



Triton Knoll Offshore Wind Farm Limited Triton Knoll Electrical System

**Appendix 2: Written Summary of
The Applicant's Oral Case put at
Compulsory Acquisition Hearing
on 13 November 2015**

Date: 30th November 2015

**Appendix 2 of the Applicant's
response to Deadline 3**

Triton Knoll Offshore Wind Farm Limited

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1. Summary of The Applicant's Oral Case

Agenda Item 1 – Introduction

- 1.1 Following an introduction from the Examining Authority (“the ExA”), the Applicant, along with other parties in attendance, introduced its representatives.

Item 2 – Opening Remarks by the Examining Authority

- 1.2 The ExA confirmed that a number of matters which had a bearing on compulsory acquisition are an agenda item (number 8) for the socio-economic issue specific hearing on Thursday 19th November 2015. The ExA confirmed that those matters which it wanted to examine at the compulsory acquisition hearing were:

- The adequacy of consultation;
- The extent of survey access granted and the effect of the proposed survey work on fields; and
- The proposed permanent access road, namely the route, the need for permanent acquisition and the fact that it is intended for use by HGVs.

- 1.3 The ExA confirmed that the following versions of the application documents would be used for reference purposes during the Hearing:

- Appendix 22 of the Applicant's response to Deadline 2: Draft Development Consent Order and Deemed Marine Licence: comparison of Revision B and Revision C;
- Appendix 23 of the Applicant's response to Deadline 2: Schedule of DCO Amendments;
- Explanatory Memorandum (document reference 3.2);
- Book of Reference (document reference 4.3);
- Order Limits Plans (document reference 2.1);
- Works Plans (document reference 2.2) accepted into the Examination and published on 9 September 2015;
- Land and Crown Plans (document reference 2.3 and 2.4) alongside Appendix 13 of the Applicant's response to Deadline 2: Updated Land Plans; and
- Appendix 40 of the Applicant's response to Deadline 1: Statement of Reasons-Revision B.

- 1.4 For ease of reference, this summary is taken in the order that the various agenda items were discussed, noting that the Hearing was concluded before Items 13 to 17 of the agenda were considered.

Item 3 - Requests to question a person making oral representations directly under s.94 of the 2008 Act

1.5 No such requests were made.

Item 4 - Summary by the Applicant of changes to key documents submitted at Deadlines 1 and 2

1.6 The Applicant provided a summary of the changes made as follows:

1.7 Deadline 1 (5 October 2015)

a) Statement of Reasons (document reference 4.1)

- The Statement of Reasons was updated to correct an error identified by Natural England regarding the stated distance of the survey ponds from the cable route at paragraph 6.21. (The distance is 250m from Order limits; not 250m from the centre line of the cable route.) Paragraph 6.21 was updated to reflect this position.
- During the update process the Applicant identified an erratum in a plot number given in paragraph 13.4 (plot 36/19 should be 37/19). This was also corrected in the revised document.

1.8 Deadline 2 (27 October 2015)

a) Crown Land Plans (document reference 2.3 and 2.4)

- The Applicant committed to updating the Land Plans when responding to **CA 1.7** of the ExA's first written questions at Deadline 1 to show on the Land Plans the limits of all land to be acquired and/or which is required for the works. The Applicant noted that it is also a requirement to show any land in which there is a Crown interest. The Applicant acknowledged that as plot 01a/01 was shown coloured yellow on Crown Land Plan 1a, it could be interpreted as indicating that new rights over the plot are to be compulsorily acquired. The Applicant therefore amended Crown Land Plan 1a so that plot 01a/01 is not coloured yellow. The Applicant also took this opportunity to update other Crown land plots for consistency. The changes to the Crown Land Plans may be summarised as follows:
 - i. Amended cover sheets.
 - ii. Note added on the second cover sheet "Plans shown are Revision B plans. All other plans forming the full set of Land Plans and Crown Land plans are Revision A which were submitted in May 2015."
 - iii. Updated contents page to list the relevant Rev B sheets.

- iv. Crown Plan 1a - yellow shading removed and scale of green zigzag on inset amended with asterisks; note added.
- v. Crown Plan 1b - scale of green zigzag on inset amended with asterisks; note added.
- vi. Crown Plan 1d - yellow shading removed from parcels 43/10 and 43/11.
- vii. Crown Plan 1g - yellow shading removed from parcels 37/18 and 37/19.
- viii. Land Plan sheet 27 - yellow shading removed from parcels 37/18 and 37/19 and a new key item added to clarify that rights over these parcels will be acquired by private agreement.
- ix. Land Plan sheet 43 - yellow shading removed from parcels 43/10 and 43/11 and a new key item added to clarify that rights over these parcels will be acquired by private agreement.

b) Development Consent Order (“the Order”) (document reference 3.1)

- The changes made to the draft Order for Deadline 2 are set out in the table below:

Provision	Change
Article 14(2) (compulsory acquisition of land)	<p>In its response to ExA Question CA1.7 the Applicant offered to amend Article 14(2) to specifically refer to Article 41, to put the ExA question as to whether the Article 14(1) power (<i>Compulsory acquisition of land</i>) is subject to Article 41 (<i>Crown rights</i>) absolutely beyond doubt. The amended Article reads as follows:-</p> <p><i>(1) This article is subject to article 16 (time limit for exercise of authority to acquire land compulsorily) article 17(2) (compulsory acquisition of rights), and article 25(9) (temporary use of land for carrying out the authorised project) and article 41 (crown rights).</i></p>
Article 16(1)(b) (time limit for exercise of authority to acquire land compulsorily)	Correction of Article reference, reference to the 1981 Act amended and related footnote

	<p>amended:-</p> <p><i>(1)(b)...as applied by article 19 20 (application of the 1981 Act Compulsory Purchase (Vesting Declarations) Act 1981.</i></p>
Article 17(3) (compulsory acquisition of rights)	<p>Paragraph 17(3) has been amended as follows:-</p> <p>(3) Subject to section 8 of the 1965 Act as substituted by paragraph 5 of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights and restrictive covenants) (other provisions as to divided land) where the undertaker acquires an existing right rights</p>
Article 23 (apparatus and rights of statutory undertakers in stopped up streets)	No streets are to be stopped up. Article 23 was therefore unnecessary and has been deleted.
Article 24 (acquisition of part) now article 23 after the deletion of article 23 at deadline 2	<p>Sub-paragraphs 24(5)(b) and 6(b) have been amended as follows:-</p> <p>(b) where the land subject to the notice to treat consists in the case of part of land</p> <p>Consisting</p>
Article 25(2) (temporary use of land for carrying out the authorised project) now article 24(2)	<p>Text amended at 25(2):-</p> <p>...shall serve notice of the intended entry on the owners and occupiers of the land for the purposes of the authorised project</p>
Article 25(9) (temporary use of land for carrying out the authorised project) now article 24(9)	<p>In ExA Question DCO 1.21 the ExA noted that 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, and that it would appear therefore that the land listed in Schedule 7 is not just for temporary possession. In its response to this question the Applicant confirmed that it is satisfied that the land listed in columns (1) and (2) of Schedule 7 is only required temporarily for</p>

	<p>the purposes specified in column (3) of Schedule 7 and agreed to deleted reference to the ability to acquire new rights, subsoil or restrictive covenants so that Article 25(9) reads as follows:-</p> <p><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</i></p> <p><i>(a) acquiring new rights or imposing restrictive covenants over any part of that land under Article 17 (compulsory acquisition of rights); or</i></p> <p><i>(b) acquiring any part of the subsoil (or rights in the subsoil) of that land under Article 21 (acquisition of subsoil only); or</i></p> <p><i>(e) carrying out a survey of that land under article 13 (authority to survey and investigate the land).</i></p>
Article 31(1) (special category land) now article 30	Typing error correction- “consistent” replaced with “inconsistent”
Article 38(1)(a) (guarantees in respect of payment of compensation) now article 37(1)(a)	<p>In its response to ExA Question CA1.20 the Applicant agreed to amended Article 38 to provide for approval of a proposed guarantee by the Secretary of State.</p> <p>Sub-paragraph 38(1)(a) has been amended to read:-</p> <p><i>“a guarantee in respect of the liabilities of the undertaker to pay compensation under this</i></p> <p><i>Order in respect of the exercise of the relevant power in relation to that land, which has</i></p> <p><i>been approved by the Secretary of State”;</i></p>

<p>Schedule 7 – (land of which temporary possession may be taken)</p>	<p>Reference to Plot 39/05 omitted in error from the schedule. New row inserted as follows:-</p> <p style="text-align: right;">(a) access Work with or No. 38 without</p> <p>Boston 39/05 Borough</p> <p>Council</p> <p>vehicles, plant, machinery, apparatus, equipment and materials for construction and carrying out of the authorised project;</p> <p style="text-align: right;">(b) laying and use of</p> <p>temporary vehicular access tracks and improvement to access tracks and roads, and erection of</p>

	<p>associated</p> <p>temporary structures</p> <p>including fencing and signage</p>
Schedule 7 – (land of which temporary possession may be taken)	<p>Clarification that plot 40/05 is required in connection with Work No 40 and plots 41/05-41/07 are required in connection with Work No 41.</p>

c) Compulsory Acquisition Schedule (document reference REP1-049)

- The changes made to the Compulsory Acquisition Schedule for Deadline 2 are as follows:
 1. The 67 parties to the Written Representation by Giles Johnston et al submitted by Wilkin Chapman LLP (document reference REP1-020) were highlighted with a single Asterisk in column 1. Those landowners also represented by the agents in this group but not listed in the Written Representation were marked with a double asterisk.
 2. For all parties marked with either 1 or 2 asterisks, comments were added to column 13 to state there were envisaged impediments to concluding agreements as these land agents have raised multiple issues.
 3. An update was also added in column 13 for the 4 landowners with whom negotiations are proceeding well and Heads of Terms are close to being concluded.

Item 5 - Report on negotiations with:

The Crown Estate Commissioners (“the Commissioners”) and Highways England Historical Railways Estate (“HEHRE”)

- 1.9 The ExA noted that the Commissioners had submitted a section 135 Planning Act 2008 consent (document reference REP1-064 dated 11 September 2015).
- 1.10 The ExA explained that in its opinion, Article 41 of the draft Order requires the consent of the appropriate Crown authority to the compulsory acquisition of land, or rights over land, in which there is a Crown interest (i.e. land held otherwise than by or on behalf of the Crown), but does not prohibit the compulsory acquisition of Crown interests.
- 1.11 The ExA suggested that this could be remedied by insertion of the words “*except for the interests of the Crown*” or equivalent wording after the descriptions of plots in which there is a Crown interest in the Book of Reference (document reference 4.3) (including taking an equivalent but precautionary approach to those plots in which there is an interest held by the Secretary of State for Transport and administered by HEHRE).
- 1.12 The ExA suggested that the Applicant make that aforementioned amendment to the Book of Reference and prepare Joint Statements with the Commissioners and HEHRE, explaining the amendments made and confirming that they are acceptable to the Commissioners and HEHRE.
- 1.13 Joint Statements have been agreed in response to the ExA’s request and have been submitted for Deadline 3 (30 November 2015) (Appendix 14 and Appendix 15 of the Applicant’s submission).

Negotiations with Lincolnshire County Council in respect of special category land

- 1.14 Plot 01/01 comprises a section of beach at Anderby Creek which is owned by Lincolnshire County Council (“LCC”). The Applicant has taken a precautionary approach and has treated plot 01/01 as open space for the purposes section 132 of the Planning Act 2008 (“the 2008 Act”).
- 1.15 The ExA confirmed that special parliamentary procedure may still apply to the compulsory acquisition of open space unless the Secretary of State is satisfied that one of three exceptions to the requirement for special parliamentary procedure is made out. The Applicant seeks to rely on the exception in subsection (3) of section 132, namely that the land in question, when burdened by the new rights, will be no less advantageous to the persons in whom it is vested; other persons entitled to rights over it; and to the public at large, than it was prior to their imposition and that fact is recorded in the relevant order.

