

DATED 11th January 2004 5

UNITED UTILITIES WATER PLC (1)

And

PEEL INVESTMENTS (NORTH) LIMITED (2)

And

JEREMY JAMES DEARDEN (3)

PLANNING OBLIGATION BY
UNILATERAL UNDERTAKING
relating to
LAND AT SCOUT MOOR, BETWEEN
EDENFIELD AND WHITWORTH, NEAR
ROCHDALE, LANCASHIRE

Bond Pearce
Southampton

THIS PLANNING OBLIGATION IS MADE ON THE
OF

January

200~~4~~5

11th

DAY

AND IS GIVEN BY:

- (1) **UNITED UTILITIES WATER PLC** a Company registered in England whose registered office is at Dawson House, Great Sankey, Warrington WA5 3LW ("the First Developer")
- (2) **PEEL INVESTMENTS (NORTH) LIMITED** a Company registered in England whose registered office is at Peel Dome, The Trafford Centre, Manchester M17 8PL ("the Second Developer")
- (3) **JEREMEY JAMES DEARDEN** of "Rochdale"

TO

ROCHDALE METROPOLITAN BOROUGH COUNCIL whose principal offices are at The Town Hall, Rochdale OL16 1AB ("the First Council")

AND

ROSSENDALE BOROUGH COUNCIL whose principal offices are at The Town Hall, Rawtenstall, Rossendale BB4 7LZ ("the Second Council").

WHEREAS

- A The First Council is the local planning authority for the purposes of the 1990 Act for the area which includes that part of the Application Site shown edged in red on the Plan annexed hereto and shown marked "Rochdale MBC".
- B The Second Council is the local planning authority for the purposes of the 1990 Act for the area which includes that part of the Application Site shown edged in red on the Plan annexed hereto and marked "Rossendale BC".
- C The First Developer is the owner in fee simple in possession of that part of the Application Site shown coloured pink on the Plan annexed hereto.

- D The Second Developer is the owner in fee simple in possession of that part of the Application Site shown coloured green on the Plan annexed hereto.
- E Jeremy James Dearden is the owner in fee simple in possession of that part of the Application Site shown coloured yellow on the Plan annexed hereto subject to an Agreement for Lease dated 19th December 2003 and made between Jeremy James Dearden and the First and Second Developer.
- F United Utilities Green Energy Limited and the Second Developer have by the Application applied to the Secretary of State for consent under Section 36 of the Electricity Act 1989 for the Development on the Application Site and for a direction under Section 90(2) of the Town & Country Planning Act 1990 that planning permission for the Development shall be deemed to be granted
- G The Application remains to be determined by the Secretary of State.
- H The First and Second Developers and Jeremy James Dearden have agreed to enter into this Obligation to make provision for the funding of habitat enhancement measures within an area shown edged in red on the Plan annexed hereto.

NOW THIS DEED WITNESSES AS FOLLOWS:-

1. Interpretation

In this Obligation (including for the avoidance of doubt the Schedules to this Obligation) unless the context otherwise requires:-

- 1.1 "The 1990 Act" means the Town and Country Planning Act 1990 (as amended)
- 1.2 "The 1989 Act" means the Electricity Act 1989 (as amended)
- 1.3 "The Application" means the application referred to in Recital F which was submitted to the Secretary of State on 4 July 2003 by United Utilities Green Energy Limited and the Second Developer (together with any amendments to the application notified by the First and Second Developers and accepted by the Secretary of State)
- 1.4 "The Application Site" means land at Scout Moor, between Edenfield and Whitworth, near Rochdale, Lancashire shown edged red on the Plan annexed hereto.

- 1.5 "The Councils" means Rochdale Metropolitan Borough Council and Rossendale Borough Council and their successors.
- 1.6 "The Development" means the erection on the Application Site of up to 26 wind turbine generators, the construction of associated access tracks and hard standing areas and ancillary development as specified in the Application.
- 1.7 "The Grant Panel" means the Panel to be established pursuant to the Habitat Enhancement Plan.
- 1.8 "The Habitat Enhancement Plan" means the Scout Moor Wind Farm Biodiversity Enhancement Plan annexed to this Obligation.
- 1.9 "The Lifetime of the Wind Farm" means the period commencing with the date of the first transmission of electricity generated by any of the 26 wind turbines comprised in the Development to the Electricity Supply System and ending on the date 25 years from that date or, if earlier, ending on such date as all of the wind turbines and other above ground level structures comprised in the Development are removed from the Application Site.
- 1.10 "The Permission" means any deemed planning permission issued by the Secretary of State pursuant to the Application
- 1.11 "The Secretary of State" means the Secretary of State for Trade and Industry.

