

Planning Obligation by Unilateral Undertaking  
Pursuant to Section 106 of the  
Town and Country Planning Act 1990

Relating to land at Crook Hill, Littleborough, Rochdale and  
Landgate, Shawforth, Rossendale

Parties

Crook Hill Properties Limited (1)

Jeremy James Dearden (2)

To

The Borough Council of Calderdale (3)

Rochdale Metropolitan Borough Council (4)

Rossendale Borough Council (5)

15 September 2011

THIS UNILATERAL UNDERTAKING is made on the 15<sup>th</sup> day of September 2011

BY:

(1) **CROOK HILL PROPERTIES LIMITED** a Company incorporated in the British Virgin Islands under Company Number 669322 and whose registered office is situated at Akara Building, 24 De Castro Street, Wickhams Cayl, Road Town, Tortola, British Virgin Islands ("the Developer")

(2) **THE LANDOWNER** being Jeremy James Dearden of [REDACTED] c/o Andrew Crossley of G Crossley & Son of [REDACTED] ("the Landowner")

to

(3) **THE BOROUGH COUNCIL OF CALDERDALE** of Town Hall, Crossley Street, HALIFAX, HX1 1UJ ("the First Council")

(4) **ROCHDALE METROPOLITAN BOROUGH COUNCIL** of the Town Hall, ROCHDALE, OL16 1AB ("the Second Council")

(5) **ROSSENDALE BOROUGH COUNCIL** of Lord Street, Rawtenstall, ROSSENDALE, BB4 7LZ ("the Third Council")

WHEREAS:

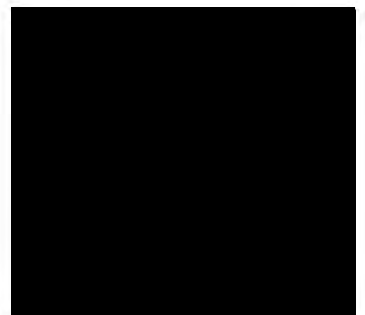
(1) The First Council, the Second Council and the Third Council (together "the Councils") are the Local Planning Authorities for the purposes of the Act for the areas as indicated on Plan A;

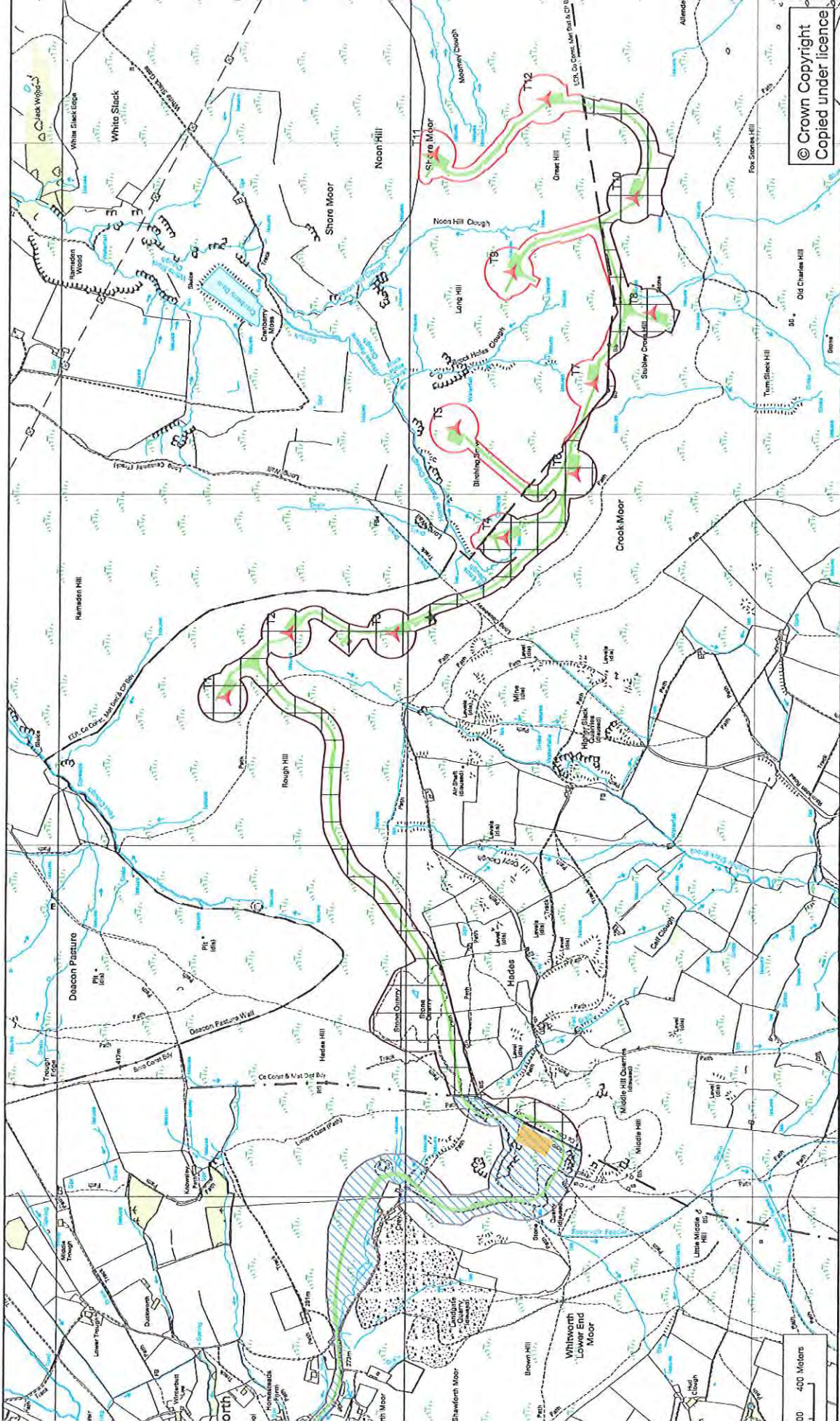
(2) The Landowner is the owner in fee simple of the Site registered as part of Title Numbers LAN92942, LAN76018, MAN137857, MAN125373, MAN125174 & WYK886148;


