

THIS DEED is made the

23rd

day of

March

2004

BETWEEN

- A PEAK DISTRICT NATIONAL PARK AUTHORITY ("MPA")
of Aldern House Baslow Road Bakewell Derbyshire DE45 1AE
- B GLEBE MINES LIMITED ("Glebe")
whose registered office is at Cavendish Mill Stoney Middleton Derbyshire S32 4TH
- C THE HONOURABLE PEREGRINE ANDREW MORNAY CAVENDISH (commonly
called The Marquess of Hartington) PETER ANTHONY BOSTOCK and RICHARD
GERVASE BECKETT all care of 21 Buckingham Gate London SW1E 6LS
("Devonshire Maintenance Fund Trustees")
- D BARCLAYS BANK PLC ("the Chargee")
c/o Barclays Loan Servicing Centre P.O. Box 299 Birmingham B1 3PF

RECITALS

1. MPA is the Mineral Planning Authority for the area within which the Restricted Land is situated and by whom the Obligations created by this deed are enforceable
2. The title to the mines and minerals beneath the Restricted Land is as follows:
 - 2.1 Devonshire Maintenance Fund Trustees are the freehold owners of the mines and minerals in parts of the Restricted Land included in the lease next mentioned
 - 2.2 Glebe is the leaseholder of the said mines and minerals by virtue of a lease ("the Mining Lease") dated 9th December 2003 and made between the Devonshire Maintenance Fund Trustees of the one part and Glebe of the other part for a term of 21 years commencing on 1st April 2003
 - 2.3 Glebe is registered with an absolute freehold title of Deep Rake (except the lead ore and rights excepted on the enfranchisement thereof) under the title number DY354390 free from any registered charge
 - 2.4 Glebe is also registered with an absolute freehold title of Sallett Hole Mine Coombs Dale Stoney Middleton under title number DY354554 free from any registered charge
 - 2.5 Glebe is further registered with an absolute freehold title of Longstone Moor Farm Longstone Moor Great Longstone under title number DY355942 subject to a registered charge dated 4 April 2002 in favour of the Chargee
 - 2.6 Glebe is further registered with a possessory title in the freehold land at Longstone Moor aforesaid under title number DY364035 free from any registered charge
3. Glebe has by the Planning Application applied to MPA for permission to carry out the Development
4. MPA has decided to grant planning permission for the Development in accordance with the Planning Application and supporting information statements and accompanying plans subject to conditions and subject to the making of this Agreement without which planning permission for the Development would not be granted

B. H. Pirmhak
Head of Law
Peak District National Park Authority
Aldern House
Baslow Road
Bakewell
Derbyshire DE45 1AE

AGREEMENT
under Section 106 of the Town and Country Planning Act 1990 (as amended)
in respect of land at or near Longstone Edge Great Longstone
Derbyshire

BARCLAY'S BANK PLC

and

THE TRUSTEES OF THE DEVONSHIRE MAINTENANCE FUND

and

GLEBE MINES LIMITED

and

PEAK DISTRICT NATIONAL PARK AUTHORITY

DATED 23rd March 2004

NOW THIS DEED made in pursuance of section 106 of the Town and Country Planning Act 1990 as amended and which is a planning obligation for the purposes of that section

WITNESSES as follows:

1. DEFINITIONS

In this deed:

- 1.1 "MPA" "Devonshire Maintenance Fund Trustees" "Glebe" and "the Chargee" shall include their respective successors in title and assignees
 "Devonshire Maintenance Fund Trustees" includes the named trustees and their successors in title for the time being entitled to the reversionary freehold estate in the land/mines in reversion immediately expectant upon the term of years created by the Mining Lease referred to in ^{clause} ~~clause~~ 2.1
- 1.2 "Condition" followed by a numeral refers to the condition bearing that number in the Planning Permission
- 1.3 "Early Cessation of Working" means a permanent cessation of winning and working of minerals as defined in Condition 86
- 1.4 "Development" means the development for which permission is requested and described in the Planning Application and supporting information statements and accompanying plans
- 1.5 "Existing Planning Permissions" refers to the planning permissions details of which are contained in Part I of the Second Schedule
- 1.6 "Longstone Edge Interim Restoration Scheme" means the scheme with the said title supplied by Glebe, a copy of which accompanies this Agreement, which is intended to apply in the event of the Early Cessation of Working
- 1.7 "Obligations" means the covenants set out in the Third Schedule and "Obligation" refers to any one of them
- 1.8 "Plan" means the Drawing Number LE2 dated November 2000, a copy of which is annexed to this Agreement
- 1.9 "Planning Application" means the application (brief details of which are set out in Part 2 of the Second Schedule) made by or on behalf of Glebe dated 9th November 2000 and registered by MPA on 14th November 2000 and the Minerals Application Form and supporting information statements and accompanying plans deposited with MPA and forming part of the Planning Application
- 1.10.1 "Planning Permission" means the planning permission, a draft copy of which is annexed hereto, to be given by MPA under the reference NP/DDD/1100/473 in response to the Planning Application
- 1.10.2 "Duration of the Planning Permission" means the period commencing upon the date of the Planning Permission to 30th November 2015 during which

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mining operations may be carried out upon the Restricted Land in accordance with the Planning Permission

- 1.11.1 "Restoration Works" means the works to be carried out and completed during the Duration of the Planning Permission on the Restricted Land after the completion of mining operations the nature of such works to be determined in the manner described in Conditions 77 to 84 inclusive and in accordance with the plans/details submitted in the Planning Application and also with schemes to be submitted under the Conditions
- 1.11.2 "Aftercare Works" means the works required to be undertaken in accordance with the aftercare scheme referred to in Condition 85 in order to bring the Restricted Land to the required standard for use for agriculture and amenity (including nature conservation) after the completion of the Restoration Works PROVIDED THAT in the event of an Early Cessation of Working the reference to "Restoration Works" and "Aftercare Works" shall refer to the works described in the "Longstone Edge Interim Restoration Scheme"
- 1.11.3 "Period of Aftercare" means the period of five years from the completion of each phase of the Restoration Works as identified on the approved plans (that is to say, the plans listed in and attached to the Planning Permission)
- 1.12 "Restoration Bond" refers to the bond or series of consecutive bonds to be entered into by Glebe and a bank insurance company or other financial institution approved by MPA with MPA in the form (or any variation thereof approved by MPA) set out in Fourth Schedule in such case any decision by MPA as to approval shall not be unreasonably withheld or delayed
- 1.13 "the Restricted Land" means the land described in the First Schedule and bound by the Obligations
- 1.14 "Surety" means any bank insurance company or other financial institution first approved in writing by MPA (such decision by MPA as to approval shall not be unreasonably withheld or delayed) and bound to MPA by the Restoration Bond

2. INTERPRETATION

- 2.1 Unless the context otherwise requires, references in this Agreement to schedules are to schedules in this Agreement
- 2.2 The headings to clauses and other parts of this Agreement are for reference only and do not affect its construction
- 2.3 This Agreement may only be varied in writing signed by or on behalf of all the parties
- 2.4 An Obligation on a party to do any act or thing includes a requirement to procure that it be done and any Obligation not to do any act or thing includes a requirement not to allow that act or thing to be done by any person under its control

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- 2.5 Obligations owed by or to more than one person are (except where the context otherwise requires) owed by or to them jointly and separately
- 2.6 Unless otherwise specified, a reference to legislation is to that legislation as extended, amended, modified, consolidated, or re-enacted from time to time and includes any instrument, order, regulation, permission, consent, licence, notice, direction, byelaw, statutory guidance or code of practice made or granted under such legislation
- 2.7.1 Any action herein required to be carried out or performed by MPA may be carried out or performed by an officer of MPA acting on its behalf
- 2.7.2 References to the "Head of Law" of MPA shall be deemed to include any person holding that post by the same or any other title or any officer of MPA subsequently appointed to carry out the services of a solicitor on behalf of MPA

3. PERFORMANCE OF THE OBLIGATIONS

- 3.1 Glebe to the extent of its legal estate and interest in the Restricted Land and the mines and minerals therein HEREBY COVENANTS with MPA to observe and perform the Obligations in respect of the Restricted Land
- 3.2 In the event that the Mining Lease referred to in recital 2.2 shall be surrendered forfeited determined or otherwise no longer be in existence the Devonshire Maintenance Fund Trustees to the extent of their legal estate and interest in the Restricted Land and the mines and minerals therein HEREBY COVENANT with the MPA to observe and perform the Obligations in respect of the Restricted Land
- 3.3 The Chargee hereby consents to the execution of this deed by Glebe and agrees that subject as herein provided the part of the Restricted Land comprised in the said title DY355942 shall be bound by the Obligations PROVIDED that the Chargee shall not be liable for any breach of covenant occurring unless and whilst it is mortgagee in possession of that said part of the Restricted Land

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4. CONDITIONS AGREED BETWEEN THE PARTIES

It is agreed and declared as follows:

- 4.1 No person shall be liable for breach of a covenant contained in this Agreement occurring after parting with all interest in the Restricted Land or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest
- 4.2 The Obligations shall take effect upon the date of this Agreement
- 4.3 This Agreement is a local land charge and shall be registered as such
- 4.4 Nothing in this deed will fetter the discretion of MPA in the exercise of any of its statutory functions or powers

5. REVOCATION

The parties hereby further agree that the Existing Planning Permissions shall be deemed to be revoked forthwith without any right to claim compensation

6. RESTORATION WORKS

Notwithstanding anything to the contrary in the Planning Permission the Obligations to commence and complete the Restoration Works and consequently the Aftercare Works shall commence:

- 6.1 upon Early Cessation of Working upon the Restricted Land at any time before the expiration of the Duration of the Planning Permission OR
- 6.2 if during the Duration of the Planning Permission Glebe enters into liquidation whether compulsory or voluntary (except for amalgamation or reconstruction of a solvent company) or has an administrative or other receiver appointed for its operations OR
- 6.3 If immediately prior to the expiration of any Restoration Bond Glebe shall not have paid to the Surety the premium in respect of the next consecutive Restoration Bond (or an extension of the period of the then existing Restoration Bond) or shall have failed to obtain confirmation that the then existing Restoration Bond will be replaced by a further consecutive Restoration Bond (in identical terms or otherwise in terms approved in advance by MPA in writing in response to a written request from Glebe) with the same Surety or another Surety first approved in writing by MPA

7. RELEASE OF THE RESTORATION BOND

- 7.1 When the Restoration Works and the Aftercare Works have been completed MPA will release the Surety from its Obligations secured by the Restoration Bond by means of a certificate to that effect signed on behalf of MPA by its Head of Law
- 7.2 The MPA may at its reasonable discretion at any time or times in writing given to Glebe and the Surety reduce the amount secured by the Restoration Bond to reflect any phased completion of the Restoration Works
- 7.3 Similarly upon the completion of each phase of the Aftercare Works the amount secured by the Restoration Bond may be reduced by an amount specified by MPA in manner aforesaid to reflect the reduced cost of the Aftercare Works

8. DISPUTES

Disputes or differences between the parties hereto may if the parties agree be referred to a single arbitrator to be agreed by the parties hereto in accordance with

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the provisions of the Arbitration Act 1996 but this shall not prevent MPA from applying for an injunction or other enforcement action.

IN WITNESS whereof this agreement has been duly executed as a deed by the parties to it the day and year first before written

FIRST SCHEDULE

(the Restricted Land)

ALL THOSE areas of land at or near Longstone Edge Great Longstone Derbyshire edged red on the Plan the larger area of land encompassing Deep Rake Bow Rake High Rake Arthurton West Watersaw Rake Watersaw Mine Compound Longstone Moor and the Beeches and the smaller being the site of Sallett Hole Mine

SECOND SCHEDULE

Part 1

(the Existing Planning Permissions)

<u>Date</u>	<u>Reference</u>	<u>Nature of Permission</u>
6th May 1949	BAR/249/14	Re-commence mining operations in an existing Lead Mine, not at present in use, at Stoney Middleton
27th July 1951	1898/9/27	Winning and working of fluorspar at Betney Cob, Longstone Moor
27th July 1951	1898/9/45	Continuation of workings for fluorspar and barytes at Longstone Edge
24th April 1952	1898/9/69	Surface working of fluorspar and barytes at Deep Rake, Hassop
27th September 1971	NP/BAR/971/6	To work fluorspar lead and barytes by underground mining at Longstone Edge
28 Jun. 1977	NP/WED/277/59	For the winning and working of fluorspar, lead and barytes by extension of existing underground workings and construction of No.2 entrance to Sallett Hole Mine
27 Feb. 1978	NP/WED/1177/464	Erect a fan housing at the ventilation shaft, Sallett Hole Mine, Great Longstone

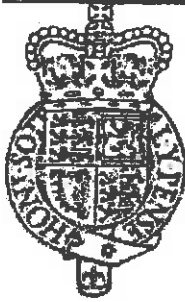
Part 2

(the Planning Application)

Reference Number -- Proposal
 NP/DDD/1100/473 -- Consolidating application for the opencast and underground extraction of vein mineralisation, including crushing and sale of limestone, import of processed mineral waste tailings for restoration, surrender of consented area, variation of conditions and small extension area

THIRD SCHEDULE
(Obligations)

1. That development shall not after the date hereof be carried out upon the Restricted Land in accordance with the planning permissions conferred by the Existing Planning Permissions
2. Not to seek any compensation for the deemed revocation of the Existing Planning Permissions nor to any formal revocation orders subsequently made to the same or similar effect nor for its inability to carry out the development permitted thereby
- 3.1 If either (a) there shall be an Early Cessation of Working or (b) Glebe shall at any time within the Duration of the Planning Permission fail to procure or maintain in force a Restoration Bond then to carry out the Restoration Works and the Aftercare Works in accordance with the "Longstone Edge Interim Restoration Scheme" forthwith upon being required in writing by MPA to do so
- 3.2 Except in the circumstances set out in paragraph 3.1 above to carry out and complete (a) the Restoration Works within the Duration of the Planning Permission and (b) the Aftercare Works during the Period of Aftercare in both cases in accordance with the conditions contained in the Planning Permission
- 3.3 In the event of default by any party responsible therefore in carrying out and completing the Restoration Works and/or the Aftercare Works to permit MPA or its contractor to enter upon the Restricted Land with all necessary workmen vehicles machinery tools and materials and to complete the aforementioned works
- 4.1 That Glebe will simultaneously with the completion of this Agreement procure provide and maintain a Restoration Bond being a bond or the first in a consecutive series of bonds with a Surety each to cover the Duration of the Planning Permission and the Period of Aftercare each Restoration Bond being for a period of not less than 3 years with the first bond running from the date hereof
- 4.2 The Restoration Bond shall be in the form set out in the Fourth Schedule with any revisions required by the Surety and approved by MPA such approval not to be unreasonably withheld or delayed in the sum of £400,000. (Four Hundred Thousand Pounds)
- 4.3 The Restoration Bond shall be in a form to bind Glebe and the Surety to MPA in order to secure the performance by Glebe of the Obligations to carry out and complete the Restoration Works and the Aftercare Works
- 4.4 The sum secured by the Restoration Bond will in the event of default by Glebe in performing the Obligations become payable to MPA forthwith in order to enable



Appeal Decision

Inquiry opened on 13 February 2007

Site visit made on 26 February 2007

by David Baldock MA DipTP DMS MRTPI

an Inspector appointed by the Secretary of State for
Communities and Local Government

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
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inspectorate.gsi.gov.uk

