

DATED 25 NOVEMBER 2021

**CEMEX UK OPERATIONS LIMITED**

- and -

**BLEAK HILL LIMITED**

- and -

**HAMPSHIRE COUNTY COUNCIL**

**DEED OF AGREEMENT**

Pursuant to Section 106 Town and Country Planning Act 1990 and Section 111 of the Local Government Act 1972 and all enabling powers relating to land at Bleak Hill III (Hamer Warren Quarry) Harbridge in Hampshire

Barbara Beardwell  
Head of Law and Governance  
Hampshire County Council  
The Castle  
Winchester  
Hampshire SO23 8UJ

133999

THIS DEED OF AGREEMENT is made the 25 day of NOVEMBER 2021

**BETWEEN**

1. **CEMEX UK OPERATIONS LIMITED** (Company Registration Number 658390) whose registered office is situated at Cemex House Evreux Way Rugby CV21 2DT ("the Developer" and "the Second Owner").
2. **BLEAK HILL LIMITED** (Company Registration Number 11960920) of Windover House, St. Ann Street, Salisbury SP1 2DR. ("the First Owner").
3. **HAMPSHIRE COUNTY COUNCIL** of The Castle Winchester Hampshire SO23 8UJ ("the County Council").

**WHEREAS**

1. The County Council is the Waste and Minerals Planning Authority and a Local Planning Authority for the purpose of Section 106 of the Act for the area of land known as land on the west side of Harbridge Drove Bleak Hill Hamer Warren at Ringwood in Hampshire ("the Site") for the purposes of identification only shown edged red on the attached plan No P6/206/2 hereto ("the Site Plan") and as such are the Local Planning Authority entitled to enforce the planning obligations herein contained.
2. The County Council is also the Local Highway Authority for Hampshire.
3. The First Owner is the freehold owner of part of the Site which is registered at the Land Registry under title numbers HP773562 and HP773564.

4. The Developer and Second Owner is the freehold owner of part of the Site which is registered at the Land Registry under title number HP416390 .
5. The Developer has submitted the Application to the County Council and the County Council has resolved to grant consent pursuant to the Application subject to (inter alia) completion of this Deed.

**NOW THIS DEED WITNESSETH** as follows :-

**1. Definitions**

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

"the Act"	means the Town and Country Planning Act 1990 as amended.
"Application"	means the application for planning permission to the County Council for the Development and allocated reference number 19/11326.
"Commencement of Development"	means the date upon which the Development is begun within the meaning of s56(2) of the Act and the expressions "Commence" "Commences" and any other cognate expressions shall be construed accordingly.
"Deed"	means this Deed of Agreement.
"Development"	means the Development of the Site for an extension of mineral working at Hamer Warren Quarry, to extract some 600,000

	tonnes of sand and gravel from Bleak Hill III, including works to create an extended haul road and back filling with inert material and progressive restoration to agriculture with increased nature conservation and biodiversity enhancements until 31 December 2025 at Bleak Hill III (No. 19/11326) as set out in the Application.
“Interest Rate”	means four per cent per annum above the base rate of National Westminster Bank Plc from time to time.
“Instigate Instigated and Instigation”	means the date that the Nature Conservation Management and Aftercare Plan is implemented and the date any amended Nature Conservation Management and Aftercare Plan is implemented in respect of the Site.
“Lorry Routing Plan”	means the plan attached at Appendix 2.
“Nature Conservation Management and Aftercare Plan”	means a management plan or plans to be prepared by the Developer in respect of the Site and submitted to the County Council to cover long term nature conservation.
“Parties “	means the First Owner the Developer and the Second

	Owner and the term "Party" shall be construed accordingly as the context so requires.
"Permission"	means planning permission for the carrying out of the Development in relation to the Site to be issued pursuant to the Application.
"Planning Obligations"	means the planning obligations in the Schedules 1-3 to this Deed.
"Highway Contribution"	means the sum of Ten Thousand Pounds (£10,000.00) payable by the Developer to the County Council as a contribution towards the future maintenance of Harbridge Drove Bleak Hill Hamer Warren Somerley near Ringwood in the vicinity of the Site.
"the Site"	means land registered at Land Registry under Title Numbers HP773562, HP773564 and HP416390 (edged red on the Site Plan) being land at Bleak Hill III Harbridge Near Ringwood in Hampshire attached hereto at Appendix 1.
"Working Day"	means any day other than a Saturday or a Sunday or a Public Holiday.

1.2 References in this Deed to the Parties shall include their successors in title and assigns.

- 1.3 References in this Deed to 'the County Council' shall include any successor to its statutory functions referred to at clause 2.2.
- 1.4 The clause headings in this Deed are for convenience only and do not form part of this Deed.
- 1.5 References in this Deed to any clause sub-clause paragraph schedule or annex shall (unless the context otherwise requires) be reference to a clause sub-clause paragraph schedule or appendix in this Deed.
- 1.6 References in this Deed to the singular shall include the plural and vice versa.
- 1.7 References in this Deed to one gender shall include all other genders.
- 1.8 Any covenant in this Deed by which the relevant party is not to do an act shall be construed as if it were a covenant not to do or permit or suffer to be done such act.
- 1.9 References in this Deed to any statute by-law regulation order and delegated legislation shall include any statute by-law regulation order or delegated legislation re-enacting modifying extending or consolidating or made pursuant to the same.
- 1.10 Where any party to this Deed is two or more legal entities references to that party shall include the plural number and covenants expressed or implied to be made by or with such parties are deemed to be made by or with such legal entities jointly and severally.
- 1.11 Any approvals or agreement authority or notice to be given by the County Council under this Deed shall be in writing.

## **Operative provisions**

### **2 Statutory Powers**

2.1 This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972 and the Localism Act 2011 and all enabling powers.

2.2 To the extent that they fall within the terms of Section 106 of the Act, the covenants on the part of the Parties contained in this Deed are planning obligations for the purpose of Section 106 of the Act and are enforceable by the County Council.

2.3 To the extent that any of the covenants on the part of the Parties contained in this Deed are not planning obligations within the meaning of the Act, they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972 and where appropriate Section 2 of the Local Government Act 2000 and all enabling powers.

### **3. Conditionality**

3.1 Those covenants given by the Parties in this Deed which constitute planning obligations for the purposes of Section 106 of the Act shall be enforceable by the County Council as the Mineral and Waste Planning Authority in accordance with Section 106 of the Act against the Parties and any person deriving title from the Parties in respect of the Site illustrated at Appendix 1 which is stated to be bound by the relevant planning obligations in this Deed.

3.2 This Deed shall take effect from the date hereof and shall bind the Site SAVE that the Planning Obligations covenants restrictions limitations and obligations contained in Schedules 1 – 3 inclusive shall be conditional upon the Permission being granted.

#### **4. Land bound and enforcing authority**

4.1 The Planning Obligations covenants restrictions limitations and obligations contained in Schedules 1-3 inclusive relate to and are binding upon the Site in so far only as they relate to such land.

4.2 The planning obligations in this Deed may be enforced against the Parties together with their successors in title by the County Council as if such persons had been an original covenanting party in respect of the interest or estate so far as affected by the planning obligations for the time being held by them in the Site.

4.3 No Party shall be liable for any breach of this Deed in respect of the Site, occurring after they have parted with their interest in it.

#### **PROVIDED THAT:**

4.4 Each Party shall as soon as reasonably practicable following a transfer of its interest notify the County Council of the name and address of the new owner.

#### **5 Lapse**

This Deed shall lapse and be of no further effect if the Permission is quashed following a successful challenge or revoked or otherwise withdrawn without the consent of the Parties and without the Permission having been implemented.

#### **6 Commencement**



Development at the Site shall be deemed to have Commenced from the date that the Permission is granted.

## **7 Step in Rights**

If the County Council exercises its rights to enter the Site and carry out any work pursuant to Section 106 of the Act then the Developer and Second Owner shall repay to the County Council all such costs incurred pursuant to the Act together with interest calculated at the Interest Rate on any sum which remains unpaid for more than 10 Working Days after the date on which such costs were first demanded and the Developer hereby covenants to pay on demand any requirement for the recovery of costs under this clause.

## **8 Dispute Resolution**

8.1 Save for matters of construction (which shall be matters for the Court) and without prejudice to clause 9 and clause 12 in the event of any dispute arising between the Parties or any of them and the County Council in respect of any matter contained in this Deed including questions of value and any question of reasonableness the same shall be referred to the Expert and the Expert's decision shall be final and binding on the Parties hereto and the County Council and whose costs (including the reimbursement of the costs of any other expert's fees) shall be at his discretion.

