

DATED 19th August 2015

THE COUNCIL OF THE BOROUGH OF REDCAR AND CLEVELAND (1)

and

THE HOMES AND COMMUNITIES AGENCY (2)

and

YORK POTASH PROCESSING & PORTS LIMITED (3)

PLANNING AGREEMENT

**Pursuant to Section 106 Town and Country Planning Act 1990
relating to land at Wilton, Redcar
Planning Application reference: R/2014/0627/FFM (Mine/MTS)**



**MARRONS
SHAKESPEARES**

**Marrons Shakespeares
Solicitors
1 Meridian South
Meridian Business Park
Leicester
LE19 1WY
Telephone: 0116 289 2200
File Ref: MET 902946.2**

THIS AGREEMENT is made the 19th day of August Two
Thousand and Fifteen

BETWEEN:

1. **THE COUNCIL OF THE BOROUGH OF REDCAR AND CLEVELAND** Redcar and Cleveland House, Kirkleatham Street, Redcar, Yorkshire TS10 1RT ("RCBC"); and
2. **THE HOMES AND COMMUNITIES AGENCY** care of Legal Services Arpley House 110 Birchwood Boulevard Warrington WA3 7QH ("the Owner"); and
3. **YORK POTASH PROCESSING AND PORTS LIMITED** (Company Registration Number 08270855) whose registered office is situate at 3rd Floor Greener House, 66-68 Haymarket, London, SW1Y 4RF ("YPL")

RECITALS:

- A. RCBC is a local planning authority for the purposes of Section 106 of the 1990 Act
- B. The Owner is the registered proprietors of the freehold interest in the Obligation Land
- C. YPL has an option to purchase the Obligation Land
- D. The parties hereto have entered into this Agreement so that in the event of the NYMNPA and RCBC issuing the Planning Permissions pursuant to the Application and the Development proceeds the Development will be regulated as hereinafter provided

OPERATIVE PROVISIONS:

1. **DEFINITIONS AND INTERPRETATION**

- 1.1 In this Agreement the following expressions shall have the following meanings:

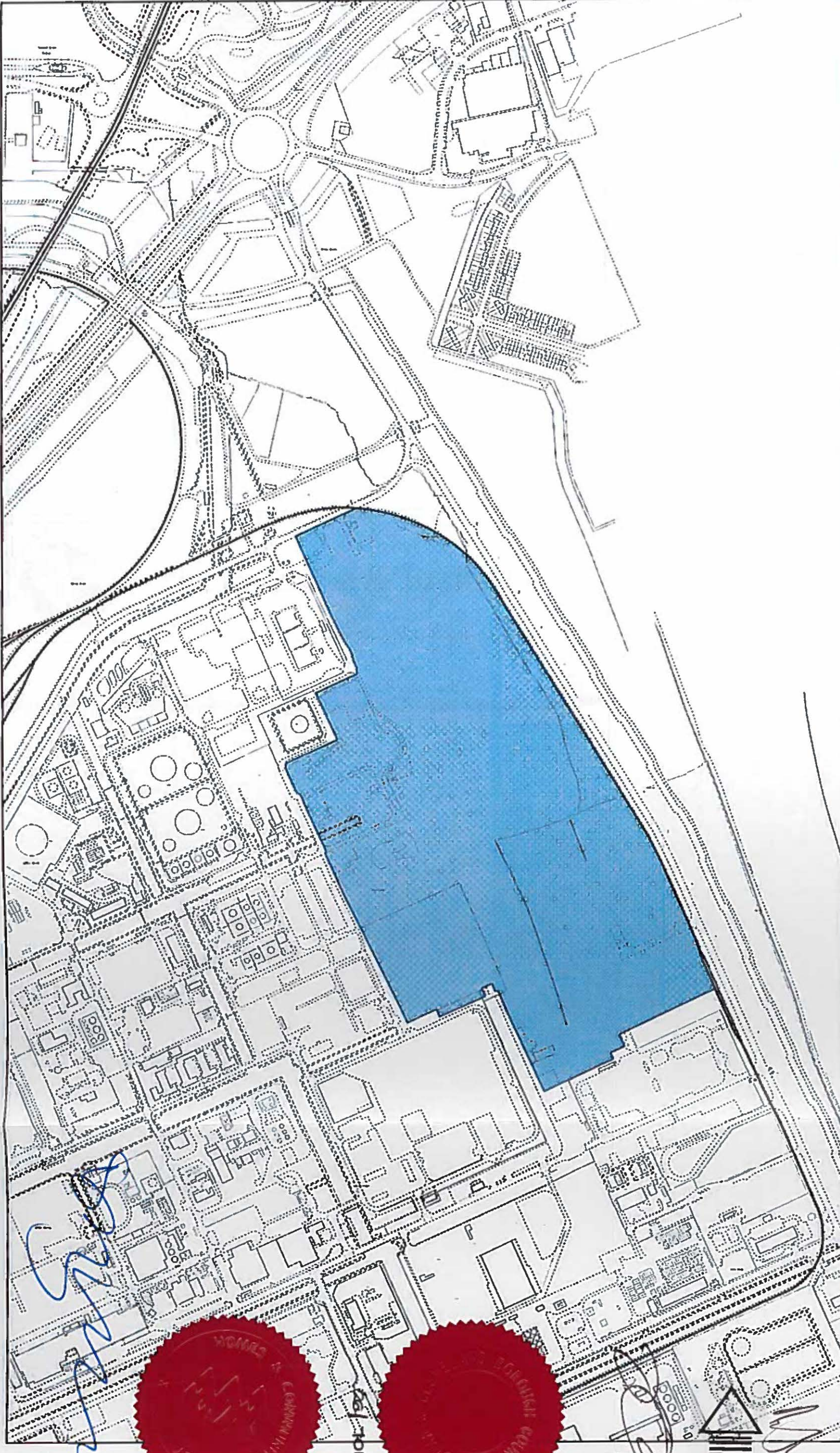
"1990 Act"

