Sibley, Sally

From: Fidler, Richard
Sent: 24 June 2015 12:32
To: _planningadvice
Subject: FW: s106 Agreement - Sutton Bridge B Power Station (SH008.485) H18-0001-06
Attachments: scanned copy s106 agreement.pdf; scanned copy section 106 agreement plan.pdf

3106

From: Jacqui Berridge [mailto:Jacqui.Berridge@lincolnshire.gov.uk]
Sent: 24 June 2015 12:20
To: Fidler, Richard; Boole, Richard; Boole, Richard; Wilson, Catherine
Subject: s106 Agreement - Sutton Bridge B Power Station (SH008.485)

Morning

Please find enclosed a scanned copy of a section 106 agreement which has been completed today in relation to air monitoring equipment contributions from the Sutton Bridge power station B . The scan is in 2 parts: part 1 is the agreement and part 2 is the plan attached to the agreement.

Richard F – can you please ensure that a copy of the agreement I placed on part II of the planning register. I believe that the permission will be issued by the SOS and that the council was a consultee only. Can you also ensure that the agreement is monitored

Richard B – please note the agreement. I would particularly draw your attention to the timescales for repayment of any amounts which are not spent detailed in Schedule 2.

Catherine – can you please register the agreement against the land edged in red on the plan and let me know once this has been done. As usual please let me know if you have any queries.

Many thanks

Jacqui Berridge
Legal Services Lincolnshire
South Holland Branch
Council Offices
Priory Road
SPALDING
Lincs PE11 2XE

01775 761161 x4518 e-mail jacqui.berridge@lincolnshire.gov.uk

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DATED 24th June 2015

SOUTH HOLLAND DISTRICT COUNCIL (1)

and

EDF ENERGY (WEST BURTON POWER) LIMITED (2)

PLANNING OBLIGATION UNDER SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990 RELATING TO SUTTON BRIDGE B COMBINED CYCLE GAS TURBINE (CCGT) GENERATING STATION

Certified as a True Copy

.....

Legal Services Lincolnshire

Squire Patton Boggs (UK) LLP
2 Park Lane
Leeds
LS3 1ES
DX 26441 Leeds

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THIS DEED is dated 24th JUNE 2015

(1) **SOUTH HOLLAND DISTRICT COUNCIL** of Council Offices, Priory Road, Spalding, Lincolnshire (the "**Council**");

(2) **EDF ENERGY (WEST BURTON POWER) LIMITED** incorporated and registered in England and Wales with company number 4267569 of 40 Grosvenor Place, Victoria, London SW1X 7EN (the "Owner")

BACKGROUND

(A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.

(B) The Owner is the freehold owner of the Property.

(C) The Owner has made the Section 36 Application and is proposing to carry out the Development

(D) The Secretary of State has consulted the Council on the Section 36 Application and the Council has allocated local planning authority reference number H18-0001-06 to that consultation

(E) The Council having regard to the provisions of the Local Plan and to all other material considerations has agreed that no objection should be raised to the issue of the Section 36 Consent subject to (inter alia) the prior completion of this deed.

(E) The parties hereto agree that the terms of this Deed meet the requirements of regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended)

AGREED TERMS

1 INTERPRETATION

The following definitions and rules of interpretation apply in this deed:

1.1 Definitions:

"Air Quality Monitoring Contribution"	means the sums or any of the sums payable in accordance with the obligations in Schedule 1
"Air Quality Monitoring Equipment"	means such equipment used by the Council for the monitoring of atmospheric concentrations of CO and NO2 as may be identified in the Sutton Bridge area
"Base Rate"	means 3% above the base rate from time to time of Lloyds Bank plc

