

DATED 27th June 2023

Deed of Variation

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

In respect of: Land on the West of Hulbert Crematorium
(known as Camp Field), Bartons Road, Havant

Between: The Council of The Borough Of Havant (1)

East Hampshire District Council (2)

Hampshire County Council (3)

Redrow Homes Limited (4)

Philip Dymoke White, Fiona Elizabeth White and
Alexander Stuart Dymoke White (5)

THIS DEED of VARIATION is made on the 27th of June 2023

BETWEEN

- (1) **THE COUNCIL OF THE BOROUGH OF HAVANT** of Civic Offices Havant, Hampshire PO9 2AX ("Borough Council")
- (2) **EAST HAMPSHIRE DISTRICT COUNCIL** of Penns Place, Petersfield, Hampshire GU31 4EX ("District Council")
- (3) **HAMPSHIRE COUNTY COUNCIL** of The Castle, Winchester, Hampshire, SO23 8UJ ("County Council")
- (4) **REDROW HOMES LIMITED** a company incorporated in England and Wales (company number 01990710) whose registered office is at Redrow House, St. David's Park, Flintshire, CH5 3RX ("the First Owner")
- (5) **PHILIP DYMOKE WHITE, FIONA ELIZABETH WHITE AND ALEXANDER STUART DYMOKE WHITE** of Chidden Farmhouse, Chidden, Hambledon, Hampshire PO7 4TD the Trustees of PD White ("the Second Owner")

(the First Owner and the Second Owner are referred to collectively as "the Owners")

Collectively "the Parties"

WHEREAS:

1. This Deed of Variation is the Variation to the Original Agreement dated 2nd October 2020.
2. The Borough Council, District 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 First Owner is the proprietor of the freehold interest in that part of the Land which is registered at the Land Registry under Title Number SH56306
4. The Second Owner is the proprietor of the freehold interest in that part of the Land which is registered at the Land Registry under Title Number SH34071.
5. The Parties with the exception of the First Owner entered into the Original Agreement in order to secure various planning obligations.
6. This Deed of Variation is to reflect the variation brought about by the Reserved Matters Application made by the First Owner following the granting of Planning Permission to application APP/19/00007 Outline Planning permission.
7. The parties to this Deed of Variation 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 terms of the Original Agreement as outlined below and provide new planning obligations to ensure appropriate Nitrate Mitigation both on site and off site at Whitewool Farm.

2. OPERATIVE PART

- 2.1 This Deed of Variation is made pursuant to Sections 106 and 106A of the Act and the Enabling Powers and contains amendments to the planning obligations contained in the Original Agreement

3. Interpretation

- 3.1 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:

"Deed of Variation" means this agreement made by Deed

"Reserved Matters Application" means application reference number APP/21/00678 which is the reserved matters application pursuant to the Borough Council's Planning Permission APP/19/00007 for the layout, scale, appearance and landscaping of 70 dwellings and associated works

"the Original Agreement" means the agreement made under Section 106 of the Act dated 2 October 2020 made between (1) Borough Council; (2) District Council; (3) County Council and (4) the Second Owner dated 2nd October 2020

"Land" has the same meaning as in the Original Agreement to include land with the Title registration number SH56306 all as shown in 'Plan 1' in the Original agreement.

4. CONSTRUCTION OF THIS DEED

- 4.1 The definitions and rules of interpretation in this Clause apply in this Deed.
- 4.2 Where in this Deed of Variation reference is made to any clause paragraph schedule or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph schedule or recital in this Deed
- 4.3 All references in this Deed of Variation to Clauses in the Original Agreement are to Clauses within the Original Agreement.
- 4.4 Clause headings shall not affect the interpretation or construction of this Deed of Variation and are for reference only.
- 4.5 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 4.6 A reference to a company shall include any company, corporation or other body corporate, whether and however incorporated or established.

- 4.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 4.8 A reference to a party shall include that party's representatives, successors or permitted assigns and in the case of the Borough Council or the District Council or the County Council the successors to its respective statutory functions.
- 4.9 A reference to a statute or statutory provisions is a reference to it as it is in force at the date of this Deed of Variation and shall include any subordinate legislation made under the statute or statutory provision.
- 4.10 References to clauses, schedules and plans (unless the context otherwise requires) are to clauses, schedules and plans of this Deed of Variation.
- 4.11 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.

5. LEGAL BASIS/STATUTORY PROVISIONS

- 5.1 This Deed of Variation 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.
- 5.2 The obligations imposed upon the Owners contained in this Deed of Variation are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Borough Council, the District Council and the County Council in the manner set out in the Original Agreement.
- 5.3 Nothing contained or implied in this Deed of Variation shall prejudice or affect the rights, powers, duties and obligations of the Borough Council, 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.
- 5.4 The parties agree that the Original Agreement shall remain in full force and effect save as expressly varied by this Deed of Variation.
- 5.5 It is hereby agreed by the parties that the variation and additional planning obligations contained in this Deed of Variation shall, take effect from the date of this Deed as though it had originally been contained in the Original Agreement.

6. VARIATION TO THE ORIGINAL AGREEMENT

- 6.1 The Original Agreement shall from the date of this Deed of Variation be varied and interpreted as set out below:
- 6.2 It is hereby agreed that the Original Agreement definitions shall be varied as follows:
- 6.3 The definition 'Affordable Dwellings' contained at Clause 1 of the Original Agreement shall be varied with the following definition:

“Affordable Dwellings” means 21 of the Dwellings to be constructed on the Land and to be provided as units of Affordable Housing as part of the Residential Development and in accordance with the Affordable Housing Mix

- 6.4 The definition “Community Orchard Management Plan” contained at Clause 1 of the Original Agreement shall be varied with the following definition:

The number 5 kilograms in line 10 of the Definition of the “Community Orchard Management Agreement” contained at Clause 1 of the Original Agreement shall be varied to mean 4.05 kilograms of total nitrogen per hectare per year for the Development in accordance with the Nutrient Budget and approved by the District Council in accordance with the provisions of Schedule 2, paragraph 2

- 6.5 The definition “Future SuDs Areas” contained in Clause 1 of the Original Agreement shall be varied with the following definition:

“Future SuDs Area” means approximately 0.22ha of the land reserved for future use as a sustainable urban drainage system and more particularly shown edged and hatched blue and marked “Future SuDs Area” on Plan 2.

- 6.6 The definition “Native and Wildflower Shrub Area” contained in Clause 1 of the Original Agreement shall be varied with the following definition:

“Native and Wildflower Shrub Area” means approximately 0.6 ha of the Land which is to be planted with native and wildflower species and more particularly shown edged and hatched green and marked “Native and Wildflower Shrub Area” on Plan 2.

- 6.7 The definitions of
“Nutrient Budget”,
“Nutrient Budget Areas Plan”;
“SuDs”; and
“Nutrient Mitigation Land”

contained in clause 1 of the Original Agreement shall be deleted and replaced with the following:

‘Nutrient Budget’ means the report prepared by Earthcare Technical Nutrient Neutrality assessment and mitigation strategy Ref: ETL732/2022 dated 17th October 2022 and Nutrient Budget Calculator dated 17th October 2022 submitted in relation to planning application ref: APP/21/00678 providing details of the nutrient budget required for the Development.

“Nutrient Budget Areas Plan” means Plan 5 attached to this Deed of Variation.

“SuDs” means the sustainable drainage systems for the Residential Development to be provided in accordance with a specification to be agreed in writing by the Borough Council with the proposed attenuation basin shown edged green and hatched with green crosses and the proposed attenuation tank shown edged blue and cross hatched blue on Plan 6

“Nutrient Mitigation Land” means approximately 1.57 ha of the Land comprised in the Buffer Landscaping, Open Space Land (not including the Children’s Play Area), the Native and Wildflower Shrub Area, the Future SuDs Areas and the Community Orchard and more particularly shown on the Nutrient Budget Areas Plan, which are to be restricted to only those uses and activities that do not exceed the nutrient load for the

Nutrient Mitigation Land above **4.05** kilograms of total nitrogen per hectare per year for the lifetime of the Residential Development in order to mitigate the water quality impacts arising from the Development on the European Protected Sites and in accordance with the Nutrient Budget.

- 6.8 Open Space Land definition in the original Agreement shall be varied and replaced with the following to reflect approved Reserved Matters Layout area of open space land in the Reserved Matters Application:

“Open Space Land” means approximately 0.07 ha of the Land shown in principle hatched yellow on Plan 2 to be provided as public open space land (including the Children’s Play Area) as part of the Residential Development in accordance with the details approved by the Borough Council.

- 6.9 The definition “**Ecology Mitigation Plan**” in clause 1 of the Original Agreement shall be replaced with the following definition:

“**Ecology Mitigation Plan**” means the report by the Ecology Co-op titled the Biodiversity Mitigation and Enhancement Plan and dated 16 November 2018 including the Reserved Matters application ref: APP/21/00678 Preliminary Ecological Appraisal ECO01516 Version 1 dated April 16th 2021 and the details approved in writing by the Borough Council.

- 6.10 The Definitions of Plan 2, Plan 5 and Plan 6 contained at clause 1 of the Original Agreement shall be varied in the Original Agreement as follows:

“**Plan 2**” means the revised layout attached to this Agreement at Appendix 1 as amended to reflect the revised layout and open space land, which shall also reflect the site layout approved and supporting uses in East Hants land and labelled ‘Plan 2’ with drawing number SOUTH.M.OV.005 Rev E.

“**Plan 5**” means the plan attached to this Agreement at Appendix 2 with drawing reference number SOUTH.M.OV.002 Rev G and labelled “Nutrient Budget Areas”

“**Plan 6**” means the plan attached to this Agreement at Appendix 3 with drawing reference number SOUTH.M.OV.006 Rev C and labelled “Drainage Layout”.

- 6.11 The definition of “**Residential Development**” contained at clause 1 of the Original Agreement shall be replaced with the following definition:

“**Residential Development**” means the construction of 70 Dwellings plus associated access and landscaping in accordance with the Borough Council’s Planning Permission.

- 6.12 **The following are to be inserted as new defined terms and definitions in Clause 1 of the Original Agreement**

“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 at the date of the Agreement

“Deed of Allocation” means a Deed of Allocation of Nitrate Offsetting Scheme dated 24th February 2023 relating to land at Whitewool Farm, East Meon, Petersfield, Hampshire GU32 1HW made between (1) William Northcroft Butler and James Nicholas Butler (2) H N Butler Farms Limited and (3) the First Owner

“Nutrient Budget Calculation” means the nutrient budget calculation relating to the residential development of the Land in the Natural England template calculation

submitted to the Borough Council and dated 17 October 2022 and which confirms a mitigation requirement of 15.12 kg/TN/year in respect of the Residential Development of the Land

6.13. Schedule 1 of the Original Agreement shall be varied as follows:

6.13.1 It is hereby agreed that Schedule 1 paragraph 1.2.1 in the Original Agreement shall be varied as follows:

1.2.1 15 Affordable Rented Dwellings; and

6.14. Schedule 5 of the Original Agreement shall be varied as follows:

6.14.1 It is hereby agreed that Schedule 5 Paragraph 4.1 shall be deleted, and varied as follows:

4.1 From first Occupation of any Dwelling, not to use or permit the use of the Nutrient Mitigation Land for any use or activity which increases the nutrient load of the Nutrient Mitigation Land above 4.05 Kilograms of total nitrogen per hectare per year and thereby affects the water quality of the European Protected Sites

6.15 The following new paragraph 5 shall be inserted into Schedule 5 of the Original Agreement:

5. OFF-SITE NITRATES MITIGATION

Off site mitigation -Whitewool Farm

5.1 The development will be reliant on off site mitigation for the additional 15.12 kg TN/year and the Nutrient neutrality assessment and mitigation strategy states:

"Based on the Calculated Outputs the total annual nitrogen load to mitigate is + 15.12 kg TN/year. This will be mitigated by purchase of nitrogen credits from the Whitewool Farm mitigation scheme".

5.2 The First Owner confirms that it has entered into the Deed of Allocation and has paid the Reserve Fee as defined and required therein to reserve the Reserve Capacity as defined in the Deed of Allocation and has provided to the Borough Council a certified copy of the Deed of Allocation.

5.3 The Borough Council confirms it has approved the Nutrient Budget Calculation as part of the Reserved Matters Application number APP/21/00678

5.4 To pay the Commuted Sum as defined and required by the Deed of Allocation to secure the Reserve Capacity as defined therein and to provide to the Borough Council with a copy of the receipt confirming payment of the Commuted Sum.

5.5. Not to Commence or permit the Commencement of the Development until the Owners have supplied to the Borough Council confirmation of the transfer of the Commuted Sum as defined in the Deed of Allocation and confirmation of receipt of the said Commuted Sum and Allocation of the Required Capacity (as defined in the Deed of Allocation) from the solicitors instructed by the landowners of Whitewool Farm

7. REGISTRATION

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

8. RELEASE AND LAPSE

8.1 This Deed of Variation shall lapse and be of no further effect if the decision of the Borough Council, the District Council or the County Council to enter into this Deed of Variation is quashed following a successful legal challenge or if the reserved matters approval granted pursuant to the Reserved Matters Application is quashed following a successful legal challenge

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

9. NO FETTER OF DISCRETION OR WAIVER

9.1 Nothing contained or implied in this Deed of Variation shall prejudice or affect the rights discretions powers duties and obligations of the Borough Council or the District Council under all statutes by laws statutory instruments orders and regulations in the exercise of their functions as local authorities

9.2 No waiver (whether expressed or implied) by the Borough Council the District Council or the County Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed of Variation shall constitute a continuing waiver and no such waiver shall prevent the Borough Council or the District Council from enforcing any of the relevant terms or conditions or from acting any subsequent breach or default.

