



Triton Knoll Offshore Wind Farm Limited Triton Knoll Electrical System

**Appendix 10: Response to
submission from National
Farmers' Union and the
Lincolnshire Association of
Agricultural Valuers at Deadline
3**

Date: January 2016

**Appendix 10 of the Applicant's
Response to Deadline 4**

Triton Knoll Offshore Wind Farm Limited

Triton Knoll Electrical System

Appendix 10: Response to submission from National Farmers' Union and the Lincolnshire Association of Agricultural Valuers at Deadline 3

Appendix 10 of the Applicant's Response to Deadline 4

Date: 5th January 2016

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TABLE OF CONTENTS

1. Written Summary of Oral Submissions at the Compulsory Acquisition Hearing on 13th November 2015	4
Oral representations from affected persons	4
Objections to compulsory acquisition	5
Whether there is a compelling case in the public interest for the land to be compulsorily acquired	5
Whether the land is required for the development to which the development consent relates or is required to facilitate or is incidental to that development	6
Whether all reasonable alternatives to compulsory acquisition have been explored	6
To seek to establish that the proposed interference with the rights of those with an interest in the land is necessary and proportionate, including with reference to Protocol 1 Art. 1 of the European Convention on Human Rights	6
2. Written Representation on the Issue Specific Hearing – Socio Economic Issues on 19th November 2015	8
Cable route	8
Joint Bays	10
Cable depth	11
Crops	11

1. Written Summary of Oral Submissions at the Compulsory Acquisition Hearing on 13th November 2015

1.1 The National Farmers' Union and the Lincolnshire Association of Agricultural Valuers (NFU and LAAV) submitted a Written Summary of Oral Submissions at the Compulsory Acquisition Hearing on 13th November 2015. The Written Summary raised a number of specific matters regarding the proposed development. The Applicant's response is below and uses the same headings as used in the Written Summary namely:

1. Oral representations from affected persons
2. Objections to compulsory acquisition
3. Whether there is a compelling case in the public interest for the land to be compulsorily acquired
4. Whether the land is required for the development to which the development consent relates or is required to facilitate or is incidental to that development, including:
 - a. The width of the cable corridor
5. Whether all reasonable alternatives to compulsory acquisition have been explored, including:
 - a. The use of alternative methods to achieve the required control over land
6. To seek to establish that the proposed interference with the rights of those with an interest in the land is necessary and proportionate, including with reference to Protocol 1 Art. 1 of the European Convention on Human Rights, including:
 - a. The proposed use of restrictive covenants

Oral representations from affected persons

Level of engagement

1.2 The Representation identified concerns regarding the level of engagement and negotiation in respect of the acquisition of rights over land. The Applicant directs the ExA to its response to Second Written Question **CA 2.2** which addresses these concerns and explains the level of engagement that has taken place, and continues to take place, with the landowners' agents.

Consultation

- 1.3 The Representation also queried the consultation which the Applicant has undertaken. The Applicant summarised the position in respect of negotiations, consultation and engagement at paragraphs 1.36 to 1.52 of Appendix 2 of the Applicant's Response to Deadline 3, the 'Written Summary of The Applicant's Oral Case put at Compulsory Acquisition Hearing on 13 November 2015' [REP3-038]. This sets out the extensive consultation that has taken place in respect of the proposed Triton Knoll Electrical System works.
- 1.4 The Applicant also recently wrote directly to all affected landowners and tenants on the 7th December 2015 inviting them to a series of 4 drop in sessions being held on the 17th and 18th December and 7th and 8th of January, at which a range of specialists from the Applicant's project team would be present to answer any questions. The letter also invited landowners to request a meeting with the Applicant at their property where any further site specific concerns could be discussed.

Form of rights

- 1.5 The Applicant's response to Second Written Question **CA 2.5** explains the nature of the rights sought, in particular the approaches other than a permanent easement considered by the Applicant. As explained in that response, following the Hearings in November 2015 and the first meeting with the NFU and LIG, the Applicant has agreed to progress private treaty discussions with landowners on the basis that Leases of Rights can be procured as an alternative to compulsory acquisition.

Mediation

- 1.6 The Applicant has addressed the matter of mediation in the Applicant's response to **CA 2.4**, including the statement made by Mr James O'Brien referred to in the Representation.

