

**DUAL REGISTRATION**

4

20 AUG 2018

SM2109213501

**DEED OF SERVITUDE AND REAL BURDENS**

**by**

**CHRISTIE-ELITE NURSERIES LIMITED**

**in favour of**

**SCOTTISH WATER**

**With the consent of**

**BANK OF SCOTLAND PLC**

2017

**Property: Temporary Access Road at Forres Waste Water Treatment Works**

**DEED OF SERVITUDE AND REAL BURDENS**

by

**CHRISTIE-ELITE NURSERIES LIMITED**, incorporated under the Companies Acts (Company Number SC056516) and having its Registered Office at Christie Elite Nurseries, Forres, Moray IV36 3TW] (the "**Burdened Owner**")

in favour of

**SCOTTISH WATER**, a body corporate established under the Water Industry (Scotland) Act 2002 and having its Principal Office at Castle House, 6 Castle Drive, Carnegie Campus, Dunfermline, Fife KY11 8GG (the "**Benefited Owner**")

with consent of

**BANK OF SCOTLAND** plc incorporated under the Companies Acts (Company Number SC327000) and having its Registered Office at The Mound, Edinburgh EH1 1YZ ("the Consentor")

1. **Definitions and Interpretation**

1.1 **Definitions**

In this Deed:

**"Benefited Property"** means ALL and WHOLE the subjects known as Forres Waste Water Treatment Works to be registered in the Land Register of Scotland under Title Number MOR17403;

**"Burdened Property"** means ALL and WHOLE (IN THE FIRST PLACE) those four fields at Bogton and Inchandich et cetera, Forres lying in the Parish of Forres and County of Moray, the whole extending to thirty two acres and two hundred and fifty four decimal or one thousandth part of an acre of thereby Imperial Measure all as the said fields are delineated and coloured pink on the tracing of the Ordnance Survey Map annexed and subscribed as relative to the Disposition by Miss Adeline Ellen Maggie Grant, Miss Leonara Gertrude Eveline Grant and Miss Mabel Mary Stuart Grant and Arthur Woodman Blair as Curator Bonus to Miss Vivian Alice Rosabel Grant in favour of Peter Murdoch dated 23 August and 1, 5, 7 September all dates 1949 and recorded in the Division of the General Register of Sasines applicable to the County of Moray on 28 September 1949; (IN THE SECOND PLACE) ALL and WHOLE the dwellinghouse now known as Broxburn, Bogton, Forres with the solum thereof and ground attached lying in the Parish of Forres and County of Moray being the subjects described in and disposed by the Disposition granted by Miss Lydia Woods in favour of Thomas Murdoch dated 19 March and recorded in the Division of the General Register of Sasines for the County of Elgin and Forres (now Moray) on 7 June both months 1935; and (IN THE THIRD PLACE) ALL and WHOLE that lot or piece of land sometime part of the Lands of Bogton in the Parish of Forres and County of Moray extending to 33 square poles 18 square yards and 15 decimal or one hundredth parts of a square yard or thereby Imperial Measure described in and disposed by and delineated and coloured pink on the plan annexed and signed as relative to the Feu Disposition by Miss Adeline Ellen Maggie

Grant, Miss Leonara Gertrude Eveline Grant and Miss Mabel Mary Stuart Grant and Arthur Woodman Blair as Curator Bonus to Miss Vivian Alice Rosabel Grant in favour of Miss Adeline Murdoch dated 18, 23 and 26 April all dates 1946 and recorded in the Division of the General Register of Sasines applicable to the County of Moray on 1 May 1946;

**"Date of Entry"** means 7 October 2017;

**"Date of Expiry"** means 6 October 2022;

**"Real Burdens"** means the real burdens set out in Part 3 of the Schedule;

**"Schedule"** means the schedule annexed to this Deed of Servitude;

**"Servitude Area"** means that area of ground extending to THREE THOUSAND ONE HUNDRED (3,100sqm) square metres or thereby, all as shown coloured pink on the plan annexed and signed as relative hereto and forming part of the Burdened Property;

**"Servitude Conditions"** means the conditions under which the Servitude Rights are to be exercised set out in Part 2 of the Schedule; and

**"Servitude Rights"** means the servitude rights set out in Part 1 of the Schedule.

## 1.2 Interpretation

Save to the extent that the context or the express provisions of this Deed otherwise requires, in this Deed:

- 1.2.1 words importing any gender include all other genders;
- 1.2.2 words importing the singular number only include the plural number and vice versa;
- 1.2.3 where at any one time there are two or more persons included in the expression "Benefited Owner" or "Burdened Owner" or Consentor obligations contained in this Deed which are expressed to be made by the party denoted by the expression in question are binding jointly and severally on them and their respective executors and representatives whomsoever without the necessity of discussing them in their order.
- 1.2.4 words importing individuals include legal persons and vice versa;
- 1.2.5 references to this Deed or to any other document are to be construed as reference to this Deed or to that other document as modified, amended, varied, supplemented, assigned, novated or replaced from time to time;
- 1.2.6 any reference to a Clause, Schedule or Part of the Schedule is to the relevant Clause, Schedule or part of the Schedule of or to this Deed;

1.2.7 any phrase introduced by the words "including", "include", "in particular" or any similar expression is to be construed as illustrative only and is not to be construed as limiting the generality of any preceding words; and

1.2.8 any rights reserved to the Benefited Owner are exercisable by the tenants, agents, employees, contractors, sub-contractors and others authorised by them from time to time.

### 1.3 **Headings**

The headings in this Deed are included for convenience only and are to be ignored in constructing this Deed.

### 1.4 **Schedule**

The Schedule forms part of this Deed.

## 2. **Grant of servitude**

IN CONSIDERATION of the sum of FIFTY THOUSAND POUNDS (£50,000) STERLING paid to the Burdened Owner by the Benefited Owner, the Burdened Owner grants the Servitude Rights but subject always to the Servitude Conditions (if any).

## 3. **Consent**

The Consensor consents to the grant of the Servitude Rights subject to the Servitude Conditions (if any).

## 4. **Consent to Real Burdens**

4.1 The Burdened Owner and the Consensor consent to the imposition of the Real Burdens on the Burdened Property.

4.2 The Benefited Owner has the right to the Real Burdens.

## 5. **Duration of Servitude**

The Servitude Rights granted by this Deed will be exercisable with effect from 7 October 2017 and shall expire on 6 October 2022 notwithstanding the dates hereof ("the Duration").

## 6. **Costs**

The Benefited Owner will pay on demand the reasonable legal and surveyors' costs incurred by the Burdened Owner and the Consensor in connection with the negotiation and completion of this Deed, together with all disbursements incurred by the Burdened Owner and Consensor and all irrecoverable Value Added Tax on such of the foregoing costs and other items as bear it. Such costs and others will include all (if any) Land and Buildings Transaction Tax payable.

7. **Warrandice**

The Burdened Owner grants simple warrandice in terms of that part of the Servitude Area shown shaded pink and cross-hatched in black, and otherwise grants warrandice in terms of the remainder of the Servitude Area.

8. **No Applications**

No application may be made to the Lands Tribunal for Scotland under section 90(1)(a)(i) of the Title Conditions (Scotland) Act 2003 in respect of the servitudes and Real Burdens set out in this Deed for a period of five years after the registration of this Deed in the Land Register of Scotland and the recording of this Deed in the General Register of Sasines: IN WITNESS WHEREOF these presents printed on this and the three preceding pages are together with the Schedule and Plan annexed and executed as follows:

**SUBSCRIBED for and on behalf of SCOTTISH WATER**

at DUNFERMLINE  
on 6 DECEMBER 2017  
By [Signature]

JOHN STEPHEN MATTHEW  
(Print full name)

AUTHORISED SIGNATORY

in the presence of: MARIA BRIDGET MCNEIL

Witness [Signature]

Full Name MARIA BRIDGET MCNEIL

Address CASTLE HOUSE, 6 CASTLE DRIVE  
DUNFERMLINE

**SUBSCRIBED by CHRISTIE-ELITE NURSERIES LIMITED**

by [Signature]  
Director

[Signature]  
Director/Secretary

MATTHIEU HOMMER  
Director (PRINT FULL NAME)

JAMES ALEXANDER CAMERON WHITTLE  
Director/Secretary (PRINT FULL NAME)

WITNESSES

at FORRES, MORAY

on 20 NOVEMBER 2017

SUBSCRIBED by BANK OF SCOTLAND PLC

by

Barrie Aird

Samantha Mitchell

NAME)

BARRIE AIRD  
Authorised Signatory PRINT FULL NAME)

SAMANTHA MITCHELL  
Authorised Signatory ~~Witness~~ (PRINT FULL

at FTIVE HOUSE

on 10/11/ 2017

This is the Schedule referred to in the foregoing Deed of Servitude and Real Burdens by Christie-Elite Nurseries Limited in favour of Scottish Water with the Consent of Bank of Scotland PLC

### **Part 1**

#### **The Servitude Rights**

The following Servitude Rights are imposed on the Burdened Property in favour of the Benefited Property for the Duration only:

1. A non-exclusive servitude right of access and egress at all times for pedestrians and vehicles (including heavy vehicles) over and across the Servitude Area including for the avoidance of doubt the transportation of materials, machinery and equipment for the purpose of access and egress to the Benefited Property (including the upgrade of the Forres Waste Water Treatment Works) together with:
  - (a) the right to carry out improvement work to the Servitude Area insofar as such work as may be reasonably necessary for the operational requirements of the owner of the Benefited Property for the time being; and
  - (b) the right to take any necessary additional health and safety measures which may be required to be carried out to the Servitude Area (and which are to be agreed between the parties acting reasonably). The additional health and safety measures may include (but are not limited to) (i) the installation of traffic safety barriers and signage to the section of the Servitude Area located to the south of the railway and (ii) the erection of fencing around the Servitude Area to the north side of the railway.

## Part 2

### The Servitude Conditions

The Servitude Rights created by this Deed are subject to the following Servitude Conditions:

1. The Servitude Rights are imposed on the Burdened Property in favour of the Benefited Property for the Duration only.
2. The owner for the time being of the Benefited Property acknowledges that the Servitude Rights do not include rights of access over the level crossing over the railway known as Bogton Nursery Level Crossing owned by Network Rail. No prescriptive rights of access shall be created over the railway.
3. The owner for the time being of the Benefited Property will:
  - 1.1 make good on demand all damage caused to the Burdened Property by reason of the exercise of the Servitude Rights by the owner for the time being of the Benefited Property or their tenants, agents, employees, contractors, sub-contractors and others authorised by them from time to time, to the reasonable satisfaction of the owner for the time being of the Burdened Property;
  - 1.2 procure that the Servitude Rights are exercised so as to cause the minimum disturbance, nuisance, or annoyance reasonably practicable to the owner for the time being of the Burdened Property and their tenants or occupiers, and all other adjoining or neighbouring proprietors, tenants or occupiers;
  - 1.3 be responsible for a share of the maintenance of the Servitude Area on an according to user basis; and
  - 1.4 comply with the reasonable health and safety requirements of the owner of the Burdened Property as may be required from time to time.
4. The parties will agree a plan for (1) the regular joint monitoring and inspection of the Servitude Area and (2) for carrying out reasonable repairs when necessary.
5. The owner for the time being of the Benefited Property will not tarmac the Servitude Area without the prior consent of the owner for the time being of the Burdened Property.
6. Compensation
  - 6.1 The owner for the time being of the Benefited Property will pay full compensation to the owner for the time being of the Burdened Property in respect of any loss, damage or injury (in this paragraph 6.1 of this Part 2 of the Schedule together referred to as "Losses", and "Loss" shall be construed accordingly) of whatsoever nature suffered by the owner for the time being of the Burdened Property (or those for whom it is responsible in law), to the extent that such Losses are directly caused by or on behalf of the owner for the time being of the Benefited



Property (or those for whom it is responsible in law) and are directly attributable to and arise from the exercise of the Servitude Rights or the breach of the Servitude Conditions set out in this Part 2 of the Schedule.

