

Dated: 25/06/21

2021

FAREHAM BOROUGH COUNCIL

and

ISLE OF WIGHT COUNCIL

and

HEATON FARMS LIMITED

AGREEMENT

pursuant to Section 106 of the Town and Country
Planning Act 1990, Section 33 of the Local
Government (Miscellaneous Provisions) Act 1982
and other powers relating to land at New Road,
Porchfield, Newport, Isle of Wight

**Southampton & Fareham Legal Services Partnership
Southampton City Council
Civic Offices
Southampton
SO14 7LY**

Ref: ENV-037310

BETWEEN:

- (1) **FAREHAM BOROUGH COUNCIL** of Civic Offices, Civic Way, Fareham, Hampshire, PO16 7AZ ("the Council");
- (2) **ISLE OF WIGHT COUNCIL** of County Hall, High Sreet, Newport, Isle of Wight, PO30 1UD ("IWC"); and
- (3) **HEATON FARMS LIMITED** (Company Registration Number 06809458) whose registered office is at Tagents Farm, Graffham, Petworth, GU28 0NL ("the Owner")

RECITALS

- A The Council is the local planning authority for the purposes of the Act for the area in which Development Land is situated.
- B IWC is the local planning authority for the purposes of the Act for the area in which the Mitigation Land is situated.
- C The Owner is the freehold owner of the Mitigation Land registered with title absolute at the Land Registry under Title Number IW84211
- D In accordance with the Habitats Regulations the Council may only grant planning permission where it is satisfied that there will not be adverse effect on the European Designated Sites as a result of the proposed development.
- E High levels of nitrates in the European Designated Sites means that the Council cannot be satisfied that additional residential accommodation will not have an adverse effect as a result of increased levels of nitrogen being discharged via wastewater treatment works.
- F In order to ensure that there is no such adverse effect, it is proposed to offset the increase in nitrogen arising from the Occupation of a Development by inter alia imposing appropriate and counter-balancing restrictions on proportionate parts of the Mitigation Land.
- G The Council, IWC and the Owner have agreed to enter into this Deed in order to regulate the use of the Mitigation Land in contemplation of applications for planning permission in respect of future residential development in the Council's area.

IT IS AGREED AS FOLLOWS:

1 DEFINITIONS

- 1.1 In addition to the definitions set out below, a series of specific definitions are included in the Schedule to this Deed giving further defined terms and expressions to facilitate interpretation and unless stated to the contrary the specific definitions in the Schedule shall apply throughout this Deed where the relevant terms and expressions are used.
- 1.2 In this Deed the following expressions shall have the meanings indicated:

"1982 Act"	The Local Government (Miscellaneous Provisions) Act 1982
"Act"	The Town and Country Planning Act 1990 (as amended)
Activation Date	The date of service of the first Notice of Purchase

