



Triton Knoll Offshore Wind Farm Limited Triton Knoll Electrical System



**Appendix 4: Written
Representation Response to
Environment Agency**

Date: October 2015

**Appendix 4 of the Applicant's
Response to Deadline 2**

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Date: 27th October 2015

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1. ENVIRONMENT AGENCY

- 1.1 The Environment Agency (EA) submitted a Written Representation for Deadline 1 (5th October 2015). The representation raised a number of specific issues, the Applicant has been in detailed discussion with the EA in relation to the points detailed in both their Relevant Representation and Written Representation. Where paragraphs from the EA Written Representation are not referenced in this submission, the Applicant has no further comments.

Geology, Hydrogeology & Ground Conditions

- 1.2 The Applicant notes the points raised by the EA in paragraphs 2.1 – 2.5 relating to previously unidentified contamination and protection of groundwater and chalk aquifer, and the request made for inclusion of two new requirements.

Previously unidentified contamination

- 1.3 The approach the Applicant has taken to dealing with previously unidentified contamination is the same as for other matters that relate to the detailed methodologies that will be adopted during construction. The detail as to how these matters will be dealt with is set out in the detail of the management plans, which are secured by Requirement 14, *Code of construction practice (onshore) and construction environmental management plan* of the draft DCO (document reference 3.1). These plans were submitted with the Application in outline form to provide an appropriate level of detail to relevant authorities, stakeholders and the ExA on the principles that will be applied in the development and agreement of the final plans, as well as an indicative form of the plans. The submission of these plans in outline form also allows discussion and amendment of them to ensure that they meet the requirements of the various statutory bodies and consultees. Once the outline plans (including the Code of Construction Practice and Construction Environmental Management Plan) are finalised at the close of the examination they will be secured as part of the development consent granted.
- 1.4 Requirement 14 already secures that the undertaker must consult with the EA prior to submission of the Code of Construction Practice (CoCP) and the plans that are included within it (which includes the Construction and Environmental Management Plan (CEMP)) to the relevant planning authority. This will ensure that the plans include the detail required by the EA. The Applicant has also proposed to the EA that the requirement is amended to make specific reference in relation to the CEMP to methods for dealing with previously unidentified contamination, to make it clear to all parties that this is a key requirement of that plan.

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- 1.5 The Applicant provided details at Deadline 1 in response to Question DCO 1.51 of the ExA's first written questions, outlining how it believes the Outline CEMP (document reference 8.7.9) already commits to the request made by the EA. Following further discussions the Applicant has proposed making some amendments to the wording of the Outline CEMP in order to more clearly address the EA's concerns.
- 1.6 The Applicant considers that together these will ensure that appropriate measures are in place to address previously unidentified contamination, alongside other construction matters. The Applicant and the EA will continue to discuss these proposals and provide an update to the ExA at Deadline 3.

Protection of groundwater and chalk aquifer

- 1.7 The Applicant recognises that the EA has separated out the issue of the need for ground investigations/risk assessment at the HDD crossings from the previously unidentified contamination issue. The Applicant understands that these concerns are in relation to the protection of underlying groundwater and Chalk aquifer; the Applicant refers the ExA to paragraph 5.4 of the Outline Construction Method Statement (CMS) (document reference 8.7.1), which states:

“Where cable sections are located above chalk strata, including where trenchless techniques (horizontal directional drilling, microbore or pipejacking) are employed, sections will be positioned so as not to intersect with that strata and the principal aquifer and provide preferential migration pathways for contaminants. The detailed methodology of the construction techniques to be addressed and agreed with the Environment Agency and relevant planning authority and the necessary consents obtained, if required.”

- 1.8 On the basis of the above and in line with the provisions for encountering previously unidentified contamination described above, the Applicant suggests that the matter is adequately dealt with through this commitment in the Outline CMS which is secured by Requirement 14 of the draft DCO (document reference 3.1). The use of “*if required*” in the Outline CMS noted above refers to the obtaining of any necessary consents which may only be applicable in certain circumstances. The Applicant and the EA continue to discuss the need for an additional requirement in the draft DCO and will provide the ExA with an update on these discussions at Deadline 3.

Requirement 14 - drafting

- 1.9 Requirement 14 includes the words “*where relevant*” to accommodate the phased approach to construction. This phrase has been included to make it clear that it is the plans or details that are relevant to a particular stage that need to be approved, and if a particular matter is not engaged in a stage, then those details do not need to be
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approved. To ensure that there is no confusion over the need for measures in the CEMP to deal with previously identified contamination, the Applicant has proposed revising the Outline CEMP (document reference 8.7.1) to include that these details must be included and approved for all stages.

Hydrology and Flood Risk

- 1.10 The Applicant notes the comment in paragraph 3.1 of the EA Written Representation in relation to the EA as a consultee in Requirement 10 of draft DCO.
- 1.11 The Applicant can confirm that Requirement 10 of the draft DCO has been updated to remove the EA as a consultee in Revision C which has been submitted to Deadline 2. The Applicant has no further comment at this stage.

Outline Code of Construction Practice (Document 8.7) & the Bathing Water Directive

- 1.12 The Applicant notes the points raised by the EA in paragraphs 5.1 – 5.9 relating to protection of Bathing Water Directive status, and the request made for inclusion of a new requirement.
- 1.13 The Applicant is in detailed discussions with the EA on matters raised in relation to Bathing Water Quality status. The Applicant has also given consideration to the comments submitted by the MMO in response to the ExA's first written questions (Question **DCO 1.52**) which were as follows:
- "It should be noted that the MMO would be responsible for any bathing water plan that has a requirement to be set for approval/certification below MHWS.*
- 1.14 *To ensure this process the requirement for post consent submissions and approval should be secured by condition within the dML. The condition should recognise the MMO as the approval organising body."*
- 1.15 The Applicant has confirmed to the EA that it would be more appropriate to include a Condition in the dML rather than a requirement in the DCO.
- 1.16 From a consideration of actual risk of an impact occurring on the status of the bathing water, the Applicant does not believe the inclusion of a condition to be necessary and sets out its position in response to Question **EOn 1.12** of the ExA's first written questions. However, the Applicant and the EA are currently in discussion in order to negotiate appropriate wording for an additional Condition and anticipate that this matter will be resolved in due course.

1.17 An update on these discussions will be provided to the ExA for examination Deadline 3.

Outline Pollution Prevention and Emergency Incident Response Plan (document 8.7.8)

1.18 The Applicant notes the comment in paragraph 6.1 of the EA Written Representation in relation to the addition of a reference to UK Spill accredited contractors in the Outline Pollution Prevention and Emergency Incident Response Plan (Outline PPEIRP) and can confirm that the change to the drafting of the Outline PPEIRP has been made, and Revision B was submitted as Appendix 39 of the Applicant's response to Deadline 1.

1.19 Paragraph 4.12 of the Statement of Common Ground (SoCG) between the Applicant and the Environmental Agency (submitted as Appendix 29 of the Applicant's response to Deadline 1) confirms agreement to the adequacy of the Outline PPEIRP (as amended).

Draft Development Consent Order

Article 6 Application and modification of legislative provisions

1.20 The Applicant notes the comment in paragraph 7.1 of the EA Written Representation in relation to the disapplication of legislative provisions.

1.21 The in principle agreement is set out in paragraph 4.81 and 4.82 of the Statement of Common Ground (SoCG) between the Applicant and the Environmental Agency (submitted as Appendix 29 of the Applicant's response to Deadline 1). The Applicant confirms that discussion continue to progress in relation to the detail of the Protective Provisions.

Requirement 14

1.22 The Applicant notes the comment in paragraph 7.3 of the EA Written Representation in relation to the addition requested for Requirement 14 of the draft DCO (document reference 3.1) and can confirm that Requirement 14 of the draft DCO has been updated in Revision C which has been submitted to Deadline 2.

Protection of the Environment Agency land interest

1.23 The Applicant notes the points raised by the EA in paragraphs 8.1 – 8.8 in relation to the EA's land interests.

The EA's land interests within the Order Limits

1.24 In order to deliver the proposed development, it is necessary for the Applicant to acquire land owned by the EA and to acquire new rights over land in which the EA has a land interest. The Applicant is seeking to acquire the necessary land and new rights by agreement with the EA, but in the event that such an agreement cannot be concluded, the Applicant has applied for powers of compulsory acquisition.

1.25 The table below, which is an extract from the *Schedule of Compulsory Acquisition* (Appendix 6 of the Applicant's Response to Deadline 1), identifies:

- The plots described in the Book of Reference (document reference 4.3) in which the Environment Agency has a land interest;
- whether the Applicant seeks to acquire the freehold of those plots or permanent rights over them; and
- the purposes for which such land/rights are sought with reference to the relevant Works numbers, and explains the nature of those rights . (For ease of reference, the terms used to describe "packages" of rights in the introduction to the Book of Reference e.g. "Cable Rights", "Unlicensed Connection Rights", have been used to identify the rights to be acquired. in the table. NB: the "packages" set out in the Book of Reference consist of the rights included in Schedule 5 of the draft DCO set out in full.)

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Name	Plots in which they have an interest		Works number(s)	Freehold acquisition (Yes/No)	Rights and/or powers intended to acquire over plot
	Plot number	Category 1/2			
Environment Agency	18/16	Category 1	17	No	Restrictive Covenants, Cable Rights, Associated Development Rights
	18/17	Category 1	17,19	No	Restrictive Covenants, Cable Rights, Associated Development Rights
	18/18	Category 1	19	No	Restrictive Covenants, Cable Rights, Associated Development Rights
	29/06	Category 1	26	No	Restrictive Covenants, Cable Rights, Associated Development Rights
	29/07	Category 1	26	No	Restrictive Covenants, Cable Rights, Associated Development Rights
	29/08	Category 1	26	No	Restrictive Covenants, Cable Rights, Associated Development Rights
	30/02	Category 1	26	No	Restrictive Covenants, Cable Rights, Associated Development Rights
	30/04	Category 1	N/A	No	Access Rights
	30/05	Category 1	N/A	No	Access Rights
	30/06	Category 1	N/A	No	Access Rights
	30/07	Category 1	26,29	No	Restrictive Covenants, Cable Rights, Associated Development Rights
	30/08	Category 1	29	No	Restrictive Covenants, Cable Rights, Associated Development Rights
	30/09	Category 1	29	No	Restrictive Covenants, Cable Rights, Associated Development Rights
	30/10	Category 1	29	No	Restrictive Covenants, Cable Rights, Associated Development Rights
	30/12	Category 1	N/A	No	Access Rights
	37/22	Category 1	37	No	Restrictive Covenants, Cable Rights, Associated Development Rights
	42/02	Category 1	39	No	Restrictive Covenants, Cable Rights, Associated Development Rights
	42/03	Category 1	39	No	Restrictive Covenants, Cable Rights, Associated Development Rights
	42/04	Category 1	39,42	No	Restrictive Covenants, Cable Rights, Associated Development Rights
	42/05	Category 1	42	No	Restrictive Covenants, Cable Rights, Associated Development Rights
	42/06	Category 1	42	No	Restrictive Covenants, Cable Rights, Associated Development Rights
	43/13	Category 1	44	No	Restrictive Covenants, Cable Rights, Associated Development Rights
	43/14	Category 1	44,46	No	Restrictive Covenants, Cable Rights, Associated Development Rights
43/15	Category 1	46	No	Restrictive Covenants, Cable Rights, Associated Development Rights	
45/18	Category 1	48,49	Yes	Freehold	
45/19	Category 1	48,49	Yes	Freehold	
45/20	Category 1	46,49	No	Restrictive Covenants, Cable Rights, Associated Development Rights	
45/22	Category 1	48,49	Yes	Freehold	

1.26 In addition, the EA is identified in the Book of Reference as having a right of access over the land comprised in plots 43/10 and 43/11, which comprise part of a private access track to the north of South Forty Foot Drain, the freehold of which is owned by the Crown Estate Commissioners.

1.27 The above plots accord with those identified by the EA in paragraph 8.2 of its Written Representation.

1.28 Section 127 of the Planning Act 2008 applies in relation to the EA's land interests if:

Section 127(1)(a): the land has been acquired by the statutory undertakers for the purposes of their undertaking;

Section 127(1)(b) a representation has been made about an application for an order granting development consent before the completion of the examination, and the representation has not been withdrawn, and

Section 127(1)(c) as a result of the representation the Secretary of State is satisfied that-

- I. the land is used for the purposes of carrying on the statutory undertakers' undertaking; or
- II. an interest in the land is held for those purposes.

1.29 At paragraph 8.5 of its Written Representation, the EA refers to a number of other land parcels (plots 01/01, 01/02, 6/11, 6/12, 16/05, and 16/09). For the avoidance of doubt, the EA has no land interest in any of these plots. Accordingly, section 127 of the Planning Act 2008 is not engaged in respect of these land parcels.

1.30 At paragraphs 8.7-8.8 of its Written Representation, the EA refers to other projects which it may want to progress in the future. It is not known whether these projects are proposed to be implemented on land within the Order Limits, and, if so, whether that land is in the EA's ownership. Nor is there any certainty about the likelihood of these projects being delivered, or what form they will take. There is no evidence therefore that section 127 of the 2008 Act is engaged.

The need for the acquisition of the EA's land interests

1.31 All of the land in which the EA has an interest is required either: for the development to which the development consent relates (section 122(2)(a) of the Planning Act 2008); or to facilitate or is incidental to that development (section 122(2)(b)).

Freehold acquisition

- 1.32 The Applicant only seeks the acquisition of freehold title to the Order Land in a limited number of circumstances for the purposes of the above-ground onshore infrastructure, including the permanent access road into the Substation from the A17 to avoid traffic travelling through Bicker village. Freehold acquisition of this land is necessary to ensure that the Applicant (and its successors) has the necessary exclusive possession and control of the land required for the safe construction, operation and maintenance of this access and any related work.
- 1.33 It is therefore necessary for the Applicant to acquire the freehold of plots 45/18, 45/19 and 45/22 (shown coloured pink and identified on the *Land Plan* (Document Reference 2.3)) in connection with the creation of a permanent access from the A17 road to the Triton Knoll substation (Work No. 48).

Permanent rights and restrictive covenants

- 1.34 Permanent rights are required to facilitate the installation and maintenance of the onshore infrastructure and to ensure its protection and continuous operation. These permanent rights, which are described in the *Book of Reference* (Application Document 4.3) as ‘packages’ according to their purpose, are proposed to be secured by Article 17 (Compulsory acquisition of rights) and Schedule 5 (Land in which only new rights etc. may be required) of the Order. The land in respect of which permanent rights are sought is shown coloured yellow on the Land Plan (Document Reference 2.3).
- 1.35 The following “packages” of rights are sought in respect of the EA’s land interests:
- “Cable Rights” are rights required in connection with/ to facilitate the installation, use and maintenance of the cables.
 - “Restrictive covenants” (positive rights) are included to prevent certain activities which may interfere with, cause damage to and/or interrupt the continuous operation of underground infrastructure.
 - “Access Rights” are rights of access, with or without vehicles, equipment and materials, including rights to carry out minor works, such as the erection of fencing, to facilitate such access.
- 1.36 The Applicant proposes to acquire Cable Rights and Restrictive covenants in plots 18/16, 18/17, 18/18, 29/06, 29/07, 29/08, 30/02, 30/07, 30/08, 30/09, 30/10, 37/22, 42/02, 42/03, 42/04, 42/05, 42/06, 43/13, 43/14, 43/15 and 45/20 for the installation and maintenance of up to 6 electrical circuits underground including access for construction and temporary haul roads (Work Nos. 17, 19, 26, 29, 37, 39, 42, 44, 46 and 49).

1.37 The Applicant proposes to acquire Access Rights over plots 30/04, 30/05, 30/06 and 30/12.

Progress with negotiations for a private treaty agreement

1.38 The Applicant has been in contact with the EA's appointed land agent (Robert Hurst of Fisher German) in order to progress negotiations in respect of a private treaty agreement covering the EA's land interests. The Applicant was advised by the EA on 06 October 2015 that Mr Hurst would be acting on the Environment Agency's behalf in respect of negotiations for a private treaty agreement. The Applicant understands that a meeting planned for 23 October 2015 between Mr Hurst and the EA did not take place and that as a result, Mr Hurst has not received full instructions to date. It is hoped that negotiations will progress and terms will be agreed and the Applicant will update the ExA on negotiations at the appropriate time.

Protection of the EA's Interests

1.39 In section 8 of its Written Representation, the EA raises concerns about the effect that the proposed restrictive covenants may have on its ability to carry out its duties as a statutory undertaker. Specific reference is made in paragraph 8.2 of the Written Representation to the EA's powers to carry out flood defence and drainage works pursuant to section 165 of the Water Resources Act 1991 (*Discharges for works purposes*) which contains powers to discharge water into any available watercourse. Section 165 of the 1991 Act also has regard to the EA's powers in section 158 (*powers to lay pipes in streets*), section 159 (*power to lay pipes in other land*), section 161 (*power to deal with foul water and pollution*) and section 163 (*power to fit stopcocks*).

1.40 The proposed powers of compulsory acquisition in Article 28 (*Statutory undertakers*) of the draft DCO (document reference 3.1) will permit the Applicant to:

- a) Acquire the EA's freehold interests in land and acquire the new rights and impose the restrictive covenants referred to above;
- b) construct the proposed development in such a way so as to cross underneath or over the EA's apparatus; and
- c) extinguish rights that the EA may have in the Order Limits and relocate/remove or reposition the EA's apparatus.

1.41 The Article 28 powers are subject to the Protective Provisions in Schedule 8 to the draft DCO.

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- 1.42 For the avoidance of doubt, the EA's statutory powers in sections 158, 159, 161, 163 and 165 of the Water Industry Act 1991 will be unaffected by the powers of compulsory acquisition in Article 28, and there is no proposal in the draft DCO to seek to dis-apply any of these statutory provisions. The EA's statutory rights will therefore be preserved in relation to both land that it owns and land in which it has no property interest (including plots 01/01, 01/02, 6/11, 6/12, 16/05, and 16/09).
- 1.43 At paragraph 8.4 of its Written Representation, the EA raises concerns that the restrictive covenants would prevent it from carrying out general repair and maintenance activities, such as grass cutting, weed control and vermin control etc. on flood defences. The proposed restrictive covenants could only prevent such activities if:
- a) The EA has a land interest which is subject to restrictive covenant. This would not therefore apply to plots 01/01, 01/02, 6/11, 6/12, 16/05, and 16/09, or to land falling outside of the Order Limits (as may be the case with the projects referred to in paragraphs 8.7 and 8.8 of the Written Representation);
 - b) the activities which the EA wishes to undertake are outside of the scope of those which might be required in exercise of the EA's statutory powers; and
 - c) the activities which the EA wishes to undertake are restricted pursuant to the terms of the restrictive covenant.
- 1.44 Without any detail as to the nature of the works that might be required, and/or the likelihood of these works being required, the Applicant is unable to confirm whether the activities would be restricted by the proposed restrictive covenant. However, as the activities referred to in the Written Representation appear to comprise repairs and maintenance, it seems unlikely that the carrying out of these activities would interfere with the integrity of the proposed development. In any event, with the exception of the restrictive covenant which seeks to prevent the erection of buildings, which is necessary to prevent interference with the underground infrastructure and is explained further in the Statement of Reasons (document reference 4.1), such activities may be undertaken with the Applicant's consent. The consent of the Applicant must not be unreasonably withheld or delayed.
- 1.45 The Applicant is therefore of the view that section 127(g) of the Planning Act 2008 is satisfied, and the new rights/restrictions proposed to be acquired from the EA can be purchased without serious detriment to the carrying out of the EA's undertaking.