2 **Legal Effect**

- 2.1 This Obligation is made pursuant to the provisions of Section 106 of the 1990 Act and is a planning obligation for the purposes of that Section and the Obligations contained herein shall bind the Application Site and shall be enforceable by the Councils within their respective boundaries
- 2.2 In this Obligation the expressions "Jeremy James Dearden", "the First Developer" and "the Second Developer" shall include their respective successors in title (and assigns)
- 2.3 The covenants contained in this Obligation shall not have effect until the following conditions are satisfied:-
- 2.3.1 The making of a direction by the Secretary of State under Section 90(2) of the 1990 Act that planning permission for the Development shall be deemed to be granted;

2.3.2 The Development has been begun by the carrying out of a material operation as defined in Section 56 of the 1990 Act on the Application Site pursuant to the Permission ("the Commencement of Development").

SAVE THAT

The term "Material Operation" shall not include operations in connection with the erection of any anemometry mast, environmental investigation, site and soil surveys or the creation and fencing of any works compound and Commencement of Development shall be construed accordingly.

2.4 If the Permission expires before the Commencement of Development or is at any time quashed, revoked or is otherwise withdrawn or modified (without the consent of Jeremy James Dearden and the First and Second Developer) then this Obligation shall forthwith determine and cease to have effect.

2.5 If at any stage after the Commencement of Development all of the wind turbines and other above ground level structures comprised in the Development are removed this Obligation shall determine and cease to have effect three years thereafter and Jeremy James Dearden, the First and Second Developers shall cease to have any Obligation in respect of any of its provisions after those three years.

2.6 This Obligation is a local land charge and shall be registered as such.

2.7 No person or company shall be liable for any breach of this Obligation unless he or it holds an interest in the part of the Application Site in respect of which such breach occurs or held such an interest at the date of the breach

2.8 Nothing in this Obligation shall be construed as prohibiting or limiting the development of the whole or any part of the Application Site in accordance with any planning permission (save and except the Permission) granted after the date of this Obligation by the Councils or by the First Secretary of State on a reference to the First Secretary of State or following an appeal

2.9 Where the context so requires:-

2.9.1 the singular includes the plural and vice versa;

- 2.9.2 the masculine includes the feminine and vice versa;
- 2.9.3 where a party includes more than one person any obligations of that party shall be joint and several;
- 2.9.4 references to the Schedule, Clauses and Paragraphs are references to the Schedule and Clauses in this Obligation and Paragraphs in the Schedule to this Obligation.

2.10 Except where otherwise provided for in this Obligation, it is not intended that any third party shall have any right to enforce any provision of the Obligation under the Contracts (Rights of Third Parties) Act 1999.

3 **Covenants**

3.1 Jeremy James Dearden and the First and Second Developers hereby jointly and severally covenant with the Councils to observe and perform the Obligations set out in this Clause.

3.2 In consideration of Jeremy James Dearden at the First and Second Developers' request agreeing to enter into this Obligation with the Councils the First and Second Developers hereby covenant with and undertake to Jeremy James Dearden that they will at all times during the currency of this Obligation observe and perform all covenants obligations and provisions on the part of Jeremy James Dearden referred to or contained in this Obligation and will indemnify and keep indemnified Jeremy James Dearden from and against all proceedings, costs, claims, demands, expenses and liabilities which Jeremy James Dearden may suffer or incur in connection with this Obligation or in respect of any breach of any covenant, obligation and provision referred to or contained in this Obligation.

3.3 Before the Commencement of Development to submit to the Councils details of the First and Second Developers' representative(s) who are to be members of the Grants Panel pursuant to the Habitat Enhancement Plan set out in the Schedule hereto.

3.4 Before the Commencement of Development to arrange a first meeting of the Grants Panel which shall be held within 6 months of the Commencement of Development and thereafter to arrange and hold meetings of the Grants Panel at no less frequency than set out in the Habitat Enhancement Plan and to provide the Councils with not less than 2 weeks notice of each such meeting

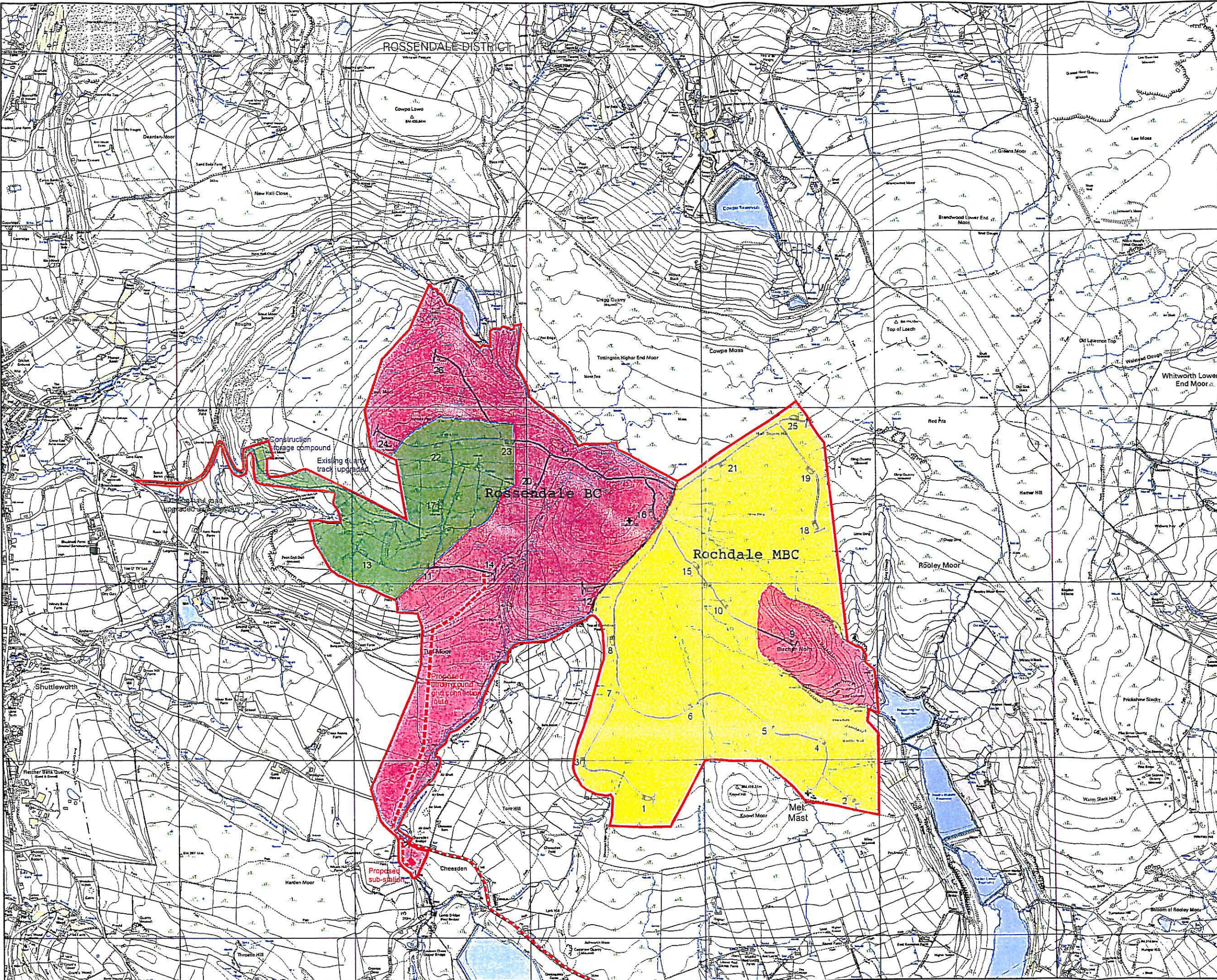
- 3.5 To arrange and fund such reasonable publicity as may be agreed by the Grants Panel to the availability of grants under the Habitat Enhancement Plan..
- 3.6 To meet the administrative expenses of meetings of the Grants Panel and out of pocket expenses of members of the Grants Panel.
- 3.7 To appoint an ecologist who is a member of the Institute of Ecology and Environmental Management and who has been approved by the Councils to be an expert member of the Grants Panel and to meet the reasonable expenses of attendance by the ecologist.
- 3.8 To make such payments to the Councils to meet the cost of grants awarded by the Grants Panel during the Lifetime of the Wind Farm subject to the total expenditure in complying with the terms of this Obligation (including for the avoidance of doubt the costs of complying with Clauses 3.4 to 3.8) not exceeding in any calendar year the following sums:-
- 3.8.1 During the first eight years from the first commissioning of the development the sum of £36,435.
- 3.8.2 During the remaining 17 years of the Lifetime of the Wind Farm the sum of £8,573.
- 3.8.3 Such sums to be indexed linked annually from the date of this Deed by reference to the Retail Price Index or any replacement of such index.
- 3.9 Any sums falling to be paid pursuant to the previous sub-clause shall be payable on the written request of the First or Second Council and within 28 days of such written request subject to such payments not exceeding the maximum sum specified in the previous sub-clause for the year during which the request is made.
- 3.10 For the avoidance of doubt, the maximum liability under this Obligation shall be the index linked sum of £437,222.
- 3.11 To use all reasonable endeavours to co-operate in the administration of the Habitat Enhancement Plan as set out in the Schedule or as the Habitat Enhancement Plan may be amended from time to time in agreement with the Councils.

4 **Arbitration**

4.1 Any dispute or difference arising between the parties with regard to their respective rights and obligations as to any matter or anything in anyway arising out of or connected with this Obligation shall be referred to the decision of a single arbitrator to be agreed between the parties or failing agreement between them to be nominated by the President of the Royal Institution of Chartered Surveyors and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or re-enactment for the time being in force.

IN WITNESS whereof the parties hereto have executed this Obligation the day and year

first before written



- Application Boundary
- Existing haul road upgraded as necessary
- Existing quarry track upgraded
- Site tracks
- - - Grid Connection
- Turbine location
- Existing 50m Met Mast
- Permanent Met Mast
- Substation
- Construction Compound
- Jeremy James Dearden Lord of the Manor of Rochdale
- United Utilities Water plc
- Peel Investments (North) Ltd

THIS DRAWING MAY BE USED ONLY FOR THE PURPOSE INTENDED AND ONLY WRITTEN DIMENSIONS SHALL BE USED

- NOTES:
1. This drawing has been prepared for inclusion in an Environmental Statement and is indicative only and subject to changes at the detailed design stage.
 2. All materials and workmanship to comply to the current British Standards.

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Oceans

Scale of A2 1:20,000

Section 106 Plan

Drawn	AW	Driving Number	MO206 10-01	Approved	
Checked		Tech Check		Date	24/11/04

6928

Schedule 1

United Utilities Green Energy Ltd and Peel Investments
(North) Ltd

Scout Moor Wind Farm Biodiversity Enhancement Fund

7 December 2004

Report no: NH55003/hio/e/kr2



United Utilities Green Energy Ltd and Peel Investments
(North) Ltd

Scout Moor Wind Farm Biodiversity Enhancement Fund

Report no: NH55003/bio/sl/v2

Date: 7 December 2004

This report has been prepared for United Utilities Green Energy Ltd and Peel Investments (North) Ltd in accordance with the terms and conditions of appointment for Scout Moor Wind Farm Biodiversity Enhancement Fund dated June 04. Hyder Consulting (UK) Ltd (2212959) cannot accept any responsibility for any use of or reliance on the contents of this report by any third party.



Consulting

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1 Introduction

In para. 6.9.2 and 6.9.3 of the Environmental Statement accompanying the planning application for the Scout Moor Wind Farm, the applicants referred to the possibility of establishing a fund to secure off-site habitat management under schemes proposed at that time through the Cowpe Moss Management Strategy and the Southern Pennine Upland Regeneration Project. Those schemes no longer exist in the form in which they were envisaged at the time the ES was prepared and it is therefore not possible to pursue this commitment via that route.

While it remains the applicants' case that the ecological impacts of the proposed development are acceptable without any requirement for off-site enhancements, the applicants have, from the outset been committed to off-site biodiversity enhancements and are prepared to continue that commitment notwithstanding that the identified delivery route set out in the ES has ceased to be available.

To this end, discussions have continued with RSPB and others with a view to agreeing an appropriate mechanism for a conservation grant fund and to agree the range of measures and management practices which would deliver high grade biodiversity enhancement, the criteria against which to assess grant applications and the likely costs of appropriate enhancement measures.

This document is based upon the advice of the RSPB and set out the means by which the fund would operate.

2 The Grant Fund

The applicants would put in place a grant fund that will be made available for positive habitat management within an identified area. The purpose of the fund will be to offer a financial incentive for local farmer and landowners to deliver high-grade upland biodiversity enhancements that, in the opinion of the RSPB would be unlikely to be achieved through agri-environment funding.

The fund will be aimed at specific habitats, species and management tasks to deliver optimum conditions for upland biodiversity.

The fund availability would be flexible. Payments may be made either as one-off incentives to cover the costs of management works which are difficult to reverse, or as "top-ups" to encourage land managers into longer term agri-environment agreements that will deliver conservation management of the highest quality.

In essence the fund will be used to seek to assist land managers to re-create biodiversity-rich habitats that would be unlikely to be achieved by agri-environment schemes alone, because they do not have agricultural benefits.

For example, while agri-environment schemes could, in theory, be used to pay for measures such as grip blocking, currently funding is only available to cover small dams, rather than blocking the lengthy of the grips. The fund proposed by the applicants could be used to employ contractors to fully rehabilitate areas of drained blanket bog by filling in entire grip systems.

It is therefore envisaged that the fund would be mainly used in conjunction with agri-environment schemes to deliver further conservation measures than would be possible under the agri-environment schemes in isolation. However, there will remain scope to use the fund outside of agri-environment schemes, where appropriate.

3 The Area

The scheme will aim to deliver up to 500ha of positively managed habitat in a favourable condition within the area shown in Figure 1. This area covers a large block of upland, including the West Pennine Moors within Greater Manchester and Lancashire.

4 Target Habitats

The fund will target areas of blanket bog as a prime objective, and thus will make a significant to the achieving the aims of the UK Biodiversity Action Plan for this habitat in the Region. The scheme will also consider "in-bye" habitat on the moorland fringe, which can be considered important for both skylarks and wading birds.

Payments would be available for the restoration of degraded blanket bogs and enhancements of blanket bog habitats which have been damaged through, for example, erosion, drainage or grazing practices. Payments would be considered for activities such as grip-blocking, pool creation, heather re-seeding, stock removal or replacement with appropriate stock types, and other feasible restoration measures.

On in-bye land, payments would focus on schemes to create wet grasslands for breeding waders, and the management of optimum sward conditions for such species. Examples of management practices that would be considered include ditch blocking, scrape creation, introduction of appropriate stock and rush management.

5 Administration of the fund

In terms of the organizational structure, a grant panel would be established comprising of representation from the wind farm operator, together with one representative nominated by each of Rossendale BC and Rochdale MDC and someone to assess the ecological merits of applications. The panel would meet on a quarterly basis to consider applications made during the previous quarter. For auditing purposes, there would be a "technical" sign off from the ecologist, together with a financial sign-off from the remainder of the panel.

Money would be applied for through any of the several environmental delivery organizations in the Region, so that the panel can hold that organization responsible to ensuring the delivery of the funded scheme. On the basis of recent discussions with some of these organizations, the applicants are confident that there is demand for the grant, and that applications would be forthcoming.

This would also lend a certain strategic element to the way in which the fund was spent.

6 Criteria for Grant Approval

Proposals will be assessed on their own merits. However, applicants must fulfil at least the following criteria:

Schemes must be shown to:

- be within the described grant area;
- deliver high quality ecological enhancements to blanket bog habitat and/or the habitats of breeding waders on blanket bog or moorland fringe habitat and;
- deliver long-term management for the grant fund's conservation objectives within either an agri-environment scheme, or an alternative agreed management plan or;
- deliver measures which are regarded by the panel as being long term in nature (where applicants do not wish to commit to agri-environment schemes)

Applications which meet the above criteria, and also provide a management plan for grant panel assessment, would be considered regardless of size, although larger scale schemes and/or schemes which show high grade management to create optimum habitat would be given preference.

7 Available funding

At the request of the applicants, the RSPB have calculated costs based on habitat management works to deliver 500ha of optimum blanket bog/wet grassland habitat. At today's prices, this amounts to a sum of £437,222 during the lifetime of the proposed wind farm.

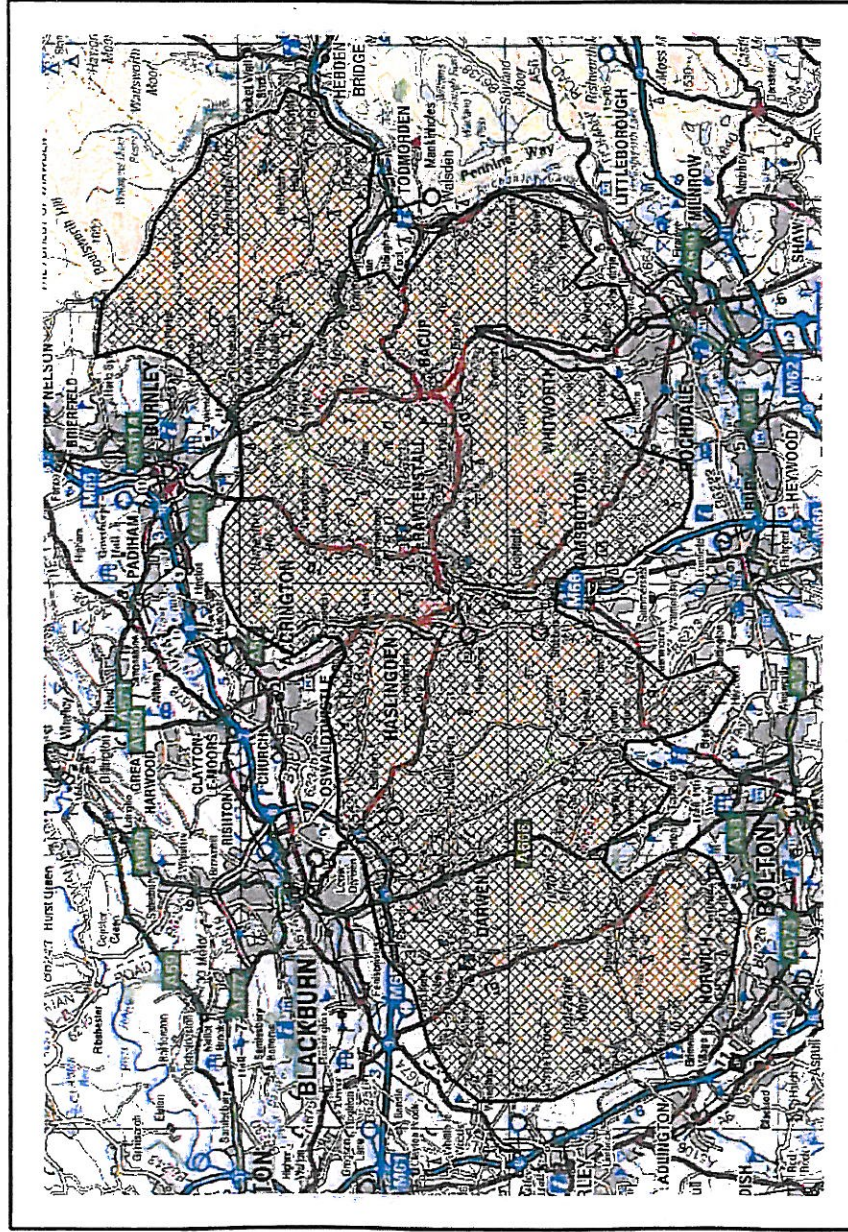
The timing of expenditure would be weighted to the early years of the commissioned wind farm, while leaving sufficient funds for maintenance over the longer term. On this basis, funds would be made available to meet the costs of habitat enhancements of up to £36,435 per annum for the first eight years and £8,573 for the remaining 17 years.

The sums indicated would be the maximum in any year to meet the cost of grant applications during that year.

Acknowledgement

The applicants are grateful to Dr T Melling and Mr G Woodburn of the RSPB, who provided them with advice on a without-prejudice basis.

Figure 1: Map of Grant Fund Area (source: RSPB)



 Funding Area

EXECUTED (BUT NOT DELIVERED UNTIL)
THE COMMON SEAL of)
THE DATED INSERTED HEREIN) as a DEED by)
UNITED UTILITIES WATER PLC was)
hereto affixed in the presence of)
acting by:)



Director

Authorised Signatory

Director/Secretary

EXECUTED (BUT NOT DELIVERED UNTIL)
THE DATED INSERTED HEREIN) as a DEED by)
PEEL INVESTMENTS ~~ED~~ (NORTH) LIMITED)
acting by:)

Director

Director/Secretary

EXECUTED AS A DEED by)
JEREMY JAMES DEARDEN)
in the presence of:-