

**DATE: 11 MAY 2021**

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**NITRATES MITIGATION  
OVERARCHING AGREEMENT AND UNILATERAL UNDERTAKING  
NOTE TO INSPECTOR**

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- 1.1 The Appellant has to progress a development specific agreement to achieve the nitrates offset agreed by the parties and approved by Natural England. Whilst the Isle of Wight Council confirmed that they would fulfil the monitoring obligations in relation to Heaton Farm Scheme, they advised that they would not engage in section 106 agreements on a development by development basis and would only progress through a strategic agreement (an overarching agreement). It was hoped that the overarching agreement would complete before the Inquiry, but as it has not a unilateral undertaking has been submitted to the Inquiry.
- 1.2 The overarching agreement is being progressed by the Council, Isle of Wight Council and the owner of the Heaton Farm Scheme. The overarching agreement regulates the entirety of the Heaton Farm Scheme, and applies across the New Forest district. The overarching agreement allows for the Heaton Farm Scheme to offset the nitrates impact of any eligible development within the New Forest. It does this by requiring that credits linked land on Heaton Farm (which is land over which a developer, such as the Appellant, has acquired credits and in respect of which a notice called a Notice to Purchase has been issued to the Council) to be taken out of agricultural use and for a woodland planting scheme to be put in place and subsequently maintained in respect of such land. Monitoring of the Heaton Farm Scheme is undertaken by Isle of Wight Council, and funded by a verification contribution paid by the owner to the Isle of Wight Council. The obligations are set out in detail at schedule 1 of the overarching agreement (a draft of which is included as schedule 2 to the overarching agreement).
- 1.3 By contrast, the unilateral undertaking is development specific. It only regulates the development and the portion of the Heaton Farm Scheme that provides the appropriate nitrates offset (agreed by the parties and approved by Natural England) for the development subject to the Appeal. However, it applies the same principles and secures substantially the same obligations as the overarching agreement in order to achieve the nitrates offset, but only in respect of the development land and the part of the Heaton Farm Scheme that provides that offset (this is identified on plan 1). It also provides for monitoring to be undertaken by the owner of the Heaton Farm scheme (instead of Isle of Wight Council, on the basis that Isle of Wight Council are not a party and so cannot covenant to undertake this), but with the same payment of a verification contribution to the Isle of Wight Council and with access granted for Isle of Wight Council so that it can, in practice, verify and undertake such monitoring. The obligations are set out in schedule 1 of the unilateral undertaking.
- 1.4 The Appellant has offered the unilateral undertaking as part of the Inquiry because the overarching agreement is yet to complete, although the Appellant understands that the overarching agreement is well progressed and it was confirmed in the Biodiversity session that this is due to complete in a month's time.
- 1.5 The Appellant recognises that the Council and Isle of Wight Council's preference is to rely on the overarching agreement and the Appellant's intention would be to operate under that strategic agreement. Therefore, by virtue of clause 6.5, the unilateral undertaking will cease to have effect when the overarching agreement completes and a Notice of Purchase in respect of the development and the planning permission is issued. The owner of the Heaton Farm Scheme is contractually obliged to serve this notice following completion of the overarching agreement.
- 1.6 The Appellant also recognises the Council's preference for a Grampian condition. Therefore, the unilateral undertaking contains a clause (clause 6.5) which provides that the unilateral undertaking will not have effect if you determine in your decision notice that the obligations can be addressed

in a Grampian condition.

- 1.7 The unilateral undertaking would bind all landowners of the development site, including the Appellant, and would bind the owner of the Heaton Farm Scheme.