

DATED THIS 17th DAY OF June 2019

- (1) ARUN DISTRICT COUNCIL
- (2) WEST SUSSEX COUNTY COUNCIL
- (3) VM1 LIMITED

Agreement pursuant to Section 106 of
the Town and Country Planning Act
1990 relating to land at 18-20 London
Road, Bognor Regis, West Sussex,
PO21 1PY
Planning ref: BR/270/18/PL

Arun District Council
Maltravers Road
Littlehampton
West Sussex
BN17 5LF
DX 57406 LITTLEHAMPTON

CMS7123

Date: 19th June 2019

PARTIES:

1. **ARUN DISTRICT COUNCIL** of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex, BN17 5LF ("**the Council**")
2. **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester, West Sussex, PO19 1RQ ("**the County Council**")
3. **VM1 LIMITED (Company No 08785919)** of 3 Valencia Road, Stanmore, Middlesex HA7 4JL ("**the Owner**")

WHEREAS

1. The District Council is the Local Planning Authority, and the Local Authority responsible for Leisure and Open Spaces for the area in which the Land is situated.
2. The County Council is the Fire and Rescue Service Authority for the area in which the Land is situated.
3. The Owner is registered as freehold owner of the Land at HM Land Registry comprised in the title number WSX254803.
4. The District Council has resolved that subject to the completion of this Agreement, Planning Permission be granted subject to the conditions for the Development.
5. Pagham Harbour policy ENV DM2 of the Arun Local Plan 2011-2031 requires the payment of a developer's contribution towards the agreed strategic approach to access management at Pagham Harbour, and the Council's Cabinet approved a tariff based system on 20th July 2015.
6. This Agreement is made as a Deed.

NOW THIS DEED WITNESSETH as follows:

1. Interpretation

- 1.1 In this Agreement unless otherwise stated the following expressions shall where the context so admits have the following meanings:

"Access Management Contribution"

means a financial contribution of £9,058.40 (Nine thousand and fifty-eight pounds and forty pence) towards the cost of delivering measures to avoid, or mitigate to an acceptable level, the harm caused to Pagham Harbour.

“Act”	means the Town and Country Planning Act 1990 (as amended).
“Application”	means an application in respect of the Land for the proposed Development and given Council reference BR/270/18/PL.
“Commencement”	means the carrying out of a material operation as defined in section 56 (4) of the Act in respect of the Development but excluding (for the purposes of this Agreement and for no other purpose) any operation relating to works of investigations in respect of land contamination or remedial action in respect thereof enabling works, site clearance, site survey works, archaeological investigations and digs exploratory boreholes operations permitted by the Town and Country Planning (General Permitted Development) Order 1995 the erection of hoardings and fencing temporary diversion of services and signage (including the formation of temporary construction accesses) and “Commence” shall be construed accordingly.
“Commencement Date”	means the date on which the Commencement of the Development begins.
“Commencement Notice”	means the written notice confirming the Commencement of the Development in accordance with clause 16.
“the Development”	means the development of the Land authorised by the Planning Permission being the part conversion and extension of existing buildings to provide 6 additional storeys over existing rooftops, to provide for up to 104 student residential units, with access from Bedford Street, associated servicing and ancillary accommodation. Entrance and staircase extension to existing building to provide access from Bedford Street.
“Fire and Rescue Service	means a financial contribution of £1,560.00

Contribution"	(one thousand five hundred and sixty pounds) which is calculated using current occupancy rates from census statistics published by the Office of National Statistics and to be paid to the County Council in accordance with paragraph 5 of the Second Schedule to contribute to the supply and installation of additional fire safety equipment to vulnerable person's homes in West Sussex Fire and Rescue Services Southern Area serving Bognor Regis. PROVIDED THAT should Commencement of Development take place after 2021, the sum shall be re-calculated using the latest published census statistics published by the Office of National Statistics.
"Household Waste and Recycling"	means any and all household waste as defined at Section 74 of Part II of the Environmental Protection Act.
"Interest Rate"	means the rate 4% above the base rate from time to time of Lloyds Bank applicable at the date the relevant contribution under this Agreement is paid.
"Land"	means land known as Land at 18-20 London Road, Bognor Regis West Sussex PO21 1PY shown for purposes of identification on the Location Plan and being registered at the Land Registry under the title number WSX254803.
"Owner"	means VM1 Limited and includes its respective successors in title.
"Pagham Harbour"	means a Special Protection Area, also known as a Natura 2000 site, situated in Pagham, West Sussex in the District of Arun, identified as being of international importance for the breeding, feeding, wintering or migration of rare and vulnerable species of European Union birds.
"Planning Permission"	means a planning permission for the proposed Development granted pursuant to the Application Planning ref: BR/270/18/PL

"Location Plan"	means the plan attached to this Deed as Appendix 1.
"Planning Authority"	means the Council and the County Council
"Waste Collection Contribution"	means a financial contribution to be made by the Owner to cover the additional cost to the Council of having to collect Household Waste and Recycling from the first floor of the Development as opposed to the ground floor which would normally be the case. This financial contribution is strictly limited to the valid and substantiated costs associated with the Council having to collect Household Waste and Recycling from the first floor of the Development and for no other purpose.
"Working Day"	means any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

2. INTERPRETATION

- 2.1 Clause headings shall not affect the interpretation of this Deed.
- 2.2 A **"person"** includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).
- 2.3 A reference to a **"company"** shall include any company, corporation or other body corporate, where and however incorporated or established.
- 2.4 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
- 2.5 Unless the context otherwise requires a reference to one gender shall include a reference to other genders.
- 2.6 A reference to any party shall include that party's representatives, successors and permitted assigns and to any person deriving title through or under the party and in the case of the Council and the County Council the successors to their respective statutory functions.
- 2.7 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.

- 2.8 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.
- 2.9 A reference to “writing” and “written” does not include fax or email.
- 2.10 References to clauses and schedules are to the clauses and schedules of this Deed.
- 2.11 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 2.12 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.
- 2.13 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.

3. LEGAL BASIS

- 3.1 This Deed constitutes a planning obligation made under Section 106 of the Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011.
- 3.2 The covenants, restrictions and requirements imposed upon the Owners under this Deed create planning obligations under Section 106 of the Act and are enforceable by the Council and the County Council as appropriate in accordance with Section 106 of the Act as local planning authorities against the Owner.

4 CONDITIONALITY

- 4.1 This Deed is conditional upon:
- 4.1.1 the grant of the Planning Permission.
- save for the provisions of Clauses 4, 8, 10,11,13,16,17 and 18 which shall come into effect immediately upon completion of this Deed.
- 4.2 In the event that the Planning Application or any planning condition is subject to an appeal then each planning obligation in this Deed is also conditional upon:
- 4.2.1 The Secretary of State or the planning inspector deciding the appeal being satisfied that it is:

4.2.1.1 Necessary to make the Development acceptable in planning terms; and

4.2.1.2 Directly related to the Development; and

4.2.1.3 Fairly and reasonably related in scale and kind to the Development; and

4.2.1.4 Complies, in all other respects with Regulation 122 of the CIL Regulations.

4.2.2 In the event that the Secretary of State or the planning inspector deciding the appeal expressly states in his Decision Letter that any individual planning obligation within the Deed is not compliant with the CIL Regulations and/or the NPPF or is immaterial to the grant of the Planning Permission and that no weight has been given to the same in reaching his decision then that planning obligation or those planning obligations will cease to have effect and shall be void for the purposes of this Deed and shall have no effect and the Owner shall not be obliged to comply with the terms of that obligation and the remaining clauses will remain in full force and effect provided that severance is achievable.

4.3 In the event that the Council or the County Council adopt a charging schedule under the CIL Regulations prior to Planning Permission being granted, the Owner shall be released any of the obligations in this Deed that relate to an item or project included on the Council and/or County Council's Regulation 123 list of infrastructure.

5 THE OWNER'S COVENANTS

5.1 The Owner covenants with the Council so as to bind the Land to perform the obligations as set out in First Schedule.

5.2 The Owner covenants with the County Council so as to bind the Land to perform the obligations as set out in Second Schedule.

5.3 The Owner covenants with the County Council to provide a Commencement Notice to the County Council not less than 10 working days before the Commencement Date.

6 THE COUNCIL'S COVENANTS

6.1 The Council covenants with the Owner and the County Council as set out in the Third Schedule.

7 THE COUNTY COUNCIL'S COVENANTS

7.1 The County Council covenants with the Owner and the Council as set out in the Fourth Schedule.

8 MISCELLANEOUS

- 8.1 The Owner shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed in the sum of £500.00
- 8.2 The Owner shall pay to the County Council on completion of this Deed the reasonable legal costs of the County Council incurred in the negotiation, preparation and execution of this Deed in the sum of £750.00.
- 8.3 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 8.4 This Deed shall be registrable as a local land charge by the Council.
- 8.5 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council or the County Council under the terms of this Deed, such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.
- 8.6 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall at the Owner's request effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 8.7 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.
- 8.8 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of the Development.
- 8.9 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 8.10 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, powers, duties and obligations of the Council or the County Council under all statutes by laws statutory instruments orders and regulations in the exercise of their functions

as a local authority.

