



IPSWICH
BOROUGH COUNCIL

SUPPLEMENTARY PLANNING DOCUMENT

SUFFOLK COAST RECREATIONAL DISTURBANCE AVOIDANCE AND MITIGATION STRATEGY

Adopted February 2020

Contents

1. Introduction	2
1.1 The Recreational Disturbance Avoidance and Mitigation Strategy.....	2
1.2 Purpose of the Supplementary Planning Document.....	2
2. The Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) ...	4
2.1 Policy Background.....	4
2.2 European Sites.....	4
2.3 Zone of Influence.....	5
2.4 The Tariff.....	5
3. Making a Planning application	6
3.1 What types of development does this apply to?	6
3.2 What types of application does this apply to?	6
3.3 When and how do I pay the contribution?	6
3.4 Legal / Admin fees.....	7
3.5 What if I don't get planning permission or choose not to implement my planning permission?.....	7
3.6 Do I have to pay the Suffolk Coast RAMS tariff?.....	8
3.7 How will the tariff be spent?	8
Appendix 1: Summary of sites relevant to the Suffolk Coast RAMS	9
Appendix 2: Map of Zones of Influence.....	12
Appendix 3: Example Unilateral Undertaking Template	13
Appendix 4: S106 Standard Clause	28
Glossary of terms.....	29

1. Introduction

The coast, heaths and estuaries of Suffolk are internationally recognised wildlife assets. They include areas designated as Special Areas of Conservation (SAC), Special Protection Areas (SPA) and Ramsar Sites (hereafter referred to as ‘European Sites’¹). These habitats and the species they hold are protected by UK and European legislation and the international Ramsar Convention.

Allowing recreation at these European Sites has numerous benefits including raising awareness, bringing revenue to support vulnerable habitat sites and improving health and wellbeing. Recreation can however bring pressure to sensitive wildlife features and if not managed appropriately, can result in habitat deterioration and species population decline. Intensive recreation pressure can cause fragmentation of habitats and isolate populations of the species for which the sites are designated, including those of a number of internationally important wildfowl and wading birds.

1.1 The Recreational Disturbance Avoidance and Mitigation Strategy

New housing growth brings new residents to the local area, and if those residents use the European Sites for recreation, which evidence suggests is likely, then pressure is increased on those European Sites. Assessing, avoiding and managing that recreation pressure is therefore an important part of planning for growth.

To address this, East Suffolk Council (formally Suffolk Coastal District Council and Waveney District Council), Ipswich Borough Council, Mid Suffolk District Council and Babergh District Council commissioned a Recreational Disturbance Avoidance and Mitigation Strategy (RAMS). This strategy set out a tariff based approach to mitigating the impact of recreational disturbance on European Sites resulting from increased housing development across the Local Authority areas. The strategy facilitates development, whilst at the same time adequately protecting European Sites from harm.

1.2 Purpose of the Supplementary Planning Document

This Supplementary Planning Document, summarises the requirements of Suffolk Coast RAMS, including the per-dwelling tariff, and provides a framework for implementing those provisions. The Supplementary Planning Document also includes information for developers and applicants to assist them in meeting the other requirements under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations as amended)².

This Supplementary Planning Document provides information to support the implementation of policies set out in the Councils’ Local Plans, and is a material planning consideration in the development management process.

¹ Described as Habitat Sites under paragraph 176 of the National Planning Policy Framework (NPPF) 2019.

² www.legislation.gov.uk/uksi/2017/1012/pdfs/ukxi_20171012_en.pdf

Initially, this Supplementary Planning Document was produced for East Suffolk District Council and Ipswich Borough Council. Although partners to the Suffolk Coast RAMS project, Babergh District Council and Mid Suffolk District Council are proceeding with the implementation of RAMS without a Supplementary Planning Document, until such time as the new joint Local Plan for Babergh and Mid Suffolk is in place.

2. The Recreational Disturbance Avoidance and Mitigation Strategy (RAMS)

2.1 Policy Background

Where a European Site could be affected by a plan or project then a Habitats Regulations Assessment must be undertaken by the competent authority. This identifies the ecological interest features of the site (such as birds, plants or animals); what they could be potentially harmed by the proposed plan or project; and assesses whether the proposed plan or project could cause that harm to occur.

The Local Plan Habitat Regulations Assessments for Ipswich Borough Council, Babergh District Council and Suffolk Coastal District Council (now the southern part of East Suffolk) concluded that without mitigation the level of residential growth proposed would be likely to have significant negative impacts on European sites through increased recreational use by the additional residents.

In response to this, East Suffolk Council (formerly Suffolk Coastal District Council and Waveney District Council), Ipswich Borough Council and Babergh District Council, with support from Natural England, jointly commissioned a Recreational Disturbance Avoidance and Mitigation Strategy (RAMS). The inclusion of Mid Suffolk District Council and Waveney District Council (the latter now being part of East Suffolk) was triggered by the advice of Natural England. This Strategy set out a tariff based approach to mitigating the impact of recreational disturbance on European Sites resulting from increased residential development across the Local Authority areas. The Strategy allows development, whilst at the same time adequately protecting European Sites from harm.

Approaching mitigation strategically through a partnership approach ensures maximum effectiveness of conservation outcomes and cost efficiency.

Where a European Site could be affected by a plan or project then a Habitats Regulations Assessment (HRA) screening must be undertaken. If this cannot rule out any possible likely significant effect on the European Site, either alone or in combination with other plans and projects, without mitigation, then an Appropriate Assessment must be undertaken. The Appropriate Assessment identifies the interest features of the site (such as birds, plants or coastal habitats), how they could be harmed, and assesses whether the proposed plan or project could have an adverse effect on integrity of the European Site (either alone or in combination with other plans and projects), and how this could be mitigated.

2.2 European Sites

The coast, heaths and estuaries of Suffolk are internationally recognised wildlife assets. They include areas designated as Special Areas of Conservation (SAC), Special Protection Areas (SPA) and Ramsar Sites. These habitats and the species they hold are protected by UK and European legislation and the international Ramsar Convention.

The RAMS report includes a review of the European Sites within and around the Local Planning Authority boundaries in combination with an analysis of current and predicted future housing growth. This concluded that twelve European Sites should be the focus of the Suffolk Coast RAMS report (see Appendix 1 for details).

2.3 Zone of Influence

Zones of influence are areas from within which it is deemed there will be likely significant effect arising from recreation undertaken by additional residents living within the zone. This determines where new development may result in changes in recreation and therefore where mitigation will be necessary. Each European Site has a zone of influence of 13km.

The evidence underpinning the methodology for defining the zone of influence is detailed in the RAMS report. Two separate tariff zones are identified:

- Zone A - reflects the zone of influence to the Stour and Orwell Special Protection Area (SPA) and Ramsar and the Deben SPA and Ramsar; and
- Zone B - relates to all the relevant European Sites apart from the Stour and Orwell.

2.4 The Tariff

The zones of influence are used to determine the contribution that needs to be made for each new residential dwelling built.

Zone	Tariff
Zone A	£121.89 per dwelling
Zone B	£321.22 per dwelling

It should be noted that some residential schemes, particularly those located close to a European Site boundary or large scale developments, are likely to need to provide additional mitigation measures (in addition to the tariff) such as Suitable Alternative Natural Green Space (SANGS) or green infrastructure measures. This would need to be assessed through a project level Habitats Regulations Assessment (HRA) (including Appropriate Assessment). The Local Planning Authority, in consultation with Natural England, will advise on these cases.

The tariff will be indexed linked, with a base date of 2019 and will be reviewed periodically. The Per house tariffs may be subject to change throughout the lifetime of the Strategy, as housing figures are reviewed again over time, and in response to more detailed understanding of costs, and as measures are implemented and monitored for effectiveness. Any revisions to the tariff will be published via the Council's website.

3. Making a Planning application

Development Management Officers will apply the Suffolk Coast RAMS requirements and this Supplementary Planning Document in their consideration of residential development proposals.

Project level Habitat Regulations Assessments (HRAs) (including Appropriate Assessments) will still be required. The Suffolk Coast RAMS streamlines these Habitat Regulations Assessments (HRAs) but this does not negate the need to pay the RAMS tariff.

3.1 What types of development does this apply to?

The requirements of Suffolk Coast RAMS and this Supplementary Planning Document apply to all new residential developments where there is a net increase in dwelling numbers. This includes, for example, the conversion of existing large townhouses into smaller flats, or the change of use of other buildings to dwellings. It excludes replacement dwellings and extensions to existing dwellings (where there is no net gain in dwelling numbers). Applicants are advised to contact the Local Planning Authority if in any doubt as to whether their development is within the scope of the Suffolk Coast RAMS and this Supplementary Planning Document.

Certain restricted development types may be excluded from the Suffolk Coast RAMS. These include nursing homes, where the residents will be those in need of daily nursing care and therefore unable to undertake outdoor recreation. Residential annexes are also excluded, as they do not result in independent dwellings. The Strategy does not cover potential effects arising from non-residential development, employment growth or infrastructure improvements. Other projects that may cause recreational disturbance at European Sites will need to undertake their own Habitat Regulation Assessments (HRAs).

