



Triton Knoll Offshore Wind Farm Limited Triton Knoll Electrical System

Appendix 37: Joint Statement between Triton Knoll Offshore Wind Farm Limited, Black Sluice Internal Drainage Board, Lindsey Marsh Drainage Board and Witham Fourth District Internal Drainage Board

Date: 5th January 2016

Appendix 37 of the Applicant's Response to Deadline 4

Triton Knoll Offshore Wind Farm Limited

Triton Knoll Electrical System

Appendix 37: Joint Statement between Triton Knoll Offshore Wind Farm Limited, Black Sluice Internal Drainage Board, Lindsey Marsh Drainage Board and Witham Fourth District Internal Drainage Board

Appendix 37 of the Applicant's Response to Deadline 4

Date: 5th January 2016

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

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

www.rweinnogy.com/tritonknoll

Drafted By:	TKOWFL
Approved By:	IDBs /TKOWFL
Date of Approval:	05/01/2016
Revision:	1.0

Triton Knoll
Offshore Wind Farm Limited
**Copyright © 2015 RWE
Innogy UK Ltd**
All pre-existing rights reserved

TABLE OF CONTENTS

1. Introduction	4
2. Watercourse Crossing Depth and Construction Method	6
3. Restrictive Covenants and Protective Provisions	9
4. Relevant Documents	10

1. Introduction

- 1.1 Triton Knoll Offshore Wind Farm Limited (the Applicant) and Black Sluice Internal Drainage Board, Lindsey Marsh Drainage Board and Witham Fourth District Internal Drainage Board (the IDBs) have been in consultation since the Application for a Development Consent Order (DCO) for the Triton Knoll Electrical System (TKES) (the Application). Initial consultation was undertaken for the purpose of working toward an agreed Statement of Common Ground (SoCG) reflecting the discussions and agreements reached between the parties through the EIA Evidence Plan process (document reference 8.16). This post-application consultation and the examination process have identified a number of issues, which the Applicant and IDBs are in discussion on.
- 1.2 The following submissions have been made by the Applicant or the IDBs (or both) in relation to those issues:
- Deadline 1 – Draft SoCG between the Applicant and the IDBs setting out initial agreements carried over from the EIA Evidence Plan process, and matters under discussion in relation to crossing depths of ordinary watercourses and safe working depths – submitted by the Applicant as Appendix 32.
 - Deadline 2 – Draft SoCG between the Applicant and the IDBs (version 2 of that submitted to Deadline 1) with the addition of further comments from the IDBs on restrictive covenants and protective provisions – submitted by the IDBs.
 - Deadline 3 – Joint Statement between the three IDBs submitted following the Compulsory Acquisition Hearing held on 13th November 2015, setting out their issues and providing further detail of the operational aspects that are carried out under their statutory function (Table 1 of the Statement) – submitted by the IDBs.
 - Deadline 3 – Written Summaries of the Development Consent Order, Compulsory Acquisition and Issue Specific hearings held between the 12th – 19th November 2015 set out the Applicant’s general position in relation to some of the matters addressed in the IDBs Deadline 3 Statement – submitted by the Applicant as Appendices 2-5.

Purpose of the document

- 1.3 The Applicant and IDBs met to discuss the outstanding matters on 3rd December 2015; the purpose of this document is to provide the Examining Authority (ExA) with an update on the matters which were discussed and the next steps which are being taken in order to work towards resolving those matters.
- 1.4 This document has been drafted between the Applicant and the IDBs, and to that end is a Joint Statement. The Applicant and IDBs will revisit the draft SoCG once the
-

matters in discussion set out in this Statement have progressed to the extent that agreement has been reached. The SoCG will be re-submitted in finalised form at the appropriate deadline.

- 1.5 The matters set out in this Statement reflect those raised in the IDBs submission to Deadline 3 and the discussions at the meeting held on the 3rd December 2015. The Applicant has also provided a response to some specific matters, relating to some of the Application documents, set out in the IDBs submission to Deadline 3.

Statutory Undertaker Position

- 1.6 The Applicant and IDBs briefly clarified the position of the IDBs as a statutory undertaker and agreed that, whilst they are not statutory undertakers for the purpose of section 127(8) of The Planning Act 2008 (the 2008 Act), they are a statutory party under section 88(3)(c) of the 2008 Act, and have statutory duties under the Land Drainage Act 1991. The pertinent statutory duties and powers under the Land Drainage Act 1991 are further set out in section 2 of the IDBs submission to Deadline 3.
- 1.7 As the IDBs have statutory responsibility for certain drains and watercourses in the vicinity of the TKES works Protective Provisions have been included within Schedule 8, Part 1 of the draft DCO (revision D submitted to Deadline 3) that would regulate the way the Applicant carries out its works.

Disapplication of Legislative Provisions

- 1.8 Article 6 *Application and modification of legislative provisions* of the draft DCO (document reference 3.1) provides for the disapplication of section 23, and any byelaws made under section 66 of the Land Drainage Act 1991. The IDBs shall be able to confirm that there is no objection in principle to the inclusion of Article 6 in the draft DCO, and thereby agree to the disapplication of the legislative provisions relevant to them under the Land Drainage Act 1991, subject to the agreement of suitable Protective Provisions within Schedule 8, Part 1 of the draft DCO and to the resolution of issues in relation to the restrictive covenants within Schedule 5 of the draft DCO. The IDBs shall provide written confirmation of agreement to the disapplication of legislative provisions at the appropriate time.

2. Watercourse Crossing Depth and Construction Method

2.1 The Applicant is committed to crossing all IDB-maintained watercourses¹ at a minimum depth of 2m plus safe working depth, which has been confirmed to be 0.9m. This commitment is secured through paragraph 5.8 – 5.9 of the Outline Construction Method Statement (CMS) (document reference 8.7.1) and Requirement 14(1)(a) of the draft DCO (revision D submitted to Deadline 3). The Applicant is also committed to crossing these using trenchless techniques as secured in the Crossing Schedule (document 8.3, revised and submitted as Appendix 45 of the Applicant's response to Deadline 4) and Requirement 5(9) of the draft DCO (revision D submitted to Deadline 3).

Other Ordinary Watercourses

2.2 The IDBs do not object to open cut techniques, but consider that some ordinary (non IDB maintained) watercourses will be too deep for this method, and that 2m plus 0.9m can easily be achieved by directional drill. Other than those ordinary watercourses affected by highways or other existing infrastructure and those included in the Crossings Schedule, the IDBs consider that the Applicant has not yet identified which ordinary watercourses will be directional drilled (due to depth and other factors stated in 2.5). The IDBs view is that due to the relatively shallow proposed depth of the cables over open countryside they will not be able to construct completely new watercourses, so improvement of the drainage network will in effect be restricted to the existing watercourse layout of both IDB-maintained and ordinary watercourses. In addition, due to the generic nature of the proposed clearances under watercourses, the IDBs are unable to accept 1m plus 0.9m as they do not know where future improvement may be required. It is considered that insufficient clearance will restrict land owner or IDB improvement if IDB adoption is required. IDBs may need to adopt watercourses for drainage and flood defence improvements to accommodate existing drainage/flood defence needs plus future demands such as climate change, development, environmental, health and safety, or other issues.

2.3 All other ordinary watercourses² are currently identified to be crossed at a minimum depth of 1m plus safe working depth (0.9m) using either open cut trenching or

¹ and ² "Ordinary Watercourse" is a watercourse that does not form part of a main river (under the meaning given in the Water Resources Act 1991). An ordinary watercourse may be actively maintained by an IDB as part of their managed network, these are referred to as 'IDB-maintained watercourses'. Alternatively an ordinary watercourse could be maintained by the landowner, and these are referred to as 'other ordinary watercourses'. It should be noted that the IDB's statutory duties and powers under the Land Drainage Act 1991 extend to both the IDB-maintained watercourses and all other ordinary watercourses.

trenchless techniques. The IDBs have, however, requested that these also be crossed at a minimum of 2m, plus 0.9m safe working depth. The Applicant and the IDBs discussed the reasons for this request in more detail at the meeting on the 3rd December 2015. The primary reason given by the IDBs is to ensure that all other ordinary watercourses can be deepened and widened to accommodate changes in run-off, for example from where a new development has been constructed; and to allow for unknown increases in volume, most likely as a result from the impacts of climate change.

- 2.4 The Applicant has taken the further information provided on this and is in the process of reviewing the implications associated with agreeing to this request. It is the Applicant's position that the technical difficulty, health and safety considerations and wider environmental impacts increase significantly when crossing at a greater depth using open cut trenching techniques. These are associated with the trench depth which would need to be reached in order to get the cables installed at a minimum of 2.9m and the extent to which the trench would need to be shored up, to ensure it is safe working environment; these concerns were discussed further during the meeting held on 3rd December 2015. The Applicant explained to the IDBs that if the depth were committed to it would be likely that the majority of the other ordinary watercourses would subsequently be crossed using trenchless techniques in order to avoid the technical difficulties; the Applicant therefore needs to be satisfied that this commitment is sufficiently justified and will respond to the points made in the IDBs case once the review of information is complete.
- 2.5 It should be noted that some of the other ordinary watercourses will, in any event, be crossed using trenchless techniques where they lie close to other assets, e.g. a road or railway. These are set out in the Crossing Schedule (Appendix 45 of the Applicant's response to Deadline 4). In these instances, where multiple adjacent assets can be crossed as a group, a minimum depth of 2m, plus 0.9m safe working depth, could be achieved below other ordinary watercourses owing to the likelihood that the depth of those group crossings will be inherently greater than this; and that such a depth can be achieved using trenchless techniques. The Crossing Schedule identifies those other ordinary watercourses which are grouped in a trenchless crossing by assigning them the same 'crossing group ID' as the larger assets being crossed.
- 2.6 It should also be noted that, whilst the Application allows for the option of either open-cut trenching the other ordinary watercourses or for crossing them using trenchless techniques, it is anticipated that at some of those other ordinary watercourses (not associated with a crossing group) may be crossed using trenchless techniques due to other factors such as ground conditions and other engineering or environmental constraints. If a trenchless crossing was required, a minimum depth of 2m plus 0.9m safe working depth could also be achieved at these other ordinary watercourses. Retaining the flexibility for either open-cut trenching or trenchless techniques within the consent is however important, as the method of construction will not be determined until further ground investigation surveys are completed pre-construction; these will
-

inform the detailed design. The Applicant cannot confirm at this stage the extent of other ordinary watercourses which may fall in to this category as this will be determined with the main contractor for the onshore works at detailed design stage.

- 2.7 Appendix 44 of the Applicant's submission to Deadline 4 identifies the areas where trenchless techniques have been committed to and identifies indicatively where it is likely that open-cut trenching will be used; and where either open cut trenching or trenchless techniques could be used, depending on the results of pre-construction surveys and detailed design.

3. Restrictive Covenants and Protective Provisions

Restrictive Covenants

- 3.1 The Applicant has confirmed to the IDBs that, where they do not have an interest in the land (i.e. they are not the landowner, tenant or occupier), they are not bound by the restrictive covenants and therefore their statutory duties will not be impeded.
- 3.2 The IDBs are however concerned that, at present, this is not clearly stated in the restrictive covenants; and that the Book of Reference (document reference 3.1) currently identifies them as the reputed owner of a number of plots over which the restrictive covenants do apply but they have confirmed that they do not have a land interest in. The Applicant and the IDBs discussed this matter in the meeting on the 3rd December 2015 and the Applicant is reviewing the restrictive covenants, and the Book of Reference, in order to provide the IDBs with further confirmation that where they have no land interest the restrictions will not impede their statutory duties. The Applicant will provide the IDBs with a response and will update the ExA on progress on this matter at the appropriate time.
- 3.3 The Applicant notes that Witham Forth District IDB does have land interests in a number of plots and therefore will be bound by the restrictive covenants; the Applicant is therefore reviewing the restrictive covenants in relation to those plots in order to ensure the IDB's statutory duties are not affected.

Protective Provisions

- 3.4 The IDBs have provided comments on the drafting of the Protective Provisions and have indicated that further comments will follow. The Applicant will review these and provide a response to the IDBs in order to work towards agreed drafting.
- 3.5 The Applicant and IDBs discussed the 'hierarchy' of the powers provided for in the Articles of the draft DCO and the provisions made in Protective Provisions. The IDBs have sought clarity on how these sit together and interact with the IDBs statutory powers; the Applicant is preparing a note explaining the relationship between the Articles of the DCO and the Protective Provisions. The note will be provided to the IDBs for consideration. The Applicant and IDBs will update the ExA on further discussions on this matter as appropriate.

4. Relevant Documents

4.1 Paragraph 4.8 of the IDBs submission to Deadline 3 highlights some comments on some of the Application documents. The Applicant has provided a response to these comments/queries below.

- Requirement 5(11) of the draft DCO

The IDBs submission to Deadline 3 stated:

“The numbers refer to the works numbers in Schedule 1 Part 1 to the draft DCO, but it is unclear how they relate to the numbers set out in the crossing schedule.”

The Applicant’s response

The reference numbers set out in the Crossing Schedule are linked to each asset or obstacle which is to be crossed; these can be identified in Appendix 5 of the Applicant’s submission to Deadline 1 *Crossing Schedule Plan*. The reference in the draft DCO is to the works numbers in Schedule 1, Part 1, these can be identified in the Works Plans (document reference 2.2). The works numbers are a mechanism for separating out the different “works” which the DCO provides for; any asset identified in the Crossing Schedule (and the associated Plan) will sit within one of the works listed in Requirement 5(11).

- Crossing Schedule (document reference 8.3)

The IDBs submission to Deadline 3 stated:

“There is an error in the crossing schedule. Drain Reference No. DK 202, named as Steeping River South Delph, is listed as a Witham Fourth IDB watercourse. The watercourse at the grid reference specified is a non IDB maintained watercourse within the Lindsey Marsh IDB district.”

The Applicant’s response

The Applicant notes this and is submitting a revised Crossing Schedule, as Appendix 45 of the Applicant’s response to Deadline 4, which corrects it and which shows the Works No.’s which each crossing sits within, following a request in EOn 2.7 of the ExA’s second written questions.

- Outline Construction Method Statement (document reference 8.7.1)

The IDBs submission to Deadline 3 stated:

“The IDB request that the words in bold [a minimum of two metres underneath the bottom of any Internal Drainage Board owned or maintained drain, and any flood defence] be deleted and replaced with the following: “...2m plus a safe working distance of 900mm beneath the hard bed of all watercourses”.”

The Applicant's response

The Applicant notes this request and can confirm that the Outline CMS will be updated to secure the safe working depth of 0.9m. The Applicant cannot commit to any updates in relation to crossing depths of all watercourses (as this includes all other ordinary watercourses) until the matters set out in section 2 of this Statement have been resolved. Details of any further updates needed to the Outline CMS will be highlighted to the ExA as necessary and an updated document will be submitted at the appropriate deadline.