"Commencement of Development"	means the carrying out in relation to the Development of any material operation as defined by Section 56(4) of the TCPA 1990 but disregarding for the purposes of this deed and for no other purpose, the following operations: demolition works; site clearance; ground investigations; site survey works; remedial work in respect of any contamination or other adverse ground conditions; diversion and laying of services; temporary access construction works; archaeological investigation; and erection of any fences and hoardings around the Property. **Commence** and **Commences** shall be construed accordingly
"Commencement Date"	means the date Development Commences
"Decommissioning Date"	means the date when the Sutton Bridge B Combined Cycle Gas Turbine Generating Station the subject of the Section 36 Consent permanently ceases operation
"Development"	means the development of the Property authorised by the Section 36 Consent for a Combined Cycle Gas Turbine plant to be known as Sutton Bridge B which would provide up to 1800 MW of electrical generation capacity
"First Generation Date"	means the date when the Sutton Bridge B Combined Cycle Gas Turbine Generating Station the subject of the Section 36 Consent is operational and first generates electricity to the national transmission system
"Index Linked"	Means (subject to Clause 6.2) increased in accordance with the following formula: Amount payable = the payment specified in this deed x (A/B) where: A= the figure for the Retail Prices Index (All Items) that applied immediately preceding the date the payment is due

B= the figure for the Retail Prices Index (All Items) that applied when the index was last published prior to the date of this deed

"Local Plan"	means the South Holland District Local Plan, July 2006
"Plan"	means the plan attached as Appendix A
"Property"	means the land against which this deed may be enforced which is the land adjacent to Sutton Bridge Power Station, Sutton Bridge shown edged red on the Plan and registered at HM Land Registry with absolute title under title number LL68401
"Section 36 Application"	means the application for consent pursuant to Section 36 of the Electricity Act 1989 (as amended) and a direction under Section 90(2) of the TCPA 1990 for deemed planning permission for the Development which was submitted to the Secretary of State in 2005 and updated in 2013
"Section 36 Consent"	means the consent which may be granted by the Secretary of State for the Development pursuant to the Section 36 Application
"TCPA 1990"	means the Town and Country Planning Act 1990 (as amended)
"VAT"	means value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax
"Working Day"	mean any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England

1.2 Clause headings shall not affect the interpretation of this deed.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7 A reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of the Council the successors to its respective statutory functions.

1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.

1.10 A reference to writing or written includes fax but not e-mail.

1.11 A reference to this deed or to any other deed or document referred to in this deed is a reference to this deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.

1.12 References to Clauses and Schedules are to the Clauses and Schedules of this deed.

1.13 An obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.14 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.15 Where 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.

2 STATUTORY PROVISIONS

2.1 This deed constitutes a planning obligation for the purposes of Section 106 of the TCPA 1990 and is made under the said Section 106 of the TCPA 1990, Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and any other enabling powers.

2.2 The covenants, restrictions and obligations contained in this deed are planning obligations for the purposes of Section 106 of the TCPA 1990 and are entered into by the Owner with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns.

2.3 The covenants, restrictions and obligations contained in this deed are enforceable by the Council in accordance with Section 106 of the TCPA 1990.

3 CONDITIONALITY

3.1 With the exception of Clauses 2 (Statutory Provisions), 3 (Conditionality), 9 (Local Land Charge), 10 (Council's Costs), 12 (Cancellation of Entries), and 20 (Governing Law) (which take effect immediately), this deed is conditional on the grant and issue of the Section 36 Consent.

4 COVENANTS TO THE COUNCIL

4.1 The Owner covenants with the Council to:

(a) observe and perform the covenants, restrictions and obligations contained in Schedule 1.

(b) give at least 10 Working Days written notice to the Council of the intended Commencement Date.

(c) give to the Council written notice of the First Generation Date as soon as this date is known by the Owner

(d) give at least 3 calendar months written notice to the Council of the intended Decommissioning Date

5 COVENANTS BY THE COUNCIL

5.1 The Council covenants with the Owner to observe and perform the covenants, restrictions and obligations contained in Schedule 2.

6 INDEXATION

6.1 All financial contributions payable to the Council under Schedule 1 shall be Index Linked.

6.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council and Owner shall agree in writing

7 RELEASE

7.1 No person shall be liable for any breach of a covenant, restriction or obligation contained in this deed after parting with all of its interest in the Property, except in respect of any breach subsisting prior to parting with such interest.

8 DETERMINATION OF DEED

8.1 The obligations in this deed (with the exception of Clause 10) shall cease to have effect if before the Commencement of Development, the Section 36 Consent:

(a) expires;

(b) is varied or revoked other than at the request of the Owner; or

(c) is quashed following a successful legal challenge.

9 LOCAL LAND CHARGE

9.1 This deed is a local land charge and shall be registered as such by the Council.

10 COUNCIL'S COSTS

10.1 The Owner shall pay to the Council on or before the date of this deed the Council's reasonable and proper legal costs together with all reasonable and proper disbursements incurred in connection with the preparation, negotiation, completion and registration of this deed, not to exceed a cap of £3,000 (three thousand pounds).

11 REASONABLENESS

11.1 Any approval, consent, direction, authority, agreement or action to be given by the Council under this deed shall not be unreasonably withheld or delayed.

12 CANCELLATION OF ENTRIES

12.1 On the written request of the Owner at any time after each or all of the obligations have been performed or otherwise discharged (and subject to the payment of the Council's reasonable and proper costs) the Council will issue a written confirmation of such performance or discharge.

12.2 Following the performance and full satisfaction of all the terms of this agreement or if this deed is determined pursuant to Clause 8 the Council will on the written request of the Owner cancel all entries made in the local land charges register in respect of this deed.

13 DISPUTES

13.1 Any dispute, controversy or claim arising out of or relating to this deed, including any question regarding its breach, existence, validity or termination or the legal relationships established by this deed, shall be finally resolved by arbitration in accordance with the Arbitration Act 1996 or any successor legislation. It is agreed that:

(a) the tribunal shall consist of one arbitrator appointed jointly by the parties;

(b) in default of the parties' agreement as to the arbitrator, the arbitrator shall be appointed on either party's request by the President for the time being of the Royal Institution of Chartered Surveyors;

(c) the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction, then equally); and

(d) the seat of the arbitration shall be London.

14 NO FETTER OF DISCRETION

14.1 Nothing (contained or implied) in this deed shall fetter or restrict the Council's statutory rights, powers, discretions and responsibilities.

15 WAIVER

15.1 No failure or delay by the Council to exercise any right or remedy provided under this deed or by law shall constitute a waiver of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16 FUTURE PERMISSIONS

16.1 Nothing in this agreement shall prohibit or limit the right to develop any part of the Property in accordance with any planning permission (other than the Section 36

Consent or modification, variation or amendment thereof) granted after the date of the Section 36 Consent.

17 NOTICES

17.1 Any notice or other communication to be given under this deed must be in writing and will be validly served if it is:

(a) delivered by hand; or

(b) sent by pre-paid first class post or by recorded delivery.

17.2 Any notice or other communication to be given under this deed must be sent to the relevant party as follows:

(a) to the Council at Council Offices, Priory Road, Spalding, Lincolnshire marked for the attention of the Planning Manager

(b) to the Owner at 40 Grosvenor Place, Victoria, London SW1X 7EN marked for the attention of The Company Secretary;

or as otherwise specified by the relevant party by notice in writing to each other party.

18 THIRD PARTY RIGHTS

18.1 A person who is not a party to this deed other than any person described in Clause 1.7 shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

19 VALUE ADDED TAX

19.1 Each amount stated to be payable by the Council or the Owner to the other under or pursuant to this deed is exclusive of VAT (if any).

19.2 If any VAT is at any time chargeable on any supply made by the Council or the Owner under or pursuant to this deed, the party making the payment shall pay the other an amount equal to that VAT as additional consideration on receipt of a valid VAT invoice.

20 GOVERNING LAW

20.1 This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

The common seal of **SOUTH HOLLAND DISTRICT COUNCIL**

was affixed to this document in the presence of:



Authorised signatory

Signed as a deed by **EDF ENERGY (WEST BURTON POWER) LIMITED** in the presence of:

.....
Director

Witness Signature: .....

Witness Name: SUSAN CEINWEN CHALLENGER

Address: EDF ENERGY
BARNETT WAY
BARNWOOD
GLOUCESTER GL4 3RS

Occupation: SOLICITOR

SCHEDULE 1
Covenants to the Council

1 AIR QUALITY MONITORING EQUIPMENT CONTRIBUTION

1.1 No later than the First Generation Date to pay to the Council the sum of £50,000 (fifty thousand pounds) in respect of the acquisition by the Council of Air Quality Monitoring Equipment which includes any costs howsoever arising incurred by or on behalf of the Council in the purchasing and placement of the Air Quality Monitoring Equipment

1.2 No later than the First Generation Date and no later than each anniversary of the First Generation Date to pay to the Council the sum of £10,000 (ten thousand pounds) in respect of the use, management, maintenance, repair, replacement (where necessary) and monitoring of the Air Quality Monitoring Equipment.

1.3 Payments made to the Council in accordance with paragraph 1.2 (above) are to cease at the earliest of:

(a) The 34th anniversary of the First Generation Date (and for the avoidance of doubt a contribution shall be payable on the said 34th anniversary); and

(b) The Decommissioning Date (and if the Decommissioning Date shall fall between the anniversary prior to the said 34th anniversary and the next following anniversary the final payment shall be pro-rata).

SCHEDULE 2
Covenants by the Council

1 AIR QUALITY MONITORING EQUIPMENT CONTRIBUTION

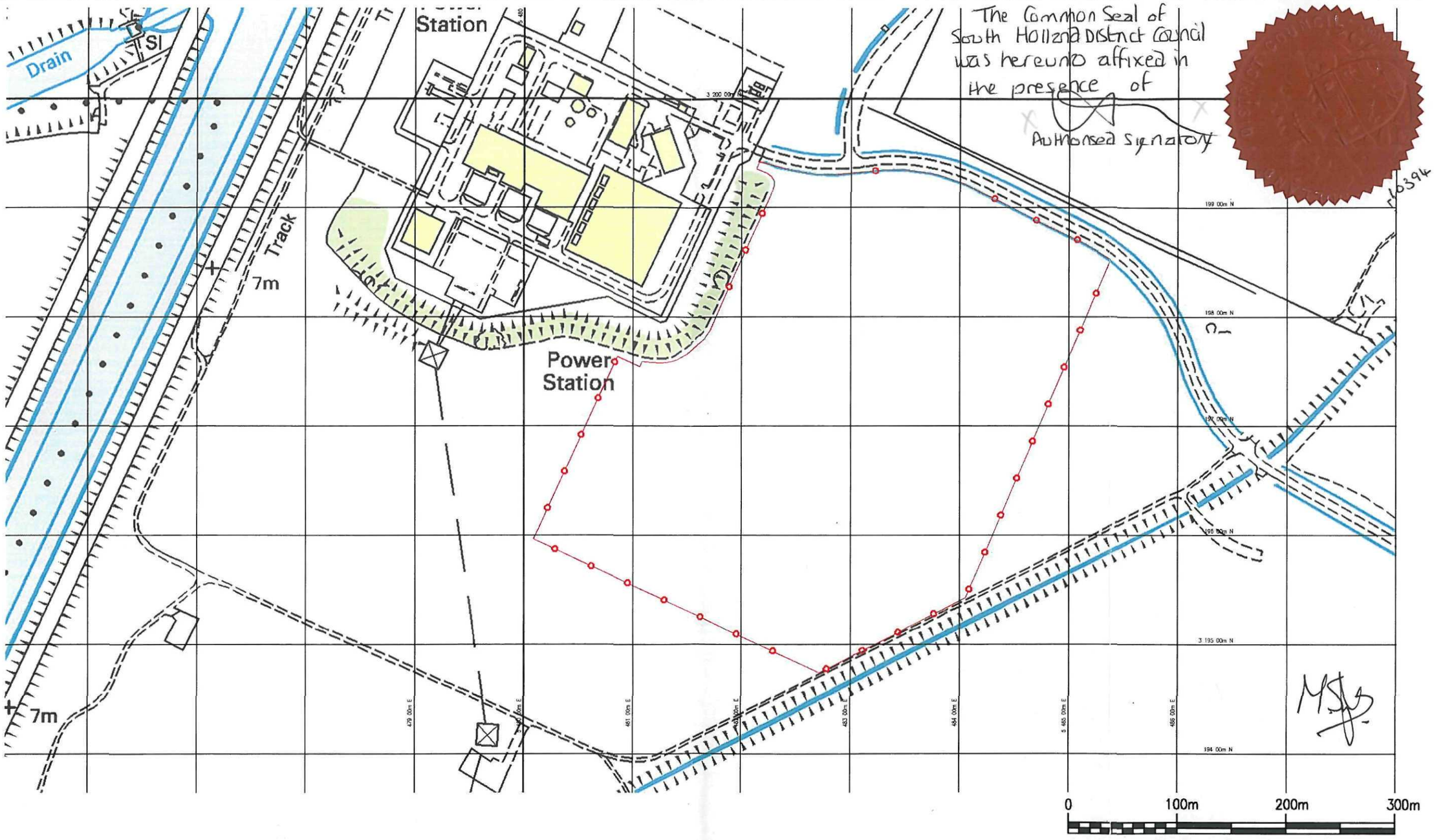
1.1 To pay the Air Quality Monitoring Contribution into a separately identified interest-bearing section of the Council's combined accounts as soon as reasonably practicable.

1.2 Not to use any part of the Air Quality Monitoring Contribution other than for the purposes for which it was paid.

1.3 In the event that the Air Quality Monitoring Contribution (or any part of it) required by paragraph 1.1 of Schedule 1 has not been spent or committed for expenditure by the Council within 5 (five) years following the date of receipt by the Council of the said Air Quality Monitoring Contribution then the Council shall refund to the Owner (being such Owner as made the contribution to the Council) any part of the said Air Quality Monitoring Contribution which has not been spent or committed for expenditure, together with any accrued interest.

1.4 In the event that any Air Quality Monitoring Contribution(s) (or any part of them) required by paragraph 1.2 of Schedule 1 has not been spent or committed for expenditure by the Council within one (1) calendar year following the date of receipt by the Council of the final Air Quality Monitoring Contribution payable under paragraph 1.3 of Schedule 1 then the Council shall refund to the Owner (being such Owner as made the contribution to the Council) any part of the said Air Quality Monitoring Contribution(s) which has not been spent or committed for expenditure, together with any accrued interest.

APPENDIX A
Plan



BAR SCALE 1:5000

REPRODUCED FROM THE 2013 ORDNANACE SURVEY 1:10,000 SCALE MAP WITH THE PERMISSION OF ORDNANCE SURVEY ON BEHALF OF THE CONTROLLER OF HER MAJESTY'S STATIONERY OFFICE © CROWN COPYRIGHT PB LICENCE NUMBER AL100018516.

Rev	Date	Description	By	Chk	App
1	31.05.13	UPDATED O.S MAP AND LICENCE	ALM	EA	EA
2	26.07.13	MAP SCALE REVISED. A4 DRAWING SHEET	ALM	EA	EA

PARSONS BRINCKERHOFF
Amber Court
William Armstrong Drive
Newcastle upon Tyne NE4 7YQ
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Client/Project:
EDF ENERGY

Title:
SUTTON BRIDGE B
RED LINE BOUNDARY

Drawn: A L MINIKIN		Checked: E AGUS	
Designed: E AGUS		Approved: E AGUS	
Date: 26/07/2013	Scale: 1:5000 A4	Sheet:	
Project Number:	Drawing Number:		Revision:
3511645A	SK 00-A		2

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Login: Minikin, Sandra Plot Date: 26/07/2013 15:32:55 File Name: K:\Environment Project Folder\3511645A - Sutton Bridge BIZ. Drawings\1. Current\Civil\Sketches\Red Line Boundary\