

C/5/2008/5012

DATED September 23rd 2009

NORFOLK COUNCIL

RESOLUTION

Under Section 106 of the
Town and Country Planning Act 1990
relating to land at Wood Farm, Marsham, Norfolk

Head of Law
Norfolk County Council
County Hall
Martineau Lane
Norwich
NR1 2DH

T H I S A G R E E M E N T is made by Deed the 23rd day of
September 2009

B E T W E E N NORFOLK COUNTY COUNCIL of County Hall Martineau Lane
Norwich (the "County Council") (1) and Crane & Sons Farms Limited of Wood Farm,
Marsham Norwich. NR10 5QQ (Company No: 00581460) (the "Owner") (2) and
NORFOLK ENVIRONMENTAL WASTE SERVICES LIMITED of 51 Norwich Road,
Horsham St. Faith, Norwich NR10 3HH (Company No. 02633546) (the "Developer")

AND RECITES:-

- (1) The Owner is the freehold owner of the land shown edged red save for the areas hatched black (the "Land") on the attached plan numbered 1 ("Plan 1") registered under title number NK335368. The Land edged red and hatched black is the application site for the purposes of the Application. The Blue Land is the land edged blue and coloured blue on the attached plan numbered 2 ("Plan 2") and the Purple Land is the land edged purple on Plan 2
- (2) The County Council is a Local Planning Authority within the meaning of the Town and Country Planning Act 1990 (the "Act") for the area within which the Land is situated
- (3) The Owner has made application to the County Council (reference C/5/2008/5012) (the "Application") in accordance with the Act and the Orders and Regulations for the time being in force thereunder for planning permission

to develop the Land by creating a permanent composting facility capable of processing up to 45,000 tonnes per annum of locally generated waste and resulting in the production of compost material (the "Development")

- (4) ~~Pursuant to an option agreement dated on or before the date of this Agreement and made or to be made between (1) the Owner and (2) the Developer~~ *It is intended that* the Developer will have the option to acquire a leasehold interest in the Land for the purpose of carrying out the Development

- (5) Subject to completion of this Agreement the County Council have resolved to grant planning permission for the Development pursuant to the Application (the "Planning Permission")

- (6) The obligations created by this Deed are planning obligations within the meaning of Section 106 of the Act (as amended) and are enforceable by the County Council

DEFINITIONS

"Commencement"

means the date on which a material operation is carried out as defined in section 56(4) of the Act comprised in the Development but not including any works of demolition, site clearance, decontamination or archaeological investigation and

"Commence" and "Commenced" shall be construed accordingly.

"Compost"

material suitable for use as a fertilizer or soil conditioner and resulting from the operations carried out pursuant to the Development

"Heavy Goods Vehicles"

means heavy commercial vehicles within the meaning of Section 138 of the Road Traffic Regulation Act 1984 and "Heavy Goods Vehicle" shall be construed accordingly

"Landscape Management Plan"

a plan for the management and maintenance of existing and proposed landscaping on the Land to be submitted and approved pursuant to condition five of the Planning Permission

"Prohibited Vehicle"

a Heavy Goods Vehicle or farm tractor with trailer in respect of which there is a Weighbridge Record in connection with the Development

"Weighbridge Record"

a record of each movement by a Prohibited Vehicle to and from the Land including the following information:

- Vehicle Registration
- Ticket Date
- Ticket Number
- Customer (meaning, as the case may, be the point of origin or destination of the materials contained in the Prohibited Vehicle)
- Carrier or operator of the Prohibited Vehicle
- Description of load
- Date and time of weighing of the Prohibited Vehicle
- the destination of the Compost leaving the Land

N O W THIS DEED WITNESSETH as follows:-

1. This Agreement is made in pursuance of Section 106 of the Act Section 111 of the Local Government Act 1972 and all other enabling powers
2. The Owner and the Developer hereby covenant with the County Council as follows:

- 2.1 not to Commence the Development until there is submitted to the County Council a Landscape Management Plan for the approval of the County Council such approval not to be unreasonably withheld or delayed.
- 2.2 upon Commencement of the Development to implement the provisions of the Landscape Management Plan approved by the County Council pursuant to clause 2.1
- 2.3 not to carry out or continue with the Development unless the Landscape Management Plan is carried out and maintained in effect as approved by the County Council
- 2.4. not to carry out or continue with the Development unless the Compost is spread only on the Blue Land PROVIDED THAT up to 3,000 tonnes per year of Compost may be spread on the Purple Land AND PROVIDED FURTHER THAT vehicular movements by Prohibited Vehicles entering and exiting the Land from and to the east generated by the Development do not exceed a maximum of 38 movements per day
- 2.5 not to carry out or continue with the Development if there are more than five deliveries of Compost to the Purple Land at Oxnead Farm on any day

2.6 to maintain Weighbridge Records and retain them for six years and make them available to the County Council at all reasonable times on reasonable prior notice

3. The Owner and the Developer hereby covenants with the County Council that with effect from the Commencement of the Development that the Land shall not be used for the purposes authorised by the Planning Permission unless:-

3.1 No Prohibited Vehicle operated by the Owner or the Developer or its employees or otherwise under the direct control of the Owner or Developer shall use the routes coloured yellow (the "Prohibited Routes").

3.2 in relation to a Prohibited Vehicle not under the direct control of the Owner or the Developer all reasonable endeavours shall be used to ensure that such vehicles comply with clause 3.1 above

3.3 there are affixed and displayed and maintained on the Land such signs approved by the County Council in writing as to locations numbers size and legend and as shall be required from time to time by the County Council (including any modifications, additions or subtractions to those first or subsequently approved by the County Council)

4 It is hereby agreed and declared for the purposes of clause 3.2 that the requirement to use reasonable endeavours:

- 4.1 requires the Owner and Developer to incorporate in all contracts with persons likely to visit the Land a term having the same effect as clause 3.1
- 4.2 requires the Owner and Developer to communicate in writing with persons whose Prohibited Vehicle from time to time regularly visits the Land informing them of the Prohibited Routes and requesting that their Prohibited Vehicle refrains from using them as appropriate at all times when visiting the Land
- 4.3 requires the Owner and Developer on receiving information that any driver of a Prohibited Vehicle shall have taken the Prohibited Routes to take all necessary and lawful action possible against the driver to ensure future compliance
- 4.4 will be breached if an employee of the Owner or Developer uses the Prohibited Routes with a Prohibited Vehicle
- 5.1 The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement promptly through negotiations between the respective senior executives of the parties who have authority to settle the same
- 5.2 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

- 5.3 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 arbitration 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 Landscape Institute who shall act as an expert and not as an arbitrator and whose decision shall be final and binding upon the parties
- 5.4 Nothing in clauses 5.1 and 5.2 shall apply to the recovery of a liquidated sum or prevent the parties from commencing or continuing court proceedings
- 6 Without prejudice to the enforcement of restrictions and obligations against successors in title no person shall be liable for any breach of this Agreement if at the time the breach occurs they have no interest in the Land
- 7 The County Council shall not be liable to any person under this Agreement after that person has parted with all interest in the Land but without prejudice to any liability arising prior thereto save for antecedent breaches
- 8 No waiver (whether express or implied) by the County Council of any breach or default by the Owner or the Developer or their successors in title in performing or observing any of the terms and conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the County Council from enforcing any of the terms and conditions or from acting

upon any subsequent breach or default in respect thereof by the Owner or the Developer or their successors in title

9. If the Planning Permission is quashed revoked or expires without implementation then this Deed shall absolutely determine
10. The Owner hereby covenants that it is the freehold owner of the Land and has full power to enter into this Agreement that the Land is free from all mortgages charges or other encumbrances (other than as advised) and there is no person having any interest in the Land other than those notified in writing to the County Council's Head of Law prior to the date hereof
11. The Owner or as the case may be the Developer shall notify the County Council upon Commencement of Development.
12. The expressions the "County Council" the "Developer" and the "Owner" shall include their respective successors and assigns as appropriate within the terms of Section 106 of the Act
13. The parties do not intend that any term of this Agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement
14. The Council may agree variations to this Deed by written approval under hand of the Director of Environment Transport and Development such approval not

to be unreasonably withheld to variations which do not prejudice the objectives of the Development Plan.

15. The Owner shall pay the County Council's reasonable legal costs on this Agreement
16. This Agreement shall be registered as a local land charge

IN WITNESS WHEREOF the parties hereto have executed and delivered this Deed
the day and year first before written

THE COMMON SEAL of THE NORFOLK

COUNTY COUNCIL was hereunto
affixed in the presence of:-

Vick M



HEAD OF LAW

Executed as a Deed by,
CRANE & SONS FARMS LIMITED
In the presence of –

Director

Roger Crane

Secretary
DIRECTOR

800

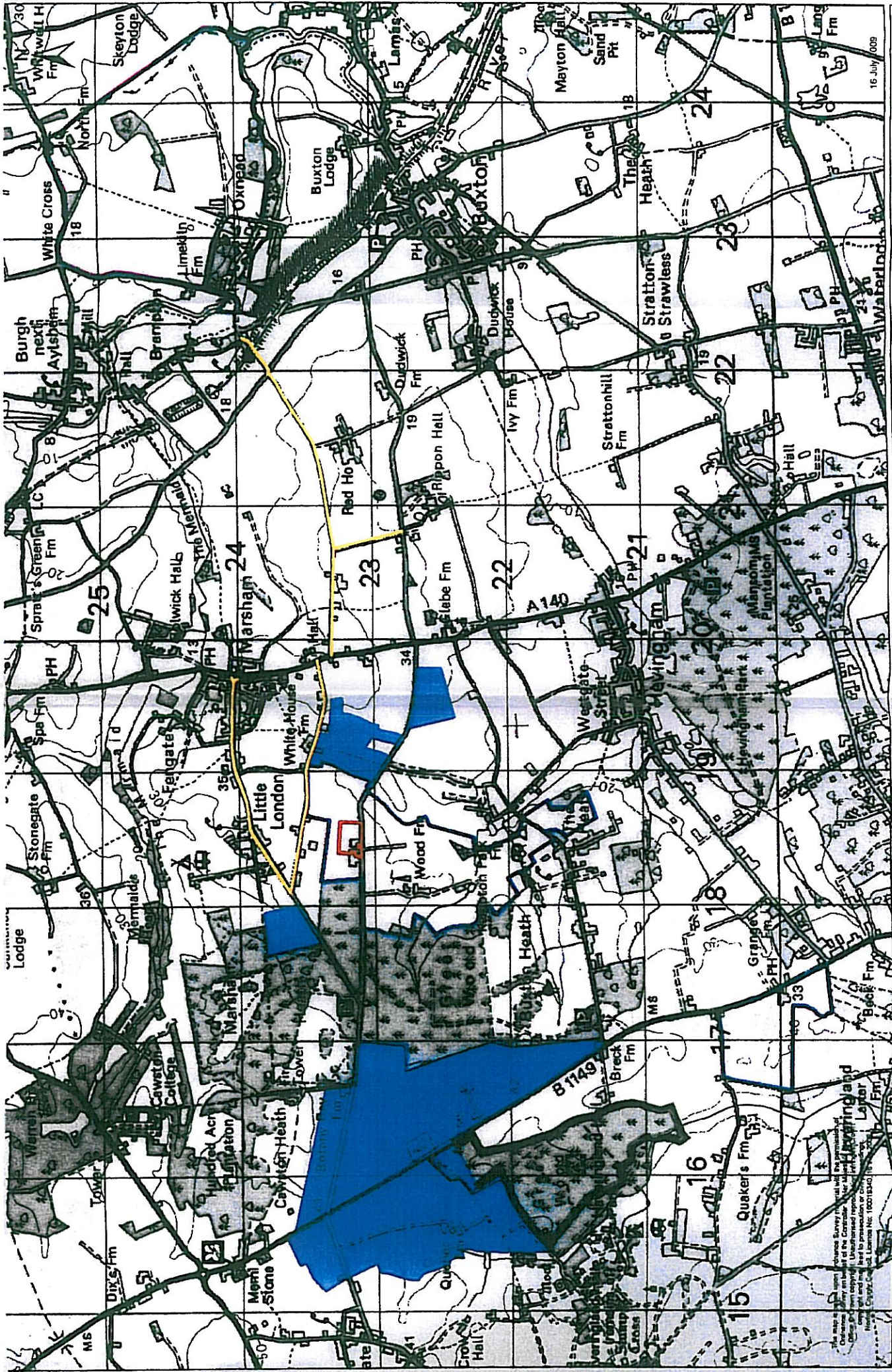
Executed as a Deed by
NORFOLK ENVIRONMENTAL WASTE SERVICES LIMITED
in the presence of

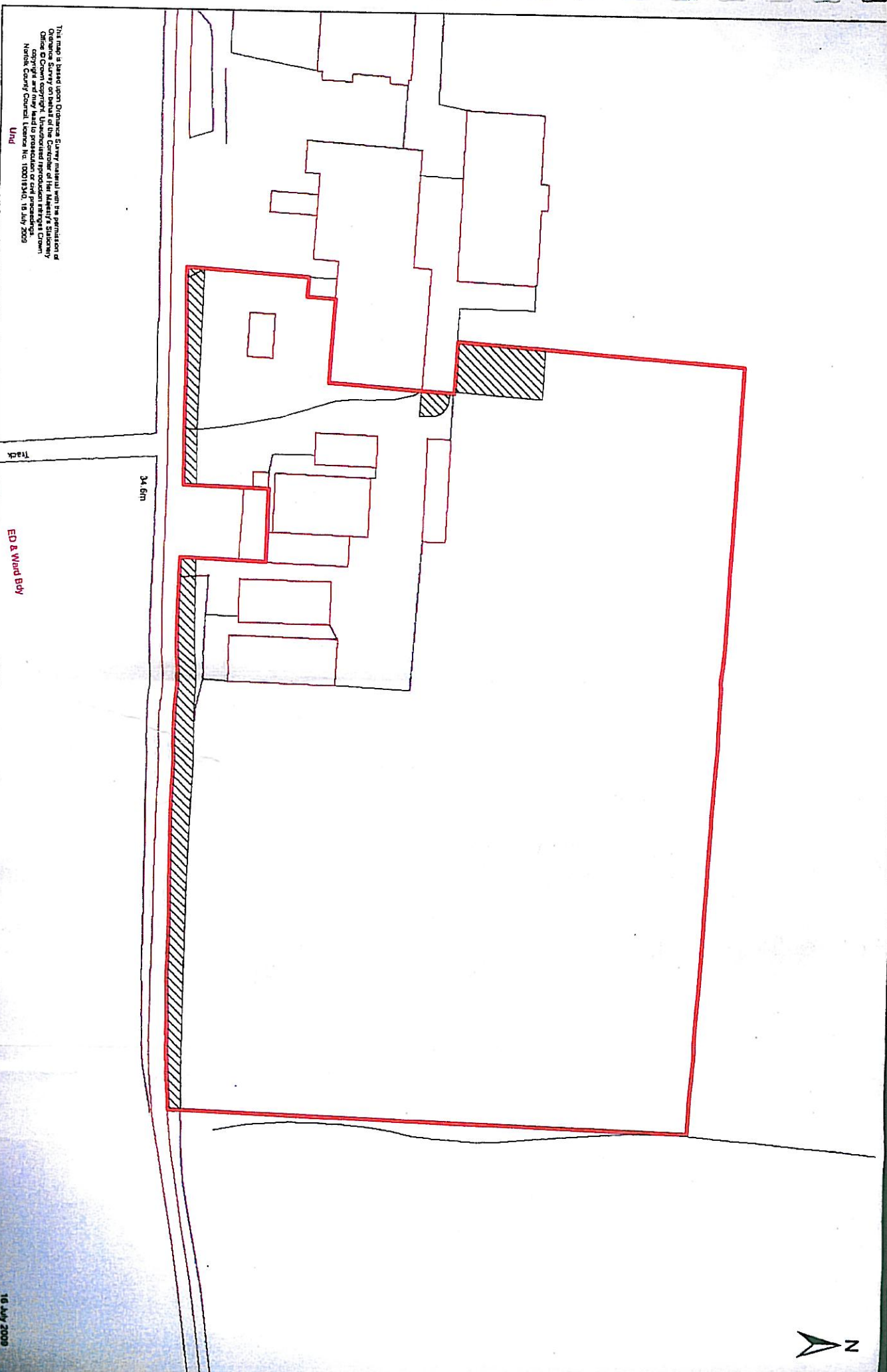
Director

[Signature]

Secretary DIRECTOR

[Signature]





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Track

34.6m

ED & Wind Bay

PLAN 1
Marsham