

Lower Thames Crossing

9.167 Unilateral Undertaking – Kent County Council (Tracked changes version)

Deleted: Draft Section 106 Agreement

Infrastructure Planning (Examination
Procedure) Rules 2010

Volume 9

DATE: ~~December~~ 2023
DEADLINE: ~~9~~

Deleted: November

Deleted: 7

Planning Inspectorate Scheme Ref: TR010032
Examination Document Ref: TR010032/EXAM/9.167

VERSION: ~~2~~.0

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Revision History

<u>Version</u>	<u>Date</u>	<u>Submitted at</u>
<u>1.0</u>	<u>17 November 2023</u>	<u>Deadline 7</u>
<u>2.0</u>	<u>11 December 2023</u>	<u>Deadline 9</u>

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and schedules of the draft s106 at Deadline 7 1

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1 Introduction

- 1.1.1 ~~A section 106 agreement (s106) could not be reached between the Applicant and Kent County Council and so this document presents planning obligations in the form of a unilateral undertaking from the Applicant to Kent County Council. The executed version of the undertaking will be submitted at Deadline 10.~~
- 1.1.2 ~~The contents of the unilateral undertaking are understood to be agreed by Kent County Council but the reason for an agreement not being reached is because of certain matters that the Applicant was not prepared to include in the s106 agreement.~~
- 1.1.3 ~~To give the Examining Authority an indication of the final status of the draft s106 agreement negotiations, Table 1.1, presents a broad summary of positions on the main clauses and schedules of the unilateral undertaking.~~

Table 1.1 Summary positions on the main clauses and schedules of the draft s106 at Deadline 9.

Sections	Commentary
s106 clauses	Drafts of the Section 106 agreements have been exchanged between the two parties and a number of the County Council's comments have been addressed by the Applicant. The s106 clauses (at the front end of the document) were substantially if not wholly agreed.
Schedule 1 – Officer Support Contributions	The County Council has accepted the Applicant's financial contribution and the terms of payment.
Schedule 2 – Severance Contributions	The County Council has accepted the Applicant's financial contribution and the terms of payment.
Schedule 3 – Payments to the Council – Enhancement of the Kent Downs Area of Outstanding Natural Beauty (KDAONB)	The County Council has accepted the Applicant's financial contribution and the terms of payment.
Schedule 4 – Heavy Goods Vehicles ("HGV") Restrictions	The County Council has accepted the Applicant's financial contribution and the terms of payment.

- 1.1.4 ~~The matters that the County Council wanted to be in the section 106 agreement but are not:~~
- ~~An obligation for the Applicant to carry out a programme of pre-emptive works to prevent or minimise damage to the Local Road Network during the LTC construction phase. In the alternative, funding for KCC to undertake such works at National Highway's expense.~~
 - ~~An obligation that National Highways should fund KCC to carry out identified mitigation measures on the Local Road Network (LRN) as identified through the Wider Network Impact (WNI) study (details of mitigation schemes including costs are provided in Appendix B of KCC's D7~~

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Deleted: <#>The draft s106 between the Applicant and Kent County Council is presented in full in Appendix A.¶
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Deleted: The Applicant will continue to consider
Deleted: Council's ongoing comments following Deadline 7 submissions.

Deleted: The Applicant has made a financial offer for Officer Contributions, which the Council has responded to with a counter-offer. The Applicant is currently reviewing the Council's counter-offer and will respond week commencing 13 November 2023. This matter remains under negotiation.

Deleted: The Applicant has made a financial offer for Severance, which the Council has responded to with a counter-offer. The Applicant is currently reviewing the Council's counter-offer and will respond week commencing 13 November 2023. This matter remains under negotiation.

Deleted: Applicant

Deleted: made a final offer for a Compensatory Enhancement Fund to

Deleted: Council for the Kent Downs AONB Unit to manage

Deleted: administer. ¶
 As set out in Schedule 3

Deleted: the draft S106 the offer is £4,240,000, which includes £600,000 to manage and administer the fund. ¶
 The value of the Compensatory Enhancement Fund has not yet been agreed by the Kent Downs AONB Unit. ¶
 Engagement is continuing and further meetings are being scheduled before the end of November

Deleted: The Applicant has received and continues to address comments raised to Schedule 6. The Applicant intends to make a financial offer for the scope of work that enables said restrictions including cost of feasibility. This matter remains under negotiation.

Deleted: Schedule 5 – Low Noise Surfacing Works

submission - [REP7-198]. The combined cost of all the proposed mitigation is estimated at £23.3m.

- c. An obligation upon the Applicant to contribute [financially] to the preparation of an outline business case for the A229 Blue Bell Hill Improvement Scheme in the order of £3m by June 2024 to allow KCC to meet its current programme.
- d. An obligation upon the Applicant to identify and fully fund mitigation to local bus services which are disrupted because of temporary works during construction. This would include a financial contribution of £80,000 due to delays arising from construction traffic management measures as set out in the Transport Assessment a further £80,000 to cover the temporary works that may impact bus services but which the Transport Assessment [APP-529] cannot determine at this stage
- e. An obligation upon the Applicant to provide a sufficient financial contribution for the implementation of traffic management measures identified through the Traffic Management Plan and Traffic Management Forum.

1.1.5 It is the Applicant's view that these requests are either already appropriately provided for and secured by Control Documents (principally the oTMPfC [REP7-148] and the dDCO (in respect to items (a), (d) and (e)); or are not required in order to make the Project acceptable in planning terms (in respect of items (b) and (c)). The Applicant's position on these matters is set out within the Statement of Common Ground between the parties submitted at Deadline 9A under matters 2.1.8, 2.1.108 (DL-1), 2.1.170 (DL-6) and 2.1.25-28.