8.2 The Expert shall have at least 10 years post qualification experience in the subject matter of the dispute.

8.3 The Expert shall be appointed subject to an express requirement that he reaches a decision and communicates it to the Parties within the minimum practicable timescale allowing for the nature and complexity

of the dispute and in any event not more than 25 Working Days from the date of his appointment to act.

- 8.4 The Expert shall be required to give notice to each of the Parties inviting each of them to submit to him within such period as he shall reasonably determine within 10 Working Days of his appointment written submissions and supporting material and shall afford to each of the Parties and the County Council an opportunity to make counter-submissions within a further 5 Working Days in respect of any such submission and material and the Expert shall disregard any representations made out of time and the Expert's decision shall be given within 15 Working Days from receipt of any counter-submissions or in the event that there are no counter-submissions within 15 Working Days of receipt of the written submissions and supporting material with reasons and in the absence of manifest error the Expert's decision shall be final and binding on the said Parties and the County Council.

## **9 Registration**

- 9.1 This Deed is a local land charge under the Local Land Charges Act 1975 and shall be registered as such.

## **10 No Fetter on Discretion**

Nothing in this Deed shall be taken to be or shall operate so as to fetter or prejudice the County Council's statutory rights powers remedies discretions and responsibilities.

## **11 County Council Obligations**

- 11.1 The County Council shall as soon as reasonably practicable following the date of this Deed issue the Permission.

11.2 The County Council shall use the Highway Contribution and any interest accrued (if any) thereon for the purposes described in this Deed and shall refund to the payee upon request any portion of the Highway Contribution remaining unspent or uncommitted by the fifth anniversary of its receipt by the County Council together with interest accrued thereon (if any).

11.3 Without prejudice to the operation of clause 4 the County Council agrees that if it is necessary to take any enforcement action in respect of this Deed it will exercise its powers of enforcement against the Developer first and shall then take enforcement action against the other Parties as it shall in at its absolute discretion consider appropriate.

## **12 Warranty as to Title**

12.1 Each Party warrants to the County Council in respect of the land in which it has an interest and in respect of which it is stated in this Deed that the obligations in this Deed should bind:

12.1.1 that the title deeds referred to in this Deed in respect of such interests in such land are complete and accurate to the best of the respective Parties' knowledge; and

12.1.2 having carried out reasonable and proper enquiries in respect of the title to the land in which they have an interest, no other party has an interest in such land which has not been disclosed to the County Council prior to the date hereof.

## **13 Severability**

It is agreed that if any part of this Deed shall be declared unlawful or invalid by a Court of competent jurisdiction then (to the extent possible) the remainder of this Deed shall continue in full force and effect.

**14 Costs**

The Developer hereby covenants for the benefit of the County Council that they will on or before the date of this Deed pay the County Council's reasonable and proper legal costs in connection with the preparation negotiation completion and registration of this Deed.

**15 Contracts (Right of Third Parties) Act 1999**

Notwithstanding the provisions of the Contracts (Right of Third Parties) Act 1999 no part of this Deed shall be enforceable by a third party who is not a party to this Deed with the exception of a successor to the County Council's statutory functions and any successor to the Parties and for the avoidance of doubt the terms of this Deed may be varied by agreement between the Parties without the consent of any such third party.

**16 Notices**

16.1 Any notices required to be served by one party on another under this Deed shall be in writing and shall be served by hand or by first class prepaid special or recorded delivery post at the addresses shown in this Deed or at such other address as they may substitute by notice in writing to the County Council or in the case of a corporate body its registered office for the time being and in the case of service by hand shall be deemed served on signature of a delivery receipt or at the time the notice is left at the address and if sent by first class prepaid special or recorded delivery shall be deemed served 2 Working Days after posting or if earlier the date and time recorded by the delivery service.

16.2 Any notice required to be served on the County Council shall be marked "for the attention of Head of Law and Governance" and shall bear the reference "Section 106 Agreement Bleak Hill III (Hamer Warren Quarry) Somerley - 133999".

## **17. Schedules and Appendices**

The Parties to this Deed agree that the Schedules and Appendices to this Deed form part of it and are incorporated as if the same had been set out in full in the main body of the document.

### **SCHEDULE 1**

#### **Highway Contribution**

1. The Developer for themselves and their successors in title covenant with the County Council to pay the Highway Contribution of ten thousand pounds (£10,000.00) on the date of this Deed.

