

---

NORTH LONDON WASTE AUTHORITY  
NORTH LONDON HEAT AND POWER  
PROJECT

---

SECTION 106 DRAFT AGREEMENT

The Planning Act 2008 The Infrastructure  
Planning (Applications: Prescribed  
Forms and Procedure) Regulations 2009  
Regulation 5 (2) (q)

AD03 . 03

---

Revision 0 | October 2015



## **Draft Section 106 Agreement in Relation to The North London Heat and Power Project**

This note summarises the status of the draft agreement under section 106 Town and Country Planning Act 1990, which the **North London Waste Authority** (the "**Applicant**") proposes to enter into with the **London Borough of Enfield** (the "**Council**") and **LondonWaste Limited** (the "**Owner**" of the EcoPark site).

The Applicant and the Council agreed heads of terms prior to a first draft of the S106 Agreement being sent by the Applicant's solicitors to the Council in early August 2015. The Applicant and the Council met to discuss the S106 Agreement in September 2015 and the Council relayed its comments on the draft, which the Applicant has incorporated into the current draft of the S106 Agreement.

The Council has not provided the Applicant with its written comments on the draft S106 Agreement. Accordingly, the draft S106 Agreement attached to this note is the most up-to-date draft as of the date on which the Applicant submitted the application for development consent for the North London Heat and Power Project.

The Applicant believes that the draft S106 Agreement is well-advanced and does not foresee any significant obstacles to agreeing a final draft with the Council.

The rest of the note summarises the principal obligations upon the Applicant and Owner contained within the draft S106 Agreement.

### **1 Planning Obligations**

#### **1.1 Written notification**

The Applicant must notify the Council of the occurrence of the anticipated date of the commencement of the Project; the full commercial operations date and the date on which the DCO is granted.

The Applicant must notify the Council when various events occur such as the date of the first supply of heat to the Lee Valley Heat Network.

#### **1.2 Employment and Skills**

Prior to the commencement of the Project, the Applicant must submit a Local Employment Strategy to the Council, which the Project Contractor and Operator of the Energy Recovery Facility will be responsible for implementing following its approval by the Council.

The Project Contractor must use reasonable endeavours to implement the various terms of the Local Employment Strategy e.g. in regards to apprenticeships (note that discussions regarding the provision of apprenticeships are ongoing between the Council and the Applicant).

#### **1.3 Local Labour Report**

The Project Contractor will submit a Local Labour Report at various intervals following the commencement of the Project. The Operator of the Energy Recovery Facility must submit a Local Labour Report at various intervals during the operational phase of the Project.

The Local Labour Report will be discussed by the Applicant/Owner and Council (and Contractor or Operator as relevant) follow submission. The objective of these meetings is to determine whether any changes to the Local Employment Strategy are necessary.

#### 1.4 Provision for Heat

The Operator must provide heat to the Lee Valley Heat Network if all conditions in the S106 Agreement are satisfied. These conditions include a heat offtake agreement being entered into and the promoter of the heat network obtaining all necessary approvals for the heat network.

The obligation to provide heat will cease to apply if any of the circumstances in the S106 Agreement occur, for example if the heat offtake agreement is breached by the Lee Valley Heat Network.

If the heat offtake agreement has not been agreed prior to the full commercial operations date, the Applicant/Owner will be required to make available technical and non-commercially sensitive information regarding the heat output from the energy recovery facility to any developer who wishes to become a heat offtaker.

#### 1.5 Travel Plans

The Owner must submit a construction travel plan, before the commencement of the Project, and an operational travel plan, prior to the full commencement operations date. Once the travel plans are approved by the Council, the Project Contractor and the Operator must implement the plans.

#### 1.6 Servicing Management Plan

Before the full commercial operations date, the Applicant/Owner must submit a servicing (non-waste deliveries) management plan for the Council's approval.

