

DATED 11 July 2014

(1) WREXHAM COUNTY BOROUGH COUNCIL

(2) BRYMBO DEVELOPMENTS LIMITED

(3) PARKHILL ESTATES LIMITED

AGREEMENT

Pursuant to Section 106 of the Town and Country Planning Act 1990 in respect of land at
Former Brymbo Steelworks, Brymbo, Wrexham

THIS AGREEMENT is made on the 11th day of JULY 2014

BETWEEN:-

- (1) WREXHAM COUNTY BOROUGH COUNCIL of Guildhall, Wrexham LL11 1AY ("the Council")
- (2) BRYMBO DEVELOPMENTS LIMITED (Company Registered Number: 00936369) of Fernhill Estate Office, Fernhill Road, Sutton, Newport, Shropshire TF10 8DJ ("the Owner")
- (3) PARKHILL ESTATES LIMITED (Company Registered Number: 02635632) of Fernhill Estate Office, Fernhill Road, Sutton, Newport, Shropshire TF10 8DJ ("the Second Owner")

1. BACKGROUND

- 1.1 For the purposes of the 1990 Act, the Council is the local planning authority for the administrative area within which the Land is located and the person who is entitled to enforce the obligations contained in this Deed.
- 1.2 For the purposes of the 1980 Act, the Council is the local highway authority for the area in which the Land is situated.
- 1.3 The Owner is the freehold owner of the Supermarket Development Site free from encumbrances.
- 1.4 The Second Owner is the freehold owner of the Housing Development Site free from encumbrances.
- 1.5 The Owner is the freehold owner of the Spine Road Site.
- 1.6 The Owner is the freehold owner of the Heritage Site free from encumbrances.
- 1.7 Pursuant to the Housing Development Planning Application and the Supermarket Development Planning Application the Owner has applied to the Council for outline planning permission for the Housing Development and the Supermarket Development.
- 1.8 The Housing Development and the Supermarket Development lie within the site of the former Brymbo steelworks for which outline permission was granted in 1997 under planning ref: CB00016 for reclamation and development of the site and which included construction of a road across the site to connect the

communities of Brymbo and Tanyfron. The said road has been constructed in part during development of parts of the former Brymbo steelworks site for housing but the northerly part (the Spine Road) has only been constructed to formation level due to lack of funding.

- 1.9 The construction of the Spine Road will provide the highway infrastructure which is necessary to connect the communities of Brymbo and Tanyfron and to facilitate development of a large area of previously developed land not currently in beneficial use.
- 1.10 On 2 September 2013 the Council having regard to the Unitary Development Plan and other material considerations resolved to grant Planning Permission for the Housing Development and the Supermarket Development subject to completion of this Deed on the basis that together the Housing Development and Supermarket Development will provide a source of funding for construction of the Spine Road and may provide a contribution to the development of the Heritage Site.
- 1.11 The Spine Road has the benefit of detailed planning permission (Ref BRY P/2010/0516).

OPERATIVE PROVISIONS

2. INTERPRETATION

- 2.1 In this Deed, the following words and expressions have the following meanings

"1980 Act"	the Highways Act 1980.
"1990 Act"	the Town and Country Planning Act 1990.
"Associated Necessary Costs"	means the actual additional costs related to the funding of the construction of the road including consultancy fees local highway authority fees necessarily incurred together Welsh Water fees necessarily incurred with a contingency sum in connection with the construction of the Spine Road in accordance with the Highways Agreement to an adoptable standard.
"Base Course Level"	means both the base course and the binder course (formerly known as the road base and base course respectively).

"Bond"	a bond in the Bond Sum to be entered into by the Owner/Second Owner with Lloyds TSB Bank PLC or another Bank being a member of the London Bankers Clearing House in favour of the Council to guarantee the due performance of the terms and conditions of the Highways Agreement in the form set out in Schedule 2.
"Bond Sum"	the sum of £1,703,514 which is equivalent to the Spine Road Construction Cost (£1,521,071) plus £182,443 for Associated Necessary Costs. It is anticipated that upon issue of the Interim Certificate, the Bond Sum will reduce to 25% of the original sum but this is at the absolute discretion of the Council.
"Commencement of Development"	means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Housing Development the Supermarket Development or the Spine Road Development begins to be carried out providing the following shall not so count as a material operation for the purposes of this Deed: site investigations or surveys
"Completed"	means the Interim Certificate (as defined in the Highways Agreement) has been issued for that part of the work
"the Council"	means Wrexham County Borough Council, The Guildhall, Wrexham LL11 1AY.
"Dwelling"	means any dwelling built pursuant to the Housing Development Planning Permission
"Final Certificate"	means the certificate issued under clause 6.3 of the Highways Agreement
"the Heritage Area"	means the wider heritage area including, in particular all built heritage assets whether they lie within the Heritage Site or not

"the Heritage Site"	means part of the freehold property title to which is registered at the Land Registry under title number WA705202 and is shown edged red on Plan 6
"the Highways Agreement"	means the agreement pursuant to Sections 38 and 278 of the 1980 Act in the form set out in Schedule 1.
"the Housing Development"	means the development of the Housing Development Site by the erection of residential premises pursuant to the Housing Development Planning Permission.
"the Housing Development Planning Application"	means the application for outline planning permission for the carrying out of the Housing Development, made by the Owner on 28 November 2012, allocated the reference BRY P/2012/0817.
"the Housing Development Planning Permission"	means the planning permission which may be granted in pursuance of the Housing Development Planning Application upon completion of this Deed.
"the Housing Development Site"	means the freehold property forming part of the former Brymbo steelworks, title to which is registered at HM Land Registry under Title Number CYM418357 and is shown edged red on Plan 1.
"Implementation Notice"	means a notice in the respect of the Housing Development Planning Permission or the Supermarket Development Planning Permission as the case may be being a written notice to be in the form attached at Appendix 1 to be served by the person who on the date of service is the owner of the Housing Development Site or the Supermarket Development Site as the case may be on the Council not later than 5 working days prior to commencement of the Implementation Works.

"Implementation Works"	means any works representing Commencement of Development of the Housing Development Planning Permission or the Supermarket Development Planning Permission as the case may be.
"Interim Certificate"	means the certificate issued under clause 6.1 of the Highways Agreement
"the Land"	means the Housing Development Site the Heritage Site the Spine Road Site and the Supermarket Development Site or any part thereof.
"Occupation"	means the occupation for the purposes permitted by the Housing Development Planning Permission or the Supermarket Development Planning Permission as the case may be 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", "Plan 2", "Plan 3", "Plan 4", "Plan 5", "Plan 6"	means the plan so marked attached to this Deed at Schedule 3 and "Plans" shall be construed accordingly.
"Proceeds"	means the money received by the Owner from the disposal of the Housing Development Site and Supermarket Development Site together
"the Spine Road"	means a roadway along the route shown shaded blue on Plan 3 and marked as sections C, D, F and G on Plan 4.
"the Spine Road Construction Cost"	means the sum of £1,521.071 being the anticipated cost as at 17 April 2014 of carrying out the works required for the completion and proper execution of the Spine Road in accordance with the Highways Agreement to an adoptable standard, excluding the Associated Necessary Costs.

"the Spine Road Development"	means the development of the Spine Road pursuant to the Spine Road Planning Permission.
"the Spine Road East Limb"	means that part of the Spine Road marked as section G on Plan 4.
"the Spine Road Planning Permission"	means the planning permission which was granted under reference P/2010/0516 or any superceding permission.
"the Spine Road Site"	means the freehold property forming part of the former Brymbo steelworks, title to which is registered at HM Land Registry under Title Numbers WA705202 and CYM194878 and is shown shaded yellow on Plan 5.
"the Spine Road West Limb"	means that part of the Spine Road marked as section F on Plan 4.
"the Supermarket Development"	means the development of the Supermarket Development Site by the erection of a supermarket and small retail units and associated car parking pursuant to the Supermarket Development Planning Permission.
"the Supermarket Development Site"	means the freehold property forming part of the former Brymbo steelworks, title to which is registered at the Land Registry under Title Number WA705202 and is shown edged red on Plan 2.
"the Supermarket Development Planning Application"	means an application for outline planning permission for the carrying out of the Supermarket Development made by the Owner on 28 November 2012 allocated the reference BRY P/2012/0816.
"the Supermarket Development Planning Permission"	means the planning permission which may be granted in pursuance of the Supermarket Development Planning Application upon completion of this Deed.

"Working Day(s)" means Mondays to Fridays (excluding days that in England and Wales are public holidays) inclusive

2.2 In this Deed:

- 2.2.1 the heading of a clause does not affect its interpretation;
- 2.2.2 the Schedules and Appendices form part of this Deed and shall have effect as if set out in full in the body of this Deed;
- 2.2.3 unless otherwise indicated, references to clauses plans Schedules and appendices are to clauses plans Schedules and appendices in this Deed;
- 2.2.4 references to any statute or statutory provision include references to:
 - 2.2.4.1 that statute or statutory provision as from time to time amended extended re-enacted consolidated or replaced; and
 - 2.2.4.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision whether before or after the date of this Deed.
- 2.2.5 references to the Land and the Site include any part thereof;
- 2.2.6 references to any party in this Deed include the successors in title to that party and any person deriving title through or under that party and in the case of the Council the successors in title to their statutory functions;
- 2.2.7 "including" means "including, without limitation";
- 2.2.8 An obligation in this Deed on a person not to do any act or thing includes an obligation not to permit or allow the doing of that act or thing;
- 2.2.9 where two or more people form a party to this Deed, the obligations they undertake may be enforced against them all jointly or against each of them individually; and
- 2.2.10 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Deed is to be unaffected.

2.3 The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a

party to it save for the avoidance of doubt it is declared that the planning obligations contained in this deed are enforceable by any successor to the Council exercising planning powers under the 1990 Act.

- 2.4 Nothing in this deed shall prohibit or limit the right to develop any part of the Supermarket Development Site or the Housing Development Site or the Spine Road Site in accordance with a planning permission, excluding the Supermarket Development Planning Permission or the Housing Development Planning Permission, granted, whether or not on an appeal, after the date of this deed.

3. **EFFECT OF THIS DEED**

- 3.1 This Deed is made pursuant to section 106 and 106A of the 1990 Act, Section 111 of the Local Government Act 1972 Section 2 of the Local Government Act 2000 and section 1 of the Localism Act 2011 and all other enabling powers.

- 3.2 The obligations contained in this Deed are planning obligations which bind the Land and are binding on the Owner and the Second Owner pursuant to section 106 of the 1990 Act.

- 3.3 The obligations contained in this Deed are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable as such by the Council as local planning authority.

- 3.4 This Deed is a local land charge for the purposes of the Local Land Charges Act 1975 and will be registered as such by the Council.

- 3.5 The obligations contained in this Deed are:-

3.5.1 necessary to make the development acceptable in planning terms;

3.5.2 directly related to the development; and

3.5.3 fairly and reasonably related in scale and kind to the development.

- 3.6 The obligations in this Deed will not be enforceable against:

3.6.1 statutory undertaker after the transfer of the statutory apparatus and any land upon or in which the statutory apparatus is situated by the Owner to that statutory undertaker

- 3.7 No person will be liable for any breach of the terms of this Deed occurring after the date on which they part with their interest in the Land or the part of the Land in respect of which such breach occurs, but they will remain liable for any breaches of this Agreement occurring before that date. Neither the reservation of any rights or inclusion of covenants or restrictions over the Land in any transfer of the Land will constitute an interest for the purposes of this clause 3.7

4. **COMMENCEMENT**

The provisions of this Deed shall have immediate effect upon the completion of the Deed SAVE FOR clauses 5.1 and 5.2.3 which shall only have effect upon and from the date upon which the Housing Development Planning Permission and the Supermarket Development Planning Permission have both been granted.

5. **OBLIGATIONS OF THE PARTIES**

5.1 The Owner and Second Owner covenant with the Council

Spine Road

- 5.1.1 to enter into the Highways Agreement and the Bond on the date of this Deed;
- 5.1.2 to construct the Spine Road in accordance with the provisions of the Highways Agreement;
- 5.1.3 to notify the Council's Head of Community Well-being and Development in writing of the date of commencement of the construction of the Spine Road within 5 Working Days thereof;

General

- 5.1.4 not to carry out any Implementation Works before the service of the Implementation Notice;
- 5.1.5 not to carry out any Implementation Works on the Housing Development Site pursuant to the Housing Development Permission or on the Supermarket Development Site pursuant to the Supermarket Development Permission prior to the Commencement of Development of the Spine Road;

Housing Development

- 5.1.6 not to allow the Occupation of any Dwelling constructed on the Housing Development Site until the Spine Road excluding the Spine Road East Limb but including the Spine Road West Limb has been constructed to Base Course Level;
- 5.1.7 not to allow the Occupation of more than 80% of the Dwellings comprising the Housing Development until the Spine Road excluding the Spine Road East Limb but including the Spine Road West Limb has been Completed;

- 5.1.8 not to allow the Occupation of more than 90% of the Dwellings comprising the Housing Development until the Spine Road has been Completed to include both the Spine Road East Limb and the Spine Road West Limb;

Supermarket Development

- 5.1.9 not to allow the Occupation of the Supermarket Development until the Spine Road excluding the Spine Road East Limb but including the Spine Road West Limb has been Completed;

Heritage Site

- 5.1.10 to provide to the Council full financial details relating to the disposal of the Housing Development Site and Supermarket Development Site to include the sale price heads of terms of sale and associated costs within 5 working days of each disposal;
- 5.1.11 to provide to the Council within 28 days of the issue of the Final Certificate full details of the actual construction costs for the Spine Road including the actual Associated Necessary Costs in order that the Council can verify the Proceeds against the costs
- 5.1.12 in the event that the Proceeds exceed the actual Spine Road Construction Costs plus the actual Associated Necessary Costs a sum equivalent to the excess shall be paid to the Council within 3 calendar months of the date of the Final Certificate or of receipt by the Owner and Second Owner of the final Proceeds whichever is the later or such other date as may be agreed by the Council to be applied for the benefit of the Heritage Area in a manner to be agreed between the Owner of the Heritage Site with the Council's Head of Community Well-being and Development in consultation with the Council's Head of Assets and Economic Development and in the absence of agreement to be determined in accordance with Clause 9.

5.2 The Council undertakes

- 5.2.1 to issue the Planning Permission upon the completion of this Agreement;
- 5.2.2 to enter into the Highways Agreement so as to facilitate the adoption of the Spine Road;
- 5.2.3 upon request in writing to pay to the Owner (here meaning the party which shall actually have paid the sum) such amount of any payment made by the Owner to the Council which has not been expended or

committed in accordance with the provisions of this deed within 10 years of the date of receipt by the Council of the sum together with such interest thereon as the relevant sum has earned in the hands of the Council but the Council shall be under no obligation to maximise such interest SAVE THAT if clause 9 has been invoked in respect of the manner in which the monies shall be spent repayment may only be requested if monies have not been expended or committed within 5 years of a determination under clause 9.

6. TERMINATION OF THIS DEED

6.1 This Deed will come to an end if:

- 6.1.1 the Housing Development Planning Permission or the Supermarket Development Planning Permission is quashed or revoked before any Implementation Works are carried out so as to render this Deed or any part of it irrelevant, impractical or unviable;
- 6.1.2 the Housing Development Planning Permission or the Supermarket Development Planning Permission expires before any Implementation Works are carried out

SAVE THAT if construction of the Spine Road has commenced the provisions of the Highways Agreement shall remain in full force and effect and any obligations arising thereunder shall remain enforceable by the Council as local highway authority pursuant to the terms of the said Highways Agreement.

7. NOTICES

- 7.1 Any notice, demand or any other communication served by any party under this Deed is to be delivered by hand or sent by first class post, pre-paid or recorded delivery PROVIDED ALWAYS the Implementation Notice shall only be validly served if it is delivered by way of recorded delivery.
- 7.2 Any notice, demand or any other communication served is to be sent to the addresses set out above or to such other address as one party may notify in writing to the others at any time as its address for service:
- 7.3 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:
 - 7.3.1 if delivered by hand, at the time of delivery;
 - 7.3.2 if sent by post, on the second working day after posting; or
 - 7.3.3 if sent by recorded delivery, at the time delivery was signed for

- 7.4 If a notice, demand or any other communication is served after 4.00pm in a working day, or on a day that is not a working day, it is to be treated as having been served in the next working day.

8. **COSTS**

The Owner and Second Owner shall pay to the Council on the signing hereof the sum of £3,500 in respect of the Council's legal costs in respect of the preparation and execution of this deed together with the local planning authority's management fee of £250.

9. **DISPUTE RESOLUTION**

If any difference or dispute arises between the parties hereto touching or concerning their respective rights duties liabilities or obligations under or by virtue of this deed the same shall be referred to a member of the Royal Institution of Chartered Surveyors ("RICS") to be agreed between the parties or failing agreement upon request by one party for arbitration that party may after 21 days of that request by him request that an arbitrator be appointed by the President for the time being of RICS or his duly authorised deputy on the application of either party and in this respect such referral shall be construed as a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force.

10. **Value Added Tax**

All sums paid or to be paid in accordance with the terms of this Deed shall be exclusive of any Value Added Tax ("VAT"). If at any time VAT becomes chargeable in respect of any supply made in accordance with the terms of this Schedule then, to the extent that VAT had not previously been charged in respect of that supply, the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly.

11. **JURISDICTION AND LEGAL EFFECT**

- 11.1 This deed shall be governed by and interpreted in accordance with the law of England and Wales.

- 11.2 No waiver (whether express or implied) by the Council 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 from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

- 11.3 Nothing herein contained or implied shall prejudice or affect the rights powers duties and obligations of the Council in exercise of its functions as a local authority highway authority and local planning authority and the rights powers duties and obligations of the Council under all public and private statutes and byelaws orders and regulations may be fully and effectually exercised in relation to the Land or any part thereof and any works executed thereon as if the deed had not been executed by the Council and in particular nothing in this deed shall restrict the Council and/or any other local authority from exercising powers of compulsory purchase in respect of any part of the Land.
- 11.4 Any approval given under this deed or for the purpose of this deed shall not be deemed to be approval for any other purpose whatsoever.

The parties have executed this agreement as a Deed and it is delivered and takes effect on the date stated at the beginning of it.

SCHEDULE 1
HIGHWAYS AGREEMENT

DATED

2014

BRYMBO DEVELOPMENTS LIMITED

- and -

WREXHAM COUNTY BOROUGH COUNCIL

A G R E E M E N T

for the construction and adoption of roads
on land at Brymbo, Wrexham and at the junctions of Railway Road and Mount Hill,
Wrexham and Blast Road, High Street and Gwalia Road, Wrexham
under the Highways Act 1980 Sections 38 and 278

Trevor Coxon
Head of Corporate and Customer Services
Wrexham County Borough Council
Guildhall
Wrexham
LL11 1AY

Ref: TS/10005795

THIS AGREEMENT is made the day of **2014**

BETWEEN:

- (1) **BRYMBO DEVELOPMENTS LIMITED** whose registered office is situated at Fernhill Estate Office, Fernhill Road, Sutton, Newport, Shropshire TF10 8DJ (Company Registration No. 00936369) ('the Developer') and
- (2) **WREXHAM COUNTY BOROUGH COUNCIL** of Guildhall, Wrexham LL11 1AY ('the Council').

NOW IT IS AGREED as follows:

1 Definitions and Interpretation

In this Agreement:

- 1.1 'the Appropriate Officer' means the highway engineer or other appropriate officer for the time being of the Council,
- 1.2 'the Bond' means the bond to be entered into by the Developer with Lloyds Bank plc or another Bank being a member of the London Bankers Clearing House in favour of the Council to guarantee the due performance of the terms and conditions of this Agreement in accordance with the terms of the s106 Agreement
- 1.3 'the Existing Roads' means the existing highways maintainable at public expense shown shaded green on Plan A,
- 1.4 'the Final Certificate' means the certificate issued under Clause 6.3 of this Agreement,
- 1.5 'the Interim Certificate' means the certificate to be issued under Clause 6.1 of this Agreement,
- 1.6 'the Land' means the land being described as land at Brymbo, Wrexham shown on Plan B being the land identified by title numbers CYM194878 and WA705202,
- 1.7 'the Maintenance Period' means the period of 12 months from the date of the Interim Certificate,
- 1.8 'Plan A' means the drawing numbered P 47067923/058 Rev. 03 annexed to this Agreement which has been approved by the Council,
- 1.9 'Plan B' means the drawing numbered P 47067923/059 Rev. 03 annexed to this Agreement which has been approved by the Council,
- 1.10 'the Planning Permission' means the obligations set out in BRY P/2010/0516 or any superceding permission as granted by the Council,

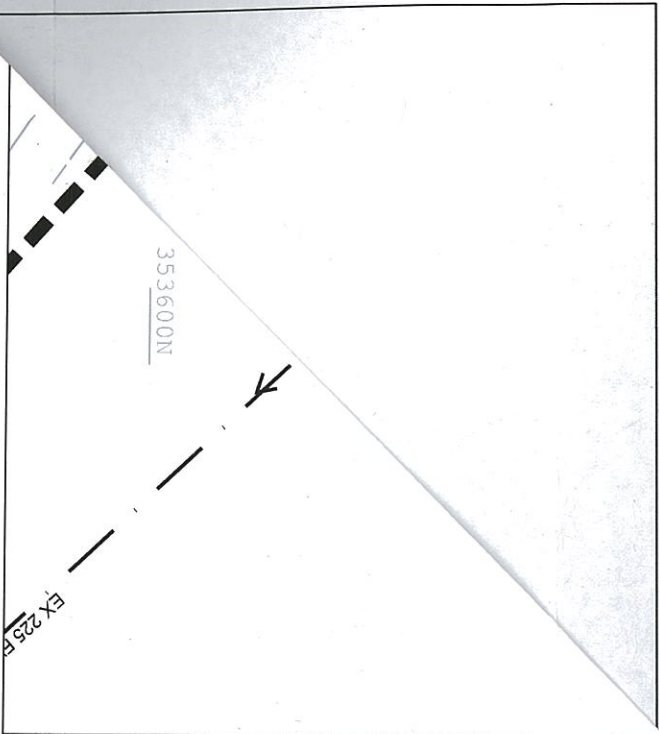
This drawing is for Preliminary purposes only and is subject to amendment during design development. UNDER NO CIRCUMSTANCES MUST THIS DRAWING BE USED FOR CONSTRUCTION PURPOSES

NOTES

1. IF RECEIVED ELECTRONICALLY IT IS THE RECIPIENT'S RESPONSIBILITY TO PRINT TO THE CORRECT SCALE. ONLY WRITTEN DIMENSIONS SHALL BE USED.

KEY

- S104 SURFACE WATER DRAIN.
- S104 FOUL WATER DRAINAGE.
- HIGHWAY DRAIN GULLY AND CONNECTION.
- HIGHWAY DRAIN AND CARRIER PIPE
- PRIVATE FOUL WATER CONNECTION.
- PRIVATE STORM WATER CONNECTION.
- CULVERT IN RIPARIAN OWNERSHIP
- S104 SEWER EASEMENT.
- EXISTING HIGHWAY LAND
- LAND TO BE DEDICATED AS HIGHWAY
- PROPOSED STREET LIGHTING



PRELIMINARY

DO DEVELOPMENTS LTD

BRYMBO DEVELOPMENT
BRYMBO
WREXHAM

Drawing Title

SECTION S278
PLAN
PLAN A

Drawn	Checked	Approved	Date
SJC	CEH		16.12.13
URS Internal Project No.			
47067923		Suitability	N/A
Scale @ A1		Zone / Mileage	N/A
1:500			

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URS

Drawing Number

P 47067923/58

Rev

03

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NOTES

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KEY

-  S104 SURFACE WATER DRAIN.
-  S104 FOUL WATER DRAINAGE.
-  HIGHWAY DRAIN GULLY AND CONNECTION.
-  HIGHWAY DRAIN AND CARRIER PIPE
-  PRIVATE FOUL WATER CONNECTION.
-  PRIVATE STORM WATER CONNECTION.
-  CULVERT IN RIPARIAN OWNERSHIP
-  S104 SEWER EASEMENT.
-  LAND TO BE DEDICATED AS HIGHWAY
-  PROPOSED STREET LIGTHING

NCC
HAR.

26



MINIARY

Check	Date	Shift
	04.09.12	01
		02
		03

DEVELOPMENTS LTD

BRYMBO DEVELOPMENT
BRYMBO
WREXHAM

Drawing Title

SECTION 38 PLAN
PLAN B

Drawn	Checked	Approved	Date
SJC	CEH		16/12/13
URS Internal Project No.			
47067923		Suitability	N/A
Scale @ A1		Zone / Mileage	N/A
1:1000			

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Drawing Number	Rev
P 47067923/59	03

- 1.11 'the Roads' means the roads to be constructed on the Land by the Developer in connection with the Section 38 Works as set out and shown on Plan B,
- 1.12 'the s106 Agreement' means the s106 entered into on the same date as this Agreement between Wrexham County Borough Council, Parkhill Estates Limited, Brymbo Developments Limited and the Welsh Ministers,
- 1.13 'the Section 278 Works' means the improvements, alterations and additions to the Existing Roads as shown on Plan A,
- 1.14 'the Section 38 Works' means the construction of the Roads including but not limited to the carriageway, footway, street lighting columns and gullies and shown on Plan B,
- 1.15 'the Specification' means all plans, documents and drawings deposited with and agreed by the Council in respect of the Section 38 and Section 278 Works outlined in Schedule 1 to this Agreement
- 1.16 words importing one gender shall be construed as importing any other gender,
- 1.17 words importing the singular shall be construed as importing the plural and vice-versa,
- 1.18 words importing persons shall be construed as importing a corporate body or a partnership and vice-versa,
- 1.19 where any party comprises more than one person the obligations and liabilities of that party under this Agreement shall be joint and several obligations and liabilities of those persons, and
- 1.20 the clause headings do form part of this Agreement and shall not be taken into account in its construction or interpretation.

2 Background

- 2.1 The Council is:
 - 2.1.1 the local Highway Authority for the County Borough of Wrexham and
 - 2.1.2 the Local Planning Authority by whom the Planning Permission is enforceable.
- 2.2 The Developer is registered as proprietor of the Land with an absolute freehold title under title numbers CYM194878 and WA705202.
- 2.3 The Developer intends to carry out the Section 38 Works on the Land and the Section 278 Works in accordance with Plan A and Plan B and the Specification.
- 2.4 The Developer desires that upon completion the Roads should become highways maintainable at the public expense.
- 2.5 The Developer also wishes to carry out work on the Existing Roads.

- 2.6 This Agreement is entered into pursuant to the Highways Act 1980, Sections 38 and 278.
- 2.8 The Council has agreed with the Developer that subject to payment of the cost of inspection of the Section 38 Works and their maintenance in a proper manner on the terms and conditions of this Agreement, the Council will do and procure all acts and things necessary for the taking over and adoption of the Roads as highways maintainable at the public expense.
- 2.9 The Council is satisfied that the Section 278 Works are of benefit to the public.

3 Bond

- 3.1 The Developer shall not commence the s278 Works or the s38 Works until the Bond has been executed and delivered to the Council.

4. The Section 38 Works: Construction of the Roads

4.1 Junctions

Where the Roads join an existing highway the Roads to that highway shall be constructed at the expense of the Developer and to the satisfaction of the Appropriate Officer.

4.2 Construction of the Section 38 Works

4.2.1 The Developer shall at his own expense construct the Section 38 Works or cause the Section 38 Works to be constructed in accordance with Plan B and the Specification approved by the Council and in all respects to the satisfaction of the Appropriate Officer, provided that any amendment to Plan B or the Specification shall be previously approved in writing by the Council and the work comprised in the amendment shall not be commenced until notification in writing of approval has been received by the Developer.

4.2.2 The Developer shall complete the Section 38 Works or any part of them as soon as is practicable and in any case not later than twelve months after the commencement of the Section 38 Works.

5 The Section 278 Works: on the Existing Highway

5.1 Liabilities of the Developer

The Developer shall carry out the Section 278 Works at his own expense and as agent for the Council in accordance with Plan A and the Specification and in all respects to the satisfaction of the Appropriate Officer within twelve months of the commencement of the s278 Works.

5.2 Statutory undertakers

The Developer shall pay all charges that may be levied on the Council or the Developer by any of the statutory undertakers in respect of removal, protection or alteration of any of their apparatus necessitated by the Section 278 Works.

6 Provisions applying to both the Section 38 Works and the Section 278 Works

6.1 The Interim Certificate

After the completion of the Section 38 Works and the Section 278 Works in accordance with this Agreement the Appropriate Officer shall issue the Interim Certificate to the Developer stating that those works have been carried out to his satisfaction and during the Maintenance Period the Developer shall execute all such works of repair, reconstruction or rectification of any and all defects and imperfections and of any and all other faults of whatsoever nature that may be required of him in writing by the Appropriate Officer.

6.2 Parties' obligations during the Maintenance Period

During the Maintenance Period:

- 6.2.1 the Developer shall at his own expense maintain the Section 38 Works and the Section 278 Works to enable safe use by vehicles and pedestrians to the satisfaction of the Appropriate Officer, and
- 6.2.2 the Council shall at its own expense undertake routine maintenance of and be responsible for payment for energy for all street lights and illuminated traffic signs.

6.3 Final Certificate

If upon the expiration of the Maintenance Period the Appropriate Officer is satisfied that the Section 38 Works and the Section 278 Works have been duly and properly maintained and are not then subject to any defects, and all other obligations under this Agreement have been performed and that an agreement pursuant to Section 104 of the Water Industry Act 1991 has been entered into by the Developer with the relevant sewerage undertaker, he shall issue the Final Certificate to the Developer stating that the Section 38 Works are suitable for adoption and shall procure the adoption of the Roads by the Council as highways maintainable at the public expense.

6.4 Issue of certificates for part

Notwithstanding the provisions of this Agreement, the Appropriate Officer may in his absolute discretion

- 6.4.1 issue an Interim Certificate and a Final Certificate in respect of such part or parts only of the Section 38 Works and the Section 278 Works as are from time to time constructed and maintained in accordance with this Agreement, and Clauses 6.1 and 6.3 shall apply accordingly to such part or parts of the Existing Roads or the Roads as are from time to time the subject of such certificates; and

6.4.2 agree to reduce the Bond proportionately.

6.5 Notice and access to be given to Appropriate Officer

The Developer shall:

- 6.5.1 before commencing the Section 38 Works or the Section 278 Works give 5 working days notice in writing to the Appropriate Officer of his intention to do so, and if such notice is not given by 2014 works shall be deemed to have commenced on 2014
- 6.5.2 during the progress of the Section 38 Works or the Section 278 Works and until the issue of the Final Certificate give to the Appropriate Officer and any person or persons duly authorised by him free access to any part of the Section 38 Works or the Section 278 Works,
- 6.5.3 permit him or them to inspect the Section 38 Works or the Section 278 Works and all or any materials used or intended to be used in the Section 38 Works or the Section 278 Works, and
- 6.5.4 give effect to any requirements made or instructions given by the Appropriate Officer or any person duly authorised by him, including the removal of specimens for analysis or other examination, for securing that the Section 38 and Section 278 Works conform to Plan A and to Plan B and the Specification, and are executed to the satisfaction of the Appropriate Officer.

6.6 No erection of overhead services

The Developer shall not at any time give consent to any service undertaking or supplier whether statutory or otherwise for the erection of overhead services in the Existing Roads or the Roads without the written consent of the Appropriate Officer being first obtained, and the location and the disposition of underground services shall follow best practice.

6.7 Default provisions

If the Developer:

- 6.7.1 fails to perform or observe any of the conditions, covenants, agreements or obligations on the part of the Developer contained in this Agreement or described or referred to on Plan A or Plan B or the Specification, or
- 6.7.2 fails to proceed with the Section 38 Works and the Section 278 Works in respect of the Existing Roads or the Roads or any of them to the satisfaction of the Appropriate Officer (whose decision shall be conclusive), or
- 6.7.3 fails to complete the Section 38 Works and the Section 278 Works within the time limits set out in this Agreement, or

6.7.4 being a company is wound up either voluntarily (except for the purpose of reconstruction or amalgamation) or compulsorily or being an individual becomes bankrupt or in either case enters into composition with its or his creditors, or

6.7.5 suffers any distress or execution to be levied against its or his goods, or

6.7.6 is the subject of the appointment of a receiver,

the Council shall (after twenty one days' notice in writing to the Developer of its intention so to do) have the right to exercise any powers whatsoever enabling it to carry out or cause to be carried out the Section 38 Works or any part of them in respect of the Roads or any part of them, or the Section 278 Works or any part of them in respect of the Existing Roads or any part of them, and to remedy any defect in them before their adoption as highways maintainable at the public expense.

6.8 Notice of default in respect of part

Where the Council serves a notice under Clause 6.7 of this Agreement in respect of any of the Existing Roads or the Roads or part of them, the service of the notice shall not in any way relieve the Developer from the performance and observance of the conditions covenants agreements or obligations on his part contained in this Agreement in respect of the rest of the Existing Roads or the rest of the Roads or part of them included in this Agreement, whether or not specified in the notice, and so far as such other Road or Roads or parts of them are concerned the terms of this Agreement shall remain in full force and effect.

6.9 Recovery of costs

If the Council serves a notice under Clause 6.7 of this Agreement and carries out the Section 38 Works and the Section 278 Works or any part of them or causes them to be carried out, the Council shall be entitled to recover the cost of doing so from the Developer including any Necessary Associated Costs, as defined in the 106 Agreement whether internal or external.

6.10 Indemnity

The Developer on behalf of himself and his successors in title or assigns, undertakes and agrees with the Council that if any claim for compensation damages, charges, costs or expenses arises in connection with or incidental to the carrying out of the Section 38 Works or the Section 278 Works (including claims relating to infringement or destruction of any right, easement or privilege and claims under Parts I and II of the Land Compensation Act 1973) or anything done or omitted to be done before issue of the Final Certificate, he will hold the Council harmless and safely indemnified from the claim FOR THE AVOIDANCE OF DOUBT such indemnity shall cease upon the date six years from the grant of the Final Certificate

6.11 Dedication of Land

Upon the issue of the Final Certificate or certificates as provided for in this Agreement the Developer shall give up and dedicate to the public

- 6.11.1 the Land on which the Section 38 Works are constructed or such part of the Land as is covered by the Final Certificate to the intent that the Land shall become a public highway up to and including the boundary of the Land with other land as indicated on Plan B; and
- 6.11.2 the land shaded clay brown on which the Section 278 Works are constructed or such part of the said land as is covered by the Final Certificate to the intent that the said land shall become a public highway up to and including the boundary of the said land with other land as indicated on Plan A

6.12 Costs of agreement

The legal costs of the Council in connection with the preparation, sealing and completion of this Agreement (and in relation to a Deed of Grant of Easement in respect of land owned by the Council under title number CYM502891) in the sum of two thousand pounds (£2,000.00) shall be paid by the Developer prior to the completion of this Agreement (and the Deed of Grant of Easement described in this Clause 6.12) to the Head of Corporate and Customer Services for the Council.

The Developer shall also pay prior to the commencement of the s278 Works s38 Works of this Agreement (and the Deed of Grant of Easement described in this Clause 6.12) to the Head of Corporate and Customer Services for the Council a fee in the sum of one hundred and six thousand, four hundred and seventy five pounds (£106,475) in respect of the inspection by the officers, employees or agents of the Council of the works executed by the Developer under this Agreement.

6.13 Adoption not to include drains

It is agreed that the adoption of the Roads as highways maintainable at the public expense shall not include the adoption as part of such highways of the drains or sewers to be constructed by the Developer but subject to this exception the adoption shall include the surface water drains, gullies and connections shown on the Plan B.

6.14 Service of notices

- 6.14.1 Any notice required to be given to the Developer under this Agreement shall be deemed to have been properly served if it is sent by the Council by pre-paid recorded delivery post to the Developer at the address given at the head of this Agreement.
- 6.14.2 Any notice required to be given by the Developer to the Council (which expression shall include the Appropriate Officer) shall be deemed to be properly served if sent by pre-paid recorded delivery post to the Head of Housing, Public Protection and Environment of the Council at the address given at the head of this Agreement.

6.15 Value Added Tax

All sums paid or to be paid in accordance with the terms of this Agreement shall be exclusive of any Value Added Tax ("VAT"). If at any time VAT becomes chargeable in respect of any supply made in accordance with the terms of this Agreement then, to the

extent that VAT had not previously been charged in respect of that supply, the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly.

6.17 Construction (Design and Management) Regulations 2007

If applicable, the Developer shall assume the obligations of the client for the purposes of the Construction (Design and Management) Regulations 2007 ("CDM Regulations") and will ensure that the execution of the works to construct the Roads complies with the CDM Regulations and in the course of carrying out such obligations the Developer shall:-

- (i) make an election in accordance with Paragraph 8 of the CDM Regulations that it is to be treated for the purposes of the CDM Regulations as the only client (when there is more than one client as defined in the regulations) in respect of the works to construct the Roads;
- (ii) appoint a CDM Co-ordinator and a principal contractor in respect of the works to construct the Roads and take all steps as are in the circumstances reasonable to ensure that each is provided with the relevant information to enable him to perform his duties under the CDM Regulations;
- (iii) allow sufficient time and resources to enable the CDM Co-ordinator and principal contractor to comply with their obligations relating to health and safety matters arising from the regulations and to co-operate with them to that end;
- (iv) notify the CDM Co-ordinator and principal contractor of any change in circumstances relating to the works to construct the Roads of which it is or ought reasonably to be aware which may affect the health and safety of persons involved or likely to become involved in the works to construct the Roads;
- (v) secure and deliver to the Council as soon as practicable after the date of completion of the works to construct the Roads (but in any event not later than three months after that date) a copy of the health and safety file prepared maintained and completed as required by the CDM Regulations;
- (vi) include in the design all information relating to design and materials which might reasonably affect the health and safety of persons involved in the works to construct the Roads and its maintenance and repair.

6.18 Jurisdiction

This deed shall be governed by and interpreted in accordance with the law of England and Wales

SCHEDULE 1**Specification for the Section 38 and Section 278 Works**

Improvement to highway at the junction of Railway Road and Mount Hill, Wrexham and at the junction of Blast Road, High Street and Gwalia Road, Wrexham and highway works on land at Brymbo, Wrexham as detailed in the Planning Permission and on Plan A and Plan B

IN WITNESS whereof the parties hereto have executed this instrument as a Deed the day and year first before written

**EXECUTED as a DEED by
BRYMBO DEVELOPMENTS LIMITED
and signed by:-**

.....
Director

.....
Director/Company Secretary

**EXECUTED as a DEED by affixing
the COMMON SEAL of WREXHAM
COUNTY BOROUGH COUNCIL
in the presence of:**

Head of Corporate and Customer Service/
Legal Services Manager

SCHEDULE 2

BOND

DATED

2014

BRYMBO DEVELOPMENTS LIMITED

- and -

LLOYDS BANK PLC

-and-

WREXHAM COUNTY BOROUGH COUNCIL

BOND

supporting an Agreement
for the construction and adoption of roads
on land at Brymbo, Wrexham and at the junctions of Railway Road and Mount Hill,
Wrexham and Blast Road, High Street and Gwalia Road, Wrexham
under the Highways Act 1980 Sections 38 and 278

Trevor Coxon
Head of Corporate and Customer Services
Wrexham County Borough Council
Guildhall
Wrexham
LL11 1AY

Ref: TS/10005795

THIS BOND is made the day of **2014**

BETWEEN:

- (1) **BRYMBO DEVELOPMENTS LIMITED** whose registered office is situated at Fernhill Estate Office, Fernhill Road, Sutton, Newport, Shropshire TF10 8DJ (Company Registration No. 00936369) ('the Developer') and
- (2) **LLOYDS BANK PLC** whose registered office is situated at 25 Gresham Street, London EC2V 7HN (Company Registration No. 00002065) but whose office for service is located at Trade Services Guarantees, PO Box 63, Two Brindley Place, Birmingham B1 2AB ('the Surety'),
- (3) **WREXHAM COUNTY BOROUGH COUNCIL** of Guildhall, Wrexham LL11 1AY ('the local Highway Authority')

1 Background

- 1.1 The Developer has entered into an Agreement pursuant to the Highways Act 1980 Sections 38 and 278 with the local Highway Authority ('the Highway Agreement') to carry out highway works on land at Brymbo, Wrexham and at the junctions of Railway Road and Mount Hill, Wrexham and Blast Road, High Street and Gwalia Road, Wrexham which are more particularly described in the Highway Agreement.
- 1.2 The Developer has entered into a further agreement pursuant to s106 of the Town and Country Planning Act 1990 (the 'Planning Agreement') which requires them to enter into this bond to guarantee the performance of the obligations under the Highway Agreement
- 1.3 This Bond is supplemental to the Highway Agreement and the Planning Agreement.
- 1.4 The Surety has agreed to guarantee the due performance of the Highway Agreement in the following manner.

2 The Surety's covenants

The Surety covenants with the local Highway Authority as follows:

- 2.1 The Surety will in all respects guarantee the due and proper performance of the Highway Agreement and the due observance and punctual performance of all the obligations, duties, undertakings, covenants and conditions by or on the part of the Developer and to be observed and performed by it which are set out in the Highway Agreement (collectively 'the Obligations'), which guarantee shall extend to include any variation of or addition to the Highway Agreement.
- 2.2 If the Developer in any respect or for any reason fails or is unable to carry out observe or perform all or any of the Obligations (unless relieved of any of the Obligations by any condition of the Highway Agreement or by the decision of a

court or tribunal of competent jurisdiction) then the Surety shall be liable for, and shall indemnify the local Highway Authority against, all losses, damages, costs and expenses whatsoever that may be incurred by the local Highway Authority by reason of or in consequence of any default or inability on the part of the Developer in performing any of the Obligations under the Highway Agreement, to the extent that such losses, damages, costs and expenses may be claimed by the local Highway Authority against the Developer under the Highway Agreement, up to a maximum aggregate sum of one million seven hundred and three thousand five hundred and fourteen pounds (£1,703,514).

3 Avoidance of obligation

The Surety shall not be discharged or released from this Bond by:

- 3.1 any agreement, concession, conduct, forbearance or indulgence granted to the Developer under the Highway Agreement or any alteration to the terms of the Highway Agreement, or
- 3.2 any other compromise or settlement of any dispute between the local Highway Authority and the Developer (but so that the local Highway Authority shall not pursue against the Surety a remedy contrary to the terms of any such compromise or settlement in so far as the Developer has complied with such terms).

4 Duration of bond

This Bond is a continuing guarantee and:

- 4.1 shall remain in operation until the earlier of:
 - 4.1.1 all the Obligations of the Developer under the Highway Agreement have been satisfied or performed in full as evidenced by the issue of the Final Certificate to the Developer
 - 4.1.2 the Surety has paid to the local Highway Authority all the sums payable by the Developer to the local Highway Authority under the terms of the Highway Agreement provided that the total sum payable by the Surety shall not exceed one million seven hundred and three thousand five hundred and fourteen pounds (£1,703,514).
- 4.2 is in addition to and not in substitution for any other security which the local Highway Authority may at any time hold for the performance of such obligations, and
- 4.3 may be enforced without first having recourse to any alternative security and without taking any other steps or proceedings against the Developer

5 Disclaimer of the Agreement

The Surety's obligation and liability under this Bond shall continue notwithstanding any disclaimer of the Highway Agreement by a liquidator or administrator appointed of the Developer, and in the event of such a disclaimer the Highway Agreement shall for the purposes of this Bond be deemed to continue.

6 Surety's liability no greater than the Developer's liability

This Bond shall not be construed as placing any greater liability upon the Surety than is upon the Developer under the terms of the Highway Agreement.

7 Jurisdiction

This Bond shall be governed by and construed in accordance with the law of England and Wales.

**EXECUTED as a DEED by
BRYMBO DEVELOPMENTS LIMITED
and signed by:-**

.....
Director

.....
Director/Company Secretary

**EXECUTED as a Deed but not delivered
until the date hereof by LLOYDS BANK PLC.
acting by an Authorised Signatory:-**

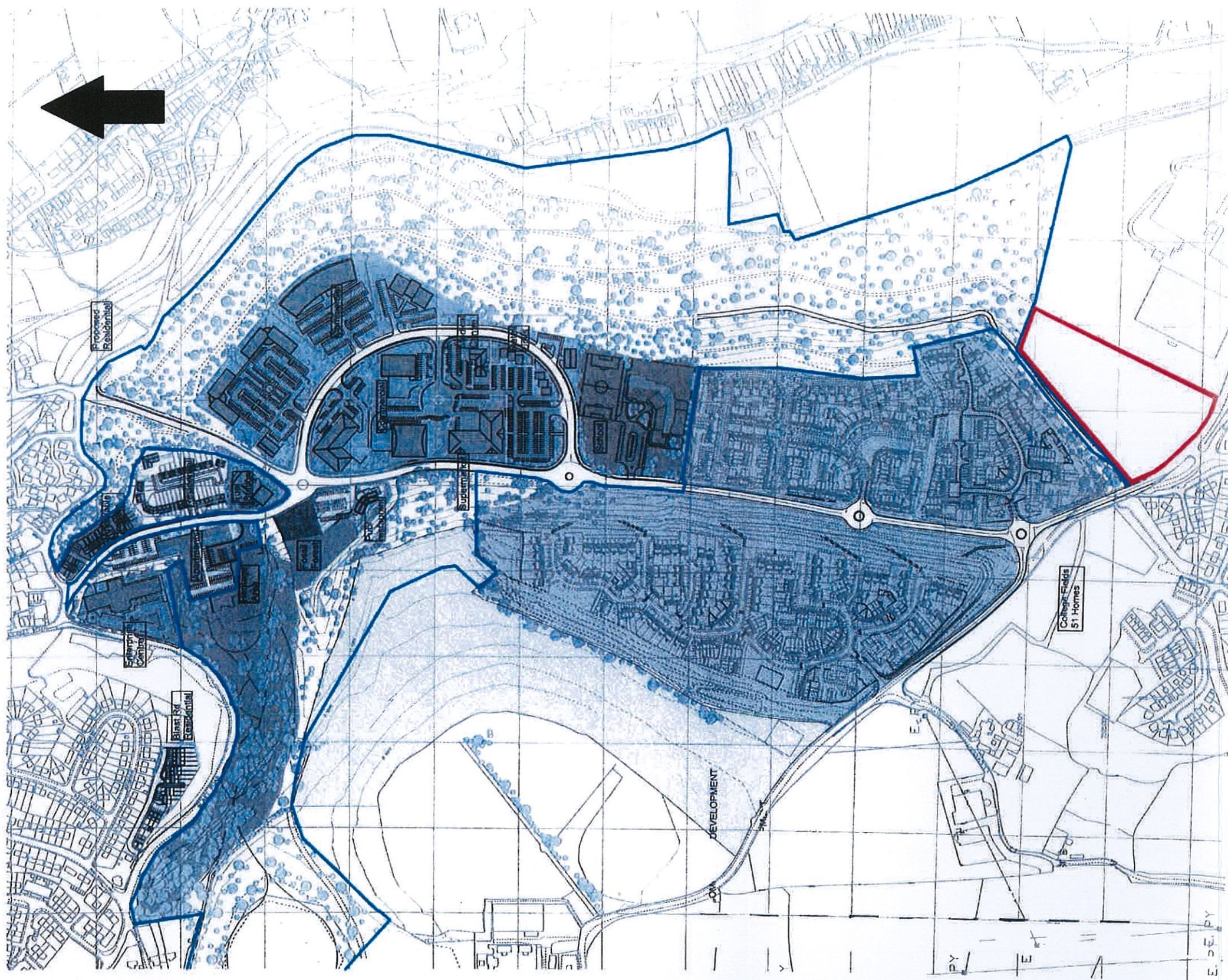
.....
Duly Authorised Signatory

**EXECUTED as a DEED by affixing
the COMMON SEAL of WREXHAM
COUNTY BOROUGH COUNCIL
in the presence of:**

Head of Corporate and Customer Services

Schedule 3

PLANS 1-6

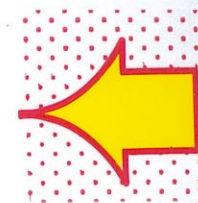


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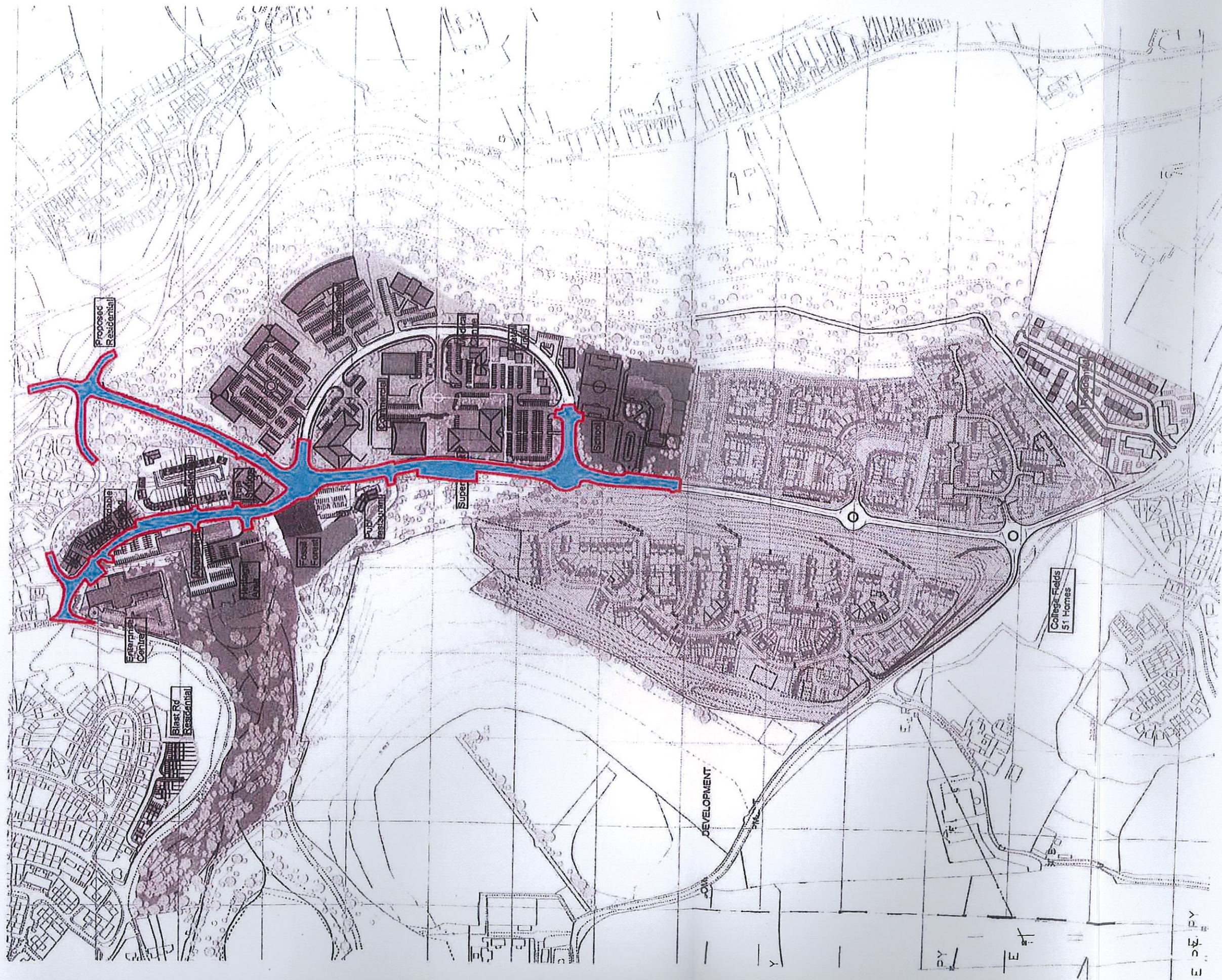


BRYMBO DEVELOPMENTS LTD PROPOSED HOUSING: LOCATION

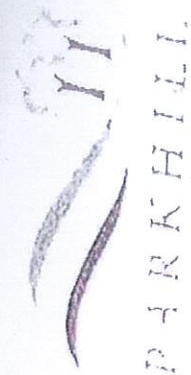
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PLAN 1



BRYMBO DEVELOPMENTS LTD
MASTERPLAN



NCC
AKR



PLAN 3
THE SPINE ROAD

P / 2010 / 0516

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KEY:

-  CARRIAGEWAY
-  FOOTWAY/CYCLEWAY
-  VERGE/SOFT LANDSCAPING
-  EARTHWORK SLOPES

NOTES:

PROPOSED HIGHWAY WORKS WILL NEED TO
BE AGREED AND APPROVED BY WREXHAM
BOROUGH COUNCIL PRIOR TO
CONSTRUCTION WORK.



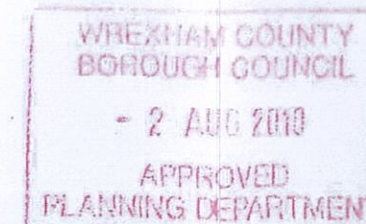
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ABC
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REFERENCE TO 14 REMOVED, SECTION 'B' ADDED, DRAWING AMENDED TO A2 SIZE.	SJC/GAL	08.09.09	02
FIRST ISSUE	SJC/GAL	21.08.09	01
Revision Details	By	Date	Suffix
	Check		

Drawing Status
P - PRELIMINARY

Job Title
**BRYMBO DEVELOPMENT
BRYMBO
WREXHAM**

Drawing Title
**HIGHWAY
PROPOSALS**



Scale at A2 1:2500	Design Office TELFORD
Drawn SJC	Date 21.08.09
Stage 1 check GAL	Date 21.08.09
Stage 2 check	Date
Approved	Date

Scott Wilson
3 Pemberton House
Stafford Court, Stafford Park,
Telford, Shropshire, TF3 3AP
Telephone (01952) 235600
Fax (01952) 235650
www.scottwilson.com



Status Drawing Number
P D110252/050

Rev
02

Handwritten: PLAN 4





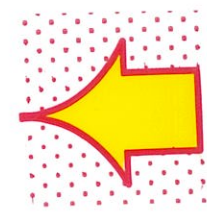
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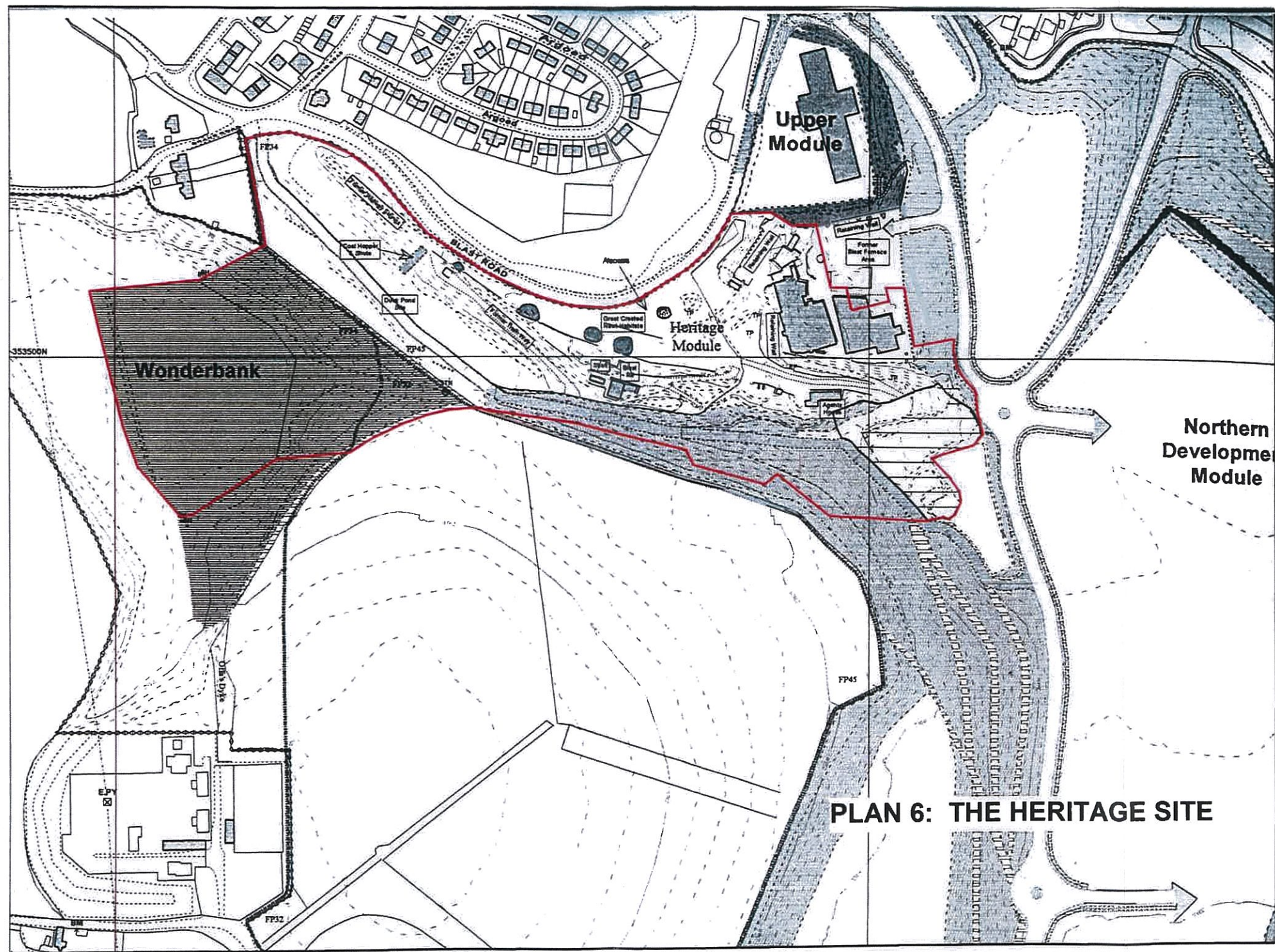


BRYMBO DEVELOPMENTS LTD MASTERPLAN

PLANS
THE SPINE ROAD
SITE

NCE
HAR
[Signature]





PLAN 6: THE HERITAGE SITE

NCE
AAR
✓



IMPLEMENTATION NOTICE

FROM:

DEVELOPMENT: []

RELEVANT PLANNING PERMISSION: [LPA ref]

RELEVANT SECTION 106 UNDERTAKING: [date] between [parties] ("The Section 106 Undertaking")

We [] hereby put the Council on notice that we intend to commence development on [] 20[] This notice is the Implementation Notice served pursuant to clause 4.1 of the section 106 Undertaking.

DATED this day of 20

.....

Signed by the Owner *

or an authorised signatory of the

Owner*

Appendix 2
Construction Costs Schedule

WCBC	ROAD CONSTRUCTION COST TENDER PRICE	COST £	% BOND	£ BOND
		1521071	100	1521071
WW	DRAINAGE	425700	33	140481
			TOTAL	1661552

PROFESSIONAL FEES	%	
Consultancy		25000
LA	7	106475
WW	2.5	10643

MAXIMUM BOND		
	road	1843995
	drainage	1521071
		140481
	CONTINGENCIES	182443

THE COMMON SEAL of
WREXHAM COUNTY BOROUGH COUNCIL

was hereunto affixed in the presence of:



-----*T. G. G. G.*-----

Head of Corporate and Customer Services/
Legal Services Manager

SIGNED as a deed on behalf of)

BRYMBO DEVELOPMENTS LIMITED)

acting by a director and its secretary)

or two directors)

Director *Maureen Crabb*

Director/ Secretary *[Signature]*

SIGNED as a deed on behalf of)

PARKHILL ESTATES LIMITED)

acting by a director and its secretary)

or two directors)

Director *Maureen Crabb*

Director/Secretary *[Signature]*

