

DATED 13th June 2007

SUFFOLK COUNTY COUNCIL

And

CEMEX UK OPERATIONS LIMITED

And

P.W.G. STAMMERS AND J.H. STAMMERS

And

RMC LOGISTICS EASTERN LIMITED

AGREEMENT PURSUANT TO SECTION 106 OF
THE TOWN AND COUNTRY PLANNING ACT 1990 (as amended)

relating to

Landfill site off Mardle Road, Wangford, Suffolk

Alan Gillespie
Head of Legal Services
Resource Management
Legal Services
Endeavour House
Russell Road
Ipswich
IP1 2BX

Ref: 8058

THIS AGREEMENT is made the 13th day of June 2007

BETWEEN the following parties:

- | | |
|--|---|
| (1) <u>SUFFOLK COUNTY COUNCIL</u> | Of Endeavour House, 8 Russell Road, Ipswich IP1 2BX ("the County Council") |
| (2) <u>CEMEX UK OPERATIONS LIMITED</u> | Whose registered office is at CEMEX House, Coldharbour Lane, Thorpe, Egham, Surrey TW20 8TD
Registered Number 00658390
("the Operator") |
| (3) <u>P.W.G STAMMERS and J.H STAMMERS</u> | of Lime Kiln Farm, Reydon Southwold Suffolk and 4 Wangford Road Reydon Southwold Suffolk respectively ("the First Owners") |
| (4) <u>RMC LOGISTICS EASTERN LIMITED</u> | Whose registered office is at CEMEX House, Coldharbour Lane, Thorpe, Egham, Surrey TW20 8TD
Registered Number 00493555
("the Second Owner") |

RECITALS

- (A) (1) In this agreement unless the context otherwise requires the following words shall have the following meanings:

"Act"	Means the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991)
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"Annual Payment"	Means the sum of £600 per annum index linked and payable to the County Council in accordance with clause 2 the said sum being the contribution from the Operator
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and the First Owners to the County Council for the maintenance of Hill Road in relation to the Development

"Application"

Means the application for planning permission to extract sand and gravel by way of extension to the existing quarry at Wangford onto land adjacent to Wangford Quarry and restoration to heath for nature conservation at the post excavation level submitted to the County Council by the Operator in accordance with the application plans and other materials deposited with the County Council and bearing planning reference number W/19531

"Approved Route"

Means the route along Hill Road Wangford shown for the purposes of identification only by the brown line on the attached plan marked "Plan A".

"Development"

Means the development permitted by the Permission

"Director"

Means the County Council's Director of Environment and Transport or other officer of the County Council acting under his hand.

"Holton

St

Peter Means the planning permission granted

Permission"

by the County Council to the Second Owner subject to conditions on 11 April 2002 for the extraction of sand and gravel under the planning reference W6645/1

"Holton St Peter Site A"

Means the land that has the benefit of the Holton St Peter Permission as shown for identification only edged black on the attached plan marked "Plan B"

"Holton St Peter Site B"

Means the land that is shown for identification only edged green on the attached plan marked "Plan B"

"Holton St Peter Sites"

Means the Holton St Peter Site A and the Holton St Peter Site B

"Implemented"

Means the carrying out on the Site pursuant to the Permission of a material operation as specified in Section 56(4) of the Act

"Owners"

Means the Operator the First Owners and the Second Owner

"Permission"

Means planning permission granted pursuant to the Application

"Prohibition Order"

Means an order to be made by the County Council substantially in the form attached hereto in Schedule 1 and marked "Prohibition Order" the said order prohibiting the extraction of the sand and gravel on the Holton St Peter Site A

"Retail Price Index" Means the Retail Prices Index (All Items) published by the National Office for Statistics or another official index replacing the same

"Secretary of State" The Secretary of State for Communities and Local Government (or other minister of the Crown in whom the relevant power or duty may from time to time reside) or any appropriate officer acting on his behalf

"Site" Means land edged red for identification only on the attached plan marked "Plan A"

"1980 Act" Means the Highways Act 1980

(2) In this agreement unless the context otherwise requires:

- (i) words importing the masculine gender shall where appropriate include the feminine gender and the neuter gender or vice versa as the case may be and words importing the singular number shall where appropriate include the plural gender and vice versa
- (ii) "party" or "parties" means a party or parties to this agreement
- (iii) references to any party shall include the successors in title and assigns of that party
- (iv) where a party includes more than one person any obligations of that party shall be joint and several
- (v) clause headings in this agreements shall not affect its construction

- (vi) reference to clauses and schedule are references to clauses in and schedules to this agreement except where the context indicates otherwise
 - (vii) where a party or any officer or employee is required to give its approval or agreement in any specific provision in this agreement such approval or agreement shall not be unreasonably withheld or delayed
 - (viii) any mention herein of any act or of any section regulation or statutory instrument shall be deemed to refer to the same sources as at any time amended and where such act section regulation or statutory instrument has been replaced consolidated or re-enacted with or without amendment such mention shall be deemed to refer to the relevant provision of the updating consolidating or re-enacting act or section or regulation or statutory instrument.
- (B) The County Council is a local planning authority and the mineral planning authority within the meaning of the Act and the local highway authority within the meaning of the 1980 Act for the area in which the Site is situate
- (C) The Operator is the successor in title to RMC (UK) Limited who has the benefit of an Option to take a Mineral Lease dated 14th July 2004 made between the First Owner and RMC (UK) Limited of the Site free from encumbrances
- (D) The Operator is also the freehold owner of that part of the Site coloured yellow on Plan A attached to this agreement
- (E) On 21 October 2005 the Operator submitted the Application to the County Council

- (F) The First Owners are the freehold owners of that part of the Site coloured blue on Plan A attached to this agreement free from encumbrances save for the Option referred to in recital (C) above
- (G) The Second Owner is the freehold owner of the Holton St Peter Sites free from encumbrances
- (H) The County Council has resolved to grant the Permission subject to conditions attached to the Permission and to the terms of this agreement
- (I) It is the intention of the parties that the Holton St Peter Permission is revoked on the terms contained in the Prohibition Order.
- (J) The Holton St Peter Site A has the benefit of the Holton St Peter Permission
- (K) It is agreed and acknowledged between the parties hereto that in consideration of the grant of the Permission the Holton St Peter Permission should be relinquished and made subject to the Prohibition Order and that on confirmation of the Prohibition Order by the Secretary of State the Holton St Peter Permission will cease to have effect
- (L) It is the intention of the Operator and the Second Owner to prepare a restoration scheme for the Holton St Peter Site B and to implement such a scheme to create a public open space with permissive public access provision consistent with the identification of the Holton St Peter Site B as a County Wildlife Site.

NOW THIS DEED WITNESSETH as follows:

1. Legal Effect

- 1.1 This agreement and the covenants that appear hereinafter are made pursuant to Section 106 of the Act and Section 111 of the Local Government Act 1972.

- 1.2 The covenants which appear hereinafter are planning obligations for the purposes of Section 106 of the Act and may be enforced by the County Council
- 1.3 This agreement is a deed
- 1.4 This agreement is a local land charge and upon completion shall be registered as such
- 1.5 This agreement is not intended to confer any rights on third parties under The Contracts (Rights of Third Parties) Act 1999 and the application of the said act is hereby excluded
- 1.6 This Agreement will not take effect save for this clause 1.6 and clause 7 unless and until:
- (a) the County Council has granted the Permission, and
 - (b) the Operator has implemented the Development (extraction only) pursuant to the Permission by the carrying out of a material operation within the meaning of Section 56(4) of the Act and
- 1.7 It is agreed that the purpose of Clause 1.6 (b) "material operation" shall not include:
- (a) site clearance;
 - (b) diversion and laying of services;
 - (c) the erection of fencing or other means of enclosure for site security
- 1.8 No party will be liable for any breach of the covenants obligations and restrictions contained in this agreement in respect of any period during which that party no longer has an interest in the Site or the part in respect of which the breach occurs

1.9 If the Permission is quashed or revoked or ceases to have effect by operation of law or expires before it has been implemented then

1.9.1 this agreement will (except for Clause 1.9.2) cease to have effect

1.9.2 the County Council will forthwith cancel all entries made in the register of local land charges in respect of this agreement

1.10 The County Council will upon the written request of the Owners at any time after each or all of the obligations set out in this agreement have been performed or otherwise discharged issue written confirmation of such performance or discharge

1.11 The County Council will upon the written request of the Owners at any time after all the obligations of the Owners under this agreement have been performed or otherwise discharged forthwith cancel all entries made in the register of local land charges in respect of this agreement

2. Covenants by the Operator and the First Owners

The Operator and the First Owners hereby jointly and severally covenant with the County Council so as to bind their respective interests in the Site and each and every part thereof that in carrying out the Development in accordance with the Permission

(i) they will take the measures set out in paragraphs (ii) to (v) of this clause so that all driver employees of them and anyone else using the Site shall when driving vehicles being used in connection with the Development travel to and from the Site only by way of the Approved Route; and

(ii) they will forthwith instruct all driver employees of themselves or of any associated or subsidiary company not to go to or come from the Site when driving vehicles being used in connection with the Development

or any other road or by any other route other than that referred to in subclause 2(i) above; and

- (iii) they will so instruct all new driver employees before they commence work; and
- (iv) they will forthwith insofar as the law permits take disciplinary measures against any employee driver proved to have disregarded such instructions; and
- (v) they will use all reasonable endeavours similarly to instruct all other drivers who might travel to and from the Site in connection with the Development
- (vi) they will pay the Annual Payment to the County Council on or before 31 January in each year with the first payment due on or before 1 January following the date of this agreement PROVIDED THAT the said sum shall be subject to increase or decrease in exact proportion to any increase or decrease in the level of the Retail Price Index between the period commencing with the date of this agreement and ending in each case with the date of payment
- (vii) they will not whilst they retain an interest in the Site use nor cause nor permit nor suffer anyone else to use the Site for the Development except in accordance with the requirements of this Agreement.
- (viii) they waive any rights to claim compensation arising from the terms of this agreement and/or from any limitations or restrictions on the planning use of the Site

The Operator hereby undertakes with the First Owners to observe and perform the covenants referred to in this clause 2 and to indemnify the First Owners from and against all actions costs claims and demands arising from or out of any failure on the part of the Operator to observe and perform such covenants

3. Operator's and the Second Owner's Covenants

The Operator and the Second Owner hereby jointly and severally covenant with the County Council so as to bind their respective interests in the Site and in the Holton St Peter Sites and each and every part thereof that in carrying out the Development in accordance with the Permission

- (i) they covenant not to work the Holton St Peter Site A pursuant to the Holton St Peter Permission
- (ii) In the event that the County Council applies for the Prohibition Order they will not object to the making of the Prohibition Order and will not claim compensation as a result of the making of the Prohibition Order
- (iii) they covenant to waive any rights to claim compensation arising from the terms of this agreement and/or from any limitations or restrictions on the planning use of the Holton St Peter Sites
- (iv) they covenant that on or before Implementation of the Permission they will submit a restoration scheme ("the Scheme") which is in accordance with the Outline Restoration Strategy attached hereto in Schedule 2 for approval to the County Council (such an approval not to be unreasonably withheld or delayed) and restore the Holton St Peter Site B in accordance of the Scheme, as approved within 5 years of Implementation of the Permission PROVIDED THAT amendments may be proposed to the Scheme but such amendments shall be of no effect unless agreed in writing by the County Council such an approval not to be unreasonably withheld or delayed.

4. County Council Covenants

The County Council HEREBY COVENANTS that it will make the Prohibition Order and submit it to the Secretary of State for confirmation

5. No waiver (whether express or implied) by the County Council of any breach of default by the Owners in performing or observing any of the covenants in this agreement shall constitute a continuing waiver and no such waiver shall

prevent the County Council from enforcing any of the covenants or from acting upon that or them or any subsequent breach or default in respect thereof

6. Any provision of this agreement which is or may be unlawful void or unenforceable shall to the extent of such unlawfulness invalidity or unenforceability be deemed severable and shall not affect any other provision of this agreement

7. The Operator shall pay to the County Council on or before the date of this agreement the reasonable legal costs incurred in the preparation of this agreement.

In WITNESS whereof this agreement has been executed and delivered as a Deed on the date first written above

SCHEDULE 1

Draft Prohibition Order

DATED

2007

SUFFOLK COUNTY COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

**ORDER UNDER SECTION 102(8) AND SCHEDULE 9 PROHIBITING THE RESUMPTION
OF DEVELOPMENT CONSISTING OF THE WINNING AND WORKING OF
MINERALS FROM LAND AT HOLTON ST PETER IN THE PARISH OF HOLTON,
SUFFOLK**

ALAN GILLESPIE
Head of Legal Services
Suffolk County Council
Endeavour House
8 Russell Road
Ipswich
Suffolk
IP1 2BX

Ref: ET/8058

Date: 9/10/06

THE SUFFOLK COUNTY COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

**ORDER UNDER SECTION 102(8) AND SCHEDULE 9 PROHIBITING THE RESUMPTION
OF THE WINNING AND WORKING OF MINERALS FROM LAND AT HOLTON ST
PETER, IN THE PARISH OF HOLTON SUFFOLK**

WHEREAS

- (1) On the 8th May 1964 planning permission was granted in respect of application N/340/10 and on the 2nd March 1966 planning permission was granted in respect of application N/340/11 for the development of land at Holton St Peter, Holton, Suffolk. On the 11th April 2000 planning permission was granted in respect of application W/6645/1 to review planning permissions N/340/10 and N/340/11 for the development of land at Holton St Peter Holton shown edged red on the plan annexed hereto ("the Land") and consisting of the winning and working sand and gravel subject to the conditions specified in the said permission.
- (2) Suffolk County Council (hereinafter referred to as "the Council") is the Mineral Planning Authority for the purposes of the Town and Country Planning Act 1990 ("the Act")
- (3) It appears to the Council that such development was carried out but has permanently ceased in that:-
 - (a) no such development has been carried out to any substantial extent anywhere in on or under the land for a period of at least 2 years and
 - (b) on the evidence available the resumption of such development in on or under the land is unlikely

NOW THEREFORE the Council in exercise of the powers conferred upon it by Section 102(8) and Schedule 9 of the Act

HEREBY PROHIBITS the resumption of development consisting of the winning and working of minerals in on or under the Land

This Order may be cited as the Suffolk County Council (land at Holton St Peter, in the parish of Holton, Suffolk) Prohibition Order 2007

DATED THIS day of 2007

THE COMMON SEAL OF SUFFOLK)
COUNTY COUNCIL was herewith affixed)
in the presence of :)

A Duly Authorised Officer of the Council

SCHEDULE 2

Outline Restoration Strategy

Outline Restoration Strategy in respect of land at Holton St Peter, identified on Plan B, edged green, accompanying Planning Agreement dated....., and referred to in that Agreement as "Holton St Peter Site B".

Statement of Restoration Objectives:

All structures and equipment formerly used in connection with the storage and processing of aggregates, together with their hardstandings and enclosure fencing, shall be removed within 6 months of commencement of restoration work on the site, so as to enable the land occupied by the former concrete batching plant to be assimilated into the immediately adjacent open space and managed consistently with it.

There shall be a minimum disturbance to soils and plants over the floor of the Holton St Peter Site B in order to protect and maintain the integrity of the flora species subject of the County Wildlife Site designation. Measures shall be undertaken to define trafficking routes across the site where it is necessary to pass machinery across the site. Only suitable machinery as shall be agreed with the Mineral Planning Authority shall be used to reflect the nature conservation integrity of the site.

A programme of management measures shall be undertaken annually, or at such frequency as may be agreed as necessary by the Mineral Planning Authority, for a period of 5 years from commencement of restoration works at the Holton St Peter Site B. Such measures shall seek to manage, maintain, and improve the ecological capital of the site and maintain and control public access for informal recreation. Management, maintenance and improvement shall include the following:

- Maintenance and nurturing the establishment of acid soil flora and plant diversity over the grass floor of the site.

- Direction of public access to specific paths or routes through or around the site;
- Provision for temporary fencing to particular areas for temporary periods to aid plant recovery or plant establishment, or improve species diversity;
- Control of access points into the area from adjacent land and Public Rights of Way, through the repair and maintenance of site fencing and provision of stiles/gates.
- Prevention of vehicular access onto the site other than through gated and secured means.
- Implementation of a programme of tree and shrub surgery and management to maintain plant diversity where this is threatened by dominant species, in particular, a reduction in and control of the Sycamore and Birch tree populations.
- Management of water bodies consistent with their nature conservation potential and angling resource.

Provision for car parking off the B1123 only within a specified area.

Provision of interpretative information on the nature conservation features of the site may be specified in the detailed scheme and provided if agreed between the parties responsible for implementation of the detailed restoration scheme. The interpretative information shall be provided at points of public access, and at specific locations where particular features or habitats are best represented.

Statement of Restoration Parties and responsibilities.

The parties responsible for implementation of the detailed restoration scheme to be submitted prior to implementation of "the Permission" as covenanted under Clause 3(iv) of the Agreement, shall be specified in the detailed scheme along with their particular responsibilities.

Where some or any of the works or management measures set out in the detailed scheme are to be resourced by the Second or Fourth party to the Agreement, the level or amount of such resourcing shall be so specified.

The COMMON SEAL of
SUFFOLK COUNTY COUNCIL
Was hereunto affixed
in the presence of:-



David Noh

(Duly authorised officer of the County Council)

The COMMON SEAL of
CEMEX UK OPERATIONS LIMITED
Was hereunto affixed
in the presence of:-



[Signature]

authorised
(Director)
signature

[Signature]

assistant
(Secretary)

Signed by
P.W.G STAMMERS and J.H
STAMMERS
in the presence of:-

P. Stammers
J.H. Stammers

Name (signed)

[Signature]

Name (printed)

STEPHEN WESTLAKE

Address

EASTON FARM

REYDON

SOUTHWOLD IP18 6SS

Occupation

FARMER

The COMMON SEAL of
RMC LOGISTICS EASTERN LIMITED
Was hereunto affixed
In the presence of:-



A handwritten signature in black ink, appearing to be "S. S. S.", written in a cursive style.

authorised
(Director)
Signatory

A handwritten signature in black ink, appearing to be "D. M. M.", written in a cursive style.

~~Director~~
(Secretary)

[illegible]

Lucy Robinson
Director of Environment & Transport
Endeavour House, 8 Russell Road, Ipswich, Suffolk. IP1 2BX.