1.1.6 The unilateral undertaking is presented in full in Appendix A.

1.1.7 In summary the unilateral undertaking provides the following:

- a. Annual financial contributions towards various officer posts to assist the County Council in meeting its obligations on account of the Authorised Development.
- b. The payment of the financial contributions for officer posts is triggered by an input date i.e. the intended first date on which work falling within a relevant role at the County Council is requested or required by the Applicant in respect of matters under the Development Consent Order in respect of the Authorised Works
- c. The payment of the financial contributions for officer posts will cease six months post the construction end date, which is defined as the date when the road tunnels are open for public use.
- d. The Applicant also covenants to pay to the Council a one-off payment of £30,000 to assist the County Council to make the necessary changes to the Historic Environment Record that would result from the Authorised Development and to upgrade the online Historic Environment Record

- e. The payment of £103,000 to mitigate severance effects on Valley Drive, Gravesend. The payment meets the County Council's costs of a study to identify the optimal location of a pedestrian crossing to address the potential impacts on pedestrians on Valley Drive and the construction of the pedestrian crossing. The works must be carried out within 18 months of the construction end date.
- f. The payment of £4.24M for an AONB Compensatory Enhancement Fund to fund measures and projects that meet a funding criterion that primarily conserves and enhances the natural beauty and special qualities of the Kent Downs AONB and its setting. An additional sum is included to meet the costs in managing and administering the fund.
- g. The payment of £28,000 to meet the County Councils costs of implementing HGV restrictions along Henhurst Road. The sum includes the costs of a feasibility study and for addressing the adverse consequences of the Henhurst Road restrictions.

Appendices

Appendix A Unilateral Undertaking

Deleted: Draft s106 agreement

DATED

2023

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Lower Thames Crossing

(1) KENT COUNTY COUNCIL

and

(2) NATIONAL HIGHWAYS LIMITED

**DEED OF DEVELOPMENT CONSENT
OBLIGATIONS**

**Pursuant to section 106 of the Town and Country Planning Act
1990 (as amended) relating to the Lower Thames Crossing**



BDB PITMANS

Registered Office

One Bartholomew Close
London
EC1A 7BL
DX 339401 London Wall

50/60 Station Road
Cambridge
CB1 2JH
DX 339601 Cambridge 24

The Anchorage
34 Bridge Street
Reading, RG1 2LU
DX 146420 Reading 21

Grosvenor House
Grosvenor Square
Southampton, SO15 2BE
DX 38516 Southampton 3

T +44 (0)345 222 9222

THIS **UNDERTAKING** is made on 2023

BY

(1) **NATIONAL HIGHWAYS LIMITED** of Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ (Company Registration number 09346363) (**National Highways**),

TO

(2) KENT COUNTY COUNCIL of Sessions House, County Hall, Maidstone ME14 1XQ (the Council):

and

Together 'the Parties' and 'Party' shall be construed accordingly.

WHEREAS

- (A) The Council is the local planning authority, the local highway authority, the education authority, the library authority, the lead local flood authority and the authority responsible for the provision of social services in the area where the Land is situated.
- (B) National Highways is the freehold owner of the Land registered at the Land Registry under title number K777301.
- (C) On 31 October 2022 National Highways submitted the Application to the Secretary of State for Transport (c/o The Planning Inspectorate) for development consent to construct and operate the Authorised Development. The Application was accepted for examination by the Secretary of State on 28 November 2022.
- (D) National Highways is entering into this unilateral undertaking, as a development consent obligation under the 1990 Act in order to secure planning obligations contained in this Deed to mitigate the impacts of the Authorised Development and to make the Authorised Development acceptable in planning terms.

NATIONAL HIGHWAYS, HEREBY **COVENANTS**, AS FOLLOWS

1 Interpretation

1.1 In this Deed the following terms and expressions have the following respective meanings unless otherwise stated:

- 1972 Act** means the Local Government Act 1972;
- 1980 Act** means the Highways Act 1980;
- 1990 Act** means the Town and Country Planning Act 1990;
- 2008 Act** means the Planning Act 2008;

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Moved down [1]: KENT COUNTY COUNCIL of Sessions House, County Hall, Maidstone ME14 1XQ (the Council); ¶ and ¶

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Affected Council means Gravesham Borough Council being the local authority which is the local land charges authority for the geographical area in which the Land is located;

Application means the application for a development consent order submitted by National Highways to the Secretary of State on 31 October 2022, pursuant to section 37 of the 2008 Act for the Authorised Development;

Authorised Development has the meaning ascribed to the term "authorised development" in the Development Consent Order;

Commencement means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the Authorised Development other than the preliminary works as defined in Schedule 2 of the Development Consent Order and "Commence" shall be construed accordingly but shall exclude any Preliminary Works;

Deleted: <#>Certificate of Substantial Completion ...

Commencement Date means the date of Commencement of the Authorised Development pursuant to the Development Consent Order;

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Construction End Date means the date when both tunnels comprised in the Authorised Development beneath the River Thames are open for traffic;

Deleted: means the period between the Commencement Date and

Deleted: Period

Construction Period means the period between the Commencement Date and the Construction End Date;

Development Consent Order means the development consent order to be made by the Secretary of State pursuant to the Application;

Expert means an independent person appointed in accordance with the provisions of Clause 9 to determine a dispute between the Parties to this Deed;

Historic Environment Record means the public record of local archaeological sites, finds and historic buildings and historic landscapes maintained and managed by the Council;

Input Date means the intended first date on which an officer of the Council as identified by a role in Part 2 or Part 3 of Schedule 1 will be invited or required by National Highways to engage in

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any consideration of matters under the provisions of the Development Consent Order in respect of the Authorised Works save in respect of any of the Preliminary Works with the exception of archaeological investigations;

Land

means the freehold land under title K777301 edged in red on the plan Annexed to this Deed;

Preliminary Works

means the preliminary works as defined in Part 1 of Schedule 2 of the Development Consent Order;

Secretary of State

means the Secretary of State for Transport; and

Working Day

a day other than a Saturday or Sunday or public holiday in England.

Deleted: means the "all Items" index figure of the Index of Retail Prices published by the Office for National Statistics or such other index as the Council may reasonably nominate in the event that the Index of Retail Prices shall no longer be published or its name or methodology be materially altered;

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1.2 In interpreting this Deed:

- 1.2.1 words incorporating the singular shall include the plural and vice versa,
- 1.2.2 words importing the masculine gender include the feminine and vice versa;
- 1.2.3 words incorporating persons shall include firms, companies, corporations, other corporate bodies and legal entities and vice versa;
- 1.2.4 references to the Council shall include any successors to its relevant statutory and other functions;
- 1.2.5 references to National Highways shall include any successors to its relevant statutory and other functions;
- 1.2.6 references to numbered Clauses, Paragraphs or Schedules are unless otherwise stated references to the relevant Clauses of, Paragraphs of and Schedules to this Deed;
- 1.2.7 references to numbered articles are unless otherwise stated references to the numbered articles comprised within the draft Development Consent Order submitted at Deadline 7 of the examination of the Application, but are to be interpreted as being adjusted to the extent necessary to accord with the provisions of the Development Consent Order as made;
- 1.2.8 words denoting a requirement or an obligation on a Party to do any act, matter or thing include an obligation to procure that it can be done and words placing a party under a restriction include an obligation not to cause, permit or suffer any infringement of the restriction;
- 1.2.9 in the absence of contrary provision in this Deed, any reference to a statute includes any statutory modification, amendment, extension, re-enactment or

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replacement of it and every statutory instrument, regulation, order, direction or specification made or issued under such statute deriving validity from it;

- 1.2.10 if any provision of this Deed shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be deemed thereby to be affected, impaired or called into question;
- 1.2.11 the recitals and headings in this Deed are for ease of reference only and shall not affect its construction or otherwise have any binding legal effect;
- 1.2.12 in the event of any conflict between the provisions of this Deed and of any document annexed hereto or referred to herein, the provisions of this Deed shall prevail;
- 1.2.13 references to 'the Parties' shall mean the Parties to this Deed and reference to a 'Party' shall mean either of the Parties;
- 1.2.14 references to 'notice' shall mean notice in writing;
- 1.2.15 references to 'including' shall mean including without limitation; and
- 1.2.16 the Interpretation Act 1978 shall apply to this Deed.

2 Legal Effect

- 2.1 This Deed is made pursuant to section 106 of the 1990 Act.
- 2.2 The obligations, covenants and undertakings on the part of National Highways in this Deed are planning obligations in the form of development consent obligations pursuant to and for the purposes of the power referred to in Clause 2.1 and so bind National Highways' interest in the Land and the said obligations, covenants and undertakings on the part of National Highways are entered into with the intent that they shall be enforceable by the Council not only against National Highways but against any successors in title to or assigns of National Highways as if that person had been an original covenanting party.
- 2.3 This Deed is a local land charge and National Highways shall seek to be register it, as such with the Affected Council in accordance with the Local Land Charges Act 1975.
- 2.4 National Highways enters into this Deed with the effect of binding the Land.

3 Conditionality

- 3.1 Subject to clause 3.2, Clauses 4 shall not have operative effect until the Development Consent Order has come into force and all other Clauses and Schedules in this Deed shall have operative effect upon the date of this Deed.

Deleted: , section 111 of the 1972 Act, section 1 of the Localism Act 2011 (as amended) and all other enabling powers.

Deleted: and insofar as any such obligations, covenants and undertakings are not capable of falling within section 106 of the 1990 Act are entered into as obligations, covenants and undertakings in pursuance of the powers referred to in clause 2.1 with the intent they shall be enforceable under contract

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- 3.2 In the event that the Development Consent Order becomes the subject of any judicial review proceedings:
- 3.2.1 until such time as such proceedings including any appeal have been finally determined, the terms and provisions of this Deed will remain without operative effect unless the Authorised Development has been Commenced; and
- 3.2.2 if following the final determination of such proceedings the Authorised Development is capable of being Commenced, then this Deed will take effect in accordance with its terms.
- 3.3 Wherever in this Deed reference is made to the final determination of judicial review proceedings (or cognate expressions are used), the following provisions will apply:-
- 3.3.1 Proceedings by way of judicial review are finally determined:-
- (a) when permission to bring a claim for judicial review has been refused and no further application may be made;
 - (b) when the court has given judgment in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused; or
 - (c) when an appeal is finally determined and no further appeal may be made.

4 Development Consent Obligations

- 4.1 National Highways covenants to observe and perform ~~its~~ obligations, undertakings, covenants and agreements in ~~the Schedules hereto~~.

5 Release

- 5.1 Subject to Clause 5.3 ~~National Highways shall, upon transfer, of the entirety of its benefit under the Development Consent Order from National Highways to another party or parties under the provisions of article 8 of the Development Consent Order be released from all obligations, in the Deed, without prejudice to any rights of the Council in respect of antecedent breach.~~

- ~~5.2 For the purposes of clause 5.1 a transfer of the entirety of the benefit of the Development Consent Order shall be deemed to have occurred if National Highways transfers the entirety of its remaining benefits under the Development Consent Order, some benefits having already been transferred under article 8~~

- 5.3 In the event that National Highways no longer has an interest in the Land but is still the undertaker for the purposes of the Development Consent Order, this Deed shall remain enforceable against it by the Council.

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The Council covenants with National Highways to observe and perform the obligations, undertakings, covenants and agreements in Schedule 6

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5.4 National Highways ~~covenants~~ not to transfer or grant all of the benefit of the Development Consent Order pursuant to article 8 thereof unless the party to which it proposes to effect the transfer or grant has first entered into a Deed with the Council on terms equivalent to this Deed ~~or has entered into a unilateral undertaking in favour of the Council on terms equivalent to this Deed.~~

6 Further Planning Permissions and Development Consent Orders

6.1 Nothing in this Deed shall be construed as prohibiting or limiting the rights of National Highways to use or develop any part of the Land in accordance with and to the extent permitted by permitted development rights, planning permission, development consent order or other statutory authority granted either before or after the date of this Deed, other than the Development Consent Order.

7 Expiry or Revocation

7.1 If the Development Consent Order expires or is quashed or revoked prior to the Commencement Date then this Deed shall immediately determine and cease to have effect.

8 Notices

8.1 ~~Any notice or consent required to be given under this Deed shall be,~~ in writing (in each case annotated with the reference 'Lower Thames Crossing') and ~~shall be sent to the address at the front of this Deed or instead to such other address as may be notified,~~ by National Highways or the Council ~~from time to time.~~

8.2 ~~Any such notice must be delivered by hand or sent by first class post, registered delivery or courier service and shall conclusively be deemed, in the absence of evidence of earlier receipt, to have been received;~~

8.3 ~~if delivered by hand, on the next Business Day after the day of delivery; and,~~
~~8.3.1 if sent by first class post, registered delivery or courier service within the United Kingdom, on the day falling 2 Business Days after the day posting or dispatch, exclusive of the day of posting or dispatch.~~

9 Notice of Authorised Development and Input Date

9.1 National Highways shall provide the Council (in writing) with:

9.1.1 ~~as much notice as reasonably practicable of the relevant Input Date and no less than 3 months notice thereof.~~

9.1.2 ~~notice of the intended Commencement Date, not later than 30 Working Days prior to that date.~~

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~~Deleted:~~ (disregarding previous transfers of part of its benefits under article 8)

~~Deleted:~~ and the Council shall cancel all entries made in its register of local land charges in respect of this Deed.

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The Council will upon request by National Highways certify compliance or partial compliance with the provisions of this Deed.¶

~~Resolution of disputes~~¶
In the event of any dispute arising between the Parties as regards this Deed, the Parties will attempt to resolve that dispute amicably including holding a meeting attended by at least one senior representative from each Party.¶

If the Parties are unable to resolve the dispute amicably pursuant to clause 9.1, either Party can refer such dispute or difference to some independent and fit person of at least 10 years professional experience of the matter in issue holding appropriate professional qualifications to be appointed (in the absence of agreement) by the President (or equivalent person) for the time being of the professional body chiefly relevant in England to such qualifications and such person will act as an Expert and his decision will be final and binding upon the Parties to the dispute or difference and his costs will be payable by the Parties to the dispute in such proportion as he will determine and failing such determination will be borne by the Parties to the dispute or difference in equal shares.¶

In the absence of agreement between the Parties to the dispute or difference as to the professional qualifications of the person to be appointed pursuant to clause 9.2, or as to the appropriate professional body within 10 (ten) Working Days after either Party has given to the other written request to concur in the professional qualifications of the person to be appointed pursuant to clause 9.2 hereof, then the question of the appropriate qualifications or professional body will be referred to a solicitor to be appointed by the President for the time being of the Law Society of England...

~~Deleted:~~ All notices, requests, demands or other written communication

~~Deleted:~~ or upon the Parties will be deemed to have been properly given or made if given

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~~Deleted:~~ registered post or recorded delivery post and addressed to the address given at Clause 10.3 of this Deed or such other address as

~~Deleted:~~ may notify the other in writing

~~Deleted:~~ or written communication to

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~~Deleted:~~ one party upon the other party pursuant to the terms of this Deed shall

~~Deleted:~~ validly served

~~Deleted:~~ in accordance with clause 10.1.

~~Deleted:~~ ~~<#>~~The address for service of any such notice, consent or approval as aforesaid is: ¶

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~~Deleted:~~ ~~<#>~~the intended Commencement Date and the obligations in this Clause 11.1.1 shall re-apply in the event

~~Deleted:~~ ~~<#>~~Commencement does not occur on the intended ...

~~Deleted:~~ ~~<#>~~;

9.1.3 ~~Notice~~ of the occurrence of each of the following within 30 Working Days of each occurrence :

(a) the Commencement Date; and

9.1.4 the day on which the Construction ~~End Date fell~~,

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the date the Development Consent Order is made;

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no earlier than nine months before the anticipated Commencement Date and no later than eight months before the anticipated Commencement Date of the anticipated Commencement

Deleted: (and such notice having been given should the anticipated Commencement Date change then notice of the changed anticipated Commencement Date shall be given promptly).

Deleted: <#>If this Deed or anything contained in it gives rise to a taxable supply for VAT purposes by the Council to National Highways then the Council shall use all reasonable endeavours to recover VAT in the first instance. ¶

Deleted: <#>subject to the Council complying with Clause 12.1

10 VAT

10.1 If this Deed or anything contained in it gives rise to a taxable supply for VAT purposes by the Council to National Highways then, National Highways shall pay to the Council or third party an amount equal to the VAT chargeable in addition to and at the same time as any payment or the provision of any other consideration for such supply upon provision of a valid VAT invoice addressed to National Highways.

Deleted: <#>Approvals ¶
Where any approval, agreement, consent, confirmation or an expression of satisfaction is required under the terms of this Deed such approval, agreement, consent, confirmation or expression of satisfaction shall be given in writing and shall not be unreasonably withheld or delayed.¶

11 Council's Powers

11.1 Nothing in this Deed shall fetter the statutory rights, powers or duties of the Council as the local planning authority, the local highway authority, the education authority, the library authority and the authority responsible for the provision of social services.

12 Jurisdiction

12.1 This Deed including its construction, validity, performance and enforcement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

Deleted: <#>Good Faith¶
The Parties agree with each other to act reasonably and in good faith in the discharge of the obligations contained in this Deed. ¶
Rights of Third Parties¶
It is not intended that any person who is not a party to this Deed shall have any right under the Contracts (Third Parties) Act 1999 to enforce any term of this Deed.¶

12.2 the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

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13 Registration

13.1 This Deed shall be sent by National Highways to the Affected Councils to be registered promptly after the date of this Deed as a local land charge in the relevant local land charges registers.

13.2 National Highways shall send to the Council evidence of the requirement at 13.1 above having been met within 7 Working Days of it having been met.

This document has been executed as a Deed and is delivered and takes effect on the date stated at the beginning of it.

Deleted: <#>Variations¶
No variation of this Deed shall be effective unless it is in writing and duly executed on behalf of the Parties.¶

SCHEDULE 1

Officer Support Contributions

PART 1

1 ~~Upon the Council confirming in writing to National Highways that the Council will comply the terms set out in paragraph 5 of this Schedule,~~ National Highways shall make payments to the Council ~~until six months after the Construction End Date in accordance with the tables,~~ in Part 2 and Part 3 of this Schedule (the "Table") to assist the Council in meeting their obligations arising on account of the Authorised Development on the basis that doing so imposes on them additional cost burdens over and above their general duties and responsibilities and in particular discharging the ~~roles and~~ obligations mentioned in the Table and any other responsibilities within that role that arise directly from the Authorised Development.

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1.1 ~~on or before the Commencement Date pay to the Council a one-off payment of £30,000 to assist the Council to make the necessary changes to the Historic Environment Record that would result from the Authorised Development and to upgrade the online Historic Environment Record.~~

2 ~~Subject to paragraph 3 the said,~~ payments shall be made annually, the first payment for each role being due on the date which is ~~two,~~ months before the ~~Input Date for that role~~ as notified by National Highways under clause ~~9.1.1,~~ with the final payment being reduced pro rata if the timing of it is such that it would cover less than a full 12 month period.

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3 ~~The payments in respect of the role of Local Authority Archaeological Advisor shall be made in accordance with the table in Part 3 of this Schedule, the first payment being due on the date which is two months before the Input Date as notified by National Highways under clause 9.1.1.~~

4 The payments made under this Schedule shall be index linked as from the date of this agreement by reference to the Retail Prices Index and should that index cease to exist at any time then by reference to another index to be ~~identified by National Highways as appropriate to replace the Retail Price Index.~~

Deleted: agreed between the Parties acting reasonably, failing which by reference to the disputes procedure in clause 9

5 ~~On accepting any payments under this Schedule the Council does so on the following terms:~~

6 The payments made under this Schedule shall be applied by the Council for the purposes ~~set out in paragraph 1,~~ of this Schedule and for no other purposes.

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7 If any part of any annual payment made under this Schedule has not been applied in accordance with paragraph 1 of this part of this Schedule within one year of payment then a sum equal to that part shall be repaid to National Highways within 56 ~~Working,~~ days whether or not requested by National Highways and National Highways shall be entitled to request and promptly receive from the Council at any time after the relevant

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anniversary full details and supporting evidence of how sums paid by National Highways under this Schedule have been applied.

- 8 ~~Any unexpended sums provided to the Council under this Schedule shall be returned forthwith to National Highways if the Lower Thames Crossing project (being the subject of the Development Consent Order) is cancelled before works upon it Commence.~~
- 9 If works on the Authorised Development should cease either permanently or temporarily the payments due to the Council under this Schedule shall be suspended until such time works resume (if the works resume at all) and the period of suspension shall be added to the interval at which the next payment is due.
- 10 If the Lower Thames Crossing project (being the subject of the Development Consent Order) is cancelled before works upon it Commence then no payments or further payments under this Schedule shall be payable by National Highways.

Deleted: If the Council considers that the Authorised Development has caused or will cause it to incur costs over and above those mentioned in Part 2 of this Schedule that is a costs burden over and above its general duties and responsibilities then it may make a fully reasoned request to National Highways in writing for reimbursement of those costs from National Highways and National Highways will use its reasonable discretion in deciding whether or not to reimburse any such costs requested in full or in part.

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PART 2

Role	Purpose of Payment: (Assessment of Additional Burden to Council)	Annual Cost of Additional Burden / Capacity Per Annum
Network Management Officer	<p>Undertaking local highway authority New Roads and Street Works Act obligations under Part 3 of the Development Consent Order.</p> <p>Responding to applications for traffic regulation orders (TROs) under Part 3 of the Development Consent Order.</p> <p>Review and provide comments on the traffic management plans and travel plans produced by the Contractors appointed by National Highways to deliver the Authorised Development.</p> <p>Attendance and participation at the Traffic Management Forum and travel plan liaison group (as described in paragraphs 3.3.15 and E.9.1 respectively of the outline Traffic Management Plan for Construction as defined in the Development Consent Order).</p>	<p>£42,212.</p>
Highways Development Manager	<p>Participation in the detailed design process as appropriate in relation to the Lower Thames Crossing.</p> <p>Implementation of the side agreement with local highway authorities.</p> <p>Agreeing a local operating agreement in respect of works on the local highway network.</p> <p>Works to the local highway network (including signage, barriers, safety measures and visibility).</p>	<p>£64,261.</p>

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Role	Purpose of Payment: (Assessment of Additional Burden to Council)	Annual Cost of Additional Burden / Capacity <u>Per Annum</u>
	<p>Site inspections (during works and prior to issuing of final Certificate), including testing of materials at National Highways' expense.</p> <p>Road safety audits (stages 3 and 4).</p> <p>Issuing of provisional certificates and final certificates in respect of works to the local highway network.</p>	
<p><u>Economic Development and Skills Officer</u></p>	<p><u>Attending the Employment and Skills Working Group to be established under National Highways' Skills Education and Employment Strategy by reference to Part 2 of the stakeholder actions and commitments register as referred to in article 61 of the Development Consent Order.</u></p> <p><u>Sharing expertise and insight on emerging local priorities and act as a key consultee, in order to enable National Highways to maximise opportunities through the development of the Skills Education and Employment Strategy and Employment and Skills Plans.</u></p> <p><u>Supporting National Highways and the Contractors to deliver initiatives that meet the ambitions and targets set out in the Skills Education and Employment Strategy</u></p> <p><u>Working in partnership with other members of the Employment and Skills Working Group to develop and deliver initiatives that support sustainable skills and employment outcomes for local communities and the local economy in response to the delivery of the Authorised Development</u></p> <p><u>To identify, promote and champion local skills and employment initiatives to enable local communities to maximise benefits through effective communication and engagement channels.</u></p>	<p><u>£347,</u></p>
<p><u>Flood and Drainage Engineer</u></p>	<p><u>Reviewing detailed drainage design to confirm application of preliminary design and implementation of drainage mitigation commitments as secured in the REAC and Design Principles as defined in the Development Consent Order.</u></p> <p><u>Reviewing detailed ordinary watercourse diversion and crossing</u></p>	<p><u>£17,197</u></p>

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Role	Purpose of Payment: (Assessment of Additional Burden to Council)	Annual Cost of Additional Burden / Capacity <u>Per Annum</u>
	<p><u>design – in line with protective provisions for drainage authorities and including Coalhouse Point wetland design, detailed water inlet design and operational / maintenance approach</u></p> <p><u>Reviewing and implementing flood risk and drainage commitments including review of construction phase drainage plan and construction phase flood risk assessment</u></p>	

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PART 3

Role	Purpose of Payment: (Assessment of Additional Burden to Council)	Payment Year	Payment
<u>Local Authority Archaeological Advisor</u>	<u>Attending meetings prior to implementation of archaeological mitigation works and prior to the implementation of historic building dismantling to input into the overall strategy for delivery of the Authorised Development</u>	<u>1</u>	<u>£45,000</u>
		<u>2</u>	<u>£45,000</u>
		<u>3</u>	<u>£35,000</u>
		<u>4</u>	<u>£30,000</u>
		<u>5 and subsequent years</u>	<u>£15,000</u>

	<p><u>Attending progress meetings on archaeological mitigation works.</u></p> <p><u>Undertaking site monitoring programme of the archaeological mitigation works and the dismantling and recording of historic buildings and sharing relevant information</u></p> <p><u>Responding to consultation requests on any proposed alterations to site specific written schemes of investigation</u></p> <p><u>Reviewing statements, reports and publications where appropriate</u></p> <p><u>Approval of post excavation assessment report</u></p> <p><u>Attending sign-off meetings once fieldwork is considered complete and undertaking formal signing off procedures to confirm that the archaeological mitigation works have been carried out satisfactorily</u></p>		
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SCHEDULE 2

Severance Contributions

- 1 ~~Upon the Council confirming in writing to National Highways that the Council will comply with the terms set out in paragraph 2 of this Schedule, National Highways will No later than the Construction End Date, pay the sum of £102,610, (“the Sum”) to the Council~~
- 2 ~~On accepting any payments under this Schedule the Council does so on the following terms:~~
 - 2.1 ~~the Sum is to be used to meet the costs of the Council to undertake a study (“the Study”) into the need for and optimum location of a pedestrian crossing in order to deal with any potential impacts on pedestrians in Valley Drive, Gravesham as on account of the Authorised Development;~~
 - 2.2 ~~the Study is to be undertaken within six months of the Council receiving the Sum from National Highways and forthwith upon its completion the Council will provide a copy of it to National Highways.~~
- 3 ~~the Sum will be used to construct a pedestrian crossing, in Valley Drive, Gravesend between Point A on Old Road East and Point B on St Albans Close as shown on the plan at Appendix A (“the Works”).~~
- 4 ~~the Works will be completed no later than, by the end of 18 months following the Construction End Date.~~
- 4.1 ~~If the Study concludes, that the Works are not required, on account of the Authorised Development, the Council will forthwith return to National Highways such part of the Sum that has not been expended in carrying out the Study~~
- 5 ~~If National Highways has to undertake the Works, after the Council has accepted the Sum, then the Council will forthwith return the Sum to National Highways or any unspent part of it at that time.~~
- 6 ~~If the Council either does not accept the Sum or has accepted the Sum but has not carried out the works within 18 months of the Construction End Date then National Highways will use reasonable endeavours to carry out or complete the Works.~~
- 7 ~~The payments made under this Schedule shall be index linked as from the date of this agreement by reference to the BCIS Public Sector and Price Index and should that index cease to exist at any time then by reference to another index to be identified by National Highways as appropriate to replace the BCIS Public Sector and Price Index.~~

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SCHEDULE 3

Payments to the Council – Enhancement of the Kent Downs Area of Outstanding Natural Beauty

1. THE AONB COMPENSATORY ENHANCEMENT FUND

1.1. Upon the Council confirming in writing to National Highways that the Council will comply in full to the terms set out in paragraphs 2, 3,4,5,6,7 and 8 of this Schedule, National Highways covenants on or before the Commencement Date to pay to the Council a total of £4,240,000 for an AONB Compensatory Enhancement Fund to fund measures and projects that meet the funding criteria set out in paragraph 4,2 of this Schedule (the "Fund"), which includes £600,000 to manage and administer the Fund (together being "the AONB Contribution").

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1.2. National Highways shall have no liability to make any further payment to the Council under this Schedule once it has paid the AONB Contribution.

Moved down [2]: <#>Forthwith upon receipt of the AONB Contribution the Council will establish the Fund with the monies from the AONB Contribution. ¶

2. ESTABLISHING THE FUND TERMS

2.1. Forthwith upon receipt of the AONB Contribution the Council will establish the Fund with the monies from the AONB Contribution.

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3. THE AONB COMPENSATORY ENHANCEMENT FUND AWARDS PANEL TERMS

Establishment and Duration

3.1. Forthwith upon receipt of the AONB Contribution the Council shall establish the AONB Compensatory Enhancement Fund Awards Panel ("the Panel") and the Council will ensure that the Panel conducts its business in accordance with the provisions of this Schedule.

Composition of the AONB Compensatory Enhancement Fund Awards Panel

3.2. The Panel shall comprise one representative from National Highways, one representative from the Council (who is not a member of the Kent Downs AONB Unit), two representatives from the Kent Downs AONB Unit and a representative from Natural England invited to be a member of the Panel in accordance with paragraph 3,3 below (if that invitation is accepted).

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3.3. The Council will invite a representative from Natural England to be a member of the Panel.

3.4. The five representatives mentioned in paragraph 3,2, will form the Panel but if Natural England decline to participate in the Panel by failing to name a representative to be a member of it or by withdrawing from the Panel then the number of Panel members will reduce accordingly.

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3.5. Each Panel member may at any time nominate a deputy from the same organisation as the nominator to attend meetings of the Panel or to otherwise take the place of the relevant member whilst that member is unavailable for any reason.

3.6. Each Panel member may at any time nominate a replacement member from the same organisation as the nominator to take the place of that member in their place.

Secretariat and Meeting Organisation

3.7. The Council (acting via the Kent Downs AONB Unit if the Council so wishes) shall act as the secretariat to the Panel and be responsible for organising its meetings.

Chair

3.8. The representative from National Highways will chair meetings of the Panel (the chair having a casting vote) and meetings will only be quorate if all of the Panel members (or their deputy) are present.

Meeting Frequency and Participation

3.9. Subject to paragraph 3.10 the Panel shall meet at least once per annum and a maximum of 4 times per annum, either virtually or in a convenient location.

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3.10. The Panel members may agree (by majority) to different meeting frequencies as necessary.

4. FUNDING APPLICATION PROCESS TERMS

4.1. During the Construction Period and for three years thereafter (the entire period comprising the "Funding Period"), the Council (acting via the Kent Downs AONB Unit if it the Council so wishes) will invite applications for funding from the Fund to carry out projects or activities within and for the benefit of the Kent Downs AONB.

4.2. Upon receipt of applications, the Council (acting via the Kent Downs AONB Unit if the Council so wishes) will identify and make recommendations to the Panel regarding projects to be funded from the Fund, and the Panel will then consider the recommendations made by reference to the eligibility criteria in sub paragraphs 4.2.1 to 4.2.9 below as well as any other relevant considerations including the amount of funding applied for and the amount of money remaining in the Fund at the relevant time:

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4.2.1. conserves and enhances the natural beauty and special qualities of the Kent Downs AONB and its setting;

4.2.2. is consistent with the objectives of the Kent Downs AONB Management Plan 2021–2026 (or any replacement version thereof adopted), including the Kent Downs Landscape Character Assessment 2020 (or replacement version thereof);

- 4.2.3. demonstrate consistency with the objectives outlined in the National Highways Environmental Sustainability Strategy (2023);
 - 4.2.4. is consistent with local and national planning policy or plans, including new or improved transport infrastructure;
 - 4.2.5. delivers value for money;
 - 4.2.6. has clearly defined scope;
 - 4.2.7. delivers effective outcomes;
 - 4.2.8. does not contradict or duplicate agreed mitigation measures assessed in the environment statement that accompanied the Application; and
 - 4.2.9. is consistent with a not-for-profit purpose.
- 4.3. Applications for funding may be made by or on behalf of the Council (acting through the Kent Downs AONB Unit) but the Panel members representing the Kent Downs AONB Unit may not participate in the decision making process as regards any such application.

5. **APPLICANT ELIGIBILITY TERMS**

- 5.1. Applications submitted to the Council for funding awards by the Panel must include sufficient evidence demonstrating that the applicant for funding meets at least one of the following criteria if funding is to be awarded by the Panel:
- 5.1.1. The applicant is a registered charity.
 - 5.1.2. The applicant is a landowner or group of landowners.
 - 5.1.3. The applicant is a community group, voluntary organisation, social enterprise, or public body.
 - 5.1.4. The applicant is an individual (or individuals) and/or business (or businesses) where the project in the opinion of the Panel will provide a clear benefit to the wider community.

6. **DRAWDOWN OF FUNDS TERMS**

- 6.1. The Council shall pay the funds awarded by the Panel to successful applicants (subject to the availability of money in the Fund to do so).
- 6.2. The allocation of funding for the successful applicants is to be drawn down in accordance with a process to be determined by the Council.
- 6.3. The Fund shall be used for the purposes of making awards in accordance with the requirements of this Schedule and for no other purpose.

7. **UNSPENT MONIES TERMS**

7.1. Any monies in the Fund that has not been distributed in accordance with the requirements of this Schedule at the end of the Funding Period ~~will~~ be returned by the Council to National Highways forthwith.

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8. **REPORTING AND ACCOUNTING TERMS**

8.1. The Council shall report annually in writing to each Panel member on the expenditure upon awards from the Fund and the effectiveness of such awards.

8.2. The Council will upon written request by National Highways provide a detailed account in writing of all sums paid from the Fund and committed to be paid therefrom.

SCHEDULE 4

Heavy Goods Vehicles (“HGV”) Restrictions

1. Upon the Council confirming in writing to National Highways that the Council will comply with the terms set out in paragraphs 2 and 4 of this Schedule, National Highways will, No later than 12 months prior to the end of the Construction Period (as then anticipated) will pay the Sum of £12,000 (“the Feasibility Payment”) to the Council.
2. On accepting the Feasibility Payment the Council does so on the following terms:
 - 2.1. The Council will commission a feasibility study (“the Feasibility Study”) into implementing restrictions on HGVs travelling south along Henhurst Road from the Gravesend East junction south (Marling Cross) and using it as a through route and into related measures (that are likely to be restrictions on HGVs using other roads in the locality) in order to deal with any likely adverse consequences of any such restrictions in terms of use of HGVs using alternative routes.
 - 2.2. The Council will promptly provide National Highways with a copy of the Feasibility Study when it has been completed
3. Upon the Council providing National Highways with a copy of the Feasibility Study under paragraph 2.2 National Highways will, within 21 days of receipt thereof pay the sum of £16,050 (“the Implementation Payment”) to the Council.
4. On accepting the Implementation Payment the Council does so on the following terms:
5. The Council will forthwith upon receipt of the Implementation Payment take the necessary steps to implement the recommendations of the Feasibility Study (or with the agreement of National Highways in writing, a variation thereof) within the scope of the Implementation Payment (and any remaining part of the Feasibility Payment) including any procedural steps and any physical works (likely primarily to be signage) and will do so by the end of the Construction Period or by a later date by agreement with National Highways in writing.
 - 5.1. Return to National Highways forthwith any part of the Feasibility Payment or the Implementation Payment that has not been used by the Council in meeting the requirements of this schedule once all relevant physical works have been done
6. For the avoidance of doubt the Council may use any unexpended portion of the Feasibility Payment in implementing the recommendations of the Feasibility Study or any variation thereof agreed under paragraph 4.
7. The payments made under this Schedule shall be index linked as from the date of this agreement by reference to the BCIS Public Sector and Price Index and should that index cease to exist at any time then by reference to another index BCIS Public Sector and Price Index.

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a ban on HGVs entering

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a restriction change from ‘Unsuitable for Long Vehicles’ to a ban on HGVs entering The Street, Meopham from the A227, except for access; and¶
a ban on HGVs entering Batt’s Road from Henley Street, except for access.¶

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8. For the purposes of this Schedule an HGV means any vehicle with a gross combination mass over 7.5 tonnes including the cargo carried.

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SCHEDULE 5

Low NOISE SURFACING WORKS

No later than [six] months prior to the end of the Construction Period National Highways covenants to pay [£] ("the Sum") to the Council to provide Low Noise Surfacing Works ("the Works") at two locations on the A228 as follows and as shown on the plan at Appendix [X]:
the section of the A228 from the Rocfort Road junction south to the Malling Road roundabout; and
the section of the A228 from the Malling Road junction south to the Rocfort Road junction.

The Council shall carry out the Works (being the local highway authority) pursuant to its powers in section 62 and 282 of the Highways Act 1980 and shall complete the Works by the end of the Construction Period.

In the event that the Council has not carried out the Works by the end of the Construction Period or if in National Highways' opinion there is no reasonable prospect of the Council doing so then the Council will permit National Highways to carry out or complete the Works on its behalf and the Council will promptly enter into any necessary arrangements with National Highways for this purpose and with the said arrangements in place will forthwith return the Sum to National Highways or any unspent part of it at that time.

For the purposes of this Schedule Low Noise Surfacing Works means a noise mitigation measure on reducing the traffic noise induced by the interaction between road surface and vehicle tyres by resurfacing with a thin surface course system as defined within Design Manual for Roads and Bridges CD 236 'Surface course materials for construction'.

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SCHEDULE 6

Council's Obligations

Registration

This Deed shall be registered by the Council promptly after the date of this Deed as a local land charge in the relevant local land charges registers.

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.

Appendix A -> Plan/s showing location of pedestrian crossing at Valley Drive, Gravesham

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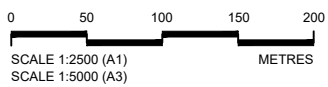
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PLAN
SCALE 1:5000



NOTES:

1.

P01.1	S2	16/11/2023		GH1	BB	BB
Rev	Status	Rev. Date	Purpose of revision	Drawn	Check'd	Approved



Project
LOWER THAMES CROSSING

Project
**LOWER THAMES CROSSING
DEVELOPMENT PHASE**

Drawing title
**S106 PEDESTRIAN CROSSING
IMPROVEMENTS
SHEET 2**

Status	S2	Fit for Information	Original Size	A3	Revision	P01.1
Scale			Scale		Date -	16/11/2023
Drawn	GH1		Checked	BB	Date -	16/11/2023
Approved	BB		Approved	BB	Date -	16/11/2023
Drawing number HE540039-CJV-HML-ZZZ_ML000000_Z-SK-CH-00002						

Annex – Plan showing land owned by National Highways

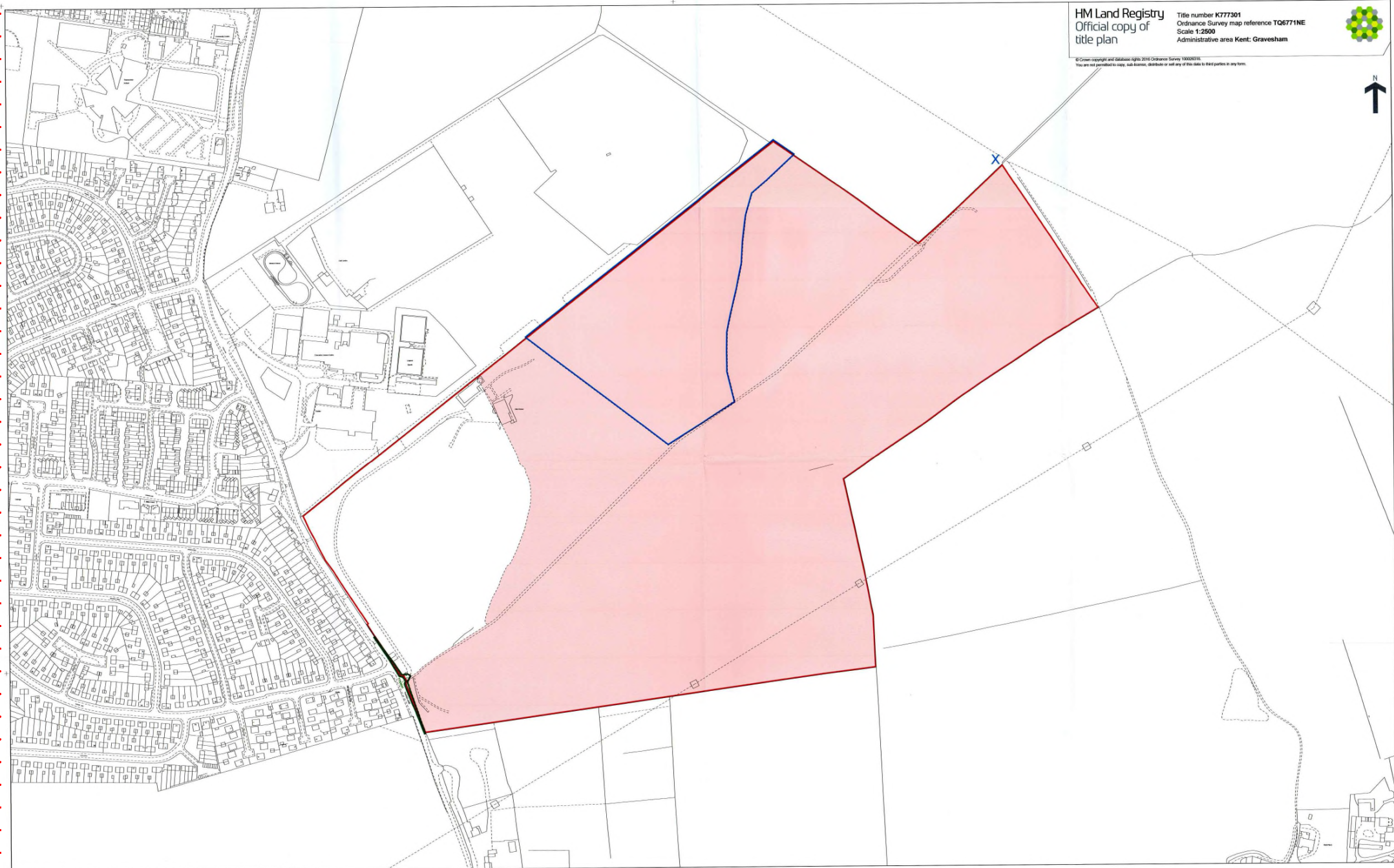
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It is admissible in evidence to the same extent as the original (s 67 Land Registration Act 2002).
This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.
This title is dealt with by HM Land Registry, Birkenhead Office.

Executed as a deed by affixing the)
common seal of NATIONAL HIGHWAYS)
in the presence of) [COMMON SEAL]

Authorised Signatory

In the presence of a Witness:

Witness name:

Witness Address: _____

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¶
Executed as a deed by affixing the¶
common seal of KENT COUNTY COUNCIL¶
in the presence of: ...

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