

Agenda Item No. 2.2

**DERBYSHIRE COUNTY COUNCIL
REGULATORY - PLANNING COMMITTEE**

17 March 2016

Report of the Strategic Director – Economy, Transport and Communities

- 2 THE CONSTRUCTION AND OPERATION OF AN ENERGY RECOVERY FACILITY (ERF) AND ANCILLARY FACILITIES, COMPRISING OFFICES AND WELFARE FACILITIES, ELECTRICAL COMPOUND, TOGETHER WITH PERIPHERAL LANDSCAPING, DRAINAGE AND SECURITY FENCE AT BRIDGE STREET, CLAY CROSS**
APPLICANT: CLAY CROSS BIOMASS LTD
CODE NO: CW4/1114/98

4.2362.11

(1) **Purpose of Report** To enable the Committee to re-authorise the determination of this application, on a revised basis.

(2) **Information and Analysis** On 11 April 2016, Members passed a resolution in favour of granting planning permission for the construction and operation of this Energy Recovery Facility (ERF) development subject to conditions, and subject to the applicant first entering into a legal agreement relating to a number of matters relating to Employment opportunities, Sustainable Community Energy fund, Rights of Way contribution, Surplus Heat provision, Public Art provision and a Liaison Committee.

A copy of the relevant minutes from the meeting is attached at Appendix A.

Since the resolution was passed negotiations have been taking place between the County Council, the applicant and the landowner (NEDDC) to agree the terms of the Section 106 agreement. At the same time the applicant has been negotiating with NEDDC to purchase the freehold of the land from the District Council. As far as Derbyshire County Council understands the freehold sale is progressing to a conclusion.

It is usual for the landowner to be a party to a Section 106 agreement to ensure that the obligations contained in that deed continue to bind the land even if it is sold. However, in this instance NEDDC has not agreed the terms of the document. The draft Section 106 as agreed between the other parties is attached to this report at Appendix C.

Planning permission cannot be issued until the legal agreement is finalised and agreed to by all relevant parties.

Given the ongoing delay to date the applicant has requested an alternative approach so that the planning permission could be issued sooner. The applicant, for commercial reasons relating to the “Contract of Difference”*, has requested that DCC as Waste Planning Authority (WPA) consider the use of a ‘Grampian’ style condition to secure the provision of the Section 106 legal agreement, rather than continuing to require the agreement to be completed before a permission is granted.

Should the WPA agree that this is an appropriate mechanism then the planning permission can be issued by DCC subject to the requirements of the legal agreement being achieved via the use of such a Grampian style planning condition.

Should the sale of the freehold proceed the then landowner would be a party to the Section 106 agreement instead of NEDDC.

If the planning permission is issued with the proposed Grampian condition, it will not be possible to commence development until the Section 106 agreement has been completed by all parties irrespective of whether the land is still owned by NEDDC or has been sold to a new landowner. Either way the requirements for the legal agreement are able to be secured unless there is a successful appeal against the condition or a removal of the condition under application of Section 73 of the Town and Country Planning Act 1990 (as amended).

As referred to above, the applicant has requested that a Grampian style condition be attached to the decision notice. This is a negatively worded pre-commencement planning condition which in this case requires the Section 106 legal agreement to be completed by all parties prior to development on site commencing. The current draft decision notice, which is at Appendix B, already contains existing precedent conditions.

The Planning Practice Guidance states that “*in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk. In such cases the 6 tests must also be met.*”

In this case it is considered that there is an exceptional circumstance as the development is complex and strategically important (in terms of the district heating opportunity to the adjoining housing site) and the delivery of the

development is understood to be at risk should the window of opportunity be lost in achieving this round of “Contract of Difference” which is due to come to an end on 21 April 2017.

Officers are satisfied that an exceptional circumstance exists in this case to allow such a condition to be used to secure the requirements of the legal agreement. In such a case the end result is the same but the route to it differs.

The proposed condition would state **No development shall commence until the applicant has entered into a planning obligation under section 106 of the Town and Country Planning Act 1990 in substantially the same form as and including the obligations set out in the draft agreement attached to this Decision Notice reference CW4/1114/98.** Reason - To secure the requirements of the planning obligation attached to the planning permission.

* A Contract for Difference (CFD) is a type of contract between a low carbon electricity generator and the Low Carbon Contracts Company (LCCC), a government-owned company. A generator party to a CFD is paid the difference between the ‘strike price’ – a price for electricity reflecting the cost of investing in a particular low carbon technology – and the ‘reference price’ – a measure of the average market price for electricity in the GB market. It gives greater certainty and stability of revenues to electricity generators by reducing their exposure to volatile wholesale prices, whilst protecting consumers from paying for higher support costs when electricity prices are high.
(<https://www.gov.uk/government/collections/electricity-market-reform-contracts-for-difference>)

(3) **Financial Considerations** The correct fee was received.

(4) **Legal Considerations** This is an application submitted under Part III of the Town and Country Planning Act 1990, which falls to this Authority to determine as the Waste Planning Authority.

I do not consider that there would be any disproportionate impacts on anyone's human rights under the European Convention on Human Rights as a result of this permission being granted subject to the conditions referred to in the delegated decision.

(5) **Environmental and Health Considerations** As indicated in the report to Committee considered on 11 April 2016.

In preparing that report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, property, social value and transport considerations.

(6) **Background Papers** File No. 4.2362.11

As referred to in the report to Committee dated 11 April 2016 and relevant correspondence between the applicant and DCC planning and legal officers.

(7) **OFFICER'S RECOMMENDATION** That the Committee resolves to **authorise** the grant of planning permission for the development proposed in the application reference CW4/1114/98 which was previously considered at Committee on 11th April 2016 subject to conditions substantially in accordance with the conditions contained in the draft Decision Notice which is attached to this report (Appendix B) and an additional condition in the following form:

No development shall commence until the applicant has entered into a planning obligation under Section 106 of the Town and Country Planning Act 1990 in substantially the same form as and including the obligations set out in the draft agreement attached to this Decision Notice reference CW4/1114/98.

Mike Ashworth
Strategic Director – Economy, Transport and Communities

MINUTES of a meeting of the **REGULATORY – PLANNING COMMITTEE** held at County Hall, Matlock on 11 April 2016.

PRESENT

Councillor T Southerd (in the Chair)

Councillors G Birkin (substitute Member), C Cox (substitute Member for reconvened meeting), M Ford, R Hosker, R A Parkinson, J Twigg, J Williams and B Wright

Apologies for absence were received from Councillors D Charles, J Dixon and Julie Hill

No Declarations of Interest were received.

29/16 **SITE VISIT** In accordance with the Code of Practice the Committee visited the site at Clay Cross (Minute No 31/16).

30/16 **MINUTES RESOLVED** that the Minutes of the meeting of the Committee held on 7 March 2016 be confirmed as a correct record and signed by the Chair.

31/16 **THE CONSTRUCTION AND OPERATION OF AN ENERGY RECOVERY FACILITY (ERF) AND ANCILLARY FACILITIES, COMPRISING OFFICES AND WELFARE FACILITIES, VISITOR CENTRE, ACCESS ROADS AND WEIGHBRIDGE FACILITIES, ELECTRICAL COMPOUND, TOGETHER WITH PERIPHERAL LANDSCAPING, DRAINAGE AND SECURITY FENCE, AT BRIDGE STREET, CLAY CROSS APPLICANT: CLAY CROSS BIOMASS LIMITED (CODE NO: CW4/1114/98)**

The proposal was for planning permission to develop an Energy Recovery Facility (ERF), which would be contained within a purpose-built building on vacant employment land at Bridge Street, Clay Cross.

Details of the proposal, together with comments received from consultees and following publicity, were contained in the report of the Strategic Director for Economy, Transport and Communities. Objections and concerns had been received from Clay Cross Parish Council, North East Derbyshire District Council and local residents and details of these were also given in the report and addressed in the planning considerations section.

The Head of Planning made reference to key points in the report and also referred to the site visit which had been undertaken which had included viewpoints into the site from several locations including the nearest property. He also presented a projection of slides which showed the site location in relation to the conservation area, a photograph of the site from Bridge Street, an impression of how this view would appear if the proposed development proceeded, other impressions of views of the completed facility and drawings from the St Modwen Development proposal for development of the adjacent former Biwaters site.

The Strategic Director's representative informed the Committee about late representations which had been received since the report had been prepared; these were from St Modwen Developments, from North East Derbyshire District Council, and from the Applicant.

The application had been considered in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004; other material considerations had also been taken in to account, including the National Planning Policy Framework (NPPF), the National Planning Practice Guidance and National Planning Policy for Waste.

The Strategic Director's representative affirmed that the main issues to be considered were need, location, sustainability and economic impact, and environmental impacts; and these issues were examined in the report.

He was satisfied from the information available that the proposal would provide a facility for treatment for residual wood waste which was much more environmentally sustainable compared to being sent to landfill, and that it would address a current need for such a facility. Surplus electricity generated from the use of the facility would be supplied to the grid and there would be an opportunity for the thermal energy generated to supply water for heating through a future Combined Heat and Power scheme. The sustainability credentials of such proposed development were recognised by the NPPF, and 'Successful Places – A Guide to Sustainable Housing Layout and Design' document adopted by North East Derbyshire District Council as Interim Planning Guidance on 1 December 2013.

It was recognised that there were concerns about the safety of energy from waste plants and reassurance was required that such plants were safe. Such a facility would require not only planning permission but also an environmental permit before it could be operational.