## **2 Council's Covenants**

#### 2.1 Planning Performance Agreement

The Council will, on written request from either the Applicant or Owner, enter into a planning performance agreement in relation to the Project. The form of planning performance agreement will be agreed with the Council and appended to the S106 Agreement.

**Dated**

- (1) The London Borough of Enfield**
- (2) LondonWaste Limited**
- (3) North London Waste Authority**

---

**DRAFT Agreement**  
**under Section 106 of the Town and Country Planning Act 1990**  
**Section 111 of the Local Government Act 1972**  
**Section 2 of the Local Government Act 2000 and**  
**Section 1 of the Localism Act 2011**

**relating to land known as**  
**The EcoPark, Advent Way, London N18 3AG**

---

Stephenson Harwood LLP  
1 Finsbury Circus  
London EC2M 7SH  
Tel +44 20 7329 4422  
Fax +44 20 7329 7100  
DX No. 64 Chancery Lane  
[www.shlegal.com](http://www.shlegal.com)



**STEPHENSON HARWOOD**

**Contents**

1 Definitions ..... 2

2 Construction of this Deed..... 6

3 Legal basis..... 6

4 Conditionality ..... 6

5 The Owner and Developer's Covenants..... 6

6 The Council's covenants..... 7

7 Miscellaneous ..... 7

8 Exclusions from liability ..... 7

9 Waiver ..... 8

10 Change in Ownership or Interests..... 8

11 Notices ..... 8

12 Council's Fees ..... 8

13 VAT..... 9

14 Disputes ..... 9

15 Jurisdiction ..... 9

16 Delivery..... 10

Schedule 1 Site Plan..... 11

Schedule 2 Application Site Plan..... 12

Schedule 3 The Owner and the Developer's Covenants ..... 13

Schedule 4 Council's Covenants ..... 19

Schedule 6 Framework Operational Travel Plan ..... 22

Schedule 7 Form of Planning Performance Agreement..... 23

## Deed

### Dated [●]

### Between

- (1) **The London Borough of Enfield** whose address is the Civic Centre, Silver Street, London EN1 3XA (the "**Council**");
- (2) **LondonWaste Limited** a company registered with number 02732548 whose registered office is EcoPark, Advent Way, Edmonton, London N18 3AG (the "**Owner**"); and
- (3) **North London Waste Authority** whose place of business is Unit 1B, Berol House, 25 Ashley Road, Tottenham Hale, London N17 9LJ (the "**Developer**").

### Introduction

- 1 The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated.
- 2 The Owner is the freehold owner of the Site against which the obligations within this Deed will be enforceable.
- 3 At the date of this Deed, the Developer has no legal interest in the Site, but is likely to be responsible for undertaking the Development in future.
- 4 On [\*] the Developer applied to the Secretary of State under section 37 of the Planning Act 2008 for a development consent to construct and operate the Project (the "**Application**"). The Application was accepted on behalf of the Secretary of State on [\*] and given reference number [\*].
- 5 Pursuant to section 42 of the Planning Act 2008, the Developer consulted the Council, amongst others, in relation to its proposals for the Development. Following discussions between the Council, the Owner and the Developer (the "**Parties**"), have agreed to enter into this Deed in order to secure the planning obligations contained within it.
- 6 The Council considers that the obligations within this Deed are necessary to make the Project acceptable in planning terms, are directly related to the Project, and are fairly and reasonably related in scale and kind to the Project.

### Now this deed witnesses as follows:

#### 1 Definitions

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

"**1990 Act**" the Town and Country Planning Act 1990;

"**Application**" has the meaning given to such term at Recital 4 of this Deed.

