

South Humber Bank Energy Centre Project

Planning Inspectorate Reference: EN010107

South Marsh Road, Stallingborough, DN41 8BZ

The South Humber Bank Energy Centre Order

Document Reference: 5.13 Development Consent Obligation

**The Infrastructure Planning (Applications: Prescribed Forms and Procedure)
Regulations 2009 - Regulation 5(2)(q)**



Applicant: EP Waste Management Ltd
Date: April 2020

DOCUMENT HISTORY

Document Ref	5.13 Development Consent Obligation		
Revision	1.0		
Author	Sarah Swales		
Signed	SS	Date	April 2020
Approved By	Nick McDonald		
Signed	NM	Date	April 2020
Document Owner	Pinsent Masons LLP		

GLOSSARY

Abbreviation	Description
CCGT	Combined Cycle Gas Turbine.
DCO	Development Consent Order: provides a consent for building and operating an NSIP.
EfW	Energy from Waste: the combustion of waste material to provide electricity and/ or heat.
EIA	Environmental Impact Assessment.
EPUKI	EP UK Investments Ltd.
EPWM	The Applicant / EP Waste Management Ltd.
ES	Environmental Statement.
MW	Megawatt: the measure of power produced.
NELC	North East Lincolnshire Council.
NSIP	Nationally Significant Infrastructure Project: for which a DCO is required.
PA 2008	Planning Act 2008.
Q2	Quarter 2
SHBEC	South Humber Bank Energy Centre.
SHBPS	South Humber Bank Power Station.
SoS	Secretary of State.

1.0 INTRODUCTION

1.1 Overview

- 1.1.1 This 'Development Consent Obligation' document (Document Ref. 5.13) has been prepared on behalf of EP Waste Management Limited ('EPWM' or the 'Applicant'). It forms part of the application (the 'Application') for a Development Consent Order (a 'DCO'), that has been submitted to the Secretary of State (the 'SoS') for Business, Energy and Industrial Strategy, under section 37 of 'The Planning Act 2008' (the 'PA 2008').
- 1.1.2 EPWM is seeking development consent for the construction, operation and maintenance of an energy from waste ('EfW') power station with a gross electrical output of up to 95 megawatts (MW) including an electrical connection, a new site access, and other associated development (together 'the Proposed Development') on land at South Humber Bank Power Station ('SHBPS'), South Marsh Road, near Stallingborough in North East Lincolnshire ('the Site').
- 1.1.3 A DCO is required for the Proposed Development as it falls within the definition and thresholds for a 'Nationally Significant Infrastructure Project' (a 'NSIP') under sections 14 and 15(2) of the PA 2008.
- 1.1.4 The DCO, if made by the SoS, would be known as the 'South Humber Bank Energy Centre Order' ('the Order').
- 1.1.5 Full planning permission ('the Planning Permission') was granted by North East Lincolnshire Council ('NELC') for an EfW power station with a gross electrical output of up to 49.9 MW and associated development ('the Consented Development') on land at SHBPS ('the Consented Development Site') under the Town and Country Planning Act 1990 on 12 April 2019. Since the Planning Permission was granted, the Applicant has assessed potential opportunities to improve the efficiency of the EfW power station, notably in relation to its electrical output. As a consequence, the Proposed Development would have a higher electrical output (up to 95 MW) than the Consented Development, although it would have the same maximum building dimensions and fuel throughput (up to 753,500 tonnes per annum (tpa)).

1.2 The Applicant

- 1.2.1 The Applicant is a subsidiary of EP UK Investments Limited ('EPUKI'). EPUKI owns and operates a number of other power stations in the UK. These include SHBPS and Langage (Devon) Combined Cycle Gas Turbine ('CCGT') power stations, Lynemouth (Northumberland) biomass-fired power station, and power generation assets in Northern Ireland. EPUKI also owns sites with consent for new power stations

in Norfolk (King's Lynn 'B' CCGT) and North Yorkshire (Eggborough CCGT).

- 1.2.2 EPUKI is a subsidiary of Energetický A Prumyslový Holding ('EPH'). EPH owns and operates energy generation assets in the Czech Republic, Slovak Republic, Germany, Italy, Hungary, Poland, Ireland, and the United Kingdom.

