
Dated: 29 October 2025

- (1) The District Council of Folkestone and Hythe
- (2) Nickolls Properties Limited
- (3) Vistry Homes Limited
- (4) Wattle Berrys LLP
- (5) Camland Hythe Ltd

Deed of Variation

relating to planning obligation by agreement pursuant to section 106A of the Town and Country Planning Act 1990 relating to the development of land known as Nickolls Quarry, Hythe, Kent

THIS SECOND DEED OF VARIATION is made on

29 October

2025

BETWEEN

- (1) **THE DISTRICT COUNCIL OF FOLKSTONE AND HYTHE** of The Civic Centre, Castlehill Avenue, Folkestone, Kent CT20 2QY ("**FHDC**");
- (2) **NICKOLLS PROPERTIES LIMITED** (registered number 4960429) whose registered office is at Victoria Court, 17-21 Ashford Road, Maidstone, Kent ME14 5DA (the "**First Owner**");
- (3) **VISTRY HOMES LIMITED** (registered number 00397634) whose registered address is at 11 Tower View, Kings Hill, West Malling, Kent, ME19 4UY (the "**Second Owner**");
- (4) **WATTLE BERRYS LLP** (registered number OC435317) whose registered office is at 4 Melbourne House, Corbygate Business Park, Priors Haw Road, Corby, NN17 5JG ("**Wattle Berry LLP**"); and
- (5) **CAMLAND HYTHE LTD** (registered number 8554819) whose registered office is at Camburgh House, 27 New Dover Road, Canterbury, CT1 3DN ("**Camland Hythe Ltd**")

(herein referred to as "the Parties").

BACKGROUND

- (A) For the purposes of the Act, FHDC is the local planning authority for the area within which the Site is located and the person who is entitled to enforce the obligations contained in this Deed.
- (B) KCC is the local highway authority and local education authority for the purposes of Highways Act and the Education Acts respectively for the area within which the Site is located and is not required to be party to this Deed.
- (C) The First Owner is the freehold owner of part of the Site registered under title number K897109 free from encumbrances that would prevent the First Owner from entering into this Deed.
- (D) The Second Owner is the freehold owner of part of the Site registered under title numbers TT164309 and TT175874 free from encumbrances that would prevent the Second Owner from entering into this Deed.
- (E) Wattle Berrys LLP has a debenture over that part of the Site registered under title number K897109 dated 31 March 2021 and Camland Hythe Ltd has a registered charge over that part of the Site registered under title number K897109 dated 2 August 2013 (both parties being referred to in this Deed as the "Chargees").
- (F) The Section 106 Agreement was varied by the First Deed of Variation.
- (G) The parties are entering into this Second Deed of Variation to vary the terms of the Section 106 Agreement as varied by the First Deed of Variation such that each reference to '250 Dwellings' in each of paragraphs 2, 4 and 5 of Schedule 2 (Employment Land) shall be deleted and replaced with a reference to '475 Dwellings'.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

- 1.1 For the purposes of this Second Deed of Variation (including for the avoidance of doubt the recitals above) the definitions set out in the Section 106 Agreement as varied by the First Deed of Variation will apply unless the context requires otherwise and in addition the

following additional expressions shall have the following meanings which shall take precedence in the event of conflict:-

"First Deed of Variation"	the deed of variation entered into by the parties dated 28 November 2024 to secure the provision and delivery of a care home as part of the Development
"KCC"	means Kent County Council
"Second Deed of Variation"	this deed of variation as entered into pursuant to s106A of the Act

2. **LEGAL EFFECT**

- 2.1 This Second Deed of Variation is made pursuant to Section 106 and Section 106A of the Act to the intent the Section 106 Agreement as amended will bind the interests of the Owners and their successors in title to each and every part of the Site and their assigns as varied herein.
- 2.2 Save as varied hereby the Section 106 Agreement as varied by the First Deed of Variation shall remain in full force and effect and shall be deemed to be set forth in full in this Second Deed of Variation to the intent that subject only to the modifications thereto effected by this Second Deed of Variation the rights and obligations therein shall (to the extent not already performed) remain enforceable and performable by FHDC and the other Parties thereto hereafter.

