

DATED 1st February 2022 2023

(1) THE COUNCIL OF THE BOROUGH OF HAVANT

and

(2) HAMPSHIRE COUNTY COUNCIL

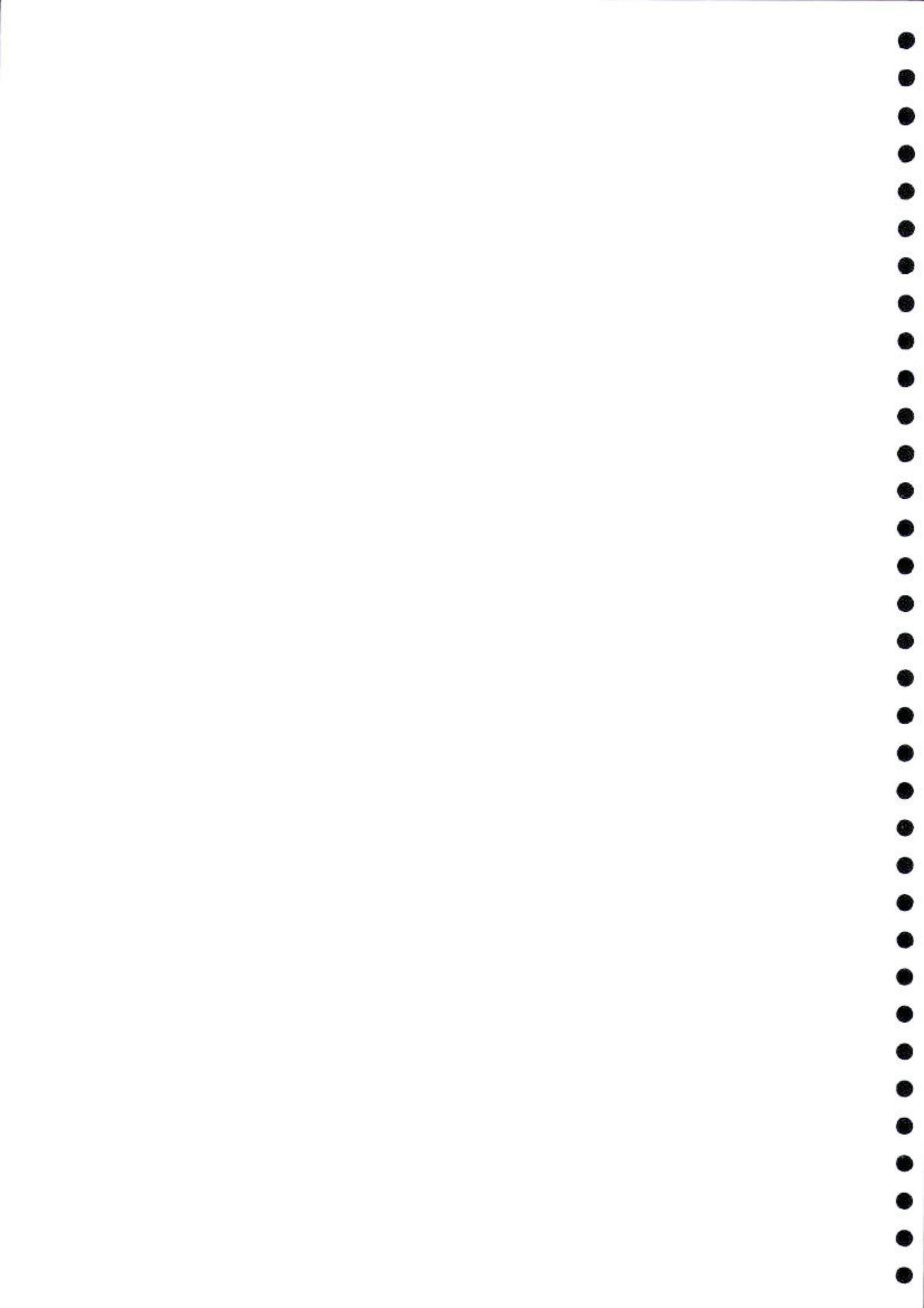
and

(3) EVELYN PARTNERS TRUST CORPORATION LIMITED and MARK GRAHAM WEAVER as
THE TRUSTEES OF THE GHM JACKSON 1972 CHILDREN'S SETTLEMENT TRUST

AGREEMENT

Under Section 106 Town and Country Planning Act 1990

relating to land west of Hulbert Road, Havant



THIS AGREEMENT is made on

1st February

2022 2023

BETWEEN:

1. **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza Civic Centre Road Havant PO9 2AX (**Borough Council**);
2. **HAMPSHIRE COUNTY COUNCIL** of The Castle, Winchester, Hampshire, SO23 8UJ (**County Council**); and
3. **EVELYN PARTNERS TRUST CORPORATION LIMITED** (Co. Regn. No. 02013947) of 45 Gresham Street, London, United Kingdom, EC2V 7BG and **MARK GRAHAM WEAVER** of Sackville House, Sackville Lane, Hartfield TN7 4AW as **THE TRUSTEES OF THE GHM JACKSON 1972 CHILDREN'S SETTLEMENT TRUST** (**Owners**)

BACKGROUND

- (A) For the purposes of the Act, the Borough Council and the County Council are the local planning authorities for the area within which the Land is situated.
- (B) The County Council is the Local Highway Authority for Hampshire (save for trunk roads and special roads) and the Transport Authority for Hampshire for the purpose of the Transport Act 1985 and 2000.
- (C) The Owners are the registered freehold proprietors of the Land which is registered with HM Land Registry under title numbers HP479058, SH21872 and SH20195.
- (D) The Owners have submitted the Application to the Borough Council for permission to develop the Land.
- (E) The Site has the benefit of planning permission dated 17th February 2021 granted by the SDNP under reference number SDNP/20/01263/FUL authorising the creation of the Wetland Area within the Site for the purposes of Nitrate Mitigation.
- (F) The Owners have entered into the Deed of Allocation with the Site Proprietor and the Site Tenant to Allocate a portion of the Site Capacity (and / or to Allocate additional Capacity through taking of other land within the Site out of agricultural use) to the Owners to mitigate the impact of the Development on nitrate levels in the Solent catchment area.
- (G) The SDNP have agreed with the Borough Council to enforce the covenants of the S106, the Deed of Allocation, and (if applicable) the Unilateral Undertaking.
- (H) The Owners enter into this Agreement in anticipation of the grant of Planning Permission being made subject to the Owners having entered into this Agreement which makes provision for regulating the Development and securing the matters referred to in this Agreement.
- (I) The parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Borough Council and the County Council against the Owners and their successors in title.

The parties agree as follows:

1 DEFINITIONS

From the date of this Agreement unless the context otherwise requires, the following definitions apply to this Agreement and Background:

"Act"	the Town and Country Planning Act 1990.
"Affordable Dwellings"	means 30% of the Dwellings to be constructed on the Land and to be provided as units of Affordable Housing as part of the Development and in accordance with the Affordable Housing Mix.
"Affordable Housing"	means Dwellings that: (a) meet the needs of Eligible Persons including availability at a cost low enough for them to afford determined with regard to the local incomes local house prices and local rents; and (b) include provisions for the housing to remain at an affordable cost for future Eligible Persons.
"Affordable Housing Mix"	means the mix of Affordable Dwellings, in terms of the number, size and tenure as set out at paragraph 1.2 of Schedule 1 or such other number, size and tenure as agreed in writing with the Borough Council.
"Affordable Housing Provider"	means either one or a combination of: (a) a body registered as a provider of social housing with the Regulator of Social Housing or such other class of body approved by the Borough Council as may be constituted under any legislation replacing that provision; or (b) such other body eligible to receive grant monies from the Borough Council or Homes England and able lawfully to own or manage housing for Eligible Persons and approved by the Borough Council; or (c) any company or organisation specialising in the delivery of Affordable Housing and approved by the Borough Council.
"Affordable Rent"	means rent inclusive of service charge which does not exceed: a) 80% of the local gross open market rent; and b) the local housing allowance rates, unless otherwise agreed in writing with the Borough Council;

		and shall only be increased annually in accordance with arrangements made for such rent increases established by Homes England.
"Affordable Rented Dwellings"		means any Affordable Dwellings let on a fixed term tenancy agreement at an Affordable Rent.
"Agreement"		this deed of Agreement.
"Allocation"		has the same meaning as "Allocation" within the S106.
"Application"		the application submitted by the Owners to the Borough Council for outline planning permission to carry out the Development and given the Borough Council's reference number APP/20/00441.
"Borough Council Monitoring Fee"		means the sum of £8,325 as a contribution towards the costs incurred by the Borough Council in the provision of a suitably qualified and experienced person whose function is to monitor, coordinate and enforce the obligations contained within this Agreement.
"Capacity"		has the same meaning as "Capacity" within the S106.
"Children's Play Area"		means the locally equipped area of play of approximately 0.01 hectares to be provided as part of the Development and in accordance with the details approved in writing by the Borough Council in the location shown in principle edged red and <i>marked</i> "Play" on Plan 2.
"Commencement of Development"		means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development is begun other than (for the purposes of this Agreement and for no other purpose) operations consisting of, site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, and "Commence" and similar expressions shall be construed accordingly.
"Community Worker Contribution"	Project	means the sum of £25,000 payable to the Borough Council as a contribution towards the provision of a suitably qualified and experienced person employed by the Borough Council to assist in the establishment of a successful and cohesive local community within the Development and to promote integration with existing communities in the vicinity of the Development.
"Common Parts"		means the parts of the Land which are intended to benefit the Occupiers of the Dwellings as a whole or to enhance their Occupation and shall without prejudice to the generality thereof include the Open Space Land, Permissive Paths, communal parking areas, any landscaped areas, amenity

spaces, street lighting, street furniture, boundary treatments but not including:

- (a) a Dwelling or the curtilage of a Dwelling; or
- (b) communal areas forming part of any residential block of flats, such as stairwells, lifts, lighting etc; or
- (c) any other buildings or structure or area to be transferred with a Dwelling; or
- (d) any communal parking areas, street lighting, street furniture and boundary treatments or other areas that are adopted by agreement made pursuant to the Highways Act 1980; or
- (e) any SuDs.

"Completion Certificate Standard"

means in the case of the Highway Works completion to the satisfaction of the County Council as evidenced by the issue of a certificate of completion by the County Council pursuant to the Highways Agreement.

"Commuted Sum"

means the sum payable by the Owners to the Site Proprietor to secure the Required Capacity for the Development as defined in the Deed of Allocation.

"Contributions"

means the Community Project Worker Contribution, SRMS Contribution and Health Contribution.

"County Council Monitoring Fee"

means the sum of £1000.00 (one thousand pounds) to be paid to the County Council towards the cost of monitoring compliance with this Agreement.

"CPI"

means the consumer prices index published by the Office of National Statistics.

"Deed of Allocation"

means the completed Deed of Allocation dated [] between the Site Proprietor, the Site Tenant, and the Owners for the Allocation of the Required Capacity to mitigate the impact of nitrates from the Development in substantially the same form as that attached to this Agreement at Appendix 3.

"Development"

means the development of up to 100 dwellings and associated improved site access, landscaping, footpaths, SuDS and other associated works on the Land in accordance with the Planning Permission.

"Development Control Preparation Fee (County Council)"

means the sum of £900.00 (nine hundred pounds) to be paid to the County Council towards the costs incurred by the County Council's development control officers in the negotiation of this Deed

"Disposal"

save where specified otherwise in this agreement, in relation to each Dwelling means:

(a) the first Occupation by anyone permitted or suffered to Occupy the Dwelling whether by:

I. a person who has acquired or has contracted to acquire any of the estates further defined in this definition at (b) (c) and (d) below in the Dwelling; or

II. who otherwise Occupies the Dwelling;

(b) the creation of a legal term of years in respect of the Dwelling; or

(c) the transfer of a freehold interest in respect of the Dwelling; or

(d) the creation of a freehold interest in the Dwelling by constituting the Dwelling as commonhold land for the purposes of the Commonhold and Leasehold Reform Act 2002; and/or whichever shall first occur.

and "Dispose" and "Disposed of" shall be construed accordingly.

"Dwelling"

means a self-contained unit of residential accommodation (including houses, flats and maisonettes) constructed on the Land pursuant to the Planning Permission and "Dwellings" shall be construed accordingly.

"Eligible Persons"

means persons with a Local Connection who are unable to afford housing accommodation on the open market (whether by renting or purchasing) within the administrative area of the Borough Council and the expression "Eligible Person" shall be construed accordingly.

"Expert"

means an independent and suitable person holding appropriate professional qualifications and of at least 10 years' post qualification experience in the area of expertise relevant to the dispute and appointed in accordance with the provisions of clause 13 to determine a dispute.

"Final Nutrient Budget Calculation"

means the Nutrient Budget Calculation for the Development in its final form.

"Framework Travel Plan"

means the framework travel plan agreed by the County Council and attached at Appendix 4.

"Health Contribution"

means the sum of £ 19,200 payable to the Borough Council as a contribution towards increasing the capacity of existing health care facilities in the vicinity of the Land to accommodate the increased demand for such services as a result of the Development.

"Head of Legal Services"

means the Head of Legal Services at the Borough Council or the County Council (as appropriate) or his/her appointed representative for the time being or any successor.

"Help to Buy Agent"	means the body nominated by the Homes England to be responsible for Shared Ownership Dwelling nominations within the administrative area of the Borough Council or in the event that nobody has been nominated such other body or organisation as the Borough Council shall first approve in writing
"Highways Agreement"	means an agreement made pursuant to Section 278 (and where necessary section 38) of the Highways Act 1980 to be entered into by the Owners with the County Council in respect of the carrying out of the Highway Works.
"Highway Works"	means the highway works for: - a). the site access as shown in principle on Plan 3; - b). the footpath to the north of the Land as shown in principle on Plan 4; - c). the cycle/ footpath to the south of the Land as shown in principle on Plan 5; d) the pedestrian crossing to the north of the Land located at point B on Plan 6; and e) the footway to the north of the Land to be constructed between points C and D on Plan 6 and to be provided in accordance with the Highways Agreement.
"Homes England"	means the body corporate charged under the Housing and Regeneration Act 2008 with the functions of regulating the provision of Affordable Housing within the Borough Council's administrative area by any registered provider or if such body ceases to exist or is superseded or any such successor body or organisation and including the Regulator of Social Housing where the context so requires.
"Index"	means CPI in respect of all Contributions payable to the Borough Council (except for the SRMS Contribution where RPI shall apply).
"Index Linked"	means increased in accordance with the following formula: Amount payable = the payment specified in this deed x (A/B) where: A = the last figure published for the Index that applied immediately preceding the date that payment was due or, if earlier, the date that the relevant payment was paid. B = the last figure published for the Index that applied immediately prior to the date of this Agreement.

"Interest"	means interest at 4% above the base lending rate of the Barclays Bank PLC from time to time.
"Land"	means the area of land known as land west of Hulbert Road, Havant as shown edged red on Plan 1.
"Local Connection"	means a connection to the administrative area of the Borough Council by virtue of: (a) existing or previous residence; (b) employment; (c) close family links through parents, siblings or offspring; or (d) any other connection as agreed with the Affordable Housing Provider and the Borough Council.
"Management Company"	means a company limited by guarantee or by shares and established or appointed in accordance with the provisions of Schedule 2 to be charged with implementing and performing the obligations as contained within the Management Plan.
"Management Plan"	means a plan for the maintenance and management of all of the following: (a) the Common Parts; (b) the Open Space Land; and (c) the SuDs for the lifetime of the Development including details of how the costs of maintenance and management shall be met by owner-occupiers of the Dwellings to be proposed by the Owners and approved by the Borough Council in accordance with the provisions of Schedule 2 and includes any variation to the approved Management Plan as may be agreed in writing between the Owners and the Borough Council from time to time.
"Natural England"	means the public body known as Natural England or any successor body which act as the Government's advisor for the natural development in England.
"Nitrate Mitigation"	means mitigation measures to neutralise nitrates from the water to mitigate the effects of increased nitrate levels in the Solent caused by off-site developments in accordance with Natural England requirements as the date of the Agreement.
"Nutrient Budget Calculator"	means the methodology and calculator created by Natural England for calculating the nutrient load of any development which proposed a net increase in overnight accommodation
"Nutrient Budget Calculation"	means the nutrient load for the Development as calculated using the Nutrient Budget Calculator

"Occupation"	means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupy" shall be similarly construed.
"Open Market Dwellings"	means Dwellings which are not Affordable Dwellings.
"Open Space Land"	means approximately 0.14 hectares of the Land as indicatively shown on Plan 2 to be provided as public open space land (including the Children's Play Area) in accordance with the relevant Reserved Matters Approval relating to the design, siting and layout of the Open Space Land.
"Outline Nutrient Budget Calculation"	means the Nutrient Budget Calculation for the Development consisting of 100 dwellings
"Permissive Paths"	means any unadopted road, footpath, footway or other means of access to be constructed on the Land within the areas as indicatively shown on Plan 2 which serves the Development in accordance with the relevant Reserved Matters Approval relating to the design, siting and layout of the Permissive Paths.
"Plan 1"	means the plan attached to this Agreement and labelled "Applicant Ownership Plan"
"Plan 2"	means the plan attached to this Agreement and labelled "CONCEPT MASTERPLAN - 01" with drawing number A096474 CMP-01 REV E or any such updated plan as the Owners submit to the Borough Council alongside a Reserved Matters Application and is approved by the Borough Council for the purposes of this definition.
"Plan 3"	means the plan attached to this Agreement labelled "Proposed Site Access Drawing" with drawing number A096474-SK01 Rev C showing in principle the Highways Works for the proposed site access.
"Plan 4"	means the plan attached to this Agreement labelled "Proposed Footway" with drawing number A096474-SK03 – Rev B showing in principle the Highway Works for the proposed footpath to the North of the Land.
"Plan 5"	means the plan attached to this Agreement labelled "Proposed Footway" with drawing number A096474-SK02 Rev C showing in principle the Highways Works for the proposed cycle/footpath to the South of the Land.
"Plan 6"	means the plan attached to this Agreement labelled Hulbert Road Footway Works Plan showing the location of the

pedestrian crossing to the north of the Land and the footway to the north of the land.

"Planning Permission"

means the outline planning permission that may be granted in pursuance of the Application.

"Practical Completion"

means the issue of a certificate of practical completion of the Dwellings by the Owners' architect or in the event that the Dwellings are constructed by a party other than the Owners the issue of a certificate of practical completion by that other party's architect.

"Provisional Capacity"

means the amount of nitrates (expressed in kg/TN/yr) specified in the Deed of Allocation being the amount of nitrates necessary to mitigate the impact of nutrients from the Development as derived from the Outline Nutrient Budget Calculation.

"Regulator of Social Housing"

means the executive non-departmental public body which undertakes economic regulation of registered providers of social housing or such successor body to whom such function is transferred from time to time.

"Required Capacity"

means the amount of nitrates (expressed in kg/TN/yr) as being the amount of nitrates necessary to mitigate the impact of nutrients from the Development in its final form and notified to the Site Tenant pursuant to the Deed of Allocation.

"Reserved Matters Application"

means the application or applications submitted for reserved matters approval with respect to details that have been reserved by the Planning Permission as matters for further approval by the Borough Council

"Reserved Matters Approval"

means the approval or approvals given by the Borough Council or following an appeal for a Reserved Matters Application.

"Reserve Fee"

means the sum payable by the Owners to the Site Proprietor under the terms of the Deed of Allocation to reserve the Provisional Capacity for the Development.

"RPI"

means the retail price index published by the Office of National Statistics.

"S106"

means the agreement dated 16th February 2021 made under section 106 of the Act between the (1) the SDNP; (2) William and James Butler; and (3) H N Butler Farms Limited in respect of the Site as varied by a deed of variation dated 29th April 2021 as attached at Appendix 2 of this Agreement.

"SDNP"	means the South Downs National Park Authority in their capacity as the local planning authority in whose area the Site is situated.
"Shared Ownership Dwellings"	means Affordable Housing leased to Eligible Persons who purchase a percentage of the equity of the Affordable Dwelling and pay a rent in relation to the share of the equity retained by the Affordable Housing Provider.
"Site"	has the same meaning as "Site" within the Deed of Allocation.
"Site Capacity"	has the same meaning as "Site Capacity" within the Deed of Allocation.
"Site Proprietor"	has the same meaning as "Owner" in the S106.
"Site Tenant"	has the same meaning as "Tenant" in the S106.
"Solent Recreation Mitigation Partnership"	means the partnership of local planning authorities bordering the Solent formed to develop the Solent Recreation Mitigation Strategy
"Solent Recreation Mitigation Strategy (SRMS)"	means the framework to mitigate potential impacts on the Solent Special Protection Area from increased visitor pressure arising from housebuilding adopted by the Solent Recreation Mitigation Partnership in December 2017
"Solent Special Protection Areas"	means the Special Protection Areas (designated under the Wildlife and Countryside Act 1981) in the Solent covered by the Solent Recreation Mitigation Strategy
"SRMS Contribution"	means the sum to be calculated in accordance with paragraph 2.1 of Schedule 5 to this Agreement as a contribution towards measures to mitigate against the impact of the Development to the Solent Special Protection Areas in accordance with the Solent Recreation Mitigation Strategy.
"SuDs"	means a sustainable drainage system for the Development in accordance with the specification agreed in writing by the Borough Council.
SuDs Bond Amount"	means 10% of the open book construction costs for the SuDs as approved in accordance with Schedule 2.
"SuDs Bond"	means a bond issued by a Surety in the form annexed at Appendix 1 to this Agreement (or such other form as the Borough Council shall approve) for the SuDs Bond Amount.
"SuDs Cash Deposit"	means a lump sum payment in cash of a sum being 10% of the open book construction costs for the SuDs as approved in accordance with Schedule 2.

"Surety"	means a bank or other financial institution as may be nominated by the Owners and approved by the Borough Council for the SuDs Bond.
"Surety (Travel Plan Bond)"	means a bank or other financial institution as may be nominated by the Owners and approved by the County Council for the Travel Plan Bond.
"Travel Plan"	The final and full form travel plan based on the Framework Travel Plan such travel plan to be approved by the County Council
"Travel Plan Approval Fee"	means the sum of £1,500.00 (one thousand five hundred pounds) payable by the Owners to the County Council towards the costs incurred or to be incurred by the County Council in approving the Travel Plan.
"Travel Plan Co-Ordinator"	means the travel plan co-ordinator to be appointed pursuant to paragraph 1.3 of Schedule 3 of this Agreement.
"Travel Plan Bond"	a bond approved by the County Council in the sum of £19,000.00 (nineteen thousand pounds) being the sum of the costs of implementation and compliance with the targets/ measures of the Travel Plan (as estimated by the County Council) plus 10% thereof by a Surety (Travel Plan Bond) acceptable to the Head of Legal Services acting reasonably
 "Travel Plan Monitoring Fee"	means the sum of £15,000.00 (fifteen thousand pounds) payable by the Owners to the County Council towards the costs to be incurred by the County Council in monitoring compliance with the Travel Plan. <i>Assistant Director for Legal Services and Monitoring officer</i>
"Travel Plan Monitoring Period"	means the period of 5 (five) years commencing from the first Occupation of the Development
"Trustees"	means Evelyn Partners Trust Corporation Limited and Mark Graham Weaver and any person appointed from time to time as trustees of The GHM Jackson 1972 Children's Settlement Trust.
"Unilateral Undertaking"	has the same meaning as "Unilateral Undertaking" within paragraph 5.6 of Schedule 1 of the S106.
"Wetland Area"	has the same meaning as "Wetland Area" within the Deed of Allocation.
"Working Day"	a day other than a Saturday or Sunday or public holiday in England.

2 INTERPRETATION

- 2.1 The clause and paragraph headings in this Agreement are for reference only and do not affect its construction or interpretation.
- 2.2 References to clauses and Schedules are to the clauses and Schedules of this Agreement, unless stated otherwise.
- 2.3 A reference to a paragraph is to the paragraph of the Schedule in which the reference is made, unless stated otherwise.
- 2.4 Words importing one gender include any other genders and words importing the singular include the plural and vice versa.
- 2.5 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa.
- 2.6 Unless this Agreement states otherwise, any reference to any legislation (whether specifically named or not) includes any modification, extension, amendment or re-enactment of that legislation for the time being in force and all instruments, orders, notices, regulations, directions, byelaws, permissions and plans for the time being made, issued or given under that legislation or deriving validity from it.
- 2.7 References to the Land include any part of it except where the context operates otherwise.
- 2.8 References to any party in this Agreement include the successors in title of that party and any references to the Borough Council and County Council include any successor local planning authority exercising planning powers under the Act and any successor Local Highway Authority.
- 2.9 References to "including" mean "including, without limitation".
- 2.10 Any covenant by the Owners not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 2.11 Where two or more people form a party to this Agreement, the obligations they undertake may be enforced against them all jointly or against each of them individually.
- 2.12 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement shall be unaffected.
- 2.13 Whenever this Agreement requires the agreement approval confirmation or consent of the parties such agreement approval confirmation or consent is not to be unreasonably withheld or delayed and the parties shall take a reasonable approach.

3 STATUTORY PROVISIONS

- 3.1 This Agreement is made by deed pursuant to sections 106 of the Act, section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011.
- 3.2 To the extent that they fall within the terms of section 106 of the Act, the obligations contained in this Agreement are planning obligations for the purposes of those sections of the Act and are enforceable by the Borough Council and the County Council.

3.3 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the Act, they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other enabling powers.

3.4 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the Borough Council or the County Council of any of its statutory powers, functions or discretions in relation to the Land or otherwise.

4 COMMENCEMENT OF AGREEMENT

This Agreement is conditional upon:

4.1 the grant of the Planning Permission; and

4.2 the Commencement of Development;

save for the provisions of clauses 4, 5, 12 and paragraph 3.2 of Schedule 7 (Nitrates Mitigation) which shall come into effect immediately upon completion of this Agreement.

5 LIMITATION OF TRUSTEES' LIABILITY

5.1 Any liability of the Trustees arising out of this Agreement or matters connected with it shall be at all times limited to the extent of the assets of The GHM Jackson 1972 Children's Settlement Trust from time to time.

5.2 Notwithstanding any other provision in this Agreement the Trustees shall have no personal liability whatsoever arising out of or in connection with this Agreement except to extend to assets only of the GHM Jackson 1972 Children's Settlement Trust which are in the form of cash or can at the relevant time be converted into cash and are available to the Trustees **SAVE THAT** clause ~~5.1~~ **Error! Reference source not found.** will not apply to any liabilities resulting from any wilful or reckless breach of duty or trust by the Trustees.

6 OWNERS COVENANTS

The Owners covenant with the Borough Council and the County Council to comply, observe and perform the obligations as set out in this Agreement.

7 BOROUGH COUNCIL COVENANTS

The Borough Council covenant with the Owners to comply, observe and perform the obligations as set out in this Agreement.

8 COUNTY COUNCIL COVENANTS

The County Council covenants with the Owners to comply, observe and perform the obligations as set out in this Agreement.

9 REGISTRATION

This Agreement shall be registered by the Borough Council as a Local Land Charge in the Register of Local Land Charges maintained by the Borough Council.

10 **RELEASE**

- 10.1 No party shall be liable for any breach of covenant, restriction or obligation contained in this Agreement after parting with all their interest in the Land except in respect of any breach on their part subsisting prior to parting with such interest.
- 10.2 Except for paragraphs 2.4 to 2.6 of Schedule 1 (but subject to paragraphs 3 and 4 of Schedule 1) regulating the use of the Affordable Dwellings, no planning obligations contained in this agreement shall be binding on any land held by an Affordable Housing Provider.
- 10.3 No planning obligations contained in this Agreement shall be binding on any land held by an freehold or leasehold owners or occupiers of individual Dwellings (or their respective mortgagees) or their successors in title.
- 10.4 No planning obligations contained in this Agreement shall be binding on any land held by any of the statutory undertakers for their operational purposes.

11 **NOTICES**

- 11.1 The Owners agree to give the Borough Council and the County Council written notice within 10 Working Days of any change in ownership of any of its interests in the Land (save for the transfer/lease or mortgage of any individual Dwelling or disposal to a statutory undertaker or chargee) occurring before Practical Completion and such notice shall give details of the transferee's full name and

11.1.1 registered office where the transferee Owner is a company

11.1.2 usual address where the transferee is not a company

together with details of the area of the Land transferred by reference to a plan.

- 11.2 Any notice, demand or any other communication to be given under or in connection with this Agreement shall be in writing and will be effective only if delivered by hand or sent by recorded delivery to the party due to receive the notice, demand or communication.

- 11.3 Any notice, demand or any other communication served shall be sent to the address of the relevant party set out at the beginning of this Agreement or to such other address as one party may notify in writing to the others at any time as its address for service and in the case of service upon the Borough Council shall be marked for the attention of the Head of Legal and in the case of service upon the County Council shall be marked for the attention of the ~~Head of Legal~~ and bearing the reference LNC/142541.

Assistant
Director for
Legal Services
and Monitoring Officer

- 11.4 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means shall be treated as having been served:

11.4.1 if delivered by hand, at the time of delivery; or

11.4.2 if sent by recorded delivery, at the time delivery was signed for.

- 11.5 If a notice, demand or any other communication is served after 4.00pm on a Working Day, or on a day that is not a Working Day, it shall be treated as having been served on the next Working Day.

- 11.6 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.

12 COSTS OF THIS AGREEMENT

Upon completion of this Agreement the Owners shall pay to the Borough Council and the County Council their reasonable and proper legal costs, in connection with the preparation, negotiation and completion of this Agreement together with the County Council Monitoring Fee and Development Control Preparation Fee (County Council).

13 DETERMINATION OF DISPUTES

- 13.1 Subject to clause 13.6, if any dispute arises relating to or arising out of the terms of this Agreement, either party may give to the other not less than ten Working Days' written notice requiring the dispute to be determined under this clause 13. The notice shall propose an appropriate Expert and specify the nature and substance of the dispute and the relief sought in relation to the dispute.

- 13.2 Any dispute over the appointment of the Expert appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of the Law Society of England and Wales who will have the power, with the right to take such further advice as he may require, to determine the appropriate Expert and to arrange his nomination.

- 13.3 The Expert shall act as an independent expert and:

13.3.1 each party may make written representations within ten Working Days of his appointment and will copy the written representations to the other party;

13.3.2 each party shall have a further ten Working Days to make written comments on the other's representations and will copy the written comments to the other party;

13.3.3 the Expert shall be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;

13.3.4 the Expert shall not take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross examine each other;

13.3.5 the Expert shall have regard to all representations and evidence before him when making his decision, which shall be in writing, and shall give reasons for his decision; and

13.3.6 the Expert shall use all reasonable endeavours to publish his decision within thirty Working Days' of his appointment.

- 13.4 Responsibility for the costs of referring a dispute to an Expert under this clause 13, including costs connected with the appointment of the Expert and the Expert's own costs and the legal and other professional costs of any party in relation to a dispute, will be decided by the Expert.

- 13.5 This clause 13 does not apply to disputes touching or concerning the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts.

- 13.6 The provisions of this clause 13 shall not affect the ability of the Borough Council or County Council to apply for and be granted declaratory relief injunction specific performance payment of any sum damages or any other means of enforcing this Agreement and consequential and interim orders and relief.

14 **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

For the purposes of the Contracts (Rights of Third Parties) Act 1999 this Agreement is not made for the benefit of nor shall any of its provisions be enforceable by any person other than the parties to his Agreement and their successors in title.

15 **INDEXATION**

- 15.1 All sums payable pursuant to this Agreement shall be Index Linked.

- 15.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Borough Council or the County Council (as appropriate) shall advise the Owners in writing.

16 **SATISFACTION OF OBLIGATIONS**

The Borough Council or County Council will on written request from the Owners use reasonable endeavours to certify within 15 Working Days whether or not an obligation under this Agreement has been satisfied.

17 **INTEREST**

If any sum due under this Agreement is paid late Interest will be payable from the date payment is due until the date of payment.

18 **VAT**

The parties to this Agreement acknowledge and agree the Contributions in this Agreement are not subject to VAT and no VAT should be charged or recoverable in addition to the amount of the Contributions specified in the Agreement.