1.3 The Proposed Development Site

- 1.3.1 The Proposed Development Site (the 'Site' or the 'Order limits') is located within the boundary of the SHBPS site, east of the existing SHBPS, along with part of the carriageway within South Marsh Road. The principal access to the site is off South Marsh Road.
- 1.3.2 The Site is located on the South Humber Bank between the towns of Immingham and Grimsby; both over 3 km from the Site. The surrounding area is characterised by industrial uses dispersed between areas of agricultural land with the nearest main settlements being the villages of Stallingborough, Healing and Great Coates. The Site lies within the parish of Stallingborough although Stallingborough village lies over 2 km away.
- 1.3.3 The Site lies within the administrative area of NELC, a unitary authority. The Site is owned by EP SHB Limited, a subsidiary of EPUKI, and is therefore under the control of the Applicant, with the exception of the highway land on South Marsh Road required for the new Site access.
- 1.3.4 The existing SHBPS was constructed in two phases between 1997 and 1999 and consists of two CCGT units fired by natural gas, with a combined gross electrical capacity of approximately 1,400 MW. It is operated by EP SHB Limited.
- 1.3.5 The Site is around 23 hectares ('ha') in area and is generally flat, and typically stands at around 2.0 m Above Ordnance Datum (mAOD).
- 1.3.6 The land surrounding the Site immediately to the south, west and north-west is in agricultural use with a large polymer manufacturing site, Synthomer, and a waste management facility, NEWLINCS, both located to the north of the Site and also accessed from South Marsh Road. The estuary of the River Humber lies around 175 m to the east of the Site.
- 1.3.1 Access to the South Humber Bank is via the A180 trunk road and the A1173. The Barton railway line runs north-west to south-east between Barton-on-Humber and Cleethorpes circa 2.5 km to the south-west of the Site and a freight railway line runs north-west to south-east circa 300 m (at the closest point) to the Site.

1.3.2 A more detailed description of the Site is provided at Chapter 3: Description of the Proposed Development Site in the Environmental Statement ('ES') Volume I (Document Ref. 6.2).

1.4 The Proposed Development

1.4.1 The main components of the Proposed Development are summarised below:

- Work No. 1— an electricity generating station located on land at SHBPS, fuelled by refuse derived fuel ('RDF') with a gross electrical output of up to 95 MW at ISO conditions;
- Work No. 1A— two emissions stacks and associated emissions monitoring systems;
- Work No. 1B— administration block, including control room, workshops, stores and welfare facilities;
- Work No. 2— comprising electrical, gas, water, telecommunication, steam and other utility connections for the generating station (Work No. 1);
- Work No. 3— landscaping and biodiversity works;
- Work No. 4— a new site access on to South Marsh Road and works to an existing access on to South Marsh Road; and
- Work No. 5— temporary construction and laydown areas.

1.4.2 Various types of ancillary development further required in connection with and subsidiary to the above works are detailed in Schedule 1 of the DCO. A more detailed description of the Proposed Development is provided at Schedule 1 'Authorised Development' of the Draft DCO and Chapter 4: The Proposed Development in the ES Volume I (Document Ref. 6.2) and the areas within which each of the main components of the Proposed Development are to be built is shown by the coloured and hatched areas on the Works Plans (Document Ref. 4.3).

1.5 Relationship with the Consented Development

1.5.1 The Proposed Development comprises the works contained in the Consented Development, along with additional works not forming part of the Consented Development ('the Additional Works'). The Additional Works are set out below along with an explanation of their purpose.

- a larger air-cooled condenser (ACC), with an additional row of fans and heat exchangers – this will allow a higher mass flow of steam to be sent to the steam turbine whilst maintaining the

exhaust pressure and thereby increasing the amount of power generated;

- a greater installed cooling capacity for the generator – additional heat exchangers will be installed to the closed-circuit cooling water system to allow the generator to operate at an increased load and generate more power;
- an increased transformer capacity – depending on the adopted grid connection arrangement the capacity will be increased through an additional generator transformer operating in parallel with the Consented Development's proposed generator transformer or a single larger generator transformer. Both arrangements would allow generation up to 95 MW; and
- ancillary works – the above works will require additional ancillary works and operations, such as new cabling or pipes, and commissioning to ensure that the apparatus has been correctly installed and will operate safely and as intended.