### **SCHEDULE 2**

#### **Nature Conservation Management and Aftercare Plan**

1. The Developer for themselves and their successors in title covenant with the County Council as follows :
  - 1.1 that it shall within six (6) months of the date of this Deed submit the Nature Conservation Management and Aftercare Plan in accordance with Restoration Plan P6/206/7A setting out the ten (10) year management and aftercare programme for the planting areas and five (5) year programme for the agricultural areas to the County Council for approval.
  - 1.2 to undertake the tasks and implement the measures identified in the Nature Conservation Management and Aftercare Plan and/or any amendments to it approved by the County Council in any reviews.

### **SCHEDULE 3**

#### **Lorry Routing Plan**

1. The Developer for themselves and their successors in title covenant with the County Council as follows:

1.1. that it will not Commence Development or use the Site for purposes pursuant to the Permission until such time as they have erected a sign of a size and design approved in writing by the County Council at the access to the Development from Harbridge Grove in the position marked "Access" on the Lorry Routing Plan stating that all lorries entering or leaving the Site should do so only via the Lorry Route referred to in clause 1.2. of this Schedule such sign to include a map indicating the Lorry Route ("the Lorry Routing Sign").

1.2. that it will thereafter maintain the Lorry Routing Sign in a good and clean condition for the duration of the Permission.

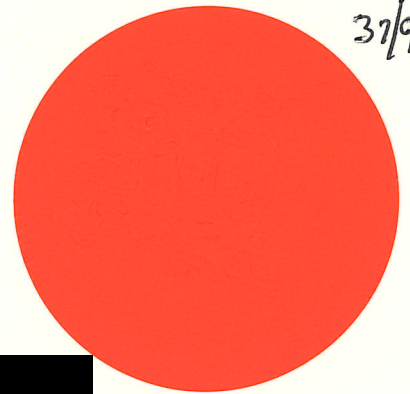
1.3. that in every contract it enters into with any contractor to bring waste material onto the Site in connection with the Development they shall insert a provision which shall be binding on any contractor that such contractor's vehicle or vehicles shall unless making deliveries to or collections from the area shown hatched on the Lorry Routing Plan ("Local Deliveries") enter and leave the Site only via Harbridge Drove Bleak Hill Hamer Warren Harbridge near Ringwood as indicated by a green line on the Lorry Routing Plan ("the Lorry Route") and that in the event any contractor breaches this requirement the Developer shall as soon as practicable issue a written warning to the contractor concerned and in the event of any subsequent breach the Developer shall prohibit that contractor's vehicle from entering the Site for the purposes of bringing waste material onto the Site.

1.4. given the location of the weighbridge on the Site that it will use their reasonable endeavours not to deposit nor permit the deposit of any waste material on the Site unless such waste material has been brought onto the Site in accordance with the Lorry Route unless making Local Deliveries.

IN WITNESS whereof the Parties hereto have executed this document as a Deed delivered the day and year first before written.

31/9/2011

EXECUTED as a DEED by affixing the )  
COMMON SEAL OF HAMPSHIRE )  
COUNTY COUNCIL in the presence of:-)



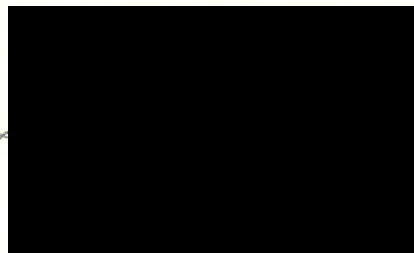
Authorised Signatory. 

Timothy Spender  
Assistant Head of  
Legal Services

Name.....

Position.....

EXECUTED as a DEED by CEMEX UK )  
OPERATIONS LIMITED acting by - )  
VISHAL PURI Director



in the presence of:

Witness signature:

[REDACTED]

Witness name (IN BLOCK CAPITALS): *MARK COLE*

Witness address: CEMEX House, Evreux Way Rugby CV21 2DT

**EXECUTED** as a **DEED** by  
**BLEAK HILL LIMITED** acting by - )  
Director

[REDACTED]

in the presence of: *Sally O'Hara*

Witness signature:

[REDACTED]

Witness name (IN BLOCK CAPITALS): *SALLY O'HARA*

Witness address:

[REDACTED]