3. **CONDITIONALITY**

This Second Deed of Variation shall come into effect upon the date of this Second Deed of Variation.

4. **VARIATIONS TO THE SECTION 106 AGREEMENT**

- 4.1 The Section 106 Agreement as varied by the First Deed of Variation shall be varied in accordance with the following in relation to Schedule 2 (Employment Land) as follows:
- 4.1.1 To delete paragraph 2 to Schedule 2 in its entirety and replace as follows:
- 2 *There shall be no Occupation of more than 475 Dwellings until such time as the Owner has submitted and secured the written approval of FHDC for a scheme to ensure the provision of the Minimum Employment Land (the "Minimum Employment Land Scheme")*
- 4.1.2 To delete paragraph 4 to Schedule 2 in its entirety and replace as follows:
- 4 *There shall be no Occupation of more than 475 Dwellings until such time as the Owner has received written confirmation from FHDC that the Minimum Employment Land Scheme has been implemented and completed to the satisfaction of FHDC PROVIDED THAT if FHDC unreasonably fail to issue the written confirmation referred to herein within 30 Working Days of a request to do so from the Owner following the completion of all works required under the Minimum Employment Land Scheme the restriction on Occupation in this paragraph shall not apply to the Employment Land.*
- 4.1.3 To delete paragraph 5 to Schedule 2 in its entirety and replace as follows:
- 5 *There shall be no Occupation of more than 475 Dwellings on the Development until such time as the Owner has submitted and secured the written approval of FHDC for an Employment Marketing Strategy.*

- 4.2 The Section 106 Agreement as varied by the First Deed of Variation shall be varied in accordance with the following in relation to Schedule 6 (Sport Leisure and Community Use):

- 4.2.1 The proviso in paragraph 3.2 shall be deleted and replaced with the following

PROVIDED THAT FHDC provide written notice to the Owner as to whether paragraph 3.1 or paragraph 3.2 will apply within 3 years from the date of the grant of the Planning Permission and in the event that FHDC do not provide any such notice within such time period paragraph 3.1 shall apply and the Sports Leisure and Community Land shall be free from the obligations imposed in this Schedule and shall be free from any enforcement action and the Owner shall be permitted to bring forward the Sports Leisure and Community Land in accordance with the terms of the Planning Permission or any other planning permission.

- 4.2.2 In paragraph 4 the reference to '2 years from the date of the grant of the Planning Permission' shall be deleted and replaced with '3 years from the date of the grant of the Planning Permission' so that the paragraph reads as follows:

Where FHDC elects to utilise the Sports Leisure and Community Contribution for the improvement of sport leisure and community facilities in accordance with paragraph 3.1 or 6.2, the Owner shall pay to FHDC the Sports Leisure and Community Contribution less the amounts paid under paragraph 2 within 3 years from the date of the grant of the Planning Permission and FHDC shall be entitled to use the Sports Leisure and Community Contribution for the improvement of such facilities and/or Affordable Housing on or off Site and following receipt of the payment the Owner shall be free from the obligation in paragraph 1 of this Schedule 6.

- 4.2.3 In paragraph 5 the reference to '2 years from the date of the grant of Planning Permission' shall be deleted and replaced with '3 years from the date of the grant of Planning Permission' so that the paragraph reads as follows:

Where FHDC elects to submit a Reserved Matters Application for the development of a sports leisure and community centre on the Sports Leisure and Community Land in accordance with paragraph 3.2 the Owner shall pay to FHDC the Sports Leisure and Community Contribution less the amounts paid under paragraph 2 within 3 years from the date of the grant of Planning Permission.

- 4.2.4 The insertion of a new paragraph 5A as follows:

The parties acknowledge that payment of the Sports Leisure and Community Contribution by the Owner in accordance with paragraphs 4 and/or 5 of Schedule 6 may be made earlier than the date of 3 years from the date of the grant of Planning Permission PROVIDED THAT such payment shall not affect FHDC's application of funds pursuant to paragraphs 3.1 and 3.2 of this Schedule 6.

5. **CHARGEES**

- 5.1 Each of the Chargees acknowledge and declare that this Second Deed of Variation has been entered into by the First Owner with its consent and that part of the Site registered under title number K897109 shall be bound by the obligations contained in Section 106 Agreement as varied by the First Deed of Variation and this Second Deed of Variation and the security of the relevant Chargee's mortgage over that part of the Site registered under title number K897109 shall take effect subject to the Section 106 Agreement as varied by the First Deed of Variation and this Second Deed of Variation PROVIDED THAT a Chargee shall otherwise have no liability under the terms of the Section 106 Agreement as varied by the First Deed of Variation and this Second Deed of Variation unless it takes possession of that part of the Site registered under title number K897109 in which case it too will be bound by the obligations as if it were a person deriving title from the First Owner.

6. MISCELLANEOUS

- 6.1 Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 nothing in this Second Deed of Variation confers or purports to confer the right to enforce any of the terms and provisions herein on any person who is not a party hereto or a successor in title to a party hereto.
- 6.2 This Second Deed of Variation is to be governed by and interpreted in accordance with the laws of England.
- 6.3 The Courts of England have jurisdiction in relation to any disputes between the Parties arising out or related to the Section 106 Agreement the First Deed of Variation and this Second Deed of Variation. This clause operates for the benefit of the FHDC and KCC who retain the right to sue and enforce any judgement against the Owners in the courts of any competent jurisdiction.
- 6.4 Nothing contained or implied in the Section 106 Agreement as varied by the First Deed of Variation and the Second Deed of Variation shall prejudice or affect the rights powers duties and obligations of FHDC and KCC in their exercise of their statutory functions and the rights and powers duties and obligations of FHDC and KCC may be as fully and effectually exercised as if they were not a party to this Deed.
- 6.5 No waiver (whether expressed or implied) by FHDC and/or KCC of any breach or default by the Owners in performing or complying with any of the obligations, covenants or undertaking contained in the Section 106 Agreement as varied by the First Deed of Variation and this Second Deed of Variation shall constitute a continuing waiver and no such waiver shall prevent FHDC or KCC from enforcing any of the said obligations covenants or undertaking or from acting upon any subsequent breach or default in respect thereof by the Owners.

7. LEGAL COSTS

The First Owner shall on completion of this Second Deed of Variation pay the reasonable and properly incurred costs of FHDC in dealing with this this Second Deed of Variation.

8. COUNTERPARTS

- 8.1 This Second Deed of Variation may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one Second Deed of Variation.
- 8.2 Transmission of an executed counterpart of this Second Deed of Variation (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) takes effect as the transmission of an executed "wet-ink" counterpart of this Second Deed of Variation.
- 8.3 No counterpart shall be effective until each party has delivered to the other at least one executed counterpart
- 8.4 Each party shall provide the other parties with its respective executed hard original counterpart by first class post forthwith following completion PROVIDED THAT where a counterpart copy is executed electronically and without prejudice to Clause 8.2, a copy circulated by e-mail to the other parties will satisfy the requirements of this Clause 8.4.

SIGNED BY or on behalf of the Parties on the date stated at the beginning of this Second Deed of Variation.

THE COMMON SEAL of
THE DISTRICT COUNCIL OF FOLKESTONE AND HYTHE
was hereto affixed to this deed
in the presence of:

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)
)




TIM HIXON
Authorised Signatory

Signed as a deed by
NICKOLLS PROPERTIES LIMITED
acting by a director and a witness

)
)
)

Signature of director

Signature of Witness:

Witness Name:

Witness Address:

Witness Occupation:

SIGNED as a **DEED**
by _____ and _____ as
attorneys for **VISTRY HOMES LIMITED**, in
the presence of:

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.....
Signature of Attorney

Signature of Witness:

Name (in BLOCK CAPITALS):

Address:

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Occupation:

Signature of Attorney

Signature of Witness:

Name (in BLOCK CAPITALS):

Address:

Occupation:

Signed as a deed by)
CAMLAND HYTHER LIMITED)
acting by a director and a witness)

Signature of director

Signature of Witness:

Witness Name:

Witness Address:

Witness Occupation:

Signed as a deed by)
WATTLE BERRYS LLP)
acting by a member and a witness)

Signature of member

Signature of Witness:

Witness Name:

Witness Address:

Witness Occupation:



