

23 August 2021
Our ref: AU/KCW/LZH/1724/01
Your ref: WS010005

National Infrastructure Planning
Temple Quay House
2 The Square
Bristol
BS1 6PN

BY EMAIL ONLY TO [REDACTED] [@planninginspectorate.gov.uk](mailto:[REDACTED]@planninginspectorate.gov.uk)

Dear Tracey

East Northants Resource Management Facility - WS010005

Signposting Questions

Further to your email dated 19 August 2021 we are pleased to provide our response to the acceptance signposting request relating to the application for a Development Consent Order for the alteration and construction of hazardous waste and low level radioactive waste facilities at the East Northants Resource Management Facility, Stamford Road, Northamptonshire. In the response below, for clarity we have reproduced the signposting questions in **blue bold italic text** followed by the response to each of the questions.

Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, Regulation 7

1. Where can we find confirmation of whether there are parties, other than those identified in the Land Plan and Land Interests Table, with rights over the Order land, for example, easements, access rights and the like which may be suspended or interfered with. If such parties exist, where can we find information on any consultation and responses received?

There are no such parties in the DCO application. Further, there is no obligation in the relevant legislation or guidance to confirm that there are no such parties. However, for completeness and to respond to the signposting questions raised we have provided the information below.

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 Regulation 5(1) states that:

'(2) The application must be accompanied by...(d) where applicable, the book of reference;'(our emphasis)



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| Regulation 7 item | Information to be provided where relevant | Need for and location of the information |
|---|---|--|
| (1)(a) ... the names and addresses for service of each person within Categories 1 and 2 as set out in section 57 (categories for purposes of section 56(2)(d)) in respect of any land which it is proposed shall be subject to: | (i) powers of compulsory acquisition | No powers of compulsory acquisition are sought as part of the proposed development in the DCO application. |
| | (ii) rights to use land, including the right to attach brackets or other equipment to buildings | No rights to use land are being sought as part of the proposed development in the DCO application. |
| | (iii) rights to carry out protective works to buildings | No rights to carry out protective works to buildings are sought as part of the proposed development in the DCO application. |
| (1)(b) | ... the names and addresses for service of each person within Category 3 as set out in section 57; | <p>The names of each person potentially within Category 3 are clearly set out in the Land Ownership and Interests Schedule (PINS document reference 6.3). As such, we consider that all necessary information has been provided with the DCO application and this in itself is not considered to be an acceptance issue.</p> <p>These people are only listed because there is a considered to be a very small chance they may be entitled to make a claim under section 152(3) of the Land Compensation Act 1973 as a result of the operation of the proposed western extension.</p> |
| (1)(c) | ...the names of all those entitled to enjoy easements or other private rights over land (including private rights of navigation over water) which it is proposed shall be extinguished, suspended or interfered with; | <p>There are no easements and other private rights over land which will be extinguished, suspended or interfered with as part of the DCO application.</p> <p>Western Power Distribution (WPD) do not have any interests in the land, but do have the benefit of a contractual wayleave and apparatus which will be diverted as part of the proposed development as described in Appendix ES5.1 (PINS document reference 5.4.5.1).</p> <p>Further, it is noted that Annex D of the guidance related to procedures for compulsory acquisition of land which refers to what ought to be included in a Book of Reference states "<i>Applicants should not add any further (non-prescribed) parts to a book of reference, for example schedules of statutory undertakers or other like bodies having or possibly having a right to keep equipment on, in or over the land within the order limits.</i>"</p> <p>Nevertheless consultation was undertaken with WPD as part of the Scoping (Annex 1 of Appendix ES2.2 (PINS document reference 5.4.2.2) and pre-application consultation (Table 2 of Appendix CRP to the Consultation Report, PINS document reference 4.2.16).</p> |



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| | | |
|------------------|---|---|
| | | <p>The Applicant is currently liaising with WPD's solicitors (Osbourne Clarke) with regard to granting the necessary easements over the Proposed Western Extension to facilitate the diversion. The Applicant intends to enter into all necessary agreements with WPD as soon as possible and in any event before the end of the examination.</p> <p>On this basis, WPD would not be included in a Book of Reference, even if it were applicable.</p> |
| (1)(d) | ...the owner of any Crown interest in the land which is proposed to be used for the purposes of the order for which application is being made | No land the subject of Crown interest will be used as part of the proposed development. |
| (1)(e)...land... | (i) the acquisition of which is subject to special parliamentary procedure | No land the acquisition of which is subject to special parliamentary procedure is being acquired as part of the proposed development. |
| | (ii) which is special category land | No special category land will be used as part of the proposed development. |
| | (iii) which is replacement land | No replacement land will be necessary as part of the proposed development. |

