

DATED

4 January

2021

KALERVO ROY BARKER

AND

TARJA HELEN BARKER

TO

WREXHAM COUNTY BOROUGH COUNCIL

UNILATERAL UNDERTAKING

PLANNING OBLIGATION BY WAY OF UNILATERAL UNDERTAKING UNDER SECTION 106 OF THE TOWN & COUNTRY PLANNING ACT 1990 RELATING TO THE REDEVELOPMENT OF LAND AND BUILDINGS AT LAND AT TUPA, PENLEY HALL DRIVE, PENLEY, WREXHAM, LL13 0LU



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SCHEDULE 1

Education Contribution

SCHEDULE 2

Management Company

THIS DEED is dated 04 / 01 / 2021

- (1) **KALERVO ROY BARKER** of Tupa, Penley Hall, Penley, Wrexham, LL13 0LU (the First Owner).
- (2) **TARJA HELEN WILSON** of 32 Parson Lane, Clitheroe, BB7 2JP (the Second Owner).
- (3) **WREXHAM COUNTY BOROUGH COUNCIL** of 16 Lord Street, Wrexham, LL11 1LG (the Council).

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the Planning Act for the area in which the Property is situated.
- (B) The First Owner and the Second Owner (together hereinafter referred to as 'the Owners') are the registered joint freehold proprietors of the Property.
- (C) The Owners have made the Planning Application in respect of the Property.
- (D) The Owners enter into this undertaking to perform the obligations set out in this Deed.

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this Deed.

Definitions:

Development: the development of the Property described in the Planning Application.

Education Contribution: means a single payment made by the Owners to the Council on the terms set out within Schedule 1 to this Deed.

Management Company: means a private limited company established by the Owners prior to the first occupation of any single dwelling constructed under the Planning Permission for the purposes of managing the site in accordance with the terms set out in Schedule 2 to this Deed.

Planning Act: means the Town and Country Planning Act 1990 as amended.

Plan 1: means the plan attached to this Deed and identified as Plan 1.

Planning Application: means the planning application numbered MAE P/2019/0835 submitted to the Council for outline permission for 9 dwellings with all matters reserved except for the layout of the buildings.

Planning Permission: means the planning permission granted pursuant to the Planning Application.

Property: means the land shown edged red on the Plan registered at HM Land Registry under title number: CYM218122.

The Site: means the land shown edged red on Plan 1.

The Owners: means the First Owner and the Second Owner together.

Working Day: means any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England or Wales.

- 1.1 Clause headings shall not affect the interpretation of this Deed.
- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.4 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.5 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.6 A reference to the Council shall include the successors to its respective statutory functions.
- 1.7 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.
- 1.8 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.
- 1.9 A reference to **writing** or **written** includes fax but not e-mail.
- 1.10 A reference to **this Deed** or to any other Deed or document referred to in this Deed is a reference to this Deed or such other Deed or document as varied or novated (in each case, other than in breach of the provisions of this Deed) from time to time.

- 1.11 References to clauses are to the clauses of this Deed.
- 1.12 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.
- 1.13 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.

2. STATUTORY PROVISIONS

- 2.1 This Deed constitutes a planning obligation for the purposes of Section 106 of the Planning Act, Section 111 of the Local Government Act 1972 and any other enabling powers.
- 2.2 The obligations contained in clause 3 of this Deed are planning obligations for the purposes of Section 106 of the Planning Act and are entered into by the Owners with the intention that they bind the interests held by the Owners in the Property and their respective successors and assigns.
- 2.3 This Deed shall come into effect on the date of grant of this Deed.
- 2.4 The obligations contained in clause 3 of this Deed are enforceable by the Council in accordance with Section 106 of the Planning Act.

3. OWNER COVENANTS

- 3.1 The Owners covenant with the Council to pay the Education Contribution to the Council on the terms set out within Schedule 1 of this Deed.
- 3.2 The Owners covenant with the Council that, prior to the first occupation of any dwelling constructed under the Planning Permission, they will establish a private limited company on the terms set out at Schedule 2 of this Deed, the purpose of which will be the management of the site.

4. RELEASE

No person shall be liable for any breach of an obligation, restriction or covenant contained in this Deed after parting with all of their interest in the Property, except in respect of any breach subsisting prior to parting with such interest.

5. DETERMINATION OF DEED

This Deed shall be determined and have no further effect if the Planning Application:

- a) is not approved;
- b) is varied or revoked other than at the request of the Owners; or
- c) is quashed following a successful legal challenge; or
- d) the Development is not commenced within the period prescribed in the condition limiting the duration of planning permission within the Planning Permission pursuant to section 91 of the Planning Act.

6. LOCAL LAND CHARGE

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

7. COUNCIL'S COSTS

The Owners shall pay to the Council, prior to commencement of the Development, up to £500 towards the Council's reasonable and proper legal costs incurred in connection with the preparation, completion and registration of this Deed.

8. OWNERSHIP

- 8.1 This Deed is entered into by the Owners on the understanding that, prior to commencement of Development, the Owners have obtained all legal and equitable interests in the Property.
- 8.2 The Owners shall give to the Council within a reasonable period of time, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Property following the execution of this Deed:
 - (a) the name and address of the person to whom the disposition was made; and
 - (b) the nature and extent of the interest disposed of.

9. NOTICES

9.1 A notice to be given under or in connection with this Deed must be in writing and must be:

- (a) delivered by hand; or
- (b) sent by pre-paid first class post or other next working day delivery service.

9.2 Any notice or other communication to be given under this Deed must be sent to the relevant party at the addresses given above or as otherwise specified by the relevant person by notice in writing to each other person.

9.3 Any notice given in accordance with clause 9.1 and clause 9.2 will be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 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 9.00 am on the next Working Day;
- (b) if sent by pre-paid first class post or other next working day delivery service at 9.00 am on the second Working Day after posting.

9.4 A notice given under this Deed shall not be validly given if sent by e-mail unless otherwise agreed by the parties.

9.5 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.

10. THIRD PARTY RIGHTS

A person who is not a party to this Deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

11. GOVERNING LAW

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

This document has been executed as a Deed and is delivered and takes effect on the date stated.

Signed as a Deed by **KALERVO ROY BARKER**

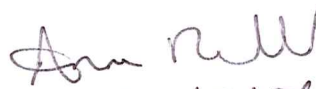


In the presence of:

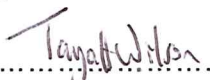
Witness Signature:

Name:

Address:


ANNA MELLOR
9 HODENHILL AVE
TARVIN
CHESTER CH3 8LW

Signed as a Deed by **TARJA HELEN WILSON**



In the presence of:

Witness Signature:

Name:

Address:


MICHAEL RIGG
36 PARSON LANE
CLITHEROE
BB7 2JP

SCHEDULE 1

Education Contribution

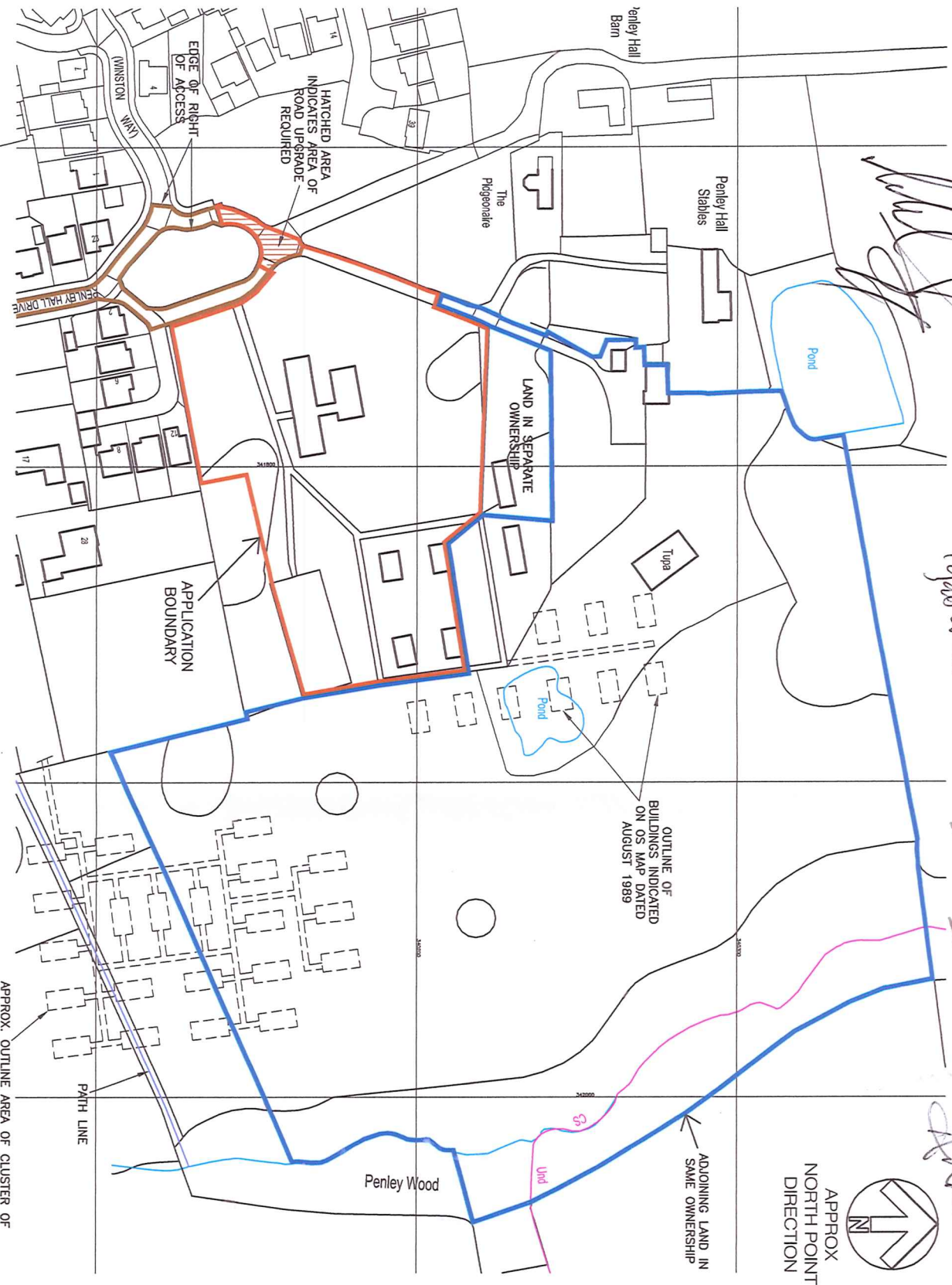
1. The Owners hereby undertake to pay the Education Contribution to the Council prior to commencement of the Development where reasonably required to do so in accordance with local planning policy.
2. The amount of the Education Contribution shall be determined in accordance with the *Local Planning Guidance Note 27 – Developer Contributions to Schools* (as may be varied or updated from time to time) and/or any other relevant guidance and planning policy released by the Council.
3. The Education Contribution is made by the Owners on the understanding that the Council will spend the Education Contribution on provision of and/or improvements to local education facilities.

SCHEDULE 2

Management Company

1. The Owners hereby undertake, prior to the first occupation of any single dwelling constructed under the Planning Permission, to establish a private limited company ('the Management Company') whose purpose shall be the maintenance and management of the Site to the common benefit of the residents and in perpetuity.
2. The Articles of Association of the Management Company shall specify that the Management Company shall have a specific legal responsibility to:
 - a. Maintain the common parts of the Site in a reasonably good repair and condition and to clean, renew, maintain, replace, repair and cultivate them as appropriate in accordance with the principles of good estate management and to the common benefit of the residents; and
 - b. Maintain the private section of road which connects the Site to Penley Hall Drive in a reasonably good repair and condition and to clean, renew, maintain, replace, repair it as appropriate in accordance with the principles of good estate management and to the common benefit of the residents; and
 - c. Keep all common parts of the Site properly lit as the Management Company deems appropriate in the interests of good estate management; and
 - d. Maintain and manage the 'wildlife mitigation area' for the benefit of wildlife and in particular great crested newts and lesser horseshoe bats and in accordance with an agreed management plan; and
 - e. Manage the identified open spaces within the Site, insofar as it is reasonably necessary to do so, in accordance with the post development open space management plan; and
 - f. Maintain and manage and where necessary enhance the boundary features of the Site, insofar as it is reasonably necessary to do so, for the benefit of wildlife; and
 - g. Pay all rates and other outgoings assessed or charged upon the common parts of the Site; and

- h. Effect appropriate insurance against the liability of the Management Company to third parties; and
 - i. Carry out such additional works and provide such additional services as it may consider to be necessary or to the common benefit of the residents; and
 - j. To manage the general operational and financial affairs of the Management Company (which may include but shall not be limited to expenses incurred, general meetings submission of annual accounts); and
 - k. Any other matters which are reasonably required for the common benefit of the residents.
3. The Owners hereby undertake that, prior to the first occupation of any single dwelling constructed under the Planning Permission, adequate steps shall be taken to ensure that no transfer of the ownership of any such dwelling shall unless the transferee agrees, upon completion of the transfer, to enter into an appropriate deed of covenant with the Management Company.



LOCATION PLAN SCALE 1:1250

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APPLICATION AREA: 0.981 hectares (2.424 acres)
BASED ON BOUNDARY ON TOPOGRAPHICAL SITE PLAN



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Revision: C	By: EWR	Date: 30/07/18	Check: WJR
APPLICATION AREA AMENDED FOLLOWING HPS COMMENTS			
Revision: B	By: EWR	Date: 26/07/18	Check: WJR
APPLICATION AREA AMENDED			
Revision: A	By: EWR	Date: 17/07/18	Check: WJR
APPLICATION AREA AMENDED FOLLOWING CLIENT COMMENTS			
15.07.18			

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Client:
MR K. BARKER & MRS T. WILSON

Project:
**LAND AT TUPA, PENLEY HALL DRIVE,
PENLEY, WREXHAM, LL13 0LU**

Detail:
**OUTLINE PLANNING APPLICATION
LOCATION PLAN**

Status:
FOR INFORMATION

Drawn By: OS
Date: 19/06/2018
Scale: 1:1250 @ A3

Checked By: WJR
Date: 19/06/2018
Signature: W. ROBERTS

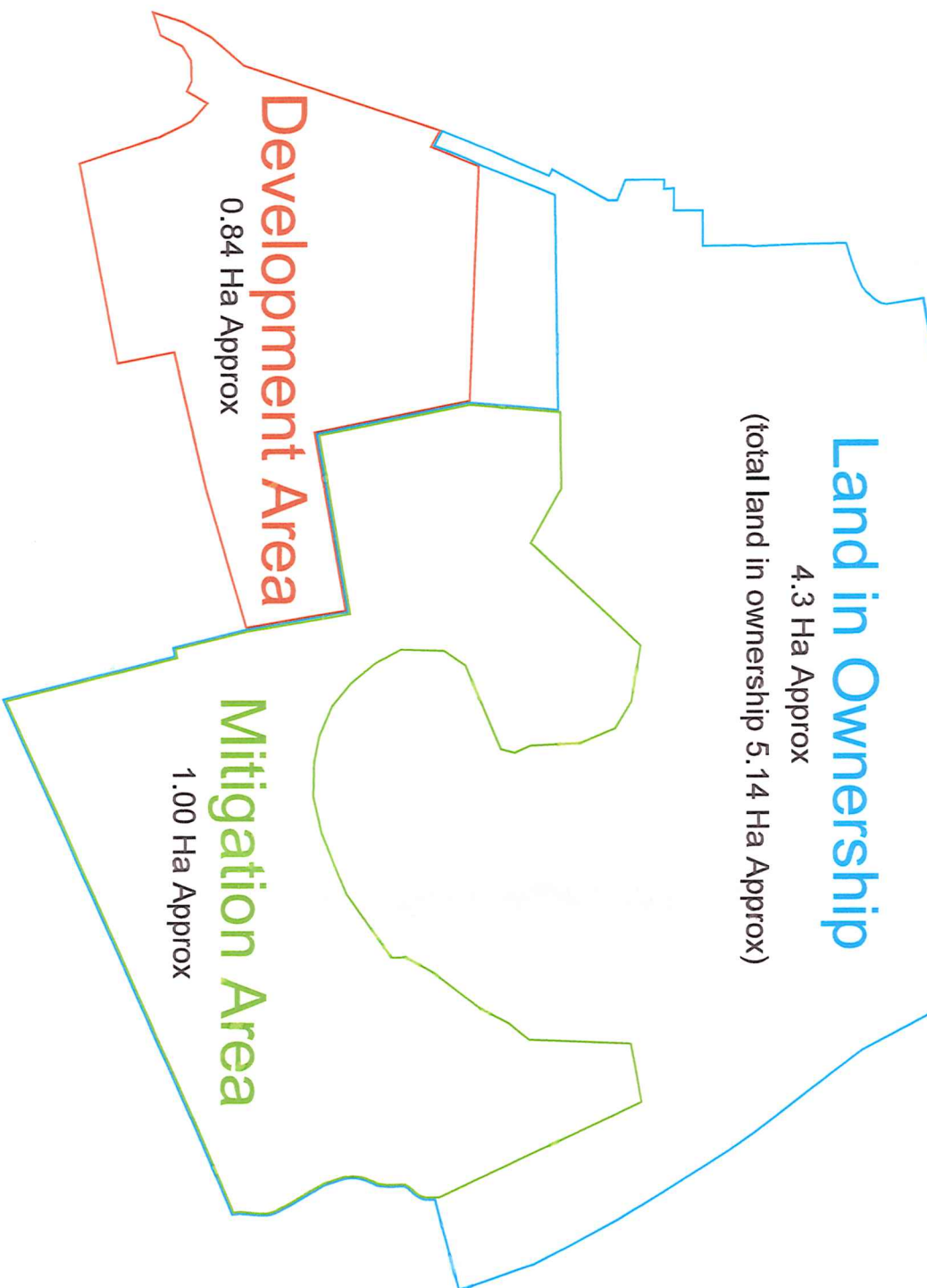
Job No: 4184/1
Dwg No: A(050)07
Revision: C

[Handwritten signature]

Length 20.15

Barker & Wilson

June 2011



Notes

Mitigation area to consist of a single storey mitigation bat roost approx. 4 x 6 m with multiple rooms and loft area specifically designed for Lesser Horseshoe bats, two ponds interconnected with swals, ponds to be approximately 10 m2. Swals/ponds to have surface water overflow feed from the development area (rainwater catchment). The habitats are to be developed to attain woodland block, scrub and boundary hedging and rank grassland areas of native species to increase biodiversity. A grassland walkway around the area is to be provided, however the Wildlife mitigation areas are to be fenced out, access to the areas to be a managed access only. Management works to the existing GCH pond will include the removal of the dense willow growth to the pond to create more open water areas.

client

Mr K. Barker and Mrs T Wilson

project title

Land at Tupa, Penley Hall Drive, Penley,
Wrexham, LL13 0LU

draw. title

Mitigation Location Plan

to be read in conjunction with the Penley Hall, Landscape Strategy Plan

scale

NTS @ A3

date

JUNE '19

drawn

TJH

rev.

chkd.

project ref.

0968B

drawing no.

MIT-01



ecological design consultants