

AN AGREEMENT made the

4<sup>th</sup>

day of

February

2020  
~~2019~~

BETWEEN

- [REDACTED]
- (1) **PERSIMMON HOMES (~~SOUTH WEST~~) LIMITED** (Company No: 00929585) whose Registered Office is at Persimmon House Fulford York YO19 4FE, **HALLAM LAND MANAGEMENT LIMITED** (Company No: 02456711) whose Registered Office is at Banner Cross Hall Ecclesall Road South Sheffield S11 9PD and **TAYLOR WIMPEY ~~EXETER~~ DEVELOPMENTS LIMITED** (Company No: ~~00401589~~ 643420) whose Registered Office is at ~~4 Capital Court Sowton Industrial Estate Exeter Devon EX2 7FW~~ (together "the Developer")  
**GATE HOUSE, TURNPIKE ROAD, HIGH WYCOMBE  
BUCKINGHAMSHIRE, HP12 3NR**
- (2) **DEVON COUNTY COUNCIL** of County Hall, Topsham Road, Exeter EX2 4QD ("Council")
- [REDACTED]

**WHEREAS:**

- 1) The Council is the Local Highway Authority
- 2) The Developer is the registered proprietor at HM Land Registry under title DN612520 of the land adjoining Southbrook Lane, Whimble, Exeter which is shown for identification only by red edging on the Drawings annexed hereto which includes within such edging the site of the proposed Road or Roads shown coloured grey and edged red on the drawings numbered 10301-110-251 G, 10301-180-201 B and 10301-110-201 N annexed hereto and is desirous of making up the Road or Roads so that the same shall become a highway or highways maintainable at public expense.
- 4) The Developer has requested that when the works hereinafter referred to for the making up the Road or Roads have been executed and maintained as hereinafter appearing the Council shall undertake the maintenance of the Road or Roads as highway or highways maintainable at the public expense which the Council has agreed to do upon the terms and conditions hereinafter appearing
- 5) The Council is requiring that the Developer execute certain works upon the public highway as hereinafter described and the Council is satisfied that those works will be of benefit to the public

In pursuance of Sections 38 and 278 of the Highways Act 1980 and Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and Section 111 of the Local Government Act 1972 and with other enabling powers; and it is hereby agreed and declared by and between the parties as follows

**1. Interpretation**

In this Agreement where the context so admits:

"Certificate of Completion" means the certificate to be issued on satisfactory completion of the Highway Works in accordance with Clause 10

**“Dedication Land Drawing”** means drawing number 10301-180-2-1B annexed hereto

**“Design Manual”** means the “Design Manual for Roads and Bridges” reference GG119 published by the Highways Agency and others, and any publication which amends or replaces it;

**“Development”** means Phase 4 Enabling Works of the East Devon New Community

**“Drawings”** mean annexed drawings with reference numbers 10301-110-251 J, 10301-180-201 B and 10301-110-201 N signed by or on behalf of the parties hereto and any amended such Drawings signed by or on behalf of the Proper Officer

**“East Devon New Community (Phase 4)”** means the Land Adjacent To Southbrook Lane forming Phase 4 of the East Devon New Community outlined in red on the Plan annexed hereto titled MLR Highway Works Section 38 –MLR Phase 4 Location Plan and which has reference number 10301-1000-051 G

**“Final Certificate”** means the certificate to be issued on satisfactory completion of the maintenance period for the Highway Works in accordance with Clause 13

**“Highways Works”** means the works to be executed upon the public highway and shown with a broken red line on the Drawings annexed hereto.

**“Maintenance Period”** means the period of 12 calendar months

**Part 1 Certificate”** means the certificate to be issued on satisfactory completion of the Part 1 Works in accordance with Clause 10

**“Part 1 Works”** means the works referred to in Part 1 of the Schedule

**“Part 2 Certificate”** means the certificate to be issued on satisfactory completion of the Part 2 Works in accordance with Clause 12

**“Part 2 Works”** means the works referred to in Part 2 of the Schedule

**“Programme of Works”** means that referred to in Clause 3.1

**“Proper Officer”** means the Head of Planning, Transportation & Environment of the Council or such other officer from time to time with responsibility for highways

**“Roads”** means those part of the Highway Works as shown coloured grey on Drawings

**“Site Plan”** means the title plan for title number DN612520

**“Specification”** means the Highways in Residential and Commercial Estates Design Guide dated Jan 1996 and as amended and current at the date of commencement of the Highway Works

**“Stage 1, 2, 3 and 4 Safety Audits”** means the safety audits so defined in the Design Manual and the Institution of Highways and Transportation’s Road Safety Audit guidelines;

**“Statutory Undertaker”** means a statutory undertaker as defined in Section 329(1) of the Highways Act 1980 and British Telecommunications plc

**“Traffic Manager”** means the officer appointed by the Council to act as traffic manager for the purposes of the Traffic Management Act 2004

**“Works”** means the works to be carried out on the Developer’s land being the land shown on the Site Plan and shown with a solid red line on the Drawings annexed hereto.

## **2. Developer's Liability**

SUBJECT to the terms conditions agreements and undertakings contained in this Agreement the Developer shall carry out and complete the Works and the Highway Works at the Developer's expense in a good and workmanlike manner and with proper materials in accordance in all respects with the Specification and the Drawings to the satisfaction of the Proper Officer and in accordance with permits and approvals granted by the Council or any other statutory or public authorities and (except as may be otherwise provided in this Agreement) shall complete the Works and the Highway Works within six (6) months of commencing the Works and Highway Works

## **3. Highway Works**

The Developer covenants with the Council that the Developer will at its own expense in relation to the Highway Works observe and perform to the reasonable satisfaction of the Council the following requirements obligations and conditions or any of them outstanding at the date of this Agreement and will immediately do any act or thing required by the Council to remedy any breach of those requirements obligations and conditions: -

- 3.1 Not to commence any part of the Highway Works before a Programme of Works and a method of carrying out the Highway Works shall have been approved by the Proper Officer (such approval not to be unreasonably withheld) and the Drawings have been provided as a CAD (dwg.) file or such other format as agreed in writing by the Proper Officer
- 3.2 Secure at its own expense any necessary approvals required from any Statutory Undertakers, emergency services and other public authorities and utilities and comply with all requirements of these
- 3.3 execute the Highway Works and works associated therewith expeditiously causing no unnecessary nuisance to the public
- 3.4 employ a suitably qualified supervisor to oversee the construction of the Highway Works and to act as liaison between the Developer contractor and the Council
- 3.5 employ a contractor or contractors to carry out the Highway Works who shall be approved by the Proper Officer (such approval not to be unreasonably withheld or delayed) and that all the covenants conditions and obligations contained in this Agreement relating to the method of working shall be included in any agreement between the Developer and its contractor and it shall not depart from it without the approval of the Council and the said contractor or contractors shall at all times during the progress of the Highway Works maintain a public liability insurance policy with a member of the Association of British Insurers for at least £5,000,000
- 3.6 to give the Traffic Manager appropriate notice in the form required by the Traffic Manager to comply with the requirements of the Traffic Management Act 2004 of the Developer intention to commence the Highway Works

- 3.7 to undertake all the requirements in respect of the execution of the Highway Works under the Construction (Design and Management) Regulations 2015 ("Regulations") as if the Developer were the client and to indemnify the Council in respect of any actions proceedings costs claims demands and liabilities arising out of any breach of the Regulations
- 3.8 as soon as possible after the date of this Agreement and in any event prior to the commencement of work on any element of the Highway Works the Developer shall contact the Council who shall identify any necessary Traffic Regulation Orders and any other similar changes to the highway subject to statutory publications e.g. zebra crossings, road humps etc and the Developer shall request the Council, if the Council is satisfied with the proposals to make any such Order or publish notice of intent or similar and shall indemnify the Council in respect of the costs involved in making any such Order including notification procedure pursuant to the relevant legislation (or any statutory modification or re-enactment thereof)
4. The Developer covenants to include in the conditions of contract of the contractors (or any sub contractors) engaged to carry out the Highway Works the following clauses:-
- 4.1 The Programme of Works and method of carrying out the Highway Works shall be approved by the Proper Officer and the contractor shall in all cases submit written notice of its intended Programme of Works and any width restrictions or occupation of the public highway to the Proper Officer for approval in writing at least 4 weeks in advance of the proposed commencement of those works and the approved Programme of Works and method shall be followed at all times
- 4.2 All work on the public highway shall be restricted to dates and times agreed in writing by the Proper Officer in order to minimise delay to vehicular traffic
- 4.3 All operations on or affecting the public highway shall be carried out so as to avoid risk of danger to both pedestrians and vehicular traffic and (except as may be previously agreed in writing by the Proper Officer) to avoid any interference with the free movement of pedestrians and vehicular traffic
- 4.4 The contractor shall in accordance with the agreed Programme of Works be allowed to take possession of so much of the public highway land as may be agreed in writing by the Proper Officer for the carrying out of the Highway Works
- 4.5 Where in the opinion of the Proper Officer work affecting the public highway causes excessive traffic congestion the contractor shall immediately suspend that work and remove any plant or equipment that create such restrictions to traffic flows
- 4.6 The Proper Officer may require the contractor to agree to any reasonable variations to any previously agreed Programme of Works in the event of excessive traffic congestion resulting from it and the contractor will take all steps to comply with any such request

4.7 The contractor will comply with the Volume 1 Department of Transport's Manual of Contract Documents for Highway Works (MCHW) – Specification for Highway Works and any publication which amends or replaces it and shall include the following additional clauses to that specification:-

4.7.1 The traffic signs road markings lamps barriers and traffic control signals shall be in accordance with the requirements of the Traffic Signs Regulations and General Directions current at the date of execution of the work

4.7.2 Traffic control signals shall be operated in the vehicle actuated mode unless otherwise agreed by the Proper Officer

4.7.3 Traffic cones and cylinders shall comply with the requirements of BS 873 Part 8 Category A Designation 1

4.7.4 The contractor shall construct temporary diversion ways wherever they propose to interfere with the existing public or private roads or other ways over which there is a public or private right of way for any traffic

4.7.5 The standard of construction and lighting shall be suitable in all respects for the appropriate class of road and the width of any diversion shall not (unless otherwise agreed with the Proper Officer such agreement not to be unreasonably withheld) be less than that of the existing way. The standard of construction shall conform to the requirements of the Council

4.7.6 Temporary white lining is to be provided to all such diversions and laid in accordance with the requirements of the Traffic Signs Regulations and General Directions or otherwise as instructed by the Proper Officer

4.7.7 Roads accesses and rights of way which are being used by construction traffic shall at all times be kept clean and clear so far as possible of dirt mud and material dropped from vehicles or from tyres arising from such use and the contractor shall provide maintain and use suitable equipment for this purpose

4.7.8 The contractor shall at all times ensure that all highway drains affected by its works shall be kept clear of any spoil mud slurry or other material likely to impede the free flow of water in them

4.7.9 The contractor shall provide the Proper Officer with the name and telephone number of a person and their deputy who can be contacted at any time during the day and night and who will be in a position to put into immediate effect any measures considered necessary by the Proper Officer to ensure the safety of the public

5. The Programme of Works shall include details of:-

- 5.1 The sequence in which each phase of the Highway Works including temporary highway works or temporary access arrangements shall be undertaken
- 5.2 The period within which each phase of work shall be completed
- 5.3 Temporary traffic and pedestrian arrangements during the construction of the development of the adjoining land including the means and positions of vehicular and pedestrian access to the development
- 5.4 Such additional plans and details as may be reasonably required by the Council to describe each phase of work

**6. Declaration**

The Developer hereby declares and warrants to the Council that he has and will throughout the duration of this Agreement maintain full right and liberty and consent to carry out such works as may be necessary to connect the Road or Roads to a vehicular highway or highways

**7. Statutory Undertakers – Connections to Existing Services**

THE Developer shall before connecting the Road or Roads with any highway or highways maintainable at the public expense give notice to each person board or authority being the Statutory Undertaker for the time being of any service or services laid in upon or under such highway or highways of the proposal to make such connection as if the connection were a work to be executed for the purposes of and were mentioned in Section 48 of the New Roads and Street Works Act 1991 and shall indemnify the Council in respect of the cost of any works or measures considered necessary by any Statutory Undertaker in consequence of the proposal to make such connection

**8. Access to the Works/ Highway Works & Inspection**

- 8.1 The Developer shall during the carrying out of the Works and the Highway Works give and allow the Proper Officer and any other officer of the Council access to every part of the Works and the Highway Works and the site thereof for the purpose of inspecting the same and all materials used or intended to be used therein and the Developer shall if requested open up for inspection any portion of the Works or (as the case may be) the Highway Works which may be covered up and should the Developer decline to comply with such a request the Council may itself open up the Works or (as the case may be) the Highway Works and in the event of any such portion of the same being found (in the reasonable opinion of the Council) to be defective the cost of such opening shall be recoverable from the Developer
- 8.2 If any inspection carried out under sub-clause 8.1 reveals defects in the Works or the Highway Works the Developer shall carry out remedial works to the satisfaction of the Council

- 8.3 The Council will inspect any remedial works carried out under sub-clause 8.2 within 5 working days of receipt of a written request from the Developer to do so
- 8.4 Following any inspection under sub-clause 8.3 the Council shall within 5 working days of its inspection notify the Developer in writing of its satisfaction with the remedial works PROVIDED THAT in the event of the remedial works being unsatisfactory this process may be repeated as many times as necessary until the defective works have been remedied to the satisfaction of the Council
- 8.5 Upon practical completion of the Works and Highway Works the Developer shall in each case notify the Council in writing of their completion and within fourteen days of receipt of such notice the Council shall carry out a final inspection of the Works or (as the case may be) the Highway Works
- 8.6 The Developer shall:-
- 8.6.1 Employ an auditor who meets the qualifying standards of the Design Manual and who will not have been involved in any part of the scheme design to carry out the Stage 1 2 3 and 4 Safety Audits who shall be approved by the Proper Officer (such approval not be unreasonably withheld or delayed) and the said auditor or auditors shall at all times during the Stage 1 2 3 and 4 Safety Audits maintain a public liability insurance policy with a member of the Association of British Insurers for at least £5,000,000
- 8.6.2 Provide copies of the Stage 1 and 2 Safety Audit reports to the Proper Officer and any consequent changes or recommendations agreed with the Proper Officer
- 8.6.3 Provide copies of the Stage 3 and 4 Safety Audit reports to the Proper Officer and any recommendations or exception agreed with the Proper Officer and the Developer shall comply with the recommendations of such report to the reasonable satisfaction of the Proper Officer
- 8.6.4 Not less than 14 days before the Highway Works are due to be completed the Developer shall ensure that the Stage 3 Safety audit of the Highway Works is carried out and upon receipt of the safety audit report the Developer shall undertake such works to comply with the recommendations of such report to the reasonable satisfaction of the Proper Officer
- 8.6.5 The Developer shall ensure that the Stage 4 Safety Audit is carried out not earlier than 12 months nor later than 36 months from issue of the Certificate of Completion
- 8.7 In the event of the final inspection revealing any defect or defects in the Highway Works or (as the case may be) the Works the provisions of clause 8.4 shall apply as if they related to a final inspection

**9. Obligations During the Maintenance Period for the Works:**

**9.1** During the maintenance period for the Works:

9.1.1 The Developer at his own expense shall maintain the Works including all grassed and plated areas and carry out such routine maintenance as may be necessary to facilitate use by vehicles and pedestrians

9.1.2 the Council at its own expense shall undertake routine maintenance of the and be responsible for payment for energy for all street lights and illuminated traffic signs

**10. Part 1 Certificate**

On completion of the Part 1 Works to the satisfaction of the Proper Officer in all respects the Proper Officer shall issue the Part 1 Certificate to the Developer

**11. Occupation of buildings**

No dwelling forming part of the East Devon New Community (Phase 4) shall be occupied until:

- a) the Proper Officer has issued the Part 1 Certificate in respect of the Roads or such part of the Roads as will provide the occupier with access to a vehicular highway and where applicable a base course pedestrian access to such highway has been provided and
- b) the Roads or such part of the Roads have columns erected ready for lighting in accordance with the Specification and the Drawings and the Developer has arranged with the electricity board for an electricity supply thereto by giving at least 6 weeks prior notice in writing or as may otherwise be agreed in writing by the Proper Officer

**12. Part 2 Certificate**

On completion of the Part 2 Works to the satisfaction of the Proper Officer in all respects the Proper Officer shall if any sewer constructed under the Roads under an agreement under Section 104 of the Water Industry Act 1991 has been certified as being or having been on maintenance issue the Part 2 Certificate to the Developer and from the date thereof

- a) the Maintenance Period shall commence to run for a period of 12 months
- b) the Roads shall become highway and remain forever open for use by the public
- c) the Developer shall remain the street manager for the purposes of Section 49 (4) of the New Roads and Street Works Act 1991 and any statutory modification or re-enactment thereof until such time as the Roads shall become highway maintainable at the public expense

**13. Obligations During Maintenance Period for Highway Works**

During the maintenance period for the Highway Works the Developer shall maintain the Highway Works and for the purposes of this clause and for the avoidance of doubt the Developer shall not have any obligations in respect of cyclic maintenance such as sweeping cleansing and provision of street lighting and other functions normally performed by the Council in respect of highways maintained at public expense

**14. Final Certificate for the Works and the Highway Works**

Prior to the expiration of the respective maintenance periods for the Works and the Highway Works the Developer shall forthwith at their own expense reinstate and make good any defect or damage which may have arisen from any cause whatsoever or be discovered during the maintenance period of which they have been notified in writing by the Proper Officer so that the Works or (as the case may be) the Highway Works comply with the Specification **and then provided that:**

- 13.1 the Developer has paid to the Council all amounts due to it under this Agreement and
- 13.2 any necessary reinstatement or other works have been completed to the satisfaction in all respects of the Proper Officer
- 13.3 the Developer has delivered to the Proper Officer drawings showing the works as constructed one set being a CAD (dwg.) file or such other format as agreed in writing by the Proper Officer

the Proper Officer shall issue the Final Certificate to the Developer in respect of the Works or (as the case may be) the Highway Works

**15. Grants of Rights of Drainage**

Prior to completion of this Agreement the Developer shall without cost to the Council execute or procure the execution by all necessary parties of such deeds as are in the opinion of the Council necessary to secure to the Council full drainage rights in respect of such parts of the surface water drainage system of the Road or Roads as are situate outside the limits of the Road or Roads and the Council shall not be liable for the payment of compensation or legal or any other costs or fees arising on account of the execution of any such deeds. If after completion of this Agreement the Council find that further drainage rights are reasonably required the Developer will at their own cost obtain those rights prior to any further certificates being issued in accordance with Clauses 10 and 13. For the avoidance of doubt the Council will not be

responsible for the drainage system until the issue of the Final Certificate in accordance with Clause 13

## 16 Procedure for Inspection and Issue of Certificates

Following receipt of a written application from the Developer for the issue of a Part 1 or Part 2 Certificate or Final Certificate pursuant to this Agreement the Proper Officer shall inspect the Works and where necessary provide the Developer with a definitive list in writing of any remedial Works required to be carried out before the issue of that Certificate. Any such remedial Works shall be subject to the same inspection procedure detailed herein until such time as they shall be completed to the reasonable satisfaction of the Proper Officer who shall issue the relevant Certificate

## 17. Adoption

- 17.1 Upon the issue of the Final Certificate the Road or Roads shall become highway or highways maintainable at the public expense
- 17.2 For the avoidance of doubt any hedges between the public highway and the Developer's adjacent development shall remain the responsibility of the Developer and its successors in title and the Developer and its successors in title shall ensure that such hedges are cut and maintained at all times in the future in a condition which will not cause any obstruction to the public highway and in the event that the Developer and its successors in title default in maintaining such hedges the Council shall be entitled to carry out such maintenance and recover the costs of doing so from the Developer or its successors in title

## 18. Inspection Fee

- 18.1 Within 7 days of the completion of this Agreement the Developer shall pay to the Council <sup>fifty</sup> ~~thirty~~ *Abh.* ~~five thousand pounds~~ <sup>£50,000</sup> ~~(£35,000)~~ in respect of the costs incurred by the Council in inspecting the Works and the Highway Works
- 18.2 Receipt by the Council of the payment of such sum shall not create any contractual relationship between the Council and the Developer nor absolve the Developer from any liability or obligation imposed upon them by the terms of this Agreement or by statute or at common law and the Council will not be liable for any loss damage or injury which the Developer may sustain by reason of insufficient or faulty inspection of the Works or the Highway Works by the Council

## 19. Determination by the Council

If the Developer fails to perform or observe any of the conditions stipulations or obligations on their part contained herein or if a receiving order in bankruptcy is made against them or if the Developer is being wound up or if the Developer enters into a composition or scheme of arrangement (otherwise than for the purpose of amalgamation or reconstruction) the Council may without prejudice to any of its rights claims or remedies against the Developer in respect of such non-performance or non-observance determine this Agreement (except for Clause 18 and 19) by notice in writing signed by the Proper Officer and delivered to the Developer or sent by post to the address stated in this Agreement

**20. Power to Execute Highway Works in Default**

If the Developer fails to execute the Highway Works in accordance with any previously agreed Programme of Works (unless prevented from doing so by matters beyond the control of the Developer when the period for completion of the Highway Works or the relevant part of them shall be extended by such reasonable period as shall be appropriate to the circumstances of delay) or if work shall (without the prior agreement of the Council) cease for more than one month or if the Developer shall go into voluntary or compulsory liquidation or if interim works are required in the interests of public safety then the Council may under Sections 278 and 296 of the Highways Act 1980 and after service of notice carry out any works it deems necessary in order to meet the requirements of this Agreement (if necessary entering onto the adjoining land for the purpose) and may then recover the reasonable and proper cost of those works from the Developer who shall reimburse the Council on demand

**21. Power to Execute Works in Default:**

WITHOUT prejudice to Clauses 2 and 17 hereof if the Developer fails to execute or complete the Works in accordance with the Developer's obligations hereunder the Council shall after not less than twenty-eight days' notice in writing to the Developer be entitled to execute or complete the Works in default by its own employees or by contract or otherwise and to recover the cost as certified by the Proper Officer from the Developer

**22. Defective or Dangerous Works**

22.1 UNTIL the Road or Roads become a highway maintainable at the public expense pursuant to this Agreement the Developer shall keep it or them and the several parts thereof in a reasonable state of repair having regard to the progress of the building works abutting on such several parts thereof and shall reinstate and make good any defects in or damage to the Works which shall or may appear to the Proper Officer to arise occur or become manifest and the Proper Officer may by notice require the Developer to make good any portion of the Works which he reasonably

considers to be defective damaged or dangerous and require the making good or reconstruction of the same by the Developer

- 22.2 Without prejudice to Clauses 2 and 17 hereof if the Developer fails to reconstruct or make good the same in accordance with the requirements of the Proper Officer the Council shall after not less than seven days' notice in writing to the Developer (except in case of emergency) be entitled to reconstruct and make good the portion of the Works which are defective damaged or dangerous by its own employees or by contractors or otherwise and to recover the cost as certified by the Proper Officer from the Developer

**23. Assignment**

This Agreement may not be assigned by the Developer without the consent of the Council which consent shall not be unreasonably withheld provided that the Council may require bonding as a condition of such an assignment

**24. Arbitration**

In the event of any dispute arising out of this Agreement the same shall be referred to a sole arbitrator to be agreed between the parties or failing agreement to be appointed 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 re-enactment or modification thereof

**25. Indemnity**

The Developer shall indemnify and keep indemnified the Council against any actions costs claims demands expenses and proceedings arising out of the undertaking of any of the Works or Highway Works which are due to any acts or defaults of the Developer or its contractor whether directly or indirectly during the course of their construction or during the ensuing maintenance period other than those arising out of or in consequence of any act neglect default or liability of the Council or its servants

**26. Land Compensation Act 1973**

The Developer shall indemnify the Council in respect of all claims pursuant to the Land Compensation Act 1973 (or any statutory modification or re-enactment of it) arising from the carrying out of the Highway Works and prior to the commencement of the Highway Works shall carry out such surveys as may be necessary to define the levels of physical factors as specified in the said Act

**27 Part or Parts**

Notwithstanding anything hereinbefore contained the Developer may from time to time during the currency of this Agreement apply to the Proper Officer for the Part 1 Certificate or Part 2 Certificate in respect of any part of the Roads (being the whole width of the road between points to be defined in the application) and if the Proper Officer is satisfied that the part so defined is in all respects suitable to be treated as a separate road for the purpose of construction and adoption in accordance with the several provisions contained in this Agreement then they shall issue a separate Part 1 Certificate or Part 2 Certificate as the case may be in respect of that part and thereafter the same proceedings may be taken in respect of the said part of the Roads as if the said part were the subject of a separate Agreement under which the terms of this Agreement applied to the said part separately from the remainder of the Roads the liability of the Surety shall where appropriate be reduced as may be agreed by the Proper Officer with the Developer

**28. Dedication**

Immediately prior to commencement of the Highway Works the Developer shall confirm that the land shown shaded pink on the Dedication Land Drawing is dedicated (insofar as it is not already so dedicated) to the public in perpetuity to form part of the highway maintainable at public expense (subject always to the provisions of this Agreement obliging the Developer to undertake the Highway Works and to maintain the same throughout the Maintenance Period) without the need for any further deed of dedication

**29. Consents & Approvals**

Where under this Agreement the consent or approval of any party is required that consent or approval shall not be unreasonably withheld or delayed

**30. Notice**

Any notice required to be served under this Agreement shall be in writing and shall be validly served if delivered to the relevant party or if sent by registered or recorded delivery post (and by facsimile in the case of emergency) as set out below:

30.1 in the case of the Council to the Head of Planning, Transportation & Environment, Devon County Council County Hall, Topsham Road, Exeter EX2 4QD

30.2 in the case of the Developer to the address shown in this Agreement

**31. Supplemental Drawings etc**

All subsequent drawings specifications licences agreements letters and documents relating to any matter contained or referred to in this Agreement shall be signed by or on behalf of the parties to

this Agreement as appropriate and shall be deemed to be supplemental to this Agreement and the stipulations and conditions contained in this Agreement shall apply to all such drawings specifications licences agreements letters and documents as if the same were incorporated in and formed part of this Agreement unless the parties specifically agree otherwise

**32. Costs**

On completion of this Agreement the Developer shall pay the Council's reasonable costs relating to the preparation and completion of this Agreement together with the legal costs associated with Clauses 10 and 13 (issuing of certificates) and Clause 14 (drainage rights)

**33. Interest**

If the Developer fails to pay any sum payable to the Council under this Agreement on the date when such payment falls due then the Council shall have the right to charge interest on such unpaid sum at the rate of 4% above base rate of Barclays Bank plc or any rate substituted therefor

IN WITNESS whereof the parties hereto have executed this Agreement as a Deed the day and year first before written

## THE SCHEDULE

### The Schedule - Part 1

- 1 All highway drainage
- 2 All other drainage contained within the highway
- 3 All kerb foundations and where appropriate kerbs including lowering at vehicle crossings and pram-ramps
- 4 Carriageway sub-base road base and any supporting structures thereto
- 5 Carriageway base course surfacing where appropriate
- 6 Demarcation of sight lines and clearance of vision splays
- 7 Footpaths to formation level

### The Schedule - Part 2

- 8 All outstanding kerbing not completed in Part 1
- 9 Pedestrian ways
- 10 Carriageway wearing course and/or carriageway base course
- 11 Vision splays and verges
- 12 Street lighting and street furniture
- 13 Street name plates
- 14 Road markings
- 15 All other Works described in the Specification and generally shown in accordance with but not limited to the Drawings

### The Works and Highway Works -Part 3

The construction of a roundabout, drainage, street lighting and associated works as shown on the Drawings and all other associated works reasonably required by the Proper Officer

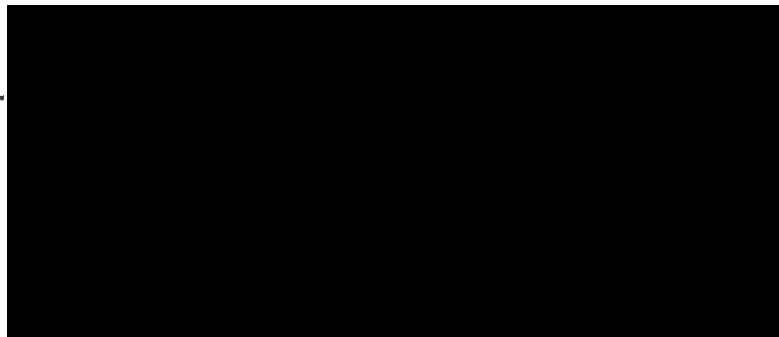
EXECUTED as a DEED by )  
TAYLOR WIMPEY DEVELOPMENTS )  
LIMITED acting by its attorneys )  
in the presence of )

EXECUTED as a DEED by )  
HALLAM LAND MANAGEMENT )  
LIMITED acting by two directors or a )  
director and the Secretary )

Director

Director/Secretary

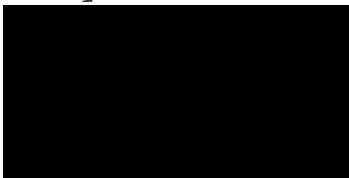
EXECUTED as a DEED by )  
PERSIMMON HOMES )  
LIMITED acting by its attorneys )  
in the presence of )



THE COMMON SEAL of )  
DEVON COUNTY COUNCIL was hereunto )  
affixed )  
in the presence of )



**A Duly Authorised Officer**



~~Assistant County Solicitor~~  
Document No. 50337



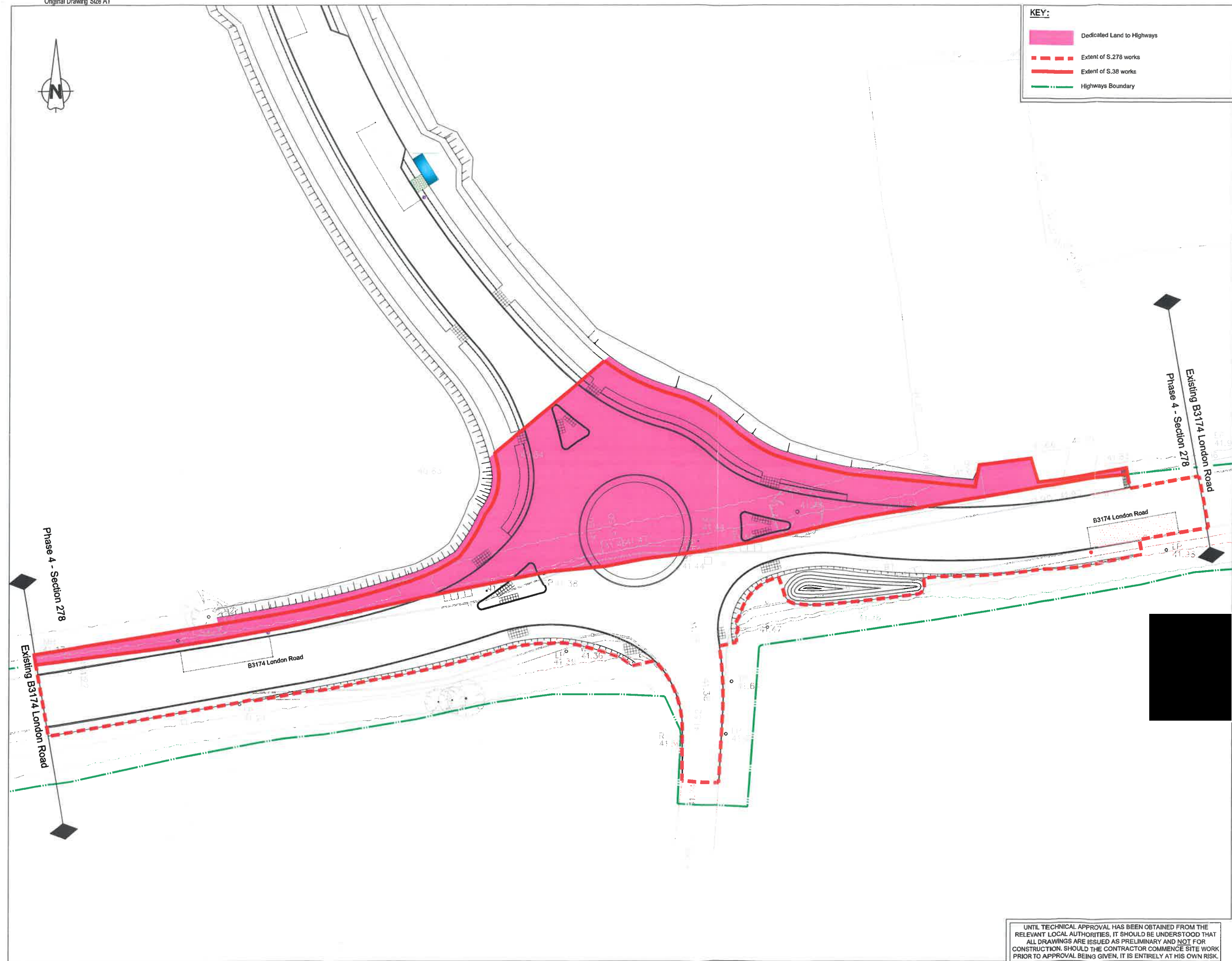
**KEY:**

- Dedicated Land to Highways
- Extent of S.278 works
- Extent of S.38 works
- Highways Boundary

**Construction Design and Management (CDM) Key Residual Risks**  
 Contractors entering the site should gain permission from the relevant land owners and/or principle contractor working on site at the time of entry. Contractors shall be responsible for carrying out their own risk assessments and for liaising with the relevant services companies and authorities. Listed below are Site Specific key risks associated with the project:

- 1) Overhead and underground services
- 2) Street Lighting Cables
- 3) Working adjacent to water courses and flood plain
- 4) Soft ground conditions
- 5) Working adjacent to live highways and railway line
- 6) Uncharted services
- 7) Existing buildings with potential asbestos hazards

- NOTES:**
1. Do not scale from this drawing.
  2. All dimensions are in metres unless otherwise stated.
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B	Extent of S.278 & S.38 works altered	FT	DS	PAB	02.09.19
A	Extension of S.278 works updated	FT	DS	PAB	07.06.19
-	First Issue	FT	DS	PAB	29.04.18



01304, Green Coast, Copford Roadway, Broom's Barn, B3174  
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**EDNC Consortium**

**East Devon New Community**

**Phase 4 Enabling Works**

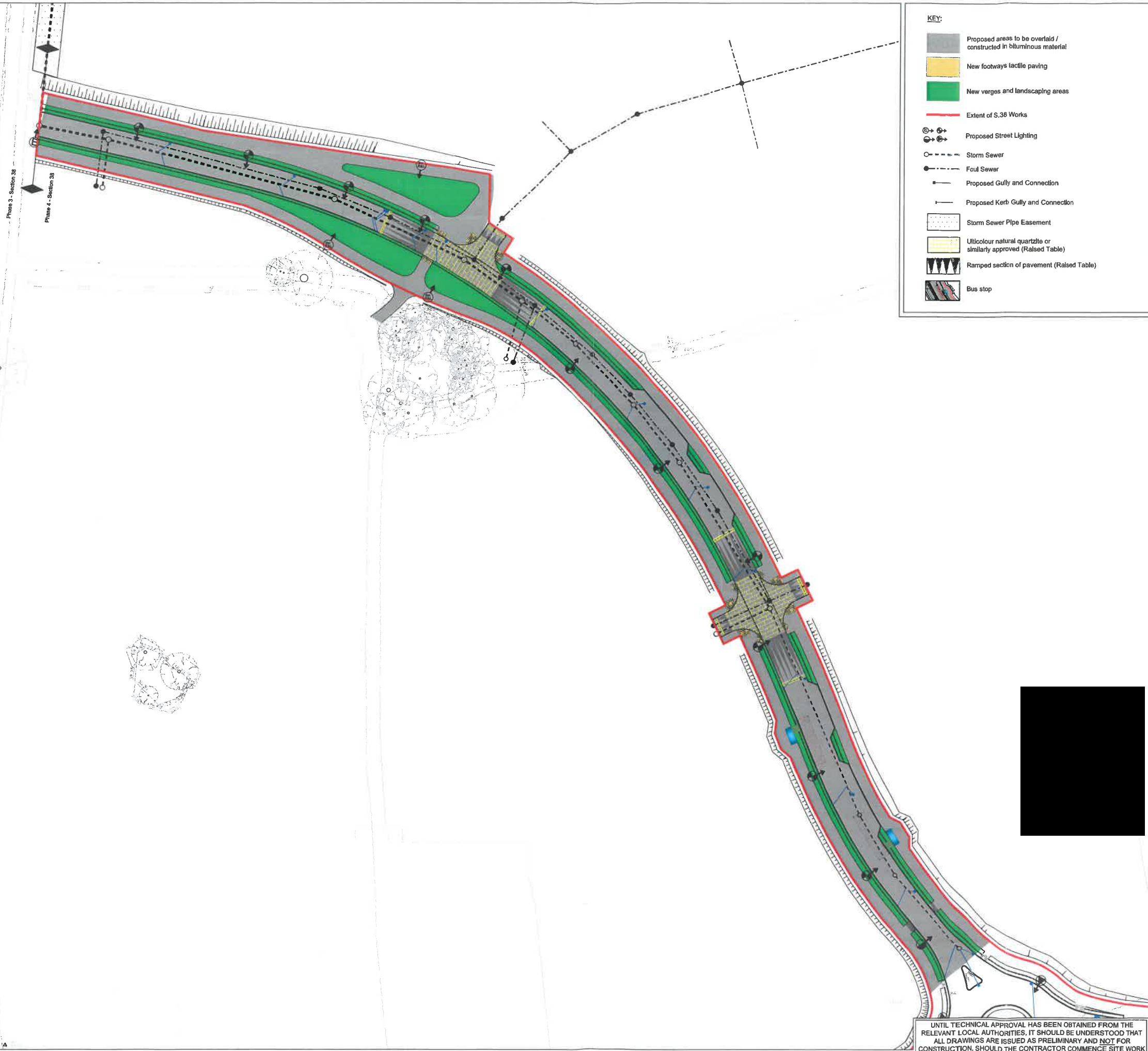
**MLR Highway Works**

**Section 278 - B3174 Roundabout**

**Land Dedication Plan**

Status	For Approval	Status Date	April 2019
Drawn	FT	Checked	DS
Date	29.04.2019	Date	29.04.2019
Scale	1:250	Number	10301-180-201
		Rev	B

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**KEY:**

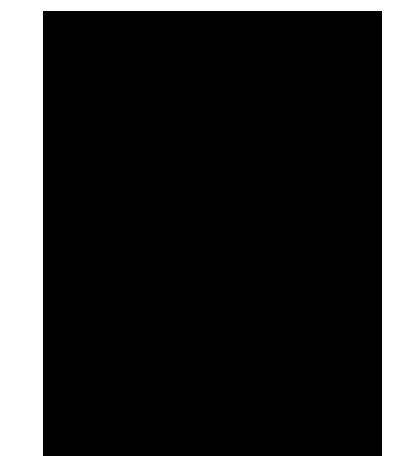
- Proposed areas to be overlaid / constructed in bituminous material
- New footways tactile paving
- New verges and landscaping areas
- Extent of S.38 Works
- Proposed Street Lighting
- Storm Sewer
- Foul Sewer
- Proposed Gully and Connection
- Proposed Kerb Gully and Connection
- Storm Sewer Pipe Easement
- Ultracolor natural quartzite or similarly approved (Raised Table)
- Ramped section of pavement (Raised Table)
- Bus stop

**Construction Design and Management (CDM) Key Residual Risks**

Contractors entering the site should gain permission from the relevant land owners and/or principle contractor working on site at the time of entry. Contractors shall be responsible for carrying out their own risk assessments and for liaising with the relevant services companies and authorities. Listed below are Site Specific key risks associated with the project.

- 1) Overhead and underground services
- 2) Street Lighting Cables
- 3) Working adjacent to water courses and flood plain
- 4) Soft ground conditions
- 5) Working adjacent to live highways and railway line
- 6) Uncharted services
- 7) Existing buildings with potential asbestos hazards

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J	Amended to suit DCC's comments	FT	DS	PAB	11.12.19
I	Key is amended	FT	DS	PAB	02.12.19
H	Amended to suit DCC's comments	FT	DS	PAB	28.11.19
G	Extent of S.278 & S.38 works altered	FT	DS	PAB	31.10.19
F	Laybys added	FT	DS	PAB	23.04.19
E	Minor amendments	FT	DS	PAB	17.01.19
D	Raised table added	FT	DS	PAB	30.07.18
C	Road Layout updated	FT	DS	PAB	17.07.18
B	Road Layout and Drainage Design updated	FT	DS	PAB	06.06.18
A	Road Layout and Drainage Design updated	FT	DS	PAB	16.03.18
-	First Issue	FT	DS	PAB	14.02.18



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**EDNC Consortium**

**East Devon New Community**

**Phase 4 Enabling Works**

**MLR Highway Works**

**Section 38 - MLR Phase 4**

**Adoption Plan**

Status	Approval	Status Date	Jan' 2018
Drawn	FT	Checked	DS
Date	19.01.2018	Rev	J
Scale	1:500	Number	10301-110-251

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**Construction Design and Management (CDM)**  
**Key Residual Risks**  
 Contractors entering the site should gain permission from the relevant land owners and/or principle contractor working on site at the time of entry. Contractors shall be responsible for carrying out their own risk assessments and for liaising with the relevant services companies and authorities. Listed below are Site Specific key risks associated with the project.

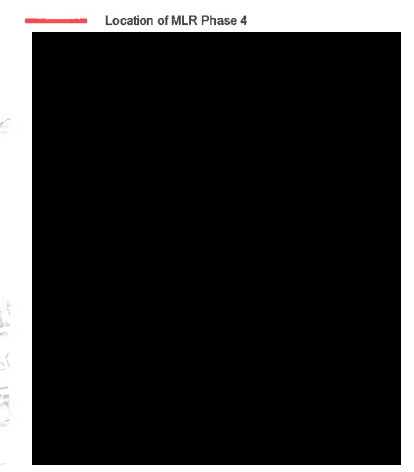
- 1) Overhead and underground services
- 2) Street Lighting Cables
- 3) Working adjacent to water courses and flood plain
- 4) Soft ground conditions
- 5) Working adjacent to live highways and railway line
- 6) Unchartered services
- 7) Existing buildings with potential asbestos hazards



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**KEY:**



G	Minor amendments	FT	DS	PAB	31.10.19
F	Laybys added	FT	DS	PAB	23.04.19
E	Minor amendments	FT	DS	PAB	17.01.19
D	Road Layout amended	FT	DS	PAB	17.07.18
C	Scale is changed	FT	DS	PAB	16.07.18
B	Road Layout updated	FT	DS	PAB	08.03.18
A	Road Layout updated	FT	DS	PAB	16.03.18
-	First Issue	FT	DS	PAB	14.02.18

**Brookbanks**

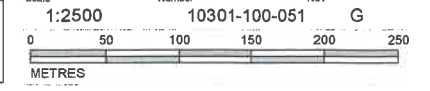
6150 Knights Court, Selfridges Parkway, Birmingham, B37 7YU  
 Tel: (0121) 329 4330 Fax: (0121) 329 4331  
 www.lasplbanks.com

EDNC Consortium

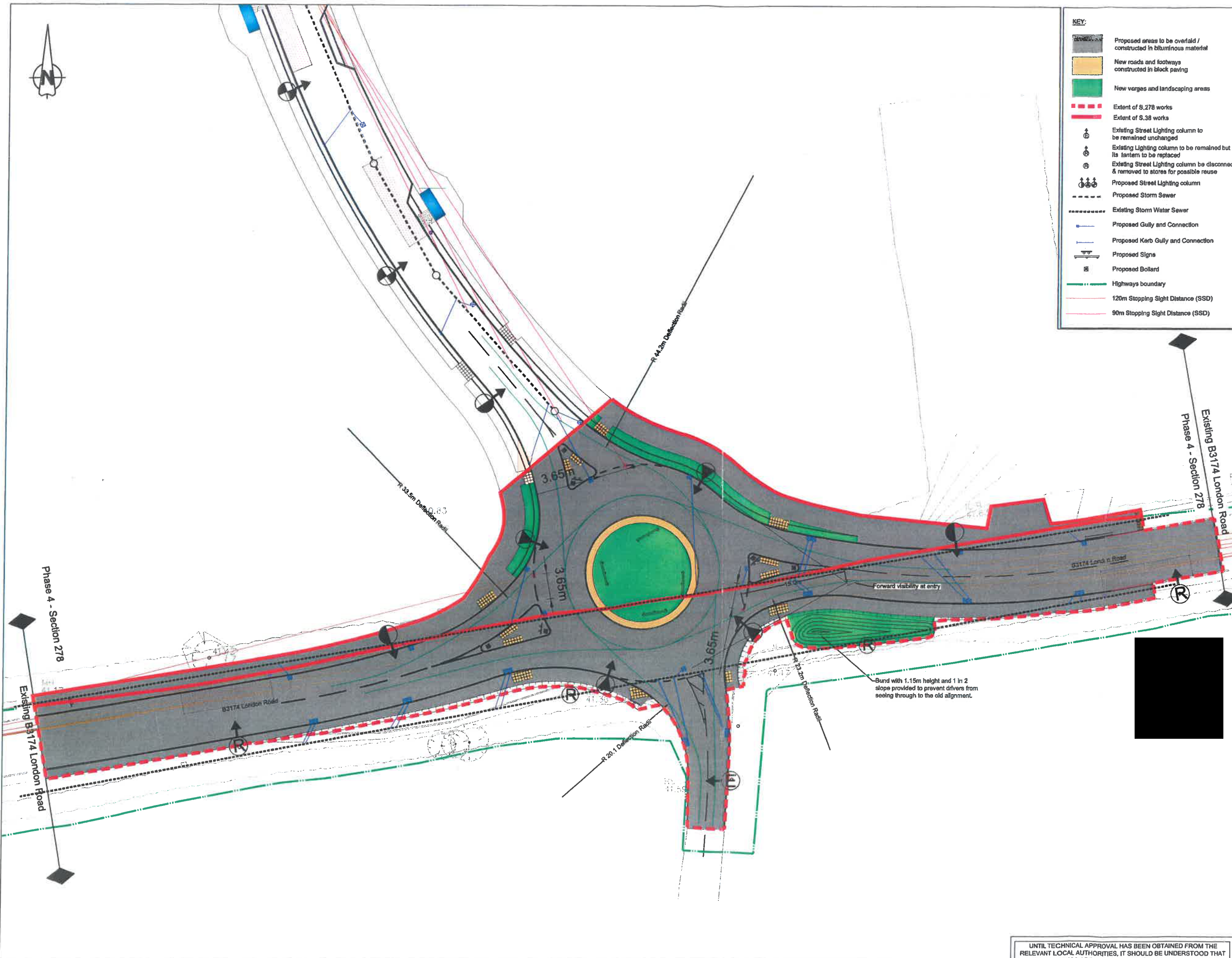
East Devon New Community  
 Phase 4 Enabling Works

MLR Highway Works  
 Section 38 - MLR Phase 4  
 Location Plan

Status	Approval	Status Date	Jan' 2018
Drawn	FT	Checked	DS
Date	19.01.2018	Rev	G



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**KEY:**

	Proposed areas to be overlaid / constructed in bituminous material
	New roads and footways constructed in block paving
	New verges and landscaping areas
	Extent of S.278 works
	Extent of S.38 works
	Existing Street Lighting column to be remained unchanged
	Existing Lighting column to be remained but its lantern to be replaced
	Existing Street Lighting column to be disconnected & removed to stores for possible reuse
	Proposed Street Lighting column
	Proposed Storm Sewer
	Existing Storm Water Sewer
	Proposed Gully and Connection
	Proposed Kerb Gully and Connection
	Proposed Signs
	Proposed Bollard
	Highways boundary
	120m Stopping Sight Distance (SSD)
	90m Stopping Sight Distance (SSD)

**Construction Design and Management (CDM) Key Residual Risks**

Contractors entering the site should gain permission from the relevant land owners and/or principle contractor working on site at the time of entry. Contractors shall be responsible for carrying out their own risk assessments and for taking with the relevant services companies and authorities. Listed below are Site Specific key risks associated with the project.

- 1) Overhead and underground services
- 2) Street Lighting Cables
- 3) Working adjacent to water courses and flood plain
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N	Gullies and visibility colour altered	FT	DS	PAB	02.09.19
M	S.38 extent of work boundary is altered	FT	DS	PAB	12.08.19
L	Amended to suit DCC's comments	FT	DS	PAB	10.07.19
K	Drainage layout & extension of S.278 works updated	FT	DS	PAB	07.06.19
J	Amended to suit DCC's comments	FT	DS	PAB	29.04.19
I	Amended to suit DCC's comments	FT	DS	PAB	25.03.19
H	Overrun is replaced by tarmac.	FT	DS	PAB	15.02.19
G	Road layout amended	FT	DS	PAB	18.12.18
F	New construction for Overrun strip considered.	FT	DS	PAB	13.11.18
E	Footways on London Road extended.	FT	DS	PAB	14.08.18
D	Footway in north west of RA widened.	FT	DS	PAB	30.07.18
C	Road Layout amended.	FT	DS	PAB	16.07.18
B	Road Layout amended.	FT	DS	PAB	25.05.18
A	Road Layout and Drainage Design updated.	FT	DS	PAB	16.03.18
-	First Issue	FT	DS	PAB	14.02.18



**EDNC Consortium**

**East Devon New Community**

**Phase 4 Enabling Works**

**MLR Highway Works**

**Section 278 - B3174 Roundabout Adoption Plan**

Drawn	Checked	Number	Rev	Status	Date
FT	DS	10301-110-201	N	Approval	Jan' 2018
Scale	1:250				19.01.2018

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AN AGREEMENT made the  
BETWEEN

4<sup>th</sup>

day of

February

2020  
~~2019~~

- (1) **PERSIMMON HOMES** (~~SOUTH WEST~~) LIMITED (Company No: 00929585) whose Registered Office is at Persimmon House Fulford York YO19 4FE, **HALLAM LAND MANAGEMENT LIMITED** (Company No: 02456711) whose Registered Office is at Banner Cross Hall Ecclesall Road South Sheffield S11 9PD and **TAYLOR WIMPEY DEVELOPMENTS** (~~EXETER~~) LIMITED (Company No: ~~00401589~~ 043420) whose Registered Office is at ~~4 Capital Court Sowton Industrial Estate Exeter Devon EX2 7FW~~ (together "the Developer") **GATE HOUSE, TURNPIKE ROAD, HIGH WYCOMBE, BUCKINGHAMSHIRE, HP12 3NK.**
- (2) **DEVON COUNTY COUNCIL** of County Hall, Topsham Road, Exeter EX2 4QD ("Council")

**WHEREAS:**

- 1) The Council is the Local Highway Authority
- 2) The Developer is the registered proprietor at HM Land Registry under title DN612520 of the land adjoining Southbrook Lane, Whimble, Exeter which is shown for identification only by red edging on the Drawings annexed hereto which includes within such edging the site of the proposed Road or Roads shown coloured grey and edged red on the drawings numbered 10301-110-251 G, 10301-180-201 B and 10301-110-201 N annexed hereto and is desirous of making up the Road or Roads so that the same shall become a highway or highways maintainable at public expense.
- 4) The Developer has requested that when the works hereinafter referred to for the making up the Road or Roads have been executed and maintained as hereinafter appearing the Council shall undertake the maintenance of the Road or Roads as highway or highways maintainable at the public expense which the Council has agreed to do upon the terms and conditions hereinafter appearing
- 5) The Council is requiring that the Developer execute certain works upon the public highway as hereinafter described and the Council is satisfied that those works will be of benefit to the public

In pursuance of Sections 38 and 278 of the Highways Act 1980 and Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and Section 111 of the Local Government Act 1972 and with other enabling powers; and **it is hereby agreed and declared** by and between the parties as follows

**1. Interpretation**

In this Agreement where the context so admits:

"**Certificate of Completion**" means the certificate to be issued on satisfactory completion of the Highway Works in accordance with Clause 10

**"Dedication Land Drawing"** means drawing number 10301-180-2-1B annexed hereto

**"Design Manual"** means the "Design Manual for Roads and Bridges" reference GG119 published by the Highways Agency and others, and any publication which amends or replaces it;

**"Development"** means Phase 4 Enabling Works of the East Devon New Community

**"Drawings"** mean annexed drawings with reference numbers 10301-110-251 J, 10301-180-201 B and 10301-110-201 N signed by or on behalf of the parties hereto and any amended such Drawings signed by or on behalf of the Proper Officer

**"East Devon New Community (Phase 4)"** means the Land Adjacent To Southbrook Lane forming Phase 4 of the East Devon New Community outlined in red on the Plan annexed hereto titled MLR Highway Works Section 38 –MLR Phase 4 Location Plan and which has reference number 10301-1000-051 G

**"Final Certificate"** means the certificate to be issued on satisfactory completion of the maintenance period for the Highway Works in accordance with Clause 13

**"Highways Works"** means the works to be executed upon the public highway and shown with a broken red line on the Drawings annexed hereto.

**"Maintenance Period"** means the period of 12 calendar months

**Part 1 Certificate"** means the certificate to be issued on satisfactory completion of the Part 1 Works in accordance with Clause 10

**"Part 1 Works"** means the works referred to in Part 1 of the Schedule

**"Part 2 Certificate"** means the certificate to be issued on satisfactory completion of the Part 2 Works in accordance with Clause 12

**"Part 2 Works"** means the works referred to in Part 2 of the Schedule

**"Programme of Works"** means that referred to in Clause 3.1

**"Proper Officer"** means the Head of Planning, Transportation & Environment of the Council or such other officer from time to time with responsibility for highways

**"Roads"** means those part of the Highway Works as shown coloured grey on Drawings

**"Site Plan"** means the title plan for title number DN612520

**"Specification"** means the Highways in Residential and Commercial Estates Design Guide dated Jan 1996 and as amended and current at the date of commencement of the Highway Works

**"Stage 1, 2, 3 and 4 Safety Audits"** means the safety audits so defined in the Design Manual and the Institution of Highways and Transportation's Road Safety Audit guidelines;

**"Statutory Undertaker"** means a statutory undertaker as defined in Section 329(1) of the Highways Act 1980 and British Telecommunications plc

**"Traffic Manager"** means the officer appointed by the Council to act as traffic manager for the purposes of the Traffic Management Act 2004

**"Works"** means the works to be carried out on the Developer's land being the land shown on the Site Plan and shown with a solid red line on the Drawings annexed hereto.

## **2. Developer's Liability**

SUBJECT to the terms conditions agreements and undertakings contained in this Agreement the Developer shall carry out and complete the Works and the Highway Works at the Developer's expense in a good and workmanlike manner and with proper materials in accordance in all respects with the Specification and the Drawings to the satisfaction of the Proper Officer and in accordance with permits and approvals granted by the Council or any other statutory or public authorities and (except as may be otherwise provided in this Agreement) shall complete the Works and the Highway Works within six (6) months of commencing the Works and Highway Works

## **3. Highway Works**

The Developer covenants with the Council that the Developer will at its own expense in relation to the Highway Works observe and perform to the reasonable satisfaction of the Council the following requirements obligations and conditions or any of them outstanding at the date of this Agreement and will immediately do any act or thing required by the Council to remedy any breach of those requirements obligations and conditions: -

- 3.1 Not to commence any part of the Highway Works before a Programme of Works and a method of carrying out the Highway Works shall have been approved by the Proper Officer (such approval not to be unreasonably withheld) and the Drawings have been provided as a CAD (dwg.) file or such other format as agreed in writing by the Proper Officer
- 3.2 Secure at its own expense any necessary approvals required from any Statutory Undertakers, emergency services and other public authorities and utilities and comply with all requirements of these
- 3.3 execute the Highway Works and works associated therewith expeditiously causing no unnecessary nuisance to the public
- 3.4 employ a suitably qualified supervisor to oversee the construction of the Highway Works and to act as liaison between the Developer contractor and the Council
- 3.5 employ a contractor or contractors to carry out the Highway Works who shall be approved by the Proper Officer (such approval not to be unreasonably withheld or delayed) and that all the covenants conditions and obligations contained in this Agreement relating to the method of working shall be included in any agreement between the Developer and its contractor and it shall not depart from it without the approval of the Council and the said contractor or contractors shall at all times during the progress of the Highway Works maintain a public liability insurance policy with a member of the Association of British Insurers for at least £5,000,000
- 3.6 to give the Traffic Manager appropriate notice in the form required by the Traffic Manager to comply with the requirements of the Traffic Management Act 2004 of the Developer intention to commence the Highway Works

- 3.7 to undertake all the requirements in respect of the execution of the Highway Works under the Construction (Design and Management) Regulations 2015 (“Regulations”) as if the Developer were the client and to indemnify the Council in respect of any actions proceedings costs claims demands and liabilities arising out of any breach of the Regulations
- 3.8 as soon as possible after the date of this Agreement and in any event prior to the commencement of work on any element of the Highway Works the Developer shall contact the Council who shall identify any necessary Traffic Regulation Orders and any other similar changes to the highway subject to statutory publications e.g. zebra crossings, road humps etc and the Developer shall request the Council, if the Council is satisfied with the proposals to make any such Order or publish notice of intent or similar and shall indemnify the Council in respect of the costs involved in making any such Order including notification procedure pursuant to the relevant legislation (or any statutory modification or re-enactment thereof)
4. The Developer covenants to include in the conditions of contract of the contractors (or any sub contractors) engaged to carry out the Highway Works the following clauses:-
- 4.1 The Programme of Works and method of carrying out the Highway Works shall be approved by the Proper Officer and the contractor shall in all cases submit written notice of its intended Programme of Works and any width restrictions or occupation of the public highway to the Proper Officer for approval in writing at least 4 weeks in advance of the proposed commencement of those works and the approved Programme of Works and method shall be followed at all times
- 4.2 All work on the public highway shall be restricted to dates and times agreed in writing by the Proper Officer in order to minimise delay to vehicular traffic
- 4.3 All operations on or affecting the public highway shall be carried out so as to avoid risk of danger to both pedestrians and vehicular traffic and (except as may be previously agreed in writing by the Proper Officer) to avoid any interference with the free movement of pedestrians and vehicular traffic
- 4.4 The contractor shall in accordance with the agreed Programme of Works be allowed to take possession of so much of the public highway land as may be agreed in writing by the Proper Officer for the carrying out of the Highway Works
- 4.5 Where in the opinion of the Proper Officer work affecting the public highway causes excessive traffic congestion the contractor shall immediately suspend that work and remove any plant or equipment that create such restrictions to traffic flows
- 4.6 The Proper Officer may require the contractor to agree to any reasonable variations to any previously agreed Programme of Works in the event of excessive traffic congestion resulting from it and the contractor will take all steps to comply with any such request

4.7 The contractor will comply with the Volume 1 Department of Transport's Manual of Contract Documents for Highway Works (MCHW) – Specification for Highway Works and any publication which amends or replaces it and shall include the following additional clauses to that specification:-

4.7.1 The traffic signs road markings lamps barriers and traffic control signals shall be in accordance with the requirements of the Traffic Signs Regulations and General Directions current at the date of execution of the work

4.7.2 Traffic control signals shall be operated in the vehicle actuated mode unless otherwise agreed by the Proper Officer

4.7.3 Traffic cones and cylinders shall comply with the requirements of BS 873 Part 8 Category A Designation 1

4.7.4 The contractor shall construct temporary diversion ways wherever they propose to interfere with the existing public or private roads or other ways over which there is a public or private right of way for any traffic

4.7.5 The standard of construction and lighting shall be suitable in all respects for the appropriate class of road and the width of any diversion shall not (unless otherwise agreed with the Proper Officer such agreement not to be unreasonably withheld) be less than that of the existing way. The standard of construction shall conform to the requirements of the Council

4.7.6 Temporary white lining is to be provided to all such diversions and laid in accordance with the requirements of the Traffic Signs Regulations and General Directions or otherwise as instructed by the Proper Officer

4.7.7 Roads accesses and rights of way which are being used by construction traffic shall at all times be kept clean and clear so far as possible of dirt mud and material dropped from vehicles or from tyres arising from such use and the contractor shall provide maintain and use suitable equipment for this purpose

4.7.8 The contractor shall at all times ensure that all highway drains affected by its works shall be kept clear of any spoil mud slurry or other material likely to impede the free flow of water in them

4.7.9 The contractor shall provide the Proper Officer with the name and telephone number of a person and their deputy who can be contacted at any time during the day and night and who will be in a position to put into immediate effect any measures considered necessary by the Proper Officer to ensure the safety of the public

5. The Programme of Works shall include details of:-

- 5.1 The sequence in which each phase of the Highway Works including temporary highway works or temporary access arrangements shall be undertaken
- 5.2 The period within which each phase of work shall be completed
- 5.3 Temporary traffic and pedestrian arrangements during the construction of the development of the adjoining land including the means and positions of vehicular and pedestrian access to the development
- 5.4 Such additional plans and details as may be reasonably required by the Council to describe each phase of work

**6. Declaration**

The Developer hereby declares and warrants to the Council that he has and will throughout the duration of this Agreement maintain full right and liberty and consent to carry out such works as may be necessary to connect the Road or Roads to a vehicular highway or highways

**7. Statutory Undertakers – Connections to Existing Services**

THE Developer shall before connecting the Road or Roads with any highway or highways maintainable at the public expense give notice to each person board or authority being the Statutory Undertaker for the time being of any service or services laid in upon or under such highway or highways of the proposal to make such connection as if the connection were a work to be executed for the purposes of and were mentioned in Section 48 of the New Roads and Street Works Act 1991 and shall indemnify the Council in respect of the cost of any works or measures considered necessary by any Statutory Undertaker in consequence of the proposal to make such connection

**8. Access to the Works/ Highway Works & Inspection**

- 8.1 The Developer shall during the carrying out of the Works and the Highway Works give and allow the Proper Officer and any other officer of the Council access to every part of the Works and the Highway Works and the site thereof for the purpose of inspecting the same and all materials used or intended to be used therein and the Developer shall if requested open up for inspection any portion of the Works or (as the case may be) the Highway Works which may be covered up and should the Developer decline to comply with such a request the Council may itself open up the Works or (as the case may be) the Highway Works and in the event of any such portion of the same being found (in the reasonable opinion of the Council) to be defective the cost of such opening shall be recoverable from the Developer
- 8.2 If any inspection carried out under sub-clause 8.1 reveals defects in the Works or the Highway Works the Developer shall carry out remedial works to the satisfaction of the Council

- 8.3 The Council will inspect any remedial works carried out under sub-clause 8.2 within 5 working days of receipt of a written request from the Developer to do so
- 8.4 Following any inspection under sub-clause 8.3 the Council shall within 5 working days of its inspection notify the Developer in writing of its satisfaction with the remedial works PROVIDED THAT in the event of the remedial works being unsatisfactory this process may be repeated as many times as necessary until the defective works have been remedied to the satisfaction of the Council
- 8.5 Upon practical completion of the Works and Highway Works the Developer shall in each case notify the Council in writing of their completion and within fourteen days of receipt of such notice the Council shall carry out a final inspection of the Works or (as the case may be) the Highway Works
- 8.6 The Developer shall:-
- 8.6.1 Employ an auditor who meets the qualifying standards of the Design Manual and who will not have been involved in any part of the scheme design to carry out the Stage 1 2 3 and 4 Safety Audits who shall be approved by the Proper Officer (such approval not be unreasonably withheld or delayed) and the said auditor or auditors shall at all times during the Stage 1 2 3 and 4 Safety Audits maintain a public liability insurance policy with a member of the Association of British Insurers for at least £5,000,000
  - 8.6.2 Provide copies of the Stage 1 and 2 Safety Audit reports to the Proper Officer and any consequent changes or recommendations agreed with the Proper Officer
  - 8.6.3 Provide copies of the Stage 3 and 4 Safety Audit reports to the Proper Officer and any recommendations or exception agreed with the Proper Officer and the Developer shall comply with the recommendations of such report to the reasonable satisfaction of the Proper Officer
  - 8.6.4 Not less than 14 days before the Highway Works are due to be completed the Developer shall ensure that the Stage 3 Safety audit of the Highway Works is carried out and upon receipt of the safety audit report the Developer shall undertake such works to comply with the recommendations of such report to the reasonable satisfaction of the Proper Officer
  - 8.6.5 The Developer shall ensure that the Stage 4 Safety Audit is carried out not earlier than 12 months nor later than 36 months from issue of the Certificate of Completion
- 8.7 In the event of the final inspection revealing any defect or defects in the Highway Works or (as the case may be) the Works the provisions of clause 8.4 shall apply as if they related to a final inspection

**9. Obligations During the Maintenance Period for the Works:**

**9.1** During the maintenance period for the Works:

9.1.1 The Developer at his own expense shall maintain the Works including all grassed and plated areas and carry out such routine maintenance as may be necessary to facilitate use by vehicles and pedestrians

9.1.2 the Council at its own expense shall undertake routine maintenance of the and be responsible for payment for energy for all street lights and illuminated traffic signs

**10. Part 1 Certificate**

On completion of the Part 1 Works to the satisfaction of the Proper Officer in all respects the Proper Officer shall issue the Part 1 Certificate to the Developer

**11. Occupation of buildings**

No dwelling forming part of the East Devon New Community (Phase 4) shall be occupied until:

- a) the Proper Officer has issued the Part 1 Certificate in respect of the Roads or such part of the Roads as will provide the occupier with access to a vehicular highway and where applicable a base course pedestrian access to such highway has been provided and
- b) the Roads or such part of the Roads have columns erected ready for lighting in accordance with the Specification and the Drawings and the Developer has arranged with the electricity board for an electricity supply thereto by giving at least 6 weeks prior notice in writing or as may otherwise be agreed in writing by the Proper Officer

**12. Part 2 Certificate**

On completion of the Part 2 Works to the satisfaction of the Proper Officer in all respects the Proper Officer shall if any sewer constructed under the Roads under an agreement under Section 104 of the Water Industry Act 1991 has been certified as being or having been on maintenance issue the Part 2 Certificate to the Developer and from the date thereof

- a) the Maintenance Period shall commence to run for a period of 12 months
- b) the Roads shall become highway and remain forever open for use by the public
- c) the Developer shall remain the street manager for the purposes of Section 49 (4) of the New Roads and Street Works Act 1991 and any statutory modification or re-enactment thereof until such time as the Roads shall become highway maintainable at the public expense

**13. Obligations During Maintenance Period for Highway Works**

During the maintenance period for the Highway Works the Developer shall maintain the Highway Works and for the purposes of this clause and for the avoidance of doubt the Developer shall not have any obligations in respect of cyclic maintenance such as sweeping cleansing and provision of street lighting and other functions normally performed by the Council in respect of highways maintained at public expense

**14. Final Certificate for the Works and the Highway Works**

Prior to the expiration of the respective maintenance periods for the Works and the Highway Works the Developer shall forthwith at their own expense reinstate and make good any defect or damage which may have arisen from any cause whatsoever or be discovered during the maintenance period of which they have been notified in writing by the Proper Officer so that the Works or (as the case may be) the Highway Works comply with the Specification **and then provided that:**

- 13.1 the Developer has paid to the Council all amounts due to it under this Agreement and
- 13.2 any necessary reinstatement or other works have been completed to the satisfaction in all respects of the Proper Officer
- 13.3 the Developer has delivered to the Proper Officer drawings showing the works as constructed one set being a CAD (dwg.) file or such other format as agreed in writing by the Proper Officer

the Proper Officer shall issue the Final Certificate to the Developer in respect of the Works or (as the case may be) the Highway Works

**15. Grants of Rights of Drainage**

Prior to completion of this Agreement the Developer shall without cost to the Council execute or procure the execution by all necessary parties of such deeds as are in the opinion of the Council necessary to secure to the Council full drainage rights in respect of such parts of the surface water drainage system of the Road or Roads as are situate outside the limits of the Road or Roads and the Council shall not be liable for the payment of compensation or legal or any other costs or fees arising on account of the execution of any such deeds. If after completion of this Agreement the Council find that further drainage rights are reasonably required the Developer will at their own cost obtain those rights prior to any further certificates being issued in accordance with Clauses 10 and 13. For the avoidance of doubt the Council will not be

responsible for the drainage system until the issue of the Final Certificate in accordance with Clause 13

## 16 Procedure for Inspection and Issue of Certificates

Following receipt of a written application from the Developer for the issue of a Part 1 or Part 2 Certificate or Final Certificate pursuant to this Agreement the Proper Officer shall inspect the Works and where necessary provide the Developer with a definitive list in writing of any remedial Works required to be carried out before the issue of that Certificate. Any such remedial Works shall be subject to the same inspection procedure detailed herein until such time as they shall be completed to the reasonable satisfaction of the Proper Officer who shall issue the relevant Certificate

## 17. Adoption

17.1 Upon the issue of the Final Certificate the Road or Roads shall become highway or highways maintainable at the public expense

17.2 For the avoidance of doubt any hedges between the public highway and the Developer's adjacent development shall remain the responsibility of the Developer and its successors in title and the Developer and its successors in title shall ensure that such hedges are cut and maintained at all times in the future in a condition which will not cause any obstruction to the public highway and in the event that the Developer and its successors in title default in maintaining such hedges the Council shall be entitled to carry out such maintenance and recover the costs of doing so from the Developer or its successors in title

## 18. Inspection Fee

18.1 Within 7 days of the completion of this Agreement the Developer shall pay to the Council <sup>fifty</sup> ~~thirty~~ <sup>£50,000</sup> ~~five thousand pounds (£35,000)~~ in respect of the costs incurred by the Council in inspecting the Works and the Highway Works Ad.

18.2 Receipt by the Council of the payment of such sum shall not create any contractual relationship between the Council and the Developer nor absolve the Developer from any liability or obligation imposed upon them by the terms of this Agreement or by statute or at common law and the Council will not be liable for any loss damage or injury which the Developer may sustain by reason of insufficient or faulty inspection of the Works or the Highway Works by the Council

## 19. Determination by the Council

If the Developer fails to perform or observe any of the conditions stipulations or obligations on their part contained herein or if a receiving order in bankruptcy is made against them or if the Developer is being wound up or if the Developer enters into a composition or scheme of arrangement (otherwise than for the purpose of amalgamation or reconstruction) the Council may without prejudice to any of its rights claims or remedies against the Developer in respect of such non-performance or non-observance determine this Agreement (except for Clause 18 and 19) by notice in writing signed by the Proper Officer and delivered to the Developer or sent by post to the address stated in this Agreement

**20. Power to Execute Highway Works in Default**

If the Developer fails to execute the Highway Works in accordance with any previously agreed Programme of Works (unless prevented from doing so by matters beyond the control of the Developer when the period for completion of the Highway Works or the relevant part of them shall be extended by such reasonable period as shall be appropriate to the circumstances of delay) or if work shall (without the prior agreement of the Council) cease for more than one month or if the Developer shall go into voluntary or compulsory liquidation or if interim works are required in the interests of public safety then the Council may under Sections 278 and 296 of the Highways Act 1980 and after service of notice carry out any works it deems necessary in order to meet the requirements of this Agreement (if necessary entering onto the adjoining land for the purpose) and may then recover the reasonable and proper cost of those works from the Developer who shall reimburse the Council on demand

**21. Power to Execute Works in Default:**

WITHOUT prejudice to Clauses 2 and 17 hereof if the Developer fails to execute or complete the Works in accordance with the Developer's obligations hereunder the Council shall after not less than twenty-eight days' notice in writing to the Developer be entitled to execute or complete the Works in default by its own employees or by contract or otherwise and to recover the cost as certified by the Proper Officer from the Developer

**22. Defective or Dangerous Works**

22.1 UNTIL the Road or Roads become a highway maintainable at the public expense pursuant to this Agreement the Developer shall keep it or them and the several parts thereof in a reasonable state of repair having regard to the progress of the building works abutting on such several parts thereof and shall reinstate and make good any defects in or damage to the Works which shall or may appear to the Proper Officer to arise occur or become manifest and the Proper Officer may by notice require the Developer to make good any portion of the Works which he reasonably

considers to be defective damaged or dangerous and require the making good or reconstruction of the same by the Developer

- 22.2 Without prejudice to Clauses 2 and 17 hereof if the Developer fails to reconstruct or make good the same in accordance with the requirements of the Proper Officer the Council shall after not less than seven days' notice in writing to the Developer (except in case of emergency) be entitled to reconstruct and make good the portion of the Works which are defective damaged or dangerous by its own employees or by contractors or otherwise and to recover the cost as certified by the Proper Officer from the Developer

**23. Assignment**

This Agreement may not be assigned by the Developer without the consent of the Council which consent shall not be unreasonably withheld provided that the Council may require bonding as a condition of such an assignment

**24. Arbitration**

In the event of any dispute arising out of this Agreement the same shall be referred to a sole arbitrator to be agreed between the parties or failing agreement to be appointed 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 re-enactment or modification thereof

**25. Indemnity**

The Developer shall indemnify and keep indemnified the Council against any actions costs claims demands expenses and proceedings arising out of the undertaking of any of the Works or Highway Works which are due to any acts or defaults of the Developer or its contractor whether directly or indirectly during the course of their construction or during the ensuing maintenance period other than those arising out of or in consequence of any act neglect default or liability of the Council or its servants

**26. Land Compensation Act 1973**

The Developer shall indemnify the Council in respect of all claims pursuant to the Land Compensation Act 1973 (or any statutory modification or re-enactment of it) arising from the carrying out of the Highway Works and prior to the commencement of the Highway Works shall carry out such surveys as may be necessary to define the levels of physical factors as specified in the said Act

**27 Part or Parts**

Notwithstanding anything hereinbefore contained the Developer may from time to time during the currency of this Agreement apply to the Proper Officer for the Part 1 Certificate or Part 2 Certificate in respect of any part of the Roads (being the whole width of the road between points to be defined in the application) and if the Proper Officer is satisfied that the part so defined is in all respects suitable to be treated as a separate road for the purpose of construction and adoption in accordance with the several provisions contained in this Agreement then they shall issue a separate Part 1 Certificate or Part 2 Certificate as the case may be in respect of that part and thereafter the same proceedings may be taken in respect of the said part of the Roads as if the said part were the subject of a separate Agreement under which the terms of this Agreement applied to the said part separately from the remainder of the Roads the liability of the Surety shall where appropriate be reduced as may be agreed by the Proper Officer with the Developer

**28. Dedication**

Immediately prior to commencement of the Highway Works the Developer shall confirm that the land shown shaded pink on the Dedication Land Drawing is dedicated (insofar as it is not already so dedicated) to the public in perpetuity to form part of the highway maintainable at public expense (subject always to the provisions of this Agreement obliging the Developer to undertake the Highway Works and to maintain the same throughout the Maintenance Period) without the need for any further deed of dedication

**29. Consents & Approvals**

Where under this Agreement the consent or approval of any party is required that consent or approval shall not be unreasonably withheld or delayed

**30. Notice**

Any notice required to be served under this Agreement shall be in writing and shall be validly served if delivered to the relevant party or if sent by registered or recorded delivery post (and by facsimile in the case of emergency) as set out below:

30.1 in the case of the Council to the Head of Planning, Transportation & Environment, Devon County Council County Hall, Topsham Road, Exeter EX2 4QD

30.2 in the case of the Developer to the address shown in this Agreement

**31. Supplemental Drawings etc**

All subsequent drawings specifications licences agreements letters and documents relating to any matter contained or referred to in this Agreement shall be signed by or on behalf of the parties to

this Agreement as appropriate and shall be deemed to be supplemental to this Agreement and the stipulations and conditions contained in this Agreement shall apply to all such drawings specifications licences agreements letters and documents as if the same were incorporated in and formed part of this Agreement unless the parties specifically agree otherwise

**32. Costs**

On completion of this Agreement the Developer shall pay the Council's reasonable costs relating to the preparation and completion of this Agreement together with the legal costs associated with Clauses 10 and 13 (issuing of certificates) and Clause 14 (drainage rights)

**33. Interest**

If the Developer fails to pay any sum payable to the Council under this Agreement on the date when such payment falls due then the Council shall have the right to charge interest on such unpaid sum at the rate of 4% above base rate of Barclays Bank plc or any rate substituted therefor

IN WITNESS whereof the parties hereto have executed this Agreement as a Deed the day and year first before written

## THE SCHEDULE

### The Schedule - Part 1

- 1 All highway drainage
- 2 All other drainage contained within the highway
- 3 All kerb foundations and where appropriate kerbs including lowering at vehicle crossings and pram-ramps
- 4 Carriageway sub-base road base and any supporting structures thereto
- 5 Carriageway base course surfacing where appropriate
- 6 Demarcation of sight lines and clearance of vision splays
- 7 Footpaths to formation level

### The Schedule - Part 2

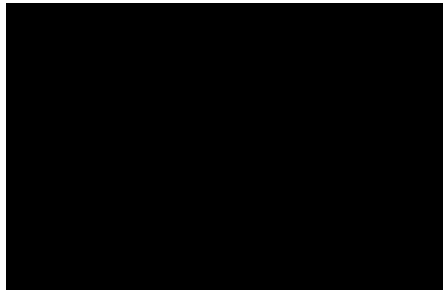
- 8 All outstanding kerbing not completed in Part 1
- 9 Pedestrian ways
- 10 Carriageway wearing course and/or carriageway base course
- 11 Vision splays and verges
- 12 Street lighting and street furniture
- 13 Street name plates
- 14 Road markings
- 15 All other Works described in the Specification and generally shown in accordance with but not limited to the Drawings

### The Works and Highway Works -Part 3

The construction of a roundabout, drainage, street lighting and associated works as shown on the Drawings and all other associated works reasonably required by the Proper Officer

EXECUTED as a DEED by )  
TAYLOR WIMPEY DEVELOPMENTS )  
LIMITED acting by its attorneys )  
in the presence of )

Executed as a deed by affixing the  
Common Seal of  
**HALLAM LAND MANAGEMENT LIMITED**  
in the presence of:



Director/Secretary

EXECUTED as a DEED by )  
PERSIMMON HOMES )  
LIMITED acting by its attorneys )  
in the presence of )

THE COMMON SEAL of )  
**DEVON COUNTY COUNCIL** was hereunto )  
affixed )  
in the presence of )







**A Duty Authorised Officer**

~~Assistant County Solicitor~~

Document No...50337.....



**KEY:**

-  Dedicated Land to Highways
-  Extent of S.278 works
-  Extent of S.38 works
-  Highways Boundary

**Construction Design and Management (CDM) Key Residual Risks**

Contractors entering the site should gain permission from the relevant land owners and/or principle contractor working on site at the time of entry. Contractors shall be responsible for carrying out their own risk assessments and for liaising with the relevant services companies and authorities. Listed below are Site Specific key risks associated with the project.

- 1) Overhead and underground services
- 2) Street Lighting Cables
- 3) Working adjacent to water courses and flood plain
- 4) Soft ground conditions
- 5) Working adjacent to live highways and railway line
- 6) Uncharted services
- 7) Existing buildings with potential asbestos hazards

- NOTES:**
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**DIRECTOR**

**DIRECTOR/SECRETARY**

B	Extent of S.278 & S.38 works altered	FT	DS	PAB	02.09.19
A	Extension of S.278 works updated	FT	DS	PAB	07.06.19
-	First Issue	FT	DS	PAB	29.04.18



EDNC Consortium

East Devon New Community

Phase 4 Enabling Works

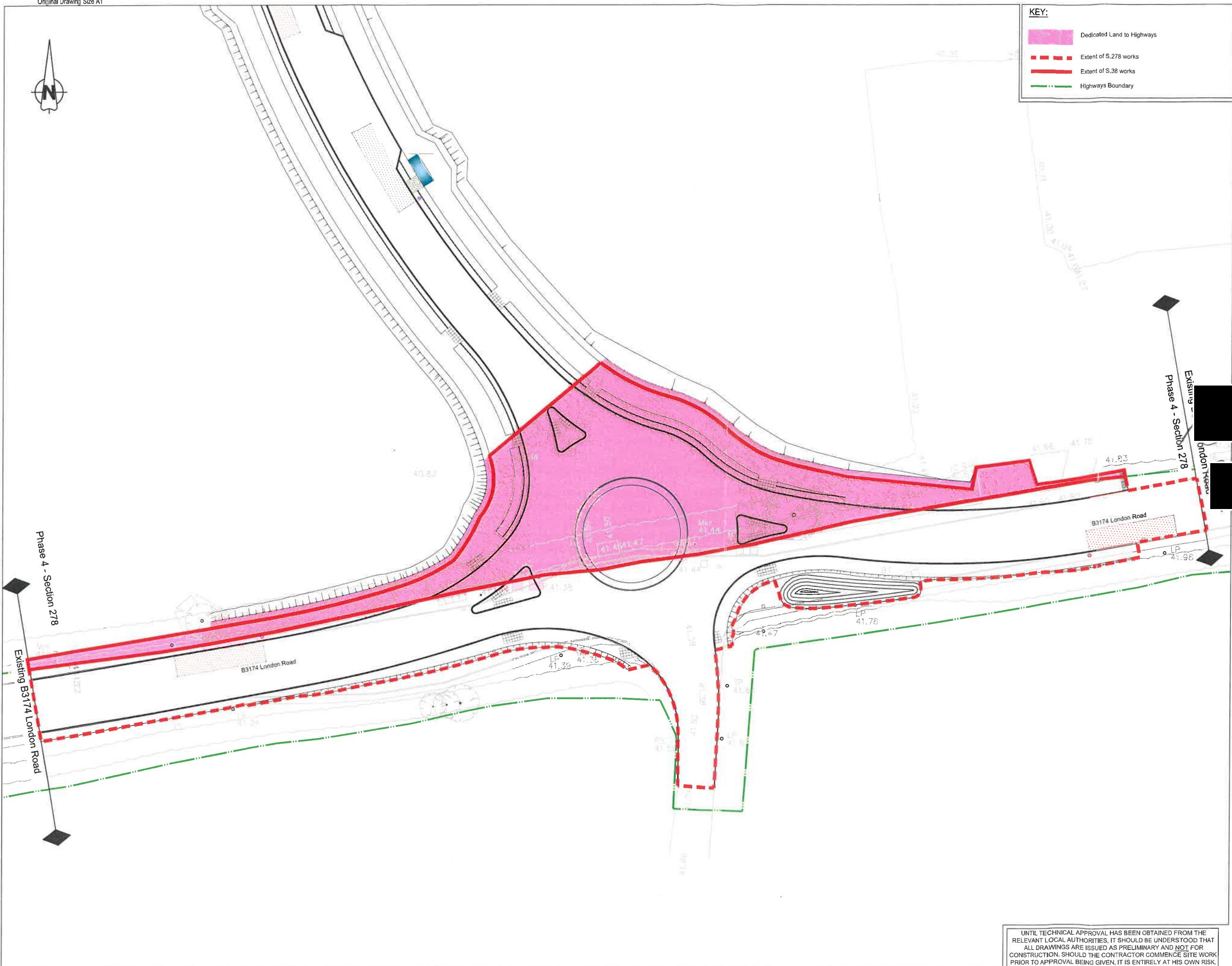
MLR Highway Works

Section 278 - B3174 Roundabout

Land Dedication Plan

Status		Status Date	
For Approval		April 2019	
Drawn	Checked	Date	
FT	DS	29.04.2019	
Scale	Number	Rev	
1:250	10301-180-201	B	

UNTIL TECHNICAL APPROVAL HAS BEEN OBTAINED FROM THE RELEVANT LOCAL AUTHORITIES, IT SHOULD BE UNDERSTOOD THAT ALL DRAWINGS ARE ISSUED AS PRELIMINARY AND NOT FOR CONSTRUCTION. SHOULD THE CONTRACTOR COMMENCE SITE WORK PRIOR TO APPROVAL BEING GIVEN, IT IS ENTIRELY AT HIS OWN RISK.





**KEY:**

- Proposed areas to be overlaid / constructed in bituminous material
- New footways tactile paving
- New verges and landscaping areas
- Extent of S.38 Works
- Proposed Street Lighting
- Storm Sewer
- Foul Sewer
- Proposed Gully and Connection
- Proposed Kerb Gully and Connection
- Storm Sewer Pipe Easement
- Ultracolor natural quartzite or similarly approved (Raised Table)
- Ramped section of pavement (Raised Table)
- Bus stop

**Construction Design and Management (CDM) Key Residual Risks**

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  5. All materials and workmanship are to be in accordance with the Contract Specification and the Department of Transport Specification for Highway works, and Devon County Council Highway Construction directions.

**DIRECTOR**

**DIRECTOR/SECRETARY**

J	Amended to suit DCC's comments	FT	DS	PAB	11.12.19
I	Key is amended	FT	DS	PAB	02.12.19
H	Amended to suit DCC's comments	FT	DS	PAB	28.11.19
G	Extent of S.278 & S.38 works altered	FT	DS	PAB	31.10.19
F	Laybys added	FT	DS	PAB	23.04.19
E	Minor amendments	FT	DS	PAB	17.01.19
D	Raised table added	FT	DS	PAB	30.07.18
C	Road Layout updated	FT	DS	PAB	17.07.18
B	Road Layout and Drainage Design updated	FT	DS	PAB	08.06.18
A	Road Layout and Drainage Design updated	FT	DS	PAB	16.03.18
-	First Issue	FT	DS	PAB	14.02.18



EDNC Consortium

East Devon New Community

Phase 4 Enabling Works

MLR Highway Works

Section 38 - MLR Phase 4

Adoption Plan

Status	Approval	Status Date	Jan' 2018
Drawn	FT	Checked	DS
Date		Date	19.01.2018
Scale	1:500	Number	10301-110-251
		Rev	J

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**Construction Design and Management (CDM)**  
**Key Residual Risks**

Contractors entering the site should gain permission from the relevant land owners and/or principle contractor working on site at the time of entry. Contractors shall be responsible for carrying out their own risk assessments and for liaising with the relevant services companies and authorities. Listed below are Site Specific key risks associated with the project.

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**KEY:**

Location of MLR Phase 4

G	Minor amendments	FT	DS	PAB	31.10.19
F	Laybys added	FT	DS	PAB	23.04.19
E	Minor amendments	FT	DS	PAB	17.01.19
D	Road Layout amended	FT	DS	PAB	17.07.18
C	Scale is changed	FT	DS	PAB	16.07.18
B	Road Layout updated	FT	DS	PAB	08.06.18
A	Road Layout updated	FT	DS	PAB	16.03.18
-	First Issue	FT	DS	PAB	14.02.18



**DIRECTOR**

**DIRECTOR SECURITY**

EDNC Consortium

East Devon New Community

Phase 4 Enabling Works

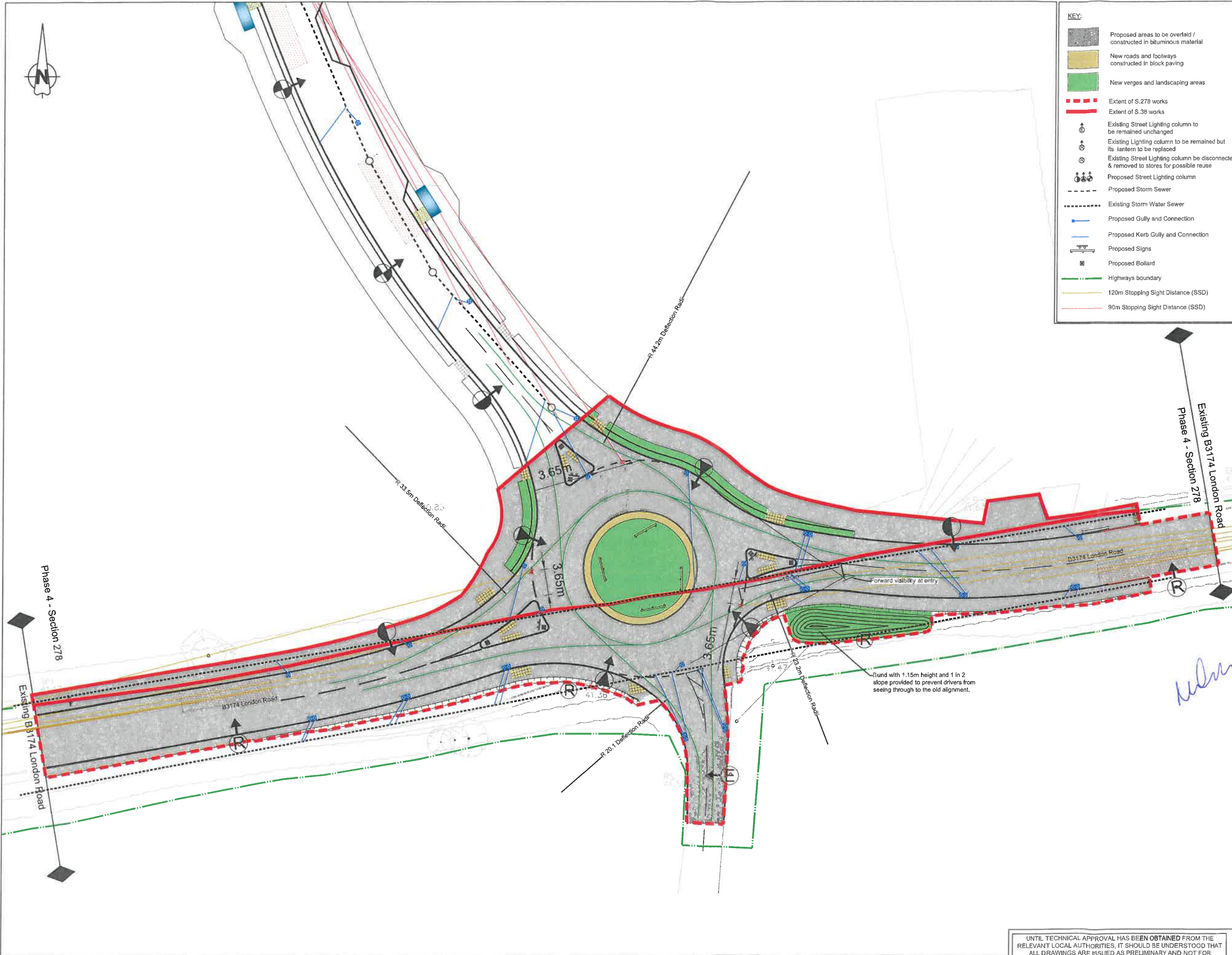
MLR Highway Works

Section 38 - MLR Phase 4

Location Plan

Status	Approval		Status Date	Jan' 2018
Drawn	FT	Checked	DS	Date
Scale	1:2500	Number	10301-100-051	Rev
				G

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**KEY:**

- Proposed areas to be overfold / constructed in bituminous material
- New roads and footways constructed in block paving
- New verges and landscaping areas
- Extent of S.278 works
- Extent of S.38 works
- Existing Street Lighting column to be remained unchanged
- Existing Lighting column to be remained but its lantern to be replaced
- Existing Street Lighting column be disconnected & removed to stores for possible reuse
- Proposed Street Lighting column
- Proposed Storm Sewer
- Existing Storm Water Sewer
- Proposed Gully and Connection
- Proposed Kerb Gully and Connection
- Proposed Signs
- Proposed Bollard
- Highways boundary
- 120m Stopping Sight Distance (SSD)
- 90m Stopping Sight Distance (SSD)

**Construction Design and Management (CDM) Key Residual Risks**

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**DIRECTOR/SECRETARY**

N	Gullies and visibility colour altered	FT	DS	PAB	02.09.19
M	S.38 extent of work boundary is altered	FT	DS	PAB	12.08.19
L	Amended to suit DCC's comments	FT	DS	PAB	10.07.19
K	Drainage layout & extension of S.278 works updated	FT	DS	PAB	07.06.19
J	Amended to suit DCC's comments	FT	DS	PAB	29.04.19
I	Amended to suit DCC's comments	FT	DS	PAB	25.03.19
H	Overrun is replaced by tarmac.	FT	DS	PAB	15.02.19
G	Road layout amended	FT	DS	PAB	18.12.18
F	New construction for Overrun strip considered.	FT	DS	PAB	13.11.18
E	Footways on London Road extended.	FT	DS	PAB	14.08.18
D	Footway in north west of RA widened.	FT	DS	PAB	30.07.18
C	Road Layout amended.	FT	DS	PAB	16.07.18
B	Road Layout amended.	FT	DS	PAB	25.05.18
A	Road Layout and Drainage Design updated.	FT	DS	PAB	16.03.18
-	First Issue	FT	DS	PAB	14.02.18



TEL: 01392 844800 FAX: 01392 844801  
 WWW.BROOKBANKS.CO.UK

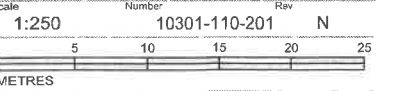
**EDNC Consortium**

East Devon New Community  
 Phase 4 Enabling Works

**MLR Highway Works**  
 Section 278 - B3174 Roundabout  
 Adoption Plan

Status	Approval	Status Date	Jan' 2018
Drawn	FT	Checked	DS
Date	19.01.2018	Rev	

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AN AGREEMENT made the

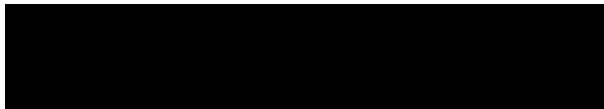
4<sup>th</sup>

day of

February

2<sup>nd</sup> 20  
2018

BETWEEN



- (1) ~~PERSIMMON HOMES (SOUTH WEST) LIMITED~~ (Company No: 00929585) whose Registered Office is at Persimmon House Fulford York YO19 4FE, **HALLAM LAND MANAGEMENT LIMITED** (Company No: 02456711) whose Registered Office is at Banner Cross Hall Ecclesall Road South Sheffield S11 9PD and **TAYLOR WIMPEY EXETER LIMITED** (Company No: ~~00401589~~ <sup>643420</sup>) whose Registered Office is at ~~4 Capital Court Sowton Industrial Estate Exeter Devon EX2 7FW~~ (together <sup>DEVELOPMENTS</sup> ~~Gate House, Turnpike Road, High Wycombe, Buckinghamshire,~~ <sup>HP12 3NR</sup> "the Developer")
- (2) **DEVON COUNTY COUNCIL** of County Hall, Topsham Road, Exeter EX2 4QD ("Council")

**WHEREAS:**

- 1) The Council is the Local Highway Authority
- 2) The Developer is the registered proprietor at HM Land Registry under title DN612520 of the land adjoining Southbrook Lane, Whimble, Exeter which is shown for identification only by red edging on the Drawings annexed hereto which includes within such edging the site of the proposed Road or Roads shown coloured grey and edged red on the drawings numbered 10301-110-251 G, 10301-180-201 B and 10301-110-201 N annexed hereto and is desirous of making up the Road or Roads so that the same shall become a highway or highways maintainable at public expense.
- 4) The Developer has requested that when the works hereinafter referred to for the making up the Road or Roads have been executed and maintained as hereinafter appearing the Council shall undertake the maintenance of the Road or Roads as highway or highways maintainable at the public expense which the Council has agreed to do upon the terms and conditions hereinafter appearing
- 5) The Council is requiring that the Developer execute certain works upon the public highway as hereinafter described and the Council is satisfied that those works will be of benefit to the public

In pursuance of Sections 38 and 278 of the Highways Act 1980 and Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and Section 111 of the Local Government Act 1972 and with other enabling powers; and it is hereby agreed and declared by and between the parties as follows

**1. Interpretation**

In this Agreement where the context so admits:

"Certificate of Completion" means the certificate to be issued on satisfactory completion of the Highway Works in accordance with Clause 10

**“Dedication Land Drawing”** means drawing number 10301-180-2-1B annexed hereto

**“Design Manual”** means the “Design Manual for Roads and Bridges” reference GG119 published by the Highways Agency and others, and any publication which amends or replaces it;

**“Development”** means Phase 4 Enabling Works of the East Devon New Community

**“Drawings”** mean annexed drawings with reference numbers 10301-110-251 J, 10301-180-201 B and 10301-110-201 N signed by or on behalf of the parties hereto and any amended such Drawings signed by or on behalf of the Proper Officer

**“East Devon New Community (Phase 4)”** means the Land Adjacent To Southbrook Lane forming Phase 4 of the East Devon New Community outlined in red on the Plan annexed hereto titled MLR Highway Works Section 38 –MLR Phase 4 Location Plan and which has reference number 10301-1000-051 G

**“Final Certificate”** means the certificate to be issued on satisfactory completion of the maintenance period for the Highway Works in accordance with Clause 13

**“Highways Works”** means the works to be executed upon the public highway and shown with a broken red line on the Drawings annexed hereto.

**“Maintenance Period”** means the period of 12 calendar months

**Part 1 Certificate”** means the certificate to be issued on satisfactory completion of the Part 1 Works in accordance with Clause 10

**“Part 1 Works”** means the works referred to in Part 1 of the Schedule

**“Part 2 Certificate”** means the certificate to be issued on satisfactory completion of the Part 2 Works in accordance with Clause 12

**“Part 2 Works”** means the works referred to in Part 2 of the Schedule

**“Programme of Works”** means that referred to in Clause 3.1

**“Proper Officer”** means the Head of Planning, Transportation & Environment of the Council or such other officer from time to time with responsibility for highways

**“Roads”** means those part of the Highway Works as shown coloured grey on Drawings

**“Site Plan”** means the title plan for title number DN612520

**“Specification”** means the Highways in Residential and Commercial Estates Design Guide dated Jan 1996 and as amended and current at the date of commencement of the Highway Works

**“Stage 1, 2, 3 and 4 Safety Audits”** means the safety audits so defined in the Design Manual and the Institution of Highways and Transportation’s Road Safety Audit guidelines;

**“Statutory Undertaker”** means a statutory undertaker as defined in Section 329(1) of the Highways Act 1980 and British Telecommunications plc

**“Traffic Manager”** means the officer appointed by the Council to act as traffic manager for the purposes of the Traffic Management Act 2004

**“Works”** means the works to be carried out on the Developer’s land being the land shown on the Site Plan and shown with a solid red line on the Drawings annexed hereto.



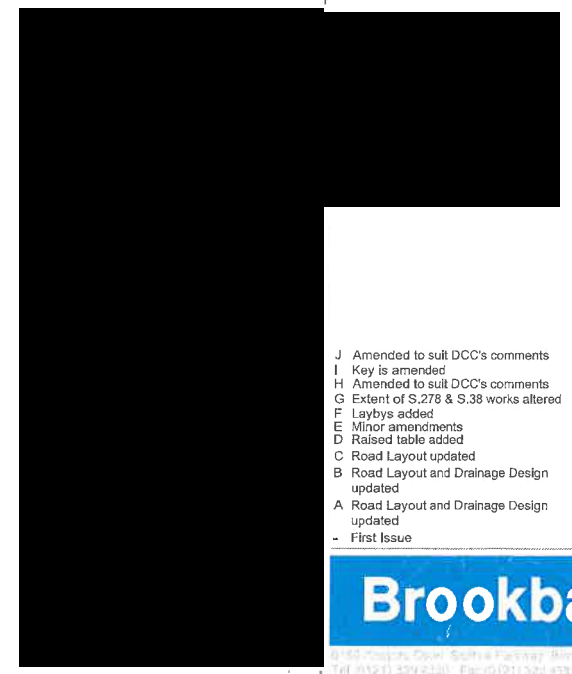
**KEY:**

- Proposed areas to be overlaid / constructed in bituminous material
- New footways tactile paving
- New verges and landscaping areas
- Extent of S.38 Works
- Proposed Street Lighting
- Storm Sewer
- Foul Sewer
- Proposed Gully and Connection
- Proposed Kerb Gully and Connection
- Storm Sewer Pipe Easement
- Ultracolor natural quartzite or similarly approved (Raised Table)
- Ramped section of pavement (Raised Table)
- Bus stop

**Construction Design and Management (CDM)**  
**Key Residual Risks**  
 Contractors entering the site should gain permission from the relevant land owners and/or principle contractor working on site at the time of entry. Contractors shall be responsible for carrying out their own risk assessments and for liaising with the relevant services companies and authorities. Listed below are Site Specific key risks associated with the project.

- 1) Overhead and underground services
- 2) Street Lighting Cables
- 3) Working adjacent to water courses and flood plain
- 4) Soft ground conditions
- 5) Working adjacent to live highways and railway line
- 6) Uncharted services
- 7) Existing buildings with potential asbestos hazards

- NOTES:**
1. Do not scale from this drawing.
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  3. Brookbanks Consulting Ltd has prepared this drawing for the sole use of the client. The drawing may not be relied upon by any other party without the express agreement of the client and Brookbanks Consulting Ltd. Where any data supplied by the client or from other sources has been used, it has been assumed that the information is correct. No responsibility can be accepted by Brookbanks Consulting Ltd for inaccuracies in the data supplied by any other party. The drawing has been produced based on the assumption that all relevant information has been supplied by those bodies from whom it was requested.
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  5. All materials and workmanship are to be in accordance with the Contract Specification and the Department of Transport Specification for Highway works, and Devon County Council Highway Construction directions.



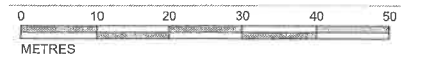
J	Amended to suit DCC's comments	FT	DS	PAB	11.12.19
I	Key is amended	FT	DS	PAB	02.12.19
H	Amended to suit DCC's comments	FT	DS	PAB	28.11.19
G	Extent of S.278 & S.38 works altered	FT	DS	PAB	31.10.19
F	Laybys added	FT	DS	PAB	23.04.19
E	Minor amendments	FT	DS	PAB	17.01.19
D	Raised table added	FT	DS	PAB	30.07.18
C	Road Layout updated	FT	DS	PAB	17.07.18
B	Road Layout and Drainage Design updated	FT	DS	PAB	08.06.18
A	Road Layout and Drainage Design updated	FT	DS	PAB	16.03.18
-	First Issue	FT	DS	PAB	14.02.18

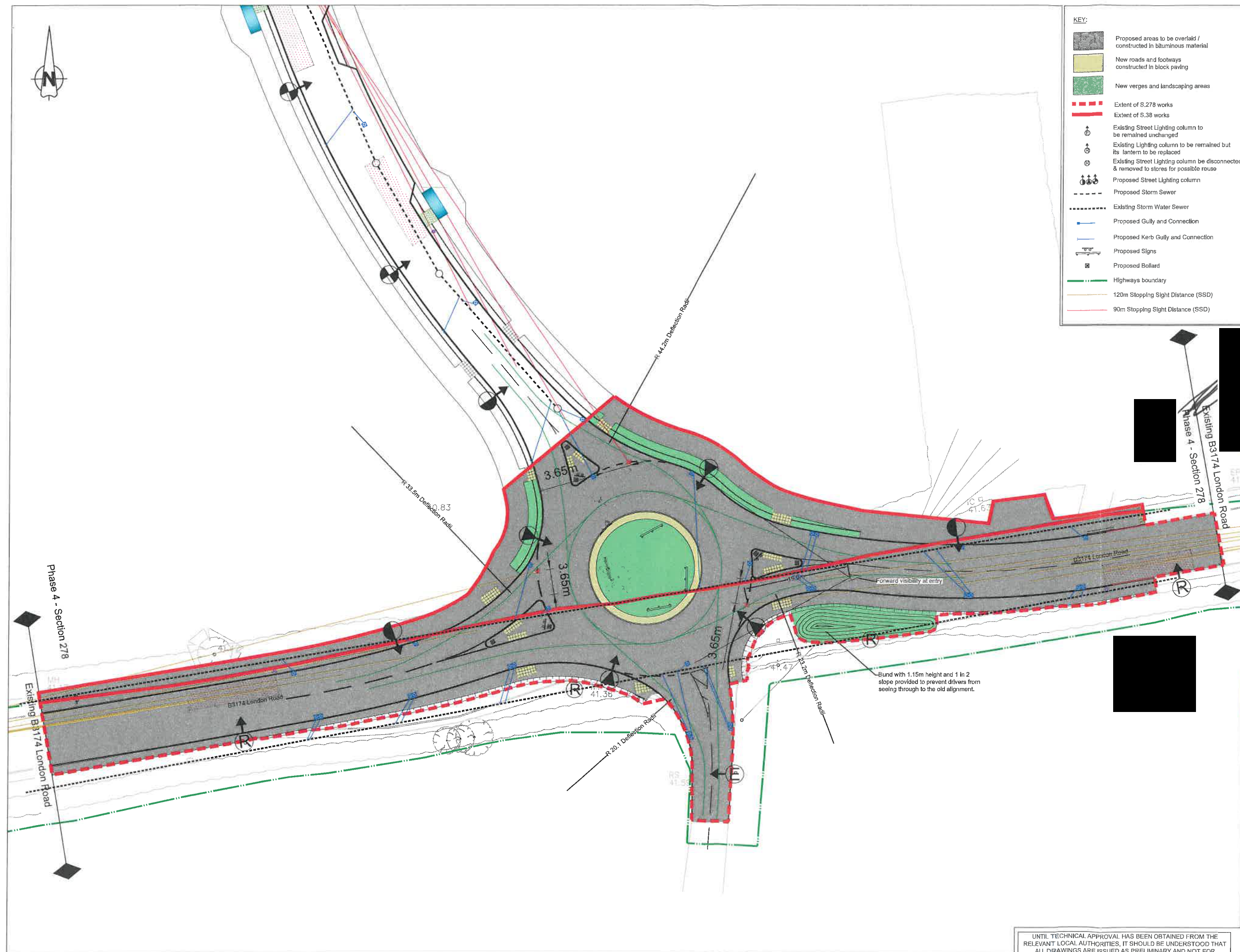
**Brookbanks**  
 0132 2594200  
 141-143 Southway, Barnstaple, Devon PL7 8JY  
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 www.brookbanks.com

EDNC Consortium  
 East Devon New Community  
 Phase 4 Enabling Works  
 MLR Highway Works  
 Section 38 - MLR Phase 4  
 Adoption Plan

Status	Approval	Date	Jan' 2018
Drawn	FT	Checked	DS
Date	19.01.2018	Rev	J
Scale	1:500	Number	10301-110-251

UNTIL TECHNICAL APPROVAL HAS BEEN OBTAINED FROM THE RELEVANT LOCAL AUTHORITIES, IT SHOULD BE UNDERSTOOD THAT ALL DRAWINGS ARE ISSUED AS PRELIMINARY AND NOT FOR CONSTRUCTION. SHOULD THE CONTRACTOR COMMENCE SITE WORK PRIOR TO APPROVAL BEING GIVEN, IT IS ENTIRELY AT HIS OWN RISK.





**KEY:**

	Proposed areas to be overlaid / constructed in bituminous material
	New roads and footways constructed in block paving
	New verges and landscaping areas
	Extent of S.278 works
	Extent of S.38 works
	Existing Street Lighting column to be remained unchanged
	Existing Lighting column to be remained but its lantern to be replaced
	Existing Street Lighting column to be disconnected & removed to stores for possible reuse
	Proposed Street Lighting column
	Proposed Storm Sewer
	Existing Storm Water Sewer
	Proposed Gully and Connection
	Proposed Kerb Gully and Connection
	Proposed Signs
	Proposed Bollard
	Highways boundary
	120m Stopping Sight Distance (SSD)
	90m Stopping Sight Distance (SSD)

**Construction Design and Management (CDM) Key Residual Risks**

Contractors entering the site should gain permission from the relevant land owners and/or principle contractor working on site at the time of entry. Contractors shall be responsible for carrying out their own risk assessments and for liaising with the relevant services companies and authorities. Listed below are Site Specific key risks associated with the project.

- 1) Overhead and underground services
- 2) Street Lighting Cables
- 3) Working adjacent to water courses and flood plain
- 4) Soft ground conditions
- 5) Working adjacent to live Highways and railway line
- 6) Uncharted services
- 7) Existing buildings with potential asbestos hazards

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N	Gullies and visibility colour altered	FT	DS	PAB	02.08.19
M	S.38 extent of work boundary is altered	FT	DS	PAB	12.08.19
L	Amended to suit DCC's comments	FT	DS	PAB	10.07.19
K	Drainage layout & extension of S.278 works updated	FT	DS	PAB	07.06.19
J	Amended to suit DCC's comments	FT	DS	PAB	29.04.19
I	Amended to suit DCC's comments	FT	DS	PAB	25.03.19
H	Overrun is replaced by tarmac.	FT	DS	PAB	15.02.19
G	Road layout amended	FT	DS	PAB	18.12.18
F	New construction for Overrun strip considered.	FT	DS	PAB	13.11.18
E	Footways on London Road extended.	FT	DS	PAB	14.08.18
D	Footway in north west of RA widened.	FT	DS	PAB	30.07.18
C	Road Layout amended.	FT	DS	PAB	16.07.18
B	Road Layout amended.	FT	DS	PAB	25.05.18
A	Road Layout and Drainage Design updated.	FT	DS	PAB	16.03.18
-	First Issue	FT	DS	PAB	14.02.18

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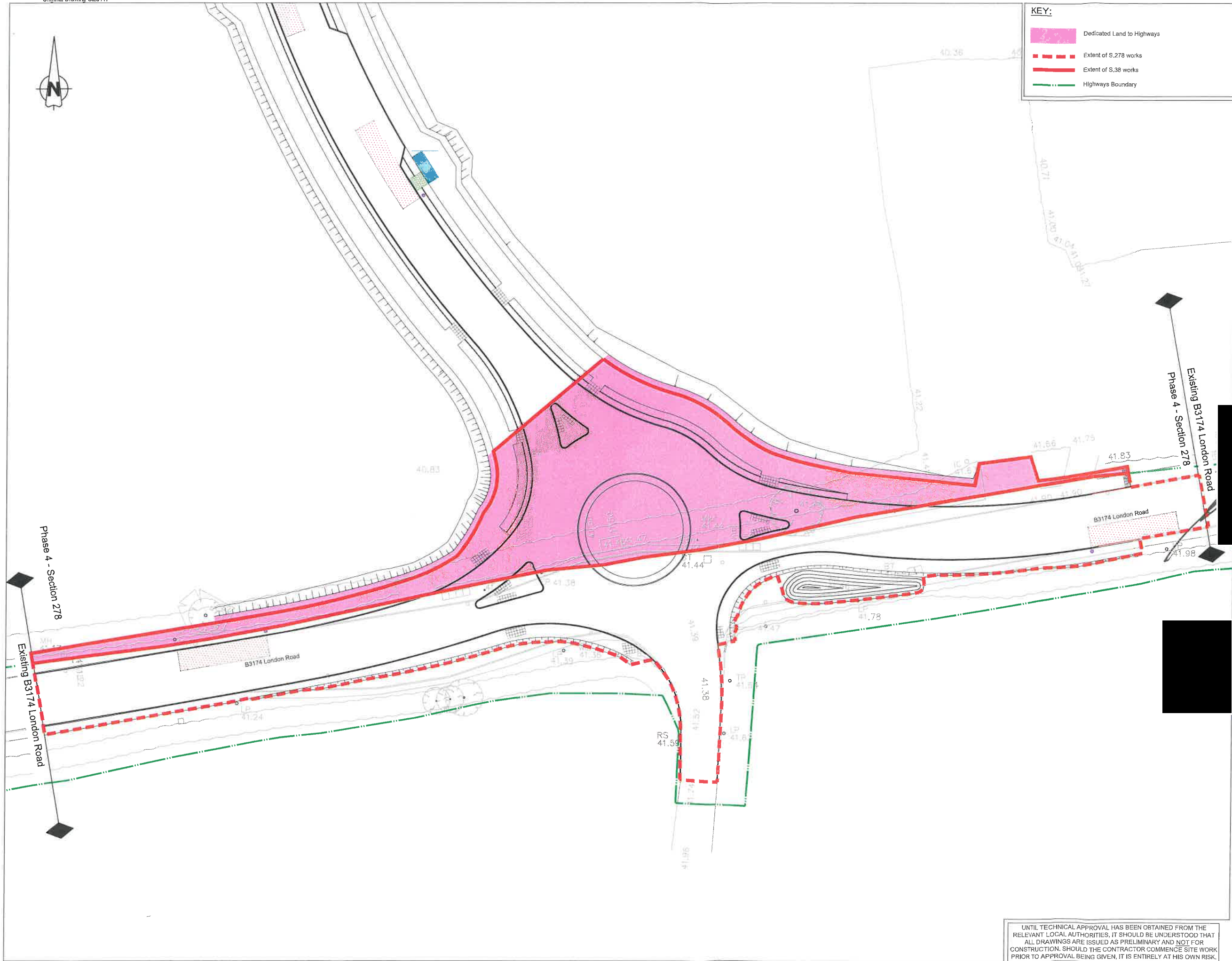
EDNC Consortium

East Devon New Community  
 Phase 4 Enabling Works

MLR Highway Works  
 Section 278 - B3174 Roundabout  
 Adoption Plan

Status	Approval	Status Date	Jan' 2018
Drawn	FT	Checked	DS
Date	19.01.2018	Rev	N
Scale	1:250	Number	10301-110-201

UNTIL TECHNICAL APPROVAL HAS BEEN OBTAINED FROM THE RELEVANT LOCAL AUTHORITIES, IT SHOULD BE UNDERSTOOD THAT ALL DRAWINGS ARE ISSUED AS PRELIMINARY AND NOT FOR CONSTRUCTION. SHOULD THE CONTRACTOR COMMENCE SITE WORK PRIOR TO APPROVAL BEING GIVEN, IT IS ENTIRELY AT HIS OWN RISK.



