

## MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is made this 25 day of August 2022

BETWEEN

- 1 **STRATFORD-ON-AVON DISTRICT COUNCIL** of Elizabeth House, Church Street, Stratford-upon-Avon, Warwickshire, CV37 6HX ("the Council")
- 2 **EDWARD JOHN LITTLER, FLORENCE CURRIE, MICHAEL JOHN LITTLER, ROBERT PETER LITTLER, ELIZABETH ANNE WEST and LITTLER INVESTMENTS LIMITED** (Company number 00841682) (collectively "the Owners").

Collectively known as "the Parties"

RECITALS

- (A) The Council formally resolved to make a Compulsory Purchase Order ("CPO") in respect of the Airfield on 11 March 2019 as follows: "make a CPO(s) under section 226(1)(b) of the Town and Country Planning Act 1990 and the Acquisition of Land Act 1981 in respect of all or part of the land edged red on the Order Plan attached at Appendix 1 and any additional land which is considered to be required in order to safeguard the existing use of the Order Land, alongside negotiations for voluntary acquisition" ("the Resolution").
- (B) Pursuant to the Resolution and paragraph 17 of the MHCLG's Guidance on Compulsory Purchase Process and the Crichel Down Rules dated July 2019, the Council has been engaging in meaningful discussions with the Owners to explore alternative options to making the CPO in order comply with Policy AS.9 of its Core Strategy and any other applicable policies.
- (C) The Parties subsequently entered into a Memorandum of Understanding dated 30 August 2019 attached at Appendix 1 for a period of twelve months ("the MoU").
- (D) The Parties have agreed a number of extensions in writing to the expiration of the MoU to January 2022.
- (E) The Owners via their agents Gladman have provided the Council with an Indicative Mix for redevelopment of the Airfield
- (F) The Parties have agreed to enter into this further Memorandum of Understanding ("MoU2") to commit to the assurances to enable the Owners to secure the appropriate consents for the construction and operation of the Development. The Council by its Cabinet agreed to enter into MoU2 on 18 July 2022 and authorised its Chief Executive to sign on behalf of the Council.

### 1 DEFINITIONS

- 1.1 **Airfield:** Wellesbourne Airfield as shown edged red on the plan at Appendix 2
- 1.2 **Development:** proposed mixed use redevelopment of the Airfield in line with the Indicative Mix which retains and supports the flying functions and provides enhanced aviation related facilities at the Airfield to incorporate the Policy Compliant Aviation Elements as proposed by the Owners and referred to in paragraph 1.6 below in accordance with Policies AS.9 of the Council's Core Strategy and any other applicable policies including replacement policies and taking account of emerging policies
- 1.3 **Infrastructure and Operations:** all the existing necessary infrastructure and operations required to operate a functioning airfield, including but not limited to:
  - (a) Retention of airfield licence

- (b) Retention of existing bi-directional runway and associated taxiways, identified as Runway Reference 18/36
  - (c) Maintenance of existing navigation aids and flight information service
  - (d) Ensuring a fire crew is in attendance during licenced hours
  - (e) Provision of aircraft maintenance services
  - (f) Provision of aviation fuel service to meet the needs of the Tenants and all users of the Airfield
  - (g) Provision of outside aircraft parking and storage
  - (h) Maintenance of existing hangars
  - (i) Provision for helicopter usage including maintenance and storage
  - (j) Provision of private and commercial flight training
  - (k) Provision of flying club
  - (l) Provision of suitable ancillary facilities e.g. rest areas, catering, toilet facilities etc
  - (m) Maintenance of existing visitor car parking
  - (n) Provision of emergency diversion service (Strasser scheme);
- 1.4 **Indicative Mix:** means the indicative split of Policy Compliant Aviation Elements and Suitable Developable Area being approximately 30 ha of Policy Compliant Aviation Elements and approximately 65 ha employment park (B2/B8/use category E(g));
- 1.5 **Planning Application:** an outline or hybrid planning application for the Development;
- 1.6 **Policy Compliant Aviation Elements:** all the relevant enhanced aviation elements forming part of the Development to ensure it complies with Policy AS.9 including but not limited to:
- (a) Facilities for Recreational Flights
  - (b) Facilities for Flight Training
  - (c) Enhanced Facilities for Business Aviation Activity including, but not limited to, incorporating a business centre and administrative facilities within enhanced Terminal Buildings with an enhanced reception/waiting lounge/check-in area and other facilities necessary to ensure as a minimum existing business aviation activities continue to operate;
  - (d) Suitable runway dimensions for a code 2 runway being a minimum of 917m in usable length
  - (e) Suitable hard surfaced taxiways linking the runway with the apron areas
  - (f) Flying circuits for fixed and rotary wing aircraft which meet the needs of users whilst minimising community noise disturbance as far as is reasonably possible.
  - (g) Enhanced hangar space of at least 2,400 sqm
  - (h) Enhanced Air traffic control tower
  - (i) Enhanced Cafe

