



Triton Knoll Offshore Wind Farm Limited Triton Knoll Electrical System

**Appendix 24: Consultee
Response Table - DCO
Amendments**

Date: October 2015

**Appendix 24 of the Applicant's
response to Deadline 2**

Triton Knoll Offshore Wind Farm Limited

Triton Knoll Electrical System

Appendix 24: Consultee Response Table –
DCO Amendments

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Deadline 2

Date: October 2015

Triton Knoll
Offshore Wind Farm Limited
4th Floor One Kingdom Street
Paddington Central
London
W2 6BD

T: 0845 026 0562
Email: info@tritonknoll.co.uk

www.rweinnogy.com/tritonknoll

Drafted By:	Burges Salmon
Approved By:	Kim Gauld-Clark
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Consultee Response Table for Deadline II

DCO Amendments

Representations

1 CONSULTEE: ANGLIAN WATER					
	Date of Representation	Section/Paragraph	Comment	Consultee Proposed Revision	Applicant's Response
1.1	Relevant Representation dated 13 July 2015	Paras 14 - 19	<p>Anglian Water object to the inclusion of Article 12 paragraph (8) in so far as it relates to public sewers, lateral drains or drains.</p> <p>This section in the DCO is inappropriate and primary legislation is already in place to deal with this aspect.</p> <p>If the Applicant wishes to connect to the Anglian Water apparatus and the sewerage system for the discharge of foul water and surface water the correct procedure is to first apply to Anglian Water under section 106 of the WIA which provides a right to communicate with the public sewer and a duty for Anglian Water to connect. Communication is only prevented if the standards of communication are not Anglian</p>		<p>The Applicant and Anglian Water have discussed the drafting of Article 12(8) Discharge of Water of the DCO and have agreed to note each other's position.</p> <p>The Applicant considers the wording to be appropriate and accords with the model provisions and recently granted DCOs, including most recently Dogger Bank Teesside.</p> <p>The parties do not expect their positions in respect of the drafting of Article 12 to change during the examination.</p>

			Water's satisfaction. [...]		
2	CONSULTEE: CANAL AND RIVER TRUST				
	Date of Response	Section/Paragraph	Comment	Consultee Proposed Revision	Applicant's Response
2.1	Relevant Representation	Schedule 8 - Protective Provisions	We note that the draft DCO contains detail of proposed arrangements for protection of the Trust's interests at Schedule 7 Part 5. However, these provisions do not provide for sufficient protection for the Trust's land and statutory undertaking. The needs to be satisfied that the means of construction of the electrical connection under the River Witham is acceptable in terms of physical impacts upon the waterway structure.		Negotiating Protective Provisions with the Canal and River Trust.

2.2	Relevant Representation	Articles	We object to the inclusion in the draft order powers to compulsorily acquire our land or rights over our land. We note under Sch 7 Part 5 Article 14 of the draft Order that the trust may enter into agreement with the undertaker to transfer land, property rights or obligations, however this is qualified by article 3(1) which provides that the Trust may not unreasonably withhold or delay consent. We will instead seek to reach prior agreement with the Promoter with a view to granting the land and rights that are strictly necessary for the development covered by the draft Order.		The Applicant is in on-going negotiations in respect of land agreements and protective provisions with the Canal and River Trust.
3	CONSULTEE: ENVIRONMENT AGENCY				
	Date of Response	Section/Paragraph	Comment	Consultee Proposed	Applicant's response

				Revision	
3.1	Relevant Representation	Requirements, Sch 1, Part 3	We agree with the proposals of ground investigation at all HDD crossings, in addition to landfill sites or contaminant sources; also that work should stop if any previously unidentified contamination is encountered. To ensure that this action is secured through the DCO we request the inclusion of the following Requirement in Schedule 1, Part 3.	<p>Requirement</p> <p>(1) If, during any stage of the development, contamination not previously identified is found to be present at the site then no further development of that stage shall be carried out until a written scheme to deal with the associated risks has been submitted to, and approved by, the relevant planning authority in consultation with the Environment Agency.</p> <p>(2) The scheme must include an investigation and assessment report, prepared by a specialist consultant approved by the local planning</p>	Discussions are on-going between the Applicant and the Environment Agency.

			<p>authority, to identify the extent of any contamination and the remedial measures to be taken for that stage to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site.</p> <p>(3) No remedial work constituting a material operation in respect of contamination of any land, including groundwater within the Order limits is to be carried out until the scheme has been approved.</p> <p>(4) In carrying out the works for the authorised development, the</p>	
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				<p>undertaker must not conduct horizontal directional drilling operations unless the scheme includes a hydrogeological risk assessment demonstrating that such operations are unlikely to cause an unacceptable risk to groundwater quality.</p> <p>(5) Remediation must be carried out in accordance with the approved scheme.</p>	
3.2	Relevant Representation	Requirement 10, Sch 1, Part 3	<p>The detailed design for the final surface water disposal scheme can be dealt with through the imposition of a suitable Requirement in the DCO. Requirement 10 is appropriate to secure this. However, following the introduction of the Town and Country</p>		<p>Although the wording of Requirement 10 Requirement for surface water drainage scheme of the draft DCO (document reference 3.1) has been previously agreed as adequately securing a surface water drainage scheme, which accords with the surface water drainage strategy submitted as part of the Flood Risk Assessment</p>

			<p>Planning (Development Management Procedure) (England) Order 2015, we no longer provide bespoke planning advice on the design of surface water management networks for new developments, regardless of flood zone. This role had transferred to lead local flood authorities (LLFA). Therefore, prior to determining this application we recommend that consultation is undertaken with the relevant experts in the LLFA and due consideration is given to its advice.</p>		<p>(document reference 6.2.5.7.3), to align with the transfer of consultation duty to the relevant LLFA it is no longer necessary for the EA to be consulted.</p> <p>Reference to the Environment Agency has been deleted from Requirement 10.</p>
3.3	Relevant Representation	Requirement 9, Sch 1, Part 3	<p>It has previously been noted that enclosure mechanisms around works, 9A and 50A could be of a solid construction, particularly if their purpose is to contain surface water runoff. This has the potential</p>	(5) No walls or solid means of enclosure around Work nos 9A and 50A shall be constructed until a flood risk assessment, which demonstrates that there will be no	<p>The Applicant and EA discussed this matter at a meeting held on the 31 July 2015, their respective flood risk advisers discussed the issue on 4 August 2015. The outcome of those discussions was that the EA confirmed that</p>

			<p>to increase flood risk to third parties through the diversion of flood waters. If walls/solid enclosure mechanisms are to be used the potential increase in flood risk resulting from this will need to be assessed and we request that we are consulted prior to the scheme being approved.</p> <p>Accordingly, we request an additional element is added to Requirement 9</p>	<p>increased risk of flooding to third parties resulting from the enclosure, has been submitted to and approved by the relevant planning authority, in consultation with the Environment Agency.</p>	<p>requested amendment to Requirement 9 is no longer requirement.</p> <p>The EA having withdrawn their request, the Applicant considers the suggested addition to Requirement 9 is not required.</p>
3.4	Relevant Representation	Requirement 14, Sch 1, Part 3	<p>This requirement infers that the coring of watercourses could be undertaken using non-trenchless techniques. The definition of 'watercourse' on page 8 of the DCO includes 'all rivers' and therefore the main rivers which fall under our jurisdiction. The Environment Agency would not permit non-trenchless techniques to be used for the crossing of main</p>	<p>14(2)(a) to read: "main river crossings shall be undertaken using trenchless methods only".</p>	<p>The wording of Requirement 14(2)(a) has been amended as follows:-</p> <p><i>"construction method statements, including methods (including both trenchless and non-trenchless techniques) for the crossing of watercourses; main river crossings shall be undertaken using trenchless methods only;"</i></p>

			rivers. We would, therefore request additional wording is added to the end of Requirement 14(2)(a)		In addition the following definition of “main river” have been added as Requirement 14(4): <i>“main river” means a river within the Order limits designated as a main river by Defra.”</i>
3.5	Relevant Representation	Schedule 1, Part 3 – Requirements	It is requested that a requirement in relation to Bathing Water Directive status is included in the draft DCO.		Discussions are ongoing between the Applicant and the Environment Agency.
4	CONSULTEE: HISTORIC BUILDINGS AND MONUMENTS COMMISSION FOR ENGLAND				
	Date of Response	Section/Paragraph	Comment	Consultee Proposed Revision	Applicant’s Response
4.1	Relevant Representation	dML, Schedule 10, condition 12(2)(c)	Require condition 12(2)(c) to be amended to reference an agreed archaeological Written Scheme of Investigation (not any “outline” document), as provided through conditions 7(1)(g), 8		dML amended accordingly.

			and 9		
4.2	Statement of Common Ground – Appendix 20 of Applicant’s response to Deadline 1.	dML, Condition 8(2)	The undertaker must ensure that a copy of any agreed archaeological report is deposited with the National Record of the Historic Environment (NRHE), by submitting an Historic England OASIS form with a digital copy of the report. If the report related to the foreshore, the undertaker must notify Lincolnshire County Council that the OASIS report has been submitted to the NRHE.		<p>Accepted. Requirement 8 has been amended as follows:-</p> <p><i>(1) Any archaeological reports produced in accordance with condition 7(g)(iii) are to be agreed with the HBMCE.</i></p> <p><i>(2) The undertaker must ensure that a copy of any agreed archaeological report is deposited with the National Monuments Record National Record of the Historic Environment (NRHE), by submitting an English Heritage Historic England OASIS form with a digital copy of the report. If the report relates to the foreshore, the undertaker must notify Lincolnshire County Council that the OASIS report has been submitted to the National Monuments Record NRHE</i></p>

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CONSULTEE: MCA					
	Date of Response	Section/Paragraph	Comment	Consultee Proposed Revision	Applicant's Response
5.1	Email dated 28 September 2015	Schedule 9, Conditions 2 and 4	In January of this year the MCA, Trinity House and MMO came up with some agreed wording for some of the navigation sections in the DML. Apologies you have not seen this before but I have attached it for you now and I'd suggest replacing the appropriate sections in your draft DML - it should just be a simple cut and paste process.		The Applicant has previously adopted the agreed wording of the MCA, Trinity House and the MMO. One minor amendment was required and the dML has been amended as follows:- Condition 2(11) and 4(4) of the draft DML will replace each other (so 2(11) becomes 4(4) and 4(4) becomes 2(11) in accordance with the agreed conditions as provided.
5.2	Correspondence between the Applicant and MCA	Schedule 9, Condition 3	Retain both 3(1) and 3(3) in the draft DML to be submitted at Deadline 2.		The MMO is of the opinion that condition 3(3) is not necessary and has requested that it be deleted. The MMO and the MCA are meeting on 4 November and this

					<p>matter will be discussed then. The MMO is content that this condition remains in the dML for the time being.</p> <p>Any further revision required will be made for Deadline III.</p>
6	CONSULTEE: MMO				
	Date of Response	Section/Paragraph	Comment	Consultee Proposed Revision	Applicant's Response
6.1	Relevant Representation	Article 2	<p>We do not agree that the definition for "maintain" should include the words "maintain", "alter", "remove", "reconstruct" or "adjust". Alterations are not necessarily maintenance and reference to this should therefore be excluded from the definition to ensure that only the works assessed in the ES are licensed. This should also be carried forward to the dML</p>		<p>By email dated 26 August 2015, the MMO agreed that the definition of "maintain" set out in Article 2 of the DCO remained as drafted.</p> <p>The MMO also agreed to the definition of "maintain" in the dML with the following amendment:-</p> <p><i>"maintain" includes inspect, upkeep, repair, adjust and alter and further includes remove, reconstruct and replace</i></p>

