

HERTFORDSHIRE COUNTY COUNCIL
SECTION 106/278 DEED OF AGREEMENT

Date: 22nd April

2004

PARTIES:

1. HERTFORDSHIRE COUNTY COUNCIL of County Hall Hertford Hertfordshire ("the County Council")
2. WELWYN HATFIELD DISTRICT COUNCIL of Council Offices The Campus Welwyn Garden City Hertfordshire AL8 6AE ("the Council")
3. J S BLOOR (NORTHAMPTON) LIMITED (Co. Regn. No. 02147383) whose registered office is situated at Ashby Road Measham Swadlincote Derbyshire DE12 7JP ("the Developer")

WHEREAS

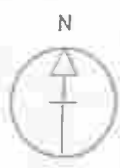
- (1) The County Council and the Council are Local Planning Authorities for the purpose of Section 106 of the Town and Country Planning Act 1990 (as amended) ("the Act") for the area of land known as Oaklands College Lemsford Lane Campus Welwyn Garden City Hertfordshire ("the Land") for the purposes of identification only shown edged red on the plan attached hereto marked "A" ("Plan A") and as such are the local planning authorities entitled to enforce the planning obligations hereinafter recited
- (2) The County Council is the Highway Authority and the Fire Authority for Hertfordshire
- (3) The Developer is the registered proprietor of the freehold of the Land which is registered at HM Land Registry under Title Number HD399844
- (4) The Developer has applied to the Council for planning permission under Application No. N6/2003/349/FP ("the Application") for the development of the Land involving demolition of the existing campus and erection of 23 dwellings with associated access parking and landscaping ("the Development")

A

44



TITLE NUMBER
HD399844



HERTFORDSHIRE : WELWYN HATFIELD

ORDNANCE SURVEY MAP REFERENCE:

TL2211NE

SCALE 1:1250

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THIS AND MADE
ASSISTANT COUNTY
SECRETARY 104



age

- (5) The Council is satisfied that the Development is such as may be approved by it under the Act and has agreed to grant planning permission for the Development substantially in the form of the draft annexed hereto ("the Planning Permission") subject to the parties entering into this Agreement including all the obligations restrictions and requirements contained herein
- (6) This Deed is entered into to make provision for regulating the Development and securing the matters hereinafter referred to which are required in order to enable the Development to go ahead

NOW THIS DEED OF AGREEMENT WITNESSETH as follows:

1.
 - a) Sub clauses 5(a) and 5(g) and 5(h)(ii) of this Deed contain Planning Obligations pursuant to Section 106 of the Act relating to the Land and are enforceable by the County Council and the Council and each of them
 - b) This Deed is also made pursuant to Section 111 of the Local Government Act 1972 and Section 278 of the Highways Act 1980 and the County Council is satisfied that it will be of benefit to the public for the County Council to enter this Deed for the execution of the works described in Schedule 1 ("the Works") which Works the County Council is authorised to execute pursuant to the Highways Act 1980
2. In the event that the Planning Permission with or without conditions is granted pursuant to the Application and the Planning Permission is thereafter implemented by the carrying out of a material operation as defined in Section 56(4) of the Act (and 'Commence' and 'Commencement' shall be construed accordingly) then this Deed shall have full force and effect but not otherwise save that Sub Clauses 5(c) (ii), 5(c)(iii), 5c(iv), 5(h)(i), 5(j)(i) and Clauses 8 to 13 inclusive shall have full force and effect from the date hereof
3. Any expense incurred or to be incurred by the Council and/or the County Council for which the Developer is or may become liable under this Agreement may be recoverable by the Council for itself and/or for the County Council as provided by Section 291 of the Public Health Act

1936 and the Council and/or the County Council reserve their rights to pursue recovery of any monies due under this Agreement by civil action

4. Unless otherwise specified where any agreement certificate or approval is to be given by the County Council under the terms of this Deed then the same shall not be unreasonably withheld or delayed

Developer's Covenants

5. The Developer for itself and successors in title hereby covenants with the County Council and the Council and with each of them as follows:
 - (a) not to occupy nor cause nor permit occupation of any building forming part of the Development nor use nor cause nor permit use of the Land for purposes pursuant to the Planning Permission until such time as a Certificate of Completion (as defined in Clause 6(b)) has been issued in respect of the Works
 - (b) to carry out at its own expense the Works on the terms and conditions described in Schedule 2 PROVIDED THAT if the Works have not been commenced within two years of the date hereof the County Council's Director of Environment ("the Director" which expression shall be deemed to include the servants agents and licensees of the Director) shall be at liberty to require such changes to the design as he reasonably considers are necessary to take account of any change in circumstances affecting the highway network in the locality of the Works
 - (c) to pay to the County Council:
 - (i) upon the issue of the Certificate of Completion referred to in Clause 6(b) and in respect of the future maintenance of street lighting a sum equivalent to 20% of the cost of those works
 - (ii) on the date hereof the whole of the reasonable costs incurred by the County Council's County Secretary and the Director in the preparation and completion of this Deed
 - (iii) on demand the reasonable cost to the County Council of approving the detailed contract drawings for the Works

including safety audits and also the cost of the safety checks referred to in Schedule 2

- (iv) on demand the full cost of processing and advertising any permanent traffic regulation orders separately
- (v) on demand the full cost of processing and advertising any other traffic regulation orders required to facilitate the Works
- (d) That it hereby indemnifies the County Council in respect of all actions claims demands expenses and proceedings arising out of or in connection with or incidental to the carrying out of the Works and any works required by any Statutory Undertaker other than those arising under Parts I and II of the Land Compensation Act 1973 in respect of which the provisions of (f) below shall apply
- (e) That without prejudice to its liability under (d) and (f) hereof to indemnify the County Council it shall be insured against public liability risks for a sum of at least £10,000,000 in respect of any one claim and shall ensure that any person or persons carrying out the Works on its behalf is similarly insured against public liability risks and the Developer or any person authorised by it to carry out the Works shall on request by the County Council produce for inspection the relevant policies of insurance together with receipts for the premiums paid
- (f) That it hereby indemnifies County Council against all costs associated with its responsibilities and against all claims pursuant to Part I and Part II of the Land Compensation Act 1973 (including claims the County Council determine should be met under the provisions of Regulation 4 of the Noise Insulation Regulations 1975 as amended by the Noise Insulation (Amendment) Regulations 1988) arising out of the use of the Works and for the purposes of this indemnity the Developer is deemed to carry out the Works as agent for the County Council
- (g) With regard to the water supply to the Development:
 - (i) to propose that the Water Scheme incorporates fire hydrants in accordance with BS 750 (1984) as reasonably and properly

required by the Hertfordshire Fire and Rescue Service ("the Service") and for the purposes of this clause the "Water Scheme" shall mean the proposal prepared by or approved by the water undertaker for the area pursuant to the Water Industry Act 1991 to provide mains water services for the Development whether by means of new mains or extension to or diversion of existing services or apparatus OR where existing water services are to be used the details of the residential dwellings and the water supply to them which shall be provided by the Developer for the written approval of the Service prior to first occupation of any residential dwelling constructed as part of the Development

- (ii) to construct and provide at no cost to the Service or the County Council the fire hydrants reasonably and properly indicated in the Water Scheme and to advise the Service in writing of the date upon which each and every fire hydrant becomes operational
 - (iii) once operational to maintain the fire hydrants in good condition and repair such that they are suitable at all times for use by the Service until they are adopted by the Service which adoption shall take place upon the issue of a Certificate of Satisfaction by the Chief Fire Officer of the Service the issue of which shall not be unreasonably delayed PROVIDED THAT such Certificate shall not be issued prior to the issue by the Director of the Certificate of Maintenance for the highways in which the fire hydrants are located
 - (iv) not to occupy or permit occupation of any building forming part of the Development until such time as it is served by an operational fire hydrant
 - (v) to address any notice to be given to the Service to the Water Services Officer, Fire and Rescue Service, Old London Road Hertford SG13 7LD Telephone 01992 507521
- (h) To pay to the Council :
- (i) on the date hereof the whole of the reasonable costs incurred

by the Council in the preparation and completion of this Deed the approval of matters relating to the Development herein mentioned and the obtaining or making of any orders required to facilitate the Development

- (ii) prior to occupation of the 12th dwelling unit comprised in the Development a commuted sum of Twenty Five Thousand pound (£25,000.00) ("the Commuted Sum") towards the provision of improved play facilities at Stanborough Park Welwyn Garden City such sum to be index linked with effect from June 2003 until the date of payment using the Retail Price Index and in the event of such index being abolished then index linking shall be by reference to such other suitable index as shall be agreed between the Developer and the Council or in default of agreement as shall be determined by the President of the Royal Institution of Chartered Surveyors
- (i) That it will provide a monthly progress report to the Chief Planning and Environmental Health Officer of the Council bearing the reference number N6/2003/349/FP on the completion of the dwelling units comprised in the Development
- (j) That it will notify the County Council and the Council in writing or procure that they are so notified of each of the following events not less than 10 days prior to such event occurring:-
 - (i) Commencement of the Development
 - (ii) occupation of the first dwelling unit comprised within the Development
 - (iii) occupation of the 12th dwelling unit comprised within the Development

County Council's Covenants

6. The County Council hereby covenants with the Developer as follows:

- (a) That it hereby authorises the Developer's roadworks contractor approved by the Director in accordance with Schedule 2 paragraph

8(b) to carry out the Works within the public highway subject to and strictly in accordance with the terms conditions and stipulations in Schedule 2

- (b) That upon completion of the Works to the satisfaction of the Director the County Council will issue a certificate of completion ("the Certificate of Completion") PROVIDED THAT THE Director shall be at liberty to delay the issue of the Certificate of Completion if in his opinion the Works are likely to be used by heavy vehicles driven by or on behalf of the Developer or his or its servants and agents or contractors in connection with road or building works carried out on the Land or on adjoining land and as from the date of such Certificate that part of the Works as are at the date of this Deed within the public highway shall become maintainable at public expense SAVE THAT for the first twelve months thereafter the Developer shall maintain the Works ("the Maintenance Period") and after the expiry of the Maintenance Period and provided always that the Works have been fully maintained as aforesaid and that any defects appearing during the said maintenance period have been made good the Director shall thereupon issue a certificate of maintenance of the Works ("the Certificate of Maintenance")

7. It is further agreed between the parties that:

- (a) If the Works are subject to the Construction Design and Management Regulations 1994 ("the CDM Regulations") then the Developer shall be the only Client for the purpose of the CDM Regulations and for the avoidance of doubt the County Council hereby appoints the Developer as the only Client
- (b) without prejudice to the terms hereof if the Developer fails to execute or complete the Works in accordance with its obligations hereunder the County Council shall after not less than fourteen days notice in writing to the Developer be entitled to complete the Works or reinstate the highway or complete such alternative Works as the Director considers appropriate in default with its own employees or by contract or otherwise and to recover the cost as certified by the Director

8. The Developer hereby warrants:
 - (a) that it is the owner of the freehold of the Land
 - (b) that no other party has an interest in the Land save as disclosed in writing to the County Secretary of the County Council prior to completion of this Deed and
 - (c) that it is capable of entering into this Deed and has obtained all necessary consents so to do
9. This Deed shall be registered by the Council as a Local Land Charge for the purposes of the Local Land Charges Act 1975
10. Nothing in this Agreement shall be construed as restricting the exercise by the Council or the County Council of any duties powers or responsibilities exercisable by them under the Act the Highways Act or under any other enactment PROVIDED ALWAYS THAT this Agreement shall remain in full force and effect notwithstanding the terms and conditions of any planning permission which may be or have been at any time issued by the Council or any other competent authority pursuant to the provisions of the Act
11. No waiver (whether expressed or implied) by the Council and/or the County Council of any breach or default by the Developer in performing or observing any of the terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council and/or the County Council from enforcing at any time any of the said terms or conditions or from acting upon any subsequent breach or default in respect thereof by the Developer
12. Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 nothing in this Deed confers or purports to confer any right to enforce any of the terms and provisions herein on any person who is not a party hereto or a successor in title to a party hereto
13. Reference wherever it appears in this Deed to the Developer shall include any successor in title thereto

SCHEDULE 1

The Works referred to in Clause 1(b) of this Deed and shown in principle on Drawing No. N485-110 shall comprise:-

1. the provision of three new accesses onto the Development site from Lemsford Lane
2. resurfacing of existing footway to the front of the Development site
3. provision of street lighting in Lemsford Lane
4. provision of a junction speed table at the main access to the Development site
5. drainage works
6. a permanent Traffic Regulation Order to facilitate road humps

TOGETHER WITH such ancillary works as may be required by the Director which ancillary works may include inter alia the provision of street lighting traffic signs carriageway markings footways street furniture and drainage and any necessary alterations to statutory undertakers equipment PROVIDED THAT if the Department of Local Government Transport and the Regions Technical Design Standards or Advice is amended after the date of this Deed the Director shall be at liberty to review the Works and require any amendments he deems necessary to ensure that the Works comply with the revised standards and advice SAVE THAT in circumstances where detailed contract drawings have been approved in writing by the Director and the Works are commenced within three months of the date of the written approval then the Director shall not seek any amendments to the Works

SCHEDULE 2

The Works shall be carried out in accordance with the following terms and conditions:

1. The Works shall not be commenced until :

- a) detailed contract drawings a Designer's Safety Plan a programme of work ('the Programme') and traffic management measures have been prepared by the Developer and approved by the Director in writing
- b) any necessary licences have been obtained and notices given pursuant to the New Roads and Street Works Act 1991
- c) if the Works are subject to the CDM Regulations the Developer as the only Client has provided to the Director:-
 - i) written details of the Planning Supervisor and the Principal Contractor
 - ii) a copy of the Health & Safety Executive's ("HSE") confirmation of receipt of a declaration by the Client pursuant to Regulation 4 of the CDM Regulations
 - (iii) a copy of the Notification of Project (form HSE10) to the HSE pursuant to Regulation 7 of the CDM Regulations
- (d) a bond has been provided in the sum of the total contract price of the Works plus 10% thereof together with the cost of any statutory undertakers Works by a Surety acceptable to the County Secretary of the County Council to the effect that if the Developer fails at any time to carry out or observe any of the terms conditions and stipulations on its part contained in this Deed or in the event of the Developer becoming bankrupt or going into liquidation or entering administrative receivership or entering into a deed of arrangement for the benefit of its creditors the Surety shall pay to the County Council such sum as may be certified by the Director to be required in order to complete the Works or reinstate the highway or complete such alternative works as the Director considers appropriate and remedy any defects prior to the Works becoming maintainable at the public expense or occurring or discovered during the Maintenance Period and the cost of any other sums due under the terms of this Deed and such further sum as the County Secretary for the time being of the County Council may certify to be necessary to fully reimburse the County Council in respect of any

costs and expenses incurred by the County Council in the enforcement of the obligations on the part of the Developer under this Deed together with the cost to the County Council of preparing an alternative contract and of supervising the execution of this alternative contract

- (e) A noise survey and assessment in respect of the Works has been undertaken by a noise expert approved by the Director in such a manner and at such times and locations approved by the Director and a copy of the survey and assessment has been submitted to the Director and all and any requirements arising therefrom have been undertaken by the Developer at its own expense
 - (f) a copy of the insurance policy and receipts referred to in Clause 5(e) have been produced to the Director
- 2. The Developer shall pay the County Council's reasonable costs incurred in inspecting the Works and shall pay before the commencement of the Works a sum equal to 5 per cent of the total tender price for the Works and further shall pay any balance due within 14 days of receipt of an invoice from the County Council
 - 3. Without prejudice to the Programme the Developer shall notify the Director in writing at least 28 days prior to the commencement of any work connected with statutory undertakers equipment and shall further notify the Director in writing at least 28 days prior to the commencement of the Works of its intention to proceed with the Works and shall further notify the Bridge Office of the Director in writing at least 24 hours prior to the commencement of each and every stage of excavation and concrete operations associated with highway structures
 - 4. Before commencing any part of the Works the Developer shall give notice to each Statutory Undertaker for the time being of any service(s) which may be affected by the Works of the proposal to carry out the Works and shall place orders and pay any costs to public utility undertakers for all works to their mains or services necessitated by the Works and shall relocate all street furniture affected to the satisfaction of the Director

5. The Works shall be signed and protected to at least the standards of Safety at Streetworks and Roadworks: A Code of Practice (ISBN 011551958-0) and the proposed arrangements shall be approved in writing by the Director and the Police before the Works commence
6. The Works shall be carried out in accordance with the Volumes 1 and 2 and 3 of the Manual of Contract Documents for Highway Works published by Her Majesty's Stationery Office in 1991 as modified and extended by the Supplements and Revisions and further as modified and extended by Supplements issued by the Director all as in force at the date of commencement of the Works ("the Specification")
7. The Works shall be carried out:
 - (a) under the terms of a NEC Contract; and
 - (b) by a roadworks contractor approved by the Director; and
 - (c) under the direction of a Project Manager who shall be a Chartered Civil Engineer and under the direction of a Supervisor both of whom shall be employed by the Developer and approved by the Director and shall be independent of the roads contractor
8.
 - (a) The inspection and direction of the Director shall be accepted and the Works shall be carried out in accordance with the approved contract drawings and to a standard of workmanship and quality of materials approved by the Director
 - (b) During the progress of the Works the Director shall have free access to every part of the Works to inspect the same as they proceed and all materials used or intended to be used therein and the Developer shall give effect to any reasonable requirements made or reasonable direction given by the Director to conform to the detailed plans drawings the Specification and the Programme
 - (c) The Developer shall not cover up any works without the approval of the Director and shall afford full opportunity for him to examine and measure any work which is about to be covered up and to examine foundations before permanent work is placed thereon and shall

give at least three working days notice to the Director whenever any such work or foundations is or are ready for examination

- (d) The Director shall have power in his reasonable discretion to test or require the testing of materials plant and workmanship used or proposed to be used in the Works and to reject any materials plant or workmanship so tested which he may reasonably find to be not in accordance with the detailed plans drawings and the Specification
 - (e) The Developer shall as soon as is reasonably practicable replace or repair any materials plant or workmanship which have been found not in accordance with the detailed drawings and the Specification with such as are in accordance
 - (f) Within four months of issue of the Certificate of Completion or the opening of the Works to traffic whichever is the later on site safety checks (Stage 3 Road Safety Audit) shall be carried out by the Director in the presence of the Resident Engineer and arising therefrom the Director shall be at liberty to require such alterations to the approved detailed contract drawings and to the Works as maybe required to ensure the safety of users of the highway PROVIDED THAT such alterations do not incur in aggregate additional expense in excess of £5,000.00
9. The Works shall be completed to the satisfaction of the Director 9 weeks of their commencement and in any event shall be completed prior to any occupation of the Development
10. The Developer shall not at any time give consent to the erection by any telecommunications operator of telegraph poles or telephone poles or to the erection by any Statutory Undertaker or public or private company firm or individual of any overground or underground equipment without the consent in writing of the Director
11. The Developer shall fully maintain the Works for the Maintenance Period and shall make good any defects or damage which may arise or be discovered during such period

12. The Developer shall provide the Director with the following within 6 months of issue of the Certificate of Completion:-

in respect of highway structures:

- (i) suitable scale negatives of "as built" drawings, soil reports, records of materials tested, revised forms TA1 and design certificates

in respect of the Works generally:

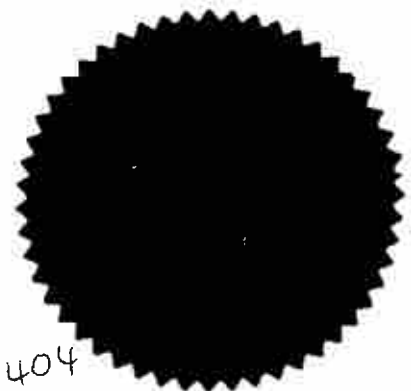
- (ii) accurate 1:500 scale negatives of "as built" drawings
- (iii) records of the earthworks showing sources of material used in areas of fill, description of fill materials, descriptions of sub-grades in cut areas, copies of results of tests of material carried out as part of the supervision of the construction of the earthworks
- (iv) records of the sources of supply of all deliveries of road construction materials with details of the location of the Works at which each load is placed
- (v) records of the sources of supply of all other manufactured materials (eg. drainage goods, fencing materials, traffic signs, electrical components and cables etc.)
- (vi) the health and safety file

IN WITNESS whereof the parties hereto have caused their respective Common Seals to be hereunto affixed to this Deed but not delivered until the day and year first before written

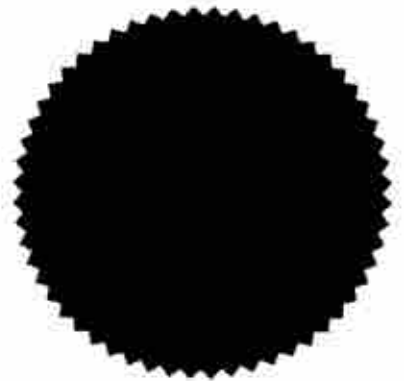
The COMMON SEAL of)
HERTFORDSHIRE COUNTY)
COUNCIL was)
affixed in the presence:

LUIS ANDRADE
ASSISTANT COUNTY
SECRETARY

~~County Secretary~~/Assistant County Secretary:-



The COMMON SEAL of)
WELWYN HATFIELD)
DISTRICT COUNCIL was)
hereunto affixed to this)
Deed in the presence of:-)



Chairman

Authori

The COMMON SEAL of)
J S BLOOR (NORTHAMPTON))
LIMITED was hereunto affixed)
to this Deed in the presence of:-)



~~Director:-~~

SED SIGNATORY

~~Director/Company~~

ORISED SIGNATORY

Date 22nd April 2004

HERTFORDSHIRE COUNTY COUNCIL

- and -

WELWYN HATFIELD DISTRICT COUNCIL

- and -

J S BLOOR (NORTHAMPTON) LIMITED

Deed of Agreement pursuant to S.106 Town
and Country Planning Act 1990 and S.278
Highways Act 1980 in relation to the
development of land at Oaklands College
Campus Lemsford Lane Welwyn Garden
City Hertfordshire

ANDREW L LAYCOCK
County Secretary
County Hall
Hertford
SG13 8DE

REF: DO/DU 764

Welwyn Hatfield Council

**DX: 30075
WELWYN GARDEN CITY 1**

For the attention of Angela Waring

**HERTFORDSHIRE
COUNTY COUNCIL
COUNTY SECRETARY'S**

County Hall
Hertford SG13 8DE
Fax : 01992 555508
DX : 145781 HERTFORD 4

Tel. : 01992 555530
Minicom: 01992 556611
Email : Damian.Ogbonnaya@
hertsc.gov.uk
Contact : Damian Ogbonnaya
My ref : DO/sk/H3R6 764
Your ref : AW/
Date : 22 April 2004

Dear Angela

**RE: OAKLANDS COLLEGE CAMPUS, LEMS FORD LANE, WELWYN GARDEN CITY
SECTION 278/106 AGREEMENT**

I have pleasure in enclosing your Council's part of the completed section 106 agreement dated 22 April 2004.

I would be grateful if you could arrange for the agreement to be registered in the land charges register and return a signed copy of this letter to me by way of confirmation of registration. I am sending a separate copy of the agreement to the Chief Planning and Environmental Health Officer for placing upon the planning register.

I thank you for your help and co-operation throughout this matter.

Yours sincerely

Damian Ogbonnaya

Enc

I confirm that the section 106 agreement between **HERTFORDSHIRE COUNTY COUNCIL (1) WELWYN HATFIELD DISTRICT COUNCIL (2) JS BLOOR (NORTHAMPTON) LIMITED (3)** has been registered in the Land Charges Register

Signed:.....

Date:..... 27/4/04

Completion Statement

From : Chief Legal & Administrative
Services Officer (Ref: AW)

To : Chief Planning & Environmental
Health Officer (FAO: Russell Monck)*

Copies To : Chief Housing Officer (FAO: Darren Welsh)
Mrs Beach - Legal Records
Mr Hurd - Accounting Services
Mr Stone - Insurance Officer
Planning Administration
Estates
Contracts Customer Services
Miss K. Jeffries - Land Charges*
File

ITP Number N/A

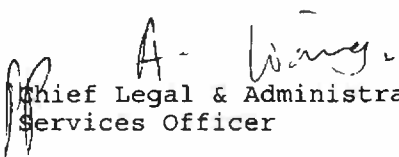
Date 22 April 2004

PROPERTY: Land at Lemsford Lane, Welwyn Garden City - Demolition of
existing campus and erection of 23 dwellings, with associated
access, parking and landscaping (N6/2003/349/FP)

RE : S106 Agreement

Please note that the above matter was completed on 22 April 2004.

Would you please note your files accordingly. Copy documents to follow for
addresses marked*.


Chief Legal & Administrative
Services Officer