

APPENDIX 7
Highways Agreement

DATED _____ **201[]**

THE OXFORDSHIRE COUNTY COUNCIL

- and -

(OWNER)

-and-

(MORTGAGEE)

draft

Agreement relating to highway works at [_____] Oxfordshire
to be undertaken by Developer

DLM/

Nick Graham
Director of Law & Governance and Monitoring Officer
Oxfordshire County Council
County Hall
New Road
Oxford OX1 1ND

THIS DEED is made on the _____ day of

Two Thousand and [_____]

BETWEEN:-

- (1) **THE OXFORDSHIRE COUNTY COUNCIL** ("the Council")
- (2) _____ (company registration number _____) ("the Owner")
- (3) _____ (company registration number _____) ("the Mortgagee")

1. **Interpretation**

In this Deed:-

- 1.1 "the 1980 Act" means the Highways Act 1980
- 1.2 "the 1990 Act" means the Town and Country Planning Act 1990
- 1.3 "As-Built Drawings" means detailed plans and drawings showing the Works in the form in which they have actually been executed and completed required under Condition 29 of the Standard Conditions
- 1.4 "Certificate of Completion" means a certificate issued under Condition 30 of the Standard Conditions
- 1.5 "the Council" means the said Oxfordshire County Council whose principal office is at County Hall New Road Oxford OX1 1ND and any successor to its statutory functions as highway authority or planning authority and any duly appointed employee or agent of the Council or such successor

1.6 "the Dedication Plan" means the plan marked 'B' annexed to this Deed or such other plan as the Owner [the Mortgagee] and the Council agree should be substituted for it

1.7 "the Development" means the development of the Site by [] further to the Planning Permission

1.8 "Dwelling" means a dwelling constructed or to be constructed pursuant to the Planning Permission

1.9 "Implementation" means the carrying out of a material operation as defined in section 56(4) of the 1990 Act and "Implement" and "Implemented" shall be construed accordingly

1.10 "including" means including without limitation and 'include' shall be construed accordingly

1.11 "Index-Linked" means adjusted according to any increase occurring between [] and the date of payment to the Council in a composite index comprised of the following indices of the BCIS Price Adjustment Formulae (Civil Engineering) 1990 Series as made available through the Building Cost Information Services (BCIS) of the Royal Institution of Chartered Surveyors weighted in the proportions below set out against each such index namely:-

Index 1	Labour & Supervision	25%
Index 2	Plant & Road Vehicles	25%
Index 3	Aggregates	30%
Index 9	Coated Macadam & Bituminous Products	20%

or if at any time for any reason it becomes impracticable to compile the said composite index then an index compiled in such other manner as may be agreed in writing by the Owner and the Council

- 1.12 “the Maintenance Costs” means the sum of [] Index-Linked to cover the cost of future maintenance of the Works
- 1.13 [“the Mortgagee” means the said] of/whose registered office is at] and its successors in title and assigns]
- 1.14 “Occupation” means the first occupation of a Dwelling for residential purposes and “Occupy” and “Occupied” shall be construed accordingly
- 1.15 “the Off-Site Works” means such part of the Works (if any) as is to be executed outside the Site
- 1.16 “the Owner” means the said] of/whose registered office is at] and its successors in title and assigns
- 1.17 “the Planning Permission” means planning permission reference number [] for the Development
- 1.18 “the Site” means the land at [] Oxfordshire shown edged in red on the Site Plan
- 1.19 “the Site Plan” means the plan marked “Plan A” annexed to this Deed

- 1.20 “the Standard Conditions” means the Council’s Standard Conditions for the Control of Highway Works in Conjunction with Development (2016 Edition) a copy of which is annexed to this Deed
- 1.21 “the Works” means the works specified in the Schedule
- 1.22 “the Works Plan” means the plan marked “Plan C” annexed to this Deed
- 1.23 Any reference to an enactment includes any amendments to or modifications of it and the version of it for the time being in force shall apply
- 1.24 Headings in this Deed are for convenience only and shall not be taken into account in its construction and interpretation
- 1.25 References to clauses sub-clauses and schedules are references to clauses sub-clauses and schedules in this Deed
- 1.26 Where the context so requires:-
- 1.26.1 the singular includes the plural and vice versa
- 1.26.2 the masculine includes the feminine and vice versa
- 1.26.3 persons includes bodies corporate associations and partnerships and vice versa
- 1.27 Where a party comprises more than one person the obligations and liabilities of that party shall be joint and several obligations and liabilities of those persons

1.28 Where more than one party enters into any obligation or liability those parties are jointly and severally liable

1.29 Words denoting an obligation on a party to do any act matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause permit or allow infringement of this restriction

2. **Preliminary**

2.1 The Owner is the owner of the freehold of the Site [subject to a Charge in favour of the Mortgagee but otherwise] free from incumbrances as the Owner hereby warrants

2.2 For the purposes of the 1990 Act the Council is the county planning authority for the area which includes the Site

2.3 For the purposes of the 1980 Act, the Road Traffic Regulation Act 1984 and the Traffic Management Act 2004 the Council is the highway authority and the traffic authority for certain highways in the area which includes the Site

2.4 The district planning authority granted the Planning Permission for the Development on []

2.5 The Owner has agreed by virtue of an agreement pursuant to Section 106 of the 1990 Act dated [] and made between [] that the Development shall not be implemented (as therein defined) prior to the completion of this Deed and shall not be occupied prior to the completion of the Works in accordance with this Deed

- 2.6 The Off-Site Works are works which the Council is authorised to execute by virtue of Part V of the 1980 Act
- 2.7 It has been agreed between the Owner and the Council that in lieu of the Owner paying the cost of the Off-Site Works the Off-Site Works should be executed by the Owner in conjunction with the carrying out of the Development
- 2.8 This Deed (which the Council are satisfied will be of benefit to the public) is made under Sections 38 72 and 278 of the 1980 Act, Section 106 of the 1990 Act, Section 111 of the Local Government Act 1972 and all other enabling powers and is a planning obligation for the purposes of Section 106 of the 1990 Act entered into by the Owner [and the Mortgagee] in respect of the Site and enforceable by the Council

3. **Covenants**

The Owner covenants:-

- 3.1 not to cause or permit the Occupation of any Dwelling before the Works have been completed
- 3.2 to execute the Works entirely at its own expense and to the satisfaction of the Council
- 3.3 in executing the Works to observe and perform all the obligations which fall on "the Developer" under the Standard Conditions and

- 3.4 to complete the Works not later than _____ and
in any event within _____ from the date on
which the Works started
- 3.5 not to commence the Works until the Maintenance Costs
have been paid to the Council and to pay the Maintenance
Costs to the Council prior to commencing the Works
- 3.6 to give the Council written notice of any disposal of an
interest in the Site and of the name and address of the new
owner and the date of the disposal within 14 days of such
disposal

4. **Adoption as Highway**

- 4.1 On the issue of a Certificate of Completion for the Works
the whole of the land shown [coloured pink] on the
Dedication Plan (subject to modification as provided in
clause 4.2) shall be deemed to have been dedicated as
public highway (for all public highway purposes including
use by mechanically propelled vehicles) and shall thereafter
subject to Conditions 34 and 35 of the Standard Conditions
be a highway maintainable at public expense
- 4.2 The Council may after consideration of the As-Built
Drawings require the substitution of a modified dedication
plan in which event that shall be agreed with the Owner [and
the Mortgagee] and the dedication as provided in clause 4.1
shall have effect in respect of the modified area

4.3 The Owner [and the Mortgagee] consent to the noting of the provisions of clause 4 of this Deed on the register under title number []

5 **Act Reasonably**

Where a matter falls within a party's discretion that party shall exercise such discretion in a reasonable and expeditious manner and shall give any requisite notice of that decision and any other notice provided for by this Deed (including the Standard Conditions) without undue delay

6 **[Mortgagee's Consent**

The Mortgagee acknowledges that the Site is bound by the obligations contained in this Deed and in the event that the dedication area is revised further to clause 4.2 the Mortgagee agrees that any part of the dedication area which is subject to its charge shall be released from such charge on dedication pursuant to clause 4.1 and the Mortgagee will execute such further documentation as may be required to effect this]

7 **Costs**

7.1 The Owner shall on completion of this Deed pay the reasonable legal costs of the Council in connection with the preparation and completion of Deed

7.2 The Owner will reimburse the Council in respect of all legal and administrative costs in connection with the enforcement of any of the provisions of this Deed including correspondence monitoring and site visits by or on behalf of the Council

7.3 The Owner will not claim any compensation in respect of the provisions of this Deed

8 **Third Party Rights**

This Deed does not create any right enforceable by any person not a party to it except that it may be enforced by the successors in title and assigns of the parties and by any successor to the Council's statutory functions

9 **Notice**

Any notice or notification to be given to the Council under this Agreement shall be sent to the Director for Planning and Place of the Council (Ref) County Hall, New Road, Oxford OX1 1ND or to such other person at such other address as the Council shall direct from time to time [and any notice or notification to be given to [] shall be sent to [] or to such other person at such address as the [] shall notify in writing to the Council from time to time

10 **No Waiver**

No alteration in the terms of this Deed nor any forbearance or forgiveness on the part of the Council in or in the extent or nature of any matter or thing concerning this Deed shall in any way release the Owner/the Mortgagee from any liability under this Deed

11 **No Fetter**

Nothing in this Deed shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions in any capacity

12 **VAT**

All works undertaken pursuant to and all payments made in accordance with the terms of this Deed shall be exclusive of value added tax and the Owner shall pay the Council any value added tax properly payable on any sums paid to the Council or works undertaken under this Deed upon presentation of an appropriate value added tax invoice addressed to the Owner

13 **Jurisdiction**

This Deed is governed by and interpreted in accordance with the Law of England

14 **Delivery**

The provisions of this Deed shall be of no effect until this Deed has been dated

IN WITNESS whereof the parties hereto have executed this Deed as a deed the day and year first before written

SCHEDULE

The Works

(1) **Principal Works**

The provision and construction in the position indicated in principle on the Works Plan(s) of the following works (“the Principal Works”):

[TO BE COMPLETED]

(2) **Preparatory and Ancillary Works**

The provision and construction of all such preparatory and ancillary works (or in the case of existing works or features necessarily affected by any part of the Works such alteration thereof) as the Council shall consider requisite for the proper construction and functioning of the Principal Works including:-

- (a) all earthworks and other things necessary to prepare the site and provide proper support for the Principal Works
- (b) all culverts ditches and other things necessary to ensure the satisfactory movement of surface water
- (c) all gullies channels grips drains sewers and other things necessary for the permanent drainage of the Principal Works
- (d) all ducts cables columns lamps and other things necessary for the permanent lighting of the Principal Works and the illumination of traffic signs
- (e) all kerbs islands verges and reservations including the grading and seeding of grassed areas

- (f) all measures necessary to ensure visibility for drivers at any bend or junction
- (g) all traffic signs road markings bollards and safety barriers
- (h) all tapers joints and reinstatements necessary where the Principal Works abut the existing highway

(3) **Amenity and Accommodation Works**

The provision and construction of all such amenity and accommodation works as the Council shall consider requisite for the protection of the local environment and private and public rights and property in consequence of the Principal Works including:-

- (a) any earth bunds and/or planting necessary to screen the Principal Works
- (b) all fences gates hedges and other means of separation of the Principal Works from adjoining land
- (c) any necessary alteration of any private access or private or public right of way affected by the Principal Works
- (d) any necessary embankments retaining walls or other things necessary to give support to adjoining land

[STANDARD CONDITIONS]

THE COMMON SEAL of)

was affixed to this Deed in the)

presence of:-)

Director

Director/Secretary

[THE COMMON SEAL of)

was affixed to this Deed in the)

presence of:-)

Director

Director/Secretary]

THE COMMON SEAL of THE)

OXFORDSHIRE COUNTY COUNCIL)

was affixed to this Deed)

in the presence of:-)

Director of Law &
Governance/
Designated Officer

OXFORDSHIRE COUNTY COUNCIL

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Nick Graham
Director of Law & Governance and Monitoring
Officer
County Hall
New Road
Oxford OX1 1ND

Director of Planning & Place
County Hall
New Road
Oxford OX1 1ND

2016 Edition

OXFORDSHIRE COUNTY COUNCIL

STANDARD CONDITIONS FOR THE CONTROL OF HIGHWAY WORKS IN CONJUNCTION WITH DEVELOPMENT

GENERAL

1 INTERPRETATION

In these Conditions:-

- 1.1 "the Agreement" means any agreement or other instrument by which these Conditions are applied.
- 1.2 "Authorisations" has the meaning given in Condition 11.1.
- 1.3 "the Bond" means the bond referred to in Condition 12.
- 1.4 "the Certificate of Completion" means the certificate issued under Condition 30.
- 1.5 "Contractor" includes an agent and any sub-contractor or agent of a main contractor.
- 1.6 "the Council" means the Oxfordshire County Council of County Hall New Road Oxford OX1 1ND and, so far as the context admits, includes any employee or contractors duly appointed by them.
- 1.7 "the Developer" means the person or persons by whom the Agreement requires the Works to be executed.
- 1.8 "including" means including without limitation or prejudice to the generality of any preceding description defining term phrase or word(s) and 'include' shall be construed accordingly.
- 1.9 "Safety Audit" means a safety audit in accordance with Oxfordshire Safety Audit Guideline as revised from time to time and incorporating H.D. 19/15 (Road Safety Audit Volume 5 design manual for roads and bridges)
- 1.10 "the Scheme of Works" means the matters specified in Conditions 9.1 – 9.3 as may for the time being have been varied and/or augmented under Condition 11 and/or Condition 23.
- 1.11 "statutory requirements" means the requirements of any enactment (being any act and any subordinate legislation as defined in the Interpretation Act 1978) national guidance or good practice guides.
- 1.12 "the Works" means the works which the Agreement requires to be executed in accordance with these Conditions and references to "the Works" includes each and every part of them.
- 1.13 The headings are for ease of reference and shall not affect the construction or interpretation of these Conditions.

1.14 References to the Construction (Design and Management) Regulations are to the Construction (Design and Management) Regulations 2015 as varied or replaced from time to time.

1.15 Any reference to any enactment includes any amendments to or modification of it and the version of it for the time being in force shall apply.

2 RELATIONSHIP WITH AGREEMENT

These Conditions shall be construed together with and subject to the Agreement and in the event of any inconsistency between the Conditions and the Agreement the latter shall prevail.

3 COMMUNICATIONS WITH THE COUNCIL

Any notice or other communication required by these Conditions to be given by the Developer to the Council shall be given in writing to the Council's Director for Environment & Economy at his main office at County Hall, New Road, Oxford OX1 1ND or to such other person and/or at such other place as he may identify in writing to the Developer.

4 APPROVALS AND CERTIFICATES

4.1 No approval consent authorisation or payment as specified in Condition 4.3 shall create any contractual relationship between the Developer and the Council beyond that contained in the Agreement or operate in any way as a warranty or otherwise imply that the subject matter of such approval consent authorisation or payment is fit for its intended purpose nor shall it relieve the Developer or any professional adviser or contractor engaged in connection with the Works from their respective obligations to use all proper skill and care in respect of the Works.

4.2 The Council will not be liable for any loss damage or injury which the Developer may sustain arising from action taken in consequence of such approval consent authorisation or payment.

4.3 The matters referred to in Condition 4.1 are:

4.3.1 any approval or consent given by the Council in respect of the discharge by the Developer of its obligations under these Conditions; or any technical approval or consent issued by the Council in respect of the Works.

4.3.2 any authorisation given or implied by or under these Conditions in respect of anything done or to be done by the Developer on or in relation to any highway; or any payment made by the Developer to the Council under these Conditions.

5 COUNCIL TO ACT IN DEFAULT OR EMERGENCY

5.1 In the event that either of the following circumstances occur:-

5.1.1 if the Developer shall be materially in default in respect of any of the provisions of the Agreement including these Conditions requiring work to be done or not done, or to be done in a particular manner or by a particular time and if such default continues after the Council have given to the Developer not less than 21 days' written notice of the steps they require to be taken to remedy such default; or

5.1.2 if it shall appear to the Council at any time during the course of execution of the Works that danger to persons or prejudice to the structure or stability of the public highway or of adjoining land exists or is imminent, and that it is not reasonably practicable to cause the Developer to take the necessary remedial steps forthwith;

the Council may take such steps themselves to the exclusion of the Developer and charge the expenses incurred (including their reasonable administrative costs) against the Developer.

5.2 Such expenses will be a debt due to the Council and recoverable by them by action or otherwise and for the avoidance of doubt the Council may recover such expenses under the Bond where the Council has taken such steps because the Developer is in default as provided in Condition 5.1.1 or where the Council has taken such steps in an emergency further to Condition 5.1.2 and in the latter case the Developer has failed to discharge the Council's expenses.

6 INDEMNITY

The Developer shall indemnify the Council and keep them indemnified against;

6.1 all actions, liabilities, claims, costs and proceedings which may arise from the execution and completion of the Works (except insofar as may arise from the negligence or default of the Council) and from anything done or not done by the Developer or by its employees or contractors in connection with the Works;

6.2 all actions, liabilities, claims, costs and proceedings arising in connection with or incidental to or in consequence of the lawful use of the highway following upon the carrying out or completion of the Works under the Land Compensation Act 1973 or under regulations made pursuant to Section 20 of the Land Compensation Act 1973 (insulation against noise) and any grants made by the Council under such regulations in accordance with its established policy. The Council may by advertisement invite claims under the Land Compensation Act 1973 and under regulations made pursuant to Section 20 of that Act.

7 **HEALTH AND SAFETY**

The Developer shall act as the only client in respect of the Works for the purposes of The Construction (Design and Management) Regulations.

8 **PAYMENTS**

Where the Council seeks any payment further to these Conditions then save where there is express provision as to timing for payment such payment shall be due within 28 days of written request from the Council and if payment is not made within such 28 day period (or where applicable such other period as expressly provided) then interest at 4% per annum above the base rate from time to time of Lloyds Bank PLC shall be payable from the expiration of the 28 day period until the date of payment.

PRELIMINARIES

9 **SUBMISSIONS TO THE COUNCIL**

The Developer shall submit to the Council the information and other matters specified in column 1 below in accordance with the timetable set out in column 2 below and the notes set out in column 3 below: -

Highway Matters

9.1

Information	Timetable	Notes
Detailed plans (which shall include a layout plan to a scale of 1:1250 or 1:2500 according to whichever is the Ordnance Survey base scale for the area), drawings and specifications of the Works (including the drainage of them) and the materials to be used to comply with the relevant standards and specifications of the Council for the time being in force, together with such structural and drainage calculations as the Council may consider necessary having regard to the nature of the Works;	No later than 3 months before any tender is invited for the execution of the Works	There shall be paid to the Council on the submission a sum equal to 0.4% of the estimated gross cost of the Works as identified in Condition 12

9.2

<p>A detailed programme designed to ensure the orderly and timely execution and completion of the Work with the minimum of disturbance and disruption to use of the highway and occupiers of property and to facilitate the implementation of any such measures in respect of undertaker's apparatus as may be identified pursuant to Condition 10.</p>	<p>No later than 2 weeks after the acceptance of any tender for the execution of the Works</p>	<p>Significant programme changes to be identified not less than 2 weeks prior to the change</p>
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9.3

<p>(a) Measures for the control of vehicles and plant to be used in the course of execution of the Works (including vehicles engaged on the transport of materials and equipment to and from the Works) and measures for traffic regulation in order to minimise and/or alleviate damage to the highway disturbance to occupiers of property and disturbance and disruption to use of the highway (including traffic congestion) ;and (b) traffic safety measures and measures including lights, guards, fencing and warning signs in order to protect the Works and/or for the safety and convenience of the public</p>	<p>No later than 2 weeks before the Works are expected to commence</p>	
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9.4

<p>Safety Audit Stage 2 Report</p>	<p>No later than 3 months before any tender is invited for the execution of the Works</p>	
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9.5

<p>Details in accordance with Condition 15 of the persons proposed to be invited to tender.</p>	<p>No later than 1 month before any tender is invited for the execution of the Works.</p>	
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Other Matters

9.6

Details of the bondsman proposed to be given pursuant to Condition 12, together with any bills of quantities or tenders which the Developer wishes the Council to take into account under that Condition.	No later than 1 month before the Works are expected to commence.	
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9.7

Details of the insurances required by Condition 14.	No later than 1 month before the Works are expected to commence.	
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9.8

<p>Part 1 Noise survey and assessment and modelling sufficient to establish whether any properties will be eligible for noise insulation according to regulation 3 or regulation 4 (as applied by the Council) of the Noise Insulation Regulations 1975 applying the requirements of the Design Manual of Roads and Bridges Volume 11 – Environmental Assessment and the Calculation of Road Traffic Noise 1988 to be undertaken by a noise expert approved by the Council.</p> <p>Part 2 If the assessment concludes that there will be any property eligible for noise insulation to submit to the Council:</p> <p>(a) a map and list of all eligible properties. ¹</p> <p>(b) a list of all occupiers and landlords</p> <p>(c) a survey and assessment for each eligible property of the work to be carried out to comply with requirements of the Noise Insulation Regulations 1975 and the specification for that work</p>	<p>No later than 1 month before the Works are expected to commence or earlier than 3 months before the Works are expected to commence.</p> <p>As above</p>	<p>Precise timing of survey to be agreed with the Council. Location of the survey/testing to be advised to the Council and if applicable adjusted to ensure regulatory compliance.</p>
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9.9

<p>Condition survey (comprising photographs) of land and highway adjoining and neighbouring the site of the Works together with such further areas as the Council may require.</p>	<p>No later than 1 month before the Works are expected to commence.</p>	
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9.10

<p>Notification of the identity of the contractor who has submitted a successful tender.</p>	<p>No later than 2 weeks after the acceptance of any tender for the</p>	
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¹ Dwellings and other buildings used for residential purposes which will be not more than 300 metres from the edge of the carriageway of the highway after completion of the work.

In any particular case any information or matter may be submitted to the Council at such later time as the Council may consider expedient subject to the Council identifying such later time in writing.

10 UNDERTAKERS' APPARATUS

10.1 The Developer shall in preparing the Scheme of Works consult every undertaker within the meaning of the New Roads and Street Works Act 1991 whose apparatus or services lie in, on, under or over the site of the Works or may otherwise be affected by the Works (whether or not it is intended to connect into such services in connection with the Works), with a view to the identification and implementation of any measures considered necessary by the undertakers for the protection of, or otherwise in relation to, their apparatus or services, and shall be responsible for all dealings with such undertakers in respect of the implementation of such measures and for all costs payable to the undertakers in that behalf.

10.2 For the avoidance of doubt the Developer shall comply with statutory requirements relating to street works (as defined in the 1991 Act).

11 AUTHORISATIONS

11.1 Authorisations signifies all rights, approvals and consents and any other requisite action to enable the Works to be properly and lawfully executed and completed (in accordance with the Agreement including these Conditions) and the subsequent implementation and functioning of the Works including (but not so as to provide an exhaustive list of examples)²:-

11.1.1 planning permission for the Works;

11.1.2 authority for stopping up diversion or other alteration of any existing highway so far as necessary to enable the Works to proceed and / or be implemented and function;

11.1.3 authority or agreement for stopping up (including relocating) any private access to any existing highways which is necessary in the opinion of the Council to enable the Works to proceed and / or be implemented and function³;

11.1.4 street works licence further to the New Roads and Street Works Act 1991;

11.1.5 authorisation for any traffic regulation measures including prohibitions, restrictions and controls where necessary in

² Examples may also include noise consent from district council

³ This relates to for example Section 127HA.

the Council's opinion to enable the Works to proceed and/or to be implemented and function⁴; and

- 11.1.6 any rights and easements which in the Council's opinion are necessary to ensure the permanent and satisfactory drainage or lighting of the Works such rights and easements to be in a form previously approved by the Council.
- 11.2 The Developer shall be responsible for ensuring that all Authorisations are secured in timely manner at its own cost.
- 11.3 Save in so far as any consent is expressly granted under the Agreement nothing in the Agreement shall prejudice or affect in any way the exercise by the Council of its powers and duties relating to any application for an Authorisation including the consideration and processing of an application, the carrying out of any procedural requirements (pursuant to any enactment or Council policies or protocols) and the determination as to whether or not the Authorisation should be made, granted or confirmed.
- 11.4 Any costs incurred by the Council relating to any application for an Authorisation - and any related matters shall be discharged by the Developer.
- 11.5 Where the procedures for securing any Authorisation entail consultation and in consequence of such consultation the Council determines that the Works / the Scheme of Works shall be varied and / or augmented then any reference to the Works and / or the Scheme of Works shall be construed as a reference to the Works and / or the Scheme of Works as so varied and / or augmented.
- 11.6 Forthwith on securing any Authorisation the Developer shall supply evidence of this to the Council to the Council's reasonable satisfaction.

⁴ This is directed at securing any requisite TROs which are integral to the Works e.g. bus lanes and also there may be various works such as traffic calming and signals where consultation is mandatory.

12 BOND

12.1 The Developer and a bondsman satisfactory to the Council shall enter into a Bond in such form as shall have been approved by the Council guaranteeing the execution and completion of the Works in accordance with the Agreement including these Conditions.

12.2 The amount of the Bond shall be

12.2.1. the gross cost of the Works (including any costs payable to undertakers pursuant to Condition 10) as then (being one month before the Works are proposed to be commenced) estimated by the Council and such estimate may take into account any bills of quantities prepared or tenders received by the Developer in respect of the Works and submitted by it to the Council; and

12.2.2. adjusted to take account of inflation for the duration of the Works (and subsequently) as reasonably estimated by the Council; and

12.2.3. adjusted to reflect the full costs that may be incurred by the Council as provided in Condition 5.1 (Council to act in default or emergency).

13 MONITORING AND OTHER COSTS

13.1 The Developer shall pay to the Council in respect of the costs to be incurred by the Council in monitoring the execution and completion of the Works (and administration of the Agreement) a sum equal to 9% of the amount of the Bond, subject to a minimum payment of £2,150

Note: The provisions of Condition 27.2 also apply

13.2 The Developer shall pay to the Council legal costs reasonably incurred in connection with the drafting and completion of the Bond.

14 INSURANCE

The Developer shall take out and maintain, until two years after the date on which the Council issues the Certificate of Completion (or if later the date on which all defects and outstanding works have been made good and completed as mentioned in Condition 33), such insurances satisfactory to the Council in the sum of £10million (or such higher sum as the Council may require) as may be appropriate to cover the liability of the Developer and of its employees and contractors in respect of any injury or damage to persons or property which may arise from or in connection with the execution and completion of the Works.

15 CONTRACTORS

15.1 The Developer shall not employ any contractor or agent for the execution of the Works except such contractor or agent as shall be recognised by the Council as being of proven competence and good standing in the field of civil and electrical engineering and experienced in the type and scale of the work which is to be the subject of the contract, and for that purpose the Developer shall not invite tenders for the execution of the Works except from persons proposed to and approved in writing by the Council before any such tender is invited; The employment of a contractor or agent shall not remove or abate any obligation on the part of the Developer arising from the Agreement including these Conditions.

15.2 The Developer shall appoint a contractor to undertake the Works in compliance with the following:-

15.2.1 advertising/publication of the proposed contract for carrying out the Works sufficient to open up the market to competition and for the transparency and impartiality of the procurement procedure to be reviewed such advertising/publication to include the essential details of the contract to be awarded and of the award methodology;

15.2.2 awarding the contract for the Works further to competition applying such transparent and impartial procurement procedures and award methodology.

15.2.3 the Developer shall without cost to the Council supply such information as the Council may reasonably require to demonstrate compliance with this Condition.

16 PRECONDITIONS TO LETTING CONTRACT

The Developer shall not let any contract for the execution of Works unless and until:-

16.1 The Scheme of Works has been approved by the Council; and

16.2 Safety Audit Stage 2 Report has been approved by the Council.

IMPLEMENTATION OF THE WORKS

17 COMMENCEMENT OF WORKS

The Developer shall only undertake the Works at such times as have previously been approved by the Council

18 NO WORK PENDING APPROVALS ETC

18.1 The Works shall not be commenced before the following have occurred:

- 18.1.1 the Council has issued written approval of the Scheme of Works;
 - 18.1.2 Safety Audit Stage 2 Report has been approved;
 - 18.1.3 evidence of all Authorisations have been supplied to the Council;
 - 18.1.4 the Bond duly executed as a deed by the Developer and the approved guarantor has been delivered to the Council;
 - 18.1.5 the costs referred to in Condition 13 have been paid to the Council;
 - 18.1.6 the Council has given its written approval to the insurances referred to in Condition 14;
 - 18.1.7 the noise survey assessment and modelling in accordance with Condition 9.8 has been supplied to the Council and if appropriate the information referred to in the second part of that Condition has been supplied to the Council
 - 18.1.8 the surveys referred to in Condition 9.9 (condition survey) has been supplied to the Council.
- 18.2 The Developer must have readily available at the site of the Works a copy of the insurances and approved Scheme of Works and shall retain them at the site for the duration of the Works and produce them to any representative of the Council on request.

19 GENERAL CONDUCT

- 19.1 The Developer shall execute and complete the Works in compliance with the approved Scheme of Works, in a sound and workmanlike manner with proper materials and in accordance with good engineering practice and in compliance with all statutory requirements and the provisions of the Agreement including these Conditions.
- 19.2 Without prejudice to the generality of Condition 6.2 and Condition 19.1 the Developer shall provide the Council with such assistance, information and documentation as the Council shall require to comply with any obligations under the Noise Insulation Regulations 1975 including assistance in responding to any claims made under Regulation 13 of those Regulations.

20 MONITORING OF SITE AND MATERIALS

20.1 The Developer shall at all reasonable times give to the Council free access to every part of the Works and shall permit them to monitor them and inspect all materials used or intended for use in the Works.

20.2 Where the Council require any such materials to be tested the Developer shall reimburse the Council the reasonable cost of such testing.

21 ERRORS AND DEFECTS

If in the course of execution of the Works it shall appear to the Council:

21.1 that any error has arisen in the position, levels, dimensions or alignment of the Works; or

21.2 that any work carried out or materials used for the purpose of the Works are defective to such extent as to prejudice in any respect the structure, stability, durability or subsequent functioning of the Works; or

21.3 that any damage has occurred in respect of the Works; or

21.4 that in any other respect the Works are not in accordance with the Scheme of Works;

and the Council notify the Developer in writing of this then the Developer shall, at its own expense and to the satisfaction of the Council, forthwith take such remedial steps as the Council shall specify in the notice. For the avoidance of doubt this Condition is without prejudice to Condition 19.

22 SUSPENSION OF WORK

If in the opinion of the Council some part of the Works ought not properly to be commenced or continued by reason either of:-

22.1 the dependence of that part on the completion of remedial steps specified in a notice given under Condition 21; or

22.2 adverse weather conditions such as to prejudice the structure or stability of that part if executed under those conditions;

the Developer shall on the written order of the Council suspend the progress of that part of the Works for such time or times and in such manner as the Council may consider necessary, and shall during such suspension properly protect and secure the Works so far as is necessary in the opinion of the Council.

23 VARIATIONS AND ADDITIONS

In the event that any of the following circumstances arising in the course of execution of the Works,:-

- 23.1 if discovery is made of adverse ground conditions or artificial obstruction or any other unforeseen factor which in the opinion of the Council necessitate a modification of the Works to avoid or compensate for such conditions, obstruction or other factor in the interests of the satisfactory completion and subsequent functioning of the Works; or
- 23.2 if it shall appear to the Council requisite, in accordance with good engineering practice and to ensure satisfactory completion and subsequent functioning of the Works that any work or materials should be added, or that any such work or materials proposed by the Developer to be done or used should be omitted or changed; or
- 23.3 if it shall appear to the Council expedient that any obligation arising from the approved Scheme of Works should be deferred by reason of delay incurred by the Developer arising from some cause not within the Developer's control; or
- 23.4 otherwise if in a particular case the Developer and the Council so agree;

the Scheme of Works shall be varied and/or augmented in manner notified in writing by the Council to the Developer, and in the application of these Conditions any reference to the Scheme of Works shall be construed as a reference to the Scheme of Works as so varied and/or augmented.

24 PREVENTION OF NOISE, DISTURBANCE ETC

- 24.1 All work shall be carried out without unreasonable noise and disturbance and in such manner as not to interfere unnecessarily or unreasonably with the use and enjoyment of property adjoining or near the Works by their owners and occupiers.
- 24.2 Without prejudice to the generality of Condition 24.1, no work shall be carried on between the hours of 8.00pm and 7.00am the following day or on any Sunday or public holiday except insofar as:-
 - 24.2.1 any operations are necessary to avoid disruption to or for the control of traffic on any highway; or
 - 24.2.2 any work is unavoidable or absolutely necessary for the safety of life or property or the safety of the Works; or
 - 24.2.3 the Council have in writing otherwise agreed.

25 PROTECTION OF HIGHWAY

- 25.1 Insofar as the Works affect in any respect the existing highway such part shall be executed with the minimum of disturbance to that highway and traffic using that highway consistent with the work in hand.
- 25.2 In the event of it appearing to the Council at any time that such disturbance has occurred or is likely to occur to such extent as to prejudice the structure of the highway or the safety of users the Developer shall forthwith take such remedial steps as the Council may require.
- 25.3 Prior to the commencement of the Works the Developer will provide suitable vehicle and wheel cleaning apparatus and ensure that such apparatus is maintained in good and useable condition and used by all vehicles immediately before leaving the site of the Works to prevent mud or other materials being deposited on the adjoining existing highway.
- 25.4 In the event of Developer receiving any complaint it will promptly notify the Council.

26 SAFEGUARDING OF COMPLETED WORK

The Developer shall until the Council have issued the Certificate of Completion take all steps necessary to protect and maintain those parts of the Works which have been executed, so that upon substantial completion of the whole of the Works every part of the Works is in a sound and workmanlike condition and free from any damage and any material wear and tear.

COMPLETION AND CONSEQUENTIAL MATTERS

27 COMPLETION OF WORKS

- 27.1 The Works shall be executed and completed within such period as the Agreement may define (whether by duration or by reference to a specified date or both), provided that in the event of delay to the work arising from some cause not within the Developer's control the Developer shall be entitled to a reasonable extension of such period.
- 27.2 Without prejudice to any right or remedy of the Council, the Council may at any time by notice to the Owner permit an extension of time as the Council shall in its discretion determine and the Developer shall pay within 14 days of demand such additional monitoring fees (in addition to that provided for in Condition 13) as is necessary to reimburse to the Council the additional cost incurred in monitoring the Works by reason of the grant of such extension of time

28 PRE COMPLETION - CLEARANCE OF SITE AND STAGE 3 SAFETY AUDIT

28.1 On substantial completion of the Works the Developer shall clear away and remove from the site of the Works all plant, surplus material, rubbish and temporary works and items of every kind, and shall leave the whole of the site of the Works clean and in a workmanlike condition to the satisfaction of the Council.

28.2 On substantial completion of the Works (and clearance of the site of the Works) the Developer shall lodge a stage 3 Safety Audit report together with the 'Designer's response' with the Council and the Developer shall execute and complete all works as advised by the Council arising from the Safety Audit recommendations.

29. HEALTH AND SAFETY

29.1 The Developer shall furnish to the Council the Health and Safety File prepared in accordance with Interim Advice Note 105/08 - Implementation of Construction (Design and Management) 2007 issued by the Highways Agency (now Highways England) as revised and/or replaced from time to time. The Health and Safety File shall include detailed plans and drawings showing the Works as the same have actually been executed and completed and the Developer shall at his own cost ensure that the Council shall not be prevented by copyright or otherwise from reproducing such plans and drawings or part of them as the Council may require for purposes relating only to the Works and the highway and the Developer shall furnish satisfactory evidence to the Council that this has been done. The plans and drawings furnished under this Condition shall be no less detailed than the plans and drawings submitted under Condition 9.1 unless the Council shall in writing otherwise agree.

30. COMPLETION CERTIFICATE

Subject always to prior compliance with the pre completion requirements (Condition 28) and with Condition 29 the Council shall issue the Certificate of Completion forthwith if the Council is satisfied that the Works (save for such minor outstanding works as the Council shall agree) have been completed in accordance with the Agreement including these Conditions

31. DEDICATION AS HIGHWAY

Upon the issue of the Certificate of Completion unless the Agreement provides otherwise the whole of the land comprised in the Works (so far as not already forming part of the public highway and excluding such part as the Developer and the Council may in writing agree) shall be deemed to have been dedicated as public highway and shall thereafter subject always to compliance with Conditions 34 & 35 be a highway maintainable at public expense.

32. EASEMENTS

- 32.1 The Developer shall forthwith following the issue of the Certificate of Completion:-
- 32.1.1 transfer to the Council all those rights and easements (so far as the same do not at that time already subsist in favour of the Council) referred to in Condition 11.1.6; and
- 32.1.2 grant to the Council any easement which in the Council's opinion is necessary to ensure the permanent and satisfactory drainage or lighting of the Works in respect of any land which is retained by the Developer and such easement shall be in a form previously approved by the Council and the Developer will procure that any person with an interest in the relevant land joins in the deed of easement for the purpose of consenting to and confirming such easement.
- 32.2 The Council shall not be liable for the payment of compensation or legal or any other costs or fees arising from any such transfer or grant of easement.

33. NOISE INSULATION

The Developer shall within 1 month after the opening of the Works to public traffic supply to the Council an update of the information required pursuant to part 2 of Condition 9.8 (noise survey assessment and modelling- map lists and works) which relates to all eligible properties at the date of the opening of the Works to public traffic.

34. REMEDYING OF DEFECTS AND OUTSTANDING WORKS

- 34.1 If at any time during the period of two years following the date on which the Council issue the Certificate of Completion:-
- 34.1.1 any defect in the Works becomes manifest (not being a defect arising solely from normal use by the public as a highway or from accidental or wilful damage by any third party); or
- 34.1.2 the Developer shall fail to complete any of the outstanding works mentioned in Condition 30 (minor outstanding Works on issue of Certificate of Completion) and the Council notify the Developer in writing of this
- then the Developer shall at his own expense cause such defect to be made good or outstanding works to be completed (as the case may be) to the satisfaction of the Council.
- 34.2 Forthwith on receipt of any notification from the Council further to Condition 34.1 the Developer will agree with the Council the timing of the carrying out of such remedial or outstanding works and unless otherwise agreed shall secure their completion within one

month of receipt of such notification (except in the event of delay arising from some cause not within the Developer's control when the Developer shall be entitled to a reasonable extension of time).

35. STAGE 4 ROAD SAFETY AUDIT

35.1 The Council may require the Developer to carry out a Safety Audit Stage 4 at any time within 36 months from the opening of the Works and to lodge the report with the Council together with the "Designer's response" within 2 months and the Council shall notify the Developer of all works required to be undertaken arising from the Safety Audit recommendations

35.2 In the event that notification of works is given by the Council further to Condition 35.1 prior to the full release of the Bond the Developer shall execute and complete all the works as advised by the Council. The Developer will agree with the Council the time that he will be carrying out such works and unless otherwise agreed shall secure their completion within 1 month of receipt of such notification (except in the event of delay arising for some cause not within the Developers control, when the Developer shall be entitled to a reasonable extension of time).

35.3 In the event that notification of works is given by the Council further to Condition 35.1 subsequent to the full release of the Bond the Developer shall pay to the Council within 28 days of written request from the Council the costs incurred or to be incurred by the Council in carrying out such works.

36. RELEASE OF BOND

36.1 Upon the issue of the Certificate of Completion the Bond shall be deemed to be released by eighty per cent (80%) of its original value;

36.2 The Bond shall be deemed to be fully discharged at the latest of the following:

36.2.1 the date two years after the date on which the Council issue the Certificate of Completion; and

36.2.2 the date on which all defects and outstanding works have been made good and completed as referred to in Condition 34; and

36.2.3 the date on which all works have been completed as referred to in Condition 35.2

36.2.4 the Council have recovered their full expenses in all cases where Condition 5 applies (Council may act in default or emergency);

36.2.5 the date on which the Council have received the transfers or grants further to Condition 32;

36.3 Conditions 36.1 and 36.2 are without prejudice to the Council's absolute discretion from time to time upon application of the

Developer to release the Bond to an extent commensurate with the proportion of the Works that have been executed and completed at such time.

APPENDIX 8

Strategic and Operational Intends

CMO Intent and Objectives

1. STRATEGIC INTENT

1.1 The strategic role of the CMO is to promote the Community Benefit over all stages of the North West Bicester Development. Specifically the CMO will:

- 1.1.1 uphold, promote and progress low carbon living;
- 1.1.2 support the creation of social capital and social cohesion for Bicester;
- 1.1.3 allow those that live and work in the North West Bicester Development the opportunity for a direct voice (participation) in the governance of their community and how the North West Bicester Development's assets are managed, as well as ensuring democratic accountability through links with the existing democratic structures in the area;
- 1.1.4 have the flexibility to respond as effectively to the needs of the first pioneer occupations as to the needs of future occupants;
- 1.1.5 be equipped with the relevant professional and entrepreneurial expertise to completely manage and build on any endowment/assets (including any community facilities transferred to it) over time for the Community Benefit and to manage and maintain all assets to the highest professional standards

1.2 It is the intention that:

- 1.2.1 a range of community facilities are to be provided across the North West Bicester Development; and
- 1.2.2 the CMO may wish to accept responsibility for management and maintenance of all or any such community facilities for the Community Benefit and in such circumstances it may be nominated by the District Council to accept a transfer of one or more of such community facilities to be provided as part of the North West Bicester Development
- 1.2.3 in the event that the CMO accepts a transfer of one or more of the community facilities provided as part of the North West Bicester Development as the District Council's nominee it may also be nominated by the District Council to receive payment of a commuted sum payable towards management and maintenance of the same
- 1.2.4 the CMO may operate any such community facilities as are transferred to it so as to generate funds in order to provide a balance between liabilities and income

2. OPERATIONAL INTENT

2.1 It is the intention that the CMO shall be set up and operated in such a way as:

- 2.1.1 to protect the Strategic Intent as set out above;
- 2.1.2 to ensure that the CMO has a membership that is representative of the community comprising the North West Bicester Development and that decisions are made for the Community Benefit and in such a way as to be accountable to the membership of the CMO;
- 2.1.3 to ensure that sufficient sustainable sources of funding are available or can be generated to ensure the CMO can operate and be financially self-sufficient for all of the functions and activities that it chooses to take on in the short and long term, including entrepreneurial activities;

- 2.1.4 not to proscribe or inhibit the CMO in the way it chooses to develop its role in the longer term and to evolve its own detailed interpretation of the Community Benefit
- 2.1.5 to ensure that the owners and developers of any part of the North West Bicester Development, in delivering and managing any of the community facilities to be provided as part of the North West Bicester Development unless and until transferred to the District Council or its nominee, take the Community Benefit into consideration;
- 2.1.6 to ensure that the CMO has access to enough information with regards to the costs of management and income streams to enable it to make properly informed decisions with regards to the community facilities for which it either elects to accept management responsibility for or is offered a transfer lease or licence of.

APPENDIX 9

Draft Bond

DATED

20[]

[OWNER]

- and -

[SURETY]

- and -

THE OXFORDSHIRE COUNTY COUNCIL

BOND 1

relating to obligations in S106 Agreement for payment of contributions

land at Himley Village Bicester

DLM/49902

Nick Graham
Director of Law & Governance and Monitoring Officer
Oxfordshire County Council
County Hall
New Road
Oxford OX1 1ND

THIS BOND dated the _____ day of _____ 20[]

MADE BETWEEN

- (1) **OWNER** (Company number []) whose registered office is situate at [] (“the Owner”)
- (2) **SURETY** of [] (“the Surety”)
- (3) **THE OXFORDSHIRE COUNTY COUNCIL** of County Hall New Road Oxford OX1 1ND (“the Council”)

Preliminary and Definitions

1. **“Agreement”** means an Agreement dated the [] day of [] 20[] between Cherwell District Council (1) Oxfordshire County Council (2) Julian Murfitt and Catherine Murfitt and others (3) to (6) and P3 Eco (Bicester) Himley Limited and others (7) and (8)
2. **“The Bond Sum”** means the sum of £14,000,000 subject as provided in clause 7
3. **“Initial County Contributions”** means the payments to be made to the Council as described in the table which follows clause 9 and according to the relevant terms of Schedules 17 and 20 to the Agreement

NOW THIS DEED WITNESSETH as follows:-

1. The Owner and the Surety are jointly and severally bound to the Council for the Bond Sum
2. The Council may call for the Surety to make payment if the Owner shall fail to pay any part of the Initial County Contributions due under the provisions of the Agreement.

3. Any claim hereunder shall be accompanied by a statement signed by the County Solicitor (or any successor to such role and such successor is at the date of this Bond designated the Director of Law and Governance) that the amount claimed represents the amount payable and that such payment then due has not been paid and such statement shall be conclusive evidence (and admissible as such) that any sums stated therein are properly due and payable to the Council. Without prejudice to the generality of the foregoing none of the following shall be required:-
 - 3.1 the Council being obliged to make any enquiry of the Owner or the Surety
 - 3.2 the need to take any legal action against the Owner
 - 3.3 any proof of default or liability on the part of the Owner
4. The Surety shall within 14 days after service of any claim pay the Council the sum specified in such claim and shall not be entitled to delay or withhold payment for any reason notwithstanding any objection by the Owner or any other party provided always that the maximum aggregate liability of the Surety does not exceed the Bond Sum
5. The Council may make as many separate claims under this Bond as it considers appropriate provided that they shall not exceed in aggregate the Bond Sum
6. Whenever any payment is made to the Council after the date of this Bond in respect of the Initial County Contributions, the Bond Sum shall be reduced on written notice from the Council to such sum as the Council, acting reasonably and taking into account amongst other matters index linking and the trigger dates for payment of the instalments of the Initial County

Contributions, then estimates to be outstanding in respect of the Initial County Contributions (being the amount of the Initial County Contributions remaining to be paid adjusted for index linking and including reasonable allowance for future index linking) plus any outstanding interest on account of late payment and all such reductions shall be notified in writing by the Council to the Owner and the Surety within 2 months of the relevant payment

7. Without prejudice to the generality of clause 5 the obligations of the Surety under this Bond shall not be affected by any act, omission or matter which might (but for this clause) operate to release or discharge such obligations in whole or in part, including without limitation:

7.1 any time or waiver or accommodation or credit granted to the Owner or the Surety or any abstention from enforcing the Council's rights against the Owner or the Surety;

7.2 any variation of or amendment to the Agreement (and references to the Agreement in this Bond shall be references to the Agreement as so varied or amended from time to time) or in the extent or notice of the Primary School Works;

7.3 any obligation on the part of the Owner being void;

7.4 the bankruptcy, liquidation or insolvency of the Owner or the presentation of a petition for the making of an administration order in respect of the Owner or the making of any such order or the appointment of (or giving of notice to appoint) an administrator in respect of the Owner;

- 7.5 any thing or matter that would or might have discharged or affected any liability if the Surety's obligation under this Bond had been secondary rather than primary
8. This deed gives no rights under the Contracts (Rights of Third Parties) Act 1999 but this does not affect any rights which are available apart from that Act
9. This Bond shall be governed by and construed in accordance with English law and the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising in connection with this Bond.

TABLE

Contributions/Payments actively bonded by Bond 1 (assuming first instalment of Primary Education Land & Funding (L&F) Contribution is paid at/prior to Implementation)			
Bond 1	Bus Infrastructure Contribution	Bus Infrastructure Payment 1	
		Bus Infrastructure Payment 2	
	Bus Services Contribution	Bus Service Payments	Payments 1 to 8
	Bus Services (Interim) Contribution	Interim Bus Service Payments	Payments 1 to 7 until the Bus Services Contribution supersedes
	Cycle Improvements Contribution (Middleton Stoney Road)	Cycle Improvements Payment 1	
		Cycle Improvements Payment 2	
	Library Contribution	Library Payment 1	

Primary Education Land & Funding (L&F) Contribution		All excepting (if the SH Trigger is achieved by 150 occupations) the 3 instalments of this contribution payable under paragraphs 3.4 to 3.6 of Schedule 17 to the Agreement
Rights of Way Contribution		
School Transport Contribution		
Shakespeare Drive Contribution	Shakespeare Drive Payment 1	If Strategic Highways Works open by 50 occupations
	Shakespeare Drive Payment 2	If Strategic Highways Works open by 100 occupations
Secondary Education Contribution	Secondary Education Payment 1	
	Secondary Education Payment 2	
Secondary Education Contribution (Temporary)		
Special Educational Needs Contribution	SEN Payment 1	
Traffic Calming Contribution		
Travel Plan Monitoring Contribution		
Major Infrastructure Contribution	First Instalment	

THIS BOND has been executed as a Deed and is delivered the day and year first before written

THE COMMON SEAL of THE)

OXFORDSHIRE COUNTY COUNCIL)

was affixed hereto in the presence of:-)

Director of Law & Governance/

Designated Officer

THE COMMON SEAL of)

)

was hereunto affixed in the)

presence of:-)

Director

Director/Secretary

[THE COMMON SEAL of)

)

was hereunto affixed in the)

presence of:-)

Director

Director/Secretary]

EXECUTED and **DELIVERED** as a)

DEED by)

acting by its duly authorised)

attorney in the presence of:-)]

DATED _____ **20[]**

[OWNER]

- and -

[SURETY]

- and -

THE OXFORDSHIRE COUNTY COUNCIL

BOND 2

relating to obligations in S106 Agreement for payment of contributions

land at Himley Village Bicester

DLM/49902

Nick Graham
Director of Law & Governance and Monitoring Officer
Oxfordshire County Council
County Hall
New Road
Oxford OX1 1ND

THIS BOND dated the _____ day of _____ 20[]

MADE BETWEEN

- (1) **OWNER** (Company number []) whose registered office is situate at [] (“the Owner”)
- (2) **SURETY** of [] (“the Surety”)
- (3) **THE OXFORDSHIRE COUNTY COUNCIL** of County Hall New Road Oxford OX1 1ND (“the Council”)

Preliminary and Definitions

1. **“Agreement”** means an Agreement dated the [] day of [] 20[] between Cherwell District Council (1) Oxfordshire County Council (2) Julian Murfitt and Catherine Murfitt and others (3) to (6) and P3 Eco (Bicester) Himley Limited and others (7) and (8)
2. **“The Bond Sum”** means the sum of £14,500,000 subject as provided in clause 7
3. **“Later County Contributions”** means the payments to be made to the Council as described in the table which follows clause 9 and according to the relevant terms of Schedules 17 and 20 to the Agreement

NOW THIS DEED WITNESSETH as follows:-

1. The Owner and the Surety are jointly and severally bound to the Council for the Bond Sum
2. The Council may call for the Surety to make payment if the Owner shall fail to pay any part of the Later County Contributions due under the provisions of the Agreement.

3. Any claim hereunder shall be accompanied by a statement signed by the County Solicitor (or any successor to such role and such successor is at the date of this Bond designated the Director of Law and Governance) that the amount claimed represents the amount payable and that such payment then due has not been paid and such statement shall be conclusive evidence (and admissible as such) that any sums stated therein are properly due and payable to the Council. Without prejudice to the generality of the foregoing none of the following shall be required:-
 - 3.1 the Council being obliged to make any enquiry of the Owner or the Surety
 - 3.2 the need to take any legal action against the Owner
 - 3.3 any proof of default or liability on the part of the Owner
4. The Surety shall within 14 days after service of any claim pay the Council the sum specified in such claim and shall not be entitled to delay or withhold payment for any reason notwithstanding any objection by the Owner or any other party provided always that the maximum aggregate liability of the Surety does not exceed the Bond Sum
5. The Council may make as many separate claims under this Bond as it considers appropriate provided that they shall not exceed in aggregate the Bond Sum
6. Whenever any payment is made to the Council after the date of this Bond in respect of the Later County Contributions, the Bond Sum shall be reduced on written notice from the Council to such sum as the Council, acting reasonably and taking into account amongst other matters index linking and the trigger dates for payment of the instalments of the Later County

Contributions, then estimates to be outstanding in respect of the Later County Contributions (being the amount of the Later County Contributions remaining to be paid adjusted for index linking and including reasonable allowance for future index linking) plus any outstanding interest on account of late payment and all such reductions shall be notified in writing by the Council to the Owner and the Surety within 2 months of the relevant payment

7. Without prejudice to the generality of clause 5 the obligations of the Surety under this Bond shall not be affected by any act, omission or matter which might (but for this clause) operate to release or discharge such obligations in whole or in part, including without limitation:

7.1 any time or waiver or accommodation or credit granted to the Owner or the Surety or any abstention from enforcing the Council's rights against the Owner or the Surety;

7.2 any variation of or amendment to the Agreement (and references to the Agreement in this Bond shall be references to the Agreement as so varied or amended from time to time) or in the extent or notice of the Primary School Works;

7.3 any obligation on the part of the Owner being void;

7.4 the bankruptcy, liquidation or insolvency of the Owner or the presentation of a petition for the making of an administration order in respect of the Owner or the making of any such order or the appointment of (or giving of notice to appoint) an administrator in respect of the Owner;

- 7.5 any thing or matter that would or might have discharged or affected any liability if the Surety's obligation under this Bond had been secondary rather than primary
8. This deed gives no rights under the Contracts (Rights of Third Parties) Act 1999 but this does not affect any rights which are available apart from that Act
9. This Bond shall be governed by and construed in accordance with English law and the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising in connection with this Bond.

TABLE

Contributions/Payments actively bonded by Bond 2			
BOND 2	Highways Contribution		
	Library Contribution	Library Payment 2	
	Major Infrastructure Contribution	Second Instalment	
		Third Instalment	
		Fourth Instalment	If triggered
	Primary Education Land & Funding (L & F) Contribution	Instalments triggered under paragraphs 3.4 to 3.6 of Schedule 17 to the Agreement	
	Shakespeare Drive Contribution	Shakespeare Drive Payment 1	If Strategic Highways Works not open by 50 occupations
		Shakespeare Drive Payment 2	If Strategic Highways Works not open by 100 occupations
	Secondary Education Contribution	Secondary Education Payment 3	
	Special Education Needs Contribution	SEN Payment 2	
Supplemental Payments		If applicable	

THIS BOND has been executed as a Deed and is delivered the day and year
first before written

THE COMMON SEAL of THE)

OXFORDSHIRE COUNTY COUNCIL)

was affixed hereto in the presence of:-)

Director of Law & Governance/

Designated Officer

THE COMMON SEAL of)

)

was hereunto affixed in the)

presence of:-)

Director

Director/Secretary

[THE COMMON SEAL of)

)

was hereunto affixed in the)

presence of:-)

Director

Director/Secretary]

[EXECUTED and DELIVERED as a)

DEED by)

acting by its duly authorised)

attorney in the presence of:-)]

APPENDIX 10

Deed of Covenant

DEED OF COVENANT

THIS DEED OF COVENANT is made the [] day of []

BETWEEN:-

- (1) *Person to whom the Primary School Site (or part of it) is transferred of [] ("the Transferee") and*
- (2) Oxfordshire County Council of County Hall, New Road, Oxford OX1 1ND
(*"the County Council"*)

NOW THIS DEED WITNESSESS as follows:-

1. Recitals

- 1.1 This Deed is entered into pursuant to the obligations contained in paragraph 3.2 of the Schedule 23 to the agreement ("the Agreement") dated [] and made between [] whereby the County Council is entitled to acquire the land defined in Schedule 22 to the Agreement as the Primary School Site
- 1.2 The Transferee has become the owner of the freehold interest in the Primary School Site (*or describe relevant part(s) and otherwise adjust as appropriate*)

2. Covenant

The Transferee [jointly and severally] covenant[s] with the County Council that the Transferee will at all times after the date of this Deed observe and perform all of the covenants, conditions and obligations on the part of the Owners and the Developer contained in Schedules 21, 22 and 23 to the Agreement whether running with the land or of a personal or collateral nature and will do and perform all acts and things as shall be necessary or appropriate to enable the County Council to exercise their right to acquire the Primary School Site in accordance with the terms and conditions of the Agreement

IN WITNESS whereof the Transferee has executed this Deed of Covenant as a deed
the day and year first before written

EXECUTED AS A DEED by)

[])

LIMITED)

acting by two Directors or a Director)

and the Secretary)

Director

Director/Secretary

DATED _____ **20[]**

[BUYER]

- and -

CHERWELL DISTRICT COUNCIL

- and -

THE OXFORDSHIRE COUNTY COUNCIL

DRAFT

DEED OF COVENANT

DLM/49902

Nick Graham
Director of Law & Governance and Monitoring Officer
Oxfordshire County Council
County Hall
New Road
Oxford OX1 1ND

- 1.5. "the District Council" means the said Cherwell District Council of Bodicote House Bodicote Banbury Oxfordshire OX15 4AA and any successor to its statutory functions and any duly appointed employee or agent of the District Council or such successor
- 1.6. "the District Obligations" means those covenants agreements conditions and other commitments on the part of the Owners and the Developer referred to in clause [9.9.4] of the Agreement and given to the District Council pursuant to the Agreement (except those which have been performed)
- 1.7. "the Site" has the meaning assigned to it in the Agreement
- 1.8. "the Transferred Land" means that part of the Site shown edged red on the plan annexed to this Deed

2. **Background**

- 2.1. This Deed is supplemental to the Agreement and to a transfer of the Transferred Land (being a substantial part of the Site) dated [] and made between [] (1) the Buyer (2)

3. **Covenants with the District Council**

The Buyer (*joint and several covenants if more than one person*) covenants with the District Council that it will at all times from the date of the Deed observe and perform the District Obligations

4. **Covenants with the County Council**

The Buyer (*joint and several covenants if more than one person*) covenants with the County Council that it will at all times from the date of the Deed observe and perform the County Obligations

5. The provisions of clauses [] of the Agreement apply to this Deed as if they were set out in full in this Deed and any references therein to "this Agreement" were references to this Deed

In witness whereof the Buyer has executed this Deed as a deed the day and year first before written

THE COMMON SEAL of)
OXFORDSHIRE COUNTY COUNCIL)
was hereunto affixed in the)
presence of:-)

Director of Law &
Governance/
Designated Officer

THE COMMON SEAL of)
CHERWELL DISTRICT COUNCIL)
was hereunto affixed in the)
presence of:-)

Authorised Signatory

EXECUTED AS A DEED by)

[1)

LIMITED)

acting by two Directors or a Director)

and the Secretary)

Director

Director/Secretary

APPENDIX 11

Sports Pavilion Brief

Sports Pavilion: NW Bicester

This specification sets out Cherwell District Council's requirements for a sports pavilion building at NW Bicester. This has been drawn up to comply with the North West Bicester Supplementary Planning Document (February 2016), Sport England Clubhouse Design Guidance Notes (2016 Update), Sport England Clubhouse Design Guidance Notes – Display Panels: Design Examples, and Oxfordshire County Council Highways advice.

1. Overview

The sports pavilion will be located on land to the south of the railway line near the proposed sports pitches to serve the NW Bicester development. A site area of 0.2 ha will be needed to accommodate both the building itself and the outside facilities such as car parking, storage areas etc.

This building must accommodate changing facilities, a kitchen, an office, toilets and a social meeting space. The pavilion must also be designed to allow space for a café / bar to provide local, sustainable food to residents and visitors.

Due to the exemplary nature of NW Bicester and the expected attention, focus and visitors to this development, the pavilion is to be constructed to allow the highest environmental performance and architectural quality. We expect the completed building to achieve BREEAM Very good with the capability of achieving Excellent, in line with the Cherwell Local Plan (July 2015) and NW Bicester SPD (February 2016).

2. Location

The aim is for the pavilion to serve the formal sports pitches. The proximity of the pavilion to the pitches will allow users to easily meet and change in a secure space.

The social space should overlook and potentially open up on to the sports pitches. The car park should allow for cars and mini-buses to park, and include a zone for dropping people off, and cycle parking.

The cafe should provide a welcoming social meeting area and be at the heart of the new building.

3. Building construction and architectural quality

The building will not only be a community focal point, but also a signature building in the NW Bicester development. Design quality is therefore very important.

This document does not stipulate the exact nature of the design or materials to be used in the construction as this could stifle creativity but regard must be had to the context of the wider development. There is a requirement for the building to use local labour and local sourcing of materials as far as possible to reduce the embodied carbon content of the design and build.

We would expect the detailed design to be drawn up and consulted upon through a full consultation process with the relevant local stakeholders. Early discussion with Cherwell

District Council Development Management and Community Development Officers is also advised.

The sports pavilion should be built to the Planning Policy Statement 1 Eco Town Supplement (2009) definition of zero carbon "over a year the net carbon dioxide emissions from all energy use within the buildings on the eco-town development as a whole are zero or below" (para. ET 7.1)

The roof of the sports pavilion should be optimised for the maximum integration of Solar PV, to serve the electrical demand of the hall itself but also for the wider development of NW Bicester.

The building should be orientated and designed to maximise the potential for solar gain and the installation of solar panels. The building should also be designed to adapt to future climate change, such as increased temperature and extreme rainfall events.

The building design should incorporate natural lighting, natural ventilation, passive climate control and the acoustic environment of the interior should be designed to manage reverberation and sound separation between activities and rooms.

Additionally, the design of the building should incorporate good daytime and evening surveillance of all public areas and rooms required for public use. The building should be fully compliant with the Equality Act 2010, which has replaced most of the Disability Discrimination Act 1995 (DDA) (however, the Disability Equality Duty in the DDA continues to apply) and should be designed to provide easy access to all facilities for the disabled.

4. Schedule of accommodation

The pavilion is to be built with an overall size of **550 sqm GIA**. In order to maximise the efficiency of land use (so the building doesn't have an overly large footprint) CDC will expect back office functions such as administration offices to be located on the upper storey of the building, while those areas that will be used by the wider public will be located on the ground floor. A lift will be required to allow easy access to the upper floor but any staircase should be located in a visible location to encourage use in preference to the lift by those who are able.

The tables below do not use up the entire 550sqm; this is to allow for flexibility in the future design, however the figures provided do provide the minimum dimensions.

The pavilion is to include the following accommodation and spaces:

- Reception / Foyer area.
- Café / bar.
- Main communal / social space.
- Administrative office.
- Secure storage.
- Changing rooms, showers and lockers.
- Unisex, disabled toilets – to include baby changing facility.
- First aid room with defibrillator.
- Kitchen to serve café / bar area.

- High speed fibre broadband, Wi-Fi and networking.
- Plant room for electrical and mechanical equipment.
- Secure, covered storage for bicycles, mobility scooters and pushchairs.

Approximate minimum dimensions for the main uses and rooms within the pavilion are provided in the tables below.

Interior use	Minimum space sqm
Reception area	30
Office	15
First Aid Room	10
Team Changing Room x 4	200
Officials Changing x 2	40
Storage	10
Toilets - Separate female and male W/C with associated space with additional baby change and disabled toilet) ¹	(Male 20 / Female 20 + baby change/disabled cubicle 5 = 45 in total)
Café / Bar	15
Kitchen	35
Café / Bar Seating Area & Social Meeting Space	120
Cleaning cupboard / store room	10
Plant room	20
Total	550

5. Outdoor Surroundings / Car Park

The pavilion should be served by a car park consisting of:

- 25 standard parking bays
- 1 disabled bay
- 2 mini-bus bays
- Cycle parking to accommodate 40 bikes
- Drop-off zone

The external area should also include a secure area for bin storage. The car park should include suitable drainage and lighting. The required space for the external works is **1250sqm**. Together with the land needed for the sports pavilion itself, the total land requirement for this facility will be 0.2 ha.

¹ Design standard to be checked with relevant legislation at point of detailed design is submitted

Sources:

- *Bankside outline specification for Pavilion.*
- *Sport England Clubhouse Design Guidance Notes (2016 Update).*
- *Sport England Clubhouse Design Guidance Notes – Display Panels: Design Examples.*
- *North West Bicester Supplementary Planning Document (February 2016)*
- *Cherwell District Council Adopted Local Plan 2011-2031 Part 1 (July 2015)*
- *Planning Policy Statement 1 Eco Town Supplement (Communities and Local Government 2009)*

APPENDIX 12
Local Food Specification

Local Food Specification

Core Objectives

- Future retailers on the site should aim to source products from the areas in which they trade in order to benefit local communities and reduce food miles.
- Individuals should have easy access to food from their own locality that they can be proud of and which supports the region's economy.
- Customers should have confidence that they can access local producers and best quality produce.

Local Sourcing

Locally sourced products should:

- Come from areas in which retailers trade, working alongside local suppliers and likeminded distributors.
- Be within a 40 mile radius of production.
- Be distributed via methods agreed with the supplier at the outset.
- Benefit from high ethical standards in respect to animal welfare, pesticide and sound sourcing should be demonstrated.
- If processed, should be made with the best quality ingredients which are, where possible sourced from the area.
- Be made from ingredients which are simple and recognisable and not include chemical additives such as stabilisers, emulsifiers, preservatives etc.
- Come from local producers who meet food safety standards and should be able to demonstrate their accreditation (and provide regular updates as necessary).
- Come from local producers who have strong links with the local economy.

Range Review

Ideally, future retailers should discuss with local producers how often their range is reviewed to ensure that the foods sourced meet natural harvest cycles.

Future retailers should also discuss opportunities for one off ranges to meet specific occasions – i.e. Christmas and Easter.

APPENDIX 13

Licence

DATED _____ 20[]

[]

and

THE OXFORDSHIRE COUNTY COUNCIL

and

CHERWELL DISTRICT COUNCIL

**DRAFT
LICENCE TO ENTER
ON TO LAND FOR PURPOSES OF**
the construction of a new highway at Himley Village North West
Bicester

Nick Graham
Director of Law & Governance
and Monitoring Officer
Oxfordshire County Council
County Hall
New Road
Oxford OX1 1ND
Ref: DLM/49902

THIS LICENCE made the day of 20[]

BETWEEN:-

- (1) [] (registered company number) whose registered office is situate at [] (“the **Grantor**”) [*land owner at date of grant*]

- (2) **THE OXFORDSHIRE COUNTY COUNCIL** of County Hall New Road Oxford OX1 1ND (“the **County Council**”)

- (3) **CHERWELL DISTRICT COUNCIL** of Bodicote House Bodicote Banbury Oxfordshire OX15 4AA (“the **District Council**”)

WITNESSES AS FOLLOWS:-

1. Definitions

1.1 In this licence :-

- 1.1.1 “**S106 Agreement**” means the s106 Agreement dated [] of [] 2019 between Cherwell District Council (1) Oxfordshire County Council (2) Julian Murfitt and Catherine Murfitt and others (3) - (6) and P3 Eco (Bicester) Himley Limited and others (7) and (8) relating to Planning Application ref: 14/02121/OUT

- 1.1.2 “**Commencement Notice**” means at least 2 months’ notice to the Grantor advising of the date when the Road Developer proposes to commence the exercise of the Construction Rights.

- 1.1.3 “**Construction Rights**” means the rights set out in Schedule 1

- 1.1.4 “**End Date**” is the date identified in a notice given by the Road Developer to the Grantor identifying the date on which the licence is to terminate which notice must be served not less than 20 Working Days in advance of that date

1.1.5 “**Judicial Review Date**” means the date five (5) Working Days after the expiry of the period of six weeks from the date of grant of the Planning Permission (provided that no Third Party Application is commenced by such date) and in the event that any Third Party Application is commenced, the next Working Day after the date on which:

(a) the Third Party Application is finally determined; and

(b) the Planning Permission is finally granted or upheld;

so that the Planning Permission is no longer open to challenge in any way by the issue of further Third Party Applications.

1.1.6 “**Licence Period**” means the period from the date advised in the Commencement Notice as to when the Road Developer proposes to commence the exercise of the Construction Rights to the End Date

1.1.7 “**Obligations**” means the obligations set out in Schedule 2

1.1.8 “**Plan**” means *this is to be a plan identifying the part of the Road Land as defined in the S106 Agreement in respect of which the Construction Rights are to be exercised*

1.1.9 “**Planning Permission**” means planning permission reference 14/02121/OUT dated *[insert date of planning permission]*

1.1.10 “**Road Developer**” means the County Council the District Council or as applicable a party approved by the County Council and the District Council (acting reasonably) and who has delivered to the Grantor a deed of covenant to observe and perform the terms of this Licence

1.1.11 “**Road Land**” means the part of Site shown edged [] on the Plan

1.1.12 “**Road Works**” means works for the construction of the Bus Route/Junction 2 Link Road/Spine Road (as those terms are

defined in the S106 Agreement) or part of them to adoption standard including works for the drainage of the highway street lighting and other services for the benefit of the highway

- 1.1.13 **"Site"** has the meaning assigned in the S106 Agreement.
- 1.1.14 **"Third Party Application"** means an application for judicial review of a decision by the district council to grant Planning Permission including an application to a higher court appealing against a judgment in respect of a judicial review application given in a lower court.
- 1.1.15 **"Trigger Date"**: means the Judicial Review Date or if earlier the date on which the Planning Permission is implemented.
- 1.2 Any reference to an enactment includes any amendments to or modifications of it and the version of it for the time being in force shall apply
- 1.3 Headings in this Licence are for convenience only and shall not be taken into account in its construction and interpretation
- 1.4 References to clauses sub-clauses and schedules are references to clauses sub-clauses and schedules in this Licence
- 1.5 Where the context so requires:-
 - 1.5.1 the singular includes the plural and vice versa
 - 1.5.2 the masculine includes the feminine and vice versa
 - 1.5.3 persons includes bodies corporate associations and partnerships and vice versa
- 1.6 Where a party comprises more than one person the obligations and liabilities of that party shall be joint and several obligations and liabilities of those persons
- 1.7 Where more than one party enters into any obligation or liability those parties are jointly and severally liable

1.8 Words denoting an obligation on a party to do any act matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause permit or allow infringement of this restriction

1.9 The Grantor includes its successors in title to the Road Land.

2. **Grant of Rights**

The Grantor hereby grants the Construction Rights on condition that they may be exercised by any Road Developer only after the occurrence of the Trigger Date and service of the Commencement Notice for the Licence Period.

3. **No Proprietary Interest**

This licence is not intended to confer any right or interest in the nature of a tenancy and gives no proprietary interest or right of exclusive possession in the Site.

4. **Performance of the Obligations**

The Road Developer who has given the Commencement Notice shall in exercise of the Construction Rights observe and perform the Obligations.

5. **Notices**

5.1 Any notice given under this licence must be in writing and signed by or on behalf of the party giving it

5.2 Any notice under this licence must be given by delivering it personally or sending it by pre-paid first class post or recorded delivery to the address and for the attention of the relevant party as follows :-

- 5.2.1 to the Grantor at its registered office address marked for the attention of the Company Secretary or to such other address or for the attention of such other person as was last notified in writing by the Grantor to the County Council and the District Council; and
- 5.2.2 to the District Council at Bodicote House Bodicote Banbury Oxfordshire OX15 4AA marked for the attention of the Head of Development Management or to such other address or for the attention of such other person as was last notified in writing by the District Council to the Grantor
- 5.2.3 to the County Council at County Hall New Road Oxford OX1 1ND marked for the attention of the Director for Planning and Place or to such other address or for the attention of such other person as was last notified in writing by the County Council to the Grantor
- 5.2.4 to any other Road Developer at the address specified in the deed of covenant supplied by the Road Developer
- 5.3 Any such notice will be deemed to have been received :-
 - 5.3.1 at the time of delivery if delivered personally; and
 - 5.3.2 on the second day after posting in the case of pre-paid first class post or recorded delivery
- 5.4 In proving service it will be sufficient to prove that delivery was made or that the envelope containing the notice was properly addressed and posted as a prepaid first class or recorded delivery letter as the case may be
- 5.5 A notice given under this licence will not be validly given if sent by e-mail or fax

6. Land Registry and Legal Powers

6.1 The Grantor hereby consents to the noting of this licence on Title number []

6.2 Section 33 Local Government (Miscellaneous Provisions) Act 1982 applies to the grant of rights as provided in clause 2

7. Contracts (Rights of Third Parties) Act 1999

For the purposes of the Contracts (Rights of Third Parties) Act 1999 this licence is not intended to and does not give any person who is not a party to it any right to enforce any of its provisions save for a Road Developer

8. Governing law and jurisdiction

This licence and any dispute or claim relating to or arising from it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any such dispute or claim

This licence has been entered into on the date stated at the beginning of it

SCHEDULE 1
The Construction Rights

Subject to the Obligations, to enter upon the Road Land with or without vehicles tools plant equipment and apparatus as necessary solely for the purpose of executing the Road Works including use as compound area(s) for the parking of vehicles and for the storage of tools plant equipment apparatus materials and a welfare facility and including the installation of drainage and other service media and making connections to existing service media within the existing highway and their use for all purposes necessary to construct the Road Works

SCHEDULE 2
The Obligations

1. To enter upon the Road Land as Licensee
2. To be responsible for and to pay all and any assessments charges duties fees rates taxes and outgoings chargeable in connection with the exercise of the Construction Rights
3. In exercising the Construction Rights not to cause any nuisance to the Grantor or to the occupiers of any neighbouring land or premises PROVIDED THAT the exercise of the Construction Rights and the construction of the Road Works are deemed not to be a nuisance
4. To indemnify the Grantor (and its successors in title) in respect of all actions, claims and demands (including all liabilities, costs, expenses, damages and losses) made or brought by any third party arising out of or in connection with:
 - 4.1 loss of or damage to property to the extent caused by negligence, breach of contract or other default by the Road Developer or the Road Developer's contractor in the exercise of the Construction Rights

- 4.2 bodily injury or death of any person to the extent caused by negligence, breach of contract or other default by the Road Developer or its contractor in the exercise of the Construction Rights
5. To maintain or to procure that its contractor maintains a policy of third party and public liability insurance to a sum of not less than £5,000,000.00 in connection with the exercise of the Construction Rights
6. To use all reasonable endeavours to complete the Road Works as soon as reasonably practicable once started.
7. To comply with all requisite consents relating to the construction of the Road Works whether pursuant to the Planning Permission or otherwise.

[GRANTOR'S EXECUTION CLAUSE]

EXECUTED AS A DEED)
 by affixing **THE COMMON SEAL** of)
THE OXFORDSHIRE COUNTY COUNCIL)
 in the presence of :-)

Director of Law and Governance/Designated Officer

EXECUTED AS A DEED)
by affixing THE COMMON SEAL of)
CHERWELL DISTRICT COUNCIL)
in the presence)

Authorised Signatory

APPENDIX 14

Not Used

APPENDIX 15
Primary School Plans



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Rev	Date	Prep/Check	Description
A	04.09.2019	GS/BS	First Issue

Penoyre & Prasad

28-42 Banner Street
 London EC1Y 8QE
 020 7260 3477
 penoyreprasad.com

Client
P3Eco

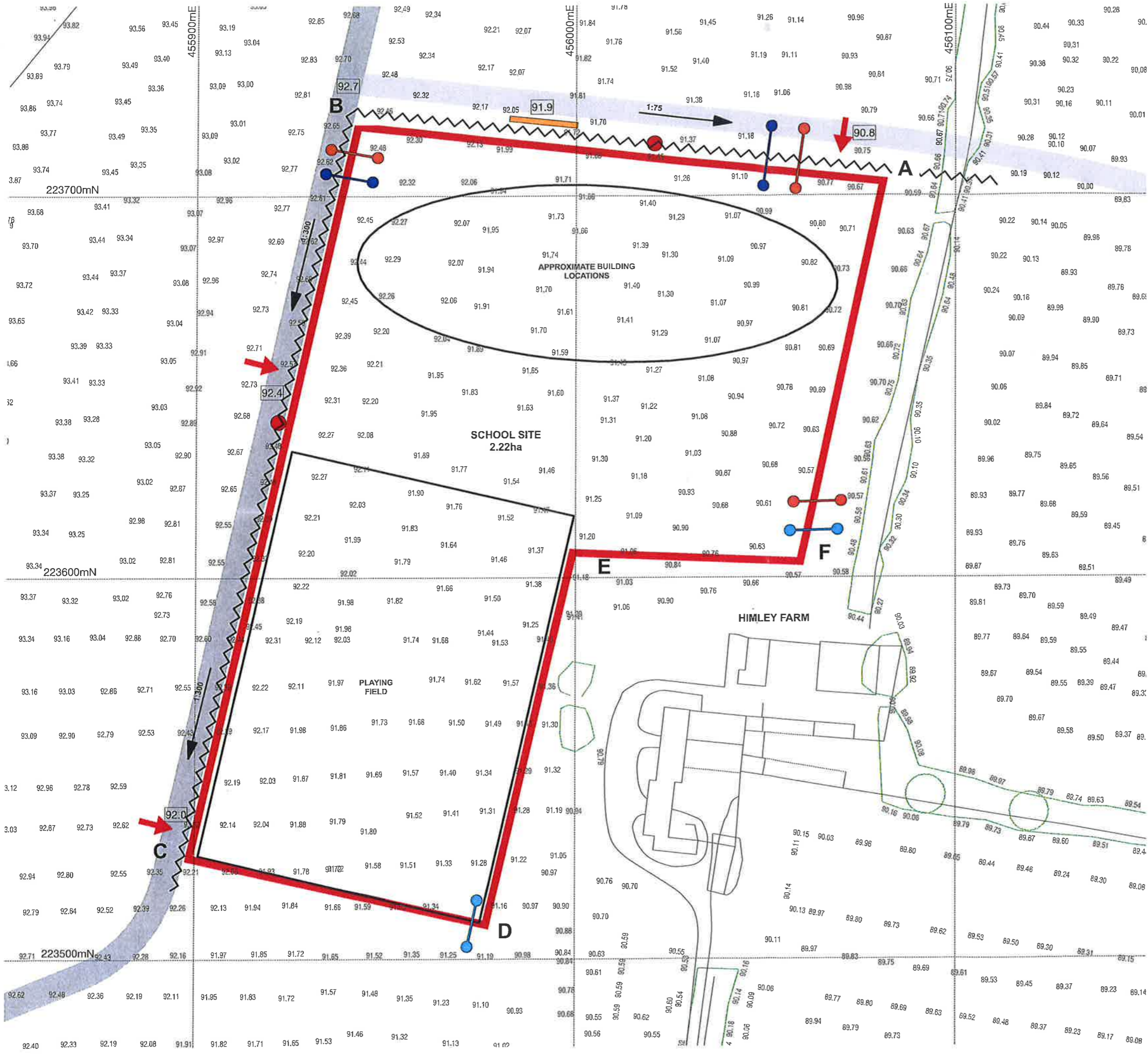
Project
592 - Himley Village

Drawing Title
School Site

Drawing Status
Outline Planning Application

Date	Scale	Revision
09.09.2019	1:500 @ A1	

Drawing Number
592-SK-060 Revision
A



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N

- Coach lay-by
- Hydrant
- Service entry point (telecoms, communications, electricity, gas and water)
- Foul water laterals
- Storm water laterals
- Vehicular access (6m wide + 2m pavement each side)
- Highway abutment
- New Road Levels
- Existing Site Levels

0 10 20 50m

Rev	Date	Prep/Check	Description
B	05.12.2019	DS/SP	Read Levels Corrected
A	09.09.2019	SS/BS	Final Issue

Penoyre & Prasad

28-42 Banner Street
 London EC1Y 8QE
 020 7250 3477
 penoyreprasad.com

Client
 P3Eco

Project
 592 - Himley Village

Drawing Title
 Primary School Site Plan

Drawing Status
 Outline Planning Application

Date
 09.09.2019

Scale
 1:500 @ A1

Drawing Number
592-SK-061

Revision
B

APPENDIX 16

Form of Primary School Warranties

DATED

CONSULTANT'S COLLATERAL WARRANTY

relating to a project at

[SHORT DESCRIPTION OF PROPERTY OR WORKS]

between

[CONSULTANT]

and

OXFORDSHIRE COUNTY COUNCIL

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PARTIES

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Consultant**).
- (2) OXFORDSHIRE COUNTY COUNCIL of County Hall, New Road, Oxford OX1 1ND (**Beneficiary**).

BACKGROUND

- (A) The Client has engaged the Consultant to perform the Services in relation to the Project.
- (B) The Client has [entered into an agreement with the Beneficiary for work on new educational facilities/work on the highway¹ and] requires the Consultant to enter into a collateral warranty in favour of the Beneficiary.
- (C) The Consultant has agreed to enter into this agreement with the Client and the Beneficiary, for the benefit of the Beneficiary.
- (D) The Beneficiary has paid £10 to the Consultant and the Client as consideration under this agreement.

AGREED TERMS

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Business Day: a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business.

CDM Regulations: the Construction (Design and Management) Regulations 2015 (SI 2015/51) and the related Approved Code of Practice issued by the Health and Safety Commission.

Client: [NAME] whose registered office is at [].

Deleterious: materials or equipment that are generally accepted, or generally suspected, in the construction industry at the relevant time as:

- (a) posing a threat to the health and safety of any person; or
- (b) posing a threat to the structural stability, performance or physical integrity of the Project or any part or component of the Project; or

¹ This recital should describe the nature of the agreement between the authority and the developer.

- (c) reducing, or possibly reducing, the normal life expectancy of the Project or any part or component of the Project; or
- (d) not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément.

Material: all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Project and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Project.

Permitted Uses: the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, funding, disposal, letting, fitting-out, advertisement, demolition, reinstatement, extension, building information modelling and repair of the Property and the Project.

Professional Appointment: an agreement in writing dated [DATE] between the Consultant and the Client

Programme: the programme, as defined in the Professional Appointment.

Project: [DESCRIPTION OF PROJECT].

Property: [DESCRIPTION OF PROPERTY].

Required Standard: all the reasonable skill, care and diligence to be expected of a qualified and experienced member of the Consultant's profession undertaking the Services on works similar in scope and character to the Project.

Services: The services referred to in the Professional Appointment, performed by or on behalf of the Consultant under the Professional Appointment.

