

# Riverside Energy Park

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## S.106 Agreement (final draft, not signed)

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VOLUME NUMBER:

**08**

PLANNING INSPECTORATE REFERENCE NUMBER:

**EN010093**

DOCUMENT REFERENCE:

**8.02.93**

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October 2019

| Revision 0 (Deadline 8B) |

APFP Regulation 5(2)(q)

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Planning Act 2008 | Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

**DATED** \_\_\_\_\_ **2019**

**(1) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BEXLEY**

**(2) CORY ENVIRONMENTAL LIMITED**

**(3) CORY ENVIRONMENTAL HOLDINGS LIMITED**

**(4) RIVERSIDE ENERGY PARK LIMITED**

**(5) HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED**

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**DEVELOPMENT CONSENT OBLIGATION BY AGREEMENT**  
relating to  
the development to be known as Riverside Energy Park  
on land at Norman Road Belvedere Kent

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**BETWEEN:-**

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BEXLEY** of Civic Offices, Broadway, The Broadway, Bexleyheath, Kent, DA6 7LB (the "**Council**");
- (2) **CORY ENVIRONMENTAL LIMITED** (company registration number: 00049722) whose registered office is at 2 Coldbath Square, London, EC1R 5HL (the "**Owner**");
- (3) **CORY ENVIRONMENTAL HOLDINGS LIMITED** (company registration number: 05360864) whose registered office is at 2 Coldbath Square, London, EC1R 5HL (the "**CEHL**");
- (4) **RIVERSIDE ENERGY PARK LIMITED** (company registration number: 11536739) whose registered office is at 2 Coldbath Square, London, EC1R 5HL (the "**REPL**"); and
- (5) **HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED** (company registration number: 06447555) whose registered office is at 8 Canada Square, London, E14 5HQ (the "**Mortgagee**").

**RECITALS:-**

- (A) The Council is the local planning authority for the REP Land and can enforce the obligations contained in this Deed.
- (B) The Owner has a freehold interest in the REP Land.
- (C) The Owner holds neither a legal or equitable interest in the REP Additional Land.
- (D) CEHL has submitted the Application.
- (E) The Council considers it expedient in the interests of the proper planning of its area that provision should be made for regulating or facilitating the Authorised Development as set out in this Deed. For the purposes of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended), the Council is satisfied that the restrictions and provisions contained in this Deed are necessary to make the Authorised Development acceptable in planning terms, that they are directly related to the Authorised Development and are fairly and reasonably related in scale and kind to the Authorised Development.
- (F) The Parties enter into this Deed to secure the development consent obligations contained in it and to enable the Secretary of State to grant the Development Consent Order.

**IT IS AGREED** as follows:-

**OPERATIVE PROVISIONS**

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this Deed (which includes the Recitals, Schedules and Appendices to it), the following words and expressions have the following meanings unless the context requires otherwise:-

- |                           |   |
|---------------------------|---|
| " <b>1990 Act</b> "       | means the Town and Country Planning Act 1990;   |
| " <b>2008 Act</b> "       | means the Planning Act 2008;  |
| " <b>2011 Act</b> "       | means the Localism Act 2011;  |
| " <b>AAQ Monitoring</b> " | means monitoring of ambient air quality which must include those matters set out within Part 2 of Schedule 2 within the vicinity of Riverside Energy Park to be carried out by the Council or on behalf of the Council by a professional services firm experienced in air quality |

	monitoring which has been procured by the Council;
<b>"AAQ Monitoring Contribution"</b>	means the annual sum of £30,000.00 (Indexed) payable pursuant to Part 1 of Schedule 2 for the purposes of AAQ Monitoring;
<b>"AAQ Report"</b>	means a report setting out the results of AAQ Monitoring which as a minimum will include: <ul style="list-style-type: none"> <li>(a) the location of the continuous monitoring stations used for the AAQ Monitoring;</li> <li>(b) analysis of AAQ Monitoring; and</li> <li>(c) statistical results;</li> </ul>
<b>"Application"</b>	means the application for the Development Consent Order under section 37 of the 2008 Act in relation to the Authorised Development and submitted to the Secretary of State and given reference number EN010093;
<b>"Authorised Development"</b>	has the same meaning as in article 2 of the Development Consent Order;
<b>"Commence"</b>	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;
<b>"Committed"</b>	means the AAQ Monitoring Contribution which the Council has:- <ul style="list-style-type: none"> <li>(a) expended;</li> <li>(b) allocated to be spent by the Council out of a budget for the purpose associated with that contribution and where that budget has been authorised by the relevant committee, Council member or Council officer; or</li> <li>(a) subject to Clause 8.2, allocated to pay for a Contribution Contract;</li> </ul>
<b>"Comply"</b>	means comply, perform, fulfil and/or discharge or procure compliance, performance, fulfilment and/or discharge, and " <b>Compliance</b> " shall be construed accordingly;
<b>"Contribution Contract"</b>	means an unconditional contract which the Council has completed before the Relevant Date requiring another party to provide works, services or supplies (or any combination of them) and which the Council has entered into because the funding for it has been provided by way of the AAQ Monitoring Contribution;
<b>"Decommissioning"</b>	means such works as required pursuant to the scheme for the restoration and aftercare of the land for Work Numbers 1, 2, 3, 4 and 5 as approved by the Council pursuant to requirement 26 (Decommissioning) of the Development Consent Order;

