

DATED 12 September 2018

- (1) CENTRAL BEDFORDSHIRE COUNCIL
- (2) BEDFORD BOROUGH COUNCIL
- (3) MILLBROOK POWER LIMITED
- (4) O&H Q7 LIMITED
- (5) FOREST OF MARSTON VALE TRUST

DEED OF DEVELOPMENT CONSENT OBLIGATIONS

pursuant to Section 106 of the Town and Country
Planning Act 1990 (as amended)
relating to the
Millbrook Power Project in Central Bedfordshire

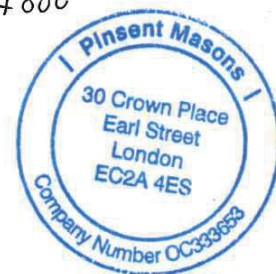
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12.09.18

M. CARPENTER, SOLICITOR

02074187000


Pinsent Masons



THIS DEED is made on

12 September

2018

BETWEEN:

- (1) **CENTRAL BEDFORDSHIRE COUNCIL** of Priory House, Monks Walk, Chicksands, Shefford, Bedfordshire SG17 5TQ ("**CBC**");
- (2) **BEDFORD BOROUGH COUNCIL** of Borough Hall, Cauldwell St, Bedford MK42 9AP ("**BBC**");
- (3) **MILLBROOK POWER LIMITED** whose registered office is at Drax Power Station, Drax, Selby, North Yorkshire, YO8 8PH (company number 08920458) (the "**Developer**");
- (4) **O&H Q7 LIMITED** whose registered office is at 25-28 Old Burlington Street, London, W1S 3AN (company number 05277165) (the "**Landowner**"); and
- (5) **FOREST OF MARSTON VALE TRUST** (registered charity number 1069229) of The Forest Centre, Station Road, Marston Moretaine, Bedford MK43 0PR (the "**Forest of Marston Vale Trust**");

WHEREAS:

- (A) CBC is the local planning authority for the area in which the Site is situated and is the enforcing authority for the purposes of section 106 of the 1990 Act.
- (B) Given the Site is located close to the administrative boundary of CBC and BBC, it is considered appropriate for BBC to be a party to this Deed so that it can take the benefit of the obligations relating to the Education Scheme and the Local Employment Scheme contained in Schedule 1 and Schedule 2.
- (C) The Landowner is the freehold owner of the Site registered at the Land Registry under title number BD209604.
- (D) The Developer has the benefit of an option to purchase the Site.
- (E) The Forest of Marston Vale Trust is responsible for creating and managing the Forest of Marston Vale.
- (F) On 23 October 2017 the Developer submitted the Application to the Secretary of State for development consent to construct and operate the Project. The Application was accepted for examination by the Secretary of State on 20 November 2017.
- (G) It is intended that the Developer will be the undertaker for the purposes of the Development Consent Order and the Developer intends to construct and operate the Project as authorised by the Development Consent Order (excluding those parts of the Project that will be constructed and operated by NGET and NGG).
- (H) The Councils, the Forest of Marston Vale Trust, the Developer and the Owner have agreed to enter into this Deed as a development consent obligation under the 1990 Act in order to secure the planning obligations contained in this Deed which are necessary to mitigate the Impacts of the Project and to make the Project acceptable in planning terms.

1. DEFINITIONS AND INTERPRETATION

- 1.1 Where in this Deed the following defined terms and expressions are used they shall have the following respective meanings unless otherwise stated:

"1990 Act"

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

"2008 Act"	means the Planning Act 2008 (as amended);
"Application"	means the application for a development consent order under section 37 of the Planning Act 2008 in relation to the Project and submitted to the Secretary of State on 23 October 2017 and given reference number EN010068;
"Built Area"	means the area of land, in Ha, to be developed for numbered works 1A, 1B, 1C, 1D (except for 1D(g)), 2A, 3A (except for 3A(f)), 5 (except for 5(d)) and 6(a) of the Project, such area to be calculated from the details approved under requirement 2(4) of the Development Consent Order;
"Commence"	has the same meaning as in Article 2 of the Development Consent Order and the words "Commencement" and "Commenced" and cognate expressions are to be construed accordingly;
"Construction Period"	means the period from Commencement until the Date of Final Commissioning (inclusive);
"Councils"	means CBC and BBC;
"Covanta S106 Agreement"	means the deed dated 8 July 2011 and made between (1) BBC (2) CBC (3) the Landowner (4) Covanta Energy Limited and (5) and Covanta Rookery South Limited relating to the Rookery South (Resource Recover Facility) Order 2011 (SI 2013 No. 680) as varied by the deed dated 11 March 2013 and made between (1) BBC (2) CBC (3) the Landowner (4) Covanta Energy Limited and (5) and Covanta Rookery South Limited;
"Date of Final Commissioning"	has the same meaning as defined Article 2 of the Development Consent Order;
"Deed"	means this deed made under section 106 of the 1990 Act and all other powers enabling;
"Development Consent Order"	means the development consent order to be made pursuant to the Application;
"Education Scheme"	means a programme of visits to schools located within the administrative areas of CBC and BBC to be made by the Developer which will be used to explain the Project and how such a facility fits within the provision of energy for the United Kingdom;
"EPC Contracts"	means the main contracts for the design, engineering, procurement, construction, installation, completion, commissioning and testing of the Project;
"Expert"	means the expert appointed by any of the Parties pursuant to Clause 20;
"Forest of Marston Vale"	means the community forest shown for the purposes of identification only outlined in blue on Plan 2;
"Forest of Marston Vale Plan"	means the Forest Plan 2000 which sets out the strategic framework and guidance for creating the Forest of

	Marston Vale the relevant extracts of which are appended to this Deed at Schedule 4;
"Forest of Marston Vale Tree Planting"	means the provision of tree planting within the Site that equates to tree coverage over a land area equivalent to 39% of the Built Area;
"Ha"	means hectare;
"Interest Rate"	means 2% above the Bank of England base rate applicable at the date the relevant payment is due;
"Index Linked"	means increased by an amount equivalent to the increase in the Retail Price Index published by the Office of National Statistics in England from the date of this Deed to the latest Index available (whether provisional or final) on the date on which the sum is payable;
"Landscape and Ecological Mitigation and Management Strategy"	means the written strategy of that name to be submitted for approval by the Developer to CBC pursuant to requirement 3 of the Development Consent Order;
"Local Employment Scheme"	means a scheme setting out the details and mechanisms for securing the use of local labour contractors goods and services during the Construction Period and Operational Period of the Project including: <ul style="list-style-type: none"> (a) the measures that the Developer will take in order to ensure that opportunities for local organisations to bid for contracts during the Construction Period are advertised locally; (b) the measures that the Developer will take in order to ensure that opportunities for local organisations to bid for contracts during the Operational Period of the Project (for example for maintenance, waste, cleaning or security services) are advertised locally; (c) a requirement for the Developer to notify the Councils when the procurement process for any construction contracts required during the Construction Period is due to begin in order to allow the Councils to advertise opportunities via any brokerage scheme that they may run; (d) a requirement for the Developer to notify the Councils when the procurement process for any operational contracts required during the Operational Period is due to begin in order to allow the Councils to advertise opportunities via any brokerage scheme that they may run; (e) the anticipated number of local supplier days that will be hosted by the Developer prior to and during the Construction Period; (f) promotion of the Local Employment Scheme and liaison with contractors engaged in the construction of the Project to ensure that they

also apply the Local Employment Scheme so far as is practicable having due regard to the need and availability for specialist skills and trades and the programme for constructing the Project;

- (g) a procedure for monitoring of the Local Employment Scheme and reporting the results of such monitoring to the Councils including details of the origins, qualifications, numbers and other details of candidates; and
- (h) a timetable for the implementation of the Local Employment Scheme.