the Town & Country Planning Act 1990

“Action Plan”	the Action Plan set out in section 5 of the York Potash Skill Strategy – Growing a local workforce
“Application”	the application submitted to the NYMNP and RCBC allocated reference numbers NYM/2014/0676/MEIA and R/2014/0627/FFM respectively applying for the winning and working of polyhalite by underground methods including the construction of a minehead at Dove’s Nest Farm involving access, maintenance and ventilation shafts, the landforming of associated spoil, the construction of buildings, access roads, car parking and helicopter landing site, attenuation ponds, landscaping, restoration and aftercare and associated works. In addition, the construction of an underground tunnel between Doves Nest Farm and land at Wilton that links to the mine below ground, comprising 1 no. shaft at Doves Nest Farm, 3 no. intermediate access shaft sites, each with associated landforming of associated spoil, the construction of buildings, access roads and car parking, landscaping, restoration and aftercare, and the construction of a tunnel portal at Wilton comprising buildings, landforming of spoil and associated works
“Commencement of Construction”	<p>the earliest date on which any of the material operations (as defined by Section 56(4) of the 1990 Act) pursuant to the implementation of the Development is begun save that irrespective of the provisions of Section 56(4) of the 1990 Act none of the following operations shall constitute a material operation for the purposes of constituting Commencement of Construction</p> <ul style="list-style-type: none"> i. trial holes or other operations to establish the ground conditions, site survey work, or works of remediation ii archaeological investigations iii any works of demolition or site clearance iv any structural planting or landscaping works v. ecological or nature conservation works associated with the Development vi. construction of boundary fencing or hoardings vii. construction of access or highway works (including drainage and media) viii. any other preparatory works agreed in writing with the Relevant Authorities <p>and Commence and Commenced shall be construed</p>

