



Homes  
England

Date: 8 July 2020

Our Ref: RFI2987

Tel: 0300 1234 500

Email: [infogov@homesengland.gov.uk](mailto:infogov@homesengland.gov.uk)

Making homes happen

██████████  
By Email Only

Windsor House  
Homes England – 6<sup>th</sup> Floor  
50 Victoria Street  
London  
SW1H 0TL

Dear ██████████

**RE: Request for Information – RFI2987**

Thank you for your recent email, which was processed under the Freedom of Information Act 2000 (FOIA).

You requested the following information:

*Please could you let me have the following information:*

- i. The estimated amount expected by Homes England when it sells on the 250 acres of land purchased from Fairham Pastures Development Ltd i.e. after the infrastructure necessary for building work to commence has been completed.*
- ii. With respect to the above, please confirm that the expected amount represents 100% of the uplift in the value of the 250 acres after the infrastructure necessary for building work to commence has been completed.*
- iii. Please confirm that Homes England has not entered into a pre-arranged sales agreement with regards to 250 acres of purchased land or, if it has, please provide details of this agreement.*
- iv. Please confirm that Homes England has sought a contribution towards the costs of servicing the site at Fairham pastures from other owners of the wider 605 acre site and, if so, please let me know the expected amount of this contribution.*
- v. Who has provided Homes England with land valuation services in respect of the purchased Fairham Pastures site and the rest of the 605 acres that comprise the Fairham Development site?*

**Response**

We can confirm that we do hold some of the requested information. We will address each of your points in turn.

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***i. The estimated amount expected by Homes England when it sells on the 250 acres of land purchased from Fairham Pastures Development Ltd i.e. after the infrastructure necessary for building work to commence has been completed.***

**&**

***ii. With respect to the above, please confirm that the expected amount represents 100% of the uplift in the value of the 250 acres after the infrastructure necessary for building work to commence has been completed.***

We can confirm that we do hold information that falls within scope of your questions numbered i and ii. This information is contained with the Valuation Report that was procured for the site.

#### Section 43 - Commercial interests

Under section 43(2) Homes England is not obliged to disclose information that would, or would be likely to, prejudice the commercial interests of any party.

The information requested relating to valuations engages section 43(2) of the FOIA as it is commercial in nature and its release would be likely to prejudice the commercial interests of Homes England and other interested parties to the information.

Homes England has identified that the information requested, if released, would be likely to prejudice the effective operation of our development at this site and our ability to realise a capital receipt on the disposal.

Section 43 is a qualified exemption. This means that once we have decided that the exemption is engaged, Homes England must carry out a public interest test to assess whether or not it is in the wider public interest for the information to be disclosed.

#### Arguments in favour of disclosure:

- Homes England acknowledges there is a general public interest in promoting accountability, transparency, public understanding and involvement in how Homes England undertakes its work and how it spends public money; and
- Homes England acknowledges there is a public interest in the potential disposal of this site for development.

#### Arguments in favour of withholding:

- If the valuation details were in the public domain this could affect the amount that developers were willing to bid for the site. It would also disclose the likely cost of any works and services to be procured by the developer in respect of the site. This would mean that the sale price bid by developers would be lower than would otherwise have been the case, and prices bid by consultants and contractors for works and services on site could be inflated. This would not be in the public interest as it would result in poorer value for money. Therefore, release would negatively affect the public purse and the developer's own return from the site;
- Disclosure would adversely affect the relationship between Homes England and current and potential partners. There would be significant reputational, commercial and financial loss to Homes England and our partners if third parties could use the information to distort the market for their own gain;



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- The consequences of releasing data that is part of a wider ongoing proposal could damage our relationships with partners and put future tender processes and negotiations at risk. This would not be in the public interest as this could put the delivery of much-needed new homes in jeopardy. This would negatively affect the supply side of the housing market and the families seeking a home. It would also undermine Homes England's position and ability to deliver against its objectives and targets in our Strategic Plan.

Having considered the arguments for and against disclosure of the information, we have concluded that at this time, the balance of the public interest favours non-disclosure.

The full text of the legislation can be found on the following link;

<https://www.legislation.gov.uk/ukpga/2000/36/section/43>

***iii. Please confirm that Homes England has not entered into a pre-arranged sales agreement with regards to 250 acres of purchased land or, if it has, please provide details of this agreement.***

There is no such agreement and therefore I am able to confirm that Homes England does not hold information that falls within scope of this part of your request.

In order to conclude that the information is not held, we have searched with the responsible team who would have the requested information if held.

The FOIA does not oblige a public authority to create information to answer a request if the requested information is not held. The duty under section 1(1) is only to provide the recorded information held.

The full text of section 1 in the legislation can be found here:

<https://www.legislation.gov.uk/ukpga/2000/36/section/1>

**Advice and Assistance**

We have a duty to provide advice and assistance in accordance with Section 16 of the FOIA. To comply with this duty we are able to confirm that Homes England does not have a sales agreement and is currently going through a marketing exercise to its DPP3 panel members regarding the initial parcels.

***iv. Please confirm that Homes England has sought a contribution towards the costs of servicing the site at Fairham pastures from other owners of the wider 605 acre site and, if so, please let me know the expected amount of this contribution.***

We can confirm that we do hold information that falls within scope of this question. Our arrangements regarding contributions from the other owners are set out in two documents, these being a Section 106 Agreement and a Section 278 Deed of Agreement.

**S106 Agreement**

We are able to inform you that we do hold the information that you have requested. However, we rely on section 21, exemption where information is available to the applicant elsewhere.



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The full text of the legislation can be found on the following link and we have quoted section 21 below for ease.  
<https://www.legislation.gov.uk/ukpga/2000/36/section/21>

21 - Information accessible to applicant by other means.

(1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.

(2) For the purposes of subsection (1)—

(a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and

(b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.

(3) For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.

Advice and Assistance

We have a duty to provide advice and assistance in accordance with Section 16 of the FOIA. As such we can advise that the S106 agreement is published on Rushcliffe Borough Council's website on the following link:

<https://planningon-line.rushcliffe.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=N8EEDNL01000>.

The S106 can be downloaded by clicking into the 'documents' tab and is labelled 'Section 106 Fairham Pastures', published 3 June 2019.

**Section 278 Agreement**

We are able to inform you that we do hold the information that you have requested, which is enclosed as Annex A. We have redacted some information contained within Annex A under the following exemptions:

Section 40 – Personal information

We have redacted/are withholding information on the grounds that it constitutes third party personal data and therefore engages section 40(2) of the FOIA.

To disclose personal data, such as names, contact details, addresses, email addresses and personal opinions could lead to the identification of third parties and would breach one or more of the data protection principles.

Section 40 is an absolute exemption which means that we do not need to consider the public interest in disclosure. Once it is established that the information is personal data of a third party and release would breach one or more of the data protection principles, then the exemption is engaged.



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The full text in the legislation can be found on the following link;

<https://www.legislation.gov.uk/ukpga/2000/36/section/40>

#### Section 43 - Commercial interests

Under section 43(2) Homes England is not obliged to disclose information that would, or would be likely to, prejudice the commercial interests of any party.

Section 43 is a qualified exemption. This means that once we have decided that the exemption is engaged, Homes England must carry out a public interest test to assess whether or not it is in the wider public interest for the information to be disclosed.

#### Arguments in favour of disclosure:

- Homes England acknowledges there is a general public interest in promoting accountability, transparency, public understanding and involvement in how Homes England undertakes its work and how it spends public money; and
- Homes England acknowledges there is interest from the public regarding contributions from all parties in relation to the site.

#### Arguments in favour of withholding:

- The redacted information relates directly to the financial arrangements of third parties. Releasing bank details could put those organisations at an increased risk of fraud. If this information were released by Homes England there would be a high risk of mistrust from third parties in relation to working with Homes England. If third parties felt that banking details would be released into the public domain it would prejudice Homes England's ability to work with partners to achieve delivery of homes and the objectives set out in our strategic plan. To release the information would be likely to cause significant reputational damage to Homes England which would not be in the public interest;

Having considered the arguments for and against disclosure of the information, we have concluded that at this time, the balance of the public interest favours non-disclosure.

The full text of the legislation can be found on the following link;

<https://www.legislation.gov.uk/ukpga/2000/36/section/43>

#### ***v. Who has provided Homes England with land valuation services in respect of the purchased Fairham Pastures site and the rest of the 605 acres that comprise the Fairham Development site?***

We can confirm that we do hold information that falls within scope of this question. Homes England has been advised by its property advisory panel firms Avison Young and Savills.



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Making homes happen

### **Right to Appeal**

If you are not happy with the information that has been provided or the way in which your request has been handled you may request an internal review by writing to;

The Information Governance Team  
Homes England – 6<sup>th</sup> Floor  
Windsor House  
50 Victoria Street  
London  
SW1H 0TL

Or by email to [infogov@homesengland.gov.uk](mailto:infogov@homesengland.gov.uk)

You may also complain to the Information Commissioner however, the Information Commissioner does usually expect the internal review procedure to be exhausted in the first instance.

The Information Commissioner's details can be found via the following link

<https://ico.org.uk/>

Please note that the contents of your request and this response are also subject to the Freedom of Information Act 2000. Homes England may be required to disclose your request and our response accordingly.

Yours sincerely,

**The Information Governance Team**  
For Homes England

OFFICIAL



***Nottinghamshire County Council***

**THE NOTTINGHAMSHIRE COUNTY COUNCIL (1)**

**-and-**

**FAIRHAM PASTURES DEVELOPMENTS LIMITED (2)**

**- and -**

**HOMES AND COMMUNITIES AGENCY (3)**

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**DEED OF AGREEMENT**

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**Relating to off-site highway works for land on the east and west  
sides of Nottingham Road, Clifton**



### Section 38/278 Agreement Summary

Site: known as land east and west of Nottingham Road South of Clifton

Title Nos. NT532768 and NT434328

#### Description of Works

##### Provision of:

New priority junction from Nottingham Road to serve phase 1 to the west  
New priority junction from Nottingham Road to serve phase 3 to the east  
New road markings, traffic signs and street lighting  
New footway to the north of Nottingham Road between the phase 1 access to the west, leading approximately 80m to the north  
Narrowing Nottingham Road to 6.75m, with kerbing on both sides providing positive drainage system, discharging to the same receiving ditch as present relocation of the change in 30/60mph speed limit, further south along Nottingham Road

#### Parties

##### **NOTTINGHAMSHIRE COUNTY COUNCIL**

Address for service of notice:

Corporate Director Place, County Hall, West Bridgford, Nottingham NG2 7QP

##### **FAIRHAM PASTURES DEVELOPMENTS LIMITED**

(Co reg no. 0270424) of Ednaston Park, Painters Lane, Ednaston, Ashbourne DE6 3FA