"**Application Site**" means the land edged red on the plan attached at Schedule 2 to this Deed and for the avoidance of doubt, includes the Site [**SH Drafting Note: only**

***the Site will be bound by the S106, but those obligations will relate to the Application Site]***

**"Apprenticeships"** means [*SH Drafting Note: NLWA considering further*];

**"Commencement of the Project"** means the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming any part of the Project and wherever on the Application Site begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of:

- (a) site clearance;
- (b) site preparation;
- (c) archaeological investigations or excavations;
- (d) surveys and investigations for the purpose of assessing ground or soil conditions and/or taking samples;
- (e) remedial work in respect of any contamination or other adverse ground conditions;
- (f) diversion and laying/provision of services including drainage;
- (g) erection of any temporary means of enclosure including hoardings and fences;
- (h) the temporary display of site notices or advertisements;
- (i) flood prevention and alleviation works;
- (j) works on construction or haulage roads/routes;
- (k) any works of an ecological nature;
- (l) permitted development under the Town and Country Planning (General Permitted Development) Order 1995 (as amended from time to time); and
- (m) any other works of a like nature to those described at paragraphs (a) to (m) (inclusive) above as are agreed in writing with the Council;

and **"Commence the Project"** and **"Commenced"** shall be construed accordingly;

**"Construction Travel Plan"** means a travel plan relating to the construction and demolition phases of the Project based upon the Framework Construction Travel Plan;

**"Contractor"** means the principal contractor engaged by the Developer to undertake the construction and/or demolition phases of the Project;

**"DCO"** means the Order made by the Secretary of State granting development consent pursuant to the Application;

**"Developer"** means the Developer and includes its successors in title and assigns;

**"DHEC Land"** means the land shown edged [red] on the plan at Schedule [\*], to be safeguarded in accordance with the terms of this Deed for the development of the District Heating Energy Centre;

**"District Heating Energy Centre"** means the district heating energy centre, connecting the pipes carrying Heat from the ERF to the boundary of the Site to the LVHN;

**"ERF"** means the energy recovery facility forming part of the Project;

**"Expert"** means any person appointed pursuant to clause 14;

**"Framework Construction Travel Plan"** means the framework travel plan at Schedule 5 of this Deed;

**"Framework Operational Travel Plan"** means the framework travel plan at Schedule 6 of this Deed;

**"Full Commercial Operations Date"** means the date on which electricity is first exported commercially from the ERF following the completion and taking over of the ERF and the issue of all of the acceptance, taking over and completion certificates, and the satisfaction of all other relevant requirements, under the contract or contracts for the construction of the ERF, and following the satisfactory commissioning of the ERF;

**"Heat"** means energy in the form of heated water or steam;

**"Heat Offtake Agreement"** has meaning given to such term at paragraph 3.1.1 of Schedule 3;

**"Local Employment Strategy"** means a written strategy detailing how local labour will be used during the construction and operational phases of the Project;

**"Local Labour Report"** means a written report setting out how the Contractor or Operator (as relevant) has complied with the obligations in paragraph 2 of Schedule 3;

**"LVHN"** means the Lee Valley Heat Network, a network of insulated pipes carrying Heat from the District Heating Energy Centre to the area surrounding the Site and proposed to be funded, designed, installed and operated by the LVHN Promoter;

**"LVHN Promoter"** means LVHN Ltd, or such other entity as may be responsible for the Lee Valley Heat Network following the date of this Deed;

**"Operational Travel Plan"** means a travel plan relating to the operation of the Project based upon the Framework Operational Travel Plan;

**"Operator"** means the entity or entities responsible for the management and operation of the ERF and/or the RRC;

**"Parties"** has the meaning given to such term at Recital 5 of this Deed;

**"Planning Performance Agreement"** means an agreement substantially in the form attached at Schedule 7 of this Deed;

**"Project"** means the project as authorised by the DCO;

**"Servicing Management Plan"** means a written plan, preparing in accordance with guidance from Transport for London describing how deliveries (other than deliveries of waste) required to facilitate the operation of the Site (once operational) will be managed;

**"Site"** means the land edged red on the plan attached at Schedule 1 to this Deed; and [*SH Drafting Note: the Site will be the existing EcoPark, together with access roads; but will exclude elements such as the laydown area*]

