

**DATED**

**2012**

**NORTH LINCOLNSHIRE COUNCIL**

**AND**

**NORTH EAST LINCOLNSHIRE COUNCIL**

**AND**

**ABLE HUMBER PORTS LIMITED**

**PLANNING OBLIGATION**

**(Relating to Land at North and South Killingholme, North Lincolnshire)**

**W S Bell  
Assistant Director: Democratic & Legal Services  
Civic Centre  
Ashby Road  
SCUNTHORPE  
North Lincolnshire  
DN16 1AB**

**THIS PLANNING OBLIGATION** is made the                      day of                      Two  
Thousand and twelve **BETWEEN NORTH LINCOLNSHIRE COUNCIL** of the Civic  
Centre, Ashby Road Scunthorpe in the District and County of North Lincolnshire ("the Lead  
Council") of the first part and **NORTH EAST LINCOLNSHIRE COUNCIL** of the Municipal  
Offices Town Hall Square, Grimsby, North East Lincolnshire DN31 1HU ("the Council") and  
**ABLE HUMBER PORTS LIMITED** whose registered office is situate at Able House,  
Billingham Reach Industrial Estate, Billingham, Teeside, TS231FX ("the Developer") of the  
third part

**WHEREAS:**

- (1) The Lead Council is the Local Planning Authority for the purposes of the Town and  
Country Planning Act 1990 and the Highways Authority for the purposes of the  
Highways Act 1980 for the area within which the site hereinafter referred to is situate and  
is acting as lead Council for the purposes of this agreement.
- (2) The Developer is the Owner in fee simple in possession of the Site free from  
incumbrances
- (3) The Council is the Lead Council's neighbouring Authority and is the Highway Authority  
for the purposes of the Highways Act 1980 for part of the highways subject to the  
Highway Improvement provision of this agreement
- (3) By a written application dated the sixteenth day of December 2011 to the Infrastructure  
Planning Commission (now the National Infrastructure Directorate ("NID")) and bearing  
the application reference number TRO3001, the Developer applied for development  
consent for the Development.
- (4) Subject to the completion of the Planning Obligation the Lead Council and Council is  
minded to advise the NID accordingly

**NOW THIS DEED WITNESSETH** as follows:

1. **THIS DEED** is made in pursuance of section 106 of the Town and Country Planning Act 1990 and is a Planning Obligation for the purposes of that section
2. **THE LEAD COUNCIL** is the Local Planning Authority by whom the provisions of this Planning Obligation are intended to be enforceable. For the avoidance of doubt, a person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms
3. **THE FOLLOWING** terms shall have the following meanings:
  - "Development" means the development of the Site as applied for in the Development consent application to the IPC and detailed in Schedule 1 to this agreement.
  - “Development Consent” means the consent granted by Order by the NID for the Development;
  - "Commencement of the Development" means the date upon which the Development is begun by the carrying out of a material operation (as defined by Section 56 of the Town and Country Planning Act 1990) pursuant to the implementation of the Development with the exception of any works carried out in connection with any archaeological investigation of the Site or trial holes or other operations to establish ground conditions of the Site or any other preliminary investigations;
  - “Highways Contribution” means the sum of **One Million Three Hundred and Seventy Three Thousand pounds (£1,373,000.00)** to be paid to the Lead Council and the Council as set out in this Agreement towards Off-Site Highway and Transportation Works and future maintenance of the highways;
  - “Off Site Highway Transportation Works” means the improvement works to the highways detailed in Schedule 2 to this agreement to be carried out by the Lead Council and the Council respectively;
  - "Permission" means the planning permission referred to in Recital (3) above;

"Site" means the area of land at North and South Killingholme, North Lincolnshire, shown outlined in red on drawing number AME-02000 and AME- 02001 annexed hereto;

Words of the masculine gender shall incorporate the feminine and neuter genders and words denoting natural persons include companies corporations and firms and all such words shall be construed interchangeably in that manner;

Words importing the singular meaning shall where the context so admits import the plural meaning and vice versa

4. **THE DEVELOPER** hereby covenants with the Council to the intent that this covenant shall be enforceable against any person deriving title from him to his said interest or any lesser interest in all or part of the site as follows-

- 4.1 **HIGHWAY CONTRIBUTION**

To pay the Highway Contribution in the following manner:

- 4.1.1 £400,000.00 of the Highway Contribution shall be paid to the Lead Council upon the date of the Commencement of the Development

- 4.1.2 £250,000.00 of the contribution shall be paid to the Lead Council on the date being the first working day 12 months after the date of the Commencement of the Development

- 4.1.3 £67,300.00 of the contribution shall be paid to the Lead Council on the yearly anniversary of the provision in 4.1.2 based upon the first working day after the date determined by this provision for 10 years notice of which shall be served in writing upon the Developer 14 days before it is due.