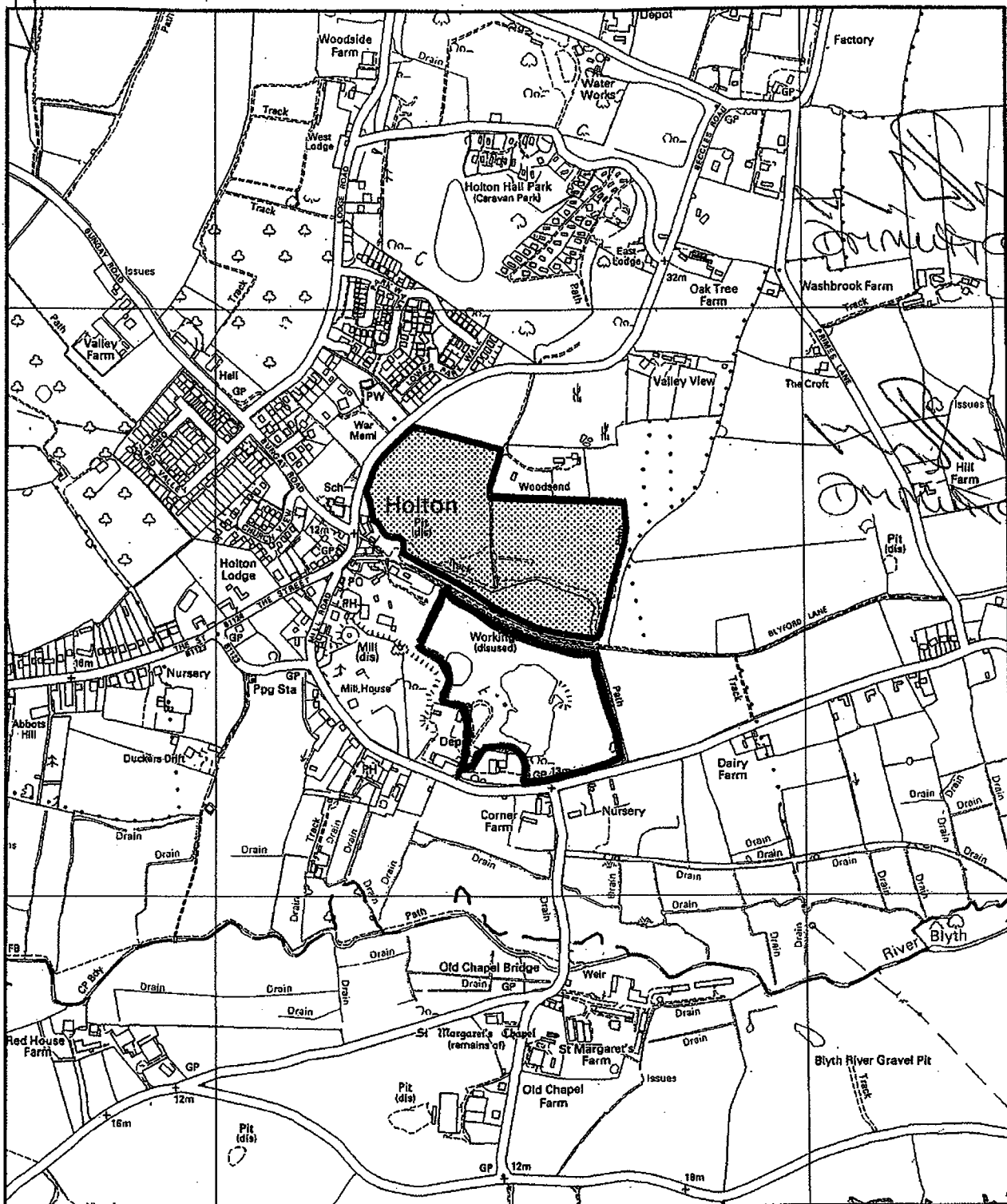


NORTH

PRODUCED BY	MJC
CHECKED BY	PBF
DRAWING No.	PLAN A
DATE	16 Jan 2007

Handwritten signature: H. P. Turner

Handwritten signature: P. J. ...



Agreement under Section 106 of the Planning Act
Land at Holton



Suffolk County Council
Environment & Transport

Lucy Robinson
Director of Environment & Transport
Endeavour House, 8 Russell Road, Ipswich, Suffolk. IP1 2BX.

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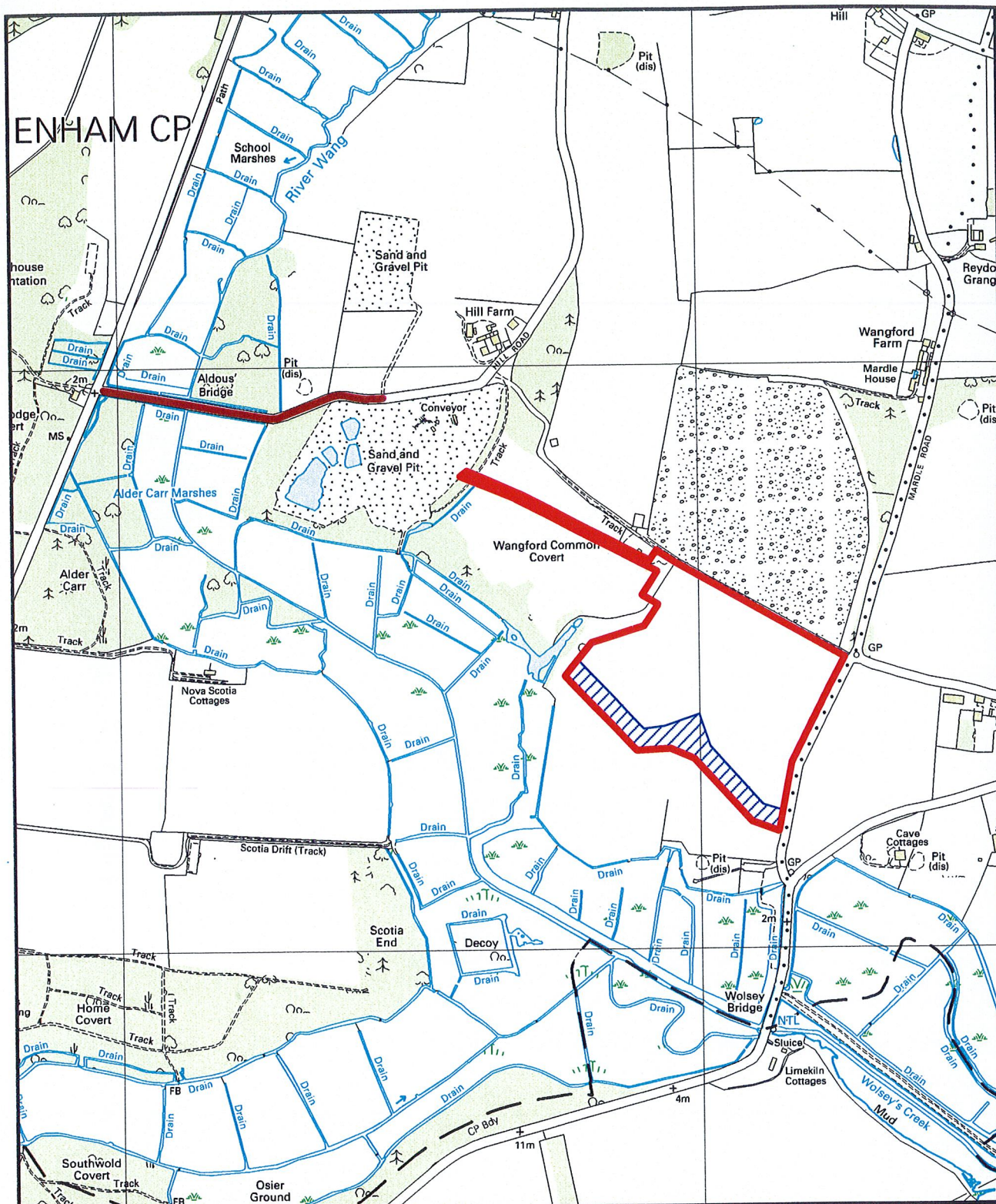
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PRODUCED BY **MJC**

CHECKED BY **PBF**

DRAWING No. **PLAN B**

DATE **6 April 2006**



Agreement under Section 106 of the Planning Act

Land at Wangford-with-Henham



Suffolk County Council
Environment & Transport

Lucy Robinson
Director of Environment & Transport
Endeavour House, 8 Russell Road, Ipswich, Suffolk. IP1 2BX.

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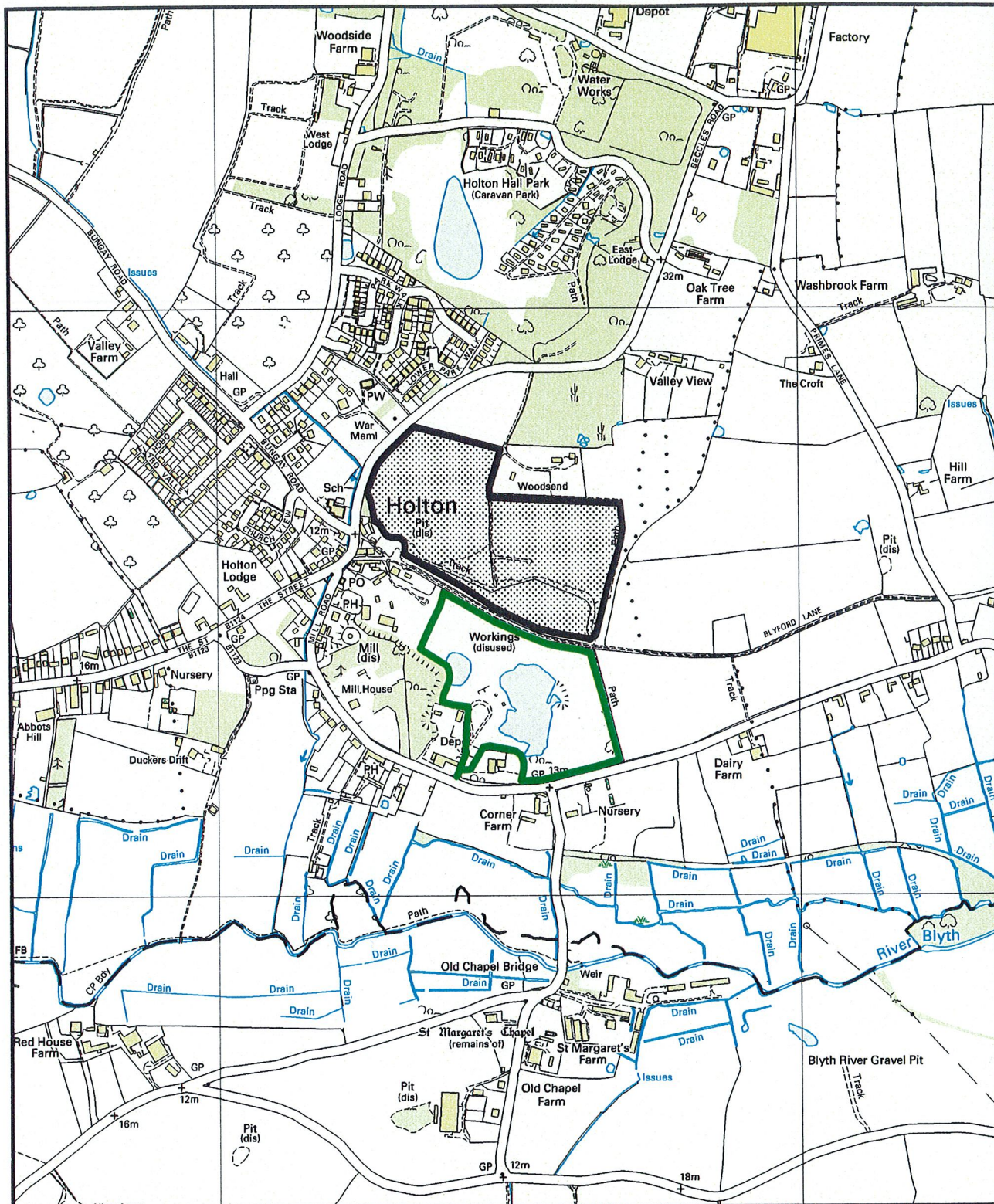
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PRODUCED BY **MJC**

CHECKED BY **PBF**

DRAWING No. **PLAN A**

DATE **6 April 2006**



Agreement under Section 106 of the Planning Act Land at Holton



Suffolk County Council
Environment & Transport

Lucy Robinson
 Director of Environment & Transport
 Endeavour House, 8 Russell Road, Ipswich, Suffolk. IP1 2BX.

Scale 1:10000



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PRODUCED BY **MJC**

CHECKED BY **PBF**

DRAWING No. **PLAN B**

DATE **6 April 2006**