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- 1.16 The ExA requested confirmation from the Applicant that the proposed transition joint bays lie outside of the parcel of special category land. This was confirmed by the Applicant. For the avoidance of doubt, the offshore export cables will come ashore under the beach and sand dunes, and will be joined to the onshore cables within transition joint bays, which will be located in the arable field on the landward side of the sand dunes on land which is not special category land (Work No. 3A; Plot 01/03).
- 1.17 The Applicant's referred to Table 1-3 of the Offshore Project Description Chapter of the Environmental Statement (document reference 6.2.2.1), clarifying that small sections of the beach will require to be closed for temporary periods of an estimated 2 to 4 weeks for installation of each of the 6 cable circuits (2 weeks being the anticipated norm, unless technical difficulties are experienced). Installation of the circuits will need to be sequential as it is only possible to have one horizontal directional drill working at any one time, so the maximum total period for which the beach will be affected by works is six months.
- 1.18 The Applicant also noted that although there will be temporary interference with the use of limited areas of open space during construction as a result of the exercise of the powers of temporary possession and the works to be undertaken, access to the remainder of the beach will still be available. Indeed, in the long-term the open space will remain unobstructed and available for the recreational uses to which it is currently put. The Applicant therefore considers that:
- There are no works proposed, or rights to be acquired, which will permanently affect the public recreational use of Plot 01/01; and
 - The recreational use of Plot 01/01 will be no less advantageous to LCC, nor to the general public, than it was before it was burdened with the rights as proposed in the Order.
- 1.19 The Applicant has therefore included a statement in the preamble to the Order which (if the Secretary of State agrees) will confirm that the section 132(3) tests have been satisfied.
- 1.20 The Applicant was not aware of the Lindsey County Council (Sandhills) Act 1932 ("The Sandhills Act") prior its application for the Order. The Sandhills Act was brought to the Applicant's attention by LCC during the Examination of the Order.
- 1.21 The Applicant agrees with LCC that it should be assumed that Plot 01/01 forms part of the land which has been designated as public open space pursuant to section 9 of the Sandhills Act.
- 1.22 During the Compulsory Acquisition Hearing the ExA requested that the Applicant and LCC prepare a Joint Statement setting out so far as may be practicable their agreed position on:

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- The correct procedure to be followed in respect of the application for compulsory purchase powers in the Order which would enable the compulsory acquisition of rights over land forming public open space; and
 - The extent to which the provisions of The Sandhills Act affects the disposal and/or use of the public open space and as a result needs to be modified/dis-applied by the Order.
- 1.23 As agreed with LCC’s legal representative, the Applicant prepared a draft Joint Statement which was sent to LCC for review on the 18th of November. Despite making a number of requests the Applicant received no response from LCC until 2:30pm on the 30th of November (the date of Deadline 3).
- 1.24 The document received by LCC, albeit signed, included a number of square brackets and drafting notes and did not confirm the agreed position, or even LCC’s position, on the issues raised by the ExA, simply stating that LCC would submit further representations. Given the ExA’s request that only final, agreed documents be submitted to the Examination, the Applicant provided LCC with an updated draft of the Joint Statement for review to try to address these issues. The Applicant also drew the LCC’s attention the need for LCC to formally submit a copy of the Sandhills Act as requested at Item 4 of the ExA’s ‘Note of Information Proposed by interested parties to be submitted at Deadline 3’, and suggested that this be appended to the Joint Statement. LCC declined to consider it further.
- 1.25 The document provided by LCC does not constitute a Joint Statement as requested by the ExA and the Applicant does not therefore consider it appropriate to submit it.
- 1.26 The Applicant will continue to make every effort to engage with LCC with a view to submitting a Joint Statement at Deadline 4.
- 1.27 A further action on the part of the Applicant was to provide a note on the staging requirement (Requirement 14) in the draft Order. This note has been submitted for Deadline 3 (Appendix 22 of the Applicant’s submission).

The position in respect of Statutory Undertakers potentially affected by the provisions of sections 127 and 138 of the 2008 Act

Witham Forth Internal Drainage Board, Black Sluice Internal Drainage Board and Lindsey Marsh Drainage Board (together, “the IDBs”)

- 1.28 Counsel for the IDBs, Mr David Altaras, confirmed that the IDBs do not fall within the definition of “statutory undertakers” for the purposes of section 127 (statutory undertaker’s land) of the 2008 Act. Post-hearing, the Applicant checked the position and can confirm that it agrees that the IDBs do not fall within the definition of “statutory undertakers” for the purpose of section 138 of the 2008 Act. The tests set out in subsection (6) of section 127 would not therefore apply to the compulsory acquisition of rights over any land which may be owned by the IDBs.

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- 1.29 The IDBs are in the process of reviewing their landholdings within the Order limits. It is the Applicant's current understanding that only Witham Fourth IDB has any land ownership.