	accordingly
"Construction Period"	the period of 5 years from the Commencement of Construction
"County Council"	North Yorkshire County Council
"Development"	the development described in the Application and to be carried out pursuant to the Planning Permissions
"Index Linked"	means adjusted in accordance with clause 2.21
"Intermediate Shaft Sites"	means the sites upon which intermediate shafts are to be situate at Lockwood Beck and Tocketts Lythe
"Mine"	the mine which is to be developed as part of the Development
"Mucky Lane Improvement Contribution"	the sum payable pursuant to paragraph 1.6 of Schedule 1
"NYBEP Contribution"	the sum payable pursuant to paragraph 1.2 of Schedule 1
"NYMNPA"	North York Moors National Park Authority
"Obligation Land"	the land shown coloured blue on Plan 1 registered at the Land Registry under title numbers CE216413 and CE169990
"Plan 1"	the plan attached hereto and marked as such
"Plan 2"	the plan attached hereto and marked as such
"Planning Permissions"	the planning permissions granted by NYMNPA and the Borough Council pursuant to the Application
"RCBC Workshop and Coaching Contribution"	the sum payable pursuant to paragraph 1.4 of Schedule 1
"RCBC Local Opportunities Contribution"	the sum payable pursuant to paragraphs 1.3 of Schedule 1
"RCBC Marketing Contribution"	the sum payable pursuant to paragraph 1.5 of Schedule 1
"RCBC STEM Contribution"	the sum payable pursuant to paragraph 1.1 of Schedule 1
"the Tees Valley"	the local authority areas of Darlington Borough Council, Hartlepool Borough Council, Middlesbrough Borough Council, Redcar and Cleveland Borough Council and Stockton on Tees Borough Council

PLAN 1



Notes:

**Bell
Ingram**

Dunn, Isla Road, Perth, PH2 7HF
Tel: 01738 621121 Fax: 01738 630901
www.bellingram.co.uk
enquiries@bellingram.co.uk

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Client
York Potash Ltd

Job title
Wilton Works

**Section 106 Plan (Mine/
MTS)**

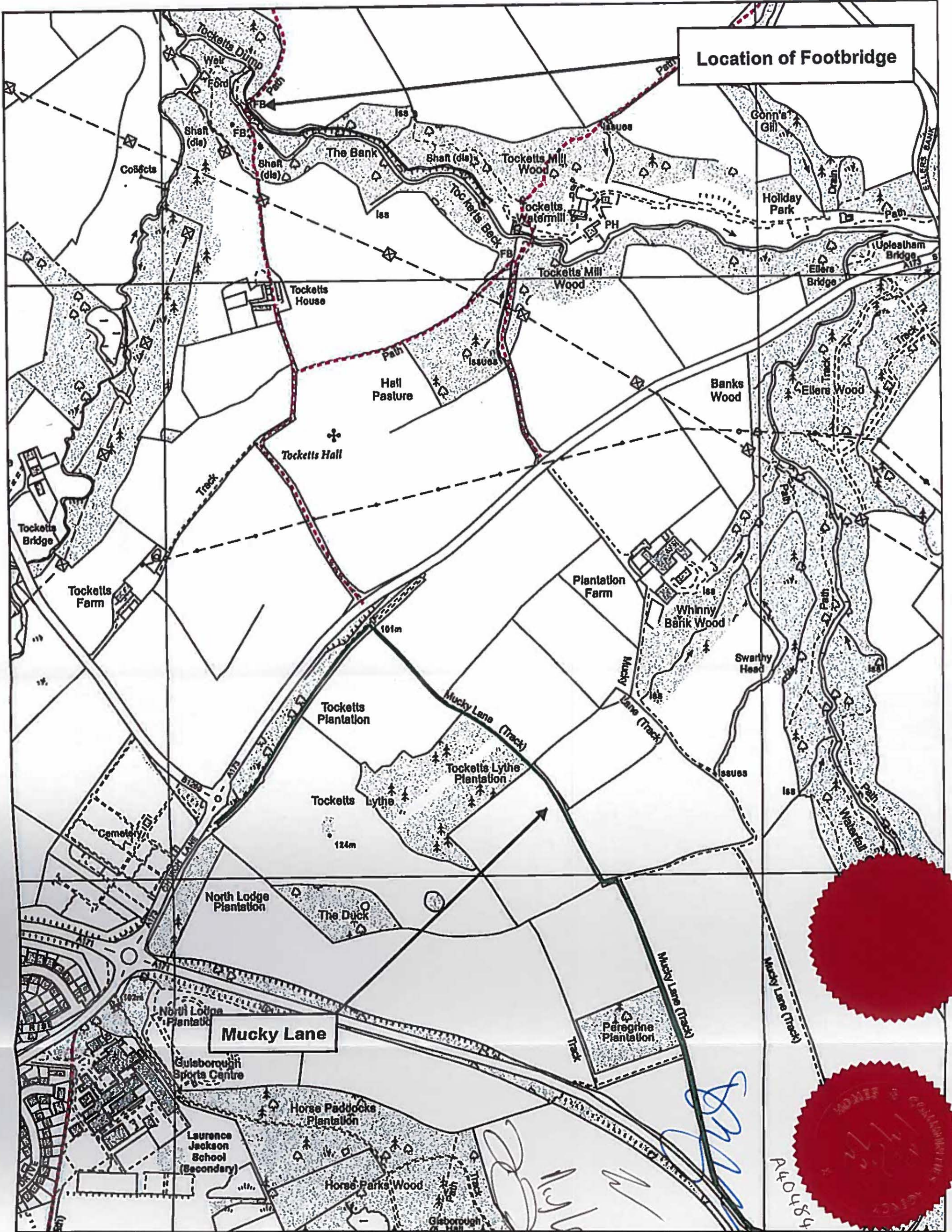
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Plan No: YS135-0102H-WTL-1 Rev 0



