

North West Bicester Exemplar (reference 10/01780/HYBRID): Section 106 Deed of Variation

Draft Heads: 12 December 2017

No	Section 106 Schedule and Clause	Obligation	Proposed Amendment	Reason for Change	Evidence Base where applicable
1	8 th Schedule, Clause 1.6	Will Service and Substantially Complete the Retail Store prior to the Occupation of 250 Dwellings and will not cause or permit more than 249 Dwellings to be Occupied until the Retail Store has been Serviced and Substantially Completed to the reasonable satisfaction of the District Council.	Will Service and Substantially Complete the Retail Store prior to the Occupation of 250 <u>350</u> Dwellings and will not cause or permit more than 249-350 Dwellings to be Occupied until the Retail Store has been Serviced and Substantially Completed to the reasonable satisfaction of the District Council.	A2Dominion instructed Bidwells to prepare a Market Assessment of Economic Sustainability at Elmsbrook Local Centre, North West Bicester. This Assessment concluded that the market principles go against the Section 106 agreement that dictates that the convenience store and community centre be built and completed by the occupation of the 250th home and the offices, nursery and ancillary retail stores to be built and completed by the occupation of the 350th home. To align these, the Section 106 requires a Deed of Variation to bring the triggers on delivery in line with commercial realities.	Please refer to enclosed Bidwell's Viability Report dated September 2017.
2	8 th Schedule, Clause 1.7	Will Service and Substantially Complete the Community Hall in accordance with the Community Hall Specification and to the reasonable satisfaction of the District Council as evidenced by the issue by the District Council of a Certificate of Practical Completion prior to the Occupation of 250 Dwellings and will not cause or permit more than 249 Dwellings to be Occupied until the Community Hall has been Serviced and Substantially completed in accordance with the Community Hall Specification and the District Council has issued a Certificate of Practical Completion in respect of it.	Will Service and Substantially Complete the Community Hall in accordance with the Community Hall Specification and to the reasonable satisfaction of the District Council as evidenced by the issue by the District Council of a Certificate of Practical Completion prior to the Occupation of 250 <u>350</u> Dwellings and will not cause or permit more than 249-350 Dwellings to be Occupied until the Community Hall has been Serviced and Substantially completed in accordance with the Community Hall Specification and the District Council has issued a Certificate of Practical Completion in respect of it.	A2Dominion instructed Bidwells to prepare a Market Assessment of Economic Sustainability at Elmsbrook Local Centre, North West Bicester. This Assessment concluded that the market principles go against the Section 106 agreement that dictates that the convenience store and community centre be built and completed by the occupation of the 250th home and the offices, nursery and ancillary retail stores to be built and completed by the occupation of the 350th home. To align these, the Section 106 requires a Deed of Variation to bring the triggers on delivery in line with commercial realities.	Please refer to enclosed Bidwell's Viability Report dated September 2017.