**HOMES AND COMMUNITIES AGENCY** (trading as Homes England) of One Friargate, Coventry, CV1 2GN

Bond sum: £158,916.26

Reduction on 1<sup>st</sup> Certificate: 60%

Reduction on 2<sup>nd</sup> Certificate: 40%



	<p>P4], CS-BWB-HGN-PAC1-DR-C-0103_S278 General Arrangement [S1-P3], CS-BWB-HGN-PAC1-DR-C-1200_S278 Signage Layout [S1-P3], CS-BWB-HGN-PAC1-DR-C-1201_S278 Signage schedule and schematic [S1-P4], CS-BWB-HGN-PAC1-DR-C-1210_S278 Road Marking Layout [S1-P3], CS-BWB-HGT-PAC1-DR-C-0600_S278 Finished Levels [S1-P3], CS-BWB-HGT-PAC1-DR-C-0650_S278 Junction Longitudinal Sections [S1-P3], CS-BWB-HGT-PAC1-DR-C-0660_S278 Setting Out [S1-P3], CS-BWB-HKF-PAC1-DR-C-1100_S278 Kerbing Layout [S1-P3], CS-BWB-HPV-PAC1-DR-C-0700_S278 Surface Finishes [S1-P3], CS-BWB-HPV-PAC1-DR-C-0720_S278 Construction Details [S1-P3], CS-BWB-HSC-PAC1-DR-C-0200_S278 Site Clearance [S1-P3], CS-BWB-VTU-PAC1-DR-C-2700_S278 Existing Utilities [S1-P3] and CS-BWB-HGN-PAC1-DR-C-0100_S278 Location Plan [S2-P4] together with such other drawings and documents as the Director may from time to time specify or agree shall be used in addition thereto or in substitution thereof. The following of the above plans are annexed to this Agreement:</p> <p>CS-BWB-HGN-PAC1-DR-C-0101_S278 Key Plan [S1-P4], CS-BWB-HGN-PAC1-DR-C-0102_S278 General Arrangement [S1-P4], CS-BWB-HGN-PAC1-DR-C-0103_S278 General Arrangement [S1-P3]; CS-BWB-HGN-PAC1-DR-C-0100_S278 Location Plan [S2-P4]</p>
"First Certificate"	Certificate issued by the Director under Clause 7.2
"the Index"	means the Price Adjustment Formulae Indices (Highways Maintenance) Series 4 published by the Business Cost Information Service on behalf of the Royal Institute of Chartered Surveyors or if for any reason such index is abolished or replaced then for the purposes of this Agreement the Index shall be such index as is published in substitution thereof by or under the authority of any Ministry or Department of Her Majesty's Government or if no such substitute index is published the Index shall be such other index as the Director shall specify that he considers most closely reflects changes in the costs of public works (roads)
"the Land Dedication Plan"	Drawing No CS BWB HGN PAC1 DR C 0104 [S2-P2]
"Notice to Complete"	notice issued in accordance with paragraph 8.1 and 8.2 of the Second Schedule
"the Permission"	planning permission for the Development was granted by Rushcliffe Borough Council on 24 May 2019 and 12 <sup>th</sup> December 2019 pursuant to planning application reference numbers 14/01417/OUT and 19/02061/REM
"the Programme"	a statement of the overall sequence in which the Works are to be carried out which shall include a general description of the arrangements and methods of construction which the Developer proposes to adopt thereof together with an

s40(2)



- Notes**
1. Do not alter the drawing in any way without the written consent of the author.
  2. This drawing is to be read in conjunction with the written reports, drawings and specifications.
  3. An electronic copy of this drawing is available on the project website.
  4. The drawing is for information only and does not constitute a contract.

**Legend**

- Land Use Designated as Highway
- Existing 578 Boundary

*Handwritten signature*

s40(2)



Rev	Date	Description	By
01	12/02/20	Issue for approval	001
02	12/02/20	Issue for approval	001

**Issues & Revisions**

- Birmingham: 011 233 8877
- Leeds: 0113 273 8000
- London: 020 724 3819
- Manchester: 0161 733 4100
- Nottingham: 0115 924 1100

**BWB**  
www.bwbgroup.com



**Fairham**

**Section 278  
Dedication Plan**

Drawn By:	G. Jovic	Checked:	D. Hodgson
Scale:	A3/A4 2397	Date:	02/10/19
Sheet No.:	1	Scale:	1:500

**For Information**

Project:	CS BWB-HGN-PAC1-DR-C-0104	Status:	S2
Revision:		Page:	P2



	the discounting of its debts
"the Bond"	the bond referred to in Clause 3.2 and substantially in the form annexed to this Agreement at the Third Schedule
"the Bond Account"	s43(2)
"the Bond Figure"	the sum of one hundred and fifty eight thousand, nine hundred and sixteen pounds and twenty six pence (£158,916.26) adjusted in accordance with any increase in the Index between the date of this Agreement and a date being ten working days prior to commencement of the Works to the intent that the adjusted figure shall constitute the Bond Figure
"Certificate to Commence"	certificate issued by the Director under Clause 7.1
"Committed Sum"	the sum of thirty six thousand eighty one pounds and eighty four pence (£36, 081.84) payable under clause 3.10.5 of this Agreement
"the Contract"	the Contract to be let by the Developer under Clause 4.2 for the construction of the Works
"Date of Commencement"	date issued by the Director on the Certificate to Commence from which works can start
"the Development"	the development of the Site by the construction of a sustainable urban extension comprising residential development up to a maximum of 3000 dwellings, employment development incorporating a maximum of 100,000sqm of B1, B2 & B8 floorspace, retail development (A1 to A5) up to a maximum of 2500sqm of floorspace, community buildings, leisure uses, schools, gypsy & traveller pitches, access to the site, new roads, footpaths & cycleways, green infrastructure including new community park, ancillary infrastructure & groundworks pursuant to the Permission hereinafter recited
"the Director"	the Council's Corporate Director of Place which shall be deemed to mean the officer of the Council from time to time holding that appointment or (if no officer holds that appointment) carrying out the duties of that appointment or such suitably qualified person as he may from time to time nominate
"the Drawings"	drawing numbers CS-BWB-GEN-PAC1-DR-C-0103_S278 Infrastructure Proposed Highway Boundary Limits [S1-P2], CS-BWB-HDG-PAC1-DR-C-0500_S278 Drainage Layout [S1-P3], CS-BWB-HDG-PAC1-DR-C-0530_S278 Drainage Catchment [S1-P3], CS-BWB-HDG-PAC1-DR-C-0560_S278 Drainage Details [S1-P3], CS-BWB-HGN-PAC1-DR-C-0101_S278 Key Plan [S1-P4], CS-BWB-HGN-PAC1-DR-C-0102_S278 General Arrangement [S1-

	estimate of the amount of time to be spent by the Developer in carrying out and completing the Works and which may from time to time in accordance with the terms of paragraph 1.1 of the Second Schedule be varied to meet the Developer's programme for the completion of the Development
"the Second Certificate"	certificate issued by the Director under Clause 7.6
"the Site"	all that land comprising on the east and west sides of Nottingham Road, Gotham, the south-east side of Green Street, and land south and of Barton lane, and the land at Barton Lane Barton In Fabis and Clifton Pasture, Nottingham Road, Clifton and for the purpose of identification only shown edged red on the location plan annexed hereto and including the land registered at H.M. Land Registry under Title Numbers: NT532768 and NT434328
"the Specification"	the "Specification for Highway Works" published by Her Majesty's Stationery Office (HMSO) as Volume I of the Manual of Contract Documents for Highway Works in December 1991 as modified and extended by supplements published by HMSO and by the Council's standard additional and supplementary clauses as at the date of preparation of the tender documentation for the Contract
"Statutory Utilities(s)"	any person company corporation board or authority whose apparatus is pursuant to a statutory right or to a licence granted under Section 50 of the 1991 Act at the date of this Agreement already installed in under over or upon the land on which the Works are to be carried out <b>PROVIDED THAT</b> such expression shall include the authorised successor to any such person company corporation board or authority
"the Surety"	such bank or other financial institution as may be nominated by the Developer and approved by the Council for the purposes of the Bond
"the Water Authority"	any person company corporation board or authority authorised by any enactment to carry on an undertaking for the supply of water
"Working Day(s)"	any days(s) upon which clearing banks in the City of London are /or would be ( but for a strike lock-out or other stoppage affecting a particular bank or banks generally) open during banking hours
"the Works"	those works for identification purposes only shown on the Drawings and specified in the First Schedule and all other things ancillary thereto including all road water drainage systems and sewers and shall (where the context so admits) mean any part or parts of them

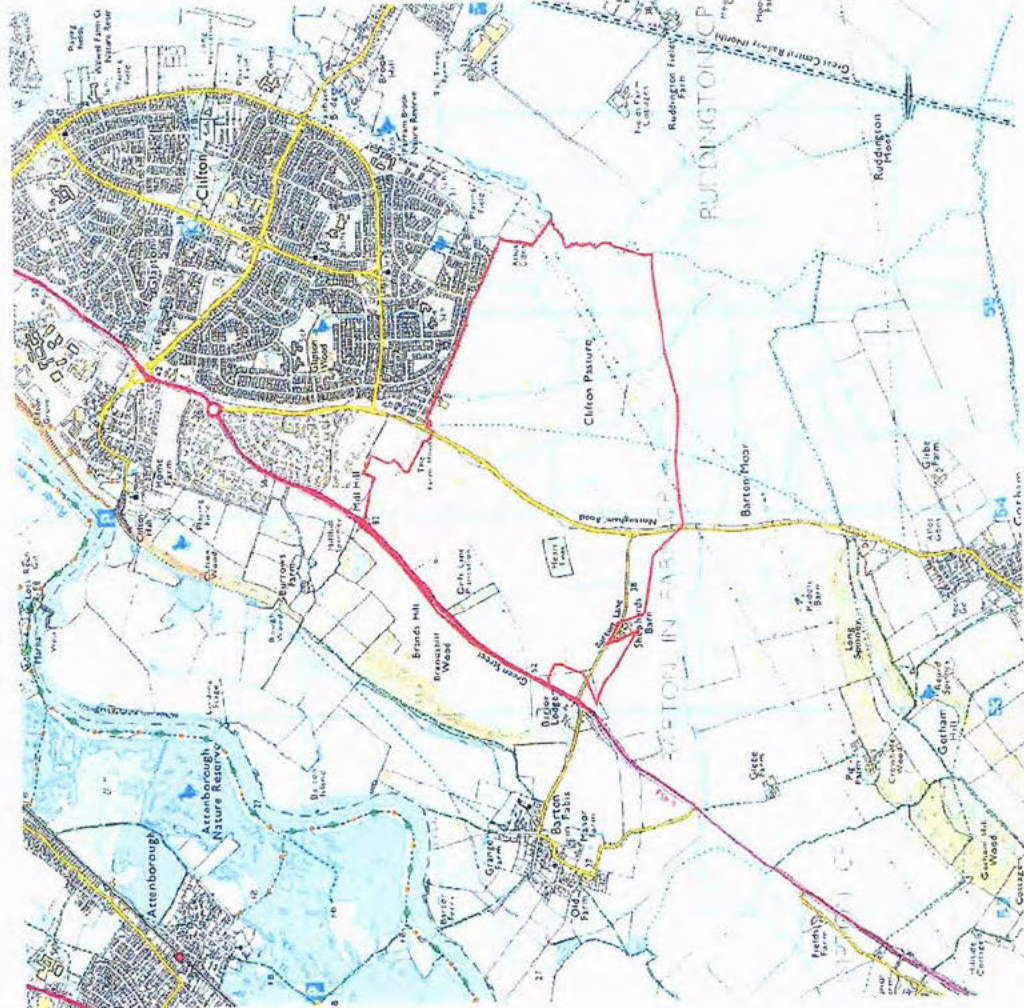
# SITE LOCATION PLAN

The drawing is the property of PACE Engineering and Design Ltd and is issued on the understanding that it is not to be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without the prior written permission of PACE Engineering and Design Ltd.

**SEAL REGISTER**  
NO: 48089



Application Boundary



s40(2)

L07210

Land South of Clifton  
**pace** SITE LOCATION  
 1:20,000 @ A3 1:0.7/16



June 2014

PACE Engineering and Design Ltd, Clifton, Bristol, UK. Tel: 01274 207200. Fax: 01274 207201. Email: info@pace-engineering.co.uk  
 www.pace-engineering.co.uk  
 Environmental Impact Statement - Clifton Pasture  
 1:20,000 @ A3 1:0.7/16

## Interpretation

- 1.2 Where the context so admits the expressions "the Council", "the Developer", "Homes England" and "the Surety" shall include their respective successors in title or assigns
- 1.3 Reference to any contractor shall include any sub-contractor
- 1.4 Reference to this Agreement shall be interpreted as including the Schedules of this Agreement
- 1.5 Reference in this Agreement to any clause sub-clause paragraph schedule drawing or plan without further designation shall be a reference to a clause sub-clause paragraph schedule drawing or plan contained in (or in the case of a drawing or plan annexed to) this Agreement so numbered
- 1.6 Reference to any statute statutory instrument regulation or order shall include any statutory extension modification or re-enactment thereof and any order regulation or bye-law made thereunder
- 1.7 Words importing the singular only shall include the plural and vice versa and words importing any particular gender shall include all genders
- 1.8 The clause headings summary and front cover of this Agreement are for convenience only and shall not be taken into consideration in the interpretation or construction of this Agreement
- 1.9 All consents permissions licenses and notices referred to in this Agreement shall be in writing unless it is specifically stated to the contrary and shall not in any event be unreasonably withheld or delayed
- 1.10 Unless expressly stated nothing in this Agreement shall create rights pursuant to the Contracts (Rights of Third Parties) Act 1999 in favour of anyone other than the Parties
- 1.11 Nothing in this Agreement shall be interpreted as acting to fetter the discretion of the Council in the exercise of any duty or power whether imposed by statute statutory instrument order regulation or other enactment
- 1.12 To the extent that any provision of this Agreement shall be found to be void voidable or partially or wholly unenforceable by a court or other tribunal of competent jurisdiction the remainder of the Agreement shall remain in force

## 2. STATUTORY PROVISIONS

- 2.1 This Agreement is made pursuant to Section 278 and Section 38 (in so far as is necessary for the dedication and adoption of the Works) of the 1980 Act, Section 111 of the Local Government Act 1972, and section 33 Local Government (Miscellaneous Provisions) Act 1982 and all other powers enabling the Council in that behalf and the covenants on the part of the Developer and Homes England hereinafter contained shall be covenants to which such provisions shall apply.

2. **DEVELOPER'S OBLIGATIONS**

3. 3.1 The Developer covenants with the Council as follows:-

- 3.1.1 not to commence the Works until the date specified on the Certificate to Commence; and
- 3.1.2 to give to the Council at least five weeks written notice and a separate ten day's written notice of the Developer's intention to commence the Works (to be no earlier than the date to be specified on the Certificate to Commence) and thereafter diligently to proceed with the Works at no cost to the Council in accordance with the provisions of the Second Schedule; and
- 3.1.3 to procure at the cost of the Developer from the Council the design of all traffic signal controlled geometric road layouts, diagrammatic electrical specifications, signal timings, traffic signal controller units and other equipment (including alterations to existing facilities) required by the Director; and
- 3.1.4 prior to commencement of the Works to obtain all consents licences easements and permissions ("the Consents") from any third parties (including adjoining landowners and Statutory Utilities) that are reasonably required to construct and thereafter maintain the Works; and

**Access**

- 3.1.5 the Developer shall during the progress of the Works give or procure for the Director unfettered access to every part of the Works and to places where materials or plant for the Works may be stored or in the course of preparation manufacture or use and permit inspection of the Works as they proceed and all materials used or intended to be used therein and shall give effect to any reasonable and proper requirements made or reasonable and proper direction given by the Director to conform to the Drawings and/or the Programme and the Specification; and

**Supervision**

- 3.1.6 that the Works to be executed by the Developer (whether carried out by the Developer or contractor) shall at all times be supervised by a Chartered Civil Engineer or other suitably qualified person who has been approved by but who shall act independently of the Council; and

**Conduct of the Works**

- 3.1.7 that the Works described in the First Schedule to this Agreement shall be carried out in accordance with:
- 3.1.7.1 the Programme, Specification and Drawings listed on the Certificate to Commence or such other Drawings and documents as may be approved from time to time by the Director; and
- 3.1.7.2 all conditions and requirements imposed by the local planning authority pursuant to the Permission in respect of

the Works; and

3.1.7.3 all conditions stipulations and requirements reasonably imposed by any Statutory Utilities in respect of any of their apparatus affected by the Works; and

3.1.7.4 the Construction (Design and Management) Regulations 2015 (and the Developer shall make available to the Director on demand the relevant information on the Health and Safety file); and

3.1.7.5 the Electricity at Work Regulations 1989; and

3.1.7.6 the Second Schedule; and

3.1.7.7 all statutory and other legal requirements

#### **Bond**

3.2 that prior to the Commencement of the Works it shall secure the Works to the satisfaction of the Director by procuring the Bond from the Surety or by way of cash deposit in the sum of the Bond Figure for the due performance of the Developer's obligations under this Agreement including the payment of all invoices and costs incurred by the Council in accordance with the terms of this Agreement; and

#### **Indemnities**

3.3 to indemnify the Council from and against all actions costs liabilities charges demands and expenses whatsoever arising or which may arise out of or be incidental to:

(a) the execution of the Works by the Developer including the Works within the existing public highway; and

(b) any costs incurred by the Council arising out of any work undertaken by it pursuant to this Agreement and including any costs incurred in the collection of pre-development noise readings which may be undertaken at the Director's sole discretion; and

#### **Land Compensation Act 1973**

(c) any claims under the Land Compensation Act 1973 (or any re-enactment or amendment thereof) and any Regulations made there under including the Noise Insulation Regulations 1975 (or any re-enactment or amendment thereof) **PROVIDED THAT** the Council shall notify the Developer forthwith upon receipt of any such claim and provide details of such claim to the Developer and shall in settling any such claim act reasonably and properly and with due regard to any representation made by the Developer in respect thereof and following acceptance or settlement of any such claim (which shall be determined as to both liability and quantum wholly at the discretion of the Director of the Council acting through his designated officers) shall promptly notify the quantum thereof to the Developer the indemnity provided by this Clause shall not apply in respect of any action cost claim demand charge or expense whatsoever arising or which may arise out of or be incidental to any negligent or defective act default or omission on the part of the Council its Agents workmen or employees; and



## **New Roads and Street Works Act 1991**

(d) to indemnify the Council against any costs arising from the Works as a result of the application of the 1991 Act and any other Act or statutory instrument or common law provision relating to Statutory Utilities' apparatus; and

### **Dedication, Adoption Agreements and Easements**

(e) any costs arising from or incidental to the failure to comply with clauses 3.6, 3.7 and 3.8 including without limitation any costs associated with the Council exercising its compulsory purchase powers; and

### **Licences**

- 3.4 before commencement of the Works and at no expense to the Council to obtain such consent licences or permissions as may be required for the purposes of carrying out the Works and to comply with the same and indemnify and keep the Council indemnified from and against all liabilities costs claims actions demands or expenses which may arise from the Developer's failure to obtain or to comply with such consents licences or permissions; and

### **Insurances**

- 3.5 that prior to the Date of Commencement it shall effect public liability insurance to insure (or shall procure that any Contractor carrying out the said Works shall insure) against death damage loss or injury which may occur arising from or out of the execution of the Works (otherwise than due to any negligent or reckless act or omission of the Council) with an approved insurer on terms approved by the Council in at least the sum of five million pounds (£5,000,000) with an excess not exceeding one thousand pounds (£1000) arising out of any one incident; and

### **Dedication**

- 3.6 Homes England and the Developer covenant with the Council that land identified on the Land Dedication Plan as the dedicated land (shown in pink) is presently outside the highway and Homes England and the Developer HEREBY DEDICATE the dedicated land as highway from the date on which the Council issues a certificate of practical completion of the Works. The land will be dedicated at no cost to the Council and free from encumbrances other than such as shall already have been created prior to the date of this Agreement.

If called upon to do so by the Council before the expiration of twenty one years (21) from the date hereof the Developer and Owner or their respective successors in title shall convey transfer the said piece of land to the Council for an unencumbered estate therein in fee simple;

For the avoidance of doubt, Homes England enter into this Agreement for the purpose of dedicating its land as highway only and will have no further liability under this Agreement and

### **Drainage Easements**

- 3.7 prior to the issue of the First Certificate to execute and complete with all necessary parties without cost to the Council such Deeds of Grant as are necessary to secure to the Council full and exclusive drainage rights in respect of such parts of the surface water drainage system as are situate outside the limits of the public highway adopted or to be adopted and such other easements as may be necessary and reasonably required by the Council for the future maintenance of any structure forming part of the Works; and

#### **Sewers**

- 3.8 to complete and copy to the Director any requisite sewer adoption agreement with the Water Authority prior to and as a condition of the issuing of the First Certificate; and

#### **Payment**

- 3.9 to pay to the Council upon the execution hereof:-
- 3.9.1 the Council's reasonable and proper legal and administrative costs in connection with the preparation, negotiation and completion of this Agreement and bond; and
  - 3.9.4 an administration design checking and site inspection fee charged at 10% of the Bond Figure up to £100,000 plus a further charge of 6% of the Bond Figure for any excess over £100,000
- 3.10 to pay to the Council within 10 Working Days of demand:-
- 3.10.1 the actual costs and expenses incurred by the Council in the testing of any materials associated with the Works; and
  - 3.10.2 any costs incurred in the collection of pre-development noise readings as required by the Director at his sole discretion; and
  - 3.10.3 any costs incurred by the Council in connection with the design ordering supply testing installation (and) commissioning (and future maintenance) of traffic control or other equipment; and
  - 3.10.4 any costs incurred by the Council in connection with the diversion and/or protection of the apparatus of Statutory Utilities as evidenced by copies of their invoices (as certified by the Director); and
  - 3.10.5 the Commuted Sum adjusted in accordance with any increase in the Index between the date of this Agreement and the date of its payment to the Council.; and
  - 3.10.6 an administration design checking and site inspection fee of 3% of the Bond Figure per annum pro-rata for each day exceeding that specified in clause 3.1.8 with a minimum charge of £1000; and
  - 3.10.7 an administration and inspection charge of £500 should more than two years have elapsed from the date of the First Certificate and the issue of the Second Certificate; and
  - 3.10.8 any additional costs incurred by the Council arising out of any work undertaken by the Council pursuant to this Agreement and including any Bond supplementary Deed or Agreement (including any variation or release thereof) all Traffic Regulation Order and public

consultations costs properly incurred by the Council as a consequence of this Agreement and which may be carried out at the Director's sole discretion; and

- 3.10.9 the actual costs and expenses incurred by the Council in checking the design of and carrying out periodic site inspections of structures as certified by the Director's highway officer for the time being such payments to be calculated on a time attendance basis at regular requisite intervals; and

#### **Work in Default**

- 3.11 that in the event of any failure by the Developer to perform its covenants and or obligations under this agreement OR if the Developer shall perform any Act of Insolvency this shall entitle the Director at his reasonable discretion to issue a Notice to Complete pursuant to the provisions contained in paragraph 8 of the Second Schedule to this Agreement.

#### **Recovery of Costs**

- 3.12 It is agreed that the cost of any works in default undertaken by the Director shall be a debt immediately due from the Developer to the Council and may be invoiced accordingly. Alternatively at the sole discretion of the Director the cost of such works may be recovered from the Bond with any excess expenditure actually incurred by the Council being a debt due immediately from the Developer.

### **4. DELEGATION OF DEVELOPER'S OBLIGATIONS**

- 4.1 It is agreed that with prior consent of the Director the performance of the Developer's obligations under this Agreement may be delegated to a contractor or sub-contractors with the prior approval of the Director PROVIDED THAT the Developer shall remain liable to the Council for the due performance and observance of this Agreement;
- 4.2 The contract by which the obligations contained in this Agreement are delegated shall contain terms and conditions no less stringent than the terms and conditions of this Agreement and shall incorporate the Specification the description of the Works appearing in the First Schedule and the Drawing and/or such other drawings (consistent with the Drawings) as may be deemed by the Director to be contract drawings for the purposes of the Contract.

#### **Assignment**

- 4.3 the Developer may not without the written consent of the Director assign or transfer the benefit of this Agreement or any part thereof and the Council shall not be obliged to require performance of this Agreement by any person other than the Developer.

### **5. THE COUNCIL'S OBLIGATIONS**

- 5.1 To carry out the design of or any alterations required by the Director to all traffic signal controlled road layout and equipment at the cost of the Developer.
- 5.2 Periodically to undertake site inspections of the Works in progress.

- 5.3 To report defects and or omissions in the Works to the Developer expeditiously and in writing and to provide such clarification as the Developer reasonably requires.
- 5.4 To act reasonably when considering any request or submission of the Developer.
- 5.5 To exercise its powers to facilitate the Development where this would not conflict with any statutory or other duty and where the Council is satisfied that this would be in the best interests of the public.

## **6. ACCESS TO PUBLIC HIGHWAY**

- 6.1 The Council without prejudice to its statutory powers and duties hereby gives to the Developer licence to enter and to remain upon with or without workmen plant and machinery so much of the public highway under the Council's control as is reasonably necessary for the Developer to carry out its obligations under this Agreement and it is hereby agreed and declared that such licence extends to breaking open (subject where appropriate to making good its surface) and without limitation to the foregoing carrying out works in on or under the said land (including excavation drainage works to utilities and maintenance).

## **7. CERTIFICATION AND ADOPTION OF THE WORKS**

### **Certificate to Commence**

- 7.1 The Council shall issue the Certificate to Commence upon the Developer satisfying all the Director's reasonable pre-commencement requirements.

### **First Certificate**

- 7.2 Upon the Director being satisfied that the Works are completed in accordance with the Drawings and Specifications the Director will issue a First Certificate to that effect subject to:-
  - (a) The receipt of Street Lighting Electrical Test Certificates and corresponding schematic electrical drawings;
  - (b) A Stage 3 Safety Audit having been undertaken by the Council and any issues having been addressed to the Director's satisfaction;
  - (c) Receipt of three sets of as built drawings as set out in paragraph 10 of the Second Schedule;
  - (d) A copy of the Health and Safety File in accordance with paragraph 11 of the Second Schedule having been provided;
  - (e) Proof of dedication and or easements by way of registration on the title and the supply of fresh office copy entries of the title;
  - (f) any traffic regulation orders are in place;
  - (g) The receipt of copies of completed requisite Agreements with the Water Authority as made necessary by the works.
- 7.3 Upon the issue of the First Certificate the Works that are not part of the public highway shall become public highway but the Developer shall

remain the street manager for the purposes of Section 49(4) of the 1991 Act until the date of issue of the Second Certificate.

#### **Maintenance Period**

- 7.4 At no cost to the Council the Developer shall maintain or shall otherwise keep in a good state of repair the Works for the period of twelve months from the date of the issue of the First Certificate.
- 7.5 Upon the expiration of such respective periods in accordance with Clause 7.4 the Developer shall forthwith commence and as soon as reasonably practicable complete the reinstatement and making good any defects or damage due to faulty survey design materials or workmanship which may have arisen or be discovered during such respective periods (including any defect in or damage to the road surface water drainage system) to the satisfaction of the Director.

#### **Second Certificate**

- 7.6 At the expiration of the twelve months maintenance period for the Works referred to in Clause 7.4 and when any necessary reinstatement or other works have been completed to the satisfaction of the Director in accordance with Clause 7.5 the Director shall issue a Second Certificate to that effect subject to:-
- (a) All information required in accordance with Clause 7.2 being received;
  - (b) Payment of all outstanding fees in accordance with Clauses 3.10 and 3.12;
  - (c) Evidence of sewer adoption by the Water Authority;
  - (d) Payment of the Commuted Sum.
- 7.7 Upon the issue of the Second Certificate the Works including any areas previously dedicated in accordance with 3.6 hereof shall become maintainable at the public expense by virtue of Section 38 of the 1980 Act with effect from the date on which the Second Certificate is issued (insofar as the Works are not already so maintainable at the public expense).

#### **8. RELEASE OF THE BOND**

- 8.1 Upon the issue of the First Certificate the Council shall subject to receipt by the Council of the information referred to in Clause 7.2 reduce or release (as applicable) either:-
- (a) the Developer and the Surety partially from their obligations under the Bond; or
  - (b) the monies in the Bond Account from its charge in either case to the extent of (60) per centum (60%) thereof.
- 8.2 Upon the issue of the Second Certificate the Council shall release the Developer and the Surety wholly from their obligations under the Bond; or the monies in the Bond Account from its charge to a total extent of 100 per centum 100% thereof **PROVIDED THAT** all monies due to be paid to the Council under this Agreement have been paid and all information required pursuant to clause 7.6 have been provided to the Director.

- 8.3 Interest earned on monies held in the Bond Account shall belong to the Developer and be subject to due deduction of any tax due on such interest.

## **9. NOTICES**

- 9.1 Any notice or other written communication to be served by one party upon another pursuant to the terms of this Agreement shall be deemed to have been validly served if delivered by hand or sent by prepaid registered or recorded delivery post to the party to be served at its address herein specified or such other address as may from time to time be notified for the purpose by notice in writing AND any such notice or other written communication to be given by the Council shall be deemed valid and effectual if it is signed on behalf of the Council by an officer or duly authorised signatory thereof.

## **10. INTEREST ON OVERDUE PAYMENTS**

- 10.1 In the event of any delay in the making of any payment required to be made by the Developer to the Council under this Agreement interest shall be payable thereon at the rate of four per cent above the Barclays Bank base lending rate from time to time in force from the due date to the date of actual payment.

## **11. MISCELLANEOUS PROVISIONS**

- 11.1 Where any agreement certificate consent permission or other approval is to be given by any party or any person on behalf of any party hereto under this Agreement the same shall not be unreasonably withheld or delayed.
- 11.2 Where there is any conflict between the provisions of the First and Second Schedules and the Specification the provisions of the First and Second Schedules shall prevail.
- 11.3 If construction of the Works has not commenced within three years from the date hereof this Agreement shall cease to have effect.

## **12. VALUE ADDED TAX**

- 12.1 All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax (VAT) properly payable in respect thereof.
- 12.2 If at any time VAT becomes chargeable in respect of any supply made in accordance with the terms of this Agreement then to the extent that VAT had not previously been charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly.

## **13. COUNCIL'S STATUTORY POWERS AND DUTIES**

- 13.1 Nothing contained or implied in this Deed shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as a local authority and its rights powers duties and obligations under all public and private statutes by-laws and regulations may be as fully and effectually exercised as if the Council were not a party to this Agreement.

## **14. ARBITRATION**

- 14.1 The Parties hereby agree that any differences and questions which arise

between the Parties in connection with this Agreement shall be referred for determination by an independent person in accordance with the following provisions:-

- 14.2 Where such dispute relates to the construction of this or any other Deed or document it shall be referred to a Solicitor or Barrister agreed upon by the Parties or in default of agreement appointed on the application of either Party by or at the direction of the President for the time being of the Law Society.
- 14.3 Where such dispute relates to engineering construction or the highway works it shall be referred to a Chartered Civil Engineer agreed upon by the Parties or in default of agreement appointed on the application of either Party by or at the direction of the President for the time being of the Institution of Civil Engineers.
- 14.4 Where such dispute relates to the valuation of property they shall be referred to a Chartered Surveyor agreed upon by the Parties or in default of Agreement appointed on the application of either Party by or at the direction at the President for the time being of the Royal Institute of Chartered Surveyors.

## **15. HOMES ENGLAND AND DEVELOPER OBLIGATION**

- 15.1 Until the dedication in clause 3.6 has occurred or the Director confirms that no dedication is required Homes England and the Developer each covenant that it will not transfer, dispose of or otherwise alienate its interest in any part of the Site adjacent to or within 1 metre of the Site's boundary with the highway where the Works occur without the written approval of the Council, such written approval to be given promptly following any request by the Developer or Homes England and which may be withheld only if the Director reasonably considers that any land is required by the Council in connection with the Homes England's and the Developer's obligation contained in clause 3.6.

## **17. GOVERNING LAW**

- 17.1 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.



Executed as a deed by the parties and delivered on the date first written above

THE COMMON SEAL of THE )  
NOTTINGHAMSHIRE COUNTY COUNCIL )  
was hereunto affixed in the presence of:- )  
Authorised Signatory )



SEAL REGISTER  
NO: /

s40(2)  
[Redacted]

EXECUTED AS A DEED by :-

FAIRHAM PASTURES DEVELOPMENTS LIMITED )

Acting by a director in the presence of :- )

s40(2)  
[Redacted]

Witness Signature

s40(2)  
[Redacted]

Name:

s40(2)  
[Redacted]

Address:

[Redacted]

Occupation:

s40(2)  
[Redacted]

THE COMMON SEAL of  
HOMES AND COMMUNITIES AGENCY

Was hereunto affixed

In the presence of:

s40(2)  
[Redacted]

Authorised Signatory



PRINT NAME

s40(2)  
[Redacted]

027267





## FIRST SCHEDULE

(Brief description of the Works to be carried out)

The Works shall be carried out in accordance with the Specification the Drawings and the Programme and the Programme shall inter alia include the following elements of construction work:-

- (A) All those works as specified by the Director and the extent of which are indicated on Plan CS-BWB-GEN-PAC1-DR-C-0103\_S278 Infrastructure Proposed Highway Boundary Limits [S1-P2] and which such works shall include the provision of Two new bell mouth vehicular access junctions on the western and eastern side of Nottingham Road (including all relevant culverts and associated infrastructure under the access points), revisions to existing street lighting, installation of a new gateway feature to the south of the new junctions, including new change in speed limit signage, dragons teeth pavement markings, bollards, narrowing and formalisation of the edge of carriageway kerb alignment, and a new length of footway at and beyond the new western bell mouth access junction, leading in a northern direction for approximately 80m. In addition, a shot extension of the existing footway on the eastern side of Nottingham Road.
- (B) All road drainage works reasonably required by the Director to be made within the Site and to the highway made necessary by the Works and indicated on the Drawings reference CS-BWB-HDG-PAC1-DR-C-0500\_S278 Drainage Layout [S1-P3]
- (C) The provision of new and/or making good to footways and verges and all landscaping made necessary by the Works.
- (D) The provision of new and/or re-siting/upgrading and/or necessary alterations required by the Director be made to street lighting columns in the highway made necessary by the Works.
- (E) The provision of new and/or re-siting/upgrading and/or necessary alterations reasonably required by the Director to be made to street furniture to the highway made necessary by the Works.
- (F) The provision of new and/or alterations required by the Director to be made to carriageway markings linings and traffic signs to the highway made necessary by the Works and or the Development.
- (G) The carrying out of any works arising from the provisions of the 1991 Act where applicable and any other Act or statutory instrument or common law provision which are required as a result of any Statutory Utility being affected by any of the Works referred to in this clause.
- (H) The performance of any alternative or additional works on land within the Developer's control or public highway maintainable at the public expense in or around the immediate environs of the Site as the Director shall reasonably consider necessary and arising out of the Works.

## SECOND SCHEDULE

(Terms and Conditions for the execution of the Works)

### **1. Design Approval**

- 1.1 Not less than three calendar months before commencement of the Works the Developer shall submit to the Director in writing for his approval all designs documents drawings specifications tender documents and the Programme for the construction of the Works together with the Developer's proposed arrangements for the supervision of the Works and commission the Council to carry out the design of all traffic signal controlled layouts and associated electrical equipment.
- 1.2 The Director shall submit to the Developer his written comments upon those matters referred to in paragraph 1.1 of this Schedule as soon as reasonably practicable from receipt and the Developer shall not commence the Works prior to the Directors approval and issue of the Certificate to Commence .
- 1.3 The Works shall be executed by the Developer in accordance with the Specification the Drawings and the Programme for construction and supervision as prepared by the Developer and approved by the Director on issue of the Certificate to Commence.
- 1.4 If the Developer wishes to revise the Programme it shall first notify the Director in writing of any proposed revisions to the Programme at least 10 Working Days before implementing such revisions AND the Director shall approve or submit to the Developer written comments in full upon those matters referred to in paragraph 1.4 of this Schedule within 10 Working Days of receipt.

### **2. Access to and Opening of the Works**

- 2.1 During the construction of the Works the Developer shall not cover up or put out of view any part or parts of the Works without the approval of the Director and shall afford full opportunity for the Director to examine and measure any work which is about to be covered up or put out of view and to examine foundations before permanent work is placed thereon and shall give at least 5 Working Days' notice to the Director whenever such work or foundations is or are ready or about to be ready for examination.
- 2.2 The Director shall promptly (unless he considers it unnecessary and advises the Developer accordingly) attend when required by the Developer upon at least 5 Working Days' notice for the purpose of examining such foundations.
- 2.3 The Director may if any part of the Works have been covered up without prior notice issue instructions to the Developer to open up or expose any part of such Works which have been so covered up without previously being inspected by the Director and all reasonable and proper cost in respect of such uncovering inspections and of reinstating of the part or parts of the Works so uncovered shall be borne by the Developer.
- 2.4 Should the Developer fail to comply with any such instructions pursuant to paragraph 2.3 of this schedule the Council may so open up or expose the Works causing as little damage or inconvenience as is possible to or in respect of any other part or parts of the Works and the reasonable and

proper cost of such taking up or exposure and reinstatement shall be met by the Developer.

### 3. Testing Materials

- 3.1 Before commencement and during the construction of the Works the Developer shall submit for approval to the Director a list of suppliers from where it wishes to obtain materials for incorporation in the Works together with test certificates for such materials and shall at no cost to the Council provide the Director with any samples of materials reasonably requested for testing purposes.
- 3.2 The Director shall at his reasonable discretion at the Developer's expense test or require the testing of materials plant or workmanship used or proposed to be used in the Works and may reject any materials plant or workmanship so tested which the Director may reasonably and properly find not to be in accordance with the Specification and the Drawings.
- 3.3 The Developer shall as soon as is reasonably practicable replace or repair any materials plant or workmanship which have been found to be not in accordance with the Specification and the Drawings with materials, plant and workmanship which comply with the Specification and Drawings.
- 3.4 The Developer shall as soon as is reasonably practicable remove such materials plant and workmanship as are rejected by the Director pursuant to paragraph 3.2 of this Schedule which are not capable of repair or remedy from the site of the Works and if the Developer shall wish to continue to store such rejected irreparable materials plant and workmanship on the site of the Works they shall be stored separately from those materials plant and workmanship which have not been so rejected or which the Developer shall wish in future to use in execution of the Works.

### 4. Statutory Utilities

- 4.1 Prior to the commencement of the Works the Developer shall give notice to Statutory Utilities of the proposal to carry out the Works as if they were works for road purposes or major highway works as defined in Section 86(3) of the 1991 Act.
- 4.2 (i) The Developer shall at no cost to the Council carry out or procure the carrying out of any works or measures as are reasonably and properly required by Statutory Utilities in consequence of the proposal to carry out the Works to the plant and equipment of Statutory Utilities on the site of the Works and shall pay the costs of any diversions or new installations required by the Statutory Utilities;  
  
(ii) The Works referred to in the First Schedule shall be deemed not to have been completed until the cost of any such diversions or new installations has been paid by the Developer **PROVIDED THAT** in the event that any requirement made by any Statutory Utility appears to the Council to be unreasonable it may at the reasonable request of the Developer join with the Developer in resisting such requirements.
- 4.3 the Developer shall cause all highway or other drains or sewers gas and water mains pipes electric (if any) or telephone cables (if any) which are to be laid by the Developer under the Works together with all necessary connections from them to the boundaries of the Works to be laid in so far as

is practicable under the Works before the foundations of the Works are laid and shall also so far as is practicable cause the connections from electric cables to any street lamps to be laid before the paving of any footways comprised in the Works is carried out and shall secure all necessary sewer adoption agreements with the Water Authority prior to issue of the First Certificate.

**5. Prevention of mud being carried on the public highway**

- 5.1 The Developer shall at no cost to the Council prevent the deposit of mud dust and other materials on public highways by vehicles and plant leaving the site of the Works.

**6. Traffic Control**

- 6.1 The Works shall not commence or continue unless or until the Developer implements measures to maintain the flow and safety of traffic and pedestrians in the vicinity of the Works which have been first approved in writing by the Director including any temporary site access arrangements and the Developer shall use reasonable endeavours to procure that site traffic in respect of the Works and the Development adhere to such route or routes and access arrangements when approaching or departing the site of the Works as may be from time to time be agreed by the Director.

**7. Road Safety**

- 7.1 During the period over which the Works are being executed the Developer shall comply with the provisions of Chapter Eight of the Department of Transport's Road Traffic Signs Manual 2009 (published by HMSO) and any amendment thereto for lighting and signing the Works and any further reasonable requirements of the Council.

**8. Remedial Works**

- 8.1 Subject to paragraphs 8.2 8.3 and 8.4 of this Schedule if the Works or any part or parts of them (including without prejudice to generality failure to make good defects) are not executed or completed in accordance with the terms of this Agreement or the Developer has performed an Act of Insolvency the Council may execute or complete the relevant part or parts of the Works in accordance with a Notice to Complete served in accordance with the provisions of this Agreement by its own employees or by contractors and shall recover its reasonable and proper costs (including costs referred to in Clause 3.10 of this Agreement and paragraphs 3.2 and 4.2 of this Schedule) from the Surety.
- 8.2 Before starting any works under paragraph 8.1 of this Schedule the Council shall in its Notice to Complete first give the Developer 15 Working Days' written notice (or in the event of there being a significant danger to users of the highway such lesser notice period as may in the circumstances be reasonable) of its intention to commence such Works.
- 8.3 Any Notice to Complete served pursuant to paragraph 8.1 and 8.2 of this Schedule shall specify the Works which have not been executed or completed in accordance with the terms of this Agreement and the period of notice ("the Notice Period") given thereunder.
- 8.4 If before the expiry of the Notice Period the Developer shall serve written notice upon the Council that the Developer intends forthwith to execute

and/or to complete the Works specified in the Notice served by the Council under paragraph 8.1 and 8.2 of this Schedule in accordance with the terms of this Agreement the Council shall then not be entitled to execute or to complete such Works unless the Developer then fails to execute and/or complete them within 15 working days.

## **9. Street Lighting**

- 9.1 If more than two years have elapsed from the date of issue of the First Certificate and the Second Certificate has not been issued then prior to the issue of the Second Certificate the Developer shall bulk clean lamp change and provide up to date Street Lighting Test Certificates for all illuminated signs and street lighting equipment.

## **10. "As built" Drawings**

- 10.1 Prior to the issue of the First Certificate the Developer shall provide the Council with three sets of drawings and one CD ROM to the satisfaction of the Director showing to a scale of 1:500 (or such other scale as the Director shall reasonably require) the Works "as built"

10.2 The "As built" drawings must include:-

- 10.2.1 All departures from the approved drawings;
- 10.2.2 The position of all Statutory Undertakers' apparatus including details of depths and protection;
- 10.2.3 Any additional levels boreholes records or other information which the Director considers to be useful;
- 10.2.4 The location direction of flow and construction materials of all new and existing drainage ditches and the location of outfalls or soakaways;
- 10.2.5 Detailed drainage plans with sizes depths gully positions new and existing connections long sections manhole and catch pit details with cover and invert levels;
- 10.2.6 All street lighting illuminated signs and cables distinguishing between private cables and board cables (and all cables shall be identified by their respective reference numbers);
- 10.2.7 Road works general arrangement including highway boundary by means of red edging visibility splays and forward visibility splays;
- 10.2.8 All soft landscaped planting details including grass cutting and watering schedules the date for expiration of the Developer's maintenance obligation together with contact names and telephone numbers of the Developer's personnel responsible for maintenance issues;
- 10.2.9 Those Structures which will be maintained by or on behalf of the Council and those permanently maintained by or on behalf of the Developer;
- 10.2.10 Signs and road markings on highway and location and details of sign face[s];
- 10.2.11 All completed finishes on the highway that is (but without limitation) high friction surfacing wearing course tactile paving carriageway footway finishes kerb types and including construction and tie in details;

10.2.12 Fencing Guardrails and Safety Barriers.

## 11. CDM Regulations

11.1 Prior to the issue of the First Certificate the Developer shall supply to the Council the Health and Safety File relating to the Works pursuant to the Construction (Design and Management) Regulations 2015 (two copies if the Works include structures).

11.2 The Health and Safety File shall include:-

11.2.1 Introduction;

11.2.2 Description of Works including Ordinance Survey location plan;

11.2.3 Responsibilities - Designers Client and Principal Contractor details including Notification of Construction Project to the Health and Safety Executive (F10);

11.2.4 Sub-Contractors and Supplier details;

11.2.5 Residual Hazards

11.2.5.1 Risk assessments for hazards anticipated post construction including cleaning and maintenance schedules and special requirements;

11.2.6 Certificates Warranties and Test Results;

11.2.7 Quarry and material compliance certificates;

11.2.8 CBR (California Bearing Ratio) and NDM (Nuclear Density Meter) results;

11.2.9 Water Authority approvals (104 Agreements) and Environment Agency approvals and/or restrictions;

11.2.10 Surfacing and anti-skid warranties;

11.2.11 Structures approvals and Commuted Sums;

11.2.12 Electrical test certificates NIC EIC (National Inspection Council for Electrical Installation Contracts);

11.2.13 Product Information

11.2.14.1 Standard details manufacturer manuals and specifications for the following;

- Fencing/railing/parapets
- Concrete mixes
- Concrete products
- Bituminous mixes
- Natural and recycled aggregates
- Drainage materials
- Ducting
- Manhole drawpit and gully covers
- Brickwork

- Steelwork reinforcement etc.
- Traffic Signs
- Street Lighting beacons bollards lanterns and feeder pillars including electrical specifications
- Traffic Signals including control boxes etc
- Any other products specific to the works.

11.3 "As Built" Drawings as set in paragraph 10 of this schedule.

## **12. Working Hours**

12.1 Shall be as specified in the Planning Permission.

## **13. Final Site Clearance**

13.1 Prior to the issue of the First Certificate the Developer shall clear away and remove from the site of the Works all constructional plant surplus material rubbish and temporary works of every kind and leave the site of the Works in a workmanlike condition.

THIRD SCHEDULE



**BOND**

DATED

2020

**ROYAL BANK OF SCOTLAND PLC**

- and -

**THE NOTTINGHAMSHIRE COUNTY COUNCIL**

---

**BOND**

---

in relation to and

an Agreement pursuant to Section 38/278 of The Highways Act 1980 relating to  
off-site highway works for land on the east and west  
sides of Nottingham Road, Clifton

is made BY:

(1) **ROYAL BANK OF SCOTLAND PLC** a company having its registered office at 36 St Andrew Square, Edinburgh, United Kingdom EH2 2YB and registered with the Companies House under number SC083026 and whose address for service is at Manchester Trade, Level 8, 1 Hardman Boulevard, Manchester M3 3AQ (the "**Bank**");

in favour of

(2) **THE NOTTINGHAMSHIRE COUNTY COUNCIL** of County Hall, West Bridgford, Nottingham NG2 7QP (the "**Beneficiary**").

**WHEREAS:**

(A) The Beneficiary and Fairham Pastures Developments Limited (a company incorporated in England & Wales with company registration No. 02707424), and whose registered office is located at [Ednaston Park, Painters Lane, Ednaston, Ashbourne, Derbyshire DE6 3FA] (the "**Principal**") have entered into an agreement pursuant to Section 278 of the Highways Act 1980 dated on or about the date of this Bond (the "**Agreement**") relating to off-site highway works at Nottingham Road, Clifton; and

(B) Under the terms of the Agreement, the Principal contracted to procure the issuance of a bond in favour of the Beneficiary by a bank or other financial institution acceptable to the Beneficiary in order to secure the discharge of its obligations under the Agreement.

**NOW THIS DEED WITNESSES:**

1. The Bank agrees by this Bond to be bound to the Beneficiary in the sum of £158,916.26 (one hundred and fifty eight thousand nine hundred and sixteen pounds and twenty six pence) (the "**Bond Figure**") on the terms set out herein, but provided in particular that the amount of the Bond Figure may be reduced in accordance with clause 5 below (and the term "**Bond Figure**" shall be construed in this Bond accordingly).
2. At the request of Clowes Developments (UK) Limited covering the obligations of the Principal, the Bank hereby irrevocably and unconditionally undertakes to the Beneficiary that, within 30 days after the Bank's actual receipt from the Beneficiary of the Beneficiary's first written demand in the form set out in the Schedule to this Bond (served in accordance with clause 9 below) (a

"**Demand**"), the Bank shall, subject to the conditions of this Bond, pay to the Beneficiary such sum of money as the Beneficiary shall certify in such Demand to be necessary to remedy the relevant breach or non-observance by the Principal (the "**Damages**"), up to a maximum aggregate liability of the Bond Figure.

3. For the avoidance of doubt, the Bank shall be entitled to accept the Beneficiary's Demand served in accordance with clause 2 above as conclusive evidence that the Damages as specified therein are properly due to the Beneficiary and the Bank shall be under no obligation to carry out any investigation or enquiry into the same, including into whether there has actually been any breach or non-observance by the Principal of any of the obligations imposed on the Principal by the Agreement, and the Bank shall not be deemed at any time or for any purpose to have been fixed with notice of any of the provisions of the Agreement. The Bank may assume that a Demand has been properly served, and act thereon in accordance with the requirements of this Bond, if it appears on its face to be a valid Demand satisfying the requirements of this Bond and received from the Beneficiary.
4. The maximum aggregate liability of the Bank under this Bond shall not exceed the Bond Figure.
5. The amount of the Bond Figure may be reduced to such lower amount as shall be specified in a written notice (served in accordance with clause 9 below) (a "**Reduction Notice**") to the Bank from the Beneficiary, which notice must also refer to this Bond, be headed "Reduction Notice" and state that the First Certificate has been issued under the Agreement. Any such reduction in the Bond Figure shall only be effective upon the actual receipt by the Bank of the Reduction Notice.
6. This Bond is a continuing obligation of the Bank and shall remain in force until released and discharged in accordance with this clause 6. Whether or not the original of this Bond shall be returned to the Bank, the obligations of the Bank under this Bond shall be released and discharged absolutely upon the actual receipt by the Bank from the Beneficiary of a written notice (served in accordance with clause 9 below) (a "**Release Notice**") stating that the Second Certificate has been issued under the Agreement.
7. More than one single Demand may be made pursuant to this Bond.
8. This Bond and the benefits hereof shall not be transferred or assigned without the prior written consent of the Bank.
9. All notices that are to be served on the Bank pursuant to this Bond (including, but not limited to, any Demand, any Reduction Notice and any Release Notice) must be either delivered by hand or posted to the Bank at its address

for service and clearly marked "For Attention: Bonds and Guarantee (Guarantees)".

10. This Bond, and any non-contractual obligations arising out of or in connection with it, shall be governed by and construed in accordance with the laws of England and the Courts of England shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Bond (including a dispute relating to the existence, validity or termination of this Bond or any non-contractual obligation arising out of or in connection with this Bond).
11. This Bond is not made for the benefit of, nor shall any of its provisions be enforceable under the Contracts (Rights of Third Parties) Act 1999 by, any person other than the Beneficiary.

**IN WITNESS WHEREOF** the Bank and the Beneficiary have each executed and delivered this Bond as a deed on the date first before written

THE COMMON SEAL of THE )  
NOTTINGHAMSHIRE COUNTY )  
COUNCIL was hereunto affixed )  
in the presence of:- )  
Authorised Signatory

Signed as a deed by

in the presence of

As the attorney and on behalf of  
The Royal Bank of Scotland plc

Bank Official  
The Royal Bank of Scotland plc  
Bonds & Guarantees  
8th Floor, 1 Hardman Boulevard  
Manchester M3 3AQ

The Royal Bank of Scotland plc has executed this deed on condition that the deed shall not be taken to be delivered for the purposes of section 46(2) of the Companies Act 2006 (as amended) until the deed has been formally dated by or on behalf of The Royal Bank of Scotland plc. Once the last signatory to the deed has executed and dated the deed, The Royal Bank of Scotland plc will deem that date to be the formal date of the deed on behalf of The Royal Bank of Scotland plc.

**SCHEDULE**  
**FORM OF DEMAND**

*[Letterhead of The Nottinghamshire County Council]*

To:

**For Attention: Loans Administration Department (Guarantees)**

[Date]

Dear Sirs,

**Bond dated [     ] 2019 in favour of The Nottinghamshire County Council (the "Bond"), issued at the request of**

We refer to the Bond. Terms defined in the Bond have the same meanings when used in this Demand.

1. Pursuant to the Bond, we hereby demand payment of the sum of £**[INDICATE AMOUNT IN FIGURES]** (**[INDICATE AMOUNT IN WORDS]** pounds).
2. We hereby certify both:
  - (i) that there has been a breach or non-observance by the Principal of one or more of the obligations of the Principal under the Agreement; and
  - (ii) that the amount demanded by us in paragraph 1 of this Demand above is the amount that is necessary to remedy the afore-mentioned breach or non-observance.

3. Payment pursuant to this Demand should be made to the following account:

Account Name:

Account Number:

Sort Code:

Bank:

Payment Reference:

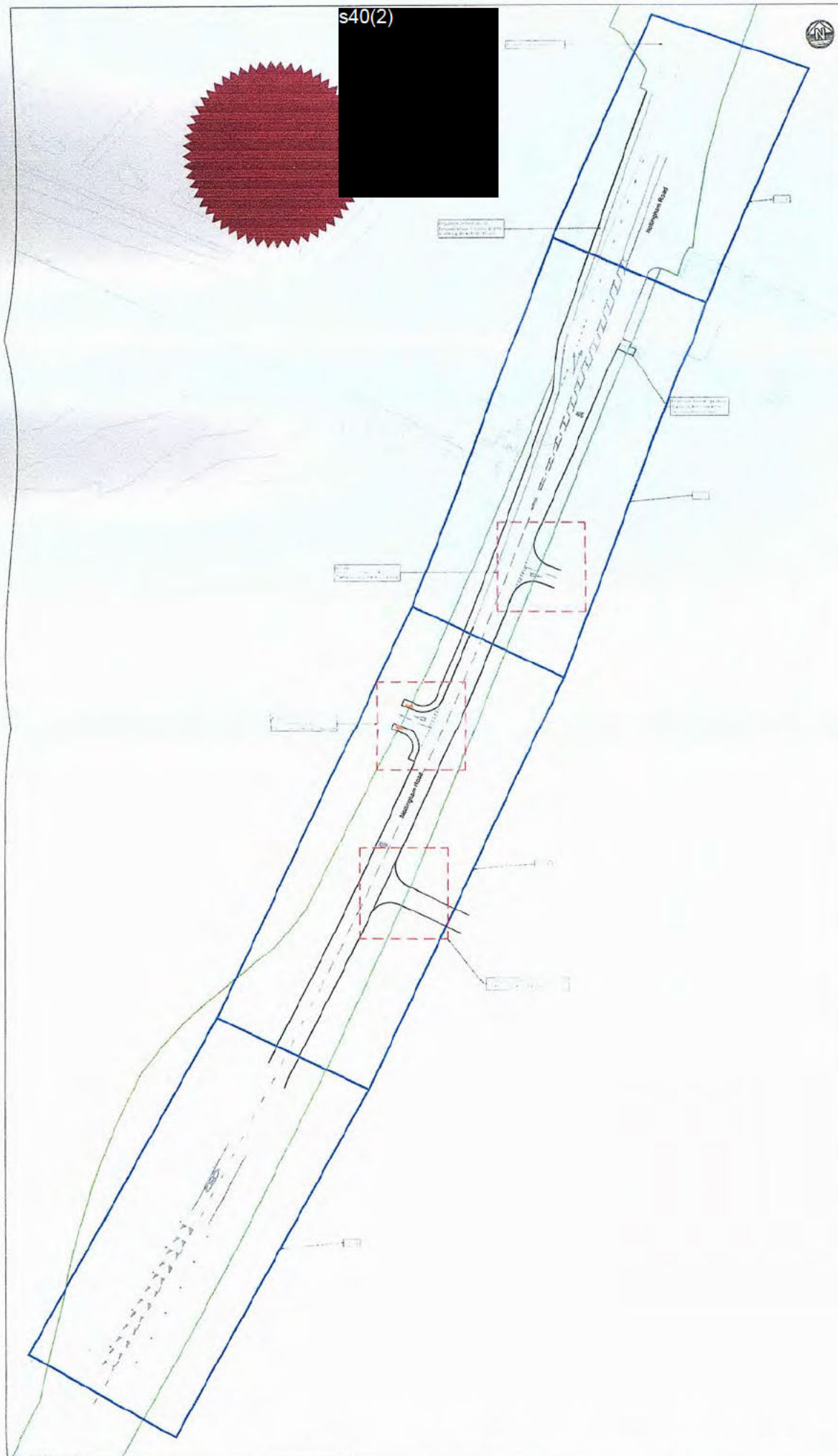
Yours faithfully,

For and on behalf of

**THE NOTTINGHAMSHIRE COUNTY COUNCIL**

ANNEXED PLANS





s40(2)

- Notes**
1. All dimensions are in millimetres unless otherwise stated.
  2. The drawing is to be used in conjunction with the relevant specifications, standards and codes of practice.
  3. All dimensions are in millimetres unless otherwise stated.
  4. The drawing is to be used in conjunction with the relevant specifications, standards and codes of practice.

**Legend**

s40(2)

s40(2)

SEAL REGISTER  
NO. 1000000000



10/02/20	Issued for NCT - new information added	20%	DM
10/02/20	Issued for NCT - to be part of a separate S178	10%	DM
14/02/20	Issued for NCT - to be part of a separate S178	10%	DM
10/02/20	Issued for NCT - to be part of a separate S178	10%	DM
10/02/20	Issued for NCT - to be part of a separate S178	10%	DM
10/02/20	Issued for NCT - to be part of a separate S178	10%	DM
10/02/20	Issued for NCT - to be part of a separate S178	10%	DM

**Issues & Revisions**

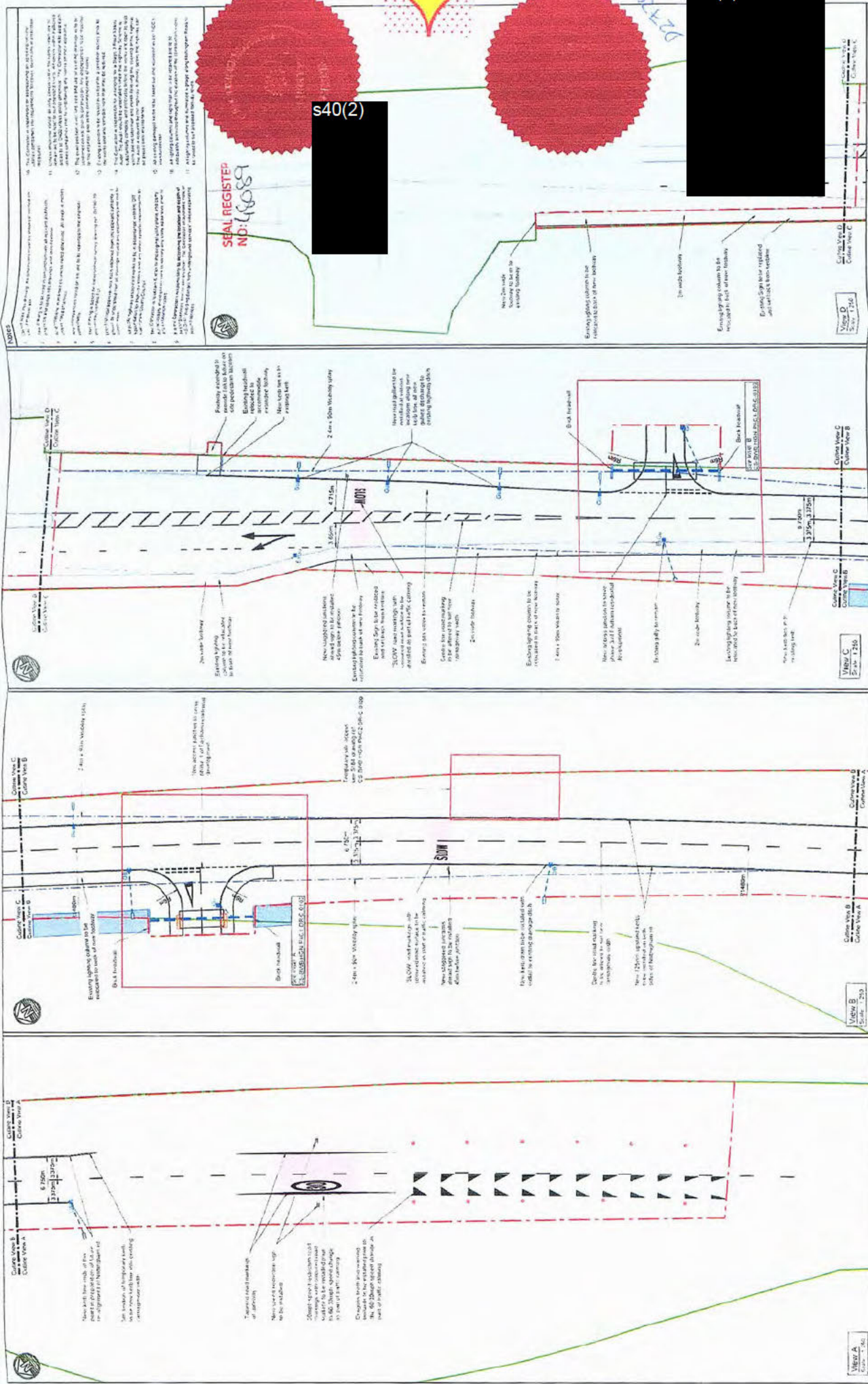
**BWB**

Birmingham 0121 733 5307  
 Leeds 0113 278 5002  
 London 020 7492 3819  
 Manchester 0161 278 4360  
 Nottingham 0115 924 1700  
[www.bwbgrouping.com](http://www.bwbgrouping.com)



Section 278  
Key Plan

Drawn by	D. Swift	Checked by	A. Lodge
Scale	NTH 1:200	Scale	1:500
Project	CS-BWB-HGN-PAC1-DR-C-0101		
Sheet No.	S1	Total Sheets	P5



**NOTES**

1. The Contractor is responsible for maintaining an adequate construction log.
2. All materials and workmanship shall conform to the specifications and standards of the Department of Transportation, State of Maryland.
3. The Contractor shall be responsible for obtaining all necessary permits and approvals from the appropriate authorities.
4. The Contractor shall be responsible for maintaining the safety of the work area and the surrounding area.
5. The Contractor shall be responsible for maintaining the quality of the work and for correcting any deficiencies.
6. The Contractor shall be responsible for maintaining the schedule of the project.
7. The Contractor shall be responsible for maintaining the communication with the project manager and the other stakeholders.
8. The Contractor shall be responsible for maintaining the records of the project.
9. The Contractor shall be responsible for maintaining the safety of the workers and the public.
10. The Contractor shall be responsible for maintaining the environment and for minimizing any impacts.
11. The Contractor shall be responsible for maintaining the quality of the materials and the workmanship.
12. The Contractor shall be responsible for maintaining the safety of the work area and the surrounding area.
13. The Contractor shall be responsible for maintaining the quality of the work and for correcting any deficiencies.
14. The Contractor shall be responsible for maintaining the schedule of the project.
15. The Contractor shall be responsible for maintaining the communication with the project manager and the other stakeholders.
16. The Contractor shall be responsible for maintaining the records of the project.
17. The Contractor shall be responsible for maintaining the safety of the workers and the public.
18. The Contractor shall be responsible for maintaining the environment and for minimizing any impacts.
19. The Contractor shall be responsible for maintaining the quality of the materials and the workmanship.
20. The Contractor shall be responsible for maintaining the safety of the work area and the surrounding area.

**SEAL REGISTER**  
NO. 14889

**View A**  
Scale: 1/8" = 1'-0"

**View B**  
Scale: 1/8" = 1'-0"

**View C**  
Scale: 1/8" = 1'-0"

**View D**  
Scale: 1/8" = 1'-0"

**Section 278**  
**General Arrangement**  
**Sheet 1**

**Fairham**

**CS-BWB-HGN-PAC1-OR-C-0102** S1 P4

**Project** CS-BWB-HGN-PAC1-OR-C-0102

**Drawn by** [Name]

**Checked by** [Name]

**Scale** As Shown

**Date** 02/18/2019

**Project** Preliminary

**BWB**

**CWC GROUP**

**Legend**

- 1. 12" x 18" x 1/2" concrete curb
- 2. 6" x 6" x 1/2" concrete curb
- 3. 4" x 6" x 1/2" concrete curb
- 4. 2" x 6" x 1/2" concrete curb
- 5. 1" x 6" x 1/2" concrete curb
- 6. 1/2" x 6" x 1/2" concrete curb
- 7. 1/4" x 6" x 1/2" concrete curb
- 8. 1/8" x 6" x 1/2" concrete curb
- 9. 1/4" x 6" x 1/2" concrete curb
- 10. 1/8" x 6" x 1/2" concrete curb
- 11. 1/4" x 6" x 1/2" concrete curb
- 12. 1/8" x 6" x 1/2" concrete curb
- 13. 1/4" x 6" x 1/2" concrete curb
- 14. 1/8" x 6" x 1/2" concrete curb
- 15. 1/4" x 6" x 1/2" concrete curb
- 16. 1/8" x 6" x 1/2" concrete curb
- 17. 1/4" x 6" x 1/2" concrete curb
- 18. 1/8" x 6" x 1/2" concrete curb
- 19. 1/4" x 6" x 1/2" concrete curb
- 20. 1/8" x 6" x 1/2" concrete curb

**Legend**

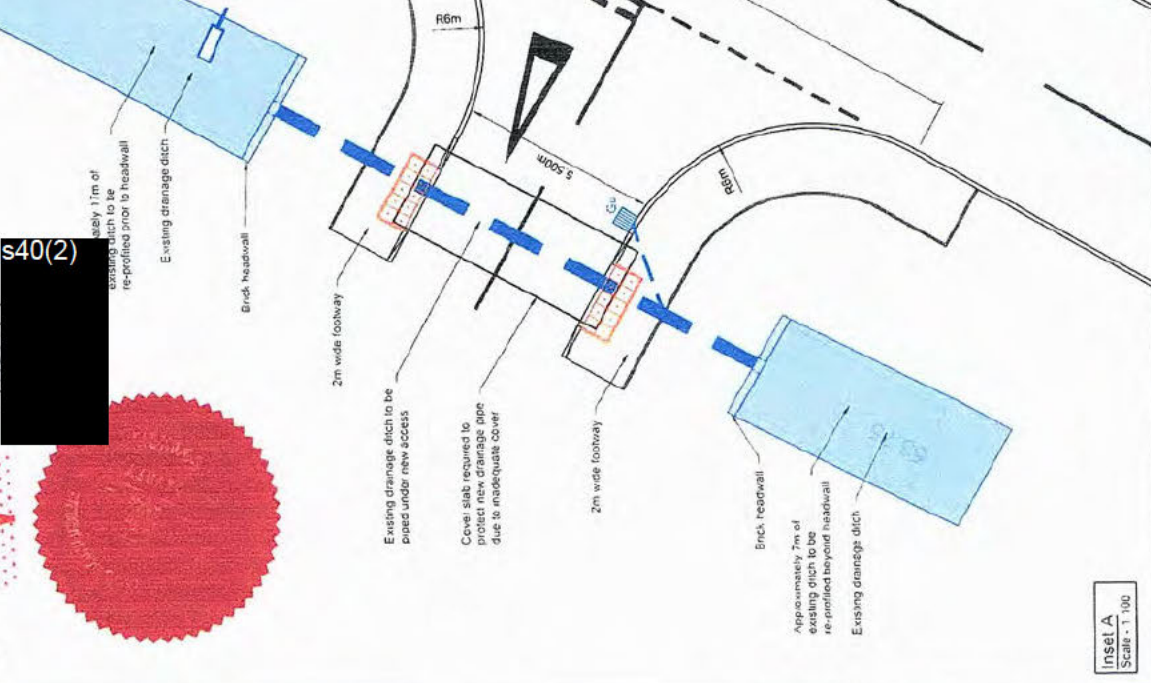
- 1. 12" x 18" x 1/2" concrete curb
- 2. 6" x 6" x 1/2" concrete curb
- 3. 4" x 6" x 1/2" concrete curb
- 4. 2" x 6" x 1/2" concrete curb
- 5. 1" x 6" x 1/2" concrete curb
- 6. 1/2" x 6" x 1/2" concrete curb
- 7. 1/4" x 6" x 1/2" concrete curb
- 8. 1/8" x 6" x 1/2" concrete curb
- 9. 1/4" x 6" x 1/2" concrete curb
- 10. 1/8" x 6" x 1/2" concrete curb
- 11. 1/4" x 6" x 1/2" concrete curb
- 12. 1/8" x 6" x 1/2" concrete curb
- 13. 1/4" x 6" x 1/2" concrete curb
- 14. 1/8" x 6" x 1/2" concrete curb
- 15. 1/4" x 6" x 1/2" concrete curb
- 16. 1/8" x 6" x 1/2" concrete curb
- 17. 1/4" x 6" x 1/2" concrete curb
- 18. 1/8" x 6" x 1/2" concrete curb
- 19. 1/4" x 6" x 1/2" concrete curb
- 20. 1/8" x 6" x 1/2" concrete curb

**HERE** 

SEAL REGISTER  
NO. 15553

s40(2)

