners”* and in particular *“drainage interests and the ability of landowners in the vicinity of the connection infrastructure area of search to raise funding for investment, were likely to be compromised” [ER5.1.33].*

3.16. In view of the above, the Panel has recommended inclusion of a requirement in the Order that no works on the offshore generating station or associated offshore development shall commence until the Secretary of State has confirmed in writing that all the necessary consents for the connection and transmission works have been obtained [ER Appendix E, Requirement 21 in Part 3 of Schedule 1]. The Secretary of State also notes the Panel also considered that without a requirement there would be risk that any financial contributions made under any section 106 agreement pursuant to a future permission would be restricted in scale only to the subsequent applications for the grid connection infrastructure and would not relate to the project as a whole. The Panel also considers that, whilst not binding on future decisions, it secures

*“functional and consenting link between two elements of the same project”* and would allow onshore and offshore elements to be considered cumulatively when the onshore impacts of the wind farm are better known at time of subsequent applications for connection elements. The requirement would also better ensure *“that subsequent permissions and/or 106 agreements could relate to and mitigate the impacts of, the project cumulatively.”* [ER 5.1.38].

### The Secretary of State’s view on mitigation in relation to grid connection infrastructure

3.17. The Secretary of State does not consider that EN-1 requires that a Grampian-style requirement of the kind recommended by the Panel is imposed simply because the application envisages further onshore development. Rather, EN1 envisages that any impacts of such further development will normally be dealt with in the consenting procedure for that development.

3.18. In the Secretary of State’s view, the consenting procedures in place in relation to the onshore infrastructure are sufficiently robust to ensure that the impacts of the infrastructure are appropriately mitigated. In particular, the Secretary of State notes that any subsequent supporting EIA assessment for grid connection infrastructure would also need to consider cumulative impact with the offshore wind farm development.

3.19. The Secretary of State is also not convinced that it is necessary to link the offshore and onshore elements of the development in order to ensure that any financial contributions made under a future s.106 agreement relate to the project as a whole rather than only the subsequent grid connection infrastructure applications. In the case of the Triton Knoll project, the offshore generating element would be located 33km off the coast of Lincolnshire and 48km off the coast of North Norfolk. The Panel found that the visual impacts of the offshore development are very limited [ER 5.5.41], and that to the extent that a judgment can be made, the limited onshore effects of construction in the DCO area, due to its distance from the shoreline, will significantly limit cumulative effects as observed from the same coastal locations [ER R.5.42]. The Secretary of State therefore considers that the potential cumulative impact of the offshore element of the overall project is not likely to be a significant component of the impact of the onshore element of the project. He does not consider therefore that it is appropriate to impose a Grampian-style requirement in order to ensure that such cumulative impacts are taken into account when assessing the scale of contributions under a section 106 agreement. Nor is it clear how a Grampian-style requirement of the type suggested would achieve such a linkage.

3.20. For the reasons set out above, the Secretary of State has decided therefore that it is not necessary to include the Grampian-style requirement recommended by the Panel.

#### **IV Habitats Regulations Assessment: European Sites and Protected Species Impacts**

4.1. Regulation 25 of the Offshore Marine Conservation (Natural Habitats & c.) Regulations 2007 (as amended) (“the Offshore Habitats Regulations”) requires the Secretary of State to consider whether the proposed Development would have a likely significant effect (“LSE”) on a European Site as defined in such Regulations. If such an LSE is identified, then he must undertake an Appropriate Assessment (“AA”) to determine whether or not the project will adversely affect the integrity of the European Site in view of its conservation objectives. The AA should take into account the impacts of the proposed project alone and also in combination with other plans and projects. If the Secretary of State cannot ascertain the absence of an adverse effect on site integrity within reasonable scientific doubt, then under the Offshore Habitats Regulations, alternative solutions should be sought. In the absence of an acceptable alternative, the project can proceed only if there are imperative reasons of overriding public interest.

4.2. The Secretary of State agrees that an AA is required under the Offshore Habitats Regulations to consider impacts of the proposed wind farm with other plans and projects. He is satisfied that sufficient information is available to enable him to make an AA.

4.3. A copy of the Habitats Regulations Assessment containing the Secretary of State’s AA is attached to this decision letter and has been prepared on the basis of the Panel’s Report together with the Report on Implications for European Sites (RIES) produced by PINS, and consultation responses on the RIES from Natural England and the applicant (which were in broad agreement with the RIES in all significant effects) [ER 5.2.10-5.2.11].