(3) The Developer has a legal interest in the Site by way of two options dated 13<sup>th</sup> May 2011 and 9<sup>th</sup> February 2007 with the Landowner in respect of the Site ("the Options");

(4) Applications for planning permission have been submitted to the Councils and given the reference 11/00080 by the First Council, the reference 11/D54145 by the Second Council and reference 2011/0030 by the Third Council. The applications are for the construction of a twelve turbine wind farm together with access tracks, substation, meteorological mast and other associated development;




(5) Some of the land on which the wind farm is to be built is common land;









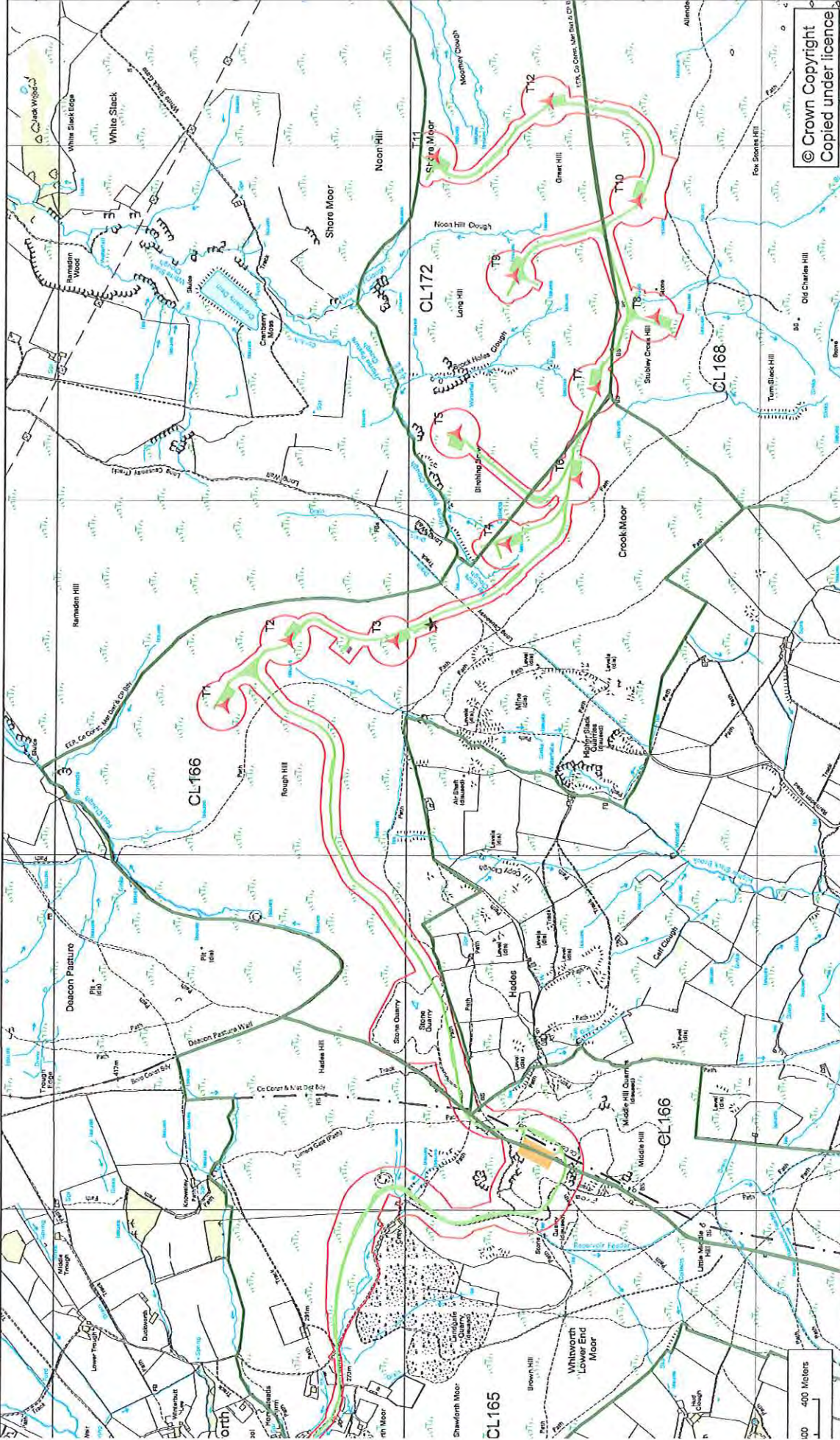
<p>Client: Coronation Power</p>	<p>Prepared by:</p> 
<p>Scale at A3: 1:11,000</p>	<p>Crook Hill 12 Wind Farm Infrastructure Refinement with Access Route via Hades Quarry</p>
<p>Date: 21 March 2011</p>	<p>Version 1</p>
<p>Plan A</p>	


**Local Planning Authority**

-  Calderdale
-  Rochdale
-  Rossendale

-  Application Boundary
-  Calderdale
-  Rochdale
-  Rossendale

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<p>Client: Coronation Power</p>	<p>Prepared by:</p> 
<p>Scale at A3: 1:11,000</p>	<p>Crook Hill 12 Wind Farm Infrastructure Refinement with Access Route via Hades Quarry</p>
<p>Date: 22 March 2011</p>	<p>Version 2</p>
<p>Plan B</p>	<p>© Crown Copyright Copied under licence</p>

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- (6) The Landowner to enable the construction of the Development needs to apply to the Secretary of State under s16 of the Commons Act 2006 to exchange and deregister those areas of the Common land contained within the Site;
- (7) The Developer and the Landowner have agreed to enter into this planning obligation by way of Unilateral undertaking delivered to the Councils ("the Undertaking") to carry out certain actions relevant to the Planning Applications and the Commons Application.

NOW THIS DEED WITNESSES as follows:

## 1 Interpretation

1.1 In this Undertaking unless the context otherwise requires the following expressions shall have the following meanings:-

- 1.1.1 Access Agreement means an agreement pursuant to Part V of the National Parks and Access to the Countryside Act 1949
- 1.1.2 the Act means the Town and Country Planning Act 1990 (as amended);
- 1.1.3 the Commons Application means an application made under s16 of the Commons Act 2006 to exchange and deregister common land within the Site on common land units CL165, CL166, CL168 and CL172 to allow the wind farm to be built;
- 1.1.4 Commencement of Development and Commence the Development means the carrying out of a material operation as defined in Section 56 of the Act other than operations consisting of site clearance, investigations for the purpose of archaeological assessment, investigations for the purpose of assessing the ground conditions and any other pre-construction survey work;
- 1.1.5 the Common means the common land referred to in the register of common land by its common land unit numbers of CL165, CL166, CL168 and CL172 and indicated on Plan B;
- 1.1.6 the Commoners means those individuals listed in column 3 in the rights section of the register of common land for CL165, CL166, CL168 and CL172 and who have not been removed from the register of common land;
- 1.1.7 the Decommissioning means the Decommissioning Method Statement that shall be submitted for the approval of the

- Method Statement Councils at least 18 months before the date of the decommissioning of the Development;
- 1.1.8 the Development means the erection and operation of 12 Turbines and associated infrastructure as described in the Planning Applications;
- 1.1.9 Index Linked means the variation of the level of the payment in question on each anniversary of the date of this Undertaking by multiplying the relevant sum by the figure obtained from the following formula namely:

$$\frac{RPI_n}{RPI_a}$$

where:

RPI is the General Index of Retail Prices - All items as published by the Central Statistical Office or if that index ceases to be published or the basis upon which such index is calculated is substantially changed or rebased, such substitute or alternate index most likely to achieve an equivalent result as the parties may agree or, in the absence of agreement, as shall be determined pursuant to clause 14 of Schedule 3; and

RPI<sub>n</sub> means the RPI for the month preceding the date on which the indexation calculation is to be effective;

RPI<sub>a</sub> means the RPI for the month of March 2010;

- 1.1.10 the Non-Operational Land means any land within the Site that is deregistered as a result of the Commons Application and which is not the Operational Land;
- 1.1.11 the Operational Land means any land within the Site that is deregistered as a result of the Commons Application and is needed for operation and maintenance of the Development. The land within the Site needed for the operation and maintenance of the Development is the land taken up by the turbine bases, the substation, crane hard standings, the base of the meteorological mast, the access tracks and the temporary site compound.
- 1.1.12 the Order means an order made by the Secretary of State under Section 17 of the Commons Act 2006

relating to the Commons Application;

- 1.1.13 the Planning Applications means the applications made to the Councils for the construction of a twelve turbine wind farm together with access tracks, substation, meteorological mast and other associated development and as validated by the Councils and given the references 11/00080, 11/D54145 and 2011/0030;
- 1.1.14 the Planning Permission means the granting of planning permission for the Planning Applications by the Councils or by the Secretary of State on appeal;
- 1.1.15 Rights means the rights of the Commoners as listed in the register of common land on the Common;
- 1.1.16 Site means the land edged red but excluding the land coloured yellow on Plan B attached to this Undertaking being land at CL165, CL166, CL168 and CL172 and forming part of land registered at HM Land Registry under Title Numbers LAN92942, LAN76018, MAN137857, MAN125373, MAN125174 & WYK886148;
- 1.1.17 Termination Date means the date which is 25 years after the date that electricity from the Development is first supplied to the grid or in any event, if no electricity from the Development is supplied to the grid for any continuous period of five years after Commencement of Development, the date that is the end of that five-year period;
- 1.1.18 Turbine a wind turbine generator erected pursuant to the Planning Permission

1.2 Where the context so requires:

1.2.1 the singular includes the plural;

1.2.2 the masculine includes the feminine;

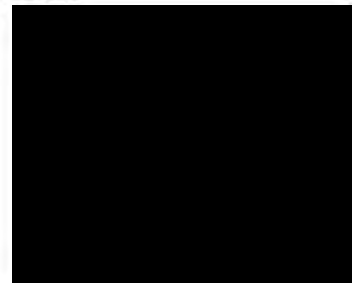
1.2.3 references to clauses plans and schedules are references to clauses and plans in and schedules to this Undertaking.

1.3 References to any parties shall include the successor person or body or the successors in title of that party.

## 2 Legal Effect



- 2.1 This Undertaking is a deed enforceable by the Councils as local planning authorities for the Site for the purposes of S106 of the Act and each and every obligation imposed by this Undertaking is a planning obligation for the purposes of Section 106 of the Act.
- 2.2 Insofar as any of the covenants contained in this Undertaking are not planning obligations within the meaning of Section 106(1) of the Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972 Section 2 of the Local Government Act 2000 and all other enabling powers.
- 2.3 The obligations in Schedules 1 and 2 of this Undertaking shall not take effect until the Order has been made by the Secretary of State;
- 2.4 Save for paragraph 2 of Schedule 3, the obligations in Schedule 3 of this Undertaking shall not take effect until:
  - 2.4.1 the Planning Permission has been granted; and
  - 2.4.2 the date of the Commencement of Development
- 2.5 Paragraph 2 of Schedule 3 shall take effect upon the grant of Planning Permission.
- 2.6 No person or the Developer or the Landowner shall be liable for any breach of this Undertaking unless he or it holds an interest in the part of the Site in respect of which such breach occurs or held such an interest at the date of the breach (and for the avoidance of doubt the Developer's legal interest in the Site by way of the two options dated 13<sup>th</sup> May 2011 and 9<sup>th</sup> February 2007 shall constitute "interests" for the purposes of this clause).
- 2.7 Nothing in this Undertaking shall be construed as prohibiting or limiting the development of the whole or any part of the Site in accordance with any planning permission granted by the Councils or the Secretary of State after the date of this Undertaking (save and except the Planning Permission).
- 2.8 In the absence of contrary provision any reference to a statute or statutory instrument includes any modification or re-enactment of it.
- 2.9 Unless otherwise provided for in this Undertaking (and subject to the Developer and/or Landowner as appropriate using reasonable endeavours to obtain the agreement of the Councils), 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 Undertaking shall be referred to the decision of a single arbitrator to be agreed between the parties or failing agreement between them within 10 working days of any party calling upon the others to agree 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. The single arbitrator shall act as an





expert and make his determination within 20 working days from the date of his appointment such determination to be made in writing giving full reasons therefor and shall be binding upon the parties. The single arbitrator shall afford the parties the opportunity to make representations in writing within 10 working days from the date of his appointment. The arbitrator shall have unfettered discretion to determine the reference to him and his costs and expenses shall be borne equally between the parties unless the arbitrator directs otherwise.

