

Dated 6 February 20²⁶

Conservation Covenant Agreement

Nutrient Neutrality

pursuant to section 117 of the Environment Act 2021

relating to land at Smeeth, Ashford, Kent

Between:

(1) WILLIAM ERIC JEANES

- and -

(2) RSK BIOCENSUS LIMITED

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This Conservation Covenant is dated 6 February 20²⁶

Between:

- (1) **William Eric Jeanes** whose address is of Bourne Farm, Bourne Road, Aldington, Ashford, Kent TN25 AR (the **Mitigation Site Operators**); and
- (2) **RSK Biocensus Limited** (a private limited company registered in England and Wales with registered number 04364279) whose registered office is at Spring Lodge, 172 Chester Road, Helsby, Frodsham, England WA6 0AR (**Responsible Body**).

Introduction

- (A) The Mitigation Site Operators hold a 'qualifying estate' in the Mitigation Site for the purpose of section 117(4) of the 2021 Act and shall comply with the Mitigation Site Operators terms and covenants contained in this Conservation Covenant.
- (B) William Eric Jeanes is the freehold owner in respect of part of the Mitigation Site which is registered at HM Land Registry under title numbers K514753, K514752, and K690496.
- (C) The Mitigation Site Operators agree to enter into this agreement with the Responsible Body regarding the Mitigation Site with the intention to create provisions which are of a qualifying kind, have a conservation purpose and are intended by the Parties to be for the public good (the **Conservation Covenant**).
- (D) The Responsible Body (pursuant to section 119 of the 2021 Act) is the body responsible for enforcing the terms of this Conservation Covenant.
- (E) This Conservation Covenant is made pursuant to Section 117 of the 2021 Act and the Parties agree that this Conservation Covenant is intended to be a Conservation Covenant and shall bind the Mitigation Site Operators and all successors in title and assigns and the persons claiming under or through the Mitigation Site Operators.
- (F) This Conservation Covenant is entered into to ensure that the Mitigation Site provides Nutrient Mitigation to satisfy the requirements of the Habitat Regulations. The Mitigation Site Operators covenant with the Responsible Body on their own behalf and on behalf of their successors in title and assigns and any person claiming title through or under them to perform the obligations contained in Schedule 1 of this Conservation Covenant.

Agreed Terms

1 Interpretation

1.1 The following definitions and rules of interpretation apply in this Conservation Covenant:

1990 Act	the Town and Country Planning Act 1990.
2021 Act	the Environment Act 2021.
Agricultural Use	(a) use for horticulture, fruit growing, seed growing (including the growing of cereal crops) undertaken without reliance on artificial fertilisers or comparable nutrient inputs;

- (b) the supplementary feeding of livestock, with the exception of mineral licks;
- (c) the rearing or release of pheasants or other game birds;
- (d) use for dairy or pig farming;
- (e) use for the breeding and keeping of livestock (any creature kept for the production of food, wool, skins or fur or for the purpose of its use in the farming of land);
- (f) use of the land as grazing land;
- (g) use as market gardens or nursery grounds; and
- (h) any other non-agricultural use that would in any way increase levels of nitrogen inputs on the Mitigation Site.

Allocation	means the attribution of any Nutrient Mitigation Credits by the Mitigation Site Operators towards a development in the Catchment, organisation or other third party to offset that developments requirement to show it is nutrient neutral (and “ Allocate ” and “ Allocated ” and “ Allocations ” shall be constructed accordingly).
Alternative Responsible Body	a body approved pursuant to section 119 of the 2021 Act.
Catchment	means the Stour River Basin Catchment
Cessation of Agriculture	the cessation of Agricultural use of the Mitigation Site, and use of the Mitigation Site as fallowed land to secure the Nutrient Mitigation Credit Number.
Cessation of Agriculture Date	the date of this Conservation Covenant.
CIEEM	the Chartered Institute of Ecology and Environmental Management.
Conservation Purpose	the use of the Mitigation Site for a qualifying purpose of a qualifying kind in accordance with section 117 of the Environment Act 2021, which has a conservation purpose and is intended by the Parties to be for the public good.
Covenant Period	the period commencing on the Cessation of Agriculture Date until and excluding 1 April 2030.
Deed of Release	the deed of release substantially in the form appended to this Conservation Covenant at Appendix 2.

Default Interest Rate	5% (five percent) over the Bank of England Base Rate from time to time.
Dispute	has the meaning set out in clause 9.1.
Expert	an independent and professionally qualified expert with relevant experience in the field of the matter in dispute who has been appointed pursuant to Clause 10 of this Conservation Covenant and for the avoidance of doubt any expert on ecology matters shall be a member of CIEEM and for the further avoidance of doubt the Expert shall be entitled to get legal support in any matter referred to them where appropriate to do so.
Force Majeure Event	a circumstance not within the control of the Mitigation Site Operators comprising an act of God such as (but not limited to) drought, flood or other natural disaster or the compulsory acquisition of the Mitigation Site by an acquiring authority under compulsory purchase powers.
Fundamental Breach	a breach of the obligation 1.2 of Schedule 1 in this Conservation Covenant which wholly undermines the Conservation Purpose excluding a Force Majeure Event, Provided That a Fundamental Breach shall not be deemed to have arisen where the Cessation of Agriculture, and the Nutrient Monitoring Works has been materially complied with.
Habitat Regulations	The Conservation of Habitats and Species Regulations 2017 (as amended).
Index	Means the Consumer Price Index published by the Office for National Statistics (or any successor government body minister or department).
Index Linked	means all payments expressed in this Deed are to be increased from the date of this Deed to the date of payment by reference to the Index applying the following formula: D = A x B/C where: A = the sum stated to be payable in this Deed; B = the last Index figure published prior to the payment date; C = the last Index figure last published prior to the date of this Deed; and D = the sum payable to the Responsible Body.
Insolvency Event	one of the following:

- (a) a winding up order is made by the Court;
- (b) an administrator is appointed pursuant to the provisions of Schedule B1 of the Insolvency Act 1986;
- (c) a receiver, liquidator provisional liquidator, administrative receiver is appointed in respect of it or any of its assets;
- (d) a resolution is passed for its winding up, liquidation or reorganisation (save for the purposes of a solvent reorganisation); or
- (e) an order is made for a moratorium under Part A1 and Schedule ZA1 of the Insolvency Act 1986.

Liability Cap	means the sum of [REDACTED]
Mitigation Site	land known as Smeeth, Ashford, Kent and being 49.3 hectares and registered at HM Land Registry under title numbers K514753, K514752, and K690496 as shown edged red on the Plan at Appendix 1.
Monitoring Pack	Information required by the Responsible Body to verify the compliance with the covenants of this deed: a) an up-to-date Nutrient Mitigation Credit Sale Register; and b) a detailed log setting out the management and monitoring actions carried out at the Mitigation Site.
Monitoring Report	monitoring reports to be issued to the Responsible Body as specified in the monitoring plan at Schedule 3.
Monitoring Fees	the fees set out in paragraph 1 of Schedule 2.
Natural England's Discretionary Advice Letter	The letter appended to Appendix 3 in which Natural England confirms the Cessation of Agriculture will generate the Nutrient Mitigation Capacity
Nutrient Mitigation	the creation of Nutrient Mitigation Credits resulting from implementing the Cessation of Agriculture that can be Allocated to a development draining to the Catchment to fulfil its requirement to mitigate the anticipated nutrient loading of that development on the Catchment.
Nutrient Mitigation Capacity	the total Nutrient Mitigation Credits resulting from the cessation of Agricultural Use and the implementation of the Cessation of Agriculture at the Mitigation Site in order to reduce nutrient inputs on the Mitigation Site for the Covenant Period.

Nutrient Mitigation Credits	the measure of one kilogram of Nutrient Mitigation (as identified in the Natural England's Discretionary Advice Letter) (based on a conversion of 1 kilogram of nitrogen or phosphorus equating to 1 credit) on the Mitigation Site pursuant to this Deed.
Nutrient Mitigation Credit Number	937.18 Nutrient Mitigation Credits in respect of nitrogen and 44.86 Nutrient Mitigation Credits in respect of phosphorus available from the Mitigation Site as forming part of the wider credits confirmed in Natural England's Discretionary Advice Letter.
Nutrient Mitigation Credit Completed Sale Confirmation	written confirmation by way of letter or email to a Nutrient Mitigation Credit Purchaser confirming the completed Sale of a Nutrient Mitigation Credit from the Mitigation Site Operators, or their agent, to the Purchaser which shall specify the following: (a) the identity of the Nutrient Mitigation Credit Purchaser including the address (which, if the Nutrient Mitigation Credit Purchaser is a company shall be its registered office address) and contact details to include an email address and telephone number; (b) the specific development (with planning reference number) in relation to which the Nutrient Mitigation Credit(s) has or have been Sold being within the Catchment; (c) the number of Nutrient Mitigation Credit(s) Sold.
Nutrient Mitigation Credit Purchaser	a purchaser of a Nutrient Mitigation Credit(s).
Nutrient Mitigation Credit Sale Register	a register maintained by the Mitigation Site Operators containing the following: (a) the total available Credits from the Mitigation Site (updated after each and every Nutrient Mitigation Credit Sale); and (b) all the details listed at (a) to (c) within the definition Nutrient Mitigation Credit Completed Sale Confirmation for each Sale of Nutrient Mitigation Credits from the Mitigation Site.
Nutrient Monitoring Works	works for the monitoring of the Mitigation Site to ensure that the Nutrient Mitigation to be achieved by the Cessation of Agriculture is maintained at the Mitigation Site or any part of the Mitigation Site to secure the Nutrient Mitigation Credit Number for the Mitigation Site or any part of the Mitigation Site.
Plans	the plans attached at Appendix 1.

Relevant Event

means any of the following events:

- a) a change in the law; or
- b) a decision of a Court, tribunal, Secretary of State, or other decision maker with competence; or
- c) a change in Natural England's custom or practice; or
- d) a change in scientific opinion based on evidence; or
- e) a change in industry practices or in the generally accepted calculation methods for the type or extent of land required to provide Nutrient Mitigation Credits,

that is accepted in writing by both Natural England and the relevant local planning authority and results in any of the following:

- a) offsite nitrate mitigation not being required in relation to development in the Catchment;
- b) Nutrient Mitigation Credits not being required for development in the Catchment; or
- c) taking the Mitigation Site (or part thereof) out of nutrient production not being considered to be an effective form of offsite nutrient mitigation.

PROVIDED THAT the relevant local planning authority has expressly stated in writing that obligations of the same nature as this Conservation Covenant need no longer be complied with in relation to the Mitigation Site (or part thereof) notwithstanding that any Nutrient Mitigation Credits have already been Allocated and attributed to a development.

Remaining Nutrient Mitigation Capacity

the available Nutrient Mitigation Capacity on the Nutrient Mitigation Credit Sale Register which can be Allocated to a development within the Catchment.

Sale/Sold

the transfer of any Nutrient Mitigation Credit or part thereof to a third party for a monetary value or any other consideration following or full payment of the balance payable following an earlier deposit payment.

Secretary of State

the Secretary of State from time to time for the Environment, Food and Rural Affairs.

- 1.2 Clause headings shall not affect the interpretation of this Conservation Covenant.
- 1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.4 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.5 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.6 A reference to this Conservation Covenant or to any other deed or document referred to in this Conservation Covenant is a reference to this Conservation Covenant or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this Conservation Covenant) from time to time.
- 1.7 References to recitals, clauses, schedules, paragraphs, appendices and plans are to the recitals, clauses, plans and paragraphs to the schedules and appendices of this Conservation Covenant. For the avoidance of doubt all schedules and appendices attached to this Conservation Covenant form part of this Conservation Covenant and are legally binding.
- 1.8 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.
- 1.9 References to any Party to this Conservation Covenant 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 Responsible Body the successors to its statutory functions.
- 1.10 Any obligation, covenant, undertaking or agreement by any Party to this Conservation Covenant not to do any act or thing includes an obligation, covenant, undertaking or agreement not to permit, procure or allow the doing of that act or thing.
- 1.11 Where the agreement acceptance consent approval or satisfaction of the Responsible Body or the Mitigation Site Operators are required under the terms of this Conservation Covenant such agreement acceptance consent approval or satisfaction shall not be unreasonably withheld or delayed.
- 1.12 If any provision or part-provision of this covenant is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 1.12 shall not affect the validity and enforceability of the rest of this Conservation Covenant.
- 1.13 This Conservation Covenant constitutes the whole agreement between the Parties and supersedes all previous agreements, whether written or oral, between the Parties relating to its subject matter.

2 Statutory Provisions

- 2.1 This Conservation Covenant is made pursuant to Section 117, Section 118 and Section 119 of the 2021 Act and all other enabling powers with the intention that it is a Conservation

Covenant between the Mitigation Site Operators and the Responsible Body, enforceable by the Responsible Body against the Mitigation Site Operators' successors in title pursuant to Section 122 of the 2021 Act.

- 2.2 The Parties agree that the Mitigation Site Operators' interest in the Mitigation Site is a qualifying estate pursuant to section 117(4) of the 2021 Act.
- 2.3 The Parties agree and acknowledge that the provisions of this Conservation Covenant have a Conservation Purpose.
- 2.4 The Parties intend that this Conservation Covenant is to be for the public good.

3 Mitigation Site Operators' Consent

- 3.1 The Parties acknowledge that the Responsible Body enters into this Conservation Covenant after reviewing the Natural England's Discretionary Advice letter, title documents, ecological reports and surveys provided to the Responsible Body by the Mitigation Site Operators and after completing its own due diligence checks on the viability of the proposals for the Mitigation Site from those documents.
- 3.2 The Mitigation Site Operators covenant with the Responsible Body so as to bind its interest in the Mitigation Site as set out in Schedule 1 of this Conservation Covenant.
- 3.3 The Parties acknowledge that the Mitigation Site Operators may enter into other contracts to deliver ecosystem services or to create other forms of environmental benefits or credits in relation to the Mitigation Site, provided that those other contracts do not:
 - 3.3.1 cause a Fundamental Breach of this Conservation Covenant;
 - 3.3.2 materially restrict the Mitigation Site Operators' ability to comply with their obligations under this Conservation Covenant;
 - 3.3.3 breach any laws or applicable government guidance on the 'stacking' of environmental credits;
 - 3.3.4 result in the sale of Nutrient Mitigation Credits into the voluntary nature markets without the written consent of the Responsible Body.

4 Release of Mitigation Site from the Obligations Contained in This Conservation Covenant

- 4.1 The Mitigation Site Operators may modify or discharge all of the Mitigation Site from the obligations contained in this Conservation Covenant by giving notice in writing to the Responsible Body (the **Site Release Notice**) where, at the date of the Release Notice no Nutrient Mitigation Credits realised from the Mitigation Site have been Sold from all or part of the Mitigation Site.
- 4.2 The Mitigation Site Operators may also modify or discharge part of the Mitigation Site from the obligations contained in this Conservation Covenant by giving notice in writing to the Responsible Body (the **Partial Release Notice**) provided that no Nutrient Mitigation Credits have been Sold from the relevant part of the Mitigation Site which shall be evidenced by the Mitigation Site Operators providing plans of the areas of the Mitigation Site Allocated to a Sale which shall be no less than the relevant Nutrient Credits required for such Sale.

- 4.3 Where the Site Release Notice or Partial Release Notice has been given in accordance with the provisions of this clause and requests release of all of the Mitigation Site the Parties shall enter into a Deed of Release substantially in the form contained in Appendix 2 as soon as is reasonably possible and the Responsible Body shall within five (5) Working Days of completion of the Deed of Release secure the release of this Conservation Covenant from its registration as a local land charge from HM Land Registry or with the relevant local authority from the relevant part of the Mitigation Site to which the Site Release Notice or Partial Release Notice relates.
- 4.4 The Mitigation Site Operators may also modify or discharge part of the Mitigation Site from the obligations contained in this Conservation Covenant by giving notice in writing to the Responsible Body (the **Partial Release Notice**) provided that no Nutrient Mitigation Credits have been Sold from the relevant part of the Mitigation Site which shall be evidenced by the Mitigation Site Operators providing plans of the areas of the Mitigation Site Allocated to a Sale which shall be no less than the relevant Nutrient Credits required for such Sale.
- 4.5 Where the Responsible Body and the Mitigation Site Operators agree to release the covenants and obligations contained in this Conservation Covenant on part of the Mitigation Site in accordance with clauses 4.3 and 4.4 or following resolution of a Dispute in accordance with clause 9 and 10 then the Parties shall enter into a Deed of Release in substantially the form contained in Appendix 2 as soon as is reasonably possible, and, following the completion of a Deed of Release the Responsible Body shall within five (5) Working Days of the date of the Deed of Release update or replace the entry regarding the Mitigation Site as a local land charge with the Deed of Release to HM Land Registry or with the relevant local authority.
- 4.6 The Mitigation Site Operators shall pay the reasonable and proper costs of the Responsible Body incurred pursuant to this clause 4.

5 **Miscellaneous Provisions**

- 5.1 No person shall be liable for any breach of a covenant, restriction or obligation contained in this Conservation Covenant after parting with all of its interest in the Mitigation Site, or parting with its interest in that part of the Mitigation Site to which the relevant covenants, restrictions or obligation relates save in respect of any breach subsisting prior to parting with such interest.
- 5.2 Insofar as any provision of this Conservation Covenant is 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 Conservation Covenant.
- 5.3 All information provided by each Party that is not already in the public domain will remain confidential unless either Party is legally required to disclose it or either Party authorises its release in writing to specifically named parties.

6 **Transitional Period**

The Parties shall, at the request of the Mitigation Site Operators, use reasonable endeavours in good faith to agree such variations to this Conservation Covenant as shall be required in order to enable the Sale of Nutrient Mitigation Credits in accordance with the 2021 Act, the 1990 Act, the Habitat Regulations and such other regulations enacted pursuant to them regarding Nutrient Mitigation.

7 **Local Land Charge**

This Conservation Covenant is a local land charge and application for registration shall be sent to the Land Registry or applicable local authority by the Responsible Body within three Working Days of execution of this Conservation Covenant.

8 **Interest on Late Payment**

Any sum or amount that has not been paid to the Responsible Body by the date it is due under the terms of this Conservation Covenant shall accrue interest on that amount at the Default Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the due date to and including the date of payment.

9 **Disputes**

9.1 The Parties shall act in good faith to resolve any dispute, claim or proceeding arising out of or relating to this Conservation Covenant (a **Dispute**) and where applicable in accordance with the provisions in this clause 9.

9.2 The Parties agree and acknowledge that no Party shall be liable for the breach of any covenant contained in this Conservation Covenant including those relating to the Cessation of Agriculture or the Nutrient Monitoring Works which arises as a direct result of a Force Majeure Event.

9.3 Where the Responsible Body reasonably considers that there has been a breach of the covenants of this Conservation Covenant the Responsible Body shall:

9.3.1 give written notice to the Mitigation Site Operators stating the nature of the breach, the steps that it considers are required to remedy the breach and the timetable for undertaking those steps (the **Initial Notice**);

9.3.2 discuss with the Mitigation Site Operators and give the Mitigation Site Operators a reasonable opportunity to discuss the Initial Notice;

9.3.3 take into account any reasonable representations made by the Mitigation Site Operators in relation to the Initial Notice and the matters specified within it.

9.4 Following the steps set out at clause 9.3, the Responsible Body will give written notice to the Mitigation Site Operators detailing the breach of this Conservation Covenant, the steps it requires to be taken to remedy the breach and the timetable for undertaking such actions (the **Final Notice**).

9.5 If after a period of three (3) months from the date the Responsible Body served the Initial Notice referred to at clause 9.3.1 on the Mitigation Site Operators and in accordance with clause 9.3 of this Conservation Covenant, the Responsible Body and the Mitigation Site Operators have been unable to agree on the issues the Parties or either Party may refer the issue(s) to an Expert in accordance with clause 10.

9.6 If at any time the Responsible Body acting reasonably notifies the Mitigation Site Operators in writing that it believes that a Fundamental Breach has arisen and the Fundamental Breach has not been remedied in accordance with a Final Notice and the Responsible Body wishes to take action to remedy the Fundamental Breach, then the Mitigation Site Operators may be required to pay to the Responsible Body within thirty (30) Working Days of the date of such notification a sum which the Responsible Body estimates to be

reasonably necessary for the Responsible Body to make good the Fundamental Breach in accordance with the Final Notice subject to clause 10.1.

- 9.7 If the Mitigation Site Operators does not disagree with the Initial Notice and does not use reasonable endeavours to remedy the breach in accordance with the Final Notice and within the timetable specified in the Final Notice, the Responsible Body may pursue all legal remedies.

10 **Expert Determination**

10.1 In the event of:

- 10.1.1 a Dispute as to whether or not a Party is, where applicable, performing its obligations, or exercising its rights in this Conservation Covenant; or
- 10.1.2 a Dispute as to the proposed sum pursuant to clause 9.6; or
- 10.1.3 any other type of Dispute where the disputing Parties agree that Expert dispute resolution is appropriate; or
- 10.1.4 a dispute over the calculation of the Remaining Nutrient Mitigation Capacity following a recalculation as per Schedule 1 paragraph 9.1;

then clauses 10.2 to 10.8 shall apply.

