

**Dated 22 September 2008**

**Given By**

**WASTENOTTS (RECLAMATION) LIMITED**

**to**

**NOTTINGHAM CITY COUNCIL**

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**UNILATERAL PLANNING  
OBLIGATION**

**pursuant to Section 106 of the Town  
and Country Planning Act 1990  
affecting Land at Eastcroft Energy  
from Waste Facility, Nottingham  
NG2 3JH**

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**ADDLESHAW GODDARD**

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**By**

**WASTENOTTS (RECLAMATION) LIMITED** (No. 2674169) whose registered office is at Ground Floor West, 900 Pavilion Drive, Northampton Business Park, Northampton, NN4 7RG (**Owner**)

**To**

**NOTTINGHAM CITY COUNCIL** of The Guildhall, South Sherwood Street, Nottingham, NG1 4BT (**Council**)

**Whereas**

- (A) The Council has a freehold interest in the Site which is registered at the Land Registry with Title Absolute under Title Numbers NT47094 and NT47101.
- (B) The Owner is the leasehold owner of the Site. That leasehold interest is registered at the Land Registry with Title Absolute under Title Number NT47101 and is shown edged red on Plan 1. The lease is for a period of 99 years commencing on 25 December 1973 and was varied on 17 June 1994. The Owner is a wholly owned subsidiary of the Developer.
- (C) The Owner granted a sublease in respect of part of the Site to White Rose dated 21 March 2000 for a term of 15 years. Such sublease is unregistered and relates to the White Rose Land. No new development or restriction is proposed under the Planning Permission in respect of the White Rose Land which is shown for identification purposes only coloured blue and cross-hatched on Plan 1. The White Rose Land is excluded from the terms obligations and covenants under this Deed.
- (D) The Council is the local planning authority for the purposes of the Planning Act and is the local highway authority for the area in which the Site is situated.
- (E) The Developer made the Planning Application to the Council on 6 August 2007, and appealed the Planning Application to the Secretary of State on 17 December 2007 (Appeal reference number APP/Q3060/A/08/2063129/NWF). Upon appeal, the Secretary of State is to determine the Planning Application.
- (F) The Owner gives this Undertaking with the intention that the obligations contained in it may be enforced by the Council against the Owner its successors in title and assigns (save for the White Rose Land ) with the intention that this Undertaking shall bind the Site.

**It is agreed**

**1 Definitions**

1.1 In this Deed, unless the context otherwise requires:

**Developer** means Waste Recycling Group Limited (No. 02674166) whose registered office is at Ground Floor West, 900 Pavilion Drive, Northampton Business Park, Northampton NN4 7RG

**Development** means the development of the Site pursuant to the Planning Permission

**DHS Contribution** means a contribution of one hundred thousand pounds and zero pence (£100,000.00) towards a Suitable Project



**DHS Proposal** means a proposed project for the expansion of the Nottingham District Heating Scheme

**Enviroenergy** means Environergy Limited (No. 04131345) a company wholly owned by the Council and responsible for the management, operation and expansion of the Nottingham District Heating Scheme

**Highways Contribution** means the contribution of fifty thousand pounds and zero pence (£50,000.00) towards the following local highway schemes:

- (a) the upgrading of pedestrian facilities and traffic signal junction at the junction of Cattle Market Road / A60 London Road, in line with the Council aspirations set out in Policy T10.4 of the Nottingham Local Plan (as adopted in November 2005) and generally in accordance with Plan No. 2 at Schedule 2 of this Deed; and/or
- (b) resurfacing of that section of A6011 Cattle Market Road between A60 London Road and Incinerator Way not affected by the above scheme

**Implementation** means the undertaking of a Material Operation pursuant to the Planning Permission (and "**Implement**" and "**Implementation Date**" and "**Implementing**" shall be construed accordingly)

**Implementation Notice** means the notice to be served or deemed to be served by the Owner on the Council that it intends to undertake a Material Operation

**Index Linked** means adjusted to reflect the net movement in the Index of Retail Prices from the date of this Undertaking to the date of payment the amount of such increase or decrease to be calculated as follows:

$$A \quad X \quad \frac{B}{C} = D$$

where:

- A = the relevant sum as specified in this Deed in pounds sterling;
- B = the Index of Retail Prices at the date the relevant sum is payable;
- C = the Index of Retail Prices at the date of this Deed
- D = the resultant sum in pounds sterling payable under this Deed

**Material Operation** means a material operation, as defined in Section 56 of the Planning Act, to implement the Planning Permission but excluding archaeological works excavation decontamination works site clearance demolition works site, soil or other investigations services diversions the undertaking of any landfill or other gas works and the erection of any hoardings, site notices temporary buildings or other temporary structures

**Nottingham District Heating Scheme** means the infrastructure and facilities run by Enviroenergy to distribute hot water to certain buildings within Nottingham City

**Plan 1** means the plan attached as Schedule 1

**Plan 2** means the plan attached as Schedule 2

**Planning Act** means the Town and Country Planning Act 1990

**Planning Application** means the application for full detailed planning permission submitted to the Council on 6 August 2007 and given reference no. 07/01502/PMFUL together with any amendments and/or variations and/or substitutions thereto and the redline application plan for which is appended to this Deed at Appendix 3

**Planning Permission** means the planning permission to be granted by the Secretary of State pursuant to the Planning Application

**Suitable Project** means a project for the expansion of the District Heating Scheme that is a suitable recipient for the DHS Contribution by virtue of the fact that it is located in or serving development within the geographic areas identified in the Nottingham Local Plan (as adopted in November 2005) and known as the Waterside Regeneration Zone, Eastside Regeneration Zones and/or Southside Regeneration Zone.

**Secretary of State** means the Secretary of State for Communities and Local Government including, if appropriate, an Inspector appointed by him

**Site** means the land at Eastcroft Energy from Waste Facility, Off Incinerator Road, Cattle Market Road, Nottingham NG2 3JH and shown edged red on Plan 1

**White Rose** means White Rose Environmental Limited whose registered office is at 2 The Embankment, Sovereign Street, Leeds, LS1 4BG

**White Rose Land** means the land to which the sublease dated 21 March 2000 referred to in Recital C relates which land is shown for indicative purposes coloured blue and cross-hatched on Plan 1

**Working Day** means any day from Monday to Friday (inclusive) other than Christmas Day, Good Friday and any statutory bank holiday in England

1.2 In this Deed unless the context otherwise requires:

- (a) where two or more persons are liable in respect of an obligation, they are jointly and severally liable
- (b) a reference to a statute is a reference to the statute as amended or re-enacted from time to time (unless otherwise stated) and includes any subordinate legislation and guidance under it
- (c) words importing any gender include every gender
- (d) person includes any corporation and unincorporated body of persons
- (e) references to a clause is a reference to a clause contained in this Undertaking
- (f) headings are for ease of reference only
- (g) words importing the singular meaning where the context so admits include the plural meaning and vice versa
- (h) reference to the Owner shall include the Owner's successors in title and assigns and all persons deriving title under the Owner except where expressly provided otherwise **SAVE THAT** White Rose who have the benefit of a sub-lease dated 21 March 2000



in respect of the White Rose Land shall be excluded from liability under the terms covenants and obligations of this Deed together with their successors in title and assigns thereto

- (i) a covenant restriction or obligation by a party to this Undertaking not to do something shall be construed as including a covenant restriction or obligation not to permit or knowingly suffer it to be done by a third party

## **2 Operative Clauses**

2.1 This Undertaking is given pursuant to section 106 of the Planning Act and the covenants restrictions and obligations contained mentioned or referred to in this Undertaking or agreed or completed pursuant to it are planning obligations for the purposes of that section.

2.2 The obligations of the Owner in clauses 3 and 4 of this Agreement have no effect until the conditions in clause 3 (**Conditions**) have been satisfied in accordance with their terms

2.3 The Conditions are:

- (a) the valid grant of the Planning Permission in relation to which either:
  - (i) the opportunity for any person to challenge the Planning Permission by judicial proceedings has ended and
  - (ii) if judicial proceedings were commenced, the proceedings have been exhausted leaving the Planning Permission finally upheld as valid and
- (b) following satisfaction of the Conditions in (a) either:
  - (i) the Owner has served the Implementation Notice; or
  - (ii) the Owner undertakes a Material Operation implementing the Planning Permission without serving the Implementation Notice (in which case the Implementation Notice shall be deemed to have been served on the date of the undertaking of the Material Operation)

2.4 If the Owner undertakes a Material Operation and judicial proceedings are commenced and the Owner suspends further implementation of the Planning Permission this document shall have no further effect unless and until:

- (a) the judicial proceedings are exhausted and the Owner elects to continue implementing the Planning Permission; or
- (b) the Owner elects to continue implementing the Planning Permission despite the judicial proceedings.

## **3 Planning Obligation – Highways Contribution**

3.1 The Owner covenants with the Council not to continue to Implement the Development unless it has within 10 working days of the Implementation of the Development paid to the Council the Highways Contribution Index Linked upon the condition that in the event of the Highways Contribution not being used in whole or in part for the purpose or purposes for which it was paid within 4 years of the date of receipt of payment then the Council will refund the whole of the Highways Contribution or such part as has not been utilised or committed (as the case

may be) to the Owner within 28 days of a written request by the Owner to the Council to that effect.

#### **4 Planning Obligation – DHS Contribution**

- 4.1 The Owner covenants with the Council not to continue to Implement the Development unless it has within 10 working days of the Implementation of the Development
- (a) provided for suitable financial security to procure the payment of the DHS Contribution pursuant to clause 4; and
  - (b) notified the Council in writing of the details of such security.
- 4.2 The Owner covenants with the Council to pay the DHS Contribution Index Linked within a period of 4 years from the Implementation of the Development provided that
- (a) a Suitable Project has been agreed under clause 4.4 or 4.5; or
  - (b) a Suitable Project has been deemed to have been agreed between the Owner and the Council under clause 4.7; or
  - (c) a Suitable Project has been determined by the arbitrator in accordance with the procedure described in clause 4.6 and clause 11; or
  - (d) it has not been necessary to identify a DHS Proposal as a Suitable Project by virtue of clause 4.8.
- 4.3 Within 2 years of the date of the Implementation of the Development the Owner shall in writing request the Council to identify a DHS Proposal to the Owner in writing.
- 4.4 Within 20 Working Days of receipt of the DHS Proposal from the Council under clause 4.3 the Owner shall either:
- (a) confirm that the Council's DHS Proposal qualifies as a Suitable Project; or
  - (b) shall confirm in writing to the Council why its DHS Proposal does not qualify as a Suitable Project and shall submit to the Council an alternative DHS Proposal which the Owner considers qualifies as a Suitable Project.
- 4.5 Within 20 Working Days of receipt of the Owner's alternative DHS Proposal (if submitted) under clause 4.3.2 the Council shall either:
- (a) confirm that the Owner's alternative DHS Proposal qualifies as a Suitable Project; or
  - (b) shall confirm in writing why the Owner's alternative DHS Proposal does not qualify as a Suitable Project.
- 4.6 In the event that a Suitable Project is not agreed between the Owner and the Council pursuant to either clause 4.4 or 4.5, either the Owner or the Council may refer to the issue to the arbitrator under clause 11 for determination.
- 4.7 In the event that the Owner does not comply with clause 4.4 the Council's DHS Proposal identified pursuant to clause 4.3 shall be deemed to have been agreed to be a Suitable Project between the Owner and the Council.



4.8 In the event that the Owner does not comply with clause 4.3 it is not necessary for the Council to identify a DHS Proposal as a Suitable Project.

4.9 The Owner makes the DHS Contribution upon the condition that in the event of the DHS Contribution not being used in whole or in part for the purpose for which it was paid within 4 years and 1 day of the date of receipt of payment then the Council will refund the whole of the DHS Contribution or such part as has not been utilised or committed (as the case may be) to the Owner within 28 days of a written request by the Owner to the Council to that effect.

## **5 Force Majeure**

If **the Owner** is prevented or delayed from performing any of its obligations in this Deed, either by an emergency or by a cause outside its direct control, then it shall:

- (a) give notice of the circumstances of the prevention or delay to the Council and
- (b) be relieved from the performance of the obligation for such period as the Council considers to be reasonably acceptable in the circumstances

## **6 Liability of parties**

6.1 A person or body is not liable for a breach of any of the obligations in this Deed after it has parted with its interest in the Site or in the part of the Site in respect of which the breach occurs but this is without prejudice to any liability that the person may have in respect of any antecedent breach

6.2 The Owner covenants with the Council that by entering into this Undertaking it binds its leasehold interest in the Site and each and every part thereof **SAVE FOR** the White Rose Land and shall carry out and comply with the covenants restrictions and obligations contained mentioned or referred to in clauses 3, 4, 5 and 15.

