authorised.
delegated.

DATED 23rd September 2010

WEST SUSSEX COUNTY COUNCIL (1)

AND

KENDALL BROS. (PORTSMOUTH) LIMITED (2)

AND

MONTEUM LIMITED (3)

DEED OF VARIATION

pursuant to Section 106A of the Town & Country Planning Act 1990 as amended

relating to Land at New Wharf Brighton Road Shoreham by Sea West Sussex

Umi Filby
Legal Services
West Sussex County Council
County Hall
Chichester
West Sussex
PO19 1RQ
Ref: CC5.231

THIS DEED OF VARIATION is made the 23rd day of September 2010

BETWEEN

(1) **WEST SUSSEX COUNTY COUNCIL** of County Hall West Street Chichester West Sussex PO19 1EQ ("the County Council")

(2) **KENDALL BROS. (PORTSMOUTH) LIMITED** Company Registration Number 478188 whose registered office is situated at Kendalls Wharf Eastern Road Portsmouth Hampshire PO3 5LY ("Kendall")

(3) **MONTEUM LIMITED** company Registration Number 1124991 whose registered office is situated at Fishermans Wharf Brighton Road Shoreham By Sea West Sussex BN43 6RE ("the Owner")

NOW THIS DEED WITNESSETH as follows:-

1. Definitions

In this Deed the following definitions apply:-

1.1 "the Original Agreement" means the Agreement made pursuant to Section 106 of the Town & Country Planning Act 1990 on 2 February 2006 and made between West Sussex County Council (1) Kendall Brothers (Portsmouth) Limited (2) and Monteum Limited (3).

1.2 "the Original Application" means the application made under planning application SU/233/04.

1.3 "the Second Application" means the application under planning application WSCC/079/09/SU

2. Recitals

2.1 The County Council is the Local Planning Authority for the purposes of the Act.

2.2 The County Council enters into this Deed under its powers contained in S106A Town and Country 1990 and S111 Local Government Act 1972 and all other powers enabling.

2.3 The Owner is still the registered freehold owner of the Land at New Wharf Brighton Road Shoreham by Sea West Sussex forming part of land under the title number WSX 79800.

2.4 Kendall has a leasehold interest in the Land dated 27 September 2000.

2.5 Kendall made the Second Application on 12 October 2009 to vary Condition 1 of the Original Application to extend the permission.

2.6 The County Council is prepared to grant the permission under the Second Application subject to the Owner and Kendall entering into this Deed of Variation varying the Original Agreement in order that it shall relate and apply to both the Original Application and the Second Application.

2.7 Unless separately defined in this Deed, definitions used in this Deed have the same meaning as those used in the Original Agreement.

NOW IT IS HEREBY AGREED

3. VARIATION

3.1 The Original Agreement shall be varied as follows:

3.1.1 Insert new definition as follows: "Second Application" – means the application under planning application WSCC/079/09/SU;

3.1.2 Insert new definition as follows: "Second Planning Permission" – means the planning permission for the Second Application in the form of the draft notice attached to this Deed of Variation;

3.1.3 Delete Clause 4.1 (a) and (b) and (c) and replace with the following:

"4.1 Kendall and the Owner hereby both covenant with the County Council as follows:-

a) From the date of Commencement of the Development and for the duration of the period throughout which the land is used for the unloading storage and grading of minerals aggregates or as a concrete batch plant in accordance with the Planning Permission and the Second Planning Permission no unloading of aggregates from any vessel situated or adjacent to the Land will take place on any day except between the hours of 0700 and 2300 hours unless the County Council has given written notice in advance approving such unloading outside these times.

b) After Commencement of the Development if Kendall or the Owner cease using the Land in accordance with the Planning Permission or the Second Planning Permission they shall inform the County Council of such cessation within 7 days thereof and shall not resume such use until written notification of resumption has been given to the County Council.

c) Kendall and the Owner will not seek to recover any compensation in respect of their covenant under clauses 4.1 (a) and (b) whether under the 1990 Act or any other statutory instrument regulations or other legislation. "

3.2 Otherwise the Original Agreement shall continue in full force and shall have the same legal effect as before this variation and shall be enforceable by the County Council.

3.3 Nothing contained in this Deed of Variation shall affect the powers of the County Council with regard to the enforcement of planning control under the Act from time to time in force.

3.4 This Deed of Variation shall be enforceable by the County Council in the same manner as the Original Agreement.

3.5 Kendall will pay the reasonable legal fees of the County Council in respect of the preparation and execution of this Deed of Variation.

4. Local Land Charge

4.1 The Original Agreement is a local land charge and this Deed shall be entered in the relevant register by the County Council so as to record the variation of the Original Agreement.

IN WITNESS whereof the parties hereto have caused this document to be executed as a Deed the day and year first before written



The Common Seal of)
WEST SUSSEX COUNTY COUNCIL)
Was hereunto affixed in the presence of:-)

Authorised Signatory [redacted]

SIGNED as a DEED)
by **KENDALL BROS. (PORTSMOUTH) LIMITED** acting by two directors or)
one director and the secretary:-)

Director [redacted]

Director/Secretary [redacted]

SIGNED as a DEED)
by **MONTEUM LIMITED**)
acting by two directors or)
one director and the secretary:-)

Director [redacted]

Director/Secretary [redacted]

Application No: WSCC/079/09/SU
COUNTY MATTER

TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) ORDER 1995

To Kendall Bros (Portsmouth) Ltd
c/o Mr John Grange
Building Design & Management Services
30 Allen Road
Southampton
Hampshire
SO30 4EU

In pursuance of their powers under the above mentioned Act and Orders, West Sussex County Council hereby notify you that they **PERMIT** the following development, that is to say:-

Variation of Condition 1 of planning permission SU/233/04 to extend the temporary permission for unloading, preparation and storage of mineral aggregates with concrete batching plant at New Wharf, Brighton Road, Shoreham, West Sussex, BN43 6RN

to be carried out in accordance with your application and plans (as modified by the under-mentioned conditions if any) submitted to this Council on 12 October 2009 (and in accordance with the relevant correspondence a copy of which is attached *) and subject to the conditions specified hereunder:-

1. **The use of the land, buildings and structures hereby permitted shall cease and the site be cleared of all buildings, structures and works erected pursuant to this permission on or before 31st December 2012.**

   Reason: In order not to prejudice consideration of future proposals for the locality and to enable the County Planning Authority to review the special circumstances under which this permission is granted.

2. **The Environmental Management Plan approved by the County Planning Authority on 13th March 2006 shall be adhered to at all times.**

   Reason: To minimise the environmental impacts arising from the operation of the site in the interests of the amenities of nearby residents, properties and the safety of highway users.

3. **No production of processed aggregates or concrete manufacture shall be undertaken on the site unless and until parking spaces for a minimum of six cars, as shown on plan 9515.04. A (revised October 2009). The area of land so provided, or any other alternative area that may be agreed in writing with the County Planning Authority in substitution for the area, shall not thereafter be used for any purpose than the parking of vehicles.**

   Reason: To ensure that adequate and satisfactory provision is made for the accommodation of vehicles clear of the public highway.

Continuation Sheet

4. No change in colour, texture or substitution of the materials and finishes of the plant, buildings and equipment illustrated on plan 9515.03. C (revised October 2009) shall be made other than with the prior written agreement of the County Planning Authority.

Reason: In the interests of the visual amenity of the locality.

5. Any fuel, oil lubricant or other potential pollutant shall be handled on the site in such a manner as to prevent pollution of any watercourse or drainage system. For any such liquid other than water this shall include storage in suitable tanks and containers which shall be housed in an area or structure surrounded by bund walls of sufficient height and construction so as to contain 110% of the total contents of all containers and associated pipework. The floor and walls of the bunded area shall be impervious to both water and oil. The pipes shall vent downwards into the bund.

Reason: To minimise the risk of pollution to watercourses and drainage systems in the vicinity of the site.

6. With the exception of the unloading from dredgers of marine dredged aggregates that shall on any day take place between the hours of 0700 and 2300 no operations authorised or required under this permission shall take place except between the hours of:

0700 and 1800 Mondays to Fridays;
0700 and Noon on Saturdays,

save that no use of the aggregate processing plant shall on any day take place before 0800 hours and that the discharging of marine dredged aggregates shall on any day take place between the hours of 0700 and 2300 only (in accordance with requirements of Condition 2 above).

No working, including the maintenance of plant and machinery, shall take place on the site on Sundays or public holidays.

Reason: In the interests of the amenities of the locality and to minimise disturbance arising from the activity on the site and the traffic generated thereby.

7. All vehicles and plant operating regularly from, or continuously on, the site shall be equipped with upward directed exhaust outlets.

Reason: To minimise the disturbance of dust on the site in the interest of the amenities of adjoining land users.

Signed
Date ..... Divisional Manager County Development.....

Continuation Sheet

8. Unless otherwise agreed by the County Planning Authority, no aggregates or other materials shall be delivered to the site for subsequent resale other than cement and additives to be used in the process of making concrete.

Reason: To ensure the site is used primarily for the handling of materials delivered by sea and to minimise traffic movements on and off the site.

9. Notwithstanding the provisions of Part 2 and Part 8 of Schedule 2 of the the Town and Country Planning (General Permitted Development) Order, 1995 (or any Order amending, replacing or re-enacting that Order), no fixed plant or machinery, buildings, structures, erections, including hardstanding, shall be installed, constructed, erected, extended or replaced nor shall any change be made to the colour of paintwork or cladding of structures and buildings on the site without the prior agreement in writing of the County Planning Authority.

Reason: To enable the County Planning Authority to control the development in the interests of the amenities of the locality.

10. Other than intruder activated lighting, the site shall not be artificially illuminated except during the permitted hours of working or during the course of unloading of cargo from a ship at the wharf and no lighting fitment shall be installed or at any time operated on the site from which the source of the light is directed towards a public highway or residential properties.

Reason: In the interests of highway safety and the amenity of nearby residents.

11. The offices included within the site shall only be occupied as an integral part of the aggregate processing and concrete batching operations and shall at no time in whole or part be occupied separately therefrom.

Reason: To ensure the site is used primarily for business associated with the handling of cargo through the port.

12. The unloading from dredgers of marine dredged aggregates shall on any day take place between the hours of 0700 and 2300 only.

Reason: In the interests of the amenities of the locality and to minimise disturbance arising from the activity on the site and the traffic generated thereby.

INFORMATIVES

A. The applicant is advised that this permission relates solely to condition 1 of planning permission SU/233/04 and other amendments/additions to remaining conditions relating to these proposals. All amendments and additional conditions and informatives have been highlighted in bold and supersede/add to those included in SU/233/04. Remaining conditions

Signed

Date ..... Divisional Manager County Development.....

Continuation Sheet

(referred to above, not in bold) are repeated from planning permission SU/233/04.

B This decision should be read in conjunction with an agreement made under Section 106 of

BC Reason for the granting of Planning Permission: the Town and Country Planning Act 1990

The proposed development meets the main material considerations in that it;

- is acceptable in terms of highway safety, the local landscape and the water environment; and

- has an acceptable impact on local amenity, and environmental health; and as such, complies with Development Plan Policies that are listed below:

Statutory Development Plan Policies

West Sussex Minerals Local Plan (2003)
Policy 16 - Safeguarding the water environment.
Policy 35 - Non-allocated mineral working sites.
Policy 36 - Movement of minerals by rail and water.
Policy 40 - Safeguarding wharves with current or potential mineral use.
Policy 42 - Mineral processing plants.
Policy 47 - Highway safety and access.
Policy 48 - Site access and safety.
Policy 52 - Siting and appearance of buildings, plant and machinery.
Policy 56 - Protection of surface and ground water quality.
Policy 57 - Importation of material to minerals sites.
Policy 59 - Control of site drainage and discharge of water.
Policy 60 - Noise.
Policy 61 - Dust.
Policy 62 - Lighting.
Policy 63 - Hours of use.

Adur District Local Plan (1996)
Policy AG1 - Built-up area.
Policy AP7 - Minimising pollution.
Policy AE7 - Shoreham Harbour approach to development.
Policy AE8 - Development not associated with the Port may be permitted.
Policy AT4 - North side of the Harbour and Shoreham Beach.
Policy AT12 - Access, servicing and parking requirements.

Signed
Date ..... Divisional Manager County Development.....

YOUR ATTENTION IS DIRECTED TO THE FOLLOWING NOTES.

THEY ARE FOR INFORMATION ONLY AND DO NOT PRETEND TO SET OUT THE WHOLE OF THE LAW ON THE SUBJECT. IT WOULD BE WELL FOR YOU TO CONSULT YOUR SOLICITOR IF YOU ARE IN ANY DOUBT.

TOWN AND COUNTRY PLANNING ACT 1990

1 Appeals to the Secretary of State

(a) If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Office of the Deputy Prime Minister under section 78 of the Town and Country Planning Act 1990.

(b) If you want to appeal, then you must do so within six months of the date of this notice, using a form which you can get from the Planning Inspectorate at Tollgate House, Houlton Street, Bristol BS2 9DJ.

(c) The Secretary of State can allow a longer period for giving notice of an appeal, but he will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.

(d) The Secretary of State need not consider an appeal if it seems to him that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.

(e) In practice, the Secretary of State does not refuse to consider appeals solely because the local planning authority based their decision on a direction given by him.

2

(a) If either the local planning authority or the Office of the Deputy Prime Minister refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.

(b) In these circumstances, the owner may serve a purchase notice on the District Council in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.

3

In certain circumstances a claim may be made against the local planning authority for compensation where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in Section 114 of the Town and County Planning Act 1990.

4

Further correspondence about this application should quote the reference number at the top right hand corner of the form.