

Matthew Woodward
Barnsley Metropolitan Borough Council
Barnsley Westgate Plaza
PO Box 604
Barnsley
S70 9SE

Date 27 June 2012
Your ref
Our ref WRIGLEE/177330-000008
Direct dial 0845 498 4830
Direct fax 0845 497 6121
elspethwrigley@eversheds.com

Dear Matthew

Unilateral Undertaking relating to land at Hazelhead/Crow Edge, Flint Lane, Sheffield

Please find enclosed a certified copy of the above undertaking, as discussed.

Thank you again for your assistance in concluding this matter and if there is any further information which would assist please do not hesitate to contact me.

Yours sincerely

PP 
Elspeth Wrigley
Associate
For Eversheds LLP

Enclosure

02 JUL 2012

RT DM

NOCHW

WC

DL

Eversheds LLP
Bridgewater Place
Water Lane
Leeds LS11 5DR

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DX 12027 Leeds-27
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Dated 13 JUNE 2012

- (1) H J Banks and Company Limited
- (2) Banks Renewables (Hazelhead Wind Farm) Limited
- (3) HSBC Bank Plc

Undertaking

under section 106 Town and Country Planning Act 1990 relating to land at
Hazelhead/ Crow Edge, Flint Lane, Sheffield

**We certify this document to be a
true copy of the original.**

Eversheds LLP *Eversheds LLP*

Dated 15.6.2012

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THIS UNDERTAKING is given on

2012

BY:

0124 7725

- (1) **H J Banks and Company Limited** (registered number ~~2267400~~) whose registered office is at Inkerman House, St John's Road, Meadowfield, Durham, DH7 8XL ("**the Landowner**");
- (2) **Banks Renewables (Hazelhead Wind Farm) Limited** (registered number 05903555) whose registered office is at Inkerman House, St John's Road, Meadowfield, Durham, DH7 8XL ("**the Leaseholder Owner**")
- (3) **HSBC Bank Plc** (registered number 14259) whose registered office is at 8 Canada Square, London E14 5HQ ("**the Mortgagee**")

TO:

Barnsley Metropolitan Borough Council of Town Hall Church Street, Barnsley, S70 2TA ("**the Council**")

BACKGROUND

- (A) For the purposes of the 1990 Act, the Council is the local planning authority for the area within which the Site is located.
- (B) The Landowner is the freehold owner of the whole of the Site subject only to the Security, but otherwise from encumbrances that would prevent the Landowner entering into this Undertaking.
- (C) The site is leased by Banks Renewables (Hazelhead Wind Farm) Limited.
- (D) On 20 June 2007, the Landowner obtained the Original Planning Permission, for the development of three (3) wind turbines and associated infrastructure. The associated infrastructure for this development included a substation building.
- (E) The wind farm has now been constructed and it is proposed that the substation building is constructed in a different location to that authorised by the Original Planning Permission.
- (F) On 6 June 2011, the New Planning Application was been submitted by the Leasehold Owner for the carrying out of the substation building development to reflect the revised location of the substation building (as shown on the New Layout Plan) and the Council is minded to grant the New Planning Permission subject to the completion of this Undertaking.

- (G) The Landowner and Leasehold Owner consider that certain planning obligations should be entered into as at the date of this Undertaking, subject to the conditions set out in this Undertaking, in respect of the Site.
- (H) The Landowner and Leasehold Owner have agreed to enter into this Undertaking with the intention that the obligations contained in this Undertaking may be enforced by the Council against the Landowner and Leasehold Owner and their successors in title.

OPERATIVE PROVISIONS

1. INTERPRETATION

- 1.1 In this Undertaking, the following words and expressions have the following meanings:

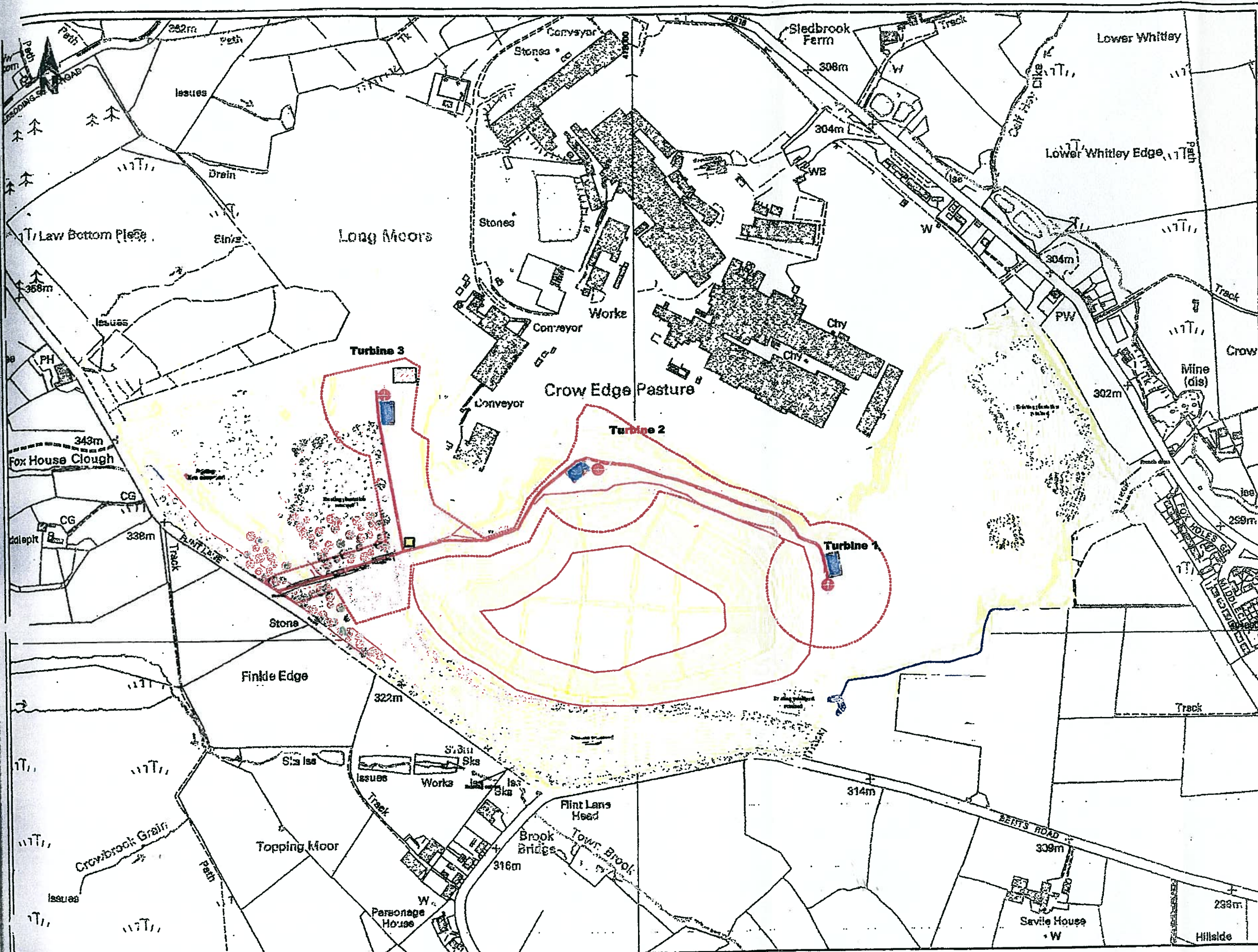
"1990 Act"	the Town and Country Planning Act 1990
"Commencement Date"	the date specified in clause 3.1
"New Layout Plan"	the plan attached to this Undertaking marked Plan 2 and given the reference number HJB/TA574/42a
"New Planning Application"	the application for planning permission in respect of the revised location of a substation building, carrying the reference 2011/0859
"New Planning Permission"	the planning permission to be granted pursuant to the New Planning Application
"Original Development"	the development as specified in the Original Planning Permission
"Original Planning Permission"	planning permission for the erection of a three turbine wind farm reference 2006/1575 dated 20 June 2007
"Original Layout Plan"	the plan attached to this Undertaking marked Plan 1 and given the reference number HJB/574/PA03
"Security"	a legal charge affecting the Site and also the land registered under title SYK466021, dated ^{19th} 31 October 2006 and made between (1) the Landowner and (2) the Mortgagee

"Site"	the freehold property known as Hazelhead/ Crow Edge, Flint Lane, Sheffield, forming part of the property registered at HM Land Registry under the Title Number SYK563976 shown for identification hatched red on the Site Plan
"Site Plan"	the plan attached to this Undertaking and marked Plan 3 and given the reference number HJB/574/PA01
"Substation Building"	the substation building forming part of the Original Development and referred to as the "site control building" in key of Plan 1
"Title Number(s)"	Title Number SYK563976

1.2 In this Undertaking:

- 1.2.1 the clause headings do not affect its interpretation;
- 1.2.2 references to any statute or statutory provision include references to:
 - 1.2.2.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and
 - 1.2.2.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;
- 1.2.3 references to the Site include any part of it;
- 1.2.4 "including" means "including, without limitation";
- 1.2.5 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Undertaking is to be unaffected.

1.3 The parties to this Undertaking do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it



Legend

- Application boundary
- Top of batter of waste void (Hazelhead Reclamation Scheme)
- Bottom of batter of waste void (Hazelhead Reclamation Scheme)
- Contours @ 1m intervals
- Construction compound
- Proposed anemometer location
- Proposed turbine location
- Site control building
- Proposed crane pad

MJB
Jhanki

HSBC Bank plc
Sheffield Securities
Processing Centre

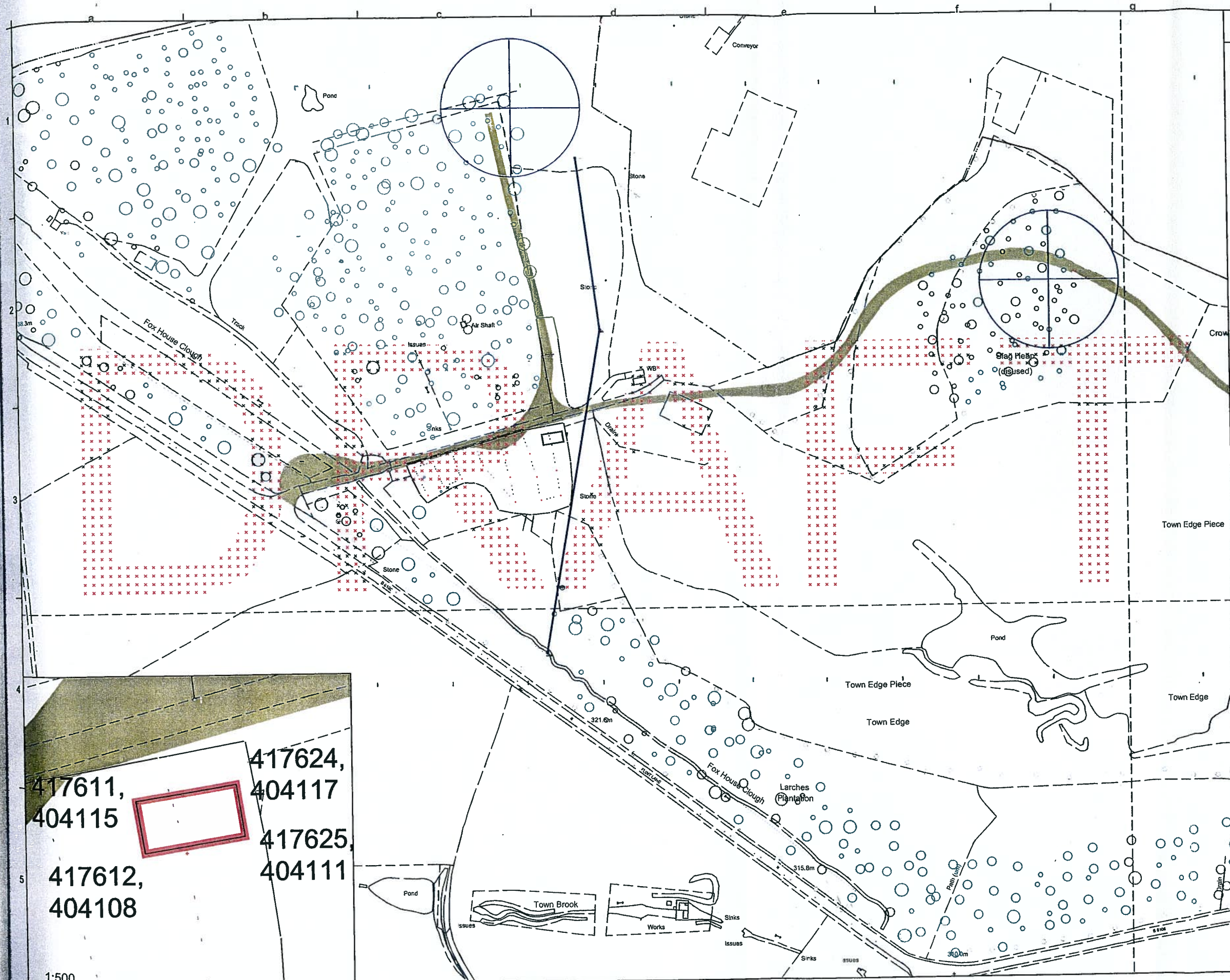


Bank Official	
Rev.	Date

BANKS
 HJ Banks & Company Limited
 3 Landrick Way,
 Baborough Links,
 Chesterfield, Derbyshire
 S443 4XE
 Telephone 01246 571500
 Fax 01246 571555
 Development Division Midlands Area

Project Hazlehead Windfarm	
Title Turbine Locations & Landfill Void	
Drawn: MR / STd	Checked: RW
Scale NTS	Date: 28/06/05 O.S. Ref. SE10
Consult:	Consultant Drawing No:
Drawing number HJB / 574 / PA03	

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 Drawing number HJB / 574 / PA03
 DOC No: DEV001604.3



Key

- Application boundary
- Water main
- Consented windfarm access track

M B
Quain

Notes:

HSBC Bank plc				
Sheffield Securities				
Processing Centre				
A	Amendment to xxxx	SH	SP	03/05/11
Bank Official				
Revision:	Description:	Drm:	Chkd:	Date:



Source Information:

Drawn: SH	Orig: BH	Checked: SP	App: 21/04/11
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Planning Application Drawing 01

DRAFT

Project:	Hazlehead Windfarm Substation
Title:	Site Location
Scale:	1:2500@A3
Ref:	HJB / TA574 / 42a
Sheet:	1/1

BANKS Renewables
development with care

Inkerman House, St John's Road, Meadowfield, Durham, DH7 8XL
T: 0844 209 1515 F: 0844 209 1565 W: www.banksgroup.co.uk

417611, 404115

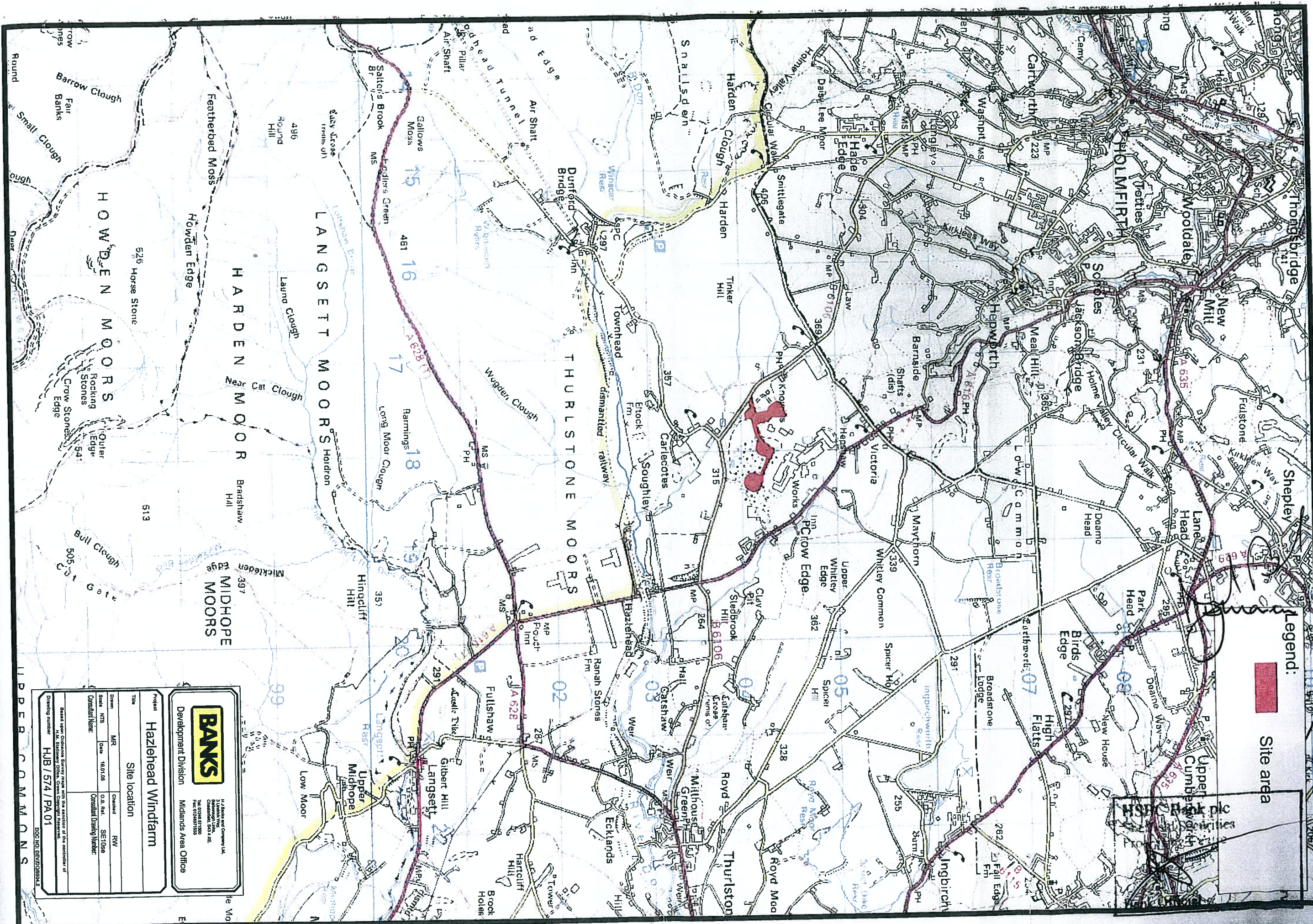
417612, 404108

417624, 404117

417625, 404111

1:500

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Legend:



Site area

BANKS		14, Station Road, Hazelhead, S64 4AE Tel: 01924 871800 Fax: 01924 871805	
Development Division Midlands Area Office			
Project Hazelhead Windfarm			
Title Site location		RW	
Drawn: MR	Date: 16/01/08	Checked: G.S. Hill	SET: 089
Scale: 1:750		Consent Drawing Number:	
Drawing number: HJB/574/PA01			

UPPER COMMONS

2. **EFFECT OF THIS UNDERTAKING**

2.1 This Undertaking is made pursuant to section 106 of the 1990 Act. It is intended that the obligations contained in this Undertaking are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the Council

2.2 The Council is the local planning authority having the power to enforce the planning obligations contained in this Undertaking.