3	13th Schedule, Clause 1.2	Will not cause permit the Construction of any Dwelling until an Interim Code Certificate has been issued by an Assessor for it certifying that Code Level 5 of the Code for Sustainable Homes will be achieved and such Interim Code Certificate has been provided to the District Council.	Will not cause or permit <u>the construction of a dwelling until an Interim Code Certificate a Design Stage Report</u> has been issued by an Assessor for it certifying that Code Level 5 of the Code for Sustainable Homes will be achieved and such <u>Interim Code CertificateDesign Stage Report</u> has been provided to the District Council.	As currently worded, this trigger cannot be satisfied. Interim Certificates will not be available prior to commencement of dwellings in phases 2, 3 and 4. Interim (AKA Design Stage) Certificates can be issued as and when (subject to potential BRE audit and any additional emerging evidence requirements). BRE provide them. The submission itself can be dependent on receipt of every required piece of evidence regardless that it may be self-evident that any particular credit can be awarded. The BRE Design stage report can be submitted in lieu of certificates whilst the design stage certification process is followed. It is anticipated that these will be available during construction of units. However, construction should not be delayed due to this. Trigger to be reviewed accordingly.	N/A
4	13th Schedule, Clause 1.3	Will not cause or permit any Dwelling to be Occupied until an Assessor has confirmed compliance with Code Level 5 of the Code for Sustainable Homes for it and this compliance has been notified in writing to the District Council.	<u>Within 6 months of completion of a phase, will notify the Council in writing that Will not cause or permitted any Dwellings to be Occupied until</u> an Assessor has confirmed compliance <u>of that phase</u> with Code Level 5 of the Code for Sustainable Homes for it and this compliance has been notified in writing to the District Council.	As currently worded, this trigger cannot be satisfied. Certificates are issued on scheme completion (on a phased basis). It is impractical to deal with this on a plot by plot basis. It is possible that a report can be issued before occupancy of the first dwelling, however, this would be premature since many site wide credits would not have the necessary evidence at this time. Trigger to be amended accordingly.	N/A

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No	Section 106 Schedule and Clause	Obligation	Proposed Amendment	Reason for Change	Evidence Base where applicable
5	13 th Schedule, Clause 1.4	Will obtain and provide to the District Council a Final Code Certificate issued by an Assessor for each Dwelling within 6 months of Practical Completion of that Dwelling certifying that Code Level 5 of the Code for Sustainable Homes has been achieved for it.	Will obtain and provide to the District Council a Final Code Certificate issued by an Assessor for each Dwelling within <u>6</u> months of Practical Completion of that <u>Dwelling Phase</u> certifying that Code Level 5 of the Code for Sustainable Homes has been achieved for it.	As currently worded, this trigger cannot be satisfied. Certificates are issued on scheme completion (on a phased basis). It is impractical to deal with this on a plot by plot basis. Trigger to be amended accordingly.	N/A
6	13 th Schedule, Clause 1.5	Will Construct or procure the Construction of all non-residential buildings in the Development to BREEAM excellent standards.	Will Construct or procure the Construction of all non-residential buildings, <u>other than the energy centre</u> , in the Development to BREEAM excellent standards.	Agreed in meeting with Cherwell District Council (Jenny Barker and Caroline Ford) on 2 June 2016, that this obligation should be amended to exclude the energy centre.	N/A
7	13 th Schedule, Clause 1.6	Will not cause or permit the Construction of any non-residential buildings until a Design Assessment Certificate has been issued by an Assessor for it certifying that BREEAM excellent standard will be achieved and such Design Assessment Certificate has been provided to the District Council.	Will not cause or permit the Construction of any non-residential buildings, <u>other than the energy centre</u> , until a Design Assessment Certificate has been issued by an Assessor for it certifying that BREEAM excellent standard will be achieved and such Design Assessment Certificate has been provided to the District Council.	Agreed in meeting with Cherwell District Council (Jenny Barker and Caroline Ford) on 2 June 2016, that this obligation should be amended to exclude the energy centre.	N/A
8	13 th Schedule, Clause 1.7	Will not cause or permit any non-residential building in the Development to be Occupied until a Post Construction Certificate has been issued by an Assessor for it certifying that BREEAM excellent standard has been achieved and such Post Construction Certificate has been provided to the District Council.	Will not cause or permit any non-residential building in the Development, <u>other than the energy centre</u> , to be Occupied until a Post Construction Certificate has been issued by an Assessor for it certifying that BREEAM excellent standard has been achieved and such Post Construction Certificate has been provided to the District Council.	Agreed in meeting with Cherwell District Council (Jenny Barker and Caroline Ford) on 2 June 2016, that this obligation should be amended to exclude the energy centre.	N/A
9	13 th Schedule, Clause 1.8	Prior to commencement of Construction of any Relevant Infrastructure Works will provide to the District Council a CEEQUAL Excellent Certificate for those works;	Prior to commencement of Construction of any Relevant Infrastructure Works will provide to the District Council a CEEQUAL Excellent <u>Interim Client and Outline Design Award</u> Certificate for those works. <u>On completion of any Relevant Infrastructure Works, will provide to the District Council a CEEQUAL Excellent Whole Team Award Certificate.</u>	As currently worded, this trigger cannot be satisfied. Required to be broken down further in terms of triggers. The Design Stage Certificate should be provided prior to commencement, and the final Certificate should be provided on completion.	N/A

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No	Section 106 Schedule and Clause	Obligation	Proposed Amendment	Reason for Change	Evidence Base where applicable
10	13 th Schedule, Clause 1.9	Will not cause or permit the Construction of any Relevant Infrastructure Works until a CEEQUAL Excellent Certificate for those works has been provided to the District Council.	Will not cause or permit the Construction of any Relevant Infrastructure Works until a CEEQUAL Excellent <u>Interim Client and Outline Design Award</u> Certificate for those works has been provided to the District Council. <u>On completion of any Relevant Infrastructure Works, will provide to the District Council a CEEQUAL Excellent Whole Team Award Certificate;</u>	As currently worded, this trigger cannot be satisfied. This obligation needs to be broken down further in terms of triggers. The Design Stage Certificate should be provided prior to commencement, and the final Certificate should be provided on completion.	N/A
11	17 th Schedule off Site Highway Work Part 2 Clause 4	Bus Lay-By Works (in principle drawing 7207 UA001881 Issue 6) Bus lay-by on the western side of the B4100 to the north of the South Entrance Works together with associated footway works linking up to the South Entrance Works and to include (a) sheltered Sheffield stand cycle parking; and (b) a bus shelter with seats of a design to be approved by the County Council and which accommodates the installation and operation of a real time information display unit at the shelter and associated works including ducting to accommodate the cabling for a real time information display unit with cabling to the junction where the sub-surface ducting connects to the 'riser' ducting at the shelter.	Bus Lay-By Works (in principle drawing 7207 UA001881 Issue 6) Bus lay-by on the western side of the B4100 to the north of the South Entrance Works together with associated footway works linking up to the South Entrance Works and to include (a) sheltered Sheffield stand cycle parking; and (b) a bus shelter with seats of a design to be approved by the County Council and which accommodates the installation and operation of a real time information display unit at the shelter and associated works including ducting to accommodate the cabling for a real time information display unit with cabling to the junction where the sub-surface ducting connects to the 'riser' ducting at the shelter.	The pavement within the bus lay-by is not wide enough to accommodate cycle parking. In consultation with Oxfordshire County Council, the cycle parking has therefore been moved adjacent to the bus stop near the Charlotte Avenue Junction.	N/A
12	18 th Schedule, Clause 4.1	Not to cause or permit Implementation in respect of any part of Phase 3 or Phase 4 (other than levelling works and provision of haul road) until the Spine Road Phase 2 has been completed to adoption standard to binder course level (but with iron work flush with the binder course) in accordance with the provisions of the Section 38 Agreement for the Spine Road Phase 2 and opened to vehicular and pedestrian traffic (including buses).	Not to cause or permit Implementation in respect of any part <u>Not to permit the Occupation</u> of Phase 3 or Phase 4 (other than levelling works and provision of haul road) until the Spine Road Phase 2 has been completed to adoption standard to binder course level (but with iron work flush with the binder course) in accordance with the provisions of the Section 38 Agreement for the Spine Road Phase 2 and opened to vehicular and pedestrian traffic (including buses).	A2Dominion requires this trigger to be pushed back as Phase 2 spine road will not be complete prior to commencement of Phase 3 and Phase 4.	Please refer to enclosed email from Tim Giddy dated 12 December 2017 entitled 18 th Schedule, Clause 4.1.
13	18 th Schedule, Clause 4.2	To cause or permit commencement of any works in respect of the Spine Road Phase 2 until there has been approved in writing by the County Council (with or without amendments and conditions) a scheme for the installation of cameras for monitoring the use of the part of the Spine Road	<u>To cause or permit commencement of any works in respect of the Spine Road Phase 2 until there has been approved in writing by the County Council, a scheme for monitoring of the part of the Spine Road Phase 2 that is to constitute a bus only route. The scheme</u>	It has been agreed between A2Dominion and Oxfordshire County Council that the need for cameras at the bus only route will be monitored. Installation will take place, subject to results of monitoring.	N/A

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		Phase 2 that is to constitute a bus only route (as shown indicatively on the On Site Highways Plan) such scheme to address the location of cameras their specification and installation which shall comply with all regulations and good practice guidance for camera enforcement of bus lanes (including Statutory Instruments 2005/2756 and Provisional Guidance of the 7 November 2005 as updated and replaced from time to time).	<u>should accommodate ducting and provision for other facilities and shall cost no more than X.</u> <u>The County Council shall monitor the bus route. The County Council should confirm no later than X whether a monitoring scheme is to be installed. The Developer shall implement the scheme in accordance with that approved by the County Council, up to a cost of X.</u>	Nb: Maximum cost for camera scheme to be agreed between parties.	
14	20 th Schedule, Clauses 2.1, 2.1.1 and 2.1.2.	Not to cause or permit the opening of any show home to visitors (or if earlier Occupation of any Dwelling or any other building at the Site) until the Travel Plan Co-ordinator has been appointed and is in post and the Owner and the Developer further covenant that A Travel Plan Co-ordinator shall be in post from the date of appointment of the first Travel Plan Co-ordinator until 10 years from the date of Occupation of the final Dwelling. A Travel Plan Co-ordinator may be employed on a part time basis but the aggregate of the hours worked by the Travel Plan Co-ordinator plus his support team (which may include as appropriate consultants) shall be no less than 22 hours per week. The Travel Plan Co-ordinator or his representative with responsibility for liaising with and assisting residents/ proposed residents of any Dwelling at the Site and those employed at premises at the Site shall be employed to work from a location at the Site on no less than 3 days per week and preferably over 5 days per week until the Occupation of the final Dwelling and thereafter on this basis pending agreement of a revised schedule by the Developer and the Owner and the County Council (all parties acting reasonably).	Not to cause or permit the opening of any show home to visitors (or if earlier Occupation of any Dwelling or any other building at the Site) until the Travel Plan Co-ordinator has been appointed and is in post and the Owner and the Developer further covenant that A Travel Plan Co-ordinator shall be in post from the date of appointment of the first Travel Plan Co-ordinator until 10 <u>2</u> years from the date of Occupation of the final Dwelling. a Travel Plan Co-ordinator may be employed on a part time basis but the aggregate of the hours worked by the Travel Plan Co-ordinator plus his support team (which may include as appropriate consultants) <u>shall be reviewed and phased in line with the phased delivery of the Development starting at 2 days (14 hours) per week from the Occupation of the first Dwelling, and up to shall be</u> no less than 22 hours per week <u>from date of final Occupation.</u> The Travel Plan Co-ordinator or his representative with responsibility for liaising with and assisting residents/ proposed residents of any Dwelling at the Site and those employed at premises at the Site shall be employed to work from a location at the Site <u>where possible from first Occupation and move to the Interim Community Centre once available</u> on no less than 3 <u>2</u> days <u>(14 hours)</u> per week and preferably over 5 <u>4</u> days per week until the Occupation of the final Dwelling and thereafter on this basis pending agreement of a revised schedule by the Developer and the Owner and the County Council (all parties acting reasonably).	The current obligation would result in an overlap of monitoring requirements, once Applications One (14/01384/OUT) and Two (LPA ref 14/01641/OUT) come forward.	Please refer to the proposed amendments to the Travel Plan Coordinator role originally shared between Cherwell District Council and A2Dominion on 30 June 2016. In addition, please refer to the enclosed correspondence between Cherwell District Council and A2Dominion dated 18 July 2016 in which amendments were agreed.
