DATED 18th December **2023**

(1) WILLIAM NORTHCROFT BUTLER and JAMES NICHOLAS BUTLER

(2) H N BUTLER FARMS LIMITED

(3) PLACES FOR PEOPLE HOMES LIMITED

DEED OF ALLOCATION OF NITRATE OFFSETTING SCHEME

At

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

IN COUNTERPART

SHOOSMITHS

Shoosmiths LLP
Forum 5
The Forum
Parkway
Whiteley
Fareham
PO15 7PA
Tel: 03700 866800
Fax: 03700 866801
Ref. GEM/ M-01056867

THIS DEED is made the 18th day of December Two thousand and Twenty Three

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) **PLACES FOR PEOPLE HOMES LIMITED** (Registered Society number IP19447R) whose registered office is at 305 Gray's Inn Road, London WC1X 8QR (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 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 together secure 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:

"1990 Act"	means the Town and Country Planning Act 1990;
"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;
"Alternative Permission"	means a planning permission granted (including on appeal) pursuant to Part III of the 1990 Act for residential development of the Application Site PROVIDED THAT the development authorised by any such permission shall not exceed the Required Capacity
"Application"	means the application for planning permission submitted to Havant Borough Council for the Development and allocated reference number APP/22/00439 received on 19 April 2022 and validated on 26 May 2022;
"Application Site"	means land at The South Downs College, College Road, Purbrook, Waterlooville, PO7 8AA
"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 £2,875 plus VAT less the Reserve Fee;
"Court Confirmatory Decision"	means 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 of the Application Site in accordance with the Planning Permission and/or any Alternative Permission;

"Expiry Date" means 30 November 2024 (or such 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 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" 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"	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 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 1990 Act; (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; and/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 Allocation of the Required Capacity;

"Reserve Capacity" means 100.16 kg/TN/yr of the Site Capacity;

"Reserve Fee" means the non-refundable sum of £28,796 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" means the agreement dated 16 February 2021 and entered into pursuant to Section 106 of the 1990 Act 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 in the form 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"	means the strait that separates the Isle of Wight from the mainland of England;
"Third Party Application"	means 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;
"Unilateral Undertaking"	means a unilateral undertaking given under section 106 of the 1990 Act 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"	means that 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"	means the development authorised by the Whitewool Farm Permission;
"Whitewool Farm Permission"	means 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"	means 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 has paid the Reserve Fee to the Tenant prior to the date of this Deed.

4.2 The Developer shall notify the Tenant of the amount of the Required Capacity and pay the Commuted Sum to the Tenant on or before the date being 8 weeks following the grant of the Planning Permission PROVIDED THAT on such date the Planning Permission is Challenge Free (and if at that date the Planning Permission is not Challenge Free the Developer shall pay the Commuted Sum on the date on which the Planning Permission is finally Challenge Free.

4.3 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 and thereafter (at the Developer's request) to confirm such Allocation in writing to Havant Borough Council or the Secretary of State (as the case may be).

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 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 (10) 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

PROVIDED THAT the time periods specified in this clause 9.5 may be extended by the written agreement of the Parties acting reasonably.

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 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:

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 10.3.1 then:

10.5.1 the Tenant and the Owner may proceed to allocate the Required 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. 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.

13. VAT

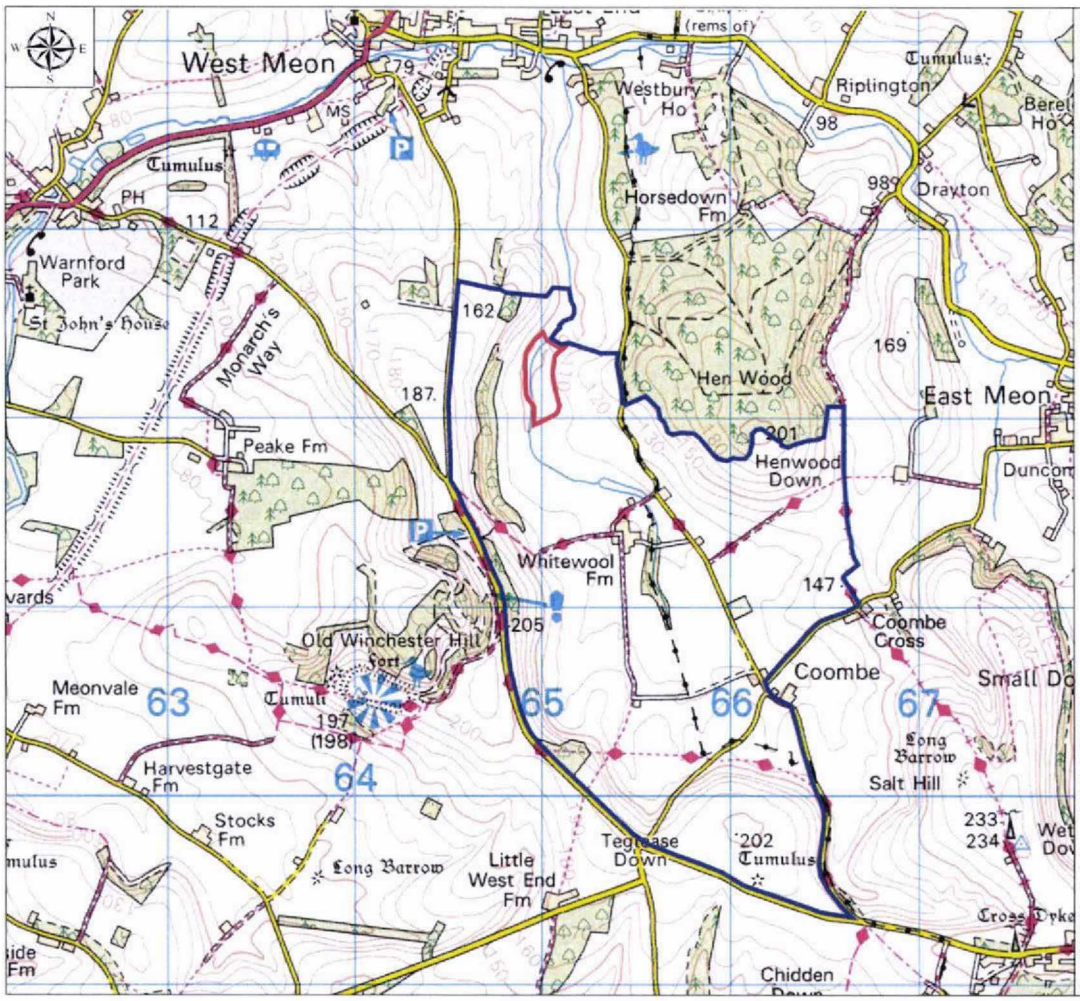
13.1 Each amount stated to be payable by the Developer to the Owner and/or Tenant under or pursuant to this deed is exclusive of VAT (if any).

13.2 If any VAT is at any time chargeable on any supply made by the Owner and/or Tenant under or pursuant to this deed, the Developer making the payment shall pay the Owner and/ or Tenant an amount equal to that VAT as additional consideration on receipt of a valid VAT invoice.

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.

Appendix 1 – The Plan



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

[redacted]

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0km 0.5km 1km

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Appendix 2 – The Section 106 Agreement as varied

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

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Ref. GEM/M-00874165

We Hereby Certify That This Is A True And Complete Copy Of The Original

Shoosmiths LLP

SHOOSMITHS LLP

Date 19/02/2021

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.

(G) Following completion of the ~~Development~~ Agreement 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;

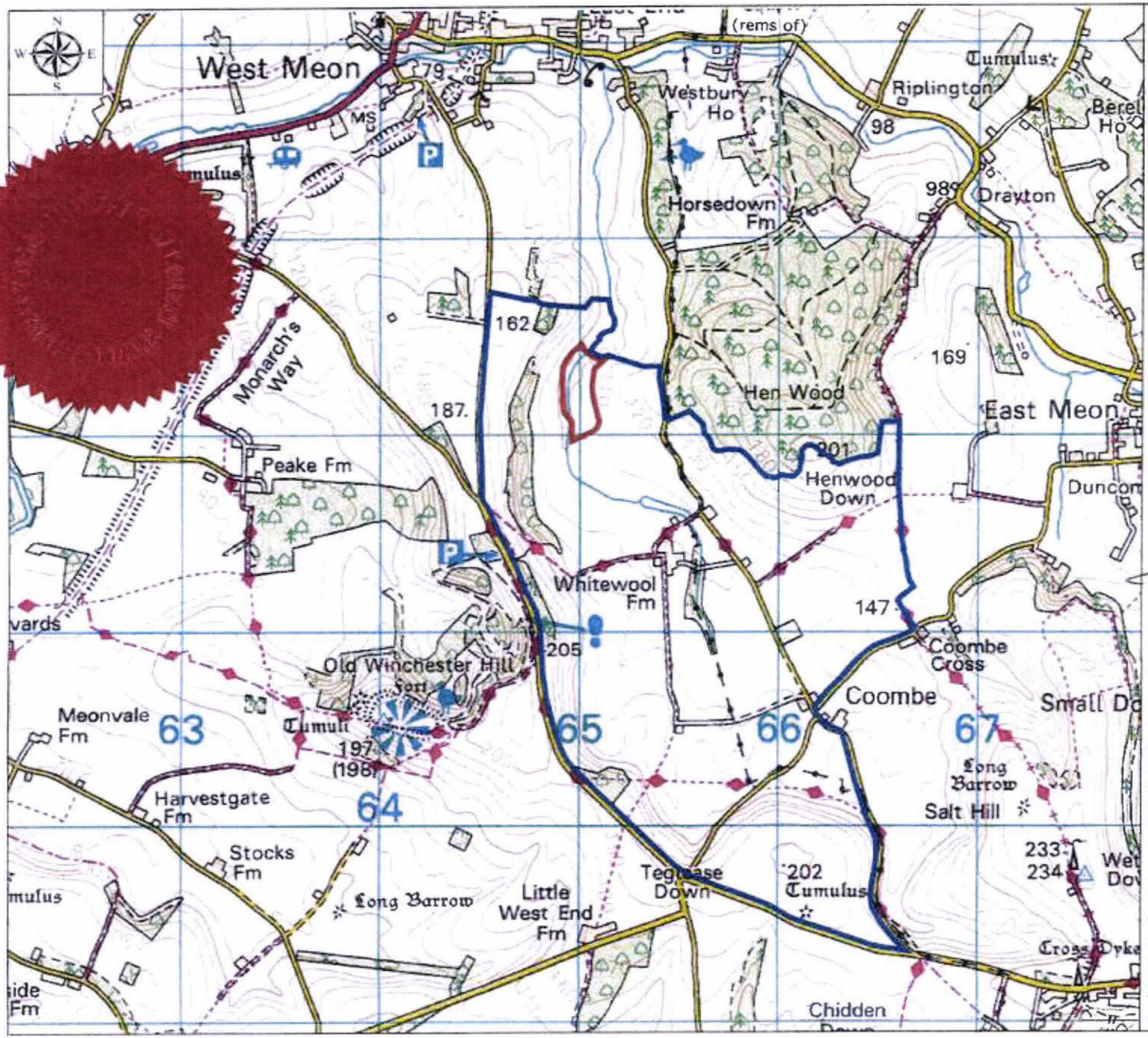
(f) works connected with infilling; or

(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

[redacted]

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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

"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

A. Planning Reference	B. Date of grant of Planning Permission	C. Date of commencement of development	D. Any subsequent planning permission for the site	E. Site	F. Estimated Nitrate Output of Development (Kg/TN/yr)	G. Residual Nitrate Offsetting Capacity (Kg/TN/yr)	H. Allocation Agreement Date	I. Correspondence Reference	J. Company	K. Comments	L. Local planning authority
TBC											
TBC											
TBC											

SCHEDULE 4

Draft Planning Permission

South Downs
National Park Authority

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:

- A plan to show how both species are to be removed from the proposed development site together with details of a release site.
- 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.

[redacted]

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

assessment (WYG, 2020[1]) 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.

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 m^3/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	67.42	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 m^3/s to l/yr.

0.0326 x 3.184e+10 = 1028073600 l/yr.

The flow rate is multiplied by the TN concentration

1028073600 x 10.8 = 11103194880 mg/yr.

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

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 sated 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.

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

- 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 unknown 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 m^2;
- Lesser pond sedge *Carex acutiformis* – planted as 9cm or 1l pots at 3 per m^2;
- Hard rush *Juncus inflexus* – planted as 9cm or 1l pots at 3 per m^2;
- Reed canary grass *Phalaris arundinacea* – planted as 9cm or 1l pots at 3 per m^2;
- Tufted hair grass *Deschampsia cesspitosa* – planted as 9cm or 1l pots at 3 per m^2.
- 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.

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.

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.

	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.

	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 a 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

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.

- 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

SHOOSMITHS

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;

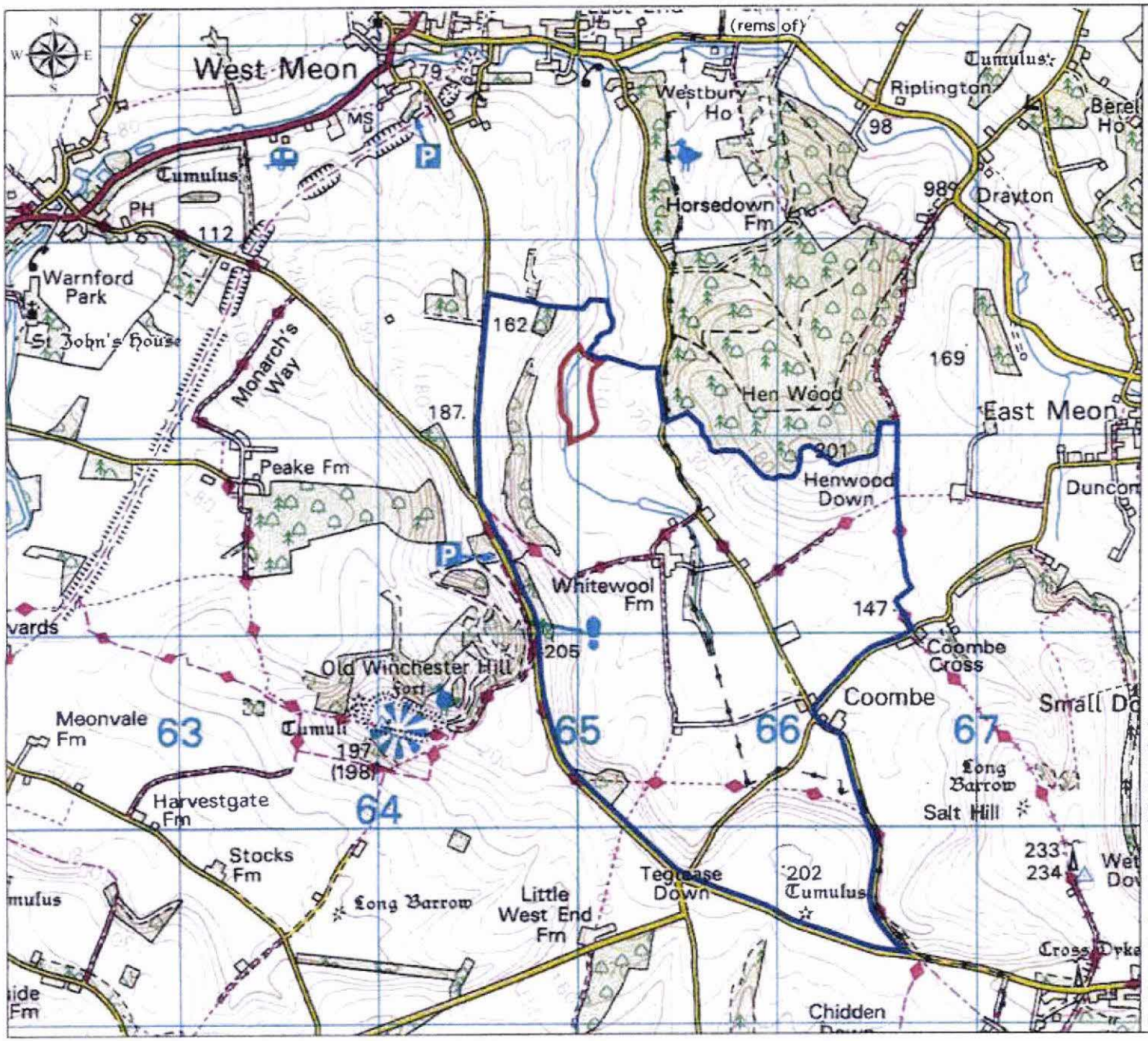
i) works for the provision or diversion of drainage or mains services to prepare the Site for development; or

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



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

9/21

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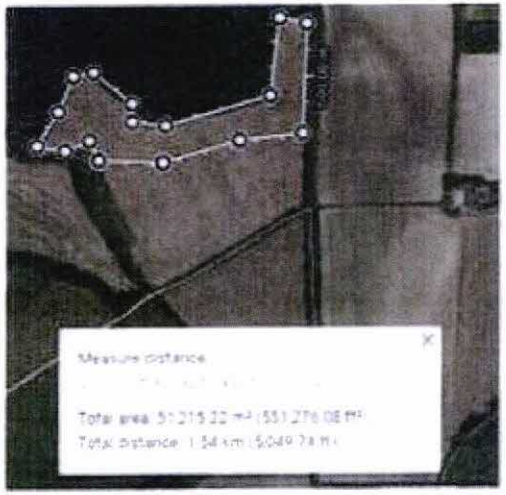
0km 0.5km 1km