"LTSA Contract"	means the main contract for the provision of long term maintenance services consisting of parts, scheduled outage services and unscheduled outage services in respect of the Project;
"NGET"	means National Grid Electricity Transmission plc (Company Registration Number 02366977) whose registered office is at 1 to 3 Strand, London, WE2N 5EH;
"NGG"	means National Grid Gas plc (Company Registration Number 02006000) whose registered office is at 1 to 3 Strand, London WC2N 5EH;
"Notice"	means the written notification given by any Party to the other Parties of their intention to refer to the Expert any dispute arising between the Parties in respect of any matter contained in this Deed, such notice to specify the matters set out in clause 20;
"Occupy"	means to occupy the Project other than for the purposes of construction fitting out commissioning testing (including the export of electricity during commissioning and testing) or site security and " Occupation " " Occupying " and " Occupied " and cognate expressions shall be construed accordingly;
"Operational Period"	means the period from the Date of Final Commissioning to when the Project is decommissioned;
"Outstanding Land Area"	means the difference, in Ha, between the actual area of land to be covered by Part of the Forest of Marston Vale Tree Planting through the approved Landscape and Ecological Mitigation and Management Strategy and the area of land that would equate to 39% of the Built Area were the Forest of Marston Vale Tree Planting to be completed in its entirety;
"Part of the Forest of Marston Vale Tree Planting"	means the provision of tree planting within the Site that equates to tree coverage over a land area less than 39% of the Built Area;
"Parties"	means the CBC, BBC, the Landowner, the Forest of Marston Vale Trust and the Developer and " Party " means any one of them as the context so requires;

"Plan 1"	means the plan attached to this Deed marked "Plan 1" showing the Site ;
"Plan 2"	means the plan attached to this Deed marked "Plan 2" showing the Forest of Marston Vale;
"PPA"	means a planning performance agreement substantially in the form set out in Schedule 5 relating to the contributions payable by the Developer towards the costs incurred by the Councils for discharging the requirements set out in Schedule 2 of the Development Consent Order and in monitoring and regulating agreed Tasks (as defined in the PPA);
"Project"	means the "authorised development" as defined in Article 2 and Schedule 1 of, and to be authorised by, the Development Consent Order part of which is to be located on the Site;
"Residual Forest of Marston Vale Contribution"	means the sum equal to the Outstanding Land Area multiplied by the Value;
"Secretary of State"	means the Secretary of State for Business, Energy and Industrial Strategy or such other Secretary of State of Her Majesty's Government that has the responsibility for determining projects relating to energy development;
"Site"	means the land at Millbrook Power Station, in the vicinity of the former clay extraction pit at Rookery South, near Stewartby, Bedfordshire shown edged in green on Plan 1;
"Value"	means seventy thousand and seven pounds and forty two pence (£70,007.42) Index Linked per Ha; and
"Working Day"	means any day apart from Saturday, Sunday and any statutory bank holiday on which clearing banks are open in England for the transaction of ordinary business.

1.2 In this Deed, unless stated otherwise:

- 1.2.1 words incorporating the singular include the plural and vice versa and words importing any gender include every gender;
- 1.2.2 words importing persons include firms, companies, corporations, and vice versa;
- 1.2.3 references to the Councils include the successors to their statutory function as local planning authorities;
- 1.2.4 references to the Landowner and to the Developer include references to the successors in title to their respective interests in the Site and persons deriving title from them (except where the contrary is expressly provided) and permitted assigns;
- 1.2.5 references to clauses, paragraphs and Schedules are unless otherwise stated references to the relevant clauses and paragraphs of and Schedules to this Deed;
- 1.2.6 words denoting an obligation on a party to do any act, matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause, permit or suffer any infringement of the restriction;

- 1.2.7 references in this Deed to statutes, by-laws, regulations, orders and delegated legislation shall include any statute, by-law, regulation, order or delegated legislation amending, re-enacting or made pursuant to the same as current and in force from time to time;
- 1.2.8 if any provision of this Deed shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be deemed thereby to be affected, impaired or called into question;
- 1.2.9 the recitals and headings in this Deed are for ease of reference only and shall not affect its construction or otherwise have any binding legal effect;
- 1.2.10 in the event of any conflict between the provisions of this Deed and of any document annexed hereto or referred to herein, the provisions of this Deed shall prevail;
- 1.2.11 references to "notice" shall mean notice in writing;
- 1.2.12 references to "including" shall mean including without limitation; and
- 1.2.13 the Interpretation Act 1978 shall apply to this Deed.

2. LEGAL EFFECT

- 2.1 This Deed is made pursuant to:
 - 2.1.1 section 106 of the 1990 Act; and
 - 2.1.2 section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other powers so enabling.
- 2.2 The obligations, covenants and undertakings on the part of the Developer in this Deed are development consent obligations pursuant to and for the purposes of the power referred to in clause 2.1.1 and so as to bind the Site and, subject to clauses 6 and 7, the said obligations, covenants and undertakings on the part of the Developer are entered into with the intent that they shall be enforceable by CBC not only against the Developer but also against any successors in title to or assigns of the Developer as if that person had been an original covenanting party and insofar as any such obligations, covenants and undertakings are not capable of falling within section 106 of the 1990 Act are entered into as obligations, covenants and undertakings in pursuance of the powers referred to in clause 2.1.2 with the intent that they shall be enforceable under contract.
- 2.3 It is hereby agreed that the Landowner and the Developer enter this Deed with the effect of binding the Site.
- 2.4 The Forest of Marston Vale Trust's approval or consent for any modification or variation of this Deed, shall only be required in respect of any modification or variation of Schedule 3.