- 4.1.4 £50,000.00 (\*final figure yet to be agreed due to additional junction improvement) of the contribution shall be paid to the Council within 12 months of the Commencement of the Development.

5. **THE LEAD COUNCIL and the Council** hereby covenants with the Developer
  - 5.1 to use the Highway Contribution for the purposes specified in this Deed
  - 5.2 in the event of the Highway Contribution or any part thereof not being used within ten years of receipt of the same to repay to the Developer any unexpended contribution
6. **IT IS HEREBY AGREED AND DECLARED** as follows:
  - 6.1 No person shall be liable for any breach of the covenants restrictions or obligations contained in this Planning Obligation occurring after he has parted with his interest in the land or the part in respect of which such breach occurs;
  - 6.2 The provisions of this Planning Obligation shall come into effect upon its execution and shall enure for the term of the perpetuity period;
  - 6.3 If the Permission shall expire before the Development is begun or shall at any time be revoked this Planning Obligation shall forthwith determine and cease to have effect;
  - 6.4 This Planning Obligation is a Land Charge and shall be registered as such
  - 6.5 Nothing in this agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than one relating to the Development) granted (whether or not on appeal) by the Council;
  - 6.6 Any variation of this Planning Obligation within 5 years from the date of this Agreement shall be made in writing but all parties to this Agreement agree that any obligation in this Planning Obligation may be varied by deed executed by the party with the burden of such obligation and the party with the benefit of such obligation.

6.7 This Planning Obligation shall not come into effect until the Development Consent is granted by order.

7. **THE DEVELOPER** hereby covenants to pay the Lead Council's legal costs reasonably incurred in the preparation and execution of this Planning Obligation
8. **THE LEAD COUNCIL** shall upon the written request of the Developer or any successor in title at any time after the obligations of the Developer hereunder have been performed or otherwise discharged issue written confirmation thereof.
9. **THE DEVELOPER** hereby warrants that no other person has any interest in the Site.

**IN WITNESS** whereof these presents have been duly executed as a deed by the parties hereto the day and year first before written

## **SCHEDULE I: DEVELOPMENT AS APPLIED FOR IN THE DEVELOPMENT**

### **CONSENT**

1. The construction and operation of a 1320 metre quay and associated dredging and land reclamation;
2. the provision of onshore facilities for the manufacture, assembly and storage of wind turbines and related items;
3. the diversion or stopping up of a footpath that runs along the south shore of the Humber
4. any necessary upgrade works to surrounding roads (Rosper Road, Eastfield Road, the A160 and the A180);
5. the conversion of the railway into a private siding;
6. the diversion of a sludge main and a drainage ditch;
7. the re-siting of apparatus;
8. the interference with rights of navigation;
9. the creation of a harbour authority;
10. deemed consent under section 34 of the Coast Protection Act 1949;
11. a deemed licence under Part 2 of the Food and Environmental Protection Act 1985;
12. the modification of public and local legislation;
13. the creation of a compensatory environmental habitat on the north bank of the Humber; and
14. the compulsory acquisition of land and rights in land and powers of temporary occupation of the land to allow Able to carry out and operate the

above development.

## **SCHEDULE 2 OFF SITE HIGHWAY TRANSPORTATION WORKS**

### **Highways in North Lincolnshire (Lead Council)**

1. Rosper Road/Humber Road

Improvements to the layout including 2 right turn lanes out of Rosper Road as detailed in Drawing number NEA1114/01 rev. B attached

### **Highways in North East Lincolnshire (the Council)**

2. A1173/North Moss Lane/Kiln Lane

Improvements to the layout by introducing a second lane to the North Moss Lane approach with stacking capacity and to extend the existing second lane on the A1173 west to increase the stacking capacity as detailed in Drawing number NEA1114/06 rev.A

3. A1173/Pelham Road

(description of works and plan to follow)



**THE COMMON SEAL** of  
**NORTH LINCOLNSHIRE COUNCIL**  
was hereunto affixed in the presence of:

Authorised Signatory

**THE COMMON SEAL** of  
**NORTH EAST LINCOLNSHIRE COUNCIL**  
was hereunto affixed in the presence of:

Authorised Signatory

**SIGNED** as a **DEED** on behalf of  
**ABLE HUMBER PORTS LIMITED**  
in the presence of: