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To all Interested Parties

Your Ref:

Our Ref: EN020019

Date: 1 August 2016

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Dear Sir/Madam

**Planning Act 2008 and the Infrastructure Planning (Examination Procedure) Rules 2010**

**Application by Triton Knoll Offshore Wind Farm Limited for an Order Granting Development Consent for the Triton Knoll Electrical System**

**REQUEST FOR COMMENTS FROM THE APPLICANT, THE CROWN ESTATE, LINCOLNSHIRE COUNTY COUNCIL, HIGHWAYS ENGLAND, NETWORK RAIL INFRASTRUCTURE LIMITED, THE CANAL & RIVER TRUST, WESTERN POWER DISTRIBUTION (EAST MIDLANDS) PLC, CONOCOPHILLIPS (UK) LIMITED AND OTHER INTERESTED PARTIES ON THE APPLICATION FOR THE PROPOSED TRITON KNOLL ELECTRICAL SYSTEM EN020019**

Following the completion of the examination on 3 March 2016, the Examining Authority submitted a Report and Recommendation in respect of its findings and conclusions on the above application to the Secretary of State for Energy and Climate Change on 3 June 2016. In accordance with section 107 of the Planning Act 2008, the Secretary of State [now the Secretary of State for Business, Energy and Industrial Strategy] has until 3 September 2016 to determine the application.

There are several issues in respect of the matters considered by the Examining Authority on which the Secretary of State would be grateful if parties identified in bold could provide an update or further clarification. The issues are grouped by topic heading:

**Section 135(1) of the Planning Act 2008 and article 41 of the draft DCO**

Section 135(1) of the Planning Act 2008 provides that an order granting development consent "may include provision authorising the Compulsory Acquisition of an interest in Crown land only if (a) it is an interest which is for the time being held otherwise than by or on behalf of the Crown; and (b) the appropriate Crown authority consents to the acquisition".

The Secretary of State takes the view that section 135(1) prevents the Secretary of State making a development consent order (DCO) which includes provision authorising the Compulsory Acquisition of a known interest in Crown land, being an interest held otherwise than by or on behalf of the Crown, unless the "appropriate Crown authority" has consented to the acquisition. Whilst previous practice may have varied, the Secretary of State now considers that DCLG guidance on the operation of section 135, which is available at:

<https://www.gov.uk/government/publications/planning-act-2008-procedures-for-the-compulsory-acquisition-of-land>, sets out the correct approach.

The Secretary of State does not consider that a provision, such as paragraph (1)(b) of article 41 of the Applicant's draft DCO (the "draft DCO") [<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN020019/EN020019-001448-Appendix%209%20-%20Applicant's%20Final%20Draft%20Development%20Consent%20Order%20and%20Deemed%20Marine%20Licence%20-%20Revision%20G.pdf>], which enables the "appropriate Crown authority" to give consent after the making of a development consent order, is consistent with the requirements of section 135(1)<sup>1</sup>. The Secretary of State, therefore, proposes to remove paragraph (1)(b) from article 41 and add the following additional paragraph to make the position clear:

"(2) Paragraph (1) does not apply to the exercise of any right under this Order compulsorily to acquire an interest in any land that is Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown".

The Secretary of State requests the observations of the **Applicant, The Crown Estate** and **Highways England** (the last two being being "appropriate Crown authorities" for the purpose of section 135(1)) on the above.

### **The Crown Estate - plots 22/20, 43/10 and 43/11**

Article 18 of (and Schedule 5 to) the draft DCO provides for the creation and Compulsory Acquisition of new rights in plots 22/20, 43/10 and 43/11 in respect of which the Crown Estate is the "appropriate Crown authority" for the purpose of section 135(1). The Crown Estate's letter of 26 February 2016 states that it provided the Examining Authority with a letter confirming consent to the making of a development consent order for the purposes of section 135(1) on 11 September 2015. The letter of 11 September 2015, however, makes such consent conditional on the inclusion of article 41(1)(b).

The Secretary of State would be grateful to learn if the **Applicant** is now able to provide unconditional consent from The Crown Estate in respect of the above Compulsory Acquisition for the purposes of section 135(1). The Secretary of State considers that the interests in the plots referred to above in Schedule 5 of the draft DCO cannot be included unless unconditional consent is provided.

### **Highways England – plots 24/02, 24/09, 24/10, 25/02, 25/06, 25/11, 25/14, 25/16, 25/18, 25/19, 25/23, 37/18 and 37/19**

Article 18 of (and Schedule 5 to) the draft DCO provides for the creation and Compulsory Acquisition of new rights in plots 24/02, 24/09, 24/10, 25/02, 25/06,

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<sup>1</sup> Article 41(1)(b) of the draft DCO provides that "nothing in this Order authorises the undertaker or any licensee...to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act)".