2.3 This Undertaking is capable of and may be registered as a local land charge by the Council.

2.4 Nothing in this Undertaking prohibits or limits the right to develop any part of the Site in accordance with a planning permission, other than one relating to the development as specified in the Planning Application, granted after the date of this Undertaking, whether or not pursuant to an appeal.

2.5 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner. *Furthermore, the Mortgagee will not be responsible for any pre-existing breach of the obligations contained in this Deed.* ✓

3. **COMMENCEMENT DATE**

3.1 The obligations contained in **clause 4.1** of and **Schedule 1** to this Undertaking do not come into effect until the date on which the New Planning Permission is granted.

4. **OBLIGATIONS OF THE PARTIES**

4.1 The Landowner and Leasehold Owner undertake to comply with the obligations set out in **Schedule 1** in relation to the development.

4.2 No person will be liable for any breach of the terms of this Undertaking occurring after parting with their interest in the Site or the part of the Site in respect of which such breach occurs but they will remain liable for any breaches of this Undertaking occurring before that date. Neither the reservation of any rights nor the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of this **clause 4.2**.

4.3 On the date this Undertaking comes into effect the Leasehold Owner undertakes to pay the Council's legal costs of £200 in assisting with the drafting and approval of this Undertaking.

5. **TERMINATION OF THIS UNDERTAKING**

5.1 This Undertaking will come to an end if either the Original Planning Permission or the New Planning Permission is quashed, revoked or otherwise withdrawn or modified at any time so as to render this Undertaking or any part of it irrelevant, impractical or unviable.

6. **NOTICES**

6.1 Any notice, demand or any other communication served under this Undertaking will be effective only if delivered by hand or sent by first class post, pre-paid or recorded delivery.

6.2 Any notice, demand or any other communication served is to be sent to the address of the relevant party set out at the beginning of this Undertaking or to such other address as one party may notify in writing to the others at any time as its address for service.

6.3 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:

6.3.1 if delivered by hand, at the time of delivery;

6.3.2 if sent by post, on the second working day after posting; or

6.3.3 if sent by recorded delivery, at the time delivery was signed for.

6.4 If a notice, demand or any other communication is served after 4.00 pm 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.

