

Kim Gault-Clarke  
Triton Knoll Offshore Wind Farm Limited  
Trigonos  
Windmill Hill Business Park  
Whitehill Way  
Swindon  
SN5 6PB

**Department for Business,  
Energy and Industrial Strategy**  
3 Whitehall Place,  
London SW1A 2AW  
T: +44 (0)300 068 5770  
E: [giles.scott@decc.gsi.gov.uk](mailto:giles.scott@decc.gsi.gov.uk)  
[www.decc.gov.uk](http://www.decc.gov.uk)

5 September 2016

Dear Ms Gault-Clark

## **PLANNING ACT 2008**

### **APPLICATION FOR DEVELOPMENT CONSENT FOR THE TRITON KNOLL ELECTRICAL SYSTEM**

#### **1. Introduction**

- 1.1 I was directed by the Secretary of State for Business, Energy and Industrial Strategy ("the Secretary of State") on 3 September 2016 to advise you that consideration has been given to:
- (a) the Report dated 3 June 2016 of the Examining Authority ("the ExA"), a panel of three Examining Inspectors, led by Kelvin MacDonald which conducted an examination into the application ("the Application") dated 23 April 2015 by Triton Knoll Offshore Wind Farm Limited ("the Applicant") for a Development Consent Order ("the Order") under section 37 of the Planning Act 2008 ("the Act") for the Triton Knoll Electrical System ("the Development");
  - (b) representations received by the Secretary of State in respect of the Application; and
  - (c) further consultation engaged in by the Secretary of State in respect of issues raised in the planning process and in the draft Order as submitted to the Secretary of State.
- 1.2 The Application was accepted for examination by the Planning Inspectorate on 21 May 2015. The examination of the Application began on 3 September 2015 and was completed on 3 March 2016. A number of hearings to consider aspects of the Application were held during the examination before it was completed.

- 1.3 The Order as applied for would grant development consent under the Act for the construction and operation of:
- (a) a submarine cable route for exporting electricity generated by the, consented but not built, Triton Knoll Offshore Wind Farm (“TKOWF”), to the shore along a route of around 66 kilometres in length;
  - (b) a landfall site with associated jointing of offshore and onshore cables to the north of the village of Anderby Creek (in Lincolnshire);
  - (c) an onshore underground cable along a route of around 60 kilometres;
  - (d) an Intermediate Electrical Compound, east of the village of Orby;
  - (e) a new onshore substation for TKOWF to the north west of the village of Bicker (in Lincolnshire); and
  - (f) a connection to the existing National Grid substation at Bicker Fen (also in Lincolnshire).
- 1.4 The Order would also grant consent for various ancillary structures and operations related to the construction, operation and maintenance of the Development.
- 1.5 Published alongside this letter on the Planning Inspectorate’s web-site is a copy of the ExA’s Report of Findings, Conclusions and Recommendation to the Secretary of State (“the ExA’s Report”). The ExA’s findings and conclusions are set out in chapters 4, 5, 6, 7, and 8 of the ExA’s Report and the Summary of Findings and Conclusions at chapter 10.

## **2. Summary of the ExA’s Report and Recommendation**

- 2.1 The issues considered during the examination on which the ExA reached conclusions on the case for development consent were:
- a) The marine environment;
  - b) Agriculture and Soil Management;
  - c) Air Quality;
  - d) Biodiversity, Biological Environment, Ecology and Geological Conservation;
  - e) Civil and Military Aviation and Defence Interests;
  - f) Climate Change Mitigation and Adaptation;
  - g) Coastal Change and Erosion;
  - h) Common Law Nuisance and Statutory Nuisance;

- i) Flood risk;
- j) Geology and Ground Conditions;
- k) Hazardous Substances;
- l) Health and Safety;
- m) Historic Environment;
- n) Land Use
- o) Landscape and Visual Impact Assessment;
- p) Noise and Vibration;
- q) Pollution Control and Other Environmental Regulatory Regimes;
- r) Security Considerations;
- s) Socio-economic impacts;
- t) Traffic and Transport;
- u) Waste Management;
- v) Water Quality and Resources;
- w) The Cumulative Effects, Inter-Relationships and the National Grid Viking Link Interconnector Project;
- x) Compulsory Acquisition and Related Matters; and
- y) Crown Land and Related Matters.

2.2 For the reasons set out in the ExA's Report, the ExA recommends [ER 10.2] that the Secretary of State should make the Order set out in Appendix A to the Report. (All numbered references, unless otherwise stated, are to paragraphs of the ExA's Report (specified in the form, ER X.XX.XX).)