<b>"Deed"</b>	means this Deed made under section 106 of the 1990 Act and all other enabling powers;
<b>"Development Consent Order"</b>	means the Riverside Energy Park Order granted by the Secretary of State pursuant to the Application and "DCO" shall be construed accordingly;
<b>"Developer"</b>	means CEHL and REPL until such time as notice is provided pursuant to clause 7.1 at which time means the Sole Developer;
<b>"Expert"</b>	means an independent person of at least 10 years standing in the area of expertise relevant to the dispute to be agreed between the Council, the Owner and the Developer or, failing agreement, to be nominated at the request and option of any of them, at their joint expense, by or on behalf of the President for the time being of the Law Society;
<b>"Index"</b>	means the Consumer Price Index or (if the index is no longer published or is unavailable for use) an alternative comparable basis for indexation agreed between the Council, the Owner and the Developer and "Indexed" shall mean an adjustment to the sum by the Index;
<b>"Interest"</b>	means interest at 4% above the base rate from time to time of the Bank of England;
<b>"Interest Bearing Account"</b>	means an account with a major clearing bank that attracts a rate of interest and has terms which would be acceptable to a reasonably prudent local authority;
<b>"Land Plans"</b>	means the plans certified as the "Land Plans" pursuant to article 40 of the Development Consent Order;
<b>"Parties"</b>	means the parties to this Deed and " <b>Party</b> " shall be construed accordingly;
<b>"Plan"</b>	means the plan attached at Appendix 1;
<b>"Pre-commencement works"</b>	has the same meaning as article 2 of the Development Consent Order;
<b>"Reasonable Endeavours"</b>	means attempt to fulfil the relevant obligation by expending effort and money as in all the circumstances may be reasonable to expect, which may include engaging professional and other advisers as appropriate but does not require a Party to take proceedings (including any appeal) in any court, public inquiry, or other hearing (unless specified to the contrary);
<b>"Relevant Date"</b>	means the date 5 years after the date on which the relevant payment was received by the Council;
<b>"REP Land"</b>	means the land identified in Part 1, Schedule 1 of this Deed and identified edged red on the Plan;
<b>"REP Additional Land"</b>	means the land identified in Part 2, Schedule 1 of this Deed and identified edged blue on the Plan;

<b>"Riverside Energy Park"</b>	means that part of the Authorised Development to be located on the REP Land and the REP Additional Land;
<b>"Secretary of State"</b>	means the Secretary of State for Business, Energy and Industrial Strategy;
<b>"Sole Developer"</b>	means either CEHL or REPL as identified in the notice given pursuant to clause 6.1 of this Deed as the party that will be carrying out the Authorised Development under the Development Consent Order;
<b>"Start of Commissioning"</b>	means the date on which the commissioning of Work Number 1A is started as notified to the Council pursuant to requirement 22(1) (notice of start of commissioning and notice of date of final commissioning) of the Development Consent Order;
<b>"Supplemental Agreement"</b>	means the form of agreement attached at Schedule 4 of this Agreement;
<b>"Utilities"</b>	means mains services including gas, electricity, potable water, telecommunications and ducting to facilitate high speed broadband;
<b>"Work Number 1A"</b>	means that part of the Authorised Development identified as "Work No. 1A" in Schedule 1 to the Development Consent Order;
<b>"Working Day"</b>	means a day other than a Saturday or Sunday or public holiday in England.

- 1.2 In this Deed, unless otherwise indicated, reference to any:-
- 1.2.1 Recital, Clause, sub-clause, paragraph number, Schedule, Appendix or plan is a reference to a Recital, Clause or sub-clause of, paragraph number of, Schedule to, Appendix to or plan annexed to this Deed;
  - 1.2.2 words importing the singular meaning include the plural meaning and vice versa;
  - 1.2.3 words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, other corporate bodies, firms or legal entities and all such words shall be construed interchangeably in that manner;
  - 1.2.4 an Act of Parliament shall include any amendment, modification, extension, consolidation or re-enactment of that Act for the time being in force and in each case shall include all statutory instruments, orders, regulations and directions for the time being made, issued or given under that Act or deriving validity from it; and
  - 1.2.5 references to the Council, the Owner, CEHL and REPL shall include their respective statutory successors or successors in title to their respective interests in the REP Land and persons deriving title therefrom (except where the contrary is expressly provided) and permitted assigns.
- 1.3 Headings where they are included are for convenience only and are not intended to influence the construction and interpretation of this Deed.
- 1.4 Any notice, notification, consent, approval, agreement, request or statement or details to be made, given or submitted under or in connection with this Deed shall be made or confirmed in writing.

1.5 Wherever an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually unless there is an express provision otherwise.

1.6 Each of the Parties to this Deed shall act in good faith and shall co-operate with each of the other Parties to facilitate the discharge and performance of all obligations on them contained in this Deed and the Developer shall comply with any reasonable requests of the Council to provide documentation within its possession (such documentation to be provided by the Developer at its own expense) for the purposes of monitoring Compliance with the obligations contained in this Deed.