6.5 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

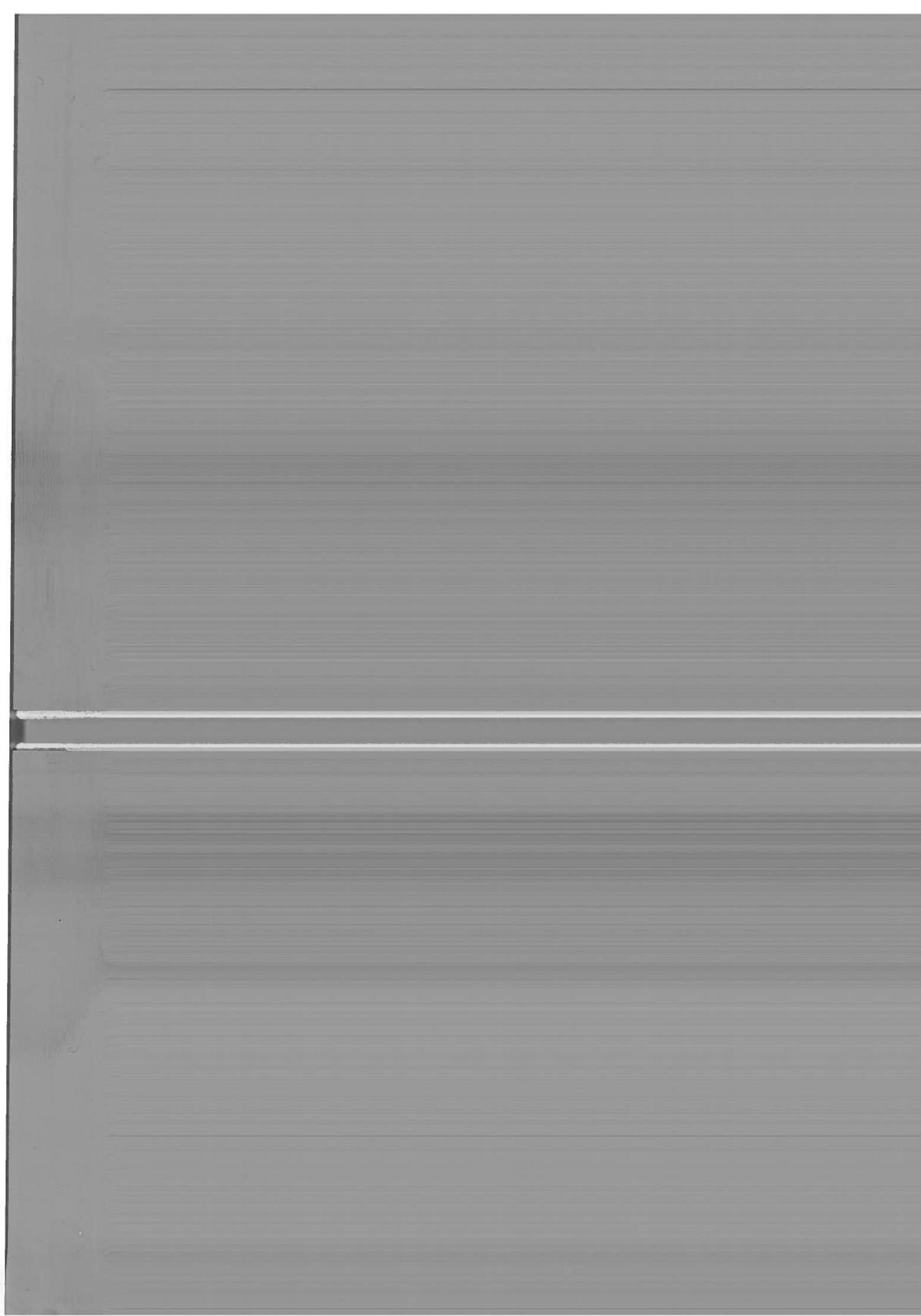
7. **JURISDICTION**

7.1 This Undertaking is to be governed by and interpreted in accordance with the law of England and Wales.

7.2 The courts of England and Wales are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Undertaking.

8. **EXECUTION**

The parties have executed this Undertaking as a deed and it is delivered on the date set out above.



SCHEDULE 1

Planning Obligation

1. The Landowner and Leasehold Owner covenant with the Council that they will not construct nor permit the construction of the Substation Building permitted in the Original Planning Permission and referred to as the "site control building" in key of **Plan 1**.

Executed as a Deed and delivered on the date shown on the front page of this Deed

EXECUTED as a deed by)
H J Banks and Company Limited)
acting as either two)
Directors or a Director and Company)
Secretary:)

Director *[Signature]*

Director / Secretary *[Signature]*

EXECUTED as a deed by)
Banks Renewables (Hazelhead Wind Farm))
Limited)
acting as either two)
Directors or a Director and Company)
Secretary:)

Director *[Signature]*

Director / Secretary *[Signature]*

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IN WITNESS WHEREOF this document which is intended to take effect as a deed has been duly executed by a duly authorised Official of the Bank as Attorney of the Bank the day and year first above written.

SIGNED AND DELIVERED

by

[Signature]
Charles Adam Brynmor Jones

Attorney of
HSBC Bank plc

in the presence of:

Witness:

[Signature]

Address:

Roland Anthony Wells
HSBC Bank plc
Sheffield Securities
Processing Centre

Bank Official

Occupation