Date: 14th November 2024

AGREEMENT PURSUANT TO SECTION 106 TOWN AND COUNTRY PLANNING ACT 1990 AND OTHER POWERS

Relating to the land at Greater Brighton Metropolitan College, Littlehampton Road, Worthing, West Sussex BN12 6NU

PARTIES:

(1) Worthing Borough Council

(2) Chichester College Group

(3) Secretary of State for Education

File Ref: 10910.32/SRH

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BETWEEN

(1) **Worthing Borough Council** of Town Hall, Chapel Road, Worthing, West Sussex BN11 1HA (the **Council**);

(2) **Chichester College Group** of Westgate Fields, Chichester, West Sussex PO19 1SB (the **Owner**); and

(3) **Secretary of State for Education** of Sanctuary Buildings, Great Smith Street, London SW1P 3BT (the **Mortgagee**).

RECITALS

A The Council is the Local Planning Authority for the purposes of the 1990 Act for the area in which the Development is situated and is also the beneficiary of the First Charge;

B The Owner is registered as the freehold owner of the Site at the Land Registry under title number WSX328858 and has submitted the Application to the Council;

C The Mortgagee is the beneficiary of the Second Charge;

D The parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed with the intention that they may be enforced by the Council against the Owner and its successors in title and assignees of the Site;

E The Council resolved on 19 June 2024 to grant the Planning Permission subject to the prior completion of this Deed without which the Planning Permission would not have been granted;

F The Council is satisfied that the obligations in this Deed are:

(a) Necessary to make the Development acceptable in planning terms;

(b) Directly relates to the Development; and

(c) Reasonably related in scale and kind to the Development.

1 DEFINITIONS AND INTERPRETATION

1.1 For the purposes of this Deed the following expressions shall have the following meanings unless the context requires otherwise:

1990 Act means the Town and Country Planning Act 1990 (as amended).

All-In Tender Price Index means the all-in tender price index published by the Building Costs Information Service of the Royal Institution of Chartered Surveyors or, if such index is at the relevant time no longer published, such other comparable index or basis for indexation as the Council may specify.

Application means the full planning application in respect of the Site for the demolition/removal of existing substandard buildings and structures and the construction of a new two- and part one-storey specialist construction workshop building, together with the

addition of a new door to the theatre building and improvements to outdoor space and landscaping, and given reference AWDM/0447/24.

Approved Professional means a professional individual who is a member of the Chartered Institute of Ecology and Environmental Management (CIEEM) or such other institute or body with ecological and environmental accreditation to be approved in writing by the Council.

Base Date means the date six months from Occupation of the Development.

Biodiversity Gain Land Monitoring Contribution means the sum of £1,800 (one thousand eight hundred pounds) plus VAT Index Linked to be paid by the Owner to the Council on demand in accordance with Schedule 2 of this Deed to be applied by the Council as a financial contribution towards the Council's costs of monitoring compliance with as required by condition 14 of the Planning Permission and approved by the Council.

Biodiversity Gain Plan means the plan submitted to, and approved by the Council, to satisfy the development's biodiversity net gain requirements pursuant to Schedule 7A of the 1990 Act.

Biodiversity Metric means the statutory biodiversity metric accounting tool specified as such by the Department for Environment, Food & Rural Affairs or Natural England pursuant to paragraph 4 of Schedule 7A to the 1990 Act or any other replacement of this metric.

Biodiversity Net Gain means an increase in Biodiversity Units resulting from implementing the Habitat Management and Monitoring Plan that can be allocated to the Development to fulfil its requirement to create or enhance biodiversity under schedule 7A of the 1990 Act.

Biodiversity Units means the units of biodiversity value in the Site as measured by the Biodiversity Metric and which are set out in the Habitat Management and Monitoring Plan and are necessary towards achieving the Biodiversity Net Gain.

BNG Monitoring Report means the monitoring report(s) to be prepared by an Approved Professional and submitted by the Owner to the Council in accordance with paragraph 2 of the Second Schedule and which shall include, as a minimum, the following headings:

(a) an assessment of the Biodiversity Units at the time of each BNG Monitoring Report against the objectives defined in the approved Habitat Management and Monitoring Plan as demonstrated by an updated Biodiversity Metric calculation;

(b) the condition and extent of growth of the Biodiversity Units using indicators in the approved Habitat Management and Monitoring Plan, including timescales together with any other notes of interest;

(c) date-stamped photographs accompanied by detailed site notes on the extent of growth and condition of the Biodiversity Units at the date of each BNG Monitoring Report; and

(d) detailed specific recommendations (where appropriate) on management actions to achieve the target condition of the Biodiversity Units at the time of the BNG Monitoring Report, including timescales for undertaking actions and marked site plans to show the actions.

Commencement Date means the date upon which the Habitat Creation and Enhancement Works have commenced and "Commenced" and "Commencement" shall be construed accordingly

Deed means this deed.

Default Interest Rate means 4% per annum above the base lending rate of the Bank of England.

Development means the development of the Site authorised by the Planning Permission.

First Charge means the charge dated 7 January 2020 in respect of the freehold title registered at the Land Registry under title number WSX328858.

Habitat Creation and Enhancement Works means the habitat creation and enhancement works set out in the Habitat Management and Monitoring Plan (excluding any management or monitoring activities specified in the Habitat Management and Monitoring Plan).

Habitat Management and Monitoring Plan means the document titled 'Habitat Management and Monitoring Plan' as required by condition 14 of the Planning Permission and approved by the Council.

Index Linked means the increase of the Biodiversity Gain Land Monitoring Contribution by the application of the following formula:

A = (B x C) divided by D

Where A	is the sum actually payable;
B	is the original sum mentioned in this Deed;
C	is the All-In Tender Price Index for the quarter preceding the Specified Date;
D	is the All-In Tender Price Index for the quarter preceding the date of this Deed;
C/D	is equal to or greater than 1.

Internal Monitoring Fee means the sum of one thousand one hundred pounds (£1,100) in respect of the Council's internal costs of monitoring the obligations in this Deed.

Mortgagees means together the Mortgagee and the Council in its capacity as the beneficiary of the First Charge.

Occupation means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations.

Plan means the site location plan with drawing number PL-13 Rev P1 appended to this Deed at Schedule 1.

Planning Permission means the planning permission to be granted in respect of the Application.

Second Charge means the charge dated 1 August 2022 in respect of the freehold title registered at the Land Registry under title number WSX328858.

Section 73 Permission means any planning permission granted by the Council (or on appeal) in respect of the Site after the date of this Deed pursuant to an application made under Section 73 of the 1990 Act and which varies and/or removes any condition attached to the Planning Permission;

Site means the land edged red on the Plan.

Specified Date means the date on which any payment under this Deed becomes due.

Working Day means Monday to Friday inclusive but excluding any day that is a bank holiday or statutory holiday.

1.2 Clause headings shall not affect the interpretation of this Deed.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7 A reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of the Council the successors to its respective statutory functions.

1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.

1.10 A reference to **writing** or **written** excludes faxes and e-mail.

1.11 A reference to **this Deed** or to any other deed or document referred to in this Deed is a reference to this Deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.

1.12 References to Clauses and Schedules are to the Clauses and Schedules of this Deed.

1.13 An obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.14 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.15 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

1.16 This deed shall not be enforceable against statutory undertakers or tenants of individual commercial units.

2 LEGAL BASIS

2.1 This Deed is made under Section 106 of the 1990 Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 with intent that it creates planning obligations binding the Owner's interest in the Site.

2.2 No person shall be liable for any breach of any provisions of this Deed after it shall have parted with its entire interest in the Site or the part of the Site in relation to which the breach relates but without prejudice to its liability for any subsisting breach arising prior to parting with such interest and for the purposes of this clause a person parts with an interest in the Site notwithstanding the retention of easements or the benefit of covenants, restrictions or reservations which shall not constitute an interest for the purposes of this clause.

3 CONDITIONALITY

3.1 Subject to Clauses 3.2 and 3.3, this Deed is effective on the date hereof.

3.2 Clause 4 is effective from the date on which the Planning Permission is granted.

3.3 This Deed shall cease to have effect (insofar only as it has not already been complied with) or if the Planning Permission it is modified by any statutory procedure or expires before the Development is Commenced or is at any time revoked this Deed shall forthwith determine and cease to have effect but the Council will not be required to repay any monies to the Owner (to the extent that any such sums have been paid by them) which have been received and expended (or committed to be expended).

4 THE OWNER'S COVENANTS

4.1 The Owner covenants with the Council to comply with its obligations in the Second Schedule.

5 COUNCIL'S COVENANTS

5.1 The Council covenants with the Owner to comply with its obligations in the Second Schedule.

6 INDEXATION

6.1 All financial contributions payable to the Council shall be Index Linked.

6.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this Deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owner in writing.

7 INTEREST ON LATE PAYMENT

7.1 If any sum or amount has not been paid to the Council by the date it is due, the Owner shall pay the Council interest on that amount at the Default Interest Rate. Such interest shall accrue on a daily basis for the period from the due date to and including the date of payment.

8 OWNERSHIP

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

9 MISCELLANEOUS

9.1 The Owner shall pay to the Council the Council's reasonable and proper legal costs incurred in the preparation, negotiation and completion of this Deed prior to the date of this Deed.

9.2 Where the agreement, approval, consent or expression of satisfaction is to be given by any Party or any person on behalf of any Party hereto under this Deed such agreement, approval or consent or expression of satisfaction:

(a) shall not be unreasonably withheld or delayed;

(a) shall be given in writing; and

may be validly obtained only before the act or event to which it applies.

9.3 Where any payment of costs or other payments are to be made by the Owner to the Council such costs and other payments shall be deemed to be reasonable and proper.

9.4 This Deed shall be deemed a local land charge and will be registered as such by the Council.

9.5 The Parties do not intend any person to have the benefit of the Contract (Rights of Third Parties) Act 1999.

9.6 If any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable, such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provision of this Deed.

9.7 Nothing contained or implied in this Deed shall prejudice or affect the rights, powers, duties and obligations of the Council in the exercise of its functions in any capacity (including in particular its capacities as highway authority and local planning authority) and the rights, powers, duties and obligations of the Council under private, public or subordinate legislation may be effectively exercised as if it were not a Party to this Deed.

10 WAIVER

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

11 AGREEMENTS AND DECLARATIONS

11.1 The parties agree that:

(a) nothing in this Deed constitutes a planning permission or an obligation to grant planning permission; and

(b) nothing in this Deed grants planning permission or any other approval, consent or permission required from the Council in the exercise of any other statutory function.

12 MORTGAGEES

12.1 The Mortgagees acknowledge and declare that this Deed has been entered into by the Owner with their consent and that the Site shall be bound by the obligations contained in this Deed and that the security of their charges over the Site shall take effect subject to this Deed provided that the Mortgagees shall otherwise have no liability under this Deed unless they take possession of the Site (or part thereof) in which case they too will be bound by the obligations in this Deed that bind the Site as if they were a person deriving title from the Owner.

13 VALUE ADDED TAX

13.1 Each amount stated to be payable by the Council or the Owner to the other under or pursuant to this Deed is exclusive of VAT (if any).

13.2 If any VAT is at any time chargeable on any supply made by the Council or the Owner under or pursuant to this Deed, the party making the payment shall pay the other an amount equal to that VAT as additional consideration on receipt of a valid VAT invoice.

14 DISPUTE RESOLUTION

Any dispute or difference arising between the parties hereto shall be dealt with as follows:

14.1 In the case of any legal requirement or interpretation or other matter regarding this Deed the same shall be referred to Counsel of at least ten years' experience in such matters who shall be appointed in default of agreement between the Owner and the Council by the President of the Bar or his deputy; and

14.2 Any matter referred to Counsel shall be decided by such person as an expert (and not as an arbitrator) who shall permit one representation and one counter-representation (each in writing) by each party to the dispute and his determination shall be in writing and final and binding on the parties (save in the case of fraud or manifest error) and the costs of such determination shall be paid as the expert shall direct but if he does not direct shall be borne equally between the Owner and the Council provided that in all cases the expert shall direct the costs be borne by the Owner where the expert considers the Council's case is reasonable.

15 GOVERNING LAW

15.1 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

16 SECTION 73 APPLICATIONS

16.1 If the Council grants a Section 73 Permission, or if a Section 73 Permission is granted following any appeal under Section 78 of the 1990 Act, any such Section 73 Permission shall be deemed to be granted subject to the covenants and provisions of this Deed and to apply in equal terms to it as if references in this Deed to the "Planning Permission" and the "Development" were also references to the Section 73 Permission and the development permitted by the Section 73 Permission respectively, save where the Council in its determination of an application or participation in an appeal for a Section 73 Permission indicates that amendments are required to this Deed to reflect the impact of the application of a Section 73 Permission and in such circumstances a separate deed pursuant to Section 106 and/or Section 106A of the 1990 Act will be required to secure relevant planning obligations relating to the Section 73 Permission.

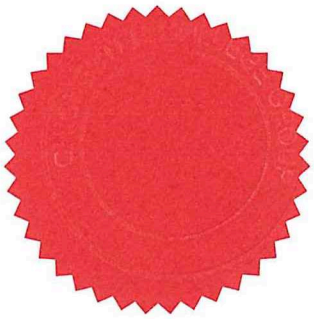
THE COMMON SEAL of)
WORTHING BOROUGH COUNCIL)
was affixed to this **DEED** by Order)



10706

DAVID JONES, LAWYER
Authorised Officer

EXECUTED as a **DEED** by affixing)
the common seal of)
CHICHESTER COLLEGE GROUP)
in the presence of:)



Authorised Signatory

Authorised Signatory

EXECUTED as a **DEED** by affixing)
the common seal of the)
SECRETARY OF STATE FOR EDUCATION)
in the presence of:)

THE CORPORATE SEAL OF THE SECRETARY OF STATE FOR EDUCATION herewith affixed is authenticated by



Authorised Signatory

Authorised ~~Signatory~~ by the Secretary of STATE for Education.

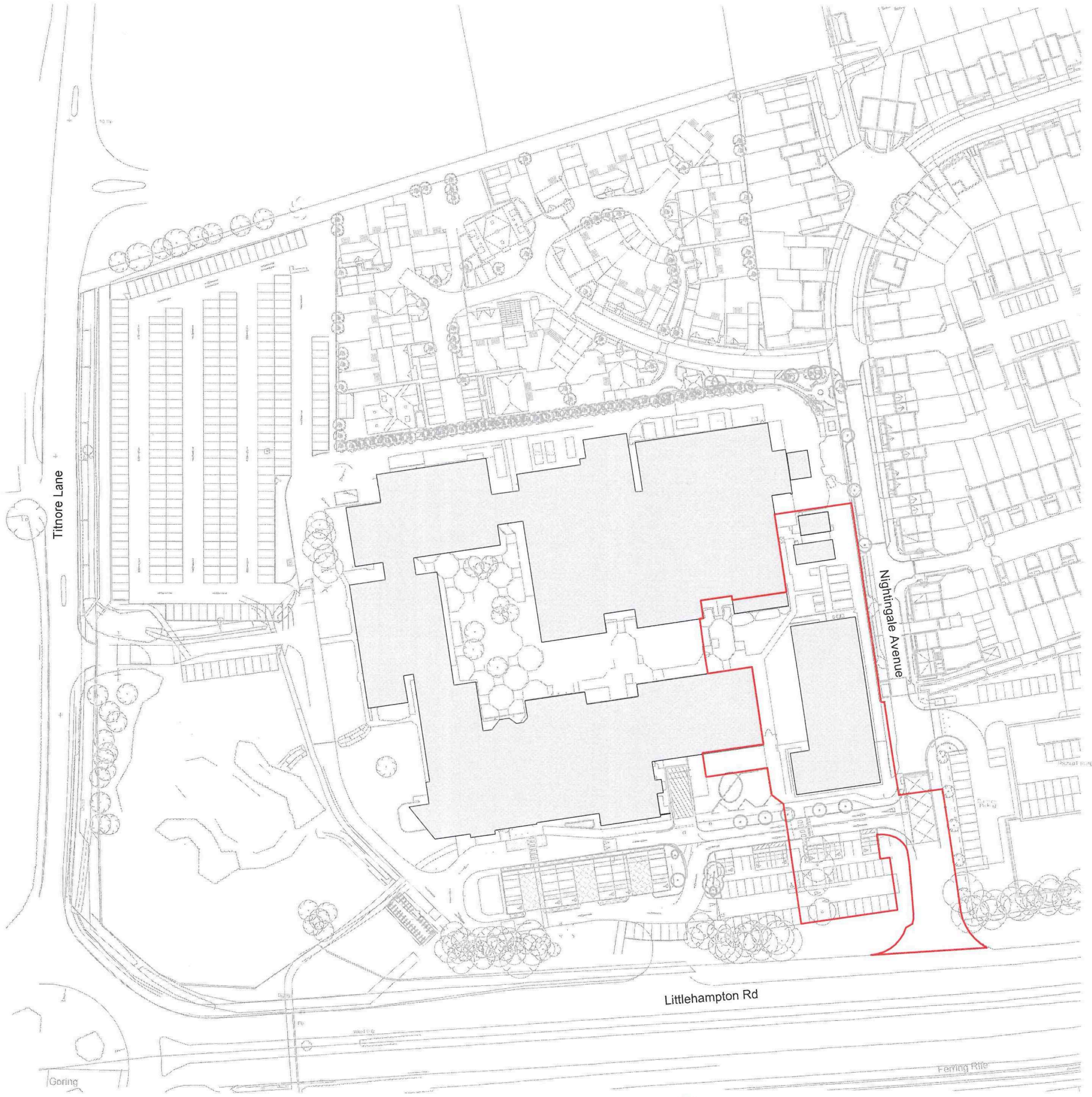
SCHEDULE 1
Plan

CDM 2015 Health & Safety Information

This information relates only to 'Significant Hazards' identified on this drawing and is to be read in conjunction with the Designer's Risk Assessment Register.

N

Red line
Application site boundary
(4,720m², 0.47Ha)



10706

4.9.24

CCG Chichester College Group

Job Title	West Durrington Campus Works
Drawing Title	Existing Site Plan - S-106
Scale	1:1250 @ A3

metres 10 20 30 40 50 60

Drawn	Checked	Date
HG	DW	10.09.24
Project	Drawing No	Rev
7367	PL-13	P1

Status
S4 - Suitable for Stage Approval

Rev	Date	Revision Details	Dr	Ch
P1	10.09.24	Planning Submission	HG	DW

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CAD Plot Date: 10/09/2024 12:01:05

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SCHEDULE 2
Biodiversity Net Gain

1. The Owner covenants with the Council to provide written notice within 10 Working Days of the following:
    a. Commencement; and
    b. Occupation of the Development.
2. The Owner covenants with the Council to pay the first Biodiversity Gain Land Monitoring Contribution and the Internal Monitoring Fee to the Council on the first anniversary of the Base Date.