## **7 Effect of Deed**

If the Planning Permission shall expire prior to the service of the Implementation Notice or is quashed revoked modified or otherwise withdrawn (without the authority of the Owner) then the terms of this Deed shall cease to have effect

## **8 Approvals**

Unless this Deed states that a party's agreement is at its sole and absolute discretion, where this Deed refers to a party agreeing any matter or thing, that party's agreement shall not be unreasonably withheld or delayed and shall be given in writing

## **9 No restriction**

This Deed does not prohibit or restrict the development of any part of the Site in accordance with a planning permission granted by the Council or by the Secretary of State on appeal or following a reference to or call-in by the Secretary of State after the date of this Deed

## **10 Registration and removal**

10.1 The Owner requests that the Council register this Deed in its Register of Local Land Charges



10.2 The Owner requests that the Council immediately on compliance by the Owner with its covenants in clauses 3 and 4 or in any event if the covenants have ceased to have effect to remove any references to this Deed or its content from the Register

10.3 The Owner shall register this Deed against the relevant title(s) of the Site at the Land Registry

## **11 Dispute resolution**

11.1 The Owner requests that any dispute or difference between any of the parties in connection with this Deed shall be resolved by arbitration under the Rules of the Chartered Institute of Arbitrators and otherwise upon the following terms:

- (a) the arbitrator shall be President of the Royal Town Planning Institute or a fellow of the Royal Institution of Chartered Surveyors, at least 10 years qualified, and who is either agreed between the Owner and the Council, in default of agreement, appointed at the request of either the Owner or the Council by or on behalf of the President of the Royal Institution of Chartered Surveyors or his deputy
- (b) the award of the arbitrator shall be final on all matters referred to him and
- (c) any costs payable by reason of the provisions of this clause shall be borne initially by the Owner or the Council at its own cost, except that the fees of the Royal Institution of Chartered Surveyors / the President shall be borne in equal proportions but thereafter all such costs and fees shall be adjusted to accord with the award of the arbitrator

## **12 Severance and Performance**

12.1 Each provision in this Deed is severable from the others, so that if any provision is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of other provisions is not affected

12.2 The failure of any party hereto at any time to require performance by any other party or parties of any of the terms obligations and/or covenants of this Deed shall in no way affect the right of such party or parties to require performance of those terms covenants and/or obligations

## **13 Contracts (Rights of Third Parties) Act 1999**

A person who is not (or is not a successor in title) to a party to this Deed does not have any rights to enforce any term of it pursuant to the Contracts (Rights of Third Parties) Act 1999

## **14 Notices**

The notices or certificates referred to in this Deed are sufficiently served under this Deed if served:

- (a) in accordance with Section 196 of the Law of Property Act 1925, but:
  - (i) the final words of Section 196(4) "and that service...be delivered" shall be deleted and there shall be substituted for the same "...and that service shall be deemed to be made on the second working day after the Registered letter has been posted" and
  - (ii) if not served on a working day, the date of service is the next working day or

- (b) if sent by fax or any means of electronic transmission to the party to be served, in which case service is made on the day of transmission, if transmitted before 5.00 p.m. on a working day, but otherwise on the next working day

**15 Change in Ownership**

The Owner covenants with the Council to give the Council immediate written notice of any change in ownership of any of its leasehold 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.

**16 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

**17 VAT**

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable

**18 Delivery of this Deed**

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

**19 Receipt of Deed**

The Owner requests that the Council acknowledge in writing the receipt of this Deed

**Executed as a deed** by the Owner or its duly authorised representatives on but not delivered until the date of this Deed

**In witness** whereof the Owner has executed this Deed the day and year first above written

Schedule 1

The Site and the White Land <sup>ROFE</sup>  
^



M.B. 25

# H.M. LAND REGISTRY

TITLE NUMBER

## NT 47 101

ORDNANCE SURVEY  
PLAN REFERENCE

COUNTY

SHEET

NATIONAL GRID

*Nottinghamshire*

SK 5838 NW SK 5839 SW

Scale: 1/1250

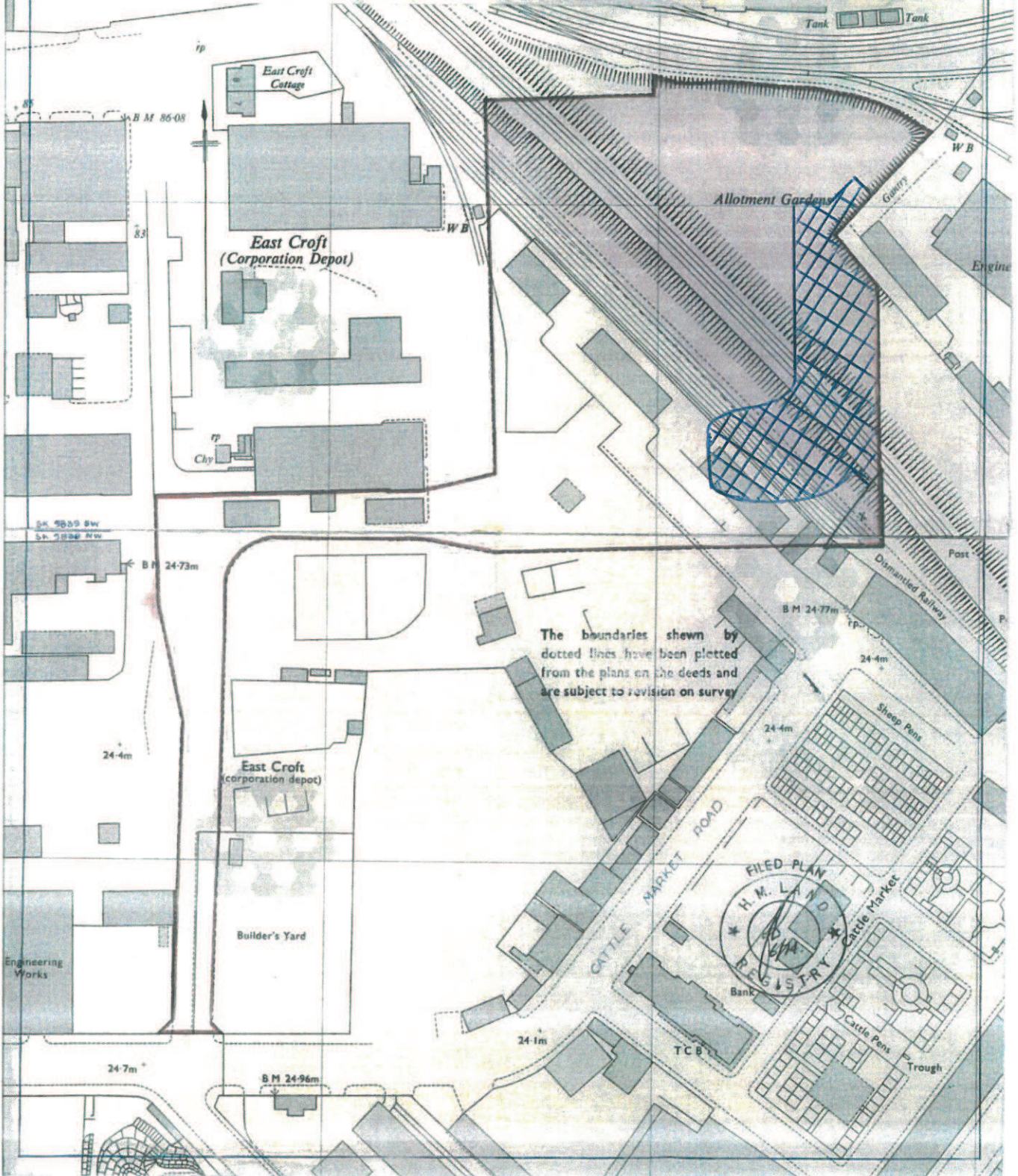
*Nottingham District*

ADMINISTRATIVE AREA  
**CITY OF NOTTINGHAM**

Crown Copyright

Garage

Tank

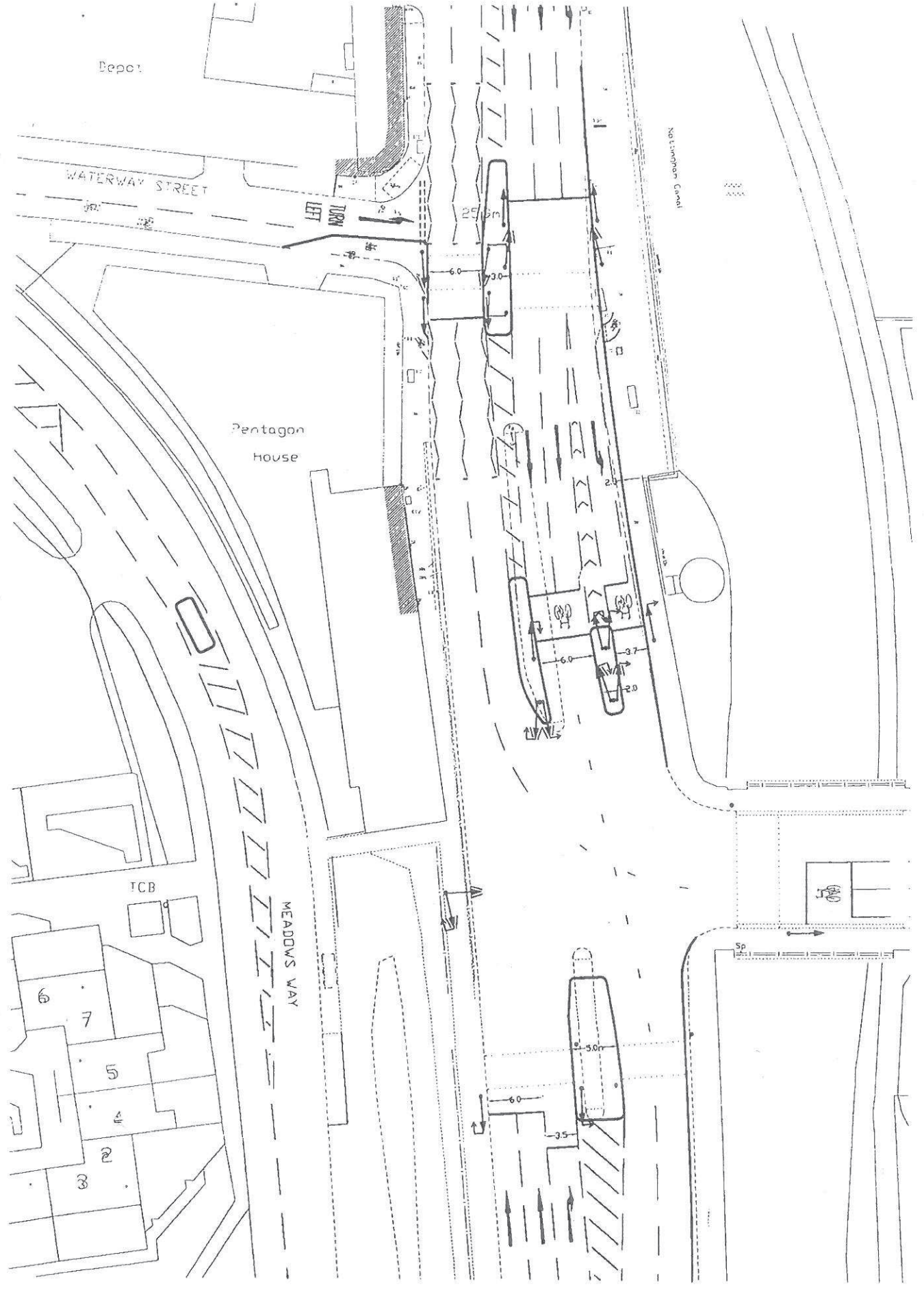


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**Schedule 2**

**Upgraded pedestrian facilities and traffic signal junction at the junction of Cattle Market Road /  
A60 London Road**







Executed as a deed by  
**The Owner**  
acting by two directors or by a director and its  
secretary

) .....  
) Director  
) .....  
) Director/Secretary

.....