**Guidance Notes for completing the Unilateral Undertaking**

Unilateral Undertakings are given before a planning application has been determined and can cover various planning obligations to take effect if the permission is granted. The purpose of this undertaking is to enable a financial contribution to be made to the Authority for ecological mitigation. The obligations usually take effect when planning permission is granted, and you will need to pay the contribution before you commence development. Note that the unilateral undertaking does not impose obligations on the Authority. In situations in which the Authority needs to be a party to the document or in which the undertaking needs to cover more than just ecological contributions please speak to the case officer in the first instance and he or she will advise you as to how to proceed and put you in touch with the legal team.

The template undertaking needs to be completed by all parties with an interest in the land. In practice this is likely to mean the owner, any mortgagee if applicable, and possibly also a developer, where the intention is that someone other than the owner will develop the land and that person or company has an interest in the land.

The assumptions listed below have been made in this standard document. If any of these do not apply to your circumstances then you will not be able to use this template and should contact the case officer who will put you in touch with the legal team:

* title to the property is registered freehold;
* there are no leasehold interests in the property;
* if a company is a party to the undertaking it is incorporated in England and Wales;
* if applicable, the owner has entered into a sale contract conditional on planning permission or an option agreement with a developer;
* the owner or developer has submitted a planning application to the Authority; and
* planning permission is likely to be granted by the Authority.

Throughout the document, where an asterisk appears please delete the text in brackets if applicable.

**Page 1**

1. Please add in the names and addresses of the owner, mortgagee and developer (if any). If any of these are a company, please use the format:

[FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the ‘Owner’/ ‘Mortgagee’ / ‘Developer’ [delete as applicable])

1. Insert the date, address, Land Registry title number and planning application number where indicated.

**Page 2**

Adjust the recitals (the numbered list under the word ‘whereas’) to reflect whether a mortgagee and developer have an interest in the land, and fill in the blanks where necessary.

**Page 3**

Insert in the table the figure for the Monitoring Fee (in line with details below) and the mortgage details.

£295.20 1-5 dwellings or up to 1ha of land

£354.24 6-10 dwellings or up to 3ha of land

£413.28 11-49 dwellings or up to 10ha of land

£531.36 50+ dwellings or more than 10ha of land

Insert in the table the figure for the New Forest Special Protection Area contribution, which is based on a figure of **£4,031** per dwelling or **£3,144** per new additional bedroom for serviced visitor accommodation.

Attach a red line plan of the site.

**Page 4**

Insert in the table the figure for the Solent Special Protection Area contribution (in line with the adopted Bird Aware Solent Strategy <http://www.birdaware.org/strategy>) as below:

£390 1 bedroom dwelling

£563 2 bedroom dwelling

£735 3 bedroom dwelling

£864 4 bedroom dwelling

£1014 5 bedroom dwelling

**Page 5**

Delete as necessary New Forest SPA or Solent SPA text if not applicable (clauses 4.2-4.5). If you are unsure the planning case officer will be able to advise which of these apply.

**Page 7 - Signatures**

Arrange for the deed and plan to be signed and witnessed by the applicant(s) and the mortgagee and any developer. Note that if the mortgagee and developer are companies you will need to ensure they use the correct form of signature block for their business (they will be able to advise you).

**Finally**

Return the undertaking to the Authority for checking, completing and registering with:

* A cheque made payable to New Forest National Park Authority to cover our Legal Fee and the Monitoring Fee.
* A red line plan of the site signed by all parties.
* A copy of the relevant Land Registry Title documents as proof of ownership.
* If there is a corporate mortgagee or developer please obtain proof from them as to authority to sign (for example, a power of attorney authorising signature) and send it to the Authority with the executed deed.

Updated January 2023

**UNILATERAL UNDERTAKING**

**DATED**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**NAME AND ADDRESS OF OWNER(S)**:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **(“the Owner(s)”)**

**[and]**

**[** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **(“the Mortgagee”)\* ]**

**[and]**

**[** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **(“the Developer”)\* ]**

**TO**

**NEW FOREST NATIONAL PARK AUTHORITY**

**of Town Hall, Avenue Road, Lymington, SO41 9ZG (“the Authority”)**

**PLANNING OBLIGATION BY UNILATERAL UNDERTAKING**

**UNDER SECTION 106 OF THE TOWN & COUNTRY PLANNING ACT 1990**

**APPLICATION SITE ADDRESS**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**LAND REGISTRY TITLE No**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**PLANNING APPLICATION No**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**THIS PLANNING OBLIGATION BY UNDERTAKING is given by the Applicant(s)\* to the NEW FOREST NATIONAL PARK AUTHORITY**

**WHEREAS:**

1. Words and phrases appearing in these recitals have the meanings ascribed to them in clause 2 of this deed
2. The Authority is the Local Planning Authority for the purposes of the 1990 Act for the area within which the Land is situated
3. The Owner(s) are the registered proprietors with title absolute of the Land which is registered at the Land Registry under the aforementioned title number [subject to the Mortgage]\*
4. [The Mortgagee is the registered proprietor of the charge dated [ ] referred to in entry number [ ] of the charges register of the Land and has agreed to enter into this deed to give its consent to the terms of the unilateral undertaking.]\*
5. [The Developer has made the Planning Application and is proposing to carry out the Development pursuant to the Planning Permission and has entered into a [sale contract conditional on planning permission **OR** option agreement] dated [DATE] with the Owner [which interest is registered at HM Land Registry against Title number [ ]]\*

(6) In accordance with the Authority’s Local Planthe Applicants are willing to enter this Undertaking in order to provide for planning contributions

**NOW THIS DEED WITNESSETH** as follows:

1. **ENABLING POWERS**

This deed is made pursuant to Section 106 of the 1990 Act and is enforceable by the Authority against the Owner(s) and their successors and assigns.

1. **DEFINITIONS AND INTERPRETATION**

2.1 In this deed the following phrases shall have the following meanings:

|  |  |
| --- | --- |
| “1990 Act” | means the Town and Country Planning Act 1990  |
| “Applicant(s)” | means the Owner(s) [and the Mortgagee and the Developer\*] |
| “Commencement of Development” | means the carrying out of a material operation as defined in Section 56(4) of the Act in respect of the Development and “Developed” and “Commence Development” shall be construed accordingly |
| “Development” | means the development to be carried out on the Land pursuant to the Planning Permission |
| “Interest in Default” | means interest at the rate of 4% over Lloyds Bank base lending rate from time to time in forceIf that bank or lending rate index ceases to exist or is replaced or rebased then Interest in Default shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Authority shall advise the Applicants in writing |
| “Land” | means the land described in the Schedule to this deed |
| “Legal Fee” | means the legal fee of one hundred pounds (£100) payable by the Owner to the Authority on delivery of this deed to cover the Authority’s costs in the preparation, checking, completion and registration of this deed |
| “Monitoring Fee” | means a fee of [ ] pounds (£[ ]) payable by the Owner to the Authority on delivery of this deed to cover the Authority’s costs in the financial and physical monitoring of compliance with this agreement |
| “Mortgage” | means a legal charge dated [ ] made between the Owners and the Mortgagee and the same is registered at entries [ ] and [ ] of the Charges Register of title number HP [ ] |
| “New Forest Special Protection Area Mitigation Contribution” | a financial contribution of [ ] pounds (£[ ])  |
| “Plan” | the plan annexed hereto |
| “Planning Application” | means the planning application with the planning application number on the title page to this deed |
| “Planning Permission” | means a valid planning permission granted pursuant to the Planning Application |
| “Solent Special Protection Area Mitigation Contribution” | a financial contribution of [ ] pounds (£[ ])  |
| “Working Day” | Means any day that is not a Saturday, a Sunday, a bank holiday or a public holiday in England  |

2.2A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality)

2.3 Unless the context otherwise requires, words in the singular shall include the plural and vice versa

2.4 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders

2.5 A reference to any party shall include that party’s personal representatives, successors and permitted assigns

2.6 A reference to the Authority shall include any successor to its statutory functions

2.7 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

2.8 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

2.9 A reference to writing or written excludes faxes and e-mail

2.10 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

2.11 References to clauses are to the clauses of this deed. Clause headings shall not affect the interpretation of this deed

2.12 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

2.13 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

1. **PLANNING OBLIGATIONS**

This deed is made under Section 106 of the 1990 Act and the planning obligations entered into by way of the covenants in this deed are obligations under Section 106 of the 1990 Act to be discharged by the Applicants in respect of the Land and are enforceable by the Authority against the Owners [, the Developer and subject to the provisions of Clause 6 the Mortgagee]\* and any person deriving title from any of them. These planning obligations will come into force on the execution and delivery of this deed

1. **COVENANTS AND LEGAL EFFECTS**

The Applicant(s)\* covenant(s)\* with the Authority that:

* 1. The Applicant(s)\* will give at least 10 Working Days’ prior written notice to the Authority of the Commencement of Development

[4.2 Prior to Commencement of Development the Applicant(s)\* will pay the Authority the New Forest Special Protection Area Mitigation Contribution

4.3 The Applicant(s)\* will pay the Authority Interest in Default on the New Forest Special Protection Area Mitigation Contribution from the date such payment falls due until the actual payment if later]\*

[4.4 Prior to Commencement of Development the Applicant(s)\* will pay the Authority the Solent Special Protection Area Mitigation Contribution

4.5 The Applicant(s)\* will pay the Authority Interest in Default on the Solent Special Protection Area Mitigation Contribution from the date such payment falls due until the actual payment if later]\*

1. **PAYMENT OF FEES**

5.1 The Applicant(s) will pay the Authority’s Legal Fee on delivery of this deed

* 1. The Applicant(s) will pay the Authority the Monitoring Fee on delivery of this deed
	2. The Applicant(s) will pay the Authority any fees incurred pursuant to clause 7 below on delivery of this deed
1. **LOCAL LAND CHARGE**

This deed is a local land charge and shall be registered as such by the Authority

1. **LAND REGISTRY**

The Applicant(s) consent(s) to the registration of this deed in the charges register of the title(s) to the Land and will pay to the Authority the costs incurred in registration.

1. **MORTGAGEE**

The Mortgagee hereby agrees that this deed shall take effect as if it was executed by the Owners [and the Developer]\* and the Authority and registered as a local land charge immediately prior to the Mortgage. The Mortgagee shall not be liable for the observance performance or non-performance of the covenants in this deed unless and until it becomes a mortgagee in possession. If the Mortgagee becomes a mortgagee in possession any liability as such will cease once it has parted with its interest in the Land

1. **RELEASE**

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

1. **DETERMINATION OF DEED**

This deed shall be determined and have no further effect if the Planning Permission:

(a) expires before the Commencement of Development;

(b) is varied or revoked other than at the request of the Owner [or Developer]\*; or

(c) is quashed following a successful legal challenge

**11. OWNERSHIP**

11.1 The Owner warrants that no person other than the Owner [, and the Developer and the Mortgagee]\* has any legal or equitable interest in the Land

11.2 Until the obligations in Clause 4 have been complied with the Applicants will give to the Authority within 10 Working Days the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Land:

(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.

1. **NOTICES**

12.1 A notice given under this deed must be in writing and must be delivered by hand or sent by pre-paid first class post or other next Working Day delivery service. Any notice [or other communication] to be given under this deed must be sent to the relevant party as follows:

(a) to the Authority at Lymington Town Hall marked for the attention of the Solicitor and Monitoring Officer;

(b) to the Owner at: [ ];

[(c) to the Developer at: [ ] marked for the attention of [ ]; [and]

(d) to the Mortgagee at: [ ] marked for the attention of [ ];]\*

or as otherwise specified by the relevant person by notice in writing to each other person.

12.2 Any notice given in accordance with this clause 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

12.3 A notice given under this deed shall not be validly given if sent by e-mail

12.4 This clause does not apply to the service of any proceedings or other documents in any legal action

**13. 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

1. **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 law of England and Wales

### THE SCHEDULE

**The Land**

All that parcel of land known as [ ] in Hampshire and shown for the purpose of identification only edged red on the Plan being registered with absolute title at the Land Registry under title number HP [ ]

**IN WITNESS** whereof this Undertaking has been executed as a deed by the Applicant(s)\* and is intended to be and is hereby delivered on the date first before written

**SIGNED** as a **DEED** by the First Applicant: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

In the presence of (signature): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Occupation: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SIGNED** as a **DEED** by the Second Applicant:\* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

In the presence of (signature): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Occupation: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Mortgagee]\*

**THE COMMON SEAL** of )

………………………………………… )

was affixed to this **DEED** )

in the presence of: )

 An Authorised Signatory \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |  |  |
| --- | --- | --- |
| [Developer]\*Executed as a deed by [NAME OF EXECUTING COMPANY] acting by [NAME OF FIRST DIRECTOR], a director and [NAME OF SECOND DIRECTOR/SECRETARY], [a director OR its secretary] |   | \_\_­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [SIGNATURE OF FIRST DIRECTOR]Director\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[SIGNATURE OF SECOND DIRECTOR OR SECRETARY][Director OR Secretary] |