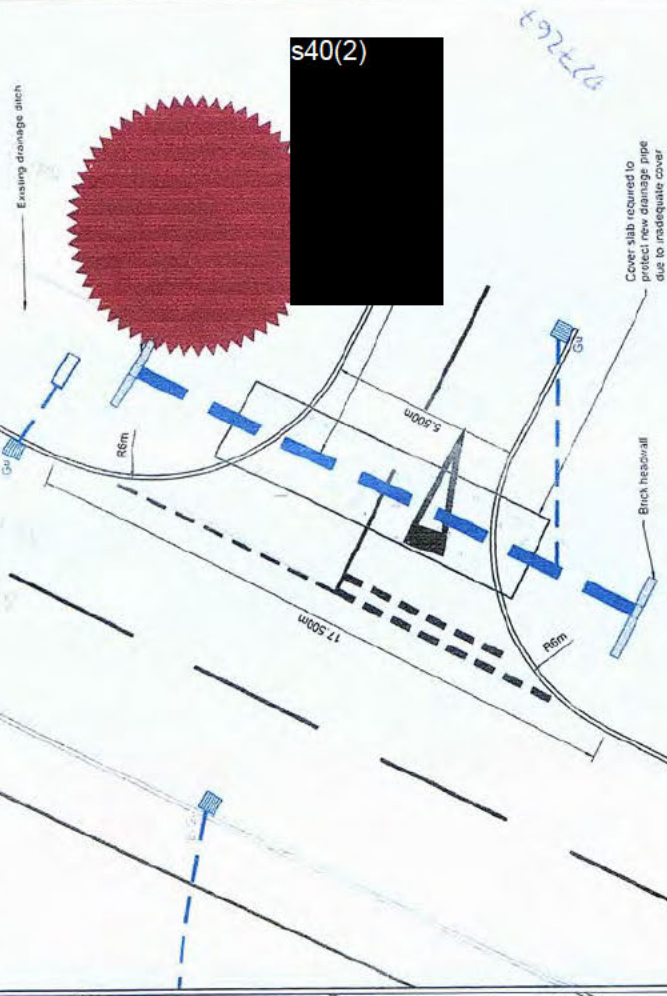
Approximately 7m of  
existing ditch to be  
re-profiled prior to headwall



**Inset A**  
Scale: 1:100

**Legend**

	Proposed highway gully & outlet drain		Proposed kerb
	Proposed 120mm storm top pipe		Proposed kerb
	2.0m x 900mm catch basin		Proposed road markings
	Proposed surface water drainage pipe		Existing ditch to be re-profiled
	Proposed 150mm storm top pipe		Proposed 150mm storm top pipe
	Proposed 150mm storm top pipe		Proposed 150mm storm top pipe
	Proposed 150mm storm top pipe		Proposed 150mm storm top pipe
	Proposed 150mm storm top pipe		Proposed 150mm storm top pipe



s40(2)



17723

**Inset B**  
Scale: 1:100

**Notes**

- Do not scale this drawing. All dimensions must be checked against the site plan.
- This drawing is to be read in conjunction with all relevant drawings, specifications, and standards.
- All dimensions are in meters unless otherwise stated in millimeters.
- Any discrepancies noted on site are to be reported to the engineer immediately.
- This drawing is based on topographical survey data of 2015-16 prepared by Minter P.L.
- Site location shown has been obtained from the relevant authority and is for information only. It is not to be used as a basis for construction.
- All works to be carried out in accordance with the requirements of the Highway Act 1980 and other applicable regulations by Haringham County Council.
- The Contractor is to obtain & refer to the original utility plans and carry out necessary investigation work to satisfy any utility agencies prior to any excavation works.
- It is the Contractor's responsibility to determine the location and depth of existing services prior to construction. The Contractor should take note of HGI027 'avoiding target non-underground services' when excavating structures.
- The Contractor is responsible for protecting an adjoining or existing structure in accordance with the requirements for their department or protection requirements.
- Unless otherwise stated, all utility covers, manholes, and other structures are to be made of concrete and are to be installed to the correct depth and location. The Contractor is to ensure that the correct bedding and bedding protection is provided throughout the installation of the structures.
- All existing culverts and structures are to be maintained. No road to be used as a haul road for proposed works.
- Existing pavement to be reused is subject to a condition survey prior to the works and any remedial works that may be required.
- The Contractor is responsible for arranging for a Stage 3 Road Safety Audit. The Audit should be undertaken when the highway scheme is substantially complete and preferably before the commencement of the works.
- At existing culverts, the Highway Authority may be asked to provide maintenance.
- All existing culverts are to be maintained and replaced as per NCC's standard detail.
- All existing culverts and structures are to be maintained to the correct depth and location. The Contractor is to ensure that the correct bedding and bedding protection is provided throughout the installation of the structures.
- All existing culverts and structures are to be maintained. No road to be used as a haul road for proposed works.

**Issues & Revisions**

Issue No.	Description	Date
1	Issue for approval	01/11/20
2	Issue for approval	01/11/20
3	Issue for approval	01/11/20
4	Issue for approval	01/11/20
5	Issue for approval	01/11/20

**Legend**

	Proposed 120mm storm top pipe
	Proposed 150mm storm top pipe
	Proposed 150mm storm top pipe
	Proposed 150mm storm top pipe
	Proposed 150mm storm top pipe
	Proposed 150mm storm top pipe
	Proposed 150mm storm top pipe
	Proposed 150mm storm top pipe

**BWB**  
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01753 751100  
www.bwbconsultants.co.uk

**CWC**  
CWC GROUP  
01753 751100  
www.cwcgroup.co.uk

**Fairham**

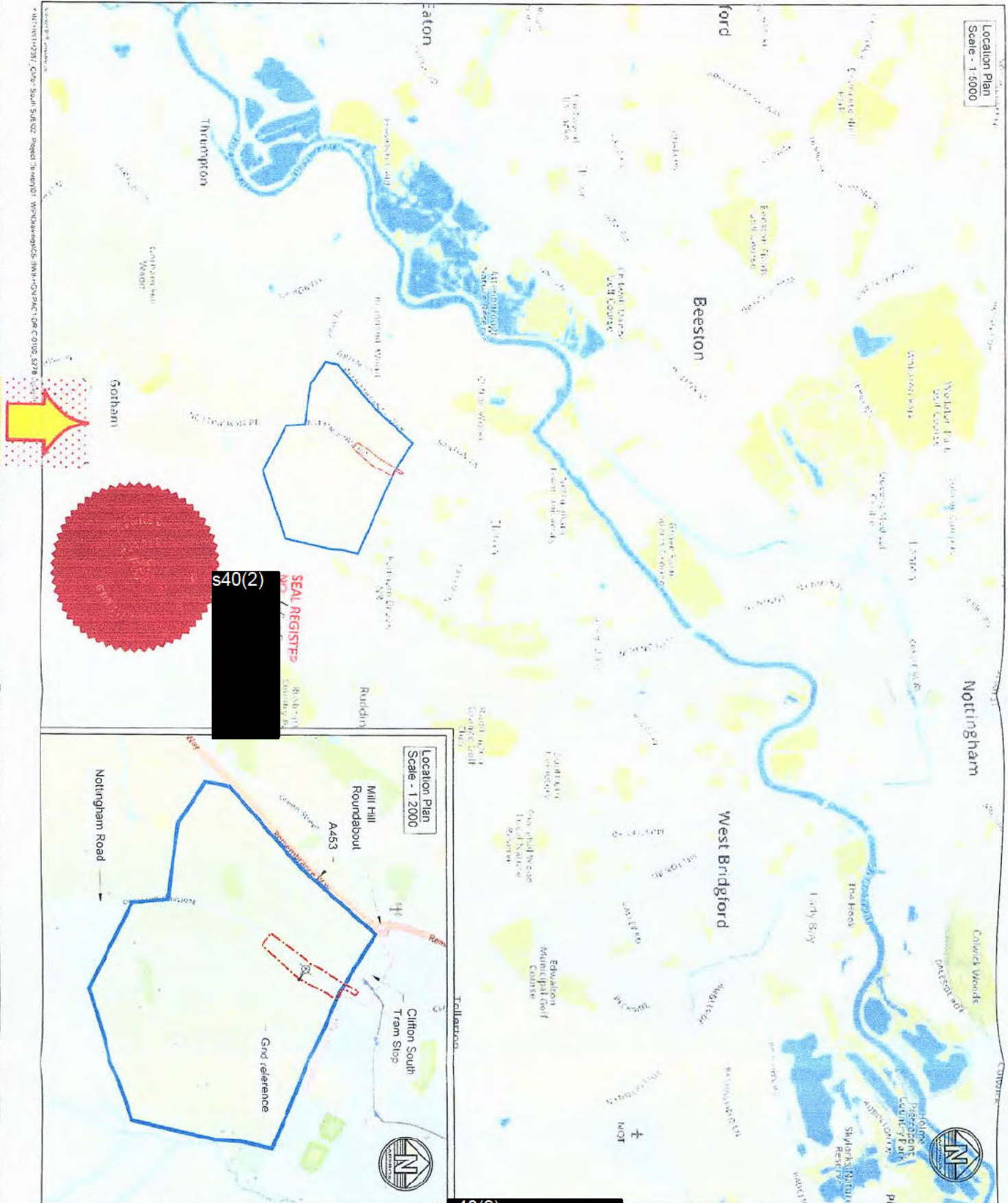
Section 278  
General Arrangement  
Sheet 2

CS-BWB-HSH-PAC-OR-C-0103 S1 P3

Preliminary

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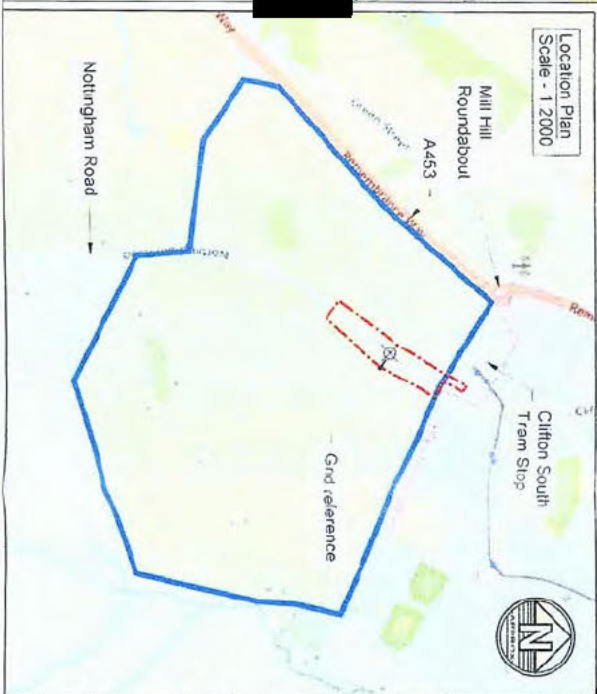
Location Plan  
Scale - 1:5000



s40(2)

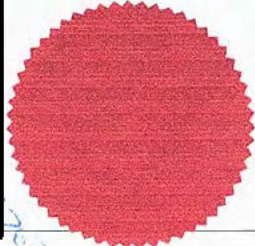
SEAL REGISTERED

Location Plan  
Scale - 1:2000



- NOTES**
1. This plan is a preliminary plan and is subject to change without notice.
  2. The plan is not to be used for any purpose other than that for which it is intended.
  3. The plan is not to be used for any purpose other than that for which it is intended.
  4. The plan is not to be used for any purpose other than that for which it is intended.
- Legend**
- (dashed line) Boundary
  - (solid line) Boundary
  - (dotted line) Boundary

s40(2)



**BWB**

3, Bridge Street, Nottingham, Notts, NG1 6JF  
 Tel: 0115 951 2000  
 Fax: 0115 951 2001  
 Email: info@bwb.co.uk  
 Website: www.bwb.co.uk

**Fairham**

Section 278  
Location Plan

Information			
Client	Scale	Project No.	Project Name
CS: BMB-HON-PACT-DR-C-0100	1:5000	278	Section 278 Location Plan
Drawn	Checked	Approved	Issue
CS: BMB-HON-PACT-DR-C-0100	CS: BMB-HON-PACT-DR-C-0100	CS: BMB-HON-PACT-DR-C-0100	S2 P4