



# Triton Knoll Offshore Wind Farm Limited Triton Knoll Electrical System

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**Appendix 30: Note on proposed  
modifications to form of  
Restrictive Covenant**

**Date: 5<sup>th</sup> January 2016**

**Appendix 30 of the Applicant's  
response to Deadline 4**

Triton Knoll Offshore Wind Farm Limited

## Triton Knoll Electrical System

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to form of Restrictive Covenant

Appendix 30 of the Applicant's response to  
Deadline 4

Date: 5<sup>th</sup> January 2016

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## 1. INTRODUCTION

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- 1.1 This Note sets out the modifications which Triton Knoll Offshore Wind Farm Limited (“the Applicant”) proposes to make to the form of restrictive covenant included in Schedule 5 of the draft Development Consent Order (“Order”), to address concerns raised by the Land Interest Group (“LIG”), Environment Agency (“EA”), Internal Drainage Boards (“IDBs”) and Lincolnshire County Council (in its capacity as landowner and local highways authority- (“LCC”).
- 1.2 As explained in section 3 below, a modified form of covenant has been provided for discussion purposes to the LIG, EA, IDBs and LCC. The Applicant is actively seeking feedback from those parties on the revised terms.

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## 2. THE PROPOSED RESTRICTIONS

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- 2.1 The Applicant is seeking rights which will restrict the way in which parties with an interest in the land can use or carry out certain activities. The proposed restrictions will bind anyone with an interest in the land at the date that they are imposed (including freehold owners and lessees) and will 'run with the land', i.e. they will bind successors in title to those owners or interests.
- 2.2 The proposed restrictions (which are set out in the first row of column (2) of each part of the table at Schedule 5 of the Order) are proposed to be imposed on the parcels of land which are listed in the first row of column (1) of each part of the table, if the Applicant is unable to secure a private treaty agreement with the relevant landowner. The same rights are being sought by the Applicant in the private treaty agreements it is seeking with the landowners.
- 2.3 The form of restrictive covenant originally proposed is as follows:

**A restrictive covenant over the land for the benefit of the remainder of the Order land to-**

- a) *prevent anything being done in or upon the land or any part thereof for the purpose of the erection of any buildings or construction erection or works of any kind (including the foundations or footings thereto);*
- b) *prevent anything to be done by way of hard surfacing of the land with concrete of any kind or with any other material or surface whatsoever without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed if the proposed surfacing would not cause damage to the relevant part of the authorised project nor make it materially more difficult or expensive to maintain the authorised project);*
- c) *prevent anything to be done by way of excavation of any kind or agricultural practices (including but not limited to ploughing) exceeding 0.6 metres in depth in the land or any activities which increase or decrease ground cover or soil levels in any manner whatsoever without the consent in writing of the undertaker save as are reasonably required to be carried out by National Grid in order to exercise their rights in relation to their apparatus within the land;*
- d) *prevent the planting or growing within the land of any trees, shrubs or underwood without the consent in writing of the undertaker (such consent not to be unreasonably*
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*withheld or delayed provided that the proposed trees, shrubs or underwood would not cause damage to the relevant part of the authorised project nor make it materially more difficult or expensive to access the relevant part of the authorised project;*

- e) *prevent anything being done in or upon the land or any part thereof which shall or may interfere with the exercise of the other rights set out in this Schedule 5 or the use of the authorised project or in any way render the authorised project or any part thereof in breach of any statute or regulation for the time being in force and applicable thereto.*

- 2.4 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 any other works requiring foundations or footings which may damage or prevent access to the proposed development for the purpose of maintenance. 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.
- 2.5 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.
- 2.6 Paragraph (c) of the restrictive covenant seeks to prevent without the prior consent of the Applicant 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, and/or activities which alter the ground cover or soil level. 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.
- 2.7 Paragraph (d) of the restrictive covenant seeks to prevent the risk of damage associated with the planting of deep rooted plants and shrubs above the installed infrastructure. The Applicant's view is that the protection of the cables, both for system integrity and for the safety of the public, is paramount in determining what restrictions are required in proximity to the cables. Deep rooted species have the potential to affect the integrity of the cable ducts and ultimately the cables themselves, should roots grow between or under ducts. Over time, strong root systems in deep rooted species can heave cable ducts and disrupt cable joints and can crush cable ducts and affect the integrity of the cable sheath and ultimately the cable core. Should this occur the presence of deep root systems is likely to increase the complexity of the remedial

action required. In addition larger trees, if felled by wind throw, provide the potential to expose the cable ducts should the root plate topple and bring large amounts of soil with it.

- 2.8 Paragraph (e) seeks to prevent any works which may render the authorised project or any part of it in breach of any statute or regulation for the time being in force and applicable.