9 EXCLUSIONS OF LIABILITY

- 9.1 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land, or such part of the Land to which the breach relates, but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 9.2 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed which relate to a part of the Land in which it does not have an interest.
- 9.3 This Deed shall not be enforceable against any owner, occupier or tenant of any dwelling constructed pursuant to the Planning Permission, or their mortgagees, nor against those deriving title from them.
- 9.4 Notwithstanding any other provision of this Deed the obligations under this Deed shall not be binding or enforceable against:
 - 9.4.1 Any mortgagee of any tenant or person to whom an affordable housing provider grants a shared ownership lease or any receiver appointed by such mortgagee or any person deriving title through any such mortgagee or receiver.
 - 9.4.2 Any person to whom a shared ownership lease of an affordable dwelling is granted.
 - 9.4.3 Any person who has acquired a either a reversionary interest or a new lease in an affordable dwelling pursuant to the terms of a shared ownership lease.
 - 9.4.4 Any affordable housing provider
- 9.5 The obligations in this Deed shall not bind or be enforceable against any statutory undertaker who has or takes in future an interest in the Site for the purpose of providing apparatus pursuant to its statutory undertaking for the Development or against network rail in the event that part of the Land is transferred to network rail pursuant to the provisions of this Deed
- 9.6 Any legal charge entered into in respect of the Land or any part of the Land after this Deed has been completed shall take effect subject to this Deed PROVIDED THAT the mortgagee under such a legal charge shall have no liability under this Deed unless it causes the breach after it becomes a mortgagee in possession of the land comprised in the legal charge and the mortgagee shall not be liable for any breach of this Deed that occurs prior to the mortgagee taking

possession of the Land.

10 WAIVER

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

11 CHANGE IN OWNERSHIP

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 Land 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 Land or unit of occupation purchased by reference to a plan provided that the Owner shall not be required to give notice to the Council of any change of ownership affecting a dwelling on the Land.

12 FUTURE SECTION 73 CONSENTS

12.1 Subject to clauses 12.2 to 12.5 below, if any Section 73 Consent is granted after the date of this Deed:

12.1.1 the obligations in this Deed shall relate to and bind such Section 73 Consent; and

12.1.2 the definitions of Planning Application, Development and Planning Permission (other than for the purposes of clause 1) shall be construed to include reference to (respectively) the planning application for the Section 73 Consent, the development permitted by the Section 73 Consent and the Section 73 Consent itself;

12.2 nothing in this clause shall fetter the discretion of the Council in determining any planning application for a Section 73 Consent and the appropriate planning obligations required in connection with the determination of the same;

12.3 to the extent that any of the obligations in this Deed have already been discharged at the date that a Section 73 Consent is granted they shall remain discharged for the purposes of the Section 73 Consent;

12.4 the provisions of this clause 12 shall not apply to any Section 73 Consent which necessitates or requires amendments to the substantive terms or obligations of or contained within this Deed; and

- 12.5 the Council reserves the right to insist upon the completion of a separate planning obligation by deed of agreement in connection with any Section 73 Consent if the Council (acting reasonably) considers it necessary to do so.

13 INTEREST

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

14 VAT

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

15 DISPUTES

- 15.1 Any dispute, controversy or claim arising out of or relating to this deed, including any question regarding its breach, existence, validity or termination or the legal relationships established by this deed, shall be finally resolved by arbitration in accordance with the Arbitration Act 1996. It is agreed that:

15.1.1 the tribunal shall consist of one arbitrator appointed jointly by the parties

15.1.2 in default of the parties' agreement as to the arbitrator, the arbitrator shall be appointed on either party's request by the President for the time being of the Royal Institution of Chartered Surveyors;

15.1.3 the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction, then equally).

16 NOTICES

- 16.1 A notice or other communication to be given under or in connection with this Deed must be in writing and must be:

16.1.1 delivered by hand; or

16.1.2 sent by pre-paid first class post or other next working day delivery service.

- 16.2 Any notice or other communication to be given under this Deed must be sent to the relevant party as follows:

16.2.1 to the Council at: Arun Civic Centre Maltravers Road, Littlehampton, West Sussex BN17 5LF marked for the attention of the Planning Department and quoting the Planning Application number: BR/270/18/PL;

16.2.2 to the County Council at Monitoring and Records Team,
Strategic Planning Division, County Hall, West Street,
Chichester, West Sussex, PO19 1RQ quoting the Planning
Application number BR/270/18/PL;

16.2.3 to the Owner at: 3 Valencia Road, Stanmore, Middlesex
HA7 4JL

or at such other address as the relevant party shall specify
by notice to the other parties

16.3 Any notice or other communication given in accordance with clause
16.1 and clause 16.2 will be deemed to have been received:

16.3.1 if delivered by hand, on signature of a delivery receipt or at
the time the notice is left at the address provided that if
delivery occurs before 9am on a Working Day, the notice
will be deemed to have been received at 9am on that day,
and if delivery occurs after 5 pm on a Working Day, or on a
day which is not a Working Day, the notice will be deemed
to have been received at 9am on the next Working Day;

16.3.2 if sent by pre-paid first class post or other next working day
delivery service at 9am on the second Working Day after
posting.

16.4 A notice or other communication given under this Deed shall not be
validly given if sent by email.

16.5 This clause does not apply to the service of any proceedings or
other documents in any legal action or, where applicable, any
arbitration or other method of dispute resolution.

17 JURISDICTION

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

18 DELIVERY

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 Owner Covenants with the Council

The Owner covenants with the Council as follows:

1 ACCESS MANAGEMENT CONTRIBUTION

- 1.1 Upon the Grant of the Planning Permission to pay to the Council the Access Management Contribution

2. WASTE COLLECTION CONTRIBUTION

- 2.1 If the Development is to cease to be used for Student Accommodation, the Owner shall notify the Council in writing, no less than 2 (two) calendar months prior to the date of cessation.
- 2.2 If the Development ceases to be used for Student Accommodation and is used for a purpose that requires the Council, under the Environmental Protection Act 1990, to collect Household Waste and Recycling from the Development. The Owner shall upon receipt of a valid and substantiated invoice from the Council, pay to the Council, within 30 days of receipt of the invoice (or such other period as may be agreed in writing with the Council) the Waste Collection Contribution.

SECOND SCHEDULE

The Owner Covenants with the County Council as follows:

1 FIRE AND RESCUE SERVICE CONTRIBUTION

- 1.1 Prior to the Commencement of the Development to pay to the County Council the Fire and Rescue Service Contribution.
- 1.2 Not to cause or allow the Commencement of the Development before the Fire and Rescue Service Contribution has been paid to the County Council.
- 1.3 The Fire and Rescue Service Contribution shall be index linked.

THIRD SCHEDULE

The Council Covenants with the Owner as follows:

1 ACCESS MANAGEMENT CONTRIBUTION

- 1.1 Upon receipt of the Access Management Contribution under paragraph 1 of the First Schedule it will hold it in a separately identified interest bearing section of the Council's combined accounts and apply the same together with any interest accruing on it for the purpose specified by this Deed.
- 1.2 Upon written request on or after ten (10) years of the date of receipt of the final instalment of the Access Management Contribution to issue to the Owner that paid the Access Management Contribution an account certified by the Group Head of Corporate Support, for the time being of the Council detailing how the Access Management Contribution has been expended by the Council.
- 1.3 If or to the extent that any of the Access Management Contribution shall not have been spent by the Council by the end of the period referred to in paragraph 1.2 above the Council shall on such date refund to the Owner that paid the Access Management Contribution any unexpended part of any of Access Management Contribution together with compound interest on the unexpended part(s) from the date of receipt by the Council of the contribution to the date of repayment at 2% above the base rate of the Bank of England applicable at the date of repayment calculated on a day to day basis.
- 1.4 If at the end of the period referred to in paragraph 1.2 of this Third Schedule the Council shall have entered into a contract or other legally binding obligation to expend the Access Management Contribution or part thereof for the purposes specified in paragraph 1.1 then the Council shall not be required to refund any part of the Access Management Contribution required for those purposes but shall as soon as possible following the completion of the said contract or other legally binding commitment account to the Owner that paid the Access Management Contribution in the manner set out in paragraph 1.2 of this Third Schedule and refund any unexpended part of the Access Management Contribution in the manner set out in paragraph 1.3 of this Third Schedule.

2 WASTE COLLECTION CONTRIBUTION

- 2.1 To collect and dispose of the Household Waste and Recycling from the first floor of the Development at the same intervals as other collections in the district in accordance with the Environmental Protection Act 1990, in the circumstances

where: (i) a valid notice has been served by the Owner on the Council under clause 2.2 of the First Schedule; and (ii) the Development is used for a purpose that requires the Council to collect Household Waste and Recycling from the Development.

