

Deed of Variation

**Pursuant to Section 106A of the Town and Country Planning
Act 1990**

In respect of: Land on the north side of Havant Road and west of
Selangor Avenue, Emsworth

Between: BDW Trading Limited (1)
The Council Of The Borough Of Havant (2)
Hampshire County Council (3)

Dated 30th November 2022

Osborne Clarke LLP

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THIS DEED of VARIATION is made on the 30 of NOVEMBER 2022
BETWEEN

- (1) **BDW TRADING LIMITED** (Co. Reg. No. 3018173) of Barratt House Cartwright Way Forest Business Park Bardon Hill Coalville Leicestershire LE67 1UF ("**Owner**")
- (2) **THE COUNCIL OF THE BOROUGH OF HAVANT** of Civic Offices Havant, Hampshire PO9 2AX ("**Council**")
- (3) **HAMPSHIRE COUNTY COUNCIL** of Civic Offices Havant, Hampshire PO9 2AX ("**County Council**")

WHEREAS:

1. This Deed is supplemental to the Original Agreement.
2. The Council and the County Council are the local planning authorities for the purposes of the Act for the area within which the Land (as defined in the Original Agreement) is situated and are the authorities by whom the planning obligations contained in this Deed are enforceable.
3. The County Council is the local highway authority and local education authority for the area within which the Land is situated.
4. The Owner acquired the Land by way of a transfer dated 13 February 2019 which is registered at the Land Registry under Title Number SH51444. The parties to this Deed being the parties that are interested in the land for the purposes of section 106 and 106A of the Act at the date of this Deed have agreed pursuant to section 106A of the Act to vary the Original Agreement on the terms set out in this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

1 DEFINITIONS

- 1.1 In this Deed where the context so admits all expressions shall have the meanings given to them by the Original Agreement save that the following expressions shall have the following meanings:

"the First Deed of Variation"	the agreement made under Section 106A of the Act dated 22 July 2020 and made between (1) BDW Trading Limited; (2) The Council of the Borough of Havant; and (3) Hampshire County Council
"the Original Agreement"	the agreement made under Section 106 of the Act dated 28 June 2018 and made between (1) Harriet Jane Roff Henry and James Francis Maxwell Harrison and Katherine Julia Nedham Wood (2) David John Gammans and James Francis Maxwell Harrison (3) BDW Trading Limited (4) the Council of the Borough of Havant and (5) Hampshire County Council as amended by the First Deed of Variation
"the Land"	has the same meaning as in the Original Agreement

2 CONSTRUCTION OF THIS DEED

- 2.1 The definitions and rules of interpretation in this Clause apply in this Deed.
- 2.2 All references in this Deed to Clauses in the Original Agreement are to Clauses within the Original Agreement.

- 2.3 Clause headings shall not affect the interpretation of this Deed.
- 2.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 2.5 A reference to a company shall include any company, corporation or other body corporate, whether and however incorporated or established.
- 2.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 2.7 A reference to a party shall include that party's representatives, successors or permitted assigns and in the case of the Council or the County Council the successors to its respective statutory functions.
- 2.8 A reference to a statute or statutory provisions is a reference to it as it is in force at the date of this Deed and shall include any subordinate legislation made under the statute or statutory provision.
- 2.9 References to clauses, schedules and plans (unless the context otherwise requires) are to clauses, schedules and plans of this Deed.
- 2.10 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to all powers enabling the parties and in particular Section 106 and 106A of the Act and Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling acts with the intention that it binds all owners' interests in the Land and their successors in title.
- 3.2 The obligations imposed upon the Owner contained in this Deed are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the District Council and the County Council in the manner set out in the Original Agreement.
- 3.3 Nothing contained or implied in this Deed shall prejudice or affect the rights, powers, duties and obligations of the District Council and County Council in the exercise of its function and its rights, powers, duties and obligations under all public private statutes, byelaws and regulations may be as fully and effectively exercised as if they were not a party to this Deed.
- 3.4 The parties agree that the Original Agreement shall remain in full force and effect save as expressly varied by this Deed.
- 3.5 It is hereby agreed by the parties that the variation contained at Clause 4 of this Deed shall take effect from the date of this Deed as though it had originally been contained in the Original Agreement.

4 VARIATION TO THE ORIGINAL AGREEMENT

- 4.1 In Clause 1 a new definition of 'LAP' and 'LAP Plan' shall be added as follows:

"LAP" means the local area of play indicatively shown and labelled 'LAP' on the LAP Plan

"LAP Plan" means the plan marked 'LAP PLAN' attached to this Deed at Appendix 7 or such other plan as may be agreed in writing with the Council

4.2 The plan annexed to this Deed at Appendix 1 shall be inserted as a new Appendix 7 entitled 'LAP Plan'

4.3 Paragraph 10.6 of Schedule 2 shall be amended to read as follows:

10.6 The Owner and or Developer shall not Occupy or permit Occupation of more than 10 Dwellings on the Land unless and until the Highway Works have been completed to the satisfaction of the County Council to the Highway Works Completion Standard.

4.4 Paragraph 11.2 of Schedule 2 shall be amended to read as follows:

11.2 Not to Occupy or permit occupation of a Dwelling until the Owner has created the permissive paths and unadopted rights of way serving that Dwelling not forming part of the Highways Works Agreement as provided above in paragraph 11.1 of this Schedule to the Council's satisfaction.

4.5 Paragraph 13 of Schedule 2 shall be amended to read as follows:

13. LAP and Children's Play Area and Open Space Land

4.6 Paragraph 13.1 of Schedule 2 shall be amended to read as follows:

13.1 Not to Occupy:

13.1.1 more than 110 Dwellings unless access to the LAP has been provided to/from Selangor Avenue and to/from the Development using the perimeter path with fencing as set out on the LAP Plan (or otherwise agreed in writing with the Council)

13.1.2 more than 110 Dwellings unless the Children's Play Area shall have been completed in accordance with details approved in writing with the Council

4.7 Paragraph 13.2 of Schedule 2 shall be amended to read as follows:

13.2 Not to Occupy more than 123 Dwellings unless the Open Space Land shall have been completed in accordance with details approved in writing with the Council

5 REGISTRATION

This Deed shall be registered as a local land charge in the Register of Local Land Charges maintained by the Council.

6 COSTS

On execution of this Deed the Owner shall pay the Council's and County Council's reasonable legal costs in connection with the negotiation and completion of this Deed.

7 GOVERNING LAW

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

8 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.

IN WITNESS whereof this instrument has been executed as a Deed the date and year first before written

EXECUTED AS A DEED when
THE COMMON SEAL of
THE COUNCIL OF THE BOROUGH OF HAVANT
Was hereunto affixed BY ORDER

.....
Authorised Officer

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

.....
Authorised Officer

Name

Position *Authorised Signatory*

EXECUTED AS A DEED by

BDW TRADING LIMITED

acting by

and

as the Attorneys in the name of BDW Trading Limited in exercise of the power

Conferred upon them by a Power of Attorney dated 16.06.2022

In the presence of

SIGNATURE OF

SIGNATURE OF

Witness Name:

Witness Address:

Witness Occupation:

SIGNATURE OF ATTORNEY

SIGNATURE OF

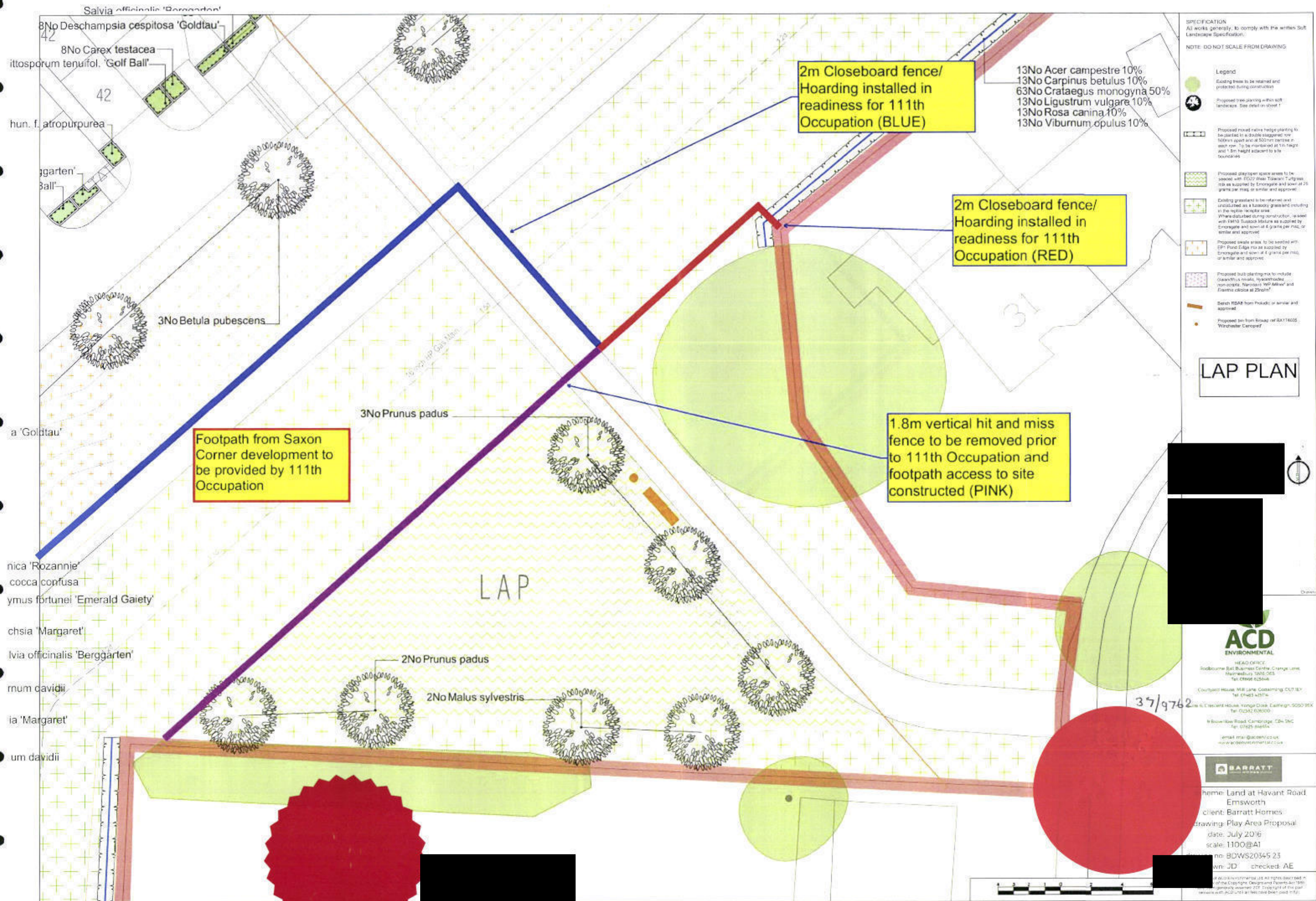
Witness Name:

Witness Address:

Witness Occupation:

APPENDIX 1

LAP Plan



- SPECIFICATION**
All works generally to comply with the written Soft Landscape Specification.
- NOTE: DO NOT SCALE FROM DRAWING**
- Legend**
- Existing trees to be retained and protected during construction
 - Proposed tree planting within soft landscape. See detail on sheet 1
 - Proposed mixed native hedge planting to be planted in a double staggered row. Hedgerow spacing at 600mm centres in each row. To be maintained at 1.5m height and 1.5m height adjacent to site boundaries
 - Proposed play area space areas to be covered with EPDM safety surfacing. To be supplied by Emongate and sown at 25 grams per m² or similar and approved
 - Existing grassland to be retained and undisturbed as a grassy area, including in the play area. Where disturbed during construction, to be sown with EM10 Tussock mixture as supplied by Emongate and sown at 4 grams per m² or similar and approved
 - Proposed swale areas to be seeded with EP1 Pond Edge mix as supplied by Emongate and sown at 4 grams per m² or similar and approved
 - Proposed sub planting mix to include: Galanthus nivalis, Hyacinthoides non-scripta, Narcissus 'VP Miller' and Eranthis ciliata at 250mm
 - Search RIBA from Product or similar and approved
 - Proposed pin from Emongate or similar and approved

LAP PLAN



ACD ENVIRONMENTAL
HEAD OFFICE
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Countydown House, 100-102, The Ridgeway, Bournemouth, Dorset, BH1 1AA
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www.acdenv.co.uk



Theme: Land at Havant Road, Emsworth
Client: Barratt Homes
Drawing: Play Area Proposal
Date: July 2016
Scale: 1:100 @ A1
No: BDWS20345 23
Drawn: JD checked: AE

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