1.5.2 The likely construction scenario is for work on the Consented Development (pursuant to the Planning Permission) to commence in Quarter 2 ('Q2') of 2020 and to continue for around three years. Following grant of a DCO for the Proposed Development (approximately halfway through the three-year construction programme), the Applicant would initiate powers to continue development under the Order instead of the Planning Permission. The Order includes appropriate powers and notification requirements for the 'switchover' between consents, to provide clarity for the relevant planning authority regarding the development authorised and the applicable conditions, requirements, and other obligations. Once the Order has been implemented the additional works would be constructed and the Proposed Development would be built out in full. The Proposed Development would commence operation in 2023.

1.5.3 Alternative construction scenarios, involving construction entirely pursuant to the Order, are also possible. Accordingly, three representative scenarios are described within Chapter 5: Construction Programme and Management in the ES Volume I (Document Ref. 6.2) and assessed in the Environmental Impact Assessment ('EIA').

1.6 The Purpose and Structure of this Document

1.6.1 This document presents information on the development consent obligations relating to the Proposed Development.

1.6.2 The Development Consent Obligation is to be entered into to vary the terms of a section 106 agreement entered into between the Applicant and NELC dated 11 April 2019 ('Original Deed') and which related to

the Consented Development. The Development Consent Obligation will be entered into pursuant to section 106 and section 106A of the Town and Country Planning Act 1990.

- 1.6.3 The Site is within the South Humber Bank mitigation zone and it was acknowledged that the Consented Development would impact land which is functionally linked to the Humber Estuary Special Protection Area / Ramsar site. On this basis and pursuant to the South Humber Gateway Ecological Mitigation Delivery Plan (September 2016) the Applicant entered into the Original Deed to secure a contribution to mitigate the Consented Development's impacts.
- 1.6.4 The Original Deed was a material consideration to NELC's decision to grant the Planning Permission.
- 1.6.5 The Applicant is now submitting the Application, and the Applicant has proposed to enter into the Development Consent Obligation so that the obligations in the Original Deed apply to the Proposed Development and the Consented Development, and so as to alter the trigger for payment of the contribution.
- 1.6.6 The variations to the Original Deed are set out at Schedule 1 to the Development Consent Obligation.
- 1.6.7 The Applicant is discussing the terms of the Development Consent Obligation with NELC and will provide updates to the Examining Authority as those negotiations progress.

APPENDIX 1: DEVELOPMENT CONSENT OBLIGATION

DATED _____ 2020

**DEED OF VARIATION UNDER SECTION 106 AND 106A OF THE TOWN AND COUNTRY
PLANNING ACT 1990 RELATING TO LAND OFF SOUTH MARSH ROAD, STALLINGBOROUGH,
GRIMSBY**

between

NORTH EAST LINCOLNSHIRE BOROUGH COUNCIL

and

EP SHB LIMITED

and

LLOYDS BANK PLC

THIS DEED is dated _____ 2020

between

- (1) **NORTH EAST LINCOLNSHIRE BOROUGH COUNCIL** of Municipal Offices Town Hall Square Grimsby North East Lincolnshire (**Council**);
- (2) **EP SHB LIMITED** (Company Registration Number 02571241) of Berger House, 36-38 Berkeley Square, London W1J 5AE (**Owner**); and
- (3) **LLOYDS BANK PLC** (Company Registration Number 00002065) of 25 Gresham Street, London EC2V7HN (**Mortgagee**).

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the TCPA for the area in which the Property is situated and the highway authority for the purposes of the Highways Act 1980.
- (B) The Owner is the freehold owner of that part of the Property registered at the Land Registry with Title Absolute under Title Number HS239444.
- (C) The Mortgagee has a charge over that part of the Property registered at the Land Registry with Title Number HS239444 and which is dated 18 December 2018.
- (D) The Council and the Owner entered into the Original Deed which resulted in the Planning Permission being granted.
- (E) EPWM has submitted the DCO Application and the parties have agreed to enter into this Deed of Variation so that the obligations in the Original Deed apply to the DCO and so as to alter the trigger for payment of the Habitat Contribution.

