

DATED

24th April

2018

SKIPTON PROPERTIES LIMITED

- and -

NATIONAL WESTMINSTER BANK PLC

- to -

ROSSENDALE BOROUGH COUNCIL

VARIATION TO PLANNING OBLIGATION BY DEED OF UNDERTAKING

under sections 106 and 106A of the Town and Country
Planning Act 1990 relating to the development of land
at Kearns Mill, Cowpe Road, Waterfoot

Walton & Co
2 Queen Street
Leeds
LS1 2TW

THIS DEED is made the 24th day of April

2018

BY:

- (1) **SKIPTON PROPERTIES LIMITED** (company number 02158429) whose registered office is at Skipton House, Riparian Court, Riparian Way, Cross Hills, Keighley BD20 7BW ("the Owner");
- (2) **NATIONAL WESTMINSTER BANK PLC** (Company Registration Number 929027) of Credit Documentation Department, 8th Floor, 1 Hardman Boulevard, Manchester M3 3AQ ("the Mortgagee");

TO

- (3) **ROSSENDALE BOROUGH COUNCIL** of The Business Centre, Futures Park, Newchurch Road, Bacup OL13 0BB ("the Council")

INTRODUCTION AND BACKGROUND

- 1. The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated and is the authority by whom the planning obligations hereby created are enforceable.
- 2. The Owner purchased the Site on 29 September 2015 and is now the freehold owner of the Site registered with Land Registry Title Number LAN129213.
- 3. The Mortgagee is the mortgagee of the Site subject to a legal charge dated 29 September 2015.
- 4. The Owner submitted the Full Application to the Council on 16 January 2018.
- 5. The Council validated the Full Application on 24 January 2018.
- 6. The Council will grant the Full Permission subject *inter alia* to the prior completion of this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1. DEFINITIONS

Unless defined in this Deed or the context otherwise requires, a term defined in the Principal Agreement shall have the same meaning in this Deed. In this Deed the following expressions shall have the following meaning:

"2015 Deed of Variation" means a Deed of Variation under sections 106 and 106A of the 1990 Act dated 30 June 2016 which was entered into by (1) Skipton Properties Limited and (2) National Westminster Bank Plc

“Full Application”	means the planning application registered by the Council on 24 January 2018 under reference 2018/0030 for the erection of 6 houses, associated mews court and landscaping together with works to change the former mill lodge area to a wetland area with paths and new planting on part of the Site
“Full Permission”	means the planning permission which may be granted by the Council pursuant to the Full Application
“Principal Agreement”	means a planning obligation by Deed of Undertaking under Section 106 of the 1990 Act dated 24 June 2015 which was entered into by (1) Brian Verity, Linda Mary Verity, Sarah Louise Barraclough, Caroline Elizabeth Verity and Robert Graham Trustees Limited and (2) National Westminster Bank Plc and which relates to the development of the Site pursuant to the Planning Permission

2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council any successor to its statutory functions.

3. LEGAL BASIS

- 3.1 This Deed is made pursuant to Sections 106 and 106A of the Act as substituted by Section 12 of the Planning and Compensation Act 1991 and Section 111 of the Local Government Act 1972.

3.2 This Deed is supplemental to the Principal Agreement as varied by the 2015 Deed of Variation.

4. CONDITIONALITY

4.1 This Deed shall take effect upon the date of the grant of the Full Permission by the Council but the variation of the Principal Agreement as set out in the First Schedule of this Deed shall only take effect upon the Commencement of Development pursuant to the Full Permission.

5. SECOND VARIATION OF THE PRINCIPAL AGREEMENT

5.1 The parties hereby agree that the Principal Agreement as varied by the 2015 Deed of Variation shall be further varied in accordance with the provisions of the First Schedule of this Deed.

5.2 The Principal Agreement as varied by the 2015 Deed of Variation is in all other respects hereby confirmed and shall (subject always to the provisions therein) remain in full force and effect.

5.3 This Deed shall be read in conjunction with and alongside the Principal Agreement and the 2015 Deed of Variation.

6. MISCELLANEOUS

6.1 Upon completion of this Deed the Owner shall pay to the Council the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed.

6.2 A person who is not a party to this Deed shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

6.3 This Deed shall be registrable as a local land charge by the Council.

6.4 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

6.5 This Deed shall cease to have effect if the Full Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.

6.6 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Full Permission) granted (whether or not on appeal) after the date of this Deed.

7. WAIVER

7.1 No waiver (whether express or implied) by the Council or the Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council or the Owner from enforcing any of the

relevant terms or conditions or from acting upon any subsequent breach or default.

8. MORTGAGEE'S CONSENT

- 8.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in the Principal Agreement as varied by this Deed and that the security of the charge over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability for breaches of the Owner's covenants in the Principal Agreement and this Deed unless it has entered into possession of the Site or any part thereof in which case it too will be bound by the Owner's covenants to the extent that the obligations affect the relevant part of the Site which stands charged to the Mortgagee and for any breaches thereof.

9. JURISDICTION

- 9.1 This Deed is governed by and interpreted in accordance with the laws of England.

10. DELIVERY

- 10.1 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

FIRST SCHEDULE
Variation of the Principal Agreement

The Principal Agreement as varied by the 2015 Deed of Variation shall be further varied as follows:

1. The following definitions shall be inserted into Clause 1 of the Principal Agreement after the definition of "Dwelling" and before the definition of "Highway Contribution":

"Full Application" means the planning application registered by the Council on 24 January 2018 under reference 2018/0030 for the erection of 6 houses, associated mews court and landscaping together with works to change the former mill lodge area to a wetland area with paths and new planting on part of the Site

"Full Permission" means the planning permission which may be granted by the Council pursuant to the Full Application

2. The definition of "Planning Permission" in Clause 1 of the Principal Agreement shall be deleted and substituted as follows:

"Planning Permission" means:
(a) the Section 73 Permission; and/or
(b) the Full Permission

3. The definition of "Development" in Clause 1 of the Principal Agreement shall be deleted and substituted as follows:

"Development" means:
(a) the development of the Site pursuant to the Section 73 Permission; and/or
(b) the development of the Site pursuant to the Full Permission

4. The definition of "Management Company" in Clause 1 of the Principal Agreement shall be deleted and substituted as follows:

"Management Company" means a body or bodies which is or are established for the purposes of providing for the long term management and maintenance of the area shown edged red on Plan 3 including the proposed wetland area, its immediate environs and the pathway through the wetland area, for the

benefit of the Development and local neighbourhood for informal recreation and for the benefit of wildlife

5. Paragraph 2 of the First Schedule to the Principal Agreement shall be deleted and substituted as follows:
 2. Prior to the Occupation of 50% of the Dwellings within the Full Application the Owner shall layout, plant and construct a pathway in the wetland area in accordance with the details shown on Plan 2 and shall maintain it thereafter
6. Paragraph 3 of the First Schedule to the Principal Agreement shall be deleted and substituted as follows:
 3. Prior to the Occupation of 50% of the Dwellings within the Full Application the Owner shall provide the Council with a copy of the agreement with the Management Company which will be responsible for the long term management and maintenance of the wetland area and its immediate environs, including the pathway through the wetland area.
7. Plan 2 which is annexed to the Principal Agreement shall be deleted and substituted with the plan annexed to this Deed and marked "Plan 2"
8. Plan 3 which is annexed to the Principal Agreement shall be deleted and substituted with the plan annexed to this Deed and marked "Plan 3"

PLANT SCHEDULE

Trees	Species	Size	Supply	Cost
11	Alnus glutinosa	14/16	350/425	14/16
12	Alnus glutinosa	12/14	350/425	12/14
13	Alnus glutinosa	10/12	350/425	10/12
14	Alnus glutinosa	8/10	350/425	8/10
15	Alnus glutinosa	6/8	350/425	6/8
16	Alnus glutinosa	4/6	350/425	4/6
17	Alnus glutinosa	3/4	350/425	3/4

All tree locations and species must be taken into consideration by the project structural engineer. The contractor shall ensure that the proposed planting is in accordance with the requirements of the NCC standards. It is the contractor's responsibility to ensure that all underground services have been located and identified in advance of free pit excavation.

No free specification/specification will be amended without prior approval from the project landscape architect and/or the client.

Native Shrub Planting	Supply	Size	Stock	Cost
1	Alnus glutinosa	40/50	Transplant	1m
2	Crataegus monogyna	40/50	Transplant	1m
3	Crataegus monogyna	40/50	Transplant	1m
4	Crataegus monogyna	40/50	Transplant	1m
5	Crataegus monogyna	40/50	Transplant	1m
6	Crataegus monogyna	40/50	Transplant	1m
7	Viburnum spines	40/50	Transplant	1m

All shrubs to be planted in accordance with horticultural best practice guidelines. No shrub species, size or location should be altered without prior approval from the landscape architect. All shrub species to be planted in groups of 3 or more. All transplanted stock to be protected using a clear spray guard and stout bamboo cane.

Willow Carr Planting	Supply	Size	Stock	Cost
1	Salix purpurea	40/50	Transplant	1m
2	Salix purpurea	40/50	Transplant	1m
3	Salix purpurea	40/50	Transplant	1m
4	Salix purpurea	40/50	Transplant	1m
5	Salix purpurea	40/50	Transplant	1m
6	Salix purpurea	40/50	Transplant	1m
7	Salix purpurea	40/50	Transplant	1m

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Grass	Supply	Size	Stock	Cost
1	Grass	40/50	Transplant	1m
2	Grass	40/50	Transplant	1m
3	Grass	40/50	Transplant	1m
4	Grass	40/50	Transplant	1m
5	Grass	40/50	Transplant	1m
6	Grass	40/50	Transplant	1m
7	Grass	40/50	Transplant	1m

All grass to be planted in accordance with horticultural best practice guidelines. No grass species, size or location should be altered without prior approval from the landscape architect. All grass species to be planted in groups of 3 or more. All transplanted stock to be protected using a clear spray guard and stout bamboo cane.

Gravel	Supply	Size	Stock	Cost
1	Gravel	40/50	Transplant	1m
2	Gravel	40/50	Transplant	1m
3	Gravel	40/50	Transplant	1m
4	Gravel	40/50	Transplant	1m
5	Gravel	40/50	Transplant	1m
6	Gravel	40/50	Transplant	1m
7	Gravel	40/50	Transplant	1m

All gravel to be planted in accordance with horticultural best practice guidelines. No gravel species, size or location should be altered without prior approval from the landscape architect. All gravel species to be planted in groups of 3 or more. All transplanted stock to be protected using a clear spray guard and stout bamboo cane.

Gravel	Supply	Size	Stock	Cost
1	Gravel	40/50	Transplant	1m
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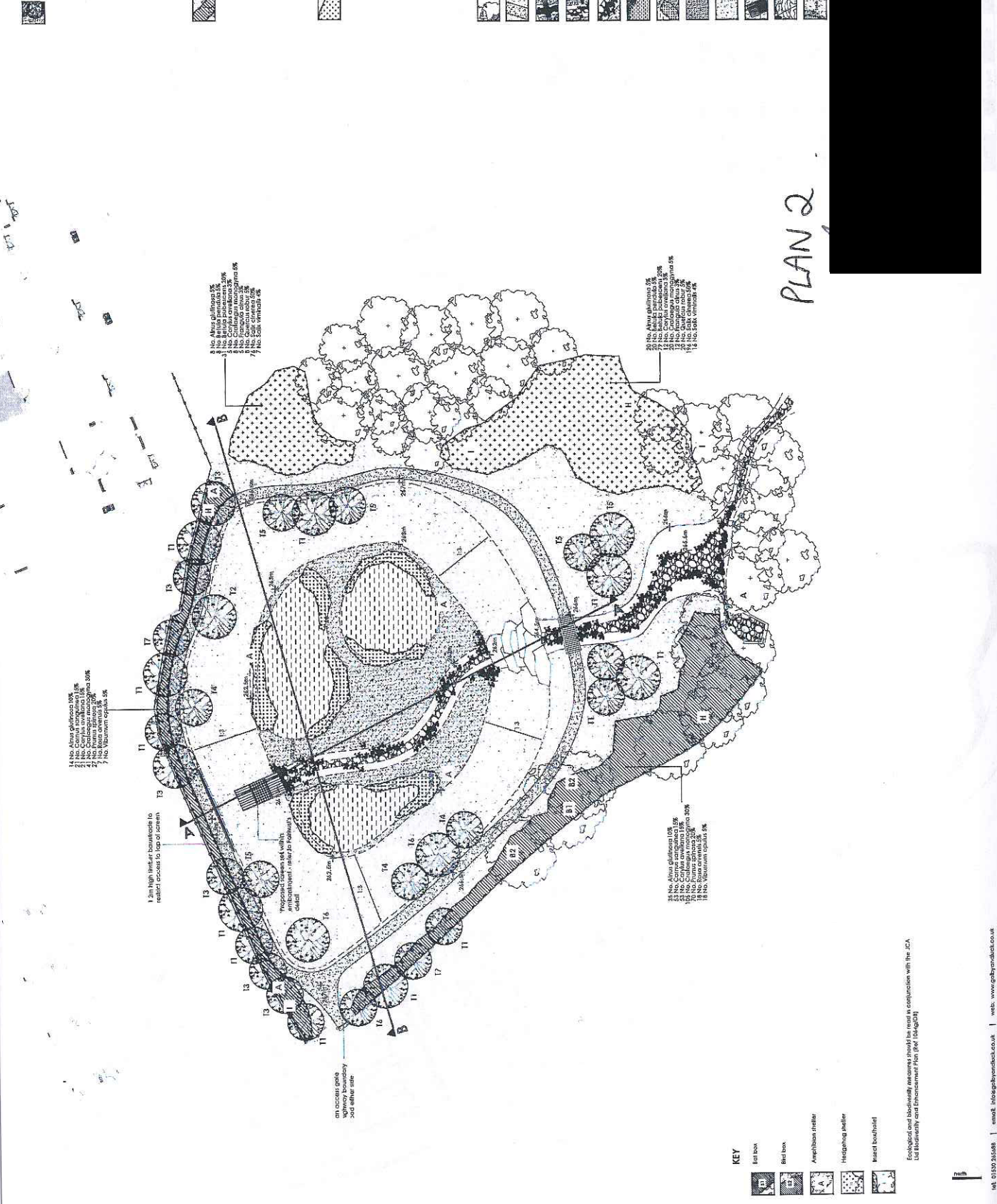
Gravel	Supply	Size	Stock	Cost
1	Gravel	40/50	Transplant	1m
2	Gravel	40/50	Transplant	1m
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FOR SECTIONS PLEASE REFER TO GI0472.07



PLAN 2

HOUSE TYPE	FLOOR AREA
4No - THE ERMYSTYD - TYPE A - 4BED 2 STOREY DETACHED	1329.3 SQ.FT.
1No - THE WHITTAKER - TYPE B - 4BED 2 STOREY DETACHED	1612.5 SQ.FT.
5No - THE IRWELL - TYPE C - 4BED 3 STOREY SPLIT LEVEL	1766.7 SQ.FT.
1No - THE COMPE - TYPE D - 4BED 3 STOREY SPLIT LEVEL	1998.0 SQ.FT.
2No - THE RAMSTORNE - TYPE E - 4BED 3 STOREY SPLIT LEVEL	2027.0 SQ.FT.
1No - THE JACKSON - TYPE F - 5BED 3 STOREY SPLIT LEVEL	2262.0 SQ.FT.
1No - THE COACH HOUSE - TYPE G - 5BED 2 STOREY DETACHED	2230.2 SQ.FT.
1No - THE CARRIAGE HOUSE - TYPE H - 5BED 2 STOREY DETACHED	2391.7 SQ.FT.
1No - THE GATE HOUSE - TYPE J - 3BED 2 STOREY END TERRACE	1564.0 SQ.FT.
1No - THE DAVITT - TYPE K - 4BED 2 STOREY DETACHED	1599.0 SQ.FT.
1No - THE SHARP - TYPE L - 4BED 2 STOREY DETACHED	1471.0 SQ.FT.
1No - THE TYRELL - TYPE M - 4 BED 3 STOREY SPLIT LEVEL	2219 SQ.FT

SCHEME TOTAL = 20 UNITS

SITE AREA

0.87 HECTARES

PARKING

39 - PRIVATE PARKING SPACES
23 - GARAGE SPACES

EXTERNALS SCHEDULE

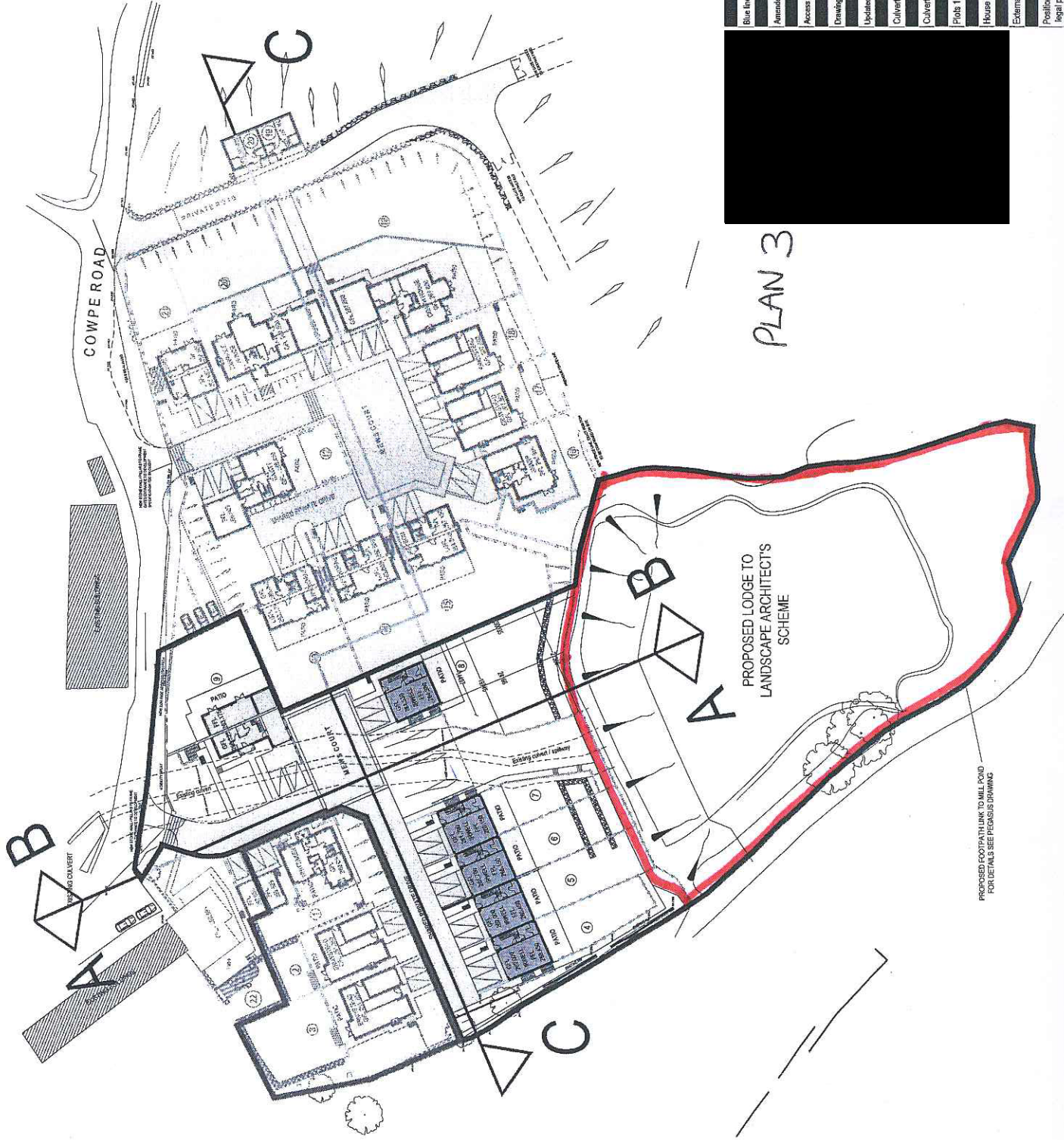
- 1.8M HIGH TIMBER HIT & MISS FENCE
- 1.2M WALL + 0.6M HIGH TIMBER HIT & MISS FENCE
- 1.5M HIGH TIMBER HIT & MISS FENCE
- DRY STONE RETAINING WALL
- DRY STONE FEATURE RETAINING WALL
- REFUSE BINS
- RETAINING WALLS
- FLAG ON EDGE

FOR FURTHER INFO REGARDING TO SOFT LANDSCAPING & BOUNDARY TREATMENTS PLEASE REFER TO LANDSCAPE ARCHITECTS DESIGN PLAN



PLANNING ISSUE

New Built Residential Development	
Kearra Mill	
Cowpe Road, Waterfoot	
Stipitation Properties	
Proposed Site Plan	
3901-005	PL03
Checked: TES	
Drawn: DW	
Date: 08/02/2018	
Scale: 1:500	
Name: To be taken from the drawing. All dimensions to be rounded up.	
Watson Batty Architects Limited	
100, The Quadrant, Waterfoot, Galway, Co. Galway, L20 1E0	
T: 01494 825 655	
F: 01494 882 300	
E: enquiries@watsonbatty.com	
W: www.watsonbatty.com	



PLAN 3

PROPOSED LODGE TO LANDSCAPE ARCHITECTS SCHEME

PROCESSED FOOTPRINTS TO MILL POND FOR DETAILS SEE PRELIMINARY DRAWING

IN WITNESS WHEREOF the parties hereto have caused this Deed to be executed as a Deed on the day and year first before written

EXECUTED AS A DEED

(but not delivered until the date hereof)
by **SKIPTON PROPERTIES LIMITED**
in the presence of

Director

Director

SIGNED AND DELIVERED AS A DEED

for and on behalf of **NATIONAL WESTMINSTER BANK PLC** by a duly
Authorised Attorney
In the presence of

Witness Signature:

Witness Name:

Witness Address: