

DATED

10th July

2020

**THE TRUSTEES OF REPLAN (UK) LIMITED RETIREMENT BENEFIT SCHEME and
PAUL GOODWIN**

AND

THE COUNCIL OF THE BOROUGH OF KIRKLEES

PLANNING AGREEMENT

Under Section 106 of the Town and Country

Planning Act 1990 relating to land

off Woodhead Road, Honley, Holmfirth

THIS AGREEMENT is made on

10th July

2020

BETWEEN

- (1) **FELIX TIMOTHY EATON** of ~~MW House, 1 Penman Way, Grove Park, Enderby, Leicester LE19 1ST~~ and **MW TRUSTEES LIMITED** (Co. Regn. No. 02630203) of 1 New Walk Place, Leicester, LE1 6RU as the **TRUSTEES OF REPLAN (UK) LIMITED RETIREMENT BENEFIT SCHEME** and **PAUL GOODWIN** of ~~MW House, 1 Penman Way, Grove Park, Enderby, Leicester LE19 1ST~~. (hereinafter referred to as "the Owner")

Honeyhouse, 3 St Marys Road, Honey, Holmfirth, HD9 6AZ

96 Huddersfield Road, Holmfirth, HD9 3AX.

AND

- (2) **THE COUNCIL OF THE BOROUGH OF KIRKLEES ("Council")** of Town Hall Huddersfield HD1 2TA (hereinafter referred to as "the Council")

BACKGROUND

- A The Council is the local planning authority for the purposes of the Town and Country Planning Act 1990 ("the Act") and is the authority by whom the obligations hereby created are enforceable
- B The Owner is the registered proprietor of the Site which is part of the land registered at HM Land Registry with title absolute under Title YY116678.
- C An Application has been made to the Council for Planning Permission for the Development.
- E The Council's Strategic Planning Committee resolved to grant the Planning Permission on 3 January 2019, subject *inter alia* to the completion of this Agreement.
- F This Agreement is made to ensure:
- (i) provision of affordable housing
 - (ii) the provision of a financial contribution towards educational facilities
 - (iii) the provision of a financial contribution towards off site play equipment.
 - (iv) the management and maintenance of sustainable urban drainage systems as part of the development.
 - (v) the provision of an access road to the edge of the Site before work commences on specific plots.

- G This Agreement creates planning obligations in favour of the Council pursuant to Section 106 of the Act (and all other enabling powers) and the Owner is to be bound by and observe and perform the covenants as detailed in this Agreement.

1. **DEFINITIONS**

"Act" means the Town and Country Planning Act 1990 (as amended);

"Affordable Dwellings" means the Affordable Rent Dwellings and Intermediate Dwellings to be provided as part of the Development pursuant to paragraph 2.1 of Schedule 1;

"Affordable Housing" has the meaning given to it by Annex 2 of the NPPF;

"Affordable Rent Dwelling" means a dwelling comprising affordable housing for rent as defined in paragraph (a) of the definition of Affordable Housing contained in glossary at Annex 2 of the NPPF;

"Application" means the Planning Application with reference No. 2017/92568;

"Development" means the development of the Site as more particularly described in the Application;

"Education Contribution" means the sum of £134,026 (one hundred and thirty four thousand and twenty six pounds) to be paid by the Owner to the Council for the purpose of providing additional school places within the Council's primary school planning area for Honley and Meltham;

"Financial Contribution" means the payment that may be made by the Developer in lieu of the provision of on-site Affordable Dwellings (or a full complement thereof) calculated as a financial contribution to the equal value of median build costs for Kirklees recognised by the RICS Build Cost Information Service (BCIS) in respect of the relevant Affordable Dwellings **PROVIDED THAT** such sum shall only be payable in respect of those Affordable Dwellings;

"Implementation" means the implementation of the Development by the carrying out of a material operation pursuant to the planning permission granted pursuant to the Application (as such term is defined in section 56(4) of the Act) which is not a Preparatory Operation;

"Inspection and Certification Charge" means the sum of £1,000 (one thousand pounds) towards the administrative costs of the Council in inspecting the laying out and completion of POS 2 and certifying that such works have been completed in accordance with paragraph 9 of Schedule 1;

“Intermediate Dwelling” means a dwelling comprising a starter home, discounted market sales housing or other affordable routes to home ownership as defined in paragraphs (b), (c) and (d) of the definition of Affordable Housing contained in glossary at Annex 2 of the NPPF;

“Management Company” means a body or bodies established or nominated by the Owner for the long term maintenance and management of the SUDS and/or POS 2 (as the context requires) in accordance with the details which are to be submitted and approved pursuant to paragraph 8 of Schedule 1;

“Market Dwellings” means those dwellings within the Development excluding the Affordable Dwellings;

“NPPF” means the National Planning Policy Framework published by the Ministry for Housing, Communities and Local Government (February 2019) or any modification or replacement thereof in force from time to time;

“Occupation and Occupied” means occupation for the purposes permitted by the Planning permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupancy in relation to security operation and **“Occupy”** shall be constructed accordingly;

“Off Site Children’s Play Facilities Contribution” means the sum of £102,374 (one hundred and two thousand three hundred and seventy four pounds) to be paid by the Owner to the Council for the purpose of providing or improving children’s play facilities at Jagger Lane Recreation Ground, Honley and/or Brockholes Recreation Ground;

“Planning Permission” means planning permission granted pursuant to the Application;

“Plots 31 to 59” means plots 31 to 59 within the Development which are numbered as such on Drawing Number 2169 - 106 annexed hereto;

“POS 2” means that part of the Site which is edged red and identified as “POS 2 – NATURAL PLAY SPACES POS” on Drawing Number 2169-72 attached to this Agreement;

“Preparatory Operation” means any of the following operations or any item of work ancillary thereto:

- (i) archaeological investigation; or
- (ii) demolition; or

- (iii) site clearance; or
- (iv) site or soil investigation; or
- (v) site remediation works; or
- (vi) the laying of services; or
- (vii) temporary works including the erection of temporary fencing and hoardings;

"Registered Provider" means a registered provider, registered social landlord or a housing association or similar organisation registered in accordance with Section 80 of the Housing and Regeneration Act 2008 or such equivalent or replacement body with the main objective of providing Affordable Housing;

"Schedule" means Schedule 1 to this Obligation;

"Site" means all that land situated off Woodhead Road, Honley, Holmfirth which is more particularly shown edged red on Drawing Number 2169-LOC attached to this Deed and registered under Title Numbers Title WYK680361;

"Sustainable Travel Contribution" means the sum of £10,000 such sum to be paid to the Council for the purposes of upgrading Bus Stop Number 19149 on Woodhead Road/Robinson Lane immediately south of the Site;

"SUDS" means the sustainable urban drainage system to be provided as part of the Development which may comprise any of the following: balancing ponds, swales, ditches, flood alleviation and surface water and ground water drainage features;

"Superstructure" has the meaning given to it by the BCIS Elemental Standard Form of Cost Analysis (4th (NRM) Edition);

"Yorkshire Water" means Yorkshire Water of Western House, Halifax Road, Bradford, BD6 2SZ or such other body exercising the statutory functions of a water undertaker for the purposes of the Water Industry Act 1991 from time to time in respect of the area within which the Site is situated.

2. INTERPRETATION

- 2.1 References to any party shall include the successor in title of that party and those deriving title through that party and, in the case of the Council, the successors in title to its functions as local planning authority
- 2.2 Words importing the singular shall include the plural and vice versa
- 2.3 Construction of this Agreement shall ignore headings and the front sheet (all of which are for reference only)

- 2.4 Unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Obligation and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule
- 2.5 Any reference to any statutory provision shall be deemed to include any subsequent re-enactment or amending provision
- 2.6 An obligation to do something includes an obligation to procure it to be done
- 2.7 An obligation not to do something includes an obligation not to allow it to be done
- 2.8 Where two or more people form a party to this Agreement, the obligations they undertake may be enforced against them all jointly or against each of them individually.
- 2.9 If any provision of this Agreement is held to be illegal invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement is to be unaffected.

3. LEGAL EFFECT

- 3.1 This Agreement is a planning obligation made in pursuance of Section 106 of the Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and is entered into by the Owner as the freehold owner of the Site and by the Council
- 3.2 This Agreement constitutes a deed
- 3.3 This Agreement is enforceable by the Council as local planning authority
- 3.4 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions in relation to the Site or otherwise
- 3.5 No person will be liable for any breach of the terms of this Agreement occurring after the date on which they part with their interest in the Site or the part of the Site in respect of which such breach occurs, but they will remain liable for any breaches of this Agreement occurring before that date
- 3.6 The obligations contained herein shall only take effect on Implementation unless specifically indicated otherwise
- 3.7 If the Planning Permission granted pursuant to the Application shall expire before Implementation or shall at any time be revoked or quashed then this Agreement shall be determined and shall have no further effect

- 3.8 Subject to clauses 3.5 and 3.6 above and clause 3.18 below with the intention of binding the Site, the Owner covenants with the Council in the terms set out in Schedule 1
- 3.9 The perpetuity period under the rule against perpetuities, if applicable to this agreement, shall be the period of 80 years from the date of this agreement.
- 3.10 A person who is not a party to this Agreement save as hereinbefore mentioned shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this obligation. This clause does not affect any right or remedy of any person which exists or is available otherwise than in pursuance to that Act.
- 3.11 Nothing in this Agreement shall prohibit or limit the right to develop all or any part of the Site in accordance with a planning permission (other than the Planning Permission to be issued pursuant to the Application) granted after the date of this Agreement.
- 3.12 The parties hereto are satisfied that (where applicable) the provisions of this Agreement comply with the requirements of regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010 and, accordingly, the parties affirm that the planning obligations contained in this Agreement are necessary to make the Development acceptable in planning terms, directly related to the Development and fairly and reasonably related in scale and kind to the Development
- 3.13 The provisions of this Agreement shall not be enforceable against such successors in title to the Owner as owners or occupiers of individual dwellings within the Development
- 3.14 This Agreement may be registered as a local land charge in the Register of Local Land Charges maintained by the Council
- 3.15 The Owner confirms that the Owner has the sole proprietary interest in the Application Site and that there are no third party interests which would require any other party to give consent to this Agreement
- 3.16 The Owner agrees with the Council that with the exception of the sums payable pursuant to paragraphs 1, 2.7 and 10 of Schedule 1 any sums payable by the Owner under this Agreement shall be increased by the application of the formula $A = B \times C/D$ where:
- (i) A is the sum actually payable on the date on which it falls due
 - (ii) B is the original sum mentioned in this Agreement

- (iii) C is the General Index of Retail Prices (All Items) for the month 2 months before the date on which it falls due
 - (iv) D is the General Index of Retail Prices (All Items) for the month 2 months before the date of this Agreement
- 3.17 The Owner agrees with the Council to pay interest on sums due to the Council under this Agreement but not paid on the due date from that date until actual payment. The rate of interest shall be 4% above Barclays Bank plc's base rate.
- 3.18 The liability of MW Trustees Limited shall be limited to the extent of the assets for the time being of the Replan (UK) Limited Retirement Benefits Scheme and further MW Trustees Limited shall have no such liability after it ceases to be trustee of the Replan (UK) Limited Retirement Benefits Scheme.

4. COUNCIL'S COVENANTS WITH THE OWNER

- 4.1 The Council hereby covenants with the Owner to use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the Council shall agree in writing.
- 4.2 The Council shall provide to the Owner such evidence as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Deed within 20 Working Days of receipt of such request.
- 4.3 At the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.
- 4.4 The Council shall within 5 years from the date on which each contribution is paid, issue to the Owner (which for the purposes of this clause shall mean the original paying party only) an account setting out details of how each such contribution has been expended.
- 4.5 If or to the extent that the contribution has not been applied by the Council for the purpose specified in this Agreement within 5 years from the date on which it was paid then such contribution shall be repaid forthwith by the Council to the Owner together with any interest accrued thereon from the date of payment by the Owner to the date of repayment by the Council.

- 4.6 Where this Agreement provides that approval consent or expression of satisfaction is required by the Owner from the Council such agreement approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed by the Council.

SCHEDULE 1

THE OWNER'S OBLIGATIONS

- 1 Upon completion of the Agreement the Owner is to pay the Council its reasonable and proper legal costs in connection with the preparation negotiating and completion of the Agreement up to a maximum sum of £1,000 (one thousand pounds).
- 2 The Owner further covenants with the Council as follows:
 - 2.1 To construct seven Affordable Rent Dwellings at Plots 1-5 and Plots 21-22, and five Intermediate Dwellings at Plots 23-25 and Plots 39-40 as part of the Development.
 - 2.2 Not to permit or allow in excess of 50% of the Market Dwellings to be Occupied until seven of the Affordable Dwellings have been constructed in accordance with paragraph 2.1 above and made available for sale to a Registered Provider or a purchaser for their own occupation and not to permit or allow in excess of 75% of the Market Dwellings to be Occupied until all twelve of the Affordable Housing Dwellings have been constructed in accordance with paragraph 2.1 above and made available for sale to the Registered Provider or a purchaser for their own occupation.
 - 2.3 To Construct the Affordable Dwellings to Homes England design and quality standards or Housing Corporation scheme development standards (or such other standards as may be agreed between the Developer and the Registered Provider) in accordance with the Planning Permission and approved plans unless otherwise agreed with the Registered Provider.
 - 2.4 If the Registered Provider shall not confirm in writing to the Owner its willingness subject to contract to purchase some or all of the Affordable Dwellings within twelve (12) calendar months of Implementation then the Council upon receipt of notice in writing from the Owner to that effect shall as soon as reasonably practicable nominate an another Registered Provider and this provision may be repeated as often as is necessary (subject to paragraph 2.5 below) until such time as one of the nominated Registered Providers shall have confirmed its willingness subject to contract to purchase the relevant Affordable Dwellings.
 - 2.5 If no Registered Provider shall have confirmed its willingness subject to contract to purchase some or all of the Affordable Dwellings within a period of twenty four (24) calendar months from Implementation or such other period agreed between the Owner and the Council and the Owner shall have produced evidence in writing no later than the period referred to in paragraph 2.4 above to the reasonable satisfaction of the Council that it has made all reasonable but commercially prudent endeavours to secure acceptance of the relevant Affordable Dwellings by another

Registered Provider then the Owner will be free to offer such Dwellings for sale on the open market but the provisions of paragraph 2.7 shall apply.

- 2.6 If the Registered Provider after confirming its willingness to purchase the Affordable Dwellings does not then enter into a contract to buy the Affordable Dwellings within two (2) months from the delivery of the complete package of contract documentation to the Registered Provider's solicitor or the Solicitor of another Registered Provider or such other period as agreed between the Owner and the Council (such agreement not to be unreasonable withheld or delayed) then:-

- i if a period of twenty four (24) calendar months from the Implementation has expired the Owner will be free to offer the Affordable Dwellings for sale on the open market but the provisions of paragraph 2.7 below shall apply.
- ii in any other circumstances the provisions of paragraphs 2.4 and 2.5 shall continue to apply.

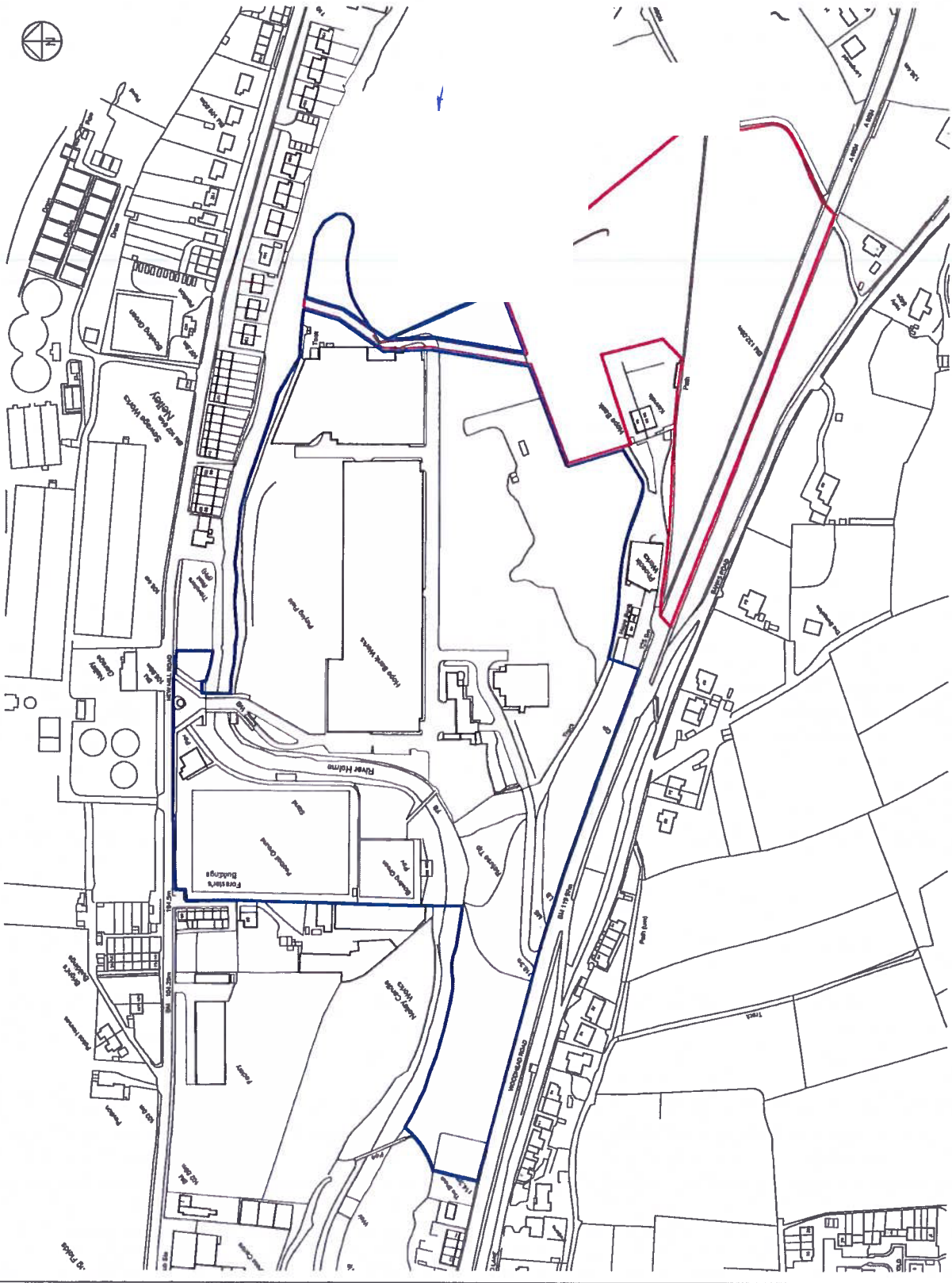
- 2.7 In the event that the Owner is free to offer the relevant Affordable Dwelling(s) for sale on the open market pursuant to paragraph 2.5 or 2.6 hereof the Owner shall within twenty eight (28) days of the sale thereof pay to the Council the Financial Contribution which is due in respect of those Affordable Dwelling(s).

- 3. The Owner covenants not to cause or permit Occupation of more than 50% of the Market Dwellings until the Education Contribution has been paid to the Council; and
- 4. The Owner covenants not to cause or permit Occupation of more than 50% of the Market Dwellings until the Off-Site Children's Play Facilities Contribution has been paid to the Council.
- 5. The Owner covenants to pay the Sustainable Travel Contribution to the Council prior to first Occupation of any Dwellings.
- 6. The Owner covenants to construct to base course level that part of the internal access road shown shaded red on Drawing 2169 - 106 annexed hereto up to the eastern boundary of the Site prior to the commencement of the construction of the Superstructure of any of Plots 31 to 59.
- 7. Prior to first Occupation of any Dwellings to provide the Council with either written evidence which confirms the agreement of Yorkshire Water to adopt the SUDS or, in the absence of such written evidence, confirmation in writing that in the absence of or pending such adoption by Yorkshire Water the SUDS will be managed and maintained by a Management Company.

8. Prior to the first Occupation of any Dwellings the Owner shall submit for the Council's written approval:
 - (i) details of the identity of the Management Company which it is proposed will manage and maintain POS 2 and (if applicable) the SUDS including its corporate structure and governing rules; and
 - (ii) the standard of maintenance of POS 2 and (if applicable) the SUDS together with the funding mechanism proposed in order to cover the costs of maintaining POS 2 and (if applicable) the SUDS to such a standard.
9. The Owner covenants to lay out and complete POS 2 in accordance with Drawing Number 2169-72 and as part of the Development no later than the commencement of the construction of the Superstructure of any of Plots 31 to 59.
10. Upon the completion of the laying out of POS 2 pursuant to paragraph 9 of this Schedule above the Owner shall notify the Council in writing that such works have been completed and shall pay to the Council the Inspection and Certification Charge.
11. Upon receipt of the Inspection and Certification Charge and not later than one calendar month following receipt of the relevant notice referred to in paragraph 10 above the Council shall inspect POS 2 and if POS 2 has been completed in accordance with paragraph 9 of this Schedule 1 then the Council shall notify the Owner to this effect in writing.
12. If upon inspection of POS 2 by the Council pursuant to paragraph 11 above POS 2 the Council considers that POS 2 has not been completed in accordance with paragraph 9 of this Schedule 1 then the Council shall notify the Owner in writing to this effect and shall specify the measures which the Council considers to be reasonably necessary in order to comply with paragraph 9 of this Schedule 1.
13. Upon receipt of a notice from the Council pursuant to paragraph 12 of this Schedule 1 the Owner shall within such reasonable period as is specified by the Council carry out those works and shall notify the Council of their completion pursuant to paragraph 10 of this Schedule 1 (such procedure being repeated as often as is necessary until such time as the Council issues its notice pursuant to paragraph 11 of this Schedule 1).
14. The Owner shall manage and maintain POS 2 and (if applicable) the SUDs in accordance with the details approved by the Council pursuant to sub-paragraph 8 of this Schedule 1 above and in any event shall not cause or permit the first Occupation of more than 75% of the Dwellings until such time as POS 2 and (if applicable) the

SUDS (or responsibility for the management and maintenance thereof) has been transferred to the Management Company approved by the Council.

15. Any transfer of or contract for the management and maintenance of POS 2 and/or (if applicable) the SUDS shall contain the following covenants:
- (a) not to build or allow or suffer to be built any buildings or structures of any kind on the SUDS and/or POS 2 (as the context requires) unless otherwise agreed in writing by the Owner and the Council;
 - (b) not to use the SUDS for any purpose other than for the sustainable drainage of the Development and/or not to use POS 2 for any purpose other than as public open space (as the context requires);
 - (c) to carry out the inspection, maintenance and management of the SUDS and/or POS 2 (as the context requires) in accordance with the details approved by the Council pursuant to paragraph 8 of this Schedule 1 (or such other details as may be agreed in writing with the Council from time to time) and in the case of the SUDS only to do so unless and until such time as the same is adopted by Yorkshire Water.



LOCATION PLAN (SCALE 1:2500)

Only figured dimensions should be used.
Scaled dimensions should be checked with the Architect.
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PLANNING

Revision:

acumen
designers & architects
acumenarchitects.co.uk 01484 546000
Hedderow House, Old Lane Road, Huddersfield, HD1 1SG

CLIENT:

BMS GROUP

JOB TITLE:

Development at
WOOD HEAD ROAD,
HONLEY, HOLFIRTH

DRAWING TITLE:

LOCATION PLAN

DRAWN:

JA

DATE:

JULY 2017

CHECKED:

JC

SCALE:

1:2500 @ A3

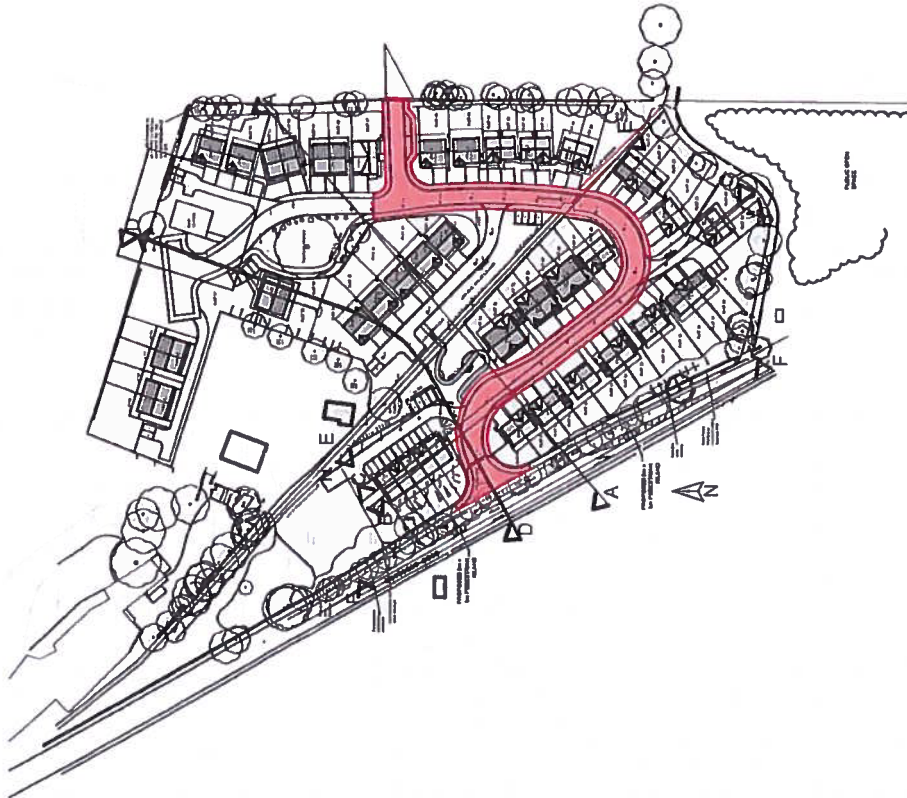
DRAWING NUMBER:

2168-LOC

2168-LOC

DRAWN: JF	DATE: SEP '18
CHECKED: JC	SCALE: 1:200 & 1:500 @ A2
DRAWING NUMBER:	2169 - 72

Only figured dimensions should be used.
Scaled dimensions should be checked with the Architect.
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PLANNING

Revision:

INTERNAL ACCESS ROAD PROVIDED AS REQUIREMENT OF
SECTION 106 AGREEMENT



acumen
designers & architects
acumenarchitects.co.uk
Headrow House, Old Leeds Road, Huddersfield, HD1 1SG
01484 546000

CLIENT: BMS GROUP	JOB TITLE: DEVELOPMENT @ WOODHEAD RD HONLEY	DRAWING TITLE: INTERNAL ACCESS PROVIDED AS REQUIREMENT OF SECTION 106 AGREEMENT	DRAWN BY: JF	DATE: OCT '19
			CHECKED BY: JC	SCALE: 1:2500 @ A4
			DRAWING NUMBER:	2169 - 106

IN WITNESS hereof the parties hereto have executed this Agreement on the date first before written

EXECUTED as a Deed by)
FELIX TIMOTHY EATON acting as Trustee of)
REPLAN (UK) LIMITED)
RETIREMENT BENEFIT SCHEME)
in the presence of:

.....
Signature of Witness

Name of Witness (in block capitals)

.....
Address of Witness

EXECUTED as a Deed by)
MW TRUSTEES LIMITED)
acting by two directors:)

.....
Signature of Director

.....
Signature of Director

EXECUTED as a Deed)
by **PAUL GOODWIN**)
in the presence of:)

.....
Signature of Witness

.....
Name of Witness (in block capitals)

.....
Address of Witness

THE CORPORATE COMMON)
SEAL OF THE COUNCIL OF)
THE BOROUGH OF KIRKLEES)
was hereunto affixed but not)
delivered until the date hereof)
in the presence of:-)



.....
~~Director - Legal Governance and Commissioning~~/Authorised Signatory