The Pavilion, 1st Floor, Botleigh Grange Office Campus, Hedge End, Southampton, Hampshire, SO30 2AF
Tel: +44 238 202 2874
www.wyg.com

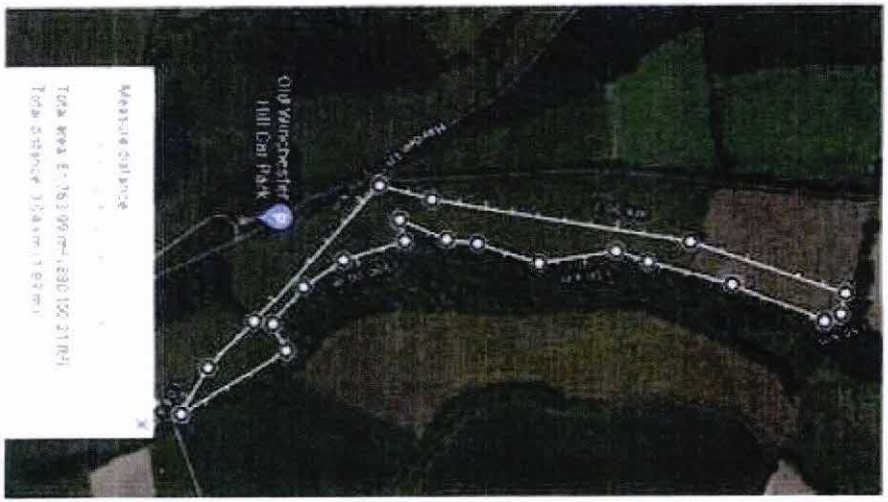
Plan 2

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: [redacted]

9/21

SIGNED AS A DEED by

WILLIAM NORTHCROFT BUTLER [redacted]

Signature

in the presence of:

[redacted]

(Full name of witness)

[redacted]

(Signature of witness)

[redacted]

Address

FARM SECRETARY

Occupation

SIGNED AS A DEED by

JAMES NICHOLAS BUTLER

[redacted] .....

Signature

in the presence of:

... [redacted]

(Full name of witness)

..... [redacted] ....

(Signature of witness)

[redacted]

Address

FARM SECRETARY

Occupation

SIGNED AS A DEED by

[redacted]

H N BUTLER FARMS LIMITED Signature

in the presence of:

[redacted]

(Full name of witness)

[redacted]

(Signature of witness)

[redacted]

Address

FARM SECRETARY

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

We Hereby Certify That This Is A True And Complete Copy Of The Original

Shoosmiths LLP

SHOOSMITHS LLP

Date 05/05/2021

THIS DEED is made on 29TH April 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

James Nicholas Butler and (3) H N Butler Farms Limited dated 16 February 2021 relating to planning application SDN/20/01263/FUL;

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.

[redacted]

THE COMMON SEAL of

SOUTH DOWNS NATIONAL

PARK AUTHORITY was hereunto affixed

in the presence of:

SIGNED AS A DEED by [redacted]

WILLIAM NORTHCROFT BUTLER

in the presence of

[redacted] ....

(full name of witness) (signature)

[redacted]

(signature of witness)

[redacted] .....

.....

.....

.....

(address)

2 Hall cottages East meon

(Occupation)

Fisheries Manager

SIGNED AS A DEED by [redacted]

JAMES NICHOLAS BUTLER

in the presence of

[redacted] ....

(full name of witness) (signature)

[redacted]

(signature of witness)

[redacted] .....

.....

.....

.....

(address)

2 Hall cottages East meon Gu32 1HW

(Occupation)

Fisheries manager

SIGNED AS A DEED by [redacted]

H N BUTLER FARMS LIMITED

in the presence of

[redacted] .....

(full name of witness) (signature)

[redacted]

(signature of witness)

[redacted] .....

.....

.....

.....

(address)

2 Hall cottages East meon GU32 1HW

(Occupation)

Fisheries Manager

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 **PLACES FOR PEOPLE HOMES LIMITED** acting by its attorney:

under a power of attorney dated ~~16 June 2022~~ 1 August 2023
in the presence of:

[redacted]
Signature of witness

Name of witness: OLIVER BROWN

Address of witness: NEW KINGS COURT, TOLLGATE, EASTLEIGH, SO53 3LG

[redacted]
.....
PLACES FOR PEOPLE HOMES LIMITED
by its attorney