AGREED TERMS

1. INTERPRETATION

1.1 Unless a term is expressly defined in this Deed of Variation (in which case the definition in this Deed of Variation prevails) or some other contrary indication appears, each term used in this Deed of Variation which is defined in the Original Deed has the same meaning as in the Original Deed.

1.2 Definitions:

DCO

Means the South Humber Bank Energy Centre Order 202[*] in such form as it may be granted by the Secretary of State

DCO Application	Means the application for the DCO submitted by EPWM on [9 April 2020] to the Secretary of State
EPWM	Means EP Waste Management Limited (company registration number 12144128) of Part Ground Floor, Paradigm Building, 3175 Century Way, Thorpe Park, Leeds LS15 8ZB
Original Deed	Means the S106 Agreement dated 11 April 2019 entered into between the Owner and the Council

2. **STATUTORY PROVISIONS**

- 2.1 This Deed of Variation is entered into pursuant to section 106 and section 106A of the TCPA and is also entered into pursuant to 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 of Variation on the part of the Owner are planning obligations for the purposes of section 106 of the TCPA 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 of Variation are enforceable by the Council in accordance with section 106 of the TCPA.
- 2.4 Except for the planning obligations contained in this Deed of Variation specifically regulating the use of land or buildings after construction (if any), no planning obligations contained in this Deed of Variation are binding on any land held by a statutory utility or statutory undertaker for their operational purposes.

3. **VARIATIONS TO THE ORIGINAL DEED**

- 3.1 The Original Deed is varied in the terms set out in Schedule 1.

4. **COUNCIL'S COSTS**

The Owner shall pay to the Council on or before the date of this Deed of Variation the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, negotiation, completion and registration of this Deed of Variation not exceeding £XX.

5. **DETERMINATION OF DEED OF VARIATION**

This Deed of Variation (with the exception of clause 4 (Council's Costs)) ceases to have effect if before the Start of Operation (as defined in Schedule 1), the DCO:

- (a) is refused by the Secretary of State;
- (b) expires;
- (c) is revoked or otherwise withdrawn; or
- (d) is quashed following a successful legal challenge.

6. **MORTGAGEE'S CONSENT**

The Mortgagee acknowledges and declares that this Deed of Variation has been entered into by the Owner with its consent and that the Property is to be bound by the obligations contained in the Original Deed as varied by this Deed of Variation and that the security of the charge over the Land shall take effect subject to the Original Deed as varied by this Deed of Variation, **PROVIDED THAT** the Mortgagee shall have no liability under the Original Deed or this Deed of Variation unless it takes possession of the Land in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

7. **GOVERNING LAW**

This Deed of Variation 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.

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

Schedule 1 Variations to the Original Deed

1. Variations to Clause 1.1

- 1.1 The following definition is inserted in Clause 1.1 of the Original Deed after the definition of Commencement Date:

“**DCO:** the South Humber Bank Energy Centre Order 202[*] in such form as it may be granted by the Secretary of State.”

- 1.2 The definition of Development is deleted from Clause 1.1 of the Original Deed and replaced with the following definition:

“**Development:** the development of the Property authorised by either:
(a) the Planning Permission or any further planning permission that is issued as a variation of the Planning Permission under section 73 or 73A of the TCPA; or
(b) the DCO including any future variation or amendment to it.”

- 1.3 The definition of Occupation is deleted from Clause 1.1 of the Original Deed and replaced with the following definition:

“**Start of Operation:** the commissioning of the Development has been completed and it is generating electricity on a commercial basis, and “Start Operating” shall be construed accordingly.”

2. Variations to Schedule 1

- 2.1 Paragraph 2 of Schedule 1 to the Original Deed is deleted and replaced with the following text:

“2. Notice of Start of Operation

2.1 To give written notice to the Council no less than 10 days prior to the Start of Operation.”

- 2.2 Paragraph 3 of Schedule 1 to the Original Deed is deleted and replaced with the following text:

“3. Habitat Contribution

3.1 Not to Start Operating (nor permit or allow the Start of Operation) until the Habitat Contribution has been paid to the Council.”

3. Variations to Schedule 2

- 3.1 In paragraph 2 of Schedule 2 to the Original Deed the words "or EPWM" are inserted after each reference to "the Owner".