- 2.10 The obligations contained within the unilateral undertaking given by Crook Hill Properties Limited and Jeremy James Dearden relating to the Planning Applications dated 20 May 2011 are no longer valid or enforceable and are superseded by the obligations contained within this Undertaking.

### **3 Developer's Obligations**

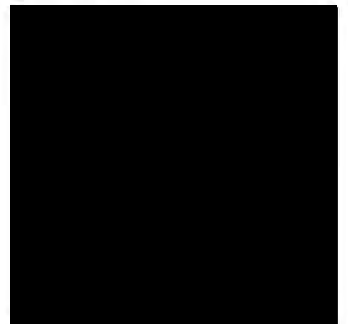
- 3.1 The Developer covenants to carry out and comply with the obligations and covenants set out in Schedule 2 and Schedule 3 of this Undertaking.

### **4 Landowner's Obligations**

- 4.1 The Landowner agrees to bind itself and its successors in title to comply with all the obligations and covenants set out in Schedule 1 and Schedule 3 of this Undertaking whether or not the obligations and covenants are expressed as being those of the Developer or of the Landowner.

### **5 Declarations**

- 5.1 If any provision of this Undertaking shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed to be thereby affected or impaired.
- 5.2 The Developer requests that this Undertaking is registered as a local land charge by the Councils following its completion and the grant of the Planning Permission.
- 5.3 If the Order is quashed or revoked or ceases to have effect by operation of law or expires then the obligations contained in Schedule 1 of this Undertaking will cease to have effect.
- 5.4 The Developer indemnifies the Landowner against all liabilities costs claims and demands arising as a result of the Landowner having entered into this Undertaking and its compliance with the obligations and covenants set out in Schedule 1 and Schedule 3 hereof (save for these liabilities, costs claims and demands arising as a result of the Landowner's negligence or as a result of the failure of the Landowner to carry out its obligations in this Undertaking).



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

## 6 Notices

6.1 Subject to clause 6.2 and 6.3 any notice under this Undertaking shall be in writing and shall be duly served if it is delivered or sent by recorded delivery post to a party at:

6.1.1 its address given in this Undertaking; or

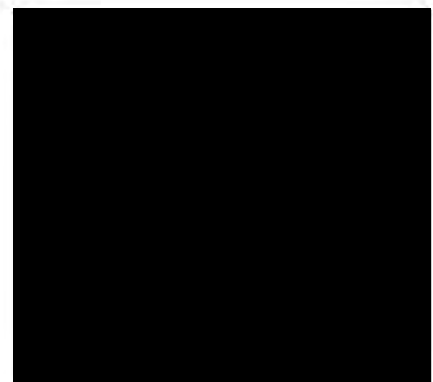
6.1.2 its registered office; or

6.1.3 such other address as may be notified in writing from time to time.

6.2 The address of the Landowner for the service of any notice under this Undertaking shall be that of Andrew Crossley of G Crossley & Son,

[REDACTED]

6.3 The address of the Developer for the service of any notice under this Undertaking shall be that of Crook Hill Properties Limited C/O Shuves Mukherji Coronation Power Limited, 108 Aldersgate Street, LONDON, EC1A 4JQ.



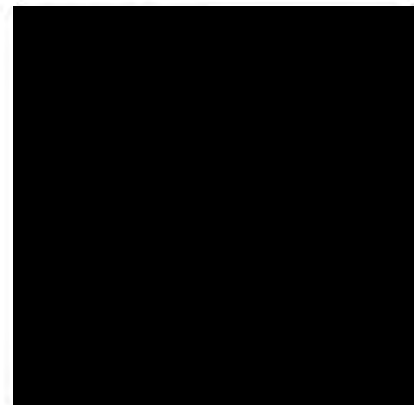
## SCHEDULE 1

### Landowner's Covenants

- 1 That prior to the export of electricity to the grid by the Development, the Landowner will, in respect of the Non-Operational Land:
  - 1.1 expressly grant rights of common to the Commoners. The rights of common to be expressly granted will reflect the Rights so that the Non-Operational Land has the same rights of common as the Common
  - 1.2 submit an application, with the appropriate fee, to the Commons Registration Authority, to register the rights and the Non-Operational Land in the register of common land.
  