3. CONDITIONALITY

- 3.1 Subject to clause 3.2, the Parties agree that:
 - 3.1.1 clauses 1, 2, 3, 4.1.3, 4.1.4, 4.2.1(c), 4.2.1(d), 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 shall have operative effect upon the date of this Deed;
 - 3.1.2 clauses 4.1.1, 4.1.2, 4.2.1(a), 4.2.1(b), 4.2.2 and 4.3 shall not have operative effect unless and until the Development Consent Order has come into force; and
 - 3.1.3 clause 4.2.3 and 4.2.4 shall not have operative effect unless and until the Development Consent Order has come into force and the Project has Commenced.
- 3.2 Where the Development Consent Order becomes the subject of any judicial review proceedings:

- 3.2.1 until such time as such proceedings including any appeal have been finally determined, the terms and provisions of this Deed will remain without operative effect unless the Project has been Commenced; and
- 3.2.2 if following the final determination of such proceedings the Development Consent Order is capable of being Commenced, then this Deed will take effect in accordance with its terms.
- 3.3 Wherever in this Deed reference is made to the final determination of judicial review proceedings (or cognate expressions are used), the following provisions will apply:
 - 3.3.1 proceedings by way of judicial review are finally determined:
 - (a) when permission to bring a claim for judicial review has been refused and no further application may be made;
 - (b) when the court has given judgment in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused; or
 - (c) when any appeal is finally determined and no further appeal may be made.

4. DEVELOPMENT CONSENT OBLIGATIONS

4.1 DEVELOPER'S OBLIGATIONS

- 4.1.1 The Developer covenants with the Councils to observe and perform the obligations undertakings covenants and agreements in Schedule 1, Schedule 2 and Schedule 3.
- 4.1.2 The Developer covenants with the Forest of Marston Vale Trust to observe and perform the obligations undertakings covenants and agreements in Schedule 3.
- 4.1.3 Prior to Commencement of the Project the Developer shall enter into a PPA with CBC and enter into a PPA with BBC.
- 4.1.4 The Developer covenants to comply with the provisions contained within the PPA entered into pursuant to clause 4.1.3 (as amended and supplemented from time to time) until the Discharge Date (as defined in the PPA).

4.2 COUNCILS' OBLIGATIONS

- 4.2.1 The Councils covenant with the Developer:
 - (a) to observe and perform the covenants and obligations on their part contained in Schedule 1, Schedule 2 and Schedule 3.
 - (b) in the event approval is required to effect a variation to either:-
 - (i) the Education Scheme; or
 - (ii) the Local Employment Scheme,such approval is to be given to the Developer in writing and must not be unreasonably withheld or delayed;
 - (c) to sign and complete a PPA with the Developer within 10 Working Days of request by the Developer; and

(d) to comply with the provisions within the PPA entered into pursuant to clause 4.2.1(c) (as amended and supplemented from time to time) until the Discharge Date (as defined in the PPA).

4.2.2 CBC covenants with the Developer to notify the Developer where any plan, detail or scheme approved by CBC pursuant to any requirement under the Development Consent Order replaces all or part of a plan, detail or scheme approved under the Rookery South (Resource Recover Facility) Order 2011 (SI 2013 No. 680) in respect of any land on which the Project is to be constructed.

4.2.3 The Councils agree that any obligations contained in the Covanta S106 Agreement relating to the Site are not enforceable against the Developer or against any successors in title to or permitted assigns or any person claiming through or under its interest in the Site.

4.2.4 The Councils agree that the construction, operation and maintenance of the Project will not constitute a breach of paragraph 16.1 of Schedule 1 of the Covanta S106 Agreement and the obligations contained in paragraph 16.1 of Schedule 1 of the Covanta S106 Agreement are not enforceable against the Developer.

4.3 FOREST OF MARSTON VALE TRUST'S OBLIGATIONS

The Forest of Marston Vale Trust covenants with the Developer to observe and perform the obligations undertakings covenants and agreements on their part contained in Schedule 3.

5. REGISTRATION AS LOCAL LAND CHARGE

This Deed shall be registered by the Councils as a local land charge in the register of local land charges pursuant to the Local Land Charges Act 1975.

6. ENFORCEMENT

The obligations, covenants and undertakings on the part of the Developer in this Deed in relation to Site shall not be enforceable by the Councils against the Landowner but shall be taken to be obligations, covenants and undertakings which are binding on the Landowner's freehold interest in the Site as if such obligations and undertakings were given by the Landowner and such obligations, covenants and undertakings shall remain binding upon any successors in title to or assigns of the Landowner and/or any person claiming through or under it an interest the Site as if that person had been an original covenanting party in respect of such interest for the time being held by the Landowner.

7. RELEASE

No person shall be liable for any breach of the development consent obligations or other provisions of this Deed after it shall have parted with its interest in the Site or the relevant part thereof but without prejudice to any rights of the Councils or either of them in respect of any antecedent breach of those obligations.

8. FURTHER PLANNING PERMISSIONS AND DEVELOPMENT CONSENT ORDERS

Nothing in this Deed shall be construed as prohibiting or limiting the rights of the Developer to use or develop any part of the Site in accordance with and to the extent permitted by a certificate of lawful use, planning permission, development consent order or other statutory authority granted either before or after the date of this Deed, other than the Development Consent Order.

9. EXPIRY

If the Development Consent Order expires or is quashed or revoked prior to Commencement then this Deed shall immediately determine and cease to have effect and the Councils shall cancel all entries made in their register of local land charges in respect of this Deed.

10. **CERTIFICATES OF COMPLIANCE**

The Councils shall upon written request certify compliance with the development consent obligations in this Deed.

11. **NOTICES**

11.1 Any notice, consent or approval required to be given under this Deed shall be in writing and shall be sent to the address and marked for the attention of the persons identified below or instead to such other persons as may be substituted for them from time to time.

11.2 Any such notice must be delivered by hand or by pre-paid special delivery post (unless the receiving party agrees to receive the notice electronically) and shall conclusively be deemed to have been received:

11.2.1 if delivered by hand, on the next Working Day after the day of delivery; and

11.2.2 if sent by special delivery post and posted within the United Kingdom, on the day 2 Working Days after the date of posting.

11.3 A notice or communication shall be served or given:

11.3.1 on CBC at its address given above or such other address for service as shall have been previously notified in writing to the other Parties and any such notice shall be marked for the attention of David Lamb, Team Leader;

11.3.2 on BBC at its address given above or such other address for service as shall have been previously notified in writing to the other Parties and any such notice shall be marked for the attention of the Chief Officer (Planning and Highways);

11.3.3 on the Landowner at its address given above or such other address for service as shall have been previously notified in writing to the other Parties and any such notice shall be marked for the attention of Tobin Rickets;

11.3.4 on the Forest of Marston Vale Trust at its address given above or such other address for service as shall have been previously notified in writing to the other Parties and any such notice shall be marked for the attention of Nick Webb; and

11.3.5 on the Developer at its address given above or such other address for service as shall have been previously notified in writing to the other Parties and any such notice shall be marked for the attention of the Company Secretary and David Ball.

11.4 The Developer shall provide the Landowner with a copy of any notice it receives pursuant to this clause 11.

12. **INTEREST**

Where any obligation in this Deed is expressed to require the Developer to pay any sum of money, interest at the Interest Rate shall be payable in addition to the sum of money itself calculated from the due date to the date on which the sum of money is actually paid.

