



The Town and Country Planning Act 1990
Approval of Minerals & Waste Application with Conditions
Application Reference Number: PL/2022/00193
Decision Date: 24/04/2025

Applicant:	Earthline Ltd The Upper Lime Kiln Works, Ogbourne St George, Nr. Marlborough, Wiltshire, SN8 1TD
Particulars of Development:	Extraction and processing of mineral and restoration using indigenous imported inert materials to agriculture with biodiversity enhancement.
At:	Blackburr Farm, Marston Meysey, Swindon, SN6 6LG

In pursuance of its powers under the above Act, the Council hereby **GRANT PLANNING PERMISSION** for the above development to be carried out in accordance with the application and plans submitted (listed below).

In accordance with paragraph 38 of the National Planning Policy Framework, Wiltshire Council has worked proactively to secure this development to improve the economic, social and environmental conditions of the area.

Subject to the following conditions:

Conditions

- 1** The development hereby permitted shall be begun before the expiration of three years from the date of this permission. Written notification of the date of commencement shall be sent to the Mineral Planning Authority within 7 days of such commencement.

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- 2** The development hereby permitted shall be limited to a period of eight years from notified date of commencement of the development by which time mineral extraction operations shall have ceased and the site shall have been restored in accordance with Restoration Plan drawing ref: 2831-5-2-DR-0001-S4-P10 dated 23/01/2024.

REASON: To ensure development is carried out in accordance with submitted application and approved details.

- 3** The development hereby permitted shall be carried out and completed in all respects strictly in accordance with the following approved plans and as stipulated in the conditions set out below together with those further details required to be submitted for approval:

- Drawing Ref: ELBLCK2110A-2b - Context Plan - dated 14.06.2023
- Drawing Ref: ELBLCK2110A-3b - Site Layout and General Phasing - dated 14.06.2023
- Drawing ref: ELBLCK2107B-1e - Footpath Diversion – dated 27.03.2024
- Drawing Ref: ELBLCK2110A-5b - Stage 1 - dated 14.06.2023
- Drawing Ref: ELBLCK2110A-6b - Stage 2 - dated 14.06.2023
- Drawing Ref: ELBLCK2110A-7b - Stage 3 - dated 14.06.2023
- Drawing Ref: ELBLCK2110A-8b - Stage 4 - dated 14.06.2023
- Drawing Ref: ELBLCK2110A-9b - Stage 5 - dated 14.06.2023
- Drawing Ref: ELBLCK2110A-10b - Stage 6 - dated 14.06.2023
- Drawing Ref: ELBLCK2110A-11b - Stage 7 - dated 14.06.2023
- Drawing Ref: ELBLCK2110A-12b - Stage 8 - dated 14.06.2023
- Drawing Ref: ELBLCK2110A-13b - Stage 9 - dated 14.06.2023
- Drawing Ref: ELBLCK2110A-14b - Stage 10 - dated 14.06.2023

- Drawing ref: ELBLCK2308 1a -Site Layout and Plant Area dated 29.02.2024
- Drawing ref: ELBLCK2308-2a - Layout of Processing Plant Area – dated 29.02.2024
Drawing ref: ELBLCK2308-3a - Welfare Unit Elevations – dated 29.02.2024
- Drawing ref: ELBLCK2308-4a - Processing Plant Elevations – dated 29.02.2024
- Drawing ref: ELBLCK2308-5a - Fuel Tank Elevations – dated 29.02.2024
- Drawing ref ELBLCK2308-6Aa - Weighbridge Elevations –dated 29.02.2024
- Drawing ref ELBLCK2308-6Ba - Weighbridge Elevations – dated 29.02.2024
- Drawing ref: 2831-5-2-DR-0001-S4-P10 - Restoration Plan – dated 23/01/2024
- Drawing ref: 2831-5-2-DR-003-S4-P4 - Detailed Restoration Plan 1 of 4 – dated 23/01/2024
- Drawing ref: 2831-5-2-DR-004-S4-P3 - Detailed Restoration Plan 2 of 4 – dated 09/06/2023
- Drawing ref: 2831-5-2-DR-005-S4-P4 - Detailed Restoration Plan 3 of 4 – dated 23/01/2024
- Drawing ref: 2831-5-2-DR-006-S4-P3 -Detailed Restoration Plan 4 of 4 – dated 09/06/2023

REASON: For the avoidance of doubt and in the interests of proper planning.

- 4 No commencement of the development shall occur until all those with a leasehold interest in the land comprising the development hereby permitted have entered into a planning obligation with the local planning authority under Section 106 of the Town and Country Planning Act 1990 in the form attached to this decision notice.

REASON: The Council is both landowner and planning authority and so it is appropriate to impose obligations on the leaseholder to secure long-term management measures necessary to mitigate the identified environmental impacts of the proposed development.

- 5** No development shall commence within the area indicated by application PL/2022/00193 until:

- a) A written programme of archaeological investigation, which should include on-site work and off-site work such as the analysis, publishing and archiving of the results, has been submitted to and approved by the Mineral Planning Authority; and
- b) The approved programme of archaeological work has been carried out in accordance with the approved details.

REASON: To enable the recording of any matters of archaeological interest.

- 6** No commencement of the development shall occur until a Construction Environmental Management Plan (CEMP) has been submitted to, and approved in writing by, the Mineral Planning Authority. The CEMP shall provide details of the avoidance, mitigation and protective measures to be implemented before and during the extraction and restoration phases, including but not necessarily limited to, the following:

- a) Identification of ecological protection areas/buffer zones and tree root protection areas and details of physical means of protection, e.g. exclusion fencing.
- b) Working method statements for protected/priority species, such as nesting birds and reptiles.
- c) Mitigation strategies already agreed with the mineral planning authority prior to determination, such as for great crested newts, dormice or bats; this should comprise the pre-construction/construction related elements of strategies only.
- d) Work schedules for activities with specific timing requirements in order to avoid/reduce potential harm to ecological receptors; including details of when a licensed ecologist and/or ecological clerk of works (ECoW) shall be present on site.
- e) Any necessary pollution protection methods, particularly for dust, silt/sediment, and other harmful substances such as oil that could otherwise pollute the watercourse.
- f) Key personnel, responsibilities and contact details (including Site Manager and ecologist/ECoW).
- g) Timeframe for provision of compliance report to the mineral planning authority; to be completed by the ecologist/ECoW and to include photographic evidence.

Development shall be carried out in accordance with the approved CEMP.

REASON: To ensure adequate protection and mitigation for ecological receptors prior to and during construction, and that works are undertaken in line with current best practice and industry standards and are supervised by a suitably licensed and competent professional ecological consultant where applicable.

- 7 No commencement of the development shall occur until a scheme to ensure no raising of ground levels within the restored areas of Phase 3a, 3b, 4a and 4b has been submitted to and approved in writing by the Mineral Planning Authority. The scheme shall be based on data from a topographical survey showing baseline ground levels shown to ordnance datum. The scheme shall be fully implemented and subsequently maintained in accordance with the scheme's timing/phasing arrangements.

REASON: To ensure that there are no detrimental impacts to flood storage or flood flow routes.

- 8 No commencement of the development shall occur until a detailed plan for groundwater level monitoring during both during mineral extraction and restoration phases together with a maintenance regime and a timetable for its implementation has been submitted to and approved in writing by the Mineral Planning Authority. The Plan shall be based on the proposed mitigation measures set out in the Hydrogeological and Hydrological Environmental Impact Assessment and Flood Risk Assessment Report Number: 211008 Version: v.04 prepared by GWP Consultants LLP dated 25 October 2023. The plan shall include details for reporting, including details of any data analysis and data presentation from the monitoring. Development shall be carried out in accordance with the approved Plan.

REASON: To ensure that measures are put in place to mitigate the assessed impact of the development on the groundwater regime.

- 9 The development hereby permitted shall not commence until a baseline groundwater and surface water quality monitoring plan and statistical method scope, including location plan and timetable of monitoring, has been submitted to, and approved in writing by, the Mineral Planning Authority. The plan shall include

details for reporting, including details of any data analysis and data presentation from the monitoring.

REASON: To ensure that the proposed site does not pose any risk to the water environment by managing any contamination issues and setting the context by having a detailed pre-commencement baseline data set.

- 10** No commencement of the development shall occur until a Landscape and Ecology Management Plan (LEMP) has been submitted to, and approved in writing by, the local planning authority. The LEMP shall include long term objectives and targets, management responsibilities and maintenance schedules for each ecological feature and landscaped area within the development, including provision and management of a minimum 10-metre-wide buffer zone alongside the watercourse, together with a mechanism for monitoring success of the management prescriptions, incorporating review and necessary adaptive management to attain targets. Thereafter the development shall be undertaken in accordance with the approved LEMP.

REASON: To ensure the long-term management of landscape and ecological features retained and created by the development, for the benefit of visual amenity and biodiversity for the lifetime of the scheme.

- 11** No commencement of the development shall occur until a final detailed a Dust Management Plan (DMP) has been submitted to and approved in writing by the Mineral Planning Authority. The Plan shall be based on the suggested mitigation measures set out in the draft dust management plan ref: ZELBF_DMP Revision A prepared by DustScanAQ dated September 2023 and detail the additional mitigation controls to be put in place during works at Phase 3a. Following its approval the DMP shall be implemented throughout the duration of the development.

REASON: To ensure that measures are put in place to control dust emissions and to safeguard the amenity of neighbouring properties

- 12** No commencement of the development shall occur until full details of the proposed access arrangement, in broad compliance with Drawing No. Figure 1 (Proposed

C124 Access Arrangement & Visibility Provision – Preliminary Layout) produced by The Hurlstone Partnership dated June 2021 have been submitted to and approved in writing by the Mineral Planning Authority. The development shall not be first brought into use until the access has been constructed and laid out in accordance with the approved details and shall be retained and maintained thereafter throughout the lifetime of the mineral extraction and site reclamation operations.

REASON: To ensure a safe and sufficient access arrangement is provided in the interests of highway safety.

- 13** No development within Phases 3 and 4 shall occur until full details of the proposed eastern and western vehicle crossing points, in broad compliance with Drawing No. Figure 2 (Proposed Temporary Signal Controlled Haul Road Crossings), produced by The Hurlstone Partnership dated June 2021 have been submitted to and approved in writing by the Mineral Planning Authority and thereafter constructed and laid out in accordance with the approved details. The eastern and western vehicle crossing points shall be retained and maintained thereafter throughout the lifetime of the mineral extraction and site reclamation operations.

REASON: To ensure a safe and sufficient access arrangement is provided in the interests of highway safety.

- 14** Other than operational movements associated with transportation between Phases 3 and 4 and the processing and stockpiling area (Phases 5a and 5b) which may use the Temporary Signal Controlled Haul Road Crossings shown on drawing ref: Figure 2 prepared by The Hurlstone Partnership Limited dated June 2021 all vehicular access and egress to and from the site shall be from the C124 Eastern Spine Road as indicated on drawing ref: Figure 1 prepared by The Hurlstone Partnership dated June 2021. No other access shall be used by vehicles entering or exiting the site. The Temporary Signal Controlled Haul Road Crossings shown on drawing ref: Figure 2 prepared by The Hurlstone Partnership dated June 2021 shall be used solely for the operational movements associated with transporting mineral from Phases 3 and 4 to the processing and stockpiling area (Phases 5a and 5b) and/or transporting inert infill material from the processing and stockpiling area (Phases 5a and 5b) to Phases 3 and 4 for placement.

REASON: To ensure that the development is carried out as proposed and the impacts are as assessed in the interests of highway safety and safeguarding local amenity.

- 15** The development shall be carried out in accordance with the submitted flood risk assessment (hydrogeological and hydrological environmental impact assessment

and flood risk assessment by GWP Consultants, dated October 2023, reference 211008 Version 04), and the following mitigation measures it details:

a) Compensatory storage for the bunds within the 1% AEP with an allowance for climate change shall be provided on a level for level basis, based on section 11.1.2 of the FRA and drawing no. ELBLCK2110B-19A and ELBLCK2110B-19B.

b) Floodplain compensation shall be undertaken prior to the construction of the bunds.

These mitigation measures shall be fully implemented in advance of the mitigation being required and subsequently in accordance with the scheme's timing/phasing arrangements. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

REASON: To prevent flooding elsewhere by ensuring that compensatory storage of flood water is provided.

- 16** No operations authorised by this permission shall take place outside of the following times:

07:00 hours to 18:00 hours Monday to Friday; and

08:00 hours to 13:00 hours Saturdays

There shall be no operations on Sundays or Bank or Public Holidays.

REASON: To protect local amenity.

- 17** Floodlights/Fixed Lighting shall not be illuminated outside of the approved hours of working listed in Condition 16 above (save for security lighting activated by unauthorised entry by persons or vehicles).

REASON: To minimise the nuisance and disturbances to surrounding area.

- 18** Any external floodlighting or other illumination shall be positioned so as not to cause glare to the users of nearby properties or land and users of the public highway.

REASON: To safeguard the amenity of users of nearby properties and land, for reasons of highway safety and to minimise the adverse environmental effects from lighting in the countryside.

- 19** Except for sand and gravels, no mineral, topsoil or subsoil shall be exported from the site.

REASON: To ensure the preservation of such materials for use in restoration and landscaping.

- 20** No minerals or processed minerals or inert infill material shall be stockpiled outside the areas designated as Processing plant area on Drawing Ref: ELBLCK2308 1a dated 29.02.2024.

REASON: To ensure the orderly operation of the site and to protect visual amenity

- 21** No materials shall be stockpiled or stored at a height greater than 5 metres when measured from adjacent ground level and shall then only be in the locations identified on Drawing Ref: ELBLCK2308 1a dated 29.02.2024.

REASON: To minimise the visual impact of the development in the interests of visual amenity.

- 22** No plant, equipment and machinery including vehicles shall be operated on the site unless equipped with effective silencing equipment that has been installed and is maintained at all times in accordance with the manufacturers, and/or supplier's instructions.

REASON: In the interests of neighbouring amenity.

- 23** No mobile plant or vehicles shall be operated on the site other than those fitted with 'white noise' reversing alarms.

REASON: To protect dwellings closest to the development site from noise intrusion

- 24** Except for temporary operations, the free field Equivalent Continuous Noise Level [LAeq, 1 hr] at noise sensitive properties adjoining the site shall not exceed the specified site noise limit as listed below. Measurements shall be taken in accordance with the monitoring scheme approved under Condition 26 below.

Location Site Noise Limit dB LAeq, 1 hr free field

1. Blackburr Farm 49
2. Second Chance 49
3. Round House Farm 48
4. Castle Eaton (Church) 46
5. Cox's Farm 51
- 5a. Four Acre Stables 51
6. Castle Eaton Bridge 46

REASON: To minimise the potential for noise disturbance.

- 25** For temporary operations, the free field Equivalent Continuous Noise Level [LAeq, 1 hr] at the noise sensitive properties listed in Condition 23 adjoining the site shall not exceed 70 dB LAeq 1hr. Temporary operations shall not exceed a total of eight weeks in any continuous duration 12-month duration. Measurements shall be taken in accordance with the monitoring scheme approved under Condition 26 below.

REASON: To minimise the potential for noise disturbance.

- 26** Prior to the commencement of soil stripping operations, a detailed Noise Monitoring Scheme shall be submitted for the written approval of the Mineral Planning Authority. The Scheme shall include but not be limited to the following details:

- a) The arrangements for the monitoring of noise emitted from the Site;

- b) The noise monitoring points;
- c) The equipment and methods to be used to monitor noise;
- d) The monitoring frequency and periods;
- e) The presentation of results to the Mineral Planning Authority;
- f) The steps to be taken in the event that the measured (or calculated) noise exceeds the permitted limits as defined in Condition 24 and 25; and,
- g) The steps to review the noise monitoring scheme from time to time.