15	20 th Schedule, Clause 3.1	Not to cause or permit the Occupation of any Dwelling until it has placed the Cycling Payment in an interest bearing account with a major bank and provided evidence to this effect to the County Council.	<u>The Developer to submit a Cycle Scheme to the County Council for approval. The Cycle Scheme shall cost no more than £100,000 (index linked). The Developer shall implement the Cycle Scheme accordingly.</u>	Agreed in meeting with Cherwell District Council (Jenny Barker and Caroline Ford) on 2 June 2016, that this obligation should be amended. A2Dominion to manage expenditure rather than placing payment into an interest bearing account with a major bank.	N/A

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16	21 st Schedule, new clause 6.1.3	A2D propose a new clause is introduced (6.1.3)	<u>If the bus operator is not satisfactory and is dismissed early, the Developer would notify the Council. If this occurred, an agreement could be made between parties that Oxfordshire County Council could serve a termination notice earlier than three years.</u>	The Termination Notice is a three years' notice. The Grayline service commencement date is 3 May 2016. The contract expires on 2 May 2019. If Grayline are not satisfactory and are dismissed early, the Developer would notify the Council. If this occurred, an agreement could be made between parties that Oxfordshire County Council could serve a termination notice earlier than three years.	N/A
17	23 rd Schedule, paragraphs 9, 9.1, 9.2, 9.3, 9.4	The Owner and the Developer covenant with the County Council to establish prior to the Occupation of any Dwelling an interest bearing account with a major bank and deposit in such account 9.1 Prior to the Occupation of any Dwelling at Phase 1 £191,761 Index Linked (Baxter) 9.2 Prior to the Occupation of any Dwelling at Phase 2 £191,761 Index Linked (Baxter) 9.3 Prior to the Occupation of any Dwelling at Phase 3 £191,761 Index Linked (Baxter) 9.4 Prior to the Occupation of any Dwelling at Phase 4 £191,761 Index Linked (Baxter) And not to cause or permit the Occupation of the first Dwelling to be Occupied at Phase1, Phase 2, Phase 3 or Phase 4 until in each case the sum of £191,761 Index Linked (Baxter) has been deposited in such account.	The Owner and the Developer covenant with the County Council to establish prior to the Occupation of any Dwelling an interest bearing account with a major bank and deposit in such account 9.1 Prior to the Occupation of any Dwelling at Phase 1 £191,761 Index Linked (Baxter) 9.2 Prior to the Occupation of any Dwelling at Phase 2 £191,761 Index Linked (Baxter) 9.3 Prior to the Occupation of any Dwelling at Phase 3 £191,761 Index Linked (Baxter) 9.4 Prior to the Occupation of any Dwelling at Phase 4 £191,761 Index Linked (Baxter) And not to cause or permit the Occupation of the first Dwelling to be Occupied at Phase1, Phase 2, Phase 3 or Phase 4 until in each case the sum of £191,761 Index Linked (Baxter) has been deposited in such account.	A2Dominion understands that the County will no longer be taking on responsibility for managing the SUDS. Obligation to be removed.	N/A
18	Appendix 5	Local lettings plan	Local Letting Plan to be superseded.	Local Letting Plan reviewed in line with CDC Strategic Housing Team requirements. Original Local Letting Plan to be superseded with the enclosed version.	Please find enclosed the amended Local Letting Plan.
19	Appendix 17	Eco Town Standards Monitoring Scheme	Monitoring Schedule to be superseded.	A2Dominion and CDC has agreed a revised Post Occupancy Monitoring Eco Town Standards Scheme.	Please find enclosed the amended Post Occupancy Eco Town Standards Monitoring Scheme.
20	Appendix 28	School intervention plans	School intervention plan to be superseded.	Plan changed through agreement with OCC to reflect the final approved design of the school. Original plan to be superseded with that enclosed.	Please find enclosed plan entitled "Intervention Plan" ref 14-1585 06 P02.