The common seal of NORTH EAST
LINCOLNSHIRE BOROUGH COUNCIL
was affixed to this document in the
presence of:

Authorised signatory

EXECUTED as a Deed)
(but not delivered until dated) by)
EP SHB LIMITED)
acting by a director in the presence of:)
)

Director

.....
Signature of witness

.....
Name of witness

.....
Address

.....
Occupation

EXECUTED as a Deed)
(but not delivered until dated) by)
LLOYDS BANK PLC)
acting by)

APPENDIX 2: ORIGINAL DEED

DATED 11th April 2019

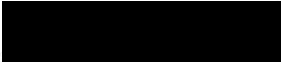
**PLANNING OBLIGATION UNDER SECTION 106 OF THE TOWN AND
COUNTRY PLANNING ACT 1990 RELATING TO LAND OFF SOUTH MARSH
ROAD, STALLINGBOROUGH, GRIMSBY**

between

NORTH EAST LINCOLNSHIRE BOROUGH COUNCIL

and

EP SHB LIMITED

CERTIFIED TO BE A TRUE AND COMPLETE
COPY OF THE ORIGINAL
DATED THIS 12 DAY OF 04 2019
Pinsent Masons LLP - 

THIS DEED is dated 11th April 2019
between

- (1) **NORTH EAST LINCOLNSHIRE BOROUGH COUNCIL** of Municipal Offices
Town Hall Square Grimsby North East Lincolnshire (**Council**).
- (2) **EP SHB LIMITED** (Company Registration Number 02571241) of Berger
House, 36-38 Berkeley Square, London W1J 5AE (**Owner**).

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the TCPA for the area in which the Property is situated and the highway authority for the purposes of the Highways Act 1980.
- (B) The Owner is the freehold owner of that part of the Property registered at the Land Registry with Title Absolute under Title Number HS239444.
- (C) The Owner has submitted the Planning Application and the Council has resolved to grant the Planning Permission subject to the planning obligations contained in this Deed being secured, and the parties have agreed to into this Deed in order to do so.
- (D) The Property is within the South Humber Bank mitigation zone and the Development will impact land which is functionally linked to the Humber Estuary Special Protection Area / Ramsar site, and therefore pursuant to the South Humber Gateway Ecological Mitigation Delivery Plan (September 2016) a contribution is required to mitigate the Development's impacts. The Habitat Contribution is to be spent by the Council in delivering mitigation at the Habitat Mitigation Site. At the date of this Agreement the Council has already completed works there to deliver sufficient mitigation land for the Development.

AGREED TERMS

1. INTERPRETATION

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

1.1 Definitions:

Base Rate: the base rate from time to time of Barclays Bank plc.

Commencement of Development: the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA but disregarding for the purposes of this deed and for no other purpose, the following operations: demolition works; site clearance; ground investigations; remedial works in respect of any contamination or other adverse ground conditions; diversion and laying of services; site survey

works; temporary access construction works; archaeological investigation; temporary display of site notices; and erection of any fences and hoardings around the Property, and **Commence** and **Commences** shall be construed accordingly.

Commencement Date: the date the Development Commences.

Default Interest Rate: 2% per annum above the Base Rate.

Development: the development of the Property authorised by the Planning Permission or any further planning permission that is issued as a variation of the Planning Permission under section 73 or 73A of the TCPA.

Habitat Contribution: £105,378.00 (one hundred and five thousand and three hundred and seventy eight pounds).

Habitat Mitigation Site: means the site known as Cress Marsh on South Marsh Road, Stallingborough, Grimsby, North East Lincolnshire at which the Council is carrying out and will maintain habitat which is designed to support species which use the Humber Estuary Special Protection Area / Ramsar Site

Index Linked: 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.

Occupation: occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, commissioning, fitting out, decoration, or occupation for marketing or display or occupation in relation to security operations or any other activity preparatory to the use of a building for the purposes authorised by the Planning Permission and **Occupy** shall be construed accordingly.

Plan: the plan attached as Annex A.

Planning Application: the application for FULL Planning permission registered by the Council under reference number DM/1070/18/FUL.

Planning Permission: the planning permission to be granted by the Council in respect of the Planning Application

Property: the land at rear of Power Station, South Marsh Road, Stallingborough, North East Lincolnshire shown edged green on the Plan being part of the land registered at HM Land Registry with absolute title under title number HS239444.

TCPA Town and Country Planning Act 1990.

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax.

Working Day: 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** does not include fax or email.
- 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 and is also entered into pursuant to 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 on the part of the Owner are planning obligations for the purposes of section 106 of the TCPA 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.

2.4 Except for the planning obligations contained in this deed specifically regulating the use of land or buildings after construction (if any), no planning obligations contained in this deed shall be binding on any freehold or leasehold owners or occupiers of individual dwellings constructed pursuant to the Planning Permission (or their respective mortgagees) or land held by any statutory utility or statutory undertaker for their operational purposes.

3. **ENFORCEABILITY**

3.1 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

4. **COVENANTS TO THE COUNCIL**

The Owner covenants with the Council to observe and perform the covenants, restrictions and obligations contained in Schedule 1.

5. COVENANTS BY THE COUNCIL

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 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 shall advise the Owner in writing.

7. RELEASE

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 and relating to that part of the Property of which such person was the registered proprietor at the time of the breach.

8. DETERMINATION OF DEED

The obligations in this deed (with the exception of clause 10) shall cease to have effect if before the Commencement of Development, the Planning Permission:

- (a) expires;
- (b) is revoked or otherwise withdrawn; or
- (c) is quashed following a successful legal challenge.

9. LOCAL LAND CHARGE

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

10. COUNCIL'S COSTS

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 disbursements incurred in connection with the preparation, negotiation, completion and

registration of this deed not exceeding £750 (seven hundred and fifty pounds).

11. INTEREST ON LATE PAYMENT

If any sum or amount has not been paid to the Council by the date it is due, the Owner shall pay the Council interest on that amount at the Default Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the due date to and including the date of payment.

12. OWNERSHIP

12.1 The Owner warrants that no person other than the Owner has any legal or equitable interest in the Property other than any matters which are recorded against title number HS239444.

12.2 Until the covenants, restrictions and obligations in Schedule 1 have been complied with, the Owner will give to the Council within ten Working Days, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Property (other than in respect of individual Dwellings):

- (a) the name and address of the person to whom the disposition was made; and
- (b) the nature and extent of the interest disposed of.

13. REASONABLENESS

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

14. CANCELLATION OF ENTRIES

14.1 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.

14.2 Following the performance and full satisfaction of all the terms of this agreement or if this deed is determined pursuant to clause 8 (and subject to the payment of the Council's reasonable and proper costs and charges) the Council will on the written request of the Owner note on the local land

charges register that the obligations in respect of this deed have been complied with.

15. DISPUTES

- 15.1 In the event of any dispute between the parties to this Deed any party may invite any other party to resolve the dispute by mediation in such manner as the parties may agree.
- 15.2 Without prejudice to clause 15.1 in the event of any dispute or difference arising between any of the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to a person with not less than ten years' recent and relevant experience of the matter in dispute whose identity will be agreed between the parties or in the absence of an agreement by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert (hereinafter the "**Expert**") whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the Expert shall determine and failing such determination shall be borne by the parties in equal shares.
- 15.3 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to clause 15.2 or as to the appropriateness of the professional body then such question may be referred by either party to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.
- 15.4 The Expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.
- 15.5 The Expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.

15.6 The provisions of this clause shall not affect the ability of the Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.

16. NO FETTER OF DISCRETION

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

17. WAIVER

No failure or delay by the Council or the Owner 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.

18. FUTURE PERMISSION

18.1 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 Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission.

19. AGREEMENTS AND DECLARATIONS

The parties agree that:

- (a) nothing in this deed constitutes a planning permission or an obligation to grant planning permission; and
- (b) nothing in this deed grants planning permission or any other approval, consent or permission required from the Council in the exercise of any other statutory function.

20. NOTICES

20.1 Any notice to be given under this deed must be in writing and must be:

- (a) delivered by hand; or
- (b) sent by pre-paid first class post or other next working day delivery service.

