

Rampion 2 Wind Farm

Category 8: Examination Documents

Note Regarding Approach to Compensation Payments

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Rampion 2 Offshore Wind Farm

Note on securing compensation payments

1. **Background**

- 1.1 Rampion Extension Development Limited (REDL), as applicant for the development consent order for the Rampion 2 offshore wind farm, has agreed to make payments to compensate South Downs National Park Authority, Horsham District Council and West Sussex County Council in respect of residual significant effects arising from the proposed development of Rampion 2.
- 1.2 At present the project does not currently own a legal interest in land within the Order limits, and but is settling agreements with landowners over whose land interests will be created including the project substation site at Oakendene. Consequently REDL is not currently able to enter into planning obligations with the relevant local planning authorities to secure payment of the relevant sums.
- 1.3 This note confirms the approach REDL proposes to take to secure the payments.

2. **Current position**

- 2.1 REDL has entered into an option agreement with the landowner for the onshore substation pursuant to which REDL will acquire a legal interest in the site following the grant of consent. Consequently it will be possible to bind REDL's legal interest in the project's onshore substation to secure payment of funds once the option has been exercised.
- 2.2 At present, REDL is anticipating acquiring rights over land comprising the cable corridor, rather than land itself.
- 2.3 A planning obligation under section 106 of the Town and Country Planning Act 1990 can only be given to, and be enforceable by, a local planning authority in whose administrative area the land to be bound is located. Consequently, once REDL have an interest in the land within the Order limits, this interest can be bound by an obligation.
- 2.4 It is proposed that the obligation would only be entered into following REDL's acquisition of their interest in the land, and consequently it may be possible to avoid the current freehold owner having to be party to the agreement to bind their interest.
- 2.5 Whilst REDL is seeking to acquire an interest in land to provide the onshore substation work is still being progressed to identify land in the South Downs National Park Authority (SDNPA) administrative area which can be bound in respect of the obligations to make compensation payments to SDNPA, however it is noted that:
 - 2.5.1 the planning obligation would need to rest solely with the landowner as REDL are not intending to acquire more than a permanent easement over the cable route in this location – an easement is not a land interest capable of being bound by a s106 obligation;
 - 2.5.2 the land comprising the cable route alone (over which REDL would acquire rights) may not be considered to provide 'security' for the scale of contribution proposed for SDNPA, particularly given the proposal for phased payments during the operational stage;
 - 2.5.3 the landowner would require a form of indemnity in respect of the liability they were accepting under the terms of the planning agreement.
- 2.6 Whilst a planning obligation is a local land charge, a local authority may also seek to register a charge against the land on the land charges register as a form of security which will affect the value of the land bound.
- 2.7 In this context we also note that the transmission assets including the onshore cable will be required to be transferred to the OFTO for the operational phase, and that body may be required to assume liability for the payments given that it will have the benefit of the land interest or rights.

3. **Solutions**

- 3.1 In the absence of REDL being able to bind a legal interest in land in the South Downs National Park at the present time, and not yet having secured a legal interest in the land at the substation, it is considered that the imposition of a requirement on the face of the draft DCO to secure that a planning obligation is entered into prior to commencement of development is an appropriate way forward. This will allow the Examining Authority, and the Secretary of State, to place reliance on the requirement and thus the compensation payments it secures. The requirement would be framed in such a way as to ensure that the appropriate planning obligation was entered into prior to the commencement of works, other than onshore site preparation works.
- 3.2 The approach of including a requirement to secure a planning obligation has been accepted in other DCOs, notably the Awel y Mor Offshore Wind Farm Order. It is noted that in relation to the Awel y Mor approach this was endorsed by the Examining Authority and weight was placed on the terms of the Landscape Enhancement Principles document submitted to the Examination to secure payment of a significant sum by way of compensation for the seascape and landscape visual effects. Reduced weight was then attributed to the harm caused to nationally designated landscapes.
- 3.3 Notably it was accepted that the anticipated section 106 agreement had not been completed, but this did not detract at all from the weight attributed to the alternative arrangements secured by the Applicant for that scheme.
- 3.4 In that instance the requirement and the principles document it referred to was also supported by a position statement agreed between the Applicant and the relevant authorities.
- 3.5 A similar approach is proposed for Rampion 2 with the inclusion of a requirement, supported by an enhancement principles document identifying how the compensation fund would be secured. This will be capable of being supported by the settled Statements of Common Ground with the authorities, or a separate position statement – please see below.
- 3.6 Inclusion of a requirement will also mean that completion of a planning obligation can be delayed such that it need only be entered into once consent has been granted, although steps can still be taken to bind land before then if possible.

HDC and WSCC

- 3.7 At the point of implementation (at the latest) REDL will have acquired a legal interest in the substation land. Located in HDC's administrative area, this land is capable of being bound and providing security for the obligations to both HDC and WSCC. An agreement, in a form agreed pursuant to the requirement in the draft DCO, can then be completed in discharge of the requirement.

SDNPA

- 3.8 As noted above, the position is different in relation to SDNPA. If REDL reaches agreement with a landowner with a significant land holding in this area, it may be able to enter into a planning agreement, jointly with that landowner, to secure planning obligations to pay compensation to SDNPA. Such an agreement would bind the identified area of land in respect of the obligations. This would be the preferred option.
- 3.9 If a co-operative landowner cannot be identified, or agreement cannot be reached with a landowner as to terms on which their land can be bound, an alternative solution will be required.
- 3.10 Given that REDL will be able to bind an interest in the substation, which is a key element of the infrastructure required to enable the project to operate and transmit generated electricity to the national grid, an arrangement can be put in place whereby that land interest can be used to provide security in respect of the payments due to SDNPA. This would require the co-operation of both HDC and SDNPA.

- 3.11 A tri-partite agreement between REDL, HDC and SDNPA could bind the substation land in respect of the payments to SDNPA. Whilst the obligation would be given to and be enforceable by HDC, contractual arrangements can be expressed in the agreement such that
- 3.11.1 REDL undertakes to HDC as a planning obligation and contractually to SDNPA to pay instalments of the compensation fund to HDC as stakeholder for SDNPA with payment transferred within a specified period, or alternatively that if HDC so direct the obligation can be discharged by payment direct to SDNPA;
 - 3.11.2 SDNPA agree with both REDL and HDC to accept the sums (including any paid over to SDNPA by HDC) and apply them towards the purpose for which they are intended
 - 3.11.3 HDC agree with both REDL and SDNPA that the monies are to be payable to SDNPA in respect of compensation for residual effects in the latter's administrative area
 - 3.11.4 HDC agree with SDNPA to enforce the obligations under section 106 in respect of the compensation payments due to HDC as stakeholder for SDNPA at the request of SDNPA in the event that REDL is in default
 - 3.11.5 REDL undertakes that in the event that it does acquire a legal interest in SDNPA's administrative area, it must enter into a planning obligation to bind that land in respect of such of the obligations that remain to be discharged at that point
 - 3.11.6 In the event that land in SDNPA's administrative area is bound, the obligation given to HDC in respect of the compensation due to SDNPA will be discharged.
- 3.12 In this manner a planning obligation is entered into and is enforceable in respect of key infrastructure for the project to secure the compensation payment. Whilst the obligation is given to and enforceable by a different local authority than that to whom the funds are ultimately due, the contractual arrangements as between the three parties provide an enforcement mechanism in the event of default. Further, REDL will be required to bind any appropriate land that it subsequently acquires in SDNPA's administrative area.

4. **Approach to requirement**

- 4.1 As noted above, the Awel y Mor DCO secured the compensation payments for residual effects pursuant to a landscape enhancement scheme principles document which was submitted to the examination.
- 4.2 A similar approach is proposed for Rampion 2 with a requirement in the following terms:
- 41. *(1) The authorised project must not be commenced, save in respect of onshore site preparation works until a landscape enhancement scheme in accordance with the landscape enhancement principles document has been submitted to and approved by the South Downs National Park Authority and Horsham District Council*
 - (2) The landscape enhancement scheme shall set out appropriate measures to compensate for the impact of the authorised development on the protected landscape of the South Downs National Park, the landscape character in which the onshore substation is located*
 - (3) The enhancement scheme shall be implemented as approved*
 - (4) In this requirement "landscape enhancement principles document" means the document certified as such by the Secretary of State under article 51.*
42. *(1) The authorised project must not be commenced, save in respect of onshore site preparation works until a public rights of way enhancement scheme in accordance*

with the public rights of way enhancement principles document has been submitted to and approved by West Sussex County Council

(2) The public rights of way enhancement scheme shall set out appropriate measures to compensate for the impact of the authorised development on the use and enjoyment of the public rights of way network in West Sussex

(3) The public rights of way enhancement scheme shall be implemented as approved

(4) In this requirement "public rights of way enhancement principles document" means the document certified as such by the Secretary of State under article 51.

- 42.1 The enhancement principles documents would be high level principles document submitted to the Examination, setting out: firstly the approach to securing compensation for both the temporary and permanent residual effects in Horsham District for the temporary landscape effects and the South Downs National Park for the permanent landscape and visual effects; and secondly the approach to securing compensation for temporary effects on public rights of way as set out above.
- 42.2 Prior to the submission of the scheme documents, the proposed approach to securing obligations through a requirement, and subsequent binding of the substation site in respect of all compensation payments, has been raised with the respective local planning authorities. The intention is that a joint position statement will be secured with the local authorities, specifically acknowledging (in respect of the landscape enhancements) that funds may be paid to HDC as stakeholder for SDNPA unless and until appropriate land is bound in the SDNPA area to secure the payments.
- 42.3 Notwithstanding the intention that the submitted scheme document would set out high level principles, the settlement of agreed form documents with the authorities to supplement the scheme will give comfort to them as to how the approach will work in due course.

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