



Galloper Wind Farm Project
Draft Heads of Terms for Section 106 Agreement
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Galloper Wind Farm Limited



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- 1.1.1 The following pages of this document contain the proposed Heads of Terms for an agreement under Section 106 of the Town and Country Planning Act 1990 (as amended by the Planning Act 2008) relating to the development consent order sought by Galloper Wind Farm Limited (GWFL) for the Galloper Wind Farm.
- 1.1.2 The proposed Heads of Terms were issued to Suffolk Coastal District Council (SCDC) on 21 October 2011. Initial comments were received in response from SCDC on 4 November 2011 and are being addressed by GWFL. A copy of the comments will be made available to the IPC on request.
- 1.1.3 GWFL will continue consultation with SCDC and are confident of reaching agreement on the Heads of Terms post submission and prior to the examination phase.

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1 Introduction

- 1.1 This document outlines the proposed heads of terms for an agreement under section 106 of the Town and Country Planning Act 1990 (as amended by the Planning Act 2008) relating to the development consent order sought by Galloper Wind Farm Limited for the Galloper Wind Farm ("the Project").

2 The Parties

2.1 The Section 106 agreement (the “Agreement”) will be between:

- (i) Galloper Wind Farm Limited (the “Developer”);
- (ii) Glencairn Stuart Oglivie (“the Landowner”); and
- (iii) Suffolk Coastal District Council (“the Council”).

2.2 GWFL, the Developer, is not presently aware of any additional parties (such as mortgagees) that may need to consent or be joined to the Agreement but such parties will be identified in the draft Agreement.

3 The Scope of the Development Consent Obligations

3.1 The Agreement shall include the following obligations:

- (i) Prior to commencement of any part of the Project above mean low water, to make a payment of £125,000 to the Council (the "Fund") for the purpose specified below;
- (ii) The Council shall use the Fund for works or measures which, in the Council's reasonable opinion, will enhance the appearance of the area of land within the vicinity of the new substation which forms part of the Project, in a manner which contributes to its status of the area as an Area of Outstanding Natural Beauty, after consultation in relation to such proposed works or measures with the Suffolk Heaths AONB Unit and Leiston Parish Council;
- (iii) The Fund shall not be used for any other purpose;
- (iv) The Fund shall be kept in an interest bearing account, and all interest earned shall be part of the Fund;
- (v) The Council shall use its reasonable endeavours to expend the Fund (including interest earned on the Fund) within [5] years of the date the original payment is made to the Council;
- (vi) The Council shall only expend the Fund on works or measures under contracts which have been awarded on a competitive basis;
- (vii) Any part of the Fund which remains unused 10 years after the date of the original payment shall be repaid to the holder of the transmission licence at that time under section 6 of the Electricity Act 1989 which applies to the westernmost compound of the substation forming part of the Project;
- (viii) The Council shall maintain full accounting records of the operation of the Fund, which shall be available for public inspection on reasonable notice. These records shall include details of the works and measures carried out using the Fund.

4 Conditionality

- 4.1 The obligations outlined at 3.1 above shall be conditional upon the granting of a consent for the Project under section 114 of the Planning Act 2008 or any replacement legislation.

5 Technicalities

- 5.1 The Agreement will satisfy all of the technical requirements of section 106 of the Town and Country Planning Act 1990 and include provisions relating to:
- (i) Release of liability upon disposal of interest;
 - (ii) Indemnity in respect of the Landowner;
 - (iii) Binding successors in title;
 - (iv) Matters to be disregarded in determining whether the consent has been implemented, for example ground investigations;
 - (v) Enforcement.
- 5.2 The Agreement will only bind part of the land which is to be the subject of the onshore works. There are two other land owners. First, the Council itself. There is no purpose in binding this land, furthermore there are real doubts as to the legal effectiveness of the enforcing planning authority being the landowner at the same time. Second, British Energy Generation Limited (BEGL). The Developer is in discussions with BEGL regarding an option to acquire its land for the substation. However, it is not in a position to require BEGL to sign this agreement, at this stage.
- 5.3 In practice, the Council has sufficient protection by virtue of the Glencairn Stuart Oglivie land alone being bound. This land includes all the export cables from the wind farm to the substation. The Project is of no value without these export cables.
- 5.4 Subject to the outcome of the negotiations with BEGL, it may be possible for the relevant BEGL land to be bound by a supplemental agreement in the same terms as this agreement. GWFL cannot commit to this at this stage, and, for the reasons just referred to, do not consider this is in fact necessary.
- 5.5 The Agreement is deliberately not conditional on implementation of the Project, as the payment is to be made before implementation (subject to 5.1(iv) above) takes place.