### 3. PROPOSED MODIFICATIONS TO THE FORM OF RESTRICTIVE COVENANT

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#### Paragraph (a)

Concern raised	Proposed Modification
This paragraph would appear to prohibit any works upon land.	Covenant re-worded to prohibit specified activities <i>unless</i> the Applicant's consent is obtained
As above	Prohibition on "works of any kind" limited to intrusive works such as the construction of foundations and footings

#### Paragraph (b)

Concern raised	Proposed Modification
The LIG has raised a concern that this paragraph would prevent the repair of existing farm access tracks, and the laying or re-laying of hard core surfaces, without the Applicant's consent.	Covenant amended to make it clear that it does not relate to existing hard surfacing or works consisting of the laying or re-laying of hard core surfaces/tracks that do not involve manholes, access chambers or other access points on the surface of the land
Inclusion of reference to expense is not appropriate.	Reference to expense removed- " <i>materially more difficult or expensive to maintain the authorised project</i> " changed to " <i>materially more difficult to access or maintain the authorised project</i> "

### Paragraph (c)

#### Concern raised

The EA, IDBs and LCC (in its capacity as local highway authority) have raised concerns that paragraph (c) would prevent them from carrying out their statutory functions

The LIG has raised concerns that paragraph (c) would prevent farmers from draining their land and carrying out day-to-day agricultural activities without obtaining the Applicant's prior consent

#### Proposed Modification

Works reasonably required to be carried out by a body exercising its statutory functions or statutory rights are specifically excluded

Activities specified, which will not jeopardise the physical integrity of the proposed development, and which may be undertaken without the need to obtain the Applicant's prior consent

### Paragraph (d)

#### Concern raised

Paragraph (d) would appear to prohibit cutting vegetation within watercourses and along the bank tops

Inclusion of reference to expense is not appropriate

#### Proposed Modification

Covenant amended to make it clear that it does not relate to existing planting but prohibits new planting or growing without consent (including permitting such growth)

Reference to expense removed- *"materially more difficult or expensive to maintain the authorised project"* changed to *"materially more difficult to access or maintain the authorised project"*

- 3.1 The consolidated modified form of restrictive covenant, which has been provided to the LIG, EA, IDBs and LCC for their comment, is as follows (no changes are proposed to paragraph (e) of the covenant as it is essential that the Applicant can at all times comply with the relevant regulatory framework):

***A restrictive covenant over the land for the benefit of the remainder of the Order land to-***

- a) *prevent anything being done in or upon the land or any part thereof for the purpose of:*

- i. the erection of any buildings; or*
- ii. the construction, erection or works of any kind requiring foundations, footings or other supporting structures;*

*without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed if the proposed building, erection, construction or works would not cause damage to the relevant part of the authorised project nor make it materially more difficult to access or maintain the authorised project);*

- b) *(b) prevent anything to be done by way of hard surfacing of the land with concrete of any kind or with any other material or surface whatsoever without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed if the proposed surfacing would not cause damage to the relevant part of the authorised project nor make it materially more difficult to access or maintain the authorised project) provided that the undertaker acknowledges that:*

- i. the laying of new hard core access tracks will not require the consent of the undertaker where no manhole(s), access chamber(s) or other access points serving the authorised project are located on the surface of the land; and*
- ii. the maintenance or repair of pre-existing hard surfacing, hard core surfaces or tracks with the same or equivalent surface or material will not require the consent of the undertaker where no manhole(s), access chamber(s) or other access points serving the authorised project are located on the surface of the land;*

- c) *prevent mole draining or the mudding out of dykes (i.e. the removal of silt sediment) or anything to be done by way of excavation of any kind or agricultural practices*

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*exceeding 0.6 metres in depth from the surface of the land or watercourse, land drain, ditch or agricultural field drain or river bed (a “Watercourse”) (as applicable) or any activities which increase or decrease ground cover or soil levels in any manner whatsoever without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed if the proposed activity would not cause damage to the relevant part of the authorised project nor make it materially more difficult to access or maintain the authorised project, with such consent being subject to such reasonable conditions as the undertaker may require) PROVIDED THAT:*

- i. the preceding restrictions in this paragraph (c) shall not apply to National Grid or any other body exercising statutory functions or statutory rights within the land;*
  - ii. ploughing and sub-soiling not exceeding 0.6 metres in depth from the surface of the land shall not require the consent of the undertaker;*
  - iii. flushing of land drainage systems, maintenance of outfalls and culverts of land drainage systems, clearance of vegetation (by use of machinery or by hand), and the operation of existing land drainage systems shall not require the consent of the undertaker;*
- d) prevent the planting or growing (including permitting growth) within the land of any trees, shrubs or underwood without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed provided that the proposed trees, shrubs or underwood would not cause damage to the relevant part of the authorised project nor make it materially more difficult to maintain or to access the relevant part of the authorised project) provided that the growing within the land of any pre-existing trees, shrubs or underwood will not require the consent of the undertaker;*
- e) prevent anything being done in or upon the land or any part thereof which shall or may interfere with the exercise of the other rights set out in this Schedule 5 or the use of the authorised project or in any way render the authorised project or any part thereof in breach of any statute or regulation for the time being in force and applicable thereto.*