

DATED

3rd February

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- (1) LOVELL PARTNERSHIPS LIMITED
- (2) BROADLAND DISTRICT COUNCIL

DEED UNDER SECTION 106 OF THE TOWN AND
COUNTRY PLANNING ACT 1990

relating to the development of site compound at
Pinelands, Horsford

Ref: ZZW/053029.427
Date: 10th December 2013

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THIS DEED is made the

3rd day of February 2014

BY:

- (1) **LOVELL PARTNERSHIPS LIMITED** (Company Number 02387333) of Kent House, 14-17 Market Place London W1W 8AJ ("the Owner")
- (2) **BROADLAND DISTRICT COUNCIL** of Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew, Norwich, Norfolk ("the Council")

1. **INTERPREATION AND DEFINITION**

In this Deed unless the context otherwise requires the following expressions shall have the following meanings:-

"Act" the Town and Country Planning Act 1990 (as amended)

"Affordable Housing" housing which is available to meet the needs of those who cannot afford to rent or buy dwellings generally available on the open market

"Affordable Housing Provider" ("AHP") (i) a registered provider as defined by s80 of the Housing and Regeneration Act 2008; or
(ii) another body whose object is or contains the provision and/or operation of affordable housing and which has been approved by the Council for the provision and/or operation of affordable housing within the administrative area of Broadland or has otherwise been approved by the Council for the purposes of this Deed

"Affordable Housing Land" The land on which the Affordable Housing Units are to be constructed

"Affordable Housing Provision" The provision of three (3) Dwellings to be provided as Affordable Housing Units on the Site

"Affordable Housing Scheme" The detailed scheme for the provision of Affordable Housing on the Site which complies with the requirements of Schedule

	1 and Schedule 2 and in accordance with drawings headed Dwg 9120 – 1001 Development Plan (phase 2) and Dwg 9120-10-1001 Floor Plans and Elevations (plots 1-2) and Dwg 9120-20-1001 – Floor Plans and elevations (plots 3-4) and approved by the Council on 5 July 2013 or such amended or replacement Affordable Housing Scheme as the Council approves in writing from time to time
"Affordable Housing Unit"	Individual units of residential accommodation constructed or provided as part of the Development as Affordable Housing
"Application"	the detailed planning application validated on 8 th May 2013 for change of use from light industrial for the erection of 10 dwellings and associated parking under reference 20130613
"Code"	the "Code for Sustainable Homes" published by the Department for Communities and Local Government dated December 2006
"Commencement Date"	the initiation of the Development by the carrying out on the Site pursuant to the Planning Permission of a material operation within the meaning of Section 56(4) of the Act (but not, for the purpose of this Deed only, operations consisting of 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 erection of any temporary means of enclosure, the temporary display of site notices or advertisements) and "Commences" shall be interpreted in accordance with this definition
"Development"	the development permitted by the Planning Permission
"Director"	the District Council's Chief Executive or other

	officers of the Council acting under his hand
"Dwelling"	any unit of residential occupation being a self-contained house constructed as part of the Development and Dwellings shall be construed accordingly
"HCA Standards"	the "Housing Quality Indicators" and "Design and Quality Standards" specified by the Homes and Communities Agency
"Inflation Provision"	the increase (if any) in the Department for Business Innovation and Skills (BIS) Output Price Index for Public Works: All Public Works between 1 st September 2006 and the date upon which a payment of the Open Space Maintenance Contribution made pursuant to this Agreement
"Occupation and Occupied"	occupation for the purposes permitted by the Planning Permission 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
"Open Market Dwellings"	Dwellings other than Affordable Housing Units
"Open Space"	that part of the Site shown for identification purposes cross hatched on the Plan 2 to be set out or provided as open space to which the general public is to have free and unrestricted access and to be transferred to the District Council (in accordance with the requirements at Schedule 3), with easy and adequate pedestrian and vehicular access thereto
"Open Space Maintenance Contribution"	means the sum of Four thousand three hundred and thirty one pounds (£4,331) indexed linked for the maintenance for a period of 20 years of the Open Space adjusted in accordance with the Inflation Provision

"Open Space Works Specification"	a scheme including plans drawings and specifications showing but not limited to the layout and design of the Open Space including details of any landscaping paths and access arrangements, street furniture and fencing together with details of the proposed permanent Open Space management regime
"Plan 1"	the plan annexed to this Deed and marked Plan 1
"Plan 2"	the plan annexed to this Deed and marked Plan 2
"Planning Obligations"	the planning obligations set out in clause 9 hereof
"Planning Permission"	the planning permission to be granted pursuant to the Application
"Qualifying Occupiers"	in relation to any person housed in an Affordable Housing Unit, any person who meets the qualifying criteria as having a total household income at a level which prevents them from obtaining on the open market housing accommodation locally which is reasonably adequate for their needs contained in the Council's policies relating to the housing allocation (as amended from time to time and as formulated pursuant to the provisions of the Housing Acts 1985, 1996 and 2004 and the Homelessness Act 2002)
"Shared Ownership Dwelling"	Affordable Housing Units to be constructed or provided as part of and in accordance with the Affordable Housing Scheme and to be let on a Shared Ownership Lease
"Shared Ownership Lease"	a lease of a Shared Ownership Dwelling granted at a premium whereby up to a maximum of 50% (fifty per cent) of the equity is granted on first sale of the Shared Ownership Dwelling and is paid by the tenant

upon completion of such lease or raised by mortgage or charge from a bank or building society and which lease shall include arrangements enabling the lessee to purchase 100% of the equity of a Shared Ownership Dwelling and acquire the freehold interest by instalments at some future date or dates and allows a rental premium to be charged on the remainder of the equitable interest (the annual rent is to be calculated as 2.75% of the value of the equity retained by the Owner and the annual rent shall not be increased by more than the percentage increase in the Retail Price Index (or if such index ceases to be published such other index as the Council shall reasonably determine) plus 0.5% of the current rent per annum or in such manner as the parties may agree)

"Site"

the land known as site compound at Pinelands, Horsford which is shown for the purposes of identification only edged red on the Plan 1

In this Deed unless the context otherwise requires:

- (i) references to any party shall include the successors in title and assigns of that party
- (ii) references to clauses and schedules are references to clauses in and schedules to this Deed except where otherwise specified
- (iii) any mention herein of any Act or of any Section Regulation or Statutory Instrument shall be deemed to refer to the same source 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
- (iv) headings in this Deed shall not form part of or affect its construction

WHEREAS:

- A. The Council is the Local Planning Authority for the purposes of the Act for the area within which the Site is situated

- B. The Owner is the freehold owner of the Site registered with other land at the Land Registry under title number NK120704
- C. The Owner has submitted the Application
- D. The Owner enters into this Deed with the intention that the obligations herein may be enforced by the Council against the Owner and its respective successors in title

2. GENERAL PROVISIONS APPLICABLE TO THIS DEED

- 2.1 This Deed is made under Section 106 of the Act Section 111 of the Local Government Act 1972 and any other enabling powers
- 2.2 The obligations of the Owner hereunder are planning obligations for the purposes of the Act and enforceable by the Council against the Owner and its successors in title and assigns
- 2.3 No person shall be liable for any breach of the covenants restrictions or obligations contained in this Deed occurring after he has parted with the interest in the Site or the part of the Site in respect of which such breach occurs but without prejudice to liability for any subsisting breach which occurs prior to parting with such interest in the Site or any part thereof in respect of which any such breach has taken place
- 2.4 The provisions of this Deed shall have immediate effect upon completion of this Deed with the exception of the Planning Obligations which shall not come into effect until both the grant of the Planning Permission and the Commencement Date
- 2.5 This Deed shall cease to have effect if:
 - 2.5.1 the Planning Permission shall be quashed revoked or otherwise withdrawn
 - 2.5.2 the Planning Permission shall expire prior to the Commencement Date
- 2.6 This Deed may be registered as a charge in the Council's Register of Local Land Charges

3. AGREEMENTS AND DECLARATIONS

IT IS HEREBY AGREED AND DECLARED as follows:

3.1 No Fetter of Discretion

Save insofar as legally or equitably permitted nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council in the exercise of its functions as Local Planning Authority and the rights powers duties and obligations under all public and private bylaws and regulations may be as fully effectively exercised