AK0481

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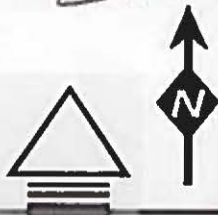


Location of Footbridge

Mucky Lane



Mucky Lane & Tocketts



Date: 28/04/2015 Drawn by: IT
 Scale = 1:8,000 DWG No: N/A

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- "the Website" means <http://www.yorkpotash.co.uk> or any successor website
- "York Potash Undergraduate Programme" means the programme set out in the Skills Strategy submitted in support of the Application

- 1.2 The expressions "RCBC" and "the Owner" shall where the context so admits include its respective successors and assigns and in the case of the RCBC the successors to their statutory functions
- 1.3 References in this Agreement to any statutes or statutory instruments shall include and refer to any statute or statutory instrument amending consolidating or replacing them respectively from time to time and for the time being in force
- 1.4 Words in this Agreement importing the singular meaning shall where the context so admits include the plural meaning and vice versa
- 1.5 Words in this Agreement of the masculine gender shall include the feminine and neuter genders and vice versa and words denoting natural persons shall include corporations and vice versa
- 1.6 Where in this Agreement reference is made to a Clause or Schedule such reference (unless the context otherwise requires) is a reference to a Clause or Schedule of this Agreement

2 GENERAL PROVISIONS

Statutory Authority

- 2.1 The obligations in this Agreement are planning obligations and are made pursuant to S106 of the 1990 Act
- 2.2 All obligations are also entered into pursuant to Section 1 of the Localism Act 2011 and Section 111 of the Local Government Act 1972
- 2.3 The obligations in Schedule 1 of this agreement bind the Obligation Land and are enforceable by RCBC

Liability

- 2.4 The parties hereto agree that no person shall be liable for breach or non-performance of any covenant contained in this Agreement after he shall have parted with all interest in the Obligation Land or the part of it in respect of which such breach or non-performance occurs but without prejudice to liability for any subsisting breach prior to parting with such interest
- 2.5 YPL has the benefit of option agreements dated 1 March 2013 and 2 October 2014 to purchase the Obligation Land and signifies its consent to the Obligation Land being bound by the terms of this Agreement and for the avoidance of doubt YPL shall not be liable in respect of any obligations made on behalf of the Owner herein unless and until it takes possession of all or part of the Obligation Land
- 2.6 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Obligation Land in accordance with a planning permission (other than the Planning Permissions as defined herein or any renewal thereof or any reserved matters approval with respect thereto) granted (whether or not on appeal) after the date of this Agreement in respect of which development this Agreement will not apply

Contingencies

- 2.7 The planning obligations contained in clause 3 and Schedule 1 to this Agreement shall take effect only on the Commencement of Construction
- 2.8 In the event of either of the Planning Permissions expiring or in the event of the revocation of either of the Planning Permissions prior to Commencement of Construction the obligations under this Agreement shall cease absolutely and RCBC shall procure that any entry referring to this Agreement in the Register of Local Land Charges shall be removed forthwith

