



Triton Knoll Offshore Wind Farm Limited Triton Knoll Electrical System

**Appendix 11: Updated
Explanatory Memorandum –
Revision B**

Date: 24th February 2016

**Appendix 11 of the Applicant's
Response to Deadline 7**

Triton Knoll Offshore Wind Farm Limited

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Memorandum – Revision B

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Deadline 7

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Offshore Wind Farm Limited
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PLANNING ACT 2008

**THE INFRASTRUCTURE PLANNING (APPLICATIONS: PRESCRIBED FORMS AND
PROCEDURE) REGULATIONS 2009**

THE TRITON KNOLL ELECTRICAL SYSTEM ORDER

EXPLANATORY MEMORANDUM

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1 INTRODUCTION

- 1.1 This explanatory memorandum accompanies the application for development consent by Triton Knoll Offshore Wind Farm Limited (“the Company”) to construct and operate the Triton Knoll Electrical System (“TKES”). The memorandum explains the purpose and effect of each article of, and Schedule to, the draft Triton Knoll Electrical System Order (“the Order”) in accordance with the requirement in regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.
- 1.2 The Order also seeks to confer upon the Company, as the “undertaker”, powers of compulsory acquisition of land or rights over land which are required for the onshore elements of the project or to facilitate them, or that are incidental to them within the meaning of section 122 of the Planning Act 2008 (“the 2008 Act”).
- 1.3 As the Order seeks to apply and modify statutory provisions under section 120(5) of the Planning Act 2008 (the 2008 Act) including in relation to drainage, hedgerows and the compulsory acquisition of land, it has been drafted as a statutory instrument as required under section 117(4) of the 2008 Act.
- 1.4 The Order is based on the model provisions set out in Schedule 1 to the Infrastructure Planning (Provisions) (England and Wales) Order 2009 (“the 2009 Order”) (“the Model Provisions”) as well as relevant precedents. The 2009 Order contains model provisions which were formally prescribed for inclusion in a development consent order under section 38 of the 2008 Act. The former Infrastructure Planning Commission (IPC) was required to have regard to these provisions when exercising its power to make an Order granting development consent. However, the Localism Act 2011 repealed section 38 and removed the need for the decision maker to have regard to the prescribed model provisions in deciding an application. Planning Inspectorate Advice Note 13 ‘Preparing the draft Order and Explanatory Memorandum, April 2012’ explains that the model provisions were intended as a guide for developers in drafting Orders, rather than a rigid structure, but aided consistency and assisted developers to draft a comprehensive set of lawful provisions.
- 1.5 In addition, Advice Note 13 recommends that provisions used in ‘predecessor’ regimes such as for Transport and Works Act Orders or Harbour Empowerment Orders may also be helpful in drafting the development consent order (DCO). An explanation as to whether each provision of the Order is based on the model provisions or a relevant precedent, and the reasons for any differences, is provided. The use of previous, or current, applications as a point of reference in drawing up an Order is also supported by

the guidance from Communities and Local Government on the pre-application process, 'Planning Act 2008 - Guidance on the pre-application process', January 2013.¹

- 1.6 The Order adopts the 'Rochdale Envelope' whereby the maximum permitted consent envelope is provided for and assessed, allowing some of the scheme detail to be approved post-consent. The approval of that detail is provided for within the Requirements in Schedule 1 Part 3 of the Order. Reference is made in the Requirements to the "relevant planning authority", depending upon where the particular works are located this will be either East Lindsey District Council (ELDC) or Boston Borough Council (BBC) for onshore works or the Marine Management Organisation (MMO) for offshore works..

2 PURPOSE OF THE ORDER

- 2.1 The purpose of the Order is to grant development consent for the Triton Knoll Electrical System in order to connect the consented Triton Knoll Offshore Wind Farm to the National Grid. Although the proposed Triton Knoll Electrical System development does not constitute a nationally significant infrastructure project in its own right, to enable the onshore and offshore elements of the system to be progressed through a single application to a single decision-maker, following a request by the Company, the Secretary of State made an order under section 35 of the Planning Act 2008 ("the section 35 direction") on 14 November 2013 that the proposal should be treated as development for which development consent is required.

- 2.2 The section 35 direction states:

"Having considered the details of RWE npower Renewables Limited grid connection proposal as set out in the letter and Supporting Statement the Secretary of State is of the view that this development when considered with the Triton Knoll Offshore Wind Farm is nationally significant....

Accordingly the Secretary of State is satisfied that the proposed grid connection infrastructure is nationally significant.

THE SECRETARY OF STATE DIRECTS that the development, together with any matters associated with it is to be treated as development for which development consent is required."

- 2.3 Copies of the covering letter, supporting statement and the Secretary of State's direction are provided in the Additional Consents document (application document 8.19),

¹ It is acknowledged that this guidance has now been updated (March 2015). Whilst this application has been prepared on the basis of the 2013 guidance the new guidance has been reviewed and the changes are not considered material.

however, in summary, the grid connection infrastructure specified within the section 35 documentation was:

- (a) up to eight export cables approximately 110km long² and associated works including junction bays and transition bays;
- (b) an onshore substation; and
- (c) an intermediate compound.

These works, together with related construction works form the principal development that is the subject of this application.

2.4 In addition to the principal development, the Order authorises associated development. Guidance from the Department of Communities and Local Government, Planning Act 2008: associated development applications for major infrastructure projects (April 2013) sets out at paragraph 5 the principles of associated development. In summary, these are that:

- (a) There is a direct relationship between the main (principal) development and the associated development;
- (b) The associated development is not an aim in itself but is subordinate to the main development;
- (c) The associated development is not an additional revenue source; and
- (d) The associated development is proportionate in scale and nature to the main development.

The TKES Order includes as associated development unlicensed works³ at National Grid's existing substation at Bicker Fen which is the interface connection point for the TKOWF, and temporary highways alterations. These works are considered to be associated development as, in addition to meeting the criteria set out in the Guidance, they are not specified in the s35 direction but are related to and necessary for the principal development. In addition, further associated development required to support the TKES includes ramps, means of access and footpaths, bunds, embankments, swales and landscaping boundary treatments; habitat creation; boreholes; jointing bays, manholes, link boxes and other works associated with the installation of cable ducts and electrical circuits; temporary structures including those needed to facilitate the crossing of watercourses including bailey bridges; temporary construction laydown areas and compounds, including accesses and their restoration; temporary drilling and tunnelling

² Since the s35 direction was made the decision has been taken to only seek consent for 6 export cables and the total final cable length is 122km

³ Which are defined in the Order as "works need to connect the authorised project to the National Grid substation at Bicker Fen that National Grid is not required, pursuant to its transmission licence, to carry out itself, including but not limited to cabling, cable sealing ends, circuit breakers, surge arrestors, dis-connectors, transformers, busbars and busbar clamp measuring equipment, relay marshalling rooms, and electrical earthing works."

compounds and working areas and their restoration; such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised project. The examples of possible associated development in the Order are not exhaustive and other works may be carried out provided they are within the scope of the environmental impact assessment. These works are considered to accord with the guidance set out above.

- 2.5 The Order also authorises ancillary works within the Order limits. These are works that do not constitute development but are required to facilitate the construction of the authorised development.
- 2.6 The Order contains a deemed marine licence under section 66(1) of the Marine and Coastal Access Act 2009 (the 2009 Act) at Schedule 9. There are no model provisions for a deemed marine licence. The licence has been prepared in a structure and style which reflects the main part of the Order, with attached conditions rather than requirements to ensure they are distinct from the main Order. The licence is deliberately drafted to be a stand-alone document (with its own set of definitions) to reflect the fact that it will have a wide distribution post-consent and ensure that any potential variation to the licences are easier to implement. The licence requires a set of plans, schemes and programmes which are approved by the MMO pursuant to the licence conditions, following relevant consultation. Most of the details of the licence will be contained in these plans, schemes and programmes. Licensed activities cannot be commenced until the required approvals are obtained.
- 2.7 Except for an area excluded because of existing minerals extraction rights, the TKES Order limits overlap with those for the Triton Knoll Offshore Wind Farm Order⁴ (“the Array Order”). This has been done because the export cables for the TKES will run from the offshore substation platforms consented as part of the Array Order. As the location of these substation platforms will not be determined until the detailed design of the offshore array is complete, the TKES Order needs to allow for the cables to run from any part of the Array Order Limits. It has been agreed with both the Planning Inspectorate and the MMO that no specific drafting is considered necessary to address this overlap as the TKES Order and deemed marine licence and the Array Order and deemed marine licence authorise separate and distinct works and there is no inconsistency between them.
- 2.8 As noted at paragraph 1.2 above, the Order seeks to confer upon the Company powers of compulsory acquisition of land and rights over land. Sections 131 and 132 of the 2008 Act (as amended) set out certain procedures to be followed where land to be subject to such powers is considered to be open space. (“Open space” for the purposes of the

⁴ SI 2013/1734

2008 Act is defined by reference to section 19 of the Acquisition of Land Act 1981 and section 336 of the Town and Country Planning Act 1990 as “any land laid out as a public garden or used for the purpose of public recreation, or land which is a disused burial ground”.)

- 2.9 The Company proposes to acquire rights over a section of beach at Anderby Creek which is owned by Lincolnshire County Council (“LCC”). The Company accepts, for the purposes of the Order, that it should be assumed that this section of beach forms part of the land designated as public open space pursuant to section 9 of the Lindsey County Council (Sandhills) Act 1932.
- 2.10 The proposed compulsory acquisition of rights over this land (for the purpose of carrying out surveys and installing power circuits) thus engages section 132 of the 2008 Act which provides that Special Parliamentary Procedure is required unless certain exceptions (specified in subsections (3) to (5) of section 132) apply.
- 2.11 By virtue of subsection (3) of section 132, an exception to the requirement for Special Parliamentary Procedure is made out if the Secretary of State is satisfied that the land in question, when burdened by the new rights, will be no less advantageous to the persons in whom it is vested; other persons entitled to rights over it; and to the public at large, than it was prior to their imposition and that fact is recorded in the relevant order.
- 2.12 Although there will be temporary interference with the use of limited areas of the open space during construction, access to the remainder will be maintained, and in the long term, it will remain unobstructed and available for the purposes for which it is currently used.
- 2.13 In view of the above, the Company considers that the open space, when burdened with the new rights, will be no less advantageous to LCC nor the general public than before their imposition. The Company has therefore included a statement in the Order which confirms that the section 132(3) tests have been satisfied.

3 PRELIMINARY

Article 1 Citation and commencement

- 3.1 This article provides for the commencement and citation of the Order. This does not appear in the Model Provisions.

Article 2 Interpretation

- 3.2 This article contains provisions for the interpretation of words and phrases used in the Order.

- 3.3 A number of definitions are included which do not appear in the Model Provisions, but which relate to the specific project and are self-explanatory. In common with many development consent orders, definitions of documents which have been submitted with the application and will be certified by the Secretary of State (for example the environmental statement) in the event that development consent is granted are included.
- 3.4 The definition of “commencement” is based on the wording taken from the Hornsea One Offshore Wind Farm Order 2014⁵. The Company considered the drafting of this definition in the context of the plans and schemes secured by the requirements during the examination and agreed with the relevant consultees that the wording, as drafted, is appropriate to allow certain preliminary works including the removal of hedgerows, and the necessary surveys that will inform the discharge of the requirements, to be undertaken with appropriate controls in place.
- 3.5 The definition of “maintain” which is included is based on the definition of Schedule 2 of the railway model provisions but the scope of the definition is widened to cover adjustment and alteration, and the reconstruction and replacement of the ancillary works. The ability to maintain the works authorised by the Order is limited to the assessment contained in the environmental statement. This wording is taken from the Hornsea One Offshore Wind Farm Order 2014 and the Dogger Bank Creyke Beck Offshore Wind Farm Order 2015⁶.
- 3.6 “Order land” is defined as meaning the land shown on the land plan which is within the limits of land to be acquired or used. Unlike the definition in the Model Provisions, it includes land subject to temporary possession for construction of the authorised project.
- 3.7 Paragraph (3) provides that “any reference in the Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by this Order.” This is intended to improve the clarity of the Order provisions and works plans.
- 3.8 A new paragraph (4) provides that “References in this Order to points identified by letters, with or without numbers, shall be construed as references to points so lettered on the works plans”. This is common in Transport and Works Act Orders and is intended to enhance the clarity of the Order provisions and works plans.

4 PRINCIPAL POWERS

Article 3 Development consent etc. granted by the Order

⁵ SI 2014/3331

⁶ SI 2015/318

- 4.1 This article is based on Model Provision 2 and grants development consent for the authorised development and consent for the ancillary works within the Order limits, thereby authorising the construction of the authorised project. The authorised development means the development described in Part 1 of Schedule 1. Part 2 of Schedule 1 describes the ancillary works. The power to carry out the works is subject to any requirements attached to the Order as set out in Part 3 of Schedule 1. The requirements correspond to planning conditions that would be imposed on the planning permission for development.
- 4.2 Paragraph (2) provides for limits within which the undertaker can deviate in the construction of the works numbered in the Schedule.

Article 4 Maintenance of the authorised project

- 4.3 This article provides the undertaker with a general power to maintain the authorised project, subject to any contradictory provisions in the Order or in any agreement made under the Order. This provision follows Model Provision 3. The definition of maintenance accords with definitions used in the confirmed Hornsea One and Dogger Bank Creyke Beck Offshore Wind Farm Orders.

Article 5 Transfer of Benefit of the Order

- 4.4 This article allows the powers and benefits of the Order to be transferred to others, in whole or in part. The consent of the Secretary of State, following consultation with the MMO, is required if the transfer or grant relates to the deemed marine licence.
- 4.5 Paragraph (5) was included at the request of the Examining Authority, to clarify that Part 4 of the Marine and Coastal Access Act 2009 does not apply to a transfer or grant under paragraph (1).
- 4.6 Paragraph (6) prescribes the circumstances in which the benefit of the provisions of the Order (and any statutory rights) may be transferred without the consent of the Secretary of State under article 5(1). The consent of the Secretary of State is not required for a transfer or grant which (i) is to a body that holds a licence under section 6 of the Electricity Act 1989, or (ii) takes place after expiry of the time limits for claims for compensation (in respect of the acquisition or use of land under the Order), and any such claims have been compromised or withdrawn or compensation has been paid or found not to be payable. Paragraph (7) provides that the MMO must be notified at least 28 days before any transfer pursuant to paragraph (6) takes place. This provision was suggested by the ExA and has been agreed with the MMO in order to provide advance notification of a partial transfer of benefit of the Order. Save for paragraph (7), this article is consistent with those included in other development consent orders such as the Dogger Bank Creyke Beck Offshore Wind Farm Order.

Article 6 Application and modification of legislative provisions

- 4.7 This article provides for the disapplication of certain requirements which would otherwise apply under public legislation in accordance with section 120(5)(a) of the 2008 Act (what may be included in an order granting development consent). That sub-section provides that an Order granting development consent may apply, modify or exclude a statutory provision which relates to any matter for which provisions may be made in the Order.
- 4.8 Paragraph (1) provides for the modification of Regulation 6(1)(j) of the Hedgerows Regulations 1997 to provide that removal of any hedgerow to which the Regulations apply is permitted for carrying out development which has been authorised by a Development Consent Order made pursuant to the 2008 Act.
- 4.9 Paragraph (2) provides for the disapplication of various additional consents which would otherwise be required from the Environment Agency, internal drainage boards or lead local flood authorities under the Water Resources Act 1991 and the Land Drainage Act 1991⁷. These are the requirements for consents to place structures on or over rivers, under the Water Resources Act, the requirement for approval under flood defence and land drainage byelaws made or deemed to be made under the Water Resources Act, the prohibition on placing obstructions in waterways which are not main rivers under the Land Drainage Act and byelaws made under the Land Drainage Act regulating the use and obstruction of watercourses. There are consents for activities which may be a necessary part of the project. The Order disapplies this requirement for in-principle consent in order to ensure that the project can proceed and instead provides for approval of detailed plans in the protective provisions for the Environment Agency and the relevant drainage authorities in Schedule 8.
- 4.10 As these provisions (other than byelaws made under section 66 of the Land Drainage Act) are prescribed under section 150 of the 2008 Act, the consent of the Environment Agency and of the relevant drainage authorities for the purpose of the Land Drainage Act 1991 is needed and these have been sought. The relevant bodies confirmed their consent to the disapplication of this legislation prior to the close of the examination.
- 4.11 Paragraph (3) dis-applies the Lindsay County Council (Sandhills) Act 1932 which (*inter alia*) restricts the disposal of land assumed to comprise open space and the erection of structures upon it.

Article 7 Defence to proceedings in respect of statutory nuisance

- 4.12 This article, which follows article 7 of the Model Provisions, provides that statutory nuisance proceedings shall not be brought under the Environmental Protection Act 1990

⁷ 1991 c.57 and 1991 c.59

in respect of noise, if the noise is created in the course of carrying out or maintenance of the authorised project and for which notice has been given under section 60, or consent obtained under section 61 or 65 of the Control of Pollution Act 1974, or cannot reasonably be avoided.

5 STREETS

Article 8 Streets

- 5.1 This article is based on Model Provision 8 and authorises the Company to interfere with, and execute works in or under the streets specified in Schedule 2 of the Order in connection with the placing, maintaining or moving of apparatus for the purposes of the authorised project. The authority given by this right is a statutory right for the purposes of section 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the New Roads and Street Works Act 1991.

Article 9 Temporary stopping up of streets

- 5.2 This article is based on Model Provision 11 and provides for the temporary stopping up of streets, subject to the consent of the relevant planning authority concerned which may attach reasonable conditions to any such consent or, in the case of the temporary stoppages of those streets specified in Schedule 3 (streets to be temporarily stopped up), on giving notification to the relevant planning authority. Where a footpath is temporarily stopped up a diversion will be provided within the zone identified on the public rights of way plans. This approach has been taken as it is not possible at this stage to identify a specific diversion, and the diversion may need to change as the works in a particular area progress. This follows the approach taken in Article 10 of The North Killingholme (Generating Station) Order 2014⁸. In addition provision is made for circumstances where a footpath may be diverted by the relevant authority prior to works taking place and it is necessary to provide for an alternative diversion zone to accommodate the authorised development. Provision is made for the payment of compensation to any person who suffers loss as a result of the suspension of any private right of way under the article (paragraph 6). This article differs from the Model Provisions in that consultation with the planning authority is not required under paragraph 4. In their consultation responses on the draft DCO, the relevant planning authorities specified that they need only be notified and did not need to approve any additional stopping up. Paragraph 4 provides for notification to the highways authority and was included at its request. It also ensures that their consent, not to be unreasonably withheld or delayed, be obtained for the temporary stopping up of any other streets under paragraph 4(b). New paragraph (5) requires that 14 days' notice be

⁸ SI 2014/2434

given under paragraph (4). These amendments to the Model Provision have been agreed with the relevant planning authorities and the highways authority.

- 5.3 Model Provisions 9 and 10 have not been included in the Order as no streets or other public rights of way will be permanently stopped up under the terms of the Order.

Article 10 Access to works and temporary highways alterations

- 5.4 Article 10 is based on Model Provision 12 and confers powers for the purposes of the authorised project to provide or improve accesses in the locations specified in Schedule 4 (access to works) or with the consent of the planning authority following consultation with the highway authority, at any other location within the Order limits.

- 5.5 Article 10(c) authorises the undertaker to carry out the temporary highways alterations which form Work No 56, and are defined in article 2 as including the temporary removal and replacement of street furniture and the temporary plating and matting of grass verges to be carried out within the public highway. Under requirement 8(3) these works are subject to approval by the relevant planning authority following consultation with the highway authority.

Article 11 Agreements with a highway authority

- 5.6 This article provides for the undertaker to enter into agreements with a highway authority relating to the construction of new streets, works in or affecting streets and the stopping up, alteration and diversion of streets. This article is based on Model Provision 13.

6 SUPPLEMENTAL POWERS

Article 12 Discharge of water

- 6.1 This article enables the Company to discharge water into any watercourse, public sewer or drain, in connection with the construction and maintenance of the authorised project with the approval and superintendence (if provided) of the authority to which the watercourse, public sewer or drain belongs (such approval not to be unreasonably withheld) and subject to other conditions. In paragraph (9) the model provision has been updated to refer to the environmental permitting regime introduced by the Environmental Permitting (England and Wales) Regulations 2010. The Environment Agency was consulted on the draft DCO and raised no concerns with the wording of this article.

- 6.2 Section 106 of the Water Industry Act 1991 (right to communicate with public sewers) does not apply to discharges authorised by this article but any dispute concerning a connection to or use of a public sewer is to be determined as if it were a dispute under that section.

Article 13 Authority to survey and investigate the land

- 6.3 This article generally follows Model Provision 16 and confers on the Company a power to enter land for the purposes of surveying or investigating, to make trial holes, carry out ecological or archaeological investigations and to place and leave or remove apparatus on the land subject to giving the owner of the land at least 14 days' notice. Approval for the making of trial holes (which may not be unreasonably withheld) is, in the case of land located within the highway boundary, to be obtained from the highway authority, or, in the case of a private street, from the street authority. It differs from Model Clause 16 in that it provides for deemed consent from the relevant planning authority where the trial holes are in a street. There is provision for the payment of compensation and those entering the land will be required to show their authority. Additionally, paragraph (2) clarifies that article 13 does not apply on any land seaward of mean high water Springs. This wording was included at the request of the MMO.

Article 14 Removal of human remains

- 6.4 This article is based on Model Provision 17 and requires the undertaker, before it carries out any development or works which will or may disturb any remains, to remove those remains. Before removing any human remains, the undertaker is required to publish notice of its intention to do so. Notice is also required to be displayed near the site and a copy of the notice sent to the local authority. It also sets out the rights of, procedure for requests made by any relatives and personal representative of a deceased person, as well as any dispute which may arise as to whether a person is the relative or personal representative of the person whose remains are proposed to be removed or as to the identity of the remains in question. The undertaker is required to certify to the Registrar General the date of re-interment or cremation and the place from which the remains were removed and the place where the remains were re-interred or cremated. The removal of any remains by the undertaker is required to be carried out in accordance with any directions which may be given by the Secretary of State.

Article 15 Compulsory acquisition of land

- 6.5 Article 15 empowers the Company to compulsorily acquire land shown on the land plans and described in the book of reference. The undertaker only seeks the acquisition of freehold title to the Order Land in a limited number of circumstances (in respect of the land coloured pink on the land plans), for the purposes of the above-ground onshore infrastructure, including the Intermediate Electrical Compound (Work No 9), the substation (Work No 50), the permanent access road into the substation (Work No 48), and the transition joint bays (Work No 3). Freehold acquisition of this land is necessary to ensure that the undertaker (and its successors) has the necessary exclusive possession and control of the land required for the safe construction, operation and maintenance of these installations and associated infrastructure and works. This article also makes provision for the extinguishment of rights, trusts and incidents to which the

land was previously subject. A detailed explanation of the powers being sought is contained in the Statement of Reasons (Revision C).

Article 16 Compulsory Acquisition of land – incorporation of the mineral code

6.6 This article incorporates parts 2 and 3 of Schedule 2 (minerals) of the Acquisition of Land Act 1981 in respect of any mines and minerals under any land which has been compulsorily purchased as part of the Order. It exempts existing rights in minerals from the scope of compulsory acquisition while also providing a procedure for dealing with the situation where the owner of mines and minerals wishes to work them. It follows Model Provision 19.

Article 17 Time limit for exercise of authority to acquire land compulsorily

6.7 This article follows Model Provision 20 and imposes a time limit of five years from the coming into force of the Order for the exercise of powers of compulsory acquisition of land.

Article 18 Compulsory acquisition of rights

6.8 Article 17 departs from Model Provision 21 and adopts the approach used in a number of recent development consent orders such as The Walney Extension Offshore Wind Farm Order 2014 (Article 21) and the Rampion Offshore Wind Farm Order 2014 (Article 25)⁹. The Article enables the Company to acquire both new and existing rights, and to impose 'restrictive covenants', over the Order land (as appropriate), rather than having to acquire the freehold to the land outright under Article 15. Article 18 thus allows the Company to take a more proportionate approach to land acquisition. Paragraph (2) departs from the Model Provision in providing that, in the case of the Order land specified in Schedule 5, the Company's compulsory purchase powers are limited to the acquisition of such new rights as may be required for the purposes specified in relation to that land in column (2) of Schedule 5.

6.9 This approach necessitates modification of the compulsory purchase and compensation provisions under general legislation so that they apply to the acquisition of new rights. Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights) has therefore been included in the DCO, which is modelled on the usual TWA Order equivalent and the provisions of the Local Government (Miscellaneous) Provisions Act 1976. This is incorporated by paragraph (4) of Article 18.

6.10 Paragraph (3) of Article 18 confirms that where the Company proposes to acquire an existing right in land, it will not be required to acquire an interest which is greater than that existing right.

⁹ SI 2014/2950 and SI 2014/1873

6.11 Paragraphs (5) and (6) of Article 18 provide a mechanism for the transfer of rights to statutory undertakers, with the consent of the Secretary of State in circumstances where the rights are required for the purpose of diverting, replacing or protecting the apparatus of a statutory undertaker.

Article 19 Private Rights

6.12 This article is based on Model Provision 22 with the following modifications:

- (a) It applies to private rights generally (including trusts or incidents to which the relevant land is subject), rather than merely to private rights of way over land. This approach has precedent in Article 26 of the Rampion Offshore Wind Farm Order 2014 and Article 22 of the Walney Extension Offshore Wind Farm Order 2014, and has been followed in subsequent draft development consent orders submitted to the Planning Inspectorate, such as the draft Thorpe Marsh Gas Pipeline Order 201[X]¹⁰.
- (b) It applies to both land and rights over land acquired pursuant to the Order (in the latter case, existing rights will be extinguished to the extent that their continuance would be inconsistent with the exercise of the new rights acquired), again, this approach has precedent in other development consent orders, such as the Hornsea One Offshore Wind Farm Order 2014 (Article 18); and
- (c) It refers to section 152 of the Planning Act 2008, and confirms that any person who suffers loss by the extinguishment or suspension of any private right under the article will be entitled to compensation.

Article 20 Power to override easements and other rights

6.13 The purpose of this article is to provide the Company with certainty that it will not be prevented from carrying out the authorised project because of the existence of an unknown third party right, such as a covenant or easement, which was not revealed through the Company's title investigation and due diligence exercise.

6.14 The article closely mirrors section 237 of the Town and Country Planning Act 1990, which allows a planning authority to carry out works on land which it has acquired or appropriated for planning purposes, notwithstanding any consequential interference with existing interests in or rights over the land, and accords with section 120(3) and (4) and item 2 of Part 1 of Schedule 5 of the Planning Act 2008, which enable a development consent order to provide for the compulsory suspension, extinguishment or interference with interests in or rights over land.

¹⁰ Document 3.1

6.15 The article's original precedent is Article 18 of the Rookery South (Resource Recovery Facility) Order 2011¹¹. The article has subsequently been included in development consent orders such as the Willington C Gas Pipeline Order 2014¹².

Article 21 Application of the Compulsory Purchase (Vesting Declarations) Act 1981

6.16 Article 21 follows Model Provision 23 and provides for the application of the compulsory vesting declaration procedure to the compulsory acquisition of land under the Order, while clarifying that the "undertaker" will be the "public authority" for these purposes. It is noted that the Order does not contain an express provision incorporating Part I of the Compulsory Purchase Act 1965 because section 125 of the Planning Act 2008 applies Part I to development consent orders which authorise the compulsory acquisition of land.

Article 22 Acquisition of subsoil only

6.17 This article follows Model Provision 24. It authorises the undertaker to acquire only the subsoil in any Order land without acquiring the whole of that land. In certain circumstances, it may be necessary to acquire only a stratum of land under the surface and in the absence of this Article the undertaker would be obliged to acquire the whole of the interest in land.

Article 23 Rights under or over streets

6.18 This article allows the Company to occupy land above or below streets within the Order limits without having to acquire the land. If there are any structures below the street then compensation is payable for any loss or damage. It follows Model Provision 27.

Article 24 Acquisition of part of certain properties

6.19 This article, which follows Model Provision 26, provides an alternative procedure where the undertaker acquires compulsorily part only of certain types of properties subject to the right of the owner to require the whole of the property to be acquired, if part cannot be taken without material detriment to the remainder. This replaces section 8(1) of the Compulsory Purchase Act 1965 and unlike those provisions sets out a process and timescales for dealing with claims of material detriment. Such provisions are usual in TWA Orders containing compulsory powers and are included in development consent orders such as the Network Rail (Ipswich Chord) Order 2012 (article 22), the Rampion

¹¹ SI 2014/1873

¹² SI 2014/3328

Offshore Wind Farm Order 2014 (article 29) and the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (article 41)¹³.

Article 25 Temporary use of land for carrying out the authorised project

- 6.20 This Article enables the Company, in connection with the carrying out of the authorised project, to take temporary possession of the land listed in columns (1) and (2) of Schedule 7 (land of which temporary possession may be taken), for the purposes specified in column (3) of Schedule 7. In addition, paragraph (1)(a)(ii) provides for the powers of temporary possession to apply to any other Order land which is subject to compulsory acquisition under the Order, provided the compulsory acquisition process has not begun in relation to it.
- 6.21 This Article is based on Model Provision 28 but also follows the approach adopted in a number of recent development consent orders, such as the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014. It allows greater flexibility and proportionality in the use of compulsory acquisition powers, as it enables the Company to take temporary possession of land to carry out the authorised project and to thereafter acquire permanent rights only to the extent that is necessary for the ongoing operation.
- 6.22 The Company is not obliged to acquire the land, nor acquire any interest in the land it takes temporary possession of under paragraph (1)(a)(ii) of this Article. Compensation is however available to owners whose land is taken possession of temporarily.
- 6.23 The Company may not compulsorily acquire the land it takes temporary possession of under paragraph (1)(a)(i) of this Article i.e. the land listed in columns (1) and (2) of Schedule 7, but is not precluded from carrying out a survey of that land under Article 13. Compensation is available to owners whose land is taken possession of temporarily.
- 6.24 Prior notice to owners and occupiers is required and the Article makes further provision for restoring land after such use (save in certain circumstances).

Article 26 Temporary use of land for maintaining authorised project

- 6.25 This article allows the Company to take temporary possession of land within the Order limits for the purpose of maintaining the authorised project during a 5 year maintenance period. It follows Model Provision 29 save that the power does not extend to any land seaward of Mean High Water Springs. This exception has been included in light of concerns raised by the Marine Management Organisation and Natural England during consultation.

¹³ SI 2012/2284, SI 2014/1873 and SI 2014/2384

6.26 In addition paragraph (1)(b) allows the undertaker to enter on any land within the Order limits in order to gain access for the purpose of maintaining the authorised project as reasonably required.

Article 27 Protective provision for specified undertakers

6.27 This article gives effect to the protective provisions in Schedule 8.

Article 28 Statutory undertakers

6.28 This article is modelled on Model Provision 31 with the following modifications:

- a) Sub-paragraphs (a) and (c) of the Model Provision have been combined and expanded to allow the Company to impose restrictive covenants over, as well as to acquire, land and rights over land, belonging to statutory undertakers.
- b) Sub-paragraph (c) is based on sub-paragraph (b) of the Model Provisions but provides for the relocation of apparatus belonging to statutory undertakers, in addition to its removal and repositioning, and the extinguishment of associated rights. This power is not restricted to specific apparatus as indicated in the land plans or book of reference as it is impracticable to show all such apparatus and a general power is required. This power makes it unnecessary to rely on the processes contained in section 271 and 272 of the Town and Country Planning Act 1990 for extinguishing rights of statutory undertakers. To the extent that a process for dealing with such extinguishment is necessary such process is provided in the protective provisions at Schedule 8. This is a standard approach in bills authorising compulsory acquisition and Transport and Works Act Orders.
- c) New sub-paragraph (b) allows the Company to construct the authorised development in such a way as to cross underneath or over apparatus belonging to statutory undertakers and other similar bodies within the Order limits.

Article 29 No double recovery

6.29 This article follows Article 44 of the Transport and Works Act Model Provisions. It is based on the long-established principle of equivalence; namely that a claimant in a compulsory purchase matter shall be compensated for no more and no less than his loss. The article thus provides that compensation is not payable in respect of the same loss or damage under both the Order and other compensation regimes. This article has been included in other development consent orders such as the Willington C Gas Pipeline Order 2014.

Article 30 Recovery of costs of new connection

6.30 This article provides for compensation to owners or occupiers of property where apparatus is removed in accordance with article 28 (statutory undertakers). It follows Model Provision 33.

Article 31 Special Category Land

6.31 As explained at paragraphs 2.8 to 2.13 above, the Company proposes to compulsorily acquire rights over a section of beach at Anderby Creek which, for the purposes of this Order, is assumed to be open space for the purposes of section 132 of the 2008 Act. Article 31 of the Order provides that any rights, trusts and incidents to which the open space land is subject will be discharged in so far as their continuance would be inconsistent with the exercise of the rights of compulsory acquisition.

7 OPERATIONS

Article 32 Deemed marine licence under the Marine and Coastal Access Act 2009

7.1 This article adopts the form of Article 37 of the Model Provisions but is adapted to reflect the enactment of the Marine and Coastal Access Act 2009. It provides for a deemed marine licence, the terms of which are set out in Schedule 9, required for the deposit at sea within the Order limits of the specified substances and articles and the construction of works in or over the sea and/or on or under the seabed.

8 MISCELLANEOUS AND GENERAL

Article 33 Application of landlord and tenant law

8.1 This article is in the form of Model Provision 35. It overrides the application of landlord and tenant law insofar as it may prejudice agreements for the operation, use or maintenance of the authorised project.

Article 34 Operational land for purposes of the 1990 Act

8.2 This article follows Model Provision 36 and provides that development consent granted by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of the Town and Country Planning Act 1990 (cases in which land is to be treated as operational land for the purposes of that Act). The purpose of this is to ensure that permitted development rights under Part 17 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995, will apply in relation to the land used for the purposes of the authorised development.

Article 35 Felling or lopping of trees and removal of hedgerows

8.3 This article enables the undertaker to fell or lop trees and shrubs for the purposes of preventing obstruction or interference with the authorised project and danger to the authorised project. Provision is included for the payment of compensation for loss and

damage. The article contains a number of additional features to the model provisions. It also enables the undertaker to remove the hedgerows as are within the Order limits and specified in Schedule 10.

Article 36 Certification of plans etc

8.4 This article would require the undertaker to submit copies of the documents, plans and sections referred to in the Order to the decision-maker, for certification as true copies following the making of the Order. This article follows Model Provision 41 with amendments relating to the documents specific to this project.

Article 37 Arbitration

8.5 This article follows Model Clause 42 and makes provision for any dispute arising under the provision of the Order and unless otherwise agreed between the parties to be settled by arbitration. These will include circumstances where the agreement of the relevant local authority is needed but cannot be reached. It does not apply to approvals under requirements, which are dealt with separately under article 34 (procedure regarding certain approvals).

Article 38 Guarantees in respect of payment of compensation

8.6 This article precludes the compulsory acquisition powers from being exercised before appropriate security arrangements in respect of payment of compensation are in place and are approved by the Secretary of State. This provision does not appear in the Model Provision. It is based on article 8 of the Rookery South (Resource Recovery Facility) Order 2011. In addition to the Rookery South precedent, the guarantee or alternative form of security need only be in place for a maximum period of 15 years. This provision has been authorised in the Hornsea Project One Offshore Wind Farm Order.

Article 39 Procedure regarding certain approvals

8.7 This article provides for an appeal process for the refusal or non-determination of any details under a requirement by the relevant planning authority. It also provides a time limit for a decision by the relevant planning authority on the submission of any details submitted pursuant to a requirement. The details of the appeal procedure are provided in new Schedule 11. It is required to ensure that subsequent applications for approval are determined appropriately. This provision has precedent in the National Grid (King's Lynn B Power Station Connection) Order 2013 and the Hinkley Point C (Nuclear Generating Station) Order 2013¹⁴.

¹⁴ SI 2013/3200 and SI 2013/2938

Article 40 Savings provisions for Trinity House

8.8 This is a standard provision taken from the Harbour Model Clauses and is included in Orders for offshore wind farms.

Article 41 Crown rights

8.9 This article is taken from other Transport and Works Order for offshore wind farm development and is designed to protect the Crown's position in relation to its own estates, rights, powers, privileges, authorities and exemptions and ensure that the Crown's written consent is required where any land, hereditaments or rights are to be taken, used, entered or interfered with as a result of granting of the Order. The wording of this article has been agreed with the Crown Estate prior to submission.

SCHEDULES

Schedule 1 Authorised Project

- 1 *Schedule 1 – Part 1 Authorised development*
- 1.1 Part 1 of Schedule 1 (authorised development) specifies the authorised development comprising the scheduled works.
- 1.2 The key aspects of the TKES works have been identified and described as separate works to allow for their accurate description in the Order and on the works plans. Broadly the works are separated into the following:
- (a) Work No 1 – the offshore export cable up to mean low water;
 - (b) Work No 2 – the offshore export between mean low water and mean high water springs;
 - (c) Works Nos 3 and 4 – the landfall works, including cabling, transition joint bays, a temporary construction compound and access works;
 - (d) Work Nos 5 – 8 and 11 – 50 – the onshore cable circuits, temporary construction compounds and access works;
 - (e) Work Nos 9 and 10 – the Intermediate Electrical Compound (IEC) and temporary construction compound (TCC);
 - (f) Work Nos 48, 49, 50 and 51 – the Triton Knoll substation, temporary construction compound and both a new temporary and permanent access road to the substation;
 - (g) Work Nos 54 and 55 – the unlicensed connection works at National Grid's Bicker Fen substation; and
 - (h) Work No 56 – temporary highways alterations to facilitate access for abnormal indivisible loads (AiLs).

In respect of Work Nos 3, 9, 50 and 54, particular elements of the overall work have been identified as a subset of that work (for example Work 9A is the IEC compound) as shown on the works plans. This has been done to provide for greater clarity and control over the location of those works within the wider work area, and to allow for certain elements of the work to be commenced without all details needing to be approved. This approach to “staging” the works, and the discharge of the requirements relating to them, is explained in more detail below.

- 1.3 The ancillary works are set out in Part 2 of Schedule 1.

2 *Schedule 1 – Part 3 Requirements*

- 2.1 Part 3 of the Schedule sets out certain requirements that the undertaker must meet in relation to the construction and operation of the authorised project. These requirements take a similar form to planning conditions. The requirements are based on those contained in Schedule 4 of the Model Provisions (the Model Requirements) of the 2009 Order, but since these are necessarily general they have been modified to reflect the various project and site specific aspects and the nature of the project. The requirements have been subject to two rounds of consultation, and the examination and where possible the comments of key consultees such as BBC, ELDC, Natural England, the Environment Agency, English Heritage and landowners' representatives have been accommodated. Model Requirements which are not relevant to the project have been omitted.
- 2.2 Save in relation to requirement 15, where the requirements refer to consultation being undertaken with specific bodies before the scheme in relation to any stage of the works is submitted to the relevant planning authority (for example requirement 10: requirement for surface water drainage scheme), this is referring to consultation that the Company will carry out, not the relevant planning authority. The planning authority's consultees are a matter for the authority in discharging the relevant requirement.
- 2.3 The phrase 'where relevant' or 'where relevant to that stage' is included in some requirements to reflect the staged nature of the works. The stages of works vary and as such so will the requirements which attach to each stage. It may be the case that a plan or scheme required for one stage of the works will not be required for the following stage. The plans and schemes to be submitted and approved by the relevant planning authority under the requirements will only be prepared and submitted where they are relevant for that stage.
- 2.4 *Requirement 1 (Interpretation)* provides for the interpretation of words and phrases used in Part 3 of Schedule 1. Definitions used in the Requirements and not already used (or defined) in the Articles to the Order are included here. A definition is provided for a "stage" of the onshore works which includes each of the key elements of infrastructure included within the Order where it is necessary for requirements to be discharged prior to works taking place. Work No 54 is not included here as these works are within the existing National Grid substation compound at Bicker Fen, and Work No 56 is not included as these are temporary works that will only take place within the public highway. For neither of these works are the standard pre-commencement requirements (for example relating to archaeology or ecology) needed given the nature and location of the works proposed. The details of Work No 56 (the temporary highways alterations) must, however, be approved by the relevant planning authority before any relevant stage of the works commence.

- 2.5 The remainder of the works are split into stages to allow for the phased discharge of the requirements meaning that certain works may commence without it being necessary to have agreed the details for all stages of all work. This provides flexibility in respect of the order of completion of the works whilst ensuring that any necessary details, plans and schemes are agreed and followed for each stage of works. To provide for further flexibility in relation to Work Nos 9 and 50, the site preparation works, called “enabling works”, are separated from the IEC and substation compounds (which includes the above ground infrastructure) to allow the details of each to be approved separately. This approach has been agreed by the relevant planning authorities in pre-application consultation on the draft Order.
- 2.6 *Requirement 2 (Time Limits)* imposes a time limit of 5 years on the undertaker’s ability to begin to construct the works starting from the date of the Order, as provided for in Regulation 3 of the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010.
- 2.7 *Requirement 3 (Detailed offshore design parameters)* sets out the detailed design parameters within which the authorised development seaward of mean low water (Work No 1) must be constructed. It restricts the dimensions of the offshore apparatus and provides for cable protection to be used. This follows the approach in the Kentish Flats Extension Offshore Wind Farm, Galloper Wind Farm and Hornsea One Orders¹⁵ rather than the Model Provisions. These detailed design parameters are those that have been assessed as the “worst case” in the environmental statement.
- 2.8 *Requirement 4 (Offshore Decommissioning)* makes provision for agreement to a written decommissioning programme for offshore works which must be put in place prior to the commencement of operation of the offshore works. Although not a Model Requirement, it is included to ensure compliance with the Energy Act 2004.
- 2.9 *Requirement 5 (Detailed design onshore)* follows Model Requirement 4 in requiring approval of details of the above ground infrastructure for the IEC and substation by the relevant planning authority (being the authority in whose area the particular works take place). Any works approved by the relevant planning authority are to be in accordance with the design principles document (application document 8.6), and, for the avoidance of doubt, are to be within the Order limits. It also includes specific restriction of the height of structures, the total footprint of the IEC and substation and the area of the fenced compound, to reflect the basis of the assessment in the environmental statement and to limit the landscape and visual impact of the onshore works. In addition it specifies the maximum width of the corridor occupied by the connection works. These restrictions

¹⁵ SI 2013/343, SI 2013/1203 and Si 2014/3331

ensure that the impact of the onshore works is minimised in line with the assessment and commitments contained in the application.

- 2.10 In relation to Work No 54 (the unlicensed works at National Grid's Bicker Fen substation) the requirements ensure that if two connection bays are installed within the northern part of the site, the southern bay (Work No 54B) and the related cabling (Work No 55) will not be constructed.
- 2.11 This requirement also makes provision for the submission of an onshore cable route sequencing plan including details of the indicative sequencing of the onshore cable works to the relevant planning authority as well as notification of the public and landowners.
- 2.12 Wording is also included in square brackets that secures the cable installation plans and "as built" plans showing the alignment of the cable circuits, which will be provided to the landowners in accordance with the soil management plan approved as part of the code of construction practice, are also to be provided to the relevant planning authorities. An approval process for these plans by the relevant planning authorities to regulate the use of the compulsory acquisition powers granted under the Order would not meet the tests for the imposition of planning conditions or requirements. The Applicant does not consider the submission of these plans to the relevant planning authority to be necessary or appropriate but has included wording in the event that the Secretary of State disagrees.
- 2.13 *Requirement 6 (Provision of landscaping)* requires a written landscape management scheme to be submitted to and approved by the relevant planning authority before the relevant stage of the authorised works may commence. The landscaping scheme shall be in accordance with the outline landscape strategy and ecological management plan. It is based on Model Requirement 7.
- 2.14 *Requirement 7 (Implementation and maintenance of landscaping)* follows Model Requirement 8 and requires the undertaker to implement the approved landscaping scheme and to replace trees or shrubs which die within 10 years of planting. In the event that Work No 55 is constructed a landscaping scheme will be required, which will be prepared in consultation with National Grid as the landowner and operator of the existing Bicker Fen substation.
- 2.15 *Requirement 8 (Highway accesses and improvements)* requires approval from the relevant planning authority of details for any new means of vehicular access to a highway, or for the alteration to any such existing means of access. It is based on Model Requirement 10. In respect of the temporary highways alterations (Work No 56), these

must, following consultation with the highways authority, be approved by the relevant planning authority and put in place before any particular stage of works commences.

- 2.16 *Requirement 9 (Fencing and other means of enclosure)* provides that temporary fencing and other means of enclosure shall be approved before the relevant stage of the onshore works is commenced, that construction works shall be securely fenced, temporary fencing, except in relation to the beach works, shall be removed after completion of the works and that the permanent fencing around Work Nos 9A and 50A is in place before these works are brought into use. Temporary fencing for the beach works must be removed on completion of construction of those works excluding testing. This is generally consistent with Model Requirement 13. However, temporary fencing of the beach works is separate from the temporary fencing of the rest of the cable route to ensure that it will be removed as early as possible to minimise impacts on the beach.
- 2.17 *Requirement 10 (Surface water drainage)* requires that works at the IEC (Work No 9), substation (Work No 50) and Bicker Fen substation (Work No 54) shall not be commenced until details of the surface water drainage system for that stage, or part of it, have been approved by the relevant planning authority in consultation with the relevant sewerage and drainage authorities. The ability for part of the drainage requirements in relation to part of an identified work to be signed off has been included to allow for the requirement to be discharged in relation to the IEC and substation enabling works in advance of the details of the above ground infrastructure. This approach has been agreed in principle by the Environment Agency.
- 2.18 *Requirement 11 (Foul water drainage)* requires that, where necessary, Work Nos 9 and 50 shall not be commenced until details of the foul water drainage system for that stage, or part of it, have been approved by the relevant planning authority in consultation with the relevant sewerage and drainage authorities. This wording has been agreed with the Environment Agency.
- 2.19 *Requirement 12 (Archaeology)* provides that the relevant works shall not commence until a stage specific written scheme of investigation has been agreed with the relevant planning authority. Any archaeological works must be carried out in accordance with the approved scheme. This wording was specifically requested by Historic England and generally follows the principles of Model Requirement 16 with amendments necessary to reflect the abolition of the Infrastructure Planning Commission. It also makes specific provision that pre-construction archaeological investigations and pre-commencement material operations which involve intrusive ground works must be carried out in accordance with a specific written scheme of investigation for those works which has been approved by the relevant planning authority, as agreed with Historic England.

- 2.20 *Requirement 13 (Ecological Management Plan and removal of hedgerows)* generally follows Model Requirement 17 but has been amended to also make provision for the removal of hedgerows. This approach has been agreed with Natural England to allow hedgerow removal to be excluded from the definition of commencement. It provides that no stage of the onshore works shall be carried out until a written ecological management plan for the relevant works reflecting the surveys and mitigation measures in the environmental statement has been approved by the relevant planning authority in consultation with the Environment Agency and relevant statutory nature conservation body. The scheme must include an implementation timetable and any measures to be taken to reinstate hedgerows on completion of the relevant stage of the onshore works. Hedgerow removal and reinstatement must be carried out in accordance with the outline landscape strategy and ecological management plan which includes detail about the approach to and timing of such works.
- 2.21 *Requirement 14 (Code of construction practice)* provides that any stage of the onshore works shall not commence until a code of construction practice, which includes the detailed plans and statements listed in paragraph 2, for that stage has been submitted to and approved by the relevant planning authority. The code of construction practice must be followed as approved for that stage of the authorised works. Paragraph 4(2) in respect of construction method statements, specifies that main river crossings shall be undertaken using trenchless methods only. This wording was included in this subparagraph at the specific request of the Environment Agency. It is based on Model Requirement 18.
- 2.22 *Requirement 15 (Unexpected contamination)* requires that, if during any stage of the authorised development, contamination not previously identified is found within the Order limits, then works in the vicinity of the contamination will cease until a written scheme including an investigation and assessment report identifying the extent of any contamination and the remedial measures to be taken, has been submitted to and approved by the relevant planning authority following consultation with the Environment Agency. Remedial works shall not be undertaken until the scheme has been approved. The specific wording of this requirement was requested by the Environment Agency.
- 2.23 *Requirement 16 (Control of operational artificial light emissions)* provides for written details of any permanent external lighting proposed to be used to be submitted and approved by the relevant authority before Work Nos 9A and 50A are brought into operation. The approved scheme shall be implemented and maintained for the lifetime of Work Nos 9A and 50A. Except for the requirement for separate schemes relating to the construction and operations phases of the development, this requirement is generally consistent with model Requirement 27.