Item 6 - Report on negotiations with affected persons not covered in Item 5

- 1.30 The Applicant provided background to the negotiations (Heads of Terms) for private treaty agreements.
- 1.31 Heads of Terms were sent to landowners in December 2014. The Applicant has offered meetings with all those who are able to grant the necessary rights. A large number of landowners and their agents have taken up that offer since December 2014 and have entered into discussions on the Heads of Terms. The Applicant has taken on board points made by landowners, either directly or via agents, resulting in revised Heads of Terms with points common to all landowners being issued in September 2015, in parallel with bespoke revisions for individual landowners.
- 1.32 The Applicant advised the ExA that a meeting was being arranged with the Land Interest Group ("LIG"), being comprised of the National Farmers' Union ("NFU"), the Lincolnshire Association of Agricultural Valuers ("LAAV") and the Country Land and Business Association ("CLA"). The Applicant hoped that this meeting would unlock some of the discussions around the Heads of Terms.
- 1.33 For those landowners not represented by the LIG, negotiations are at various stages and the Applicant is happy to provide specific details if required.
- 1.34 The ExA queried the number of private treaty agreements which had been concluded. The Applicant advised that since Deadline 2, a total of 3 interests had agreed terms with the Applicant.
- 1.35 In the schedule of compulsory acquisition provided at Deadline 2 (Appendix 12 of the Applicant's Deadline 2 submission), the ExA noted that at column 13, "Any envisaged impediments to the achievement of reaching a mutual commercial agreement", the Applicant had stated for a number of landowners that the "landowner is being represented by a land agent who is part of the written representation submitted by a group of agents on behalf of 67 landowners." The Applicant clarified that this detail had been included to identify those parties where it was not necessarily straightforward to discuss individual requirements, and where common principles relevant to the whole group needed to be progressed.
- 1.36 A number of points were raised by the LIG and others with respect to negotiations, consultation and engagement, to which the Applicant responded at the end of the Hearing agenda. This response is summarised for clarity below.

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- 1.37 The Development Consent Order process requires the Applicant to consult, including with persons with an interest in land. As explained in the Consultation Report (document reference 5.1) and Site Selection & Design Report (document reference 8.17), extensive non-statutory and statutory rounds of consultation have taken place with landowners which has been very valuable. Consultation has resulted in significant design changes to the proposed development where the Applicant has been able to make changes. These changes are recorded in the Site Selection & Design Report (document reference 8.17).
- 1.38 Heads of Terms for private treaty agreements were first sent to landowners in December 2014. This was after the statutory consultation required by section 42 of the Planning Act 2008. It is the Applicant's opinion that it would have been premature to have issued Heads of Terms prior to that consultation.
- 1.39 As part of the Applicant's written response to Question CA 1.3 of the ExA's First Written Questions, the Applicant set out the contact made with specified landowners and their agents. The contact schedules demonstrate the attempts made to discuss the Heads of Terms. The Applicant has engaged with land agents on the proposed commercial terms where the Applicant was advised that agents had been instructed to represent landowners, in accordance with standard RICS (Royal Institution of Chartered Surveyors) principles. The Applicant has not sought to exclude any persons with an interest in land from engaging with the project.
- 1.40 On one occasion the Applicant was forced to contact landowners directly with regards to the Heads of Terms where the Applicant had not had contact from a particular land agent for some considerable time.
- 1.41 The Applicant was surprised to hear the LIG assert at the Hearing that there had not been negotiation over the Heads of Terms for private treaty agreements. The Applicant revised the Heads of Terms with points common to all landowners in September 2015, after taking on points raised during discussions. Those revisions included a change to the method of indexing payments; and increased offers in terms of link box payments and payments for temporary construction compounds.
- 1.42 The Applicant considers that discussions on the Heads of Terms have been constructive up until recently, when confirmation was received from those agents in the LIG that the nature of the rights sought, being a permanent easement, was an absolute line in the sand. The Applicant noted that Heads of Terms discussions were progressing with other agents who are not part of the LIG and that those agents were not present at the Hearing.
- 1.43 As part of communications with agents the Applicant has asked for client specific matters to be included in discussions, since the Applicant's preference is to discuss matters on an individual basis.
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- 1.44 The Applicant has made detailed commitments with regards to drainage in the Heads of Terms, and the text of these commitments has been reproduced in a Written Representation submitted to the ExA (being that submitted by the LIG for Deadline 1).
- 1.45 With regards to the comment on mediation made by Mr James O'Brien, the Applicant's recollection is somewhat different to Mr O'Brien. The context of that particular discussion was within an initial meeting on the Heads of Terms and the Applicant was of the view that it was not appropriate to get into a discussion on mediation at that stage of negotiations. The Applicant would like to clarify that it has not ruled out mediation.
- 1.46 The Applicant did decline the offer of a collective meeting with agents, as in the Applicant's experience large group meetings have a tendency to become unruly. However as an alternative the Applicant offered to meet individually with landowners' representatives to discuss details particular to each landowner. This offer has been reiterated throughout the Heads of Terms process.
- 1.47 On the matter of professional fees, the Applicant has offered to pay reasonable fees incurred as a result of Heads of Terms discussions, with an initial cap which is normal practice to keep control of project expenditure. Where negotiations are progressing towards an agreement the Applicant has offered to raise that cap. Interim invoices from agents for ongoing Heads of Terms negotiations are being submitted to the Applicant and are being paid. The Applicant has agreed fee caps with statutory undertakers in respect of discussions regarding Protective Provisions.
- 1.48 Mr Chris Banham raised concerns regarding contact and engagement as a landowner. The Applicant advised that engagement had taken place with the Banham family on cable routing. After the close of the Hearing the Applicant offered a site meeting with Mr Banham and his agent (Mr Giles Johnston) to discuss site specific matters, which the Applicant is pleased to report that Mr Banham agreed to and arrangements are being made for that site meeting. Mr Johnston had previously advised the Applicant that he was instructed to represent Mr Banham and therefore Heads of Terms specific to Mr Banham were sent directly to Mr Johnston.
- 1.49 Revised Heads of Term were sent to land agents and affected persons in September 2015. The Applicant is still awaiting substantive comments on the Heads of Terms from 2 land agents present at the Hearing. The Applicant is of the opinion that a lack of agreement on private treaty discussions is not for want of trying on the Applicant's part.
- 1.50 The Applicant was thankful to the various parties for raising matters at the Hearing, noting that many points were being raised with the Applicant for the first time, particularly in respect of the negotiations.
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- 1.51 Mr Simon Randle for Lincolnshire County Council referred to the Agricultural Land Drainage note submitted by the Applicant for Deadline 2 (Appendix 26 of the Applicant's Deadline 2 response) and the extract of route change requests contained within that note. The table referred to in the Agricultural Land Drainage note is an extract from a more detailed table in the Site Selection & Design Report (Table 6.3 of document reference 8.17). The table in the Site Selection & Design Report provides more detail such as map sheet references, grid references, and change requests not related to land-use. The report also provides an explanation of when changes to the proposed development were made as a result of consultation, how changes were requested and how change requests were assessed. For example, paragraphs 6.3.30 to 6.3.36 summarise the 2014 Cable Route Consultation.
- 1.52 The Applicant notes that during the Hearing on Onshore Issues including Construction on 17 December 2015, Mr Jacob Hain for the Applicant gave a summary of the Applicant's extensive consultation to date, including consultation with landowners. During that summary by Mr Hain, Boston Borough Council spoke of the Applicant's exemplary role in engaging with Boston Borough Council during the development of the Triton Knoll Electrical System.

Item 7 - Oral representations from affected persons

- 1.53 A number of landowners and/or their representatives made submissions regarding the contact they have had with the Applicant. The Applicant's response to the general points raised was summarised by the Applicant prior to the close of the Hearing, as set out in Item 6 above.

Item 8 - Objections to compulsory acquisition - the need for a permanent easement

- 1.54 The Applicant confirmed that the consent for the offshore array (The Triton Knoll Offshore Wind Farm Order 2013) to which the proposed development would connect, is not time limited. It is possible therefore, that due to Government policy or otherwise, the limit-limited lease for the offshore array will need to be extended. The proposed development will need to remain in situ and operational for the duration of the offshore array and, depending upon decommissioning requirements relevant at the time, may be required to remain in situ indefinitely rather than being removed. While ever the proposed development is in situ, there must be corresponding rights. The Applicant has not therefore limited the term of the easement.
- 1.55 Similarly, for so long as the proposed development is in operation it will be necessary to retain rights to gain access to it for the purposes of maintenance and to protect it from damage/interference. As noted above, the Applicant does not know what future decommissioning requirements will be. If the infrastructure is removed it may be possible for certain rights to be terminated. However, it is not currently possible for the Applicant to confirm which (if any) rights may be terminated.

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- 1.56 The Applicant explained that it is important for all parties, particularly landowners, to ensure that the associated rights endure for as long as the infrastructure is in situ, otherwise there may be a question as to responsibility for, and/or liability in connection with, it. This includes the rights sought by the Applicant for the operation and maintenance accesses, the easement and the restrictive covenant.
- 1.57 It was suggested by counsel for the LIG that it is industry practice to seek a lease for underground cable infrastructure and only to seek the compulsory acquisition of a permanent easement in the development consent order by way of a fall back in the event it is necessary to secure rights against any other third parties that may come to light. The Applicant explained that, whilst the promoters of a limited number of other projects may have sought to secure necessary rights by way of leases, there are a significant number of consented projects, such as Gwynt y Mor, Teeside A&B, Galloper and Creyke Beck, for which the promoter has been granted compulsory purchase powers to acquire rights by way of an easement and has negotiated the same by private treaty. The approach is not, as has been suggested, wholly unusual, but is in fact very common.
- 1.58 Counsel for the LIG submitted that, had the Applicant sought to negotiate a lease rather than a permanent easement, such a lease would have been accepted long ago. Mr Johnston, on behalf of the LIG also confirmed that in his view the decommissioning requirements could be addressed by way of abandonment provisions in a lease. The Applicant explained that it is not possible to compulsorily acquire a lease and the Applicant must be able to ensure that the necessary rights can be compulsorily acquired in the event that private agreements for acquisition of all of the necessary rights over the Order land cannot be concluded. Paragraph 25 of the *Guidance related to procedures for the compulsory acquisition of land* published in September 2013 is clear that where proposals would entail the compulsory acquisition of many separate plots of land (such as for long, linear schemes) it may not always be practicable to acquire by agreement each plot of land. Where this is the case it is reasonable to include provision authorising compulsory acquisition covering all the land required at the outset. The Applicant's approach accords with this guidance. The Applicant also explained that it had to ensure that the rights acquired would be in a form satisfactory to an OFTO. Were there to be a 'patchwork' approach to the nature of the rights procured along the cable corridor, this creates a risk of incompatible rights and a rights 'gap' which would not be accepted by an OFTO and could prejudice the delivery of the proposed development.

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- 1.59 The Applicant does not accept that it has not sought to negotiate these and other points of concern raised by landowners and other interested parties. However, for the reasons set out in the Applicant's response to the ExA's written question CA 1.5, the Applicant considers that it is necessary to secure the acquisition of rights, and the imposition of restrictive covenants, by way of an easement. Given landowners' strong preference for a lease rather than a permanent easement, the Applicant undertook to review whether time-limited rights by way of a lease would deliver the necessary rights for the construction, operation, protection, maintenance and decommissioning of the proposed development. This issue remains under consideration and the Applicant will report on progress at deadline 4.
- 1.60 The IDB's raised concerns that the proposed restrictive covenant will prevent them from carrying out their duties, while acknowledging that they are in discussions with the Applicant regarding the practical effect of the restrictive covenant and the negotiation of protective provisions. Counsel for the IDBs indicated that he had made written submissions regarding proposed amendments to the draft Order. These are not yet before the Examination and therefore the Applicant makes no comment on these matters at this stage. Negotiations are however continuing between the Applicant and the IDBs on the rights required and on protective provisions.

Item 9 - Category 3 persons

- 1.61 The Applicant explained that Part 2 of the Book of Reference (document reference 4.3) contains the names and addresses of those whose land, while not directly affected by the proposed development, may be entitled to claim compensation for loss resulting from the implementation of the Order and use of the proposed development, as per section 57(4) of the 2008 Act. These persons are referred to as "Category 3" persons.
- a) A person is within Category 3 if the Applicant thinks that, if the order as sought by the application were to be made and fully implemented, the person would or might be entitled-
 - b) as a result of the implementing of the order,
 - c) as a result of the order having been implemented, or
 - d) as a result of use of the land once the order has been implemented, to make a relevant claim.
- 1.62 Category 3 is split into two sections, those potentially able to make a Section 10 claim under the Compulsory Purchase Act 1965 and those potentially able to make a claim under Part 1 of the Land Compensation Act 1973.