- 2 That if no equivalent provision is made within the Order then as soon as is reasonably possible and before the Commencement of Development the Landowner will:
  - 2.1 enter into an Access Agreement with the Councils to enable the public to use and pass over the access tracks, temporary construction compound and crane hard standings within the Site on horse or by foot; and
  - 2.2 grant a licence to the Commoners to use and pass over and graze their animals on the access tracks, temporary construction compound and crane hard standings within the Site;

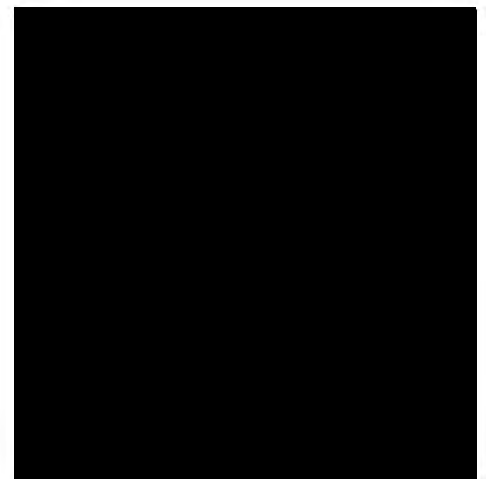
The Access Agreement and licence granted under this obligation will endure and be effective until the parts of the Site that are referred to in the Access Agreement and licence have been registered as common land in accordance with either paragraph 3 or paragraph 4 of this Schedule PROVIDED THAT there will be the ability to restrict the access temporarily for the specific purpose of and to enable construction, necessary maintenance and repairs to the wind farm and infrastructure should the need arise.

- 3 That within 6 months of the date of completion of the reinstatement of the land in accordance with Schedule 3 of this Undertaking, the Landowner will, in respect of the Operational Land:
  - 3.1 expressly grant rights of common to the Commoners. The rights of common to be expressly granted will reflect the Rights so that the land has the same rights of common as the Common
  - 3.2 submit an application, with the appropriate fee, to the Commons Registration Authority, to register the rights and the land in the register of common land.



- 4 That should the Planning Permission expire and not be renewed then within 6 months of the expiry of the Planning Permission the Landowner will, in respect of the land removed from the register of common land under the Order:
- 4.1 expressly grant rights of common to the Commoners. The rights of common to be expressly granted will reflect the Rights so that the land has the same rights of common as the Common
  - 4.2 submit an application, with the appropriate fee, to the Commons Registration Authority, to register the rights and the land in the register of common land.

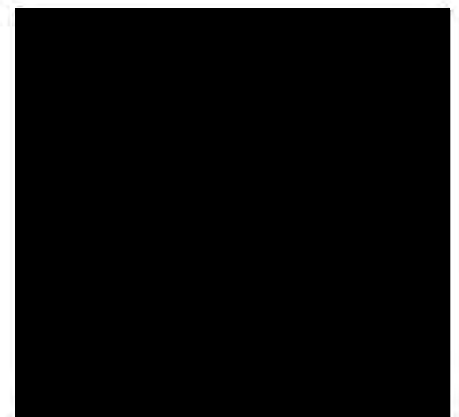
For the sake of clarity if an application is lodged to renew the Planning Permission within 6 months of the expiry of the current Planning Permission then no express grant or application to register will have to take place until the renewal application has been refused and all methods of appeal including a High Court challenge have been exhausted.



## SCHEDULE 2

### Developer's Covenants

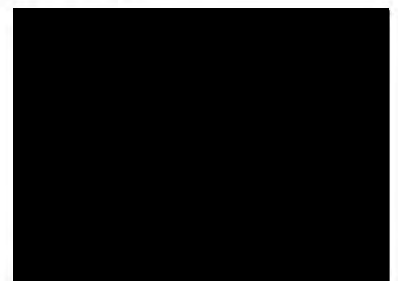
- 1 The Developer will join in with and support as necessary the actions required by the Landowner to enable the Landowner to comply with the covenants in Schedule 1.
- 2 The Developer covenants to make payment in advance to the Landowner or its successors in title in respect of all reasonable and proper costs and expenses anticipated by the Landowner or its successors in title to be incurred by the Landowner or its successors in title in complying with all covenants set out in Schedule 1 hereof.
- 3.1 Prior to the Commencement of the Development and on each anniversary of the Commencement of the Development the Restoration Bond or Escrow Restoration Deposit shall be reviewed by an independent expert appointed by and at the cost of the Developer (with the agreement of the Landowner which agreement shall not be unreasonably withheld or delayed) to ensure that it remains capable of covering the estimated net costs to secure the satisfactory restoration of the Site or part thereof in accordance with the Decommissioning Method Statement (or if no Decommissioning Method Statement is available then in accordance with current best practice in decommissioning).
- 3.2 A copy of the independent expert's determination shall be given to the Landowner and if the independent expert recommends that the Restoration Bond or Escrow Restoration Deposit should be increased the Developer shall within 28 days of such determination increase the Restoration Bond or Escrow Restoration Deposit in accordance with the expert's determination.



