

Dated this *9th* day of July 2020

(1) BABERGH DISTRICT COUNCIL

(2) HAYLINK LIMITED

**Deed of Variation made under section 106A of the Town and Country Planning
Act 1990, and all other enabling powers, of a Deed of Agreement creating
Planning Obligations**

regulating development of

Land known as HMS Ganges, Shotley Peninsula, Shotley, Ipswich.

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Ref: MT/CM

DATE AND PARTIES

THIS DEED is made the ^{9th} day of July 2020

BETWEEN:-

- (1) **Babergh District Council** of Endeavour House, 8 Russell Road, Ipswich, Suffolk IP1 2BX ("the District Council"), and
- (2) **Haylink Limited** (company registration number 03692725) whose registered office is at 3rd Floor, Sterling House, Langston Road, Loughton, Essex IG10 3TS ("Haylink")

RECITALS:

- A. The District Council is the Local Planning Authority for the purposes of the 1990 Act for the area in which the Application Site is situated and, as such, is entitled to enforce the planning obligations contained in the Original Agreement, as varied by this Deed of Variation.
- B. Haylink is the registered proprietor of the of the majority of the Application Site with title absolute registered at HM Land Registry under Title Number SK222108.
- C. Towcrest 2 is the registered proprietor of a small part of the Application Site comprising of the Red Strip with title absolute registered at HM Land Registry under Title Number SK362147. For the avoidance of doubt the Red Strip remains unaffected by this Deed.
- D. This Deed is entered into by agreement with the District Council to regulate the Development and secure the matters hereinafter referred.

OPERATIVE PROVISIONS

NOW THIS DEED WITNESSES as follows: -

1. INTERPRETATION

- 1.1 All words and expressions defined in the Original Agreement shall have the same meaning in this Deed (except to the extent that they are expressly varied by this Deed or the context otherwise requires).
- 1.2 The provisions of the Original Agreement relating to its interpretation and construction including clauses 1 and 2 of the Original Agreement apply to this

Deed except to the extent that they are expressly varied by this Deed or the context otherwise requires.

- 1.3 For the purposes of this Deed the following words and expressions shall have the following meanings unless the context indicates otherwise:-

"the Original Agreement"	means the agreement dated 18 December 2015 relating to the proposed development the subject of the Planning Permission, and made between the District Council, the County Council, Haylink Limited, Towcrest 2 Limited and Towcrest Limited.
"the Parties"	means the District Council and Haylink Limited.
"External Shell and Core"	means...Roof, walls, intermediate floors (where required), staircase and lift shaft (where required) excluding lift car and finishes, foul water pipes and service ducts taken into the building awaiting connections.
"External Refurbishment"	means...Repairs to roof, external walls, doors, windows, gutters, downpipes and decoration where required.

2. LEGAL BASIS

- 2.1 This instrument is a Deed and to the extent that the provisions of it are within the terms of section 106 of the 1990 Act is made pursuant to the provisions of section 106A and contains planning obligations for the purpose of that statutory provision.
- 2.2 The covenants, restrictions and requirements imposed upon Haylink by this Deed create planning obligations pursuant to section 106 of the Act and are enforceable by the District Council.
- 2.3 To the extent that any of the obligations 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, section 38 of the Highways Act 1980, section 1 of the Localism Act 2011 and all other enabling powers.

- 2.4 This Deed is supplemental to and varies the Original Agreement. The Parties have agreed to modify the Original Agreement under Section 106A of the 1990 Act.

3. JURISDICTION

This Deed is made in England and shall be governed by and interpreted in accordance with the law of England and Wales and each party irrevocably submits to the exclusive jurisdiction of the courts of England and Wales as regards any claim or matter arising under this Deed.

4. VARIATION OF THE ORIGINAL AGREEMENT

It is hereby agreed between the Parties hereto that from the date of this Deed the Original Agreement shall be varied as follows:

4.1 Interpretation and Legal Effect

4.1.1 p.16 clause 2.10 the words “the date of this Agreement” are deleted and replaced with the words “the date of the final approval of all pre-commencement conditions set out in the Planning Permission and pre-commencement obligations set out in the Original Agreement (as varied)”.

4.2 The Swimming Pool Building

4.2.1 p.3 “**Commercial Facilities Plan**” - the words “swimming pool” and “(NB – refer to the Heritage Assets Plan for the siting of the Swimming Pool Building)” are deleted.

