

INSTRUCTIONS TO HEAD OF LEGAL SERVICES:
SECTION 106 AGREEMENT

Authorised by Area Planning Committee on:

Action Requested by: Sue Wood
Date Submitted: 8 June 2010
Completion Date Required: 6 July 2010

Action Required: Negotiate and complete an agreement pursuant to Section 106 Town & Country Planning Act 1990 as amended in respect of the following:

APPLICATION NO: 09/00508/FUL

APPLICANT: DEFRA
AGENT: Darntonegs Ltd (Mr C Leetham)
ADDRESS: The Food & Environment Research Agency
Sand Hutton
York
YO41 1LZ
ADDRESS: The Coach House
Monk Fryston Hall
Monk Fryston
Leeds
West Yorkshire
LS25 5DU

Tel: 01977-681001

PROPOSAL: Reconfiguration of existing site entrance, erection of gatehouse, formation of adjacent car park for visitors and formation of additional staff parking for 64 no. vehicles together with associated landscaping

APPLICATION SITE: The Food & Environment Research Agency, Sand Hutton, York, YO41 1LN,

Approx Area:(A/Ha)

SUMMARY OF TERMS TO BE INCLUDED IN AGREEMENT:

Restriction/Obligation: For highways junction works once the trigger has been reached. The trigger level is based on total vehicle movements through the junction. The trigger is 358 two way trips, and can only be exceeded no more than 12 times in a calendar year.

The submitted travel plan has to be implemented prior to the development being first brought into use.

If trigger point is reached, failure to carry out the travel plan, will result in the cease of use of the building.
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PLANNING AGREEMENT ENQUIRY AND REQUISITION FORM

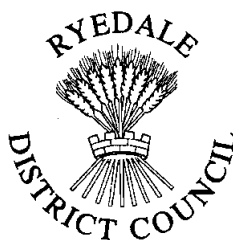
- | | |
|--|-----------------------|
| 1. Full Name and address of applicant(s) | |
| 2. Full name & address of any legal person* having any of the following interests in the application site:- | |
| (a) OWNER -
(name all fee simple owners, including persons having or proposing to have the benefit of an option to purchase or contract for the purchase of the application site) | |
| (b) TENANT | |
| (c) CHARGEE/MORTGAGEE
(including address of registered office as well as of local branch and date of the Charge/Mortgage) | |
| (d) LICENSEE | |
| (e) OTHER (specify interest) | |
| 3. Supply proof of Title to the application site and any adjoining land. | Enclosed/Not enclosed |
| 4. Confirm the applicant(s) will pay the Council's current administrative fee: | |

***Note:**

If any of the persons named in the answers to the above questions are a limited company the full correct company name and the address of the registered office should be supplied. If any persons named trade under a business name then the name of the sole trader, partners or company so trading, together with their address, should also be stated. If a partnership is involved the full names and address of all partners should be given.

Ryedale House
Malton
North Yorkshire
YO17 7HH

Tel: (01653) 600666
Fax: (01653) 690834
Website: www.ryedale.gov.uk



Chief Executive
Janet Waggott
Corporate Director
Marie-Ann Jackson
Corporate Director (S151)
Paul Cresswell

DEFRA
C/O Darntonegs Ltd (Mr C Leetham)
The Coach House
Monk Fryston Hall
Monk Fryston
Leeds
West Yorkshire
LS25 5DU

8 June 2010

Dear Sir/Madam

APPLICATION NO: 09/00508/FUL

DESCRIPTION: Reconfiguration of existing site entrance, erection of gatehouse, formation of adjacent car park for visitors and formation of additional staff parking for 64 no. vehicles together with associated landscaping

LOCATION: The Food & Environment Research Agency Sand Hutton York YO41 1LN

The Area Planning Committee has resolved that Planning Permission can be granted for the above development subject to your Client entering into an Agreement with the Council pursuant to Section 106 of the Town & Country Planning Act 1990 as amended. The Agreement will include the following covenants:

1. Highways works shall be conducted once the trigger level has been hit.
2. The development shall be constructed and completed in accordance with plans and relevant documents.

This Agreement needs to be completed before your Client receives Planning Permission for the above development.

Before the draft Agreement (which is a legal document on which your Client may require advice) is drawn up for approval, I would be grateful if you could forward the attached Planning Agreement Enquiry and Requisition Form direct to your Client or to his Solicitor for completion on his behalf. It is important that your Client should ask his Solicitor to assist him in completing the enclosed form as it includes several questions on the matter of the ownership and occupation of and title to the land to be covered by the Agreement. When completed, the form should be returned to the Council Solicitor at the above address as soon as possible so that the draft Agreement can then be sent to your Client's Solicitor for approval on his behalf. If you have any questions with regard to this matter please contact Fiona Brown on extension 261.

Yours faithfully

K A Winship
Council Solicitor

Enc.

LEGAL SERVICES
Council Solicitor - K A Winship LLB(Hons)

THIS DEED is made the 12 day of November 2010

BETWEEN

- 1 **THE RYEDALE DISTRICT COUNCIL** whose principal office is at Ryedale House Malton in the County of North Yorkshire YO17 7HH ("the Council")
- 2 **THE SECRETARY OF STATE FOR THE ENVIRONMENT, FOOD AND RURAL AFFAIRS**, of 2 Foss House, Kings Pool, York, YO1 7PX ("the Owner")

INTRODUCTION

- 1 The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- 2 The Owner is the freehold owner of the Site.
- 3 FERA has submitted the Application on behalf of the Owner to the Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1 **DEFINITIONS**

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

- | | |
|-------------------------------|---|
| "Act" | the Town and Country Planning Act 1990 (as amended). |
| "Application" | the application for full planning permission submitted to the Council for the Development and allocated reference number 09/00508/FUL. |
| "Commencement of Development" | 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, erection of contractors compounds, the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly |
| "Development" | the Development of the Site for reconfiguration of existing site entrance erection of gatehouse formation of adjacent car park for visitors and formation of additional staff parking for 64 vehicles together with associated landscaping as set out in the Application. |

"FERA"	The Food and Environment Research Agency being an executive agency of the Department of Environment, Food and Rural Affairs
"Interest"	interest at 3 per cent above the base lending rate of the National Westminster Bank Plc from time to time.
"Highways Agency"	The Executive Agency of the Department for Transport (DfT), responsible for operating, maintaining and improving the strategic road network in England on behalf of the Secretary of State for Transport or such other Governmental body carrying out the same functions and which may replace the Highway Agency
"Mitigation Works"	the relocation of the existing western central pedestrian refuge approximately 23 metres to the south west and the extension of the existing right turn lane on the A64 by approximately 23 metres as detailed on WSP Drawing Number 1157/GA/03 Revision A forming Appendix E of the Travel Plan
"Occupy"	occupy for the use authorised by the Planning Permission and for the avoidance of doubt shall not mean occupy for the purpose of constructing the Development
"Plan"	the plan attached to this Deed carrying the drawing number 7099 [90] 07 Rev B.
"Planning Permission"	the full planning permission subject to conditions to be granted by the Council pursuant to the Application substantially in the form set out in the Second Schedule.
"Travel Plan"	the Travel Plan prepared for FERA by WSP UK Limited and dated 18 May 2010 attached at Annex 1 of this Agreement
"Trigger Level"	358 two way trips exceeded more than 12 times during a calendar year.
"Site"	the land against which this Deed may be enforced as shown edged red on the Plan.

2 CONSTRUCTION OF THIS DEED

- 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 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 all their obligations can be enforced against all of them jointly and severally 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 person deriving title through or under that party and in the case of the Council the successors to its statutory functions.

2.7 The headings are for reference only and shall not affect construction.

3 LEGAL BASIS

3.1 This Deed is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000.

3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner.

4 CONDITIONALITY

This Deed is conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of Development

save for the provisions of Clauses 6.1, 8, 11, 12 and 13 which shall come into effect immediately upon completion of this Deed.

5 THE OWNER'S COVENANTS

5.1 The Owner covenants with the Council as set out in the Third Schedule.

5.2 The Council covenants with the Owner as set out in the Fourth Schedule.

6 MISCELLANEOUS

6.1 The Owner shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed in the sum of £350 (three hundred and fifty pounds).

6.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

6.3 This Deed shall be registrable as a local land charge by the Council.

6.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner 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 on behalf of the Council by the Head of Planning;

And any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.

6.5 If the Owner makes a written request for the Council to place a note against the entry made in the Local Land Charges Register stating which obligations have been discharged and complied with, the Council shall place such a note against the entry and following the performance and

satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

- 6.6 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.
- 6.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 6.8 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 but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 6.10 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.
- 6.11 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

7 WAIVER

No waiver (whether expressed or implied) by the Council or Owner 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 or Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

8 CHANGE IN OWNERSHIP

The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

9 INTEREST

If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

10 VAT

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

11 DISPUTE PROVISIONS

- 11.1 In the event of any dispute or difference arising between the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

11.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 11.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.

11.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.

11.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.

11.5 The provisions of this clause shall not affect the ability of the Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.

12 JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

13 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.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

FIRST SCHEDULE

The Site

Land on the south side of the A64 (T) at Sand Hutton, York, being the Food and Environment Research Agency, registered at HM Land Registry with Title Number NYK111716 and shown for the purposes of identification edged red on the Plan

RYEDALE DISTRICT COUNCIL

TOWN & COUNTRY PLANNING ACT 1990

FULL APPLICATION FOR PERMISSION TO CARRY OUT DEVELOPMENT

RYEDALE DISTRICT COUNCIL, THE LOCAL PLANNING AUTHORITY, HAS CONSIDERED THIS APPLICATION AND HAS DECIDED IT SHOULD BE APPROVED SUBJECT TO THE CONDITIONS STATED BELOW:

Application No: 09/00508/FUL

Proposal: Reconfiguration of existing site entrance, erection of gatehouse, formation of adjacent car park for visitors and formation of additional staff parking for 64 no vehicles together with associated landscaping

at: The Food & Environment Research Agency Sand Hutton York YO41 1LN

for: DEFRA

Decision Date:

REASON FOR APPROVAL

The proposed development is in accord with the following development plan policies and there are no other material considerations that outweigh those listed development plan policies:

CONDITIONS AND ASSOCIATED REASONS

01 The development hereby permitted shall be begun on or before

Reason:- To ensure compliance with Section 51 of the Planning and Compulsory Purchase Act 2004

02 Before the development hereby permitted is commenced, or such longer period as may be agreed in writing with the Local Planning Authority, details and samples of the materials to be used on the exterior of the building the subject of this permission shall be submitted to and approved in writing by the Local Planning Authority

(NB Pursuant to this condition the applicant is asked to complete and return the attached proforma before the development commences so that materials can be agreed and the requirements of the condition discharged)

Reason:- To ensure a satisfactory external appearance

DEFRA
C/O Darntonegs Ltd (Mr C Leetham)
The Coach House
Monk Fryston Hall
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Leeds
West Yorkshire
LS25 5DU

APPN NO: 09/00508/FUL

- 03 Notwithstanding the submitted landscaping scheme on drawing no. 7099 [90] 04 B, no part of the proposed mounding along the northern, eastern and western boundaries of the development shall exceed 450mm in height, any remaining spoil being graded into the existing open area behind the new mounds. In addition, the proposed northern mound shall be set back some 2 metres from the northern boundary of the site. The proposed planting shall be carried out in the first available planting season following completion of the development, and any plant material that, within a period of five years following planting, dies, is removed, or becomes seriously damaged or diseased, shall be replaced with others of similar sizes and species, unless the Local Planning Authority gives written consent to any variation.

Reason:- To ensure that the proposed new planting is appropriately integrated into the prevailing landscape, in the interests of appropriate screening to the development, and to ensure the long-term retention of the screen planting

- 04 No development shall commence on site prior to the submission of sustainable drainage systems (SUD's) which has been agreed in writing by the Local Planning Authority in consultation with the Foss Internal Drainage Board. The development shall thereafter be implemented in accordance with the approved details, unless otherwise agreed in writing with the Local Planning Authority.

Reason:- To ensure the satisfactory drainage of the site.

- 05 The development hereby permitted shall be carried out in accordance with the following approved plan(s):

7099 [20] 01 Revision A,
7099 [90] 04 Revision B, and
7099 [90] 05.

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

NO CONSENT OR APPROVAL HEREBY GIVEN REMOVES ANY REQUIREMENT TO SERVE NOTICES OR SEEK APPROVAL FROM THE DISTRICT COUNCIL WHERE SUCH ACTION IS REQUIRED BY THE BUILDING ACT 1984 OR OF ANY OTHER STATUTORY PROVISION. NO PART OF THE PROPOSED DEVELOPMENT SHOULD BE STARTED WITHOUT COMPLYING WITH SUCH REQUIREMENT

HEAD OF PLANNING

DEFRA
C/O Darntonegs Ltd (Mr C Leetham)
The Coach House
Monk Fryston Hall
Monk Fryston
Leeds
West Yorkshire
LS25 5DU

APPN NO: 09/00508/FUL

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THIRD SCHEDULE

THE OWNER'S COVENANTS WITH THE COUNCIL

1 THE OWNER COVENANTS WITH THE COUNCIL

1.1 THAT HE WILL NOT bring into use or Occupy any part of the Development until the Travel Plan has been adopted by him and, the following adoption of the Travel Plan, the measures set out in Chapter 5 of the Travel Plan shall be implemented in accordance with the approved timescales.

1.2 THAT HE WILL put in place the Monitoring Plan as set out in Chapter 7 of the Travel Plan, in accordance with the timetable set out therein.

1.3 THAT HE WILL install automated traffic counters at appropriate points on the Site such points to be agreed with the Council and to constantly record the number of vehicles arriving and departing the Site Provided that

- 1.3.1 full details of the automated system to monitor vehicle trips to and from the Site have been submitted to and approved in writing by the Council and the Highways Agency prior to any part of the Development being brought into use
- 1.3.2 the system referred to in 1.3 has been implemented and is operating to the satisfaction of the Council and the Highways Agency (both acting reasonably)
- 1.3.3 The details to be submitted pursuant to 1.3 ~~3~~ above shall include: *KM*
- how the system will be maintained
 - The date from which the system will be fully operational
 - details of the monitoring equipment
 - how the data will be collected
 - how the results will be reported to the Council and the Highways Agency in accordance with the terms of the provisions in the Travel Plan

1.4 THAT HE WILL enter into an agreement with the Highways Agency under Section 278 of the Highways Act 1980 ("the Section 278 Agreement") in the event that the Trigger Level is met unless it is agreed in writing by the Council and the Highways Agency that the Mitigation Works are not required and that further monitoring is required and the Owner will use reasonable endeavours to secure the completion of the Section 278 Agreement within one month of the Trigger Level being met.

1.5 THAT HE WILL within 6 months from the date on which the Section 278 Agreement is signed and completed, deliver and complete the Mitigation Works, in accordance with the terms of that Section 278 Agreement, unless it is agreed in writing by the Council and the Highways Agency (both acting reasonably) that the 6 month period may be extended.

FOURTH SCHEDULE
THE COUNCIL'S COVENANTS WITH THE OWNER

1. THE COUNCIL COVENANTS WITH THE OWNER

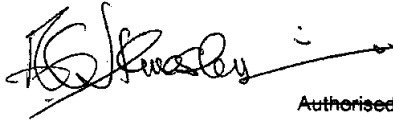
1.1 That it will issue the Planning Permission within ten working days of the date of this Deed.

ANNEX ONE

TRAVEL PLAN

THE COMMON SEAL OF ^{THE} RYEDALE DISTRICT COUNCIL)
was affixed in the presence of: AND IS AUTHENTICATED)
BY)

CHAIRMAN

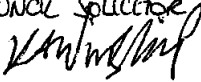


Authorised Signatory

Minute 934/82

Reg.'s. 6306

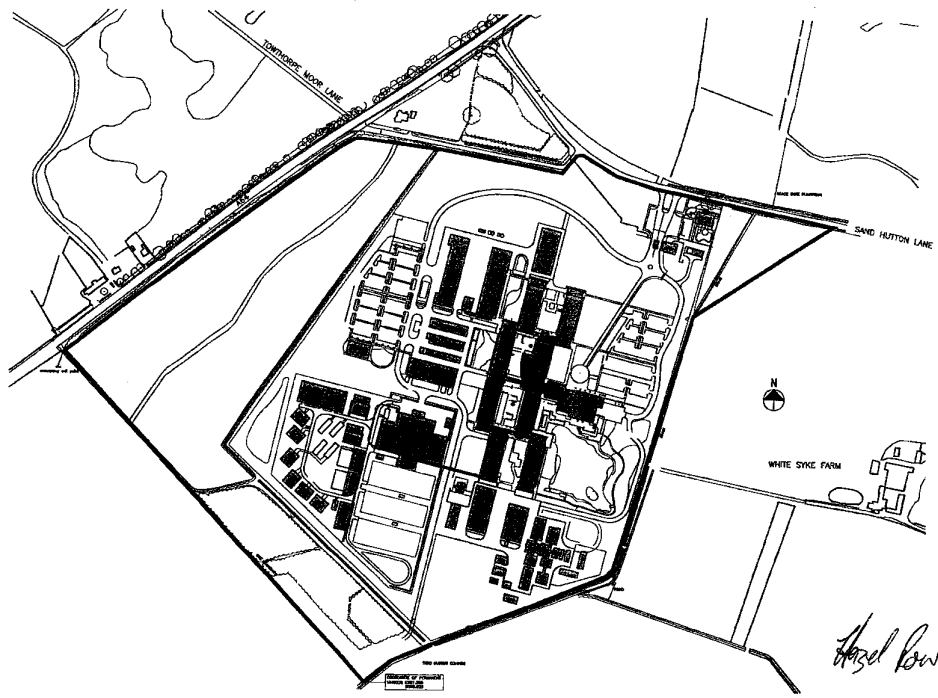
Initials *cew*

COUNCIL SECRETARY


THE COMMON SEAL OF THE SECRETARY OF)
STATE FOR THE ENVIRONMENT, FOOD AND RURAL AFFAIRS)
was hereunto affixed in the presence of:)



SECOND SCHEDULE
Form of notice of planning permission



SCALE 1:50
 SCALE 1:100
 SCALE 1:200
 SCALE 1:500
 SCALE 1:1000

Harold Rowley

No. 1 - Drawing sheet number and title. CEN-15009
 No. 2 - NO. OF SHEETS DRAWN. CEN-20000
 No. 3 - NO. OF SHEETS DRAWN. CEN-20000
 DRAWING NO. 20000

DATE	BY	CHKD BY
DATE	BY	CHKD BY

dantonegs
 MULTI ENVIRONMENT CONSULTANCY
 155E CHURCH STREET, LONDON, TWICKENHAM

Project Name: Flem, York
 Project: Outdoor Project
 Drawing Title: Site Location Plan
 Project No: 15000
 Date: 15.04.09

DATE	BY	CHKD BY
15.04.09	C.D.L.	

7098 Date 07

DRAWING NO. 20000
 NO. OF SHEETS DRAWN. CEN-20000
 NO. OF SHEETS DRAWN. CEN-20000
 DRAWING NO. 20000