

From: [Robert Crawford Clarke](#)
To: [Rampion2](#)
Subject: DEADLINE 6 SUBMISSION
Date: 31 July 2024 14:55:28
Attachments: [EXTERNAL RAMPION 2 - RESPONSE TO HEADS OF TERMS.msg](#)
[UPDATED RESPONSE - RAMPION 2 - AGENTS' RESPONSE TO HEADS OF TERMS RECENTLY ISSUED.msg](#)
[EXTERNAL Rampion 2 - Professional Fees and Key Terms.msg](#)

Dear Georgiana,

I would be grateful if you could draw this email to the Examining Panel's attention for reasons which will be obvious from its content.

I write on behalf of the following affected landowners on the scheme (working from the south):-

[REDACTED]

I have studied the Deadline 5 submissions, and am extremely concerned to note that the tone of the Applicant's comments is extremely misleading as it suggests that there has been extensive engagement on their part with a genuine attempt to reach reasonable and fair agreement and that the reason for the lack of such agreement is due to obstruction and/or lack of engagement by myself and/or my clients. This is not correct.

Specifically:-

REP5-011b (Land Rights Tracker Rev D Tracked) – Unique reference numbers 126, 40, 24,13, 121

The Applicant's latest comments in red are misleading and incorrect in the extreme:-

1. At my behest, a group of all the agents known to be acting on the cable route was formed in early 2021 with a view to working collaboratively with RWE on the many issues in negotiations which would be common to all clients, such an approach being beneficial to RWE. In response to the Heads of Terms issued by RWE to all our clients in March last year, the group's combined response was submitted on 24th April, which is attached with this submission email for your reference. Thus the statement against all of my above clients that no formal response to these Heads of

Terms has been received is incorrect. We had spent a lot of time giving detailed consideration to the Terms and formulating our response. Also attached for reference was the response received from Giles Lister of Carter Jonas on 15th May, the tone of which was very unconstructive. It more or less dismissed the majority of points raised and did not display any genuine attempt to engage and reach amicable agreement.

2. The Applicant correctly states that we submitted track changes comments on the draft option and easement document at the start of this month. As clearly stated to the applicant at the time, given that these documents incorporated those matters covered by the Heads of Terms, any separate comments on those Heads of Terms alone would have been superfluous, and thus the fact that we have not submitted any client specific comments on the Heads of Terms is immaterial. Indeed, in discussions responding on the detailed legal documentation we have given the matters far more detailed consideration than would have been required from the heads of terms alone, which is of benefit to the Applicant.

3. I have also made it clear to the Applicant, most recently when submitting the track changes comments referred to in 2 above, that my clients would be happy to meet and go through the terms, but such meeting needs to consider the option and easement documents rather than the Heads of Terms given the lack of detail therein.

4. The lack of clarify on payment of professional fees has also not helped in negotiations. The Applicant states correctly that it issued a fees letter last month, which is also attached for reference. However, given that the Applicant refers to attempts to engage going back to 2021, it is extremely late in the day to be attempting to clarify in what circumstances they will pay professional fees. Even this most recent letter does not give full comfort; for example there have been many site meetings over the years with the Applicant which has necessitated agent presence, which cannot necessarily be attributed to the matter of 'agreeing Heads of Terms', and we have incurred a lot of client time which we have somewhat had to take on trust will be ultimately paid by the Applicant. We submit that a meaningful desire to engage would include at the outset of the process complete clarity that all agents time incurred would be paid for to enable matters to proceed within the timescales the Applicant states it wishes.

Yours faithfully,

ROBERT CRAWFORD CLARKE

1 Chapel Place
London, W1G 0BG

T: 020 7518 3209

F:

Your ref:

Our ref: J0039831

Dear

RAMPION 2 – PROFESSIONAL FEES

Further to previous correspondence in connection with the above we are writing to clarify Rampion 2's position in terms of payment of fees incurred by Affected Parties in connection with Key Terms.

RED commits to reimburse professional fees that have been reasonably and properly incurred in the negotiation of Key Terms, subject to receipt of an invoice and accompanying timesheets to demonstrate that the fees have been incurred and charged in accordance with RICS professional standards.

To assist all parties with effective budgeting and monitoring of fees, RED has included details of what it considers are reasonable fees in its Key Terms documentation, with any unrecoverable VAT to be paid on top.

In the event that the fees are anticipated to be above the Rampion 2 expected figure RED requests that the Landowner's representative provide RED with a fee estimate for its pre-approval.

RED requests that the agent notify RED when the fees are within 10% of the estimated fee level, at which stage the fees incurred will be subject to review by RED. If the fees have been reasonably and properly incurred, then these will be paid. RED will then request a further fee estimate, where appropriate, for the anticipated time and estimated fees to enable the parties to conclude negotiations and complete the relevant documents.

RED agrees to make interim payments of professional fees where there is an agreed estimate and the fees are justified and where the fees incurred do not exceed 90% of the total estimate for land agent advice. Otherwise fees will be paid as soon as practicable after the return of the signed Heads of Terms or completion of the relevant documentation and the provision of the invoice and time sheets.

A number of parties have asked about the payment of solicitor's fees in connection with the negotiation of the Key terms. It is usual for the commercial items in Key Terms to be reviewed and agreed by the appointed agent and for solicitor involvement to commence once the Key Terms have been agreed. If however, a party considers that it is necessary for them to take legal advice upon specific matters relating to the Key Terms, RED will give reasonable consideration to this. RED requests that the need for legal advice on a particular topic is raised with Carter Jonas who will review the request. Where reasonably required, RED will instruct its solicitors to engage with the solicitor appointed by the Affected Party. The involvement of solicitors before Key Terms are agreed is not expected to be necessary but RED will consider these requests, on a case by case basis.

Where reasonably requested, RED will: -

1. provide an appropriate undertaking to pay reasonable solicitors fees in connection with the specifically highlighted elements of the Key Terms.

or

2. consider exclusion of the element requiring legal input from the Key Terms and deal with the matter at the full document stage.

Carter Jonas will continue to strive to engage fully with all parties affected by the proposed DCO and their agents and to progress discussions and negotiations for an Option for easement and respective accesses and compounds. Active discussions are sought on the detail of the Key Terms and associated documents to include specific issues raised associated with individual landholding.

I trust the above clarifies the position on fees however should you have any further queries in connection with the above please contact me.

Yours sincerely

E:
M:

RAMPION 2 HEADS OF TERMS ISSUED APRIL 2023 - COMBINED AGENTS' RESPONSE

ITEM	RAMPION 2 OFFER	AGENTS' RESPONSE	Formal Response
1. GENERAL COMMENT		The heads of terms offered are far too lacking in detail. It is not possible for us to advise our clients sufficiently on the deal offered. Draft documents (option and easement) need to be issued and solicitors instructed and we can advise clients appropriately. This is how things were done on Rampion 1, where from our memory heads of terms were never issued, things went straight to draft documentation stage so appropriate detail could be seen and understood. This seems a reasonable approach. For more comment see under 'incentive payment' below	The position is noted with reference to the request for draft documents. The Heads of Terms set out key terms that will be incorporated into the Option and easement documents which will be made available to your clients solicitors for review and comment once instructed further to the signing of Heads of Terms. Rampion 2 is a different, albeit a similar name, to the referred to Rampion 1 scheme, formally Rampion scheme, and as such the pathway from initial discussions with interested parties associated with the project requirements through to DCO submission will be different. Rampion 2 has different parameters, specifications and requirements.
2. ITEMS MENTIONED IN HOTS:- OPTION PAYMENT	none	You are labelling first instalment of easement payment as an option payment, but if you do this then the easement payment is reduced by 10%. You can't have it both ways	The Option payment is 10% of the 100% easement payment as opposed to a 10% payment in addition to the easement payment
INCENTIVE PAYMENT	10% uplift on easement payments for agreed HOTS in 6 weeks	We have 3 serious concerns with this. 1) in view of the lack of detail in the HOTS, (see above) it is unreasonable to expect clients to commit in such a short timescale. We cannot advise them appropriately. 2) In the agents' forum of 19th July 2021 brief terms were presented by you which stated that the incentive payment would apply if option exchanged within 3 months of issuing of terms. You are now offering the payment if heads of terms (not the option) are agreed within 6 weeks (not 3 months). This is a substantial rowback of your position. A more reasonable position may be that the payment applies if option exchanges within 3 months of issue of draft option and easement documents. 3) At that same agents' forum, your indicative programme stated that the terms would be issued in Q3 of 2021, whereas they were issued in Q2 of 2023, nearly 2 years late, and yet despite us having waited so long for them you expect our clients to agree them within 6 weeks. Your position is untenable on this point.	1/ Please refer to the above in terms of the Rampion 2 scheme and timeframes. It is felt that the incentive period is proportionate to the commitment required in considering, discussing and agreeing the Heads of Terms. 2/ These are two different issues and timeframes with associated payment being an incentive payment (6 Weeks) associated with the Heads of Terms which is in addition to the easement consideration then an Option payment (3 Months) which is part of (10%) the easement payment as above 3/ The position is noted. RWE were not in a position in 2022 to issue terms as a consequence of feedback received following the consultations carried out and finalising of alignment in 2023.
LEGAL FORM OF EASEMENT		it would be helpful to understand why Rampion 1 'easement' was actually lease of the below ground strip the cable sits in, whereas you state that Rampion 2 will be a genuine easement which presumably includes the surface - what are the implications of this to our clients?.	This is Rampion 2 not Rampion. Rampion 2 will progress an easement which is a right to use the cable strip in a particular way for a term of years. The easement is considered to be sufficient for the project requirements.
EASEMENT WIDTH	20m with possibility for extension to unspecified limit for obstructions	Rampion 1 was 15m (ie less land take) with possibility to extend to 30m for physical obstructions (ie a specified maximum). Why is Rampion 2 wider and without limit on the maximum?	This is Rampion 2 not Rampion. Rampion 2 cable strip with associated payment will be as stated within the Heads of Terms and is the width considered necessary by the project engineers. Rampion 1 was 2 circuits compared to the proposed 4 circuits for Rampion 2.