## 2. **LEGAL BASIS**

2.1 This Deed is made under:-

2.1.1 section 106 of the 1990 Act; and

2.1.2 section 1 of the 2011 Act, sections 111, 120 and 139 of the Local Government Act 1972, and all other enabling powers that may be relevant to the enforcement of the obligations contained in this Deed.

2.2 The obligations, covenants and undertakings on the part of the Owner in this Deed are development consent obligations for the purposes of section 106 of the 1990 Act and so bind the Owner's interest in the REP Land. Subject to Clause 9, the obligations, covenants and undertakings on the part of the Owner are entered into with the intent that they are enforceable not only against the Owner but also against any successors in title or assigns of the Owner and any person claiming through or under the Owner an interest or estate in the REP Land or any part of it as if that person had been the original covenanting party in respect of the interest for the time being held by it.

2.3 Insofar as any obligations, covenants and undertakings in Clause 2.2 are not capable of falling within section 106 of the 1990 Act they are entered into in pursuance of the relevant powers referred to in Clause 2.1.2.

2.4 The obligations, covenants and undertakings on the part of the Developer are given in contract and are subject to clause 7.

2.5 So far as the obligations, covenants and undertakings in this Deed are given by or to the Council they are entered into under the relevant powers referred to in Clause 2.1 and those obligations, covenants and undertakings are enforceable by or against the Council.

2.6 Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council of any of their statutory powers, duties, functions or discretions in relation to the REP Land or otherwise.

## 3. **CONDITIONAL ENTRY INTO FORCE**

3.1 Subject to Clause 3.2, this Deed is conditional upon and will not take effect until both the Development Consent Order has been granted and the Authorised Development has Commenced.

3.2 Clauses 1, 2, 3, 4, 5.1.2, 6.1, 6.2, 6.3.2, 8.2.8, 7, 9, 10, 12, 15 and 16 come into effect on the date of this Deed.

## 4. **DURATION**

4.1 This Deed will end (to the extent it has not already been complied with), if the Development Consent Order:-

4.1.1 is quashed, revoked or otherwise withdrawn at any time so as to render this Deed or any part of it irrelevant, impractical or unviable; or



4.1.2 expires before Commencement.

4.2 Where this Deed ends the Council must remove all entries made in the Register of Local Land Charges in respect of this Deed within 20 Working Days of this Deed ending.

## 5. **OWNER'S COVENANTS WITH THE COUNCIL**

5.1 The Owner on behalf of itself and its successors in title to its interest in the REP Land covenants with the Council:-

5.1.1 to Comply with each obligation, covenant and undertaking on the part of the Owner contained in Schedule 2 and Schedule 3; and

5.1.2 that there will be no Commencement until the REP Additional Land is bound by this Deed through the completion of the Supplemental Agreement or Supplemental Agreements.

## 6. **CEHL, REPL AND THE DEVELOPER'S COVENANTS WITH THE COUNCIL**

6.1 Prior to carrying out the Pre-commencement Works, CEHL and REPL must give notice in writing to the Council, in accordance with clause 15, identifying which of CEHL or REPL will be carrying out the Authorised Development under the Development Consent Order.

6.2 CEHL and REPL (as applicable) covenant with the Council that, following service on the Council of a notice pursuant to 6.1 either of CEHL or REPL that is not the Sole Developer shall not:

6.2.1 take any steps to implement any of the powers in the Development Consent Order or works authorised by the Development Consent Order; and/or

6.2.2 discharge any of the powers or functions under the Development Consent Order.

6.3 The Developer covenants with the Council:-

6.3.1 to Comply with each obligation, covenant and undertaking on the part of the Developer contained in Schedule 2 and Schedule 3; and

6.3.2 that there will be no Commencement until the REP Additional Land is bound by this Deed through the completion of the Supplemental Agreement or Supplemental Agreements.

## 7. **SOLE DEVELOPER AND RELEASE**

7.1 From the date of the notice given pursuant to clause 6.1 above, either CEHL or REPL as is identified as the party that will be carrying out the Authorised Development under the Development Consent Order shall be the Sole Developer for the purposes of this Deed and references in this Deed to "Developer" shall be read as referring to "Sole Developer" save for in clause 6.1.

7.2 From the date of the notice given pursuant to clause 6.1 above, either of CEHL or REPL (as is not identified in the notice as being the party that will be carrying out the Authorised Development under the Development Consent Order) will be released with immediate effect from all liabilities, obligations, undertakings and covenants under this Deed which will no longer be enforceable against CEHL or REPL (as applicable).

## 8. **THE COUNCIL'S COVENANTS**

8.1 The Council covenants with the Owner and the Developer to Comply with each obligation, covenant and undertaking on its part as set out in this Deed.

