

DATED

7th February

2022

WILLIAM ASHBY ADAMS

MARY CATHLEEN ADAMS

to

CHERWELL DISTRICT COUNCIL

and

OXFORDSHIRE COUNTY COUNCIL

PLANNING OBLIGATION BY DEED OF UNILATERAL UNDERTAKING

under section 106 of the Town and Country Planning Act 1990
relating to
land at Glebe Farm Boddington Road Claydon Banbury OX17 1TD

Planning Application Ref: 20/02446/F

Planning Appeal Ref: APP/C3105/W/21/3280416

Morag Thomson
Freelance Solicitor
Planning and Infrastructure
www.moragthomson.net

THIS UNDERTAKING is entered into as a DEED on

7th February 2022

BY:

WILLIAM ASHBY ADAMS and **MARY CATHLEEN ADAMS** of Old House Farm Banbury Road Lower Boddington Northamptonshire NN11 6XY ("the Owner").

TO:

CHERWELL DISTRICT COUNCIL of Bodicote House Bodicote, Banbury, Oxfordshire OX15 4AA ("the District Council"); and

OXFORDSHIRE COUNTY COUNCIL whose principal office is at County Hall, New Road Oxford OX1 1ND ("the County Council").

INTRODUCTION

- A. The District Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- B. The County Council is the county planning authority for the purposes of the Act and has for the area in which the Site is situated powers and duties in respect of highways and the regulation of traffic pursuant to the Highway Act 1980, the Road Traffic Regulation Act 1984 and the Traffic Management Act 2004.
- C. The Owner is the freehold owner of the Site free from encumbrances other than those revealed on the charges register which interest is registered under Title Number NN287638.
- D. W A Adams Partnership (being a partnership comprising the Owner and their two daughters) has submitted the Application to the District Council, the District Council has refused to grant permission and the Owner has appealed against such refusal.
- E. If the Appeal is allowed the obligations in this undertaking will apply and may be enforced against the Owner and the Owner's successors in title by the Councils (for the avoidance of doubt the provisions set out in clause 4 will come into immediate effect and be enforceable regardless as to whether the Appeal is allowed).

NOW THIS DEED WITNESSETH AS FOLLOWS

OPERATIVE PART

1 DEFINITIONS

For the purposes of this Undertaking the following expressions shall have the following meanings:

"Act"	means the Town and Country Planning Act 1990
"Appeal"	means the appeal against the refusal of the Application (ref: APP/C3105/W/21/3280416) to be determined by an Inspector appointed by the Secretary of State
"Application"	means the application for planning permission for the formation of an inland waterways marina with ancillary facilities building, car parking, access and associated landscaping including the construction of a new lake submitted to the District Council and registered on 24 September 2020 under reference number 20/02446/F
"Development"	means the development of the Site as approved by the Planning Permission
"Implementation"	means the carrying out of any material operation (as defined in Section 56(4) of the Act) forming part of the Development other than (for the purposes of this undertaking and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purposes of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Implement" "Implemented" and "Implementing" shall be construed accordingly
"Index Linked"	means adjusted according to any increase occurring between June 2018 and the date when the relevant payment is made to the

	<p>County 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: -</p> <p>Index 1 Labour & Supervision 25%</p> <p>Index 2 Plant & Road Vehicles 25%</p> <p>Index 3 Aggregates 30%</p> <p>Index 9 Coated Macadam & Bituminous Products 20%.</p> <p>or if at any time for any reason it becomes impracticable to use any such index such alternative index as may be agreed between the Owner and the County Council</p>
"Interest"	means interest at the rate of 4% per annum above the base lending rate of Lloyds Bank Plc from time to time
"Occupation"	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction; fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupied" and "Occupy" shall be construed accordingly
"Planning Permission"	means the decision letter granting any planning permission issued pursuant to the determination of the Appeal
"PROW Contribution"	means the sum of Ten Thousand Pounds (£10,000.00) Index Linked towards the cost of the PROW Improvements
"the PROW Improvements"	<p>means works to improve the public rights of way between the Site and the village of Claydon comprising all or any of the following:</p> <ul style="list-style-type: none"> • Surfacing • Furniture • Accessibility • Management of vegetation

“the Site”	means the land against which the obligations in this undertaking may be enforced shown edged black and coloured yellow on the Site Plan
“Site Plan”	means the plan showing the Site edged black and coloured yellow attached to this undertaking

2. CONSTRUCTION OF THIS UNDERTAKING

- 2.1 Where in this undertaking reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this undertaking.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons including companies, corporations and firms and all such words shall be construed interchangeably in that manner.
- 2.4 Wherever more than one person is a party and/or where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually.
- 2.5 “Including” means including without limitation or prejudice to the generality of any preceding description defined term phrase or word(s) and “include” shall be construed accordingly
- 2.6 Words denoting an obligation on a party to do any act or 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 that restriction.
- 2.7 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, order, plans, regulations, permissions and directions for the time being made, issued, or given under that Act or deriving validity from it.
- 2.8 Reference to any party to this undertaking shall include successors in title to that party and to any deriving title through or under that party and in the case of the District Council and County Council the successors to their respective statutory functions
- 2.9 The headings are for reference only and shall not affect construction.

3 LEGAL BASIS

- 3.1 This undertaking is given pursuant to Section 106 of the Act.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this undertaking create planning obligations pursuant to Section 106 of the Act which apply to and bind the Site and are enforceable by the District Council and the County Council.

4 CONDITIONALITY

This undertaking is conditional upon the grant of the Planning Permission Save for the provisions of this clause and Clauses 3, 6, 7, 8, 9, 12 and 13 and 14 (legal basis, miscellaneous, waiver, fetter, data protection change of ownership, jurisdiction and delivery) which shall come into effect immediately upon the completion of this undertaking.

5 OWNER'S COVENANTS

- 5.1 The Owner undertakes to the District Council and County Council to comply with the obligations set out in the body of this Deed.
- 5.2 The Owner undertakes to the County Council as set out in Schedule 1 and in Schedule 2

6 MISCELLANEOUS

- 6.1 No provisions of this undertaking shall be enforceable under the Contracts (Right of Third Parties) Act 1999 (other than by the District Council and County Council and their successors to their respective statutory functions).
- 6.2 Insofar as any clause or clauses of this undertaking are found (for whatever reason) to be invalid, illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this undertaking and insofar as reasonably practicable the Owner shall seek to amend that clause or clauses by agreement with the District Council and County Council in such reasonable manner as achieves the original intention of the clause without illegality.
- 6.3 This undertaking shall cease to have effect (insofar as it has not already been complied with) if the Planning Permission shall be quashed (and refused upon re-determination), revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to Implementation PROVIDED ALWAYS that the Planning Permission has not been Implemented.

- 6.4 No person shall be liable for any breach of any of the planning obligations or other provisions of this undertaking after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 6.5 Nothing in this undertaking shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission other than the Planning Permission (as defined herein) granted (whether or not on appeal) after the date of this undertaking.
- 6.6 The Owner undertakes to pay on demand the District Council's reasonable legal costs incurred in connection with the preparation and completion of this Deed
- 6.7 The Owner undertakes to:
- 6.7.1 pay on demand to the County Council the County Council's reasonable legal costs incurred in connection with the preparation and completion of this undertaking; and
- 6.7.2 reimburse the County Council in respect of all legal and administrative costs reasonably and properly incurred in connection with any enforcement of any of the provisions in this undertaking should the need for enforcement arise in the reasonable opinion of the County Council; and
- 6.7.3 within Fourteen (14) days of any grant of Planning Permission pay to the County Council the sum of £120 (One Hundred and Twenty Pounds) towards the cost of monitoring and administering compliance with the obligations in this undertaking

7 WAIVER

- 7.1 No waiver (whether expressed or implied) by the District Council and/or the County Council of any breach or default in performing or observing any of the covenants terms or conditions of this undertaking shall constitute a continuing waiver and no such waiver shall prevent the District Council or the County Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

8 NO FETTER

- 8.1 Nothing in this undertaking shall prejudice or affect the rights powers duties and obligations of the District Council or the County Council in the exercise of their respective functions in any capacity.

9 CHANGE OF OWNERSHIP ETC

- 9.1 The Owner undertakes:

9.1.1 to give to the District Council and separately the County Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this undertaking have been discharged such notice to give details of the transferee's full name and registered office if a company, or

usual address if not, together with the area of the Site or unit of occupation purchased by reference to a plan.

9.1.2 to notify the District Council and the County Council in writing within fourteen days of the occurrence of each of the following events and to specify in the notification the date on which it occurred:

9.1.2.1 the date of Implementation of the Planning Permission; and

9.1.2.2 the date of first Occupation.

10 INTEREST

10.1 If any payment due under this undertaking is paid late, Interest will be payable from the date payment is due to the date of full payment.

10.2 Interest shall be calculated and accrue daily and if any payment is made more than three months after the date it becomes due shall be compounded monthly

11 VAT

11.1 All consideration given in accordance with the terms of this undertaking shall be exclusive of any value added tax properly payable and the Owner shall pay to the County Council any value added tax properly payable on any sums paid to the County Council or works undertaken under this undertaking upon presentation of any appropriate value added tax invoice addressed to the Owner.

12 JURISDICTION

12.1 This undertaking is a Deed is governed by and interpreted in accordance with the law of England.

13 DELIVERY

13.1 The provisions of this undertaking (other than this clause which shall be of immediate effect) shall be of no effect until this deed has been dated.

14 DATA PROTECTION

The Owner acknowledges that information as to compliance with obligations pursuant to this undertaking (including as to whether or not contributions have been paid) may be passed to:

- 14.1 persons who make enquiries on such matters and who advise that they or their clients are proposing to acquire an interest in the Site and it is acknowledged that the recipients of such information may then disseminate it further
- 14.2 any person when so required in order to comply with statutory requirements including the Freedom of Information Act 2000

IN WITNESS whereof the Owner hereto has executed this Deed on the day and year first before written

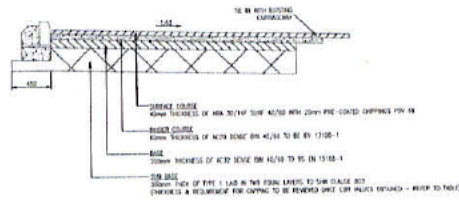
PLANS

NOTES:

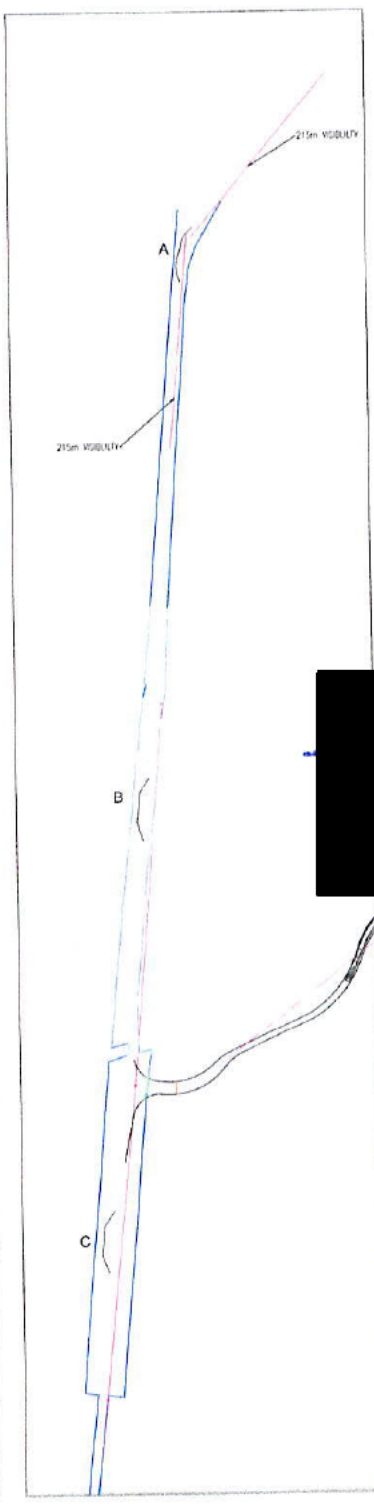
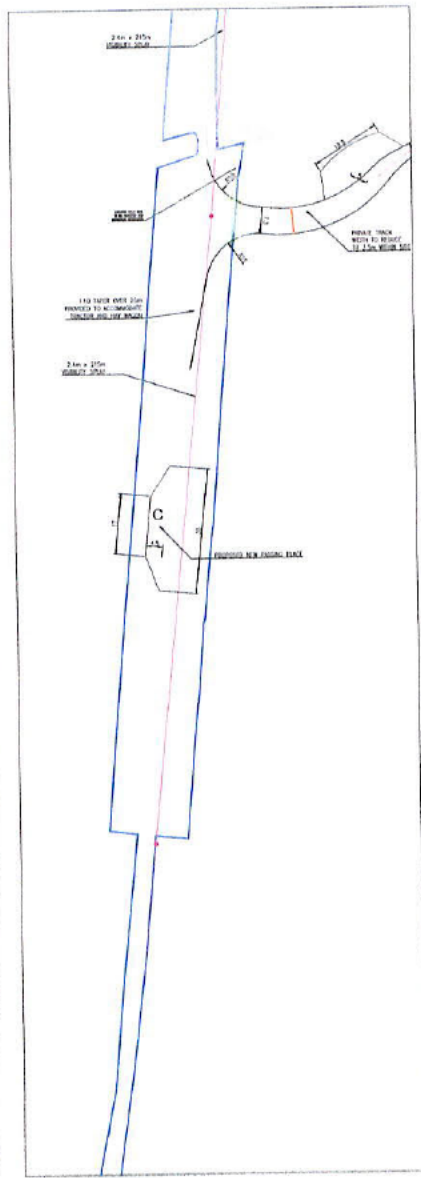
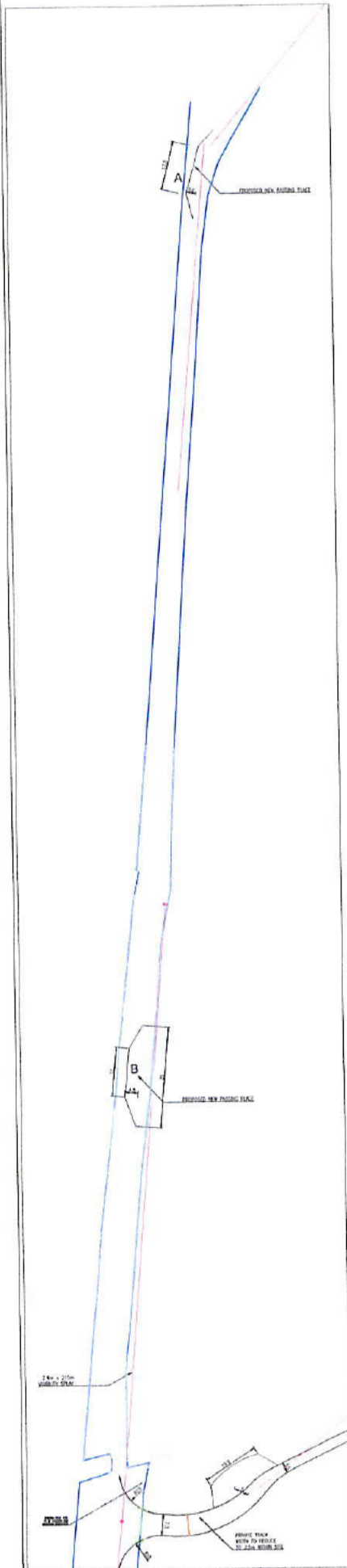
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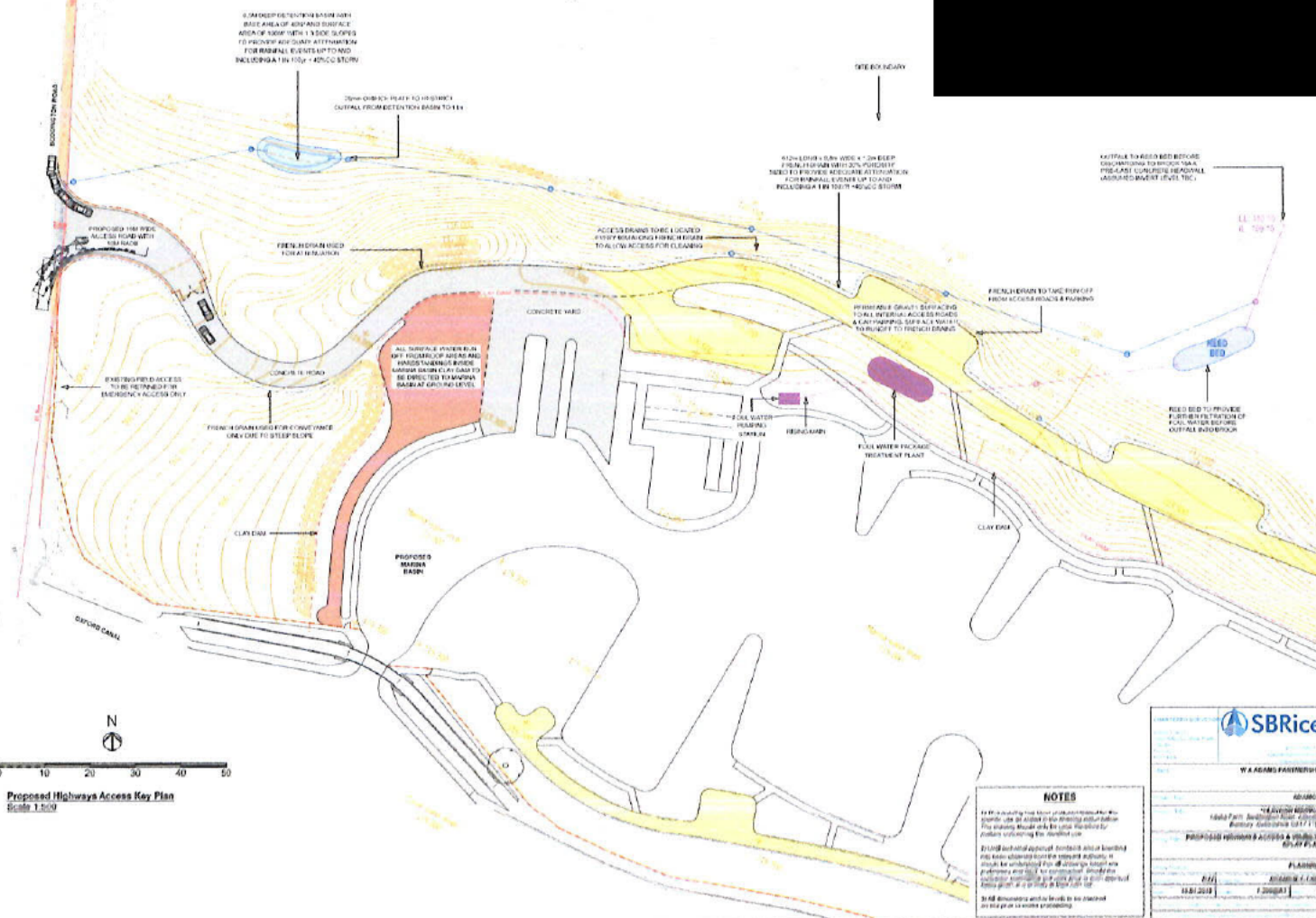
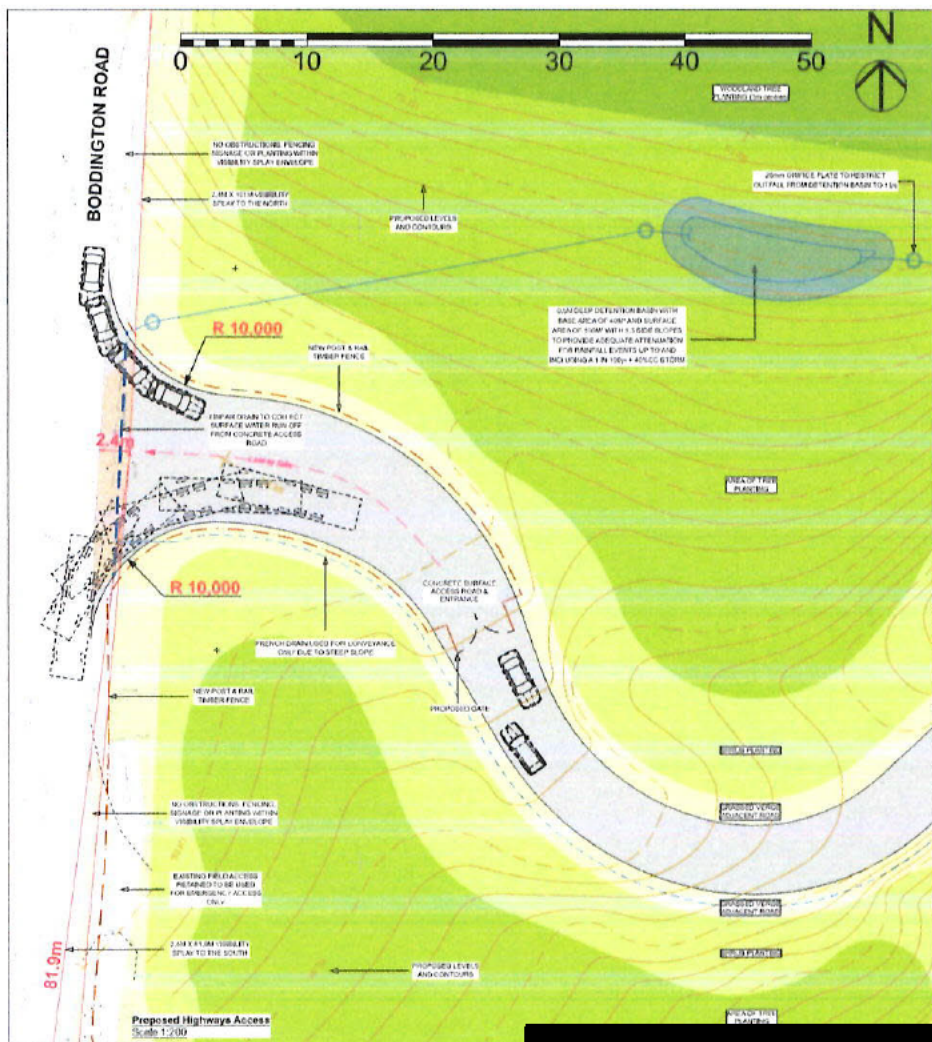
— EXISTING HIGHWAY BOUNDARY



PAVING DAY CONSTRUCTION CROSS SECTION
SCALE 1:20



SPRINGFIELD FARM BOCCINGTON ROAD LOWER BOCCINGTON		
OFF SITE PAVING FLARE GENERAL ARRANGEMENT PROJECTIONS		
W A ADAMS PARTNERSHIP		
2008_03_00_01 5		
A	AD	AS BHCW
FOR INFORMATION APPROVAL		
MEC		



SBRice
W. A. ADAMS PAPERWORKS

NOTES

1. All quantities are based on the information provided and are subject to change if any items are omitted or added. The quantity shown is for the entire project unless otherwise indicated.
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PROJECT INFORMATION

Project Name: **PROPOSED HIGHWAY ACCESS & KEY PLAN**

Client: **PLANNING**

Date: **18/01/2019**

Scale: **1:500**

Sheet: **1**

SCHEDULE 1

PROW Contribution

1. The Owner covenants and undertakes to the County Council to pay the PROW Contribution to the County Council prior to first Occupation of the Development and not to cause or permit first Occupation of the Development until the PROW Contribution has been paid to the County Council.

SCHEDULE 2

Highway Works

PART 1

1. DEFINITIONS

- 1.1 In this Schedule the following definitions shall apply (for the avoidance of doubt any definition which does not appear below shall be giving the meaning allocated to it in the main body of this Deed):

Expression	Meaning
the 1980 Act	means the Highways Act 1980
Highway Agreement	means an agreement under Section 278 (and if appropriate section 38) of the 1980 Act in accordance with the form contained in Schedule 3 to this Deed (subject to any amendments that the circumstances may reasonably and properly require) with the County Council which provides for the execution of the Works by the Owner at the Owner's expense.
Works Plan (Bellmouth)	means the drawing reference number ADAMCM-1-1-005 Revision A attached to this Deed
Works Plan (Passing Places)	means the drawing reference number 25958_03_020_01.5 Revision A attached to this Deed

Expression**Meaning****Works**

means the principal works together with associated preparatory and ancillary works and the amenity and accommodation works described in Part 2 of this Schedule

1.2 The Works are works which the County Council is authorised to execute by virtue of Part V of the 1980 Act

1.3 The Owner intends to enter into the Highway Agreement with the County Council

2. WORKS OBLIGATIONS

2.1 The Owner covenants with and undertakes to the County Council not to cause or permit Implementation of the Development until:

2.1.1 there has been submitted to the County Council and approved by it in writing in principle drawings for the Works together with associated drawings and technical information as set out in the County Council's section 278 application form as adjusted from time to time;

2.1.2 if there is any land to be dedicated following completion of the Works there has been submitted to the County Council and approved by it in writing plans detailing the land to be dedicated following completion of the Works and there has been deduced to the satisfaction of the County Council title in respect of any such land to be dedicated

2.1.3 The anticipated duration of construction of the Works has been agreed with the County Council together with the longstop date for completion of the Works and commuted maintenance sum in respect of the cost of future maintenance, and as applicable replacement of the Works, has been agreed; and,

2.1.4 a Highway Agreement incorporating in principle drawings and plans and other matters approved and agreed pursuant to paragraphs 2.1.1 to 2.1.3 has been entered into by the Owner in respect of the Works together with all parties with an interest in any land to be dedicated further to the Highway Agreement and any mortgagee of such land has released it fully and effectively from its charge.

- 2.2 Not to cause or permit first Occupation of the Development unless and until the Works have been completed pursuant to and in accordance with the Highway Agreement
- 2.3 Notwithstanding the terms of paragraph 2.1.4 not to Occupy any part of the Development until the Highway Agreement has been entered into in accordance with paragraphs 2.1.1 to 2.1.3 above and the Works have been completed pursuant to and in accordance with the Highway Agreement

PART 2 THE WORKS

(1) PRINCIPAL WORKS

The provision and construction of the following works ("the Principal Works"):

- (a) A new bellmouth access to Boddington Road as shown indicatively on the Works Plan (Bellmouth)
- (b) Localised widening of Boddington Road to provide passing places as shown indicatively on the Works Plan (Passing Places)

(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 Principal Works such alteration thereof) as the County 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 County 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