

**From:** [Hayes, Elliot](#)  
**To:** [caroline.o"neill@dft.gov.uk](mailto:caroline.o)  
**Cc:** [A303 Sparkford to Ilchester Dualling](#); [Houghton, James C1 \(DIO Estates-SnrSafegdgMgr2\)](#); [Sanderson, Hannah](#); [A303 Sparkford to Ilchester](#)  
**Subject:** A303 Sparkford to Ilchester - response to Secretary of State"s further request for comment  
**Date:** 11 December 2020 08:32:53  
**Attachments:** [A303 s106 UU December.pdf](#)  
[A303 s106 UU Letter Signed.pdf](#)

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Dear Caroline

Further to the Secretary of State's invitation for further comments from Highways England and the Defence Infrastructure Organisation in relation to the issue of birdstrike, please find attached an updated Section 106 Unilateral Undertaking accompanied by a joint statement between Highways England and James Houghton (CC'd) on behalf of the Ministry of Defence confirming that both parties consider the matter resolved.

If you have any queries, please don't hesitate to get in touch.

I would be grateful if you could please confirm safe receipt of this email and both attachments.

Kind regards

Elliot

**Elliot Hayes** Project Manager

Regional Investment Programme South West

Highways England | Temple Quay House | 2 The Square, Temple Quay | Bristol | BS1 6HA

**Tel:** +44 (300) 470 5611

**Web:** <http://www.highways.gov.uk>

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**Highways England Company Limited | General enquiries: 0300 123 5000**  
**|National Traffic Operations Centre, 3 Ridgeway, Quinton Business Park, Birmingham B32 1AF | <https://www.gov.uk/government/organisations/highways-england> | [info@highwaysengland.co.uk](mailto:info@highwaysengland.co.uk)**

*Registered in England and Wales no 9346363 | Registered Office: Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ*

Consider the environment. Please don't print this e-mail unless you really need to.

Caroline O'Neill  
Department for Transport  
Great Minster House  
33 Horseferry Road  
London  
SW1P 4DR

Hannah Sanderson  
Senior Project Manager  
Highways England  
Temple Quay House  
2 The Square, Temple Quay  
Bristol  
BS1 6HA

Tel: 0300 123 5000

11 December 2020

Dear Ms O'Neill

### **A303 Sparkford to Ilchester dualling s.106 Unilateral Undertaking**

Further to your letter dated 12 November 2020 Highways England and the Ministry of Defence (MoD) have discussed the matters raised in the recent correspondence between the parties regarding the s.106 unilateral undertaking, dated 30 September 2020 (the September UU). Highways England and the MoD have discussed these matters and wish to make this joint statement.

Highways England has completed a further unilateral undertaking, dated 11 December 2020 (the December UU). The wording of this unilateral undertaking has been agreed with the MoD. This letter highlights the changes made to the September UU and focusses on the eight points which were being discussed between Highways England and the MoD as part of the recent correspondence submitted to the Secretary of State. Please note that defined terms in this section are the same as those in the December UU, unless otherwise stated.

1. The MoD is content that there is no issue with recital 10 as the issues raised in this respect are dealt with as part of the obligations in the text of the December UU.
2. Clause 2.5 has been amended to ensure that if the Ponds are removed, infilled or their use is changed, that the obligations in the December UU will end provided that the MoD agrees that it is satisfied that there is no current or future risk of bird strike to RNAS Yeovilton whilst it is still an operational airfield from the changed landform or any associated landscaping and planting.
3. Schedule 1, paragraph 1.2 has been amended to provide for more frequent reporting on the use of the Ponds by Birds and more frequent inspections of the Ponds.



4. Schedule 1, paragraph 1.3 - the definition of WeBS has been expanded to account for the ability to include more detail in the reports being undertaken by Highways England (for example, details of the number of hazardous birds, the number of birds on the Ponds, the form of bird control employed, its effectiveness and the direction of travel of any dispersed birds etc.)
5. Schedule 1, paragraph 1.7 has been amended to ensure more adequate liaison between Highways England and the MoD. This paragraph now provides that all WeBS reports shall be provided to the MoD within 2 weeks of being completed so that they can be reviewed by the MoD. Linked to the change to Schedule 1, paragraph 1.7 is the change to paragraph 1.9. This provides that Highways England will act in accordance with any comments made by the MoD in terms of how it approaches the production of the WeBS, provided that the MoD justifies its position based on evidence that the alternative methods proposed will ensure a reduced risk of birdstrike at RNAS Yeovilton.
6. Schedule 1, paragraph 1.9 has been amended to ensure a response time to any Request for Action of 24 hours.
7. Schedule 1, paragraph 1.15(c) has been amended to allow for the Bird Management Measures to be reassessed by Highways England and the MoD on a more frequent basis.
8. A provision which provided that the obligations in the unilateral undertaking would cease where (i) no Birds had been detected on the Ponds for a period of five years and (ii) there had been no Request for Action in the same period has been deleted.

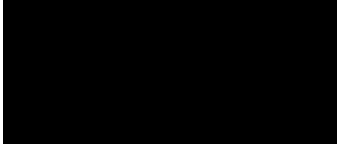
The Secretary of State will note the addition of recitals numbers 9 to 11 in the December UU. This reflects the position that the development consent obligations in the September UU are being superseded by the December UU. Highways England will, in due course, seek a Deed of Revocation to nullify the September UU but it does not consider that this is required at this stage because the December UU is a valid s.106 which binds the land noted in it. In addition, as the December UU has been agreed with the MoD there is no ambiguity over which provisions will regulate the development in the event that the DCO is granted.

Highways England considers that the Secretary of State can give the December UU adequate weight as a material consideration as part of its consideration of the DCO application because it adequately addresses the birdstrike concerns raised by the MoD.

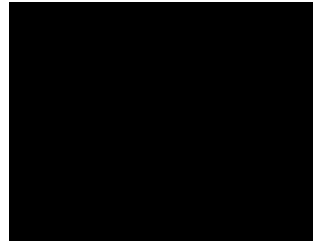
As the MoD has agreed to the wording of the December UU, once the December UU is completed, it has no further comments to make in respect of the DCO application and is content that the December UU (coupled with the other amendments proposed by Highways England through the DCO) satisfies its concerns in respect of the birdstrike issue arising from this scheme.

We would be grateful if you could please confirm safe receipt of this letter, and that this will be passed to the SoS as soon as possible.

Yours faithfully



Hannah Sanderson  
Highways England  
Senior Project Manager  
Email:  
[Hannah.Sanderson@highwaysengland.co.uk](mailto:Hannah.Sanderson@highwaysengland.co.uk)  
Telephone: 0300 123 5000



James Houghton  
Ministry of Defence  
Senior Safeguarding Manager  
Email: [James.Houghton109@mod.gov.uk](mailto:James.Houghton109@mod.gov.uk)



**Unilateral Undertaking relating to The A303 Sparkford to Ilchester  
Dualling Development Consent Order**

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

Given by:

Highways England Company Limited (1)

to

South Somerset District Council (2)

and

Secretary of State for Defence (3)



**THIS UNILATERAL UNDERTAKING** is made this 10 day of December 2020

**AND GIVEN BY:**

(1) **HIGHWAYS ENGLAND COMPANY LIMITED** (Company registration number: 09346363) whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ (**Highways England**);

To:

(2) **SOUTH SOMERSET DISTRICT COUNCIL** of the Council Offices, Brympton Way, Yeovil, Somerset BA20 2DS (**the Council**); and

(3) **SECRETARY OF STATE FOR DEFENCE** of the Ministry of Defence, Whitehall, London, SW1A 2HB (**MoD**)

**RECITALS**

- 1 The definitions used in these Recitals are the same as those set out in the Definitions section below
- 2 The Council is the Local Planning Authority for the purposes of the Act for the area in which the Site and the Ponds are located
- 3 Highways England has submitted the Application for the Development to the Secretary of State for Transport and is the freehold owner of part of the Site
- 4 As part of the Development Highways England proposes to construct and maintain the Ponds
- 5 The MoD owns and operates the airfield currently known as RNAS Yeovilton which is in close proximity to the Ponds
- 6 During the Examination into the Application the MoD raised concerns regarding the potential for "birdstrike" to occur from the Ponds as the Ponds may attract wildfowl which has the potential to be hazardous to aircraft
- 7 Following the conclusion of the Examination, on 12 September 2019 the Examining Authority (ExA) recommended to the Secretary of State for Transport that the Application be refused, partly on the basis that it does not consider that Highways England can deliver the changes to the Ponds suggested by the MoD within the parameters of the Application



- 8 The Secretary of State for Transport issued a Minded to Refuse letter on 27 July 2020 asking Highways England for further information in respect of the Ponds which Highways England responded to on 17 August 2020
- 9 In response to this letter Highways England completed a unilateral undertaking pursuant to s.106 of the Act dated 30 September 2020 (the "**September UU**") which includes measures which Highways England considers overcome the MoD's objections to the Development
- 10 However, the MoD did not consider that the September UU fully addressed its concerns
- 11 On this basis Highways England has completed this Deed to ensure that the MoD's concerns in respect of the Development are addressed and this Deed supersedes the September UU and replaces the obligations contained within it
- 12 Highways England considers that it can deliver the necessary design changes to the Ponds within the parameters of the Application (and the DCO) and, being resolved to minimise any impacts on RNAS Yeovilton, has set out comprehensive mitigation measures as part of the Application
- 13 In addition to these measures Highways England considers it expedient to commit to further maintenance and monitoring measures to be secured during the operation of the Development as outlined in this Deed which are material to the determination of the Application and are development consent obligations as set out in s.106(9) of the Act
- 14 The development consent obligations set out in this Deed are contingent on the grant and Commencement of the DCO and the Commencement of the Ponds

## **DEFINITIONS**

For the purposes of this Agreement the following expressions shall unless the context otherwise requires have the meanings given to them below:

<b>"the Act"</b>	means the Town and Country Planning Act 1990 as amended
<b>"Anniversary"</b>	means 12 months from the specified date or period
<b>"Application"</b>	means the application for a DCO sought under the Planning Act 2008
<b>"Birds"</b>	means Canada Goose ( <i>Branta canadensis</i> ), Egyptian Goose ( <i>Alopochen aegyptiaca</i> ), Greylag Goose ( <i>Anser anser</i> ), Grey Heron ( <i>Ardea cinerea</i> ), Little Egret ( <i>Egretta garzetta</i> ), Common Crane



(*Grus grus*), gulls of all species (*Larus sp.*), dabbling duck species (*Anatini*), and starlings (*Sturnus vulgaris*)

<b>"Bird Management Measures"</b>	means the measures set out in (but not limited to) paragraph 1.5 of Schedule 1
<b>"Bird Management Officer"</b>	means a representative of Highways England with whom the Council or the MoD may liaise in respect of the Bird Management Measures
<b>"Bird Monitoring Data"</b>	means any data (including data obtained through WeBS) relating to the Birds' use of the Ponds
<b>"Commencement of Development"</b>	means the carrying out on the Site of any material operation pursuant to section 155 of the Planning Act 2008 and in accordance with the DCO and for the avoidance of doubt nothing in this Deed shall have any bearing on the definition of "Commence" or its derivatives contained within the DCO
<b>"Commencement of the Ponds"</b>	means the date on which the works to construct the Ponds begins
<b>"Completion of Construction"</b>	means the date on which the construction of the Ponds is completed
<b>"Completion of Construction of the DCO"</b>	means the date on which the Development is completed
<b>"Confirmatory Deed"</b>	means a confirmatory deed to be provided to the Council and the MoD by Highways England substantially in the form of the draft deed set out in Schedule 2 of this Deed
<b>"Construction Phase"</b>	means the period during which the Ponds are being constructed by Highways England
<b>"DCO"</b>	means a Development Consent Order to be known as <i>The A303 Sparkford to Ilchester Dualling Development Consent Order 202[ ]</i> granted by the Secretary of State for Transport authorising the construction, operation and maintenance of the Development



<b>"the Development"</b>	means the development described in the Application and authorised by the DCO
<b>"Establishment Period"</b>	means the period of two years from Completion of Construction
<b>"Examination"</b>	means the statutory examination undertaken by the Examining Authority into the Application
<b>"Open to Traffic"</b>	means open to use by the public for vehicular traffic following Completion of Construction of the DCO and shall exclude use and vehicular traffic required by Highways England for the purposes of constructing the Development
<b>"Operational Phase"</b>	means operational phase of the Development which begins on Completion of Construction of the DCO
<b>"Party"</b>	means any party to this Deed and shall include 'party' 'Party' or any variation thereof
<b>"Plan 1"</b>	means the plan appended to this Deed bearing reference HE551507-GTY-LLO-000-DR-BL-50001 showing land owned by Highways England shown by a dashed red line and included in the DCO to be bound by the development consent obligations set out in this Deed
<b>"Ponds"</b>	means the area of land on which five (5) ponds to be developed under the terms of the DCO are to be located (subject to the detailed design requirements set out in the DCO) including land required for landscaping and planting purposes required in respect of the maintenance of the ponds, as shown by a dashed red line on the Ponds Plans
<b>"Ponds Plans"</b>	means the plans appended to this Deed showing the location of the Ponds and bearing drawing number:  HE551507-GTY-ELS-000-DR-LX-50329 (for pond 1) HE551507-GTY-ELS-000-DR-LX-50332 (for pond 2) HE551507-GTY-ELS-000-DR-LX-50331 (for pond 3) HE551507-GTY-ELS-000-DR-LX-50330 (for pond 4) HE551507-GTY-ELS-000-DR-LX-50333 (for pond 5)



**NOTES**

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**KEY TO SYMBOLS**  
 HIGHWAYS ENGLAND LAND TO BE BOUND  
 OCC BOUNDARY

REV	DATE	REASON FOR CHANGE	DESIGNER	CHKD	APPD
P01	22/08/09	S108 ISSUE	JM	JSC	JL
P02	25/08/09	#008 ISSUE	JM	JSC	JL



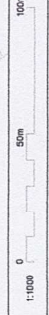
**PROJECT TITLE**  
A303 SPARKFORD TO ILCHESTER DUALLING

**PROJECT STAGE**  
PCF STAGE 5

**DRAWING TITLE**  
A303 s106 - LAND TO BE BOUND

**SUITABLE FOR INFORMATION**  
 SCALE: 1:1000  
 FORMAT: S2  
 REGION: P02

**DRAWING NUMBER**  
HE551507-GTY-LLO-000-DR-9L-50001





**NOTES**

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- ALL LEVELS ARE ABOVE ORDNANCE DATUM.
- DO NOT SCALE FROM THIS DRAWING.
- THIS MAP IS DERIVED FROM PROGNOSIS SURVEY DATA, CONTROLLED BY HER MAJESTY'S STATIONERY OFFICE. DRAWING COPY RIGHTS ARE RESERVED AND MAY LEAD TO PROSECUTION ON CIVIL PROCEEDINGS.
- FENCING LAYOUT SHOWN FOR REFERENCE, FORTENDING TYPES REFER TO FENCING DRAWING SERIES HES1001-GTY-HED-MC-CR-C-500/10-300/4.

**KEY TO SYMBOLS**

	PROPOSED LAWNS (E 1)
	PROPOSED MATURE TREES (E 1)
	PROPOSED WOODLAND (E 1)
	PROPOSED WOODLAND (E 2)
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	PROPOSED WOODLAND (E 50)

PH	REV	DATE	DESCRIPTION	NO	DATE	BY

CONTRACTOR  
**SWECO**

CLIENT  
**GallifordTry**

PROJECT TITLE  
**A303 SPARKFORD TO ILCHESTER DUALLING**

PROJECT STAGE  
**PCF STAGE 5**

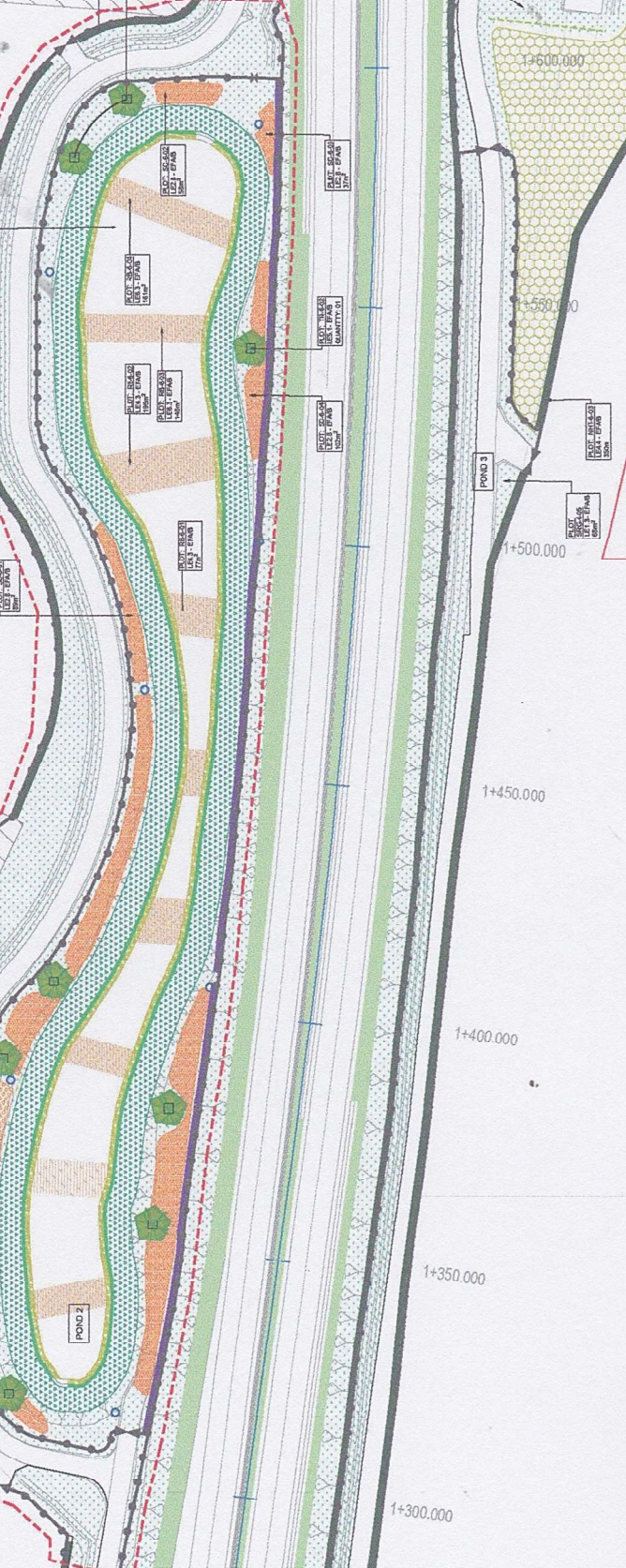
DRAWING TITLE  
**A303 POND 2 & LANDSCAPE**

SUITABLE FOR INFORMATION

SCALE	1:500	STATUS	S2	REVISION	P01
SHEET SIZE	A1	DRAWING NUMBER	HES51507-GTY-ELS-000-DR-LX-50332		

- CONTRACTOR TO SET OUT PLANTING PRIOR TO PLANTING.
- ALL PLANTS MUST BE PLANTED TO THE SPECIFICATION AND ESTIMATE (AS NECESSARY) AS AGREED WITH THE LANDOWNER PRIOR TO PLANTING.
- MINIMUM PLANTING DISTANCES TO BE APPLIED AS FOLLOWS:
- EDGE OF CARRIAGEWAY, SHRUBS - 4.5M / EDGE OF CARRIAGEWAY, TREES - 7M
- EDGE OF DITCH - 3.5M
- EXISTING PLANTING - 2M
- NOISE BARRIERS - 2M
- DE OF EMBANKMENTS - 3M
- WOODEN STRUCTURE - 3M
- POWER CABLES, HEDGES AND SHRUB PLANTING 1.5M / SMALL TREES 3M / LARGE TREES 6M
- GAS SUPPLY, SHRUB PLANTING 2.5M / SMALL TREES 3.5M / LARGE TREES 6M / SUNK SPECIES - 10M
- SEWERS - SHRUB PLANTING 1M FROM CENTRE LINE / TREES - 6M / SUNK SPECIES - 10M

- PLANTS SPECIFIED TO BE PLANTED AT A 1.0M DISTANCE FROM THE HARD ESTATE. ALL PLANTS MUST BE PLANTED TO THE SPECIFICATION AND ESTIMATE (AS NECESSARY) AS AGREED WITH THE LANDOWNER PRIOR TO PLANTING.
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**IMPORTANT**

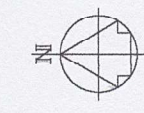
SAFETY, HEALTH & ENVIRONMENTAL INFORMATION

TO BE READ IN CONNECTION WITH THE DRAINAGE AND FLOODING PREVENTION WORKS AT THE A303 SPARKFORD TO ILCHESTER DUALLING. THIS DRAWING IS A PART OF THE DESIGN AND SHALL BE USED IN ACCORDANCE WITH THE INSTRUCTIONS AND SPECIFICATIONS GIVEN THEREIN.

HAZARD REF: [REDACTED] / BREF DESCRIPTION OF HAZARD: [REDACTED]

HAZARD REF: [REDACTED] / BREF HAZARD DESCRIPTION

HMC-C-016	Risk of slips and falls when planting on steep slopes.
HMC-M-011	Risk of slip and falls when maintaining paths and drainage ponds stops.





This drawing should not be relied on if it is used in a way that is inconsistent with the purpose for which it was prepared. It is the responsibility of the user to ensure that the drawing is used for the purpose for which it was prepared. It is the responsibility of the user to ensure that the drawing is used for the purpose for which it was prepared. It is the responsibility of the user to ensure that the drawing is used for the purpose for which it was prepared.

**GENERAL PLANTING NOTES:**

- CONTRACTOR TO SET OUT PLOT BOUNDARIES PRIOR TO PLANTING.
- ALL AREAS WITHIN THE HIGHWAY BOUNDARY ARE TO BE REINSTATED (AS NECESSARY) AS PER THE DRAWING.
- MINIMUM PLANTING DISTANCE TO ROAD AS FOLLOWS:
  - EDGE OF CARBONWAY, SHRUBS - 4.5M EDGE OF CARBONWAY, TREES - 7M
  - EDGE OF DITCH - 3.0M
  - NOSE BARRIERS - 2M
  - TOE OF EMBANKMENTS - 3M
  - VEHICLE RESTRAINT STRUCTURE - 3M
  - POWER CABLES - HEDGE AND SHRUB PLANTING 1.5M / SMALL TREES 3M / LARGE TREES 6M
  - GAS SUPPLY - SHRUB PLANTING 2.5M / SMALL TREES 3 - 6M / LARGE TREES 6M / SALIX
  - SEWERS - SHRUB PLANTING 1M FROM CENTRE LINE / TREES - 6M / SALIX SPECIES - 10M
- CONTRACTOR TO BE PLANTED AT A POSITION WITHIN PLOTS WHERE AT MATURITY THEY WILL NOT BE WITHIN FALLING DISTANCE OF THE CARBONWAY.
- EACH PLOT MUST NOT BE PLANTED WITHIN 25M OF THE OUTSIDE EDGE OF THE PLOT.
- PLANTS MUST NOT BE USED IN AREAS OF WOODLAND NEAR INVESTMENT WITHIN 10M. IT SHALL BE SUBSTITUTED WITH AN INCREASED PERCENTAGE OF CAMPAUNUS BELLIDUS INSTEAD.
- THE OUTSIDE OF THE 450M MARK LINE TO BE POSITIONED ON THE LANDOWNER SIDE OF THE HIGHWAY BOUNDARY FENCE UNLESS AGREED OTHERWISE.
- FOR LANDSCAPE AND ECOLOGY SPECIFICATION REFER TO HE551507-GTY-ELS-000-SP-LD-0002.
- FOR PLANTING SCHEDULES REFER TO HE551507-GTY-ELS-000-SH-LD-0002.
- TO BE READ IN CONJUNCTION WITH LANDSCAPE AND ECOLOGY DRAWINGS HE551507-GTY-ELS-000-OR-LC-0005 TO HE551507-GTY-ELS-000-CL-LX-0028.

- NOTES**
- THIS DRAWING SHALL BE USED FOR THE PURPOSE SHOWN IN THE TITLE BOX ONLY.
  - ALL DIMENSIONS ARE IN METRES UNLESS STATED OTHERWISE.
  - ALL LEVELS ARE ABOVE GROUND DATA UNLESS STATED OTHERWISE.
  - DO NOT SCALE FROM THIS DRAWING.
  - THIS DRAWING IS TO BE USED TO GUIDE THE CONTRACTOR IN THE PLANTING OF THE LANDSCAPE. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE SELECTION OF PLANT MATERIAL AND FOR THE PROTECTION OF EXISTING PLANT MATERIAL. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF EXISTING PLANT MATERIAL AND FOR THE PROTECTION OF EXISTING PLANT MATERIAL.
  - FENCING LAYOUT SHOWN FOR REFERENCE. FOR FENCING TYPES REFER TO FENCING DRAWINGS SERIES HE551507-GTY-HFE-000-OR-CH-00010 - 0014.

**KEY TO SYMBOLS**

	PROPOSED MATURE TREE (H 10.0)		PROPOSED MEDIUM TREE (H 5.0)
	PROPOSED SMALL TREE (H 3.0)		PROPOSED SHRUB (H 1.5)
	PROPOSED HEDGE		PROPOSED BARRIER
	PROPOSED FENCING		PROPOSED ROAD
	PROPOSED PATH		PROPOSED DRAINAGE
	PROPOSED WATER FEATURE		PROPOSED STRUCTURE
	PROPOSED STRUCTURE		PROPOSED STRUCTURE

**KEY TO SYMBOLS**

	PROPOSED MATURE TREE (H 10.0)		PROPOSED MEDIUM TREE (H 5.0)
	PROPOSED SMALL TREE (H 3.0)		PROPOSED SHRUB (H 1.5)
	PROPOSED HEDGE		PROPOSED BARRIER
	PROPOSED FENCING		PROPOSED ROAD
	PROPOSED PATH		PROPOSED DRAINAGE
	PROPOSED WATER FEATURE		PROPOSED STRUCTURE

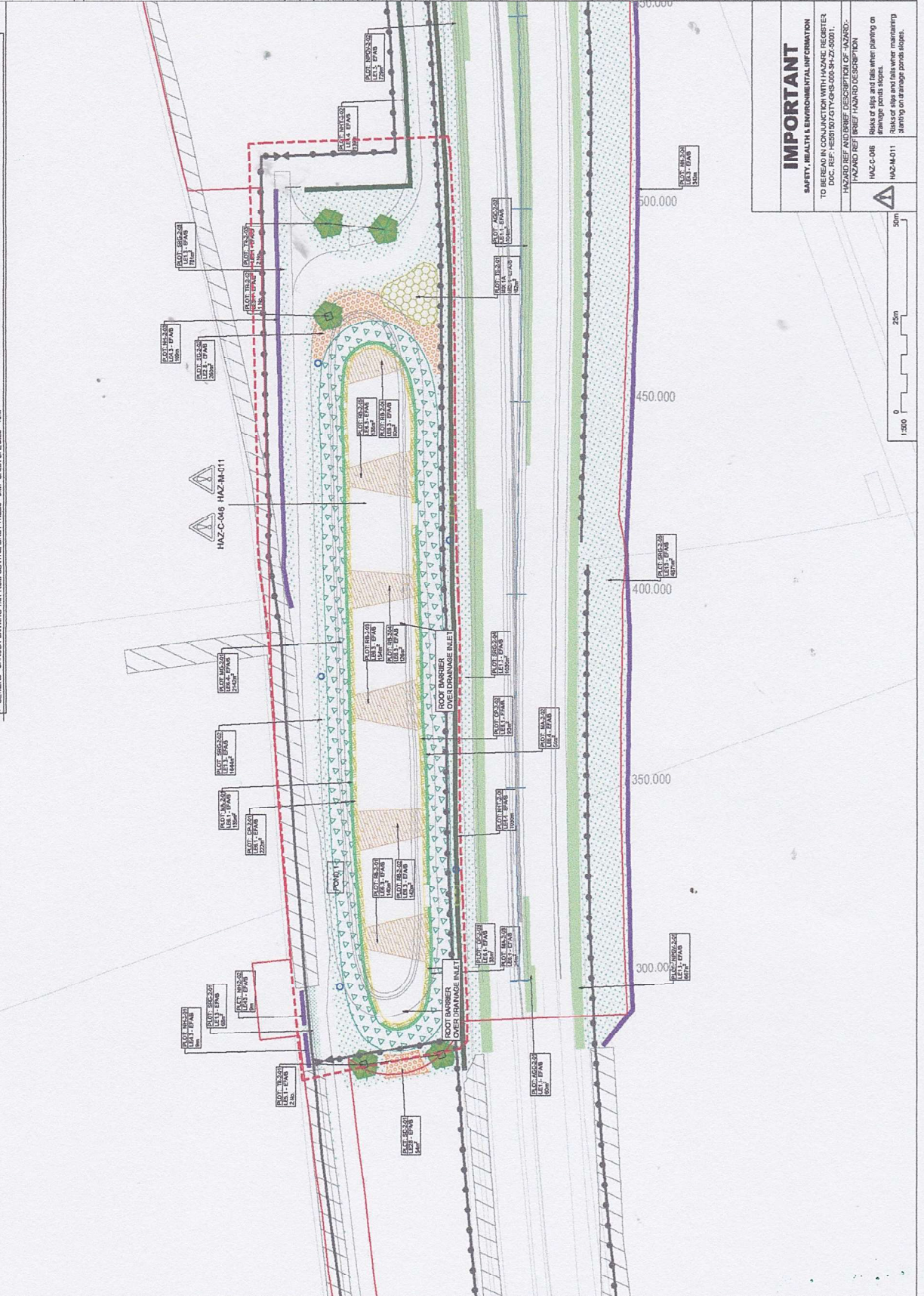
NO	DATE	DESCRIPTION
1	22/06/20	ISSUE
2		
3		
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8		
9		
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**SWECO**

**GallifordTry**

**highways england**

PROJECT TITLE	A303 SPARKFORD TO ILCHESTER DUALLING
PROJECT STAGE	PCF STAGE 5
DRAWING TITLE	A303 POND 1 & LANDSCAPE
SUITABILITY	SUITABLE FOR INFORMATION
SHEET SIZE	A1
SCALE	1:500
STATUS	S2
REVISION	P01
DRAWING NUMBER	HE551507-GTY-ELS-000-DR-LX-50329



**IMPORTANT**

**SAFETY, HEALTH & ENVIRONMENTAL INFORMATION**

TO BE READ IN CONJUNCTION WITH HAZARD REGISTER DOC. REF: HE551507-GTY-06-000-SH-Z-0001.

HAZARD REF AND BRIEF DESCRIPTION OF HAZARD: HAZ-C-048

HAZARD REF AND BRIEF HAZARD DESCRIPTION: HAZ-NC11

Risks of slips and falls when planting on average gentle slopes.

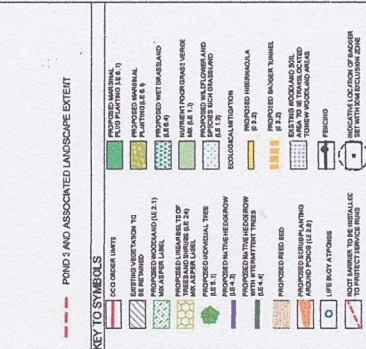
Risks of slips and falls when maintaining planting on average gentle slopes.

SCALE	1:500
STATUS	S2
REVISION	P01
DRAWING NUMBER	HE551507-GTY-ELS-000-DR-LX-50329



**NOTES**

- THIS DRAWING SHALL BE USED FOR THE PURPOSE SHOWN IN THE TITLE BLOCK ONLY.
- ALL DIMENSIONS ARE IN METRES UNLESS STATED OTHERWISE.
- ALL LEVELS ARE ABOVE DRAINAGE DATUM.
- DO NOT SCALE FROM THIS DRAWING.
- THIS MAP IS REPRODUCED FROM ORIGINATE SURVEY MATERIAL. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY CONSENTS FROM THE LANDLORDS AND THE LOCAL AUTHORITY FOR THE REPRODUCTION OF THIS DRAWING. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY CONSENTS FROM THE LANDLORDS AND THE LOCAL AUTHORITY FOR THE REPRODUCTION OF THIS DRAWING.
- PLANTING SCHEDULES SUCH AS FOS REFERENCE, FORMWORK TYPES REFER TO FENCING DRAWING SERIES HE551507-GTY-FE-000-UR-CH-0010 - 0014.



REV	DATE	DESCRIPTION	DESIGNER	CHECKED	APP'D
1	22/09/20	ISSUE FOR TENDERS			

**CONTRACTOR**  
**SWECO**

**CLIENT**  
**GalifordTry**

**PROJECT TITLE**  
A303 SPARKFORD TO ILCHESTER DUALLING

**PROJECT STAGE**  
PCF STAGE 5

**DRAWING TITLE**  
A303 POND 3 & LANDSCAPE

**SUITABILITY**  
SUITABLE FOR INFORMATION

**SCALE**  
1:500

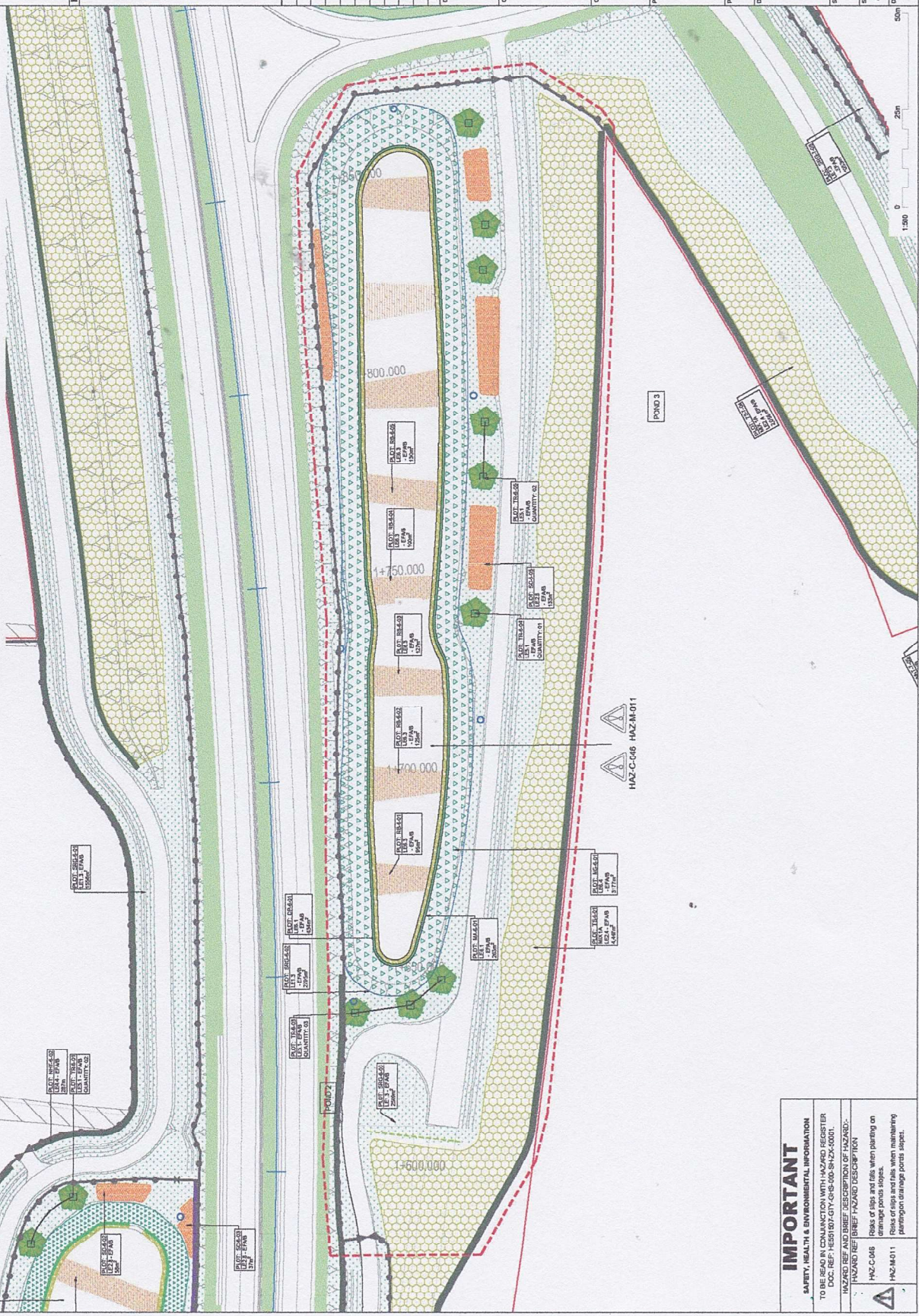
**REVISION**  
S2

**REVISION**  
P01

**DRAWING NUMBER**  
HE551507-GTY-ELS-000-DR-LX-50331

**GENERAL PLANTING NOTES:**

- CONTRACTOR TO SET OUT PLOT BOUNDARIES PRIOR TO PLANTING.
- ALL AREAS WITHIN THE HIGHWAY BOUNDARY ARE TO BE REINSTATED (AS NECESSARY) AS SHOWN ON THE DRAWING.
- MINIMUM PLANTING SPECIFICATIONS TO BE AS FOLLOWS:
  - EDGE OF CARBAMIDEWAY SHRUBS - 4.5M/EDGE OF CARBAMIDEWAY TREES - 7M
  - EXISTING PLANTING - 2M
  - NOISE BARRIERS - 2M
  - EDGE OF EMBANKMENT STRUCTURE - 3M
  - POWER CABLES - HEDGE AND SHRUB PLANTING 1.5M/ SMALL TREES 3M / LARGE TREES 5M
  - OVERHEAD POWER LINES - SHRUB PLANTING 2.5M / SMALL TREES 3 - 6M / LARGE TREES 5M / SUNK
  - SEWERS - SHRUB PLANTING 1M FROM CENTRELINE / TREES - 5M / SUNK SPECIES - 10M
- FRANUS SPINOSA TO BE PLANTED AT A 10M DISTANCE FROM THE HARD LEISURE.
- LETULA SPINOSA TO BE PLANTED IN A POSITION WITHIN PLOTS WHERE AT MATURITY THEY WILL NOT BE WITHIN FALLING DISTANCE OF THE OVERHEADWAY.
- SALIX FRAXINOSA MUST NOT BE PLANTED WITHIN 20M OF THE OUTSIDE EDGE OF THE PLOT.
- FRAXUS BACATA NOT TO BE USED IN AREAS OF WOODLAND NEAR LIVESTOCK AND WITHIN MX 2 IT SHALL BE SUBSTITUTED WITH AN INCREASED PERCENTAGE OF CARPINUS BETULUS INSTEAD.
- THE HIGHWAY BOUNDARY FENCE UNLESS AGREED OTHERWISE.
- FOR LANDSCAPE AND ECOLOGY SPECIFICATION REFER TO HE551507-GTY-EL-000-SP-LD-3002Z.
- FOR PLANTING SCHEDULES REFER TO HE551507-GTY-EL-000-SH-LD-0002Z.
- TO BE READ IN CONJUNCTION WITH LANDSCAPE AND ECOLOGY DRAWINGS HE551507-GTY-ELS-000-DR-LX-50220 TO HE551507-GTY-ELS-000-DR-LX-50222.



**IMPORTANT**

**SAFETY, HEALTH & ENVIRONMENTAL INFORMATION**

TO BE READ IN CONJUNCTION WITH HAZARD REGISTER DOC. REF: HE551507-GTY-01-00-SH-ZK-0001.

**HAZARD REF. AND BRIEF DESCRIPTION OF HAZARD:**

**HAZ-C-046**  
Risks of slips and falls when planting on drainage porous slopes.

**HAZ-M-011**  
Risks of slips and falls when maintaining perforation drainage porous slopes.

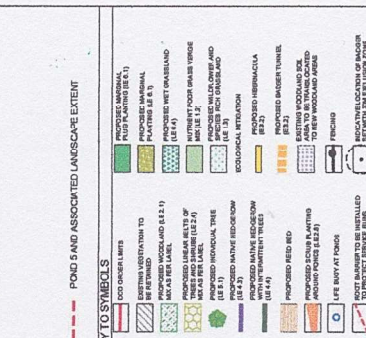






**NOTES**

1. THIS DRAWING SHALL BE USED FOR THE PURPOSE SHOWN IN THE TITLE BLOCK ONLY.
2. ALL DIMENSIONS ARE IN METRES UNLESS STATED OTHERWISE.
3. ALL LEVELS ARE ABOVE ORDNANCE DATUM.
4. DO NOT SCALE FROM THIS DRAWING.
5. THIS MAP IS REPRODUCED FROM ORDNANCE SURVEY MATERIAL. THE CONTROLLER OF HER MAJESTY'S STATIONERY OFFICE, CROWN COPYRIGHT, UNAUTHORISED REPRODUCTION INFRINGES CROWN PROCEEDINGS.
6. FENCING LAYOUT SHOWN FOR REFERENCE. FOR FENCING TYPES REFER TO FENCING DRAWINGS SERIES HE551507-GTY-PFE-000-DR-CH-0010 - 0014.



PI	Z24000	JOB ISSUE	J05	A/E	JL
REV		REVISION NOTE			
DESIGNER					

CONTRACTOR  
**SWECO**

GallifordTry

CLIENT  
**highways england**

PROJECT TITLE  
A303 SPARKFORD TO ILCHESTER DUALLING

PROJECT STAGE  
PCF STAGE 5

DRAWING TITLE  
A303 POND 5 & LANDSCAPE

SITABILITY  
SUITABLE FOR INFORMATION

SHEET SIZE  
A1

SCALE  
1:500

REVISED  
S2

REVISION  
P01

DRAWING NUMBER  
HE551507-GTY-ELS-000-DR-LX-50333

**GENERAL PLANTING NOTES:**

1. CONTRACTOR TO SET OUT PLOT BOUNDARIES PRIOR TO PLANTING.
2. ALL PLANTING TO BE PERFORMED WITHIN 14 DAYS OF COMMENCEMENT OF WORKS UNLESS OTHERWISE SPECIFIED.
3. ALL PLANTING TO BE INSTALLED IN ACCORDANCE WITH THE SPECIFICATION AND DRAWINGS.
4. ALL PLANTING TO BE INSTALLED IN ACCORDANCE WITH THE SPECIFICATION AND DRAWINGS.
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10. ALL PLANTING TO BE INSTALLED IN ACCORDANCE WITH THE SPECIFICATION AND DRAWINGS.

**ASPECT GENERAL PLANTING NOTES:**

1. CONTRACTOR TO SET OUT PLOT BOUNDARIES PRIOR TO PLANTING.
2. ALL PLANTING TO BE PERFORMED WITHIN 14 DAYS OF COMMENCEMENT OF WORKS UNLESS OTHERWISE SPECIFIED.
3. ALL PLANTING TO BE INSTALLED IN ACCORDANCE WITH THE SPECIFICATION AND DRAWINGS.
4. ALL PLANTING TO BE INSTALLED IN ACCORDANCE WITH THE SPECIFICATION AND DRAWINGS.
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9. ALL PLANTING TO BE INSTALLED IN ACCORDANCE WITH THE SPECIFICATION AND DRAWINGS.
10. ALL PLANTING TO BE INSTALLED IN ACCORDANCE WITH THE SPECIFICATION AND DRAWINGS.



**IMPORTANT**

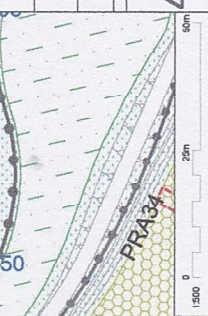
SAFETY, HEALTH & ENVIRONMENTAL INFORMATION

TO BE READ IN CONJUNCTION WITH HAZARD REGISTER DOC. REF: HE551507-GTY-316-000-SH-20-50001.

HAZARD REF AND BRIEF DESCRIPTION OF HAZARD:

HAZ-C-046 Risks of slips and falls when planting on uneven ground.

HAZ-A-011 Risks of slips and falls when maintaining planting on uneven ground.





<b>"Request for Action"</b>	means a written request submitted by the MoD to Highways England sent in accordance with Schedule 1
<b>"RNAS Yeovilton"</b>	means the land at the airfield currently known as Royal Naval Air Station Yeovilton located near Yeovil, Somerset
<b>"the Site"</b>	means the land comprised within the redline boundary shown on Plan 1
<b>"WeBS"</b>	<p>means a wetland bird survey to ascertain Birds use of the Ponds such surveys to be based on WeBS methodology for the WeBS Core Count amended to suit birdstrike hazard purpose and shall include such other detail as is necessary to cover:</p> <ul style="list-style-type: none"> <li>- details and numbers of hazardous bird species</li> <li>- numbers of birds on the Ponds</li> <li>- the form(s) of bird control employed</li> <li>- the reaction of the birds (including direction of dispersal)</li> <li>- the effectiveness of control</li> <li>- a full record of the number and species of hazardous birds culled by lethal control</li> </ul>
<b>"Working Days"</b>	any day on which the clearing banks in the City of London are reasonably anticipated to be open to the public

## **1 INTERPRETATION**

For the purposes of this Deed:

- 1.1 Reference to any act of Parliament or section of such act shall include reference to any replacement or modification or re-enactment of it
- 1.2 The masculine gender includes the feminine and neuter genders and vice versa
- 1.3 The singular includes the plural and vice versa
- 1.4 Reference to persons include firms companies corporations authorities and other bodies and vice versa
- 1.5 References to the Council's or the MoD's consent shall mean the prior written consent of the Council or the MoD which consent shall not be unreasonably withheld or delayed and



shall be expressed to be pursuant to this Deed and such consent shall be in addition to and not in substitution for any other permission that may be necessary

- 1.6 References to any party in this Deed shall include their successors in title and assigns
- 1.7 Any covenant by Highways England not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing
- 1.8 If any provision in this Deed is held to be illegal invalid or unenforceable the legality validity and enforceability of the remainder of this Deed so far as is practicable is to be unaffected
- 1.9 Nothing in the clause headings to this Deed shall affect its interpretation
- 1.10 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the DCO) granted after the date of this Deed

**IT IS HEREBY AND DECLARED** as follows:

- 1.11 This Deed is made in pursuance of the provisions of Section 106 of the Act
- 1.12 The covenants and agreements by Highways England contained within Schedule 1 of this Deed are development consent obligations for the purposes of Section 106 of the Act with the intent that the same shall be enforceable by the Council and the MoD against Highways England and its successors in title and any person corporate or otherwise claiming through or under it an interest or estate in any part or parts of the Ponds as if that person had also been an original covenanting party in respect of the interest or estate for the time being held by them
- 1.13 Highways England shall not be liable for any breach of this Deed unless it has an interest in/is the owner of the part of the Ponds in respect of which such breach occurs or held such an interest at the date of the breach

**2 CONDITIONALITY**

- 2.1 This Deed is conditional and the development consent obligations contained within Schedule 1 to this Deed shall only take effect upon:
  - (a) the grant of the DCO;
  - (b) Commencement of the Development; and
  - (c) Commencement of the Ponds



- 2.2 If the DCO expires without Commencement of the Development and Commencement of the Ponds or is quashed revoked or otherwise withdrawn or modified by any statutory procedure without the consent of Highways England this Deed shall cease to have effect
- 2.3 This Deed is provided on the condition that where this Deed ceases to have effect in accordance with clauses 2.4 or 2.5 the Council shall on written request vacate or cancel the entry made in the Local Land Charges register in relation to this Deed or otherwise to record the fact that it has come to an end and no longer affects the land shown on Plan 1
- 2.4 This Deed is provided on the condition that if aircraft cease to use RNAS Yeovilton the obligations in this Deed shall cease to have effect provided that the Council provides written confirmation to Highways England that the use of RNAS Yeovilton for use by aircraft or aviation purposes has ceased
- 2.5 This Deed is provided on the condition that if the Ponds are permanently removed, infilled or the use of the Ponds is permanently changed such that there is no water on which Birds can feed or breed the obligations in this Deed shall cease to have effect PROVIDED THAT the MoD has confirmed to Highways England in writing that it is satisfied that the landform, any associated landscaping, and planting resulting from the works to remove, infill or use the Ponds for another purpose does not and will not at any time whilst RNAS Yeovilton is an operational airfield pose a risk from birdstrike

2.6 **LAND CHARGE**

- 2.7 This Deed shall be registered as a Local Land Charge in the Local Land Charges Register maintained by the Council

**3 VARIATIONS**

- 3.1 Variations of the terms of this Deed (other than minor amendments or variations of a transitory nature not affecting the nature or extent of liability hereunder) may be evidenced only by a supplemental deed executed as a deed of variation unless the Council and the MoD otherwise indicates in writing or is a party thereto and a copy of any supplemental agreement shall be sent to the Council for the purpose of amending the Local Land Charges Register

- 3.2 The parties may rescind or vary this Deed without the consent of a third party to whom an express right to enforce any of its terms has been provided

**4 NOTICES**

- 4.1 Any notice given under this Deed shall be deemed to have been validly served on or communicated to the relevant party upon whom such notice is being served if sent by prepaid post recorded delivery or delivered by hand to their registered address (if



appropriate) or such other address for services as shall from time to time be notified in writing

4.2 The Developer will serve fourteen days' written Notice upon the Council and the MoD following:

- (a) Commencement of Development;
- (b) Commencement of the Ponds; and
- (c) Completion of Construction

## **5 DETERMINATION OF DISPUTES**

5.1 Subject to clause 5.8 if any dispute arises relating to or arising out of the terms of this Deed any Party may give to the others written notice requiring the dispute to be determined under this clause 5

5.2 The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute

5.3 For the purposes of this clause 5 a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to developments in the nature of the Development and property in the same locality as the Site

5.4 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of any Party to the President or next most senior available officer of the Law Society who will have the power with the right to take such further advice as he may require to determine the appropriate type of Specialist and to arrange his nomination under clause 5.5

5.5 Any dispute over the identity of the Specialist is to be referred at the request of any Party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists or the Parties cannot agree the identity of the organisation then the Specialist is to be nominated by the President or next most senior available officer of the Law Society

5.6 The Specialist is to act as an independent expert and:

- (a) each Party may make written representations within ten working days of his appointment and will copy the written representations to the other Parties;



- (b) each Party is to have a further ten working days to make written comments on the others' representations and will copy the written comments to the other Parties;
- (c) the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;
- (d) the Specialist is not to take oral representations from the Parties without giving each Party the opportunity to be present and to give evidence and to cross-examine each other;
- (e) the Specialist is to have regard to all representations and evidence before him when making his decision which is to be in writing and is to give reasons for his decision; and
- (f) the Specialist is to use reasonable endeavours to publish his decision within 30 working days of his appointment

5.7 Responsibility for the costs of referring a dispute to a Specialist under this clause 5, including costs connected with the appointment of the Specialist and the Specialist's own costs but not the legal and other professional costs of any party in relation to a dispute will be decided by the Specialist

5.8 This clause 5 does not apply to disputes in relation to matters of law or the construction or interpretation of this Deed which will be subject to the jurisdiction of the courts

## **6 THIRD PARTY RIGHTS**

6.1 The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a Party to it

## **7 COSTS**

7.1 Upon completion of this Deed Highways England will pay to the Council and MoD all proper and reasonable legal costs of the Council and the MoD in connection with the preparation negotiation and completion of this Deed

## **8 JURISDICTION**

8.1 This Deed is to be governed and interpreted in accordance with the law of England and Wales

## **9 EXECUTION**

9.1 Highways England has executed this Deed as a deed and it is delivered on the date set out above



## Schedule 1

### Highways England Covenants

#### **Maintenance**

- 1 Highways England covenants with the Council and the MoD that it will maintain the Ponds in accordance with the detail approved by the Secretary of State for Transport pursuant to the DCO

#### **Monitoring**

- 1.1 Highways England covenants with the Council and the MoD that it shall undertake a WeBS within one month of Commencement of the Ponds
- 1.2 Highways England covenants with the Council and the MoD that it shall:
  - (a) inspect the Ponds at least twice a day during the Construction Phase and the Establishment Period
  - (b) inspect the Ponds at least once a month following the end of the Establishment Period
  - (c) undertake a WeBS every month from the date of the Commencement of the Ponds until the first Anniversary of Commencement of the Ponds
  - (d) undertake a WeBs every second month from the date of the first Anniversary of Commencement of the Ponds until the Second Anniversary of Commencement of the Ponds
  - (e) undertake a WeBs every quarter thereafter
- 1.3 The WeBS shall be undertaken by Highways England to assess the type and size of any population of Birds visiting the Ponds, the Birds' usage of the Ponds (feeding and breeding) and trends in the Birds' numbers

#### **Management**

- 1.4 Highways England covenants with the Council and the MoD that it shall implement the Bird Management Measures on the basis of the WeBS and/or other Bird Monitoring Data to minimise the use of the Ponds by Birds which may nest, feed or use the Ponds during the Construction Phase and the Operational Phase of the Development
- 1.5 The Bird Management Measures shall include (but not be limited to):
  - walking across the site until the Birds have left the site;



- sending a dog to chase the Birds;
- flags and other distractions including imitation people;
- goose proof fencing along water or reed interface with land;
- distress calls;
- gas guns;
- pyrotechnics;
- raptors;
- shooting;
- nest and egg removal;
- habitat management including vegetation control;
- appropriate licensed population control;
- installing signs around the Ponds which prohibit the feeding of the Birds

1.6 Highways England undertakes with the Council and the MoD that the purpose of the Bird Management Measures shall be to:

- prevent breeding colonies of heron, little egret or common crane on the Ponds
- prevent the breeding of gulls and geese on the Ponds
- prevent the roosting of gulls on the Ponds
- prevent the breeding feral geese (Canada Goose, Egyptian Goose and Greylag Goose) on the Ponds
- undertake bird control measures to ensure that no more than 15 geese are located on the Ponds at any one time
- undertake bird control measures to ensure that no more than 20 gulls are located on the Ponds at any one time
- prevent any starling from roosting on the Ponds

1.7 Prior to the Construction Phase Highways England covenants with the Council and the MoD that it shall inform the Council and the MoD of the identity of the Bird Management Officer and the Bird Management Officer shall provide the MoD with copies of the WeBs undertaken in accordance with paragraph 1.2 of this Schedule 1 within 2 weeks of the reports being completed

1.8 The Bird Management Officer or their appointee shall undertake the measures referred to in paragraph 1.6 of this Schedule 1

1.9 Highways England shall act in accordance with any comments the MoD makes in writing in respect of producing the WeBs and undertakes to amend its approach to producing the WeBs under paragraph 1.2 of this Schedule 1 PROVIDED THAT the MOD considers the



proposed changes necessary for safeguarding purposes and the comments are supported by an appropriate evidence base which demonstrates that the proposed amendments to its approach to producing the WeBS are necessary to reduce the risk of birdstrike at RNAS Yeovilton

- 1.10 Subject to paragraph 1.11 in the event that the Council or the MoD considers there to be presence of Birds on the Ponds which constitute a safety concern in respect of the operation of aircraft entering or exiting RNAS Yeovilton the MoD shall inform Highways England of such an event in writing and Highways England shall undertake any one or more of the specific Bird Management Measures identified in paragraph 1.6 of this Schedule 1 within 24 hours of receipt of a written notification (a "**Request for Action**")
- 1.11 In the event that Highways England fails to undertake a Request for Action the MoD may enter the Ponds and undertake any action it considers necessary in order to remove, deter or minimise the risk of the Birds to RNAS Yeovilton

#### **Licence**

- 1.12 Subject to paragraph 1.13 of this Schedule 1 Highways England grant to the MoD (which includes its agents and assigns) a licence to enter the Ponds for the sole purpose of undertaking the Bird Management Measures (including any measures the MoD considers necessary where paragraph 1.11 of this Schedule 1 applies) which the MoD considers necessary for the purpose of safeguarding the safety of aircraft entering and exiting RNAS Yeovilton
- 1.13 In entering the Ponds the MoD shall be responsible for the health and safety of its employees, agents and assigns and the MoD shall ensure that it has in place appropriate insurance to cover all activities being undertaken by its employees, agents and assigns and that all such individuals are suitably qualified to undertake the activities which they have been instructed to undertake on the Ponds by the MoD

#### **Cooperation**

- 1.14 In order to fulfil the obligations set out in this Deed Highways England and the MoD agree to share any Bird Monitoring Data or otherwise gathered in respect of the Birds' usage of the Ponds
- 1.15 Highways England and the MoD agree to reassess the agreed Bird Management Measures (having regard to the Bird Monitoring Data gathered by each Party) at the following intervals:
- (a) on Completion of Construction;
  - (b) at the end of the Establishment Period;



- (c) where necessary and agreed between the parties in writing annually starting on the first Anniversary of the end of the Establishment Period; and
- (d) any other period which is requested by the MoD in writing where the MOD considers the proposed reassessment necessary for safeguarding purposes and the request is supported by an appropriate evidence base which demonstrates that the reassessment of the proposed measures are necessary to reduce the risk of birdstrike at RNAS Yeovilton

### **Successors in title**

- 1.16 Subject to paragraph 1.17 of this Schedule 1 Highways England covenants with the Council and the MoD that it shall ensure that prior to transferring any part of the Ponds to a third party that it will secure an agreement from that third party in the same terms as set out in this Deed and Highways England covenants with the Council and the MoD that it shall place a restriction on the registered title to the Ponds in the same terms
- 1.17 Where the functions and responsibilities of Highways England are transferred to another body or Government Department pursuant to a Statutory Instrument or Act of Parliament the obligations and covenants will automatically transfer and paragraph 1.16 of this Schedule 1 shall not apply

### **Costs**

- 1.18 Highways England covenants with the MoD that it shall pay the MoD's reasonable costs incurred in respect of undertaking the Bird Management Measures where Highways England has failed to comply with a Request for Action. This payment shall be provided within a period of 28 days of the MODs Request of Action provided that the MoD has provided Highways England with evidence of their costs incurred and a breakdown of these costs

### **Reassessment**

- 1.19 The obligations in this Deed shall be reassessed by Highways England and the MoD on every Anniversary of this Deed to determine whether the obligations in this Deed are necessary (having regard to all data gathered and the number of instances where Bird Management Measures and / or Requests for Action were undertaken)

### **The Site**

- 1.20 Highways England undertakes with the Council and the MoD that the Site shall not be Open to Traffic as part of the Development until Highways England has either acquired an interest in any part of the Ponds or has taken possession (temporarily or otherwise) of any part of the Ponds



## **Confirmatory Deed**

- 1.21 Highways England covenants with the Council and the MoD that it shall provide the Council and the MoD with the Confirmatory Deed within 20 Working Days of acquiring the freehold title to the Ponds



## Schedule 2

### Draft Confirmatory Deed

DATED

20[ ]

GIVEN BY:

- (1) **HIGHWAYS ENGLAND COMPANY LIMITED** (Company registration number: 09346363) whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ (**Highways England**);

TO:

- (2) **SOUTH SOMERSET DISTRICT COUNCIL** of the Council Offices, Brympton Way, Yeovil, Somerset BA20 2DS (**the Council**); and
- (3) **SECRETARY OF STATE FOR DEFENCE** of the Ministry of Defence, Whitehall, London, SW1A 2HB (**MoD**)

#### RECITALS

- (A) The Definitions in this Deed are the same as those set out in the s.106 unilateral undertaking given by Highways England to the Council and MoD on [ ] 2020 details of which are set out in the Schedule to this Confirmatory Deed and which regulates the ongoing monitoring and maintenance of the Ponds (the "**Unilateral Undertaking**")
- (B) This Confirmatory Deed relates to Highways England's freehold interest in the Ponds registered at Her Majesty's Land Registry under title no(s) [ ] and which is shown edged red on the plan annexed to this Confirmatory Deed
- (C) The Council is the local planning authority for the area within which the Ponds are located
- (D) The development consent obligations, covenants and other provisions contained in the Unilateral Undertaking (as detailed in the Schedule) are enforceable by the Council and MoD against Highways England and are binding in respect of Highways England's interest in the Ponds in accordance with the terms of this Confirmatory Deed and the Unilateral Undertaking

#### OPERATIVE PROVISIONS

##### 1. Operation of this Confirmatory Deed

1.1. This Confirmatory Deed and the obligations contained in it are:

- (a) to the extent that they fall within the terms of section 106 of the 1990 Act, made pursuant to section 106 of the Town and Country Planning Act 1990 as development consent obligations and these and the other provisions referred to in the Planning Agreement are made pursuant to such other enabling powers (statutory or otherwise) as may be relevant and appropriate;
- (b) executed by Highways England so as to bind and subject its estate or interest in the Ponds to the obligations covenants and other provisions contained in the Unilateral



Undertaking (if and to the extent that they remain to be observed performed and complied with at the date of this Confirmatory Deed);

- (c) enforceable in accordance with the Unilateral Undertaking by the Council and the MoD

## 2. Highways England Obligations

- 2.1. Highways England hereby covenants and undertakes to the Council and the MoD that its interest in the Ponds shall be bound by the obligations covenants and other provisions contained in the Unilateral Undertaking if and insofar as such terms and obligations covenants and other provisions remain to be complied with in accordance with the Unilateral Undertaking as at the date hereof

## 3. Miscellaneous Provisions

- 3.1. All words and phrases in this Confirmatory Deed shall bear the same meaning as defined in the Unilateral Undertaking except where defined otherwise in this Confirmatory Deed
- 3.2. This Confirmatory Deed shall be registrable by the Council as a local land charge
- 3.3. Any invalidity illegality or unenforceability of any clause or paragraph in the Unilateral Undertaking shall not affect the validity or enforceability of the remaining provisions in this Confirmatory Deed
- 3.4. This Confirmatory Deed shall immediately cease to have effect if and to the extent that the Unilateral Undertaking shall cease to have effect in accordance with its terms

**IN WITNESS** of which this Deed has been executed and delivered on the day and year above written

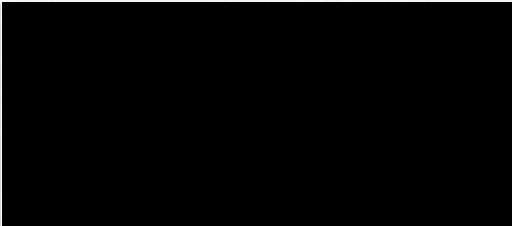
### SCHEDULE

#### The Unilateral Undertaking

Date	Parties	Details of legal interests bound by the Unilateral Undertaking
[ ]	(1) Highways England Company Limited  (2) South Somerset District Council  (3) Secretary of State for Defence	Freehold titles [ ]



Executed as a Deed by affixing the common seal of **HIGHWAYS ENGLAND COMPANY LIMITED**  
in the presence of:



Director or Authorised Signatory

Signature of Witness

Name of Witness

Address of Witness

Occupation of Witness