			<p>definition. The MMO suggest the applicant produces a Schedule of Maintenance to allow for maintenance works and to define the activities assessed by the ES and permitted by the DCO/dML.</p> <p>The application has indicated that the wording is similar to that submitted to PINS for the Rampion, Hornsea, Creyke Beck projects. It should be noted that for these projects, to deal differing views on the definition of maintenance, it was agreed that only operational maintenance activities adequately considered within their ES were permitted. Where possible these were agreed in the form of Schedule of Maintenance during the examination of the applicant.</p>		<p><i>any of the ancillary works in Part of Schedule 1 (authorised project) to the extent assessed in the environmental statement and “maintenance” shall be construed accordingly.</i></p> <p>As set out in row 6 of Appendix A of the draft SoCG, the MMO have agreed that they are content with the level of detail within the OOMP.</p>
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			As advised the applicant has submitted the Outline Offshore Operations and Maintenance plan in which they commit to the submission of a detailed offshore operations and maintenance plan, In which the applicant should set out what activities they anticipate to be required and detail where this has been assessed within the ES. The MMO are currently undertaking a review of this outline plan and we are therefore currently unable to agree with the applicant's current interpretation of maintain at this stage.		
6.2	Relevant Representation	Article 5	Transfer of Benefit of Order:- 1.1 In formulating this position the MMO has considered the relevant provisions of the Planning Act 2008		As set out in rows 7-13 of Appendix A of the draft SoCG, the Applicant and the MMO have discussed the drafting of Article 5(5) Transfer of benefit of Order of the DCO and

			<p>("the 2008 Act") and the Marine and Coastal Access Act 2009 ("the 2009 Act") as well as the provisions of made DCOs for other offshore developments.</p> <p>1.2 The MMO is content that the default effect of section 156 of the 2008 Act, in the absence of a contrary provision as envisaged in section 156(2), is that more than one person can have the benefit of a DCO. Furthermore, as section 149A of the 2008 Act does not make any further contrary provision which would affect or otherwise limit the scope of section 156(1) it follows that a DML as part of a DCO can legally benefit more than one person at the same time.</p> <p>1.3 However, while it may be legally</p>		<p>have agreed to note each other's positions.</p> <p>The parties do not expect their positions in respect of the drafting of article 5(5) to change during the examination.</p> <p>The Applicant has made the following amendment to 5(6)(b):-</p> <p><i>"The date specified under (6)(a)(ii) must not be earlier than the expiry of five 10 days from the date of the receipt of the notice."</i></p>
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			<p>possible to partially transfer or lease the benefit of a DML it is not necessarily desirable and the MMO retains serious operational concerns regarding the adequate monitoring of compliance with, and any subsequent enforcement of, a DML, and any conditions of a DML where the benefits of a DML have been transferred partially under the provisions as drafted within Article 5 (page 6), rather than whole as permitted by section 72(7) and (8) of the 2009 Act.</p> <p>1.4 There is no express provision within Part 4 of the 2009 Act that is on a par to section 156 of the 2008 Act. The only similar provision is contained within section 71(5) of the 2009 Act. This subsection states that conditions can be</p>		
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		<p>attached to a licence in order “to bind any person who for the time being owns, occupies or enjoys any use of the works in question (whether or not the licence is transferred to that other person).” The existence of this provision requiring such an express step to be taken in order for the conditions to bind any such persons allows the MMO to draw the conclusion that, unlike the situation created by section 156(1) of the 2008 Act, the benefit of a marine licence does not automatically lie with such persons because if it did the conditions would already apply without requiring section 71(5).</p> <p>1.5 Moreover, while the provisions of Part 4 of the 2009 Act are drafted in a very general way, section</p>		
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			<p>72(7) can be said to envisage the transfer of a licence from one single legal entity to another only. The Explanatory Note on this part of the 2009 Act states:</p> <p>On receipt of an application from the licensee, the licensing authority may transfer a licence from one named person to another. Licensees themselves cannot transfer their licences.</p> <p>1.6 It is of utmost importance that there is a clear identification of areas of responsibility and a mechanism allowing appropriate enforcement action to be taken as necessary. For this purpose the MMO's preferred position, reflecting and deriving from the consistent approach taken in relation to marine licences issued by the MMO in accordance</p>		
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			<p>with Part 4 of the 2009 Act, continues to be that:</p> <ul style="list-style-type: none"> • There is a single identified licence holder for a DML; • Any transfer of a DML for the licence holder to another single identifiable legal entity should be undertaken either by the MMO under section 72(7) of the 2009 Act or; where the transfer of benefit of the DML is to be undertaken in accordance with the transfer of benefit provisions in the main body of the DCO, as a single transfer of the whole benefit of the DML only from the licence holder (undertaker) to another single identified legal entity only on application to the Secretary of State, who will then consult the MMO prior to making a final 		
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			<p>determination.</p> <p>1.7 However, in consideration of the above and upon review of the current drafting of Article 5 of the DCO, we are content with the wording of 5(1) and (2) as it ensures that partial transfers will be approved by the Secretary of State in consultation with the MMO.</p> <p>1.8 However, we do not support the current drafting of Article 5(5) which permits the partial transfer of benefits without an approval process. It is not clear why specific provisions relating to bodies holding section 6 licences can circumvent the process outlined in 5(1)?</p> <p>1.9 We have operational concerns that such an approach allows</p>		
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			<p>partial transfer of benefits and associated liabilities to other parties without regulatory oversight. In operational practice, under the currently proposed wording, there is a risk that where the benefit of a DML lies with more than one legal entity the responsibility for complying with any particular condition or part of a DML would be significantly more problematic to determine. This consequently may limit the ability of the MMO to fulfil its statutory obligation to protect the environment, protect human health and protect other legitimate users of the sea.</p> <p>1.10 We do not currently support the drafting of Article 5 as proposed by the applicant. We are of the opinion that</p>		
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			Article 5(5) should be deleted and that all grants / transfers should be carried out in accordance with Article 5 (1). This would help alleviate operational concerns that in relation to partial transfer of DMLs.		
6.3	Relevant Representation	Article 13	The applicant states that they may enter any land for survey and investigation purposes as set out in the Order limits. The MMO would like to point out that activities detailed within 13 (a) to (d) carried out below MHWS may require a marine licence and should not be included, unless it has been assessed within the ES and included within the DML. The MMO request that this statement be redrafted to clearly demark the boundaries of the access limits. The MMO advise that the		Article 13 of the DCO has been amended to include a new paragraph (2) which states: <i>"Paragraph (1) shall not authorise the undertaker to carry out any of the actions listed in sub-paragraphs (a) to (d) above on any land seaward of MHWS;"</i>

			wording used in Article 26 (2)(c) could be adopted for this purpose.		
6.4	Relevant Representation	Schedule 1, Part 2	<p>The potential scope of “ancillary works” is very broad and we advise that the DCO should be amended that ancillary works should clearly be linked to the extent that have been considered in the ES.</p> <p>In addition the applicant has included the wording removal, reconstruction or alteration of the subsea cables. The MMO do not believe removal or reconstruction to be “ancillary works” but an integral part of the scheme and the MMO request that this wording be removed.</p>		<p>The wording set out in paragraph 2(3) of the dML at Schedule 9 of the DCO states:</p> <p><i>(3) and in connection with Work Nos 1 and 2, ancillary works within the offshore Order limits and up to mean high water springs which have been subject to an environmental impact assessment recorded in the environmental statement comprising –</i></p> <p>This wording clearly links the ancillary works within the dML to the assessments undertaken in the submitted ES, on this basis it is not considered that any further changes to the drafting are required.</p> <p>In terms of the “removal, reconstruction or alteration of the position of subsea cables”, these are not an integral part of</p>

					<p>the scheme as they do not relate to the TKES cables, but to existing offshore cables that may need works doing to them as a result of the installation of the TKES cables.</p> <p>The MMO has agreed to the following amendments to paragraph 2(3)(d):</p> <p><i>the removal, reconstruction or alteration of the position of subsea cables existing at the date of commencement of the licenced activities ;</i></p>
6.5	Relevant Representation	Schedule 1, Part 3 – Requirement 18	The MMO request clarification as to whether the “construction traffic management plan” includes offshore vessel traffic, as if it does then we would advise that this activity would be considered under the remit of the MMO and not the Local Planning Authority.	As set out in in row 19 of Appendix A of the draft SoCG, the Applicant clarified that at present, as set out in the Outline Traffic Management Plan (document 8.9), Requirement 18 only relates to onshore traffic.	Agreed. No change required.

6.6	Relevant Representation	Schedule 9, Part 1	<p>In our response to the applicant Section 42 consultation dated 22 December 2014 we stated:</p> <p>Article 1, (page 105 of April 2015 DCO/DML). Interpretation, definition of “commencement”. We recommend that this definition be reworded as follows:</p> <p>“commence” means beginning to carry out the activities authorised by the deemed marine licences at Schedule 9 (deemed licences under the Marine and Coastal Access Act 2009) other than pre-construction surveys or monitoring.</p> <p>This definition ensures that no marine activities are started prior to the completion of pre-construction surveys or monitoring</p>		<p>Draft dML amended to include new Condition 9 as follows:-</p> <p><i>9 (1) Horizontal directional drilling works within Work No 2, including exit for HDD, shall not commence until the following has been submitted to and approved in writing by the MMO including as relevant to those works -</i></p> <ul style="list-style-type: none"> <i>(a) a construction method statement in accordance with the details assessed within the environmental statement including details of contractors, vessels and vessel transit corridors;</i> <i>(b) a written scheme of archaeological investigation; and</i> <i>(c) a marine pollution contingency plan.</i>
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		<p>requirements.”</p> <p>The applicant has amended the drafting as follows:</p> <p>“commence” means beginning to carry out the activities authorised by the deemed marine licence (deemed licence under the Marine and Coastal Access Act 2009) other than pre construction surveys or monitoring, and exit for HDD and related works.</p> <p>The MMO do not support the inclusion of “HDD and related works”. The MMO believe that HDD exit works would be considered as commencement of offshore works.</p> <p>In addition, it is not clear what is intended by related works. It is important that any</p>		<p><i>(2)The undertaker shall also comply with conditions 2(6), 2(7), 2(8) and 2(9) prior to horizontal directional drilling works commencing.</i></p> <p>The following consequential amendments were also made in the dML:-</p> <p><i>“commence means ... other than pre-construction surveys or monitoring, horizontal directional drilling works, including exit for HDD and related works.”</i></p> <p><i>10. - Each programme, statement, plan, protocol or scheme required to be approved under condition 7 and the details to be approved under Condition 9...”</i></p>
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			related works, such as the use of temporary cable protection, must be clearly considered in the ES and may also be considered as the start of the offshore construction.		
6.7	Relevant Representation	Schedule 9 - Part 1, Article 4 (i)	Please note English Heritage have been renamed as Historic England.		DCO amended accordingly.
6.8	Relevant Representation	Schedule 9, Part 2, para 2(8)	The applicant advises that start of works notices will only be issued for Work No 1. The MMO request that notifications are also issued for Work No 2.		Condition 2(8) has been amended to include reference to Work No 2.
6.9	Relevant Representation	Schedule 9, Part 2, para 3(1) and (3)	Condition 3(1) and (3) appear to be identical, the MMO would be content for (3) to be removed.		As set out in row 24 of Appendix A of the draft SoCG, the Applicant proposed that Condition 3(3) was removed. However, subsequent to these agreements the MCA has advised that they wish to retain this paragraph.

					<p>The MMO and the MCA are meeting on 4 November and this matter will be discussed then. The MMO is content that this condition remains in the dML for the time being.</p> <p>Any further revision required will be made for Deadline III.</p>
6.10	Relevant Representation	Schedule 9, Part 2, para 5(6)	<p>The applicant has included a condition for removing waste material from below MHWS within 4 weeks of completion of the authorised scheme. The MMO request clarification as to what constitutes “waste” and whether the applicant has given consideration to the Waste Framework Directive. No waste should be left below MHWS, especially through 1 tidal cycle as it is likely to have been washed away and potentially contaminated the environment.</p>		<p>DML condition 5(6) has been to remove reference to waste amended as follows:</p> <p><i>“The undertaker must ensure that any debris arising from the construction of the authorised scheme or from equipment or temporary works placed below MHWS are removed within 4 weeks of completion of the authorised scheme unless otherwise agreed with the MMO.”</i></p>

6.11	Relevant Representation	Schedule 9, Part 2, para 5(7)	<p>The applicant has committed to supplying the MMO with audit sheets, whilst this approach has been adopted on previous projects, we believe the condition may result in an administrative burden on the applicant and we suggest the applicant only reports those items that become "lost". Appendix 2 to this response includes a "dropped object" reporting mechanism for consideration by the applicant.</p>	<p>TKOWFL needs to retain the ability to follow the audit sheet procedure but accepts the MMO position regarding the dropped object procedure.</p> <p>Condition 5(7) of the DML has therefore been amended to include both the audit sheet and dropped object procedure.</p> <p><i>"(7) Subject to subparagraph (10), at least 10 days before commencement of the licensed activities, the undertaker must submit and obtain to the MMO approval of an audit sheet covering all aspects of the authorised scheme licensed activities or any phase of them. The audit sheet must include details of—</i></p> <p><i>(a) loading facilities;</i></p> <p><i>(b) vessels;</i></p>
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					<p>(c) equipment;</p> <p>(d) shipment routes;</p> <p>(e) transport;</p> <p>(f) working schedules; and</p> <p>(g) all components and materials to be used in the construction of the authorised scheme.</p> <p>(8) The audit sheet must be maintained throughout the construction of the authorised scheme and any changes notified immediately in writing to the MMO (or relevant phase) and must be submitted to the MMO for review at fortnightly intervals during periods of active offshore construction.</p> <p>(9) In the event that the MMO becomes aware that any of the materials on the audit sheet cannot be accounted for, it must require the undertaker to carry out a side-scan sonar survey</p>
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				<p><i>to plot all obstructions across a reasonable area of search agreed by the MMO where construction works and related activities have been carried out. Local commercial fishing groups must be invited to send a representative to be present during the survey. Any obstructions that the MMO believes to be associated with the authorised scheme must be removed at the undertaker's expense.</i></p> <p><i>(10) As an alternative to the completion of an audit sheet, with written approval from the MMO, the undertaker may introduce a dropped object procedure. If a dropped object procedure is introduced, any dropped objects must be reported to the MMO using the dropped object procedure form within 6 hours of the undertaker becoming aware of an incident.</i></p>
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					<p><i>On receipt of the dropped object procedure form, the MMO may require relevant surveys to be carried out by the undertaker (such as side-scan sonar), and the MMO may require obstructions to be removed from the seabed at the undertaker's expense.</i></p> <p><i>(11) The undertaker must agree with the MMO, before commencement of works, whether the dropped object procedure or audit sheet is to be used.</i></p> <p><i>[...]</i></p>
6.12	Relevant Representation	Schedule 9, Part 2, para 7(1)(a)	The applicant states that the licensed activities or any part.... approved by the MMO, Natural England should also be included as a consultee in this condition to ensure no Annex 1 habitat is		Natural England will be included in Condition 7(1)(a) on request of Natural England.

			placed at risk.		
6.13	Relevant Representation	Schedule 9, Part 2, para 7(1)(f) and (h)	The MMO advise that these two conditions are linked, Natural England will need to be consulted on the specification and installation plans mentioned in (f) as mitigation for the conditioning described in (h) to ensure that impacts to Annex 1 habitat is minimised through any proposed mitigation.		Natural England will be included in Condition 7(1)(f) and (h) on request of Natural England.
6.14	Relevant Representation	Schedule 9, Part 2, para 7(1)(c)(i)	The MMO request that the HDD works are added to this condition in order to ensure the proposed methods are appropriate, have been provided and assessed within the ES, and include appropriate mitigation.		Not required. See new condition 9. And consequential change to condition 10: 10. -- Each programme, statement, plan, protocol, or scheme to be approved under condition 7 and the plan to be approved under condition 9 ...
6.15	Relevant Representation	Schedule 9, Part 2, para 7(1)(d)(ii)	The applicant states: a chemical risk assessment to include		Condition 7(1)(d)(ii) has been agreed with the MMO. No change required.

