

Provision of Bus Services Topic Paper

of the Local Planning Authority in respect of:

Land at Chilmington Green, Ashford Road, Great Chart, Ashford, Kent

Appeals by:

Hodson Developments (Ashford) Limited; Chilmington Green Developments Limited;
Hodson Developments (CG ONE) Limited; Hodson Developments (CG TWO)

Limited; and Hodson Developments (CG THREE) Limited.

Against the failure to determine applications to modify or discharge obligations contained in the S.106 agreement dated 27 February 2017 attached to planning permission ref: 12/00400/AS (as amended by a Supplement Agreement dated 29 March 2019 and a deed of variation dated 13 July 2022).

Appeal References: APP/W2275/Q/23/3333923 & APP/E2205/Q/23/3334094

Ashford Borough Council References: AP-90718 & AP-90647

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A Plan 131065A23 Rev A: Chilmington Green Phased High Frequency Bus Service Route

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1.0 Introduction

- 1.1 This Topic Paper is submitted on behalf of the Local Planning Authority Ashford Borough Council ("the Council") and concerns the modifications proposed to Schedule 20 of the Chilmington Green S.106 Agreement ("the Agreement") which secures obligations in respect of the provision of bus services to/from the Chilmington Green development site (the "Site").
- 1.2 Bus services are required to meet the public transport needs of the residents of the Chilmington Green development (the "Development") based on a total population of circa 13,800. Policy CG12 of the Chilmington Green Area Action Plan (the "AAP") requires that "public transport services from Chilmington Green shall be designed to deliver at least a 20% public transport mode share for trips to and from the site" (CD3/1/1, page 83).
- 1.3 Chapter 11 of the AAP "sets out the proposed approach to phasing of the Development and how this should relate to the delivery of key infrastructure" (CD3/1/1, paragraph 11.1, page 110). The AAP continues that "this approach is informed by the availability of existing infrastructure and the ability to deliver new infrastructure in a cost-effective and viable manner whilst ensuring that development remains sustainable in its own right at all stages a key principle of this AAP" (CD3/1/1, paragraph 11.3, page 110).
- 1.4 The Development is to be delivered in four phases Main AAP Phases 1, 2, 3 & 4. The location of these four phases on the Site are shown in AAP Figures 18-21 (CD3/1/1, pages 115-118) and they are defined in the Agreement (refer to Definitions, paragraph 1.1). The number of dwellings in each phase is shown in Table 1 below.

Main AAP Phase	Number of dwellings	Cumulative number of dwellings	
1	1501	1501	
2	1124	2625	
3	1559	4184	
4	1566	5750	

Table 1: the number of dwellings in each Main AAP Phase.

1.5 One of the key principles of the AAP (refer to policies CG1(b) & CG8) is that each phase of the Development is 'sustainable in its own right'. The AAP states that "this requires that properly planned infrastructure delivery is achieved alongside the development of new housing and that any significant gaps or shortfalls in provision are avoided" (CD3/1/1, paragraph 11.30, page 113).

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1.6 The AAP includes an Infrastructure Delivery Plan (the "IDP") "which sets out when key infrastructure will need to be delivered and how it is anticipated this will occur" (CD3/1/1, paragraph 11.33, page 114). The AAP also envisaged that "the IDP will provide the basis for the Heads of Terms within the Section 106 Agreement for the Development and for the use of planning obligations attached to any grant of outline planning permission to control the implementation of the Development." (CD3/1/1, paragraph 11.33, page 114).

2.0 The requirements of the agreement

- 2.1 In summary, Schedule 20 requires the appellant to (1) provide bus related infrastructure and bus priority measures on the Site and to maintain them (2) provide a bus service between the Site and Ashford town centre (3) provide the first occupiers of each dwelling with bus vouchers to use on the bus service (4) to subsidise the bus service.
- 2.2 In detail, Schedule 20 requires the following:
 - i. To provide a temporary bus stop to serve the first 200 dwellings on the Site no later than 100 dwelling occupations and to submit to and have approved by the Council a maintenance scheme for the temporary bus stop no later than 100 dwelling occupations (Schedule 20, paragraph 1.1 & 1.2).
 - ii. To start operating a bus service between the Site and Ashford town centre at a frequency of at least every 30 minutes no later than 100 dwelling occupations (Schedule 20, paragraph 1.3).
 - iii. To provide on the Site, the initial bus related infrastructure for Main Phase 1 no later than 200 dwelling occupations and to submit to and have approved by the Council a maintenance scheme for the initial bus infrastructure no later than 200 dwelling occupations (Schedule 20, paragraph 1.4 & 1.5).
 - iv. To provide on the Site, the subsequent bus priority measures and bus related infrastructure for Main AAP Phase 1 no later than 1222 dwelling occupations and to submit to and have approved by the Council a maintenance scheme for the subsequent bus priority measures and bus related infrastructure and for any property so specified to be transferred at nil consideration and nil cost to the specified body no later than 1222 dwelling occupations (Schedule 20, paragraph 1.6 & 1.7).
 - v. To start operating a more frequent bus service between the Site and Ashford town centre at a frequency of at least every 20 minutes no later than 1222 dwelling occupations (Schedule 20, paragraph 1.8).

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vi. To provide on the Site, the bus priority measures and bus related infrastructure for Main Phase 2 no later than 2772 dwelling occupations and to submit to and have approved by the Council a maintenance scheme for Main Phase 2 bus priority measures and bus related infrastructure no later than 2772 dwelling occupations (Schedule 20, paragraph 1.9 & 1.10).

- vii. To start operating a more frequent bus service between the Site and Ashford town centre at a frequency of at least every 13-14 minutes no later than 2772 dwelling occupations (Schedule 20, paragraph 1.11).
- viii. To provide on the Site, the bus priority measures and bus related infrastructure for Main Phase 3 no later than 4107 dwelling occupations and to submit to and have approved by the Council a maintenance scheme for the Main Phase 3 bus priority measures and bus related infrastructure no later than 4107 dwelling occupations (Schedule 20, paragraph 1.12 & 1.13).
- ix. To start operating a more frequent bus service between the Site and Ashford town centre at a frequency of at least every 10 minutes no later than 4107 dwelling occupations (Schedule 20, paragraph 1.14).
- x. To provide on the Site the bus priority measures and bus related infrastructure for Main Phase 4 no later than 5000 dwelling occupations and to submit to and have approved by the Council a maintenance scheme for the Main Phase 4 bus priority measures and bus related infrastructure no later than 5000 dwelling occupations (Schedule 20, paragraph 1.15 & 1.16).
- 2.3 The temporary bus stop, initial bus related infrastructure, subsequent bus priority measures and bus related infrastructure for Main Phase 1 and the bus priority measures and bus related infrastructure for Main Phases 2, 3 & 4 shall be provided in accordance with the relevant reserved matters approval, including relevant standards of adoption specified in that approval (Schedule 20, paragraphs 1.1, 1.4, 1.6, 1.7, 1.9, 1.12, 1.15).
- 2.4 The initial bus related infrastructure and subsequent bus priority measures and bus related infrastructure for Main Phase 1 and the bus priority measures and bus related infrastructure for Main Phases 2, 3 & 4, shall include bus clearways, shelters, bus boarders, flags, real-time information displays and any other necessary infrastructure (Schedule 20, paragraphs 1.4 & 1.5, 1.6, 1.9 & 1.10, 1.12 & 1.13, 1.15 & 1.16).
- 2.5 All the bus services are required to connect with the first train from Ashford International to St Pancras International and finish at a time to connect with the last train from St Pancras International to Ashford International (at the time of going to tender) (Schedule 20, paragraphs 1.1,1.8, 1.11, 1.14).

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2.6 For each requirement to start operating a particular bus service frequency, the Agreement allows that if the appellant has used a tender approved by the Council (which may include a requirement to tender for different options), but no bids are successful, the Council may agree to the appellant tendering for an alternative service instead. Alternatively, or in addition, the Council may agree to a greater number of dwelling occupations than specified (Schedule 20, paragraphs 1.1,1.8, 1.11. 1.14).

- 2.7 To provide the first occupiers of each dwelling with vouchers with a face value of £450 index linked for use on the bus service between the Site and Ashford town centre (Schedule 20. Paragraph 1.17)
- 2.8 The appellant is required to maintain the bus priority measures and bus related infrastructure in accordance with the relevant approved maintenance scheme (Schedule 20, paragraph 1.18).
- 2.9 Provided the Council has previously approved in writing all tenders for the bus service, the appellants' liability to subsidise the bus service is limited to the following maximum subsidies (Schedule 20, paragraph 2):

Main AAP	Bus Service	Trigger (dwelling	Maximum Subsidy
Phase	Frequency	occupations)	(index linked)
1	30 mins	100	£900,000
1	20 mins	1222	£800,000
3	13-14 mins	2772	£900,000
3	10 mins	4107	£400,000

- 2.10 Schedule 20 also refers to plan ref: 131065/A/23 rev A which shows the proposed route of the bus services and the four phases of bus infrastructure provision. A copy of this plan is provided in Appendix A.
- 2.11 To date, three of the dwelling occupations triggers relating to the bus service obligations referred to above have been reached. This relates to the provision of a temporary bus stop and the initial bus related infrastructure for Main Phase 1 and the submission and approval by the Council of a maintenance scheme for both, alongside the operation of a bus service between the Site and Ashford town centre at a frequency of at least every 30 minutes.
- 2.12 Based on evidence of dwelling occupations, the temporary bus stop and the associated maintenance scheme, should have been provided and the bus service should have started operating no later than 20 April 2021. The initial bus related infrastructure and associated maintenance scheme should have been delivered no later than 30 March 2022. However, to date none of these obligations have been fully complied with.

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2.13 The Council and appellant entered into settlement agreement on the 10 February 2023 (CD1/17) which sought to resolve these breaches of the agreement. Following this, the appellant submitted a planning application for the temporary bus stop and associated maintenance scheme on 16 June 2023, and planning permission was subsequently granted on 9 August 2023 (ref: PA/2023/0986). However, to date, the temporary bus stop has not been installed on the Site and there is no bus service operating. No planning application has been submitted for the initial bus related infrastructure which has also not been delivered on the Site.

3.0 The Continuing purpose

- 3.1 Early provision of bus services to serve the new community is essential to residents' adoption of sustainable patterns of travel at an early stage in the development.
- 3.2 Chapter 9, paragraph 9.40 of the AAP (CD3/1/1, page 80) states "it is proposed that a new high quality bus service between Chilmington Green and the town centre / railway station is provided at an early stage of the development" Paragraph 9.43 (CD3/1/1, page 81) continues "although it is likely to take some considerable time before there is sufficient patronage for the new service from Chilmington Green to achieve commercial viability, there is also a need to provide the service at a point before travel patterns and behaviour become too established by the residents there. This means that subsidy will be required from developers to support the early introduction of the service alongside the capital expenditure on bus priority measures".
- 3.3 The requirement for a bus service is also set out in the AAP IDP (CD3/1/1, pages 155; 158; 160; 162) which states that a new bus service from Chilmington Green to Ashford Town Centre should commence no later than 200 dwelling occupations alongside the implementation of appropriate bus priority measures and bus related infrastructure. The IDP also identifies that throughout Main AAP Phases 3, 4 and 5 that there should be an on-going subsidy of the bus service provision, subject to the commercial viability of the service.
- 3.4 The timing of delivery of the bus service was agreed as part of the outline planning permission based on achieving the minimum 20% public transport mode share for trips to and from the site required to avoid an unacceptable impact on the local highway network (refer to AAP Policy CG12 (CD3/1/1, page 93)). The policy acknowledges that the bus service will not initially be commercially viable and as such will require subsidy from the developers until sufficient patronage is reached.

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3.5 The planning committee report for the outline planning application identified that "the transport planning of the proposed development has assumed that there will be a significant use of public transport for trips both within the development and for those going elsewhere" (CD6/1, paragraph 224, page 1.168). The committee report also identified that "the bus service will have to be phased in order to avoid running empty buses and ensure that the service achieves value for money" (CD6/1, paragraph 226, page 1.168). This phasing acknowledged that the target "20% bus mode share should be viewed as the target for the development upon full occupation and realisation of the high frequency bus service, i.e. when the development and bus service reach 'critical mass' and viability" (CD6/1, paragraph 226, page 1.168).

3.6 The supplementary transport assessment (the "STA") submitted by the appellant in support of the outline planning application for the Development identified that a bus service would be required to support the Development (CD10/10, page 54). The bus service proposed is set out in Table 2 below and is compared to the measures secured in the Agreement. The Agreement secured a bus service generally in accordance with the service identified as being required in the appellant's supplementary transport assessment, albeit with a slight variation to the trigger and frequency of the first and last phase of the bus service delivery.

Appellant's Trans	sport Assessment	Obligations in the Agreement	
Trigger	Bus Service frequency (minutes)	Trigger	Bus Service frequency (minutes)
0 - 200	40	100	30
1222	20	1222	20
2772	13-14	2772	13-14
4107	13-14	4107	10
5750	10	-	-

Table 2: the proposed modifications to the bus service compared with the service secured in the Agreement.

- 3.7 The STA also identified that "to facilitate these bus services some pump-priming subsidies may be needed and the level of these subsidies will be agreed as part of the negotiation of the S106 agreement associated with any planning consent granted" (CD10/10, page 54, paragraph 9.13).
- 3.8 The provision of a bus service and associated bus related infrastructure to serve the Development, alongside financial subsidies and incentives are required to ensure that the Development is sustainable and that a minimum of

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20% of trips to/from the site are via public transport. It was acknowledged when outline planning permission was granted that the bus patronage would need to be built up over the course of the construction of the Development to achieve this 20% mode share, consequently the bus service is to be introduced in phases.

3.9 The delivery of the bus service and associated bus related infrastructure, alongside the financial subsidies and incentives within the timescales set out within the Agreement remains integral and essential to meeting the public transport needs of the residents of Chilmington Green, to ensure the Development is sustainable and that a meaningful alternative to car travel is available to residents.

4.0 Relevant Planning Policy and Guidance

- 4.1 Chilmington Green AAP Policy CG1 Chilmington Green Development Principles identifies the key development principles for the Development. The policy states that Chilmington Green will be a 'well designed, safe and accessible, high quality, sustainable development which supports a viable public transport network' and that 'each main phase of the Development will be sustainable in its own right, through the provision of the required social and physical infrastructure, both on-site and off-site' (CD3/1/1, page 21).
- 4.2 Chilmington Green AAP Policy CG12 Public Transport states that 'public transport services from Chilmington Green shall be designed to deliver at least a 20% public transport mode share for trips to and from the site'. The policy refers to the requirement for the developers to subsidise a new fast, frequent bus service from the Chilmington Green District Centre to Ashford Town Centre and railway station running on at least a 10 minute frequency during weekday peak periods; provide contributions towards bus priority measures on the route between Chilmington Green and the town centre; provide contributions towards the provision of bus-related infrastructure and to fund proposals to incentivise the use of the bus service once it is operating CD3/1/1. page 83).
- 4.3 Local Plan Policy SP1 Strategic Objectives seeks to ensure development is supported by the necessary social, community, physical and e-technology infrastructure, facilities and services, with any necessary improvements brought forward in a co-ordinated and timely manner and to promote access to a wide choice of easy to use forms of sustainable transport modes including bus, train, cycling and walking to encourage as much non-car based travel as possible and to promote healthier lifestyles (CD4/1 page 9).
- 4.4 Local Plan Policy TRA4 Promoting the local bus network states that 'the potential for bus patronage should be considered as part of any proposal for new residential or commercial development. Applications should demonstrate

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whether modal shift in favour of public transport can be achieved through existing bus services or improvements to the network as a key determinant of the scheme's sustainability. Enhancements could include the delivery of bus priority measures, the provision of a new service or the alteration/expansion of an existing service, contributions towards bus-related infrastructure and operational subsidy for the service in the early years of occupation of the development (CD4/1, page 259).

- 4.5 Local Plan Policy COM1 Meeting the Community's Needs identifies the requirement for infrastructure and facilities to meet the need generated by new development, including sports facilities (C4/1, page 303).
- 4.6 Local Plan Policy IMP1 Infrastructure Provision seeks the delivery of infrastructure to support new development (CD4/1, page 312).
- 4.7 Paragraph 109 of the NPPF states that development proposals should identify and pursue opportunities to promote walking, cycling and public transport use.
- 4.8 Paragraph 115 of the NPPF requires sustainable transport modes to be prioritised taking account of the vision for the site, the type of development and its location.
- 4.9 Paragraph 117(a) of the NPPF states that development should, second only to pedestrian and cycle movements, give priority so far as possible to facilitating access to high quality public transport, with layouts that maximise the catchment area for bus or other public transport services, and appropriate facilities that encourage public transport use'.

5.0 The Proposed Modifications

- 5.1 In summary, the appellant seeks the following modifications to the Agreement.
 - i. To delay the provision of the temporary bus stop on the Site and the submission and approval by the Council of the associated maintenance scheme from no later than 100 dwelling occupations to no later than 500 dwelling occupations (CD2/14, request No.95).
 - ii. To delay the requirement for a bus service to start operating from no later than 100 dwelling occupations to no later than 500 dwelling occupations. To delete the requirement for a bus service to operate at a frequency of at least every 30 minutes and replace with a requirement for a bus service to operate at a frequency of every 30 minutes during Peak Hours and every 60 minutes outside Peak Hours, starting at 06:00 hours and finishing at 20:00 hours on Monday to Sunday (CD2/14. request No.95).

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iii. To delay the provision of the initial bus related infrastructure for Main Phase 1 and the submission and approval by the Council of the associated maintenance scheme from no later than 200 dwelling occupations, to no later than 1222 dwelling occupations (CD2/14, request No.95).

- iv. To delete the requirement for a bus service to start operating between the Site and Ashford town centre at a frequency of at least every 20 minutes no later than 1222 dwelling occupations; at a frequency of at least every 13-14 minutes no later than 2772 dwelling occupations and at a frequency of at least every 10 minutes no later than 4107 dwelling occupations (CD2/14, request No.95).
- v. To delete the requirement for all the bus services to connect with the first train from Ashford International to St Pancras International (currently 05:10 hours) and finish at a time to connect with the last train from St Pancras International to Ashford International (currently 00:50 hours) (CD2/14, request No.95).
- vi. At the start of the bus service, to delete the option for the Council to potentially agree to tendering for an alternative service if no bids are successful, and instead to require the Council to agree to such, and to require the Council not to unreasonably withhold consent to delaying the trigger point by allowing more dwellings to be occupied before the bus service starts operating (CD2/14, request No.95).
- vii. To insert a new obligation to replace the requirement to increase the frequency of the bus service at specified points in time based on dwelling occupations and instead require the appellant to undertake bus service monitoring to monitor the effectiveness of the bus service and to submit to the County Council bus service monitoring reports to establish whether a revised bus service should be implemented to either increase or reduce its service, including a timetable for implementation (CD2/12, request No.95).
- viii. To insert an obligation that the bus priority measures and bus related infrastructure for Main Phase 2 shall be transferred at nil consideration and nil cost to the specified body (CD2/14, request No.95).
- ix. To delete the requirement for the first occupiers of each dwelling to be provided with vouchers with a face value of £450 index linked for use on the bus service (CD2/14, request No.96).
- x. To delete the caps on the amount of subsidy that the Appellants are required to give to the bus services (CD2/14, request No.95).

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6.0 Appraisal of the Proposed Modifications

- 6.1 The appellant's reason for the proposed modifications to the bus service obligations appears to be to reflect the s106 agreement for the Possingham Farm development, all other reasons have been deleted from their submission (CD2/14, request No. 95).
- 6.2 The Possingham Farm development is for up to 655 dwellings and the appellant's transport assessment for that development anticipates that the modal share of trips by bus/minibus/coach to/from that development would be 3% (CD10/22, table 5.2). This is far lower than the modal share by bus of 20% that the Chilmington Green outline planning permission was based upon.
- 6.3 The proposed delay to the provision of the Chilmington Green bus service until 500 dwelling occupations and the removal of the requirement to incrementally increase the frequency of the bus service as the number of residents of the Development increases would only serve to increase residents' reliance on the private motor vehicle to meet their day-to-day transport needs, resulting in an increase in the number of vehicle movements to/from the Site which would subsequently result in a car dominated and unsustainable community.
- 6.4 To deliver the bus patronage required to achieve a 20% modal share in bus travel it is essential to provide a high frequency bus service at a point before travel patterns and behaviour become established by residents. Reducing the frequency of the service to hourly (every 30 minutes during peak hours), reducing the hours within which the bus service would run and relying on monitoring of the patronage of this hourly/half hourly service to establish whether a more frequent bus service is required is unlikely to provide an accurate picture of demand. Residents are more likely to use a service with a high frequency and less likely to use an infrequent service - the frequency of the bus service is likely to influence its patronage. The monitoring approach proposed would have no consequences for service frequency unless the service is found to be "significantly" over of under utilised" (CD2/14, request 95). This appears to be a very high bar, especially since there is no proposed definition of "significantly' over of under utilised". It is unlikely, therefore, that a revised service would ever be put forward by the appellant and consequently the proposal would compromise the ability of the Development to achieve the minimum 20% public transport mode share for trips to and from the site.
- 6.5 The Council does not agree that the approach agreed for the Possingham Farm development is appropriate for the Chilmington Green development given the significant difference in the public transport modal share that these two outline planning permissions were based upon and the completely different scale of each development.

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6.6 Furthermore, it is not clear why the appellant considers it appropriate for the Possingham Farm development to be served by a bus service to the town centre no later than 100 dwelling occupations. but considers it appropriate for the residents of Chilmington Green to wait until 500 dwellings are occupied before a bus service is provided. The proposal to delay the start of the Chilmington Green bus service is directly contrary to the stated reason for this modification (to reflect the s106 agreed for the Possingham Farm development).

6.7 The delivery of the bus related infrastructure should also increase in line with the number of dwelling occupations on the Site. Delaying provision of the Phase 1 initial bus related infrastructure to 1222 dwelling occupations would result in up to 1222 households having to use a single temporary bus stop at the northern end of the site adjacent to Access A off the A28. This temporary bus stop would not be within a 400 metre walking distance from all 1222 households that it would have to serve and would only comprise a bus stop sign. There would be no bus shelter or seating provided. The distance of the temporary bus stop from residents' homes and the lack of shelter/seating is also likely to discourage the used of the bus service and increase the number of car based trips.

Viability

6.8 The appellant previously stated that the modifications proposed to the bus service obligations are "wholly unsustainable and will only serve to undermine the viability of Main Phase 1, subsequent Phases and ultimately the delivery of the Development as a whole". However, this justification has been deleted from the appellant's submission, it is therefore not clear whether the appellant is still making these arguments in respect of viability. Notwithstanding this ambiguity, for the reasons set out in the Council's legal submissions, it is not accepted that viability is relevant to the tests which need to be applied when considering the appeals, the Council's 'Viability' Proof of Evidence will, however, present the Council's case in respect of the substantive viability issues; therefore, this Topic Paper does not respond to this point.

7.0 Conclusion

- 7.1 The Agreement currently secures the delivery of a bus service and associated infrastructure, subsidies and incentives. The obligations serve a useful purpose because the provision of a bus service is essential and necessary to deliver a truly sustainable development at Chilmington Green where there is a viable alternative to travel by private motor vehicle.
- 7.2 The modifications proposed to the obligations would not serve that purpose equally well because the delay in the commencement of the bus service would

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result in up to 500 households having to rely on the private motor vehicle to meet their day-to-day transport needs. In addition, the deletion of the requirement to increase the frequency of the bus service, the delay to the provision of the bus related infrastructure and the deletion of the bus vouchers for residents would remove the measures that are intended to assist in making the bus service attractive to residents and consequently viable in the long term.

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Appendix A

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