13. **APPROVALS**

Where any approval, agreement, consent, confirmation or an expression of satisfaction is required under the terms of this Deed such approval, agreement, consent, confirmation or expression of satisfaction shall be given in writing and shall not be unreasonably withheld or delayed.

14. **COUNCILS' POWERS**

Nothing in this Deed shall fetter the statutory rights, powers or duties of the Councils as local planning authorities or as Highway authorities as the case may be.

15. **GOOD FAITH**

The Parties agree with each other to act reasonably and in good faith in the discharge of the obligations contained in this Deed.

16. **RIGHTS OF THIRD PARTIES**

It is not intended that any person who is not a party to this Deed shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

17. **JURISDICTION**

17.1 This Deed including its construction, validity, performance and enforcement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

17.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

18. **COUNTERPARTS**

This Deed may be executed in any number of counterparts, each of which is an original and all of which may together evidence the same agreement.

19. **COSTS**

19.1 The Developer shall pay on completion of this Deed the reasonable legal and planning costs of the Councils incurred in the preparation, negotiation and execution of this Deed in the sum of £4,375 (comprising £500 to BBC and £3,875 to CBC).

19.2 The Developer shall pay on completion of this Deed the reasonable legal costs of the Forest of Marston Vale Trust incurred in the preparation, negotiation and execution of this Deed in the sum of £1,500 plus VAT.

20. **DISPUTE RESOLUTION**

20.1 In the event of any dispute arising between the Parties in respect of any matter contained in this Deed the same may be referred to the Expert by any Party serving the other Parties with a Notice.

20.2 The Notice must specify:

20.2.1 the nature, basis and brief description of the dispute;

20.2.2 the clause of this Deed or paragraph of a Schedule of this Deed to which the dispute has arisen; and

20.2.3 the proposed Expert.

20.3 The Expert shall be an independent person possessing expertise relevant to the dispute and in the event that the Parties are unable to agree whom should be appointed as the Expert within twenty (20) Working Days after the date of the Notice then any Party may request:

- 20.3.1 if such dispute shall relate to matters concerning the construction, interpretation and/or the application of this Deed, the Chairman of the Bar Council to nominate the Expert;
 - 20.3.2 if such dispute shall relate to matters necessitating any calculation or otherwise concerning a financial aspect of this Deed, the President of the Institute of Chartered Accountants in England and Wales to nominate the Expert;
 - 20.3.3 if such dispute shall relate to matters requiring a specialist chartered surveyor, the President of the Royal Institute of Chartered Surveyors to nominate the Expert;
 - 20.3.4 in all other cases, the President of the Law Society to nominate the Expert.
- 20.4 The Expert shall act as an expert and not as an arbitrator and whose cost shall be at his discretion or in the event that he makes no determination, such costs will be borne by the Parties to the dispute in equal shares.
- 20.5 The Expert shall be appointed (through an agreed request statement setting out exactly the questions that he is to determine submitted jointly by the Parties) subject to an express requirement that he reaches his decision and communicates it to the Parties to the dispute within the minimum practical timescale allowing for the nature and complexity of the dispute and in any event not more than twenty (20) Working Days from the date of his appointment to act.
- 20.6 The Expert shall be required to give notice to each of the said Parties to the dispute inviting each of them to submit to him within twenty (20) Working Days from the date of his appointment written submissions and supporting material and shall afford to the said Parties an opportunity to make counter submissions within a further ten (10) Working Days in respect of any such submission and material.
- 20.7 In the absence of manifest error the Expert's decision shall be binding on the Parties.

SCHEDULE 1

THE EDUCATION SCHEME

1. Prior to Commencement of the Project, the Developer shall submit the Education Scheme to the Councils for approval.
2. The Developer and the Councils shall work together to establish the initiatives set out within the Education Scheme.
3. The Developer shall not Commence the Project until the Education Scheme has been approved by the Councils and the Developer shall thereafter carry out the approved Education Scheme for a period of five years from the Date of Final Commissioning.
4. The Developer shall be entitled to vary the Education Scheme, such variation to be agreed between the Developer and the Councils in accordance with the requirements of Clause 4.2.1 of this Deed.

SCHEDULE 2

THE LOCAL EMPLOYMENT SCHEME

1. Prior to Commencement of the Project, the Developer shall submit the Local Employment Scheme to the Councils for approval. The Developer and the Councils agree that the following contracts will not be included within the Local Employment Scheme:
 - (a) the EPC Contracts;
 - (b) the LTSA Contract; and
 - (c) any contracts for works undertaken by NGET or NGG.
2. The Developer and the Councils shall work together to establish the initiatives set out within the Local Employment Scheme.
3. The Developer shall not Commence the Project until the Local Employment Scheme has been approved by the Councils and the Developer shall thereafter carry out the approved Local Employment Scheme until the Project is decommissioned in accordance with requirement 18 of Schedule 2 of the Development Consent Order.
4. The Developer shall use reasonable endeavours to procure that the contractors engaged in the construction of the Project assist in the implementation of the Local Employment Scheme.
5. For the avoidance of doubt, the Local Employment Scheme shall not require the Developer or any contractors, to award any contract for the construction or operation of the Project to any specific company.
6. The Developer shall implement the Local Employment Scheme in accordance with the timetable contained in the approved Local Employment Scheme **PROVIDED THAT** the Developer may from time to time seek approval for revisions of the Local Employment Scheme from the Councils.
7. The Developer shall use reasonable endeavours to procure that the contractors engaged in the construction of the Project interview and if appropriate recruit suitably qualified applicants as part of the Local Employment Scheme including providing such assistance as is reasonably practicable to those contractors.
8. The Developer shall:
 - 8.1.1 advertise invitations to tender for all contracts for the provision of services and materials to the Project in at least one local newspaper with a circulation in all areas within a 25 mile radius of the Site (save in respect of the EPC Contract and the LTSA Contract and any contracts for works undertaken by NGET or NGG); and
 - 8.1.2 invite at least two companies who have responded to an advertisement published in accordance with paragraph 8.1.1 of this Schedule 2 and whose principal offices are located within a 25 mile radius of the Site to tender for each contract in relation to the construction of the Project including in relation to the supply of materials and services

PROVIDED THAT nothing in this paragraph shall require the Developer to award any contract for the construction or operation of the Project to any such company.
9. The Developer shall be under no obligation in respect of paragraph 8 of this Schedule 2 to invite any company or advertise any contract for the provision of services and materials where, to the Developer's knowledge, there is no company within a radius of 25 miles of the Site that is capable of fulfilling any such contract **PROVIDED THAT** it notifies the Councils of the contracts to which this paragraph 9 applies.

SCHEDULE 3

FOREST OF MARSTON VALE

1. DEVELOPER'S OBLIGATIONS

1.1 Following approval of the Landscape and Ecological Mitigation and Management Strategy by CBC, the Developer shall:

1.1.1 calculate whether the Landscape and Ecological Mitigation and Management Strategy provides for the Forest of Marston Vale Tree Planting or Part of the Forest of Marston Vale Tree Planting; and

1.1.2 where only Part of the Forest of Marston Vale Tree Planting is provided in the Landscape and Ecological Mitigation and Management Strategy, calculate the Residual Forest of Marston Vale Contribution

and shall provide such details (including the calculations) to CBC and the Forest of Marston Vale Trust for approval.

1.2 Where the Developer calculates that the Forest of Marston Vale Tree Planting is to be provided for in the approved Landscape and Ecological Mitigation and Management Strategy and CBC and the Forest of Marston Vale Trust approve such calculation pursuant to paragraph 1 of this Schedule 3, the Developer shall provide the Forest of Marston Vale Tree Planting in accordance with the implementation timetables approved within the Landscape and Ecological Mitigation and Management Strategy.

1.3 Where the Developer calculates that Part of the Forest of Marston Vale Tree Planting is to be provided for in the approved Landscape and Ecological Mitigation and Management Strategy and CBC and the Forest of Marston Vale Trust approve such calculation, together with the calculation of the Residual Forest of Value Contribution, the Developer shall:

1.3.1 within 21 working days of such approval, pay the Residual Forest of Marston Vale Contribution to the Forest of Marston Vale Trust; and

1.3.2 provide the Part of the Forest of Marston Vale Tree Planting in accordance with the implementation timetables approved within the Landscape and Ecological Mitigation and Management Strategy.

1.4 In the event that the Developer does not comply with paragraph 1.3.1 of this Schedule 3, the Developer shall pay interest on any amount of the Residual Forest of Marston Vale Contribution outstanding at the Interest Rate calculated from the date on which the Residual Forest of Marston Vale Contribution was due under paragraph 1.3.1 of this Schedule 3 to the date of payment.

2. FOREST OF MARSTON VALE TRUST'S COVENANTS IN RESPECT OF THE RESIDUAL FOREST OF MARSTON VALE CONTRIBUTION

2.1 Following receipt of the Residual Forest of Marston Vale Contribution pursuant to paragraph 1.3.2 of this Schedule 3, the Forest of Marston Vale Trust covenants and undertakes to:

2.1.1 use the Residual Forest of Marston Vale Contribution for the purposes of the aims and objectives of the Forest of Marston Vale Plan relating to tree planting and woodland creation; and

2.1.2 provide, on written request from the Developer, reports to the Developer setting out the expenditure from the Residual Forest of Marston Vale Contribution up to the date of the relevant request.

2.2 On receipt of the Residual Forest of Marston Vale Contribution by the Forest of Marston Vale Trust, CBC and the Forest of Marston Vale Trust agree that the Developer is released from its obligations

in this Schedule 3 with immediate effect provided that the obligations in paragraph 1.3.2 shall continue to apply for the duration of the timetables approved within the Landscape and Ecological Mitigation and Management Strategy.

SCHEDULE 4
FOREST OF MARSTON VALE PLAN 2000

THE FOREST OF MARSTON VALE



FOREST PLAN

2000

WOODLANDS AND COUNTRYSIDE

The areas of work outlined in this chapter are of central importance to the delivery of the Forest Plan. Tree planting, habitat creation, farm conservation work and the long term management of these features will be of major importance to the landscape and wildlife of the Community Forest. This work will also provide opportunities for recreation, enhance the quality of life for those living and working in the Community Forest and offer direct and indirect economic benefits to the Vale area.

Many of the Forest Plan objectives reflect those found in the Forestry Commission's 'England Forestry Strategy' and policies and strategies from the Countryside Agency, local authorities and other partner organisations such as English Nature (Natural Areas Strategy, 1996) have also been taken into consideration. Local Biodiversity Action Plans (Bedfordshire County Council, 2000) provide guidance on many issues relating to countryside management in the Forest.

WOODLAND CREATION & TREE PLANTING

Tree planting is the core objective of the Community Forest with the new woodland providing a setting for a wide range of other activities.

Significant areas of tree planting will be secured towards the 30% target, with the core Brickfields and urban fringe zones being

targeted for the highest proportion of tree planting. Reduced tree cover will be sought on the land to the east and west.

A Woodland Creation Strategy (Forest of Marston Vale, 2000) has been produced which looks at the issues surrounding the Forest planting work. It describes a series of aims, objectives and action points that will improve the delivery of tree planting targets in the Community Forest. Further detail on the woodland creation proposals can be found in the Strategy.

All of the current methods for encouraging new planting will be utilised, ensuring that their potential benefits are realised (grants from the Forestry Commission and Ministry of Agriculture Fisheries and Food). In addition, it is important that all Community Forests and national partners work to lobby government for changes in the relevant policies and in the level and nature of resources currently available. Contributing to the evolution of the Rural Development Regulation and the New Implementation Options is a good example of work that could have significant potential in delivering the Forest of Marston Vale.

It is important that larger scale projects are secured where multi-purpose forestry can be practised. Opportunities offered through the restoration of landfill and derelict sites and planning agreements offer the greatest future prospects for large scale woodland creation.



Professional advice and grant aid is available for all tree planting.

Creating larger woods is one of the key targets of the England Forestry Strategy.

The predominance of agriculture in the Vale means that significant farm woodland creation must be secured. Promotional efforts will highlight the various potential benefits of farm woodlands and reiterate the enhanced opportunities provided by the existence of the Community Forest.

Good woodland design and tree establishment practices will continue to be promoted, in accordance with the best practice guidance provided by the Forestry Commission and others. In this way, all new planting will have the potential to provide good quality timber and the many associated benefits to wildlife, landscape, shelter and sporting interests.

WOODLANDS AND COUNTRYSIDE

The long term viability of new woods will be promoted by ensuring appropriate management in the establishment period, including preparation and maintenance.

During the winters of 1992/3 and 1993/4, the Woodland Trust planted some 50 hectares of new woodland to create 'Reynold Wood'. This formed part of the 100 hectares of previous farmland and existing woodland, near Brogborough, bought with the help of the Countryside Commission, Bedfordshire County Council and Shanks & McEwan. Woodland management in the existing Holcot Wood and a meadow creation project were implemented to complement the new planting. The new woodland is now becoming a significant landscape feature and open access to the site has proved valuable to local people and for holding events such as the 'Mudstreak' cross country run.

Woodland creation & tree planting will be achieved by:

- implementing an annual programme of tree planting towards realising the long-term aim of 30% woodland cover in the Vale over a 40 year period. Joint working with landowners and organisations such as the Woodland Trust, local authorities and Forestry Commission will be promoted;
- promoting the Woodland Grant Scheme, Farm Woodland Premium Scheme and other

support mechanisms and exploring funding from the private sector by sponsorship including carbon sequestration. The Forest Team will contribute to any development of the New Implementation Options (single flexible grant, tendering scheme and land trading);

- promoting well designed new woodlands, as a resource, to deliver a wide range of landscape, economic, social and environmental benefits. Particular emphasis will be placed on securing larger woodlands (>20 ha) and those that meet defragmentation, urban fringe and access objectives in accordance with the England Forestry Strategy and DETR targets;
- encouraging the development of new national and regional policies and, where necessary, seeking funds to apply them to woodland creation in the Marston Vale;
- encouraging and supporting landowners to ensure that all new woodlands are successfully established and well maintained, and developing new services to assist with this, where appropriate;
- working with planning authorities to ensure that developments provide opportunities to secure large scale new woodland creation in appropriate areas;
- working with site owners and planning authorities to ensure that restoration schemes for derelict land and landfill sites meet Forest landscape, wildlife and recreation objectives;
- seeking opportunities to secure land for woodland creation. This could be through acquisition, leasing, management partnerships or other suitable mechanisms.

6 year old wild cherry trees add to the landscape.



SCHEDULE 5
PLANNING PERFORMANCE AGREEMENT



For the attention of: Roy Romans
Central Bedfordshire Council
Priory House
Monks Walk
Chicksands
Bedfordshire

July 2018

Dear Sirs

Millbrook Power Limited Discharge of Conditions Planning Performance Agreement (PPA)

1. INTRODUCTION

1.1 The following terms are defined for the purpose of this Agreement:

"**2008 Act**" means the Planning Act 2008 (as amended); and

"**Application**" means the application for a development consent order under section 37 of the 2008 Act in relation to the Project and submitted to the Secretary of State on 23 October 2017 and given reference number EN0 10068; and

"**Development Consent Order**" or "**DCO**" means the development consent order to be made pursuant to the Application; and

"**Index Linked**" means increased by an amount equivalent to the increase in the Retail Price Index published by the Office of National Statistics in England from the date of this Agreement to the latest Index available (whether provisional or final) on the date on which the sum is payable; and

"**Project**" means the "authorised development" as defined in Article 2 and Schedule 1 of, and to be authorised by, the Development Consent Order.

1.2 On 23 October 2017 the Developer submitted the Application to the Secretary of State for development consent to construct and operate the Project. The Application was accepted for examination by the Secretary of State on 20 November 2017.

1.3 This Agreement is entered into on the date hereof and shall become effective from the commencement date of the DCO. The DCO contains further requirements to be met for approval by Central Bedfordshire Council (the "Council") prior to the commencement of certain Works. This PPA letter covers the collaborative working of MPL and the Council in respect of the discharge of requirements to ensure that timeframes and requirements set by the DCO are complied with throughout the construction of the consented works and provides protection (in accordance with its terms) for the Council in relation to financial resource and expenses it incurs through facilitating/monitoring the discharge of requirements. The review and discharge of the DCO requirements shall be referred to as a "**Task**".

1.4 Accordingly, by signing this letter (the "**Performance Agreement**" or "**PPA**") MPL and the Council agree to commit to its terms.

1.5 The Council has powers to enter into this PPA pursuant to Section 111 of the Local Government Act 1972, Section 93 of the Local Government Act 2003 and Section 1 of the Localism Act 2011.

1.6 For the avoidance of doubt, the Contracts (Rights of Third Parties) Act 1999 shall not apply and no person other than MPL and the Council (and any successors in title, assigns or successor bodies) shall have any rights under or be able to enforce the provisions of this PPA.

2. PROJECT STEERING GROUP ("PSG")

- 2.1 MPL and the Council agree to set up a PSG comprising representatives from MPL and the Council. Representatives will include the project manager from MPL, the lead planning consultant retained by MPL, and the lead planning officer responsible for the Millbrook Power Project from the Council. The PSG will provide the principle interface and forum for discussion between MPL and the Council. The principle responsibilities of the PSG will be to monitor the Tasks (including to ensure that there is good communication between the Council's officers where necessary to deliver each Task), resolve any matters arising from the Tasks through discussion where possible, review and agree to the key outputs from Tasks and ensure the proper administration of this PPA. In addition it will consider whether to approve (which role can be delegated to an MPL representative) the payment of invoices submitted by the Council previously reviewed by the project manager on behalf of MPL and referred back to the PSG pursuant to Clause 8. The PSG will also establish and maintain a Task register to track the progress of Tasks and record agreed actions in relation to the delivery of Tasks.
- 2.2 The PSG will adopt a collaborative approach to working seeking to ensure that it fulfils its responsibilities efficiently, effectively, openly, transparently and in good faith while always respecting the constituent parties' interests and with the aim of effectively fulfilling the requirements of the DCO.
- 2.3 The PSG will meet at intervals agreed between the parties. Meetings may be by conference call if the parties agree in advance. The parties shall use all reasonable endeavours to agree a mutually suitable date for each PSG meeting.

3. KEY POINTS OF CONTACT

- 3.1 The key point of contact at the Council shall be the lead planning officer responsible for the Millbrook Power Project.
- 3.2 The key point of contact for the Council at MPL for all Workstreams is the project manager for the Millbrook Power Project.

4. WORKSTREAMS AND TASKS

- 4.1 Tasks carried out pursuant to this PPA may relate to any activity which is directly related to the review and discharge of conditions in accordance with the requirements of the DCO or, if the parties agree, to any other activity related to the Millbrook Power Project including any investigation of an alleged breach (where any allegation is reasonably made) of a condition or discharge requirement which shall have been notified to MPL.
- 4.2 Briefs and proposals for Tasks will be discussed at the PSG, if this is possible in accordance with the construction programme.
- 4.3 For the avoidance of doubt, Tasks may include provision of services by the Council's legal officers and administrative staff to the extent directly required for the delivery of the Tasks.

5. TEAM CONTINUITY

Where possible, there will be continuity of the key members of MPL's team and the Council's team. Where this is not possible, changes will be notified to the other parties as soon as possible and an appropriate handover carried out.

6. EXERCISE OF STATUTORY DUTIES AND DISCRETION

- 6.1 The Council will at all times operate within their statutory powers and duties and in accordance with the legislation to which they are subject. No decision, advice, observation, response, representation or approval by the Council in respect of the Millbrook Power Project, pursuant to its statutory powers and duties under the Planning

Act 2008 or otherwise, shall be in any way prejudiced or fettered by the existence of this PA.

- 6.2 MPL will at all times operate within its statutory powers and duties and in accordance with the legislation to which it is subject.
- 6.3 MPL and the Council also acknowledge that the existence of this PPA (or the interpretation of it) in no way predetermines any element of the process of discharging the requirements for the Millbrook Power Project.

7. ANTI-BRIBERY AND CORRUPTION

The parties will comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption contained in the Bribery Act 2010. The parties will maintain in place throughout the term of this PPA their own policies and procedures to ensure compliance.