- 10.2 Where there is a Dispute to which clause 10.1 applies has not been resolved within twenty (20) Working Days the Parties shall use reasonable endeavours to agree the identity of an Expert and instruct an Expert jointly.
- 10.3 In the event the Parties cannot agree on the identity of an Expert, then after 20 (twenty) Working Days from the date of either Party notifying the other that it is seeking to agree an Expert, either Party may refer the Dispute to an Expert (appointed in accordance with clause 10.4) whose decision shall be final and binding on the Parties in the absence of manifest error and their costs shall be payable by the Parties in such proportion as the Expert shall determine and failing such determination shall be borne by the disputing Parties in equal shares.
- 10.4 Any Expert shall be appointed by agreement of the Parties or otherwise by:
- 10.4.1 the President (Vice President) of CIEEM where the matter concerns ecology;
 - 10.4.2 the President (or Deputy) of the Law Society where the matter concerns the construction or meaning of this Conservation Covenant (or related document); and
 - 10.4.3 the President (or Deputy) of the Royal Institute of Chartered Surveyors in all other circumstances
- 10.5 Unless the Expert shall direct to the contrary, not more than twenty (20) Working Days after their appointment the Parties shall exchange and copy to the Expert written summaries of their cases together with a bundle of key documents relied upon.
- 10.6 The Mitigation Site Operators shall permit the Expert to visit the Mitigation Site unaccompanied and the Parties agree that the Expert may call for such written evidence from the disputing Parties as they may require.

10.7 The terms of appointment for the Expert shall include the following terms:

- 10.7.1 that Expert shall not, unless they direct to the contrary, hear oral representations from any Party;
- 10.7.2 that the Expert shall fully consider all submissions and evidence when making their decision;
- 10.7.3 any decision shall be in writing and reasons for the decision shall be given;
- 10.7.4 that the Expert shall use all reasonable endeavours to give their decision and the reasons for it as speedily as possible and in any event within thirty (30) Working Days of their receipt of the bundle referred to at 10.5;
- 10.7.5 that any Expert howsoever appointed shall be subject to the express requirement that a decision is reached and communicated to the Parties within the minimum practicable timescale allowing for the nature and complexity of the Dispute.

11 No Fetter of Discretion

Nothing herein contained or implied shall prejudice or affect the rights discretions powers duties and obligations of the Responsible Body under all statutes, statutory instruments, orders and regulations in the exercise of its functions as a Responsible Body.

12 Waiver

No waiver (whether express or implied) by the Responsible Body of any breach or default by the Mitigation Site Operators performing or observing any of the obligations, terms or conditions of this Conservation Covenant shall constitute a continuing waiver and no such waiver shall prevent the Responsible Body from enforcing any of the said obligations terms or conditions or from acting upon any subsequent breach or default in respect thereto by the Parties.

13 Notices

13.1 Any notice or other communication to be given under this Conservation Covenant must be sent to:

13.1.1 in the case of the Responsible Body for the attention of [REDACTED] or his replacement or any Director of RSK Biocensus Limited via email to: [REDACTED] and [REDACTED];

13.1.2 in the case of the Mitigation Site Operators to [REDACTED] or their replacement via email to [REDACTED]

or as otherwise specified in writing by the Parties to each other from time to time.

13.2 Any notice or other communication given in accordance with this clause will be deemed to have been received:

13.2.1 if delivered by hand, on signature of a delivery receipt provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day;

- 13.2.2 if sent by pre-paid first class post or other next Working Day delivery service, at 9.00 am on the second Working Day after posting; or
- 13.2.3 if delivered by commercial courier on the date and at the time that the courier's delivery receipt is signed.

14 Cancellation of Land Charges Entries

- 14.1 On the written request of the Mitigation Site Operators at any time after each or all of the obligations in this Conservation Covenant have been performed or otherwise discharged (and subject to the payment of the Responsible Body's reasonable and proper costs) the Responsible Body will as soon as reasonably practicable issue a written confirmation of such performance or discharge provided that the Responsible Body is satisfied that such obligations have been performed in full.
- 14.2 Following the Responsible Body's satisfaction pursuant to clause 14.1 that performance and full satisfaction of all the terms of this Conservation Covenant have been satisfactorily carried out or if this Conservation Covenant is determined other than in the circumstances set out in clause 4.2 – 4.4 of this Conservation Covenant, the Responsible Body shall as soon as reasonably practicable on the written request of the Mitigation Site Operators seek to secure cancellation of all entries made in the local land charges register in respect of this Conservation Covenant by the Land Registry or the relevant local authority.

15 Third Party Rights

A person who is not a Party to this Conservation Covenant shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Conservation Covenant.

16 Jurisdiction

This Conservation Covenant is governed by and interpreted in accordance with the law of England.

17 Mortgagees

- 17.1 This Conservation Covenant shall not be enforceable against any mortgagee or chargee from time to time which shall have the benefit of a mortgage or charge over the whole or part of the Mitigation Site unless and until such mortgagee or chargee is in possession of the Mitigation Site or that part of the Mitigation Site over which it has a mortgage or charge, in which case it too will (in respect of the Mitigation Site or relevant part of the Mitigation Site over which it has a mortgage or charge) be bound by the obligations as if it were a Party deriving title from the Mitigation Site Operators.
- 17.2 For the avoidance of doubt, any buyer purchasing the Mitigation Site or any part of it from the mortgagee or chargee exercising a power of sale shall be bound by the terms of this Conservation Covenant.

18 Commencement

This Conservation Covenant shall come into effect upon the date of this Conservation Covenant.

19 Termination

- 19.1 Subject to clause 19.2 and 19.3, the Responsible Body may at its sole discretion terminate this Conservation Covenant where either:
- 19.2 a Fundamental Breach has occurred (and has not been remedied in accordance with this Conservation Covenant); or
- 19.2.1 an Insolvency Event has occurred in relation to the Mitigation Site Operators.
- 19.3 In the event the Responsible Body elects to terminate this Conservation Covenant pursuant to clause 19.1 the Mitigation Site Operators or in the case of an Insolvency Event the Mitigation Site Operators' administrator, liquidator or receiver shall seek to modify or release that part of the Mitigation Site by entering into a Deed of Release to this Conservation Covenant.
- 19.4 This Conservation Covenant may be otherwise terminated by agreement with the Parties only in respect of any Nutrient Mitigation Credits realised from the Mitigation Site which have not yet been Sold in accordance with clause 4 or in respect of land within the Mitigation Site from which no Nutrient Mitigation Credit has been realised in accordance with clause 4.
- 19.5 If a Relevant Event occurs, the Mitigation Site Operators may terminate this Conservation Covenant by service of a notice on the Responsible Body in accordance with clause 13.

20 Insurance

- 20.1 The Mitigation Site Operators shall at its own expense maintain insurance in respect of all third party liability risks in relation to the Mitigation Site to provide cover in respect of total claims of not less than one (1) million pounds.
- 20.2 The Mitigation Site Operators shall provide evidence that such insurance has been affected and shall provide a copy of the insurance to the Responsible Body prior to the Sale of the first Nutrient Mitigation Credit and thereafter upon the reasonable request of the Responsible Body not more than once in each calendar year.
- 20.3 The Mitigation Site Operators shall ensure that the insurance approved in accordance with clause 20.1 shall be kept in place for the Covenant Period.

21 Limitation of Liability

- 21.1 The restrictions on liability in this clause 21 apply to every liability arising under or in connection with this Conservation Covenant including liability in contract, tort (including negligence), misrepresentation, restitution, under any indemnity or otherwise.
- 21.2 Nothing in these clauses shall limit or exclude either Party's liability for death or personal injury resulting from negligence, for fraud or fraudulent misrepresentation or any matter in respect of which it would be unlawful for either Party to restrict or exclude liability.
- 21.3 Subject to clauses 21.1 and 21.2, the Responsible Body's total liability under or in connection with this Conservation Covenant, whether in contract, shall not exceed the Liability Cap

- 21.4 Subject to clauses 21.1 and 21.2, the Mitigation Site Operators' total liability under or in connection with this Conservation Covenant, whether in contract, tort (including negligence), or otherwise shall not exceed the Liability Cap
- 21.5 Except as set out in these clauses, all warranties, conditions and other terms whether express or implied by statute, or common law or otherwise are, to the fullest extent permitted by law, excluded from this Conservation Covenant.
- 21.6 This Conservation Covenant shall not be enforceable against:
 - 21.6.1 any statutory undertaker who acquires any part of the Mitigation Site or interest therein for the exclusive purpose of carrying out their statutory undertaking; or
 - 21.6.2 any person whose only interest in the Mitigation Site or any part of it is in the nature of the benefit of an easement or covenant.

22 **Assignment**

- 22.1 The Responsible Body may novate, assign or otherwise deal or dispose of the benefit or burden of its interests in this Conservation Covenant to an Alternative Responsible Body or the Secretary of State.
- 22.2 The Mitigation Site Operators shall enter at the Responsible Body's cost, such costs to be reasonable and proper, into a deed of novation in a form reasonably required by the Responsible Body and the Alternative Responsible Body or the Secretary of State as relevant.
- 22.3 The Responsible Body shall provide notice of the novation, assignment or other dealing or disposal of its interest in this Conservation Covenant to the Mitigation Site Operators in accordance with clause 13.

This Conservation Covenant has been executed as a deed, is delivered, and takes effect on the date stated at the beginning of it.

Schedule 1

1 Covenants by the Mitigation Site Operators

- 1.1 The Mitigation Site Operators covenant with the Responsible Body with the intent to bind the Mitigation Site to observe and perform the covenants, restrictions and obligations contained in this Conservation Covenant from the commencement of this Conservation Covenant until the end of the Covenant Period
- 1.2 The Mitigation Site Operators covenant with the Responsible Body that from the date of Cessation of Agriculture and for the duration of the Covenant Period:
 - 1.2.1 not to use, or allow the use of, the Mitigation Site for Agricultural Use, or any other use that would increase the nutrient load at the Mitigation Site; and
 - 1.2.2 not to encumber or otherwise deal with its interest in the Mitigation Site or any part or parts thereof in any manner whatsoever whereby the obligations, covenants and undertakings imposed by this Conservation Covenant are rendered impossible to carry out.
- 1.3 The Mitigation Site Operators covenant that there are no other interests (legal or equitable) or of a 'qualifying estate' (as defined by section 117(4) of the 2021 Act) in the Mitigation Site at the date of this Conservation Covenant.
- 1.4 The Mitigation Site Operators covenant that they have undertaken detailed geographical, geological, hydrological and technical studies as necessary, or other studies as requested by the Responsible Body, to determine that no part of the Mitigation Site is subject to any constraints which would be reasonably capable of affecting its suitability as a Mitigation Site for the Conservation Purpose and realisation of Nutrient Mitigation Credits for the duration of the Covenant Period.

2 Right of Access

- 2.1 The Mitigation Site Operators will allow the Responsible Body a right of entry to the Mitigation Site (including rights of access over any other land that the Mitigation Site Operators have rights over to access the Mitigation Site as required) and permit the Responsible Body at all reasonable times subject to at least three (3) Working Days' prior notice to enter on the Mitigation Site (and other land over which the Mitigation Site Operators have access over to access the Mitigation Site) with or without vehicles and machinery for the purpose of:
 - 2.1.1 inspecting the Mitigation Site (or necessary part thereof) and assessing compliance with this Conservation Covenant; and
 - 2.1.2 (at the sole discretion of the Responsible Body to elect) carrying out any obligations that the Responsible Body may choose to perform or observe in the place of the Mitigation Site Operators, during the continuance of this Conservation Covenant subject always to there being an ongoing material breach of the obligations contained in this Conservation Covenant and the Responsible Body first complying with clauses 9.3 to 9.6 and in relation only to an ongoing material breach that has not been remedied within the timescales set out in clause 9;

2.1.3 without prejudice to any other rights or remedies, the Responsible Body reserves the right to charge the Mitigation Site Operators for its reasonable additional costs (such costs to be reasonable and proper) and time incurred if there are any access restrictions that may affect access to the Mitigation Site or Responsible Body's ability to perform its obligations under the terms of this Conservation Covenant.

2.2 Any such entry by the Responsible Body shall be at the Responsible Body's own risk, subject to the Responsible Body maintaining all necessary insurances, causing as little damage, disturbance and inconvenience as reasonably possible and making good any damage caused.

3 Replacement Mitigation Site Operators

3.1 Until the covenants, restrictions and obligations in this Conservation Covenant have been complied with, the Mitigation Site Operators shall give written notice to the Responsible Body within twenty (20) Working Days of the date of any conveyance, transfer, lease of 10 years or more entered into in respect of all or any part of the Mitigation Site. Such notice shall contain the following details:

3.1.1 the name and address of the person/company/company registration to whom the disposition is to be made;

3.1.2 the nature and extent of the interest disposed of together with a plan identifying the area of Mitigation Site;

3.1.3 confirmation that it has undertaken reasonable and diligent enquiries to ascertain whether any conflict of interest could arise with the proposed person taking the conveyance, transfer, lease of ten years or more referred to in this paragraph 3.1 and the Responsible Body provided that this obligation shall not apply to a statutory undertaker acquiring an interest in the Mitigation Site for the purposes of its undertaking; and

3.1.4 If on completion of the enquires in 3.1.3 a potential conflict of interest is identified by the Mitigation Site Operators then they shall notify the Responsible Body within 3 Working Days.

3.2 Until the covenants, restrictions and obligations in this Conservation Covenant have been complied with, the Mitigation Site Operators shall give written notice to the Responsible Body no longer than ten (10) Working Days after the date of any conveyance, transfer, lease, assignment, mortgage or other disposition is entered into in respect of all or any part of the Mitigation Site. Such notice shall contain the details set out in paragraphs 3.1.1 to 3.1.3 inclusive.

4 Cessation of Agriculture

4.1 The Mitigation Site Operators will confirm the Cessation of Agriculture to the Responsible Body within 10 Days of commencing the Cessation of Agriculture.

5 Monitoring Requirements

5.1 The Mitigation Site Operators shall ensure that the Responsible Body is fully briefed and provided with all necessary information, documentation, GIS (Geographic Information System) data, reasonably required by the Responsible Body to be able to perform the

Responsible Body's obligations and shall cooperate with the Responsible Body in all matters relating to this Conservation Covenant.

- 5.2 The Mitigation Site Operators shall ensure that all information, documentation, GIS (Geographic Information System) data, and materials provided to The Responsible Body are complete and accurate as reasonably practicable in all material respects and the Mitigation Site Operator acknowledges that the Responsible Body shall rely upon any and all information, documentation and materials provided by the Mitigation Site Operator.
- 5.3 The Mitigation Site Operators covenant to submit to the Responsible Body a Monitoring Pack on the anniversary of this Conservation Covenant relating to the Mitigation Site and for the entirety of the Covenant Period in respect of the whole Mitigation Site in accordance with the monitoring provisions at Schedule 3.

6 **Sale of Credits**

Within 30 (thirty) Working Days following the completed Sale of each Nutrient Mitigation Credit, the Mitigation Site Operators shall:

- 6.1 provide written confirmation of the Nutrient Mitigation Credit Sale to the Responsible Body;
- 6.2 update all aspects of the Nutrient Mitigation Credit Sale Register in relation to completed Sold Nutrient Mitigation Credits;
- 6.3 allocate the relevant Nutrient Mitigation Capacity for the Sold Nutrient Mitigation Credits on the Nutrient Mitigation Credit Sale Register maintained by the Mitigation Site Operators;
- 6.4 not to amend the Nutrient Mitigation Credit Sale Register in respect of any Sold Nutrient Mitigation Credits;
- 6.5 supply to the Responsible Body copies of the updated Nutrient Mitigation Credit Sale Register following any Sale of Nutrient Mitigation Credits and at any other time requested by the Responsible Body;
- 6.6 comply with all statutes laws and regulations including obtaining any necessary planning permissions or other regulatory consents or licences in the delivery of the Cessation of Agriculture and the Nutrient Monitoring Works.

7 **Monitoring Fees**

- 7.1 The Mitigation Site Operators covenants with the Responsible Body to pay the Monitoring Fees in consideration of the provision of the services by the Responsible Body as set out in Schedule 2 to this Conservation Covenant.

Schedule 2 Fees and Payment

1 Monitoring Fees

- 1.1 The Mitigation Site Operators agree to pay the annual monitoring fees of [REDACTED] Index Linked from and including the Cessation of Agriculture Date and thereafter annually throughout the Covenant Period for the services provided by the Responsible Body.
- 1.2 Any extra costs referred to in this Conservation Covenant incurred by the Responsible Body and agreed between the Parties (including but not limited to schedule 1 paragraph 2.1.3 and schedule 3 paragraph 1.5) will be charged at the following rates:
 - 1.2.1 [REDACTED] per hour for work done by an ecologist
 - 1.2.2 [REDACTED] per hour for work done by solicitors and/or legal advisors
- 1.3 All consideration given in accordance with the terms of this Conservation Covenant shall be exclusive of any VAT.
- 1.4 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Conservation Covenant then to the extent that VAT has not been previously charged in respect of that supply the Party making the supply shall have the right to issue a VAT invoice to the Party to whom the supply was made and the VAT shall be paid accordingly.
- 1.5 Where an Index ceases to exist or is replaced or rebased then it shall include reference to any Index which replaces it or any rebased Index (applied in a fair and reasonable manner to the periods before and after rebasing under this Deed) or in the event the Index is not replaced, to an alternative reasonably comparable basis or index as the Responsible Body shall advise the Gain Site Operator in writing.

Schedule 3

Monitoring Plan by the Responsible Body

1 Monitoring by the Responsible Body

The Responsible Body will monitor the Mitigation Site Operators' compliance with the covenants in this Deed and their proposals for the Mitigation Site in accordance with the following provisions:

- 1.1 During each year during the Covenant Period until expiry of the Covenant Period and in a time of the year that is preferable for completing a Monitoring Report the Mitigation Site Operators will provide to the Responsible Body a Monitoring Pack in accordance with Schedule 1 paragraph 5.3;
- 1.2 In addition to the monitoring years in paragraph 1.1 of this Schedule, the Responsible Body may undertake additional visits to the Mitigation Site at a time it decides, at no additional cost to the Mitigation Site Operators, to ensure compliance with this Conservation Covenant. The Responsible Body shall give a minimum of 30 days' notice to the Mitigation Site Operators before attending the Mitigation Site.
- 1.3 Once the Responsible Body has attended the Mitigation Site in accordance with paragraph 1.1 and 1.2 it will review the information and complete the following:
 - 1.3.1 a risk assessment of the Mitigation Site Operators to include insolvency and credit checks and any other internal risk assessment it deems necessary;
 - 1.3.2 update of the mapping of the Mitigation Site in the GIS database; and
 - 1.3.3 a review of the Nutrient Mitigation and Monitoring Plan to decide whether any amendments are necessary.
- 1.4 If the Responsible Body acting reasonably considers that a further site visit or survey is necessary to review whether the Mitigation Site Operators complying with this Conservation Covenant and that the Nutrient Mitigation and Monitoring Plan is meeting the Nutrient Mitigation Credit Number then the Responsible Body may attend the Mitigation Site for an extra visit at the costs set out in Schedule 2;
- 1.5 If the Responsible Body has determined that the Nutrient Mitigation and Monitoring Plan is being complied with, the Responsible Body shall confirm this in writing to the Mitigation Site Operators within eight (8) weeks following inspection (or further inspection as appropriate) and again at the end of the Covenant Period;
- 1.6 Any amendment to the monitoring requirements and plan in this Schedule may be agreed between the Parties in writing.

Executed as a deed by WILLIAM ERIC JEANES in the presence of:)
)

)
(signature of William Eric Jeanes)

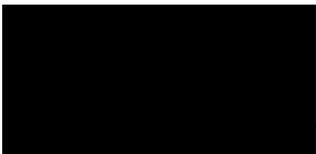
Witness sign:
.....

Witness print name:
.....

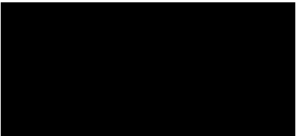
Witness print address:
.....
.....

Executed as a deed by RSK BIOCENSUS LIMITED acting by:)
)


.....
Name


.....
Signature of director


.....
Name

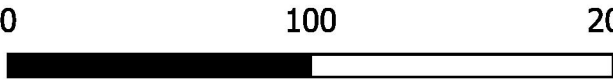

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Signature of director/secretary

Appendix 1 Plans



Scale 1:2500





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Open Government Licence v3.0.

Appendix 2

Template Deed of Release

DATED 2025

[] (1)
and
RSK BIOCENSUS LIMITED (2)

Deed of Release
Relating to a Conservation Covenant Agreement
dated [] made pursuant to Section
117, 118 and 119 of the
Environment Act 2021 and all other enabling
powers, relating to at land at
[]

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9 GOVERNING LAW..... 2

10 JURISDICTION 2

DATED

2025

PARTIES

- (1) [] a private limited company registered in England and Wales with registered number [] and whose registered office is at [] (the **Gain Site Operator**); and
- (2) **RSK BIOCENSUS LIMITED** a private limited company registered in England and Wales with registered number 04364279 whose registered office is at Spring Lodge, 172 Chester Road, Helsby, Frodsham WA6 0AR (the **Responsible Body**).

INTRODUCTION

- A This Deed is supplemental to the Conservation Covenant.
- B The Gain Site Operator is the freehold owner of the land shown edged red in the plan contained in Appendix 1 of this Deed which is registered at the Land Registry under title number[s] [] and the parties have agreed to bind the entirety of this land under the terms of the Conservation Covenant (as varied by this Deed).
- C The parties have agreed to release some of the land from the covenants of the Conservation Covenant so that only the land shown on the Plan appended to Appendix 1 of this Deed will remain bound by the Conservation Covenant.
- D This Deed is made pursuant to Section 117, Section 118, Section 119 and Section 129 of the 2021 Act and all other enabling powers and is supplemental to the Conservation Covenant.

IT IS AGREED THAT:

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Deed:
- “**Conservation Covenant**” means the conservation covenant agreement dated [] made between (1) the Gain Site Operator and (2) the Responsible Body relating to the Gain Site.
- 1.2 Unless otherwise provided, the words and expressions defined in, and the rules of interpretation of, the Conservation Covenant shall have the same meaning and effect in this Deed.

