



# Immingham Green Energy Terminal

9.72 Initial draft Section 106 Unilateral Undertaking relating  
to habitat compensation at Skeffling

Infrastructure Planning (Examination Procedure) Rules 2010  
Volume 9

May 2024

Planning Inspectorate Scheme Ref: TR030008

Document Reference: TR030008/EXAM/9.72

DATED

2024

**ASSOCIATED BRITISH PORTS**  
as Owner

TO

**EAST RIDING OF YORKSHIRE COUNCIL**  
as Council

and

[•]

**DEVELOPMENT CONSENT OBLIGATION BY UNDERTAKING PURSUANT TO  
SECTION 106 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 an Undertaking to inform early discussions with the relevant planning authorities in relation to the proposed habitat compensation in circumstances where an adverse effect on integrity ("AEOI") of the European Sites from the Authorised Project (either alone or in combination with other plans and projects) has not been ruled out by the Secretary of State.*

*At this stage the appropriate statutory nature conservation body has not formed a view on whether an AEOI on the European sites from the Authorised Project can be ruled out and therefore negotiations with the relevant planning authorities on the terms of an Undertaking to secure the Compensation have not yet commenced. Nevertheless this initial draft of the Undertaking is provided to the Examining Authority ("ExA") as requested at Issue Specific Hearing 4 and the Applicant will provide the ExA with an update on progress on negotiations of this Undertaking with the relevant planning authorities at Deadline 4.*

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**THIS DEED OF UNDERTAKING IS GIVEN ON**

**2024**

**BY**

- (1) **ASSOCIATED BRITISH PORTS** of a company with registered number ZC000195 whose registered office is at 25 Bedford Street, London, WC2E 9ES ("**ABP**")

**TO**

- (2) **EAST RIDING OF YORKSHIRE COUNCIL** of County Hall, Cross Street, Beverley, East Riding of Yorkshire, HU17 9BA (the "**Council**")

**AND**

- (3) [•]

**BACKGROUND**

- (A) The Council is the relevant local planning 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) ABP is entering into this Undertaking to provide Environmental Enhancement in connection with the Authorised Project and, if so required, to secure Compensation for the Authorised Project in the event that the Secretary of State concludes as part of its Appropriate Assessment of the Project that an adverse effect on the integrity of the European Sites cannot be ruled out either alone or in combination with other plans or projects.
- (E) This Undertaking is entered into by ABP 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 Undertaking unless the context otherwise requires the following terms shall have the following meanings:

"**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.

**"Compensation"** means the creation of [0.132ha] of [●] habitat within the Dedicated Land to act as compensation for the permanent loss of intertidal habitat associated with the Authorised Project in circumstances where the Secretary of State, in determining the Application concludes that such compensation is required.

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

**"Dedicated Land"** means the one hectare of land (in total) (forming part of the OtSMRS site) identified on the Plan which is to be allocated to the Authorised Project in accordance with the terms of this Undertaking.

**"Ecological Enhancement"** means the creation of new [●] habitat within the Dedicated Land provided in connection with the Authorised Project (less any Compensation required by the Secretary of State).

**"EMMP"** means an environmental monitoring and maintenance plan for the Dedicated Land which may comprise the EMMP for OtSMRS (as a whole) or specific parts thereof.

**"Environment Agency"** means the statutory body and executive non-departmental public body established under the Environment Act 1995 with specific statutory duties and powers relating to the protection of the environment including any successor to its functions.

**"OtSMRS"** means the Outstrays to Skeffling Managed Realignment Scheme granted permission by the Council under Application Reference 19/00786/STPLFE comprising a joint initiative developed by the Environment Agency and the Owner using a managed realignment approach to create new intertidal habitat (mudflats and saltmarsh) and wet grassland for wildlife on the north bank of the Humber estuary, near Welwick and Skeffling.

**["Plan"** means the plan attached to this Undertaking.]

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

**"Undertaking"** means this Deed of Undertaking.

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

- 1.2 References to any party to this Undertaking shall include the successors in title to that party and to any party deriving title through or under that party and in the case of the Council the successors to their respective statutory functions.
- 1.3 References in this Undertaking to the Land shall include any part of it.
- 1.4 The Clause headings in this Undertaking are for convenience only and do not form part of the Undertaking.
- 1.5 References to Clauses paragraphs Schedules recitals and plans shall (unless the context otherwise requires) be references to Clauses paragraphs Schedules recitals in this Undertaking or in the case of a plan attached to this Undertaking.
- 1.6 Words importing the singular meaning shall where the context so admits include the plural meaning and vice versa.