Date 26th April 2007

Appeal Ref: APP/M9496/C/06/2017966

Land at Backdale, Hassop, Longstone Edge

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Bleaklow Industries Limited against an enforcement notice issued by the Peak District National Park Authority.
- The Authority's reference is NAW/B242/MIN2382.
- The notice was issued on 5th May 2006.
- The breach of planning control as alleged in the notice is the winning and working of limestone other than in accordance with planning permission 1898/9/69.
- The requirements of the notice are to cease:
 - (a) in the area shaded grey on the plan attached to the notice, all the winning and working of limestone;
 - (b) in the area outside the area shaded grey but within the notice area, the winning and working of limestone other than the working of such limestone as is won in the course of working fluorspar and barytes.
- The period for compliance with the requirements is one day.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Appeal Ref: APP/M9496/C/06/2018130

- This is an appeal made on the same grounds by MMC Mineral Processing Ltd. All details are identical to those on the appeal by Bleaklow Industries.

Summary of Decision: The appeals succeed in part on ground (f) and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

1. PRELIMINARY MATTERS

- 1.1 At the Inquiry an application for a partial award of costs was made by Bleaklow Industries Limited [BIL] against the National Park Authority [NPA]. This application is the subject of a separate Decision.
- 1.2 The evidence of those witnesses which it was expected might include matters of personal recollection (rather than record or professional opinion) was taken on oath. These were Mr Harpley, Mr Taylor, Dr Furness and Mr Tippett.
- 1.3 The inquiry sat for ten days between 13th and 28th February. My site visit was carried out on 26th February 2007. In addition to visiting the appeal land I travelled along

- 5.11 The survey information for the weighbridge stockpile suggests that the mineral value of this was very low. Fifteen samples have a mineral content of 9% or less and although up to five samples give a higher value, some of the latter are known to relate only to specific sub-piles
- 5.12 As noted in paragraph 5.6 above there is a conflict over the size of fluorspar stockpiles on the southern waste heap in June 2005. There have been four samples of this material, one of 27.8% and three between 3.4% and 9.1%.
- 5.13 The overall impression is that the ore produced was of a low quality and only conceivably saleable when blended with higher quality ore in which it formed only 10% of the product.

Characteristics of the submitted ROMP scheme

- 5.14 The ROMP scheme involves the excavation, export and sale of the limestone and fluorspar occurring on the land affected to a level of 190m, some 80m below existing levels. A historic estimate by the NPA was that this would "release" up to 12 million tonnes of limestone.
- 5.15 Evidence for the fluorspar likely to be on the land relies on a trenching report carried out in 1996¹³. This was achieved by excavation to a depth of 3m at 8 points within Peak Pasture. The presence of the veins was known from other sources, such as the BGS map. The purpose of the trial holes was to provide information on the width of the veins and quality of ore. Only one trench found in-situ material, with all other excavated and sampled material being backfill. Four samples were produced for analysis, with fluorspar content ranging from 40-65%.
- 5.16 Based on this source Mr Walton has calculated the likely tonnage of fluorspar ore from implementation of the ROMP scheme to be 177,200 tonnes. He agreed in cross examination that a 10% reduction should be made to allow for the effect of past underground mining, giving a net figure of about 160,000 tonnes.
- 5.17 Evidence was given that this might be an over-estimate and it is also argued that in practice more mineral might be found. In this respect the difficulty of identifying and evaluating deposits is described in the BGS Mineral Planning Factsheet and the typical variability of veins is also recorded in the SCG. There was also reference to the Reporting Code for mineral exploration results. In terms of this classification Mr Walton regards his estimate as an inferred resource.
- 5.18 This is the information available for the purpose of the appeals. Since the appellants do not own the rights to the vein minerals at Peak Pasture it is perhaps not surprising that more detailed evidence has not been provided. The onus is on the appellant/developer to provide sufficient evidence to enable the relevant judgement to be made. In the case of an appeal against an enforcement notice on legal grounds there is an onus of proof on the appellant. I am doubtful that there is sufficient reliable evidence to evaluate the entirety of the operations proposed in the ROMP scheme. Thus for example it might be that in parts of the land there is no fluorspar and that could be relevant to whether the operations would be lawful. The assumption of continuity of the mineral resource is not justified from the very limited evidence put forward. Nevertheless the judgement I need to make is a rather broader one, that is whether operations substantially

¹³ BIL2