

Triton Knoll Offshore Wind Farm Limited Triton Knoll Electrical System

Additional Consents

April 2015

Application Document: 8.19

APFP Regulations 5(2)(q)

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Limited

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1 SUMMARY

- 1.1 This document sets out the consents that are, or may be, required for the Triton Knoll Electrical System (TKES) and are not contained within the draft Development Consent Order (DCO). This document also provides details of the consents that are disapplied within the DCO and which, as a result, will not need to be applied for separately and the position of the bodies that would otherwise be responsible for granting those consents. It also provides details of any consents that are already in place, including the development consent order granted for the Triton Knoll Offshore Wind Farm array.
- 1.2 There is no requirement for this document in the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009, but it is provided to assist in the examination of the TKES application.

2 CONSENTS ALREADY SECURED

Triton Knoll Offshore Wind Farm Order

- 2.1 The Triton Knoll Electrical System (TKES) works are required to connect the consented Triton Knoll Offshore Wind Farm (TKOWF) array to the national grid.
- 2.2 As set out in the Consultation Report (Application Document 5.1), the TKOWF was initially promoted by Triton Knoll Offshore Wind Farm Limited (TKOWFL) as a project that included both the offshore turbine array and offshore and onshore electrical connection. Following National Grid's announcement in December 2010 that it was undertaking a strategic review of connection options and the resulting uncertainty surrounding the completion of that review and a potential connection date, TKOWFL decided to progress the consenting of the offshore wind farm array and associated works separately from the electrical connection works.
- 2.3 An application under s37 of the Planning Act 2008 for the TKOWFL array was made to the Secretary of State on 31 January 2012. The application was accepted and an examination held between 23 July 2012 and 21 January 2013. On 11 July 2013 the Secretary of State published his decision letter and the Triton Knoll Offshore Wind Farm Order. A copy of the Triton Knoll Offshore Wind Farm Order is at Appendix 1 to this document.
- 2.4 The Examining Authority's recommendation and the Secretary of State's decision letter can be found at:
- <http://infrastructure.planningportal.gov.uk/projects/east-midlands/triton-knoll-offshore-wind-farm/>

Triton Knoll Electrical System Section 35 Direction

- 2.5 The various elements that comprise the Triton Knoll Electrical System (TKES), and are the subject of this application, do not fall within definition of a Nationally Significant Infrastructure Project (NSIP) in the Planning Act 2008 (the 2008 Act). However, the 2008 Act makes provision under section 35 for the Secretary of State to direct that development which meets the criteria set out in section 35 is development for which development consent is required. A direction under section 35 brings that development within the remit of the 2008 Act.
- 2.6 On 25 October 2013, TKOWFL made an application to the Secretary of State for a section 35 direction for the TKES. A copy of the section 35 request, which sets out the basis on which the direction was sought is at Appendix 2.

On 13 November 2013, the Secretary of State made the section 35 direction on the basis that the Triton Knoll Electrical System works “when considered with the Triton Knoll Offshore Wind Farm is nationally significant”. A copy of the section 35 direction is also at Appendix 2.

Generation Licence under section 6 of the Electricity Act 1989

- 2.7 Under section 6 of the Electricity Act 1989 the Office of Gas and Electricity Markets (Ofgem) may grant a licence for the generation of electricity. On 24 July 2013, an electricity generation licence was granted to TKOWFL. A copy of that licence is at Appendix 3.
- 2.8 In February 2014, TKOWFL sought to rely on the powers contained within its generation licence to secure rights to survey land for the purposes of the TKES application. In response to its application Ofgem took the view that such rights were not available as there was not the requisite direct relationship between the land to be surveyed and the generation of electricity as required by standard licence condition 15(4). Having identified issues with the current provisions in standard licence conditions 14 and 15, including in relation to the exercise of compulsory entry powers to carry out surveys, Ofgem undertook an initial consultation (commencing 29 November 2014) on a change to licence conditions 14 and 15 to expressly provide for the powers that TKOWFL believed were available to the holder of a generation licence.
- 2.9 On 24 March 2015 Ofgem confirmed that it had decided to proceed with a statutory consultation to modify standard licence conditions 14 and 15 of the electricity generation licence, noting that:
- “these issues in practice could cause delay and/or higher costs in developing or connecting generation and be a source of uncertainty and confusion for stakeholders in relation to the exercise of compulsory powers. We therefore proposed a number of draft amendments to address the above issues, with the aims of removing uncertainty for licence holders and other stakeholders, and of better facilitating the timely and efficient development of electricity generation, including the connection of offshore generation to the main system.”*
- 2.10 Representations with regard to the proposed modifications must be made on or before 19 May 2015. The consultation document can be found at:
- <https://www.ofgem.gov.uk/ofgem-publications/94030/150324policydecisionletterfinal1-pdf>

3 CONSENTS DISAPPLIED

- 3.1 Under section 120(5) of the 2008 Act an order granting development consent may—
- apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order; and
 - make such amendments, repeals or revocations of statutory provisions of local application as appear to the decision-maker to be necessary or expedient in consequence of a provision of the order or in connection with the order.
- 3.2 Article 6 of the draft Development Consent Order (DCO) (application document 3.1) disappplies the following statutory provisions:
- Consent under section 109 of the Water Resources Act 1991 which relates to the provision of structures in, over or under a main river;
 - Consent under any bylaws made under or having effect as if made under paragraph 5, 6 or 6A of Schedule 25 of the Water Resources Act 1991 which requires consent or approval for the carrying out of works;
 - Section 23 of the Land Drainage Act 1991 in relation to the prohibition of obstructions etc in watercourses; and
 - The provision of any bylaws made under section 66 of the Land Drainage Act 1991 which require consent or approval for the carrying out of works.
- 3.3 The disapplication of (a) to (d) above requires the consent of the body who would otherwise have granted approval under s150 of the Planning Act 2008 and paragraph 32 of Part 1 of the Schedule to the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010.
- 3.4 In relation to (a) and (b) above, the Environment Agency (EA) are the relevant consenting body. In relation to (c) and (d) above, the relevant consenting bodies are the Internal Drainage Boards for the areas in question, Black Sluice Internal Drainage Board, Lindsey Marsh Drainage Board and Witham Fourth District Internal Drainage Board. The disapplication of these provisions has been considered as part of the EIA Evidence Plan process (see application document 8.16 for details) and the detailed drafting was included within the draft DCOs provided to the IDBs and the EA for comment. At no stage have the IDBs or the EA raised a concern with the approach taken and as a result the application is being submitted on the basis that the relevant consents to the disapplication of the statutory provisions will be secured. Relevant correspondence is included at Appendix 4. However, TKOWFL has

sought written consent of this from the IDBs and EA. The EA has stated that it is not in a position to confirm this until the TKES application has been submitted, and formal consent is currently being sought from the IDBs.

- 3.5 In the unlikely event that consent to disapply the statutory provisions is not secured prior to the Preliminary Meeting, TKOWFL will update the Examining Authority on its approach, including whether consent is likely to be secured or whether it will be necessary to remove the disapplications from the DCO.

4 CONSENTS WHICH WILL BE REQUIRED

- 4.1 At this stage it is expected that the following consents, which are not provided for in the DCO, will be required:

- a decommissioning scheme under Chapter 3 of Part 2 of the Energy Act 2004;
- approvals from the relevant planning authority pursuant to the requirements contained in the DCO (see Part 3 of Schedule 1 of the DCO, application document 3.1);
- approvals from the MMO pursuant to the conditions contained in the deemed Marine Licence (see Schedule 9 of the DCO, application document 3.1);
- a licence under section 10 of the Protection of Badgers Act 1992;
- an environmental permit under the Environmental Permitting (England and Wales) Regulations 2010 in relation to discharge to water or groundwater;
- a water abstraction licence under sections 24 or 25 of the Water Resources Act 1991;
- approval from the highways authority to undertake any works to the public highway and, if necessary, completion of an agreement under section 278 of the Highways Act 1980; and
- approval from (1) the Crown Estate Commissioners, and (2) the Highways Agency Historical Railways Board (each being “the appropriate Crown authority” for the purposes of section 227(5) of the 2008 Act), which confirms the relevant authority’s consent to inclusion of the following in the DCO:
 - provisions which authorise the compulsory acquisition of interests in land in which the authority has an interest, other than the interests of the authority; and/or
 - any other provision applying in relation to Crown land,

as appropriate, for the purposes of sub-sections 135(1) and (2) of the 2008 Act respectively.

- 4.2 The approvals required for (a) to (c) above can only be secured once the DCO has been granted.
- 4.3 In relation to (d) above, as recommended by Natural England's guidance note¹ a draft badger licence application has been submitted to Natural England. The expectation is that Natural England will issue a "letter of no impediment" confirming that there is nothing to indicate that a licence would not be granted at the appropriate time.
- 4.4 In respect of (e) and (f), TKOWFL sought confirmation from the EA regarding the timing for any Environmental Permit application or water abstraction licence and the information that would need to be provided within the TKES DCO application. The EA has confirmed that as these consents are construction-related it would be appropriate to seek them after the DCO consent is in place. Relevant correspondence is included at Appendix 5.
- 4.5 The consent of the Highways Authority and completion of any s278 agreement would be sought when the detailed design of any highways works has been completed following the grant of the DCO and prior to the highways works being undertaken.
- 4.6 In respect of (h) above, this is described in more detail in section 13 of the Statement of Reasons (application document 4.1).

5 CONSENTS WHICH MAY BE REQUIRED

- 5.1 At this stage it is considered that the following additional consents which are not included within the DCO may be required for the TKES:
- a licence from Natural England under regulations 53 to 55 of the Conservation of Habitats and Species Regulations 2010.
- 5.2 As the survey work to date has not indicated the presence of relevant European protected species (EPS) within the proposed development boundary it is likely that licences under the Conservation of Habitats and Species Regulations will not be required.
- 5.3 However, as agreed with Natural England (see correspondence at Appendix 6), and set out in the Outline Landscape Strategy and Ecological

¹ <https://www.gov.uk/badgers-protection-surveys-and-licences>

Management Plan (application document 8.8) and secured in the DCO requirements (application document 3.1) once survey access has been secured additional survey work will be undertaken to confirm the absence or presence of great crested newts (GCN). If necessary a scheme of mitigation and protection measures will be put in place. If those surveys confirm the presence of any GCN it may also be necessary to secure a licence to permit disturbance to that species.