



## **Triton Knoll Electrical System**

**Planning Inspectorate Reference: EN020019**

**Representations made by  
the Environment Agency for Deadline 4  
Unique Reference Number: 10031799**

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The Environment Agency's (EA) submission for Deadline 4 consists of the following:

**Section 1** - comments on the revised draft Development Consent Order (DCO) – revision D

**Section 2** – Answers to the Examining Authority's second written questions

In addition, we would like to take this opportunity to advise you of our wish to attend the Issue Specific Hearings on 19-22 January 2016 in respect of local impacts, compulsory acquisition and the draft Development Consent Order.

## **Section 1 - comments on the revised draft Development Consent Order (DCO) – revision D**

### **Part 1 – 2. Interpretation**

We welcome the deletion of the exclusion of ‘remedial work in respect of any contamination or other adverse ground conditions’ from the definition of ‘commence’. The deletion of this phrase goes part way to resolving our representations on this issue and securing the EA’s regulatory position in respect of consultation on any contamination encountered and remediation scheme proposed to deal with it.

### **Schedule 9 – Part 2**

**Condition 14, Bathing Water Status** – we welcome the inclusion of the condition for a scheme to protect the Bathing Water Quality Directive status should the intertidal cable installation works take place during the bathing water season.

## Section 2 – Answers to the Examining Authority’s second written Questions

Please find below answers to the questions specifically directed to the EA and also questions where we believe we have relevant information to assist the Examining Authority.

Question Number	Topic Heading/Respondent	Question	EA response
DCO 2.13	<p><i>Article 6 – Application and modification of legislative provisions</i>  <b>The Applicant</b></p>	<p>The <i>Written Summary of the Applicant’s Oral Case put at DCO Issue Specific Hearing on the 12 November 2015</i> [REP3-037] states that you have noted the need to secure agreement from the relevant bodies to the disapplication of legislation, as set out in the Additional Consents Document [APP-121] and that you are engaged in ‘ongoing’ discussions on this.</p> <p>Provide a statement on the outcome of, or if strictly necessary the progress with, these discussions.</p> <p>The ExA reminds the Applicant of the importance of obtaining these agreements.</p>	<p>As mentioned in paragraph 4.81 of the SoCG (dated October 2015 submitted at Deadline 1) the EA has no objection to the principle of the inclusion of Article 6 <i>Application and modification of legislative provisions</i> in the draft DCO and will agree to this <b>subject to</b> the agreement of suitable Protective Provisions within Schedule 8, part 1 of the DCO.</p> <p>Also see response to CA 2.21 below.</p>
DCO 2.27	<p><i>means of controlling unexpected contamination</i>  <b>The Applicant</b>  <b>The Environment Agency</b></p>	<p>The <i>DCO Schedule of Amendments Explanatory document</i> [REP3-047] states that the Applicant and the Environment Agency remain in discussions regarding the appropriate means of controlling unexpected contamination within the draft DCO.</p> <p>Provide an agreed statement on the outcome of, or if strictly necessary the progress with, these discussions.</p>	<p>The EA remains of the opinion that dealing with unsuspected contamination is not an issue that can be adequately dealt with through the Code of Construction Practice (incorporated within the Construction Environmental Management Plan) and that an additional Requirement in the DCO is needed. This point has now been agreed with the Applicant. However, there remains a disagreement on the form of wording that the Requirement should take.</p> <p>On 23 December 2015 the applicant provided us with an amended form of wording (amended from that requested by the EA in its Written Representation at paragraph 2.5) for the additional Requirement. The EA has largely agreed to the amended wording with the exception of</p>

