

DATED

21st JULY

2016

(1)

DOROTHY AGNES LEA

and

WHITTINGTON DEVELOPMENTS LIMITED

(2)

and

THE COUNCIL OF THE BOROUGH OF HAVANT

(3)

D E E D

Pursuant to (inter alia)

Section 106 of the Town and Country Planning Act 1990
Relating to Land at 11 Bound Lane Hayling Island PO11 9HU
in Hampshire

Solicitor to the Council
East Hampshire District Council
Penns Place
Petersfield
Hampshire
GU31 4EX

THIS DEED is made the 21st day of JULY 2016

BETWEEN

- (1) DOROTHY AGNES LEA OF 11 BOUND LANE, HAYLING ISLAND PO11 9HU ("the Owner")
- (2) WHITTINGTON DEVELOPMENTS LIMITED (CO. REG. NO. 09340279) OF Long Acre, Milton Street, Polegate BN26 5RW and care of GCL Solicitors, 3000 Cathedral Hill, Guildford, Surrey GU2 7YB ("the Developer")
- (3) THE COUNCIL OF THE BOROUGH OF HAVANT of Public Service Plaza Civic Centre Road Havant PO9 2AX ("the Council")

WHEREAS:

- (1) The Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 for the area within which the Land is situate
- (2) The Owner is the freehold owner of the Land being registered at the Land Registry under Title Number SH41157 and title entries and relevant documentation have been produced to the Council prior to the date hereof
- (3) The Council is the Local Authority for the purpose of Section 111 of the Local Government Act 1972 and is satisfied that the arrangements made in this Deed will facilitate be conducive and incidental to the Council's functions
- (4) The Developer has an option agreement with the Owner to purchase the Land
- (5) The Developer being a party to this Deed as described in parties clause 2 above has submitted the Application for the Development to the Council and the Council being desirous of improving the area and general locality of the Land and wishing to restrict and regulate the development and use of the Land is minded to grant planning permission pursuant to the Application

NOW THIS DEED WITNESSETH as follows:

1. Statutory Powers

This Deed is made pursuant to:

- 1.1 Section 106 of the Town and Country Planning Act 1990
- 1.2 Section 111 of the Local Government Act 1972 to the intent that it shall bind the Owner and the Developer and their successors in title to each and every part of the Land and its assigns

2. Interpretation

- 2.1 Reference in this Agreement to a Clause Schedule or Recital shall mean a clause schedule or recital to this Agreement
- 2.2 Headings in this Agreement are for ease of reference only and shall not affect construction or interpretation of any of the provisions of this Agreement
- 2.3 In this Agreement where the context so admits:
 - 2.3.1 words importing one gender shall include all other genders
 - 2.3.2 words importing the singular shall include the plural and vice versa
 - 2.3.3 A reference to writing or written does not include faxes or e-mail
 - 2.3.4 A reference to "this deed" or to any other agreement or document referred to in this deed is a reference to this deed or such other document or deed as varied or novated (in each case other than in breach of the provisions of this deed) from time to time
 - 2.3.5 References to clauses plans schedules and appendices are to the clauses plans schedules and appendices of this deed
 - 2.3.6 An obligation in this deed on a person not to do something includes an obligation not to agree or allow that thing to be done
 - 2.3.7 Any phrase introduced by the terms 'including' 'include' 'in particular' or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms

3. Planning Obligations

- 3.1 The obligations contained in this Deed are planning obligations for the purposes of Section 106 of the Town and Country Planning Act 1990 and are enforceable by the Council

4. Covenants Binding on Implementation

- 4.1 The covenants undertakings obligations and restrictions in this Agreement shall become binding on the parties to this Agreement upon Implementation

5. Definitions

In this Agreement the following expressions shall unless the context shall otherwise require have the following meanings:

"The Act" Means the Town and Country Planning Act 1990 as amended

"Affordable Housing Contribution" means the sum of £176,711.36 (ONE HUNDRED AND SEVENTY SIX THOUSAND SEVEN HUNDRED AND ELEVEN POUNDS AND THIRTY SIX PENCE) Index Linked towards the provision of off-site affordable housing in accordance with Policies CS9 and CS21 of the Havant Borough Local Plan (Core Strategy)

"the Application" Shall mean the application submitted to the Council by the Developer given reference number APP/16/00327 for the Development and any subsequent application to vary the Planning Permission made pursuant to s.73 of the Town and Country Planning Act 1990.

"Common Parts" means the parts of the Land which do not comprise a Dwellinghouse or the curtilage of a Dwellinghouse and which are intended to benefit the Occupiers of the Dwellinghouses as a whole or to enhance their Occupation and shall without prejudice to the generality thereof include the

	meadow area, un-adopted roads, communal parking areas, footways, footpaths, landscaped areas, amenity spaces, SUDS and drainage ditches
"Default Interest Rate"	interest at four per cent above the base lending rate of Barclays Bank Plc from time to time
"the Development"	means development authorised by the Planning Permission consisting of the construction of 5 detached chalet style dwellings, 1 detached bungalow and 1 pair of semi – detached dwellings with ancillary garaging, car parking spaces, the creation of a new vehicular crossover and closure of two existing access points
"Dwellinghouse"	means any unit of residential accommodation constructed pursuant to the Planning Permission and forming part of the Development for the sole use as a private residence of an Occupier
"Ecological Mitigation and Management Plan"	means a single detailed site wide scheme of ecological mitigation compensation and enhancement measures (including but not limited to: site plan showing all ecological mitigation measures; details of site lighting; details of reptile mitigation measures; details of the ongoing management and monitoring of retained/enhanced habitats and who shall be responsible) to be agreed in writing by the Council
"Index Linked"	means increased in accordance with the following formula such indexation shall only be applied in circumstances where the RPI

at the date of payment stands at a higher level than it did at the date of the Planning Permission for the Development:

$$A \times \frac{C}{B}$$

Where: A = the contribution amount

B = the last figure published prior to the grant of Planning Permission

C = the last figure published prior to Implementation of Development

"Implementation"

means the Implementation of the Planning Permission by the carrying out of a material operation under Section 56(4) of the Act excluding operations consisting of site clearance, demolition work on the Land, archaeological investigations, investigations for the purpose of assessing contamination, remedial action in respect of contamination, diversion and laying of services and the erection of means of enclosure for the purposes of site security and/or the display of advertisements (and implement implements and implemented shall be construed accordingly)

"Indexation"

means the RPI from the date of this Agreement until payment

"the Land"

means land at 11 Bound Lane Hayling Island Hampshire shown edged red on the Plan

"Management Company"

means a company or other body to be charged with the management and maintenance of the Common Parts and the SUDS in accordance with paragraphs 5.1 to 5.9 of Schedule 1

"the Management Plan"	proposals (to be agreed in writing by the Council) for arrangements to secure the future maintenance and Management of the Common Parts and SUDS by the Management Company
"the Monitoring and Administration Fee"	means the sum of £1,000 being a fee (applied at such time and in such manner as the Council shall in its absolute discretion determine) used towards the costs to be incurred by the Council in the provision of suitably qualified and experienced persons whose function is inter alia to monitor co-ordinate and enforce planning deeds
"Occupation"	means occupation of a Dwellinghouse for the purposes of a residential household (and "Occupy" "Occupies" "Occupiers" and "Occupied" shall be construed accordingly)
"the Owner"	means the Owner of any or all parts of the Land and as parties to this Deed of Agreement who is described in recital 3 of this Agreement being a person identified in accordance with Section 106 (9)(c) of the Act
"Plan"	means the plan annexed hereto at Schedule 3
"the Planning Permission"	means the planning permission granted by the Council for the Development pursuant to the Application
"Practical Completion"	means the issue of a certificate of practical completion of the Development by the Owner's architect or in the event that the Development is constructed by a party

other than the Owner the issue of a certificate of practical completion by that other party's architect

"RPI"

means the Retail Prices Index as published by the Office of National Statistics or (in the event that the Office of National Statistics ceases to publish the RPI) such other similar index as determined by the Council

"Solent Recreation
Mitigation Project
Contribution"

means the sum of £1,408.00 (ONE THOUSAND FOUR HUNDRED AND EIGHT POUNDS)] being calculated as the sum of £176 for each Dwellinghouse in respect of the Special Protection Area mitigation measure delivered through the Interim Solent Recreation Mitigation Strategy

"SUDS"

means a sustainable urban drainage system for the Development in accordance with a specification agreed in writing by the Council and if statutorily empowered so to do by Hampshire County Council

6. Statutory provisions

- 6.1 This Deed constitutes a planning obligation for the purposes of section 106 of the Act
- 6.2 The covenants restrictions and obligations contained in this Deed are planning obligations for the purposes of section 106 of the Act and are entered into by the Owner with the intention that they bind the interests held by those persons in the Land and their respective successors and assigns

- 6.3 The covenants restrictions and obligations contained in this Deed are enforceable by the Council in accordance with section 106 of the Act

7. Conditionality

- 7.1 With the exception of clauses 1, 2, 3, 6, 9, 11, 12, 13, 16, 17, 18, 20, 21, 22, 23, 25 and 26 (which take effect immediately) this Deed is conditional on (i) the grant and issue of the Planning Permission and (ii) Implementation of the Development

8. Covenants

- 8.1 The Owner covenants with the Council to observe and perform such of the covenants restrictions and obligations contained in Schedule 1
- 8.1 The Council covenants with the Owner to observe and perform the covenants restrictions and obligations contained in Schedule 2

9. Exclusions of Liability

- 9.1 The Developer agrees with the Owner to indemnify the Owner against all costs, expenses, damages, losses and liabilities arising out of this Deed in the event that the Developer Implements the Planning Permission but not otherwise
- 9.2 Notwithstanding any other provision of this Deed the obligations contained within clause 8 shall not be binding upon or enforceable against the owner or occupiers of any Dwellinghouse nor any mortgagees of any owners or occupiers of any Dwellinghouse nor any providers of utility services

10. Indexation

- 10.1 The Affordable Housing Contribution shall be Index Linked from the date that the Planning Permission is granted until the date of payment and shall be linked to the RPI
- 10.2 The Solent Mitigation Strategy Contribution shall be Index Linked from the date that the Planning Permission is granted until the date of payment and shall be linked to the RPI
- 10.3 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable

manner to the periods before and after rebasing under this Deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owner in writing

11. Release

- 11.1 No person (including any subsequent successors in title to the Land) shall be liable for any breach of a covenant, restriction or obligation contained in this Deed after parting with all of its interest in the Land, except in respect of any breach subsisting prior to parting with such interest

12. Determination of deed

- 12.1 The obligations in this Deed shall cease to have effect if before the Implementation of Development the Planning Permission:
- (a) expires;
 - (b) is varied or revoked other than at the request of the Owner; or
 - (c) is quashed following a successful legal challenge
- 12.2 Nothing in this Deed shall be construed as prohibiting or limiting any right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted by the Council or by the Secretary of State upon appeal or reference to him after the date of this Deed

13. Local land charge

- 13.1 This Deed is a local land charge and shall be registered as such by the Council

14. Interest on late payment

- 14.1 Where any sum or amount has not been paid to the Council by the date on which it is due the Owner shall pay to the Council interest at the Default Interest Rate on that amount for the period from the due date up to and including the date of payment

15. Reasonableness

- 15.1 Any approval consent direction authority agreement or action to be given by the Council under this deed shall not be unreasonably withheld or delayed

16. Disputes

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

17. No fetter of discretion

- 17.1 Nothing (contained or implied) in this deed shall fetter or restrict the Council's statutory rights powers discretions and responsibilities

18. No compensation payable

- 18.1 No compensation shall be payable by the Council as a result of the obligations contained in this deed