3.2 Invalidity or Unenforceability of any of the terms of this Deed

If any provision in this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired

3.3 No Waiver

No waiver (whether express or implied) by the Council of any breach or default by the Owner in performing or observing any of the covenants in this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the covenants or from acting upon any subsequent breach or default in respect thereof

3.4 Enforceability

3.4.1 Nothing in this Deed shall be binding on or enforceable against purchasers or occupiers of those Dwellings which are not Affordable Housing Units or their mortgagees or successors in title to such purchasers occupiers or mortgagees; or

3.4.2 Schedule 3 shall not be binding on or enforceable against the AHP or any purchasers or occupiers of the Affordable Housing Units or their mortgagees or successors in title to such AHP or such purchasers occupiers or mortgagees.

4. **NOTICES**

4.1 Any notice document or other correspondence required to be served or given under the provisions of this Deed shall be in writing and delivered personally or sent by pre-paid letter or facsimile

4.2 The address for any notices or other written communication in the case of each party to this Deed shall be as follows:-

The Council

The Chief Executive, Broadland District Council, Thorpe Lodge, 1 Yarmouth Road, Thorpe, St. Andrew, Norwich, Norfolk NR7 0DU

The Owners

Commercial Director, Lovell Partnerships Ltd, Marston Park, Tamworth, Staffordshire, B78 3HN

5. **THIRD PARTIES**

5.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed and no person who is not a party to this Deed (other than a successor in title to one of the

original parties) shall be entitled in that person's own right to enforce any provision of this Deed pursuant to the provisions of the said Act

6. JURISDICTION

- 6.1 This Deed is to be governed by and interpretation in accordance with the law of England and Wales

7. TITLE WARRANTY

- 7.1 The Owner hereby warrants to the Council that it is the freehold owner of the Site and has full power to enter into this Deed and that the Site is free from all mortgages charges or other encumbrances and that there is no person having any interest in the Site other than as notified in writing to the Council's Director prior to the date hereof

8. NOTIFICATION

- 8.1 The Owner shall notify the Council of the Commencement Date and upon first occupation of the first Affordable Housing Unit such notifications to be given within 14 days of reaching such threshold PROVIDED THAT default in giving the requisite notice shall not prevent Commencement of Development occurring or the triggering of obligations contained herein.

9. PLANNING OBLIGATIONS

- 9.1 The Owner hereby covenants with the Council to carry out and comply with the obligations and restrictions on it set out in Schedule 1, Schedule 2 and Schedule 3 to this Deed

10. COUNCIL'S OBLIGATIONS

- 10.1 The Council covenants with the Owner to comply with the obligations on it set out in Schedule 3 to this Deed

11. COSTS

- 11.1 The Owner shall on completion of this Deed pay the Council's reasonable legal and administrative costs of £835 incurred in the preparation negotiation and completion of this Deed and the Council hereby acknowledges the same

12. PAYMENT OF INTEREST

- 12.1 The Owner shall pay interest at the rate of 4% above HSBC Bank base rate for the time being in force on any monies due under the provisions of this Deed in the event of late payment for the period from the date the monies should have been paid to the date the money is received

13. VAT

- 13.1 All consideration given in accordance with the terms of this Agreement shall be inclusive of all VAT (if any)
- 13.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Deed, then to the extent that VAT has not previously been charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly

14. DISPUTES

- 14.1 The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Deed promptly through negotiations between the respective senior executives of the parties who have authority to settle the same
- 14.2 If the matter is not resolved through negotiation the parties will attempt in good faith to resolve the dispute or claim through an Alternative Dispute Resolution ("ADR") procedure as recommended to the parties by the Centre for Dispute Resolution
- 14.3 If the matter has not been resolved by an ADR procedure within 28 days of the initiation of such procedure or if either party will not participate in an ADR Procedure the dispute may be referred by either party to adjudication for decision by a person appointed by agreement between the parties or in default of agreement by the President for the time being of the RICS who shall act as an expert and not as an arbitrator and whose decision shall be final and binding upon the parties.
- 14.4 Nothing in Clauses 13.1, 13.2 and 13.3 shall apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings

15. OWNERS INDEMNITY

- 15.1 The Owner 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

16. ISSUE OF APPROVALS

- 16.1 Where any approval, consent, agreement or the like is required to be given by the Council pursuant to the terms of this Deed it shall be in writing and shall not be unreasonably withheld or delayed

17. STATUTORY UNDERTAKERS CONSENT

- 17.1 The obligations and restrictions in this Deed shall not be enforceable against any statutory undertaker which acquires any part of the Site for the purposes of its statutory undertaking or function

SCHEDULE 1

AFFORDABLE HOUSING

The Owner covenants with the Council:

- 1.1 Not to construct or procure the construction of the Affordable Housing Units otherwise than in accordance with the Planning Permission, the Affordable Housing Scheme, to a minimum of level 3 of the Code and to current HCA Standards
- 1.2 Save as otherwise provided to this Deed not to use or allow or permit the Affordable Housing Units to be occupied for any purpose other than as Affordable Housing
- 1.3 Save as otherwise provided in this Deed not to use or allow or permit the Affordable Housing Units to be occupied other than by Qualifying Occupiers in accordance with the Affordable Housing Scheme
- 1.4 Save as otherwise provided in this Deed the Owner shall not dispose of its freehold interest in the Affordable Housing Units other than to an AHP
- 1.5 Paragraphs 1.2 and 1.3 and 1.4 above shall not be binding upon:
 - (a) subject to paragraphs 1.6 and 1.7 any mortgagee in possession of the Affordable Housing Units or part thereof or successors in title to the mortgagee in possession; nor
 - (b) subject to paragraph 1.6 any receiver or manager (including an administrative receiver) for such mortgagee; nor
 - (c) any individual owner occupier of the Affordable Housing Units (or their mortgagee or chargee) who has purchased the Affordable Housing Unit pursuant to a right to buy claim under Part V of the Housing Act 1985 or Section 16 of the Housing Act 1996 or any similar or substitute right applicable or their mortgagee; nor
 - (d) by a person who has staircased under a Shared Ownership Lease to acquire 100% of the leasehold or freehold of the Shared Ownership Dwelling
 - (e) successors in title to all of the above
- 1.6 Any mortgagee (or any administrator or receiver or manager) in possession of the freehold or leasehold of all or any of the Affordable Housing Units ("the Mortgagee") shall benefit from paragraph 1.5 above PROVIDED THAT it has first complied with the following:
 - a) not less than three months prior written notice ("the Notice") of any intention to dispose of any of the Affordable Housing Units must be given to the Council and if the Council responds by written notice within three months from receipt of the Notice setting out arrangements for the transfer of the Affordable Housing Units so as to maintain them as Affordable Housing then the Mortgagee shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer but if the Council does not serve its response notice within the said three months or if having used its reasonable endeavours the Mortgagee shall not have effected the transfer envisaged in

the Council's response notice within 12 weeks of that notice then the Mortgagee shall be entitled to dispose of the Affordable Housing Units free of the restrictions set out in this Deed but subject to any lease subsisting at that date PROVIDED THAT the Mortgagee shall not be required to dispose of the Affordable Housing Units for a sum less than the monies outstanding under the mortgage or charge

- 1.7 Not to Occupy or allow Occupation of more than 6 of the Open Market Dwellings unless and until all of the Affordable Housing Units to be provided under the approved Affordable Housing Scheme are practically complete and the Affordable Housing Land has been transferred to the approved AHP in accordance with and subject to the following:
 - (a) any transfer shall be for a consideration at a level which ensures that no public subsidy is required to enable the transaction to be completed and to enable the Affordable Housing Units to be let or sold as the case may be at a cost low enough for eligible persons to afford
- 1.8 Any AHP with an interest in an Affordable Housing Dwelling shall use any proceeds from the disposal of subsequent equity in Shared Ownership Dwellings for the provision of Affordable Housing within the administrative area of the Council
- 1.9 Not to permit any Affordable Housing Unit to be occupied other than under a Shared Ownership Lease.

SCHEDULE 2
The Affordable Housing Scheme

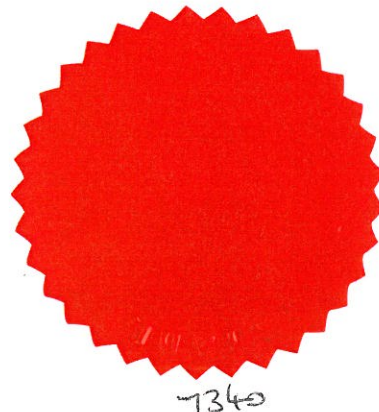
<u>PLOT NUMBER</u>	<u>DWELLING TYPE</u>	<u>TENURE</u>
1	2-Bedroom 4-Person House	Shared Ownership
2	2-bedroom 4-Person House	Shared Ownership
3	2-Bedroom 4-Person House	Shared Ownership

SCHEDULE 3 OPEN SPACE

1. The Owner covenants with the Council
 - 1.1 Not to Occupy or allow Occupation of any Dwelling unless and until the Open Space Works Specification has been submitted to and approved by the Council in writing (such approval not to be unreasonably withheld or delayed)
 - 1.2 Not to Occupy or allow Occupation of more than 8 of the Dwellings comprised in the Development unless and until the Open Space has first been provided in accordance with the approved Open Space Works Specification to the written satisfaction of the Council provided that the Council has inspected the Open Space and provided its written satisfaction of the same or reasonable comments within 2 weeks of being requested to do so
 - 1.3 To thereafter maintain the Open Space to a standard suitable for use by members of the public and as approved by the Council until such time as the Open Space has been transferred to the Council (or such other body as the Council may nominate) in accordance with the provisions contained herein
 - 1.4 Not to Occupy or allow Occupation of the final Dwelling comprised in the Development unless and until the Open Space has been offered for transfer to the Council (or such other body as the Council may nominate) in accordance with the reasonable requirements of the Council (which for the avoidance of doubt includes a requirement for the Open Space to be transferred free from all encumbrances restrictions or easements which might affect the use as Open Space or result in additional cost or liability to the Council not normally associated with the use of the Open Space) for a sum not exceed £1 (one pound) PROVIDED THAT the Council shall not be required to accept the transfer of the Open Space Land unless it has been provided in strict accordance with the Open Space Works Specification
 - 1.5 To pay the Open Space Maintenance Contribution to the Council on the same date as the transfer of the Open Space Land to the Council (or such other body as the Council may nominate)
2. The Council covenants with the Owner as follows:
 - 2.1 in the event that the Open Space is transferred to such other body as it may nominate to pay the Open Space Maintenance Contribution to that body within 30 days of receipt of the sum
 - 2.2 in the event that the Open Space is transferred to the Council not to use the Open Space Maintenance Sum except for the maintenance of the Open Space

EXECUTED by the parties hereto as a deed on the date written above

THE COMMON SEAL of)
BROADLAND DISTRICT COUNCIL)
was hereunto affixed)
in the presence of)



M. M. M. M.

DEMOCRATIC
Head of Corporate Services
and Monitoring Officer

SIGNED as a DEED)
by [*John L. L.*])
and [*Kevin Smith*])
acting as attorney for
LOVELL PARTNERSHIPS LIMITED

John L. L.
Attorney

as attorney for Lovell Partnerships Ltd.

in the presence of

Witness Signature

Name

Address

Occupation

LOIS CHALLAND
UNIT 5, INTERCHANGE 25
BOSTOCKS LANE
NOTTINGHAM
NG10 5QG

Lois Challand
KAL COMMERCIAL P.A.
as attorney for
Lovell Partnerships Ltd.
Attorney

in the presence of

Witness Signature

Name

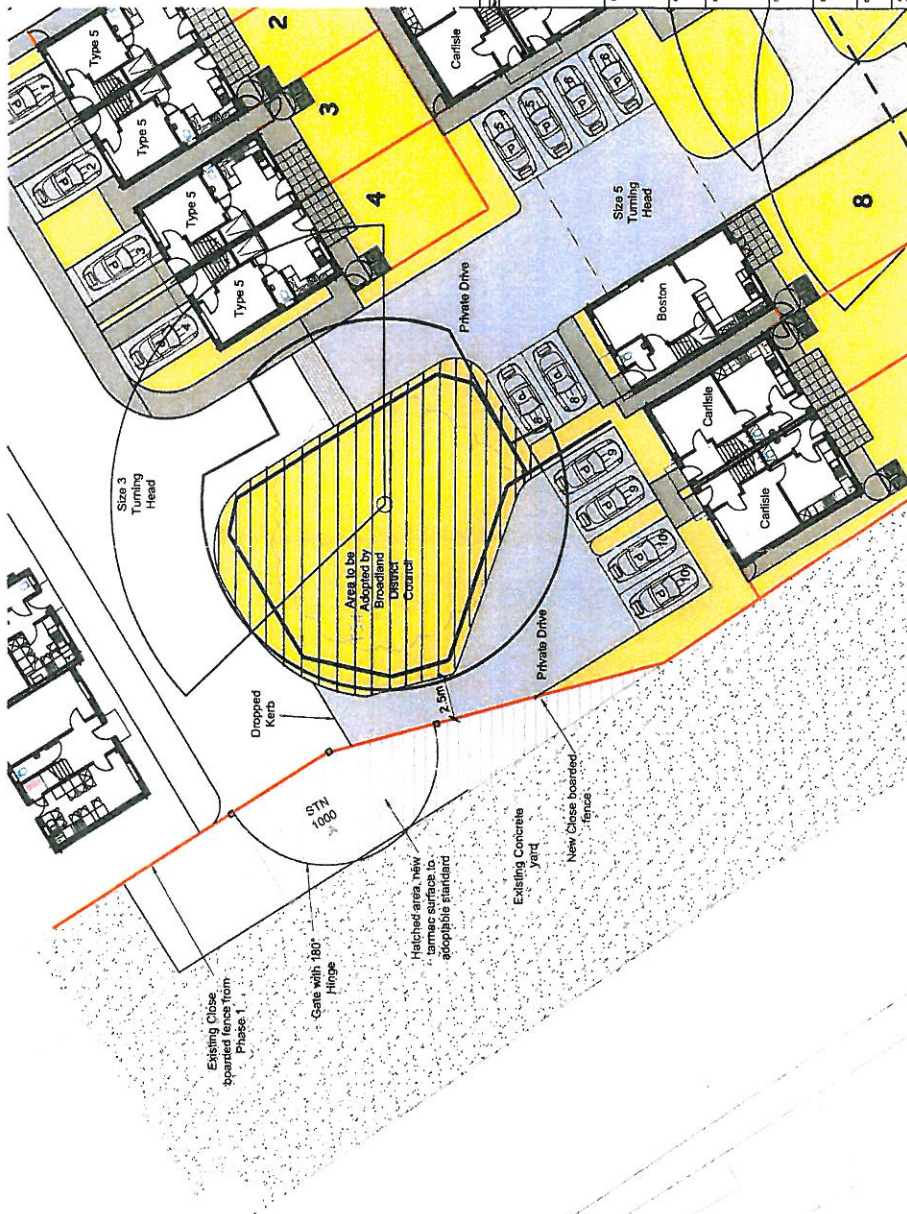
Address

Occupation

Lois Challand
LOIS CHALLAND
UNIT 5, INTERCHANGE 25
BOSTOCKS LANE
NOTTINGHAM
NG10 5QG

COMMERCIAL P.A.

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DEVELOP LAND TO BE TRANSFERRED TO B.D.C.



Project Name	Richard Pike Associates
Client	Pinelands Development, Horsford
Design	Lowell Partnerships Ltd.
Project	Driveway Proposal
Date	December 2013
Scale	1:200 @ A3
Drawn by	6120-Sketch
Check	FOR COMMENT ONLY
Notes	All dimensions must be checked and the plan must be signed



7340

Mime

Head of Democratic Services and Monitoring Officer

Handwritten signature/initials.

Handwritten signature/initials.

PLAN 1



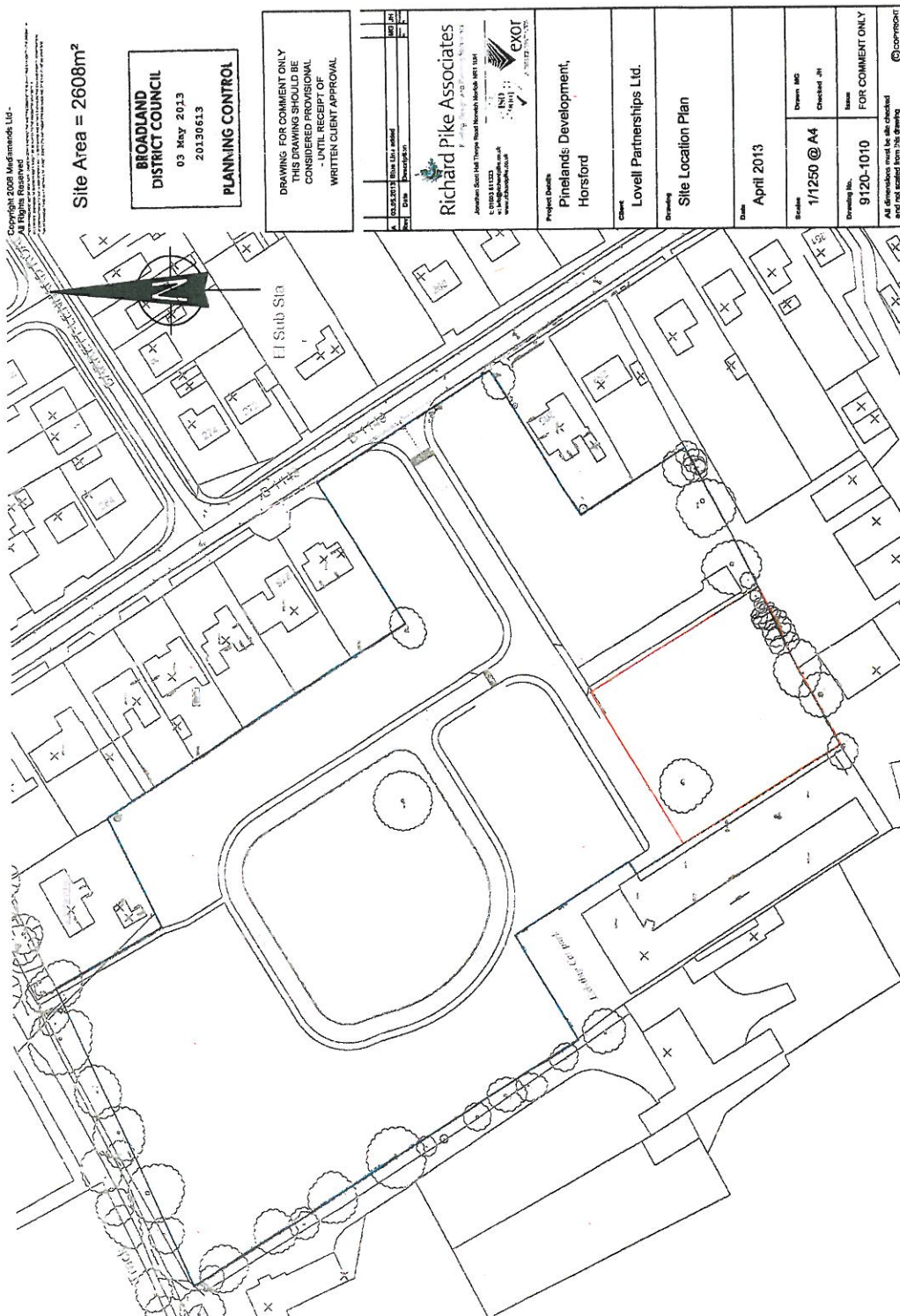
7343

Handwritten signature

Head of Planning Services and
Planning Officer

Handwritten signature

Handwritten signature



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Site Area = 2608m²

**BROADLAND
DISTRICT COUNCIL**
03 May 2013
20130613
PLANNING CONTROL

DRAWING FOR COMMENT ONLY
THIS DRAWING SHOULD BE
CONSIDERED PROVISIONAL
- UNTIL RECEIPT OF
WRITTEN CLIENT APPROVAL

Client	Pinelands Development, Horsford
Client	Lovell Partnerships Ltd.
Drawing	Site Location Plan
Date	April 2013
Scale	1/1250 @ A4
Drawn	MC
Checked	JH
Drawing No.	9120-1010
FOR COMMENT ONLY	
All dimensions must be checked and not scaled from the drawing.	
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