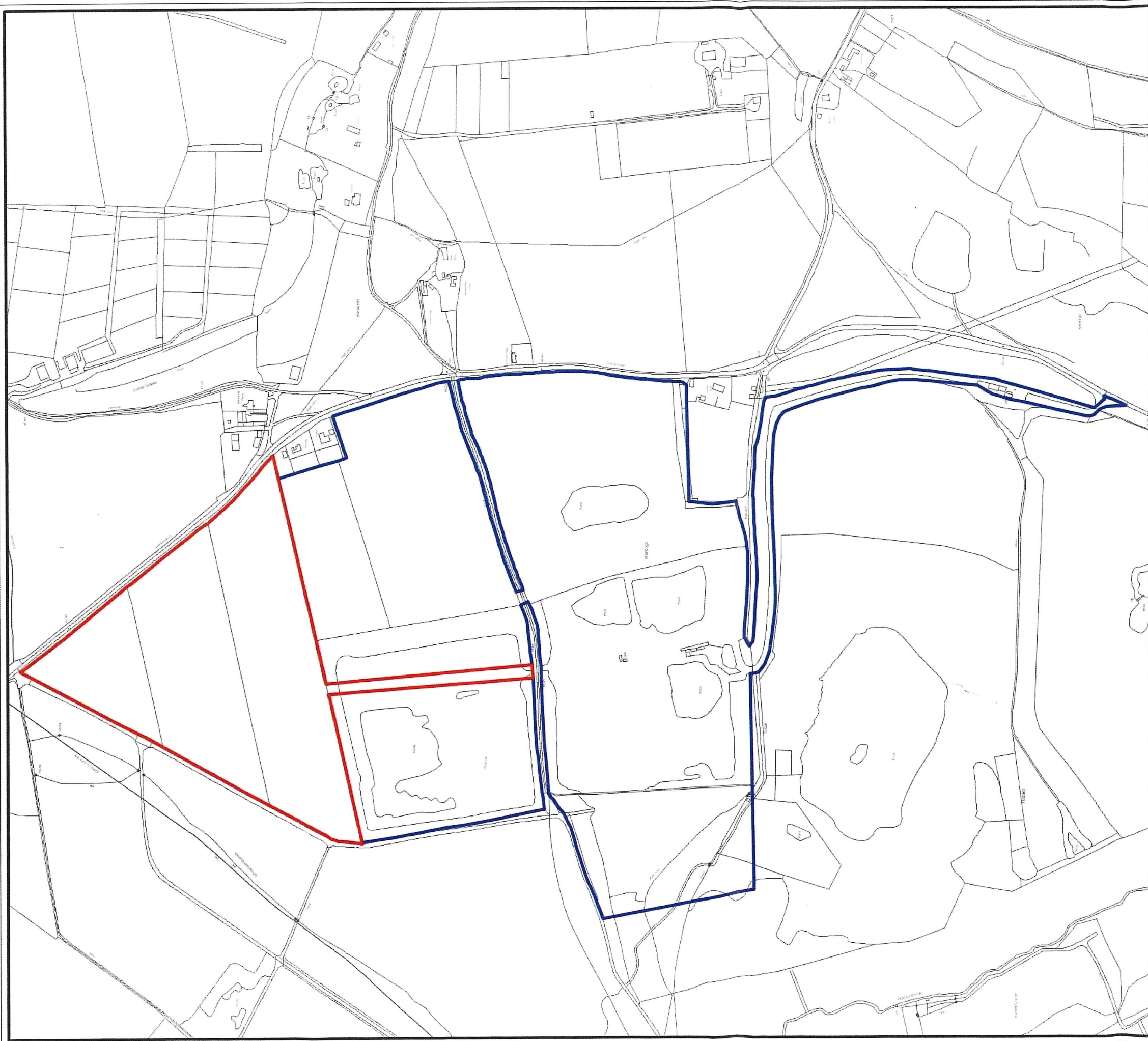
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**Appendices**

**Appendix 1**

Site Location Plan



Revisions

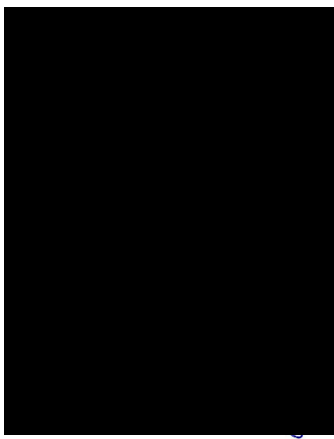
Based on the Ordnance Survey Land Line Data with the permission of Her Majesty's Stationery Office. © Crown Copyright. Licence No. 100018131.



