

## **BEMP PROVISIONS & BOND**

### **“the BEMP”**

means a document designed to implement the habitat retention, enhancement and creation identified in [ ]. The BEMP must include details of:

- (i) the establishment and maintenance of native tree, shrub and wildflower planting and for habitat enhancement and creation
- (i) provision for long-term management (at least 30 years), maintenance and monitoring of biodiversity on the site in accordance with the agreed targets for 'no net loss of biodiversity' provided in the biodiversity metric calculation and in accordance with timescales agreed with the Council
- (ii) reporting back to the Council in accordance with agreed timescales and
- (iii) provision for securing the remediation of any shortcomings in meeting the projected targets contained within the biodiversity metric calculation.

### **“BEMP Area”**

means those parts of the Property shown on Drawing No. [ ] to be provided and managed in accordance with the BEMP

### **“BEMP Works”**

means the works to be carried out in accordance with the BEMP including the initial establishment of the BEMP habitats in accordance with the BEMP

<b>“Bond”</b>	means a bond in the form annexed at the [ ] Schedule or such other form as the Council shall approve
<b>“Bond Figure”</b>	means an amount to be agreed between the Council and the Owner in accordance with paragraph [ ] of the [ ] Schedule , such sum.to be increased or decreased by an amount equivalent to the increase or decrease in the Index from the date hereof until the date on which such sum is payable.
<b>“Surety”</b>	means a bank or other financial institution as may be nominated by the Owner and approved by the Council acting reasonably.

## **1 The BEMP Area**

- 1.1 To submit to the Council the BEMP relating to the future management and maintenance of the BEMP Area prior to the Commencement of Development who shall in the event that the BEMP requires amendment as soon as reasonably practicable write to the Owner and request such amendment and the Owner shall re-submit the BEMP addressing the Council’s concerns such procedure to be repeated until the BEMP is approved.
  
- 1.2 Following the completion of the initial establishment of the BEMP habitats to notify the Council by serving a notice in writing upon the Council (“Owner’s Notice”) who shall within 14 days or as soon as reasonably practicable arrange for the inspection of the BEMP Works or the particular element of the BEMP Works that has been completed and if those BEMP Works shall have been carried out to the reasonable satisfaction of the Council the Council shall promptly issue a certificate of completion (“Certificate of Completion”) of the BEMP Works or the particular element of the BEMP Works that has been completed such certificate to bear the date of the inspection (“Completion Date”) **PROVIDED THAT** it is agreed that in the event that the Council does not inspect the BEMP Works or the particular element of the BEMP Works that has been completed within 28 days of the date it receives the Owner’s Notice then the date ending 35 days after the date it receives the Owner’s Notice shall be deemed to be the relevant Completion Date.
  
- 1.3 If the BEMP Works or the particular element of the BEMP Works that has been completed have not been carried out to the reasonable satisfaction of the Council then following notification in writing by the Council of any defect in writing the Owner shall rectify the

defect specified and invite further inspection by the Council in accordance with the procedures set out in paragraph 1.2 such procedures to be repeated as necessary until the Council issues a Certificate of Completion of the BEMP Works or the particular element of the BEMP Works that has been completed.

- 1.4 Following service of a Certificate of Completion accordance with paragraphs 1.2 or 1.3 the Owner shall thereafter maintain and in perpetuity the BEMP Area in accordance with the BEMP incorporating principles of good horticultural, ecological and estate management
- 1.5 The Owner shall not permit the [First Occupation] of the [ ] until the initial establishment of the BEMP habitats have been completed and a Certificate of Completion has been issued in accordance with paragraphs 1.2 or 1.3 above
- 1.6 The Owner shall implement the approved BEMP in respect of the BEMP Works on the BEMP Area and thereafter the Owner shall make suitable arrangements for biodiversity management, monitoring and reporting by a suitably qualified ecologist in accordance with the trigger dates, for monitoring and reporting contained in the BEMP, based on the anticipated times for achieving the target habitat condition, which are incorporated into the metric calculation and once the target habits have been established shall monitor and provide further intervention if targets have not been met.
- 1.7 The Owner shall monitor the BEMP Area and measure the success of the BEMP in meeting its objectives as follows twelve months following its commencement and thereafter in years 2, 5, 10, 15, 20 and 30 so as to evidence that management of the site is being successfully implemented.
- 1.8 The BEMP will be subject to a review at least every 10 years, which should include an appraisal of the habitats present at the site (based on the monitoring surveys), assessment of the success of the BEMP to date and any required revisions to the BEMP. The first BEMP review will consider the success of initial habitat establishment; establish which management techniques have been successful and those that have not; and an assessment of whether overall management has been effective.

1.9 The field assessments to be undertaken as part of the monitoring in paragraph 1.8 shall be carried out by a competent botanist at an appropriate time of year. The condition of the BEMP Area must be assessed using standard criteria available in the Biodiversity Metric v 3.0 technical supplement (or as updated by Natural England). The assessment methodology and the condition assessment criteria to be used should be set out in the BEMP and should the monitoring highlight any deficits, a remediation program must be agreed with the Council to ensure that the target habitats continue to be able to be met within a realistic timeframe. Any variations to individual habitat areas or condition scores must be agreed with the Council in advance, and must, as a minimum match the agreed number of habitat units to be delivered under the metric calculation for linear and area habitats.

## 2. **The Bond**

2.1 Within 10 Working Days of the approval of the BEMP in accordance with paragraph 1.1, to submit to the Council a cost estimate of the Bond Figure from three ecological consultancies which must be registered practices with the Chartered Institute of Ecology and Environmental Management (Registered Practice Directory (cieem.net)) or on prior agreement with the Council, an Ecological Clerk of Works who is a member of CIEEM (“the Cost Estimate”) such figure to cover the costs of :-

2.1.1 the implementation of the BEMP Works ; and

2.1.2 the maintenance and monitoring of the BEMP Works on the BEMP Area for a period of 30 years in accordance with the provisions in paragraphs 1.6 – 1.9 such period to commence from the service of a Certificate of Completion served accordance with paragraphs 1.2 or 1.3

2.2 The Council shall notify the Owner of the preferred Cost Estimate as soon as reasonably practicable or if the Cost Estimate is not deemed to be acceptable by the Council then the Owner shall re-submit the Cost Estimate or part of it as appropriate addressing the Council’s concerns such procedure to be repeated until the Cost Estimate is approved

1.2 The Owner shall within 10 Working Days of the date of approval of the Cost Estimate and at its own expense enter into the Bond with the Surety for the performance of the Owner’s obligations in relation to the implementation and future management and maintenance of the BEMP under this agreement

[ ] SCHEDULE

**BOND**

THIS BOND is made on [DATE] between:

[OWNER]

[SURETY]

[HBC]

BACKGROUND:

(A) On [DATE] the Owner, Harrogate Borough Council [and North Yorkshire County Council] entered into a section 106 agreement (“the Agreement”) in relation to land at [ ] The Owner is under an obligation to undertake the implementation and the maintenance and the monitoring of the BEMP Works on the BEMP Area for a period of 30 years on the terms and conditions specified in the Agreement.

(B) Clause [ ] of the Agreement contains a covenant by the Owner to enter into a bond to secure its obligations and liabilities under the terms of the Agreement.

(C) This Bond is supplemental to the Agreement.

(D) All words and phrases defined in the Agreement shall have the same meaning in this Bond, save where the context otherwise dictates.

1. The Owner and the Surety are bound jointly and severally to the Council for the sum of £[AMOUNT] (“the Bond Figure”).
2. In the event that the Owner [and/or the Management Company] ceases to maintain, manage or monitor the BEMP Works on the BEMP Area according to the obligations in the Agreement, the Surety shall pay to the Council within [NUMBER] Working Days of written demand such sum of money as the Council estimates to be necessary to make good the default by the Owner [and/or the Management Company]. If the actual cost of securing the obligations and liabilities of the Owner and/or the Management Company exceeds such estimate the Surety shall pay the

excess to the Council within [NUMBER] Working Days of written demand provided that the amount demanded shall not exceed the Bond Figure (whether as a single sum or as an aggregated sum.

3. The Surety shall not be released or discharged from this Bond by any arrangement made between the Owner and the Council for the variation of the Agreement or otherwise, either with or without the consent of the Surety.
  
5. The obligations of the Surety under this Bond shall cease and determine absolutely on the expiry of 30 years from the date of the Certificate of Completion unless a claim is made by the Council, in writing, before the expiry of the 30 year term

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 [NAME OF OWNER] acting by [NAME OF FIRST DIRECTOR], a director and [NAME OF SECOND DIRECTOR/SECRETARY], [a director OR its secretary]

OR

Executed as a deed by [NAME OF OWNER] acting by [NAME OF DIRECTOR], a director in the presence of:

.....

[SIGNATURE OF WITNESS]

[NAME, ADDRESS [AND OCCUPATION] OF WITNESS]

Executed as a deed by [NAME OF SURETY] acting by [NAME OF FIRST DIRECTOR] a director, and [NAME OF SECOND DIRECTOR/SECRETARY], [a director OR its secretary]

OR

Executed as a deed by [NAME OF SURETY] acting by [NAME OF DIRECTOR] a director, in the presence of:

.....

[SIGNATURE OF WITNESS]

[NAME, ADDRESS [AND OCCUPATION] OF WITNESS]

The Common Seal of **THE COUNCIL OF THE**)

**BOROUGH OF HARROGATE** was hereunto )

affixed under the authentication of: )

Head of Legal & Governance

Chief Solicitor