The meaning of 'book of reference' is set out in Regulation 7. It is stated that a book of reference should include the following:

The wording of Regulation 7(1)(b) does not expressly require a Book of Reference to be prepared if Category 3 parties are identified and the wording in Regulation 5(2) states that a Book of Reference is only required **where applicable**, supporting the position that a Book of Reference will not always be needed. On the basis that no powers of compulsory acquisition are sought, it is the view of the Applicant and its advisors that a Book of Reference is **not applicable**.

The PINS Guidance Advice Note Six (Preparation and submission of application documents) lists the Book of Reference under "Compulsory Acquisition Information" which supports the position that a book of reference does not need to be prepared if compulsory acquisition powers are not sought.

On the basis that there is no additional information, which is not already set out in the application documents submitted, which would be included in any Book of Reference, the Applicant maintains that this document is not required to comply with legislative requirements and guidance. Therefore the application as submitted does reach a satisfactory standard pursuant to section 55(3)(f) of the Planning Act 2008 when having regard to section 55(5A) of the Planning Act 2008.

2. Where can we find confirmation of whether or not the proposal involves protective works to buildings whose owners may need to be consulted. If such parties exist, where can we find information on any consultation and responses received?



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There are some buildings on the Existing ENRMF Site, but these are in the ownership and control of the Applicant, so no rights to carry out works are required. The proposed western extension comprises arable land and contains no buildings and there are no other buildings in the vicinity of the proposed development which will be affected as described in the Environmental Statement at paragraph 3.1.6 and shown on Figure ES3.1 (PINS document reference 5.3.3.1).

As confirmed in the response to question 1 above, the draft Development Consent Order does not include the power to carry out protective works to buildings and therefore it is clear that no rights are sought as part of the proposed development. Accordingly, there is no information on or consultation with the owners of any such buildings.

3. Where can we find confirmation of whether or not the proposal involves Crown Land (part 4) or Special Category Land (part 5), or if such parties exist, where can we find information on any consultation and responses received?

As confirmed in the response to question 1 above, the proposed development does not involve any Crown Land or Special Category Land. Accordingly, there is no information on or consultation with the owners of any such land. In terms of the application documents, the Land Interests Table (PINS document reference 6.3) sets out all interests in the order limits and does not refer to any Crown interests; there is no reference in the application documents including the Explanatory Memorandum and the draft Development Consent Order to any such land; and it is stated in response to question 20 (see extract below) in the application form that no plan or accompanying information identifying any Crown Land is relevant.

20. A plan with any accompanying information identifying any Crown land

* Issues are relevant for this application:

Yes

No

4. Where can we find details of the terms of the leaseholds or option agreements which the applicant is relying on to deliver the proposal?

The relevant aspects of the leaseholds and options are summarised in Paragraph 2.7 of the Explanatory Memorandum (PINS document reference 3.3) which states that:

'The Proposed Development does not require any compulsory acquisition of land. All works will take place on land which the Applicant has a leasehold interest in or has an option over. Similarly no compulsory acquisition or extinguishment of rights of any other party is required in order to deliver the Proposed Development.'

Relevant details of leaseholds are provided in the notes on the key of the relevant Land Plans (PINS document reference 2.2) and in the Land Interests Table (PINS Document reference 6.3). The Applicant confirms that it has a sufficient leasehold term to construct and operate the facility and restore the land. If it did not, powers of compulsory acquisition would have been sought. Copies of the leasehold titles can be obtained from the Land Registry.

The Option Agreement for the proposed western extension land (Works 1B) allows for the purchase of the title of the land by Augean South Limited from the current landowners following the grant of the Development Consent Order.



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The option agreement is registered on the freehold title for the proposed western extension and a copy of the Option Agreement can be ordered from the Land Registry. A copy can be provided if required, but there is no requirement to provide title documents as part of a DCO application or to explain any terms of such agreements, regardless of whether compulsory acquisition powers are sought.

5. The consultation letters that you sent on the 26 October 2020 do not state what Category the applicant considered the consultees to be and, therefore, the terms on which the consultees understood they were being consulted (Consultation Report (CR) Appendix CRQ). Where can we find this information?

Appendix CRQ to the Consultation Report (PINS document reference 4.2.17) includes a copy of the standard email sent to S42 consultees. The emails state in the third paragraph that:

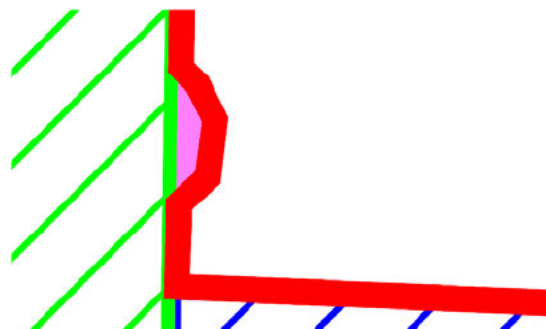
'...Augean are now progressing with the formal statutory consultation for the project under Section 42 and Section 47 of the Planning Act 2008 (as amended) and we attach...'

The approach to the consultation with the S47 consultees is described in Section 4 of the Consultation Report (PINS document reference 4.1) and in the Statement of Community Consultation (Appendix CRF to the Consultation Report, PINS document reference 4.2.6).

There is no requirement in the regulations, Act or guidance to specify in the correspondence which section the parties are being consulted pursuant to. We consider the consultation correspondence to be adequate for the purposes of the consultation process and there is no prejudice to those that have been consulted.

6. Where can we find details of the parties with an interest in the additional land around the Swallow Hole and the Applicant's negotiations with them (having regard to the consultation letter dated 14 June 2021 (CR Appendix CRV), which states that 'Augean may also need to seek legal powers to compulsorily acquire new rights over your land, although we will continue to negotiate with you privately in relation to any rights which may be required.')

The details of the parties with an interest in the additional land around the Swallow Hole (Title NN240859) are shown on the Land Plan (PINS document reference 2.2, Sheet 1 of 3. You will need to zoom-in to this very small area so the pink colour which matches the reference in the key is visible) and the Land Interests Table (PINS document reference 6.3). An enlarged extract from the relevant section of the Land Plan is shown below.



Following the 14 June 2021 correspondence Augean carried out further work which has satisfied Augean and its advisors that they have the necessary rights to continue to drain surface water runoff to the swallow hole and that **no compulsory acquisition of land is necessary**. The outcome of the further work carried out by Augean has been provided to the agents for the owners of Title NN240859.



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The 14 June 2021 consultation correspondence is superseded by the Explanatory Memorandum (PINS document reference 3.3) which states at paragraph 2.7 that:

'The Proposed Development does not require any compulsory acquisition of land. All works will take place on land which the Applicant has a leasehold interest in or has an option over. Similarly no compulsory acquisition or extinguishment of rights of any other party is required in order to deliver the Proposed Development.'

It is stated in response to question 13 (see extract below) in the application form that no compulsory acquisition of land or an interest in land or right over land is relevant.

13. Compulsory Acquisition of land or an interest in land or right over land

* Issues are relevant for this application:

Yes No

Further details of the correspondence with the agents for the owners of Title NN240859 can be provided if deemed necessary, but to be clear, Augean has not applied for any compulsory rights with respect to this land and this is a decision solely for Augean to make. If the Examining Authority wish to test whether Augean has sufficient rights for drainage, this can be pursued as part of the Examination Process.

7. Where can we find confirmation that no temporary possession of land will be required?

There is no specific question in the Application Form which requires confirmation regarding whether any temporary possession of land is required. The proposed development does not require any temporary possession of land. The relevant article to secure temporary powers of possession has not been included in the draft Development Consent Order (PINS document reference 3.1) and accordingly, there is no reference in the application documents including the Explanatory Memorandum (PINS document reference 3.3) and there is no colouring shown on the Land Plan (PINS document reference 2.2) which identify any need for the temporary possession of land.

In addition the Explanatory Memorandum (PINS document reference 3.3) states at paragraph 2.7 that:

'All works will take place on land which the Applicant has a leasehold interest in or has an option over.'

Land Plan and Land Interests Table

8. A small area on the southern boundary of the site (immediately to the east of the inset area) does not appear to be subject to any identified freehold or leasehold interests. Where can we find the details of the parties with an interest in this land; any consultation undertaken and responses received? Please refer to the attached annotated Plan for further detail.

The Existing ENRMF Site was transferred by Bernard Charles Howard, Roy George Howard, Percival William Howard and Anthony Frederic Howard trading as Howard Farms to Atlantic Freeholds (No. 2) Limited (Trading as Atlantic Waste) on 10 July 2003. A copy of the TR1 and plan is attached to this letter. Atlantic Waste was then purchased by the Applicant in 2004, the acquisition completed on 15 December 2004. Therefore, the area of land referred



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to appears to have been excluded from the Land Registry polygon for NN252039 in error. Because the Land Plan was prepared based on the Land Registry polygons rather than the plans attached to the original transfer documents, this error has been reflected in the information shown on the Land Plan.

As the application documents set out, the Applicant has been in occupation of the entirety of the Existing ENRMF Site since 2004 and has been operating it under the East Northamptonshire Resource Management Facility Order 2013 (as amended). There is a boundary fence in place around the southern perimeter of the Existing ENRMF Site including the cross hatched area shown on the annotated plan (Question 8 plan) you have sent us, which has not been challenged and the adjacent landowners, Howard Farms Limited, were formally consulted on the red line boundary for the proposed development and made no comments.

For these reasons, the Applicant is confident it has sufficient control over the cross hatched land and will make an application to the Land Registry to correct the title plan for NN252039 to show the true extent of the land transferred from Atlantic Freeholds (No. 2) Limited in 2004.

9. Where can we find an explanation of the relationship between the terms and boundaries of the Applicant's various freehold (NN252039, NN233142) and leasehold (NN188628, NN182966, NN185822) interests in the eastern part of the Order Land?

There is no requirement (in relevant legislation or guidance) to provide an explanation of the relationship between the terms and boundaries of the Applicant's various freehold and leasehold interests. As the land interests are overlapping and complex, as agreed in discussions with PINS prior to submission of the application, the various interests are set out clearly on a series of separate plans (Land Plan, PINS document reference 2.2, Sheets 1 to 3) rather than overlaid on a single plan. The holders of the interests are set out in the Land Interests Table (PINS document reference 6.3).

The Applicant has been operating the Existing ENRMF Site pursuant to the East Northamptonshire Resource Management Facility Order 2013, which was granted for the same red line boundary (excluding the proposed western extension area), for a period of 7 years and prior to that under relevant planning permissions for a period of 9 years. This demonstrates the Applicant has sufficient control over the Existing ENRMF Site. If the Applicant was not confident it had sufficient interests in the land, it would have applied for compulsory acquisition powers.

Other Matters

10. The Explanatory Memorandum confirms that no CA is sought. However, Article 12(7) of the draft DCO refers to 'the compulsory acquisition of land under this Order', although there are no other DCO Articles on CA. Where can we find an explanation of the intent of Article 12(7)?

The Explanatory Memorandum (PINS document reference 3.3) states clearly at paragraph 2.7 that:

'The Proposed Development does not require any compulsory acquisition of land. All works will take place on land which the Applicant has a leasehold interest in or has an option over. Similarly no compulsory acquisition or extinguishment of rights of any other party is required in order to deliver the Proposed Development.'



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It is stated in response to question 13 (see extract below) in the application form that no compulsory acquisition of land or an interest in land or right over land is relevant.

13. Compulsory Acquisition of land or an interest in land or right over land

* Issues are relevant for this application:

Yes

No

Draft Article 12(7) in the draft Development Consent Order is in the section entitled '*Authority to survey and investigate the land*'. This draft article is based on standard wording included in most Development Consent Orders and sub section (7) confirms that Section 13 of the Compulsory Purchase Act 1965 applies when the undertaker is exercising the relevant powers under Article 12. The reference to compulsory acquisition of land and section 125 has been included unnecessarily and the Applicant would propose to amend the wording in the draft Development Consent Order as follows in advance of the preliminary meeting:

'(7) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article ~~to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act~~.

As such there is no intent to seek compulsory acquisition. This wording is easily amended and the inclusion of this wording is not sufficient to mean the Application is not of a satisfactory standard pursuant to section 55(3) of the Planning Act 2008.

11. Where can we find a plan which clearly shows the Water Bodies in a River Management Plan - as required by Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, Reg 5(2) (I)(iii).

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 regulation 5(2)(I)(iii) states that:

'(2) The application must be accompanied by....(I) where applicable, a plan with accompanying information identifying....(iii) water bodies in a river basin management plan'.

The water bodies within 10km of the application site are shown on Drawing reference AU/KCW/07-21/22662, PINS document reference 2.11, Sheet 2 of 2.

Further details and plans are provided in the Environmental Statement and its appendices. The hydrology section (Section 17) of the Environmental Statement (PINS document reference 5.2) refers to Figures ES1.1 (PINS Document reference 5.3.1.1), ES17.3 (PINS document reference 5.3.17.3) and ES17.4 (PINS document reference 5.3.17.4) which show all of the relevant '*Water Bodies in a River Management Plan*' at and in the vicinity of the site. The catchment boundaries are not shown on any of these plans but the waterbodies are.

It is stated in the subsection on Water Framework Directive Classification (Section 17.3.14) that:

'The quality of the surface water at and in the vicinity of the site is classified by the Environment Agency under the Water Framework Directive (WFD). The WFD classifications and objectives are presented in the River Basin Management Plans (RBMP). The RBMP relevant to the site comprises the Anglian River Basin District'.

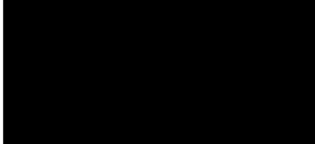


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The text then refers to WFD classifications of the Willow Brook (Nene) catchment and the Wittering Brook Catchment. The limits of the Willow Brook and the Wittering Brook catchments in the vicinity of the site as defined on the EA Catchment data explorer website are shown on Figure 1 (drawing reference AU/KCW/03-21/22297) of the 2021 Surface Water Management Plan (PINS Document reference 5.4.18.2).

We trust that the information provided is helpful. Should you have any queries or need any further information please do not hesitate to contact us.

Yours sincerely



Leslie Heasman

cc K Ashworth, Womble Bond Dickinson
 C Brook, Womble Bond Dickinson
 G Wilson, Augean
 K Haddrell, Planning Inspectorate
 J Stephens, Planning Inspectorate
 M Wilson, Planning Inspectorate
 ENRMF Extension, Planning Inspectorate

Enc A copy of the TR1 dated 10 July 2003



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10 The Transferor transfers with (Place "X" in the box which applies and add any modifications).

full title guarantee

limited title guarantee

11 Declaration of trust Where there is more than one transferee place "X" in the appropriate box.

The Transferees are to hold the Property on trust for themselves as joint tenants.

The Transferees are to hold the Property on trust for themselves as tenants in common in equal shares.

The Transferees are to hold the Property (complete as necessary)

12 Additional Provision(s) Insert here any required or permitted statement, certificate or application and any agreed covenants, declarations etc.

Indemnity

12.1 The Transferee for itself and its successors in title covenants with the Transferor by way of indemnity only but not further or otherwise that the Transferee and its successors in title will at all times from the date of this transfer observe and perform all the covenants, agreements, restrictions, stipulations, provisions and conditions subject to which the Property is transferred so far as the same relate to the Property and are still subsisting and capable of taking effect and will indemnify and keep indemnified the Transferor from and against all liabilities of any kind (including, without limitation, liabilities under claims, demands, proceedings, awards and actions (for matters of any kind) including, without limitation, costs, expenses, losses, damage, compensation, penalties, fees and disbursements):

12.2 The Transferee for itself and its successors in title covenants with the Transferor by way of indemnity only but not further or otherwise that the Transferee and its successors in title will at all times from the date hereof observe and perform all covenants and other obligations of the Landlord under the tenancy documents ("**Tenancy Documents**") referred to in the attached schedule and will indemnify and keep indemnified the Transferor from and against all future actions, claims, demands, losses, costs, expenses, damages and liability in any way relating thereto.

Rights reserved

12.3 "**Retained Land**" means that part of the land comprised within the Conveyance but excluding the Property.

12.4 The Transferee grants to the Transferor for the benefit of the Retained Land the right to enter the Property on prior written notice and at reasonable times (except in the case of emergency) for the purpose of repairing and maintaining the waterpipe running along the southern boundary of the Property provided that such right must be exercised in a way which causes as little inconvenience as practicable to the Transferee and that any damage so caused shall be forthwith made good to the reasonable satisfaction of the Transferee.

Schedule of Tenancy Documents

| No. | Date | Nature of document | Parties |
|-----|----------------|--------------------|---|
| 1. | 23 August 1996 | Lease | (1) Bernard Charles Howard & Others (2) Haleport Limited |
| 2. | 14 May 1996 | Lease | (1) Bernard Charles Howard & Others (2) Haleport Limited |
| 3. | 23 August 1996 | Deed of Variation | (1) Bernard Charles Howard & Others (2) Haleport Limited |

13 *The Transferors and all other necessary parties should execute this transfer as a deed using the space below. Forms of execution are given in Schedule 3 to the Land Registration Rules 1925. If the transfer contains transferees' covenants or declarations or contains an application by them (e.g. for a restriction), it must also be executed by the Transferees.*

SIGNED (but not delivered until the)
 date hereof) as a deed by **BERNARD**)
 [Redacted] in the)

Signature:
 Print Name:
 Address:

SIGNED (but not delivered until the)
 date hereof) as a deed by **ROY**)
 [Redacted] e)

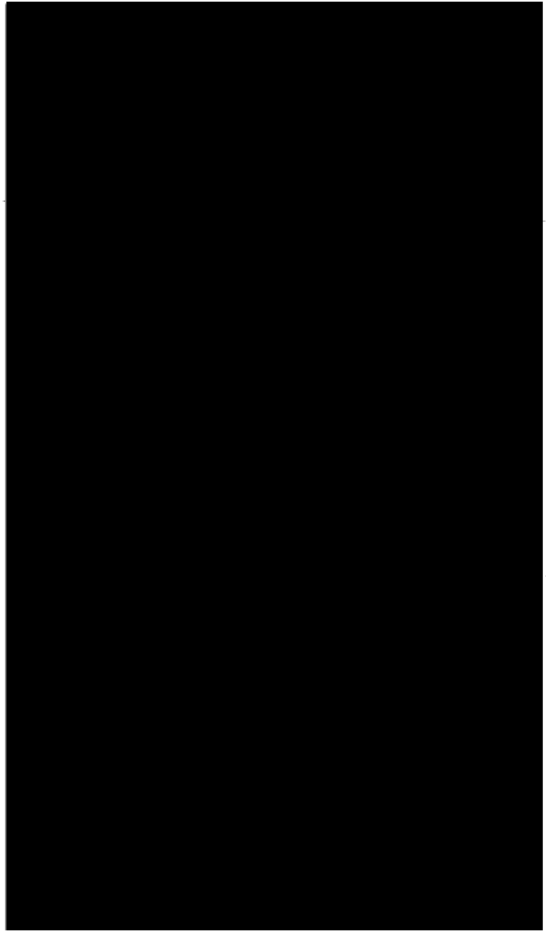
Signature:
 Print Name:
 Address:

SIGNED (but not delivered until the)
 date hereof) as a deed by)
 [Redacted] **WARD**)

Signature:
 Print Name:
 Address:

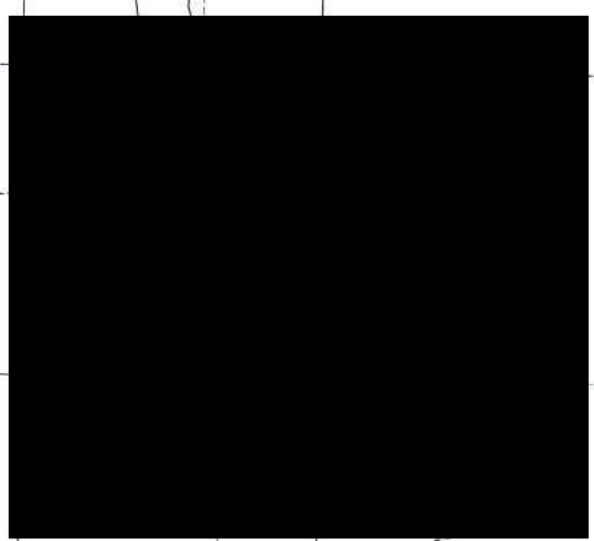
SIGNED (but not delivered until the)
 date hereof) as a deed by **ANTHONY**)
 [Redacted] in the)

Signature:
 Print Name:
 Address:



Michael C Rabbett LLB
 Solicitor
 Buckles
 Whittlesey

PLAN SP/6



| | | | |
|--------|--------|--------|--------|
| E.C.P. | P.G.H. | P.W.H. | A.F.H. |
| X | X | X | X |



NESBITT COTTAGES

3100

Reservoir Covered

87.8m

B.M. 82.2'

Clay Pit

Clay Pit

Clay Pit

Clay Pit

Pond

Pond

Drain

Hard Bay

Pond

Tract

Tracer

Tracer

Sc

C

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3:222

Hard Bay

COP

Pond

75.2m

75.5m

B.M. 82.2'

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