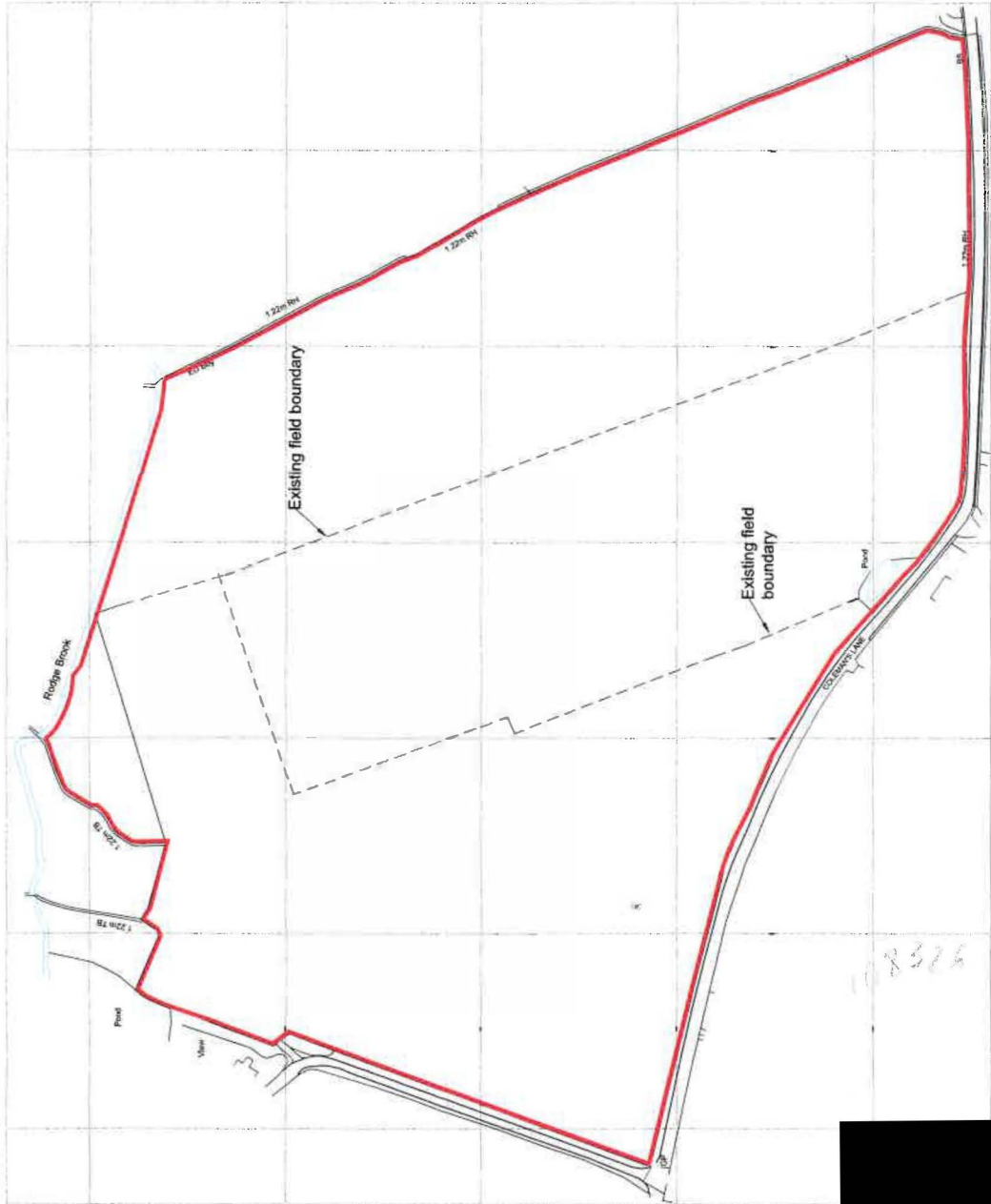
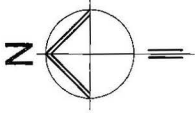
“Agreement to Purchase”	An agreement entered into by the Owner and a developer for the purchase of Credits
“Agriculture”	(a) use for horticulture, fruit growing, seed growing (including the growing of cereal crops); (b) use for dairy farming; (c) use for the breeding and keeping of livestock (any creature kept for the production of food, wool, skins or fur or for the purpose of its use in the farming of land); (d) use of the land as grazing land; and (e) use as market gardens or nursery grounds, and ‘Agricultural’ shall be construed accordingly
“Application”	Any planning application for residential development submitted to and validated by the Council
“Commence”	The carrying out of a “material operation” (as defined in section 56(4) of the Act) in connection with a Development (and “Commencement” and “Commenced” shall be construed accordingly)
“Credits”	Credits sold by the Owner to a developer that correspond to the Credits Linked Land where one Credit equates to 1 Kg of total Nitrogen reduction (as against historic discharges on the Mitigation Land) in discharges from the relevant Credit Linked Land each year
“Credits Linked Land”	Such part of the Mitigation Land identified in the Notice of Purchase and which area corresponds to the number of Credits purchased in order to off-set anticipated additional nitrates from a particular development, and which for the avoidance of doubt shall not correspond to more than one specified development
“Deed”	This agreement made by deed
“Development”	The development of Development Land in accordance with a Permission
“Development Land”	The land which is the subject of an Application
“End Date”	The date 125 years from the date of this Deed
“European Designated Sites”	Collectively the Solent and Southampton Water Special Protection Area (SPA) and Ramsar site, Portsmouth Harbour SPA and Ramsar site, Chichester and Langstone Harbours SPA and Ramsar site, the Solent Maritime Special Area of Conservation and the Solent and Dorset Coast SPA
“Five Year Date”	The date five years from the Activation Date
“Habitats Regulations”	The Conservation of Habitats and Species Regulations 2017
“Legal Costs”	The Council’s reasonable legal costs incurred in the preparation and execution of this Deed in the maximum sum of £[]