25/11, 25/14, 25/16, 25/17, 25/19, 25/23, 38/18 and 37/19, in respect of which the Highways England is the "appropriate Crown authority" for the purposes of section 135(1). Highways England's letter of 25 February 2016 states that it provided the Examining Authority with a letter confirming consent to the making of a development consent order for the purposes of section 135(1) on 6 November 2015. The letter of 6 November 2015, whilst giving consent for the purposes of section 135(1), requests that Highways England be kept fully informed of any amendments to the draft DCO that impact on Crown land.

In light of the Secretary of State's proposed amendment to article 41 (see above), the Secretary of State requests confirmation from **Highways England** that it nevertheless consents to the Compulsory Acquisition of the interests referred to above for the purposes of section 135(1).

### **Consequential changes**

If the Secretary of State does not include an interest in a plot of "Order land" in Schedule 5 of the draft DCO, the Secretary of State considers that changes will be necessary to the Book of Reference and the land plans. The Secretary of State will request revised documents once it becomes clear whether any changes will, in fact, be necessary.

### **Private Treaty Agreements**

The Secretary of State notes that, in its final updated Schedule of Compulsory Acquisition dated 29 February 2016 (Appendix 2 of the Applicant's Response to Deadline 8), the Applicant states in respect of Lincolnshire County Council's farm estate that: "The Applicant understands that the land agent appointed to represent Lincolnshire County Council (LCC) for their farm estate has now been instructed to discuss an agreement for all the LCC land, which includes the land at the landfall site as well as the LCC owned farms that are crossed by the cable route." The Secretary of State requests an update from the **Applicant** and **Lincolnshire County Council** as to the current position with regard to the negotiation of a private treaty agreement to secure the land rights for the proposed development.

The Secretary of State notes that the Applicant submitted on 28 July 2016 an update on progress since the close of the examination with regard to the negotiation of other private treaty agreements to secure the land rights for the proposed development (see attached). The Applicant sets out that:

"At the time of writing 92% of all landowners along the cable route have signed up to Heads of Terms (110 of a total 120) indicating their acceptance of a voluntary agreement to acquire the rights over their land that are required to deliver the Triton Knoll Electrical System.

Since the close of the Examination detailed negotiations have continued with land agents and the Lincolnshire Association of Agricultural Valuers' nominated legal representative to build on the principles within these Heads of Terms and agree the specific detail to be included in the property documentation. These documents are currently being distributed to landowners and Triton Knoll Offshore Wind Farm Limited (TKOWFL) is working closely with landowners' solicitors to complete the agreements.

Furthermore, over the past few months the project has been undertaking site investigation works along a portion of the cable corridor. This is to provide detailed information on ground conditions which will allow us to understand impacts on land drainage and environmental constraints, and work with the landowners to put in place mitigating actions. It will also help us to reduce the costs associated with the project

which will directly benefit consumers. In order to implement these works, voluntary access licences have been sought with 40 landowners, representing around one third of the onshore cable corridor; 39 of these have allowed access to their land.

The Secretary of State would be grateful for any further observations from **Interested Parties** on the 'Landowner negotiations' mentioned in the letter.

If in consequence of the above any powers of Compulsory Acquisition sought in the draft DCO are no longer required, **the Applicant** is asked to provide a revised form of the DCO (showing track changes) and a revised book of reference.

### **Network Rail Infrastructure Limited**

The Secretary of State notes that paragraph 1.5 of the Joint Statement between TKOWFL and Network Rail (Appendix 10 of the Applicant's Response to Deadline 8) [<https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/EN020019/EN020019-001488-Appendix%2010%20-%20Joint%20Statement%20from%20Triton%20Knoll%20Offshore%20Windfarm%20and%20%20Network%20Rail.pdf>] states: "At this stage Network Rail does not consider there to be any material impediments to concluding the negotiation of the Deed of Undertaking and the necessary land agreements and will update the Secretary of State as soon as it is able to confirm whether it is in a position to withdraw its objection to the Application"

The Secretary of State requests an update from **Network Rail Infrastructure Limited** as to the current position and to learn whether Network Rail Infrastructure Limited is now in a position to withdraw its representation made under section 127 of the Planning Act 2008.

### **Canal & River Trust**

The Secretary of State notes that paragraph 3.5 of the Joint Statement between TKOWFL and Canal & River Trust (Appendix 9 of the Applicant's Response to Deadline 8) [<https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/EN020019/EN020019-001487-Appendix%209%20-%20Joint%20Statement%20between%20Triton%20Knoll%20Offshore%20Windfarm%20Limited%20and%20Canal%20and%20River%20Trust.pdf>] states: "The Trust does not consider there to be any impediment to concluding the private treaty agreement and will update the Secretary of State once it has been completed. The Trust will also withdraw its objection to the TKES at that time."

The Secretary of State requests an update from the **Canal & River Trust** as to the current position and to learn whether it is now in a position to withdraw its representation made under section 127 of the Planning Act 2008.

