



BY EMAIL to: harry.garland@kirklees.gov.uk

FAO Harry Garland

Legal, Governance and Commissioning
Second Floor, High Street Buildings
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Huddersfield
HD1 2ND

17 December 2020

Dear Mr Garland

Reference: DEV/HG/ML/D70A-521

Objection: Notice of Disposal of Public Open Space (s123 Local Government Act 1972) ("Section 123 Notice")

Land Adjoining Calder Road, Ravensthorpe

We write in relation to the above Section 123 Notice given by Kirklees Council notifying of its intention to dispose of an area of approximately 11,310 square metres of "public open space" land adjoining Calder Road in Ravensthorpe (the "**Land**"). We understand that an area of 25,000 square metres of public open space is being disposed of in totality as part of a series of section 123 notices, of which the Section 123 Notice for the Land is just one.

Berkeley De Veer Limited ("**BDV**") objects to the disposal of the Land and the reasons for our objection are set out below.

Dewsbury Riverside

The Land forms part of a wider area of land which is allocated under Policy HS61 of the Kirklees Local Plan ("**Dewsbury Riverside**") for the purposes of a substantial residential-led mixed use strategic development, including up to 4,000 new homes¹. Policy HS61 confirms that "*the site will play a key role in helping transform Dewsbury and Ravensthorpe*".

Dewsbury Riverside is under multiple ownerships, which includes both BDV and Kirklees Council.

On 19 March 2019, the Council approved the Dewsbury Riverside Masterplan Framework (the "**Framework**"). The Council's Cabinet report sets out that Dewsbury Riverside is a key site within the North Kirklees Growth Zone, which is identified as a spatial priority area for housing growth in the

¹ Of which 1,869 are intended to be delivered during the Local Plan period

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Leeds City Region Strategic Economic Plan. The Cabinet report also confirms that the delivery of Dewsbury Riverside is essential in meeting the housing needs of the Kirklees Local Plan, being the largest housing allocation and therefore making the most significant contribution to the housing needs established by the Kirklees Strategic Housing Market Assessment.

Outline Planning Permission (2016/60/94118/E)

Outline planning permission (the “**OPP**”) was granted by the Council on 12 April 2017 for residential development on land within Dewsbury Riverside and to the east of the Land. The OPP benefits from modifications made by the Business and Planning Act 2020 to the Town and Country Planning Act 1990 (see section 93D of that Act) which means that the deadline for submission of reserved matters applications is extended to 1 May 2021.

The OPP includes a priority T-junction off Raventhorpe Road (the “**T-Junction**”) (see Appendix 1). It is anticipated that the delivery of the T-Junction under the OPP would act as a catalyst and driver for early development of Dewsbury Riverside. The OPP allows the delivery of 120 dwellings within the Dewsbury Riverside area but the T-Junction has the capacity to unlock between 600-700 dwellings, as well as other key parts of Dewsbury Riverside. BDV intends to secure technical approval for the construction of the T-Junction and submit the first reserved matters application under the OPP in early 2021.

Transpennine Route Upgrade

The Section 123 Notice references the Transpennine Route Upgrade, and we are aware from Network Rail that an option on the Land is proposed with Network Rail to facilitate Network Rail’s proposals for the Huddersfield to Westtown (Dewsbury) Phase 2 route upgrade works (the “**Route Upgrade**”). We understand that an application for a Transport and Works Act Order (a “**TWA Order**”) (under the Transport and Works Act Order 1992) for the Route Upgrade is scheduled to be submitted by Network Rail during Q1 2021.

Exchange Land

The Council will no doubt be aware that a TWA Order covering the compulsory acquisition of open space is subject to Special Parliamentary Procedure, unless there has been or will be suitable land of comparable quality given in exchange (“**Exchange Land**”)². The Exchange Land is shown shaded brown on the plan at Appendix 2.

Section 19(4) of the Acquisition of Land Act 1981 confirms that “*open space*” means any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial

² Exchange Lane being land which is (i) not less in area; and (ii) equally advantageous to the persons entitled to use the land



ground, and we understand that the Council considers the Land to be “open space” for these purposes³. (See “**Legislation Extracts**” appended to this letter).

We assume the voluntary disposal of the Land to Network Rail is intended to obviate the need for the Land to be compulsorily acquired within the TWA Order and, by extension, obviate the need for Exchange Land to be provided by Network Rail.

Access Area

BDV is concerned that (irrespective of the proposed disposal of the Land to Network Rail) Network Rail would still seek to include compulsory acquisition powers within the TWA Order, meaning they would need to also secure adequate Exchange Land to avoid Special Parliamentary Procedure. We understand that Network Rail is proceeding on this basis (which is common practice⁴) and Network Rail has confirmed to us directly that such proposed Exchange Land includes BDV land within Dewsbury Riverside.

Appendix 3 to this letter shows illustratively part of the location of a crucial access point to the Dewsbury Riverside development (the “**Access Area**”). This area will need to include a four-armed roundabout in time, but is also the location of the T-Junction deliverable under the OPP (which is capable of accommodating 600-700 dwellings to begin with, before being upgraded to a roundabout at the appropriate stage of the delivery programme for Dewsbury Riverside). We understand the Exchange Land proposed by Network Rail includes land in the Access Area needed for the delivery of the roundabout and/or the T-Junction.

There is therefore a clear risk to the delivery of Dewsbury Riverside if land that is crucial for opening up and facilitating the development of the site instead needs to be secured for public recreation as part of an Exchange Land certificate prepared by Network Rail. This risks amounting to an absolute barrier as between the Dewsbury Riverside site and the adoptable highway once the proposed Route Upgrade works have been undertaken by Network Rail.

If the Council proceeds to voluntarily dispose of the Land to Network Rail, then assuming that Exchange Land does need to be secured in exchange within the Access Area, the development of Dewsbury Riverside would be put significantly at risk. In turn, this exposes the Council to significant risk in two principle respects:

(i) Risks to Kirklees Council as LPA

The development of Dewsbury Riverside is relied upon in the Council’s Local Plan. The 1,869 new homes to be delivered on Dewsbury Riverside under Policy HS61 accounts for 6% of all the housing

³ It is not immediately obvious to us that the Land necessarily meets the definition of “open space” for these purposes, although that is a matter beyond the scope of this objection

⁴ I.e. the TWA Order that is currently being prepared will likely be drafted to include default compulsory acquisition powers by way of insurance in case negotiations break down or private agreement cannot be reached with the Council (such as the option on the Land we understand is proposed) before the TWA Order Application is submitted, which would in turn trigger the statutory requirements on Network Rail to secure Exchange Land.



required within the plan period. Put another way, the housing delivered under Policy HS61 exceeds the delivery requirement for an entire year under the Local Plan (set at 1,730 new homes per annum, see paragraph 8.6 of the Local Plan).

Prejudice to the delivery of Dewsbury Riverside also risks prejudice to the various contributions that Dewsbury Riverside would otherwise be capable of making towards improved rail, road, pedestrian and cycle connections, improvements to Ravensthorpe Station and surrounding area, and the delivery of landscape and environmental enhancements. It should also be recognised that the delivery of Dewsbury Riverside is anticipated to lead to significant planning gain including £400m GVA and 9,500 construction related new jobs in the local economy.

The Framework demonstrates the rationale for and importance of the proposed “access loop” within Dewsbury Riverside (the “**Access Loop**”). This is shown on the Dewsbury Riverside Masterplan extract at **Appendix 4**. The Access Loop is critical to the delivery of Dewsbury Riverside and freeing up capacity on the already congested Ravensthorpe Road / Lees Hall Road section to the north of the site.

Bringing traffic off this section and through the site is a key benefit and feature of the Masterplan for Dewsbury Riverside, and this will clearly not be achievable if an access at Ravensthorpe Road is rendered undeliverable as a consequence of the Access Area being secured as Exchange Land. Indeed, without the prospect of the Ravensthorpe Road access being delivered, it is likely that the entire Masterplan will need to be reviewed.

Whilst the proposed access at Forge Lane is not intended nor needed until at least 1,500 dwellings have been delivered, it is not thought possible for this access to be opened up any earlier due to third party ownership issues (including in relation to an existing Mosque in that area). A failure to deliver suitable access in the Access Area would therefore leave only the Lees Hall Road access (and no Access Loop) which could be devastating to the delivery of not only Dewsbury Riverside but also other potential Local Plan projects in the vicinity.

The New Calder Bridge proposal would be equally prejudiced by the securing of the Access Area as Exchange Land. The new bridge is proposed to connect the Dewsbury Riverside site with Low Mill Lane and the A644 and provide additional off-site highway capacity. This key strategic highways infrastructure is not required within the Local Plan period but is nonetheless needed for the full 4,000 units within Dewsbury Riverside to be delivered.

(ii) Risks to Kirklees Council as landowner

The notice to which this objection relates is made under section 123 of the 1972 Act. Section 123 concerns disposals of land by “principal councils” and sets out a duty on councils to obtain the best consideration that can reasonably be obtained on a disposal of land.

While the Council’s “best value” duty applies in the present circumstances only in relation to the Land (and does not, at least under the 1972 Act, extend to considerations of any subsequent valuation of the Council’s interests in the wider Dewsbury Riverside area) BDV would nonetheless suggest that the Council exercises caution in making decisions today that risk an inevitable

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diminution in the value of the Dewsbury Riverside site (and so the Council's financial interests in Dewsbury Riverside as landowner) arising from the harm posed through the potential for Exchange Land being secured in the Access Area.

Prejudice to others

The point made above in relation to the harm that would arise to the Council's financial interests in Dewsbury Riverside applies equally to other landowner interests in Dewsbury Riverside, including BDV's.

Conclusion

In conclusion, it appears there may be a disconnect between what the Council is trying to achieve, on the one hand in the context of voluntary disposals of open space to Network Rail in advance of a TWA Order application being submitted, and on the other in the context of the Council's interests in Dewsbury Riverside as both local planning authority and as a landowner.

BDV recognises that the Council has different functions (and will employ different people and teams in relation to those different functions) and that it is a challenge for any local authority to ensure that those functions are exercised in a harmonious and complementary fashion. However, in the present case, BDV would urge the Council to look again at the issue of the disposal of this Land more holistically.

While BDV is supportive of the Route Upgrade and the wider economic benefits that this will bring, it is imperative to ensure that the Access Area is properly safeguarded now so that the necessary highway upgrades and improvements can be undertaken in future to allow the ambitions of the local plan to be fully realised.

BDV suggests that this process of review and reflection should include a further analysis of whether land owned by the Council that might be in scope for Network Rail's Route Upgrade purposes is correctly identified as "public open space" and, where land is correctly identified as such, whether reasonable alternatives for Exchange Land exist outside the boundaries of the Access Area but within the wider Dewsbury Riverside site (or in close proximity to it).

There is other more suitable land in the vicinity (including land owned by BDV) which, we say represents more suitable Exchange Land (as may be required) and which would seem to us to meet all of the tests in s19 of The Acquisition of Land Act 1981, while not prejudicing development of Dewsbury Riverside. We would welcome a discussion with the Council in this regard.

Yours sincerely

Berkeley De Veer Limited

Enc.

This letter is sent electronically and so is unsigned

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Appendix 1A: Site Access to Application Site from Ravensthorpe Road (separately attached)

Appendix 1B: Indicative Masterplan: Ravensthorpe Road (separately attached)

Appendix 2: Location of Proposed Exchange Land (separately attached)

Appendix 3: Proposed Roundabout Layout in Access Area at Ravensthorpe Road (separately attached)

Appendix 4: Dewsbury Riverside Masterplan Extract (immediately below)

Legislation Extracts: (enclosed)



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Legislation Extracts
The Transport and Works Act 1992
The Acquisition of Land Act 1981

Section 12(1) of the Transport and Works Act 1992 provides as follows:

an order under section 1 or 3 [of the 1992 Act] authorising a compulsory purchase shall be subject to special parliamentary procedure to the same extent as it would be, by virtue of section 18 or 19 of the Acquisition of Land Act 1981 (or by virtue of paragraph 5 or 6 of Schedule 3 to [the 1992] Act) (National Trust land, commons etc), if the purchase were authorised by an order under section 2(1) of that Act.

Section 19(1) of the Acquisition of Land Act 1981 (the “**1981 Act**”) provides as follows:

In so far as a compulsory purchase order authorises the purchase of any land forming part of a common, open space or fuel or field garden allotment, the order shall be subject to special parliamentary procedure unless the Secretary of State is satisfied—

(a) that there has been or will be given in exchange for such land, other land, not being less in area and being equally advantageous to the persons, if any, entitled to rights of common or other rights, and to the public, and that the land given in exchange has been or will be vested in the persons in whom the land purchased was vested, and subject to the like rights, trusts and incidents as attach to the land purchased, or

(aa) ...

(b) ...

and certifies accordingly.

Section 19(4) tells us that for these purposes “open space” means any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial ground, and we understand that the Council considers the Land to be “open space” for these purposes⁵.

Paragraph 6(1) of Schedule 3 of the 1981 Act provides as follows:

In so far as a compulsory purchase order authorises the acquisition of a right over land forming part of a common, open space or fuel or field garden allotment, it shall be subject to special parliamentary procedure unless the Secretary of State is satisfied—

(a) ...

(aa)...

(b) that there has been or will be given in exchange for the right additional land which will as respects the persons in whom there is vested the land over which the right is to be acquired, the persons, if any, entitled to rights of common or other rights over that land, and the public, be adequate to compensate them for the disadvantages

⁵ It is not immediately obvious to us that the Land necessarily meets the definition of “open space” for these purposes, although that is a matter beyond the scope of this objection

which result from the acquisition of the right, and that the additional land has been or will be vested in the persons in whom there is vested the land over which the right is to be acquired, and subject to the like rights, trusts and incidents as attach to that land apart from the compulsory purchase order, or

(c)...

and certifies accordingly.

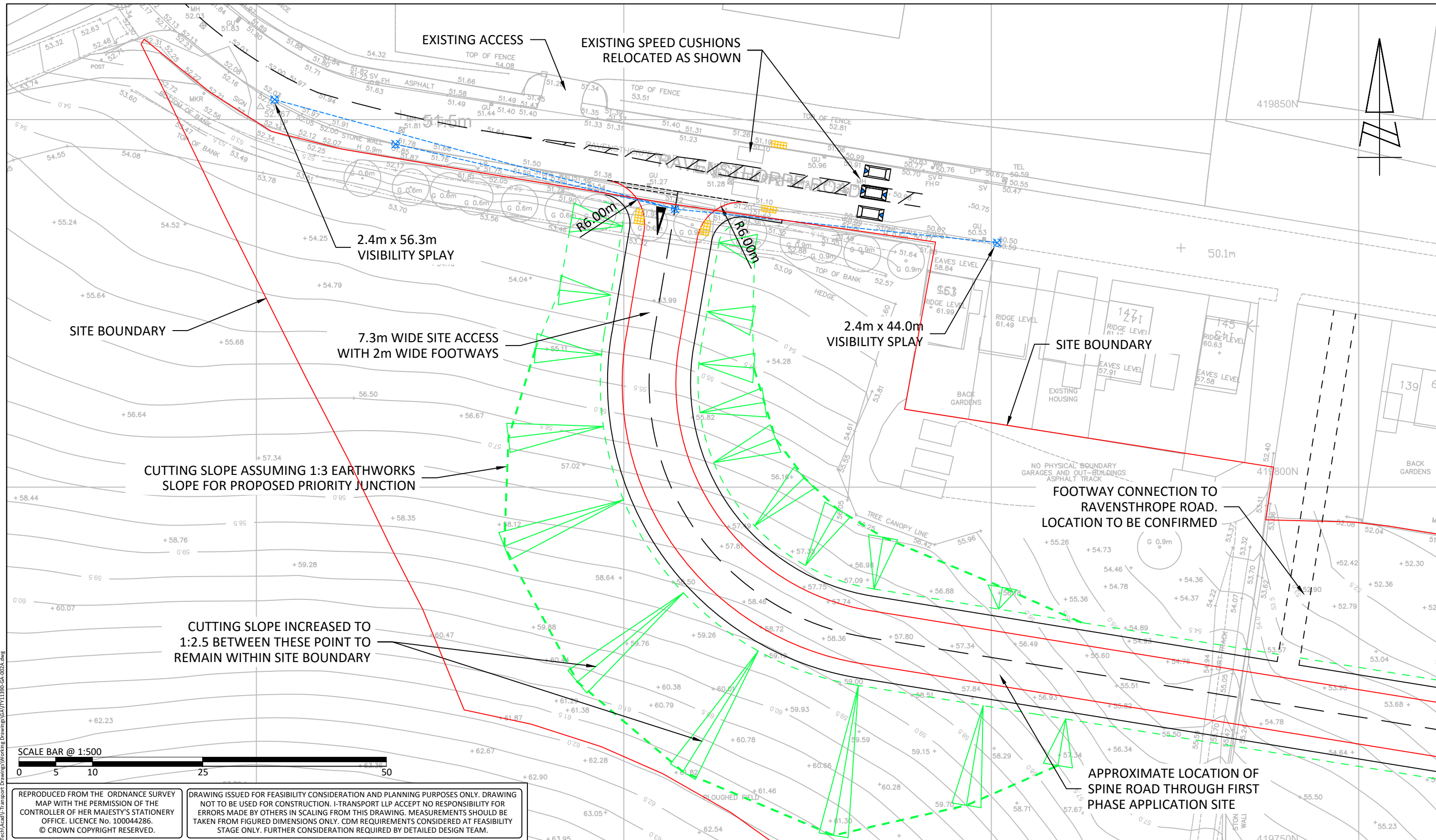
Paragraph 6(5) of Schedule 3 of the 1981 Act tells us that for these purposes “*open space*” means *any land laid out as a public garden, or used for the purpose of public recreation, or land being a disused burial ground*].

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REV	DATE	BY	DESCRIPTION	CHK	APD
A	15.11.16	PH	EARTHWORKS AMENDED	GJ	SE
STATUS: PLANNING					

TITLE:	SITE ACCESS TO APPLICATION SITE FROM RAVENSTHORPE ROAD	
PROJECT:	LAND OFF RAVENSTHORPE ROAD, DEWSBURY	CUSTOMER: MILLER HOMES

SCALE @ A3:	1:500	CHECKED:	GJ	APPROVED:	SE
FILE REF:	ITY11390-GA-002	DRAWN:	PH	DATE:	11.11.2016
DRAWING No:	ITY11390 - GA - 002				
PROJECT No:	ITY11390	REV:	A		



- KEY**
- Approximate Site Boundary
 - Dwellings
 - Garages
 - Driveway
 - Footpath / Bridleway
 - Highway
 - Shared Surface
 - Private Drive
 - Back Gardens
 - Front Gardens
 - Soft Landscape
 - Verge Tree Planting

South Dewsbury | Indicative Masterplan: Ravensthorpe Road

CLIENT: MILLER HOMES
 SCALE: NOT TO SCALE
 DATE: 01/11/2016

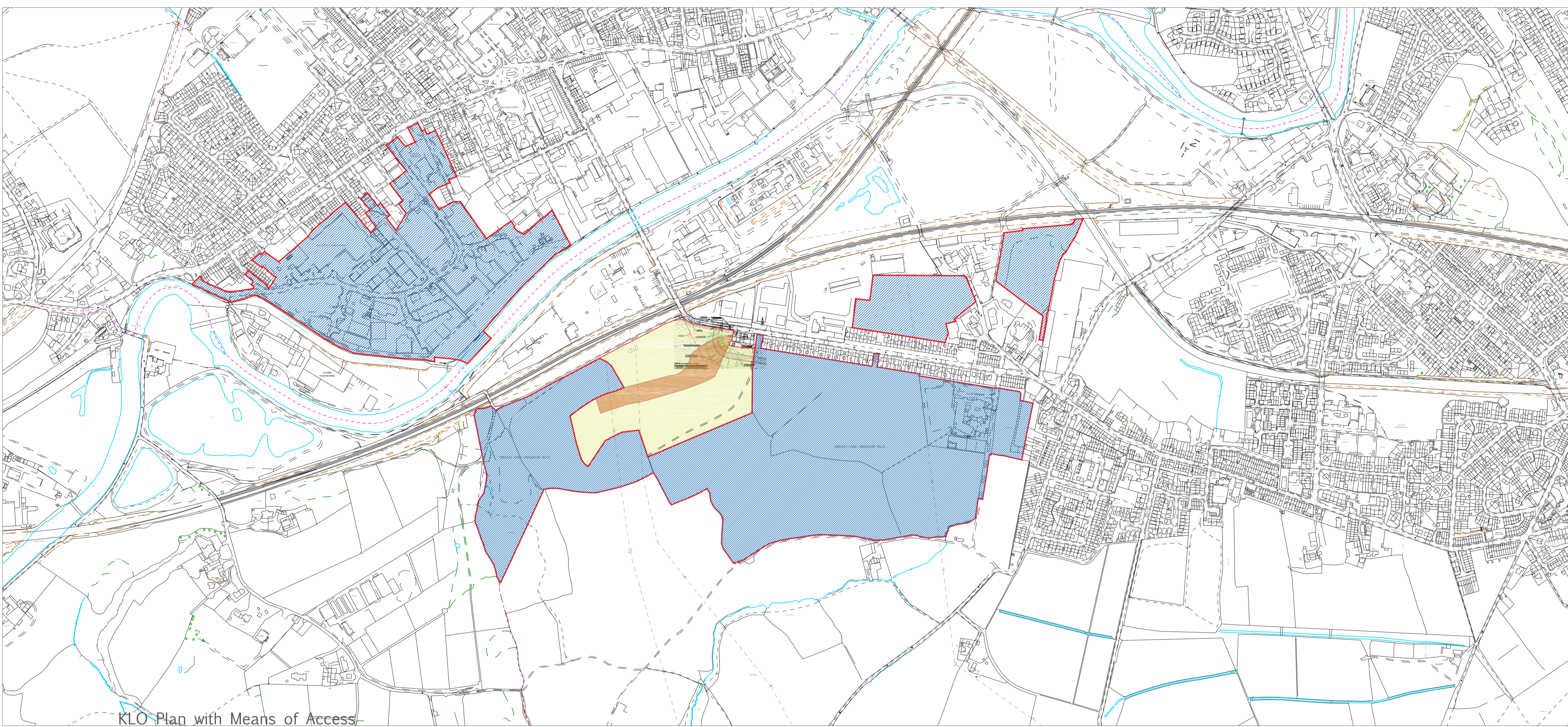
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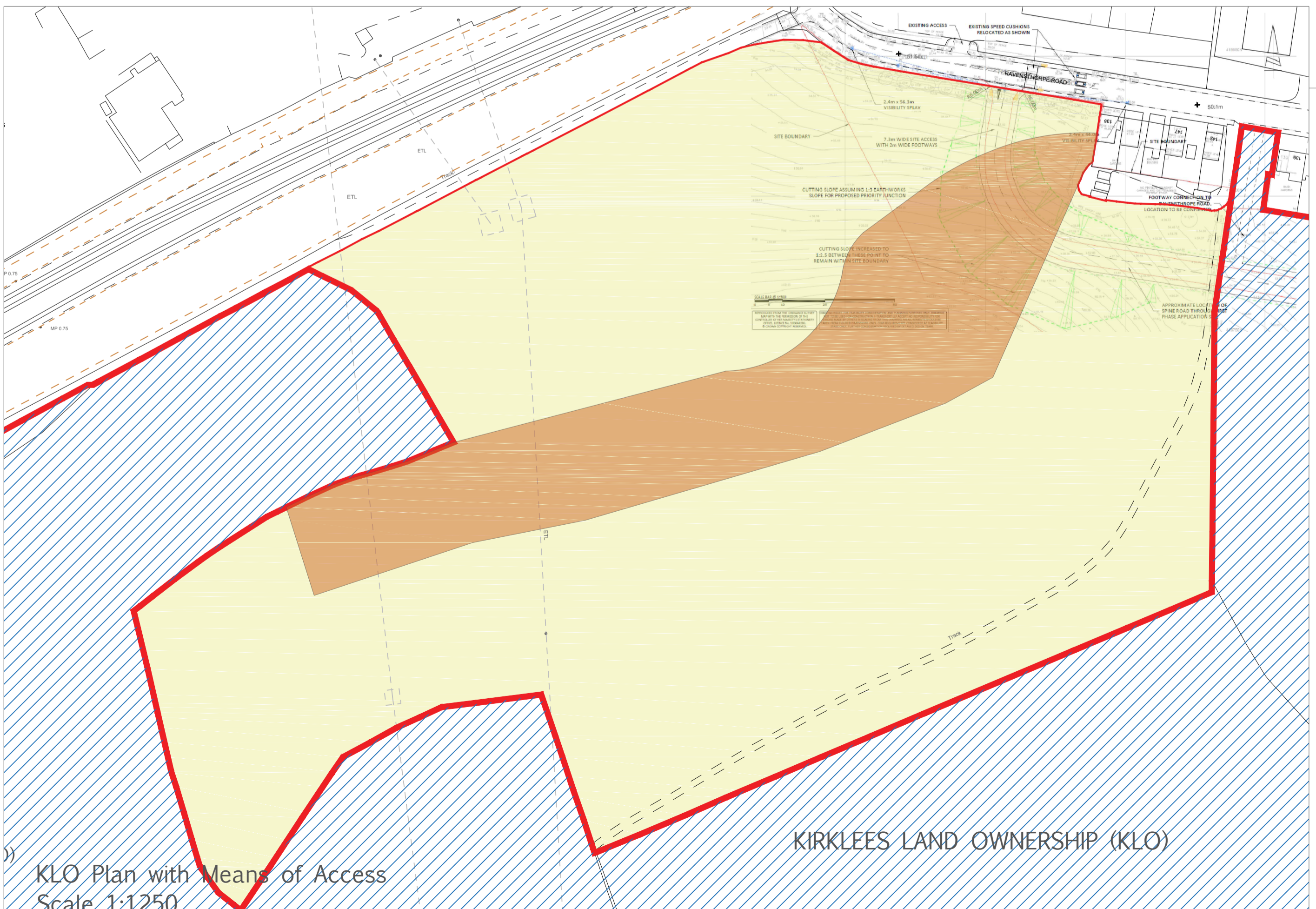
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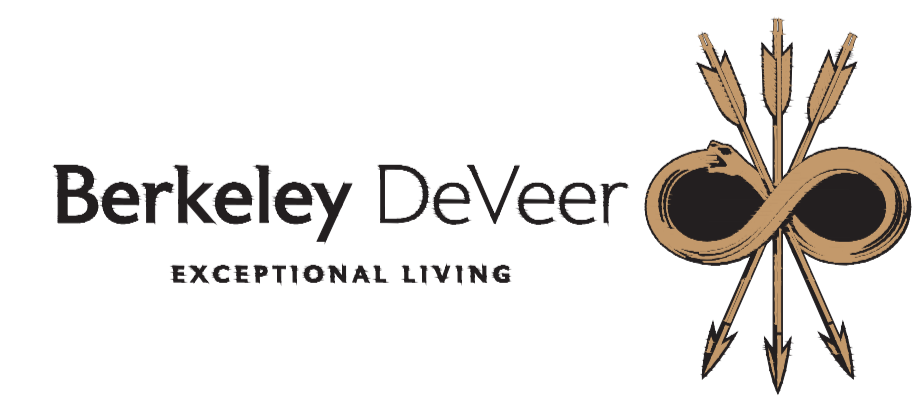
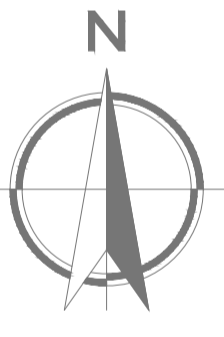


KLO Plan with Means of Access
Scale 1:2000



KLO Plan with Means of Access
Scale 1:1250

KIRKLEES LAND OWNERSHIP (KLO)



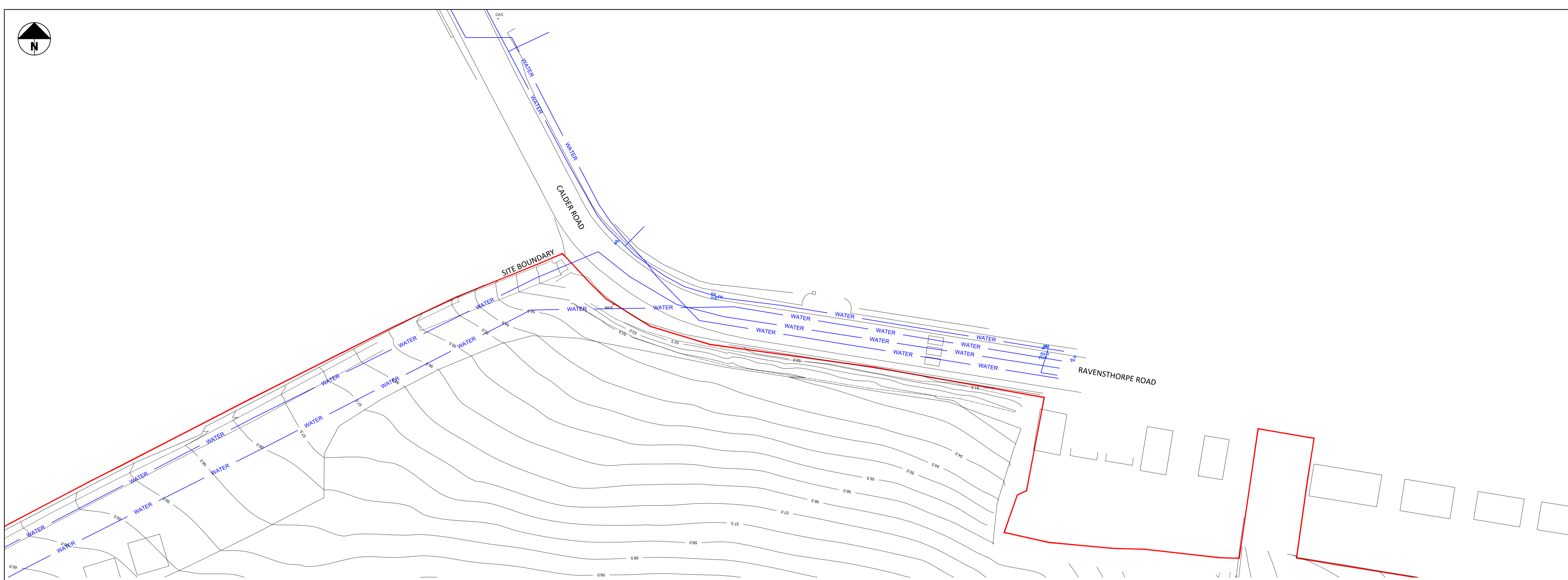
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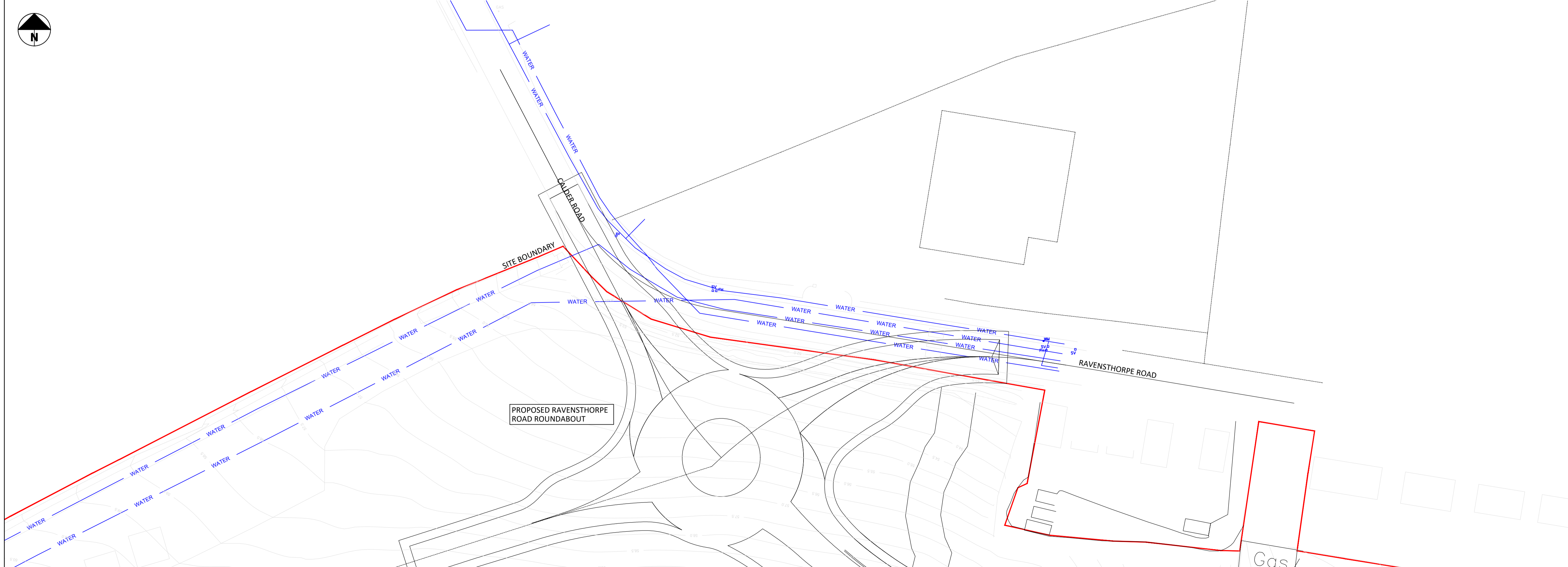
PROJECT: Dewsbury

DRAWING: Plan A

Drawing Number: BDV.DEW.OV.01 Rev: -



RAVENSTHORPE ROAD - EXISTING ROAD LAYOUT
 YORKSHIRE WATER REQUIRING DIVERSION
 SCALE 1:500 @ A1

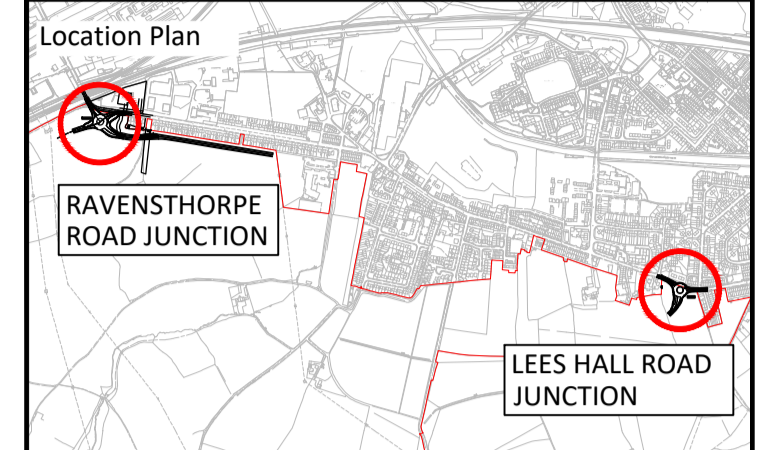


RAVENSTHORPE ROAD - PROPOSED ROUNDABOUT LAYOUT
 YORKSHIRE WATER REQUIRING DIVERSION
 SCALE 1:500 @ A1

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2. This drawing should not be scaled.
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- EXISTING WATER MAIN
- WM
- EXISTING WATER METER
- SV
- EXISTING SCOUR VALVE
- FH
- EXISTING FIRE HYDRANT

STATUTORY UNDERTAKER ASSET LOCATION INFORMATION BASED ON:

- CENTARA FUSION PLAN TITLED CEN11057
- YORKSHIRE WATER ENQUIRY MAP REF SE1916NE DATED 03/10/18

26-11-18	A	ISSUED FOR INFORMATION	TM	PC
Date	Rev	Description	Drawn	Chkd

Civic Engineers
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 LEEDS Tower Works, Unit 02-01, Globe Road, Leeds, LS11 5GG. Tel: 0113 2025 130
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Project
DEWSBURY RIVERSIDE

Title
**C3 PLANT DIVERSIONS
 RAVENSTHORPE ROAD ENTRANCE
 YORKSHIRE WATER**

Status

INFORMATION				
Scale @ A1	Date Created	Drawn	Checked	
1:500	NOV '18	TM	PC	
Project Number	Originator	Discipline	Drawing Number	Revision
107350	CIVIC	CI	1085	A