

Dated

27 JULY

2023

THE COUNTY COUNCIL OF DURHAM

and

NATIONAL GRID ELECTRICITY TRANSMISSION PLC

Agreement

pursuant to Section 106 of the Town and Country Planning
Act 1990 relating to land at Hawthorn Grid Site
Murton DH6 2RX

Application reference: DM/22/01663/OUT

**Durham County Council
County Hall
Durham
DH1 5UL
Ref: LA/35090**

This Deed is made the 27 day of JULY 2023

By

1. **THE COUNTY COUNCIL OF DURHAM** of County Hall, Durham, DH1 5UL ("**the Council**"); and
2. **NATIONAL GRID ELECTRICITY TRANSMISSION PLC** (CRN: 02366977) whose registered office is at 1 - 3 Strand, London, WC2N 5EH ("**the Developer**")

Whereas

- A. The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated and is the authority by whom the obligations hereby created are enforceable.
- B. The Developer is the freehold owner of the Developer's Land which forms part of the Site and which is unregistered and was acquired pursuant to a conveyance dated 5 December 1966 and has also submitted the Application.
- C. The Developer has made The National Grid Electricity Transmission plc (Scotland to England Green Link 1) Compulsory Purchase Order 2023
- D. The Council's County Planning Committee resolved on 4 April 2023 to grant the Planning Permission subject to the prior completion of this Deed.
- E. The Developer has agreed to enter into this Deed with the intention that the obligations contained in this Deed may be enforced by the Council against the Developer and their successors in title.

Now this Deed witnesses as follows:

1. DEFINITIONS

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

"Act" the Town and Country Planning Act 1990 (as amended);

"Application" the application for planning permission dated 7 June 2022 submitted to the Council for the Development and allocated reference number DM/22/01663/OUT;

"Biodiversity Land" the semi-natural habitats within the Site and shown on Plan 2 or such land (including part of the Biodiversity Land only or alternative land) as may be agreed in writing with the Council;

"Biodiversity Scheme and a management plan for the creation of the semi-natural habitats on the Biodiversity

Management Plan"

Land which shall contain target habitat descriptions, timescales for the target habitats to be delivered, details of the long term management of the habitats, monitoring of the delivery of the target habitats including a monitoring report to be submitted to the Council;

"Biodiversity Works"

the works for the creation of semi-natural habitats on the Biodiversity Land set out in the approved Biodiversity Scheme and Management Plan;

"Commencement of Development"

the implementation of the Planning Permission by the carrying out of any material operation as defined by Section 56 of the Act but, for the avoidance of doubt, the Planning Permission is deemed not to be implemented for the purposes of this definition by any works of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, the carrying out of any decontamination or landfill works, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements;

"Developer's Land"

that part of the Site shown edged blue on Plan 1;

"Development"

the Development of the Site pursuant to the Planning Permission comprising the erection of a new 400 kilovolt electricity substation, a converter station, and the laying out of replacement public open space on land to the west and south of Jade Business Park, with all matters reserved as set out in the Application;

"Management and Maintenance"

means the management and maintenance of the Biodiversity Land for the Management and Maintenance Period to be carried out in accordance with the provisions set out in the Biodiversity Scheme & Management Plan;

"Management and Maintenance

means the period of 30 years commencing with the completion of the Biodiversity

Period"	Works;
"Operated"	means operated as part of the high-voltage electricity transmission network serving Great Britain;
"Plan 1"	means the plan marked 'Plan 1' attached to this Deed at the First Schedule;
"Plan 2"	means the plan marked 'Plan 2' attached to this Deed at the First Schedule;
"Planning Permission"	the planning permission subject to conditions to be granted by the Council pursuant to the Application as set out in the Second Schedule;
"Section 39 Agreement"	an agreement under Section 39 of the Wildlife and Countryside Act 1981, in substantially the form as appended at the Fifth Schedule with such amendments as agreed between the parties (acting reasonably and without delay), to secure the management and maintenance of the Biodiversity Land in accordance with the approved Biodiversity and Management Plan for not less than a 30 year period;
"Site"	the land at Hawthorn Grid Site Murton DH6 2RX subject of the Application as shown edged blue and red on Plan 1;
"Working Day"	any day apart from Saturday and Sunday and statutory bank holidays.

2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed (unless the context otherwise requires).
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.

- 2.4 Where two or more people form a party to this Deed, the obligations they undertake may be enforced against them all jointly, or against each of them individually unless there is express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 References to any party to this Deed 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 Council the successors to their respective statutory functions.
- 2.7 The headings and contents list are for reference only and shall not affect construction.
- 2.8 Any covenant by the Developer or the Council not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 2.9 Insofar as any clause or clauses of this Deed are 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 Deed.
- 2.10 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 2.11 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission or any non-material amendment thereto) granted (whether or not on appeal) after the date of this Deed nor shall any payment be due under this Deed in respect of any development carried out under such other planning permission.

3. LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011.
- 3.2 The covenants, restrictions and requirements imposed upon the Developer under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Developer.

4. CONDITIONALITY

- 4.1 The obligations contained within this Deed are conditional upon:

- 4.1.1 the grant of the Planning Permission; and

- 4.1.2 the Commencement of Development

save for the provisions of Clause 7 which shall come into effect immediately upon the completion of this Deed.

5. THE DEVELOPER'S COVENANTS

- 5.1 The Developer covenants with the Council (so as to bind the Developer's Land) to fully observe and perform the obligations in this Deed including those obligations set out in the Schedules and hereby agrees that the Developer's Land shall be subject to the obligations, restrictions and covenants herein, such obligations being planning obligations for the purposes of section 106 of the Act as set out in the Third Schedule.

6. THE COUNCIL'S COVENANTS

- 6.1 The Council covenants with the Developer to observe and perform the obligations set out in the Fourth Schedule.

7. FEES

- 7.1 The Developer shall pay to the Council on completion of this Deed the sum of £750 (SEVEN HUNDRED AND FIFTY POUNDS) incurred in the negotiation, preparation and execution of this Deed and shall also pay the Council's reasonable costs in monitoring compliance with the terms of this Deed in the sum of £150.

8. LOCAL LAND CHARGE

- 8.1 This Deed shall be registrable as a local land charge by the Council.
- 8.2 Following the performance and satisfaction of all the obligations contained in this Deed or where the obligations under this Deed are no longer enforceable the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed against the Site (or relevant part).

9. COMMUNICATION AND COUNCIL'S CONSENT OR APPROVAL

- 9.1 Where the agreement, approval, consent or expression of satisfaction is required by the Developer from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld.
- 9.2 Any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.

10. TERMINATION OF THIS DEED

- 10.1 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn (or without the consent of the Developer it is modified by any statutory procedure) or expires prior to the Commencement of Development.

11. THE CONTRACTS ACT

- 11.1 Save as provided in respect of successors in title to the Site or any successor to the relevant statutory function of the Council this Deed shall not be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999 and no third party shall acquire any benefit, rights or claims whatsoever thereto.

13. COUNCIL'S POWERS

- 13.1 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes bye-laws statutory instruments orders and regulations in the exercise of their functions as local authority.

14. EXEMPTIONS

- 14.1 The obligations in this Deed shall not bind or be enforceable against:

14.1.1 any Statutory Undertaker or other infrastructure provider holding an estate or interest in the Site or part of the Site nor against plant equipment conduits or structures located there for its operational purposes; nor

14.1.2 anyone whose only interest in the Site is in the nature of the benefit of an easement or covenant.

15. WAIVER

- 15.1 No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

16. JURISDICTION

- 16.1 This Deed is governed by and interpreted in accordance with the law of England and Wales.

17. DISPUTE RESOLUTION

17.1 Where any dispute or difference arises between any of the parties to this Deed, except as to a matter of law which shall remain the jurisdiction of the Courts, any party to such dispute or difference shall be entitled to have the matter referred to the determination of an expert (the "Appointed Expert") having not less than 10 years' relevant experience in the field of the matter in dispute and being a member of the Royal Institution of Chartered Surveyors or if appropriate to the matter in dispute of another professional institution or body the identity of such person in default of agreement being an appointment made on the application of any party to such dispute at any time by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors.

17.2 In the absence of a direction by the Appointed Expert in accordance with this clause as to how the costs of the reference to the Appointed Expert should be borne as between the relevant parties the parties to such dispute shall bear their own costs and shall share equally the costs and charges of the Appointed Expert.

17.3 The Appointed Expert shall:

17.3.1 afford to each of the parties to the dispute an opportunity to make representations to him in writing and if he/she so directs submissions upon one another's representations;

17.3.2 be entitled to stipulate the periods of time for the making of such representations as is reasonable in the circumstances;

- 17.3.3 be bound to have regard to such representations;
- 17.3.4 have the power of making directions as to the responsibility for the costs of his/her award (including both the costs of the relevant parties and the costs and charges of the Appointed Expert) to be met by any party behaving unreasonably.
- 17.3.5 in the making of his/her award not be liable save to the extent in law as provided in relation to the decisions of an expert.
- 17.3.6 make awards which are final and conclusive as between the parties to such dispute (except that such awards shall not remove the parties' rights of appeal on matters of law); and
- 17.3.7 be replaced by a fresh appointee in the event of his/her becoming at any time unable or unwilling for any reason to proceed to discharge his/her function such fresh appointee to be appointed in the manner prescribed in this clause.

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



FIRST SCHEDULE

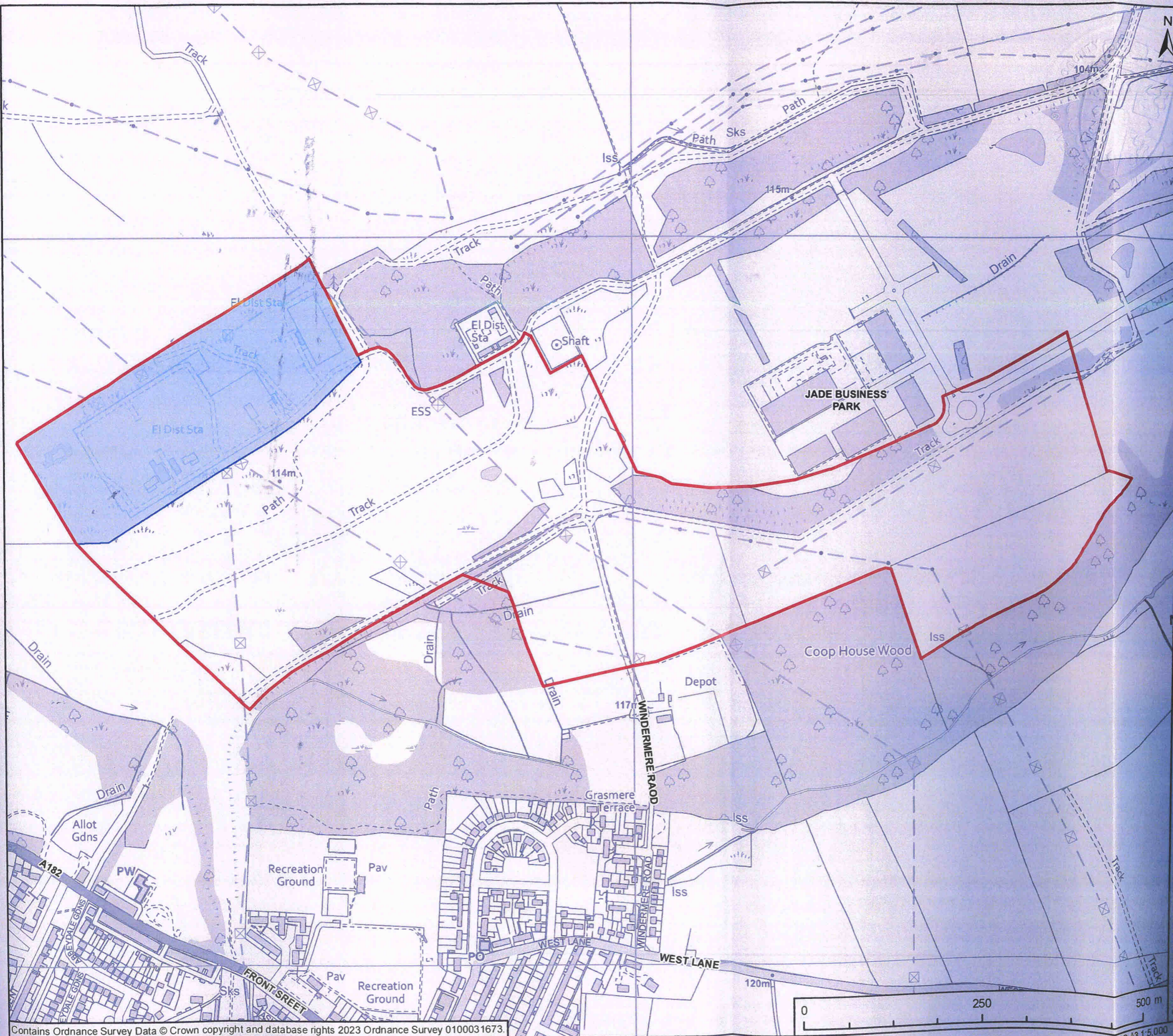
The Plans

GIS: LC Checked: DF Approved: MS

nationalgrid

PROJECT
Scotland England Green Link 1

KEY
 Planning Application Boundary
 National Grid Existing Substation Land

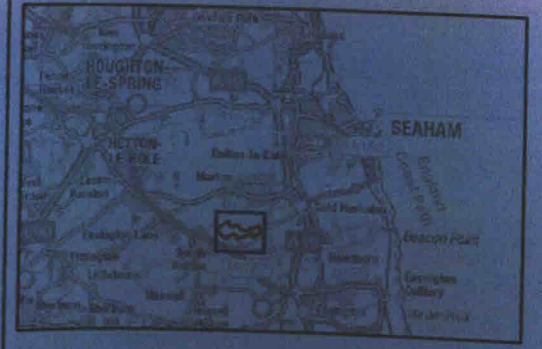


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MEMBER OF THE BOARD SEALING COMMITTEE

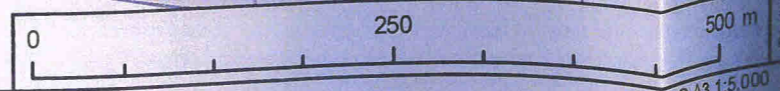


TITLE
Figure 1
Site Plan

Plan 1

REFERENCE
SEGL1_T_S106_1_v1_20230612

SHEET NUMBER
1 of 1
DATE
12/06/2023



Scale @ A3 1:5,000

