

PLANNING

**THE VPI IMMINGHAM LLP (LAND AT ROSPER ROAD) COMPULSORY PURCHASE
ORDER 2024**

DOCUMENT CD 8.27

APPENDICES TO REBUTTAL STATEMENT OF EVIDENCE

**Owen Francis
Director, Head of Planning Wales
Turley Associates Ltd**

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APPENDIX 1

Date	Correspondence
August 2020	Humber Zero cooperation between P66 and VPI created.
10 August 2021	Humber Zero Joint Project Management Team meeting to discuss the finalization of HoTs for land agreements tabled by Acquiring Authority.
7 September 2021	Humber Zero Joint Project Management Team meeting to discuss the finalization of HoTs for land agreements tabled by Acquiring Authority.
5 October 2021	Humber Zero Joint Project Management Team meeting to discuss the finalization of HoTs for land agreements tabled by Acquiring Authority.
9 November 2021	Humber Zero Joint Project Management Team meeting to discuss the finalization of HoTs for land agreements tabled by Acquiring Authority.
7 December 2021	Humber Zero Joint Project Management Team meeting to discuss the finalization of HoTs for land agreements tabled by Acquiring Authority.
7 December 2021	Email from P66 returning draft HoTs with some final amendments.
12 December 2021	Email from Pinsent Masons to P66 circulating draft Option Agreement.
15 December 2021	Email from Acquiring Authority to P66 suggesting a call to discuss any issues with the Option Agreement.
17 December 2021	Email from P66 to Acquiring Authority confirming that they have not looked at the Option Agreement yet and are focusing on preparing the draft Lease.
22 December 2021	Email from Pinsent Masons enquiring when we should expect to receive the draft Lease.
10 January 2022	Email from P66 confirming that an agreed version of the drafting of the Option Agreement is not feasible by 21 January 2022. Acquiring Authority respond to P66 and emphasise that the signing of the agreed HoTs by 21 January 2022 is important.
11 January 2022	Humber Zero Joint Project Management Team meeting to discuss the finalization of HoTs for land agreements tabled by Acquiring Authority.
13 January 2022	Email from Acquiring Authority to P66 chasing the execution of HoTs.
17 January 2022	Email from P66 to Acquiring Authority confirming that P66 is still working on the execution of the HoTs and the intention is to have it by mid-week.
18 January 2022	Email from P66 to Acquiring Authority clarifying the alienation provisions.
19 January 2022	Emails between Acquiring Authority and P66 in relation to the alienation provisions and Acquiring Authority suggesting a call with P66.
24 January 2022	Call between Acquiring Authority and P66 and follow up emails on the alienation provisions.

Date	Correspondence
1 February 2022	Humber Zero Joint Project Management Team meeting to discuss the finalization of HoTs for land agreements tabled by Acquiring Authority.
17 February 2022	HoTs between P66 and the Acquiring Authority for the lease of the Order Land fully executed.
22 February 2022	Email from Pinsent Masons to P66 asking when they should expect to receive the draft Lease and comments on the Option Agreement that was circulated on 12 December 2021.
25 February 2022	Email from P66 to Pinsent Masons confirming that they are still working on the documents and hope to be able to return them the following week.
1 March 2022	Humber Zero Joint Project Management Team meeting to discuss the Lease of the Order Land.
9 March 2022	Email from Acquiring Authority to P66 querying when the comments on the Option Agreement will be returned and highlighting the need to finalise matters.
15 March 2022	Email from P66 returning comments on the draft Option Agreement and providing a first draft of the Lease.
5 April 2022	Humber Zero Joint Project Management Team meeting. The Lease and Option Agreement tabled by Acquiring Authority as critical path items.
12 April 2022	Email from Pinsent Masons to P66 returning a revised draft Option Agreement.
13 May 2022	Email from Pinsent Masons to P66 returning a revised Lease with comments and inviting responses on both the revised Lease and Option Agreement (which was circulated on 12 April 2022).
8 June 2022	Humber Zero Joint Project Management Team meeting. The Lease and Option Agreement tabled by Acquiring Authority as critical path items.
5 July 2022	Humber Zero Joint Project Management Team meeting. The Lease and Option Agreement tabled by Acquiring Authority as critical path items.
May - September 2022	Option Agreement and Lease drafts are exchanged between P66 and Pinsent Masons. P66 returns Option Agreement with comments and proposals that are considered to be further from the agreed HoTs.
1 September 2022	Humber Zero Joint Project Management Team meeting. The Lease and Option Agreement tabled by Acquiring Authority as critical path items.
14 September 2022	Email from Acquiring Authority to P66 returning marked-up Lease for P66 to review. Pinsent Masons asking P66 whether the Option Agreement is now in agreed form and whether the temporary access licence currently in place can be extended. No response was received from P66.
3 October 2022	Second email from Pinsent Masons chasing P66 on responses to draft Lease and queries from 14 September 2022.