Statutory consultees Public Health England and the Environment Agency had not objected to the proposed development. Public Health England had concluded that it had no significant concerns regarding risk to

health of the local population from any environmental emissions from the development. The Environment Agency had no objection subject to conditions relating to land contamination investigation and remediation actions, groundwater and drainage and advisory notes relating to flood, river pollution, historic landfill, and groundwater.

The Strategic Director's representative explained that the evidence provided in the representations submitted by the Leader of the District Council and its officers, and by St Modwen, in support of the assertion of negative economic impact, were also to be given weight as a significant material consideration, but this was not considered by him to be so compelling as to justify departing from the recommendation for approval. The ERF development allowed for residual waste to be diverted from landfill and non-fossil fuel derived electricity to be generated, and represented an opportunity for heat to be taken up by nearby commercial and residential occupiers and/or occupiers of future nearby development under the redevelopment of the former Biwaters site. These were positive features of an efficient energy-from-waste plant which was also considered to represent a positive economic benefit in line with the regeneration of Clay Cross.

Members were reminded that the application site had a history of waste uses. The design of the structure proposed would be of a modern industrial style and appearance with no obvious conflict with the relevant requirements of the local plan policies. It was considered that the buildings and proposed stacks and associated plumes, on balance, should not have an unduly negative overall impact on the landscape and visual character of the area, that there would be no significant adverse ecological impacts arising from the proposed development and that any issues relating to the disturbance of the ground from construction could be addressed by appropriate conditions.

The traffic impacts associated with the proposal had been examined and it was not considered that the number of vehicle movements involved provided any substantive grounds for refusal.

The development in the form proposed, however, would have some adverse impacts. The most obvious and direct adverse impact being the construction of the proposed development; but these would be temporary and could be reduced by conditions to control the dust and noise emissions.

The potential for impacts from gasification plant emissions on human health had been considered in the context of the advice received from the Environment Agency, the main regulator of the processes to be operated in the plant by the Environmental Permit. There was perception of a risk to health, which was also to be taken into account. However, officers did not

consider that a refusal to the proposal on such grounds could be sustained by the Authority.

The need to provide facilities to manage the waste arising in Derbyshire was very evident but the actual provision had to be done in ways that respected the Waste Hierarchy, whilst affording sufficient protection against adverse impacts for the people and environment of the area. The Strategic Director was satisfied that there was a need for the proposed development and on that basis he concluded that the application site was appropriate for the type of activity proposed and that it accorded with the provisions of the development plan. He was satisfied that it could be operated in an environmentally acceptable manner and not harm the regeneration of Clay Cross, but potentially support it.

Mr K Walters, who lived near the site and had made representations, addressed the Committee. He referred to concerns relating to traffic and suggested that the current 30mph speed limit at Bridge Street was already exceeded by about 90% of traffic. He also expressed concern that the proposed development was to be situated on an old mineshaft. Other concerns he raised related to the quality and supply of the wood and fire risks, emissions and pollution, and noise levels. He concluded that residents should be entitled to live in a clean environment and that a more suitable location for the facility would be at Markham Vale.

Mr M Hicks addressed the Committee on behalf of the applicant. He referred to the details of the proposal in the report and reiterated that the facility would contribute to sustainable waste treatment in the County; it would provide energy to homes; would direct waste wood from landfill; provide employment, including apprenticeships; and would generate payment of business rates and other financial benefits. He commented that operations would be inside the building thereby creating minimum impact to the area and that the site had an existing waste permit. He stated that the location was an existing waste site, that there would be no harmful environmental impact, and that operations would tackle climate change, and would provide benefits to Clay Cross.

As requested by the Chair, the Strategic Director's representative responded to the issues referred to by Mr Walters in his address. He explained that the Council when examining the proposal as Highway Authority had considered the accident record for the road and had evaluated that the proposal should not create any additional problems; that in relation to the mineshaft and contamination issue these problems would need to be addressed whenever the site was developed; that the current proposal would use up to date technology and gas emissions would be monitored and be in accordance with the Waste Incineration Directive; that staff safety training

would be included in the permit; that noise levels from the facility would meet the appropriate standards for both day and night time; and that the quality of the wood would be for consideration under the permitting process.

Councillor Wright remarked that he was the local Member for the site and was familiar with the history of its use for tipping waste but felt that the site should not be used further for waste and that a non-waste use would be appropriate. He expressed dissatisfaction with the height and mass of the designed chimney stacks and the plumes that would be emitted. He considered that the regeneration of the area was an overriding priority and felt that this proposal would be detrimental to that, especially since there were no contracts in place for the Combined Heat and Power heating.

Councillor Ford commented that there were both positive and negative effects to be weighed up but that he was persuaded that the proposal was acceptable, taking into account that the building was well designed, that he did not feel that the building would cause undue light loss for the neighbouring development site, and that the creation of apprenticeships and employment would be welcome.

Councillor Twigg agreed that the building was well designed and felt that the development would improve the area.

The Strategic Director's representative pointed out that there were provisions in the proposed conditions to require appropriate remediation of the site in advance of construction and reminded the Committee of the Employment allocation of the site in the local plan.

RESOLVED to authorise the grant of planning permission for the development proposed in application planning ref CW4/1114/98, subject to (1) conditions substantially in accordance with the conditions contained within the report of the Strategic Director for Economy, Transport and Communities; and

(2) the prior completion of an agreement or unilateral deed containing obligations under section 106 of the Town and Country Planning Act 1990 (as amended) which shall make provision to the satisfaction of the Strategic Director of Economy, Transport and Communities and the Director of Legal Services substantially in accordance with the draft Heads of Terms referred to in the report.

32/16 PROPOSED ERECTION OF TWO DETACHED EDUCATIONAL BUILDINGS, A CANOPY AND THE CONSTRUCTION OF A NEW SCHOOL DRIVE AT CRESWELL C OF E INFANT AND NURSERY SCHOOL, GYPSY LANE, CRESWELL APPLICANT: DERBYSHIRE COUNTY COUNCIL (CODE NO: CD5/1115/116) This was an application for the construction of two new educational buildings, a canopy and a new school

drive at Creswell Infants and Nursery School, Creswell. Details of the proposal, together with comments received from consultees and following publicity were contained within the report of the Strategic Director for Economy, Transport and Communities.

The Strategic Director's report explained that the school was currently 'over capacity' and the pupil projections showed that there would be a sustained demand within Creswell for nursery and infant school places, exceeding current capacity of the school. He commented that the proposed developments would result in the loss of playing field land and that Sport England had objected on the grounds that the proposal was considered to be contrary to policies of the Bolsover District Local Plan (BDLP), the National Planning Policy Framework (NPPF) and Sport England's Playing Field Policy. He also reported that construction of the new drive and access point was dependent on the development of an adjacent housing estate and until this access point was provided the application proposed to continue to use the existing access from Gypsy Lane. The Highway Authority had raised highway safety concerns as the junction of Gypsy Lane/Elmton Road was considered to be substandard.

The application had been considered in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004; other material considerations had also been taken into account, including Government policy in the National Planning Policy Framework and Sport England's Planning Policy Statement.

The Strategic Director concluded that there was an accepted need for the development in order to meet the demand for school places in the Creswell area. He had noted that the development would result in the loss of school playing field, which was not to be compensated for and, as such, could not be considered to accord with relevant policies contained in the Bolsover District Local Plan and in the National Planning Policy Framework. However, the loss of the playing field when balanced against the need to provide sufficient school places was not considered to be so significant so as to recommend the refusal of the application. It was recognised that the development could potentially impact on highway safety and the concerns of the Highway Authority were acknowledged. However, he was of the view that a condition to require either the construction of the new drive and access or the approval of a scheme to restrict the use of the existing access from Gypsy Lane prior to the buildings being brought into use would address these concerns.

Subject to the recommended planning conditions being imposed, the Strategic Director did not find the development to be unacceptable. He recommended that the application be authorised for a grant of permission with

conditions, subject to first consulting with the Secretary of State for Communities and Local Government (as required by the Town and Country Planning (Consultation) (England) Direction 2009) on the basis that it was minded to grant planning permission for the development.

RESOLVED that (1) the Secretary of State for Communities and Local Government be consulted on this application in accordance with the 2009 Directions, on the basis that the Committee is minded to grant planning permission for the Development: and

(2) provided that the Secretary of State decides not to call in the application for his own determination, planning permission be granted subject to the conditions contained within the report of the Strategic Director for Economy, Transport and Communities.

33/16 ENVIRONMENT ACT 1995: SCHEDULE 13 INITIAL REVIEW OF MINERAL PLANNING PERMISSION (ROMP), FOR BONEMILL QUARRY, RYDER POINT, HOPTON, WIRKSWORTH APPLICATION FOR DETERMINATION OF CONDITIONS FOR THE CONTINUATION OF EXTRACTION OF MINERALS AND SUBSEQUENT RESTORATION APPLICANT: LONGCLIFFE QUARRIES LIMITED (CODE NO: R3/0198/20)

In accordance with requirements of the Environment Act 1995 an application had been submitted to review the conditions of an 'old mineral permission' in respect of Bonemill Quarry situated at Ryder Point, Hopton, Wirksworth. The report of the Strategic Director for Economy, Transport and Communities explained that the principle of the permission for the development was not under question and a valid planning permission existed for the site. The main planning issue was whether the proposed planning conditions were sufficient to ensure that the development could be controlled such that it did not cause unacceptable impacts upon local residents or the wider environment.

Consultations had taken place and the Strategic Director's report summarised responses. The local Member's comments were reported at the meeting; Councillor Ratcliffe had expressed support in general to the proposed conditions, but commented on the impact that increased traffic on the roads would cause within her Division.

The report referred to the Strategic Director's assessment the application against the relevant development plan policies and other material considerations had also been taken in to account, including the National Planning Policy Framework (NPPF) and the National Planning Practice Guidance. The effects on local communities and neighbouring land uses in relation to noise, dust, blast vibration and other inappropriate lighting had been examined in the report, together with other pollution or disturbance.

A draft set of conditions were recommended in Appendix A to the report, which included a number of changes from the set of conditions proposed by the applicant, which had been submitted with the application. The draft conditions were recommended in order to bring appropriate updates and much improved control to mitigate against any significant harmful environment impacts as the proposed works progressed at the quarry.

The report explained that generally methods of quarry working, landscaping, restoration and aftercare of the site would be brought in line with modern planning permissions and the requirements of the consultees. In considering changes to the scheme of conditions as submitted by the applicant, the Strategic Director reported that he had given appropriate consideration in each case to the potential effect on working rights, the economic viability of the operations concerned and the asset value of the site. He had also taken into account the information provided by the applicant's submission, including the Environmental Statement.

The report noted the Council might be liable to compensation for loss attributable to the scheme if (i) it determined conditions which differed in any respect from those submitted by the applicant; (ii) the effect of the alteration, compared with the conditions which applied previously, was to restrict working rights at the site (other than through restoration and aftercare conditions); and (iii) the restriction was such as to prejudice adversely and to an unreasonable degree, the economic viability of operating the site or the asset value of the site. It explained that where provisos (i) and (ii) were satisfied the Authority had to issue a notice to identify the restriction and to state whether in its opinion the third proviso was satisfied or not.

In this case the existing permission, so far as controlled by the existing conditions, lacked any fixed formal parameters for depth of working. Therefore the proposed new set of conditions would restrict the working rights. However, it was not considered that the draft conditions would prejudice the mineral asset value or the economic viability of the site.

A revised draft condition 8 was circulated for consideration at the meeting, which featured a limit on overall volumes of minerals won and worked to those which would be reasonably required to produce 825,000 tonnes of mineral for export in any single year, with a specific provision for enabling production to a higher limit only through prior submission to an appropriate a mitigation scheme and approval in writing by the authority of such a scheme. The Strategic Director's representative explained that the proposed revised version had been prepared in consultation with the applicant following concerns expressed on its behalf that the draft condition 8 in the report would require a limit on output that would be inflexible and restrictive to the extent that it might impact adversely on the economic viability of its

working the quarry. The Strategic Director's representative further explained that he found the revised version of the draft condition to be satisfactorily for its purpose, although a yearly limit of 825,000 tonnes would be ten percent above that which had been proposed in the report, it would still be low enough to secure the reliability of the assessments of impacts from the development which were contained in the applicant's environmental statement.

It was also noted at the meeting that to secure compatibility of the conditions with the full potential scheme of working referred to by the applicant, which included the working phases depicted on drawings numbered B26/44 and B26/45, these drawings also needed to be included in the list of documentation to appear in condition 3.

RESOLVED to authorise the Strategic Director for Economy, Transport and Communities to issue (1) for the purposes of Paragraph 9 of Schedule 13 of the Environment Act 1995, a set of planning conditions to apply to the relevant permission ASR/1255/3 (1884/402621/5) for Bonemill Quarry that shall replicate or be substantially similar to the draft conditions set out in Appendix A to the report of the Strategic Director for Economy, Transport and Communities, subject to the substitution of draft condition 8 by the revised version circulated at the meeting, and the inclusion of the drawings B/26/44 and B/26/45 as documents in draft condition 3; and

(2) a notice as required by Paragraph 10 (2) of Schedule 13 of the Environment Act 1995 in accordance with the wording in Appendix B to the report.

34/16 PROPOSED EXTENSION OF TIME FOR THE SUBMISSION OF AN APPLICATION UNDER THE ENVIRONMENT ACT 1995 (SCHEDULE 14) FOR APPROVAL OF CONDITIONS TO WHICH A PLANNING PERMISSION IS TO BE SUBJECT (FIRST PERIODIC REVIEW OF MINERAL PLANNING PERMISSIONS OR 'ROMP' APPLICATION) AT HILLHEAD QUARRY, BUXTON (PLANNING PERMISSION CODE NUMBERS 1986/9/6 (DISPOSAL OF MINERAL WASTE/MINERAL WINNING AND WORKING); 1986/9/8 (DISPOSAL OF MINERAL WASTE/MINERAL WINNING AND WORKING); CHA/262/11 (DISPOSAL OF MINERAL WASTE); CHA/864/13 (DISPOSAL OF MINERAL WASTE); CHA/865/17 (DISPOSAL OF MINERAL WASTE) APPLICANT: TARMAC LIMITED Hillhead Quarry was an inactive limestone quarry near Buxton. The owner and operator, Tarmac Limited, had asked for the agreement of the Mineral Planning Authority to further postpone the date by which an application had to be made to determine a new scheme of conditions from 28 April 2016 to 28 April 2020.

The report of the Strategic Director for Economy, Transport and Communities gave a planning background of the site. In making the request to postpone the first periodic review, Tarmac Limited had made reference to the new provisions for greater flexibility in the scheduling of reviews of mineral permissions set out in the Growth and Infrastructure Act 2013. The Strategic Director commented that a deferral to 2020 would be in accordance with the spirit of this legislation. He considered that the conditions relating to environmental impacts, such as noise, dust, blast, vibrations, etc, approved in 1998, were still robust and would allow mineral extraction and processing operations at the site to be controlled to acceptable modern standards. He, therefore, considered that a deferment of the first periodic review to April 2020 would not appear to present any fundamental problems.

RESOLVED to authorise the Strategic Director – Economy, Transport and Communities to agree in writing to the due date for the submission of an application under Paragraph 6 of Schedule 14 of the Environment Act 1995 for approval of new conditions with the planning conditions to which planning permissions 1986/9/6, 1986/9/8, CHA/262/11 CHA/864/13, and CHA/865/17 at Hillhead Quarry is to be subject, being deferred until 28 April 2020.

35/16 PROPOSED EXTENSION OF TIME FOR THE SUBMISSION OF AN APPLICATION UNDER THE ENVIRONMENT ACT 1995 (SCHEDULE 14) FOR APPROVAL OF CONDITIONS TO WHICH A PLANNING PERMISSION IS TO BE SUBJECT (FIRST PERIODIC REVIEW OF MINERAL PLANNING PERMISSIONS OR ‘ROMP’ APPLICATION) AT HINDLOW QUARRY, BUXTON (PLANNING PERMISSION CODE NUMBER CHA/1156/3 (DISPOSAL OF MINERAL WASTE/MINERAL WINNING AND WORKING OF MINERALS) APPLICANT: TARMAC LIMITED Hindlow Quarry was an inactive limestone quarry near Buxton. The owner and operator, Tarmac Limited, had asked for the agreement of the Mineral Planning Authority to further postpone the date by which an application must be made to determine a new scheme of conditions from 28 April 2016 to 28 April 2020.

The report of the Strategic Director for Economy, Transport and Communities gave a planning background of the site, including the approval of a Non-Material Amendment to planning permission CHA/1156/23 in November 2014 (Minute No 10/15 refers), which introduced a new condition requiring an ecological survey of the Phase 1 area (as defined by the current approved development scheme and conditions), prior to the resumption of winning and working of minerals.

In making the request to postpone the first periodic review, Tarmac Limited had made reference to the new provisions for greater flexibility in the scheduling of reviews of mineral permissions set out in the Growth and

Infrastructure Act 2013. The Strategic Director commented that a deferral to 2020 would be in accordance with the spirit of this most recent relevant legislation. He considered that the conditions relating to environmental impacts, such as noise, dust, blast vibrations, etc, approved in 1998, were still robust and that they would allow mineral extraction and processing operations at the site to be controlled to acceptable modern standards. He, therefore, did not foresee any immediate threat to the environment which would call for a more urgent reconsideration of the schedule of conditions approved in 1998, than would be the case with the RoMP due date being extended to 28 April 2020 as requested.

RESOLVED to authorise the Strategic Director for Economy, Transport and Communities to agree in writing to the due date for the submission of an application, under Paragraph 6 of Schedule 14 of the Environment Act 1995, for approval of new conditions with the planning conditions to which planning permission CHA/1156/3 at Hindlow Quarry is to be subject, being deferred until 28 April 2020.

36/16 **CURRENT ENFORCEMENT ACTION** **RESOLVED** to receive the report on current Enforcement Action.

37/16 **OUTSTANDING APPLICATIONS** **RESOLVED** to receive the list on decisions outstanding on 11 April 2016 relating to EIA applications outstanding for more than sixteen weeks, major applications outstanding for more than thirteen weeks and minor applications outstanding for more than eight weeks.

38/16 **CURRENT APPEALS/CALLED-IN APPLICATIONS**
RESOLVED to note the report on current appeals/called-in applications relating to County matters.

39/16 **DEVELOPMENT MANAGEMENT MONTHLY PERFORMANCE MANAGEMENT STATISTICS** **RESOLVED** to receive the Planning Services Development Management Monthly Performance Management Statistics for March 2016.

40/16 **MATTERS DETERMINED BY THE STRATEGIC DIRECTOR FOR ECONOMY, TRANSPORT AND COMMUNITIES UNDER DELEGATED POWERS** **RESOLVED** to note that the following applications had been approved by the Strategic Director for Economy, Transport and Communities under delegated powers on:-

(a) Delegation Meeting – 10 March 2016

- 1 Proposed Replacement of Single Glazed Steel Framed Windows with Double Glazed Aluminium Units at Darley Dale Primary School, Greenaway Lane, Hackney, Matlock
Applicant: Derbyshire County Council
Planning Application Code No: CD3/0116/129
- 2 Proposed Erection of Timber Gazebo at Wirksworth Junior School, Wash Green, Wirksworth
Applicant: Derbyshire County Council
Planning Application Code No: CD3/0116/130
- 3 Proposed Development: Section 73 Application to Not Comply with Conditions 3, 6 and 29 of Planning Permission CW4/0415/2 to Extend the Completion Date of the Remediation Project, to Further Amend the Final Landform of the Restored Site and Allow the Production of Separate Completion Reports for the Development Platform Area and the Remainder of the Site at the Former Avenue Coking Works, Derby Road, Wingerworth
Applicant: Homes and Communities Agency
Planning Application Code No: CW4/1115/112
- 4 Proposed Erection of a Polytunnel and Greenhouse at Lea Primary School, Church Street, Lea, Matlock
Applicant: Derbyshire County Council
Planning Application Code No: CD6/1215/118
- 5 Delegated Decision on Schemes Required by Planning Conditions:
 - SD2827
 - SD2823

(b) Delegation Meeting – 24 March 2016

- 1 Delegated Decision on Schemes Required by Planning Conditions:
 - SD2825

(c) Delegation Meeting – 31 March 2016

- 1 Proposed Replacement of a Single-Storey Building incorporating an Entrance Reception, Administration Offices and Single Classroom at Riddings Junior School, Church Street, Riddings
Applicant: Derbyshire County Council
Planning Application Code No: CD6/0116/132

- 2 Delegated Decision on Schemes Required by Planning Conditions:
 - SD2832
 - SD2833

(d) Delegation Meeting – 7 April 2016

- 1 Proposed Replacement of Single Glazed Aluminium Framed Windows and Doors with Double Glazed Aluminium Units at Fairmeadows Foundation Primary School, Fairfield Crescent, Swadlincote
Applicant: Derbyshire County Council
Planning Application Code No: CD9/0216/136
- 2 Delegated Decision on Schemes Required by Planning Conditions:
 - SD2836
 - SD2837
 - SD2814

41/15 **EXCLUSION OF THE PUBLIC RESOLVED** that the public, including the press, be excluded from the meeting during the Committee's consideration of the remaining item on the Agenda to avoid the disclosure of the kind of exempt information detailed in the following summary of proceedings:-

SUMMARY OF PROCEEDINGS CONDUCTED AFTER THE PUBLIC, INCLUDING THE PRESS, WERE EXCLUDED FROM THE MEETING

- 1 To confirm the exempt Minutes of the meeting of the Committee held on 7 March 2016.

42/16 **MINUTES RESOLVED** that the exempt Minutes of the meeting of the Committee held on 7 March 2016 be confirmed as a correct record and signed by the Chair.

Appendix B

LET7251

PUBLIC
Form TCP 3

DERBYSHIRE COUNTY COUNCIL

TO: SLR Consulting Ltd
Aspect House
Aspect Business Park
Bennerley Road
Nottingham, NG6 8WR

County Hall
Matlock
Derbyshire
DE4 3AG

4.2362.11

TOWN AND COUNTRY PLANNING ACT 1990

In pursuance of the powers vested in the Council under the above Act and all related Acts, Orders and Regulations, and with reference to your application Code No CW4/1114/98 received on the 10 December 2014 for permission **for The construction and operation of an Energy Recovery Facility (ERF) and ancillary facilities, comprising offices and welfare facilities, visitor centre, access roads and weighbridge facilities, electrical compound, together with peripheral landscaping, drainage and security fence** in the manner described in the application and shown on the accompanying plan(s) and drawing(s), NOTICE IS HEREBY GIVEN that permission for the proposed development is **GRANTED subject to compliance with the following conditions:**

1 **Time Limit**

The development hereby permitted shall be commenced within three years of the date of this decision notice.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 (as amended).

2 **Notification of Dates**

The operator shall provide not less than five days' notice to the Waste Planning Authority of the dates of:

- the commencement of construction under this permission;
- when the development hereby permitted will become operational; and
- Export of electricity to the grid.

Date

Signed

Authorised Officer of the Council

Reason: To confirm the dates for monitoring for compliance with this permission

2a Capacity and type of waste

The proposed development shall not receive more than 80,000 tonnes of material per annum.

The facility shall be limited to only receive as feedstock residual waste wood which is within grades A to- C under the Wood Recyclers Associations (WRA) grading system, and there shall be no waste which is received for the development which is not waste wood within the definition of feedstock which shall have been agreed in writing, prior to commencement of development by the waste planning authority.

The operator shall maintain records of the tonnage and sources of waste delivered to the site and shall make these records available to the Waste Planning Authority at any time upon request.

Reason: in the interests of sustainable waste management in accordance with the waste hierarchy. A use of any feedstock other than from waste streams which accord with this condition would give rise to different environmental effects which would not have been subject to assessment regarding sustainability during the determination of the application for this permission.

2b Electrical Connection

The facility to be operated in accordance with this permission shall not be operated at any times when it would not generate electricity and supply it to the relevant electricity distribution network.

Reason: To ensure that the electricity connection arrangements are effective in accordance with the waste hierarchy.

2c Decommissioning

Not less than 6 months prior to the final cessation of operation of the facility under the development hereby permitted, a scheme shall be submitted for the written approval of the Waste Planning Authority. The scheme shall include the removal of all buildings, chimney stacks, associated plant, machinery, waste and processed materials from the site within a period of 18 months.

The operator shall inform the Waste Planning Authority in writing within 30 days of final cessation of operation of the facility under the development hereby permitted that the operation has ceased.

Date

Signed

Authorised Officer of the Council

Thereafter, the site shall be restored in accordance with the scheme as approved under this condition.

Reason: To secure successful restoration of the site

2d Combined Heat and Power

The applicant shall provide within 12 months of commencement of development, a detailed scheme to be submitted for approval in writing by the waste planning authority, relating to an appropriate connection at the site boundary to enable heat offtake to be realised by commercial and/or residential properties. The approved scheme shall include an implementation timescale for site boundary connection and a mechanism for implementation, including annual review of actions undertaken to establish identification of the potential heat off take users.

Reason: To secure thermal energy offtake is realised in the interests of sustainable development.

2e Duration

The use under this permission shall cease not later than the expiration of 25 years from the date of commencement of export of electricity to the grid.

Reason: To avoid the use of the facility to be developed under this permission continuing beyond 25 years duration without a prior assessment taking place of the case for the continuation of use.

3 Approved Development

The development hereby permitted shall be carried out in full compliance with the details contained in the Planning Application and submitted by SLR Consulting Limited on behalf of Clay Cross Biomass Limited on 4 November 2014 and received as valid by the Waste Planning Authority on 10 December 2014, and the documents which accompanied it, except insofar as may otherwise be required under the terms of any other condition set out in this Decision Notice.

For ease of reference, the documents which accompanied the Planning Application comprise the following:

CC 3/1: Landscape Plan

DWG No 1: Existing Site Plan

DWG No 2: Proposed Site Plan/Roof Plan

DWG No 3: Proposed Ground Floor Plan

Date

Signed

Authorised Officer of the Council

DWG No 4: Proposed Elevations
DWG No 5: Proposed Elevations
DWG No 6: Typical Sections
DWG No 7: Part Proposed Ground Floor Plan
DWG No 8: Part Proposed First Floor Plan
DWG No 9: Proposed Roof Plan
Planning Statement
Environmental Statement (in two parts including main text and technical appendices)

Reason: To clarify that the development must be carried out in full conformity with the details submitted including the mitigation measures proposed in the planning application, supporting documents and Environmental Statement.

Pre Commencement Conditions

4 Site Investigation Works

No development hereby permitted shall commence before:

- The Waste Planning Authority has approved in writing a scheme for intrusive site investigations which has been submitted to it, which shall include locating and assessing the mine entry (as referred to by the Coal Authority in letter dated 2 October 2015 and any other potential ground/surface hazard;
- The approved scheme of intrusive site investigations has been undertaken;
- A report of findings arising from the intrusive site investigations has been submitted to the Waste Planning Authority with a scheme for its written approval of remedial works for the mine entry, and any foundation designs which may be required for building over the mine entry or other surface/ground hazard identified;
- Those remedial works as approved which are not comprised in the development have been Implemented.

Reason: To fully identify and safeguard the mine shaft within the site boundary and other ground/surface hazard.

5 Cross Sections

No development hereby permitted shall commence before plans showing detailed longitudinal and transverse cross- sections of both existing and proposed ground levels have been submitted to and approved in writing by the Waste Planning Authority. The sections

Date

Signed

Authorised Officer of the Council

shall also indicate the ground level of adjoining land adjacent to the site

Reason: To establish the extent of cut and fill required and to monitor and control the height of the building(s) in relation to surrounding land, buildings and features in the interests of visual amenity in the urban setting.

6 **Contaminated Land Remediation**

The development hereby permitted shall not commence before:

A scheme for remediation of contaminated land at the site, has been submitted to and approved in writing by the Waste Planning Authority, which includes the following components:

i) A report of the results of a site investigation (taking into account preliminary risk assessment and conceptual modelling of the site as provided within Chapter 5 of the Environmental Statement) to provide clarification and detailed assessment of the risks to each of the receptors that could be affected by contaminants of the site, including those potential receptors that are off site (including groundwater)

ii) An options appraisal for remediation and risk reduction with full details of the measures proposed to reduce the risks detailed in the assessment under i) above to negligible levels and to remediate any impacts on receptors through contamination from the site, and how they are proposed to be undertaken.

iii) A verification plan providing details of the data that will be collected in order to demonstrate that the measures set out in the appraisal in ii) above are complete and identifying any requirements for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

The remediation scheme as approved shall be implemented

Reason: The Environmental Statement acknowledges that the site has contamination present and the level, type and extent of this contamination needs to be fully determined prior to commencement. National Planning Policy Framework (NPPF) Paragraph 109 states that the planning system should contribute to and enhance the natural and local environment by preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of water pollution. The NPPF (Paragraph 121) also states that planning policies and decisions should also ensure that adequate site investigation information, prepared by a competent person, is presented.

Date

Signed

Authorised Officer of the Council

7 Surface Water and Drainage

Prior to commencement of the development hereby permitted (or such date or stage in the development as may be agreed in writing with the Waste Planning Authority) a scheme of details for the implementation, maintenance and management of the system for drainage of surface water at the site shall be submitted to and approved in writing by the Waste Planning Authority. The approved scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include:

- i) a timetable for implementation of the system, and
- ii) a plan for the management and maintenance of the system drainage.

The scheme shall be designed in accordance with the contents of the document published by the Department for the Environment, Food and Rural Affairs entitled 'Non-statutory technical standards for sustainable drainage systems' and dated March 2015 as far as reasonably practicable, and shall include restricting the peak runoff of surface water from the development in accordance with S3 and S5 as detailed in the document and : accommodating surface water in order to restrict flood risk within the development in accordance with S7, S8 and S9 in the document .

The system at all times following its construction shall be fully maintained by the developer and/or operator of the energy resource facility.

Reason: To manage surface water flood risk, minimise surface water flooding and in the interests of sustainable drainage implementation, management and maintenance.

8 Dust and odour

No development hereby permitted shall commence until a scheme has been submitted to and approved in writing by the Waste Planning Authority, to minimise and mitigate the impacts of dust and odour on local air quality from construction operations during the construction of the development The requirements of the scheme under this condition as approved by the Waste Planning Authority shall be fully implemented throughout the construction of the development.

At such times when the movement of vehicles, soils, or dusty materials is not possible without causing dust nuisance, such

Date

Signed

Authorised Officer of the Council

movement shall temporarily cease until such times as the weather conditions improve so as to enable such movement to take place without causing dust nuisance to be prevented.

Reason: To ensure that dust and odour during the construction phase of development is properly managed so as to minimise the impact on potential local receptors.

9 **Soil Management**

No development hereby permitted shall commence until a soil management plan covering all the areas of proposed soft landscaping has been submitted to and approved in writing by the Waste Planning Authority. The soil management plan shall include a method for ensuring that the origins and qualities of the soil material to be used are appropriate for the proposed soft landscaping, and details of temporary stockpiling, depth of application and suitability as a growing medium. The soil management plan as approved shall be fully implemented.

Reason: To ensure that soil imported to the site is of good quality and is kept and used in accordance with the landscaping plan.

10 **Weed Control**

No development hereby permitted shall commence before a scheme has been submitted to and approved in writing by the Waste Planning Authority, to manage any invasive plant species or notifiable species of weed that are found on the site during the construction/landscaping phase or during the operation of the facility.

The requirements of the scheme under this condition as approved by the Waste Planning Authority shall be fully implemented throughout the duration of the development

Reason: To ensure that any invasive plant species or notifiable species of weed found are properly handled and that dispersion is avoided.

11 **Lighting**

(a) No illumination of any construction work under the development shall occur before a scheme has been submitted and approved in writing by the Waste Planning Authority, for lighting during the construction phase. The scheme shall include the following details:

- The position, height and type of all lighting
- The intensity of lighting

Date

Signed

Authorised Officer of the Council

•The measures proposed to minimise the impact of lighting on the environment generally, with particular focus on houses and businesses within close proximity of the facility, as identified in section 7 of the Environmental Statement

(b) Following construction, no external lighting shall be installed or operated except in accordance with a scheme having regard to the Guidance Notes for the Reduction of Obtrusive Light GN01: 2011 produced by the Institute of Lighting Professionals that shall have been submitted to and approved in writing by the Waste Planning Authority.

Reason: In the interests of visual amenity and to avoid any light pollution during construction and operation of the facility.

12 **Noise Management Plan**

No development shall commence before a Noise Management Plan, to control all noise generating activity from the use of the facility under this permission, has been submitted to and approved in writing by the Waste Planning Authority. The Noise Management Plan shall include detailed building design measures in respect of sound reduction based on those assumed under 8.101 to 8.103 outlined in Chapter 8 of the Environmental Statement and detailed mitigation measures based on those outlined at 8.132 in Chapter 8 of the Environmental Statement. The Noise Management Plan shall be implemented as approved. In the event that an operation or the use of any plant or equipment fails to comply with the limits set out in the Noise Management Plan, the operation or use shall cease until appropriate alternative noise mitigation measures have been approved by the Waste Planning Authority and implemented.

Reason: To safeguard the aural amenity of local residents, adjacent properties and land users.

Highway conditions

- 13 The location of all vehicular movements between the highway and the site for construction purposes shall be limited to the location of the existing vehicular entrance from the highway into the site, or such other access as may be agreed in writing with the Waste Planning Authority.

Reason – In the interests of highway safety

Date

Signed

Authorised Officer of the Council

- 14 No development hereby permitted shall be commenced until a scheme setting out the detailed design for securing of satisfactory inter-visibility and impermeable surfacing for movements of vehicles between the highway and the site during construction via the existing vehicular entrance, or temporary vehicle entrance, from the highway into the site, has been submitted to and approved in writing by the Waste Planning Authority.

All requirements of the scheme as approved which are designed to be implemented in advance of the construction shall be fully implemented. All other requirements of the scheme shall be implemented throughout the construction period.

Reason: In the interests of highway safety

- 15 No development (other than such as may be required for due implementation of elements of a scheme approved in accordance with (14 above) shall take place before space has been provided within the site for storage of plant and materials, site accommodation, loading, unloading and manoeuvring of goods vehicles, parking and manoeuvring of employees and visitors vehicles, laid out and constructed in accordance with detailed designs first submitted to and approved in writing by the Waste Planning Authority. Once provided this space shall be kept free from any impediment to these functions throughout the construction period.

Reason: In the interests of highway safety

- 16 Throughout the period of construction vehicle wheel cleaning facilities shall be provided and retained within the site. All construction vehicles shall have their wheels cleaned before leaving the site in order to prevent the deposition of mud and other extraneous material on the public highway.

Reason: In the interests of highway safety

- 17 The development shall not be brought into beneficial use until the vehicle access(es), including associated visibility sightlines, have been constructed in accordance with detailed designs first submitted to and approved by the Planning Authority. Thereafter the accesses shall be retained accordingly and the land within the visibility sightlines retained free of obstructions exceeding 600mm above

Date

Signed

Authorised Officer of the Council

ground level.

Reason: In the interests of highway safety

- 18 The development hereby permitted shall not be brought into beneficial use until the car/vehicle parking areas shown on the approved drawings have been completed, surfaced and demarcated, and thereafter, the areas shall be kept free of obstruction and available for the parking of vehicles associated with the development.

Reason: In the interests of highway safety

- 19 The development hereby permitted shall not be brought into beneficial use until cycle parking facilities have been implemented and made available for use. The cycle parking facilities shall thereafter be retained for use by the occupants of, and visitors to, the development at all times.

Reason: In the interests of highway safety

- 20 The development hereby permitted shall not be brought into beneficial use until the facilities for commercial vehicle loading, unloading, circulation and manoeuvring have been completed in accordance with the approved drawings. Thereafter, these areas shall be kept free of obstruction and available for these activities.

Reason: In the interests of highway safety

- 21 There shall be no gates or other barriers on the accesses within 15m. of the nearside highway boundary and any gates shall open inwards only, unless otherwise agreed in writing by the Waste Planning Authority.

Reason: In the interests of highway safety

- 22 **Ecology**

No development hereby permitted shall commence until a comprehensive programme of times and periods over the duration of the development for the initial implementation and the continuation of those ecological mitigation and compensation measures described in Chapter 11 of the Environmental Statement

Date

Signed

Authorised Officer of the Council

at sections 11.121 to 11.131 inclusive has been submitted to and approved in writing by the Waste Planning Authority . The measures shall be implemented and continued in accordance with the programme as approved in accordance with this condition shall be fully implemented.

Reason: In the interests of habitat/species protection and enhancement which may be adversely affected if a timed programme for implementation of measures for mitigation and compensation of impacts on them is not ascertained prior to commencement of development.

23 The development hereby permitted and the associated preparatory felling of trees and clearance of vegetation shall not be commenced unless :

(i) a brief ecological re-survey which updates result of the ecological surveying work of 2014 which are reported in the Environmental Statement with regard to the detection of any potential actual or likely presence at the site of additional protected or notable species, and which is in accordance with the methodologies used for that 2014 work and the Environmental Statement (or any alternative standard methodologies which the Waste Planning Authority may first approve in writing), has been both carried out and submitted to the Waste Planning Authority no more than 30 days in advance of the date for such commencement and either:

(i) no such additional actual or likely presence of such species has been detected, or

(ii) such additional presence of species has been detected and a scheme of mitigation or compensation measures for such additional species presence has also been submitted to the Waste Planning Authority no more than 30 days in advance of the date for such commencement and the Waste Planning Authority has approved that scheme.

All mitigation or compensation measures in a scheme approved pursuant to this condition shall be implemented.

Reason: To provide protection to the ecology of the site and to ensure as far as it is reasonably practicable that the legally

Date

Signed

Authorised Officer of the Council

protected species of the site are fully ascertained immediately in advance of commencement of the works associated with the development and protected from their effects.

24 Vegetation Clearing

No tree felling or clearing of vegetation shall be carried out in the period between 1 March and 31 August inclusive unless a nesting bird mitigation strategy in respect of such works (which shall include the undertaking of nesting bird checks immediately prior to the commencement of the works and the provision of any mitigation or compensation measures required thereafter) has been approved in writing by the Waste Planning Authority, and such works shall only be carried out in conjunction with the carrying out of all measures contained in such an approved strategy.

Reason: To protect nesting birds

25 Temporary and permanent Site Fencing

Prior to the erection of any temporary and permanent fencing at the Site, details of the location and specification/finish of the fencing shall be submitted in writing for the written approval of the Waste Planning Authority. The approved temporary fencing shall be erected as approved prior to any construction operations and maintained for the construction period. The approved permanent fencing shall be erected as approved prior to the start of operations and maintained for the life of the development.

Reason: To ensure that the site is properly secured and minimise any visual impact to nearby receptors.

26 Landscaping

Within six months of commencement of development a scheme for landscaping of the site (including screening by shrub and tree cultivation) shall be submitted for approval in writing by the Waste Planning Authority. The scheme shall be implemented as approved within the first planting and seeding seasons after the completion of construction works. Within five years of the implementation of the scheme, any tree, shrub or hedgerow which dies or becomes seriously damaged, diseased or are removed, shall be replaced with plants of the same species or such alternatives as may be approved by the Waste Planning Authority.

Date

Signed

Authorised Officer of the Council

Reason: In the interests of the amenity of the local area and to ensure the development is adequately screened.

27 **Verification Report**

The facility to be developed in accordance with this permission shall not be brought into beneficial use until:

i) a verification report, demonstrating completion of the measures set out in the approved remediation scheme and the effectiveness of the measures, has been submitted to and approved in writing by the Waste Planning Authority. The report shall include results of sampling and monitoring carried out on which the report's conclusions are based; and

ii) a long-term monitoring and maintenance plan for monitoring of pollutant linkages, maintenance and arrangements for contingency action during the life of the approved development has been submitted to and approved in writing by the Waste Planning Authority.

The long-term monitoring and maintenance plan shall be implemented as approved.

Reason: To ensure that the measures required as an outcome of the site investigation and risk assessment are completed to a satisfactory standard. National Planning Policy Framework (NPPF) Paragraph 109 states that the planning system should contribute to and enhance the natural and local environment by preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of water pollution. The NPPF Paragraph 121 states that planning policies and decisions should ensure that adequate site investigation information, prepared by a competent person, is presented.

28 **Unexpected Contamination**

In the event that unexpected land contamination is found at the site during construction works, then no further development shall be carried out on that part of the site until the developer has submitted to the Waste Planning Authority a method statement for remediating the unexpected contamination and the Waste Planning Authority has approved the method statement in writing. This method statement shall set out in detail how this unexpected contamination is to be dealt with including a scheme of remedial measures and timescales for remediation. Thereafter the construction works shall proceed fully in accordance with the approved method statement.

Date

Signed

Authorised Officer of the Council

Reason: To ensure that any unforeseen contamination on the site is handled and dealt with in an agreed manner to protect the surrounding environment.

29 **External Materials**

No later than six months after the commencement of the development a detailed scheme for the external finish of the main building and chimney stacks shall be submitted for approval in writing by the Waste Planning Authority.

The external finish of the main building and the chimney stacks shall be in accordance with the approved details.

Reason: To secure the acceptability of the visual impact of the development.

30 **Construction Noise**

Sound associated with the construction of the development hereby approved shall not exceed 70dB LAeq,1hr as measured or calculated to a position representing the centre of any domestic garden of a dwelling identified in Section 8 of the Environmental Statement.

All construction (and any remediation) activities shall comply with the guidance in British Standard BS5228 Noise and Vibration, and Control on Construction and Open Sites. Efficient silencers shall be fitted to, used and maintained in accordance with the manufacturers' instructions on all vehicles, plant, and machinery to be used on the site. Except for the purposes of maintenance, no machinery shall be operated with the covers open or removed.

In the event of the Waste Planning Authority notifying the operator that it has grounds for concern that an exceedance of construction phase noise levels from the development hereby permitted at a noise sensitive dwellings in the locations which were used for the noise impact assessment within section 8 of the Environmental Statement (or such other comparable dwellings as may be agreed) has occurred, the operator shall undertake a noise survey within 2 weeks of a written request by the Waste Planning Authority for such a survey to be undertaken. The noise survey shall be undertaken in accordance with any appropriate noise standard that may be specified in the notification (or if no standard is so specified, in accordance with the British Standards most relevant to investigation of those grounds for concern).

Date

Signed

Authorised Officer of the Council

The results of the noise survey will be provided to the Waste Planning Authority within 1 week of the survey being undertaken.

In the event that the results of the noise survey confirm that any such exceedance of construction phase noise emissions levels has occurred the operator shall also submit, for written approval, to the Waste Planning Authority, within 2 weeks of the survey being undertaken a scheme of measures to be implemented to avoid further exceedances.

Any scheme submitted under this condition which is approved by the Waste Planning Authority shall be fully implemented as approved

Reason: To ensure that noise and vibration from construction of the facility is properly managed so as to avoid excessive noise and vibration during construction and minimise their impacts on occupiers of nearby properties in the interests of aural amenity of nearby dwellings.

31 Noise Monitoring and Mitigation During Facility Operation

No work associated with the erection of the steel portal frame of the building structure shall commence before a Noise Management Plan, to control all noise generating activity from the use of the facility under this permission, has been submitted to and approved in writing by the Waste Planning Authority. The Noise Management Plan shall include detailed building design measures in respect of sound reduction based on those assumed under 8.101 to 8.103 outlined in Chapter 8 of the Environmental Statement and detailed mitigation measures based on those outlined at 8.132 in Chapter 8 of the Environmental Statement.

The Noise Management Plan shall demonstrate that the rating level of the sound, corrected for acoustic features, measured at or calculated to a position representing any residential façade which may suffer a loss of aural amenity from sound associated with the development, is no greater than the relevant levels prescribed in the table below:

Date

Signed

Authorised Officer of the Council

Location	Period	Measured Background Noise Level	Predicted Rating Level
		L _{A90}	L _{Ar,T}
1. Egstow Street	Sunday	39	36
	Daytime	38	
	Night-time	36	37
2. Hetton Drive	Sunday	41	40
	Daytime	41	
	Night-time	32	37
3. Brassington Street	Sunday	35	34
	Daytime	36	
	Night-time	32	37
4. Hospital Cottages	Sunday	46	36*
	Daytime	46	
	Night-time	37	

The Noise Management Plan shall be implemented as approved. In the event that an operation or the use of any plant or equipment fails to comply with the limits set out in the Noise Management Plan, the operation or use shall cease until appropriate alternative noise mitigation measures have been approved by the Waste Planning Authority and implemented.

Reason: To safeguard the amenity of local residents and businesses.

32

Green Roof System

Prior to the development being brought into beneficial use a scheme for the laying and maintenance of the Green Roof System as identified on drawing number SCH512, No 5 – Revision A will be submitted to and approved in writing by the Waste Planning Authority. This scheme will include actions that will be taken to replace the vegetation should that become necessary.

The requirements of the scheme under this condition as approved by the Waste Planning Authority shall be fully implemented throughout the duration of the remainder of the development

Date

Signed

Authorised Officer of the Council

Reason: To ensure that the green roof is kept and maintained in a sound condition so as not to undermine the appearance of the facility.

33 Permitted Development

Notwithstanding the provisions of Part 7 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015,(or any Order amending, replacing or re-enacting that Order) no plant or machinery, equipment, structures, buildings or erections shall be erected, extended, installed or replaced externally within the site without the approval of the waste planning authority.

Reason: There is a need to secure control over additional plant, machinery and buildings or other erections in the interests of visual impact to views into the site from nearby existing (and proposed) residential areas.

Operational Matters

34 Waste

No waste shall be processed, deposited or stored at the site except within the indoor areas of the site designated for that purpose as indicated on plan ref SCH 512 (3) – Proposed Ground Floor Plan. No external processing, deposition or storage of waste materials shall occur outside the building.

Reason: In the interests of visual amenity.

35 Securing of Loads

All loads of waste materials delivered to or removed from the site shall be enclosed or covered so as to prevent spillage, dust or loss of material at the site or onto the public highway

Reason: In the interests of environmental and highway safety and dust minimisation.

36 Hours of Delivery, Removal and Maintenance

No delivery of fuel, removal of ash or other waste, or maintenance work for the site (other than for routine maintenance only by an operative visiting without any motor vehicle other than a light van or other light vehicle, or for emergency protection of persons or property), shall be undertaken outside the hours of 0730 to 1800 hours from Monday to Friday inclusive, and 0730 to 1300 on

Date

Signed

Authorised Officer of the Council

Saturday, or at any time on Sundays or Bank Holidays

Any likely or expected works, including maintenance, which are likely to be required to be undertaken outside these hours shall be submitted for approval in writing by the waste planning authority within 3 months of commencement of development. The approved details shall be fully implemented.

Reason: To safeguard the amenity of local residents and adjacent land users.

37 **Noise Monitoring Complaints During Facility Operation**

In the event of the Waste Planning Authority notifying the operator that it has grounds for concern that the rating level of the sound specified in the conditions above might have been exceeded, the operator shall within 2 weeks of that notification undertake a noise survey undertaken in accordance with any appropriate noise standard that may be specified in the notification (or if no standard is so specified, in accordance with the British Standards most relevant to investigation of those grounds for concern) under the supervision of the Waste Planning Authority. The results of the noise survey will be provided to the Waste Planning Authority for its written approval within 1 month of the survey being undertaken.

Should the results show that further mitigation measures are necessary these shall be identified within the report and implemented within 1 month (or otherwise agreed) following their approval by the Waste Planning Authority.

Reason: To provide a noise monitoring and further mitigation contingency.

38 **Use of Machinery and Mobile Plant**

All vehicles, plant and machinery operated within the site shall be maintained in accordance with the manufacturer's specification at all times, this shall include the use of effective silencers. The operator will fit reversing devices to vehicles which are non-tonal or other appropriate reversing warning mechanism.

Reason: To mitigate the noise effects from vehicles to protect nearby residents and businesses from intermittent and excessive noise generated.

Date

Signed

Authorised Officer of the Council

39 Chemical Storage

Any facilities for the storage of oil, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The volume of the bunded compound shall be at least equivalent to the capacity of the tank plus 10%. If there is multiple tankage, the compound shall be at least equivalent to the capacity of the largest tank, vessel or the combined capacity of interconnected tanks or vessels plus 10%. All filling points, associated pipework, vents, gauges and sight glasses shall be located within the bund or have separate secondary containment. The drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipework shall be located above ground and protected from accidental damage. All filling points and tank/vessels overflow pipe outlets shall be detailed to discharge downwards into the bund.

Reason: To minimise the pollution of watercourses and aquifers.

Statement of Compliance with Article 35 of the Town and Country Development Management Procedure Order 2015

The Waste Planning Authority worked with the applicant in a positive and pro-active manner based on seeking solutions to problems arising in the processing of planning applications in full accordance with this Article. The applicant engaged in pre-application and post application discussions and meetings with relevant officers in the Authority, prior to the submission of the application.

Advisory note

This planning permission is issued subject to an agreement under S106 of the Town and Country Planning Act 1990 (as amended)

NOTES

The following notes are included as a requirement of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

Appeals to the Secretary of State

- If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under Section 78 of the Town and Country Planning Act 1990.
- If you want to appeal against your local planning authority's decision, then you must do so within six months of the date of this notice. Appeals must be made using a form which you can get from the Secretary of State at Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN or online at www.planningportal.gov.uk/pcs.
- The Secretary of State can allow a longer period for giving notice of an appeal, but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.
- The Secretary of State need not consider an appeal if it seems to the Secretary of State that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.
- In practice, the Secretary of State does not refuse to consider appeals solely because the local planning authority based its decision on a direction given by the Secretary of State.

Purchase Notices

- If either the local planning authority or the Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that the owner can neither put the land to a reasonably beneficial use in its existing state nor render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.
- In these circumstances, the owner may serve a purchase notice on the County Council in whose area the land is situated. This notice will require the Council to purchase the owner's interest in the land in accordance with the provisions of Chapter 1 of Part VI of the Town and Country Planning Act 1990.

The following notes are the further advice of the County Council.

- This permission relates to planning control only. Any other statutory consent necessary to enable the proposed development to commence must be obtained from the appropriate authority or regulator.

Appendix C

DATED

2016

(1) DERBYSHIRE COUNTY COUNCIL

(2) FALCON WASTE DEVELOPMENT LAND COMPANY LIMITED

(3) ~~NORTH EAST DERBYSHIRE DISTRICT COUNCIL~~ [LANDOWNER]

DEED

Under Section 106 of the Town and Country Planning Act 1990

(as amended)

Relating to land known as Plot 20, Bridge Street Industrial Estate, Clay Cross, Derbyshire

REF: PLANNING REF: CW4/1114/98

THIS DEED is dated

2016

BETWEEN:

- (1) **DERBYSHIRE COUNTY COUNCIL** of County Hall, Matlock, Derbyshire DE4 3AG (“**the County Council**”)
- (2) **FALCON WASTE DEVELOPMENT LAND COMPANY LIMITED** whose registered office is at Larkfleet House, Falcon Way, Southfield Business Park, [Bourne, Lincolnshire](#) PE10 0FF, Company number 05740791 (“**the Developer**”); and
- (3) ~~**NORTH EAST DERBYSHIRE DISTRICT COUNCIL**~~[\[THE LANDOWNER\]](#) (“**the Owner**” or “**NEDDC**”).

WHEREBY IT IS AGREED AS FOLLOWS:-

- (A) The County Council is the Waste Planning Authority for the County of Derbyshire for the area in which the Site is situated.
- (B) The Owner is the registered proprietor of the Site with freehold title at HM Land Registry under title numbers DY310288 and DY479366 free from encumbrances.
- (C) The Developer is the registered proprietor of part of the Site with leasehold title at HM Land Registry under title number DY313433 free from encumbrances.
- (D) [The Applicant](#) submitted the Application to the County Council on 4 November 2014.
- (E) The County Council’s Regulatory Planning Committee resolved on 11 April 2016 that Planning Permission be granted subject to this Deed being entered into.
- (E) The Parties have agreed to enter into this Deed with the intention that the obligations contained in this Deed may be enforced by the County Council against the Developer and its successors in title.

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Deed unless the context requires otherwise the following words and expressions have the respective meanings indicated:

Act: means the Town and Country Planning Act 1990 (as amended);

Application: means the application for the Planning Permission submitted to the County Council on 4 November 2014 and given reference number CW4/1114/98.

Approved Vehicular Routes: means the routes to and from the Site as shown on the Routing Plan.

Art Contribution: means the sum payable in accordance with paragraph 1.6 of Schedule 1 of this Deed.

Clay Cross Settlement: means the area of Clay Cross up to the settlement development limits for Clay Cross which are defined on the proposals maps in the North East Derbyshire Local Plan 2001 – 2011.

Commencement of Development: means the carrying out in relation to the Development of any material operation as defined by section 56(4) of the Act but

disregarding for the purposes of this Deed and for no other purpose, the following operations: demolition works, site clearance, ground investigations, site survey works, temporary access construction works, and erection of any fences and hoardings around the Site; the provision of underground drainage and sewers and the laying and diversion of other services and service medium; excavation, deposition, compaction, levelling of materials to new contours and works connected with infilling; archaeological investigations and digs; ecological surveys, investigations or assessments (including, for the avoidance of doubt, investigations or assessments relating to bats); decontamination and remediation works; the erection of buildings below ground level, such as the excavation and construction of underground car parks and the laying of foundations; interim landscaping works; the construction of a temporary site compound and welfare facilities/buildings/enclosures and **Commence** and **Commenced** shall be construed accordingly.

Development: means the development of the Site authorised by the Planning Permission.

Energy Recovery Facility: means the waste-to-energy facility which is to be constructed in accordance with the Planning Permission.

Plan 1: means the plan showing the Site boundary attached to this Deed dated October 2014 with reference CC 2/2.

Plan 2: means the plan showing the Clay Cross Settlement attached to this Deed with reference "Plan 2".

Planning Permission: means the planning permission subject to conditions which is to be granted by the County Council in respect of the Application substantially in the form of the draft attached at Schedule 2 of this Deed.

Rights of Way Contribution: the sum payable in accordance with paragraph 1.4 to Schedule 1 of this Deed.

Site: means the land shown edged red on Plan 1.

Sustainable Community Energy Contribution: the sum payable in accordance with paragraph 1.3 to Schedule 1 of this Deed.

Working Day: any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

- 1.2 The headings to clauses and in schedules throughout this Deed are for convenience only and should not be taken into account in the construction or interpretation of the Deed.
- 1.3 The masculine feminine and neuter genders include each of the other genders and the singular includes the plural and vice versa.

- 1.4 References to any party to this Deed 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 County Council the successors to its statutory functions.
- 1.5 References to any statute include all regulations, orders, directions and other instruments made under that statute and any statute, regulation, order, direction or other instrument amending, consolidating or replacing it in force from time to time.
- 1.6 A reference to a clause, plan or schedule is (unless the context otherwise requires) a reference to a clause, plan or schedule contained in this Deed.
- 1.7 Obligations undertaken by more than one party are joint and several obligations.
- 1.8 Insofar as any clauses of this Deed 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 Deed.

2. OPERATIVE PROVISIONS

- 2.1 This Deed is made pursuant to Section 106 of the Act and the covenants and other obligations contained in this Deed are planning obligations for the purposes of that section in so far as they fall within the terms of sub-Section 106(1).
- 2.2 Insofar as any of the covenants contained in this Deed are not planning obligations within the meaning of the Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972, Section 2 of the Local Government Act 2000 and any other enabling powers.
- 2.3 The County Council is the Waste Planning Authority by which the planning obligations contained in this Deed are enforceable.

3. COMMENCEMENT

This Deed and all the provisions contained within it shall come into effect immediately upon completion of this Deed.

4. RELEASE

No person shall be liable for any breach of a covenant, restriction or obligation contained in this Deed after parting with all of its interest in the Site, except in respect of any breach subsisting prior to parting with such interest.

5. LAPSE

This Deed shall cease to have effect if the Planning Permission:

- 5.1 expires;
- 5.2 is varied or revoked other than at the request of the Developer; or
- 5.3 is quashed following a successful legal challenge

6. PLANNING OBLIGATIONS

- 6.1 The Developer and Owner hereby covenant with the County Council to observe and perform the covenants set out in paragraph 1 to Schedule 1 of this Deed.
- 6.2 The County Council covenants with the Developer and the Owner to observe and perform the covenants set out in paragraph 2 to Schedule 1 of this Deed.

7. INDEMNITY

The Developer hereby covenants with the Owner that they will carry out each of the obligations contained in this Deed on behalf of the Owner and will indemnify the Owner in respect of any and all liabilities arising out of their entering into this Deed and out of the performance or non-performance by the Developer of the obligations contained in this Deed.

