

DATED *24th June* 2015

BRIAN VERITY, LINDA MARY VERITY, SARAH LOUISE BARRACLOUGH,  
CAROLINE ELIZABETH VERITY AND ROBERT GRAHAM TRUSTEES LIMITED

- and -

NATIONAL WESTMINSTER BANK PLC

- to -

ROSSENDALE BOROUGH COUNCIL

PLANNING OBLIGATION BY DEED OF UNDERTAKING

under section 106 of the Town and Country  
Planning Act 1990 (as amended) relating to land  
at Kearns Mill, Cowpe Road, Waterfoot

Walton & Co  
2 Queen Street  
Leeds  
LS1 2TW

THIS DEED is given this 24<sup>th</sup> day of June 2015

BY:

- (1) **BRIAN VERITY, LINDA MARY VERITY, SARAH LOUISE BARRACLOUGH AND CAROLINE ELIZABETH VERITY** care of Gordons LLP, Forward House, 8 Duke Street, Bradford BD1 3QX and **ROBERT GRAHAM TRUSTEES LIMITED** (Co Reg No 03071679) of 3<sup>rd</sup> Floor HQ Building, 2 Atherton Street, Manchester M3 3RG as trustees of the Skipton Properties Pension Scheme ("the Owner")
- (2) **NATIONAL WESTMINSTER BANK PLC** (Co Reg No 929027) of 3<sup>rd</sup> Floor, 2 Whitehall Quay, Leeds LS1 4HG ("the Mortgagee")

TO:

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

#### WHEREAS

- (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 obligations hereby created are enforceable.
- (2) The Owner is the freehold owner of the Site registered at HM Land Registry under title number LAN129213.
- (3) The Mortgagee is the mortgagee of the Site subject to a legal charge dated 30 April 2012.
- (4) The Owner has submitted the Application to the Council for planning permission to carry out the Development on the Site.
- (5) The Council has resolved to grant the Planning Permission for the Development subject to conditions.
- (6) The Owner has agreed to enter into this Deed so as to create planning obligations in favour of the Council pursuant to section 106 of the 1990 Act and to be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained.

#### NOW THIS DEED WITNESSES AS FOLLOWS:

##### 1. DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

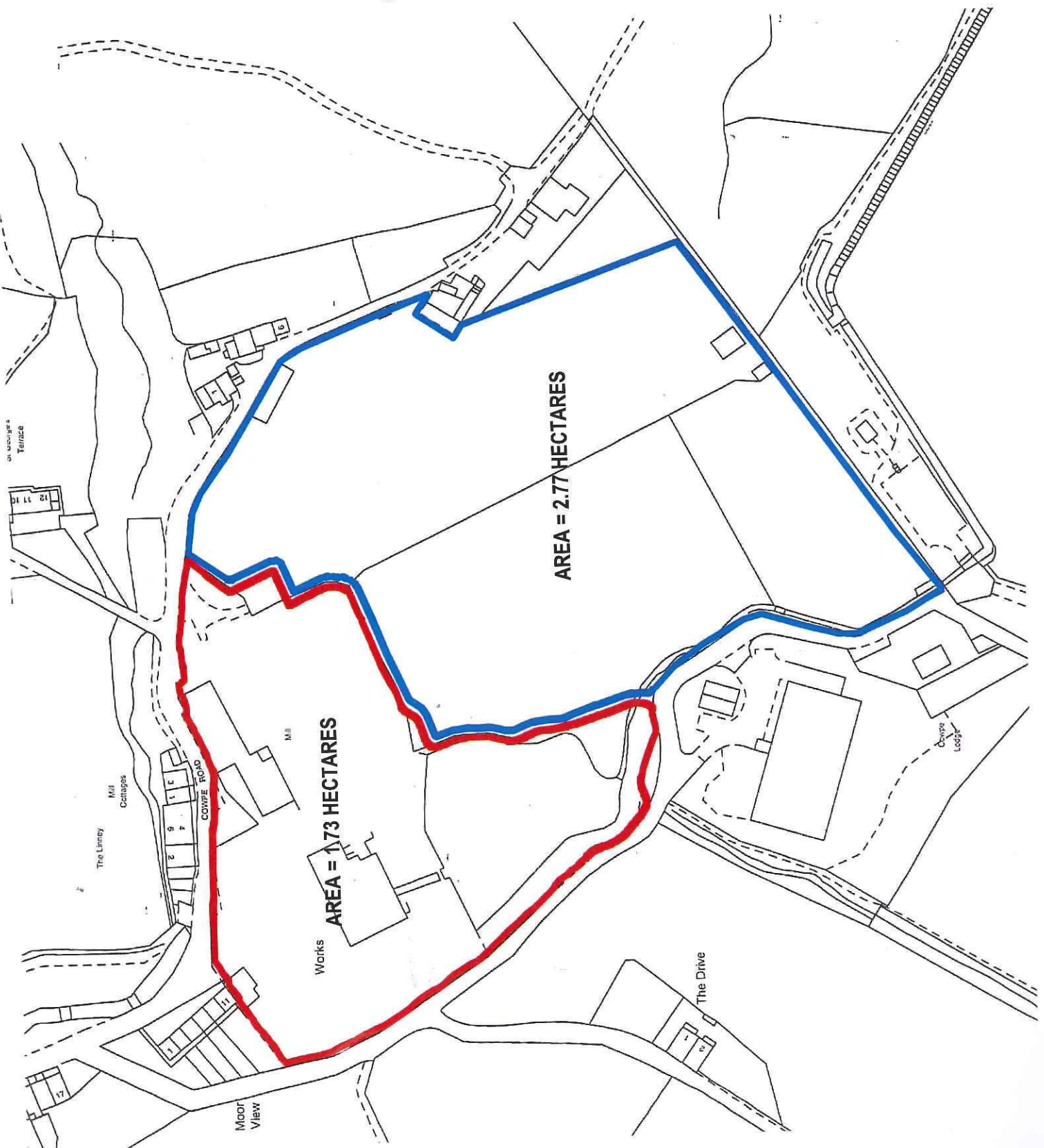
"1990 Act" means the Town and Country Planning Act 1990 as amended



“Application”	means the application for the proposed creation of 22 houses and access courts, together with proposals for landscaping, pedestrian access, stables and access to adjoining farm land registered by the Council on 17 February 2015 under reference 2015/0024
“Claim”	means a claim which may be submitted to HMRC for Land Remediation Relief pursuant to the Corporation Tax Act 2009;
“Commencement of Development”	means the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “Commence Development” shall be construed accordingly
“Contribution”	means a sum up to a maximum of £122,200 (one hundred and twenty two thousand two hundred pounds) equal to the amount of tax saving which would be achievable by the Owner if a Claim were to be submitted by the Owner and approved by HMRC, such sum to be calculated as 20% of the Qualifying Land Remediation Expenditure
“Development”	means the development proposed by the Application
“Dwelling”	means a dwelling (including a house flat or maisonette) falling (for the avoidance of doubt) within Class C3 of the Town and Country Planning (Use Classes) Order 1987 which is to be constructed pursuant to the Planning Permission and reference to “Dwellings” shall be construed accordingly
“Highway Contribution”	means the sum of £10,000 (ten thousand pounds) to be paid to the Council for the provision of off-site traffic calming measures and traffic safety works in the vicinity of the Site
“HMRC”	means Her Majesty’s Revenue & Customs or any statutory successor thereto
“Interest”	means interest at 2% above the base lending rate of Barclays Bank plc from time to time

"Index"	All items Index of Retail Prices issued by the Office for National Statistics (All in Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation)
"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 existing mill pond, its immediate environs and the pathway around the existing mill pond, for the benefit of residents of the Development and local neighbourhood for informal recreation and for the benefit of wildlife
"Occupation"	means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations
"Plan 1"	means the plan annexed to this Deed marked "Plan 1"
"Plan 2"	means the plan annexed to this Deed marked "Plan 2"
"Plan 3"	means the plan annexed to this Deed marked "Plan 3"
"Planning Permission"	means the planning permission which the Council has resolved to grant pursuant to the Application
"Qualifying Land Remediation Expenditure"	has the meaning set out in section 1144 of the Corporation Tax Act 2009
"Site"	means the land at Kearns Mill, Cowpe Road, Waterfoot, Cowpe shown edged red on Plan 1
"Working Day"	means any day of the week other than Saturday Sunday or any bank holiday

## **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.



Revision:	Date:	Drawn:	Checked:
<b>PLANNING ISSUE</b>			
Project: New Build Residential Development Kearns Mill Cowpe Road, Waterfoot			
Client: Skipton Properties			
Location Plan			
Job No:	3901-005	Drawing No:	PL02
Date:	19/02/2013	Scale:	1:1250@A3
		Drawn:	TES
		Checked:	RPM
CAD Ref: P:3901-005\CAD			
Note: Do not scale from this drawing. All dimensions to be checked on-site.			
Watson Batty Architects Limited Shires House, Shires Road Guiseley, Leeds LS20 8EU T: 01943 876 665 F: 01943 882 300 E: enquiries@watsonbatty.com W: www.watsonbatty.com			
 <b>WATSON BATTY</b> architects			
 Redefining space • delivering the vision			

HOUSE TYPE	FLOOR AREA
2No - THE ERMYSTYED - TYPE A - 4BED 2 STOREY DETACHED	1399.3 SQ.FT.
1No - THE WHITTAKER - TYPE B - 4BED 2 STOREY DETACHED	1612.5 SQ.FT.
9No - THE IRWELL - TYPE C - 4BED 3 STOREY SPLIT LEVEL	1786.7 SQ.FT.
3No - THE COWPE - TYPE D - 4BED 3 STOREY SPLIT LEVEL	1998.0 SQ.FT.
2No - THE RAWSTORNE - TYPE E - 4BED 3 STOREY SPLIT LEVEL	2027.0 SQ.FT.
1No - THE JACKSON - TYPE F - 5BED 3 STOREY SPLIT LEVEL	2292.0 SQ.FT.
1No - THE COACH HOUSE ONE - TYPE G - 5BED 2 STOREY DETACHED	2230.2 SQ.FT.
1No - THE COACH HOUSE TWO - 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.

SCHEME TOTAL = 22 UNITS

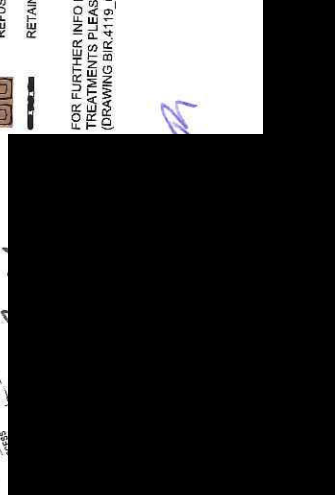
- SITE AREA  
1.73 HECTARES
- PARKING  
43 - PRIVATE PARKING SPACES  
37 - GARAGE SPACES
- EXTERNALS SCHEDULE  
1.8M HIGH TIMBER HIT & MISS FENCE  
1.5M HIGH TIMBER HIT & MISS FENCE  
REFUSE BINS  
RETAINING WALLS

FOR FURTHER INFO REGARDING TO SOFT LANDSCAPING & BOUNDARY TREATMENTS PLEASE REFER TO PEGASUS LANDSCAPE DESIGN PLAN (DRAWING BIR.4119\_01B)



### PLANNING ISSUE

Project	
New Build Residential Development Keams Mill Cowper Road, Waterfoot	
Client: Slipton Properties	
Proposed Site Plan	
Job No:	3901-005
Drawing No:	PL03
Drawn By:	CD
Checked By:	CD
Notes: Do not scale from this drawing. All dimensions to be checked on site.	
Watson Batty Architects Limited Shire House, Shire Road Gunsley, Leeds LS20 9TU T: 0143 876 665 F: 0143 876 666 E: enquiries@watsonbatty.com W: www.watsonbatty.com	
 <b>WATSON BATTY</b> architects	
realising space • delivering the vision	



**SCHEDULE OF ACCOMMODATION**

HOUSE TYPE	FLOOR AREA
2 No - THE BRANSTAD - TYPE A - 4BED 2 STOREY DETACHED	1233.3 SQ.FT.
1 No - THE WHITTAKER - TYPE B - 4BED 2 STOREY DETACHED	1012.8 SQ.FT.
8 No - THE IRWELL - TYPE C - 4BED 3 STOREY SPLIT LEVEL	1766.7 SQ.FT.
3 No - THE COWPE - TYPE D - 4BED 3 STOREY SPLIT LEVEL	1988.0 SQ.FT.
2 No - THE RAWSTORNE - TYPE E - 4BED 3 STOREY SPLIT LEVEL	2027.0 SQ.FT.
1 No - THE JACKSON - TYPE F - 5BED 3 STOREY SPLIT LEVEL	2262.0 SQ.FT.
1 No - THE COACH HOUSE ONE - TYPE G - 5BED 2 STOREY DETACHED	2230.2 SQ.FT.
1 No - THE COACH HOUSE TWO - TYPE H - 5BED 2 STOREY DETACHED	2391.7 SQ.FT.
1 No - THE GATE HOUSE - TYPE J - 3BED 2 STOREY END TERRACE	1564.0 SQ.FT.
1 No - THE DAVITT - TYPE K - 4BED 2 STOREY DETACHED	1599.0 SQ.FT.
<b>SCHEME TOTAL = 22 UNITS</b>	

**SIDE AREA**  
1.73 HECTARES

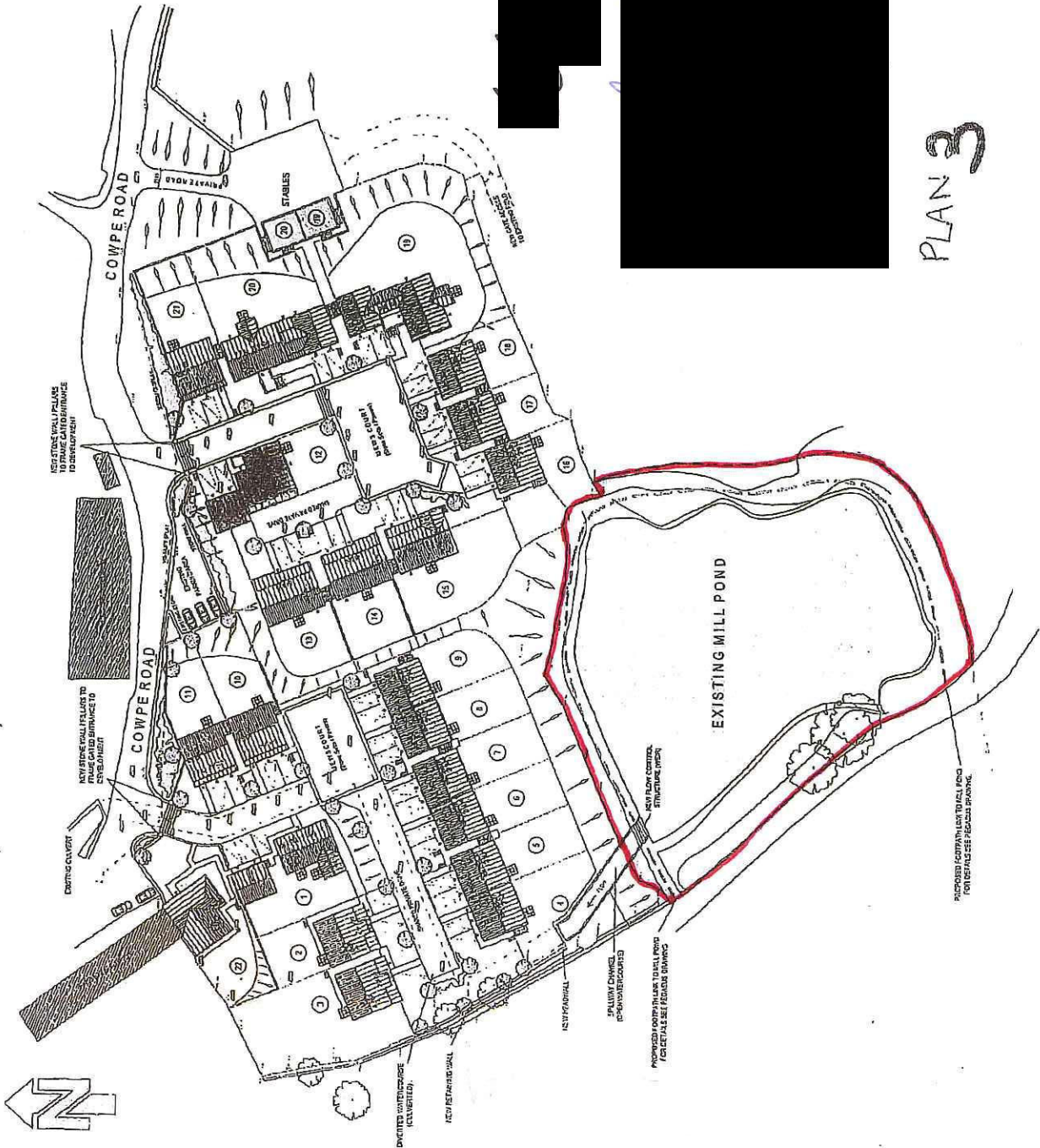
**PARKING**  
43 - PRIVATE PARKING SPACES  
37 - GARAGE SPACES

**EXTERNALS SCHEDULE**  
1.1M HIGH TIMBER HIT & MISS FENCE  
1.5M HIGH TIMBER HIT & MISS FENCE  
REFUSE BINS  
RETAINING WALLS

FURTHER INFO REGARDING TO SOFT LANDSCAPING & BOUNDARY TREATMENTS PLEASE REFER TO PREVIOUS LANDSCAPE DESIGN PLAN DRAWING BIR4119\_01B



<b>PLANNING ISSUE</b>	
Project	New Rich Residential Development
Client	Keene Ltd Comps Road, Waterford
Drawn	Sharon Fitzgerald
Checked	Planned Site Plan
Date	20/01/2015
Drawn By	Sharon Fitzgerald
Checked By	Sharon Fitzgerald
Scale	1:500
Project No	3801-005
Client Ref	PL03
Project Name	Comps Road, Waterford
Project Address	Comps Road, Waterford
Project Description	New Residential Development
Project Status	Approved
Project Location	Comps Road, Waterford
Project Contact	Sharon Fitzgerald
Project Phone	01924 386 025
Project Email	sharon@watsonbatty.com
Project Website	www.watsonbatty.com
Project Logo	



PLAN 3

- 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 section 106 of the 1990 Act section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011 and all other enabling powers to the intent that it is enforceable against any person deriving title to the Site from through or under the Owner.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act which bind the Site and are enforceable by the Council as local planning authority against the Owner.

### **4. CONDITIONALITY**

- 4.1 This Deed shall take effect upon the date hereof but the covenant from the Owner in clause 5 of this Deed is conditional upon:
- 4.1.1 the grant of the Planning Permission; and
- 4.1.2 the Commencement of Development.

### **5. THE OWNER'S COVENANT**

- 5.1 The Owner covenants with the Council as set out in the First Schedule.

### **6. MISCELLANEOUS**

- 6.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 6.2 This Deed shall be registrable as a local land charge by the Council.
- 6.3 This Deed is given on the condition that following the performance and satisfaction of all the obligations contained in this Deed and upon the written request of the Owner the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed



- 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 (insofar only as it has not already been complied with) if the Planning 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 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed:
- (a) to the extent that such breach relates to any part of the Site in which that person has no interest; and/or
  - (b) which occurs after it shall have parted with its interest in the Site or if it be part only the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest for which it shall continue to be liable
- 6.7 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 6.8 The Owner shall pay to the Council on completion of this Deed the reasonable legal and administrative costs in the preparation and negotiation of this Deed in the sum of £200.

## **7. JURISDICTION**

- 7.1 This Deed is governed by and interpreted in accordance with the law of England and Wales.

## **8. DELIVERY**

- 8.1 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.

## **9. MORTGAGEE'S CONSENT**

- 9.1 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 this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

## **10. DISPUTES**

- 10.1 Where the parties are in dispute or disagreement as to their respective rights duties or obligations or as to the failure of the Council to give or confirm its consent where required under this Deed or as to any other matter or thing

arising out of or connected with this Deed then the parties shall use their reasonable endeavours to resolve the same within 20 Working Days of the dispute or disagreement arising.

- 10.2 Failing the resolution of any such dispute or disagreement within the said 20 Working Days the dispute or disagreement may be referred for determination in accordance with the provisions of this clause 10 on the reference of either of the parties to the dispute or disagreement.
- 10.3 The dispute or disagreement shall be referred to the decision of an independent and suitable person unconnected to any of the parties and appropriately qualified to deal with the subject matter of the dispute or disagreement ("the Expert") who shall either be jointly appointed by the parties within a period of 10 Working Days following a failure of the parties to resolve the dispute or disagreement pursuant to clause 10.2 above or failing agreement on such nomination appointed by the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute.
- 10.4 The determination of the Expert (including any determination as to the responsibility for payment of his costs and those of the parties) shall be final and binding upon the parties.
- 10.5 The reference shall be deemed to be a reference to any expert (and not an arbitrator).
- 10.6 The terms of reference of the Expert shall include the following:
  - (a) he shall call for representations from all parties within 10 Working Days of a reference to him under this Deed and shall require the parties to exchange representations within this period;
  - (b) he shall allow the parties 10 Working Days from the expiry of the 10 Working Days referred to in sub-clause (a) above to make counter representations;
  - (c) any representations or counter representations received out of time shall be disregarded by the Expert;
  - (d) he shall provide the parties with a written decision (including his reasons) within 10 Working Days of the last date for receipt of counter-representations;
  - (e) he shall be entitled to call for such independent expert advice as he shall think fit; and
  - (f) each party shall bear its own costs save for the Expert's fees and the costs of any independent expert's advice called for by the Expert, both of which shall be included in the Expert's award.

## **11. INTEREST**

- 11.1 If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

**12. INDEXATION**

- 12.1 Any sum referred to in the First Schedule shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which the sum is payable.

**EXECUTED AS A DEED** by the Owner and the Mortgagee on the day and year first hereinbefore appearing

**FIRST SCHEDULE**  
The Owner's Covenants

The Owner covenants with the Council in the following terms:

1. The Owner shall pay the Highway Contribution to the Council prior to the Occupation of the 8<sup>th</sup> Dwelling.
2. Prior to the Occupation of the Dwellings on Plots 4 to 9 the Owner shall construct a bound gravel pathway with pegged timber edges around the existing mill pond within the Site in the approximate location indicated by a red dashed line on Plan 2 and shall maintain it thereafter.
3. Prior to the Occupation of 75% of the Dwellings 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 existing mill pond and its immediate environs, including the pathway around the existing mill pond within the Site.
4. The Owner shall submit to the Council a schedule of all works which the Owner considers are eligible for Qualifying Land Remediation Expenditure ("the Schedule of Expenditure") prior to the Occupation of 8 Dwellings.
5. The Schedule of Expenditure shall be submitted to the Council by guaranteed delivery and shall be deemed to have been received by the Council on the day after its due submission to the Council.
6. The Council and the Owner will use all reasonable endeavours to agree the Schedule of Expenditure within four weeks from receipt or deemed receipt of the Schedule of Expenditure by the Council.
7. If the Council fails to respond in writing to the Owner with its approval or disapproval of the Schedule of Expenditure within four weeks of the date of receipt or deemed receipt of the Schedule of Expenditure, then the Schedule of Expenditure will be deemed approved by the Council.
8. If no agreement is reached between the Council and the Owner on the Schedule of Expenditure then the matter may be referred to an Expert pursuant to clause 10.3 of this Deed in which case paragraph 9 of this Schedule shall apply once the Expert has issued his decision. The Council agrees the Owner may continue with construction of the Development notwithstanding determination of the Schedule of Expenditure has then to be determined.
9. The Owner shall pay the Contribution to the Council within two months of the date of approval or deemed approval of the Schedule of Expenditure.

**EXECUTED as a DEED**  
by **BRIAN VERITY** as Trustee  
of the Skipton Properties Pension Scheme  
in the presence of:

Witness Signature [Redacted]  
Witness Name *Judi Ogden*  
Witness Address [Redacted]  
Witness Occupation *PA*

**EXECUTED as a DEED**  
by **LINDA MARY VERITY** as Trustee  
of the Skipton Properties Pension Scheme  
in the presence of:

Witness Signature [Redacted]  
Witness Name *Judi Ogden*  
Witness Address [Redacted]  
Witness Occupation *PA*

**EXECUTED as a DEED**  
by **SARAH LOUISE BARRACLOUGH** as Trustee  
of the Skipton Properties Pension Scheme  
in the presence of:

Witness Signature [Redacted]  
Witness Name *Judi Ogden*  
Witness Address [Redacted]  
Witness Occupation *PA*

**EXECUTED as a DEED**  
by **CAROLINE ELIZABETH VERITY** as Trustee  
of the Skipton Properties Pension Scheme  
in the presence of:

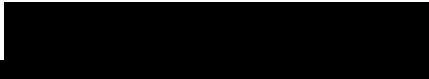
Witness Signature [Redacted]  
Witness Name *Judi Ogden*  
Witness Address [Redacted]  
Witness Occupation *PA*


**EXECUTED as a DEED**  
by **ROBERT GRAHAM TRUSTEES LIMITED** as Trustee  
of the Skipton Properties Pension Scheme  
in the presence of:



Witness Signature   
Witness Name *ADRIAN RUIE*  
Witness Address   
Witness Occupation *ACTUARY*

**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 orney *STEVEN WILLMOTT*  
*DOCUMENTOR*  
*CREDIT DOCUMENTATION.*  
Witness Name: *SALLY TAYLOR*  
Witness Address: *The Royal Bank of Scotland Group*  
