

**DATED** \_\_\_\_\_ **2023**

(1) LANCASHIRE COUNTY COUNCIL

(2) CULZEAN W2E LIMITED

(3) SIMONSWOOD PROPERTIES LIMITED

(4) NATIONAL WESTMINSTER BANK PLC

(5) PEEL L&P (PORTS) LIMITED

(6) LIVERPOOL TIMBER IMPORTERS STORAGE COMPANY LIMITED

(7) DOLLARBILL LIMITED

**Commented [A1]:** If land is still subject to a charge Natwest will need to enter the s106 to consent to its terms - we have included language which limits the Mortgagee's liability

**Commented [A2]:** INCLUDED as owners of the estate road over which works are being carried out

Usually the landowners would enter into the s106 to consent to its terms and to ensure that the road repair obligations run with the land (i.e. the estate road)

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**SECTION 106 AGREEMENT**  
relating to  
development of land to at Simonswood  
Industrial Estate, Stopgate Lane, Kirkby  
LCC/2022/0003

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Pinsent Masons

## CONTENTS

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	Page
1 DEFINITIONS AND INTERPRETATION	2
2 INTERPRETATION	4
3 LEGAL BASIS	5
4 CONDITIONALITY	5
5 THE OWNERS' COVENANTS	5
6 NOTICES	5
7 THIRD PARTY RIGHTS	6
8 LOCAL LAND CHARGE	6
9 SEVERABILITY	6
10 LIABILITY LIMITATIONS AND RELEASES	6
11 CHANGE IN OWNERSHIP	7
12 NO FETTER ON FUTURE DEVELOPMENT	7
13 SECTION 73 PERMISSIONS	7
14 INTEREST	7
15 VALUE ADDED TAX	7
16 DISPUTE RESOLUTION	7
17 LEGAL COSTS	8
18 APPROVALS AND RESPONSES	9
19 DUTY TO ACT REASONABLY AND IN GOOD FAITH	9
20 MORTGAGEE'S CONSENT	9
21 JURISDICTION	9
22 DELIVERY	9
SCHEDULE 1 – THE SITE	10
SCHEDULE 2 – OWNERS' COVENANTS	13

THIS DEED is made on

2020

**BETWEEN:-**

- (1) **LANCASHIRE COUNTY COUNCIL** of P.O. Box 100 County Hall Preston Lancashire PR1 0LD (the "**Council**"); and
- (2) **CULZEAN W2E LIMITED** (Co. Regn. No. 11439784) of Chadwick House Warrington Road, Birchwood, Warrington, Cheshire, England, WA3 6AE (the "**Applicant**");
- (3) **SIMONSWOOD PROPERTIES LIMITED** (Co. Regn. No. 04646763) of 1 Abbots Quay, Monks Ferry, Birkenhead CH41 5LH (the "**First Owner**")
- (4) **[PEEL L&P (PORTS) LIMITED]**(Co. Regn. No. 05892787) of Venus Building 1 Old Park Lane, Traffordcity, Manchester, England, M41 7HA (the "**Second Owner**")
- (5) **[LIVERPOOL TIMBER IMPORTERS STORAGE COMPANY LIMITED]** [ *no details available on Companies House* ] (the "**Third Owner**")
- (6) **[DOLLARBILL LIMITED]** (Co. Regn. No. 02346437) of 72 New Cavendish Street, London W1G 8AU (the "**Fourth Owner**")
- (7) **[NATIONAL WESTMINSTER BANK PLC]** (Co. Regn. No. 929027) care of Credit Documentation Department, 8th Floor, 1 Hardman Boulevard, Manchester M3 3AQ (the "**Mortgagee**")

(collectively the "**Parties**")

**WHEREAS:-**

- (A) The Council is the local planning authority for the purposes of the Act for the area in which the Application Site is situated.
- (B) The Applicant submitted the Planning Application.
- (C) The Applicant intends to develop the Site and Industrial Estate Road in accordance with the Planning Permission.
- (D) The First Owner is the registered proprietor with absolute title of part of the Site registered at HM Land Registry under Title Number [LAN174549] and as further detailed in Schedule 1.
- (E) [The Mortgagee has a registered charge dated 2 August 2017 over the First Owner's interest in the Site and enters into this Deed to give consent to its terms.]
- (F) [The Second Owner is the registered proprietor with title absolute of part of the Industrial Estate Road registered at HM Land Registry under Title Number [ MS620567] and as further detailed in Schedule 1.]
- (G) [The Third Owner is the registered proprietor with title absolute of part of the Industrial Estate Road registered at HM Land Registry under Title Number [ LA800584] and as further detailed in Schedule 1.]
- (H) [The Fourth Owner is the registered proprietor with title absolute of part of the Industrial Estate Road registered at HM Land Registry under Title Number [LA762226] and as further detailed in Schedule 1.]
- (I) On 7 December 2022 the Council resolved that it was minded to approve the Development subject to the completion of this Deed.
- (J) The Parties have given due consideration to the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and agree that the planning obligations

**Commented [A4]:** Main Development Site title LAN174549 is backdated to 24.1.22

Applicant to explain up to date title position

**Commented [A5]:** currently NATIONAL WESTMINSTER BANK PLC (Co. Regn. No. 929027) of Credit Documentation Department, 8th Floor, 1 Hardman Boulevard, Manchester M3 3AQ has a registered charge dated 2 August 2017 over the Site - has this been discharged?

contained in this Deed are necessary to make the Development acceptable in planning terms, directly related to the Development and fairly and reasonably related in scale and kind to the Development.

IT IS AGREED as follows:-

1. **DEFINITIONS AND INTERPRETATION**

1.1 In this Deed, except where a different interpretation is necessary in the context, the words and expressions set out below shall have the following meanings:-

"Act"	means the Town and Country Planning Act 1990
"Application Site"	means the land in respect of the which the Planning Application has been submitted and which will benefit from the Planning Permission once granted as is more particularly described in Schedule 1 and shown shaded yellow on Plan 2
"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 other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly
"Development"	means demolition of existing building and erection of purpose built building (and ancillary structures) to house high treatment facility for the management of medical waste on the Site and as more particularly set out in the Planning Application
"Dispute Resolution Procedure"	means the procedure set out in at Clause 16
"Index"	<p>means the Building Cost Information Services (BCIS) All-in Tender Price Index published by the Royal Institute of Chartered Surveyors or any successor body (or such other index replacing the same) in accordance with the following formula</p> $A \times B/C = D$ <p>Where:</p> <p>A = the contribution payable in accordance with this Deed</p> <p>B = the figure shown in the BCIS All-in Tender Price Index for the period immediately prior to the date of payment under this Deed</p> <p>C = the figure shown in the BCIS All-in Tender Price Index for the period last published before the date of this Deed; and</p>

Commented [A6]: Awaiting confirmation of relevant index (if any)

	D = the recalculated sum under this Deed
	and <b>"Index Linked"</b> should be construed as adjusted by reference to this Index
<b>"Industrial Estate Road"</b>	means that part of the internal estate access road shown edged red on Plan 3 [comprising the land owned by the Second Owner, Third Owner and Fourth Owner against which this Deed may be enforced]
<b>"Interest"</b>	means interest at 4 per cent above the base lending rate of Barclays Bank PLC from time to time
<b>"Occupation"</b>	means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and <b>"Occupied"</b> shall be construed accordingly
<b>"Owners"</b>	means the First Owner, the Second Owner, the Third Owner and the Fourth Owner
<b>"Parties"</b>	means the parties to this Deed
<b>"Plan 1"</b>	means the plan showing the Application Site appended to this Deed and marked Plan 1
<b>"Plan 2"</b>	means the plan showing the Site appended to this Deed and marked Plan 2
<b>"Plan 2"</b>	means the plan showing the Industrial Estate Road appended to this Deed and marked Plan 2
<b>"Planning Application"</b>	means the full planning application made for the Development on the Application Site which has been allocated the Council's reference number LCC/2022/0003
<b>"Planning Permission"</b>	means the planning permission for the Development to be granted by the Council pursuant to the Planning Application
<b>"Road Repair Scheme"</b>	means a written scheme setting out the: <ul style="list-style-type: none"> <li>(a) scope;</li> <li>(b) specification;</li> <li>(c) programme;</li> <li>(d) drainage details;</li> <li>(e) proposals for ongoing management and maintenance;</li> <li>(f) proposals for funding ongoing management and maintenance;</li> </ul>

Commented [A7]: Keep under review

	for/in connection with the resurfacing, repair and improvement of the Industrial Estate Roads to be approved by the Council under paragraph 2 of Schedule 2
<b>"Road Repair Works"</b>	means the works prescribed by the Road Repair Scheme approved under paragraph 2 of Schedule 2
<b>"Section 73 Permission"</b>	means a planning permission granted pursuant to an application submitted under Section 73 of the Act to carry out Development otherwise than in accordance with the conditions attached to the Planning Permission
<b>"Signage"</b>	3 x signs providing information on the traffic regulation rules applicable to the public highway in the vicinity of the Development
<b>"Signage Contribution"</b>	Means the sum of £1065 Index Linked to be paid to the Council towards the Signage
<b>"Site"</b>	means that part of the Application Site owned by the First Owner and the land against which this Deed may be enforced as is more particularly described in Schedule 1 and shown shaded yellow on Plan 2
<b>"Utilities"</b>	means mains services including gas, electricity, potable water, foul and surface water drainage, data cables and telecommunications
<b>"Working Days"</b>	means Monday to Friday inclusive but excluding days which are public holidays (Christmas Eve, Christmas Day, Boxing Day, Good Friday, Easter Monday and any other statutory bank holiday)

## 2. INTERPRETATION

- 2.1 Where in this Deed reference is made to any clause, paragraph or Schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or Schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably 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 all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all Instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that act or deriving validity from it.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council (in its capacity as local planning authority) the successors to their respective statutory functions.

### 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 1 of the Localism Act 2011 and all other powers so enabling.
- 3.2 To the extent that they fall within the terms of section 106 of the Act, the covenants, restrictions, obligations and requirements contained in this Deed are planning obligations for the purposes of section 106 of the Act and are enforceable by the Council against the Owners.
- 3.3 The obligations contained in the Schedules to this Deed are planning obligations for the purposes of section 106 of the Act and are entered into by the Owners with the intention that they bind the interests held by those persons in the Site and [and the Industrial Estate Roads and] their respective successors and assigns.

Commented [A8]: Keep under review

### 4. **CONDITIONALITY**

- 4.1 Subject to Clause 4.2 this Deed is conditional upon Commencement of Development.
- 4.2 The following clauses and paragraphs shall come into effect on the date of this Deed:-
- 4.2.1 Clause 3 – Legal Basis
  - 4.2.2 Clause 6 – Notices
  - 4.2.3 Clause 8 – Local Land Charge
  - 4.2.4 Clause 11 – Change in Ownership
  - 4.2.5 Clause 17 – Costs
  - 4.2.6 Clause 21 – Jurisdiction
  - 4.2.7 Clause 22 – Delivery

### 5. **THE OWNERS' COVENANTS**

- 5.1 The Owners covenant with the Council and binds its interest in the Site as set out in Schedule 2 to this Deed in relation to the Development.
- 5.2 The Owners covenant with the Council to give at least 5 Working Days written notice to the Council of the intended date of Commencement of Development.

### 6. **NOTICES**

- 6.1 Where the agreement, approval, consent or expression of satisfaction is required by the Owners from the Council under the terms of this Deed such agreement, approval, consent or expression of satisfaction shall be given on behalf of the Council by the Director of Planning and Environment or person authorised on his behalf.
- 6.2 Any notice, demand or any other communication served under this Deed will be effective only if delivered by hand or sent by first class post, pre-paid or recorded delivery and is to be sent to the address set out at the beginning of this Deed or to such other address as one party may notify in writing to the others at any time as its address for service.
- 6.3 Notices to any successor in title to the Owners shall be sent to that successor in title's last known address.

- 6.4 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:-
- 6.4.1 if delivered by hand, at the time of delivery;
- 6.4.2 if sent by post, on the second working day after posting; or
- 6.4.3 if sent by recorded delivery, at the time delivery was signed for.
- 6.5 If a notice, demand or any other communication is served after 4.00 pm on a Working Day, or on a day that is not a Working Day, it is to be treated as having been served on the next Working Day.
- 6.6 For the avoidance of doubt, where proceedings have been issued in the Courts of England, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.
7. **THIRD PARTY RIGHTS**
- 7.1 No provisions of this deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by anyone other than the Parties and their successors in title.
8. **LOCAL LAND CHARGE**
- 8.1 This Deed shall be registrable as a local land charge by the Council.
- 8.2 Following the performance and satisfaction of any obligation contained in this Deed the Council shall on the Owners' request place a note on the entry made in the Register of Local Land Charges in respect of this Deed to that effect.
9. **SEVERABILITY**
- 9.1 Insofar as any clause or clauses 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.
10. **LIABILITY LIMITATIONS AND RELEASES**
- 10.1 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed (with all appeal proceedings exhausted), revoked or otherwise withdrawn or (without the consent of the Owners) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 10.2 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 Site or the part in respect of which such breach relates but without prejudice to liability for any subsisting breach arising prior to parting with such interest. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of this clause.
- 10.3 This Deed shall not be enforceable against:-
- 10.3.1 utility companies and statutory undertakers in relation to any parts of the Site acquired by them for electricity sub-stations gas governor stations or pumping stations or any of the operational functions of such companies; and
- 10.3.2 anyone whose only interest in the Site or any part of it is in the nature of the benefit of an easement or covenant.



**11. CHANGE IN OWNERSHIP**

- 11.1 Subject to Clause 11.2, the Owners shall notify the Council within 20 Working Days of any change in ownership of any of their interests in the Site occurring before all the obligations under this Deed have been discharged.
- 11.2 The notice under Clause 11.1 must contain details of the transferee's full name and registered office (if a company, or usual address if not) together with a plan showing the area of the Site or unit of occupation purchased.
- 11.3 No notice under Clause 11.1 needs to be given in respect of any transfer of part of the Site to a statutory undertaker or other person for the supply of Utilities or public transport services.

**12. NO FETTER ON FUTURE DEVELOPMENT**

- 12.1 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

**13. SECTION 73 PERMISSIONS**

- 13.1 If the Council grants a 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 where the Council in its determination of the application for a Section 73 Permission acting reasonably indicates that consequential amendments are required to this Deed to reflect the impact of the application for a Section 73 Permission and 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
- 13.2 It is hereby agreed that where conditions attached to one or more of the planning permissions comprising the Planning Permission or a Section 73 Permission have been discharged or partially discharged, the equivalent conditions in subsequent planning permissions comprising the Planning Permission or a subsequent Section 73 Permission shall also be treated as being discharged or (as applicable) partially discharged in respect of those subsequent Planning Permissions and/or Section 73 Permissions unless the Council shall notify the Owners that the Council considers that such previous discharges do not adequately discharge conditions on subsequent planning permissions comprising the Planning Permission or subsequent Section 73 Permissions due to changes in circumstances PROVIDED THAT where any planning permissions comprising the Planning Permission, or any subsequent Section 73 Permissions state on their face those conditions that are deemed to have been discharged to date by any previous permissions comprising the Planning Permission or a previous Section 73 Permission, this shall constitute a definitive statement by the Council of conditions that are considered to be discharged in respect of those previous permissions.

**14. INTEREST**

If any payment due by the Owners under this Deed is paid over 20 Working Days late then Interest will be payable from the date payment was due to the date of actual payment.

**15. VALUE ADDED TAX**

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

**16. DISPUTE RESOLUTION**

- 16.1 Subject to Clause 16.9, if any dispute arises relating to or arising out of the terms of this Deed, either Party may give to the other written notice requiring the dispute to be determined under this Clause 16. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.

- 16.2 For the purposes of this Clause 16 a "**Specialist**" is a person qualified to act as an expert in relation to the dispute having not less than 10 years' professional experience in the area to which the dispute relates.
- 16.3 The Specialist shall be appointed by agreement between the Parties or (if within 10 Working Days after service of the notice referred to in Clause 16.1 the Parties have been unable to so agree then (on the application of any of the Parties) the provisions of paragraph 16.4 shall apply
- 16.4 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either Party to the President for the time being of the Law Society (or other appropriate President of a professional institute with expertise in the relevant discipline as agreed between the parties in dispute) who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under Clause 16.5.
- 16.5 Any dispute over the identity of the Specialist is to be referred at the request of either Party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the parties cannot agree the identity of the organisation, then the Specialist is to be nominated by the President for the time being of the Chartered Institute of Arbitrators (or other appropriate President of a professional institute with expertise in the relevant discipline as agreed between the parties in dispute).
- 16.6 The Specialist is to act as an independent expert and:-
- 16.6.1 each Party may make written representations within 10 Working Days of his appointment and will copy the written representations to the other Party;
- 16.6.2 each Party is to have a further 10 Working Days to make written comments on the other's representations and will copy the written comments to the other Party;
- 16.6.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;
- 16.6.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross-examine each other;
- 16.6.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and
- 16.6.6 the Specialist is to use all reasonable endeavours to publish his decision within 30 Working Days of his appointment.
- 16.7 Responsibility for the costs of referring a dispute to a Specialist under this Clause 16, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any Party in relation to a dispute, will be decided by the Specialist.
- 16.8 The Specialist's decision will (save in the case of fraud or manifest error) be final and binding on the Parties.
- 16.9 This Clause 16 does not apply to disputes in relation to matters of law or the construction or interpretation of this Deed which will be subject to the jurisdiction of the courts of England.
17. **LEGAL COSTS**
- The Applicant shall pay the Council's reasonable legal costs in connection with the negotiation and completion of this Deed prior to the completion of this Deed.

18. **APPROVALS AND RESPONSES**

18.1 Where the agreement, approval, consent, confirmation or expression of satisfaction is required by the Owners from the Council under the terms of this Deed such agreement, approval, consent, confirmation or expression of satisfaction must be in writing and shall not be unreasonably withheld or delayed.

18.2 Where it is provided in this Deed that any document or other matter is to be agreed or approved by any of the Parties, the relevant provision shall be deemed to be subject to a proviso that the Party in receipt of the submission of the matter to be approved or agreed shall proceed expeditiously to consider such submission and if agreement is not reached or the matter is not agreed or approved then the matter may be referred to a Specialist for determination pursuant to the Dispute Resolution Procedure.

19. **DUTY TO ACT REASONABLY AND IN GOOD FAITH**

19.1 The Parties agree with one another to act reasonably and in good faith in the fulfilment of the obligations in this Deed.

19.2 In the event that any part of the Signage Contribution have not been expended by the Council at the expiration of the 10<sup>th</sup> (tenth) anniversary of the date of receipt thereof by the Council then the Council shall repay to the person who paid the said contribution or the balance thereof together with any interest that has accrued against the amount to be repaid.

20. **[MORTGAGEE'S CONSENT**

The Mortgagee acknowledges that this Deed has been entered into by the First Owner with its consent and that the Site shall be bound by this Deed and accordingly its security over the First Owner's interest in the Site shall take effect subject to this Deed **PROVIDED THAT** the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site (or part thereof) and in which case it will also be bound by the covenants, restrictions and obligations in the Deed as if it were a person deriving title from the First Owner]

21. **JURISDICTION**

This Deed is governed by and interpreted in accordance with the laws of England.

22. **DELIVERY**

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.

**EXECUTED AS A DEED** by the parties on the date which first appears on this Agreement.

**SCHEDULE 1**  
**THE APPLICATION SITE**

The land with the benefit of the Planning Permission as shown edged red on **Plan 1** below:



### THE SITE

Freehold property registered at the Land Registry under title number LAN174549 and known as Units 2, 6 and 7 Simonswood Industrial Estate, Stopgate Lane, Kirkby as shown shaded yellow on **Plan 2** below.

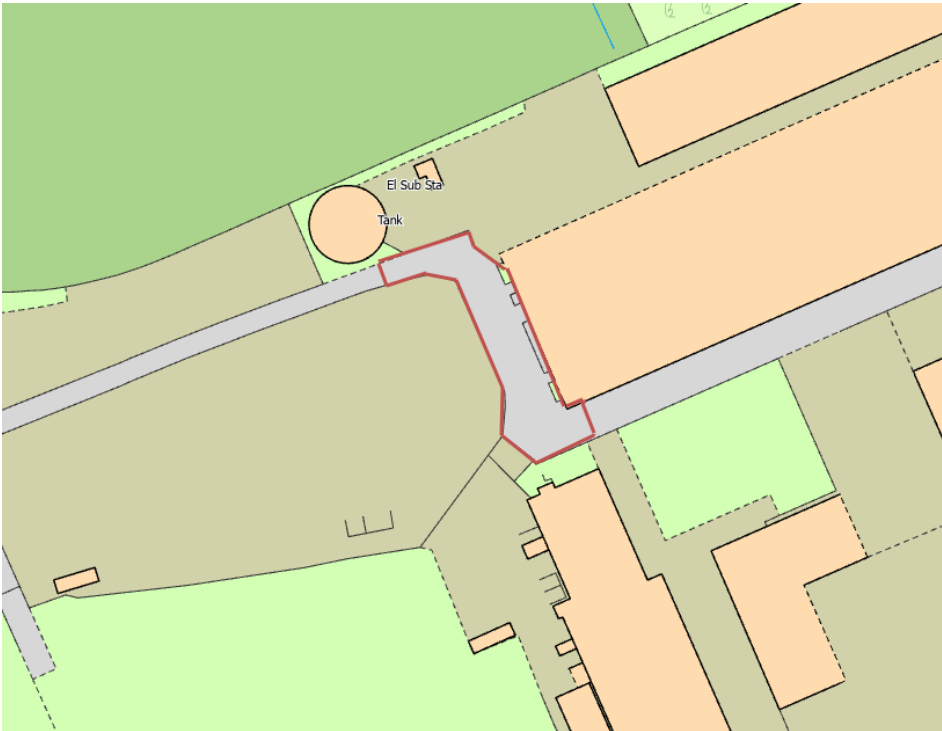
#### DRAFT Plan 2:



### THE INTERNAL INDUSTRIAL ESTATE ROADS

The Industrial Estate Roads serving the Site as shown edged red on **Plan 3** below:

**DRAFT Plan 3:**



## **SCHEDULE 2**

### **1. SIGNAGE CONTRIBUTION**

#### **1.1 The Owners covenant with the Council:-**

- 1.1.1 To pay the Signage Contribution Index Linked to the Council prior to Commencement of Development;
- 1.1.2 Not to Commence the Development until the Signage Contribution Index Linked has been paid to the Council

### **2. ROAD REPAIR SCHEME**

#### **2.1 The Owners covenant with the Council:-**

- 2.1.1 To submit to and obtain the Council's written approval of the Road Repair Scheme prior to Commencement of Development;
- 2.1.2 Not to Commence Development unless and until it has obtained the Council's written approval of the Road Repair Scheme submitted pursuant to paragraph 2.1.1;
- 2.1.3 To carry out the Road Repair Works in accordance with the approved Road Repair Scheme prior to Commencement of the Development;
- 2.1.4 Not to Commence the Development unless and until Road Repair Works have been completed in accordance with the approved Road Repair Scheme;
- 2.1.5 To maintain and manage the Road Repair Works in accordance with the approved Road Repair Scheme for the lifetime of the Development

THE COMMON SEAL of **LANCASHIRE**  
**COUNTY COUNCIL** was hereunto affixed  
In the presence of:-

)  
)  
)  
Authorised Signatory

**EXECUTED** as a Deed (but not delivered  
until dated) by **CULZEAN W2E LIMITED**  
acting by two Directors or a Director  
and the Secretary:-

)  
)  
)  
)  
)  
Director  
  
Director/Secretary

**EXECUTED** as a Deed (but not delivered  
until dated) by **SIMONSWOOD PROPERTIES**  
**LIMITED** acting by two Directors or a Director  
and the Secretary:-

)  
)  
)  
)  
)  
Director  
  
Director/~~Secretary~~

**Commented [A9]:** Insert exec blocks for Natwest, Peel and Liverpool etc. as applicable