20.2 Any notice to be given under this deed must be sent to the relevant party as follows:

- (a) to the Council at Municipal Offices, Town Hall Square, Grimsby, DN31 1HU marked for the attention of Director of Economy & Growth
- (b) to the Owner at EP UK Investments Ltd, Ground Floor, Paradigm Way, 3175 Century Way, Thorpe Park, Leeds LS15 8ZB marked for the attention of James Crankshaw, Head of Engineering

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

20.3 Any notice given in accordance with clause 20.1 and clause 20.2 will be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice or document is left at the address provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day; or
- (b) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Working Day after posting.

20.4 A notice given under this deed shall not be validly given if sent by e-mail or fax.

20.5 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

21. THIRD PARTY RIGHTS

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

22. VALUE ADDED TAX

22.1 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).

22.2 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.

23. **GOVERNING LAW**

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.

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

Schedule 1 Covenants to the Council

1. Notice of Commencement Date

- 1.1 To give at least ten Working Days' written notice to the Council of the intended Commencement Date.

2. Notice of completion of the Development

- 2.1 To give written notice to the Council upon completion of the Development.

3. Habitat Contribution

- 3.1 Not to Occupy (nor permit or allow the Occupation of) the Development until the Habitat Contribution has been paid to the Council.

Schedule 2 Covenants by the Council

1. Issue of Planning Permission

- 1.1 To issue the Planning Permission within two Working Days of the date of this Deed.

2. Details of Expenditure

- 2.1 To provide to the Owner such evidence as the Owner shall reasonably require to confirm that the Council has used the sums paid by the Owner under this Deed for the purposes provided for in this deed.

