

8 January 2015

**UNILATERAL PLANNING OBLIGATION UNDER SECTION 106 OF THE TOWN &
COUNTRY PLANNING ACT 1990**

by

SCOTTOW MOOR SOLAR LIMITED

and

NORFOLK COUNTY COUNCIL

to

NORTH NORFOLK DISTRICT COUNCIL

and

BROADLAND DISTRICT COUNCIL

Relating to Land at Former RAF Coltishall, Lamas Road, Scottow NR10 5LR

Gilson Gray LLP
29 Rutland Square
Edinburgh
EH1 2BW

THIS UNILATERAL PLANNING OBLIGATION IS DATED

GIVEN BY

- (1) **SCOTTOW MOOR SOLAR LIMITED** incorporated and registered in England and Wales with company number SC488522 whose registered office is at Kirkton House, Guthrie, Forfar DD8 2TP ("**Developer**") and
- (2) **NORFOLK COUNTY COUNCIL** of County Hall, Martineau Lane, Norwich, Norfolk NR1 2DH ("**Owner**")

TO

- (3) **NORTH NORFOLK DISTRICT COUNCIL** of Council Offices, Holt Road, Cromer, Norfolk NR27 9EN ("**Council**"); and
- (4) **BROADLAND DISTRICT COUNCIL** of Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew, Norwich, Norfolk NR7 0DU (the "**Second Council**" and, together with the Council, the "**Councils**").

BACKGROUND

- (A) The Councils are the Local Planning Authorities as defined in the Act and Local Planning Authorities for the purposes of planning obligations imposed pursuant to the provisions of Section 106 of the Act.
- (B) The Owner owns the Property.
- (C) The Developer has made the Planning Applications and is proposing to carry out the Development.
- (D) The Developer intends to develop the Property pursuant to the Planning Permissions and has entered into an option agreement dated 31 October 2014 with the Owner.
- (E) The Developer and the Owner are willing to give an undertaking to perform the obligations set out in this deed in order to facilitate the grant of the Planning Permission by ensuring that the Council can regulate the Development by securing the benefits contained in this deed.

AGREED TERMS

1. Interpretation

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

1.1. Definitions

"**Act**" means the Town and Country Planning Act 1990 and any statutory amendment thereto

"Commencement of Development" means the carrying out in relation to the Development of any material operation as defined by section 56(4) of the Act but disregarding for the purposes of this deed and for no other purpose, the following operations: demolition works; site clearance; ground investigations; site survey works; temporary access construction works; archaeological investigation; and erection of any fences and hoardings around the Property and **"Commenced"** and **"Commences"** shall be construed accordingly.

"Commencement Date" means the date of Commencement of Development.

"Development" means the development of the Property described in the Planning Application.

"Heritage Assets" means the two scheduled monuments designated as World War II fighter pen, Cold War blast walls and associated remains at the former RAF Coltishall together with non-designated heritage assets to include the control buildings, radar structures, bomb stores and other Cold War blast walls.

"Heritage Contribution" means the sum of TWENTY FIVE THOUSAND POUNDS (£25,000) STERLING as a contribution solely towards the cost of maintenance and repair of Heritage Assets and/or other heritage asset related activities.

"Plan" means the plan attached to this deed.

"Property" means the freehold land at the former RAF Coltishall, Norfolk shown edged red on the Plan being part of the land registered at HM Land Registry with absolute title under title number NK425199

"Planning Application" means the application for planning permission made by the Developer to the Council to develop the Property under reference number PF/14/1334 and the application for planning permission made by the Developer to the Second Council to develop the Property under reference 20141677.

"Planning Permission" means the planning permissions to be granted by the Council in respect of the Planning Applications.

"Working Day" means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory bank holiday and **"Working Days"** shall be construed accordingly.

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. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6. A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.7. A reference to the Council shall include 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 excludes faxes and e-mail.
- 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 are to the clauses of this deed.
- 1.13. 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.
- 1.14. 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 Act, section 111 of the Local Government Act 1972 and any other enabling powers.

- 2.2. The obligations contained in clause 3 of this deed are planning obligations for the purposes of section 106 of the Act and are entered into by the Developer and 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 obligations contained in clause 3 of this deed are enforceable by the Council in accordance with section 106 of the Act.

3. Covenants with the Council

3.1. The Developer covenants with the Councils:

3.1.1. to pay the Heritage Contribution to the Council on or before the Commencement Date;

3.1.2. to give at least 3 Working Days written notice to the Councils of the Commencement Date.

3.2. The Developer covenants with the Councils:

3.2.1. not to commence the commercial export and sale of electricity from the Development without having first agreed with the Owner and the Councils a plan of works for the mitigation of any loss of habitat for any population of breeding skylarks at the Property caused by the Development (the "**Skylark Mitigation Works Plan**");

3.2.2. to implement the Skylark Mitigation Works Plan within 12 calendar months of the first date of commercial export and sale of electricity from the Development.

3.3. If a Skylark Mitigation Works Plan cannot be agreed within 8 weeks of the Commencement Date, the Developer may instead pay to the Councils the sum calculated by multiplying the number of skylark plots (being an area required for a breeding pair of skylarks to nest) required to mitigate any permanent loss of habitat for breeding skylarks at the Property caused by the Development multiplied by the prevailing Countryside Stewardship Scheme payment for the establishment of skylark nesting plot) (the "**Skylark Mitigation Payment**") and such payment shall fully discharge the covenants on the part of the Owner and the Developer contained in clause 3.2.

4. Owner Covenant

The Owner covenants with the Councils that it shall not and shall procure that no other person (other than the Developer and its permitted persons) shall Commence the Development unless either it or some third party has paid the Heritage Contribution (as set out in clause 3.1) and either (i) implemented the Skylark Mitigation Works Plan (as set out in clause 3.2) or (ii) paid the Skylark Mitigation Payment (as set out in clause 3.3).

5. Release

No person shall be liable for any breach of an obligation, restriction or covenant 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.

6. Determination of deed

This deed shall be determined and have no further effect if the Planning Permission:

- a) expires before the Commencement of Development;
- b) is varied or revoked other than at the request of the Owner or Developer; or
- c) is quashed following a successful legal challenge.

7. Local land charge

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

8. Notices

8.1. Any notice or other communication to be given under or in connection with this deed must be in writing and must be:

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

8.2. Any notice or other communication to be given under this deed must be sent to the relevant party as follows:

- a) to the Council at: Council Offices, Holt Road, Cromer, Norfolk NR27 9EN marked for the attention of the Head of Planning
- b) to the Second Council at: Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew, Norwich NR7 0DU marked for the attention of Head of Planning;
- c) to the Owner at: County Hall, Martineau Lane, Norwich, NR1 2DH marked for the attention of Head of Legal Services;
- d) to the Developer at: Kirkton House, Guthrie, By Forfar, DD8 2TP;

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

8.3. Any notice or other communication given in accordance with clause 8.1 and clause 8.2 will be deemed to have been received:

- a) if delivered by hand, on signature of a delivery receipt or at the time the notice 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;
- 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.

- 8.4. A notice or other communication given under this deed shall not be validly given if sent by e-mail.
- 8.5. In proving service by post it shall be sufficient (unless any relevant part of the postal service is affected by industrial action) to prove that the envelope containing the notice or other communication was duly stamped addressed and posted to the addresses specified in clause 8.2.
- 8.6. 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.

9. Miscellaneous

- 9.1. The Developer undertakes to indemnify the Owner in respect of any liabilities, actions, demands, proceedings, costs and expenses arising directly or indirectly as a result of the Owner having entered into this deed.
- 9.2. If any provision of this deed shall be held to be invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions of this deed shall not in any way be deemed to be thereby affected or impaired.

10. 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.

11. 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 and Wales.

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

Executed as a deed by SCOTTOW
MOOR SOLAR LIMITED acting by
David Fyfe, a in the presence of:

[Handwritten signature]

Witness

Donna Clarke
214 Bravington Road
London W9

Executed as a deed by NORFOLK
COUNTY COUNCIL acting by
~~CHRISTOPHER SKINNER~~ authorised
signatory, in the presence of:

Witness

Witness name:

Witness address:

[Handwritten signature]
Director

[Handwritten signature]
Authorised Signatory



authorised to sign
on behalf of: HEAD OF LAW

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