### **Western Power Distribution (East Midlands) plc**

The Secretary of State notes that Osborne Clarke's letter of 3 February 2016 [[https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/EN020019/EN020019-000935-160303\\_EN020019\\_Osborne%20Clarke%20LLP%20on%20behalf%20of%20WPD.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/EN020019/EN020019-000935-160303_EN020019_Osborne%20Clarke%20LLP%20on%20behalf%20of%20WPD.pdf)] confirms on behalf of Western Power Distribution (East Midlands) plc that the protective provisions as shown in the Applicant's final draft development consent order are agreed between that company and the Applicant. In light of that, the Secretary of State would be grateful to learn whether **Western Power Distribution**

**(East Midlands) plc** is now willing to withdraw its representation made under section 127 of the Planning Act 2008.

### **ConocoPhillips (UK) Limited**

The Secretary of State notes that from paragraph 2.6 of the Joint Statement between TKOWFL and ConocoPhillips UK Limited – Appendix 44 of the Applicant’s Response to Deadline 7 [<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN020019/EN020019-001460-Appendix%2044%20-%20Joint%20Statement%20between%20Triton%20Knoll%20Offshore%20Wind%20Farm%20Limited%20and%20ConocoPhillips%20UK%20Limited.pdf>] - that pipeline crossing agreements are “currently being discussed”. The Secretary of State would be grateful for an update from the **Applicant** and **ConocoPhillips (UK) Limited** as to the current position.

### **Changes proposed in Applicant’s letter of 2 June 2016 to the Planning Inspectorate**

The Applicant wrote to the Planning Inspectorate on 2 June 2016 (see attached) to set out a list of changes which the Applicant proposed should be incorporated into any DCO made. The Secretary of State is considering these changes and requests any observations from **Interested Parties** on the proposed changes set out in the Applicant’s letter.

### **Link boxes**

The Secretary of State notes the concerns raised during the Examination, for example, by the National Farmer’s Union (NFU), that manholes/inspection chambers should be located in field boundaries and not in fields, where they may be an obstacle to farm machinery and risk damage to the machinery. The Secretary of State further notes that the Applicant stated in its Written Summary of the Applicant’s Oral Case put at Socio-Economic Issue Specific Hearing on 19 November 2015 that the “covers installed on top of the link boxes would be capable of taking agricultural vehicle loads” (paragraph 1.29).

In order to secure the above and to ensure that link boxes interfere with agricultural practices as little as possible, the Secretary of State is considering whether, in the event he is minded to grant consent, to include the following additional paragraph in Requirement 14 (code of construction practice (onshore)) in Part 3 of Schedule 1 to the Applicant’s draft DCO:

*“(3) The code of construction practice must, where relevant to that stage, secure that any link box (as referred to in the outline soil management plan (revision E), which forms part of the outline code of construction practice) located in a place where agricultural machinery may pass over the box has a cover that is-*

*(a) capable of bearing agricultural machinery loads; and*

*(b) designed so as to allow agricultural machinery to pass over the box without damaging the machinery.”*

The Secretary of State requests the views of the **Applicant** and **Interested Parties** on the above.

## **Lindsey Marsh Drainage Board and Black Sluice Internal Drainage Board**

The Secretary of State notes that, whilst the Book of Reference (revision C) shows that Lindsey Marsh Drainage Board is the freehold or reputed freehold owner of a number of plots and that Black Sluice Internal Drainage Board is the freehold or reputed freehold owner of a number of other plots, the Applicant's updated Schedule of Compulsory Acquisition (Appendix 2 of the Applicant's Response to Deadline 8) states in respect of both the Lindsey Marsh Drainage Board and Black Sluice Internal Drainage Board that the Applicant does not believe the "party has a freehold interest in affected land". The Secretary of State would be grateful for confirmation of the position from the **Applicant**. If it is the case that either Lindsey Marsh Drainage Board or Black Sluice Internal Drainage Board does not have a freehold interest in any affected land, the Applicant is requested to provide the Secretary of State with a Book of Reference (showing track changes) to set out the correct position.

### **The deadline for a response is 8 August 2016.**

The response should be submitted by email to [tkes@pins.gsi.gov.uk](mailto:tkes@pins.gsi.gov.uk) . Please send any hard copy responses to the Triton Knoll Electrical System Project Team, Secretary of State for Business, Energy and Industrial Strategy, c/o the Planning Inspectorate, 3B Eagle, Temple Quay House, Temple Quay, Bristol, BS1 6PN. If you will have difficulty in submitting a response by the consultation deadline, please inform the Project Team.

### **Your response will be published on the Triton Knoll Electrical System project page of the Planning Inspectorate website as soon as possible after 8 August 2016.**

<https://infrastructure.planninginspectorate.gov.uk/projects/east-midlands/triton-knoll-electrical-system/>

This letter is without prejudice to the Secretary of State's decision on whether or not to grant development consent for the Triton Knoll Electrical System and nothing in this letter is to be taken to imply what that decision might be.

Yours faithfully

**Giles Scott**

Giles Scott  
Head of Energy Infrastructure Planning and Coal Liabilities