**"Working Day"** means any day other than a Saturday or Sunday or public holiday in England.

## **2 Construction of this Deed**

- 2.1 Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Deed.
- 2.2 The headings appearing in this Deed are for ease of reference only and do not affect the construction or interpretation of this Deed.
- 2.3 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.4 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations, partnerships and firms and all such words shall be construed interchangeably in that manner.
- 2.5 Wherever more than one person is required by this Deed to fulfil an obligation, that obligation can be enforced against all of those persons and against each individually unless there is an express provision otherwise.
- 2.6 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.7 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 Council the successors to its statutory functions.

## **3 Legal basis**

- 3.1 This Deed is made pursuant to Section 106 of the 1990 Act, Section 111 of the Local Government Act 1972, Section 2 of the Local Government Act 2000, Section 1 of the Localism Act 2011 and all other powers so enabling.
- 3.2 The covenants, restrictions and requirements imposed under this Deed create planning obligations pursuant to Section 106 of the 1990 Act and are enforceable by the Council as local planning authority against the Site.

## **4 Conditionality**

- 4.1 This Deed shall come into force on the date hereof except for clause 5 and Schedule 2 which shall be conditional upon the grant of the DCO.
- 4.2 If the DCO shall expire before the Commencement of the Project or shall at any time be quashed, revoked or otherwise withdrawn or (without the consent of the Developer or the Owner) it is materially modified by any statutory procedure such that the Developer's, the Owner's, the Contractor's or the Operator's ability to construct or operate the Project is materially and demonstrably adversely affected, any obligation, commitment or undertaking remaining to be satisfied pursuant to this Deed shall therefrom cease to have effect.

## **5 The Owner and Developer's Covenants**

5.1 The Owner and the Developer severally covenant with the Council as set out in Schedule 3.

## **6 The Council's covenants**

6.1 The Council covenants with the Owner and the Developer as set out in Schedule 4.

## **7 Miscellaneous**

7.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

7.2 This Deed shall be registrable as a local land charge against the Site by the Council.

7.3 Where the agreement, approval, consent or expression of satisfaction is required by any person from the Council under the terms of this Deed such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed.

7.4 Any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.

7.5 Following the performance and satisfaction of any of the obligations contained in this Deed the Council shall upon written request forthwith effect the cancellation of the relevant entry made in the Register of Local Land Charges in respect of this Deed.

7.6 Insofar as any provision of this Deed is 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.

7.7 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site (or part thereof) or, in the case of the Owner, ceases to have any involvement with the Site, the Operator or no longer holds the majority shareholding in the Owner, but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

7.8 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission granted (whether or not on appeal) or a development consent order made after the date of this Deed.

## **8 Exclusions from liability**

8.1 The obligations in this Deed shall not be enforceable against:

8.1.1 any licensee or person having access rights, wayleaves or easements over any part of the Site;

8.1.2 any statutory undertaker (other than the Operator) or utility providing services to or through the Site;

8.1.3 any occupational tenant of any part of the Site, unless such obligation is expressly stated in this Deed to exclusively relate to that part of the Site in which the occupational tenant has an interest; and

- 8.1.4 any mortgagee or chargee, unless such mortgagee or chargee has become a mortgagee in possession of the Site (or relevant part of the Site), in which case such mortgagee or chargee shall be bound by those obligations in this Deed which were binding upon the person from whom it derives its interest.

## **9 Waiver**

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

## **10 Change in Ownership or Interests**

The Owner and the Developer agree to give the Council immediate written notice of any change in ownership of their legal interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

## **11 Notices**

- 11.1 Any notice, consent or approval required to be given under this Deed must be in writing and must be delivered personally or sent by pre-paid first class post, or electronic mail (email).

