



The purpose of this paper is to ask Members to agree a Licence to Occupy a section of the Bonchurch revetment to accommodate a Natural England project for the protection and development of the Glanville Fritillary Butterfly.

No. DETAIL

1) BACKGROUND

- a) Discussions between Councillor Leigh Geddes and the Lead Advisor of Natural England's Solent & Isle of Wight Team Mark Larter has resulted in proposed project to develop part of the Bonchurch revetment to establish a protected site for the rare Glanville Fritillary Butterfly.
 - b) The project will be managed and financed by Natural England and needs to be completed by 31 March 2017.
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2) THE PROJECT

- a) This Butterfly is heavily protected and its only UK active sites are on the Island's south coast.
 - b) The project will develop the section of the Bonchurch revetment shown on the attached map to protect and encourage the species development as well as having an information board with details about it.
 - c) In discussions with Natural England and the Isle of Wight Council it became clear that responsibility for the site of the project was best placed with the Town Council.
 - d) A draft Licence to Occupy the site, attached to this Report, has been considered by the Public Buildings Working Group.
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3) RECOMMENDS

The Public Buildings Working Group recommends that the Town Council accepts the Licence to Occupy and expresses its support for the project.



Dated

2016

**ISLE OF WIGHT COUNCIL
and
VENTNOR TOWN COUNCIL**

LICENCE TO OCCUPY

relating to the area of revetment along Wheelers Bay, Ventnor formerly used as a boat park.

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This licence is made on the

day of

2014

BETWEEN

- (1) ISLE OF WIGHT COUNCIL, of County Hall, Newport, Isle of Wight PO30 1UD (the '**Licensor**'); and
- (2) Ventnor Town Council Salisbury Gardens, Dudley Road, Ventnor, Isle of Wight PO38 1EJ (the '**Licensee**')

AGREED TERMS

1. Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement
 - '**Competent Authority**'; any statutory undertaker or any statutory public local or other authority or regulatory body or any court of law or government department or any of them or any of their duly authorised officers
 - '**Insurance**'; fully comprehensive public liability insurance in a sum of not less than £5m for each and every claim arising in respect of the Permitted Use of the Property by the Licensee or its Agents or Contractors.
 - '**Licence Fee**'; £1 peppercorn
 - '**Licence Period**'; the period from and including 1st December 2016 until the date on which this Licence is determined in accordance with clause 4
 - '**Necessary Consents**'; all planning permissions and all other consents, licences, permissions, certificates, authorisations and approvals whether of a public or private nature which shall be required by any Competent Authority for the Permitted Use
 - '**Permitted Use**'; Butterfly Project managed by Natural England
 - '**Plan**'; the plan attached to this Licence
 - '**Property**'; area of revetment along Wheelers Bay, Ventnor formerly used as a boat park.as shown edged red on the Plan
 - '**VAT**'; value added tax chargeable under the Value Added Tax Act 1994 or any similar replacement or additional tax
- 1.2 Clause, Annex, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules forms part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the Schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however, incorporated or established.

- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders
- 1.8 Unless otherwise specified, a reference to a particular law is a reference to it as it is in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate laws for the time being in force made under it and all orders, notices, codes of practice and guidance made under it
- 1.9 A reference to **writing** or **written** excludes faxes and e-mail.
- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done and to use its best endeavours to prevent such act or thing being done by a third party
- 1.11 References to clauses, Annexes and Schedules are to the clauses, Annexes and Schedules of this Licence; references to paragraphs are to paragraphs of the relevant Schedule.
- 1.12 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms
- 1.13 Unless otherwise expressly provided, the obligations and liabilities of parties under this agreement are joint and several

2. Licence to occupy

- 2.1 Subject to clause 3 and clause 4, the Licensor permits the Licensee to occupy the Property for the Permitted Use for the Licence Period in common with the Licensor and all others authorised by the Licensor.
- 2.2 The Licensee acknowledges that:
 - 2.2.1 the Licensee shall occupy the Property as a licensee and that no relationship of landlord and tenant is created between the Licensor and the Licensee by this agreement;
 - 2.2.2 the Licensor retains control, possession and management of the Property and the Licensee has no right to exclude the Licensor from the Property;
 - 2.2.3 the licence to occupy granted by this agreement is personal to the Licensee and is not assignable and the rights given in clause 2 may only be exercised by the Licensee and its employees;

3. Licensee's obligations

- 3.1 The Licensee agrees and undertakes:
 - 3.1.1 to keep the Property clean, tidy and clear of rubbish at all times.

- 3.1.2 not to use the Property other than for the Permitted Use;
- 3.1.3 not to make any alteration or addition whatsoever to the Property, other than by way of creating a breeding area for the purpose of protecting the butterflys as allowed for in the permitted use;
- 3.1.4 To provide a management plan for the location which shall include a specification of the ground clearance works to establish the growth of natural vegetation.
- 3.1.5 not to display any advertisement, signboards, nameplate, inscription, flag, banner, placard, poster, signs or notices at the Property without the prior written consent of the Licensor such consent not to be unreasonably withheld or delayed;
- 3.1.6 not to do or permit to be done on the Property anything which is illegal or which may be or become a nuisance (whether actionable or not), annoyance, inconvenience or disturbance to the Licensor or any owner or occupier of neighbouring property; save that the Property may be used for the access and construction purposes set out in the Permitted Use and such Permitted Use shall not constitute a nuisance, annoyance, inconvenience or disturbance within the meaning of this clause;
- 3.1.7 not to cause or permit to be caused any damage to:
 - (a) the Property, or any neighbouring property; or
 - (b) any property of the owners or occupiers of the Property, or any neighbouring property;
- 3.1.8 not to apply for any planning permission in respect of the Property;
- 3.1.9 not to do anything that will or might constitute a breach of any Necessary Consents affecting the Property or which will or might vitiate in whole or in part any insurance effected by the Licensor in respect of the Property from time to time;
- 3.1.10 to comply with all laws and with any recommendations of the relevant suppliers relating to the supply of electricity, gas, water, sewage and other services and utilities to or from the Property
- 3.1.11 to observe any rules and regulations the Licensor makes and notifies to the Licensee from time to time governing the Licensee's use of the Property and the Common Parts;
- 3.1.12 to leave the Property in a clean and tidy condition and to remove all the Licensee's and any of its agents' and contractors' materials, equipment and goods from the Property at the end of the Licence Period;
- 3.1.13 to reinstate the Property on or before termination of this Licence, in accordance with the condition of the property as found at the start of this licence
- 3.1.14 to indemnify the Licensor and keep the Licensor indemnified against all losses, claims, demands, actions, proceedings, damages, costs, expenses or other liability in any way arising from:
 - (a) this Licence;

- (b) any breach of the Licensee's undertakings contained in clause 3; and/or
- (c) the exercise of any rights given in clause 2

3.1.15 To maintain Insurance in respect of the Property and the Permitted Use

4. Termination

- 4.1 The licence to occupy granted by this agreement shall end on the earliest of:
a date provided by either party giving a minimum notice of one month.

5. Notices

- 5.1 Any notice required to be given under this Licence, shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each party required to receive the notice as set out below:
 - 5.1.1 to the Licensor at: County Hall, Newport, Isle of Wight PO30 1UD and marked for the attention of Legal Services
 - 5.1.2 to the Licensee at: Salisbury Gardens, Dudley Road, Ventnor Isle of Wight PO38 1EJ and marked for the attention of Director.or as otherwise specified by the relevant party by notice in writing to each other party
- 5.2 Any notice or other communication shall be deemed to have been duly received:
 - 5.2.1 if delivered personally, when left at the address and for the contact referred to in this clause; or
 - 5.2.2 if sent by pre-paid first-class post or recorded delivery, at 12.00 noon on the second working day after posting; or
 - 5.2.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 5.3 A notice or other communication required to be given under this agreement shall not be validly given if sent by e-mail
- 5.4 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action

6. Costs

The Licensor and Licensee shall be responsible for their own costs, fees, charges and expenses (together with VAT and disbursements) in relation to the negotiation and completion of this Licence

7. No warranties for use or condition

- 7.1 The Licensor gives no warranty that the Property possesses the Necessary Consents for the Permitted Use
- 7.2 The Licensor gives no warranty that the Property is physically fit for the purposes specified in clause 2

8. Limitation of Licensor's liability

8.1 Subject to clause 8.2, the Licensor is not liable for:

8.1.1 the death of, or injury to the Licensee, its employees, customers or invitees to the Property; or

8.1.2 damage to any property of the Licensee or that of the Licensee's employees, customers or other invitees to the Property; or

8.1.3 any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by Licensee or the Licensee's employees, customers or other invitees to the Property in the exercise or purported exercise of the rights granted by clause 2.

8.2 Nothing in clause 8.1 shall limit or exclude the Licensor's liability for:

8.2.1 death or personal injury or damage to property caused by negligence on the part of the Licensor or its employees or agents; or

8.2.2 any matter in respect of which it would be unlawful for the Licensor to exclude or restrict liability.

9. Rights of Third Parties

A person who is not a party to this agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999

10. Governing law and jurisdiction

10.1 This Licence and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales

10.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Licence or its subject matter or formation (including non-contractual disputes or claims)

IN WITNESS WHEREOF THIS DOCUMENT HAS BEEN EXECUTED AND DELIVERED ON THE DATE FIRST STATED ABOVE.

Signed by [NAME]
for and on behalf of ISLE Of WIGHT Authorised Signatory
COUNCIL

Signed by [NAME]
for and on behalf of [NAME OF Director
LICENSEE]