Determination by Expert

- 2.9 Notwithstanding any specific provision in this Agreement in the event

of any dispute between the Owner and RCBC concerning this Agreement including any dispute as to whether or not an obligation has been performed or matter to be agreed under any of the provisions of this Agreement the matter may at the written option of any relevant party (notice of which shall be given to the other party or parties) be referred to such expert as they may agree or (in default of agreement within 20 working days of the date of giving of the notice) appointed by the Chairman for the time being of the Planning and Environment Bar Association whose appointment shall be conducted on the following terms:

- 2.9.1 The person to be appointed pursuant to Clause 2.9 shall if possible be a person having fifteen years or more relevant post-qualification experience of the issue in dispute and projects comprising works of the scale and nature of the Development and of the particular issue in dispute
- 2.9.2 The reference to the expert shall be on terms that:
 - 2.9.2.1 the expert shall afford the parties to the dispute an opportunity to make representations to him/her in writing and if he/she so directs to make submissions on one another's representation;
 - 2.9.2.2 the expert shall be able to stipulate periods of time for the making of such submissions and representations;
 - 2.9.2.3 the expert shall be bound to have regard to the said submissions and representations;
 - 2.9.2.4 the expert shall have the power to award the costs of the determination in favour of either party at the expense of the other in the event that the expert shall consider that the said other party has acted unreasonably and the extent of the costs awarded shall reflect the extent and effect of said unreasonable behaviour;
 - 2.9.2.5 the expert shall be limited in his findings to the proposals put by either party or a proposal falling between both of them; and
 - 2.9.2.6 the findings of the expert shall save in the case of manifest material error be final and binding on the Owner and RCBC save that the

parties retain the right to refer to the Courts on a matter of law

VAT

- 2.10 In the event that the provision by the Owner to RCBC or other body of any land or buildings or infrastructure or matters pursuant to this Agreement is a taxable supply for the purposes of the legislation relating to Value Added Tax in respect of which any Value Added Tax should become payable then RCBC or other body in receipt of such supply shall pay to YPL all such Value Added Tax upon receipt from the Owner of a Value Added Tax invoice therefore and YPL shall endeavour to ensure that the timing of such invoice or invoices within any four week period shall be such as to minimise the period between settlement of the invoice and recovery of the tax

Time Periods

- 2.11 It is agreed between the parties that any of the periods specified in the Agreement may be extended by mutual agreement in writing between the Owner and RCBC SAVE THAT any party to this Agreement who requires time to be of the essence in respect of any period extended shall serve notice on any other relevant party stating that time is of the essence in relation to any time period so extended

Approvals

- 2.12 For the purposes of this Agreement where a party is required to make a request give confirmation approval or consent express satisfaction with agree to vary or to give notice of any matter such request confirmation approval consent expression of satisfaction agreement to vary or notice shall be deemed to have not been given or expressed unless given or expressed in writing and shall not be unreasonably withheld or delayed

Notices

- 2.13 The service of notices and communications pursuant to this Agreement shall be sent to the addressee at the address stated in this Agreement or at such other address as the addressee shall have notified to the others in writing

- 2.14 Notices and communications under this Agreement may be sent by personal delivery or by First Class Post (recorded delivery) and any notice or communication sent by First Class Post (recorded delivery) and correctly addressed shall be conclusively deemed to have been received by the addressee on the second business day following the date of posting

Exclusion of the Contracts (Rights of Third Parties) Act 1999

- 2.15 Nothing herein contained or implied shall give or be construed as giving rights, privileges, powers or enforceability other than to the specific parties executing this document and their successors (if any) as defined herein and the provisions of the Contracts (Rights of Third Parties) Act 1999 and any benefits or rights which could arise therefrom are expressly excluded to the intent that no third party within the meaning of that Act shall have any rights of enforcement in respect of any matter herein contained

Void Provisions

- 2.16 If any provision of this Agreement is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the remaining provisions of this Agreement shall continue in full force and effect and the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality provided that any party may seek the consent of the other or others to the termination of this Agreement on such terms as may in all the circumstances be reasonable if the effect of the forgoing provisions would be to defeat the original intention of the parties

Application of this Agreement

- 2.17 If the RCBC agree pursuant to an application under Section 73 of the 1990 Act to any variation or release of any condition contained in the Planning Permission or if any such condition is varied or released following an appeal under Section 78 of the 1990 Act the covenants or provisions of this Agreement shall, if RCBC and the Owner both agree, be deemed to bind the varied permission and to apply in equal

terms to the new planning permission

No Fetter of Discretion

- 2.18 Save as permitted by law nothing contained or implied in this Agreement shall prejudice or affect the rights powers duties and obligations of RCBC in their rights powers duties and obligations under all public and private statutes bylaws and regulations which may be as fully and effectually exercised as if RCBC were not a party to this Agreement

