

DATED

30th APRIL

2014

WREXHAM COUNTY BOROUGH COUNCIL (1)

- and -

THE WELSH MINISTERS (2)

- and -

THE SECRETARY OF STATE FOR JUSTICE (3)

AGREEMENT

Pursuant to Section 106 of the Town and Country Planning Act 1990
in respect of land at the Former Firestone Site, Bridge Road, Wrexham
Industrial Estate, Wrexham

Trevor Coxon
Head of Corporate and Customer Services
Guildhall
Wrexham
LL11 1AY
(Ref: SWD/10007213)

THIS AGREEMENT is made on the 30th day of APRIL 2014

BETWEEN:-

(1) **WREXHAM COUNTY BOROUGH COUNCIL** of Guildhall Wrexham
LL11 1AY (the Council)

and

(2) **THE WELSH MINISTERS** of Welsh Government of Crown Building,
Cathays park, Cardiff CF10 3NQ (the Owner)

and

(3) **THE SECRETARY OF STATE FOR JUSTICE** c/o Ministry of Justice
Estates Directorate, 102 Petty France, London, SW1H 9AJ (the MOJ)

RECITALS

- A The Council is the Local Planning Authority for the purposes of Section 106 of the Act in respect of the Land.
- B The Owner is the owner of the freehold interest in the Land registered at the Land Registry under Title Numbers WA701292 and WA709947.
- C The Land is subject to a sale agreement dated 25th November 2013 made between the Owner of the first part, the MOJ of the second part and the Council of the third part whereby the Prison Site is to be transferred to the MOJ and the Habitat Mitigation Site is to be transferred to the Council but there are no other legal interests in the Land.
- D The MOJ has submitted the Planning 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.
- E The Council is minded to grant planning permission subject to conditions in response to the Planning Application subject to the prior completion of this deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this document unless the contrary intention appears the following terms shall have the following meanings:

Act	the Town and Country Planning Act 1990
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Annual Extension of Bus Service Contribution	the sum of £20,000
Annual Sunday Bus Service Contribution	the sum of £15,000
Approval of Reserved Matters	any subsequent approval of reserved matters in accordance with the Planning Permission
Commencement of Development	the carrying out of a material operation as defined by Section 56(4) of the Act in accordance with the Planning Permission and the expression "Commencement Date" shall mean the date on which the Commencement of Development occurs
Contributions	the Annual Sunday Bus Service Contribution, the Annual Extension of Bus Service Contribution and the ~~Transport Infrastructure~~ ^{Traffic Order} Improvements Contribution and "Contribution" shall be construed accordingly
Development	the development of the Prison Site in accordance with the Planning Permission
Extension of Bus Service	the extension of ~~the bus route to run between the Prison Site and Wrexham General Railway Station and the extension of the hours of operation of the bus route Monday to Saturday with the first bus leaving from the Wrexham General Railway Station on or before 6.00 a.m. with the last bus leaving the Prison Site no earlier than 8.00 p.m. both morning and evening~~ ^{existing bus services to Wrexham Industrial Estate to include} details to be discussed by the parties.
First Occupation Date	the date on which the Development is first Occupied
Habitat Management Plan	the ENVIRON Ecological Mitigation Strategy and Habitat Management Plan dated September 2013 and the ENVIRON Addendum to Ecological Mitigation Strategy and Habitat Management Plan dated December 2013 submitted with the Planning Application

Habitat Mitigation Site

Index

Interest

Land

Occupation and Occupied

Plan

Planning Application

Planning Permission

Prison

Prison Site

Sunday Bus Service

Traffic Order

shall comprise the two areas of land edged ~~blue and green~~ on the Plan

the all items index of retail prices issued by the Office for National Statistics or any successor organisation

4% above the base lending rate from time to time of Barclays Bank PLC compounded annually

land situate at the Former Firestone Site, Bridge Road, Wrexham Industrial Estate, Wrexham comprising both the Prison Site and the Habitat Mitigation Site ~~and shown edged red on the Plan~~

occupation of the Prison by the first prisoners for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or display or occupation in relation to security operations

the plan annexed hereto

planning application reference no: P/2013/0671 for the construction of a prison and all associated facilities, infrastructure, parking and security measures on the Prison Site

the planning permission subject to conditions to be issued by the Council pursuant to the Planning Application

the prison to be constructed on the Prison Site pursuant to the Planning Permission

~~the land shaded pink~~ ^{shown edged with a broken red line} on the Plan

the provision of a Sunday bus service to serve the route between the Prison Site and Wrexham-General Station

taking the statutory steps required with a view to making and implementing a traffic regulation order necessary to control or restrict parking on Bridge

the other hatched green

DD AS/ R

DD AS/ R

DD AS/ R

Railway
DD AS/ R

Road

Traffic Order Contribution the sum of £3,000 for the making of a Traffic Order

Working Days any day falling between Monday and Friday (both days inclusive) upon which the clearing banks in the City of London are open for normal business which is not Good Friday or a statutory bank holiday

1.2 Interpretation

1.2.1 A reference in this deed to an Act of Parliament or to any order regulation statutory instrument or the like shall include a reference to any amendment or re-enactment of the same.

1.2.2 Words importing the masculine gender include the feminine gender and vice versa. Words in the singular include the plural and vice versa and words importing individuals shall be treated as importing corporations and vice versa.

1.2.3 Any heading or side notes are for ease of reference only and shall not affect the construction of this deed.

1.2.4 Wherever 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 unless there is an express provision otherwise.

1.2.5 References to any Party shall include the successors in title to that Party and any person deriving title through or under that Party and in the case of the Council the successors in title to their statutory functions.

1.2.6 Reference in this deed to any recital, clause, paragraph or schedule is, unless the context otherwise requires a reference to the recital, clause, paragraph or schedule in this deed so numbered.

2 LEGAL BASIS

2.1 This deed is made pursuant to Section 106 and 106A 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.

2.2 The obligations created by this deed relate to the Land and are binding on the Owner and the MOJ pursuant to Section 106 of the Act.

2.3 The obligations contained in this deed are planning obligations for the purposes of Section 106 of the Act and are enforceable as such by the Council as local planning authority.

2.4 The obligations contained in this deed are:-

2.4.1 necessary to make the Development acceptable in planning terms;

2.4.2 directly related to the Development; and

2.4.3 fairly and reasonable related in scale and kind to the Development.

3 **CONDITIONS AND DURATION**

3.1 This deed is conditional upon:-

3.1.1 the grant of the Planning Permission

3.1.2 the Commencement of Development

save for the provisions of clause ⁷ Provisions of Immediate Effect which shall come into effect immediately upon completion of this deed.

AY DD
P

3.2 Nothing in this deed shall prevent compliance with any obligation pursuant to it before that obligation comes into effect under this clause 3 and no such early compliance shall amount to a waiver of the effect of this clause 3.

4 **DEVELOPER COVENANTS**

^{Owner and}
The ~~MOJ~~ hereby covenant with the Council:

AY DD
P

4.1 to comply with the obligations relating to the management of the Habitat Mitigation Site set out in the First Schedule;

4.2 to comply with the obligations to pay to the Council the Contributions set out in the Second Schedule

4.3 to give notice in writing to the Council's Head of Community, Well-being and Development of the Commencement Date within 14 days thereof.

5 **COUNCIL'S COVENANTS**

The Council hereby covenants with the Owner and MOJ:

5.1 to use all sums received for the purposes specified in this deed for which they are to be paid;

5.2 upon request in writing to pay to the MOJ (here meaning the party which shall actually have paid the relevant sum or sums) such amount of any payment made by the MOJ to the Council which has not been expended or committed in accordance with the provisions of this deed within five years of the date of receipt by the Council of the final such payment if payable in instalments together with such interest thereon as the

relevant sum has earned in the hands of the Council but the Council shall be under no obligation to maximise such interest whilst the relevant contribution is in its hands;

- 5.3 upon request in writing to provide to the MOJ reasonable evidence as to the expenditure of the sums paid by the MOJ under this deed.
- 5.4 upon receipt of the Annual Sunday Bus Service Contribution and Annual Extension of Bus Service Contribution to use reasonable endeavours to procure the Extension of Bus Service as soon as is reasonably practicable after receipt of payment

6 LOCAL LAND CHARGE

This deed is a Local Land Charge for the purposes of the Local Land Charges Act 1975 and will be registered as such by the Council.