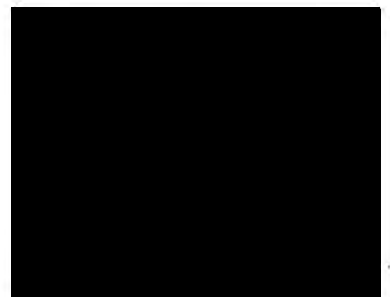
## SCHEDULE 3

### Decommissioning Covenants

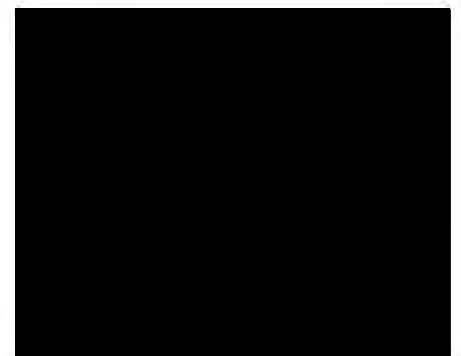
- 1 The Developer hereby undertakes to decommission the Development and restore those parts of the Site requiring restoration. Such decommissioning of the Development and restoration of the Site shall be completed within a reasonable timeframe beginning from the Termination Date and in any event within 12 months from the Termination Date.
- 2 The Developer covenants with the Councils and the Landowner that the Developer shall:
  - (i) provide to the Councils the Decommissioning Method Statement; and
  - (ii) prior to the Commencement of Development, obtain and deliver a letter of credit or a guarantee bond of an insurance company or from a bank or other financial institution based in the United Kingdom and approved by the Councils to be jointly and severally bound with the Developer for the amount of £20,000 (TWENTY THOUSAND POUNDS) per MW of generation capacity of the Development (which sum shall be Index Linked) to secure the satisfactory restoration of the Site or part thereof (in accordance with current best practice in decommissioning) and such sum shall be available to the Councils and the Landowner in accordance with the procedure set out below in the event of the Developer failing to decommission and restore the Site in accordance with the Decommissioning Method Statement ("the Restoration Bond").
  - (iii) As an alternative to securing a guarantee bond of an insurance company or from a bank as outlined in the foregoing paragraph, the Developer shall place on deposit in an escrow account (to be approved by the Councils) an amount of £20,000 (TWENTY THOUSAND POUNDS) per MW of generation capacity of the Development (which sum shall be Index Linked) to secure the satisfactory restoration of the Site or part thereof (in accordance with current best practice in decommissioning) and such sum shall be available to the Councils and the Landowner in accordance with the procedure set out below in the event of the Developer failing to decommission and restore the Site in accordance with the Decommissioning Method Statement ("the Escrow Restoration Deposit"); and
  - (iv) prior to the Commencement of Development have the amount of £20,000 per MW of generation capacity checked by an independent expert appointed by and at the cost of the Developer and with the agreement of the Councils and the Landowner; and
  - (v) agree to be bound by the recommendation of the expert and to increase the amount per MW of generation capacity to be paid into either the Restoration Bond or Escrow Restoration Deposit if that is the finding of the expert.



- 3 Without prejudice to the right of the Councils and the Landowner to exercise any statutory powers, the Developer undertakes to permit the Councils and the Landowner to call upon the Restoration Bond or the Escrow Restoration Deposit in accordance with the procedure set out further below.
- 4 In the event that the Developer has not restored the Site or any given part thereof within a reasonable timeframe (and in any event within 12 months from the Termination Date) and/or in accordance with the Decommissioning Method Statement any one or more of the Councils may by written notice intimate such failure to the Developer and in such event shall send a copy thereof to the Landowner. Such notice may describe the nature of the breach the steps required to remedy such breach and the timescales within which the remedial steps must be taken. In the event that the Developer has not provided a satisfactory Decommissioning Method Statement to the Councils within 12 months from the Termination Date, such notice may describe the steps required to decommission the site in accordance with current best practice in decommissioning.
- 5 In the event that the Developer has not complied with the timescales set out in any notice under paragraph 4 of this Schedule 3 the Councils shall notify the Landowner of such non-compliance. The Landowner may determine to carry out such remedial steps on the Site (taking account of the steps required to be taken in any notice served by the Councils) and the Landowner shall serve written notice on the Councils and the Developer intimating that it intends to carry out the remedial steps. The Landowner shall be entitled to recover from the Restoration Bond or the Escrow Restoration Deposit such sum as relates to the reasonable costs of such works (insofar as reasonably incurred and in accordance with the Decommissioning Method Statement or, if no Decommissioning Method Statement has been approved, in accordance with current best practice) by the Landowner PROVIDED THAT the Landowner's rights contained herein shall be subject to paragraph 6 below.
- 6 No recovery from the Restoration Bond or the Escrow Restoration Deposit may be made by the Landowner under paragraph 5 or 15 unless the amount of the proposed recovery has been submitted to and approved by the Councils and by the Developer in writing such approval not to be unreasonably withheld (provided that if any of the Councils or the Developer fails to reply to the Landowner within a period of 30 working days following a submission made by the Landowner under this paragraph, there shall be deemed an approval by that party of the proposed amount of the recovery).
- 7 Should any dispute arise in relation to the paragraphs above in this Schedule:
  - (i) between any of the Landowner and the Developer it shall be determined in accordance with the procedure set out in paragraph 14 of this Schedule;
  - (ii) between any of the Landowner and the Councils or the Developer and the Councils the Landowner or the Developer as appropriate shall use reasonable



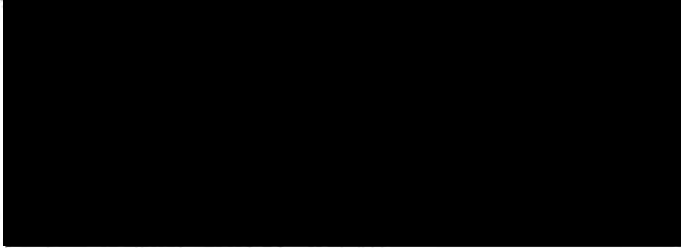
- (ii) a replacement Restoration Bond or Escrow Restoration Deposit in the reduced amount on the same terms (other than the amount) as the Restoration Bond or Escrow Restoration Deposit being replaced .
- 13 Notwithstanding the provisions of Schedule 2, paragraph 3.1, the Restoration Bond or Escrow Restoration Deposit shall be reviewed by the Developer and the Councils with the agreement of the Landowner (such agreement not to be unreasonably withheld or delayed) on the fifth tenth fifteenth twentieth and twenty fourth anniversaries of the Commencement of Development to ensure that it remains capable of covering the estimated net costs to secure the satisfactory restoration of the Site or part thereof in accordance with the Decommissioning Method Statement or, if no Decommissioning Method Statement has been approved, in accordance with current best practice in decommissioning and if no agreement is reached the provisions of paragraph 14 below shall apply.
- 14 In the event of a dispute arising pursuant to this Schedule 3 a party to the dispute may refer it to an expert to be appointed by agreement or in the absence of any agreement to be appointed by the President of the Royal Institution of Chartered Surveyors on the application of the First Council, the Second Council or the Third Council or the Developer or the Landowner as appropriate. The expert shall be a surveyor of not less than ten (10) years standing with appropriate experience. The expert shall (subject to agreement between the relevant parties) receive submissions from the parties within twenty (20) working days of his appointment and shall undertake as a condition of his appointment to issue his decision within forty (40) working days of the date of his appointment and he shall be entitled to find fees due to or by the relevant parties in such a proportion as he shall determine failing which equally. The decision of the expert shall be final and binding on the relevant parties except in the case of manifest error.
- 15 In the event that the Developer fails after the Termination Date to comply with its obligations in Schedule 2, paragraph 2 of this Undertaking the Landowner will comply with all covenants set out in Schedule 1 of this Undertaking and may apply to the Councils to recover from the Restoration Bond or Escrow Restoration Deposit the reasonable and proper costs incurred by the Landowner in so complying. This application to the Councils shall be made in accordance with paragraph 6 of this Schedule 3.





IN WITNESS the parties have executed this Undertaking as a Deed on 15 September 2011

EXECUTED AS A DEED AND DELIVERED )  
BY **Crook Hill Properties Limited** )  
acting by its duly authorised )  
Director and Secretary )



Director/Secretary

EXECUTED as a DEED AND DELIVERED )  
By **Jeremy James Dearden** )  
in the presence of: )



Witness' signature ....

Witness' name (capital letters) ....

Address .....

.....

.....

Occupation

