

Corby Borough Council

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PLANNING SERVICES

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**TOWN AND COUNTRY PLANNING ACT 1990,
Section 106A**

NOTICE OF THE MODIFICATION OF PLANNING OBLIGATIONS

Gateley Plc (RJZW)
Park View House
58 The Ropewalk
Nottingham
NG1 5DW

Our Ref:

Date: 25.08.16

Dear Sir

APPLICATION REF: 04/00442/OUT

Notice of Modification of planning obligations :

(i) agreement dated 4 July 2006 between Corus UK Limited (1) Corby Borough Council (2) and Northamptonshire County Council (3) in respect of Land South of Long Croft Road, Corby ; and

(ii) agreement dated 27 July 2008 between Silentpride Limited (1) Corby Borough Council (2) Northamptonshire County Council (3) and AIB Group (UK) Plc (4) in respect of part of the said land south of Long Croft Road, Corby ; and

(iii) agreement dated 6 September 2010 between Silentpride Limited (1) Corby Borough Council (2) Northamptonshire County Council (3) and AIB Group (UK) Plc (4)) in respect of part of the said land south of Long Croft Road, Corby

all made pursuant to Section 106 of the Town and Country Planning Act 1990

Applications :

(i) application to Corby Borough Council for modification of the said planning obligations in respect of the said land south of Long Croft Road, Corby dated 18 February 2016 by Silentpride Limited (in administration) and JME Civils Limited; and (ii) duplicate application made to Northamptonshire County Council in respect of the said land south of Long Croft Road, Corby dated 18 February 2016 by Silentpride Limited (in administration) and JME Civils Limited

In pursuance of the powers in section 106A (6) (c) of the above mentioned Act, the Borough Council as Local Planning Authority **HEREBY MODIFIES** the planning obligations specified in accordance with the submitted application as amended and duplicate application as amended in the terms set out in the schedule of modifications attached to this notice.



INVESTOR IN PEOPLE



Your attention is drawn to the NOTES overleaf

Yours faithfully

Director of Corporate Service

On behalf of Corby Borough Council

NOTES

(1) This Notice of the determination of applications pursuant to section 106A(8) is issued solely for the purpose of Section 106A of the Town and Country Planning Act 1990 (as amended).

(2) Northamptonshire County Council has arranged with Corby Borough Council for the discharge of its functions in respect of the duplicate application and authority to determine the duplicate application was transferred by Northamptonshire County Council to Corby Borough Council pursuant to section 101 of the Local Government Act 1972 by the Assistant Director Environment, Planning and Transport of Northamptonshire County Council on 24 August 2016 accordingly.

(3) If any further information is required in connection with this decision it may be sought from the Director of Planning Services, Corby Borough Council, The Cube, George Street, Corby, NN17 1QG. Please quote the reference number of this decision in any correspondence.

SECTION 106A TOWN AND COUNTRY PLANNING ACT 1990

Application to modify agreements dated 4 July 2006, 28 July 2008 and 6 September 2010

**relating to the development of land at Little Stanion Corby Northamptonshire
(the "Old Agreements")**

**SCHEDULE OF MODIFICATIONS:
PROPOSED REPLACEMENT TERMS**

This schedule of modifications sets forth in full the replacement wording of the recitals, operative clauses and schedules of the Old Agreements as proposed in this section 106A application

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THE REPLACEMENT RECITALS

The following recitals shall be substituted for the recitals contained in the Old Agreements:

INTRODUCTION

- 1 The Council is the local planning authority for the purposes of the Act for the area in which the Old Site and the Residual Site are situated.
- 2 The County Council is a local planning authority and the local highway authority and the local education authority under the relevant enactments for the area in which the Old Site and the Residual Site are situated.
- 3 Silentpride Limited (registered company number 5860814) of Berry House 4 Berry Street London ("the Owner") is the freehold owner of the Residual Site which is registered at the Land Registry with title absolute under the title number NN269359 subject to the matters identified in the charges register thereto
- 4 The Old Site and the Woodland Areas are subject to or referred to in the Old Agreements.
- 5 The Owner and JME Civils Limited have submitted the Application to the intent that the Old Agreements shall be modified in manner hereinafter appearing.
- 6 The Old Agreements have been modified pursuant to section 106A(8) with effect from the issue of the Decision Notice in the manner set out herein.
- 7 The parties acknowledge that the Councils have agreed to forego benefits secured by the Old Agreements in reliance upon the willingness of the Owner to enter and be bound by the terms of this Agreement

THE REPLACEMENT OPERATIVE CLAUSES

The following operative clauses shall be substituted for the operative clauses contained in the Old Agreements:

OPERATIVE PART

1. DEFINITIONS

For the purposes of this Deed the following expressions in column one shall have the meanings respectively ascribed to them in column two:

Column One

Column Two

“Acceptable Local Store Planning Permission”

a planning permission authorising the construction and use of the Local Store whose terms including without limitation the planning conditions imposed thereon and the planning obligations required in respect thereof shall be reasonably acceptable to the Owner;

“Acceptable NCB Planning Permission”

a planning permission authorising the construction and use of the NCB whose terms including without limitation the planning conditions imposed thereon and the planning obligations required in respect thereof shall be reasonably acceptable to the Owner;

“Acceptable Tata Land Contract”

a contract or option entitling the Owner or its nominee to acquire the Tata Land on terms acceptable to the Owner;

“Acceptable Tata Land Planning Permission”

a planning permission authorising Viable Tata Land Development granted in response to the Tata Land Application whose terms including without limitation the planning conditions imposed thereon and the planning obligations required in respect thereof shall be reasonably acceptable to the Owner;

“Act”

the Town and Country Planning Act 1990;

“Additional Dwelling Sale Profit”

the sum, (if any), calculated in accordance with the formula in Schedule 4, to be paid to the Council and the County Council within twenty one (21) days of the Additional Dwelling Sales Profit being agreed between the parties, (or in default of such agreement determined pursuant to the provisions of Clause 12), to be applied by the Council to the benefit of Little Stanion and or the residents thereof and the County Council for contributing towards the costs of Little Stanion Primary School;

“Application”

the application for modification or discharge of the Old Agreements submitted to the Council and the County Council on 18 February 2016 (as amended);

“Approved EVA”

the AspinallVerdi Viability Assessment of November 2015;

“Commencement of Development”

the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure or construction site compounds, the temporary display of site notices or advertisements and for the avoidance of doubt any development carried out under a separate full planning

	<p>permission for enabling works including formation of levels, sustainable urban drainage systems, proposed landscaping and/or internal highways and "Commence Development" shall be construed accordingly;</p>
"Decision Notice"	<p>a decision notice issued pursuant to section 106A authorising the modification of the Old Agreements in the terms set forth in the Application;</p>
"Development"	<p>the development of the Residual Site pursuant to any Further Permissions or such other development as may be agreed in writing between the Council the County Council and the Owner from time to time;</p>
"Dwelling"	<p>any building intended to be occupied as a dwelling (including a house flat or maisonette) on the Residual Site to be constructed pursuant to a planning permission granted before the date of the Decision Notice or a Further Permission;</p>
"First Occupation"	<p>the date on which a Dwelling is first Occupied;</p>
"Further Applications"	<p>(i) the Tata Land Application; and</p> <p>(ii) any application for planning permission (including outline planning permission) for development on the Residual Site submitted after the date of the Decision Notice which shall not be required to exceed a maximum of 165 units of residential accommodation, 400 square metres (gross external area) for the Local Store and 400 square metres (gross external area) for the NCB;</p>
"Further Obligation"	<p>any planning obligation entered into under section 106 of the Act (whether in any case also made under other powers) in respect of development authorised by a Further Permission after the date of the Decision Notice;</p>
"Further Permission"	<p>any planning permission granted (in outline or in full) in respect of development defined in a Further Application;</p>
"Index"	<p>the All Items Index of Retail Prices issued by the Office for National Statistics or in the event of discontinuance any replacement thereof or such alternative index as may be proposed by the Owner and agreed by the Council;</p>
"Interest"	<p>interest at two (2) per cent above the base lending rate of the National Westminster Bank Plc from time to time;</p>
"Little Stanion Community Payment"	<p>a sum payable once only in respect of each Dwelling being £11,000 (eleven thousand pounds) ~ LESS the aggregate cost of all the other planning benefits required to be paid to the Council or as the case may be the County Council, or provided in kind pursuant to any Further Obligation or payable by way of Community Infrastructure Levy when expressed on a 'per new housing unit' basis ~ which payment shall be used for contributing towards the costs of Little Stanion Primary School;</p>
"Little Stanion Up-lift Sum"	<p>a sum equal to 34% of the Additional Dwelling Sale Profit PROVIDED THAT the aggregate total sum payable by way of Little Stanion Community Payment and Little Stanion Up-lift Sum shall never exceed the Old Agreements Deficit which payment shall be used for contributing towards the costs of Little Stanion Primary School or such other matters benefiting the existing community occupying the Pre-Developed Land as the Council</p>

	and the County Council shall determine;
"Local Store"	a retail unit having a minimum gross external area of 400m ²
"Local Store Planning Condition"	<p>(i) the grant by the Council of an Acceptable Local Store Planning Permission; and</p> <p>(ii) the expiry of a period of six weeks after the grant of an Acceptable Local Store Planning Permission unless within the said period of six weeks legal proceedings have been commenced by any person to challenge the validity of the Acceptable Local Store Planning Permission in which case this pre-condition shall not be deemed to have been satisfied until the final determination of such proceedings (it being understood that such proceedings shall not be deemed to be finally determined for the purposes hereof until the expiry of any period allowed for any application for leave to appeal or the expiry of any period allowed in which to appeal pursuant to such leave if required) PROVIDED THAT the an Acceptable Local Store Planning Permission shall not be quashed in such proceedings)</p>
"Management Scheme"	reasonable written particulars of the Management Entity including its corporate structure directors and officers and the mechanism of funding of the Management Entity demonstrating to the satisfaction of the Council that the proposed Management Entity can carry out the management and maintenance of the Public Open Space;
"Maintenance Scheme"	written particulars that are in general conformity with the specification appearing at Schedule 5 of this Agreement to be agreed by the Council in writing specifying the regime of maintenance of the Public Open Space to be followed by the Owner and subsequent to the transfer of the Public Open Space to the Management Entity by the Management Entity subject to any variations thereto as may be proposed in writing by the Owner and approved in writing by the Council from time to time;
"Management Entity"	Little Stanion Farm Management Company Limited (registered company number 06373075) of 1 Adelaide House, Corby Gate Business Park, Priors Haw Road, Corby, Northamptonshire, NN17 5JG which shall be responsible for the long term maintenance and management of the Public Open Space in accordance with paragraph 12 of the Fourth Schedule;
"New Masterplan"	<p>a high level description of the development within the Residual Site that is in general conformity with Plan 2 to be submitted no later than the date on which the first Further Application is made to the Council and which shows at a minimum the principal locations and main identifying features of:</p> <ul style="list-style-type: none"> i) areas of Public Open Space ii) childrens' play areas (local area for play, local equipped area for play, neighbourhood equipped area for play, and multi use games area) iii) playing field iv) NCB v) Local Store vi) areas for Dwellings vii) main access ways and main spine roads
"NCB"	a new community building having a gross external area of a minimum of 400 square metres to be constructed on the NCB Site

to a standard and specification to be agreed with the Council acting reasonably

“NCB Planning Condition”

(i) the grant by the Council of an Acceptable NCB Planning Permission; and

(ii) the expiry of a period of six weeks after the grant of an Acceptable NCB Planning Permission unless within the said period of six weeks legal proceedings have been commenced by any person to challenge the validity of the Acceptable NCB Planning Permission in which case this pre-condition shall not be deemed to have been satisfied until the final determination of such proceedings (it being understood that such proceedings shall not be deemed to be finally determined for the purposes hereof until the expiry of any period allowed for any application for leave to appeal or the expiry of any period allowed in which to appeal pursuant to such leave if required) PROVIDED THAT the an Acceptable NCB Planning Permission shall not be quashed in such proceedings);

“NCB Site”

a site in the village centre south of the existing primary school the precise location and parameters of which shall be determined through the submission of a planning application for the NCB PROVIDED THAT the NCB Site shall have a gross area of at least 400 m2;

“NCB Transfer Terms”

the transfer of the NCB shall take place on the following basis:

- 1 the consideration shall be the sum of £1 (one pound);
- 2 the transfer shall be subject to all encumbrances that exist on the date of the transfer (save for financial charges) and the reservation of such rights and easements for the benefit of the Residual Site and/or any adjoining land retained by the Owner as are reasonably necessary and required in connection with the Development TOGETHER WITH such rights and easements as are reasonably necessary and required for the use and enjoyment of the relevant land for the purposes for which it is being transferred;
- 3 the covenants on the part of the Council in the transfer instrument shall include the following covenants:
 - (i) not to use or suffer the NCB to be used other than for the purposes for which it is being transferred for the benefit of members of the public;
 - (ii) to maintain the NCB Site in a clean and tidy condition consistent with its use at all times;
 - (iii) not to build or allow or suffer to be built any building on the NCB Site;
4. the NCB Site shall be offered in a Serviced Condition;
5. the benefit of all manufacturer's and other warranties shall be assigned to the Council on the date of completion of the transfer;

and if the transfer of the NCB were to be agreed by the Owner and the Council to take the form of the grant of a long lease by the Owner to the Council these terms shall apply mutatis mutandis to

	the grant of the said lease accordingly;
“Oakley Vale Cycleway Link”	a cycleway linking the Old Site with Oakley Vale whose precise specification and route parameters shall be agreed or determined in accordance with this Deed;
“Occupation” “Occupy” and “Occupied”	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;
“Old Agreements”	collectively the following: <ul style="list-style-type: none"> (i) an agreement between Corus UK Limited (1) the Council (2) and the County Council (3) under section 106 of the Act dated 4 July 2006 in respect of the Old Site; and (ii) an agreement between the Owner (1) the Council (2) and the County Council (3) and the Mortgagee (4) in respect of a part of the Site known as the ‘Berbank site’ under section 106 of the Act dated 28 July 2008; and (iii) a further agreement between the Owner (1) the Council (2) and the County Council (3) and the Mortgagee (4) in respect of that part of the Site known as the ‘Berbank site’ under section 106 of the Act dated 6 September 2010;
“Old Agreements Deficit”	the aggregate total of the quantified sums payable but not yet paid at the date of the Decision Notice to the Council or to the County Council pursuant to an agreement between Corus UK Limited (1) the Council (2) and the County Council (3) under section 106 of the Act dated 4 July 2006 in respect of the Old Site LESS the sum of £945,000 (nine hundred and forty-five thousand pounds) which was defined as the Community Facilities Contribution in the said agreement;
“Old Site”	the total site area bound by the Old Agreement of 4 July 2006 (which contains the Pre-Developed Land which is hereby released from liability under the Old Agreements pursuant to the Decision Notice) and which also contains the Residual Site in respect of which they remain enforceable subject to and in accordance with the modifications effected hereby;
“On-site Roads”	the carriageways footways and other infrastructure for the use of pedestrians or vehicles to pass and re-pass already partially constructed on the Old Site;
“On-site Sewers”	the drains and sewers already partially constructed on the Old Site to serve amongst other properties the Dwellings occupied on the Pre-Developed Land;
“OSH Specification”	a specification of works to on-site highways necessary and sufficient to make good on-site highways to an adoptable standard;
“OSH Programme”	a written programme setting out the time periods within which defined stages of the OSH Works are to be carried out;
“OSH Works”	works to on-site highways approved by the County Council as necessary and sufficient to make good on-site highways to an adoptable standard;

“OSS Specification”	a specification of works to on-site sewers necessary and sufficient to make good on-site sewers to an adoptable standard;
“OSS Programme”	a written programme setting out the time periods within which defined stages of the OSS Works are to be carried out;
“OSS Works”	works to on-site sewers approved by the Undertaker as necessary and sufficient to make good on-site sewers to an adoptable standard;
“Phase”	a phase of the Development to be submitted and approved as part of the relevant Further Application in relation to the Residual Site;
“Plan 1”	the plan annexed to this Agreement entitled “Little Stanion Farm Key Diagram ” drawing reference 1611-M01G;
“Plan 2”	the title plan in respect of registered title NN269359 a copy of which is incorporated herewith
“Planning Permission”	outline planning permission 04/00442/OUT dated 5 July 2006 whereby outline planning permission for residential and associated development was granted in respect of the Old Site;
“POS Application”	an application for planning permission for works to lay out or construct the Public Open Space for the benefit of existing and/or future residents of dwellings on the Pre-Developed Land or Dwellings on the Residual Site;
“POS Consultation”	such reasonable public consultation process as shall be agreed between the Owner and the Council (or determined in default of agreement pursuant to clause 12) in respect of the scope and nature of future Public Open Space Works to enable in particular the residents of Dwellings already constructed and occupied on the Pre-Developed Land a reasonable opportunity to express their opinions respecting the same;
“Practical Completion”	issue of a certificate of practical completion by the Owner’s architect or in the event that the Development is constructed by a party other than the Owner the issue of a certificate of practical completion by that other party’s architect and the terms “Practically Completed” shall be construed accordingly;
“Pre Developed Land”	that part the Old Site on which some residential development has already taken place being all of the Old Site other than the Residual Site;
“Provisional Up-lift Calculation”	a written calculation by the Owner in respect of whether and to what extent any Additional Dwelling Sale Profit arises including without limitation an appraisal summary substantially in the form of the Approved Appraisal Summary amended as required in order to record the outcome of the calculation of Additional Dwelling Sale Profit;
“Public Open Space”	the areas of the Residual Site indicated as open space or recreational areas shaded green or orange on Plan 1 the precise parameters of which are to be defined as such on a plan submitted by the Owner and approved in writing by the Council (or determined in accordance with clause 12) or such other area or areas of the Residual Site as shall be agreed in writing between the Council and the Owner from time to time;

“Reasonable Regulations”	such reasonable regulations as the Management Entity may impose from time to time for reasons of good estate management in the interests of the health safety and wellbeing of all those using the Public Open Space for lawful recreational purposes;
“Residual Site”	the part of the Old Site owned by Silentpride Limited and remaining within registered title NN269359 at the date of the Decision Notice as the same is shown for the purposes of identification on Plan 2;
“Serviced Condition”	In relation to the NCB Site the provision of all Service Installations and roads to the boundary thereof in accordance with a scheme approved by the Council;
“Service Installation”	any laying installation repair maintenance and or re-location of any pipes cables conduits or other service media for gas water electricity foul and surface water drainage telephonic or other communications or information conducting media in on under or over any part of the Old Site for the benefit of any part of the development already undertaken on the Pre-Developed Land or to be undertaken hereafter on any part of the Old Site including without limitation on the Residual Site and “Service Installations” means the said pipes cables conduits or other service media;
“Section 38 Agreement”	an agreement under section 38 of the Highways Act 1980 between the Owner and the County Council in respect of the On-Site Roads to the intent that the same shall become public highways maintainable at the public expense;
“Section 104 Agreement”	an agreement under section 104 of the Water Industry Act 1991 between the Owner and the statutory undertaker in respect of the On-Site Sewers to the intent that the same shall become public sewers maintainable at the expense of the undertaker as part of the public sewerage network;
“Silentpride Release”	the termination of the administration of Silentpride Limited following the sufficient achievement of the purpose of the administration and the administrators obtaining their discharge from liability in accordance with paragraph 98 of Schedule B1 IA86;
“Substantially Completed”	completed save for very minor defects so that the relevant works can be used for the purpose for which they were designed and “Substantial Completion” shall be construed accordingly;
“Tata Land”	the land owned by Tata adjacent to the north-eastern boundary of the Site the precise parameters of which are to be defined as such on a plan to be submitted by the Owner and approved in writing by the Council (or determined in accordance with clause 12);
“Tata Land Application”	an application for outline planning permission or full planning permission for residential development and ancillary infrastructure and open space up to a maximum of 125 units of residential accommodation on the Tata Land;
“Tata Land Planning Condition”	a contractual pre-condition which will be satisfied if and only if all of the following events have occurred: (i) the Owner or its nominee shall have entered into an Acceptable Tata Land Contract; and

(ii) the grant by the Council of an Acceptable Tata Land Planning Permission; and

(iii) the expiry of a period of six weeks after the grant of an Acceptable Tata Land Planning Permission unless within the said period of six weeks legal proceedings have been commenced by any person to challenge the validity of the an Acceptable Tata Land Planning Permission in which case this Deed is conditional upon the final determination of such proceedings (it being understood that such proceedings shall not be deemed to be finally determined for the purposes hereof until the expiry of any period allowed for any application for leave to appeal or the expiry of any period allowed in which to appeal pursuant to such leave if required) PROVIDED THAT the an Acceptable Tata Land Planning Permission shall not be quashed in such proceedings);

“Transfer”

the freehold transfer (or if the Owner and the Council shall so agree the creation of a long leasehold estate by the grant of such a lease by the Owner to the Council);

“Unconditional Date”

the date on which the last to occur of (i) the issue of the Decision Notice and (ii) the Silentpride Release shall occur;

“Viable Development”

development on the Residual Site of the form defined in a Further Application and which it would be financially viable for the Owner or its nominee to carry out according to a methodology and calculation agreed between the Owner or its nominee and the Council or determined in accordance with clause 12 in default of agreement PROVIDED THAT no development shall under any circumstances be considered viable if the aggregate cost of all the other relevant planning benefits required to be paid to the Council or as the case may be the County Council or provided in kind pursuant to any planning obligation or planning condition when expressed on a 'per new housing unit' basis shall exceed £11,000 (eleven thousand pounds);

“Viable Tata Land Development”

development on the Tata Land of the form defined in the Tata Land Application and which it would be financially viable for the Owner or its nominee to carry out according to a methodology and calculation agreed between the Owner or its nominee and the Council or determined in accordance with clause 12 in default of agreement;

“Welcome Centre Site”

the part of the Residual Site on which the building currently known as the 'Welcome Centre' is currently located.

“Woodland Areas”

the woodlands in respect of which pursuant to clause 6 of the Old Agreement dated 4 July 2006 a woodland management plan applies

2. CONSTRUCTION OF THIS DEED

2.1. Where in this Deed 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 Deed and for the avoidance of doubt references to “this Deed” are references to the planning obligations following modification of the Old Agreements effected by the Decision Notice pursuant to section 106A(8) of the Act notwithstanding the absence of execution of ‘this Deed’.

- 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 include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4. 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.
- 2.5. 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.
- 2.6. References to any party to this Deed shall 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 and County Council the successors to their respective statutory functions.
- 2.7. The headings and contents list are for reference only and shall not affect construction.

3. LEGAL BASIS

- 3.1. This records all the terms of all planning obligations enforceable in respect of the Residual Site pursuant to the Decision Notice and section 106A (8) of the Act.
- 3.2. The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council and the County Council in the case of covenants made with them as local planning authorities against the Owner in respect of the Residual Site.

4. CONDITIONALITY

- 4.1. Without prejudice to clause 4.2, this Deed is conditional upon the issue of the Decision Notice.
- 4.2. The obligations in Clauses 5, 6 and 9 and the First Schedule of this Deed are also conditional upon and shall not take effect unless and until the occurrence of the Silentpride Release and such occurrence shall be notified in writing by the Owner to the Council and the County Council.

5. THE OWNER'S COVENANTS

- 5.1. The Owner covenants with the Council and the County Council as set out in the First Schedule.

6. THE COUNCILS' COVENANTS

- 6.1. The Council in its capacity as the local planning authority covenants with the Owner as set out in the Second Schedule.
- 6.2. The County Council covenants with the Owner as set out in the Third Schedule.

7. MISCELLANEOUS

- 7.1. No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 7.2. This Deed shall be registrable as a local land charge by the Council.
- 7.3. Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Head of Planning and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.
- 7.4. Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 7.5. Insofar as any clause or clauses of this Deed 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 Deed.
- 7.6. This Deed shall cease to have effect if the determination of the Application by the issue of the Decision Notice shall be quashed or any of the modifications effected thereby are declared to have been unlawfully made.
- 7.7. No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Residual Site or in part of the Residual Site in respect of which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.8. This Deed shall not be enforceable against:
- 7.8.1. (for the avoidance of doubt) the Pre-Developed Land or any part thereof or any owner of any part thereof or any person deriving title to any part thereto from such owner;
 - 7.8.2. owner-occupiers or tenants of Dwellings (whether constructed pursuant to the Planning Permission, a Further Permission or any other planning permission granted prior to or after the date of the Decision Notice) nor against those deriving title from them; nor
 - 7.8.3. any statutory undertaker holding an estate or interest in the Residual Site or part of the Residual Site nor against plant equipment conduits or structures located there for its operational purposes; nor
 - 7.8.4. anyone whose only interest in the Residual Site or any part of it is in the nature of the benefit of an easement or covenant, or as the owner of the sub-soil of any highway within the Site; nor
 - 7.8.5. any person whose only interest in the Residual Site or any part of it is an estate or interest in any subterranean stratum of mineral or other matter.
- 7.9. Nothing in this Deed shall prohibit or limit the right to develop any part of the Residual Site in accordance with a planning permission (other than the Planning Permission or a Further Permission) granted (whether or not on appeal) after the date of this Deed nor shall any payment be due to the Council or the County Council pursuant to this Agreement as a result of any development carried out pursuant to such later planning permission.

8. WAIVER

- 8.1. No waiver (whether expressed or implied) by the Council or the Owner 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 the County Council or Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

9. CHANGE IN OWNERSHIP AND MONITORING

- 9.1. The Owner agrees with the Council to give to the Council within 10 working days the Council written notice of any change in ownership of any of its interests in the Residual Site (save for any transfer in respect of a Dwelling or to any other person against whom this Agreement is not enforceable pursuant to clause 7.8.2 to 7.8.5 inclusive occurring before all the obligations under this Deed 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 Residual Site purchased by reference to a plan.
- 9.2. From the Commencement of Development the Owner shall notify the Council in writing upon the Occupation of every 30 Dwellings constructed pursuant to any planning permission granted in respect of development which is the subject of a Further Application.

10. INTEREST

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

11. VAT

- 11.1. All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable but no value added tax shall be payable by any person other than pursuant to a valid value added tax invoice addressed to that person.

12. DISPUTE PROVISIONS

- 12.1. In the event of any dispute or difference arising between the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.
- 12.2. In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 12.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.
- 12.3. Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more

than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.

- 12.4. The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.

13. COMMUNITY INFRASTRUCTURE LEVY

- 13.1. If after the date of the Decision Notice there shall be enacted any "tax" related to the grant of planning permission (whether the community infrastructure levy or otherwise) and the terms of such tax mean that any obligations under this Agreement or under any condition attached to the Planning Permission or any Further Permission change or that the Owner must pay a sum to any person (whether HM Government or to the Council or to the County Council or otherwise) which would duplicate, add to or overlap with any obligation of a party under this Agreement then the parties agree that the terms of this Agreement may at the election of the party affected be modified to such extent (if any) as is necessary to ensure that the party affected shall not be required to contribute (whether by financial contribution or works in kind or both) more than once (in whole or in part) for any item of infrastructure or matter.

14. JURISDICTION

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

15. THE MODIFICATION OF THE OLD AGREEMENTS

- 15.1. Subject to clause 15.3 with effect from the date of first satisfaction of the pre-condition in clause 4.1 the Old Agreements shall have effect subject to the modifications specified in the Application (as set out in this Deed) and for the avoidance of doubt shall not be enforceable against the Pre-Developed Land or any person having any estate or interest in the Pre-Developed Land or any part of it.
- 15.2. Subject to clause 15.3 the Council and the County Council declare and acknowledge that with effect from the date of the first satisfaction of the pre-condition in clause 4.1 they renounce and abandon any claim action cause dispute or difference against or with any party to any of the Old Agreements and any person deriving title from any such party and shall hereafter hold any such party and any such person deriving title from such person fully and effectually indemnified against all costs expenses liabilities or other costs whatsoever and howsoever arising from any breach of any provision of any of the Old Agreements WITHOUT PREJUDICE to the enforceability of the modified planning obligations set forth in this Deed against the Owner of the Residual Site.
- 15.3. The Application does not seek to modify or discharge the planning obligation in clause 6 of the Old Agreement dated 4 July 2006 (Woodland Management Plan) (including the definitions and plan relating to the said clause 6) which shall remain in full force and effect and enforceable in accordance with the Old Agreements. For the avoidance of doubt the beneficial owner from time to time of the Woodland Areas as defined in that Old Agreement shall also continue not to be bound by any obligation other than the said clause 6 in the manner set forth in the final part of clause 1.2.2 of the Old Agreement of 4 July 2006.

THE REPLACEMENT SCHEDULES

The following schedules shall be substituted for the schedules contained in the Old Agreements:

FIRST SCHEDULE

The Owner shall with effect from the Unconditional Date:

PART ONE: THE RESIDUAL SITE

On-site Highways

1. Within three months of the Unconditional Date submit the OSH Specification and the OSH Programme for the Council's approval;
2. Use reasonable and commercially sensible endeavours to procure the adoption of the On-site Roads (including but not limited to street furniture and lighting) by entering into a Section 38 Agreement;
3. Within 28 days of the completion of any Section 38 Agreement (unless provided to the contrary therein) to commence and thereafter carry out and complete to the satisfaction of the Council each element of the OSH Works in accordance with the approved OSH Programme and OSH Specification subject to the terms of the Section 38 Agreement;

On-Site Sewers

4. Within three months of the Unconditional Date submit the OSS Specification and the OSS Programme for the Council's approval;
5. Use reasonable and commercially sensible endeavours to procure the adoption of the On-site Sewers by the Undertaker including without limitation: (i) observing and performing the terms of any pre-existing agreement under section 104 of the Water Industry Act 1991 (as amended); or (ii) the exercise by the statutory undertaker of a power to adopt the same as public sewers maintainable at the expense of the said undertaker without any further agreement being required to be entered into; or (iii) entering into a Section 104 Agreement;
6. Within 28 days of the completion of any new Section 104 Agreement (unless provided to the contrary therein) to commence and thereafter carry out and complete to the satisfaction of the said undertaker each element of the OSS Works in accordance with the approved OSS Programme and OSS Specification subject to the terms of the said new Section 104 Agreement;

New Masterplan

7. No later than the submission of the first of the Further Applications submit the New Masterplan to the Council for approval.

Public open Space

8. Within three months of the Unconditional Date commence the POS Consultation and provide to the Council a written report thereof within 28 days of the completion of the POS Consultation;
9. Within three months of the completion of the POS Consultation submit the POS Application or otherwise submit details of the Public Open Space for the Council's approval;
10. Carry out and complete to the reasonable satisfaction of the Council each element of the approved Public Open Space Works to a specification first approved in writing by the Council or an inspector appointed by the Secretary of State pursuant to a planning condition on any planning permission authorising the construction of the Public Open Space and make the area of the Public Open Space in respect of which those Public Open Space Works shall have been carried out available for public use PROVIDED THAT if the Owner shall decide to submit the POS Application it shall be at liberty to appeal to the Secretary of State in the event of any refusal or non-determination of the same and the expression "Public Open Space Works" shall be understood to be the works authorised by a planning permission granted by an Inspector exercising the jurisdiction of the

Secretary of State or by the Secretary of State if he shall assert or recover such jurisdiction if the Owner shall in its absolute discretion implement such planning permission;

11. Prior to completing the Public Open Space Works, provide the Management Scheme to the Council;
12. Notify the Council of completion of the Public Open Space Works and invite the Council to inspect the same and the Owner shall carry out any remedial works identified by the Council acting reasonably;
13. From the completion of the Public Open Space Works to the reasonable satisfaction of the Council the Owner shall:
 - 13.1 procure the transfer of the Public Open Space to the Management Entity and upon completion of the transfer to the Management Entity the Management Entity (and absent any such transfer the Owner) shall:
 - 13.1.1 not use the Public Open Space (excluding any part thereof which forms part of a sustainable urban drainage system) for any purpose other than for the provision of public open space for the benefit of members of the public;
 - 13.1.2 maintain and manage the Public Open Space in a clean and tidy condition and free of defects and in accordance with the Maintenance Scheme approved by the Council;
 - 13.1.3 not build or allow or suffer to be built any building on the Public Open Space (save for any existing buildings or structures or any buildings or structures intended and designed to be ancillary to the use of the Public Open Space or as may be required in respect of Service Installation);
 - 13.1.4 allow public access to the Public Open Space, subject to any byelaws the Council may make and any Reasonable Regulations the Owner or the Management Entity may make and any restrictions on public access required in order to comply with legal requirements or reasonably resulting from Service Installation or as agreed with the Council as a result of health and safety or ecological concerns or for any other reason the Council shall lawfully determine
 - 13.1.5 Provide to the Council upon request, (but not more frequently than once per year), such documentary evidence as the Council may reasonably require to demonstrate that the Management Entity has complied with the requirement to manage the Open Space , in accordance with the Maintenance Scheme

The Community Building

14. The Owner shall within six months of the Unconditional Date submit an application for planning permission for the NCB, and within two years of the NCB Planning Condition being satisfied construct the NCB and offer to transfer it for a nominal consideration to the Council on the NCB Transfer Terms together with such other terms as shall be agreed between the Owner and the Council AND insofar as it is able to do so the Owner shall not prevent access to the existing community building on the Welcome Centre Site for the local residents and the wider public unless and until the NCB has been constructed and made available in substitution therefor.

Local Store

15. The Owner shall within six months of the Unconditional Date submit an application for planning permission for the Local Store, and within two years of the Local Store Planning Condition being satisfied construct the Local Store and offer to rent it to a retailer for a period of not less than twelve months according to a marketing strategy agreed in advance by the Council

Other Further Applications

16. The Owner shall:

- 16.1 within 6 months of the Unconditional Date make or procure the making of one or more Further Applications pursuant to which it shall seek or procure the seeking of planning permission (in outline or in full) for at least an aggregate total of 60 units of residential accommodation or such lesser amount of development as shall have been determined to be Viable Development;
- 16.2 within 12 months of the Unconditional Date make or procure the making of one or more Further Applications pursuant to which it shall seek or procure the seeking of planning permission (in outline or in full) for at least an aggregate total of 100 units of residential accommodation or such lesser amount of development as shall have been determined to be Viable Development;
- 16.3 within 18 months of the Unconditional Date make or procure the making of one or more Further Applications pursuant to which it shall seek or procure the seeking of planning permission (in outline or in full) for at least an aggregate total of 165 units of residential accommodation or such lesser amount of development as shall have been determined to be Viable Development.

The Little Stanion Payment Obligations

- 17. The Owner shall not Occupy nor permit the Occupation of more than:
 - 17.1 50% of the Dwellings in a Phase until 50% of the Little Stanion Community Payment shall have been made to the County Council in respect of the total number of Dwellings in that Phase.
 - 17.2 80% of the Dwellings in a Phase until a further and final 50% of the Little Stanion Community Payment shall have been made to the County Council in respect of the total number of Dwellings in that Phase

PROVIDED THAT the aggregate total sum payable by way of Little Stanion Community Payment and Little Stanion Up-lift Sum shall never exceed the Old Agreements Deficit

PART TWO: THE TATA LAND

- 1. The Owner will use reasonable and commercially sensible endeavours to enter into the Acceptable Tata Land Contract within two years of the Unconditional Date.
- 2. If the Owner (or a company in the same group as the owner) has acquired the Tata Land it shall not make any Tata Land Application or carry out any development on the Tata Land unless and until it has entered into an undertaking pursuant to s106 of the 106 Act the effect of which is to bind its interest in the Tata Land with the obligations contained in this Agreement.
- 3. The Owner shall use reasonable and commercially sensible endeavours to make or procure the making of the Tata Land Application within 6 months of the Owner having entered into an Acceptable Tata Land Contract.

Oakley Vale Cycleway Link

- 4. The Owner shall use reasonable and commercially sensible endeavours within 6 months of the satisfaction of the Tata Land Planning Condition to:
 - 4.1 submit for the approval of the Council and the County Council a specification and plan for the Oakley Vale Cycleway Link the specification and precise parameters of which shall be agreed or determined in default of agreement pursuant to clause 12;
 - 4.2 within 24 months of the approval or determination of the specification and precise parameters of and for the Oakley Vale Cycleway Link apply for all necessary consents to enable the lawful construction and dedication of the same as a public right of way PROVIDED THAT for the avoidance of doubt the Owner shall not be obliged to pay or provide any consideration in money or money's worth to any third party for any property or other rights to construct or procure the dedication of the same or any part of it;

- 4.3 within 12 months of the obtaining of the last necessary consent to enable the construction of the Oakley Vale Cycleway Link to commence and carry out the construction of the same in accordance with a programme first agreed in writing with the Council and the County Council PROVIDED THAT the Owner shall not be liable to repair or maintain the Oakley Vale Cycleway Link following the completion of the construction thereof to the reasonable satisfaction of the Council and the County Council.

The Little Stanion Community Payment as applicable to the Tata Land

5. The Owner shall not Occupy nor permit the Occupation of more than:
- 5.1 50% of the Dwellings authorised by an Acceptable Tata Land Planning Permission until 50% of the Little Stanion Community Payment shall have been made to the Council in respect of the total number of Dwellings authorised by that Acceptable Tata Land Planning Permission;
- 5.2 80% of the Dwellings authorised by an Acceptable Tata Land Planning Permission until a further and final 50% of the Little Stanion Community Payment shall have been made to the Council in respect of the Dwellings authorised by that Acceptable Tata Land Planning Permission

PROVIDED THAT the aggregate total sum payable by way of Little Stanion Community Payment and Little Stanion Up-lift Sum shall never exceed the Old Agreements Deficit.

PART THREE: THE LITTLE STANION UP-LIFT SUM (APPLICABLE IN RESPECT OF BOTH THE RESIDUAL SITE AND THE TATA LAND)

1. The Owner shall within 21 days of the earlier of;
- 1.1 Substantial Completion of the 160th Dwelling constructed and occupied pursuant to a Further Permission in respect of the Residual Site; and
- 1.2 Completion of 95% of the total number of Dwellings permitted pursuant to the Further Applications; and
- 1.3 the date which is five years of the date of issue of the Decision Notice
- send to the Council and the County Council the Provisional Up-lift Calculation in respect of the Dwellings constructed and occupied on the Residual Land.
2. If the Tata Land Planning Condition shall have been satisfied and the Owner shall have acquired a legal estate in the Tata Land pursuant to an Acceptable Tata Land Contract, the Owner shall within 21 days of the earlier of:
- 2.1 Substantial Completion of the 120th Dwelling constructed and occupied pursuant to a Further Permission in respect of the Tata Land; and
- 2.2 the date which is five years of the date of issue of the Decision Notice
- send to the Council the Provisional Up-lift Calculation in respect of any Dwellings constructed and occupied on the Tata Land.
3. The Council shall within 56 days of receipt of the Provisional Up-lift Calculation pursuant to paragraphs 1 or 2 above inform the Owner in writing that either (i) the Provisional Up-lift Calculation is approved; or (ii) the Provisional Up-lift Calculation is not approved and if it is not approved the Council shall give written reasons therefor.
4. If the Provisional Up-lift Calculation is approved by the Council the Owner shall pay to the Council within 21 days of receipt of written notice of such approval the Little Stanion Up-lift Sum (if any) stated in the Provisional Up-lift Calculation.

5. If the Provisional Up-lift Calculation is not approved by the Council within 56 days of receipt of it by the Council the amount of any Little Stanion Up-lift Sum shall be determined pursuant to clause 12 if either party shall refer it for dispute resolution in accordance therewith and the Owner shall pay to the Council the amount thereby determined within 21 days of publication of such determination.

ALWAYS PROVIDED THAT the aggregate total sum payable by way of Little Stanion Community Payment and Little Stanion Up-lift Sum shall never exceed the Old Agreements Deficit

SECOND SCHEDULE
COUNCIL'S COVENANTS

- 1 The Council covenants with the Owner to use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid.
- 2 The Council shall pay to the Owner such amount of any payment made by the Owner to the Council under this Deed which has not been expended in accordance with the provisions of this Deed (and money shall be deemed to be expended if the Council has properly entered into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose or if the Council has received a fully costed scheme from the County Council and has made payment to the Council in respect thereof) within seven years of the date of receipt by the Council of such payment together with interest at the Co-Operative Bank Plc base rate from time to time for the period from the date of payment to the date of refund.
- 3 The Council shall provide to or procure for the Owner such evidence as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Deed.
- 4 The Council covenants to pay 50% of the Little Stanion Up-lift Sum to the County Council within 28 days of receipt of the money from the Owner.

THIRD SCHEDULE

COUNTY COUNCIL'S COVENANTS

1. The County Council covenants with the Owner to use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid.

FOURTH SCHEDULE

ADDITIONAL DWELLING SALE PROFIT

PART ONE: BACKGROUND

This schedule sets out the basis for calculating the Additional Dwelling Sale Profit.

The Additional Dwelling Sale Profit is to be calculated:

- (i) in the context of the background summarised in this Part One of this Schedule;
- (ii) in accordance with the formula set out in Part Two of this Schedule.

By an appraisal summary titled "Little Stanion – Additional Site Areas 165 Units" appended to the Approved EVA ("the Appraisal Summary") it has been determined that the Development of the Residual Site pursuant to a Further Permission(s) should on the assumptions therein stated fund an aggregate total Little Stanion Community Payment of £1,800,000 (one million eight hundred thousand pounds). That figure – which is identified in the Appraisal Summary as "S106" immediately under the heading "Municipal Costs" represents £11,000 (eleven thousand pounds) per Dwelling multiplied by 165 Dwellings = £1.815M rounded down to £1.8M.

That Appraisal Summary assumed amongst other things that the revenue for gross sales of all 165 Dwellings would total £27,803,840 (which represents a rate per square foot of £152 multiplied by an assumed total area in square feet of 182,920 square feet).

The Council and the County Council consider that in order that the Development pursuant to the Further Permissions should remain acceptable in planning terms in circumstances in which the *actual* revenue achievable on sales of Dwellings were to increase the Council and/or the County Council (as they may agree between them) should receive a reasonable and proportionate *additional* contribution towards the Old Agreements Deficit for the benefit of the community of Little Stanion.

That additional contribution is the Little Stanion Up-lift Sum and it represents one third (rounded up to 34% in favour of the Council and the County Council) of any Additional Dwelling Sale Profit.

The formula set out in Part Two of this Schedule addresses such *actual* revenue and outlay figures as will be available after the substantial completion of the great majority of the Dwellings in respect of which the Owner is to make Further Applications (actual figures generally replacing the *assumed* figures which appeared in the Appraisal Summary, but subject to certain specific continuing assumptions as stated below). For example, build and infrastructure costs will be reviewed upwards or downwards based on the actual costs which will have been incurred.

If any Little Stanion Up-lift Sum shall be payable in respect of the Tata Land the Additional Dwelling Sale Profit shall be calculated in accordance with the formula in Part Two of this Schedule *mutatis mutandis*

PART TWO: THE FORMULA

The Additional Dwelling Sale Profit =

NR minus (C + P)

Where:

NR = "Net Realisation" being the actual net realisation calculated by deducting *actual* purchaser's costs from the *actual* gross development value but otherwise applying the method set out in the Appraisal Summary.

C = "Costs" being the aggregate total outlay in respect of:

ACQUISITION COSTS

Comprising:

- (i) a residual land value representing 75% of market value of the Residual Site as at Commencement of Development increased (if at all) in accordance with changes in the Index from the date of Commencement of Development to the date of calculation of the Additional Dwelling Sale Profit.
- (ii) Town Planning application fees and costs (not including S106 but including the costs of the New Masterplan preparation and approval process) and being the actual figure for these costs to replace the assumed figure of £32,389 which appeared in the Appraisal Summary).

CONSTRUCTION COSTS

Comprising:

- (i) The actual construction costs for *all the Development* carried out pursuant to Further Permission on or including without limitation all construction costs for the NCB, retail units, and Dwellings.
- (ii) A contingency at 3% as stated in the Appraisal Summary.
- (iii) Other Construction Costs:
 - (a) The actual construction costs for all externals including without limitation the costs of completing the On-site Roads and the On-Site Sewers and the Public Open Space.
 - (b) Municipal Costs comprising the assumed Little Stanion Community Payment aggregate total of £1,800,000 (one million eight hundred thousand pounds) or the actual aggregate total S106 costs secured by any Further Obligation if greater (reduced pro rata if less than 165 Dwellings on the Residual Site have been sold when the calculation of the Additional Dwelling Sale Profit is made).

PROFESSIONAL FEES

The *actual* professional fees incurred including without limitation planning consultancy and legal fees and *actual* development manager/promoter fees incurred.

MARKETING & LETTING

The actual marketing, letting agent and letting legal fees incurred.

DISPOSAL FEES

The actual sales agent and sales legal fees incurred.

FINANCE

The actual total cost of finance incurred.

P = profit being a sum equal to 20% of the gross development value (being a developer's profit level slightly below the 20.07% on GDV figure used in the Approved EVA

FIFTH SCHEDULE

PUBLIC OPEN SPACE MAINTENANCE SPECIFICATION

1. OPEN SPACE MAINTENANCE SPECIFICATION

1.1 Any Amenity Grassland

Objectives

1.1.1 To provide a well-tended green canvass for the public open spaces of the site, offering areas for exercise, play and visual amenity.

1.1.2 All amenity grass areas are to be maintained in a neat and tidy state through regular mowing, edge trimming around ornamental shrub beds, herbicide application, repairs to eroded areas, aeration, and reseeding as necessary to maintain a uniform and healthy sward.

Code	Prescription	Frequency	Details
A1	Litter pick and scavenge	Weekly	Site to be kept free of litter, stones and debris through a once-weekly operation at all times during the year. All litter, debris, and stones that have migrated to the surface should be removed prior to mowing.
A2	Grass cutting and edge trimming	Weekly in Spring; Fortnightly in Summer & Autumn	Grass cutting to be undertaken weekly in Spring, and fortnightly in Summer and Autumn, totalling a maximum of 24no. visits per year. Grassed areas to be kept to a maximum height of 40mm in normal conditions. In drought conditions adjust cutting heights to c.60mm. In very wet conditions, all operations involving grass cutting shall cease until conditions allow operations to continue without damaging the surfacing, levels and contours of the ground. Path edges, fence-lines and hedge bottoms etc to be strimmed as necessary to maintain tidy appearance. Maximum of 24no. visits per year. Steep embankments are to be left as meadow grass (see Section B below).
A3	Weed control	3no. visits per year	Thistle, docks & other undesirable weeds are to be treated with an appropriate herbicide on a maximum of 3no. visits per year. Apply in dry, calm conditions and allow a period of 3 days to elapse before grass is cut.
A4	Fertiliser	2no. visits per year	March: NPK ratio of 15:10:10 Spring fertiliser applied at the manufacturers recommended rate. September: NPK ratio of 5:10:10 Autumn fertiliser applied at manufacturers recommended rate. NB: No fertiliser is to be applied to the meadow grassland and marginal areas around lakes and stream (See Section 2.6 Meadow Areas below). This item to be priced as a provisional item which will be discussed and authorised by the appropriate person prior to commencement.
A5	Provisional items	As required, upon agreement	The health of the grass areas will be maintained at all times, and damaged areas are to be made good as soon as practicable. Therefore the following operations may occasionally need to be carried out as required: <ul style="list-style-type: none"> • Scarifying to remove moss and thatch • Topdressing and reseeding • Aerating These items will be discussed with and authorised by the appropriate person prior to commencement.

1.2 Any Meadow Grassland

Objectives

- 1.2.1 Meadows will provide an informal visual amenity with opportunities for invertebrates, and small birds and mammals to forage in the urban environment. This will be achieved through the promotion of attractive species such as meadow buttercup, poppy, devils-bit scabious, and knapweed, and the control of undesirable weeds such as thistle, dock, and bristly ox-tongue.
- 1.2.2 These grassland areas are to be maintained as a biodiversity resource. Nutrient levels are to be kept low by abstaining from fertiliser application, and grass will receive a single annual hay cut in the late Autumn.
- 1.2.3 In addition, existing vegetation along the hedgerows / ditches should be allowed to develop and be managed in the same way as the meadow areas.

Code	Prescription	Frequency	Details
B1	Litter Pick and Scavenge	Weekly	Remove litter on a once weekly basis, and immediately prior to meadow cut.
B2	Grass cutting	Annually in Autumn following seed drop	1no. visit in October. Grassed areas to be cut to a height of c.200mm. In areas near to wetland features the arisings are to be left in situ for up to 1 week after the cut to enable any invertebrates to access the ditch / pond margin vegetation - arisings are then to be removed. In all other grassland areas arisings are to be removed from site.
B3	Weed control	3no. visits per year	Thistle, docks & other undesirable invasive weeds are to be removed in 3no. visits per year as required, through targeted application of appropriate herbicides or by hand pulling (thistle is unlikely to be effectively controlled through hand pulling alone). Only those herbicides that have been cleared for use in or near water (MAFF 1995) may be used in the vicinity of wetland features. Apply herbicide in dry, calm weather conditions and at the appropriate time of the year. Avoid spray drift onto adjacent areas. Spraying to be undertaken prior to flowering for effective control.

1.3 Any Marginal and Aquatic Vegetation

Objectives

- 1.3.1 These areas will provide potential nesting and protective cover opportunities for water birds and aquatic mammals and amphibians.
- 1.3.2 Marginal planting areas will generally be allowed to grow tall & develop naturally following establishment. It is important to maintain a balance between amenity & natural pond quality.

Code	Prescription	Frequency	Details
C1	Litter pick and scavenge	Weekly	Areas to be cleared of litter once weekly.
C2	Vegetation clearance	Annually	In order to retain a balance of reeds and other marginal vegetation, and prevent choking up of open water areas, the removal of reed vegetation should be reviewed at the end of each growing season with any removal of plants carried out by strimming between January and March. Any arisings are to be left in situ for up to 1 week to enable any invertebrates to access the lake margin

Code	Prescription	Frequency	Details
			vegetation - arisings are then to be removed. No more than c.25% of the marginal vegetation of any area to be removed in one year.
C3	Weed control	3no. visits per year	Thistle, docks & other undesirable invasive weeds are to be removed in 3no. visits per year as required. Hand weeding is preferred, but targeted application of appropriate herbicides may be used if necessary. Only those herbicides that have been cleared for use in or near water (MAFF 1995) may be used in the vicinity of wetland features. Apply herbicide in calm weather conditions and at the appropriate time of the year.
C4	De-silting	Every three years max.	Depth of water in smaller water bodies within any SUDS system should be maintained to provide a range of habitats. Any excavation or removal of sediment deposits should be carried out locally (ensuring no damage or disturbance to the original pond profile). Pockets of reed and other marginal and aquatic planting should be left. Any excavation should be undertaken during the winter months, using appropriate machinery. Excavated material is to be left within a lay down area adjacent to the ponds for at least 24 hours to allow overwintering aquatic animals to return to the water, prior to its removal off site.
C5	Aquatic vegetation control	Biennially	Removal of vegetation in any ponds should be undertaken once every other year maximum, by hand pulling/cutting or digging out of rootstock during winter months to minimise any likely disturbance. No aquatic herbicides are to be used. Removal of wetland plants should be selective, to maintain species diversity. Any stream should be managed as a series of open water and vegetated areas. Any vegetation clearance should be done on a planned rotational basis to minimise disturbance to the pond habitat

1.4 Any Specimen Avenue Trees and Tree Groupings

Objectives

- 1.4.1 These trees provide essential habitat for invertebrates and birds in the urban environment. Their long-term establishment will fix carbon, and help to reduce urban microclimatisation.
- 1.4.2 Avenue or individual trees should be formally maintained. Informal tree groups should be maintained with a 'natural' approach.

Code	Prescription	Frequency	Details
D1	Weed control	4-6 visits per year	1m ² areas around base of trees in grass to be maintained weed and grass free through minimum of 4 and maximum of 6 visits per year, by spraying with glyphosate to obviate the need for mowing machinery to be used around the base of the trees and thus protect them from mower damage. Visits 5 and 6 to be priced per visit as additional visits as a provisional item.
D2	Pruning	Annually if required	An annual assessment of the need for selective pruning to remove any dead branches should be made at the end of each growing season with work carried out in the following winter or spring depending on species (see Pruning / Trimming Requirements). Pruning should be limited to the minimum necessary to maintain good form, vigour, to preserve views (through progressive crown lifting) and to remove dead wood or diseased and

Code	Prescription	Frequency	Details
			dying branches. Pruning is to be carried out to the highest horticultural standards using secateurs and hand saws. Dead foliage and branches are to be removed by cutting back to an outward facing bud. Suckers are to be removed by cutting back to their source on the affected plant. All tree work to be carried out in accordance with BS 3998 – 1989.
D3	Tree Ties and Stakes	Annually	Inspect tree ties at least annually during establishment to ensure that trees are well supported, firmly planted, upright, and that there is no constriction or chafing of the stem. Remove stakes and ties as soon as trees are self-supporting.

1.5 Any Ornamental Shrub Beds

Objectives

- 1.5.1 To provide visual amenity and biodiversity benefits across the site. The beds should be maintained as formal ornamental shrub areas which create a parkland character.

Notes

- 1.5.2 These areas have been designed to be generally low-maintenance; however, annual interventions will be required for weed control and litter collection. All ornamental shrub and groundcover planting areas should be kept weed-free throughout any given year to maintain their high profile amenity value.
- 1.5.3 Occasional pruning / trimming of certain species will be required to remove dead branches and maintain good form. However, the different species used have been designed to complement each other creating a varied height structure and habit. Therefore, beds are not to be trimmed to a uniform height. Certain structural species prescribed below (see Pruning Requirements) may need trimming to promote good shape or prevent encroachment on adjoining beds such as *Prunus lustanica*.
- 1.5.4 Shrub beds should also be reviewed every 3 years to identify any gaps or replacements in the shrub beds. These should be replaced using the same species.

Code	Prescription	Frequency	Details
E1	Litter pick and scavenge	Weekly	Maintain planting areas free of litter at all times through weekly visits.
E2	Weed control	3no. visits per year	Maintain planting areas free of weeds through 3no. visits per year. Requirements for weed control will reduce as the shrub canopy closes, however, this should be monitored and the margins of the shrub beds will need to be inspected regularly.
E3	Pruning	Annually as required	An annual assessment of the need for pruning should be made at the end of each growing season with work carried out in the following winter or spring depending on species (see Pruning / Trimming Requirements).
E4	Mulch	Annually	Maintain mulched areas to c.50mm depth through annual top up until canopy closes.

1.6 Any Native Shrub Edge Mix / Hazel Coppice

Objectives

1.6.1 Shrub edge mix areas to be generally allowed to grow and develop naturally.

Code	Prescription	Frequency	Details
F1	Litter pick and scavenge	Weekly	Maintain planting areas free of litter through weekly visits.
F2	Weed control	3no. visits per year max.	<p>Areas to be kept weed-free until the canopy closes – minimal selective weed control to be undertaken beyond this period as required. NB: Once areas start to mature the need for weed control will be reduced due to shading.</p> <p><i>The development of an herbaceous layer other than pernicious weeds and/or non- native weed species such ragwort, dock and thistles should be permitted in the interests of biodiversity.</i></p> <p>The maintenance schedule allows 3 visits p.a. in year 1-3 for new areas, assuming the canopy has closed sufficiently after this.</p>
F3	Shrub pruning	Annually as required	<p>The shrub edge mix areas should be allowed to develop naturally with minimal cutting required. However, occasional cutting back of these areas may be required to prevent encroachment onto POS areas or adjoining footpaths, and to remove deadwood.</p> <p>Pruning is to be carried out to the highest horticultural standards using secateurs, approved mechanical hedge cutters and hand saws.</p>
F4	Thinning works	Annually as required	Thinning work should be carried out as required to maintain a natural appearance and allow some of the slower growing species such as holly, dogwood and privet to develop and create a varied canopy structure. To BS 3998 – 1989
F5	Hazel /willow coppicing	5 -7 years on rotation	<p>Areas to be coppiced back during winter every 5-7 years on rotation to ensure good age mix in each area.</p> <p>Cut away small whippy growth from around base of stool. Remove stems one by one. Cut from outside of stool around and in, in a spiral pattern at c.25mm above ground level. Cut each stem upwards towards the centre to promote run off of water & help prevent rot. Clean up stool after coppicing including cutting off any splinters or split wood.</p> <p>NB: Felled timbers from coppicing or pruning works could be stacked in inconspicuous locations within planting adjacent to the pond / hedgerow areas as habitat suitable for invertebrates, amphibians and fungi.</p>

1.7 Any Mixed Woodland

Objectives

- 1.7.1 Mixed Woodland areas to be generally allowed to grow and develop naturally with a varied canopy structure.

Notes

- 1.7.2 In some areas that experience poor drainage conditions, areas should be monitored to prevent dominance of one species i.e. salix sp over other species and coppicing and/or thinning should be carried out on a rotational basis (see table below).

Code	Prescription	Frequency	Details
G1	Litter pick and scavenge	Weekly, with annual deep clean	Ensure planting areas are free from litter and debris through clearing paths weekly and woodland areas annually.
G2	Weed control	As required to a max. of 3no. visits per year	Selective weed control should be carried out as required to spot treat weeds with an appropriate herbicide to remove thistle, docks & other undesirable weeds. NB: Once areas start to mature, the need for weed control will be reduced due to shading. Only those herbicides that have been cleared for use in or near water may be used (MAFF 1995). Apply herbicide in calm weather conditions and at the appropriate time of the year.
G3	Pruning	Occasional as required	The woodland mix areas should be allowed to develop naturally with minimal cutting required. However, occasional cutting back of these areas may be required to prevent encroachment onto POS areas or adjoining footpaths.
G4	Thinning works	<i>See Details</i>	All works to conform to BS 3998 – 1989. If trees have established well, consider selective removal. Remove unhealthy or damaged specimens to allow space for future growth of healthy trees. 1-2 no. specimens should remain per single species group of 3no. plants (e.g. out of a group of 9no. ash approx. 3-6no. would be retained depending on rates of growth). The need for further extraction should be reviewed at the end of year 8. The objective is to maintain a natural appearance and allow some of the slower growing species such as holly and privet to develop and create a varied canopy structure. Thinning, trimming and shaping should be done as required according to species, variety, season, state of growth and visual effect.
G5	Coppicing willow	5 -7 years on rotation	Coppicing of willow specimens to be carried out as required to prevent dominance of willow species (<i>Salix caprea</i> and <i>S. cinerea</i>). Occasional individual specimens or small groups should be coppiced back every 5-7 years or as required. This would be done on a phased basis to ensure that there is a varied age range of willows from newly coppiced through to mature coppice areas. Cut away small whippy growth from around base of stool. Remove stems one by one. Cut from outside of stool around and in, in a spiral pattern at c.25mm above ground level. Cut each stem upwards towards the centre to promote run off of water & help prevent rot. Clean up stool after coppicing including cutting off any splinters or split wood. The development of an herbaceous layer other than pernicious weeds and/or non-native weed species such ragwort, dock and thistles should be permitted in the interests of biodiversity. NB: Felled timbers from coppicing or pruning works could be stacked in inconspicuous locations adjacent to the pond / hedgerow planting areas as habitat suitable for invertebrates, amphibians and fungi.

1.8 Any Informal Native Hedgerow
Objectives

- 1.8.1 Allow hedgerows to establish biodiversity corridors through the urban environment, to provide food and shelter for a range of birds, invertebrates, and small mammals.

Code	Prescription	Frequency	Details
H1	Litter pick and scavenge	Weekly	Ensure areas are free from all litter and debris through weekly visits
H2	Weed control	3no. visits per year	Hedge mix areas to be kept weed-free through 3no. visits per year until the canopy closes – selective weed control to be undertaken beyond this period as required. <i>The development of a herbaceous layer other than pernicious weeds and/or non-native weed species such ragwort, dock and thistles should be permitted in the interests of biodiversity.</i>
H3	Cutting Hedgerow Mix Areas	See Details	The hedgerow mix areas should be allowed to develop naturally with minimal cutting required. However, occasional cutting back of these areas may be required to prevent encroachment onto POS areas or adjoining footpaths, and to remove deadwood. Pruning is to be carried out during winter to the highest horticultural standards using secateurs, approved mechanical hedge cutters and hand saws.
H4	Hedge laying	Every 15 years	Hedges to be laid on a 15 year rotation to increase longevity and growth structure.

1.9 Any Formal Hedgerow

Objectives

- 1.9.1 Maintain as formal hedgerow areas to reflect the character of the surrounding countryside and provide food and nesting opportunities for birds.

Code	Prescription	Frequency	Details
J1	Litter pick and scavenge	Weekly	Ensure areas are free from all litter and debris through weekly visits
J2	Weed control	3no. visits per year	Hedge mix areas to be kept weed-free through 3no. visits per year until the canopy closes – selective weed control to be undertaken beyond this period as required.
J3	Hedge cutting	Annually	Formal hedges to be maintained annually to a height of between 1.5-2m high with an 'A' shaped profile to promote dense vegetation at the base.

1.10 Any Existing Hedgerow

Objectives

- 1.10.1 Maintain current state of informal but well defined hedge-line c.3-4m high to provide urban spaces for nesting birds.

Code	Prescription	Frequency	Details
K1	Litter pick and scavenge	Weekly	Ensure areas are free from all litter and debris through weekly visits

Code	Prescription	Frequency	Details
K2	Hedge cutting	Annually	Where practicable, bring mature hedges into maintenance and maintain as loosely 'A' shaped hedge c.3-4m high. Retain trees within the hedgerow as single specimens where appropriate. NB. Hedges which have become severely overgrown may be managed as tree or woodland belts – follow management prescriptions for mixed woodland areas (<i>see item G</i>)

1.11 Any Existing Woodland

Objectives

- 1.11.1 Maintain longevity and ecological health of woodland areas, and (where appropriate) maintain informal access routes and visibility through woodland areas in the interests of user safety and amenity. The existing/desired character of each individual woodland area will be preserved / brought about through specific management proposals.
- 1.11.2 Individual mature tree specimens to be managed in terms of tree health, ecological value, and public safety where appropriate.

Notes

- 1.11.3 Clearance and selective felling will need to be reviewed annually to determine further works in line with the above objectives
- 1.11.4 Ongoing crown lifting / scrub clearance may need to be carried out where appropriate along the informal routes to maintain good visibility in the interests of user safety.
- 1.11.5 Any pruning / coppicing work to take place between October & March and then reviewed annually to maintain safe and legible pedestrian routes through the woodland areas.
- 1.11.6 NB: Pruning will be limited to the minimum necessary to prevent obstruction of footpaths, maintain good form, vigour and to remove dead wood or diseased & dying branches.
- 1.11.7 A Method Statement from the Contractor for undertaking any works is to include Health and Safety provision for disposal of hazardous waste (e.g. hypodermic needles) and removal of dumped rubbish throughout all the areas.
- 1.11.8 Larger pieces of cut timber can be retained and bundled within the woodland to provide invertebrate habitat.

Code	Prescription	Area	Frequency	Details
L1	Path maintenance	W1 - W5	3no. visits per year	Maintain visibility and access along informal pedestrian routes through strimming, coppicing or cutting back vegetation where required.
L2	Tree assessment	W1 - W5	Annually	Undertake annual safety assessment of trees which may potentially pose a risk to public health (i.e. located adjacent to road verges / footpaths).
L3	Arboricultural works	W1 - W5	Annually as required	Carry out tree works where appropriate (i.e. where health and safety of the public is affected). All work undertaken to conform to BS 3998 – 1989.
L4	Stake and tree tie removal	W1 - W5	As required	Any stakes and/or tree ties not required are to be removed.

Code	Prescription	Area	Frequency	Details
L5	Maintain tree crowns	W4	Annually as required	Maintain crowns of trees adjoining any bridleway to c.3m to preserve open views into the woodland area.

1.12 Any Mature Trees

Objectives

- 1.12.1 To ensure the longevity of the site's mature tree cover, providing environmental, ecological, and visual amenity benefits whilst minimising the risk to public health and safety from falling trees or tree limbs.

Notes

- 1.12.2 The details of the required works to be undertaken will be identified and reported following an arboricultural assessment of the relevant trees on site.

1.13 General Items

Objectives

- 1.13.1 To ensure that the open space remains well-tended and free of litter and damage, to provide quality open space areas for people to enjoy, and to promote neighbourhood pride and cohesion.

Code	Prescription	Frequency	Details
M1	Maintain benches	As required	Ensure benches are maintained in a functional, safe and hygienic state for public use.
M2	Sports Pitch	As required, following maintenance timetable relevant for the sport use, published by Sport England or similar body, and agreed with Corby Borough Council	Prescriptions may include (but not be limited to): <ul style="list-style-type: none"> • Mowing • Fertiliser application • Herbicide application • Pest and disease control • Aeration / de-compaction • Scarification • Topdressing / re-seeding • Patch repairing • Irrigation • Pitch marking

2. PRUNING / TRIMMING REQUIREMENTS

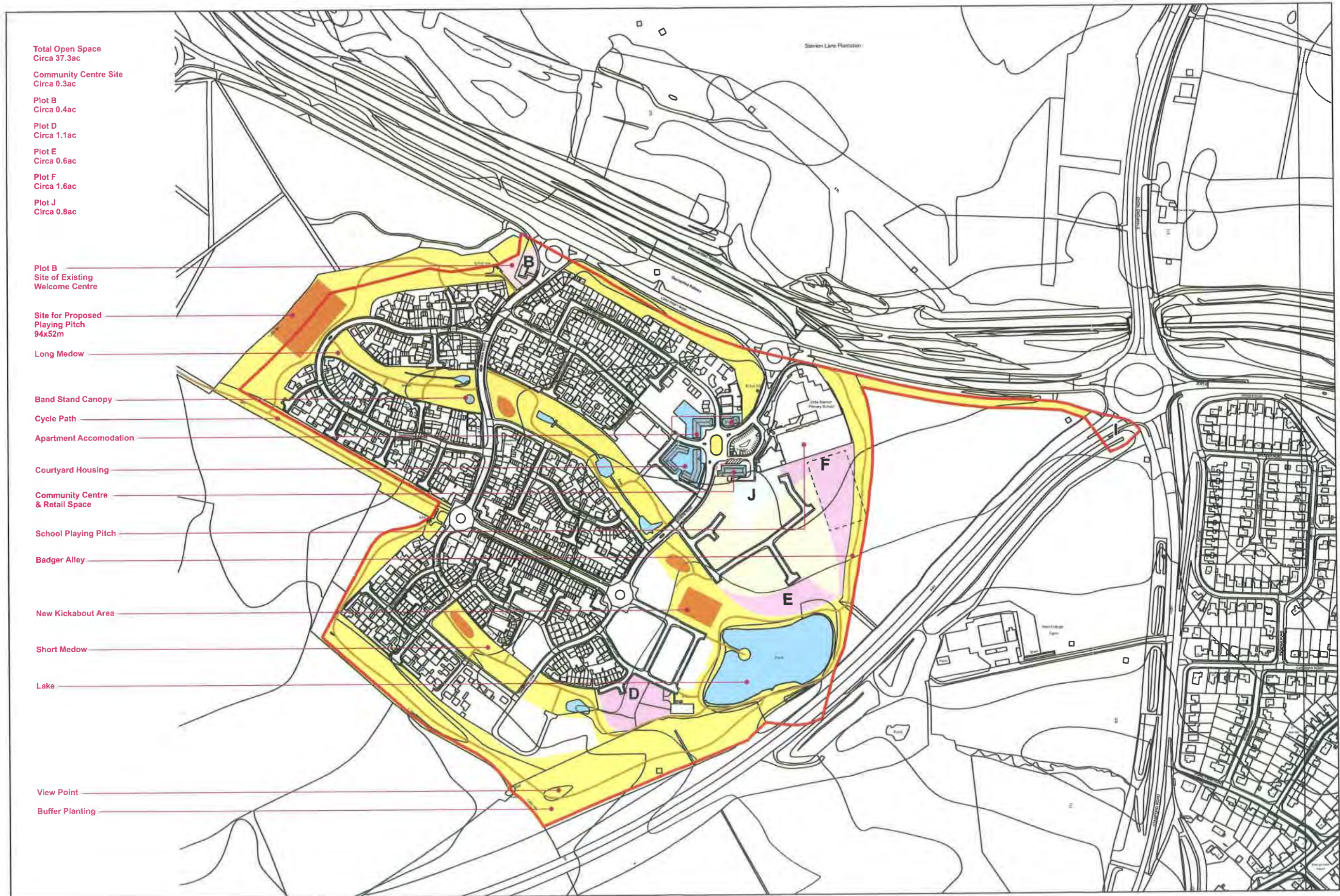
2.1 Ornamental Shrub Areas

- 2.1.1 These areas are designed to be generally low-maintenance; however, annual interventions will be required for weed control and litter collection. All ornamental shrub and groundcover planting areas should be kept weed-free throughout any given year to maintain their high profile amenity value.
- 2.1.2 Occasional pruning / trimming of certain species will be required to remove dead branches and maintain good form. However, where different species are they should be selected and designed to complement each other creating a varied height structure and habit. **Therefore, beds are not to be trimmed to a uniform height.**
- 2.1.3 Shrub beds should also be reviewed every 3 years to identify any gaps or replacements in the shrub beds. These should be replaced using the same species.

Species	Pruning / trimming requirements
<i>Aucuba j.</i> 'Marmorata'	Trim lightly in February if required to keep foliage dense
<i>Berberis</i> (deciduous)	Remove old stems from ground level if necessary in February
<i>Chaenomeles</i> (quince)	Remove old stems from ground level if necessary in February
<i>Choisya ternata</i> (Mexican blossom)	Trim lightly after flowering if required to keep foliage dense
<i>Cornus</i> (dogwood)	Coppice every other year in early spring to c.300mm above ground
<i>Cotoneaster w.</i> 'John Waterer'	Remove any badly positioned shoots in early spring. No regular pruning required
<i>Euonymus europaeus</i> 'Red Cascade'	Prune only to remove old stems from ground level if necessary in February
<i>Hypericum</i> 'Hidcote'	Trim lightly in Feb / March if required to keep foliage dense
<i>Forsythia</i>	Prune only to remove old stems from ground level if necessary in February
<i>Kerria j.</i> 'Pleniflora'	Trim lightly after flowering to thin out some of the older canes
<i>Mahonia</i> 'Winter Sun' (specimen)	Remove any badly positioned shoots in early spring. No regular pruning required
<i>Mahonia a.</i> 'Apollo' (groundcover)	No regular pruning required
<i>Potentilla</i> 'Goldfinger'	Trim lightly after flowering (autumn) if required to keep foliage dense
<i>Prunus</i> 'Otto Luyken' (medium-sized cherry laurel)	No regular pruning required
<i>Prunus lusitanica</i> (Portugal laurel)	No regular pruning, but in spring shorten or remove any too-vigorous or badly positioned growths
<i>Rhus t.</i> 'Laciniata' (sumac)	No regular pruning, but in spring shorten or remove any too-vigorous or badly positioned growths
<i>Salix elaeagnos</i>	No regular pruning, but in spring shorten or remove any too-vigorous or badly positioned growths
<i>Sambucus</i> 'Sutherland Gold' (golden elder)	Prune only to remove old stems from ground level if necessary in February
<i>Viburnum x bodnatense</i> 'Dawn'	Prune only to remove old stems from ground level if necessary in February
<i>Weigela f.</i> 'Foliis Purpureis'	Prune only to remove old stems after flowering if required to keep foliage dense

2.2 Trees

- 2.2.1 Most trees are best pruned in late winter but some, such as *Carpinus betulus* and *Prunus sp.* should have limbs removed in mid- to late summer.

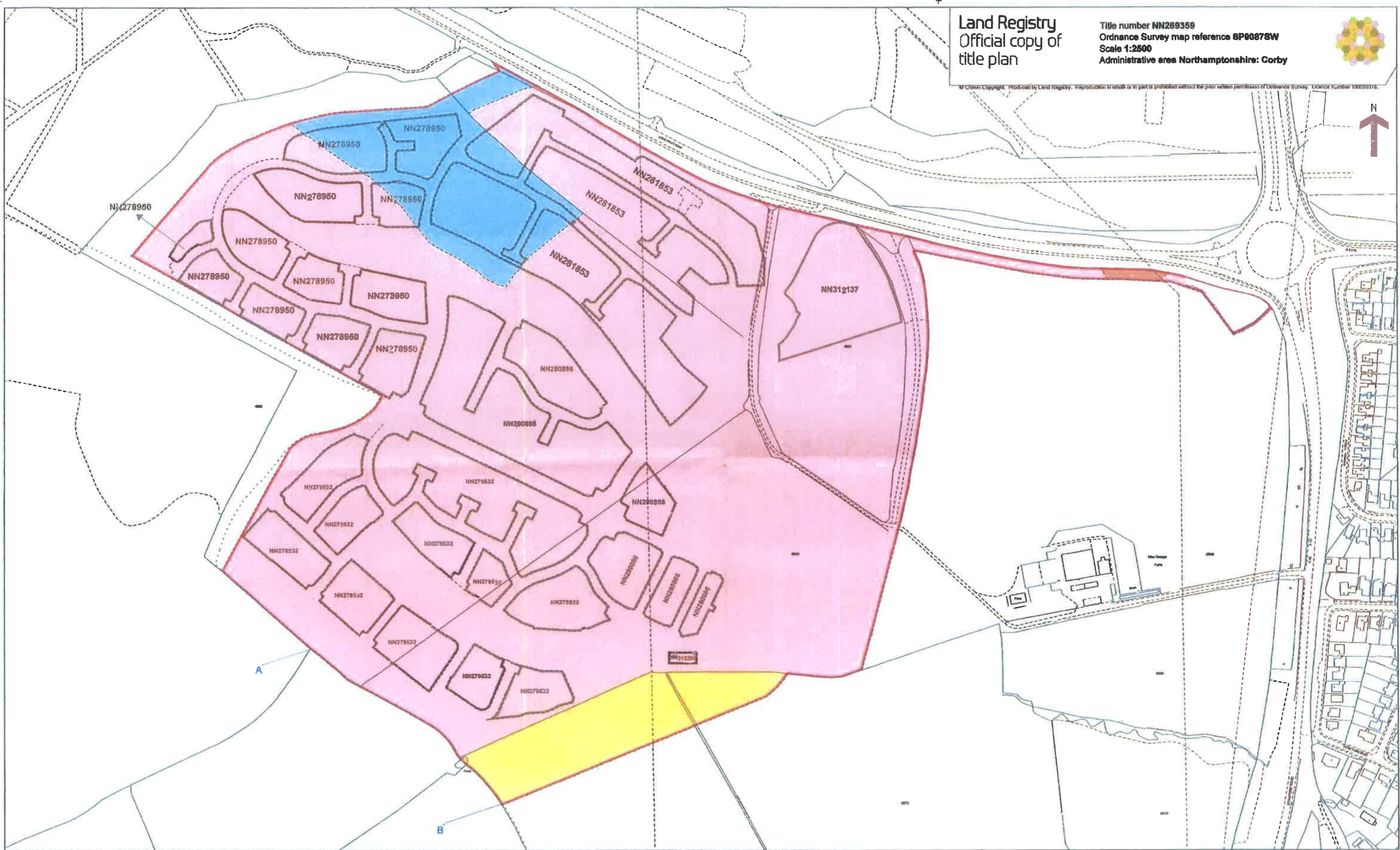


Land Registry
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title plan

Title number NN269359
Ordnance Survey map reference SP8087SW
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