### **3. Summary of the Secretary of State's Decision**

3.1 The Secretary of State has decided under section 114 of the Act to make with modifications an Order granting development consent for the proposals in the Application. A copy of the Order is published alongside this decision letter as is the Secretary of State's Habitats Regulations Assessment. This letter is a statement of reasons for the Secretary of State's decision for the purposes of section 116 of the Act and the notice and statement required by regulations 23(2)(c) and (d) of the

#### **4. The Secretary of State's Consideration of the Application**

- 4.1 The Secretary of State has carefully considered the ExA's Report, the representations made in respect of the Application and all other material considerations. The Secretary of State's consideration of the ExA's Report is set out in the following paragraphs.
- 4.2 In making the decision, the Secretary of State has had regard to the National Policy Statements ("NPSs") referred to in paragraph 4.3 below, the Local Impact Reports submitted by East Lindsey District Council, Boston Borough Council, Lincolnshire County Council ("LCC") and North Kesteven District Council, the relevant local plans and to all other matters which are considered to be important and relevant to the Secretary of State's decision as required by section 105 of the Act. The Secretary of State also confirms for the purposes of regulation 3(2) of the 2009 Regulations that he has also taken into consideration the environmental information as defined in regulation 2(1) of those Regulations. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

#### **Need for the Proposed Development**

- 4.3 No NPS has effect in relation to the Development (because it falls outside the definition of Nationally Significant Infrastructure Project ("NSIP") set out in the Act). In making his decision, the Secretary of State is required under section 105 of the Act to have regard *inter alia* to any other matters which he thinks are both important and relevant.
- 4.4 The ExA sets out [ER 4.6.1] that the Development of itself is not an NSIP but notes that the Secretary of State issued a direction under section 35 of the Planning Act on 14 November 2013 to treat the Development as an NSIP ("the Secretary of State's Direction").
- 4.5 The ExA concludes that the primary specific need for the Development is as set out in the Secretary of State's Direction, namely that, "*It is needed to deliver the electricity generated by the consented Triton Knoll Offshore Wind Farm array (a project of national significance) into the national grid transmission system.*" The Secretary of State agrees with that assessment.
- 4.6 Further, Energy National Policy Statements, EN-1 (Overarching NPS for Energy), EN-3 (NPS for Renewable Energy Infrastructure and EN-5 (NPS for Electricity Networks Infrastructure) set out a national need for development of new nationally significant electricity generating infrastructure of the type already consented (i.e. the TKOWF) and set out the relevant considerations for the decision-maker to take into account in reaching its decision. The Secretary of State considers that the NPSs are important and relevant to his decision on the Application because the

Development is development which could have been “associated development” under the Act if it had been included within the application for consent for TKOWF To which it would be linked and for which a national need is set out in the NPSs. The Secretary of State notes that the ExA considers the Application against the considerations set out in EN-1, EN-3 and EN-5 throughout the Report and considers that, in the absence of any adverse effects that are unacceptable in planning terms, making the Order would be consistent with the NPSs.

- 4.7 The Secretary of State has considered all the issues set out above and concludes that the need for the Development has been established.

## **5. Consideration of the ExA’s Conclusions and Recommendations**

- 5.1 The Application was considered by the Planning Inspectorate which submitted its Report of Findings, Conclusions and Recommendation (“the ExA’s Report”) to the Secretary of State for consideration on 3 June 2016.
- 5.2 Except as indicated otherwise, the Secretary of State agrees with the findings, conclusions and recommendation of the ExA as set out in the Report, and the reasons for the Secretary of State’s decision are those given by the ExA in support of their conclusions and recommendation.

### **(i) Agriculture and Soil Management**

- 5.3 The Secretary of State notes that there were concerns expressed during examination about: the potential impacts of the installation and operation of the underground cables on field drainage systems; the installation of ‘link boxes’ (cable-testing pits set at intervals of 600 – 1000 metres along the onshore cable route with lid dimensions of 1 metre x 1 metre) which have the potential to adversely affect agricultural operations over them); soil reinstatement and aftercare; and the sequencing of cable installation along the onshore route. The ExA considered each of these matters and concluded that, with the exception of the link boxes, they had been adequately addressed through the inclusion of suitable provisions or mitigation – including the need to agree a Code of Construction Practice and a Soil Management Plan (based on existing “outline” plans) with the relevant district planning authority – within the Order. The Secretary of State agrees with the ExA’s conclusions and notes that the outline Soil Management Plan underwent considerable revision during the examination to deal with issues related to drainage in particular.
- 5.4 On link boxes, the Secretary of State notes concerns that these would be located in fields where they might be an obstacle to farm machinery which might be damaged by them. A number of interested parties expressed the view that link boxes should be located in field boundaries to ensure that link boxes interfered with farm machinery and agricultural practices as little as possible. The ExA noted that the Applicant’s written response during the examination indicated that covers would be installed on top of link boxes and that these would be capable of taking agricultural vehicle loads and recommended that the Secretary of State

should seek to make provision for this. The Secretary of State, therefore, consulted the Applicant and other interested parties to the examination about the inclusion of a provision to ensure that “agricultural machinery” could pass over the link boxes without damage (by way of amendment to Requirement 14 (code of construction practice) in Part 3 of Schedule 1 to the Order). The wording of the proposed provision was set out in the letter.

- 5.5 One respondent to the consultation stated that it was imperative that suitable protection for link boxes was provided in any Order that might be made.
- 5.6 In its response to the Secretary of State, the Applicant notes that link boxes are a critical element of the design of any underground electrical connection. The Applicant indicates that it was concerned that ‘agricultural machinery’ was not defined and could be interpreted to include ground-engaging cultivation equipment – such as a plough or harrow – rather than the agricultural vehicle itself. It, therefore, suggested some revised wording to make it clear that the Soil Management Plan must secure that the link boxes are designed so as to allow the wheels or tracks of agricultural machinery (rather than ground-engaging cultivation equipment) to pass over link boxes without damaging either the box or the wheels or tracks of the machinery in question.
- 5.7 However, the Applicant acknowledged the importance of minimising the impact on agricultural operations of link boxes and notes that the outline Soil Management Plan (set out in Revision E) which will form the basis of the approved Soil Management Plan states that, “The....Agricultural Liaison Officer will be responsible for ensuring that the location, orientation grouping and demarcation of link boxes are informed, subject to overriding constraints, through discussions with landowners”.
- 5.8 The Secretary of State considers that the Applicant’s proposed wording when taken with the other provisions of the outline Soil Management Plan, the intention of which is to minimise interference with farming operations, and which will form the basis of the approved Soil Management Plan, provides suitable protection for farmers and other land users. The Applicant’s wording has, therefore, been included in the Order that the Secretary of State has made.

(ii) Biodiversity, Biological Environment, Ecology and Geological Conservation

- 5.9 The Secretary of State is aware that concerns were raised by Lincolnshire Wildlife Trust and Lincolnshire County Council about whether the ecological surveys undertaken by the Applicant provided adequate coverage of ecological receptors. In part, these concerns were triggered by the Applicant’s inability to access a number of potential survey sites along the route of the onshore cable because landowners refused access to the surveyors. The ExA considered the arguments put forward by both the Applicant and other interested parties to the

examination (including Natural England, the Government's statutory advisers on nature conservation matters, which agreed with the Applicant's approach to the ecological assessment). With the inclusion of Requirement 20 (European protected species) in Part 3 of Schedule 1 to the Order recommended to the Secretary of State, which provides for pre-construction surveys to establish the presence of any European protected species, the ExA determined that the approach to ecological surveys had been adequate. The Secretary of State agrees.

(iii) The Historic Environment

- 5.10 LCC said it objected to the approach taken by the Applicant to assess potential effects on archaeology considering that the Applicant's reliance on desk top surveys, rather than field evaluations, was insufficient to allow a proper assessment of potential impacts. However, Historic England and the relevant district planning authorities – Boston Borough Council and East Lindsey District Council – were content with the approach the Applicant had adopted. The ExA considered that, in light of the comments from those organisations and the Order securing provision for field evaluations so that data is available to inform any mitigation strategy, the Applicant's approach to pre-construction surveys was acceptable. The Secretary of State agrees with the ExA's conclusions in this matter.
- 5.11 LCC expressed concerns about the Outline Onshore Written Scheme of Investigation ("WSI") proposed by the Applicant, maintaining that appropriate mitigation could not be determined until informed by evaluation results from pre-construction surveys. However, during the examination, amendments were made to Requirement 12 (archaeology) in Part 3 of Schedule 1 to the recommended Order to capture pre-construction field testing. The Secretary of State notes that the relevant district planning authority is required to agree the WSI referred to in Requirement 12, including any mitigation measures. The ExA found the approach taken was acceptable and was adequately secured in the outline WSI and Requirement 12.
- 5.12 There were concerns about the potential impacts of the construction of parts of the onshore elements of the Development on the Sibsey Memorial, erected to commemorate the victims of a Second World War air crash. However, the Applicant explained that suitable protective measures were contained in the proposed Order and the ExA was satisfied that suitable mechanisms to safeguard the Memorial would be put in place. The Secretary of State agrees with this conclusion.

(iv) Landscape and Visual Impact Assessment

- 5.13 The Secretary of State is aware that there was a great deal of discussion during the examination about the siting of the landfall works at Anderby Creek (rather than at nearby Anderby Creek South where, it was argued, the impacts would be less or at some other location, such as the Humber Estuary) and about the siting of the Intermediate Electrical Compound ("IEC"), particularly why the original site for the compound –

in the 'Brown Zone' at the Wainfleet Industrial Estate in Skegness – had been discarded in favour of a site further inland at Orby. There were also discussions about whether the proposed location for the grid connection substation at Bicker Fen was the most optimal.

- 5.14 In respect of the landfall location, the Secretary of State notes the Applicant's argument that it had explored a number of options which had been discarded, including sites around the Humber Estuary because it argued the existing infrastructure there would need to be considerably reinforced such that it would not meet National Grid's requirements to offer the most economical connection point, whereas the existing National Grid substation at Bicker Fen can accommodate the Development with only minor modification. The Secretary of State notes that the owner of the Anderby Creek South site, the Lincolnshire Wildlife Trust, had plans to enhance the wildlife value of the Anderby Creek South site and that utilising that site for the landfall would pose greater environmental and construction challenges to avoid disturbing wildlife than would be the case if the more northerly site was used. The ExA concludes that the Humber Estuary and Anderby Creek South options were not viable alternatives to the chosen landfall point. The Secretary of State agrees with that conclusion.
- 5.15 As far as the consideration of the siting of the IEC is concerned, the principal issue was why the site originally proposed for the compound, in the "Brown Zone" at Skegness was not utilised. The Applicant indicated that the original location (including the cable route alignment) appeared to conflict with possible redevelopment plans for the location in question, which included the provision of a new road system and the development of new business and industrial units. However, the ExA concludes that the new road system was highly unlikely to materialise (certainly in the medium term) but accepts that the Applicant has done what it can to examine alternative sites. The ExA also concludes that the visual impacts of the final site location at Orby would be significant from two residential receptor points and that the proposed mitigation for visual impacts – a planting programme around the site – would only be partially successful even after a reasonable length of time. (The planting itself would introduce a noticeable, alien, feature into what is a flat and treeless landscape.)
- 5.16 The ExA concludes that, on balance, the proposed mitigation is a positive measure to reduce impacts and that there would be no significant visual effects from the operation of the IEC. The ExA also concludes that the construction and operation of the IEC would accord with the Local Plan and with paragraph 5.9 of EN-1.
- 5.17 As far as the proposed substation at Bicker is concerned, the ExA questioned whether an alternative to the chosen site – one next to the existing National Grid substation at Bicker Fen – would be more appropriate and considered responses, including those of Boston Borough Council. The ExA concluded that the Applicant had examined alternative sites and, subject to the provision of suitable mitigation in the form of planting around the new substation site at Bicker, there would be