7 PROVISIONS OF IMMEDIATE EFFECT

- 7.1 The MOJ shall pay to the Council on the signing hereof the sum of £2,500 in respect of the Council's legal costs for the preparation and execution of this deed and a section 106 management fee of £5,400.
- 7.2 Nothing in this deed shall create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999 save for the avoidance of doubt it is declared that the planning obligations contained in this deed are enforceable by any successor local planning authority to the Council exercising planning powers under the Act.

8 NOTICES

- 8.1 Any notice or other written communication to be served upon any party or given by one party to any other under the terms of this deed shall be deemed to have been validly served or given if delivered by hand or sent by ordinary first class post or sent by recorded delivery post to the party upon whom it is to be served or to whom it is to be given or otherwise notified.
- 8.2 A notice or communication shall be served or given:
 - 8.2.1 on the Owner c/o The Director of Legal Services Welsh Government Crown Building Cathays Park Cardiff CF10 3NQ and MOJ at its usual address or such other address as shall be notified in writing to the Council from time to time;
 - 8.2.2 on the Council at Guildhall Wrexham LL11 1AY or such other address as shall be notified in writing to the Owner and MOJ from time to time.
- 8.3 Any notice or other written communication to be given by the Council shall be deemed valid and effectual if on its face it is signed on behalf of the Council by an officer or duly authorised signatory.

9 DISPUTE RESOLUTION

If any difference or dispute arises between the parties hereto touching or concerning their respective rights duties liabilities or obligations under or by virtue of this deed the same shall be referred to a member of the Royal Institution of Chartered Surveyors ("RICS") to be agreed between the parties or failing agreement upon request by one party for arbitration that party may after 21 days of that request by him request that an arbitrator be appointed by the President for the time being of RICS or his duly authorised deputy on the application of either party and in this respect such referral shall be construed as a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force.

10 JURISDICTION AND LEGAL EFFECT

- 10.1 This deed shall be governed by and interpreted in accordance with the law of England and Wales.
- 10.2 In so far as any clause or clauses of this deed are found (for whatever reason) to be invalid, illegal or unenforceable, that invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this deed.
- 10.3 No waiver (whether express or implied) by the Council 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 from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.
- 10.4 Nothing herein contained or implied shall prejudice or affect the rights powers duties and obligations of the Council in exercise of its functions as a local authority highway authority and local planning authority and the rights powers duties and obligations of the Council under all public and private statutes and byelaws orders and regulations may be fully and effectually exercised in relation to the Land or any part thereof and any works executed thereon as if the deed had not been executed by the Council and in particular nothing in this deed shall restrict the Council and/or any other local authority from exercising powers of compulsory purchase in respect of any part of the Land.
- 10.5 Any approval given under this deed or for the purpose of this deed shall not be deemed to be approval for any other purpose whatsoever.

11 INDEXATION AND INTEREST

- 11.1 Any sum to be paid to the Council under the Second Schedule and being due more than twelve months after the date of this deed shall be increased by an amount equivalent to the increase in the Index from the date of this deed until the date such sum is due and payable.

11.2 If any payment due under this deed is paid late Interest shall be payable from the date payment is due until the date of payment.

12 AGREEMENT

DD AC/ R
The Welsh Ministers shall not

DD AC/ have R
~~No person shall be liable for any breach of the covenants or undertakings contained in this Deed which occur after the relevant person has parted with his particular interest in the Land or the part or parts in respect of which such breach occurs AND no owner or occupier of any area of land within the Land or their successors in title will be liable in respect of any area of land within the Land in respect of which it is not an owner or occupier~~
AC/ R

IN WITNESS whereof the Council the Owner and the MOJ have executed this agreement as a **DEED** the day and year first before written

THE FIRST SCHEDULE

MANAGEMENT OF THE HABITAT MITIGATION SITE

A Conditions Imposed

- 1 Not to use the Habitat Mitigation Site for any purpose other than as an area for the management of ecological measures in accordance with the Habitat Management Plan.

2 The MOJ shall maintain and manage the whole of the Habitat Mitigation Site in accordance with the Habitat Management Plan until the end of September 2019 where after the Council shall maintain and manage that part of the Habitat Mitigation Site edged green and the MOJ shall maintain and manage that part of the Habitat Mitigation Site edged green in accordance with the Habitat Management Plan for a period of 25 years starting from the date hereof.