- 2.24 *Requirement 17 (Construction Hours)* sets out the construction hours for the onshore works. The overarching working hours of 0700 to 1900 Mondays to Saturdays with no working on Sundays or Bank Holidays are set out, with certain exceptions. Shorter working hours, for example in relation to noisy activities, may be included within the Code of Construction Practice, and if agreed in advance with the relevant planning authority. Examples of types of working that may need to be undertaken are included in paragraph 2(a). In the event that 24 hour working is required for any trenchless technique (for example completing an HDD under a road or watercourse) the Company is required to notify the relevant planning authority in advance, and where those works are within 100m of an occupied dwelling such works can only take place with the consent of the resident of the dwelling.
- 2.25 *Requirement 18 (Control of noise during operational phase)* specifies noise limits for operational noise arising from the IEC and substation.
- 2.26 *Requirement 19 (Construction traffic)* provides that no part of the IEC and substation enabling works and no stage of the onshore works may commence until written details of a construction phase traffic management plan (which includes a construction travel plan) for the management of construction traffic have been submitted to and approved by the relevant planning authority. The traffic management plan sets out a series of construction vehicle management controls in one cohesive document for the onshore works and formalises the commitment made to the relevant planning authorities and statutory consultees in the Environmental Statement. The construction travel plan will include provisions relating to contractors' travel and parking. This reflects Model Requirement 22. It also restricts construction and contractor traffic to using the permanent or temporary access roads (Work Nos 48 and 49) for access to the substation and requires that the timing for the construction of the permanent and temporary access roads is included within the Construction Method Statement. This wording is included at the request of and as agreed with Boston Borough Council.
- 2.27 *Requirement 20 (European protected species)* provides that the relevant stage of the connection works shall not be commenced until a final pre-construction survey for that stage has been carried out to establish whether there are any European protected species present, or likely to be impacted by the works. If so, the requirements provides that the relevant stage of works shall not commence until a scheme for protection and mitigation has been approved, which shall be implemented as approved unless otherwise agreed. This mirrors Model Requirement 34.
- 2.28 *Requirement 21 (Restoration of land used temporarily for construction)* provides that any land which is landward of mean high water springs and which is used temporarily for the onshore works must be restored to its prior condition or such condition as the relevant planning authority shall approve. This restoration must be carried out within six months

of completion of the relevant stage of the onshore works. This generally conforms with Model Requirement 35, though reference to the onshore works has been added and approval of reinstatement has been amended from the Commission to the relevant planning authority.

- 2.29 *Requirement 22 (Onshore decommissioning)* makes provision for a scheme for decommissioning of the onshore works to be submitted to and approved by the relevant planning authority within six months of the cessation of commercial operations, meaning when the electrical connection works are no longer required, and after consultation with landowners in relation to their landholding. This requirement relates to the onshore works, down to mean low water only. It does not relate to the offshore array. This requirement has precedent in The East Anglia One Offshore Wind Farm Order¹⁶.
- 2.30 *Requirement 23 (Local Employment)* The ExA proposed a new requirement relating to the provision of an employment and skills development plan. The Applicant does not consider this to be a relevant or appropriate requirement for this consent which solely captures the Electrical System for the offshore wind farm. The Applicant considers that the imposition of a requirement specifying how this process should run is premature and would not assist it, or the LEPs, and would not necessarily secure the best outcomes and opportunities for local people and companies. Actively engaging the local supply chain is secured by the very fact that it is of commercial benefit for the Applicant in taking the TKES forward as part of the wind farm project. Therefore it is not necessary to constrain and further complicate the procurement processes by conditioning this in the DCO.
- 2.31 In the event that it is considered that it is appropriate for a new requirement to be added to the Triton Knoll Electrical System DCO, the Applicant has suggested the wording in square brackets as included in Requirement 23. The requirement, as proposed, makes provision for notification of the relevant planning authority of a plan detailing the arrangements to promote employment and skills development opportunities related to the onshore works, including proposals for working with the local enterprise partnership and relevant planning authority to promote such opportunities. The plan must be implemented and maintained for the duration of the construction of the onshore works. Such a requirement would not undermine or duplicate the supply chain work being undertaken for the whole offshore wind farm project (both the Triton Knoll Array and the Electrical System).
- 2.32 *Requirement 24 (Requirement for written approval)* provides that where any requirement requires the approval of the Secretary of State or other relevant planning authority, such approval shall be in writing. This follows Model Requirement 36.

¹⁶ SI 2014/1599

2.33 *Requirement 24 (Amendments to approved details)* provides that any details approved pursuant to any requirement shall be taken to include any amended details which are subsequently approved. It follows Model Requirement 37.

3 *Schedule 2 Streets subject to street works*

3.1 This Schedule describes the streets, including footpaths, in which street works may be carried out. It cross refers to article 8 of the Order

4 *Schedule 3 Streets to be temporarily stopped up*

4.1 This Schedule describes the streets and footpaths to be temporarily stopped up and the extent of such temporary stopping up. It cross refers to article 9 of the Order. The extent of any footpath stopping up or diversion is shown on the public rights of way plans.

5 *Schedule 4 Access to works*

5.1 This Schedule identifies points of access to the Works for construction traffic. It cross refers to article 10 of the Order and the access are shown on the access to works and streets plans.

6 *Schedule 5 Land in which only new rights etc. may be acquired*

6.1 This Schedule was introduced by Article 18 (compulsory acquisition of rights) which does not form part of the Model Provisions. It identifies, by number on the land plan, the land over which the undertaker's powers of acquisition are limited to the acquisition of the new rights described in relation to that land in the book of reference.

7 *Schedule 6 Modification of compensation and compulsory purchase enactments for creation of new rights*

7.1 Like Schedule 5, this Schedule was introduced by Article 18 (compulsory acquisition of rights) and is not a Model Provision. It provides for the usual compensation enactments for the compulsory purchase of land and interests in land to apply with necessary modifications to the compulsory acquisition under this Order of a new right. These modifications appear in the same form in the Rampion Offshore Wind Farm Order 2014 (Schedule 8) and the East Anglia ONE Offshore Wind Farm Order 2014 (Schedule 7)¹⁷.

8 *Schedule 7 Land of which temporary possession may be taken*

8.1 This Schedule relates to article 25(1)(a)(i), and identifies, by number on the land plan, the land over which the Company may exercise powers of temporary possession, the purpose of which it may be taken and the relevant part of the authorised project.

9 *Schedule 8 Protective provisions*

¹⁷ SI 2014/1873 and SI 2014/1599

9.1 This Schedule sets out protective provisions for statutory undertakers affected by the authorised project. The provisions in Part 1 (Protection for the Environment Agency and drainage authorities), Part 2 (Protection for Network Rail Infrastructure Limited), Part 3 (Protection for National Grid Gas plc and National Grid Electricity Transmission plc), Part 4 (Protection for Anglian Water), Part 5 (Protection for the Canal and River Trust) have been under negotiation with the relevant parties. The drafting included within the Order reflects the Company's current position but it is expected that negotiations will continue following submission of the application. The protective provisions in Part 6 (Protection for electricity, gas and sewerage undertakers) and Part 7 (Protection for operators of electronic communications code networks) are included for completeness, but have not been requested by or agreed with any of the relevant undertakers.

10 *Schedule 9 Deemed licence under the Marine and Coastal Access Act 2009*

10.1 This Schedule sets out the deemed marine licence for the authorised development below mean high water springs. The Model Provisions do not provide a draft deemed marine licence and simply refer to the Food and Environmental Protection Act 1985 and the Coastal Protection Act 1949. The licensing provisions under this legislation have been superseded by the marine licensing regime under the Marine and Coastal Access Act 2009 ("the 2009 Act"). The draft licence conditions have been the subject of discussion between the Company the MMO, the Maritime and Coastguard Agency and Trinity House.

11 *Schedule 10 Removal of hedgerows*

11.1 This Schedule sets out the sections of hedgerow that may be removed in the construction of the authorised development.

12 *Schedule 11 Discharge of requirements*

12.1 This Schedule sets out the details for an appeal process for the refusal or non-determination of any details under a requirement by the relevant planning authority. It also provides a time limit for a decision by the relevant planning authority on the submission of any details submitted pursuant to a requirement.