

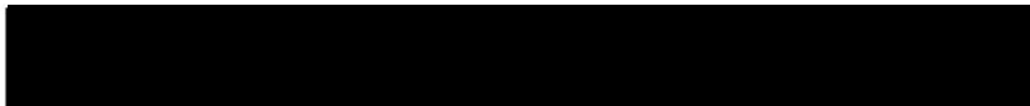
AN UNDERTAKING DATED

7 December

2023

GIVEN BY:

(1)



(2)



(3) CLYDESDALE BANK PLC

TO:

(4) EAST HERTFORDSHIRE DISTRICT COUNCIL

WITH THE CONSENT OF:

(5) ENDURANCE ENERGY WICKHAM HALL LIMITED

Planning obligation by unilateral undertaking under Section 106 of the
Town and Country Planning Act 1990
relating to land at Wickham Hall Estate Hadham Road Bishops Stortford Hertfordshire
CM23 1JG

 **HOWES
PERCIVAL**

Flint Buildings
1 Bedding Lane
Norwich
Norfolk
NR3 1RG
Tel: 01603 762103
Fax: 01603 762104

BY

(1) [REDACTED]
[REDACTED] and [REDACTED]
[REDACTED] ("**First Owner**"); and

(2) [REDACTED]
 ("**Second Owner**"); and

(3) **CLYDESDALE BANK PLC** trading as Clydesdale Bank and Yorkshire Bank and Virgin Money (Co. Regn. No. SC001111) whose registered office is situated at 30 St Vincent Place, Glasgow G1 2HL and whose address for service is Business Fulfilment Team - Securities, Virgin Money, 7 - 8 North Avenue, Clydebank, G81 2NT ("**Chargee**");

TO

(4) **EAST HERTFORDSHIRE DISTRICT COUNCIL** of Wallfields, Pegs Lane, Hertford, SG13 8EQ ("**Council**");

WITH THE CONSENT OF:

(5) **ENDURANCE ENERGY WICKHAM HALL LIMITED** (Co. Regn. No. 13605363) whose registered office is situated at Unit 1 Burlington Park, Station Road, Foxton, Cambridge, England, CB22 6SA ("**Applicant**").

THIS UNDERTAKING is given on 7 December 2023

RECITALS

- 1 For the purposes of the 1990 Act the Council is the local planning authority for the area within which the Site and part of the Obligation Area is located and the authority that is entitled to enforce the obligations contained in this Deed.
- 2 The First Owner is the registered proprietor of part of the Site and part of the Obligation Area registered with freehold title absolute under title numbers HD381853 and HD172655 at the Land Registry.
- 3 The Second Owner is the registered proprietor of part of the Site registered with freehold title absolute under title number HD537717 at the Land Registry and part of the Obligation Area under title numbers HD537717 and HD501304.
- 4 The Chargee is the proprietor of the following charges :
 - dated 7 December 2012 referred to in entry number 18 of the charges register of title number HD381853 relating to the Site and the Obligation Area;
 - dated 1 September 2014 referred to in entry number 7 of the charges register of title number HD537717 relating to the Site and the Obligation Area;
 - dated 7 December 2012 referred to in entry number 7 of the charges register of title number HD501304 relating to the Obligation Area; andand the Chargee has agreed to enter into this Deed in order to consent to the terms hereof.
- 5 The Applicant has the benefit of a promotion agreement in relation to the Site on which the Development shall be carried out dated 5 April 2022 and the Applicant has applied to register this interest against title numbers HD381853, HD172655, HD537717 and HD501304 at the Land Registry.
- 6 The Applicant submitted the Application.
- 7 On 11 January 2023 the Council resolved to grant planning permission for the Development.

- 8 The Owners and the Applicant are prepared to enter into this deed in order to secure the planning obligations it creates.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PROVISIONS

1 DEFINITIONS

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

“1990 Act”	the Town and Country Planning Act 1990;
“Application”	the application for full planning permission validated by the Council on 30 November 2021 and allocated reference number 3/21/2601/FUL;
“Commencement of Development”	the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development begins to be carried out on the Site pursuant to the Planning Permission 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 temporary means of access, construction of access to the Site and the temporary display of site notices or advertisements and “Commence” and “Commencement” and “Commence Development” shall be construed accordingly;
“Date of First Use”	means the date on which the First Use occurs;

