Planning Obligation by Deed of Unilateral Undertaking

Section 106 of the Town and Country Planning Act 1990 relating to a permitted development for a limited period for a change of use from agricultural use to camping use under Part 4 Class B, BA and BC and Part 5 Class A

**DATED 202[ ]**

1. **[ OWNER ]**

**TO:-**

**THE DISTRICT COUNCIL OF NEW FOREST**

## UNILATERAL UNDERTAKING

Pursuant to Section 106 of the Town and Country Planning Act 1990

With the purpose of providing for the removal of camping site waste off-site to an area that is outside of the catchment of Identified International Conservation Sites and providing funding towards off-site mitigation projects

relating to land at [insert address of Site]

Hampshire

APPLICATION NUMBER *[ insert planning application reference ]*

Legal Services

New Forest District Council

Appletree Court

Lyndhurst SO43 7PA

**THIS DEED** **OF UNILATERAL UNDERTAKING** is made the day of 202[ ]

**BY:**

**(1)** **[**  *insert name/s of owner/s* **]** of [ *insert address/es of owner/s* ]   
 (“Owner”)

**TO: THE DISTRICT COUNCIL OF NEW FOREST** of Appletree Court Lyndhurst in Hampshire SO43 7PA ("Council").

# INTRODUCTION

1. The Council is a local planning authority within the meaning of the Act and the competent authority within the meaning of the Regulations.
2. The Owner is the freehold owner of the land registered with title absolute at the HM Land Registry under the Title being land that includes the Site bound by this Deed.
3. The Applicant made the Application to the Council pursuant to the Regulations.
4. The Owner has had regard to the Supplementary Planning Document adopted May 2021 entitled “Mitigation for Recreational Impacts on New Forest European Sites”
5. The Owner considers that certain planning obligations to ensure that the objectives of the SPD is met in respect of the Development should be entered into as at the date of this Deed.
6. Paragraph 2.36 of the SPD states that for camping and caravan pitches the contribution level will be based on the total rate for a 1 bedroom dwelling for each pitch or visitor room. It also confirms that the level of contribution will also be determined on a pro-rata basis to reflect periods the accommodation is available over the year.
7. The Owner has agreed to enter into this Deed with the intention that the obligations contained in this Deed may be enforced by the Council against the Owner and their respective successors in title to the Site.
8. This Deed is a planning obligation for the purposes of Section 106 of the Act.
9. This Undertaking is drafted so that there are two requirements imposed upon the Owner to meet the overarching objective of the SPD. The first requirement is that human waste produced on site as a result of the Development is sent for disposal outside the catchment of Identified International Conservation Sites. The second requirement is the making of a financial payment to the Council towards the funding of the Council’s off-site mitigation projects.

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**OPERATIVE PART**

**1. DEFINITIONS**

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

|  |  |
| --- | --- |
| “Act” | the Town and Country Planning Act 1990; |
| “Applicant” | **[insert name and address of applicant]** |
| “Application” | an application made to the Council by the Owner/ Applicant [ *delete as necessary*]under regulation 77 of Regulations and dated [ *insert date of application* ]; |
| “Approval” | the written notification of the approval of the Application by the local planning authority under regulation 77 of the Regulations; |
| “Camper“ | A person using the Site for camping in accordance with the Development and “Campers” shall be construed accordingly; |
| “Class B” | :Class B of Part 4 of Schedule 2 to the Order; |
| “Class BA”  “Class BC” | Class BA of Part 4 of Schedule 2 to the Order;  Class BC of Part 4 of Schedule 2 to the Order |
| “Class A”  “Class C” | Class A of Part 5 of Schedule 2 to the Order;  Class C of Part 5 of Schedule 2 to the Order |
| “Camping Management Plan” | the covenants of the Owner in paragraphs 1.2 and 1.3 of Part 1 of the Second Schedule to this Deed; |
| “Commencement of Development” | the first date in any individual calendar year on which any material operation (as defined in Section 56(4) (e) of the Act) forming part of the Development begins to be carried out by the entry of Campers arriving at the Site and their subsequent Occupation on any day permitted by the Development and **FOR THE AVOIDANCE OF DOUBT** does not include Preparations and “Commence Development” shall be construed accordingly; |
| “Deed” | this deed made pursuant to section 106 of the Act and references to the term “Deed”, “Agreement” or “Deed of Agreement” or “Undertaking” shall also be construed as a reference to this deed; |
| “Development” | means the development authorised as Permitted Development; |
| “First Schedule” | the first schedule to this Deed; |
| “Implement” | to begin and thereafter continue the carrying out of the steps identified in the Camping Management Plan over the period of each calendar year in the course of the months of January to December; |
| “Council’s Costs” | the Council’s reasonable costs that the Council incur in order to consider the drafting and registration of this Deed in the amount of £75; |
| “New Permission” | a planning permission other than the use permitted by the Permitted Development (whether granted by notice under section 70, 73 or 78 of Part III of the Act) authorising the redevelopment of the Site; |
| “Occupation” and “Occupied” | occupation for the purposes permitted by the Permitted Development; |
| “Order” | the Town and Country Planning (General Permitted Development) (England) Order 2015 (SI 2015/596); |
| “Permitted Development” | the material change of use of the Site or part of the Site for the purpose of a temporary use from agricultural use to camping or from a temporary use from agriculture to a mixed use of camping and agricultural use where that change of use is authorised by reason of Class B, Class BA , Class BC, Class A or Class C; |
| “Pitch” | an individual pitch for a Camper created pursuant to the Permitted Development and for the avoidance of doubt the total number of Pitches shall not exceed 70 (or 50 if exercising Permitted Development by reason of Class BC) on any one Pitch Day; |
| “Plan” | the plan showing the Site edged red identified in the Third Schedule; |
| “Preparations” | operations consisting of the erection of any temporary means of enclosure, the provision on the land of any moveable or temporary structure for the purposes of the Development and the temporary display of site notices or advertisements; |
| “Regulations” | Conservation of Habitats and Species Regulations 2017 (SI 2017/1012); |
| “Second Schedule” | the second schedule to this Deed; |
| “Season” | the period of each calendar year between 1 January to 31 December (inclusive); |
| “Site” | that part of the land described in the First Schedule registered with title absolute at the HM Land Registry under the Title Number against which this Deed may be enforced as shown edged red on the Plan; |
| “SPD” | the Supplementary Planning Document adopted May 2021 by the Council and entitled “*Mitigation for Recreational Impacts on New Forest European Sites*”; |
| “Third Schedule” | the third schedule to this deed; |
| “Title Number” | HP[*insert title number of land*] |
| “Undertaking” | this deed of undertaking given by the Owner to the Council pursuant to section 106 of the Act and references to the term “Agreement”, “Deed” or “Deed of Undertaking” shall also be construed as a reference to this deed of undertaking. |

**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 severally unless there is an express provision otherwise.

2.5 Any reference to an Act of Parliament or statutory instrument shall include any amendment, modification, extension or re-enactment of that Act for the time being in force and in the case of an Act or statutory instrument shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act statutory instrument 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 person deriving title through or under that party and in the case of the Council successors to their respective statutory functions.

* 1. For the purpose of such parts of this Deed as may be subject to the rule against perpetuities the perpetuity period applicable to this Deed shall be eighty years from the date hereof.
  2. Any covenant by the Owner not to do an act or thing shall be deemed to include an obligation not to cause or permit or suffer such act or thing to be done by any other person.
  3. The headings and contents list are for reference only and shall not affect construction.
  4. In this Deed the use of the term “human waste” is intended to mean water and sewerage waste generated by Campers using the Development.

**3. LEGAL BASIS**

3.1 This Deed is made pursuant to Section 106 of the Act.

3.2 The covenants, restrictions and requirements undertaken by the Owner pursuant to this Deed create planning obligations pursuant to Section 106 of the Act that bind the Site and are enforceable by the Council or any successor authority as local planning authority against the Owner and their successors in title.

**4. CONDITIONALITY**

This Deed shall come into effect immediately upon its completion.

**5. THE OWNER’S COVENANTS**

Subject to Clause 4 (Conditionality) the Owner covenants with the Council to comply with the planning obligations in this Deed as set out in the Second Schedule

**6. MISCELLANEOUS**

## 6.1 This Deed shall be registrable as a local land charge by the Council.

6.2 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

6.3 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after they have parted with their entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

6.4 Subject to clause 6.5 nothing in this Deed shall prohibit or limit the right to develop the Site or any other part of the Land in accordance with a New Permission granted after the date of this Deed other than the Permitted Development.

6.5 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local planning authority.

6.6 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

**7. WAIVER**

No waiver (whether expressed or implied) by the Council or the Owner 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 or Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

**8. OWNERSHIP**

## 8.1 The Owner HEREBY CONFIRMS AND WARRANTS that the Owner is the registered proprietor of the Site registered at HM Land Registry under the Title Number and that they have full power to enter into this Deed and that there is no other person having a charge over or any other interest in the Site whose consent is necessary to make this Deed binding on the Site and all estates and interests therein.

## 8.2 The Owner shall give the Council 10 (ten) days 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.

**9. VAT**

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

**10. JURISDICTION**

10.1 This Deed is governed by and interpreted in accordance with the law of England and Wales and the Owner submits to the jurisdiction of the courts of England and Wales.

**11. NOTICES**

11.1 Notices shall be deemed to have been properly served if sent in writing by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.

11.2 The principal address of the Owner is the address stated in this Deed, but the Owner may give no less than seven days notification to the Council of a change of address.

**12. COMPLIANCE**

The Owner agrees to give the Council written notice at least 5 days before Commencement of Development.

**13. DELIVERY**

13.1 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.

#### FIRST SCHEDULE

**The Site**

Land being land [ *insert address of land* ] shown edged red on the Plan and forming part of the land registered with Title Absolute at HM Land Registry under the Title Number

#### SECOND SCHEDULE

##### The Owner’s Covenants with the Council

**Part 1 -Treatment of Sewage and Wastewater**

**Defined Terms**

* 1. For the purposes of this Part 1 the following expressions shall have the following meanings:

|  |  |
| --- | --- |
| “Contract” | a contract between the Owner and a waste carrier within the meaning of the Waste Regulations for the Transportation of the content of the Tanks to the Treatment Works during the course of a Season (or the remainder of the Season where Commencement of Development has not previously taken place in that Season); |
| Identified International Conservation Sites | * The New Forest Special Area of Conservation (SAC), the New Forest Special Protection Area (SPA) and the New Forest Ramsar site; * The Solent Maritime SAC, Solent and Isle of Wight Lagoons SAC, the Solent and Southampton Water SPA, and the Solent and Southampton Water Ramsar site; * The River Avon SAC, Avon Valley SPA and Ramsar site; and * The River Itchen SAC. |
| “Tanks” | tanks (or other such containers as are approved in writing by the Council) on the Site used to receive and temporarily store human waste from Campers arising from the use of the Site for the Development; |
| “Transportation” | transportation of human waste from the Tanks to the Treatment Works by a Waste Carrier; |
| “Treatment Works” | **[** *insert name of treatment works]*Sewage Treatment Works,  [ *insert address of treatment works* ] or in the event that this Sewage Treatment Works is unable to accept the human waste for any reason then such other Treatment Works as might be agreed by the Owner with the Council (in consultation with the appropriate regulatory body AND FOR THE AVOIDANCE OF DOUBT the Sewage Treatment Works must operate so that the human waste produced on site as a result of the Development is sent outside the identified International Nature Conservation Sites ; |
| “Waste Carrier” | a company registered with the Environment Agency or any successor agency responsible for the enforcement of the Waste Regulations as a waste carrier for the purposes of the Waste Regulations; and |
| “Waste Regulations” | Waste (England and Wales) Regulations 2011  (SI 2011/988). |

**Covenants**

* 1. The Owner covenants with the Council that in each Season from the day immediately prior to the date of Commencement of Development and continuing throughout the Season:
     1. not to at any time permit the use of the site for the Development without first having entered into a Contract with a Waste Carrier for Transportation;
     2. not to at any time knowingly permit or allow the use of the Site for Development by Campers in a manner that shall result in the deposit of human waste on the Site (unless that waste is in Tanks);
     3. not to at any time permit or allow the Occupation of the Development at any time without compliance with the covenants in paragraph 1.2.1 and 1.2.2.
  2. The Owner covenants with the Council that for each Season from the day immediately prior to the date of Commencement of Development and continuing throughout the Season he shall:
     1. ensure Campers in Occupation use facilities which result in human waste collecting in the Tanks;
     2. ensure human waste in the Tanks is transported by a Waste Carrier to the Treatment Works by the end of each Season;
     3. for a period of two years from end of each Season retain electronic records of the Contract for that Season together with electronic evidence of (a) waste transfer notes or a document with the same information, such as an invoice or (b) a season ticket for a series of loads requiring Transportation;
     4. within one month of a written demand by an authorised officer of the Council produce the records referred to in paragraph 1.3.3 to the Council;
     5. ensure the Site is operated so that the Camping Management Plan is Implemented during each Season in which there is a Pitch offered to a Camper.

**Evidence**

* 1. The Owner covenants to supply to the Council such information as the Council may reasonably request in writing to demonstrate to the satisfaction of the Council that the Owner has complied with Camping Management Plan within 21 days of receiving a particularised request in writing by the Council.

**Part 2 – Financial Contribution to the Council**

1. In this paragraph 2 and the following paragraphs of this Part 2 of the Second Schedule the following terms have the following meanings―

|  |  |
| --- | --- |
| “Bird Aware Calculation” | means a sum of TWO POUNDS AND FIFTY PENCE (£2.50) per Pitch per Season in the event of the Site operating for up to and including 28 days in any one Season ;  or,  a sum of FIVE POUNDS (£5.00) per Pitch per Season in the event of the Site operating up to and including 60 days in any one Season |
| “Bird Aware Contribution” | the sum of money payable by the Owner to the Council or via the Council by the Payment Dates in each Season being the financial contributions resulting from the Bird Aware Calculation as a contribution towards Bird Aware Solent in accordance with the Local Plan 2016-2036 Part One: Planning Strategy New Forest District outside the New Forest National Park policy ENV1 and the Solent Recreation Mitigation Strategy 2017 |
| “Financial Contribution” | the sum of money payable by the Owner to the Council or via the Council by the Payment Dates in each Season being the financial contributions resulting from the Calculation that shall mitigate the recreational impact on the New Forest |
| “Calculation” | means either a sum of TEN POUNDS (£10.00) per Pitch per Season in the event of the Site operating for up to and including 28 days in any one Season or a sum of TWENTY FIVE POUNDS (£25.00) per Pitch per Season in the event of the Site operating for in excess of 28 days and up to a maximum of 60 days in any one Season |
| “Indexation Rate” | The rate calculated on 31st March each year in line with the “All Items” index figure of the Index of Retail Prices published by the Office for National Statistics or any successor ministry or department of government; |
|  |  |
| “Index Linked ” | Any sum expressed in this Deed to be Index Linked is a sum that has been calculated by the Council in accordance with the Indexation Rate and published on its website from time to time |
| “Pitch Day” | a day in the course of the Development during which there is a Camper in Occupation on a Pitch. |

* 1. The Owner covenants with the Council that in each Season from the day immediately prior to the date of Commencement of Development and continuing throughout the Season:
     1. Not to at any time permit the use of the Site on a Pitch Day without retaining a record of the use of the Pitch by a Camper;
     2. Not to at any time knowingly permit or allow the use of the Site for Development by Campers in a manner that results in a Pitch Day not being recorded in electronic format in accordance with paragraphs 2.2.1, 2.2.2 and 2.2.3 below;
     3. not to or at any time permit the Occupation of the Development at any time without compliance with the covenants in paragraph 2.1.1 and 2.1.2;
     4. not to at any time permit more than 70 Pitches to be Occupied on any one given Pitch Day if exercising Permitted Development by reason of Class B or BA or 50 Pitches to be Occupied on any one given Pitch Day if exercising Permitted Development by reason of Class BC ;
     5. that in the event that more than 50 or 70 Pitches (as the case may be) are Occupied on any one given Pitch Day in breach of 2.1.4 above to immediately require those pitches over the 50 or 70 limit (as the case may be) to be vacated and to pay the Council a proportionate extra amount in relation to those extra pitches for the time so occupied.
  2. The Owner covenants with the Council to:
     1. accurately record each Pitch Day in an accessible and retrievable electronic format;
     2. provide the Council with an updated electronic record of each Pitch Day and the current Calculation within 14 days of a written request by the Council;
     3. keep the records required by the Council in an accessible format for no less that two years after the year in which they are created.
     4. pay the Financial Contribution and any Bird Aware Contribution to the Council (following receipt of an invoice which for the avoidance of doubt shall additionally include an annual sum of £75.00 being the Council’s Costs), such sums to be those as published on the Council’s website as being the up to date figures which are Index Linked, by no later than 31 December in any given Season (and for the avoidance of doubt the Financial Payment shall be due for the Season operating between **1 January** and **31 December of any given year**);
     5. pay interest in the event of non-payment or late payment of the Financial Contribution and any Bird Aware Contribution at the rate of 4% above the base rate of Barclays Bank on the outstanding sum from the date the payment was due until the date received by the Council.
     6. To ensure the Pitches used in a former Season do not distort the Calculation or the Bird Aware Calculation AND FOR THE AVOIDANCE OF DOUBT in order to arrive at the Financial Contribution and any Bird Aware Contribution the Owner shall apply the calculation of the number of new Pitches so that these are deemed to be reset to zero on the day before the start of each new Season.
     7. If the Financial Contribution or any Bird Aware Contribution remains unpaid on 15 September in any Season, to immediately cease the use of the Site for the Permitted Development for that Season until such time as the Financial Contribution and any Bird Aware Contribution is received by the Council whereupon the use granted pursuant to the Permitted Development may resume.

**THIRD SCHEDULE**

**The Plan**

**[** *Insert Plan showing the land edged in red* **]**

**IN WITNESS** whereof the Owner has hereto executed this Deed on the day and year first before written.

|  |  |
| --- | --- |
| Executed as a deed by **[** *insert your name as shown on the front page of this Deed***]**  in the presence of:  ............................................................  SIGNATURE OF WITNESS  WITNESS NAME: *[add witness name]*  WITNESS ADDRESS: *[add witness address]* | ...................................................  (signature) |