

DATED 20th March 2014/5

NORFOLK COUNTY COUNCIL

- and -

BIFFA WASTE SERVICES LIMITED

- and -

CEMEX UK OPERATIONS LIMITED

- and -

NOVERA ENERGY GENERATION NO 2 LIMITED

A G R E E M E N T

Under Section 106 of the
Town and Country Planning Act 1990
relating to Landfill Site at
Deighton Hills Shooting Ground Attlebridge Norfolk

Head of Law
Norfolk County Council
County Hall
Martineau Lane
Norwich
NR1 2DH

NS/41209

Registered as a
LLC (Part 3)
07/4/15

THIS AGREEMENT is made by Deed the 20th day of March 2014/5
BETWEEN:-

- (1) **THE NORFOLK COUNTY COUNCIL** of County Hall Martineau Lane
Norwich Norfolk NR1 2DH ("the County Council") and
- (2) **BIFFA WASTE SERVICES LIMITED** (Co Regn No. 946107) whose
registered office is situate at Coronation Road Cressex High Wycombe
Bucks HP12 3TZ ("the Owner") and
- (3) **CEMEX UK OPERATIONS LIMITED** (Co Regn No. 00658390) whose
registered office is situate at Cemex House, Coldharbour Lane Thorpe,
Egham, Surrey TW20 8TD ("CEMEX") and
- (4) **NOVERA ENERGY GENERATION NO 2 LIMITED** (Co Regn No.
02366593) whose registered office is situate at First Floor 500 Pavilion
Drive, Northampton Business Park, Northampton NN4 7YJ ("the
Lessee")

RECITALS

- A. The County Council is a local planning authority within the meaning of
the 1990 Act for the area within which the Land is situated
- B. The Owner is the registered proprietor of the Land which is registered at
H M Land Registry under title numbers NK219352, NK334847 and
NK165000 subject to the matters recorded on the register
- C. CEMEX has the benefit of an Option Agreement dated 9th November
2005 over that part of the Land shown edged pink on the Plan and is
entering into this Deed to acknowledge that any interest it takes will be
subject to the obligations contained herein

- D. The Lessee has the benefit of a Lease over that part of the Land edged blue on the Plan and is entering into this Deed to bind its interest in that part of the Land which forms part of an area associated with site infrastructure (Area 10) and where levels and surface type are unaffected by the restoration scheme referred to in the Application.
- E. The Owner has submitted the Application to the County Council for planning permission to carry out the Development and the County Council have resolved to grant the Planning Permission subject to completion of this Deed

NOW THIS DEED WITNESSETH as follows:

DEFINITIONS

1. In this Deed:

1.1 The following words have the following meanings unless in the context it would not be appropriate:

"the 1990 Act"	the Town and Country Planning Act 1990 or any statutory modification or re-enactment thereof
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"the Application"	the application for variation of conditions 1, 2, 9 and 10 of planning permission reference C/5/2009/5013 to amend the restoration scheme / contours and to extend the restoration period until 31 st March 2016 to allow time to bring in sufficient restoration soils and for planting on the land edged red on the Plan in accordance with the forms plans
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and particulars deposited with the District Council and numbered C/5/2012/5008

"Commencement"	the initiation of the Development by the carrying out of a material operation within the meaning of Section 56(4) of the 1990 Act and "Commence" shall be interpreted in accordance with this definition
"the Development"	development for waste disposal, re-excavation of sand and restoration to heathland carried out pursuant to the Planning Permission
"the Land"	the land at Attlebridge Landfill site Norfolk shown edged red on the Phase Plan
"Phase"	means one or more of the areas of the Development identified as Areas numbered 1 to 10 on the Phase Plan and "Phase" or "Phases" shall be construed accordingly
"the Phase Plan"	the plan annexed hereto and numbered AT939-D2v3
"the Plan"	the plan annexed hereto and labelled "the section 106 Plan"
"the Planning Permission"	means the planning permission granted pursuant to the Application for the

Development which shall include any subsequent planning permission issued pursuant to an application to vary its conditions under Section 73 of the Act

INTERPRETATION

- 1.2 One gender includes all the others
- 1.3 The singular includes the plural and vice versa
- 1.4 the obligations imposed by this Deed on more than one person are joint and several
- 1.5 The parties to this Deed include their respective successors in title
- 1.6 A covenant not to do something includes a covenant not to permit or suffer that thing to be done
- 1.7 Headings in this Deed are for ease of reference only and cannot be taken into account in its construction or interpretation
- 1.8 A reference to a paragraph or clause in the Schedule of this Deed is a reference to a paragraph or clause in that part of the Schedule

