



# Triton Knoll Offshore Wind Farm Limited Triton Knoll Electrical System

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**Appendix 26: Development  
Consent Order Schedule of  
Amendments Explanatory  
Document**

**Date: 1<sup>st</sup> February 2016**

**Appendix 26 of the Applicant's  
Response to Deadline 5**

# Schedule of Amendments for Deadline 5

## Explanatory Document

This Document sets out the changes to the draft DCO either specifically requested by consultees or interested parties or proposed by the Applicant to address matters raised at the Hearings in January 2016. Please note that a number of minor amendments have been made to the draft DCO to correct typographical errors, or to ensure consistency with drafting conventions which are not recorded in this table, but are recorded in the Development Consent Order Schedule of Amendments for Deadline 5. The Protective Provisions have also been amended to reflect discussions or where agreed, the final agreed versions. The amendments to the Protective Provisions are not presented in this table.

## Representations

1					
CONSULTEE: ENVIRONMENT AGENCY					
	Date of Response	Section/Paragraph	Comment	Consultee Proposed Revision	Applicant's response
1.1	On-going discussions between the Applicant and the Environment Agency	New Requirement 15 – unexpected contamination	The Environment Agency has requested that the requirement be amended to specify that the relevant planning authority consult with them following the submission of the scheme as opposed to consultation being carried out prior to the submission of the scheme.		<p>The Applicant's position regarding consultation with the EA is that, in line with the process set out in the other requirements in the DCO, the Applicant would consult with the EA prior to submitting the scheme to the relevant planning authority in order to save time post-submission and its expectation being that the relevant planning authority would wish to confirm this itself and would automatically consult with the EA prior to signing off the scheme.</p> <p>However, following the discussion at the hearing the</p>

					<p>Applicant has reviewed the wording of requirement 15 and accepts the suggested amendment of the EA. Requirement 15 now reads-</p> <p><i>"15.—(1) If, during any stage of the authorised development, contamination not identified or address 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 following consultation with the Environment Agency."</i></p>
1.2	5 October 2015 (Deadline 1) [REP1-040]	Schedule 5	"The imposition of such restrictive covenants (particularly covenants a, b, and c) will seriously impede the Environment Agency in carrying out its duties as a statutory undertaker".		The Applicant and EA have agreed the inclusion of a new paragraph '(f)' in the form of restrictive covenant which confirms that nothing in paragraphs (a) to (e) restricts the exercise of statutory functions, statutory powers, statutory rights, statutory duties, statutory responsibilities or statutory obligations.

2					
CONSULTEE: BBC					
2.1	Submissions for D3 dated 20 November 2015	Requirement 18	The Council, in response to the ExA's request for some suggested wording, proposed additional wording to the Applicant for Requirement 18 (now Requirement 19) of the draft DCO (construction traffic).		The Applicant and the BBC have agreed the following wording:-  <i>"19(2) Construction and contractor traffic related to the authorised development shall only use Work No 48 or 49 to access Work Nos 50 to 55 inclusive and the timings for the construction of Work Nos 48 and 49 shall be included within the Construction Method Statement approved as part of the relevant Code of Construction Practice."</i>
3					
CONSULTEE: IDBs					
	Date of Response	Section/Paragraph	Comment	Consultee Proposed Revision	Applicant's Response
3.1	30 November 2015 (Deadline 3) [REP3-001]	Schedule 5	"Paragraph (a) [of the restrictive covenant] would appear to prohibit any works upon its land."		Covenant re-worded to prohibit specified activities <i>unless</i> the Applicant's consent is obtained, and prohibition of "works of any kind" limited to intrusive works. The IDBs have confirmed that they are happy with paragraph (a).
3.2	As above	As above	"Paragraph (d) [of the restrictive covenant] would appear to prohibit cutting vegetation within the		Covenant amended to make it clear that it does not relate to existing planting but prohibits new planting or growing without

			watercourse channel and along the bank tops.”		consent. The IDBs have confirmed that they are happy with paragraph (d).
3.3	As above	Schedule 5	<p>“As presently drafted, the restrictive covenants set out in Schedule 5 would prevent those IDBs that own the land on which a watercourse is situated (in particular, Witham Fourth IDB and perhaps the other two IDBs4) from exercising their statutory powers...</p> <p>...Paragraph (e) is vague in scope and excessively wide in extent and potentially could prohibit the legitimate exercise by Witham Fourth IDB of some or all of its statutory powers.”</p>		The Applicant and IDBs have agreed the inclusion of a new paragraph ‘(f)’ in the form of restrictive covenant which confirms that nothing in paragraphs (a) to (e) restricts the exercise of statutory functions, statutory powers, statutory rights, statutory duties, statutory responsibilities or statutory obligations.
3.4	During discussions pre-Deadline 5	Schedule 5		<p>Addition of the words “hard” and “bed” where shown in bold below:</p> <p><i>(c) prevent:</i>  <i>(i) mole draining or the mudding out of dykes (i.e. the removal of silt sediment); or</i>  <i>(ii) anything to be done by way of excavation of any kind or agricultural practices exceeding 0.6 metres in depth from:</i>  <i>(a) the surface of the land;</i>  <i>(b) the <b>hard bed level</b> of</i></p>	Agreed and included in revised form of covenant.

				<i>the open drain, ditch watercourse or river</i>	
4	<b>CONSULTEE: LCC</b>				
	<b>Date of Response</b>	<b>Section/Paragraph</b>	<b>Comment</b>	<b>Consultee Proposed Revision</b>	<b>Applicant's Response</b>
4.1	During discussions	Schedule 5	Concerns were raised that paragraph (b) of the restrictive covenant would prevent the repair of existing farm access tracks, and the laying or re-laying of hard core surfaces, without 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
4.2	As above	Schedule 5	Concerns were raised that paragraph (c) of the restrictive covenant would prevent farmers from carrying out day-to-day agricultural activities without consent.		Activities specified, which will not jeopardise the physical integrity of the proposed development, which may be undertaken without the need to obtain consent. The Applicant had understood that the LIG had agreed that mole draining and the mudding out of dykes should only be carried out with the consent of the cable operator, to ensure safety. However, the LIG has since advised that it is not willing to agree to that.  Discussions are ongoing with regard to paragraph (c).

5						CONSULTEE: LCC					
		Date of Response	Section/Paragraph	Comment	Consultee Proposed Revision	Applicant's Response					
5.1		30 November 2015 (Deadline 3) [REP3-024]	Article 6		"82. LCC would suggest that Article 6 should contain reference to the " Lindsey County Council (Sandhills) Act 1932""	The Applicant and LCC have agreed the inclusion of a new sub-paragraph (3) in Article 6 (Application and modification of legislative provisions) of the draft DCO to dis-apply the Sandhills Act.					
5.2		As above	Schedule 5	"86. As presently advised the restrictions under the DCO applies to all of the plots of land owned by LCC or under its control as Statutory Authority. There does not appear to be any logical reason for that global approach. There is no reason for the restriction to apply to the public open space, which by its very nature will not be developed or otherwise used in any way likely to interfere with the Applicants interests. As such there is no reason for its imposition."		The Applicant does not accept LCC's contention that because Plot 01/01 is designated as public open space, it will not be developed or used in any way likely to interfere with the authorised project. LCC may wish to undertake works compatible with the use of Plot 01/01 as open space, but which may have the potential to interfere with/damage the proposed development (such as the erection of beach huts/a café/ a visitor centre). The Applicant therefore maintains that it is necessary to impose the restrictive covenant over this land.					
5.3		As above	Schedule 5	"87. Further the covenant has the potential to interfere with		The Applicant has included a new paragraph '(f)' in the form of					

			the Councils lawful duties in respect of highway maintenance, which is not justified.”		restrictive covenant which confirms that nothing in paragraphs (a) to (e) restricts the exercise of statutory functions, statutory powers, statutory rights, statutory duties, statutory responsibilities or statutory obligations.
5.4	As above	Schedule 5	“88. On a more general point the restriction is imposed, according to the Applicants statement to protect its cable as well as the safety of others in the area. Accordingly those restrictions based on the premise that something may be more difficult or costly but not related to safety cannot be justified and should not be imposed.”		Reference to expense has been removed from the restrictive covenant to that <i>“materially more difficult or expensive to maintain the authorised project”</i> reads <i>“materially more difficult to access or maintain the authorised project”</i> .
5.5	As above		“90. The suggestion that the restriction is required to guarantee against tree route damage is without foundation.”		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,

					<p>should roots grown 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.</p> <p>The Applicant's view is that the approach where restrictions would have to be placed on the size of above ground growth, and management of all planting across the cable route would have to be undertaken by landowners to ensure compliance, still creates too great a risk to the integrity of the cables.</p>
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6					
CONSULTEE: MMO					
	Date of Response	Section/Paragraph	Comment	Consultee Proposed Revision	Applicant's Response
6.1	On-going discussions between MMO and the Applicant	Schedule 9 - Condition 5	<p>The dML provides two alternative procedures for notifying the MMO of dropped objects. There is the audit sheets procedure and the dropped objects procedure.</p> <p>The dropped objects procedure is now the preferred procedure of the MMO, and the MMO requested the removal of the audit sheet procedure.</p>		<p>The Applicant recognises that the dropped objects procedure is now the preferred procedure of the MMO, however the audit sheet procedure is the scheme included in the Triton Knoll Array DCO and therefore for consistency between the two DCOs the Applicant would refer to retain the option for both procedures.</p> <p>Condition 5(13) amended and agreed with the MMO as follows:-</p> <p><i>"In the event that any rock material used in the construction of the authorised scheme is misplaced or lost below MHWS, the undertaker must report the loss to the MMO, Trinity House, MCA and UKHO <u>as soon as possible and in any event within 6 hours</u> and if the MMO shall reasonably consider such material to constitute a navigation or environmental</i></p>

					<p><i>hazard (dependent on the size and nature of the material) the undertaker must endeavour to locate the material and recover it."</i></p>
6.2	Letter dated 25 November 2015	Schedule 9 – Condition 13	<p>The MMO have provided an alternative to the current drafting for the applicants.</p> <p>This change to the wording ensures that the burial of the export cable is managed appropriately over the lifetime of the project.</p>	<p><i>A swath bathymetric survey to IHO Order 1a across the area(s) within the offshore Order limits ensure the cables have been buried and located within the Order limits and provide the data and survey report(s) to the UKHO. The results of the post cable lay surveys must be submitted to the MMO as part of a cable burial risk assessment which shall include detail of cable burial management including surveys and reporting of burial depths over the lifetime of the project</i></p>	<p>Revised wording on surveys has been agreed with the MMO and NE and has been included in the revised draft DCO for Deadline 5:</p> <p><i>" 13.—(2)(b) a swath bathymetric survey to IHO Order 1a within 12 months of the completion of the licenced marine activities across the area(s) within the offshore Order limits within which licenced marine activities have been carried out to—</i></p> <p><i>i) ensure the cables have been buried and located within the Order limits; and</i></p> <p><i>ii) provide information on bedform morphology</i></p> <p><i>and the data and survey report(s) are to be provided to the UKHO. The results of the post cable lay surveys must be submitted to the MMO as part of a cable burial risk assessment which shall include detail of cable burial management including surveys and</i></p>

					<p><i>notification of cable exposure over the lifetime of the project.</i></p> <p><i>(c) a subsequent swath bathymetric survey, focused on agreed locations to demonstrate that any changes to bedforms or sediment movement are within the ranges predicted in the environmental statement.</i></p>
6.3	Letter dated 25 November 2015	Article 5	Disagreement between the Applicant and the MMO on the transfer of benefit of the Order.		<p>The Applicant and the MMO have drafted a joint note on the transfer of benefit of the order which has been submitted for Deadline 5.</p> <p>The Applicant and the MMO note each other's respective positions on partial transfers without the consent of the Secretary of State.</p> <p>Article has been amended to delete the additional wording in 5(6) proposed by the Applicant at Deadline 4 at the request of the MMO, and reference to paragraph (6) has been deleted from paragraph (7) to clarify that all transfers take place in accordance with paragraph (1) but subject to paragraph (6).</p>

7 PROPOSED AMENDMENTS IN RESPONSE TO DCO HEARINGS IN JANUARY 2016				
	Hearing Topic and Date	Section/Paragraph	Comment	Proposed amendments
7.1	Local Impacts 19 January 2016	Schedule 1, Part 3 Requirement 12	There was a discussion on AH2.1 of the ExA's Second Written Questions as to whether as drafted, the Written Scheme of Investigation, which is required under Requirement 12 of Schedule 1 of the dDCO, would not necessarily need to be agreed prior to any archaeological works taking place and ensure that the archaeological investigations cannot be carried out until the Written Scheme of Investigation is agreed.	<p>In response to the submissions from both Councils and the representations made at the local impacts hearing of the 19 January 2016, the Applicant has progressed discussions with Historic England and has agreed that Requirement 12(4) should be revised to read:</p> <p>“(1) No stage of the onshore works shall commence until, for that stage, a stage specific written scheme of investigation in accordance with the outline onshore written scheme of investigation has been submitted to and approved by the relevant planning authority.</p> <p>(2) The approved written stage specific scheme must identify areas where archaeological work is required, and the measures to be taken to protect, record or preserve any significant archaeological remains, as defined in the outline onshore written scheme of investigation, that may be found.</p> <p>(3) Any archaeological works must be carried out by a suitably qualified and competent person or body previously notified to the relevant planning authority.</p> <p><del>(4) Pre construction archaeological surveys must be carried out in accordance with the details set out in the outline onshore written scheme of investigation.</del></p> <p><b>(4) Pre-construction archaeological investigations and pre-commencement material operations which involve intrusive ground</b></p>

				<b>works shall only take place in accordance with a specific written scheme of investigation which is itself in accordance with the details set out in the outline onshore written scheme of investigation, and which has been submitted to and approved by the relevant planning authority.</b>
7.2	DCO 22 January 2016	Article 2 – Definition of "external electrical equipment"	The ExA confirmed that they do consider that a definition of "external electrical equipment" would be useful.	DCO amended as follows:-  <i>“external electrical equipment” means any electrical equipment in relation to Work No 9 and /or Work No 50 that is not housed within a building and has been assessed in the environmental statement and is otherwise referred to as “external transmission components” in the environmental statement and “additional electrical infrastructure” in the design principles document.”</i>
7.3	DCO 22 January 2016	Article 2, definition of "limits of deviation"	Two queries were raised - firstly, whether the reference to Order limits plans in the definition should in fact be to the Works plans and secondly whether, given the discussions had at the hearings, the Applicant considered that reference to vertical limits of deviation is required.	The Applicant has reviewed the definition of "limits of deviation" and agrees that the correct reference should be to the works plans. The definition of "limits of deviation" now reads:-  <i>“limits of deviation” – means the situation as shown on the works plans”</i>
7.4	DCO 22 January 2016	Article 9	Lincolnshire County Council (LCC) as the highways authority requested to be consulted and notified in respect of the temporary stopping up of streets.	In respect of temporary stopping up of streets, the Applicant explained that for those works set out in Schedule 3 of the Order, the purpose of Article 9 is to permit those works to be carried out without any further steps being carried out as both the public and LCC, in particular, are aware that such temporary closures may take place through the extensive consultation on the DCO itself. It is the Applicant's position that the process of consultation and notification identified by LCC in their response for Deadline 4 is unnecessary as in these

				<p>circumstances, unlike standard traffic order procedures, LCC is not being asked to determine an application for a traffic order.</p> <p>The Applicant confirmed however, that it would be happy to extend the requirement for notification under Article 9 to LCC.</p> <p>The DCO has been amended as follows:-</p> <p><i>“(3) Without prejudice to the generality of paragraph (1) the undertaker may—</i></p> <p><i>(a) temporarily stop up, alter or divert the streets specified in Columns (1) and (2) of Schedule 3 (streets to be temporarily stopped up); and</i></p> <p><i>(b) in relation to any footpath specified in Columns (1) and (2) of Schedule 3 temporarily stop up, alter or divert the footpath to the extent of the diversion zone for that footpath shown on the public rights of way plans <b>or in respect of any diverted footpath to the extent of the diversion zone agreed with the highway authority.</b></i></p> <p><i>(4) The undertaker shall not temporarily stop up, alter or divert—</i></p> <p><i>(a) any street specified in paragraph (3) without notifying the relevant planning authority <b>and the highway authority;</b> and</i></p> <p><i>(b) any other street without <del>notifying the relevant planning authority</del> <b>the consent of the highway authority</b> which may attach reasonable conditions to any consent <b>and such consent not to</b></i></p>
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				<p><b>be unreasonably withheld or delayed.</b></p> <p><del>save as agreed in advance by the relevant planning authority, any notification under this paragraph must be made at least 14 days prior to the temporary stopping up, alteration or diversion taking place.</del></p> <p><b>(5) Save as agreed in advance by the relevant planning authority any notification under paragraph (4)(a) must be made at least 14 days prior to the temporary stopping up, alteration or diversion taking place.</b></p> <p><b>(6) Any person who suffers loss by the suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.</b></p> <p><del>(5)</del><b>(7) In this article “diverted footpath” means a footpath identified in Columns (1) and (2) of Schedule 3 that has been diverted by the highway authority prior to commencement of the onshore works”</b></p> <p>LCC has confirmed its agreement to these amendments.</p>
7.5	DCO 22 January 2016	New Article 14 - Removal of Human Remains	The ExA's expressed their view that as the proposed development is principally on agricultural land, there is the potential for human remains to be discovered during construction and therefore it would be beneficial to include the model article to provide a process in the even that human remains are discovered.	<p>The Applicant has no evidence to suggest that human remains would be found, but agrees with the ExA that it would be beneficial to include such an article.</p> <p>The Applicant has therefore inserted a new Article 14 Removal of Human Remains that follows the Model Provision, in the draft DCO.</p>

7.6	DCO 22 January 2016	Article 36		For clarity, the Applicant has revised article 36 to include the revision number for the relevant outline plans. These revision numbers will be completed for Deadline 7 when the final revision numbers for these plans are known.
7.7	DCO 22 January 2016	Schedule 1 – Part 3 Requirement 1		For clarification the Applicant has amended the description of the stage for Work No 50 to exclude the enabling works and Work No 9A.  The same amendment has been carried through to the description of the stage of Work No 50.
7.8	DCO 22 January 2016	Schedule 9 – Condition 14	ELDC requested to be included as a consultee along with the EA.	DCO amended accordingly.  <i>“Work No 2 shall not be undertaken between 15 May and 30 September in any year unless a scheme to protect the Bathing Water Quality Directive status, as determined by a review of Environment Agency baseline data prior to construction, has been submitted to and approved in writing by the MMO, following consultation with the Environment Agency and East Lindsey District Council. The scheme must include:[...]”</i>