4.4 The Secretary of State notes that the Panel’s Report and RIES contained a typographical error that referred to ‘9’ Sandwich tern mortalities. The Errata Sheet produced by PINS confirms that this figure should instead be ‘8’ sandwich tern mortalities. The Errata Sheet states that *“At paragraphs 5.2.40 and 5.2.51 the Examining Authority has incorrectly referred to the mortality figure for ALL Sandwich tern mortalities ((9) as identified in the Applicant’s HRA report see Tables 14 and 15, page 63). The reference should in actual fact be to the 8 additional ADULT Sandwich tern mortalities identified in the DECC Southern Wash AA, relied upon by the Applicant in their report to inform the HRA and accurately identified at Table 5.3 of the Examining Authority’s report. In addition Matrix 3.1 (g) of the RIES incorrectly referred to the mortality figure for ALL Sandwich tern mortalities 9. The reference should in actual fact be to the 8 additional ADULT Sandwich tern mortalities.”*

4.5 The Secretary of State has taken PINS' Errata Sheet into consideration and reached his conclusions on the basis of the correct figure of '8' Sandwich tern mortalities.

4.6 The Secretary of State agrees with the Panel's "*first tier*" conclusion [ER 5.2.13] that the potential for LSE cannot be excluded in respect of five European sites:

- North Norfolk Coast Special Protection Area (SPA) and Ramsar;
- Flamborough Head and Bempton Cliffs SPA;
- Inner Dowsing, Race Bank & North Ridge candidate Special Area of Conservation (SAC);
- Humber Estuary SAC; and
- The Wash and North Norfolk Coast SAC.

4.7 The Panel concluded that there will be no adverse effects on the integrity of any of the above sites as a result of the Project alone or in combination [ER 5.2.51, 5.2.61, 5.2.67, 5.2.75, 5.2.79, 5.2.81]. The Statutory Nature Conservation Bodies (SNCBs), agreed with the Panel's conclusions for four of the five sites. However, they raised concerns that there could be an adverse effect on the North Norfolk Coast SPA/Ramsar due to Sandwich terns colliding with turbines in combination with other wind farms in the Greater Wash. They questioned the collision risk model and modelling parameters adopted by TKOWFL (which are the same as applied by the Secretary of State on the Greater Wash AA in 2012).

4.8. Having assessed the evidence, the Secretary of State concludes that the collision risk model and modelling parameters adopted by TKOWFL in relation to Sandwich terns is robust. This is an accord with his judgement in the Greater Wash AA<sup>4</sup> and with the findings of the Panel [ER 5.2.46-5.2.51]. He is not aware of any new scientific evidence that would lead him to depart from his previous judgement nor of any demonstrable unreasonableness in that decision.

4.9. The Secretary of State finds no reason to disagree with the Panel's conclusions of no adverse effects for any of the five European Sites. The reasoning behind this is set out in the attached Habitats Regulations Assessment. This conclusion takes account of relevant mitigation measures included in the DCO and DML requirements.

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<sup>4</sup> The Appropriate Assessment produced in connection with the Secretary of State's development approval under section 36 of the Electricity Act 1989 for wind farms at Race Bank and Dudgeon, made on 6 July 2012.

## **V Developments since the close of ExA Examination**

5.1. The Secretary of State notes that Lincolnshire County Council wrote to RWE Npower Renewables Limited on 1 March 2013 (i.e. after the close of the ExA's Examination) to express "*grave concerns*" regarding the Company's pre-submission consultation on the location of an onshore electricity substation and intermediate electrical compound. The Council considers that the consultation on the four search zones for the substation and three for the compound "*within sensitive areas of Boston and East Lindsey respectively*" is "*presented as a fait accompli in which only site details are open to consideration and is not consistent with how a consultation should be conducted i.e. by asking pertinent questions with alternative options*". The Secretary of State also notes Lincolnshire County Council wrote the Secretary of State for Communities and Local Government on 12 June 2013 to express their concerns regarding energy infrastructure development in Lincolnshire, including proposed substation locations for the Triton Knoll project.

5.2. As Lincolnshire County Council's letter relate to consultation on the onshore grid connection infrastructure, which will be subject to further consents and assessments, the Secretary of State is satisfied that they raise no new issues that require reference back to parties.

5.3. The Secretary of State has also received a letter from Mark Simmonds MP dated 14 May 2013, on behalf of his constituents Mr and Mrs Slaughter, regarding concerns relating to the proposed Bicker Fen substation on Bicker Village. Similarly, as the letter relates to the onshore grid connection infrastructure, which will be subject to further consents and assessments, the Secretary of State is satisfied that it raises no new issues that require reference back to parties.