Objections to compulsory acquisition

- 1.7 The Representation reiterates concerns over the form of rights sought. The Applicant would again direct the ExA to the Applicant's response to **CA 2.5**, which explains the nature of the rights sought, and the Applicant's approach to progressing Leases of Rights with landowners. In addition, the Applicant would direct the ExA to the Applicant's response to **CA 2.2**, including the appendix, which addresses the attempts made by the Applicant to negotiate with landowners and where appointed, their agents.

Whether there is a compelling case in the public interest for the land to be compulsorily acquired

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- 1.8 With regards to the assertion made in the Representation that the Applicant was unable to establish a compelling case in the public interest for the land to be acquired compulsorily, the Applicant directs the ExA to paragraphs 1.74 to 1.78 of Appendix 2 of the Applicant's Response to Deadline 3 [REP3-038].
- 1.9 The Applicant would also direct the ExA to the Applicant's response to **CA 2.9** and notes that the ExA reserves the right to examine this further at the Compulsory Acquisition Hearing to be held on 20 January 2015.

Whether the land is required for the development to which the development consent relates or is required to facilitate or is incidental to that development

The width of the cable corridor

- 1.10 With regards to the matters raised in the Representation concerning the width of the cable corridor, the Applicant provided clarification at paragraphs 1.79 to 1.85 of Appendix 2 of the Applicant's Response to Deadline 3 [REP3-038].
- 1.11 In addition, the Applicant is providing a clarification note regarding the requirement for a 60 meter cable corridor for both construction and operation for Deadline 4 (Appendix 29 of the Applicant's response).

Whether all reasonable alternatives to compulsory acquisition have been explored

The use of alternative methods to achieve the required control over land

- 1.12 The Applicant directs the ExA to its response to Question **CA 2.5**, which explains the nature of the rights sought, in particular approaches other than a permanent easement considered by the Applicant. As explained in that response, following the Hearings in November 2015 and the first meeting with the NFU and LIG the Applicant has agreed to progress private treaty discussions with landowners on the basis that Leases of Rights can be procured as an alternative to compulsory acquisition.

To seek to establish that the proposed interference with the rights of those with an interest in the land is necessary and proportionate, including with reference to Protocol 1 Art. 1 of the European Convention on Human Rights

The proposed use of restrictive covenants

- 1.13 As explained in Appendix 2 of the Applicant's response to Deadline 3 [REP3-038], particularly at paragraphs 1.66 to 1.73, the imposition of restrictive covenants to protect apparatus from interference and/or damage and to protect landowners and members of
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the public from associated injury is industry practice and is necessary for the proposed development.

- 1.14 The Applicant would also direct the ExA to the Applicant's response to Second Written Questions **SE 2.9** and **SE 2.10**, which address restrictive covenants and agricultural operations, and the proposed redrafting of the restrictive covenants respectively. **SE 2.10** refers to the discussions on restrictive covenants with the Land Interest Group¹ (LIG), the Environment Agency and the three Internal Drainage Boards.

While the Applicant acknowledges these concerns and has undertaken to revisit the drafting of the restrictive covenants in consultation with various interested parties, 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.

¹ The Land Interest Group is a working party formed from representatives of the National Farmers' Union, the Lincolnshire Association of Agricultural Valuers and the Country Land and Business Association.

2. Written Representation on the Issue Specific Hearing – Socio Economic Issues on 19th November 2015

2.1 The National Farmers' Union and the Lincolnshire Association of Agricultural Valuers (NFU and LAAV) submitted a Written Representation on the Issue Specific Hearing – Socio Economic Issues on 19th November 2015. The Written Representation raised a number of specific matters regarding the proposed development. The Applicant's response is below and uses the same headings as used in the Written Representation namely:

1. Cable route
2. Jointing Bays
3. Cable depth
4. Crops including Field Drainage and Soil Restoration

Cable route

Cable route selection

2.2 The Representation requested further clarification on the route selection in the area of Anderby Creek. The Applicant directs the ExA to the Site Selection and Design Report [APP-117], particularly section 4 'Landfall Selection' and section 6 'Onshore Cable Route Selection And Design' which together with the context provided by the full report explain the selection of Anderby Creek North as preferred landfall and the subsequent evolution of the cable route.

2.3 The Applicant would also direct the ExA to Appendix 5 of the Applicant's response to Deadline 3 'Written Summary of The Applicant's Oral Case put at Socio-Economic Issue Specific Hearing on 19 November 2015' [REP3-041], particularly paragraphs 1.5 to 1.16 where this is explained.