EASEMENT PAYMENT	£74.13 per m run, equating to £3.70 per sq m	Rampion 1 paid £40 per m run, equating to £2.67 per sq m of easement land sterilized, but due to indexation (see below) this now equates to £4.28 per sq m, substantially more than is being offered now. However, more appropriate market evidence is from the Esso pipeline which is paying £45 per metre run for a 6 metre easement, equating to £7.14 per sq m. This was fixed in 2019. Indexing by RPI from say September 2019 to March 2023 increases this payment to £9 per sq m. From this its clear that the figure in the terms of £3.70 per sq metre is completely inadequate.	The before and after value will have regard to market value of the land in question and this has no reference to RPI. Reference to the ESSO pipeline is not relevant as the payments put forward were as a consequence of a commercial rather than market value decision made by the company promoting the DCO.
WHEN PAYABLE	10% signing option, 70% entry for works, 20% signing of easement	Rampion 1 paid 10/80/10 and we see no reason to deviate from this	This is Rampion 2 not Rampion. Rampion 2 cable strip with associated payment will be as stated within the Heads of Terms.
OTHER PAYMENTS	£0.50 per sq m per annum for additional areas	Rampion 1 paid £0.45 per sq m per month for works compounds, which with indexation would equate to approx £0.72, or £8.64 per annum	This is Rampion 2 not Rampion. The proposed basis of payment has regard to the market value for similar uses of land as opposed to RPI.
	access routes not mentioned	Rampion 1 also paid the above rate for access routes	This is Rampion 2 not Rampion. The proposed basis of payment has regard to the market value for similar uses of land as opposed to RPI. The proposed linear rates for 6m access width with passing bays etc where no cable easement on the entities land are:- Construction only access - £3/linear meter - 5 years - Minimum payment £500 Operational Access - £4.50/linear meter - 99 years - Minimum payment £500 Construction and Operational Access - £7.50/linear meter - 99 years Where there are cable easement required on an entities land the proposed easement payment is inclusive of the proposed access payment.
FEES AGENT	£750 on signing of HOTS, £2,250 on signing of option	This is completely unrealistic cap. We need to be properly remunerated so we can properly advise our clients, and in some cases our time input could be considerable, particularly if the easement stretches over more than one legal entity or title. Costs for agreeing the documentation should be on a time basis. And what about subsuequent costs, dealing with:- 1) ongoing issues between completion of documentation and construction 2) matters arising during construction 3) dealing with crop loss and disturbance	The proposed referred payment of fees relates to specific elements of the project associated with legal entities and titles rather than fees associated with the wider project requirements. For key terms this is proportionate. Any reasonable costs incurred post option exchange will be covered / agree at the option stage.
FEES SOLICITOR	3500	we very much doubt whether solicitors will agree to this. Solicitor fees to be agreed direct with Rampion solicitors on case by case basis	The position is noted but lawyers instructed on behalf of RWE will be progressing matters on the basis as proposed.
WORKING STRIP	40m plus unspecified additional areas if required	we cannot agree to anything which is unspecified without more detail. Rampion 1 did not have an open maximum like this.	This is Rampion 2 not Rampion. Rampion 2 unspecified additional areas will be progressed on the basis as stated within the Heads of Terms. All works will be within the DCO consent boundary. The land agreements will require Rampion 2 to work within the parameters of the consent. There is therefore a maximum specified.
GRANTOR RESTRICTIONS	not to allow any plant to grow on easement strip	Seriously?	There will be the stated restrictions so as not to undermine, cause damage, restrict flows etc to the cable and associated apparatus within the cable strip. No planting of trees on the easement strip or allowing trees to establish / grow.