4.2.2 p.6 “**Contribution for the Swimming Pool**” definition is deleted and a new definition is inserted “**Contribution in lieu of the Swimming Pool**” – “means the sum of Forty Thousand Pounds (£40,000) to be paid by Haylink to the District Council who are obliged to pass that sum to Shotley Parish Council.

4.2.3 p.7 “**Heritage Assets**” – the words “the Swimming Pool Building” are deleted.

4.2.4 p.7 “**Heritage Assets Plan**” – means the drawing numbered 18504D/02 Revision P1 a copy of which is annexed hereto at **Schedule 5** is deleted and inserted is “means the drawing numbered 18504D/02 Revision P2 which is annexed hereto at **Schedule 1**”.

4.2.5 p.14 “**Swimming Pool Building**” and “**Swimming Pool Notice**” – both definitions are deleted.

4.2.6 p.19 clause 5.6 – Heritage Assets - from Table B under “**Name of Heritage Asset**” the words “Swimming Pool Building”, and under “**Heritage Works**” the words “Secure, watertight, ventilated in advance of future use” and under “**works to be completed by**” the words “20 residential dwellings” are deleted.

4.2.7 p.20 clause 5.7 the words “and the Swimming Pool Building” are deleted.

4.2.8 p.20 clause 5.13 the words “Swimming Pool Building” – are deleted.

4.2.9 p. 20 clauses 5.14 and 5.15 are deleted.

4.2.10 p.22 clauses 5.36.2 and 5.37 the word “for” is deleted and replaced with the words “in lieu of”.

4.2.11 p.29 clause 10.1.5 the word “for” is deleted and replaced with the words “in lieu of” and the words “and will procure that the Parish Council will as quickly as possible thereafter carry out a viability study to ascertain whether the Swimming Pool can be refurbished and used viably as a recreational facility for use by the public (although not exclusively) and the study shall be sent to the District Council and the Developer for their information” are deleted and replaced with the words “once it has been demonstrated (through copy invoices) that requests to release such money will be spent for the benefit of the community”.

4.2.12 p.29 clause 10.1.6 is deleted.

4.3 Care Home, Flexible Use Building, and Retail/Office Buildings

4.3.1 p.18, clause 5.4 Commercial Facilities, Table A:

The heading “To be constructed to Completion by” is deleted

In relation to the "Care Home" the words "113 Residential Dwellings" are deleted and replaced with the words "External Shell and Core to be constructed by the Completion of the 140th Residential Dwelling and Completion of the building prior to the Completion of the 270th Residential Dwelling.

4.3.2 In relation to the "Flexible Use Buildings" and "Retail/office Buildings" the words "113 Residential Dwellings" are deleted and replaced with "External Shell and Core to be constructed by the Completion of the 140th Residential Dwelling and Completion of the Flexible Use and Retail/Office buildings prior to the Completion of the 270th Residential Dwelling.

4.3.3 p.18, clause 5.5 is deleted and replaced with the words "Not to Occupy more than 140 Residential Dwellings unless and until the Commercial Facilities have been constructed as follows: "Flexible Use Buildings", "Retail/office Buildings" and "Care Home" constructed to External Shell and Core and not to Occupy more than 270 Residential Dwellings until Completion of the Care Home and the Flexible Use and Retail/Office Buildings".

4.4 Vincent House/Nelson Hall

4.4.1 p.19, clause 5.6 **Heritage Assets** Table B under "**Heritage Works**" in relation to Vincent House and Nelson Hall the words "but limited to external refurbishment" are added after the words "used for its intended purposes".

4.4.2 p.20 clause 5.9 is deleted and replaced with the words "Not to occupy more than 140 Residential Dwellings unless and until Nelson Hall and Vincent House have been renovated in accordance with the Heritage Assets Specification but limited to external refurbishment and not to occupy more than 270 dwellings unless and until the renovation is completed to enable the buildings to be used for their intended purpose".

4.5 The Fort

4.5.1 p.19, clause 5.6 **Heritage Assets** delete the words: "(except for the Heritage Works carried out to the Fort which shall be carried prior to the Commencement of the Development)".