6.2 The owner for the time being of the Burdened Property shall use its reasonable endeavours to mitigate all such Losses.

6.3 For any claim by the owner for the time being of the Burdened Property in relation to a Loss under this paragraph 6 of this Part 2 of the Schedule, the owner for the time being of the Burdened Property shall make such claim to the owner for the time being of the Benefited Property within 24 months of the date on which the relevant Loss is alleged to have arisen.

6.4 Paragraphs 6.1, 6.2 and 6.3 of this Part 2 of the Schedule shall not apply to the extent that:

6.4.1 such Losses arise by virtue of the fault or negligence of the owner for the time being of the Burdened Property (or those for whom it is responsible in law); or

6.4.2 such Losses are indirect, special or consequential losses (which expressions include loss of profits and business interruption), but declaring that tree crop loss shall form a valid head of claim.


**Part 3**  
**Real Burdens**

The following real burdens are imposed on the Burdened Property in favour of the Benefited Property for the Duration only:

1. The owner for the time being of the Burdened Property shall not erect any building or other erection or carry out any development or construction work or plant, grow, cultivate or permit to grow any trees, shrubs, bushes or other plants and vegetation (1) over the Servitude Area or (2) which otherwise is likely adversely to affect the Servitude Area or the access of the owner for the time being of the Benefited Property thereto and to the Benefited Property without the prior written consent of the owner for the time being of the Benefited Property and the owner for the time being of the Benefited Property shall be entitled to lop, cut or remove the whole or any part of any trees, shrubs, bushes, other plants and vegetation or remove any building obstructing or causing interference or likely to obstruct or cause interference to the Servitude Area and/or the Benefited Property all without any liability and/or damages attaching to the owner for the time being of the Benefited Property.
2. The owner for the time being of the Burdened Property shall not alter the existing ground levels along the Servitude Area or obstruct in any way the access of the owner for the time being of the Benefited Property to same without the prior written consent of the owner for the time being of the Benefited Property.



SIV

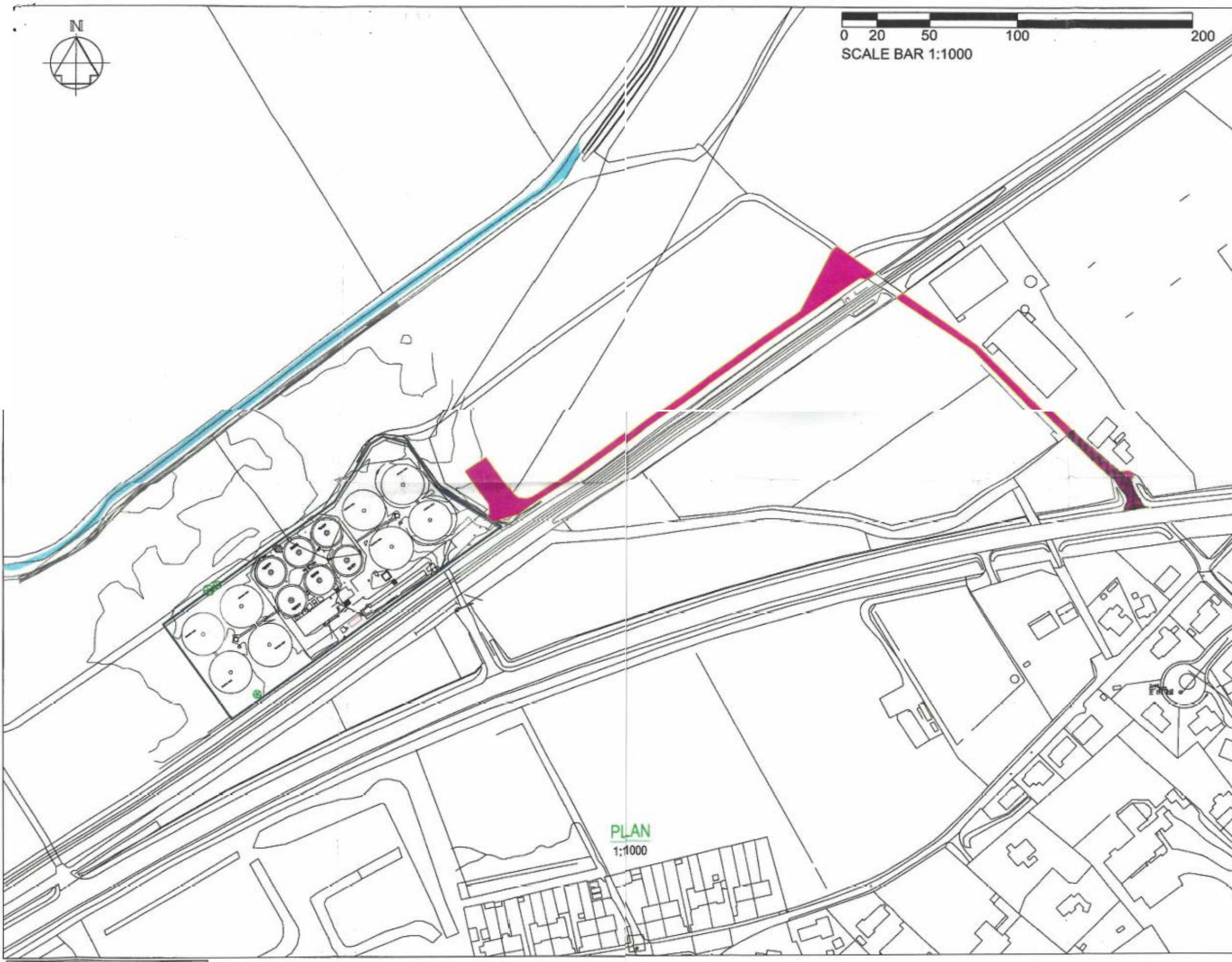


Christie - Eric (P)



SIV





0 20 50 100 200  
SCALE BAR 1:1000

Original Title	A1
Revision	P01

- NOTES**
1. ALL DIMENSIONS IN MILLIMETRES UNLESS STATED OTHERWISE.
  2. ALL LEVELS IN METRES ABOVE ORDNANCE DATUM (M OD) UNLESS STATED OTHERWISE.

**KEY**

LAND SUBJECT TO LEASE  
AGREEMENT AREA = 0.3 Ha

**OWNER**

CHRISTIE ELITE NURSERIES LTD.  
FORRES  
MORAY  
N/26 37W

**OCCUPIER**

SCOTTISH WATER  
CASTLE HOUSE  
6 CASTLE DRIVE  
CARNegie CAMPUS  
DUNFERMLINE  
KY11 8GG

*This is the plan referred to in the  
proposed Deed of Lease and Deed  
Borrowing by Christie-Elite Nurseries  
Limited and Scottish Water with  
the consent of Deed of Scotland etc*

*Allyson*

*Next H-1*

*BR*

LA	FOR PLANNING	SEA			24.12
Rev	Description	Drawn	Chk'd	App'd	Date

This drawing is the property of Scottish Water and must not be used in any way other than for the purpose for which it was prepared without the written consent of Scottish Water.

**Scottish Water**  
Trusted to serve Scotland

SCOTTISH WATER  
CASTLE HOUSE  
6 CASTLE DRIVE  
CARNegie CAMPUS  
DUNFERMLINE  
KY11 8GG  
TEL: 01383 840000  
FAX: 01383 840011

Drawn by	Checked by	Group	Approved by
MANCROFT			
Date	Date	Date	Date
24.07.17			

Scale: FOR INFORMATION

Project Title: FORRES WWTW

Drawing Title: LEASE DRAWING

TEMPORARY ACCESS LAYOUT PLAN

SLIPPER EQUIPMENT No.

SLIPPER PLANT No.

Autocad No. 501000000

Drawing No.

5016300000-WW-DRA-00000002-0A