

Appendix 1– Proposed Amendments to Draft Supporting Documents

| Reference | Comment/Proposed Amendment | Applicant Response |
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| Section 17 Order | | |
| <p>Para 23 of the YS response</p> | <p>Amend to tie the schedules to the operative provisions, for instance by adding to the preliminary wording in paragraph 1:</p> <p><i>“...the area in which the release land described in the First Schedule and the replacement land described in the Second Schedule are situated...”</i></p> | <p>The Applicant accepts the Yateley Society’s suggestion and has amended paragraphs 1 and 2 of the draft s.17 Order to expressly define the release land and replacement land by reference, respectively, to the First and Second Schedules of the draft Order.</p> |
| <p>Para 3 of the OSS response</p> | <p>The applicant is committed to executing a deed under s.193 of the Law of Property Act 1925 in relation to the replacement land (q.15(1)). We welcome that commitment, and that the deed is expressed to be irrevocable. The deed should be the subject of provision in the s.17 order, as the draft proposes.</p> | <p>The Applicant notes that the OSS is referring to clause 2 (a) of the draft s.17 order (Appendix 5 to the Response) which cross-refers to the s.193 Deed. The Applicant does not consider that clause 2(a) is strictly necessary to include in the s.17 Order because, once executed, the s.193 Deed itself will be a valid legal instrument which makes provision for the s.193 rights. However, the Applicant included it in the draft s.17 Order at the request of the OSS during pre-application consultation and welcomes their continued engagement with this Application.</p> |

Section 106 Unilateral Undertaking

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| <p>Paras 51, 54 and 55 of the YS response</p> | <p>Section 3.2 includes CFHL’s successors and assignees but there are concerns as to who will take over the EMP. CFHL’s obligations under the Deed should be guaranteed and indemnified by an English company with substantial assets such as Falcon Propco4 Limited.</p> | <p>The Applicant notes that there are no financial contributions or step in rights for which an indemnity is required. The Applicant also does not consider a guarantee from an English registered company is necessary as HCC can enforce the s.106 obligations by seeking an injunction against CFHL regardless of the fact it is a Guernsey registered company. The Applicant will be having further discussions with HCC in relation to the draft Unilateral Undertaking and is willing to consider the request to include a guarantee further with HCC.</p> |
| <p>Para 52 of the YS response</p> | <p>There should be a requirement for CFHL to pay HCC and Natural England’s legal and monitoring fees.</p> | <p>The Applicant acknowledges the Yateley Society’s concern to ensure that discharge of the s.106 obligations and implementation of the EMP is duly monitored and enforced. If requested by HCC or Natural England, the Applicant would be willing to consider committing to contribute towards their relevant costs and fees.</p> |
| <p>Para 53 of the YS response</p> | <p>Clause 4.2: In the second line the words “suitably qualified” should be moved before the word “agent” to make it clear that both agents and contractors must be suitably qualified.</p> | <p>The Applicant accepts the Yateley Society’s suggestion and has made a minor amendment to clause 4.2 of the draft Unilateral Undertaking accordingly. A similar amendment has also been made to paragraph 1.10 of the EMP.</p> |
| <p>Para 53 of the YS response</p> | <p>Clause 5: CFHL should be obliged to seek the approval of HCC before the transfer goes ahead to ensure that the transferee has the means and expertise to carry out its responsibilities under the Deed.</p> | <p>The Applicant acknowledges Yateley Society’s comment and confirms that there is no intention for the Replacement Land to be transferred to a separate entity during the 15-year management period and that CFHL is committed to duly implementing the EMP. In any event, the Applicant submits that a requirement for HCC to provide prior approval of any potential transfer of the Replacement Land is unnecessary on the basis that HCC will have authority, by automatic effect of the Unilateral Undertaking, to take enforcement action against any successor in title or assignee.</p> |

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| Paras 55 of the YS response | Clause 9: amend to make it clear that HCC can enforce the Deed. | The Applicant acknowledges the Yateley Society's comment and notes that clause 3.4 of the Unilateral Undertaking confirms that CFHL's covenants in clause 4 are enforceable by HCC in accordance with s.106 of the Town and Country Planning Act 1990. For the avoidance of doubt, the Applicant has made the exclusion of third-party enforcement under clause 9 expressly subject to clause 3.4 and clause 3.5. The Applicant has added clause 3.5 to make clear that the deed is also capable of enforcement under s.111 of the Local Government Act 1972 and s.1 of the Localism Act 2011 in the event of any doubt about its enforceability under s.106. |
| Paras 56 - 57 of the YS response | <p>Execution: a guarantee an indemnity should be given by an English company as CFHL is based in Guernsey.</p> <p>As CFHL is based in Guernsey, a legal opinion should be obtained from lawyers in Guernsey to check that those signing have authority and to ensure that the company complies with the formalities under the relevant local law.</p> | <p>Please see the Applicant's response to paragraphs 51, 54 and 55 of the YS response above.</p> <p>The Applicant acknowledges the Yateley Society's comment and confirms that, if assurance of CFHL's legal identity is requested by HCC, the Applicant is willing to arrange for a foreign legal opinion to be obtained.</p> |

Draft Deed applying section 193 LPA

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| Para 66 of the YS response | Background and Clause 3: Include supplementary provisions providing that the section 193 rights which transfer from the Release Land to the Replacement Land are irrevocable rights. | The Applicant notes (as set out in response to Question 14 of the application form) that the Release Land is not currently subject to s.193 rights as the Release Land is not included within the land covered by a revocable deed made on 5 May 1927 by the Ecclesiastical Commissioners for England as Lords of the Manor and Hundred of Crondall (the "1927 Deed"). There are therefore no existing s.193 rights over the Release Land which could be transferred to the Replacement Land. The Applicant has instead provided its own s.193 Deed in order to apply the s.193 rights to the Replacement Land so that it benefits from the same access rights as the surrounding common land; albeit the draft |
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| | | s.193 Deed has been made irrevocable as opposed to the 1927 Deed which is revocable. |
| Para 67 of the YS response | Background and Clause 3: However, under the Draft Deed applying section 193 LPA, from the Approval Date defined in the Deed, section 193 of the 1925 Act shall apply so that CFHL grants public rights of access over the Replacement Land “so long as the land remains registered as common land and that the application of Section 193 may not be revoked unless and until the Registered Replacement Land is removed from the register of common land.” The words in italics above should be removed, so that the public right of access for air and exercise shall always apply. This would be consistent with what happened in the ranger’s cottage decision under Application Ref: COM 3199 623. | <p>The Applicant considers that the inclusion in the s.193 Deed of the words “<i>so long as the land remains registered as common land and that the application of Section 193 may not be revoked unless and until the Registered Replacement Land is removed from the register of common land</i>” is proportionate and in accordance with the purpose and intention of s.193 and its application to common land. The s.193 rights are directly linked to the designation of the Release Land as common land and in the highly unlikely event common land status was removed from the Release Land in the future then the s.193 rights must equally fall away.</p> <p>The Applicant notes that the situation was slightly different in the Ranger’s Cottage matter. In that case, the s.17 Order provided for the transfer of the existing s.193 rights under the revocable 1927 Deed and in doing so declared that those rights should be irrevocable. As noted above, the same process is not possible for this Application as the s.193 rights under the 1927 Deed do not apply to the Release Land. The Applicant has already made its s.193 Deed irrevocable.</p> |
| Para 68 of the YS response | Background and Clause 3: the Deed should contain an undertaking binding on CFHL and its successors in title that they will not take any action to attempt to have the Replacement Land removed from the Register of Common Land if it becomes possible to do so. | The Applicant acknowledges Yateley Society’s concern to ensure the permanence of public access over the Replacement Land as registered common land. The Applicant reiterates the CFHL’s commitment to securing and facilitating public access over the Replacement Land. The Applicant notes, however, neither the statutory regime nor relevant guidance require a landowner to ‘give up’ their ability to rely on any statutory processes. As this application process demonstrates, the statutory common land regime permits deregistration where application is made to the Secretary of State and the robust statutory tests are met (including, in this case, for the provision of appropriate exchange land). This in itself offers significant legal protection to the land. Whilst it is highly |

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| | | unlikely that future circumstances would ever dictate the need to make an application to deregister the Replacement Land, it is not necessary, appropriate or proportionate to seek to prevent a landowner from acting in accordance with the relevant statutory regime, and guidance, in the future. |
| Para 69 of the YS response | Clause 6: Given that this clause specifically precludes people who are not parties to the deed from having any rights to enforce its terms, as CFHL is the only party to this Deed, it needs amending. It cannot be right, and presumably is not what CFHL intended, to have clauses in deeds that, by their wording, specifically seek to exclude a statutory body from exercising its statutory obligations. | <p>The Applicant clarifies that clause 3.3 of the Deed operates as a declaration that s.193 of the 1925 Act applies to the Replacement Land from the Works Completion Date. On that date, the public will obtain rights that may be enforced directly under s.193. In accordance with s.193(2) of the 1925 Act, on completion of the Deed CFHL will deposit a copy of the Deed to the Minister for Environment, Food and Rural Affairs. The Applicant has amended clause 3.1 of the Deed to clarify this requirement.</p> <p>The Applicant is willing to and has removed (what was) clause 6 of the s.193 Deed which excluded the rights of third parties to enforce the Deed.</p> |
| Para 70 of the YS response | <p>Execution: a guarantee and indemnity should be given by an English company as CFHL is based in Guernsey.</p> <p>As CFHL is based in Guernsey, a legal opinion should be obtained from lawyers in Guernsey to check that those signing have authority and to ensure that the company complies with the formalities under the relevant local law.</p> | <p>The Applicant notes the Yateley Society's comment and clarifies that, as the effect of the deed is to declare the application of s.193 of the 1925 Act to the Replacement Land, there are no financial or other obligations that may be indemnified or guaranteed by another company or person.</p> <p>With regards to the Yateley Society's request for the Applicant to obtain a foreign legal opinion on the corporate identity of Cottage Farm Holding Limited, please see the Applicant's response to paragraphs 56 and 57 of the Yateley Society's response, above.</p> |
| Environmental Management Plan | | |
| Para 58 of the YS response | Provide further information on how the Replacement Land will be maintained as an integrated part of Yateley Common during and beyond the 15 year term of the EMP. | The Applicant acknowledges the Yateley Society's concern to ensure the effective maintenance of the Replacement Land as an integrated part of Yateley Common during and beyond the Management Period. The Applicant confirms that the 15-year Management Period proposed is |

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| | | <p>sufficient to achieve this objective (having regard to relevant guidance), and that the EMP includes commitments for CFHL to continue maintaining the Replacement Land beyond the initial Management Period. Please refer to paragraph 4.6 above for further details.</p> <p>Whilst the EMP is sufficient to establish the Replacement Land as an integrated part of Yateley Common, the Applicant recognises the interest expressed by various parties in how the ecological and heritage value of the Replacement Land is developed. Please refer to paragraphs 4.7 to 4.12 above for further details on the management approach to be adopted through the EMP and CFHL's reinforced commitments to consider proposals from interested parties (including the Yateley Society) to undertake additional ecological or heritage works on the Replacement Land.</p> |
| Para 59 of the YS response | Add in protection for Lomer's Lane within the EMP. It is recommended that access points are provided where Lomer's Lane intersects with the south and east boundary of Cottage Farm, subject to some reinstatement work on the Yateley Common side of the boundary at the southern access point due to it having been dug out. | <p>The Applicant acknowledges the Yateley Society's concern for Lomer's Lane to be protected and conserved. The Applicant confirms that the EMP does not mandate any operations on the Replacement Land that could disturb Lomer's Lane in excess of measures which would be carried out in connection with the current equestrian use of the land.</p> <p>CFHL has expanded its commitments in the EMP to consult the Yateley Society (and others) concerning the erection of way markers, heritage information boards and suitable public access points to the Lomer's Lane feature. Please see paragraphs 5.43 to 5.45 above.</p> |
| Para 60 of the YS response | Section 1.3: In view of the parlous position of HCC's finances and the fact that Natural England, as an executive non-departmental public body, may cease to exist in its current form, and either party's responsibilities may transfer to other bodies, it would be sensible to refer here to other bodies to which their responsibilities may be devolved. | The Applicant notes the Yateley Society's comment and has included additional wording in paragraph 1.5 of the EMP to confirm that HCC (and any successor body in name or statutory function) will have statutory power to enforce implementation of the EMP through the Unilateral Undertaking. A corresponding amendment has also been made to the definition of "Council" in the Unilateral Undertaking. |

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| Para 61 of the YS response | Section 1.5: The phrase “remains open to discussion with”, etc. is unsatisfactory. There needs to be a positive obligation to consult, engage and resolve issues within an appropriate timescale. See also comments on Section 1.55. | The Applicant notes the Yateley Society’s comments and has reinforced CFHL’s commitment at (what is now) paragraph 1.9 of the EMP to consider any proposals for additional ecological or heritage works on the Replacement Land and has set out, at paragraph 1.65, a process through which such proposals may be brought forward. |
| Paras 62 - 63 of the YS response | <p>Section 1.6: We are concerned at the stated intention to mow the Replacement Land here and elsewhere in 1.28. Unless mowing is agreed with Hampshire Countryside Service or Natural England, we would have thought that this would be detrimental to the establishment of heathland flora and fauna on the land. As the intention is to integrate the Replacement Land with the Yateley Common Countryside Park, the creation, size and frequency of mowing of fire breaks should be agreed with the Hampshire Countryside Service as a precaution against wildfires.</p> <p>The words “suitably qualified” should be inserted before “agent”, so that they cover both agents and contractors.</p> | <p>The Applicant acknowledges the Yateley Society’s comments and confirms that there is no intention to mow the entirety of the Replacement Land. Rather, mowing shall be restricted to maintenance of the key ‘access ways’ across the Replacement Land which shall be defined initially by public use (i.e. the ‘desire paths’) and then defined within the management measures reviewed annually according to the provisions of the EMP. The Applicant has amended (what is now) paragraph 1.7 of the EMP to clarify this point.</p> <p>The Applicant confirms that the creation and maintenance of firebreaks on the Replacement Land will be addressed as part of the annual review process (which involves consultation with HCC and Natural England) prescribed by the EMP.</p> <p>The Applicant has amended reference to a “suitably qualified agent or contractor” in (what is now) paragraph 1.10 of the EMP.</p> |
| Para 64 of the YS response | Section 1.55: At the end of the Management Period, CFHL should continue to maintain the Replacement Land and its historic boundaries to a standard agreed from time to time with HCC and Natural England. | As outlined at paragraph 4.6(b) above, the Applicant has included additional ongoing obligations at paragraph 1.61 of the EMP. |
| Para 65 of the YS response | Section 1.56: CFHL should continue to send a representative after the Management Period as they have for many years. | The Applicant has amended (what is now) paragraph 1.62 of the EMP to clarify that CFHL will send a representative to the tri-annual meetings of the Yateley Common Management Committee throughout the Management Period and beyond. |

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| Para 6 of the OSS response | The monitoring measures in the EMP should include 'Monitoring of vegetation growth across the Replacement Land to assess the suitability of the Site for recreational access on foot and on horseback, in accordance with the s.193 rights. The EMP should be amended, wherever necessary, to give effect to this wider ambition. | The Applicant acknowledges the OSS's comments and has included additional obligations in the EMP for CFHL to review, throughout the Management Period, the vegetation growth across the Replacement Land and assess the suitability of the site for recreational access in accordance with the s.193 Access Deed. |
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