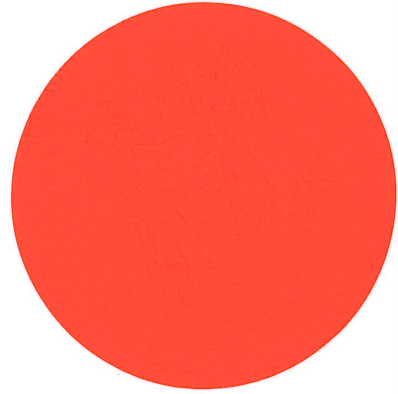
Planning Department  
 CEMEX UK Operations Limited  
 CEMEX, 1st Floor  
 188 High Street, Egham  
 TW20 9ED

Telephone 01932 568833  
 Facsimile 01932 568933

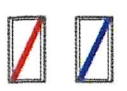
Drawn By:	T Paiman	Company:	CEMEX UK Operations Limited
Date:	March 2019	Site:	Bleak Hill III
Scale:	1:5000 @ A3	Project:	Hamer Warren Quarry
Chkd:		Title:	Site Plan
OS Ref:		Dwg No:	P6/206/2



37/9041



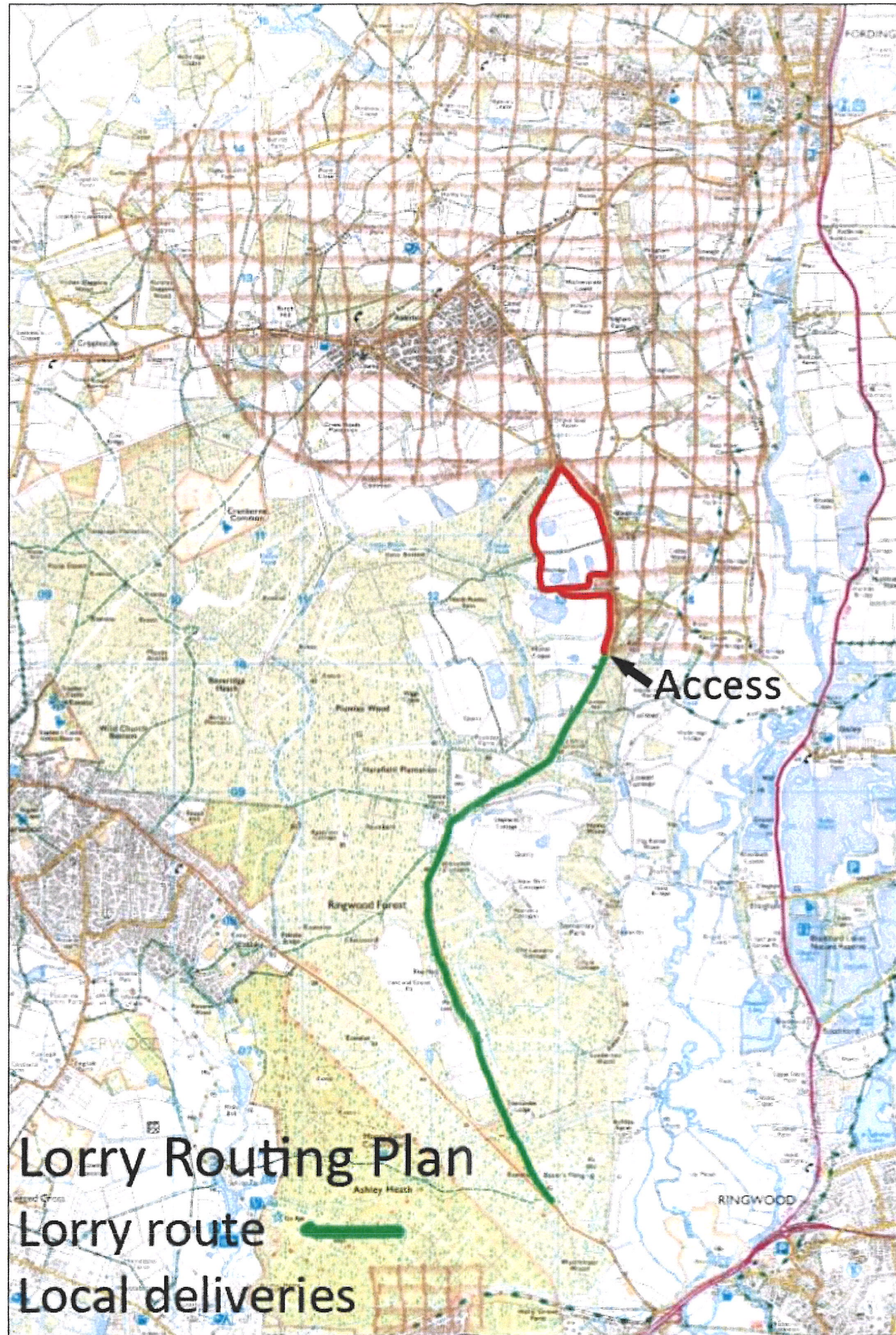
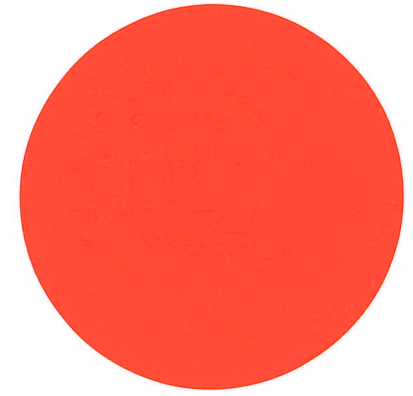
Application Boundary  
 Other Company's Controlled Land