- 1.2 Clause headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a **company** includes any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

- 1.7 A reference to a party shall include that party's legal and personal representatives, successors or permitted assigns.
- 1.8 A reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force from time to time, taking account of any amendment, extension, or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.
- 1.9 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to **writing** or **written** includes faxes but not e-mail.
- 1.12 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of this agreement) at any time.
- 1.13 References to clauses are to the clauses of this agreement.
- 1.14 Where the words **include(s)**, **including** or **in particular** are used in this agreement, they are deemed to have the words "without limitation" following them.

2. COMPLY WITH PROFESSIONAL APPOINTMENT

- 2.1 The Consultant warrants to the Beneficiary that:
- (a) it has complied, and shall continue to comply, with its obligations under the Professional Appointment, including its obligations to:
 - (i) carry out and fulfil, in all respects, the duties of a designer [and Principal Designer]² under the CDM Regulations;
 - (ii) not, without the Client's written consent, make any material change to the designs or specifications for the Project after they have been settled or approved; and
 - (iii) act fairly and impartially when exercising its power to issue certificates and award extensions of time under any building contract relating to the Project.
 - (b) it has exercised and shall continue to exercise the Required Standard:
 - (i) when performing the Services;

² This wording will not apply unless the Consultant is appointed as the Principal Designer.

- (ii) not to specify for use any products or materials in the Project, which are Deleterious at the time of specification or use;
- (iii) to comply with (and ensure the completed Project complies with) any:
 - (A) Act of Parliament;
 - (B) instrument, rule or order made under any Act of Parliament; and
 - (C) regulation or bye-law of any local authority, statutory undertaker or public or private utility or undertaking that has any jurisdiction over the Project or with whose systems or property the Project is or will be connected;
- (iv) to perform the Services and prepare all Material for those elements of the Project for which the Consultant is responsible according to the Programme or, in the absence of a Programme, in sufficient time to facilitate the efficient progress of the Project.

2.2 In proceedings for breach of this clause 2, the Consultant may:

- (a) rely on any limit of liability or other term of the Professional Appointment; and
- (b) raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint client, with the Client, under the Professional Appointment (for this purpose not taking into account any set-off or counterclaim against the actual client under the Professional Appointment).

2.3 The Consultant's duties or liabilities under this agreement shall not be negated or diminished by:

- (a) any approval or inspection of:
 - (i) the Property; or
 - (ii) the Project; or
 - (iii) any designs or specifications for the Property or the Project; or
- (b) any testing of any work, goods, materials, plant or equipment; or
- (c) any omission to approve, inspect or test,

by or on behalf of the Beneficiary or the Client.

2.4 This agreement shall not negate or diminish any other liability or otherwise owed to the Beneficiary by the Consultant.

3. NO INSTRUCTIONS TO CONSULTANT BY BENEFICIARY

The Beneficiary may not give instructions to the Consultant under this agreement.

4. COPYRIGHT

4.1 The Consultant grants to the Beneficiary, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by, or on behalf of, the Consultant for any purpose relating to the Project and the Property, including any of the Permitted Uses.

4.2 This licence allows the Beneficiary to use the Material in connection with any extension of the Project, but not to reproduce the designs contained in the Material in any such extension.

4.3 This licence carries the right to grant sub-licences and is transferable to third parties without the consent of the Consultant.

4.4 The Consultant shall not be liable for use of the Material for any purpose other than that for which it was prepared and/or provided.

4.5 The Beneficiary may request a copy (or copies) of some or all of the Material from the Consultant. On the Beneficiary's payment of the Consultant's reasonable charges for providing the copy (or copies), the Consultant shall provide the copy (or copies) to the Beneficiary.

5. PROFESSIONAL INDEMNITY INSURANCE

5.1 The Consultant shall maintain professional indemnity insurance for an amount of at least £[SUM under appointment] [for any one occurrence, or series of occurrences, arising out of any one event **OR** in the annual aggregate] for a period beginning on the date of this agreement and ending 12 years after the date of practical completion of the Project, provided that such insurance is available at commercially reasonable rates and terms. The Consultant shall maintain that professional indemnity insurance:

- (a) with reputable insurers lawfully carrying on insurance business in the UK or EU;
- (b) on customary and usual terms and conditions prevailing for the time being in the insurance market; and
- (c) on terms that:
 - (i) do not require the Consultant to discharge any liability before being entitled to recover from the insurers; and

- (ii) would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 1930.

5.2 Any increased or additional premium required by insurers because of the Consultant's claims record or other acts, omissions, matters or things particular to the Consultant shall be deemed to be within commercially reasonable rates.

5.3 The Consultant shall not, without the Beneficiary's written consent:

- (a) settle or compromise any claim with the insurers that relates to a claim by the Beneficiary against the Consultant; or
- (b) by any act or omission lose or affect the Consultant's right to make, or proceed with, that claim against the insurers.

5.4 The Consultant shall immediately inform the Beneficiary if the Consultant's required professional indemnity insurance ceases to be available at commercially reasonable rates and terms, so that the Consultant and the Beneficiary can discuss how best to protect the respective positions of the Beneficiary and the Consultant regarding the Project and the Property, without that insurance.

5.5 Whenever the Beneficiary reasonably requests, the Consultant shall send the Beneficiary evidence that the Consultant's professional indemnity insurance is in force, including, if required by the Beneficiary, an original letter from the Consultant's insurers or brokers confirming:

- (a) the Consultant's then current professional indemnity insurance; and
- (b) that the premiums for that insurance have been paid in full at the date of that letter.

6. LIABILITY PERIOD

The Beneficiary may not commence any legal action against the Consultant under this agreement after 12 years from the date of practical completion of all of the Project.

7. ASSIGNMENT

7.1 The Beneficiary may assign the benefit of this agreement on two occasions to any person with an interest in the Project.

7.2 The Beneficiary shall notify the Consultant and the Client of any assignment. If the Beneficiary fails to do this, the assignment shall still be valid.

7.3 The Consultant shall not contend that any person to whom the benefit of this agreement is assigned under clause 7.1 may not recover any sum under this agreement because that person is an assignee and not a named party to this agreement.

8. NOTICES

8.1 Any notice required to be given under this agreement 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 each party required to receive the notice, as set out below:

(a) [CONSULTANT]: [CONTACT] [ADDRESS]

(b) [BENEFICIARY]: [CONTACT] [ADDRESS]

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

8.2 A notice shall be deemed to have been duly received:

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

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

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

8.3 A notice required to be given under this agreement shall not be validly given if sent by e-mail.

8.4 This clause shall not apply to the service of any proceedings or other documents in any legal action.

9. THIRD PARTY RIGHTS

A person who is not a party to this agreement shall not have any rights under or in connection with it.

10. GOVERNING LAW AND JURISDICTION

10.1 This agreement, 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.

10.2 The parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection

with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by [**NAME OF CONSULTANT**] acting by a director and a director **OR** its secretary

.....
[SIGNATURE OF FIRST DIRECTOR]
Director

.....
[SIGNATURE OF SECOND DIRECTOR OR SECRETARY]
Director **OR** Secretary

Executed as a deed by affixing the Common Seal of **OXFORDSHIRE COUNTY COUNCIL** in the presence of:

County Solicitor/Designated Officer

DATED

CONTRACTOR'S COLLATERAL WARRANTY

relating to a project at

[SHORT DESCRIPTION OF PROPERTY OR WORKS]

between

[CONTRACTOR]

and

OXFORDSHIRE COUNTY COUNCIL

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THIS AGREEMENT is dated

2013

PARTIES

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Contractor**).
- (2) OXFORDSHIRE COUNTY COUNCIL of County Hall, New Road, Oxford OX1 1ND (**Beneficiary**).

BACKGROUND

- (A) The Employer has engaged the Contractor to carry out [design and] construction work.
- (B) The Beneficiary has [entered into an agreement with the Employer for work on new educational facilities/work on the highway¹] and has an interest in the [design and]² construction work.
- (C) The Employer requires the Contractor to enter into a collateral warranty in favour of the Beneficiary.
- (D) The Contractor has agreed to enter into this agreement with the Employer and the Beneficiary for the benefit of the Beneficiary.
- (E) The Beneficiary has paid £10 to the Contractor and the Employer as consideration under this agreement.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Building Contract: an agreement in writing dated _____ between the Employer and the Contractor.

Business Day: a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business.

CDM Regulations: the Construction (Design and Management) Regulations 2015 (SI 2015/51).

¹ This recital should describe the nature of the agreement between the Authority and the Developer.

² If the Building Contract is a design and build contract the square brackets at recitals (A), (B), clauses 1.1 and 2.1 can be removed.

Deleterious: materials or equipment that are generally accepted, or generally suspected, in the construction industry at the relevant time as:

- (a) posing a threat to the health and safety of any person; or
- (b) posing a threat to the structural stability, performance or physical integrity of the Works or any part or component of the Works; or
- (c) reducing, or possibly reducing, the normal life expectancy of the Works or any part or component of the Works; or
- (d) not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément.

Employer: [NAME] whose registered office is at []

Material: all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Works and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Works.

Permitted Uses: the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, funding, disposal, letting, fitting-out, advertisement, demolition, reinstatement, extension, building information modelling and repair of the Property and the Works.

Property: [DESCRIPTION OF PROPERTY].

Works: the [design,] construction and completion of the building works referred to in the Building Contract, carried out by or on behalf of the Contractor under the Building Contract.

- 1.2 Clause headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a **company** includes any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

- 1.7 A reference to a party shall include that party's legal and personal representatives, successors or permitted assigns.
- 1.8 A reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force from time to time, taking account of any amendment, extension, or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.
- 1.9 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to **writing** or **written** includes faxes but not e-mail.
- 1.12 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of this agreement) at any time.
- 1.13 References to clauses are to the clauses of this agreement.
- 1.14 Where the words **include(s)**, **including** or in **particular** are used in this agreement, they are deemed to have the words "without limitation" following them.

2. COMPLY WITH BUILDING CONTRACT

- 2.1 The Contractor warrants to the Beneficiary that:
- (a) it has complied, and shall continue to comply, with its obligations under the Building Contract, including its obligations to:
 - (i) carry out and complete the Works properly;
 - (ii) use workmanship and materials of the quality and standard specified in the Building Contract; and
 - (iii) if appointed as such, carry out and fulfil, in all respects, the duties of a Principal Contractor under the CDM Regulations;
 - (b) [without affecting clause 2.1(a), and to the extent that it takes responsibility for the same under the Building Contract, it:
 - (i) has designed, or will design, the Works; and
 - (ii) has selected, or will select, goods, materials, plant and equipment for incorporation in the Works,

with all the reasonable skill, care and diligence to be expected of a qualified and experienced architect (or other appropriate professional designer) undertaking the design of works similar in scope and character to the Works; and]

- (c) it [has used all the reasonable skill, care and diligence to be expected of a qualified and experienced architect (or other appropriate professional designer) undertaking the design of works similar in scope and character to the Works to **OR** has not and will] not specify or use any products or materials in the Works, which, at the time of specification [or use], are Deleterious.

2.2 In proceedings for breach of this clause 2, the Contractor may:

- (a) rely on any limit of liability or other term of the Building Contract; and
- (b) raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint employer, with the Employer, under the Building Contract (for this purpose not taking into account any set-off or counterclaim against the actual employer under the Building Contract).

2.3 The Contractor's duties or liabilities under this agreement shall not be negated or diminished by:

- (a) any approval or inspection of:
 - (i) the Property; or
 - (ii) the Works; or
 - (iii) any designs or specifications for the Property or the Works; or
- (b) any testing of any work, goods, materials, plant or equipment; or
- (c) any omission to approve, inspect or test,

by or on behalf of the Beneficiary or the Employer.

2.4 This agreement shall not negate or diminish any duty or liability otherwise owed to the Beneficiary by the Contractor.

3. **NO INSTRUCTIONS TO CONTRACTOR BY BENEFICIARY**

The Beneficiary may not give instructions to the Contractor under this agreement.

4. **COPYRIGHT**

4.1 The Contractor grants to the Beneficiary, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any

Material prepared by, or on behalf of, the Contractor for any purpose relating to the Works and the Property, including any of the Permitted Uses.

- 4.2 This licence allows the Beneficiary to use the Material in connection with any extension of the Works, but not to reproduce the designs contained in the Material in any such extension.
- 4.3 This licence carries the right to grant sub-licences and is transferable to third parties without the consent of the Contractor.
- 4.4 The Contractor shall not be liable for use of the Material for any purpose other than that for which it was prepared and/or provided.
- 4.5 The Beneficiary may request a copy (or copies) of some or all of the Material from the Contractor. On the Beneficiary's payment of the Contractor's reasonable charges for providing the copy (or copies), the Contractor shall provide the copy (or copies) to the Beneficiary.

5. PROFESSIONAL INDEMNITY INSURANCE

5.1 The Contractor shall maintain professional indemnity insurance for an amount of at least £[SUM under building contract] [for any one occurrence, or series of occurrences, arising out of any one event **OR** in the annual aggregate] for a period beginning on the date of this agreement and ending 12 years after the date of practical completion of the Works, provided that such insurance is available at commercially reasonable rates and terms. The Contractor shall maintain that professional indemnity insurance:

- (a) with reputable insurers lawfully carrying on insurance business in the UK or EU;
- (b) on customary and usual terms and conditions prevailing for the time being in the insurance market; and
- (c) on terms that:
 - (i) do not require the Contractor to discharge any liability before being entitled to recover from the insurers; and
 - (ii) would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 1930.

5.2 Any increased or additional premium required by insurers because of the Contractor's claims record or other acts, omissions, matters or things particular to the Contractor shall be deemed to be within commercially reasonable rates.

- 5.3 The Contractor shall not, without the Beneficiary's written consent:
- (a) settle or compromise any claim with the insurers that relates to a claim by the Beneficiary against the Contractor; or
 - (b) by any act or omission lose or affect the Contractor's right to make, or proceed with, that claim against the insurers.
- 5.4 The Contractor shall immediately inform the Beneficiary if the Contractor's required professional indemnity insurance ceases to be available at commercially reasonable rates and terms, so that the Contractor and the Beneficiary can discuss how best to protect the respective positions of the Beneficiary and the Contractor regarding the Works and the Property, without that insurance.
- 5.5 Whenever the Beneficiary reasonably requests, the Contractor shall send the Beneficiary evidence that the Contractor's professional indemnity insurance is in force, including, if required by the Beneficiary, an original letter from the Contractor's insurers or brokers confirming:
- (a) the Contractor's then current professional indemnity insurance; and
 - (b) that the premiums for that insurance have been paid in full at the date of that letter.

6. LIABILITY PERIOD

The Beneficiary may not commence any legal action against the Contractor under this agreement after 12 years from the date of practical completion of all of the Works.

7. ASSIGNMENT

- 7.1 The Beneficiary may assign the benefit of this agreement on two occasions to any person with an interest in the Works.
- 7.2 The Beneficiary shall notify the Contractor and the Employer of any assignment. If the Beneficiary fails to do this, the assignment shall still be valid.
- 7.3 The Contractor shall not contend that any person to whom the benefit of this agreement is assigned under clause 7.1 may not recover any sum under this agreement because that person is an assignee and not a named party to this agreement.

8. NOTICES

8.1 Any notice required to be given under this agreement 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 each party required to receive the notice, as set out below:

(a) [CONTRACTOR]: [CONTACT] [ADDRESS]

(b) [BENEFICIARY]: [CONTACT] [ADDRESS]

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

8.2 A notice shall be deemed to have been duly received:

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

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

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

8.3 A notice required to be given under this agreement shall not be validly given if sent by e-mail.

8.4 This clause shall not apply to the service of any proceedings or other documents in any legal action.

9. THIRD PARTY RIGHTS

A person who is not a party to this agreement shall not have any rights under or in connection with it.

10. GOVERNING LAW AND JURISDICTION

10.1 This agreement, 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.

10.2 The parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by **[NAME OF CONTRACTOR]** acting by a director and a director **OR** its secretary

.....
[SIGNATURE OF FIRST DIRECTOR]
Director

.....
[SIGNATURE OF SECOND DIRECTOR OR SECRETARY]
Director **OR** Secretary

Executed as a deed by affixing the Common Seal of **OXFORDSHIRE COUNTY COUNCIL** in the presence of:

County Solicitor/Designated Officer

APPENDIX 17

Draft Form of Transfer

Land Registry

Transfer of part of registered title(s)

TP1

If you need more room than is provided for in a panel, and your software allows, you can expand any panel in the form. Alternatively use continuation sheet CS and attach it to this form.

Leave blank if not yet registered.

When application for registration is made these title number(s) should be entered in panel 2 of Form AP1.

Insert address, including postcode (if any), or other description of the property transferred. Any physical exclusions, such as mines and minerals, should be defined.

Place 'X' in the appropriate box and complete the statement.

For example 'edged red'.

For example 'edged and numbered 1 in blue'.

Any plan lodged must be signed by the transferor.

Give full name(s).

Complete as appropriate where the transferor is a company.

Give full name(s).

Complete as appropriate where the transferee is a company. Also, for an overseas company, unless an arrangement with Land Registry exists, lodge either a certificate in Form 7 in Schedule 3 to the Land Registration Rules 2003 or a certified copy of the constitution in English or Welsh, or other evidence permitted by rule 183 of the Land Registration Rules 2003.

1	Title number(s) out of which the property is transferred: []
2	Other title number(s) against which matters contained in this transfer are to be registered or noted, if any:
3	Property: Land at [] The property is identified <input type="checkbox"/> on the attached plan and shown: <i>Plan to show clearly which boundary structures belong.</i> <input type="checkbox"/> on the title plan(s) of the above titles and shown:
4	Date:
5	Transferor: <u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix: <u>For overseas companies</u> (a) Territory of incorporation: (b) Registered number in England and Wales including any prefix:
6	Transferee for entry in the register: The Oxfordshire County Council <u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix: <u>For overseas companies</u> (a) Territory of incorporation: (b) Registered number in England and Wales including any prefix:

Each transferee may give up to three addresses for service, one of which must be a postal address whether or not in the UK (including the postcode, if any). The others can be any combination of a postal address, a UK DX box number or an electronic address.

Place 'X' in the appropriate box. State the currency unit if other than sterling. If none of the boxes apply, insert an appropriate memorandum in panel 12.

Place 'X' in any box that applies.

Add any modifications.

Where the transferee is more than one person, place 'X' in the appropriate box.

Complete as necessary.

Use this panel for:

- definitions of terms not defined above
- rights granted or reserved
- restrictive covenants
- other covenants
- agreements and declarations
- any required or permitted statements
- other agreed provisions.

The prescribed subheadings may be added to, amended, repositioned or omitted.

Any other land affected by rights granted or reserved or by restrictive covenants should be defined by reference to a plan.

7 Transferee's intended address(es) for service for entry in the register:

County Hall, New Road, Oxford OX1 1ND
DX4310 Oxford

8 The transferor transfers the property to the transferee

9 Consideration

The transferor has received from the transferee for the property the following sum (in words and figures):

X The transfer is not for money or anything that has a monetary value

Insert other receipt as appropriate:

10 The transferor transfers with

X full title guarantee

limited title guarantee

11 Declaration of trust. The transferee is more than one person and

they are to hold the property on trust for themselves as joint tenants

they are to hold the property on trust for themselves as tenants in common in equal shares

they are to hold the property on trust:

12 Additional provisions

12.1 **Definitions**

12.1.1 The "Transferor's Adjoining Land" means the adjoining land owned by the Transferor shown edged green on the attached plan

12.1.2 "Service Conduits" means sewers drains channels pipes watercourses wires cables and other conducting media and installations and ancillary equipment and associated facilities

12.1.3 "Services" means water soil effluent gas fuel oil electricity telephone telephonic signals television electronic communication and the like

12.1.4 "Exercise Period" means the period of eighty years from the date of this Transfer

12.1.5 "Development" means development pursuant to planning permission ref no [] for []

12.1.6 "S106 Agreement" means an agreement []

12.2 The disposition effected by this transfer is subject to

12.2.1 any matters contained or referred to in the entries in the records made in registers maintained by the Land Registry as at [] under title number ON[]

12.2.2 any matters which the Transferor did not and could not reasonably know about at both the date of the S106 Agreement and the date of this transfer.

12.2.3 any notice, order or proposal given or made by a person acting without the authority of the relevant authority acting under statutory authority *Note this is without prejudice to Tenth schedule para 1.1.1*

Rights granted for the benefit of the property

12.3 Rights granted for the benefit of the Property

12.3.1 The Property is transferred together with the following rights but subject to the conditions listed in clause 12.3.1.1 which rights are hereby granted or such rights have been excepted and reserved for the benefit of the Property:-

12.3.1.1 the right to enter onto such part of the Transferor's Adjoining Land as is not built upon and which shall be reasonably necessary for the purpose with a view to carrying out works in connection with the construction of a school on the Property (and associated facilities) not further or otherwise.

12.3.1.2 a right of way (until adoption as highway maintainable at the public expense) at all times and for all purposes (in common with the Transferor and all other persons having the like right) with or without vehicles on foot only or with bicycles (as appropriate) over roads footpaths and cycleways which may be constructed at the date of this Transfer or within the Exercise Period on or over the Transferor's Adjoining Land and which are either proposed to be adopted by the highway authority as highways maintainable at public expense or which are intended to provide access to and egress from the Property

12.3.1.3 the right to construct connections and connections between any such roads and footpaths and cycle ways at such points as shown approximately on the relevant plan which is comprised in the S106 Agreement or as otherwise approved by the Transferor (such approval not to be unreasonably withheld). *Note: if appropriate adaptations shall include agreed routes.*

12.3.1.4 [to be included if at the time of transfer access has not been constructed] until the rights conferred by clauses 12.3.1.2 and 12.3.1.3 above come into operation a right of way at all times and for all purposes with or without vehicles or on foot only (as appropriate) over the Transferor's Adjoining Land over such

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reasonably convenient route as the Transferor shall from time to time agree with the Transferee (both parties acting reasonably) *Note: if appropriate remain to adapt and include agreed route.*

12.3.1.5 the right) to the free and uninterrupted passage and running of Services from and to the Property through and along any Service Conduits which may be laid or constructed at the date of this Transfer or during the Exercise Period under or through the Transferor's Adjoining Land

12.3.1.6 the right to enter upon onto such part of the Transferor's Adjoining Land as is not built upon or intended to be built upon (pursuant to a planning permission that has been granted at the relevant time) as shall be reasonably necessary for the purposes of laying Service Conduits reasonably necessary to the Property and for making connections from the Property to Service Conduits and where reasonably required and (subject always to clause 12.5) of inspecting repairing maintaining renewing and carrying out any Service Conduits

12.3.1.7 the right for the Transferee and those authorised by it at all times to enter upon so much of the Transferor's Adjoining Land as shall be reasonably necessary for the purpose of installing foundations for boundary fencing for the Property which may extend to 300mm into the Transferor's Adjoining Land and afterwards retaining, inspecting, maintaining, repairing, altering, renewing, replacing and removing the same

12.3.1.8 all such rights of support from the Transferor's Adjoining Land as may be requisite to ensure the stability and integrity of the Property and of any buildings which are now or at any time within the Exercise Period shall be erected on the Property

12.4 **Rights reserved for the benefit of the Transferor's Adjoining Land**

12.4.1 There are excepted and reserved out of the Property for the benefit of the Transferor and its successors in title the owners or occupiers (in common with all other persons having the like right) for the time being from time to time of the whole or part of the Transferor's Adjoining Land the following rights;

12.4.1.1 All such rights of support from the Property as may be requisite to ensure the stability of any buildings which are now or at any time within the Exercise Period shall be erected on the Transferor's Adjoining Land

12.5 **The rights contained in clause 12.3 are subject to the following conditions:-**

12.5.1 the position and specification of any connections or works pursuant to clause 12.3.1.6 shall be approved by the owner of the land on which the same are being effected (such approval not to be unreasonably withheld or delayed) and all requisite consents from any relevant authority or utility company for the same shall be obtained by the person exercising the rights before

effecting such connections or works

- 12.5.2 The exercise of rights pursuant to Clause 12.3.1.6 shall be subject to giving prior reasonable notice in writing (save in case of emergency when as much prior notice as is reasonably practicable shall be given).
- 12.5.3 the person exercising the rights to enter pursuant to Clause 12.3.1.1, 12.3.1.3 and 12.3.1.6, shall cause as little disturbance as reasonably possible and make good any damage caused
- 12.5.4 the person exercising the rights pursuant to Clause 12.3.1.5 shall contribute a fair and reasonable proportion of the costs of inspecting cleansing repairing maintaining renewing or replacing the Service Conduits (not forming part of the mains) through (or into) which the rights are exercised Provided always that this does not apply in respect of any of the Service Conduits provided for the Property pursuant to the S106 Agreement.
- 12.5.5 the owner or occupier of the land in which the same are situate may alter the position of the Service Conduits over or through (or into) which the rights are exercised (and the rights shall then apply to the altered position and no longer to the previous location) PROVIDED that the supply of Services to or from the school shall not be disrupted or otherwise adversely affected by the relocation works or in consequence of the relocation of the Service Conduits
- 12.6 The Transferee hereby covenants with the Transferor that the Transferee will by way of indemnity only observe and perform the several covenants and conditions contained or referred to in the Registers of Title Numbers [] as at [date]] and will indemnify the Transferor against all actions costs claims demands losses and liability in respect of any future breach thereof so far as the same affect the Property are still subsisting and capable of taking effect
- 12.7 The Transferor hereby covenants with the Transferee that the Transferor will maintain and repair suitable for its intended purpose the following:-
- [12.7.1 the routes of the rights of way referred to in clause 12.3.1.4 above until the rights conferred in clause 12.3.1.2 above come into operation]
- 12.7.2 and in good and substantial repair and condition the roads footpaths and cycleways referred to in clause 12.3.1.2 above until they are adopted as highways maintainable at the public expense
- 12.7.3 and in good and substantial repair and condition sewers and drains and other drainage infrastructure serving the Property until such time as they are adopted by the statutory undertaker.
- 12.7.4 Subject to the provisions of clause 12.5 no later than three months from receipt of a written request to grant

to the Transferee or any public or local authority or public utility company or other company or person such easements wayleaves rights liberties and privileges as may be necessary to permit the laying construction and use of Service Conduits under or through such part of the Transferor's Adjoining Land as is not built upon or intended to be built upon (pursuant to a planning permission that has been granted at the relevant time) necessary to serve the Property (together with rights of inspection repair maintenance renewal and cleansing of the Service Conduits) to secure the free and uninterrupted passage and running of Services from and to the Property

Restrictive covenants by the Transferee

12.8 The Transferee hereby covenants with the Transferor so as to benefit each and every part of the Transferor's Adjoining Land and so as to bind the Property and each and every part thereof into whosoever's hands the same may come:

12.8.1 Not without the consent of the Transferor to cause or permit the Property to be developed and then used for a period of twenty years from the date of this Transfer otherwise than for the purposes of a primary school and early years education provision and all reasonably ancillary uses which may include (but shall not be limited to) day care and extended school provision and after school activities together with the provision of community based activities which may include (but shall not be limited to) support services for families, children and older persons, family intervention services, adult learning, youth provision and lifelong learning.

Any other land affected should be defined by reference to a plan and the title numbers referred to in panel 2.

Include words of covenant.

Include words of covenant.

Restrictive covenants by the transferor

12.9 The Transferor hereby covenants with the Transferee to the intent that this covenant shall bind and run with the Transferors Adjoining Land and each and every part thereof

12.9.1 not to erect or cause or permit to be erected any mobile phone mast on any part of the Transferors Adjoining Land which is within 200 metres of the boundary of the Property

12.9.2 not to erect or cause or permit to be erected any fencing or other structure on any boundary between the Property and the Transferors Adjoining Land unless it shall have been approved in writing by the Transferee as suitable for a school boundary and it is agreed that any such boundary structure so approved shall become part of the Property - remove for direct delivery.

Insert here any required or permitted statements, certificates or applications and any agreed declarations and so on.

Other

It is agreed and declared as follows: -

Section 62 of the Law of Property Act 1925 shall not apply to this Transfer and except as expressly granted the Property shall not by virtue of the agreement for this transfer or this transfer be entitled to any easement right privilege or other appurtenance over the Transferor's Adjoining Land and except as expressly reserved the Transferor's Adjoining Land shall not be entitled to any easement right privilege or other appurtenance over the Property.

Nothing in this Deed shall create a building scheme

The transferor must execute this transfer as a deed using the space opposite. If there is more than one transferor, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If the transfer contains transferee's covenants or declarations or contains an application by the transferee (such as for a restriction), it must also be executed by the transferee.

13 Execution

WARNING

If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.








Failure to complete this form with proper care may result in a loss of protection under the Land Registration Act 2002 if, as a result, a mistake is made in the register.

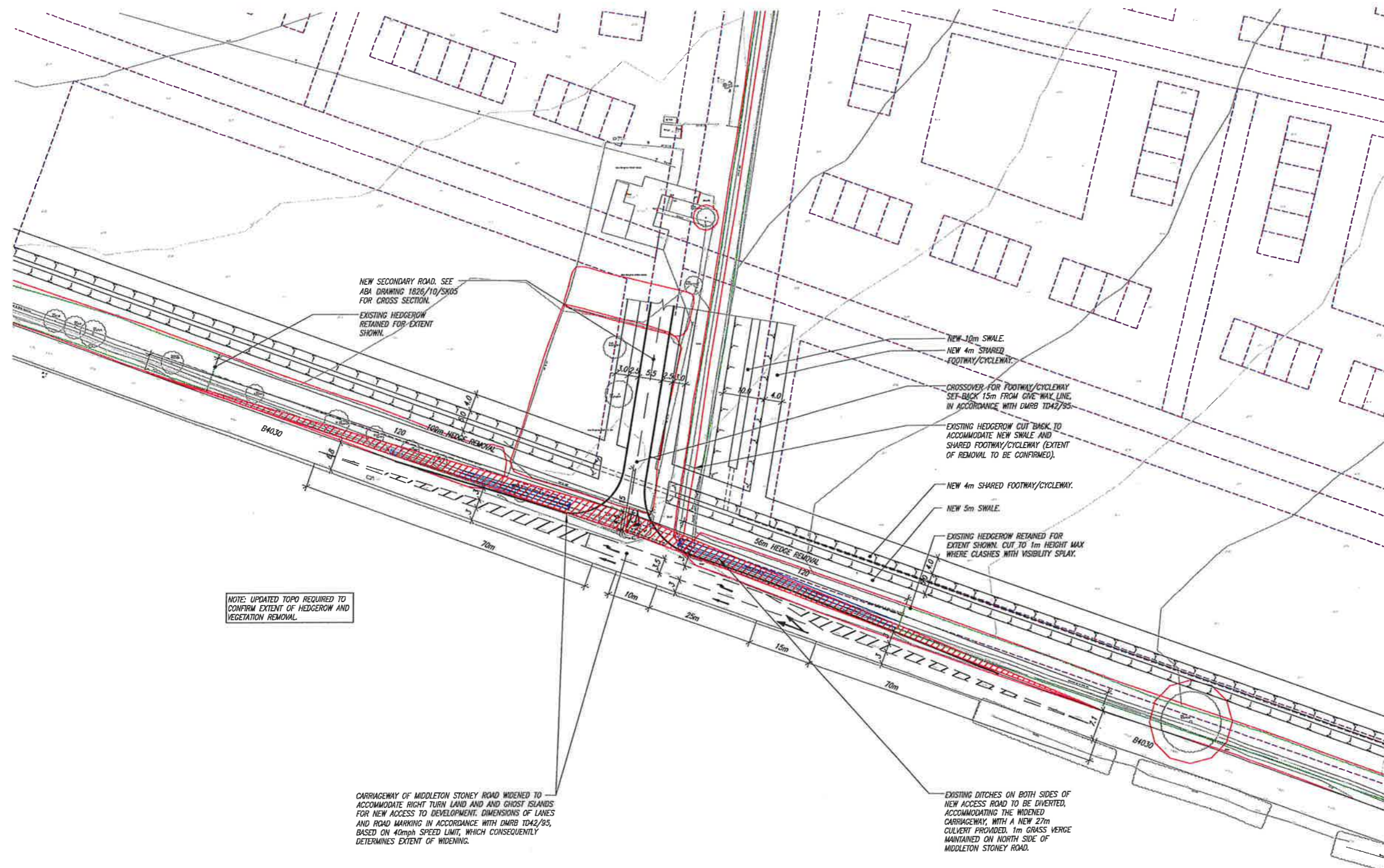
Under section 66 of the Land Registration Act 2002 most documents (including this form) kept by the registrar relating to an application to the registrar or referred to in the register are open to public inspection and copying. If you believe a document contains prejudicial information, you may apply for that part of the document to be made exempt using Form EX1, under rule 136 of the Land Registration Rules 2003.

APPENDIX 18

Additional Plans

1. THIS DRAWING IS TO BE READ IN CONJUNCTION WITH ALL RELEVANT ARCHITECT'S AND ENGINEER'S DRAWINGS AND THE SPECIFICATION.
2. DO NOT SCALE FROM THIS DRAWING.
3. KEY.

-  EXISTING HEDGEROW AND VEGETATION TO BE RETAINED.
-  VISIBILITY SPLAY IN ACCORDANCE WITH DMRB TD42/95, BASED ON 40mph SPEED LIMIT WITH X=4.5m, Y=120m.
-  DITCH TO BE DIVERTED.
-  NEW CULVERT.
-  NEW SWALE.
-  P&P REGULATORY PLAN OUTLINE.
-  EXISTING ROOT PROTECTION AREA.



NOTE: UPDATED TOPO REQUIRED TO CONFIRM EXTENT OF HEDGEROW AND VEGETATION REMOVAL.

CARRIAGEWAY OF MIDDLETON STONEY ROAD WIDENED TO ACCOMMODATE RIGHT TURN LANE AND GHOST ISLANDS FOR NEW ACCESS TO DEVELOPMENT. DIMENSIONS OF LANES AND ROAD MARKING IN ACCORDANCE WITH DMRB TD42/95, BASED ON 40mph SPEED LIMIT, WHICH CONSEQUENTLY DETERMINES EXTENT OF WIDENING.

FOR INFORMATION ONLY

12.09.17 FOR INFORMATION MBr

job
HIMLEY VILLAGE

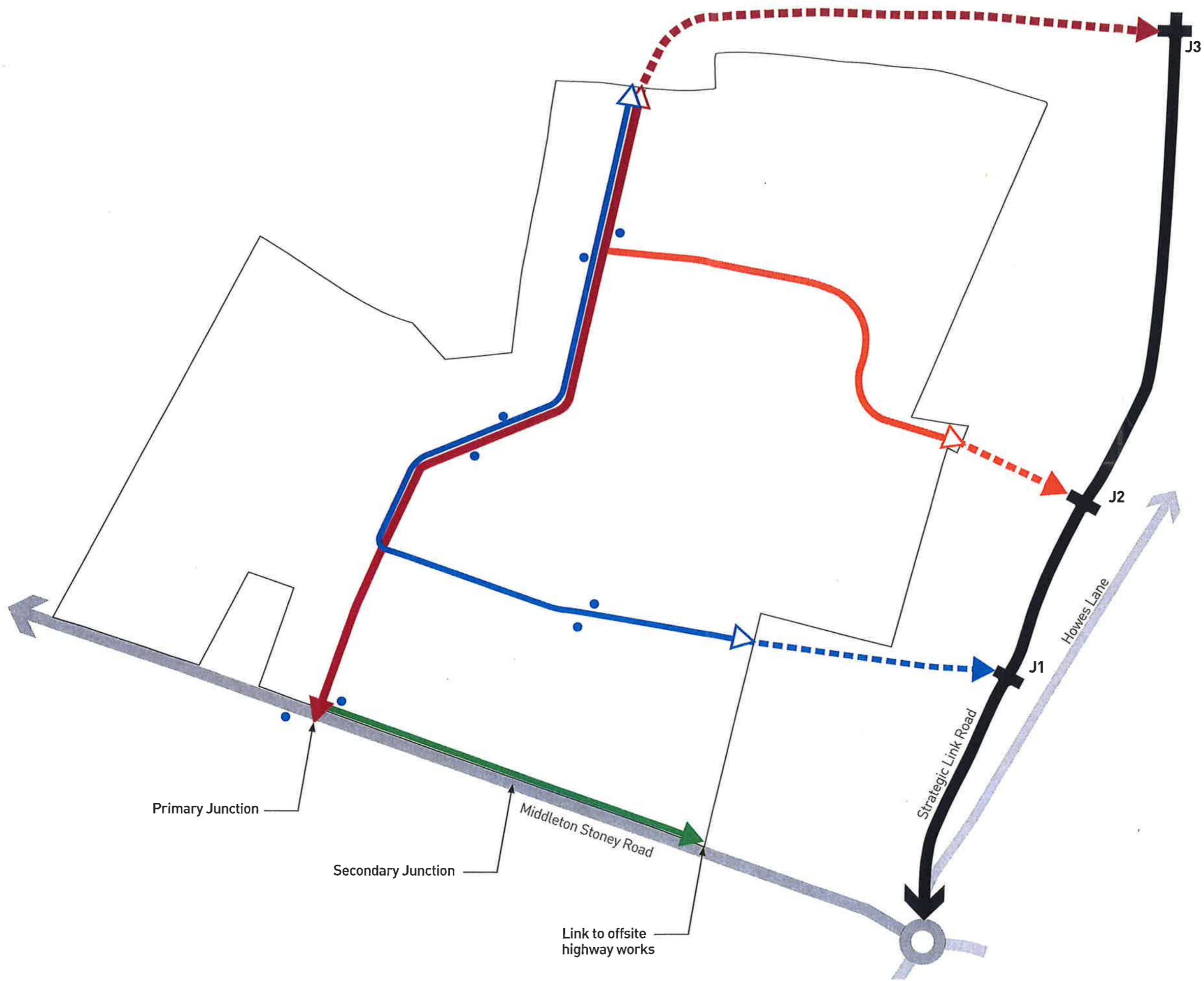
site
MIDDLETON STONEY ROAD, SECONDARY ROAD JUNCTION 40mph SPEED LIMIT












drawn
MA
date
SEPT'17

checked
MBr
scale (original - A1)
1:500

Alan Baxter
75 Cowcross Street London EC1M 6EL
tel 020 7250 1555
email aba@alanbaxter.co.uk
www.alanbaxter.co.uk

orig. no.
1826/10/14



-  Pedestrian & cycle route
-  Spine road
-  Junction 2 link road
-  Bus route
-  Bus stops
-  New junctions
-  Routes over third party
-  Routes over third party
-  New connection/linking to third party land
-  New connection/linking to third party land
-  New connection/linking to third party land

Primary Junction

Secondary Junction

Middleton Stoney Road

Link to offsite highway works

Strategic Link Road

Howes Lane

J1

J2

J3

HIMLEY VILLAGE DEVELOPMENT TRANSPORT INFRASTRUCTURE	
ON SITE HIGHWAYS PLAN	
1826/10	
MARCH 2018	Alan Baxter



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 2019/05/05 London 100018504. Single source.

- N
- weedland
 - sports fields
 - hedgerow/hedgerow buffer
 - newt protection area
 - SUDS (indicative location)
 - allotments
 - ponds
 - public green space
 - play area (indicative location)
 - school playing fields (indicative location)
 - Playing Field Boundary Line

NO.	DATE	DESCRIPTION	BY
1	13.03.2015	Issue for comment	Penryre
2	13.03.2015	Final - incorporating comments	Penryre
3	13.03.2015	Revised	Penryre
4	13.03.2015	Approved	Penryre
5	13.03.2015	Area agreed	Penryre
6	13.03.2015	Area agreed	Penryre
7	13.03.2015	Final	Penryre

Penryre
 partners
 28-42 Ravenor Street
 London EC1Y 8QE
 020 7259 3477
 penryre@penryre.com

Client
 P3Eco

Project
 592 - Himley Village

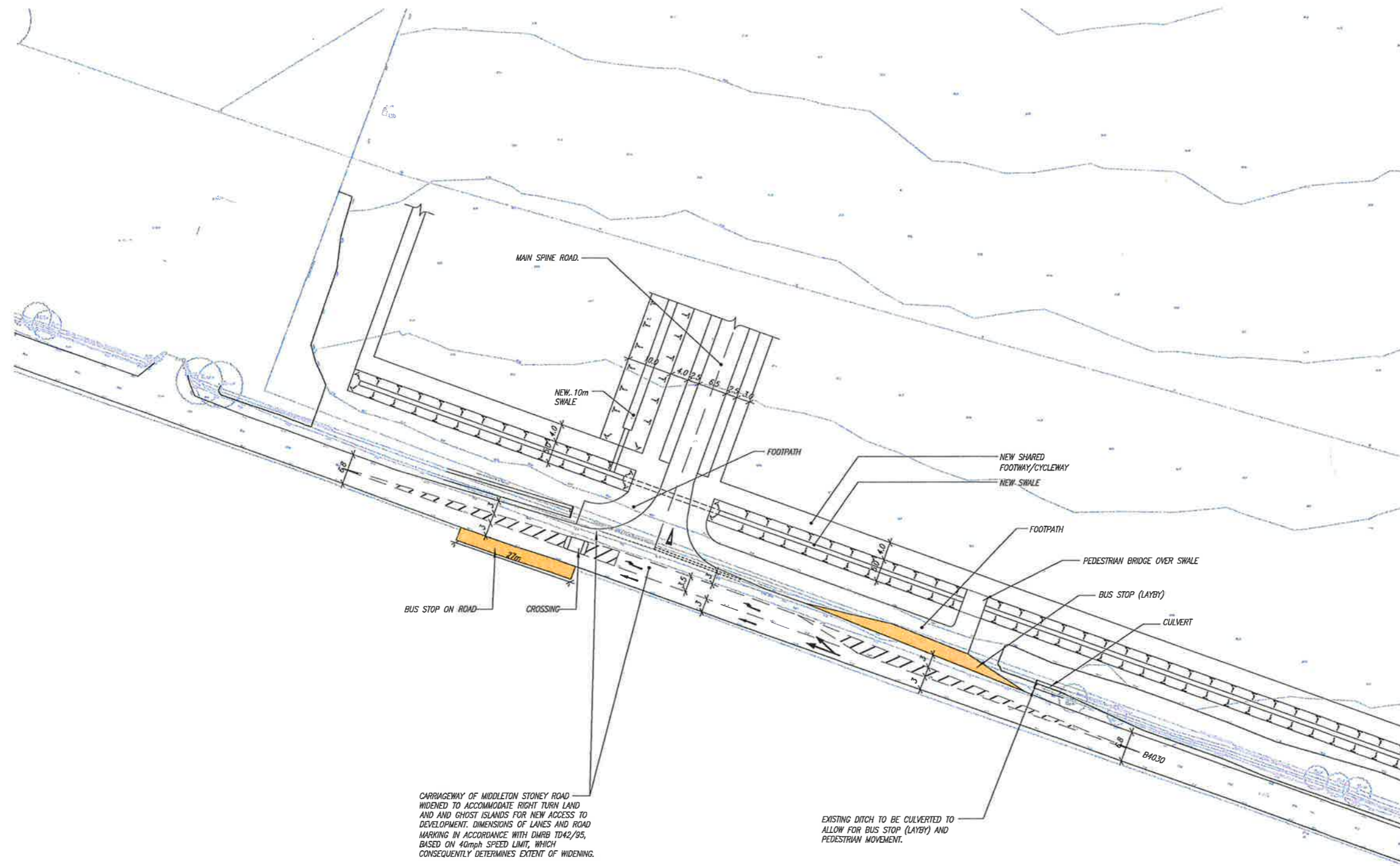
Drawn To
 Landscape - Parameter Plan 3

Drawing Name
 Outline Planning Application

Date
 01.08.2015 12:50 @A1

Drawing No
 592-PL-106

Sheet No
 H



CARRIAGEWAY OF MIDDLETON STONEY ROAD WIDENED TO ACCOMMODATE RIGHT TURN LANE AND AND GHOST ISLANDS FOR NEW ACCESS TO DEVELOPMENT. DIMENSIONS OF LANES AND ROAD MARKING IN ACCORDANCE WITH DMRB TD42/95, BASED ON 40mph SPEED LIMIT, WHICH CONSEQUENTLY DETERMINES EXTENT OF WIDENING.

EXISTING DITCH TO BE CULVERTED TO ALLOW FOR BUS STOP (LAYBY) AND PEDESTRIAN MOVEMENT.

notes

1. THIS DRAWING IS TO BE READ IN CONJUNCTION WITH ALL RELEVANT ARCHITECT'S AND ENGINEER'S DRAWINGS AND THE SPECIFICATION.

2. DO NOT SCALE FROM THIS DRAWING.

3. KEY

- EXISTING HEDGECROW AND VEGETATION TO BE RETAINED.
- - - - - NEW CULVERT.
- ▨▨▨▨ NEW SWALE

FOR INFORMATION ONLY

A	14.03.18	MINOR UPDATES	GB
A	04.12.17	MINOR UPDATES	MBF
-	12.09.17	FOR INFORMATION.	MBF

job
HIMLEY VILLAGE

site
**MIDDLETON STONEY ROAD,
MAIN SPIKE ROAD JUNCTION
40mph SPEED LIMIT**

drawn MA	checked GB
date MARCH18	scale (original - A1) 1:500

Alan Baxter

75 Cowcross Street London EC1M 6EL
tel 020 7250 1555
email aba@alanbaxter.co.uk
www.alanbaxter.co.uk

orig. no. 1826/10/21	rev. A
--------------------------------	------------------

Mytton, David - Law & Governance

From: David Bird <DBird@VWV.CO.UK>
Sent: 10 January 2020 17:48
To: Mytton, David - Law & Governance; Bradley Evans; Mutton, Karen
Cc: Cox, Howard - Communities
Subject: RE: S106 Himlèy Village [VWV-LIVE.FID2015375]

David
Please make the change.
Kind regards
David

David Bird
Partner

dbird@vwv.co.uk

DD: 0117 314 5382 | M: 07500 838 556 | Connect 

Veale Wasbrough Vizards LLP

From: Mytton, David - Law & Governance [mailto:David.Mytton@Oxfordshire.gov.uk]
Sent: 10 January 2020 16:05
To: David Bird; Bradley Evans; Mutton, Karen
Cc: Cox, Howard - Communities
Subject: [EXTERNAL] S106 Himlèy Village

This Message originated outside your organisation.

Dear David, I received the 9 engrossments of the section 106 late morning and have now looked through one as a sample to check the handwritten amendments and appendices.

Unfortunately my time was limited for checking the zip file of appendices on the afternoon of 11 December and I did not spot that the wrong school site land registry plan was attached. The correct one is attached now – attachment no 1.

David/Karen, can you authorise me to remove the school site land registry plan incorporated in the documents (attachment no 2) and staple in the correct one?

I also did not spot that only one of the two collateral warranties was attached – for consultants. Can you both please authorise me to staple in the one for contractors – attachment no 3?

Thanks David

David Mytton
Solicitor
For and on behalf of Nick Graham
Director of Law & Governance and Monitoring Officer

Tel: 07392 318904

Oxfordshire County Council, Law and Governance,
County Hall, New Road, Oxford OX1 1ND

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Mytton, David - Law & Governance

From: Mutton, Karen <KarenMutton@eversheds-sutherland.com>
Sent: 13 January 2020 09:35
To: Mytton, David - Law & Governance; David Bird; Bradley Evans
Subject: RE: S106 Himley Village

David

I'm happy for you to make the change on behalf of the District Council.

Kind regards

Karen

Karen Mutton | Principal Associate | Planning and Infrastructure Consenting | Eversheds Sutherland

T: +44 115 931 7557
M: +44 7392 281 278
www.linkedin.com/in/karen-mutton

www.eversheds-sutherland.com

Eversheds Sutherland

Client Commitment. Innovative Solutions. Global Service.

From: Mytton, David - Law & Governance <David.Mytton@Oxfordshire.gov.uk>
Sent: 10 January 2020 16:33
To: David Bird <DBird@VWV.CO.UK>; Bradley Evans <BEvans@VWV.CO.UK>; Mutton, Karen <KarenMutton@eversheds-sutherland.com>
Subject: FW: S106 Himley Village

Dear all, just to add that the description of the Primary School Land Plan in the definition in schedule 22 is correct i.e. 592-SK-060 Rev A (and that corresponds with the drawing at attachment no 1). Kind regards David

From: Mytton, David - Law & Governance
Sent: 10 January 2020 16:05
To: David Bird <DBird@VWV.CO.UK>; Bradley Evans <BEvans@VWV.CO.UK>; Mutton, Karen <KarenMutton@eversheds-sutherland.com>
Cc: Cox, Howard - Communities <Howard.Cox@Oxfordshire.gov.uk>
Subject: S106 Himley Village

Dear David, I received the 9 engrossments of the section 106 late morning and have now looked through one as a sample to check the handwritten amendments and appendices.

Unfortunately my time was limited for checking the zip file of appendices on the afternoon of 11 December and I did not spot that the wrong school site land registry plan was attached. The correct one is attached now – attachment no 1.

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Thanks David

David Mytton
Solicitor
For and on behalf of Nick Graham
Director of Law & Governance and Monitoring Officer

Tel: 07392 318904

Oxfordshire County Council, Law and Governance,
County Hall, New Road, Oxford OX1 1ND

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