FOURTH SCHEDULE

The County Council Covenants

The County Council covenants with the Owner as follows:

1 FIRE AND RESCUE SERVICE CONTRIBUTION

- 1.1 Upon receipt of the Fire and Rescue Service Contribution under paragraph 1 of the Second Schedule it will hold it in a separately identified interest bearing section of the County Council's combined accounts and apply the same together with any interest accruing on it for the purpose specified by this Deed in the vicinity of the Site.
- 1.2 Upon written request on or after ten (10) years of the date of receipt of the final instalment of the Fire and Rescue Service Contribution to issue to the party that paid the Fire and Rescue Service Contribution an account certified by the Director of Finance, Performance and Procurement for the time being of the County Council detailing how the Fire and Rescue Service Contribution has been expended by the County Council.
- 1.3 If or to the extent that any of the Fire and Rescue Service Contribution shall not have been spent by the County Council by the end of the period referred to in paragraph 1.2 above the County Council shall on such date refund to the party that paid the Fire and Rescue Service Contribution any unexpended part of any of Fire and Rescue Service Contribution together with compound interest on the unexpended part(s) from the date of receipt by the County Council of the contribution to the date of repayment at 2% above the base rate of the Bank of England applicable at the date of repayment calculated on a day to day basis.
- 1.4 If at the end of the period referred to in paragraph 1.2 of this Fourth Schedule the County Council shall have entered into a contract or other legally binding obligation to expend the Fire and Rescue Service Contribution or part thereof for the purposes specified in paragraph 1.1 then the County Council shall not be required to refund any part of the Fire and Rescue Service Contribution required for those purposes but shall as soon as possible following the completion of the said contract or other legally binding commitment account to the party that paid the Fire and Rescue Service Contribution in the manner set out in paragraph 1.2 of this Fourth Schedule and refund any unexpended part of the Fire and Rescue Service Contribution in the manner set out in paragraph 1.3 of this Fourth Schedule.

THIS DOCUMENT has been executed as a Deed and is delivered and takes effect on the date stated at the beginning

Executed as a Deed by affixing
THE COMMON SEAL of
ARUN DISTRICT COUNCIL in
The presence of:

Authorised signatory

Signature:

Name: *SALLY SODDEN*

Job Title: *CONTRACTS LAWYER*

Seal Book No. *195/2019*

Executed as a Deed by affixing
THE COMMON SEAL of
WEST SUSSEX COUNTY COUNCIL in
The presence of:

Authorised signatory

Signature

Name:

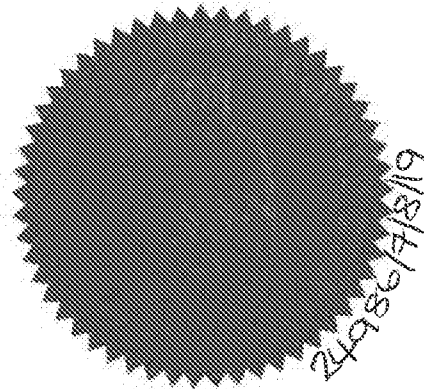
Job Title:

Seal Book No.

Signed as a Deed on behalf of **VM1**
LIMITED by

Director:

~~Director/~~Company Secretary

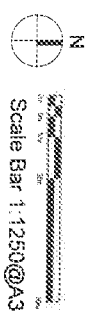
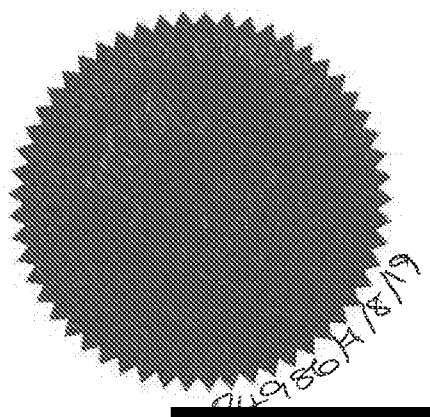


APPENDIX 1 PLAN

Proposed Location Plan

1 : 1250

Project name	Project No.	Drawing No.	Revision	Scale
Vainias Student Residences, Bognor Regis	16102	P150	P4	FLANNING
Site Location Proposed	Scale @ A3	Drawn By	Checked By	Date
	1 : 1250	JAH	DJS	NOV 2017
This drawing is the copyright of Cover Storey Architects LLP All dimensions must be verified on site prior to construction Do not scale this drawing except for planning application purposes				



COVER STOREY

Architects

15 Bognor Regis, Sussex

PO21 2JH

Drawn by	Checked by	Date
JAH	DJS	NOV 2017

