

Dated 13th February 2025

The Council of the Borough of Havant

and

Portsmouth Water Limited

and

Hampshire County Council

**Deed of Variation under section 106 and 106A of the Town
and County Planning Act 1990**

relating to land at Havant Thicket, Havant

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Deed of Variation

Dated 13th February 2025

Parties

- (1) **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza Civic Centre Road Havant PO9 2AX (the '**Borough Council**');
- (2) **PORTSMOUTH WATER LIMITED** a company registered in England and Wales with company registration number 025364455 and whose registered office is PO Box No 8, West Street, Havant, Hampshire, PO9 1LG (the '**Owner**');
- (3) **HAMPSHIRE COUNTY COUNCIL** of The Castle Winchester SO23 8UJ (the '**County Council**')

(together the **Parties**).

Introduction

- (A) The Borough Council, the Owner, the County Council, East Hampshire District Council, the Secretary of State for Environment Food and Rural Affairs and Hampshire County Council in its capacity as landowner entered into the Original Agreement in respect of the Pipeline Development. The Borough Council granted the Pipeline Planning Permission for the Pipeline Development on 15 October 2021.
- (B) The Shaft 1 Reserved Matters Application was submitted to the Borough Council on 12 March 2024 and was considered at the Borough Council's Planning Committee on 13 June 2024 and the Borough Council resolved to grant the Shaft 1 Reserved Matters Application which was granted on 28 June 2024.
- (C) The Borough Council is the local planning authority for the purposes of the Act for the area in which the Pipeline Land is situated and the County Council is the highways authority for the purposes of the Highways Act 1980 for the area within which the Pipeline Development is situated and they are the bodies by which the obligations contained in the Original Agreement and this Deed of Variation are enforceable.
- (D) The Owner is the freehold proprietor of the part of the Pipeline Land registered at the Land Registry with title absolute under title number SH35777 known as Waterworks, Meyrick Road, Havant.
- (E) The obligations contained in the Original Agreement to which this Deed of Variation relates are not enforceable by East Hampshire District Council and consequently East Hampshire District Council is not a party to this Deed of Variation in accordance with the provisions of section 106A(1)(a) of the Act.
- (F) The obligations contained in the Original Agreement which are to be performed by the Secretary of State for Environment Food and Rural Affairs are not affected by this Deed of Variation and consequently the Secretary of State for Environment Food and Rural Affairs is not a party to this Deed of Variation in accordance with the provisions of section 106A(1)(a) of the Act.

- (G) The obligations contained in the Original Agreement which are to be performed by Hampshire County Council are not affected by this Deed of Variation and consequently Hampshire County Council in its capacity as landowner is not a party to this Deed of Variation in accordance with the provisions of section 106A(1)(a) of the Act.
- (H) For the avoidance of doubt the Parties agree that none of the obligations in the Original Agreement that apply to the Reservoir Planning Permission are in any way varied or affected by the terms of this Deed of Variation.
- (I) The Parties have agreed to enter into this Deed of Variation to vary the obligations within the Original Agreement in relation to the Pipeline Planning Permission.

Agreed terms

1 Definitions and interpretation

1.1 Words and expressions defined in the Original Agreement shall, unless the context otherwise requires, bear the same meanings in this Deed of Variation.

1.2 For the purposes of this Deed of Variation the following terms shall have the following meanings unless otherwise stated or unless otherwise inconsistent with the context:

Original Agreement means the agreement under Section 106 of the Act dated 15 October 2021 made between (1) the Council of the Borough of Havant (2) East Hampshire District Council (3) Portsmouth Water Limited (4) the Secretary of State for Environment Food and Rural Affairs and (5) Hampshire County Council;

Shaft 1 Reserved Matters Application means the reserved matters application submitted to the Borough Council with reference APP/24/00204 in respect of the Pipeline Planning Permission which applies to the Shaft 1 Reserved Matters Area

Shaft 1 Reserved Matters Approval means the reserved matters approval granted by the Borough Council in respect of the Shaft 1 Reserved Matters Application

Shaft 1 Reserved Matters Area means the area shown edged red on the plan annexed to this Deed of Variation

1.3 Any covenant by the Owner not to do any act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person where knowledge of the actions of the other person is reasonably to be inferred.

1.4 Any references to any particular statute include any statutory extension, modification, amendment or re-enactment of such statute and also include any subordinate instruments, regulations or orders made in pursuance of it.

1.5 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Borough Council or County Council the successors to their respective statutory functions.

1.6 The headings appearing in this Deed of Variation are for ease of reference only and shall not affect the construction of this Deed of Variation.

- 1.7 In this Deed of Variation the singular includes the plural and vice versa and the masculine includes the feminine and vice versa.
- 1.8 Nothing in this Deed of Variation shall prohibit or limit the right to develop any part of the Pipeline Land in accordance with a planning permission (other than the Pipeline Planning Permission and/or the Shaft 1 Reserved Matters Approval) granted (whether or not on appeal) after the date of this Deed of Variation.
- 1.9 Any notice, notification, consent, approval, agreement, request or statement or details to be made, given, or submitted under or in connection with this Deed of Variation shall be made or confirmed in writing in accordance with the provisions of Clause 9 of the Original Agreement.
- 1.10 In the event of any inconsistency or ambiguity in respect of the intentions and obligations of the parties to this Deed of Variation arising under this Deed of Variation and/or the Original Agreement, then the provisions of this Deed of Variation will prevail.
- 1.11 This Deed of Variation is supplemental to and varies the provisions of the Original Agreement.
- 2 Legal basis**
- 2.1 This Deed of Variation is made by deed pursuant to Section 106 and Section 106A of the Act, section 111 of the Local Government Act 1972, section 33 of the Local Government (Miscellaneous Provisions) Act 1982, and section 1 of the Localism Act 2011 with the intention that it shall bind the Owner's interest in the Pipeline Land as provided by those sections.
- 2.2 The covenants, restrictions and requirements imposed on the Owner in the Original Agreement as supplemented and varied by this Deed of Variation are planning obligations pursuant to and for the purposes of Sections 106 and 106A of the Act and the relevant provision within the Highways Act 1980 and are enforceable against the Owner by the Borough Council as local planning authority and the County Council as local planning authority in accordance with the terms of the Original Agreement as supplemented and varied by this Deed of Variation.
- 2.3 Insofar as the provisions hereof do not constitute planning obligations for the purposes of Section 106 of the Act, this Deed of Variation is also entered into pursuant to Section 111 of the Local Government Act 1972, section 33 of the Local Government (Miscellaneous Provisions) Act 1982, Section 1 of the Localism Act 2011 and all other powers enabling in that behalf.
- 2.4 Nothing in this Deed of Variation restricts or is intended to restrict the proper exercise at any time by the Borough Council or County Council of any of their statutory powers, functions, or discretions in relation to the Pipeline Land or otherwise.
- 3 Commencement of Agreement**
- 3.1 This Deed of Variation takes immediate effect upon completion hereof save for clause 5.1 and the provisions of Schedule 1 which are conditional upon the grant of the Shaft 1 Reserved Matters Approval.

3.2 Save as expressly varied by this Deed of Variation the Original Agreement shall remain in full force and effect.

3.3 Where any obligation under the Original Agreement has been complied with that obligation shall be deemed to have been complied with under the Original Agreement as varied by this Deed of Variation.

4 Miscellaneous

4.1 No provisions of this Deed of Variation shall be enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999 nor does it confer or purport to confer any right to enforce any of the terms and provisions of this Deed of Variation to any person who is not a party or successor in title or statutory successor to a party hereto.

4.2 This Deed of Variation shall be registered as a Local Land Charge by the Borough Council.

4.3 Insofar as any clause or clauses of this Deed of Variation are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed of Variation.

5 Obligations of the Owner

5.1 The Owner covenant with the Borough Council and the County Council in relation to its interests in the Pipeline Land to comply with the obligations set out in Schedule 2 of the Original Agreement as supplemented and varied by Schedule 1 of this Deed of Variation.

5.2 The Owner covenants to pay to the Borough Council and County Council on completion of this Deed of Variation their reasonable legal costs and disbursements of and incidental to the negotiation and execution of this Deed of Variation.

6 Jurisdiction

This Deed of Variation is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

7 Delivery

7.1 The provisions of this Deed of Variation (other than this clause which shall be of immediate effect) shall be of no effect until this Deed of Variation has been dated.

Schedule 1

Variations to the Original Agreement

The Parties hereby agree that the Original Agreement shall be varied as follows:

- 1 In the recitals of the Original Agreement at recital (D) the words "and that part of the Pipeline Land registered under title number SH35777." shall be inserted immediately after the words "Manor Lodge Road Land"
- 2 The definitions of "Shaft 1 Reserved Matters Application", "Shaft 1 Reserved Matters Approval" and "Shaft 1 Reserved Matters Area" at clause 1.2 of this Deed of Variation shall be inserted at clause 1 of the Original Agreement in alphabetical order.
- 3 A new definition of 'Authorised Works' shall be inserted into clause 1 of the Original Agreement in alphabetical order as follows:

"Authorised Works means the works approved pursuant to the Shaft 1 Reserved Matters Approval"
- 4 The words "the Borough Council and" shall be inserted immediately before "the County Council" in:
 - 4.1 clause 5.3 of the Original Agreement;
 - 4.2 the heading in Schedule 2 to the Original Agreement; and
 - 4.3 the first line below the heading in Schedule 2 to the Original Agreement.
- 5 Paragraphs 2.5 to 2.8 (inclusive) of Schedule 2 to the Original Agreement shall be deleted and replaced as follows:
 - "2.5 To enter into the Highways Agreement(s) for the Southern Site Access Works prior to the Commencement of the Pipeline Development other than the Authorised Works
 - 2.6 Not to Commence the Pipeline Development (other than the Authorised Works) until the Highways Agreement(s) for the Southern Site Access Works has been entered into
 - 2.7 To complete the Southern Site Access Works to Certificate of Completion Standard prior to the Commencement of the Pipeline Development other than the Authorised Works
 - 2.8 Not to Commence the Pipeline Development (other than the Authorised Works) until the Southern Site Access Works have been completed to Certificate of Completion Standard."

Annex

IN WITNESS whereof the Parties have executed this Deed of Variation on the day and year first before written.

Executed as a Deed by affixing the)
common Seal of **THE COUNCIL**)
OF THE BOROUGH OF HAVANT)



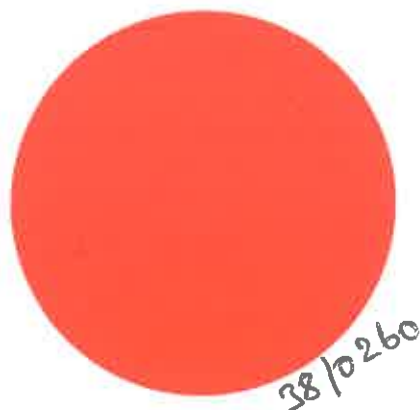
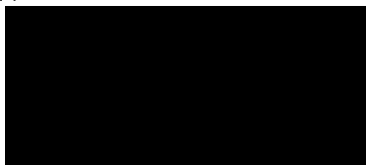
103705

in the presence of: -)



Authorised signatory

Executed as a Deed by affixing the)
common seal of **HAMPSHIRE**)
COUNTY COUNCIL in the)
presence of: -)



Executed as a Deed by)

PORTSMOUTH WATER LIMITED)

acting by a director and its secretary

Signature of Director:

Signature of Secretary:

