

DATED 23rd September 2008

Sheffield City Council (1)
E.ON UK PLC (2)
E.ON Climate & Renewables UK Ltd (3)

DEED OF PLANNING OBLIGATIONS

made under section 106 of the Town and Country
Planning Act 1990 in respect of land at Alsing Road
Blackburn Meadows Tinsley Sheffield S9 1HF

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THIS DEED is made the

23rd

day of

September 2008

BETWEEN

- (1) Sheffield City Council of Town Hall Pinstone Street Sheffield South Yorkshire S1 2HH
("Council")
- and
- (2) E.ON UK PLC (Company Number: 02366970) whose registered office is at Westwood Way Westwood Business Park Westwood Coventry CV4 8LG
("Owner")
- (3) E.ON Climate & Renewables UK Ltd (Company Number: 03758404) whose registered office is at Westwood Way Westwood Business Park Westwood Coventry CV4 8LG
("Developer")

IT IS AGREED THAT:

1 DEFINITIONS

Unless the context states otherwise, in this Agreement the following terms shall have the defined meanings:

- 1.1 "1990 Act" means the Town and Country Planning Act 1990 (as amended).
- 1.2 "Application" means the outline application made to the Council for planning permission for the Development and given the reference number 08/01225/OUT.
- 1.3 "Commencement of Commercial Operations" means the date on which the Development is fully operational as a commercial enterprise and production of electricity for export to the National Grid commences and all pre-operational testing has been satisfactorily completed.
- 1.4 "Commencement of the Development" means the date that a material operation, as defined in Section 56(4) of the 1990 Act, is undertaken on the Development but for the purpose of this Deed does not include any operations relating to demolition, site preparation, site investigation, surveys, erection of fencing and hoardings, diversion of any services or archaeological investigations.
- 1.5 "Community Fund" means the fund to be established by the Council to promote and/or deliver community projects through community led initiatives for

the benefit of the community as directed by the Council within the Darnall ward of Sheffield City Council in accordance with the constitution to be established in accordance with Schedule 1, 1.1.

- 1.6 "Contributions" means the contributions specified in Schedule 1.
- 1.7 "Development" mean a biomass-fired renewable energy plant with associated flood management works, landscaping and improvements to an existing access as more particularly described in the Application.
- 1.8 "Fixed Link" means the proposed highways to be constructed between Meadowhall Way and Sheffield Road as promoted by the Council as part of a wider highways/public transport corridor improvement.
- 1.9 "Index" means the All Items Index of Retail Prices issued by the Office for National Statistics from time to time.
- 1.10 "Land" means the land edged red on the plan annexed hereto bearing reference number P2001838 and registered at the Land Registry under Title Number SYK534837.
- 1.11 "Megawatts Per Hour Net" means the generated electricity output from the Development per hour minus all auxiliary power consumptions as measured at the fiscal meter prior to distribution to the Distribution Network Operator ("DNO") or National Grid ("NG").
- 1.12 "Owner" means the Owner and the Developer and the Developer shall be able to perform any of the obligations in place of the Owner.
- 1.13 "Permitted Development Rights" means development granted planning permission by the Town and Country Planning (General Permitted Development) Order 1995 as amended from time to time.
- 1.14 "Planning Obligations" means the obligations created by Clause 6 and set out in Schedule 1 and 2.
- 1.15 "Planning Permission" means a planning permission to be issued by the Council for the Development and includes any approval of reserved matters and any variation or modification to the planning permission that occurs after the Council has issued the planning permission.

2 INTERPRETATION

In this Deed:

- 2.1 Words in the singular include the plural and vice versa;
- 2.2 A reference to a gender includes a reference to all other genders;
- 2.3 A reference to a person includes companies and all other legal entities;
- 2.4 Unless stated otherwise, a reference to a clause, schedule or paragraph are references to the clauses, schedules and paragraphs of this Deed;
- 2.5 The headings and table of contents in this Deed are for convenience only and shall not affect its interpretation.
- 2.6 Unless this Deed states otherwise, any reference to a statute, statutory instrument or other legislative provision includes any amendment, extension or re-enactment of it for the time being in force.
- 2.7 Unless this Deed states otherwise, references to any party shall include that party's successors in title except for any right of repayment contained in this Deed, which shall apply only to the named party.

3 LAND OWNERSHIP

- 3.1 The Owner owns the Freehold interest in the Land.

4 ENABLING POWERS

- 4.1 This Deed is made under section 106 of the 1990 Act, section 111 of the Local Government Act 1972 and all other enabling powers.
- 4.2 The obligations of the Owner in Schedule 1 are planning obligations for the purpose of section 106 of the 1990 Act and are enforceable by the Council as a local planning authority for the part of the district in which the Land is situated.

5 COMMENCEMENT OF DEVELOPMENT

- 5.1 The obligations in Clause 6 and Schedules 1 and 2 of this Deed shall not come into effect unless:
 - (a) The Council grants planning permission for the Application; and
 - (b) Commencement of the Development.

6 OBLIGATIONS

- 6.1 The Owner agrees with the Council to observe and perform the obligations or activities specified in Schedule 1.
- 6.2 The Council agrees with the Owner to observe and perform the obligations or activities specified in Schedule 2.

7 PAYMENT OF COUNCIL'S COSTS

7.1 The Owner shall pay the Council's reasonable and properly incurred legal costs in negotiating and executing this Deed up to a maximum of £1,000 (One Thousand Pounds).

8 THIRD PARTY RIGHTS

8.1 The Owner and the Council agree that a person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

9 RELEASE FROM LIABILITY

9.1 Except for any breach that occurs before a person parts with their interest in the Land, no person shall be liable for a breach of any covenant, agreement or obligation created by this Deed after he shall have parted with all interest in the Land or the part of the Land in respect of which a breach occurs.

10 SATISFACTION OF THE OBLIGATIONS

10.1 The Planning Obligations created by Clause 6 and Schedule 1 shall be registered by the Council as a local land charge but the Council shall cancel the charge if either:

- (a) All parties to this Deed comply with the Planning Obligations set out in this Deed;
or
- (b) This Deed ceases to have effect under the provisions of clause 12.

10.2 Upon the written request of any person with an interest in the Land the Council shall, after any of the Planning Obligations have been performed or otherwise discharged, issue written confirmation of that fact and shall enter a note on the local land charges register confirming the performance or discharge.

10.3 The Council shall upon the written request of any person with an interest in the Land after any of the Planning Obligations have been performed or otherwise discharged execute a Deed of Release (or partial release) from the relevant provisions of the Deed and procure that a note of the Deed of Release shall be entered on the local land charges register.

11 DISPUTE RESOLUTION

11.1 Any dispute or difference arising between the Council and the Owner with regard to their respective rights and obligations arising out of or connected with this Deed shall be referred by the Council or, the Owner to the decision of a single arbitrator to be agreed by the parties.

11.2 If the parties are unable to agree to an arbitrator under clause 11.1 then any party may apply to the President for the time being of the Royal Institute of Chartered Surveyors and the President shall appoint an arbitrator.

11.3 A reference under clause 11.1 or 11.2 shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any subsequent amending or replacing legislation.

11.4 The provisions of this clause shall not apply to Schedules 1 and 2 hereof.

12 TERMINATION OF THE DEED

12.1 If the planning permission granted by the Council for the Application expires, is revoked or is quashed in any legal proceedings before the Commencement of the Development, then this Deed shall terminate and cease to have effect and the Council shall immediately remove any entry relating to this Deed from the register of Local Land Charges.

12.2 If the granting of the Planning Permission is the subject of any judicial review proceedings (including application for permission to apply for judicial review) then from the date that the Council is aware of such proceedings:

(a) The Council shall forthwith notify the Owner (and any other person it has reasonable grounds to believe may have an interest in any part of the Land) of such proceedings; and

(b) The requirement to comply or to comply further with the Planning Obligations shall be suspended temporarily until the final disposal of the legal proceedings at which time, if the Planning Permission or the Deed has not been quashed, the requirement to comply or to comply further with the Planning Obligations (as may be varied by order of the court) shall recommence and any time-limits for compliance with the Planning Obligations set out in this Deed shall be extended by the period of the suspension under this clause.

13 NOTICE

13.1 Any notice given under this Deed shall be in writing and shall be delivered personally or sent by pre-paid first class recorded delivery post or facsimile transmission.

13.2 The address for service of any such notice shall be as set out at the start of this Deed.

13.3 Any Notice under this Deed shall be deemed to have been served as follows:

(a) If personally delivered at the time of delivery;

(b) If by post at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom; or

(c) If sent by tested facsimile transmission at the time of successful transmission;

13.4 In proving service it shall be sufficient to prove that personal delivery was made and a receipt obtained or that the envelope containing the notice was:

(a) Properly addressed and delivered into the custody of the postal authority in a pre-paid first class recorded delivery envelope and a receipt was obtained; or

(b) That the telex or facsimile was successfully transmitted on a tested line and acknowledged in writing as having been received by the addressee as the case may be.

14 REASONABLENESS

14.1 Where the Council or the Owner (acting by their officers or otherwise) are requested to give their approval, agreement, confirmation or consent under this Deed they shall not unreasonably refuse or withhold that approval, agreement, confirmation or consent and the Council and the Owner will use reasonable endeavours to give their approval agreement confirmation or consent within 28 days of receiving a written request.

15 ALTERNATIVE PLANNING PERMISSIONS

15.1 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission, excluding the Planning Permission, granted, whether or not on an appeal, after the date of this Deed.

16 WAIVER

16.1 No Waiver (whether express or implied) by the Council (or the Owner) of any breach or default in performing or observing any of the covenants terms or conditions of the Deed shall constitute a continuing waiver and no such waiver shall prevent the Council (or the Owner) from enforcing any of the relevant covenants terms or conditions or for acting upon any subsequent breach or default.

17 INDEXATION

17.1 All sums referred to in the First Schedule shall be increased by an amount equivalent to the increase in the Index from the date of Commencement of Development until the date on which such sums are payable.

IN WITNESS the parties have sealed and signed this Deed and delivered it on date set out above.

SCHEDULE 1

The Owner's Obligations

The Community Fund

- 1.1 Within 90 days of Commencement of Commercial Operations the Owner shall assist (where requested to do so) the Council to set up the Community Fund with any such person as the Council shall designate the purpose of which will be to oversee the allocation of funds paid in to it by the Owner pursuant to the obligations set out in Clause 1.5 of this Deed.
- 1.2 On or before 1 April following the date of Commencement of Commercial Operations the Owner shall pay a sum of £0.127 (Twelve and seven tenths pence) per Megawatts Per Hour Net electricity produced at the Development in the preceding 12 month period using figures recorded from the fiscal meter at the Development prior to distribution to the DNO or NG to the Community Fund ("the Annual Sum") subject to a maximum of £25,000 per annum.
- 1.3 Every 12 months on the anniversary of the date of the payment of the first Annual Sum the Owner shall pay the Annual Sum to the Community Fund provided that the obligation to pay the Annual Sum shall cease following the decommissioning of the Development and/or the permanent cessation of commercial operation of the Development whichever is the sooner.

The Fixed Link

- 1.4 The Owner shall pay to the Council following the Commencement of Development and upon a written demand from the Council for the same the sum of £75,000 (Seventy Five Thousand Pounds) for utilisation in the construction of the Fixed Link ("the Fixed Link Contribution").
- 1.5 In the event that the Council do not issue a written demand for the Fixed Link Contribution in accordance with Schedule 1, Paragraph 1.4 the Owner shall pay the Fixed Link Contribution to the Council on the Commencement of Commercial Operations.

Air Pollution Reduction Initiatives

- 1.6 Prior to the Commencement of Commercial Operations the Owner shall pay the sum of £10,000 (Ten Thousand Pounds) to the Council for use in any air pollution reduction initiatives in the Darnall ward of the city of Sheffield ("the Initial Air Pollution Reduction Contribution").
- 1.7 Every 12 months on the anniversary of the date of the payment of the Initial Air Pollution Reduction Contribution the Owner shall pay the sum of £5,000 (Five Thousand Pounds) to the Council for use in any air pollution reduction initiatives in the Darnall Ward of the city of Sheffield ("the Air Pollution Reduction Contribution") for a period of three years in totality.

SCHEDULE 2

The Council's Obligations

- 1.1 The Council shall establish the Community Fund within 90 days of the Commencement of Commercial Operations.
- 1.2 The Council together with any such person as the Owner may in its absolute discretion designate shall establish a constitution for the Community Fund setting out the basis on which monies may be paid out of the Community Fund.
- 1.3 The Community Fund shall administer the distribution of the funds paid in accordance with the provisions of this Schedule and will be composed of at least two administrators from the Council such administrators to be subject to the approval of the Owner (such approval not to be unreasonably withheld or delayed) and the Owner retains the right to participate in the decision making process of any application received by the Community Fund at its own discretion.
- 1.4 The Council shall acknowledge in writing receipt of any sum paid pursuant to Schedule 1 within 14 days of such payment being received.
- 1.5 The Council shall advise the Owner not less than 28 days before the due date for payment of the increase in any Contribution every year in accordance with Clause 17 (Indexation) of this Deed.
- 1.6 The Council shall hold the Fixed Link Contribution in an interest bearing account and in the event that construction of the Fixed Link has not been completed within the period of 10 years from the date of payment of the Fixed Link Contribution and adopted as highway maintainable at public expense the Council shall return the Fixed Link Contribution together with any interest accrued thereon to the Owner within 14 days.
- 1.7 The Council agree to incorporate into any proposal for the Fixed Link an alternative access to the permanent access of the Development whether or not the Owner requests it but for the avoidance of doubt nothing in this Agreement requires the Council to make any contribution towards the cost of any such permanent access.
- 1.8 The Council shall hold the Initial Air Pollution Reduction Contribution and the subsequent 3 Air Pollution Reduction Contributions in an interest bearing account and in the event that on the expiration of 3 years from the date of payment of the final instalment of the Air Pollution Reduction Contribution under Paragraph 1.7 of Schedule 1 any sums remain unspent the remainder of any sums held therein shall be returned to the Owner together with any interest accrued thereon within 14 days.
- 1.9 The Council shall accept the performance of any of the Owner's obligations by the Developer as if the Owner had performed the obligations or obligations itself.

e-on

BLACKBURN MEADOWS PARTNERSHIP SHALL HAVE SOLE RESPONSIBILITY FOR ANY USE
MADE OF THIS DOCUMENT OTHER THAN THAT WHICH IT WAS PREPARED FOR.
ALL MEASUREMENTS SHOULD BE CHECKED ON SITE.
DO NOT SCALE FROM THIS DRAWING.
ANY CHANGES TO OR ADDITIONS TO THIS DRAWING TO BE MADE TO THE
DRAWING SHOULD BE APPROVED BY THE DESIGNER.
NOTES

PP201638
Hinalstark

[Signature]
i. Fairclough

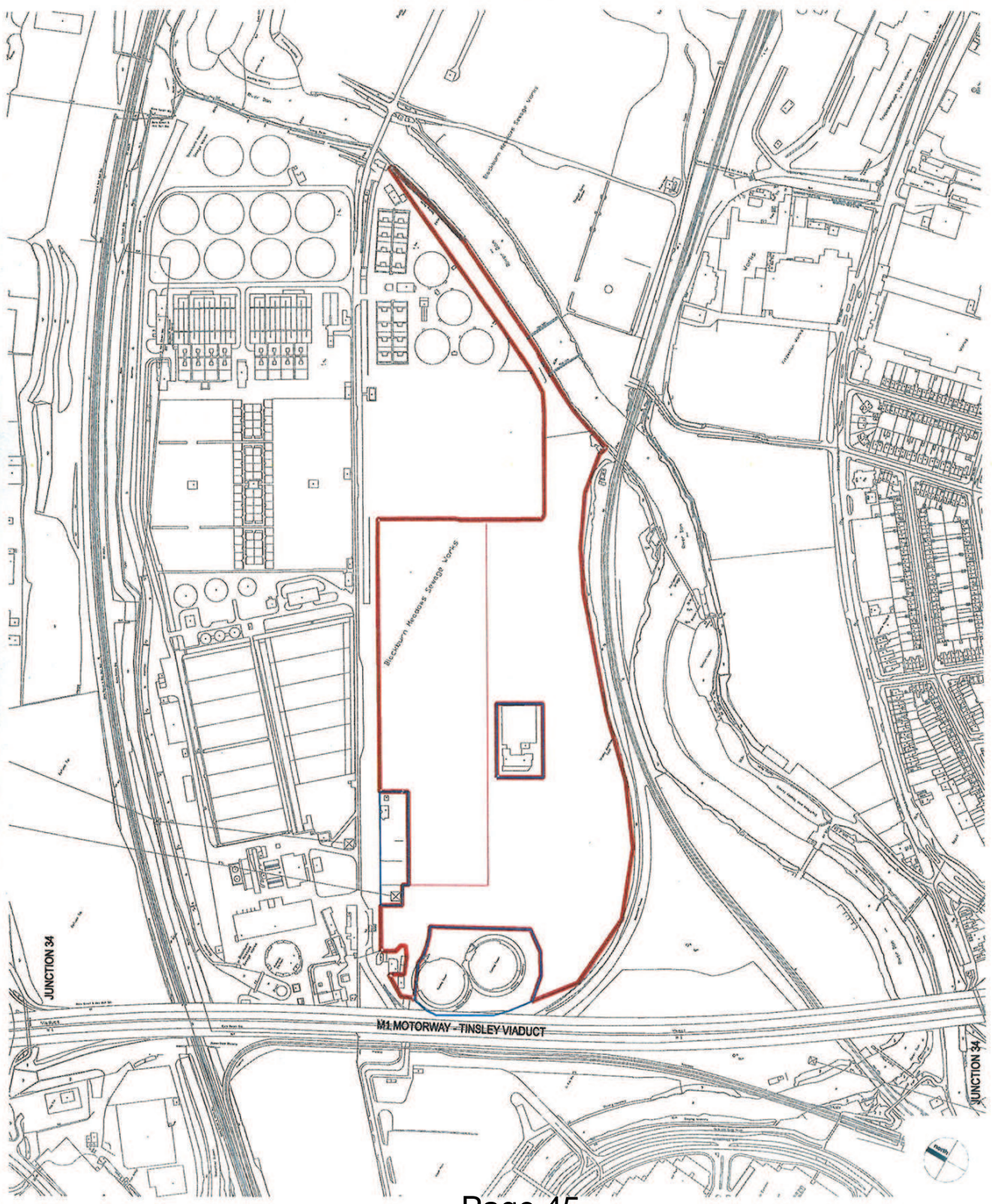
FIRST ISSUE
DATE: 12/25/00

- APPLICATION BOUNDARY
- ADDITIONAL E ON OWNED LAND
- PLANT BOUNDARY



Building Design Partnership
Architects, Designers & Engineers
33 Canine St
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BLACKBURN MEADOWS BIOMASS POWER STATION
P2001638
SITE PLAN
SCALE 1:2500
DATE 06/03/08
(C) A002



The **COMMON SEAL** of **SHEFFIELD CITY COUNCIL** was affixed to this Deed, which was delivered when dated, in the presence of:



**Assistant Chief Executive
Legal and Governance**



Authorised Signatory

Signature :
Name :

SIGNED and delivered as a deed by **E.ON UK PLC** acting by two directors or by one director and the secretary:

Director
Signature :
Name :



Director/Secretary
Signature :
Name :



SIGNED and delivered as a deed by **E.ON CLIMATE & RENEWABLES UK LTD** acting by two directors or by one director and the secretary:

Director
Signature :
Name :



D. FARRIER

Director/Secretary
Signature :
Name :

I. Fairclough
Ian Fairclough