- 11.2 The addresses for service of any such notice, consent or approval are:

11.2.1 for those delivered personally or sent by pre-paid first class post, the addresses given above or such other address for service as has been previously notified in writing by any Party to the other Parties; and

11.2.2 for those to be send by electronic mail (email):

- (a) to the Owner: [*to be inserted*];
- (b) to the Developer: [*to be inserted*]; and
- (c) to the Council: [*to be inserted*].

## **12 Council's Fees**

- 12.1 The Developer will pay to the Council on completion of this Deed the reasonable and properly incurred legal costs of the Council in respect of the negotiation, preparation and execution of this Deed

- 12.2 The Developer will pay to the Council [\*] following the Commencement of the Project in respect of the Council's monitoring of the planning obligations within this Deed.

## **13 VAT**

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

## **14 Disputes**

14.1 In the event of a dispute arising between the Parties (including the Contractor and the Operator) in respect of any matter contained in this Deed, the same shall be referred (by any party within ten (10) Working Days of so notifying the other parties) to an Expert, such Expert to act as an expert and not as an arbitrator and whose decision shall be final and binding on the parties save in the case of manifest error and (subject to clause 14.4) whose costs shall be in his award and the Expert shall be of at least ten (10) years standing in his field of expertise.

14.2 The Expert must be:

14.2.1 if the dispute relates to matters concerning the construction, interpretation and/or application of this Deed, an independent barrister or a solicitor;

14.2.2 if the dispute relates to matters necessitating any calculation or otherwise concerning a financial aspect of this Deed, an independent chartered accountant;

14.2.3 in any other case, (at the discretion of the President of the Chartered Institute of Arbitrators), an independent architect, civil engineer, or town planner;

14.2.4 if the dispute relates to matters falling within two or more of clauses 14.2.1 to 14.2.3, such person or persons as the President of the Chartered Institute of Arbitrators considers appropriate.

14.3 If the Expert nominated pursuant to this clause 14 dies or declines to act, another Expert must be appointed in his place.

14.4 Unless the Expert directs otherwise, the costs of the relevant application to him will be divided equally between the parties to the relevant dispute.

14.5 The Expert will be appointed 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 complexity of the dispute and in any event not more than twenty (20) Working Days from the date of his appointment to act.

14.6 The Expert will be required to give written notice to each of the parties to the relevant dispute inviting each of them to submit to him within ten (10) Working Days written submissions and supporting material and will afford to those parties an opportunity to make counter submissions within a further five (5) Working Days in respect of any such submission or material and his decision shall be delivered with reasons.

## **15 Jurisdiction**

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

**16 Delivery**

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

**Schedule 1**  
**Site Plan**

**Schedule 2**  
**Application Site Plan**

## Schedule 3      The Owner and the Developer's Covenants

### 1      Notifications

- 1.1      The Owner shall notify the Council in writing of the date on which the Secretary of State makes the DCO, within five (5) Working Days of the occurrence of the same.
- 1.2      The Owner shall notify the Council in writing of:
- 1.2.1      the anticipated Commencement of the Project; and
- 1.2.2      the anticipated Full Commercial Operations Date,
- in each case not less than five (5) Working Days prior to the occurrence of the relevant event.
- 1.3      The Developer shall notify the Council in writing of:
- 1.3.1      the Developer entering into the Heat Offtake Agreement (as defined below) with the LVHN Promoter;
- 1.3.2      the first supply of Heat to the LVHN;
- 1.3.3      the occurrence of any of the events described in paragraph 3.2 of this Schedule,
- not less than five (5) Working Days following the occurrence of such event; and
- 1.3.4      the name, address and contact details of:
- (a)      the Contractor; and
- (b)      the Operator,
- in each case not less than five (5) Working Days following their respective appointment.