8. FUNDING OF THE PPA

- 8.1 In consideration for the performance of all Tasks by the Council in accordance with this PPA, MPL shall pay the Council
 - 8.1.1 a fee of £750.00 Index Linked for each Task; and
 - 8.1.2 any additional payment requested pursuant to Clause 8.5.
- 8.2 Subject to paragraph 8.3 and 8.4 of this PPA, MPL will pay the Council within five days of the date of any application by MPL in respect of an individual Task and for all payments to be made pursuant to 8.1.1 within 30 days of receipt of a valid invoice from the Council.
- 8.3 Invoices for work carried out in relation to a task shall be submitted at the end of the Task or quarterly whichever is the earlier, firstly to the Project Manager for MPL (unless delegated to another MPL team member) for preview prior to any referral to the PSG in accordance with clause 2.1.
- 8.4 Should MPL consider in its opinion that an invoice or invoices submitted to it by the Council is for work carried out that is not in accordance with the Task, or with that Council's duties under this PPA, or otherwise is not payable by it pursuant to this agreement, the invoice shall not become payable until, and to the extent that, the invoice has been agreed at the next PSG meeting, following which MPL shall pay the sums due within 30 days of the PSG meeting
- 8.5 In the event that the hours and internal resource of the Council to perform a Task is in excess of 11 hours, the Council shall submit time recorded information for the relevant Task to MPL and request additional payment. MPL shall act reasonably in considering any further request for payment.
- 8.6 VAT will be payable as required by law by MPL.
- 8.7 For the avoidance of doubt, the parties may agree in writing an alternative process for the funding of the Councils' costs under this PPA.
- 8.8 The Council may not recover costs for provision of the Council's statutory duties but for the avoidance of doubt, the parties shall ensure that any future agreed Tasks do not cover such activities.

9. MINIMUM PERFORMANCE STANDARDS

- 9.1 MPL and the Council will agree to respond to e-mails and telephone messages within 5 working days and hold meetings with 10 working days of request. This is provided always that substantive information to be provided pursuant to a Task will be subject to the timescales set out in the Tasks. Where information is reasonably required by the

Council in connection with a Task, MPL will use reasonable endeavours to ensure the information is provided within 10 working days of request. The overall performance of the Council shall be governed by Schedule 12 of the DCO.


10. **TERM AND VARIATION**

10.1 This PPA will be effective from the date on which the DCO comes in to force and ending on either the earlier of the discharge of all requirements pursuant to the DCO or the date on which the DCO shall expire in accordance with its provisions (the "Discharge Date"). The PPA may be terminated after the Discharge Date by either party giving at least 14 days notice in writing, subject to any outstanding fees for tasks being paid. It may also be varied or amended by the agreement of MPL and the Council prior to termination. Any such amendment or variation must be evidenced in writing signed by an authorised representative of each party.

Yours faithfully,

.....**For and on behalf of Millbrook Power Limited**

We hereby acknowledge receipt and accept the contents of this PPA

Signed.... 

For and on behalf of Central Bedfordshire Council

Date.....21/8/18.....

Plan 1
Site

0 100 200 300 400
Metres

Reproduced from the Ordnance Survey Map with permission of the Controller of Her Majesty's Stationery Office. © Crown Copyright 1976. Carter Jonas LLP

Legend

- LR Title BD209604
- MPL transfer land

██████████

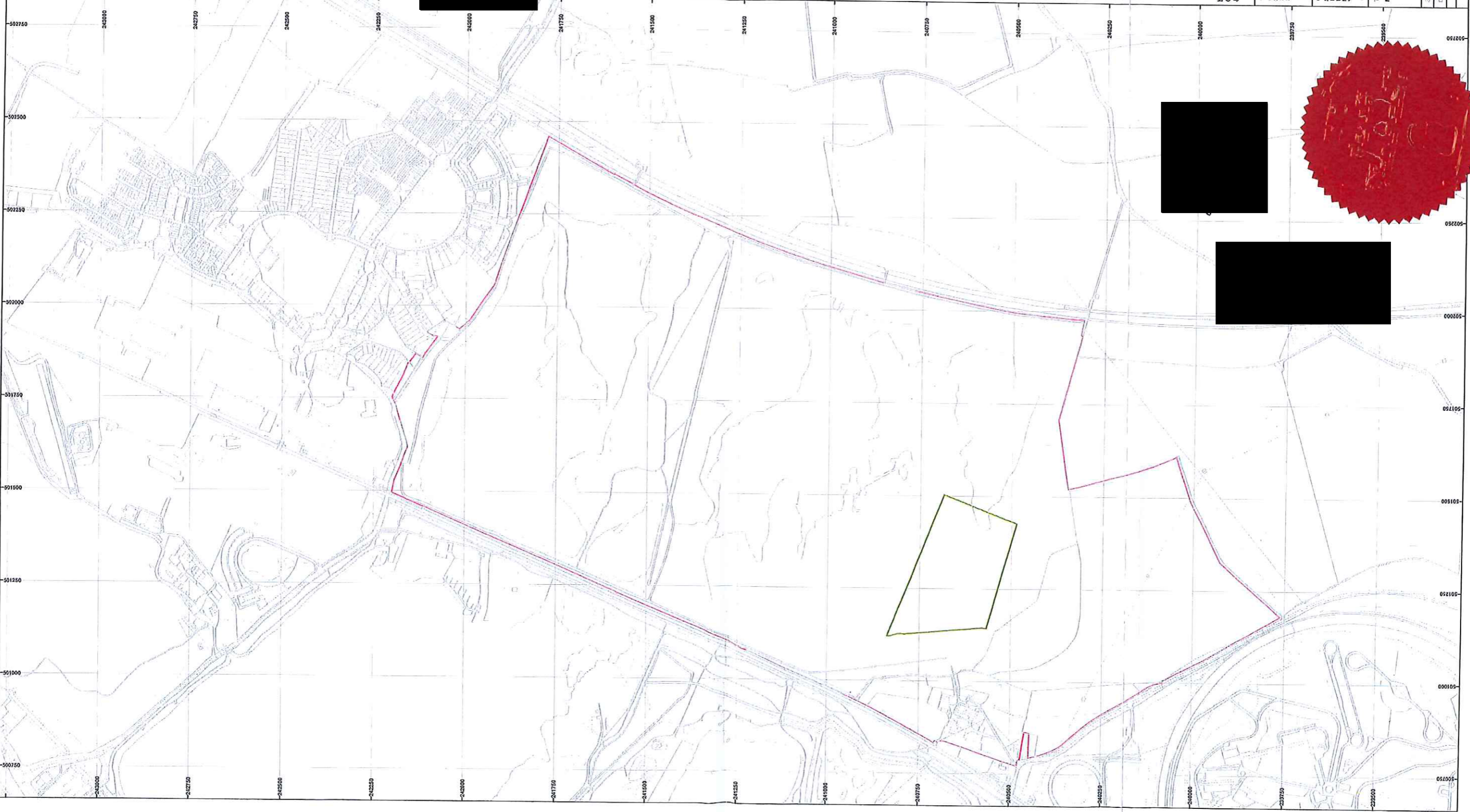
FOREST OF MARSTON VILE TRUST
DIRECTOR

██████████

COMPANY SECRETARY
N.T. WEBB

S.A. WILLIAMS

██████████



██████████

██████████



based on:
C&H Proposed Option Boundary drawing ASC.14.250D
& Land Registry title BD209604.

Carter

Carters
Carter Jonas LLP
25 Abchurch Lane
Birmingham
B4 4GA

www.cartersjones.co.uk
millbrook@cartersjones.co.uk

Millbrook Power Limited
Draze Power Station
North Yorkshire
YO8 8PH
www.millbrookpower.co.uk

Millbrook Power Ltd Section 106 agreement - Plan 1

Drawn by: J0005126-18-03	Checked by: [redacted]	Approved by: [redacted]	MD
Issue: 1	Date: 11 June 2018	Revision: [redacted]	MD

Plan 2

Forest of Marston Vale

Creating the Forest of Marston Vale

FOREST OF MARSTON VALE TRUST
DIRECTOR

[Redacted]

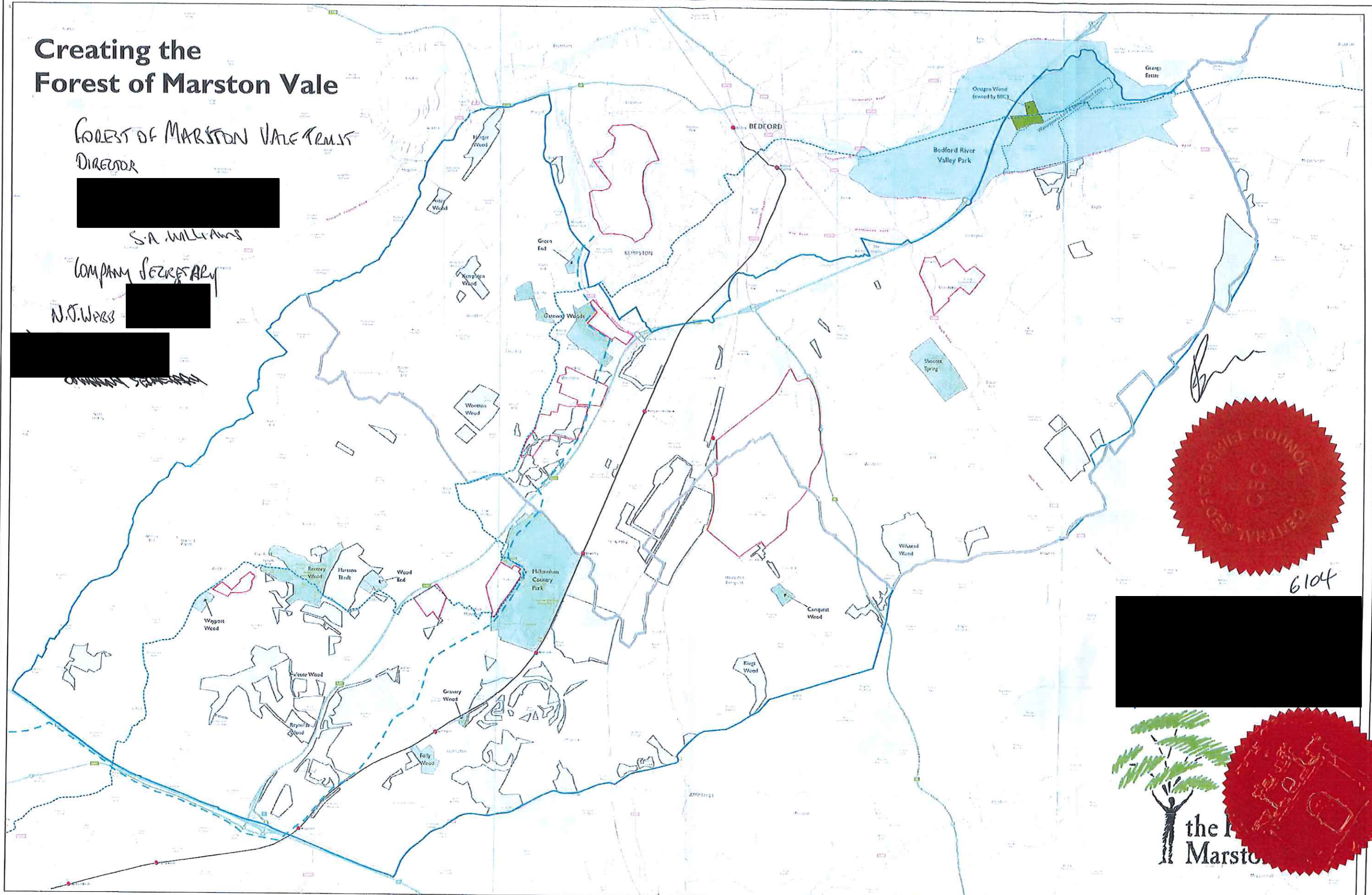
S.A. MILLER

COMPANY SECRETARY

N.J. WARR

[Redacted]

[Redacted]



Map of Forest Area (outlined in blue) Showing FMVT Sites (green block), Local Authority Boundary (grey line), Bedford River Valley Park (blue block), Watersports Lake Development (labelled on map within blue dashed outline), Third Party Woodlands (outlined in black), Milton Keynes to Bedford Waterway (blue dashed line), Bletchley Train Line (bold black line with red dots for stations), Strategic Development Sites (outlined in red) and Oxford to Cambridge Cycleway Sustrans Route 51 (blue dotted line).



Scale 1:30,000 on A1 Paper

IN WITNESS whereof this Deed has been duly executed by the parties to this Deed on the date which appears at the head of this document.

The COMMON SEAL of CENTRAL BEDFORDSHIRE COUNCIL was hereunto affixed in the presence of:

) [Redacted]
)
)

Authorised signatory



6104

The COMMON SEAL of BEDFORD BOROUGH COUNCIL was hereunto affixed in the presence of:

) [Redacted]
)
)

Authorised signatory

BARBARA HELEN MORRIS
ASSISTANT CHIEF EXEC.
LAW + GOVERNANCE
SOLICITORS TO THE COUNCIL



EXECUTED as a DEED by MILLBROOK POWER LIMITED

)
)

acting by two directors or one director and the company secretary:

Director

[Redacted]

ANDREW KOSS

Director / Secretary

[Redacted]

DAVID MCCALLUM

EXECUTED as a DEED by O&H Q7 LIMITED)

acting by two directors or one director and)
the company secretary:

Director

Director / Secretary

DAVID LYONS

PETER DOUGLAS PLAND

EXECUTED as a DEED by FOREST OF)
MARSTON VALE TRUST)

acting by:

DIRECTOR

SA WILLIAMS

COMPANY SECRETARY

N.J. WEBB