

From: [Stephen Lunt](#)
To: [Mona Offshore Wind Project](#)
Subject: Mona Offshore Wind Project - Registration Identification Number: 20048010 - Our Client: Jennings Building & Civil Engineering Limited - Further Submissions (JEN8/11)
Date: 04 November 2024 21:56:55
Attachments: [image680984.jpg](#)

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Dear Sirs,

We are instructed by Jennings Building & Civil Engineering Limited (“Our Client”) in respect of the above matter.

With regards to the Book of Reference (which accompanies the application for a Development Consent Order for the Mona Offshore Wind Farm), we understand that Our Client is the recognised owner of the following Plot numbers:

- 02-014;
- 02-015;
- 02-016;
- 02-017;
- 02-018;
- 02-019;
- 02-020;
- 02-021;
- 02-022;
- 02-023; and
- 02-024

We are instructed to make the following submissions:

1. The mines and minerals are expressly excluded from Our Client’s registered title (title number WA651451). The ancillary powers of working those mines and minerals are reserved (for the benefit of the owner of those mines and minerals). The Applicant wishes to impose restrictive covenants on Our Client to, in particular, prevent excavations and to prevent operations which may obstruct, interrupt or interfere with the exercise of the rights. It is surely iniquitous to expect Our Client to accept an obligation to prevent a third party from exercising rights that it is lawfully able to exercise, such as rights of the owner of the mines and minerals. There are of course also the legal rights of statutory undertakers which, again, Our Client should not be expected to interfere with.

The obligation “to prevent” within the proposed restrictive covenants is therefore wholly inappropriate and ought to be replaced by specific and limited obligations on the landowner itself not to excavate, not to interfere etc - so as to exclude Our Client from having to be responsible for the actions of third parties (who may be undertaking activities entirely outside of Our Client’s knowledge and control).

2. Our Client has previously (and in good faith) allowed the Applicant to undertake both non-intrusive and intrusive investigations in respect of Our Client's property. As a result of the intrusive investigations, Our Client has no faith whatsoever in the Applicant making good any future damage that it may cause or alternatively ensuring that Our Client is adequately compensated for such damage. The intrusive investigations that were undertaken resulted in extensive damage to Our Client's property followed by a derisory and reluctant compensation payment. Our Client is very fearful that, by permitting such sweeping rights, the Applicant will be free to cause even more damage (in respect of which Our Client will not have adequate protection). Again, Our Client is keen to ensure that any further damage to its property is restricted to the Easement Strip itself so as to avoid the extensive damage that Our Client has already experienced in respect of Our Client's wider property.

3. Our Client is particularly concerned about the impact of the extensive rights on Our Client's property located outside of the Easement Strip. Our Client is concerned that, in particular, the rights of access (both during and after the initial construction works), the rights to create lay down areas, the rights to erect signage, the rights to discharge water, the rights to install additional equipment and service media, the rights to store and stockpile materials, the rights to erect supporting or protective structures and all other obstructive and adverse rights could easily prevent Our Client from maximising the potential of its own property. It has been already stressed in oral submissions that Our Client fears that these extensive rights will effectively sterilise the entirety of Our Client's ownership which is wholly unreasonable – especially when partnered with the derisory sums being offered to Our Client.

Since the prior use of Our Client's property as a landfill site, Our Client has spent considerable sums of money clearing and cleaning its property with a view to establishing an alternative, future use (including exploring the potential creation of a leisure/tourist destination similar of the current use of neighbouring land). By permitting such extensive rights over and across the full extent of Our Client's property, Our Client would effectively be prevented from putting the property to such alternative uses and maximising its potential.

Our Client's position is therefore that all/any such rights and restrictive covenants ought to be limited solely to the Easement Strip itself so as to prevent the sterilisation of Our Client's neighbouring property.

Indeed, the Applicant has proposed to Our Client's representative during negotiations that, if access rights across Our Client's neighbouring property cannot be agreed, then the Applicant's access ought to be restricted to the Easement Strip in order to connect into any adjoining contiguous easement strip over which the Applicant has rights. Furthermore, Our Client is of the view that, if needed by the Applicant, access to and from the Easement Strip could easily be created along the

narrower strip of neighbouring land that Our Client understands is owned by The Crown – thereby considerably reducing the detrimental impact that the various rights and covenants will have on Our Client’s wider property.

Furthermore, it has been indicated that the relevant cables will be buried at such a depth that any future surface interference following construction may well be negligible. This ought to be properly and thoroughly explored and understood on the basis that Our Client should not be put in a position whereby it is effectively forced to grant extensive rights to a third party and accept the imposition of restrictive covenants which, together, will at best materially restrict the future use of Our Client’s property or at worst sterilise the entirety of Our Client’s ownership, when, in reality, many of the proposed rights are likely to be superfluous or incapable of being exercised, given the depth of the proposed service media.

Finally, Our Client has requested that we stress and repeat in the strongest terms possible that the proposed rights and restrictions must be limited to the already-considerable Easement Strip so as not to sterilise the balance of Our Client’s property.

We would be most grateful if you could please take these further, important submissions into account in assessing the Applicant’s application.

Regards

Stephen Lunt
DTM Legal LLP

Stephen Lunt | Partner | Property
For and on behalf of DTM Legal LLP

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