"Date of Final Decommissioning"	means the date on which the decommissioning of the Development has been completed pursuant to the decommissioning and site restoration scheme approved by the Council under condition 3 of the Planning Permission;
"Development"	the development of the Site pursuant to the Planning Permission for the erection of a solar photovoltaic farm with an output capacity not to exceed 49.9MW of energy, with supporting infrastructure and battery storage, inverters and transformers, fencing and landscaping works;
"First Use"	means the Development is ready for Use;
"Maintain"	<p>means to use Reasonable Endeavours to:</p> <ul style="list-style-type: none"> - ensure that any route is kept in good repair; - ensure that the surface of the footpath is not defective or disturbed; - keep the route free from obstruction; - keep the route free from encroachment from vegetation; - ensure the route is kept visible; - ensuring the footpaths are of a minimum width of 1.5 metres

PROVIDED THAT nothing in this definition or this Deed shall require any development in

relation to the Permissive Routes which would require planning permission

and "**Maintained**" shall be construed accordingly;

"Obligation Area"

the part of the land at Wickham Hall Estate Hadham Road Bishops Stortford Hertfordshire CM23 1JG registered under title numbers HD537717, HD172655, HD501304 and HD381853 which is shown by blue dotted lines on the Permissive Path Plan for identification purposes only;

"Owners"

means together the First Owner and Second Owner;

"Permissive Path 1"

means the route shown by way of a blue dotted line and labelled "1" on the Permissive Path Plan which forms part of the land registered under title numbers HD537717 and HD172655;

"Permissive Path 2"

means the route shown by way of a blue dotted line and labelled "2" on the Permissive Path Plan which forms part of the land registered under title number HD501304;

"Permissive Path 3"

means the route shown by way of a blue dotted line and labelled "3" on the Permissive Path Plan which forms part of the land registered under title number HD381853;

"Permissive Path 4"

means the route shown by way of a blue dotted line and labelled "4" on the Permissive Path Plan which forms part of the land registered under title number HD501304;

"Permissive Paths"	means Permissive Path 1, Permissive Path 2, Permissive Path 3 and Permissive Path 4 and a reference to "Permissive Path" shall be to any one of them;
"Permissive Path Plan"	the drawing marked "Permissive Path Plan" and given drawing number SK01 attached to this Deed at Schedule 1;
"Permissive Route"	a route available and Maintained for use by the public on foot PROVIDED THAT nothing in this Deed shall require such routes to be dedicated as public rights of way nor prevent the First Owner and/or the Second Owner from erecting and maintaining signage or other indications on or in the vicinity of such a route (including but not limited to a notice or notices pursuant to section 31(3) of the Highway Act 1980) including signage in relation to the use and permitted type of user of such a route and nothing in this Deed shall prohibit the First Owner and/or the Second Owner depositing a statement with the appropriate authority pursuant to section 31(6) of the Highway Act 1980 the effect of which is to declare and indicate that each and any Permissive Path has not been dedicated as highway;
"Planning Permission"	the planning permission to be issued by the Council pursuant to the Application;
"Reasonable Endeavours"	means the taking of such reasonable steps that would be taken by a reasonable and prudent person acting in their own commercial interests which for the avoidance of doubt shall not require the Owners to take proceedings (including any appeal) in any

court, public inquiry or other hearing (unless specified to the contrary) but subject thereto and to other terms of this Deed, including (where reasonably required by the Council) providing supporting evidence of the matters mentioned above;

“Section 73 Consent”

means a planning permission granted pursuant to section 73 of the Act which varies and/or removes any condition to which the Planning Permission and/or to which such planning permission granted pursuant to section 73 of the Act was granted;

“Site”

the part of the land at Wickham Hall Estate Hadham Road Bishops Stortford Hertfordshire CM23 1JG registered under title numbers HD172655, HD537717 and HD381853 and shown edged red on the Site Plan for identification purposes only;

“Site Plan”

the drawing marked “Location Plan” and given drawing number D01 Rev A attached to this Deed at Schedule 1;

“Statutory Undertaker”

means any statutory undertaker (other than the Owners and any successor to the Owners operating the Development) who occupies the Site or Obligation Area in their capacity as a statutory undertaker for purposes related to their function as a provider of the supply of utility services that is not associated with the Use;

“Use”

means use of the Development for the generation of electricity;

“Working Day”

Monday to Friday (inclusive) except Good Friday, Christmas Day and public or bank holidays from time to time in England.

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, sub-clause, schedule, paragraph, sub-paragraph or recital such reference (unless the context otherwise requires) is a reference to a clause, sub-clause, schedule, paragraph, sub-paragraph or recital in 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 interchangeably in that manner.
- 2.4 Subject to Clause 5, 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 references to the Council shall include the successors to its statutory functions.
- 2.7 The headings are for reference only and shall not affect the construction of this Deed.
- 2.8 Any covenant by any of the Owners not to do an act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the 1990 Act and to the extent that it does not contain planning obligations Section 111 of the Local Government Act 1972 and all other enabling powers.
- 3.2 The covenants restrictions and requirements imposed upon the Owners under this Deed create planning obligations pursuant to Section 106 of the 1990 Act and are enforceable by the Council as the local planning authority against the Owners and their successors in title.
- 3.3 This Deed is a local land charge and upon completion shall be registrable by the Council as such.

4 CONDITIONALITY

This Deed is conditional upon:

- 4.1 the grant of the Planning Permission; and
- 4.2 the Commencement of the Development.

Save for the provisions of this clause and clauses 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12 and 13 which shall come into effect immediately on completion of this Deed

5 THE OWNERS' COVENANTS

- 5.1 Subject to Clause 6.6, the Owners covenant with the Council for themselves and their successors in title to observe and perform the obligations and stipulations contained in this Deed and the covenants as set out in Schedule 2 on the basis that such covenants shall not be joint and several and shall only be enforceable against:

5.1.1.1 the First Owner and Second Owner in respect of covenants relating to Permissive Path 1;

5.1.1.2 the Second Owner in respect of covenants relating to Permissive Path 2;

5.1.1.3 the First Owner in respect of covenants relating to Permissive Path 3; and

5.1.1.4 the Second Owner in respect of covenants relating to
Permissive Path 4

SAVE FOR the relevant covenants contained in the Second Schedule which shall be jointly and severally enforceable against the Owners.

6 MISCELLANEOUS

- 6.1 The Owners shall comply with any reasonable requests of the Council and their duly authorised officers or agents to have reasonable access to any part of the Site or the Obligation Area (for the purposes of inspection only) or any reasonable requests to provide documentation within the Owners' possession (at the Owners' expense) for the purposes of monitoring compliance with the obligations contained herein.
- 6.2 The Owners declare and covenant to the Council to observe and perform the conditions restrictions and other matters mentioned herein and shall not make any claim for compensation in respect of any condition restriction or provision imposed by this Deed.
- 6.3 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 6.4 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.
- 6.5 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the written consent of the Owners or the Applicant) it is modified by any statutory procedure (other than by pursuant to section 73 of the 1990 Act) or expires prior to the Commencement of Development.
- 6.6 No person or entity 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 interest in the Site or the part of the Site or the Obligation Area or the part of the Obligation Area in respect of which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest PROVIDED THAT the reservation of any rights or the inclusion of any covenants in any transfer shall not constitute an interest for the purposes of this clause.

- 6.7 None of the covenants in this Deed shall be enforceable against any Statutory Undertaker who acquires any part of the Site or the Obligation Area or interest therein in its capacity as a Statutory Undertaker.
- 6.8 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site or the Obligation Area in accordance with a planning permission other than the Planning Permission.
- 6.9 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as local authorities.
- 6.10 Any mortgagee shall be liable only for any breach of the provisions of this Deed during such period as he is a mortgagee in possession of the Obligation Area.

7 WAIVER

No waiver (whether expressed or implied) by the Council, the Owners or the Applicant 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, the Owners or the Applicant (as appropriate) from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

8 CHANGE IN OWNERSHIP

The Owners covenant with the Council to give it written notice of any transfer in ownership of any of its freehold interests in the Site or the Obligation Area such notice to be served within twenty one (21) Working Days of such transfer and to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or the Obligation Area (as appropriate) by reference to a plan PROVIDED THAT this obligation shall not apply to the transfer or grant of leases of electricity sub-stations or gas governors or the like.

9 CHARGEES' CONSENT

The Chargee acknowledges and declares that this Deed has been entered into by the Owners with its consent and that the Site shall be bound by the planning obligations, Undertakings and covenants contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the Chargee shall otherwise have no liability under this Deed unless it takes possession of

the Site in which case they too will be bound by the planning obligations, Undertakings and covenants as if they were a person deriving title from the Owners.