Effect of any Waiver

- 2.19 No waiver (whether express or implied) by RCBC of any breach or default by the Owner in performing or observing any of the terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent RCBC from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default in respect thereof by the Owner

General Requirement to Co-operate

- 2.20 Without prejudice to its statutory duties RCBC and the Owner shall all act in good faith and shall co-operate with each other to facilitate the discharge and performance of the obligations of the other contained within this Agreement within the timescales specified

Indexation

- 2.21 Where payments are identified as being Index Linked in this Agreement then such sums shall be adjusted by applying the All Items Retail Prices Index as published by the Office of National Statistics (or any successor thereof) including any applicable local or regional waiting from date hereof to the date of payment

Interest

- 2.22 Where any payment or part payment which the parties hereto are obliged to pay or repay pursuant to the provisions of this Agreement is not paid on the date upon which the obligation to make such a payment falls due then interest at 4% above the base rate of HSBC

Bank Plc from time to time calculated on a daily basis shall be added to the outstanding balance of the payment from the date on which the payment or part payment became due until the date of receipt of the payment or part payment

3 THE OWNER'S PLANNING OBLIGATIONS

3.1 The Owner covenants with RCBC to comply with the obligations contained in Schedule 1

4 RCBC'S COVENANTS

4.1 RCBC covenant with the Owner to comply with the obligations set out in Schedule 2

SCHEDULE 1

The Owner covenants with RCBC to observe and perform the following obligations:

- 1 Employment and Training**
- 1.1 To pay the RCBC STEM Contribution to RCBC for the purposes set out in paragraph 1 of Schedule 2 and no other as follows:
 - 1.1.1 Forty Thousand Pounds (£40,000) Index Linked within 28 days of the Commencement of Construction; and
 - 1.1.2 Forty thousand pounds (£40,000) Index Linked on the anniversary of the Commencement of Construction (comprising Eighty Thousand Pounds (£80,000) in total plus indexation)
- 1.2 To pay the NYBEP Contribution to RCBC for the purposes set out in paragraph 2 of Schedule 2 and no other as follows:
 - 1.2.1 Thirty Seven Thousand and Five Hundred Pounds (£37,500) within 28 days of the Commencement of Construction; and
 - 1.2.2 Thirty Seven Thousand and Five Hundred Pounds (£37,500) Index Linked on each anniversary of the Commencement of Construction for a period of nine years (comprising Three Hundred and Seventy Five Thousand Pounds (£375,000) Index Linked in total plus indexation)
- 1.3 To pay the RCBC Local Opportunity Contribution to RCBC for the purposes set out in paragraph 3 of Schedule 2 and no other as follows:
 - 1.3.1 Forty Thousand Pounds (£40,000) Index Linked payable to RCBC within 28 days of the Commencement of Construction; and
 - 1.3.2 Forty Thousand Pounds (£40,000) Index Linked on each anniversary of the Commencement of Construction during the Construction Period for a period of four years (being four further payments of Forty Thousand Pounds (£40,000) Index Linked and comprising Two Hundred Thousand Pounds (£200,000) in total plus indexation)

- 1.4 To pay the RCBC Workshop and Coaching Contribution to RCBC to be applied for the purposes set out in paragraph 4 of Schedule 2 and no other as follows:
- 1.4.1 Ten Thousand Pounds (£10,000) Index Linked within 28 days of the Commencement of the Construction
- 1.5 To use all reasonable endeavours to implement the ongoing and outstanding actions in the Action Plan specifically to achieve:-
- 1.5.1 the creation of 50 apprenticeship opportunities within the first five years following the Commencement of Construction and an ongoing apprenticeship programme;
- 1.5.2 the continued delivery of the York Potash Undergraduate Programme;
- 1.5.3 the training of at least 250 construction workers to become mine workers; and
- 1.5.4 the training of at least 50 people to become tradespeople in mining operations.
- 1.6 To publish details of all contract opportunities for suppliers of YPL or its primary contractors on the Website and notify them to RCBC Business Growth Team of any and all such opportunities

2 Tourism

- 2.1 To pay the RCBC Marketing Contribution to RCBC to be applied for the purposes set out in paragraph 5 of Schedule 2 and no other as follows:
- 2.1.1 Eighty Thousand Pounds (£80,000) Index Linked payable to RCBC within 28 days of the Commencement of the Construction; and
- 2.1.2 Eighty Thousand Pounds (£80,000) Index Linked on each anniversary of the Commencement of Construction during the Construction Period for a period of four years being four further payments of Eighty Thousand Pounds (£80,000) and (comprising Four Hundred Thousand Pounds (£400,000) in total plus indexation)

3 Mucky Lane

3.1 To pay the Mucky Lane Improvement Contribution to RCBC to be applied for the purposes set out in paragraph 6 of Schedule 2 and no other as follows:

3.1.1 Following receipt of a breakdown of costs from the Council to pay to the Council such sum in accordance with that breakdown up to a maximum of Fifty Six Thousand Pounds (£56,000) Index Linked within 28 days of the commencement of construction at the Tocketts Lythe Shaft Site

4. Security

4.1 Not to carry out the Commencement of Construction until security arrangements to secure the reinstatement of the Intermediate Shaft Sites (in the event of the cessation of construction or mining operations when there is no reasonable prospect of them recommencing) are in place to the reasonable satisfaction of RCBC

SCHEDULE 2

RCBC covenants with the Owner as follows:

1. To apply the RCBC STEM Contribution for the purposes of improving the awareness of science technology engineering and maths in primary schools within the Borough of Redcar and Cleveland and for no other purposes whatsoever
2. To apply the NYBEP Contribution through the North Yorkshire Business and Education Partnership for the provision of science technology engineering and maths resources and activities for secondary schools and further education within the Tees Valley and for no other purposes whatsoever
3. To apply the RCBC Local Opportunities Contribution towards identifying and preparing local people for opportunities during the construction and operation of the Development and for no other purposes whatsoever
4. To apply the RCBC Coaching Contribution towards delivery of workshops and coaching sessions to local businesses to achieve the requisite standards to supply YPL and its contractors with goods and services and for no other purposes whatsoever
5. To apply the RCBC Marketing Contribution towards the creation of a marketing programme and events to promote the borough of Redcar & Cleveland to visitors and for no other purposes whatsoever
6. To apply the Mucky Lane Improvement Contribution as follows:
 - a) Up to Sixteen Thousand Pounds (£16,000.00) Index Linked towards the resurfacing of Mucky Lane; and
 - b) Up to Forty Thousand Pounds (£40,000.00) Index Linked for the provision of a bridge at Tocketts Lythe as shown on Plan 2 and for no other purposes whatsoever

7. To repay to the payer any unexpended monies paid to the RCBC pursuant to the obligations in Schedule 1 at the expiration of 5 years from the date of payment within two months of the expiry of the aforesaid 5 year period in respect of which period time shall be of the essence

8. To provide full and precise details of the expenditure of all monies paid pursuant to each of the obligations in this Agreement to payer which details shall be provided to payer within 28 days following receipt of a request for the same from payer and provided that no more than 4 requests shall be made in any calendar year

IN WITNESS whereof the parties hereto have executed as a Deed on the date first above written

THE COMMON SEAL OF REDCAR)
AND CLEVELAND BOROUGH COUNCIL)
was hereunto affixed in the presence of: -)



26 | 7014

THE COMMON SEAL OF THE HOMES)
AND COMMUNITIES AGENCY)
was hereunto affixed in the presence of: -)



Authorised Signatory

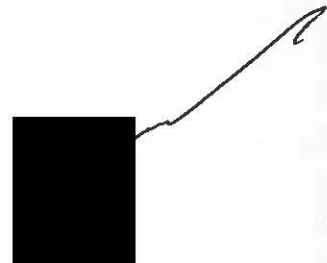


Bayo Dosunmu

PRINT NAME Assistant Chief Executive

SIGNED AS A DEED on behalf of)
YORK POTASH PROCESSING & PORTS)
LIMITED by two directors or one director)
and its company secretary)

Director



~~Director~~ Secretary