Adequacy of surveys

2.4 The Representation noted that two landowners raised questions about the amount of land surveyed.

2.5 The Applicant refers the ExA to the Applicant's response to **CA 1.15** of the First Written Questions which summarises the agreement that has been reached with the relevant consultees regarding the adequacy of the survey data collected;

“By July 2014, discussions with statutory consultees, including Natural England and Historic England (formally English Heritage), were well progressed and the Triton Knoll EIA Evidence Plan process had commenced. Important elements of these discussions included seeking agreement as to what constituted an appropriate baseline dataset on which to undertake a robust Environmental Impact Assessment and further, what level of surveys could be left until the pre-construction phase.

In relation to onshore ecology surveys, through discussions and negotiations in the EIA Evidence Plan Onshore Ecology Review Panel meetings, it was accepted that the data coverage was acceptable to undertake a robust EIA. This was on the basis of the low level of ecology that had been identified in both desk-top surveys and site surveys where access had been permitted, the geographical spread of land across the study area where access had been permitted and on-site data had been gained and also the uniform nature of the site (large arable fields, dissected by multiple drainage ditches). This was agreed on condition that a detailed pre-construction survey strategy was undertaken. This is confirmed in the Onshore Ecology Review Panel summary sheet which can be found at Appendix I, Annex B of the Triton Knoll EIA Evidence Plan (document reference 8.16).

For onshore historic environment matters, the relevant consultees initially indicated that a full geophysical survey should be undertaken within the Proposed Development Boundary with trial trenching prior to the submission of the application. However, through detailed discussions and negotiations with the relevant consultees, through the EIA Evidence Plan Onshore Historic Review Panel process, with the exception of Lincolnshire County Council², it was agreed that this work could be undertaken at the pre-construction stage and this was secured in Chapter 6 of the Outline Onshore Written Scheme of Investigation (WSI). This is confirmed in the Onshore Historic Environment Review Panel summary sheet, which can be found at Appendix I, Annex C1 of the Triton Knoll EIA Evidence Plan (document reference 8.16). “

- 2.6 The Applicant confirms that the alignment of the cable corridor has evolved significantly over time which has meant that different landowners have been contacted at different times to request access for surveys. The iterative cable route alignment process, detailed in section 6 of the Site Selection and Design Report (APP-117), meant that multiple access requests were made to landowners and occupiers as the onshore

² Lincolnshire County Council Archaeology team was not able to agree that geophysical surveys and trial trenching could be acceptably undertaken at the pre-construction phase. This is an outstanding area of disagreement and is stated in the summary of the Onshore Historic Environment Review Panel summary at Appendix I, Annex C1 of the Triton Knoll EIA Evidence Plan (document reference 8.16), under “*Summary of Current, remaining Areas of Disagreement*”.

cable route went through a period of development and refinement. In addition as different surveys often had different seasonal requirements or methodology repeated requests for access for surveys were made in 2012, 2013 and 2014.

- 2.7 Figures 1 to 3 at Annex 2 of the Statement of Reasons [APP-12] provide the land access status achieved at specific points in 2012, 2013 and 2014 with the final Proposed Development Boundary and survey area overlaid. Figures 4 and 5 indicate the dates at which landowners on the various iterations of the routes were contacted.
- 2.8 In addition, the Applicant would also direct the ExA to Appendix 5 of the Applicant's response to Deadline 3 [REP3-041], particularly paragraph 1.14.

Cable corridor width

- 2.9 The Representation questioned the cable corridor width, in particular in connection with hedgerow crossings and the choice of transmission technology for the cables.
- 2.10 The Applicant directs the ExA to paragraphs 1.17 to 1.19 of Appendix 5 of the Applicant's response to Deadline 3 [REP3-041] which addresses these questions, as well as the Applicant's response to Second Written Question **SE 2.19**.

Nature of Rights sought

- 2.11 In the context of the design life of the proposed development, the Representation questioned the nature of the rights sought by the Applicant. The Applicant's response to Second Written Question **CA 2.5** explains the nature of the rights sought, in particular approaches other than a permanent easement considered by the Applicant.

Occupation of agricultural land

- 2.12 The Representation sought clarification on the length of time agricultural land would be affected by the construction of the proposed development. As explained in paragraphs 1.25 and 1.26 of Appendix 5 of the Applicant's response to Deadline 3 [REP3-041]:

The Applicant reiterated that the length of time spent on any one land holding will depend on the construction programme and when works are commenced on that land and that a number of factors may influence this. The average duration for the construction 'site' to be across any given landholding is 3.5 years. This will however be less in some cases and potentially more in others with a maximum worst case of 54 months.

The Applicant has submitted further clarification on the construction sequence as Appendix 22 of the Applicant's response to Deadline 3 [REP3-058].

Joint Bays

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- 2.13 The Representation referred to the discussion on Joint Bays and Link Boxes at the Socio Economic hearing. The Applicant directs the ExA to paragraphs 1.27 to 1.37 of Appendix 5 of the Applicant's response to Deadline 3 [REP3-041] which clarify these discussions.
- 2.14 In particular, the Applicant reiterated that the siting of the link boxes will be decided in discussion with the landowner and is likely to involve the Agricultural Liaison Officer (ALO).
- 2.15 In addition, the Applicant also directs the ExA to the Applicant's response to Second Written Questions **SE 2.5** and **SE 2.6** which are concerned with the impact of, and location of Joint Bays and Link Boxes. The Applicant's response to Question **SE 2.21** addresses the question of decommissioning of Link Boxes.

Cable depth

- 2.16 The Applicant's response to Question **SE 2.9** of the ExA's Second Written Questions addresses those concerns raised in the Representation in connection with the proposed restrictive covenants and farming operations.
- 2.17 In addition, the Applicant directs the ExA to paragraphs 1.38 to 1.39 of Appendix 5 of the Applicant's response to Deadline 3 [REP3-041] which set out the position explained by the Applicant at the Socio Economic hearing in relation to the proposed restrictive covenants.
- 2.18 In addition, further explanation of the interaction between restrictive covenants and Human Rights is provided in the Applicant's response to **CA 2.10**.

Crops

Field Drainage

- 2.19 The Applicant recognises that the issue of land drainage is of great importance to landowners and is a topic which has been brought to the Applicant's attention through the various rounds of non-statutory and statutory consultation with landowners and other stakeholders as well as through discussions with landowners and their representatives and landowner organisations such as the National Farmers' Union.
- 2.20 The Applicant's responses to Questions **SE 1.11** and **SE 1.12** of the ExA's First Written Questions address concerns with regards to land drainage.
- 2.21 In addition, the Applicant has submitted a clarification paper in relation to land drainage as Appendix 26 of the Applicant's response to Deadline 2 [REP2-026].

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- 2.22 As explained at paragraph 1.42 of Appendix 5 of the Applicant's response to Deadline 3 [REP3-041], the Applicant has insufficient information at this stage to complete a detailed drainage mitigation design for each landowners landholding, but will do this at the pre-construction stage once the detailed design of the electrical system is known, the necessary pre-construction surveys have been undertaken and information from landowners on existing drainage systems gathered. As part of the process of carrying out pre-construction investigations and the liaison to take place with the ALO and the landowners, the Applicant will welcome consideration of alternative approaches to reinstating drainage systems. Managing interactions with drainage systems will be a collaborative process with landowners.
- 2.23 Further clarification on the reinstatement of agricultural land in connection with land drainage is provided at paragraphs 1.52 to 1.56 of Appendix 5 of the Applicant's response to Deadline 3 [REP3-041].
- 2.24 As set out in the Applicants Response to Question and **SE 2.14**, **SE 2.16**, **SE 2.17** and **SE 2.18** of the ExA's Second Written Questions, the Applicant met with the Land Interest Group (LIG) on 3rd and 22nd December 2015 to discuss the key areas of concern regarding the project, including the land drainage works. The Applicant's drainage expert who was present at both meetings, was able to provide more information on the proposals for drainage prior to, during and post construction.
- 2.25 The Applicants Response to Question **SE 2.9** of the ExA's Second Written Questions sets out the Applicant's commitment to ensuring that field drainage is not impacted by the proposed development.
- 2.26 The Applicants Response to Question **SE 2.15** of the ExA's Second Written Questions provides some examples of how the drainage systems could be re-instated.
- 2.27 Detailed requirements relating to land drainage have been provided by the LIG and where appropriate, wording has been included in the Outline Soil Management Plan (Revision B) (Appendix 25 of the Applicant's Response to Deadline 4).

Soil restoration

- 2.28 The Applicant's commitments in relation to the reinstatement of agricultural land are set out in detail in Section 2 of the Outline Soil Management Plan (Revision B) (Appendix 25 of the Applicant's Response to Deadline 4), which is an appendix to the Outline CoCP [APP-198].