			<p>the timing of when the EA should be consulted on any remediation scheme.</p> <p>It is the Applicant's preference to include (and undertake) consultation with the EA prior to formal submission of any scheme to the relevant planning authority. We understand that their preferred form of wording is to be included in the revised draft of the DCO to be submitted today for Deadline 4.</p> <p>It is the EA's preference that the relevant planning authority undertakes the discharge in consultation with the EA, i.e. following formal submission. The reason we request this is because the Applicant would be under no obligation to take on board our pre-submission comments/advice. Additionally, with the reference to consultation with the EA prior to submission, there would then be no legal obligation on the relevant planning authority to consult us (this is not the type of development listed in Schedule 4 of the Town and Country Planning (Development Management Procedure) Order 2015) and take our comments into account in determining the application. It is our opinion that to secure our regulatory position under the correct consultation process, the following wording should be included in the DCO:</p> <p><i>(1) If, during any stage of the authorised development, contamination not previously identified, or addressed within the relevant code of construction practice, is found to be present within the Order limits then no further development in the vicinity of the contamination 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 <u>in</u></i></p>
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			<p><u>consultation with the Environment Agency.</u></p> <p>(2) <i>The scheme must include an investigation and assessment report, prepared by a specialist consultant notified in advance to the relevant planning authority, to identify the extent of any contamination and the remedial measures to be taken 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 site.</i></p> <p>(3) <i>No remedial work identified in accordance with paragraph (2) is to be carried out until the scheme has been approved.</i></p>
DCO 2.34	<p><i>Schedule 9 – proposed new Condition 14</i>  <b>The Environment Agency</b>  <b>The MMO</b>  <b>East Lindsey DC</b></p>	<p>The <i>DCO Schedule of Amendments Explanatory document</i> [REP3-047] states that the condition relating to bathing water quality has now been agreed by the MMO and is included as a new condition 14 of the dML.</p> <p>i) To the MMO  Signify that you have agreed the wording of this proposed new Condition;</p> <p>ii) To the EA  Comment on whether the wording of this proposed new Condition satisfies your request for the inclusion of a requirement relating to the Bathing Water Directive;</p> <p>iii) To East Lindsey DC  Comment on the acceptability and wording of this proposed new Condition</p>	<p>The EA confirms that the new Condition now included within the deemed Marine Licence (as Condition 14) satisfies its request for the inclusion of a requirement relating to the Bathing Water Directive.</p>

CA 2.21	<p><i>Statutory Undertakers</i>  <b>The Applicant</b>  <b>Environment Agency</b>  <b>Drainage Authorities</b>  <b>Network Rail</b>  <b>Infrastructure</b>  <b>National Grid Gas</b>  <b>plc</b>  <b>National Grid</b>  <b>Electricity plc</b>  <b>Anglian Water</b>  <b>Canal &amp; River Trust</b></p>	<p>The draft DCO [REP3-043] contains the following draft Protective Provisions at Schedule 8:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> The Environment Agency</li> <li><input type="checkbox"/> Drainage Authorities</li> <li><input type="checkbox"/> Network Rail Infrastructure</li> <li><input type="checkbox"/> National Grid Gas plc</li> <li><input type="checkbox"/> National Grid Electricity plc</li> <li><input type="checkbox"/> Anglian Water</li> <li><input type="checkbox"/> Canal &amp; River Trust</li> <li><input type="checkbox"/> Electricity, gas and sewerage undertakers and</li> <li><input type="checkbox"/> Operators of electronic communications code networks.</li> </ul> <p>According to the <i>Statements of Common Ground Summary and Index</i> [REP3-049], protective provisions remains an issue with Anglian Water Services, the Canal &amp; River Trust and the Environment Agency. Provide a statement on Protective Provisions indicating the status of each in terms of the achievement of, or progress towards, final agreement and indicating whether it is intended that provisions will be agreed with any other body.</p>	<p>The EA is continuing to discuss the detail of the Protective Provisions with the Applicant and the relevant Drainage Authorities. These are progressing towards an agreed format – the Applicant was sent draft provisions on 23 December 2015, which included many areas of common ground. However, these were sent with the caveat that until discussions regarding the restrictive covenants/land issues are concluded we reserve the right to request further amendments to them if necessary.</p> <p>We are now awaiting feedback from the Applicant on the draft provisions provided.</p> <p>Also see answer to DCO 2.13 above.</p>
CA 2.22	<p><i>Statutory Undertakers</i>  - s.127 and s.138  <b>The Applicant</b></p>	<p>Provide an update, jointly with affected Statutory Undertakers where possible, on the position on s.127 and s.138 showing where agreement has been reached and representations withdrawn.</p>	<p>The EA is a statutory undertaker within the meaning at s.127 of the Planning Act 2008. We are currently in discussions with the Applicant regarding the acquisition of 3 plots of freehold land held by the EA. These negotiations are progressing and we do not see any impediments to this, <b>subject to</b> the EA securing continued access to this land to enable it to undertake flood defence maintenance works when required. However, I can confirm that as yet we are not able to withdraw our representations on this matter.</p>

<p>EOn 2.9</p>	<p><i>Flood risk</i>  <b>The Applicant</b>  <b>The Environment Agency</b></p>	<p>In their written representations for Deadline 3, both Mr Bowler [REP3-006] and Bicker Parish Council [REP3-019] state that the Environment Agency has confirmed increased flood risk due to closure of pumping stations.</p> <p>i) Is this correct?</p> <p>ii) If so,</p> <p>a) are you satisfied that the increased risk is acceptable?</p> <p>b) are you satisfied that the increased risk will be properly managed?</p> <p>c) how will this be achieved and</p> <p>d) show where the draft DCO provides adequate security that risks in this respect will be properly and effectively managed</p>	<p>The EA is currently undertaking the Black Sluice Catchment Works project to examine the way that flood risk management is currently undertaken in this river catchment. Our flood model for this project has shown the area of land affected by different scales of flooding with and without the Black Sluice Pumping Station in Boston. The model outputs show very little difference in the flood extents during scenarios for a 1 in 10 chance and a 1 in 100 chance of flooding happening in any one year. Most settlements in the catchment are on the high ground, with 16 homes shown in the lowland area that had the potential to be affected by the changes in the flood extent. We have surveyed thresholds of all 16 of these properties, all of them are above the 1 in 100 chance flood level with the pumps switched off, and so are not at high risk of flooding in either scenario.</p> <p>The decision as to whether the pumping station will be closed has not yet been made. Three of the five pumps are not currently working due to damage sustained during the December 2013 floods. However, all five pumps are at the end of their working life and it is estimated that it would cost approximately £15-20 million to refurbish the pumping station.</p> <p>Notwithstanding the above, the Applicant's flood risk assessment (FRA) has been undertaken in accordance with the requirements set out in the Overarching National Policy Statement for Energy (EN-1). This requires consideration of "<i>both the potential adverse and beneficial effects of flood risk management infrastructure.....together with the consequences of their failure</i>" (paragraph 5.7.5). The Applicant's FRA addresses the issue of possible failure of the pumping station in paragraphs 4.8.2-3. The FRA has also</p>
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			<p>demonstrated that there will be no increase in flood risk to third parties elsewhere in the catchment as a result of the proposed development.</p> <p>Consequently, the EA can confirm that:</p> <ul style="list-style-type: none"> <li>i) It is currently considering the future options for flood risk management in the Black Sluice catchment and decommissioning of the pumping station is one option being considered. If this option is taken forward it would lead to a slight increase in the flood extents.</li> <li>ii) <ul style="list-style-type: none"> <li>a) the increased risk has no bearing on the Project as the failure of the pumping station has already been considered by the Applicant's supporting FRA.</li> <li>b) the FRA has demonstrated that adequate mitigation will be incorporated into the proposal, in line with national planning guidance.</li> <li>c) this will be achieved through the setting of appropriate finished floor levels of the substation using topographical surveys, to be undertaken post consent, and the setting of critical infrastructure above the extreme (0.1% event + climate change) flood level.</li> <li>d) the FRA forms part of the Environmental Statement, which is secured as part of the certified plans under Article 35 and the finished floor levels will be agreed through the discharge of Requirement 5(5).</li> </ul> </li> </ul>
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