- (j) Enhanced Tenant and visitor parking
- (k) Enhanced Grass (3.08ha) and hardstanding (1.64ha) aeroplane parking
- (l) Provision for helicopter operations and hangarage
- (m) Fuel depot
- (n) Additional premises for new tenants, including associated hangarage and aircraft parking
- (o) Appropriate mitigation for loss of crosswind runway 05/23 in the form of the enhancements listed above;

1.7 **Suitable Development Area:** means the balance of the Site suitable for development for non-aviation uses.

## 2 ASSURANCES ON THE PART OF THE OWNERS

2.1 To maintain the Infrastructure and Operations required to support existing flying operations at the Airfield and use reasonable endeavours to maintain the established flying functions at the Airfield including the extension or grant of tenancies on reasonable terms for the duration of this Agreement and thereafter as agreed with the Council

2.2 To progress the following in a timely manner:

- (a) Commence early informal engagement with the CAA to confirm which Civil Aviation Process(es) including CAP791 and CAP1616 are required to be complied with to authorise a change in airfield infrastructure and airspace respectively to enable the Policy Compliant Aviation Elements to be developed;
- (b) Comply with the Civil Aviation Process(es) as required by the CAA under 2.2(a) to enable the Policy Compliant Aviation Elements to be developed;
- (c) Prepare and submit a request for pre-application advice relating to the Development to the Council and work collaboratively with the Council's planning policy team on this;
- (d) Taking into account the outcome of the pre-application advice and CAP processes (which may run in tandem), prepare and submit a Planning Application for the Development to the Council to include:
  - (i) a detailed viability assessment which demonstrates the Policy Compliant Aviation Elements are commercially viable;
  - (ii) an environmental statement prepared in accordance with the requirements of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and a scoping opinion issued by the local planning authority as the Development falls within Schedule 2;
  - (iii) a phasing plan relating to the Development which allows for the delivery of phase 1 (the development of the north eastern part of the Suitable Developable Area for employment use) first, followed by the delivery of Phase 1a being the Policy Compliant Aviation Elements followed by the remainder of the Suitable Developable Area including the employment floorspace, with consideration given to some of the Policy Compliant Aviation Elements being delivered in advance of phase 1;
  - (iv) an implementation plan, which details how the airfield infrastructure and facilities will be managed so as to ensure that the Airport remains open and existing operations retained during the construction and operation of

the Development and including the details of transitional arrangements from the existing operator to the proposed operator;

- (v) details of the legal commitments to be provided under 2.2(e)(iii) below;

and work collaboratively with the Council's planning policy team during the determination of the Planning Application to secure planning permission for the Development (and to pursue any planning appeals and/or defend or bring any statutory or judicial review challenges brought against a decision of the local planning authority/Secretary of State/Courts relating to the Development with over 50% merit of success as advised by leading Counsel);

- (e) In the event planning permission for the Development is to be granted:
  - (i) procure a commercial operator for the operation of the Policy Compliant Aviation Elements to ensure the long term viable operation of the Airfield;
  - (ii) comply with the terms of the implementation plan, which details how the airfield infrastructure and enhanced facilities will be managed so as to ensure that the Airport remains open and existing operations retained during the construction and operation of the Development and including the details of transitional arrangements from the existing operator to the proposed operator;
  - (iii) provide legal commitments relating to the phasing and implementation plans noted at Clauses 2.2(d) (ii) and (iii) and 2.2(e) (i) and (ii);
- (f) Progress the allocation of the Airfield for the Development in the emerging South Warwickshire Local Plan and work collaboratively with the Council's planning policy team on this.

2.3 To provide the Council with regular updates (at least monthly).

2.4 To use reasonable endeavours not to take any steps to prejudice the Development.

### **3 ASSURANCES ON THE PART OF THE COUNCIL**

3.1 Not to take any active steps to make a CPO pursuant to the Resolution:

- (a) prior to termination by either party of the MoU2 pursuant to the termination provisions in Clause 5;
- (b) following construction and first operation of the Policy Compliant Aviation Elements of the Development in line with the assurances in Clause 2.2 and the procurement of a commercial operator for the Airfield.

3.2 To use reasonable endeavours to work with the Owners to fulfil the assurances in Clause 2.

### **4 MEETINGS**

4.1 The Parties agree to meet on at least a quarterly basis to progress the Development with the dates of such meetings being fixed by agreement between the parties by no later than 30 August 2022.

### **5 TERM AND TERMINATION**

5.1 This MOU2 shall continue in full force from the date of completion for a period of 24 months or until such other date as the Parties may otherwise agree in writing to enable the assurances to be progressed.

- 5.2 This MoU2 may be terminated by either party with immediate effect by giving notice in writing to the other party if:
- (a) the other party is in material breach of any of the assurances in clauses 2, 3 and 4 or the other terms of this MoU2;
  - (b) liquidation or similar proceedings are filed by or against the other party or if any action is taken by or against the other party under any law the purpose or effect of which is or may be to relieve such party in any manner from its debts or to extend the time of payment thereof or the other party makes an assignment for the benefit of creditors or makes any conveyance of any of its property which in the opinion of the terminating party may be to the detriment of that party's creditors; or
  - (c) a receiver or trustee or similar official is appointed with authority to take possession of the other party's property or any part thereof.

## **6 COSTS**

- 6.1 Each party shall bear their own legal costs in relation to the drafting of the MoU2.

## **7 GENERAL ASSIGNMENT**

- 7.1 This MoU2 is personal to the parties and neither this MoU2 nor any rights, licences or obligations under it may be assigned, charged, transferred, mortgaged, otherwise encumbered or dealt with in any other manner (including declaration of trust over it) by either party without the prior written approval of the other party.

## **8 HEADINGS**

- 8.1 The headings in this MoU2 are for reference purposes only and are not intended to be taken into account in the interpretation of its provisions.

## **9 VARIATION**

- 9.1 This MoU2 may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except by an instrument in writing signed by a duly authorised officer or representative of each of the parties with the exception of Clause 5.1.

## **10 NON WAIVER**

- 10.1 This MoU2 is entered into without prejudice to any rights the Owners may have in respect of any compulsory acquisition of the Airfield by the Council, including any right to (a) object to any proposed compulsory purchase order; (b) to judicially review or otherwise challenge any decision by the Council and/or Secretary of State in respect of any decision made in respect of the making, confirmation or exercise of powers under any compulsory purchase order; and (c) any rights to compensation arising from the exercise of any compulsory purchase order whatsoever.

## **11 NOTICES**

- 11.1 All notices under this MoU2 shall be in writing and all such notices shall be deemed to have been duly given when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or if transmitted by fax or e-mail and a successful transmission report or return receipt is generated; and in each case addressed to the most recent address, e-mail address, or facsimile number notified to the other party.

**12 GOVERNING LAW**

12.1 This MoU2 and all matters arising from it (including non-contractual claims and disputes) and any dispute resolutions referred to below shall be governed by and construed in accordance with the law of England and Wales.

**13 JURISDICTION**

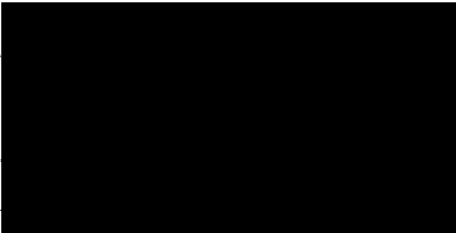
13.1 The parties submit to the exclusive jurisdiction of the English and Welsh courts.

13.2 Nothing in this MoU2 shall fetter the powers and/or duties (including those under statute) of the Council.

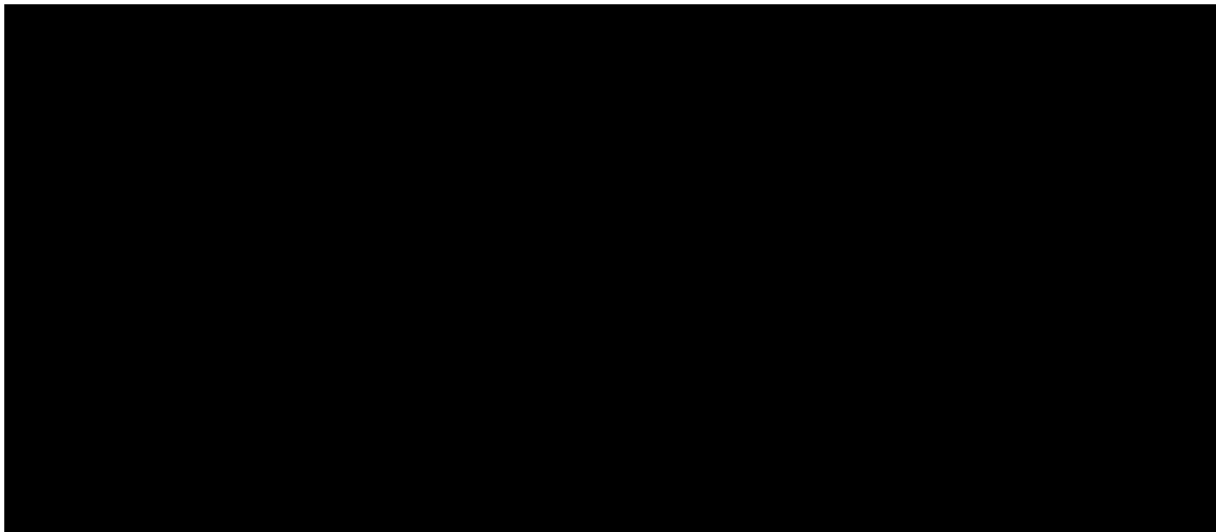
13.3 Nothing in the agreement should be construed as a decision by the Council as local planning authority that the Development is acceptable or shall be granted planning permission.

Signed for and on behalf of Stratford upon Avon District Council

Signature  
Name...  
Position  
Date...



Signed for and on behalf of the Owners



**Appendix 1 – MOU1**

## MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is made this 30<sup>th</sup> day of August 2019

BETWEEN

- 1 STRATFORD-ON-AVON DISTRICT COUNCIL of Elizabeth House, Church Street, Stratford-upon-Avon, Warwickshire, CV37 6HX ("the Council")
- 2 EDWARD JOHN LITTLER, FLORENCE CURRIE, MICHAEL JOHN LITTLER, ROBERT PETER LITTLER, CHRISTOPHER MAXWELL LITTLER, ELIZABETH ANNE WEST and LITTLER INVESTMENTS LIMITED (Company number 00841682) (collectively "the Owners").

### RECITALS

- (A) The Council formally resolved to make a Compulsory Purchase Order ("CPO") in respect of the Airfield on 11 March 2019 as follows: "*make a CPO(s) under section 226(1)(b) of the Town and Country Planning Act 1990 and the Acquisition of Land Act 1981 in respect of all or part of the land edged red on the Order Plan attached at Appendix 1 and any additional land which is considered to be required in order to safeguard the existing use of the Order Land, alongside negotiations for voluntary acquisition*" ("the Resolution").
- (B) Pursuant to the Resolution and paragraph 17 of the MHCLG's Guidance on Compulsory Purchase Process and the Crichef Down Rules dated July 2019, the Council has been engaging in meaningful discussions with the Owners to explore alternative options to making the CPO in order comply with Policy AS.9 of its Core Strategy and any other applicable policies and in so doing has agreed to the assurances contained in Clause 3 of this MoU.
- (C) During the course of the discussions, the Owners have agreed to collaborate with the Council to maintain the established flying functions at the Airfield whilst pursuing the Development and in so doing have agreed to the assurances contained in Clause 2 of this MoU.

### 1 DEFINITIONS

- 1.1 **Airfield:** Wellesbourne Airfield as shown edged red on the plan at Appendix 1
- 1.2 **Development:** proposed mixed use redevelopment of the Airfield which retains and supports the flying functions and provides enhanced aviation related facilities at the Airfield as proposed by the Owners in accordance with Policies AS.9 of the Council's Core Strategy and any other applicable policies and including a code 1 runway (750m x 18m)
- 1.3 **Infrastructure and Operations:** all the necessary infrastructure and operations required to operate a functioning airfield, including but not limited to:
  - (a) Retention of airfield licence
  - (b) Retention of existing bi-directional runway and associated taxiways, identified as Runway Reference 18/36
  - (c) Maintenance of existing navigation aids and flight information
  - (d) Ensuring a fire crew is in attendance during licenced hours
  - (e) Provision of maintenance services
  - (f) Provision of aviation fuel service to meet the needs of the Tenants and all users of the Airfield



- (g) Provision of outside aircraft parking and storage
- (h) Maintenance of existing hangars
- (i) Provision for helicopter usage including maintenance and storage
- (j) Provision of private and commercial flight training
- (k) Provision of flying club
- (l) Provision of suitable ancillary facilities e.g. rest areas, catering, toilet facilities etc
- (m) Maintenance of existing visitor car parking
- (n) Provision of emergency diversion service (Strasser scheme).

1.4 **The Tenants:** the tenants of the Airfield as at the date of this MoU

## 2 ASSURANCES ON THE PART OF THE OWNERS

- 2.1 To use reasonable endeavours to maintain the established flying functions at the Airfield by maintaining the Infrastructure and Operations for the duration of this Agreement;
- 2.2 To enter into dialogue with the Tenants at the Airfield and if the discussions are constructive to use reasonable endeavours to offer the tenants new contracted out tenancies on reasonable terms in relation to cost and duration for 12 months (with a Landlord's-only 28-day break clause exercisable only on termination of this MoU pursuant to Clause 4) before the cessation of the existing tenancies. This will involve but not be limited to the following steps:
- (a) Within 2 days of signing the MoU, the Owners will write to the tenants with whom discussions have been constructive (or their solicitors) to confirm the proposals for each tenancy and provide copies to the Council in commercial confidentiality;
  - (b) Within 15 working days the Owners will provide an update to the Council in commercial confidentiality setting out a summary of the stages of negotiation with each tenant;
  - (c) By no later than 30 September 2019, the Owners will provide the Council in commercial confidentiality with an update on the tenancy position for those tenants whose current tenancies end on 30 September 2019;
  - (d) By no later than 29 October 2019, the Owners will provide the Council in commercial confidentiality with an update on the tenancy position for those tenants whose current tenancies end on 29 October 2019;
  - (e) In the event any of the tenants do not agree to the terms of the new tenancies being offered, the Owners will update the Council within 2 working days and discuss and seek to agree the next steps with them.
- 2.3 To use reasonable endeavours to work collaboratively with the Council's planning policy team to finalise a masterplan relating to the Development ("the Masterplan") within a timescale to be agreed between the Parties;
- 2.4 To use reasonable endeavours to submit a planning application relating to the Development within a timescale to be agreed between the Parties. The planning application will include a phasing and implementation plan, which details how the flying function would be retained during the construction and operation of the Development;

- 2.5 To use reasonable endeavours not to take any steps to prejudice the Development;
- 2.6 To use reasonable endeavours to provide regular updates, every two months as the minimum and more regularly when there are key developments or as expressly set out, to the Council on the position in respect of all the assurances noted above.

### **3 ASSURANCES ON THE PART OF THE COUNCIL**

- 3.1 Not to take any active steps to make a CPO pursuant to the Resolution prior to notice being given by either party to terminate the MoU pursuant to the termination provisions in Clause 4;
- 3.2 To work collaboratively with the Owners in agreeing the Masterplan;
- 3.3 To retain the 'Wellesbourne Airfield Cost Provision' of £1.125m within its budget whilst the MoU is in place. Whilst the expenditure of this money will remain entirely in the Council's control, the Council will consider opportunities for this money to be spent to enable the achievement of the objectives of the Core Strategy.

### **4 TERM AND TERMINATION**

- 4.1 This MoU shall continue in full force for 12 months from the date of completion or until such other date as the Parties may otherwise agree in writing.
- 4.2 Either party may terminate this MoU by giving 1 month's notice in writing to the other party.
- 4.3 This MoU may be terminated by either party with immediate effect by giving notice in writing to the other party if:
- (a) the other party is in material breach of any of the assurances in clauses 2 and 3 or the other terms of this MoU;
  - (b) liquidation or similar proceedings are filed by or against the other party or if any action is taken by or against the other party under any law the purpose or effect of which is or may be to relieve such party in any manner from its debts or to extend the time of payment thereof or the other party makes an assignment for the benefit of creditors or makes any conveyance of any of its property which in the opinion of the terminating party may be to the detriment of that party's creditors; or
  - (c) a receiver or trustee or similar official is appointed with authority to take possession of the other party's property or any part thereof.

### **5 COSTS**

The Council shall bear their own costs and the reasonable legal costs of the Owners in relation to the drafting of the MoU.

### **6 GENERAL ASSIGNMENT**

This MoU is personal to the parties and neither this MoU nor any rights, licences or obligations under it may be assigned, charged, transferred, mortgaged, otherwise encumbered or dealt with in any other manner (including declaration of trust over it) by either party without the prior written approval of the other party.

### **7 HEADINGS**

The headings in this MoU are for reference purposes only and are not intended to be taken into account in the interpretation of its provisions.

**8 VARIATION**

This MoU may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except by an instrument in writing signed by a duly authorised officer or representative of each of the parties.

**9 NON WAIVER**

This MoU is entered into without prejudice to any rights the Owners may have in respect of any compulsory acquisition of the Airfield by the Council, including any right to (a) object to any proposed compulsory purchase order; (b) to judicially review or otherwise challenge any decision by the Council and/or Secretary of State in respect of any decision made in respect of the making, confirmation or exercise of powers under any compulsory purchase order; and (c) any rights to compensation arising from the exercise of any compulsory purchase order whatsoever.

**10 NOTICES**

All notices under this MoU shall be in writing and all such notices shall be deemed to have been duly given when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or if transmitted by fax or e-mail and a successful transmission report or return receipt is generated; and in each case addressed to the most recent address, e-mail address, or facsimile number notified to the other party.

**11 GOVERNING LAW**

This MoU and all matters arising from it (including non-contractual claims and disputes) and any dispute resolutions referred to below shall be governed by and construed in accordance with the law of England and Wales.

**12 JURISDICTION**

12.1 The parties submit to the exclusive jurisdiction of the English and Welsh courts.

12.2 Nothing in this MoU shall fetter the powers and/or duties (including those under statute) of the Council.

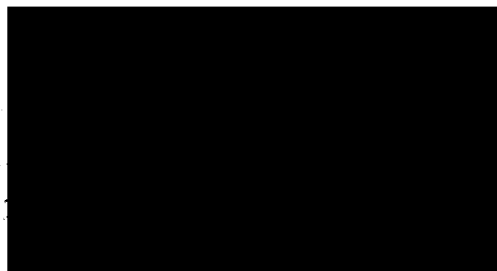
Signed for and on behalf of Stratford upon Avon District Council

Signature

Name.....

Position...

Date .....

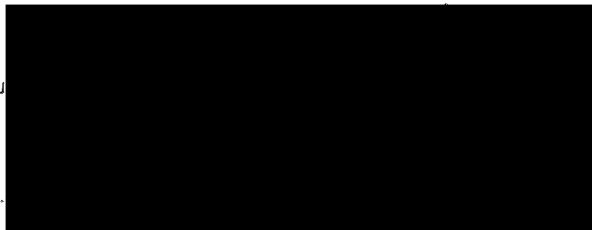


Signed for and on behalf of the Owners

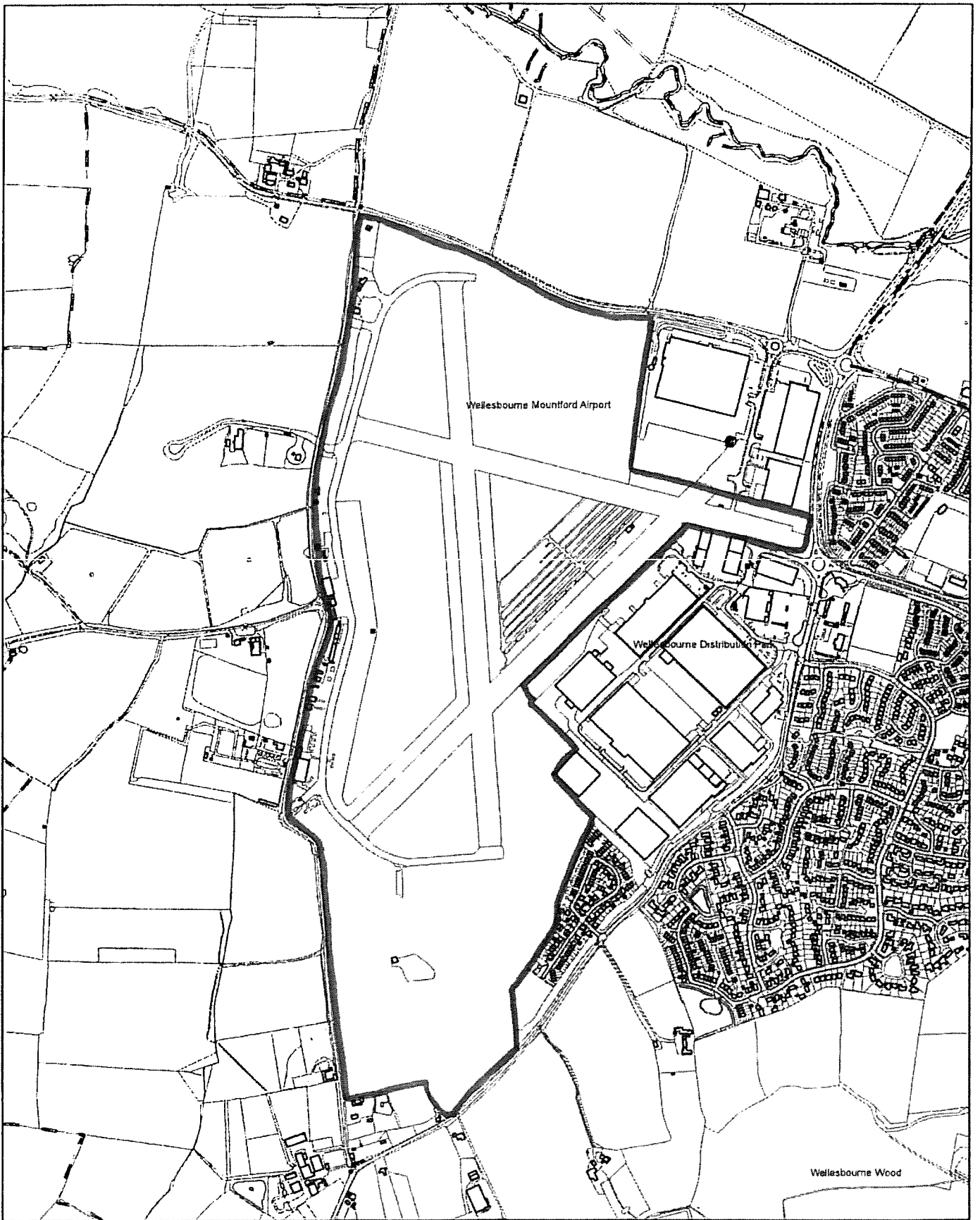
Signature

Name

Date...



## Appendix 2 – Airfield Plan



Legend

### Wellesbourne Airfield



Scale 1:10,000



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Ordnance Survey 100024287