

PLANNING OBLIGATION

between

THE SCOTTISH BORDERS COUNCIL, constituted under the Local Government etc. (Scotland) Act 1994 and having their Council Headquarters at Newtown Saint Boswells, Melrose, the Planning Authority for the Scottish Borders area for the purposes of the Town and Country Planning (Scotland) Act 1997 (hereinafter referred to as the ("Planning Authority"))

and

JOHN FRANCIS SEED residing at [REDACTED] TRUSTEE AND PARTNER OF THE FIRM OF R. M. AND J. F. SEED, having a place of business at Cothill, Duns, TD10 6YW the heritable proprietor of the Land referred to in the agreement (who and whose successors as Heritable Proprietors of the Land hereinafter defined are hereinafter referred to as "the Developers")

and with the consent of

DAVID ARCHIBALD SEED, residing at Saturnia, Greenlaw, Berwickshire TD10 6YR and SANDRA JANE SEED, residing at Saturnia, Greenlaw, aforesaid as the assumed Partners of and Trustees for the said firm of R. M. and J. F. Seed.

1. This Planning Obligation is entered into in terms of Section 75, subject to Sections 75A, 75B and 75C, of the Town and Country Planning (Scotland) Act 1997 ("the Act") for the purpose of permanently restricting and regulating the development and use of ALL and WHOLE that area of land to the South of The Old Manse, Gavinton shown delineated in red on Plan 1 annexed and executed as relative hereto ("the Land"), being part and portion of the subjects more particularly described (Fifth) in, disposed by, delineated in red on the plan marked "C" annexed to the Disposition by Colonel The Honourable Thomas George Breadalbane Morgan Grenville Gavin of Langton with the consent of William Abel Towler in favour of William Robson Turnbull dated Second and Eleventh November and recorded in the Division of the General Register of Sasines for the County of Berwick on Fifth December all Nineteen hundred and twenty four.

REGISTERS OF SCOTLAND  
GENERAL REGISTER OF SASINES  
COUNTY OF BERWICK

YEAR 2016  
YEARLY RUNNING NUMBER  
PRESENTED AND RECORDED ON

238

11 JUL 2016

2. The Developer has lodged with the Planning Authority Planning Application Number 13/00332/FUL (the "Planning Application") seeking planning permission for the development of the Land for residential purposes, comprising the erection of fifty four dwellinghouses and associated infrastructure ("the Development").
  
3. The Developer shall provide as part of the Development thirteen dwellinghouses which shall be for the purposes of affordable housing (the "Affordable Housing Units"). The other dwellinghouses comprising the Development which are not the Affordable Housing Unit shall be known collectively as the "Market Units". The final location of the thirteen Affordable Housing Units shall be agreed as part of the Finalised Affordable Housing Scheme (hereinafter defined), but unless otherwise agreed, and authorised in writing by the Planning Authority, they shall be the:
  - (a) dwellinghouse on plot 7 shown delineated & hatched in red on Plan 2 annexed and executed as relative hereto;
  - (b) dwellinghouse on plot 8 shown delineated in red on the said Plan 2;
  - (c) dwellinghouse on plot 9 shown delineated & cross hatched in red on the said Plan 2;
  - (d) dwellinghouse on plot 15 shown delineated in dark blue on the said Plan 2;
  - (e) dwellinghouse on plot 16 shown delineated & cross hatched in dark blue on the said Plan 2;
  - (f) dwellinghouse on plot 21 shown delineated & cross hatched in light blue on the said Plan 2;
  - (g) dwellinghouse on plot 22 shown delineated & hatched in dark blue on the said Plan 2;
  - (h) dwellinghouse on plot 26 shown delineated in light blue on the said Plan 2;
  - (i) dwellinghouse on plot 27 shown delineated & hatched in light blue on the said Plan 2;
  - (j) dwellinghouse on plot 33 shown delineated & hatched in green on the said Plan 2;
  - (k) dwellinghouse on plot 34 shown delineated in purple on the said Plan 2;
  - (l) dwellinghouse on plot 53 shown delineated in green on the said Plan 2;
  - (m) dwellinghouse on plot 54 shown delineated & cross hatched in green on the said Plan 2;
  
4. The Planning Authority has agreed to grant the planning permission sought under the Planning Application upon certain conditions. These conditions have been agreed between the parties.

NOW THEREFORE THE PARTIES HAVE AGREED AND DO HEREBY AGREE AS FOLLOWS:-

- (a) The Developer has intimated to the Planning Authority that it is their intention to build the Development in a number of phases. At least two of the Affordable Housing Units

shall be delivered by the Developer as part of each phase, unless otherwise agreed in writing with the Planning Authority;

- (b) The Developer shall, prior to the commencement of works on the Development, submit to the Planning Authority their written proposals for the phasing of the building of the Development (the "Phasing Proposal"), with each phase comprising a number of Market Units and, with the exception of one of the proposed Phases, at least two Affordable Housing Units. The Phasing Proposal shall:
- (i) state which of the fifty four dwellinghouses on the Development are proposed to form each phase of the Development;
  - (ii) state for each phase of the Development which of the dwellinghouses are proposed to be Market Units and which are proposed to be Affordable Housing Units;
- (c) The Planning Authority shall, within 20 working days of receipt of the Phasing Proposal, provide written confirmation to the Developer as to whether the Phasing Proposal is acceptable or not acceptable (the "Phasing Proposal Response"). If no Phasing Proposal Response is received by the Developer within said period of 20 working days the Phasing Proposal shall automatically be deemed to comprise acceptable phasing proposals and that Phasing Proposal is agreed by the Planning Authority such that it shall comprise the Finalised Phasing Scheme (as after defined) In the event that the Planning Authority determines that the Phasing Proposal:
- (i) does not comprise acceptable phasing proposals, then the Planning Authority, acting reasonably shall set out in the Phasing Proposal Response why it is not acceptable, how it could be amended to be acceptable and formally requesting the Developer, prior to the commencement of works on the Development, to submit a further Phasing Proposal (the "Revised Phasing Proposal"). The Planning Authority shall, within 20 working days of receipt of the Revised Phasing Proposal from the Developer, issue a further Phasing Proposal Response, intimating whether or not they are now satisfied. If no further Phasing Proposal Response is received by the Developer within said period of 20 working days the Revised Phasing Proposal shall automatically be deemed to comprise acceptable phasing proposals and that Revised Phasing Proposal is agreed by the Planning Authority such that it shall comprise the Finalised Phasing Scheme (as after defined) ; or
  - (ii) does comprise acceptable phasing proposals then the Planning Authority, acting reasonably, shall set out in the Phasing Proposal Response that the Phasing Proposal is now agreed (the "Finalised Phasing Scheme");

For the avoidance of doubt the Developer shall not commence works on any part of the Development until there is in place the Finalised Phasing Scheme (deemed or otherwise). Without prejudice to the foregoing deeming provisions the Planning Authority shall be bound to deliver to the Developer within 20 working days of a written request for the same, written evidence confirming their agreement to the Finalised Phasing Scheme, in terms acceptable to the Developer.

- (d) The Developer shall build out the Development in the agreed phases, in accordance with the Finalised Phasing Scheme.
- (e) The Developer shall, prior to the commencement of works on any phase of Development in terms of the Finalised Phasing Scheme, submit to the Planning Authority their written proposals for delivering the affordable housing on that phase (the "Affordable Housing Phase Proposal"), in compliance with the Scottish Borders Council Approved Supplementary Planning Guidance on Affordable Housing (the "SBC AH SPG"). The Affordable Housing Phase Proposal shall:
  - (i) confirm which of the dwellinghouses on that phase of the Development are proposed as the Affordable Housing Units;
  - (ii) state what affordable delivery mechanism or mechanisms, in compliance with the SBC AH SPG, is proposed for each of the Affordable Housing Units on that phase;
  - (iii) state what the proposed delivery points are for each of the Affordable Housing Units on that phase either by:
    - (I) reference to a period of time following commencement of works; or
    - (II) relating it to the Market Units being delivered;
- (f) The Planning Authority shall, within 20 working days of receipt of the Affordable Housing Phase Proposal, provide written confirmation to the Developer as to whether the Affordable Housing Phase Proposal complies or does not comply with the Scottish Borders Council Approved Supplementary Planning Guidance on Affordable Housing (the "AH Phase Proposal Response"). If no Affordable Housing Phase Proposal Response is received by the Developer within said period of 20 working days the Affordable Housing Phase Proposal shall automatically be deemed to comprise acceptable phasing proposals and that Affordable Housing Phase Proposal is agreed by the Planning Authority such that it shall comprise the Finalised Affordable Housing Phase Scheme (as after defined). In the event that the Planning Authority determines that the Affordable Housing Phase Proposal:

- (i) does not comply with the Scottish Borders Council Approved Supplementary Planning Guidance on Affordable Housing then the Planning Authority, acting reasonably shall set out in the AH Phase Proposal Response why it does not comply, how it could be amended to comply and formally requesting the Developer, prior to the commencement of works on the Development, to submit a further Affordable Housing Phase Proposal (the "Revised Affordable Housing Phase Proposal"). The Planning Authority shall, within 20 working days of receipt of the Revised Affordable Housing Phase Proposal from the Developer, issue a further AH Phase Proposal Response, intimating whether or not they are now satisfied. If no further Affordable Housing Phase Proposal Response is received by the Developer within said period of 20 working days the Revised Affordable Housing Phase Proposal shall automatically be deemed to comprise acceptable phasing proposals and that Revised Affordable Housing Phase Proposal is agreed by the Planning Authority such that it shall comprise the Finalised Affordable Housing Phase Scheme (as after defined); or
- (ii) does comply with the Scottish Borders Council Approved Supplementary Planning Guidance on Affordable Housing then the Planning Authority, acting reasonably, shall set out in the AH Phase Proposal Response that the Affordable Housing Phase Proposal is now agreed (the "Finalised Affordable Housing Phase Scheme");

For the avoidance of doubt the Developer shall not commence works on any phase of the Development, as defined by the Finalised Phasing Scheme, until there is in place the Finalised Affordable Housing Phase Scheme for that phase of the Development (deemed or otherwise). Without prejudice to the foregoing, the Planning Authority shall be bound to deliver to the Developer within 20 working days of a written request for the same, written evidence confirming their agreement to the Finalised Affordable Housing Phase Scheme, in terms acceptable to the Developer.

- (g) The Developer shall deliver the Affordable Housing Units on each phase of the Development in accordance with the Finalised Affordable Housing Phase Scheme for that phase of the Development, and in accordance with the Finalised Phasing Scheme.
- (h) The Developer shall pay to the Planning Authority:
  - (i) for each of the dwelling houses at the Development, both Market Units and Affordable Units, the sum of FIVE HUNDRED POUNDS (£500.00) Sterling (the "House Play Contribution"); and

- (ii) for each of the Market Units at the Development the sum of FIVE THOUSAND NINE HUNDRED AND SIXTY FIVE POUNDS (£5,965.00) Sterling (the "ELL MU Contribution").

The total of every House Play Contribution payable for all the dwelling houses at the Development is TWENTY SEVEN THOUSAND POUNDS (£27,000) Sterling ("the Play Facilities Contribution") and the total of every House ELL MU Contribution that is payable for all the Market Units by the Developers to the Planning Authority is TWO HUNDRED AND FORTY FOUR THOUSAND FIVE HUNDRED AND SIXTY FIVE POUNDS (£244,565) Sterling ("The Education and Lifelong Learning Contribution") giving a total payable by the Developer to the Planning Authority of TWO HUNDRED AND SEVENTY ONE THOUSAND FIVE HUNDRED AND SIXTY FIVE POUNDS (£271,565) Sterling ("the Consideration").

- (i) The Consideration shall be payable by the Developer to the Planning Authority by instalments for each phase of the Development, as agreed in the Finalised Phasing & Affordable Housing Scheme. Every House Play Contribution and every ELL MU Contribution for the dwelling houses to be built on that phase of the Development shall be payable by the Developer to the Planning Authority five days from:-
  - (i) the date on which the Verifier, as defined by Section 7 of the Building (Scotland) Act 2003, gives written intimation to the Developer that they have approved the Completion Certificate, in terms of Section 18 of the Building (Scotland) Act 2003, in respect of the Market Unit that results in at least 50% of the Market Units on that phase of the Development being occupied, inhabited, completed or sold; or
  - (ii) the date on which the Verifier gives written intimation to the Developer that they have approved the Certificate of Temporary Habitation, in terms of Section 21 of the Building (Scotland) Act 2003, in respect of the Market Unit that results in at least 50% of the Market Units on that phase of the Development being occupied, inhabited, completed or sold; or
  - (iii) the date on which the Market Unit is occupied, that results in at least 50% of the Market Units on that phase of the Development being occupied, inhabited, completed or sold; or
  - (iv) the settlement date for the sale of the Market Unit that results in at least 50% of the Market Units on that phase of the Development being occupied, inhabited, completed or sold;

whichever is the earlier. Interest shall be payable thereon (by the Developer to the Planning Authority) at 5% above the base rate of the Bank of Scotland in the event of failure to make payment timeously of any part of the Consideration.

- (j) The Education and Lifelong Learning Contribution shall be applied by the Planning Authority with respect to the provision of educational accommodation and facilities in the Scottish Borders area, in accordance with the Scottish Borders Council approved Developer Contribution Policy. In particular:
- (i) the sum of ONE HUNDRED AND FOUR THOUSAND AND SEVENTEEN POUNDS (£104,017) STERLING shall be expended towards the provision of Primary School educational accommodation and facilities for children at the Development as the Planning Authority, acting reasonably, solely determines (the "ELL Primary School Contribution"); and
  - (ii) the sum of ONE HUNDRED AND FORTY THOUSAND FIVE HUNDRED AND FORTY EIGHT (£140,548) STERLING shall be expended towards the additional educational accommodation and facilities that have been provided for Berwickshire High School (the "ELL Provided Secondary School Contribution");  
(or such equivalent apportionment taking into account any indexation as referred to in clause 4(k) and 4(l) below).
- (k) The ELL Primary School Contribution shall be index linked, which indexed increment shall be calculated and added annually as at 1 April of each year, all such indexation to be calculated by reference to the BCIS TPI UK Index, or in the event that such index is abolished or otherwise ceases to be available for any reason, such other index reasonably equivalent thereto as the Planning Authority may nominate.
- (l) The ELL Provided Secondary School Contribution shall be index linked, which indexed increment shall be calculated and added annually as at 1 April of each year, all such indexation to be calculated by reference to the Retail Price Index, or in the event that such index is abolished or otherwise ceases to be available for any reason, such other index reasonably equivalent thereto as the Planning Authority may nominate.
- (m) In the event that the Planning Authority does not require to expend the ELL Primary School Contribution (or part thereof) within a period of ten years of the date of its full receipt then it or any unexpended part shall be repayable by the Planning Authority to the Developer forthwith (after the expiry of such ten year period) together with simple interest calculated from the date of receipt by the Planning Authority of the said contribution from the Developer to the date of repayment of the said contribution (or the relevant part thereof) to the Developer by the Planning Authority at the rate of 0.25 percent below the base lending rate of the Bank of Scotland.

- (n) The Play Facilities Contribution shall be applied by the Planning Authority as a Development Contribution as defined in the Scottish Borders Council Approved Supplementary Planning Guidance on Developer Contributions. The Play Facilities Contribution shall be used in connection with the provision, inspection, maintenance and depreciation of additional children's play equipment and ancillary supporting infrastructures in the Gavinton area as the Planning Authority (acting reasonably) shall determine and be the sole judge.
- (o) In the event that the Planning Authority does not require to expend the Play Facilities Contribution (or part thereof) within ten years of the date of receipt by the Planning Authority of payment of the Play Facilities Contribution by the Developer ("the Payer of the Play Facilities Contribution") then the Play Facilities Contribution (or relevant part thereof) shall be repayable by the Planning Authority to the Payer of the Play Facilities Contribution (whether or not the Payer of the Play Facilities Contribution are still the heritable proprietors of the Land) forthwith (after the expiry of such ten year period) together with simple interest calculated from the receipt by the Planning Authority of the Play Facilities Contribution from the Payer of the Play Facilities Contribution to the date of the repayment of the Play Facilities Contribution (or the relevant part thereof) to the Payer of the Play Facilities Contribution by the Planning Authority at the rate of 0.25% below the base lending rate for the time being of the Bank of Scotland. For the avoidance of doubt the Planning Authority shall be entitled to retain for a period of fifteen years from the date of receipt such proportion of the Play Facilities Contribution as is required for the inspection, maintenance and depreciation costs associated with the said additional play equipment and ancillary supporting infrastructures.
5. The Developer hereby undertakes not to dispose of the Land or any part of it or interest in it prior to the date of recording of this Planning Obligation in the appropriate division of the General Register of Sasines or registration in the Land Register of Scotland, as the case may be.
6. The Developer hereby undertake to reimburse the Planning Authority all reasonably incurred legal costs up to a maximum of £525, plus registration dues and other outlays, in respect of in the preparation, execution, and registration of this Planning Obligation.
7. Each of the restrictions and regulations in this Planning Obligation has been and is agreed independently of the others and in the event of its becoming or being held to be ineffective whether by operation of law or otherwise the remaining terms of this Obligation shall continue in force.



8. An owner of the Land shall, upon ceasing to be an owner of the Land, cease to be bound by the terms of this Planning Obligation save only in relation to any antecedent breach while the former owner was such owner thereof or of such part until such breach shall have been remedied or the relative obligation otherwise discharged. After the first sale of a dwellinghouse comprised within the Development, whether an Affordable Unit or a Market Unit, the owner of that dwellinghouse ("the sold house") shall have no liability in respect of the share of the Consideration due from the other dwellinghouses provided the share of the Consideration due from the sold house has been paid. In respect of each dwellinghouse the maximum share of the Consideration for which an owner of a dwellinghouse shall be liable is the sum due relative to that dwellinghouse only, in accordance with Clause 4(h) hereof.
9. Any dispute arising under this Obligation shall be referred to an arbitrator in accordance with the Arbitration (Scotland) Act 2010 under declaration that (1) the juridical seat of the arbitration is Scotland and (2) rules 41 and 69 of the Scottish Arbitration Rules forming Schedule 1 of the Arbitration (Scotland) Act 2010 shall not apply, which arbitrator shall be appointed by the parties (or, failing agreement, by the Sheriff of Lothian & Borders at Jedburgh) whose decision shall be final and binding on each party: IN WITNESS WHEREOF these presents typewritten on this and the eight preceding pages with the 2 plans annexed are executed as follows:

For THE SCOTTISH BORDERS COUNCIL by

Authorised Signatory ..

Name in Full ..

Designation ..

at

on

in the presence of:

Witness Signature

Witness Full Name

Witness Address

Council Headquarters, Newtown St Boswells

08/07/2016

Council Headquarters, Newtown St Boswells

By JOHN FRANCIS SEED

Signature

Designation

at

on

in the presence of:

Witness Signature

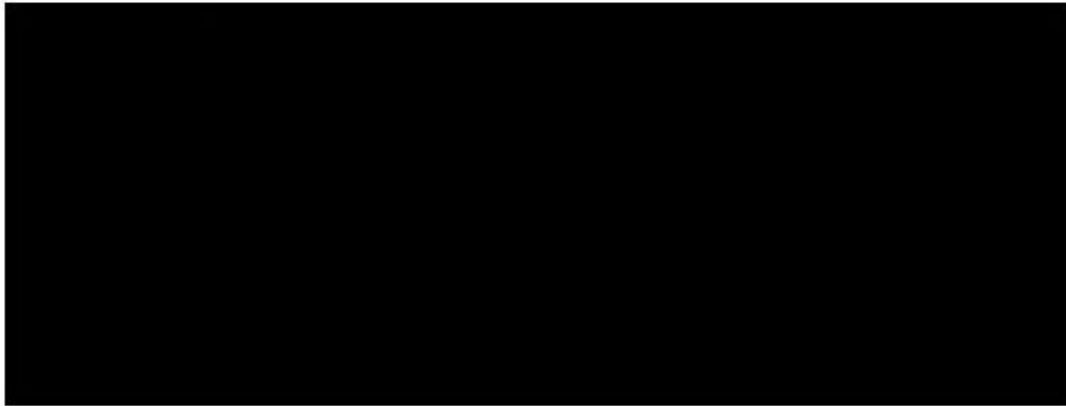
Witness Full Name

Witness Address

as Partner and Trustee of the FIRM OF R. M. AND J. F. SEED

*DUNS*

*2 June 2016*



*Passo also*

And with the consent of DAVID ARCHIBALD SEED

Signature

Designation

at

on

in the presence of:

Witness Signature

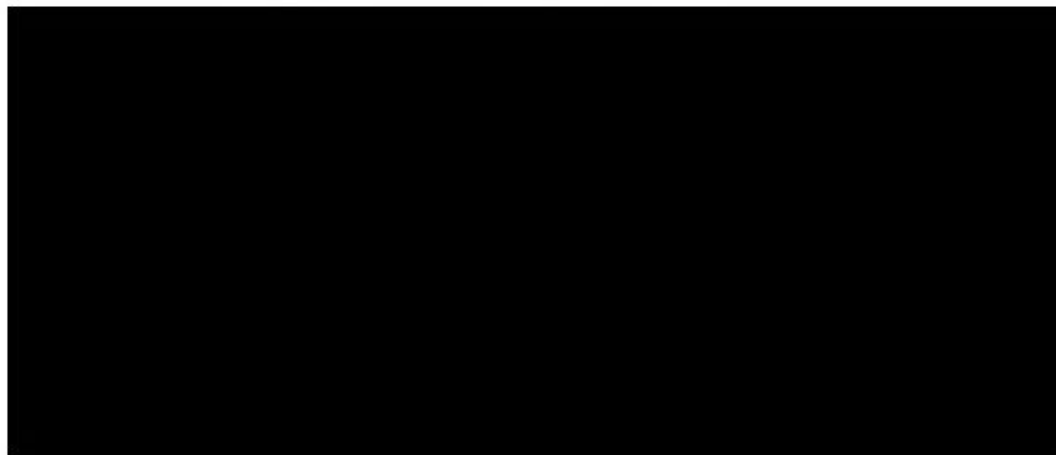
Witness Full Name

Witness Address

as assumed Partner and Trustee of the FIRM OF R. M. AND J. F. SEED

*DUNS*

*2 June 2016*



*not m/m.*

And with the consent of SANDRA JANE SEED

Signature

Designation

at

on

in the presence of:

Witness Signature

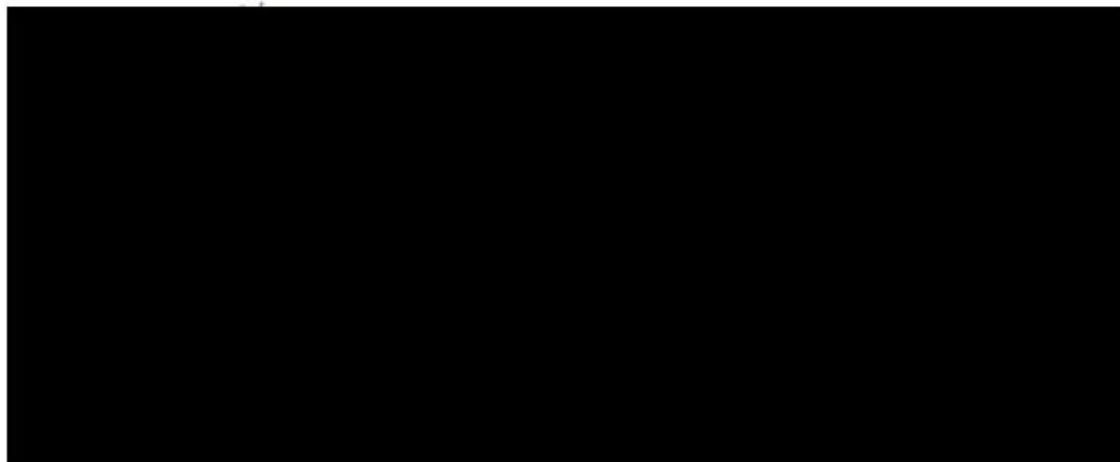
Witness Full Name

Witness Address

as assumed Partner and Trustee of the FIRM OF R. M. AND J. F. SEED

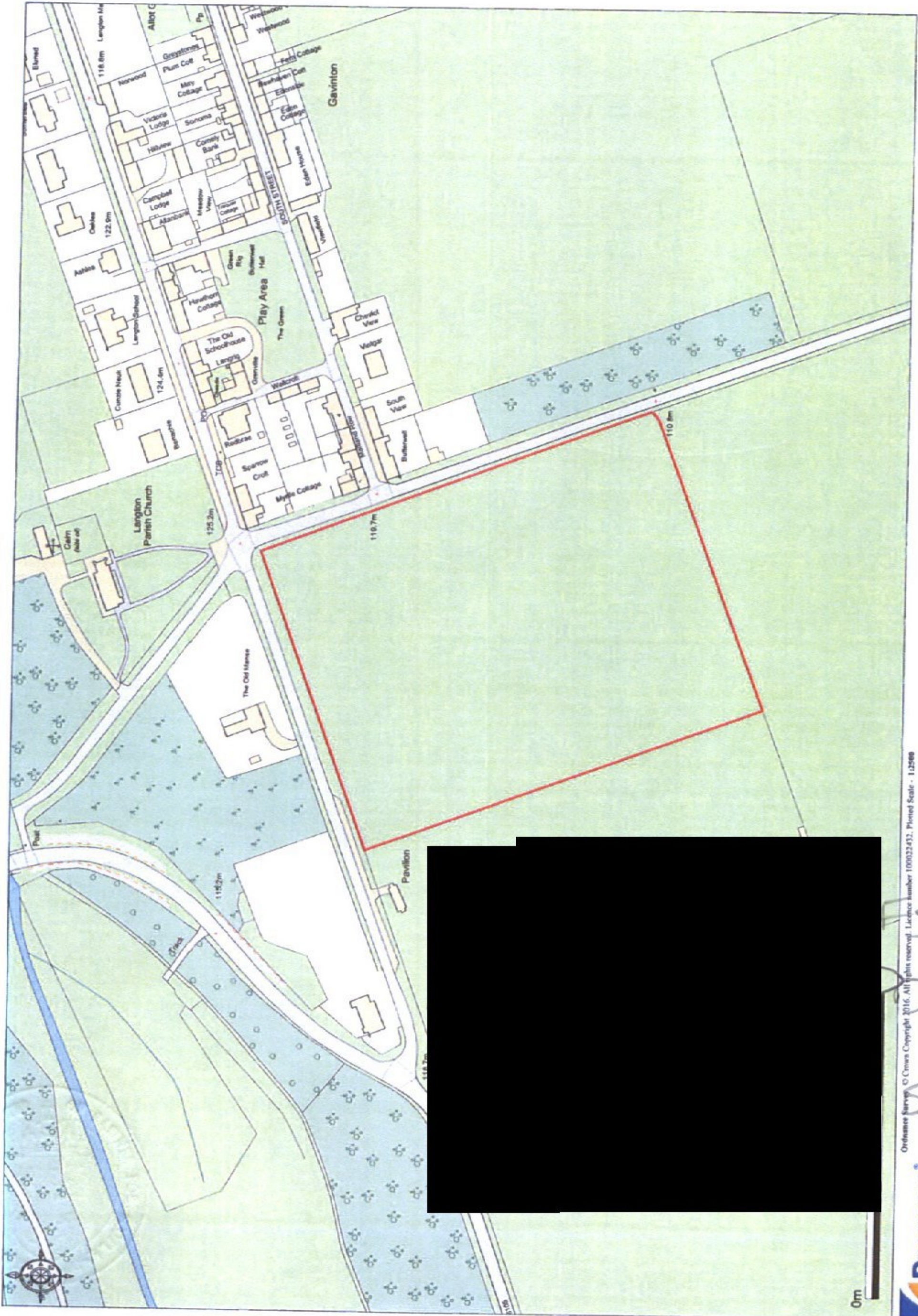
*DUNS*

*2 June 2016*



*SSS*

PLAN 1



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S  
DAS  
S S

ing provision

! allocated parking spaces = 92 spaces proposed

allocated parking space = 5 spaces proposed

75 communal parking = 14 communal spaces

= 24 spaces proposed

aces proposed

Rev	Date	Description	Drawn	Check
D	25.03.14	Road Planning Officer comments addressed; Visitor parking between plots 12 & 13 removed End parking bays on plots 10 to 13 increased to 3r	RM	AS
C	22.08.14	Issued to SBC for comment	RM	AS
B	25.08.14	Amendments made to layout and schedule	RM	AS
A	29.06.14	Issued to SBC for comment	RM	AS
P	15.03.13	Issued for planning	RM	RP

Rev | Date | Description | Drawn | Check

Drawing Status

## Planning

Client

RF & JM Seed

## JOHN THOMPSON & PARTNERS



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15-21 Carlton Road  
Edinburgh EH9 8DL  
T: +44 (0)131 550 8500  
F: +44 (0)131 558 8506  
W: www.jtp.co.uk

Project

New residential development  
West Gavinton

Drawing Title

Masterplan

Scale (B1) 1:500

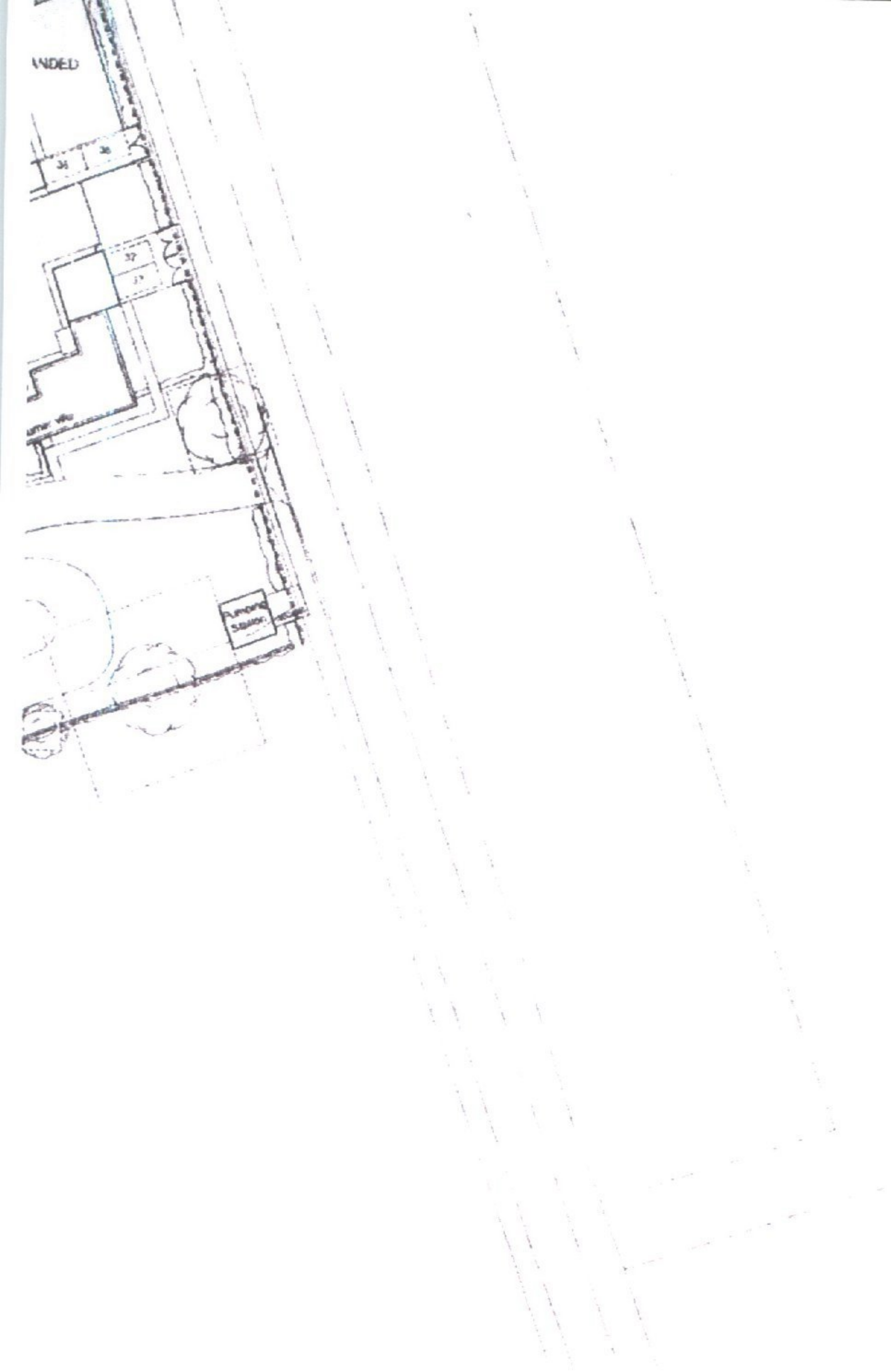
Job Ref 00620

Drawing No 00620\_MP\_05

Revisor D

Scale Bar  
0 5 10 15 20 25m





INDEXED

Provided

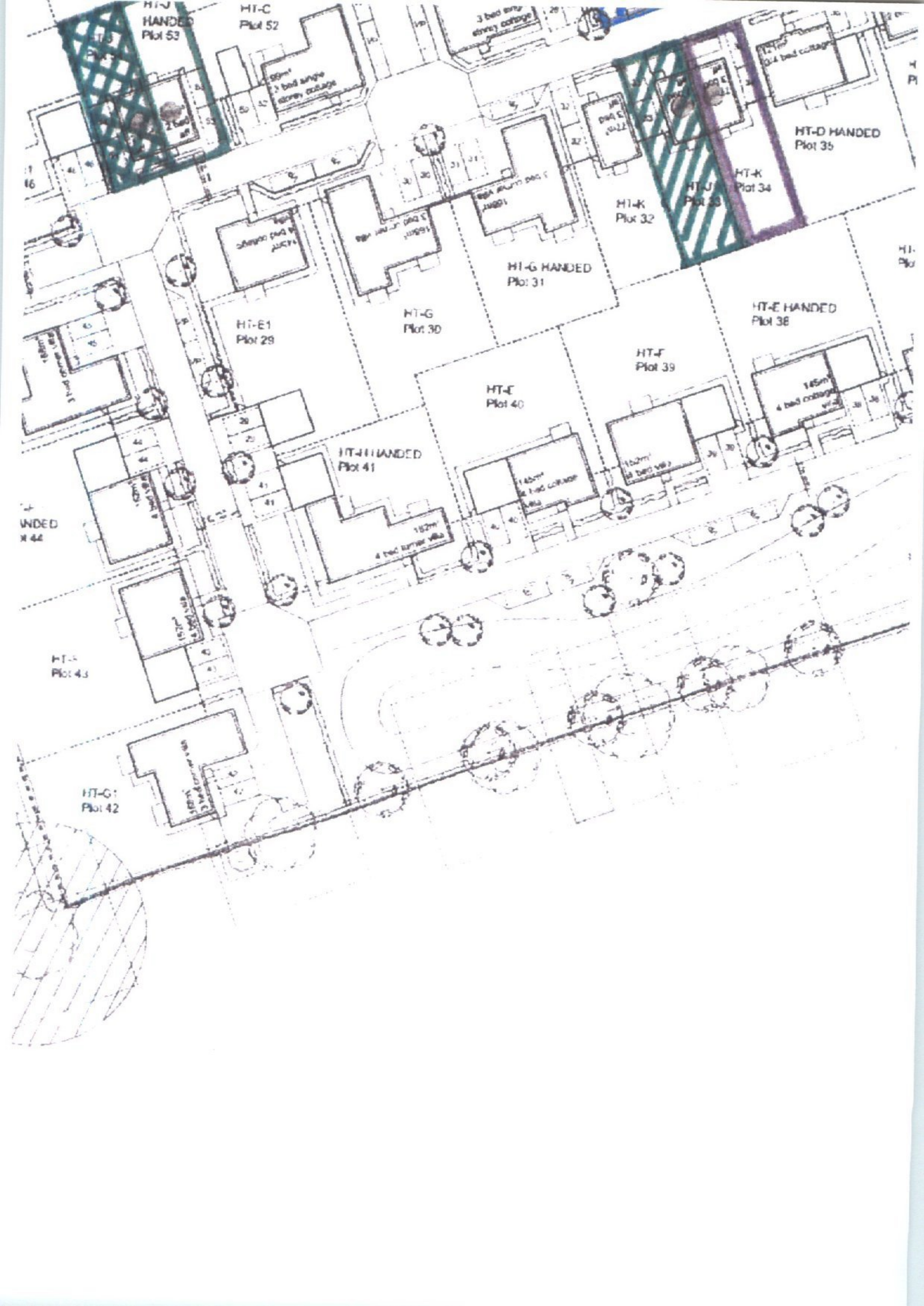
46 plots

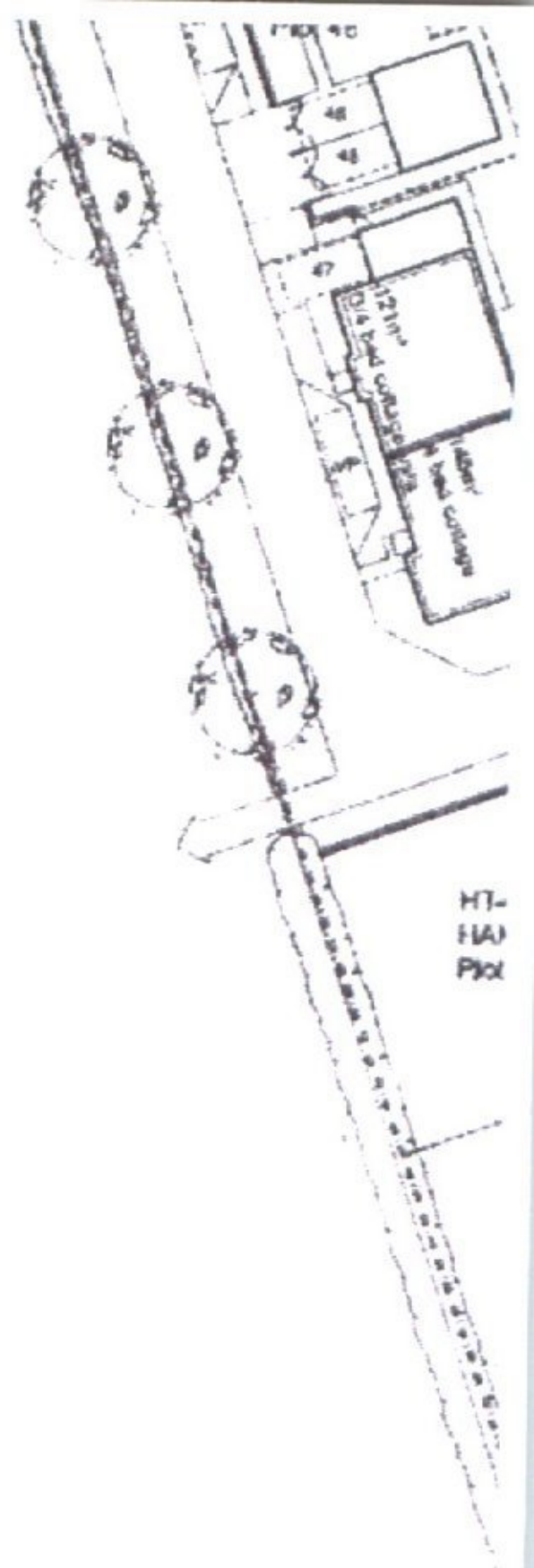
5 plots w

8 plots w

Visitor pa

Total = 1





HT-  
HA  
PK



L

121m²

# PLAN.2.

**Notes:**

Do not scale from this drawing.

All contractors must visit the site and be responsible for taking and checking Dimensions

All construction information should be taken from figured dimensions only.

Any discrepancies between drawings, specifications and site conditions must be brought to the attention of the supervising officer.

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This drawing is for planning purposes only. It is not intended to be used for construction purposes, unless all reasonable efforts are used to ensure drawings are accurate. John Thompson & Partners accept no responsibility or liability for any reliance placed on, or use made of this plan by anyone for purposes other than those stated above.

AMENDED PLAN  
 Received  
 30 Mar 2015  
 App No. 13/00352/FUL

## Affordable units

### on Schedule

area (m <sup>2</sup> )	area (ft <sup>2</sup> )	number	total area (m <sup>2</sup> )	total area (ft <sup>2</sup> )
72	774.7	4	288	3,099
104.0	1119.0	1	104	1,119
104.0	1119.0	1	104	1,119
93.0	1000.7	4	372	4,003
93.0	1000.7	2	186	2,001
119.4	1284.3	5	597	6,422
119.4	1284.3	2	239	2,569
145.4	1564.5	2	291	3,129
145.4	1564.5	4	582	6,258
151.8	1633.4	4	607	6,533
151.8	1633.4	1	152	1,633
171.2	1842.1	2	342	3,684
171.2	1842.1	2	342	3,684
181.5	1952.9	6	1,089	11,718
77	828.5	1	77	829
		41	5372	67890

### ing Units (13%)

88	732	7	476	5,122
77	829	6	462	4,971
		13	938	10093

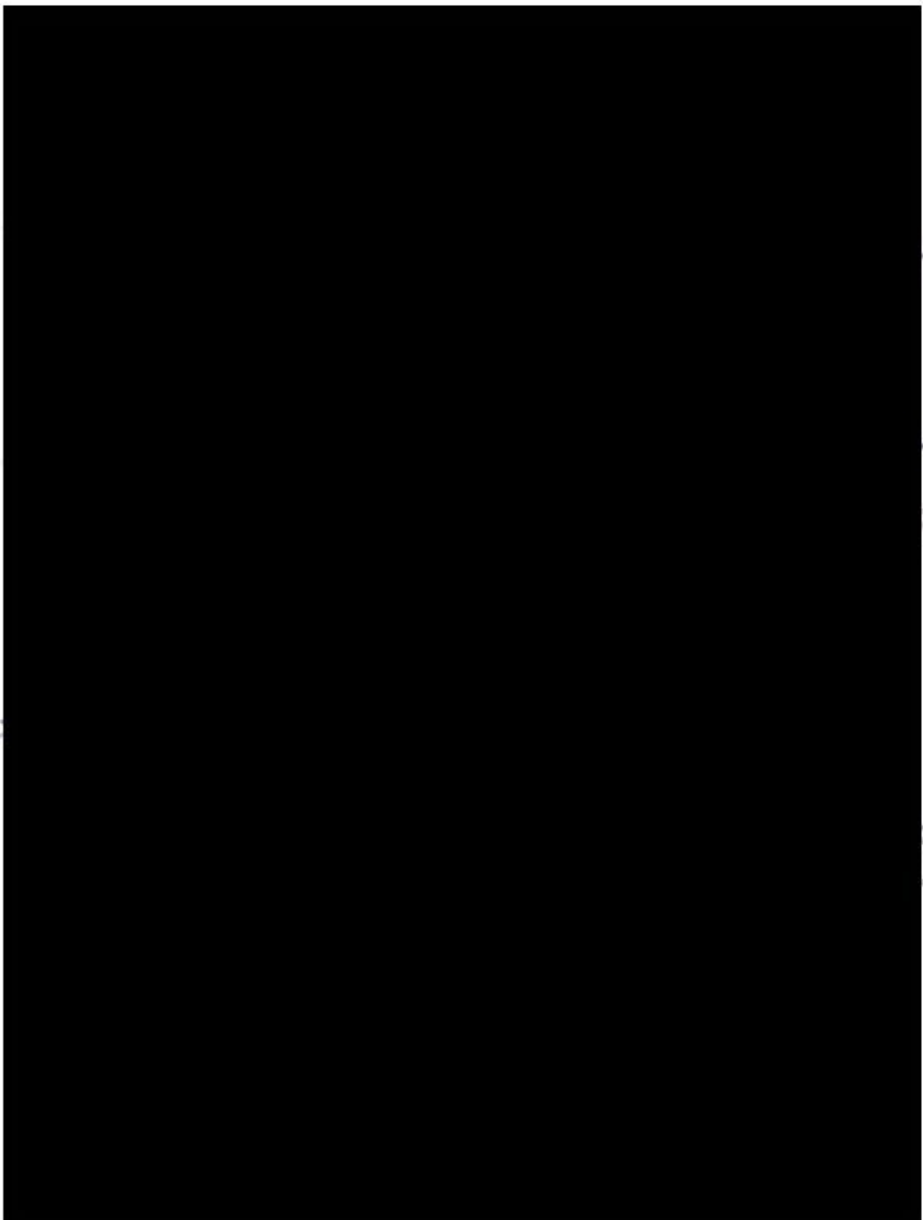
<b>Totals</b>		54	6310	67893
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### ing provision

0% = 92 spaces

5% visitor parking = 12 spaces

75 spaces per plot = 14 spaces



FS  
 2  
 DAS



B



Accommodate

house type

- Type A
- Type B
- Type BT
- Type C
- Type CT
- Type D
- Type DA
- Type E
- Type ET
- Type F
- Type FT
- Type G
- Type GT
- Type H
- Block

Affordable

Type K

Required

46 plots

46 plots

8 plots w



HT-C1  
Plot 03

HT-A  
Plot 04

HT-H HANDED  
Plot 50

HT-C1 HANDED  
Plot 10

HT-A HANDED  
Plot 16

HT-F1 HANDED  
Plot 51

HT-D  
Plot 11

HT-D1 HANDED  
Plot 17

HT-E1  
Plot 19

HT-C HANDED  
Plot 28

HT-F HANDED  
Plot 12

HT-H  
Plot 20

HT-K  
Plot 27

HT-J  
Plot 15

HT-K HANDED  
Plot 28

HT-K HANDED  
Plot 27

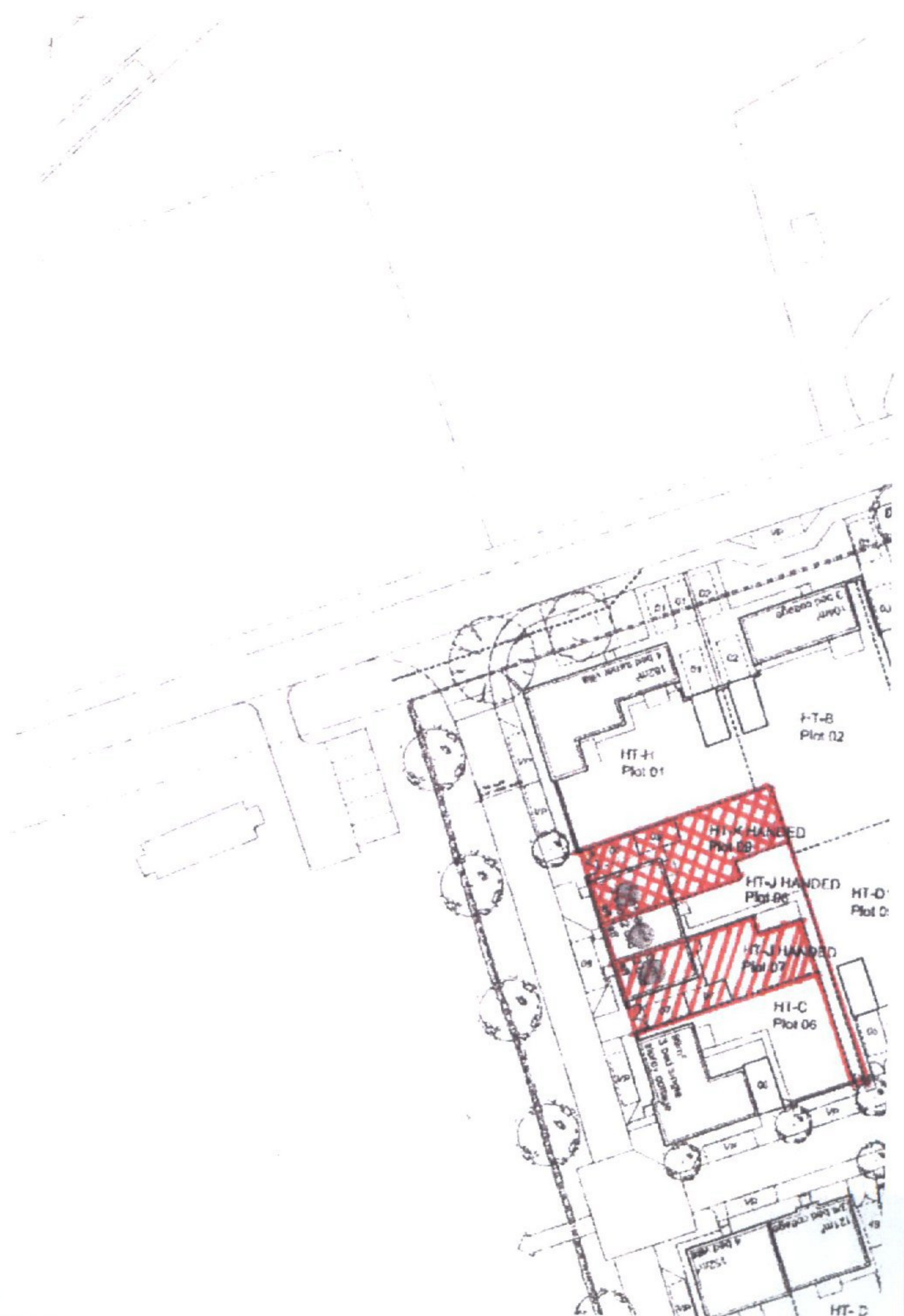
HT-I HANDED  
Plot 13

HT-C HANDED  
Plot 14

HT-G  
Plot 25

HT-B1  
Plot 23

HT-A  
Plot 24



1 1 JUL 2018
YEARLY RUNNING No.

BER 1

PLANNING OBLIGATION

between

THE SCOTTISH BORDERS COUNCIL

and

JOHN FRANCIS SEED, DAVID ARCHIBALD SEED  
AND SANDRA JANE SEED AS TRUSTEES AND  
PARTNERS OF THE FIRM OF R. M AND J. F.  
SEED

2016  
PL658/58E/GN/KS  
Planning Ref 13/00332/FUL

Developer Contributions for Education & Lifelong  
Learning/Play & on Site Affordable Housing

Subjects: Land South of the Old Manse, Gavinton

SK0669952301

The Scottish Borders Council  
Council Headquarters  
Newtown St Boswells  
Melrose TD6 0SA