### 2      Employment and Skills

- 2.1      Nothing in this paragraph 2 shall require the Owner, Developer, Contractor or Operator, any sub-contractors of the Site (each an "**Employer**") to do (or refrain from doing) anything which:
- 2.1.1      would be contrary to prudent business practice;
- 2.1.2      would be contrary to law;
- 2.1.3      would require the Employer to employ, contract or otherwise engage with a person who:
- (a)      lacks the necessary skills, qualifications or experience and cannot in the opinion of the Employer be trained within a reasonable time; and/or

- (b) is unwilling or unavailable to be employed, contract or otherwise engage with the Employer; and/or
  - (c) is not of sufficient financial standing (where relevant).
- 2.2 The Owner will submit a Local Employment Strategy to the Council for approval prior to the Commencement of the Project.
- 2.3 Following the Council's approval of the Local Employment Strategy, the Developer will procure that the Contractor and the Operator, respectively, implement the approved Local Employment Strategy. In particular, the Owner will procure that:
  - 2.3.1 the Contractor uses reasonable endeavours to:
    - (a) employ at least [\*]% of its workforce engaged in the construction and demolition phases of the Project from the local area and procure that all material sub-contractors do the same;
    - (b) offer, either itself or through its sub-contractors engaged in the Project at least [\*] Apprenticeships during the construction and demolition phases of the Project; and **[SH Drafting Note: NLWA to discuss further with LBE]**
    - (c) offer, either itself or through its sub-contractors engaged in the Project at least [\*] hours (in aggregate) of training for its workforce engaged in the construction and demolition phases of the Project, such training to be appropriate to the relevant recipient(s) and agreed with the Council. **[SH Drafting Note: NLWA to discuss further with LBE]**
  - 2.3.2 the Operator publicises details of operational staff vacancies and access to apprenticeship schemes through the Council's JOBSnet and Jobcentre Plus, or such other similar schemes as the Council shall reasonably propose to the Operator.
- 2.4 The Owner will procure that:
  - 2.4.1 until the Full Commercial Operations Date, the Contractor will submit a Local Labour Report in respect of the construction and demolition phases of the Project to the Council, every three (3) months following the Commencement of the Project; and
  - 2.4.2 the Operator will submit a Local Labour Report in respect of the operational phase of the Project to the Council, on the first Working Day following the days which are:
    - (a) three (3) months;
    - (b) six (6) months;

- (c) twelve (12) months;
- (d) twenty-four (24) months;
- (e) thirty-six (36) months; and
- (f) forty-eight (48) months,

respectively, following the Full Commercial Operations Date

- 2.5 Subject to paragraph 2.6, the Developer, Contractor or Operator, and the Council will meet following the submission of each Local Labour Report pursuant to paragraph 2.4 (above) to discuss and agree any changes which those parties consider are necessary or desirable to the Local Employment Strategy in order to best secure its aims.
- 2.6 Where relevant, following agreement amongst the relevant parties as to the changes to be made to the Local Employment Strategy, the Developer shall procure that such changes are implemented by the Contractor or Operator, provided that the Local Employment Strategy as amended shall not impose any greater liability on the Developer, Owner, Contractor or Operator as relevant than the Local Employment Strategy as approved by the Council pursuant to paragraph 2.3 of this Schedule.

### 3 Provision of Heat

- 3.1 Subject to paragraph 3.2, the Developer and the Owner will procure that the Operator provides Heat to the LVHN if all of the following conditions have been met:
  - 3.1.1 the Developer, Owner, Operator (if relevant) and the LVHN Promoter have completed a commercial agreement as to the terms on which the ERF could be connected to the LVHN (the "**Heat Offtake Agreement**") and all conditions within such contract have been satisfied or waived;
  - 3.1.2 the LVHN Promoter has obtained all necessary approvals, licences, permissions, consents and land rights for the LVHN;
  - 3.1.3 the LVHN Promoter has installed the necessary infrastructure and apparatus in order to receive, distribute and/or use the Heat via the LVHN.
- 3.2 The obligation to provide Heat to the LVHN in paragraph 3.1 (above) shall cease to apply in the following circumstances:
  - 3.2.1 the Heat Offtake Agreement is breached by the LVHN Promoter or else is terminated by any party to it;
  - 3.2.2 the LVHN is operated in an unsafe or potentially dangerous manner or any of the necessary approvals, licences, permissions, consents or land rights for the LVHN are revoked, quashed, withdrawn or terminated;