## **VI Secretary of State's conclusions and decision**

6.1. For the reasons given in this letter, the Secretary of State considers that there is a compelling case for authorising the Triton Knoll offshore wind farm project, given the added contribution that it would make to the production of renewable energy. He considers granting consent would be consistent with energy National Policy Statements EN-1 (Overarching NPS for Energy) and EN-3 (NPS for Renewable Energy Infrastructure), which set out a national need for development of new nationally significant electricity generating infrastructure of the type proposed.

6.2. Having carried out a Habitats Regulations Assessment containing an AA, which is attached to this letter, the Secretary of State considers that there will be no adverse effects on the integrity of: the North Norfolk Coast SPA/Ramsar; the Flamborough Head and Bempton Cliffs SPA; the Inner Dowsing, Race Bank and North Ridge candidate SAC, the Humber Estuary

SAC; and the Wash and North Norfolk Coast SAC, either alone or in combination with other plans and projects.

6.3. The Secretary of State has therefore decided to accept the Panel's recommendation at ER 6.0.8 to make the Order granting development consent and imposing the requirements as proposed by the Panel, but subject to the modifications described in section 7 below. He confirms that, in reaching this decision, he has had regard to the Panel's Report, as amended by the Errata sheet referred to in paragraph 1.4 above, the local impact report submitted by the relevant local authority and to all other matters which he considers important and relevant to his decision as required by section 105 of the 2008 Act. The Secretary of State confirms also for the purposes of regulation 3(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 that he has taken into consideration the environmental information as defined in regulation 2(1) of those Regulations.

## **VII Modifications to the Order**

7.1. For the reasons set out in paragraphs 3.17 - 3.20 above, the Secretary of State has decided not to include Requirement 21 in the draft Order in Part 3 of Schedule 1 at Appendix E to the ER (headed "*Consents for connection and transmission works*").

7.2. He has also decided not to include Requirement 19 in Part 3 of Schedule 1 to the draft Order (headed "*Decommissioning*"), as he understands this requirement was included in error and is duplicated by Requirement 24 in Part 3 of Schedule 1 to the draft Order at Appendix E to the ER (also headed "*Decommissioning*").

7.3. The Panel also asked the Secretary of State to consider whether SNCBs should be removed from the provisions for arbitration covered by Article 12 of the draft Order at Appendix E (headed "*Arbitration*") [ER 5.11.20]. To maintain consistency with other offshore wind farms approved under the Planning Act 2008 since the close of the Panel's Examination, the Secretary of State has decided that the arbitration provisions should apply to SNCBs and has therefore modified the article in the Order accordingly.

7.4. In relation to transference of the Order to another undertaker, the Panel has asked the Secretary of State to consider whether Article 6(5) of the draft Order at Appendix E should be modified to also require electricity licence holders to notify him of a transfer [ER 5.11.21]. To maintain consistency with other offshore wind farms approved under the Planning Act 1998 since the close of the Panel's Examination, the Secretary of State has decided not to modify the transference provisions in the Order.

7.5. In addition to the above, the Secretary of State has decided to make various minor changes to the form of the draft Order as set out in Appendix E of

the ER which do not materially alter its effect, including changes to conform with the current practice for Statutory Instruments (e.g. modernisation of language), changes in the interests of clarity and consistency, and changes to ensure that the Order has the intended effect.

### **VIII Challenge to decision**

8.1. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

### **IX Publicity for decision**

9.1. The Secretary of State's decision on this application is being publicised as required by section 116 of the 2008 Act and regulation 23 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

Yours sincerely

Giles Scott  
Head of National Infrastructure Consents

**ANNEX  
LEGAL CHALLENGES RELATING TO APPLICATIONS FOR  
DEVELOPMENT CONSENT ORDERS**

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the former Infrastructure Planning Commission or the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks from the date when the Order is published. The Triton Knoll Offshore Wind Farm Order as made is being published on the date of this letter on the Planning Inspectorate website at the following address:

<http://infrastructure.planningportal.gov.uk/projects/east-midlands/triton-knoll-offshore-wind-farm/>

**These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655**



## **ERRATA SHEET – Triton Knoll Offshore Wind Farm**

Planning Act 2008 (as amended)

Secretary of State's decision letter and statement of reasons dated  
11 July 2013

| <u>Page No.</u> | <u>Paragraph</u> | <u>Error</u>    | <u>Correction</u>  |
|-----------------|------------------|-----------------|--|
| 12              | 7.4              | Incorrect date. | Replace "Planning Act 1998"<br>with "Planning Act 2008". |