# Planning Obligation Agreement under Article 25 of the Planning and Building (Jersey) Law 2002

relating to the development of Maison de Ville, La Pouquelaye, St. Helier, JE2 3ZL

Dated

2300 March

2018

The Chief Officer for the Environment (1)

Patrick Freeley House Limited (2)

#### **PARTIES**

- The Chief Officer for the Environment of States Offices, South Hill, St Helier, Jersey JE2 4US ("the Chief Officer");
- (2) Patrick Freeley House Limited ("the Owner") of 13-14 Esplanade, St Helier, Jersey JE1 1EE

## RECITALS

- 1 The Owner warrants that it is the owner in perpetuity (à fin d'héritage) of the Site.
- With the agreement of the Owner, an application (accorded the reference P/2017/1176) for planning permission for the Development has been submitted by Dandara Jersey Limited.
- 3 Having regard to the purposes of the Law the Island Plan 2011 and all other material considerations the Chief Officer is minded to approve the grant of planning permission for the Development subject to the prior completion of this Agreement.
- 4 The parties hereto have agreed to enter into this Agreement in order to secure the planning obligations contained herein.
- 5 The parties acknowledge that this Agreement is legally binding.
- 6 This Agreement shall be construed so as to give effect to the purpose and intention of the Law.

# NOW THIS AGREEMENT WITNESSES AS FOLLOWS:

### OPERATIVE PART

## 1 DEFINITIONS

For the purposes of this Agreement the following expressions shall have the following meanings:

"Additional Infrastructure Works"	the installation by the Minister for Infrastructure or the Parish of St Helier of a new surface water sewer to the said Minister's standards for public sewers under the Drainage (Jersey) Law 2005 under Patrick Freeley Lane to pick up new road gullies to be installed in Patrick Freeley Lane and, if applicable, gullies from La Pouquelaye
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"Additional Infrastructure Works Cost"	any additional cost (as demonstrated by the Owner to the Minister for Infrastructure on an open book basis) incurred by the Owner in respect of the Surface Water Sewer Works, whether anticipated at the time of appointing the relevant Dfl Drainage Specified Contractors or arising during the carrying out of the Surface Water Sewer Works, as a result of making provision in the specification of the Surface Water Sewer Works for the effect of the Additional Infrastructure Works;
"Agreement"	this agreement including the recitals and schedules hereto;
"Application"	the application for planning permission in respect of the Site and described as "Demolish existing nursing home. Construct 28 No. two bed apartments with associated parking and amenity space. 3D Model available AMENDED PLANS: Footway access to Victoria Crescent removed from proposal; omission of a window from the second floor plan and retention of tree added; appearance of a boundary wall (to be retained) corrected on artistic impressions; typing errors corrected in Design & Access Statement. AMENDED DESIGN:Proposed building reduced in length to increase landscape strip adjacent to Patrick Freeley Lane and given the reference P/2017/1176;
"Chief Officer"	the person appointed from time to time as the chief executive officer (or equivalent) of the administration of the States responsible for planning and building in accordance with Article 1 of the Law;
"Commencement"	the date on which any operation forming

	part of the Development permitted by the Planning Permit or any subsequent planning permission for the Development begins to be carried out, and "Commence" and "Commenced" shall be construed accordingly;	
"Development"	the development of the Site as set out in the Application;	
"Dfl Drainage Specified Contractors"	drainage contractors as specified from time to time by the Minister for Infrastructure	
"GST"	goods and services tax under the Goods and Services Tax (Jersey) Law 2007;	
"Island Plan 2011"	The States of Jersey Island Plan, 2011 (as amended from time to time);	
"Law"	the Planning and Building (Jersey) Law 2002;	
"Month"	a calendar month;	
"Occupation" "Occupy" and "Occupied"	means occupation for the purposes permitted by the Planning Permit 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;	
"Plan"	the plan of the Site attached at the First Schedule to this Agreement;	

AND A SAME	
"Planning Permit"	the planning permission for the Development granted by the Chief Officer pursuant to the Application, a copy of which is attached at the Second Schedule and references to the Planning Permit include where the context permits any variations to the said planning permission from time to time;
"Road Works"	the provision and installation of bollards of a number, design and position to be agreed between the Owner and the Parish of St Helier Roads Committee (each acting reasonably) and to be sited on the roadside edge of the pavement adjacent to the Site on La Pouquelaye;
"Royal Court"	the Royal Court of the Island of Jersey;
"Site"	Maison de Ville, La Pouquelaye, St. Helier, JE2 3ZL, as shown for the purpose of identification edged by a broken red line on the Plan;
"Surface Water Sewer Works"	the installation of a new public surface water sewer along Upper Clarendon Road to connect to the existing public surface water sewer in Clarendon Road in order to provide for separation of the foul and surface water for the Development to be constructed in accordance with a specification consistent with the Surface Water Sewer Works Plan issued by the Minister for Infrastructure to the Owner for the adoption by the said Minister for Infrastructure as a public sewer under the Drainage (Jersey) Law 2005, such specification to make provision for the effect of the Additional Infrastructure Works in the event that prior to the expiry of two (2) Months from the date of registration of this Agreement the Minister for Infrastructure shall provide the Owner with

	such details regarding the Additional Infrastructure Works as shall enable the Owner (acting reasonably) to do so;
"Surface Water Sewer Works Plan"	the proposed drainage feasibility plan with reference Job No. 15986 Drawing No. SK02 Rev P1 included within the drainage strategy forming part of the Application, a copy of which is contained in the Fifth Schedule.

# 2 CONSTRUCTION OF THIS AGREEMENT

- 2.1 Where in this Agreement 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 Agreement.
- 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 a law of the States of Jersey shall include any modification, extension or re-enactment of that law 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 Law or deriving validity from it.
- 2.6 References to any party to this Agreement 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 Chief Officer the successors to his statutory functions.
- 2.7 This Agreement shall be construed so as to give effect to the purpose of the Law.

### 3 LEGAL BASIS

- 3.1 This Agreement is made pursuant to Article 25 of the Law.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Agreement create planning obligations pursuant to Article 25 of the Law and are enforceable by the Chief Officer against the Owner.

#### 4 CONDITIONALITY

This Agreement shall come into effect immediately upon the date on which this Agreement has been recorded as registered in the Royal Court as evidenced by an Act of the said Court.

#### 5 OWNER COVENANTS

The Owner covenants and agrees with the Chief Officer as set out in the Third Schedule so that this Agreement shall be enforceable without limit of time against the Owner and any person claiming or deriving title through or under the Owner to the Site or any part or parts thereof.

### 6 CHIEF OFFICER COVENANTS

The Chief Officer covenants with the Owner as set out in the Fourth Schedule.

### 7. PUBLIC REGISTRY OF CONTRACTS

The Chief Officer shall as soon as practicable apply to the Royal Court for an order that this Agreement be registered in the Public Registry of Contracts.

### 8 MISCELLANEOUS

- 8.1 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Chief Officer under the terms of this Agreement 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 may be given on behalf of the Chief Officer by the Director Development Control of Planning and notice or communication to the Chief Officer pursuant to the provisions of this Agreement shall be addressed to the Director Development Control of Planning at Planning and Building Services South Hill St Helier Jersey JE2 4US or as otherwise notified for the purpose by notice in writing.
- 8.2 Any notices on the Owner shall be deemed to have been properly served if sent by ordinary post to and addressed to such party at the address referred to above or as otherwise notified for the purpose by notice in writing.
- 8.3 Insofar as any clause or clauses of this Agreement 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 Agreement.
- 8.4 This Agreement shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permit shall be quashed, cancelled, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified (other than by process under Article 10 of the Law) by any statutory procedure or expires prior to the Commencement of Development.
- 8.5 No person shall be liable for any breach of any of the planning obligations or other provisions of this Agreement after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 8.6 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permit) granted (whether or not on appeal) after the date of this Agreement.
- 8.7 Except in so far as legally or equitably permitted this Agreement shall not prejudice or fetter or affect any statutory power discretion or duty of the Chief Officer and without prejudice to the generality of the foregoing it is agreed

between the parties hereto that any benefit or power conferred on the Chief Officer by any of the obligations or covenants by the Owner in favour of the Chief Officer under this Agreement are in addition to any of the Chief Officer's statutory powers under the Law.

- 8.8 Nothing contained herein shall be construed as obviating the need for the Owner to obtain or acquire from any third party with respect to the Development or its use any consents permits authorisations rights interests in land or servitudes.
- 8.9 Nothing in this Agreement shall be construed or interpreted in such a way or inference to be drawn so as to place or create a duty of care upon the Chief Officer as a result of the Chief Officer agreeing to accept the covenants agreements and undertakings on the part of the Owner as contained herein.
- 8.10 The Owner shall not be entitled to any costs or compensation as a result of the making of this Agreement and the obligations contained herein.
- 8.11 All communications and notices served or made under this Agreement shall be in writing.

### 9 WAIVER

No waiver (whether expressed or implied) by the Chief Officer of any breach or default in performing or observing any of the covenants terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Chief Officer from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

### 10 CHANGE IN OWNERSHIP

The Owner agrees with the Chief Officer to give the Chief Officer written notice (as soon as reasonably practical following such change) of any change in ownership of its interest in the Site occurring before all the obligations under this Agreement have been discharged.

## 11 DISPUTE RESOLUTION

In the event that any dispute shall arise in respect of any provision of this Agreement it shall be referred if not resolved within seven working days to the arbitration of an independent arbitrator under the provisions of the Arbitration (Jersey) Law 1998 such arbitrator to be named by the agreement of the parties to the dispute or in default of agreement by the President for the time being of the Royal Institution of Arbitrators upon the application of any party to the dispute.

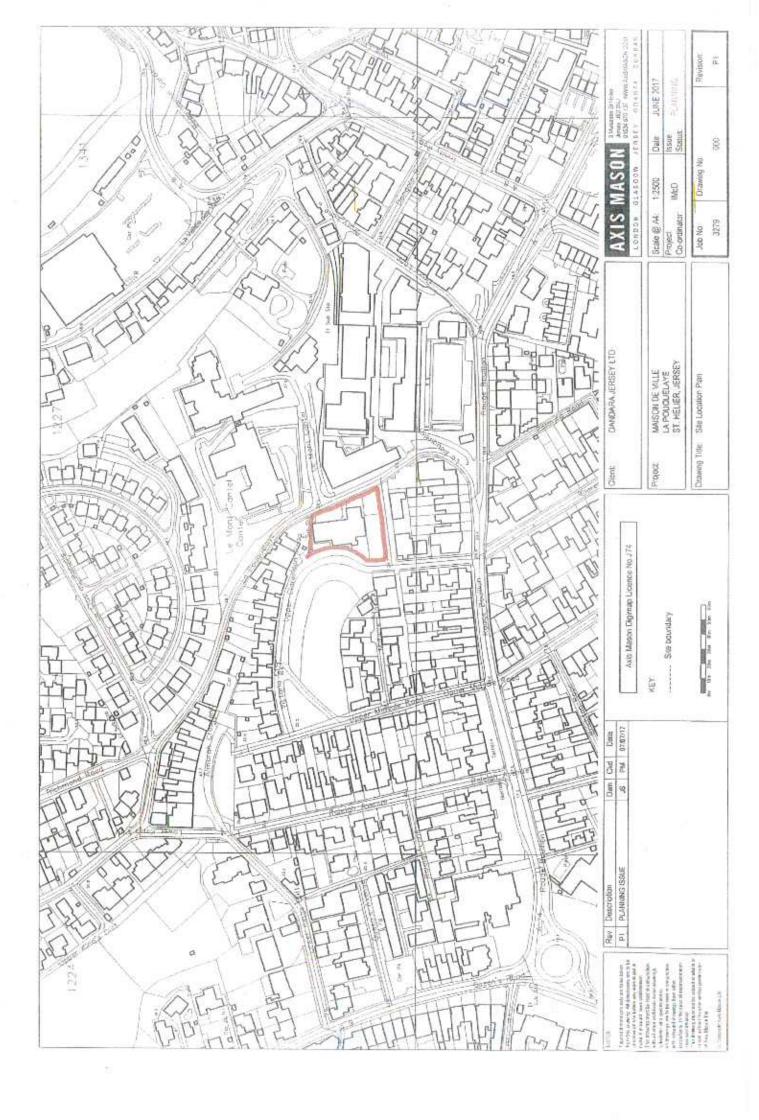
# 12 GOODS AND SERVICES TAX

- 12.1 All cause given in accordance with the terms of this Agreement shall be exclusive of any GST properly payable in respect thereof.
- 12.2 If at any time GST is or becomes chargeable in respect of any supply made in accordance with the terms of this Agreement then to the extent that GST had not previously been charged in respect of that supply the person making the supply shall have the right to issue a GST invoice to the person to whom the supply was made and the GST shall be paid accordingly.

# 13 JURISDICTION

This Agreement is governed by and interpreted in accordance with the law of the Island of Jersey.

# FIRST SCHEDULE The Plan



# SECOND SCHEDULE The Planning Permit

Department of the Environment
Planning and Building Services
South Hill

St Helier, Jersey, JE2 4US Tel: +44 (0)1534 445508



Planning Application Number P/2017/1176

# **Decision Notice**

PLANNING AND BUILDING (JERSEY) LAW 2002

In accordance with Article 19(8) of the Planning and Building (Jersey) Law 2002, as representations were made in connection with this application, this decision shall not have effect during the period of 28 days immediately after the decision date.

This permission enures (unless otherwise stated) for the benefit of the land to which it relates and of each person for the time being having an estate or interest in that land.

This decision does not absolve the parties concerned from obtaining, nor does it overrule, any other permission that may be required under any other law. In addition, it does not overrule any private property rights, nor does it absolve the need to obtain the permission of the owner of the land to which this permission relates.

This is notification of the decision to GRANT permission to develop land under Article 19 of the Planning and Building (Jersey) Law 2002;

In respect of the following development:

Demolish existing nursing home. Construct 28 No. two bed apartments with associated parking and amenity space.

AMENDED PLANS: Footway access to Victoria Crescent removed from proposal; omission of a window from the second floor plan and retention of tree added; appearance of a boundary wall (to be retained) corrected on artistic impressions; typing errors corrected in Design & Access Statement.

AMENDED DESIGN: Proposed building reduced in length to increase landscape strip adjacent to Patrick Freeley Lane.

To be carried out at:

Maison De Ville, La Pouquelaye, St. Helier, JE2 3ZL.

Reason for Approval: The proposed development is considered to be acceptable having due regard all of the material considerations raised. In particular, the development has been assessed against relevant policies of the Adopted Island Plan 2011 (Revised 2014) which identifies this as being located within the Built-Up Area where residential development is encouraged. The proposed building is regarded as acceptable because, as amended its size, mass and appearance can be accommodated on the site without detriment to the surrounding properties, and the additional landscaping works will enhance the Green Backdrop Zone.

In addition, the representations raised to the scheme on grounds including highway safety concerns, overdevelopment, lack of on-site parking and

# PLANNING AND BUILDING (JERSEY) LAW 2002

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overlooking have been assessed. However, it is considered that the proposal accords with the terms of the relevant policies and will not have an unreasonable impact on neighbouring properties, in accordance with Policy GD1.

This permission is granted subject to compliance with the following conditions and approved plan(s):

- A. The development shall commence within three years of the decision date. Reason: The development to which this permission relates will need to be reconsidered in light of any material change in circumstance.
- B. The development hereby approved shall be carried out entirely in accordance with the plans, drawings, written details and documents which form part of this permission.

**Reason:** To ensure that the development is carried out and completed in accordance with the details approved.

# Conditions:

- 1. Any tree felling, hedge removal or any clearance works shall only be undertaken between the months of 1st October to 1st March in any calendar year, unless a written statement has been submitted from a qualified and competent person confirming that there are no nesting birds or other protected wildlife in any of the trees or hedgerows to be felled or removed. The written statement shall be submitted to and approved by the Department of the Environment at least 5 working days in advance of any felling or clearance works.
- Prior to commencement of the development hereby approved, a scheme of landscaping shall be submitted to and approved in writing by the Department of the Environment. The scheme of landscaping shall provide details of the following;
- i) all existing trees, hedgerows and other plants, walls, fences and other features which it is proposed to retain on the site:
- ii) the position of all new trees and/or shrubs, this must include the species of plant(s)/tree(s) to be planted, their size, number and spacing and the means to be used to support and protect them;
- iii) other landscape treatments to be carried out including any excavation works, surfacing treatments, or means of enclosure;
- iv) the measures to be taken to protect existing trees and shrubs;
- v) the presence of any invasive plant species on site, and if present, a detailed method statement for the removal and long-term management/ eradication of the species; and,
- vi) A landscape management plan for the maintenance of the landscaped areas. Once agreed, the approved scheme shall be implemented in full and thereafter retained and maintained as such.

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- 3. The findings and required mitigation measures outlined in the Ecology Assessment shall be implemented prior to the commencement of development, continued throughout the phases of development (where applicable) and thereafter retained and maintained as such. Any variations that may be required as a result of findings on site are to be agreed in writing by the Department of the Environment prior to works being undertaken.
- 4. No part of the development hereby approved shall be occupied until all hard and soft landscape works as indicated on the approved plan have been carried out in full. Following completion, the landscaping areas shall be thereafter maintained as such.
- No part of the development hereby approved shall be occupied until the elements within the site identified as new footpath have been delivered as such to achieve a 2m wide footpath to the western side of La Pouquelaye, which shall be thereafter maintained as such.
- 6. Prior to the development being brought into first use, visibility splays shall be laid out and constructed in accordance with the approved plans. The visibility splays shall then be maintained thereafter and no visual obstruction of any kind over the height of 600mm shall be erected within them.
- 7. No part of the development hereby approved shall be occupied until the levels of potential contaminants in the ground have been investigated, any risks to human health or the wider environment assessed and mitigation measures proposed in a remediation strategy to be submitted to and approved in writing by the Department of the Environment. The approved remediation strategy shall be implemented in full, in accordance with the requirements of Supplementary Planning Guidance Planning Advice Note 2 Development of Potentially Contaminated Land, as amended. Any changes to the strategy require the express written consent of the Department of the Environment prior to the work being carried out.
- Prior to first occupation of the building hereby approved a scheme to emphasis the pedestrian entrance shall first be submitted to and approved in writing by the Department of the Environment.
- 9. No part of the development hereby approved shall be occupied until the vehicular manoeuvring area and respective car parking spaces have been laid out, surfaced and drained as indicated on the approved plans. The car parking spaces shall thereafter be retained solely for the use of occupants of the development and shall not be sub-let for any other purpose.
- No part of the development hereby approved shall be occupied until the electric car charging facilities have been wholly constructed in accordance with

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the approved plans. The facilites shall thereafter be retained solely for the use of occupants of the development and maintained as such.

# Reasons:

- To ensure the protection of any nesting birds and any recognised species in accordance with Policies NE2 and NE4 of the Adopted Island Plan 2011 (Revised 2014).
- To safeguard the character and appearance of the area in accordance with Policies GD1, NE1, NE2 and NE4 of the Adopted Island Plan 2011 (Revised 2014).
- 3. To ensure the protection of all protected species in accordance with Policies NE1, NE2 and NE4 of the Adopted Island Plan 2011 (Revised 2014).
- 4. To ensure that the benefits of the approved landscaping scheme are carried out and completed, making a positive contribution to the amenities of the site in accordance with Policies GD1, GD7, NE1, NE2 and NE4 of the Adopted Island Plan 2011 (Revised 2014).
- To ensure that the benefits to pedestrian safety which can be delivered by this scheme are carried out and completed in accordance with Policy GD1 of the Adopted Island Plan 2011 (Revised 2014).
- 6. In the interests of highway safety, in accordance with Policy GD1 of the Adopted Island Plan 2011 (Revised 2014).
- 7. To ensure the development does not have an adverse impact on public health or the wider environment, in accordance with Policies GD1 and GD6 of the Adopted Island Plan 2011 (Revised 2014).
- 8. The pedestrian entrance is largely hidden from view at the northern side of the building. Emphasis of this by way of an archway or signage on the pavement edge will be of benefit to visitors and delivery companies, and in line with Policy GD1 and GD7 of the Adopted Island Plan 2011 (Revised 2014).
- 9. To ensure that the development provides adequate provision for off-street parking and manoeuvring for users of the site, in the interests of highway safety and the general amenities of the area, in accordance with Policy GD1 of the Adopted Island Plan 2011 (Revised 2014).
- In the interests of promoting sustainable patterns of development, in accordance with Policies TT9 and SP6 of the Adopted Island Plan 2011 (Revised 2014).

# PLANNING AND BUILDING (JERSEY) LAW 2002

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## FOR YOUR INFORMATION

Informative 1 – Your attention is drawn to the Planning Obligation Agreement linked to this permission dated 23/03/18 and available for view on the Department of the Environment website at gov.je.

Informative 2 - The applicant's attention is drawn to the consultation response from the Parish of St Helier dated 20/09/17 with regard to any alterations to the footpaths, surfacing and drainage of the hard-surfaced areas on site, the requirement to comply with the Highway Encroachments (Jersey) Regulations 1957, and the need to discuss construction and refuse arrangements with the Parish.

Informative 3- The applicant's attention is drawn to the consultation response from the Natural Environment Team dated 18/09/17 with regard to dealing with urban gulls. Appropriate planting to encourage wildlife and integrating roosting features.

Informative 4 - Refer to the guidance on The Control of Dust and Emissions from Construction and Demolition, which can be found online at: http://www.london.gov.uk/thelondonplan/guides/bpg/bpg\_04.jsp

Informative 5 - Refer to the guidance contained in the document 'Guidelines on Noise Control for Construction Sites' which is available online at http://www.gov.je/Industry/Construction/Pages/ConstructionSite.aspx and 'British Standard BS5228:2009 Code of Practice for Noise and Vibration Control on Construction and Open Sites'.

The approved plans can be viewed on the Planning Register at www.gov.je/planning

The following plan(s) has/have been approved:

- 1. Location Plan
- 2. Amended Proposed Site Plan 100 P7
- Amended Lower Ground Floor Car Park 101 P7
- Amended Ground Floor Plan 102 P7
- Amended First Floor Plans Options 1 & 2 103 P6
- 6. Amended Third Floor & Roof Plans 104 P5
- 7. Amended Proposed Context Sections 120 P5
- 8. Amended Proposed Context Elevations 300 P5
- 9. Amended Proposed West & East Elevations 301 P5
- 10. Amended Proposed North & South Elevations 302 P5
- 11. Proposed Facade Details 400 P3
- 12. Amended Proposed Landscape Plan 900 P4

DECISION DATE: 23/03/18

The development <u>may</u> also require building permission, for which a separate application will need to be made. If you are in any doubt as to whether building permission is required please telephone the Building Applications Team on 448407.

### THIRD SCHEDULE

### The Owner's Covenants with the Chief Officer

The Owner covenants, agrees and undertakes:

#### COMMENCEMENT

1 Not to Commence the Development until the Owner has given to the Chief Officer seven (7) days' notice in writing of its intention so to do.

### ROAD WORKS

- 2 To carry out and complete the Road Works at the cost of the Owner prior to the Occupation of any part of the Development.
- 3 Not to Occupy any part of the Development until such time as the Road Works have been carried out and completed.

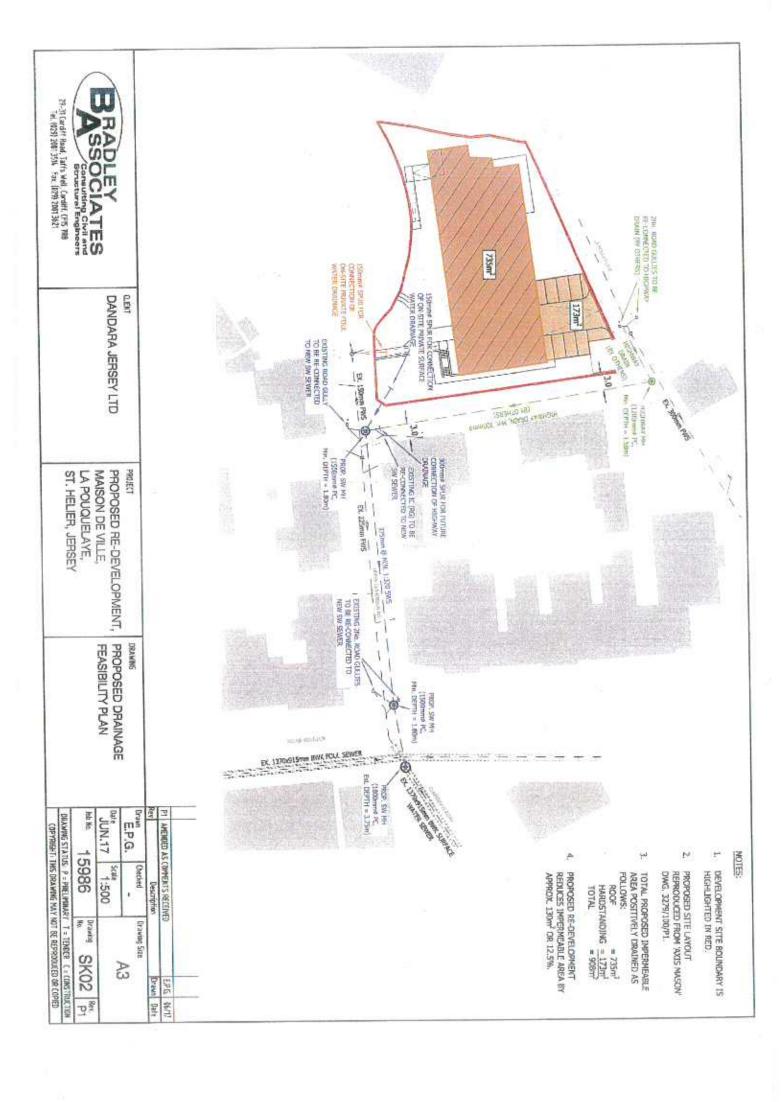
#### SURFACE WATER SEWER WORKS

- Subject to the Minister for Infrastructure paying to the Owner each Additional Infrastructure Works Cost no later than thirty (30) days after the application from the Owner to the Minister for Infrastructure requesting the payment of the same, to carry out and complete the Surface Water Sewer Works using Dfl Drainage Specified Contractors at the cost of the Owner prior to the Occupation of any part of the Development.
- Subject to the Minister for Infrastructure paying to the Owner each Additional Infrastructure Works Cost no later than thirty (30) days after the application from the Owner to the Minister for Infrastructure requesting the payment of the same, not to Occupy any part of the Development until such time as the Surface Water Sewer Works have been carried out and completed.
- Upon being notified of substantial completion of the Surface Water Sewer Works the Owner shall supply to the Minister for Infrastructure two full sets of 'as constructed' plans and section drawings showing the the Surface Water Sewer Works or 'as constructed' records in a media format compatible with the Minister for Infrastructure's records.

# FOURTH SCHEDULE Chief Officer's covenants

To issue the Planning Permit following the registration of this Agreement.

# FIFTH SCHEDULE Surface Water Sewer Works Plan



Signed on behalf of the Chief Officer by	(MPRETOR)
in the presence of this 22 day of March 2018	
Signed on behalf of Patrick Freeley House Limited	<i>81</i>
by	BARTON
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