			<p>information regarding how and when chemicals are to be used, stored and transported in accordance with recognised best practice guidance.</p> <p>The reference to best practice guidelines is quite vague and the MMO request that the actual guidance document is named.</p>		
6.16	Relevant Representation	Schedule 9, Part 2, para 12(1)	<p>The applicant states:</p> <p>The undertaker must submit details for approval by the MMO in.....</p> <p>The MMO request the wording is amended to read details for written approval by the MMO..... This brings the condition in line with other conditions within the DML.</p>		<p>Accepted. Condition 12(1) is amended as follows:</p> <p><i>The undertaker must submit details for written approval by the MMO in consultation with the statutory nature conservation body of proposed pre-construction surveys, including methodologies and timings, and a proposed format and content for a pre-construction baseline report;</i></p>
6.17	Relevant Representation		The DCO/DML do not make any reference to the approval of a		As set out in row 33 of Appendix A of the draft SoCG, the MMO have

			<p>Marine Mammal Mitigation Plan (MMMP). The ES refers to the fact that one will be produced and submitted to the MMO for approval (ES Chapter 6 (6.90)). To secure this commitment by the applicant it should be conditioned within the DML. However the MMO are happy to discuss further the requirement for a MMMP with both the applicant and Natural England.</p>		<p>advised that they will defer to Natural England on this issue.</p> <p>Paragraph 4.213 of the SoCG with Natural England confirms:-</p> <p><i>“With respect to mitigation measures, it is agreed that given the generally low level of significance ascribed to the predicted changes to Marine Mammals as a result of the construction, operation and decommissioning of the project, no specific mitigation or monitoring is required.”</i></p>
6.18	Relevant Representation	Schedule 9, Part 2	<p>The MMO request that a condition be included within the DML to submit an “as constructed” plan. This will allow the MMO to verify that the project has been constructed in accordance with approved preconstruction plans</p>		<p>Condition 13(2)(b) is amended as follows:-</p> <p><i>(2) (b) a swath bathymetric survey to IHO Order 1a across the area(s) within the offshore Order limits ensure the cables have been buried and located within the Order limits and provide the data and survey report(s) to the</i></p>

			and documents.		<i>UKHO.</i>
6.19	Relevant Representation	Schedule 9, Part 2	The MMO acknowledge that the applicant has committed to producing a decommissioning plan for submission for approval to the Secretary of State. However the MMO would request that a condition is included within the DML requiring the applicant to submit a decommissioning plan to the MMO, for written approval, a minimum of six months prior to any decommissioning activities being undertaken.		<p>The MMO's request for a separate decommissioning plan to be submitted for approval is noted, but not agreed. The Applicant considers that this would be duplication with the obligation to submit such a plan to the Secretary of State under s106 of the Energy Act. On the basis that a separate marine licence is likely to be required for decommissioning of the offshore electrical system works, the following wording is proposed as an alternative to the current drafting of Schedule 9, Part 1, paragraph 4:-</p> <p><i>The licence does not permit the decommissioning of the authorised scheme. No decommissioning activity may commence until a decommissioning programme has been approved by the Secretary of State under</i></p>

					<i>section 106 of the Energy Act 2004. Furthermore, at least 4 months before carrying out any decommissioning activity, the undertaker must notify the MMO of the proposed activity to establish whether a marine licence is required for the activity.</i>
7	CONSULTEE: NATURAL ENGLAND				
	Date of Response	Section/Paragraph	Comment	Consultee Proposed Revision	Applicant's Response
7.1	Relevant Representation	DCO	Natural England is currently reviewing the wording within the draft DCO and provides details of any initial concerns in section 6. Natural England will continue to review the draft DCO and provide any further details within its Written Representations after further pre-examination discussions, or will agree to wording		Noted.

			directly with the Applicant through the Statement of Common Ground.		
7.2	Relevant Representation	dML	Natural England also expects a detailed Environmental Monitoring Plan to be provided prior to construction and advice that this should be secured by way of a condition of the deemed marine licence.		The Applicant highlights that Condition 13 of the DML details post construction surveys.
7.3	Relevant Representation	dML	Natural England considers it would be beneficial for the Development Consent Order to quantify the details of operation and maintenance works.		The agreement in relation to the quantification of the operation and maintenance works is set out in row 43 of Appendix A of the SoCG.
7.4	Relevant Representation	dML	Natural England's head office at Foundry House in Sheffield is now closed.	New head office is: Natural England Foss House Kings Pool 1-2 Peasholme Green	Accepted. DCO amended accordingly.

				York North Yorkshire YO1 7PX Tel: 0300 060 1911	
7.5	Written Representation dated 5 October 2015	dML, Condition 8(2)	the cable armouring plan referred to in condition 7(e) 'Preconstruction plans and documentation', be renamed and as a cable protection plan		Accepted. DCO amended accordingly.
8					
CONSULTEE: NORTH KESTIVEN DISTRICT COUNCIL					
	Date of Response	Section/Paragraph	Comment	Consultee Proposed Revision	Applicant's Response
8.1	Written Rep dated 5 October 2015	Schedule 1, Part 3 Requirements 14 and 18	The district council considers that either draft Requirement 14 or 18 should include reference to construction traffic routeing and any prohibited routes, along with the means by which such		These matters are set out in the outline traffic management plan (document reference 8.9), and in particular paragraphs 4.1 – 4.4 set out the details of proposed routes, and figure 4.1 the road network that will be used

			restrictions may be enforced.		by HGVs. On the basis that the construction traffic management plan approved under Requirement 18 must accord with the outline traffic management plan changes to this Requirement are not considered necessary or appropriate. Amendments to Requirement 14 are not appropriate as construction traffic is dealt with by Requirement 18.
8.2	Written Rep dated 5 October 2015	Schedule 1, Part 3 Requirements 15	Whilst the district Council notes that the wording of the draft Requirement may give sufficient scope, it considers that details of the hours of illumination, and the means of their control, should be provided.		Details of the hours of illumination and their means of control will be provided within the written schemes approved by the relevant planning authorities under Requirement 15. Neither Boston Borough Council nor East Lindsay District Council, as the relevant planning authorities in whose area the relevant works will be located have requested this information to be included within this Requirement.

8.3	Written Rep dated 5 October 2015	Schedule 1, Part 3 Requirements 16	The District Council's default guideline construction hours of operation (for noise generating works) are)7 30am to 18:00pm Monday to Friday and 08:00am to 13:00pm on Saturdays with no Sunday or Bank Holiday working and we would request that the Examining Authority have regard to this in the consideration of this Requirement.		The Applicant would refer the Council and the ExA to its response to ExA 1 st questions DCO 1.47 which explains the reasons for the construction hours set out in the draft DCO.
8.4	Written Rep dated 5 October 2015	Schedule 1, Part 3 Requirements 17	As noted above, the requirement suggests that overall operational noise immissions from the substation should be limited to 35dB, to include any relevant penalties for tonal or impulsive noise. Whilst the Council would in principle support such a limit being imposed, on the basis of its concerns highlighted in paragraphs 7.3 and 7.4 above it is unclear as to how this limit		No change required.

			would be met, in the absence of any further information and confidence on the actual external to internal transmission reductions that would be applied at Drove Farm.		
8.5	Written Rep dated 5 October 2015	Schedule 1, Part 3 Requirements 5(3)(a), 6(1) and 2(a) and 2(b), 14(2)(f) and 2(i), 15, 17 and 18.	The District Council has no comments on the remaining draft Requirements, however would wish to be consulted upon details that may be submitted in relation to draft Requirements 5(3)(a), 6(1) and 2(a) and 2(b), 14(2)(f) and 2(i), 15, 17 and 18		The Applicant notes the Council's request and considers it a matter for the relevant planning authority as to which bodies, including neighbouring authorities, it consults in relation to the discharge of the Requirements.

ExA's First Written Questions

9 ExA's First Written Questions – For Deadline I				
	Question Number	Section/Paragraph	Question	Proposed amendments
9.1	DCO 1.1	Article 1 – definition of 'ancillary'	Should the definition of 'ancillary works' contain the phrase 'and which fall within the scope of the work assessed by the environmental statement'? Provide the reasoning for your response.	The applicant does not consider that the additional text is required in the definition of 'ancillary works' but proposed that it is appropriate to be included in the description of ancillary works at Schedule 1 Part 2. Schedule 1, Part 2 Ancillary works has been amended to:- "Works and operations within the Order limits and which fall within the scope of the work assessed by the environmental statement comprising:-"
9.2	DCO 1.4 (a)	Article 1 – definition of "commencement"	Should the reference to Section 56(4) of the 1990 Act be instead to Section 155 of the Planning Act 2008 (as amended)	The definition of 'commence' has been amended to:- "...any material operation (as defined in section 155 of the Planning Act 2008)..."
9.3	DCO 1.5 (b)	Article 2 – definition of "construction compounds"	If [construction compounds] are to be temporary, provide a revised definition of construction compound which clearly states their temporary nature.	The definition of 'construction compound' has been amended to:- 'construction compound' means a <i>temporary</i> construction site associated with the electrical works..."
9.4	DCO 1.6	Article 2 -- definition of "construction	The phrase 'electrical works' in the definition of 'construction compound' is	The definition of 'construction compounds' has

		compounds”	not defined elsewhere in the draft DCO. Either provide a definition for insertion into Article 2 of the draft DCO or justify this exclusion from the definitions.	been amended to:- ‘construction compound’ means a temporary construction site associated with the <i>onshore</i> works...”
9.5	DCO 1.7	Article 2 – definition of “electrical circuit”	Suggest any revised definitional wording [for electrical circuits] to clarify any potential confusion in the documentation.	The definition of ‘electrical circuit’ has been amended to:- ‘electrical circuit’ means a number of electrical conductors necessary to transmit electricity between two points within the authorised development (<i>onshore</i>) and shall take the form of <i>three separate cables laid in cable ducts and shall include fibre optic cables and earthing cables either within the electrical circuit or laid alongside.</i>
9.6	DCO 1.8	Article 2 (and Article 1 of draft dML) - definition of “LAT”	Show where "LAT" meaning lowest astronomical tide is used in the draft DCO or in the draft deemed Marine License. If it is not, justify its inclusion in Article 2	References to LAT have been deleted.
9.7	DCO 1.9	Article 2 – definition of “Onshore Works”	[...] Clarify whether Work Nos 2 and 3 are onshore or offshore works.	Work No 3 forms part of the onshore works and will be wholly onshore. Accordingly, the reference to <i>‘laid on or beneath the seabed’</i> has been deleted from the description of Work No 3. It is now described as:- Work No 3 – up to 6 electrical circuits for the transmission of high voltage alternating current electricity <i>laid underground including in cable ducts</i> connecting Work No 2 and Work No 5; Work No 3A; access to Work No 2, including the construction of haul roads; and Work No 3B.

9.8	DCO 1.21	Article 25	Article 25(9) permits the compulsory acquisition of new rights and existing rights in subsoil and airspace land and permits the imposition of restrictive covenants. It would appear therefore that the land listed in Schedule 7 is not just for temporary possession.	In respect of paragraph 1(a)(i) of Article 25, the Applicant is satisfied that the land listed in columns (1) and (2) of Schedule 7 is only required temporarily for the purposes specified in column (3) of Schedule 7. The reference in Article 25(9) to the ability to acquire new rights, subsoil or restrictive covenants has therefore been deleted so that Article 25(9) reads as follows:- <i>“(9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker shall not be precluded from carrying out a survey of that land under article 13 (authority to survey and investigate the land).”</i>
9.9	DCO 1.23	Article 25	Article 25(5) refers to acquiring the land in accordance with the provisions of paragraph (4)(b). To what does paragraph (4)(b) refer?	The reference to paragraph 4(b) was included in error. The reference should be to paragraph 3(b) of Article 25. Article 25(5) has therefore been amended to cross-refer to paragraph 3(b) as opposed to 4(b).
9.10	DCO 1.27	Article 36	‘The hedgerows plans’ listed in Article 36(1)(g) are not defined in Article 2 – Interpretation. Provide a definition	Article 2 of the Order has been amended to include the following definition of hedgerow plans:- <i>‘hedgerow plans – means the plans certified as the hedgerow plans by the Secretary of State for the purposes of this Order</i>
9.11	DCO 1.36	Schedule 1, Part 3 Requirement 5	Requirement 5(8)(a) states that only one of either Work Nos 47A and 47B shall be used for the construction of the onshore	The Applicant has determined that Work No 47B is not required. Work No 47B has been deleted from Schedule 1

			works. Set out the procedure for making this decision and show where this procedure is secured in the draft DCO.	of the draft DCO. The following consequential changes have also been made in Schedule 1 Part 3: - (w) Work No 46 (using either the temporary construction compound at Work No 47A or Work No 47B , or Work no 51 and access at Work No 48); - (x) Work Nos 48 and 49 (using either the temporary construction compound at Work No 47A or Work No 47B); Requirement 5(8)(a) & (b) has been deleted.
9.12	DCO 1.38	Schedule 1, Part 3 Requirement	[...] No restrictions on [the lightning rods] height or number is included in the draft DCO. Either justify the exclusion of such a restriction or suggest wording that secures those maxima which have been used in the landscape and visual assessment.	Schedule 1, Part 3 - Requirement 5 has been amended as follows:- <i>5(7)(c) The total number of lightning rods within the fenced compound shall not exceed 4 and the height of any lightning rod shall not exceed 21m AOD.</i> <i>5(9)(c) The total number of lightning rods within the fenced compound shall not exceed 22 and the height of any lightning rod shall not exceed 21.54m AOD.</i>
9.13	DCO 1.44	Schedule 1, Part 3 Requirement 10	[...] The Environment Agency, therefore, requested additional wording be added to the end of Requirement 14(2)(a) to read: "main river crossings shall be undertaken using trenchless methods only".	Schedule 1, Part 3 Requirement 14(a) has been amended to state:- <i>Construction method statements, (including both trenchless and non-trenchless techniques) for the crossing of watercourses; main river crossings</i>

			State your acceptance, or otherwise of this suggested addition; evidencing your reasons if this is not acceptable.	<i>shall be undertaken using trenchless methods only.</i>
9.14	DCO 1.50	Schedule 1, Part 3 Requirement 23	Should the reference to Article 35 in Requirement 23(2) be a reference to Article 36?	The reference to Article 35 in Requirement 23(2) should have been to Article 36. However the reference to Article 35 is now correct as a result of the deletion of Article 23.
9.15	DCO 1.51	Schedule 1, Part 3 Requirements	<p>In its Relevant Representation the Environment Agency requests a new Requirement be added to read:</p> <p>(1) If, during any stage of the development, contamination not previously identified is found to be present at the site then no further development of that stage shall be carried out until a written scheme to deal with the associated risks has been submitted to, and approved by, the relevant planning authority in consultation with the Environment Agency.</p> <p>(2) The scheme must include an investigation and assessment report, prepared by a specialist consultant approved by the local planning authority, to identify the extent of any contamination and the remedial measures to be taken for that stage to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site.</p>	Discussions with the Environment Agency are on-going

			<p>(3) No remedial work constituting a material operation in respect of contamination of any land, including groundwater within the Order limits is to be carried out until the scheme has been approved.</p> <p>(4) In carrying out the works for the authorised development, the undertaker must not conduct horizontal directional drilling operations unless the scheme includes a hydrogeological risk assessment demonstrating that such operations are unlikely to cause an unacceptable risk to groundwater quality.</p> <p>(5) Remediation must be carried out in accordance with the approved scheme.</p>	
9.16	DCO 1.56	Schedule 11, paragraph 2(3)	<p>Schedule 11 2(3) provides that "If the requirement indicates that consultation must take place with a requirement consultee the relevant planning authority must issue the consultation"</p> <p>The Explanatory Memorandum [APP-011] states at paragraph 2.2 (page 20) that where the requirements refer to consultation being undertaken this is referring to consultation that the Company will carry out, not the relevant planning authority.</p> <p>Explain the apparent discrepancy between the draft DCO and the Explanatory Memorandum in this respect.</p>	<p>Schedule 11 2(3) has been amended as follows:-</p> <p><i>"If the relevant planning authority wishes to consult with a body identified in the requirement it must issue the consultation within 5 business days of receipt of the application and must notify the undertaker in writing specifying any further information requested by the identified body within 3 business days of receipt of such a request and in any event within 21 business days of receipt of the application."</i></p>

9.17	DCO 1.57(c)	Schedule 11, paragraph 5(2)(b)	Schedule 11 – paragraph 5(2)(b) refers to a ‘period determined’. Show where this period is stated in this Schedule.	Schedule 11 – paragraph 5(2)(b) should refer to paragraph 1 and has been amended as follows:- <i>“the relevant planning authority failing to determine the application within the period under paragraph 1”</i>
9.18	DCO 1.65	Schedule 9, Part 2 Condition 4(2)	Part 2, Condition 4(2) of the draft dML reference MWHS rather than MHWS. Has this been changed in the revised draft DCO?	Condition 4(2) has been amended to refer to ‘MHWS’.
9.19	CA 1.20	Article 38(1)(a)	[...] Suggest revised wording for Article 38(1)(a) to indicate any approving body.	Article 38(1)(a) has been amended to read:- <i>“a guarantee in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land, which has been approved by the Secretary of State”.</i>
9.20	LV 1.15 (c) and LV 1.17	Schedule 1, Part 3 Requirement 5	Confirm that the design parameters (paragraphs 4.3 and 4.5 of the Design Principles Document) are consistent with those set out in draft DCO.	There was an error in the draft DCO in respect of the maximum height of the GIS. Requirement 5(9)(b)(i) has been amended as follows:- <i>“The highest part of any building shall not exceed 16m AOD.”</i>