

Report to	<b>Planning Committee</b>
Date	<b>10 October 2011</b>
By	<b>Head of Planning</b>
Local Authority	<b>Winchester City Council</b>
Application Number	<b>98/02144/FUL (original application number)</b>
Application	<b>Variation of Section 106 agreement</b>
Address	<b>Intech, Morn Hill, Winchester</b>
Purpose of Report	<b>The application is reported to the Committee for decision.</b>

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**Recommendation: that the request for variation to the Section 106 agreement by Hampshire Technology Centre Trust (Intech) be refused for the reasons set out in section 9 of this report**

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## **1. Site Description**

- 1.1 The Intech Science Centre and Planetarium is part of a site on the eastern slopes of Morn Hill, 2Km to the east of Winchester close to the junction of the B3404 and A31. The Intech Science Centre is housed within a large white pyramidal building, with an adjacent dome housing a planetarium.
- 1.2 In addition to the Intech buildings, the site contains a satellite teleport (which includes subterranean buildings) and a hotel. All of these are accessed from the B3404. The parts of the site that are not developed are maintained as Downland. The site is in a wider setting of open countryside, but is bordered on three sides by roads. To the northwest is a mobile home park.

## **2. Relevant Planning History**

- 2.1 Planning permission for redevelopment of the Morn Hill site was granted in June 1999. The redevelopment included a satellite teleport, a hotel, and a science centre (Intech). Permission was granted subject to the entering into of a Section 106 agreement. The detail of the Section 106 agreement is considered in paragraphs 2.4-2.8 below. The satellite teleport and Intech were completed shortly after permission was granted.
- 2.2 The hotel element was not carried out at the same time as the rest of the development. Various developers sought to implement this element of the development, and Winchester City Council agreed to vary the Section 106 agreement on two occasions. Ultimately a new Section 106 agreement for the hotel element was entered into in 2008. The new agreement provided for a timetable for completion of that part of the development, ongoing landscaping, and reinstatement in the event that the timetable was not complied with.
- 2.3 The various changes to the Section 106 Agreement did not apply to the Intech part of the site, which remains subject to the original 1999 agreement.

### **1999 Section 106 Agreement Provisions**

- 2.4 The 1999 Section 106 agreement covered a number of points, including removal of all the existing uses on the site (which was previously a scrapyards), implementation of each element within five years of the permission, landscape management and highway issues.

- 2.5 In addition, there were specific clauses covering the provision of the Intech centre, including transfer of the land, and a requirement that the centre was only occupied by Intech (or a charity carrying out similar functions and approved by the Council).
- 2.6 There was also a clause applying to the whole of the site, which provided that if the development of any element had not started within five years of the permission, that part of the site would have to be reinstated and used thereafter as open countryside. Similarly, if the Intech facility was constructed and subsequently became redundant or ceased to be occupied in accordance with the agreement for more than twelve months, the agreement (Clause 12.2) provided that the Intech development should be demolished, the car park removed, and the whole of that part of the site reinstated to open countryside and used as such thereafter. A similar provision applies to the Teleport, but not the hotel.
- 2.7 The full clause reads:-  
*"The Developers covenant with the Council that if at any time the INTECH development on the green land becomes redundant or ceases (for more than twelve months) to be occupied as permitted by Clause 9.1 hereof then the INTECH development shall forthwith be demolished (including all ancillary buildings) and the car park on the green land removed and the green land shall thereafter forthwith be reinstated as Open Countryside and shall not at any time thereafter be used otherwise than as Open Countryside".*

The "green land" is as indicated on the plan reproduced as **Appendix 2** to this report.

### **3 Proposal**

- 3.1 Intech have requested that the requirement set out in paragraph 2.8 above is removed from the agreement in respect of the Intech centre.
- 3.2 Intech opened in August 2002. 120,000 visitors come to the centre each year, of which 28,000 are students on school visits. A planetarium has since been opened (this building was part of the original permission), and has enabled the centre to operate almost entirely on a self-funded basis. The centre is well established, in both the education and tourist fields.
- 3.3 The building is security for Intech's existing bank loans. The applicants state that:
- the requirement to demolish the building and reinstate the land as open countryside in the event that the development becomes redundant has an adverse impact on the value of the security which Intech can offer to their existing bank, or any future bank they may wish to deal with.
  - the reduction in risk which would result from the removal of this clause would allow Intech to move forward in the future on a stronger footing.
  - Intech relies on fundraising to refurbish exhibits as well as creating educational workshops for schools. Like the banks, funding bodies are keen to ensure that their investments are appropriate and risks are minimised. Retaining the clause may therefore hinder Intech in raising funds to develop and improve the facilities.
- 3.4 Intech originally sought the removal or alteration of this clause in 2002. However, although there were initial discussions this request was not progressed further until recently.

### **4 Consultations**

- 4.1 The relevant ward councillors, Itchen Valley Parish Council and Chilcomb Parish Meeting have been consulted.
- 4.2 The Chair of Chilcomb Parish Meeting has responded to the consultation. Whilst the work of Intech is supported, they see no reason why the clause should be removed. The clause was included when permission was granted and accepted by all parties at the time. Removing the provision might allow the site to be resold/developed to the detriment of the community. The site is important to the community due to its visibility to people arriving via the A31 and A272, and needs protecting as downland.
- 4.3 Hampshire County Councillor, Mrs. Jacky Porter, has expressed concern at the intentions behind the request for the variation, and would want to see proof of the difficulties which

the restriction causes. As with Chilcomb Parish Meeting, she is supportive of the work of Intech.

- 4.4 There have been no neighbour consultations, however there was full consultation at the time of the original application. In very broad terms the majority of support letters related to the benefits of the educational use proposed, whereas objectors were concerned about the landscape impact.

## **5 National Park Purposes**

- 5.1 The two statutory purposes of National Park designation are:
- To conserve and enhance the natural beauty, wildlife and cultural heritage of their areas;
  - To promote opportunities for the public understanding and enjoyment of the special qualities of their areas.

If there is a conflict between these two purposes, conservation takes precedence.

- 5.2 There is also a duty for the SDNPA to foster the economic and social well being of the local community in pursuit of these purposes. Government policy relating to national parks set out in PPS7: Sustainable Development in Rural Areas and Circular 20/10 is that they have the highest status of protection in relation to landscape and scenic beauty. Conservation of the natural beauty of the landscape and countryside must, therefore, be given great weight in development control decisions.

## **6 Planning Policy Context**

- 6.1 Section 106 planning obligations may be modified or discharged if agreed between the local authority and the person or persons to which it is enforceable. The Secretary of State considers that the variation of obligations by agreement between the parties is to be preferred to the formal application and appeal procedures.

## **7 Planning Assessment**

- 7.1 Although the application is for the amendment of a Section 106 agreement, it is considered appropriate to include a full planning assessment of the site. The details of this site will be new to most members and, at the time that the original permission was granted, the site was not within a protected landscape (The AONB boundary followed the far side of the A31). It is now within the South Downs National Park and any existing impacts on the national park need to be fully considered in order to properly understand the implications were the restoration requirement to be removed.

### **Design & Landscape Impact**

- 7.2 The site is identified in the South Downs Integrated Landscape Character Assessment (SDILCA) as being within area A5 – Winchester Open Downs. This is classic undulating chalk upland, consisting of vast arable fields (dating from the 18<sup>th</sup>-19<sup>th</sup> Century in this particular character area), combined with a more irregular mosaic of species rich unimproved chalk grassland, scrub and woodland on the steeper slopes where farming was more difficult.
- 7.3 In its assessment of specific changes to the Winchester Open Downs character area, the SDILCA includes the following as an identifiable change:
- “The building of the Intech educational science building and satellite dish which are greatly contrasting in size and style to the traditional settlement patterns and building materials.”*
- 7.4 The Intech site is therefore very prominent in it's Downland setting. The merits of it as a design and gateway feature are addressed separately below. But in terms of its prominence and impact as a feature in the landscape, it does not make a positive contribution to its setting as it competes with it, rather than harmonising with it.
- 7.5 The site is bordered on two sides by the A31, and to the north by the B3404. It is not, therefore the most remote, tranquil location within the national park. Nevertheless, the

adjacent roads are hidden by the landform or by planting in many views towards the site, and even where the roads are visible, the INTECH site remains the most prominent, dominant feature.

- 7.6 The site was not previously Downland – it was a scrapyard, which had environmental as well as visual impacts. The current buildings can therefore be considered an improvement in certain near- and middle-distance views, although from further away the site is much more visible than the previous use was. Nevertheless, the consideration is with regard to the impact of the existing buildings and the requirement to restore to open countryside.
- 7.7 Whilst the landscape impact will have been assessed at the time that the original application was permitted (a Visual Impact Assessment was submitted with the application), the National Park had not been designated and the site was outside of the AONB. The requirement for the site to be restored to open countryside was therefore made at a time when the site did not benefit from either protective landscape designation.
- 7.8 However, it appears that the original primary reason for the requirements was not because of landscape impact but was, instead, to ensure the whole of the site was developed, as set out further on. Nevertheless, the National Park designation can be considered a material change that would strengthen the need to retain the restoration requirement.

### **Design**

- 7.9 The City Council's Urban Design & Major Developments Officer considers the building to be an important gateway landmark on the approach to Winchester. He explains that the pyramid building was designed to have a pure uncluttered external form, which is amplified by the white colour. He considers this is appropriate for the educational science & technology use.
- 7.10 The National Park Authority's Design Officer has been consulted on the proposals and he has commented that the design, in its own right, is appropriate for the current use, but that it is not appropriate for its setting. It is acceptable as it is because of the socially beneficial nature of its use. If the use were to cease, then there would be *"no justification for the retention of the building within the national park or the avoidance of its restoration to downland unless a relevant educational use were found"*.

### **The Public Benefit of the Intech use**

- 7.11 Intech is now well established and fulfils an important educational and tourism function in the local area (inside and outside of the national park). The stated reason for amendment to the S106 agreement is in order to allow for money to be borrowed against the resale value of the site. The applicant claims that granting the variation to the agreement would safeguard (and enhance) the educational provision for the future.
- 7.12 There is therefore an argument that by granting permission for the variation, the national park authority would be fulfilling its' duty to foster the economic and social well being of the local community – although the educational use in this case is not specifically in pursuit of the National Park purposes.

### **The Impact of the Proposals on nearby Heritage Assets**

- 7.13 Planning Policy Statement 5 (*Planning for the Historic Environment*) requires planning authorities to assess the potential impacts upon heritage assets – including their setting. There are two designated heritage assets within close proximity of the site. As with Intech, these heritage assets were not previously within a protected landscape, but they are now within the National Park, the cultural heritage of which should be conserved or enhanced.
- 7.14 60 metres to the south-west of the main pyramid building is a small bowl barrow surrounded by ditch, which is a scheduled ancient monument. 140 metres to the west is the early 20<sup>th</sup> Century Magdalen Hill Cemetery, which is a listed Grade II on the register of historic parks and gardens. The two heritage assets therefore provide an interesting juxtaposition of one of the earliest and one of the most recent of funerary practices of inhabitants of the South Downs.

- 7.15 Views towards these heritage assets are dominated by the Intech site. One particularly notable view from within the National Park is that from the South Downs Way on Telegraph Hill, immediately next to another group of bowl barrows.
- 7.16 There are also views out from these heritage assets that should be considered. It is of particular note that the listing description for Magdalen Hill Cemetery includes the following:  
*"[The Cemetery's] position offers expansive views over the surrounding countryside in every direction apart from the south, although the eastern view is now (2003) cut short by a late C20 business development."*
- The 20<sup>th</sup> Century "business development" referred to is the Intech site, with both the pyramid building and planetarium being clearly visible from the eastern end of the cemetery.
- 7.17 The removal of the Intech buildings, were the current use to cease, could therefore be considered an enhancement to the cultural heritage of this part of the national park.

### **Biodiversity and nature conservation**

- 7.18 To the immediate west of the Intech site, the verges surrounding Percy Hobbs roundabout are identified as notable road verges, containing chalkland species including the Pyramid Orchid. Part of this area, and parts of the scarp slope of Magdalen Down, 800 metres to the west, are designated local (chalk grassland) wildlife sites. If the restoration requirement were retained, there would therefore appear to be good potential for the site to be restored to chalk grassland, helping to link up the existing identified sites. This would, in theory, result in enhancement of the biodiversity of the part of the downs, although it must be remembered that the restoration requirement does not include provisions for the long term management of the site in a favourable state, whereas the existing use does include beneficial land management of some of the non-developed land on the site.

### **Highway issues**

- 7.19 The original application was accompanied by a Transport Sustainability Proposal and the current charitable educational use controls highway impacts through the way visitors are predominantly managed through pre-booked school coach visits. Were the buildings to be retained for another use, an application for a change of use would be necessary, and any highway issues could be considered then.

### **Sustainability**

- 7.20 Given the embodied energy that went into the construction of the Intech site, there would be some benefit in sustainability terms if there was no longer a requirement to demolish and remove the buildings.

### **Residential Amenity**

- 7.21 As with highway issues (see above), existing impacts on nearby residents are controlled by the nature of the existing use. Were the buildings to be retained for another use, an application for a change of use would be necessary, and any additional impacts on residential amenity could be considered then.

### **The justification for the clause**

- 7.22 This matter was recovered from Winchester City Council shortly after it appeared as an item on their planning committee agenda. The report of the head of Legal Services for Winchester City Council suggested that the principal reason for inclusion of the requirement to restore the land to open countryside was to ensure that each element of the planning permission was fully implemented, and this has now happened. The three parts of the site have all been developed as originally intended (although a second subterranean building, which was part of the teleport, and some of the satellite dishes have not been implemented), are now in separate ownerships and are all well-established.
- 7.23 The normal rule is that once a part of the approved development is implemented, the remainder of the development can be built thereafter as and when the developer chooses (if it is built at all). Therefore, the agreement modified this rule and ensured that if any element (teleport, Intech or hotel) had not been implemented within five years, the permission

effectively lapsed for that part and that area would have to have been cleared and reinstated as open countryside.

7.24 However, there is additionally a Clause (12.1), which reads:

*“The Developers covenant with the Council that if within 5 years of the date of the Permission, implementation has not taken place of:*

- (i) the teleport development on the pink land, or*
- (ii) the INTECH development on the green land, or*
- (iii) the hotel development on the blue land*

*then the pink, green or blue land in respect of which such Implementation has not taken place [sic] (as the case may be) shall forthwith be reinstated as Open Countryside and shall not at any time thereafter be used otherwise than as Open Countryside”*

7.25 This clause does not seem to relate to the requirement to complete the development, and provides for the principle of the building being retained for a future occupier other than Intech to be considered.

### **Other issues**

7.26 In response to the comments from the Chairman of Chilcomb Parish Meeting, removing the restriction would not remove the other requirements in the Section 106 agreement which limit the use of the building to educational purposes and ancillary scientific and cultural purposes, and limit occupation to Intech or a charity approved by the Council with similar objectives. It would not therefore be possible for Intech to dispose of the building for a different use or to e.g. a private occupier as this would be in breach of the agreement.

## **7 Conclusion**

8.1 Ultimately, any application within the South Downs National Park must be assessed against statutory policy and the National Park's purposes and duty, as set out in section five. The buildings were clearly contrary to policy, and the s106 agreement was a safeguarding measure to ensure that this exception was not abused.

8.2 As currently written, the S106 agreement requires restoration to Downland – which would be an enhancement in landscape terms. The loss of this requirement would therefore, strictly speaking, be detrimental to the National Park and therefore would result in neither conservation or enhancement.

8.3 The National Park Authority does have its' social and economic duty to take into account – and ensuring the continued viability of the existing INTECH use by removing the requirement could be seen to be fulfilling that duty. However the primary purpose must take precedence – and the loss of the opportunity to ensure the restoration of the site to Downland contradicts that primary purpose.

8.4 The SDNPA's policy objectives and the National Park purposes are best served by the Intech use remaining, as this use was the only justification for the development. If Clause 12.2 were removed there would still be controls over the future use of this site, but this would be a weakening of those controls, and may therefore itself become a factor in encouraging alternative uses for the site. This must be weighed against arguments to the contrary, such as the continuance of other buildings on the site, and the sustainability arguments of requiring the demolition of a functioning building, but on balance the argument in favour of retaining the clause as the best way of supporting policy objectives and NP purposes is advocated.

## **9. Recommendation**

9.1 It is recommended that the request for removal of Clause 12.2 be refused for the following reasons:

The existing Clause requires restoration of the site to open countryside if the current use ceases. To remove this clause would be contrary to the purposes of National Park Designation. The Intech buildings were permitted contrary to policy

and so removing the clause would undermine policy objectives and the National Park purposes.

## **10 Crime and Disorder Implications**

10.1 It is considered that the proposal does not raise any crime and disorder implications.

## **11 Human Rights Implications**

11.1 This request has been considered in light of statute and case law and any interference with an individual's human rights is considered to be proportionate to the aims sought to be realised.

## **12 Other risks**

12.1 The risk of not granting permission is that an existing educational charity may not be able to borrow money based on the resale value of the site. In the worst scenario, the charity would fail, and the requirement to restore the site may not be achievable, resulting in the buildings remaining empty.

### **JIM REDWOOD Head of Planning**

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#### **Appendices**

1. location map
2. Extract of plan from Section 106 agreement

SDNPA Consultees  
Head of Planning; SDNPA Design Officer; SDNPA Western Area Manager; WCC Open Space Project Officer; WCC Urban Design & Major Developments Officer, Monitoring Officer & Senior Solicitor.

#### **Background Documents**

Letter from INTECH requesting variation.

Section 106 agreement dated 4 June 1999