

DATED 30 August 2023

EASTLEIGH BOROUGH COUNCIL

and

HAMPSHIRE COUNTY COUNCIL

and

RUSSELL WELLESLEY SHONE as Executor for the estate of John Wellesley Shone

and

HIGHWOOD VENTURES LIMITED

AGREEMENT

Pursuant to Section 106 of the Town and Country Planning Act 1990 and Section 111 of the Local Government Act 1972 relating to land at Moorhill Road, West End, Southampton, SO30 3AY

Legal Services Manager
Eastleigh Borough Council
Eastleigh House
Upper Market Street
EASTLEIGH
SO50 9YN

THIS DEED is made on

30 August

2023

BETWEEN

- (1) EASTLEIGH BOROUGH COUNCIL of Eastleigh House Upper Market Street Eastleigh Hampshire SO50 9YN ("the Council")
- (2) HAMPSHIRE COUNTY COUNCIL of The Castle Winchester Hampshire SO23 8UJ ("the County Council")
- (3) RUSSELL WELLESLEY SHONE of 24 Keith Road, Hayes UB3 4HW as Executor for the estate of John Wellesley Shone ("the Owner")
- (4) HIGHWOOD VENTURES LIMITED incorporated and registered in England and Wales with company number 05657785 whose registered office is The Hay Barn Upper Ashfield Farm, Hoe Lane, Romsey, Hampshire, United Kingdom, SO51 9NJ ("the Developer").

RECITALS

- (1) The Council is the local planning authority for the purposes of the Act for the area within which the Site is situated
- (2) The Owner is the freehold owner of part of the Site and the applicant in respect of an application for first registration of part of the Site subject to an option agreement dated 31 March 2021 in favour of the Developer
- (3) The County Council is:-
 - (i) a local planning authority for the purpose of section 106 of the Act
 - (ii) the local highway authority (except for trunk roads and special roads)
 - (ii) education authority for Hampshire
 - (iii) the Transport Authority for Hampshire for the purpose of the Transport Act of 1985 and 2000
 - (iv) the owner of the land fronting the highway

- (4) Highwood Homes Limited (the parent company of the Developer) has by written application numbered F/22/94034 and dated 17 October 2022 (and made valid on 20 October 2022) ("the Application") applied to the Council for Planning Permission for the Development of the Site.
- (5) The Council is desirous of granting planning permission for the Development of the Site subject to the conditions contained in the Planning Permission and subject to the Owner and the Developer entering into this Deed
- (6) The parties hereto are satisfied that the agreement is to the benefit of the public and that the obligations contained herein are:
- a. Necessary to make the development acceptable in planning terms;
 - and
 - b. directly related to the development; and
 - c. fairly and reasonably relate in scale and kind to the development in accordance with Regulation 122 CIL.

- (7) This Deed is a planning obligation for the purposes of Section 106 of the Act

Interpretation

1. The following definitions and rules of interpretation apply in this deed:

1.1 Definitions

"the Act"	means the Town and Country Planning Act 1990
"Commencement of Development"	means the carrying out in relation to the Development of any material operation as defined by section 56 (4) of the Act but disregarding for the purposes of this deed and for no other purposes, the following operations:

- works associated with the construction of temporary access to the Site
- Site clearance
- Site preparation;
- Archaeological investigations and evaluation;
- Ecological mitigation works
- Evaluation and investigation for the purposes of assessing contamination and any remedial action in respect of any contamination;
- Evaluation and investigation for the purposes of assessing contamination and any remedial action in respect of any contamination;

and the expressions "commenced", "commence", "commencing" and "commences" shall be construed accordingly

"Council's Contribution Payments"

means the payments to be made by the Owner to the Council in respect of:

- (i) the Health Provision Contribution;
- (ii) the Public Art Contribution;

all index linked in accordance with clause 9.2 of this Deed and payable in accordance with Schedule Four of this deed

"County Council Contribution Payments"

means the payments to be made by the Owner to the County Council in respect of the Traffic Regulation Order Contribution and Sustainable Integrated Transport Contribution index linked in accordance with clause 9.1 of this Deed and payable in accordance with Schedule Four of this deed

"Default Interest Rate"

means interest at four percent (4%) above the base lending rate of Barclays Bank Plc from time to time

"Development"

means the development described in Schedule Two

"Development Control Preparation Fee"

means the sum of one thousand two hundred and twenty pounds (£1,220) payable to the County Council

"Dwelling"	means any dwelling including a house flat or maisonette to be constructed pursuant to the Planning Permission
"Health Provision Contribution"	means a contribution in the sum of eight thousand six hundred and six pounds and eighty nine pence (£8,606.89) index linked from and including May 2023 in accordance with Clause 9.2 of this Deed and to be used towards the provision, expansion or enhancement of health facilities to accommodate additional capacity within existing GP surgeries in the Local Area
"Highway Works"	means the highway works referred to in Schedule Five of this Deed to include the arrangements for the provision and, where relevant, maintenance of roads footways cycle ways and street trees for adoption as shown in principle on drawing 3127-HIA-XX-ZZ-DR-A-0101 attached to this Deed at Appendix Two or such other drawing approved in writing by the County Council
"Highway Works Agreement"	means an agreement or agreements

pursuant to Section 278 and /or Section 38 of the Highways Act 1980 to be entered into by the Owner with the County Council in respect of the carrying out of the Highway Works

"Highway Works Specification"

means the specifications and plans to be submitted to and approved in writing by the County Council in respect of the Highway Works Agreement

"Local Area"

means the area of Hedge End, West End and Botley

"Monitoring Fee"

means the sum of £1,950 towards the County Council's cost of monitoring compliance with this Deed

"Occupation"

means occupation for residential purposes excluding occupation for the purpose of sales or maintaining, fitting out or decoration and reference to "Occupy" and "Occupied" shall be construed accordingly

"Owner"

means the Owner and/ or Owners and their respective successors in title to the Site

"Planning Permission"	means planning permission for the development of the Site numbered F/22/94034
"Public Art"	means the provision of art for the public benefit in accordance with the Public Art Strategy
"Public Art Contribution"	means the sum of twenty five thousand eight hundred and sixty two pounds and sixty five pence (£25,862.65) index linked from and including May 2023 in accordance with Clause 9.2 of this Deed towards the provision, maintenance and supervision of off-site Public Art to enhance and link the Site to the wider area within which it is situated.
"Public Art Strategy"	means the adopted Eastleigh Public Art Strategy 2015-2019
"Section 106 Monitoring Contribution"	means the cost of the Council's Planning Obligations Administrator and Enforcement Officer for monitoring compliance with the terms of this Deed in the sum of three thousand pounds (£3,000.00)

"Section 73 Permission"	means a planning permission granted pursuant to section 73 of the Act
"Site"	means the land described in Schedule One
"Site Plan"	means the plan annexed hereto at Appendix One
"Sustainable Integrated Transport Contribution"	means a contribution to be paid to the County Council by the Owner in the sum of forty six thousand one hundred and thirty six pounds and seventeen pence (£46,136.17) index linked from and including May 2023 in accordance with clause 9.1 of this Deed and payable in accordance with Schedule Four in respect of sustainable transport measures to be used towards: • real time information at bus stops; • bus shelter improvements; - and/or • pedestrian improvements

“TRO Contribution”

means a traffic regulation order (“TRO”) contribution to be paid to the County Council by the Owner in the sum of nine thousand three hundred and eighty six pounds and forty one pence (£9,386.41) index linked from and including May 2023 in accordance with Clause 9.1 of this Deed and payable in accordance with Schedule Four to be used towards traffic management measures and signage alterations required on the local road network and/or towards the cost of implementing revised TROs in the vicinity of the Site.

“VAT”

value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax

“Working Day”

any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England **OR** Wales.

- 1.2 Clause headings shall not affect the interpretation of this deed.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to writing or written excludes faxes and e-mail.
- 1.11 A reference to this deed or to any other deed or document referred to in this deed is a reference to this deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.
- 1.12 References to clauses and Schedules are to the clauses and Schedules of this deed.
- 1.13 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.14 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.15 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

Statutory Provisions

1. This Deed is made pursuant to Section 106 of the Act and Section 111 of the Local Government Act 1972 and all other enabling powers and in consideration of the covenants contained in this Deed
2. The obligations by the Owner in this Deed are deemed to be planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council and the County Council (as appropriate) as local planning authorities against the Owner and any person deriving title in the Site or any part of it from the Owner

Conditionality

3. The clauses of this deed take effect immediately, but the Schedules of this deed are conditional on the grant and issue of the Planning Permission and the Commencement of the Development.

Owner's and Developer's covenants

4.1 The Owner for themselves and their respective successors in title hereby covenant with the Council, and as a separate covenant with the County Council, with the intent of binding the Site so that such covenants shall be enforceable against successors in title and any person claiming through or under them to observe the restrictions and to perform the obligations contained in Schedule Three to Schedule Five inclusive.

4.2 The Developer covenants with the Council and the County Council not to Commence or permit Commencement of the Development until a transfer of the Owner's interest in the Site has been completed (unless otherwise agreed by the Council and the County Council)

Release

5. No person shall be liable for any breach of a covenant, restriction or obligation contained in this deed after parting with all of its interest in the Site, except in respect of any breach subsisting prior to parting with such interest.

Reasonableness

6. The parties hereby agree that where under the terms of this Deed the consent or approval or confirmation of the Council or the County Council or their respective officers is required then such consent or approval or confirmation shall not be unreasonably withheld or delayed and the parties shall use their respective reasonable endeavours to raise and answer any queries arising from submission for consents or approvals or confirmations as promptly as reasonably practicable to enable the Council or the County Council to make the relevant decision on an informed basis

Local land charge

7. This Deed is a local land charge and will be registered as such

Section 73 permission

8. If a Section 73 Permission is granted by the Council in relation to the Development then with effect from the date that such permission is granted the definitions and the obligations in this Deed shall in addition to continuing to bind the Site in respect of the Planning Permission relate to and bind all subsequent Section 73 Permissions and the Site itself without any further act by the parties PROVIDED THAT nothing in this clause shall:

- 8.1 Restrict the ability of the Owner to request a variation to the terms of this Deed in connection with the grant of any Section 73 Permissions (which request the Council shall consider in light of all the circumstances); or

8.2 Fetter the discretion of the council in determining:

8.2.1 Any application(s) under section 73 of the Act; or

8.2.2 The appropriate nature and/ or quantum of section 106 obligations insofar as they are materially different to those contained in this Deed and required pursuant to a determination under section 73 of the Act whether by way of a new deed or supplemental deed pursuant to section 106 of the Act or a modification agreement pursuant to section 106A of the Act.

Disputes

9 Save in respect of any provision requiring any disagreement or dispute between the parties to be referred to arbitration, if any dispute or difference shall arise between the parties then the following provisions shall apply

9.1 the dispute or difference may on written notice by any party at any time and served on the other parts (the "Determination Notice") be referred to and determined by an independent person (the "Independent Person") who shall have been qualified in respect of the general subject matter of the dispute or difference for not less than ten (10) years and who shall be a specialist in relation to such subject matter

9.2 the Independent Person shall be appointed by agreement between the relevant parties (if within 10 working days after service of the Determination Notice they have been unable to agree) on the application of any relevant party by the President for the time being of the Law Society or his or her duly appointed deputy or any other person authorised by him or her to make appointments on his or her behalf

9.3 the Independent Person to be appointed under this Clause shall act as an expert and the following provisions shall have effect:

- 9.3.1 the Independent Person shall act as an expert and not as an arbitrator and his or her decision shall be final and binding upon the parties to the dispute or disagreement (save in the case of manifest error)
- 9.3.2 the Independent person shall consider (inter alia) any written representations made on behalf of any party (if made reasonably promptly) but shall not be bound by them
- 9.3.3 the parties to the dispute or disagreement shall use all reasonable endeavours to procure that the Independent Person shall give his or her decision as speedily as possible;
- 9.3.4 the cost of appointing the Independent Person and his or her costs and disbursements in connection with his or her duties under this agreement shall be shared between the parties to the dispute or disagreement in such proportions as the Independent Person shall determine, or in the absence of such determination equally between such parties; and
- 9.3.5 if the Independent Person shall be or become unable or unwilling to act then the above procedure for the appointment of an expert may be repeated as often as necessary until a decision is obtained

Indexation

10 It is agreed between the parties that:

- 10.1 the County Council's Contribution Payments to be paid to the County Council by the Owners hereunder are required to be index linked and each relevant payment shall be increased by reference to the Retail Price Index ("RPI") published by the Office for National Statistics (or amendment or replacement thereof) from and including the base date referred to in the definition of such contributions to the date that the payment is received by the County Council.

10.2 the Council's Contribution Payments to be paid to the Council by the Owners under the terms of this Deed are required to be index linked and in this respect each relevant payment shall be increased by the percentage by which the Retail Prices Index (excluding mortgages) ("RPIX") published by the Office for National Statistics (or amendment or replacement thereof) increased from and including the relevant base date referred to in the definition of such contributions to the date the relevant payment is received by the Council.

Interest on late payment

- 11 If any sum or amount has not been paid to the Council or the County Council by the date it is due, the Owner shall pay the Council or the County Council (as appropriate) interest on that amount at the Default Interest Rate (both before and after any judgement). Such interest shall accrue on a daily basis for the period from the due date and including the date of payment.

Costs

- 12 On or before completion of this Deed the Developer shall pay to the Council the Council's reasonable and proper legal costs in connection with the preparation, negotiation and completion of this Deed together with the Council's Section 106 Monitoring Contribution.
- 13 On or before completion of this Deed the Developer shall pay to the County Council the County Council's reasonable and proper legal fees in connection with the preparation, negotiation and completion of this Deed including the Monitoring Fee and the Development Control Preparation Fee.

Expenditure in advance by Council or County Council

- 14 If prior to receipt of any contributions payable pursuant to the terms of this Deed the Council and/or County Council incurs any expenditure in providing facilities to which it was intended to apply any such contribution (or in consequence of arranging the provision thereof) by the letting of a contract or otherwise including any design costs whether in anticipation of or as a result of the Development then the Council and/or County Council may immediately following receipt of such contribution deduct therefrom a sum equivalent to such expenditure incurred and for the avoidance of doubt it is hereby further agreed that such a proportion of any such contribution shall not be the subject of any requirement to repay or account for it or any interest accrued thereon pursuant to the terms of this Deed and that such monies shall be and remain the property of the Council and/or County Council and shall not be bound by the terms of this Deed. For the further avoidance of doubt any such expenditure shall not result in an increase of the contributions identified in this Deed.

No fetter of discretion

- 15 Nothing (contained or implied) in this deed shall fetter or restrict the statutory rights, powers, discretions and responsibilities of the Council or the County Council.

Waiver

- 16 No failure or delay by the Council or the County Council to exercise any right or remedy provided under this Deed or by law shall constitute a waiver of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

Future permissions

- 17 Nothing in this agreement shall prohibit or limit the right to develop any part of the Site in accordance with any planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission.
- 18 The parties agree that:
- 18.1 Nothing in this Deed constitutes a planning permission or an obligation to grant planning permission; and
 - 18.2 Nothing in this Deed grants planning permission or any other approval, consent or permission required from the Council or the County Council in the exercise of any other statutory function.

Third party rights

- 19 Any person who is not a party to this Deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term under this Deed

Ownership

- 20 The Owner agrees with the Council and the County Council to give the Council and the County Council immediate written notice of any change of ownership of any of its interest in the Site occurring before all the obligations under this Deed have been discharged by the Council and the County Council and such notice shall give details of the transferees full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation acquired by the transferee by reference to a plan.

- 21 The Owner warrants that no person other than the Owner has any legal or equitable interest in its part of the Site.

Cancellation of entries

- 22 On the written request of the Owner at any time after each or all of the obligations have been performed or otherwise discharged (and subject to the payment of the Council's reasonable and proper costs) the Council will issue a written confirmation of such performance or discharge.
- 23 Following the performance and full satisfaction of all the terms of this agreement or if this deed is determined pursuant to clause 8 (and subject to the payment of the Council's reasonable and proper costs and charges) the Council will on the written request of the Owner cancel all entries made in the local land charges register in respect of this deed.

VAT

- 24 Each amount stated to be payable by the Council or the Owner to the other under or pursuant to this deed is exclusive of VAT (if any).
- 25 If any VAT is at any time chargeable on any supply made by the Council or the Owner under or pursuant to this deed, the party making the payment shall pay the other an amount equal to that VAT as additional consideration on receipt of a valid VAT invoice.

Governing law

- 26 This Deed is to be governed by and interpreted in accordance with the law of England and is enforceable in the Courts of England and Wales.

INDEX OF SCHEDULES

Schedule One	Description
Schedule Two	Proposed Development of the Site
Schedule Three	Notification
Schedule Four	Contribution Payments
Schedule Five	Highway Works

SCHEDULE ONE
(Description of Site)

The freehold land at Moorhill Road, West End, Southampton, SO30 3AY shown edged red on the Site Plan (excluding any adopted highway land) and registered at HM Land Registry with freehold title absolute under Title Numbers HP870864, HP204669 and HP843672.

SCHEDULE TWO
(Proposed Development of Site)

Proposed 70-bed care home (Use Class C2); associated access, parking, landscaping, sustainable drainage, electricity sub-station, other structures and works; following demolition and clearance of the existing site.

SCHEDULE THREE

(Notification)

1. The Owner shall notify the Council and the County Council in writing or procure that they are so notified of each of the following events within 7 days of such event occurring:
 - 1.1. Commencement of Development
 - 1.2. Occupation of Development

SCHEDULE FOUR
(The Contribution Payments)

1. The Owner covenants to pay to the Council the Council's Contribution Payments prior to first Occupation of the Development.
2. The Owner covenants:
 - 2.1 prior to Commencement of Development to pay the first instalment of the Sustainable Integrated Transport Contribution (being fifty (50%) percent of the total amount thereof) (Index Linked) to the County Council and not to Commence nor permit Commencement of Development unless and until that sum has been paid to the County Council as aforesaid
 - 2.2 prior to Occupation of the Development to pay the second instalment of the Sustainable Integrated Transport Contribution (being the remaining fifty (50%) percent of the total amount thereof) (Index Linked) to the County Council and not to Occupy nor permit Occupation of the Development unless and until that sum has been paid to the County Council as aforesaid
 - 2.3 prior to Occupation of the Development to pay the TRO Contribution (Index Linked) to the County Council and not to Occupy nor permit Occupation of the Development unless and until that sum has been paid to the County Council as aforesaid
3. The Owner shall not Occupy or allow the Development to be Occupied until the Council's Contribution Payments referred to in paragraph 1 have been paid to the Council

SCHEDULE FIVE

(Highway Works)

The Owners covenant with the County Council:

1. to enter into the Highway Works Agreement with the County Council for the Highway Works as per the approved Highway Works Specification prior to Occupation of any Dwelling on the Site
2. Not to Occupy or permit Occupation of any Dwelling on the Site unless and until the Owner has entered into the Highway Works Agreement
3. To carry out and complete the Highway Works at their own expense and in a good and workmanlike manner in accordance with the Highway Works Agreement
4. not Occupy or permit Occupation of any Dwelling on the Site unless and until the Highway Works have been completed to the written satisfaction of the County Council

In Witness whereof the parties hereto have today executed and delivered this agreement as a Deed

EXECUTED as a DEED by affixing
THE COMMON SEAL of EASTLEIGH
BOROUGH COUNCIL in the
presence of:



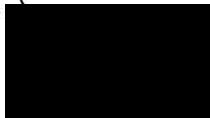
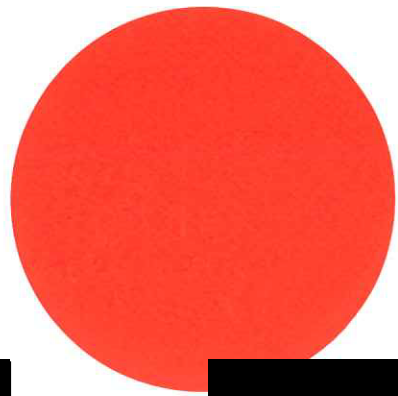
Authorised Signatory



EXECUTED as a DEED by affixing)

THE COMMON SEAL of HAMPSHIRE)

COUNTY COUNCIL in the presence of:-



gnatory



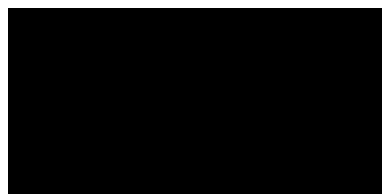
SIGNED as A DEED by)

RUSSELL WELLESLEY SHONE)

as Executor for the estate of)

John Wellesley Shone)

in the presence of:-)

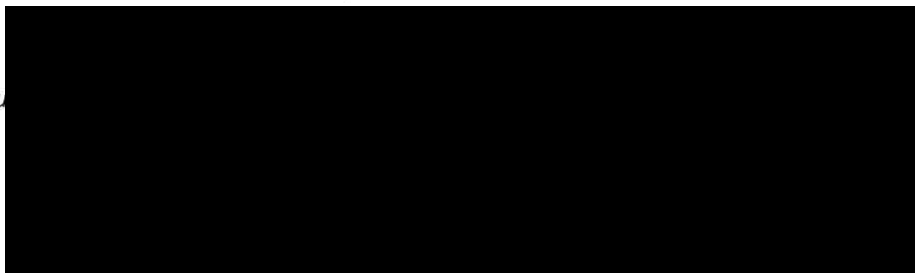


Witness Name

Witness Signature

Address

Occupation



EXECUTED AS A DEED by)

HIGHWOOD VENTURES LIMITED)

acting by a Director)

in the presence of:-)

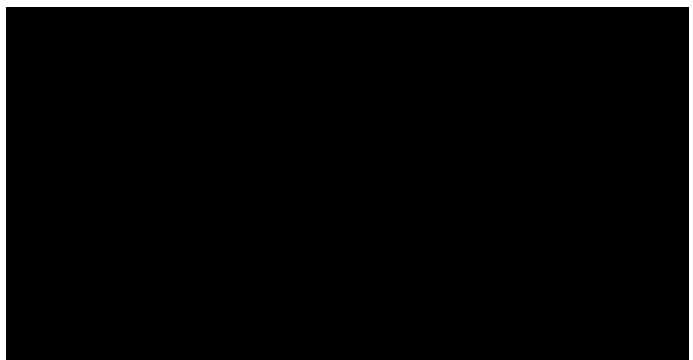


Witness Name

Witness Signature

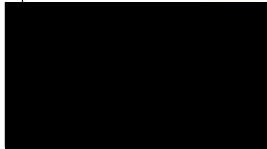
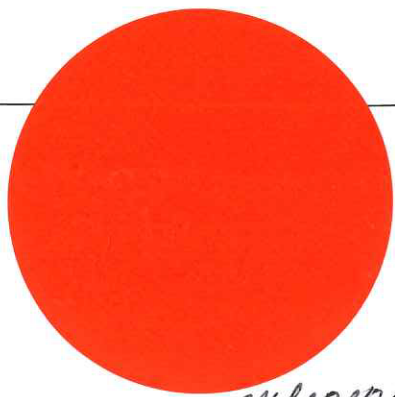
Address

Occupation



APPENDIX ONE

Site plan



Red thick line denotes Care Home Site Boundary

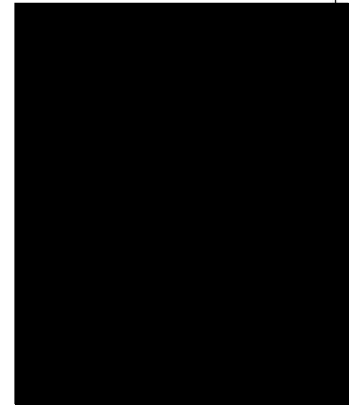
NOTES

Do not scale this drawing.

All dimensions are in millimetres unless stated otherwise.

This drawing is to be read in conjunction with all other relevant drawings and specifications.

The copyright of this drawing is vested in Harris Irwin Associates Ltd. and must not be copied or reproduced without his written consent of a Director.



P2	05.10.22	Updated Boundary line	MLG	BG
P1	12.08.22	For Planning	MLG	BG
Rev	Date	Description	Drawn By	Checked By

HARRIS IRWIN
architects

Aske Stables, Aske, Richmond, North Yorkshire. DL10 5HG
t: 01748 825675
e: enquiries@harrisirwin.com
w: www.harrisirwin.com

Project:
Proposed 70 Bed Care Home
Moorhill Road, West End
Southampton

Client:
Highwood


HIGHWOOD

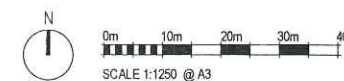
Drawing Title:
Location Plan

For Planning Submission

HA Project Number	Scale @ A3	Suitability
3127	1:1250	D0

Project	Originator	Volume	Level	Type	Role	Number
3127	HIA	XX	ZZ	DR	A	0100

1 0100 Location Plan
1 : 1250



APPENDIX TWO
Highway Works Plan

