

Cheshire East Local Plan

Biodiversity Net Gain Supplementary Planning Document

Final Draft

October 2023



Contents

1. Introduction	3
Purpose of the Supplementary Planning Document	3
Status of the SPD	4
2. First Draft SPD Consultation	4
Submitting your views	5
What happens after the consultation?	5
3. Planning Policy Framework	5
Legislative Context	5
National Policy Context	6
Local planning policy	7
Cheshire East Local Plan Strategy	7
Cheshire East Site Allocations and Development Policies Document	7
Made Neighbourhood Development Plans	8
Supplementary Planning Documents	8
Emerging plans:	8
4. Other Council Projects and Strategies:	9
Corporate Plan	9
Environmental Strategy	9
Green Infrastructure Plan 2019	9
Carbon Neutral Action Plan	9
5. Our Requirements	10
6. Which Applications will BNG Requirements Apply to?	11
Major Development	11
Minor Development	11
BNG in Minor Development	12
Permitted Development:	12
Prior Approval	13
Exemptions:	13
7. Application of the mitigation hierarchy	14
8. Where Should Biodiversity Net Gain be Delivered?	15
9. Development Management Process and validation	16
Habitats Regulations Assessment	17
10. What information should be supplied	18
Ecological Appraisal Reports:	18
Biodiversity Net Gain Report	19
11. Using the Metric	20
Step by step guide	20
How to complete the Metric Calculation	21
12. Implementation of Net Gain	21
13. Incorporation of Additional Biodiversity Features	22
14. Implementation of Net Gain	23
The Ecological Network	23
15. Buffering of Important Nature Conservation Sites including Ancient Woodlands	25
16. Monitoring and Facilitation Fee	26
Legal Fees	27
Typical Conditions	27
17. Glossary	29
18. Appendices	32

Appendix 1: Table of Local Requirements for Protected Species	32
Appendix 2 Template BNG S106	1
Appendix 3 Report of Consultation on the First Draft BNG SPD	94
Appendix 4 Habitats Regulations Screening Assessment.....	105

1. Introduction

- 1.1 Biodiversity is the variety of different living things on Earth. It benefits humanity in numerous ways including keeping our air and water clean, controlling pests, pollinating crops, maintaining healthy soils, providing medicines and improving mental health. Biodiversity also makes ecosystems more resistant to climate change through the moderation of temperatures with the shade it provides, and the absorption of Co2 from the atmosphere.
- 1.2 Through the need for housing, and demand for land for agriculture, the available space for biodiversity and the complex food-webs required to support it has decreased to a fraction of the size and quality it would naturally be. The world has lost somewhere in the region of 69% of its wildlife population in the past fifty years alone. One million plant and animal species are currently threatened with extinction. This mass extinction, if left unaddressed, threatens all the benefits we enjoy from biodiversity, with potential catastrophic impacts on civilisations across the world.
- 1.3 We have a collective responsibility to support the improvement of biodiversity from the position it is at now and planning has a role to play. Through policies in the Cheshire East Development Plan, the council has an ambition to secure improvements to biodiversity when development takes place. With the introduction of Biodiversity Net Gain via the Environment Act, the guidance in this document helps to explain how the Council will apply it's policies and how developers can support improvements to biodiversity by ensuring a net gain is achieved.

Purpose of the Supplementary Planning Document

- 1.4 Supplementary Planning Documents ("SPDs") add further detail to policies contained within the development plan and are used to provide guidance on specific sites or particular issues. SPDs do not form part of the adopted development plan but they are a material planning consideration in decision taking.
- 1.5 This Final Draft Biodiversity Net Gain SPD provides guidance related to existing development plan policies found in the Cheshire East Local Plan Strategy (adopted July 2017) and the Site Allocations and Development Policies Document (adopted December 2022), particularly those policies that address the Council's approach to protecting the natural environment, securing ecological enhancements and Biodiversity Net Gain (BNG).
- 1.6 The Final Draft SPD:
 - 1.6.1 Explains terminology and practice associated with biodiversity conservation.
 - 1.6.2 Explains the level of biodiversity net gain the Council expects development to achieve in Cheshire East, and where it should be secured.
 - 1.6.3 Sets out what written information is required to submit with a planning application regarding protection of the natural environment and the securing Biodiversity Net Gain;
 - 1.6.4 and

- 1.6.5 Provides guidance on what measures will be required if the minimum levels of Biodiversity Net Gain level cannot be achieved on site.

Status of the SPD

- 1.7 The SPD has been prepared in accordance with the Planning Act 2004 and the associated Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended).
- 1.8 Once finalised and published, this document will replace the Macclesfield Borough Council Nature Conservation SPD and be a material consideration in the determination of planning applications.

2. First Draft SPD Consultation

- 2.1 Consultation on the first draft of the BNG SPD took place between May and June 2021. A total of 296 comments were received from 43 parties.
- 2.2 A Report of consultation, including a summary of the changes made to this final draft SPD is included at Appendix 3.
- 2.3 Final Draft SPD Consultation
- 2.4 Consultation on the final draft SPD will take place between XX October 2023 and XX November 2023. Comments must be received by the Council no later than 5pm on XX November 2023 (dates to be defined).
- 2.5 The consultation documents can be viewed online at:
- 2.6 <https://cheshireeast-consult.objective.co.uk/portal/planning/spd/hmo>
- 2.7 and can be accessed via computer terminals at public libraries in Cheshire East during opening hours (for information about opening hours see www.cheshireeast.gov.uk/libraries or telephone 0300 123 7739).
- 2.8 There is no legal requirement for Supplementary Planning Documents to be accompanied by Sustainability Appraisal, and this is reinforced in national planning guidance. However, in exceptional circumstances there may be a requirement for SPDs to be subject to Strategic Environmental Assessment (SEA) where it is considered likely that they may have a significant effect on the environment that has not already been assessed within the SEA of the Local Plan. A screening assessment of this SPD has been undertaken and concludes that further such assessment is not necessary.
- 2.9 A screening exercise has also been carried out to determine whether the document gives rise to the need for Appropriate Assessment (under the Habitats Regulations). This similarly concludes that further such assessment is unnecessary. These screening assessments have been published (Appendix 4) and you can give your views on their findings too.

Submitting your views

- 2.10 The council's online consultation portal is our preferred method for submitted responses, but you can also respond by e-mail or in writing using a comment form available online and at the locations listed above. You can respond:
- 2.11 Online: Via the consultation portal at: <https://cheshireeast-consult.objective.co.uk/portal/planning/spd/hmo>
- 2.12 By e-mail: To planningpolicy@cheshireeast.gov.uk
- 2.13 By post: Strategic Planning (Westfields), C/O Municipal Buildings, Earle Street, Crewe CW1 2BJ
- 2.14 Please make sure that your comments reach us by **5pm on the XX of November 2023.**
- 2.15 The Council cannot accept anonymous comments and consultees must provide a name and contact details. Your personal data will be processed in line with our Strategic Planning Privacy Notice, which is available on the council's website (www.cheshireeast.gov.uk). Your name and comments will be published and made available to view on the Council's online consultation portal.

What happens after the consultation?

- 2.16 Following consultation, the Council will carefully consider all representations received before deciding whether any amendments to the draft SPD are needed. The final version of the SPD alongside a Consultation Statement summarising the feedback and changes to the SPD will then be published for further comment before the SPD is adopted.
- 2.17 Once adopted the SPD will be formal planning guidance and will be considered as a material consideration to securing planning obligations in the Cheshire East area.

3. Planning Policy Framework

- 3.1 Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise¹. Material planning considerations include national planning policy and adopted supplementary planning guidance, where relevant.

Legislative Context

- 3.2 Under the Environment Act 2021 all planning permissions granted in England (with a few exceptions) except small sites will be required to deliver at least 10% net gain in November 2023. Biodiversity Net Gain will be required for small sites from April 2024.

¹ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

Net Gain will be measured using the Defra Biodiversity Metric and habitats will need to be secured for 30 years.

National Policy Context

- 3.3 The National Planning Policy Framework ('the Framework') includes references to biodiversity net gain which are relevant to decision taking and the guidance provided in this SPD. Relevant extracts from the Framework include paragraph 174:
 - 3.3.1 Planning policies and decisions should contribute to and enhance the natural and local environment by:
 - 3.3.2 protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);
 - 3.3.3 and
 - 3.3.4 minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures
- 3.4 Paragraph 179:
- 3.5 To protect and enhance biodiversity and geodiversity, plans should:
 - 3.5.1 a) Identify, map and safeguard components of local wildlife-rich habitats and wider ecological networks, including the hierarchy of international, national and locally designated sites of importance for biodiversity; wildlife corridors and stepping stones that connect them; and areas identified by national and local partnerships for habitat management, enhancement, restoration or creation;
 - 3.5.2 and
 - 3.5.3 b) promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity.
- 3.6 Paragraph 180:
 - 3.6.1 (a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;
 - 3.6.2 And
 - 3.6.3 (d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.

- 3.7 Additional guidance on Biodiversity Net Gain is also available via the [National Planning Practice Guidance](#).

Local planning policy

- 3.8 Relevant local planning policies are set out in the development plan for the area. The development plan for Cheshire East currently comprises of the Cheshire East Local Plan Strategy, adopted July 2017 and the Site Allocations and Development Policies Document (“SADPD”), adopted December 2022, saved policies from the Cheshire Waste Local Plan and saved policies from the Cheshire Minerals Local Plan. Neighbourhood Development Plans that have been successful at referendum and have subsequently been ‘made’ also form part of the statutory development plan.
- 3.9
- 3.10 Development plan policies of relevance to Biodiversity Net Gain are summarised below. Consideration will also be given to other relevant planning policies within each plan, where appropriate to the planning application proposals.

Cheshire East Local Plan Strategy

- 3.11 The Cheshire East Local Plan Strategy (“LPS”) was adopted on the 21 July 2017, and this is the strategic plan for the borough. Relevant policies include but are not limited to the following:
- 3.12 Policy IN 2: Developer Contributions
- 3.13 Policy SE 6: Green Infrastructure
- 3.14 Policy SC 3: Health and Well-Being
- 3.15 Policy SE 3: Biodiversity and Geodiversity
- 3.16 Policy SE 5: Trees, Hedgerows and Woodland
- 3.17 Policy SE 6: Green Infrastructure

Cheshire East Site Allocations and Development Policies Document

- 3.18 The Cheshire East Site Allocations and Development Policies Document (SADPD) was adopted 12th December 2022 and provides more detailed development management policies and smaller scale site allocations than the LPS. Relevant policies include but are not limited to the following:
- 3.19 ENV 1: Ecological Network. This policy states that new development should seek proportionate opportunities to protect, conserve, restore and enhance the ecological network for the borough. Development in sustainable land use areas should enhance the wider environment by actively contributing to the integration and creation of appropriate green infrastructure and habitats.

- 3.20 ENV 2: Ecological Implementation. This policy states development proposals must deliver an overall net gain for biodiversity. Major developments and developments affecting semi-natural habitats must be supported by a biodiversity metric calculation to ensure the delivery of a biodiversity measurable net gain.
- 3.21 ENV 6: Trees, hedgerows and woodland implementation. This policy states replacement trees, woodlands and/or hedgerows must be integrated in development schemes as part of a comprehensive landscape scheme. Where it can be demonstrated that this is not practicable, contributions to off-site provision should be made, priorities in the locality of the development.

Made Neighbourhood Development Plans

- 3.22 As at the 31 March 2023, 36 Neighbourhood Development Plans (“NDP’s”) had been ‘made’ and now form part of the adopted development plan. Further details of these plans can be found on the council’s website:
- 3.23 <https://www.cheshireeast.gov.uk/planning/neighbourhood-plans/neighbourhood-planning.aspx>

Supplementary Planning Documents

- 3.24 The council has adopted a number of Supplementary Planning Documents and full details of these can be found on the council’s website at: https://www.cheshireeast.gov.uk/planning/spatial_planning/cheshire_east_local_plan/supplementary_plan_documents/supplementary_plan_documents.aspx
- 3.25 Relevant SPDs include:
- 3.26 Emerging [Sustainable urban Drainage SPD](#)
- 3.27 Emerging [Developer Contributions SPD](#)
- 3.28 [Congleton Borough Council Trees and Development SPD](#) (October 2006)
- 3.29 [Macclesfield Borough Council Nature Conservation Strategy](#) (October 2006)

Emerging plans:

- 3.30 Cheshire East Minerals and Waste Development Plan Document.
- 3.31 The [Minerals and Waste Development Plan Document](#) is currently in preparation. A first draft was consulted on during November and December 2022. The plan will set out the council’s planning policies on minerals and waste.

4. Other Council Projects and Strategies:

Corporate Plan

- 4.1 The Council's [Corporate Plan](#) 2021-2025 sets out three main aims to be open, fair and green. The Council has an ambition to 'lead our communities to protect and enhance our environment, tackle the climate emergency and drive sustainable development' and within this ambition is a key objective to improve biodiversity and natural habitats in the borough through a number of measures including embedding biodiversity off-setting across the Cheshire East Council Estate, delivering a programme of tree planting and increasing rewilding.
- 4.2 The Corporate Plan also includes objectives to ensure that new development is appropriately controlled to protect and support the borough through a number of actions, including through the preparation and implementation of supplementary planning documents.

Environmental Strategy

- 4.3 In May 2019 the Council committed to become a carbon neutral organisation by 2025 and in January 2022 a further commitment was made to make Cheshire East a carbon neutral borough by 2045.
- 4.4 The Council's [Environment Strategy 2020-2024](#) sets out the key strategies and plans that will be employed to achieve this ambition including the strategic approach to enhancing and protecting the environment as set out in the Council's Development Plan. The Strategy also includes reference to the Council's Green Infrastructure Plan 2019.

Green Infrastructure Plan 2019

- 4.5 The [Green Infrastructure Plan](#) is a road map for a comprehensive and connected Green Infrastructure (GI) to meet the needs of people and nature in the 21st century and to pass on a better environment to the next generation
- 4.6 The plan is intended to help develop projects that deliver a net gain in Green Infrastructure and provides an evidence base and framework to support project delivery.
- 4.7 The plan highlights some strategic areas for consideration and suggests some approaches to partnership working and the involvement of communities or landowners.

Carbon Neutral Action Plan

- 4.8 To support the ambition of the Council to become carbon neutral, the Environmental Strategy committed the Council to produce a [Carbon Neutral Action Plan](#). The plan sets out the actions and pathways the Council should take to achieve carbon neutrality and includes the employment of nature-based solutions and an 'insetting' approach

whereby carbon savings are made within the local authority area through supply chain improvement or activity such as tree planting.

- 4.9 By working with the Mersey Forest and Cheshire Wildlife Trust, the Council aims to plant 100 hectares of trees by 2025, including a 7-hectare site at Leighton Grange in Crewe.

5. Our Requirements

- 5.1 Cheshire East Council are seeking a minimum 10% net gain in biodiversity from new development. This should be delivered on-site, and the gain should be demonstrated using the Defra approved biodiversity metric. Where this is not possible, the gain may involve off-site compensation, with the approach to be agreed with the Local Planning Authority (LPA).
- 5.2 To achieve consistency of information on which to carry out decision-making, the LPA will expect all applications to conform to the guidance in this SPD.
- 5.3 To calculate how the minimum 10% increase in biodiversity is to be achieved, biodiversity losses and gains associated with development and land management practices need to be measured in a consistent, robust, and transparent way. To achieve this, DEFRA has created a [Biodiversity Metric](#) to measure biodiversity losses and gains, which is mandated in Schedule 14 of the Environment Act 2021. DEFRA has also produced a simplified version of the Biodiversity Metric called the Small Sites Metric which can be used for minor development, subject to certain criteria being met.
- 5.4 Where compensation is targeted at a specific species, off site compensation must be delivered in an area where this species is known to occur. Desk and field-based assessments may be required to establish this.
- 5.5 Habitat creation proposals, both on and offsite, must avoid 'down trading' of habitat value, that is seeking to create habitat of lower distinctiveness than those lost. Habitat creation proposals must be additional to any existing obligations and not deliver something that would occur anyway (for example through an existing planning permission, Forestry Commission grant or Environmental Stewardship scheme).
- 5.6 All proposals to deliver biodiversity Net gain through on-site and off-site habitat creation must be:
- 5.6.1 In compliance with forthcoming British Standard BS 8683 (Process for designing and implementing Biodiversity Net Gain)
 - 5.6.2 Agreed in advance with the LPA
 - 5.6.3 Evaluated through the use of the Biodiversity Metric
 - 5.6.4 Located in a strategically important area as identified by the LPA (unless agreed in advance)
 - 5.6.5 Secured by an appropriate agreement to ensure long term management.

5.6.6 Be supported by a monitoring and management plan (adaptive management plan)

5.6.7 Monitored and reviewed

6. Which Applications will BNG Requirements Apply to?

6.1 When determining planning applications, the Council seeks to protect and enhance the natural environment wherever possible, and the Council's Development Plan includes policies that support this aim.

6.2 Policy SE3 Biodiversity and Geodiversity of the LPS requires that all development (including conversions, on both brownfield and greenfield sites) must aim to positively contribute to the conservation and enhancement of biodiversity and geodiversity and should not negatively affect these interests. Policy ENV2 of the SADPD requires that development proposals should provide for a net gain in biodiversity in line with the expectations of national policy and that major applications or applications affecting semi-natural habitat be supported by a biodiversity metric. These requirements apply to all forms and scale of development that require planning permission in Cheshire East.

6.3 At the time of writing, national requirements are established by the [Environment Act 2021](#)² which requires development to deliver a minimum 10% increase in biodiversity from November 2023. For small sites this requirement does not come into effect until April 2024. However, the requirements of the development plan in Cheshire East remain and therefore, where possible, the Council will seek a positive contribution to the natural environment from minor development sites.

Major Development

6.4 Major Development is development for housing where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more. For non-residential development, major development is development that includes additional floorspace of 1,000m² or more, or a site of 1 hectare or more, or as otherwise provided in the Town and Country Planning (Development Management Procedure) (England) Order 2015.

6.5 All major development is required to provide a 10% Biodiversity Net Gain.

Minor Development

6.6 Minor development is development at a scale less than the definition for major development. For residential developments, minor development is where:

² [Environment Act 2021 \(legislation.gov.uk\)](#)

- 6.7 the number of dwellings to be provided is between 1 and 9 (inclusive) with a site area of less than 1 ha.
- 6.8 Where the number of dwellings is not known and the site area is less than 0.5 ha.
- 6.9 For all other development types, minor development is where the site area is less than 0.5 ha.

BNG in Minor Development

- 6.10 In order to make 10% minimum BNG requirement easier to implement for minor development, a simplified version of the Biodiversity Metric, called the [Small Sites Metric](#), can be used where both of the following criteria are met:
 - 6.11 For residential development:
 - 6.11.1 there are fewer than 10 residential units on a site area (no more than 9 units) less than 1 hectare; or
 - 6.11.2 if the number of residential units is not known, the site area is less than 0.5 hectare
 - 6.11.3 For non-residential development:
 - 6.11.4 where the floor space to be created is less than 1,000 square; or
 - 6.11.5 where the site area is less than 1 hectare
 - 6.11.6 However, the SSM cannot be used on such sites where:
 - 6.11.7 habitats not available in the SSM are present
 - 6.11.8 priority habitats are within the development site (excluding some hedgerows and arable field margins)
 - 6.11.9 European protected species are present on the development site
 - 6.11.10 any offsite interventions are required
 - 6.12 Development that qualifies as minor development and meets the tests above will be able to utilise and submit the DEFRA Small Sites Metric with their proposals. However, as this metric is unsuitable to calculate off-site losses and gains, where calculation of off-site losses and gains is required, the latest version of the full DEFRA Biodiversity Metric should be used.

Permitted Development:

- 6.13 Certain development is granted planning permission by national legislation without the need to submit a planning application and is considered 'permitted development'. To be eligible for such permitted development rights, each 'class' of development specified in the legislation has associated limitations and conditions that must be adhered to.

- 6.14 However, legal protection for wildlife still applies regardless of the existence of permitted development rights and so any legally protected animals, plants or habitats that may be affected will need proper consideration for the development to be lawful and there remains a need for the Council to consider the effects that any development relying on permitted development rights might have on biodiversity.
- 6.15 Where applicants propose to undertake development under Permitted Development Rights, it is the responsibility of the applicant to satisfy themselves that:
- 6.16 Permitted Development Rights are in place
- 6.17 The proposal complies with Permitted Development Rights; and
- 6.18 No harmful impact on the natural environment will arise from the proposal
- 6.19 To ensure such issues are dealt with appropriately, applicants are advised to consult the Councils [interactive map](#) in the first instance to identify if designated natural habitats are present. Applicants are also advised to secure a Lawful Development Certificate from the Council. More information on Lawful Development Certificates, and how to apply can be found on the [Councils website](#).

Prior Approval

- 6.20 Prior approval is a condition of permitted development which requires an application to the Local Planning Authority (LPA) for its 'prior approval' to determine that the circumstances of the application are such that permitted development rights are in place and do apply to the site concerned. This allows the LPA to consider the proposals, their likely impacts regarding certain factors (such as transport and highways) and how these may be mitigated.
- 6.21 Where natural habitats and wildlife are likely to be present, adequate information must be provided to the Council to support the assessment of the ecological implications of the development, the need for mitigation, and if necessary, the need for a licence from Natural England. Work must not commence on such proposed development until the LPA has issued its determination.
- 6.22 Class Q applications are applications for Prior Approval for a change of use or conversion of a building, and any land within its curtilage, from a use as an agricultural building to that of a dwelling. Where the buildings are likely to support bats or other legally protected species, there is a risk that they may be affected by the proposals, and it is therefore essential that the LPA has certainty of impacts prior to determination of any application. Sufficient information, including appropriate survey results, will be needed to support such an application.

Exemptions:

- 6.23 In line with the Government's response to the recent consultation on Biodiversity Net Gain Regulations and Implementation in February 2023³, the Council considers that

³ [Government response and summary of responses - GOV.UK \(www.gov.uk\)](#)

policies requiring Biodiversity Net Gain do not apply to development impacting habitat of an area below a 'de minimis' threshold of 25 metres squared, or 5m for linear habitats such as hedgerows.

- 6.24 The de-minimis threshold will be particularly relevant for development that involves the construction of new commercial or leisure buildings which, if the definition of building under the Town and Country Planning Act 1990 were to be applied, could include any structure or erection, and any part of a building. Without introducing the de-minimis threshold, policies SE3 and ENV2 of the local plan could apply to structures such as post boxes, phone masts and small areas of hard standing etc.
- 6.25 The Council recognises the importance of ensuring that the application of the Biodiversity Net Gain requirement is proportionate to the size of the development and the resulting impact on habitats. Therefore, the Council considers that Policies SE3 and ENV2 do not apply to commercial or leisure development of a size below a 'de minimis' threshold of 25m².

7. Application of the mitigation hierarchy

- 7.1 In accordance with Policy ENV2, Biodiversity Net Gain should be achieved in a way that is consistent with the mitigation hierarchy. All development proposals must therefore ensure losses of, and impacts to, biodiversity are firstly avoided, if impacts cannot be avoided measures should be developed to mitigate these impacts, finally if impacts are unavoidable and cannot be mitigated then, as a last resort, compensation measures should be provided.
- 7.2 The mitigation hierarchy first seeks to avoid significant harm. Developments should seek to comply with this policy requirement through designing out impacts on biodiversity. This will be achieved for example by locating development proposals on a site with least ecological value, retaining and buffering important ecological features, such as priority habitats, within the layout of a residential development or seeking to retain habitat for a protected species such as an existing bat roost within a building proposed for conversion or renovation. Development proposals must also seek to avoid severance effects which occur when retained features are isolated from each other by development that is impermeable to wildlife.
- 7.3 Where impacts cannot be fully avoided, mitigation proposals will be required. Mitigation involves the development of strategies to minimize impacts and will involve changes to the timing of operations to avoid sensitive seasons, supervision of sensitive works, the provision of wildlife fencing or changes in engineering operations to minimize disturbance or land take.
- 7.4 Compensation, which should only be provided as a last resort where impacts cannot be avoided or mitigated, involves strategies such as the creation of new habitat or the enhancement of existing habitats, which is provided in lieu of habitat lost as a result of development.
- 7.5 Where a proposed development affects a designated site, or other ecological or geological feature listed in Local Plan Strategy SE.3 compensation measures will only

be considered where the proposed development is held to comply with the policy tests detailed in policy SE3 and the mitigation hierarchy described above.

8. Where Should Biodiversity Net Gain be Delivered?

- 8.1 Delivery of Biodiversity Net Gain (BNG) will always be sought on site wherever possible. To achieve this, applicants should engage an ecological consultant at the earliest stages of their project to ensure the design process is used to integrate biodiversity net gain on site and to demonstrate how policy requirements related to Biodiversity Net Gain, particularly how policies SE3 of the LPS, ENV1 and ENV2 of the SADPD, have been addressed.
- 8.2 Policy SE3 of the Local Plan Strategy identifies areas of high biodiversity or geodiversity value; Policy ENV1 of the SADPD sets out the extent of the Ecological Network in Cheshire East; and Policy ENV2 establishes how net gain should be achieved.
- 8.3 Where Biodiversity Net Gain on site is not possible, applicants should set out the options they have considered, and the reasons why on site BNG is not achievable. Applicants should also set out how they will compensate for any loss or impact on biodiversity through on and offsite improvements. There is no requirement for compensatory habitats to be subject to public access. However public access is encouraged where this can occur without being detrimental to the value of the habitats created.
- 8.4 Off-site habitat provision should be prioritised firstly towards those areas identified as Nature Improvement Areas, those areas identified by the Ecological Network Map as delivering the most benefit for biodiversity (Core Areas, Corridors and Stepping Stones, Restoration areas) any designated Wildlife Corridors shown in neighbourhood plans or the CEC Core Strategy and SADPD and any areas identified in Local Nature Recovery Strategies. Habitat creation in these strategically important sites will deliver a greater benefit for biodiversity and so potentially less habitat creation will be required in order to achieve the same biodiversity benefits.
- 8.5 Existing habitats or habitat creation/enhancement proposals within the Cheshire East Ecological Network or the Local Nature Recovery Strategy should be entered into the Biodiversity Metric Calculation as being “Formally identified in a Local Strategy”.
- 8.6 Habitat creation and enhancement will be prioritised to locations where they deliver the maximum benefits for biodiversity, but delivery is only ever possible where suitable opportunities arise ‘on the ground’. Consequently, offsite habitat creation and enhancement may be delivered at any suitable location within Cheshire East (with preference given to those locations listed in the previous paragraph) where a suitable opportunity exists.
- 8.7 This in most cases is likely to be ~~may be~~ some distance from the site of the related development proposals. The Defra metric considers the ‘spatial risk’ associated with off-site BNG delivery. Spatial risk is the relationship between the development site and

the off-site provision. The metric penalises proposals where off-site habitat is located at a distance from the development site. Under the metric, offsite delivery within the same Local Authority area is not assigned a penalty and therefore where opportunities exist which are local to the site, these should be explored.

- 8.8 The translocation of existing habitats, unavoidably lost as part of development proposals, to an alternative location on or off site may be required where the benefits of this are proportionate to the impacts associated with the development. Translocated habitats are anticipated to lose a significant proportion of their biodiversity value through translocation, consequently additional habitat creation must be included within a development scheme to adequately compensate for this loss of biodiversity value when translocation takes place.
- 8.9 It should be noted that an aerodrome safeguarding zone exists around Manchester Airport within which development that would impact on the safety of the airport's operation will be referred to the airport for consultation. BNG delivery in this location should not increase the risk of bird strike hazard within 13km of the airport.
- 8.10 Similarly, in the south of the borough the civil parishes of Dodcutt cum Wilkesley, Audlem, Buerton and Newhall have areas within a Birdstrike Safeguarding Zone surrounding RAF Tern Hill, some 8.4km south of the boundary of Cheshire East Council. Within these parishes the creation of BNG should not be designed in a way that attracts large and flocking bird species.

9. Development Management Process and validation

- 9.1 To ensure that appropriate and effective mitigation measures can be secured either by a condition of any consent, or under a mitigation licence from Natural England, the Council needs certainty of likely impacts on a Biodiversity Site or protected or priority species/habitats prior to determination.
- 9.2 To support determination of planning applications, the Council therefore expects adequate ecological information to be provided. Where no ecological report has been submitted and there is a likelihood of biodiversity being present and affected by a proposal, applicants will be requested to provide reasonable information in line with [Government Standing Advice](#).
- 9.3 Where no ecological report is submitted, or it is not submitted with sufficient information, delays may be caused through, for example, waiting for surveys to be carried out in the appropriate season. If, despite a request from the Council, this information is not provided at a proportionate level of detail that can give certainty of likely impacts and details of effective and deliverable mitigation measures, the Council may refuse an application. Precautionary mitigation will not be acceptable (for example proposals to install bat boxes to compensate for potential loss of roosts, without undertaking a survey).

- 9.4 When submitting a planning application, applicants are required to include various reports and assessments related to the site and type of development. A full list of local validation requirements can be accessed on the [Councils website](#).
- 9.5 Guidance on local requirements for Ecological and Geodiversity assessments is also available via the [Council's website](#) and sets out the criteria which may trigger the need to submit an assessment. Local Requirements are set out at Appendix 1.
- 9.6 Where ecology reports include recommendations for further surveys, these will be needed prior to determination. The Council encourages applicants to ensure that recommendations for mitigation and compensation measures have been embedded into the design of schemes and that they confirm delivery at the appropriate stage to support determination of a planning application. This approach is relevant to Outline Planning Applications too, when broad mitigation and compensation strategies will be required in sufficient detail to demonstrate that they can be realistically incorporated into a detailed design at the reserved matters stage.
- 9.7 Where impacts on biodiversity will be minimised such that the proposal is acceptable, all ecological mitigation, compensation, and enhancements to deliver measurable net gain for biodiversity will either be a condition of the consent (if all habitat works are on site) or included in a legal agreement. Generally, conditions will not relate to protected species surveys as this information is needed prior to determination. A template S106 agreement for the submission and implementation of offsite BNG requirements, is included at [Appendix 2](#).
- 9.8 To support determination of outline or phased applications, updated protected species surveys and mitigation strategies will need to be submitted at reserved matters stage for any measures not fully detailed in the information provided with the original application.

Habitats Regulations Assessment

- 9.9 Where development has the potential to have a significant effect on a Habitats Site, proposals need to be accompanied by information to support the preparation of the Habitats Regulations Assessment (HRA) by the Local Planning Authority. Habitats sites in Cheshire East are available to view here, via the Council's interactive [Local Plan Adopted Policies Map 2022](#). Site design should ensure that adverse effects on the integrity of the site(s) are avoided and submitted information should include the results of any necessary surveys and details of any proposed mitigation measures.
- 9.10 The Impact Risk Zones (IRZs) are a GIS tool developed by Natural England to make a rapid initial assessment of the potential risks posed by development proposals to Sites of Special Scientific Interest (SSSIs), Special Areas of Conservation (SACs), Special Protection Areas (SPAs) and Ramsar sites. They define zones around each site which reflect the sensitivities of the features for which it is notified and indicate the types of development proposal which could potentially have adverse impacts. Where development falls within an impact risk zone, Natural England will be consulted, and further assessments and surveys may be required. Applicants should be aware that the Council will consult with Natural England in these circumstances which may result in a requirement for applicants to submit further information.

10. What information should be supplied

Ecological Appraisal Reports:

- 10.1 To assess the potential impact of proposed development, it is necessary to submit protected species surveys, ecological assessments, and geodiversity assessments with many planning applications. This guidance details when surveys and assessments are required in support of planning applications.
- 10.2 Whilst this guidance has been designed to cover the most likely scenarios, protected species and other important natural features are often encountered in the most unexpected circumstances. The Council may therefore request further information relating to biodiversity or geodiversity conservation after the registration of the application but prior to determination. Therefore, the Council advises that pre-application advice is sought at an early stage, which may rule out the need to provide some surveys.
- 10.3 If a planning application involves any of the development proposals shown in the table at Appendix 1, the relevant protected species survey and impact assessment must be submitted in support of a planning application.
- 10.4 Exceptions for when a full Species Survey and Assessment may not be required:
 - 10.4.1 Following consultation by the applicant at the pre-application stage, the LPA has stated in writing that no protected species surveys and assessments are required.
 - 10.4.2 If it is clear that no protected species are present, despite the guidance in the table at Appendix 1 indicating that they are likely, the applicant should provide evidence with the planning application to demonstrate that such species are absent (e.g. this might be in the form of a letter or brief report from a suitably qualified and experienced person, or a relevant local nature conservation organisation).
 - 10.4.3 If it is clear that the development proposal will not affect any protected species present, then only limited information needs to be submitted. This information should, however:
 - 10.4.4 (i) demonstrate that there will be no significant affect on any protected species present and
 - 10.4.5 (ii) include a statement acknowledging that the applicant is aware that it is a criminal offence to disturb or harm protected species should they subsequently be found or disturbed.
- 10.5 In some situations, it may be appropriate for an applicant to provide a protected species survey and report for only one or a few of the species shown in the Table in Appendix 1 e.g., those that are likely to be affected by a particular activity. Applicants should make clear which species are included in the report and which are not (because exceptions apply).
- 10.6 If the application is likely to affect any site designated for its nature conservation value (Special Protection Area, Special Area of Conservation, SSSI, Ramsar, Local Wildlife

Site etc.) or any semi-natural habitats, such as woodlands, wetlands, ponds, rough or species rich grassland etc. an ecological survey and assessment for the relevant feature must be submitted as part of the Planning application.

- 10.7 A survey and assessment will not be required where the applicant is able to provide copies of pre-application correspondence with the Local Planning Authority stating that they are satisfied that the proposed development will not affect any regional or local sites designated for their local nature conservation importance or any other priority habitats or other notable features.
- 10.8 The evaluation of habitats recorded on site should be undertaken with reference to the Cheshire Region Local Wildlife Site Selection Criteria. Habitats that meet the selection criteria thresholds should be considered to be of 'County' importance.

Biodiversity Net Gain Report

- 10.9 It is already a requirement that an Ecological Impact Assessment (EclA) is submitted with most types of planning applications (the exceptions are when dealing with householder applications or sites with very low value ecological features – in which case a written statement or Preliminary Ecological Appraisal may still be acceptable).
- 10.10 A Biodiversity Net Gain report will now be required to clearly show how the site has been assessed using the Defra Biodiversity Metric Version 4.0. The report should be prepared in accordance with the recent CIEEM guidance¹. This will demonstrate the baseline value of the site (before development) and the post-development value.
- 10.11 Clear scaled maps will be required showing precisely where the Biodiversity Unit scores occur for both the Baseline and post-development scenarios. There should also be a section demonstrating why the condition score has been chosen – with reference to all scoring criteria from the associated Defra Technical Guidance habitat tables.
- 10.12 The objective should always be to deliver 10% net gain for biodiversity on-site and therefore it will be essential to appoint an Ecological Consultant at the earliest stage to be involved in the iterative design stage of the layout. The Ecological Consultant should work closely with the Landscape Architect and Urban Designers to consider which options of the layout lead to the best possible outcome for achieving Net gain for biodiversity on-site. This type of information should be included in the Design & Access Statement (if appropriate) whereby different options of layout are shown with their corresponding different Biodiversity Unit impacts – together with an explanation why one option has been chosen over another where the layout resulting in the lowest impact on biodiversity has not been taken forward to the proposed layout stage.
- 10.13 Evidence is required in the Biodiversity Net Gain Report to demonstrate the Ecological Consultant has been involved in the initial design of the layout in a meaningful way to help achieve a net gain for biodiversity. This should include reference to the Mitigation Hierarchy of avoiding damage to sensitive ecological features, minimising impacts on ecological features, and where these first two steps cannot be achieved (with an explanation to justify why not) finally an explanation that demonstrates consideration of what level of compensation will be required either on-site or off-site (or both).

11. Using the Metric

Step by step guide

- 11.1 **Step 1: Map the habitat type(s) impacted by your development.**
- 11.2 **Step 2: Assess the baseline condition of each habitat**
- 11.3 **Step 3: Apply the ‘avoid, mitigate, compensate’ hierarchy to the development proposals to ensure impacts on biodiversity are minimised**
- 11.4 **Step 4: Enter baseline habitat details and anticipated habitat creation and enhancement delivered as part of the development into the biodiversity metric.**
- 11.5 **Step 5: Use the metric calculation results to determine if any further habitat works are required to achieve net gain and whether there are particular requirements for the type of offset needed.**
- 11.6 **Step 6: Decide how you want to provide any additional compensation required to achieve BNG**
- 11.7 Under SADPD Policy ENV2 Supporting information paragraph 4.14 A net gain in biodiversity must be demonstrated using a biodiversity net gain calculation for all major developments, and developments affecting semi-natural habitats. The Environment Act when fully in force will however require BNG calculations to be undertaken for all developments except those affecting habitats under 25-meter square or linear habitats less than 5m. For consistency the DEFRA metric should be used for all relevant applications within Cheshire East.
- 11.8 An iterative approach to site design should be employed, which considers biodiversity impacts from an early stage and throughout the design process. To ensure the best possible outcomes for biodiversity an ecological consultant should be appointed and where alternative design options are put forward once an application has been submitted, they should be accompanied by a proportionate biodiversity metric calculation.
- 11.9 Biodiversity Net Gain Calculations are to be undertaken in accordance with the Natural England Version 4 metric (March 2023) or subsequent revised Natural England/Defra metric.
- 11.10 The net gain calculation and proposals for achieving biodiversity net gain must be undertaken in accordance with the following documents and/or any subsequent publications:
- 11.11 The Biodiversity Metric 4.0 auditing and accounting for biodiversity, User guide and technical appendices (March 2023) (Natural England).
- 11.12 Biodiversity net gain, Good Practice Principles for development – A practical guide (2019) CIEEM, IEMA, CIRIA.

- 11.13 Field work undertaken to inform the metric calculation must be undertaken at the appropriate time of year.
- 11.14 The field survey and metric calculation must include all habitats within the of the application, regardless of whether these habitats are affected by the proposed development.
- 11.15 If a development site has been cleared with the resulting loss of habitats in advance of a biodiversity metric calculation having been undertaken baseline should be taken as being the habitats present prior to clearance. The biodiversity value of the habitats lost is to be estimated based upon a desk-based assessment and professional judgement. The precautionary principal to be applied when the condition or distinctiveness of the habitats lost is unknown.

How to complete the Metric Calculation

- 11.16 Applicants are advised to seek assistance an ecological consultant when completing the calculation.
- 11.17 The following survey information and assessment is required to complete the calculation:
- 11.17.1 Area of each habitat and length of each linear feature present within the red line of the application.
- 11.17.2 Habitat type in UK Habs, or translated into UK Habs from another survey type, Habitat condition of each habitat must be assessed in accordance with the version 4.0 metric (or any later published version) criteria.
- 11.17.3 Calculate losses of existing habitat to development based upon current planning layout.
- 11.17.4 Enter area anticipated habitat type and target condition for any habitat creation/enhancement or landscaping proposed on site as part of the development. This should be based upon a landscape plan submitted in support of the application.
- 11.17.5 Condition targets should be informed by the metric condition assessment criteria and must be realistic being in mind the location and likely usage of the application plan.

12. Implementation of Net Gain

- 12.1 Major Schemes and those affecting natural/semi natural habitats (as required under Local Plan Policy), or all developments required to undertake an assessment under the Environment Act, are subject to net gain requirements
- 12.2 If the biodiversity metric calculation shows that a proposed development would result in a failure to deliver the required net gain for biodiversity the applicant should:
- 12.2.1 Firstly, review design solutions an re-apply the Mitigation Hierarchy, seeking to avoid any impacts particularly on higher value habitats.

12.2.2 Secondly, review habitat creation proposals to ensure the maximum biodiversity value can be delivered on site.

12.3 Where the above process is followed and concludes that off-site provision is necessary to achieve a net gain, off-site habitat creation for the purposes of delivering Biodiversity net gain and will be secured by either:

12.3.1 Option 1 Developers providing their own off-set

12.3.2 Option 2 Purchase of off-sets from an independent provider

12.3.3 Option 3 A mixture of the above

Option1: Developers providing their own offset on land within their control

12.4 This option may be used if there is land suitable for habitat creation within Cheshire East which is owned or in the control of the applicant. Habitat creation measures, management and monitoring would be secured by a legal agreement or planning condition to ensure they are delivered in accordance with good practice principles.

Option 2: Purchase of offsets from an independent provider and delivery body/habitat bank

12.5 The provider/habitat bank must be agreed with the LPA. Under this option a contribution from the developer will be paid directly into the independent provider/habitat bank. The provider/habitat bank would then be required to provide suitable assurances of habitat delivery and 30 years monitoring/management to the LPA. This would again usually be secured by the provider being a signatory to the section 106 agreement.

12.6 Currently, Cheshire East Council does not act as a habitat provider. However, the Council may review this position and could potentially offer this service in the future.

13. Incorporation of Additional Biodiversity Features

13.1 In addition to proposals for habitat creation and enhancement as assessed by the biodiversity metric calculation all development proposals must also include proposals for the incorporation of features to enhance the biodiversity of the resulting development. Such features can include:

13.1.1 Features for nesting birds associated with the built environment such as swifts and house sparrows

13.1.2 Green walls and green/brown roofs

13.1.3 Features for roosting bats

13.1.4 Creation of new wildlife ponds and the re-creation of historically lost ponds

13.1.5 Log piles and compost heaps

13.1.6 Provision of gaps in boundary fences to allow access by hedgehogs and provision of hedgehog domes. Hedgehog Highways should be marked out on site to ensure they are not blocked up by future landowners.

14. Implementation of Net Gain

14.1 This section applies to minor applications not affecting natural/semi natural habitat.

14.2 Developments which fall below the threshold which requires the submission of a full biodiversity metric calculation (minor application not affecting natural/semi natural habitats or developments below the thresholds in the Environment Act) must be supported by proposals for the incorporation of features for biodiversity enhancement, as listed above, these would be in addition to any features that may be required to address any adverse impacts resulting from the development.

The Ecological Network

14.3 The Ecological Network is the extent of known ecological assets and incorporates existing protected sites and priority habitats. The network identifies areas to restore and areas that could provide buffers to the network. The ecological network will assist in the provision of nature conservation and ecosystem services that are essential for sustainable development.

14.4 SADPD Policy ENV 1 requires any development proposals in Core Areas or Corridors and Stepping Stone sites as identified by the Cheshire East Ecological Network map to:

14.4.1 Increase the size of core areas

14.4.2 Increase the quality and quantity of priority habitat

14.4.3 Create new priority habitat that can act as stepping stones or corridors.

14.4.4 Increase the structural connectivity between stepping stones in restoration zones

14.5 As described in the earlier sections of this SPD all development proposals are required to deliver a net gain for biodiversity in accordance with SE 3 (5) and ENV 2 of the SADPD. Compliance with Local Plan Core strategy policy SE 3 (5) and ENV 2 as specified in this SPD within Core Areas, Corridors, Stepping Stone and Restoration sites would also make a significant contribution towards compliance with SADPD policy ENV 1 and vice versa.

14.6 The purpose of SADPD Policy ENV 1 is to ensure that where development occurs in any area that is strategically important for biodiversity then the habitat creation delivered by these developments is similarly delivered in a strategic manner to maximise the benefits to enhancing a resilient ecological network within the Borough.

14.7 A detailed and interactive GIS based map, which sets out the extent of the Ecological Network, can be accessed via the Council's [Local Plan Adopted Policies Map 2022](#).

The map includes all policy layers, and the Ecological Network is held under the heading 'Ecology and Nature'. Selecting this option will demonstrate the extent of the ecological network in Cheshire East and the component sites that compromise the network.so

- 14.8 The Ecological Network Map associated with ENV 1 should be used to inform the input in the 'strategic significance' entry on the Biodiversity Metric Calculation spreadsheet.
- 14.9 The Council will expect most developments to deliver the required net gain for biodiversity through habitat creation undertaken within the red line of a planning application. However, where this is not possible the Council will expect any development proposals to identify appropriate offsite opportunities for habitat creation. Developers must use the Council's ecological network map in accordance with the requirements of policy ENV1 when formulating their proposals for biodiversity net gain. An illustration of how this could be achieved is provided in Table 2 below.
- 14.10 Table 2: Illustration of how developments within the zones identified in ENV 1 can meet the relevant policy obligations.

Ecological Network Map Zone	Policy requirements under ENV1	Example of how the policy requirements of ENV 1 may be fulfilled.
Core areas, Corridors and Stepping Sites.	Increase the size of core areas, increase the quality and quantity of priority habitat create new priority habitat that can act as stepping stones or corridors.	<p>Habitat creation such as new ponds, woodland or hedgerow planting or species rich grassland creation to extend the area of any existing priority habitat or designated site present.</p> <p>Habitat Management to increase the value of existing habitats, including measures such as removal of non-native species or the introduction of suitable cutting regime.</p> <p>Creation of new habitats that compliment existing habitats in the broader area to allow wildlife to use these as stepping stones to move between existing habitats in the vicinity.</p>
Restoration Areas	Increase the size of core areas, increase the quality and quantity of priority habitat create new priority habitat that can act as stepping stones or corridors. Increase structural connectivity between stepping stones.	<p>Habitat creation such as new ponds, woodland or hedgerow planting or species rich grassland creation to extend the area of any existing priority habitat or designated site present.</p> <p>Habitat Management to increase the value of existing habitats, including measures such as removal of non-native species or the introduction of suitable cutting regime.</p> <p>Creation of new habitats that compliment existing habitats in the broader area to allow wildlife to use these as stepping</p>

		<p>stones to move between existing habitats in the vicinity.</p> <p>Create linear habitats, such as along water courses or new hedgerows to increase connectivity between existing habitats r designated sites.</p>
Sustainable Land Use Areas	Actively contribute to the integration and creation of appropriate green infrastructure.	<p>Increase the biodiversity value of green infrastructure delivered as part of a development.</p> <p>This can be done by incorporating native species planting in formal open spaces, designing SUDS schemes to maximise their biodiversity value and providing open space with a designing large open space areas with a more naturalistic Country Park type approach.</p>
Mere and Mosses Catchments	Avoid any contamination and hydrological impacts on associated catchments.	Identify the extent of the catchments of any Meres and Mosses sites relevant to a development sites and avoiding any direct impacts on the catchments and ensuring development proposals avoid any discharge of contaminated surface water into the relevant catchment.

14.11

14.12 SADPD Policy ENV1 Requires any developments within the catchment of the Cheshire Meres and Mosses to avoid any contamination and hydrological impacts on the catchment. The catchments for several meres and mosses are shown on the Council's ecological network map. Developers and applicants should however be aware that there are numerous meres and mosses in Cheshire the catchments for which have not been mapped. Identification of meres and mosses and their associated catchments should therefore be undertaken as part of ecological assessment undertaken in support of any future planning applications.

15. Buffering of Important Nature Conservation Sites including Ancient Woodlands

15.1 Ancient woodlands receive protection through Local Plan policy SE3 and paragraph 175 c of the NPPF.

15.2 Ancient woodlands, including plantations on ancient woodland sites, are highly valuable and sensitive to a number of indirect impacts associated with development. To minimise these effects development proposals located adjacent to all ancient woodland must provide undeveloped buffers in accordance with current best practice and Natural England's Standing Advice. The location and size of the buffer required must be informed by an assessment of the potential direct/indirect impacts of the

proposed development that includes consideration of the proposed layout, the hydrology and topography of the proposed development site and woodland and any other relevant factors and be of a minimum of 5m.

- 15.3 Priority Habitats and Species and Local Wildlife Sites also receive protection through Local Plan Policy SE 3. Where development is proposed adjacent to these the provision of undeveloped buffer zones is a suitable means of limiting indirect impacts upon them. Development proposals must therefore include suitable buffers as a means of avoiding these indirect impacts and must be supported by evidence to justify the extent of the undeveloped buffer proposed as part of the scheme.
- 15.4 Proposals for the provision of buffers must take account of any policy requirements for the extent and location of buffers detailed in the relevant Neighbourhood Plan.

16. Monitoring and Facilitation Fee

- 16.1 A Monitoring fee will be payable to the LPA where delivery of the compensation is to take place off-site as per Option 1 (third party land) or Option 2 (purchase of Biodiversity Credits) - this amount will be 10% of the Net gain for biodiversity Sum agreed and be in addition to that Sum.
- 16.2 Where Option 2 (Biodiversity Credit) is the chosen approach, there will also need to be facilitation of delivery by the Council (or third-party Habitat Bank) which will be an additional 10%.
- 16.3 The LPA (or third-party Habitat Bank) will need to facilitate and monitor the Net gain for biodiversity Works (off-site) – this will involve keeping an audit and map of where Biodiversity Units have been lost and what Works are delivered in different locations provide the Net gains for Biodiversity (a Biodiversity Offsetting Spreadsheet and GIS linked map system). Where the LPA is taking on responsibility for off-site Net gain (Option 2) it will need to work with Delivery Partners and ensure Biodiversity Delivery Agreements are in place before funding is passed to the relevant Delivery Partner. The Biodiversity Delivery Agreement will include periodic reporting from the Delivery Partner to the LPA against the relevant Works to be implemented in the Biodiversity Delivery Agreement.
- 16.4 The LPA will also be responsible (along with other relevant Partners) for producing and revising the Leeds Local Nature Recovery Strategy which will clearly state the Biodiversity Priorities for the Leeds District – a draft version will be available on request. There may also be the need to refine the Leeds Habitat Network map (together with any Extensions at Neighbourhood Plan level) and identify Priorities/Opportunities on a map that forms part of the Local Nature Recovery Strategy (as referred to in the Environment Bill).
- 16.5 In order to also contribute towards strategic West Yorkshire biodiversity projects there will be an additional 5% sum. This will be used for projects such as delivering landowner advice to Local Wildlife Site owners and will be allocated at the discretion of the LPA.
- 16.6 Additional sums for each off-site Option summarised below:

- 16.6.1 Option 1 – 15% for monitoring (10%) and strategic biodiversity projects (5%)
- 16.6.2 Option 2 – 25% for monitoring (10%), facilitation (10%) and strategic biodiversity projects (5%)
- 16.7 A Section 106 Agreement will be used to transfer payment from the developer to the LPA and deliver Net gains for Biodiversity Off-site (Options 1 and 2).
- 16.8 It should be noted that once the LPA has set up a formal Net gain for biodiversity system (backed by SPD, Policy and/or the Environment Act) it is likely this will require on-site Net gain to also be monitored – and therefore an additional sum may also be required for monitoring the on-site Net gain delivery.

Legal Fees

- 16.9 Applicants will be required to pay the Council's legal costs as well as their own for drafting and checking legal agreements and will need to provide a solicitor's undertaking to do so. Applicants should also be aware that a solicitor's undertaking and proof of title will be required by Cheshire East Council where applicable.

Typical Conditions

16.10 Condition for securing on site delivery of BNG:

- 16.11 Prior to the commencement of development, a habitat creation method statement and a 30-year habitat management plan for the retained and newly created habitats on site shall be submitted to and approved in writing by the Local Planning Authority. The habitat creation method statement to detail habitat creation and enhancement measures to ensure the delivery of those habitats specified in the biodiversity metric calculations submitted with the applications.
- 16.12 The 30-year habitat management plan shall detail how the newly created, enhanced, and retained habitats will be managed achieve the target condition specified in the Biodiversity Metric Calculations submitted with the application. The habitat management plan to include a schedule of ecological monitoring and reporting and a mechanism to secure the agreement and implementation of contingency measures if monitoring reveals that habitats on site are failing to achieve their target distinctiveness and/or condition.
- 16.13 The development shall be carried out in accordance with the approved details.
- 16.14 Reason: To safeguard biodiversity in accordance with ENV2.

16.15 Condition for submission of features to enhance biodiversity of a consented development:

- 16.16 Prior to the commencement of development, a strategy for the incorporation of features to enhance the biodiversity value of the proposed development is to be submitted to the LPA. The submitted strategy should include proposals for the provision of features for nesting birds including house sparrow and roosting bats, gaps in garden fences to facilitate the movement of hedgehogs, native species planting, brash piles and a

16.17 wildlife pond. The proposals shall be permanently installed in accordance with approved details.

16.18 Reason: to safeguard biodiversity in accordance with the NPPF and Local Plan Policy SE3.

17. Glossary

Development	Defined by the Town and Country Planning Act 1990 as “the carrying out of building, engineering, mining or other operation in, on, over or under land, or the making of any material change of use of any building or other land.” Most forms of development require planning permission, unless expressly granted planning permission via a development order.
Development Plan	This includes adopted Local Plans and Neighbourhood Plans and is defined in Section 38 of the Planning and Compulsory Planning Act 2004
Green Infrastructure	A network of multi-functional green space, urban and rural, which is capable of delivering a wide range of environmental and quality of life benefits for local communities.
Habitats Regulations Assessment	The process that competent authorities must undertake to consider whether a proposed development plan or programme is likely to have significant effects on a European site designated for its nature conservation interest.
Habitat Bank	A parcel of land that can be used to create a significant uplift in biodiversity
Local Plan	<p>The plan for the development of the local area, drawn up by the local planning authority in consultation with the community.</p> <p>In law this is described as the Development Plan Documents adopted under the Planning and Compulsory Purchase Act 2004.</p> <p>Current core strategies or other planning policies, which under the regulations would be considered to be Development Plan Documents, form part of the Local Plan. This term includes old policies which have been saved under the 2004 Act.</p>
Local Plan Strategy	Development Plan Document setting out the spatial vision and strategic objectives of the planning framework for an area, having regard to the Community Strategy.

Local Planning Authority	The local authority or council that is empowered by law to exercise planning functions. In the case of this SPD, the Local Planning Authority is Cheshire East Council.
Local Wildlife Site	An exceptional area of land valuable to wildlife and identified in the local plan
Major Application	<p>Larger scale development – housing of more than 10 units/0.5 hectares; retail, community, recreation or cultural development of more than 1000 square metres</p> <p>Business, storage or distribution of 5000 square metres or above/1 hectare</p> <p>Mineral extraction</p> <p>Waste development</p>
Minor Application	<p>Development of less than 1000 square metres/less than one hectare.</p> <p>Change of use less than 1000 square metres</p> <p>Gypsy and traveller sites of less than 9 pitches</p>
National Described Space Standards	The nationally described space standard is not a building regulation and remains solely within the planning system as a new form of technical planning standard if supported by a local plan policy. It deals with internal space standards within new dwellings and is suitable for application across all tenures
Natural / semi natural habitat	Ecological assemblages that have been substantially modified in their composition, balance or function by human activities
Neighbourhood Plan	A plan prepared by a parish council or neighbourhood forum for a particular neighbourhood area (made under the Planning & Compulsory Purchase Act 2004).
Planning area	School(s) designated to an area for the purposes of pupil place planning.
Red-Line Boundary	The total area of land to which a planning permission will apply
Site Allocations and Development Policies Document	Part of the Local Plan which will contain land allocations and detailed policies and proposals to deliver and guide the future use of that land.

Reserved Matters	Outstanding issues to be determined when an outline application is considered
Supplementary Planning Document	A Local Development Document that may cover a range of issues, thematic or site specific, and provides further detail of policies and proposals in a 'parent' Development Plan Documents.
Sustainability Appraisal	An appraisal of the economic, environmental, and social effects of a plan from the outset of the preparation process to allow decisions to be made that accord with sustainable development.
Strategic Environmental Appraisal	SEA is a process and a tool for evaluating the effects of proposed policies, plans and programmes on natural resources, social, cultural and economic conditions and the institutional environment in which decisions are made.
Viability Study	A report, including a financial appraisal, to establish the profit or loss arising from a proposed development. It will usually provide an analysis of both the figures inputted and output results together with other matters of relevance. An assessment will normally provide a judgement as to the profitability, or loss, of a development.

18. Appendices

Appendix 1: Table of Local Requirements for Protected Species

Heading

Local Requirements for Protected Species. If a planning application involves any of the development proposals shown in the Table below, the relevant protected species survey and impact assessment must be submitted in support of a planning application.	Bats	Barn Owls	Breeding Birds	Great Crested Newt	Otters	Dormouse	Kingfisher	Water Vole	Badgers	Reptiles	White Clawed Crayfish	Lesser Silver Water Beetle
Proposed development which includes the modification conversion, demolition or removal of buildings and structures (especially roof voids) involving the following:	x											
all agricultural buildings (e.g. farmhouses and barns) particularly of traditional brick or stone construction and/or with exposed wooden beams greater than 20cm thick;	x	x										
all buildings with features suitable for bats (i.e. accessible soffit boxes, weather boarding and/or hanging tiles) that are within 200m of woodland and/or water;	x											
pre-1960 detached buildings and structures within 200m of woodland and/or water;	x											
pre-1914 buildings within 400m of woodland and/or water;	x											
pre-1914 buildings with gable ends or slate roofs, regardless of location;	x											

all tunnels, mines, kilns, ice-houses, adits, military fortifications, air raid shelters, cellars and similar underground ducts and structures;	x											
all bridge structures, aqueducts and viaducts (especially over water and wet ground).	x											
Proposals involving lighting of churches and listed buildings or flood lighting of green space within 50m of woodland, water, field hedgerows or lines of trees with obvious connectivity to woodland or water	x	x	x									
Proposals affecting woodland, or field hedgerows and/or lines of trees with obvious connectivity to woodland or water bodies.	x		x			x						
Proposed tree work (felling or lopping) and/or development affecting:												
old and veteran trees that are older than 100 years;	x		x									
trees with obvious holes, cracks or cavities,	x	x	x									
trees with a girth greater than 1m at chest height;	x		x									
Proposals affecting gravel pits or quarries and natural cliff faces and rock outcrops with crevices, caves or swallets.	x		x						x			
Major proposals within 500m of a pond (or similar water body)* (Note: A major proposals is one that is more than 10 dwellings or more than 0.5 hectares or for non-residential development is more than 1000m ² floor area or more than 1 hectare)				x								
Minor proposals within 100m of a pond (or similar water body) *				x								
Proposals directly affecting or within 10m of a pond (or similar water body) *				x				x				x

Proposals affecting the floodplain of a river or within 10m of rivers, ditches, streams, canals, lakes, or other aquatic habitats.	x		x		x		x	x			x	
Proposals affecting 'derelict' land (brownfield sites), allotments and railway land.			x						x	x		
Proposed development affecting any buildings, structures, feature or locations where protected species are known to be present **.	x	x	x	x	x	x		x	x	x	x	x

* The Impact of development on great crested newts is highly variable and site specific, hence these distances are for guidance only. For large developments it may sometimes only be necessary to survey ponds 250m away. Conversely, minor developments may sometimes need to consider ponds further than 100m. An impact assessment in the absence of a full survey may be appropriate in some circumstances.

** Confirmed as present by either a data search (for instance via the local environmental records centre) or as notified to the developer by the local planning authority, and/or by Natural England, the Environment Agency or other nature conservation organisation. Note: a data search not recording any protected species will not in itself be sufficient evidence that such species are not present.

Appendix 2 Template BNG S106

CHESHIRE EAST BOROUGH COUNCIL

Planning Obligation by Deed of Agreement under Section 106 of the Town and Country Planning Act 1990

Cheshire East Borough Council

And

[]

And

[]

And

[]

Relating to Land at []

PLEASE NOTE :This document is a standard form of s106 produced by Cheshire East Council. Individual applications will need alterations and changes to be made to this standard document to tailor it to the specific requirements of the application. However, the Council will not ordinarily agree to change the definitions or clauses 2-16 contained within this document. When you send your agreement to the Council you will need to produce title to the land the subject of the application.

Planning Obligation by Deed of Agreement

under Section 106 of the Town and Country Planning Act 1990
relating to land at

Dated

2023

TABLE OF CONTENTS

1	INTRODUCTION.....	4
2	CONSTRUCTION OF THIS DEED	34
3	LEGAL BASIS	35
4	CONDITIONALITY	35
5	THE OWNER'S COVENANTS AND MORTGAGEE'S ASSENT.....	35
6	THE COUNCIL'S COVENANTS	36
7	MISCELLANEOUS.....	37
8	WAIVER.....	39
9	CHANGE IN OWNERSHIP	39
10	INDEXATION	39
11	INTEREST	40
12	VAT 40	
13	JURISDICTION	40
14	DELIVERY	40
15	NOTICES	40
16	DISPUTES	41
	THE FIRST SCHEDULE	44
	Owner's Covenants with the Council.....	44
	Part 1 - General Provisions	44
	Part 2 - Affordable Housing Provisions.....	45
	Part 3 - Open Space Provisions	56
	Part 4 – Highways provisions	66
	Part 5- Education Provisions	67
	Part 6 – Healthcare Provisions	67
	Part 7 - Biodiversity Net Gain Provisions.....	67

THE SECOND SCHEDULE	75
Council's Covenants.....	75
THE THIRD SCHEDULE.....	78
Nominations Agreement.....	78
THE FOURTH SCHEDULE.....	82
Discounted Sale House Resale Covenant Scheme Clauses	82
THE FIFTH SCHEDULE	88
Approved Landscape and Ecological Management Plan	88

DATE

2023

PARTIES:

- (1) **CESHIRE EAST BOROUGH COUNCIL** of Westfields, Middlewich Road, Sandbach, Cheshire, CW11 1HZ ("Council")
- (2) §(company number) whose registered office is § ("Owner 1")
- (3) §(company number) whose registered office is § ("Owner 2")
- (4) §(company number) whose registered office is § ("Mortgagee")
- (5) §(company number) whose registered office is § ("BNG Owner")
- (6) §[Note - All persons with a legal or beneficial interest in the site should also be joined unless otherwise agreed by the Council: including holders of all third party rights, for example, option holders, tenants, beneficial owners where there is a trust, easement and right of way owners where they are affected by the development]

Owner 1 and Owner 2 shall together be known as "the Owner".

1 INTRODUCTION

- 1.1 The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated.
- 1.2 The Council is the highway authority for the purposes of the 1980 Act for the area in which the Site is situated.
- 1.3 The Council is the education authority for the area in which the Site is situated.

- 1.4 The Owner is the freehold owner of the Site.
- 1.5 The BNG Owner is the freehold owner of the BNG Mitigation Site.
- 1.6 The Mortgagee is the chargee of the Site under Legal Charge dated § registered as Entries § and § in the Charges Register of title §
- 1.7 § has a legal/beneficial interest in the Site through §
- 1.7 The Owner has submitted the Application to the Council and the Parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed, having regard to the provisions of the development plan and the planning considerations affecting the Site.
- 1.8 §The Council resolved on § to approve the Application and grant Planning Permission subject to the prior completion of this Deed. §
- § The Council resolved on § to refuse the Application and the Owner has made an Appeal against the refusal of the Council to grant planning permission for the Application. §
- 1.9 The Parties to this Deed have given due consideration to the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (SI 2010 No.948 (to the extent relevant to the obligations in this Agreement) and the advice set out at paragraph 56 of the NPPF and agree that the planning obligations it contains are:
- (i) necessary to make the Development acceptable in planning terms;
 - (ii) directly related to the Development; and
 - (iii) fairly and reasonably related in scale and kind to the Development.

NOW THIS DEED WITNESSES AS FOLLOWS:

For the purposes of this Deed the following expressions shall have the following meanings

“1980 Act”	The Highways Act 1980
“1990 Act”	the Town and Country Planning Act 1990 (as amended)
“Appeal”	means the appeal lodged in respect of the refusal by the Council of the Application given the appeal reference §
“Application”	the application for § full/outline§ planning permission registered by the Council on the § and allocated reference number §
“Commencement of Development”	<p>the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development begins to be carried out and “Commence Development” shall be construed accordingly.</p> <p>Note – The Council sees no reason why a planning permission should commence and a s106 not take effect at the same time – indeed obligations within this deed may require schemes with layouts prior to commencement of development approved under the planning permission</p>
“Development”	the Development of the Site by the formation of § as set out in the Application.
“Development Manager”	the Council’s senior development management officer or any other officer to whom they delegate some or all of their functions under this Deed

“Dwellings”	The housing built on Site pursuant to the Planning Permission and reference to “Dwelling” shall mean any one of the houses
“Index”	all Items Index of Retail Prices issued by the Office for National Statistics or any successor organisation
“Interest”	interest at 4% (four) per cent above the Bank of England base rate from time to time
“NPPF”	The National Planning Policy Framework published in July 2021 as amended and updated or such policy document as supersedes or replaces it
“Occupation” and “Occupied” and “Occupier”	occupation for the purposes permitted by the Planning Permission
"Parties"	the parties to this Agreement and the word "Party" shall mean any one of them
“Phase”	a part of the Site identified as a construction phase on the Phasing Plan
“Phasing Plan”	a plan to be approved by the Development Manager before Commencement of Development identifying the number, location, extent and programming of construction phases of the whole Site and showing the number of houses to be provided in each Phase and the location and provision of all of the Open Space serving the whole Site
“Plan 1”	the plan attached to this Deed and marked Plan 1

“Plan 2” the plan attached to this Deed and marked Plan 2

“Plan 3” the plan attached to this Deed and marked Plan 3

“Plan 4” the plan attached to this Deed and marked Plan 4

“Plan 5” the plan attached to this Deed and marked Plan 5

Note – all plans should be signed by all parties

“Planning Permission” §the § full/outline§ planning permission subject to conditions granted by the Council pursuant to the Application

§the §full/outline§ planning permission subject to conditions granted pursuant to the Appeal

"Reserved Matters" has the same meaning as in The Town and Country Planning (Development Management Procedure)(England) Order 2015

"S106 Monitoring Officer" the Council's S106 Monitoring Officer for the time being or their successor post or any other officer to whom they delegate their S106 monitoring functions

“Site” the land known as § and registered at Land Registry under title number CH§ against which this Deed may be enforced as shown edged red on the Plan 1

“Working Day”

Monday-Friday of each week save for any bank holidays observed in England.

Affordable Housing Definitions

“Adjoining Parish”

Means the parishes of §§

“Affordable Housing”

Social Rented Housing or Affordable Rented Housing and Intermediate Housing as identified in the NPPF or its successor policy guidance provided to eligible households whose needs are not met by the market, determined with regard to local incomes and local house prices, and which includes provision for the housing to be retained at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision and “Affordable House” shall be construed accordingly

"Affordable Housing Scheme"

means a scheme which specifies in relation to the whole of the Site:

- (a) the Agreed Mix;
- (b) the timing, location and distribution of the Affordable Housing within the Site, ensuring that the Affordable Housing is pepper-potted throughout the Site and not segregated from the Open Market Housing;
- (c) details of how the proposed design and construction of the Affordable Housing will ensure that the Affordable Housing is materially indistinguishable (in terms of outward design and appearance) from the Open Market Housing of similar size within the Development;
- (d) if Shared Equity Sale Houses are to be delivered, the detailed terms of the Shared Equity Sale Scheme, together with the legal mechanisms by which it is to be secured and marketed;
- (e) if Discounted Sale Houses are to be delivered the detailed terms of the Resale Covenant Scheme,

together with the legal mechanisms by which it is to be secured and marketed .

and which may be amended from time to time with the written approval of the HM

"Affordable Housing Units"

The 30% (thirty per cent) of the Dwellings identified pursuant to the Affordable Housing Scheme to be constructed on the Site pursuant to the Planning Permission in accordance with the Affordable Housing Scheme approved by the Council

"Affordable Rented Housing"

Affordable Housing to be let by the RPSH to households whose needs are not adequately served by the commercial housing market at no more than 80% (eighty per cent) of the local Market Rent (including service charges where applicable)

"Agreed Mix"

subject to and in accordance with Paragraph 1.3 of Schedule 1, the number size tenure and mix of Affordable Housing Units approved by the Council in writing and which shall be determined having regard to the identified housing needs within the Council's administrative area

"AHP"

The Affordable Homes Programme of government funding available from 2021 – 2026 that is regulated by Homes England

"Cascade Provision"

The selection of prospective Occupiers given priority in the following order;

1. residents of the Parish
2. residents of an Adjoining Parish
3. residents of § ward
4. residents of §
5. residents from anywhere within Cheshire East

Note – this is only required for Rural Exception/Rural/Green belt sites and consequential amendments will be required through the First Schedule if this is not required

"Chargee"

A chargee or mortgagee and an administrator or receiver (including administrative receivers) howsoever appointed by them or any other person appointed under any security documentation to enable such mortgagee or charge to realise its security and any

successors in title to such mortgagee or chargee

“Cheshire Homechoice Scheme”

A partnership scheme between the Council and RPSH in the area of the Council that enables registration to the scheme by those in Housing Need and maintains a list of those in Housing Need and how urgently they require accommodation and any successor scheme or process for a similar purpose as approved by the Council

“Community Connection”

Means that a person

- Currently lives, or has lived, within the boundaries of the parish or adjoining parish and have done for at least 2 (two) consecutive years
- Has immediate family (sibling, son, daughter, parent, step-parent or adoptive parents) who are currently living within the boundaries of the parish or adjoining parish and have done for at least five years
- Has a permanent contract of employment within the parish or adjoining parish

Note - this is only required for Rural Exception/Rural/Green belt sites and consequential amendments will be required through the First Schedule if this is not required

“Completed”

constructed and fitted out ready for Occupation in accordance with the standards approved in the Affordable Housing Scheme

“Designated Protected Area”

means the area of §insert name of area covered by designation§ where regulations are in place to ensure that rural affordable housing – specifically grant-funded shared ownership properties - remain in the ownership of local people. Where this is the case, providers are required to offer grant-funded shared ownership properties with a lease that contains provisions either

a) to restrict staircasing to no more than 80% (eighty per cent) or that

b) in instances where the leaseholder is permitted to acquire more than 80% (eighty per cent) (i.e. up to full ownership), then there is an obligation on the landlord (or a designated alternative landlord) specified in the lease that commits them to repurchase the property when the leaseholder wishes to sell

"Discounted Sale Houses"

Affordable Housing identified in the Affordable Housing Scheme which is to be sold to Qualifying Persons at the Discounted Sale Price in accordance with the Resale Covenant Scheme which the Owners shall ensure binds the Discounted Sale Houses in perpetuity

"Discounted Sale Price"

no more than 70% (seventy per cent) of Open Market Value

"Disposal"

The sale, transfer, option, gift exchange, declaration of trust, assignment, lease and including a contract for any such disposal and "Disposals" "Dispose" and "Disposed of" shall be construed accordingly

"Homes England"

the non-departmental public body that funds Registered Providers of Social Housing or such other body as may replace it and is recognised as such by the Government

"HM"

the Council's senior housing manager for the time being or any other officer to whom they delegate some or all of their functions

"Housing Need"	living in unsuitable housing conditions and/or being unable to afford suitable housing at open market prices either to rent or to buy
"Intermediate Housing"	homes for sale or rent provided at a cost above Social Rented Housing but below market levels which for the avoidance of doubt may include Shared Ownership Housing, Shared Equity Sale Houses, Discounted Sale Houses or such other similar form of intermediate Affordable Housing approved in writing by the Council
"Local Connection"	<p>means that a person:</p> <ul style="list-style-type: none"> • currently lives or has lived within the administrative area of the Council and has done so for at least 2 (two) consecutive years; or • has immediate family (parent, sibling, child or adoptive parent) who are currently living in the administrative area of the Council and who has done so for at least 5 (five) years; or • has a permanent contract of employment in the administrative area of the Council; or • is a member of the armed forces or former service personnel (within 5 (five) years of their discharge) or a bereaved spouse or civil partner of a member of the armed forces leaving services family accommodation following the death of their spouse or civil partner, or a serving or former member of the reserve forces who needs to move because of a serious injury, medical condition or disability sustained as a result of such membership; or • has other significant connections to the administrative area of the Council such that in the reasonable opinion of the HM, they should be eligible for Affordable Housing within the administrative area of the Council
"Market Rent"	the estimated amount for which the relevant Dwelling should lease (let) on the date of valuation between a willing lessor and willing lessee on appropriate lease terms in an arms length transaction after proper marketing wherein the

parties had acted knowledgeably, prudently and without compulsion

"Nominations Agreement"

an agreement between the Council and a RPSH establishing a process for nominating Qualifying Persons as tenants for a percentage of the Social Rented Dwellings and the Affordable Rented Housing substantially in the form appended at the Third Schedule

"Open Market Housing"

Dwellings constructed on the Site pursuant to the Planning Permission which are not identified as Affordable Housing Units in the Affordable Housing Scheme

"Open Market Value"

s

(a) in relation to Social Rented Housing Affordable Rented Housing and Shared Ownership Housing such open market value as is agreed between the Owner and the Registered Provider;

(b) in relation to the Discounted Sale Houses and the Shared Equity Sale Houses such open market value as is agreed between the Owner and HM;

h case assessed in general accordance with the Red Book of the Royal Institution of Chartered Surveyors as amended from time to time

"Parish"

Means the parish of §

"Qualifying Persons"

persons approved by the HM in writing who have demonstrated that they are In Housing Need, will Occupy Affordable Housing as a sole or main residence and who have a Local/Community Connection and "Qualifying Person" shall be construed accordingly

"Registered Provider of Social Housing" and "RPSH"	mean a registered provider of social housing within the meaning of Section 80(2) of Part 2 of the Housing and Regeneration Act 2008 (including any statutory replacement or amendment) as registered with Homes England
"Resale Covenant Scheme"	a scheme approved in writing by HM which restricts the sale price of the Discounted Sale Houses to the Discounted Sale Price and restricts owner-occupation to Qualifying Persons and the terms upon which such occupation and /or sale or transfer of such Dwellings may take place within the parameters set out in the First Schedule such scheme to be substantially in the form set out at the Fourth Schedule with such modifications and amendments as may be agreed in writing by the HM
"Rural Exception Site"	Small sites used for affordable housing in perpetuity where sites would not normally be used for housing
"Serviced Condition"	in relation to the land to be used for Affordable Housing the remediation of the land to a standard fit for its end use and the provision of roads, sewers, gas, wheelchair access, electricity and telecommunications to the boundary of the said land in accordance with a scheme which has first been submitted to and approved by the Council
"Shared Equity Sale Houses"	those Affordable Housing identified in the Affordable Housing Scheme which are to be sold subject to a Shared Equity Sale Scheme to Qualifying Persons
"Shared Equity Sale Scheme"	a scheme approved in writing by the HM which controls the permitted sale price of the Shared Equity Sale Houses, the categories of persons who are eligible to own and/or occupy the

Shared Equity Sale Houses and the terms upon which such occupation and/or Disposal of such houses may take place and which provides for a subsidy up to 30% (thirty per cent) of the purchase price secured on the Shared Equity Sale Houses by way of second charge and redeemed in accordance with, and on such legally binding terms, as the HM may reasonably require

"Shared Ownership Housing"	Affordable Housing sold and leased by a RPSH on Shared Ownership Terms as HM may approve
"Shared Ownership Terms"	terms of disposal contained in model shared ownership leases published by the Homes England from time to time whereby (i) a RPSH sells shares in the equity of a dwelling to an occupier who pays rent upon the remainder and §(ii) Staircasing to 100% (one hundred per cent)of the equity of the dwelling is allowed; § (ii) Staircasing to 80%(eighty percent) of the equity of the dwelling is allowed in accordance with the Designated Protected Area
"Social Rented Housing"	Affordable Housing let by a RPSH at a Target Rent to tenants eligible for social housing
"Staircasing"	the exercise by the owner-occupier of a Shared Ownership Housing of the right to purchase additional equity shares up to §100% (one hundred percent)§80% (eighty percent)§ of the entire interest in the dwelling after which the rent payable on any equity share retained by the RPSH shall be reduced proportionally
"Surplus Sale Proceeds"	any sums received by a RPSH by way of Staircasing or exercise of a tenants right to acquire so far as such sale proceeds exceed:

- (a) all capital debt incurred by the RPSH in relation to the relevant dwelling including interest and costs thereon; and
- (b) all related costs in respect of the purchase and sale of the relevant dwelling or an equity share in the relevant dwelling

"Target Rent"

target rents for social rented housing (or its equivalent) as published from time to time by Homes England (or such other body as may replace Homes England, having responsibility for setting target rents for social housing)

"Transfer"

the transfer of the freehold or grant of a lease for a term of at least 125 (one hundred and twenty five) years unless otherwise agreed in writing with the Council and "Transferred" shall be construed accordingly

Education Definitions

"BB103"

means the document described as Building Bulletin 103 and entitled "Area Guidelines for Mainstream Schools" published by the Department for Education and the Education Funding Agency and dated June 2014 including any document which from time to time replace (in whole or part) that document

"BB104"

means the document described as Building Bulletin 104 and entitled "Area Guidelines for SEND and alternative provision" published by the Department for Education and the Education Funding Agency and dated December 2015 including any document which from time to time replaces in whole or in part that document

"Education Contribution"

means the Primary Education Contribution, the Secondary Education Contribution and the Special Education Needs Contribution

“Education Index”	Means the BCIS (Building Cost Information Service) all in tender price index
“Education Purposes”	Means the purpose for which the Education Contribution is paid as set out in the definitions of Primary Education Contribution, Secondary Education Contribution and Special Education Needs Contribution
“Local Factors”	Means the factors which will be taken into account (in addition to the Primary Education Provision Factors, the Secondary Education Provision Factors or the Special Education Needs Provision Factors as appropriate) by the Council in relation to the provision of additional and / or replacement educational facilities for children of school age namely the need for process involved in and outcome of any consultation which is necessary under the School Organisation (Prescribed Alterations to Maintained Schools)(England) Regulations 2013 and the School Organisation (Establishment and Discontinuance of Schools) Regulations 2013, the purchase or other acquisition of any necessary land and / or rights for the provision of such facilities, the need to obtain and the terms of any approval of the Secretary of State for Education under section 77 of the School Standards and Framework Act 1998, the need for and if necessary obtaining of any planning permission for such facilities and (where appropriate) the organisation of classrooms and other accommodation within the school(s) concerned and the ability of the Council to enforce the expansion of the school(s) concerned where any such school is its own admission authority
“Primary Education Contribution”	means the sum of £§ (§ Pounds) towards the costs of the provision of sufficient classroom(s) and/or additional or alternative accommodation having regard to the need for specialist educational facilities within the school(s) concerned, in

accordance with BB103 and associated ancillary building areas (including but not limited to hall, office, group room) plus any required external works such as (but not exclusively) playground, playing field, car park; for the § (§) pupils of primary school age that can be expected to be generated (in accordance with BB103) by the development; such classroom(s) and/or facilities to be provided (at the sole discretion of the Council as the local education authority and having regard to the application of the Primary Education Provision Factors and the Local Factors) at one of the Primary Schools located within 2 miles of the Development. **Primary Schools currently located within 2 miles (or catchment) of the development include §**

“Primary Education Provision Factors” means the factors to be taken into account in respect of the provision of buildings and / or facilities to accommodate children of primary school age as set out in BB103 including the provision of net area and / or non-net area accommodation as described in BB103

“Secondary Education Contribution” means the sum of £§(§Pounds) towards the costs of the provision of sufficient classroom(s) and / or additional or alternative accommodation having regard to the need for specialist educational facilities within the schools concerned in accordance with BB103 and associated ancillary building areas (including but not limited to hall, office, group room) plus any required external works such as (but not exclusively) playgrounds, playing fields, car parks; for the § (§) pupils of secondary school age that can be expected to be generated (in accordance with BB103) by the Development; such classroom(s) to be provided (at the sole discretion of the Council as the local education authority and having regard to the application of the Secondary Education Provision Factors and the Local Factors) at one of the Secondary School(s) located within 3 miles of the Development., **Secondary Schools currently**

located within 3 miles (or catchment) of the development include §

“Secondary Education Provision Factors” means the factors to be taken into account in respect of the provision of buildings and / or other facilities to accommodate children of secondary school age as set out in BB103 including the provision of net area and non-net area accommodation as described in BB103

“Special Education Contribution” Needs means the sum of £§ (§Pounds) towards the costs for sufficient classroom(s) and/or additional or alternative accommodation having regard to the need for specialist educational facilities within the schools concerned in accordance with BB104 and associated ancillary building areas (including but not limited to hall, office, group room) plus any required external works such as (but not exclusively) playgrounds, playing fields and car parks for the § (§) pupils with a SEN need that can be expected to be generated (in accordance with BB103) by the Development such classroom or other facilities to be provided (at the sole discretion of the Council as the local education authority and having regard to the application of the Special Education Provision Factors and the Local Factors) at §, or at such other school catering for Special Educational Needs as may be being provided within ten years of the payment of the Education Contribution or in the event that the Council triggers the need for a new school

“Special Education Provision Factors” Needs means the factors to be taken into account in respect of the provisions of buildings and/or facilities to accommodate children of Special Education Needs school age as set out in BB104 including the provision of net area and/or non-net area accommodation as described in BB104

Highways Definitions

“Bus Shelter Contribution”	means the sum of £§ (§ pounds) as a contribution towards the provision and/or improvement of bus shelters located in the vicinity of the Site the need for which arises directly from the Development
“Footpath Contribution”	the sum of £§ (§ pounds) towards the Council`s costs of improving pedestrian links from the Site to §
“Highways Contribution”	The sum of £ § (§pounds)
“Highways Index”	Construction Output Price Index (New Works) (OPI)
“Highways Works”	Works for mitigating the traffic and transportation impacts of the Development through §
“Traffic Management Contribution”	means the sum of £§ (§ pounds) as a contribution towards the costs of implementing traffic management measures, the need for which arises directly from the Development
“Traffic Regulation Order”	An order under the Road Traffic Regulation Act 1984 to regulate the §parking of vehicles/speed of vehicles§ on highways within the vicinity of the Site
“TRO Contribution”	The sum of £ § (§pounds)
“TRO Works”	The funding of a Traffic Regulation Order to regulate the parking of vehicles on highways in the vicinity of the Site which shall include all reasonable advertising administrative and legal costs involved in the making of the Traffic Regulation Order and provision of road

markings and signs, the need for which arises directly from the Development

Open Space Definitions

“Allotments”	an area of §m ² for use as allotments to be provided on the Site within the Open Space
“Allotment Contribution”	The sum of £§(§pounds) to be paid to the Council for the improvement of existing allotments in § in place of the provision of allotments within the Site and the need for which arises directly from the Development
“Allotment Purposes”	the addition, improvement and enhancement of the allotments at § together with all proper and reasonable professional fees and administrative expenses directly attributable thereto to the end and intent that the said monies shall be used towards additions, improvements and enhancements for § allotments within a 15 year period from receipt from the Owner
“Certificate”	means a certificate containing a summary of the Expenditure and specifying the amount of the Estate Service Charge for any Financial Year.
“Ecological Works and Habitat Management Scheme”	A scheme setting out works to increase the ecological value of the §Pond §Woodland Area§ for §amphibians§ general biodiversity§, and the long term management proposals
“Estate Service Charge”	an estate service charge forever charged on and issuing out of the Site and representing a fair and proper proportion of the Expenditure applicable to the particular Dwelling and payable annually to the Management Company in respect of its administration and of insuring and maintaining, repairing and as

necessary renewing the Open Space in accordance with the Management Scheme and Ecological Works and Habitat Management Scheme

“Expenditure”

the aggregate of all costs, charges, expenses and outgoings whatsoever incurred by the Management Company in relation to the insurance, maintenance, repair, cleansing, and where necessary renewal of the Open Space all in accordance with the Management Scheme and Ecological Works and Habitat Management Scheme

“Financial Year”

each year ending on 31st December or such other date as the Management Company shall determine

“Local Area Play”

“LAP”

An unsupervised equipped play area containing at least 3 (three) different fixed items of play equipment (including one multi unit) which are suitable for use by toddlers designed and laid out to meet relevant safety standards for play facilities (which shall be the appropriate European Standard), in the area shown hatched § on the Plan

“Locally Equipped Area for Play”

“LEAP”

An unsupervised equipped play area containing at least 5 (five) different fixed items of play equipment (including one multi unit) which are suitable for use by children of early school age (aged 4-10 years old) designed and laid out to meet relevant safety standards for play facilities (which shall be the appropriate European Standard), in the area shown hatched § on the Plan

“Maintenance Sum”

a sum calculated by the Council to cover the ongoing management and maintenance of the Open Space for a period of 15 (fifteen) years from the date of transfer to the Council/§ based on the actual costs of the management and maintenance tasks required to be carried out to

the Open Space as identified in the Management Scheme

“Management Company”	A limited company with the purpose of managing the Open Space within the Development in accordance with the Management Scheme and Ecological Works and Habitat Management Scheme
“Management Scheme”	A scheme for the future management and maintenance of the Open Space that identifies the maintenance requirements for the Open Space including all ongoing maintenance operations, specifically identifying the management objective, task and the timing and frequency of the operation for all the features of the Open Space to include hard and soft landscaping, surfacing materials, furniture, play equipment, refuse or other storage units, signs, lighting, boundary treatments, trees, shrubs and hedge plants and details of who is to undertake the on-going future maintenance of the Open Space to ensure that the Open Space remains safe and available for public use based on the draft Management Scheme attached to this Deed at the Sixth Schedule
“Multi Use Games Area” “MUGA”	A hard surfaced fenced area to meet with Sport England standards
“Neighbourhood Equipped Area Play” “NEAP”	An unsupervised equipped play area containing at least 8 (eight) different fixed items of play equipment (including one multi unit) which are suitable for use by children of early school age (aged 4-10 years old) designed and laid out to meet relevant safety standards for play facilities (which shall be the appropriate European and Fields in Trust Standards) associated with a kick about area, in the area shown hatched § on the Plan

“Offsite Green Space Contribution”	The sum of £\$(£pounds) to be paid by the Owner to the Council for § at § in place of provision of amenity greenspace within the Site and the need for which arises directly from the Development
“Offsite Play Contribution”	The sum of £\$(£pounds) to be paid by the Owner to the Council for § at § in place of the provision of an equipped children’s play area within the Site and the need for which arises directly from the Development
“Open Space”	All the areas of open space within the Development and identified within the Phasing Plan and detailed in the Open Space Scheme to be provided by the Owner including formal and informal recreation areas, §the LEAP, §LAP, §NEAP, §MUGA, the Play Space, Allotments, Teen Facilities, Outdoor Gym, incidental green spaces around the Development outside of residential curtilage, pedestrian and cycle links, wildlife habitats, landscaping belts and drainage areas as shown outlined/hatched § on the Plan
“Open Space Scheme”	a scheme approved by the Development Manager in respect of each Phase detailing (i) the size location and type of Open Space (ii) details and specifications for works and materials showing how the Open Space will be graded, drained, landscaped, seeded, planted, laid out and provided fit for use by the public (iii) in relation to §the LEAP, §LAP, §NEAP, §MUGA and Teen Facilities details of the design and layout of the area, the construction specification, the safety surfacing, materials and play equipment, demonstrating that they meet relevant European safety and disability standards, together with details of fencing, seating for supervising adults and a buffer zone landscaped with low level planting, (iv) in relation to the Outdoor Gym the detailed plan, specification for construction, works and materials demonstrating that they meet relevant European safety and disability standards (v) in relation to the Allotments a detailed plan and

specification for the construction and laying out of the Allotments, including details of secure fencing, the water supply serving the Allotments, number of standpipes (each standpipe serving 5 plots), toilets, bitmac parking area for the tenants of the Allotments, hardstanding delivery area and accessible paths (vi) a specification of the construction method and materials to be used

“Open Space and Amenity Land Commuted Sum” the sum of £§ (§pounds) to cover deficiencies in the provision of open space and amenity land within the Development as identified by the Council the need for which arises directly from the Development

“Open Space and Amenity Land Purposes” towards works of addition, improvement and enhancement together with all proper and reasonable professional fees and administrative expenses directly attributable thereto to the end and intent that the said monies shall be used towards additions, improvements and enhancements of § and at § within the period of § years from receipt from the Owner

“Outdoor Gym” A gym of 16 (sixteen) activities to be provided on the Open Space on the Site

“Play Space” The play space to be provided by the Owner within the Site in the area hatched § on Plan§

“Pond” The area shown hatched/edged blue on Plan §

“Recreation and Outdoor Sports Facilities Commuted Sum” the sum of £§ (§ Pounds) to cover the deficiencies in the provision of recreation and outdoor sports facilities within the Development as identified by

the Council the need for which arises directly from the Development

“Recreation and Outdoor Sports Facilities Purposes” towards works of addition, improvement and enhancement to the sports pitches and sports facilities together with all proper and reasonable professional fees and administrative expenses directly attributable thereto to the end and intent that the said monies shall be used towards additions, improvements and enhancements of § and at § within the period of § years from receipt from the Owner

“Service Charge Payment Date” the date of completion of the transfer of each Dwelling comprised in the Development and thereafter on 1st January in each year

“Teen Facilities” An area allocated for teenagers to include a combination of items such as a hang out shelter/seating area, BMX/skate facility, climbing wall, table tennis located near the NEAP and MUGA in line with Fields in Trust standards

“Woodland Area” The area shown hatched/edged blue on Plan §

Biodiversity Net Gain Definitions

“BNG” means Biodiversity Net Gain

“Biodiversity Metric Calculation” an assessment of biodiversity which calculates the biodiversity impact of a development, or change in land management, in biodiversity units

“BNG Mitigation Site”	the land known as § and registered at Land Registry under title number CH§ against which this Deed may be enforced shown edged red on Plan 2 where the § biodiversity units shall be provided for the purpose of achieving the BNG for the Development		
“Biodiversity Site Management Period”	Site	Management	means the period of 30 (thirty) years from the issue of the Habitat Creation Completion Certificate
“Biodiversity Plan”	Site	Management	<p>§means the management plan for the BNG Mitigation Site which shall include the following-</p> <ul style="list-style-type: none"> (a) the principles of habitat management to be applied; (b) the management protocols for the BNG Land to be employed for the Biodiversity Site Management Period; (c) the timing and frequency of management activities works and actions and maintenance works activities and actions to be implemented throughout the Biodiversity Site Management Period; (d) A reporting process whereby the Nature Conservation Officer shall be informed of any ecological issues on the BNG Mitigation Site, which report shall include an assessment of the cause of the issue and potential remedy for the reported issue and a timetable for implementation of any measures approved by the Nature Conservation Officer;

- (e) A process for submitting written requests to the Nature Conservation Officer to amend the Biodiversity Site Management Plan. §

§ means the document reference § submitted as part of the Application§

“BNG Ecologist”

means the ecologist who shall be responsible for implementation of the Habitat Creation Works, the Biodiversity Site Management Plan and Ecological Monitoring Strategy and preparing and submitting Ecological Monitoring Reports

“Ecological Monitoring Report”

means the report to be submitted in accordance with paragraph § of Part 7 of the Second Schedule in accordance with the Ecological Monitoring Strategy

“Ecological Monitoring Strategy”

§ means the monitoring strategy for the BNG Mitigation Site which shall include the following:

- (a) The frequency of monitoring visits and the monitoring methods to be employed, including the minimum qualifications and experience of those undertaking or assisting in the monitoring process;
- (b) The monitoring methodologies used to assess the progress of the habitats created towards their target condition and target distinctiveness;
- (c) The method of reporting the results of monitoring and the data to be supplied to the Nature Conservation Officer with each Ecological Monitoring Report submitted pursuant to the Ecological Monitoring Strategy;
- (d) The monitoring results which are the agreed triggers for the BNG Ecologist to prepare a

programme of remedial actions and measures with an accompanying timetable for the written approval of the Nature Conservation Officer; §

§ means the document reference § submitted as part of the Application§

“Habitat Creation Certificate” Completion means a written certificate issued by the Nature Conservation Officer confirming that the Habitat Creation Works have been completed to his satisfaction

“Habitat Creation Statement” Method Means the method statement for the delivery of the habitat creation or enhancement works sufficient to deliver the required Biodiversity Units, as detailed in the submitted document reference §

“Habitat Creation Works” means habitat creation works undertaken at the BNG Mitigation Site in accordance with the Habitat Creation Method Statement, the completion of which is to be evidenced by the issue of a Habitat Creation Completion Certificate and for the avoidance of doubt these works are to develop and create the biodiversity habitats only and does not cover the subsequent management of the habitat following initial habitat creation works

“Nature Conservation Officer” means the Council’s Nature Conservation Officer for the time being or their successor post or any other officer to whom they delegate their nature conservation management functions

Healthcare Definitions

“Healthcare Contribution”	the sum of £\$ (§ pounds) for the Healthcare Contribution Purposes
“Healthcare Contribution Purposes”	Works towards § at § the need for which arises directly from the Development
“Healthcare Provider”	The body who the Healthcare Contribution will be paid to by the Council to carry out the Healthcare Contribution Purposes

OVERAGE

“Actual Land Acquisition Costs”	<p>The actual value of the Site at the date it is acquired from the Owner being the aggregate of the following:</p> <ul style="list-style-type: none"> (a) the price paid by the buyer of the Site to the Owner; and (b) an amount equal to any discount from market value allowed by the Owner to the buyer of the Site in accordance with an option agreement
“Assessment Date”	the date upon which completion of the Disposal of the fiftieth to last Dwelling takes place or is deemed have taken place
“Base Profit”	The Gross Development Value for the Open Market Housing multiplied by § % added to the Gross Development Value for the Affordable Housing multiplied by § % to ascertain the developer’s profit for the scheme
“Costs”	The total costs of the development to be determined by adding the total development costs (as shown at the end of Table 2 of the Residual Development Profit Appraisal) to the total of the cost of bank finance (as

shown at the end of Table 3 of the Residual Development Profit Appraisal).

“Disposal”	A transfer or lease of a Dwelling and “Disposals” “Dispose” and “Disposed of” shall be construed accordingly
“Dwellings”	the houses built on the Site pursuant to the Planning Permission and reference to “Dwelling” shall mean any one of the houses
“Extras”	The price received by the Owner for the supply of any extra items over and above the relevant Standard Specification including carpets, curtains, conservatories, soft furnishings and white goods provided by the Owner on the Disposal of the Dwelling;
“Gross Development Value”	the composite sum of the Sales Value for each of the Dwellings as set out in Table 1 of the Residual Development Profit Appraisal
“Incentives”	<p>any items properly provided by the Owner to a buyer on a Disposal by way of an incentive on the sale of the relevant Dwelling (provided that all Extras shall be excluded from the calculation of Incentives) including:</p> <p>(a) the evidenced cost of any items (for example, but not limited to, carpets, curtains, soft furnishings and white goods) included in the sale of the relevant Unit in respect of which no additional payment is made by the purchaser of the Dwelling;</p> <p>(b) the payment of the purchaser’s solicitor’s and/or surveyor’s costs and expenses and/or purchaser’s removal costs, stamp duty land tax and/or any other expenditure paid or reimbursed by the developer which a purchaser of a Dwelling would reasonable be expected to have incurred; and</p> <p>(c) the amount of any discount, deposit paid arrangement, allowance, cashback or other sales incentive</p>
“Independent Surveyor”	the person appointed under the provisions of paragraph § of Part 8 of the First Schedule

“Overage”	<p>The amount by which any Surplus Profit for the development exceeds the Base Profit, calculated and determined in accordance with the Residual Development Profit Appraisal prepared following the Assessment Date in accordance with the provisions of Part 8 of the First Schedule and such that:</p> <p>the Overage is the sum obtained (if any) by deducting the Base Profit from the Surplus Profit and is subject to the Overage Cap</p>
“Overage Cap”	the sum of £§ (§ pounds)
“Residual Development Profit Appraisal”	an open-book financial viability appraisal of the Development in accordance with the Sixth Schedule dealing with the Development as it exists at the relevant date or in a form similar to that contained in the Sixth Schedule or as may otherwise be proposed by the Owner and agreed by the Council in writing such agreement not to be unreasonably withheld or delayed
“Sales Value”	The price or premium which the Owner receives as consideration for the Disposal of a Dwelling net of Incentives and Extras
“Security Units”	the last § Dwellings to be sold at the Site as permitted by the Planning Permission (and ‘Security Unit’ means any one of them)
“Standard Specification”	the developer’s standard specification for the relevant house-type in use at the time when the relevant Dwelling is sold
“Surplus Profit”	the amount (if any) by which the Gross Development Value exceeds the Costs as shown in Table 4 of the Residual Development Profit Appraisal

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 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 against each individually unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to its statutory functions.
- 2.7 The headings and contents list are for reference only and shall not affect construction.
- 2.8 Any obligation, covenant, undertaking or agreement by any party to this Deed not to do any act or thing includes an obligation, covenant, undertaking or agreement not to permit, procure or allow the doing of that act or thing.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the 1990 Act and section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011 and (in relation to Affordable Housing matters) Section 609 of the Housing Act 1985 with the intention that it shall bind the Parties interests in the Site.
- 3.2 The covenants, restrictions and requirements imposed upon the Parties under this Deed create planning obligations pursuant to Section 106 of the 1990 Act and are enforceable by the Council as local planning authority against the Parties and to the extent that any of the obligations are not planning obligations within the 1990 Act they are entered into pursuant to the powers contained in s111 Local Government Act 1972, s33 Local Government (Miscellaneous Provisions) Act 1982 and s1 Localism Act 2011 and all other enabling powers.

4 CONDITIONALITY

- 4.1 This Deed shall come into effect upon the issue of the Planning Permission except for clause 7.1, 9, 13, 14, 15 and 16 which shall come into effect immediately upon completion of this Deed.

Note – the Council sees no reason for the s106 to take effect otherwise than from the point of issue of the planning permission, and obligations within this deed may require schemes with layouts, or other obligations to occur prior to commencement of the planning permission

5 THE OWNER'S COVENANTS AND MORTGAGEE'S ASSENT

- 5.1 The Owner covenants with the Council

5.1.1 as set out in the First Schedule;

- 5.1.2 not to encumber or otherwise deal with their interest in the Site or any part or parts thereof in any manner whatsoever whereby the obligations, covenants and undertakings imposed by this Agreement are rendered impossible to carry out;

5.1.3 To notify the Council's S106 Monitoring Officer within five Working Days of the occurrence of the following dates:

- Commencement of the Development; and
- Occupation of the first Dwelling within each Phase of the Development; and
- Commencement of construction of the Affordable Housing Dwellings; and
- Occupation of the first Affordable Housing Dwelling within the Development;

[Note – further notifications may need to added dependant upon trigger points contained within the obligations]

5.1.4 that there are no interests (legal or equitable) required for the purposes of S106 in the Site other than detailed in this Deed.

5.2 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

5.3 § acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the covenants and obligations contained in this Deed and that the operation and exercise of their interest shall take effect subject to this Deed.

6 THE COUNCIL'S COVENANTS

6.1 The Council covenants with the Owner

6.1.1 as set out in the Second Schedule

6.1.2 Following receipt of any payments or financial contributions from the Owner pursuant to any obligations contained in this Deed,

- (a) to place the payments or financial contributions on deposit in the Council's Bank accounts (as the Council in its sole discretion shall decide) and to attribute a rate of interest thereon; and
- (b) to apply such payments or financial contributions only for the purposes specified in this Deed provided that the Council will be entitled to treat any accrued interest as if it were part of the principal sum paid by the Owner and for the avoidance of doubt the Council may apply all or any part of such payments to costs already incurred at the date of payment in pursuit of the purposes specified in this Deed.

7 MISCELLANEOUS

- 7.1 The Owner shall pay to the Council on completion of this Deed the reasonable legal and planning costs of the Council in the sum of £\$ (\$ pounds) incurred in the negotiation, preparation and execution of this Deed.
- 7.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 7.3 This Deed shall be registerable as a local land charge by the Council.
- 7.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given by the Development Manager unless otherwise stated.
- 7.5 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 7.6 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or expires prior to the Commencement of Development.

- 7.7 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest provided that the notice required by Clause 9 has been given.
- 7.8 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 7.9 Without prejudice to the Council's statutory rights of entry the Owner shall permit the Council and its authorised employees and agents upon reasonable written notice to enter the Site at all reasonable times for the purpose of verifying whether or not any obligation arising hereunder has been performed or observed.
- 7.10 The obligations contained in this Deed shall not be binding upon nor enforceable against any statutory undertaker or other person who acquires any part of the Site or interest therein for the purposes of the supply of electricity gas water drainage telecommunication services or public transport services.
- 7.11 The obligations to pay the §Education Contribution/Offsite Green Space Contribution/Offsite Play Contribution/Recreation and Outdoor Sports Facilities Commuted Sum/Open Space and Amenity Land Commuted Sum/Highway Contribution/Bus Shelter Contribution/Footpath Contribution/Traffic Management Contribution/TRO Contribution/Healthcare Contribution§ pursuant to provisions of paragraph § of Part 3§, 4§ and 5§ of the First Schedule to this Deed shall not be enforceable against an owner/occupier or tenants or their successors in title (or in either case their respective mortgagees) of a Dwelling Disposed of pursuant to the Planning Permission PROVIDED THAT on the date of first Disposal of the Dwelling any payment which has become due as at the date of such Disposal pursuant to the provisions of Part § of the First Schedule has been made and FOR THE AVOIDANCE OF DOUBT an owner/occupier or tenant or their successors in title (or in either case their respective mortgagees) of that Dwelling shall not be liable for any payment that was not due at the date of the first Disposal of that Dwelling nor for any payment that becomes due after the date of first Disposal of that Dwelling.
- 7.12 The exemption from liability in clause 7.11 shall be suspended for Dwellings in the event that at the time of first Disposal any payments due under this Agreement are outstanding and shall remain suspended until all outstanding

payments plus the required Interest shall have been paid and PROVIDED THAT any restriction on Occupation in this Deed shall remain enforceable against any owner/occupiers or tenants (or their mortgagees) occupying a Dwelling in breach of such restriction.

8 WAIVER

- 8.1 No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

9 CHANGE IN OWNERSHIP

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

10 INDEXATION

- 10.1 Unless otherwise referred to below, any sum referred to as due in the First Schedule shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable.
- 10.2 The Highways Contribution/TRO Contribution/Footpath Contribution/Bus Shelter Contribution/Traffic Management Contribution referred to as due in the First Schedule shall be increased by an amount equivalent to the increase in the Highways Index from the date hereof until the date on which such sum is payable.
- 10.3 The Education Contribution referred to as due in the First Schedule shall be increased by an amount equivalent to the increase in the Education Index from the date hereof until the date on which such sum is payable.

11 INTEREST

- 11.1 If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

12 VAT

- 12.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

13 JURISDICTION

- 13.1 This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the Courts of England.

14 DELIVERY

- 14.1 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

15 NOTICES

- 15.1 In this Clause:

- 15.1.1 'The Council's address' means the address of the Council shown on the first page of this Deed or such other address as the Council may from time to time notify to the Owner and its successors as being its address for service for the purposes of this Deed
- 15.1.2 'The address of the Owner' means the address shown on the first page of this Deed or such other address as it may have from time to time notified to the Council as being its address for service for the purposes of this Deed
- 15.1.3 'The address of the Mortgagee' means the address shown on the first page of this Deed or such other address as it may have from time to time notified to the Council as being its address for service for the purposes of this Deed

[Note -Add any other party with an interest in the Site]

- 15.2 Any notice or other communication given or made in accordance with this Deed shall be in writing and:

- 15.2.1 May (in addition to any other effective mode of service) be delivered personally or sent by registered or recorded delivery or prepaid first class letter post or its equivalent and
- 15.2.2 Shall in the case of a notice or other communication to the Council be served on the Council at the Council's address addressed to its Planning S106 Monitoring Officer
- 15.2.3 Shall in the case of a notice or other communication to the Owner be served on the Owner at the address of the Owner
- 15.2.4 Shall in the case of a notice or other communication to the Mortgagee be served on the Mortgagee at the address of the Mortgagee

[Note - Add any other party with an interest in the Site]

15.3 Notices shall not be sent by email or DX

16 DISPUTES

16.1 One Party may by serving notice on all the other Parties (the **Notice**) require a dispute to be referred to an expert for determination.

16.2 The Notice must specify:

16.2.1 The nature, basis and brief description of the dispute;

16.2.2 The Clause or paragraph of a Schedule or Appendix pursuant to which the dispute has arisen; and

16.2.3 The proposed expert.

16.3 The expert may be agreed upon by the Parties and in the absence of such agreement within one month of the date that the Notice is issued pursuant to clause 16.1 either Party may request that the following nominate the expert at their joint expense:

16.3.1 If such dispute relates to matters concerning the construction, interpretation and/or the application of this Agreement, the Chairman of the Bar Council to nominate the expert;

16.3.2 If such dispute relates to matters requiring a specialist chartered surveyor, the President of the Royal Institute of Chartered Surveyors to nominate the expert;

- 16.3.3 If such dispute relates to matters requiring a specialist chartered civil engineer or specialist transport advice, the President of the Institution of Civil Engineers to nominate the expert;
 - 16.3.4 If such dispute relates to matters requiring a specialist chartered accountant, the President of the Institute of Chartered Accountants in England and Wales to nominate the expert;
 - 16.3.5 If such dispute relates to Affordable Housing the expert shall be nominated by the President of the Royal Town Planning Institute; and
 - 16.3.6 In all other cases, the President of the Law Society to nominate the expert as he thinks appropriate including joint experts
- 16.4 If an expert nominated or appointed pursuant to clause 16 shall die or decline to act another expert may be appointed in his place in accordance with the provisions of clause 16.9.
- 16.5 The expert will be appointed subject to an express requirement that he reaches his decision and communicates it to the Parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 20 (twenty) Working Days from the date of the notice of his appointment which is served on the parties pursuant to clause 15.
- 16.6 Notice in writing of the appointment of an expert pursuant to this clause 16 shall be given by the expert to the Parties and he shall invite each of the Parties to submit to him within 10 (ten) Working Days written submissions and supporting material and will afford to each of the said Parties an opportunity to make counter submissions within a further 5 (five) Working Days in respect of any such submission and material.
- 16.7 The expert shall act as an expert and not as an arbitrator. He shall consider any written representation submitted to him within the period specified in clause 16 and shall not be in any way limited or fettered thereby and shall determine the dispute in accordance with his own judgement.
- 16.8 The expert shall give notice of his decision in writing and his decision will (in the absence of manifest error) be final and binding on the Parties hereto.

- 16.9 If for any reason the expert fails to make a decision and give notice thereof in accordance with this clause 16 the Party or Parties may apply to the President of the Law Society for a substitute to be appointed in his place (which procedure may be repeated as many times as necessary).
- 16.10 The expert's costs shall be in the expert's award or in the event that he makes no determination, such costs will be borne by the parties to the Dispute in equal shares.
- 16.11 Nothing in this clause shall be taken to fetter the Parties' ability to seek legal redress in the Courts (or otherwise) for any breach of the obligations in this Deed.

IN WITNESS whereof the Parties hereto have executed this Deed on the day and year first before written.

THE FIRST SCHEDULE

Owner's Covenants with the Council

The Owner covenants with the Council as follows;

Part 1 - General Provisions

1. Development shall not Commence unless with the first Reserved Matters application for approval of details of the layout of part or all of the Site, the Owner has submitted a Phasing Plan showing:
 - 1.1 the number, programming and physical extent of each phase of construction
 - 1.2 the total number of Dwellings to be constructed on the Site
 - 1.3 the total number of Affordable Housing to be constructed on the Site which shall comprise 30% (thirty pre cent) of the Dwellings split 65% (sixty five pre cent) Social Rented Housing and/or Affordable Rented Housing and 35% (thirty five percent) Intermediate Housing
 - 1.4 the location and type of Open Space to be provided for the whole Siteand until the Council has approved the Phasing Plan in writing.
2. Development shall not Commence on any Phase unless with the Reserved Matters application for approval of details of the layout of that Phase, the Owner has submitted and the Council has approved in writing:
 - (i) an Affordable Housing Scheme showing how the Affordable Housing is to be provided and managed within that Phase
 - (ii) an Open Space Scheme showing how the Open Space is to be provided and managed within that Phase
 - (iii) a Management Scheme

(iv) details of the Management Company to which all the Open Space will be transferred in accordance with this Deed,

(v) §an Ecological Works and Habitat Management Scheme §

PROVIDED ALWAYS that the Phasing Plan, the Affordable Housing Scheme(s), the Open Space Scheme(s), the Management Scheme(s), §and the Ecological Works and Habitat Management Scheme§ may each be amended at any time with the written consent of the Development Manager or HM as appropriate.

3. Development shall be carried out in complete accordance with the Phasing Plan, the Affordable Housing Scheme(s,) the Open Space Scheme(s),§the Ecological Works and Habitat Management Scheme § and the Management Scheme(s) as amended from time to time.

Part 2 - Affordable Housing Provisions

- 1 The Owner covenants with the Council that subject to the releases and mortgagee protection contained in this Deed:

1.1 30% (thirty percent) of the Dwellings permitted by the Planning Permission shall be constructed as Affordable Housing Units.

1.2 The Affordable Housing Units shall not be used or Occupied other than as Affordable Housing in perpetuity, as the sole private residence of a Qualifying Person §in compliance with the Cascade Provision§ and in accordance with the requirements of this Schedule and with the requirements of the Affordable Housing Scheme.

1.3 The Affordable Housing Units shall comprise:

(a) 65% (sixty five per cent) Affordable Rented Housing or Social Rented Housing;

(b) 35% (thirty five per cent) Intermediate Housing

1.4 The Affordable Housing Units shall only be Transferred:

(a) Completed and in a Serviced Condition

- (b) With vacant possession
- (c) Shall contain provisions that the grant of rights of access and passage of services and other rights reasonably necessary for the use of the Affordable Housing Units as Dwellings
- (d) On terms to ensure this Deed is complied with including a requirement to ensure a RPSH enters into the Nominations Agreement

2. The Affordable Housing Scheme for each Phase shall detail;

- 2.1 the number of Affordable Housing Units which shall be constructed within that Phase
- 2.2 the type and tenure of each of the Affordable Housing Units, identifying which are Affordable Rented Housing or Social Rented Housing or Intermediate Housing
- 2.3 the construction standards of the Affordable Housing Units which, in respect of the Intermediate Housing shall satisfy the requirements of Building Regulations current at the time of construction and, in respect of the Social Rented Housing and the Affordable Rented Housing shall satisfy the National Design Guide published by the Ministry of Housing, Communities and Local Government in October 2019 and updated from time to time or any such document as supercedes it.
- 2.4 the location of the Affordable Housing Units
- 2.5 the timescale for provision of the Affordable Housing Units which shall accord with this Deed

PROVIDED THAT

- 2.6 the total number of Affordable Housing Units provided on the whole Site shall not be less than 30% (thirty per cent) of the Dwellings and the tenure of the Affordable Housing Units provided on the whole Site shall be split overall between 65% (sixty five per cent) Social Rented

Housing and/or Affordable Rented Housing and 35% (thirty five per cent) Intermediate Housing

- 2.7. the type, construction standards, location, the timescale for provision of the Affordable Housing Units, the designation of either Affordable Rented Housing or Social Rented Housing within the 65% (sixty five per cent) split, the designated type of Intermediate Housing tenure within the 35% (thirty five per cent) split may be amended at any time with the written approval of HM.
- 3 Within each Phase, not more than 50% (fifty per cent) (80% eighty per cent) if the HM confirms as part of the written approval of the Affordable Housing Scheme that there is a high degree of pepperpotting of the Affordable Housing throughout the Site and throughout the Open Market Housing) of the Open Market Housing shall be Occupied until:
- 3.1.1 all the Affordable Housing Units have been Completed in accordance with the Planning Permission, this Deed and the Affordable Housing Scheme and made ready for immediate Occupation and use; and
 - 3.1.2 all of the Shared Ownership Houses and Affordable Rented Housing and Social Rented Housing have been Transferred to a RPSH in accordance with the Affordable Housing Scheme and this Deed; and
 - 3.1.3 a comprehensive marketing campaign in respect of all of the Discounted Sale Houses and Shared Equity Sale Houses has been approved in writing by the Council, commenced and thereafter actively pursued using best endeavours to secure a sale of those Dwellings in accordance with this Deed.

Affordable Rented Housing and Social Rented Housing

- 4 Following Transfer pursuant to this Deed of the Affordable Rented Housing and the Social Rented Housing to an RPSH, the Affordable Rented Housing and the Social Rented Housing shall at all times be owned and managed by a RPSH for the purpose of providing social housing at or below a Market Rent or a Target Rent (as appropriate) and the Affordable Rented Housing and the Social Rented Housing shall be maintained and repaired in accordance with the proper and normal customs and practices of a good landlord and the RPSH shall accept full responsibility for servicing managing repairing and maintaining the Affordable Rented Housing and the Social Rented Housing.
- 5 If the Owner Transfers the Affordable Rented Housing and the Social Rented Housing to a RPSH which is a party to the Cheshire Homechoice Scheme then the allocation of each of the Affordable Rented Housing and the Social Rented Housing to a tenant shall be governed by such scheme.
- 6 If the Owner Transfers the Affordable Rented Housing and the Social Rented Housing to a RPSH which is not a party to the Cheshire Homechoice Scheme then the Owner shall procure that upon such Transfer the RPSH enters into a Nominations Agreement with the Council, allowing the Council to nominate tenants to 50% (fifty per cent) of first and subsequent lettings
- 7 The RPSH will only allocate tenancies to persons in Housing Need who will Occupy the Affordable Rented Housing and the Social Rented Housing as their sole or main residence and, in addition to its own lettings policy, the RPSH will prioritise applicants with a Local/Community Connection §and in compliance with the Cascade Provision§. Where the Council fails to nominate a prospective occupier to any of the Affordable Rented Housing and the Social Rented Housing in accordance with the agreed nomination procedure, the RPSH can substitute an occupier from their own waiting list provided that the potential occupier is in Housing Need and will Occupy the Affordable Rented Housing and the Social Rented Housing as their sole or main residence and in accordance with the Local/Community Connection priority order §and in compliance with the Cascade Provision§.

- 8 With the object of preserving the Affordable Rented Housing and the Social Rented Housing as Affordable Housing none of them shall be sold into owner occupation or otherwise disposed of by a RPSH other than by way of:
- 8.1 disposal to another RPSH for the purposes of providing social housing at or below a Target Rent; or
 - 8.2 Transfers of Engagements under section 110 of the Co-operative and Community Benefit Societies Act 2014 or any re-enactment thereof; or
 - 8.3 creation of easements or other rights in favour of statutory undertakings or service companies for the purpose of providing services to the Site; or
 - 8.4 sale to a sitting tenant by way of a tenants` statutory right to acquire or arrangement imposed or promoted by the Homes England whether as a condition of grant funding or otherwise; or
 - 8.5 mortgage or charge and subject always to the residual power of sale of a mortgagee in possession; or
 - 8.6 assured tenancies granted to Occupiers.

Shared Ownership Housing

- 9 Following Transfer of the Shared Ownership Housing to an RPSH, the Shared Ownership Housing shall be provided by an RPSH for the purpose of providing Shared Ownership Housing and will only be Occupied as Affordable Housing in accordance with the terms of this Deed on the Shared Ownership Terms.
- 10 In addition to the RPSH's standard arrangements governing the nomination and approval of applicants to buy and rent Shared Ownership Housing, the RPSH will prioritise applicants who are in Housing Need with a Local/Community

Connection § and comply with the Cascade Provision§ unless the Shared Ownership Housing is funded by Homes England AHP whereby the Homes England restrictions attached to AHP funding will solely apply unless the site is a Rural Exception Site when compliance with the Local/Community Connection § and Cascade Provision§ is required even if funding is supplied by Homes England AHP.

- 11 The first Disposal of each of the Shared Ownership Housing by a RPSH shall not involve the sale of an equity stake of less than 10% (ten per cent) or more than 75% (seventy-five per cent) nor a rental element calculated at more than 2.75% (two point seven five per cent) of the value of the unsold equity PROVIDED THAT within the permitted range of 10% (ten per cent) and 75% (seventy-five per cent) the RPSH shall use reasonable endeavours to transfer an equity stake of 50% (fifty per cent).

Recycling of Surplus Sale Proceeds

- 12 The RPSH shall:
- 12.1 advise HM of all sales of equity in the Social Rented Dwellings, the Affordable Rented Housing and the Shared Ownership Housing; and
 - 12.2 hold any Surplus Sale Proceeds in an interest bearing account; and
 - 12.3 inform HM on request of the amount of money at any one time in that account and
 - 12.4 use such Surplus Sale Proceeds whether in part, in full or in conjunction with other sums in the following order of priority
 - 12.4.1 for repurchasing any of the Affordable Housing if sufficient funds have accrued;
 - 12.4.2 for other Affordable Housing projects within §;
 - 12.4.3 for other Affordable Housing projects anywhere within Cheshire East,

and notify HM of such use, or

- 12.5 if the Social Rented Housing, Affordable Rented Housing or Shared Ownership Housing are funded in whole or in part through a Homes England grant the Surplus Sale Proceeds for the funded Affordable Housing shall be paid into a recycled capital grant fund as required by the Homes England funding and then spent in accordance with the conditions of the provision of the grant from Homes England.

Discounted Sale Houses

- 13 The Discounted Sale Houses will only be Occupied as Affordable Housing in accordance with the terms of this Deed and the Resale Covenant Scheme.

- 14 The Owner will not advertise for sale or otherwise market the Discounted Sale Houses until he has obtained HM's written approval of a Resale Covenant Scheme which

- 14.1 prevents all subsequent sales from taking place in excess of the Discounted Sale Price;

- 14.2 restricts purchasers to Qualifying Persons

- 14.3 sets out the nomination rights and eligibility criteria

- 14.4 allows for eligibility but not price restrictions to be lifted in appropriate circumstances;

- 14.5 sets out a procedure governing subsequent Disposals including notification of intention to sell, reasonable timescales, assessment of Open Market Value and any other appropriate remarketing provisions;

- 14.6 sets out appropriate administrative and conveyancing arrangements for Disposals which shall be tailored according to the Owner's intention to sell freehold or leasehold title and which include the model transfers or leases which will be used to bring the Resale Covenant Scheme into binding effect and which will allow for the Council's reasonable legal costs to be met

- 15 The first Disposal of each Discounted Sale House shall be at the Discounted Sale Price to a Qualifying Person §and in compliance with the Cascade Provision§ and shall secure that the approved Qualifying Person enters into appropriate covenants direct with the Council pursuant to section 33 Local Government (Miscellaneous Provisions) Act 1982 to ensure the enforceability of the Resale Covenant Scheme PROVIDED THAT if the Owner demonstrates to HM's reasonable satisfaction that:
- 15.1 he gave HM full details of his marketing arrangements 14 (fourteen) days before a Discounted Sale House was first advertised and invited HM to nominate Qualifying Persons to purchase and Occupy it; and
 - 15.2 he advertised the Discounted Sale House at the Discounted Sale Price on the open market for 10 (ten) weeks (and that it was Completed for at least 4 (four) of those weeks) or for such lesser period (or periods) as HM may agree; and
 - 15.3 he used best endeavours to advance a sale with any Qualifying Persons who appeared to be suitable prospective purchasers; and
 - 15.4 a contract for sale has not been executed and exchanged,
- then the Owner may Dispose of the Discounted Sale House at the Discounted Sale Price to any person who on completion enters into covenants with the Council pursuant to s33 Local Government (Miscellaneous Provisions) Act 1982 ensuring the enforceability of the Resale Covenant Scheme.
- 16 All second and subsequent Disposals of a Discounted Sale House shall be at the Discounted Sale Price to an approved Qualifying Person §and in compliance with the Cascade Provision§ in accordance with the Resale Covenant Scheme to the intent and effect that this shall continue to apply to all second and subsequent disposals but the word 'Owner' shall instead read 'seller of the Discounted Sale House'
- 17 Upon Disposal of any Discounted Sale Houses the Owner shall observe and perform the obligations of the Owner and transferee within the Resale

Covenant Scheme agreed by the Council and shall procure that all future Disposals of those Dwellings shall be bound by the terms of the Resale Covenant Scheme.

Shared Equity Sale Houses

- 18 The Shared Equity Sale Houses will only be Occupied as Affordable Housing in accordance with the terms of this Deed and the Shared Equity Sale Scheme.
- 19 The Owner will not advertise for sale or otherwise market the Shared Equity Sale Houses until he has obtained HM's written approval of a Shared Equity Sale Scheme which details:
 - 19.1 the restriction of purchasers to Qualifying Persons
 - 19.2 the procedural steps notifications and timescales governing Disposals of the Shared Equity Sale Houses including notification of intention to sell, reasonable timescales, assessment of Open Market Value and any other appropriate remarketing provisions;
 - 19.3 eligibility criteria;
 - 19.4 alternative arrangements in the event that sales are not forthcoming within reasonable timescales;
 - 19.5 a procedure for assessing Open Market Value:
 - 19.6 terms of Disposal including appropriate administrative and conveyancing arrangements (including approval of draft documentation) requiring co-operation between sellers buyers and chargees including the Council and which in the case of a Council scheme will allow for the Council's reasonable legal costs to be met ;
 - 19.7 terms regarding priority, repayment and redemption of the relevant legal mortgage.

- 20 The first Disposal of each Shared Equity Sale House shall be in accordance with the Shared Equity Sale Scheme §and in compliance with the Cascade Provision§ to a Qualifying Person and at no more than 70% (seventy per cent) of Open Market Value.
- 21 All second and subsequent Disposals of a Shared Equity Sale House shall be in accordance with the Shared Equity Sale Scheme §and in compliance with the Cascade Provision§ to a Qualifying Person.
- 22 Upon Disposal of any Shared Equity Sale House the Owner shall observe and perform the obligations of the Owner within the Shared Equity Sale Scheme and shall procure that all future Disposals of those Dwellings shall be bound by the terms of the Shared Equity Sale Scheme approved by the Council.
- 23 If the Owner has used all reasonable endeavours to Dispose of a Shared Equity Sale House, in accordance with this Deed and the Shared Equity Sale Scheme then the relevant Shared Equity Sale House may be Disposed of to a person who is not a Qualifying Person PROVIDED ALWAYS that the Shared Equity Sale Scheme shall apply in full to any subsequent Disposal by that disponent or their successors in title.

Mortgagee Protection and Releases

24. The restrictions in this Part Two – Affordable Housing Provisions of the First Schedule shall not apply to Affordable Housing:
- 24.1 in the control of a Chargee of an RPSH in the event of a default under a mortgage or charge PROVIDED THAT
- 24.1.1 the Chargee has given the Council at least 3 (three) months written notice of its intention to exercise such power of sale, and
- 24.1.2 the Chargee has used reasonable endeavours to first dispose of the dwellings to another RPSH and has provided written evidence of such reasonable endeavours to HM and for the avoidance of doubt such Chargee shall not be under any

obligation to dispose of the dwellings for a sum less than the monies outstanding pursuant to the legal charge or mortgage plus any interest and cost

24.1.3 If the said Chargee shall not have disposed of the said Affordable Housing Units or any part thereof in accordance with paragraph 24.1.2 above, within the said 3 (three) month period, the said Chargee may (but without imposing any obligation on the said Chargee) dispose of the Affordable Housing Units which have not by that time been disposed of to such RPSH on the open market to a willing buyer, and such buyer shall take free of the restrictions imposed herein in relation to the relevant Affordable Housing Units.

24.2 owned by a tenant who has exercised a statutory right to acquire by way of a purchase grant or like scheme or any mortgagee or chargee of such tenant or any receiver appointed by such mortgagee or chargee (including administrative receivers)

24.3 in the control of a Chargee in accordance with the Shared Ownership Terms

24.4 owned by an Occupier who has purchased 100% (one hundred per cent) of the equity of a Shared Ownership lease following the exercise of Staircasing rights or in accordance with any other Homebuy scheme or any Chargee of such Occupier.

Local Advertising for Green Belt/Rural exception Sites

Note – only required for Rural Exception/Rural/Green Belt sites

25 Prior to the first Disposal of an Affordable Housing Unit, the Owner will advertise that the Affordable Housing Unit is available in at least 2 (two) newspapers circulating within the Parish and the Adjoining Parishes for a consecutive period of at least 4 (four) weeks.

- 26 Prior to any subsequent letting of an Affordable Housing Unit, the Owner will advertise that the Affordable Housing Unit is available in at least 2 (two) newspapers circulating within the Parish and the Adjoining Parishes for a consecutive period of at least 4 (four) weeks.
- 27 The advertisements referred to in paragraphs 25 and 26 must clearly identify that prospective occupiers with a §Local/Community§ Connection in accordance with the Cascade Provision will be given priority.
- 28 A copy of the advertisements referred to at paragraphs 25 and 26 will be provided to the councils of the Parish, and the Adjoining Parishes and to the Council, together with the dates that the advertisements will be printed to enable the Council to advertise the Affordable Housing Unit via its own media at an appropriate time.

Part 3 - Open Space Provisions

On-site Open Space

- §1.1 Prior to the Commencement of Development on each phase to submit the Open Space Scheme for that Phase to the Council and not to Commence Development on each Phase unless and until the Open Space Scheme for that Phase has been submitted to and approved in writing by the Council.§
- §1.1 That the Open Space Scheme will be submitted for approval by the Council at the same time as the first reserved matters application and in any event prior to Commencement of Development and Commencement of Development will not take place until the Open Space Scheme has been approved in writing by the Council.§
- 1.2 In order to maintain the integrity and long term future viability of the Open Space, not without the prior consent of the Council to locate any site and work compounds on the Open Space.
- 1.3 Prior to the Occupation (of more than 50% (fifty per cent) of the Dwellings) of each Phase of the Development to provide the Open Space within that phase in complete accordance with the approved Open Space Scheme and Phasing Plan so that it is available and safe for immediate public

use and not to permit or allow the Occupation (of more than 50% (fifty percent) of the Dwellings) of each Phase of the Development until the Open Space within that Phase has been provided in complete accordance with the approved Open Space Scheme and Phasing Plan so that it is available and safe for immediate public use.

- 1.4 Not to permit or allow the use of the Open Space until a Royal Society for the Prevention of Accidents (or any successor body or organisation) post installation inspection written report, and evidence of manufacturers warranties of at least 5 (five) years duration from the date of installation of equipment in relation to §the LEAP, §LAP, §NEAP, §MUGA,§Play Space§ has been provided to the Council, and for the avoidance of doubt, the Open Space will not be considered available and safe for immediate public use unless and until the inspection report and manufacturers warranties described in this clause have been provided.
- §1.5 Prior to the Occupation of the Development to submit the Management Scheme to the Council and not to allow or permit Occupation of the Development until the Management Scheme has been submitted to the Council and the Council has approved the Management Scheme in writing. §
- 1.6 To maintain the Open Space in accordance with the Management Scheme approved by the Council at all times from Occupation of 50% (fifty per cent) of the Dwellings in each Phase of the Development so that it is safe and available at all times for public use to the satisfaction of the Council.
- 1.7 To amend the Management Scheme only with the Council's written consent.
- 1.8 To keep the Open Space open, unbuilt upon (save for permitted play equipment) and available for public recreational use in perpetuity save for access to any wildlife area to which access is restricted in the Management Scheme(s).

Management Company

§(incorporating the Owners of the Development)

Only one set of Management Company clauses are required – select whether there is to be a management company made up of residents from the development or not.

- 2.1 To prevent the sale of any individual Dwelling until a Management Company has been formed and the Owner has provided evidence of such formation to the Council (including a certified copy of the Memorandum and Articles of Association of the Management Company).
- 2.2 Not to wind up the Management Company or alter its constitution without the prior written consent of the Council unless the whole of the Development shall have been demolished or unless the Council have otherwise first agreed in writing.
- 2.3 Not to permit or allow the sale, transfer, grant of an option, gift, exchange in return for other property, a declaration of trust, assignment, lease or other disposal of any individual dwelling comprised in the Development until the buyer of such dwelling has applied for and been granted membership of the Management Company.
- 2.4 The Owner will procure that the buyer of each Dwelling comprised in the Development enters into covenants substantially in the form set out below (or in such other form as agreed in advance by the Council in writing) direct with the Management Company under which the buyer shall covenant:-
 - (i) to pay the estimated Estate Service Charge (or an appropriate proportion of it in respect of the payment due on the date of this transfer) to the Management Company in advance on the Service Charge Payment Date or if later immediately on receipt of a demand for payment from the Management Company ; and
 - (ii) immediately on receiving a Certificate, to pay to the Management Company any shortfall between the estimated Estate Service Charge paid and the amount of the Estate Service Charge so certified,
 - (iii) not to dispose (other than by way of mortgage or assured shorthold tenancy) of the Dwelling unless the disponent enters into and delivers

to the Management Company a direct covenant with the Management Company in the form set out at sub-paragraphs (i) and (ii) above and this paragraph (iii).

- 2.5 to procure that an application is made to the Land Registry for entry of a restriction onto the register of the title of each Dwelling comprised in the Development in standard form L in Schedule 4 of the Land Registration Rules 2003 namely:

'No disposition of the registered estate (other than a charge) by the proprietor of the registered estate , or by the proprietor of any registered charge, not being a charge registered before entry of this restriction is to be registered without a certificate signed by a conveyancer that the provisions of paragraph [the provisions referred to at paragraph 2.4 above] of a transfer dated [] and made between [name] (1) and [name] (2) have been complied with or that they do not apply to the disposition

- 2.6 The Owner shall not permit or allow the Occupation of more than 75% (seventy five per cent) of the Dwellings that form part of the Development unless and until the freehold interest in the Open Space has been transferred free from incumbrances (other than as set out below) to the Management Company but for the avoidance of doubt the transfer shall:

- i. be a transfer of the entire freehold interest of the Open Space
 - ii be free from any pre-emption or option agreement
 - iii. be free from any mortgage, charge, lien or other such incumbrance
 - iv. include all usual and necessary rights of way with or without vehicles
 - v. be subject to rights of reasonable access to the public
 - vi. reserve any usual and necessary rights to use existing services and to lay and use new services together with any rights of entry to inspect, repair, renew, cleanse and maintain the same

- vii. declare that boundary structures shall belong to and be maintained by adjoining owners
- viii. not require consideration in excess of £1 (one pound)
- ix. contain covenants by the Management Company in favour of the Council and pursuant to Section 33 of the Local Government (Miscellaneous provisions) Act 1982 to the effect that the Management Company shall maintain, repair, replace as necessary and generally manage the Open Space in strict accordance with the Management Scheme and the principles of good estate management to the intent that the Open Space remains fit for purpose and available for safe use by the public at all times during which any part of the Development is Occupied
- x. include provisions securing the sole use of the Open Space for the recreational enjoyment of the public as amenity open space
- xi. include a declaration that no area of the Open Space is dedicated as public highway nor that any use by the public of any part of the Open Space shall be taken in any way as an intention by the Owner to dedicate the same as Highway. §

§(Not incorporating the Owners of the Development)

2.1 The Owner will procure that the buyer of each Dwelling comprised in the Development enters into covenants substantially in the form set out below (or in such other form as agreed in advance by the Council in writing) direct with the Management Company under which the buyer shall covenant:-

- (i) to pay the estimated Estate Service Charge (or an appropriate proportion of it in respect of the payment due on the date of this transfer) to the Management Company in advance on the Service Charge Payment Date or if later immediately on receipt of a demand for payment from the Management Company ; and

- (ii) immediately on receiving a Certificate, to pay to the Management Company any shortfall between the estimated Estate Service Charge paid and the amount of the Estate Service Charge so certified, and
- (iii) not to dispose (other than by way of mortgage or assured shorthold tenancy) of the Dwelling unless the disponent enters into and delivers to the Management Company a direct covenant with the Management Company in the form set out at sub- paragraphs (i) and (ii) above and this paragraph (iii).

2.2 to procure that an application is made to the Land Registry for entry of a restriction onto the register of the title of each Dwelling comprised in the Development in standard form L in Schedule 4 of the Land Registration Rules 2003 namely:

'No disposition of the registered estate (other than a charge) by the proprietor of the registered estate , or by the proprietor of any registered charge, not being a charge registered before entry of this restriction is to be registered without a certificate signed by a conveyancer that the provisions of paragraph [the provisions referred to at paragraph 2.1 above] of a transfer dated [] and made between [name] (1) and [name] (2) have been complied with or that they do not apply to the disposition

2.3 The Owner shall not permit or allow the Occupation of more than 75% (seventy five per cent) of the Dwellings that form part of the Development unless and until the freehold interest in the Open Space has been transferred free from incumbrances (other than as set out below) to the Management Company but for the avoidance of doubt the transfer shall:

- i. be a transfer of the entire freehold interest of the Open Space
- ii be free from any pre-emption or option agreement
- iii. be free from any mortgage, charge, lien or other such incumbrance

- iv. include all usual and necessary rights of way with or without vehicles
- v. be subject to rights of reasonable access to the public
- vi. reserve any usual and necessary rights to use existing services and to lay and use new services together with any rights of entry to inspect, repair, renew, cleanse and maintain the same
- vii. declare that boundary structures shall belong to and be maintained by adjoining owners
- viii. not require consideration in excess of £1 (one pound)
- ix. contain covenants by the Management Company in favour of the Council and pursuant to Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 to the effect that the Management Company shall maintain, repair, replace as necessary and generally manage the Open Space in strict accordance with the Management Scheme and the principles of good estate management to the intent that the Open Space remains fit for purpose and available for safe use by the public at all times during which any part of the Development is Occupied
- x. include provisions securing the sole use of the Open Space for the recreational enjoyment of the public as amenity open space
- xi. include a declaration that no area of the Open Space is dedicated as public highway nor that any use by the public of any part of the Open Space shall be taken in any way as an intention by the Owner to dedicate the same as Highway.§

Transfer of Open Space – to Council

- §3.1 Upon the request of the Owner, the Council will consider the transfer to it of any part of the Open Space on the strict understanding that a transfer will not take place prior to the satisfactory completion of a 12 (twelve) month maintenance period for the area

identified to be transferred. Any transfer of any part or parts of the Open Space to the Council will be at nominal value and accompanied by;

- (1) the appropriate Maintenance Sum for the area to be transferred that will be agreed prior to the transfer; and,
- (2) all appropriate certificates and guarantees for any equipment located, and works undertaken by the Owner, within the Open Space, or any part thereof, to be transferred.

At no point will the Council be required to accept the transfer to it of any part or parts of the Open Space. §

- §3.1 To maintain (including but not limited to repair, grass cutting, litter picking and collection of rubbish) the Open Space in a good and workmanlike manner in accordance with the Management Scheme which shall include, but is not limited to, the replacement of any planting that dies for a period of twelve (12) months starting from the date that notification is received by the Owner from the Council that the Open Space has been provided and laid out to a satisfactory level, or otherwise pay to the Council a sum of money to be agreed between the Owner and the Council to enable the Council to carry out such work and be responsible for the one year maintenance period.
- 3.2 At the expiration of the period of 12 (twelve) months from the completion of the Open Space to the satisfaction of the Council the Owner will transfer the freehold interest in the Open Space to the Council for a consideration of £1.00 (one pound).
- 3.3 Upon the satisfactory completion of the 12 (twelve) month maintenance period to pay to the Council the Maintenance Sum, together with a further sum arrived at by multiplying the Maintenance Sum by the percentage increase (if any) in the Index of Retail Prices (or such index as shall be generally accepted to have replaced the same) between the month prior to the date hereof and the month prior to the date of such transfer.
- 3.4 Not to permit the Occupation of more than 75% (seventy five per cent) of the Dwellings within the Development unless and until the Open Space has been transferred to the Council, any transfer to the Council will be free from incumbrances (other than as set out below) but for the avoidance of doubt the transfer shall:

- i. be a transfer of the entire freehold interest of the Open Space
- ii. be free from any pre-emption or option agreement
- iii. be free from any mortgage, charge, lien or other such incumbrance
- iv. include all usual and necessary rights of way with or without vehicles
- v. be subject to rights of reasonable access to the public
- vi. reserve any usual and necessary rights to use existing services and to lay and use new services together with any rights of entry to inspect, repair, renew, cleanse and maintain the same
- vii. declare that boundary structures shall belong to and be maintained by adjoining owners
- viii. not require consideration in excess of £1 (one pound)
- ix. contain covenants by the Council to the effect that the Council shall maintain, repair, replace as necessary and generally manage the Open Space in strict accordance with the Management Scheme and the principles of good estate management to the intent that the Open Space remains fit for purpose and available for safe use by the public at all times during which any part of the Development is Occupied
- x. include provisions securing the sole use of the Open Space for the general recreational enjoyment of the public as general amenity open space
- xi. include a declaration that the paths/cycleway is/are not dedicated to the public nor that any use by the public of any

part of the paths/cycleway shall be taken in any way as an intention by the Owner to dedicate the same as Highway

xii include provision for payment to the Council of the Maintenance Sum at the time of transfer

§xiii include provision for a maintenance period of one year after transfer whereby the Owner maintains the Open Space in accordance with the Management Scheme and replaces any dead or dying plants or shrubs. §

Commutated sum for Off-site Provision of open space

4 §Prior to the Commencement of /Occupation of /Occupation of more than §% (§ per cent) of the Dwellings /Occupation of more than § (number) dwellings within the Development to pay the Offsite Greenspace Contribution/Offsite Play Contribution/ Open Space and Amenity Land Commuted Sum/ Recreation and Outdoor Sports Facilities Commuted Sum to the Council and not to permit or allow the Commencement of /Occupation of /Occupation of more than §% (§ per cent) of the Dwellings /Occupation of more than § (number) dwellings within the Development unless and until the Offsite Greenspace Contribution/Offsite Play Contribution/ Open Space and Amenity Land Commuted Sum/ Recreation and Outdoor Sports Facilities Commuted Sum has been paid to the Council § for the Open Space and Amenity Land Purposes/Recreation and Outdoor Sports Facilities Purposes §.

Commutated sum for Off-site provision of Allotments

5 §Prior to the Commencement of /Occupation of /Occupation of more than §% (§ per cent) of the Dwellings /Occupation of more than § (number) dwellings within the Development to pay the Allotment Contribution to the Council and not to permit or allow the Commencement of /Occupation of /Occupation of more than §% (§ per cent) of the Dwellings /Occupation of more than § (number) dwellings within the Development unless and until the Allotment Contribution has been paid to the Council for the Allotment Purposes. §

Ecological Pond/Woodland Clauses

- 6 Prior to the Commencement of Development to submit to the Council's Nature Conservation Officer the Ecological Works and Habitat Management Scheme and not to Commence Development at the Site unless and until the Council's Nature Conservation Officer has given written approval to the submitted Ecological Works and Habitat Management Scheme.
- 7 Prior to the Commencement of Development at the Site to commence works in accordance with the approved Ecological Works and Habitat Management Scheme and not to Commence Development at the Site unless and until works to the §Pond§Woodland Area§ have been commenced in accordance with the approved Ecological Works and Habitat Management Scheme. The §Pond§Woodland Area§ shall be laid out and the works required under the Ecological Works and Management Scheme shall be completed to the satisfaction of the Council's Nature Conservation Officer prior to the Occupation of the Development.
- 8 The Pond Woodland Area shall be maintained in perpetuity as an ecological area in accordance with the approved Ecological Works and Management Scheme.

Part 4 – Highways provisions

- 1.1 Prior to the Occupation[of §%(\$ per cent) of the Dwellings]/Commencement of the Development to pay to the Council the Highways Contribution/TRO Contribution for the Highways Works/TRO Works and not to allow or permit the Occupation[of §%(\$ per cent) of the Dwellings]/Commencement of the Development until the Highways Contribution/TRO Contribution has/have been paid in full.
- 1.2 Prior to the Occupation[of §% (\$ per cent) of the Dwellings]/Commencement of the Development to pay to the Council the Bus Shelter Contribution and not to allow or permit the Occupation[of §% (\$ per cent) of the Dwellings]/Commencement of the Development until the Bus Shelter Contribution has been paid in full.
- 1.3 Prior to the Occupation[of §% (\$ per cent) of the Dwellings]/Commencement of the Development to pay to the Council the Traffic Management Contribution and not to

allow or permit the Occupation[of §% (§ per cent) of the Dwellings]/Commencement of the Development until the Traffic Management Contribution has been paid in full.

- 1.4 Prior to the Occupation[of §% (§ per cent) of the Dwellings]/Commencement of the Development to pay to the Council the Footpath Contribution and not to allow or permit the Occupation[of §% (§ per cent) of the Dwellings]/Commencement of the Development until the Footpath Contribution has been paid in full.

Part 5- Education Provisions

- 1 Prior to the Occupation [of §% (§ per cent) of the Dwellings]/Commencement of the Development to pay to the Council the Education Contribution for the Education Purposes and not to allow or permit the Occupation[of more than §% (§ per cent) of the Dwellings]/Commencement of the Development until the Education Contribution has been paid in full.

Part 6 – Healthcare Provisions

- 1 Prior to the Occupation [of §% (§ per cent) of the Dwellings]/Commencement of the Development to pay to the Council the Healthcare Contribution for the Healthcare Contribution Purposes and not to allow or permit the Occupation[of more than §% (§ per cent) of the Dwellings]/Commencement of the Development until the Healthcare Contribution has been paid in full.
- 2 The Owner acknowledges that the Council shall not be responsible for how the Healthcare Contribution is utilised or in the event that the Healthcare Provider does not comply with paragraph 1.7.3 of the Second Schedule for its return once it has transferred the Healthcare Contribution to the Healthcare Provider but without prejudice to the rights of the Owner to seek to enforce the obligations in Clause 1.7 directly against the Healthcare Provider AND in which case the Council shall provide to the Owner such assistance as it reasonably can to enforce those obligations.

Part 7 - Biodiversity Net Gain Provisions

The Owner and the BNG Owner hereby covenant with the Council and with each other as follows;

- §1 The Habitat Creation Method Statement, Habitat Management Plan, Ecological Monitoring Strategy and Biodiversity Metric Calculation will be submitted to and approved in writing by the Council prior to the Commencement of the Development. §
- 2 The name of the BNG Ecologist will be notified to the Council in writing prior to the Habitat Creation Works being undertaken and the Council will be given immediate written notice of any change in the BNG Ecologist prior to the completion of the Biodiversity Site Management Period.
- 3 Not to §Occupy the Development/more than § Dwellings within the Development§ nor permit or suffer the §Occupation of the Development/more than § Dwellings within the Development§ until the Nature Conservation Officer has issued the Habitat Creation Completion Certificate.
- 4 To undertake the Habitat Creation Works at the BNG Mitigation Site in accordance with the approved Habitat Creation Method Statement and to complete the Habitat Creation Works within the next planting season following the completion of this Deed.
- 5 Forthwith following completion of the Habitat Creation Works the BNG Owner shall in writing invite the Nature Conservation Officer to inspect the Habitat Creation Works.
- 6 If following the Nature Conservation Officer's inspection of the Habitat Creation Works the Nature Conservation Officer requires in writing any additional works as may reasonably be required to ensure that the Habitat Creation Works comply with the LEMP the BNG Owner shall undertake the requested works as soon as possible in accordance with any timescales agreed with the Council and the Owner and shall forthwith invite the Council to inspect the works. This process shall be repeated until the Habitat Creation Completion Certificate is issued.

- 7 Following the issue of the Habitat Creation Completion Certificate the BNG Owner will maintain and manage the BNG Mitigation Site for the Biodiversity Site Management Period as an ecological area in accordance with the Biodiversity Site Management Plan.
- 8 To implement the Ecological Monitoring Strategy at the BNG Mitigation Site for the Biodiversity Site Management Period.
- 9 On the 1st, 2nd, 5th, 10th, 20th and 30th (first, second, fifth, tenth, twentieth and thirtieth) anniversary of the issue of the Habitat Creation Certificate, the BNG Ecologist shall submit to the Nature Conservation Officer (with a copy provided to the Owner) an Ecological Monitoring Report prepared in accordance with the Ecological Management Strategy.
- 10 In the event that an Ecological Monitoring Report identifies that remedial actions are required and proposes specific remedial actions and/or measures, the remedial actions and/or measures approved by the Nature Conservation Officer shall be undertaken by the BNG Owner at the BNG Mitigation Site in accordance with a timetable agreed by the Council and the BNG Owner.

Part 8 - Overage

- 1 A Residual Development Profit Appraisal will be submitted to the Council within one calendar month of the date following the Disposal of the §th Dwelling on Site and within one calendar month of the Assessment Date and will be accompanied by sufficient information to enable the Council to understand the Sales Value of each Dwelling.
- 2 The Council shall notify the Owner in writing within 60 Working Days of receipt of the Residual Development Profit Appraisal whether or not that Residual Development Profit Appraisal is approved by the Council provided that the Council's approval shall be deemed to have been given at the expiry of such period unless within such period the Council has served written notice on the Owner specifying that its approval is withheld and has supplied the Owner with written reasons and (to the extent applicable) relevant supporting evidence for such refusal. If the Council's approval is not given or deemed to have been

given in accordance with this paragraph, the parties will each use reasonable endeavours to agree the Residential Development Profit Appraisal as soon as is practicable.

- 3 If the §th to last Dwelling has not been Disposed of by the date which is 12 months after the date of the Disposal of the §st to last Dwelling, then the §th to last Dwelling shall for the purposes of this Schedule be deemed to have been Disposed of the date which is 12 months after the date of Disposal of the §st to last Dwelling and the Sales Value and Costs for the §th to last Dwelling will be ascertained in accordance with paragraph 4 as if the §th to last Dwelling was also a Security Unit.
- 4 If at the Assessment Date a binding contract for the Disposal of a Security Unit has already been exchanged such that the Sales Value and Costs for that Security Unit are known then the Surplus Profit for that Security Unit will be ascertained and the Residual Development Profit Appraisal completed using those figures. If a binding contract for the Disposal of a Security Unit has not been exchanged at the Assessment Date then the Surplus Profit will be calculated for that Security Unit by taking the mean average of the Surplus Profit figures for the 3 Disposals which immediately precede the Assessment Date of Dwellings of the same or (where no equivalent comparable house types have been the subject of an Disposal) the closest house type.
- 5 The Residual Development Profit Appraisal will take the form of the template in the Sixth Schedule (or such other form of viability appraisal that may be proposed by the Owner and agreed in writing by the Council such agreement not to be unreasonably withheld or delayed) PROVIDED THAT there shall be an open book accounting approach demonstrating that the actual land cost and the development values and the finance costs are all reflective of actual figures, overheads, costs and expenditure. The 'Total Development Costs' as reflected in the Residual Development Profit Appraisal shall include (without limitation to the generality of the foregoing) all expenditure, payments, overheads and costs incurred in relation to the Site or the proposed Development and the sale of the Dwellings by the Owner or any of the relevant Owner's predecessors in title

after the application for Planning Permission was made or in connection with that application. The Owner agrees with the Council to act reasonably and promptly in allowing the Council (upon reasonable prior notice) access to such information as the Council may reasonably require in order for it to verify the Residual Development Profit Appraisal.

- 6 The Residual Development Profit Appraisal shall be facilitated by the Owner acting reasonably and in good faith by fully disclosing and justifying all capital costs and revenue items for the proposed Development and making all itemised capital costs and revenue items available on request to the Council for the purpose of compliance checking by an audit process of the Council's choosing (the Council acting reasonably and fairly). The land value for the Residual Development Profit Appraisal shall be the Actual Land Acquisition Costs and the Owner shall disclose to the Council such evidence as is required to justify the Actual Land Acquisition Costs sum.
- 7 When the Residual Development Profit Appraisal is supplied following the Assessment Date, the calculation to determine Overage shall be made and any Overage shall be due to the Council and paid as an additional Affordable Housing contribution, NHS contribution and Education contribution. The calculation shall be made and paid in accordance with this Schedule but the amount of Overage payable shall not in any circumstances exceed the Overage Cap.
- 8 For the avoidance of doubt:
 - (a) where a calculation of Overage produces a negative figure, the Council shall not be obliged to pay that amount to the Owner; and
 - (b) where there is a change of Owners, the new Owners shall still be able to include in the Residual Development Profit Appraisal expenditure incurred by the previous Owner(s).
- 9 Where the Residual Development Profit Appraisal for the Assessment Date demonstrates to the reasonable satisfaction of the Council there is Surplus

Profit in respect of the proposed Development that produces Overage, the Overage shall subject to the Overage Cap be paid to the Council by the Owner on the later of:

- (a) 30 working days after the date on which the Overage has been agreed with the Council; and
- (b) 30 working days after the date on which the Overage has been determined in accordance with this Schedule.

10 The Council agrees with the Owner to use any Overage paid by the Owner to the Council towards the provision of subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available on the open market within Cheshire East, for the provision of education services or towards the provision of NHS services.

11 The Owner shall serve notice upon the Council within 7 days of completing the Disposal of:

- (a) the 1st to last Dwelling; and
- (b) the 5th to last Dwelling unless the Assessment Date has already arisen by this date.

12 Any dispute as to the Overage payable under this Schedule shall be dealt with in accordance with the following provisions of this paragraph 12.

12.1 The Council and the Owner shall endeavour to agree on the appointment of an independent surveyor (who shall be the 'Independent Surveyor' for the purposes of this Schedule) and shall agree with the Independent Surveyor the terms of the appointment.

12.2 The Independent Surveyor shall be of the Royal Institution of Chartered Surveyors with at least ten years' experience in the

matter(s) referred to him and, so far as practicable, so that his usual place of business is within a 50 mile radius of the Site.

- 12.3 If the Council and the Owner are unable to agree on the Independent Surveyor or the terms of the appointment within ten Working Days from and including the date on which the matter was referred for determination, either of them shall then be entitled to request the President of the Royal Institution of Chartered Surveyors or his deputy (the 'President') to appoint an Independent Surveyor (who shall then be the 'Independent Surveyor' for the purposes of this Schedule) and to agree with the Independent Surveyor the terms of the appointment.
- 12.4 The Independent Surveyor is required to prepare a written decision and give notice of the decision together with recommendations (where applicable to the Council and the Owner) within twenty working days from the including the date of the Independent Surveyor's appointment.
- 12.5 If the Independent Surveyor dies or becomes unwilling or incapable of acting, or does not deliver his decision within the time required by this paragraph :
- (a) either the Council or the Owner may apply to the President to discharge the Independent Surveyor and to appoint a replacement Independent Surveyor; and
 - (b) this paragraph shall apply to the new Independent Surveyor as if they were the first Independent Surveyor appointed.
- 12.6 The Council and the Owner are entitled to make good in submissions to the Independent Surveyor and will provide (or procure that others provide) the Independent Surveyor with such assistance and documents as the Independent Surveyor reasonably requires for the purpose of reaching a decision.

- 12.7 The Independent Surveyor shall act as an expert and not as an arbitrator. The Independent Surveyor's written decision shall be final and binding on the Council and the Owner in the absence of manifest error or fraud.
- 12.8 The Council and the Owner agree to pay the Independent Surveyor's costs in the proportions determined by the Independent Surveyor within ten working days from and including any demand for payment. If they are so paid, either the Council or the Owner shall be entitled to pay the Independent Surveyor the sums due and recover the amounts due from the other party as a debt due on demand.

THE SECOND SCHEDULE

Council's Covenants

The Council covenants

- 1.1 that at the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.
- 1.2 to operate abide by and comply with the arrangements terms conditions and obligations for the purposes set out in the First Schedule hereto

Southern Planning Clauses – Open Space

- 1.3 Upon the written request of the Owner to provide a reasonable breakdown of the use of and deployment of the said contributions and in the event that any of the said monies have not have been expended, or contractually committed to be spent, by the § anniversary of the date of receipt thereof by the Council, then the Council shall (if required by the person who paid it) at that time repay to the person who paid it, the Offsite Greenspace Contribution/Offsite Play Contribution, Allotment Contribution or the balance thereof (if any) together with all interest accrued upon such balance (if any) as may have arisen.

Northern Planning Clauses – Open Space

- 1.3 Upon the written request of the Owner to provide a reasonable breakdown of the use of and deployment of the said contributions and in the event that any of the said monies have not have been expended, or contractually committed to be spent, by the § anniversary of the date of receipt thereof by the Council, then the Council shall (if required by the person who paid it) at that time repay to the person who paid it, the Open Space and Amenity Land Commuted Sum and the Recreation and Outdoor Sports Facilities Commuted Sum, Allotment Contribution or the balance thereof (if any) together with all interest accrued upon such balance (if any) as may have arisen.

Highways Clauses

- 1.4 Upon the written request of the Owner to provide a reasonable breakdown of the use of and deployment of the said contributions and in the event that any of the said monies have not have been expended, or contractually committed to be spent, by the 10th (tenth) anniversary of the date of receipt thereof by the Council, then the Council shall (if required by the person who paid it) at that time repay to the person who paid it, the Highways Contribution/Footpath Contribution/TRO Contribution/Bus Shelter Contribution/Traffic Management Contribution or the balance thereof (if any) together with all interest accrued upon such balance (if any) as may have arisen.

Education Clauses

1. 5 Upon the written request of the Owner to provide a reasonable breakdown of the use of and deployment of the said contributions and in the event that any of the said monies have not have been expended, or contractually committed to be spent, by the 10th (tenth) anniversary of the date of receipt thereof by the Council, then the Council shall (if required by the person who paid it) at that time repay to the person who paid it, the Education Contribution or the balance thereof (if any) together with all interest accrued upon such balance (if any) as may have arisen.

Healthcare Clauses

1. 6 to keep an up to date record of all payments from the Healthcare Contribution transferred by the Council to the Healthcare Provider
- 1.7 to pay the Healthcare Contribution to the Healthcare Provider upon receipt of a document from the Healthcare Provider:
- 1.7.1 confirming that they will apply the Healthcare Contribution solely for the Healthcare Contribution Purposes;

1.7.2 providing full details of the expenditure of the Healthcare Contribution which details shall comprise either a receipt for expenditure incurred or a contract committing such expenditure;

1.7.3 confirming that they will return any unspent part of the Healthcare Contribution together with interest accrued to the Council or the Owner after the expiry of ten years from the date of receipt by the Council of the Healthcare Contribution.

- 1.8 Upon the written request of the Owner to provide a reasonable breakdown of the payment of the said contributions to the Healthcare Provider and in the event that any of the said monies have not have been paid to the Healthcare Provider, by the tenth anniversary of the date of receipt thereof by the Council, then the Council shall (if required by the person who paid it) at that time repay to the person who paid it, the Healthcare Contribution or the balance thereof (if any) together with all interest accrued upon such balance (if any) as may have arisen.

THE THIRD SCHEDULE
Nominations Agreement
NOMINATIONS AGREEMENT

This Nomination Agreement is made between Cheshire East Council (the Council) and XXXXXXXXXX (the Registered Provider)

It is the intention of this agreement to establish a framework by which the Council make nominations to the Registered Provider. Nominations will be made from the Council's Housing Register via the Council's choice based lettings service (Cheshire Homechoice).

The Registered Provider will in any one year (April to March) pass xx% of their new-build vacancies and xx% of their relets within in the Cheshire East Borough for nomination. Where alternative quota or contracts have been formally agreed between the Registered Provider and the Council, these will take precedence over the general target.

Properties will be advertised via Cheshire Homechoice for a minimum of five working days, to include a Saturday, Sunday and Monday to enable housing register applicants to express interest in the property. Expressions of interest can be made via telephone, the website or a visit to any one of the partnership offices. Advice and support will be provided to applicants who need it, to ensure they are able to access and use the scheme.

Nomination process where there is no direct access into CEC back office systems

In typical circumstances, communication between the Council and the Registered Provider for nomination requests will be made via email to ensure minimal delays in the lettings process. Where an immediate response is required, enquiries should be made via telephone to the Homechoice Team.

When a property becomes available for letting, the Registered Provider will email full details of the nominations request to the Cheshire Homechoice Team (cheshirehomechoice@cheshireeast.gov.uk) using the designated request

form. This should include photographs of the property and specific advert details. An advert for the property will be generated by the Team in accordance with the Common Allocation Policy; adverts will be clearly labelled to show the property features, local neighbourhood information and types of household that are able express an interest.

The Registered Provider will be supplied with a list of the top 5 eligible applicants for the property, within 10 working days of sending in the nomination request. The Registered Provider will be expected to work through them in order of priority until they find a suitable/ interested applicant. The applicant will then be contacted by the Registered Provider to confirm their successful application and advised about procedures for viewing/ assessment for the property. If the list is exhausted, a further 5 applicants from those who expressed an interest in the property will be supplied

The Registered Provider will inform Homechoice of the results of the nomination by email (cheshirehomechoice@cheshireeast.gov.uk), within 5 working days of the offer made to the applicant.

Nomination process where there is back office access to Homechoice

Adverts will be inputted directly by the Registered Provider, containing the correct letting parameters to enable the maximum number of eligible applicants to apply, in accordance with the Common Allocations Policy.

When an advert closes the Registered Provider will be able to access a full shortlist of all applicants and will be expected to work through them in order of priority until they find a suitable/ interested applicant. The applicant will then be contacted by the Registered Provider to confirm their successful application and advised about procedures for viewing/ assessment for the property.

The Registered Provider will complete the matching process on the back office system in order to formally remove the applicant from the register and record the nomination. This will happen within 5 working days of the offer.

If no suitable applicants have expressed an interest in a property advertised or the list has been exhausted; the Registered Provider will have an option to withdraw the property from the scheme or to run the advert for a further weekly cycle.

Any nominations withdrawn from the scheme after a full weekly cycle of advertising will constitute a failed nomination and will count as part of the nominations quota.

The Registered Provider will process the nomination in accordance with the Common Allocations Policy.

The Homechoice Team and the applicant will be kept informed of any delays regarding the availability of property, for example due to extensive repairs, alterations and revised termination dates.

Quarterly nomination outcomes will be sent to the Homechoice Team Leader at the Council, on a quarterly basis

The Registered Provider will advise the Homechoice Team Leader of all new developments coming into management at least 3 months before handover and a nomination timetable will be agreed. References will be made to the legal agreement drawn up between the Registered Provider and the Council's legal department with regard to all new developments.

Both the Registered Provider & the Council will maintain and review such records as is necessary to ensure there are no criteria relating to re-housing and nomination process which directly or indirectly discriminate against any applicant on the ground of race, religion, sex, sexuality or disability.

The Registered Provider and the Council will at all times work in ways which are mutually advantageous. For example, they will advise each other of any internal restructure which may affect the nominations process.

The Registered Provider and the Council agree to sharing information regarding Homechoice applicants & nominees for monitoring purposes.

This process has been agreed between:

SIGNATURE

NAME (PRINTED)

DESIGNATION

ON BEHALF OF CHESHIRE EAST COUNCIL

And

SIGNATURE

NAME (PRINTED):

DESIGNATION:

ON BEHALF OF:

THE FOURTH SCHEDULE
Discounted Sale House Resale Covenant Scheme Clauses
Standard Remarketing Provisions for Discounted Sale Houses
forming the basis for a
Re-Sale Covenant Scheme
to be tailored for freehold or leasehold sales

1. On any disposal of a Discounted Sale House the following definitions shall be imposed in the deed of transfer or lease (as applicable):

1.1 “the Agreement” means a s106 Agreement dated20 made between Cheshire East Borough Council (1) and (2) and(3)

1.2 “the Assumptions” are:

1.2.1 a willing seller and buyer

1.2.2 that prior to the date of valuation the Dwelling was freely exposed to the market and there has been a reasonable period within which to negotiate the sale (having regard to the nature of the Dwelling and the state of the market) and that values remained static throughout that period and

1.2.3 that no account is taken of any bid by any prospective purchaser with a special interest and

1.2.4 that both parties to the transaction had acted knowledgeably prudently and without compulsion; and

1.2.5 that the Dwelling is in its existing state of repair and sold with vacant possession

1.2.6 that the transfer/assignment does not contain any provisions that are not standard or usual in residential freehold/leasehold transactions

- 1.3 "Council" means Cheshire East Borough Council of Westfields, Middlewich Road, Sandbach, Cheshire CW11 1HZ
- 1.4 "Discounted Sale Price" means no more than seventy per cent (70%) of the Open Market Value of the Dwelling
- 1.5 "Disposal" means sale, transfer, option, gift exchange, declaration of trust, assignment, lease and including a contract for any such disposal and "Disposals" "Dispose" and "Disposed of" shall be construed accordingly;
- 1.6 "Independent Valuer" means a member of the Royal Institution of Chartered Surveyors appointed by the Owner of the Dwelling at his own cost but first approved by the Council in writing
- 1.7 "Open Market Value" means the value assessed by an Independent Valuer and agreed by the Council in accordance with paragraph 2.3 below or determined in accordance with paragraph 2.4 below.
- 1.8 "Owner" means the person who intends to Dispose of the relevant Dwelling
- 1.9 "Dwelling" means the property the subject of this deed
- 1.10 "Approved Person" means a Qualifying Person (as defined in the Agreement), who is approved by the Council to purchase the Dwelling or such other persons as are approved by the Council in writing pursuant to clauses 2.7 or 2.8 below or such other persons as are approved by the Council from time to time
- 1.11 "Main Residence" means a dwelling lived in by an owner/occupier as his sole or main home for more than thirty-five weeks in every calendar year
- 1.12 a 'Sale' of the Dwelling occurs in every case where there is a Disposal of the Dwelling except when the Disposal is:
- (i) executed pursuant to an order of a court on granting in respect of the parties a decree of dissolution of marriage or judicial separation or
 - (ii) executed pursuant to an order of a court which is made in connection with the dissolution or annulment of the marriage or the parties' judicial separation and which is made at any time after the granting of such decree or

- (iii) executed at any time in pursuance of an agreement made in contemplation of or otherwise in connection with the dissolution or annulment of the marriage or their judicial separation or
- (iv) executed by personal representatives of a deceased Owner for the purpose of transferring or assigning into the sole ownership of the spouse of the Owner
- (v) executed by personal representatives of a deceased joint tenant and a surviving joint tenant for the purpose of transferring or assigning the Premises into the sole ownership of the surviving joint tenant

PROVIDED THAT where a Disposal falls within the categories set out in paragraph 1.12(i) – (v) the transferee covenants with the Council as set out in paragraph 2.11 below and "Sell" shall be construed accordingly

- 2. The following shall apply where a person wishes to Sell the Dwelling:
 - 2.1 The Owner of the Dwelling shall before commencing marketing of the Dwelling, submit an assessment of Open Market Value.
 - 2.2 The assessment produced pursuant to sub paragraph 2.1 above shall be prepared by an Independent Valuer and submitted by the then Owner to the Council for approval within one month of the valuation being carried out.
 - 2.3 The Council shall either approve the assessment submitted to it in accordance with to sub-paragraph 2.2 above or provide an alternative assessment of the Open Market Value with a view to arriving at an agreed valuation.
 - 2.4 If agreement between the Council and the Owner is not reached under sub paragraph 2.3 above within 4 weeks of the Council's receipt of the assessment then the matter shall be referred to an appropriate independent expert (who shall either be agreed between the parties by the President for the time being of the Royal Institution of Chartered

Surveyors or any person acting with his authority) and the decision of the expert shall be final and binding (save in the case of manifest error) and his costs shall be borne as he shall direct (or where no direction is made, the costs shall be borne by the Owner).

- 2.5 Having obtained the Council's agreement of the Open Market Value or having received the binding decision of the expert in accordance with paragraph 2.4 of this deed in order to establish the Open Market Value, the Owner will give the Council written notice of (a) the date upon which he or she has arranged for the Dwelling to be advertised for sale and (b) the name and address of the agent who will market the premises, and will invite the Council to nominate Approved Persons to purchase the Dwelling.
- 2.6 If exchange of contracts for the Sale of the Dwelling has not occurred within 6 months of the date of the valuation being agreed or determined in accordance with paragraph 2.4 of this deed, then the Owner shall submit a new valuation, repeating the steps set out in paragraphs 2.1 to 2.3 and any Sale shall only proceed in accordance with the new Valuation, which in turn shall only be valid for a period of six months from the date it is agreed or determined in accordance with paragraph 2.4 of this deed.
- 2.7 At any time up to exchange of contracts for the sale of the Dwelling the Council may nominate Approved Persons to the Owner as prospective purchasers prioritised from its own affordable housing lists and from applications made to it in response to the Owner's own marketing exercise. Priority will be given to applicants in accordance with any Local/Community Connection criteria set out in the Agreement.
- 2.8 Prioritising nominees in the order indicated by the Council (if any) and having satisfied himself regarding their sustainability as prospective purchasers, the Owner will use reasonable endeavours to advance a sale of the Dwelling to an Approved Person.
- 2.9 If the Owner satisfies the Council (by written confirmation from his solicitor or estate agent) that the Dwelling has been advertised continuously for ten weeks at the Discounted Sale Price to those who would qualify as Approved Persons and that he or she has not been able to exchange contracts for sale then he shall be entitled to sell the Dwelling to any person at the Discounted Sale Price.

2.10 If a Dwelling is sold to a purchaser in accordance with clause 2.9 above

(i) **the Council will certify to the Land Registrar that the disposition complies with clause [] of the transfer/lease dated [] made between [] and [] so that the disposition may be registered in accordance with the restriction on the register of title of the Dwelling and**

(ii) **the Dwelling shall remain subject to the terms of the Agreement and the transfer/lease and the requirements of Paragraph 2.11 shall apply regarding future disposal to and occupation by an Approved Person.**

2.11 Upon Sale of the Dwelling and upon every transfer/assignment of the Dwelling described in clause 1.10 (i) – (v) above, the transferor shall covenant with the Council and as a separate covenant with the transferee (but not so as to render the transferor liable to the transferee after the transferor shall have parted with his interest in the Dwelling) that:

(a) any Sale of the Dwelling shall only be for the Discounted Sale Price

(b) any Sale of the Dwelling shall be to an Approved Person

(c) the Dwelling shall at all times be the Main Residence of the transferee

(d) the transferee shall not effect a Sale save in accordance with Paragraph 2 above

(e) the transferee shall not sell the Dwelling without first:

(i) procuring that any transferee enters into a covenant with the Council to observe and perform the covenant set out in this paragraph 2.11; and

(ii) delivering to the Council the covenant referred to in this paragraph 2.11 on the Sale of the Dwelling

2.12 To the intent that no transfer of the Dwelling shall take place otherwise than in accordance with paragraph 2.11 above the transferee shall at the transferee's own expense apply to the Chief Land Registrar to enter the following restriction on the register of the title to the Dwelling such restriction to remain on the register during its subsistence:

'No disposition of the registered estate (other than a charge) by the Registered Proprietor is to be registered without a certificate addressed to the Land Registry and signed by the Borough Solicitor, Cheshire East Borough Council, Westfields, Middlewich Road, Sandbach, Cheshire, CW11 1HZ that the disposition complies with clause [] of a transfer/lease dated [] made between [] (1) and [] (2)'

- 2.13 The Council shall have the benefit of the right to enforce the covenants contained above pursuant to the Contracts (Rights of Third Parties) Act 1999

THE FIFTH SCHEDULE
Approved Landscape and Ecological Management Plan

THE SIXTH SCHEDULE

Form of Viability Appraisal

CHESHIRE EAST BOROUGH COUNCIL - BASIC DEVELOPMENT APPRAISAL

Site Location: _____

Site Size in Hectares: _____

Has Developer Purchased the site?:

Date of Purchase / Option Agreement:

Total Number of Residential Units:

Proposed Number of Affordable Units: 30% of total number of residential units on site

Target for Developer Profit (% GDV): §% of GDV for Open Market Dwellings; §% of GDV for Affordable Housing

Table 1 - GROSS DEVELOPMENT VALUE				
Open Market Units :-				
Unit Type		Floor Area	Number	Actual or Anticipated Sales Value
Actual unit types		Actual sq m		Actual
		Actual sq m		Actual
		Actual sq m		Actual
		Actual sq m		Actual
		Actual sq m		Actual
		Actual sq m		Actual
Sub-total		Actual sq m		£ Actual
Affordable Units :-				
Unit	Floor Area Actual sq m	Tenure	Number	Actual or Anticipated Actual
	Actual sq m			Actual
	Actual sq m			Actual
	Actual sq m			Actual
Sub-total	Actual sq m			£Actual
TOTAL GROSS DEVELOPMENT VALUE				

Table 2 - TOTAL DEVELOPMENT COSTS				
Construction :-			Rate	Total
A	Standard Construction Cost	£	per sq m	
B	Roads and Services	£	lump sum	
C	Landscaping	£	lump sum	
D	Abnormal costs (please specify)	£	lump sum	
E	Other (please specify) – changes to Lifetimes Homes Standards and applicable Building Regulations	£	lump sum	
F A to E Sub-total				
G	Construction Contingency	%	of F	
H TOTAL CONSTRUCTION COSTS (A to G)				£
Fees :-			Rate	Total
J	Professional Fees	%	of H	
K	Project Management	%	of H	
L	Marketing & Advertising	£	lump sum	
M	Actual Planning & Feasibility Fees	£	lump sum	
N	Legal Fees on Sales / Lettings	%	of GDV	
P	Agents Fees on Sales / Lettings	%	of GDV	
R	Actual Land Acquisition Costs	£	lump sum	

S	Actual Land Acquisition Fees	£	lump sum	
T	S106 (on and off-site contributions)	£	lump sum	
TOTAL DEVELOPMENT COSTS				£

Table 3 - COST OF BANK FINANCE	
Interest Rate %	(actual likely to be paid now)
Development Period	(§ Years)
Total Development Costs (TDC) £	(Total from table 2)
Application of Interest Rate	The Interest Rate will be cashflowed by an Independent surveyor to reflect the actual programme of Total Development Cost expenditure
Total Interest	£
Other Bank Lending/Arrangement Fees	Actual Arrangement and Exit Fees
TOTAL FINANCE COST	£

Table 4 - DEVELOPMENT SURPLUS / LOSS			
	Money In	Money Out	
GDV			
Total Development Costs			
Total Finance Cost			
TOTAL SCHEME SURPLUS OR LOSS			£
Expressed as a % of Gross Development Value			%

THE COMMON SEAL of)

§)

was affixed to this Deed in the presence of:)

Director

Director/Secretary

SIGNED as a **Deed** by **§**)

acting by a director and its secretary or)

two directors)

Director

Director / Secretary

SIGNED as a Deed by)

§)

in the presence of)

Witness Signature:

Name:

Address:

Occupation:

THE COMMON SEAL of)
CHESHIRE EAST BOROUGH COUNCIL)
was affixed in the presence of:)

Authorised Signatory:

Appendix 3 Report of Consultation on the First Draft BNG SPD

Document section	Summary of the main issues raised	presentors	Council response including any changes proposed
Section 1: Introduction	The content of this draft Biodiversity Net Gain SPD aligns much more closely with the SADPD which awaits Examination rather than the adopted Plan document from 2017.	Cashtal Properties Ltd	<p>The first draft BNG SPD was prepared in anticipated of the SADPD being adopted in early 2022 but the examination process took longer than expected. The SADPD has now been examined, found sound and adopted in December 2022.</p> <p>The BNG SPD provides guidance on environmental policies of the CELPS but has been designed to align closely to the SADPD, in particular to policies 'ENV1 Ecological Network' and 'ENV2 Ecological Implementation'.</p>
	All staff and elected members involved in consideration of biodiversity issues relating to planning decisions need to be adequately trained and mentored	Peak District National Park Authority	Staff and elected members have undertaken training in BNG matters and CPD related to this agenda is an on-going requirement and practice for in-house ecologists who provide internal training to planning staff.
Section 2	CPRE recognise SA and SEA not required of the document	CPRE Cheshire	Cheshire East Council are of the view that SEA and SA are not a required part of the process related to the production of this SPD.
Section 3	This section could be considerably strengthened by conveying the urgency that the interlinked climate and biodiversity crisis means for making biodiversity net gain	Mr. Christopher Thornton	Noted. Further explanatory text has been included in the introductory parts of the document.
	We recommend that a reference should be included to the climate emergency and the harm to biodiversity that will arise consequently in the future.	CPRE Cheshire	As above
	<p>We consider that no further work can proceed on the emerging BNG SPD until:</p> <ol style="list-style-type: none"> 1. The objections to the emerging SADPD in relation to biodiversity net gain have been resolved through independent examination; and/or 2. The Environment Bill has received royal assent and there will undoubtedly be transition arrangements in place for authorities whereby adopted development plans do not place such a burden on developers. Appendix 1 of the BNG SPD seeks to address strategic environmental assessment and habitat regulations assessment screening and it concludes that no significant environmental effects would arise as a result of the SPD. 	<p>Bloor Homes (NW) Ltd</p> <p>Jones Homes & Persimmon Homes (Jones Homes & Persimmon Homes</p>	<p>The first draft BNG SPD was prepared in anticipated of both the progression of Environment Act being implemented , and the SADPD being adopted in early 2022. However the examination process for the SADPD took longer than expected. The SADPD has now been examined, found sound and adopted in December 2022.</p> <p>The BNG requirements of the Environment Act come into force in November 2023 and it has been prudent to delay progression of this SPD to allow for the emergence of further guidance on how the Act</p>

			<p>should be implemented, and also await for the publication of associated regulations.</p> <p>The BNG SPD provides guidance on environmental policies of the CELPS but has been designed to align closely to the SADPD, in particular to policies 'ENV1 Ecological Network' and 'ENV2 Ecological Implementation'.</p> <p>The points raised have now been resolved.</p>
	It may be prudent for the Council to delay the progression of the Biodiversity Net Gain SPD until the Environment Bill is passed into law. This would enable the Council to reflect the requirement to deliver a 10% net gain in biodiversity within the SPD, rather than providing only limited guidance beyond that set out in the Local Development Plan.	Gladman Developments Ltd	As above, the Bill is now enacted.
	The Framework does not advocate a blanket approach to biodiversity net gain and it does not promote a quantitative metric calculator for identifying whether a net gain can be achieved.	Bloor Homes (NW) Ltd Jones Homes & Persimmon Homes (Jones Homes & Persimmon Homes	The wording in this section has been updated to reflect the point raised and to set out the preference for using a quantitative metric.
	The Council must in the first instance seek to fully understand the consequences of applying the BNG SPD as drafted in terms of viability, site capacities and the overall strategy and objectives of the Cheshire East LPS.	Bloor Homes (NW) Ltd Jones Homes & Persimmon Homes (Jones Homes & Persimmon Homes	Viability of the primary policies which this SPD provides guidance on was considered during the examination of the SADPD. No viability problems were identified.
	There is no evidence that the Council has sought to understand the implications of the Draft BNG SPD for the requirements for a deliverable supply of sites.	Bloor Homes (NW) Ltd	As above
	The detailed guidance set out in the BNG SPD should only relate to the policies of the adopted development plan, in accordance with national policy and the legal framework governing the remit of supplementary planning documents.	IM Land	<p>The first draft BNG SPD was prepared in anticipated of both the progression of Environment Act being implemented , and the SADPD being adopted in early 2022. However the examination process for the SADPD took longer than expected. The SADPD has now been examined, found sound and adopted in December 2022.</p> <p>The BNG requirements of the Environment Act come into force in November 2023 and it has been prudent to delay progression of this SPD to allow for the</p>

			<p>emergence of further guidance on how the Act should be implemented, and also await for the publication of associated regulations.</p> <p>The BNG SPD provides guidance on environmental policies of the CELPS but has been designed to align closely to the SADPD, in particular to policies 'ENV1 Ecological Network' and 'ENV2 Ecological Implementation'.</p> <p>The points raised have now been resolved.</p>
	The SPD requires amendment to stipulate that BNG should not increase the risk of bird-strike hazard within 13km of the airport	Manchester Airport Group	The point is noted and the SPD has been updated accordingly to clarify the approach to BNG within the Manchester Airport Consultation zone and provide a link to digital mapping for applicants.
Section 4	We advise that this section includes clarification that Biodiversity Net Gain (BNG) does not replace existing environmental legislation or policy requirements. This includes the application of the mitigation hierarchy and BNG does not apply to development subject to the Habitats Regulations	Natural England	Noted, document updated accordingly.
	In answer to the question in paragraph 4.1, whether smaller sites should consider biodiversity net gain, we believe there should be a commitment to ensure a minimum of 10% Biodiversity Net Gain for all developments in Cheshire East and this must be highlighted in the Supplementary Planning Document	The Environment Agency	Explanatory text has been included in regard to small sites
	the SPD's progress should be held in abeyance until the BNG legislation within the Environment Bill passes into law, with the associated DEFRA metric endorsed and finalised by government	Barratt David Wilson North West, Barratt Homes Manchester, Bellway Homes, Taylor Wimpey Homes and Redrow Homes	Pleasesee comments above
	We note that DEFRA will be introducing a "small sites" metric and the SPD should commit to being fully consistent with this to ensure clarity for developers.	Jones Homes & Persimmon Homes (Jones Homes & Persimmon Homes	A small sites metric has been published . The SPD has been updated to reflect this guidance.

	Achieving the “greatest” BNG is not a requirement of national policy and should not therefore be sought within the SPD. It also fails to reflect other valid constraints/considerations which may arise on site which mean that the greatest BNG cannot be achieved.	Harrow Estates plc and Avro Heritage Ltd	Noted, the wording in the document has been changed in the interests of clarity.
	The provision for off-site mitigation should be incorporated into §4.4(d) for consistency with the broad approach advocated elsewhere in the draft SPD.	Bourne Leisure Limited	This has now been addressed in the document.
	Recommendation (2) At §4.4 clarification needs to be added to confirm that this is a data gathering exercise, and not a field-based exercise.	Barratt David Wilson North West, Barratt Homes Manchester, Bellway Homes, Taylor Wimpey Homes and Redrow Homes	This has now been addressed in the document.
Section 5.	acknowledging that the ecological networks are likely to evolve into Local Nature Recovery Strategy Networks which will play an important role in guiding the delivery of BNG going forward	Natural England	This has now been addressed in the document.
	The Ecological Network Map is difficult to decipher.	Transition Wilmslow	A link to a digital version of this map has been included and the original image removed.
	production of the SPD should be delayed until the adoption of the SADPD so that the evidence can be tested properly, and it can be demonstrated that the two documents clearly align.	Harrow Estates plc and Avro Heritage Ltd	See comments above
	canal corridors may also be recognised as potential 'off site' ecological assets for habitat provision (section 8.11), and prioritised for projects where additional benefits need to be sought. Offsite commuted sums could be used to provide biodiversity net gain along our waterways, where these can't be secured on site.	Canal & River Trust	To consider
	For the avoidance of doubt it is necessary that this section makes clear what type and scale of application or development will be subject to these requirements.	Bourne Leisure Limited	Type and scale of application referenced
	At §5.3 the guidance should be updated to make clear that the Core Area can be delivered off-site or potentially through the use of 'Biodiversity Credits' to be brought in under the Environment Bill. This can be achieved by including “on or off the development site” following “the size of the core area”:	Barratt David Wilson North West, Barratt Homes Manchester, Bellway Homes, Taylor Wimpey Homes and Redrow Homes	To consider
	The requirements should be proportionate, and the text should be re-worded to clarify the types of application to which this requirement will apply.	Harrow Estates plc and Avro Heritage Ltd	To consider

Section 6	it would be more appropriate to produce the SPD once the relevant legislation has reached Royal Assent, and the final version of the metric has been published	Bourne Leisure Limited	See comments above
	Gladman recommend that the Council consider allocating land to specifically provide opportunities for offsite mitigation of the effects of new development on biodiversity. This would be a proactive approach to ensuring a net gain in biodiversity can be achieved by all new development, where offsite mitigation is required.	Gladman	Not possible.
	The other triggers for requiring application of the metric are unclear. To ensure there is no doubt when an application would trigger this requirement "all other developments effecting natural or semi-natural habitats" and a "transport scheme" should be more clearly defined or explained to assist in transparency of the Council's application of this requirement.	Bourne Leisure Limited Harrow Estates plc and Avro Heritage Ltd	To consider. New wording has been introduced at X to further clarify the position in this regard
	Consider whether each change to a layout requires BNG – what parameters are reasonable?	Bourne Leisure Limited	To consider
	The SPD appears to suggest at §6.3 that there will be a requirement for a different BNG calculation if a layout changes. This requirement is considered to be disproportionate.	Harrow Estates plc and Avro Heritage Ltd	To consider
	The SPD should make it clear about what level of detail is expected for the different types of planning application e.g. outline, reserved matters or full planning applications.	Jones Homes & Persimmon Homes (Jones Homes Persimmon Homes	Further guide has been provided at section X regarding
	It is not clear to an applicant how 'pollution' should be interpreted and how the direct and indirect effects of a development in terms of pollution should or are expected to be calculated.	Bourne Leisure Limited	To consider
	§6.6 as currently drafted is inaccurate and therefore needs to be removed; the current metric (2.0) does not allow for indirect impacts to be input into the calculator	Barratt David Wilson North West, Barratt Homes Manchester, Bellway Homes, Taylor Wimpey Homes and Redrow Homes	Use of latest metric included in the latest version. Further guidance provided on indirect impacts.
	We would strongly suggest that reference to the Cheshire Wildlife Trust is removed from paragraph 6.8 due to the potential perceived conflict of interest.	Barratt David Wilson North West, Barratt Homes Manchester, Bellway Homes, Taylor Wimpey Homes and Redrow Homes	Reference removed

	Clarity is requested in relation to §6.10. It states: The survey and calculation should include the whole of the development boundary (red line) and adjacent land where direct or indirect impacts upon adjacent habitats are anticipated. As written the emerging SPD suggests surveys will be required to look at land within the red edge but also land beyond. It is not clear what would trigger a requirement to consider land outside the red edge.	Bourne Leisure Limited Barratt David Wilson North West, Barratt Homes Manchester, Bellway Homes, Taylor Wimpey Homes and Redrow Homes Harrow Estates plc and Avro Heritage Ltd	The document has been updated to clarify the circumstances under which land outside the red-line boundary will be considered for the purposes of BNG calculations.
	The survey and calculation should NOT be required to consider or include (undefined) 'adjacent' habitats. It should focus on the red line area.	Mineral Products Association	The document has been updated to clarify the circumstances under which land outside the red-line boundary will be considered for the purposes of BNG calculations.
	The SPD should make reference to use of future subsequent versions of the metric.	various	
	Identify phrases that need clarifying in the glossary 'low distinctiveness' 'poor condition' etc.		The glossary has been updated.
	The statement that creation of low distinctiveness habitats can only ever reach poor condition is harsh given that the SPD specifically encourages developers to incorporate biodiverse habitats into the site's green infrastructure. There are many examples of design guidance that focusses on biodiversity. The SPD should provide more encouragement for developers to build biodiverse-friendly habitats into new urban habitats. We suggest that this is re-worded to state that low distinctiveness habitats will normally be expected to achieve poor condition, unless the applicant can demonstrate how moderate or good condition would be achieved for the site in question.	Jones Homes & Persimmon Homes (Jones Homes & Persimmon Homes - 1274852)	noted
	The wording of the SPD at §6.14 regarding pre-development habitat value should be rephrased to more precisely reflect the emerging legislation in the Environment Bill	Bourne Leisure Limited	The section has been updated to more closely reflect the legislation.
Section 7	General support for use of the mitigation hierarchy		noted
	Harrow broadly supports the suggested approach to applying the mitigation hierarchy but considers that there should be scope to agree mitigation with the Council during the application process	Harrow Estates plc and Avro Heritage Ltd	noted

	For outline applications, it may not be possible or reasonable for a developer to provide detailed information on how or where off-site measures will be delivered. This statement of the mitigation hierarchy should be accompanied by a recognition that for outline applications, sufficient information should be provided to give the LPA confidence that BNG can be secured through conditions or obligations attached to the outline permission.	Jones Homes & Persimmon Homes (Jones Homes & Persimmon Homes	Noted and clarification provide in the document
Section 8	It would be beneficial to provide clarity on the preference for on-site provision of BNG and that the Council will only consider off-site provision when it has been adequately demonstrated that net gains cannot be achieved on-site. Natural England advise that off -site provision should always be located as close as possible to where the losses in habitat will occur	Natural England	
	Section 8 places the onus entirely on the developer to prepare a package of measures in advance of a planning application submission and ensure deliverability and long-term management arrangements. This puts a great deal of burden on the developer and is likely to result in an ad-hoc and inconsistent approach in terms of planning applications. A simple mechanism for S106 should be put in place, led by the Council.	Bloor Homes (NW) Ltd Jones Homes & Persimmon Homes (Jones Homes & Persimmon Homes	It is the developers responsibility to demonstrate how will achieved net gain.
	8.5 inconsistent with earlier parts of the document. Agreement mechanism for offsite/onsite delivery not set out. Monitoring and management plan needs to be proportionate.	Bourne Leisure Limited	noted
	Recommendation (9) Clarification is required at §8.5(d) to make clear the meaning of the term 'strategically important'. Recommendation (10) Clarification is required at §8.5(g) to make clear which bodies will run the proposed 'offset register'. Recommendation (11) Clarification is required at §8.5(h) to make clear which bodies will be responsible for 'monitoring'.	Barratt David Wilson North West, Barratt Homes Manchester, Bellway Homes, Taylor Wimpey Homes and Redrow Homes	noted
	Consider including model clauses at 7.5	Bloor Homes (NW) Ltd	noted
	8.6 This should be amended to read "pay reasonable professional fees associated with the above, up to an agreed sum".	Mineral Products Association	noted
	8.7 clarify what 'detailed worked up proposals' means	Bourne Leisure Limited	noted
	For outline applications, sufficient detail should be provided to demonstrate that there is no reason for the LPA to consider that BNG cannot be delivered through planning condition or obligation.	Jones Homes & Persimmon Homes (Jones Homes & Persimmon Homes	Noted and document updated

	Harrow therefore considers that flexibility should be introduced to the guidance and would suggest that the wording "where possible" is added to the end of the first sentence of §8.11.	Harrow estates	noted
	The Council needs to provide resource to identify land parcels suitable for offsite solutions and create a geodatabase of sites that have been assessed and verified as potential offset sites. This would create a more open market.	Jones Homes & Persimmon Homes (Jones Homes & Persimmon Homes	This is not the role of the council currently.
	General support for offsite provision and recognition that this may be some distance from the development site	various	noted
	the document needs more clarity on how the Council will assess and weigh off-setting BNG schemes in non-strategic locations.	Jones Homes & Persimmon Homes (Jones Homes & Persimmon Homes	
Section 9	9.1 - Consistency is needed with para 4.1	Jones Homes & Persimmon Homes (Jones Homes & Persimmon Homes	
9.14	In the first instance we note that the Council will receive a fee for the determination of the planning application and as this work will form part of the application process there is no clear justification for an additional fee. If this fee is to be applied, the precise fee should be identified, evidence should be provide to show why it cannot be covered by the planning application fee and evidence should be provided to show how the figure identified has been derived. Harrow is concerned that the unit costs identified and set up fees seem high and no clear explanation is provided to demonstrate how these costs have been derived so it is not clear whether they are justified.	Harrow Estates plc and Avro Heritage Ltd Barratt David Wilson North West, Barratt Homes Manchester, Bellway Homes, Taylor Wimpey Homes and Redrow Homes	Approach to fees updated with updated explanation.
	The Council's proposed admin fee of £1,200 per unit seems reasonable, but there should be a basis of calculation provided for transparency	Jones Homes & Persimmon Homes (Jones Homes & Persimmon Homes	Approach to fees updated with updated explanation.
	Gladman submit that the formula and a breakdown for these costings (and any subsequent updates) is provided for review and comment.		Approach to fees updated with updated explanation.
	9.22 we would welcome standard templates for both conditions and s106 agreements as they would help avoid any delays with decision making.		Included in Appendices

	<p>No break-down is provided at §9.23 on how the set-up fee has been calculated (at £6,945). In any event, and especially if these costs are from Cheshire Wildlife Trust, the future draft of the SPD needs to provide additional evidence justifying this figure. It is not considered to be reasonable as drafted, without this justification. The £6,945 set-up fee per agreement seems high for simple agreements. We appreciate the benefits of a simple charging structure, but we suggest the Council might consider a two-band structure with a lower charge for small schemes and/or situations where a new management plan does not need to be prepared. In any case, the £6,945 should be clarified in terms of staff time, in the interests of transparency.</p>		Approach to fees updated with updated explanation.
Section 10	It is not clear how an 'approved' organisation will be defined and agreed by the LPA.	Bourne Leisure Limited	noted
10.1	Harrow considers that details should be provided as to how these "approved responsible" bodies will be identified as this information is not currently provided in the SPD.	Harrow EStates	
10.1	Section 10 needs to be strengthened to include a detailed process for coming to these legal agreements with developers including a list of appropriate sanctions if they will not comply. Therefore, there should be a recommendation that the biodiversity agreement MUST BE IN PLACE before the development starts.	Bollington Town Council	noted
10.4	We disagree that all High Distinctiveness habitats require a specialist contractor to implement, and we are not convinced that this will be enforceable. We suggest that this requirement is modified to state that for high distinctiveness habitats, the developer's ecologist should provide assurances of the ability of the contractor to implement the habitat establishment	Jones Homes & Persimmon Homes (Jones Homes & Persimmon Homes	noted
10.5	At §10.5 the SPD notes that the implementation of off-site habitat creation proposals will be secured by means of a section 106 agreement. Whilst this approach is welcomed, Bourne Leisure considers that the option of securing proposals by means of a negatively worded 'Grampian' condition should also be included in this section.	Bourne Leisure Limited	noted
10.6	<p>Harrow notes that §10.6 of the SPD requires that all development proposals must also include proposals for the incorporation of features to enhance the biodiversity of the resulting development in addition to proposals for habitat creation and enhancement as assessed by the biodiversity metric calculation.</p> <p>Examples identified include green wall and green/brown roofs, and features for nesting birds and bats. Harrow is concerned that this requirement is effectively seeking additional biodiversity enhancement when proposals will already be subject to significant biodiversity requirements through the metric. It is not considered that this approach is justified as the Council will effectively be 'double charging' in order to achieve additional biodiversity gain.</p>	Harrow Estates plc and Avro Heritage Ltd	Approach clarified and updated in the document

10.7	We do not consider that the wording of §10.7 (page 24) is currently appropriate, as it states that where schemes that are classed as 'minor AND not affecting natural/semi-natural habitats', they will be exempt from having to be put through the Defra metric. We consider that all minor and small-scale major applications should be exempt. This approach would remain consistent with the adopted and emerging Development Plan Documents as they would still have to demonstrate ecological enhancement, using appropriate features from (a) – (k) in §10.8. (18) The reference to natural and semi-natural habitats should be removed from paragraph 10.7 and replaced by a scale-based approach which would remain consistent with the Development Plan whilst continuing to ensure BNG is delivered.	Barratt David Wilson North West, Barratt Homes Manchester, Bellway Homes, Taylor Wimpey Homes and Redrow Homes	Legislation has been updated to clarify the position, the updated document reflects this.
10.8	The list of BNG features is good, but more guidance is needed on what is actually expected and what a planning officer and small developer should agree on without specialist knowledge. Again, this indicates that a Biodiversity SPD should precede or incorporate the BNG SPD. Alternatively, the Cheshire East Design Guide could be amended to incorporate advice on BNG measures.	Jones Homes & Persimmon Homes (Jones Homes & Persimmon Homes	noted
Section 11	We advise the Ecological Network Map should be made available as an online interactive map and with GIS shapefiles for download and use.	Jones Homes & Persimmon Homes (Jones Homes & Persimmon Homes	noted
	Whether within the red line of a proposed development or at an offsite area, an isolated area of gain for biodiversity will be of limited value if there is not an identified corridor or stepping ability to a wider natural environment. In all cases the developer should be required to demonstrate that this linking is identified within the proposal.	Mr Roger Cole	noted
Section 12	England Trees Action Plan and Peat Action Plans introduce actions to research further protections for such habitats. We suggest that there is merit in referring to these strategies and perhaps deferring more detailed guidance on buffer zones pending the outcome of these pieces of research.		Guidance on buffer zones has been included
Section 13	Table 1 has a vague heading– states CWT BNG. Clarification is required on the purpose of this table and if this is a Cheshire Wildlife Trust (CWT) or Cheshire East requirement, Tables 2 and 3 are not appropriately titled and reference is again made to CWT. Full clarification is required on how the costs and prices have been calculated for transparency as expected from a local authority.	Jones Homes & Persimmon Homes (Jones Homes & Persimmon Homes	Table updated, references updated
13.4	Accelerated succession will not be an option in Defra metric 3.0 and sites which are suitable for woodland creation may not always support existing grassland. Finer detail and more clarification is needed on this point.	Jones Homes & Persimmon Homes (Jones Homes & Persimmon Homes	noted

	Recommendation (20) Land should not be designated as Potential Local Wildlife Sites unless there is a realistic chance of habitats being proposed, we would instead suggest that future monitoring of land to assess its suitability against the Local Wildlife Sites Criteria.	Barratt David Wilson North West, Barratt Homes Manchester, Bellway Homes, Taylor Wimpey Homes and Redrow Homes	noted
	Recommendation (14) A breakdown should be included to justify how the figure of £1,200 covering Cheshire East Council's costs is arrived at, given that we are not aware of other Local Authorities who charge such a fee.	As above	Noted and approach modified
	Recommendation (16) It is essential that a break-down of the £6,945 set-up fee is provided as justification to Table 1, to ensure the SPD is robust and reasonable.	As above	Noted, approach modified
	It is therefore essential that the SPD is explicit in stating that the BNG metric will not be applied to sites which already benefit from outline planning permission, given that to introduce this would go beyond the scope of a Reserved Matters submission. This is a key point that the guidance needs to cover as both the adopted LPS and the emerging SADPD refer only to Net Gain being delivered within 'development proposals', and does not differentiate between Full, Outline, and Reserved Matters submissions.	As above	Noted, approach modified and reference to how outline applications should be dealt with is included

Appendix 4 Habitats Regulations Screening Assessment

1. Cheshire East Council has produced a final draft Biodiversity Net Gain Supplementary Planning Document (“SPD”). The purpose of the SPD is to provide guidance on the provision of Biodiversity Net Gain and achieving an appropriate Biodiversity Net Gain mix on development sites proposed in the borough, adding further detail to policies contained within the Development Plan.
2. The Development Plan for Cheshire East consists of the Local Plan Strategy (LPS) and the Site Allocations and Development Policies Document (SADPD). In addition, made Neighbourhood Plans also form part of the Development Plan.
3. The policy framework for the SPD is contained in the LPS, with a particular focus on Policy SE 3 (“Biodiversity and Geodiversity”), SE 5 (“Trees, Hedgerows and Woodland”) and Policy SE 6 (“Green Infrastructure”); and within the SADPD via policies ENV1 (“Ecological Network”) and ENV2 (“Ecological Implementation”).
4. This screening report is designed to determine whether or not the contents of the final draft Biodiversity Net Gain SPD require a Strategic Environmental Assessment (“SEA”) in accordance with the European Directive 2001/42/EC and associated Environmental Assessment of Plans and Programmes Regulations 2004. The report also addresses whether the draft Biodiversity Net Gain SPD has a significant adverse effect upon any internationally designated site(s) of nature conservation importance and thereby subject to the requirements of the Habitats Regulations. The report contains separate sections that set out the findings of the screening assessment for these two issues.
5. From 17 May 2021 until the 14 June 2021, a previous iteration of the BNG SPD and its accompanying SEA and HRA Screening Report were consulted on. Feedback was received from Natural England and The Environment Agency,

but not in relation to the screening report. No feedback was received in relation to the SEA and HRA Screening Report.

6. This statement, alongside the final draft Biodiversity Net Gain SPD, will be the subject of consultation in accordance with the relevant regulations and the Council's Statement of Community Involvement. This will include consultation with the relevant statutory bodies (Natural England, Environment Agency and Historic England). Comments received during the consultation on the draft Biodiversity Net Gain SPD and this statement will be reflected in future updates to this document.

Strategic Environmental Assessment Screening

Legislative Background

7. The objective of SEA is to provide for a high level of protection of the environment with a view to promoting the achievement of sustainable development. It is a requirement of European Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (also known as the SEA Directive). The Directive was transposed in UK law by the Environmental Assessment of Plans and Programmes Regulations 2004, often known as the SEA Regulations.
8. Article 3(3) and 3(4) of the regulations make clear that SEA is only required for plans and programmes when they have significant environmental effects. The 2008 Planning Act removed the requirement to undertake a full Sustainability Appraisal for a SPD although consideration remains as to whether the SPD requires SEA, in exceptional circumstances, when likely to have a significant environmental effect(s) that has not already been assessed during the preparation of a Local Plan. In addition, planning practice guidance (PPG – ref Paragraph: 008 Reference ID: 11-008-20140306) states that a SEA is unlikely to be required where an SPD deals only with a small area at local level, unless it is considered that there are likely to be significant environmental effects.

Overview of draft Biodiversity Net Gain SPD

9. The purpose of the draft Biodiversity Net Gain SPD is to provide further guidance on the implementation of the SE 3 (“Biodiversity and Geodiversity”), SE 5 (“Trees, Hedgerows and Woodland”) and Policy SE 6 (“Green Infrastructure”) LPS policies.
10. It is important to note that policies in the LPS and SADPD were the subject of Sustainability Appraisal, which incorporated the requirements of the SEA regulations (as part of an Integrated Sustainability Appraisal). The likely significant environmental effects have already been identified and addressed – the SPD merely provides guidance on existing policies. The LPS Integrated Sustainability Appraisal has informed this SPD screening assessment.
11. SEA has been undertaken for policies SE 3 (“Biodiversity and Geodiversity”), SE 5 (“Trees, Hedgerows and Woodland”) and Policy SE 6 (“Green Infrastructure”), as part of the Integrated Sustainability Appraisal that supported the LPS. For the purposes of compliance with the UK SEA Regulations and the EU SEA directive, the following reports comprised the SA “Environmental Report”:
- SD 003 – LPS Submission Sustainability (Integrated) Appraisal (May 2014);
 - PS E042 – LPS Sustainability (Integrated) Appraisal of Planning for Growth Suggested Revisions (August 2015);
 - RE B006 – LPS Sustainability (Integrated) Appraisal Suggested Revisions to LPS Chapters 9-14 (September 2015);
 - RE F004 – Sustainability (Integrated) Appraisal – Proposed Changes (March 2016);
 - PC B029 – Sustainability (Integrated) Appraisal - Proposed Changes to Strategic and Development Management Policies (July 2016);
 - PC B030 – Sustainability (Integrated) Appraisal - Proposed Changes to Sites and Strategic Locations (July 2016);
 - MM 002 - Sustainability (Integrated) Appraisal - Main Modifications Further Addendum Report.

12. In addition, an SA adoption statement was prepared in July 2017 to support the adoption of the LPS. It should also be noted that the SADPD and the policies contained in it have also been supported by a Sustainability Appraisal (incorporating the requirements for the SEA directive).

SEA Screening Process

13. The council is required to undertake a SEA screening to assess whether the draft Biodiversity Net Gain SPD is likely to have significant environmental effects. If the draft Biodiversity Net Gain SPD is considered unlikely to have significant environmental effects through the screening process, then the conclusion will be that SEA is not necessary. This is considered in Table 1 below:-

Table 1: Establishing the need for a SEA

Stage		Decision	Rationale
1.	Is the SPD subject to preparation and/or adoption by a national, regional or local authority OR prepared through a legislative procedure by Parliament or Government? (Art. 2 (a)).	Yes	The SPD will be prepared and adopted by Cheshire East Borough Council.
2.	Is the SPD required by legislation, regulatory or administrative provisions? (Article. 2 (a)).	No	The Council's Local Development Scheme (2020 – 2022) does not specifically identify the need to produce a draft Biodiversity Net Gain SPD.
3.	Is the SPD prepared for agricultural, forestry, fisheries, energy, industry, transport, waste management, telecommunications, tourism, town and country planning or land use, AND does it set a framework for future development consent of projects in Annexes I and II to the EIA Directive? (Article 3.2 (a)).	No	The SPD is being prepared for town and country planning use. It does not set a framework for future development consent of projects in Annexes I and II to the EIA Directive (Article 3.2 (a)). Whilst some developments to which the guidance in the SPD applies would fall within Annex II of the EIA Directive at a local level, the SPD does not specifically plan for or allow it.
4.	Will the SPD, in view of its likely effect on sites, require an assessment under Article 6 or 7 of the Habitats Directive? Art 3.2 (b)).	No	A Habitats Regulations Assessment has been undertaken for the LPS and emerging SADPD. The SPD does not introduce new policy or allocate sites for development. Therefore, it is not considered necessary to undertake a

			HRA assessment for the SPD. This conclusion has been supported by an HRA screening assessment as documented through this report.
5	Does the SPD determine the use of small areas at local level, OR is it a minor modification of a PP subject to Art. 3.2? (Art 3.3)	No	The SPD will not determine the use of small areas at a local level. The SPD provides guidance on the how applicants should demonstrate the delivery of biodiversity net gain, but it does not specifically determine the use of small areas at a local level. The SPD will be a material consideration in decision taking.
6.	Does the SPD set the framework for future development consent of projects (not just projects in Annexes to the EIA Directive)? (Art. 3.4)	No	The LPS and emerging SADPD provide the framework for the future consent of projects. The SPD elaborates upon approved and emerging policies and does not introduce new policy or allocate sites for development.

14. The final draft SPD is considered to not have a significant effect on the environment and therefore SEA is not required. However, for completeness, Table 2 assesses whether the draft SPD will have any significant environmental effects using the criteria set out in Annex II of SEA Directive 2001/42/EC⁴ and Schedule 1 of the Environmental Assessment of Plans and Programmes Regulations 2004⁵.

Table 2: assessment of likely significance of effects on the environment

SEA Directive Criteria of Schedule 1 of Environmental Assessment of Plans and Programmes Regulations 2004	Summary of significant effects, scope and influence of the document	Is the Plan likely to have a significant environmental effect (Yes / No)
1.Characteristics of the SPD having particular regard to:		

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001L0042&from=EN>

⁵ http://www.legislation.gov.uk/ukxi/2004/1633/pdfs/ukxi_20041633_en.pdf

SEA Directive Criteria Schedule 1 of Environmental Assessment of Plans and Programmes Regulations 2004	Summary of significant effects, scope and influence of the document	Is the Plan likely to have a significant environmental effect (Yes / No)
(a) The degree to which the SPD sets out a framework for projects and other activities, either with regard to the location, nature, size or operating conditions or by allocating resources.	<p>Guidance is supplementary to policies contained in the LPS and SADPD, both of which have been the subject of SA / SEA. The policies provide an overarching framework for development in Cheshire East.</p> <p>The final draft Biodiversity Net Gain SPD provides further clarity and certainty to form the basis for the submission and determination of planning applications, consistent with policies in the LPS.</p> <p>Final decisions will be determined through the development management process.</p> <p>No resources are allocated.</p>	No
(b) The degree to which the SPD influences other plans and programmes including those in a hierarchy.	<p>The final draft SPD is in general conformity with the LPS, which has been subject to a full Sustainability Appraisal (incorporating SEA). It is adding more detail to the adopted LPS, SADPD and other policies in the Development Plan, which has itself been the subject of Sustainability Appraisal. Therefore, it is not considered to have an influence on any other plans and programmes.</p>	No
(c) The relevance of the SPD for the integration of environmental considerations in particular with a view to promoting sustainable development.	<p>The final draft SPD promotes sustainable development, in accordance with the NPPF (2019) and LPS policies. The LPS has been the subject of a full Sustainability Appraisal (incorporating SEA). The final draft SPD has relevance for the integration of environmental considerations and promotes sustainable development by providing guidance on the delivery</p>	No

SEA Directive Criteria Schedule 1 of Environmental Assessment of Plans and Programmes Regulations 2004	Summary of significant effects, scope and influence of the document	Is the Plan likely to have a significant environmental effect (Yes / No)
	of Biodiversity Net Gain in the borough.	
(d)Environmental problems relevant to the SPD.	There are no significant environmental problems relevant to the SPD.	No
(e)The relevance of the SPD for the implementation of Community legislation on the environment (for example plans and programmes related to waste management or water protection).	The final draft SPD will not impact on the implementation of community legislation on the environment.	No
2.Characteristics of the effects and area likely to be affected having particular regard to:		
(a)The probability, duration, frequency and reversibility of the effects.	The final draft SPD adds detail to adopted LPS and SADPD policy; itself the subject of SA.	No
(b)The cumulative nature of the effects of the SPD.	The final draft SPD adds detail to adopted LPS and SADPD policy, itself the subject of SA. The SA associated with the LPS and SADPD have considered relevant plans and programmes. No other plans or programmes have emerged that alter this position.	No
(c)The trans-boundary nature of the effects of the SPD.	Trans-boundary effects will not be significant. The final draft SPD will not lead to any transboundary effects as it is providing additional detail regarding the implementation of policies SE 3, SE 5 & SE 6 in the LPS and ENV1 and ENV2 in the SADPD, and does not, in itself, influence the location of development.	No
(d)The risks to human health or the environment (e.g. due to accident).	The final draft SPD will not cause risks to human health or the environment as it is adding detail to	No

SEA Directive Criteria Schedule 1 of Environmental Assessment of Plans and Programmes Regulations 2004	Summary of significant effects, scope and influence of the document	Is the Plan likely to have a significant environmental effect (Yes / No)
	environmental policies in the Local Plan.	
(e)The magnitude and spatial extent of the effects (geographic area and size of the population likely to be affected) by the SPD.	The final draft SPD covers the Cheshire East administrative area. The draft SPD will assist those making planning applications in the borough.	No
(f)The value and vulnerability of the area likely to be affected by the SPD due to: <ul style="list-style-type: none"> • Special natural characteristics of cultural heritage • Exceeded environmental quality standards or limit values • Intensive land use. 	The final draft SPD will not lead to significant effects on the value or vulnerability of the area. It is adding detail regarding the implementation of environmental policies SE 3, SE 5 and SE 6 in the LPS, and policies ENV1 and ENV2 of the SADPD, and does not, in itself, influence the location of development.	No
(g)The effects of the SPD on areas or landscapes which have recognised national Community or international protected status.	The SPD does not influence the location of development, so will not cause effects on protected landscape sites.	No

Conclusion and SEA screening outcome

15. The SPD is not setting new policy; it is supplementing and providing further guidance on an existing LPS and SADPD policy. Therefore, it is considered that an SEA is not required on the final draft Biodiversity Net Gain SPD. This conclusion will be revisited following consideration of the views of the three statutory consultees (the Environment Agency, Historic England and Natural England) and if there are significant changes to the SPD following public consultation.

Habitats Regulations Assessment Statement

16. The Council has considered whether its planning documents would have a significant adverse effect upon the integrity of internationally designated sites of nature conservation importance. European Directive 92/43/EEC on the Conservation of Natural Habitats and Wild Flora and Fauna (Habitats Directive) provides legal protection to habitats and species of European importance. The principal aim of this directive is to maintain at, and where necessary restore to, favourable conservation status of flora, fauna and habitats found at these designated sites.
17. The Directive is transposed into English legislation through the Conservation of Habitats and Species Regulations 2017 (a consolidation of the amended Conservation of Habitats and Species Regulations, 2010) published in November 2017.
18. European sites provide important habitats for rare, endangered or vulnerable natural habitats and species of exceptional importance in the European Union. These sites consist of Special Areas of Conservation (SACs, designated under the EU Directive 92/43/EEC on the conservation of natural habitats and of fauna and flora (Habitats Directive)), and Special Protection Areas (SPAs, designated under EU Directive 2009/147/EC on the conservation of wild birds (the Birds Directive)). Government policy requires that Ramsar sites (designated under the International Wetlands Convention, UNESCO, 1971) are treated as if they are fully designated European sites for the purposes of considering development proposals that may affect them.
19. Spatial planning documents may be required to undergo Habitats Regulations Screening if they are not directly connected with or necessary to the management of a European site. As the draft Biodiversity Net Gain SPD is not connected with, or necessary to, the management of European sites, the HRA implications of the SPD have been considered.
20. A judgement, published on the 13 April 2018 (People Over Wind and Sweetman v Coillte Teoranta (C-323/17) clarified that measures intended to avoid or reduce the harmful effects of a proposed project on a European site may no

longer be taken into account by competent authorities at the Habitat Regulations Assessment “screening stage” when judging whether a proposed plan or project is likely to have a significant effect on the integrity of a European designated site.

21. Both the LPS and SADPD have been subject to HRA.

22. The final draft Biodiversity Net Gain SPD does not introduce new policy; it provides further detail to those policies contained within the LPS. The HRA concluded that policies s SE3 ‘Biodiversity and Geodiversity’, SE5 Trees Hedgerows and Woodland, SE6 ‘Green Infrastructure’ could not have a likely significant effect on a European Site. The same applies to the final draft Biodiversity Net Gain SPD. The draft Biodiversity Net Gain SPD in itself, does not allocate sites and is a material consideration in decision taking, once adopted.

23. The final draft Biodiversity Net Gain SPD either alone or in combination with other plans and programmes, is not likely to have a significant effect on any European site. Therefore, a full Appropriate Assessment under the requirements of the Habitats Regulations is not required.

Conclusion and HRA screening outcome

24. Subject to views of the three statutory consultees (the Environment Agency, Historic England and Natural England), this screening report indicates that an Appropriate Assessment under the Habitats Regulations is not required.



Cheshire East Council

Email: localplan@cheshireeast.gov.uk

www.cheshireeast.gov.uk/localplan

Tel: 01270 685893