Date	Correspondence
4 October 2022	Humber Zero Joint Project Management Team meeting. The Lease and Option Agreement tabled by Acquiring Authority as critical path items.
11 October 2022	Email from Acquiring Authority to P66 asking for explanation on outstanding issues and lack of progress on land documents
October 2022	Emails from P66 to Pinsent Masons / Acquiring Authority confirming that P66 will not review the Option Agreement and Lease until a decision has been reached regarding plot layout and the position of the Killingholme ditch. P66 confirm that the Option Agreement is not in agreed form and that further amendment will be required.
7 November 2022	Meeting held between the Acquiring Authority and North East Lindsey Drainage Board to discuss the diversion of the drain over the P66 Land. Various drain routing options were presented and the rationale for the selected option was explained. Guy Hird from the Drainage Board noted that there was a clear rationale for the drain diversion and design work would be progressed between the parties.
December – July 2023	Exchanges between Acquiring Authority and P66 confirming various outstanding points e.g., regarding ditch locations, construction schedule. January 2023 parties attend a land workshop.
6 December 2022	Humber Zero Joint Project Management Team meeting. The Lease and Option Agreement tabled by Acquiring Authority as critical path items.
9 March 2023	Humber Zero Joint Project Management Team meeting. The Lease and Option Agreement tabled by Acquiring Authority as critical path items.
9 March 2023	Email from Acquiring Authority to P66 requesting a meeting to finalise land documents.
2 May 2023	Humber Zero Joint Project Management Team meeting. The Lease and Option Agreement tabled by Acquiring Authority as critical path items.
12 May 2023	Email from Acquiring Authority to P66 requesting advancement of lease agreement and temporary access issues.
6 June 2023	Humber Zero Joint Project Management Team meeting. The Lease and Option Agreement tabled by Acquiring Authority as critical path items.
4 July 2023	Email from Pinsent Masons to P66 detailing the remaining outstanding points on the Lease and proposed way forward.
4 July 2023	Humber Zero Joint Project Management Team meeting. The Lease and Option Agreement tabled by Acquiring Authority as critical path items.
17 July 2023	Email from P66 stating that they hope to revert shortly.
17 August 2023	Email from P66 with further comments on the Lease. Various points remain outstanding.

Date	Correspondence
6 September 2023	Humber Zero Joint Project Management Team meeting. The Lease and Option Agreement tabled by Acquiring Authority as critical path items.
August - October 2023	Further revised drafts of the Lease are circulated. No resolution is reached.
27 October 2023	Email from Acquiring Authority to P66 regarding extent of assignment protections requested by P66.
7 November 2023	Humber Zero Joint Project Management Team meeting. The Lease and Option Agreement tabled by Acquiring Authority as critical path items.
13 November 2023	Email from P66 in relation to financial security. P66 confirm they will revert on the other points.
24 November 2023	Email from Acquiring Authority to P66 requesting full comments on the suite of land / lease documents.
27 November 2023	P66 email to confirm that they have another internal review scheduled for that week and will provide an update following this.
30 November 2023	P66 email stating that they hope to revert on the Lease shortly.
6 December 2023	Acquiring Authority email request comments at P66's earliest opportunity.
12 January 2024	Acquiring Authority email to P66 in relation to the s.106 Agreement and lack of finalisation of Option Agreement. Acquiring Authority express concern over the fact the Option Agreement remains unexecuted and request a discussion with P66 to bring the Option Agreement and associated draft agreements to a conclusion.
12 January 2024	Email from Acquiring Authority to P66 requesting immediate resolution of land Option Agreement as this has become an impediment to planning approvals
17 January 2024	P66 revert on financial security matters. Acquiring Authority requests a call with P66 within the next two days to bring this issue to a conclusion.
18 January 2024	P66 confirm that their position and agree to check internally and revert. They do not comment on convening a call. Acquiring Authority revert and explain position on the financial security.
18 January 2024	Emails between Acquiring Authority and P66 regarding level of guarantees required under the Lease Agreement.
25 January 2024	Teams call between Acquiring Authority and P66 to discuss utility requirements under ESA as a condition to land lease agreement.
7 February 2024	Acquiring Authority circulate updated draft of option to lease and request a meeting that week or the next to bring the issues to a conclusion.