	Also restrictions on title to be limited to extent of easement and any preagreed access, not whole title	Position noted subject to reasonable agreed variation where there will be a requirement to put in place wider restrictions so as to protect the cable as stated within the Heads of Terms and agreed with individual landowners on a case by case basis.
RAMPION 2 RIGHTS	must be limited by reference to plan of easement and working area and agreed access routes and compounds, above ground apparatus, additional construction areas etc. Payments for surveys done post option completion should also be paid for (as has been agreed on the Esso pipeline). Some rights must be qualified, eg felling of trees on additional temporary land take. Rights to lay cables must be restricted to use for wind farm only. Also how and when will the rights be exercised? Much more detail needed.	The Heads of Terms set out key terms that will be incorporated into the Option and easement documents which will include plans. On completion of the Option survey access can be taken as required and where damage is caused then reasonable compensation will be assessed and where substantiated and proven to be caused as a direct consequence of the access being taken paid.
ABORTIVE COSTS	to be reimbursed howsoever incurred, not just on unilateral withdrawal by Rampion	As set out within the Heads of Terms costs will only be reimbursed where RWE withdraw unilaterally from discussions / negotiations.
CROP LOSS	All disturbance and crop loss etc must be fully compensated (not just 'considered' as in HOTS). Rampion 1 paid 90% of estimated crop loss on entry for construction, and we would expect the same here	Crop loss and disturbance will be paid where reasonable, substantiated and shown to be caused as a direct consequence of the works in accordance with the relevant legislation.
3. ITEMS NOT MENTIONED IN HOTS		
INDEXATION	All Rampion 1 payments (including fees) increased by RPI from date of option as base date. Most Rampion 1 options completed around January 2011. This would result in easement payment of £40 being indexed to March 23 of approx £64.14 per m run or £4.28 per sq m based on a 15 metre easement width	Please refer to the above with regard basis of payments and RPI.
LIFT AND SHIFT PROVISION FOR DEVELOPMENT	was included in Rampion 1 and needs to be here	This is Rampion 2 not Rampion. There will not be a lift and shift clause.
TENANTS, LICENCEES ETC	how will they be dealt with? Landowners want to ensure that their tenants etc are treated fairly, listened to and properly compensated. Provisions need incorporating in the documentation or Rampion needs to also deal direct with them	The occupier of land will be paid crop loss and disturbance where appropriate having regard to the agreement in place, reasonable, substantiated and shown to be caused as a direct consequence of the works in accordance with the relevant legislation. RWE will be looking to ensure that tenants, licencees etc are treated fairly and listened to at all stages of the project. We would ask that copies of all licenses, tenancies etc are forwarded so that we have reference thereto.
INDEMNITY AND LIABILITY	full indemnification of damage, claims etc in respect of Rampion and its contractors	Crop loss and disturbance will be paid where reasonable, substantiated and shown to be caused as a direct consequence of the works in accordance with the relevant legislation.
LAND DRAINAGE	no mention of how this will be preserved	RWE will be looking to ensure that all existing land drainage adversely affected by the works are reinstated save where a land drainage remediation scheme is installed to include header drains etc to replace existing land drainage as part of the works. For the cable easement a land drainage scheme will be discussed with the landowner. Further to construction a land drainage remediation scheme will be implemented where required in consultation with the landowner. This can be included within the HoTs if required however it was intended for this to be dealt with in the option negotiation stage.
REINSTATEMENT	no mention of how this will be dealt with	The DCO will require reinstatement requirements. the outline Code of Construction Practice deals with reinstatement (appropriate paragraph references depend on the location of the land involved / individual landowners. (https://rampion2.com/wp-content/uploads/2021/07Rampion-2-Outline-Code-of-Construction-Practice-.pdf))
TERMINATION	what happens at end of 99 years?	On termination of the term easement the cable and associated apparatus will be made safe and above ground structures removed to a depth to be agreed.

CLIENT'S TIME

was paid for at £50 per hour on Rampion 1 (from memory). Indexation as above This is Rampion 2 not Rampion. Please refer to the above with regard basis of payments and RPI.
would put this rate at around £80 per hour