- 3.2.3 it is not viable for the Project to continue to provide Heat;
- 3.2.4 the Operator or the Developer or the Owner receives notice from the LVHN Promoter that it no longer wishes to receive Heat, in which case a copy of such notice shall be forwarded to the Council in accordance with paragraph 1 of Schedule 3;
- 3.2.5 when the ERF is not generating electricity or Heat, including but not limited to the following periods:
  - (a) prior to the Full Commercial Operations Date;
  - (b) during maintenance of the ERF;
  - (c) during maintenance of the LVHN; and
  - (d) following the decommissioning of the ERF.
- 3.3 If the Heat Offtake Agreement is not in force prior to the Full Commercial Operations Date, the Owner and the Developer shall be required to make available to potential Heat offtakers who request it, such technical and non-commercially sensitive information regarding the potential Heat output from the ERF as they have in their possession and control, provided that only such information as is reasonably necessary to understand the potential heat offtake opportunities need to be disclosed.
- 3.4 Subject to paragraph 3.5, the Owner shall not, for a period of five (5) years from the Full Commercial Operations Date, develop or permit any other party to develop the DHEC Land.
- 3.5 The obligation in paragraph 3.4 shall not apply to temporary uses of the DHEC Land and cease to apply if the LVHN proposals are abandoned by the LVHN Promoter or the Council.

#### 4 **Travel Plans**

- 4.1 Prior to the Commencement of the Project, the Owner will prepare and submit to the Council for approval, a Construction Travel Plan. Following its approval by the Council, the Owner will procure that the Contractor implements the Construction Travel Plan.
- 4.2 During the construction phases of the Project, the Owner, the Developer, the Contractor and the Council will meet every six (6) months (unless otherwise agreed) following the approval of the Construction Travel Plan to discuss and agree any changes which the parties consider are necessary or desirable to the Construction Travel Plan. Following agreement of any changes, the Owner and the Developer shall procure that the Contractor implements such changes provided that they shall not impose any greater liability on the Owner, the Developer or the Contractor (or its subcontractors).
- 4.3 Prior to Full Commercial Operations Date, the Owner will prepare and submit to the Council for approval, an Operational Travel Plan. Following its

approval by the Council, the Owner will procure that the Operator implements it.

4.4 The Owner, the Developer, the Operator and the Council will meet on the first Working Day following the days which are:

4.4.1 six (6) months

4.4.2 twelve (12) months; and

4.4.3 twenty-four (24) months,

respectively, following the approval of the Operational Travel Plan to discuss and agree any changes which the parties consider are necessary or desirable to the Operational Travel Plan. Following agreement of any changes, the Owner and the Developer shall procure that the Operator implements such changes provided that they shall not impose any greater liability on the Owner, the Developer or the Operator.

4.5 The Owner and the Developer shall procure that the Operator uses its reasonable endeavours to promote the Operational Travel Plan to those employed by the Operator to encourage alternatives to single-occupancy car travel to and from the Site and, in particular, cycling opportunities.

4.6 The Owner and the Developer will undertake a programme of monitoring pedestrian and cyclist movements to and from the Property during the construction phase of the Project and for the [twenty-four (24)] month period following the Full Commercial Operations Date. The Owner and the Developer will provide the data obtained to the Council upon reasonable request. The Owner, the Developer, the Contractor, the Operator and the Council will use the data to inform discussions regarding possible changes to the Construction Travel Plan and the Operational Travel Plan.

## 5 Servicing Management Plan

5.1 Prior to the Full Commercial Operations Date, the Owner and the Developer shall submit to the Council for its approval a Servicing Management Plan and following its approval by the Council having consulted Transport for London, the Owner and the Developer will procure that the Operator implements the Servicing Management Plan as approved.

5.2 The Owner, the Developer, the Operator and the Council will meet on the first Working Day following the days which are:

5.2.1 six (6) months

5.2.2 twelve (12) months; and

5.2.3 twenty-four (24) months,

respectively, following the approval of the Servicing Management Plan to discuss and agree any changes which the parties consider are necessary or desirable to the Servicing Management Plan. Following agreement of any changes, the Owner and the Developer shall procure that the Operator

implements such changes provided that they shall not impose any greater liability on the Owner, the Developer or the Operator.

**Schedule 4**

**Council's Covenants**

**1 Employment and Skills**

1.1 The Council agrees that nothing in paragraph 2 of Schedule 3 shall require the Owner, Developer, Contractor or Operator, and/or any sub-contractors of the Site (each an "**Employer**") to do (or refrain from doing) anything which:

- 1.1.1 would be contrary to prudent business practice;
- 1.1.2 would be contrary to law;
- 1.1.3 would require the Employer to employ, contract or otherwise engage with a person who:
  - (a) lacks the necessary skills, qualifications or experience and cannot in the opinion of the Employer be trained within a reasonable time; and/or
  - (b) is unwilling or unavailable to be employed, contract or otherwise engage with the Employer; and/or
  - (c) is not of sufficient financial standing (where relevant).

1.2 The Council will not propose or require any changes to the Local Employment Strategy, pursuant to the review mechanism described at paragraph 2.6 of Schedule 3 which impose a greater liability on the Developer, the Owner, the Contractor or the Operator as relevant than the Local Employment Strategy as approved by the Council pursuant to paragraph 2.3 of Schedule 3.

**2 Travel Plans**

2.1 The Council will not propose or require any changes to the Construction Travel Plan or the Operational Travel Plan, pursuant to the review mechanisms described in paragraph 4 of Schedule 3 which impose a greater liability on the Developer, the Owner, the Contractor or the Operator as relevant than the Construction Travel Plan or the Operational Travel Plan as approved by the Council pursuant to paragraphs 4.1 and 4.3 of Schedule 3.

**3 Servicing Management Plan**

3.1 Prior to approving the Servicing Management Plan, the Council will consult Transport for London on the draft Servicing Management Plan received from the Owner and Developer and will take account of Transport for London's reasonable comments on the draft Servicing Management Plan.

3.2 The Council will not propose or require any changes to the Servicing Management Plan, pursuant to the review mechanisms described in paragraph 5 of Schedule 3 which impose a greater liability on the Developer, the Owner, or the Operator as relevant than the Servicing Management Plan as approved by the Council pursuant to paragraph 5.1 of Schedule 3.

#### **4 Planning Performance Agreement**

Upon receipt of a written request from either the Owner or the Developer, the Council will enter into the Planning Performance Agreement in relation to the Project with the Owner and the Developer.

**Schedule 5**  
**Framework Construction Travel Plan**

**Schedule 6**  
**Framework Operational Travel Plan**

**Schedule 7**  
**Form of Planning Performance Agreement**

**In witness** whereof the parties hereto have executed this Deed on the day and year first before written.

**The Common Seal of**

was affixed in the presence of:

-----  
Authorised Signatory

**Executed as a deed by**

-----

signature  
of witness -----

name -----  
print name of witness

address

**Executed as a deed by**

in the presence of:

----- print name ----- signature ----- Director

----- print name ----- signature ----- Director / Secretary



Series 03 Draft Development  
Consent Order

**NORTH LONDON WASTE  
AUTHORITY**

1b Berol House, 25 Ashley Road  
Tottenham Hale  
N17 9LJ

Telephone: 020 8489 5730

Fax: 020 8365 0254

Email: [project@northlondonheatandpower.london](mailto:project@northlondonheatandpower.london)