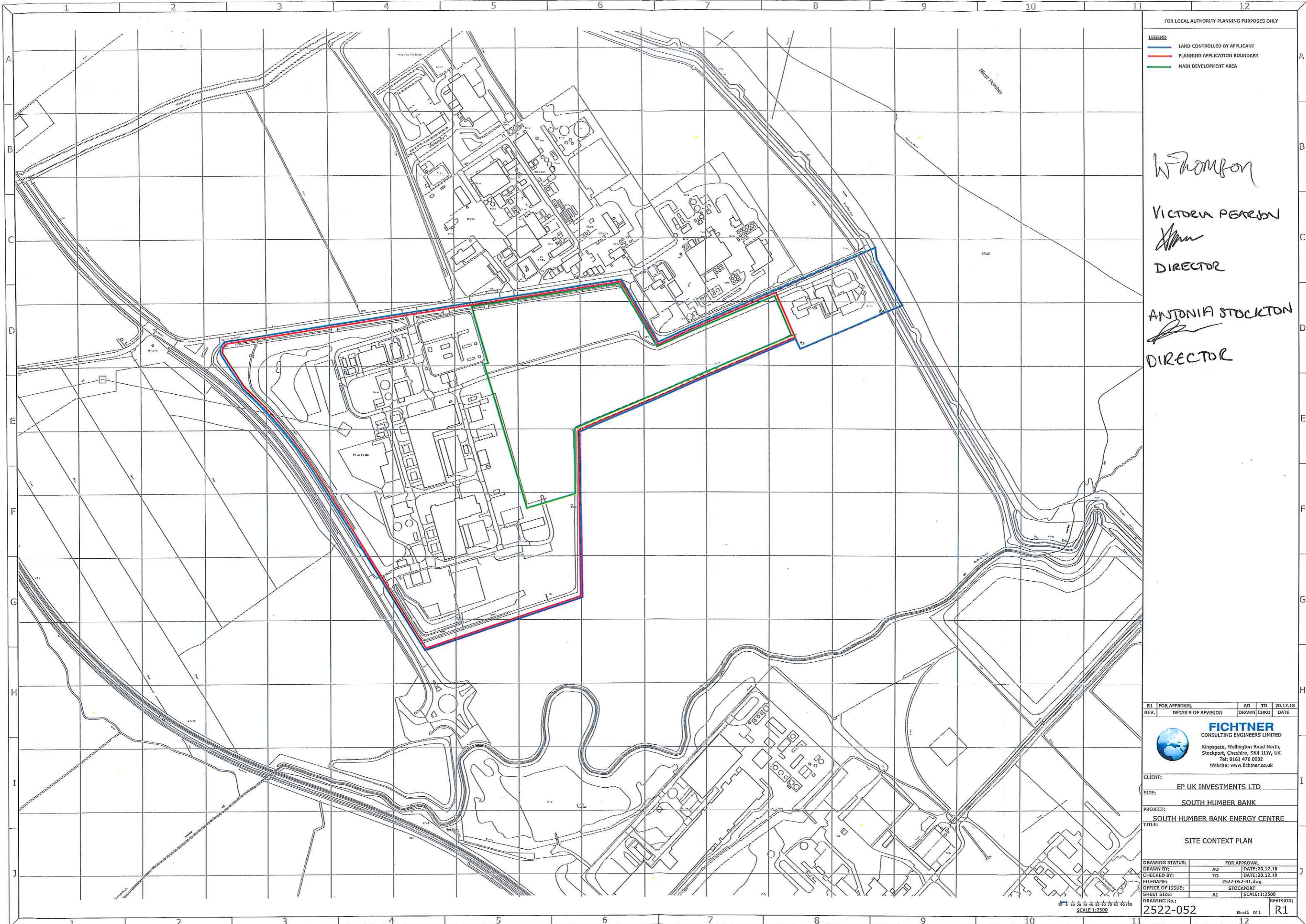
3. Evidence of Discharge

- 3.1 To supply the confirmations referred to in clause 14 of the main body of this deed promptly in accordance with the provisions of clause 14.

4. Habitat Contribution

- 4.1 To apply the Habitat Contribution and any accumulated interest solely towards the reimbursement of monies already expended on the centralised off-site mitigation project in the South Humber Bank Mitigation Zone to offset the Property being used for the Development being the habitat creation and maintenance works at the Habitat Mitigation Site.

Annex A. Plan



FOR LOCAL AUTHORITY PLANNING PURPOSES ONLY

- LEGEND
- LAND CONTROLLED BY APPLICANT
 - PLANNING APPLICATION BOUNDARY
 - MAIN DEVELOPMENT AREA

W. Thompson
 VICTORIA PEARSON
VP
 DIRECTOR

ANTONIA STOCKTON
 DIRECTOR

REV.	FOR APPROVAL	AO	TO	20.12.18
REV.	DETAILS OF REVISION	DRAWN	CHKD	DATE

FICHTNER
 CONSULTING ENGINEERS LIMITED

 Kingsgate, Wellington Road North,
 Stockport, Cheshire, SK4 1LW, UK
 Tel: 0161 476 0032
 Website: www.fichtner.co.uk

CLIENT: EP UK INVESTMENTS LTD
 SITE: SOUTH HUMBER BANK
 PROJECT: SOUTH HUMBER BANK ENERGY CENTRE
 TITLE: SITE CONTEXT PLAN

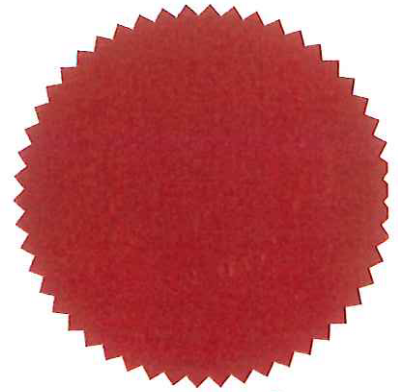
DRAWING STATUS:		FOR APPROVAL	
DRAWN BY:	AO	DATE:	20.12.18
CHECKED BY:	TO	DATE:	20.12.18
FILENAME:	2522-052-R1.dwg		
OFFICE OF ISSUE:	STOCKPORT		
SHEET SIZE:	A1	SCALE:	1:2500
DRAWING No.:	2522-052	REVISION:	R1
			Sheet 1 of 1

SCALE 1:2500

The common seal of NORTH EAST
LINCOLNSHIRE BOROUGH COUNCIL
was affixed to this document in the
presence of:



Authorised signatory



2347

EXECUTED as a Deed
(but not delivered until dated) by
EP SHB LIMITED
acting by a director in the presence of:

)
)
)
)
)



TARLOME BAINDS

Director



.....
Signature of witness

VICTORIA PEARSON

.....
Name of witness

FLAT 1, 4 BENINGTON RD, LONDON W8 5TN

.....
Address

ACCOUNTANT

.....
Occupation