19. Waiver

- 19.1 No waiver (whether express or implied) by the Council of any breach or default by the Owner in performing or observing any of the covenants restrictions or obligations of this deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions contained in this deed or acting on any subsequent breach or default of this deed

20. Notices

- 20.1 Any notice or other communication required to be given under this deed shall be in writing and shall be delivered personally or sent by pre-paid first class post or recorded delivery or by commercial courier to any person required to receive the notice or communication at its address set out above or as otherwise specified by the relevant person by notice in writing to each other person
- 20.2 Any notice or other communication required to be given under this deed to the Owner shall be sent to the Owner at their address set out above or as otherwise specified by the Owner by notice in writing

21. Third party rights

- 21.1 No person other than a party to this deed shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed

22. Severance

- 22.1 If any court or competent authority finds that any provision of this deed (or part of any provision) is invalid illegal or unenforceable that provision or part-provision shall to the extent required be deemed to be deleted and the validity and enforceability of the other provisions of this deed shall not be affected
- 22.2 If any invalid unenforceable or illegal provision of this deed would be valid enforceable and legal if some part of it were deleted the parties shall amend such provision so that (as amended) it is legal valid and enforceable and to the greatest extent possible achieves the parties' original intention

23. Value added tax

- 23.1 All consideration given in accordance with the terms of this deed shall be exclusive of any VAT properly paid
- 23.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this deed then to the extent that VAT has not been previously charged in respect of that supply the party making the supply shall have the right to issue a VAT invoice to the party to whom the supply was made and the VAT shall be paid accordingly

24. Governing Law

- 24.1 This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales
- 24.2 This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it

25. Costs

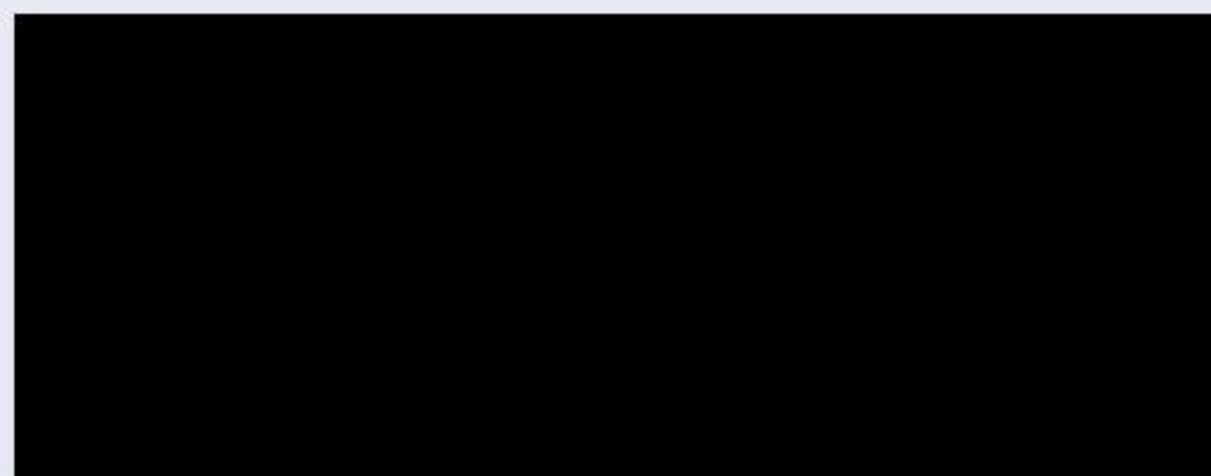
- 25.1 The Developer hereby covenants to pay to the Council on completion of this deed the sum of £665.00 in respect of its legal and other costs in connection with the preparation and approval of this deed such costs to be paid prior to completion of this deed

26. Council Successors

26.1 The expression "the Council" shall include successors to its functions as Local Planning Authority for the purposes of the Town and Country Planning Act 1990

IN WITNESS whether the parties hereto have executed these presence as a Deed the day and year first before written

Signed as a DEED by the said
DOROTHY AGNES LEA
in the presence of



Signed as a DEED by
WHITTINGTON DEVELOPMENTS
LIMITED acting by
a director and its secretary /
two Directors

)

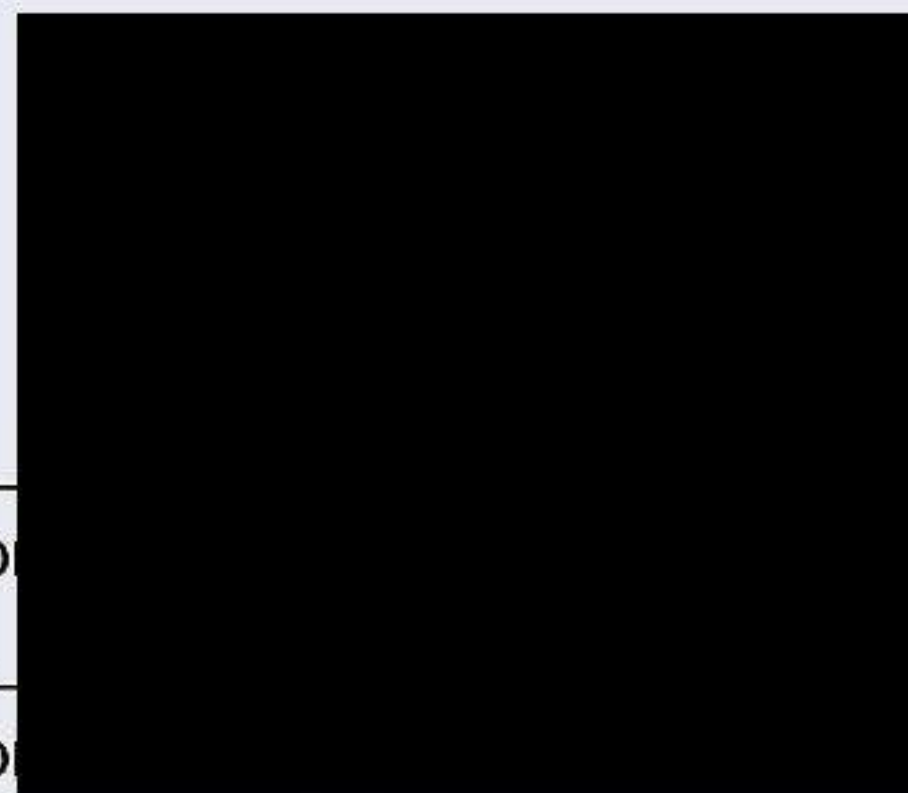
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Director

Director



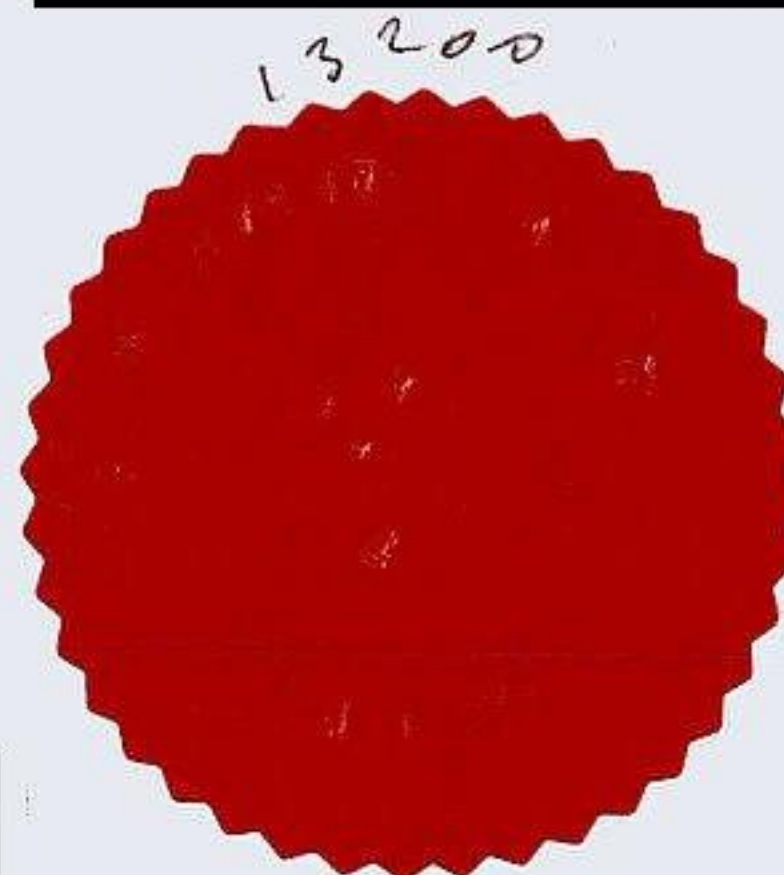
EXECUTED as a DEED by affixing
THE COMMON SEAL of THE
COUNCIL OF THE BOROUGH OF
HAVANT in the presence of:

)

)

)

)



Authorised Signatory

Schedule 1

Owner's covenants

1. Implementation

- 1.1 The Owner shall notify the Council in writing at least 14 days before Implementation

2. Contributions

- 2.1 The Owner covenants not to Implement or to cause or permit Implementation of the Development permitted by the Planning Permission until it has paid or caused to be paid to the Council the Solent Mitigation Strategy Contribution subject to Indexation in accordance with the figures supplied to the Council by the Solent Recreation Mitigation Partnership towards the Solent Recreation Mitigation Strategy such sum to be collected by the Council on behalf of the Solent Recreation Mitigation Partnership
- 2.2 The Owner covenants not to Occupy or to cause or permit Occupation of the Development permitted by the Planning Permission until it has paid or caused to be paid to the Council the Affordable Housing Contribution
- 2.3 The Owner covenants not to Occupy or to cause or permit the Occupation of the Development permitted by the Planning Permission until it has paid or caused to be paid to the Council the Monitoring and Administration Fee

3. Ecological Mitigation and Management Plan

- 3.1 The Owners covenant not to Implement or cause or permit Implementation of the Development permitted by the Planning Permission unless and until the Ecological Mitigation and Management Plan has been approved in writing by the Council such approval not to be unreasonably withheld or delayed
- 3.2 The Council shall give notice to the Owner of its decision to either approve (with or without modifications) or to refuse to approve the details submitted by the

Owner under Paragraph 3.1 above within one month of receipt of such details and in the event that the Council fails to give such notice the details as submitted shall be deemed to have been approved

4. SUDS

4.1 The Owner covenants not to Occupy or cause or permit Occupation of the Development unless and until the SUDS have been constructed to the satisfaction of the Council (acting reasonably and without delay) and in accordance with the specification previously agreed in writing by the Council such agreement not to be unreasonably withheld or delayed

5. Management of the Land

5.1 The Owner covenants not to Implement the Development unless and until the Council has approved in writing (such approval not to be unreasonably withheld or delayed) the Owner's proposal for an entity to be responsible for the maintenance and management of the Common Parts and the SUDS within the Land such proposals to include full details of the proposed structure and voting rights of the entity (the **"Management Company"**)

5.2 The Owner shall not Occupy or cause or permit Occupation of any Dwellinghouse on the Land until:

- (i) the Management Company has been formed in accordance with the approved proposal; and
- (ii) the Management Plan has been approved in writing by the Council (such approval not to be unreasonably withheld or delayed)

6. Management Company

6.1 Prior to the expiry of six months from Implementation of Development to supply to the Solicitor to the Council for written approval by the Council (such approval not to be unreasonably withheld or delayed):-

6.1.1 a draft memorandum and articles of association for the Management Company; and

6.1.2 proposals for arrangements to secure the future maintenance of the Common Parts and the SUDS by the Management Company (which may include a Transfer of the Common Parts and the SUDS to the Management Company or the granting of a long

lease of the Common Parts and the SUDS by the Owner in favour of the Management Company) so as to ensure that the Common Parts and SUDS are properly maintained such proposals to include details of how the costs of any parking court, street lighting charges, cleaning and maintaining the Common Parts and SUDS, shall be met (by residents of the Development or otherwise); and

- 6.2 Any submission of documents or details to the Council pursuant to this Schedule shall include a reference to the Planning Permission the date and parties to this agreement, and the paragraph under which approval is sought, together with a statement of the date by which a decision must be given by the Council
- 6.3 The Council shall give notice to the Owner of its decision to either approve (with or without modifications) or to refuse to approve the details submitted by the Owner under Paragraph 4.1 and 5.1 above within one month of receipt of such details and in the event that the Council fails to give such notice the details as submitted shall be deemed to have been approved without modification
- 6.4 Forthwith after the approval by the Council of the proposed memorandum and articles of association the Owner shall take all necessary steps to secure the formation and registration of the Company at Companies House (taking into account any modifications reasonably required by the Council) and to notify the Council accordingly within seven days of the completion of the registration of the Company
- 6.5 The Owner shall repair and maintain the Common Parts and the SUDS to the reasonable satisfaction of the Council (acting reasonably) until such time as the Management Company is registered and the maintenance arrangements to be approved by the Council (such approval not to be unreasonably withheld or delayed) have been fully implemented
- 6.6 At any time prior to the expiry of six months from Implementation of the Development the Owner may submit to the Council for its written approval alternative proposals for the maintenance and upkeep of the Common Parts and the SUDS, (such approval not to be unreasonably withheld or delayed) and in relation to any such alternative arrangements the provisions of this paragraph 5.6 of Schedule 1 shall

apply to the extent that the Owner shall remain responsible for the maintenance and upkeep of the Common Parts and the SUDS, without prejudice to the generality of paragraph 5.5 above until such alternative arrangements (as approved by the Council as aforesaid) have been fully implemented

- 6.7 To provide to the Council a cash deposit ("the Deposit") to the value of 10% of the cost of construction of the SUDS such cost being the cost approved in writing by the Council
- 6.8 The Deposit shall be held by the Council in a suitable interest bearing account until the SUDS are transferred to the Company or if earlier the date of completion of construction of the Development. Should the Owner fail to construct the SUDS in accordance with the provisions contained in paragraph 4 or prior to completion of such construction shall be adjudicated bankrupt or shall go into liquidation voluntarily or otherwise or shall execute a deed of assignment for the benefit of or otherwise compound with its creditors (except for the purpose of reconstruction or amalgamation) the Owner agrees that the Council may without prejudice to its other rights remedies and powers against the Owner expend an equivalent sum from the Deposit to offset any expenditure which the Council may incur in carrying out the construction of the SUDS and also the Council's legal costs arising from the provision of the SUDS
- 6.9 Upon transfer of the SUDS to the Company or if earlier the date of completion of construction of the Development the Council will repay the balance of the Deposit and any accrued interest subject to the Owner having complied with the obligations under paragraph 4 of this Schedule
- 6.10 To provide such Deposit prior to Implementation of the Development.

Schedule 3

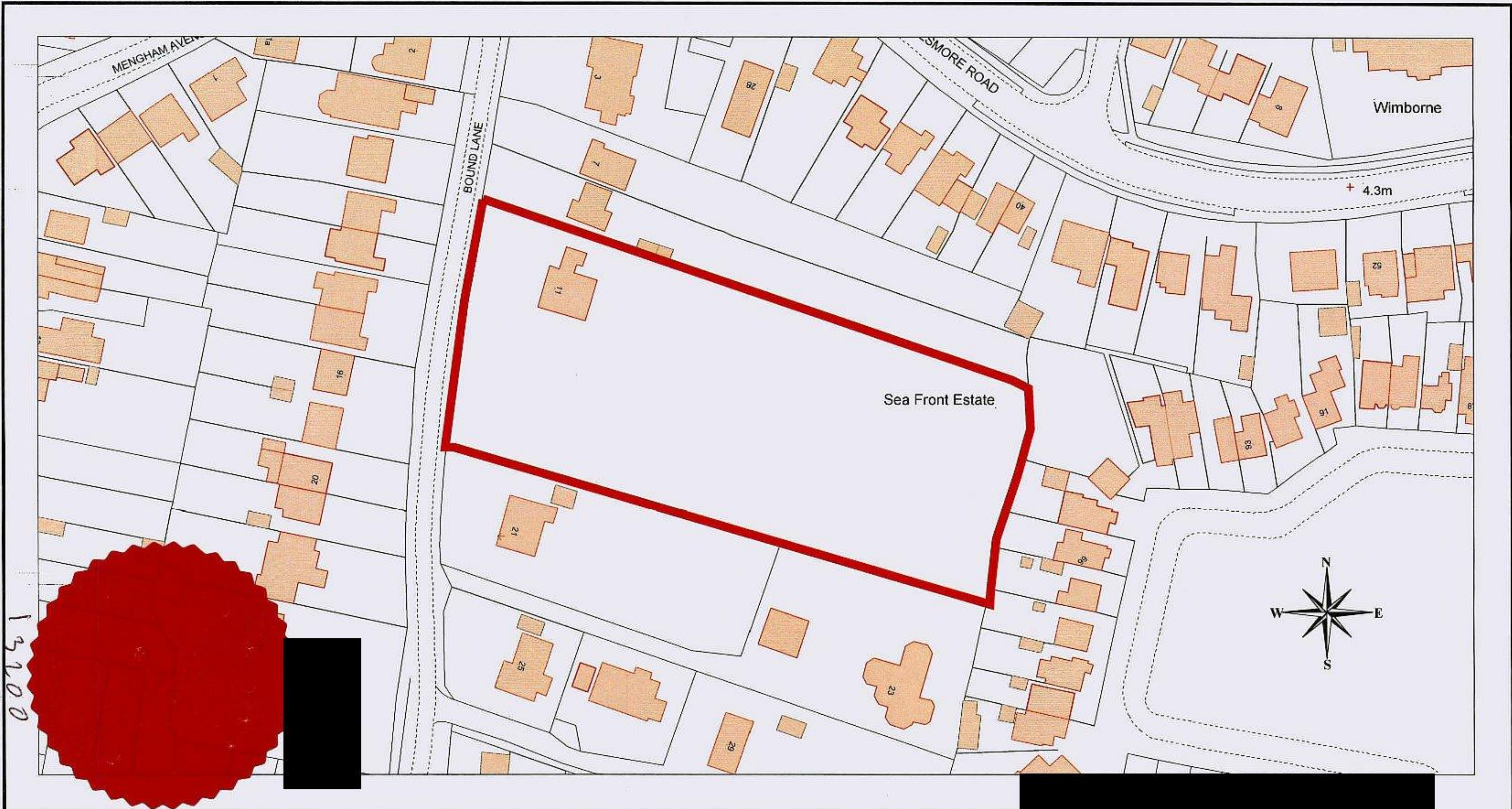
Council's covenants

1. Covenants to the Owner

- 1.1 The Council covenants with the Owner not to use the Affordable Housing Contribution or the Solent Mitigation Strategy Contribution other than for or to the purposes set out in this Deed and on the written request of the Owners to repay any unexpended balance of those Contributions to the Owners on the expiry of 7 years from the date of Practical Completion of the Development.
- 1.2 The Council covenants with the Owner to issue the Planning Permission within 7 days of this Deed being completed

Schedule 4

The Plan



Public Service Plaza
Civic Centre Road
Havant
Hampshire PO9 2AX

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

 **Havant**
BOROUGH COUNCIL

Title:

Plan 1

S106 Agreement
11 Bound Lane
Hayling Island

Drawn By:
JA

Scale:
1:1250

Drawing No:
PC44/0602

Cleaner, Safer, More Prosperous