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- 1.63 The names and addresses listed in the section 10 claim column relate to those parties who have a right of access over farm access tracks which are affected by the proposed cable corridor or by the use of the operation and maintenance tracks. Whilst unlikely that these parties will be able to substantiate a section 10 claim due to the provision of temporary crossing points, there may be some interference during the construction.
- 1.64 The Applicant confirmed to the ExA that it did consider whether there were any potential section 10 claimants outside of the Order land, but the pattern of landownership and the route of the corridor is such that the majority of neighbouring landowners are already noted elsewhere in the Book of Reference.
- 1.65 There are no names listed under the column for potential Part 1 claimants. The Applicant confirmed that it had been informed by the results of the environmental assessment in reaching this view. The two potential physical factors which have any potential to cause a reduction in value of property are noise and vibration. Both have been evaluated and the conclusions are that the effects during the operation of the proposed development will be minimal on neighbouring properties. See further Table 11-7 of Volume 3, Chapter 11 of the ES (document reference 6.2.3.11).

Item 10 - The draft Order

Restrictive Covenant

- 1.66 A number of landowners and statutory and non-statutory undertakers (including the IDBs) raised concerns regarding the imposition of restrictive covenants.
- 1.67 While the Applicant acknowledges these concerns and has undertaken to revisit the drafting of the restrictive covenants in consultation with various interested parties, the Applicant explained that the imposition of restrictive covenants to protect apparatus from interference and/or damage and to protect members of the public from associated injury is industry practice and is necessary here. Restrictive covenants have, for example, been included in other recent development consent orders such as the Rampion Offshore Wind Farm Order 2014 and The East Anglia ONE Offshore Wind Farm Order 2014.
- 1.68 The Applicant also notes that it is standard practice for statutory undertakers such as National Grid to impose similar restrictions (please see the attached National Grid guidance regarding underground cables).
- 1.69 The Applicant explained that Paragraph (a) of the restrictive covenant seeks to prevent anything being done on the relevant land parcels for the purpose of the erection of any buildings or construction, erection or works of any kind including the foundations or footings thereto. This is a critical requirement to protect the integrity of the cables and to ensure that they can be easily accessed for the purpose of maintenance and repair.

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- 1.70 Paragraph (b) of the restrictive covenant seeks to prevent the construction of hard surfaces on the relevant land parcels without the consent of the Applicant. Again, this restriction is imposed to protect the integrity of the cables and to ensure that they can be easily accessed for the purpose of maintenance. The Applicant's consent can however be sought for such activities and, where the Applicant is satisfied that the proposed works do not pose a risk, such consent will be readily given.
- 1.71 Paragraph (c) of the restrictive covenant seeks to prevent excavations or other agricultural practices from being undertaken on/in the relevant land parcels below a depth of 0.6m from the surface of the land, without the consent of the Applicant. The purpose of this restriction is to protect the apparatus from interference and/or damage and to protect members of the public/landowners from associated injury. Concerns have been raised by the landowners and IDBs that this would prevent the installation of and maintenance of drainage systems. This is not at all the Applicant's intention.
- 1.72 The Applicant welcomed the feedback that had been received from the parties on the terms of the restrictive covenant and will liaise with the parties with a view to discussing the nature of the activities which the various bodies and/or landowners may need to undertake on the land, and where necessary will revisit the terms of the proposed restrictive covenant accordingly. However, it is imperative that the restrictive covenant provides the necessary protection for the proposed development.
- 1.73 Paragraphs (d) and (e) of the restrictive covenant were not discussed at the CA hearing but the Applicant notes that the risks associated with the planting of deep rooted plants and shrubs above the installed infrastructure was considered at the Landscape and Visual hearing on 18th November. There was also discussion at the Socio-economic hearing on 19th November concerning the inter-relationship between landowner drainage systems and the proposed restrictive covenant.

Item 11 - Compelling case in the public interest for the land to be acquired compulsorily, including (a) The overall need for the project

- 1.74 The ExA invited parties to comment on whether there was a need for the proposed development. Counsel for the LIG opined that in order to satisfy the tests in section 122 of the 2008 Act, the Applicant must demonstrate that there is a compelling case in the public interest for the compulsory acquisition of land (or rights over land) and that it is not sufficient to demonstrate that there is a compelling case for the project.
- 1.75 The Applicant did not have the opportunity to respond to this point at the hearing. For the avoidance of doubt, Section 122 of the 2008 Act sets out two conditions which must be met to the satisfaction of the Secretary of State before compulsory acquisition can be authorised. The first relates to the purpose for which compulsory acquisition is sought. In addition to establishing the purpose for which compulsory acquisition is sought, section 122 requires the Secretary of State to be satisfied that there is a compelling case in the public interest for the land to be acquired compulsorily.

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- 1.76 Paragraph 13 of the DCLG guidance titled “*Guidance related to procedures for the compulsory acquisition of land*” published in September 2013 (“the 2008 Act Guidance”) explains that for this second condition to be met, the Secretary of State will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired.
- 1.77 Paragraph 14 of the 2008 Act Guidance goes on to explain that in determining where the balance of public interest lies, the Secretary of State will weigh up the public benefits that a scheme will bring against any private loss to those affected by the compulsory acquisition. The Applicant therefore considers that the compelling case for compulsory acquisition, as elucidated in paragraph 14 of the 2008 Act Guidance, is inextricably linked to the case/need for, and benefits of, the project in respect of which the compulsory powers are sought.
- 1.78 The need for the proposed development is explained in the Planning Statement (document reference 8.4). In summary:
- 1.78.1. There is an urgent need for new (and particularly low carbon) energy Nationally Significant Infrastructure Projects (“NSIPs”) to be brought forward as soon as possible and certainly in the next 10 to 15 years. New renewable energy projects need to continue to come forward urgently to ensure that the UK meets its target of sourcing 15% of its total energy from renewable sources by 2020 (required by the 2009 EU Renewable Energy Directive) (EN-1 paragraph 3.4.1). This means that 30% of electricity will have to come from renewables. Offshore wind is expected to provide the largest single contribution towards the 2020 renewable energy generation targets (EN-1 paragraph 3.4.3).
- 1.78.2. Given the level and urgency of need for such infrastructure, EN-1 makes clear that the Secretary of State should start with a presumption in favour of granting consent to applications for energy NSIPs unless any more specific and relevant policies set out in the relevant NPS clearly indicate that consent should be refused (EN-1 paragraph 4.1.2).
- 1.78.3. The proposed development is integral to the delivery of the Triton Knoll Offshore Wind Farm with an installed capacity of up to 900 MW. This will make a substantial contribution to the 2020 renewable energy generation target and meeting the need as set out in the NPS for new renewable energy NSIPs.

Item 12 - To establish that the land is required for the development to which the development consent relates or is required to facilitate, or is incidental to, that development and is for a legitimate purpose, including:

(a) The width of the cable corridor

- 1.79 The Applicant's case for the compulsory acquisition of land and rights over land is clarified in the Compulsory Acquisition Case Clarification Note at Appendix 17 to the Applicant's Response for Deadline 3.
- 1.80 Appendix 28 of the Applicant's Response for Deadline 2 comprised a clarification paper titled '*Onshore Export Corridor Requirements- Explanatory Note*'. As explained in the paper, the Applicant already has consent for the Triton Knoll Offshore Wind Farm array and is seeking consent for up to six cable circuits (offshore and onshore) to deliver a capacity of up to 900 megawatts from the offshore array into the interface point at the existing Bicker Fen National Grid substation. The ExA did not examine at the CA Hearing the need for up to 6 cable circuits to be consented. This was considered further in the Onshore ISH and at the Socio-Economic ISH and the Applicant's hearing summary for each refers (Appendix 3 and Appendix 5 respectively).
- 1.81 The Applicant is taking a proportionate approach to land acquisition in respect of the rights required to construct, use, access and maintain the cable corridor. The Applicant therefore proposes to take temporary possession of the proposed cable corridor for the purposes of constructing and laying the underground permanent cables and associated equipment ("the Temporary Construction Corridor"). The Temporary Construction Corridor is required to be up to 60m at any point. As a result the Applicant is seeking authority to take temporary possession of a 60m-wide cable corridor.
- 1.82 The Applicant explained that it will only seek to acquire permanent rights (by way of easement and restrictive covenant) as are reasonably required for the continued operation and maintenance of the proposed development. The Easement will sit within the 60 m width of the Temporary Construction Corridor; its width is determined by various factors including the installation method (i.e. trenched or trenchless), micro-siting around constraints and the location of the cable joint pits and link boxes, the number of cables required, and the need to have adequate separation distances between them.

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- 1.83 The Applicant explained the final width requirement of the Easement is not yet known due to the complexity of installing 6 circuits and the need to undertake detailed pre-construction surveys. The precise location of any ground conditions or features and the construction techniques to be used will not be identified until the detail design stage and may be amended during construction. Until then, it is not possible to specify the precise arrangement of the cables within the Temporary Construction Corridor therefore the Applicant requires the flexibility to accommodate additional trenchless crossings to allow micro-siting around constraints. For example, if there is an obstruction, it will be necessary to divert the cables around it, thereby taking up a greater width.
- 1.84 Furthermore, where directional drilling is undertaken (see the location of trenchless crossing points is set out in the *Crossing Schedule* (document reference 8.3) and *Crossing Schedule Plans*, Appendix 5 of the Applicant's Response to Deadline 1), this results in the cables being buried at a deeper depth. This has implications for electrical capability, in that greater separation distances are required between the cables to minimise heat interaction and maintain cable rating. Directional drilling also necessitates greater separation between cables to facilitate safe installation during drilling operations.
- 1.85 In response to the ExA's question of how wide a "normal" installation might be, the Applicant confirmed that if the haul road is in the centre of the corridor, as illustrated in Appendix 1 to the *Onshore Export Corridor Requirements- Explanatory Note*, the easement width could be approximately 38-40m. The Applicant also clarified the need for the protective buffer zone.

(b) The required footprint for the intermediate electrical compound and the onshore electricity footprint

- 1.86 The ExA requested clarification as to how the Applicant had determined the proposed footprint for the Intermediate Electrical Compound ("IEC"), for which freehold acquisition is sought. The Applicant summarised the position at the CA hearing. The Applicant confirms that the use of AC technology requires the construction of an IEC to take some of the reactive power out of the cables so that sufficient power can be maintained along the entirety of the cable route. There are two different technology choices available for the IEC: Air Insulated Switchgear (AIS) and Gas Insulated Switchgear (GIS). AIS technology uses open air to isolate components; GIS technology uses pressurised gas to isolate components. Generally, AIS is less compact than GIS, due to the physical requirements of using open air to isolate equipment. Nevertheless, both technologies require associated equipment to form the whole IEC installation.

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- 1.87 Whilst the two technologies may therefore result in different configurations in terms of the footprint of the buildings which will house the IEC, the area of proposed freehold acquisition of land for the IEC goes beyond that which is required for the substation. This is a result of the difference in the overall function of the IEC compared to the substation; as well as the need to install drainage systems for the IEC; the need to allow access for maintenance purposes; and the requirement for appropriate landscaping and fencing of the entire IEC area. As a result, the overall footprint of the IEC is not determined solely by the choice of switchgear, and it will be the same overall footprint in both cases.
- 1.88 Freehold acquisition of the IEC site will ensure that the Applicant (and its successors) has the necessary exclusive possession and level of control of the land required for the safe operation and maintenance of this technically complex installation which will include a variety of above ground equipment (switchgear, busbars, transformers, capacitors, reactors etc.) and which could pose a potential hazard to members of the public.

(c) How the applicant intends to use the land which it is proposed to acquire, including the eventual use of land where compulsory acquisition has been applied for, for example, on land larger than that required for the work or to provide flexibility

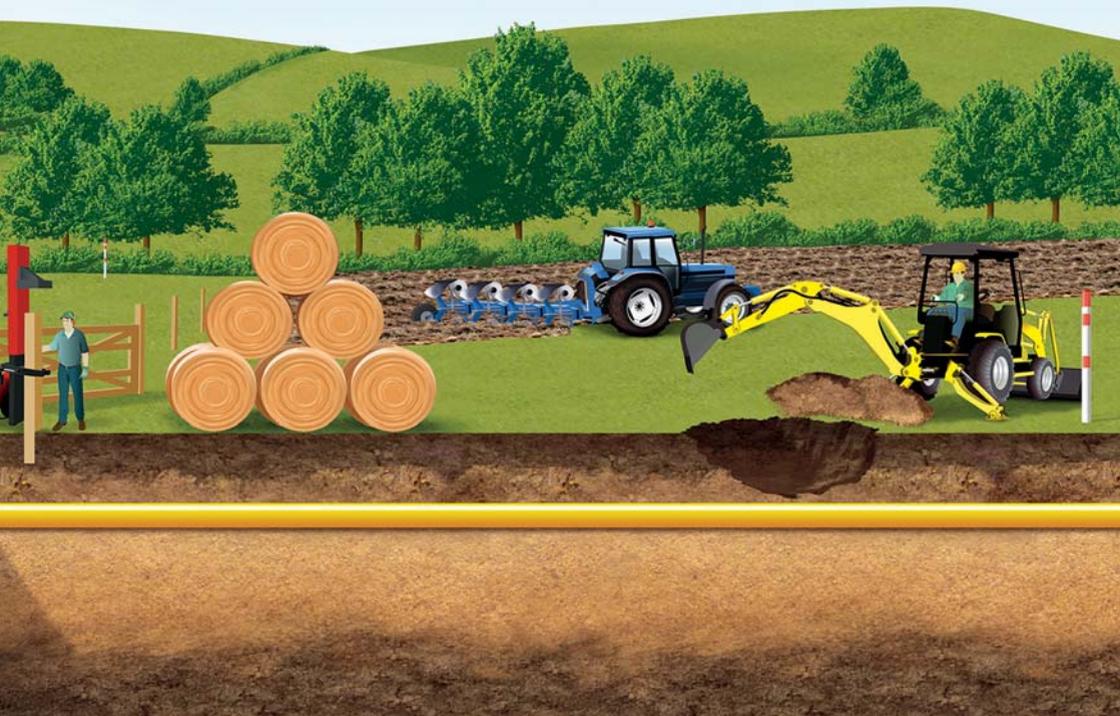
- 1.89 Note: The remaining items on the ExA's CA Hearing Agenda were postponed.

Annex A – National Grid ‘Dial before you dig’ guidance

nationalgrid

Dial before you dig

Your at-a-glance guide



Seven steps

Pipeline safety advice for farmers, landowners, occupiers and contractors

YOUR AT-A-GLANCE GUIDE TO WORKING NEAR GAS PIPELINES

- 1** Routine agricultural activities, including ploughing (to a depth of 0.5m max), are permitted.
- 2** Always contact National Grid before putting in any new drainage and clearing out ditches.
- 3** Always call National Grid before installing fencing and gate posts to a depth greater than 0.5m.
- 4** Ground cover should not be reduced or increased, or materials stacked or stored above gas pipelines.
- 5** Remember, gas marker posts can be accidentally moved, pipelines change direction and may not always run in straight lines between posts.
- 6** Written approval must be gained from National Grid before you plant trees or shrubs on the easement strip above a gas pipeline.
- 7** If necessary or requested, a technician will visit the site to locate and mark out the pipeline, and advise on what works can and can't be done safely. This is a FREE service.



to stay safe

tractors

IT'S FREE
... to ask for
advice if you
are not sure

DON'T CUT CORNERS... DIAL BEFORE YOU DIG

Other than routine agricultural activities, **DO NOT CARRY OUT** work in the vicinity of a pipeline without the consent of National Grid.

Please remember to supply:

- clearly identifiable plan, site grid references or postcode
- works start date
- contact details
- details of planned work

Please give as much notice as possible, ideally 14 days.

We will check the location of any assets in the vicinity of the proposed works.

You will then be sent a map showing the pipeline's location.



If you are planning to do work near or in the vicinity of a pipeline, call Plant Protection on

0800 688 588*

*CALLS WILL BE RECORDED AND MAY BE MONITORED

SELF SERVICE FOR PLANT ENQUIRIES:

www.beforeyoudig.nationalgrid.com

This is a free online enquiry service giving results within minutes from a grid reference, postcode or street name. This site allows you to submit enquiries about activities and work that you are planning, which may have an impact on the National Grid Gas Distribution and Transmission Gas and Electricity Networks.

www.linerearchbeforeudig.co.uk

This is a free online enquiry service giving instant results from a grid reference, postcode or street name. If your result is within a National Grid zone of interest, you can click directly through to www.beforeyoudig.nationalgrid.com

NOTE: Linesearch service is not available for all National Grid Pipelines. Therefore, please click on the National Grid link or call Plant Protection to ensure you have all the available information.

nationalgrid

EMERGENCY

If you hit the pipeline, whether the damage is visible or not, or in the event of an emergency, call the National Gas Emergency Service immediately on

0800 111 999*

*CALLS WILL BE RECORDED
AND MAY BE MONITORED

IF YOU ARE PLANNING TO DO WORK NEAR OR IN THE VICINITY OF A PIPELINE PLEASE CONTACT THE PLANT PROTECTION TEAM ON:

☎ 0800 688 588*

✉ plantprotection@nationalgrid.com

✉ National Grid Plant Protection

National Grid Block 1

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