3.2 What types of application does this apply to?

The Suffolk Coast RAMS tariff applies to all full applications, outline applications, permitted development and reserved matters applications where no contribution was made at the outline stage.

The General Permitted Development Order (GPDO) allows for the change of use of some buildings and land to Class C3 (dwelling houses), with this development subject to prior approval. The Suffolk Coast RAMS will apply to such developments.

Sites that already have planning permission will not be required to pay any additional mitigation sum, unless they are resubmitted for consideration.

3.3 When and how do I pay the contribution?

Contributions must be paid to the Local Planning Authority before the commencement of development, unless otherwise agreed.

Where a financial contribution towards the Suffolk Coast RAMS is required and there are no other Section 106 planning obligations associated with the application, the payment can either be made upfront or a Unilateral Undertaking (legal agreement) can be entered into to secure payment upon commencement of the development.

The Suffolk Coast RAMS contribution is payable in addition to any Community Infrastructure Levy (CIL) liability and/or any other S106 or S278 contributions for other types of contribution and there may be other site-specific mitigation requirements in respect of European Sites and ecology.

Planning obligations are legally binding on the landowner (and any successor in title).

The possible mechanisms for securing contributions are detailed below. Development Management officers will advise on the most appropriate mechanism during the course of the application process.

1. Unilateral Undertaking: A draft template Unilateral Undertaking (see Appendix 3) has been developed. This can be completed by applicants themselves or with the assistance of a solicitor. This should be submitted alongside the planning application.

The undertaking must be submitted with the site location plan, and the land title plan and register printed from Land Registry within the previous 3 months (title documents can be sourced from [HM Land Registry](#)) or a copy of the title deeds certified by a solicitor.

2. S106: In the case of larger or more complicated developments, the most appropriate route for securing contributions will be via a multi-party Section 106 Agreement.

Applicants must submit a Heads of Terms document for the Section 106 Agreement, identifying these requirements and specifying their agreement to enter into a planning obligation. Heads of Terms should be provided at the point of submission of the planning application.

3.4 Legal / Admin fees

Developers or land owners are expected to meet the Local Planning Authority's legal fees associated with any drafting, checking and approving any deed. These legal fees are in addition to the statutory planning application fee, and the contribution itself, and must be reasonable. Details of the Local Planning Authority's current legal fees can be found on the Council's website.

3.5 What if I don't get planning permission or choose not to implement my planning permission?

The tariff will be refunded minus a small administrative charge.

3.6 Do I have to pay the Suffolk Coast RAMS tariff?

Under the Habitats Regulations (as amended), a development which is likely to have a significant effect on a Habitats site, either alone or in-combination with other plans and projects, must provide mitigation or otherwise must satisfy the tests of demonstrating 'no alternatives' and 'reasons of overriding public interest'.

Residential development within the RAMS zone of influence must demonstrate that the impact of that development (either alone or in-combination with other plans and projects) on protected sites can be mitigated. Natural England would be consulted and would need to be satisfied that all impacts were being mitigated. Payment of the RAMS tariff is one option for providing that mitigation.

The alternative would be for the developer to gather their own evidence for a project level Habitats Regulations Assessment (HRA) and then to secure the necessary bespoke mitigation measures for delivery in perpetuity. This assessment would likely have a much higher cost than if the developer were to make a contribution to the implementation of the RAMS.

3.7 How will the tariff be spent?

Monies collected from zones A and B will be combined and spent across the tariff area. A list of strategic projects is listed in the Strategy document. The order in which projects come forward will be determined by an Executive Group who will oversee the implementation of the Strategy. Senior officers from each authority will be represented within the Executive Group to provide the necessary authority and decision making. Natural England will also input into the Executive Group in an advisory capacity. A dedicated Delivery Officer gives assurance that the whole project will be effectively managed and delivered.