- 3 Prior to Commencement of Development to appoint an independent body to carry out an ecological compliance audit in accordance with the Habitat Management Plan to assess whether ecological avoidance, mitigation and compensation schemes have been implemented in compliance with the Habitat Management Plan.

- 4 The MOJ shall observe and perform the provisions of the Habitat Management Plan in respect of the whole of the Habitat Mitigation Site until the end of September 2019 and thereafter the Council shall observe and perform the provisions of the Habitat Management Plan in respect of that part of the Habitat Mitigation Site edged green and the MOJ shall observe and perform the provisions of the Habitat Management Plan in respect of that part of the Habitat Mitigation Site edged blue for a period of 25 years starting from the date hereof.

B Performance of Work

To employ only reputable and experienced consultants or contractors to undertake all works under the measures contained in the Habitat Management Plan.

THE SECOND SCHEDULE

PAYMENT OF CONTRIBUTIONS

by the Owner of the Prison Site

- 1 The Contributions shall be paid in accordance with this Schedule and for the avoidance of doubt it is acknowledged that the obligation to pay contributions is not conditional upon receiving any demand, request, invoice or other communication from the Council, save the additional payments referred to in paragraph 4 and payment referred to in paragraph 5.

- 2 **The Annual Sunday Bus Service Contribution**

To pay the Annual Sunday Bus Service Contribution on the First Occupation Date and on the first and second anniversaries of the First Occupation Date

- 3 **The Annual Extension of Bus Service Contribution**

To pay the Annual Extension of Bus Service Contribution on the First Occupation Date and on the first and second anniversaries of the First Occupation Date

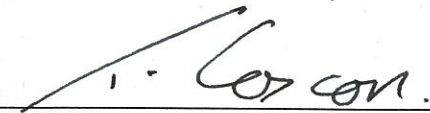
- 4 If, following a review by the Council of the Sunday Bus Service and Extension of Bus Service such review not to be carried out before the expiration of a year from payment of the final Annual Extension of Bus Service Contributions, the Council determines that either or both of the said services is/are not sustainable without further subsidy and the Council is satisfied that there is sufficient demand for the route to justify its continuation it may require further payments of the Annual Sunday Bus Service Contribution and the Annual Extension of Bus Service Contribution in the fourth and fifth year of operation upon the MOJ being satisfied that the further payments offer value for money and in the event that it is so satisfied it shall make such payments within 28 days of receipt of a written demand

- 5 **The Traffic Order Contribution**

In the event that the first annual monitoring report submitted to the Council in accordance with condition 17 of the Planning Permission identifies a shortfall in car parking provision at the Prison which results in on-street parking on Bridge Road by visitors or staff of the Prison which is considered to constitute a highways safety hazard to pay the Traffic Order Contribution within 28 days of receipt of a written request from the Council

demand

THE COMMON SEAL of
WREXHAM COUNTY BOROUGH COUNCIL
was hereunto affixed in the presence of;


Head of Corporate and Customer Services



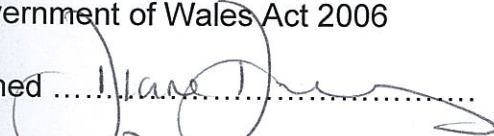
EXECUTED AS A DEED
By applying the seal of
THE WELSH MINISTERS

The application of the seal of
The Welsh Ministers is

AUTHENTICATED by

DD ~~Michael Clarke~~ Diane Dunning
Deputy Director

who is duly authorised for that purpose
by the Director of Legal Services
by authority of The Welsh Ministers
under Section 90(2) of the
Government of Wales Act 2006

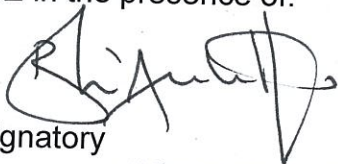
Signed 

Name DIANE DUNNING

Job Title DEPUTY DIRECTOR OF LEGAL SERVICES



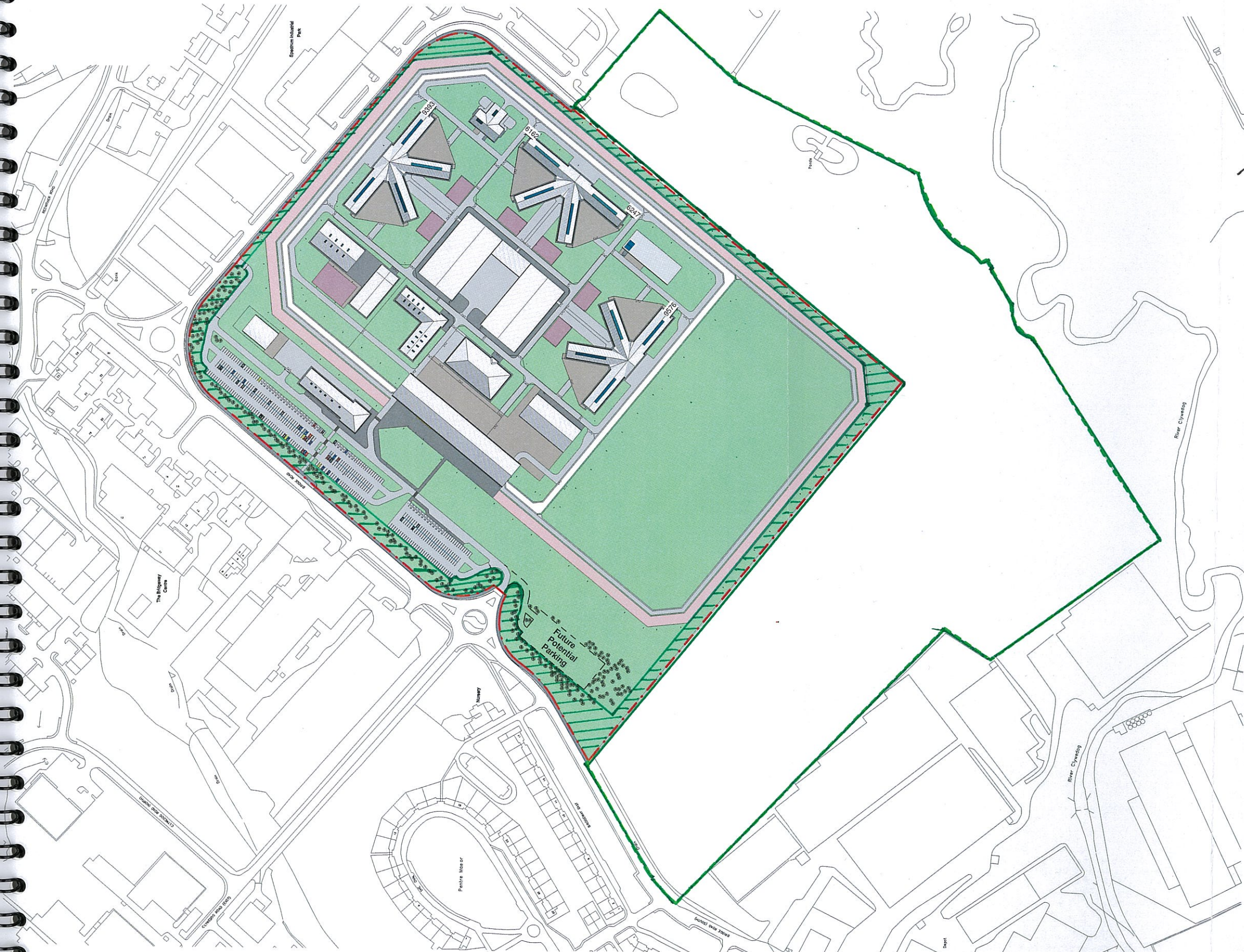
EXECUTED as a DEED by
Affixing the Common Seal of
THE SECRETARY OF STATE
FOR JUSTICE in the presence of:



Authorised Signatory

BRIAN MCAULIFFE





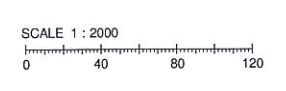
Legend

- Site Boundary
- Ecology Area

I. Coran

[Signature]
[Signature]

Proposed Site Masterplan1
 1 : 2000



Rev	Description	IN	Date
 Ministry of JUSTICE Estate Directorate			
Project Sponsor Guy Beaumont		Designer 	
Prison: NEW PRISON NORTH WALES			
Drwg. Title: Proposed Site Masterplan			
Drwg No.: 200-A(00)P-003-Planning			
AMENDMENT			
Drawn By	Date	Scale	
PH	14/08/13	As indicated @ A1	
Do not scale off this drawing. Check all dimensions on site			
0mm10mm100mm  Original Scale 1:1			