no significant visual impacts from the operation of the new sub-station. The Secretary of State notes the arguments above and agrees with the analysis and conclusions reached by the ExA.

(v) Proposed National Grid Viking Link Interconnector Project

- 5.18 The Viking Link Interconnector project is being proposed to link the UK and Danish electrical systems by way of a sub-sea connection. The proposal is being taken forward by National Grid Viking Link Limited (“NGVLL”), a special purpose vehicle set up by National Grid. The proposal is at an early stage of planning development with no firm decisions taken about the location of the landfall at the UK end, although it seems likely that it will be at a point on the Lincolnshire coast, possibly close to the landfall site for the Development. The end point for the Viking Link Interconnector would be the existing National Grid substation at Bicker Fen but route options between the eventual landfall and Bicker Fen have not yet been decided.
- 5.19 The question of the relationship of the proposed Viking Link Interconnector to the Development was a topic of some concern during the examination given the potential for significant cumulative impacts.
- 5.20 However, the ExA states that NGVLL indicated during the examination process that it had not finalised its consideration of the site of the cable landfall and that there were very few details that could be taken into account in considering cumulative impacts. This was the approach taken by the Applicant in framing the environmental information submitted as part of the Application.
- 5.21 The ExA concluded that the Applicant had taken into account the Viking Link Interconnector as far as it was able to do so now and that cumulative impacts between it and the Development would be considered as part of the eventual application for the Viking Interconnector Link to be made under the Town and Country Planning Act 1990. The ExA, therefore, considered it was able to assess the impacts of the proposed Development in the absence of definitive information about the proposed Viking Link Interconnector concluding that there would be no significant offshore and onshore cumulative effects of the Development. Having considered all the matters set out above, the Secretary of State agrees with the ExA’s conclusions in this matter and also agrees with the ExA’s conclusion that, in the event that the Secretary of State does decide to grant consent for the Development, it would be for NGVLL to assess the cumulative impact of its project with the Development (and any others that may be relevant) in making any application for the necessary consent for the Interconnector project.

(vi) Compulsory Acquisition

- 5.22 Compulsory acquisition powers over land can be granted only if the Secretary of State is satisfied that certain conditions set out in the Act are met:

- the condition in section 122(2) is that the land is required for the development for which the development consent relates or is required to facilitate or is incidental to the development; and
- the condition in section 122(3) is that there is a compelling case in the public interest for the land to be acquired compulsorily.

5.23 The Applicant's approach has been to seek compulsory acquisition powers over land along the whole extent of the proposed onshore cable route and temporary possession powers for areas required during survey works, construction and for maintenance. In particular, the Applicant is seeking the compulsory acquisition of a combination of freehold title for nineteen plots (for above-ground infrastructure such as the IEC and the new substation), new permanent rights in respect of a 'cable corridor' (such as rights of access and rights to install and maintain cables) of up to 60 metres in width as well as temporary possession powers in respect of land. The Applicant also seeks the imposition of a restrictive covenant in respect of the cable corridor to prevent interference with (and, potentially, injury from) the underground infrastructure forming part of the Development.

5.24 The ExA's Report covers compulsory acquisition and matters related to it in great detail. This included consideration of whether the 60 metre wide cable corridor would always be required. The Applicant acknowledged that it would not necessarily be this width but it was not certain as it had not carried out surveys to identify all possible constraints along the cable route. The ExA, while stating that it may have been desirable for the Applicant to have gained a greater understanding of ground conditions before submitting the Application, acknowledged that the recommended Order allows the Applicant to exercise compulsory acquisition powers only in respect of land that is actually needed for the Development (so that if the full width of the corridor was not needed, the land would not be acquired). In order to provide greater certainty to landowners about the extent of the cable corridor, amendments were made to the Order during the examination which would require the Applicant to notify landowners of the cable route sequencing plan at least three months before the commencement of works. The ExA's overall conclusion is that the case for compulsory acquisition has been made and the conditions set out in the Act and guidance have been fulfilled in all respects.

5.25 The Secretary of State sought further information from relevant interested parties about issues related to the compulsory acquisition of rights over third party interests in Crown land. These issues do not affect the overall conclusion on the grant of compulsory acquisition powers. The Secretary of State, therefore, concurs with the ExA's conclusion in this matter.

(vii) Statutory undertakers

5.26 The recommended Order includes powers of compulsory acquisition in respect of the land of a number of statutory undertakers. Section 127 of the Act provides that, where a representation by a statutory undertaker

has been made and is not withdrawn, the Secretary of State's power to grant powers of compulsory acquisition in respect of the statutory undertaker's land may be exercised only if the Secretary of State is satisfied of matters specified in section 127.

- 5.27 The ExA's report records that at the conclusion of the examination representations had been made and not withdrawn by three statutory undertakers, Network Rail Infrastructure Limited ("Network Rail"), the Canal & River Trust ("CART") and Western Power Distribution (East Midlands) plc ("WPD"). WPD withdrew its representation by letter dated 5 August 2016 in response to the Secretary of State's consultation (see below).
- 5.28 The recommended Order provides powers for the Applicant to create and compulsorily acquire new rights over the land of Network Rail and CART. Section 127(6)(a) of the Act provides that the Secretary of State may include such a provision in the Order only if the Secretary of State is satisfied that the rights can be purchased without serious detriment to the carrying on of the undertaking. Noting that the recommended Order contains protective provisions agreed by both Network Rail and CART, the ExA was satisfied that the statutory test in section 127(6)(a) is met. The Secretary of State agrees.
- 5.29 The Order provides, where the compulsory acquisition of land is authorised, for the extinguishment of "relevant rights" and for the removal of "relevant apparatus" (within the meaning of section 138 of the Act) of statutory undertakers, subject to the protective provisions in Schedule 8. The ExA was satisfied that the extinguishment of relevant rights or the removal of relevant apparatus is necessary for the purpose of carrying out of the Development and that the statutory test in section 138(4) of the Act for the inclusion of such provision in the Order is met. The Secretary of State agrees with the ExA in this matter.

(viii) Human Rights Act 1998

- 5.30 It is unlawful for the Secretary of State to act in a way that is incompatible with a "Convention right" (i.e a right under the European Convention on Human Rights ("ECHR") protected by the Human Rights Act 1998.) The Secretary of State should not, therefore, make the Order if to do so would be incompatible with a Convention right.
- 5.31 The ExA sets out that the compulsory acquisition provisions in the recommended Order engage a number of Convention rights identified as:
- Article 6 (which entitles those affected by compulsory acquisition powers sought for the Development to a fair and public hearing of their objections);
  - Article 8 (which protects private and family life, home and correspondence);

- Article 1 of the First Protocol to the ECHR (which protects property rights).

5.32 The ExA considered the possible interference with Convention rights from the Development and the compulsory acquisition powers sought. The ExA concluded that the proposed interference with Convention rights would be for legitimate purposes that would justify such interference in the public interest and to a proportionate extent. The Secretary of State agrees with the ExA's rationale for reaching its conclusions in relation to Articles 6 and 8 of the ECHR and Article 1 of the First Protocol to the ECHR.

(ix) Special Category Land

5.33 One of the plots over which the power to create and compulsorily acquire new rights is sought (plot 01/01 at the landfall site) was identified by the Applicant and the landowner, LCC, as being open space land and is, therefore subject to the provisions of section 132 of the Act. Section 132 provides that an order granting development consent is subject to special parliamentary procedure to the extent that the order authorises the compulsory acquisition of a right over open space land unless the Secretary of State is satisfied that the land in question will, when burdened with the new right, be "no less advantageous" to persons in whom it is vested, other persons entitled to rights of common or other rights, and the public.

5.34 The plot consists of beach, sand dunes, public footpath, trees and shrubbery and forms part of the Lincolnshire Coastal Country Park under which cables would be run. Lincolnshire County Council strongly argued that the "no less advantageous" test would not be met. The Council pointed, among other things, to the disruption during the installation of the cables and stated that transition bays (located in a neighbouring plot) would be visible from the part of land (but not the beach).

5.35 The ExA considered the arguments and decided that the Secretary of State could be satisfied that the land when burdened with the order rights would be no less advantageous to the persons in whom it is vested, other persons if any entitled to rights of common or other rights and the public. The ExA further considered that, although there would be some impact on the use of the land as open space during construction, as the infrastructure would be installed underground, there would be no permanent visual impact on the open space land itself. The ExA also considered that the change in the view from part of the open space land, caused by the installation of the transition joint bays in neighbouring land when mitigated, as secured by the Order would not be such as to make the open space land less advantageous. The Secretary of State agrees with the way the ExA has considered this issue and with its recommendation.

(x) Crown Land

- 5.36 Section 135(1) of the Act 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. In the Application, the Applicant seeks powers to create and compulsorily acquire new rights over third party interests in Crown land of which the Crown Estate and Highways England are the “appropriate Crown authorities”. These include rights to install and maintain electrical cables.
- 5.37 In a letter dated 11 September 2015 sent during the Examination, the Crown Estate indicated that inclusion of compulsory acquisition powers in respect of rights in plots in respect of which the Crown Estate was the appropriate Crown authority would have to be subject to the inclusion of article 41 of the recommended Order. Article 41(1)(b) made the exercise of compulsory acquisition powers in respect of Crown land subject to the subsequent consent of the appropriate Crown authority.
- 5.38 In a letter dated 1 August 2016 to the parties, the Secretary of State set out his view that section 135(1) of the Act prevents him making a development consent order 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. The Secretary of State also explained that he did not consider that article 41(1)(b) of the recommended Order was consistent with the requirements of section 135(1). The Secretary of State noted that, whilst previous practice may have varied, this approach was consistent with 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>
- 5.39 In the same letter, the Secretary of State indicated that he proposed to replace article 41(1)(b) of the recommended Order with a new provision, the effect of which would be to make clear that the exercise of compulsory acquisition powers in respect of rights over third party interests in Crown land is not subject to the subsequent consent of the appropriate Crown authority. The Secretary of State also asked for prior consent to compulsory acquisition from all appropriate Crown authorities.
- 5.40 In response, Highways England provided prior consent to compulsory acquisition. Although The Crown Estate made representations as to why section 135(1) should be interpreted to allow for the consent of an appropriate Crown authority to be provided subsequent to the Order being made, The Crown Estate nevertheless provided prior consent to

compulsory acquisition by letter dated 1 September 2016<sup>1</sup>. The Secretary of State notes that that letter requests that article 41 be amended as set out in the Secretary of State's letter of 1 August 2016 (with minor modifications) and The Crown Estate be "consulted further if any variation to the Applicant's final draft development consent order Revision G submitted into the examination on 24 February 2016 and allocated document reference (REP7-018) ("the Draft DCO") is proposed which could affect any other provisions of the Draft DCO which are subject to section 135(1) or 135(2) of the Act". The Secretary of State considers that no such variations have been made and that no further consultation with The Crown Estate is necessary. The Secretary of State has, therefore, amended article 41 (article 40 of the made Order) as set out in the letter of 1 August 2016 with the minor modifications requested).

## **6. Other Matters**

### **Habitats Regulations Assessment**

- 6.1 Regulation 61 of the Conservation of Habitats and Species Regulations 2010 ("the Habitats Regulations") and regulation 25 of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 ("the Offshore Habitats Regulations") require the Secretary of State to consider whether the Development is likely to have a significant effect, either alone or in combination with other plans and projects, on a European site or a European offshore marine site, as defined in the Habitats Regulations and the Offshore Habitats Regulations (together a "European site"). If likely significant effects cannot be ruled out, then an Appropriate Assessment must be undertaken by the Secretary of State to address the implications for the site in view of its conservation objectives. In light of any such assessment, the Secretary of State may grant development consent only if the Secretary of State has ascertained that the Development will not, either on its own or in combination with other plans and projects, adversely affect the integrity of a European site, unless there is no alternative solution and imperative reasons of overriding public interest apply.
- 6.2 European sites protected include Special Areas of Conservation ("SACs") established under Council Directive 92/43/EC on the conservation of habitats and species and of wild flora and fauna (the "Habitats Directive") and Special Protection Areas ("SPAs") established under Council Directive 2009/147/EC on the conservation of wild birds (the "Wild Birds Directive"). A Site of Community Importance ("SCI") is a site in the process of receiving approval by the European Commission and will be a SCI until the site has been formally designated as a SCA by the United Kingdom Government.
- 6.3 The ExA's overall findings and conclusions in relation to the Habitats and Offshore Habitats Regulations are found in section 6 of the Report.

---

<sup>1</sup> The Crown Estate's letter of 1 September 2016 gives consent for the purposes of section 135(1) in respect of plots 43/10 and 43/11 and confirms that plot 22/20 is not Crown land for the purposes of section 135(1).

- 6.4 The Secretary of State notes that the ExA recommended [ER 6.1.70] that an Appropriate Assessment should be undertaken to assess the potential impacts of the Development's operational and maintenance phases on the *Sabellaria spinulosa* qualifying reef feature of the Inner Dowsing, Race Bank and North Ridge SCI both alone and in-combination with other plans or projects.
- 6.5 The Secretary of State considers that the Development has the potential to have a likely significant effect on the *Sabellaria spinulosa* reef feature of the SCI. The Secretary of State has, therefore, undertaken an Appropriate Assessment – taking account of all relevant information – of the SCI's conservation objectives to determine whether the proposed Development, either alone or in-combination with other plans and projects, will result in an adverse effects on the site's integrity. The Secretary of State concludes that the Development, with mitigation in place, will not have an adverse effect on the integrity of any European site either alone or in-combination with other plans or projects. The Secretary of State's consideration is set out in the "Record of the Habitats Regulations Assessment Undertaken under Regulation 61 of the Conservation of Habitats and Species Regulations 2010 and Regulation 25 of the Offshore Marine Conservation (Natural Habitats &c.) Regulations 2007 for an Application under the Planning Act 2008" which is published alongside this letter.

### **Representations Received After the Close of the Examination**

- 7.1 During the decision-making period, the Secretary of State consulted interested parties on 1 August 2016 on a range of matters on which clarification was requested:

- (i) Section 135(1) of the Planning Act 2008 and article 40 of the Draft Order

See paragraph 5.36 – 5.40 above.

- (ii) Private Treaty Agreements

The Secretary of State sought an update on the state of negotiations on a private treaty agreement between the Applicant and LCC in respect of the latter's holding of affected land – including county owned farm land and open space land at the landfall site for the cable connection. Other parties were also invited to provide comments on the status of their land treaty agreements with the Applicant.

LCC indicated that it had appointed a land agent to act on its behalf but that, in view of the Council's objection to the proposed Development "given the wider economic and environmental impacts the scheme would have on Lincolnshire", no progress had been made in finding common ground between the parties. In response to the Council's comments, the Applicant set out that it had made every effort to reach agreement with the Council without success but

remained committed to continuing its engagement with the Council to agree a solution.