10. SEVERABILITY

It is agreed that if any part of this Deed of Variation shall be declared unlawful or invalid by a court of competent jurisdiction then (to the extent possible) the remainder of this Deed of Variation shall continue in full force and effect.

11. COSTS

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

12. GOVERNING LAW

This Deed of Variation 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.

13. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

The parties to this Deed of Variation 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 by affixing)
The Common Seal of **THE COUNCIL**)
OF THE BOROUGH OF HAVANT)

in the presence of:)

[Redacted Signature]

Authorised Officer *Solicitor*



EXECUTED AS A DEED when
THE COMMON SEAL of
East Hampshire District Council
Was hereunto affixed BY ORDER

[Redacted Signature]

Authorised Officer *Solicitor*

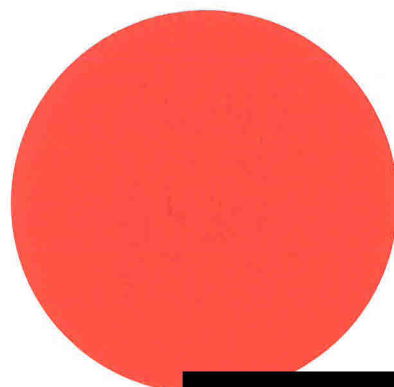


272231

THE COMMON SEAL of
HAMPSHIRE COUNTY COUNCIL

In the presence of:

[Redacted Signature]



[Redacted Signature]

EXECUTED as a DEED by

**as attorney for
REDROW HOMES LIMITED**

as attorney for REDROW HOMES LIMITED

in the presence of:-

[REDACTED]

EXECUTED as a DEED by

**as attorney for
REDROW HOMES LIMITED**

as attorney for REDROW HOMES LIMITED

in the presence of:-

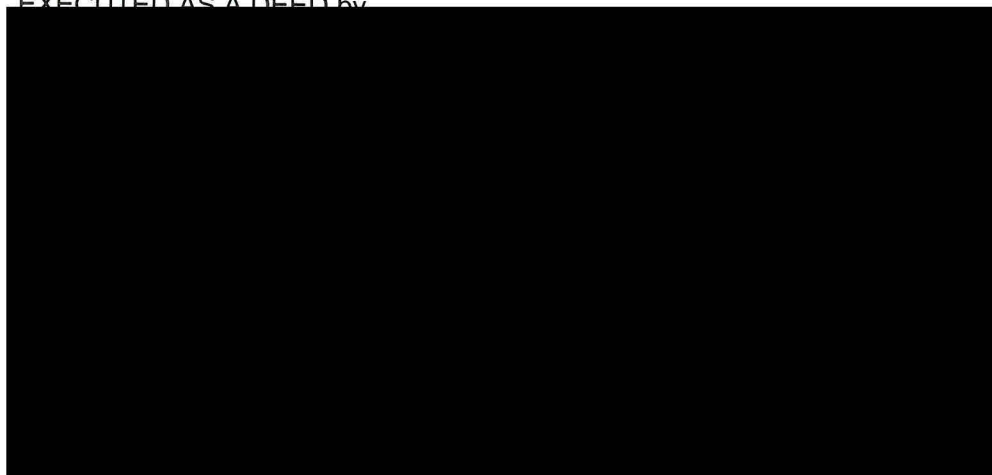
[REDACTED]

**EXECUTED AS A DEED by
PHILIP DYMOKE WHITE**

In the presence of:

[REDACTED]

EXECUTED AS A DEED by



EXECUTED AS A DEED by



APPENDIX 1

Plan 2



S106 - Plan 2

Key:

1. Vehicular Access
2. Emergency Access
3. Existing trees retained
4. Swale / attenuation pond
5. Community Orchard
6. Landscaped Public Open Space
7. Ancient Woodland
8. Crematorium
9. Access to Crematorium
10. Farm access
11. Managed grassland / fallow
12. LAP



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Southern Counties
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RG42 8QB

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project
Bartons Road (Phase 1),
Southleigh

drawing
S106 - Plan 2

2023 scale @ a3
1:1500

drawn
CM

drawing number
SOUTH.M.OV.005 E revision

272231

APPENDIX 2
Plan 5

S106 - Plan 5



- Key:
- Amenity Grass Areas
0.07HA
 - Wildflower & Native Shrubs
0.60HA
 - Ancient Woodland Buffer Planting
0.27HA
 - Orchard
0.41HA
 - Pond
0.22HA

revision	date	prepared	description
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project
Bartons Road (Phase 1),
Southleigh

drawing
S106 - Plan 5
Nutrient Budget Areas

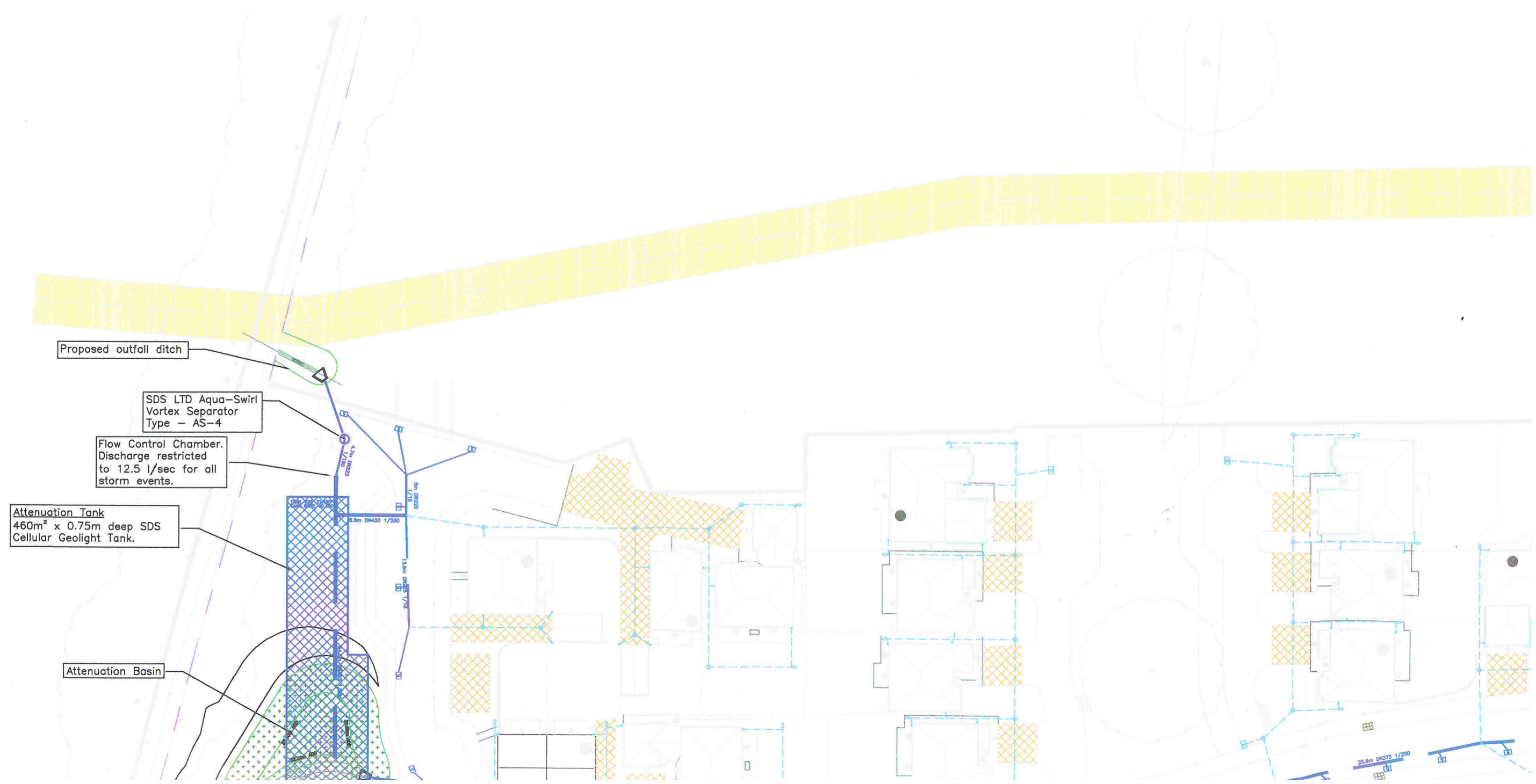
date	scale @ a3	drawn
March 2023	1:1500	CM

drawing number	revision
SOUTH.M.OV.002	G



APPENDIX 3

Plan 6



Proposed outfall ditch

SDS LTD Aqua-Swirl
Vortex Separator
Type - AS-4

Flow Control Chamber.
Discharge restricted
to 12.5 l/sec for all
storm events.

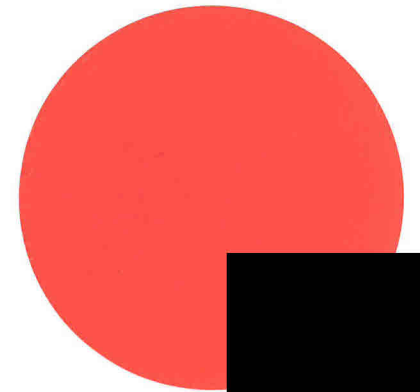
Attenuation Tank
460m² x 0.75m deep SDS
Cellular Geolight Tank.

Attenuation Basin

272231

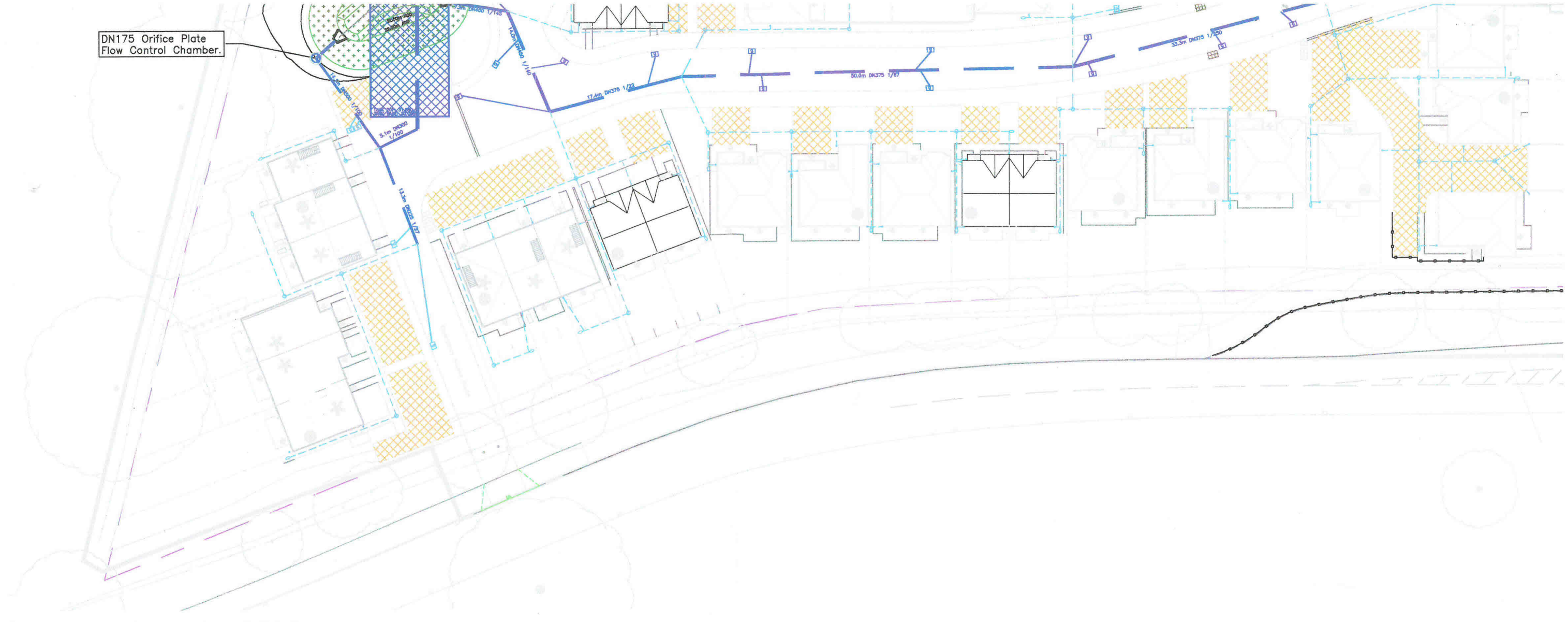


key plan



notes





Key:

-  Attenuation Tank
-  Attenuation Basin
-  Permeable Paving
-  Surface Water

S106 - Plan 6



number **OUTH.M.OV.006** revision **C**