



DRAFT SECTION 106 AGREEMENT

**FOR THE DEVELOPMENT CONSENT ORDER APPLICATION FOR
THE ALTERATION AND CONSTRUCTION OF HAZARDOUS
WASTE AND LOW LEVEL RADIOACTIVE WASTE FACILITIES AT
THE EAST NORTANTS RESOURCE MANAGEMENT FACILITY,
STAMFORD ROAD, NORTHAMPTONSHIRE**

PINS project reference: WS010005

PINS document reference 6.4

July 2021



Baddesley Colliery Offices, Main Road, Baxterley, Atherstone, Warwickshire, CV9 2LE
Tel. (01827) 717891 Fax. (01827) 718507

2021

Agreement pursuant to Section 106 of the Town and County Planning Act
1990
relating to
land at the East Northants Resource Management Facility, Stamford Road,
Northamptonshire

North Northamptonshire Council ⁽¹⁾
Augean South Limited ⁽²⁾ and
Howard Farms Limited ⁽³⁾

DATE

PARTIES

- (1) **North Northamptonshire Council** of One Angel Square, Northampton, NN1 1ED (**Council**); and
- (2) **Augean South Limited** (Company No. 04636789) whose registered office is 4 Rudgate Court, Walton, Wetherby, LS23 7BF (the **First Owner**); and
- (3) **Howard Farms Limited** (Company No. 07448588) whose registered office is West Hay Farm, Stamford Road, Kings Cliffe, Northamptonshire PE8 6XX (the **Second Owner**).

BACKGROUND

- (A) The Council is the relevant planning authority for the purposes of the 2008 Act for the area within which the Land is situated and is the authority by whom these development consent obligations are enforceable.
- (B) The First Owner is the freehold owner of the Existing Facility under freehold title number NN252039 and has an option over the Extension Area.
- (C) The Second Owner is the freehold owner of the Extension Area under freehold title numbers NN306577 and NN306205.
- (D) The First Owner has previously been granted development consent for the Existing Facility under the Previous DCO and as part of this entered into the Existing Section 106 Agreement.
- (E) The Development includes and extends the development granted under the Previous DCO.
- (F) The First Owner submitted an Application to the Planning Inspectorate on [●] July 2021 for development consent to construct and operate the Development. The Application was accepted for examination on [●] 2021.
- (G) If granted, the DCO will revoke and replace the Previous DCO and this Agreement will revoke and replace the Existing Section 106 Agreement.
- (H) It is intended that the First Owner will be the undertaker for the purposes of the DCO and it intends to construct and operate the Development as authorised by the DCO.
- (I) The parties to this Deed have agreed to enter into this Deed in order to secure the development consent obligations contained in this Deed.
- (J) Nothing in this Agreement constitutes an obligation to grant the DCO.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this agreement the following terms and expressions have the respective meanings given to them unless the context otherwise requires:

1990 Act	the Town and County Planning Act 1990 (as amended).
2008 Act	the Planning Act 2008 (as amended).
Application	the application for development consent to authorise the Development on the Land made under Section 30 of the 2008 Act

submitted to the Planning Inspectorate on [●] July 2021 and given reference WS010005.

Approved Group	a community group approved by the Council that demonstrates to the Council's reasonable satisfaction that: <ol style="list-style-type: none">1. they provide value for money; and2. they have the potential to continue in future; and3. they provide benefit to the community; and4. they are accessible by the community; and5. there is a need within the community for the facilities, schemes or services they provide.
Community Fund	the fund established by the Council pursuant to the Section 106 Agreement dated 5 November 2010 and to be used only for the Specified Purposes.
DCO	the development consent order to be made under the 2008 Act pursuant to the Application.
Development	a hazardous waste facility and associated development as listed in Schedule 1 of the DCO.
Existing Facility	the East Northants Resource Management Facility, Stamford Road, Kings Cliffe, Peterborough, PE8 6XX constructed on the land shaded yellow on the Site Plan.
Existing Section 106 Agreement	the Section 106 Agreement dated 14 January 2013 and entered into by Augean South Limited (2) and Northamptonshire County Council in respect of the Previous DCO.
Extension Area	the land shaded pink on the Site Plan.
Highway Purposes	highway maintenance and improvement of Stamford Road from and including the entrance to the Existing Facility northwards to the junction between Stamford Road and the A47.
Highways Contribution	a contribution of five thousand pounds (£5,000) per year for the Highway Purposes.
Land	the land against which the obligations herein may be enforced and shown edged red on the Land Plan.
Land Plan	the plan attached to this Agreement as Appendix 1.
LLW	solid radioactive waste typically with a specific activity of 200 becquerels per gram (Bq/g).
Owners	the First Owner and Second Owner
Previous DCO	The East Northamptonshire Resource Management Facility Order 2013.
Schemes	community facilities, schemes or projects that

1. increase health, wellbeing and active lifestyle participation in the community; or
2. increase volunteering within the community to contribute to community self-help; or
3. increase financial resilience and sustainability for community groups; or
4. increase community services offered that benefit the wider community; or
5. help prevent and protect against impacts of climate change

Site Plan

the plan attached to this Agreement as Appendix 2.

Specified Purposes

1. furtherance of the approved objects listed in regulation 33(2) (c), (d), (da), (e) and (f) of the Landfill Tax Regulations 1996 (as may be amended from time to time) and all or any reasonable costs (including salaries and reasonable expenses) associated with facilitating and running any such projects under regulation 33(2) (c), (d), (da) or (e); or
2. provision, maintenance or improvement of Schemes which may include buying equipment, supporting activities or events, ongoing rental costs or room hire, building maintenance and/or grounds maintenance.

1.2 In this Agreement (unless the context otherwise requires):

- 1.2.1 the words **including** and **include** and words of similar effect shall not be deemed to limit the general effect of the words which precede them;
- 1.2.2 obligations undertaken by a party which comprises more than one person shall be deemed to be made by them jointly and severally;
- 1.2.3 words importing persons shall include firms, companies and bodies corporate and vice versa;
- 1.2.4 words importing the singular shall include the plural and vice versa;
- 1.2.5 words importing the masculine gender include the feminine gender and vice versa and words importing the neuter gender include the masculine and/or feminine gender;
- 1.2.6 the headings and page numbers throughout this Agreement are for convenience only and shall not be taken into account in the construction and interpretation of this Agreement;
- 1.2.7 references to a numbered Clause, Schedule, Paragraph or Appendix are references to the clause, schedule, paragraph or appendix to this Agreement so numbered;
- 1.2.8 any reference to any statutory provision shall be deemed to include any subsequent re-enactment or amending provision;
- 1.2.9 an obligation not to do something includes an obligation not to allow it to be done; and
- 1.2.10 where in any other part of this Agreement an expression or word is defined or expressed to have a particular meaning in such part the word or expression so defined shall have the same meaning throughout this Agreement unless the contrary intention is expressly stated.

- 1.3 No failure or delay by the Council to exercise any right power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or of some other right or power of the relevant Council officers.

2. STATUTORY PROVISIONS

- 2.1 This Agreement is executed as a Deed and the development consent obligations contained in this Agreement are development consent obligations for the purposes of Section 106 of the 1990 Act.
- 2.2 This Agreement is made pursuant to Section 106 of the 1990 Act, Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000 and in pursuance of all other powers enabling the parties hereto respectively.
- 2.3 The development consent obligations contained in this Agreement shall be enforceable by the Council.
- 2.4 The development consent obligations are intended to bind the Land and is enforceable against any person corporate or otherwise claiming or deriving title through or under the Owners of the Land or any part or parts thereof as if that person had been an original covenanting party to this Agreement.
- 2.5 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission other than the DCO.
- 2.6 None of the obligations herein shall be enforceable against statutory undertakers or other persons who acquire any part of the Land or an interest in it for the purposes of the supply of electricity gas water or telecommunications in connection with the development of the Land.
- 2.7 If any provision of this Deed is held to be invalid illegal or unenforceable under any enactment or rule of law that term or provision shall to that extent be deemed not to form part of this Deed and the enforceability of the remainder of this Deed shall remain unaffected.

3. COMMENCEMENT AND CONTINUANCE

- 3.1 Without prejudice to the position of the Owners or the Council on the Application the covenants and obligations contained in this Agreement (with the exception of Clause 8 which shall take effect on the completion of this Agreement) shall be conditional and shall not have effect unless and until:
- 3.1.1 the DCO is made; and
- 3.1.2 the Owners serve written notice upon the Council under Article 4 of the DCO.
- 3.2 The development consent obligations in this Agreement shall lapse and cease to be binding upon the Owners for the time being of the Land if the DCO shall lapse without being implemented or be quashed or revoked.
- 3.3 From the date this Agreement takes effect pursuant to clause 3.1 all of the obligations in the Existing Section 106 Agreement will be revoked and superseded by the obligations in this Agreement and the Council shall ensure that any entry made in the Register of Local Land Charges is cancelled or otherwise record the fact that the Existing Section 106 Agreement has come to an end and no longer binds the Existing Facility.

4. COVENANTS

- 4.1 The Owners covenants to perform and observe the development consent obligations set out in Schedule 1.
- 4.2 The Council covenants to perform and observe the obligations set out in Schedule 2.

5. DISPOSAL OF INTEREST IN LAND

- 5.1 No person shall be liable for the breach of any covenant in this Agreement after they have parted with their interest in the Land or the part of the Land in respect of which the breach occurs but this shall be without prejudice to their liability for any subsisting breach of covenant occurring prior to when they parted with such interest.

6. LOCAL LAND CHARGE

- 6.1 The Owners acknowledge that this Agreement may be registered as a local land charge in the Register of Local Land Charges maintained by the District Council.
- 6.2 Where the Agreement comes to an end under Clause 3.2 above or otherwise ceases to have effect, any entry made in the Register of Local Land Charges shall be cancelled or otherwise record the fact that it has come to an end and no longer affects the Land.

7. PAYMENT OF THE COUNCIL'S STANDARD FEE

On the execution hereof the First Owner shall pay to the Council the Council's standard legal charge in this matter amounting to the sum of £[●].

8. FURTHER PLANNING PERMISSIONS AND DEVELOPMENT CONSENTS

Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission or consent other than the DCO made (whether or not on appeal or by any other means) after the date of this Agreement

9. VARIATION OF THIS AGREEMENT

- 9.1 This Agreement may be varied only by deed between the parties hereto or their respective successors in title and assigns.

10. APPROVALS, CONSENTS, ETC

- 10.1 All approvals certificates consents agreements satisfactions confirmations or calculations (or anything of a similar nature) that may be requested by the Owners and/or given by the Council or its officers in accordance with this Agreement shall be in addition to any other approvals consents agreements or confirmations that may be required by the Act or by any other statute or regulations.
- 10.2 All such approvals consents agreements satisfactions confirmations or calculations shall not be unreasonably withheld or delayed by the Council or its relevant officers.

11. NOTICES

Notices required to be given or served under this Agreement shall be addressed to the parties at their addresses referred to in the Parties section of this Agreement.

12. EXCLUSION OF THIRD PARTY RIGHTS

Without prejudice to the terms of this Agreement the provisions of the Contracts (Rights of Third Parties) Act 1999 are excluded from the terms of this Deed.

13. PAYMENT

- 13.1 Unless otherwise provided the date for payment (**Due Date**) of any sum payable under any provision of this Agreement shall be the date on which payment becomes due under such provision or (in the case only where payment does not have to be made except following a demand or notification by the Council of the sum payable) the date 7 days after the making of such demand or notification.

13.2 Where payment of any sum payable as aforesaid is made after the Due Date interest shall be payable from the Due Date until the date of actual payment and shall be added to and form part of such sum at the rate of four per cent above the base rate for the time being of the Bank of England.

14. RESOLUTION OF DISPUTES (OTHER THAN MEANING OR CONSTRUCTION)

14.1 In the event of any dispute or difference arising between the parties hereto touching or concerning any matter or thing arising out of this Agreement (other than a dispute or difference touching or concerning the meaning or construction of this Agreement) such dispute or difference shall be referred to some independent and fit person 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 shall act as an expert and his decision shall be final and binding on the parties to the dispute or difference and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties to the dispute or difference in equal shares.

14.2 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 sub clause 14.1 above or as to the appropriate professional body within fourteen days after any party has given to the other parties to the dispute or difference a written request to concur in the professional qualifications of the person to be appointed pursuant to sub clause 14.1 above then the question of the appropriate qualifications or professional body shall be referred to a solicitor to be appointed by the President for the time being of the Law Society of England and Wales on the application of any party to the dispute or difference and such solicitor shall act as an expert and his decision as to the professional qualifications of such person or as to the appropriate professional body shall be final and binding on the parties to the dispute or difference and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties to the dispute or difference in equal shares.

15. GOVERNING LAW AND JURISDICTION

The terms of this Deed shall be governed by the laws of England and Wales and are subject to the exclusive jurisdiction of the Courts of England and Wales.

SCHEDULE 1

Development Consent Obligations

1. LLW COMMUNITY FUND CONTRIBUTION

- 1.1 Subject to the provisions of Paragraph 1.2 below, for each tonne of LLW accepted on the Land the Owners will pay five pounds (£5) to the Council for immediate deposit in to the Community Fund.
- 1.2 The Owners will only be obliged to make one annual payment to the Council to satisfy the obligation in Paragraph 1.1.1 above which shall be calculated by reference to the total tonnage of LLW that has been accepted in that preceding calendar year and will be payable on 1 April.
- 1.3 If the Council requests the Owners to do so, the Owners shall provide a quarterly report to the Council setting out information on the amount of LLW received in that preceding quarter.
- 1.4 The first payment to be made pursuant to paragraph 1.2 of this Schedule 1 shall be calculated in respect of all LLW accepted on the Land for the calendar year in which the last payment was made pursuant to Schedule 1 of the Previous Section 106 Agreement.

2. HIGHWAY CONTRIBUTION

- 2.1 The Owners shall pay to the Council the Highway Contribution annually on 1 April taking effect pursuant to clause 3.1 of this Agreement with the final payment to be made in the final year that waste is receipted onto the Land in accordance with the DCO.

SCHEDULE 2

Council's Obligations

1. LLW COMMUNITY FUND

- 1.1 The Council shall continue to carry out all the necessary steps required to administer the Community Fund and shall secure prior approval from the Owners, such approval not to be unreasonably delayed or withheld, as to the appropriate set up and administration of the Community Fund.
- 1.2 The Council shall be the signatory for the release of any and all monies from the Community Fund provided that the monies are used in accordance with paragraph 1.4 of this Schedule.
- 1.3 The Council shall be responsible for the day to day administration of the Community Fund.
- 1.4 The Council shall only be entitled to allocate the monies in the Community Fund to an Approved Group for the Specified Purposes within a maximum 10 mile radius of the Land.
- 1.5 In respect of each Approved Group that the Council allocates monies to in accordance with Paragraph 1.4 of this Schedule the Council shall notify and confirm to the project coordinator of the Approved Group that the Owners are responsible for donating the relevant monies to that particular Approved Group.
- 1.6 The Council shall provide an annual report to the Owners setting out details of the relevant projects that monies have been allocated from the Community Fund.
- 1.7 The Council shall allow the Owners to carry out an annual open book audit of the accounts for the Community Fund upon receipt of 21 days written notice of such request.

2. HIGHWAY CONTRIBUTION

- 2.1 The Council shall only use the Highway Contribution for the Highway Purposes.
- 2.2 In the event that all or any part of the Highway Contribution has not been expended by the Council in accordance with the provisions of Paragraph 2.1 of this Schedule on completion of the Development such sums as remain unexpended shall be returned by the Council to the party who paid the contribution together with interest thereon calculated at the rate of 2% above the base rate of Barclays Bank plc from the date of payment.

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

Executed as a deed by affixing the common seal of **North Northamptonshire Council** in the presence of:

Insert Common Seal of Company

.....
Head of Corporate Governance (the Officer appointed for that purpose)

Executed as a deed by **Augean South Limited** acting by a director, in the presence of a witness:

.....
Director

Signature (Witness)

Print Name

Address

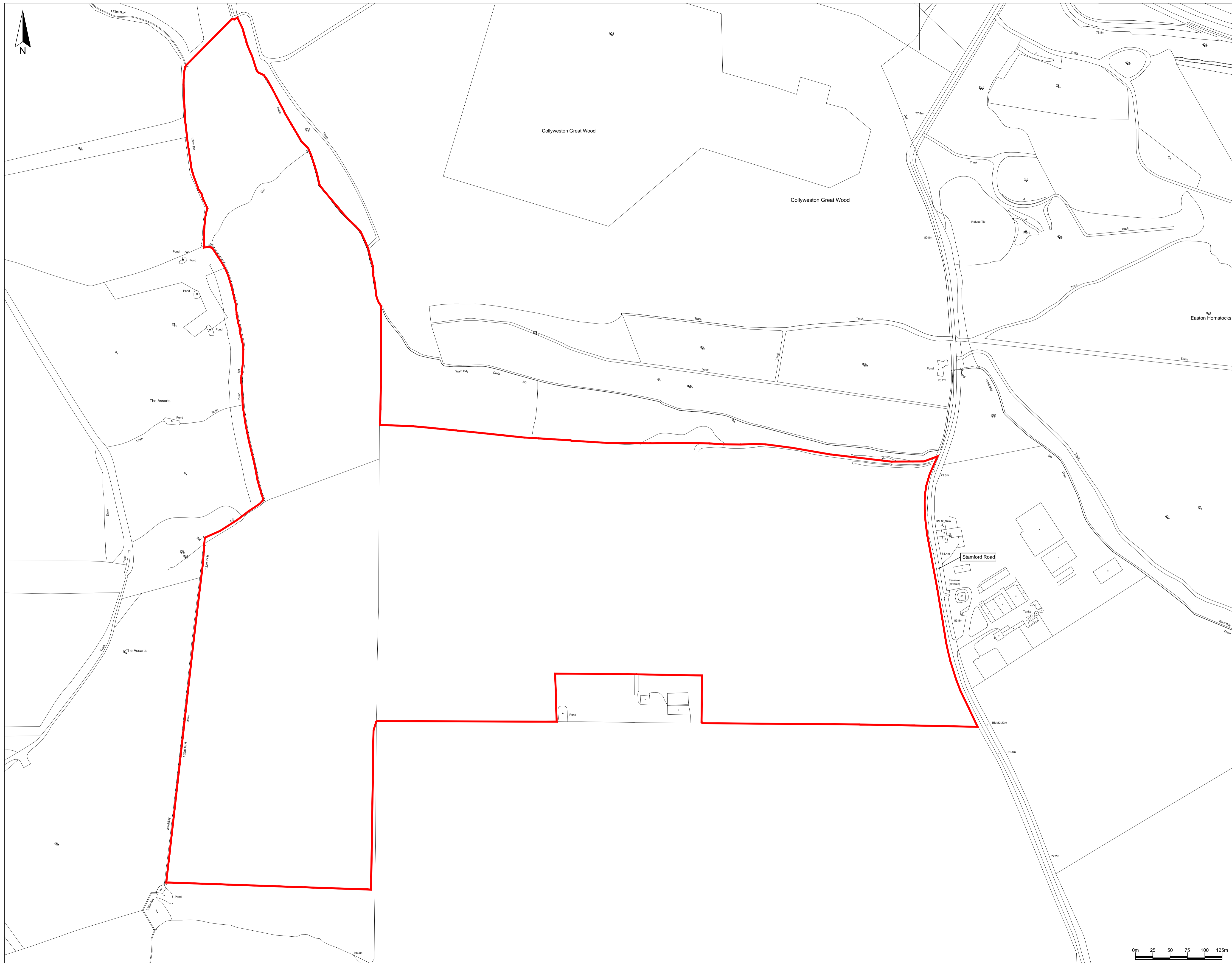
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Occupation



APPENDIX 1

Land Plan



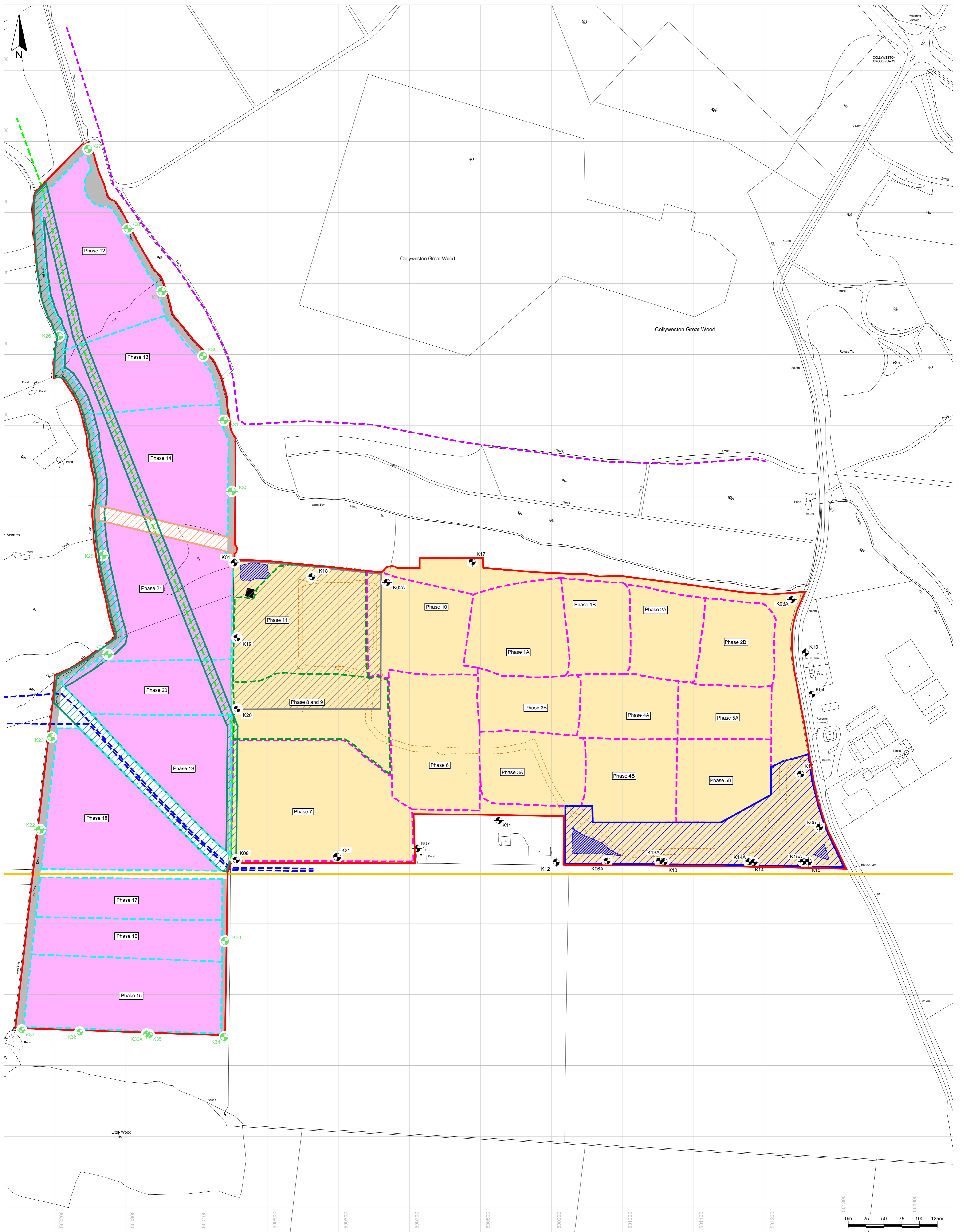
Key / Notes

Boundary of the land covered by the Section 106 Agreement

Rev	Status	Dm	App	Chk	Date
	Final	KR	SPS	LH	26/07/21
Site		Client			
EAST NORTHANTS RESOURCE MANAGEMENT FACILITY					
Title		Section 106 Agreement			
Drawing Ref		Scale			
AU/KCW/07-21/22664		1:2,500 @ A1			
					
<small> Backleary Colliery Offices, Main Road, Backleary, Althorpe, Warrickshire, CV9 2LE, Telephone: 01527 717891 Fax: 01527 719507 </small>					

APPENDIX 2

Site Plan



Key / Notes

- Boundary of the area the subject of the application for the Development Consent Order
- Approximate phase boundaries for the existing ENRMF already constructed
- Approximate phase boundaries for the existing ENRMF to be constructed
- Approximate phase boundaries to be constructed in the proposed western extension
- Approximate route of water pipelines
- Approximate route of an oil pipeline
- Approximate route of an overhead electricity cable (to be diverted)
- Approximate location of a high pressure gas pipeline
- Location of a monitoring borehole
- Location of a new groundwater and landfill gas monitoring borehole
- Constructed surface water management ponds
- Site access/main haul road
- Gas flare
- Ecological stand off area during the operational stage
- Works areas
- Work No 1A
- Work No 1B
- Work No 2
- Work No 3
- Work No 4
- Work No 5

Regulation (5)(2)(o)

Rev	Final	KR	SPS	LH	26/07/21
	Status	Dr	App	Chk	Date
Site: EAST NORTHANTS RESOURCE MANAGEMENT FACILITY Client:					
Title: General arrangement plan - Work No 1A and Work No 1B PINS document reference 2.4					
Drawing Ref: AUJKCW07-21/22656 Scale: 1:2,500@A1 Reproduced scale mapping by permission of Ordnance Survey on behalf of The Controller of Her Majesty's Stationery Office. © Crown copyright 2017. All rights reserved. Licence number 100017818.					