8. LAND BOUND AND LOCAL LAND CHARGE

- 8.1 The land bound by the covenants in Schedule 1 is the Site.
- 8.2 This Deed shall be registered as a local land charge promptly following execution of this Deed by a request to that effect made of North East Derbyshire District Council in writing by the County Council.

9. COSTS

The Developer shall pay to the County Council on completion of this Deed the Council's reasonable legal costs incurred in the negotiation, preparation and execution of this Deed.

10. DISPUTE PROVISIONS

- 10.1 In the event of any dispute or difference arising between any of the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with experience in resolving such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

- 10.2 In the absence of an agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 10.1 or as to the appropriateness of the professional body then such question may be referred by either party to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.
- 10.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight Working Days after the conclusion of any hearing that takes place or twenty-eight Working Days after he has received any file or written representation.
- 10.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten Working Days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter submission within a further ten Working days.

11. FETTER OF DISCRETION

Nothing in this Deed shall be or shall be construed to be a fetter or restriction on the proper exercise at any time by the County Council of any of its statutory powers functions or discretions in relation to the Site or otherwise.

12. NOTICES

Any notice notification or application for any approval consent or other authorisation required to be made by any party under this Deed shall be in writing served on the County Council's Strategic Director – Economy Transport and Communities at its headquarters address or such other Chief Officer of the County Council and/or address as the County Council shall specify in writing by notice served on the other parties to this Deed (or their successors in title for the time being at the date of such notice) and any notice approval or consent or other authorisation by the County Council shall be in writing and served on the other parties at their respective address herein before described or at such new address in the UK as they shall by notice from time to time specify to the County Council.

13. THIRD PARTY RIGHTS

The parties to this Deed do not intend that any of its terms shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it or not a successor in title to such a party.

14. WAIVER

No waiver (whether express or implied) by the County Council of any breach or default by the Developer or Owner in performing or observing any of the covenants, restrictions or obligations of this Deed shall constitute a continuing waiver and no such waiver shall prevent the County Council from enforcing any of the relevant terms or conditions contained in this Deed or acting on any subsequent breach or default of this Deed.

15. JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England as it is applied in England.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

EXECUTED AS A DEED by)
FALCON WASTE DEVELOPMENT)
LAND COMPANY LIMITED)

in the presence of :-

Director:

Director/Company Secretary

THE COMMON SEAL OF)
DERBYSHIRE COUNTY COUNCIL)
was affixed to this Deed)
in the presence of:)

Authorised Signatory

THE COMMON SEAL OF _____)
NORTH EAST DERBYSHIRE _____)
DISTRICT COUNCIL _____)
was affixed to this Deed _____)
in the presence of: _____)

Authorised Signatory

Schedule 1 Planning Obligations

1. The Developer and the Owner covenant with the County Council as follows:
 - 1.1 General

To give at least five Working Days written notice to the County Council of the date on which it will Commence Development.
 - 1.2 Employment Opportunities

To operate an apprenticeship scheme which shall at all times throughout the first five years duration of the operation of the Energy Recovery Facility provide employment and practical vocational training based at the Energy Recovery Facility for one person at any one time and so far as is lawful to promote the recruitment for appointment as apprentices under the scheme of individuals who are younger than 25 years old or who are entitled to jobseeker's allowance pursuant to the Jobseekers Act 1995 or another official financial benefit in respect of unemployment or availability for work and who have been so entitled for no less than 6 months and who are living at the time of recruitment within the Clay Cross Settlement.
 - 1.3 Sustainable Community Energy

On the first operation of the Energy Recovery Facility and export of power to the national grid network to pay to the County Council, a single financial contribution of £80,000.00 (representing £1.00 for each tonne of waste wood up to the total capacity to be consented) for the purpose of providing funding for any projects and initiatives that will support any one or more of the objectives of (a) reducing energy consumption (b) reducing carbon dioxide and other greenhouse gas emissions and (c) raising sustainable local energy generation, and that will be beneficial to the community of the Clay Cross Settlement.
 - 1.4 Rights of Way

To provide a financial contribution of £15,000.00 to be paid on or before the Commencement of Development to the County Council for the purpose of providing funding for the improvement and enhancement of Footpath 28 for the Parish of Clay Cross which might include the provision of interpretation boards and the diversion of its route.
 - 1.5 Surplus Heat

Before the start of the operation of the Energy Recovery Facility to convene a working group comprising representatives from the Developer, the County Council, ~~NEDDC~~, and to such extent as is reasonable, NEDDC and developers, tenants and owners of neighbouring land, which shall meet at such times as the representatives shall agree for the purpose of encouraging technically and economically viable provision of heated water offtakes from the Energy Recovery Facility and their connection to existing or contemplated business or residential premises on neighbouring or nearby land as a source of energy to the premises, and thereafter to ensure the provision of all practical administrative and secretarial facilities which may be necessary for the working group to function effectively, including the provision of a suitable local venue for every meeting notification in advance of every

meeting to members and the production and keeping of minutes for every meeting (which shall be made available to the public) until such time as the County Council might notify the Developer and the Owner in writing that the County Council considered that it was not expedient in the public interest for the working group to continue .

1.6 Public Art

Before the start of the operation of the Energy Recovery Facility to provide a financial contribution to the County Council of £5,000.00 for the funding of public art provision within the Clay Cross Settlement in accordance with the covenant 2.4 in paragraph 2 below

1.7 Liaison ~~€~~Committee

- a. to ensure that throughout the duration of the Development a local liaison committee ("**the Liaison Committee**") is established for the purposes of discussion of any local matters relating to the carrying out of the Development and of receiving and responding to consultations regarding the application of the Art Contribution and the Sustainable Community Energy Contribution
- b. Prior to the first meeting of the Liaison Committee to recruit its members by:
 - i. designating one individual to represent the Developer
 - ii. inviting North East Derbyshire District Council to designate a councillor to represent it
 - iii. inviting Clay Cross Parish Council to designate a councillor to represent it
 - iv. inviting the member of the County Council for the ward area containing the Site to represent itor by taking any alternative steps which might be agreed between the County Council and the Developer.
- c. To ensure the provision of all practical administrative and secretarial facilities which may be necessary to enable the Liaison Committee to function effectively including the provision of a suitable local venue for every meeting notification in advance of every meeting to members and the production and keeping of minutes for every meeting (which shall be made available to the public).
- d. To ensure that a first meeting of the Liaison Committee is convened so as to take place on a date which shall be agreed with the County Council at least one month in advance and which shall be no earlier than eight weeks and no

later than four weeks prior to the Commencement of Development and to convene further meetings of the site liaison committee at such time and intervals as the site liaison committee shall consider to be appropriate.

2. The County Council covenants with the Developer as follows:

2.1 Sustainable Community Energy

a. To hold the Sustainable Community Energy Contribution in a County Council interest bearing bank account and identify and keep identified the Sustainable Community Energy Contribution within its accounting records.

b. Not to use or distribute for use by any other party any part of the Sustainable Community Energy Contribution other than for the purpose for which it was paid.

~~b.c.~~ In the event that the Sustainable Community Energy Contribution has not been spent or committed for expenditure by the Council within 10 years of the date of receipt the Council shall refund to the Developer any part of the Sustainable Community Energy Contribution which has not been spent or committed for expenditure, together with any accrued interest.

~~c.d.~~ For the avoidance of doubt, for the purposes of paragraph 2.1 (c) of this Schedule, contributions shall be deemed to have been committed if the Council has entered into any contract the performance or fulfilment of which will require the Council to expend funds in the future.

2.2 Rights of Way

a. To hold the Rights of Way Contribution in a County Council interest bearing bank account and identify and keep identified the Rights of Way Contribution within its accounting records.

b. Not to use or distribute for use by any other party any part of the Rights of Way Contribution other than for the purposes for which it was paid (whether by the County Council or another party).

c. In the event that the Rights of Way Contribution has not been spent or committed for expenditure by the Council within ten years from the Commencement of Development of the Energy Recovery Facility the County Council shall refund to the Developer any part of the Rights of Way Contribution which has not been spent or committed for expenditure, together with any accrued interest.

d. For the avoidance of doubt, for the purposes of paragraph 2.2 (c) of this Schedule, contributions shall be deemed to have been committed if the Council has entered into any contract the performance or fulfilment of which will require the Council to expend funds in the future.

2.3 Surplus Heat

To use reasonable endeavours to assist the Developer in convening the working group referred to in covenant 1.5 in Paragraph 1 above.

2.4 Public Art

- a. Within ten years from the Commencement of Development of the Energy Recovery Facility to apply the Art Contribution to the provision of public art within the Clay Cross Settlement and before doing so if reasonably practicable to consult the Liaison Committee and to engage with the residents of the community of Clay Cross to ascertain local preferences for specific options for its application.
- b. In the event that the Art Contribution has not been spent or committed for expenditure by the Council within ten years from the Commencement of Development of the Energy Recovery Facility the County Council shall refund to the Developer any part of the Art Contribution which remains unused and uncommitted for expenditure at the end of this period, together with accrued interest.
- c. For the avoidance of doubt, for the purposes of paragraph 2.4 (b) of this Schedule, contributions shall be deemed to have been committed if the Council has entered into any contact the performance or fulfilment of which will require the Council to expend funds in the future.

2.5 Liaison Committee

So far as practicable to provide for the attendance of an officer from the planning service of the County Council at each meeting of the Liaison Committee in accordance with paragraph 1.7 above in order to assist its effective functioning.

Schedule 2: Draft Planning Permission