## **Appendix 2**

### Lorry Routing Plan

37/904/1



# Lorry Routing Plan

Lorry route 

Local deliveries 

**Appendix 3**

Deed of Indemnity

THIS DEED is dated

2021

**BETWEEN:**

- (1) **CEMEX UK OPERATIONS LIMITED** incorporated and registered in England and Wales with company number 0658390 whose registered office is at Cemex House Evreux Way Rugby CV21 2DT (**CEMEX**);
- (2) **BLEAK HILL LIMITED** incorporated and registered in England and Wales with company number 11960920 whose registered office is at Windover House St Ann Street Salisbury SP1 2DR (**BLEAK HILL**);

**RECITALS:**

- (A) The parties are now required to enter into such agreement pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) (**the S106 Agreement**)
- (B) The S106 Agreement contains planning obligations relating to planning permission reference **19/11326**
- (C) CEMEX have agreed to indemnify BLEAK HILL in respect of the planning obligations contained in the S.106 Agreement on the terms of this Deed.

**IT IS AGREED THAT:**

1. **Interpretation**
  - 1.1 The definitions and rules of interpretation in this clause apply in this deed.

**S106 Agreement** an agreement dated today's date pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) between Hampshire County Council (1) CEMEX (2) and BLEAK HILL (3)
  - 1.2 Clause headings shall not affect the interpretation of this deed.
  - 1.3 References to clauses are to the clauses of this deed.
  - 1.4 A reference to this deed (or to any other agreement or document referred to in this deed) is a reference to this deed (or such other agreement or document) as varied, amended, supplemented or novated in accordance with its terms from time to time.
  - 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
  - 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
  - 1.7 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
  - 1.8 This agreement shall be binding on and endure to the benefit of, the parties to this deed and their respective successors and permitted assigns, and references to a **party** shall include that party's successors and permitted assigns.

2. **Indemnity**

2.1 In consideration of BLEAK HILL entering into the S106 Agreement CEMEX covenants to indemnify and keep indemnified BLEAK HILL against all costs of works and or financial or other obligations as well as all liabilities proceedings reasonable and proper costs charges claims demands and expenses arising from any breach of the provisions of the S.106 Agreement provided that such indemnity shall not apply in respect of costs of works and or financial or other obligations or any liabilities costs charges or expenses whatsoever arising or which may arise out of or be incidental to any act or default or omission by BLEAK HILL save where such act or default or omission is requested or expressly authorised by CEMEX.

3. **Governing Law and Jurisdiction**

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

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

**EXECUTED as a DEED**  
by **CEMEX UK OPERATIONS**  
**LIMITED** acting by director in the  
presence of :

)  
)  
)

Director:

Witness signature

Witness name

Witness address

Witness occupation