

**COMPLETION OF A SIDE AGREEMENT RELATED TO AN
AGREEMENT UNDER SECTION 106 OF THE TOWN AND
COUNTRY PLANNING ACT 1990 (AS AMENDED) FOR THE
RELEASE OF FUNDS FOR ENVIRONMENTAL
ENHANCEMENTS TO GLEN FABA**

Presented by the Head of Planning and Strategic Partnerships

EXECUTIVE SUMMARY

In December 2010 planning permission was granted for the development of a sustainable energy facility at Ratty's Lane, Hoddesdon. This was the subject of a section 106 agreement which required a contribution of £75,000 for environmental improvements to land adjacent to Glen Faba lake as mitigation for the new development. Linked to the section 106 agreement is a side agreement which the Authority is required to complete to enable the release of the funding. Authority is required for this to be signed under seal. A full copy of the side agreement is included in Appendix B to this report.

RECOMMENDATIONS

- Members Approve:
- (1) completion of the side agreement to the section 106 agreement linked to the grant of planning permission (Hertfordshire ref 7/0510 – 10); and
 - (2) spending the £75,000 from Hertfordshire County Council to complete the environmental improvements to land adjacent to Glen Faba.

BACKGROUND

- 1 In 2010 the Authority was consulted on an application for a proposed sustainable energy facility at Ratty's Lane, Hoddesdon. The application for the sustainable energy facility includes advanced thermal treatment and anaerobic digestion designed to treat municipal, commercial and industrial waste. The site is located just west of the statutory boundary of the Regional Park.
- 2 The Authority considered the application at its meeting of 23 September 2010 (paper ULV/45/10) and although it did raise major reservations over the potential

impact of the proposal on the Regional Park, it acknowledged that if planning permission was granted planning obligations or conditions should be included seeking amongst other matters £100,000 for measures to mitigate the impact of the scheme (minute 63). The habitat enhancements proposed for Glen Faba will include the improvement of existing and creation of new reedbeds, enhancement of the bankside vegetation which will benefit species such as Water Vole and works to the heronry on site to improve habitat suitability. If feasible, ponds targeting Great Crested Newts will be created, although this is dependent on site surveys.

- 3 The County Council secured £75,000 from the developers for these environmental works by the Authority and this has been included in the section 106 agreement which was issued with the planning permission in May 2012. The terms of the agreement require payment of the money to Hertfordshire in advance of works to implement the permission commencing on site. This has been done and the money is sitting in an interest bearing account ready for the Authority to access.

SUPPLEMENTAL AGREEMENT

- 4 To enable the Authority to access the monies the Authority has to complete a side agreement which will allow the transfer of the money from Hertfordshire to the Authority. This draft agreement would require the money to be used for the purposes referred to in the section 106 agreement.

ENVIRONMENTAL IMPLICATIONS

- 5 There are no environmental implications arising directly from the recommendations in this report.

FINANCIAL IMPLICATIONS

- 6 On completion of the agreement the monies would be transferred to the Authority. The agreement would remain in force until the earlier of either the completion of the proposed works or a determination by the County Council that the monies are not being used in accordance with the section 106 agreement.

HUMAN RESOURCE IMPLICATIONS

- 7 There are no human resource implications arising directly from the recommendations in this report.

LEGAL IMPLICATIONS

- 8 There are no legal implications arising directly from the recommendations in this report.

RISK MANAGEMENT IMPLICATIONS

- 9 The terms of the side agreement do not pose a risk to the Authority as the Senior Conservation Officer will deliver the project at Glen Faba to an agreed programme which will be completed during 2018. This is important as the monies have been secured as mitigation for a development which has already gone ahead.

EQUALITY IMPLICATIONS

- 10 There are no equality implications arising directly from the recommendations in this report.

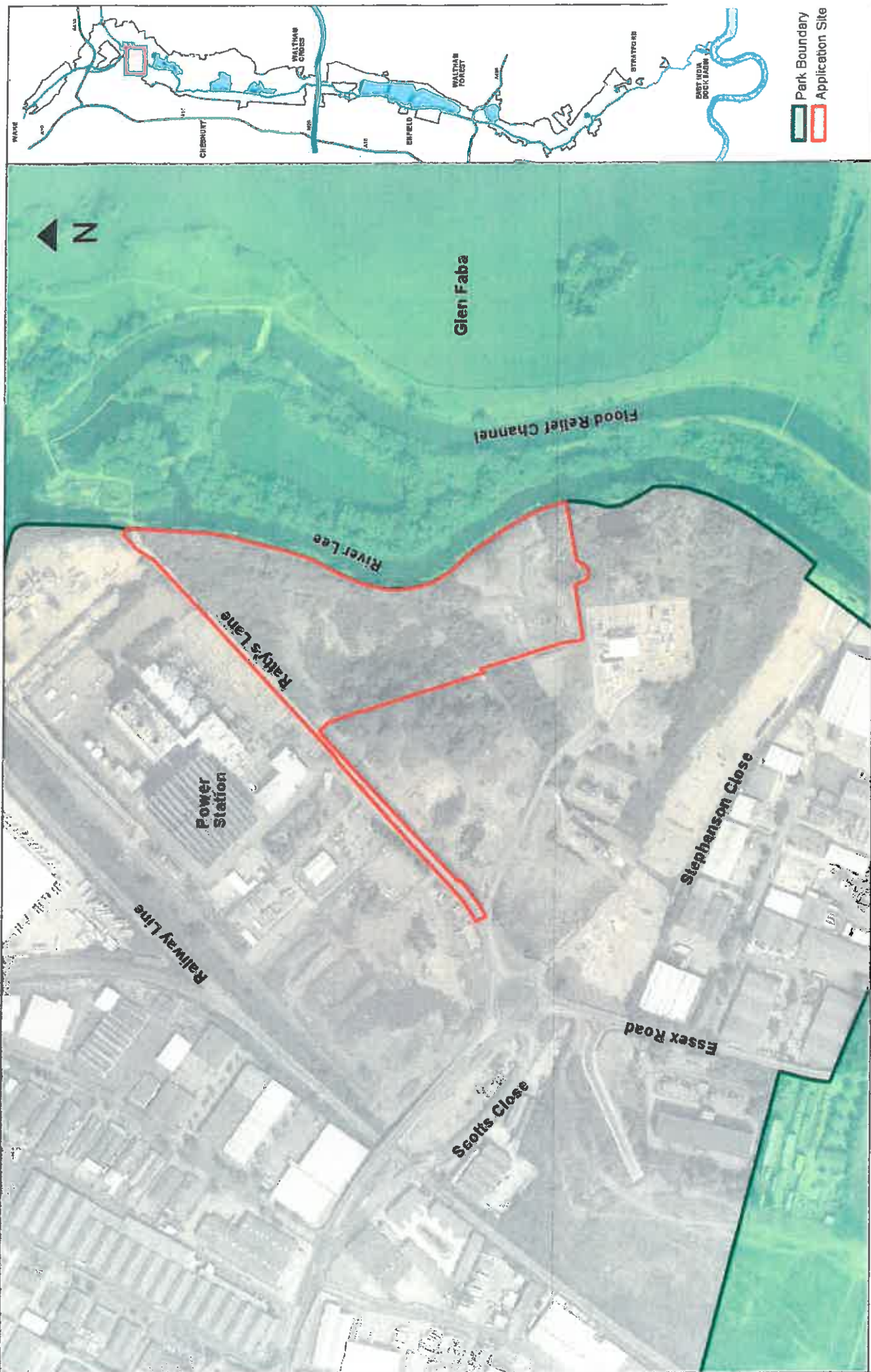
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PREVIOUS COMMITTEE REPORTS

Upper Lee Valley ULV/45/10 Planning consultation 23 September 2010
Regeneration &
Planning Committee

APPENDICES ATTACHED

Appendix A Plan of site boundary
Appendix B Draft Side Agreement



 Park Boundary
 Application Site

Ratty's Lane - Section 106 Agreement

1:5000 @ A4
02.06.16

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THIS Deed is made on this day of 2016 between:

1. **HERTFORDSHIRE COUNTY COUNCIL** of County Hall Pegs Lane Hertford Hertfordshire SG13 8DE (the "**County Council**")

2. **LEE VALLEY REGIONAL PARK AUTHORITY** of Myddelton House Bulls Cross Enfield Middlesex EN2 9HG (the "**Authority**")

WHEREAS:

- (1) The County Council is a local planning authority for the purposes of the 1990 Act for the area in which the Site is situate

- (2) The Authority made representations to the County Council during the County Council's consideration of the Planning Application as a result of which representations the County Council considered that the Ecology Contribution was
 - (a) necessary to make the Development acceptable in planning terms
 - (b) directly related to the Development and
 - (c) fairly and reasonably related in scale and kind to the Development

- (3) On 20 March 2012 the Section 106 Agreement was made for the purposes of regulating the Development and securing the matters therein referred to including payment of the Ecology Contribution

- (4) On 26 March 2012 the County Council granted the Planning Permission for the Development under reference 7/0510-10

- (5) The Owner has paid the Ecology Contribution to the County Council and it is intended under this Deed to allocate the Ecology Contribution to the Authority in accordance with the terms of the Section 106 Agreement

IT IS NOW AGREED as follows:

1. Definitions Interpretation and General

1.1 In this Deed the following terms shall have the following meanings:-

“Act“	the Town and Country Planning Act 1990 as amended
“Ecology Contribution”	the sum of seventy five thousand pounds (£75,000)
“Section 106 Agreement”	an agreement dated 20 March 2012 made between the County Council (1) Trent Developments Limited (2) and PCL Transport Limited (2) varied by a further agreement dated 18 March 2014 made between the County Council (1) Trent Developments Limited (2) and Metro Bank PLC (3) both which are annexed to the Schedule hereto

