

18 April

2023

**Planning Obligation by Deed of Agreement
under Section 106 of the Town and Country
Planning Act 1990**

relating to land at

Part of Land adjoining Elm Point, Abbey Road
North, Wrexham Industrial Estate, Wrexham
LL13 9UE

WREXHAM COUNTY BOROUGH COUNCIL (1)

and

M & L INVESTMENT PARTNERS LLP (2)

and

CLYDESDALE BANK PLC (3)

and

AMPHIBIAN AND REPTILE CONSERVATION TRUST (4)

Linda Roberts
Chief Officer Governance and Customer
Guildhall
Wrexham
LL11 1AY
Ref: NR/043702

DATE 18 April

2023

PARTIES

- (1) **WREXHAM COUNTY BOROUGH COUNCIL** of the Guildhall, Wrexham LL11 1AY ("Council") and
- (2) **M & L INVESTMENT PARTNERS LLP** (LLP registered number OC0349566) of Unit 1, First Avenue, Redwither Business Park, Wrexham LL13 9XP ("the Owner")
- (3) **CLYDESDALE BANK PLC** (Scottish registered company number SC001111) whose registered office is Business Lending Services, 20 Merrion Way, Leeds LS2 8NZ ("Mortgagee")
- (4) **AMPHIBIAN AND REPTILE CONSERVATION TRUST** (registered company number 06932972 and registered charity number 1130188) whose registered company office is 744 - 748 Christchurch Road, Boscombe, Bournemouth, Dorset BH7 6BZ ("the Management Company")

INTRODUCTION

- (1) The Council is the local planning authority for the purposes of this Deed and the Town & Country Planning Act 1990 (as amended) for the area within which the property described in the First Schedule hereto is situate and is the local planning authority by whom a planning obligation is enforceable
- (2) The Owner is the registered leasehold proprietor of the Site
- (3) The Owner has submitted the Application to the Council and the parties have agreed to enter into this deed in order to secure the planning obligations contained in this Deed
- (4) The Mortgagee is the registered proprietor of a charge dated 23 April 2018 on the Site
- (5) The Owner intends on leasing the Mitigation Areas to the Management Company

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

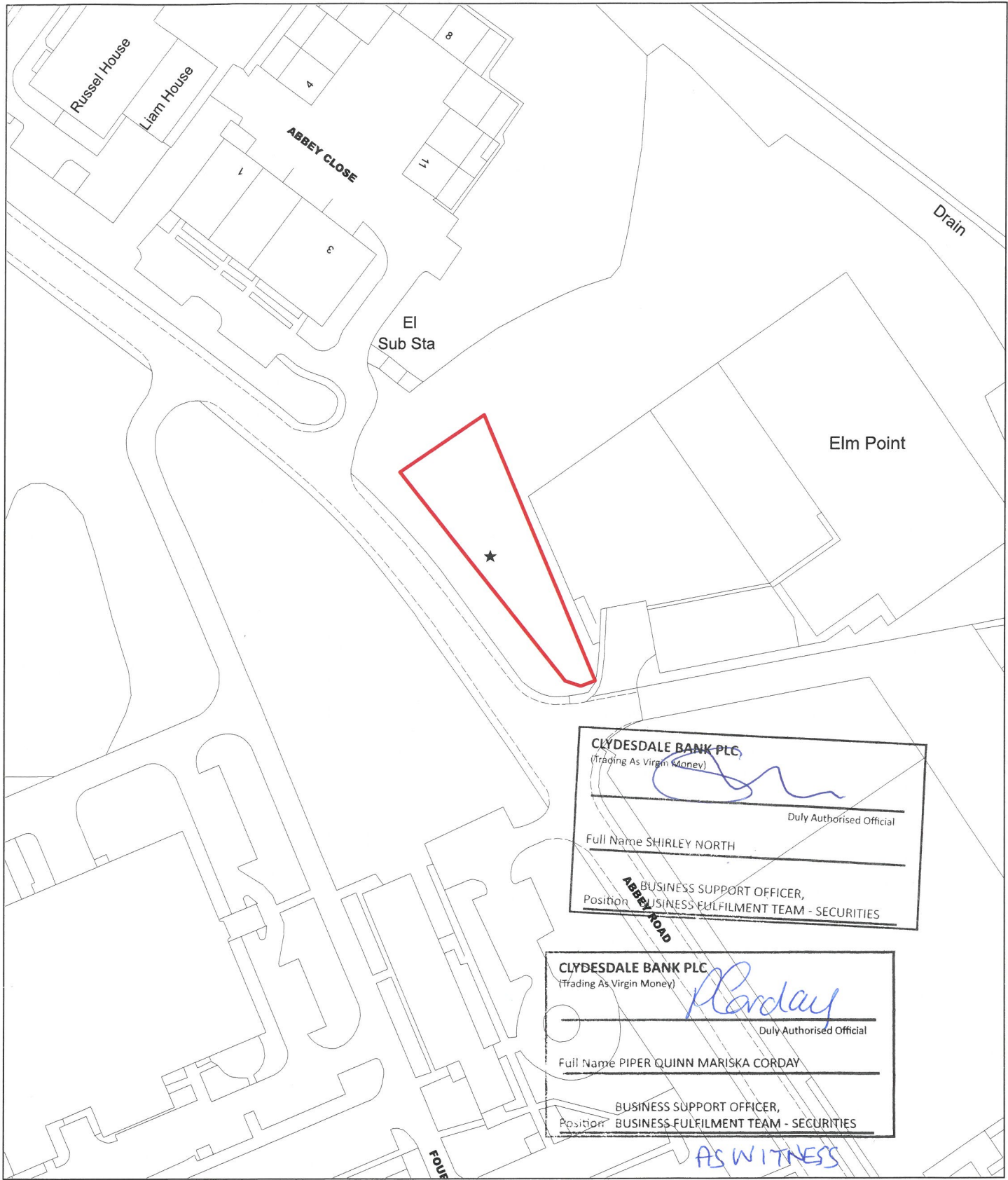
For the purposes of this Deed the following expressions shall have the following meanings:

"Act"	the Town and Country Planning Act 1990
"Application"	the application for outline planning permission dated submitted to the Council for the

Development and allocated reference number P/2021/0683

"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 other than (for the purposes of this Deed and for no other purpose) operations consisting of surveys of existing structures, site clearance, demolition work, 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, hoardings and scaffolding, the temporary display of site notices or advertisements, site preparation, site reclamation, preliminary landscaping and ground modelling, service diversions or decommissioning, laying of services and other works of site establishment preparatory to the commencement of construction and operations permitted by the Town and Country Planning (General Permitted Development) Order 1995 (as amended) and "Commence Development" shall be construed accordingly.
"Development"	the development of the Site consisting as set out in the Application
"Index"	All Items Index of Retail Prices issued by the Office for National Statistics
"Interest"	interest at 5 per cent above the base lending rate of the Barclays Bank Plc from time to time.
"Material Operation"	means a material operation as defined in Section 56 subsection 4(a) to (e) of the 1990 Act to implement the Planning Permission save for those operations contained in the definition of "Commencement of Development" contained in this Deed.
"MA Plan"	means the long-term management and surveillance plan relating to the implementation and management of the Mitigation Areas submitted to and approved in

Plan 1



CLYDESDALE BANK PLC
(Trading As Virgin Money)

Duly Authorised Official
Full Name SHIRLEY NORTH
Position BUSINESS SUPPORT OFFICER,
BUSINESS FULFILMENT TEAM - SECURITIES

CLYDESDALE BANK PLC
(Trading As Virgin Money)

Duly Authorised Official
Full Name PIPER QUINN MARISKA CORDAY
Position BUSINESS SUPPORT OFFICER,
BUSINESS FULFILMENT TEAM - SECURITIES

AS WITNESS

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Chief Officer
Economy and Planning
Planning Services
Lambpit Street
Wrexham LL11 1AR

