

Rampion 2 Wind Farm

Category 8: Examination Documents

Draft S106 Agreement with West Sussex County Council

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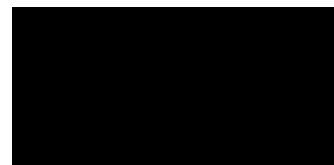
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Dated: 2024

- (1) Rampion Extension Development Limited
- (2) West Sussex County Council
- (3) [Landowners]

Agreement

under section 106 of the Town and Country Planning Act 1990, section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 relating to the Rampion 2 Offshore Wind Farm

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BETWEEN

- (1) **Rampion Extension Development Limited** (Company Registration Number 12091939) whose registered office is Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire SN5 6PB (the **"Undertaker"**)
- (2) **West Sussex County Council** of County Hall, West Street, Chichester, West Sussex PO19 1RG (**"WSCC"**).
- (3) [Landowners]

BACKGROUND

- (A) The Undertaker has made the Application for the Order granting development consent for the Development which was accepted for examination by the Secretary of State on 7 September 2023 pursuant to section 55 of the 2008 Act.
- (B) WSCC is a local planning authority and highway authority for the purpose of the 1990 Act for the area within which that part of the Development landward of mean low water springs is located
- (C) [The Landowner is the registered freehold proprietor of the Land]
- (D) The Undertaker has the benefit of an option to acquire an interest in the Land and is party to this Agreement to enter into obligations on its own behalf and to acknowledge that it will be bound by the obligations herein in the event that it acquires an interest in the Land.
- (E) The Landowner and the Undertaker have agreed with WSCC that this Agreement will take effect under section 106 of the 1990 Act, section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011 on the making of the Order as set out herein.
- (F) The Landowner and the Undertaker have agreed with WSCC to provide the Compensation Fund towards the provision of compensation measures required as a consequence of the Order granting development consent for the Development.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following words and expressions have the following meanings:

"1990 Act"	the Town and Country Planning Act 1990 (as amended)
"2008 Act"	the Planning Act 2008 (as amended)
"Application"	the application for the Order to authorise the Development made under section 37 of the 2008 Act by the Undertaker and accepted for examination by the Secretary of State on 7 September 2023 with reference number EN010117
"Compensation Fund"	the sum of £[FIGURE] ([WORDS]) to be paid to WSCC pursuant to paragraph 3 of Schedule 1 and to be used by WSCC for the purposes set out in paragraph 1 of Schedule 2
"Completion of Commissioning"	the date when the cable circuits comprising the Development have been fully tested and verified

that they are able to transmit their rated power capacity to the grid connection

“Development”

the works for which development consent is sought and to be authorised by the Order, being an Offshore Wind Farm with a generating capacity of in excess of 100MW together with associated electrical infrastructure comprising:

- up to 90 offshore wind turbine generators and up to three offshore substations with associated foundations
- inter-array cables and cables connecting the offshore substations and export cables to bring the power onshore
- a single landfall site near Climping, Arun District
- buried onshore cables in a single corridor
- a new onshore substation, near Cowfold, Horsham District, that will connect to the existing National Grid Bolney substation, in Mid Sussex District, via buried onshore cables; and
- an extension to and additional infrastructure at the existing National Grid Bolney substation, Mid Sussex District to connect the project to the national grid electrical network

“Expert”

an expert having not less than ten years post qualification experience in the subject matter of the dispute. The expert shall be agreed by the parties to the dispute or in default of agreement appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales, or the President for the time being of the Law Society or the President for the time being of the Royal Town Planning Institute as appropriate to the subject matter of the dispute, and in the event of a dispute as to which should apply, as decided by the Present of the Law Society

“Implementation”

beginning to carry out any material operation (as defined in section 155 of the 2008 Act) relating to those parts of the Development landwards of mean low water springs provided that for the avoidance of doubt the carrying out of operations consisting of onshore site preparation works (as defined in the Order) shall not constitute a material operation and consequently shall not individually or together constitute implementation for the purposes of this Agreement and the terms **Implement** and **Implemented** shall be construed accordingly