8.2 The Council covenants with the Owner and the Developer as follows:-

8.2.1 not to use or apply the AAQ Monitoring Contribution other than for AAQ Monitoring;

8.2.2 to carry out or procure the carrying out of the AAQ Monitoring;

- 8.2.3 to hold the AAQ Monitoring Contribution in an Interest Bearing Account pending use;
- 8.2.4 from time to time following a reasonable request by the Owner and/or the Developer but not more frequently than once every 12 months to provide the Owner and/or the Developer (as applicable) with a breakdown of expenditure from the AAQ Monitoring Contribution that has been Committed;
- 8.2.5 except where the AAQ Monitoring Contribution has been expended or allocated to pay for a Contribution Contract in which case clause 8.2.6 applies, that if any, all or any part of the AAQ Monitoring Contribution (including any interest earned) has not been Committed or expended on the day 5 years after the day on which the relevant payment was received or on the date this Deed ends (whichever is the earlier), the Council shall repay the unspent portion to the party that made the AAQ Monitoring Contribution together with any interest accrued from the date of payment to the date of repayment; and
- 8.2.6 if the circumstances outlined in Clause 8.3 or 8.4 are met, the Council must repay the relevant part of the AAQ Monitoring Contribution (including any interest earned) to the party that paid that relevant part of the AAQ Monitoring Contribution within 8 weeks of receiving any repayment or it becoming clear that all or part of a AAQ Monitoring Contribution is no longer payable;
- 8.2.7 to prepare or procure the preparation of the AAQ Report, the first AAQ Report to be delivered to the Owner and the Developer on the first anniversary of the Start of Commissioning and then annually on the anniversary of the Start of Commissioning until:-
  - (a) the 26th anniversary of the Start of Commissioning (for the avoidance of doubt, the last AAQ Report to be delivered on the 26th anniversary of the Start of Commissioning); or
  - (b) the permanent cessation of the operation of Work Number 1A.

whichever is the earlier;
- 8.2.8 to enter into any Supplemental Deed as required by the Owner and/or the Developer pursuant to the Owner's and the Developer's obligations in clauses 5.1.2 and 6.3.2 respectively.

8.3 Clause 8.2.6 applies if:-

- 8.3.1 a Contribution Contract is revoked or terminated after the Relevant Date;
- 8.3.2 the Council is repaid all or any part of the AAQ Monitoring Contribution which had been Committed to that Contribution Contract; and
- 8.3.3 the Council does not enter into a replacement Contribution Contract covering the same works, services or supplies within 12 weeks after revocation or termination of the previous Contribution Contract.

8.4 Clause 8.2.6 applies if all or any part of AAQ Monitoring Contribution is no longer payable under a Contribution Contract.

## 9. **SUCCESSORS IN TITLE AND RELEASE**

- 9.1 References in this Deed to the Council include the successors to its statutory functions.
- 9.2 The obligations in this Deed are not binding on or enforceable against any statutory undertaker or other person who acquires any part of the REP Land or any interest in it for the purposes of supplying Utilities or public transport services.
- 9.3 If the Owner or any person disposes of its entire interest in the REP Land or in any part of it, the Owner or that person will be released from its obligations in this Deed which will no longer be

enforceable against the Owner or that person in relation to the REP Land or that part of the REP Land disposed of, except to the extent that disposal is the grant of an easement, restriction, restrictive covenant or similar.

9.4 The release of the Owner or any person under Clause 9.3 is without prejudice to any subsisting liability for any antecedent breach or antecedent failure to Comply with its obligations arising before parting with that interest.

9.5 Nothing in this Deed will prevent Compliance with any obligation under it before that obligation comes into effect or Compliance by the Developer with an obligation of the Owner, and early compliance will not amount to a waiver of the effect of this Clause 9.

## 10. **OTHER DEVELOPMENT**

Nothing in this Deed shall prohibit or limit the right to develop any part of the REP Land in accordance with a planning permission (other than the Development Consent Order) granted (whether or not on appeal) after the date of this Deed.

## 11. **ENFORCEMENT PROTOCOL**

11.1 Before taking action to enforce any of the provisions of this Deed, the Council will give written notice to the Owner and the Developer stating the nature of the breach, the steps required to remedy the breach and specifying a reasonable timescale for the Owner and the Developer for remedying the breach.

11.2 The Council will also give the Owner and the Developer the opportunity to discuss the breach with the Council and the timescale and steps for remedying it prior to the remedy being carried out. The Council will take into account any reasonable representations made by the Owner and the Developer.

11.3 If the Owner and the Developer do not diligently remedy the breach within the time period agreed under the notice (or such longer period subsequently agreed with the Council) the Council shall before taking further enforcement action and where applicable seek to utilise any bond, guarantee, surety or other financial provision in place in respect of the relevant obligation in order to remedy the breach.

11.4 If no bond, guarantee, surety or other financial provision is in place and if the Owner/Developer does not use Reasonable Endeavours to remedy the breach within the stated time period or longer period as agreed with the Council the Council will be able to pursue legal remedies.

## 12. **MORTGAGEE'S CONSENT**

12.1 The Mortgagee acknowledges and declares that:-

12.1.1 this Deed has been entered into by the Owner with its consent;

12.1.2 the REP Land shall be bound by the obligations contained in this Deed; and

12.1.3 the security of the Mortgagee over the REP Land shall take effect subject to this Deed.

12.2 The Parties agree that the Mortgagee will only be liable for any breach of the provisions of this Deed during such period as it is a mortgagee in possession of the REP Land when it becomes bound by the obligations as if it were a person deriving title from the Owner. It will not be liable for any breach of the provisions of this Deed after it has parted with or released its interest in the REP Land.

## 13. **DISPUTE RESOLUTION**

13.1 If a dispute between the Parties persists beyond 10 Working Days and relates to any matter contained in this Deed (but excluding any matter of law), the dispute may be referred to the Expert

by any Party. The Expert will act as an expert and not as an arbitrator. His decision shall be final and binding on the Parties.

- 13.2 Each Party will bear its own costs and the Expert's costs will be paid as determined by him.
- 13.3 The Expert will be appointed subject to an express requirement that he must reach his decision and communicate it to the Parties within the minimum practical timescale allowing for the nature and complexity of the dispute, and in any event not more than 20 Working Days from the date of his appointment to act. His decision will be given in writing with reasons and in the absence of manifest error will be binding on the Parties.
- 13.4 The Expert will be required to give notice to each of the Parties, inviting each of them to submit to him within 10 Working Days written submissions and supporting material and will afford to the Parties an opportunity to make counter submissions within a further 5 Working Days in respect of any such submission and material.

#### 14. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT**

Nothing in this Deed will create any rights in favour of or be enforceable by any person who is not a party to this Deed under the Contracts (Rights of Third Parties) Act 1999.

#### 15. **NOTICES**

- 15.1 Any notice or other written communication to be served on a Party or given by one Party to any other under the provisions of this Deed will be deemed to have been validly served or given if delivered by hand or sent by first class post or sent by recorded delivery post to the Party on whom it is to be served or to whom it is to be given and will conclusively be deemed to have been received on:-
- 15.1.1 if delivered by hand, the next Working Day after the day of delivery;
- 15.1.2 if sent by post, the day 2 Working Days after the date of posting; or
- 15.1.3 if sent by recorded delivery, at the time delivery was signed for.
- 15.2 If a notice, demand or any other communication is served after 4.00pm on a Working Day, or on a day that is not a Working Day, it is to be treated as having been served on the next Working Day.
- 15.3 The address for any notice or other written communication shall be within the United Kingdom.
- 15.4 Where proceedings have been issued in the Courts of England, the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.
- 15.5 A notice or communication will be served or given:-
- 15.5.1 on the Owner at its registered office from time to time or such other address as notified in writing to the parties from time to time, marked for the attention of the General Counsel;
- 15.5.2 on the Developer at its registered office from time to time or such other address notified in writing to the parties from time to time, marked for the attention of the General Counsel;
- 15.5.3 on the Council at the London Borough of Bexley Council, Civic Offices, 2 Watling Street, Bexleyheath, Kent, DA6 7AT or such other address notified in writing to the parties from time to time, marked for the attention of the section 106 monitoring officer; and
- 15.5.4 on the Mortgagee at its registered office from time to time or such other address notified in writing to the parties from time to time, marked for the attention of the CTLA Trustee Services Administration at the Corporate Trust & Loan Agency.
- 15.6 Any notice or other written communication to be given by the Council will be deemed valid and effectual if on its face it is signed on behalf of the Council by an officer or duly authorised signatory.

**16. LOCAL LAND CHARGE AND LAND REGISTRY REGISTRATION**

- 16.1 The Council must register this Deed as a local land charge immediately after the date of this Deed.
- 16.2 The Council must cancel all entries made in the Register of Local Land Charges relating to this Deed as soon as all obligations under this Deed have been satisfied.

**17. JURISDICTION AND LEGAL EFFECT**

- 17.1 This Deed will be governed by and interpreted in accordance with English Law.
- 17.2 If any provision of this Deed is found (for whatever reason) to be invalid, illegal or unenforceable, that invalidity, illegality or unenforceability will not affect the validity or enforceability of the remaining provisions of this Deed.
- 17.3 No waiver (whether expressed or implied) by the Council of any breach or default by the Owner or the Developer in Complying with any obligation, covenant or undertaking in this Deed will constitute a continuing waiver and no waiver will prevent the Council from enforcing any obligation, covenant or undertaking or from acting upon any subsequent breach or default of any obligation, covenant or undertaking by the Owner or the Developer.

**18. INDEXATION, LATE PAYMENT AND VAT**

- 18.1 Any sum to be paid to the Council under this Deed will be adjusted by an amount equivalent to the change in the Index from the date of this Deed to the date on which such sum is paid. Where the change in the Index is negative the sum payable will be reduced accordingly.
- 18.2 If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.
- 18.3 The Parties to this Deed acknowledge and agree in accordance with the guidance set out in HMRC Reference: Notice 742 (June 2012) and in particular paragraphs 8.4 and 8.6 that whilst such guidance remains applicable, the AAQ Contribution in this Deed is not subject to VAT treatment and no VAT should be charged or recoverable in addition to the amount of the AAQ Contribution specified in the Deed.

**EXECUTED AS A DEED** by the parties on the date which first appears in this Deed.

**EXECUTED** as a deed by )  
affixing the common seal of the **MAYOR AND** )  
**BURGESSES OF THE LONDON BOROUGH OF** )  
**BEXLEY** was hereto affixed in the presence of:- )  
)  
)

Common seal of company **MAYOR AND BURGESSES**  
**OF THE LONDON BOROUGH OF BEXLEY**

In the presence of:

**EXECUTED** as a deed )  
by **CORY ENVIRONMENTAL LIMITED** )  
acting by [a director and its secretary] )  
[two directors]:- )  
)

Director

Director/Secretary

**EXECUTED** as a deed )  
by **CORY ENVIRONMENTAL HOLDINGS** )  
**LIMITED** )  
acting by [a director and its secretary] )  
[two directors]:- )

Director

Director/Secretary

**EXECUTED** as a deed )  
by **RIVERSIDE ENERGY PARK LIMITED** )  
acting by [a director and its secretary] )  
[two directors]:- )  
)

Director

Director/Secretary

**EXECUTED** as a deed )  
by **HSBC Corporate Trustee Company (UK)** )  
**Limited** )  
acting by a director )  
in the presence of:- )

Signature of witness .....

Name (in BLOCK CAPITALS) .....

Address .....

.....

.....

## SCHEDULE 1

### LAND AND TITLE(S)

#### PART 1

#### REP LAND

<b>Description of Land</b>	<b>Title Documents</b>
9385 square metres of land being car park, scrubland and hardstanding and labelled plot 02/04 on the Land Plans	Title number K137567
2606 square metres of land being car park and labelled plot 02/22 on the Land Plans	Title number SGL129715

#### PART 2

#### REP ADDITIONAL LAND

<b>Description of Land</b>	<b>Title Documents</b>
15040 square metres of land being industrial premises, greenery and hardstanding and labelled plot 02/02 on the Land Plans	Title number SGL535744
4678 square metres of land being industrial premises and hardstanding at Wernick Event Hire Limited, Norman Road and labelled plot 02/05 on the Land Plans	Title number SGL502959
6362 square metres of land being industrial premises and hardstanding and labelled plot 02/06 on the Land Plans	Title Number SGL511335
875 square metres of land being industrial premises, access road and hardstanding and labelled plot 02/07 on the Land Plans	Title Number SGL535744
999 square metres of land being grassland, greenery and shrubbery and labelled plot 02/09 on the Land Plans	Title Number SGL509429
936 square metres of land being shrubbery and grassland, south of the Riverside Resource Recovery Facility and west of Norman Road, Belvedere and labelled plot 02/23 on the Land Plans	Title Number SGL632977



## **SCHEDULE 2**

### **AMBIENT AIR QUALITY MONITORING**

#### **PART 1**

1. The Owner or the Developer shall pay the AAQ Monitoring Contribution on the Start of Commissioning and then annually on the anniversary of the Start of Commissioning until:-
  - 1.1 the 25th anniversary of the Start of Commissioning (for the avoidance of doubt, the last payment to be made on the 25th anniversary of the Start of Commissioning); or
  - 1.2 the permanent cessation of the operation of Work Number 1Awhichever is the earlier.

#### **PART 2**

1. The data to be provided in the AAQ Report must include as a minimum the monitoring of the following pollutants, which must be reported in a manner that enables a direct comparison against national air quality objectives, and the monitoring locations:
  - 1.1 nitrogen dioxide;
  - 1.2 PM10;
  - 1.3 PM2.5;
  - 1.4 carbon monoxide; and
  - 1.5 sulphur dioxide.

### **SCHEDULE 3**

#### **FUND FOR DECOMMISSIONING**

1. From the earlier of 32 years from the Start of Commissioning or three years prior to the permanent cessation of the operation of Riverside Energy Park (unless otherwise agreed in writing between the Council and the Owner or the Developer), the Owner or the Developer shall submit to the Council for approval details of an appropriate financial guarantee (whether, for example, in the form of a bond from a reputable financial institution or a deposit placed with the Council or a suitable parent company guarantee) to cover the costs of Decommissioning the works identified as Work Numbers 1, 2, 3, 4 and 5 of the Authorised Development, such financial guarantee to be used by the Council in the event of default by the Owner or the Developer of such obligations.
2. In the event that the Council neither approves nor refuses approval of the details submitted pursuant to paragraph 1 of this Schedule within the 2 months of the date of submission the details shall be deemed to have been approved;
3. In the event that the Council makes a reasonable and proper request in writing to the Owner or the Developer prior to the expiry of the 2 month period in paragraph 2, the period referred to in paragraph 2 shall be extended to a period agreed between the Council and the Owner or the Developer (all parties acting reasonably and not to unreasonably withhold or delay their consent);
4. If, prior to expiry of the said 2 month period (or such extended period if applicable), the Council issues a refusal of details submitted pursuant to paragraph 1 then, subject always to the provisions of clause 13, the Owner or the Developer shall submit within 2 months of the date of such refusal amended details taking proper account of any reasonable and proper reasons for refusal given by the Council and paragraphs 2 and 3 of this Schedule shall apply to each re-submission.
5. In the event of any dispute arising in relation to this Schedule, the arbitration provisions in article 42 of the Development Consent Order will apply.

SCHEDULE 4

SUPPLEMENTAL AGREEMENT

DATED

201[X]

- (1) The Mayor and Burgesses of the London Borough of Bexley
- (2) [REDACTED]<sup>1</sup>
- (3) [REDACTED]<sup>2</sup>

SUPPLEMENTAL DEVELOPMENT CONSENT OBLIGATION BY AGREEMENT

made pursuant to section 106 of the Town and Country Planning Act 1990 and all other powers enabling

relating to the development to be known as Riverside Energy Park on land at Norman Road Belvedere Kent



Pinsent Masons

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<sup>1</sup> Insert name of Covenantor

<sup>2</sup> Insert names of chargees (if any)

THIS SUPPLEMENTAL AGREEMENT is made on

20[ ]

**BETWEEN:-**

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BEXLEY** of Civic Offices, Broadway, The Broadway, Bexleyheath, Kent, DA6 7LB (the "**Council**");
- (2) [ ] whose [registered office/address] is [ ] (the "**Covenantor**");
- [(3) [ ] of [ ] (the "**Chargee**")]<sup>3</sup>

**RECITALS**

**WHEREAS:-**

- (A) The Council is the local planning authority for the purposes of section 106 of the 1990 Act for the area within which the REP Additional Land is situated.
- (B) On [ ] 2019 the Council (1), Cory Environmental Limited (2), Cory Environmental Holdings Limited (3) Riverside Energy Park Limited (4) and HSBC Corporate Trustee Company (UK) Limited (4) entered into the Principal Agreement.
- (C) At the date the Principal Agreement was completed, Cory Environmental Limited did not hold either a legal or equitable interest in the REP Additional Land.
- (D) On [ ] 201[ ] [and on [ ] 201[ ]] the Covenantor became the proprietor of the freehold interest in the REP Additional Land.
- (E) This Supplemental Agreement is entered into for the purpose of confirming that certain of the obligations, covenants and undertakings contained in the Principal Agreement are binding on the REP Additional Land for the purposes of the said section 106 of the 1990 Act.

**OPERATIVE PROVISIONS:-**

**1. INTERPRETATION**

- 1.1 Save where provided otherwise, words and expressions used in this Supplemental Agreement have the meaning assigned to them in the Principal Agreement.
- 1.2 For the purposes of this Supplemental Agreement, the following words and expressions have the meanings assigned:-

**"Principal Agreement"** means an agreement dated [ ] 201[ ] between the Council (1), Cory Environmental Limited (2), Cory Environmental Holdings Limited (3) Riverside Energy Park Limited (4) and HSBC Corporate Trustee Company (UK) Limited (5) and entered into pursuant to section 106 of the 1990 Act and other relevant powers;

**"REP Additional Land"** means the land edged [ ] on the plan attached to this Supplemental Agreement, being the land edged blue on the Plan attached to the Principal Agreement.

**2. OPERATION OF THIS SUPPLEMENTAL AGREEMENT**

- 2.1 This Supplemental Agreement is supplemental to the Principal Agreement and is entered into pursuant to section 106 of the 1990 and (insofar as this Agreement does not contain planning

<sup>3</sup> Insert details of any persons holding legal charges over the Land or delete if no charges.

obligations), section 1 of the 2011 Act, sections 111, 120 and 139 of the Local Government Act 1972, and all other enabling powers that may be relevant to the enforcement of the obligations contained in this Supplemental Agreement and the Principal Agreement.

- 2.2 The obligations, covenants, undertakings and agreements contained in this Supplemental Agreement and given to the Council are development consent obligations for the purposes of section 106 of the 1990 Act and are enforceable by the Council as the local planning authority for the area within which the REP Additional Land is located.
- 2.3 The Covenantor confirms to and covenants with the Council that from the date of this Supplemental Agreement its freehold interest in the REP Additional Land is bound by the obligations, covenants and undertakings of the Principal Agreement contained within clause 2.4 below and that such obligations, covenants and undertakings are development consent obligations pursuant to and for the purposes of section 106 of the 1990 Act and so as to bind the REP Additional Land and the said obligations, covenants and undertakings are entered into by the Covenantor with the intent that they shall be enforceable not only against the Covenantor but also against any successors in title to or assigns of the Covenantor and/or any person claiming through or under the Covenantor an interest or estate in the REP Additional Land (other than a statutory undertaker insofar as and to the extent that the relevant statutory undertaker is occupying the REP Additional Land in its capacity as a statutory undertaker) as if that person had been an original covenanting party in respect of such interest for the time being held by it.
- 2.4 The obligations, covenants and undertakings referred to in clause 2.3 are those contained within the following Schedules of the Principal Agreement:
- 2.4.1 Schedule 2; and
- 2.4.2 Schedule 3.
- 2.5 The Council covenants with the Covenantor in respect of the REP Additional Land to perform the obligations, covenants and undertakings on its part contained in the Principal Agreement that relate to the REP Additional Land.

### 3. **[CHARGEES CONSENT**

- 3.1 The Chargee acknowledges and declares that:-
- 3.1.1 this Supplemental Agreement has been entered into by the Covenantor and the Council with its consent;
- 3.1.2 that the REP Additional Land shall be bound by the obligations contained in this Supplemental Agreement; and
- 3.1.3 the security of the mortgagee over the REP Additional Land to which this Deed relates shall take effect subject to this Supplemental Agreement.
- 3.2 The Chargee being a full member of the Council of Mortgage Lenders or otherwise approved in writing by the LPA on a case-by-case basis will be liable only for any breach of the provisions of this Supplemental Agreement during such period as he is a chargee in possession of the REP Additional Land.]

### 4. **LOCAL LAND CHARGE**

This Supplemental Agreement is a local land charge and shall be registered as such.

**IN WITNESS** whereof the parties have executed this Supplemental Agreement as a deed the day and year first above written

**EXECUTED** as a deed by )  
affixing the common seal of the **MAYOR AND** )  
**BURGESSES OF THE LONDON BOROUGH OF** )  
**BEXLEY** was hereto affixed in the presence of:- )  
)  
)

Common seal of company **MAYOR AND BURGESSES**  
**OF THE LONDON BOROUGH OF BEXLEY**

In the presence of:

**EXECUTED** as a deed )  
by [ ] )  
acting by [a director and its secretary] )  
[two directors]:- )  
)

Director

Director/Secretary

**EXECUTED** as a deed )  
by [ ] )  
acting by [a director and its secretary] )  
[two directors]:- )  
)

Director

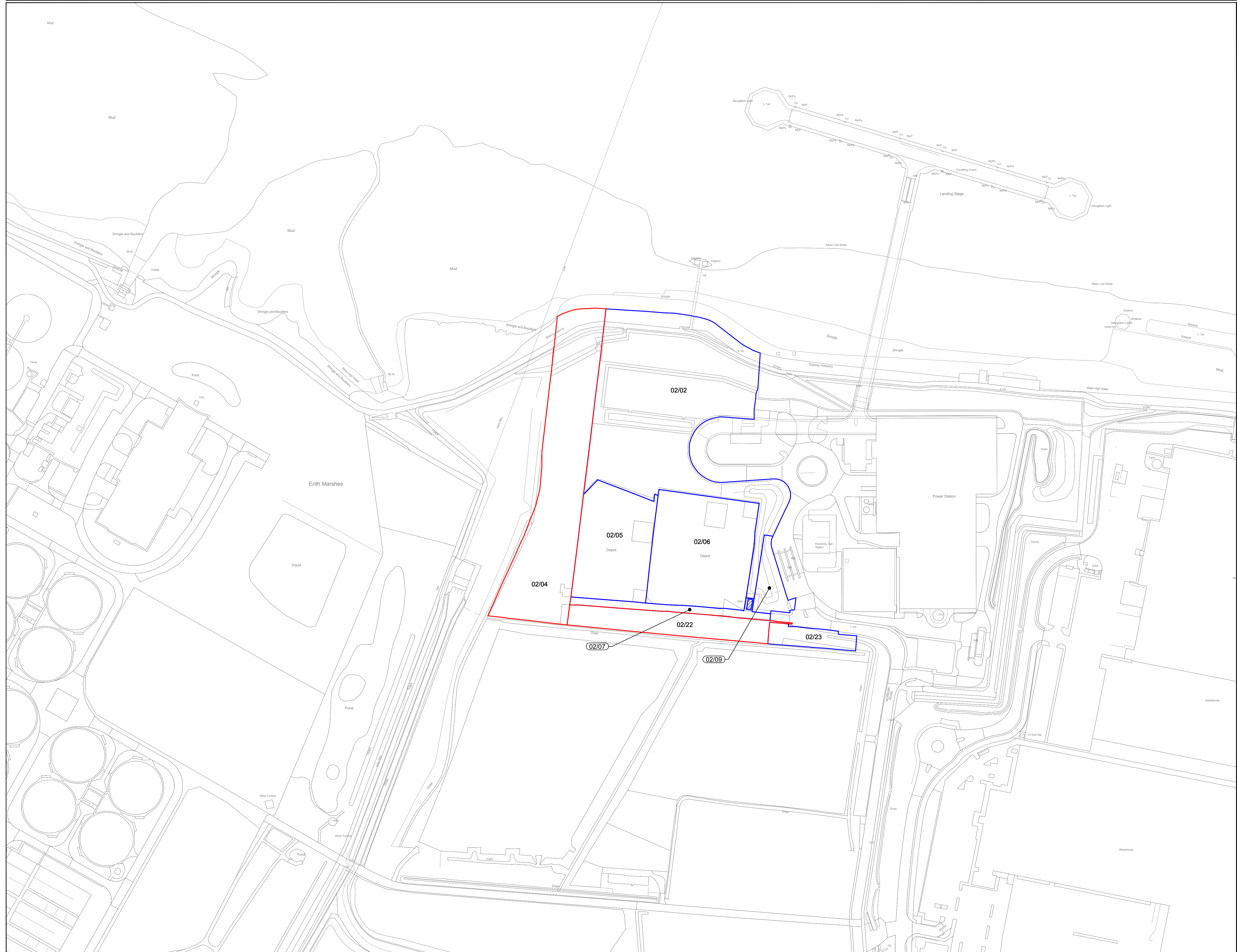
Director/Secretary

**APPENDIX 1**

**PLAN**

Key:

- REP Land.
- REP Additional Land.
- Land excluded from REP Additional Land.



Title:  
**Plan - Appendix 1**  
**Sheet 1 of 1**

Scale: 1:1250 @ A1

Dwg Ref: N:\CAD Team\Cory Environmental\DWGS\Master Plan\Cory\_E\_Plan-Appendix1.dwg

Doc Ref: 2.1 Regulation 5(2)(i)

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	Date: 25.09.2019	Drawn by: G.J.
	Rev: 1	Checked: A.P.