10 NOTICES

10.1 Any notice shall be deemed to be served if delivered personally or sent via recorded delivery as follows:

10.1.1 Council: Legal Services Manager, East Hertfordshire District Council,
Wallfields, Hertford SG13 8EQ

10.1.2 First Owner: [REDACTED]
[REDACTED]
[REDACTED]

10.1.3 Second Owner: [REDACTED]
[REDACTED]

10.1.4 Chargee: Business Lending Services, 20 Merrion Way, Leeds LS2 8NZ

11 SECTION 73 CONSENT

11.1 If any Section 73 Consent is granted after the date of this Deed:-

11.1.1 the planning obligations in this Deed shall automatically relate to and bind such Section 73 Consent from the date of the grant of the Section 73 Consent (in addition to continuing to bind the Site in respect of the Planning Permission) without the need to enter into any subsequent deed of variation or new deed pursuant to section 106 or section 106A of the 1990 Act;

11.1.2 the definitions of "**Application**", "**Development**", and "**Planning Permission**" (other than for the purpose of Clause **Error! Reference source not found.**) shall be construed to include reference to (respectively and as appropriate) the planning application for the Section 73 Consent the development permitted by the Section 73 Consent and the Section 73 Consent itself; and

11.1.3 this Deed shall be endorsed with the following words in respect of any Section 73 Consent:-

"the planning obligations and undertakings in the Deed relate to and bind the Site in respect of which a new planning permission reference [] has been granted pursuant to Section 73 of the Town and Country Planning Act 1990 (as amended)"

provided that:-

- 11.1.4 nothing in this Clause shall fetter the discretion of the Council in determining any planning application for a Section 73 Consent and the appropriate planning obligations, other obligations and undertakings required in connection with the determination of the same;
 - 11.1.5 to the extent that any of the planning obligations in this Deed have already been discharged at the date that a Section 73 Consent is granted they shall remain discharged for the purposes of the Section 73 Consent; and
 - 11.1.6 the Council reserve the right to require the completion of a separate planning obligation that could include other obligations and undertakings by deed of agreement or deed of variation in connection with any Section 73 Consent if either or both (acting reasonably) consider it desirable and necessary to do so.
- 11.2 In the event of different planning obligations or other obligations or undertakings agreed by the Council being binding on any Section 73 Consent pursuant to Clause 11.1.6 above, this Deed shall not apply to that Section 73 Consent if that separate deed expressly states that it is in substitution (or partial substitution) for the Planning Obligations and the Other Obligations or undertakings contained in this Deed.

12 JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and the Owners submits to the non-exclusive jurisdiction of the courts of England.

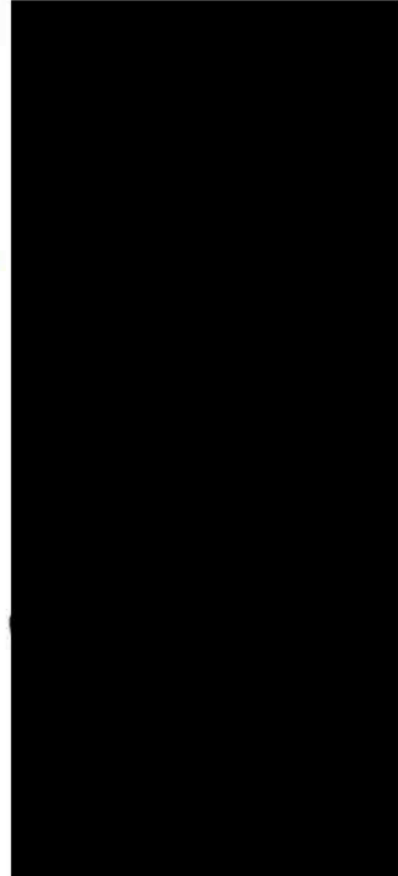
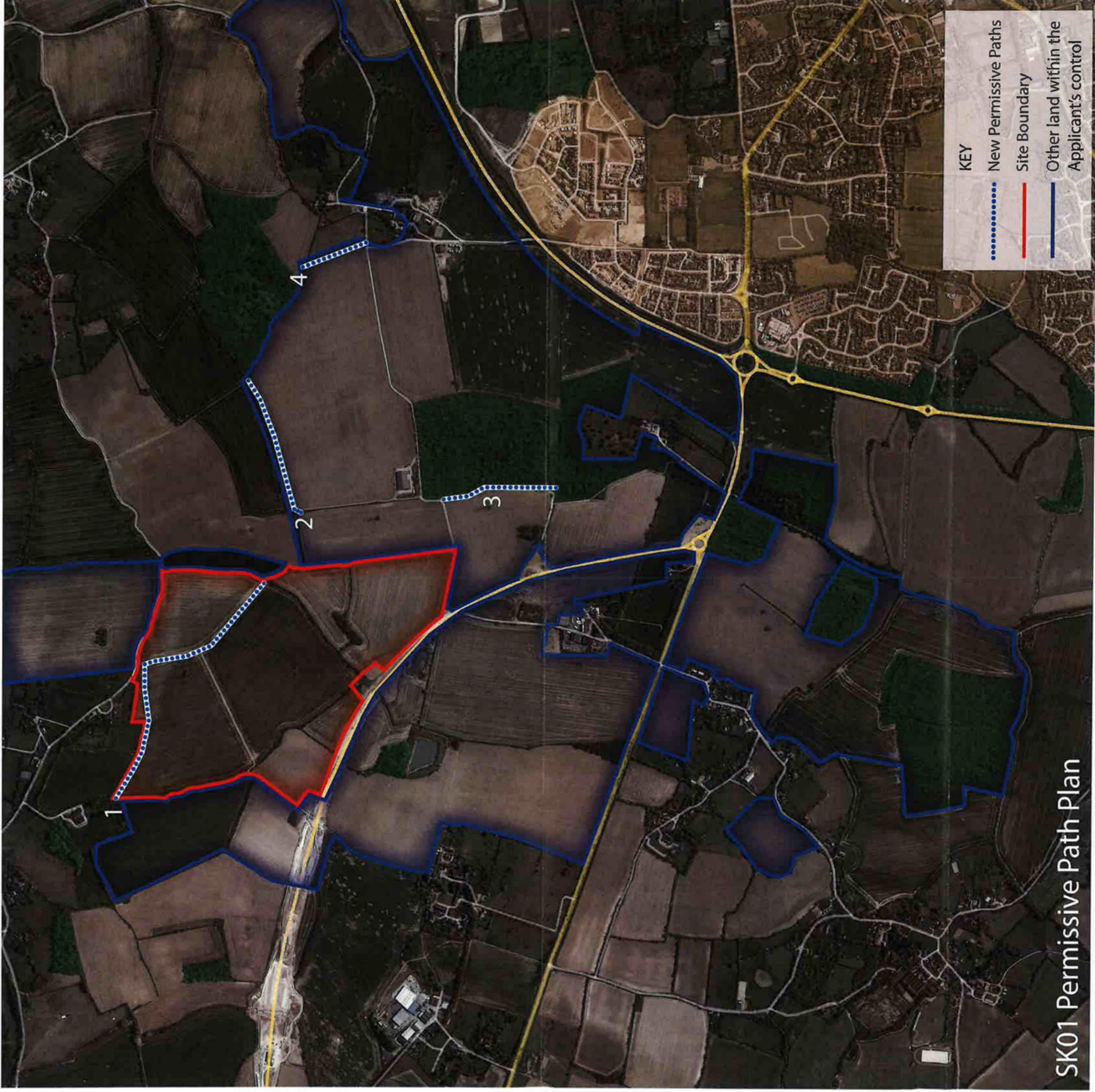
13 DELIVERY

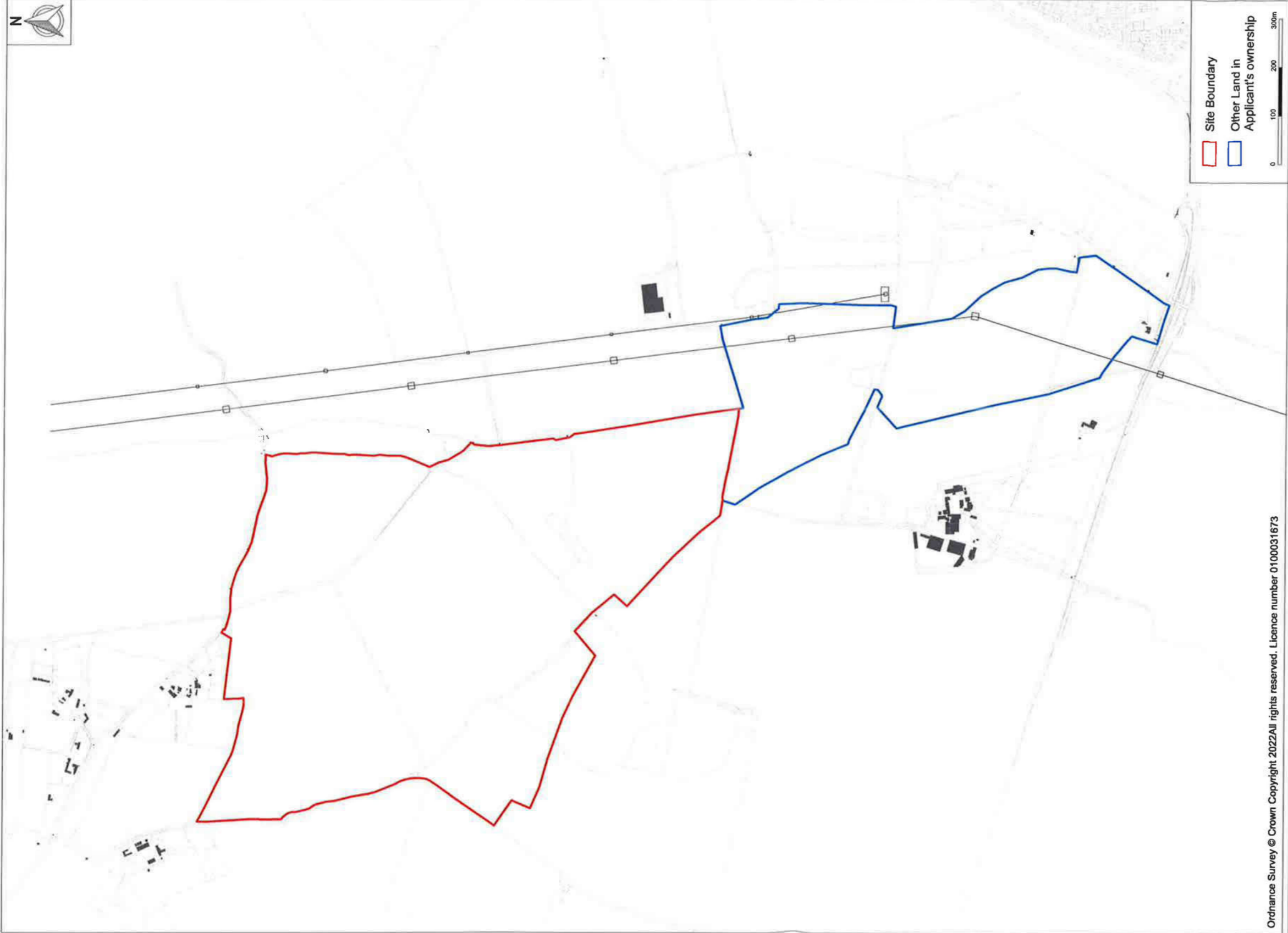
The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

SCHEDULE 1

Permissive Path Plan

Site Plan





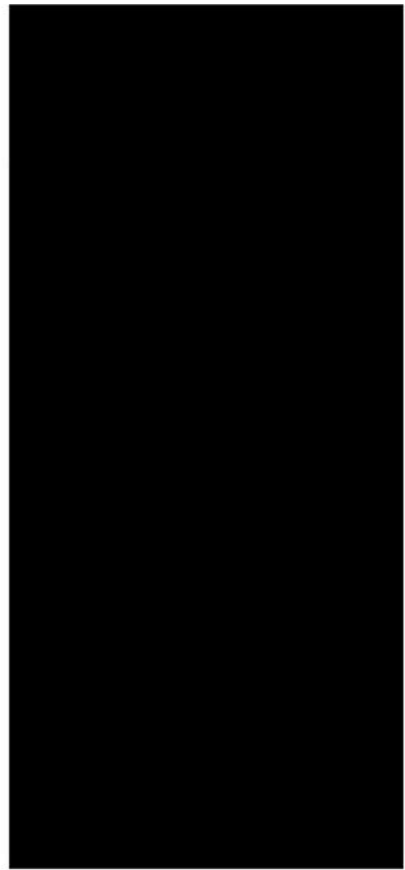
□ Site Boundary
□ Other Land in Applicant's ownership

Ordnance Survey © Crown Copyright 2022 All rights reserved. Licence number 0100031673

CLIENT	Endurance Energy Wickham Hall Limited		
PROJECT	Wickham Hall Estate, Bishops Stortford		
DATE	31 May 2022	OR No.	545278 220145
SCALE	1:5000 @ A2	DRAWING No.	D01
JOB No.	HSD24	REV.	A

DLP PLANNING LIMITED
 4 Abbey Court, Eagle Road, Play Bushes Park
 Bedford, MK44 3WH
 T 01234 832 740
 F 01234 831 266
 E bedford@dplanners.co.uk

DRAWING TITLE
Location Plan



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

EXECUTED as a DEED by
FRANK DAVID HARVEY in
the presence of:

)
)
) _____

Witness signature

) _____

Name

) _____

Address

) _____

Occupation:

) _____

EXECUTED as a DEED by
SUZANA ROSE HARVEY in
the presence of:

)
)
) _____

Witness signature

) _____

Name

) _____

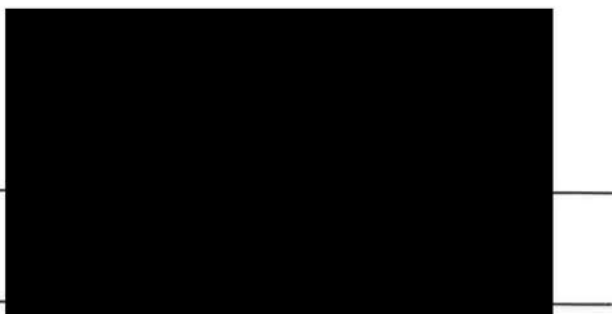
Address

) _____

Occupation:

) _____

EXECUTED as a DEED by)
DAVID ERNEST HOLLEST in)
the presence of:)

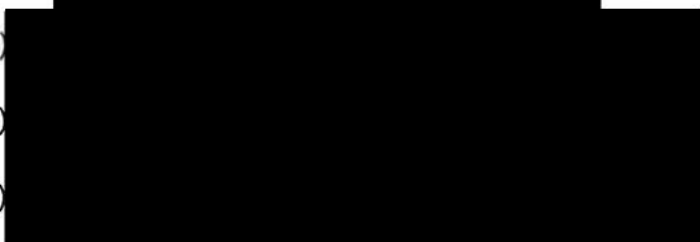


Witness signature)

Name)

Address)

Occupation:)



EXECUTED and DELIVERED)
as a Deed by **ENDURANCE ENERGY**)
WICKHAM HALL LIMITED)
acting by a director in the presence of:)



.....
Director

Signature of witness.....

Name of witness (block capitals)

Witness address

Witness occupa

EXECUTED AS A DEED for and on behalf of)

CLYDESDALE BANK plc (trading as Clydesdale Bank and
Yorkshire Bank and Virgin Money)

acting by its duly authorised signatory

[Redacted signature area]

Authorised signatory

In the presence of)

[Redacted witness name]

Witness

[Redacted witness details]
Full name,

SCHEDULE 2

Permissive Path obligations

1. The Owners hereby covenant with the Council not to allow or permit the First Use of the Development unless and until the Permissive Paths have been provided as Permissive Routes.
2. The Owners hereby covenant with the Council (each to the extent that the Permissive Paths falls within their ownership) from the Date of First Use to the Date of Final Decommissioning to provide the Permissive Paths as Permissive Routes.
3. Where the Council at any time following First Use of the Development notify in writing the Owners (or any one of them, as relevant) ("**Council Notice**") that a Permissive Path/s is not being provided as a Permissive Route the Owners or Owner (as applicable to the extent that the Permissive Paths falls within their ownership) covenant/s that within two months of the date of the Council Notice (or such longer period as may be agreed in writing by the Council), they shall provide such Permissive Path/s (as appropriate) as a Permissive Route/s (as appropriate).
4. The Owners (to the extent that they are Owners of the Site) covenant to cease Use and comply with condition 3 of the Planning Permission in respect of the decommissioning and restoration of the Site where any Council Notice is not complied with within two months of the date of the Council Notice (or such longer period as may be agreed in writing by the Council).