

DATED 19<sup>th</sup> April 2021

**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**

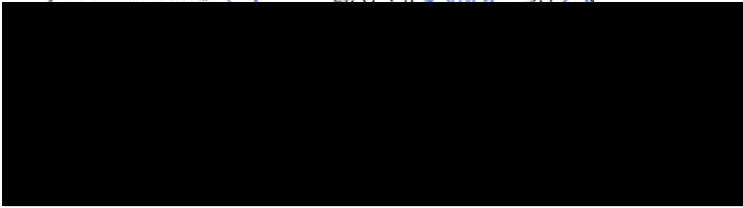
between

**NORTH EAST LINCOLNSHIRE BOROUGH COUNCIL**

and

**EP SHB LIMITED**

CERTIFIED TO BE A TRUE AND COMPLETE  
COPY OF THE ORIGINAL  
DATED THIS 19 DAY OF April 2021



THIS DEED is dated 19<sup>th</sup> April 2021  
between

- (1) **NORTH EAST LINCOLNSHIRE BOROUGH COUNCIL** of Municipal Offices  
Town Hall Square Grimsby North East Lincolnshire (**Council**); and
- (2) **EP SHB LIMITED** (Company Registration Number 02571241) of Byron  
House, 7-9 St James's Street, London SW1A 1EE (**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 Council and the Owner entered into the Original Deed which resulted in the Planning Permission being granted.
- (D) 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:**

<b>Charge</b>	Means a charge dated 18 December 2018
<b>Confirmatory Deed</b>	Means the deed a draft of which is attached to this Deed at Appendix 1 and with such amendments as the Council may approve
<b>DCO</b>	Means the South Humber Bank Energy Centre Order 202[*] in such form as it may be granted by the Secretary of State
<b>DCO Application</b>	Means the application for the DCO submitted by EPWM on 9 April 2020 to the Secretary of State

<b>EPWM</b>	Means EP Waste Management Limited (company registration number 12144128) of Part Ground Floor, Paradigm Building, 3175 Century Way, Thorpe Park, Leeds LS15 8ZB
<b>"Implement the DCO"</b>	Means the carrying out of a material operation, as defined in section 155 of the Planning Act 2008 (which explains when development begins), comprised in or carried out for the purposes of the development authorised under the DCO and "Implementation of the DCO" shall be construed accordingly
<b>Mortgagee</b>	Means Lloyds Bank plc (Company Registration Number 00002065) of 25 Gresham Street, London EC2V7HN in its capacity as mortgagee over that part of the Property registered at the Land Registry with Title Number HS239444 by virtue of the Charge
<b>Original Deed</b>	Means the S106 Agreement dated 11 April 2019 entered into between the Owner and the Council
<b>Start of Operation</b>	Means 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. 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. OWNER'S COVENANTS**

4.1 The Owner covenants with the Council not to issue a notice pursuant to article 5 of the DCO or Implement the DCO until the Mortgagee has entered into a Confirmatory Deed (with the Owner and the Council), PROVIDED THAT:

- (a) if the Charge is discharged prior to a notice being issued pursuant to article 5 of the DCO or Implementation of the DCO; and
- (b) evidence of this is provided to the Council (to its satisfaction);

then this covenant shall no longer be enforceable.

**5. 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 £[        ].

**6. 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 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.

**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 following definition is inserted in Clause 1.1 of the Original Deed after the definition of Development:

"**Electricity Generating Station:** the electricity generating station forming part of the Development and comprising: fuel reception and storage facilities; a combustion system housed within a boiler hall, consisting of two combustion lines and associated boilers; a steam turbine and generator housed within a turbine hall with a cooling system comprising fin fan coolers; a bottom ash handling system; a flue gas treatment system; a silo or tank for the storage of ammonia or urea based reagents; an air-cooled condenser; a compressed air system; a process effluent storage tank; a demineralised water treatment plant and demineralised water storage tanks; and indoor storage tanks for boiler water treatment chemicals"

- 1.4 The following definition is inserted in Clause 1.1 of the Original Deed after the new definition of Electricity Generating Station:

"**EPWM:** EP Waste Management Limited (company registration number 12144128) of Part Ground Floor, Paradigm Building, 3175 Century Way, Thorpe Park, Leeds LS15 8ZB"

- 1.5 The definition of Occupation is deleted from Clause 1.1 of the Original Deed.

