

DATED 15th October

2018

THE COUNCIL OF THE BOROUGH OF TORBAY

AND

CAVANNA HOMES (DEVON) LIMITED

AND

LLOYDS BANK PLC

AND

NATIONAL HOUSE-BUILDING COUNCIL

AGREEMENT

under Section 38 of the Highways Act 1980
and section 111 of the Local Government Act 1972
in connection with
street works at
Primrose Hill
Area 4 South (Phase 4) off Plantation Way
Torquay
in the Borough of Torbay

CONTENTS

CLAUSE

1	Interpretation	1
2	Statutory provisions	4
3	Developer's obligations.....	4
4	Developer's declaration	4
5	Extension of time to complete the Works.....	4
6	Suspension of the Works.....	5
7	Access to the land	5
8	Procedure for inspection and issue of certificates.....	5
9	Part 1 Certificate.....	6
10	Part 2 Certificate.....	6
11	Certificates for part or parts of the Road	6
12	The Maintenance Period	6
13	Final Certificate	7
14	Adoption	8
15	Materials sampling and testing	8
16	New Roads and Street Works Act 1991.....	8
17	Keeping the existing highway clean.....	8
18	Connecting to existing services	8
19	Occupation of buildings	9
20	Grant of easements.....	9
21	CDM Regulations	10
22	Surety's obligations	10
23	Council's covenants.....	11
24	Specification to take precedence	12
25	Technical advice.....	12
26	Making up of private streets.....	12

27	Indemnities.....	12
28	Insurance	13
29	Default events	13
30	Council's power to execute works in default	14
31	Disputes	14
32	Mortgagee's consent	14
33	Legal and other costs	15
34	Assignment	15
35	Local land charges register.....	15
36	Notices	15
37	Third party rights	16
38	Governing law	16

SCHEDULE

SCHEDULE 1	PART 1 WORKS	1
SCHEDULE 2	PART 2 WORKS	1

THIS AGREEMENT is dated 15 October 2018

PARTIES

- (1) **THE COUNCIL OF THE BOROUGH OF TORBAY** of Town Hall Castle Circus Torquay Devon TQ1 3DR ("the Council")
- (2) **CAVANNA HOMES (DEVON) LIMITED** (Co. Reg. No. 4228419) of Cavanna House, Riviera Park, Nicholson Road, Torquay, Devon TQ2 7TD ("the Developer").
- (3) **LLOYDS BANK PLC** (Co. Reg. No. 2065) of Mid Market Securities, 5th Floor, 110 St Vincent Street, Glasgow, G2 5ER ("the Mortgagee")
- (4) **NATIONAL HOUSE-BUILDING COUNCIL** (Co. Reg. No. 00320784) of NHBC House, Davy Avenue, Knowlhill, Milton Keynes, MK5 8FP ("the Surety").

BACKGROUND

- A. The Council is the local highway authority for the area in which the Land is situated.
- B. The Developer owns the Land which includes the site of the proposed Road and all other land required for the Works.
- C. The Developer has requested that after the Works have been completed and maintained, the Council shall adopt the Road as a highway maintainable at the public expense, which the Council has agreed to do on the terms and conditions of this agreement.
- D. The Surety has agreed to enter into this agreement for the purposes set out in clause 22.
- E. The Mortgagee is the registered proprietor of the charge dated 22 September 2015 referred to in entry no 5 and 6 of the charges register of Title number DN526290 and has agreed to enter into this agreement to grant the consent contained in clause 32.

AGREED TERMS

1 INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

CDM Regulations: the Construction (Design and Management) Regulations 2015

Client: the client as defined by the CDM Regulations.

Default Cost: all of the following:

1.1.1 the cost of carrying out the Default Work;

1.1.2 the cost of maintaining the Works for the Maintenance Period; and

1.1.3 the usual establishment charges of the Council.

Default Notice: written notice given by the Proper Officer to the Surety under clause 22.1.

Default Work: work required to be carried out by or on behalf of the Surety so that the Works are constructed or completed in accordance with this agreement.

Drawings: the Drawings numbered

0013 S38/104 rev D
0013 DP/102 rev C
0013 DP/101 rev B
0013 DP/206 rev B
0013 CTR/101 rev C
0013 GA/101 rev B
0013 RP/102 rev C
0013 SD/103 rev C

attached to this agreement and signed by or on behalf of the parties and any amended drawing signed by on or behalf of the Proper Officer.

Estimated Cost: the sum of £401,000 which, in the reasonable opinion of the Proper Officer, is the cost of carrying out the Works within the period specified in clause 3.1.6.

Final Certificate: the certificate to be issued on satisfactory completion of the Works under clause 13.

Health and Safety File: the health and safety file as required by the CDM Regulations.

Land: the freehold land at Area 4 South, Riviera Way, Torquay shown edged red on Drawing S38/104 Rev D part being the land registered at HM Land Registry with absolute title under title number DN526290

Maintenance Period: the maintenance period specified in clause 12.1.1.

Part 1 Certificate: the certificate to be issued under clause 9 on satisfactory completion of the Part 1 Works.

Part 1 Works: the works set out in Schedule 1.

Part 2 Certificate: the certificate to be issued under clause 10 on satisfactory completion of the Part 2 Works.

Part 2 Works: the works set out in Schedule 2.

Proper Officer: any officer of the Council for the time being appointed for the purposes of this agreement.

Road: the carriageway and footway of the private road shown on the Drawings, including:

- (a) any off-site highway drainage;
- (b) the footpaths, street lighting, all verges, service strips, service margins, vehicular crossings, road surface water drainage system (if any); and
- (c) all other ancillary items.

and **Roads** shall mean more than one of them.

Road Land: the freehold estate in the Land comprising the Road.

Sewer Adoption Agreement: an agreement made under section 104 of the Water Industry Act 1991.



Refer to 3278/102 for Section 2/B Improvement works

LUMINAIRE SCHEDULE (Taken from 'Area 4 SL Design REVA-Dec14')

Symbol	Label	Qty	Catalog Number	Description	Lamp	File	Lumens	LF
+	C	31	VMK L024 V1 X2L2 ON 8M COLUMN TO TORBAY SPECIFICATION	V-Max Streetlighting luminaire	LED C 2000LM - 4000K	VMK L024 V1. Absolute X2L2.IES	0.86	0.86
○	13		VMK L024 V1 X2L2 ON 8M BASE AND LOWER PUDSELY DIAMOND COLUMN GALVANISED	V-Max Streetlighting luminaire	LED C 2000LM - 4000K	VMK L024 V1. Absolute X2L2.IES	0.86	0.86

Phase 1 Section 3B boundary

REMARKS:
 1. All proposed works are to be carried out in accordance with the relevant standards and specifications.
 2. The contractor is responsible for the design and construction of the proposed works.
 3. All drainage works to be carried out in accordance with the relevant standards and specifications.
 4. All drainage works to be carried out in accordance with the relevant standards and specifications.
 5. All drainage works to be carried out in accordance with the relevant standards and specifications.
 6. All drainage works to be carried out in accordance with the relevant standards and specifications.
 7. All drainage works to be carried out in accordance with the relevant standards and specifications.
 8. All drainage works to be carried out in accordance with the relevant standards and specifications.
 9. All drainage works to be carried out in accordance with the relevant standards and specifications.
 10. All drainage works to be carried out in accordance with the relevant standards and specifications.
 11. All drainage works to be carried out in accordance with the relevant standards and specifications.

KEY:

- Site Boundary
- Change
- PROPOSED 500mm ADAPTABLE AREAS (Refer to 328 Standards Details)
- Carriageway for adoption
- Block paving for adoption
- Footway for adoption
- PROPOSED 500mm ADAPTABLE HIGHWAY DRAINAGE (Refer to 328 Standards Details)
- Gully and connection
- Essement
- PROPOSED 150mm ADAPTABLE DRAINAGE (Refer to 328 Standards Details, Appendix Schedule 1, Drainage Details)
- Proposed foul sewer
- Proposed foul manhole
- Sewer for adoption 7 type 3 chamber
- Proposed 300mm sewer
- Proposed 150mm sewer manhole and reference

NOTES:
 1. All proposed works are to be carried out in accordance with the relevant standards and specifications.
 2. The contractor is responsible for the design and construction of the proposed works.
 3. All drainage works to be carried out in accordance with the relevant standards and specifications.
 4. All drainage works to be carried out in accordance with the relevant standards and specifications.
 5. All drainage works to be carried out in accordance with the relevant standards and specifications.
 6. All drainage works to be carried out in accordance with the relevant standards and specifications.
 7. All drainage works to be carried out in accordance with the relevant standards and specifications.
 8. All drainage works to be carried out in accordance with the relevant standards and specifications.
 9. All drainage works to be carried out in accordance with the relevant standards and specifications.
 10. All drainage works to be carried out in accordance with the relevant standards and specifications.
 11. All drainage works to be carried out in accordance with the relevant standards and specifications.

AWPC PARTNERSHIP

AWPC
awcockward partnership

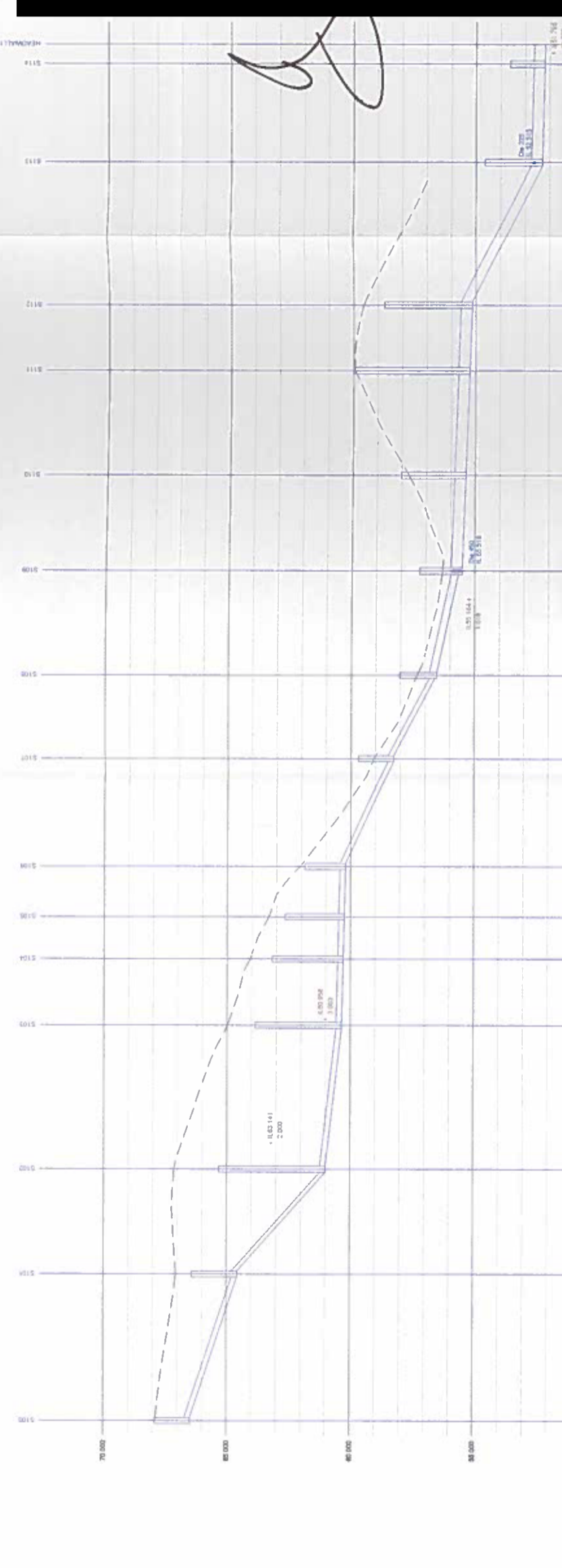
AREA 4 SOUTH TORQUAY
PHASE 4
SECTION 3B PLAN

PROJECT NO: 0013
DRAWING NO: S38/104

SCALE: 1:500
DATE: 25/11/2014

FOR TECHNICAL APPROVAL

For continuation refer Window 1



RUN 1
DATUM 51.000

GROUND LEVEL	STORMWATER COVER LEVEL	STORMWATER INVERT	STORMWATER DETAILS	STORMWATER LENGTHS
87.808			Pipe 1.030 Dia: 24 Material: PVC 1 in 0.015 Type B	38.518
87.818			Pipe 1.001 Dia: 24 Material: PVC 1 in 0.015 Type B	21.441
87.823			Pipe 1.003 Dia: 24 Material: PVC 1 in 0.015 Type B	29.334
87.873			Pipe 1.002 Dia: 24 Material: PVC 1 in 0.015 Type B	29.334
87.903			Pipe 1.006 Dia: 24 Material: PVC 1 in 0.015 Type B	22.281
87.913			Pipe 1.008 Dia: 24 Material: PVC 1 in 0.015 Type B	22.281
87.972			Pipe 1.007 Dia: 24 Material: PVC 1 in 0.015 Type B	11.154
87.978			Pipe 1.005 Dia: 24 Material: PVC 1 in 0.015 Type B	21.408
87.987			Pipe 1.009 Dia: 24 Material: PVC 1 in 0.015 Type B	18.804
87.987			Pipe 1.008 Dia: 24 Material: PVC 1 in 0.015 Type B	31.268
87.987			Pipe 1.010 Dia: 24 Material: PVC 1 in 0.015 Type B	31.268
88.003			Pipe 1.008 Dia: 24 Material: PVC 1 in 0.015 Type B	18.804
88.031			Pipe 1.007 Dia: 24 Material: PVC 1 in 0.015 Type B	21.408
88.038			Pipe 1.009 Dia: 24 Material: PVC 1 in 0.015 Type B	18.804
88.043			Pipe 1.008 Dia: 24 Material: PVC 1 in 0.015 Type B	31.268
88.083			Pipe 1.008 Dia: 24 Material: PVC 1 in 0.015 Type B	22.281
88.087			Pipe 1.008 Dia: 24 Material: PVC 1 in 0.015 Type B	22.281
88.272			Pipe 1.007 Dia: 24 Material: PVC 1 in 0.015 Type B	11.154
88.278			Pipe 1.005 Dia: 24 Material: PVC 1 in 0.015 Type B	21.408
88.283			Pipe 1.009 Dia: 24 Material: PVC 1 in 0.015 Type B	18.804
88.288			Pipe 1.008 Dia: 24 Material: PVC 1 in 0.015 Type B	31.268
88.315			Pipe 1.003 Dia: 24 Material: PVC 1 in 0.015 Type B	33.815
88.320			Pipe 1.002 Dia: 24 Material: PVC 1 in 0.015 Type B	29.334
88.320			Pipe 1.001 Dia: 24 Material: PVC 1 in 0.015 Type B	21.441
88.320			Pipe 1.006 Dia: 24 Material: PVC 1 in 0.015 Type B	22.281
88.320			Pipe 1.008 Dia: 24 Material: PVC 1 in 0.015 Type B	22.281
88.320			Pipe 1.007 Dia: 24 Material: PVC 1 in 0.015 Type B	11.154
88.320			Pipe 1.009 Dia: 24 Material: PVC 1 in 0.015 Type B	18.804
88.320			Pipe 1.005 Dia: 24 Material: PVC 1 in 0.015 Type B	21.408
88.320			Pipe 1.008 Dia: 24 Material: PVC 1 in 0.015 Type B	31.268
88.320			Pipe 1.010 Dia: 24 Material: PVC 1 in 0.015 Type B	31.268
88.320			Pipe 1.011 Dia: 24 Material: PVC 1 in 0.015 Type B	18.804
88.320			Pipe 1.012 Dia: 24 Material: PVC 1 in 0.015 Type B	30.148
88.320			Pipe 1.013 Dia: 24 Material: PVC 1 in 0.015 Type B	20.031
88.320			Pipe 1.014 Dia: 24 Material: PVC 1 in 0.015 Type B	4.0
88.320				
88.320				
88.320				
88.320				
88.320				
88.320				
88.320				
88.320				
88.320				
88.320				
88.320				

KEY:
 - - - Existing ground alignment
 (Symbol) FOR FINISHED SIDEWALK WITHIN PAVED AREAS ADD BOTTOM TO ALIGNMENT LEVEL.
 (Symbol) FOR FINISHED SIDEWALK WITHIN UNPAVED AREAS ADD BOTTOM TO ALIGNMENT LEVEL.
 (Symbol) FOR FINISHED SIDEWALK WITHIN PAVED AREAS ADD BOTTOM TO ALIGNMENT LEVEL.
 (Symbol) FOR FINISHED SIDEWALK WITHIN UNPAVED AREAS ADD BOTTOM TO ALIGNMENT LEVEL.
 (Symbol) FOR FINISHED SIDEWALK WITHIN PAVED AREAS ADD BOTTOM TO ALIGNMENT LEVEL.
 (Symbol) FOR FINISHED SIDEWALK WITHIN UNPAVED AREAS ADD BOTTOM TO ALIGNMENT LEVEL.

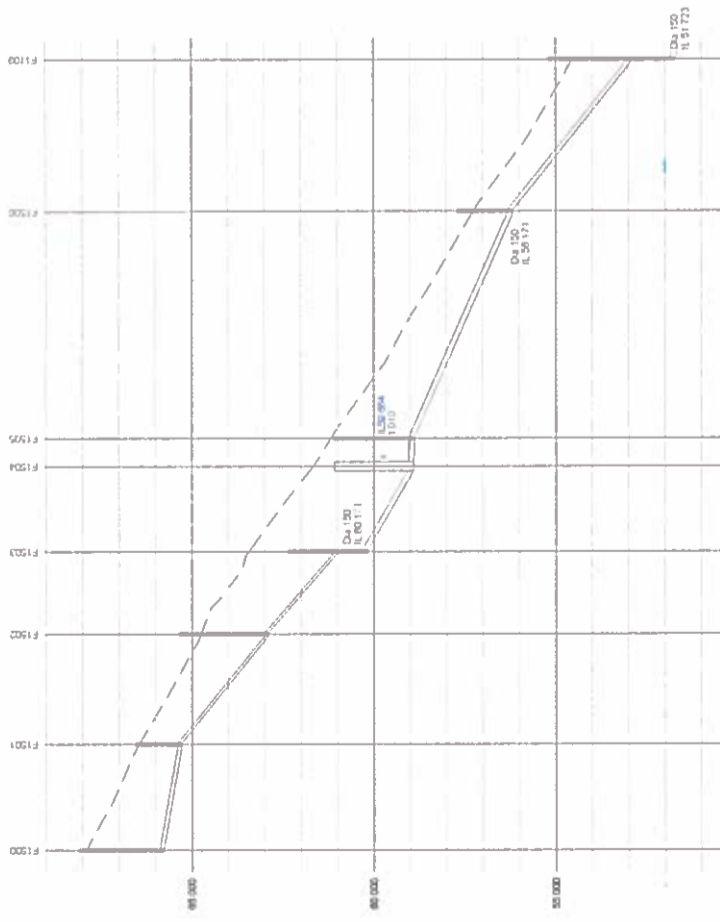
PROJECT: AREA 4 SOUTH TORQUAY
 SHEET: S104 SURFACE LONG SECTIONS NETWORK 1 (SHEET 1)
 PROJECT No: 0013
 DRAWING No: DP101
 SCALE: HORIZ: 1:500
 VERT: 1:100

APPROVED FOR TECHNICAL APPROVAL

cavanna
 civil & structural
 engineers

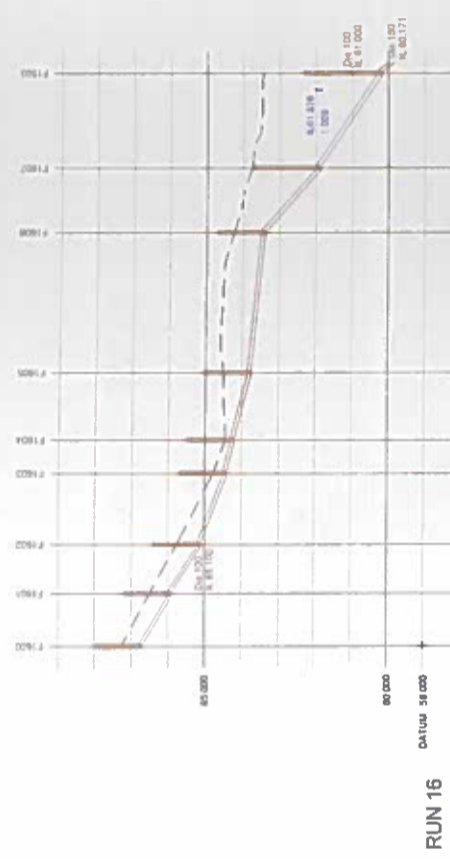
DATE: 13/10/2014
 DRAWN BY: J. G. GIBSON
 CHECKED BY: J. G. GIBSON
 PROJECT NO: 0013
 DRAWING NO: DP101
 SCALE: HORIZ: 1:500
 VERT: 1:100

OMP DWCOCKWARD PARTNERSHIP
 Auckland Street, Auckland, New Zealand. Phone: 09 594 9999
 Fax: 09 594 9999
 www.omp.co.nz



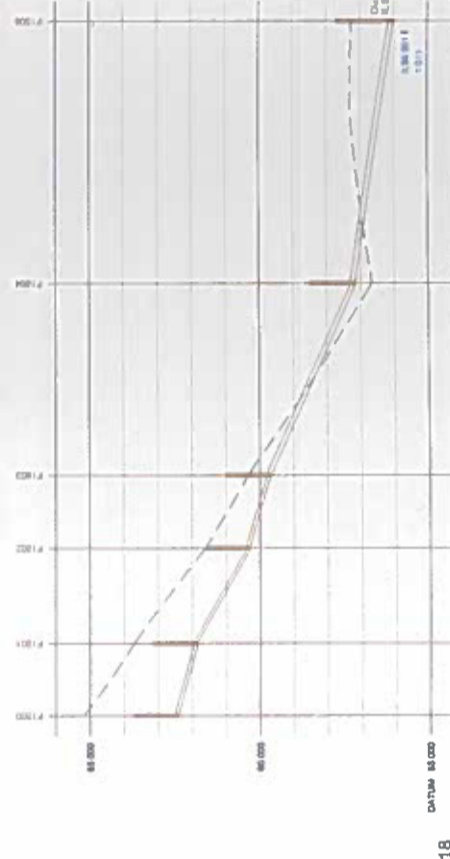
RUN 15
DATUM 50.000

GROUND LEVEL	FOULWATER COVER LEVEL	FOULWATER INVERT	FOULWATER DETAILS	FOULWATER LENGTHS
97.000	96.175	96.175	Pipe 15.000 Dia 100 Chd 1 in 30 Type 3	14.500
95.000	94.270	94.270	Pipe 15.001 Dia 100 Chd 1 in 6 Type 3	15.170
93.000	92.270	92.270	Pipe 15.002 Dia 100 Chd 1 in 5 Type 3	11.370
91.000	90.270	90.270	Pipe 15.003 Dia 100 Chd 1 in 12 Type 3	11.750
89.000	88.270	88.270	Pipe 15.004 Dia 100 Chd 1 in 12 Type 3	31.257
87.000	86.270	86.270	Pipe 15.005 Dia 100 Chd 1 in 6 Type 3	20.822



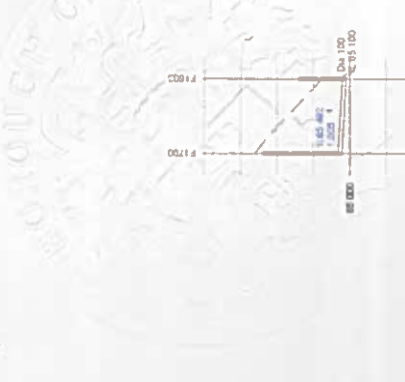
RUN 16
DATUM 50.000

GROUND LEVEL	FOULWATER COVER LEVEL	FOULWATER INVERT	FOULWATER DETAILS	FOULWATER LENGTHS
67.000	66.700	66.700	Pipe 16.000 Dia 100 Chd 1 in 9 Type 3	2.704
68.000	67.200	67.200	Pipe 16.001 Dia 100 Chd 1 in 9 Type 3	8.800
69.000	68.200	68.200	Pipe 16.002 Dia 100 Chd 1 in 14 Type 3	8.813
70.000	69.200	69.200	Pipe 16.003 Dia 100 Chd 1 in 21 Type 3	4.000
71.000	70.200	70.200	Pipe 16.004 Dia 100 Chd 1 in 21 Type 3	8.233
72.000	71.200	71.200	Pipe 16.005 Dia 100 Chd 1 in 21 Type 3	19.270
73.000	72.200	72.200	Pipe 16.006 Dia 100 Chd 1 in 9 Type 3	8.870
74.000	73.200	73.200	Pipe 16.007 Dia 100 Chd 1 in 6 Type 3	13.041



RUN 18
DATUM 50.000

GROUND LEVEL	FOULWATER COVER LEVEL	FOULWATER INVERT	FOULWATER DETAILS	FOULWATER LENGTHS
62.000	61.800	61.800	Pipe 18.001 Dia 100 Chd 1 in 9 Type 3	14.000
63.000	62.800	62.800	Pipe 18.002 Dia 100 Chd 1 in 11 Type 3	10.800
64.000	63.800	63.800	Pipe 18.003 Dia 100 Chd 1 in 11 Type 3	10.771
65.000	64.800	64.800	Pipe 18.004 Dia 100 Chd 1 in 11 Type 3	28.442
66.000	65.800	65.800	Pipe 18.005 Dia 100 Chd 1 in 11 Type 3	26.812



RUN 17
DATUM 50.000

GROUND LEVEL	FOULWATER COVER LEVEL	FOULWATER INVERT	FOULWATER DETAILS	FOULWATER LENGTHS
97.000	96.175	96.175	Pipe 17.000 Dia 100 Chd 1 in 30 Type 3	10.277
95.000	94.270	94.270	Pipe 17.001 Dia 100 Chd 1 in 6 Type 3	11.820
93.000	92.270	92.270	Pipe 17.002 Dia 100 Chd 1 in 5 Type 3	11.370
91.000	90.270	90.270	Pipe 17.003 Dia 100 Chd 1 in 12 Type 3	11.750
89.000	88.270	88.270	Pipe 17.004 Dia 100 Chd 1 in 12 Type 3	31.257
87.000	86.270	86.270	Pipe 17.005 Dia 100 Chd 1 in 6 Type 3	20.822

SEE: Existing ground alignment

- FOR FINISHED CARRIAGEWAY WITHIN BLOCK PAVED AREAS ADD 80mm TO ALIGNMENT LEVEL.
- FOR FINISHED MANHOLE LEVELS ADD 80mm TO COVER LEVEL WITHIN BLOCK PAVED AREAS.

DESIGNED BY: **awcockward partnership**

PROJECT: AREA 4 SOUTH TORQUAY

TITLE: SLOW FLOW LONG SECTIONS (SHEET 6)

PROJECT No: 0013

DRAWING No: DP/206

SCALE: H.A.1

VERT: 1:100

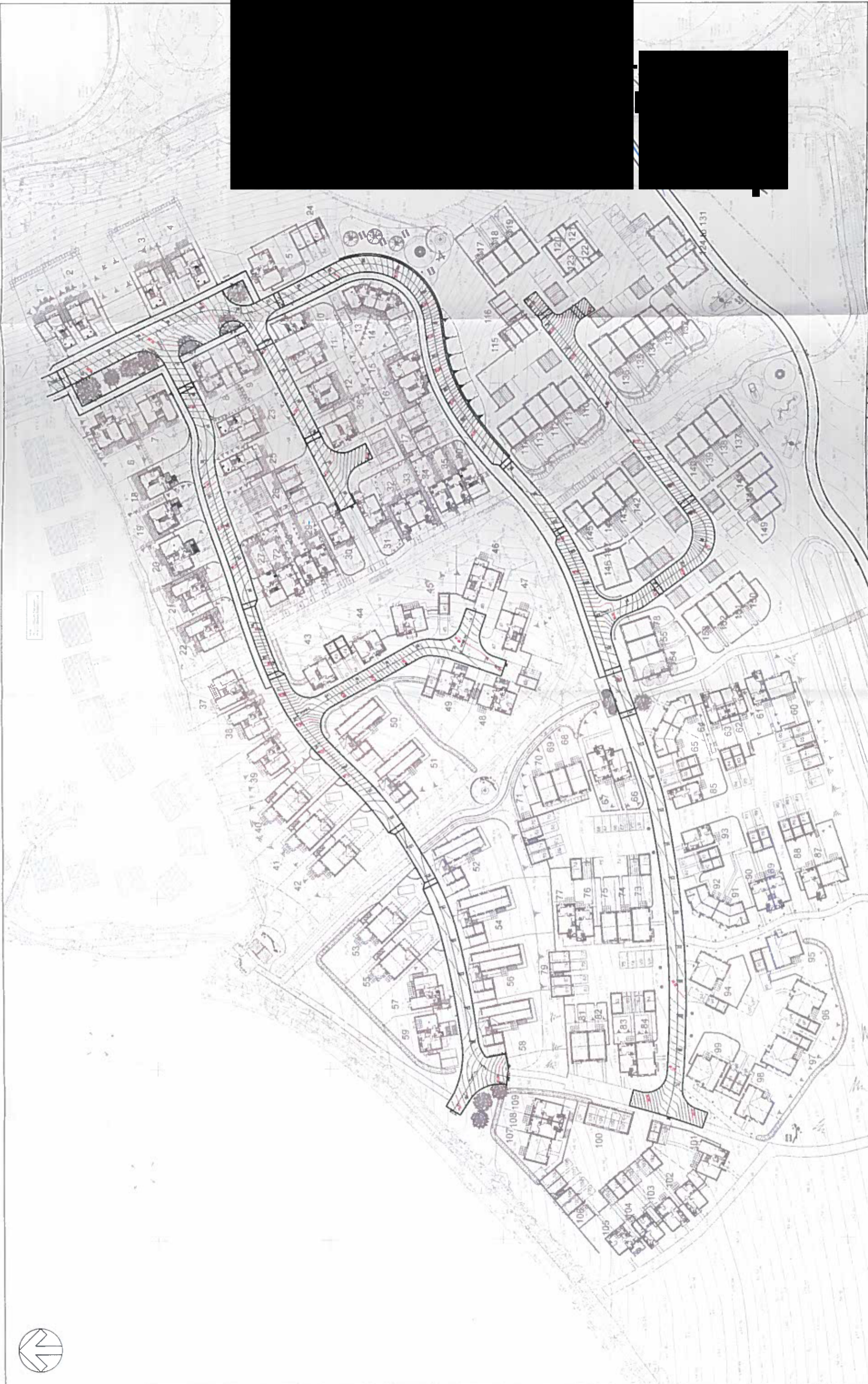
DATE: 12.10.2011

REV: A

DATE: 04.07.2011

DESCRIPTION: COVERING

FOR TECHNICAL APPROVAL



KEY:
 CONTOURS
 Major contour (1.2m)
 Minor contour (0.1m)
 CHANGES
 Challenge

Note:
 1. Drawing to be read in conjunction with all engineering drawings

REV	DATE	DESCRIPTION	BY	CHKD	APP'D
CLEAR					
cavanna <small>homes</small>					
PROJECT No: 0013					
SCALE 1:1					
PROJECT: AREA 4 SOUTH TORQUAY CONTOUR PLAN					
DRAWN BY: CTR/101					
REV: C					

DESIGNED BY



awcockward partnership

AWCOCKWARD PARTNERSHIP
 100 STURGEON ROAD, TORQUAY, DEVON, EX38 8JH
 TEL: 01392 40221 FAX: 01392 40222
www.awcockward.com

FOR INFORMATION ONLY

25 meters



For details of office
S278 works refer to
SD/101

For details of office
S278 works refer to
SD/101

KEY:

ADAPTABLE SURFACE FINISHES

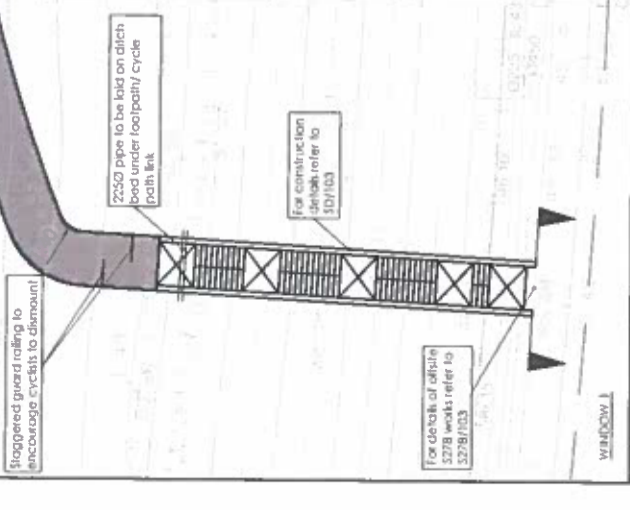
- BLACKTOP CARRIAGEWAY CONSTRUCTION
- BLACKTOP CARRIAGEWAY CONSTRUCTION WITH EPDM RESIN BINDER
- BLACKTOP FOOTPATH/FOOTWAY CONSTRUCTION

KERB DETAILS

- Subsided kerb to SD/102 in adoptable areas
- *Adaptable areas to have 40mm upstand unless stated otherwise
- *All kerbs to be 182 with 125mm upstand next to kerbside
- *Dropped kerb/transition kerbs to be applied to necessary areas between 182/BN kerbs
- *All kerbs to be BN with 40mm upstand next to dropped kerbs unless stated otherwise
- *All kerbs to be BE at rear/edge of roadway/footpath unless stated otherwise
- *For ramp kerbs and upstands, please refer to SD/101 & SD/102
- *All pedestrian crossing/connection points to have BN with 40mm upstand in accordance with Local Council Design Guide
- *Section lines to be used in conjunction with SD/101
- *182, BN and CK kerbs to be Centrydies Classic

ADAPTABLE SURFACE FINISHES

- BLOCK PAVED CARRIAGEWAY CONSTRUCTION
- BLACKTOP CARRIAGEWAY CONSTRUCTION WITH EPDM RESIN BINDER
- BLACKTOP TRANSITION LENGTH CONSTRUCTION
- BLOCK PAVED FOOTWAY CONSTRUCTION



Notes

1. Drawing to be used in conjunction with all engineering drawings
2. Details of private landscaping to be provided by client

DESIGN BY

awcockward partnership

PROJECT: AREA 4 SOUTH TORQUAY

TITLE: ADAPTABLE SURFACING PLAN

REV: 00/3

SCALE: 1:25

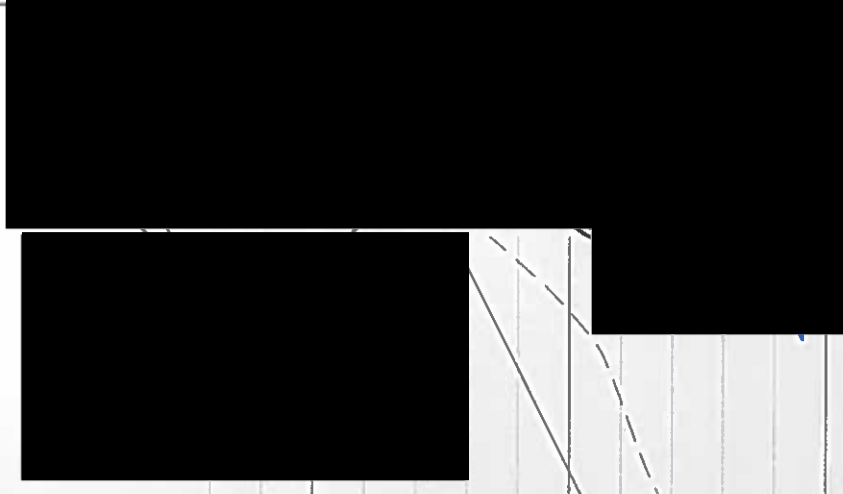
DATE: 00/3

FOR TECHNICAL APPROVAL

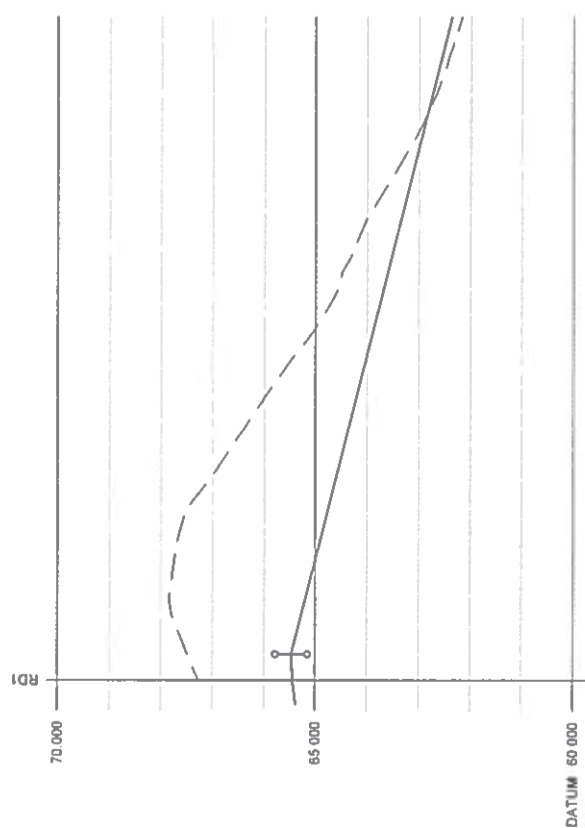
AWCOCKWARD PARTNERSHIP

AWCOCKWARD PARTNERSHIP, LIVINGSTON COURT, WOODMERE PARK, PYRMONT, SYDNEY NSW 1582

For continuation refer Window 1



CHAINAGE	EXISTING GROUND LEVEL	ALIGNMENT LEVEL	VERTICAL ALIGNMENT	HORIZONTAL ALIGNMENT
0.000	60.356	60.168	G = -5.000% T = 20.0 L = 1.0	R = 8.400
10.000	59.158	59.789	G = -10.000% T = 10.0 L = 20.000	R = 8.400
20.000	57.850	58.940		
30.000	56.514	57.940		
40.000	55.087	56.940		
50.000	54.348	55.940		
60.000	53.808	54.940		
70.000	53.207	53.940		
80.000	52.568	53.163		
83.315	53.122	53.108		
90.000	52.621	53.332		
93.808		53.808		
100.000	53.002	54.217		
110.000	53.883	55.217		
120.000	54.532	56.217		
130.000	56.536	57.217		



CHAINAGE	EXISTING GROUND LEVEL	ALIGNMENT LEVEL	VERTICAL ALIGNMENT	HORIZONTAL ALIGNMENT
0.000	67.258	65.455	G = -5.000% T = 20.0 L = 20.000	R = 8.400
10.000	67.780	65.082		
20.000	66.983	64.582		
30.000	65.641	64.082		
40.000	64.453	63.582		
50.000	63.388	63.082		
60.000	62.449	62.582		
64.576	62.150	62.353		

DESIGN BY: **awcockward partnership**

awcockward partnership

Awcock Ward Partnership, Kensington Court, Woodvoter Park, Pymble, NSW, Australia
Tel: 01392 49007 Web: www.awcockward.com

PROJECT	AREA 4 SOUTH TORQUAY
TITLE	HIGHWAY LONG SECTION (SHEET 2)
PROJECT No:	0013
DRAWING No:	RP/102
SCALE @ A2:	HORZ = 1:500 VERT = 1:100
CLIENT:	cavanna homes
FOR TECHNICAL APPROVAL	

KEY:

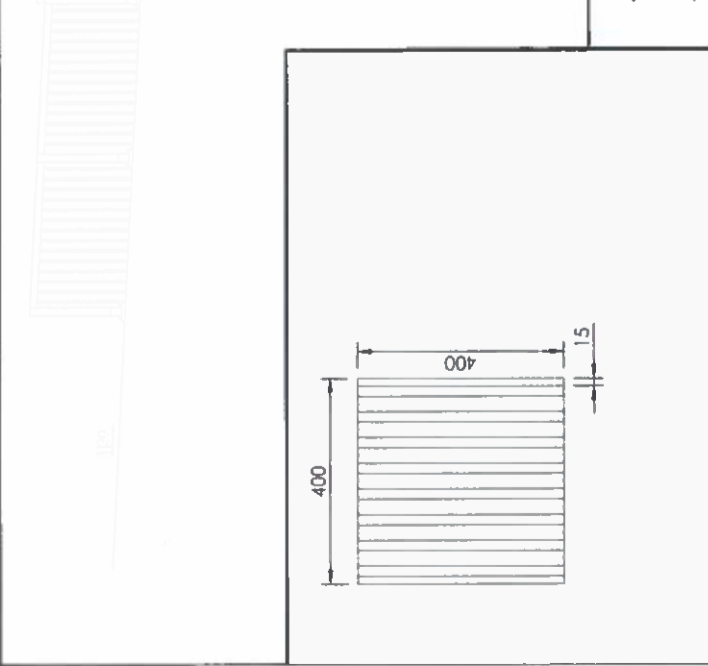
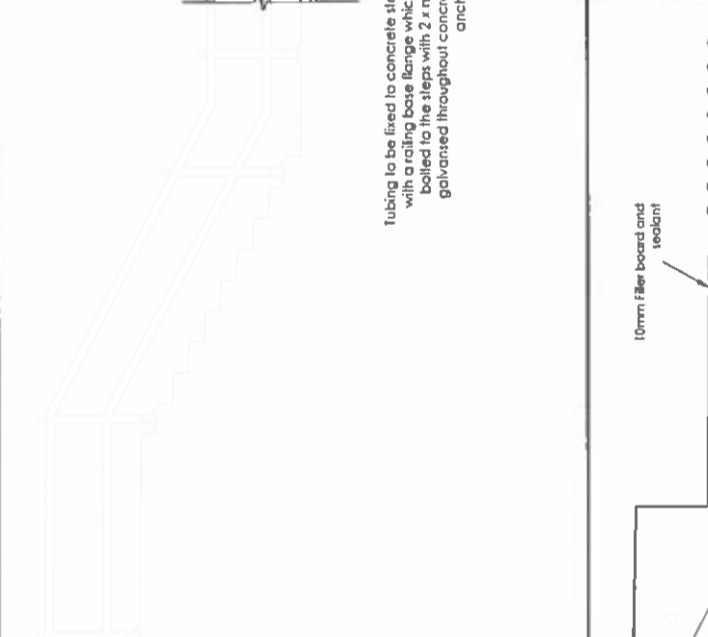
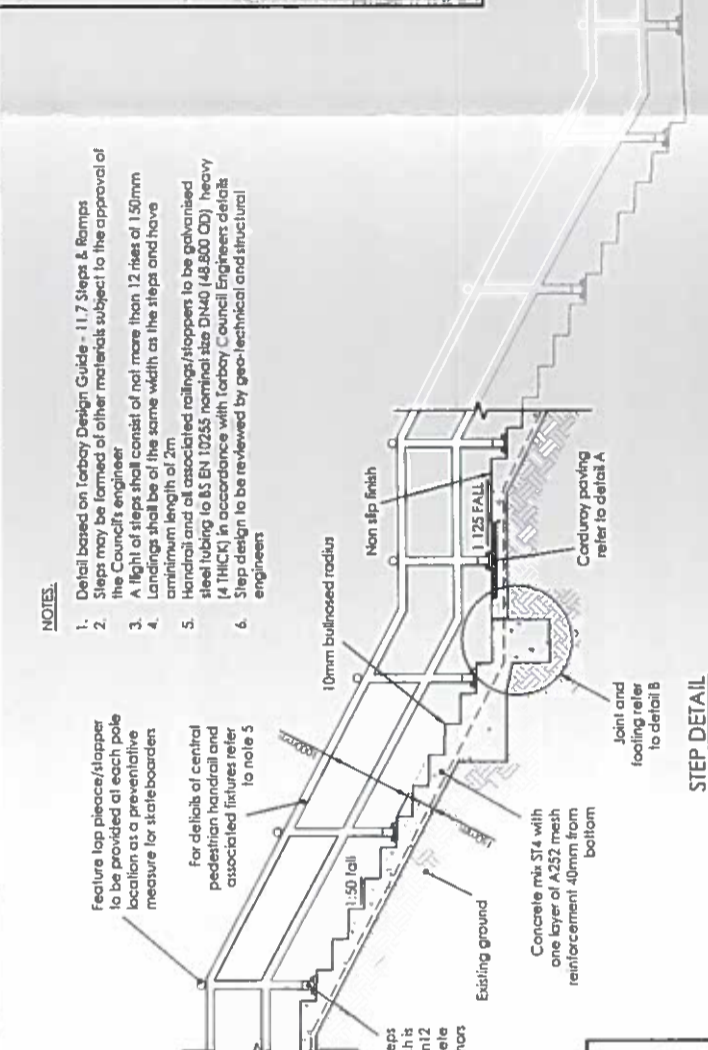
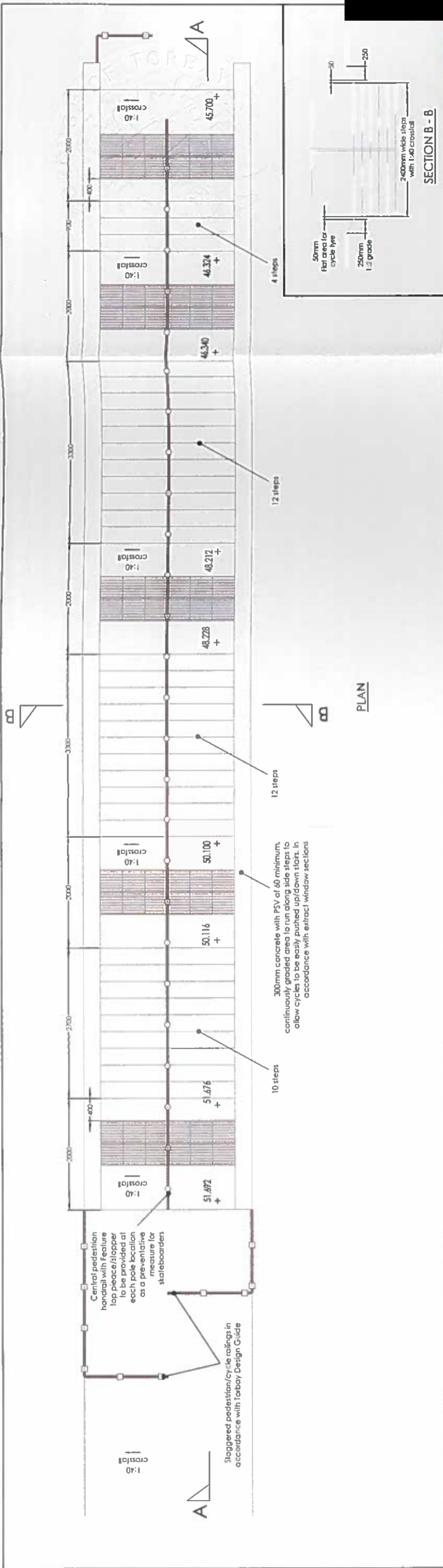
- Proposed ground alignment
- Existing ground alignment

NOTE:

- Drawing to be read in conjunction with engineering plans

FOR FINISHED CARRIAGEWAY WITHIN BLOCK PAVED AREAS ADD 80mm TO ALIGNMENT LEVEL

FOR FINISHED MANHOLE LEVELS ADD 80mm TO COVER LEVEL WITHIN BLOCK PAVED AREAS



- NOTES:**
1. Detail based on Torbay Design Guide - 11.7 Steps & Ramps
 2. Steps may be formed of other materials subject to the approval of the Council's engineer
 3. A flight of steps shall consist of not more than 12 rises of 150mm
 4. Landings shall be of the same width as the steps and have a minimum length of 2m
 5. Handrail and all associated railings/stoppers to be galvanneal steel tubing to BS EN 10255 nominal size DN40 (48.800 OD) heavy (4 THCK) in accordance with Torbay Council Engineers detail
 6. Step design to be reviewed by geo-technical and structural engineers

AWAITING ISSUE

CLIENT: cavanna homes

PROJECT: AREA 4 SOUTH TORQUAY

TITLE: ADOPTABLE STEP/CYCLE LINK TO RIVIERA WAY

PROJECT No: 0013

DRAWING No: SD/103

REV: C

SCALE @ A2: 0 1:50 2.5 metres

DESIGN BY: awcockward partnership

REV	DATE	DESCRIPTION	CHK	APD
C		STEPS AND FEATURES MATERIAL FINISH AMENDED. SECTION B & B ADDED.	GW	RJ
B	05.10.2014	FEATURE PIECE ADDED TO STEPS CROSSFALL & PSV NOTE ADDED.	GW	RJ
A	05.09.2014	INITIAL ISSUE	GW	RJ

DRAWING STATUS: FOR TECHNICAL APPROVAL

AWCOCKWARD PARTNERSHIP
Awcock Ward Partnership, Levington Court, Woodvale Park, Plym Hill, Exeter, EX2 5TY
Tel: 01392 409207 Web: www.awcockward.co.uk

Specification: the publications entitled

- i. "Torbay Council - Highways Design Guide for New Developments" adopted by the Council in October 2013 (Revision 2 – July 2016); and
- ii. the Design Guide Exception Report by the Council dated April 2003

Statutory Undertaker: a statutory undertaker, as defined in section 329(1) of the Highways Act 1980 and including:

- (a) persons authorised under any enactment to carry on an undertaking for the supply of electricity, gas, water and any sewerage undertaking;
- (b) the Environment Agency;
- (c) a holder of a licence to operate telecommunication systems;
- (d) the Civil Aviation Authority; and
- (e) the holder of a licence to supply cable television.

Street Furniture: objects and pieces of equipment installed for various purposes on the carriageway and footway of the Road shown on the Drawings including street lighting, traffic lights and traffic signs.

Surety's Counter Notice: written notice of the Surety's intention to carry out the Default Work.

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax.

Working Day: any day which is not a Saturday, a Sunday, or a bank holiday or public holiday in England.

Works: the Part 1 Works and the Part 2 Works.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

- 1.10 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.11 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.12 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.13 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 STATUTORY PROVISIONS

This agreement is made under section 38 of the Highways Act 1980, section 111 of the Local Government Act 1972 and any other enabling powers of the Council.

3 DEVELOPER'S OBLIGATIONS

- 3.1 The Developer shall, at its own cost, use all reasonable endeavours to carry out and complete the Works:
- 3.1.1 in a good and workmanlike manner;
 - 3.1.2 using only good quality materials approved by the Proper Officer;
 - 3.1.3 in accordance with this agreement, the Specification (a copy of which has been received by the Developer) and the Drawings;
 - 3.1.4 to the Proper Officer's reasonable satisfaction; and
 - 3.1.5 in compliance with all relevant British standards, codes of practice and good building practice; and
 - 3.1.6 within twelve calendar months following the date of this Agreement
- 3.2 The Developer shall give to the Proper Officer not less than 10 Working Days written notice of the date of starting the Works.
- 3.3 The Developer shall maintain the Road until the date of issue of the Final Certificate.

4 DEVELOPER'S DECLARATION

The Developer declares and warrants to the Council that throughout the duration of this agreement the Developer has or will have full right, liberty and consent to carry out such works as may be necessary to connect the Road to a highway that is, or will be, maintainable at the public expense.

5 EXTENSION OF TIME TO COMPLETE THE WORKS

- 5.1 Without prejudice to any remedy of the Council, the Proper Officer may at any time, exercising absolute discretion grant an extension of time to complete the Works for a further period or periods by giving written notice to the Developer and providing
- i. that if such extension of time (to be confirmed in writing by the Proper Officer) is granted the Developer shall pay to the Council such additional inspection fee (based on the estimated cost of any outstanding works) as shall be agreed between the Proper Officer and the Developer; and

- ii. the Developer and the Proper Officer shall review the amount of the Default Cost (as specified in Clause 22) in force at that time and the Developer shall if required by the Proper Officer in writing arrange for the amount of the Default Cost to be increased to such reasonable amount as shall be required by the Proper Officer

6 SUSPENSION OF THE WORKS

- 6.1 If the Developer intends to suspend construction of the Works for a period of more than twenty Working Days, the Developer shall notify the Proper Officer in writing of:
 - 6.1.1 the intended suspension not less than five Working Days before the start of the suspension; and
 - 6.1.2 the Developer's intention to re-commence construction of the Works not less than five Working Days before such re-commencement.
- 6.2 If the Developer fails to notify the Proper Officer under clause 3.2 and clause 6.1, the inspection fee referred to in clause 33 shall be increased by such amount as the Proper Officer, exercising absolute discretion, sees fit in order to reimburse the Council any additional cost incurred by the Council in inspecting the Works because of such failure.

7 ACCESS TO THE LAND

- 7.1 During construction of the Works, the Developer shall give to the Proper Officer and any other Council officer free access to every part of the Works and Land for the purpose of inspecting the Works and all materials used, or intended to be used, for the Works.
- 7.2 While carrying out any inspection under clause 7.1, the Proper Officer and any other Council officer shall comply with any reasonable health and safety requirements notified to them by the Developer.
- 7.3 During construction of the Works, the Proper Officer may require the Developer to open up or expose any of the Works that have been covered up without previously being inspected by the Proper Officer. If the Developer fails to comply with any such request, the Council may take up or expose the relevant part of the Works causing as little damage or inconvenience as possible to or in respect of any other part or parts of the Works. The Developer shall pay the Council's reasonable and proper costs of such taking up, exposure and reinstatement

8 PROCEDURE FOR INSPECTION AND ISSUE OF CERTIFICATES

- 8.1 The Developer must apply to the Proper Officer in writing for a:
 - 8.1.1 Part 1 Certificate;
 - 8.1.2 Part 2 Certificate; and
 - 8.1.3 Final Certificate.
- 8.2 Within ten Working Days following receipt of a written application from the Developer for the issue of a Part 1 Certificate or Final Certificate and within ten Working Days following written application from the Developer for the issue of a Part 2 Certificate, the Proper Officer shall:
 - 8.2.1 inspect the Works to which the application relates; and

8.2.2 provide the Developer (where necessary) with a definitive written list of any works required to be carried out to remedy any defect or damage to the Road before the issue of that certificate.

8.3 The Developer must carry out the works referred to in clause 8.2.2 without delay and at its own cost.

8.4 The works referred to in clause 8.2.2 shall be subject to the same inspection procedure detailed in this clause 8 until such time as the works have been completed to the reasonable satisfaction of the Proper Officer.

8.5 The Proper Officer shall issue the relevant certificate in accordance with clause 9, clause 10 or clause 13.

9 PART 1 CERTIFICATE

Within 20 Working Days following completion of the Part 1 Works to the reasonable satisfaction of the Proper Officer, the Proper Officer shall issue the Part 1 Certificate to the Developer.

10 PART 2 CERTIFICATE

Within 20 Working Days following completion of the Part 2 Works to the reasonable satisfaction of the Proper Officer, the Proper Officer shall issue the Part 2 Certificate to the Developer provided that

10.1.1 a camera survey of the surface water drains serving the Road which are to be the responsibility of the Council has been carried out and provided to the Proper Officer; and

10.1.2 the maintenance period of any sewer constructed on or under the Road in accordance with a Sewer Adoption Agreement is currently running or has expired.

11 CERTIFICATES FOR PART OR PARTS OF THE ROAD

11.1 The Developer may apply to the Proper Officer for a Part 1 Certificate or a Part 2 Certificate for any part of the Road (being the whole width of the Road between specified points to be agreed by the Proper Officer and defined in the application).

11.2 If the Proper Officer is satisfied that the part of the Road defined is suitable to be treated as a separate road for the purposes of construction and adoption under this agreement, the Proper Officer may issue a separate Part 1 Certificate or Part 2 Certificate, as the case may be, for that part of the Road.

11.3 The same procedures may then be taken in respect of the said part of the Road as if it were the subject of a separate agreement under which the terms of this agreement applied, but without affecting the application of this agreement to the remainder of the Road.

11.4 Following the date of issue of a Part 1 Certificate or a Part 2 Certificate, as the case may be, for part of the Road, the liability of the Surety shall be reduced pursuant to clause 22.1 pro rata in relation to the part of the Road over which the Part 1 Certificate or Part 2 Certificate is issued

12 THE MAINTENANCE PERIOD

12.1 From and including the date of the Part 2 Certificate:

12.1.1 the Maintenance Period shall commence to run for a period of twelve

calendar months or, if construction vehicles continue to travel along the Road, such longer period as the Proper Officer may reasonably determine; and

- 12.1.2 the Road shall become a highway open for use by the public at large, but shall not be regarded as a highway maintainable at the public expense.
- 12.2 During the Maintenance Period, the Developer shall, at its own cost and to the reasonable satisfaction of the Proper Officer:
- 12.2.1 maintain the Works, including all grassed and planted areas, and carry out routine maintenance of the Road, including sweeping, gully emptying and snow clearance; and
- 12.2.2 clear all abandoned vehicles, rubbish, or other unauthorised materials from the Road.
- 12.3 During the Maintenance Period the Council shall, at its own cost undertake routine maintenance of and be responsible for, the supply of energy all the street lights and illuminated traffic signs.
- 12.4 Before the Maintenance Period expires, the Developer shall, without delay and at its own expense, reinstate and make good any defect or damage to the Road, which may have arisen from any cause or be discovered, during the Maintenance Period (including any defect in, or damage to, the road surface water drainage system) of which the Developer has been notified in writing by the Proper Officer, so that the Works comply with the Specification and the Drawings.

13 FINAL CERTIFICATE

The Proper Officer shall issue the Final Certificate to the Developer provided that:

- 13.1.1 the Developer has paid to the Council all amounts due to the Council under this agreement;
- 13.1.2 any necessary reinstatement or other works notified in writing to the Developer in accordance with clause 12.4 have been completed to the reasonable satisfaction of the Proper Officer;
- 13.1.3 the Road connects directly to a highway maintainable at public expense;
- 13.1.4 the Developer has delivered to the Proper Officer each of the following:
- i) coloured drawings showing to a scale of 1:500 the Works as constructed, in a format specified by the Proper Officer;
 - ii) one copy of the Health and Safety File in a format specified by the Proper Officer; and
 - iii) highways inventory data in a format specified by the Proper Officer.
- 13.1.5 The Developer has at its own expense provided the Proper Officer with verification that any sewers constructed on or under the Road, in accordance with a Sewer Adoption Agreement, have been adopted by a Statutory Undertaker;
- 13.1.6 the Developer has obtained and delivered to the Council all necessary deeds of easement under clause 20;

13.1.7 the Developer has procured that an independent safety auditor, approved by the Council, has undertaken road safety audit stages 1, 2, 3 and (if required by the Proper Officer) 4 ("Road Safety Audits") on the Works in accordance with H.D 19/03 (Road safety audit volume 5: design manual for roads and bridges); and

13.1.8 The Developer has carried out, at its own expense, all the remedial works identified in the Road Safety Audits to the reasonable satisfaction of the Proper Officer;

14 **ADOPTION**

From and including the date of issue of the Final Certificate, the Road or any part of the Road, as the case may be, shall become a highway maintainable at the public expense and (providing it has satisfied all pre-adoption requirements of this Agreement) the Developer shall cease to have any liability pursuant to this Agreement save pursuant to clause 27.2.

15 **MATERIALS SAMPLING AND TESTING**

15.1 The Developer shall, if requested by the Proper Officer, make all necessary arrangements for an independent accredited testing facility, approved by the Council, to test the materials proposed to be used in connection with the Works. The Developer shall bear the full cost of such testing and give to the Proper Officer, at no expense to the Council, copies of all material testing certificates.

15.2 Any material rejected by the Proper Officer acting reasonably, as a result of the tests carried out under clause 15.1 shall not be used by the Developer for any of the Works.

16 **NEW ROADS AND STREET WORKS ACT 1991**

From the date of issue of the Part 2 Certificate until the date of issue of the Final Certificate, the Developer shall:

16.1.1 appoint a supervisor qualified in accordance with the provisions of section 67 of the New Roads and Street Works Act 1991; and

16.1.2 remain the street manager of the Road under section 49(4) of the New Roads and Street Works Act 1991.

17 **KEEPING THE EXISTING HIGHWAY CLEAN**

The Developer shall:

17.1.1 before commencing the Works provide suitable vehicle and wheel cleaning apparatus on the Land; and

17.1.2 during construction of the Works ensure the cleaning apparatus is well maintained and used by all vehicles immediately before leaving the Land to minimise the risk of mud and other materials being deposited on the highway.

18 **CONNECTING TO EXISTING SERVICES**

18.1 The Developer shall

18.1.1 At its own cost and expense advise all Statutory Undertakers who have or may have apparatus or any part of their services affected by the Works

18.1.2 carry out, at its own cost, any works or measures required by a Statutory

Undertaker as a result of the Works; and

18.1.3 indemnify the Council for the cost of any works or measures carried out, as a result of the Works, by the Council at the request of the Statutory Undertaker.

18.2 Before connecting the Road to the carriageway of a highway maintainable at the public expense, the Developer shall give notice to the relevant Statutory Undertaker of any service or services laid in, on, or under the existing highway of the proposal to make such connection as if the connection were works for road purposes or major highway works as defined in section 86 of the New Roads and Street Works Act 1991.

19 OCCUPATION OF BUILDINGS

No buildings erected by or on behalf of the Developer that front, adjoin, abut or have access to the Road shall be occupied (save for occupation for the purposes of construction security and/or marketing) until:

19.1.1 the Proper Officer has issued confirmation that Part 1 Works have been completed for the Road, or the part of the Road that will provide the occupier with access to a vehicular highway;

19.1.2 a base course pedestrian access (where applicable) to such highway has been provided;

19.1.3 the Road or that part of the Road referred to in clause 19.1.1 has operational street lighting columns erected in accordance with the Specification and the Drawings and the Developer has arranged with the service provider for an electricity supply to the lighting by giving at least six weeks' prior notice in writing or as may otherwise be agreed in writing by the Proper Officer; and

19.1.4 the Road or that part of the Road referred to in clause 19.1.1 has street name plates erected as agreed with the Proper Officer.

20 GRANT OF EASEMENTS

20.1 Before the Proper Officer issues a Final Certificate, the Developer shall, if required by the Council, without cost to the Council, execute and complete or procure the execution and completion of:

20.1.1 a deed of easement to secure for the Council full drainage and maintenance of street lighting rights to such parts of the surface water drainage and lighting systems of the Road Land that are not within the Road Land; and

20.1.2 any other deeds of easement required by the Council for the future maintenance by the Council of any street furniture not within the Road Land.

20.2 The Developer shall pay the Council's proper and reasonable legal costs and disbursements in connection with the grant of any deeds of easement.

20.3 The Council shall not be liable for the payment of compensation or legal or any other costs or fees arising on account of the completion of any deeds of easement referred to in clause 20.1 or due to the subsequent use of the easement.

21 CDM REGULATIONS

- 21.1 The Developer elects to be treated for the purposes of the CDM Regulations as the only Client. The Council agrees with such election by the Developer.
- 21.2 The Developer agrees to undertake all the obligations of a Client and to use its best endeavours to ensure that the Works are carried out in accordance with the CDM Regulations.
- 21.3 Before commencement of the Works, the Developer shall ensure that the Works are properly notified to the Health and Safety Executive in accordance with the CDM Regulations and shall give the Council a copy of the notification and any acknowledgement from the Health and Safety Executive.
- 21.4 The Developer shall ensure that the Health and Safety File is maintained correctly and is available for inspection in accordance with the CDM Regulations.
- 21.5 The Developer warrants it has taken or shall take all reasonable steps to be satisfied that all contractors engaged on the Works are suitable and competent having regard to their responsibilities in relation to the Works and the CDM Regulations.
- 21.6 The Developer shall indemnify and keep the Council indemnified against any breach of the Developer's obligations under this clause 21.

22 SURETY'S OBLIGATIONS

- 22.1 If any of the default events listed in clause 29 occur, the Proper Officer may, without affecting any statutory rights or powers or any other right, claim, or remedy under this agreement for such non-performance or non-observance, give to the Surety a Default Notice:
 - 22.1.1 specifying the Default Work; and
 - 22.1.2 containing an estimate by the Proper Officer of the Default Cost. The Default Cost shall not exceed:
 - (a) the Estimated Cost;
 - (b) £200,500 on and after the issue of the Part 1 Certificate;
 - (c) £100,250 on and after the issue of the Part 2 Certificate; or
 - (d) an amount to be determined by the Proper Officer, exercising absolute discretion, after the issue of either part of a Part 1 Certificate or part of a Part 2 Certificate.
- 22.2 Within 20 Working Days following the date of receipt of the Default Notice, the Surety shall:
 - 22.2.1 pay the Default Cost to the Council; or
 - 22.2.2 send the Surety's Counter Notice to the Council.
- 22.3 If the Surety, having sent the Surety's Counter Notice to the Council, fails to start the Default Work within 20 Working Days from and including the date of receipt by the Council of the Surety's Counter Notice, the Surety shall without delay, pay the Default Cost to the Council together with simple interest at a rate of 5% per annum above the base rate of National Westminster Bank PLC from time to time, calculated from and including the date on which the Default Notice was sent to the Surety to and including

the date the payment is made.

- 22.4 If the Surety, having sent the Surety's Counter Notice to the Council, starts the Default Work, and the Default Work is not completed within four calendar months from and including the date the Surety's Counter Notice was received by the Council, or within such further period or periods as may be agreed by the Proper Officer, the Surety shall forthwith on demand by the Proper Officer, pay to the Council:
- 22.4.1 such sum as the Proper Officer may determine as being the cost of carrying out any Default Work not carried out by the Surety or the cost of maintaining the Works for a period of twelve calendar months before the Road becomes maintainable at public expense (or the cost of both); and
- 22.4.2 the amount determined by the Proper Officer as representing the usual establishment charges of the Council.
- 22.5 The sum payable under clause 22.4 shall not exceed the Default Cost.
- 22.6 A demand stated to be made under this agreement and signed on behalf of the Council shall be conclusive as to the Surety's obligation to pay the amount demanded and there shall be no obligation or duty on the Surety to serve a Surety's Counter Notice
- 22.7 Following the issue of a Final Certificate for:
- 22.7.1 any part of the Road, the liability of the Surety shall be reduced by an amount as may be directed by the Proper Officer acting reasonably; or
- 22.7.2 all of the Road or the final part of the Road, the Surety shall be released from all liability under this agreement.

23 COUNCIL'S COVENANTS

The Council covenants with the Developer and the Surety for the benefit of each and every building plot fronting, adjoining, abutting, or having access to the Road:

- 23.1.1 to use all reasonable endeavours in consultation with the Surety and/or the Developer (as appropriate) to mitigate any loss or damage sustained because of any default by the Developer, by taking such reasonable steps as the Council thinks fit;
- 23.1.2 to use all monies received from the Surety pursuant to clause 22 and/or the Developer pursuant to this Agreement towards the carrying out or completing the Works and maintaining and making good all defects for a period of twelve calendar months after completion of the Works. The amount received from the Surety shall be deducted from any sum that would otherwise be recoverable from the owners of premises fronting the Road under the Highways Act 1980;
- 23.1.3 if the sum paid by the Surety or the Developer to the Council exceeds the cost of carrying out or completing the Works and maintaining and making good all defects as set out in this agreement (together with the amount of the Council's usual establishment charges) to repay to the Surety or the Developer as appropriate within 20 Working Days following the date of the Final Certificate, the amount of any excess; and
- 23.1.4 on the issue of the Final Certificate to give such notices and do whatever else may be required for securing that the Road or any part thereof, as the case may be, shall become a highway maintainable at public expense.

24 SPECIFICATION TO TAKE PRECEDENCE

If there is any conflict between the Specification and the Drawings, the Specification shall take precedence unless otherwise agreed in writing by the Proper Officer.

25 TECHNICAL ADVICE

If the Proper Officer determines that technical advice is required before any feature or structure included as part of the Works or that is under or over the Road can be approved, the Developer shall reimburse to the Council, within 20 Working Days following receipt of an invoice, all costs incurred by the Council in obtaining such technical advice.

26 MAKING UP OF PRIVATE STREETS

If the Developer fails to perform any of its obligations under this agreement, nothing in this agreement shall prevent or restrict the Council from exercising its powers under the Private Street Works Code contained in Part XI of the Highways Act 1980 or any other statutory provision.

27 INDEMNITIES

27.1 The Developer shall indemnify the Council in respect of any actions, charges, claims, costs, losses, damages, demands, liabilities and proceedings arising out of any breach or non-observance of the Developer's obligations in this agreement including (but not limited to):

27.1.1 third party claims for death, personal injury or damage to property;

27.1.2 statutory or other liability for the safety or security of the Land, working methods, employment practices, protection of the environment and control of pollution; and

27.1.3 third party claims for unlawful interference with any rights of light, air, support, water, drainage or any other easement or right.

27.2 The Developer shall indemnify the Council in respect of any claims for compensation under section 10 of the Compulsory Purchase Act 1965 and claims under the Land Compensation Act 1973 arising out of, in connection with or incidental to, the carrying out of the Works and their subsequent use, other than those arising out of or in consequence of any negligent act default or omission of the Council.

27.3 The indemnification referred to in clause 27.2 includes:

27.3.1 compensation payments under Part I of the Land Compensation Act 1973;

27.3.2 all fees successfully claimed by claimants, and those fees reasonably and properly incurred by the Council or its agent or contractor, in negotiating any claims (together with VAT payable on the claimants' professional advisors' fees);

27.3.3 statutory interest payments to claimants and their professional advisors; and

27.3.4 the Council's reasonable and proper legal costs in making the compensation, fees and interest payments under this clause 27.3.

27.4 The Developer shall only be required to indemnify the Council in accordance with this agreement if:

27.4.1 the Council notifies the Developer as soon as reasonably practicable on

becoming aware of any matter which becomes the subject of a claim for indemnity;

27.4.2 the Council keeps the Developer reasonably informed of all progress of which it is, or becomes, aware of in connection with that matter and of any proposed settlement;

27.4.3 where it is permitted by the Council's insurer, not settling or compromising that matter without the previous consent of the Developer, such consent not to be unreasonably withheld or delayed. Where the Developer does not consent it shall indemnify the Council against all costs incurred by the Council in litigating that matter and will assist the Council in such litigation by providing such witnesses and other evidence as it is able to do relating to any matter in contention.

28 **INSURANCE**

From and including the date of completion of this agreement until the date of issue of the Final Certificate, the Developer shall procure and maintain public liability insurance to cover claims for injury to or death of any person or loss or damage to any real or personal property for an indemnity of not less than £5,000,000 for any one occurrence or series of occurrences arising out of the same event.

29 **DEFAULT EVENTS**

The Council may terminate this agreement (except for clause 1, clause 3, clause 7, clause 18, clause 19, clauses 21-23, clause 26 and clauses 30-39) immediately by written notice to the Developer without prejudice to any other rights the Council may have, if any of the following events occur:

29.1.1 the Developer is in fundamental breach of any of its conditions, stipulations or obligations and liabilities in this agreement; or

29.1.2 the Developer is in substantial breach of any of its conditions, stipulations or obligations and liabilities in this agreement and has failed to rectify the breach within a reasonable time after receiving notice to rectify from the Proper Officer; or

29.1.3 where the Developer is a corporation:

29.1.3.1 has an administrative receiver or receiver appointed over the whole or part of the Developer's assets or suffers the appointment of an administrator; or

29.1.3.2 any step is taken in connection with any voluntary arrangement or any other compromise or arrangement for the benefit of any creditors of the Developer; or

29.1.3.3 in relation to the Developer, the appointment of an administrator, the filing of documents with the court for the appointment of an administrator or the giving of notice of intention to appoint an administrator by the Developer or its directors, or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or

29.1.3.4 a receiver or manager is appointed in relation to any property or income of the Developer; or

29.1.3.5 a liquidator is appointed in respect of the Developer; or

- 29.1.3.6 a voluntary winding-up of the Developer is commenced, except a winding-up for the purpose of amalgamation or reconstruction of a solvent company in respect of which a statutory declaration of solvency has been filed with the Registrar of Companies; or
- 29.1.3.7 the Developer is struck-off from the Register of Companies; or
- 29.1.3.8 the Developer otherwise ceases to exist; or
- 29.1.4 Where the Developer is an individual:
 - 29.1.4.1 the taking of any step in connection with any voluntary arrangement or any other compromise or arrangement for the benefit of any creditors of the Developer; or
 - 29.1.4.2 the presentation of a petition for a bankruptcy order or the making of a bankruptcy order against the Developer.

30 COUNCIL'S POWER TO EXECUTE WORKS IN DEFAULT

- 30.1 Without affecting clause 3 and clause 29, if the Developer fails to carry out or complete the Works in accordance with the Developer's obligations under this agreement, the Council, after giving to the Developer and the Surety not less than 20 Working Days written notice, shall be entitled to carry out or complete the Works in default, using the Council's own employees, or by contractors or otherwise and to recover from the Developer or Surety the cost or carrying out or completing the Works as certified by the Proper Officer.
- 30.2 The Developer hereby grants to the Council and the Council's agents, contractors and employees full right and licence to enter onto and remain on the Land together with all machinery plant and materials in order to carry out or complete the Works and remedy any defects or damage to the Road pursuant to clause 30.1.

31 DISPUTES

Any dispute, controversy or claim arising out of or relating to this agreement, including any question regarding its breach, existence, validity or termination or the legal relationships established by this agreement, shall be finally resolved by arbitration in accordance with the Arbitration Act 1996. It is agreed that:

- 31.1.1 the tribunal shall consist of one arbitrator appointed jointly by the parties;
- 31.1.2 in default of the parties' agreement as to the arbitrator, the arbitrator shall be appointed on either party's request by the President for the time being of the Institution of Civil Engineers;
- 31.1.3 the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction, then equally); and

32 MORTGAGEE'S CONSENT

The Mortgagee consents to the terms of this agreement but without liability save in the event that the Mortgagee becomes successor in title to the Developer at any time before the Developer has fully performed all its obligations contained in this agreement.

33 LEGAL AND OTHER COSTS

33.1 On the date of completion of this agreement or whenever demanded, within ten Working Days of written demand, the Developer shall pay to the Council:

33.1.1 £24,060 in respect of the reasonable and proper costs and expenses incurred or to be incurred by the Council in connection with the technical assessment, and inspection of the Works being 6% of the total of the Estimated Cost;

33.1.2 the Council's reasonable and proper legal costs and disbursements in connection with the preparation, completion and registration of this agreement;

33.1.3 any costs incurred by the Council in making and implementing any orders that regulate traffic which the Proper Officer deems necessary because of the Works and whether made or implemented before, during or after completion of the Works; and

33.2 Receipt by the Council of the payment of any sum shall not create any contractual relationship between the Council and the Developer, nor absolve the Developer from any liability or obligation imposed on the Developer by the terms of this agreement, or by statute or at common law.

34 ASSIGNMENT

The Developer may not assign this agreement without the prior written consent of the Council such consent not to be unreasonably withheld or delayed.

35 LOCAL LAND CHARGES REGISTER

As soon as practicable, following the date of completion of this agreement, the Council shall enter this agreement and its terms and conditions in the local land charges register.

36 NOTICES

36.1 A notice or other communication to be given under this agreement must be in writing and must be:

36.1.1 delivered by hand; or

36.1.2 sent by pre-paid first class post or other next working day delivery service (and by fax in the case of emergency).

36.2 Any notice or other communication to be given under this agreement must be sent to the relevant party as follows:

36.2.1 to the Council at: the Highways and Engineering Department, Town Hall, Torquay TQ1 3DR marked for the attention of the Principal Engineer

36.2.2 to the Developer at: its registered office marked for the attention of "Mark Patten, Engineer"

36.2.3 to the Surety at: its registered office

36.2.4 to the Mortgagee at: its registered office

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

36.3 Any notice or other communication given in accordance with clause 36.1 and clause 36.2 will be deemed to have been received:

36.3.1 if delivered by hand, on signature of a delivery receipt or at the time the notice or other communication is left at the address provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day;

36.3.2 if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Working Day after posting.

36.4 A notice or other communication required to be given under this agreement shall not be validly given if sent by e-mail.

36.5 This clause does not apply to the service of any proceedings or other documents in any legal action.

37 THIRD PARTY RIGHTS

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

38 GOVERNING LAW

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

This agreement has been entered into on the date stated at the beginning of it.

Executed as a deed by affixing)
the COMMON SEAL of)
THE COUNCIL OF THE BOROUGH OF TORBAY)
was affixed to this document in)
the presence of :)



Authorised signatory

The Council of The Borough of Torbay S/No. 7067



EXECUTED as a DEED by affixing)

the COMMON SEAL of)

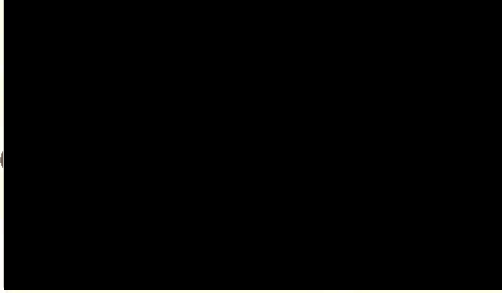
CAVANNA HOMES)

(DEVON) LIMITED) ...

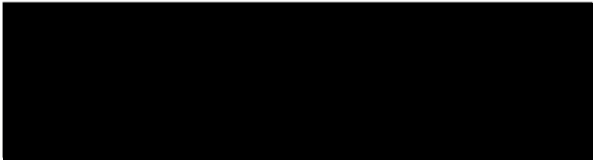


in the presence of:-

Director



igned as a deed by [redacted] and [redacted] as attorneys for National House-Building Council under a Power of Attorney dated 6th December 2016

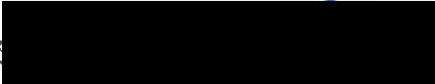


CUSTOMER SUPPORT MANAGER
CUSTOMER SERVICES

As attorney for National House-Building Council

Customer Support Team Leader

Customer Services



As attorney for National House-Building Council

Executed as a DEED by LLOYDS BANK PLC by an Authorised Attorney:



(print name)

Attorney

An Authorised Attorney, in the presence of:



Signature of witness



Name of witness:

Address of witness:

New Superior Homes
1st Floor
11 Earl Grey Street
Edinburgh
EH3 9AA

SCHEDULE 1 PART 1 WORKS

- All highway drainage.
- All other drainage contained within the Road.
- All kerb foundations and where appropriate, kerbs including lowering at vehicle crossings, pram-ramps, sub-base and base course surfacing to pedestrian way.
- Carriageway sub-base, road base, vehicle crossings and any supporting structures to the same.
- Carriageway base course surfacing and all vehicle crossings where appropriate.
- Demarcation of sight lines and clearance of vision splays.
- Operational street lighting.
- Temporary street name plates.

SCHEDULE 2 - PART 2 WORKS

- All outstanding kerbing not completed as part of the Part 1 Works.
- Pedestrian ways and cycle ways.
- Carriageway wearing course and carriageway base course including (where appropriate) speed restraint measures.
- Vision splays, verges and service strips.
- All outstanding street lighting and street furniture.
- Street name plates.
- Road markings and traffic signs.
- All other works described in the Specification and shown in the Drawings.