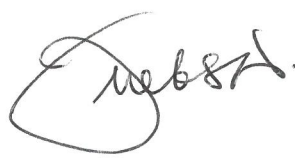
20 FEBRUARY 2023
SCALE 1:1250
SJ3850

**Town and Country Planning Act 1990
Section 106 Obligation**



P/2021/0683
2 ELM POINT, ABBEY ROAD, NORTH
WREXHAM







	writing by the Council pursuant to the Application
"Mitigation Areas"	means the areas of Mitigation Areas as shown coloured green on Plan 2
"Plan 1"	the Plan attached to this Deed marked as Plan 1
"Plan 2"	the Plan attached to this and marked Plan 2
"Planning Permission"	the full planning permission subject to conditions to be granted by the Council pursuant to the Application
"Site"	the land subject to this Deed as shown edged red on the Plan and more particularly described in the First Schedule

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 against each individually unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act 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 deriving validity from it.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council and County Council the successors to their respective statutory functions.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000 and all other enabling powers.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner

4 CONDITIONALITY

This Deed is conditional upon:

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

save for the provisions of Clauses 5.2, 6.1, 12 and 13 (notice of commencement of development, legal costs, jurisdiction and delivery) fees and any other relevant provisions which shall come into effect immediately upon completion of this Deed.

5 THE OWNER'S AND MANAGEMENT COMPANY'S COVENANTS

- 5.1 The Owner covenants with the Council on behalf of itself and its successors in title to the Site (but subject always to clause 6.8 of this Deed) to comply with the obligations set out in Parts 1 and 2 of the Second Schedule to this Agreement.
- 5.2 The Owner shall serve on the Council a notice of Commencement of Development not less than two days before Commencement of Development.
- 5.3 The Management Company covenants with the Council on behalf of itself and its successors in title to the Mitigation Areas (but subject always to clause 6.8 of this Deed) to comply with the obligations set out in Parts 2 and 3 of the Second Schedule to this Agreement.

6 MISCELLANEOUS

- 6.1 The Owner shall pay 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 £1000.00.
- 6.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 6.3 This Deed shall be registrable as a local land charge by the Council.
- 6.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the 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 such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Head of Community Wellbeing and Development. 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.
- 6.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 6.6 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.

- 6.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if:-

6.7.1 the Planning Permission shall be quashed revoked or otherwise withdrawn or (without the consent of the Owner) is modified by any statutory procedure

6.7.2 the Planning Permission shall expire prior to the Commencement of Development; or

6.7.3 the Site is developed under a new planning permission (other than one issued under Section 73 of the Act for variation or discharge of a condition of the Planning Permission) granted after the Planning Permission by the Council or any other competent authority and there has been no Commencement of Development.

- 6.8 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 but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

- 6.9 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.

7 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 Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

8 MORTGAGEE'S CONSENT

- 8.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

9 CHANGE IN OWNERSHIP

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

10 INDEXATION

Any sum referred to in the Second Schedule 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.

11 INTEREST

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

12 JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and Wales.

13 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.

14 SECTION 73 VARIATION

In the event that the Council shall at any time hereafter grant a planning permission pursuant to an application under section 73 of the Act in respect of conditions on the Planning Permission, save and in so far as this Deed has been amended by way of a deed of variation prior to the grant of such planning permission, references in this Deed to the Application and the Planning Permission shall be deemed to include any subsequent section 73 applications and planning permissions as aforesaid and this Deed shall henceforth take effect and be read and construed accordingly.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

FIRST SCHEDULE

Description of the Site

Part of Land adjoining Elm Point, Abbey Road North, Wrexham Industrial Estate, Wrexham LL13 9UE registered at H M Land Registry in the name of the Owner with leasehold title absolute under title number CYM748216 as shown edged in red on Plan 1

SECOND SCHEDULE

Owner and Management Company Covenants

Part 1 - Owner Covenants

1. Not to Commence Development on the Site until:-
 - a. the Owner has granted the sub-lease of the Mitigation Areas to the Management Company for a term of 24 years 364 days (subject to an option to break exercisable by the Management Company) at no cost to the Management Company.
 - b. a copy of the completed sub-lease by the Owner to the Management Company has been submitted to the Council.
2. If the circumstances in paragraph 4 of Part 2 of this schedule occur the Owner will at its own cost perform and observe all obligations, conditions and covenants contained in the MA Plan until such time as a new lease has been granted.

Part 2 – Owner and Management Company Covenants

1. To observe and perform the provisions of the MA Plan and monitor and review it at least every 5 years and to obtain the approval of the Council to any amendments thereto so as to ensure that they remain appropriate and relevant over time.
2. To provide in the sub-lease a covenant in the following terms:
 - a. "The Tenant hereby covenants to observe and perform the covenants agreements obligations and stipulations contained or referred to in Parts 2 and 3 of the Second Schedule of an Agreement dated 2023 made between Wrexham County Borough Council (1) M & L Investment LLP (2) Clydesdale Bank PLC (3) and Amphibian and Reptile Conservation Trust AND to observe and perform the requirements of the MA Plan referred to therein".
3. To comply with the MA Plan and to maintain and manage for 24 years 364 days minimum the Mitigation Areas in accordance with the MA Plan, the Planning Permission and this Agreement.
4. In the event the Lease is determined to use all reasonable endeavours to enter into a new lease with the Management Company or such alternative licenced

ecology body as is approved by the Council in writing in advance on the same terms as the Lease.

Part 3 - Management Company and Mitigation Areas

1. Not to use the Mitigation Areas for any purpose whatsoever other than as Mitigation Areas for the benefit of the Development.

EXECUTED as a DEED on the date specified as the commencement of this Agreement.

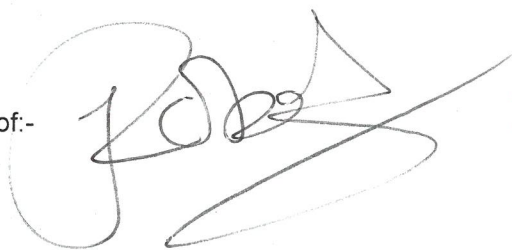
EXECUTED as a DEED by affixing

THE COMMON SEAL of

WREXHAM COUNTY BOROUGH COUNCIL

in the

presence of:-



Chief Officer Governance and Customer



Executed by **M & L INVESTMENT PARTNERS LLP** acting by Michael Philip McCarthy, a member, in the presence of:

Michael Philip McCarthy

Member

SIGNATURE OF WITNESS:

NAME OF WITNESS: KARUNA HOGLAND

ADDRESS OF WITNESS:

Allington Hughes Law
2 Vicars Lane
Chester CH1 1QX
DX 19983

OCCUPATION OF WITNESS:

SOLICITOR

Tel: 01244 312166 Fax: 01244 348876

CLYDESDALE BANK PLC
(Trading As Virgin Money)

Full Name SHIRLEY NORTH

BUSINESS SUPPORT OFFICER,
Position BUSINESS FULFILMENT TEAM - SECURITIES

EXECUTED as a Deed by

for and on behalf of

CLYDESDALE BANK PLC

CLYDESDALE BANK PLC
(Trading As Virgin Money)

Full Name PIPER QUINN MARISKA CORDAY

BUSINESS SUPPORT OFFICER,
Position BUSINESS FULFILMENT TEAM - SECURITIES

Executed by **AMPHIBIAN AND REPTILE CONSERVATION TRUST** acting by

JONATHAN WEBSTER a director, in the presence of:

Director name:

JONATHAN WEBSTER

AMPHIBIAN + REPTILE CONSERVATION TRUST
Director

SIGNATURE OF WITNESS:

CHRISTINE BOLDING

NAME OF WITNESS:

CHRISTINE BOLDING

ADDRESS OF WITNESS:

15 LADIES MILE ROAD

PMCHAM, BRIGHTON, SUSSEX
BN1 8QG

OCCUPATION OF WITNESS:

RETIRED