“Land”

the land shown edged red on the Land Plan against which this Agreement can be enforced being land the freehold to which is registered at HM Land Registry under title [] comprising part of the land on which those elements of the Development landwards of mean low water springs may take

place

"Land Plan"	the plan attached to this Agreement and marked as [Plan Title]]
"Monitoring Fee"	the sum of [£FIGURE (WORDS)] to be paid to WSCC in accordance with the terms of Schedule 1 towards monitoring compliance with this Agreement
"Order"	a development consent order to be made under the 2008 Act pursuant to the Application
"Parties"	the Landowner, the Undertaker and WSCC and "Party" shall be construed accordingly

- 1.2 Words denoting the singular only shall include the plural and vice versa.
- 1.3 Where any one of the Parties is not a body corporate then unless the context requires otherwise neuter words shall include the masculine or feminine gender (as the case may be).
- 1.4 Words denoting one gender shall include all genders and words denoting persons shall include firms and corporations and vice versa.
- 1.5 References to any Party in this Agreement shall include that Party's successors in title and assigns.
- 1.6 References to a body (and its successors in title) exercising statutory powers and/or functions in this Agreement shall unless otherwise specified include any successor in function.
- 1.7 Every covenant in this Agreement not to do a particular thing shall be deemed to include a covenant not to cause authorise or permit that thing to be done by another person.
- 1.8 Wherever there is more than one person named as a Party and where more than one Party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 1.9 References to any statute or statutory provision includes a reference to:
- 1.9.1 that statute or statutory provision as from time to time amended extended re-enacted or consolidated; and
- 1.9.2 all statutory instruments or orders made pursuant to it.
- 1.10 If any provision of this Agreement is found to be invalid, illegal or unenforceable then such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of the remaining provisions of this Agreement.
- 1.11 Unless the context otherwise requires references to any clause sub-clause paragraph schedule appendix drawing or plan (or any part of them) is to a clause sub-clause paragraph schedule appendix drawing or plan (or any part of them) to this Agreement.
- 1.12 The headings in this Agreement are inserted for convenience only and shall not affect the construction or interpretation of this Agreement.

2. **STATUTORY REQUIREMENTS**

- 2.1 This Agreement is made pursuant to section 106 of the 1990 Act, section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011 and all other enabling powers.

- 2.2 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in section 111 Local Government Act 1972 and all other enabling powers.
- 2.3 The obligations contained within this Agreement are enforceable by WSCC in accordance with **clause 2.5** below.
- 2.4 WSCC the Landowner and the Undertaker each agree to act reasonably in exercising their discretion and discharging their functions under this Agreement and where any notice, consent, approval, authorisation, agreement or other similar affirmation is required under the terms of the Agreement, the parties will not unreasonably withhold or delay such notice, consent, approval, authorisation, agreement or other similar affirmation.
- 2.5 The covenants contained in **Schedule 1** shall be enforceable against the Landowner and the Undertaker by WSCC.
- 2.6 The covenants contained in **Schedule 2** shall be enforceable against WSCC by the Undertaker.

3. **CONDITIONALITY**

3.1 This Agreement is conditional upon:

- 3.1.1 the making of the Order; and
- 3.1.2 Implementation

save for the provisions of **clauses 6 to 11** which shall come into effect immediately upon completion of this Agreement.

4. **LANDOWNER AND UNDERTAKER COVENANTS**

- 4.1 The Landowner and Undertaker covenant so as to bind their interest in the Land to comply with the obligations within **Schedule 1** to this Agreement
- 4.2 The Undertaker covenants to the Landowner that it will comply with and discharge the obligations within **Schedule 1** to this Agreement

5. **WSCC COVENANTS**

- 5.1 WSCC covenants on behalf of itself and its successors in title and function to perform and comply with the obligations within **Schedule 2** to this Agreement.
- 5.2 Nothing within this Agreement shall fetter the statutory rights, powers or duties of WSCC as a local authority or in the discharge of any other statutory function (as the case may be).

6. **TERMINATION OF THIS AGREEMENT**

6.1 This Agreement will come to an end if:

- 6.1.1 subject to **clause 6.2**, the Order is quashed, revoked or otherwise withdrawn or modified at any time so as to render this Agreement or any part of it irrelevant, impractical or unviable; or
- 6.1.2 the Order expires before Implementation without having occurred.

6.2 Where the Agreement comes to an end under **clause 6.1**:

- 6.2.1 WSCC is to vacate or cancel the entry made in the Local Land Charges register in relation to this Agreement or otherwise to record the fact that it has come to an end and no longer affects the Site; and
- 6.2.2 any monies paid under this Agreement to WSCC, with the exception of fees paid under **clause 7**, are to be returned to the party that made the payment within one month of the Agreement coming to an end together with interest accrued on the monies from and including the date of payment to and including the date of repayment.
- 6.3 Where the Agreement is released in part by a future agreement, WSCC will place a note against the entry made in the local land charges register stating which obligations no longer have effect.
- 6.4 If the Landowner or Undertaker makes a request in writing at any time after each or all of the obligations under this Agreement have been discharged and complied with WSCC will issue a written confirmation of such performance or discharge.
- 6.5 Following the performance and full satisfaction of all the terms of this Agreement or if this Agreement is determined pursuant to **clause 6.1** WSCC will on the written request of the Landowner or Undertaker cancel all entries made in the local land charges register in respect of this Agreement.

7. **WSCC COSTS**

The Undertaker hereby agrees to pay WSCC on completion of this Agreement their reasonable legal costs incurred in the negotiation, preparation, execution and registration of this Agreement.

8. **REGISTRATION AND DISCHARGE OF OBLIGATIONS**

- 8.1 This Agreement shall be registrable as a local land charge by WSCC on the registers of local land charges.
- 8.2 Following the performance or discharge of each of the obligations contained in this Agreement, WSCC shall upon the request of the Landowner or Undertaker provide written confirmation of the performance or discharge of the relevant obligation and if so requested execute an Agreement of release or partial release from the relevant provisions of this Agreement which shall be registered on the register of local land charges of WSCC.

9. **NOTICES**

- 9.1 Any notice, request, demand or other written communication of any sort to be served on any of the Parties under the terms of this Agreement shall be deemed to have been properly made if sent by first class post to the Party on whom that notice, request, demand or other written communication is to be served under this Agreement and addressed as follows:
- 9.1.1 the Landowner at the address first set out above;
- 9.1.2 the Undertaker at the address first set out above;
- 9.1.3 WSCC at the address first set out above.

10. **RIGHTS OF THIRD PARTIES**

A person who is not a Party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms but for the avoidance of doubt it is further agreed that the exclusion of the application of the Contracts (Rights of Third Parties) Act 1999 shall not prevent all or any future successors in title to any of the Parties to this Agreement from being able to benefit or to enforce any of the obligations in this Agreement.

11. **OTHER PLANNING PERMISSIONS OR DEVELOPMENT CONSENTS**

Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission or consent (other than the Order) granted (whether or not on appeal) after the date of this Agreement.

12. **INTEREST**

The Landowner and Undertaker hereby agree to pay interest on the Compensation Fund [*or the Monitoring Fund*] due but not paid on the date on which the relevant payment is due until the actual date of payment at 4% above the base rate of the Bank of England applicable from time to time calculated from day to day.

13. **RELEASE**

13.1 No person shall be liable for any breach of a covenant, restriction or obligation contained in this deed after parting with all of its interest in the Land, except in respect of any breach subsisting before parting with that interest.

13.2 The Undertaker shall be liable for the covenants restrictions and obligations set out in this Agreement including clause 5 and the schedules referred to therein in the event that it Implements the Development PROVIDED ALWAYS that the Undertaker shall have no further liability under the terms of this Agreement following provision to HDC of a deed of covenant duly executed by a successor in title or assign to its interest in any part of the Land or by a third party who has an interest in part of the land on which the Development may be carried out and who has the benefit of the provisions of the Order or any part thereof pursuant to Article 5 (Benefit of the Order) of the Order confirming that they will be bound by and comply with the covenants restrictions and obligations in this Agreement.

14. **VAT**

All consideration given in accordance with the terms of this Agreement shall be exclusive of value added tax properly payable.

15. **DISPUTE PROVISIONS**

15.1 In the event of any dispute or difference between any of the Parties arising out of this Agreement (other than a dispute or difference relating to a question of law or in relation to the interpretation of the Agreement) the Parties agree that the matter in dispute shall on the application of any Party be referred to the Expert and it is further agreed that:

15.1.1 the determination of the Expert shall be final and binding on the parties save in the case of manifest or legal error;

15.1.2 the Parties shall be entitled to make representations and counter representations in accordance with such timetable as the Expert shall direct;

15.1.3 the Expert's costs shall be borne in such proportions as the Expert may direct failing which the Parties shall each bear their own costs of the reference and determination and the Expert's costs calculated by dividing the Expert's costs by the number of sides to the reference; and

15.1.4 the Expert may be replaced by a fresh appointee in the event of becoming at any time unable or unwilling for any reason to proceed to discharge such function and such fresh appointee shall be appointed in the same manner as the Expert.

16. **JURISDICTION**

This Agreement is governed by and interpreted in accordance with the law of England and the Parties submit to the non-exclusive jurisdiction of the courts of England.

17. **COUNTERPARTS**

- 17.1 This Agreement may be entered into in the form of two or more counterparts each executed by one or more of the Parties but taken together shall constitute one instrument.

DRAFT

SCHEDULE 1

Landowner and Undertaker obligations

The Landowner and Undertaker covenant with WSCC as follows:

1. To notify WSCC in writing within 14 days in advance of the intended date of Implementation.
2. To notify HDC in writing within 14 days following its occurrence of Implementation of the Development.
3. To pay to WSCC the Compensation Fund prior to or upon the date of Implementation
4. Not to Implement Development until such time as the Compensation Fund has been paid to WSCC.
5. To pay to WSCC the Monitoring Fund prior to or upon the date of Implementation
6. Not to Implement Development until such time as the Monitoring Fund has been paid to WSCC.
7. To notify WSCC in writing of the date of Completion of Commissioning.

SCHEDULE 2

WSCC Obligations

WSCC covenants with the Undertaker as follows:

1. To use the Compensation Fund as follows:
 - 1.1 [£FIGURE (WORDS)] towards the provision of increased planting to offset and compensate for the temporary residual adverse effects arising from removal of hedgerows and trees on the users of the highway and public right of way network within the WSCC area until the new planting is established
 - 1.2 [£FIGURE (WORDS)] towards improvements to the public rights of way network affected by the construction works on a temporary basis whilst they are closed or diverted within a 5km buffer zone of the cable route and onshore substation
2. Not to use the Compensation Fund for any purposes other than those set out paragraph 1 above unless otherwise agreed in writing with the Undertaker.
3. To apply the Monitoring Fund for monitoring compliance with the terms of this Agreement and for no other purposes whatsoever
4. To keep the Compensation Fund and the Monitoring Fund each in an interest bearing account until the point at which payment is required to be applied for the purpose for which it has been paid.
5. After a period of five years from Completion of Commissioning, to repay the Compensation Fund or any part of the Compensation Fund which has not been used for the purposes for which it was paid, to the person who paid the Compensation Fund to WSCC.
6. To maintain full accounting records of the operation of the Compensation Fund and the Monitoring Fund, including any accrued interest, and such records shall be available for public inspection on reasonable notice and shall include details of the works and measures carried out using the Compensation Fund.

EXECUTION

Signed as a Deed by)
RAMPION EXTENSION DEVELOPMENT)
LIMITED)
acting by two directors or)
one director and its secretary)

Signature of director

Signature of director/secretary

Executed as a Deed by affixing)
the common seal of)
WEST SUSSEX COUNTY COUNCIL)
in the presence of:)

Signature of member

Signature of member

[Signed as a Deed by)
[LANDOWNER])
in the presence of:)

Signature of individual

Witness Signature:

Witness Name:

Witness Address:]