3. The Owner covenants with the Council to submit a BNG Monitoring Report in respect of the works set out in the Habitat Management and Monitoring Plan to the Council for its written approval on the first (1st), second (2nd), fifth (5th), tenth (10th), fifteenth (15th), twentieth (20th) and thirtieth (30th) anniversaries of the Base Date or in accordance with such other timescale and frequency as shall be set out in the Habitat Management and Monitoring Plan agreed in writing with the Council.
4. The Council shall within twenty-eight Working Days of its receipt of a BNG Monitoring Report confirm in writing to the Owner whether it will instruct an external consultant to undertake a peer review of the report ("**the Review Notice**") and, in the event a peer review is required, the Owner shall pay to the Council a Biodiversity Gain Land Monitoring Contribution within twenty-eight Working Days of the date of the Review Notice.
5. The Council shall within twenty-eight Working Days of the Review Notice give written notice to the Owner either:
    a. Stating that it agrees the contents BNG Monitoring Report; or
    b. Correcting or challenging any of the conclusions in the BNG Monitoring Report with reasoned justification.
6. In the event that the Council shall have served notice on the Owner pursuant to paragraph 5(b) of this Schedule:
    a. The Owner and the Council (and its external consultant, as appropriate) shall use reasonable endeavours to agree the BNG Monitoring Report between them in writing; and
    b. If the Owner and the Council (and its external consultant, as appropriate) have failed to agree the BNG Monitoring Report within twenty-eight Working Days of the notice served pursuant to paragraph 5(b) of this Schedule then the matter in dispute shall be referred to the expert for determination in accordance with the provisions of clause 14 of this Deed.
7. The Council covenants with the Owner to use the Biodiversity Gain Land Monitoring Contribution and the Internal Monitoring Fee for no purpose other than the monitoring, implementation and ongoing compliance of the Biodiversity Gain Plan, which for the avoidance of doubt may include (but shall not be limited to) the cost of engaging an external consultant as provided for in this Schedule.