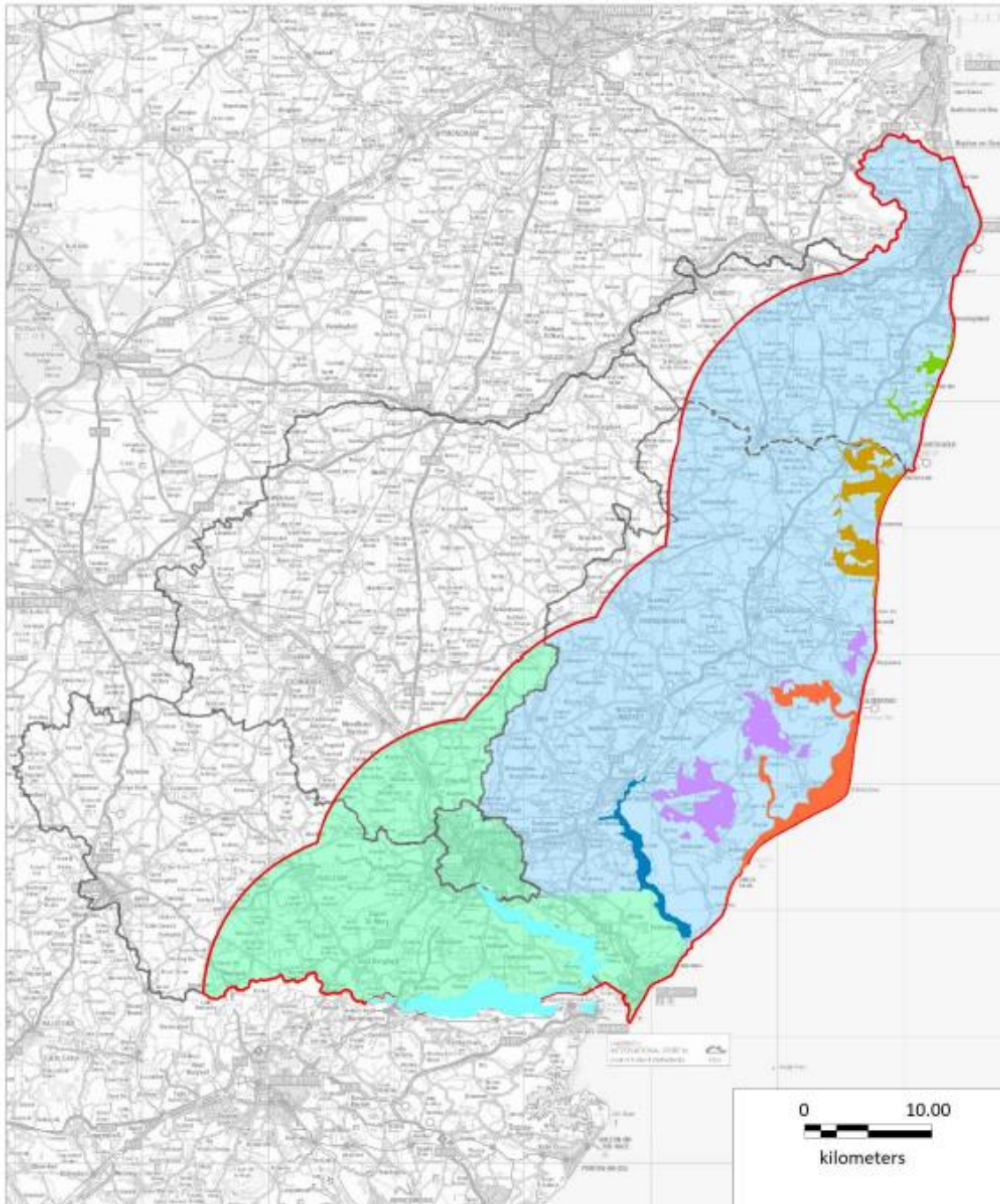
Appendix 1: Summary of sites relevant to the Suffolk Coast RAMS

European site	Interest Feature
Alde-Ore Estuary SPA (<i>East Suffolk</i>)	<ul style="list-style-type: none"> • Ruff • Avocet • Marsh Harrier • Redshank • Lesser Black-Backed Gull • Sandwich Tern • Little Tern
Alde-Ore & Butley Estuaries SAC (<i>East Suffolk</i>)	<ul style="list-style-type: none"> • H1330 Atlantic salt meadows • H1130 Estuaries • H1140 Mudflats and sandflats
Alde-Ore Estuary Ramsar (<i>East Suffolk</i>)	<ul style="list-style-type: none"> • Ramsar criterion 2: The site supports a number of nationally-scarce plant species and British Red Data Book invertebrates • Ramsar criterion 3: The site supports a notable assemblage of breeding and wintering wetland birds • Ramsar criterion 6: Bird species/populations occurring at levels of international importance (Lesser Black-backed Gull, Avocet, Redshank)
Benacre to Easton Barents Lagoons SAC (<i>East Suffolk</i>)	<ul style="list-style-type: none"> • H1150 Coastal lagoons
Benacre to Easton Barents SPA (<i>East Suffolk</i>)	<ul style="list-style-type: none"> • Little Tern • Bittern • Marsh Harrier
Deben Estuary SPA (<i>East Suffolk</i>)	<ul style="list-style-type: none"> • Dark-Bellied Brent Goose • Avocet
Deben Estuary Ramsar (<i>East Suffolk</i>)	<ul style="list-style-type: none"> • Ramsar criterion 2: Supports a population of the mollusc <i>Vertigo angustior</i> • Ramsar criterion 6: Species/populations occurring at levels of international importance (Dark-bellied Brent Goose)
Dew's Ponds SAC (<i>East Suffolk</i>)	<ul style="list-style-type: none"> • Great crested newt
Minsmere-Walberswick Heaths & Marshes SAC (<i>East Suffolk</i>)	<ul style="list-style-type: none"> • H4030 European dry heaths • H1210 Annual vegetation of drift lines • H1220 Perennial vegetation of stony banks
Minsmere – Walberswick SPA (<i>East Suffolk</i>)	<ul style="list-style-type: none"> • Teal • Bittern • Marsh Harrier • Hen Harrier

	<ul style="list-style-type: none"> • European Nightjar • Northern Shoveler • Gadwall • Avocet • Little Tern • White-Fronted Goose
Minsmere-Walberswick Ramsar (<i>East Suffolk</i>)	<ul style="list-style-type: none"> • Ramsar Criterion 1: The site contains a mosaic of marine, freshwater, marshland and associated habitats, complete with transition areas in between. Contains the largest continuous stand of reedbeds in England and Wales and rare transition in grazing marsh ditch plants from brackish to fresh water. • Ramsar criterion 2: This site supports nine nationally scarce plants and at least 26 red data book invertebrates, including the mollusc <i>Vertigo angustior</i>. • An important assemblage of rare breeding birds associated with marshland and reedbeds.
Orfordness-Shingle Street SAC (<i>East Suffolk</i>)	<ul style="list-style-type: none"> • H1210 Annual vegetation of drift lines • H1220 Perennial vegetation of stony banks • H1150 Coastal lagoons
Sandlings SPA (<i>East Suffolk</i>)	<ul style="list-style-type: none"> • European nightjar • Woodlark
Staverton Park & The Thicks, Wantisden SAC (<i>East Suffolk</i>)	<ul style="list-style-type: none"> • H9190 Old acidophilous oak woods with <i>Quercus robur</i> on sandy plains
Stour and Orwell Estuaries SPA (<i>Ipswich, East Suffolk and Babergh</i>)	<ul style="list-style-type: none"> • Black-tailed godwit • Knot • Dunlin • Waterbird assemblage • Redshank • Grey plover • Dark-bellied brent goose • Northern pintail • Pied avocet
Stour and Orwell Estuaries Ramsar (<i>Ipswich, East Suffolk and Babergh</i>)	<ul style="list-style-type: none"> • Ramsar criterion 2: Contains seven nationally scarce plants: stiff saltmarsh-grass; small cord-grass; perennial glasswort; lax-flowered sea lavender and the eelgrasses <i>Zostera angustifolia</i>, <i>Z. marina</i> and <i>Z. noltei</i>. • Ramsar criterion 2: Contains five British Red Data Book invertebrates: the muscid fly <i>Phaonia fusca</i>; the horsefly <i>Haematopota grandis</i>; two spiders, <i>Arctosa fulvolineata</i> and <i>Baryphema duffeyi</i>; and the endangered swollen spire snail <i>Mercuria confusa</i>. • Ramsar criterion 5: Wintering waterfowl assemblage • Ramsar criterion 6: Species/populations occurring at levels of international importance (Redshank, Dark-

	bellied Brent Goose, Pintail, Grey Plover, Knot, Dunlin, Black-tailed Godwit)
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Appendix 2: Map of Zones of Influence



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European site boundaries sourced from Natural England website; © Natural England.

Appendix 3: Example Unilateral Undertaking Template

DATE INSERT DATE

UNILATERAL UNDERTAKING

Made under Section 106 of the Town and
Country Planning Act 1990 (as amended)

relating to land at: INSERT ADDRESS

IN FAVOUR OF [*
] BOROUGH COUNCIL

Legal Services
Ipswich Borough Council
Grafton House
15-17 Russell Road
Ipswich
IP1 2DE

[Where shown, amend accordingly before printing and signing (with witness(es))]

DATE [*INSERT DATE]

PARTIES

By [*INSERT FULL NAME AND ADDRESS] of
]

the “Owner”

[*And

[*INSERT FULL NAME AND ADDRESS] of
]

the “Owner”

[* And

the Bank/Building Society (Company no) of

[* And
] (“the Bank/Building
Society”)*

To [*] BOROUGH COUNCIL of Grafton House, 15-17 Russell Road, Ipswich, IP1
2DE **the “Borough Council”**

INTRODUCTION

- 1 The Borough Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- 2 The ownership of the Site is set out in the First Schedule [~~and is subject to a charge in favour of the Bank/Building Society but otherwise] free from encumbrances~~
- 3 [~~The Bank/Building Society is mortgagee of the Land under a Legal Charge dated [insert date] and made between the Owner and the Bank/Building Society]*~~
- 4 [~~The Bank/Building Society has agreed to the execution of this Agreement and acknowledges that subject as herein provided the Land shall be bound by the obligations contained in the Second Schedule]*~~
- 5 [~~The Bank/Building Society acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Land shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Land shall take effect subject to this Deed PROVIDED THAT the Bank/Building Society shall otherwise have no liability under this Deed unless it takes possession of the Land in which case it too will be bound by the obligations in this Deed as if it were a person deriving title from the Owner]*~~
- 6 The Borough Council has not yet determined the Planning Application and the Owner enters into this Deed to secure the planning obligation which will take effect following a grant of the Planning Permission for the Development

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings and shall be read in conjunction with the definitions set out in the Third Schedule:

- “Act” the Town and Country Planning Act 1990 as amended;
- “Application Site” the land described in the First Schedule as shown edged red for identification purposes only on the Application Site Plan;
- “Application Site Plan” the plan attached to this Deed
- “Commencement of Development” the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out on the Site other than (for the purposes of this Deed and for no other purpose) operations consisting of archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements or the erection of temporary fences and “Commence Development” shall be construed accordingly;
- “Development” the development of the Site as described in the Planning Application and in accordance with the Planning Permission
- “Dwelling” any dwelling (including house flat or maisonette) to be constructed pursuant to the Planning Permission and dwellings shall be construed accordingly

<p>“Habitats Sites Mitigation Contribution”</p>	<p>means the sum of £INSERT TOTAL (*in words)</p> <p>(Index Linked) calculated using the Habitat Mitigation Contribution Calculation to be paid by the Owner to the Borough Council as a contribution towards the impact of development on the Habitats Sites</p>
<p>“Habitats Sites Mitigation Contribution Calculation”</p>	<p>the sum of £121.89 x (multiplied by) the total number of new Dwellings proposed pursuant to the Planning Permission to calculate the Habitats Sites Mitigation Contribution</p>
<p>“Index”</p>	<p>means the All-in Tender Price Index published by the Building Costs Informative Service from time to time</p>
<p>“Index Linked”</p>	<p>the sum referred to in the Second Schedule of this Deed shall be increased or decreased by an amount equivalent to the increase or decrease in the Index from the date of the grant of Planning Permission until the date on which the Habitats Sites Mitigation Contributions is payable using the formula $A=B \times C/D$ but not to be decreased lower than B</p> <p>A – the sum payable under this Deed B – the original sum calculated C – the Index for the month 2 months before the date on which the Habitat Mitigation Contribution is payable D – the Index for the month 2 months before the date of the grant of the Planning Permission</p>
<p>“Interest”</p>	<p>interest at four (4) per cent above the base lending rate of the Bank of England from time to time</p>
<p>“Occupation”</p>	<p>occupation of any Dwelling on the Site for the purposes permitted by the Planning Permission and occupation would be deemed to have taken place when the Council have evidence of the occupation of any Dwelling on the Site 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</p>

“Planning Application”

means the application for Planning Permission for INSERT DESCRIPTION OF DEVELOPMENT AS INCLUDED ON THE PLANNING APPLICATION

at INSERT ADDRESS OF DEVELOPMENT

submitted to the Borough Council on INSERT DATE

“Planning Permission”

the INSERT TYPE

planning permission subject to conditions to be granted by the Borough Council pursuant to the Planning Application;

“Site”

the land described in the First Schedule against which this Deed may be enforced as shown edged red for identification purposes only on the Application Site Plan;

“Working Days”

Monday to Friday (inclusive) except Good Friday, Christmas Day and public or bank holidays from time to time in England.

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 Directive of the European Union shall include any modification, extension or re-enactment of that Act or Directive for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or Directive or deriving validity from it.
- 2.6 Any 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 Borough Council the successors to its respective statutory functions.
- 2.7 The headings are for reference only and shall not affect construction.
- 2.8 Any covenant by the Owner not to do an act or thing shall be deemed to include an obligation to use all reasonable endeavours not to permit or suffer such act or thing to be done by another person where knowledge of the actions of the other person is reasonably to be inferred.
- 2.9 Any notices required to be given under the terms of this Deed may (in addition to any other valid method of service) be given or served by sending the same by recorded delivery post addressed to the party to or upon whom it is to be given or served at the address for that party given in this Deed or such other address in the United Kingdom as that party may by notice to the other parties hereto or their agent stipulate as that party's address for service of notice pursuant to this Deed or if not such address is given or stipulated at that party's last known address and any notice so

given or served shall be deemed to be received and the date on which it is given or served shall be deemed to be 48 hours after posting.

