



# WINCHBURGH DEVELOPMENTS LIMITED

## WINCHBURGH DEVELOPMENT MANAGEMENT SCHEME

### BACKGROUND AND INTRODUCTORY COMMENTS FROM WINCHBURGH DEVELOPMENTS LIMITED

#### Requirement for and Purpose of the Development Management Scheme

For a period in excess of 20 years Local Authorities (L.A.s) have been unwilling to take on the maintenance burden of landscaping (or "common areas") associated with new housing developments, except where legally obliged to do so, such as the adoption of verges associated with new roads serving the development.

As a consequence Planning Authorities now impose obligations on new home owners (and on commercial owners), via planning conditions, for the ongoing maintenance of landscaping generally in newly consented developments.

In common with other similar new build developments Winchburgh provides for the long term maintenance of the common areas under a Development Management Scheme (DMS), which allows the Owners' Association to implement management control of the scheme. The DMS relates to the common areas applicable to the entire Winchburgh Development. It should be noted that there may be separate common areas within individual residential development sites that will be regulated separately in terms of an ownership/management regime set up by the residential developer who developed the relevant plot.

#### The Development Management Scheme

The Development Management Scheme provides a framework for management and maintenance of shared facilities which are funded by a service charge payable by the owners of each unit in the development. The Scheme sets out key definitions and provides for the establishment of an owners' association, its powers, function etc, and financial matters. It consists of a set of rules which are applied to units within the development which are to be subject to the same conditions.

**Included in this note is a summary of the main terms of the Development Management Scheme prepared by Pinsent Masons. Please note that this note and the summary have been prepared for information purposes only and no reliance on them can be placed on them by any party. This is not a full summary of the DMS and the DMS itself should be referred to to understand the fully terms. The DMS has important legal consequences and you are advised to take independent legal advice as to its terms. The solicitor who represented you when you bought your property should be able to provide you with that advice.**

#### Phase 1 Position

Winchburgh Developments Ltd (WDL) are the "first managers" under the DMS.

Since commencement of development in 2012, and occupation of the first housing units in 2013, WDL has funded, at its' own cost, the maintenance of the Phase 1 landscaped areas and has paid Scottish Woodland, and other contractors, the associated annual maintenance costs. This will remain the position until the respective landscape areas around each Phase 1 development block are completed to the requirement of the respective planning approvals, at which point each area of land will be transferred into the DMS. The costs of maintenance of the Phase 1 Landscaped Areas has been circa £12,000 in 2018. Those costs have been met by WDL, but if they had been payable by the 550

Phase 1 Owners the annual cost would have been about £20 per residential unit if it was split equally among all the residential units.

### **Forecast Financial contributions – Interim and Completed Position**

The DMS applies to new development land and units within the Winchburgh Development Site and consented under Planning Permission in Principle 1012/P/05, which is the planning document that permits subsequent detailed planning permissions for each development block within the masterplan boundary to be approved.

It's forecast that at least c. 3,500 residential units and up to 50 acres of commercial and retail development will be constructed within the Winchburgh Development Site under PPiP 1012/P/05. An aggregate of the total residential and commercial/retail space can be expected to generate an equivalent total of contributing unit Owners of c. 4,000.

WDL will only transfer land into the DMS when the relevant area has been definitively identified and initially formed in accordance with the relevant planning consent. The approach that WDL has taken to date is to only form the common areas within the development near the development plots that are being developed out. Based on that approach, the amount of individual owners' contributions at the outset, when development is only partly underway, can be expected to be similar (at current day prices) as when the full masterplan is complete and all new owners are making their contribution. It is important to note that the annual amount of contributions can vary according to the maintenance works to be undertaken in each year.

On the basis of 4,000 owners - if each Owner was required to pay an amount of £60 per unit/annum the funds available to the Owners Association would be £240,000 each year for the maintenance works required to be undertaken. An average contribution of £80 per annum would generate an annual fund of £320,000. This is just an example to show the possible extent of the annual service charge fund and the figures should not be relied upon as the amount per individual residential unit (be that a flat or a house) will vary depending on the extent of the service charge attributable to the Development Plot in which it is situated and how that service charge has been allocated amongst individual residential units within that Development Plot (which should have been set by the residential developer of that plot). Commercial owners will likely pay more by way of annual contributions as the site that they will occupy will generally be larger.

Please also note that the DMS allocates the service charge in terms of the DMS on a development plot by development plot basis not on an individual house/flat basis.

**WINCHBURGH DEVELOPMENTS LIMITED ("WDL")**  
**WINCHBURGH, WEST LOTHIAN**  
**DEVELOPMENT MANAGEMENT SCHEME ("DMS")**  
**PINSENT MASONS EXECUTIVE SUMMARY**

**1 INTRODUCTION**

- 1.1 A Development Management Scheme ("DMS") has been entered into to regulate the ownership and management of the common areas of the Winchburgh Development.
- 1.2 The DMS is registered against the title to all properties within the Winchburgh Development and all owners are obliged to comply with its terms. The DMS is part of the title documentation that you and/or your solicitor would have been provided with and reviewed when you bought your property.
- 1.3 A Development Management Scheme has been used to give flexibility over the extent of the development plots and common areas as it is not currently possible to determine the exact extent of the common areas and each development plot at this stage.
- 1.4 The Winchburgh Owners' Association (the "Association") has been formed as a result of the DMS being registered at the Land Register and it is that entity that will ultimately own all of the common areas. All owners within the Development automatically become members of the Association.
- 1.5 A separate contract has been entered into between WDL and the Association to regulate the transfer of the common areas from WDL to the Association once those areas have been definitively identified, formed and completed by WDL. The DMS and contract allows those areas to be transferred by WDL to the Association in separate sections.

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**2 DEVELOPMENT MANAGEMENT SCHEME**

**2.1 Subjects**

- 2.1.1 The DMS relates to the Development shown outlined in red on Plan 1 (the "**Development**")

**2.2 Common Areas**

- 2.2.1 The Common Areas (or scheme property as it is defined in the DMS) are the recreational areas, roads, lanes, footpaths, cycleways, planted areas, woodland play parks, sustainable urban drainage system areas, service media, service strips, sport pitches and landscaped areas either (i) held by the Association from time to time or (ii) held by the Developer (i.e. WDL) and notified by the Developer to the association (along with a plan) as being a common area for the purpose of the DMS. The common areas within the development were originally intended to be approximately the subjects coloured green within the area outlined in red on Plan 2 but that is indicative only and WDL has the right to vary the extent of the common areas from those indicatively shown.

## 2.3 **Development Plots**

2.3.1 The Development is split into a number of individual Development Plots. Those Development Plots are large areas and generally sites that are sold to residential developers or commercial developers. The Development Plots were shown indicatively coloured grey on Plan 1 attached. WDL has the right to vary the extent of the Development Plots.

## 2.4 **Community Servitudes**

2.4.1 All owners have a right of access for pedestrian, pedal cycles and vehicular traffic as appropriate over all roads, lanes, parking spaces, footpaths and cycle ways within the Development so far as not forming part of a development plot and so far as not adopted.

2.4.2 All owners have the right to use the Common Areas.

2.4.3 All owners have rights for service media through the Development

## 2.5 **Development Servitudes**

2.5.1 Rights have been reserved for WDL to install service media and to form, construct and re-align roads and footpaths within the Development.

## 2.6 **Disputes**

2.6.1 There is a provision in the DMS for any disputes to be resolved by a third party expert.

## 2.7 **The Association**

2.7.1 All owners within the Development automatically become members of the Association. The Association is a corporate body formed by statute as a result of the DMS being put in place. The function of the Association is to manage the Development for the benefit of the members.

2.7.2 The Association has various powers (as fully set out in the DMS) including rights to own any part of the Development, to carry out maintenance, improvements or alterations to the Common Area and to require owners of units to contribute by way of service charge to Association funds and to engage employees and appoint agents.

2.7.3 The Association does not have power to acquire any land outwith the Development.

## 2.8 **The Manager**

2.8.1 The Association is to have a Manager who is agent of the Association. The first Manager under the DMS is WDL. The appointment of the Manager is made by the members at a General Meeting.

2.8.2 The Manager has various duties set out in the DMS, including, among others, being appointed to manage and maintain the Common Areas, keep financial records and prepare accounts of the Association and implement any decisions of the Association. The Manager may employ/instruct appropriate persons to manage the Common Areas on its behalf.

## 2.9 **Owners' Representative**

2.9.1 Where a development plot is split into two or more ownerships, the owners of those areas are to appoint an Owners' Representative

## 2.10 **General Meetings**

- 2.10.1 There are to be meetings of the Association and those are to be carried out annually. The Manager may also call a general meeting. Notice of the meeting is sent to the Owners' Representative for each Development Plot and the Owners' Representative is to send the notice to the owners of all units within that Development Plot.
- 2.10.2 An Owners' Representative can also call a meeting in certain circumstances.
- 2.10.3 35% of Owners Representatives require to be present for a quorum to be present at a general meeting.
- 2.10.4 All individual owners of properties within the Development are entitled to attend a general meeting as well as Owners' Representatives, the Manager and WDL as developer.
- 2.10.5 For the purpose of voting, one vote is allocated to each Development Plot and decisions are made by a majority of the votes cast. WDL as developer has a casting vote in the event of a tie until WDL ceases to own at least 10% of the Development Plots.

## 2.11 **Advisory Committee**

- 2.11.1 The Association can elect a few of the Owners' Representatives to form an advisory committee who can provide advice to the Manager on the exercise of its powers and fulfilment of its duties.

## 2.12 **Financial Matters**

- 2.12.1 An annual budget is to be prepared setting out the service charge for the Development for each year and the times for payment by the owners within the Development
- 2.12.2 The service charge for each Development Plot is calculated based on the area of that Development Plot (as set out in the Schedule to the DMS) compared to the total area of Development Plots sold or leased by the Developer at that point in time.
- 2.12.3 Where a Development Plot is owned by one party, they pay the full service charge for that Development Plot.
- 2.12.4 Where a Development Plot consists of two or more Units (ie individual properties sold off separately be that a commercial site, a house or a flat for example) the titles to that Development Plot should specify the share payable by each individual owner within that specific Development Plot. If no specific percentage has been allocated, then each owner within that Development Plot pays an equal share of the service charge attributable to that Plot. Please note that for residential development sites, the residential developer who has developed out the site and sold the individual properties will normally have specified in a Deed of Conditions or further DMS for that specific Development Plot what the share is that is payable by each owner of a flat or house within that Development Plot.
- 2.12.5 No service charge is attributable to a Development Plot which has been neither conveyed or leased by WDL.
- 2.12.6 The Manager is to send the notices for payment of the service charge to the Owners' Representative for each Development Plot. The Owners' Representative then sends it on to each of the individual owners within their Development Plot and is to use all reasonable endeavours to collect the service charge from the owners and pay it to the Manager. The Manager has the right to collect the service charge directly from the individual owners within a Development if required too.
- 2.12.7 If there is service charge that cannot be recovered from own owner (eg if they are insolvent), there is mechanism for those service charge costs to be divided up amongst the other owners.

2.12.8 Interest is payable by individual owners at 4% above the base rate of the Bank of England on any service charge payments that are not paid within 28 days of becoming due for payment.

2.12.9 For each individual residential unit, an initial deposit of £200 is payable. Any owner is not entitled to repayment of this initial deposit. On ceasing to be an owner, the selling owner should seek payment of the initial deposit from the new owner of the unit.

2.13 **Amenity Conditions**

2.13.1 There are amenity conditions in the DMS regulating things like advertising notices, obligations to maintain individual units, insurance, boundary treatments and the use of the Common Areas.

2.14 **Good Construction Guidelines**

2.14.1 There are Good Construction Guidelines that apply to any owner/developer within the Development.