"Mitigation Land"	The land known as land at New Road, Porchfield, Newport, Isle of Wight shown for identification purposes only edged with a red line on Plan 1
"Monitoring Report"	A report prepared by or on behalf of the Owner demonstrating how it has complied with its obligations in this Deed in respect of its management and use of the Mitigation Land, including a comprehensive list and plan showing the extent of the Mitigation Land that has become Credits Linked Land at the time of the report, the first such report to cover the period since the date of this Deed and thereafter the period since the date of the previous Monitoring Report
"Notice of Purchase"	<p>A written notification (from the Owner to the Council) of the purchase of Credits to include the following information:</p> <ul style="list-style-type: none"> • Name of developer purchasing the Credits; • Details of the Development to benefit from the Credits, to include application number, description and location; • Number of Credits purchased; • Nitrogen budget for the Credits Linked Land; • Details of the Credits Linked Land to include a plan with the Credits Linked Land clearly identifiable and specifying the size of the Credits Linked Land in hectares.
"Occupation"	Occupation for the purposes permitted by a 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 "Occupy" and "Occupied" shall be construed accordingly
"Plan 1"	The plan annexed hereto and marked "Plan 1" showing the Mitigation Land edged red
"Permission"	A full or outline planning permission subject to conditions to be granted by the Council pursuant to an Application (and for the avoidance of doubt to include any modifications of such planning permission and variations of conditions attaching to such planning permission, and any minor or non-material amendments to such planning permission provided such modifications, variations or amendments do not increase the number of Credits required for the Development)
"Residential Units"	Individual units within a Development to be used for residential purposes (and for the avoidance of doubt this definition shall include houses and flats as appropriate)
"Twenty Year Date"	The date twenty years from the Activation Date
"Twenty Year Verification Contribution"	The sum of £12,500.00 (twelve thousand five hundred pounds) to cover IWC's costs of monitoring compliance with this agreement until the Twenty Year Date as set out in paragraphs 3 and 4 of the Schedule to this Deed, and calculated based on 20 visits at a cost of £625 per visit.

PLAN 1

Ownership Plan
Colemans Lane,
Newport,
Isle of Wight

1:2500 on A3
Revision: -



138040

AUTHORISED
SIGNATORY

"Verification Contribution"	A sum to reflect the reasonable costs per visit incurred by IWC in monitoring compliance with this agreement between the Twenty Year Date and the End Date.
"Woodland Planting Scheme"	means a scheme for the planting of trees on the Mitigation Land, to include details of number and species of trees and timing of planting, and measures for maintaining and encouraging the successful growth of the trees for a minimum of ten years after planting, and which shall be designed in accordance with the principles of IW Core Strategy Policy DM12 and so as to ensure that there will be a minimum of 20% canopy cover across the Mitigation Land at maturity.

2 INTERPRETATION

- 2.1 Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Deed.
- 2.2 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all words shall be construed interchangeable in that manner.
- 2.3 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 2.4 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.5 References to any party to this Deed shall, to the full extent permitted by law, include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successors to their respective statutory functions.
- 2.6 References to "the parties" shall mean the parties to this Deed and reference to a "party" shall mean any one of the parties.
- 2.7 The headings and contents list are for reference only and shall not affect construction.
- 2.8 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

3 STATUTORY AUTHORITY

- 3.1 This Deed is made pursuant to Section 106 of the Act, Section 33 of the 1982 Act and Section 1 of the Localism Act 2011. The covenants, restrictions and requirements imposed upon the Owner under this Deed create covenants pursuant to Section 106 of the Act and Section 33 of the 1982 Act and are enforceable by the Council and IWC against the Owner, and to the extent permitted by law, its successors in title and any person deriving title in the Mitigation Land or any part of it from the Owner.

4 EFFECT OF THE AGREEMENT

- 4.1 Subject to clause 4.2 this Deed shall take effect on the day and year first before written.

4.2 The covenants contained in Paragraph 1 of the Schedule to this Deed shall only take effect in respect of each area of Credits Linked Land on the date of service of the Notice of Purchase in respect of that Credits Linked Land.

4.3 On service by the Owner on the Council of a Notice of Purchase the land identified within that notice shall become Credits Linked Land.

5 THE OWNER'S COVENANTS

5.1 The Owner hereby covenants with the Council pursuant to section 33 of the 1982 Act that it will observe and perform the covenants contained in the Schedule to this Deed subject to the operation of clauses 4.2 and 7.2 of this Deed.

5.2 The Owner hereby covenants with IWC pursuant to section 106 of the Act that it will observe and perform the covenants contained in the Schedule to this Deed subject to the operation of clauses 4.2 and 7.2 of this Deed.

6 IWC'S COVENANTS

6.1 IWC hereby covenants with the Council that it will observe and perform the covenants contained in paragraph 4 of the Schedule to this Deed subject to the operation of clauses 4.2 and 7.2 of this Deed.

7 RELEASE AND LAPSE

7.1 It is hereby agreed that Owner shall not be liable for a breach of any of its obligations under this Deed (save for antecedent breaches) after it shall have parted with all of its respective interests in the Mitigation Land.

7.2 Where any Permission expires without having been Commenced or where any Permission is quashed following a successful legal challenge the Credits Linked Land relating to that Permission (via a Notice of Purchase) shall be released automatically on such expiry or quashing of such Permission from the covenants contained in the Schedule to this Deed so that the Owner shall then be entitled to serve a fresh Notice of Purchase in relation to that Credits Linked Land.

8 LAND CHARGES

8.1 This Deed is a local land charge and shall be registered as such by IWC.

8.2 Upon the full satisfaction of all the terms of this Deed the Owner may request that IWC procure that all entries in the register of local land charges relating to it other than those obligations which are of continuing effect be removed as soon as reasonably practicable.

9 DUTY TO ACT REASONABLY

9.1 All parties to this Deed acknowledge that they are under a duty to act reasonably and (without prejudice to generality) if any deed consent approval or expression of satisfaction is due from one party to another under the terms of this Deed the same shall not be unreasonably withheld or delayed.

10 NO FETTER ON DISCRETION OR WAIVER

10.1 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council or IWC under all statutes by-laws statutory

instruments orders and regulations in the exercise of their respective functions as a local authority.

10.2 Nothing in this Deed shall impose any contractual or other obligations on the Council to grant a Permission.

10.3 No waiver (whether expressed or implied) by the Council or IWC of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council or IWC from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

11 COVENANT AS TO TITLE

11.1 The Owner hereby covenants with the Council and IWC that no person other than the parties to this Deed has any interest in the Mitigation Land.

12 SEVERABILITY

12.1 It is agreed that if any part of this Deed shall be declared unlawful or invalid by a court of competent jurisdiction then (to the extent possible) the remainder of this Deed shall continue in full force and effect.

13 COUNCIL AND IWC COSTS

13.1 The Owner hereby covenants with the Council that it will on or before the date of this Deed pay the Council's Legal Costs.

13.2 The Owner hereby covenants with the IWC that it will on or before the date of this Deed pay the IWC's reasonable legal costs incurred in the preparation and execution of this Deed in the maximum sum of £[]

14 CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999 and NO EXCLUSIVITY

14.1 Subject to the remaining provisions of this clause 14, and notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 no part of this Deed shall be enforceable by a third party who is not a party to the Deed and for the avoidance of doubt the terms of this Deed may be varied by Deed between the parties and the Council without the consent of any such third party.

14.2 For the avoidance of any doubt this deed does not grant the Council any exclusive rights in relation to the Mitigation Land and the Owner is free without consent of the other parties to this deed to enter into separate arrangements with other local planning authorities in relation to the Mitigation Land whether for similar purposes to this deed or otherwise SAVE THAT once any part of the Mitigation Land has become Credits Linked Land that part shall not be the subject of separate new commitments by the Owner in favour of another local planning authority where such commitments in effect duplicate the provisions of the Schedule to this deed.

15 NOTICES

15.1 Any notices required to be served by one party on another under this Deed shall be served by First Class prepaid post or (in the case of the Council being the recipient) by email in the following manner:

15.1.1 on the Council at the address shown above or by email to devcontrol@fareham.gov.uk marked "for the attention of the Head of Development Management";

15.1.2 on IWC at the address as detailed above; and

15.1.3 on the Owner at the address as detailed above or as notified by the Owner in writing to the Council and IWC.

15.2 Notices served in accordance with this clause 15 shall be deemed received (a) where sent by first class prepaid post, by 4pm on the second working day following posting and (b) where sent by email to the Council, by 9am on the first working day following sending of the email.

16 NOTIFICATION OF SUCCESSORS IN TITLE

16.1 The Owner covenants with the Council and IWC that it will give immediate written notice to the Council and IWC of any change of ownership of the Mitigation Land if at such time the obligations contained within this Deed have not fully 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 Mitigation Land purchased by reference to a plan.

17 JURISDICTION

17.1 This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

18 DELIVERY

18.1 This Deed is for the purposes of the Regulatory Reform (Execution of Deeds and Documents) Order 2005 a deed and for the avoidance of doubt the Deed shall be deemed not delivered despite being executed by the parties until such time as it is dated.