ENABLING POWERS

- 2. This Deed and the covenants hereinafter contained are made with the County Council and are enforceable by the County Council pursuant to Section 106 of the 1990 Act (and to the extent to which the said covenants are capable of being entered into thereunder they shall constitute planning obligations for the purposes thereof) Sections 111

and 139 of the Local Government Act 1972 or any statutory modification or re-enactment thereof and any other powers thereby enabling

OWNER'S OBLIGATIONS & CONSENTS

- 3.1 The Owner covenants with the County Council so as to bind the Land and to observe and perform the obligations contained in the Schedule to this Deed
- 3.2 The Owner covenants that it is the freehold owner of the Land and has full power to enter into this Deed and that the Land is free from all mortgages charges or other encumbrances and that there is no other person having an interest in the Land other than the parties to this Deed whose consent is necessary to make this Deed binding on the Land and all estates and interests in it
- 3.3 CEMEX hereby consent to the Owner entering into this Deed and acknowledge that its interest in the Land is bound by the obligations contained herein.
- 3.4 The Lessee covenants with the County Council so as to bind its interest in that part of the Land edged blue on the Plan that in the event that it acquires an interest in any other parts of the Land and carries on the Development it will observe and perform the obligations contained in the Schedule to this Deed to the extent of such acquired interest.

AGREEMENTS AND DECLARATIONS

4. The parties agree and declare as follows:
 - 4.1 No waiver (whether express or implied) by the County Council of any breach or default by the Owner or their successors in title in performing or observing any of its obligations under this Deed shall constitute a

continuing waiver or prevent the County Council from enforcing those obligations or from acting upon any subsequent breach or default

- 4.2 This Deed shall cease to have effect if the Planning Permission shall be quashed revoked or otherwise withdrawn before the date upon which the Development is Commenced AND FOR THE AVOIDANCE OF DOUBT where permission is issued pursuant to an application under section 73 of the Act this Deed shall continue in full force and effect subject to and in accordance with the provisions contained herein AND PROVIDED THAT in the event that upon receipt of an application under section 73 of the Act the County Council considers that the obligations contained in this Deed should be varied or amended it is agreed and acknowledged that the County Council retain the right to refuse such application unless and until a deed of variation or alternative agreement has been entered into to secure the appropriate obligations.
- 4.3 The provisions of this Deed shall only come into effect on Commencement of the Development unless otherwise specifically indicated in this Deed or to construe otherwise would be inconsistent with the requirements of any such covenants or provisions
- 4.4 Without prejudice to the enforcement of restrictions and obligations against successors in title no person shall be liable for any breach of this Deed if at the time the breach occurs they have no interest in the Land
- 4.5 The County Council shall not be liable to any person under this Deed after that person has parted with all interest in the land but without prejudice to any liability arising prior thereto
- 4.6 The Owner agrees to pay to the County Council their reasonable legal costs incurred in connection with the preparation of this Deed

DISPUTE RESOLUTION

- 5.1 The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Deed promptly through negotiations between the respective senior executives of the parties who have authority to settle the same.
- 5.2 If the matter is not resolved through negotiation the parties will attempt in good faith to resolve the dispute or claim through an Alternative Dispute Resolution ("ADR") procedure as recommended to the parties by the Centre for Dispute Resolution.
- 5.3 If the matter has not been resolved by an ADR procedure within 28 days of the initiation of such procedure or if either party will not participate in an ADR Procedure the dispute may be referred by either party to arbitration for decision by a person appointed by agreement between the parties or in default of agreement by the President for the time being of the Institute of Civil Engineers who shall act as an expert and not as an arbitrator and whose decision shall be final and binding upon the parties.
- 5.4 Nothing in this clause shall apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings.

CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 6. Subject to Clause 1.5 no person shall derive any benefit or have any right entitlement or claim in relation to this Deed by virtue of the Contracts (Rights of Third Parties) Act 1999

JURISDICTION

- 7. This Deed is govern by and interpreted in accordance with the laws of England and Wales

SCHEDULE

- 1 The Owner hereby covenants with the County Council as follows:-
 - 1.1 within 12 months of the date of this Deed to submit to the County Council a revised scheme for the ongoing maintenance management and monitoring of the Land for the approval of the County Council such scheme to include:
 - a) provision for the restoration to heathland and grass heath in accordance with the restoration plan submitted as part of the Application under reference number AT939-D3v4 and dated November 2012 or such other plan as is approved and agreed by the County Council
 - b) such other provisions as may be agreed in writing between the parties(the "Management Scheme")
 - 1.2 to implement the approved Management Scheme within the timescales set out therein but no later than 12 months from completion of each Phase of the Development or as otherwise agreed with the County Council
 - 1.3 to thereafter manage the Land to the reasonable satisfaction of the County Council in accordance with the approved Management Scheme for a minimum period of 25 years following completion of the restoration of the final Phase of the Development

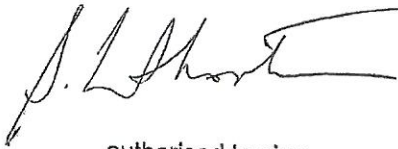
1.4 upon completion of this Deed and upon receipt of 48 hours notice (or such other period as the Owner may agree) to allow access to the Land to the County Council it's officers and it's authorised agents including any conservation body as may be nominated by the County Council and agreed with the Owner, such agreement not to be unreasonably withheld (the "Nominated Body") for the purposes of monitoring the implementation of and compliance with the approved Management Scheme when required

1.5 within 12 months of the date of this Deed to convene a meeting between the Owner the County Council and the Nominated Body to discuss the detailed management of the Land

IN WITNESS whereof the parties hereto have executed this instrument as their deed and it is the parties' intention that this deed be delivered and it is hereby delivered on the date first before written

THE COMMON SEAL of
THE NORFOLK COUNTY COUNCIL
was hereunto affixed
in the presence of:-

HEAD OF LAW



authorised to sign
on behalf of: HEAD OF LAW



37598

Executed as a deed by **BIFFA
WASTE SERVICES LIMITED**
acting by a director in the presence of:

K.W.M

Director

Signature of witness



Name (in BLOCK CAPITALS) MR. D FRYER, SOLICITOR
BIFFA WASTE SERVICES LIMITED
CORONATION ROAD
CRESSEX
HIGH WYCOMBE
BUCKINGHAMSHIRE HP12 3TZ

Address

Executed as a deed by **CEMEX
UK OPERATIONS LIMITED**
acting by a director



in the presence of:

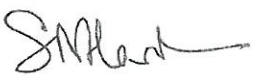

Witness signature:



Witness name (please print): DAPHNE M MURRAY

Witness address: Cemex House,
Coldharbour Lane, Thorpe,
Esham, Surrey TW20 8TD

Executed as a deed by
**NOVERA ENERGY
GENERATION NO 2 LIMITED**
acting by a director and its
secretary or by two directors:


Director

Director/Secretary

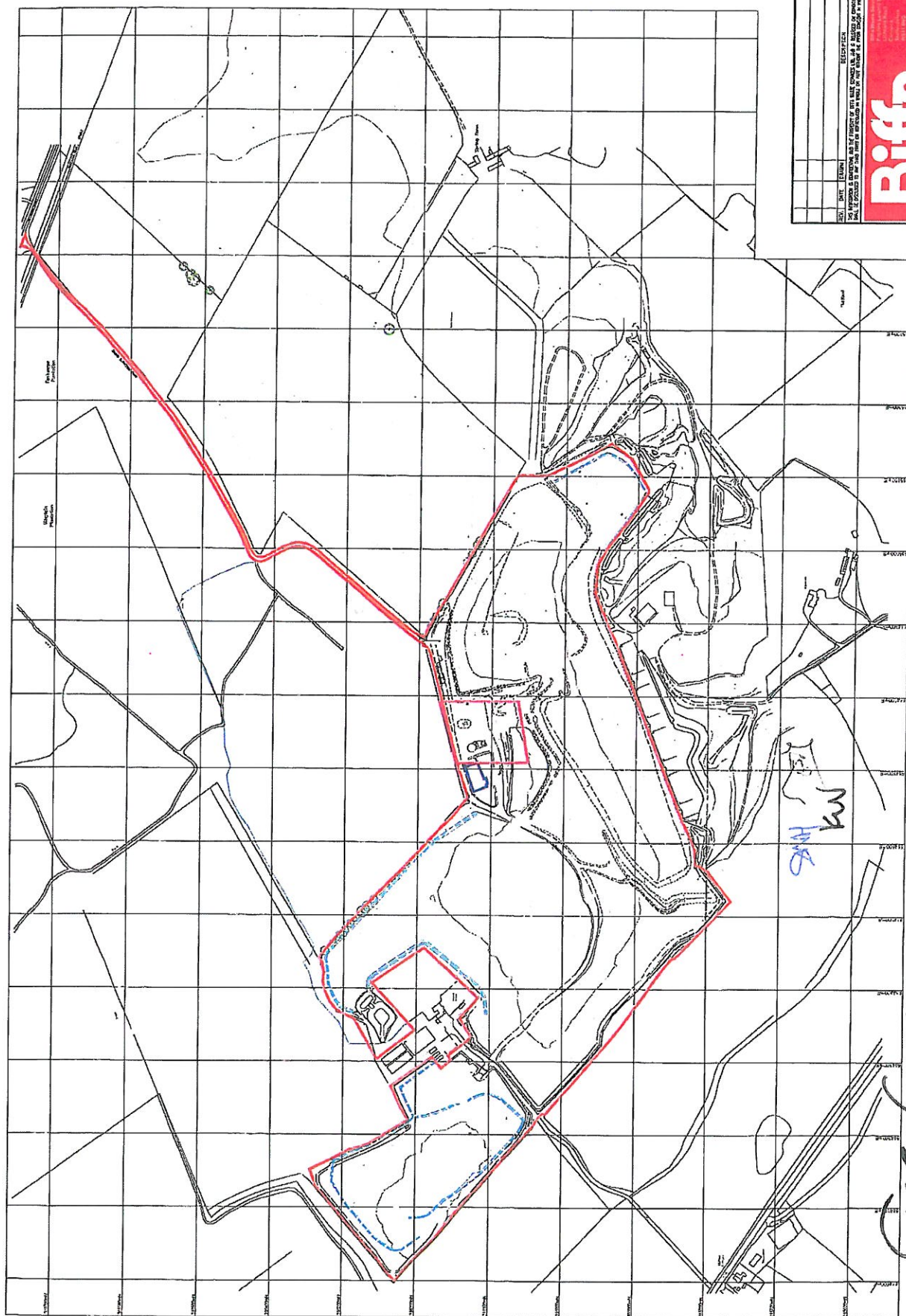


J. L. Lethbridge

authorised to sign
on behalf of: HEAD OF LAW

77598

PROJECT		DATE	DESIGN	SCALE
PLANNING				
UPON				
ATTLEBOROUGH LANDFILL SITE				
DRAWING TITLE		SECTION 105 PLAN		
DATE		06/11/2014		
SCALE		1:1000		
Biffa				
Biffa Waste Services Ltd Biffa Waste Services Ltd Biffa Waste Services Ltd Biffa Waste Services Ltd Biffa Waste Services Ltd				



KEY

- NEEDLE AREA OF INTEREST
- APPLICATION AREA
- BOUNDARY

ALL DIMENSIONS SHOWN ARE IN METRES

77598

authorised to sign
on behalf of HEAD OF LAW



PROJECT	Planning Application
LOCATION	Atteridge Lodge Site
DATE	20/06/2012
SCALE	1:1000 (2 A1)
DESIGNED BY	AKS/SH/DO
CHECKED BY	
DATE	
SCALE	
PROJECT	
LOCATION	
DATE	
SCALE	

Key

- Planning boundary (1:1000 Scale)
- Existing or new 1:1000 survey work (see topographic survey dated 20/06/2012)
- Proposed contour (based on 20/06/2012 data 25-1-03)
- Contour to show where vegetation is proposed, and where further information may be required (see survey data 25-1-03)
- Proposed (see settlement contours in area 10 to be retained)

Area 10: 100m x 100m (approximate)

Area 9: 100m x 100m (approximate)

Area 8: 100m x 100m (approximate)

Area 7: 100m x 100m (approximate)

Area 6: 100m x 100m (approximate)

Area 5: 100m x 100m (approximate)

Area 4: 100m x 100m (approximate)

Area 3: 100m x 100m (approximate)

Area 2: 100m x 100m (approximate)

Area 1: 100m x 100m (approximate)

SMH BT

kw

Dec 19/2011