Date	Correspondence
8 February 2024	Teams call between Acquiring Authority and P66 to discuss utility requirements under ESA as a condition to land lease agreement.
8 February 2024	<p>P66 revert and confirm position in relation to financial security.</p> <p>Acquiring Authority request a meeting on 14 February 2024 to discuss. P66 respond and confirm they are not available on this date; they do not propose an alternative. Acquiring Authority requests that P66 propose a suitable date for a meeting.</p>
9 February 2024	P66 propose meeting times, meeting is agreed for 15 February.
12 February 2024	Call between Acquiring Authority and P66 – summary of items to discuss on call on 15 February.
12 February 2024	Email and telephone call from Acquiring Authority to P66 discussing the challenges of the requests made by P66 regarding lease guarantees and the need to resolve land matters to comfort key stakeholders (e.g, lenders, VPI management etc).
14 February 2024	Email from Acquiring Authority to P66 indicating the need to resolve land agreements and sign option agreement.
15 February 2024	Meeting between Acquiring Authority and P66.
19 February 2024	Acquiring Authority circulate revised wording on financial security following the meeting on 15 February.
21 February 2024	Emails between Acquiring Authority and P66 regarding insurance requirements in respect of the leased lands (P66 seeking significantly higher protections as compared to all existing leases).
22 February 2024	Emails between Acquiring Authority and P66 regarding insurance requirements in respect of the leased lands (P66 seeking significantly higher protections as compared to all existing leases).
28 February 2024	Email from Acquiring Authority to P66 asking for complete list of ESA conditions required in order for P66 to agree land documents.
28 February 2024	Email from Acquiring Authority to P66 requesting consideration of market standard insurance protections re liability caps.
1 March 2024	Email from Acquiring Authority to P66 enquiring about insurance requirements under land agreements.
5 March 2024	Email from Acquiring Authority to P66 explaining the limits of the DPA to accommodate cost recovery of P66 products (a condition P66 requested as part of the lease agreement).
7 March 2024	Email from Acquiring Authority to P66 requesting clarity on ESA amendments required before P66 would accept the lease agreement.

Date	Correspondence
7 March 2024	Email from P66 rejecting a meeting to discuss connections between ESA and land lease agreement finalization.
11 March 2024	Email from P66 rejecting Acquiring Authority's offer on ESA amendments to facilitate land lease agreement finalization.
11 March 2024	Email from P66 provisionally rejecting Acquiring Authority's proposed land insurance proposal.
12 March 2024	Email from Acquiring Authority to P66 requesting a call with P66's insurance team to understand land insurance issues.
12 March 2024	Email from P66 to Acquiring Authority indicating insurance team are on holiday and unable to discuss.
14 March 2024	Email from Acquiring Authority to P66 proposing a process to agree ESA amendments and thus facilitate land lease agreement finalization.
14 March 2024	Emails between P66 and Acquiring Authority indicating that P66 rejects Acquiring Authority's land insurance proposal outright and a request by Acquiring Authority to explain this position.
19 March 2024	Email from P66 indicating that it rejects the Acquiring Authority's proposal for ESA amendment agreement and land lease finalization and requesting cancellation of meeting to discuss.
March-July 2024	Management calls every other Tuesday between Acquiring Authority and P66 to discuss advancing land issues.
9 April 2024	Humber Zero Joint Project Management Team meeting where outstanding land issues noted.
9 April 2024	Email from Acquiring Authority to P66 asking for regular weekly calls to resolve land access agreements.
21 May 2024	Email from Pinsent Masons to North Lincolnshire Council discussing section 106 agreement, requesting P66's changes to the terms of the s106 agreement including requesting (1) a release of liability clause to benefit P66 on the Acquiring Authority taking a lease; and (2) a BNG contribution in lieu of an obligation to submit a BNG plan.
5 June 2024	Email from North Lincolnshire Council rejecting the release of liability clause to benefit P66 on the Acquiring Authority taking a lease.
12 June 2024	Email from North Lincolnshire Council rejecting the inclusion of a BNG contribution in lieu of an obligation to submit a BNG plan.
13 June 2024	Email from Pinsent Masons to North Lincolnshire Council with revised draft section 106 agreement.
17 June 2024	Email from North Lincolnshire Council confirming agreement of the section 106 agreement as drafted by Pinsent Masons.

Date	Correspondence
3 July 2024	Email from Pinsent Masons to North Lincolnshire Council confirming that the section 106 agreement is with P66 for approval.
26 July 2024	Telephone call between Acquiring Authority and P66 notifying Acquiring Authority's intention to make a CPO to acquire P66's land interest for the Project to preserve Humber Zero viability. Offer to continue commercial negotiations.
15 October 2024	Email from P66 to Pinsent Masons agreeing to the release clause drafting.
28 October 2024	Meeting between VPI and P66 (in person) at VPI Immingham to discuss potential ESA amendments (emails discussing possible terms sent on 22 October 2024 and 21 October 2024).
1 November 2024	Email from VPI to P66 regarding VPI accepting more ROG under ESA.
15 November 2024	Email from VPI informing of upcoming pricing formulae for ESA negotiations.
27 November 2024	Email from P66 to VPI stipulating that no land agreement without amendment to the Energy Services Agreement.
13 December 2024	Email from Pinsent Masons to P66 with further copy of the section 106 agreement including a contribution towards BNG provision payable on commencement of development.
13 December 2024	Email from VPI to P66 with proposed ESA pricing structure for ESA negotiations and response email from P66 asking for more specific terms.
19 December 2024	Email from VPI to P66 requesting clarity on quantum of product, term and nature of abatement levels required by P66 for ESA negotiations. Partial P66 response on 3 January 2025
6 January 2024	Email from VPI to P66 asking for confirmation on quantum and nature of abated product required under the amended ESA. Follow-up email sent on 15 January 2025.
7 January 2025	Email from P66 to Pinsent Masons with further revised draft of the section 106 agreement.
7 January 2025	Email from Pinsent Masons to North Lincolnshire Council with revised section 106 agreement.
16 January 2025	Email from P66 requesting details on pricing formula for proposed ESA amendment (VPI has been delayed on getting these figures in the absence of confirmation from P66 as to what final quantum and abatement levels are required).

APPENDIX 2

Eleanor Croft

From: Eleanor Croft
Sent: 08 May 2025 16:24
To: Eleanor Croft
Subject: FW: S106 and Deed of Indemnity [PM-AC.FID5785396]

From: Beth Grant <Beth.GRANT@pinsentmasons.com>
Sent: 10 February 2025 14:54
To: Lindley, Helen (Lindley, Helen) <Helen.Lindley@contractor.p66.com>
Cc: Ross Corser <Ross.Corser@pinsentmasons.com>; Nick McDonald <Nick.McDonald@pinsentmasons.com>; Dwight Gomes <DGomes@VPI-I.com>
Subject: RE: S106 and Deed of Indemnity [PM-AC.FID5785396]

Hi Helen

I hope you are well.

I wanted to follow up on Mike's email below to see if there is anything that I can do to assist in reaching agreement on the Deed of Indemnity.

I had understood the document to be largely agreed. The key issue raised by Mike in his email of 15 May (attached) related to the provisions that were previously included to require a direct deed of covenant from future purchasers of the land and those provisions were subsequently removed to address Mike's concerns.

The Dol provides as follows:

1. VPI covenants to fully comply with the S106 Agreement and all planning obligations contained therein and to notify P66 promptly upon satisfaction of each obligation;
2. The above covenant is backed by both an indemnity and the right to set-off the amount of any payments arising under the indemnity which are unpaid within 28 days of demand against the amounts payable by P66 to VPI under the terms of the Energy Supply Agreement;
3. VPI also covenants not to transfer its rights under the option agreement without (a) procuring P66's prior written consent ; and (b) procuring that any such transferee enters into a direct deed of covenant with P66 on the terms of the Dol;
4. P66 covenants not to commence the development or otherwise implement the Planning Permission in such a way which may/would trigger any of the s106 planning obligations and indemnifies VPI against any losses it might incur as a result of a breach of such covenant. The indemnity provided by VPI (referred to at (2) above) does not apply in relation to any matter arising out of a breach by P66 of this covenant.
5. VPI's covenants/indemnity will cease to apply (save in respect of antecedent breaches) upon the earlier of (i) expiry of the option agreement without having been exercised, (ii) the developer having transferred its rights under the option agreement in compliance with point (3) above (in which event P66 would be covered by a direct deed of covenant from the relevant disponent), (iii) the planning obligations having been satisfied in full or becoming null and void, (iv) the planning permission being quashed/revoked/expired without having been implemented, (v) P66 having disposed of the land to a third party
6. P66's covenant/indemnity will cease to apply (save for antecedent breaches) upon the earlier of (i) commencement of development by VPI, (ii) the planning permission being quashed/revoked/expired without having been implemented.

Alongside the above, we have of course managed to secure the Council's agreement that the S106 can contain a single obligation to pay the Biodiversity Offsetting Contribution (£1,832,732) prior to commencement of the development. The Dol provides P66 with ample protection in the event of a breach of the S106 by VPI through both the indemnity and right to off-set.

If you have remaining concerns regarding the Deed of Indemnity, it would be helpful if we could discuss these to try to agree a way forward.

I look forward to hearing from you.

Kind regards

Beth

Beth Grant
Senior Associate

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For Pinsent Masons LLP

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From: Wailes, Mike <Michael.Wailes@p66.com>

Sent: 05 February 2025 11:48

To: Dwight Gomes <DGomes@VPI-I.com>; Lindley, Helen (Lindley, Helen) <Helen.Lindley@contractor.p66.com>

Cc: Beth Grant <Beth.GRANT@pinsentmasons.com>

Subject: [EXTERNAL] RE: S106 and Deed of Indemnity

Hi Dwight,

Following up from the review last week, the P66 team has met to discuss the drafting of the required amendments to the DoI. Unfortunately, your CPO is demanding a considerable amount of time and we need to focus our limited legal resources on the forthcoming CPO and other ongoing priority issues. Therefore, at this point we will be unable to provide a redline to the DoI agreement.

Thanks,

Mike

From: Dwight Gomes <DGomes@VPI-I.com>

Sent: Friday, January 31, 2025 8:53 AM

To: Wailes, Mike <Michael.Wailes@p66.com>; Lindley, Helen (Lindley, Helen) <Helen.Lindley@contractor.p66.com>

Cc: Beth Grant <Beth.GRANT@pinsentmasons.com>

Subject: [EXTERNAL]RE: S106 and Deed of Indemnity

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Ok, thanks for letting us know Mike. Happy to jump on a call with your senior counsel and discuss any issues they might have early next week. We tried to keep the DoI simple, whilst as "P66 friendly" as possible given that we didn't really know the extent of the exposure at the time. As we all now know, we are talking about a £1.7M exposure, so I'm fairly confident we should be able to resolve this quickly.

Thanks

Dwight Gomes

Commercial

E: DGomes@VPI-I.com



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From: Wailes, Mike <Michael.Wailes@p66.com>
Sent: 31 January 2025 08:46
To: Dwight Gomes <DGomes@VPI-I.com>; Lindley, Helen (Lindley, Helen) <Helen.Lindley@contractor.p66.com>
Cc: Beth Grant <Beth.GRANT@pinsentmasons.com>
Subject: RE: S106 and Deed of Indemnity

Good morning,

As an update, we went through our DoI updates with our senior counsel yesterday and there were some further suggestions on our proposals.
Will look to have them over early next week.

Regards,

Mike

From: Wailes, Mike
Sent: Friday, January 24, 2025 1:00 PM
To: Dwight Gomes <DGomes@VPI-I.com>; Lindley, Helen (Lindley, Helen) <Helen.Lindley@contractor.p66.com>
Cc: Beth Grant <Beth.GRANT@pinsentmasons.com>
Subject: RE: S106 and Deed of Indemnity

Hi Dwight,

We reviewed the DoI this week and are expecting to be able to provide a red-line next week.
Have a good weekend.

Regards,

Mike

From: Dwight Gomes <DGomes@VPI-I.com>
Sent: Friday, January 24, 2025 12:56 PM
To: Wailes, Mike <Michael.Wailes@p66.com>; Lindley, Helen (Lindley, Helen) <Helen.Lindley@contractor.p66.com>
Cc: Beth Grant <Beth.GRANT@pinsentmasons.com>
Subject: [EXTERNAL]S106 and Deed of Indemnity

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Hi Mike and Helen,

Hope you are both well. I understand that the S106 has now been agreed and that signature of that document is now subject to P66's sign-off on the draft deed of indemnity. If the indemnity is no longer needed (due to the quantified lower fixed cost of the BNG), please let us know. Alternatively, if you still need the indemnity, can we please get your comments/sign-off on that document so that we can bring at least the S106 issue to a close.

Happy to chat.

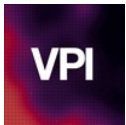
Hope you have a good weekend.

Thanks

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E: DGomes@VPI-I.com



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