SCHEDULE

THE COVENANTS

The Owner covenants with the Council and IWC as follows:

1. COVENANTS REGULATING USE OF THE MITIGATION LAND

1.1 Subject to paragraph 1.2 of this Schedule not to use any parcel of Credits Linked Land for Agriculture or deposit or permit the deposit of any fertiliser on the Credits Linked Land during the lifetime of the Development that is assigned to that parcel of Credits Linked Land.

1.2 Notwithstanding the provisions of paragraph 1.1 of this Schedule, the following activities (without limitation) shall for the avoidance of doubt be permitted:

- 1.2.1 The harvesting and removal of any existing crop in the ground at the Activation Date provided no additional fertiliser inputs are applied;
- 1.2.2 the planting and management of trees in accordance with the Woodland Planting Scheme;
- 1.2.3 leaving the Credits Linked Land naturally to regenerate;
- 1.2.4 planting and maintaining greensward;
- 1.2.5 creating and maintaining open space;
- 1.2.6 creating and maintaining forestry rides;
- 1.2.7 the carrying out and maintenance of any planting scheme or woodland management plan that is first approved by Natural England, the Forestry Commission, or any other authority for the time being with relevant responsibility for land such as the Mitigation Land

provided no further fertiliser inputs are applied.

1.3 By no later than two months after the Activation Date to submit to the Council for its written approval the Woodland Planting Scheme, such approval to be given only after consultation with the IWC but not to be unreasonably withheld or delayed.

1.4 Following approval of the Woodland Planting Scheme, to implement and thereafter comply with the approved Woodland Planting Scheme:

- (a) in so far as it relates to any parcel of land that becomes Credits Linked Land; and
- (b) so that any required planting shall take place no later than the next planting season following such parcel of land becoming Credits Linked Land (but may occur earlier).

1.5 The parties acknowledge that the Woodland Planting Scheme may need to be varied from time to time. Any such variation may be proposed by the Owner and then will be subject to approval in line with the process contemplated by paragraph 1.3 of this schedule.

2. NOTIFICATION REQUIREMENTS

- 2.1 Upon completion of any sale of Credits, but only once the Owner has been paid in full for such sale, the Owner shall immediately send the relevant Notice of Purchase to the Council and IWC.

3. MONITORING CONTRIBUTIONS

- 3.1 The Owner undertakes to IWC to pay the Twenty Year Verification Contribution to IWC on or before the Activation Date.
- 3.2 The Owner undertakes to IWC and FBC to send a Monitoring Report to IWC at the following intervals:
- 3.2.1 Annually from the Activation Date until the Twenty Year Date; and
 - 3.2.3 Every five years from the Twenty Year Date until the End Date; and
 - 3.2.4 Once in the final year ending on the End Date
- 3.3 The Owner undertakes to IWC to pay, on written demand by way of a notice in accordance with this Deed, the Verification Contribution to IWC for the IWC carrying out its monitoring obligations at paragraph 4.1.2 and 4.1.3 of this Schedule. Such demand shall not be given by IWC before completion of the monitoring obligations on a year by year basis.

IWC OBLIGATIONS

4. MONITORING

- 4.1 IWC shall monitor the obligations insofar as they relate to the Mitigation Land by way of a physical visit to the Mitigation Land (such access hereby permitted by the Owner) to inspect the Mitigation Land, verify the contents of the Monitoring Report and provide as soon as practicable afterwards a written report to the Council of the findings of their visit, at the following intervals:
- 4.1.1 Annually from the Activation Date until the Twenty Year Date; and
 - 4.1.2 Every five years from the Twenty Year Date until the End Date; and
 - 4.1.3 One visit in the final year ending on the End Date.

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

107316

THE COMMON SEAL OF)
FAREHAM BOROUGH COUNCIL)
was affixed in the presence of:)



Authorised Signatory:

THE COMMON SEAL OF)
ISLE OF WIGHT COUNCIL)
was affixed in the presence of:)



Authorised Signatory:

138041

BEN GARD
PRINCIPAL LAWYER
AUTHORISED SIGNATORY
ISLE OF WIGHT COUNCIL

EXECUTED AS A DEED by)
HEATON FARMS LIMITED *acting by a director*)
in the presence of:)



With *Ad*
Director: 

Director

Director/Secretary: *PETER FELLOW*
1000 LAKEIDE
PORETSMOUTH
SOLICITOR