3 LEGAL BASIS

3.1 This Deed is made pursuant to Section 106 of the Act and to the extent that it does not contain planning obligations Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers.

3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed that are planning obligations pursuant to Section 106 of the Act are enforceable by the Borough Council as the local planning authority against the Owner and their successors in title.

3.3 Any variation of this Deed is to be by way of a formal variation by deed between all the parties unless there is express provision in this Deed otherwise.

4 CONDITIONALITY

The provisions set out in this Deed are conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of Development

save for the provisions of this Clause and Clauses 6.2, 6.11, 8, 9 and 10 which shall take effect immediately upon completion of this Deed.

5 THE OWNER'S COVENANTS

5.1 The Owner hereby covenants with the Borough Council as set out in the Second Schedule so as to bind the Site and each and every part thereof.

5.2 The Owner warrants that they are the freehold owner of the Site and have full power and capacity to enter into this Deed and that there is no other party or person having a charge or any other interest in or over the Site [(other than the Bank/Building Society)*] whose consent is necessary to make this Deed binding on the Site and all estates and interests therein.

6 MISCELLANEOUS

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

6.2 This Deed shall be registrable as a local land charge by the Borough Council.

- 6.3 It is acknowledged that following the performance and satisfaction of all the obligations contained in this Deed the Borough Council shall forthwith on the written request of the Owner mark accordingly all entries made in the Register of Local Land Charges in respect of this Deed.
- 6.4 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.
- 6.5 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 Development.
- 6.6 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 Site (or that part of the Site in respect of which such breach occurs) but without prejudice to liability for any subsisting breach arising prior to parting with such interest AND FOR THE AVOIDANCE OF DOUBT neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site (or any part or parts of the Site) shall constitute an interest for the purposes of this Clause.
- 6.7 Subject to clause 6.8 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
- 6.8 In the event that any new planning applications are made in respect of the Development pursuant to section 73 of the Act then with effect from the date that the new planning permission is granted pursuant to section 73 of the Act
- 6.9 the obligations in this Deed shall in addition to binding the Site in respect of the Planning Permission relate to and bind the Site in respect of any planning permission granted pursuant to section 73 of the Act
- 6.10 the definitions of Development Planning Application and Planning Permission shall be assumed to include references to any applications under section 73 of the Act, the planning permissions granted thereunder and the development permitted by such subsequent planning permissions PROVIDED THAT nothing in this clause shall fetter the discretion of the Council in determining any applications under section 73 of the Act and the appropriate nature and/or quantum of section 106 obligations in so far as they are materially different to those contained in this Deed and required pursuant to

a determination under section 73 of the Act whether by way of a new deed or supplemental deed pursuant to section 106 of the Act or a modification pursuant to section 106A of the Act

- 6.11 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, functions, powers, duties and obligations of the Borough Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.
- 6.12 The Owner covenants from the date that this Deed takes effect to allow the Borough Council, and its respectively duly authorised officers or agents at all reasonable times following at least three days' prior notice to enter into and upon the Site for the purposes of monitoring compliance with the provisions of this Deed.
- 6.13 The Owner hereby agrees that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of this Deed are hereby waived.
- 6.14 The Owner covenants to pay the Borough Council's reasonable legal costs incurred in the preparation and negotiation of this Deed on completion of this Deed.

7 WAIVER

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

8 CHANGE IN OWNERSHIP

The Owner agrees with the Borough Council to give the Borough Council written notice within 10 Working Days 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 quoting the Planning Application reference number and 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 purchased by reference to a plan and the title number or numbers thereof PROVIDED THAT this obligation shall not apply to any disposal to any of the statutory utilities for their operational purposes or to any mortgagee or charge of the Site.

9 JURISDICTION

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

10 DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until the Planning Permission is granted

FIRST SCHEDULE

Details of the Owner's Title, and description of the Site

Freehold land at INSERT ADDRESS

within registered title number INSERT shown edged red for identification only on the Application Site Plan.

or if unregistered*

[defined in the Conveyance dated [insert date] made between
and
[insert details of the parties]*

SECOND SCHEDULE

Habitats Sites Mitigation Contribution

The Owner for themselves and their successors in title to the Site covenant as follows:-

- 1 To notify the Borough Council of Commencement of Development
- 2 Within 28 days of Commencement of Development in respect of the development permitted pursuant to the Planning Application the Owner shall pay to the Borough Council the Habitats Sites Mitigation Contribution
- 3 Not to cause or permit Occupation until the Habitats Sites Mitigation Contribution has first been paid to the Borough Council
- 4 In the event that the Habitats Sites Mitigation Contribution remains unpaid after 28 days of Commencement of Development, Interest will be payable from the date that the sum fell due until the date of actual payment
- 5 Any notice or other written communication relating this Deed for the Borough Council shall be addressed to the Legal Team by post to the Legal Team, Grafton House, 15-17 Russell Road, Ipswich, IP1 2DE.

IN WITNESS whereof this Deed has been duly executed as a Deed on the date and year first written

EXECUTED as a **DEED** by [enter full name:]

)
)

in the presence of:

Signature of Witness:.....

Full Name of Witness:.....

Address of Witness:.....

EXECUTED as a **DEED** by [enter full name:]

)
)

in the presence of:

Signature of Witness:.....

Full Name of Witness:.....

Address of Witness:.....

EXECUTED as a **DEED** by *[insert]*) *

BANK/BUILDING SOCIETY)

its seal having been affixed in the presence of:)

Authorised Signatory

[insert full name/title]

[if not executed by seal, to be witnessed and please attach a certified copy of the Power of Attorney for the signatory]

Appendix 4: Example S106 Standard Clause

Habitats Regulation Mitigation Contribution

The Owner covenants with the Borough Council as follows:

Not to Occupy or allow the Occupation of any of the Dwellings unless the Owner shall first have paid the Habitats Regulation Mitigation Contribution to the Borough Council.

Definitions

Dwelling – any dwelling (including a house bungalow flat or maisonette and including Affordable Dwellings and Market Housing Units) to be constructed pursuant to the Planning Permission.

Habitat Regulations Mitigation Contribution – a contribution of £121.89 per Dwelling.

Any sum referred to shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable.

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

Glossary of Terms

Avoidance measures: Actions that avoid the occurrence of significant effects arising from a plan or project on European Sites

Competent Authority: The decision maker under the Conservation of Habitats and Species Regulations 2017: often the local authority, but could be a planning inspector or other body responsible for assessing a plan or project for approval. The four local planning authorities who are implementing the Suffolk Coast RAMS are competent authorities.

Development Plan Document (DPD): A Local Development Document which forms part of the statutory Development Plan, examples include the Core Strategy and Area Action Plans.

European Sites: an ecological network of sites (SPAs and SACs) established under the Habitats Directive and Wild Birds Directive to provide a strong protection for Europe's wildlife areas. Para 176b of the National Planning Policy Framework (NPPF, 2019) states that Ramsar sites should be given the same protection as Habitats sites.

Green Infrastructure: a strategic, planned network of natural, semi-natural and artificial features and networks designed and managed to deliver a wide range of ecosystem services and quality of life benefits.

Habitat fragmentation: the process by which habitat loss results in the division of larger, continuous habitats into smaller, more isolated remnants. Fragmentation disrupts ecological processes, isolates species populations and leads to reduced species richness (i.e. reduced biodiversity).

Habitats Regulations Assessment: An assessment undertaken by a competent authority, to determine the nature and extent of any potential impacts on European sites arising from a plan or project. The assessment is undertaken where a competent authority is undertaking, or giving authorisation for a plan or project.

Local Development Document: comprising two types, Development Plan Documents and Supplementary Planning Documents, which together form the Local Development Framework.

Mitigation Measures: Actions that minimise the potential effects arising from a plan or project on a European site.

Natural England: The UK government public body responsible for caring for England's natural environment.

Ramsar Site: An internationally important wetland site designated under the Ramsar Convention 1971.

Suitable Alternative Natural Greenspaces (SANGs): the name given to greenspace that is of a quality and type suitable to be used as mitigation to offset the impact of new development.

Special Area of Conservation (SAC): Areas defined by regulation 3 of the Conservation of Habitats and Species Regulations 2017 which have been given special protection as important conservation sites.

Special Protection Area (SPA): Areas classified under regulation 15 of the Conservation of Habitats and Species Regulations 2017 which have been identified as being of international importance for the breeding, feeding, wintering or the migration of rare and vulnerable species of birds.

Supplementary Planning Document (SPD): Documents which add further detail to the policies in the Development Plan. They can be used to provide further guidance for development on specific sites, or on particular issues. Supplementary planning documents are capable of being a material consideration in planning decisions but are not part of the Development Plan.

Zone of Influence (Zoi): established to provide an indication of the geographical extent to which recreation pressure may impact each European Site.



IPSWICH
BOROUGH COUNCIL

Planning and Development
Ipswich Borough Council
Grafton House, 15-17 Russell Road, Ipswich IP1 2DE

www.ipswich.gov.uk
planningpolicy@ipswich.gov.uk