### 2. Variations to Clause 2.1

- 2.1 Clause 2.1 of the Original Deed is deleted and replaced with the following text:

"2.1 This deed constitutes for the purposes of –

2.1.1 the Planning Permission a planning obligation for the purposes of section 106 of the TCPA; and

2.1.2 the DCO a development consent 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 other enabling powers"

**3. Variations to Schedule 1**

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

**"2. Notice of start of construction of the Electricity Generating Station**

2.1 To give written notice to the Council no less than 10 days prior to the start of construction of any part of the Electricity Generating Station."

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

**"3. Habitat Contribution**

3.1 To pay the Habitat Contribution to the Council prior to the later of:-

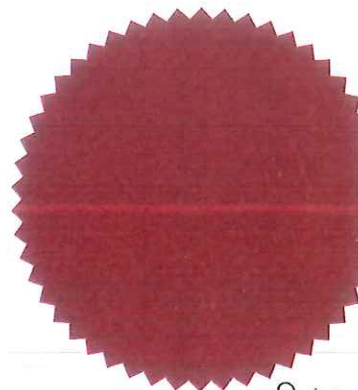
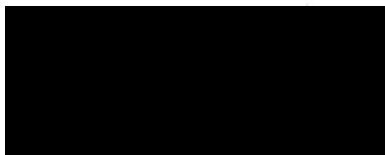
3.1.1 the start of construction of any part of the Electricity Generating Station; or

3.1.2 the date 28 days from the date of completion of this deed."

**4. Variations to Schedule 2**

4.1 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:



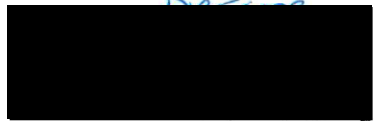
9114



EXECUTED as a Deed )  
(but not delivered until dated) by )  
EP SHB LIMITED )  
acting by two directors: )  
)

Director 

VICTORIA BEARDON  
DIRECTOR



TAYLOR BANKS  
DIRECTOR

**Appendix 1 – Confirmatory Deed**

DATED \_\_\_\_\_ 2021

**CONFIRMATORY DEED 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**

and

**LLOYDS BANK PLC**

THIS DEED is dated \_\_\_\_\_ 2021  
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 Byron  
House, 7-9 St James's Street, London SW1A 1EE (**Owner**); and
- (3) **LLOYDS BANK PLC** (Company Registration Number 00002065) of 25  
Gresham Street, London EC2V7HN (**Mortgagee**).

#### **BACKGROUND**

- (A) On [ ] the Council and the Owner entered into the Deed of  
Variation.
- (B) 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.
- (C) This Confirmatory Deed is required pursuant to clause 4.1 of the Deed of  
Variation and is entered into for the purpose of securing the Mortgagee's  
acknowledgment and declaration that the Deed of Variation has been entered  
into by the Owner with the Mortgagee's consent and limit the Mortgagee's  
liability under the Deed of Variation.

#### **1. INTERPRETATION**

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

1.2 Definitions:

<b>Deed of Variation</b>	Means the deed dated [ ] made between (1) the Council and (2) the Owner entered into pursuant to section 106 of the Town and Country Planning Act 1990
--------------------------	---

#### **2. STATUTORY PROVISIONS**

2.1 This Confirmatory Deed is entered into pursuant to 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 contained in this Confirmatory Deed are enforceable by the Council in accordance with section 106 of the TCPA.

3. **MORTGAGEE'S CONSENT**

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

4. **COUNCIL'S COSTS**

The Owner shall pay to the Council on or before the date of this Confirmatory 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 Confirmatory Deed not exceeding £[     ].

5. **GOVERNING LAW**

This Confirmatory 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.

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 two directors: )  
)

Director

Director

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