



# Immingham Green Energy Terminal

9.71 Initial draft Section 106 agreement for payment of  
contribution towards woodland compensation

Infrastructure Planning (Examination Procedure) Rules 2010  
Volume 9

May 2024

Planning Inspectorate Scheme Ref: TR030008

Document Reference: TR030008/EXAM/9.71

DATED [●]

**NORTH EAST LINCOLNSHIRE COUNCIL**  
as Council

**ASSOCIATED BRITISH PORTS**  
as ABP

**DRAFT AGREEMENT PURSUANT TO SECTION 106 OF THE TOWN AND  
COUNTRY PLANNING ACT 1990**

in relation to the Immingham Green Energy Terminal Project

*BCLP Drafting note: this document is an initial draft of a s106 agreement to inform discussions with NELC on the woodland compensation and specifically payment of a financial contribution towards an offsite woodland planting scheme. At this stage the woodland compensation to be delivered as part of the Project remains under discussion with NELC and the trigger and quantum for payment of any financial contribution are still to be discussed and agreed.*

*Nevertheless, this initial draft of the s106 Agreement is provided to the Examining Authority ("ExA") as requested at Issue Specific Hearing 5 and the Applicant will provide the ExA with an update on progress on negotiations of this s106 Agreement with NELC at Deadline 4.*



Bryan Cave Leighton Paisner

**Bryan Cave Leighton Paisner LLP**

Governor's House 5 Laurence Pountney Hill London EC4R 0BR  
Tel: +44 (0)20 3400 1000 Fax: +44 (0)20 3400 1111

## Contents

| <b>Clause</b>               | <b>Name</b>  | <b>Page</b> |
|-----------------------------|--|-------------|
| 1                           | Definitions and interpretation .....               | 1           |
| 2                           | Statutory powers .....                             | 2           |
| 3                           | Land bound .....                                   | 2           |
| 4                           | Conditionality .....                               | 3           |
| 5                           | ABP's covenants .....                              | 3           |
| 6                           | Council's covenants .....                          | 3           |
| 7                           | Release and lapse.....                             | 3           |
| 8                           | Local Land Charge .....                            | 3           |
| 9                           | No fetter on discretion .....                      | 4           |
| 10                          | Severability .....                                 | 4           |
| 11                          | Legal costs.....                                   | 4           |
| 12                          | Contracts (Rights of Third Parties) Act 1999 ..... | 4           |
| 13                          | Notices .....                                      | 4           |
| 14                          | Interest on Late Payments .....                    | 4           |
| 15                          | VAT .....  | 5           |
| 16                          | Dispute Resolution.....                            | 5           |
| 17                          | Jurisdiction.....                                  | 5           |
|                             |  |             |
| <b>Schedule</b>             | <b>Name</b>  | <b>Page</b> |
| 1                           | ABP's Covenants.....                               | 7           |
| 2                           | Council's Covenants .....                          | 8           |
| <b>Execution Page</b> ..... |  | 9           |
|                             |  |             |
| <b>Appendix</b>             | <b>Name</b>  | <b>Page</b> |
|                             | Plan.....  | 10          |

**DATED** [•]

**PARTIES**

- (1) **NORTH EAST LINCOLNSHIRE COUNCIL** of Municipal Offices, Town Hall Square, Grimsby, North East Lincolnshire, DN31 1HU (the "**Council**")
- (2) **ASSOCIATED BRITISH PORTS**, a company with registered number ZC000195 whose registered office is at 25 Bedford Street, London, WC2E 9ES ("**ABP**")

**BACKGROUND**

- (A) The Council is the relevant local planning authority for the purposes of the 2008 Act for the area within which the Immingham Green Energy Terminal Project, being the Authorised Project, is situated and is the authority by whom the development consent obligations in this deed are enforceable pursuant to s106 of the 1990 Act.
- (B) ABP is the registered proprietor of the freehold interests in the Land registered at the Land Registry under title number [•].
- (C) ABP submitted the Application to the Secretary of State (c/o the Planning Inspectorate) on 21 September 2023 under section 37 of the 2008 Act for the DCO. The Application was accepted for Examination on 19 October 2023.
- (D) The parties to this Agreement have agreed to enter into this Agreement in order to secure the performance of the development consent obligations contained within it in relation to the DCO.

**OPERATIVE PROVISIONS**

**1 DEFINITIONS AND INTERPRETATION**

**1.1** In this Agreement:

"**1990 Act**" means the Town and Country Planning Act 1990 (as amended).

"**2008 Act**" means the Planning Act 2008 (as amended).

"**Application**" means the application for the DCO submitted by ABP to the Secretary of State on 21 September 2023 and accepted for examination on 19 October 2023 to which the reference number TR30008 has been allocated.

"**Authorised Project**" has the meaning ascribed to that term within the DCO.

"**Battery Street Planting Contribution**" means the sum of [•] (£[•]) for the purpose of [•] in relation to the Council's new woodland expansion planting scheme at Battery Street Playing Field.

