

DATED 3rd November

2021

(1) WILLIAM NORTHCROFT BUTLER AND JAMES NICHOLAS BUTLER

(2) H N BUTLER FARMS LIMITED

(3) FAREHAM BOROUGH COUNCIL

AGREEMENT

Pursuant to Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and other powers relating to land at Whitewool Farm, East Meon, Petersfield, Hampshire GU32 1HW

SH ∞ SMITHS

Shoosmiths LLP

Forum 5

The Forum

Parkway

Whiteley

Fareham

PO15 7PA

Tel: 03700 866800

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Ref. M-00874165

THIS AGREEMENT is made on 3rd November 2021

BETWEEN

1. **WILLIAM NORTHCROFT BUTLER**, of The Cart House, East Meon, Petersfield GU32 1HW and **JAMES NORTHCROFT BUTLER** of Whitewool Farm, East Meon, Petersfield GU32 1HW (the “**Owner**”); and
2. **H N BUTLER FARMS LIMITED**, a company incorporated in England and Wales (company number 00554785) whose registered office is at Whitewool Farm, East Meon, Petersfield GU32 1HW (the “**Tenant**”); and
3. **FAREHAM BOROUGH COUNCIL**, of Civic Offices, Civic Way, Fareham, Hampshire PO16 7AZ (the “**Council**”).

BACKGROUND

- (A) The Owner is the freehold proprietor of the Site with Title Absolute registered at HM Land Registry under Title Number SH21605.
- (B) The Tenant occupies the Site under the terms of a lease dated 4 April 2014 made between (1) Nicholas Northcroft Butler and Christine June Butler as Trustees of the G M Butler ‘N’ Settlement and (2) H N Butler Farms Limited.
- (C) The Site is located within South Downs National Park for which South Downs National Park Authority is the local planning authority.
- (D) Planning Permission exists for the Development of the Site to create a wetland habitat capable of neutralising nitrates from the water to mitigate the effects of increased nitrate levels in the Solent caused by Qualifying Development including Qualifying Development within the area administered by the Council.
- (E) The Section 106 Agreement regulates the Development of the Site and provides for the Owner and the Tenant to enter into Allocation Agreements with developers of Qualifying Developments whereby the Owner and the Tenant agree to Allocate Capacity to the developer and thereafter maintain the Site in order to provide Nitrate Mitigation for the Qualifying Development.
- (F) The obligations on the part of the Owner and the Tenant contained in the Section 106 Agreement are not enforceable by the Council.
- (G) By this Agreement the Owner and the Tenant covenant with the Council to comply with such obligations as are required in order to provide effective Nitrate Mitigation for Qualifying Developments that are subject to an Allocation Agreement and are within the Council's administrative area

The parties agree as follows:

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless the context requires otherwise, the following definitions apply:

“1982 Act”

The Local Government (Miscellaneous Provisions) Act 1982

"1990 Act"	The Town and Country Planning Act 1990 (as amended)
"Alternative Capacity"	the capacity for Nitrate Mitigation secured pursuant to any Unilateral Undertaking
"Allocation"	<p>the dedication by the Owner and/or Tenant of a portion of the Capacity to the developer of a Qualifying Development to mitigate the impact of that Qualifying Development on the nitrate levels of the Solent;</p> <p>and "Allocate" and "Allocated" shall be construed accordingly;</p>
"Allocation Agreement"	an agreement substantially in the form of the draft appended to this Agreement at Schedule Two to be entered into by the Tenant and a developer of a Qualifying Development to provide Nitrate Mitigation for such Qualifying Development
"Authority"	South Downs National Park Authority or its successor in title as local planning authority for the area in which the Site is located
"Capacity"	up to 2000 Kg/TN/yr to be removed from the Solent by the Development (unless an increase has been approved by the Authority and Natural England in writing following submission of evidence in accordance with the Section 106 Agreement)
"Capacity Monitoring Report"	A report in substantially the form appended at Schedule Three of this Agreement to be updated upon the completion of each Allocation Agreement and produced by the Tenant with any accompanying plans which provides evidence of any remaining Capacity and Alternative Capacity (where the provisions of a Unilateral Undertaking remain extant) for Nitrate Mitigation of an off-site Relevant Qualifying Development following the Tenant entering into an Allocation Agreement
"Commencement of Development"	<p>The date on which the Development commences by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act, other than (for the purposes of this Agreement and no other);</p> <ul style="list-style-type: none"> (a) site investigations or surveys; (b) archaeological works; (c) site decontamination; (d) the demolition of any existing buildings or structures; (e) the erection of hoardings and fences; (f) works connected with infilling; or

(g) the construction of access and service roads
and "Commence and "Commenced" shall be construed accordingly.

"Deed of Variation"	the deed of variation dated 29 April 2021 made between (1) South Downs National Park Authority (2) William Northcroft Butler and James Nicholas Butler and (3) H N Butler Farms Limited
"Development"	works to regrade the Site to create a new habitat to facilitate the removal of nitrates from Whitewool Stream and deliver net biodiversity enhancements
"Extant Unilateral Undertaking"	the Unilateral Undertaking given by (1) William Northcroft Butler and James Nicholas Butler and (2) H N Butler Farms Limited to (3) South Downs National Park Authority dated 29 April 2021;
"Extant Unilateral Undertaking Land"	the land bound by the Extant Unilateral Undertaking and being that part of Whitewool Farm, East Meon, Petersfield, Hampshire GU32 1HW as shown edged red on Plan 2
"Failure Notice"	notice served on the Tenant and/or the Owner by the Authority pursuant to paragraph 5.2 or paragraph 5.3 of Schedule 1 to the Section 106 Agreement;
"Landscape and Ecological Management Plan"	The document in substantially the form appended to this Agreement at Schedule Four subject to any reasonable amendment requested by the Authority and/or the Tenant in accordance with the Section 106 Agreement, such amendment to be notified to the Council in accordance with the provisions of this Agreement
"Natural England"	the public body known as Natural England or any successor body which acts as the Government's adviser for the natural environment in England
"Nitrate Mitigation"	mitigation measures to neutralise nitrates from the water to mitigate the effects of increased nitrate levels in the Solent caused by Qualifying Developments in line with Natural England requirements at the date of this Agreement
"Operational"	the time at which the Development is providing Nitrate Mitigation at the Capacity
"Plan 1"	the plan annexed hereto at Schedule One showing the Site edged red;
"Plan 2"	the plan annexed hereto at Schedule One showing the land bound by the Extant Unilateral Undertaking;
"Planning Permission"	the planning permission for the Development granted by South Downs National Park Authority on 17 February 2021 under reference SDNP/20/01263/FUL

“Pre-Development Mitigation Scheme”	The written proposals submitted by the Tenant and/or the Owner to the Authority pursuant to paragraph 5.6 of Schedule 1 of the Section 106 Agreement of the action to be taken by the Tenant and/or the Owner in the event that the Tenant and/or Owner have entered into Allocation Agreements to provide Nitrate Mitigation before the Commencement Date and/or the Development becoming Operational
“Qualifying Development”	any off-site development which requires Nitrate Mitigation that is treated by the Southern Water Peel Common Waste Water Treatment Works, the Southern Water Budds Farm Waste Water Treatment Works, Ashlett Creek Water Treatment Works or other waste water treatment works as agreed in writing by Natural England
“Relevant Allocation Agreement”	an Allocation Agreement relating to a Relevant Qualifying Development
“Relevant Qualifying Development”	a Qualifying Development of land for which the Council is the local planning authority;
“Relevant Unilateral Undertaking”	a Unilateral Undertaking relating to a Relevant Allocation Agreement and/or Relevant Qualifying Development
“Remediation Scheme”	the written proposals submitted by the Tenant and/or the Owner to the Authority pursuant to paragraph 5.1 of Schedule 1 to the Section 106 Agreement of the action to be taken by the Tenant and/or the Owner in the event that the Tenant and/or Owner have entered into Allocation Agreements which require greater Capacity than is available
“Site”	Whitewool Farm, East Meon, Petersfield, Hampshire GU32 1HW as shown edged red on Plan 1
“Section 106 Agreement”	the agreement dated 16 February 2021 made pursuant to section 106 of the 1990 Act between (1) South Downs National Park Authority (2) William Northcroft Butler and James Nicholas Butler and (3) H N Butler Farms Limited as amended by the Deed of Variation
“Solent”	the strait that separates the Isle of Wight from the mainland of England
“Unallocated Capacity”	Any Capacity that has not been Allocated
“Unilateral Undertaking”	any planning obligation given unilaterally by deed by the Owner and Tenant to the Authority in accordance with paragraph 5 of Schedule 1 to the Section 106 Agreement pursuant to which the Owner and Tenant shall be bound to take action to make available any shortfall of Capacity required by an Allocation Agreement either in the event of a

failure of the Development or in advance of the Development being Operational

**“Unilateral Undertaking
Expiry Date”**

the earlier of the following:

- a) the expiry of the lifetime of all such Qualifying Developments which are the subject of an Allocation Agreement to which Clause 4.1 relates; and
- b) Capacity being made available through the Development and being Allocated to all such Qualifying Developments which are the subject of an Allocation Agreement to which Clause 4.1 relates.

**“Unilateral Undertaking
Land”**

land which is the subject of and bound by a Unilateral Undertaking and which includes (for avoidance of doubt) the Extant Unilateral Undertaking Land

**“Water Sampling and Water
Flow Monitoring Scheme”**

the water sampling and water flow monitoring scheme approved by the Authority pursuant to paragraph 2.1.3 of Schedule 1 of the Section 106 Agreement

“Whitewool Stream”

the watercourse which runs through the Site part of which is shown on Plan 1 and from which nitrates shall be removed by the Development

“Working Days”

any Monday, Tuesday, Wednesday, Thursday and Friday except bank or public holidays and except any day between 25 December and 2 January (inclusive) in each year

- 1.2 The clause headings in this Agreement are for reference only and do not affect its construction or interpretation.
- 1.3 References to clauses and Schedules are to the clauses and Schedules of this Agreement unless stated otherwise.
- 1.4 Words importing one gender include any other genders and words importing the singular include the plural and vice versa.
- 1.5 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa.
- 1.6 Unless this Agreement states otherwise, any reference to any legislation (whether specifically named or not) includes any modification, extension, amendment or re-enactment of that legislation for the time being in force and all instruments, orders, notices, regulations, directions, byelaws, permissions and plans for the time being made, issued or given under that legislation or deriving validity from it.
- 1.7 References to the Site include any part of it.

- 1.8 References to any party in this Agreement include the successors in title of that party and in the case of the Council include any successor local authority exercising powers under the 1982 Act
- 1.9 References to "including" means "including without limitation"
- 1.10 Any covenant by the Owner or Tenant not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 1.11 Where two or more people form a party to this Agreement, the obligations they undertake may be enforced against them all jointly or against each of them individually.
- 1.12 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Agreement shall be unaffected.

2 LEGAL EFFECT

- 2.1 This Agreement is made pursuant to Section 33 of the 1982 Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011.
- 2.2 The covenants, restrictions and requirements imposed upon the Owner and the Tenant under this Agreement are enforceable by the Council against the Owner and the Tenant and to the extent permitted by law against each of their successors in title and any persons deriving title in the Site from either of them

3 COMMENCEMENT

- 3.1 This Agreement shall take effect on the day and year first before written.

4 COVENANTS OF THE OWNER AND TENANT

- 4.1 The Owner and the Tenant covenant with the Council as follows:
- 4.1.1 To comply with the Landscape and Ecological Management Plan
- 4.1.2 To use the Site in accordance with the Planning Permission for the lifetime of all Relevant Qualifying Developments to which Capacity is Allocated pursuant to a Relevant Allocation Agreement.
- 4.1.3 Not to Commence Development until the Water Sampling and Water Flow Monitoring Scheme is approved in writing pursuant to the Section 106 Agreement.
- 4.1.4 To provide to the Council a copy of the Water Sampling and Water Flow Monitoring Scheme within ten (10) Working Days of its approval by the Authority.
- 4.1.5 To implement in full the Water Sampling and Water Flow Monitoring Scheme.
- 4.1.6 To provide the Council with a copy of any Relevant Allocation Agreement and/or Relevant Unilateral Undertaking within 20 Working Days of the date of such agreement or undertaking along with an updated Capacity Monitoring Report.
- 4.1.7 Not to enter into any Relevant Allocation Agreement unless it can evidence that there is enough Unallocated Capacity available to Allocate to the Relevant Qualifying Development pursuant to the Relevant Allocation Agreement.

4.1.8 To allow the Council access to the Site upon reasonable written notice at all reasonable times in order for the Council to satisfy itself that the Owner and/or Tenant is complying with their obligations in this Agreement.

4.1.9 In the event that the Tenant and/or the Owner shall execute a Unilateral Undertaking to remove land from agricultural production in compliance with a Pre-Development Mitigation Scheme, Remediation Scheme and/or Failure Notice the Tenant and/or the Owner shall (if it shall not have already done so) cease using the Unilateral Undertaking Land for agriculture and from such cessation of use until the Unilateral Undertaking Expiry Date shall:

- A) Not cultivate the Unilateral Undertaking Land for agriculture (other than by sowing slow growing seed mix or tree planting in order to facilitate Nitrate Mitigation);
- B) Not add or apply any artificial fertiliser or livestock manure to the Unilateral Undertaking Land; and
- C) Not allow any livestock onto the Unilateral Undertaking Land;

in accordance with such Unilateral Undertaking.

4.1.10 For the avoidance of doubt:

- a) clause 4.1.9 applies to the Extant Unilateral Undertaking and the Extant Unilateral Undertaking Land; and
- b) nothing in clause 4.1.2 or clause 4.1.7 shall prevent the Tenant and/or the Owner from entering into a Relevant Allocation Agreement prior to the Development being Operational PROVIDED ALWAYS THAT:
 - i enough Alternative Capacity is available to provide the Nitrate Mitigation required for the Relevant Qualifying Development to which such Relevant Allocation relates and such Alternative Capacity is provided and maintained in accordance with clause 4.1.9; and
 - ii the Tenant and/or the Owner can evidence that there will be enough Unallocated Capacity available to Allocate to the Relevant Qualifying Development pursuant to the Relevant Allocation Agreement once the Development is Operational

5 PRIMACY OF THE SECTION 106 AGREEMENT

5.1 Nothing in this Agreement shall require the Owner and/or the Tenant to do anything or refrain from doing anything:

5.1.1 that would constitute a breach of the Section 106 Agreement; or

5.1.2 that would constitute or a breach of any condition of the Planning Permission; or

5.1.3 that would require them to act other than in accordance with any direction, notice, order or request given by the Authority pursuant to the Section 106 Agreement; or

5.1.4 that would require them to act other than in accordance with any Enforcement Notice, Breach of Condition Notice, Stop Notice, Planning Contravention Notice or other exercise of planning enforcement powers by the Authority in relation to the Site

- 5.2 Except in the case of manifest error, in relation to anything to be done or action to be taken by the Owner and/or the Tenant in relation to the Development and/or the Site including in order to remedy any breach of the Section 106 Agreement the Council shall accept the written certificate, notice or expression of satisfaction given by the Authority pursuant to the Section 106 Agreement or pursuant to its statutory powers as local planning authority as valid and conclusive evidence that such thing has been done or action taken

6 LOCAL LAND CHARGE

- 6.1 The Owner/Tenant shall apply to the Authority for this agreement to be registered as a local land charge.

7 SECTION 73 APPLICATION

- 7.1 The Owner/Tenant shall provide written notification to the Council when an application is made pursuant to section 73 of the Act the effect of which, if granted, will alter the Site's ability to provide Nitrate Mitigation.

8 ENFORCEABILITY

- 8.1 The obligations contained in this Agreement 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.
- 8.2 A party shall not be liable for any breach of the obligations or other covenants contained in this Agreement occurring after the relevant party has parted with the whole of its interest in the Site or the part of the Site in which such breach occurs (but without prejudice to the liability of the relevant party for any breach occurring prior to its parting with such interest).

9 NOTICES

- 9.1 Any notice, consent, demand or any other communication served under this Agreement will be effective only if in writing and delivered by hand or sent by first class post, pre-paid or recorded delivery.
- 9.2 Any notice, consent, demand or any other communication served shall be sent to the address of the relevant party set out at the beginning of this Agreement or to such other address as one party may notify in writing to the others at any time as its address for service.

10 DETERMINATION OF DISPUTES

- 10.1 Subject to clause 10.7, if any dispute arises relating to or arising out of the terms of this Deed, either party may give to the other written notice requiring the dispute to be determined under this clause 10. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.
- 10.2 For the purposes of this clause 10 a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to developments in the nature of the Development and property in the same locality as the Site.
- 10.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of the Law Society who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under clause 10.4.

- 10.4 Any dispute over the identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the Council and the Tenant cannot agree the identity of the organisation, then the Specialist is to be nominated by the President or next most senior available officer of the Law Society.
- 10.5 The Specialist is to act as an independent expert and:
- 10.5.1 each party may make written representations within ten (10) Working Days of his appointment and will copy the written representations to the other party;
 - 10.5.2 each party is to have a further ten (10) Working Days to make written comments on the other's representations and will copy the written comments to the other party;
 - 10.5.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;
 - 10.5.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross-examine each other;
 - 10.5.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and
 - 10.5.6 the Specialist is to use all reasonable endeavours to publish his decision within thirty (30) Working Days of his appointment.
- 10.6 Responsibility for the costs of referring a dispute to a Specialist under this clause 10, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.
- 10.7 This clause 10 does not apply to disputes in relation to matters of law or the construction or interpretation of this Deed which will be subject to the jurisdiction of the courts.

11 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

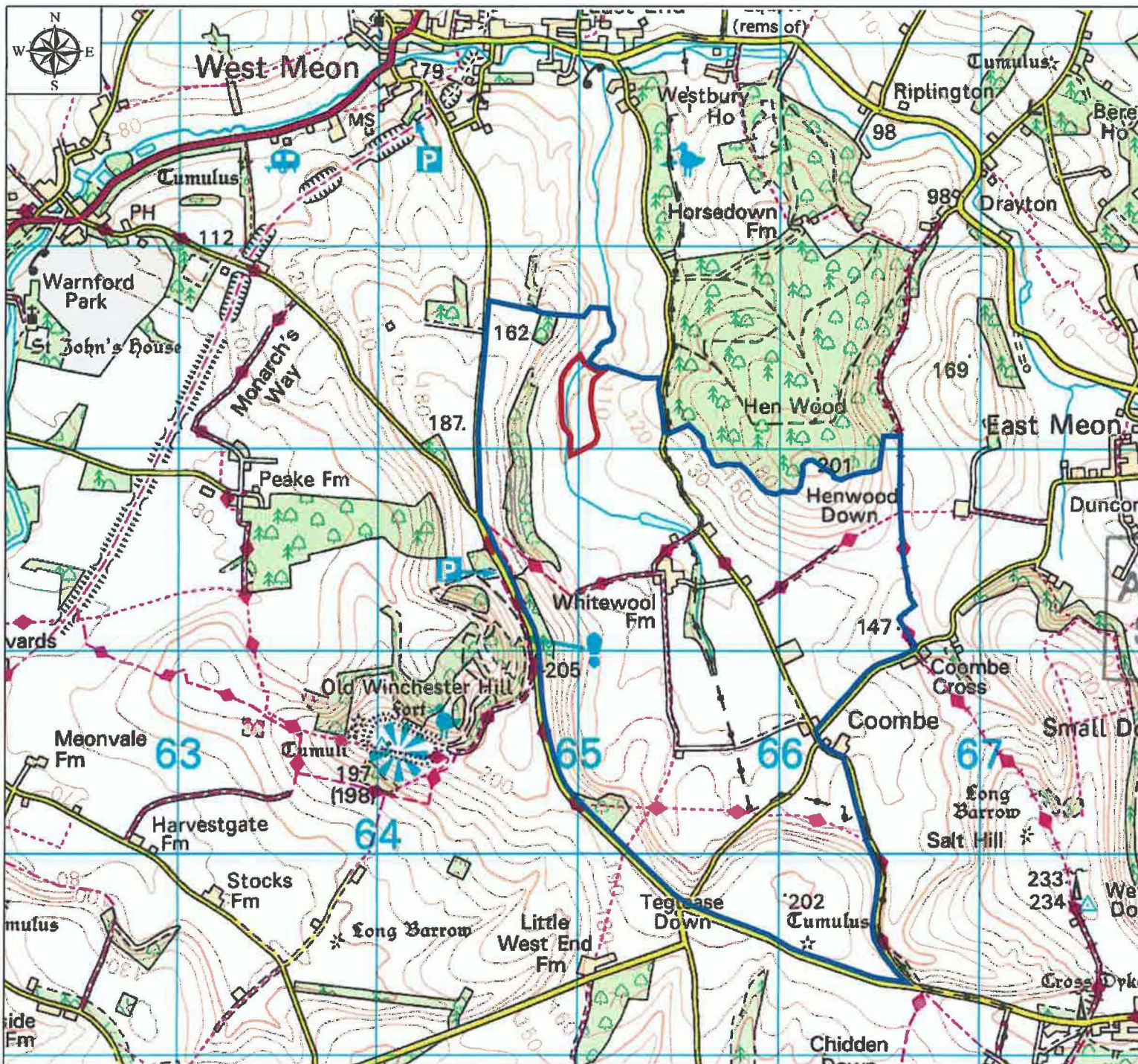
- 11.1 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it provided that the exclusion of the said Act shall not prevent all or any future successors in title to any of the parties to this Agreement from being able to benefit from or enforce any of the provisions of this Agreement.

12 JURISDICTION

- 12.1 This Agreement shall be governed by the laws of England and the Courts of England shall have sole jurisdiction in respect of the construction of this Agreement and as to the respective rights and liabilities of the parties.

SCHEDULE ONE

Plans



Client: H.N. Butler Farms Limited
Project: Whitewool Farm
Drawing Name: Application Boundary
Project No: A115857
Drawing No: Application Boundary/01

Scale: 1:25,000 @ A3
Notes: Do not Scale
Drawn: IM
Checked: CM

Key

-  Application Boundary
-  Land owned by Applicant

AUTHORISED
SIGNATORY

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0km 0.5km 1km

The Pavilion, 1st Floor, Botleigh
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End, Southampton, Hampshire,
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Tel: +44 238 202 2874
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Plan 2



[Redacted]

[Redacted]

AUTHORISED
SIGNATORY

[Redacted]

108439

SCHEDULE TWO

Draft Allocation Agreement

DATED

2021

(1) WILLIAM NORTHCROFT BUTLER and JAMES NICHOLAS BUTLER

(2) H N BUTLER FARMS LIMITED

(3) [Name]

DEED OF ALLOCATION OF NITRATE OFFSETTING SCHEME

At

Whitewool Farm, East Meon, Petersfield, Hampshire GU32 1HW

IN COUNTERPART

SH[∞]SMITHS

Shoosmiths LLP
Forum 5
The Forum
Parkway
Whiteley
Fareham
PO15 7PA
Tel: 03700 866800
Fax: 03700 866801
Ref. GEM/M-00914088

THIS DEED is made the day of Two thousand and Twenty One

BETWEEN

- (1) **WILLIAM NORTHCROFT BUTLER** of The Cart House East Meon, Petersfield GU32 1HW and **JAMES NICHOLAS BUTLER** of Whitewool Farm, East Meon, Petersfield GU32 1HW (the "Owner"); and
- (2) **H N BUTLER FARMS LIMITED** (Company registration number: 00554785) of Whitewool Farm, East Meon, Petersfield, Hampshire, GU32 1HW (the "Tenant"); and
- (3) **[DEVELOPER NAME]** (Company registration number: XXX) of XXXXX(the "Developer");

together **the Parties**

WHEREAS:

- (A) The Owner owns the freehold interest in the Site and is registered as proprietor with Title Absolute at the Land Registry free from encumbrances other than those matters contained or referred to in the Property and Charges Register of Title Number SH21605 at the date of this Deed.
- (B) The Tenant occupies the Site under the terms of a lease dated 4 April 2014 made between (1) Nicholas Northcroft Butler and Christine June Butler as Trustees of the G M Butler 'N' Settlement and (2) H N Butler Farms Limited.
- (C) High levels of nitrogen from housing and agricultural sources in the Solent have caused excessive growth of green algae (a process called eutrophication) which is having a detrimental impact upon protected habitats in the Solent.
- (D) The Site benefits from the Whitewool Planning Permission for habitat creation works to facilitate the removal of nitrates from the natural environment.
- (E) The Owner and the Tenant have entered into the Section 106 Agreement and the Section 33 Agreement which together secure the long term use of the Site for (inter alia) nitrate mitigation purposes and which facilitate the Allocation and ongoing monitoring of the Site in order to provide a nitrate offsetting solution for the benefit of offsite developments. The Section 106 Agreement also anticipates and enables other land comprised in the Site to be taken out of agricultural use (and secured through a Unilateral Undertaking) to provide additional Capacity in the event that the Tenant and/or the Owner have Allocated or propose to Allocate a greater Capacity than the Wetland Area is able to deliver or in the event that Capacity is required prior to the completion of the Wetland Area.

- (F) The Owner and the Tenant have agreed to Allocate a portion of the Site's Capacity (and/or to Allocate additional Capacity through the taking all or part of the Farmland out of agricultural use) to the Developer in order to mitigate the impact of the Development on nitrate levels in the Solent catchment in return for the Commuted Sum.

NOW THIS DEED WITNESSETH:

1. DEFINITIONS

- 1.1 The following words and phrases shall have unless the context otherwise requires bear the following meanings:

"Allocation"

means that a portion of the Mitigation Land providing a Capacity of not less than the Required Capacity has been designated pursuant to this Deed for the purposes of mitigating the impact of the Development on nitrate levels in the Solent catchment by the submission of a Capacity Monitoring Report by the Owner to SDNPA and the Council in accordance with the Section 106 Agreement and the Section 33 Agreement and "Allocate" and "Allocated" shall be construed accordingly

"Application"

means either:

- a) the application for planning permission submitted to Fareham Borough Council for the Development and allocated reference number [xxx] received and validated on [xxx]; and/or
- b) such other application as agreed in writing between the Developer and the Tenant and the Owner;

"Capacity"

means an amount (expressed in kg/TN/yr) of nitrates to be removed from

the Solent as a consequent of Nitrate Mitigation

"Capacity Monitoring Report"

has the same meaning as in the Section 106 Agreement

"Commutated Sum"

means a sum to be calculated by the following formula:

the Required Capacity

x

[insert sum]

less the Reserve Fee

"Deed of Variation"

means the deed of variation dated 29 April 2021 made between (1) South Downs National Park Authority (2) William Northcroft Butler and James Nicholas Butler and (3) H N Butler Farms Limited appended to this Deed at Appendix 2;

"Development"

means the development for [insert description in accordance with Developer's application];

"Expiry Date"

means the date that is [xxx] months from the date of this Deed (or such alternative date as may be agreed by the parties in writing);

"Farmland"

means that part(s) of the Site (excluding the Wetland Area) which is in agricultural use;

"Implementation Date"

means the date on which the Development commences by the carrying out of a material operation as specified in section 56(4) of the Town and Country Planning Act 1990 other

than (for the purposes of this Deed and no other);

- a) site investigations or surveys;
- b) archaeological works;
- c) site decontamination;
- d) the demolition of any existing buildings or structures;
- e) excavation works;
- f) clearance or regrading;
- g) the erection of hoardings and fences;
- h) works connected with infilling;
- i) works for the provision or diversion of drainage or mains services to prepare the Site for development; or
- j) the construction of access and service roads;

and "Implementation" and "Implement" shall be construed accordingly;

"Landscape and Ecological Management Plan"

means the landscape and ecological management plan agreed between SDNPA and the Tenant in the discharge of condition 4 of the Whitewool Farm Permission

"Lease"

means the lease dated 4 April 2014 made between (1) Nicholas Northcroft Butler and Christine June Butler as Trustees of the G M Butler 'N' Settlement and (2) H N Butler Farms Limited

"Mitigation Land"

means an area within the Site to be specified by reference to a plan and having a Capacity of not less than the Required Capacity which is to be dedicated towards mitigating the impact of the Development on nitrate levels in the Solent catchment and which (subject always to paragraphs 5.3 to 5.5 of this Deed) may comprise an area within the Wetland Area or the Farmland (at the Owner and the Tenant's discretion if relevant)

"Nitrate Mitigation"

means mitigation measures to neutralise nitrates from the water to mitigate the effects of increased nitrate levels in the Solent caused by off-site developments in line with Natural England requirements at the date of the Section 106 Agreement;

"Nitrate Offsetting Engineering Works"

means the works to be carried out pursuant to the Whitewool Farm Development;

"Occupation"

means occupation of the Development for the purposes permitted by the Satisfactory Planning Permission but not occupation for the purposes of construction, fitting out or decoration for marketing or display purposes or in connection with security operations and "Occupy" and "Occupied" shall be construed accordingly;

"Plan 1"

means the plan showing the Site shown edged blue and the Whitewool Farm Development shown edged red appended to this Deed at Appendix 1;

“Planning Agreement”

means an agreement or undertaking with the relevant planning authority or any other competent authority made under:

- a) section 106 of the Town and Country Planning Act 1990;
- b) section 111 of the Local Government Act 1972;
- c) sections 38, 184 or 278 of the Highways Act 1980;
- d) section 33 of the Local Government (Miscellaneous Provisions) Act 1982;
- e) section 98, 104 or 106 of the Water Industry Act 1991; or
- f) section 2 of the Local Government Act 2000;

“Planning Permission”

means the planning permission for the Development to be issued pursuant to the Application;

“Relevant Event”

means any of the following events:

- a) a change in the law; or
- b) a decision of a Court, tribunal, Secretary of State, or other decision maker with competence; or
- c) a change in Natural England’s custom or practice; or
- d) a change in scientific opinion based on evidence; or
- e) a change in industry practices or in the generally accepted calculation methods for the type or extent of land required to achieve Nitrate Mitigation;

that is accepted in writing by both Natural England and Fareham Borough Council and results in any of the following:

- a) off-site nitrate mitigation not being required in relation to the Development; or
- b) Nitrate Mitigation not being required; or
- c) neither the Whitewool Farm Development nor taking the Farmland out of production being considered to be an effective form of Nitrate Mitigation; or
- d) neither the Whitewool Farm Development nor the Farmland being required for Nitrate Mitigation;

"Required Capacity"

means the Capacity (as notified in writing by the Developer to the Owner and the Tenant in accordance with clause 4.2) as being the amount necessary to provide Nitrate Mitigation to mitigate the impacts of the Development

"Reserve Fee"

means the non-refundable sum of £[xxx] to be paid by the Developer to the Tenant;

"Satisfactory Planning Permission"

means a Planning Permission which the Developer confirms in writing to the Tenant is a) acceptable and b) the Developer has the intention of implementing it;

"SDNPA"

means the South Downs National Park Authority acting in its capacity as local planning authority

"Section 33 Agreement"

means the agreement dated [xxx] entered into pursuant to Section 33 of the

Local Government (Miscellaneous Provisions Act 1982 between (1) Fareham Borough Council, (2) William Northcroft Butler and James Nicholas Butler and (3) H N Butler Farms Limited in connection with the Whitewool Farm Development in the form appended to this Deed at Appendix 3;

"Section 106 Agreement"

means the agreement dated 16 February 2021 entered into pursuant to Section 106 of the Town and Country Planning Act 1990 between (1) South Downs National Park Authority (2) William Northcroft Butler and James Nicholas Butler and (3) H N Butler Farms Limited in connection with the Whitewool Farm Development as amended by the Deed of Variation in the form appended to this Deed at Appendix 2;

"Site"

means Whitewool Farm, East Meon, Petersfield, Hampshire GU32 1HW and registered at the HM Land Registry at Title Number SH21605 and shown edged blue on Plan 1;

"Site Capacity"

means the total Capacity of the Site following the completion of the Whitewool Farm Development which is estimated to be 2,000 Kg/TN/yr;

"Solent"

means the strait that separates the Isle of Wight from the mainland of England;

"Unilateral Undertaking"

means a unilateral undertaking given under section 106 of the Town and Country Planning Act 1990 in accordance with paragraph 5.1 of Schedule 1 of the Section 106 Agreement which secures the taking out

of agricultural use of part of the Farmland;

“Wetland Area”

means part of Whitewool Farm, East Meon, Petersfield, Hampshire GU32 1HW as shown edged red on Plan 1 to be used as the creation of a Wetland Habitat pursuant to the Whitewool Farm Permission which will act as a Nitrate Mitigation scheme;

“Whitewool Farm Development”

means the development authorised by the Whitewool Farm Permission

“Whitewool Farm Permission”

means the planning permission dated 17 February 2021 to develop a nitrate removal scheme from Whitewool Stream through ecological enhancement granted pursuant to the planning application with reference number SDNP/20/01263/FUL;

“Working Days”

any Monday, Tuesday, Wednesday, Thursday and Friday except bank or public holidays and except any day between 25 December and 02 January (inclusive) in each year;

2. INTERPRETATION

- 2.1 The clause headings in this Deed are for reference only and do not affect its construction or interpretation.
- 2.2 References to clauses and Schedules are to the clauses and Schedules of this Deed, unless stated otherwise.
- 2.3 A reference to a paragraph is to the paragraph of the Schedule in which the reference is made, unless stated otherwise.
- 2.4 Words importing one gender include any other genders and words importing the singular include the plural and vice versa.
- 2.5 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa.

- 2.6 Unless this Deed states otherwise, any reference to any legislation (whether specifically named or not) includes any modification, extension, amendment or re-enactment of that legislation for the time being in force and all instruments, orders, notices, regulations, directions, byelaws, permissions and plans for the time being made, issued or given under that legislation or deriving validity from it.
- 2.7 References to the Site include any part of it.
- 2.8 References to "including" means "including, without limitation".
- 2.9 Any covenant not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 2.10 Where two or more people form a party to this Deed, the obligations they undertake may be enforced against them all jointly or against each of them individually.
- 2.11 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Deed shall be unaffected.

3. COMMENCEMENT

- 3.1 This Deed will take effect on the date of this Deed.

4. OBLIGATIONS OF THE DEVELOPER

- 4.1 The Developer shall pay the Reserve Fee to the Tenant on the date of this Deed.
- 4.2 Within one month of the date of grant of the Planning Permission the Developer shall confirm in writing to the Tenant whether the Planning Permission is a Satisfactory Planning Permission and in the event the Planning Permission is a Satisfactory Planning Permission the Developer shall notify the Tenant of the amount of the Required Capacity the Satisfactory Planning Permission requires to provide Nitrate Mitigation.
- 4.3 The Developer shall pay the Tenant the Commuted Sum on or before the Implementation Date.
- 4.4 The Developer shall not Implement until it has paid the Commuted Sum to the Tenant

5. OBLIGATIONS OF THE OWNER AND THE TENANT

- 5.1 Following receipt of the Reserve Fee the Owner and the Tenant covenant to reserve xx kg/TN/yr out of the total Site Capacity for the Developer until the earlier of:

- 5.1.1 the Expiry Date; and

- 5.1.2 the date on which the entirety of the Required Capacity has been Allocated to the Developer.
- 5.2 The Owner and Tenant covenant to Allocate the Mitigation Land in order to provide the Required Capacity of Nitrate Mitigation for the Development and to confirm such Allocation in writing to the Developer within 5 Working Days of receipt of the Commuted Sum.
- 5.3 For the avoidance of doubt, the minimum aggregate Capacity to be Allocated to the Developer by the Owner and Tenant shall not be less than the Required Capacity.
- 5.4 Following receipt of the Commuted Sum the Owner and the Tenant thereafter covenant to maintain the Mitigation Land in accordance with the Landscape and Ecological Management Plan or in accordance with the terms of a Unilateral Undertaking (as appropriate and subject always to clause 5.5 below) for the lifetime of the Development.
- 5.5 In the event the Wetland Area becomes available for Nitrate Mitigation (and the Wetland Area shall not be considered to have become available until the Nitrate Offset Engineering Works have completed) after a portion of the Farmland has been Allocated but prior to first Occupation of the Development, the Owner and/or the Tenant may transfer the Allocation from the Farmland to the Wetland Area immediately and confirm in writing to the Developer the transfer has occurred.
- 5.6 If a Planning Agreement is required by the relevant local planning authority or any other competent authority as a pre-condition to the grant of Satisfactory Planning Permission the Tenant and/or the Owner shall, if required, enter into the Planning Agreement provided that:
- 5.6.1 the terms of the Planning Agreement which relate to or seek to bind land which is within the Owner and the Tenant's ownership and or occupation are acceptable to the Owner and the Tenant (acting reasonably and having regard to the delivery of the Nitrate Mitigation scheme and the Allocation pursuant to this Deed);
- 5.6.2 the Developer pays the Owner and the Tenant's (reasonable and properly incurred) legal fees in connection with the Planning Agreement ;
- 5.6.3 any liabilities on the Owner or the Tenant under the Planning Agreement are conditional upon the implementation of the Planning Permission; and
- 5.6.4 the Owner and/or or the Tenant will not be liable for a breach of a covenant contained in the Planning Agreement after the Owner and/or the Tenant has parted with all its interest in the Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.

- 5.7 The Owner and the Tenant each covenant to comply with their obligations (if any) under the Section 106 Agreement and the Section 33 Agreement in so far as they relate to the Mitigation Land and any Unilateral Undertaking.

6. VARIATION

- 6.1 In the event Fareham Borough Council requests a variation to this Deed on reasonable terms in order to make the Whitewool Farm Permission or any Application acceptable in planning terms the Owner and the Tenant and the Developer shall (acting reasonably) consider such request and, if agreed, the Owner and the Tenant and the Developer shall as soon as reasonably practicable enter into a deed of variation to vary this Deed.

7. DETERMINATION OF THE LEASE

- 7.1 Should the Lease terminate or otherwise come to an end:

7.1.1 all obligations owed by the Developer to the Tenant under the terms of this Deed shall henceforth be owed by the Developer to the Owner; and

7.1.2 all obligations owed by the Owner and/or the Tenant to the Developer shall henceforth be owed solely by the Owner to the Developer.

8. NOTICES

- 8.1 Any notice, consent, demand or any other communication served under this Deed will be effective only if in writing and delivered by hand or sent by first class post, pre-paid or recorded delivery.

- 8.2 Any notice, consent, demand or any other communication served shall be sent to the address of the relevant party set out at the beginning of this Deed or to such other address as one party may notify in writing to the others at any time as its address for service.

9. DETERMINATION OF DISPUTES

- 9.1 Subject to clause 9.7, if any dispute arises relating to or arising out of the terms of this Deed, either party may give to the other written notice requiring the dispute to be determined under this clause 9. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.

- 9.2 For the purposes of this clause 9 a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to developments in the nature of the Development and property in the same locality as the Site.

- 9.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of the Law Society who will have the power, with the right to take such further advice as he may require,

to determine the appropriate type of Specialist and to arrange his nomination under clause 9.4.

9.4 Any dispute over the identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the Developer and the Tenant cannot agree the identity of the organisation, then the Specialist is to be nominated by the President or next most senior available officer of the Law Society.

9.5 The Specialist is to act as an independent expert and:

9.5.1 each party may make written representations within ten (10) Working Days of his appointment and will copy the written representations to the other party;

9.5.2 each party is to have a further ten (10) Working Days to make written comments on the other's representations and will copy the written comments to the other party;

9.5.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;

9.5.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross-examine each other;

9.5.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and

9.5.6 the Specialist is to use all reasonable endeavors to publish his decision within thirty (30) Working Days of his appointment.

9.6 Responsibility for the costs of referring a dispute to a Specialist under this clause 9, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.

9.7 This clause 9 does not apply to disputes in relation to matters of law or the construction or interpretation of this Deed which will be subject to the jurisdiction of the courts.

10. TERMINATION OF THIS DEED

- 10.1 In the event that the Tenant has not received the Commuted Sum on or prior to the Expiry Date the Owner and the Tenant shall thereafter be released from its obligations in this Deed.
- 10.2 If any part of the kg/TN/yr reserved for the Developer under clause 5.1 has been allocated to the Developer in accordance with clause 5.2 on or before the Expiry Date this Deed will come to an end and the obligations in this deed will immediately terminate on the earlier of:
- 10.2.1 the end of the lifetime of the Development;
 - 10.2.2 the occurrence of a Relevant Event.
- 10.3 Without affecting any other right or remedy available to it, any party may terminate this Deed with immediate effect by giving notice to the other parties if a Relevant Event occurs.
- 10.4 Without affecting any other right or remedy available to it,
- 10.4.1 either the Tenant or the Owner may terminate this Deed with immediate effect by giving notice to the Developer if the Developer is in breach of any of its obligations in this Deed and has failed to rectify the breach within a reasonable time after receiving notice to rectify from the Tenant or the Owner; and
 - 10.4.2 the Developer may terminate this Deed with immediate effect by giving notice to the Tenant and the Owner if the Tenant or the Owner is in breach of any of its obligations in this Deed and both the Tenant and the Owner failed to rectify the breach within a reasonable time after receiving notice to rectify from the Developer.
- 10.5 If this Deed is terminated in accordance with the provisions of Clause 10.2 or Clause 10.3 or Clause 10.4 then:
- 10.5.1 the Tenant and the Owner may proceed to allocate the Required Capacity to a third party;
 - 10.5.2 the Tenant and the Owner may use the Mitigation Land as they see fit in their absolute discretion, including resuming farming activities on the land;
 - 10.5.3 Neither party shall have any further rights or obligations under this Deed save for:
 - 10.5.3.1 the rights of either party in respect of any earlier breach of this Deed; and
 - 10.5.3.2 the obligations in the clauses referred to in 10.6;
 - 10.5.3.3 any sums paid to the Tenant or to the Owner by the Developer under the terms of this Deed shall not be refunded.

- 10.6 Clause 9 shall continue in force notwithstanding the termination of this contract under clause 10.1 or clause 10.2.

11. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it provided that the exclusion of the said Act shall not prevent all or any future successors in title to any of the parties to this Deed from being able to benefit from or to enforce any of the provisions of this Deed.

12. COUNTERPARTS

This Deed may be executed in any number of counterparts each of which when executed and delivered shall constitute an original of this Deed but all the counterparts shall together constitute the same deed. No counterpart shall be effective until each party has executed at least one counterpart.

13. JURISDICTION

- 13.1 Subject to the provisions of clause 9 this Deed shall be governed by the laws of England and Wales and the Courts of England shall have sole jurisdiction in respect of the construction of this Deed and as to the respective rights and liabilities of the parties.

APPENDIX 1

The Plan

APPENDIX 2

Section 106 Agreement and Deed of Variation

APPENDIX 3

Section 33 Agreement

IN WITNESS WHEREOF the Parties hereto have executed this deed the day and year first before written

SIGNED AS A DEED by)

WILLIAM NORTHCROFT BUTLER)

in the presence of:)

.....

(Full name of witness)

.....

(Signature of witness)

.....

.....

.....

.....

Address

.....

Occupation

SIGNED AS A DEED by)

JAMES NICHOLAS BUTLER)

in the presence of:)

.....

(Full name of witness)

.....

(Signature of witness)

.....

.....

.....

.....

Address

.....

Occupation

EXECUTED AS A DEED by)

H N BUTLER FARMS LIMITED)

in the presence of:-)

.....

.....

(Full name of witness)

.....

(Signature of witness)

.....

.....

.....

.....

Address

.....

Occupation

Executed as a DEED by)

[DEVELOPER])

in the presence of:-)

.....

(Full name of witness)

.....

(Signature of witness)

.....

.....

.....

.....

Address

.....

Occupation

SCHEDULE THREE

Capacity Monitoring Report

[illegible]

SCHEDULE FOUR

Landscape and Ecological Management Plan

LANDSCAPE AND ECOLOGY MANAGEMENT PLAN

**FOR WHITEWOOL STREAM
NITRATE REMOVAL PROJECT**

CLEAN WATER - NATURALLY

Landscape and Ecology Management Plan

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Landscape and Ecology Management Plan

Introduction

This Landscape and Ecology Management Strategy (LEMP) has been prepared for and by H N Butler Farms Ltd. in consultation with Biologic Designs Ltd. and Tetra Tech to inform the ongoing landscape and ecological management and maintenance operations for the proposed.

This LEMP describes the range of proposed landscape and biodiversity planting and post construction aftercare to safeguard specific landscape features, habitats and species to discharge Condition 4 of the planning consent (SDNP/20/01263/FUL) which states:

No development shall commence take until a site-wide detailed Landscape and Ecological Management Plan (LEMP) is submitted to and approved in writing by the Local Planning Authority. The LEMP shall include, but not necessarily be restricted to, details of long term objectives and management responsibilities and regime of the landscape scheme; measures to enhance ecology through the provision of landscape species. The measures shall thereafter be implemented in accordance with the approved details.

Reason: To conserve and enhance flora and fauna.

Site Location

The site is located at Whitewool Farm, East Meon off the South Downs Way, centred at Ordnance Survey National Grid reference: SU 6520521702 and is shown in Figure 1. The site is bounded by agricultural fields on the northern, eastern and western boundary. Meon Springs fly fishery is located south of the site which consists of a series of lakes supplied by the Whitewool Stream that flows through the site along its western edge. The site is shown in Figure 2 and comprises of arable land, dense scrub, tall ruderal, scattered trees, line of trees, semi-improved neutral grassland, improved grassland, earth bank and the Whitewool Stream.

Development Proposals

The proposed development comprises the creation of a Stage Zero Wetland and Wet Woodland system, comprising of wet woodland and riparian edge alongside Whitewool Stream to remove nitrogen from the stream before it joins the River Meon. The proposals include significant landscaping and habitat creation.

Role of this Document

The role of this document is to set out important information regarding:

- Water flow and water quality
- Ecology and habitat.
- Landscape and access.

The document outlines the **baseline** (what is happening now in 2021), the **habitat creation and maintenance** plans, the aimed for **outcomes** and the **monitoring** of each of the three areas.

The document should be read in conjunction with the supporting landscape plans and appended to this report and the approved detailed planting plans.

Landscape and Ecology Management Plan

Monitoring Roles

The South Downs National Park Authority (SDNPA) are overall responsible for monitoring the scheme. H.N. Butler Farms Ltd. is responsible for collating and submitting details of:

- Water flow and water quality and allocation agreements
- Ecology and habitat.
- Landscape and access.

Monitoring of the project undertaken by SDNPA. will comprise of monitoring against Habitat Condition Targets set out in this document and review of flow and nitrogen concentration data against allocation agreements.

Monitoring visits will take place on the following program:

- Years 1-5: 2 monitoring visits per year;
- Years 6-10: 1 monitoring visit per year; and
- Years 11+: 1 monitoring visit every 2 years.

Vision, Aims and Objectives

The vision for the project is to successfully restore the landscape character of the site from the existing improved agricultural setting to that of a natural chalk valley system, incorporating wetland, riparian edge and wet woodland habitats. This will provide biodiversity gains through habitat creation and improved connectivity along the stream corridor. It will also provide ecosystem services through improved water quality, climate change resilience (through carbon storage in woodland and other vegetation) and flood risk management. As part of this vision, it is intended that on-going management is low-intensity, with habitats left to establish and mature naturally wherever possible.

This LEMP provides a program of landscape and ecological management, enhancement and future monitoring giving details of the on-going landscape management and maintenance operations for the development which will secure the integrity of the landscape and habitat creation and wetland function. This will deliver the following objectives:

- The successful establishment of the planting design using best horticultural practices to maintain healthy growth and habitat condition.
- Creation of wetland habitat to reduce nitrogen outputs to the River Meon and the Solent.
- Maintenance of created habitats in perpetuity.

The nitrogen removal aim of the project is to lower the total nitrogen level in Whitewool Stream by more than 2000 kg/TN/yr. This will be monitored as outlined in the Water Sampling and Recording document.

Monitoring these objectives, and therefore progress towards achieving the vision, will comprise three elements:

- Habitat condition monitoring (Landscape);
- Water quality monitoring;
- Ecological (species) monitoring.

Landscape and Ecology Management Plan

These three elements will demonstrate whether the objectives and vision are being achieved and therefore monitoring against further landscape or ecosystems services criteria are not considered necessary.

This strategy document is intended to cover the first five years of the site's establishment. Following this, an update to the plan will be required to detail the next phase of on-going management, informed by site monitoring.

It should be noted that as the establishment of the new planting progresses, the operation and management may need to be altered from that included within this document to better suit a maturing landscape.

Landscape and Ecology Management Plan

Baseline

Water flow and quality

Based on historical data from the East and West Meon gauging stations (1987-2020) annual flow has been recorded at 1,027,073 m³/yr as illustrated in the below table, with a low flow period between July and November.

Table 3.2: Flow through Whitewool Stream based on historical data from the East Meon and West Meon Gauging Stations (1987 – 2020)

Month	Average Flow (m ³ /s)		Contribution from East Meon (%)	Contribution from Whitewool Stream* (%)	Flow Through Whitewool Stream (m ³ /s)	Flow Through Whitewool Stream (m ³ /day)
	West Meon	East Meon				
January	0.3938	0.2539	64.47	17.76	0.0700	6,044
February	0.4732	0.1925	40.68	29.66	0.1403	12,126
March	0.2674	0.145	54.23	22.88	0.0612	5,286
April	0.1885	0.1125	59.68	20.16	0.0380	3283
May	0.1076	0.0647	60.13	19.93	0.0215	1853
June	0.0663	0.0447	67.42	16.29	0.0108	933
July	0.0433	0.0304	70.19	14.90	0.0065	558
August	0.0286	0.0245	85.66	7.17	0.0021	177
September	0.0193	0.0183	94.82	2.59	0.0005	43
October	0.0571	0.0729	127.67**	0	0	0
November	0.1455	0.1603	110.17**	0	0	0
December	0.2565	0.1761	68.66	15.67	0.0402	3,472
Average 1 ⁺	-	-	72.16	13.92	0.0326	2,815
Average 2 [~]	0.1833	0.1063	57.98	21.01	0.0385	3,328

*based on our assumption that 50% of the residual flow post West Meon GS comes from the study site (T-4) and the remaining 50% comes from tributary T-3.

The results from the Nitrate Removal Monitoring Report record an average TN concentration in Whitewool Stream of **10.8 mg/l**. To calculate the baseline nitrogen within Whitewool Stream, the flow rate is converted from m³/s to l/yr.

$$0.0326 \times 3.184 \times 10^{10} = 1028073600 \text{ l/yr.}$$

The flow rate is multiplied by the TN concentration

$$1028073600 \times 10.8 = 11103194880 \text{ mg/yr.}$$

Converted to kilograms this gives an annual amount of nitrogen within Whitewool Stream:

$$11103194880 / 1000000 = \mathbf{11103 \text{ Kg/yr TN.}}$$

Ecology and Habitat

The site is bounded by agricultural fields on the northern, eastern and western boundary. The site

Landscape and Ecology Management Plan

comprises of arable land, with grassland field boundaries/tracks. To the South of the site is dense scrub, a line of trees, semi-improved neutral grassland and an earth bank. Beyond that is Meon Springs Fly Fishery consisting of a series of lakes supplied by the Whitewool Stream that flows through the site along its western edge.

To the North of the site, Whitewool Stream flows through a number of arable and grassland fields until it reaches the main river at West Meon. In this section it is mainly wooded along the banks.

Ecological surveys carried out between 2019 and 2020 in support of the application found no evidence of, and negligible habitat potential for protected species within the site boundary. There is suitability, in particular for otter and water vole, upstream and downstream although no evidence was recorded (only habitats upstream could be accessed).



Landscape and Ecology Management Plan

Landscape and access

The landscape surrounding the site is farmed land, primarily dairy, (the farm has a herd size of 400 cows that are grazed during the Summer and housed in the Winter).

Field cropping consists of a grazing platform around the dairy and further fields being used for forage production, such as forage maize and cereals for wholecrop. The valley is surrounded by steep downland, where dairy followers are reared in the Summer months.

The landscape of the site comprises of a narrow ditch like stream with crops grown on either side. There is nothing more than a 12m riparian buffer strip to the West of the stream to protect it from run off and leaching.

Whitewool Stream emerges from the ground via a number of Springs in the valley floor. The underlying geology is chalk capped with loamy clay soils. The soil is very alkaline and light in appearance.

The below picture illustrates the nature of the landscape in 2020.



There is currently no public access to this area.

Landscape and Ecology Management Plan

Habitat Creation

Wet woodland

Several hundred wetland trees will be planted, including black poplars and willows, established within the Biologic Design wetland ecosystem treatment system (WET System), which is a form of biodiverse and productive wet woodland.

Unrooted cuttings of willow and poplar can be planted any time up until May; successful establishment is greatly enhanced by use of weed excluding moisture retentive woodchip mulch.

Both willows and poplars add wildlife benefits as when mature they are home to a myriad of wetland and bird species.

The proposed planting will benefit from a three to five-year establishment period to encourage healthy plant development. A minimum of 2 no. annual maintenance visits should be undertaken, during mid spring and mid-summer to re-firm all planted material, adjust stakes/shelters as required, and to remove weeds at the base of each tree (no herbicides to be used). During this period, appropriate maintenance and / or replacement planting will be carried out. At the end of this period the plants will have grown to a reasonable size and only periodic maintenance would be required thereafter.

Plants will be selected and provided by Biologic Design and planted based on Permaculture Design Directives and Principles which will take into account the soil pH of 8.2.

The willow will be managed as short rotation coppice, the black poplar as pollards and mini-pollards with both standards and coppice lime *Tilia cordata* and alder *Alnus glutinosa*.

Other maintenance commitments for the proposed wetland tolerant species of tree will be minimal after the initial establishment period although the following will need to be undertaken:

- selective pruning to improve health, tree form and longevity;
- selective thinning in the long term to allow space for the trees to develop; and
- pest and disease control.

Riparian edge

Riparian edge will be planted between the wet areas and the wet woodland, with a suitable river plain / water meadow seed mix containing native species of local provenance. This will comprise 95% fine grasses and 5% wildflower seed. Seed will be sown at the appropriate time of year when the ground temperature will be high enough for germination i.e. between April and October.

The riparian edge will be managed through cutting, with no use of artificial fertilisers. This will include an autumn cut after the herbs and grasses have seeded. A carefully controlled cut, i.e. using light machinery and cutting the sward to no less than 300mm, will not harm wildlife and will benefit by maintaining the grassland in an open condition and preventing scrub encroachment. Additionally, cutting a rotational basis i.e. leaving selected areas unknown for an entire season, should assist in providing structural diversity to the sward, and provide suitable basking, foraging and refuge areas for reptiles, as well as enhancing its invertebrate diversity.

Stage Zero wetland area

The Stage Zero wetland area will be established in wide corridors for water to find meandering paths to create a natural environment for wetland plants to establish, create habitat and strip out nitrates.

Landscape and Ecology Management Plan

Prior to wetland planting, a wet grassland seed mix will be established to provide stabilisation of the Stage Zero wetland base. Tall emergent plants will then be planted within the wetland. Reeds, Rushes and Sedges all provide an oxygenating function which maintains the microbial population within the soil root zone which mineralises the nutrients within the water flow and thus enhances the water quality, as well as benefiting the aquatic ecology. They also provide the key function of the proposed wetland by facilitating removal of nitrogen. Suitable emergent vegetation plants (wet woodland, dense reedbed area, and sunny pond edge) will include:

Tall linear-emergent marginals:

<i>Carex acutiformis</i>	Lesser Pond Sedge
<i>Carex pendula</i>	Pendulous Sedge
<i>Carex paniculata</i>	Great Tussock Sedge
<i>Carex pseudocyperus</i>	Cyperus Sedge
<i>Glyceria maxima</i>	Reed Sweet Grass
<i>Iris pseudacorus</i>	Yellow Flag Iris
<i>Juncus inflexus</i>	Hard Rush
<i>Phragmites communis</i>	Common Reed
<i>Phalaris arundinacea</i>	Reed Canary Grass
<i>Schoenoplectus lacustris</i>	Great Club Rush

Flowering marginals:

<i>Lythrum salicaria</i>	Purple Loosestrife
<i>Lysimachia vulgaris</i>	Yellow Loosestrife
<i>Alisma plantago-aquatica</i>	Water Plantain
<i>Stachys palustris</i>	Marsh Woundwort
<i>Scrophularia auriculata</i>	Water Figwort

Ground cover flowering marginals at water's edge:

<i>Myosotis palustris</i>	Water Forget-me-not
<i>Veronica beccabunga</i>	Brooklime
<i>Mentha aquatica</i>	Water Mint

Flowering bank plants:

<i>Angelica sylvestris</i>	Wild Angelica
<i>Eupatorium cannabinum</i>	Hemp Agrimony
<i>Filipendula ulmaria</i>	Meadowsweet
<i>Tanacetum vulgare</i>	Tansy
<i>Silene dioica</i>	Red Campion

Wet woodland plants

<i>Carex remota</i>	Remote Sedge
<i>Carex sylvatica</i>	Wood Sedge
<i>Deschampsia cespitosa</i>	Tufted Hair Grass
<i>Luzula sylvatica</i>	Wood Rush

Locally appropriate Pondweeds can also be included as agreed.

Wetland maintenance will be carried out to control the accumulation of litter, to prevent succession and maintain water quality. Removal of rubbish will also be undertaken.

Management of the pond habitat will occur seasonally during lower flow conditions for access via

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cutting and extraction.

Cutting will take place every five years with arisings removed.

During establishment, supplementary watering will take place if required.

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Habitat Condition Targets

Wet woodland

The aim of the Wet Woodland is to create a biodiverse productive habitat that will strip out the nitrogen from the water running through it. As well as other species, within the system there will be willow that can be harvested for biomass boilers and basketry.

It is acknowledged that woodland in particular requires a long period of establishment to reach full maturity. The following sets out the target condition criteria for the woodland habitat once mature, monitoring prior to this should review progress towards these targets where appropriate (for example presence of dead wood). The woodland is expected to achieve all criteria after Year 30.

1. The woodland should have complete canopy cover. During the establishment phase, native tree species should be present across 80% of the woodland area.

Within the wet woodland, there will be a coppice wood with annual or biannual coppice cuts containing some short rotation coppice willow for biomass production and basketry; alder on a 14 year coppice cycle for firewood/woodchip and black poplar, managed as mini-pollards, pollards and standards.

2. Native species should be dominant (less than 5% cover of non-native species).

All species used will be native wetland marginals and wetland wildflowers raised selected and raised by Biologic Designs.

3. There should be a diverse age and height structure of trees. This criterion should apply from Year 30.

Due to the establishment of the various coppice and Pollarding procedures we shall rapidly attain a woodland which will have the appearance of a multi aged woodland rather than a plantation - all planted at the same time. This is due to the different tree heights we shall see established on the site by the various management cycles.

4. Trees should be free from damage by stock or wild animals (in the past 5 years) with less than 20% of vegetation browsed.

All trees will be planted with love and caring and will be protected from deer and rabbit by the erection of a deer and rabbit proof fence around the perimeter of the wet woodland and wetland until it has sufficiently established.

5. There should be evidence of successful regeneration (such as seedlings or saplings). This criterion should apply from Year 30.

We shall be 'inoculating' the entire site with both wetland marginals, wet meadow and wetland wildflower seed mixes - as well as planting these wetland trees we shall introduce a seed mix over the years so that areas will be able to evolve as it suits best and the system will be able to 'self-evolve' within the local conditions.

8. There should be standing or fallen dead wood of over 20cm diameter.

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During establishment this should take the form of log piles using material from the wider farm. A woodchip mulch will be used to hold back weeds and maintain a moist soil profile for more effective planting establishment. It will also act as a source of 'dead wood' within the system and the arbuscular and other fungal mycorrhizal associates within the woodland biome rapidly colonise and assist the establishment and continued viability of the various trees. We shall also add branches and logs within the site to give our site as many ecotones as possible.

6. There should be no evidence of inappropriate management (e.g soil compaction, vehicle access, materials storage).

Vehicles will be limited to small quad and trailer for harvesting and access for management. minimal vehicular access is a prerequisite.

7. There should be no evidence of nutrient enrichment.

In nutrient terms, the system will be self-sustaining.

8. There should be more than three native tree and tree shrub species within an average 10m.

The planting density will exceed this. The species list will for trees within the wet woodland will comprise of a mixture of Willows, Black Poplar and Alder, with some Oaks on the outer soil banks.

Riparian edge

The aim of the riparian edge is to create habitat and create groundcover in areas that are not wooded.

The following sets out the target condition criteria for the riparian edge once mature, monitoring prior to this should review progress towards these targets where appropriate. The riparian edge / water meadow is expected to achieve all criteria after Year 15.

1. The vegetation should exhibit greater than 30% cover of wildflowers.
2. There should be less than 5% cover of undesirable species (creeping, marsh and spear thistles, broad-leaved and curled docks, common nettle, creeping buttercup, white clover, cow parsley, common ragwort and marsh ragwort).
3. There should be less than 10% cover of bare ground.
4. There should be less than 5% cover of bracken, scrub or bramble.
5. There should be no evidence of damage from excessive poaching, machinery use or storage.

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Stage Zero wetland area

The following sets out the target condition criteria for the wetland area once mature. Monitoring prior to this should review progress towards these targets where appropriate. The wetland is expected to achieve all criteria after Year 15.

1. Cover of undesirable species (see above) should be less than 10%.
2. Cover of scrub should be less than 5%.
3. Cover of bare ground should be less than 10%.
4. No more than 25% of the wetland area should have continuous cover of litter.
5. There should be no evidence of channel scouring or bank de-stabilisation.

There should be no evidence of poor water quality (such as opacity caused by suspended sediment, or green tinges or algal mats caused by eutrophication).

Access Management

The development will create a unique and interesting habitat in the area, which needs to be left to establish and function, yet at the same time be educational and appreciated by people.

As part of the project, it is therefore proposed that an informal path is established around the wetland area, for use by farm visitors such as school trips. This is not intended to be surfaced and will comprise a woodchip covered path around the site boundary.

This should be maintained by natural erosion by foot traffic, however this should be supplemented by mechanical cutting as required during summer to make sure the path is clear, and to prevent visitors from creating new desire lines.

An education board will be created at the southern extent of the site, adjacent to the informal path. This will provide a map clearly showing the informal path, an overview of the project vision, the habitats and species supported and the ecosystems services benefits of the project.

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Maintenance

The following annual maintenance program is suggested to ensure the maintenance work is carried out at the most beneficial time. For all seasons, the following will need to be undertaken:

- Inspections, including adjusting tree stakes and ties when necessary and after strong winds;
- Watering - water when necessary and through periods of drought to ensure the
- planting / grass areas continue to thrive; and
- Pest and disease control.

Landscape maintenance will ultimately be the responsibility of the owner (HN Butler Farms Ltd.) but may be undertaken by an appointed agent.

The maintenance of trees, shrubs and other plants after the date of practical completion will be carried out by the Contractor until the responsibility is transferred to the persons responsible for future management (owner).

Any tree and plant showing the following attributes must be replaced within a period of 5 years from the date of completion unless stated elsewhere within this document. These include those plants that:

- Dead, diseased or dying
- Are missing or not in accordance with the specification
- Lack any vigor.

Replacements must be carried out immediately, or in the next planting season, by the contractor at his own cost. Any additional topsoil applied to the planting should be quality loam to BS 3882.

All loss or damage arising from theft or malicious damage prior through the contract shall be made good by the Contractor at his own expense.

Inspection checks shall be carried out a minimum of 6-monthly during establishment, or as required, by a competent person, acting for the local authority and/or owner. Six-monthly to annual checks may also be carried out by the Local Authority.

No existing trees, shrubs or other plants shall be removed or cut without specific instructions from the Contract Administrator. Existing trees are to be retained, protected and undisturbed throughout the contract.

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Schedule of Activities

Item	Activities	Frequency
Wet Woodland		
Establishment	Inspect newly planted trees to ensure healthy development, carry out necessary arboricultural works as necessary.	Twice a year Spring and Autumn for first 3 years.
Watering	During establishment.	As required
Annual Maintenance	<p>Check tree ties, stakes, irrigation pipes and adjust as required.</p> <p>Stakes: replace loose, broken or decayed stakes.</p> <p>Ties: Adjust, re-fix and replace loose or defective ties allowing for growth and to prevent chafing. Where chafing has occurred, reposition or replace ties to prevent further chafing.</p>	Twice a year March and August.
Replacement planting	Inspect short lived wood stemmed shrub species and carry replacement planting to maintain healthy stock and appearance.	As required straight away or during the next planting season.
Annual Maintenance year 4 onwards	Remove tree ties, stakes and guys, make good stake holes on adequately established trees.	Once in August.
Thinning	Thinning of immature trees by hand to provide space for growth and promote ground flora.	Once in January or February, Year 5.
Riparian Edge		
Watering	During establishment / germination of seed / wildflower mixtures	As required

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Cutting	<p>Cutting needed to provide diverse, scrub free marginal areas.</p> <p>First year cut: Annual weed growth to be cut back to encourage perennial ground coverage</p>	Once during March
	<p>Subsequent cuts: Work in 2/3 years' rotation, work on one bank each year.</p>	Between September / November.
Wetland		
Watering	<p>During establishment of plug plants.</p> <p>During periods of prolonged dry weather.</p>	As required.
Debris and Litter	Keep habitats clear of litter and debris.	Once per month.
Cutting	<p>Management of wetland vegetation will comprise mechanical cutting of</p> <p>vegetation. Cutting will take place every 5 years with a maximum of 1/3 of the total area cut on each occasion.</p> <p>Arisings to be removed and composted within the farm.</p>	Every 5 years in July / August.
Plant replacements	Remove dead plants and replace within the next planting season, or as soon as practical.	As required.
Water perimeter	<p>Inspect the water perimeter to ensure that the wetland remains constrained to area.</p> <p>Shore up the banks if necessary.</p>	Annually during the low flow period.

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Assessment	<p>Inspection by ecologist to ascertain the establishment of the habitat creation.</p> <p>Make recommendations as necessary to address any health problems or necessary remedial works.</p> <p>Hydrologist to check wetland areas periodically to ensure functioning requirements are being achieved.</p> <p>Make recommendations as necessary.</p>	Once a year.
Access Management		
Maintain informal path	Manual mow/cut of grass path to 50mm height.	As required between March and October annually.
Maintain education board	<p>Clean to make sure information is legible.</p> <p>Carry out any repairs necessary (or replace).</p>	As required

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Monitoring and Review

Water Quality (Nitrates)

Flow rates of the stream will be recorded by H.N. Butler Farms Ltd., who will install and maintain a continuous flow monitor of the stream, with a device such as an Isco 2150 area velocity flow meter.

Water samples will be collected by H.N. Butler Farms Ltd. and sent off for analysis to an environmental quality laboratory, such as NRM, to measure total nitrogen. Full details of this can be found in the water monitoring report.

Information will be submitted to SDNPA annually for Years 1 – 10, followed by bi-annually from Year 11, in line with the SDNPA monitoring program.

SDNPA also have the right to collect water samples and check flow data to verify the information.

If the TN levels do not fall by 2000 kg/TN/yr (or the number of credits allocated) following establishment, further measures will be taken to reduce the levels, which could include:

- Remediation of habitat and water flow within the wetland and wet woodland.
- Addition of flora, such as reeds, upstream of the wetland to remove TN before it gets to the wetland.
- Construction of swales and sediment traps to reduce run-off nitrates getting into the stream.
- Adaptation of agricultural practices to reduce TN entering the system.
- Removal of land from agricultural production.

Ecology and habitat

During the construction period a suitably qualified Ecologist, as Ecological Clerk of Works appointed by the developer, will monitor the success of the scheme implementation and ongoing maintenance of the works during the implementation period (to Year 5). This will secure compliance and appropriate development of the scheme and remedial action is taken with regard to plant replacements and habitat creation.

Monitoring will primarily be against progress towards the Habitat Condition Targets set out above and will comprise at a minimum visits in the summer and winter seasons, with additional visits as required (to supervise implementation works depending on activities undertaken).

Prior to the first monitoring visit, a pro-forma reporting template will be produced setting out the Habitat Condition Targets to be checked on each visit. Where a target is based on cover (e.g. % cover of bare ground), this should be based on a representative sample of quadrats. This should comprise five 20m x 20m quadrats for woodland ten 1m x 1m quadrats for water meadow (this is smaller than the typical size for woodland quadrats but takes into account the small area compared to most woodlands). Wetland criteria will be estimated from a visual survey undertaken along the entire perimeter to account for the safety implications of working near water.

In addition to the condition targets, monitoring will include a visual survey for presence (such as basking reptiles) or evidence of fauna such as tracks, droppings, feeding remains. This will include (but not be limited to) reptiles, bats (potential roosts), water voles, otters and badgers,

Close monitoring of the environmental indicators, watering requirements and species identification will provide a clearer view of the actual performance of the landscape planting and will form a closer indicator of possible changes in management focus to respond to climate change.

Landscape and Ecology Management Plan

If ecological and habitat indicators are not being met remediation actions will be taken as outlined in the schedule of activities table above.

- Addition of flora, such as reeds, upstream of the wetland to remove TN before it gets to the wetland.
- Construction of swales and sediment traps to reduce run-off nitrates getting into the stream.
- Adaptation of agricultural practices to reduce TN entering the system.
- Removal of land from agricultural production.

Landscape and Access

It is expected as this natural development matures that it will create a space of peace and tranquility full of nature.

The site will be kept tidy and up together but not manicured. It will be open for visitors and those harvesting and coppicing in the Wet Woodland.

As beauty can only be measured by humans who have visited, it will be assessed by questionnaires being completed by those who have visited. These will be collated and available for SDNPA to see.

This will also give proof of access.

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Farmland Scheme

Prior to commencement of developing the wetland or if a point of failure arises, due to allocations exceeding the capacity of the wetland, nitrates can be mitigated by H.N. Butler Farms Ltd. unilaterally implementing other measures that will be monitored by SDNPA. For the purposes of this document, we will call this the Farmland Scheme.

The measures could include:

- Addition of flora, such as reeds, upstream of the wetland to remove TN before it gets to the wetland area.
- Construction of swales and sediment traps to reduce run-off nitrates getting into the stream.
- Adaptation of agricultural practices to reduce TN entering the system.
- Removal of land from agricultural production.

Assuming that, for this purpose, farmland was removed from production, the obligations would be that it will not be used for the lifetime of the offset developments or until it is transferred to the wetland scheme or another agreed mitigation option.

In the event of this occurrence the farm will enter a unilateral undertaking that outlines the area of land being set aside from production ensuring that it provides the requisite nitrate mitigation required by the allocation agreements and suitable landscape and ecological merit.

Review

The management objectives and maintenance prescriptions should be reviewed regularly and any refinements incorporated into an updated management plan for on-going medium and long-term management.

Methods and techniques identified in these documents will be updated where relevant to respond to updated best practices in landscape and ecological management.

The results of all any monitoring surveys/reports will feed back into the general management of the site, and management strategies will be altered where necessary to ensure the long-term objectives for the landscape and ecological planting is achieved. The results of monitoring will be reported back to the owner and SDNPA on an annual basis.

The first review period will take place following the completion of the implementation phase – Year 5. An update to the LEMP will be produced and agreed with SDNPA, including the date of the next review.

PREPARED, EDITED AND UPDATED BY

Person	Position	Role
Jamie Butler	Director H.N. Butler Farms Ltd.	Project Manager
Jay Abraham	Owner Biologic Designs	Preferred Contractor
David West	Associate Ecologist Tetra Tech	Project Ecologist

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as a deed the day and year first before written

SIGNED AS A DEED by

WILLIAM NORTHCROFT BUTLER

W [Redacted Signature]

Signature

in the presence of:

[Redacted Name]

[Redacted Name]

[Signature]
(Signature of witness)

[Redacted Address]
.....
.....
.....

Address

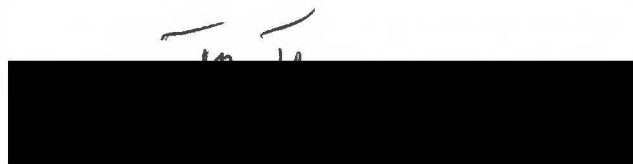
2 Hall Cottages Eastmeon GU32 1HW

Occupation

Fisheries manager

SIGNED AS A DEED by

JAMES NICHOLAS BUTLER



Signature

in the presence of:







Address

2 Hall cottages East meon GU32 1 HW

Occupation

Fisheries manager

SIGNED AS A DEED by

H N BUTLER FARMS LIMITED

Signature

in the presence of:

Address

2 Hall cottages Eastmeon GU32 1HW

Occupation

Fisheries manager

**THE COMMON SEAL of FAREHAM
BOROUGH COUNCIL** was hereto affixed in
the presence of:

108439