Noise monitoring shall be carried out in accordance with the approved Scheme when the development hereby permitted is brought into use.

REASON: To minimise potential noise disturbance, to enable the effects of the development to be adequately monitored during the operations.

- 27** Soil management shall be carried out in accordance with the provisions set out in Section 5 of the Impact Assessment on Agricultural Land Quality and Soil Resources prepared by Askew Land and Soil Ltd dated 15 December 2021. All topsoil, subsoil and soil-forming material shall be retained on the site for the purposes of site restoration.

REASON: To protect the soil resources.

- 28** Within 12 months of the completion of infilling operations the site access provided under Condition 12 shall be removed in accordance with a scheme to be first submitted to and approved in writing by the Mineral Planning Authority. The scheme shall include details for reinstatement of all boundary treatment, hedgerows and verge and be in broad compliance with Drawing ref: 2831-5-2-DR-0001-S4-P10 dated 23/01/2024.

REASON: To ensure that the site is restored to an acceptable standard.

- 29** Within 12 months of the completion of infilling operations the crossing points provided under Condition 13 shall be removed in accordance a scheme to be first submitted to and approved in writing by the Mineral Planning Authority. The scheme shall include details for reinstatement of all boundary treatment,

hedgerows and verge and be in broad compliance with Drawing ref: 2831-5-2-DR-0001-S4-P10 dated 23/01/2024.

REASON: To ensure that the site is restored to an acceptable standard.

- 30** All restored areas of the Site shall undergo aftercare management for a 5-year period. The aftercare period for each part of the site will begin once the restoration condition for the relevant part of the site has been met, the date of which shall be notified in writing to the Mineral Planning Authority within 21 days.

REASON: To ensure that the site is restored to an acceptable standard.

- 31** Aftercare shall be carried out in accordance with Appendix 4: Five Year Aftercare and Drainage Scheme prepared by Askew Land & Soil Ltd dated 15 December 2021.

REASON: To comply with the requirements of Schedule 5 of the Town & Country Planning Act 1990 and to ensure that the reclaimed land is correctly husbanded and brought into a condition suitable for long term agricultural management with biodiversity enhancement.

Informative

- 32** This permission shall be read in conjunction with an Agreement made under Section 106 of the Town and Country Planning Act, 1990 as required by Condition 4 of this Permission relating to land at Blackburr Farm, Marston Meysey, SN6 6LG.

Informative

- 33** The work is to be carried out following the standards and guidelines for Strip, Map and Record excavations as set out by the Chartered Institute for Archaeologists (CIfA). The costs of this work are to be met by the applicant

Informative

- 34** The scheme required under Condition 10 shall include the following:

- Scaled plans showing the extent and layout of the buffer zone. The minimum 10-metre-wide buffer provision shall be measured from the top of the bank (where the bank meets the surrounding level of ground).
- Buffer zone protection measures (this could include physical fencing). These shall be specific to the species of livestock to be grazed on the land.
- Details of any proposed planting scheme (UK native species only, ideally of local provenance).
- Details of how the buffer will be managed over the longer term including adequate financial provision, management operations and schedule and named body responsible.

Informative

35 The Environmental Permitting (England and Wales) Regulations 2016 require a permit or exemption to be obtained for any activities which will take place:

- on or within 8 metres of a main river (16 metres if tidal)
- on or within 8 metres of a flood defence structure or culverted main river (16 metres if tidal)
- on or within 16 metres of a sea defence
- involving quarrying or excavation within 16 metres of any main river, flood defence (including a remote defence) or culvert
- in the floodplain of a main river if the activity could affect flood flow or storage and potential impacts are not controlled by a planning permission

For further guidance please visit <https://www.gov.uk/guidance/flood-risk-activities-environmental-permits> or contact our National Customer Contact Centre on 03708 506 506 (Monday to Friday, 8am to 6pm) or by emailing enquiries@environment-agency.gov.uk. or email Blandford.frap@environment-agency.gov.uk with details of permitted works and state your planning application reference.

The applicant should not assume that a permit will automatically be forthcoming once planning permission has been granted, and we advise them to consult with us at the earliest opportunity.

Informative

36 The infilling of waste associated with this development will require an Environmental Permit under the Environmental Permitting (England & Wales) Regulations 2016, from the Environment Agency, unless an exemption applies. The applicant is advised to contact the Environment Agency on 03708 506 506 for further advice and to discuss the issues likely to be raised. You should be aware that there is no guarantee that a permit will be granted. Additional 'Environmental

Permitting Guidance' can be found at: <https://www.gov.uk/environmental-permit-check-if-you-need-one>.

Parvis Khansari - Corporate Director, Place

NOTES

- 1 **Other Necessary Consents.** This document only conveys permission for the proposed development under Part III of the Town and Country Planning Act 1990 and the applicant must also comply with all the byelaws, regulations and statutory provisions in force in the area and secure such other approvals and permissions as may be necessary under other parts of the Town and Country Planning Act 1990 or other legislation.
 - 1.1 the need in appropriate cases to obtain approval under Building Regulations. **(The Building Regulations may be applicable to this proposal. Please contact the Council's Building Control team before considering work on site);**
 - 1.2 the need to obtain an appropriate order if the proposal involves the stopping up or diversion of a public right of way or other highway (including highway verge);
 - 1.3 the need to obtain a separate "Listed Building Consent" to the demolition, alteration or extension of any listed building of architectural or historic interest;
 - 1.4 the need to make any appropriate arrangements under the Highways Act 1980, in respect of any works within the limits of a highway. The address of the Highway Authority is County Hall, Trowbridge, BA14 8JD (It is the responsibility of the applicant to ascertain whether the proposed development affects any listed building or public right of way / other highway, including highway verge).
- 2 **Appeals.** If the applicant is aggrieved by the decision of the local planning authority to grant permission subject to conditions, he may appeal to the Secretary of State for the Environment in accordance with Section 78(1) of the Town and Country Planning Act 1990 within six months of the date of this decision. (Information and forms relating to the appeals process can be found at the Planning Portal - <http://www.planningportal.gov.uk/planning/appeals>).
- 3 **Climate Change.** Wiltshire Council acknowledges the climate emergency and is seeking to make the county carbon neutral. You are encouraged to include energy efficiency that exceeds building regulations and to meet residual energy demand through renewable energy and low-carbon technologies, including high levels of electric vehicle charging points. The developer is encouraged to contact the climate team to discuss this further. climate@wiltshire.gov.uk

DATED

between

WILTSHIRE COUNCIL

and

EARTHLINE LIMITED

Deed under Section 106 of the Town and Country Planning Act 1990
and all other enabling powers
relating to Blackburr Farm Marston Meysey Swindon Wiltshire SN6 6LG

Head of Legal Services
Wiltshire Council
County Hall
Bythesea Road
Trowbridge
Wiltshire BA14 8JN
Ref: IKEN154149

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SCHEDULES

SCHEDULE 1 DEVELOPER'S COVENANTS

SCHEDULE 2 COUNCIL'S COVENANTS

APPENDIX 1: SITE LOCATION PLAN

THIS DEED is dated

2025

BETWEEN

1. **WILTSHIRE COUNCIL** of County Hall Bythesea Road Trowbridge Wiltshire BA14 8JN (the “Council”);
2. **EARTHLINE LIMITED** incorporated and registered in England and Wales with company number 02534626 whose registered office address is at The Upper Lime Kiln Works Bytham Road Ogbourne St George Marlborough Wiltshire SN8 1TD (the “Developer”);

BACKGROUND

1. The Developer is the leasehold owner of the Land registered at the Land Registry under title numbers WT111415, WT111434, WT118742, WT118875, WT118888, WT118903, WT118945, WT274647, WT116475, shown for the purposes of identification only edged red on the plan at Appendix 1
2. The Council is the local planning authority for the purposes of the Act for the area in which the Land is situated
3. The Developer 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 without which the Planning Permission would not be granted
4. The provisions of this Deed are also being entered into by the Developer for the benefit of the MOD because of its interest in the aerodrome RAF Fairford nearby

NOW THIS DEED WITNESSES AS FOLLOWS:

1 DEFINITIONS

The definitions and rules of interpretation in this clause apply in this Deed:

“the Act”	means the Town and Country Planning Act 1990 (as amended)
“Bird Hazard Management Plan” (“BHMP”)	means the Bird Hazard Management Plan to be submitted by the Developer to the Council for its approval in conjunction with the MOD, the purpose of which (subject to any current statutory licencing or permit requirements relating to the control of wildlife) is to ensure that the Land once restored does not attract birds that may cause danger or inconvenience to aircraft and for the avoidance of doubt includes any subsequent amendments or variations to the Bird Hazard Management Plan as may be agreed between the parties in writing

“CIL Regulations”	means the Community Infrastructure Levy Regulations 2010
“Commencement of Development”	means the date on which any material operation as defined in section 56(4) of the Act forming part of the Development begins to be carried out and “Commencement” and “Commence Development” shall be construed accordingly
“Completion”	means the date of final completion of the restoration of the Land in accordance with the approved restoration scheme and “Complete” shall be construed accordingly
“Deed”	means this deed
“Development”	means any development permitted by the Planning Permission
“Director”	means the Corporate Director, Growth, Investment and Place or his appointed representative for the time being of the Council
“Land”	means the land at Blackburr Farm Marston Meysey Swindon Wiltshire SN6 6LG shown edged red on the site location plan referenced ELBLCK2110B-1 Rev b attached to this Deed at Appendix 1
“Land Compensation Act”	in relation to clause 11 means the Land Clauses Consolidation Act 1845 the Land Compensation Act 1961 the Compulsory Purchase Act 1965 the Land Compensation Act 1973 and the Planning and Compensation Act 1991 and includes the Human Rights Act 1998 and any variation or enactment of the Land Compensation Acts on a date on or after the date of execution of this deed which confers a right of compensation for the compulsory acquisition of land and/or the diminution in

	value of land as a result of the carrying out of or the use of public works
“Landscape and Ecological Management Plan”	means the landscape and ecological management plan to be submitted by the Developer to the Council for its approval as a condition of the Planning Permission
“MOD”	means the Secretary of State for Defence
“Planning Application”	means the planning application for planning permission for the extraction and processing of mineral and restoration using indigenous imported inert materials to agriculture with biodiversity enhancement registered by the Council on 8 February 2022 and allocated reference number PL/2022/00193
“Planning Permission”	means the planning permission for the Development that may be granted pursuant to the Planning Application
“Section 73 Permission”	means a planning permission granted by the Council pursuant to an application made under Section 73 of the Act or Section 73A of the Act in respect of the Planning Permission
“Statutory Undertaker”	has the meaning given to such term in the Act and for the avoidance of doubt, shall include any public gas transporter water or sewerage undertaker electricity supplier or public telecommunications operator or other utility operator
“Water Monitoring Scheme”	means the groundwater levels monitoring plan and baseline groundwater and surface water quality monitoring plan to be submitted by the Developer to the Council

for its approval as a condition of the Planning Permission

“Working Day”

means a day other than a Saturday or Sunday or public holiday in England and **Working Day** shall be construed accordingly

2 CONSTRUCTION OF THIS DEED

- 2.1 Words importing the masculine include the feminine and neuter gender and vice versa
- 2.2 Words importing the singular include the plural and vice versa
- 2.3 Words importing persons include companies corporations and vice versa and all such words shall be construed interchangeable in that manner
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation (including by becoming a successor in title) all their obligations can be enforced against all of them jointly and against each individually
- 2.5 Insofar as different parts of or interests in the Land are owned by different persons each person covenants with the Council and with one another to co-operate insofar as they are able to ensure that the covenants herein on behalf of the Developer are fulfilled as expeditiously as possible
- 2.6 The headings throughout this Deed are for convenience only and shall not be taken into account in the construction and interpretation of this Deed
- 2.7 Any reference to a clause paragraph schedule or plan is to one in or attached to this Deed and any reference to this Deed includes any schedule, plan, annexure or other attachment to this Deed
- 2.8 In the absence of contrary provision any reference to a statute or statutory instrument includes any statute or statutory instrument amending consolidating or replacing them respectively from time to time and for the time being in force and reference to a statute includes any statutory instrument direction or specification made or issued under the statute or deriving validity from it
- 2.9 References to any party to this Deed and the MOD shall include the successors in title to that party and to any deriving title through or under that party and successors to any statutory functions of the Council
- 2.10 Covenants to do or not to do an action shall include respectively a covenant to permit or not to permit that action to be done

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972, Section 93 Local Government Act 2003, Section 1 Localism Act 2011 and all other enabling powers and has been entered into by the Council pursuant to those powers
- 3.2 The covenants restrictions and requirements created by this Deed are planning obligations for the purposes of Section 106 of the Act to the intent that it shall bind the parties and their respective successors in title to each and every part of the Land and are enforceable by the Council as local planning authority and (for the avoidance of doubt) shall be enforceable by the MOD as a contractual obligation
- 3.3 It is acknowledged that the obligations contained in this Deed are:
- 3.3.1 necessary to make the Development acceptable in planning terms;
 - 3.3.2 directly related to the Development; and
 - 3.3.3 fairly and reasonably related in scale and kind to the Development in accordance with the requirements of Regulation 122 of the CIL Regulations

4 COMMENCEMENT

- 4.1 Save for the provisions of this clause 4.1 and clauses 7.5 and 14.1 of this Deed which shall take effect immediately the obligations in this Deed are (unless otherwise specified) conditional upon:
- 4.1.1 the grant of Planning Permission; and
 - 4.1.2 Commencement of Development.
- 4.2 This Deed shall cease to have any effect (insofar only as it has not already been complied with) if prior to Commencement of Development the Planning Permission shall expire or be quashed modified or revoked without the consent of the Developer

5 THE DEVELOPER'S COVENANTS

- 5.1 The Developer agrees to undertake and covenant with the Council and the MOD to observe and perform the obligations set out in Schedule 1 of this Deed

6 THE COUNCIL'S COVENANTS

- 6.1 The Council agrees to undertake and covenant with the Developer to observe and perform the obligation set out in Schedule 2 of this Deed

7 GENERAL

The parties agree that:

- 7.1 Nothing in this Deed constitutes an obligation to grant planning permission or any other approval consent or permission required from the Council in the exercise of any other statutory function and nothing in this Deed constitutes and such approval, consent or permission
- 7.2 Aside from the MOD, which can enforce this Deed under the Contracts (Rights of Third Parties) Act 1999 as if it were a party, this Deed does not and is not intended to confer a benefit on a third party within the meaning of the Contracts (Rights of Third Parties) Act 1999 (other than any replacement body of the Council)
- 7.3 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land or that part of the Land in relation to which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest
- 7.4 Insofar as any clause or clauses or any part thereof of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed
- 7.5 The Developer shall pay to the Council its proper and reasonable legal costs incurred in negotiating preparing and entering into this Deed upon completion of this Deed
- 7.6 This Deed shall be registerable as a local land charge by the Council
- 7.7 Where the agreement approval consent or expression of satisfaction is required by the Developer from the Council under the terms of this Deed such agreement approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement consent approval or expression of satisfaction shall be given in writing on behalf of the Council by the Director
- 7.8 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed
- 7.9 Nothing contained or implied in this Deed shall prejudice affect fetter or restrict the rights powers duties and obligations of the Council in the exercise of its functions as Local Planning Authority or any other statutory function rights duties powers and obligations under all public and private statutes byelaws and regulations
- 7.10 This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the Courts of England
- 7.11 In the event the Council grants a subsequent Section 73 Permission or if a Section 73 Permission is granted following an appeal under Section 78 of the Act, any such Section 73 Permission shall be deemed to be granted subject to the covenants and provisions of this Deed and to apply in equal terms to it save that where the Council in its determination of the application for a Section 73 Permission requires consequential amendments to this Deed to

reflect the impact of the application for a Section 73 Permission in such circumstances a separate deed pursuant to section 106 of the Act will be required to secure relevant planning obligations relating to the Section 73 Permission

8 NOTICES

- 8.1 Any notice or other communication given or made under this Deed shall be in writing and (unless otherwise herein provided) shall be deemed to be sufficiently served if sent by pre-paid first class post or other next working day delivery service to the address of the party specified in this Deed or to such other address (in substitution thereof) as may be notified in writing by that party from time to time for this purpose and in the case of the Council shall be addressed to the Head of Legal Services and quote reference [Iken 154149] and copied to the Section 106 and Community Infrastructure Levy Officer

9 WAIVER

- 9.1 No waiver (whether expressed 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 for acting upon any subsequent breach or default

10 CHANGE IN OWNERSHIP

- 10.1 The Developer agrees with the Council to give the Council immediate written notice of any change of any of its interests in the Land occurring before all the obligations under this Deed have been discharged. Such notice to give details of the new party's name and registered office (if a company or usual address if not) together with the relevant area of the Land or unit of occupation by reference to a plan

11 INDEMNITY

- 11.1 The Developer hereby undertakes and agrees with the Council that in the event of any claim or claims being made against the Council for any compensation (including any claim arising under the Land Compensation Act), damage, costs, charges and / or any other payment arising in connection with or incidental to or in consequence of any failure on the part of the Developer to comply with its obligations under this Deed the Developer will hold the Council fully indemnified from and against each and every said claim
- 11.2 The Developer shall not be liable under this clause to indemnify the Council in respect of any claim only insofar as and to the extent that the said claim is found to have resulted from the negligent act or omission of the Council or its servants or agents save that for the purpose of

this clause the Developer or persons acting on behalf of the Developer shall not be regarded as servants or agents of the Council

12 EXEMPTIONS FROM THIS DEED

12.1 The obligations contained in this Deed shall not be binding upon nor enforceable against:

12.1.1 any mortgagee or chargee of the Land (unless and until they become a mortgagee or chargee in possession of the Land);

12.1.2 any Statutory Undertaker who acquires an interest in the Land or any part of the Land for the purpose of undertaking its statutory functions and as a consequence of the release given in this clause this Deed may be modified varied or released without the consent or approval of any such Statutory Undertaker without them being a party to any document or deed required to effect such modification variation or release but such document or deed shall take effect as if they had been a party to such document or deed

13 DISPUTE PROVISIONS

13.1 In the event that there shall be any dispute between the parties to this Deed in respect of any matter arising under the terms of this Deed and which dispute the parties are unable to resolve any of the parties may refer the matter to an Expert (being a person as described below) for determination SAVE THAT in no case shall any point be referred to the Expert which is a point that is in or relates to any matter in the Planning Permission itself (where the Council's determination shall be final)

13.2 The Expert shall be a person with knowledge and expertise in the subject matter of the dispute and in the event that the parties cannot agree the identity of the person to be appointed as Expert pursuant to this clause within fifteen (15) Working Days of one party's notification to the other party of that party's decision to refer the matter to an Expert either party may seek nomination of an Expert by the president for the time being of the appropriate professional body (whose nomination shall be binding on the parties)

13.3 The Expert shall issue a decision within thirty (30) Working Days of appointment pursuant to clause 13.1 or 13.2, such decision shall be binding on the parties (save in the case of manifest error or fraud)

13.4 The costs of the Expert shall be in the award of the Expert

13.5 The Expert shall (save with the agreement of both parties) be restricted to settling disputes and he shall give the parties the opportunity to make representations and counter-representations

13.6 The provisions of this clause 13 do not apply in the case of any dispute or difference arising in connection with any matter covered by this Deed to the extent that the same is a dispute or difference as to a matter of law or concerning the interpretation of this Deed

14 **DELIVERY**

- 14.1 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

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it

The common seal of **WILTSHIRE COUNCIL**
was affixed to this document in the presence
of:

Authorised signatory

Signed as a deed by **EARTHLINE
LIMITED** acting by

.....
a director in the presence of:-

Schedule 1 – Developer’s Covenants

The Developer covenants with the Council and the MOD:

1. not to Commence Development until the Developer has submitted the BHMP to the Council for approval, such BHMP to provide for the following:
 - a. To reduce infringements of critical airspace by species that threaten operations at RAF Fairford
 - b. Ensure that adequate systems are in place to define roles, responsibilities, and procedures for managing bird strike risk
 - c. Define the methods by which bird hazards are managed; and
 - d. Outline the processes involved in monitoring bird strike risk and the ongoing evaluation of the BHMP
2. subject to paragraph 4 of this Schedule, to implement the BHMP and adhere to the BHMP from the date of Commencement of Development until such time as the Council has provided written consent (such consent not to be unreasonably withheld) that the BHMP is no longer required for the purposes set out in this Deed
3. not to cause or permit anything to be done or not done on the Land which is incompatible with or which may otherwise adversely affect the implementation or observance of the BHMP
4. in the event that the aerodrome RAF Fairford ceases to operate as an aerodrome the Developer shall not be required to comply with the obligations set out in paragraphs 1, 2 and 3 above which shall be deemed to be discharged.

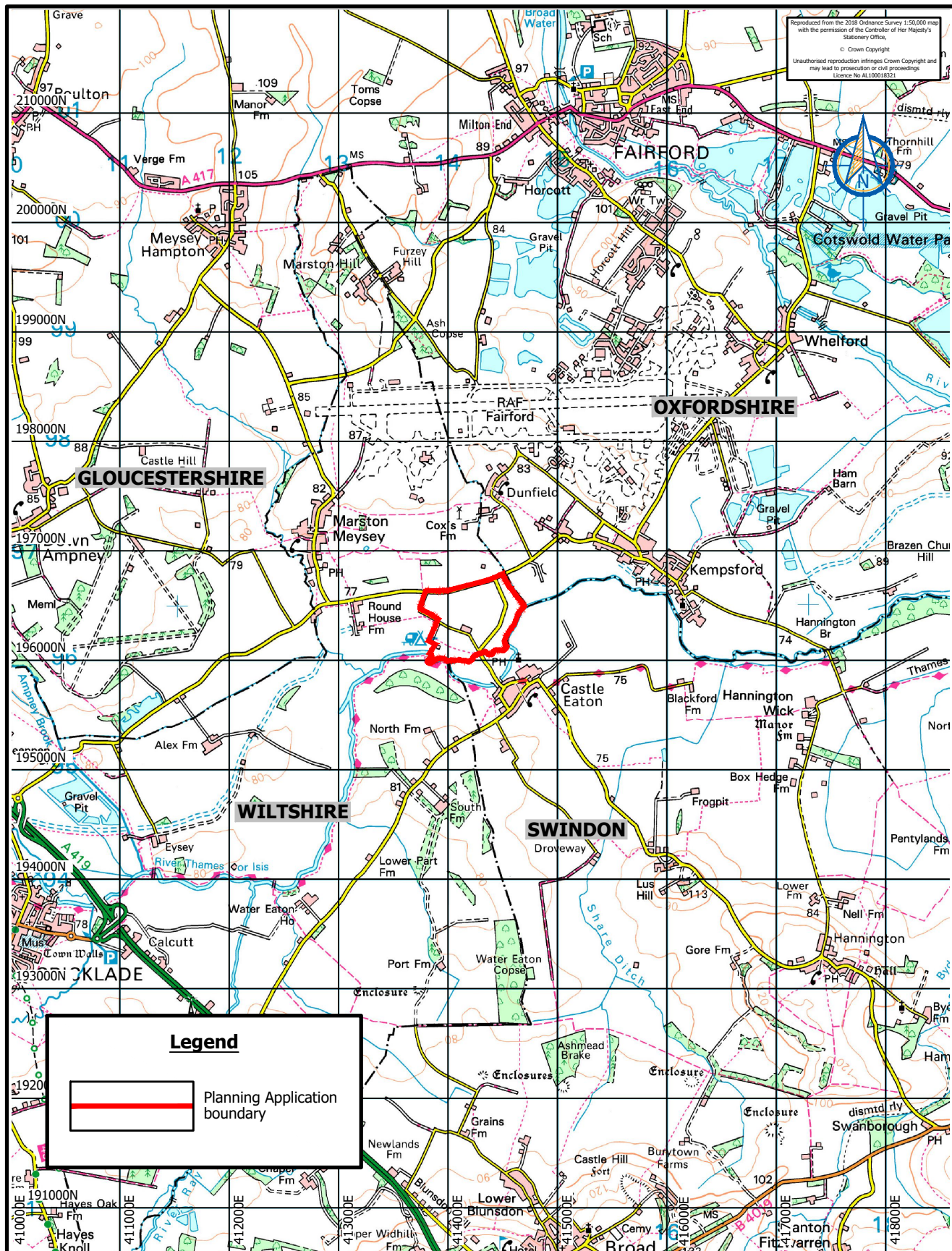
The Developer covenants with the Council:

5. to implement the Water Monitoring Scheme and adhere to the Water Monitoring Scheme from the date of Commencement of Development or until such time as the Council has provided written consent (such consent not to be unreasonably withheld) that the Water Monitoring Scheme is no longer required for the purposes set out in this Deed
6. to implement the Landscape and Ecological Management Plan and adhere to the Landscape and Ecological Management Plan from the date of Commencement of Development to the date thirty (30) years after the date of Completion

Schedule 2 – Council’s Covenants

1. Where the approval of the BHMP is required by the Developer from the Council in consultation with the MOD under paragraph 1 of Schedule 1 to this Deed such approval shall not be unreasonably withheld or delayed

Appendix 1: Site location plan (drawing number ELBLCK2110B-1 Rev b



Version	Revision and compilation notes	Date	Client				
a	Issued	12.10.2021	Earthline Limited				
b	Issued	08.08.2023	Project				
			Blackburr Farm: EIA and FRA				
 GWPconsultants Upton House Market Street, Charlbury Oxfordshire OX7 3PJ United Kingdom tel +44 (0)1608 810374 fax +44 (0)1608 810093 e-mail info@gwp.uk.com web www.gwp.uk.com GWP Consultants LLP. Registered No. OC326183. Registered Office: Upton House, Market Street, Charlbury, Oxfordshire OX7 3PJ, UK earth & water resources			Site location				
			Date	Drawn	Checked	Scale	
			08.08.2023	GS/EMB	CC	1:50,000 at A4	
			Drawing Ref	Drawing No		Version	
			ELBLCK2110B	1		b	