2 STATUTORY PROVISIONS

- 2.1 This Deed is made pursuant to Section 117, 118, 119 and 129 of the Act and all other enabling powers with the intention that it is supplemental to the Conservation Covenant, and enforceable by the Responsible Body against the Gain Site Operator and its successors in title to the extent permitted by law pursuant to Section 122 of the 2021 Act.
- 2.2 The covenants and obligations in the Conservation Covenant as varied by this Deed on the part of the Responsible Body are enforceable by the Gain Site Operator and its

successors in title in the Gain Site or any part thereof against the Responsible Body pursuant to Section 123 of the 2021 Act.

3 VARIATION DATE

The parties agree that the amendment set out in this Deed shall take effect on the date of this Deed.

4 AMENDMENTS TO THE CONSERVATION COVENANT

The parties agree that from the date of this Deed the Conservation Covenant shall be amended so that the plan at Appendix 1 of the Conservation Covenant and is deleted and replaced with the plan contained at Appendix 1 of this Deed.

5 CONSERVATION COVENANT IN FULL FORCE AND EFFECT

This Deed is supplemental to the Conservation Covenant and, subject to the amendment described in this Deed, the Conservation Covenant shall remain in full force and effect.

6 CONFIRMATION AND INCORPORATION

The parties further agree and declare that the terms of the Conservation Covenant, except as varied by this Deed pursuant to Section 129 of the Act, are confirmed as if the same were set out in this Deed in full, and that such terms as so varied shall for all purposes (including, without limitation, for the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989) be deemed incorporated in this Deed.

7 LOCAL LAND CHARGE

This Deed is a local land charge and shall be registered as such by the Responsible Body as soon as practicable on or after the date of this Deed.

8 THIRD PARTY RIGHTS

A person who is not a party to this Deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Deed.

9 GOVERNING LAW

This Deed and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England.

10 JURISDICTION

The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Deed, its subject matter or formation (including non-contractual disputes or claims).

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

EXECUTED as a deed by [])
 acting by:)
)
)
)
)

Name _____

.....
Director

Name _____

.....
Director

EXECUTED as a deed by **RSK**)
BIOCENSUS LIMITED acting by:)
)
)
)

.....
Director

Name _____

.....
Director

Name _____

APPENDIX 1

[PLAN]

Appendix 3
Natural England's Discretionary Advice Letter

Date: 15 August 2025
Our ref: UDS-A018728, 522955
Your ref: Stodmarsh Temporary Fallowing Scheme



Customer Services
Hornbeam House
Crewe Business Park
Electra Way
Crewe
Cheshire
CW1 6GJ

0300 060 3900

BY EMAIL ONLY

Dear Gabriel Connor-Streich,

Discretionary Advice Service (Charged Advice)

UDS - A018728

Development proposal and location: Stodmarsh Temporary Fallowing Scheme (various locations in East Stour region)

Thank you for your consultation on the above dated 21 March 2025, which was received on the same date.

This advice is being provided as part of Natural England's Discretionary Advice Service. Greenshank Environmental Limited has asked Natural England to provide advice upon:

- The proposed temporary fallowing nutrient mitigation scheme on land within the East Stour region

This advice is provided in accordance with the Quotation and Agreement dated 08 March 2025.

The following advice is based upon the information within the following documents:

1. Greenshank_ODG_temp fallow land management scheme, Version 1, 07 July 2025
2. Greenshank_ODG_temp fallow land management scheme, Version 2, 07 August 2025

Summary Advice

Having reviewed the updated assessment on the proposed temporary fallowing nutrient mitigation scheme, I am satisfied that;

- Greenshank Environmental Limited have provided calculations and evidence to support a reduction in Total Nitrogen of 3700.52 kg TN/yr and 180.07 kg TP/yr from the proposed temporary fallowing of 216.32ha located on agricultural land in the East Stour region.
- The land proposed for temporary fallowing all connect to the River Stour upstream of the Stodmarsh Special Area of Conservation, Special Protection Area and Ramsar site. The implementation of the temporary fallowing proposal will provide appropriate temporary nutrient mitigation for new development proposals that are required to demonstrate nutrient neutrality in the Stodmarsh catchment
- A Conservation Covenant is an acceptable mechanism to secure the required management, monitoring and enforcement for the proposed nutrient mitigation scheme, and that the Responsible Body will take on the legal responsibility for ensuring these are adhered to.

Additional Advice

Provision of Information to Competent Authorities

I recommend that Greenshank Environmental provides Competent Authorities with a clear overview of how the proposed nutrient mitigation scheme meets the requirements of a Habitats Regulations Assessment, including the requirement for the appropriate management, monitoring and enforcement to be secured. Thought should also be given to how the scheme will be transparent and accountable to Competent Authorities, who may wish to confirm that mitigation has only been allocated to one development.

I advise that the following points are considered when drawing up the agreement with the Responsible Body of the Conservation Covenant (these should also be shared with the Competent Authority):

- How the land will be managed so that the specified following nutrient leaching rate for total nitrogen (3kg/yr) and/or total phosphorus (0.02kg/yr) is maintained until 1 April 2030.
- The extent of the monitoring effort/regime required to demonstrate that the mitigation land is functioning as intended (e.g. that there are no additional inputs, and the management is appropriate).
- Provisions for any necessary enforcement. For example, how enforcement would be effective in addressing and deterring potential breaches, and how monitoring can support potential enforcement action.

The Competent Authority should be confident that measures will be in place to address the above, with assurance that they can be appropriately secured, and that the legal agreement addresses how such measures will be funded. I note that these credits could be relied on by a number of different Competent Authorities, and advise that consideration is given to the mechanism by which each would ensure the above.

I advise that an appropriately detailed method of tracking/recording the created mitigation is kept by yourselves. Securing mitigation against individual planning applications will require appropriate record keeping by the Competent Authority to ensure there is no double counting/over prescription of credits and that credits are only used to mitigate where they are upstream of the impact (as required by principle 3 in TIN186 above). I would recommend a precautionary buffer of credits is kept as a reserve, in the event planning applications require additional credits than they originally anticipated.

Nutrient Mitigation Principles

All mitigation schemes should demonstrate how they meet the [Mitigation principles \(TIN186\)](#) issued as part of our advice to LPAs on 16 March 2022.

You should ensure your proposal is in accordance with the following advice: [Combining environmental payments: biodiversity net gain \(BNG\) and nutrient mitigation - GOV.UK \(www.gov.uk\)](#)

For mitigation proposal to be compliant with the Habitats Regulations, the appropriate assessment should be able to demonstrate that such measures are known to be effective, reliable, timely, guaranteed and of sufficient duration. Such measures should be supported by evidence and confidence that they will be effective and that they can be legally enforced to ensure they are strictly implemented. The above considerations will need to be included with the Competent Authorities appropriate assessment when reviewing the proposed mitigation scheme.

When considering the overall certainty of measures needed to mitigate impacts of designated sites, Natural England are best placed to give direct advice concerning scientific certainty (i.e. functionality and effectiveness of nutrient mitigation); securing practical certainty (i.e. deliverability of mitigation measures through the planning process) generally requires a consideration of multiple stakeholder concerns and legislative considerations to which the competent authority is generally best placed to make decisions about, compared to Natural England. As such, we acknowledge that we are not best placed to provide detailed advice on how mitigation measures should be secured.

Nutrients from current and future land use

The Competent Authority should be confident that the appropriate land use has been selected; please see the [Nutrient Budget Calculator Guidance Document](#) for a detailed description of the land use types. Natural England advises that the applicant should provide evidence of the land use for the last 10 years. Examples of evidence could include land sale agreements, aerial photographs, basic farm payment information etc. The Competent Authority should be assured and satisfied that the site areas used in the nutrient budget calculation are correct and that the existing and proposed land uses are appropriately precautionary. The current/prior land use is an evidential matter for the Competent Authority.

Further advice on the proposed nutrient mitigation scheme

Initial DAS meeting – 29 July 2025

In our initial DAS call on the 29 July 2025, we reviewed key aspects of the proposed temporary fallowing nutrient mitigation scheme, including the methodology for calculating nutrient reductions and the associated land management practices. I was satisfied with the approach used to estimate reductions from fallowing agricultural land. However, I emphasised the importance of applying the temporal principles outlined in the [Stodmarsh Nutrient Neutrality Methodology \(November 2020\)](#), particularly for land situated on freely draining soils.

It was noted that the majority of the land lies over impeded drainage soils, making a significant time lag for nutrient reduction benefits to reach Stodmarsh unlikely (time from implementation of mitigation measures to the nutrient reduction benefits reaching the River East Stour/Stodmarsh). As such, I advised that a hydrogeological assessment would not be necessary for these parcels. A portion of the land was classified as 'freely draining' in the [LandIS Soils](#) viewer, but we discussed that evidence could be provided to reclassify it as 'slightly impeded drainage'. I recommended that this evidence be incorporated into an updated version of the assessment.

We discussed the option for one 40ha field to be replanted as winter wheat for the 1st year of fallowing (with no fertilisers being applied for that year). I advised that this was not an approach that I was familiar with, and advised that this type of management would be very difficult to manage, monitor and enforce, to have practical certainty that no fertiliser has been applied to this field. I committed to consulting internally with colleagues to determine whether similar proposals had been encountered previously.

We briefly discussed conservation grazing as a potential management option for the fallowed land. While typically used for long-term conservation, I agreed that it could serve as a suitable temporary measure, provided that stocking densities do not exceed 0.25 livestock units per hectare, and that no supplementary feeding or application of organic or inorganic fertilisers occurs. I noted that this type of management may be challenging to monitor and enforce in practice – details of this will need to be submitted to the Responsible Body for consideration prior to entering into a conservation covenant. Additionally, this information must be presented to the Competent Authority as part of the appropriate assessment, to demonstrate that the temporary mitigation offers practical certainty—i.e., that it will be both effective and legally enforceable.

Follow-up DAS meeting – 05 August 2025

During our follow-up call on the 05 August 2025, we discussed the updated assessment, which provided evidence to support the reclassification of previously identified 'freely draining' land as 'slightly impeded drainage'.

We also discussed the proposal to replant a single 40ha field with winter wheat during the first year of fallowing. I raised concerns that continued arable activity could disturb the soil and increase the risk of silt and phosphorus runoff, undermining the intent of fallowing as a mitigation measure. To address this, we agreed that establishing a 15m grass buffer strip around the field could help prevent runoff, subject to evidence demonstrating its effectiveness.

Given the novelty of this approach, I advised that detailed management and monitoring proposals must be submitted to the Responsible Body for review prior to entering into a conservation

covenant. This information must also be provided to the Competent Authority as part of the appropriate assessment, to demonstrate that the proposed temporary mitigation offers practical certainty—i.e., that it will be both effective and legally enforceable.

Following review of the updated temporary following assessment (Greenshank Environmental Ltd, 07 August 2025), I have no other further comments to make aside from the subjects detailed below.

Protected sites

I am currently of the view that, based on the objective information provided on the proposed development, a likely significant effect on the Stodmarsh SAC, SPA and Ramsar cannot be excluded, either individually or in combination with other plans or projects. This likely significant effect relates to the construction phase of the scheme, specifically the associated impacts from soil and sediment mobilisation during the construction phase. In order to mitigate these risks, suitable pollution control measures will be proposed and assessed in the development of the detailed design of the scheme. These additional details and pollution control measures should be included in a shadow appropriate assessment in order to ascertain that the proposed development will not adversely affect the integrity of the Stodmarsh designated sites.

Protected species

The advice on this proposal, and the guidance contained within Natural England's standing advice relates to this case only and does not represent confirmation that a species licence (should one be sought) will be issued. Please find general advice on European Protected Species at Annex 1.

Nationally Designated Landscapes

As the development site is within/adjacent to Kent Downs National Landscape, consideration should be given to the direct and indirect effects upon this designated landscape and in particular the effect upon its purpose for designation, as well as the content of the relevant management plan for Kent Downs National Landscape.

For clarification of any points in this letter, please contact Thomas.scott-heagerty@naturalengland.org.uk

☒ The advice provided in this letter has been through Natural England's Quality Assurance process

The advice provided within the Discretionary Advice Service is the professional advice of the Natural England adviser named below. It is the best advice that can be given based on the information provided so far. Its quality and detail is dependent upon the quality and depth of the information which has been provided. It does not constitute a statutory response or decision, which will be made by Natural England acting corporately in its role as statutory consultee to the competent authority after an application has been submitted. The advice given is therefore not binding in any way and is provided without prejudice to the consideration of any statutory consultation response or decision which may be made by Natural England in due course. The final judgement on any proposals by Natural England is reserved until an application is made and will be made on the information then available, including any modifications to the proposal made after receipt of discretionary advice. All pre-application advice is subject to review and revision in the light of changes in relevant considerations, including changes in relation to the facts, scientific knowledge/evidence, policy, guidance or law. Natural England will not accept any liability for the accuracy, adequacy or completeness of, nor will any express or implied warranty be given for, the advice. This exclusion does not extend to any fraudulent misrepresentation made by or on behalf of Natural England.

Yours sincerely,
Thomas Scott-Heagerty
Sussex & Kent Area Team

Cc commercialservices@naturalengland.org.uk

Annex 1

European Protected Species

A licence is required in order to carry out any works that involve certain activities such as capturing the animals, disturbance, or damaging or destroying their resting or breeding places. Note that damage or destruction of a breeding site or resting place is an absolute offence and unless the offences can be avoided (e.g. by timing the works appropriately), it should be licensed. In the first instance it is for the developer to decide whether a species licence will be needed. The developer may need to engage specialist advice in making this decision. A licence may be needed to carry out mitigation work as well as for impacts directly connected with a development. Further information can be found in Natural England's ['How to get a licence'](#) publication.

If the application requires planning permission, it is for the local planning authority to consider whether the permission would offend against Article 12(1) of the Habitats Directive, and if so, whether the application would be likely to receive a licence. This should be based on the advice Natural England provides at formal consultation on the likely impacts on favourable conservation status and Natural England's [guidance](#) on how the three tests (no alternative solutions, imperative reasons of overriding public interest and maintenance of favourable conservation status) are applied when considering licence applications.

Natural England's pre-submission Screening Service can screen application drafts prior to formal submission, whether or not the relevant planning permission is already in place. Screening will help applicants by making an assessment of whether the draft application is likely to meet licensing requirements, and, if necessary, provide specific guidance on how to address any shortfalls. The advice should help developers and ecological consultants to better manage the risks or costs they may face in having to wait until the formal submission stage after planning permission is secured, or in responding to requests for further information following an initial formal application.

The service will be available for new applications, resubmissions or modifications – depending on customer requirements. More information can be found on [Natural England's website](#).