

DATED

30<sup>th</sup> July

2013

MAGDALA BUILDING PROPERTIES LIMITED

and

WARNER GOODMAN LLP

And

LLOYDS TSB BANK PLC

to

THE COUNCIL OF THE BOROUGH OF HAVANT

**PLANNING OBLIGATION BY  
UNDERTAKING**

Pursuant to Section 106 of the Town and Country  
Planning Act 1990 (as amended)

relating to land at

**9 -11 St Georges Walk Waterlooville  
in Hampshire**

Payment Prior to Commencement

**THIS DEED OF UNDERTAKING** is made the 30<sup>th</sup> day of July 2013  
**BY**

- (1) THE FIRST OWNER and THE SECOND OWNER
- (2) THE SECOND OWNER'S MORTGAGEE

1. In this Deed:

- 1.1 "the Act" means the Town and Country Planning Act 1990 as amended
- 1.2 "Alternative Affordable Housing Contribution" means the sum of money specified in Paragraph Eight of the Schedule being the payment of a financial contribution in lieu of the shortfall of on-site affordable housing provision (calculated in accordance with the methodology contained in the Council's "Supplementary Planning Documents – Housing July 2011")
- 1.3 "Application" means the application for planning permission in respect of the Land given a reference number which is set out in paragraph Five of the Schedule which Application to carry out the Development has been made to the Council as appropriate local planning authority.
- 1.4 "the Council" means the Council of the Borough of Havant being the local planning authority by whom the within written Obligations are enforceable
- 1.5 "the County Council" means Hampshire County Council being the local planning authority by whom the within written Obligations are enforceable
- 1.6 "the Development" means the development described in paragraph Six of the Schedule
- 1.7 "the Hampshire County Council Transport Contribution" means the sum of money specified in Paragraph Eight of the Schedule being a contribution (being applied at such time and in such manner as the County Council shall in its absolute discretion determine) to the costs to be incurred by the Council or Hampshire County Council in the provision, improvement and maintenance of Havant Borough Council's sustainable transport list.
- 1.8 "Indexed" means in respect of the Hampshire County Council Transport Contribution such sum to be index linked in accordance with the All Items Index of Retail Prices (RPI) published by the Office of National Statistics or any replacement thereof from the date hereof until the date of payment and such indexation shall only be applied in circumstances where the RPI at the date of payment stands at a higher level than it did at 1 April 2013
- 1.9 "the Land" means the land described at paragraph One of the Schedule and any buildings structures or erections at any time thereon
- 1.10 "the Monitoring/Legal Costs Fees" means the sum of money specified in Paragraph Eight of the Schedule being Fees (being applied at such time and in such manner as the Council shall in its absolute discretion determine) used towards the costs to be incurred by the Council in the provision of suitably

qualified and experienced persons whose function interalia is to draft monitor coordinate and enforce section 106 Obligations.

- 1.11 "the Second Owner's Mortgage" means the mortgage or charge (if any) described at paragraph Four of the Schedule and all of them if more than one
- 1.12 "the Second Owner's Mortgagee" means the mortgagee described at paragraph Three of the Schedule
- 1.13 "Obligations" and "OBLIGATIONS" means those planning obligations (being restrictions requirements covenants agreements obligations or any of the foregoing) enforceable at law and in particular (but without prejudice to the availability to any enforcing authority of any power which may be available to it for the purposes of the enforcement of this Deed) under the authority of the statutory provision referred to in clause 4 of this Deed and which are set out in paragraph Nine of the Schedule
- 1.14 "the First Owner" and "the Second Owner" means the owners of any or all parts of the Land and as parties to this Deed acting and being obliged by this Deed jointly and severally who are described at paragraph Two of the Schedule being a person or persons identified in accordance with Section 106(9)(c) of the Act
- 1.15 "the Permission" means the grant of planning permission made in response to the Application including where appropriate any grant of approval in respect of matters reserved by the said grant of planning permission or any subsequent grant of planning permission for the Development or for such other development on the Land as is not materially different from the Development (the determination of materiality being solely at the discretion of the Council)
- 1.16 "the Plan" means the plan attached to this Deed
- 1.17 "the Playing Space Contribution" means the sum of money specified in Paragraph Eight of the Schedule being a contribution (being applied at such time and in such manner as the Council shall in its absolute discretion determine) to the costs to be incurred by the Council in the provision, improvement and maintenance of playing space to meet the needs of residents of new housing developments.
- 1.18 "the Schedule" means the Schedule to this Deed being an integral part of this Deed
- 1.19 "the Solicitor" means the solicitor giving the Certificate at paragraph Seven of the Schedule
- 2.1 With the intention and so as permanently to bind the Land and all parts thereof so far as lawfully may be effected and into whomsoever hands the same may come and so that the Obligations hereby created shall be

enforceable both against the First Owner and Second Owner and the Second Owner's Mortgagee and their respective successors the First Owner and Second Owner and the Second Owner's Mortgagee (should it or they take possession of any part of the Land or exercise powers of sale under its security) HEREBY SEVERALLY COVENANT AND UNDERTAKE AS A PLANNING OBLIGATION TO COMPLY FULLY WITH THE OBLIGATIONS

- 2.2 This instrument or document hereby expresses itself as executed as a Deed
3. The First Owner and the Second Owner has produced at Paragraph Seven of the Schedule a Certificate of the Solicitor with the intention that the Council may and shall rely upon the truth of the matters therein certified namely that;
  - 3.1 the First Owner and the Second Owner are immediately entitled to possession and occupation of a freehold estate in the Land subject only to the Second Owner's Mortgage (if any) no other person having an interest therein at law or (to the best of the First Owner and Second Owner's knowledge and belief) in equity
  - 3.2 in the case that the Land is subject to any mortgage the Mortgage (or in the case of more than one each of them) is described at Paragraph Four of the Schedule and no other mortgage or charge has been concluded which affects the Land other than the Mortgage and in the event that none is so described that there is no such mortgage or charge affecting the Land
4. This Deed of Undertaking is made pursuant to Section 106 of the Act with the intent that it shall bind the First Owner and the Second Owner and the Second Owner's Mortgagee and be enforceable against them and the persons deriving title under them and shall be a planning obligation for the purposes of the Act
5. This Deed shall have effect from the date the Permission is granted
6. In the event of any difference between the description of the Development in this Deed and the terms of the grant of permission issued by the Council in response to the Application the text of the grant of planning permission only shall be deemed to express the permission granted by the Council in response to the Application
7. Expressions of acceptance or satisfaction on the part of the Council with things done in discharge of Obligations or determinations of materiality for the

purposes of clause 1.13 shall be ineffective and not relied upon by any person unless in writing by the Council's Executive Head of Planning and Built Environment for the time being or such other officer who may be identified in writing by the Council for this purpose

8. In the event that any provision of this Deed is held to be invalid or unenforceable the remaining provisions of this Deed shall remain in full force and effect

9. Second Owner's Mortgagee's Consent

9.1 The Second Owner's Mortgagee consents to the completion of this deed and declares that its interest in the Second Owner's Land shall be bound by the terms of this deed as if it had been executed and registered as a land charge prior to the creation of the Mortgagee's interest in the Property.

9.2 The Second Owner's Mortgagee shall not be personally liable for any breach of the obligations in this deed unless committed or continuing at a time when the Mortgagee is in possession of all or any part of the Second owner's Land.

10. Release

No person shall be liable for any breach of any of the Obligation, restrictions or covenants contained in this deed after parting with all of its interest in the Land, except in respect of any breach subsisting prior to parting with such interest.

11. Determination of Deed

This deed shall be determined and have no further effect if the Planning Permission:

- (a) expires before the commencement of any Material Operation;
- (b) is varied or revoked other than at the request of the First Owner or the Second Owner or
- (c) is quashed following a successful legal challenge.

12. Covenants between First Owner and Second Owner:-

- (a) The First Owner covenants with the Second Owner that it will not carry out any works amounting to a Material Operation triggering the payment of

any of the Contributions detailed in Clause 8 of the Schedule without the mutual consent of the Second Owner

(b) The Second Owner covenants with the First Owner that it will not carry out any works amounting to a Material Operation triggering the payment of any of the Contributions detailed in Clause 8 of the Schedule without the mutual consent of the First Owner

### 13. Notices

Any notice or other communication required to be given under this deed shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to any person required to receive the notice or communication at its address as set out below:

(a) Council:

Havant Borough Council ;  
Public Service Plaza Civic Centre Rd, Havant, Hampshire PO9 2AX  
(Ref; Solicitor to the Council)

(b) First Owner:

Magdala Building Properties Limited Wentworth House 4400 Parkway  
Whiteley Hants PO15 7FJ (Ref; Alan Wood)

(c) Second Owner:

Claire Battye Warner Goodman LLP of 2-4 Landport Terrace  
Portsmouth Hants PO1 2RG (fax 02392 755094)

(d) Second Owner's Mortgagee:

Lloyds TSB Bank PLC, Corporate Customer Service (Dept 9317) 4<sup>th</sup>  
Floor, 6/7 Park Row Leeds LS1 5LB

or as otherwise specified by the relevant person by notice in writing to each other person.

13.2 Any notice or other communication shall be deemed to have been duly received:

(a) if delivered personally, when left at the address and for the contact referred to in this clause;

(b) if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second working day after posting; or

(c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

14. Third Party Rights

No person other than a party to this undertaking, and their respective successors and permitted assigns, and the Council and the County Council and their successors to its respective statutory functions shall have any rights to enforce any term of this deed.

15. 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.

16. Disputes

If any dispute arises out of this deed in respect of the mutual covenants between the First Owner and the Second Owner, the dispute shall be referred to an arbitrator appointed jointly by the First Owner and the Second Owner ("the parties"). If the parties cannot agree on the arbitrator's identity the arbitrator shall be appointed on either party's request by the President for the time being of the Royal Institution of Chartered Surveyors. The arbitrator shall act in accordance with the Arbitration Act 1996 and the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction, then equally).

THE SCHEDULE

1. (See clause 1.9) the Land

**The land known as 9 – 11 St Georges Walk Waterlooville in Hampshire shown edged with a heavy black line on the Plan.**

2. (See clause 1.14) the First Owner:

**No. 9 St Georges Walk**

Magdala Building Properties Limited (company registration no. 00558795)  
whose registered offices are at:

Wentworth House  
4400 Parkway  
Whiteley  
Hampshire  
PO15 7FJ

(see Clause 1.14) The Second Owner:-

**No. 11 St Georges Walk**

Warner Goodman LLP (company registration no. OC325046) whose  
registered offices are at:  
Portland Chambers  
66 West Street  
Fareham  
Hampshire  
PO16 0JR

3. (See clause 1.12) the Second Owner's Mortgagee:

Lloyds TSB Bank PLC Corporate Customer Service (Dept 931) 4<sup>th</sup> Floor 6/7  
Park Row Leeds LS1 5LB

4. (See clause 1.11) the Second Owner's Mortgage:  
A legal charge dated 26<sup>th</sup> June 2007

5. (See clause 1.3) the Council's planning application reference number:

**APP/13/00415**

6. (See clause 1.6) the Development

**Outline Application for construction of 4 storey building comprising  
1No. ground floor office and 11 No. 1 and 2 bedroom apartments with  
associated parking and access from Portland Road, following  
demolition of existing buildings at 9 and 11 St Georges Walk**

7. (See clauses 1.19 and 3) Solicitors' Certificate  
Certificate of Title

As Solicitor for the First Owner and Second Owner we hereby certify that on the date of this Deed what is set out in clauses 3.1 and 3.2 and paragraphs 2, 3 and 4 of the [REDACTED] Deed is true

Signed: ..... E BATTYE  
 Name: ..... RTNER  
 Address: .....OODMAN LLP  
 COLMAN HOUSE  
 2-4 LANDPORT TERRACE  
 PORTSMOUTH, HANTS. PO1 2RG  
 .....

8. Contributions

| Cost Code | Contribution                                                                 | Amount            |
|-----------|------------------------------------------------------------------------------|-------------------|
| B100 7202 | the Hampshire County Council Transport Contribution (See clause 1.7 and 1.8) | £22,551 (Indexed) |
| B100 7261 | The Playing Space Contribution (see clause 1.17 )                            | £10,326.50        |
|           | Alternative Affordable Housing Contribution (see clause 1.2)                 | £138,312          |
| 2875 4411 | Monitoring Fee (See clause 1.10)                                             | £5,133            |
| 4220 4355 | Legal Costs Fee (See clause 1.10)                                            | £230              |

9. (See clause 1.13) the Obligations

- 9.1 Not to commence or introduce or cause permit or suffer to be commenced or introduced upon or at the Land any Material Operation (as defined in Paragraph 9.6 of this Schedule) permitted by the Permission at any time before the Owner shall have paid to the County Council or caused to be paid to the County Council the Hampshire County Council Transport Contribution (Indexed)
- 9.2 Not to commence or introduce or cause permit or suffer to be commenced or introduced upon or at the Land any Material Operation (as defined in Paragraph 9.6 of this Schedule) permitted by the Permission at any time before the Owner shall have paid to the Council or caused to be paid to the Council the Playing Space Contribution [REDACTED]

- 9.3 Not to commence or introduce or cause permit or suffer to be commenced or introduced upon or at the Land any Material Operation (as defined in Paragraph 9.6 of this Schedule) permitted by the Permission at any time before the Owner shall have paid to the Council or caused to be paid to the Council the Alternative Affordable Housing Contribution
- 9.4 The Owner covenants to pay the Legal Costs Fees to the Council on or before the date of this Undertaking
- 9.5 The Owner covenants to notify the Council and the County Council in writing at least 14 days before commencing a Material Operation on the Land.
- 9.6 In Paragraphs 9.1 9.2 9.3 and 9.5 of this Schedule and where specified elsewhere in this Deed "Material Operation" means:
- 9.6.1 any work of construction in the course of the erection of a building;
- 9.6.2 the digging of a trench which is to contain the foundations or part of the foundations of a building;
- 9.6.3 the laying of any underground main or pipe to the foundations or part of the foundations of a building or to any such trench as is mentioned in paragraph 9.6.2;
- 9.6.4 any operation in the course of laying out or constructing a road or part of a road;
- 9.6.5 any change in the use of the Land which constitutes material development as defined in the Act;

but disregarding for the purposes of this deed and for no other purpose, the following operations:-

demolition works;  
site clearance;  
ground investigations;  
site survey works;  
temporary access construction works;  
archaeological investigation;  
and erection of any fences and hoardings around the Land

IN WITNESS whereof the parties hereto have executed and delivered this instrument or document as a Deed the day and year first before written.

Signed as a DEED by )  
MAGDALA BUILDING )  
PROPERTIES LIMITED )  
acting by )  
a director and its secretary/ )  
two Directors )

Signed as a DEED by

the said

WARNER GOODMAN L

Acting by one Member

In the presence of:

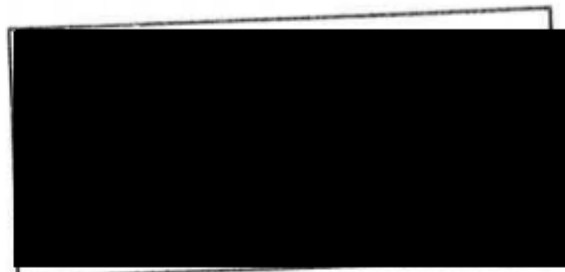
Name of witness:

Address:

WARNER GOODMAN LLP  
PORTLAND CHAMBERS  
66 WEST STREET  
FAREHAM PO16 0JR

Occupation: FINANCIAL SERVICES MANAGER

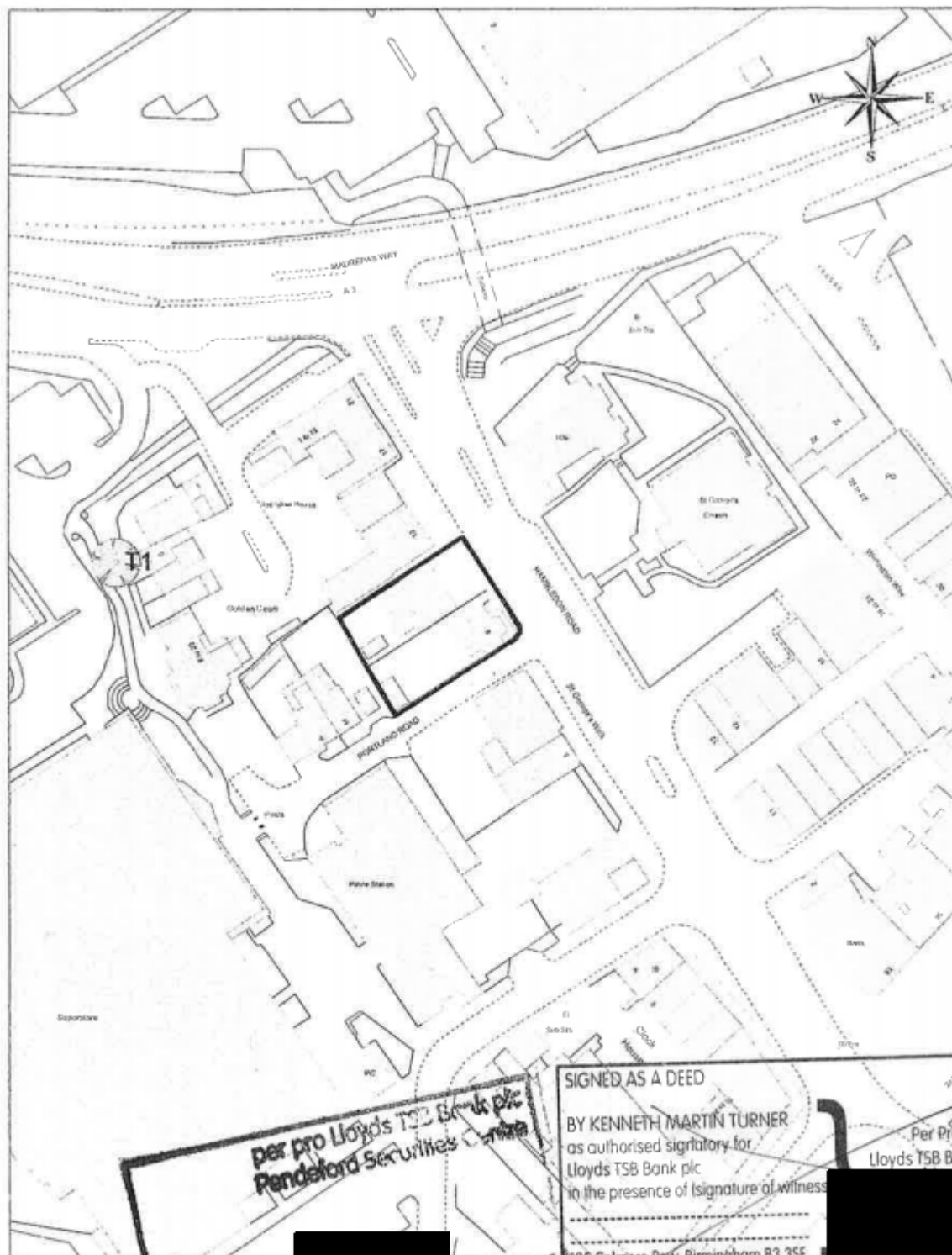
Signed as a DEED )  
by Lloyds TSB BANK PLC )  
by an attorney or authorised )  
signatory on behalf of Lloyds )  
TSB Bank PLC in the presence )  
of:- )



Name of witness:

Address:

Occupation:



per pro Lloyds TSB Bank plc  
Pendeford Securities

SIGNED AS A DEED

BY KENNETH MARTIN TURNER  
as authorised signatory for  
Lloyds TSB Bank plc  
in the presence of (signature of witness)

Per Pro  
Lloyds TSB Bank plc

125 Colmore Row, Birmingham B3 3SF

ies Officer

Public Service Plaza  
Civic Centre Road  
Havant  
Hampshire PO9 2AX

tel 023 9247 4174 fax 023 9248 0263  
www.havant.gov.uk



Title:

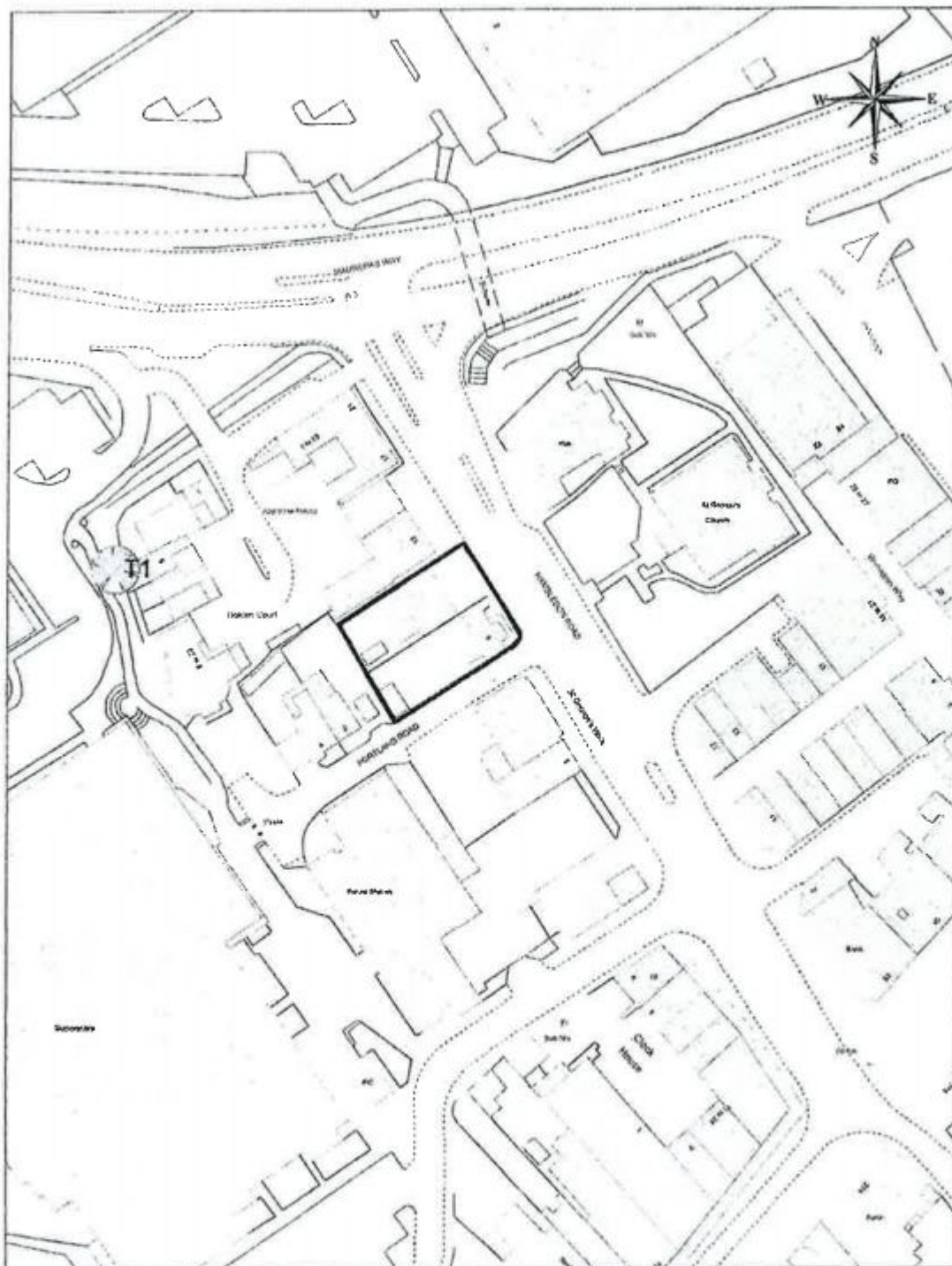
Town & Country Planning Act 1990  
S106 Legal Agreement  
9-11 St Georges Walk  
Waterlooville  
Ref: APP/13/00414

Drawn By  
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Scale:  
1:1250

Drawing No:  
PC44/0582

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Public Service Plaza  
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Hampshire PO9 2AX

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Town & Country Planning Act 1990  
S106 Legal Agreement  
9-11 St Georges Walk  
Waterlooville  
Ref: APP/13/00414

BC

Scale:  
1:1250

Drawing No:  
PC44/0582

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