

DATE 20th December 2008

UNILATERAL UNDERTAKING
UNDER SECTION 106
OF THE
TOWN AND COUNTRY PLANNING ACT 1990

RELATING TO

4 acres of Land accessed off of Atlantic Way within Barry Docks Barry

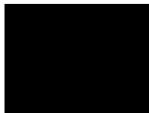
GIVEN BY

Barry Energy Recovery Limited

and

Associated British Ports

THIS DEED is made 27th December 2009 by Barry Energy Recovery Limited, 6 Croft Court, Whitetails Business Park, Westby, Lancashire FY4 5PR (company registration number) 6589595 ("the Developer") and Associated British Ports a statutory body corporate pursuant to the Transport Act 1981 of ~~100 Holborn London EC1N 2ER~~ ("ABP")



Aldwych House, 71-9, Aldwych, London, WC2B 4HN

WHEREAS

- A. The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated
- B. ABP is the owner of the freehold interest in the Site which forms part of the property contained in the Conveyance.
- C. The Developer and the Council consider that the following Planning Obligations should be entered into as of the date of this Deed conditional upon the Application being granted and subject to the conditions contained in this Deed in respect of the Site.
- D. ABP as the owner of the freehold interest in the Site has agreed to join into this deed to give its consent to the Developer entering into this deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

1 DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

"Act"	the Town and Country Planning Act 1990
"Agreement"	an agreement dated 3 rd April 2009 made between ABP (1) and the Developer (2)
"Application"	the application for full planning permission registered on 9 th January 2009 and submitted to the Council for the Development and allocated reference number 2009/00021/FUL
"Beneficial Occupation"	means the stage at which the building and plant have been constructed and are fit for use as described in the Application and such use has commenced
"Commencement of Development"	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work.

archaeological investigations investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly.

"Conveyance"	means a conveyance of the Site together with other land dated 22 nd July 1893 and made between the Right Honourable Ivor Bertie Baron Wimborne and his trustees (1) and the Barry Railway Company (2)
"The Council"	means the Vale of Glamorgan Council
"the Developer"	means Barry Energy Recovery Limited
"Development"	the Development of the Site by a Change of use from B2 - General Industrial Use to Sui Generis - Waste Use which would include operational development in the form of the construction of a gasification waste to energy plant for non-hazardous waste as set out in the Application.
"Index"	all Items Index of Retail Prices issued by the Office for National Statistics.
"Interest"	interest at 4% per cent above the base lending rate of Barclays Bank Plc from time to time
"Plan"	the plan attached to this Deed
"the Planning Obligations"	means the obligations specified in the Second Schedule annexed hereto
"Planning Permission"	the full planning permission subject to conditions to be granted by the Council pursuant to the Application.
"Public Art"	means art that is the original work of a living professional artist and is created for a particular place, commissioned by or working in collaboration with others such as architects, landscape designers planners, developers, arts officers and community representatives or the provision of facilities which enable the creation of art.

"Public Art Contribution"	means a sum equivalent in the financial value of 1% of the construction costs of the Development excluding plant, infrastructure and landscaping.
"Public Art Fund"	means the Council's fund for Public Art derived through financial contributions for Public Art where Public Art has not been provided on development sites to the value of 1% of the build costs, which is held in an interest bearing account until such time as sufficient funds are available to cover the costs of an alternative work of art or until a suitable alternative site is found;
"Site"	the land against which this Deed may be enforced as shown edged red on the Plan.
"Sustainable Transport Contribution"	means the sum of two thousand pounds (£2,000) per employee post payable to the Council to provide or enhance Sustainable Transport Facilities serving the Site.
"Sustainable Transport Facilities"	means information, facilities or infrastructure which provides or improves access for pedestrians, cyclists, public transport users, motor cycles, taxis or car sharers in the vicinity of the Site.

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

2.5 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council, the successors to its statutory functions.

3. THE PLANNING OBLIGATIONS

3.1 This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000.

3.2 The covenants, restrictions and requirements imposed upon the Developer under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Developer.

3.3 This Deed is conditional upon:

(i) the grant of the Planning Permission, and

(ii) the Commencement of Development.

3.4 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

3.5 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Developer) it is modified by any statutory procedure or expires prior to the Commencement of Development.

3.6 The Developer covenants with the Council to observe and perform the obligations in respect of the Site as set out in this Deed and the Schedule.

3.7 This Deed relates only to the Site.

3.8 This Deed shall be registerable as a local land charge by the Council.

3.9 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

3.10 The Developer agrees to indemnify ABP against any costs or liabilities arising under any covenants contained herein or any planning obligations created by this deed.

3.11 It is acknowledged that ABP is a party to this deed at no cost to ABP and solely for the purpose of confirming its consent as freeholder of the Site in order to procure the grant of the Planning Permission AND on that basis ABP now gives its consent to the Developer entering into this deed.

4. CHANGE IN OWNERSHIP

4.1 The Developer agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

FIRST SCHEDULE
The Developer and ABP's Title and description of the Site

Part 1 – The Site

ALL THAT land shown edged in red on the Plan comprising approximately 4 acres of land at Atlantic Way Barry in the County of the Vale of Glamorgan and which forms part of the property contained in the Conveyance and is the subject of the Agreement

Part 2 – ABP's Title

The Conveyance and all statutory transmissions since the date of the Conveyance

Part 3 – The Developer's Title

The Agreement and a lease to be granted to the Developer in accordance with the provisions of the Agreement

SECOND SCHEDULE
The Developer's Covenants with the Council

The Developer covenants and agrees:

1. The Developer shall pay to the Council on completion of this Deed the Administration Fee of £3,223.20 and the legal costs of £750.00 the Council incurred in the preparation of this Deed.

Public Art

2. Prior to Commencement of Development the Developer shall submit a schedule of build costs to the Council in order to calculate the value of the Public Art Contribution
3. Prior to Beneficial Occupation of the Development, the Developer shall submit to the Council for its approval details of a costed scheme for the provision of Public Art on Site including a schedule for implementation.
4. The approved scheme shall be implemented on the Site in accordance with the approved details and in any event no later than 12 months following Beneficial Occupation of the Development
5. In the event that either:
 - a. The Council agrees that no public art can be practically provided on Site; or
 - b. the cost of implementing the approved scheme is less than the Public Art Contribution

the Developer shall, prior to the Beneficial Occupation of the Development, pay to the Council the remaining amount of the Public Art Contribution which shall not be spent on Site which shall be added to the Council's Public Art Fund.

Sustainable Transport

6. Prior to Beneficial Occupation of the Development the Developer shall provide written notification to the Council confirming the total number of employees to be employed within the Development for whom the Sustainable Transport Contribution is payable

7. To pay the Sustainable Transport Contribution, on or before the date of Beneficial Occupation of the Development.

Notification Indexation and Interest

8. To notify the Council in writing of the date of Commencement of Development and Beneficial Occupation of the Development within one calendar month of their respective occurrence.

9. Any sum referred to above shall be increased by an amount equivalent to the increase in the Index calculated from the date hereof until the actual date on which such sum is payable

10. If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of actual payment.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written

Executed and DELIVERED as a DEED
by Barry Energy Recovery Limited
acting by two Directors
or by one Director and its Company Secretary

Signature

Name and Office of Signatory

Signature

0 1 2 0 1 4

Name and Office of Signatory

Executed as a DEED by
ASSOCIATED BRITISH PORTS
by the affixing of its Common Seal
in the presence of:

Assistant Secretary's Signature

Assistant Secretary's Name

Amy R. [Signature]