*[Drafting note: trigger and quantum of payment to be agreed].*

"**DCO**" means the development consent order made under the 2008 Act pursuant to the Application granting development consent for the Authorised Project.

"**Land**" means the land described in Clause 3.1.

"**Plan**" means the plan attached to this Agreement.

**"Secretary of State"** means the Secretary of State for Transport.

**"Working Day(s)"** means a day other than a Saturday or Sunday or public holiday in England.

- 1.2 References in this Agreement to "ABP" shall include its successors in title to the Land and its assigns.
- 1.3 References in this Agreement to the "Council" shall include any successor to its functions as local planning authority.
- 1.4 References in this Agreement to any statutes or statutory instruments include any statute or statutory instrument amending, consolidating or replacing them respectively from time to time in force and references to a statute include statutory instruments and regulations made pursuant to it.
- 1.5 The clause headings in this Agreement are for convenience only and do not form part of the Agreement.
- 1.6 References to clauses paragraphs schedules or recitals shall (unless the context otherwise requires) be references to clauses paragraphs and schedules or recitals in this Agreement.
- 1.7 References to the singular shall include the plural and vice versa.
- 1.8 Where the agreement, approval, consent or expression of satisfaction ("**Approval**") is required by a party from another party, such Approval shall not be unreasonably withheld or delayed and shall not be effective unless given in writing.

## 2 **STATUTORY POWERS**

This Agreement is entered into by deed, is a planning obligation for the purposes of Section 106 of the 1990 Act and the obligations contained within it are development consent obligations for the purposes of Section 106 of the 1990 Act and this Agreement is entered into pursuant also to Section 111 of the Local Government Act 1972 and it is acknowledged by the parties that the obligations contained within it are binding on the Land and are enforceable by the Council as local planning authority against ABP as owner of the Land and against its successors in title in respect of its interests in the Land.

## 3 **LAND BOUND**

- 3.1 The land bound by the obligations in this Agreement is the land [shown edged in red on the Plan.] *(Drafting Note: Extent of land bound to be agreed with the Council. It is proposed that the S106 agreement will bind the area of Long Strip from which the trees are to be removed – plan to be prepared).*
- 3.2 None of the obligations herein shall be enforceable against:
- (a) a statutory undertaker or other person who acquires any part of the Land or interest therein for the purposes only of the supply or provision of electricity, gas, water, drainage, waste, telecommunications or public transport services;
  - (b) a future mortgagee or chargee of the Land unless and until such mortgagee or charge takes possession of the Land (or part) over which it holds a legal charge in which case it will be bound by the obligations as if it were a person deriving title from ABP (as applicable); and

- (c) a tenant, lessee or occupier of the Land (or part).

#### 4 **CONDITIONALITY**

The obligations in this Agreement (save for the covenant in Clause 11 (*Legal costs*)) are unless otherwise specified conditional upon:

- (a) the making of the DCO by the Secretary of State; and
- (b) [the Authorised Project having been begun for the purposes of paragraph 2 (Time limit for commencement of the authorised project) of Schedule 2 (Requirements) of the DCO by ABP or a person authorised by it.]

#### 5 **ABP'S COVENANTS**

ABP covenants with the Council that it will observe and perform the covenants on its part contained in Schedule 1 (*ABP's Covenants*).

#### 6 **COUNCIL'S COVENANTS**

The Council covenants with ABP that it will observe and perform the covenants on its part contained in Schedule 2 (*Council's Covenants*).

#### 7 **RELEASE AND LAPSE**

7.1 The parties agree that ABP shall not be liable for a breach of any of its obligations under this Agreement or obligations relating to any part of the Land after it shall have parted with all of its interests in the Land or the part in respect of which the breach arises (as the case may be) save in either case for antecedent breaches.

7.2 It is further agreed that this Agreement shall lapse and be of no further effect if:

- (a) the DCO shall lapse without the Authorised Project having been begun for the purposes of paragraph 2 (Time limit for commencement of the authorised project) of Schedule 2 (Requirements) of the DCO; or
- (b) the DCO shall be changed or revoked otherwise than with the consent of ABP; or
- (c) the DCO is quashed following a successful legal challenge (in which case any money paid to the Council pursuant to an obligation in this Agreement shall forthwith be returned to ABP).

7.3 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission or other development consent or other approval granted (whether or not on appeal) after the date of this Agreement.

#### 8 **LOCAL LAND CHARGE**

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

8.2 Upon the satisfaction of the terms of this Agreement the Council shall at the request of ABP procure that all entries in the register of local land charges relating to them shall be removed or marked as discharged as soon as is reasonably practicable.

8.3 The Council agrees that it will confirm in writing the extent of the obligations which ABP has discharged at the date of the request as soon as is reasonably practicable after receipt of a written request from ABP or a person on its behalf.

9 **NO FETTER ON DISCRETION**

Nothing in this Agreement shall be taken to be or shall operate so as to fetter or prejudice the Council's statutory rights powers discretions and responsibilities (save where legally or equitably permitted).

10 **SEVERABILITY**

It is agreed that if any part of this Agreement shall be declared unlawful or invalid by a Court of competent jurisdiction then (to the extent possible) the offending provisions will be severed from the Agreement and the remainder of this Agreement shall continue in full force and effect.

11 **LEGAL COSTS**

ABP covenants with the Council that it will no later than the date of this Agreement pay £[●] towards the Council's reasonable legal costs in connection with the preparation and completion of this Agreement.

12 **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 no part of this Agreement shall be enforceable by a third party who is not a party to the Agreement and for the avoidance of any doubt the terms of the Agreement may be varied by agreement between the parties without the consent of any third party being required.

13 **NOTICES**

Any notices required to be served by one party on another under this Agreement shall be served by first class prepaid post or by hand in the following manner:

- (a) on the Council at the address shown above marked "For the attention of [●]"; and
- (b) on ABP at the address shown above marked "For the attention of [●]" and bearing reference "[●]".

save that any of the parties may by written notice notify the other parties of an alternative address and/or reference for the service of subsequent written notices in which case those details shall be substituted for the details in Clause 13(a) to Clause 13(b) above.

14 **INTEREST ON LATE PAYMENTS**

Any payment due from ABP under this Agreement which is not paid on the due date shall be payable with interest calculated at the rate of 2% above the base lending rate from time to time of Barclays Bank plc.

**15 VAT**

All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable which shall be payable by the relevant paying party, subject to receipt of a valid VAT invoice.

**16 DISPUTE RESOLUTION**

16.1 In the event of any dispute or difference arising between the parties arising out of this Agreement such dispute or difference may be referred to an expert, being an independent and fit person holding professional qualifications appropriate in light of the subject matter of the dispute, to be appointed (in the absence of agreement) by the President (or equivalent person) for the time being of the professional body chiefly relevant in England to such qualifications.

16.2 In the absence of agreement between the parties to the dispute or difference as to the professional qualifications of the expert to be appointed pursuant to Clause 16.1, or as to the appropriate professional body, within ten Working Days after any party has given to the other parties to the dispute or difference a written request to concur in the professional qualifications of the expert to be appointed pursuant to Clause 16.1 then the question of the appropriate qualifications or professional body shall be referred to a solicitor to be appointed by the President for the time being of the Law Society of England and Wales on the application of any party to the dispute or difference. Such solicitor shall act as an expert and his decision as to the professional qualifications of such person, or as to the appropriate professional body, shall be final and binding on the parties to the dispute or difference 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 to the dispute or difference in equal shares.

16.3 The expert shall act as an expert and not as an arbitrator.

16.4 The expert shall be appointed subject to an express requirement that he reaches his decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 46 Working Days from the date of his appointment to act.

16.5 The expert shall be required to give notice to each of the said parties inviting each of them to submit to him within ten Working Days of his appointment written submissions and supporting material and shall afford to each of the said parties an opportunity to make counter submissions within a further 15 Working Days in respect of any such submission and material and the expert's decision shall be given in writing within 20 Working Days from receipt of any counter submissions or in the event that there are no counter submissions within 21 Working Days of receipt of the written submissions and supporting material with reasons and in the absence of manifest material error the expert's decision shall be final and binding on the said parties.

16.6 The expert may award the costs of the dispute resolution in such proportions as he see fit but in the absence of an express award to this effect the costs of the dispute resolution shall be borne by the parties to the dispute in equal shares.

**17 JURISDICTION**

17.1 This Agreement is governed by and interpreted in accordance with the law of England and Wales and the Courts of England and Wales shall have sole jurisdiction in respect of the construction of this Agreement.



**This Agreement has been entered into as a deed on the date stated at the beginning of this Agreement.**

DRAFT

## **Schedule 1** **ABP's Covenants**

In this Schedule 1 (*ABP's Covenants*):

- 1** ABP covenants with the Council to pay the Battery Street Planting Contribution to the Council prior to [removal of the trees on the Land] [*Drafting note: trigger and quantum of payment to be agreed with the Council*].

## **Schedule 2 Council's Covenants**

In this Schedule 2 (*Council's Covenants*):

- 1 The Council covenants with ABP to apply the Battery Street Planting Contribution received from ABP under the terms of this Agreement for the purposes specified in this Agreement for which it has been paid.
- 2 *[Drafting note: obligations relating to how the monies are held, repayment provisions and notification of how sums have been spent to be discussed with the Council alongside discussion on quantum of payment and trigger].*

**EXECUTION PAGE**

**Council**

Executed as a deed by **NORTH EAST** ) *[Common seal]*  
**LINCOLNSHIRE COUNCIL** by affixing its )  
common seal in the presence of )  
[name of director] and )  
[name of second director or secretary] :

Director

Director/Secretary

**ABP**

Executed as a deed (but not delivered until )  
the date hereof) by **ASSOCIATED** )  
**BRITISH PORTS** affixing its Common Seal )  
in the presence of:

Director/Secretary/Authorised Signatory

## **Appendix Plan**