

IN TRIPlicate

DATED

21 August

2020

THE COUNCIL OF THE CITY OF MANCHESTER

- and -

MANCHESTER RESIDENCES (NEW CROSS) LIMITED

- and -

HCC INTERNATIONAL INSURANCE COMPANY PLC

A G R E E M E N T

made under Section 278 of the Highways Act 1980

relating to highway works

at Bendix Street, Chadderton Street, Marshall Street

and Oldham Road, New Cross,

Manchester

City Solicitor

PO Box 532

Town Hall

Manchester

M60 2LA

Ref: L/JGL/EVD5012/398

THIS AGREEMENT is made the 21 day of AUGUST 2020

BETWEEN:

- (1) **THE COUNCIL OF THE CITY OF MANCHESTER** of PO Box 532, Town Hall, Albert Square, Manchester M60 2LA ("the Council")
- (2) **MANCHESTER RESIDENCES (NEW CROSS) LIMITED** (Company Registration No. 11201596) whose registered office is situate at 350 Euston Road, Regents Place, London NW1 3AX ("the Developer"); and
- (3) **HCC INTERNATIONAL INSURANCE COMPANY PLC** (Company Registration No. 01575839) whose registered office is situate at 1 Aldgate, London EC3N 1RE ("the Surety")

Recitals

- 1.1 The Council is the local highway authority with statutory responsibility for all public highways within its jurisdiction including the Public Highway
- 1.2 The Developer proposes to undertake the Development in accordance with the Planning Permission and to undertake the Highway Works as agent for the Council as far as this Agreement is concerned for the purpose of Section 278 of the Act.
- 1.3 The Council is satisfied that the carrying out of Highway Works will be of benefit to the public.
- 1.4 The Surety has agreed to enter into this Agreement to guarantee the performance of the Developer's obligations.

2. INTERPRETATION

- 2.1 In this Agreement unless the context otherwise requires or admits the following terms and expressions shall have the meanings specified:
 - 2.1.1 "**Act**" means the Highways Act 1980 (as amended) and any statutory modification on re-enactment of the same;

2.1.2 **"Administration/Inspection Fee"** means the payment to be made by the Developer to the Council upon request towards the Council's Cost in monitoring and inspecting the undertaking of the Highway Works

2.1.3 **"Advance Warning Signs"** means public information signs that give advance notice to highway users of the commencement of the Highway Works (or any part) or that communicates other relevant information

2.1.4 **"Agreement Plans"** means the following drawings:

1. "NEW CROSS SECTION 278 - GENERAL ARRANGEMENT"
prepared by Curtins Consulting Ltd under Drawing Number 060014-S278-100 (Rev G);
2. "NEW CROSS SECTION 278 - PROPOSED ROAD MARKINGS"
prepared by Curtins Consulting Ltd under Drawing Number 060014-S278-1100 (Rev F);
3. "NEW CROSS SECTION 278 - SITE CLEARANCE" prepared by Curtins Consulting Ltd under Drawing Number 060014-S278-200 (Rev E);
4. "NEW CROSS SECTION 278 - PROPOSED CONSTRUCTION DETAILS" prepared by Curtins Consulting Ltd under Drawing Number 060014-S278-700 (Rev I); and
5. "NEW CROSS SECTION 278 - KERBING DETAILS" prepared by Curtins Consulting Ltd under Drawing Number 060014-S278-710 (Rev H)
6. "STREET TREE DETAILS. OLDHAM ROAD" prepared by SLR under Drawing Number NCR-SLR-ZO-ZO-DR-L-700 (Rev P1)

attached to this Agreement and signed by or on behalf of the parties or such other plan(s) as may be approved from time to time by the Council either as amendments to the Agreement Plan or as part of the detailed design for the Highway Works.

- 2.1.5 **“CDM Regulations”** means the Construction (Design and Management) Regulations 2015
- 2.1.6 **“Client”** means the client as defined by the CDM Regulations
- 2.1.7 **“Completion Certificate”** means the certificate to be issued on satisfactory completion of the Highway Works in accordance with Clause 7.5
- 2.1.8 **“Contractor”** means the contractor appointed by the Developer (as applicable) as the principal contractor under the CDM Regulations to carry out the Highway Works
- 2.1.9 **“Council’s Cost”** means all administrative and other reasonable fees or establishment charges of the Council in connection with the Highway Works incurred or to be incurred up until the issue of the Final Certificate, including but not limited to:
- 2.1.9.1 the Administration/Inspection Fee;
 - 2.1.9.2 the cost of checking and approval of the Design Works;
 - 2.1.9.3 all legal, administrative and construction costs incurred by the Council in connection with any amendments required to existing Traffic Regulation Orders or the promotion of new or revocation and amendment of existing Traffic Regulation Orders arising as a consequence of the Highway Works;
 - 2.1.9.4 all costs or expenses incurred in complying with the CDM Regulations insulating buildings against noise or in satisfying claims made under the noise abatement legislation and/or the Land Compensation Act 1973 Part 1 in connection with the Highway Works in accordance with Clause 15.3.
- 2.1.10 **“Default Cost”** means both the:
- 2.1.10.1 cost of carrying out the Default Work; and
 - 2.1.10.2 the whole (or any part of) the Council’s Cost

2.1.11 **"Default Event"** includes the following events:

2.1.11.1 the Developer at any time failing to perform or observe any of the conditions stipulations or obligations on its part contained in this Agreement; or

2.1.11.2 a receiving order in bankruptcy is made in respect of the Developer's estate; or

2.1.11.3 the Developer being wound up; or

2.1.11.4 the Developer entering into a composition or scheme of arrangement (otherwise than for the purpose of reconstruction or amalgamation)

2.1.12 **"Default Notice"** means a notice served by the Proper Officer on the Surety in accordance with Clause 17.1

2.1.13 **"Default Work"** means work required to be carried out in connection with the Highway Works by or on behalf of the Surety following a Default Event in order to secure the performance of the Developer's covenants, obligations and liabilities contained in this Agreement

2.1.14 **"Deposit"** means the sum of THREE THOUSAND POUNDS (£3,000.00) paid by the Developer to the Council in advance of this Agreement the receipt whereof the Council hereby acknowledge as an advance contribution towards the Council's Cost

2.1.15 **"Design Works"** means undertaking a feasibility study and preparing the detailed highway design (including if appropriate the lighting design) and the Specification all such work to be undertaken by the Developer and approved separately by the Proper Officer prior to commencement of the Highway Works

2.1.16 **"Development"** means the erection of part 10, part 8 storey block and a part 8, part 6 storey block to form 274 residential apartments in total together with ground floor commercial units facing Oldham Road (342 sqm) (Use Class A1,

A2 A3 and B1) with associated car parking, hard and soft landscaping, new public realm following the closure of Goulden Street and other associated works following demolition of existing buildings as permitted by the Planning Permission

2.1.17 **"Due Date"** is the date when a payment is due in accordance with the terms and conditions of this Agreement

2.1.18 **"Estimated Cost"** means the sum of FIFTY THOUSAND POUNDS (£50,000.00)

2.1.19 **"Final Certificate"** means the certificate issued by the Proper Officer to the Developer following the expiry of the Maintenance Period in accordance with Clause 9

2.1.20 **"Further Works"** means those works as may be specified in accordance with Clause 9.2.2 prior to issue of the Final Certificate

2.1.21 **"Health and Safety File"** means the file or other permanent record containing the information required by the CDM Regulations

2.1.22 **"Highway Works"** means the highway improvement works described generally in the Schedule and identified in principle on the Agreement Plans and any detailed design subsequently approved by the Council in accordance with this Agreement and in the event of a discrepancy between the works described in the Schedule and in the Agreement Plans the Agreement Plans shall take precedent

2.1.23 **"Interest"** means the interest at the rate of 4% per annum above the base rate from time to time of Barclays Bank PLC

2.1.24 **"Maintenance Period"** means a period of twelve (12) calendar months calculated from the date upon which the Completion Certificate is issued (Excepting That in circumstances where the Highway Works include soft landscaping or tree planting the Maintenance Period shall be extended to twenty-four (24) calendar months calculated from the date upon which the

Completion Certificate is issued or, if the construction vehicles continue to travel along the Public Highway, such longer period as the Proper Office may reasonably determine unless at the end of that period the Proper Officer forms the view that the Final Certificate cannot be issued on the basis that the Further Works have not been completed in accordance with this Agreement in which case the Maintenance Period shall include such further period as shall elapse until the issue of the Final Certificate).

2.1.25 "**Planning Permission**" shall mean the planning permission issued by Manchester City Council under reference number 112015/FO/2016/N1

2.1.26 "**Programme**" means the period for completion of the Highway Works as defined in Clause 7.3

2.1.27 "**Proper Officer**" means the person for the time being appointed by the Council for the purposes of this Agreement or of any provision contained herein

2.1.28 "**Public Highway**" means those parts of Bendix Street, Chadderton Street, Marshall Street and Oldham Road, New Cross, Manchester that is maintainable at the public expense as more particularly shown within the red line boundary on the Agreement Plans on which the Highway Works are proposed to be carried out including all footpaths, Street Furniture, verges, service strips, service margins, vehicular crossings and road surface water drainage systems (if any) and all other things ancillary thereto

2.1.29 "**Public Liability Insurance Policy**" shall mean an insurance policy with an insurance company regulated and registered with the Association of British Insurers for a sum of not less than £10,000,000 (ten million pounds) in respect of any single claim, the number of claims being unlimited, in the Developer's own name to cover claims for injury to, or death of, any person or loss or damage to any real or personal property arising out of the execution

and use of the Highway Works.

2.1.30 **“Road Safety Audits”** shall mean the audits of the Highway Works to be carried out in accordance with the Department for Transport Road Traffic Audit Standard HD 19/15

2.1.31 **“Road Safety Audit report”** shall mean the report to be prepared by the Safety Auditor following the carrying out of the Road Safety Audits

2.1.32 **“RSA3”** shall mean a Stage 3 Road Safety Audit report relating to the completed Highway Works to be carried out prior to issue of the Completion Certificate

2.1.33 **“RSA4”** shall mean a Stage 4 Road Safety Audit report relating to the completed Highway Works to be carried out 11 months following the issue of the Completion Certificate

2.1.34 **“Safety Auditor”** shall mean an independent and suitably qualified highway or traffic engineer appointed by the Developer at the Developer's expense to carry out the Road Safety Audits such appointment having been previously approved in writing by the Proper Officer

2.1.35 **“Specification”** shall mean the publication entitled “Specification for Highway Works” published by the Stationery Office as Volume 1 of the Manual of Contract Document for Highway Works as modified and extended by the latest edition of the publication entitled “Roads for Adoption a Guide for Developers” and by the Council's Standard Detail Drawing and those drawings submitted by or on behalf of the Developer and subsequently approved in writing by the Proper Officer

2.1.36 **“Statutory Undertaker”** shall mean a statutory undertaker as defined in Section 329(1) of the Act

2.1.37 **“Street Furniture”** shall mean all types of street furniture including (but not limited to) the bollards, fencing, street lighting, traffic lights and illuminated traffic signs installed or to be installed as part of the Highway Works

- 2.1.38 **"Traffic Regulation Order"** shall mean any temporary or permanent order required to commence and carry out the construction of the Highway Works pursuant to the Road Traffic Regulation Act 1984 including any amendment required to an existing order
- 2.1.39 **"VAT"** shall mean the value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax
- 2.1.40 **"Working Day"** shall mean any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England or Wales
- 2.2 The Schedule will form part of this Agreement and will have effect as if set out in full in the body of this Agreement and any reference to this Agreement will include the Schedule.
- 2.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 2.4 A reference to any party shall include that party's personal representatives and successors and in the case of the Council the successors to their respective statutory functions.
- 2.5 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
- 2.6 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 2.7 Where any approval or agreement of the Council is required pursuant to this Agreement, such approval or agreement shall be in writing.
- 2.8 A reference to this Agreement or to any other agreement or document referred to in this Agreement is a reference to this Agreement or such other document or agreement as varied or novated (in each case, other than in breach of the provisions of this Agreement from time to time

- 2.9 References to clause numbers are to the relevant clauses of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule
- 2.10 Words in the singular include the plural and vice versa and words importing one gender include any gender
- 2.11 The clause headings are for reference only and shall not affect the construction hereof

3. STATUTORY PROVISIONS

- 3.1 This Agreement is made as a deed under Section 278 of the Act, Section 33 of the Local Government (Miscellaneous Provisions) Act 1982, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and any other power or authority thereby enabling.
- 3.2 The Council gives the Developer and all those authorised by the Developer licence to enter the Public Highway with or without workmen, plant and machinery to enable the Developer to comply with its obligations in this Agreement and Subject To the terms of this Agreement the Council agrees that the Developer is permitted to break open the surface of the Public Highway to the extent reasonably necessary for the carrying out of the Highway Works Provided That the Developer will make good any damage to the Public Highway and will leave the Public Highway in a good clean tidy and workmanlike condition to the satisfaction of the Proper Officer.

4. DEVELOPER'S OBLIGATIONS

- 4.1 The Developer shall on the date of this Agreement pay the Deposit to the Council, receipt of which the Council shall acknowledge as a contribution towards the Council's Cost.

Pre-commencement obligations

- 4.2 The Developer shall obtain the prior written approval of the Proper Officer for the Design Works (including the Specification) before undertaking the Highway Works.
- 4.3 Prior to commencement of the Highway Works the Developer shall provide to the Council a Public Liability Insurance Policy in accordance with Clause 16.

- 4.4 The Developer shall install the Advance Warning Signs in such locations as the Proper Officer advises and to the Proper Officer's satisfaction.

Ongoing obligations

- 4.5 The Developer covenants with the Council to construct and complete the Highway Works in accordance with the terms of this Agreement and the Design Works

- 4.6 The Developer covenants to pay to the Council within ten (10) Working Days following receipt of a written demand:

4.6.1 the Administration/Inspection Fee and any other outstanding amount reasonably and properly incurred as part of the Council's Cost which is in excess of the Deposit paid;

4.6.2 Any costs reasonably and properly incurred by the Council associated with diversions or protection of statutory undertakers' equipment if necessary for the Highway Works' completion; and

4.6.3 all legal, administrative and construction costs reasonably and properly incurred or to be incurred by the Council in connection with any amendments required to existing Traffic Regulation Orders or the promotion of new Traffic Regulation Orders arising as a consequence of the Highway Works

- 4.7 The Developer covenants to pay the Council's legal costs and disbursements in connection with the preparation and completion of this Agreement and duplicates thereof on the date of this Agreement.

- 4.8 In the event that the Developer fails to pay any of the monies due at the time they are due the Proper Officer shall, until payment of the monies due has been made, cease to inspect the site or works being undertaken on site for the purpose of accepting and certifying the Highway Works and in that case the Council being a local highway authority shall not be under any obligation to accept or certify any of the Highway Works under this Agreement

- 4.9 Receipt by the Council being the highway authority of the Council's Cost or the legal costs or any other amounts (or any part thereof) referred to in Clauses 4.6 and 4.7

shall not be deemed to create any contractual relationship between the Council and the Developer nor absolve the Developer from any liability or obligation imposed upon it by the terms of this Agreement or by statute or at common law and the Council shall not be liable for any loss damage or injury which the Developer may sustain by reason of insufficient or faulty inspection of the Highway Works by the Proper Officer.

4.10 The Developer shall not interfere with the free flow of traffic on the Public Highway or in any way obstruct the Public Highway without the express written permission of the Proper Officer and the bringing into force of any necessary Traffic Regulation Order.

4.11 The Developer shall:

4.11.1 submit to the Council noise readings, supporting information, calculations and any other information or data that the Council may reasonably request for the purposes of ascertaining whether any properties are eligible for an offer of insulation works or a grant to cover the cost of such works pursuant to the Noise Insulation Regulations 1975;

4.11.2 consult with, place orders with and pay any costs to Statutory Undertakers in relation to any works to their mains, services, plant or equipment necessitated by the Highway Works including any works required by the Statutory Undertakers to divert the services to the satisfaction of the Proper Officer; also consult with Statutory Undertakers about their maintenance schedule on the Public Highway and ensure that this does not conflict with the Developer's Programme for the duration of the construction of the Highway Works and the Maintenance Period to the satisfaction of the Proper Officer.

4.11.3 provide the Proper Officer with contact details for a representative who will be available for the duration of the construction of the Highway Works and the Maintenance Period and a telephone number of such representative which

number will be manned on a twenty-four (24) hour basis in case of emergency; and

4.11.4 apply for any necessary Traffic Regulation Orders which may be required in order for the Highway Works to commence.

5 ACCESS TO THE LAND

5.1 During construction of the Highway Works the Developer shall give to the Proper Officer and any other Council officer free access to every part of the Highway Works for the purpose of inspecting the Highway Works and all material used or intended to be used for the Highway Works.

5.2 During construction of the Highway Works the Proper Officer may ~~acting reasonably~~ require the Developer to open up or expose any of the Highway Works that have been covered up without previously being inspected by the Proper Officer and if the Developer fails to comply with any such request the Council may take up or expose the relevant part of the Highway Works and the Developer shall pay the Council's costs of such taking up and exposure.

6 THE COUNCIL'S OBLIGATIONS

6.1 The Council covenants with the Developer that it will comply with its obligations contained in this Agreement Provided That in the event that the Developer fails to pay any of the monies due in the Agreement at the time they are due, the Proper Officer will until payment of any monies due has been made, cease to inspect the site or the Highway Works for the purpose of accepting and certifying the Highway Works and shall be under no obligation to accept or certify the Highway Works under this Agreement

6.2 Following a reasonable request from the Developer in writing and receipt of payment in accordance with Clause 4.6.4 the Council shall as soon as reasonably practicable commence the statutory process relating to any Traffic Regulation Order required for the Development.

- 6.3 The Council shall disregard this Agreement when considering any objections to any Traffic Regulation Order which they may propose to make and if any objections are made the Council shall have no duty or obligation to the Developer by reason of this Agreement or otherwise to make the Traffic Regulation Order other than the duty it would have to all persons interested in the Traffic Regulation Order in its capacity as a local highway authority.
- 6.4 If the Council resolves to make one or all of the Traffic Regulation Orders, any Traffic Regulation Order shall be made and the statutory formalities completed as soon as reasonably practicable.
- 6.5 In the event that there are any surplus Deposit monies or any other monies paid by the Developer under this Agreement on the date of the Final Certificate, the Council shall return the surplus monies to the Developer within ten (10) Working Days.

7 CONSTRUCTION OF THE HIGHWAY WORKS – COMPLETION CERTIFICATE

- 7.1 The Developer shall at its own cost carry out and complete the Highway Works:
- 7.1.1 in a good and workmanlike manner;
 - 7.1.2 using only good quality materials approved by the Proper Officer; and
 - 7.1.3 in accordance with the Design Works approved by the Proper Officer prior to commencement of the Highway Works.
- 7.2 During the carrying out of the Highway Works the Developer shall comply with:
- 7.2.1 the Traffic Signs Regulations and General Directions 2016 and any statutory modification or re-enactment of the same;
 - 7.2.2 any directions of the Police and the Proper Officer in respect of lighting and signing of the Highway Works and any diversion routes; and
 - 7.2.3 if requested by the Proper Officer, the Developer shall remove any existing Street Furniture (if applicable) and relocate or deliver it for local storage.
- 7.3 The Developer shall provide the Proper Officer with written notification of the date upon which the Development reaches practical completion and shall complete the

Highway Works within three (3) calendar months after the practical completion date ("the Programme")

7.4 Before applying for the Completion Certificate the Developer shall either:

7.4.1 commission the preparation and completion of a RSA3 in relation to the Highway Works and after providing the result of such RSA3 to the Proper Officer the Developer shall fully address, remedy and resolve any issues that are identified by the RSA3 within a timescale first agreed between the Developer and the Proper Officer and to the entire satisfaction of the Proper Officer and will provide such evidence within the timetable as the Proper Officer may require to prove that the Developer has complied with all and any recommendations referred to in the RSA3 to the satisfaction of the Proper Officer; or

7.4.2 apply to the Proper Officer for consent (or the Proper Officer may recommend) that the said RSA3 be postponed until after the issue of the Completion Certificate and that such RSA3 be carried out within eight (8) weeks following issue of the Completion Certificate so that the Safety Auditor can record the movement of traffic following completion of the construction of the Highway Works and the RSA3 will be Subject To scrutiny by the Proper Officer at every stage in accordance with the conditions contained in this Agreement

7.5 On completion of the Highway Works to the absolute satisfaction of the Proper Officer in all respects (having regard to any additional works alterations or amendments which may be required by virtue of Clause 7.4.1) the Proper Officer shall issue the Completion Certificate to the Developer Provided That if the Developer has applied for consent to postpone the RSA3 in accordance with Clause 7.4.2 a RSA3 will be carried out and any issues addressed within the timeframe specified in Clause 7.4.2 and the Maintenance Period shall commence to run from

the date of the Completion Notice.

8. OBLIGATIONS DURING THE MAINTENANCE PERIOD

The Maintenance Period shall be as specified under Clause 2.1.20 and throughout the Maintenance Period the Developer shall at its own expense reinstate and make good any defect in or damage to the Highway Works or any damage to the Public Highway arising from any cause whatsoever of which it shall have been notified in writing by the Proper Officer and shall complete all such reparation and remediation works within twenty-eight (28) days (or such other period as agreed with the Proper Officer) following receipt of a written notification from the Proper Officer specifying the extent of the said remediation works which require completion to the effect that the Highway Works shall comply with the Specification up to and including the date for expiry of the Maintenance Period to the satisfaction of the Proper Officer.

9. FINAL CERTIFICATE

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9.1 After the expiry of the Maintenance Period and Subject To the Developer having commissioned prepared and submitted to the Proper Officer a RSA4 (if required) the Developer must apply to the Proper Officer in writing for a Final Certificate.

9.2 Within twenty (20) Working Days following receipt of a written application for the issue of a Final Certificate the Proper Officer shall:

9.2.1 inspect the Highway Works to which the application relates, and

9.2.2 provide the Developer (where necessary) with a definitive written list of any further works required to be carried out and a timetable which has been discussed with the Developer for carrying out these works in order to remedy and make good any defect or damage to the Highways Works which may have arisen during the Maintenance Period in accordance with Clause 8. or any necessary reinstatement works which may have arisen during the

Maintenance Period (including but not limited to any defect in or damage to the road surface water drainage system) or any other works reasonably required as a result of the RSA3 and RSA4 (as applicable) ("Further Works").

9.3 The Developer shall carry out any Further Works without delay and at its own cost.

9.4 The Further Works shall be Subject To the same inspection procedure detailed in Clause 9.2 until such time as the Developer has remedied or made good any such defect or damage to the satisfaction of the Proper Officer.

9.5 Within twenty (20) Working Days following a satisfactory inspection the Proper Officer shall issue the Final Certificate to the Developer Provided That:

9.5.1 the Developer has paid to the Council the balance (having regard to the payment of the Deposit) of the Council's Cost;

9.5.2 any Further Works have been completed to the satisfaction in all respects of the Proper Officer; and

9.5.3 the Developer has delivered to the Proper Officer:

9.5.3.1 one (1) set of drawings in PDF and in CAD format showing to a scale of no less than 1:500 the Highway Works as constructed; and

9.5.3.2 one (1) copy of the Health and Safety File and the final Health and Safety Plan, both in electronic format;

9.6 From the date of the issue of the Final Certificate the Highway Works shall become part of the highway maintainable at public expense.

9.7 On issue of the Final Certificate the Council shall release the Developer from all liability under this Agreement.

10 INTEREST ON PAYMENTS

10.1 If any payment due under any of the provisions of this Agreement is not made on or before the date on which it is due ("the Due Date") the Developer shall pay to the Council the Interest as at the Due Date for the period starting with the Due Date and ending with the actual date of payment

- 10.2 The Council shall be under no obligation to place any sums paid to them by the Developer pursuant to this Agreement in an account which bears interest on such sums and (without prejudice to Clause 10.1) any sums repaid to the Developer hereunder shall not carry the payment of any interest thereon.

11. MINOR ALTERATIONS

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- 11.1 If the Developer wishes to amend the Design Works or revise the proposals for implementation of the Highways Works (including the Programme) it shall submit details in writing to the Council and no amendments or revisions shall be implemented without the prior written approval of the Proper Officer.
- 11.2 If the Proper Officer considers it necessary and reasonable and notifies the Developer in writing the Developer may be required to incorporate minor alterations or additions to the Design Works or to vary construction of the Highway Works.
- 11.3 The terms and provisions of this Agreement shall apply to any such amended or revised works as they apply to the Highway Works as originally designed.

12 MATERIALS SAMPLING AND TESTING

- 12.1 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 Highway Works and 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.
- 12.2 Any material rejected by the Proper Officer as a result of the tests carried out shall not be used by the Developer for any of the Highway Works.

13 KEEPING THE HIGHWAY CLEAN AND TIDY

- 13.1 All roads footpaths rights of way and other means of passage that lead to from or cross the site of the Highway Works and are available for use by the public during the

carrying out of the Highway Works shall be kept free from mud or other substances deposited through the construction operations of the Highway Works and any such substance deposited by the Developer or its Contractor shall be promptly removed at no cost to the Council.

13.2 If such substances are not promptly and adequately removed the Council may close any associated crossings entrances and exits and in the event of there being a danger to highway users may arrange for the substances to be removed by its own employees or contractors and may recover its costs from the Developer and on removal of any such substances the Council shall allow such crossings entrances and exits to be reopened and any losses or expenses incurred as a result of these measures will be borne by the Developer.

13.3 On completion of the Highway Works the Developer shall clear away and remove from the Public Highway all construction plant surplus material rubbish and temporary works and leave the site of the Highway Works in a good clean tidy and workmanlike condition to the satisfaction of the Proper Officer.

14 CDM REGULATIONS

14.1 The Developer agrees to undertake all the obligations of a Client and to ensure that the Highway Works are carried out by its Contractor in accordance with the CDM Regulations.

14.2 The Developer shall ensure that the Health and Safety File is maintained correctly and is available for inspection in accordance with the CDM Regulations.

14.3 The Developer warrants that it has taken or shall take all reasonable steps to be satisfied that its Contractor and all contractors engaged on the Highway Works have the skills knowledge and experience in undertaking the Highway Works and in respect of the CDM Regulations.

14.4 The Developer shall indemnify and keep the Council indemnified against any breach of the Developer's obligations under this Clause 14.

15 INDEMNITIES

- 15.1 The Developer shall indemnify the Council against any actions charges claims costs expenses losses damages demands liabilities and proceedings arising out of any breach or non-observance by the Developer of its obligations under this Agreement or at any time in connection with or incidental to the carrying out or use of the Highway Works (including without limitation any negligent or defective design or construction of the Highway Works).
- 15.2 The Developer shall indemnify the Council in respect of any claims under Section 10 of the Compulsory Purchase Act 1965, Part I of the Land Compensation Act 1973 and any claims for compensation under the Noise Insulation Regulations 1975 arising out of in connection with or incidental to the carrying out of the Highway Works and their subsequent use.
- 15.3 The indemnity contained in this Clause 15 includes:
- 15.3.1 all fees incurred by claimants which the Council is obliged to pay and those of the Council or its agent or contractor in negotiating any claims (together with VAT payable on the claimants' professional advisors' fees);
- 15.3.2 statutory interest payments to claimants and their professional advisors; and
- 15.3.3 the Council's reasonable and proper legal costs in making the compensation fees and interest payments.
- 15.4 In the event of the Council receiving a claim under this Clause 15 the Council shall notify and submit details of the claim to the Developer as soon as reasonably practicable following receipt of such a claim.
- 15.5 The terms of this Clause 15 shall not apply in the event that the actions charges claims costs expenses losses damages demands liabilities and proceedings arise as a result of any negligent act or omission by the Council or any third parties acting on its behalf.

- 15.6 Other than in respect of any antecedent root of action or claim this Clause 15 shall cease to apply from the date upon which the Final Certificate is issued in accordance with Clause 9 of this Agreement.

16 INSURANCE

- 16.1 Prior to commencing the Highway Works the Developer shall provide the Council with a copy of a Public Liability Insurance Policy together with proof that it is in force and any such other information relating to the policy as the Council shall reasonably require.
- 16.2 From and including the date applicable under Clause 16.1 above until the date of issue of the Final Certificate the Developer shall maintain a Public Liability Insurance Policy.
- 16.3 The Developer shall ensure that the Council's interest under this Agreement is endorsed on the Public Liability Insurance Policy.

17. SECURITY FOR PERFORMANCE OF THE DEVELOPER'S OBLIGATIONS

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- 17.1 If any Default Event occurs the Council 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 serve the Surety with a Default Notice which will specify:-

17.1.1 the Default Work; and

17.1.2 include an estimate of the Default Cost Provided That:

17.1.2.1 the Default Cost will not exceed the Estimated Cost; and

17.1.2.2 following issue of the Completion Certificate the Default Cost shall not exceed 50% of the Estimated Cost

- 17.2 Within twenty (20) Working Days following the date of receipt of the Default Notice

the Surety shall either:

17.2.1 pay the Default Cost to the Council; or

17.2.2 send the Council a notice ("the Surety's Counter Notice") of the intention of the Surety to carry out the Default Work.

17.3 If the Surety having sent the Surety's Counter Notice to the Council fails to start the Default Work within fifty-six (56) days after the Surety received the Default Notice the Surety shall forthwith pay the Default Cost to the Council with Interest from the Due Date up to the date of payment.

17.4 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 (4) calendar months after the Surety's Counter Notice was received by the Council or within such further period as may be agreed in writing with the Proper Officer the Surety shall Subject To Clause 17.3 forthwith on demand pay to the Council such sum as the Proper Officer may determine as being the Default Cost for the Default Work.

17.5 The Council hereby agree that in the event that the Council has not accessed the Bond by the date of issue of the Completion Certificate the Bond shall be reduced by Twenty Five Thousand Pounds (£25,000.00) (representing fifty per cent (50%) of the Default Cost).

17.6 The Council shall issue a Final Certificate once the Default Work has been completed to the satisfaction of the Proper Officer and the Surety has paid the Default Cost and for the avoidance of doubt nothing in this Agreement shall require the Council to issue the Final Certificate until the Surety has paid the Default Cost or has completed the Default Work to the satisfaction of the Proper Officer

17.7 Following the issue of a Final Certificate in accordance with Clause 17.5, the Council shall release the Surety from all liability under this Agreement.

17.8 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 Public

Highway:

- 17.8.1 to use reasonable endeavours to mitigate any loss or damage sustained because of any default by the Developer, by taking such steps as the Council thinks fit;
- 17.8.2 to use all monies received from the Surety to secure the performance of the Developer's covenants and obligations contained in this Agreement in accordance with the terms of this Agreement including but not limited to carrying out or completing the Highway Works and maintaining and making good all defects during the Maintenance Period;
- 17.8.3 if the sum paid by the Surety to the Council exceeds the cost of carrying out or completing the Highway Works and Further Works and maintaining and making good all defects throughout the Maintenance Period as set out in this Agreement (together with the amount of the Council's usual establishment charges) to repay to the Surety within twenty (20) Working Days following the date of the Final Certificate, the amount of any excess; and
- 17.8.4 on the issue of the Final Certificate to give such notices and do whatever else may be required for securing that the Highway Works become part of the highway maintainable at public expense.

18 ADDITIONAL BOND

It is hereby agreed between the Council and the Developer that in the event of the Developer being unable to undertake the Highway Works in accordance with the Programme or any longer period agreed by the Council the Developer shall:

- 18.1 obtain forthwith when required to do so by the Council an additional guarantee or bond for an amount to be specified conclusively by the Council as representing the excess of the revised estimated cost of the outstanding works to be carried out under

this Agreement over the Estimated Cost; and

- 18.2 pay forthwith to the Council when required to do so any increase in the Council's Cost resulting directly from the Developer's non-compliance with the Programme.

19 POWER TO EXECUTE WORKS IN DEFAULT

If the Developer fails to execute or complete the Highway Works in accordance with the Developer's obligations hereunder the Council shall after not less than twenty (20) Working Days' notice in writing to the Developer be entitled to execute or complete the Highway Works in default by its own employees servants workmen contractors or other duly authorised personnel or otherwise and to recover from the Developer the cost thereof including all fees, costs and expenses associated with undertaking any such default works as certified by the Proper Officer.

20 ARBITRATION

In the event of any dispute arising out of this Agreement the same shall be referred to an expert to be appointed by agreement between the parties or failing agreement:

19

20

20.1

20.2

20.3 where the dispute involves the interpretation of the terms of this Agreement in the matter of the parties' rights, liabilities or obligations, by a suitably qualified barrister nominated by the President for the time being of the Law Society;

20.4 where the dispute involves an issue not covered by Clause 20.1 by a suitably qualified expert nominated by the President for the time being of the Institution of Civil Engineers

AND in this respect this Agreement shall be construed as a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or re-enactment thereof and each party shall bear its own costs of such arbitration (Subject To any direction as to or award of costs made by the arbitrator).

21 NOTICES

Any written notice to be served on the Council shall be delivered or posted to the Proper Officer and any notices to be served on the Developer may be delivered or posted to its registered office or last known registered or head office.

22 ASSIGNMENT

This Agreement shall not be assigned by the Developer and the assignment of this Agreement is hereby expressly prohibited Provided That the Council agree to consider any request from a proposed assignee of the development site for the execution by the proposed assignee (and its surety if required by the Council) of an agreement with the Council on similar terms and conditions to this Agreement.

23 EXCLUSION OF THIRD PARTIES

No person other than a party to this Agreement and their respective successors shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

24 HIGHWAY AUTHORITY'S STATUTORY POWERS

Nothing in this Agreement shall:

- 24.1 Prevent or restrict the exercise by the Council of its powers under Part XI of the Act or any other statutory powers except that this Agreement is intended to be such an agreement as is mentioned in Section 219 sub-section (1) of the Act
- 24.2 Imply any obligation on the part of the Council to the Developer or to any person to ensure that the Highway Works are properly constructed
- 24.3 Affect the Council's rights powers duties and obligations in the exercise of its functions as a local authority planning authority or highway authority or in any other capacity whatsoever nor relieve the Developer from the necessity to obtain all such

approvals or consents as may from time to time be requisite from the Council in any such capacity as aforesaid.

25 APPLICABLE LAW

This Agreement is governed by and interpreted in accordance with the law of England.

SCHEDULE

(Brief Description of Highway Works)

1. The construction of a footway cross over on Chadderton Street to facilitate vehicle access to the underground car park ramps comprising associated drop kerbing.
2. The existing car park accesses on Chadderton Street, Bendix Street and Oldham Road will be removed and converted into new footway.
3. New footway construction, kerbing and resurfacing on Chadderton Street, Bendix Street and Oldham Road.
4. New footway construction and resurfacing on Marshall Street
5. Relocation of the street lighting column at the corner of Marshall Street and Chadderton Street in accordance with an approved design
6. The existing parking bays on located on Marshall Street and Bendix Street to be maintained.
7. The planting of six (6) Ginkgo biloba Prinston Sentry trees which should be heavy standards 16-18cm in accordance with the details more particularly shown on the drawing referred to as Plan 6 under Definition Clause 2.1.4 to this Agreement.
8. The initiation of a twenty-four (24) hour waiting restriction on the south-east footway of Chadderton Street to prohibit vehicles parking adjacent to the footway cross over in order for the visibility to be maintained.
9. Refreshing of existing road markings adjacent to the Development as more particularly described in the Agreement Plans.

IN WITNESS whereof the parties have executed this document as their Deed the day and
year first above written

THE COMMON SEAL of **THE COUNCIL**

OF THE CITY OF MANCHESTER was

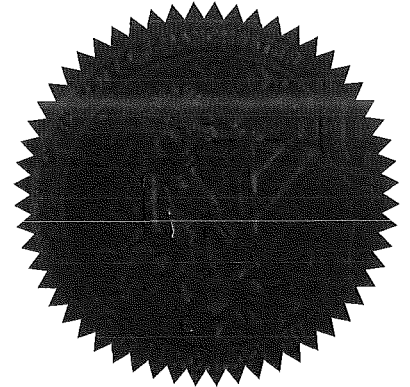
hereunto affixed in pursuance of

an Order of the Council of

the said

Signature

Name (in



01106800

Authorised Signatory

EXECUTED as a DEED by **MANCHESTER RESIDENCES (NEW CROSS) LIMITED**

acting by

its duly authorised signatory in the

presence of a witness:-

Signature:

Name (in Capitals):

Authorised Signatory

Witness Signature:.....

Witness Name (in Capitals): ..

Address

Occupation: *Construction & design Manager*

~~THE COMMON SEAL of HCC INTERNATIONAL INSURANCE COMPANY PLC~~

was hereunto affixed in the

presence of:-

Director

~~Director/Company Secretary/Authorised Signatory*~~

(* delete as appropriate)

SIGNED AS A DEED BY
MARTYN DAVID WARD
as Attorney for and on behalf of
HCC INTERNATIONAL INSURANCE COMPANY PLC
in the presence of:-



Witness : [REDACTED]
Occupation : SENIOR BOND ADMINISTRATOR 61/40/00886



NOTES:

1. ALL DIMENSIONS ARE IN METRES UNLESS OTHERWISE STATED.
2. ALL LEVELS IN MAOD UNLESS SPECIFIED OTHERWISE.
3. EXISTING UTILITIES INFORMATION TO BE SUPPLIED BY OTHERS.
4. THE CONTRACTOR IS RESPONSIBLE FOR VERIFYING THE ACCURACY OF THE TOPOGRAPHICAL SURVEY AND UNDERTAKING ADDITIONAL SURVEYS FOR VALIDATION PURPOSES.

KEY

- SECTION 278 BOUNDARY
- VISIBILITY SPLAYS
- SECURITY GATES
- PROPOSED FOOTWAY
- PROPOSED CARRIAGEWAY

[Handwritten signature]

TOKI-MARINE

[Handwritten signature]

G	DRAWING STATUS UPDATED	16.05.18	HS	HS
F	INDICATIVE KERBLINE REMOVED	20.03.18	EMM	HS
E	UPDATED FOLLOWING COUNCIL COMMENTS	19.03.18	EMM	HS
D	UPDATED FOLLOWING COUNCIL COMMENTS	16.03.18	EMM	HS
C	OLDHAM ROAD ACCESS REMOVED	30.10.17	EMM	HS
B	AS PER HIGHWAY OFFICER COMMENTS	11.10.17	EMM	HS
A	AS PER HIGHWAY OFFICER COMMENTS	29.06.17	TM	HS
Rev:	Description:	Date:	By:	Chkd:

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Status:	APPROVED			
Project:	NEW CROSS SECTION 278			
Dwg Title:	GENERAL ARRANGEMENT			
Scale:	Size:	First Issue:	Drawn:	Checked:
1:200	A1	16.01.17	LL	HS
Dwg No:	060014-S278-100			Rev: G
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NOTES

- THIS DRAWING IS TO BE READ IN CONJUNCTION WITH ALL RELEVANT ARCHITECTS AND ENGINEERS DRAWINGS AND SPECIFICATIONS.
- DO NOT SCALE THIS DRAWING. ALL DETAILS AND DIMENSIONS ARE TO BE CHECKED BY THE CONTRACTOR PRIOR TO COMMENCEMENT OF CONSTRUCTION. ANY DISCREPANCIES TO BE REPORTED TO THE ENGINEER.
- ALL DIMENSIONS ARE IN METRES UNLESS OTHERWISE NOTED.
- ALL LEVELS IN mAOD UNLESS SPECIFIED OTHERWISE.
- MODIFICATIONS TO THE EXISTING HIGHWAY WILL FORM PART OF THE SECTION 278 WORKS.
- ALL ROAD MARKINGS TO BE IN ACCORDANCE WITH 'THE TRAFFIC SIGNS REGULATIONS AND GENERAL DIRECTIONS' MANUAL.
- EXISTING UTILITIES INFORMATION TO BE SUPPLIED BY OTHERS.
- THE CONTRACTOR IS RESPONSIBLE FOR VERIFYING THE ACCURACY OF THE TOPOGRAPHICAL SURVEY AND UNDERTAKING ADDITIONAL SURVEYS FOR VALIDATION PURPOSES.
- ALL WORKS TO BE AGREED AND APPROVED BY THE LOCAL AUTHORITY PRIOR TO COMMENCING ON SITE.
- ANY EXISTING ROAD MARKING THAT ARE DAMAGED DURING CONSTRUCTION ARE TO BE MADE GOOD.
- EXISTING ROAD SIGNS TO REMAIN



S. Brown

F	DRAWING STATUS UPDATED	22.10.18	MF	HS
E	INDICATIVE KERBLINE REMOVED	20.03.18	EMM	HS
D	UPDATED FOLLOWING COUNCIL COMMENTS	19.03.18	EMM	HS
C	UPDATED FOLLOWING COUNCIL COMMENTS	16.03.18	EMM	HS
B	LINING TO CHADDERTON ST UPDATED	01.12.17	HS	HS
A	AS PER HIGHWAY OFFICER COMMENTS	11.10.17	EMM	HS
Rev:	Description:	Date:	By:	Chkd:



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Status:

APPROVED FOR CONSTRUCTION

Project:

NEW CROSS SECTION 278

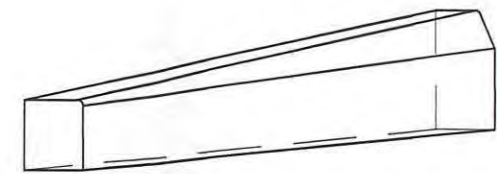
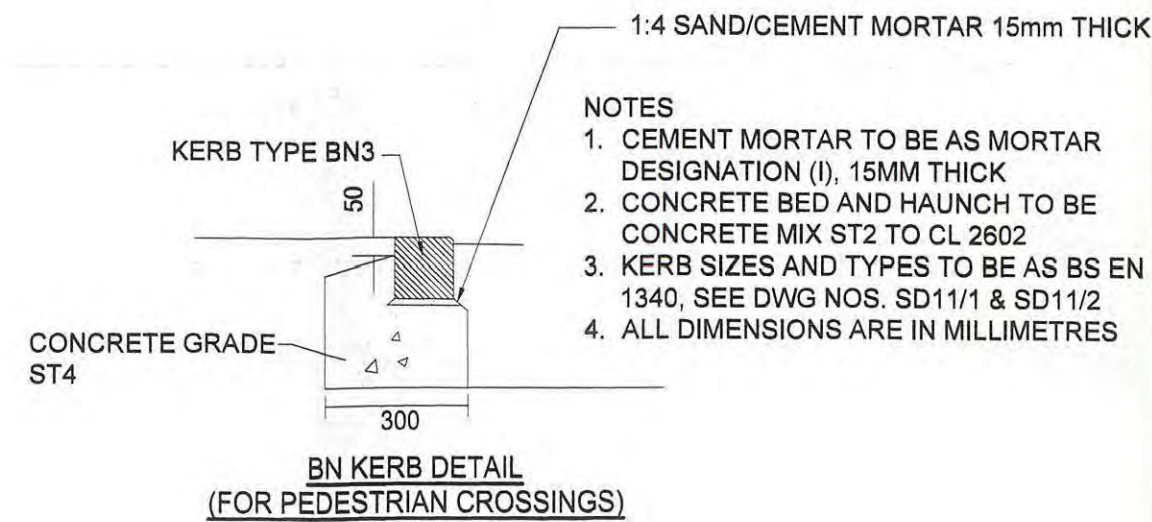
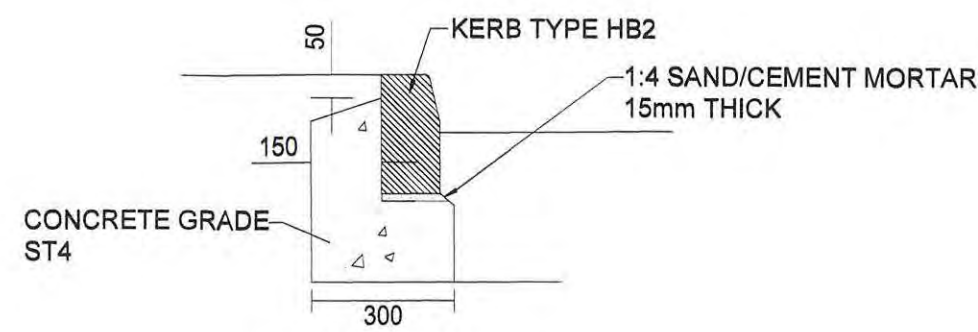
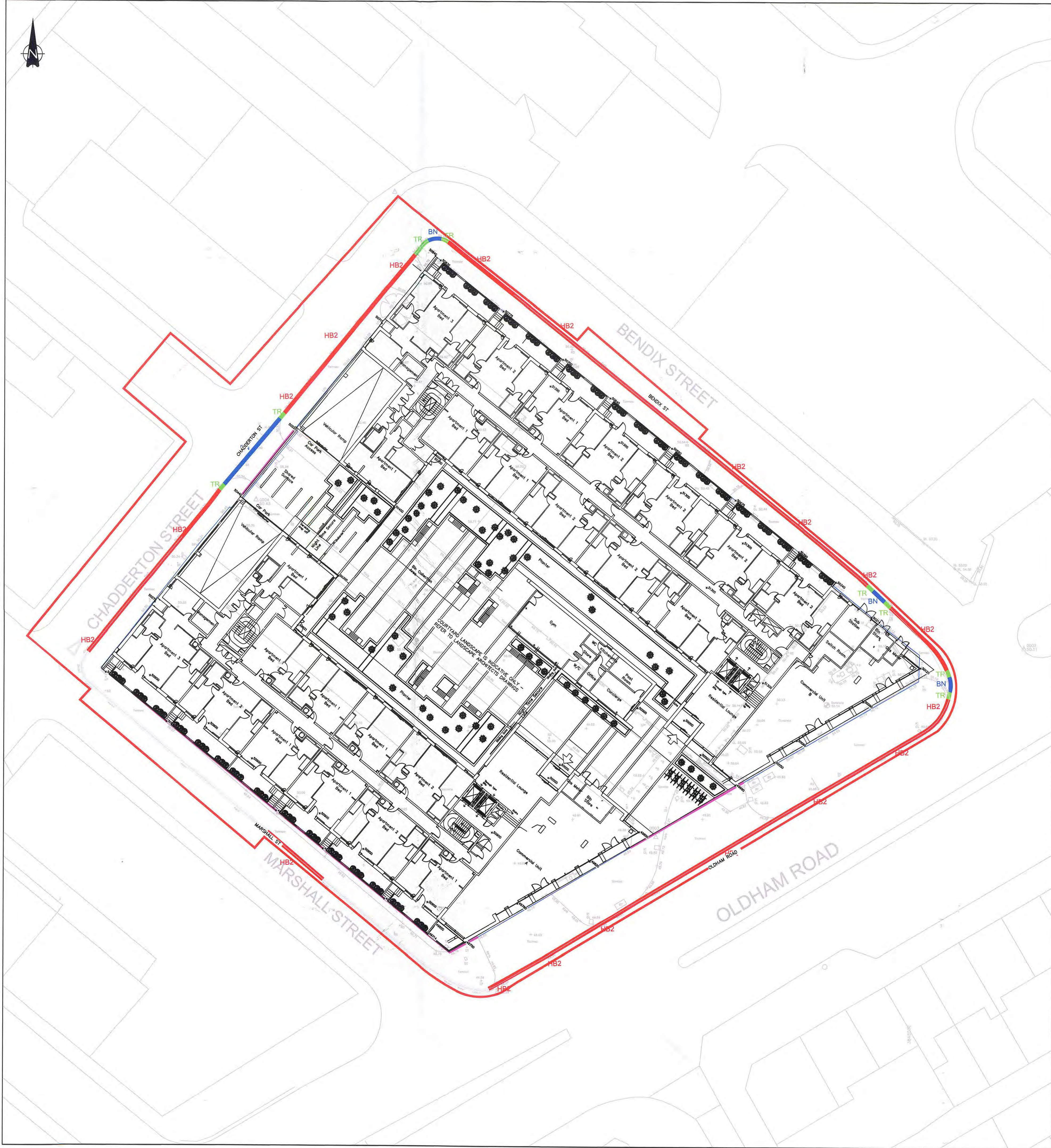
Drg Title:

PROPOSED ROAD MARKINGS

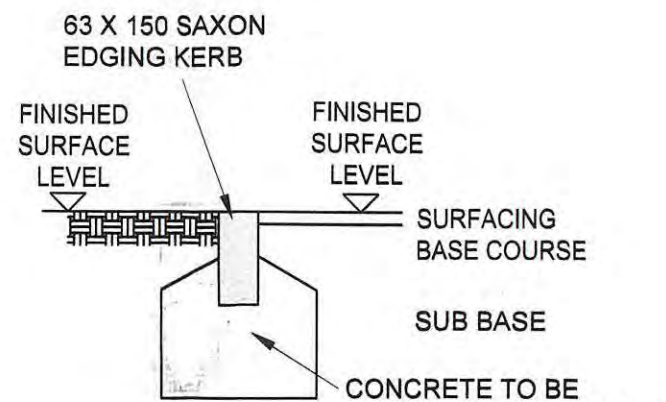
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1:200	A1	16.01.17	LL	HS

Drg No:	Rev:
060014-S278-1100	F

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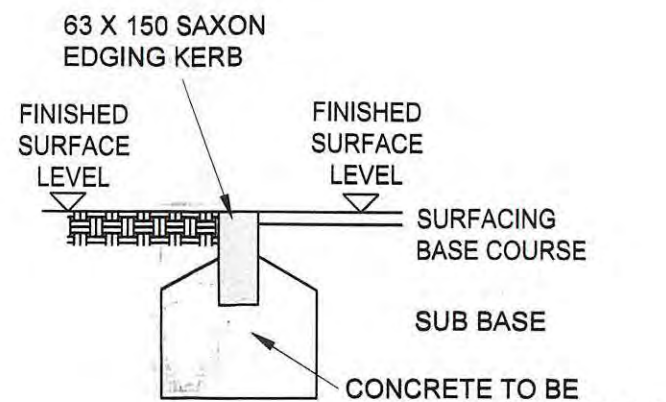
CONCRETE TRANSITION KERB
125 x 255 HALF BATTERED
TO 125 x 150 BULLNOSED



EDGING KERB FLUSH DETAIL

- NOTES
1. CEMENT MORTAR TO BE AS MORTAR DESIGNATION (I), 15MM THICK
 2. CONCRETE BED AND HAUNCH TO BE CONCRETE MIX ST2 TO CL 2802
 3. KERB SIZES AND TYPES TO BE AS BS EN 1340. SEE DWG NOS. SD11/1 & SD11/2
 4. ALL DIMENSIONS ARE IN MILLIMETRES

CONCRETE TRANSITION KERB
125 x 255 HALF BATTERED
TO 125 x 150 BULLNOSED



EDGING KERB FLUSH DETAIL

TABLE 1 - KERBING DETAILS

	DESCRIPTION	
HB2: 125mm UPSTAND	HALF-BATTERED KERB	255mm x 125mm HB2
BN: 0-6mm UPSTAND	BULLNOSED CONCRETE KERB	255mm x 125mm BN2
TR: 255mm to 150mm	DROP CONCRETE KERB	255/150mm x 125mm HB to BN

KEY

- HB2 255X125MM HALF-BATTERED KERB TYPE HB2 TO BS EN 1340:2003
- BN 150X125 BN BULLNOSED KERB FLUSH (5MM FOR PEDESTRIAN CROSSINGS)
- TR 255/150X125 HB TO BN DROPPER KERB TO BS EN 1340:2003
- EXISTING KERBING TO BE MADE GOOD
- EDGING KERB

NOTES

1. ALL DIMENSIONS ARE IN METRES UNLESS OTHERWISE STATED.
2. ALL LEVELS IN mAOD UNLESS SPECIFIED OTHERWISE.
3. EXISTING UTILITIES INFORMATION TO BE SUPPLIED BY OTHERS.
4. THE CONTRACTOR IS RESPONSIBLE FOR VERIFYING THE ACCURACY OF THE TOPOGRAPHICAL SURVEY AND UNDERTAKING ADDITIONAL SURVEYS FOR VALIDATION PURPOSES.

H	DRAWING STATUS UPDATED	22.10.18	MF	HS
G	INDICATIVE KERBLINE REMOVED	20.03.18	EMM	HS
F	UPDATED FOLLOWING COUNCIL COMMENTS	19.03.18	EMM	HS
E	UPDATED FOLLOWING COUNCIL COMMENTS	16.03.18	EMM	HS
D	KERBING AMENDED	30.10.17	EMM	HS
C	PROPOSED LAYOUT UPDATED	11.10.17	EMM	HS
B	KERBING UPDATED	04.07.17	HS	HS
A	AS PER HIGHWAY OFFICER COMMENTS	29.06.17	TM	HS
Rev:	Description:	Date:	By:	Chkd:



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Status:

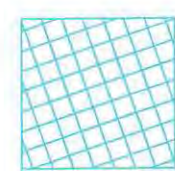
APPROVED FOR CONSTRUCTION

Project: NEW CROSS SECTION 278

Dwg Title: KERBING DETAILS

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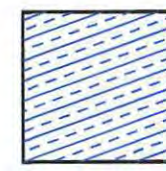
Dwg No:	Rev:
060014-S278-710	H



**P1 PROPOSED FOOTPATH
FULL DEPTH CONSTRUCTION**
20MM AC 6 CLOSE SURFACE 100/150
40MM DBM BINDER COURSE TO CLAUSE 906
100MM GRANULAR TYPE 1 SUB-BASE TO CLAUSE 803



**P3 FOOTPATH
PLAIN AND OVERLAY**
20MM MINIMUM AC 6 DENSE SURFACE
COURSE TO CLAUSE 1105 (SC1) REGULATED
TO EXISTING "PLAINED" SURFACE



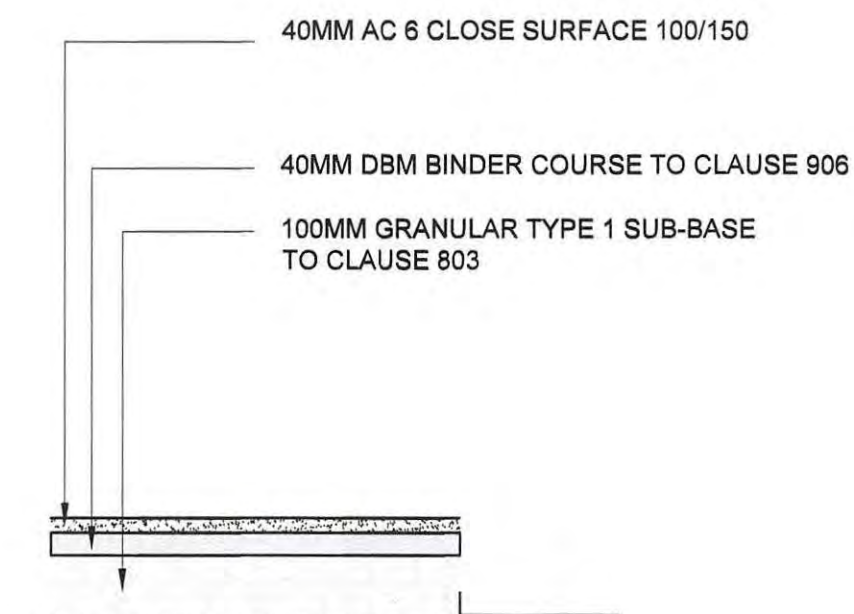
**P2: PROPOSED CARRIAGEWAY SURFACING
PLANE OUT SURFACE AND BASE COURSE**
40MM AC 10 CLOSE SURF 100/150
60MM DENSE ASPHALT CONCRETE WITH 20MM AGGREGATE BINDER COURSE
(CLAUSE 929) (BC1)
(BINDER COURSE REPLACED WITH BINDER COURSE REGULATING ONLY IN
LOCATIONS OF OVERLAY LESS THAN 50MM)
DENSE ASPHALT CONCRETE BINDER COURSE REGULATING, 0MM TO 50MM
REGULATING (CLAUSE 929) (RC1)

• EG

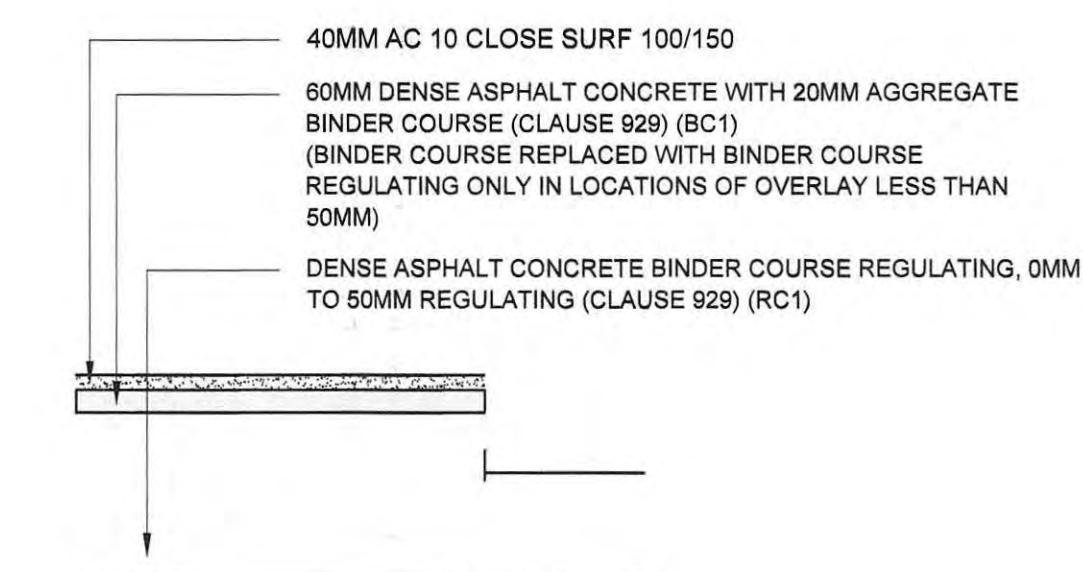
EXISTING GULLY TO BE CLEANED OUT AND
PROVED FOLLOWING COMPLETION OF THE
DEVELOPMENT WORKS



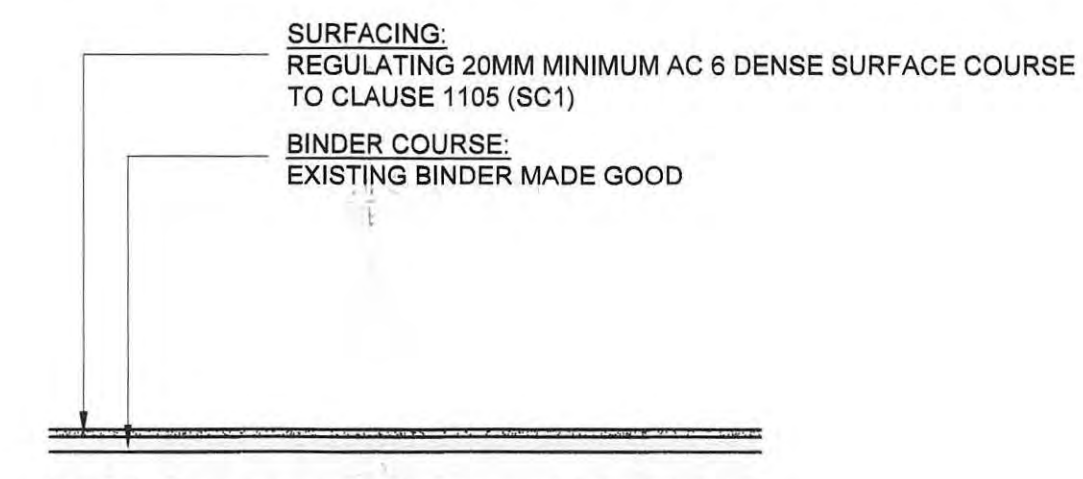
**P1: PROPOSED CARRIAGEWAY
FULL DEPTH CONSTRUCTION**
40MM AC 10 CLOSE SURF 100/150
60MM DENSE ASPHALT CONCRETE WITH 20MM AGGREGATE BINDER COURSE
(CLAUSE 929) (BC1)
180MM DENSE ASPHALT CONCRETE WITH 40MM AGGREGATE BASE COURSE
(CLAUSE 929) (B1)
150MM GRANULAR TYPE 1 SUB-BASE TO CLAUSE 803 (SB1)
350MM GRANULAR 6F1 CAPPING LAYER TO CLAUSE 613 (CL1)
350MM GRANULAR 6F1 CAPPING LAYER TO CLAUSE 613 (CL1)



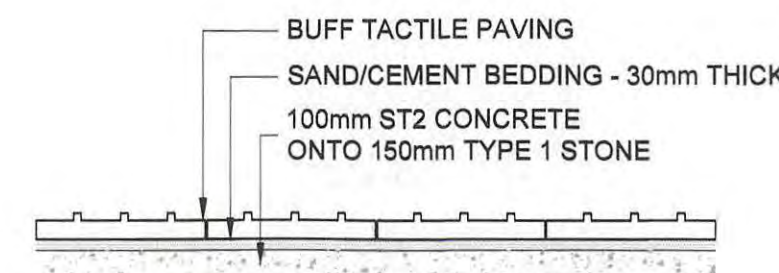
**P1: ASPHALT PAVED
FOOTPATH CONSTRUCTION**



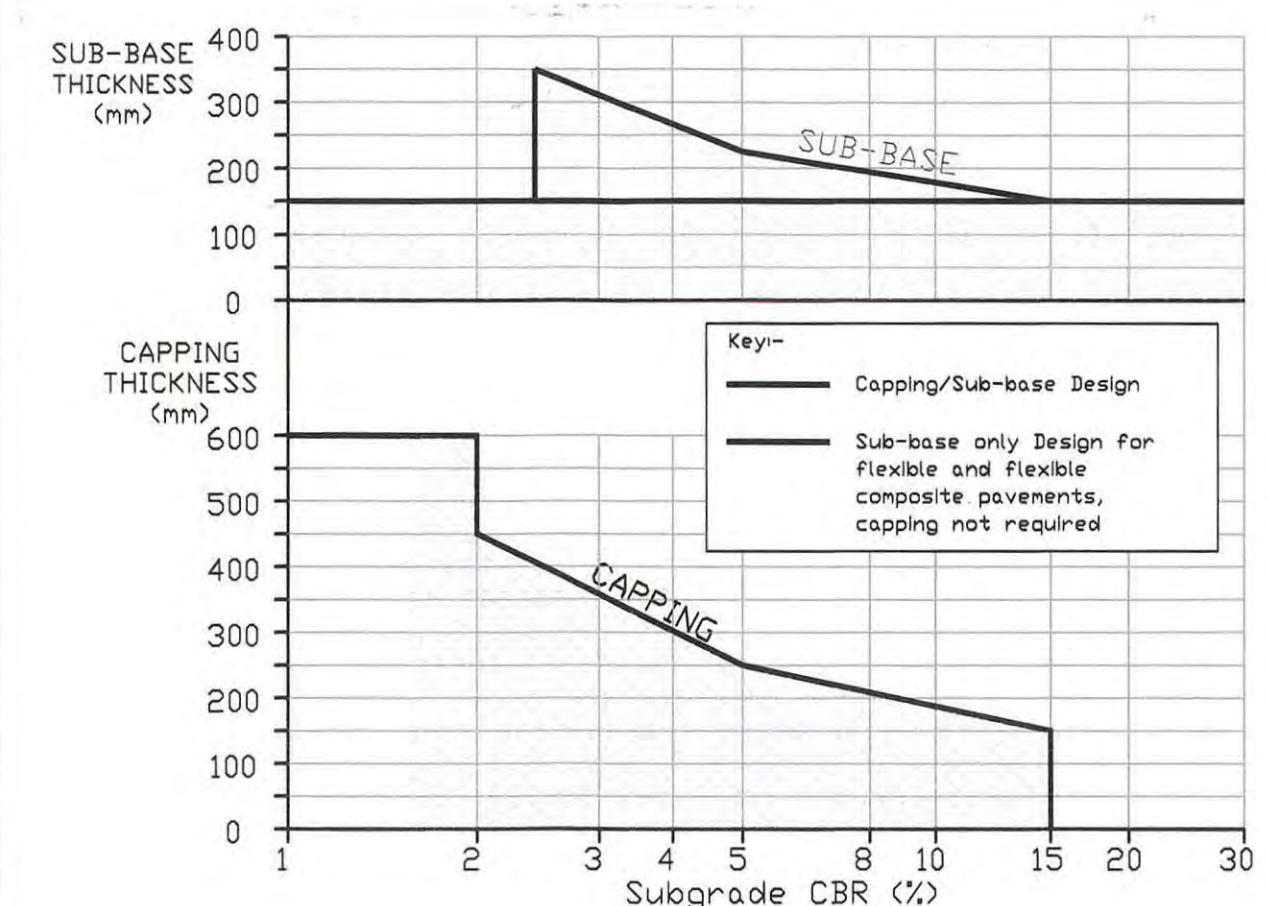
**P2: PROPOSED FOOTPATH RE-SURFACING
PLANE OUT SURFACE AND BASE COURSE**



**P3: PROPOSED FOOTPATH
PLANE OUT SURFACE**



P3: PROPOSED TACTILES



NOTES

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4. THE CONTRACTOR IS RESPONSIBLE FOR VERIFYING THE ACCURACY OF THE TOPOGRAPHICAL SURVEY AND UNDERTAKING ADDITIONAL SURVEYS FOR VALIDATION PURPOSES
5. FOR DETAILS OF RETAINING WALLS REFER TO STRUCTURAL ENGINEERS DRAWINGS 60868-CUR-XX-XX-DR-S-1600's
6. IF BINDER COURSE IS USED TEMPORARILY FOR DRIVERS ON THEN A SUITABLE BOND COAT IS TO BE APPLIED PRIOR TO SURFACE COURSE.

Paul

I	DRAWING STATUS UPDATED	22.10.18	MF	HS
H	INDICATIVE KERBLINE REMOVED	20.03.18	EMM	HS
G	UPDATED FOLLOWING COUNCIL COMMENTS	19.03.18	EMM	HS
F	UPDATED FOLLOWING COUNCIL COMMENTS	16.03.18	EMM	HS
E	EXISTING GULLIES ADDED	12.12.17	HS	HS
D	FOOTWAY CONSTRUCTION AMENDED	30.10.17	EMM	HS
C	AS PER HIGHWAY OFFICER COMMENTS	11.10.17	EMM	HS
B	AS PER HIGHWAY OFFICER COMMENTS	29.06.17	TM	HS
A	FOOTWAY CONSTRUCTION AMENDED	19.01.17	HS	HS
Rev:	Description:	Date:	By:	Chkd:



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Status: **APPROVED FOR CONSTRUCTION**

Project: **NEW CROSS
SECTION 278**

Drg Title: **PROPOSED
CONSTRUCTION DETAILS**

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