The Applicant indicated that negotiations with other landowners had been more successful with 92% of affected landowners agreeing Heads of Terms with it. The Applicant also indicated that it would continue to conclude private treaty agreements with affected parties. The Applicant stated that the agreed Heads of Terms and subsequent treaty agreements provide for the land to be retained in the Order and to be subject to powers of compulsory acquisition whilst the Applicant has agreed to provide undertakings not to exercise compulsory acquisition powers, subject to a limited number of qualifications. Accordingly, no changes are proposed to the Order or Book of Reference.

(iii) Network Rail Infrastructure Limited

The Secretary of State asked Network Rail Infrastructure Limited to confirm whether it would withdraw its representation submitted under section 127 of the Act. The representation has not been withdrawn, and the Secretary of State's conclusions in relation to section 127 are set out at paragraphs 5.26 – 5.29 above.

(iv) Canal & River Trust

The Secretary of State asked the Canal & River Trust to confirm whether it would withdraw its representation submitted under section 127 of the Act. The representation has not been withdrawn, and the Secretary of State's conclusions in relation to section 127 are set out at paragraphs 5.26 – 5.29 above.

(v) Western Power Distribution (East Midlands) plc

The Secretary of State asked Western Power Distribution (East Midlands) plc to confirm whether it would withdraw its representation submitted under section 127 of the Act. The company has confirmed the withdrawal of its representation.

(vi) Conoco Phillips (UK) Limited

The Secretary of State sought an update from the Applicant and Conoco Phillips UK Limited on the state of gas pipeline crossing agreements to protect both parties from damages in the event of impacts arising from the proximity of the two sets of infrastructure. In response, the Applicant indicated that it was still discussing the matter with Conoco Phillips and would provide an update at the earliest opportunity.

The Secretary of State notes that the Applicant and Conoco Phillips submitted a joint statement which sets out a series of agreements reached by the two parties (other than pipeline crossing agreements) and that there are protective provisions for certain statutory



undertakers (which would include Conoco Phillips (UK) Limited) in the recommended Order.

(vii) Changes Proposed in the Applicant's Letter of 2 June 2016 to the Planning Inspectorate

The Secretary of State sought comments from interested parties on minor changes to the draft Order suggested by the Applicant in its letter of 2 June 2016 to provide clarity on the definition of "stage" in Requirement 1 of Part 3 of Schedule 1 to the Order. There were no comments on this matter. The Secretary of State has made the suggested changes.

(viii) Link Boxes

See paragraphs 5.3 – 5.8 above.

(ix) Lincolnshire County Council

LCC wrote to the Secretary of State on 3 August 2016 setting out its objection to the proposed Development and asking that the consent application should be refused.

Throughout the examination, the Council raised a number of concerns about various potential impacts arising from the Development but the letter of 3 August 2016 specifically focused on the potential harm to the Lincolnshire coastline and to the tourism industry. The Secretary of State does not consider that the letter of 3 August 2016 adds to the representations made by the Council during the examination.

The ExA considered the Council's representations during the examination and concluded that while there would be potential impacts from various aspects of the Development – both at the cable landfall point and at the intermediate electrical compound the proposed substation – these would either be limited to the duration of construction (in the case of the landfall works) or mitigation planting would ensure other impacts would not be significant.

In the case of tourism, the ExA was satisfied that all relevant and important issues had been examined thoroughly and that the Applicant's assessment of all issues had been adequate. The ExA also noted that the Applicant's position was supported by East Lindsey District Council and Boston Borough Council.

The Secretary of State considers, therefore, that the matters raised by LCC in its letter of 3 August 2016 have been assessed and the conclusions reached by the Examining Authority are reasonable.

## 8. General Considerations

### Transboundary Impacts

- 8.1 A screening exercise for transboundary impacts was undertaken by the Secretary of State for Communities and Local Government (“SoSCLG”) for the purposes of regulation 24 of the 2009 Regulations. SoSCLG applied the precautionary approach set out in the Planning Inspectorate’s “Advice Note 12: Transboundary Impacts Consultation” and took the view that the Development was not likely to have a significant effect on the environment in another European Economic Area state. The Secretary of State agrees with this assessment.

### Natural Environment and Rural Communities Act 2006

- 8.2 The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, has to have regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when making a decision on whether to grant development consent. The Secretary of State is of the view that the Report considers biodiversity sufficiently to accord with this duty.

### Equality Act 2010

- 8.3 The Equality Act 2010 includes a public sector “general equality duty”. This requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Act; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following “protected characteristics”: age; gender; gender reassignment; disability; marriage and civil partnerships<sup>2</sup>; pregnancy and maternity; religion and belief; and race. The Secretary of State is satisfied that there is no evidence of any harm, lack of respect for equalities or disregard to equality issues in relation to the Application.

### Marine Licences

- 8.4 The Order deems a Marine Licence to have been issued under Part 4 of the Marine and Coastal Access Act 2009. In accordance with regulation 3A of the Infrastructure Planning (Decision) Regulations 2010, the Secretary of State has had regard to the need to protect the environment, the need to protect human health and the need to prevent interference with legitimate uses of the sea.

---

<sup>2</sup> In respect of the first statutory objective (eliminating unlawful discrimination etc.) only

## **9. The Secretary of State's Conclusions and Decision**

- 9.1 For the reasons set out in this letter, the Secretary of State considers that there is a compelling case for granting development, given the need for the Development and that the potential adverse local impacts of the Development do not outweigh the benefits of the scheme [as mitigated by the terms of the Order].
- 9.2 The Secretary of State has, therefore, decided to accept the ExA's recommendation in paragraph 10.2.1 of the ExA's Report to make the Order granting development consent and to impose the requirements recommended by the Panel but subject to the modifications described below.

## **10. Modifications to the Order**

- 10.1 The Secretary of State has considered the Order recommended to him by the ExA and proposes to amend it in a number of respects. The principal amendments are as follows:
- (i) Article 5 (transfer of benefit of Order) – the Secretary of State has redrafted article 5, with the aim of making the intention clearer. The changes of substance are as follows: (1) the addition of paragraph (1) to make it clear that the benefit of the Order may be transferred only in accordance with the Order (and that section 156 of the does not apply); (2) the addition of paragraph (7)(b)(ii) to provide that the notice of a transfer of the benefit of the Order given for the purposes of paragraph (6) must be accompanied by evidence of the Secretary of State's consent to the transfer, where such consent is required.
  - (ii) Article 6 (application and modification of legislative provisions) - article 6(2)(a) of the recommended Order contained, with the consent of the Environment Agency, a provision disapplying section 109 of the Water Resources Act 1991. The effect of section 109 was to prohibit inter alia the erection of structures in watercourses forming part of a main river without consent. Section 109 has now been repealed, and activities that previously required consent under section 109 now require a permit under the Environmental Permitting Regulations 2010. The Secretary of State has, therefore, amended article 6 to reflect this change.
  - (iii) Article 20 (power to override easements and other rights) – the Secretary of State removed this article as it unnecessarily duplicates the effect of sections 152 and 158 of the Act.
  - (iv) Article 35 (certification of plans, etc.) – the Secretary of State has included all component parts of the outline code of construction practice for certification in the documents to be certified. The Secretary of State has also provided that the book of reference to be certified should be revision D dated 8 August 2016, sent in response to the Secretary of State's letter of 1 August 2016.

- (v) Article 40 (Crown rights) – the Secretary of State has amended this article to provide that the powers in the Order to compulsorily acquire rights over third party interests in Crown land are not subject to the subsequent consent of the appropriate Crown authority (see paragraphs 5.36 – 5.40 above).

#### Schedule 1, Part 3

- (vi) Requirement 1 (interpretation) - the Secretary of State has made minor amendments to the definition of “stage” set out in the Applicant’s letter of 2 June 2016 (see paragraph 7 (vii) above).
- (vii) Requirement 3 (detailed offshore design parameters) – the Secretary of State has added provisions which reflect conditions 1(1) and (4) of the marine licence.
- (viii) Requirement 14 (code of construction practice (onshore)) - the Secretary of State has amended this provision to ensure that the soil management plan secures that link boxes are capable of bearing agricultural machinery loads (see paragraphs 5.3 – 5.8 above).

#### Schedule 8, Part 3 (protection for National Grid Gas plc and National Grid Electricity Transmission plc)

- (ix) Paragraphs 2, 8 and 9 – the Secretary of State has made changes (including, in particular, to the definition of “statutory undertaker” in paragraph 2) to make it clear that the protective provisions in Part 3 apply for the benefit of National Grid Gas plc and National Grid Electricity Transmission plc only (and not other gas transporters within the meaning of Part 1 of the Gas Act 1986 or other licence holders within the meaning of the Electricity Act 1989, to whom the protective provisions in Part 6 apply).

#### Schedule 9 (deemed marine licence under Marine and Coastal Access Act 2009)

- (ix) Condition 7 (pre-construction plans and documents) – the Secretary of State has amended the condition so that before approving various pre-construction plans and documents, referred to in paragraphs (a), (c), (e), (f), (h) and (i), the Marine Management Organisation (“MMO”) must consult the statutory nature conservation body.
- (x) Condition 9 (pre-construction works and documentation: horizontal directional drilling works within Work No. 2) – the Secretary of State has amended the condition so that before approving the written scheme of archaeological investigation referred to in paragraph (b), the MMO must consult Historic England.
- (xi) Condition 10 (pre-construction plans and documentation: time for submission, etc.) – the Secretary of State has amended the condition to make it clear that, when amendments are proposed to plans and other documents that are required to be approved by the MMO under the marine licence, the MMO must, before approving any

amendments, consult any body that it was required to consult before approving the original plan.

- 10.2 In addition to the above, the Secretary of State has made other minor changes to the recommended Order which do not materially alter its effect, including changes to conform with the current practice for statutory instruments (for example, modernisation of language), the removal of unnecessary material; changes in the interests of clarity and consistency; and changes to ensure that the Order and the marine licences have the intended effect.

**11. Challenge to decision**

- 11.1 The circumstances under which the Secretary of State's decision may be challenged are set out in the note in the Annex to this letter.

**12. Publicity for Decision**

- 12.1 The Secretary of State's decision on the Application is being publicised as required by section 116 of the Act and regulation 23 of the 2009 Regulations.

Yours sincerely

GILES SCOTT

Head of Energy Infrastructure Planning and Coal Liabilities

## **ANNEX**

### **LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS**

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the date on which the Order is published (or, if later, the day after the date on which the Secretary of State's Statement of Reasons (the decision letter) is published). The Triton Knoll Electrical System Order 2016 as made is being published on the date of this letter on the Planning Inspectorate website at the following address:

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

**These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to grant the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655).**