45040

Submitted
jointly by

Robert Crawford Clarke,



RAMPION 2 HEADS OF TERMS ISSUED APRIL 2023 - COMBINED AGENTS' RESPONSE

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2. ITEMS MENTIONED IN HOTS:-		
OPTION PAYMENT	none	You are labelling first instalment of easement payment as an option payment, but if you do this then the easement payment is reduced by 10%. You can't have it both ways We have 3 serious concerns with this. 1) in view of the lack of detail in the HOTS, (see above) it is unreasonable to expect clients to commit in such a short timescale. We cannot advise them appropriately. 2) In the agents' forum of 19th July 2021 brief terms were presented by you which stated that the incentive payment would apply if option exchanged within 3 months of issuing of terms. You are now offering the payment if heads of terms (not the option) are agreed within 6 weeks (not 3 months). This is a substantial rowback of your position. A more reasonable position may be that the payment applies if option exchanges within 3 months of issue of draft option and easement documents. 3) At that same agents' forum, your indicative programme stated that the terms would be issued in Q3 of 2021, whereas they were issued in Q2 of 2023, nearly 2 years late, and yet despite us having waited so long for them you expect our clients to agree them within 6 weeks. Your position is untenable on this point.
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LEGAL FORM OF EASEMENT		it would be helpful to understand why Rampion 1 'easement' was actually lease of the below ground strip the cable sits in, whereas you state that Rampion 2 will be a genuine easement which presumably includes the surface - what are the implications of this to our clients?.
EASEMENT WIDTH	20m with possibility for extension to unspecified limit for obstructions	Rampion 1 was 15m (ie less land take) with possibility to extend to 30m for physical obstructions (ie a specified maximum). Why is Rampion 2 wider and without limit on the maximum? Rampion 1 paid £40 per m run, equating to £2.67 per sq m of easement land sterilized, but due to indexation (see below) this now equates to £4.28 per sq m, substantially more than is being offered now. However, more appropriate market evidence is from the Esso pipeline which is paying £45 per metre run for a 6 metre easement, equating to £7.14 per sq m. This was fixed in 2019. Indexing by RPI from say September 2019 to March 2023 increases this payment to £9 per sq m. From this its clear that the figure in the terms of £3.70 per sq metre is completely inadequate.
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WHEN PAYABLE	10% signing option, 70% entry for works, 20% signing of easement	Rampion 1 paid 10/80/10 and we see no reason to deviate from this
OTHER PAYMENTS	£0.50 per sq m per <i>annum</i> for additional areas access routes not mentioned	Rampion 1 paid £0.45 per sq m per <i>month</i> for works compounds, which with indexation would equate to approx £0.72, or £8.64 per annum Rampion 1 also paid the above rate for access routes
FEES AGENT	£750 on signing of HOTS, £2,250 on signing of option	This is completely unrealistic cap. We need to be properly remunerated so we can properly advise our clients, and in some cases our time input could be considerable, particularly if the easement stretches over more than one legal entity or title. Costs for agreeing the documentation should be on a time basis. And what about subsuequent costs, dealing with:- 1) ongoing issues between completion of documentation and construction 2) matters arising during construction 3) dealing with crop loss and disturbance
FEES SOLICITOR		£3,500 we very much doubt whether solicitors will agree to this. Solicitor fees to be agreed direct with Rampion solicitors on case by case basis

WORKING STRIP 40m plus unspecified additional areas if required
GRANTOR RESTRICTIONS not to allow any plant to grow on easement strip

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Also restrictions on title to be limited to extent of easement and any preagreed access, not whole title
must be limited by reference to plan of easement and working area and agreed access routes and compounds, above ground apparatus, additional construction areas etc. Payments for surveys done post option completion should also be paid for (as has been agreed on the Esso pipeline). Some rights must be qualified, eg felling of trees on additional temporary land take. Rights to lay cables must be restricted to use for wind farm only. Also how and when will the rights be exercised? Much more detail needed.
to be reimbursed howsoever incurred, not just on unilateral withdrawal by Rampion

RAMPION 2 RIGHTS
ABORTIVE COSTS
CROP LOSS

All disturbance and crop loss etc must be fully compensated (not just 'considered' as in HOTS). Rampion 1 paid 90% of estimated crop loss on entry for construction, and we would expect the same here

3. ITEMS NOT MENTIONED IN HOTS

INDEXATION
LIFT AND SHIFT PROVISION FOR DEVELOPMENT

All Rampion 1 payments (including fees) increased by RPI from date of option as base date. Most Rampion 1 options completed around January 2011. This would result in easement payment of £40 being indexed to March 23 of approx £64.14 per m run or £4.28 per sq m based on a 15 metre easement width

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TENANTS, LICENCEES ETC
INDEMNITY AND LIABILITY
LAND DRAINAGE
REINSTATEMENT
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CLIENT'S TIME

how will they be dealt with? Landowners want to ensure that their tenants etc are treated fairly, listened to and properly compensated.
Provisions need incorporating in the documentation or Rampion needs to also deal direct with them
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24/04/2023 Submitted jointly by

Robert Crawford Clarke, [REDACTED]