

Dated 2<sup>nd</sup> August 2024

**UNILATERAL UNDERTAKING**  
**pursuant to s106**  
**Town and Country Planning Act 1990**  
**and Section 111 Local Government Act 1972 and all other enabling powers**

relating to

**LAND ON THE WEST SIDE OF KNOWLE LANE, HORTON HEATH, EASTLEIGH**

**ALDERBURY HOMES LTD (1)**

**AND**

**ONYX DEVELOPMENT FINANCE LIMITED (2)**

**TO**

**EASTLEIGH BOROUGH COUNCIL (2)**

**PLANNING APPLICATION REF: F/23/94713**  
**PLANNING APPEAL REFERENCE: APP/W1715/W/23/3328986**

**THIS DEED OF UNILATERAL UNDERTAKING** is made the 2<sup>nd</sup> day of August 2024  
**BY:**

**(1) ALDERBURY HOMES LTD** (Co.Regn.No 08654636) care of Coastal Accountants Ltd, Office 2 Unit 3 Mitchell Point, Ensign Way, Hamble, Southampton, Hampshire, SO31 4RF ("Owner")

**(2) ONYX DEVELOPMENT FINANCE LIMITED** (Co.Regn.No 11642215) OF Larch House, Parklands Business Park, Forest Road, Denmead, Waterlooville, PO7 6XP ("Mortgagee")

**TO:**

**(3) EASTLEIGH BOROUGH COUNCIL** of Eastleigh House, Upper Market Street, Eastleigh, SO50 9YN ("Council")

**WHEREAS:-**

- (1) Words and phrases appearing in these recitals have the meanings given to them in clause 1 of this Unilateral Undertaking
- (2) The Owner is the registered proprietor with freehold title absolute under Title Numbers ~~HP58324~~ <sup>HP58324 MB</sup>
- (3) The Mortgagee is the registered proprietor of a charge dated as referenced at entry numbers 6 and 7 of the charges register of title number ~~HP58324~~ <sup>HP58324 MB</sup> and the Mortgagee has agreed to enter into this Unilateral Undertaking to give its consent to the same
- (4) The Council is the local planning authority for the purpose of the Act for the area in which the Land is situate
- (5) The Application has been made to the Council for the Development
- (6) The Council issued a decision notice refusing planning permission for the Application on 18 July 2023 and the Appeal has been submitted against the refusal
- (7) This Unilateral Undertaking is given with the intent that any objections of the Council or the Secretary of State to the grant of Planning Permission are overcome

**NOW THIS DEED WITNESSETH** as follows:-

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Unilateral Undertaking the following words and phrases shall have the following meanings:-

|                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|--------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| "2010 Act"                                             | The Community Infrastructure Levy Regulations 2010 (as amended)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| "Act"                                                  | the Town and Country Planning Act 1990 (as amended)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| " Application"                                         | The full planning application for the Development submitted to the Council and validated by them under reference F/ 23/94713 on 17 February 2023                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| " Appeal"                                              | The appeal submitted to the Planning Inspectorate against the refusal of the Application and given reference APP/W1715/W/23/3328986                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| "Appeal Decision"                                      | The document issued by either the Secretary of State or an Inspector which determines the Appeal                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| "Checking Fee"                                         | the sum of £350.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| "Commencement"                                         | <p>The carrying out on the Site of a material operation as defined in section 56(4) of the Act in connection with the Development and pursuant to the Permission but not otherwise save that for the purpose of this definition the carrying out of any</p> <ul style="list-style-type: none"> <li>(a) works of site clearance ground investigation and site survey works</li> <li>(b) construction of temporary boundary fencing or temporary hoardings</li> <li>(c) construction of temporary accesses</li> <li>(d) archaeological investigation</li> <li>(e) site decontamination or remediation works</li> <li>(f) ecological mitigation works</li> <li>(g) creation of site compounds</li> <li>(h) site security and</li> <li>j) any other site preparation works</li> </ul> <p>shall not be deemed to be the carrying out of a material operation and "Commence" "Commenced" "Commencement" and "Commencing" shall be construed accordingly</p> |
| "Development"                                          | Construction of 6.no dwellings including landscaping, parking and associated works following demolition and site preparation.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| "Habitats Mitigation (Bird Aware Solent) Contribution" | A contribution of five thousand eight hundred and sixty six pounds (£5,866.00 ) towards Bird Aware Solent and as                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

Index Linked in accordance with the retail price index (excluding mortgages) published by the Office of National Statistics from the date of this Unilateral Undertaking to the date of payment of the Habitats Mitigation (Bird Aware Solent) Contribution

|                          |                                                                                                                                                                                                                                                  |
|--------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| "Land"                   | The land on the west side of Knowle Lane Horton Heath Eastleigh edged red on Plan 1                                                                                                                                                              |
| "Occupy"                 | Occupation of any dwelling permitted by the Permission for residential purposes but not including occupation by personnel engaged for the purposes of construction or fitting out and "Occupation" and 'Occupied' shall be construed accordingly |
| "Parties"                | the parties who have executed this Unilateral Undertaking                                                                                                                                                                                        |
| "Permission"             | a valid planning permission for the Development                                                                                                                                                                                                  |
| "Plan 1"                 | The plan marked "Plan 1" showing the Land attached at Appendix 1                                                                                                                                                                                 |
| "Secretary of State"     | the Secretary of State for Levelling Up, Housing and Communities (or such successor Secretary of State or minister of state who shall assume the same decision making powers from time to time)                                                  |
| "Unilateral Undertaking" | means this deed                                                                                                                                                                                                                                  |

- 1.2 The references to the Parties or any other legal or natural person named in this Unilateral Undertaking shall include his her its or their successors in title heirs and assigns and in the case of any Local Authority shall include any successor in function
- 1.3 Unless otherwise stated references to clause numbers are references to clauses in this Unilateral Undertaking
- 1.4 Unless otherwise stated references to schedule recital and paragraph numbers are references to the schedule recital and paragraph numbers in this Unilateral Undertaking
- 1.5 The singular includes the plural and vice versa
- 1.6 The masculine gender includes the feminine and neuter genders and vice versa

- 1.7 References to persons includes natural persons and partnerships firms and other such unincorporated bodies corporate bodies and all other legal persons of whatever kind and however constituted
- 1.8 References to Acts of Parliament statutory instruments or Government circulars or regulations or sections or paragraphs of any such acts statutory instruments or Government circulars or regulations include any re-enactments amendments or replacements of them
- 1.9 Save as expressly provided by this Unilateral Undertaking covenants and obligations given by any of the Parties to this Unilateral Undertaking shall attach to the Land and every part of it and shall bind their successors in title and assignees or any persons claiming by under or through them
- 1.10 Wherever there is more than one person named as a Party and where more than one Party undertakes an obligation all their obligations can be enforced against all of them jointly and severally
- 1.11 References in this Unilateral Undertaking to the Council shall include references to any successor to its statutory functions as a local planning authority
- 1.12 Where the agreement, approval, consent or expression of satisfaction is required to be given or reached or taken by any party under the terms of this Unilateral Undertaking such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed.
- 1.13 This Unilateral Undertaking is governed by and interpreted in accordance with the law of England and Wales and the Parties submit to the non-exclusive jurisdiction of the courts of England and Wales

## **2 LEGAL EFFECT**

- 2.1 This Unilateral Undertaking is executed as a deed and shall constitute a planning obligation for the purposes of section 106 of the Act to the intent that it shall bind the Owner and its successors in title to each and every part of the Site
- 2.2 This Unilateral Undertaking may be enforced by the Council in their capacity as local planning authority against the Owner and any person deriving title to the Site or any part of it from the Owner
- 2.3 Any person shall upon parting with all interest in any part of the Site be released from all obligations rights and duties under the terms of this Unilateral Undertaking insofar as they relate to such part of the Site save in the respect of liability for any antecedent breach of this Unilateral Undertaking and shall upon parting with the entirety of their interest in the Site as a whole be released from all liability whatsoever under the terms of this Unilateral Undertaking save insofar as it relates to an antecedent breach of this Unilateral Undertaking

- 2.4** Clauses 1 -2 and 5 to 13 shall take effect on the date hereof but in all other respects this Unilateral Undertaking shall not take effect until the following conditions precedent have been satisfied
- 2.4.1 the Permission I has been granted; and
- 2.4.2 the Development has been Commenced
- but thereupon it shall have full force and effect
- 2.5** Nothing in this Unilateral Undertaking shall be construed as prohibiting limiting or affecting any right to develop any part of the Site in accordance with a planning permission (other than the Permission) granted by the Council or on any appeal after the date of this Unilateral Undertaking and for the avoidance of doubt any operations works or development in accordance with such a planning permission shall not constitute Commencement under the terms of this Unilateral Undertaking
- 2.6** If any individual clause or paragraph in this Unilateral Undertaking is subsequently held to be unenforceable by a court the parties agree that the offending clause or paragraph shall cease to be binding and shall be severed from this Unilateral Undertaking **PROVIDED HOWEVER THAT** the severing of such a clause or paragraph shall not affect the continuing enforceability of the remainder of this Unilateral Undertaking
- 2.7** If the Permission shall expire within the meaning of sections 91, 92 and 93 of the Act or is revoked modified or otherwise withdrawn then this Unilateral Undertaking shall cease to have further effect but in ceasing to have further effect shall not prejudice any express or implied rights accrued or accruing to the Owner by virtue of anything done by the Council or vice-versa in connection with or arising from the terms of this Unilateral Undertaking
- 2.8** Except insofar as legally or equitably permitted nothing contained within this Unilateral Undertaking shall fetter the Council in the future exercise of their rights and powers under the Act the Local Government Act 1972 or any other statutory power
- 2.9** This Unilateral Undertaking shall cease to have effect if in determining the Appeal, the Secretary of State or the Inspector expressly states in its Appeal Decision letter that this Unilateral Undertaking does not comply with Regulation 122 of the 2010 Regulations.
- 2.10** If in determining the Appeal, the Secretary of State or the Inspector expressly states in its Appeal Decision letter that any individual obligation within this Unilateral Undertaking does not comply with Regulation 122 of the 2010 Regulations or is immaterial to the grant of Planning Permission and that no weight should be given to it in reaching its decision then that/those obligations(s) will cease to have effect and shall be void for the purposes of this Unilateral Undertaking and the Owner shall not

be required to comply with that obligation notwithstanding that the remaining clauses and obligations shall remain in full force and effect.

**3 PLANNING OBLIGATIONS**

**3.1 HABITATS MITIGATION (BIRD AWARE SOLENT) CONTRIBUTION**

The Owner covenants not to Occupy or permit Occupation of the Development until the Owner has paid the Council the Habitats Mitigation (Bird Aware Solent) Contribution

**3.2 NUTRIENT MITIGATION**

3.2.1 The Owner covenants not to Occupy or permit Occupation of the Development until a mitigation package addressing the additional nutrient inputs arising from the development has been submitted to and approved in writing by the Council. The mitigation package shall address all of the additional nutrient loading upon protected European sites from the development and shall allow the Council to ascertain on the basis of the best available scientific evidence that such additional nutrient loading will not have an adverse effect on the integrity of those European Sites, having regard to the conservation objectives for which they are designed.

3.2.2 The Owner covenants not to Occupy or permit Occupation of the Development until evidence has been submitted in writing to the Council that the mitigation package approved by the Council in Clause 3.3.1 has been implemented in full

**4. INDEXATION**

**4.1** For the purposes of this Unilateral Undertaking any reference to any Contribution including any constituent part of a Contribution as being "Index Linked" shall mean such Contribution as adjusted in accordance with the following formula namely

$$\frac{A \times B}{C}$$

Where

A is the Contribution specified in this Unilateral Undertaking

B is the figure at which the Retail Price Index excluding mortgages (RPIx) stands when such Contribution is paid to the Council

C is the figure at which the RPIx stood at 1<sup>st</sup> April 2024

**4.2** If the RPIx is re-based or replaced an appropriate alternative index shall be substituted by agreement between the parties hereto and any dispute concerning that substitution shall be resolved pursuant to Clause 11

- 4.3** It is hereby declared hereto that indexation shall only be applied in circumstances where the RPIx at the date of payment stands at a higher level than it did at 1<sup>st</sup> April 2024

**5 SERVICE PROVISIONS**

- 5.1** Any notice or other written communication to be served upon or given by one party to any other under the terms of this Unilateral Undertaking shall be deemed to have been validly served or given if delivered by hand or sent by recorded delivery post to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing
- 5.2** The address for any notice or other written communication shall only be within the United Kingdom and is
- 5.2.1** for the Owner as specified above or such other address as shall have been notified to the Council's Service Director for Planning and Environment in writing
- 5.2.2** for the Council as specified above marked "for the attention of the Service Director for Planning and Environment "

- 5.3** Any notice or other written communication to be given by the Council shall be deemed valid and effectual if on its face it is signed on behalf of the Council by an officer or duly authorised signatory

**6 THIRD PARTIES**

For the purposes of the Contracts (Rights of Third Parties) Act 1999 this Unilateral Undertaking is not intended to and does not give any person who is not a Party to it any right to enforce any of its provisions SAVE FOR the Council

**7 LOCAL LAND CHARGE**

This Unilateral Undertaking is a Local Land Charge and the Council may register it in its Register of Local Land Charges in accordance with the provisions of the Local Land Charges Act 1975 and Section 106(11) of the Act

**8 WARRANTY AS TO TITLE**

- 8.1** The Parties hereby warrant to the Council that the title details referred to in the recitals are complete and accurate in every respect. Further the Parties warrant that there are no other persons to their knowledge who have an interest in the Land that have not been disclosed to the Council

**9. COSTS**

- 9.1** The Owner covenants on or before the completion of this Unilateral Undertaking to pay the Checking Fee towards the Council's costs in connection with the approval and registration of this Unilateral Undertaking

**10. MORTGAGEE'S CONSENT**

- 10.1** The Mortgagee consents to the completion of this Unilateral Undertaking and declares that its interest in the Land shall be bound by the terms of this Unilateral Undertaking as if it had been executed and registered as a land charge prior to the creation of the Mortgagee's interest in the Land
- 10.2** The Mortgagee shall not be personally liable for any breach of the obligations in this Unilateral Undertaking unless committed or continuing at a time when it is in possession of all or any part of the Land.
- 10.3** Any mortgagee shall not be liable for any breach of the obligations in this Unilateral Undertaking unless committed or continuing at a time when it is in possession of all or any part of the Land in which case it will be bound by the obligations in this Unilateral Undertaking as if it were a person deriving title from the Owner.

## **11. S73 APPLICATIONS**

- 11.1** In the event that the Council shall at any time hereafter grant a planning permission pursuant to an application made under Section 73 of the Act in respect of the conditions in the Permission then references in this Unilateral Undertaking to the Application and Permission shall be deemed to include any such subsequent planning applications and planning permissions granted as aforesaid and this Unilateral Undertaking shall henceforth take effect and be read and construed accordingly PROVIDED THAT this shall not fetter the Council's discretion in determining any Section 73 application or prejudice its ability to require further s106 obligations

## **12 DISPUTE RESOLUTION**

- 12.1** Save for matters of construction (which shall be matters for the Court) in the event of any dispute arising between the relevant parties or any of them in respect of any matter contained in this Unilateral Undertaking including questions of value and any question of reasonableness the same shall be referred to an expert ("Expert") to be agreed upon between the parties or at the request and option of either of them to be nominated at their joint expense by or on behalf of the President for the time being of the Royal Institute of Chartered Surveyors and the Expert's decision shall be final and binding on the parties hereto with the exception of a manifest error and whose costs (including the reimbursement of the costs of any other expert's fees) shall be at his discretion
- 12.2** The Expert shall have at least ten (10) years post qualification experience in the subject matter of the dispute
- 12.3** Within ten (10) Working Days of his appointment the Expert shall be required to give notice to each of the parties inviting each of them to submit to him within such period as he shall reasonably determine written submissions and supporting material and

shall afford to each of the parties an opportunity to make counter submissions within a further ten (10) Working Days in respect of any such submissions and material and the Expert shall disregard any representations made out of time and the Expert's decision shall be given in writing within fifteen (15) Working Days from receipt of any counter submissions or in the event that there are no counter submissions within fifteen (15) Working Days of receipt of the written submissions and supporting material with reasons and in the absence of manifest error the Expert's decision shall be final and binding on the said parties

- 12.4** It is hereby declared that nothing in this Clause 12 shall be taken to fetter the ability of the Council to seek legal redress in respect of any breach of the obligations entered into by the Owner in this Deed

**13 Stamp Duty Land Tax**

- 13.1** Entry into this Deed does not constitute a transaction for a chargeable consideration for which Stamp Duty Land Tax is required

**14 Electronic Signatures**

- 14.1** The parties to this Deed agree that this Deed may be signed by electronic signature (whatever form the electronic signature takes) and that this method of signature is as conclusive of the intention of all parties to be bound by this Deed as if signed by manuscript signature by all parties

**IN WITNESS WHEREOF the Parties hereto have duly executed and delivered this Unilateral Undertaking as a Deed the day and year first before written**

**EXECUTED as a DEED by ALDERBURY HOMES LTD**

Acting by:

Director

(sign)

(print name)

Steven Parsons

Signed by:  
[Redacted Signature]  
1136D5D6D8DC4D6...

In the presence of:-

Signed by:  
[Redacted Signature]  
A456E93C40B9484...

Witness (sign and print name) Andrew Phipps

Address The Dell, Clubhouse Lane, Waltham Chase, Southampton SO32 2NN

Occupation Office Manager

**EXECUTED as a DEED by ONYX DEVELOPMENT FINANCE LIMITED**

Acting by:

Director

(sign)

(print name)

DocuSigned by:  
[Redacted Signature]  
3DD850423034465...  
Dan Richards

In the presence of:-

DocuSigned by:  
[Redacted Signature]  
32C5AE6B2818412...

Laura Nahid

Witness (sign and print name) 26 Grayling Crescent,  
Winchester, SO30 2BY

Address

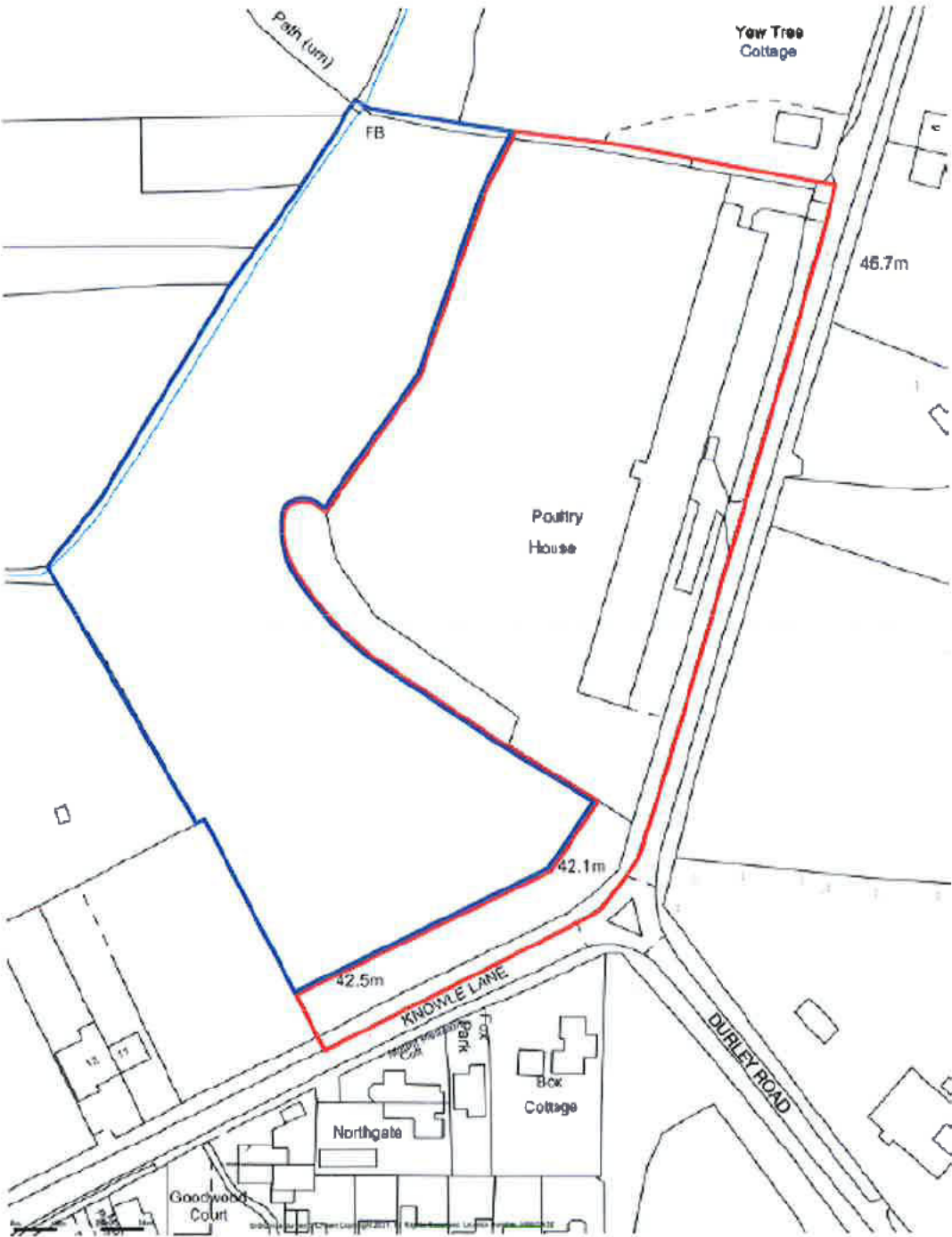
Occupation

Executive Assistant

APPENDIX 1: SITE PLAN

DocuSigned by:  
[Redacted Signature]  
3D0600723034403...  
Dan Richards

| REF | TITLE              | SITE                                     | SCALE           |
|-----|--------------------|------------------------------------------|-----------------|
| 001 | Site Location Plan | Cockpit Farm Barn, Knowle Lane, Fair Oak | 1:1250<br>at A4 |



Signed by:  
[Redacted Signature]  
F13605D6D8DC4D6...