

DATED 12 SEPTEMBER 2014

(1) Ryedale District Council

and

(2) GMI Holbeck Land (Malton) Limited

AGREEMENT

relating to

Land at
Wentworth Street, Malton

pursuant to Section 106 of the Town & Country
Planning Act 1990 (as amended)

Planning reference: 11/00927/MOUT

CONTENTS

1. RECITALS
2. DEFINITIONS
3. ENABLING POWERS AND INTERPRETATION
4. APPLICATION OF S106 OF THE ACT
5. CONDITIONALITY
6. OBLIGATIONS OF THE DEVELOPER
7. OBLIGATIONS OF THE COUNCIL
8. INDEXATION
9. INTEREST
10. VAT
11. LOCAL LAND CHARGE
12. PAYMENT OF COUNCIL'S COSTS
13. NOTICES
14. DISPUTES
15. DETERMINATION OF THE AGREEMENT
16. NO FETTER OF DISCRETION
17. FUTURE PERMISSIONS
18. WAIVER
19. THIRD PARTY RIGHTS
20. GOVERNING LAW
21. LEGAL EFFECT

SCHEDULES

- | | |
|------------|------------------------------|
| Schedule 1 | Developer's Covenants |
| Schedule 2 | Retailer Workshops |
| Schedule 3 | Plan 1 – the Site |
| Schedule 4 | The proposed decision notice |
| Schedule 5 | Supplemental Deed |
| Schedule 6 | The Council's Obligations |
| Schedule 7 | Plan 2 (W50667/05-1B) |
| Schedule 8 | Delivery Management Scheme |
| Schedule 9 | Plan 3 – The Junction works |

THIS AGREEMENT is made on 12 SEPTEMBER 2014

BETWEEN:

- (1) **RYEDALE DISTRICT COUNCIL OF Ryedale House, Malton, North Yorkshire, YO17 7HH** ("the Council") of the first part
- (2) **GMI HOLBECK LAND (MALTON) LIMITED of Middleton House, Westland Road, Leeds LS11 5UH** ("the Developer") of the second part

1. RECITALS

- 1.1 The Council is the Local Planning Authority for the purposes of the Act and for the area in which the Property is situated
- 1.2 The Developer has entered into the Agreement for Lease for the acquisition of a legal interest in the Property and as such is 'a person interested in land' for the purposes of Section 106(1) of the Act.
- 1.3 The Council is the freehold owner of the Site under title number NYK363063 and intends to transfer the Property to the Developer pursuant to the Agreement for Lease.
- 1.4 The Developer has applied to the Council for permission to develop the Property in accordance with the Application and is willing to enter into this Agreement pursuant to the provisions of Section 106 of the Act in order to facilitate the Development
- 1.5 The Council having regard to the provisions of the Development Plan, the National Planning Policy Framework, and to all other material considerations

resolved at its meeting of the Council's Planning Committee held on 24 April 2014 and following execution of this Agreement to grant the Planning Permission

1.6 The Council considers it expedient in the interests of the proper planning of its area that the development of the Property should be restricted or regulated in accordance with this Agreement.

2. DEFINITIONS

2.1 In this Agreement the following expressions shall unless the context otherwise requires have the following meanings:-

"the Act" means the Town and Country Planning Act 1990 (as amended) or any re-enactment or modification thereof for the time being in force

"Agreement" means this Agreement containing planning obligations made by deed pursuant to Section 106 of the Act

"Agreement for Lease" means the conditional agreement for lease between (1) the Council and (2) the Developer dated 4 May 2011 and as subsequently amended

"Application" The Planning application seeking planning permission for the development bearing Reference No. 11/00927/MOUT in respect of the Property for which a resolution to grant permission has been passed by the Council conditionally subject to conclusion of this Agreement.

“Commencement Notice”	Written Notice given by the Developer to the Council giving 5 Working Days advance notice that implementation of the Development is about to take place and specifying the date of intended implementation of the Development.
“the Contributions”	Each or any or all of the Finkle Street/Spital Street One Way System and Pedestrian Improvements Contribution, the Old Malton Roundabout Contribution and the Yorkersgate/B1248 Contribution.
“Development”	Development is defined by the Act pursuant to the Application or such application for planning permission which may be approved in relation to the scheme approved under the Application pursuant to Section 73 of the Act
“Delivery Management Scheme”	A written scheme to include details of the delivery routes that the occupier of the Development will require of drivers of vehicles (whether employed directly by the occupier of the Development or third parties with whom such occupier has entered into delivery contracts) entering and leaving the Site for commercial purposes and such other matters which are listed in Schedule 8 to this Agreement. For the avoidance of doubt the approved route shall require all vehicles entering or leaving the Site for commercial purposes to do so by avoiding Highfield Road. Unless Highfield Road is the only passable route to the Site.
“The Expert”	An expert with a minimum of 10 years’ experience

appointed jointly by the parties but in default of such agreement such appointment shall be made by the President for the time being of the Royal Institution of Chartered Surveyors

“The Finkle Street/Spital Street One Way System and Pedestrian Improvements Contribution”

The sum of £35,000 to be paid by the Developer to the Council in accordance with the terms of this Agreement towards promotion of any necessary traffic regulation order or orders and implementation of works to the highway to improve the footways shown within the area coloured light blue on Plan 2 (W50667/05-1B) contained at Schedule 7 to this Agreement.

“the Highway Monitoring Arrangement”

Surveys of traffic passing through the Old Malton Roundabout comprising two surveys prior to and then every three months following the opening of the Store for a one year period, such survey arrangements to be agreed between the Developer and the Council in consultation with the Local Highway Authority and such dates to be agreed between the Developer and the Council in Consultation with the Local Highway Authority as being representative of the weekday morning, afternoon and Saturday times of peak traffic flow and to include queue lengths on all approaches

“the Highway Monitoring Report”

The report prepared by the Developer following the Highway Monitoring Arrangement of the data collected and submitted to the Council and the local Highway Authority for review

"Indexation"

means the recalculation of any payment specified in this Agreement by applying the following formula:

$$A \times \frac{B}{C} = D$$

Where:

A = the payment specified in this Agreement in pounds Sterling

B = the figure shown in the RPIX for the month last published prior to the date the payment is made under this Agreement

C = the figure shown in the RPIX for the month immediately prior to the date of this Agreement

D = the recalculation sum in pounds sterling payable under this Agreement

or if the RPIX shall cease to be compiled or the formula shall otherwise be incapable of operation then such other equivalent means as shall be proposed by the Developer (and approved by the Council in writing) to recalculate such payment with the intent that it shall have like effect

"Index-Linked/Linking"

the adjustment of payments due under this Agreement as a result of Indexation from the date of Planning Permission to the date of payment of the Contribution

"Implementation Date"

the date of implementation of the Development by the carrying out of a material operation as defined in Section 56 of the Act other than (for the purposes of this Agreement and for no other purpose) operations consisting of site clearance, demolition work,

archaeological investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and references to "Implementation" and "Implement" shall be construed accordingly

"the Junction Works"	Works to the Old Malton Roundabout as shown indicatively on Plan 3
"the Livestock Market Scheme"	The redevelopment of Malton's Livestock Market pursuant to planning permission 11/00412/MOUT
"Occupation Date"	the first date of occupation of the Store (which for the avoidance of doubt shall not include occupation for the purposes of fitting out the Development) and the terms "Occupy" "Occupied" and "Occupation" shall be construed accordingly
"Old Malton Roundabout"	The junction of Old Malton Road (B1257) and Highfield Road, Malton
"Old Malton Roundabout Contribution"	A contribution of £100,000 (one hundred thousand pounds) to be applied to kerb realignment and/or white lining works as shown on Plan 3 which may be reasonably required by the Council in consultation with the Local Highway Authority after review by the Council in consultation with the Local Highway Authority of the Highway Monitoring Report and after

exclusion of traffic generated by developments with the benefit of planning permission granted after the Planning Permission

“the Old Malton Roundabout Contribution Notice”

Notice which may be given by the Council in consultation with the Local Highway Authority following receipt and review of the Highway Monitoring Report to the Developer of the requirement for the Old Malton Roundabout Contribution to be paid to the Council and containing a detailed description of the Junction Works

“the Parties”

the parties to this Agreement and their successors in title

“Plan 1”

the plan attached at Schedule 3 which shows the boundaries of the land comprised in the Site and the Property

“Plan 2”

the plan attached at Schedule 7 which shows the land within which the Finkle Street/Spital Street One Way System and Pedestrian Improvements Contribution may be applied to footway improvements

“Plan 3”

the plan attached at Schedule 9 which shows indicatively works which may be required to the Old Malton Roundabout subject to the provisions of this Agreement

“the Planning Permission”

the notice of permission (substantially in the form of the draft copy which is annexed to this Agreement at

	Schedule 4) to be issued by the Council pursuant to the Application and the date of grant of the Planning Permission shall be the date on which the notice is issued
“the Property”	A leasehold interest of 250 years in part of the land and premises known as Wentworth Street Car Park, Malton as shown edged in red on Plan 1 and registered at HM Land Registry under title number NYK363063
“Public Art and Wayfinding Scheme”	A scheme of public art and town centre wayfinding to be agreed in writing in advance by the Creative Economy Officer from time to time of the Council or such other officer who may be notified by the Council to the Developer to the total value (including any community consultation associated with the provision of the scheme) of £25,000 (twenty five thousand pounds)
“The Retailer Workshops”	Meetings with an experienced retail marketing consultant at an inclusive cost of £5,000 (five thousand pounds) to the Developer arranged in Malton and Norton town centres by the Developer to offer retailing and marketing advice to traders located in the vicinity of Malton and Norton town centres aimed at attraction by the local businesses of new customers, increasing sales and raising business profile
“RPIX”	the All Items Index of Retail Prices issued by the Office for National Statistics

"the Site"	The land edged red on Plan 1
"the Store"	The supermarket to be developed under the Planning Permission
"Strategic Transport Contribution"	The sum of £37,500 (thirty seven thousand five hundred pounds) towards the highway improvements contained in the Draft Supplementary Planning Document: Developer Contribution towards Strategic Transport Improvements at Malton and Norton (Interim Version) July 2007 and for no other purpose.
"Sufficient Interest"	The ownership of the Property by the Developer
"Supplemental Deed"	Means a deed to be entered into by the Developer in the form as set out in Schedule 5 as soon as reasonably practicable upon acquiring a Sufficient Interest in the Property so as to bind the Property to the planning obligations contained in the Agreement.
"S106 Monitoring Officer"	The Development Manger of the Council or such other officer as may be notified by the Council to the Developer
"Working Days"	means any Monday to Friday (other than bank and public holidays)
"the Yorkersgate/B1248 Contribution"	A contribution of £25,000 (twenty five thousand pounds) towards improvements to the junction of Yorkersgate and B12148

NOW THIS DEED WITNESSETH as follows:-

3. Enabling Powers & Interpretation

- 3.1 This Agreement constitutes a planning obligation for the purposes of section 106 of the Act, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers
- 3.2 Where in this Agreement reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Agreement.
- 3.3 Words importing the singular shall include the plural and vice versa and any words denoting actual persons shall include companies, corporations and other artificial persons.
- 3.4 A reference to a company shall include any company, corporate or other body corporate, wherever and however incorporated or established.
- 3.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders
- 3.6 Any reference to a specific statute or statutes includes any statutory extension or modification amendment or re-enactment of such statute and any regulation or orders made under such statute.
- 3.7 The clause and paragraph headings do not form part of this Agreement and shall not be taken into account in its construction or interpretation.
- 3.8 An obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

3.9 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually

3.10 Where any approval consent agreement or the like is required to be given pursuant to the terms of this Agreement it shall be in writing

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

4 Application of Section 106 of the Act

4.1 It is hereby agreed that the covenants, restrictions and obligations contained in this Agreement are planning obligations for the purposes of Section 106 of the Act and that the Council is the local planning authority by whom they may be enforced.

4.2 The covenants and undertakings herein on the part of the Developer are entered into with the intent that the same shall be enforceable without limit of time not only against the Developer but also against its successors in title and assigns and any person corporate or otherwise claiming through or under the Developer an interest or estate created after the date hereof in the Property or any part or parts thereof as if that person had also been an original covenanting party in respect of such of the covenants and undertakings which relate to the interest or estate for the time being held by that person apart from any statutory undertakers who may become a successor in title or becomes an assign of the Developer or who takes an interest or estate in the Property and for the avoidance of doubt those statutory undertakers shall not be liable for any breach of a covenant restriction or obligation contained in this Agreement

4.3 No person shall be liable for any breach of a covenant, restriction or obligation contained in this Agreement after parting with all of its interest in the Property but without prejudice to its liability for any subsisting breach arising prior to parting with such interest

5. Conditionality

5.1 This Agreement is conditional upon the grant of the Planning Permission and the Implementation of the Development save for the provisions of Clauses 11.1 and 12.1 which shall come into effect immediately upon completion of this Agreement.

5.2 This Agreement shall forthwith determine and cease to have effect in the event that the Planning Permission is revoked or quashed

5.3 There shall be no Implementation of Development unless and until the Property has first been transferred to the Developer or such successor in title who has first been notified to the Council

6. Obligations of the Developer

6.1 The Developer hereby covenants with the Council:

6.2 To observe and perform the covenants, restrictions and obligations contained in Schedule 1 and Schedule 2

6.3 Not to Implement, cause or permit Implementation of the Development until the Commencement Notice has been given to the Council;

6.4 To permit the Council and its authorised employees and agents upon reasonable written notice access to the Property at all reasonable times for the purposes of verifying whether or not any obligations arising hereunder have been performed or observed;

6.5 To comply with any reasonable requests of the Council to provide documentation within the Developer's possession (at the Developer's expense for the purposes of monitoring compliance with the obligations contained herein)

6.6 Not to Occupy or cause or permit the Occupation of the Development or any part thereof until notice has been given to the Council that the Development is ready for Occupation

7 Obligations of the Council

7.1 The Council hereby covenants with the Developer to observe and perform the covenants, restrictions and obligations contained in Schedule 6

8. Indexation of Contributions

8.1 Any financial contributions payable to the Council under this Agreement shall be Index Linked from the date of the Planning Permission until the date on which such sum is paid.

9. Interest

9.1 Where any sum or amount payable to the Council under this Agreement has not been paid by the date on which it is due, the Developer shall pay the Council interest at the rate of 3% above the base rate of National Westminster Bank plc or such other clearing bank nominated by the Council from time to time in force on that amount for the period from the due date to (and including) the date of payment or if the clearing banks cease at any time to publish a base lending rate, such comparable rate of interest as the Council may reasonably determine

10. Value Added Tax ("VAT")

10.1 All contributions given in accordance with the terms of this Agreement shall be exclusive of any VAT properly payable in respect thereof.

10.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Agreement then to the extent that VAT has not been previously charged in respect of that supply the party making the supply shall have the right to issue a VAT invoice to the party to whom the supply was made and the VAT shall be paid accordingly.

11. Local Land Charge

11.1 This Agreement shall be registered by the Council as a Local Land Charge.

11.2 On the written request of the Developer at any time after each or all of the obligations have been performed or otherwise discharged (and subject to the payment of the Council's reasonable and proper costs) the Council will issue a written confirmation of such performance or discharge.

12. Payment of Council's Costs

12.1 The Developer agrees to pay forthwith to the Council the proper and reasonable legal costs incurred by the Council in preparing and settling this Agreement in the sum of £1500 (one thousand five hundred pounds).

13. Notices

13.1 Any notice (or other communication) required to be given under this Agreement shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to any person required to receive the notice (or communication) at its address as set out below:

Council: The Development Manager, Ryedale District Council, Ryedale House,
Old Malton, Road, Malton YO17 7HH

Developer: The Company Secretary, GMI Holbeck Land (Malton) Limited,
Park House, Westland Road, Leeds LS11 5UH

or as otherwise specified by the relevant person by notice in writing to each
other person.

13.2 Any notice served pursuant to the Agreement shall cite the number and clause
of the Agreement to which it relates and in the case of notice to the Council
the planning reference number for the Development

14. Disputes

14.1 If any dispute arises out of this Agreement, the dispute may be referred to
the Expert

14.2 The procedure to be followed in any dispute resolution shall be that written
submissions shall be exchanged between the Parties and served upon the
Expert within 21 days of the appointment of the Expert with any response to
be exchanged between the Parties and served upon the Expert within 14 days
of the date that the first submissions were served upon the Expert.

14.3 The findings of the Expert including any finding in respect of costs shall be
binding upon all Parties and costs shall be at the discretion of the Expert.

14.4 The provisions of this clause shall not affect the ability of the Council to seek
recourse through the Courts.

15. Determination of the Agreement

15.1 This Agreement (with the exception of Clause 12) shall cease to have effect if (insofar only as it has not already been complied with) the Planning Permission expires, is varied or revoked other than at the request of the Developer or is quashed following a successful legal challenge prior to the Implementation of the Development

15.2 The cessation of this Agreement shall not affect the liability of any party for any earlier breach

16. No fetter of discretion

16.1 Nothing contained or implied in this Agreement shall prejudice, fetter, restrict or affect the Council's powers to enforce any specific obligation term or condition nor shall anything contained or implied herein prejudice, fetter, restrict or affect any provisions, rights, powers, discretions, responsibilities, duties and obligations of the Council in the exercise of its functions as Local Planning Authority for the purposes of the Act or as a local authority generally and its rights, powers, discretions, responsibilities, duties and obligations under all public and private statutes, bye laws and regulations may be as fully and effectually exercised as if the Council were not a party to this Agreement.

17. Future Permissions

17.1 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Property in accordance with any planning permission (other than the Planning Permission) granted after the date of the Planning Permission.

18. Waiver

18.1 The failure by any party to enforce at any time or for any period any one or more of the terms and/or obligations of this Agreement including those contained in any Schedule or appendix hereto shall not be a waiver of those terms and/or obligations or of the right at any time subsequently to enforce all term of this Agreement.

19. Third Party Rights

19.1 The Parties to this Agreement 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.

20. Governing Law

20.1 This Agreement is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales

21. Legal Effect

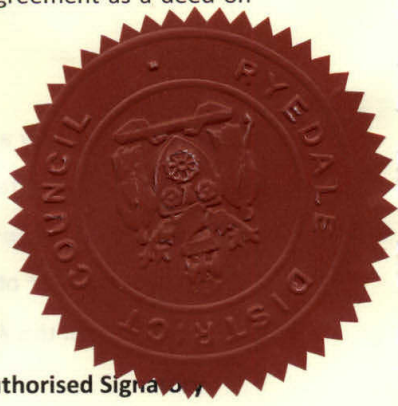
21.1 The Developer covenants with the Council not to Implement or cause or permit Implementation of the Development until the Developer has (i) acquired a Sufficient Interest in the Property against which all the obligations in this Agreement may be enforced by the Council and (ii) has entered into the Supplemental Deed which has the effect of binding the entire Property subject to the terms of this Agreement

In Witness whereof the Parties hereto have executed this Agreement as a deed on the day and year first before written

SEALED with the COMMON SEAL of the)
RYEDALE DISTRICT COUNCIL)
in the presence of :

Minute 213-1415 Reg No. 6764 Initials CMS

K.A. Winch



Authorised Signatory

EXECUTED as a deed by)
GMI HOLBECK LAND (MALTON) LIMITED)
acting by a director and its secretary)
or two directors)

J. Best

Director J.BEST
R.A. Firth
Secretary/Director

SCHEDULE 1

Developer's Covenants

The Developer covenants:

- 1.1 Prior to the Implementation Date to pay to the Council the Finkle Street/Spital Street One Way System and Pedestrian Improvements Contribution
- 1.2 To pay the Strategic Transport Contribution to the Council prior to the Occupation Date
- 1.3 Prior to the Occupation Date to fund and commence implementation of the Highway Monitoring Arrangement
- 1.4 To complete the Highway Monitoring Arrangement and following its completion to fund and complete the Highway Monitoring Report and provide this to the Council within six weeks following the completion of the Highway Monitoring Arrangement
- 1.5 If required by the Council in consultation with the Local Highway Authority, both acting reasonably, to make the Old Malton Roundabout Contribution within four weeks of receipt of the Old Malton Roundabout Notice
- 1.6 Upon notice being given by the Council to the Developer of the commencement of construction of any buildings comprising the Livestock Market Scheme to pay to the Council forthwith the Yorkersgate/B1248 Contribution and for the avoidance of doubt if there is no construction of buildings included within the Livestock Market Scheme the Yorkersgate/B1248 Contribution will not be payable

- 1.7 To complete the Public Art and Wayfinding Scheme prior to the Occupation Date.
- 1.8 Before the Development is brought into use (including any stocking of the food store) the Developer shall ensure that the occupier of the Development shall provide for approval by the Council the Delivery Management Scheme for the food store hereby approved. Once approved, the Developer will ensure that the provisions of the Delivery Management Scheme will be adopted by the occupier(s) from time to time for the lifetime of the Development unless otherwise first agreed in writing with the Council.
- 1.9 The Developer shall use all reasonable endeavours to require every driver of a heavy goods vehicle entering upon or egressing the Site to be bound by his contractual arrangement with the Developer to avoid Highfield Road unless Highfield Road is the only passable route to the Site
- 1.10 Not to:
 - 1.10.1 Implement, cause or permit Implementation of the Development until such time as the Council has received the Finkle Street/Spital Street One Way System and Pedestrian Improvements Contribution and the Yorkersgate/B1248 Contribution
 - 1.10.2 Occupy or cause or permit the Occupation of the Development or any part thereof or use or cause or permit the use of the Development or any part thereof until such time as the Council has received the Strategic Transport Contribution
- 1.11 To apply Index-linking to all Contributions due under this Agreement

SCHEDULE 2

RETAILER WORKSHOPS

The Developer covenants that before the Occupation Date in consultation with the Council's Business Liaison Manager (or such other person as is nominated by the Council) to meet with potential participants, arrange and advertise the Retailer Workshops to such parties and then to deliver the Retailer Workshops in accordance with the advertised details of the workshops agreed with the Business Liaison Manager or such substitute party nominated by the Council.

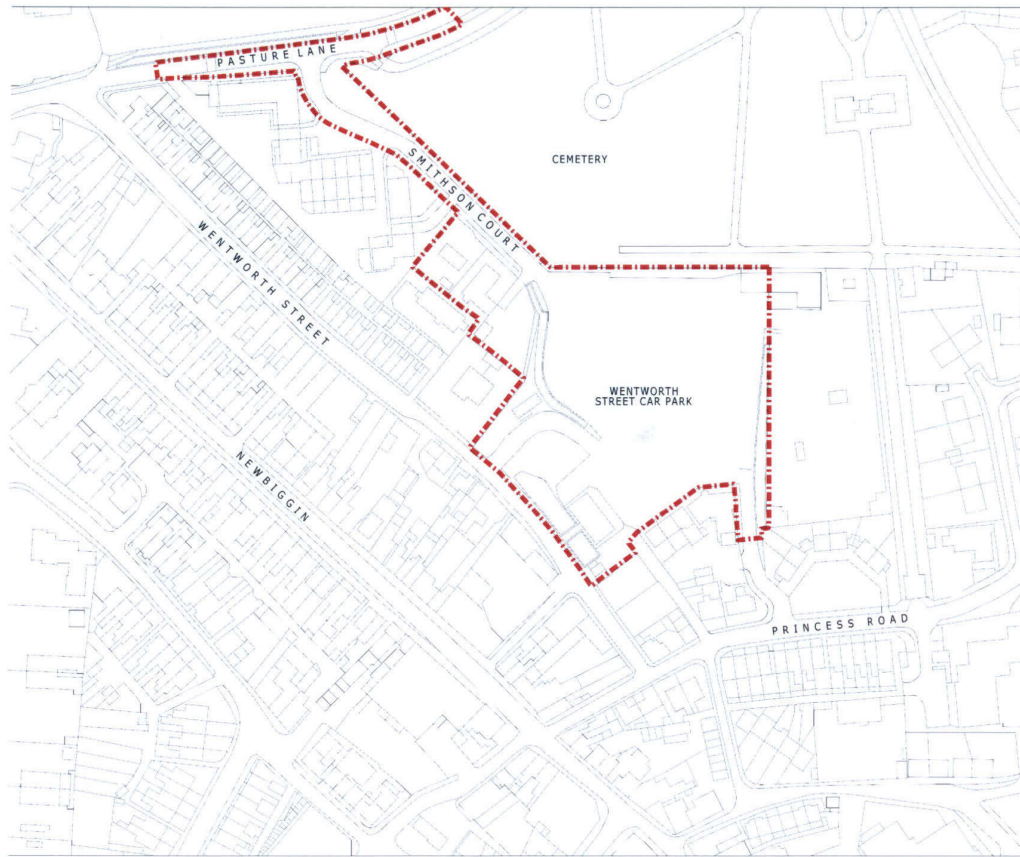


SCHEDULE 3

PLAN 1



PLAN 1



THIS DRAWING AND ANY DATA THEREON IS PREPARED BY
 OR FOR THE USE OF
 AND MUST NOT BE COPIED OR REPRODUCED
 WITHOUT THE WRITTEN CONSENT OF
 BLS ARCHITECTS

NO OTHER PERSONS ARE TO BE GIVEN ANY INFORMATION
 FROM THIS DRAWING OR DATA
 AND ANY INFORMATION IS TO BE PROVIDED TO THE CLIENT
 UNDER THE INSTRUCTIONS OF THE ARCHITECT



--- DENOTES EXTENT OF LAND OWNERSHIP

KAWLINSKI

Client: **GMT / HOLBECK LAND**
 Project: **THE WENTWORTH PROJECT**
 Location: **WENTWORTH STREET MALTON**

Document: **EXISTING SITE LOCATION PLAN**

LAND OWNERSHIP

Date	Start No.	Start No.	Start No.	Start No.
JUNE '14	SP			1:1250@A3
3888	L		001	

BLS Architects LLP
 1400113 2471 222
 1400113 2004 630
 info@bbsarchitects.com
 #bbsarchitects





SCHEDULE 4

The Draft Decision Notice





RYEDALE DISTRICT COUNCIL
TOWN & COUNTRY PLANNING ACT 1990

OUTLINE APPLICATION FOR PERMISSION TO CARRY OUT DEVELOPMENT

RYEDALE DISTRICT COUNCIL, THE LOCAL PLANNING AUTHORITY, HAS CONSIDERED THIS APPLICATION AND HAS DECIDED THAT IT SHOULD BE APPROVED SUBJECT TO THE CONDITIONS STATED BELOW:

Application No: 11/00927/MOUT
Proposal: Erection of retail units (Use Class A1), offices (Use Class B1), petrol filling station, car park and associated landscaping (Revised Details)
at: Car Park Wentworth Street Malton North Yorkshire
for: GMI Holbeck Land (Malton) Ltd
Decision Date:

REASON FOR APPROVAL

The proposed development is in accord with the following development plan policies and there are no other material considerations that outweigh those listed development plan policies:

Regional Spatial Strategy - Policy E1 - Creating a Successful and Competitive Regional Economy
Regional Spatial Strategy - Policy E2 - Town Centres and Major Facilities
Regional Spatial Strategy - Policy ENV1 - Development and Flood Risk
Regional Spatial Strategy - Policy ENV5 - Energy
Regional Spatial Strategy - Policy T1 - Personal Travel Reduction and Modal Shift
Regional Spatial Strategy - Policy Y1 - York Area Sub Area Policy
Ryedale Local Plan - Policy ENV7 - Landscaping
Ryedale Local Plan - Policy R1 - Retail development within town centres
Ryedale Local Plan - Policy T3 - Access to the local highway network
Ryedale Local Plan - Policy T7 - Parking
Ryedale Local Plan - Policy T10 - Public rights of way and pedestrian facilities
Ryedale Local Plan - Policy U3 - Surface water run-off
Ryedale Local Plan - Policy U4 - Sewage disposal
National Planning Policy Framework

GMI Holbeck Land (Malton) Ltd
C/O GMI Property Management Ltd (Ms Carolyn Lord)
Park House
Westland Road
Leeds
West Yorkshire
LS11 5UH

CONDITIONS AND ASSOCIATED REASONS

- 01 Approval of the details of the access, layout, scale, appearance and landscaping of the development (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before any development is commenced and the development shall be carried out as approved.

This condition is imposed in order to comply with the requirements of Section 92 of the Town and Country Planning Act 1990.

- 02 Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

This condition is imposed in order to comply with the requirements of Section 92 of the Town and Country Planning Act 1990.

- 03 The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

This condition is imposed in order to comply with the requirements of Section 92 of the Town and Country Planning Act 1990.

- 04 The details to be submitted pursuant to Condition 1 shall conform with the principles and parameters contained in the submitted revised Design and Access Statement (dated November 2013) in relation to:

- i. the location of the built development areas comprised in the description of development;
- ii. the location of access routes and in particular the details of principal routes into and out of the site and the principle of the primary entrance to the supermarket on Wentworth Street ;
- iii. the height, width and length of the supermarket building including car parking under the building; and
- iv. the appearance of the supermarket building including in particular the elevational treatment of the frontage to Wentworth Street

Reason:- This condition is imposed in the interests of the character and appearance of the area, the amenity of adjacent uses and in respect of access issues and to satisfy the requirements of Policy SP16 and SP20 of the Ryedale Plan - Local Plan Strategy.

- 05 A separation distance of no less than 16 metres between the proposed development and the external elevations of Wentworth Mews shall be provided. For the purposes of this condition 'the proposed development' is taken to be any built element of the proposals - including any retail or office building, pedestrian colonnade or similar structure but not including any fencing.

Reason:- This condition is imposed in the interests of the character and appearance of the area, the amenity of adjacent uses and in respect of access issues and to satisfy the requirements of Policy SP16 and SP20 of the Ryedale Plan - Local Plan Strategy.

GMI Holbeck Land (Malton) Ltd
C/O GMI Property Management Ltd (Ms Carolyn Lord)
Park House
Westland Road
Leeds
West Yorkshire
LS11 5UH

06 No development shall be commenced until:

- i. Details of car parking arrangements within the site which shall, notwithstanding the indicative status, accord with drawing numbers 3888 PL 004 Revision B, W50667/Option 6, W50667/07, W50667/06; and
- ii. Details of both hard and soft landscaping works (to the extent not required to 6(i) above), including, in the case of soft landscaping works: planting plans, written specifications, schedules of plants, noting species, plant sizes and proposed numbers / densities where appropriate and an implementation programme have been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall accord in principle and be implemented in full as part of the approved scheme and retained as such thereafter, unless otherwise agreed in writing by the Local Planning Authority.

Reason:- This condition is imposed in the interests of highway safety and to satisfy the requirements of Policy SP16 of the Ryedale Plan - Local Plan Strategy.

07 There shall be no access or egress by any heavy goods vehicles used for site preparation or for construction on the application site between the highway and the application site until full details of any measures required to prevent surface water from non-highway areas discharging on to the existing or proposed highway together with a programme for their implementation have been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority. The measures shall be implemented in accordance with the approved details and programme unless otherwise agreed in writing by the Local Planning Authority in consultation with the Highway Authority.

This condition is imposed in the interests of highway safety and to satisfy the requirements of Policy SP16 of the Ryedale Plan - Local Plan Strategy.

08 No part of the development shall be brought into use until the existing vehicular access on to Wentworth Street has been permanently closed off and the highway restored. These works shall be in accordance with details which have first been approved in writing by the Local Planning Authority in consultation with the Highway Authority. No new access shall be created without the written approval of the Local Planning Authority in consultation with the Highway Authority.

Reason:- This condition is imposed in the interests of highway safety and to satisfy the requirements of Policy SP16 of the Ryedale Plan - Local Plan Strategy.

09 There shall be no excavation or other groundworks, other than for investigative works, or the depositing of material on the site in connection with the construction of the access road or building(s) or other works until:

- i. The details of the required highway improvement works, listed below (including a phasing and completion programme), have been submitted to and approved in writing by the Local Planning Authority in consultation with the Local Highway Authority.

GMI Holbeck Land (Malton) Ltd
C/O GMI Property Management Ltd (Ms Carolyn Lord)
Park House
Westland Road
Leeds
West Yorkshire
LS11 5UH

APPN NO: 11/00927/MOUT

- ii. An independent Stage 2 Safety Audit has been carried out in accordance with HD19/03 - Road Safety Audit or any superseding regulations.
- iii. A programme for the completion of the proposed works has been submitted.

The required highway improvements shall provide for:

- a. The provision of a new signalised junction to include a right turn lane at Pasture Lane / Smithson Court with formal pedestrian crossing facilities on Pasture Lane and across Smithson Court, which shall, notwithstanding the indicative status, accord with drawing number W50667/Option 6.
- b. The realignment and widening of Smithson Court and provision of footways on both sides of the road.
- c. Provision of new private accesses off Smithson Court.
- d. Alterations to the footways on Wentworth Street, provision of raised table and zebra crossing and provision of loading bay and pick up point.
- e. A scheme to improve pedestrian access on Pump Lane and the introduction of parking restrictions.
- f. Provision of a Puffin Crossing on Newbiggin.

No part of the development shall be brought into use until the highway works listed under condition number 7 of this permission have been constructed in accordance with the details approved in writing by the Local Planning Authority under condition number 7 of this permission and such that the carriageway and any footway/footpath from which it gains access has been constructed to basecourse macadam level and kerbed and connected to the existing highway network with street lighting installed and in operation.

Reason:- This condition is imposed in the interests of highway safety and to satisfy the requirements of Policy SP16 of the Ryedale Plan - Local Plan Strategy.

- 10 There shall be no excavation or other groundworks, except for investigative works, or the depositing of material on site until the following highway works have been constructed in accordance with the details approved in writing by the Local Planning Authority under Condition 9:

- a. The provision of a new signalised junction to include a right turn lane at Pasture Lane / Smithson Court with formal pedestrian crossing facilities on Pasture Lane and across Smithson Court.
- b. The realignment and widening of Smithson Court and provision of footways on both sides of the road.
- c. Provision of new private accesses off Smithson Court.

Reason:- This condition is imposed in the interests of highway safety and to satisfy the requirements of Policy SP16 of the Ryedale Plan - Local Plan Strategy.

GMI Holbeck Land (Malton) Ltd
C/O GMI Property Management Ltd (Ms Carolyn Lord)
Park House
Westland Road
Leeds
West Yorkshire
LS11 5UH

APPN NO: 11/00927/MOUT

11 No part of the development shall be brought into use until the following highway works have been constructed in accordance with the details approved in writing by the Local Planning Authority under Condition 9:

- a. Alterations to the footways on Wentworth Street, provision of raised table and zebra crossing and provision of loading bay and pick up point.
- b. A scheme to improve pedestrian access on Pump Lane and the introduction of parking restrictions.
- c. Provision of a puffin crossing on Newbiggin.

Reason:- This condition is imposed in the interests of highway safety and to satisfy the requirements of Policy SP16 of the Ryedale Plan - Local Plan Strategy.

12 There shall be no commencement of construction works on the proposed new store until full details of the following have been submitted to and approved in writing by the Local Planning Authority in consultation with the Local Highway Authority:

- i. Tactile paving
- ii. Vehicular, cycle and pedestrian accesses
- iii. Vehicular and cycle parking
- iv. Vehicular turning arrangements
- v. Manoeuvring arrangements
- vi. Loading and unloading arrangements

The development shall be carried out in accordance with the approved details.

Reason:- This condition is imposed in the interests of highway safety and to satisfy the requirements of Policy SP16 of the Ryedale Plan - Local Plan Strategy.

13 No part of the development shall be brought into use until the approved vehicle access, parking, manoeuvring and turning areas approved under condition 12 have been constructed which shall, notwithstanding the indicative status, accord with drawing numbers 3888 PL 004 Revision B, W50667/Option 6, W50667/07, W50667/06.

Reason:- This condition is imposed in the interests of highway safety and to satisfy the requirements of Policy SP16 of the Ryedale Plan - Local Plan Strategy.

14 No external lighting equipment shall be used during site preparation or construction other than in accordance with details submitted to and approved in writing by the Local Planning Authority in consultation with the Local Highway Authority.

Reason:- This condition is imposed in the interests of highway safety and to satisfy the requirements of Policy SP16 of the Ryedale Plan - Local Plan Strategy.

GMI Holbeck Land (Malton) Ltd
C/O GMI Property Management Ltd (Ms Carolyn Lord)
Park House
Westland Road
Leeds
West Yorkshire
LS11 5UH

- 15 There shall be no establishment of a site compound, site clearance, demolition, excavation or depositing of material in connection with the construction on the site until proposals have been submitted to and approved in writing by the Local Planning Authority for the provision of:
- i. On-site parking capable of accommodating all staff and sub-contractor vehicles clear of the public highway.
 - ii. On-site materials storage capable of accommodating all materials required for the operation of the site.

The approved areas shall be kept available for their intended use and accord in principle with the approved details at all times that construction works are in operation and signage erected to direct that all vehicles in use in connection with development of the site shall park in the approved areas.

Reason:- This condition is imposed in the interests of highway safety and to satisfy the requirements of Policy SP16 of the Ryedale Plan - Local Plan Strategy.

- 16 Prior to the development being brought into use, a Travel Plan shall be submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority. This shall provide for the following matters in relation to the development:
- i. The appointment of a Travel Plan Co-Ordinator.
 - ii. A partnership approach to influence travel behaviour.
 - iii. Measures to encourage the use of alternative modes of transport other than the private car by persons travelling to the site.
 - iv. Provision of up-to-date details of public transport services serving the development.
 - v. Continued appraisal of travel patterns and measures provided through the Travel Plan.
 - vi. Improved safety for vulnerable road users.
 - vii. A reduction in all vehicle trips and mileage.
 - viii. A programme for the implementation of measures (i) to (vii) and any proposed physical works.
 - ix. Procedures for monitoring the uptake of such alternative modes of transport and for providing evidence of compliance.
 - x. Proposals to minimise the impact of the development on local air quality, including the feasibility of provision of 'Motor Vehicle Low Emission Measures,' such measures to be considered being: provision of separate refuelling points at the Petrol Filling Station for low emission vehicles, electric vehicle charging bays to be provided in the Petrol Filling Station and car park and the use of low emission vehicles for any home shopping delivery scheme which may be operated from the store.

From the bringing into use of the development the Travel Plan shall be implemented in accordance with the approved details and the development shall thereafter be carried out and operated in accordance with the approved Travel Plan.

Reason:- This condition is imposed in the interests of highway safety and to satisfy the requirements of Policy SP16 of the Ryedale Plan - Local Plan Strategy.

GMI Holbeck Land (Malton) Ltd
C/O GMI Property Management Ltd (Ms Carolyn Lord)
Park House
Westland Road
Leeds
West Yorkshire
LS11 5UH

APPN NO: 11/00927/MOUT

- 17 If during development contamination not previously identified as found to be present be found then the Local Planning Authority should be notified and no further development shall be carried out until the extent of the contamination has been investigated and a remediation strategy detailing how this unsuspected contamination shall be dealt with has been submitted to and agreed in writing with the Local Planning Authority. The remediation strategy shall be implemented as approved.

Reason:- This condition is imposed because previous uses of the site may have resulted in contamination that has not been identified by the Phase I and II Geo-environmental Assessments previously carried out at the site and to satisfy the requirements of Policy SP17 of the Ryedale Plan - Local Plan Strategy and Section 11 of the National Planning Policy Framework.

- 18 Loading, unloading or movements of supermarket deliveries and home shopping vehicles at the approved supermarket, and deliveries to the petrol filling station shall be restricted to between the hours of 9:00 and 19:00 on Sundays, and 07.00 and 22:00 on all other days , unless agreed otherwise in writing by the Local Planning Authority.

Reason:- This condition is imposed in the interest of the residential amenities of the area and to satisfy the requirements of Policies SP16 and SP20 of the Ryedale Plan - Local Plan Strategy.

- 19 Prior to the operation of the foodstore and the petrol filling station hereby approved a Noise Management Plan shall be submitted to and approved in writing by the Local Planning Authority and thereafter adhered to unless otherwise agreed in writing by the Local Planning Authority. The submitted scheme shall include measures to be implemented at the site to minimise noise disturbance to local residents from deliveries and other servicing and operational requirements.

Reason:- This condition is imposed in the interest of the residential amenities of the area and to satisfy the requirements of Policies SP16 and SP20 of the Ryedale Plan - Local Plan Strategy.

- 20 No fixed plant and / or machinery shall come into operation until a scheme containing details of the fixed plant and machinery serving the development hereby permitted together with associated mitigation measures is submitted to and approved in writing by the Local Planning Authority. Such scheme will include the anticipated rating level of plant noise emitted from the site between the hours of 23.00 and 07.00 and separately between 07.00 and 23.00 when assessed at the nearest noise sensitive property. The measurements and assessment shall be made in accordance with BS4142: 1997. Any fixed plant and/or machinery shall be provided in accordance with an approved scheme.

Reason:- This condition is imposed in the interest of the residential amenities of the area and to satisfy the requirements of Policies SP16 and SP20 of the Ryedale Plan - Local Plan Strategy.

- 21 Prior to the commencement of development (other than demolition and site clearance) full details of the boundary treatment proposed along the boundaries of the site with Smithson Court shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full as part of the development in accordance with the approved scheme and retained as such thereafter, unless otherwise agreed in writing by the Local Planning Authority.

GMI Holbeck Land (Malton) Ltd
C/O GMI Property Management Ltd (Ms Carolyn Lord)
Park House
Westland Road
Leeds
West Yorkshire
LS11 5UH

APPN NO: 11/00927/MOUT

Reason:- This condition is imposed in the interest of the residential amenities of the area and to satisfy the requirements of Policies SP16 and SP20 of the Ryedale Plan - Local Plan Strategy.

- 22 Before the commencement of development a Construction Environmental Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Construction Environmental Management Plan shall identify the measures and procedures that will be implemented to minimise the creation and impact of noise, vibration, dust and waste disposal resulting from the demolition, site preparation, groundwork and construction phases of the development and to manage the Heavy Goods Vehicle access to and from the site associated with such phases including the proposed routeing to be used by such traffic, and maintaining general, public access car parking (a minimum of 150 spaces) at the site throughout the construction phase. The Construction Environmental Management Plan shall include details of measures to be employed to prevent the egress of mud and other detritus onto the public highway including wheel washing facilities where considered necessary by the Local Planning Authority in consultation with the Highway Authority. These measures shall be made available before any excavation or depositing of material in connection with the construction commences on the site and be kept available and in full working order and used until such time as the Local Planning Authority agrees in writing to their withdrawal. Unless otherwise agreed in writing by the Local Planning Authority, once approved, the Construction Environmental Management Plan shall be adhered to at all times and until the Local Planning Authority in consultation with the Highway Authority agree in writing that its operation can be withdrawn. Unless otherwise first agreed in writing by the Local Planning Authority, once approved the Construction Environmental Management Plan shall be adhered to at all times and until the Local Planning Authority in consultation with the Highway Authority agree in writing that its operation can be withdrawn including keeping available through the working day and in full working order any equipment or facilities proposed.

Reason:- This condition is imposed in the interest of the residential amenities of the area and to satisfy the requirements of Policies SP16 and SP20 of the Ryedale Plan - Local Plan Strategy.

- 23 Details of the dates, times and duration of all piling operations shall be submitted to the Local Planning Authority at least fourteen days before such operations commence.

Reason:- This condition is imposed in the interest of the residential amenities of the area and to satisfy the requirements of Policies SP16 and SP20 of the Ryedale Plan - Local Plan Strategy.

- 24 Prior to the foodstore being brought into use details of means of prevention of vehicular access to the car park (outside of hours to be agreed with the Local Planning Authority) shall be submitted to and approved in writing by the Local Planning Authority and thereafter provided, retained and operated in accordance with the approved scheme or such other scheme approved in writing by the Local Planning Authority which may supersede it.

Reason:- This condition is imposed in the interest of the residential amenities of the area and to satisfy the requirements of Policies SP16 and SP20 of the Ryedale Plan - Local Plan Strategy.

GMI Holbeck Land (Malton) Ltd
C/O GMI Property Management Ltd (Ms Carolyn Lord)
Park House
Westland Road
Leeds
West Yorkshire
LS11 5UH

25 Prior to the development being brought into use an external lighting scheme for the site shall be submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority. The approved external lighting scheme shall be implemented in accordance with the approval (or any amendment thereto or replacement external lighting scheme approved in writing by the Local Planning Authority in consultation with the Local Highway Authority) prior to the development being brought into use.

26 The foodstore and comparison retail unit hereby approved shall not be open to the general public outside the hours of 10:00 and 18:00 on Sundays and 07:00 and 22:00 on all other days unless otherwise agreed in writing by the Local Planning Authority.

Reason:- This condition is imposed in the interest of the residential amenities of the area and to satisfy the requirements of Policies SP16 and SP20 of the Ryedale Plan - Local Plan Strategy.

27 The Petrol Filling Station hereby approved shall not be open to the general public between the hours of 23.00 and 07.00 unless otherwise agreed in writing by the Local Planning Authority.

Reason:- This condition is imposed in the interest of the residential amenities of the area and to satisfy the requirements of Policies SP16 and SP20 of the Ryedale Plan - Local Plan Strategy.

28 The development of the Petrol Filling Station hereby permitted shall not be commenced until such time as a scheme to install the underground fuel tank(s) has been submitted to, and approved in writing by, the Local Planning Authority. The scheme shall include the full structural details of the installation, including details of:

- i. Excavation;
- ii. The tank(s);
- iii. Tank surrounds;
- iv. Associated pipework;
- v. Monitoring system(s);

The scheme shall be fully implemented and subsequently retained in accordance with the scheme unless otherwise agreed in writing by the Local Planning Authority.

Reason:- This condition is imposed because the site is located on the Corallian Limestone, which is designated as a Principal aquifer. The site is therefore vulnerable to any potentially polluting activity and the proposed petrol filling station poses a potential pollution risk.

29 Construction of any building shall not begin until a detailed surface water drainage scheme for the site has been submitted to and approved in writing by the Local Planning Authority. The development shall not be brought into use until the scheme has been implemented in accordance with the approved details, unless otherwise agreed in writing by the Local Planning Authority, The scheme shall provide for:

- i. Storage to accommodate surface water run-off from a 1 in 30 year rainfall event without flooding of the site, to include an allowance of 20% to take into account climate change.

GMI Holbeck Land (Malton) Ltd
C/O GMI Property Management Ltd (Ms Carolyn Lord)
Park House
Westland Road
Leeds
West Yorkshire
LS11 5UH

APPN NO: 11/00927/MOUT

- ii. A design which will ensure that storm water from a 1 in 100 year event, to include an additional allowance for increased storm water through climate change, and surcharge to the drainage system can be stored on site without risk to people or property and without overflowing to the watercourse;
- iii. Detailed surface water calculations for the whole scheme;
- iv. Surface water run-off from the site to be limited to 2 litres per second;
- v. Details of the scheme will be maintained and managed after completion;
- vi. Details of operation of the scheme were the surface water pumping station to fail.

Reason:- This condition is imposed to prevent the increased risk of flooding and ensure future maintenance of the surface water drainage system and to satisfy the requirements of Policy SP17 of the Ryedale Plan - Local Plan Strategy.

- 30 No development shall take place until such time as the implementation of a programme of archaeological work has been secured by the applicants in accordance with a written scheme of investigation which has previously been submitted to and approved in writing by the Local Planning Authority.

Reason:- This condition is imposed as the site is of archaeological interest.

- 31 Unless otherwise agreed in writing by the Local Planning Authority no building or other obstruction shall be located over or within 3.0 (three) metres either side of the centre line of the sewer which crosses the site.

Reason:- This condition is imposed in order to allow sufficient access for maintenance and repair at all times.

- 32 The site shall be developed with separate systems of drainage for foul and surface water on and off site.

Reason:- This condition is imposed to ensure satisfactory and sustainable drainage and to satisfy the requirements of Policy SP17 of the Ryedale Plan - Local Plan Strategy.

- 33 No development shall take place until details of the proposed means of foul drainage, including details of any off-site works have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason:- This condition is imposed in order to ensure that the site can be properly drained and to satisfy the requirements of Policy SP17 of the Ryedale Plan - Local Plan Strategy.

- 34 There shall be no piped discharge of surface water from the development prior to the completion of the approved surface water drainage works and no buildings shall be occupied or brought into use prior to the completion of the approved foul drainage works.

Reason:- This condition is imposed to ensure satisfactory and sustainable drainage and to satisfy Policy SP17 of the Ryedale Plan - Local Plan Strategy.

GMI Holbeck Land (Malton) Ltd
C/O GMI Property Management Ltd (Ms Carolyn Lord)
Park House
Westland Road
Leeds
West Yorkshire
LS11 5UH

- 35 Surface water from vehicle parking and hardstanding areas shall be passed through an interceptor of adequate capacity prior to discharge. Roof drainage should not be passed through any interceptor.

Reason:- This condition is imposed to ensure satisfactory and sustainable drainage and to satisfy Policy SP17 of the Ryedale Plan - Local Plan Strategy.

- 36 The development shall be carried out in accordance with the recommended mitigation and enhancement proposals as set out in Section 5 of the Habitat Survey and Protected Species Assessment. These are to include precautionary working method demolition, pre demolition bat surveys and enhancement of new buildings for bat use.

Reason:- This condition is imposed in the interests of protected species.

- 37 The foodstore and non-food unit hereby approved shall not cumulatively provide any more than 1903m2 convenience floorspace (net) or 974m2 comparison floorspace (net).

Reason:- This condition is imposed in order to ensure the development does not have any adverse effect on the vitality and viability of Malton town centre or any other centre.

- 38 The 253m2 of office accommodation hereby approved shall only be used for purposes falling within Use Class B1a (office uses other than a use within class A2), as defined by the Town and Country Planning (Use Classes) Order 1987 (as amended) and specified in the submitted application.

Reason:- This condition is imposed in order to ensure the development does not have any adverse effect on the vitality and viability of Malton town centre or any other centre.

- 39 No construction of any building shall take place until the Local Planning Authority has approved a report provided by the applicant identifying how the predicted CO2 emissions of the development will be reduced by at least 10% through the use of on-site renewable energy equipment, sustainable building techniques and/or other sustainability measures. The carbon savings which result from this will exceed what is required to comply with Part L of the Building Regulations. The development shall then proceed in accordance with the approved report or any superseding report which has been approved in writing by the Local Planning Authority.

Reason:- This condition is imposed in the interest of sustainability and to minimise the development's impact on climate change and satisfy the requirements of Policy SP17 of the Ryedale Plan - Local Plan Strategy.

GMI Holbeck Land (Malton) Ltd
C/O GMI Property Management Ltd (Ms Carolyn Lord)
Park House
Westland Road
Leeds
West Yorkshire
LS11 5UH

APPN NO: 11/00927/MOUT

- 40 The development shall not commence until the proposed off-site highway works associated with decision number 10/00899/MOUT (or any associated planning permission granted under Section 73 of the Town and Country Planning Act 1990) at Broughton Road, Malton including the realignment of Pasture Lane, the provision of a new roundabout with Broughton Road and alterations to create a 3-arm signalised junction at the Newbiggin / Broughton Road / The Mount junction have been commenced.

Reason:- This condition is imposed in the interests of highway safety and to satisfy the requirements of Policy SP16 of the Ryedale Plan - Local Plan Strategy.

- 41 The development shall not be brought into use until the highway works described in Condition 40 have been opened to traffic.

Reason:- This condition is imposed in the interests of highway safety and to satisfy the requirements of Policy SP16 of the Ryedale Plan - Local Plan Strategy.

- 42 No development shall take place until details of crime prevention measures have been submitted to and approved in writing by the Local Planning Authority. The details shall include a timetable for the implementation of approved measures. The development shall then proceed in accordance with the approved measures and timetable. The approved measures shall, thereafter, be retained as approved.

Reason:- This condition is imposed in the interests of promoting healthy communities, and reducing crime and fear of crime through design. And to satisfy the requirements of paragraph 69 of the National Planning Policy Framework and Policy SP16 of the Ryedale Plan - Local Plan Strategy.

GMI Holbeck Land (Malton) Ltd
C/O GMI Property Management Ltd (Ms Carolyn Lord)
Park House
Westland Road
Leeds
West Yorkshire
LS11 5UH

APPN NO: 11/00927/MOUT

Footnote :

In dealing with and determining this application, the Local Planning Authority have sought to take a positive approach to foster the delivery of sustainable development in accordance with the requirements of the National Planning Policy Framework. As such, the Local Authority has taken steps to work proactively with the applicant to seek solutions to problems that may have arisen in dealing with this application with a view to improving local economic, social and environmental conditions.

NO CONSENT OR APPROVAL HEREBY GIVEN REMOVES ANY REQUIREMENT TO SERVE NOTICES OR SEEK APPROVAL FROM THE DISTRICT COUNCIL WHERE SUCH ACTION IS REQUIRED BY THE BUILDING ACT 1984 OR OF ANY OTHER STATUTORY PROVISION. NO PART OF THE PROPOSED DEVELOPMENT SHOULD BE STARTED WITHOUT COMPLYING WITH SUCH REQUIREMENTS.

HEAD OF PLANNING & HOUSING

GMI Holbeck Land (Malton) Ltd
C/O GMI Property Management Ltd (Ms Carolyn Lord)
Park House
Westland Road
Leeds
West Yorkshire
LS11 5UH

being in force

“Deed” means this deed made pursuant to Section 106 of the Act

“the Parties” the parties to this Deed and their successors in title

“the Principal Agreement” an agreement dated _____ made under Section 106 of the Act between (1) the Council and (2) GMI Holbck Land (Malton) Limited (described therein as “the Developer”) relating to planning application 11/00927/MOUT and appended to this Deed at Schedule 1

“the Property” A leasehold interest of 250 years in part of the land and premises known as Wentworth Street Car Park, Malton as shown edged in red on Plan 1 and registered at HM Land Registry under title number NYK363063 as described in the Principal Agreement

2. Enabling Powers & Interpretation

2.1 This Deed constitutes a planning obligation for the purposes of section 106 of the Act, section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and any other enabling powers

3. The Principal Agreement

3.1 From the date of this Deed the Principal Agreement shall be read and construed together with the provisions of this Deed.

3.2 The Principal Agreement and the terms of the Principal Agreement shall have effect as though the provisions contained in this Deed had been originally contained in the Principal Deed.

4. Covenants of the Owner

4.1 The Owner hereby covenants with the Council to observe and perform the covenants, restrictions and obligations contained in the Principal Agreement and referred to therein as being the responsibility of the Developer

4.2 The Owner acknowledges that both the positive and restrictive covenants and undertakings contained in the Principal Agreement are entered into with the intent that the same shall be enforceable without limit of time not only against the Owner but also against their successors in title and assigns and any person corporate or otherwise claiming through or under the Owner an interest or estate created after the date hereof in the Property or any part or parts thereof as if that person had also been an original covenanting party in respect of such of the covenants and undertakings which relate to the interest or estate for the time being held by that person.

4.3 The Owner agrees that this Deed will bind the Property to the planning obligations contained in the Principal Agreement and warrants that no person or corporate body other than the Owner has any legal or equitable interest in the Property and whose consent is necessary to make this Deed binding on the Property and all estates and interests therein.

4.4 Until there has been compliance with the covenants, restrictions and obligations in this Deed, the Owner will give to the S106 Monitoring Officer (Planning Department) within 10 Working Days, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Property:

- (a) the name and address of the person to whom the disposition was made; and
- (b) the nature and extent of the interest disposed of

5. Exclusion of Contracts (Rights of Third Parties Act 1999)

5.1 Notwithstanding the provisions of the Contracts (Rights of Third Parties Act 1999) nothing in this Deed shall confer any right to enforce any of the terms and provisions contained herein on any person who is not a party to this Deed.

6. Governing Law and Jurisdiction

6.1 This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales

In Witness whereof the Parties hereto have executed this Deed on the day and year first before written

SEALED with the **COMMON SEAL** of the)
RYEDALE DISTRICT COUNCIL)
in the presence of :)

Authorised Signatory

EXECUTED as a deed by)
GMI HOLBECK LAND (MALTON) LIMITED)
acting by a director and its secretary)
or two directors)

Director

Secretary/Director

SCHEDULE 1

THE PRINCIPAL AGREEMENT



SCHEDULE 6

THE COUNCIL'S OBLIGATIONS

The Council hereby covenants with the Developer:

1. To issue separate receipts on request for any sum paid to the Council under this Agreement.
2. Unless immediately applied pursuant to this Agreement to place the Contributions in an interest bearing account or in separate interest bearing accounts as the Council shall in its discretion decide.
3. Not to apply the Contributions for any purpose otherwise than for the purposes set out in this Agreement within the Council's area.
4. That in the event the Contributions or any part or parts thereof are not expended or committed within 5 years of the date of payment then the sum or sums not expended or committed plus interest accrued will be repaid to the Developer or its nominee and for the avoidance of doubt, the Contributions or any part or parts thereof shall be deemed to have been committed if the Council has entered into any contract or given any undertaking (whether enforceable at law or otherwise) the performance or fulfilment of which will require the Council to expend funds in the future
5. In respect of the Old Malton Roundabout, acting reasonably and in consultation with the Local Highway Authority

5.1 to agree the Highway Monitoring Arrangement with the Developer
and

5.2 upon receipt of the Highway Monitoring Report to consider such report whilst discounting traffic generated by any developments in the vicinity of the Old Malton Road (B1257), Highfield Road, Malton and Pasture Lane, Malton and to determine whether the Junction Works would be of benefit to the safe and convenient use of the highway such that would justify service on the Developer of the Old Malton Roundabout Contribution Notice

6. to use the Strategic Transport Contribution for the sole purposes specified in this Agreement

SCHEDULE 7

PLAN 2

The area coloured blue on Plan 2 (W50667/05-1B)



TOWN CENTRE IMPROVEMENTS OVERVIEW



P:\data\W50667 - Malton\Drawings\W50667_05_A (b) B.dwg Plotted on 13/08/12 at 13:26 by spdy

1:1000

© Pell Frischmann

Pell Frischmann
 GROUP HOUSE, GREGG STREET, WAVERLEY, N1 1 1
 Telephone +44 (0)1924 368 143
 Email p.frischmann@pellfrischmann.com
 www.pellfrischmann.com

Project
Malton

Drawing Title
SECTION 278/106 EXTENTS

Drawn	Name	Date	Scale	VARIES @ A3
Designed				File No. W50667_05_A (b) B.dwg
Checked				Drawing Status
Approved				Drawing No. W50667/05-1(B)
				Revision B

PLAN 2

SCHEDULE 8

Delivery Management Scheme – matters to be included for approval

1. The document will be issued by the Developer/operator in conjunction with all contracts for goods, services and/or materials which are delivered to or collected from the Site using heavy goods vehicles and shall form part of the contract for such delivery or service provision.
2. Breaches of the provisions of the document shall be considered by the Developer/operator as a breach of contract and shall be expressed to be a cause for termination of the contract.
3. Drivers of heavy goods vehicles shall travel to and from this Site by avoiding Highfield Road unless Highfield Road is the only passable route to the site.
4. Prior to the Occupation Date notices shall be erected on the Site which advise that heavy goods vehicles egressing from the Site are not permitted to travel left on Pasture Lane and along Highfield Road
5. A commitment shall be made to take appropriate action to include issue of warnings of the routeing restriction in place if the Developer/operator becomes aware that Highfield Road been used by a heavy goods vehicle egressing or entering the Site at a time when other routes have been passable
6. Third parties who are to use heavy goods vehicles and who are required to visit the Site by the Developer/operator will be advised of the restriction from using Highfield Road unless Highfield Road is the only passable route.
7. In the event of the Council being made aware of any usage by heavy goods vehicles of Highfield Road (when other routes have been passable) and the Council requesting further information about action taken by the Developer/operator to supply relevant information about action taken to prevent such further usage by heavy goods vehicles.

SCHEDULE 9

PLAN 3

The Junction Works





Yew Tree Cottage

The Croft

3

9

2

4

R.A. Winch

Stone

— Approximate scheme extent

© Pell Frischmann

Pell Frischmann
GEORGE HOUSE, GEORGE STREET, WAKEFIELD WF1 1LY
Telephone +44 (0)1924 349 145
Email enquiries@pellfrischmann.com
www.pellfrischmann.com

Project

Malton

Drawn	Name	Date	Scale	1:250 @ A3
Designed			File No.	W50667_004_B.dwg
Checked			Drawing Status	
Approved			Drawing No.	W50667/004
			Revision	C

Client

GMI Properties Ltd

Drawing Title

Proposed arrangement at Junction of Town Street / Highfield Road

2013

DATED

2014

(1) Ryedale District Council
and
(2) GMI Holbeck Land (Malton) Limited

AGREEMENT

relating to

Land at
Wentworth Street, Malton

pursuant to Section 106 of the Town & Country
Planning Act 1990 (as amended)

Planning reference: 11/00927/MOUT

CONTENTS

1. RECITALS
2. DEFINITIONS
3. ENABLING POWERS AND INTERPRETATION
4. APPLICATION OF S106 OF THE ACT
5. CONDITIONALITY
6. OBLIGATIONS OF THE DEVELOPER
7. OBLIGATIONS OF THE COUNCIL
8. INDEXATION
9. INTEREST
10. VAT
11. LOCAL LAND CHARGE
12. PAYMENT OF COUNCIL'S COSTS
13. NOTICES
14. DISPUTES
15. DETERMINATION OF THE AGREEMENT
16. NO FETTER OF DISCRETION
17. FUTURE PERMISSIONS
18. WAIVER
19. THIRD PARTY RIGHTS
20. GOVERNING LAW
21. LEGAL EFFECT

SCHEDULES

- | | |
|------------|------------------------------|
| Schedule 1 | Developer's Covenants |
| Schedule 2 | Retailer Workshops |
| Schedule 3 | Plan 1 – the Site |
| Schedule 4 | The proposed decision notice |
| Schedule 5 | Supplemental Deed |
| Schedule 6 | The Council's Obligations |
| Schedule 7 | Plan 2 (W50667/05-1B) |
| Schedule 8 | Delivery Management Scheme |
| Schedule 9 | Plan 3 – The Junction works |

THIS AGREEMENT is made on

2014

BETWEEN:

- (1) **RYEDALE DISTRICT COUNCIL OF Ryedale House, Malton, North Yorkshire, YO17 7HH** ("the Council") of the first part
- (2) **GMI HOLBECK LAND (MALTON) LIMITED of Middleton House, Westland Road, Leeds LS11 5UH** ("the Developer") of the second part

1. RECITALS

- 1.1 The Council is the Local Planning Authority for the purposes of the Act and for the area in which the Property is situated
- 1.2 The Developer has entered into the Agreement for Lease for the acquisition of a legal interest in the Property and as such is 'a person interested in land' for the purposes of Section 106(1) of the Act.
- 1.3 The Council is the freehold owner of the Site under title number NYK363063 and intends to transfer the Property to the Developer pursuant to the Agreement for Lease.
- 1.4 The Developer has applied to the Council for permission to develop the Property in accordance with the Application and is willing to enter into this Agreement pursuant to the provisions of Section 106 of the Act in order to facilitate the Development
- 1.5 The Council having regard to the provisions of the Development Plan, the National Planning Policy Framework, and to all other material considerations

resolved at its meeting of the Council's Planning Committee held on 24 April 2014 and following execution of this Agreement to grant the Planning Permission

- 1.6 The Council considers it expedient in the interests of the proper planning of its area that the development of the Property should be restricted or regulated in accordance with this Agreement.

2. DEFINITIONS

- 2.1 In this Agreement the following expressions shall unless the context otherwise requires have the following meanings:-

"the Act" means the Town and Country Planning Act 1990 (as amended) or any re-enactment or modification thereof for the time being in force

"Agreement" means this Agreement containing planning obligations made by deed pursuant to Section 106 of the Act

"Agreement for Lease" means the conditional agreement for lease between (1) the Council and (2) the Developer dated 4 May 2011 and as subsequently amended

"Application" The Planning application seeking planning permission for the development bearing Reference No. 11/00927/MOUT in respect of the Property for which a resolution to grant permission has been passed by the Council conditionally subject to conclusion of this Agreement.

“Commencement Notice” Written Notice given by the Developer to the Council giving 5 Working Days advance notice that implementation of the Development is about to take place and specifying the date of intended implementation of the Development.

“the Contributions” Each or any or all of the Finkle Street/Spital Street One Way System and Pedestrian Improvements Contribution, the Old Malton Roundabout Contribution and the Yorkersgate/B1248 Contribution.

“Development” Development is defined by the Act pursuant to the Application or such application for planning permission which may be approved in relation to the scheme approved under the Application pursuant to Section 73 of the Act

“Delivery Management Scheme” A written scheme to include details of the delivery routes that the occupier of the Development will require of drivers of vehicles (whether employed directly by the occupier of the Development or third parties with whom such occupier has entered into delivery contracts) entering and leaving the Site for commercial purposes and such other matters which are listed in Schedule 8 to this Agreement. For the avoidance of doubt the approved route shall require all vehicles entering or leaving the Site for commercial purposes to do so by avoiding Highfield Road. Unless Highfield Road is the only passable route to the Site.

“The Expert” An expert with a minimum of 10 years’ experience

appointed jointly by the parties but in default of such agreement such appointment shall be made by the President for the time being of the Royal Institution of Chartered Surveyors

“The Finkle Street/Spital Street One Way System and Pedestrian Improvements Contribution”

The sum of £35,000 to be paid by the Developer to the Council in accordance with the terms of this Agreement towards promotion of any necessary traffic regulation order or orders and implementation of works to the highway to improve the footways shown within the area coloured light blue on Plan 2 (W50667/05-1B) contained at Schedule 7 to this Agreement.

“the Highway Monitoring Arrangement”

Surveys of traffic passing through the Old Malton Roundabout comprising two surveys prior to and then every three months following the opening of the Store for a one year period, such survey arrangements to be agreed between the Developer and the Council in consultation with the Local Highway Authority and such dates to be agreed between the Developer and the Council in Consultation with the Local Highway Authority as being representative of the weekday morning, afternoon and Saturday times of peak traffic flow and to include queue lengths on all approaches

“the Highway Monitoring Report”

The report prepared by the Developer following the Highway Monitoring Arrangement of the data collected and submitted to the Council and the local Highway Authority for review

"Indexation"

means the recalculation of any payment specified in this Agreement by applying the following formula:

$$A \times \frac{B}{C} = D$$

Where:

A = the payment specified in this Agreement in pounds Sterling

B = the figure shown in the RPIX for the month last published prior to the date the payment is made under this Agreement

C = the figure shown in the RPIX for the month immediately prior to the date of this Agreement

D = the recalculation sum in pounds sterling payable under this Agreement

or if the RPIX shall cease to be compiled or the formula shall otherwise be incapable of operation then such other equivalent means as shall be proposed by the Developer (and approved by the Council in writing) to recalculate such payment with the intent that it shall have like effect

"Index-Linked/Linking"

the adjustment of payments due under this Agreement as a result of Indexation from the date of Planning Permission to the date of payment of the Contribution

"Implementation Date"

the date of implementation of the Development by the carrying out of a material operation as defined in Section 56 of the Act other than (for the purposes of this Agreement and for no other purpose) operations consisting of site clearance, demolition work,

archaeological investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and references to "Implementation" and "Implement" shall be construed accordingly

"the Junction Works"	Works to the Old Malton Roundabout as shown indicatively on Plan 3
"the Livestock Market Scheme"	The redevelopment of Malton's Livestock Market pursuant to planning permission 11/00412/MOUT
"Occupation Date"	the first date of occupation of the Store (which for the avoidance of doubt shall not include occupation for the purposes of fitting out the Development) and the terms "Occupy" "Occupied" and "Occupation" shall be construed accordingly
"Old Malton Roundabout"	The junction of Old Malton Road (B1257) and Highfield Road, Malton
"Old Malton Roundabout Contribution"	A contribution of £100,000 (one hundred thousand pounds) to be applied to kerb realignment and/or white lining works as shown on Plan 3 which may be reasonably required by the Council in consultation with the Local Highway Authority after review by the Council in consultation with the Local Highway Authority of the Highway Monitoring Report and after

exclusion of traffic generated by developments with the benefit of planning permission granted after the Planning Permission

“the Old Malton Roundabout Contribution Notice”

Notice which may be given by the Council in consultation with the Local Highway Authority following receipt and review of the Highway Monitoring Report to the Developer of the requirement for the Old Malton Roundabout Contribution to be paid to the Council and containing a detailed description of the Junction Works

“the Parties”

the parties to this Agreement and their successors in title

“Plan 1”

the plan attached at Schedule 3 which shows the boundaries of the land comprised in the Site and the Property

“Plan 2”

the plan attached at Schedule 7 which shows the land within which the Finkle Street/Spital Street One Way System and Pedestrian Improvements Contribution may be applied to footway improvements

“Plan 3”

the plan attached at Schedule 9 which shows indicatively works which may be required to the Old Malton Roundabout subject to the provisions of this Agreement

“the Planning Permission”

the notice of permission (substantially in the form of the draft copy which is annexed to this Agreement at

	Schedule 4) to be issued by the Council pursuant to the Application and the date of grant of the Planning Permission shall be the date on which the notice is issued
“the Property”	A leasehold interest of 250 years in part of the land and premises known as Wentworth Street Car Park, Malton as shown edged in red on Plan 1 and registered at HM Land Registry under title number NYK363063
“Public Art and Wayfinding Scheme”	A scheme of public art and town centre wayfinding to be agreed in writing in advance by the Creative Economy Officer from time to time of the Council or such other officer who may be notified by the Council to the Developer to the total value (including any community consultation associated with the provision of the scheme) of £25,000 (twenty five thousand pounds)
“The Retailer Workshops”	Meetings with an experienced retail marketing consultant at an inclusive cost of £5,000 (five thousand pounds) to the Developer arranged in Malton and Norton town centres by the Developer to offer retailing and marketing advice to traders located in the vicinity of Malton and Norton town centres aimed at attraction by the local businesses of new customers, increasing sales and raising business profile
“RPIX”	the All Items Index of Retail Prices issued by the Office for National Statistics

“the Site”	The land edged red on Plan 1
“the Store”	The supermarket to be developed under the Planning Permission
“Strategic Transport Contribution”	The sum of £37,500 (thirty seven thousand five hundred pounds) towards the highway improvements contained in the Draft Supplementary Planning Document: Developer Contribution towards Strategic Transport Improvements at Malton and Norton (Interim Version) July 2007 and for no other purpose.
“Sufficient Interest”	The ownership of the Property by the Developer
“Supplemental Deed”	Means a deed to be entered into by the Developer in the form as set out in Schedule 5 as soon as reasonably practicable upon acquiring a Sufficient Interest in the Property so as to bind the Property to the planning obligations contained in the Agreement.
“S106 Monitoring Officer”	The Development Manger of the Council or such other officer as may be notified by the Council to the Developer
“Working Days”	means any Monday to Friday (other than bank and public holidays)
“the Yorkersgate/B1248 Contribution”	A contribution of £25,000 (twenty five thousand pounds) towards improvements to the junction of Yorkersgate and B12148

NOW THIS DEED WITNESSETH as follows:-

3. Enabling Powers & Interpretation

- 3.1 This Agreement constitutes a planning obligation for the purposes of section 106 of the Act, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers
- 3.2 Where in this Agreement reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Agreement.
- 3.3 Words importing the singular shall include the plural and vice versa and any words denoting actual persons shall include companies, corporations and other artificial persons.
- 3.4 A reference to a company shall include any company, corporate or other body corporate, wherever and however incorporated or established.
- 3.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders
- 3.6 Any reference to a specific statute or statutes includes any statutory extension or modification amendment or re-enactment of such statute and any regulation or orders made under such statute.
- 3.7 The clause and paragraph headings do not form part of this Agreement and shall not be taken into account in its construction or interpretation.
- 3.8 An obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

3.9 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually

3.10 Where any approval consent agreement or the like is required to be given pursuant to the terms of this Agreement it shall be in writing

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

4 Application of Section 106 of the Act

4.1 It is hereby agreed that the covenants, restrictions and obligations contained in this Agreement are planning obligations for the purposes of Section 106 of the Act and that the Council is the local planning authority by whom they may be enforced.

4.2 The covenants and undertakings herein on the part of the Developer are entered into with the intent that the same shall be enforceable without limit of time not only against the Developer but also against its successors in title and assigns and any person corporate or otherwise claiming through or under the Developer an interest or estate created after the date hereof in the Property or any part or parts thereof as if that person had also been an original covenanting party in respect of such of the covenants and undertakings which relate to the interest or estate for the time being held by that person apart from any statutory undertakers who may become a successor in title or becomes an assign of the Developer or who takes an interest or estate in the Property and for the avoidance of doubt those statutory undertakers shall not be liable for any breach of a covenant restriction or obligation contained in this Agreement

4.3 No person shall be liable for any breach of a covenant, restriction or obligation contained in this Agreement after parting with all of its interest in the Property but without prejudice to its liability for any subsisting breach arising prior to parting with such interest

5. Conditionality

5.1 This Agreement is conditional upon the grant of the Planning Permission and the Implementation of the Development save for the provisions of Clauses 11.1 and 12.1 which shall come into effect immediately upon completion of this Agreement.

5.2 This Agreement shall forthwith determine and cease to have effect in the event that the Planning Permission is revoked or quashed

5.3 There shall be no Implementation of Development unless and until the Property has first been transferred to the Developer or such successor in title who has first been notified to the Council

6. Obligations of the Developer

6.1 The Developer hereby covenants with the Council:

6.2 To observe and perform the covenants, restrictions and obligations contained in Schedule 1 and Schedule 2

6.3 Not to Implement, cause or permit Implementation of the Development until the Commencement Notice has been given to the Council;

6.4 To permit the Council and its authorised employees and agents upon reasonable written notice access to the Property at all reasonable times for the purposes of verifying whether or not any obligations arising hereunder have been performed or observed;

6.5 To comply with any reasonable requests of the Council to provide documentation within the Developer's possession (at the Developer's expense for the purposes of monitoring compliance with the obligations contained herein)

6.6 Not to Occupy or cause or permit the Occupation of the Development or any part thereof until notice has been given to the Council that the Development is ready for Occupation

7 Obligations of the Council

7.1 The Council hereby covenants with the Developer to observe and perform the covenants, restrictions and obligations contained in Schedule 6

8. Indexation of Contributions

8.1 Any financial contributions payable to the Council under this Agreement shall be Index Linked from the date of the Planning Permission until the date on which such sum is paid.

9. Interest

9.1 Where any sum or amount payable to the Council under this Agreement has not been paid by the date on which it is due, the Developer shall pay the Council interest at the rate of 3% above the base rate of National Westminster Bank plc or such other clearing bank nominated by the Council from time to time in force on that amount for the period from the due date to (and including) the date of payment or if the clearing banks cease at any time to publish a base lending rate, such comparable rate of interest as the Council may reasonably determine

10. Value Added Tax ("VAT")

10.1 All contributions given in accordance with the terms of this Agreement shall be exclusive of any VAT properly payable in respect thereof.

10.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Agreement then to the extent that VAT has not been previously charged in respect of that supply the party making the supply shall have the right to issue a VAT invoice to the party to whom the supply was made and the VAT shall be paid accordingly.

11. Local Land Charge

11.1 This Agreement shall be registered by the Council as a Local Land Charge.

11.2 On the written request of the Developer at any time after each or all of the obligations have been performed or otherwise discharged (and subject to the payment of the Council's reasonable and proper costs) the Council will issue a written confirmation of such performance or discharge.

12. Payment of Council's Costs

12.1 The Developer agrees to pay forthwith to the Council the proper and reasonable legal costs incurred by the Council in preparing and settling this Agreement in the sum of £1500 (one thousand five hundred pounds).

13. Notices

13.1 Any notice (or other communication) required to be given under this Agreement shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to any person required to receive the notice (or communication) at its address as set out below:

Council: The Development Manager, Ryedale District Council, Ryedale House,
Old Malton, Road, Malton YO17 7HH

Developer: The Company Secretary, GMI Holbeck Land (Malton) Limited,
Park House, Westland Road, Leeds LS11 5UH

or as otherwise specified by the relevant person by notice in writing to each
other person.

13.2 Any notice served pursuant to the Agreement shall cite the number and clause
of the Agreement to which it relates and in the case of notice to the Council
the planning reference number for the Development

14. Disputes

14.1 If any dispute arises out of this Agreement, the dispute may be referred to
the Expert

14.2 The procedure to be followed in any dispute resolution shall be that written
submissions shall be exchanged between the Parties and served upon the
Expert within 21 days of the appointment of the Expert with any response to
be exchanged between the Parties and served upon the Expert within 14 days
of the date that the first submissions were served upon the Expert.

14.3 The findings of the Expert including any finding in respect of costs shall be
binding upon all Parties and costs shall be at the discretion of the Expert.

14.4 The provisions of this clause shall not affect the ability of the Council to seek
recourse through the Courts.

15. Determination of the Agreement

15.1 This Agreement (with the exception of Clause 12) shall cease to have effect if (insofar only as it has not already been complied with) the Planning Permission expires, is varied or revoked other than at the request of the Developer or is quashed following a successful legal challenge prior to the Implementation of the Development

15.2 The cessation of this Agreement shall not affect the liability of any party for any earlier breach

16. No fetter of discretion

16.1 Nothing contained or implied in this Agreement shall prejudice, fetter, restrict or affect the Council's powers to enforce any specific obligation term or condition nor shall anything contained or implied herein prejudice, fetter, restrict or affect any provisions, rights, powers, discretions, responsibilities, duties and obligations of the Council in the exercise of its functions as Local Planning Authority for the purposes of the Act or as a local authority generally and its rights, powers, discretions, responsibilities, duties and obligations under all public and private statutes, bye laws and regulations may be as fully and effectually exercised as if the Council were not a party to this Agreement.

17. Future Permissions

17.1 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Property in accordance with any planning permission (other than the Planning Permission) granted after the date of the Planning Permission.

18. Waiver

18.1 The failure by any party to enforce at any time or for any period any one or more of the terms and/or obligations of this Agreement including those contained in any Schedule or appendix hereto shall not be a waiver of those terms and/or obligations or of the right at any time subsequently to enforce all term of this Agreement.

19. Third Party Rights

19.1 The Parties to this Agreement 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.

20. Governing Law

20.1 This Agreement is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales

21. Legal Effect

21.1 The Developer covenants with the Council not to Implement or cause or permit Implementation of the Development until the Developer has (i) acquired a Sufficient Interest in the Property against which all the obligations in this Agreement may be enforced by the Council and (ii) has entered into the Supplemental Deed which has the effect of binding the entire Property subject to the terms of this Agreement

In Witness whereof the Parties hereto have executed this Agreement as a deed on
the day and year first before written

SEALED with the COMMON SEAL of the)
RYEDALE DISTRICT COUNCIL)
in the presence of :)

Authorised Signatory

EXECUTED as a deed by)
GMI HOLBECK LAND (MALTON) LIMITED)
acting by a director and its secretary)
or two directors)

Director

Secretary/Director



SCHEDULE 1

Developer's Covenants

The Developer covenants:

- 1.1 Prior to the Implementation Date to pay to the Council the Finkle Street/Spital Street One Way System and Pedestrian Improvements Contribution
- 1.2 To pay the Strategic Transport Contribution to the Council prior to the Occupation Date
- 1.3 Prior to the Occupation Date to fund and commence implementation of the Highway Monitoring Arrangement
- 1.4 To complete the Highway Monitoring Arrangement and following its completion to fund and complete the Highway Monitoring Report and provide this to the Council within six weeks following the completion of the Highway Monitoring Arrangement
- 1.5 If required by the Council in consultation with the Local Highway Authority, both acting reasonably, to make the Old Malton Roundabout Contribution within four weeks of receipt of the Old Malton Roundabout Notice
- 1.6 Upon notice being given by the Council to the Developer of the commencement of construction of any buildings comprising the Livestock Market Scheme to pay to the Council forthwith the Yorkersgate/B1248 Contribution and for the avoidance of doubt if there is no construction of buildings included within the Livestock Market Scheme the Yorkersgate/B1248 Contribution will not be payable

- 1.7 To complete the Public Art and Wayfinding Scheme prior to the Occupation Date.
- 1.8 Before the Development is brought into use (including any stocking of the food store) the Developer shall ensure that the occupier of the Development shall provide for approval by the Council the Delivery Management Scheme for the food store hereby approved. Once approved, the Developer will ensure that the provisions of the Delivery Management Scheme will be adopted by the occupier(s) from time to time for the lifetime of the Development unless otherwise first agreed in writing with the Council.
- 1.9 The Developer shall use all reasonable endeavours to require every driver of a heavy goods vehicle entering upon or egressing the Site to be bound by his contractual arrangement with the Developer to avoid Highfield Road unless Highfield Road is the only passable route to the Site
- 1.10 Not to:
 - 1.10.1 Implement, cause or permit Implementation of the Development until such time as the Council has received the Finkle Street/Spital Street One Way System and Pedestrian Improvements Contribution and the Yorkersgate/B1248 Contribution
 - 1.10.2 Occupy or cause or permit the Occupation of the Development or any part thereof or use or cause or permit the use of the Development or any part thereof until such time as the Council has received the Strategic Transport Contribution
- 1.11 To apply Index-linking to all Contributions due under this Agreement

SCHEDULE 2

RETAILER WORKSHOPS

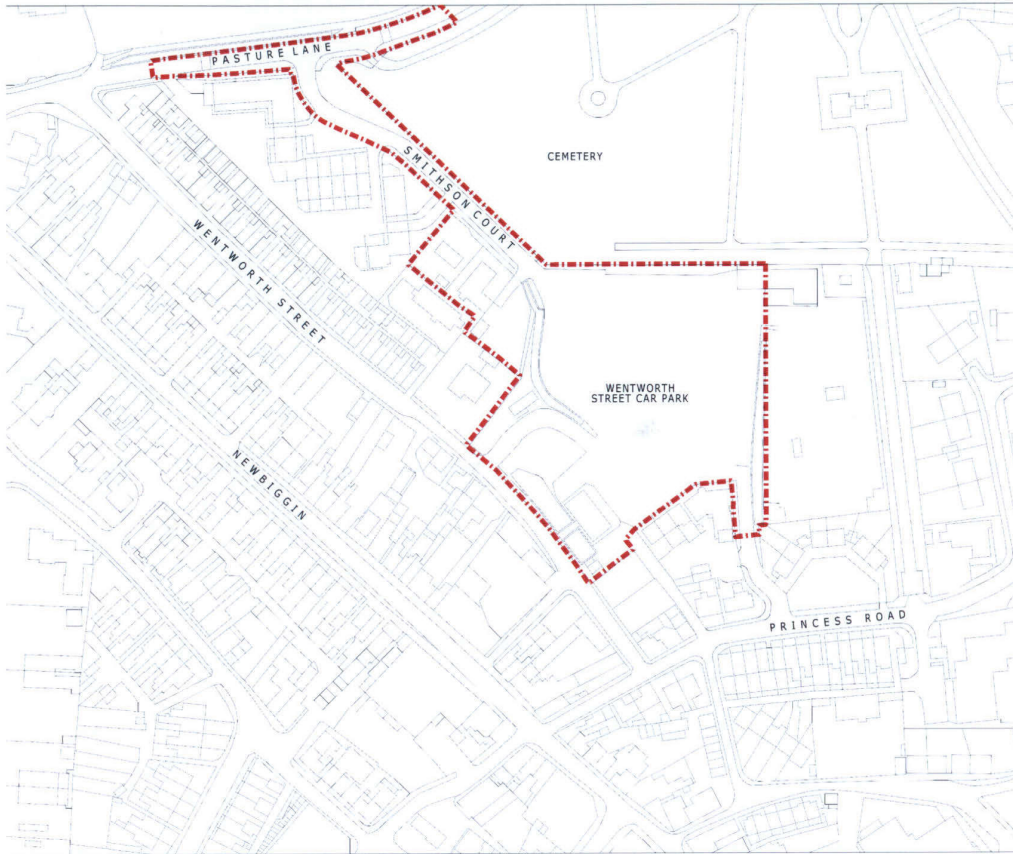
The Developer covenants that before the Occupation Date in consultation with the Council's Business Liaison Manager (or such other person as is nominated by the Council) to meet with potential participants, arrange and advertise the Retailer Workshops to such parties and then to deliver the Retailer Workshops in accordance with the advertised details of the workshops agreed with the Business Liaison Manager or such substitute party nominated by the Council.

۱۱
۱۲
۱۳
۱۴
۱۵
۱۶
۱۷
۱۸
۱۹
۲۰
۲۱
۲۲
۲۳
۲۴
۲۵
۲۶
۲۷
۲۸
۲۹
۳۰
۳۱
۳۲
۳۳
۳۴
۳۵
۳۶
۳۷
۳۸
۳۹
۴۰
۴۱
۴۲
۴۳
۴۴
۴۵
۴۶
۴۷
۴۸
۴۹
۵۰
۵۱
۵۲
۵۳
۵۴
۵۵
۵۶
۵۷
۵۸
۵۹
۶۰
۶۱
۶۲
۶۳
۶۴
۶۵
۶۶
۶۷
۶۸
۶۹
۷۰
۷۱
۷۲
۷۳
۷۴
۷۵
۷۶
۷۷
۷۸
۷۹
۸۰
۸۱
۸۲
۸۳
۸۴
۸۵
۸۶
۸۷
۸۸
۸۹
۹۰
۹۱
۹۲
۹۳
۹۴
۹۵
۹۶
۹۷
۹۸
۹۹
۱۰۰

SCHEDULE 3

PLAN 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100



THIS DRAWING AND ANY DATA HEREON IS PROTECTED BY COPYRIGHT AND SHALL NOT BE COPIED OR REPRODUCED WITHOUT THE WRITTEN CONSENT OF DLG ARCHITECTS

NO CONTRACTUAL OBLIGATION SHALL BE INCURRED BY THIS DRAWING UNLESS IT IS SIGNED BY A REGISTERED ARCHITECT

ALL DIMENSIONS AND COORDINATES ARE TO BE TAKEN FROM THE DATUM POINT INDICATED ON THE DRAWING UNLESS OTHERWISE SPECIFIED



--- DENOTES EXTENT OF LAND OWNERSHIP

DLG ARCHITECTS
 GMI / HOLBECK LAND
 THE WENTWORTH PROJECT
 WENTWORTH STREET
 MALTON

EXISTING SITE LOCATION PLAN

LAND OWNERSHIP

DATE: JUNE'14 SP
 SCALE: 1:1250@A3

NO. OF SHEETS: 3888 L
 SHEET NO.: 001

DLG ARCHITECTS LLP
 ONE SHAWLEY ROAD
 MALTON, NORTH YORKSHIRE
 YO10 2BB
 T: +44(0)13 2471 222
 F: +44(0)13 205 533
 info@dlgarchitects.com
 dlgarchitects.com



PLAN 1

SCHEDULE 4

The Draft Decision Notice

SCHEDULE 5
SUPPLEMENTAL DEED

Dated this day of 201

BETWEEN

- (1) **RYEDALE DISTRICT COUNCIL** ("the Council") of the first part
- (2) **GMI HOLBECK LAND (MALTON) LIMITED** ("the Owner") of the second part

Recitals

- (3) This Deed is supplemental to the terms of the Principal Agreement
- (4) The Owner has on the date hereof at *[insert time]* purchased the Property from the Council and now warrants that no person SAVE FROM THE Council who retains the freehold interest other than the Owner has any legal or equitable interest in the Property
- (5) The Owner enters into this Deed so as to bind the Property to the planning obligations contained in the Principal Agreement
- (6) The Owner will use its reasonable endeavours to register the requisite transfer documentation with the Land Registry within 30 days of the date of completion of this Deed.

1. DEFINITIONS

- 1.1 In this Deed the following expressions shall unless the context otherwise requires have the following meanings:-

"the Act" means the Town and Country Planning Act 1990 (as amended)
or any re-enactment or modification thereof for the time

	being in force
“Deed”	means this deed made pursuant to Section 106 of the Act
“the Parties”	the parties to this Deed and their successors in title
“the Principal Agreement”	an agreement dated _____ made under Section 106 of the Act between (1) the Council and (2) GMI Holbck Land (Malton) Limited (described therein as “the Developer”) relating to planning application 11/00927/MOUT and appended to this Deed at Schedule 1
“the Property”	A leasehold interest of 250 years in part of the land and premises known as Wentworth Street Car Park, Malton as shown edged in red on Plan 1 and registered at HM Land Registry under title number NYK363063 as described in the Principal Agreement

2. Enabling Powers & Interpretation

- 2.1 This Deed constitutes a planning obligation for the purposes of section 106 of the Act, section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and any other enabling powers

3. The Principal Agreement

- 3.1 From the date of this Deed the Principal Agreement shall be read and construed together with the provisions of this Deed.

3.2 The Principal Agreement and the terms of the Principal Agreement shall have effect as though the provisions contained in this Deed had been originally contained in the Principal Deed.

4. Covenants of the Owner

4.1 The Owner hereby covenants with the Council to observe and perform the covenants, restrictions and obligations contained in the Principal Agreement and referred to therein as being the responsibility of the Developer

4.2 The Owner acknowledges that both the positive and restrictive covenants and undertakings contained in the Principal Agreement are entered into with the intent that the same shall be enforceable without limit of time not only against the Owner but also against their successors in title and assigns and any person corporate or otherwise claiming through or under the Owner an interest or estate created after the date hereof in the Property or any part or parts thereof as if that person had also been an original covenanting party in respect of such of the covenants and undertakings which relate to the interest or estate for the time being held by that person.

4.3 The Owner agrees that this Deed will bind the Property to the planning obligations contained in the Principal Agreement and warrants that no person or corporate body other than the Owner has any legal or equitable interest in the Property and whose consent is necessary to make this Deed binding on the Property and all estates and interests therein.

4.4 Until there has been compliance with the covenants, restrictions and obligations in this Deed, the Owner will give to the S106 Monitoring Officer (Planning Department) within 10 Working Days, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Property:

- (a) the name and address of the person to whom the disposition was made; and
- (b) the nature and extent of the interest disposed of

5. Exclusion of Contracts (Rights of Third Parties Act 1999)

5.1 Notwithstanding the provisions of the Contracts (Rights of Third Parties Act 1999) nothing in this Deed shall confer any right to enforce any of the terms and provisions contained herein on any person who is not a party to this Deed.

6. Governing Law and Jurisdiction

6.1 This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales

In Witness whereof the Parties hereto have executed this Deed on the day and year first before written

SEALED with the COMMON SEAL of the)
RYEDALE DISTRICT COUNCIL)
in the presence of :)

Authorised Signatory

EXECUTED as a deed by)
GMI HOLBECK LAND (MALTON) LIMITED)
acting by a director and its secretary)
or two directors)

Director

Secretary/Director

SCHEDULE 1

THE PRINCIPAL AGREEMENT

۱
۲
۳
۴
۵
۶
۷
۸
۹
۱۰
۱۱
۱۲
۱۳
۱۴
۱۵
۱۶
۱۷
۱۸
۱۹
۲۰
۲۱
۲۲
۲۳
۲۴
۲۵
۲۶
۲۷
۲۸
۲۹
۳۰
۳۱
۳۲
۳۳
۳۴
۳۵
۳۶
۳۷
۳۸
۳۹
۴۰
۴۱
۴۲
۴۳
۴۴
۴۵
۴۶
۴۷
۴۸
۴۹
۵۰
۵۱
۵۲
۵۳
۵۴
۵۵
۵۶
۵۷
۵۸
۵۹
۶۰
۶۱
۶۲
۶۳
۶۴
۶۵
۶۶
۶۷
۶۸
۶۹
۷۰
۷۱
۷۲
۷۳
۷۴
۷۵
۷۶
۷۷
۷۸
۷۹
۸۰
۸۱
۸۲
۸۳
۸۴
۸۵
۸۶
۸۷
۸۸
۸۹
۹۰
۹۱
۹۲
۹۳
۹۴
۹۵
۹۶
۹۷
۹۸
۹۹
۱۰۰

SCHEDULE 6

THE COUNCIL'S OBLIGATIONS

The Council hereby covenants with the Developer:

1. To issue separate receipts on request for any sum paid to the Council under this Agreement.
2. Unless immediately applied pursuant to this Agreement to place the Contributions in an interest bearing account or in separate interest bearing accounts as the Council shall in its discretion decide.
3. Not to apply the Contributions for any purpose otherwise than for the purposes set out in this Agreement within the Council's area.
4. That in the event the Contributions or any part or parts thereof are not expended or committed within 5 years of the date of payment then the sum or sums not expended or committed plus interest accrued will be repaid to the Developer or its nominee and for the avoidance of doubt, the Contributions or any part or parts thereof shall be deemed to have been committed if the Council has entered into any contract or given any undertaking (whether enforceable at law or otherwise) the performance or fulfilment of which will require the Council to expend funds in the future
5. In respect of the Old Malton Roundabout, acting reasonably and in consultation with the Local Highway Authority

5.1 to agree the Highway Monitoring Arrangement with the Developer and

5.2 upon receipt of the Highway Monitoring Report to consider such report whilst discounting traffic generated by any developments in the vicinity of the Old Malton Road (B1257), Highfield Road, Malton and Pasture Lane, Malton and to determine whether the Junction Works would be of benefit to the safe and convenient use of the highway such that would justify service on the Developer of the Old Malton Roundabout Contribution Notice

6. to use the Strategic Transport Contribution for the sole purposes specified in this Agreement



SCHEDULE 7

PLAN 2

The area coloured blue on Plan 2 (W50667/05-1B)



TOWN CENTRE IMPROVEMENTS OVERVIEW



P:\data\W50667 - Malton\Drawings\W50667_05_A (b) B.dwg Plotted on 13/09/12 at 13:26 by jpsj

Pell Frischmann GEORGE HOUSE, GEORGE STREET, WAVERLEY WVL 11Y Telephone +44 (0)1753 366 145 Email enquiries@pellfrischmann.com www.pellfrischmann.com	Project	Malton		
	Client	GMI Properties Ltd	Drawing Title	SECTION 278/106 EXTENTS
	Drawn	Name	Date	Scale
	Designed			VARIES @ A3
	Checked			File No.
	Approved			W50667_05_A (b) B.dwg
	Drawing No.	W50667/05-1(B)		Drawing Status
				Revision
				B

PLAN 2

SCHEDULE 8

Delivery Management Scheme – matters to be included for approval

1. The document will be issued by the Developer/operator in conjunction with all contracts for goods, services and/or materials which are delivered to or collected from the Site using heavy goods vehicles and shall form part of the contract for such delivery or service provision.
2. Breaches of the provisions of the document shall be considered by the Developer/operator as a breach of contract and shall be expressed to be a cause for termination of the contract.
3. Drivers of heavy goods vehicles shall travel to and from this Site by avoiding Highfield Road unless Highfield Road is the only passable route to the site.
4. Prior to the Occupation Date notices shall be erected on the Site which advise that heavy goods vehicles egressing from the Site are not permitted to travel left on Pasture Lane and along Highfield Road
5. A commitment shall be made to take appropriate action to include issue of warnings of the routeing restriction in place if the Developer/operator becomes aware that Highfield Road been used by a heavy goods vehicle egressing or entering the Site at a time when other routes have been passable
6. Third parties who are to use heavy goods vehicles and who are required to visit the Site by the Developer/operator will be advised of the restriction from using Highfield Road unless Highfield Road is the only passable route.
7. In the event of the Council being made aware of any usage by heavy goods vehicles of Highfield Road (when other routes have been passable) and the Council requesting further information about action taken by the Developer/operator to supply relevant information about action taken to prevent such further usage by heavy goods vehicles.

SCHEDULE 9

PLAN 3

The Junction Works



Yew Tree Cottage

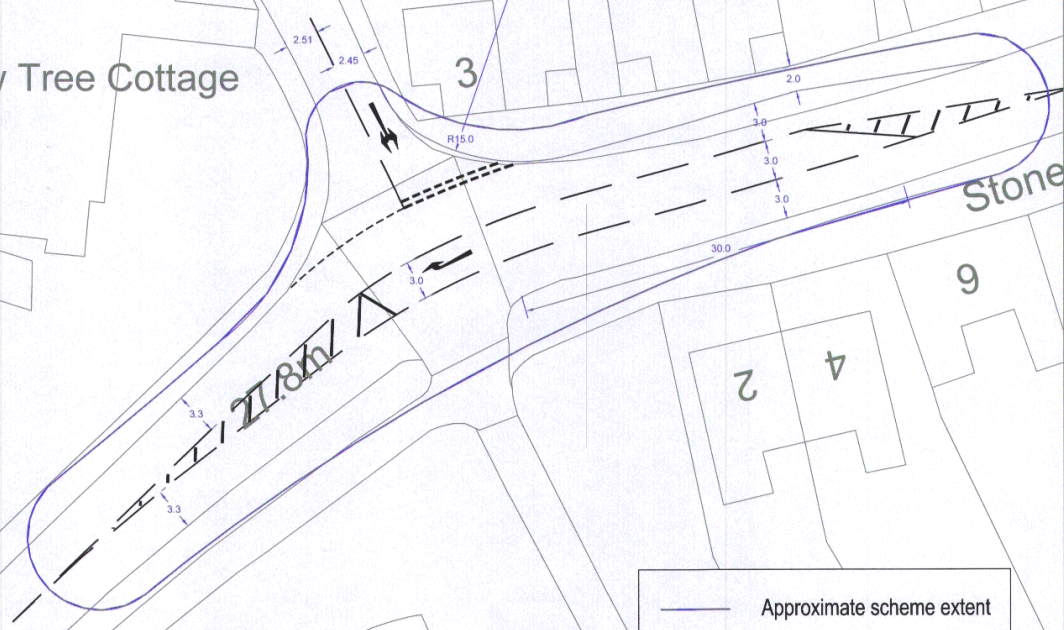
The Croft

9

2

4

3



— Approximate scheme extent

© Pell Frischmann

Pell Frischmann
GEORGE HOUSE, GEORGE STREET, WAKEFIELD WF1 1LY
Telephone: +44 (0)1924 588 150
Email: projects@pellfrischmann.com
www.pellfrischmann.com

Project: Malton

Name	Date	Scale
		1:250 @ A3
Drawn		File No. W50667_004_B.dwg
Designed		Drawing Status
Checked		
Approved		
Drawing No.	W50667/004	
		Revision C

Client: GMI Properties Ltd

Drawing Title: Proposed arrangement at Junction of Town Street / Highfield Road

PLAN 3