2. In this Deed:

- 2.1 any reference to any statute or any section of a statute includes any statutory re-enactment or modification
- 2.2 any reference to clauses and schedules are references to clauses and schedules to this Deed
- 2.3 headings in the Deed shall not form part of or affect its construction
- 2.4 where a party is required to give consent or approval by any specific provision of this Deed such approval shall not be unreasonably withheld or delayed

- 2.5 any provision of this Deed which is or may be unlawful void or unenforceable shall to the extent of such unlawfulness invalidity or unenforceability be deemed severable and shall not affect any other provision of this Deed
- 2.6 where two or more people form a party to this Deed the obligations they undertake may be enforced against them all jointly or against each of them individually
- 2.7 words of the masculine gender shall incorporate the feminine and neuter genders and words of the singular shall include the plural and vice versa
- 2.8 references to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the County Council the successors to its functions
- 2.9 Save where the context otherwise requires the expressions used in this Deed shall have the same meaning or meanings as those stated in the Section 106 Agreement

3. It is hereby agreed as follows:

- 3.1 This Deed is entered into pursuant to Section 111 of the Local Government Act 1972 Section 1 of the Localism Act 2011 and all other powers enabling the County Council
- 3.2. The County Council shall within 28 days of the date of this Deed transfer the Ecology Contribution to the Authority together with any accrued interest and indexation under the terms of the Section 106 Agreement
- 3.3. The Authority shall following receipt of the Ecology Contribution:

- i) acknowledge receipt of such payments in writing to the County Council within 5 working days of receipt
- ii) hold the Ecology Contribution in a separate and identifiable interest-bearing account and shall at all times maintain a proper record of all payments received and expenditure made from the said account with regard to the Ecology Contribution
- iii) apply the Ecology Contribution solely and diligently and with reasonable care and skill strictly in accordance with the Section 106 Agreement and specifically towards the costs of ecological improvements in the vicinity of the Site including the Glen Faba Lake to the rear of the River Lea adjacent to the Site and the Ecology Land
- iv) upon request provide to the County Council full and audited accounts of all expenditure paid out of or allocated to the Ecology Contribution
- v) if any part of the sums received by the Authority in respect of the Ecology Contribution have not been spent in accordance with the Section 106 Agreement and Clause 3.3 (iii) hereof the Authority shall upon written request from the County Council received at any time or following any request from persons entitled under the Section 106 Agreement to a refund of such unspent sums repay any such unspent sum together with any accrued interest to the County Council

- 4. The Authority shall indemnify the County Council in respect of all actions claims demands expenses and proceedings arising out of or in connection with or incidental to the expenditure or otherwise of the Ecology Contribution

5. This Deed shall be deemed to have become operative as from the date hereof and shall remain in full force and effect until the earlier of
 - 5.1 full and complete performance of the obligations on the part of the Authority contained in this Deed or
 - 5.2 3 months notice in writing given by the County Council to the Authority at the address above if the County Council's Chief Executive and Director of Environment for the time being (or his officers or agents) at his sole discretion acting reasonably determines that expenditure of the Ecology Contribution (together with interest and indexation thereon) is not in accordance with the Section 106 Agreement and/or the terms of this Deed and the Authority does not remedy such action within one month of the date of the written notice
6. If this Deed is terminated in accordance with Clause 5.2 hereof the Authority shall within 28 days of such termination repay to the County Council any part of the Ecology Contribution which has not been spent in accordance with the Section 106 Agreement and Clause 3.3 (iii) hereof together with interest accrued on such unspent sum
7. Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 nothing in this Deed confers or purports to confer any right to enforce any of the terms and provisions herein on any person who is not a party hereto or a statutory successor to such a party
8. This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the English courts

IN WITNESS whereof the parties hereto have executed this Deed as a deed but the same remains undelivered until the day and year first before written

The COMMON SEAL of)
HERTFORDSHIRE COUNTY)
COUNCIL was hereunto affixed)
in the presence of:-)

Chief Legal Officer / Assistant Chief Legal Officer

The COMMON SEAL of)
LEE VALLEY REGIONAL PARK)
AUTHORITY was hereunto affixed)
in the presence of:-)

.....
Chairman

.....
Authorised Signatory
Name of Authorised Signatory:

THE SCHEDULE

Section 106 Agreement and Deed of Variation

Date 2016

HERTFORDSHIRE COUNTY COUNCIL

- and -

LEE VALLEY REGIONAL PARK AUTHORITY

Agreement relating to Planning Obligations

KATHRYN P PETTITT
Chief Legal Officer
County Hall
Hertford
SG13 8DE

Ref:- DO/004067