

**Planning Obligation Agreement under Article 25 of the
Planning and Building (Jersey) Law 2002**

relating to the development of Part of Westmount Gardens St. Aubins
Road, S Helier

Dated 11th September 2014:

The Minister for Planning and Environment (1)

The Parish of St Helier (2)

Jersey Electricity Plc (3)

Public of the Island (4)

DATE 11th September 2014

PARTIES

- (1) The Minister for Planning and Environment of States Offices, South Hill, St Helier, Jersey JE2 4US ("the Minister")
- (2) The Parish of St Helier Town Hall York Street St Helier Jersey JE4 8PA ("the Parish")
- (3) Jersey Electricity Plc (Co Regn No 67) The Powerhouse Queen's Road St Helier Jersey JE4 8NY ("JEC")
- (4) Public of the Island acting by the Treasury Minister, c/o Jersey Property Holdings, Maritime House, La Route du Port Elizabeth, St Helier JE2 3NW ("the Public")

RECITALS

- 1 The Minister is the Minister of the States charged with the administration of the Law by whom the obligations in this Agreement are enforceable in accordance with the provisions of the Law.
- 2 The Parish warrants that it is the owner in perpetuity (à fin d'héritage) of the Site
- 3 The Site forms part of Westmount Gardens
- 4 JEC submitted an application to the Minister for planning permission for the Development
- 5 The Development will result in the loss of part of Westmount Gardens as a public park
- 6 The Public has agreed to transfer to the Parish and the Parish has agreed to receive from the Public the Extension Land to form part of and become incorporated into Westmount Gardens as part of the park so as offset the loss to the park of the Site as a result of the Development by the JEC
- 7 Having regard to the purpose of the Law the Island Plan 2011 and all other material considerations the Minister is minded to grant planning permission for the Development subject to the completion of this Agreement that provision should be made for regulating or facilitating the development or use of the Site

in the manner hereinafter appearing and without such the Minister would not be so minded

- 8 The parties acknowledge that this Agreement is legally binding
- 9 This Agreement shall be construed so as to give effect to the purpose and intention of the Law

NOW THIS AGREEMENT WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

For the purposes of this Agreement the following expressions shall have the following meanings:

"Commencement"		the date on which any operation forming part of the Development permitted by the Planning Permit or any subsequent planning permission for the Development begins to be carried out and "Commence" and "Commenced" shall be construed accordingly
"Development"		the development of the Site to "Excavate former quarry site and construct primary substation" in accordance with the Planning Permit.
"the Extension Land"		The land to be used for the purposes of extending Westmount Gardens including an access road leading to Overdale Hospital and shown for the purposes of identification only coloured black on the drawing marked as Fig.3 and annexed hereto

"GST"		goods and services tax under the Goods and Services Tax (Jersey) Law 2007
"Law"		the Planning and Building (Jersey) Law 2002.
"Occupation, Occupy and Occupied"		occupation for the purposes permitted by the Planning Permit but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations.
"Planning Permit"		the planning permission for the Development (reference P/2014/0512) a draft copy of which is attached at the Second Schedule.
"Royal Court"		the Royal Court of the Island of Jersey.
"Site"		That part of Westmount Gardens, West Park, La Route de St Aubin, St Helier, Jersey as shown by a thick black line upon which the Development is to be carried out by JEC

2 CONSTRUCTION OF THIS AGREEMENT

- 2.1 Where in this Agreement reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Agreement.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner.
- 2.4 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 against each individually unless there is an express provision otherwise.
- 2.5 Any reference to a law of the States of Jersey shall include any modification, extension or re-enactment of that law for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Law or deriving validity from it.
- 2.6 References to any party to this Agreement shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Minister the successors to his statutory functions.
- 2.7 This Agreement shall be construed so as to give effect to the purpose of the Law

3 LEGAL BASIS

- 3.1 This Agreement is made pursuant to Article 25 of the Law.
- 3.2 The covenants, restrictions and requirements imposed upon the Public and the Parish under this Agreement create planning obligations pursuant to Article 25 of the Law and are enforceable by the Minister against the Public and the Parish.

4 CONDITIONALITY

This Agreement is conditional upon the grant of the Planning Permit save for the provisions of Clauses 9 and 10 which shall

come into effect immediately upon the date which this Agreement has been recorded as registered in the Royal Court as evidenced by an Act of the said Court.

5 OWNERSHIP COVENANTS

The Parish and the Public respectively covenant and agree with the Minister as set out in the Third Schedule so that this Agreement shall be enforceable without limit of time against the Parish and the Public respectively and any person claiming or deriving title through or under the Parish or the Public to the Site or any part or parts thereof or to the Extension Land or any part or parts thereof.

6 PUBLIC REGISTRY OF CONTRACTS

The Minister shall as soon as practicable apply to the Royal Court for an order that this Agreement be registered in the Public Registry of Contracts.

7 MISCELLANEOUS

- 7.1 Where the agreement, approval, consent or expression of satisfaction is required from the Minister under the terms of this Agreement such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction may be given on behalf of the Minister by the Director - Development Control of Planning and notice or communication to the Minister pursuant to the provisions of this Agreement shall be addressed to the Director, Development Control at Planning and Building Services South Hill St Helier Jersey JE2 4US or as otherwise notified for the purpose by notice in writing.
- 7.2 Any notices on the Parish the Public or the JEC shall be deemed to have been properly served if sent by ordinary post to and addressed to such party at the address referred to above or as otherwise notified for the purpose by notice in writing.
- 7.3 Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement.

- 7.4 This Agreement shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permit shall be quashed, cancelled, revoked or otherwise withdrawn or (without the consent of the Parish) it is modified (other than by process under Article 10 of the Law) by any statutory procedure or expires prior to the Commencement of Development;
- 7.5 No person shall be liable for any breach of any of the planning obligations or other provisions of this Agreement after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.6 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permit) granted (whether or not on appeal) after the date of this Agreement.
- 7.7 Except in so far as legally or equitably permitted this Agreement shall not prejudice or fetter or affect any statutory power discretion or duty of the Minister and without prejudice to the generality of the foregoing it is agreed between the parties hereto that any benefit or power conferred on the Minister by any of the obligations or covenants by the Parish the Public and JEC in favour of the Minister under this Agreement are in addition to any of the Ministers' statutory powers under the Law
- 7.8 Nothing contained herein shall be construed as obviating the need for the Parish the Public and JEC to obtain or acquire from any third party with respect to the Development or its use any consents permits authorisations rights interests in land or servitudes
- 7.9 Nothing in this Agreement shall be construed or interpreted in such a way or inference to be drawn so as to place or create a duty of care upon the Minister as a result of the Minister agreeing to accept the covenants agreements and undertakings on the part of the Parish the Public and JEC as contained herein
- 7.10 The Parish the Public and JEC shall not be entitled to any costs or compensation as a result of the making of this Agreement and the obligations contained herein

7.11 All communications and notices served or made under this Agreement shall be in writing.

8 WAIVER

No waiver (whether expressed or implied) by the Minister of any breach or default in performing or observing any of the covenants terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Minister from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

9 CHANGE IN OWNERSHIP

The Parish agrees with the Minister to give the Minister written notice (as soon as reasonably practical following such change) of any change in ownership of any of its interest in the Site (other than a change to the JEC) occurring before all the obligations under this Agreement have been discharged.

10 DISPUTE RESOLUTION

In the event that any dispute shall arise in respect of any provision of this Agreement it shall be referred if not resolved within seven working days to the arbitration of an independent arbitrator under the provisions of the Arbitration (Jersey) Law 1998 such arbitrator to be named by the agreement of the parties to the dispute or in default of agreement by the President for the time being of the Royal Institution of Arbitrators upon the application of any party to the dispute

11 GOODS AND SERVICES TAX

11.1 All *cause* given in accordance with the terms of this Agreement shall be exclusive of any GST properly payable in respect thereof;

11.2 If at any time GST is or becomes chargeable in respect of any supply made in accordance with the terms of this Agreement then to the extent that GST had not previously been charged in respect of that supply the person making the supply shall have the right to issue a GST invoice to the person to whom the supply was made and the GST shall be paid accordingly

12 JURISDICTION

This Agreement is governed by and interpreted in accordance with the law of the Island of Jersey.

SECOND SCHEDULE
The Planning Permission

Department of the Environment
Planning & Building Services
South Hill
St Helier, Jersey, JE2 4US
Tel: +44 (0) 1534 445508
Fax: +44 (0) 1534 445528



xx/xx/xxxx

MS Planning Ltd
First Floor, Union House
Union Street
St Helier
JE2 3RF

Planning Application Number P/2014/0512

Dear Sir/Madam

Application Address:	Proposed Primary Substation Site, St. Aubins Road, St. Helier
Description of Work:	Excavate former quarry site and construct primary substation. (Digital model available.)

Please find enclosed notice of The Minister for Planning & Environment's decision regarding the above application.

Please note that the Conditions imposed on the Notice are important and should be strictly adhered to and any subsequent changes to the development which may affect the requirements of the Conditions should be notified to the Minister for Planning and Environment as soon as possible.

Failure to comply with the attached Conditions may result in the Minister for Planning and Environment instigating Enforcement Action.

Yours faithfully

Lawrence Davies
Planner, Development Control
Planning Services, South Hill, St. Helier, Jersey, JE2 4US
direct dial: +44 (0) 1534 448472
fax: +44 (0) 1534 445528
email: L.davies@gov.je

Encl.

Decision Notice

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2014/0512

*******DRAFT*******

IMPORTANT NOTICE

This notice gives permission under Article 19 of the Planning and Building (Jersey) Law 2002, as amended. In accordance with Article 24(i) of the Law the grant of this permission enures (except insofar as the permission otherwise provides) for the benefit of the land to which it relates and of each person for the time being having an estate or interest in that land.

The development stated below may also require Building consent under Article 34, for which a separate application will need to be made. If you are in any doubt as to whether building permission is required please telephone the Building Applications Team on 448407 who will be pleased to help.

The Minister for Planning & Environment, having considered your application hereby GRANTS PERMISSION TO DEVELOP LAND¹ under Article 19 of the Planning and Building (Jersey) Law 2002.

Excavate former quarry site and construct primary substation: (Digital model available.)

To be carried out at:

Proposed Primary Substation Site, St. Aubins Road, St. Helier.

PLEASE NOTE

This decision is purely permissive and in no way absolves the parties concerned from obtaining, nor does it overrule, any other permission that may be required under any other law. In addition, it does not overrule any private property rights, nor does it absolve an applicant from the need to obtain the permission of the owner of the land to which a permission relates.

REASON FOR APPROVAL: Permission has been granted having taken into account the relevant policies of the approved Island Plan, together with other relevant policies and all other material considerations, including the consultations and representations received. The Planning Applications Panel has undertaken a site visit as part of its consideration of the application.

The approved scheme is for the construction of a new primary sub-station. The application site is zoned as Protected Open Space, which is protected under the provisions of the 2011 Island Plan, in particular policy SCO 4. However, the applicant (the Jersey Electricity Company) has satisfactorily demonstrated that the

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APPROVED

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PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2014/0512

development cannot reasonably be located elsewhere. The applicant has also demonstrated that there is a clear and urgent need for this piece of additional infrastructure, and the Panel accepts that the application is in the island's strategic interest.

This is large structure; however, its size is dictated by operational requirements. Although the new building will be prominent, the sloping backdrop to the site, use of appropriate materials and additional planting will assist in mitigating its visual impact.

As part of the application, the applicant has committed to providing an extension to Westmount Gardens, through the use of a formal agreement, to compensate for that part of the park which will be lost to the development.

Subject to compliance with the following conditions and approved plan(s):

Standard Condition

- A. If the development hereby permitted has not commenced within five years of the decision date, this permission shall cease to be valid.

Reason: The Minister for Planning & Environment reserves the right to reconsider this proposal consequent on any future change of circumstances or policy.

Condition(s):

1. Prior to the commencement of development, a Demolition / Construction Environmental Management Plan (D/CEMP) shall be submitted to, and agreed in writing by, the Minister for Planning and Environment. The D/CEMP shall thereafter be implemented in full until the completion of the development and any variations agreed in writing by the Minister prior to such work commencing. The Plan shall include an implementation programme of mitigation measures to minimise any adverse effects of the proposal, and shall include, but is not limited to:
 - a) a demonstration of best practice in relation to noise and vibration control; and control of dust and emissions (such as noise and vibration, air, land and water pollution);
 - b) details of a publicised complaints procedure, including office hours and out-of-hours contact numbers;
 - c) specified hours of working (to include that work which would result in noise being heard outside the application boundary occurs only between 8am and 6pm Monday to Friday, and 8am to 1pm on

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Saturdays, with no noisy working outside these times, and no noisy work on Bank or Public Holidays);

- d) details of any proposed crushing / sorting of waste material on site;
 - e) details of the proposed management of traffic and pedestrians (to include for vehicle wheel washing); and
 - f) details of the manner in which public access will be maintained to the park throughout the course of development.
2. Prior to the commencement of the development hereby approved, a full Waste Management Plan, which covers both the preparatory (including excavation) and construction phases of development, shall be submitted to, and agreed in writing by, the Minister for Planning and Environment.
 3. Prior to the commencement of development, the levels of potential contaminants in the ground shall be investigated, any risks to human health or the wider environment assessed and mitigation measures proposed in a scheme to be submitted to and approved in writing by the Minister for Planning and Environment. The approved scheme shall be implemented to the satisfaction of the Minister for Planning and Environment and in accordance with the requirements of Supplementary Planning Guidance Planning Advice Note 2 - Development of Potentially Contaminated Land as amended. Any changes to the scheme require the express written consent of the Minister for Planning and Environment.
 4. Prior to the commencement of the development hereby permitted, samples of all of the external materials to be used shall be submitted to, and approved in writing by, the Minister for Planning and Environment. High quality photographic evidence may be sufficient for some items. In addition, the external colour of the rendered surfaces of the building must also be agreed in writing prior to commencement. Thereafter, the approved details shall be implemented in full.
 5. Prior to the commencement of the granite work phase of the development hereby approved, a sample panel of the new granite wall (measuring not less than 1m x 2m, and including a corner), shall be constructed on the site and be inspected and approved by the Minister for Planning and Environment.
 6. Notwithstanding the landscaping scheme hereby approved, prior to the commencement of the landscaping scheme, the species of new planting shall be first agreed with the Minister for Planning and Environment. Thereafter, all planting and other operations comprised in the landscape scheme hereby

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approved shall be completed prior to first occupation of any element of the development.

7. Notwithstanding the submitted details hereby approved, prior to the commencement of development, an Ecological Report shall be submitted to and approved in writing by the Minister for Planning and Environment. The methodology for the Report shall first have been agreed in writing by the Minister for Planning and Environment, and the report shall include a survey for protected species, including consideration of habitat and potential mitigation works, details of the timing of any works, and provisions for post-development safeguarding and monitoring. Once agreed, the recommendations of the report shall be implemented in full prior to use of the development and maintained in perpetuity thereafter.
8. Notwithstanding any indication on this permit or on any of the application drawings/details hereby approved, no trees shall be felled, hedgerows removed or dense scrub vegetation cleared within the period 1st March to 31st July (in any calendar year) unless the applicant has first prepared a written risk assessment from a qualified and competent person which confirms that there are no nesting birds in any of the trees to be felled, nor in hedges nor vegetation to be removed. The written risk assessment shall include details of the site survey undertaken, together with a statement of the findings, and shall be submitted to the Environment Department for comment 5 working days in advance of any felling.

Reason(s):

1. In the interests of protecting the amenities of the area generally and to accord with Policy GD 1 of the Jersey Island Plan 2011.
2. To accord with the requirements of Policy WM 1 of the 2011 Island Plan.
3. To ensure the development does not have an unreasonable impact on public health or the wider environment and to accord with Policy GD1 and GD 6 of the Jersey Island Plan, 2011.
4. The execution of this development is considered to be critical to its success, and the Minister for Planning & Environment wishes to be assured as to the quality of these details in accordance with Policies GD 1 and GD 7 of the Jersey Island Plan, 2011.
5. To ensure that the new granite-work demonstrates a high quality of workmanship and that the development is sympathetic in appearance to its

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surroundings, thereby safeguarding the visual amenities of the area, in accordance with Policy GD 7 of the 2011 Island Plan.

6. To ensure the benefits of the landscape scheme are not delayed, in the interests of the amenities of the area and to ensure a high quality of design in accordance with Policies SP 7 and GD 7 of the Jersey Island Plan 2011.
7. In the interests of biodiversity and ecology, in accordance with Policies SP 4, NE 1, NE 2 and NE 3 of the Jersey Island Plan 2011.
8. Article 6 of the Conservation of Wildlife (Jersey) Law, 2000 makes it an offence for any person knowingly to;
 - a) damage or destroy the den of any protected wild animal while that den is in use;
 - b) take, damage or destroy the nest of any protected wild bird while that nest is in use or being built;
 - c) obstruct access to the den of any protected wild animal, or the nest of any protected wild bird, while that den or nest is in use; or
 - d) disturb any protected wild animal occupying a den or any protected wild bird occupying a nest.

This applies to all birds except Carrion crow, magpie, feral pigeon, wood pigeon and starling. It also applies to bats and squirrels and other protected mammals. Full details may be found in the Conservation and Wildlife (Jersey) Law, 2000.

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FOR YOUR INFORMATION:

The approved plans can be viewed on the Planning Register at www.gov.je/planning

The following plan(s) has/have been approved.

001 P2	Existing Vegetation Appraisal
003 P2	Landscape Site Plan
004 P1	Proposed Outline Plant List & Images
005 P1	Landscape Elevations
3533-01 C	Site Location Plan
3533-02 T	Site & Ground Floor Plan
3533-03	Mezzanine & Roof Plans
3533-04	Site Sections
3533-05 L	Site Elevations
3533-06	Sub-Station Elevations
3533-07	Existing Site Plan
	Photo-montage Images 1, 2 & 3
	Air Quality Assessment
	Framework Construction Management Plan
	Initial Ecological Assessment of Westmount Gardens
	Landscape Statement
	Noise Impact Assessment
	Phase 1 Geotechnical & Geo-environmental Report
	Planning, Design and Heritage Statement
	Transport Statement

If written representations were made on this application this permission shall not have effect for a period of 28 days from the date of this notice, in order to allow for the lodging of any 'third party' appeal against the decision under Article 114 of the Law of the Planning and Building (Jersey) Law 2002.

If during this period a person appeals in accordance with Article 114 of the Law, the decision shall not have effect until either the appeal is withdrawn or is determined. When any such appeal is determined the decision shall have effect, if at all, in accordance with that determination.

xx/xx/xxxx Signed

for Director

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APPROVED

THIRD SCHEDULE
The Covenants with the Minister

The Parish the JEC and the Public covenant agree and undertake:

Westmount Gardens Extension

1. Not to Commence the Development until such time as the Public has transferred ownership of the “Extension Land” to the Parish of St Helier
2. That following the transfer referred to in paragraph 1 above not to use the Extension Land other than as an extension of Westmount Gardens as a public park and an access road leading to Overdale Hospital.

Commencement

3. Not to Commence the Development of the Site unless not less than twenty-eight (28) days' notice in writing of the intention to do so has been given to the Minister

Signed on behalf of the Parish

by . CONSTABLE ST. HELEER



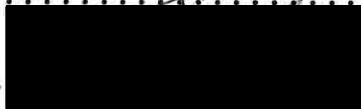
in the presence of . JOHN STEVENARD



this 8th day of SEPTEMBER 2014

Signed on behalf of the Public

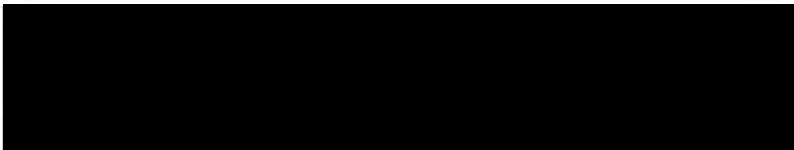
by . DIRECTOR OF ESTATES . . . JERSEY PROPERTY HOLDINGS



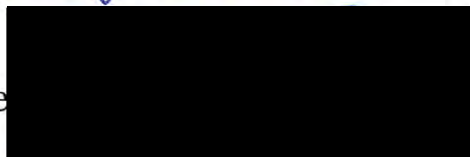
in the presence of
.....

this 10th day of September 2014

Signed on behalf of JEC

by 

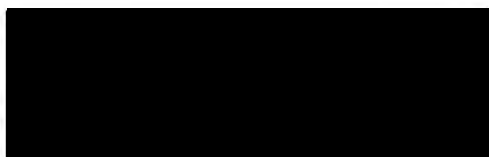
..... *Chief Executive*

in the presence 

..... *ENERGY DIVISION DIRECTOR, JERSEY ELECTRICITY PLC*

this *10th* day of *SEPTEMBER* 2014

Signed on behalf of the Minister

by .  .. (*PETER LE GREY, - DIRECTOR*)

in the presence of  (*Sumathran Gnanapavan*)

this *11th* day of *September* 2014