4.5.2 p.19 clause 5.6 **Heritage Assets** - from Table B under “**works to be completed by**” the words “Prior to Commencement of Development” are deleted and replaced with the words “By 25th December 2025”.

4.5.3 p.20 clause 5.7 delete the words “Not to Commence the Development unless and until the Heritage Works to the Fort have been completed and” and replace with the words “Not to Occupy more than 20 Residential Dwellings unless and until the Heritage Works have been completed to the Ceremonial Gates”.

4.6 Retirement Properties

4.6.1 p.13 the definition “**Retirement Properties** means those Residential Dwellings identified on the plan numbered 18504D-150 Revision P4 a copy of which is attached at Schedule 8” is deleted.

4.6.2 p.26 clause 5.63 – **Restriction on Occupation** is deleted.

4.6.3 p.45 Schedule 8 - Retirement Properties Plan is deleted.

4.7 Pre –commencement – Sustainability Pack

4.7.1 p.18 clause 5.1.5 the word “draft” is inserted between the words “the” and “Sustainability”.

4.8 Pre-Commencement - The Heritage Assets Specification and the Recreational Facilities Specification

4.8.1 p.17 clause 5.1.1 is deleted and replaced with the words; “the Heritage Assets Specification and the Recreational Facilities Specification for each phase of the Development as set out in the Planning Permission under condition 27 (Approved Plans) have been submitted to and approved by the District Council in writing”.

4.9 Recreational Facilities

4.9.1 p.23 **TABLE C** is amended as follows:

In the column headed "**To be provided by**" on the row relating to LAP3 the words "20 Residential Dwellings" shall be deleted and replaced with the words "40 Residential Dwellings".

4.10.2 p. 23 clause 5.45 is amended as follows: the figure "20" shall be deleted and replaced with the figure "40".

4.10 Construction Management Plan

4.10.1 p.4 the definition "**Construction Management Plan**" is deleted and replaced with the following:

"Construction Management Plan" means the plan approved in accordance with condition 2 of the Planning Permission.

4.10.2 p.27 clause 6.1 is deleted.

4.10.3 p.27 clause 6.2 is amended as follows:

the words "or the expiry of the period for approval in clause 6.1" are deleted.

4.11 The parties further agree that save as expressly varied by this Deed the Original Agreement shall remain in full force and effect.

5. LEGAL COSTS

5.1 Haylink shall, prior to completion, pay the District Council's reasonable legal costs incurred in connection with the preparation, negotiation and completion of this Deed.

6. MISCELLANEOUS PROVISIONS

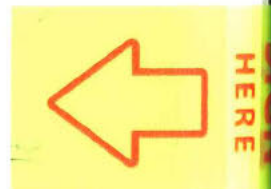
6.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Deed or a successor to the District Council.

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

IN WITNESS WHEREOF the parties hereto have executed this Deed but the same remains undelivered until the day and year first before written.

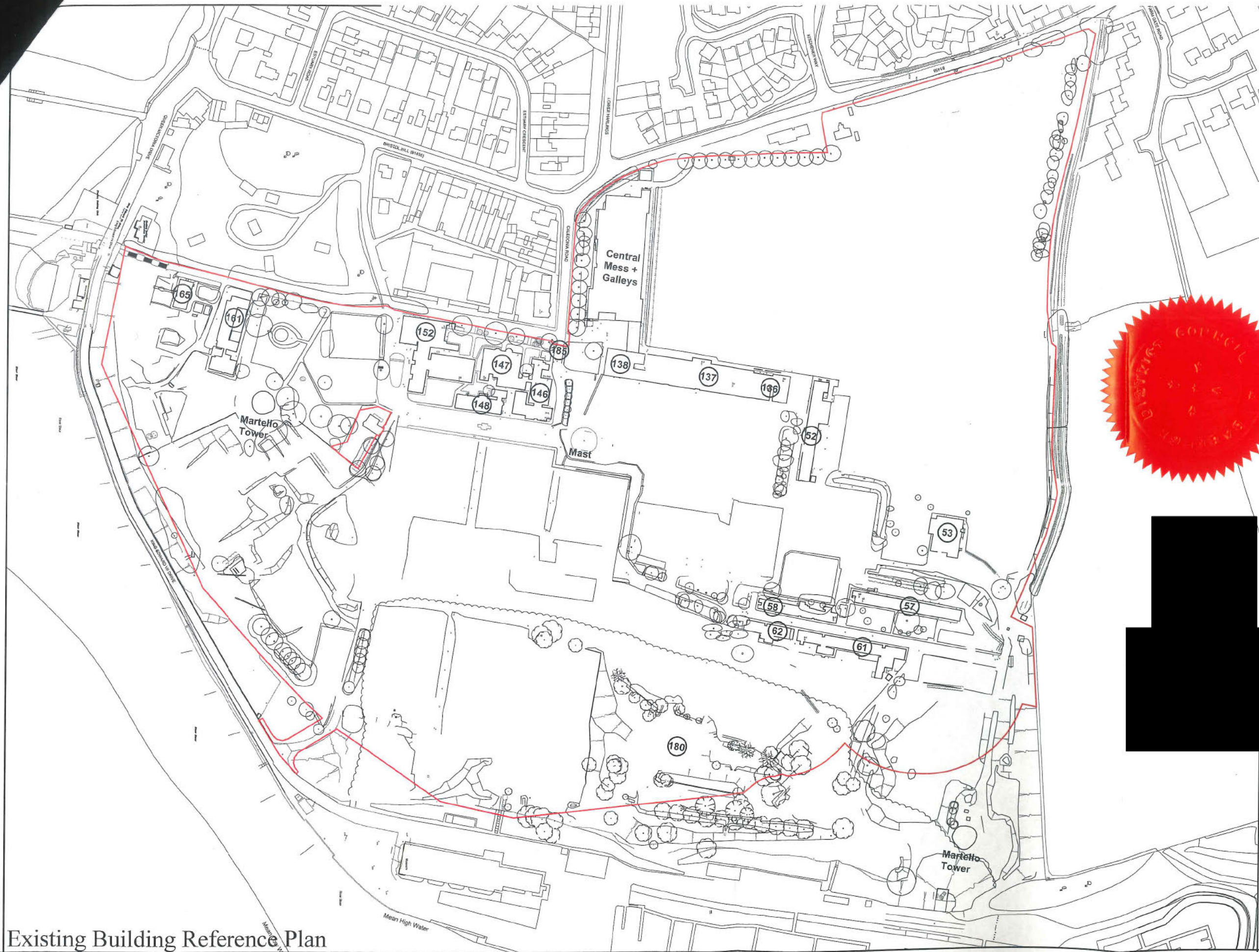
... ..

Director
Name M. Roar
Secretary/Director
Name P. G. Roberts



HERITAGE ASSETS PLAN

9



NOTES:

Do Not Scale.

Report all discrepancies, errors and omissions.

Verify all dimensions on site before commencing any work on site or preparing shop drawings.

All materials, components and workmanship are to comply with the relevant British Standards, Codes of Practice, and appropriate manufacturers recommendations that from time to time shall apply.

For all specialist work, see relevant drawings.

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Rev	Date	Description
P1	Feb/15	Lined Gate and Fort added

Building Reference

- 137 Nelson Hall
- 138 Admin (Nelson)
- 136 Laundry
- Vincent House
- Club
- Drake
- Practical Suite
- Hawke 3
- Hawke 1 & 2
- Signals School
- 152 Ganges
- 148 Admin
- 146/7 Anson
- 165 Bungalow
- 180 Fort
- 185 Listed Gate

Survey based on information and spot heights provided by others (refer to DAS).

Interiors are not surveyed due to Health and Safety concerns, such as Asbestos.

Project Title

Proposed Use Development

At

HMS Ganges

Shotley

Ipswich

Building Description

Building Reference Plan

Heritage Asset

Drawn by

50@A1

Checked by

ary 2011

CLAGUE

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TELEPHONE 01227 762660 FAX 01227 762149

13 NORTH STREET ASHFORD KENT TN24 8LF
TELEPHONE 01233 624354 FAX 01233 610018

1 KINSBOURNE COURT LUTON ROAD
HARPENDEN HERTFORDSHIRE AL3 3BL
TELEPHONE 01582 765192 FAX 01582 462149

ARCHITECTS

INTERIOR DESIGNERS

HISTORIC BUILDING CONSULTANTS

URBAN DESIGNERS

Drawing Number

18504D/02

Revision

P2

Existing Building Reference Plan

Proposed Mixed Use Development