- 1.7 References to the masculine gender shall incorporate the feminine and neuter gender and *vice versa* and words denoting natural persons including companies corporations the Council and firms and all such words shall be construed interchangeably in that manner.
- 1.8 References in this Undertaking to any statute or statutory instrument shall include any statute or statutory instrument amending consolidating or replacing them respectively from time to time in force and references to statute include statutory instruments and regulations made pursuant to it.
- 1.9 Nothing in this Undertaking shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission, development consent or other approval (other than the DCO) granted (whether or not on appeal) after the date of this Undertaking.
- 1.10 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**

- 2.1 This Undertaking is a planning obligation for the purposes of s106 of the 1990 Act and is entered into by deed pursuant to s106 of the 1990 Act, s111 of the Local Government Act 1972 and s2 of the Local Government Act 2000 and any other enabling powers.
- 2.2 The obligations contained in this Undertaking are development consent obligations for the purposes of section 106 of the 1990 Act and are entered into by ABP with the intention that they bind the interests held by those persons in 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.

*[BCLP Drafting note: area of land to be bound by the Undertaking to be discussed and agreed]*

## 3 **CONDITIONALITY**

The obligations and covenants in this Undertaking (save for the covenant in Clause 9 (*Legal Costs*)) are unless otherwise specified conditional upon:

- 3.1 the making of the DCO; and
- 3.2 [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.]

## 4 **OWNER'S COVENANTS**

- 4.1 The Owner **COVENANTS** with the Council that it will observe and perform the covenants set out in in Schedule 2 (*ABP's Obligations*).

## 5 **RELEASE AND LAPSE**

- 5.1 No party shall be liable for a breach of this Undertaking occurring after the date on which they shall have parted with their interest in the Land or such part of the Land in respect of which such breach occurs (as the case may be) save in either case for antecedent breaches.

5.2 This Undertaking shall lapse and be of no further effect (without any further act or deed on the part of any person) and the entry on the Register of Local Land Charges in respect of this Undertaking shall be cancelled if:

5.2.1 the Secretary of State refuses to make the DCO pursuant to the Application.

5.2.2 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

5.2.3 the DCO shall be changed or revoked or otherwise withdrawn otherwise than with the consent of ABP; or

5.2.4 the DCO is quashed following a successful legal challenge.

## 6 **NO FETTER ON DISCRETION**

Save as permitted by law nothing in this Undertaking shall fetter or restrict the discretion of the Council in the exercise of its powers under any statutory enactment or other enabling power for the time being in force.

## 7 **SEVERABILITY**

If any part of this Undertaking 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 Undertaking and the remainder of this Undertaking shall continue in full force and effect.

## 8 **LOCAL LAND CHARGE**

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

8.2 Upon the full satisfaction of all the terms of this Undertaking or if this Undertaking is no longer extant or lapses pursuant to Clause 5.2 ABP may request that the Council procure that all entries in the register of local land charges relating to this Undertaking shall be removed forthwith.

## 9 **LEGAL COSTS**

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

## 10 **CONTRACTS RIGHTS OF THIRD PARTIES**

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

## 11 **NOTICE**

Any notice or other written communication to be served pursuant to the terms of this Undertaking shall be deemed to have been validly served if delivered by hand or sent by prepaid registered or recorded delivery post to the relevant party to be delivered

at its address hereinafter specified (or such other address or method as may from time to time be notified for the purpose by notice in writing):

Any notices required to be served by one party on another under this Undertaking shall be deemed to be validly served if delivered 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 "[●]";

(or such other address or method as may from time to time be notified for the purpose by notice in writing).

12 **NO WAIVER**

No waiver whether express or implied by the Council or any breach or default by ABP in performing or observing any of the obligations contained herein shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing the relevant obligations or from acting upon any subsequent breach or default.

13 **VAT**

All consideration given in accordance with the terms of this Undertaking 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.

14 **JURISDICTION**

This Undertaking 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 Undertaking.

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



**Schedule 1  
Land**

**Schedule 2**  
**ABP's Obligations**

- 1 ABP covenants with the Council that [from/prior to] [*trigger to be confirmed*] ABP shall:
  - (a) prepare an EMMP in respect of the Dedicated Land;
  - (b) provide the Council with a copy of:
    - (i) The EMMP for the Dedicated Land; and
    - (ii) A plan confirming the location of the Dedicated Land
  - (c) confirm to the Council the proportion of the Dedicated Land which is to comprise:
    - (i) Compensation (if any); and
    - (ii) Ecological Enhancement.
  
- 2 ABP covenants with the Council that from [*trigger to be confirmed*] the Dedicated Land shall be used in accordance with the principles of the EMMP as either (i) Compensation and Ecological Enhancement or (ii) Ecological Enhancement only and for no other purposes.

**EXECUTION PAGE**

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**