19 **WAIVER**

No failure or delay by the Borough Council or County Council to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver (whether express or implied) for any breach or default by the Owners in performing or observing any of the covenants, restrictions or obligation contained in this Agreement. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

20 **TERMINATION**

- 20.1 The obligations in this Agreement (with the exception of clause 12) shall cease to have effect if before the Commencement of Development, the Planning Permission:

20.1.1 expires;

20.1.2 is varied or revoked other than at the request of the Owners; or

20.1.3 is quashed following a successful legal challenge.

21 FUTURE PERMISSIONS

21.1 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.

21.2 This Agreement shall apply to any planning permission subsequently granted by the Borough Council (and not on appeal) under section 73 or 73A of the Act which permits non-compliance with any of the conditions attached to the Planning Permission (a "Subsequent Permission") and the term Planning Permission shall be construed to include the Subsequent Permission unless otherwise required by the Borough Council or the circumstances in clause 20.1 arise.

22 JURISDICTION

22.1 This Agreement shall be governed by and interpreted in accordance with the laws of England.

22.2 The Courts of England shall have jurisdiction in relation to any disputes between the parties arising out of or related to this Agreement.

IN WITNESS of which this document has been duly executed as a deed and delivered on the date stated at the beginning of this document.

SCHEDULE 1

AFFORDABLE HOUSING

The Owners covenant with the Borough Council:

1 AFFORDABLE HOUSING MIX

- 1.1 To provide the Affordable Dwellings as part of the Development in accordance with the Affordable Housing Mix and in accordance with the relevant Reserved Matters Approval relating to the design, siting and layout of the Affordable Dwellings.
- 1.2 That the Affordable Housing Mix shall reflect the mix of Dwellings in the Development overall and shall consist of:
 - 1.2.1 70% Affordable Rented Dwellings; and
 - 1.2.2 30% Shared Ownership Dwellings (with fractions rounded up to the nearest whole number);or such other mix of type, tenure and numbers as may be agreed in writing with the Borough Council at its absolute discretion.

2 AFFORDABLE DWELLINGS

- 2.1 To ensure that the Affordable Dwellings within the Development will be integrated and compatible with the design of the Open Market Dwellings.
- 2.2 Not to Occupy or permit Occupation of more than 25 Open Market Dwellings until 11 of the Affordable Dwellings:
 - 2.2.1 are completed and are ready for Occupation; and
 - 2.2.2 have been transferred to an Affordable Housing Provider;by either a transfer or transfers of the freehold interest or the creation of a long leasehold interest with a term of not less than 125 years.
- 2.3 Not to Occupy or permit Occupation of more than 40 Open Market Dwellings until 100% of the Affordable Dwellings:
 - 2.3.1 are completed and are ready for Occupation; and
 - 2.3.2 have been transferred to an Affordable Housing Provider;by either a transfer or transfers of the freehold interest or the creation of a long leasehold interest with a term of not less than 125 years.
- 2.4 Not to let or transfer any Shared Ownership Dwellings to persons other than persons nominated by the Help to Buy Agent.
- 2.5 Not to allow or permit Occupation of any Affordable Dwellings for any purpose other than as Affordable Housing for Occupation by Eligible Persons subject to paragraphs 3 and 4 of this Schedule.
- 2.6 Not to let any Affordable Rented Dwellings to persons other than persons nominated by the Borough Council subject to paragraphs 3 and 4 of this Schedule.

2.7 that any deed of transfer or lease (as applicable) to an Affordable Housing Provider of the Affordable Dwellings shall contain the following (or such other alternative provisions as the Borough Council may agree in writing):

- 2.7.1 a covenant not to use the Affordable Dwellings otherwise than for the provision of Affordable Housing (subject to provisions equivalent to those in paragraphs 3 and 4 of this Schedule 1); and
- 2.7.2 a covenant not to Dispose of any of the Affordable Dwellings other than for the purpose of providing Affordable Housing to Eligible Persons (subject to provisions equivalent to those in paragraphs 3 and 4 of this Schedule 1); and
- 2.7.3 a covenant requiring the Affordable Housing Provider to enter into an agreement with the Borough Council granting the Borough Council the right to nominate 100% of the Occupiers of the Affordable Rented Dwellings when initially let and 100% of all subsequent true voids.

3 100% EQUITY SHARE

The provisions in paragraph 2 of this Schedule 1 shall cease to have effect in respect of any Affordable Dwelling where a leaseholder of a Shared Ownership Dwelling (or its mortgagee) has purchased 100% of the equity in the Affordable Dwelling or in respect of any Affordable Dwelling where the Occupier has exercised a statutory right to buy or a right to acquire in respect of such Dwelling.

4 CHARGE IN POSSESSION

4.1 For the purpose of this paragraph "Chargee" means:

- 4.1.1 any mortgagee or chargee;
- 4.1.2 any receiver, administrative receiver or administrator appointed under the Law of Property Act 1925;
- 4.1.3 any housing administrator appointed under the Housing and Planning Act 2016; or
- 4.1.4 any other person appointed under any security document to enable a chargee or mortgagee to realise its security;

of the Affordable Housing Provider and the whole or any one or more of the Affordable Dwellings.

4.2 For the purpose of this paragraph "Disposal", "Dispose" and "Disposed" means the transfer of a freehold or leasehold interest in respect of an Affordable Dwelling by a Chargee.

4.3 The provisions of this Agreement relating to Affordable Dwellings shall not be binding on a Chargee (or any person or bodies deriving title through such Chargee) PROVIDED THAT the Chargee will have first:

- 4.3.1 given written notice to the Borough Council of its intention to exercise its powers of sale to Dispose of any of the Affordable Dwellings ("Notice"); and
- 4.3.2 used reasonable endeavours over a period of three months from the date the Notice is served to complete a Disposal of the relevant Affordable Dwelling(s) to either:
 - (a) another Affordable Housing Provider; or
 - (b) to the Borough Council.

- 4.4 Any Disposal referred to in paragraph 4.3.2 shall be for a consideration not less than the amount properly due and outstanding under the terms of the Chargee's relevant security documentation. This sum shall include all accrued principal monies, interest and the Chargee's reasonable costs and expenses.
- 4.5 In the event that a Disposal referred to in paragraph 4.3 shall not have been completed within the period of three months referred to in paragraph 4.3.2, the Chargee will be entitled to Dispose of the relevant Affordable Dwelling(s) free from the provisions of this Schedule 1 relating to Affordable Housing which shall determine absolutely in respect of the relevant Affordable Dwelling(s).
- 4.6 For the avoidance of doubt in respect of the relevant Affordable Dwelling(s) Disposed of in accordance with paragraph 4.5 above the purchaser shall not be subject to the obligations of this Schedule 1 to this Agreement.

SCHEDULE 2

MANAGEMENT OF THE DEVELOPMENT

The Owners (and the Borough Council where relevant) covenant:

1 MANAGEMENT COMPANY AND MANAGEMENT PLAN

- 1.1 Not to Commence the Development until the Borough Council (or an Expert) has approved in writing the Owners' proposal for the formation of the Management Company and such proposal shall include full details of the proposed structure and voting rights of the Management Company.
- 1.2 The Borough Council covenants that it will notify the Owners that it either approves or rejects the proposal referred to in paragraph 1.1 of this Schedule 2 (or any resubmission) within six weeks of receipt. If notification of a refusal is received by the Owners from the Borough Council within the aforementioned time period, the Owners shall continue to comply with the obligation at paragraph 1.1 of this Schedule 2 and submit a further proposal or proposals until such time as the Borough Council (or an Expert in the case of dispute) approves the Owners' proposals for the Management Company.
- 1.3 In the event that the Borough Council fails to notify the Owners in accordance with paragraph 1.2 of this Schedule 2, the proposal for the formation of the Management Company as submitted in accordance with paragraph 1.1 of this Schedule 2 (or as resubmitted) will be deemed approved in writing by the Borough Council for the purposes of paragraph 1.1.
- 1.4 Not later than three months following Commencement of the Development to submit to the Borough Council in writing the Management Plan.
- 1.5 The Borough Council covenants that it will notify the Owners that it either approves or rejects the proposal referred to in paragraph 1.4 of this Schedule 2 (or any resubmission) within two months' of receipt. If notification of a refusal is received by the Owners from the Borough Council within the aforementioned time period, the Owners shall revise the Management Plan and submit such revisions until such time as the Borough Council (or an Expert in the case of dispute) approves the Management Plan.
- 1.6 In the event that the Borough Council fails to notify the Owners in accordance with paragraph 1.5 of this Schedule 2, the Management Plan as submitted in accordance with paragraph 1.4 of this Schedule 2 (or as resubmitted) will be deemed approved by the Borough Council in writing for the purposes of paragraph 1.8.2.
- 1.7 Following approval of the Management Plan in accordance with this Schedule 2 the Owners shall within six months of such approval take all necessary steps to secure the formation and registration of the Management Company at Companies House (taking into account any modifications reasonably required by the Borough Council) and to notify the Borough Council accordingly within fourteen days of the completion of the registration of the Management Company.
- 1.8 Not to allow or permit Occupation of any Dwelling until:
 - 1.8.1 the Management Company has been formed in accordance with the approved proposals; and
 - 1.8.2 the Management Plan has been approved in writing by the Borough Council or by an Expert).
- 1.9 Following completion of the relevant areas to secure the proper maintenance of the Common Parts and the SuDs to the reasonable satisfaction of the Borough Council until such time as:

- 1.9.1 the Management Company is registered and the Management Plan has been approved; and
 - 1.9.2 in respect of the Common Parts:
 - (a) the maintenance arrangements in accordance with the Management Plan have been implemented; and
 - (b) the transfer or the granting of a long leasehold interest of the Common Parts to the Management Company is completed; and
 - 1.9.3 in respect of the SuDs, such SuDs are transferred to the Management Company or adopted by a statutory undertaker.
- 1.10 That if the Management Company ceases to exist as a company or if the Management Company at any time defaults in the performance of any of its covenants or obligations on its part as contained in the Management Plan then the Owners shall (without prejudice to any other right or remedy of the Owners against the Management Company or any other person) perform the said covenants and obligations until the appointment by the Owners of a successor to the Management Company.
- 2 PROVISION OF THE SUDS**
- 2.1 Not less than two months prior to the Commencement of the Development to submit to the Borough Council a bill of quantities detailing the open book construction costs for the SuDs.
 - 2.2 The Borough Council covenants that it shall within ten Working Days notify the Owners that it either approves the open book construction costs for the SuDs as submitted or proposes such reasonable amendments as are considered necessary. In the event that the Borough Council fails to respond to the open book construction costs for the SuDs within ten Working Days of receipt, the open book construction costs as submitted are to be deemed approved.
 - 2.3 Where reasonable amendments to the open book construction costs for the SuDs are proposed by the Borough Council within the period specified in paragraph 2.2, the Owners shall not more than ten Working Days after receiving the Borough Council's proposed amendments revise the open book construction costs for the SuDs.
 - 2.4 The Owners shall submit the revised open book construction costs to the Borough Council and the provisions of paragraphs 2.2 and 2.3 shall apply until such time as the open book construction costs are agreed or deemed approved or approved by an Expert in the case of dispute.
 - 2.5 On or before Commencement of the Development to:
 - 2.5.1 provide to the Borough Council a SuDS Bond for the SuDs Bond Amount; or
 - 2.5.2 pay the SuDs Cash Deposit to the Borough Council.
 - 2.6 Where a SuDs Cash Deposit is paid by the Owners in accordance with paragraph 2.5.2, the Borough Council shall place the SuDs Cash Deposit into an interest bearing account with the interest accruing to the Owners.
 - 2.7 The SuDs Bond shall endure, or the SuDs Cash Deposit shall be retained by the Borough Council, until the date of completion of construction of the SuDs serving the Development as evidenced by receipt of a written notice confirming that the SuDs have been completed in accordance with the details approved by the Borough Council to the reasonable satisfaction of the Borough Council.
 - 2.8 The Borough Council shall within ten Working Days of the event in paragraph 2.7 occurring either:

- 2.8.1 release the Owners and the Surety from the SuDs Bond; or
 - 2.8.2 repay the SuDs Cash Deposit (or if the Borough Council has realised part of the SuDs Cash Deposit in accordance with paragraph 2.9 the unexpended amount) to the Owners, together with accrued interest (if any).
- 2.9 If the Owners:
- 2.9.1 fail to construct the SuDs in accordance with the details approved by the Borough Council in writing; or
 - 2.9.2 prior to completion of the SuDs are adjudicated bankrupt or go into liquidation voluntarily or otherwise; or
 - 2.9.3 have executed a deed of assignment for the benefit of or otherwise compound with their creditors (except for the purpose of reconstruction or amalgamation),
- the Borough Council may (without prejudice to the Borough Council's other rights remedies and powers against the Owners):
- 2.9.4 by written notice, require the Surety to pay for; or
 - 2.9.5 require the SuDs Cash Deposit be applied to,
- any reasonable and proper expenditure (including legal costs) which the Borough Council may incur in carrying out the construction of the SuDs to serve the Development to its own design or the Owners' design to return the Land to the level of hydrological response as existed before Commencement.
- 2.10 The Borough Council shall within ten Working Days of service of a written request by the Owners inspect the SuDS and shall within ten Working Days of that inspection give written notice to the Owners either that the SuDS have been completed to the reasonable satisfaction of the Borough Council or specify the works to be undertaken to ensure that the SuDS comply with the details approved by the Borough Council.

SCHEDULE 3

Travel Plan

- 1** The Owners covenant with the County Council:
 - 1.1** Not Occupy nor permit Occupation of the Development or any part thereof unless and until it has prepared the Travel Plan and secured the County Council's written approval of it
 - 1.2** To implement and comply with the Travel Plan in accordance with the requirements and timetable of the approved Travel Plan
 - 1.3** Without prejudice to the approved Travel Plan the Owners shall not Occupy or permit Occupation of the Development (or any part thereof) unless and until it has appointed a Travel Plan Co-ordinator for the whole of the Development to implement the Travel Plan and has notified the County Council in writing of such appointment
 - 1.4** On demand and in any event prior to Occupation of the Development to pay to the County Council the Travel Plan Approval Fee
 - 1.5** Not to Occupy nor permit Occupation of the Development (or any part thereof) unless and until it has paid to the County Council the Travel Plan Monitoring Fee
 - 1.6** Not to Occupy nor permit Occupation of the Development unless and until it has provided to the County Council the Travel Plan Bond to the effect that (subject to paragraph 2 of Schedule 8 of this Deed) if in the reasonable opinion of the County Council, the Owners fail at any time within 5 (five) years of Occupation of the Development to deliver the agreed measures/targets and/or comply with any/all of the measures/targets contained within the Travel Plan the Surety (Travel Plan Bond) shall pay to the County Council on demand such sum as may be certified by the County Council to be reasonably required up to the amount of the Travel Plan Bond in order to remedy the failure to achieve and implement the agreed measures/targets contained within the Travel Plan or such alternative measures as the County Council reasonably determines will at no greater cost to the Owners achieve the overall aims of the Travel Plan
 - 1.7** That if it or its successors in title Occupy the Land or any part thereof it or they will implement the Travel Plan relating to the Development or such part of the Land to be Occupied and shall use all reasonable endeavours to achieve the targets set therein for the Travel Plan Monitoring Period

SCHEDULE 4

HIGHWAY WORKS

The Owners covenant with the County Council:

- 1 To enter into a Highways Agreement(s) for the Highway Works with the County Council prior to the Commencement of Development.
- 2 Not to Commence nor permit Commencement of the Development unless and until the Owners have entered into a Highways Agreement(s) with the County Council for the Highway Works.
- 3 To carry out and complete the Highway Works to Completion Certificate Standard prior to the Development being brought into use or Occupation.
- 4 Not to Occupy nor permit Occupation of the Development unless and until the Highway Works have been carried out and completed to Completion Certificate Standard.

SCHEDULE 5

SOLENT RECREATION MITIGATION STRATEGY CONTRIBUTION

The Owners (and the Borough Council where relevant) covenant:

1 SRMS CONTRIBUTION

- 1.1 Upon all Reserved Matters Applications relating to the Development being submitted to the Borough Council, the Borough Council shall calculate the SRMS Contribution in accordance with the formula set out at paragraph 2.1 of this Schedule 5 and shall notify the Owners in writing of the SRMS Contribution.
- 1.2 Not to Occupy or permit Occupation of the Development until the SRMS Contribution has been paid to the Borough Council.

2 SRMS CALCULATION

- 2.1 The SRMS Contribution for the Development shall be calculated using the following formula and matrix:

SRMS Contribution = the sum of the values of A to E (Index Linked) in Column 3 below.

Where the value of A to E in Column 3 are calculated as follows:

X (the value in Column 1) multiplied by Y (the rate applied in Column 2)

SRMS Contribution Rates (Index Linked)		
Column 1 X	Column 2 Y (Applicable bedroom rate)	Column 3 (SRMS Contribution for corresponding bedroom number – i.e. X multiplied by Y) (£)
Number of Dwellings with 1 bedroom	£390	A
Number of Dwellings with 2 bedrooms	£563	B
Number of Dwellings with 3 bedrooms	£735	C
Number of Dwellings with 4 bedrooms	£864	D
Number of Dwellings with 5+ bedrooms	£1,014	E

A worked example is as follows:

A development with 4 dwellings comprising 2 dwellings with 2 bedrooms and 2 dwellings with 3 bedrooms dwellings have a contribution of:

	Column X	Column Y (Applicable bedroom rate)	Column 3 (SRMS Contribution for corresponding bedroom number) (£) (X multiplied by Y)	
Number of Dwellings with 1 bedroom	0	0	0	A
Number of Dwellings with 2 bedrooms	2	563	1126	B
Number of Dwellings with 3 bedrooms	2	735	1470	C
Number of Dwellings with 4 bedrooms	0	0	0	D
Number of Dwellings with 5+ bedrooms	0	0	0	E
Total SRMS Contribution equals the sum of the values of A - E			£2596	

SCHEDULE 6

Other Borough Council Contributions

The Owners covenant with the Borough Council:

1 BOROUGH COUNCIL MONITORING FEE

Not to Commence or permit Commencement of Development until the Borough Council Monitoring Fee has been paid to the Borough Council.

2 COMMUNITY PROJECT WORKER CONTRIBUTION

2.1 To pay the Community Project Worker Contribution to the Borough Council in the following instalments:

2.1.1 25% payable prior to Commencement of Development

2.1.2 25% payable 6 months from Commencement of Development

2.1.3 25% payable 12 months from Commencement of Development

2.1.4 25% payable 18 months from Commencement of Development

2.2 Not to Commence or permit Commencement of Development until 25% of the Community Project Worker Contribution has been paid to the Borough Council

2.3 Not to Occupy or permit Occupation of more than 100 Dwellings until 100% of the Community Project Worker Contribution has been paid to the Borough Council.

3 HEALTH CONTRIBUTION

Not to Occupy or permit Occupation of any Dwelling until the Health Contribution has been paid to the Borough Council.

SCHEDULE 7

MISCELLANEOUS

The Owners covenants with the Borough Council and the County Council as follows:

1 NOTICE

- 1.1 To give to the Borough Council and the County Council not less than ten Working Days written notice of their intention to Commence Development.
- 1.2 To notify to the Borough Council and the County Council in writing of the date of Occupation for the first time of any part of the Development within ten Working Days of it occurring.

2 SUBMISSION OF DOCUMENTS

To provide when submitting documents or details to the Borough Council and/or County Council pursuant to the Schedules of this Agreement a reference to the relevant Planning Permission, the date and parties to this Agreement, and the paragraph and Schedule under which approval is sought, together with a statement of the date by which a decision must be given by the relevant council.

3 NITRATES MITIGATION

- 3.1 Upon commencement of the Agreement to enter into the Deed of Allocation and pay the Reserve Fee as defined and required therein to reserve the Provisional Capacity and to provide to the Borough Council a certified copy of the Deed of Allocation.
- 3.2 To submit to the Borough Council, for approval as part of the Reserved Matters Applications, a Final Nutrient Budget Calculation
- 3.3 To pay the Commuted Sum required by the Deed of Allocation to secure the Required Capacity and to provide to the Borough Council with a copy of the receipt confirming payment of the Commuted Sum.
- 3.4 Not to Commence or permit the Commencement of the Development until the Borough Council notifies the Owner in writing that it is satisfied that the Required Capacity has been secured SAVE THAT the Borough Council must provide such notification with 10 Working Days of receipt of the confirmation of payment as set out in paragraph 3.3 of this Schedule otherwise the Borough Council shall be deemed to be satisfied that the Required Capacity has been secured.

4 OPEN SPACE LAND

- 4.1 To provide the Open Space Land in accordance with this paragraph 4 and the relevant Reserved Matters Approval relating to the design, siting and layout of the Open Space Land.
- 4.2 Not to Dispose or permit the Disposal of more than 30 Dwellings until the Open Space Land (including the Children's Play Area) has been delivered in accordance with the Reserved Matters Approval.
- 4.3 Following the making available to the public of the Open Space Land in accordance with paragraph 4.2, to ensure that the Open Space Land is available for use by owner-occupiers of the Dwellings and the public at large (save for permitted closures for reasons of maintenance or health and safety)

5 PUBLIC ACCESS

- 5.1 To provide the Permissive Paths in accordance with this paragraph 5 and the relevant Reserved Matters Approval relating to the design, siting and layout of the Permissive Paths.
- 5.2 Not to Occupy or permit Occupation of more than 30 Dwellings until the Permissive Paths have been laid out, constructed and made available for use in accordance with the relevant Reserved Matters Approval.
- 5.3 Following the making available to the public of the Permissive Paths in accordance with paragraph 5.2, to ensure that the Permissive Paths are available for use by owner-occupiers of the Dwellings and the public at large.
- 5.4 To include in any transfer or lease of the Permissive Paths covenants requiring the Permissive Paths to be made and kept available for use by the public in perpetuity (save for permitted closures for reasons of maintenance or health and safety).

SCHEDULE 8

COVENANTS BY THE BOROUGH COUNCIL AND THE COUNTY COUNCIL

1 BOROUGH COUNCIL'S COVENANTS

The Borough Council covenants with the Owners as follows:

- 1.1 To use the Community Project Worker Contribution, the Health Contribution, and the SRMS Contribution for the purposes specified in this Agreement.
- 1.2 Following receipt of a written request to do so to repay to the person who paid the Community Project Worker Contribution, the Health Contribution, and the SRMS Contribution such amount of those contributions which remain unspent for expenditure (and money shall be deemed to be expended if the Borough Council has properly entered into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose) on the tenth anniversary of the date of receipt by the Borough Council of the last instalment (where applicable) of such contribution, together with Interest accrued (if any) from the date of payment of the contribution until the date of request for refund.
- 1.3 Following receipt of a written request to do so to repay to the person who paid the Community Project Worker Contribution, the Health Contribution, and the SRMS Contribution such amount of those contributions which remain unspent (whether or not committed) on the tenth anniversary of the date of receipt by the Borough Council of the last instalment (where applicable) of such contribution, together with Interest accrued (if any) from the date of payment of the contribution until the date of request for refund

2. THE COUNTY COUNCIL'S COVENANTS

The County Council covenants with the Owners as follows:

- 2.1 Except in the case of an emergency prior to calling in the Travel Plan Bond the County Council shall first provide written notice to the Owners specifying the failures to comply with the Travel Plan and the steps required to remedy the failings and the County Council shall allow the Owners 20 (twenty) working days to remedy the failings to the County Council's satisfaction
- 2.2 Upon the expiry of the Travel Plan Monitoring Period the County Council shall without undue delay provided that the Travel Plan Co-Ordinator has first demonstrated to the County Council's reasonable satisfaction that the requirements of the Travel Plan have been implemented) release the Travel Plan Bond (or part thereof) from the Surety (Travel Plan Bond) that secured the Travel Plan to the payor of the Travel Plan Bond

13422

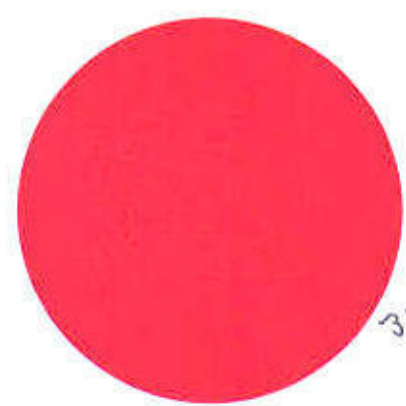


EXECUTED as a DEED by affixing
THE COMMON SEAL of the COUNCIL OF THE
BOROUGH OF HAVANT

in the presence of:



Authorised Signatory



37/100392

EXECUTED as a DEED by affixing
THE COMMON SEAL of the HAMPSHIRE
COUNTY COUNCIL

in the presence of:



Authorised Signatory

Name: ADRIAN OWEN

Position: Authorised Officer

Executed as a Deed by **EVELYN
PARTNERS TRUST CORPORATION
LIMITED** acting by **CHRISTOPHER
SHEPARD**

)
)
)

[Redacted Signature]

Director

Signature of Witness:

Name:

Address

[Redacted Signature and Address]

Occupation:

TAX ADVISER

Executed as a Deed by **MARK
GRAHAM WEAVER** in the presence of:

}
}

[Redacted Signature]

Signature

Witness signature

Name

(in block capitals)

Address

[Redacted Signature]

[Redacted Address]

Occupation

CHARITABLE SUBSCRIBER



Plan 1 - Land (Applicant Ownership Plan)

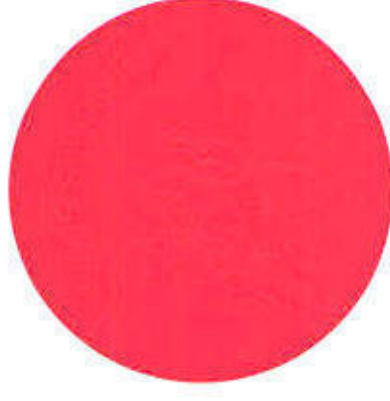


Applicant Ownership Plan

Hulbert Road, Havant



Area of application site in land
owners control



37/100392

13422

Notes:

Drawn by: MS

Drawing No.

Checked by: NB

Revision No.

Office: Southampton

0 50 100 150 200 Meters

25 July 2022

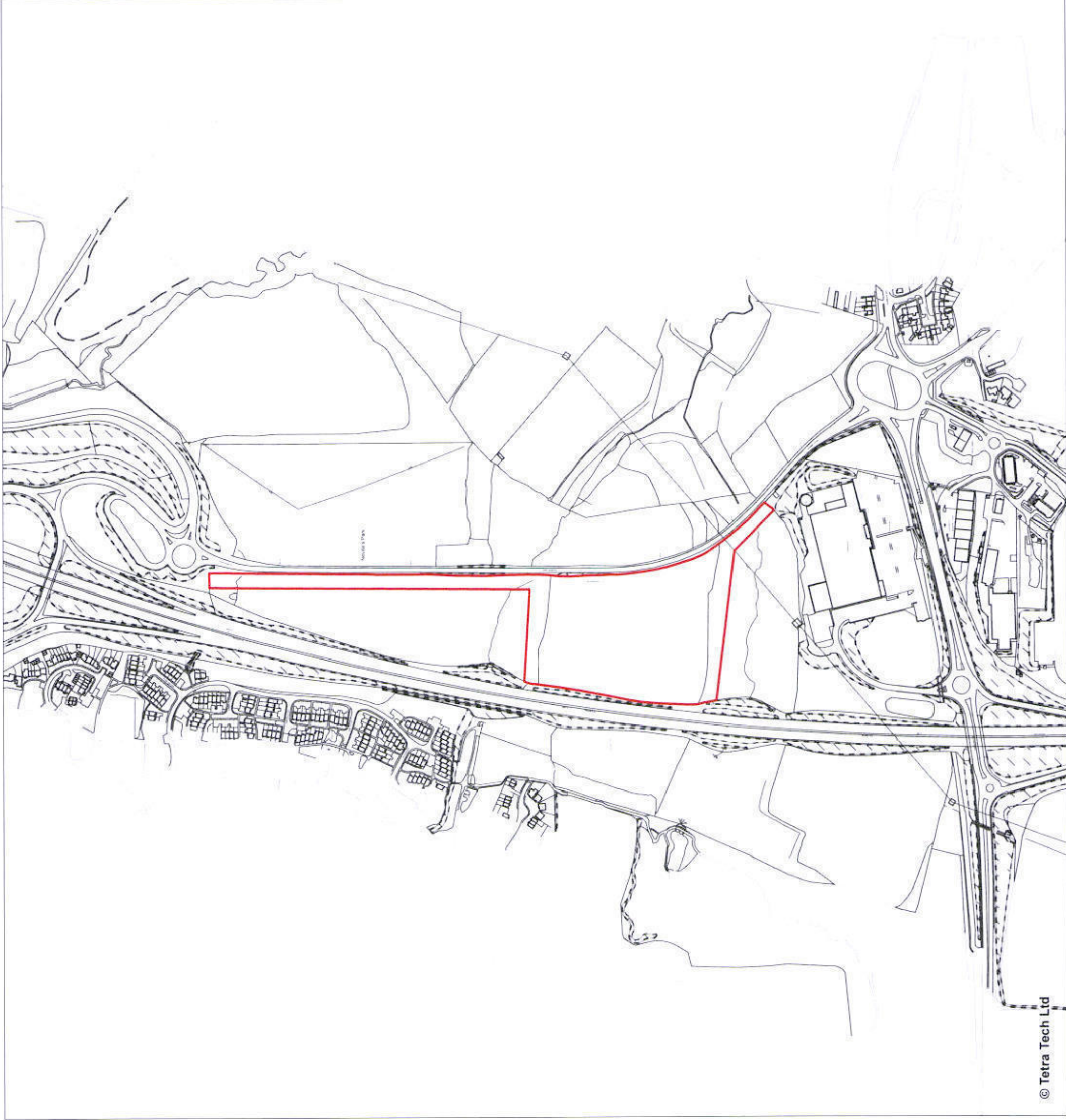
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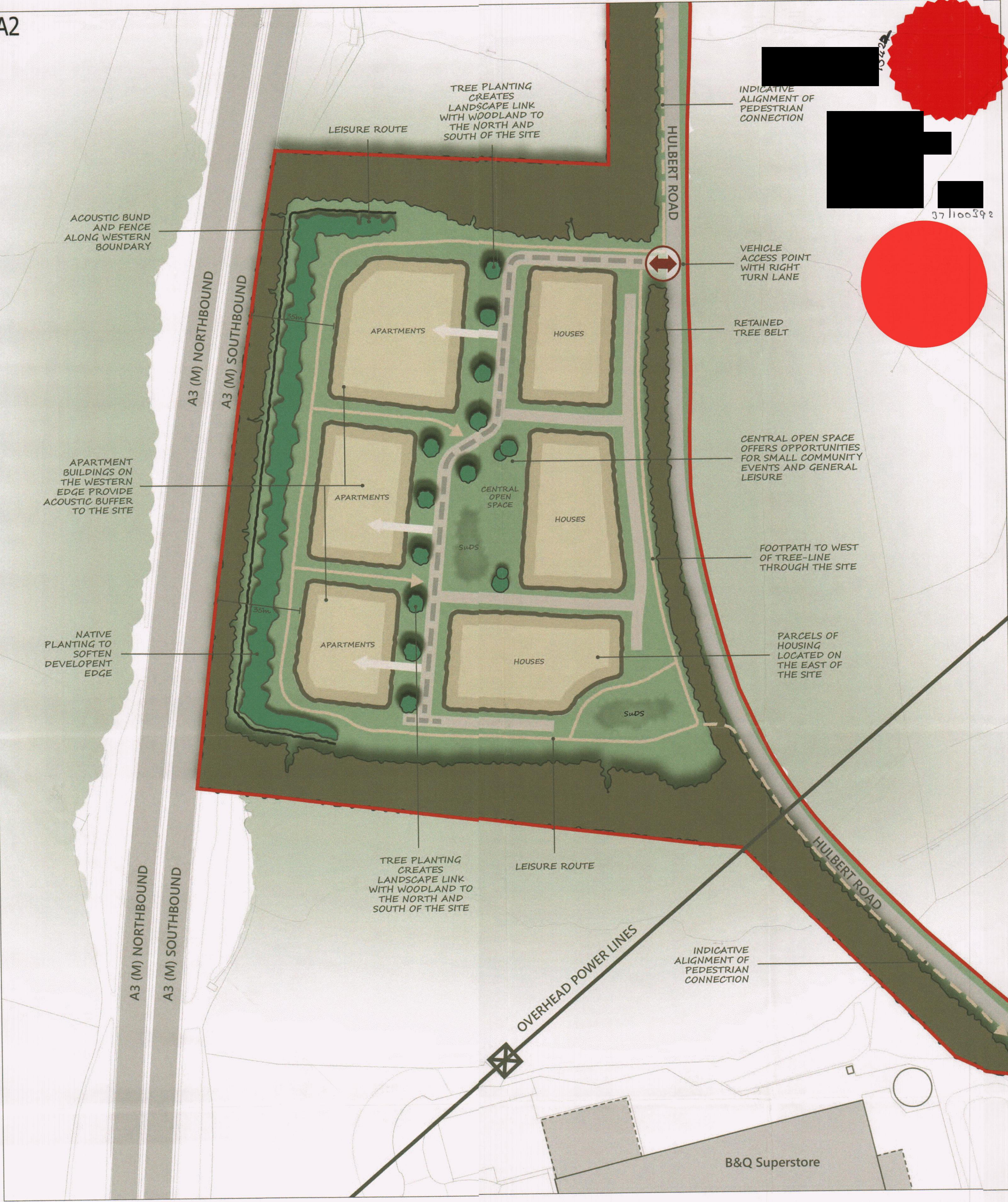
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The Pavilion 1st Floor
Boleagh Grange
Office Campus
Hedge End
Southampton
Hampshire, SO30 2AF



Plan 2 "CONCEPT MASTERPLAN - 01" with drawing number A096474 CMP-01 REV E



NOTES
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REV	DESCRIPTION	DATE	AUTHOR	CHK'D
A	Masterplan updated	03/04/20	BA	-
B	Masterplan updated	09/04/20	BA	-
C	Annotations updated	09/04/20	BA	-
D	Title block updated	22/04/20	BA	-
E	Updated to reflect acoustic report	07/12/20	BA	-

KEY
Indicative Site Boundary

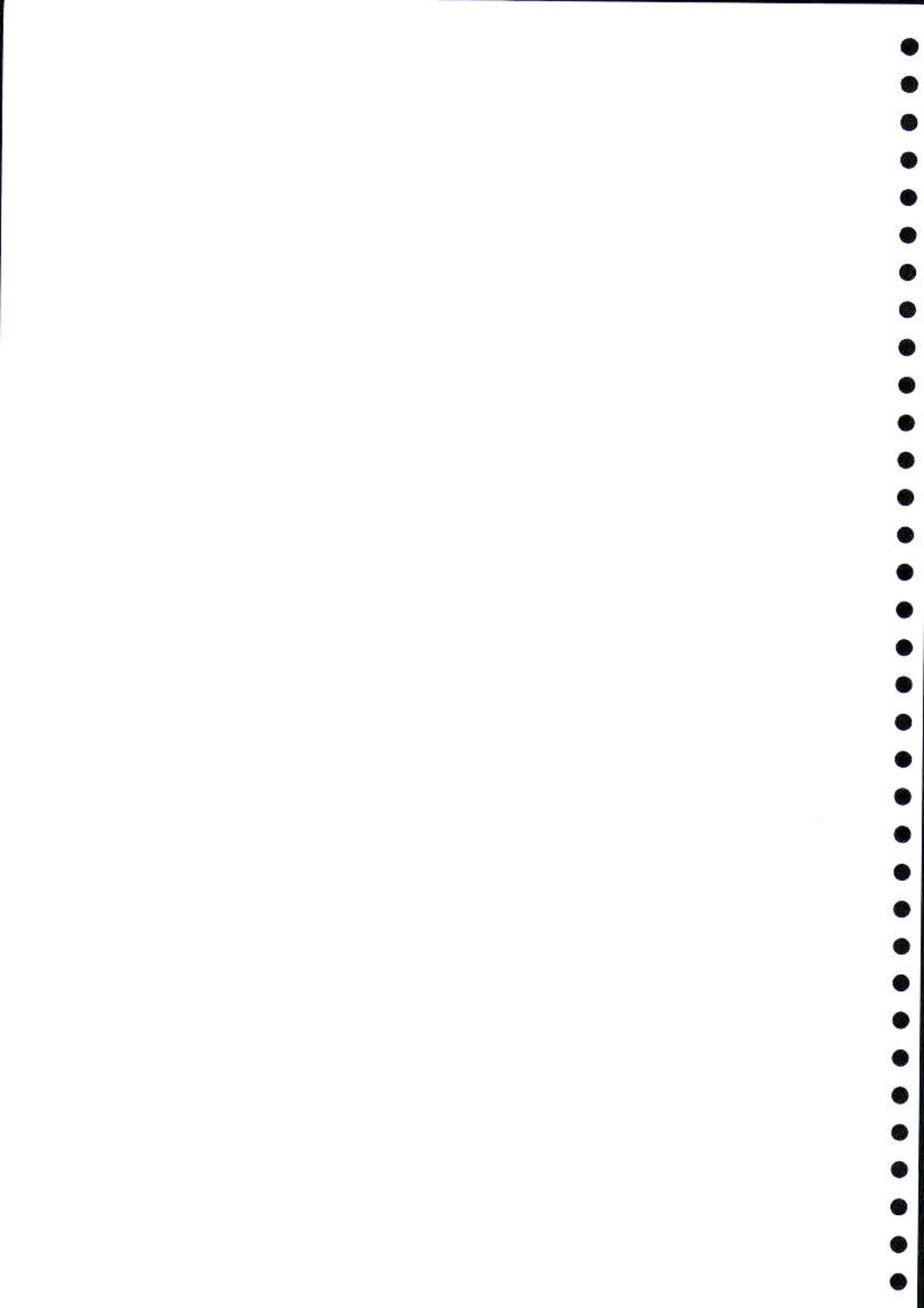


WYG Urban & Landscape Design
Southampton Office
The Pavilion, Botleigh Grange Office Campus, Hedge End, Southampton, SO30 2AF
t: 02382 022 800 w: www.wyg.com

PROJECT			
Hulbert Road Havant			
For: The Trustees of the GHM Jackson 1972 Settlement			
DRAWING			
Concept Masterplan - 01			
SCALE	DATE	AUTHOR	CHK'D
1:1000 @ A2	11/03/19	BA	CL
JOB NO.	DRAWING NO.	REV	
A096474	CMP-01	E	



Plan 3 "Proposed Site Access Drawing" with drawing number A096474-SK01 Rev C

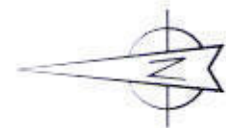




2.4 x 160m visibility splay

2.4 x 86m tangential
visibility splay

2.4 x 160m visibility splay



2.500

6.100

8.000

8.000

7.500

Notes

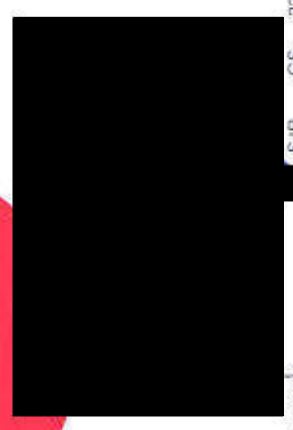
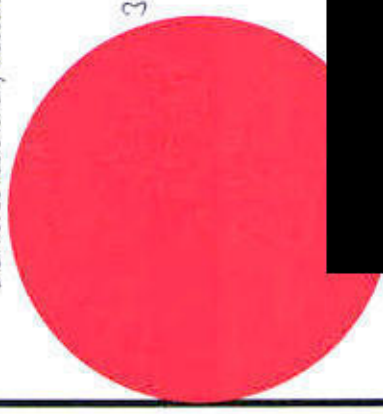
General

1. Do not scale from drawing
2. All dimensions are in metres, unless stated otherwise
3. This drawing is to be read & printed in colour
4. This drawing is for illustrative purposes only

Disclaimer

1. The information contained in this drawing is based on a combination of OS and data provided by others and WYG shall not be liable for any inaccuracies or deficiencies

37/100592



C	Relocate access	SJR	GS	22.03.2021
B	Removal of ghost island/right turn	SJR	GS	28.10.2020
A	Revised Application Boundary	BM	AP	21.05.2020

REV	DETAILS	DRAWN	CHECKED	DATE
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CLIENT

WYG Planning

PROJECT

Hulbert Road, Havant

DRAWING TITLE

Proposed Site Access

SCALES	As Shown	PHEET SIZE	A3
DRAWN	GS	CHECKED	MA
		DATE	28.02.2019

WYG Transport



The Pavilion, 1st Floor, Botleigh Grange Office
Campus, Hedge End, Southampton, SO30 2AF
t: 02382 022 800 e: transport@wyg.com

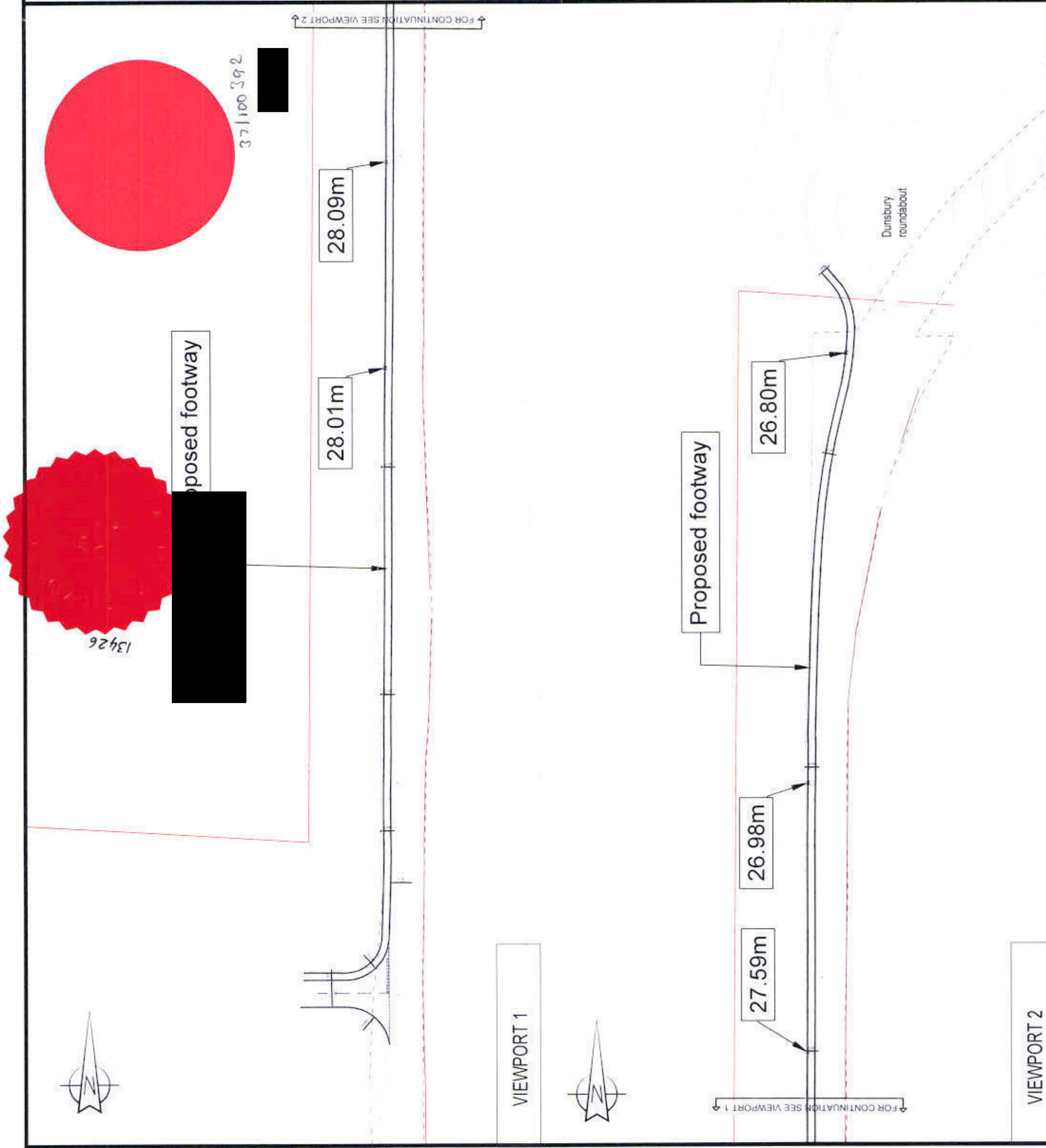
DRAWING NUMBER	A096474-SK01	REVISION	C
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Scale 1:1250

Scale 1:500

"Plan 4" "Proposed Footway" with drawing number A096474-SK03 – Rev B showing in principle the Highways Works for the proposed footpath]





Notes:

General

- 1. Do not scale
- 2. All dimensions are in metres, unless stated otherwise
- 3. This drawing is to be read & printed in colour
- 4. This drawing is for illustrative purposes only
- 5. Any proposed levels on this drawing are indicative only and based on existing channel line level + 125mm kerb + 1 in 40 fall across flexible footway construction

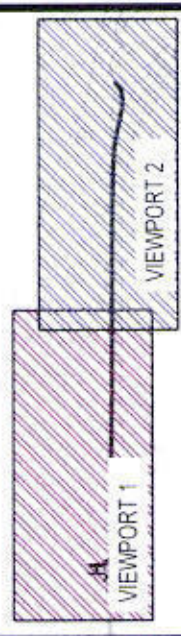
Disclaimer

- 1. The information contained in this drawing is based on a combination of OS and data provided by others and WYG shall not be liable for any inaccuracies or deficiencies.

Key:

- - - Application boundary
- - - Approximate extent of highway boundary

Overview plan



REV	DETAILS	DRAWN	CHECKED	DATE
B	Relocation of access	SJR	GS	22.03.2021
A	Removal of ghost island and right turn	SJR	GS	28.10.2020

WYG Planning

Hulbert Road, Havant

Proposed Footway

SCALE	1:1000	SHEET SIZE	A3
DRAWN	JG	CHECKED	GS
		DATE	27.10.20



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Campus, Hedge End, Southampton, SO30 2AF
1.02382 022 800 e: transport@wyg.com

DRAWING NUMBER	A096474-SK03	REVISION	B
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"Plan 5"

"Proposed Footway" with drawing number A096474-SK02
Rev C showing in principle the Highways Works for the
proposed [cycle/footpath]



13422



Pedestrian access
point into site

28.09m

27.73m

26.81m

26.29m

25.71m

25.61m

25.61m

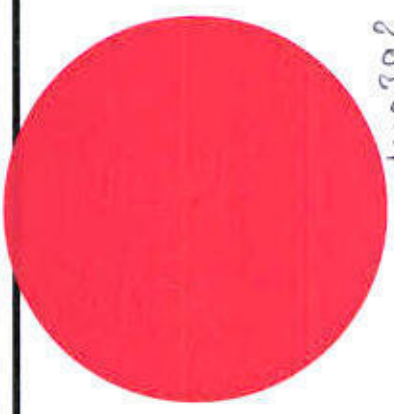
26.03m

26.76m

27.27m

27.70m

Proposed footway



37/100392



Notes:

General

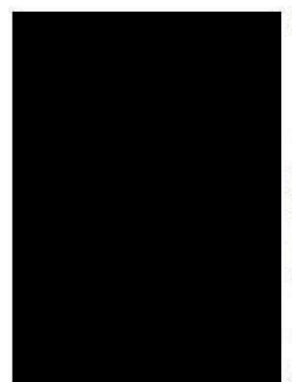
1. Do not scale from drawing.
2. All dimensions are in metres, unless stated otherwise.
3. This drawing is to be read & printed in colour.
4. This drawing is for illustrative purposes only.
5. Any proposed levels on this drawing are indicative only and based on existing channel line level + 125mm kerb + 1 in 40 fall across flexible footway construction.

Disclaimer

1. The information contained in this drawing is based on a combination of OS and data provided by others and WYG shall not be liable for any inaccuracies or deficiencies.

Key:

- Application boundary
- Approximate extent of highway boundary



C	Drawing updated with Highway boundary	JG	GS	27.10.2020
B	Drawing updated with topographical survey	JG	GS	22.10.2020
A	Revised Application Boundary	BM	AP	21.05.2020

REV	DETAILS	DRAWN	CHECKED	DATE
CLIENT				

WYG Planning

Hulbert Road, Havant

Proposed Footway

SCALES	1:1000	SHEET SIZE	A3
DRAWN	GS	CHECKED	MA
		DATE	28.02.2019

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t: 02382 022 800 e: transport@wyg.com

DRAWING NUMBER: **A096474-SK02**

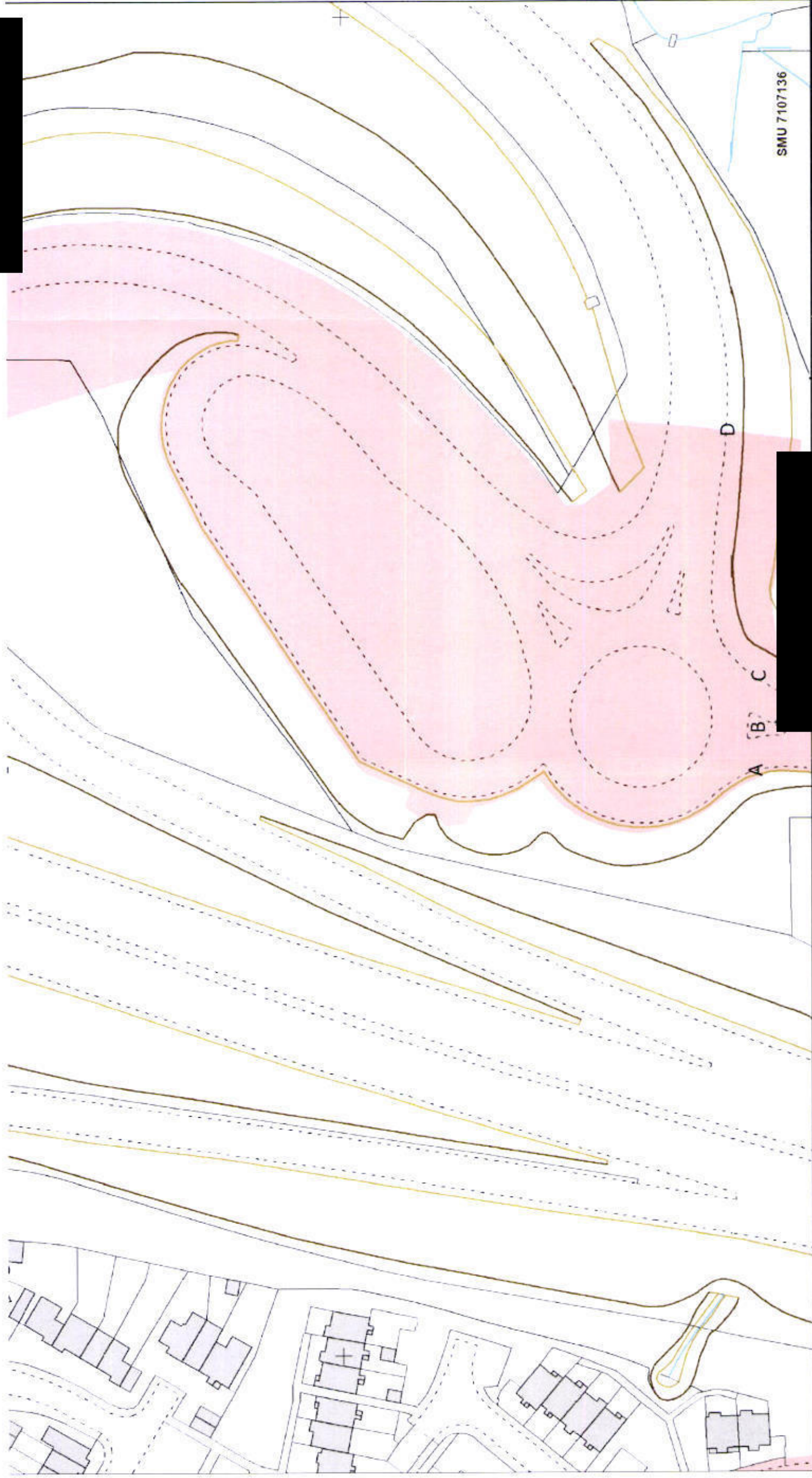
REVISION: **C**

"Plan 6"

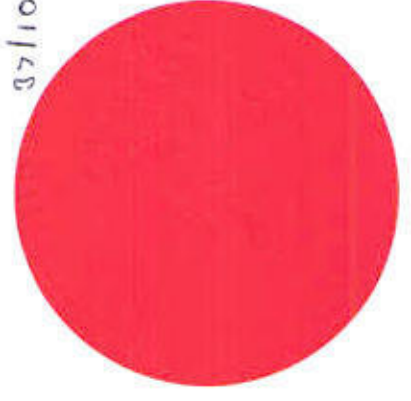
Hulbert Road Footway Works Plan



Hulbert Road Footway Works Plan



37/1003



13th April

APPENDIX 1

Bond Agreement relating to the SuDs

This Bond is made as a deed **between** the following parties whose names and addresses are set out in the Schedule to this Bond (the 'Schedule'):-

- (1) The 'Contractor' as principal
- (2) The 'Guarantor' as guarantor, and
- (3) The 'Employer'

Whereas

- (1) By a contract (the 'Contract') entered into or to be entered into between the Employer and the Contractor particulars of which are set out in the Schedule the Contractor has agreed with the Employer to execute works (the 'Works') upon and subject to the terms and conditions therein set out.
- (2) The Guarantor has agreed with the Employer at the request of the Contractor to guarantee the performance of the obligations of the Contractor under the Contract upon the terms and conditions of this Bond subject to the limitation set out in clause 2.

Now this deed witnesses as follows:-

- 1 The Guarantor guarantees to the Employer that in the event of a breach of the Contract by the Contractor the Guarantor shall subject to the provisions of this Bond satisfy and discharge any damages sustained by the Employer ("the Damages") which relate to the obligation to carry out the Works.
- 2 The maximum aggregate liability of the Guarantor and the Contractor under this Bond shall not exceed the sum set out in the Schedule (the 'Bond Amount').
- 3 Unless the Employer expressly agrees, the Guarantor shall not be discharged or released by any alteration of any of the terms conditions and provisions of the Contract or in the extent or nature of the Works and no allowance of time by the Employer under or in respect of the Contract or the Works shall in any way release reduce or affect the liability of the Guarantor under this Bond.
- 4 Whether or not this Bond shall be returned to the Guarantor the obligations of the Guarantor under this Bond shall be released and discharged absolutely upon the Expiry Date (as defined in the Schedule) save in respect of any breach of the Contract which has occurred and in respect of which a claim in writing containing particulars of such breach and stating that the amount being demanded has been established and ascertained pursuant to and in accordance with the provisions of or by reference to the Contract and takes into account all sums due or to become due to the Contractor has been made upon and received by the Guarantor before the Expiry Date.
- 5 The Contractor having requested the execution of this Bond by the Guarantor undertakes to the Guarantor (without limitation of any other rights and remedies of the Employer or the Guarantor against the Contractor) to perform and discharge the obligations on its part set out in the Contract.

- 6 This Bond and the benefit thereof shall not be transferred or assigned without the prior written consent of the Guarantor and the Contractor.
- 7 The parties to this Bond do not intend that any of its terms will be enforceable, by virtue of The Contracts (Rights of Third Parties) Act 1999 or otherwise, by any person not a party to it.
- 8 This Bond shall be governed by and construed in accordance with the laws of England and Wales and only the courts of England and Wales shall have jurisdiction hereunder.

The Schedule

The Contractor: **[Developer's details];**

The Guarantor: **[Bank's details];**

The Employer: **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza Civic Centre Road Havant Hampshire PO9 2AX;

The Contract: means the section 106 agreement dated [] 2022 and entered into by (1) the Council of the Borough of Havant, (2) Hampshire County Council and (3) Smith & Williamson Trust Corporation Limited (co. regn. no. 02013947) and Mark Graham Weaver as the trustees of the GHM Jackson 1972 Children's Settlement Trust (Owners); relating to land at the west of Hulbert Road, Havant

The Works the construction of a sustainable drainage system in accordance with paragraphs 3.1 to 3.10 of Schedule 2 to the Contract;

The Bond Amount: the sum of (£xxxxxxx) xxxxxxxx pounds sterling only

The Expiry Date: this Bond will expire on the date of completion of the Works and upon receipt of a written notice confirming that the Borough Council is reasonably satisfied with the Works.

In witness whereof the Contractor and the Guarantor have executed and delivered this Bond as a Deed this day of 202[]

EXECUTED as a DEED by **DEVELOPER**)
in the presence of:-)

Director

Director/Secretary

EXECUTED as a DEED by affixing the)
COMMON SEAL of xxxxxxxxxx)
BANK)
in the presence of:-)

APPENDIX 2

Agreement dated 16th February 2021 made under section 106 of the Act between the (1) Site Proprietor; (2) Site Tenant; and (3) South Downs National Park in respect of the Site as varied by deed of variation dated 29th April 2020 as attached at Appendix [] of this Agreement.

DATED 16th February 2021

- (1) SOUTH DOWNS NATIONAL PARK AUTHORITY
(2) WILLIAM NORTHCROFT BUTLER and JAMES NICHOLAS BUTLER
(3) H N BUTLER FARMS LIMITED

SECTION 106 AGREEMENT

relating to land at

Whitewool Farm, East Meon, Petersfield, Hampshire GU32 1HW

SHOOSMITHS

Shoosmiths LLP
Forum 5
The Forum
Parkway
Whiteley
Fareham
PO15 7PA
Tel: 03700 866800
Fax: 03700 866801
Ref. GEM/M-00874165

THIS DEED is made the 16th day of February Two thousand and Twenty-One

BETWEEN

- (1) **SOUTH DOWNS NATIONAL PARK AUTHORITY** of South Downs Centre, North Street, Midhurst, West Sussex GU29 9DH (the "Authority"); and
- (2) **WILLIAM NORTHCROFT BUTLER** of The Cart House East Meon, Petersfield GU32 1HW and **JAMES NICHOLAS BUTLER** of Whitewool Farm, East Meon, Petersfield GU32 1HW (the "Owner"), and
- (3) **H N BUTLER FARMS LIMITED** (Company registration number: 00554785) of Whitewool Farm, East Meon, Petersfield, Hampshire, GU32 1HW (the "Tenant"); and

WHEREAS:

- (A) The Owner owns the freehold interest in the Site and is registered as proprietor with Title Absolute at the Land Registry free from encumbrances other than those matters contained or referred to in the Property and Charges Register of Title Number SH21605 at the date of this Deed.
- (B) The Tenant occupies the Site under the terms of a lease dated 4 April 2014 made between (1) Nicholas Northcroft Butler and Christine June Butler as Trustees of the G M Butler 'N' Settlement and (2) H N Butler Farms Limited.
- (C) The Tenant wishes to carry out the Development upon the Site in accordance with the Planning Permission and the obligations contained herein. The Owner agrees to its interest in the Site being bound by the obligations and restrictions set out in this Deed.
- (D) The Authority is the local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations contained in this Deed are enforceable.
- (E) The Owner and the Tenant propose to develop the Site as an interception wetland with the intention of removing nitrogen on drainage pathways from land higher up in the Solent catchment in order to mitigate the effect of residential development on nitrate levels elsewhere in the catchment.
- (F) The Authority has (in return for the Monitoring Sum) agreed to monitor the Site as set out in this Agreement to determine whether the wetland is in existence and is functioning in accordance with the Landscape and Ecological Management Plan.

Agreement

- (G) Following completion of the ~~Development~~ the Owner and the Tenant agree to enter into Allocation Agreements
- (H) Having regard to the planning considerations affecting the Site and in the interests of the proper planning of its area, the Authority has resolved to grant Planning Permission subject to further satisfactory ecological surveys being undertaken and the prior completion of this Agreement to ensure certain planning obligations are secured, subject to the conditions set out in this Agreement, in respect of the Site.
- (I) The Authority has confirmed that all the obligations and covenants included in this Deed are compliant with Regulation 122 of the Community Infrastructure Regulations 2010 (as amended).

NOW THIS DEED WITNESSETH:

1. Definitions and Interpretation

- 1.1 The following words and phrases shall have unless the context otherwise requires bear the following meanings:

"1990 Act" The Town and Country Planning Act 1990 (as amended),

"Allocation" means a portion of the Capacity which shall be dedicated by the Tenant to a developer(s) of an off-site development to mitigate the impact of a Qualifying Development on the nitrate levels of the Solent,

and "Allocate" and "Allocated" shall be construed accordingly,

"Allocation Agreement" an agreement(s) substantially in the form of the draft attached hereto as Schedule 6 to be entered into by the Tenant and a developer(s) of off-site developments to provide a nitrate offsetting solution for such offsite developments;

"Application" the application for full planning permission submitted to the Authority for the Development and allocated reference number SDNP/20/01263/FUL and considered by Planning Committee on 9 April 2020;

"Capacity" up to 2000 Kg/TN/yr to be removed from the Solent by the Development (unless paragraph 5 of Schedule 1 of this Agreement applies) (unless an increase has been approved by the Authority and Natural England in writing following

submission of evidence to demonstrate capacity exists such evidence to be based on monitoring results and that nitrogen levels and the efficiency of the wetland in removing nitrates are stable and consistent) AND FOR THE AVOIDANCE OF DOUBT the baseline of the Capacity for monitoring purposes shall be based on the Kg/TN/yr within Whitewool Stream prior to Commencement of Development calculated at 11092 Kg/TN/yr OR the recorded Kg/TN/yr of the water entering the wetland, whichever is the highest,

"Capacity Monitoring Report"

a report in substantially the form appended at Schedule 3 of this Deed to be updated upon the completion of each Allocation Agreement and produced by the Tenant with any accompanying plans which provides evidence of any remaining Capacity for Nitrate Mitigation of an off-site Qualifying Development following the Tenant entering into an Allocation Agreement,

"Commencement Date"

the date on which the Development commences by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act. other than (for the purposes of this Agreement and no other);

- (a) site investigations or surveys,
- (b) archaeological works,
- (c) site decontamination;
- (d) the demolition of any existing buildings or structures,
- (e) the erection of hoardings and fences,
- (f) works connected with infilling, or
- (g) the construction of access and service roads,

and "**Commence**" and "**Commenced**" shall be construed accordingly;

"Development"

development of works to regrade the land to create a new habitat to facilitate the removal of nitrates from Whitewool Stream and deliver net biodiversity enhancements pursuant to the Planning Permission;

"Index"	The All in Tender Price Index published by the Building Costs Information Service of the Royal Institution of Chartered Surveyor or any successor organization or index
"Index Linked"	The contribution expressed in this Agreement to be Index Linked shall be increased in relation to the relevant Index for that contribution
"Interest"	Interest at the rate of 4% above the base rate of the Bank of England from time to time
"Landscape and Ecological Management Plan"	The document in substantially the form appended to this Deed at Schedule 5 which the Authority and the Tenant agree contains sufficient detail to fulfil Natural England's requirements to allow Nitrate Mitigation and to the satisfaction of the Authority and should be complied with subject to any reasonable amendment requested by the Authority and/or the Tenant,
"Lease"	the lease dated 4 April 2014 made between (1) Nicholas Northcroft Butler and Christine June Butler as Trustees of the G M Butler 'N' Settlement and (2) H N Butler Farms Limited;
"Monitoring Sum"	the sum of Forty-Two Thousand Six Hundred and Eighty Pounds (£42,680) Index Linked to be utilised by the Authority for the monitoring of the Site in accordance with the Landscape and Ecological Management Plan and not for any other use,
"Natural England"	means the public body known as Natural England or any successor body which acts as the Government's adviser for the natural environment in England;
"Nitrate Mitigation"	mitigation measures to neutralise nitrates from the water to mitigate the effects of increased nitrate levels in the Solent caused by off-Site developments in line with Natural England requirements at the date of this Agreement,
"Parties"	means the parties to this Agreement,
"Plan"	the plan annexed hereto;



Client: H.N. Butler Farms Limited
 Project: Whitewool Farm
 Drawing Name: Application Boundary
 Project No: A115857
 Drawing No: Application Boundary/01

Scale: 1:25,000 @ A3

Notes: Do not Scale

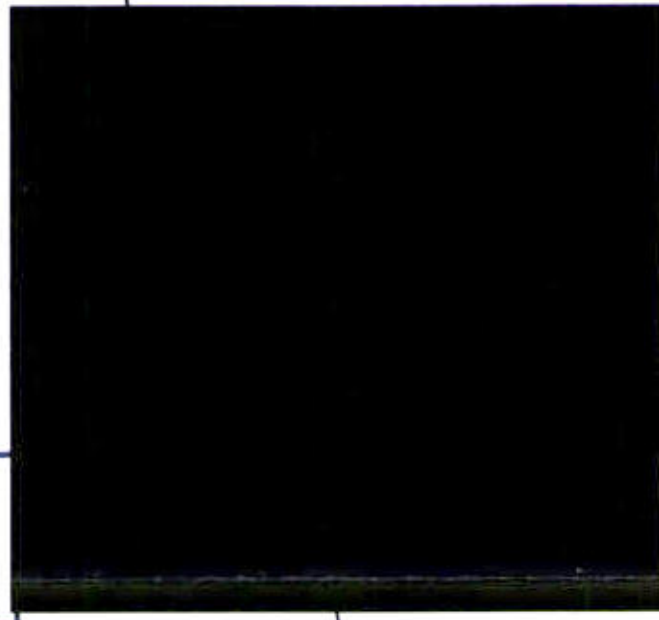
Drawn: IM

Checked: CM

Key

Application Boundary

Land owned by Applicant



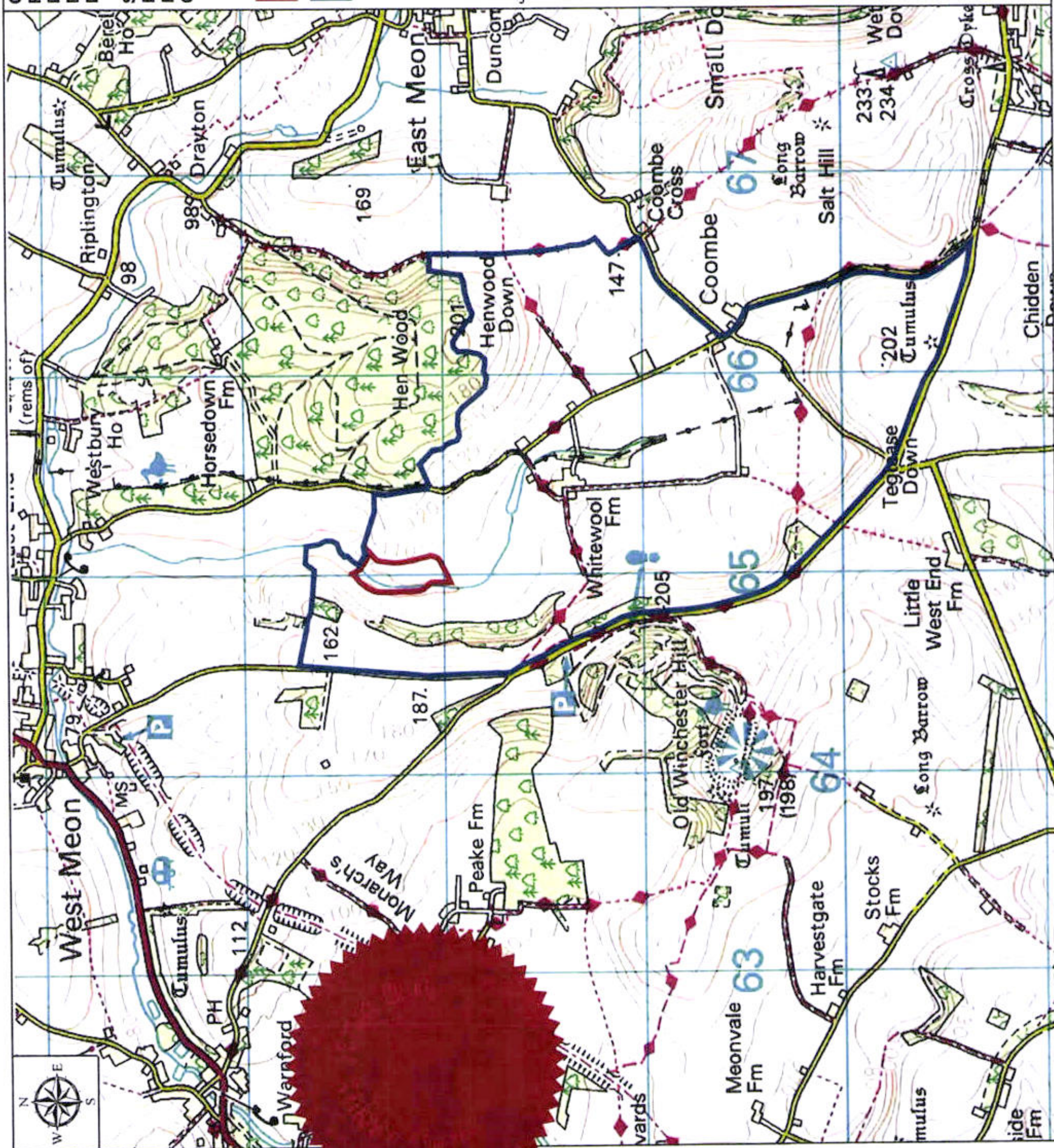
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0km 0.5km 1km

The Pavilion, 1st Floor, Botleigh
 Grange Office Campus, Hedge
 End, Southampton, Hampshire,
 SO30 2AF

Tel: +44 238 202 2874

www.wyg.com



4/21

"Planning Permission"

the planning permission for the Development in the form of the draft attached hereto as Schedule 4 to be issued pursuant to the Application or any variation to that permission granted pursuant to Section 73 of the 1990 Act;

"Qualifying Development"

means any off-site development which requires Nitrate Mitigation that is treated by the Southern Water Peel Common Waste Water Treatment Works, the Southern Water Budds Farm Waste Water Treatment Works, Ashlett Creek Water Treatment Works or other waste water treatment works as agreed in writing by Natural England;

"Relevant Event"

means any of the following events:

- a) a change in the law; or
- b) a decision of a Court, tribunal, Secretary of State, or other decision maker with competence; or
- c) a change in Natural England's custom or practice; or
- d) a change in scientific opinion based on evidence; or
- e) a change in industry practices or in the generally accepted calculation methods for the type or extent of land required to achieve Nitrate Mitigation;

that is accepted in writing by Natural England and/or the relevant local planning authority and results in either

- a) nitrate neutrality not being required; or
- b) Nitrate Mitigation not being required; or
- c) the Development no longer being considered to be an effective form of Nitrate Mitigation; or
- d) the Development not being required for Nitrate Mitigation; or
- e) the Allocation or the Development or the Nitrate Mitigation on the Site being too burdensome or too costly for the Tenant or the Owner

"Site"

Whitewool Farm, East Meon, Petersfield, Hampshire GU32 1HW as shown edged red on the **Plan**

"Site Visit"

means two (2) visits per year in the Years 1 to 5, one (1) visit per year in Years 6 to 10 and from Years 11 to 125 a bi-annual visit (every other year) subject to a review by the Authority at

Year 5 and Year 10 and any reasonable adjustment made by the Authority following such reviews

"Solent" is the strait that separates the Isle of Wight from the mainland of England

"Unallocated" means the whole or any part of the Capacity that has not been Allocated

"Whitewool Stream" the watercourse which runs through the Site part of which is shown on the Plan and from which nitrates shall be removed by the Development;

"Working Days" any Monday, Tuesday, Wednesday, Thursday and Friday except bank or public holidays and except any day between 25 December and 2 January (inclusive) in each year,

2. INTERPRETATION

- 2.1 The clause headings in this Agreement are for reference only and do not affect its construction or interpretation.
- 2.2 References to clauses and Schedules are to the clauses and Schedules of this Agreement, unless stated otherwise
- 2.3 A reference to a paragraph is to the paragraph of the Schedule in which the reference is made, unless stated otherwise
- 2.4 Words importing one gender include any other genders and words importing the singular include the plural and vice versa
- 2.5 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa
- 2.6 Unless this Agreement states otherwise, any reference to any legislation (whether specifically named or not) includes any modification, extension, amendment or re-enactment of that legislation for the time being in force and all instruments, orders, notices, regulations, directions, byelaws, permissions and plans for the time being made, issued or given under that legislation or deriving validity from it.
- 2.7 References to the Site include any part of it.
- 2.8 References to any party in this Agreement include the successors in title of that party and in the case of the Authority include any successor local planning authority exercising planning powers under the 1990 Act
- 2.9 References to "including" means "including, without limitation"

- 2.10 Any covenant by the Owner or Tenant not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 2.11 Where two or more people form a party to this Agreement, the obligations they undertake may be enforced against them all jointly or against each of them individually
- 2.12 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Agreement shall be unaffected.

3. LEGAL EFFECT

- 3.1 This Agreement constitutes a Deed is made pursuant to section 106 of the 1990 Act and Section 22 of the Cities and Local Government Devolution Act 2016 and all other enabling powers and enactments that are relevant
- 3.2 To the extent that they fall within the terms of section 106 of the 1990 Act, the obligations contained in this Agreement are planning obligations for the purposes of section 106 of the 1990 Act with the intent that they bind the Site and are enforceable by the Authority
- 3.3 The Authority is the local planning authority having the power to enforce the planning obligations contained in this Agreement against the Tenant and/or Owner subject to clause 8 below but without prejudice to all and any other means of enforcing them at law or in equity or by statute and a planning obligation not to do any act or thing includes an obligation not to cause or permit or suffer that act or thing to be done by any other person.
- 3.4 No person constituting the Tenant and/or Owner will be liable for breach of a covenant restriction or obligation contained in this Agreement after he has parted with all the interest in the Site 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
- 3.5 This Agreement will be registered as a local land charge by the Authority
- 3.6 Nothing in this Agreement:
- 3.6.1 prohibits or limits the right to develop any part of the Site in accordance with a planning permission, other than one relating to the Development as specified in the Application, granted after the date of this Agreement, whether or not pursuant to an appeal PROVIDED THAT any such planning permission does not prevent or restrict in any way the continued operation of the Development and/or the Nitrate Offsetting Management Plan;
- 3.6.2 shall be construed as restricting the exercise by the Authority of any powers exercisable by it under the 1990 Act or under any other Act in the exercise of their functions as a local authority

4. COMMENCEMENT

- 4.1 This Agreement will take effect on the Commencement Date save for clause 15 which shall take effect immediately upon completion of this Agreement.

5. OBLIGATIONS OF THE PARTIES

- 5.1 The Owner and the Tenant covenants to comply with the obligations expressed to be on their part set out in Schedule 1 in relation to the Development.
- 5.2 The Authority covenants to comply with the obligations expressed to be on its part set out in Schedule 2.
- 5.3 Within 28 (twenty eight) days of a request from the Tenant and /or the Owner the Authority will certify whether or not an obligation under this Agreement has been satisfied and if not the steps that are required to be taken in order to secure its satisfaction provided that where such obligation is an ongoing obligation this clause shall not apply
- 5.4 The Authority agrees that upon the Tenant's and the Owner's obligations under this Agreement being satisfied and upon receipt of a written request by the Tenant and/or the Owner the Authority will remove all relevant entries relating to this Agreement from the Local Land Charges Register

6. OBLIGATIONS ON THE OWNER

- 6.1 The Owner consents to the terms of this Deed binding its interest in the Site and covenants with the Council to perform the obligations of the Tenant under this Deed should the Lease terminate or otherwise come to an end.
- 6.2 Should the Lease terminate or otherwise come to an end all obligations owed by the Authority to the Tenant under the terms of this Deed shall henceforth be owed by the Authority to the Owner

7. THE TENANT TO NOTIFY AUTHORITY:

- 7.1 The Tenant and/or the Owner covenants with the Authority to notify the Authority in writing:
- 7.1.1 of its intention to Commence the Development; and
- 7.1.2 of the occurrence of the date of completion of the Development as soon as reasonably practicable following completion; and
- 7.1.3 when it enters into an Allocation Agreement

8. ENFORCEABILITY OF OBLIGATIONS

- 8.1 The obligations contained in this Deed shall not be binding upon nor enforceable against any statutory undertaker or other person who acquires any part of the Site or interest therein for

the purposes of the supply of electricity gas water drainage telecommunication services or public transport services

- 8.2 A party shall not be liable for any breach of the obligations or other covenants contained in this Deed occurring after the relevant party has parted with the whole of its interest in the Site or the part of the Site in which such breach occurs (but without prejudice to the liability of the relevant party for any breach occurring prior to its parting with such interest)

9. RIGHT OF ACCESS

Without prejudice to the Authority's statutory rights of entry the Tenant shall permit the Authority and its authorised employees and agents upon reasonable written notice to enter the Site at all reasonable times for the purpose of verifying whether or not any obligation arising hereunder has been performed or observed.

10. WAIVER

No waiver (whether express or implied) by the Authority of any breach or default by the Tenant in performing or observing any of the covenants undertakings obligations or restrictions contained in this Deed shall constitute a continuing waiver and no such waiver shall prevent the Authority from enforcing any of the said covenants undertakings obligations or restrictions from acting upon any subsequent breach or default in respect thereof by the Tenant.

11. INTEREST

If any sum due under this Agreement is paid late Interest will be payable from the date the payment is due to the date of payment

12. FEES

The Tenant covenants with the Authority to pay to the Authority prior to the date hereof the Authority's reasonable legal fees for the preparation, negotiation and completion of this Agreement.

13. NOTICES

- 13.1 Any notice, consent, demand or any other communication served under this Agreement will be effective only if in writing and delivered by hand or sent by first class post, pre-paid or recorded delivery.
- 13.2 Any notice, consent, demand or any other communication served shall be sent to the address of the relevant party set out at the beginning of this Agreement or to such other address as one party may notify in writing to the others at any time as its address for service

14. DETERMINATION OF DISPUTES

- 14.1 Subject to clause 14.7, if any dispute arises relating to or arising out of the terms of this Deed, either party may give to the other written notice requiring the dispute to be determined under this clause 14. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute
- 14.2 For the purposes of this clause 14 a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to developments in the nature of the Development and property in the same locality as the Site
- 14.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of the Law Society who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under clause 14.4
- 14.4 Any dispute over the identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the Authority and the Tenant cannot agree the identity of the organisation, then the Specialist is to be nominated by the President or next most senior available officer of the Law Society
- 14.5 The Specialist is to act as an independent expert and:
- 14.5.1 each party may make written representations within ten (10) Working Days of his appointment and will copy the written representations to the other party,
 - 14.5.2 each party is to have a further ten (10) Working Days to make written comments on the other's representations and will copy the written comments to the other party;
 - 14.5.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;
 - 14.5.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross-examine each other,

14.5.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision, and

14.5.6 the Specialist is to use all reasonable endeavours to publish his decision within thirty (30) Working Days of his appointment

14.6 Responsibility for the costs of referring a dispute to a Specialist under this clause 14, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist

14.7 This clause 14 does not apply to disputes in relation to matters of law or the construction or interpretation of this Deed which will be subject to the jurisdiction of the courts.

15. TERMINATION OF THIS AGREEMENT

15.1 This Agreement will come to an end if

15.1.1 the Planning Permission is quashed or revoked before the Commencement Date; or

15.1.2 the Planning Permission expires before the Commencement Date without having been implemented; or

15.1.3 there is a Relevant Event,

16. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it provided that the exclusion of the said Act shall not prevent all or any future successors in title to any of the parties to this Agreement from being able to benefit from or to enforce any of the provisions of this Agreement.

17. JURISDICTION

This Agreement shall be governed by the laws of England and Wales and the Courts of England shall have sole jurisdiction in respect of the construction of this Agreement and as to the respective rights and liabilities of the parties.

SCHEDULE 1

The Tenant's and Owner's Covenants

1 NITRATE OFFSETTING MANAGEMENT PLAN

The Tenant and the Owner covenant to comply with the Landscape and Ecological Management Plan

2 USE OF THE SITE , PAYMENT OF THE MONITORING SUM, WATER SAMPLING AND WATER FLOW MONITORING SCHEME

2.1 The Tenant and the Owner covenants

2.1.1 to use the Site in accordance with the Planning Permission for the lifetime of all off site developments which have entered into Allocation Agreements and rely upon the Site for mitigation

2.1.2 within 10 Working Days of the date of completion of the Development to pay to the Authority the Monitoring Sum and following such date of completion of the Development to allow the Authority reasonable access to the Site to enable it to comply with its obligations in Schedule 2 and the Parties shall operate in good faith to minimise any disruption (as far as is reasonably practicable) to the operation of the Site and any outstanding works that remain to be carried out by the Tenant

2.1.3 that prior to the Commencement of Development to submit to the Authority in writing a scheme for approval by the Authority detailing measures for water sampling and water flow monitoring ("Water Sampling and Water Flow Monitoring Scheme"). The scheme shall include, but not be limited to, the following elements:-

- a) a timetable setting out when and how water sampling and water flow monitoring will take place over a period of 125 years, specifically to include a requirement for continuous water flow data and monthly water sampling for the first 2 years of the development
- b) the technology and methods that will be relied upon to undertake the water sampling and water monitoring
- c) how and when the results of the water sampling and water flow monitoring will be recorded and provided to the Authority over the 125 year period, specifically to include a requirement to submit results to the Authority every 4 months for the first 2 years of the development

- d) how the results of the water sampling and water flow monitoring will be verified, detailing the relevant accredited experts that will be used in this regard
- e) a conclusion, drawn from the water sampling and water flow data collected on the efficiency of the wetland to remove nitrates

2.1.4 to implement in full the Water Sampling and Water Flow Monitoring Scheme approved by the Authority pursuant to paragraph 2.1.3 above

2.1.5 not to Commence Development until the Water Sampling and Water Flow Monitoring Scheme pursuant to paragraph 2.1.3 above is approved in writing by the Authority

3 ALLOCATION

3.1 The Tenant and/or the Owner shall submit to the Authority a copy of any Allocation Agreement entered into within twenty working days of entering into it along with a Capacity Monitoring Report.

3.2 The Tenant and/or the Owner shall only enter into an Allocation Agreement where it can evidence that there is sufficient Unallocated Capacity available for the requested level of Allocation.

4 BREACH

4.1 If at any time there is a material breach of the obligations in this Schedule then the Authority may without prejudice to any of its other powers serve on the Tenant and the Owner a default notice setting out the nature of the breach, the steps required to remedy it and a reasonable timescale for compliance

4.2 In the event that the Tenant and/or Owner fails to remedy a breach as set out in a default notice served pursuant to paragraph 4.1 above within the timescale set out in the default notice then the Authority may take such steps specified in the default notice itself, at all times complying with the Landscape and Ecological Management Plan. The Authority shall be entitled to enter the Site for the purposes of taking such steps as set out in the default notice and upon completion of works shall provide to the Tenant and/or Owner evidence of the expenditure reasonably incurred in the form of invoices and receipts. The Tenant or Owner shall reimburse the Authority of all such expenditure within 28 days of receipt of the invoices and receipts from the Authority

5 FAILURE OF DEVELOPMENT *or before completion of the development*

5.1 If at any time the Capacity Monitoring Report shows that the Tenant and/or Owner have entered into Allocation Agreements which require greater Capacity than is available the Tenant and/or Owner may confirm in writing to the Authority (which must include a signed plan and a Unilateral Undertaking pursuant to Section 106 of the Town and Country Planning Act 1990) where

appropriate) the action that they intend to take to make available the shortfall of the Capacity required by the Allocation Agreements. Such action could include taking land within the ownership of the Tenant and/or Owner out of agricultural use at a minimum rate of 36 2KgTN/yr per hectare such rate to be subject to a proportionate and reasonable assessment at the time of failure based on the current Natural England published guidance and any other material considerations, or transferring to an appropriate alternative nitrate offsetting scheme until the earlier of

5.1.1 the expiry of the lifetime of all off site developments which have entered into Allocation Agreements and rely upon the Site for mitigation; or

5.1.2 until the actions in the Second Failure Notices are complied with (and for the avoidance of doubt the failure is remedied).

5.2 If at any time the Capacity Monitoring Report shows that the Tenant and/or Owner have entered into Allocation Agreements which require greater Capacity than is available and the Tenant and/or Owner has not complied with paragraph 5.1 above the Authority may without prejudice to any of its other powers serve on the Tenant and the Owner a failure notice ("First Failure Notice") setting out the nature of the failure, the steps required to remedy the failure and a reasonable timescale for compliance.

5.3 In the event that the Tenant and/or Owner fails to remedy the failure as set out in a First Failure Notice within the timescale set out in the First Failure Notice then the Authority may serve a second notice ("Second Failure Notice") which requires the Owner to take action beyond that identified in the First Failure Notice. Such action could include, taking land within the ownership of the Tenant and/or Owner out of agricultural use at a minimum rate of 36.2KgTN/yr per hectare, or transferring to an appropriate alternative nitrate offsetting scheme until the earlier of

5.3.1 the expiry of the lifetime of all off site developments which have entered into Allocation Agreements and rely upon the Site for mitigation, or

5.3.2 until the actions in the Second Failure Notices are complied with (and for the avoidance of doubt the failure is remedied).

5.4 The Authority will specify in the Second Failure Notice the nitrate output amount (TN) which requires appropriate alternative nitrate mitigation to remedy the failure set out in such notice

5.5 Within one month of receipt of the Second Failure Notice the Owner and/or Tenant must confirm in writing (which must include a signed plan and a Unilateral Undertaking pursuant to Section 106 of the Town and Country Planning Act 1990 where appropriate) the action that they intend to take in response to the Second Failure Notice such action to be taken within two months of receipt of the Second Failure Notice.

6 USE OF THE SITE

- 6.1 The Tenant and/or the Owner agree that no off-site development can benefit from the Site without the relevant Allocation Agreement first being provided to the Authority as evidence the Allocation Agreement has been entered in to

SCHEDULE 2

The Authority's Obligations

1 MONITORING

- 1.1 The Authority covenants to use the Monitoring Sum for its intended purpose and not for any other purpose.
- 1.2 The Authority agrees that it shall, or procure that a competent third party shall, attend Site Visits to determine whether the Site is in existence and functioning in accordance with the Landscape and Ecological Management Plan until all the Capacity has been Allocated. The Site Visits referred to in paragraph 1.2 above shall be arranged between the parties on reasonable written notice.
- 1.3 The Authority agrees to provide as soon as reasonably practicable following
 - 1.3.1 a Site Visit carried out pursuant to paragraph 1.2 of this Schedule, and/or
 - 1.3.2 a written request from the Owner and/or Tenant,a written confirmation to the Owner and/ or Tenant of its findings of the most recently occurring Site Visit from time to time confirming whether the Site is acting as a Nitrate Mitigation scheme.
- 1.4 For the avoidance of doubt, the Authority agrees with the Tenant and/ or the Owner that:
 - 1.4.1 available Capacity shall be Allocated to Qualifying Developments by the Tenant and/or Owner at their discretion, and
 - 1.4.2 the existence at any time of any Unallocated Capacity shall not be taken into account by the Council in the determination of any application for planning permission by the Council without prior written approval from the Tenant and/or Owner such approval to be in the form of an Allocation Agreement.

SCHEDULE 3

Monitoring

Illustrative Capacity Monitoring Report

[illegible]

SCHEDULE 4

Draft Planning Permission

Mr Adrian Lynham
WYG
The Pavilion
1st Floor
Botleigh Grange Office Campus
Hedge End
SO30 2AF
United Kingdom

DATE TO BE ADDED

TOWN AND COUNTRY PLANNING ACT 1990
Town and Country Planning (Development Management Procedure) (England) Order 2015

Application No: SDNP/20/01263/FUL

Proposal: Works to re-grade the land to create new habitat to facilitate the removal of nitrates from Whitewool Stream and deliver net biodiversity enhancements.

Site Address: Whitewool Farm , Whitewool Lane, East Meon, Petersfield, GU32 1HW

GRANT OF PLANNING PERMISSION

In pursuance of its powers under the above mentioned Act, the South Downs National Park Authority as the Local Planning Authority hereby **GRANTS** Planning Permission for the above development in accordance with the plans and particulars submitted with your application received on 9th April 2020.

This permission is subject to the following conditions:-

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with the provisions of Section 91 (1) of the Town and Country Planning Act 1990 (as amended) and Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2 The development hereby permitted shall be carried out in accordance with the plans listed below under the heading "Plans Referred to in Consideration of this Application".

Reason: For the avoidance of doubt and in the interests of proper planning.

- 3 No development shall commence until a detailed Scheme of Landscape Works has been submitted to and approved in writing by the Local Planning Authority. These details shall include:

- a. Written specifications of planting methods (including cultivation and other operations associated with tree, plant and grass establishment, tree pits and guying methods);
- b. Schedules of trees and plants, noting species, planting sizes and proposed numbers/densities where appropriate;
- c. Retained areas of trees and hedgerows;
- d. Manner and treatment of the watercourse and its banks;
- e. Details of the circular footpath including materials, design and appearance (including edging) and the crossing at the northern end of the wetland;
- f. A landscape schedule for a minimum period of 5 years including details of the arrangements for its implementation;
- g. A timetable for implementation of the landscaping works.

The scheme of Landscaping Works shall be implemented in accordance with the approved timetable. Any plant which dies, becomes diseased or is removed within the first five years of planting, shall be replaced with another of similar type and size, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To achieve an appropriate landscaping scheme to integrate the development into the landscape and provide a setting for the new development.

- 4 No development shall commence take until a site-wide detailed Landscape and Ecological Management Plan (LEMP) is submitted to and approved in writing by the Local Planning Authority. The LEMP shall include, but not necessarily be restricted to, details of long term objectives and management responsibilities and regime of the landscape scheme; measures to enhance ecology through the provision of landscape species. The measures shall thereafter be implemented in accordance with the approved details.

Reason: To conserve and enhance flora and fauna.

- 5 No development shall commence until a scheme detailing measures for the protection of Brown Trout (a protected species under the Salmon and Freshwater Fisheries Act 1975) and Eel (a protected species under the Eel Regulations 2009) has been submitted to, and approved in writing by, the Local Planning Authority. The scheme shall include the following elements:
 - o A plan to show how both species are to be removed from the proposed development site together with details of a release site.
 - o A strategy for how fish species will be prevented from re-entering the entire development site for the duration of the works.

The scheme must consider the whole duration of the development, from the construction phase through to completion and operation of the development. Any change to operational responsibilities, including management, shall be submitted to, and approved in writing by, the Local Planning Authority. The scheme shall be carried out in accordance with a timetable for implementation as approved.

Reason: Brown Trout and Eel are protected species under the Salmon and Freshwater Fisheries Act 1975 and the Eel Regulations 2009, and are believed to be present at the site.

- 6 No development shall commence until a detailed Construction Environmental Management Plan has been submitted to, and approved in writing by, the Local Planning Authority. The approved Plan shall be adhered to throughout the construction period. The Plan shall provide for:
 - i. An indicative programme for carrying out of the works;
 - ii. Method Statement for the demolition and construction work;
 - iii. Chemical and/or fuel run-off from construction into the watercourse;
 - iv. Measures to minimise the noise (including vibration) generated by the construction

- process, the selection of plant and machinery;
- v. Means of limiting sediment released into the watercourse during construction to limit impacts downstream.
- vi. Measures to safeguard the existing ecology of the site including any protected species;
- vii. Details of any floodlighting, including location, height, type and direction of light sources and intensity of illumination;
- viii. The parking of vehicles of site operatives and visitors;
- ix. Loading and unloading of plant and materials;
- x. Storage of plant and materials used in constructing the development;
- xi. The erection and maintenance of security hoarding, where appropriate;
- xii. Wheel washing facilities;
- xiii. Measures to control the emission of dust and dirt during construction;
- xiv. A scheme for re-using/disposing of waste, including spoil elsewhere;
- xv. Provision for storage, collection and disposal of rubbish;
- xvi. Working hours.

Reason: In the interests of highway safety and the amenities of the area.

- 7 The development shall not commence until further detailed site levels, including longitudinal and latitudinal sections through the site, of the proposals have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved details.

Reason: To ensure a satisfactory development which responds to the characteristics of the landscape and creates an appropriate environment for the new habitats to establish and an appropriate flow of water through the site.

- 8 The proposals shall include the provision of an interpretation board along the circular footpath within the site. Its siting, scale and design shall be agreed by the Local Planning Authority before it is erected. It shall be erected in accordance with the agreed details and maintained thereafter.

Reason: To promote the understanding and enjoyment of the scheme to visitors.

- 9 Prior to the approved ground works commencing, an updated ecological survey of the application site for the presence of specifically badgers, water vole, otter and reptiles shall be undertaken. The findings of the survey work and any additional mitigation measures proposed for during construction shall subsequently be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be undertaken in full accordance with any approved mitigation measures.

Reason: To identify and ensure the survival and protection of important species and those protected by legislation that could be adversely affected by the development.

INFORMATIVE NOTES

These are advice notes to the applicant and are not part of the planning conditions:

1. Crime and Disorder Implications

It is considered that the proposal does not raise any crime and disorder implications.

2. Human Rights Implications

This planning application has been considered in light of statute and case law and any interference with an individual's human rights is considered to be proportionate to the aims sought to be realised.

3. Equality Act 2010

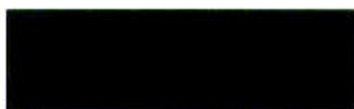
Due regard has been taken of the South Downs National Park Authority's equality duty as contained within the Equality Act 2010.

Plans Referred to in Consideration of this Application

The application has been assessed and recommendation is made on the basis of the following plans and documents submitted:

Plan Type	Reference	Version	Date on Plan	Status
Plans - Location Plan	SITE LOCATION PLAN	APPLICATION BOUNDARY/0 1	20.03.2020	Approved
Plans -	SITE SURVEY	SUR-01	20.03.2020	Approved
Plans -	5R-2224-101	PLAN AND CROSS SECTION	19.06.2020	Approved
Plans -	A115857	V6 – LANDSCAPE PROPOSALS	19.06.2020	Approved
Reports -	PLANNING STATEMENT AMENDMENTS	1299010 - VERSION 3	19.06.2020	Approved
Reports -	'LETTER REPORT'- A115857	A115857- VERSION 2	19.06.2020	Approved
Reports -	ECOSYSTEMS SERVICES STATEMENT	A115857- VERSION 1	19.06.2020	Approved
Reports -	FLOOD RISK ASSESSMENT	2224- VERSION 1	19.06.2020	Approved
Reports -	METHOD STATEMENT	FR22 -1A	19.06.2020	Approved

Reasons: For the avoidance of doubt and in the interests of proper planning.



TIM SLANEY

Director of Planning
South Downs National Park Authority

SCHEDULE 5

Draft Landscape and Ecological Management Plan

Landscape and Ecology Management Plan



Site:	Whitewool Farm
Client:	H N Butler Farms
Job Number:	A115857
File Location:	I:\Projects\Projects A115000 on\A115857 Butler Farm\REPORTS\

Introduction

This Landscape and Ecology Management Strategy (LEMP) has been prepared for H N Butler Farms to inform the on-going landscape and ecological management and maintenance operations for the proposed wetland and habitat creation at Whitewool Farm.

This LEMP describes the range of proposed landscape and biodiversity planting and post construction aftercare to safeguard specific landscape features, habitats and species to discharge Condition 4 of the planning consent (SDNP/20/01263/FUL) which states:

No development shall commence take until a site-wide detailed Landscape and Ecological Management Plan (LEMP) is submitted to and approved in writing by the Local Planning Authority. The LEMP shall include, but not necessarily be restricted to, details of long term objectives and management responsibilities and regime of the landscape scheme; measures to enhance ecology through the provision of landscape species. The measures shall thereafter be implemented in accordance with the approved details.

Reason: To conserve and enhance flora and fauna.

1.1 Site Location

The site is located at Whitewool Farm, East Meon off the South Downs Way, centred at Ordnance Survey National Grid reference: SU 6520521702 and is shown in Figure 1. The site is bounded by agricultural fields on the northern, eastern and western boundary. Meon Springs fishing resort is located south of the site which consists of a series of lakes supplied by the Whitewool Stream that flows through the site along its western edge. The site is shown in Figure 2 and comprises of arable land, dense scrub, tall ruderal, scattered trees, line of trees, semi-improved neutral grassland, improved grassland, earth bank and the Whitewool Stream.

1.2 Development Proposals

The proposed development comprises the creation of a 2 ha wetland alongside the Whitewool Stream to remove nitrogen from the stream before it joins the River Meon. The proposals (see Appendix B) also include significant landscaping and habitat creation including an 8m riparian buffer (approximately 0.3 ha) to the west and a large area of riparian meadow and wet woodland to the east (approximately 1.8 ha). Arisings from the construction of the wetland will be used to recontour part of the arable field to the east where the wet woodland will be located. As per the wetland

Landscape and Ecology Management Plan



assessment (WYG, 2020¹) it has been predicted that the proposed wetland will achieve a reduction in nitrogen outputs from the site of at least 4000 kg/yr.

1.3 Vision, Aims and Objectives

The vision for the project is to successfully restore the landscape character of the site from the existing improved agricultural setting to that of a natural chalk valley system, incorporating wetland, riparian grassland and woodland habitats. This will provide biodiversity gains through habitat creation and improved connectivity along the stream corridor. It will also provide ecosystem services through improved water quality, climate change resilience (through carbon storage in woodland and other vegetation) and flood risk management. As part of this vision, it is intended that on-going management is low-intensity, with habitats left to establish and mature naturally wherever possible.

The LEMP will provide a programme of landscape and ecological management, enhancements and future monitoring. This will provide details of the on-going landscape management and maintenance operations for the development which will secure the integrity of the landscape and habitat creation and wetland function. This will deliver the following objectives:

- The successful establishment of the planting design using best horticultural practices to maintain healthy growth and habitat condition;
- Creation of wetland habitat to reduce nitrogen outputs to the River Meon and the Solent;
- Maintenance of created habitats in perpetuity.

The nitrogen removal aim of the project is to lower the total nitrogen level in Whitewool Stream by more than 2000 kg/TN/yr. This will be monitored as outlined in the Water Sampling and Recording document.

Monitoring these objectives, and therefore progress towards achieving the vision, will comprise three elements:

- Habitat condition monitoring;
- Water quality monitoring;
- Ecological (species) monitoring.

These three elements will demonstrate whether the objectives and vision are being achieved and therefore monitoring against further landscape or ecosystems services criteria are not considered necessary.

This strategy document is intended to cover the first five years of the site's establishment. Following this, an update to the plan will be required to detail the next phase of on-going management, informed by site monitoring.

It should be noted that as the establishment of the new planting progresses, the operation and management may need to be altered from that included within this document to better suit a maturing landscape.

¹ WYG. (2020). Whitewool Farm Wetland Letter Report.

Landscape and Ecology Management Plan



Site Baseline

1.4 Stream Flow

Based on historical data from the East and West Meon gauging stations (1987-2020) annual flow has been recorded at 1,027,073 m³/yr as illustrated in the below table, with a low flow period between July and November.

Table 3.2: Flow through Whitewool Stream based on historical data from the East Meon and West Meon Gauging Stations (1987 – 2020)

Month	Average Flow (m ³ /s)		Contribution from East Meon (%)	Contribution from Whitewool Stream* (%)	Flow Through Whitewool Stream (m ³ /s)	Flow Through Whitewool Stream (m ³ /day)
	West Meon	East Meon				
January	0.3938	0.2539	64.47	17.76	0.0700	6,044
February	0.4732	0.1925	40.68	29.66	0.1403	12,126
March	0.2674	0.145	54.23	22.88	0.0612	5,286
April	0.1885	0.1125	59.68	20.16	0.0380	3283
May	0.1076	0.0647	60.13	19.93	0.0215	1853
June	0.0663	0.0447	67.47	16.29	0.0108	933
July	0.0433	0.0304	70.19	14.90	0.0065	558
August	0.0286	0.0245	85.66	7.17	0.0021	177
September	0.0193	0.0183	94.82	2.59	0.0005	43
October	0.0571	0.0729	127.67**	0	0	0
November	0.1455	0.1603	110.17**	0	0	0
December	0.2565	0.1761	68.66	15.67	0.0402	3,472
Average 1*	-	-	72.16	13.92	0.0326	2,815
Average 2*	0.1833	0.1063	57.98	21.01	0.0385	3,328

*based on our assumption that 50% of the residual flow post West Meon GS comes from the study site (T-4) and the remaining 50% comes from tributary T-3.

1.5 Nitrogen Concentration

The results from the Nitrate Removal Monitoring Report record an average TN concentration in Whitewool Stream of 10.8 mg/l.

To calculate the baseline nitrogen within Whitewool Stream, the flow rate is converted from m³/s to l/yr.

$$0.0326 \times 3.184 \times 10^{10} = 1028073600 \text{ l/yr.}$$

The flow rate is multiplied by the TN concentration

$$1028073600 \times 10.8 = 11103194880 \text{ mg/yr.}$$

Converted to kilograms this gives an annual amount of nitrogen within Whitewool Stream:

Landscape and Ecology Management Plan



11103194880 / 1000000 = 11103 Kg/yr TN.

1.6 Habitat

The site is bounded by agricultural fields on the northern, eastern and western boundary. The site comprises of arable land, with grassland field boundaries/tracks. To the South of the site is dense scrub, a line of trees, semi-improved neutral grassland and an earth bank. Beyond that is Meon Springs Fly Fishery consisting of a series of lakes supplied by the Whitewool Stream that flows through the site along its western edge.

To the North of the site, Whitewool Stream flows through a number of arable and grassland fields until it reaches the main river at West Meon. In this section it is mainly wooded along the banks.

Ecological surveys carried out between 2019 and 2020 in support of the application found no evidence of, and negligible potential for protected species within the site boundary. There is suitability, in particular for otter and water vole, upstream and downstream although no evidence was recorded (only habitats upstream could be accessed).

Preliminary Principles

This document should be read in conjunction with the supporting landscape plans and appended to this report and the approved detailed planting plans.

Landscape maintenance will ultimately be the responsibility of the owner (HN Butler Farms), but may be undertaken by an appointed agent.

The maintenance of trees, shrubs and other plants after the date of practical completion will be carried out by the Contractor until the responsibility is transferred to the persons responsible for future management (owner).

Any tree and plant showing the following attributes must be replaced within a period of 5 years from the date of completion unless stated elsewhere within this document. These include those plants that:

- Dead, diseased or dying
- Are missing or not in accordance with the specification
- Lack any vigour

Replacements must be carried out immediately, or in the next planting season, by the contractor at his own cost.

Any additional topsoil applied to the planting should be quality loam to BS 3882.

All loss or damage arising from theft or malicious damage prior through the contract shall be made good by the Contractor at his own expense.

Inspection checks shall be carried out a minimum of 6-monthly during establishment, or as required, by a competent person, acting for the local authority and/or owner. Six-monthly to annual checks may also be carried out by the Local Authority.

Landscape and Ecology Management Plan



No existing trees, shrubs or other plants shall be removed or cut without specific instructions from the Contract Administrator. Existing trees are to be retained, protected and undisturbed throughout the contract.

Habitat Creation

Wet Woodland

Planting will be undertaken during the dormant season, which is November to February when bare-root plants are available from the nurseries. The proposal will include a shrub outer edge and an inner core with trees and shrubs. The shrub outer edge will be 3.5m wide.

The proposed planting will benefit from a three to five-year establishment period to encourage healthy plant development. A minimum of 2 no. annual maintenance visits should be undertaken, during mid spring and mid-summer to re-firm all planted material, adjust stakes/shelters as required, and to remove weeds at the base of each tree (no herbicides to be used). During this period, appropriate maintenance and / or replacement planting will be carried out. At the end of this period the plants will have grown to a reasonable size and only periodic maintenance would be required thereafter.

Plants will be specified as bare-root stock and will of local provenance would be specified in accordance with the HTA National Plant Specification: 1997 and of suitable native species of local provenance.

Tree species are to be protected with 1.2m high shelter guard (secured to a well-driven softwood stake) and the shrub species planted with 0.75m spirals for protection from mammal damage.

Feathered trees will be planted into an excavated pit. All native feathered trees shall be pit planted randomly throughout the proposed planting area within the 'inner core'. Each tree to be secured with an adjustable tree-tie to a well-driven softwood stake support, which is angled to suit the prevailing wind direction. All tree species will be planted with 1.2m high shelter guards for protection from mammal damage.

Mulch mats to be used, if necessary, during the initial planting works, with hand-weeding.

Maintenance commitments for the proposed feathered trees will be minimal after the initial establishment period although the following will need to be undertaken:

- selective pruning to improve health, tree form and longevity;
- selective thinning in the long term to allow space for the trees to develop; and
- pest and disease control.

The following annual maintenance programme is suggested to ensure the maintenance work is carried out at the most beneficial time. For all seasons, the following will need to be undertaken:

- Inspections, including adjusting tree stakes and ties when necessary and after strong winds;
- Watering - water when necessary and through periods of drought to ensure the
- planting / grass areas continue to thrive; and

Landscape and Ecology Management Plan



- Pest and disease control.

Riparian Buffer / Water Meadow

The riparian buffer will be planted with a suitable river plain / water meadow seed mix containing native species of local provenance. This will comprise 95% fine grasses and 5% wildflower seed. Seed will be sown at the appropriate time of year when the ground temperature will be high enough for germination i.e. between April and October.

The riparian margin will be managed through cutting, with no use of artificial fertilisers or herbicides. This will include an autumn cut after the herbs and grasses have seeded. A carefully controlled cut, i.e. using light machinery and cutting the sward to no less than 300mm, will not harm wildlife and will benefit by maintaining the grassland in an open condition and preventing scrub encroachment. Additionally, cutting a rotational basis i.e. leaving selected areas uncut for an entire season, should assist in providing structural diversity to the sward, and provide suitable basking, foraging and refuge areas for reptiles, as well as enhancing its invertebrate diversity.

Wetland

The establishment of the wetland will take place over a 4-year period with 0.5 ha planted per year. After the first year, supplemental planting will take place if required to supplement the natural spread of the initial planting. Prior to wetland planting, a wet grassland seed mix will be established to provide stabilisation of the wetland base. Tall emergent plants will be then be planted within the wetland. Reeds provide an oxygenating function which maintains water quality as well as benefiting the aquatic ecology. They also provide the key function of the proposed wetland by facilitating removal of nitrogen. Suitable emergent vegetation plants will include:

- Common reed *Phragmites australis* – planted as root trainers, 1l pots or rhizome clumps at 3 to 5 per m²;
- Lesser pond sedge *Carex acutiformis* – planted as 9cm or 1l pots at 3 per m²;
- Hard rush *Juncus inflexus* – planted as 9cm or 1l pots at 3 per m²;
- Reed canary grass *Phalaris arundinacea* – planted as 9cm or 1l pots at 3 per m²;
- Tufted hair grass *Deschampsia cespitosa* – planted as 9cm or 1l pots at 3 per m².
- Hemp agrimony *Eupatorium cannabinum* – 9cm, 1 litre or 2 litre pots.

If required during establishment, supplementary watering will take place.

Wetland maintenance will be carried out to control the accumulation of litter, to prevent succession and maintain water quality. Removal of rubbish will also be undertaken. Management of the pond habitat will occur during late summer during lower flow conditions for access via mechanical cutting. Cutting will take place every five years with arisings removed. During each cutting phase, a maximum of 1/3 of the total area will be managed to create habitat variation.

Monitoring of the wetland by a suitably qualified hydrologist and ecologist will inform the management required for the wetland areas.

Landscape and Ecology Management Plan



Habitat Condition Targets

Wet Woodland

It is acknowledged that woodland in particular requires a long period of establishment, and will take more than 30 years to reach full maturity. The following sets out the target condition criteria for the woodland habitat once mature, monitoring prior to this should review progress towards these targets where appropriate (for example presence of dead wood). The woodland is expected to achieve all criteria after Year 30.

1. The woodland should have complete canopy cover. *During the establishment phase, native tree species should be present across 80% of the woodland area.*
2. Native species should be dominant (less than 5% cover of non-native species).
3. There should be a diverse age and height structure of trees. *This criterion should apply from Year 30.*
4. Trees should be free from damage by stock or wild animals (in the past 5 years) with less than 20% of vegetation browsed.
5. There should be evidence of successful regeneration (such as seedlings or saplings). *This criterion should apply from Year 30.*
6. There should be standing or fallen dead wood of over 20cm diameter. *During establishment this should take the form of log piles using material from the wider farm.*
7. There should be no evidence of drainage or channels to manipulate water flow within the woodland.
8. There should be no evidence of inappropriate management (e.g. soil compaction, vehicle access, materials storage).
9. There should be no evidence of nutrient enrichment.
10. There should be more than three native tree and three shrub species within an average 10m radius.

Riparian Buffer / Water Meadow

The following sets out the target condition criteria for the riparian buffer / water meadow once mature, monitoring prior to this should review progress towards these targets where appropriate. The riparian buffer / water meadow is expected to achieve all criteria after Year 15.

1. The vegetation should exhibit greater than 30% cover of wildflowers, rushes and sedges (i.e. *Juncus* and *Carex* species).
2. There should be less than 5% cover of undesirable species (creeping, marsh and spear thistles, broad-leaved and curled docks, common nettle, creeping buttercup, white clover, cow parsley, common ragwort and marsh ragwort).
3. There should be less than 10% cover of bare ground.
4. There should be less than 5% cover of bracken, scrub or bramble.
5. There should be no evidence of damage from excessive poaching, machinery use or storage.

Landscape and Ecology Management Plan



Wetland

The following sets out the target condition criteria for the wetland once mature, monitoring prior to this should review progress towards these targets where appropriate. The wetland is expected to achieve all criteria after Year 15.

1. There should be no evidence of artificial drainage.
2. Cover of undesirable species (see above) should be less than 10%.
3. Cover of scrub should be less than 5%.
4. Cover of bare ground should be less than 10%.
5. No more than 25% of the wetland area should have continuous cover of litter.
6. Reedbed vegetation should include at least 60% common reed.
7. There should be no evidence of channel scouring or bank destabilisation.
8. There should be no evidence of poor water quality (such as opacity caused by suspended sediment, or green tinges or algal mats caused by eutrophication).

Access Management

As part of the project, it is proposed that an informal path is established around the wetland area, for use by farm visitors such as school trips. This is not intended to be surfaced and will comprise a grass path around the site boundary. This should be maintained by natural erosion by foot traffic, however this should be supplemented by mechanical cutting as required during summer to make sure the path is clear, and to prevent visitors from creating new desire lines.

An education board will be created at the southern extent of the site, adjacent to the informal path. This will provide a map clearly showing the informal path, an overview of the project vision, the habitats and species supported and the ecosystems services benefits of the project.

Schedule of Activities

Item	Activities	Frequency
Wet Woodland		
Establishment	Inspect newly planted trees to ensure healthy development, carry out necessary arboricultural works as necessary.	Twice a year Spring and Autumn for first 3 years.
Watering	During establishment.	As required
Annual Maintenance	Check tree ties, stakes, irrigation pipes and adjust as required. Stakes: replace loose, broken or decayed stakes. Ties: Adjust, re-fix and replace loose or defective ties allowing	Twice a year March and August.

Landscape and Ecology Management Plan



	for growth and to prevent chafing. Where chafing has occurred, reposition or replace ties to prevent further chafing.	
Replacement planting	Inspect short lived wood stemmed shrub species and carry replacement planting to maintain healthy stock and appearance.	As required straight away or during the next planting season.
Annual Maintenance year 4 onwards	Remove tree ties, stakes and guys, make good stake holes on adequately established trees.	Once in August.
Thinning	Thinning of immature trees by hand to provide space for growth and promote ground flora.	Once in January or February, Year 5.
Riparian Buffer		
Watering	During establishment / germination of seed / wildflower mixtures	As required
Cutting	Cutting needed to provide diverse, scrub free marginal areas. First year cut: Annual weed growth to be cut back to encourage perennial ground coverage	Once during March
	Subsequent cuts: Work in 2/3 years' rotation, work on one bank each year.	Between September / November.
Wetland		
Watering	During establishment of plug plants. During periods of prolonged dry weather.	As required.
Debris and Litter	Keep habitats clear of litter and debris.	Once per month.
Cutting	Management of wetland vegetation will comprise mechanical cutting of	Every 5 years in July / August.

Landscape and Ecology Management Plan



	vegetation. Cutting will take place every 5 years with a maximum of 1/3 of the total area cut on each occasion. Arisings to be removed and composted within the farm.	
Plant replacements	Remove dead plants and replace within the next planting season, or as soon as practical.	As required.
Water perimeter	Inspect the water perimeter to ensure that the wetland remains constrained to area. Shore up the banks if necessary.	Annually during the low flow period.
Assessment	Inspection by ecologist to ascertain the establishment of the habitat creation. Make recommendations as necessary to address any health problems or necessary remedial works. Hydrologist to check wetland areas periodically to ensure functioning requirements are being achieved. Make recommendations as necessary.	Once a year.
Access Management		
Maintain informal path	Manual mow/cut of grass path to 50mm height.	As required between March and October annually.
Maintain education board	Clean to make sure information is legible. Carry out any repairs necessary (or replace).	As required

Landscape and Ecology Management Plan



Monitoring and Review

Ecology and Landscape

During the construction period a suitably qualified Ecologist, as Ecological Clerk of Works appointed by the developer, will monitor the success of the scheme implementation and ongoing maintenance of the works during the implementation period (to Year 5). This will secure compliance and appropriate development of the scheme and remedial action is taken with regard to plant replacements and habitat creation.

Monitoring will primarily be against progress towards the Habitat Condition Targets set out above and will comprise at a minimum visits in the summer and winter seasons, with additional visits as required (to supervise implementation works depending on activities undertaken). Prior to the first monitoring visit, a pro-forma reporting template will be produced setting out the Habitat Condition Targets to be checked on each visit. Where a target is based on cover (e.g. % cover of bare ground), this should be based on a representative sample of quadrats. This should comprise five 20m x 20m quadrats for woodland ten 1m x 1m quadrats for water meadow (this is smaller than the typical size for woodland quadrats but takes into account the small area compared to most woodlands). Wetland criteria will be estimated from a visual survey undertaken along the entire perimeter to account for the safety implications of working near water.

In addition to the condition targets, monitoring will include a visual survey for presence (such as basking reptiles) or evidence of fauna such as tracks, droppings, feeding remains. This will include (but not be limited to) reptiles, bats (potential roosts), water voles, otters and badgers,

Close monitoring of the environmental indicators, watering requirements and species identification will provide a clearer view of the actual performance of the landscape planting and will form a closer indicator of possible changes in management focus to respond to climate change.

If ecological and landscape indicators are not being met remediation actions will be taken as outlined in the schedule of activities table above.

Nitrogen

Flow rates of the stream will be recorded by H.N. Butler Farms Ltd., who will install and maintain a continuous flow monitor of the stream, with a device such as an Isco 2150 area velocity flow meter.

Water samples will be collected by H.N. Butler Farms Ltd. and sent off for analysis to an environmental quality laboratory, such as NRM, to measure total nitrogen.

Information will be submitted to SDNPA annually for Years 1 – 10, followed by bi-annually from Year 11, in line with the SDNPA monitoring programme.

SDNPA also have the right to collect water samples and check flow data to verify the information.

If the TN levels do not fall by 2000 kg/TN/yr following establishment, further measures will be taken to reduce the levels, which could include:

- Remediation of habitat and water flow within the wetland.

Landscape and Ecology Management Plan



- Addition of flora, such as reeds, upstream of the wetland to remove TN before it gets to the wetland.
- Construction of swales and sediment traps to reduce run-off nitrates getting into the stream.
- Adaptation of agricultural practices to reduce TN entering the system.
- Removal of land from agricultural production.

Review

The management objectives and maintenance prescriptions should be reviewed regularly and any refinements incorporated into an updated management plan for on-going medium and long-term management.

Methods and techniques identified in these documents will be updated where relevant to respond to updated best practices in landscape and ecological management.

The results of all any monitoring surveys/reports will feed back into the general management of the site, and management strategies will be altered where necessary to ensure the long-term objectives for the landscape and ecological planting is achieved. The results of monitoring will be reported back to the owner and SDNPA on an annual basis.

The first review period will take place following the completion of the implementation phase – Year 5. An update to the LEMP will be produced and agreed with SDNPA, including the date of the next review.

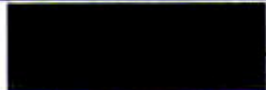
SDNPA Monitoring

Monitoring of the project in the long-term will be undertaken by SDNPA. This should comprise monitoring against Habitat Condition Targets and review of flow and nitrogen concentration data. This will take place on the following programme:

- Years 1-5: 2 monitoring visits per year;
- Years 6-10: 1 monitoring visit per year; and
- Years 11+: 1 monitoring visit every 2 years.

Landscape and Ecology Management Plan



Quality Control		
Version:	1	FINAL
Prepared by:		Emma Taylor Consultant Ecologist
Checked and Verified By:		David West CEnv MCIEEM Associate Ecologist

Version:	Date:	Updated by:	Verified by:	Description of changes:
2	Jan 20	DW	DW	Added additional information on monitoring and targets.

WYG Environment Planning Transport Ltd. accept no responsibility or liability for the use which is made of this document other than by the Client for the purpose for which it was originally commissioned and prepared.

SCHEDULE 6

Draft Allocation Agreement

DATED

2021

(1) WILLIAM NORTHCROFT BUTLER and JAMES NICHOLAS BUTLER

(2) H N BUTLER FARMS LIMITED

(3) [Name]

DEED OF ALLOCATION OF NITRATE OFFSETTING SCHEME

At

Whitewool Farm, East Meon, Petersfield, Hampshire GU32 1HW

IN COUNTERPART

SH ∞ SMITHS

Shoosmiths LLP
Forum 5
The Forum
Parkway
Whiteley
Fareham
PO15 7PA
Tel: 03700 866800
Fax: 03700 866801
Ref. GEM/M-00914088

THIS DEED is made the day of Two thousand and Twenty One

BETWEEN

- (1) **WILLIAM NORTHCROFT BUTLER** of The Cart House East Meon, Petersfield GU32 1HW and **JAMES NICHOLAS BUTLER** of Whitewool Farm, East Meon, Petersfield GU32 1HW (the "Owner"); and
- (2) **H N BUTLER FARMS LIMITED** (Company registration number: 00554785) of Whitewool Farm, East Meon, Petersfield, Hampshire, GU32 1HW (the "Tenant"); and
- (3) **[DEVELOPER NAME]** (Company registration number: XXX) of XXXXX(the "Developer");

together **the Parties**

WHEREAS:

- (A) The Owner owns the freehold interest in the Site and is registered as proprietor with Title Absolute at the Land Registry free from encumbrances other than those matters contained or referred to in the Property and Charges Register of Title Number SH21605 at the date of this Deed.
- (B) The Tenant occupies the Site under the terms of a lease dated 4 April 2014 made between (1) Nicholas Northcroft Butler and Christine June Butler as Trustees of the G M Butler 'N' Settlement and (2) H N Butler Farms Limited.
- (C) High levels of nitrogen from housing and agricultural sources in the Solent have caused excessive growth of green algae (a process called eutrophication) having a detrimental impact upon protected habitats in the Solent.
- (D) The Site benefits from the Whitewool Planning Permission for habitat creation works to facilitate the removal of nitrates from the natural environment.
- (E) The Owner and the Tenant have entered into the Section 106 Agreement which secures the long term use of the Site for (inter alia) nitrate mitigation purposes and which facilitates the Allocation and ongoing monitoring of the Site in order to provide a nitrate offsetting solution for the benefit of offsite developments.
- (F) The Owner and the Tenant have agreed to Allocate a portion of Site to the Developer in order to mitigate the impact of the Development on nitrate levels in the Solent catchment in return for the Commuted Sum.

NOW THIS DEED WITNESSETH:

1. DEFINITIONS

- 1.1 The following words and phrases shall have unless the context otherwise requires bear the following meanings:

"Allocation" means the written confirmation from SDNPA on receipt of a Capacity Monitoring Report confirming i) that the Mitigation Land has been designated pursuant to this Deed for the purposes mitigating the impact of the Development on nitrate levels in the Solent catchment and ii) that the Mitigation Land provides a Capacity of not less than the Required Capacity and "Allocate" and "Allocated" shall be construed accordingly

"Application" means either:

- a) the application for planning permission submitted to [insert LA details] for the Development and allocated reference number xxxx; received and validated on xxx; and/or
- b) such other application as agreed in writing between the Developer and the Tenant and the Owner;

"Capacity" means an amount (expressed in kg/TN/yr) of nitrates to be removed from the Solent as a consequent of Nitrate Mitigation

"Capacity Monitoring Report" has the same meaning as in the Section 106 Agreement

"Commuted Sum" means a sum to be calculated by the following formula:

the Required Capacity

x

[insert sum]

less the Reserve Fee

"Development"

means the development for [insert description in accordance with Developer's application];

"Expiry Date"

the date that is xx months from the date of this Deed (or such alternative date as may be agreed by the parties in writing);

"Farmland"

the area of farmland within the area shown edged white on Plans 2 and 3 appended to this Deed or such other area to be dedicated by the Tenant and notified to the Developer;

"Implementation Date"

the date on which the Development commences by the carrying out of a material operation as specified in section 56(4) of the 1990 Act other than (for the purposes of this Deed and no other);

- a) site investigations or surveys;
- b) archaeological works;
- c) site decontamination;
- d) the demolition of any existing buildings or structures;
- e) excavation works;
- f) clearance or regrading;
- g) the erection of hoardings and fences;
- h) works connected with infilling;

i) works for the provision or diversion of drainage or mains services to prepare the Site for development; or

j) the construction of access and service roads;

and "Implementation" and "Implement" shall be construed accordingly;

"Landscape and Ecological Management Plan"

The landscape and ecological management plan agreed between South Downs National Park and the Tenant in the discharge of condition 4 of the Whitewool Farm Permission

"Lease"

the lease dated 4 April 2014 made between (1) Nicholas Northcroft Butler and Christine June Butler as Trustees of the G M Butler 'N' Settlement and (2) H N Butler Farms Limited

"Mitigation Land"

an area within the Site to be specified by reference to a plan and having a Capacity of not less than 83 kg/TN/yr which is to be dedicated towards mitigating the impact of the Development on nitrate levels in the Solent catchment and which (subject always to paragraph xx xx of this Deed) may comprise an area within the Wetland Area or the Farmland (at the Owner and the Tenant's discretion if relevant)

"Nitrate Mitigation"

mitigation measures to neutralise nitrates from the water to mitigate the effects of increased nitrate levels in the Solent caused by off-site developments in line with Natural England

	requirements at the date of the Section 106 Agreement;
"Nitrate Offsetting Engineering Works"	the works to be carried out pursuant to the Whitewool Farm Development,
"Occupation"	occupation of the Development for the purposes permitted by the Satisfactory Planning Permission but not occupation for the purposes of construction, fitting out or decoration for marketing or display purposes or in connection with security operations and "Occupy" and "Occupied" shall be construed accordingly,
"Plan 1"	a plan showing the Site shown edged blue and the Whitewool Farm Development shown edged red;
"Plans 2 and 3"	a plan showing the proposed area for the Farmland which may be amended by the Tenant at any time;
"Planning Agreement"	an agreement or undertaking with the relevant planning authority or any other competent authority made under a) section 106 of the Town and Country Planning Act 1990; b) section 111 of the Local Government Act 1972; c) sections 38,184 or 278 of the Highways Act 1980; d) section 33 of the Local Government (Miscellaneous Provisions) Act 1982, e) section 98, 104 or 106 of the Water Industry Act 1991, or



This is a detailed topographic map of the West Meon area in Hampshire, England. The map shows the West Meon river flowing through the landscape, with various settlements and landmarks labeled. Key features include West Meon, Drayton, East Meon, and several archaeological sites marked with red dots and labels like 'Long Barrow', 'Salt Hill', and 'Tegase Down'. The map also displays contour lines, roads, and a grid system. A compass rose is located in the bottom left corner.

Notes: Do not Scale

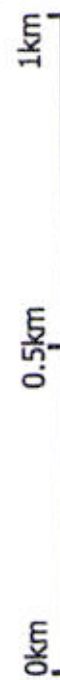
Checked: CM

1001

1501

Land owned by Applicant

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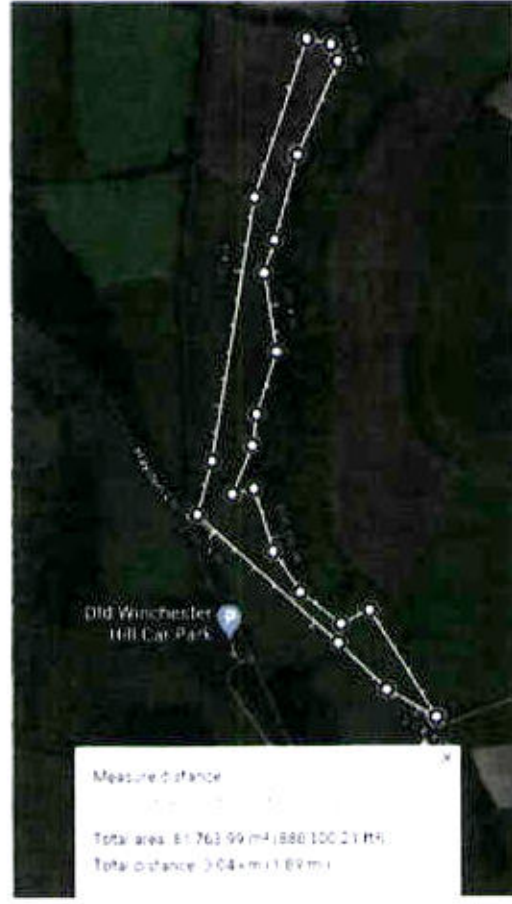
Plan 2

EHDC – 2.5ha in the below area, or another suitably agreed area at Whitewool Farm.



Plan 3

Winchester district – 2.5ha in the below area, or another suitably agreed area at Whitewool Farm.



- f) section 2 of the Local Government Act 2000;

"Planning Permission"

means the planning permission for the Development to be issued pursuant to the Application;

"Relevant Event"

means any of the following events:

- a) a change in the law; or
- b) a decision of a Court, tribunal, Secretary of State, or other decision maker with competence; or
- c) a change in Natural England's custom or practice; or
- d) a change in scientific opinion based on evidence, or
- e) a change in industry practices or in the generally accepted calculation methods for the type or extent of land required to achieve Nitrate Mitigation;

that is accepted in writing by both Natural England and/or the relevant local planning authority and results in any of the following.

- a) off-site nitrate mitigation not being required in relation to the Development; or
- b) Nitrate Mitigation not being required, or
- c) neither the Whitewool Farm Development nor taking the Farmland out of production being considered to be an effective form of Nitrate Mitigation, or
- d) neither the Whitewool Farm Development nor the Farmland

	being required for Nitrate Mitigation;
"Required Capacity"	means the Capacity (as notified in writing by the Developer to the Owner and the Tenant in accordance with clause 4.2) as being the amount necessary to provide Nitrate Mitigation to mitigate the impacts of the Development
"Reserve Fee"	the non-refundable sum of £xxx to be paid by the Developer to the Tenant;
"Satisfactory Planning Permission"	a Planning Permission which the Developer confirms in writing to the Tenant is a) acceptable and b) the Developer has the intention of implementing it;
"SDNPA"	means the South Downs National Park Authority acting in its capacity as local planning authority
"Section 106 Agreement"	an agreement dated XXX entered into pursuant to Section 106 of the Town and Country Planning Act 1990 between (1) South Downs National Park Authority (2) William Northcroft Butler and James Nicholas Butler and (3) H N Butler Farms Limited in connection with the Whitewool Farm Development in the form appended to this Deed at Appendix []
"Site"	Whitewool Farm, East Meon, Petersfield, Hampshire GU32 1HW and registered at the HM Land Registry at Title Number SH21605 and shown edged blue on Plan 1;
"Site Capacity"	means the total Capacity of the Site following the completion of the

	Whitewool Farm Development which is estimated to be 2,000 Kg/TN/yr
"Solent"	is the strait that separates the Isle of Wight from the mainland of England;
"Wetland Area"	part of Whitewool Farm, East Meon, Petersfield, Hampshire GU32 1HW as shown edged red on Plan 1 to be used as the creation of a Wetland Habitat pursuant to the Whitewool Farm Permission which will act as a Nitrate Mitigation scheme;
"Whitewool Farm Development"	the development authorised by the Whitewool Farm Permission
"Whitewool Farm Permission"	planning permission dated xxxx to develop a nitrate removal scheme from Whitewool Stream through ecological enhancement granted pursuant to the planning application with reference number SDNP/20/01263/FUL;
"Working Days"	any Monday, Tuesday, Wednesday, Thursday and Friday except bank or public holidays and except any day between 25 December and 02 January (inclusive) in each year;

2. INTERPRETATION

- 2.1 The clause headings in this Deed are for reference only and do not affect its construction or interpretation.
- 2.2 References to clauses and Schedules are to the clauses and Schedules of this Deed, unless stated otherwise.
- 2.3 A reference to a paragraph is to the paragraph of the Schedule in which the reference is made, unless stated otherwise.
- 2.4 Words importing one gender include any other genders and words importing the singular include the plural and vice versa.

- 2.5 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa.
- 2.6 Unless this Deed states otherwise, any reference to any legislation (whether specifically named or not) includes any modification, extension, amendment or re-enactment of that legislation for the time being in force and all instruments, orders, notices, regulations, directions, byelaws, permissions and plans for the time being made, issued or given under that legislation or deriving validity from it.
- 2.7 References to the Site include any part of it.
- 2.8 References to "including" means "including, without limitation".
- 2.9 Any covenant not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 2.10 Where two or more people form a party to this Deed, the obligations they undertake may be enforced against them all jointly or against each of them individually.
- 2.11 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Deed shall be unaffected.

3. COMMENCEMENT

- 3.1 This Deed will take effect on the date of this Deed.

4. OBLIGATIONS OF THE DEVELOPER

- 4.1 The Developer shall pay the Reserve Fee to the Tenant on the date of this Deed.
- 4.2 Within one month of the date of grant of the Planning Permission the Developer shall confirm in writing to the Tenant whether the Planning Permission is a Satisfactory Planning Permission and in the event the Planning Permission is a Satisfactory Planning Permission the Developer shall notify the Tenant of the amount of the Required Capacity the Satisfactory Planning Permission requires to provide Nitrate Mitigation.
- 4.3 The Developer shall pay the Tenant the Commuted Sum on or before the Implementation Date.
- 4.4 The Developer shall not implement until it has paid the Commuted Sum to the Tenant

5. OBLIGATIONS OF THE OWNER AND THE TENANT

- 5.1 Following receipt of the Reserve Fee the Owner and the Tenant covenant to reserve **xx** kg/TN/yr out of the total Site Capacity for the Developer until the earlier of:

- 5.1.1 the Expiry Date, and
 - 5.1.2 the date on which the entirety of the Required Capacity has been Allocated to the Developer
- 5.2 The Owner and Tenant covenant to Allocate the Mitigation Land in order to provide the Required Capacity of Nitrate Mitigation for the Development within 5 Working Days of receipt of the Commuted Sum.
- 5.3 For the avoidance of doubt, the minimum aggregate Capacity to be Allocated to the Developer by the Owner and Tenant shall not be less than the Required Capacity
- 5.4 Following receipt of the Commuted Sum the Owner and the Tenant thereafter covenant to maintain the Mitigation Land in accordance with the Landscape and Ecological Management Plan for the lifetime of the Development
- 5.5 In the event the Wetland Area becomes available for Nitrate Mitigation (and the Wetland Area shall not be considered to have become available until the Nitrate Offset Engineering Works have completed) after a portion of the Farmland has been Allocated but prior to first Occupation of the Development, the Owner and/or the Tenant may transfer the Allocation from the Farmland to the Wetland Area immediately and confirm in writing to the Developer the transfer has occurred.
- 5.6 If a Planning Agreement is required by the relevant local planning authority or any other competent authority as a pre-condition to the grant of Satisfactory Planning Permission the Tenant and/or the Owner shall, if required, enter into the Planning Agreement provided that:
 - 5.6.1 the terms of the Planning Agreement which relate to or seek to bind land which is within the Owner and the Tenant's ownership and or occupation are acceptable to the Owner and the Tenant (acting reasonably and having regard to the delivery of the Nitrate Mitigation scheme and the Allocation pursuant to this Deed),
 - 5.6.2 the Developer pays the Owner and the Tenant's (reasonable and properly incurred) legal fees in connection with the Planning Agreement ;
 - 5.6.3 any liabilities on the Owner or the Tenant under the Planning Agreement are conditional upon the implementation of the Planning Permission; and
 - 5.6.4 the Owner and/or or the Tenant will not be liable for a breach of a covenant contained in the Planning Agreement after the Owner and/or the Tenant has parted with all its interest in the Site 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.

- 5.7 The Owner and the Tenant each covenant to comply with their obligations (if any) under the Section 106 Agreement in so far as they relate to the Mitigation Land

6. VARIATION

- 6.1 In the event the relevant planning authority requests a variation to this Deed on reasonable terms in order to make the Whitewool Farm Permission or any Application acceptable in planning terms the Owner and the Tenant and the Developer shall (acting reasonably) consider such request and, if agreed, the Owner and the Tenant and the Developer shall as soon as reasonably practicable enter into a deed of variation to vary this Deed.

7. DETERMINATION OF THE LEASE

- 7.1 Should the Lease terminate or otherwise come to an end:

7.1.1 all obligations owed by the Developer to the Tenant under the terms of this Deed shall henceforth be owed by the Developer to the Owner; and

7.1.2 all obligations owed by the Owner and/or the Tenant to the Developer shall henceforth be owed solely by the Owner to the Developer

8. NOTICES

- 8.1 Any notice, consent, demand or any other communication served under this Deed will be effective only if in writing and delivered by hand or sent by first class post, pre-paid or recorded delivery.

- 8.2 Any notice, consent, demand or any other communication served shall be sent to the address of the relevant party set out at the beginning of this Deed or to such other address as one party may notify in writing to the others at any time as its address for service.

9. DETERMINATION OF DISPUTES

- 9.1 Subject to clause 9.7, if any dispute arises relating to or arising out of the terms of this Deed, either party may give to the other written notice requiring the dispute to be determined under this clause 9. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.

- 9.2 For the purposes of this clause 10 a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to developments in the nature of the Development and property in the same locality as the Site.

- 9.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of the Law Society who will have the power, with the right to take such further advice as he may require,

to determine the appropriate type of Specialist and to arrange his nomination under clause 9.4.

- 9.4 Any dispute over the identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the Developer and the Tenant cannot agree the identity of the organisation, then the Specialist is to be nominated by the President or next most senior available officer of the Law Society.

- 9.5 The Specialist is to act as an independent expert and:

9.5.1 each party may make written representations within ten (10) Working Days of his appointment and will copy the written representations to the other party;

9.5.2 each party is to have a further ten (10) Working Days to make written comments on the other's representations and will copy the written comments to the other party;

9.5.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require,

9.5.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross-examine each other,

9.5.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and

9.5.6 the Specialist is to use all reasonable endeavors to publish his decision within thirty (30) Working Days of his appointment

- 9.6 Responsibility for the costs of referring a dispute to a Specialist under this clause 9, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist

- 9.7 This clause 9 does not apply to disputes in relation to matters of law or the construction or interpretation of this Deed which will be subject to the jurisdiction of the courts.

10. **ASSIGNMENT**

10.1 At any time prior to the earlier of

10.1.1 the Expiry Date and

10.1.2 the date on which the Required Capacity has been Allocated

the Developer may with the Owner and the Tenant's approval assign the benefit of this Deed to a third party (such approval not to be unreasonably withheld or delayed)

10.2 Following the date on which the Required Capacity has been Allocated the Developer may with the Owner and the Tenant's prior written approval assign the benefit of the Allocation and/or this Deed to a third party (such approval not to be unreasonably withheld or delayed) PROVIDED ALWAYS that the Developer shall pay the Owner and the Tenant's reasonably legal costs incurred in connection with the amendment of any updated or revised Capacity Monitoring Report required by SDNPA.

11. TERMINATION OF THIS DEED

11.1 In the event that the Tenant has not received the Commuted Sum on or prior to the Expiry Date the Owner and the Tenant shall thereafter be released from its obligations in this Deed

11.2 If any part of the kg/TN/yr reserved for the Developer under clause 5.1 has been allocated to the Developer in accordance with clause 5.2 on or before the Expiry Date this Deed will come to an end and the obligations in this deed will immediately terminate on the earlier of

11.2.1 the end of the lifetime of the Development;

11.2.2 the occurrence of a Relevant Event

11.3 Without affecting any other right or remedy available to it, any party may terminate this Deed with immediate effect by giving notice to the other parties if a Relevant Event occurs.

11.4 Without affecting any other right or remedy available to it,

11.4.1 either the Tenant or the Owner may terminate this Deed with immediate effect by giving notice to the Developer if the Developer is in breach of any of its obligations in this Deed and has failed to rectify the breach within a reasonable time after receiving notice to rectify from the Tenant or the Owner; and

11.4.2 the Developer may terminate this Deed with immediate effect by giving notice to the Tenant and the Owner if the Tenant or the Owner is in breach of any of its obligations in this Deed and both the Tenant and the Owner failed to rectify the breach within a reasonable time after receiving notice to rectify from the Developer

11 5 If this Deed is terminated in accordance with the provisions of Clause 11 2 or Clause 11.3 or Clause 11.4 then:

11.5.1 the Tenant and the Owner may proceed to allocate the Required Capacity to a third party,

11 5 2 the Tenant and the Owner may use the Mitigation Land as they see fit in their absolute discretion, including resuming farming activities on the land;

11.5.3 Neither party shall have any further rights or obligations under this Deed save for:

11.5.3.1 the rights of either party in respect of any earlier breach of this Deed; and

11 5 3.2 the obligations in the clauses referred to in 12.6 4,

11.5.3.3 any sums paid to the Tenant or to the Owner by the Developer under the terms of this Deed shall not be refunded

11 6 Clause 9 shall continue in force notwithstanding the termination of this contract under clause 11.1 or clause 11.2.

12. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it provided that the exclusion of the said Act shall not prevent all or any future successors in title to any of the parties to this Deed from being able to benefit from or to enforce any of the provisions of this Deed.

13. **COUNTERPARTS**

This Deed may be executed in any number of counterparts each of which when executed and delivered shall constitute an original of this Deed but all the counterparts shall together constitute the same deed. No counterpart shall be effective until each party has executed at least one counterpart.

14. **JURISDICTION**

14 1 Subject to the provisions of clause 9 this Deed shall be governed by the laws of England and Wales and the Courts of England shall have sole jurisdiction in respect of the construction of this Deed and as to the respective rights and liabilities of the parties.

IN WITNESS WHEREOF the Parties hereto have executed this deed the day and year first before written

SIGNED AS A DEED by

WILLIAM NORTHCROFT BUTLER

.....

in the presence of.

.....

(Full name of witness)

.....

(Signature of witness)

.....

.....

.....

.....

Address

.....

Occupation

SIGNED AS A DEED by

JAMES NICHOLAS BUTLER

.....

in the presence of

.....

(Full name of witness)

.....

(Signature of witness)

.....

.....

.....

.....

Address

.....

Occupation

Executed as a DEED by)

H N BUTLER FARMS LIMITED)

in the presence of:-)

.....

(Full name of witness)

.....

(Signature of witness)

.....

.....

.....

.....

Address

.....

Occupation

Executed as a DEED by)

[DEVELOPER])

in the presence of:-)

.....

(Full name of witness)

.....

(Signature of witness)

.....

.....

.....

.....

Address

.....

Occupation

IN WITNESS WHEREOF the Parties hereto have executed this deed the day and year first before written

THE COMMON SEAL of SOUTH DOWNS
NATIONAL PARK AUTHORITY was hereto
affixed in the presence of:



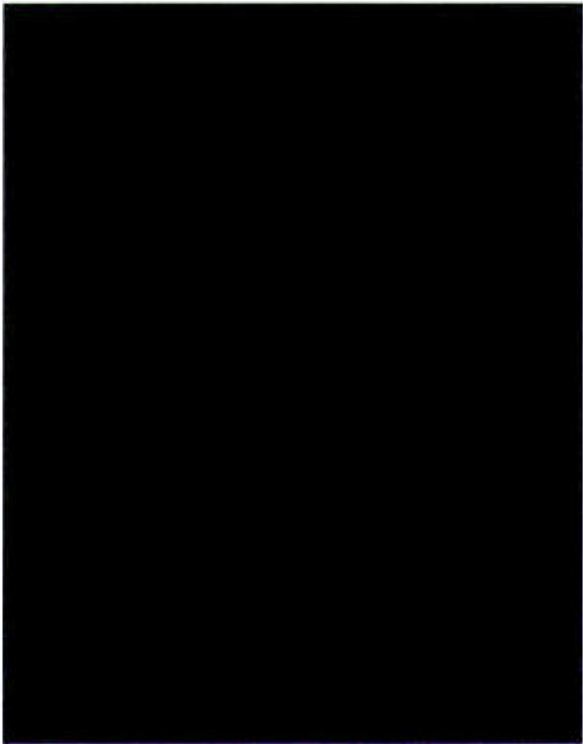
SIGNED AS A DEED by



WILLIAM NORTHCROFT BUTLER

9/21

Signature

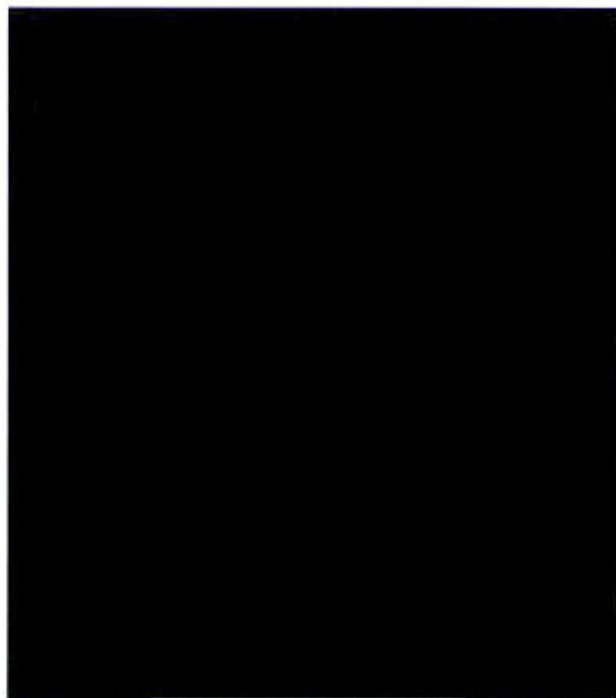


SIGNED AS A DEED by

JAMES NICHOLAS BUTLER

A black rectangular box redacting the signature of James Nicholas Butler.

Signature

A large black rectangular box redacting the main content of the deed.

SIGNED AS A DEED by

H N BUTLER FARMS LIMITED

Signature

Occupation

DATED 29TH APRIL 2021

(1) SOUTH DOWNS NATIONAL PARK AUTHORITY

(2) WILLIAM NORTHCROFT BUTLER AND JAMES NICHOLAS BUTLER

(3) H N BUTLER FARMS LIMITED

DEED OF VARIATION

Relating to a Section 106 Agreement dated 16 February 2021

Land at Whitewool Farm, East Meon, Petersfield, Hampshire GU32 1HW

SHOOSMITHS

Shoosmiths LLP
Forum 5
The Forum
Parkway
Whiteley
Fareham
PO15 7PA

Ref. M-00874165

THIS DEED is made on

2021

BETWEEN

- 1 **SOUTH DOWNS NATIONAL PARK AUTHORITY**, of South Downs Centre, North Street, Midhurst, West Sussex GU29 9DH (the **"Authority"**), and
- 2 **WILLIAM NORTHCROFT BUTLER** of The Cart House East Meon, Petersfield GU32 1HW and **JAMES NICHOLAS BUTLER** of Whitewool Farm, East Meon, Petersfield GU32 1HW (the **"Owner"**)
- 3 **H N BUTLER FARMS LIMITED**, a company incorporated in England and Wales (company number 00554785) whose registered office is at Whitewool Farm, East Meon, Petersfield GU32 1HW (the **"Tenant"**)

BACKGROUND

- (A) The Owner owns the freehold interest in the Site and is registered as proprietor with Title Absolute at the Land Registry free from encumbrances other than those matters contained or referred to in the Property and Charges Register of Title number SH21605 at the date of this Deed
- (B) The Tenant occupies the Site under the terms of a lease dated 4 April 2014 made between (1) Nicholas Northcroft Butler and Christine June Butler as Trustees of the G M Butler 'N' Settlement and (2) H N Butler Farms Limited
- (C) The Authority is the local planning authority for the purposes of the Act for the area in which the Site is situated
- (D) The Authority, the Owner and the Tenant entered into the Principal Deed on 16 February 2021 in connection with the Application for planning permission to carry out the Development of the Site
- (E) Planning Permission for the Development was granted on 17 February 2021
- (F) This Deed of Variation is supplemental to and varies the Principal Deed with the effect that the Principal Deed has immediate effect and is no longer conditional upon Commencement of the Development

The parties agree as follows

1 DEFINITIONS AND INTERPRETATION

- 1.1 Save where expressly stated otherwise, words and expressions used in this Deed of Variation including the Recitals shall have the same meaning as defined in the Principal Deed
- 1.2 Unless the context otherwise requires, references in this Deed of Variation to "the parties" shall mean the parties to this Deed of Variation
- 1.3 Where in this Deed of Variation the following defined terms are used they shall have the following meanings

"Principal Deed"

the Section 106 Agreement between (1) South Downs National Park Authority (2) William Northcroft Butler and

- 1 4 Where in this Deed of Variation reference is made to any clause, paragraph or Schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or Schedule or recital in this Deed of Variation
- 1 5 Words importing the singular meaning where the context so admits include the plural meaning and vice versa
- 1 6 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner
- 1 7 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise
- 1 8 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all Instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that act or deriving validity from it
- 1 9 References to any party to this Deed of Variation shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council (in its capacity as local planning authority) the successors to its respective statutory functions
- 1 10 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

2 VARIATION OF THE PRINCIPAL DEED

- 2 1 The parties agree that with effect from the date of this Deed of Variation the Principal Deed shall be modified in accordance with the further provisions of this Clause 2 and the parties covenant to observe and perform or cause to be observed and performed *their* obligations contained in the Principal Deed as amended by this Deed of Variation
- 2 2 In Clause 1 of the Principal Deed
- 2 2 1 the definition of "Commencement Date" shall be amended by the addition of the words ", Commencement" after "Commence",
- 2 2 2 a new definition of "Operational" shall be inserted with the meaning "in relation to the Development, that the Development is in existence and is functioning in accordance with the Landscape and Ecological Management Plan"
- 2 3 Clause 4 1 of the Principal Agreement shall be deleted and replaced as follows
- "4 1 *This Agreement will take effect immediately upon completion of this Agreement* "

2 4 Paragraph 3 2 of Schedule 1 to the Principal Deed shall be amended by the addition of the words "(Subject to Paragraph 5 6 of this Schedule)" at the beginning of the paragraph

2 5 New Paragraph 5 6 and 5 7 and 5 8 shall be inserted into Schedule 1 to the Principal Deed as follows

"5 6 *For avoidance of doubt, the Tenant and/or the Owner may enter into any one or more Allocation Agreements prior to Commencement of the Development and/or prior to the Development being Operational PROVIDED ALWAYS THAT in the event that such Allocation Agreement requires Nitrate Mitigation prior to Capacity being made available through the Development the Tenant and/or the Owner shall confirm in writing to the Authority for the Authority's written approval (which must include a signed plan and a Unilateral Undertaking pursuant to Section 106 of the Town and Country Planning Act 1990 where appropriate) the action they intend to take to ensure that such requirement for Nitrate Mitigation is met by taking land within the ownership of the Tenant and/or Owner out of agricultural use at a minimum rate of 36 2 kgTN/yr per hectare such rate to be subject to a proportionate and reasonable assessment at the relevant time based on current Natural England published guidance and any other material considerations until the earlier of*

5 6 1 *the expiry of the lifetime of all such off-site developments which have entered into Allocation Agreements and rely upon the Site for Nitrate Mitigation, or*

5 6 2 *Capacity being made available through the Development and being Allocated to all such off-site developments pursuant to paragraph 5 8,*

AND FOR THE AVOIDANCE OF DOUBT the aggregate Allocation of the Allocation Agreements shall not exceed the Capacity

5 7 *In the event that the provisions of Paragraph 5 6 apply, the Tenant and/or the Owner shall comply with the provisions of Clause 3 1 by submitting a copy of each Allocation Agreement entered into along with a Capacity Monitoring Report within twenty working days of*

5 7 1 *entering into the Allocation Agreement (in which case the Capacity Monitoring Report shall be modified as necessary to confirm the Nitrate Mitigation requirements of the Qualifying Development and the area of land taken out of agricultural use to meet such Nitrate Mitigation requirements), and*

5 7 2 *Capacity being made available through the Development and being Allocated to the Qualifying Development pursuant to paragraph 5 8*

5 8 *Within 20 Working Days following Capacity being made available through the Development the Tenant and/or the Owner shall in relation to each and every Allocation Agreement entered into pursuant to Paragraph 5 6, Allocate the requisite portion of the Capacity in the Development to the relevant off-site development(s) and shall submit a Capacity Monitoring Report to the Authority confirming this in accordance with Paragraph 5 7 2"*

3 THIRD PARTIES

3 1 No term of this Deed of Variation shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Deed (or a successor in title to such person)

4 EXECUTION

- 4.1 The parties have executed this Deed of Variation as a deed and it is delivered on the date set out at the front of this Deed of Variation.
- 4.2 This Deed of Variation may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

5 JURISDICTION

- 5.1 This Deed of Variation is governed by and shall be implemented in accordance with the law of England.
- 5.2 Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to hear and decide any suit, action or proceedings, and/or settle any disputes, which may arise out of or in any way relate to this Deed of Variation or its formation and, for these purposes, each party irrevocably submits to the jurisdiction of the courts of England.

IN WITNESS whereof the parties have executed this Deed of Variation and delivered it on the day and year first above written.

THE COMMON SEAL of

SOUTH DOWNS NATIONAL

PARK AUTHORITY was hereunto affixed

in the presence of:



SIGNED AS A DEED by

WILLIAM NORTHCROFT BUTLER

in the presence of

Greg Adam

(full name of witness)

(signature)

(signature of witness)

(address)

SIGNED AS A DEED by

JAMES NICHOLAS BUTLER

in the presence of

Greg Adam

(full name of witness)

(signature)

(signature of witness)

SIGNED AS A DEED by

H N BUTLER FARMS LIMITED

in the presence of

Greg Adlan

(full name of witness)

(signature)

APPENDIX 3 - DEED OF ALLOCATION

DATED

2022

(1) WILLIAM NORTHCROFT BUTLER and JAMES NICHOLAS BUTLER

(2) H N BUTLER FARMS LIMITED

(3) THE TRUSTEES OF THE GHM JACKSON 1972 CHILDREN'S SETTLEMENT
TRUST

DEED OF ALLOCATION OF NITRATE OFFSETTING SCHEME

At

Whitewool Farm, East Meon, Petersfield, Hampshire GU32 1HW

IN COUNTERPART

SH ∞ SMITHS

Shoosmiths LLP
Forum 5
The Forum
Parkway
Whiteley
Fareham
PO15 7PA
Tel: 03700 866800
Fax: 03700 866801
Ref. MYP/M-01017588

THIS DEED is made the day of

Two thousand and Twenty Two

BETWEEN

- (1) **WILLIAM NORTHCROFT BUTLER** of The Cart House East Meon, Petersfield GU32 1HW and **JAMES NICHOLAS BUTLER** of Whitewool Farm, East Meon, Petersfield GU32 1HW (the "Owner"); and
- (2) **H N BUTLER FARMS LIMITED** (Company registration number: 00554785) of Whitewool Farm, East Meon, Petersfield, Hampshire, GU32 1HW (the "Tenant"); and
- (3) **EVELYN PARTNERS TRUST CORPORATION LIMITED** (Co. Regn. No. 02013947) of 45 Gresham Street, London, United Kingdom, EC2V 7BG and **MARK GRAHAM WEAVER** of Sackville House, Sackville Lane, Hartfield TN7 4AW as **THE TRUSTEES OF THE GHM JACKSON 1972 CHILDREN'S SETTLEMENT TRUST** (the "Developer");

together **the Parties**

WHEREAS:

- (A) The Owner owns the freehold interest in the Site and is registered as proprietor with Title Absolute at the Land Registry free from encumbrances other than those matters contained or referred to in the Property and Charges Register of Title Number SH21605 at the date of this Deed.
- (B) The Tenant occupies the Site under the terms of a lease dated 4 April 2014 made between (1) Nicholas Northcroft Butler and Christine June Butler as Trustees of the G M Butler 'N' Settlement and (2) H N Butler Farms Limited.
- (C) High levels of nitrogen from housing and agricultural sources in the Solent have caused excessive growth of green algae (a process called eutrophication) which is having a detrimental impact upon protected habitats in the Solent.
- (D) The Wetland Area benefits from the Whitewool Farm Planning Permission which authorises habitat creation works to facilitate the removal of nitrates from the natural environment.
- (E) The Owner and the Tenant have entered into the Section 106 Agreement which secures the long term use of the Wetland Area for (inter alia) nitrate mitigation purposes and which facilitates the Allocation and ongoing monitoring of the Wetland Area in order to provide a nitrate offsetting solution for the benefit of offsite developments. The Section 106 Agreement also anticipates and enables other land comprised in the Site to be taken out of agricultural use (and secured through a Unilateral Undertaking) to provide additional Capacity in the event that the Tenant and/or the Owner have Allocated or propose to Allocate a greater Capacity than the Wetland Area is able to deliver or in the event that Capacity is required prior to the completion of the Wetland Area.

- (F) The Owner and the Tenant have agreed to Allocate a portion of the Wetland Area's Capacity (and/or to Allocate additional Capacity through the taking of other land within the Site out of agricultural use) to the Developer in order to mitigate the impact of the Development on nitrate levels in the Solent catchment in return for the Commuted Sum.

NOW THIS DEED WITNESSETH:

1. DEFINITIONS

- 1.1 The following words and phrases shall have unless the context otherwise requires bear the following meanings:

"Allocation"	means that the Required Capacity has been designated pursuant to this Deed for the purposes of mitigating the impact of the Development on nitrate levels in the Solent by the submission of a Capacity Monitoring Report by the Owner to SDNPA and "Allocate" and "Allocated" shall be construed accordingly;
"Allocation Date"	means the date 5 Working Days after the Developer has made payment of the Commuted Sum (by which the Tenant shall have Allocated the Required Capacity)
"Application"	means the application for planning permission submitted to Havant Borough Council for the Development and allocated reference number APP/20/00441 received on 9 June 2020 and validated on 6 August 2020;
"Application Site"	means the site on which the Development is to be constructed as shown edged red on the attached plan
"Capacity"	means an amount (expressed in kg/TN/yr) of nitrates to be removed from the Solent as a consequence of Nitrate Mitigation;
"Capacity Monitoring Report"	has the same meaning as in the Section 106 Agreement;

"Challenge Free"

means the first of the following events to occur;

- a) The expiry of the Challenge Period without any Third-Party Application having been made;
- b) Any Third-Party Application is Finally Determined; and
- c) the Planning Permission is finally granted or upheld whether after a reference back to Havant Borough Council and the Planning Permission is no longer open to the issue of a further Third-Party Application;

"Challenge Period"

means the period of six weeks commencing on the date of grant of the Planning Permission;

"Commuted Sum"

means a sum to be calculated by the following formula:

the Required Capacity

x

£2,550 (two thousand five hundred and fifty pounds)

less the Reserve Fee;

"Court Confirmatory Decision"

either:

(a) a judgment of the High Court or Court of Appeal confirming the grant of the Planning Permission and the period for an appeal against such a decision has expired without a further Third-Party Application being made; or

(b) a judgment of the Supreme Court confirming the grant of the Planning Permission.

"Deed of Variation"

means the deed of variation dated 29 April 2021 made between (1) South Downs National Park

Authority (2) William Northcroft Butler and James Nicholas Butler and (3) H N Butler Farms Limited appended to this Deed at Appendix 2;

"Development"

means the development comprising up to 100 dwellings and associated improved site access, landscaping, footpaths, SuDS and other associated works on land to the west of Hulbert Road, Havant in accordance with the Planning Permission on the Application Site;

"Expiry Date"

means the date that is 18 months from the date of this Deed (or such later alternative date as may be agreed by the parties in writing);

"Farmland"

means that part(s) of the Site (excluding the Wetland Area) which is in agricultural use;

"Finally Determined"

means, where a Third-Party Application has been made, the first of the following events to occur:

(a) permission to bring a Third-Party Application has not been granted and the period within which an application for permission to appeal against such refusal has expired without a further Third-Party Application being made;

(b) all Third-Party Applications have been withdrawn;

(c) a Court Confirmatory Decision has been issued; or

(d) a Quashing Order has been issued and a further Planning Permission has been granted which is Challenge Free;

"Implementation Date"

means the date on which the Development commences by the carrying out of a material operation as specified in section 56(4) of the Town and Country Planning Act 1990 other than (for the purposes of this Deed and no other);

- a) site investigations or surveys;
- b) archaeological works;
- c) site decontamination;
- d) the demolition of any existing buildings or structures;
- e) excavation works;
- f) clearance or regrading;
- g) the erection of hoardings and fences;
- h) works connected with infilling;
- i) works for the provision or diversion of drainage or mains services to prepare the Site for development; or
- j) the construction of access and service roads;

and "Implement" and "Implementation" shall be construed accordingly;

"Landscape and Ecological Management Plan"

means the landscape and ecological management plan agreed between SDNPA and the Tenant in the discharge of condition 4 of the Whitewool Farm Permission;

"Lease"

means the lease dated 4 April 2014 made between (1) Nicholas Northcroft Butler and Christine June Butler as Trustees of the G M Butler 'N' Settlement and (2) H N Butler Farms Limited;

"Mitigation Land"

means an area within the Site to be specified by reference to a plan and having a Capacity of not less than the Required Capacity which is to be dedicated towards mitigating the impact of the Development on nitrate levels in the Solent catchment and which (subject always to

paragraphs 5.3 to 5.5 of this Deed) may comprise the Wetland Area or an area within the Farmland (at the Owner and the Tenant's discretion if relevant)

"Nitrate Mitigation"

mitigation measures to neutralise nitrates from the water to mitigate the effects of increased nitrate levels in the Solent caused by off-site developments in line with Natural England requirements at the date of the Section 106 Agreement;

"Nitrate Offset Engineering Works"

means the works to be carried out pursuant to the Whitewool Farm Development;

"Occupation"

means occupation of the Development for the purposes permitted by the Planning Permission but not occupation for the purposes of construction, fitting out or decoration for marketing or display purposes or in connection with security operations and "Occupy" and "Occupied" shall be construed accordingly;

"Plan"

means the plan showing the Site edged blue and the Wetland Area shown edged red at Appendix 1;

"Planning Agreement"

means an agreement or undertaking with the relevant planning authority or any other competent authority made under:

- a) section 106 of the Town and Country Planning Act 1990;
- b) section 111 of the Local Government Act 1972;
- c) sections 38, 184 or 278 of the Highways Act 1980;
- d) section 33 of the Local Government (Miscellaneous Provisions) Act 1982;

- e) section 98, 104 or 106 of the Water Industry Act 1991; or
- f) section 2 of the Local Government Act 2000;

"Planning Permission"

means the planning permission for the Development to be issued pursuant to the Application;

"Quashing Order"

means the decision of the court to nullify the Planning Permission;

"Relevant Event"

means any of the following events:

- a) a change in the law; or
- b) a decision of a Court, tribunal, Secretary of State, or other decision maker with competence; or
- c) a change in Natural England's custom or practice; or
- d) a change in scientific opinion based on evidence; or
- e) a change in industry practices or in the generally accepted calculation methods for the type or extent of land required to achieve Nitrate Mitigation;

that is accepted in writing by both Natural England and Havant Borough Council as resulting in any of the following:

- a) off-site nitrate mitigation not being required in relation to the Development; or
- b) Nitrate Mitigation not being required; or
- c) neither the Whitewool Farm Development nor taking the Farmland out of production being considered to be an effective form of Nitrate Mitigation; or

- d) neither the Whitewool Farm Development nor taking the Farmland out of production being required for Nitrate Mitigation;

AND PROVIDED ALWAYS that the Developer (acting reasonably) agrees in writing that the occurrence of such Relevant Event results in this Agreement no longer serving any useful purpose;

"Required Capacity"

means the Capacity (as notified in writing by the Developer to the Owner and the Tenant in accordance with clause 4.2) as being the amount necessary to provide Nitrate Mitigation to mitigate the impacts of the Development;

"Reservation Period"

means the period from the date of this Deed until the earlier of the Expiry Date and the Allocation Date;

"Reserve Capacity"

means 108.74 kg/TN/yr of the Site Capacity;

"Reserve Fee"

the non-refundable sum of £27,728 (twenty seven thousand seven hundred and twenty eight pounds) exclusive of VAT to be paid by the Developer to the Tenant;

"SDNPA"

means the South Downs National Park Authority acting in its capacity as local planning authority;

"Section 106 Agreement"

an agreement dated 16 February 2021 and entered into pursuant to Section 106 of the Town and Country Planning Act 1990 between (1) South Downs National Park Authority (2) William Northcroft Butler and James Nicholas Butler and (3) H N Butler Farms Limited in connection with the Whitewool Farm Development as amended by the Deed of Variation appended to this Deed at Appendix 2;

"Site"

Whitewool Farm, East Meon, Petersfield, Hampshire GU32 1HW and registered at the HM

	Land Registry at Title Number SH21605 and shown edged blue on the Plan;
"Site Capacity"	means the total Capacity of the Wetland Area following the completion of the Whitewool Farm Development which is estimated to be 2,000 Kg/TN/yr;
"Solent"	is the strait that separates the Isle of Wight from the mainland of England;
"Third-Party Application"	a third party's application for judicial review of a decision to grant the Planning Permission (as applicable) including an application to a higher court appealing against a judgment in respect of an application for judicial review given in a lower court and the term "Third-Party Applications" shall be construed accordingly;
"Trustees"	means Evelyn Partners Trust Corporation Limited and Mark Graham Weaver and any person appointed from time to time as trustees of The GHM Jackson 1972 Children's Settlement Trust;
"Unilateral Undertaking"	a unilateral undertaking given under section 106 of the Town and Country Planning Act 1990 in accordance with paragraph 5.1 of Schedule 1 of the Section 106 Agreement which secures the taking out of agricultural use of part of the Farmland;
"Wetland Area"	part of Whitewool Farm, East Meon, Petersfield, Hampshire GU32 1HW as shown edged red on the Plan to be used as the creation of a wetland habitat pursuant to the Whitewool Farm Permission which will act as a Nitrate Mitigation scheme;
"Whitewool Farm Development"	the development authorised by the Whitewool Farm Permission;
"Whitewool Farm Permission"	the planning permission dated 17 February 2021 under reference number SDNP/20/01263/FUL

authorising the development of a scheme to remove nitrates from Whitewool Stream through ecological enhancement;

"Working Days"

any Monday, Tuesday, Wednesday, Thursday and Friday except bank or public holidays and except any day between 25 December and 02 January (inclusive) in each year.

2. INTERPRETATION

- 2.1 The clause headings in this Deed are for reference only and do not affect its construction or interpretation.
- 2.2 References to clauses and Schedules are to the clauses and Schedules of this Deed, unless stated otherwise.
- 2.3 A reference to a paragraph is to the paragraph of the Schedule in which the reference is made, unless stated otherwise.
- 2.4 Words importing one gender include any other genders and words importing the singular include the plural and vice versa.
- 2.5 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa.
- 2.6 Unless this Deed states otherwise, any reference to any legislation (whether specifically named or not) includes any modification, extension, amendment or re-enactment of that legislation for the time being in force and all instruments, orders, notices, regulations, directions, byelaws, permissions and plans for the time being made, issued or given under that legislation or deriving validity from it.
- 2.7 References to the Site include any part of it.
- 2.8 References to "including" means "including, without limitation".
- 2.9 Any covenant not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 2.10 Where two or more people form a party to this Deed, the obligations they undertake may be enforced against them all jointly or against each of them individually.
- 2.11 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Deed shall be unaffected.

- 2.12 The term "Developer" shall include any successor in title to the Development assigned the benefit of this Deed pursuant to clause 13.

3. COMMENCEMENT

- 3.1 This Deed will take effect on the date of this Deed.

4. OBLIGATIONS OF THE DEVELOPER

- 4.1 The Developer has paid the Reserve Fee to the Tenant prior to the date of this Deed.
- 4.2 At least one month before the Implementation Date the Developer shall notify the Tenant of the amount of the Required Capacity.
- 4.3 The Developer shall pay the Commuted Sum to the Tenant on or before the Implementation Date.
- 4.4 The Developer shall not Implement until it has paid the Commuted Sum to the Tenant

5. OBLIGATIONS OF THE OWNER AND THE TENANT

- 5.1 Following receipt of the Reserve Fee the Owner and the Tenant covenant to reserve the Reserve Capacity for the Developer for the duration of the Reservation Period.
- 5.2 The Owner and Tenant covenant to Allocate the Capacity in order to provide the Required Capacity of Nitrate Mitigation for the Development and to confirm such Allocation in writing to the Developer within 5 Working Days of receipt of the Commuted Sum.
- 5.3 For the avoidance of doubt, the minimum aggregate Capacity to be Allocated to the Developer by the Owner and Tenant shall not be less than the Reserve Capacity.
- 5.4 Following receipt of the Commuted Sum the Owner and the Tenant thereafter covenant to maintain the Mitigation Land in accordance with the Landscape and Ecological Management Plan or in accordance with the terms of a Unilateral Undertaking (as appropriate and subject always to clause 5.5 below) for the lifetime of the Development.
- 5.5 In the event the Wetland Area becomes available for Nitrate Mitigation (and the Wetland Area shall not be considered to have become available until the Nitrate Offset Engineering Works have completed) after a portion of the Farmland has been Allocated but prior to first Occupation of the Development, the Owner and/or the Tenant may transfer the Allocation from the Farmland to the Wetland Area immediately and confirm in writing to the Developer the transfer has occurred.
- 5.6 If a Planning Agreement is required by the relevant local planning authority or any other competent authority as a pre-condition to the grant of a Planning Permission the Tenant and/or the Owner shall, if required, enter into the Planning Agreement provided that:

- 5.6.1 the terms of the Planning Agreement which relate to or seek to bind land which is within the Owner and the Tenant's ownership and or occupation are acceptable to the Owner and the Tenant (acting reasonably and having regard to the delivery of the Nitrate Mitigation scheme and the Allocation pursuant to this Deed);
- 5.6.2 the Developer pays the Owner and the Tenant's (reasonable and properly incurred) legal fees in connection with the Planning Agreement;
- 5.6.3 any liabilities on the Owner or the Tenant under the Planning Agreement are conditional upon the Implementation of the Planning Permission; and
- 5.6.4 the Owner and/or or the Tenant will not be liable for a breach of a covenant contained in the Planning Agreement after the Owner and/or the Tenant has parted with all its interest in the Site 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.

5.7 The Owner and the Tenant each covenant to comply with their obligations (if any) under the Section 106 Agreement and any Unilateral Undertaking.

6. VARIATION

6.1 In the event the relevant planning authority requests a variation to this Deed on reasonable terms in order to make the Whitewool Farm Permission or the Application acceptable in planning terms the Owner and the Tenant and the Developer shall (acting reasonably) consider such request and, if agreed, the Owner and the Tenant and the Developer shall as soon as reasonably practicable enter into a deed of variation to vary this Deed.

7. DETERMINATION OF THE LEASE

7.1 Should the Lease terminate or otherwise come to an end:

- 7.1.1 all obligations owed by the Developer to the Tenant under the terms of this Deed shall henceforth be owed by the Developer to the Owner; and
- 7.1.2 all obligations owed by the Owner and/or the Tenant to the Developer shall henceforth be owed solely by the Owner to the Developer.

8. NOTICES

8.1 Any notice, consent, demand or any other communication served under this Deed will be effective only if in writing and delivered by hand or sent by first class post, pre-paid or recorded delivery.

- 8.2 Any notice, consent, demand or any other communication served shall be sent to the address of the relevant party set out at the beginning of this Deed or to such other address as one party may notify in writing to the others at any time as its address for service.

9. DETERMINATION OF DISPUTES

- 9.1 Subject to clause 9.7, if any dispute arises relating to or arising out of the terms of this Deed, either party may give to the other written notice requiring the dispute to be determined under this clause 9. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.
- 9.2 For the purposes of this clause 9 a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to developments in the nature of the Development and property in the same locality as the Site.
- 9.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of the Law Society who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under clause 9.4.
- 9.4 Any dispute over the identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the Developer and the Tenant cannot agree the identity of the organisation, then the Specialist is to be nominated by the President or next most senior available officer of the Law Society.
- 9.5 The Specialist is to act as an independent expert and:
- 9.5.1 each party may make written representations within ten (10) Working Days of his appointment and will copy the written representations to the other party;
 - 9.5.2 each party is to have a further ten (10) Working Days to make written comments on the other's representations and will copy the written comments to the other party;
 - 9.5.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;

9.5.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross-examine each other;

9.5.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and

9.5.6 the Specialist is to use all reasonable endeavors to publish his decision within thirty (30) Working Days of his appointment.

9.6 Responsibility for the costs of referring a dispute to a Specialist under this clause 9, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.

9.7 This clause 9 does not apply to disputes in relation to matters of law or the construction or interpretation of this Deed which will be subject to the jurisdiction of the courts.

10. TERMINATION OF THIS DEED

10.1 In the event that the Tenant has not received the Commuted Sum on or prior to the Expiry Date the Owner and the Tenant shall thereafter be released from its obligations in this Deed.

10.2 If any part of the Reserve Capacity has been Allocated to the Developer before the Expiry Date in accordance with clause ⁵²~~Error! Reference source not found.~~, the obligations in this deed will immediately terminate on the earlier of:

10.2.1 the end of the lifetime of the Development;

10.2.2 the occurrence of a Relevant Event.

10.3 Without affecting any other right or remedy available to it, any party may terminate this Deed with immediate effect by giving notice to the other parties if a Relevant Event occurs.

10.4 Without affecting any other right or remedy available to it,

10.4.1 either the Tenant or the Owner may terminate this Deed with immediate effect by giving notice to the Developer if the Developer is in breach of any of its obligations in this Deed and has failed to rectify the breach within a reasonable time after receiving notice to rectify from the Tenant or the Owner; and

10.4.2 the Developer may terminate this Deed with immediate effect by giving notice to the Tenant and the Owner if the Tenant or the Owner is in breach of any of its obligations in this Deed and both the Tenant and the Owner failed to rectify the

breach within a reasonable time after receiving notice to rectify from the Developer.

10.5 If this Deed is terminated in accordance with the provisions of Clause 10.1 or Clause 10.2 or Clause 10.3 or Clause 10.4 then:

10.5.1 the Tenant and the Owner may proceed to allocate the Reserve Capacity to a third party;

10.5.2 the Tenant and the Owner may use the Site as they see fit in their absolute discretion, including resuming farming activities on the land;

10.5.3 Neither party shall have any further rights or obligations under this Deed save for the rights of either party in respect of any earlier breach of this Deed; and

10.5.4 any sums paid to the Tenant or to the Owner by the Developer under the terms of this Deed shall not be refunded.

10.6 Clause 9 shall continue in force notwithstanding the termination of this contract under this clause 10.

11. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it provided that the exclusion of the said Act shall not prevent all or any future successors in title to any of the parties to this Deed from being able to benefit from or to enforce any of the provisions of this Deed.

12. LIMITATION OF TRUSTEES' LIABILITY

12.1 Any liability of the Trustees arising out of this Agreement or matters connected with it shall be at all times limited to the extent of the assets of The GHM Jackson 1972 Children's Settlement Trust from time to time.

12.2 Notwithstanding any other provision in this Agreement the Trustees shall have no personal liability whatsoever arising out of or in connection with this Agreement except to extend to assets only of the GHM Jackson 1972 Children's Settlement Trust which are in the form of cash or can at the relevant time be converted into cash and are available to the Trustees SAVE THAT clause 12.1 will not apply to any liabilities resulting from any willful or reckless breach of duty or trust by the Trustees.

13. ASSIGNMENT

13.1 The Developer may at any time prior to the Expiry Date assign any or all of its rights and obligations under this agreement to a successor in title to the Development, provided that it

obtains the prior written consent of such dealing to the Tenant (such consent not to be unreasonably withheld or delayed).

- 13.2 The Developer shall not be liable for any breach of covenant, restriction or obligation contained in this Deed after parting with its interest in the Application Site except in respect of any breach on its part subsisting prior to parting with such interest.

14. COUNTERPARTS

This Deed may be executed in any number of counterparts each of which when executed and delivered shall constitute an original of this Deed but all the counterparts shall together constitute the same deed. No counterpart shall be effective until each party has executed at least one counterpart.

15. JURISDICTION

- 15.1 Subject to the provisions of clause 9 this Deed shall be governed by the laws of England and the Courts of England shall have sole jurisdiction in respect of the construction of this Deed and as to the respective rights and liabilities of the parties.

Appendix 1 – The Plan

Appendix 2 – The Section 106 Agreement as varied

IN WITNESS WHEREOF the Parties hereto have executed this deed the day and year first before written

SIGNED AS A DEED by

WILLIAM NORTHCROFT BUTLER

in the presence of:

.....

(Full name of witness)

.....

(Signature of witness)

.....

.....

.....

.....

Address

.....

Occupation

SIGNED AS A DEED by

JAMES NICHOLAS BUTLER

.....

in the presence of:

.....

(Full name of witness)

.....

(Signature of witness)

.....

.....

.....

.....

Address

.....

Occupation

Executed as a DEED by)

H N BUTLER FARMS LIMITED)

in the presence of:-)

.....

(Full name of witness)

.....

(Signature of witness)

.....

.....

.....

.....

Address

.....

Occupation

Executed as a Deed by **EVELYN**)

PARTNERS TRUST CORPORATION)

LIMITED acting by CHRISTOPHER)

SHEPARD)

Director

Signature of Witness:

Name:

Address

Occupation:

Executed as a Deed by **MARK
GRAHAM WEAVER** in the presence of:

}
Signature

Witness signature

Name
(in block capitals)

Address

Occupation

APPENDIX 4 FRAMEWORK TRAVEL PLAN

Land at Hulbert Road, Havant

Framework Travel Plan

A096474

Issue

Trustees of the GHM Jackson 1972 Settlement

May 2021

Prepared on Behalf of Tetra Tech Environment Planning Transport
Limited. Registered in England number: 03050297

Document Control

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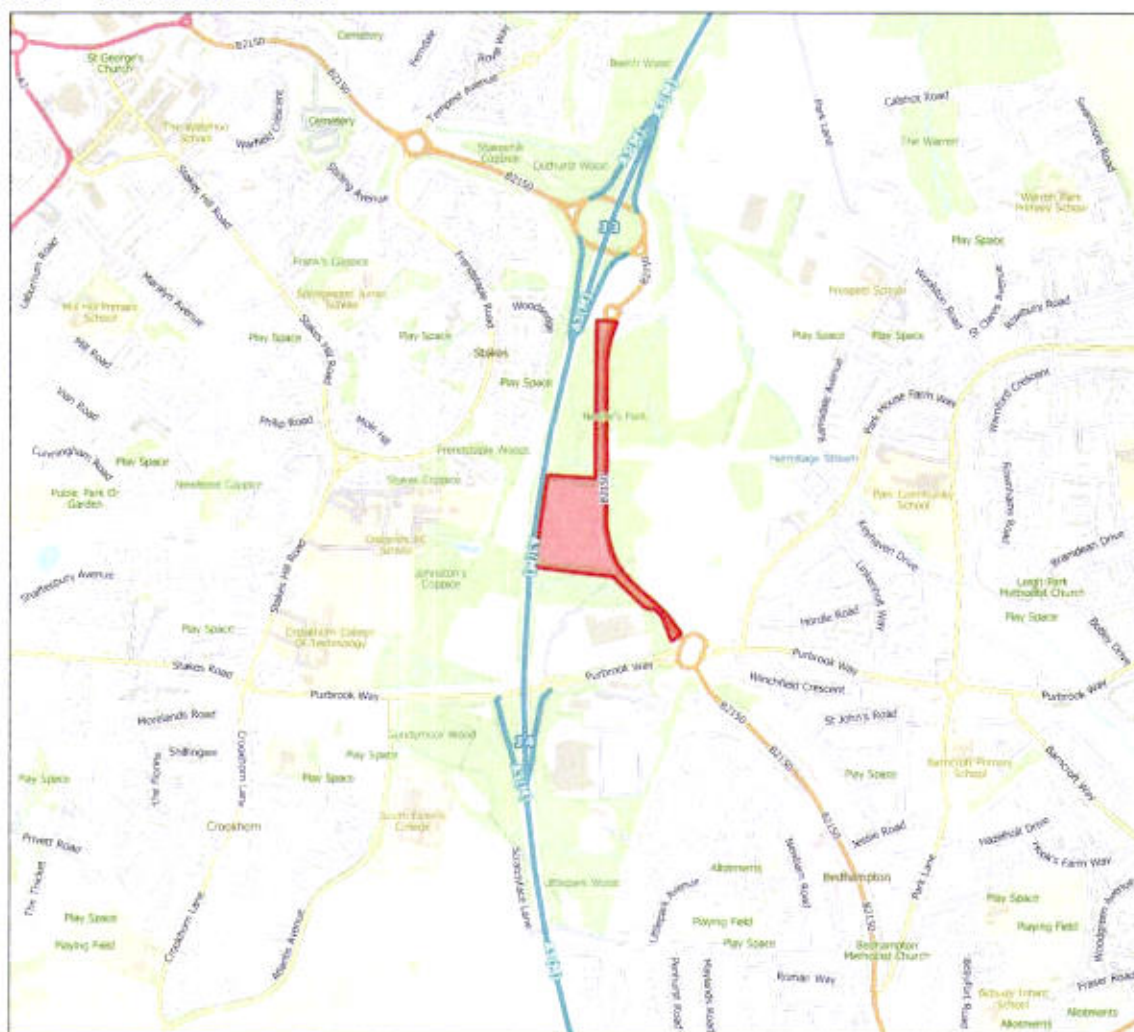
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1 INTRODUCTION

BACKGROUND AND SITE LOCATION

- 1.1 Tetra Tech has been commissioned by Trustees of the GHM Jackson 1972 Settlement (the 'Applicant') to prepare a Framework Travel Plan Assessment (FTP) to support a proposed residential development at Hulbert Road, Havant (the 'Site').
- 1.2 The site is bound to the east by Hulbert Road, to the north and south by woodland, and to the west by the A3(M). There is an existing junction into the site on Hulbert Road located approximately 500m north of the Asda Roundabout. Hulbert Road is subject to a 40mph speed limit with no street lighting present.
- 1.3 The location of the site in the context of the local highway network is detailed on **Figure 1.1**.

Figure 1.1 Site Location Plan



DEVELOPMENT PROPOSALS

- 1.4 The development comprises of 120 dwellings, with access from Hulbert Road.

TRAVEL PLAN

- 1.5 A Travel Plan (TP) is a package of measures designed to promote access to a site by sustainable modes of transport thereby reducing reliance on single occupancy private car usage. Travel Plans are site specific and tailored to the individual requirements of the type of development and intended users of the site.
- 1.6 Travel Plans have a set of clear objectives which underpin the purpose for having a TP. Appropriate measures are identified to help achieve the stated objectives, as well as appropriate monitoring and marketing techniques. A robust plan can have a significant role in reducing the transport impacts of a development, though critical to its success is the commitment of the developer, local authority and other interested parties to ensuring its implementation and progress.

TRAVEL PLAN OBJECTIVES

- 1.7 The objectives of the Travel Plan have been identified as follows:
- Seek to minimise the number of single occupancy car journeys made to the site, to promote travel by the more sustainable modes of transport, and to manage the overall transport impacts of the development.
- 1.8 Wider environmental, economic and health objectives also apply, such as:
- Reducing carbon emissions;
 - Reducing living costs for residents; and
 - Improving individual health and fitness.
- 1.9 These objectives should guide the setting of targets and the types of measures that are implemented.

REPORT STRUCTURE

- 1.10 Following this introductory chapter, the remainder of this TP is structured as follows:
- Chapter 2: Existing Conditions – provides an outline review of the existing transport conditions prevailing at the development Site and in the immediate surrounding area;
 - Chapter 3: Aims, Objectives and Targets – outlines the aims, objectives and targets of the Travel Plan;
 - Chapter 4: Travel Plan Responsibility, Strategy and Measures – sets out the Travel Plan strategy;
 - Chapter 5: Monitoring and Review – sets out the monitoring and review process of the Travel Plan; and
 - Chapter 6: Summary and Conclusions – Provides a summary and concludes the report.

2 EXISTING CONDITIONS

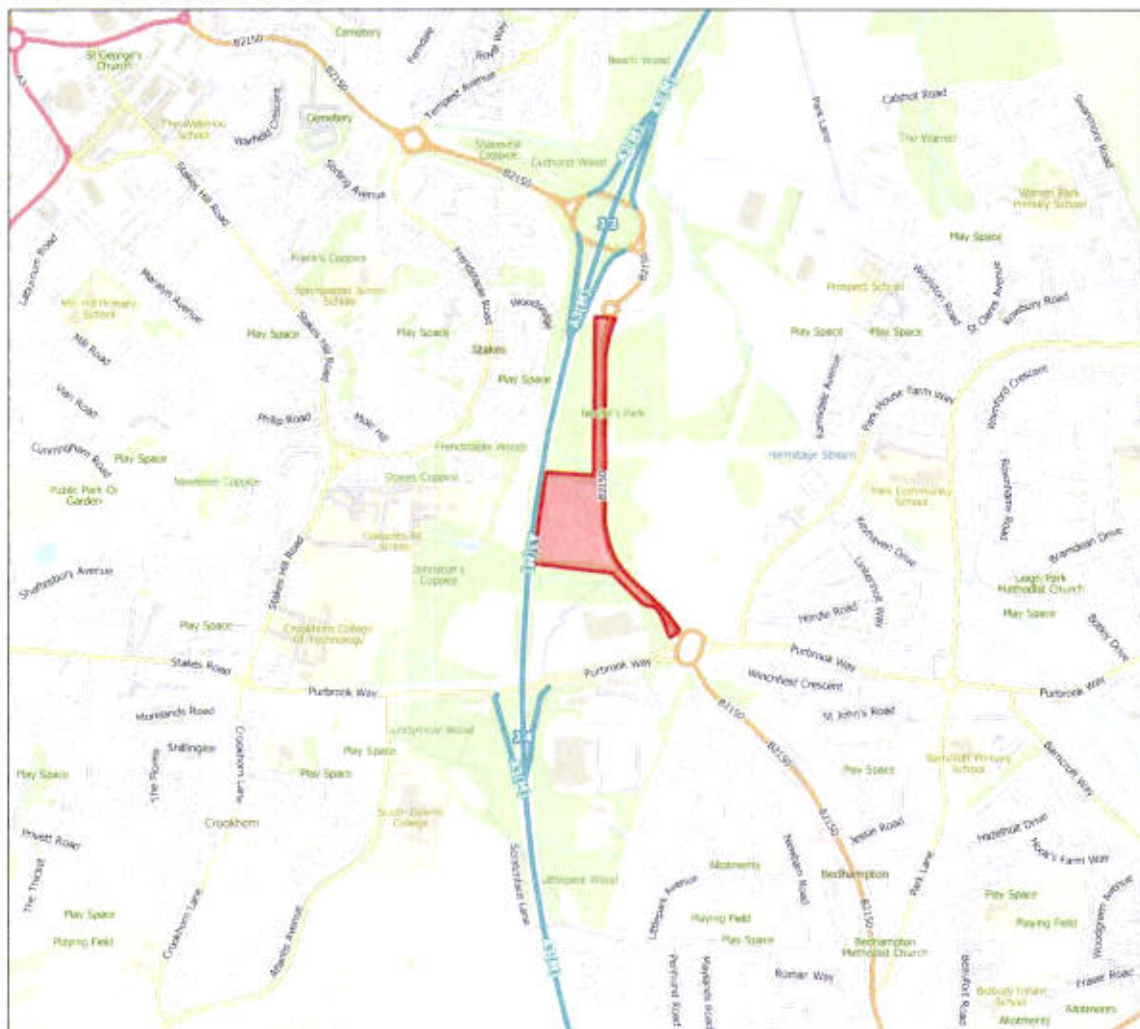
INTRODUCTION

- 2.1 This section of the TA reviews the existing conditions of the site with regard to its location and accessibility by sustainable modes.

SITE LOCATION AND DESCRIPTION

- 2.2 The site is located to the northwest of Havant and to the southeast of Waterlooville. In a strategic context, the site is located circa 10 kilometres northeast of Portsmouth within the county of Hampshire.
- 2.3 The site is bound to the east by Hulbert Road, to the north and south by woodland, and to the west by the A3(M). There is an existing junction into the site on Hulbert Road located approximately 500m north of the Asda roundabout. Hulbert Road is subject to a 40mph speed limit with no street lighting.
- 2.4 The location of the development site is illustrated at **Figure 2.1**.

Figure 2.1 Site Location Plan



ACCESSIBILITY GUIDANCE

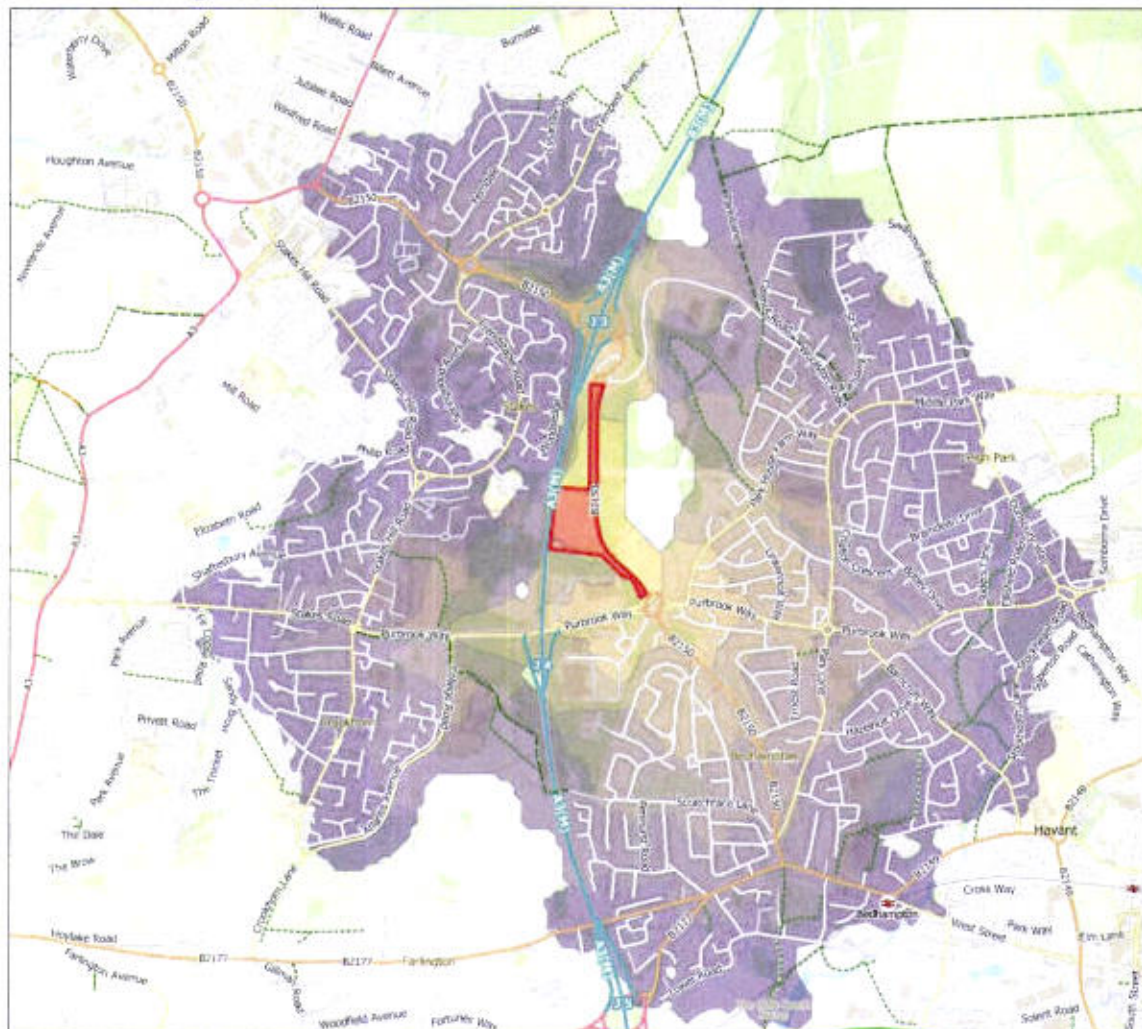
- 2.5 When considering the sustainability audit within the TA, Tetra Tech have reviewed the nationally available accessibility guidance prepared by central government and professional transport institutions for both walking and cycling.
- 2.6 The 2017 National Travel Survey (NTS) (published July 2018) identifies that walking is a favourable option for short trips, with the average person willing to walk for an average time of 17 minutes. Given the IHT guidance that pedestrians travel at a speed of 1.4m/s, pedestrians are therefore likely to walk to areas within approximately 1.4km of their origin. The NTS 2017 (NTS0308 dataset) also identifies that 81% of all trips under 1.6km are made on foot, 24% for trips that are 1.6 to 3.2km.
- 2.7 The Chartered Institution of Highways and Transport (CIHT) guidance document 'Planning for Walking' (April 2015) states that 80% of journeys shorter than 1.6km are made wholly on foot with 20% for journeys that are 1.6 km to 3.2km long also being undertaken on foot.
- 2.8 Both the National Travel Survey and CIHT guidance come to a similar conclusion in that walking offers the opportunity to provide for shorter distance trips of up to 1.6km with some people prepared to walk up to a maximum of 3.2km. These walking distances have been used as a measure for what is an acceptable distance to access local facilities.
- 2.9 The 2017 National Travel Survey also covers cycling and identifies the average person is willing to cycle for an average time of 23 minutes (6.1km) with 56% of all cycle trips up to 8km in distance and 77% of trips being up to 16km.
- 2.10 The Department for Transport; Local Transport Note 2/08 'Cycle Infrastructure Design' (2008) states that cyclists usually want to be able to travel at speeds of 19kph, which is the average speed of a cyclist on a level surface. It is therefore considered that 16kph is an appropriate average travel speed, given the time spent negotiating the urban realm (e.g. manoeuvring through junctions). On this basis taking the journey time for the NTS and DfT cycling speeds the average person is willing to cycle 24 minutes equating to of 6.4km. In terms of 79% of trips being up to 8km, this would equate to a cycling time of 30 minutes.
- 2.11 The CIHT guidance document 'Planning for Cycling' (October 2015) states most cycling trips are for short distances, with 80% being less than 8km and with 40% being less than 3.2km. However, most trips by all modes are also short distances (67% are less than 8km, and 38% are less than 3.2km). The bicycle is therefore a potential mode for many of these trips.
- 2.12 Both the National Travel Survey and CIHT guidance come to a similar conclusion in that cycling provides the opportunity to provide for shorter distance trips of up to 8km with many of the population prepared to cycle 3.2km. These cycling distances have been used as a measure for what is an acceptable distance to access local facilities.
- 2.13 It should be noted that the CIHT guidance document 'Planning for Public Transport in Development' (March 1999) states that users of bus services prefer their origin and destination to be located within 400m of a bus corridor. The National Travel Survey (NTS) 2014 (September 2015), recorded that

pedestrians will walk on average 624m to bus stops, when using a local bus as the main part of a local trip.

ACCESS BY WALKING

- 2.14 The site gains its pedestrian access via an informal arrangement from Hulbert Road. The pedestrian network in this area is in its infancy, with Hulbert Road offering no footway within the immediate vicinity of the site access, with footway provision provided approximately 200m to the southeast of the site on the western side of the carriageway. This footway forms part of the local pedestrian network, a combination of footways, footpaths and crossing points which accommodates the safe movement of pedestrians throughout Havant and the local area.
- 2.15 A GIS network analysis has been carried out to assess pedestrian accessibility from the development Site. **Figure 2.2** shows a 30-minute walk isochrone, which has been calculated based upon a walking speed of 4.8 km/hr and has been classified into 5-minute walking bands (400m). The orange areas closer to the site represent shorter walking journey times of up to 10 minutes, and the purple areas represent areas within a 10-30 minute walk of the site.

Figure 2.2 Walking Isochrone

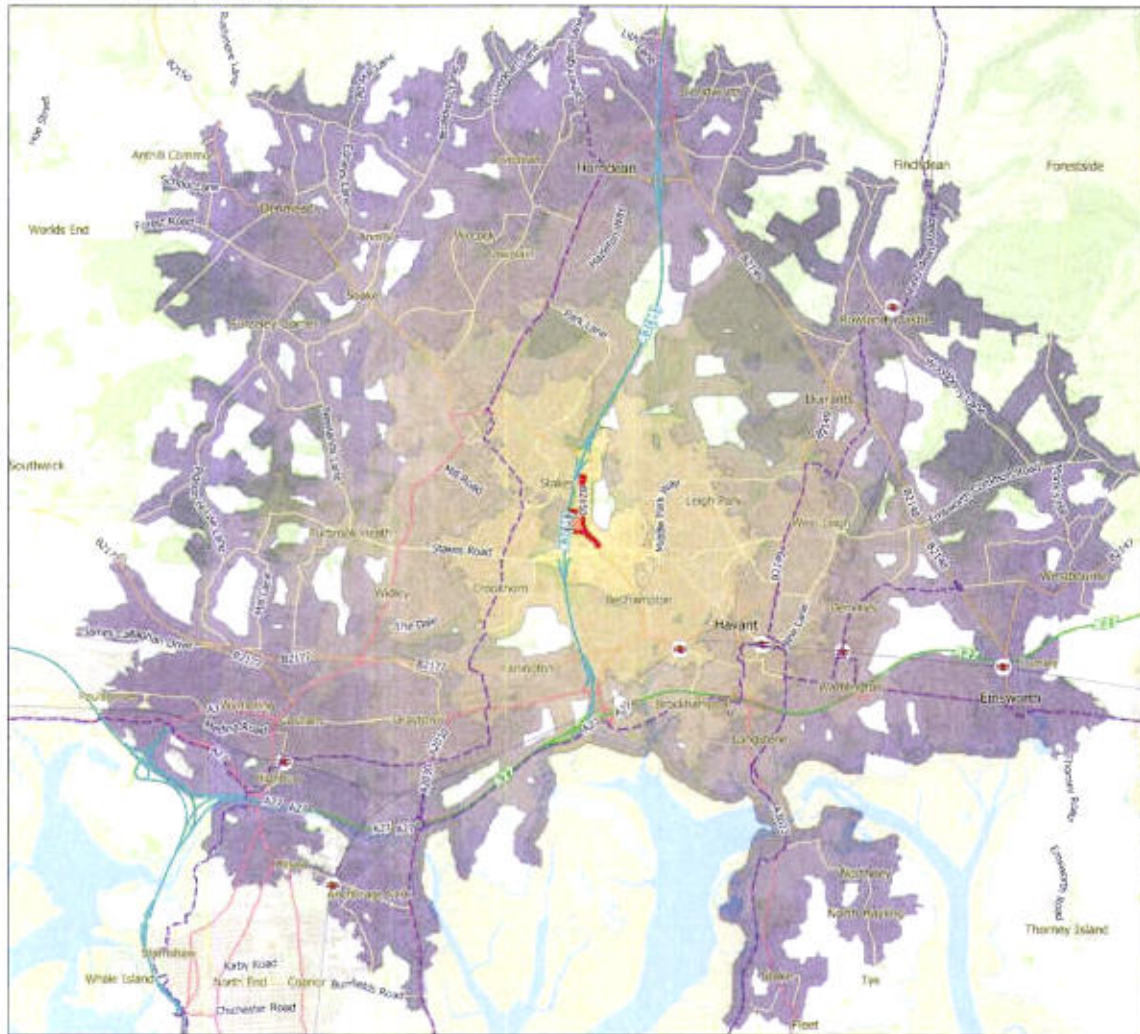


- 2.16 This analysis shows that pedestrians are able to walk a large area of Havant and Waterlooville within 30 minutes, including Bedhampton Station and a number of local amenities and education facilities.
- 2.17 In addition to the footways there are a number of PRowS (Public Rights of Way) which route within the study area. These PRowS are illustrated in **Figure 2.2**.
- 2.18 The proposed development is therefore well located and provides opportunities for future residents and site users to access key facilities and transport networks by foot, therefore reducing the reliance on vehicle travel.

ACCESS BY CYCLING

- 2.19 In the immediate vicinity of the site, cyclists are accommodated upon the local highway network. National Cycle Network (NCN) Route 222 is located to the west of the site within Purbrook. NCN 222 comprises of a mixture of an on-road and off-road routes from Portsmouth to Petersfield. The location of the NCN Route in relation to the site is shown in **Figure 2.3**.
- 2.20 As shared cycleway/footway is provided south of the site along the length of Purbrook Way which provides a link from Havant to Purbrook.
- 2.21 A GIS network analysis has been carried out to assess cyclist accessibility from the development Site. **Figure 2.3** shows a 30-minute cycle isochrone, which has been calculated based upon a cycle speed of 16km/hr and has been classified into 5-minute cycling bands (1.33km). The orange areas closer to the site represent shorter cycle journey times of up to 10 minutes, and the purple areas represent areas within a 10-30 minute cycle ride from the site.
- 2.22 This analysis shows that Havant, Waterlooville, Horndean, Rowlands Castle and Emsworth, and many employment and leisure areas are all within a 30-minute cycle from the site, in addition to the facilities set out in **Table 2.3**.

Figure 2.3 Cycling Isochrone



- 2.23 The site is located within close proximity to a number of employment opportunities, with the Solent Business Park, Heyward Business Centre, Dunsbury Park and Solent Retail Park within a short cycle.

PUBLIC TRANSPORT

Bus Services

- 2.24 The nearest bus stops to the site are located on Purbrook Way adjacent to B&Q approximately 700m from the site. The 'Hulbert Road' bus stops are both marked and benefit from a shelter containing concise timetabling information. Additional stops are located on the B2150 and Park House Farm Way circa 700-800m away.
- 2.25 **Table 2.1** sets out the bus services which serve the 'Hulbert Road' bus stops.

Table 2.1 Local Bus Services

Service	Route	Approximate Frequency (minutes)		
		Monday - Friday	Saturday	Sunday
20 ^{SS}	Portsmouth – Havant	30 mins 06:39 – 19:58	30 mins 07:14 – 20:02	-
	Havant – Portsmouth	30 mins 06:25 – 18:25	30 mins 06:49 – 18:24	-
37 ^{SS}	Petersfield – Havant	Hourly 07:43 – 19:42	9 Daily 08:04 – 19:28	-
	Havant – Petersfield	Hourly 06:46 – 18:16	7 Daily 08:26 – 17:22	-
39 ^{SS}	Wecock – Havant	15 mins 06:01 – 21:38	15 mins 06:35 – 21:38	Hourly 08:02 – 18:02
	Havant – Wecock	15 mins 06:13 – 23:14	15 mins 07:10 – 23:14	Hourly 08:09 – 19:09
621 ^{SS}	Baffins – Havant	1 Daily 16:55	-	-
	Havant – Baffins	1 Daily 09:06	-	-
641 ^{ED}	Southbourne – Oaklands School	1 Daily 15:50	-	-
	Oaklands School – Southbourne	1 Daily 08:35	-	-
654 ^F	Oaklands School – Hambledon	1 Daily 16:39	-	-
	Hambledon – Oaklands School	1 Daily 08:41	-	-
SD4 ^F	Waltham – Havant College	1 Daily 09:20	-	-
SD5 ^F	Gosport – Havant Campus	1 Daily 09:15	-	-
	Havant Campus – Gosport	1 Daily 16:40	-	-

^{SS} Stagecoach South ^{ED} Emsworth and District ^F First Portsmouth, Fareham and Gosport

Rail Services

- 2.26 Bedhampton Railway Station is located 2.3km south east of the site and can be accessed within a 28-minute walk or a 7-minute cycle. Bus services SD4 and SD5 provide a daily link from the site to Bedhampton Rail Station, enabling site users to travel by bus to the rail station.
- 2.27 The station is located on the Portsmouth Direct Line and the West Coastway Line and is managed by Southern Railway. The station benefits from a number of facilities including:

- 20 cycle parking spaces; and
- Ticket buying facilities.

2.28 **Table 2.2** sets out the travel times to key destinations which are accessible from Bedhampton Rail Station.

Table 2.2 Direct Rail Services from Bedhampton

Destination	Average Frequency	Travel Time
Havant	20 mins	3 mins
Portsmouth Harbour	60 mins	18 mins
Guilford	60 mins	59 mins
London Waterloo	60 mins	104 mins

LOCAL HIGHWAY NETWORK

Hulbert Road

- 2.29 The Hulbert Road is located adjacent to the site and runs in a north to south direction within the vicinity of the site routing between the A3 in Waterloooville and Purbrook Way in Havant.
- 2.30 Hulbert Road is subject to 40mph within the vicinity of the site but currently has no pedestrian or cycle infrastructure connecting to the site.

Purbrook Way

- 2.31 Purbrook Way is subject to a 40mph speed limit and provides access to the A3(M) via junction 4. A shared cycleway/footway is provided along the length of Purbrook Way providing a link from Havant to Purbrook.

A3 (M)

- 2.32 The A3 (M) runs to the west of the site, between Horndean to the north where it joins the A3 and Havant in the south where it joins the A27.
- 2.33 The A3 (M) comprises of a two-way two-lane carriageway and a hard shoulder. The A3 is subject to motorway regulations, including the national speed limit. From the site the A3(M) can be accessed via junction 3 in the north or junction 4 to the south.

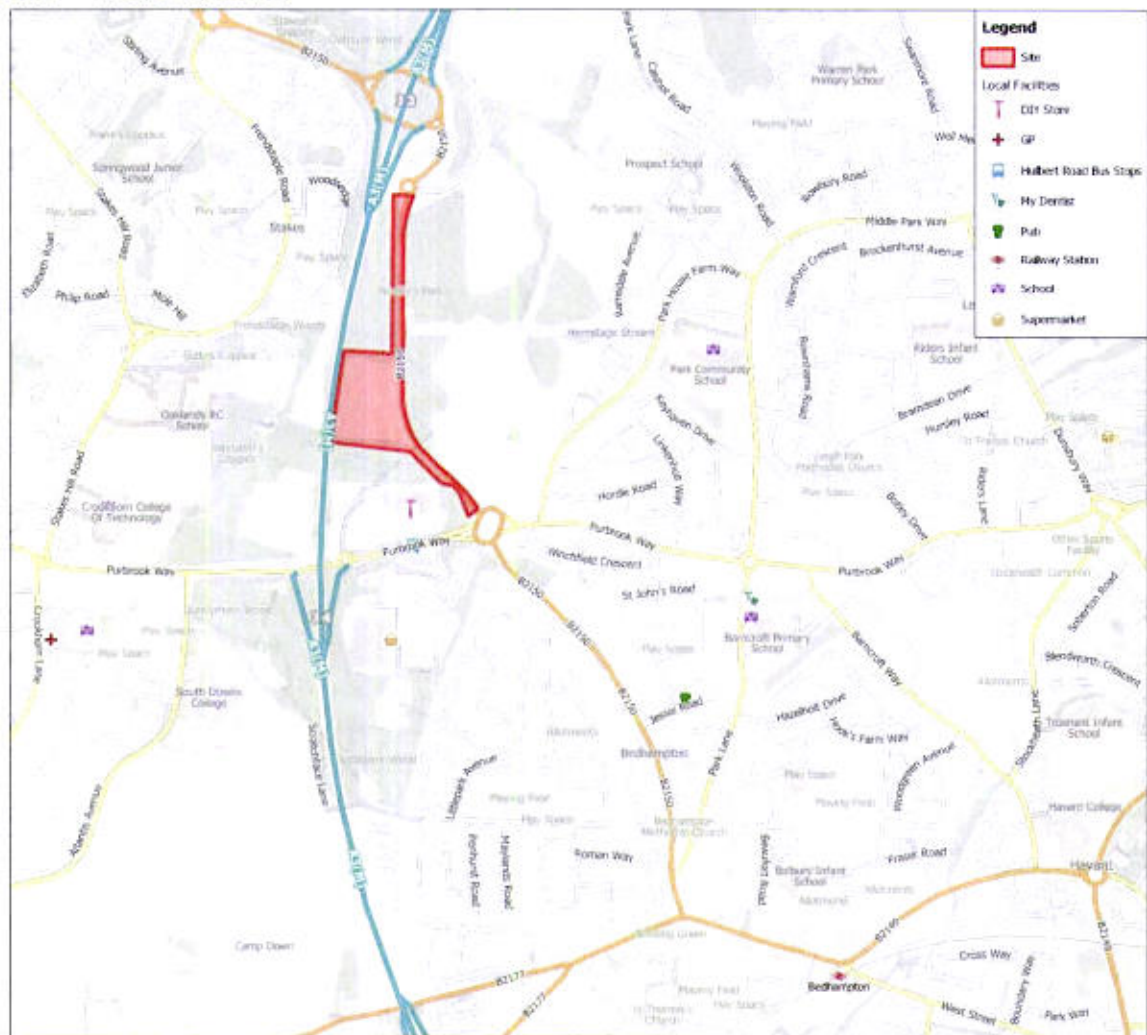
Accessibility to Local Services and Facilities

- 2.34 Numerous services and facilities to support local residents are provided within the local areas. **Table 2.3** provides a summary of the local facilities within close proximity to the proposed development and the approximate walking and cycling times, using an average walking speed of 1.33 m/s and an average cycling time of 4.4m/s, while **Figure 2.4** shows the location of the local facilities in relation to the site.

Table 2.3 Local Facilities

Service / Facility	Approximate Distance (Metres)	Approximate Walking Time (Minutes)	Approximate Cycling Time (Minutes)
Hulbert Road Bus Stops	600	8	2
B&Q	700	9	3
Asda	900	11	3
Barncroft Primary School	1400	18	5
My Dentist	1400	18	5
The Swan Inn	1400	18	5
Park Community School	1800	23	7
Riverside School	2000	25	8
Crookhorn Lane Surgery	2000	25	8
Crookhorn College	2100	26	8
Bedhampton Rail Station	2300	29	9
Iceland Foods	2600	33	10

Figure 2.4 Local Facilities



2.35 Given the above, it is considered that the site is well located to encourage a number of trips generated by future site users to be undertaken by sustainable and active modes of transport including walking and cycling.

3 AIMS, OBJECTIVES AND TARGETS

INTRODUCTION

- 3.1 This chapter outlines the aims, objectives and targets of the Travel Plan for the Proposed Development.

TRAVEL PLAN AIMS

- 3.2 The main aims of this TP are as follows:
- To ensure that travel choices information (e.g. available services, the benefits of more sustainable travel behaviour including more efficient car use) are promoted to prospective new residents and visitors at the Site;
 - To increase the incidence of journeys undertaken by healthy and active travel modes and public transport; and
 - Promote healthier lifestyles

TRAVEL PLAN OBJECTIVES

- 3.3 The objective of this Travel Plan is to:
- Promote travel by more sustainable modes of transport, and to manage the overall transport impacts of the development.
- 3.4 Beneath this headline objective, several other related objectives have been identified as follows:
- Objective 1: Reduce the need to travel by car;
 - Objective 2: Promote walking / cycling and health and wellbeing;
 - Objective 3: Promote public transport (with a particular emphasis on rail and bus); and
 - Objective 4: Provide information that is conducive towards promoting sustainable travel and changing travel behaviour.

TRAVEL PLAN TARGETS

- 3.5 The success of the Travel Plan is measured by whether it achieves its objectives through set targets which will be identified following the initial survey and which will be advised to HCC. The targets, which are related to the objectives, can be 'action' targets or 'aim' targets. Action targets set out specific commitments to implement measures within certain timescales to ensure delivery. Aim targets provide numerical goals for modal shift.
- 3.6 All targets will be SMART (Specific, Measurable, Achievable, Realistic, Time-bound).

Action Targets

- 3.7 The action targets are set out in the Action Plan and include the following key milestones;

- The Travel Plan will be formally launched on an individual basis as properties are occupied;
- Provision of a 'Travel Information Pack' for each dwelling upon occupation;
- The baseline survey will be conducted within 3 months of meaningful occupation (50% of dwellings occupied) and details advised to the HCC;
- An updated version of the Travel Plan will be produced with an Action Plan following the baseline surveys. This updated version of the Travel Plan will have clear aims and objectives which outline modal shift targets over at least a 5-year period; and
- Monitoring surveys will be undertaken on the anniversary of the baseline survey which will monitor the modal shift of residents.

AIM TARGETS

- 3.8 The Travel Plan will be monitored over a period of not less than 5 years. Once the baseline travel survey results have been analysed, specific targets will be set according to the monitoring programme set out in this report and details advised to the HCC, albeit, an indicative modal share target is set out below. The main target will be to reduce dependency on the private car. Other targets will at least cover increasing levels of public transport patronage and increasing walking and cycling modal splits.

Table 3.1 Travel Plan Targets

Objective	Baseline % mode split	Target % mode split at end of year five
Aim targets		
Reduce the proportion of travel by single-occupancy vehicles	TBC following baseline survey	-10%
Increase share of journeys on foot and by bicycle	TBC following baseline survey	+5%
Increase share of journeys by public transport	TBC following baseline survey	+5%

4 TRAVEL PLAN RESPONSIBILITY, STRATEGY AND MEASURES

INTRODUCTION

- 4.1 This chapter outlines the management strategy of the Travel Plan and proposed measures.

TRAVEL PLAN STRATEGY

- 4.2 The Travel Plan for the Proposed Development will be site specific with the choice of measures partly determined by the existing opportunities and constraints offered by the Site. The Travel Plan will combine a range of hard measures such as site design and infrastructure with soft measures such as marketing and raising awareness.
- 4.3 The specified measures will provide a holistic package in which individual measures are integrated into the design, marketing and occupation of the Site rather than being 'retrofitted' once the Development is established.
- 4.4 Furthermore, the Travel Plan will be treated as a 'live' document, ever changing and evolving to best suit the needs of the Development.

RESPONSIBILITY

Travel Plan Coordinator

- 4.5 A Travel Plan Co-ordinator (TPC) will be appointed to promote, implement and monitor the Travel Plan. The role will include offering Travel Plan information and advice to all residents and the promotion of Travel Plan measures.
- 4.6 A contact name for the nominated TPC will be provided to HCC as soon as it is known. This name will also be identified to residents through a site travel notice board and as part of the travel information.
- 4.7 The responsibilities of the TPC are many and varied and include:
- Liaison with HCC to obtain literature promoting sustainable travel;
 - Overseeing the Development and implementation of the Travel Plan;
 - Designing and implementing effective marketing and awareness-raising campaigns to promote the Travel Plan;
 - Coordinating the necessary data collection exercises required to develop the Travel Plan;
 - Acting as a point of contact for residents requiring travel information; and
 - Coordinating the monitoring programme for the Travel Plan, including target setting.
- 4.8 The TPC will be the first point of contact for all residents in all matters regarding travel to and from the Site.

TRAVEL PLAN MEASURES

Residential Database

- 4.9 The TPC will collect information on the uptake of travel planning mechanisms by residents. This information will include whether residents have received their TIP or been issued their newsletter.

Travel Information Packs (TIP)

- 4.10 Travel Information Packs (TIP) will be provided to all new residents to ensure that they are fully informed of the travel choices available from the outset. The TIP will likely include:
- Site specific bus and rail timetable information;
 - Sustainable travel vouchers;
 - A plan showing appropriate cycle routes to key destinations, services and facilities;
 - A plan showing appropriate pedestrian routes to key destinations, services and facilities;
 - Contact details of the TPC;
 - Information online, regarding sustainable travel and travel planning tools;
 - Information on free health apps that promote walking and cycling;
 - Contact details of local reputable taxi firms; and
 - Information on the benefits of sustainable transport on health and the environment.

Noticeboard

- 4.11 A noticeboard will be provided for residents which may contain walking and cycling maps for the area as well as local public transport information. It can also be used as a facility to promote sustainable travel events / initiatives.
- 4.12 It will be the responsibility of the TPC to ensure that the information contained on the board is relevant and up to date. The noticeboard will be located in an area which is highly trafficked by pedestrians to ensure that material is frequently viewed.

Newsletter/Email

- 4.13 The TPC will produce a biannual newsletter during the active phase of the Travel Plan, which will detail the progress towards targets and the results of the monitoring. The newsletter will be provided in either a leaflet form or electronically.
- 4.14 The newsletter will act as a promotion tool for the Travel Plan by publicising any new measures, national sustainable travel campaigns and improvements to sustainable travel facilities in the local area.

Focus Groups and Events

- 4.15 The TPC will organise focus groups (such as a Bicycle Users' Group) and promote appropriate events (e.g. walk to work week, liftshare week) throughout the year to promote sustainable travel.

Promote Sustainable Travel

Walking

- 4.16 Walking will be promoted to residents through a variety of communication mechanisms (such as TIP, noticeboard, etc). The information will likely contain:
- Maps identifying key facilities;
 - Pedestrian friendly walking routes and travel times; and,
 - Information promoting the health and cost benefits of walking.
- 4.17 New walking routes will be provided as part of the development and promoted to residents. Maps will be provided to residents showing safe local walking routes.
- 4.18 The TPC will co-ordinate with local schools to promote walk to school events.
- 4.19 As part of the development, a 3.0m shared use footway/cycleway will be provided along the southern side of Hulbert Road. This will provide a high quality link from the site to existing facilities and employment opportunities in the local area.

Cycling

- 4.20 It is proposed that as part of the development, cycle parking spaces will be provided on site. Cycling will be promoted to residents through a variety of communication mechanisms (such as TIP and noticeboard). The information will contain:
- Maps identifying key facilities, local cycling shops and cycle friendly routes;
 - Information promoting the health and cost benefits of cycling;
 - Local cycle route maps; and,
 - Safe cycling practice.
- 4.21 As part of the development, a 3.0m shared use footway/cycleway with signage will be provided along the southern side of Hulbert Road. This will provide a high quality link from the site to existing facilities and employment opportunities in the local area.
- 4.22 Secure, covered cycle storage will be provided for all properties in the development; either with sheds/garages for houses, or secure communal parking for flats.
- 4.23 The TPC will set up a Bicycle Users' Group (BUG) for residents.

Public Transport

- 4.24 Public transport will be promoted to residents through a variety of communication mechanisms (such as TIP, Noticeboard, etc). The information will contain:
- Maps identifying key bus routes, the location of bus stops and Bedhampton Railway station; and
 - Timetable information (obtained from the operators).
- 4.25 A sustainable travel voucher (for use at bike shops or with public transport operators, amongst others) will be provided to residents as part of the TIP.

- 4.26 The TPC will co-ordinate with local public transport providers to improve services, negotiate discounts and trial initiatives

Car Parking

- 4.27 Car parking use on site will be monitored, and a management strategy implemented should issues arise regarding parking provision and use.

Smart Working Measures

- 4.28 The TPC will promote home delivery services and good quality broadband services to residents, and home working, where possible, to employers.

ACTION PLAN

- 4.29 The Action Plan for the Proposed Development is set out in in **Appendix A**.

5 MONITORING AND REVIEW

INTRODUCTION

- 5.1 This chapter sets out the implementation, monitoring and review process of the Travel Plan.

IMPLEMENTATION

- 5.2 A key aspect of the Travel Plan is the provision of travel information for site users. It will be the responsibility of the TPC to ensure that the strategy and proposed measures are implemented.
- 5.3 The TPC will prepare an Implementation Strategy Table to set out responsibilities and timescales for implementation and monitoring the progress of the initiatives proposed by the Travel Plan.
- 5.4 It will also be the role of the TPC to monitor and evaluate the impacts of the Travel Plan and report findings to the HCC.
- 5.5 The Travel Plan will be delivered as part of the Section 106 agreement. The developer will commit to paying HCC's monitoring and evaluation fees, as well as a Travel Plan Cash Deposit of £35,720, equivalent to the cost of the measures set out in the Action Plan.

MONITORING AND REVIEW

- 5.6 It is important to recognise that Travel Plans are live documents and as such develop over time with changing conditions. Monitoring and review are an integral part of a Travel Plan and its results can help recognise success, and generally raise awareness.

	Year 1	Year 2	Year 3	Year 4	Year 5
Level of Report	Baseline survey, 1 year after occupation. To include survey results and monitoring report	Snapshot survey Monitoring report	Full Survey Monitoring report	Snapshot survey Monitoring report	Full Survey Monitoring report

- 5.7 The findings of the surveys will be reviewed, and a short monitoring report prepared. This will be issued to HCC within two months of the date of the travel survey. If necessary, a meeting will be arranged between the TPC and HCC to discuss progress and possible enhancements to the Travel Plan should these be deemed necessary.
- 5.8 All surveys will be required to have a minimum 35% response rate, with rewards offered if necessary to reach the minimum response rate (such as shopping vouchers).
- 5.9 Should the minimum response rate still not be met, surveys such as Automatic Traffic Counts will be undertaken to determine travel patterns.
- 5.10 A sample questionnaire is included as **Appendix B**.

SUMMARY

- 6.1 Tetra Tech has been commissioned by Trustees of the GHM Jackson 1972 Settlement (the 'Applicant') to prepare a Framework Travel Plan (FTP) to support a proposed residential development at Hulbert Road, Havant (the 'Site').
- 6.2 This Framework Travel Plan is designed to set out the overarching Travel Plan strategies, objectives and aims for the Proposed Development.
- 6.3 The Travel Plan will focus on 'action' and 'aim' targets. The site proposes a 10% reduction in single occupancy car travel over the life span of the Travel Plan. The Travel Plan will therefore target the use of sustainable transport and ensure the continued sustainable travel behaviour among residents.
- 6.4 This Travel Plan provides a holistic package of measures to promote travel by sustainable modes. Management and monitoring of the TP will be overseen by the TPC who will raise awareness of sustainable travel and promote the principles of the Travel Plan to future residents.

CONCLUSION

- 6.5 This Travel Plan outlines a package of measures with the ultimate aim of promoting sustainable travel choices for future residents

APPENDIX A – ACTION PLAN

Hulbert Road, Havant

Action Plan

Preliminary Action	Responsibility	Timescale	Cost
Appoint TPC, confirm TPC with HCC	Developer	3 months prior to occupation	£ 250.00
Confirm Action Plan with HCC	TPC	3 months prior to occupation	£ 500.00
Liaison with local bike shops to arrange discounts/vouchers	TPC	Prior to first occupation	£ 3,660.00
Liaison with local bus operators to arrange discounts/vouchers	TPC	Prior to first occupation	£ 3,660.00
Preparation and distribution of Travel Pack to residents	TPC	Upon occupation of each dwelling	£ 3,500.00
Set up TP action database for monitoring information	TPC	Prior to first occupation	£ 500.00
Set schedule of residents meetings, newsletter distribution etc.	TPC	Prior to first occupation	£ 750.00
Undertake baseline travel survey	TPC	3 months post-50th dwelling occupation	£ 1,750.00
Undertake full occupation travel survey	TPC	100% occupation	£ 1,250.00
Prepare and submit preliminary monitoring report	TPC	Following full occupation survey	£ 900.00
			£ 16,720.00

Ongoing Action	Responsibility	Timescale	Cost (Year 1)	Cost (Year 2)	Cost (Year 3)	Cost (Year 4)	Cost (Year 5)
Personal journey planning for residents	TPC	Ongoing	£ 500.00	£ 500.00	£ 500.00	£ 500.00	£ 500.00
Maintaining currency of travel information pack	TPC	Ongoing	£ 500.00	£ 500.00	£ 500.00	£ 500.00	£ 500.00
Promotion of sustainable travel events (e.g. Walk to Work Week)	TPC	Ongoing	£ 250.00	£ 250.00	£ 250.00	£ 250.00	£ 250.00
Attendance at meetings with residents' steering group	TPC	Ongoing	£ 500.00	£ 500.00	£ 500.00	£ 500.00	£ 500.00
Maintaining database of information, e.g. personal details, car sharing	TPC	Ongoing	£ 300.00	£ 300.00	£ 300.00	£ 300.00	£ 300.00
Preparation and distribution of communications	TPC	Ongoing	£ 300.00	£ 300.00	£ 300.00	£ 300.00	£ 300.00
Co-ordination of travel surveys	TPC	Ongoing	£ 250.00	£ 250.00	£ 250.00	£ 250.00	£ 250.00
Preparation and submission of monitoring reports	TPC	Ongoing	£ 1,200.00	£ 1,200.00	£ 1,200.00	£ 1,200.00	£ 1,200.00
			£ 3,800.00	£ 3,800.00	£ 3,800.00	£ 3,800.00	£ 3,800.00
Total :			£ 19,000.00				

APPENDIX B – SAMPLE TRAVEL SURVEY QUESTIONNAIRE

Hulbert Road, Havant

We would be grateful if you could spare a few moments to answer the following questions regarding your travel to and from work.

1. What is your postcode?

2. Do you or any member of your household own a car? If so, how many?

Yes

Total cars in household:

No

3. How do you most frequently travel to and from your home for the following activities? (Choose the mode of travel that you use most often)

[illegible]

4. How often do you use the following modes of travel for journeys from your home?

[illegible]

5. Have you changed your most common mode of transport since relocating to this development?

Yes

No

If yes, why?

6. Which of the following changes would most encourage you to cycle for journeys in the local area, e.g. within Havant? (If you already cycle, which would you most like to see?)

Safer, better lit cycle paths

Improve cycle paths on the journey to town centre/
rail station

Improve cycle parking at this development

Arrangements to buy a bicycle at discount

Improved crossing facilities

Improved cycle parking at local facilities – where?

[illegible]

None of the above
Other (please specify)

--

7. Which of the following changes would most encourage you to use public transport for your journeys in the local area? (If you already travel to by public transport, which would you most like to see).

More direct bus routes	
More frequent bus services	
More frequent train services	
More frequent tram services	
Better lighting at bus shelters and on footpaths	
More convenient bus drop-off points	
Better bus links to work from station	
Public transport information	
None of the above	
Other (please specify)	

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8. Which of the following changes would most encourage you to walk for journeys in the local area? (If you already walk, which would you most like to see?)

Cleaner, better maintained footpaths	
Better lighting on footpaths	
More improved pedestrian crossing points	
Slower speed limits	
Better street lighting in the local area	
None	
Other (please specify)	

--

9. Which of the following changes would most encourage you to car share? (If you already car share, which would you most like to see?)

More help finding car share partners who have similar work patterns	
Free taxi home if let down by car	
More information regarding car sharing i.e. benefits	
None	
Other (please specify)	

--

10. Did you know this development operated a Travel Plan?

Yes	
No	

11. If yes, how did you find out about the Travel Plan?

During the sales process

Word of mouth

Development publication/newsletter/notice board/website

Personalised travel planning process

Other (please specify)

--

12. Please use the following box to provide any comments you wish to make in relation to travel in the local area:

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Thank you for completing this survey.