**KEY:**

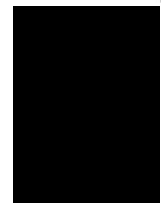
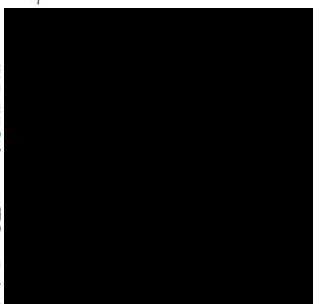
- Dedicated Land to Highways
- Extent of S.278 works
- Extent of S.38 works
- Highways Boundary

**Construction Design and Management (CDM) Key Residual Risks**

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- 2) Street Lighting Cables
- 3) Working adjacent to water courses and flood plain
- 4) Soil ground conditions
- 5) Working adjacent to live highways and railway line
- 6) Uncharted services
- 7) Existing buildings with potential asbestos hazards

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B	Extent of S.278 & S.38 works altered	FT	DS	PAB	02.09.19
A	Extension of S.278 works updated	FT	DS	PAB	07.06.19
-	First Issue	FT	DS	PAB	29.04.18



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**EDNC Consortium**

**East Devon New Community**  
**Phase 4 Enabling Works**

**MLR Highway Works**  
**Section 278 - B3174 Roundabout**  
**Land Dedication Plan**

Status		Status Date	
For Approval		April 2019	
Drawn	Checked	Date	
FT	DS	29.04.2019	

Scale	Number	Rev
1:250	10301-180-201	B
0 5 10 15 20 25		
METRES		

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**Construction Design and Management (CDM) Key Residual Risks**  
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5. All materials and workmanship are to be in accordance with the Contract Specification and the Department of Transport Specification for Highway works, and Devon County Council Highway Construction directions.

**KEY:**

— Location of MLR Phase 4



G	Minor amendments	FT	DS	PAB	31.10.19
F	Laybys added	FT	DS	PAB	23.04.19
E	Minor amendments	FT	DS	PAB	17.01.19
D	Road Layout amended	FT	DS	PAB	17.07.18
C	Scale is changed	FT	DS	PAB	16.07.18
B	Road Layout updated	FT	DS	PAB	08.06.18
A	Road Layout updated	FT	DS	PAB	16.03.18
-	First Issue	FT	DS	PAB	14.02.18

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**EDNC Consortium**  
 East Devon New Community  
 Phase 4 Enabling Works

**MLR Highway Works**  
 Section 38 - MLR Phase 4  
 Location Plan

Status	Approval	Status Date	Jan' 2018
Drawn	FT	Checked	DS
Date	19.01.2018		

Scale	1:2500	Number	10301-100-051	Rev	G

UNTIL TECHNICAL APPROVAL HAS BEEN OBTAINED FROM THE RELEVANT LOCAL AUTHORITIES, IT SHOULD BE UNDERSTOOD THAT ALL DRAWINGS ARE ISSUED AS PRELIMINARY AND NOT FOR CONSTRUCTION. SHOULD THE CONTRACTOR COMMENCE SITE WORK PRIOR TO APPROVAL BEING GIVEN, IT IS ENTIRELY AT HIS OWN RISK.

## **2. Developer's Liability**

SUBJECT to the terms conditions agreements and undertakings contained in this Agreement the Developer shall carry out and complete the Works and the Highway Works at the Developer's expense in a good and workmanlike manner and with proper materials in accordance in all respects with the Specification and the Drawings to the satisfaction of the Proper Officer and in accordance with permits and approvals granted by the Council or any other statutory or public authorities and (except as may be otherwise provided in this Agreement) shall complete the Works and the Highway Works within six (6) months of commencing the Works and Highway Works

## **3. Highway Works**

The Developer covenants with the Council that the Developer will at its own expense in relation to the Highway Works observe and perform to the reasonable satisfaction of the Council the following requirements obligations and conditions or any of them outstanding at the date of this Agreement and will immediately do any act or thing required by the Council to remedy any breach of those requirements obligations and conditions: -

- 3.1 Not to commence any part of the Highway Works before a Programme of Works and a method of carrying out the Highway Works shall have been approved by the Proper Officer (such approval not to be unreasonably withheld) and the Drawings have been provided as a CAD (dwg.) file or such other format as agreed in writing by the Proper Officer
- 3.2 Secure at its own expense any necessary approvals required from any Statutory Undertakers, emergency services and other public authorities and utilities and comply with all requirements of these
- 3.3 execute the Highway Works and works associated therewith expeditiously causing no unnecessary nuisance to the public
- 3.4 employ a suitably qualified supervisor to oversee the construction of the Highway Works and to act as liaison between the Developer contractor and the Council
- 3.5 employ a contractor or contractors to carry out the Highway Works who shall be approved by the Proper Officer (such approval not to be unreasonably withheld or delayed) and that all the covenants conditions and obligations contained in this Agreement relating to the method of working shall be included in any agreement between the Developer and its contractor and it shall not depart from it without the approval of the Council and the said contractor or contractors shall at all times during the progress of the Highway Works maintain a public liability insurance policy with a member of the Association of British Insurers for at least £5,000,000
- 3.6 to give the Traffic Manager appropriate notice in the form required by the Traffic Manager to comply with the requirements of the Traffic Management Act 2004 of the Developer intention to commence the Highway Works

- 3.7 to undertake all the requirements in respect of the execution of the Highway Works under the Construction (Design and Management) Regulations 2015 (“Regulations”) as if the Developer were the client and to indemnify the Council in respect of any actions proceedings costs claims demands and liabilities arising out of any breach of the Regulations
- 3.8 as soon as possible after the date of this Agreement and in any event prior to the commencement of work on any element of the Highway Works the Developer shall contact the Council who shall identify any necessary Traffic Regulation Orders and any other similar changes to the highway subject to statutory publications e.g. zebra crossings, road humps etc and the Developer shall request the Council, if the Council is satisfied with the proposals to make any such Order or publish notice of intent or similar and shall indemnify the Council in respect of the costs involved in making any such Order including notification procedure pursuant to the relevant legislation (or any statutory modification or re-enactment thereof)
4. The Developer covenants to include in the conditions of contract of the contractors (or any sub contractors) engaged to carry out the Highway Works the following clauses:-
- 4.1 The Programme of Works and method of carrying out the Highway Works shall be approved by the Proper Officer and the contractor shall in all cases submit written notice of its intended Programme of Works and any width restrictions or occupation of the public highway to the Proper Officer for approval in writing at least 4 weeks in advance of the proposed commencement of those works and the approved Programme of Works and method shall be followed at all times
- 4.2 All work on the public highway shall be restricted to dates and times agreed in writing by the Proper Officer in order to minimise delay to vehicular traffic
- 4.3 All operations on or affecting the public highway shall be carried out so as to avoid risk of danger to both pedestrians and vehicular traffic and (except as may be previously agreed in writing by the Proper Officer) to avoid any interference with the free movement of pedestrians and vehicular traffic
- 4.4 The contractor shall in accordance with the agreed Programme of Works be allowed to take possession of so much of the public highway land as may be agreed in writing by the Proper Officer for the carrying out of the Highway Works
- 4.5 Where in the opinion of the Proper Officer work affecting the public highway causes excessive traffic congestion the contractor shall immediately suspend that work and remove any plant or equipment that create such restrictions to traffic flows
- 4.6 The Proper Officer may require the contractor to agree to any reasonable variations to any previously agreed Programme of Works in the event of excessive traffic congestion resulting from it and the contractor will take all steps to comply with any such request

4.7 The contractor will comply with the Volume 1 Department of Transport's Manual of Contract Documents for Highway Works (MCHW) – Specification for Highway Works and any publication which amends or replaces it and shall include the following additional clauses to that specification:-

4.7.1 The traffic signs road markings lamps barriers and traffic control signals shall be in accordance with the requirements of the Traffic Signs Regulations and General Directions current at the date of execution of the work

4.7.2 Traffic control signals shall be operated in the vehicle actuated mode unless otherwise agreed by the Proper Officer

4.7.3 Traffic cones and cylinders shall comply with the requirements of BS 873 Part 8 Category A Designation 1

4.7.4 The contractor shall construct temporary diversion ways wherever they propose to interfere with the existing public or private roads or other ways over which there is a public or private right of way for any traffic

4.7.5 The standard of construction and lighting shall be suitable in all respects for the appropriate class of road and the width of any diversion shall not (unless otherwise agreed with the Proper Officer such agreement not to be unreasonably withheld) be less than that of the existing way. The standard of construction shall conform to the requirements of the Council

4.7.6 Temporary white lining is to be provided to all such diversions and laid in accordance with the requirements of the Traffic Signs Regulations and General Directions or otherwise as instructed by the Proper Officer

4.7.7 Roads accesses and rights of way which are being used by construction traffic shall at all times be kept clean and clear so far as possible of dirt mud and material dropped from vehicles or from tyres arising from such use and the contractor shall provide maintain and use suitable equipment for this purpose

4.7.8 The contractor shall at all times ensure that all highway drains affected by its works shall be kept clear of any spoil mud slurry or other material likely to impede the free flow of water in them

4.7.9 The contractor shall provide the Proper Officer with the name and telephone number of a person and their deputy who can be contacted at any time during the day and night and who will be in a position to put into immediate effect any measures considered necessary by the Proper Officer to ensure the safety of the public

5. The Programme of Works shall include details of:-

- 5.1 The sequence in which each phase of the Highway Works including temporary highway works or temporary access arrangements shall be undertaken
- 5.2 The period within which each phase of work shall be completed
- 5.3 Temporary traffic and pedestrian arrangements during the construction of the development of the adjoining land including the means and positions of vehicular and pedestrian access to the development
- 5.4 Such additional plans and details as may be reasonably required by the Council to describe each phase of work

**6. Declaration**

The Developer hereby declares and warrants to the Council that he has and will throughout the duration of this Agreement maintain full right and liberty and consent to carry out such works as may be necessary to connect the Road or Roads to a vehicular highway or highways

**7. Statutory Undertakers – Connections to Existing Services**

THE Developer shall before connecting the Road or Roads with any highway or highways maintainable at the public expense give notice to each person board or authority being the Statutory Undertaker for the time being of any service or services laid in upon or under such highway or highways of the proposal to make such connection as if the connection were a work to be executed for the purposes of and were mentioned in Section 48 of the New Roads and Street Works Act 1991 and shall indemnify the Council in respect of the cost of any works or measures considered necessary by any Statutory Undertaker in consequence of the proposal to make such connection

**8. Access to the Works/ Highway Works & Inspection**

- 8.1 The Developer shall during the carrying out of the Works and the Highway Works give and allow the Proper Officer and any other officer of the Council access to every part of the Works and the Highway Works and the site thereof for the purpose of inspecting the same and all materials used or intended to be used therein and the Developer shall if requested open up for inspection any portion of the Works or (as the case may be) the Highway Works which may be covered up and should the Developer decline to comply with such a request the Council may itself open up the Works or (as the case may be) the Highway Works and in the event of any such portion of the same being found (in the reasonable opinion of the Council) to be defective the cost of such opening shall be recoverable from the Developer
- 8.2 If any inspection carried out under sub-clause 8.1 reveals defects in the Works or the Highway Works the Developer shall carry out remedial works to the satisfaction of the Council

- 8.3 The Council will inspect any remedial works carried out under sub-clause 8.2 within 5 working days of receipt of a written request from the Developer to do so
- 8.4 Following any inspection under sub-clause 8.3 the Council shall within 5 working days of its inspection notify the Developer in writing of its satisfaction with the remedial works PROVIDED THAT in the event of the remedial works being unsatisfactory this process may be repeated as many times as necessary until the defective works have been remedied to the satisfaction of the Council
- 8.5 Upon practical completion of the Works and Highway Works the Developer shall in each case notify the Council in writing of their completion and within fourteen days of receipt of such notice the Council shall carry out a final inspection of the Works or (as the case may be) the Highway Works
- 8.6 The Developer shall:-
- 8.6.1 Employ an auditor who meets the qualifying standards of the Design Manual and who will not have been involved in any part of the scheme design to carry out the Stage 1 2 3 and 4 Safety Audits who shall be approved by the Proper Officer (such approval not be unreasonably withheld or delayed) and the said auditor or auditors shall at all times during the Stage 1 2 3 and 4 Safety Audits maintain a public liability insurance policy with a member of the Association of British Insurers for at least £5,000,000
- 8.6.2 Provide copies of the Stage 1 and 2 Safety Audit reports to the Proper Officer and any consequent changes or recommendations agreed with the Proper Officer
- 8.6.3 Provide copies of the Stage 3 and 4 Safety Audit reports to the Proper Officer and any recommendations or exception agreed with the Proper Officer and the Developer shall comply with the recommendations of such report to the reasonable satisfaction of the Proper Officer
- 8.6.4 Not less than 14 days before the Highway Works are due to be completed the Developer shall ensure that the Stage 3 Safety audit of the Highway Works is carried out and upon receipt of the safety audit report the Developer shall undertake such works to comply with the recommendations of such report to the reasonable satisfaction of the Proper Officer
- 8.6.5 The Developer shall ensure that the Stage 4 Safety Audit is carried out not earlier than 12 months nor later than 36 months from issue of the Certificate of Completion
- 8.7 In the event of the final inspection revealing any defect or defects in the Highway Works or (as the case may be) the Works the provisions of clause 8.4 shall apply as if they related to a final inspection

**9. Obligations During the Maintenance Period for the Works:**

9.1 During the maintenance period for the Works:

9.1.1 The Developer at his own expense shall maintain the Works including all grassed and plated areas and carry out such routine maintenance as may be necessary to facilitate use by vehicles and pedestrians

9.1.2 the Council at its own expense shall undertake routine maintenance of the and be responsible for payment for energy for all street lights and illuminated traffic signs

**10. Part 1 Certificate**

On completion of the Part 1 Works to the satisfaction of the Proper Officer in all respects the Proper Officer shall issue the Part 1 Certificate to the Developer

**11. Occupation of buildings**

No dwelling forming part of the East Devon New Community (Phase 4) shall be occupied until:

- a) the Proper Officer has issued the Part 1 Certificate in respect of the Roads or such part of the Roads as will provide the occupier with access to a vehicular highway and where applicable a base course pedestrian access to such highway has been provided and
- b) the Roads or such part of the Roads have columns erected ready for lighting in accordance with the Specification and the Drawings and the Developer has arranged with the electricity board for an electricity supply thereto by giving at least 6 weeks prior notice in writing or as may otherwise be agreed in writing by the Proper Officer

**12. Part 2 Certificate**

On completion of the Part 2 Works to the satisfaction of the Proper Officer in all respects the Proper Officer shall if any sewer constructed under the Roads under an agreement under Section 104 of the Water Industry Act 1991 has been certified as being or having been on maintenance issue the Part 2 Certificate to the Developer and from the date thereof

- a) the Maintenance Period shall commence to run for a period of 12 months
- b) the Roads shall become highway and remain forever open for use by the public
- c) the Developer shall remain the street manager for the purposes of Section 49 (4) of the New Roads and Street Works Act 1991 and any statutory modification or re-enactment thereof until such time as the Roads shall become highway maintainable at the public expense

**13. Obligations During Maintenance Period for Highway Works**

During the maintenance period for the Highway Works the Developer shall maintain the Highway Works and for the purposes of this clause and for the avoidance of doubt the Developer shall not have any obligations in respect of cyclic maintenance such as sweeping cleansing and provision of street lighting and other functions normally performed by the Council in respect of highways maintained at public expense

**14. Final Certificate for the Works and the Highway Works**

Prior to the expiration of the respective maintenance periods for the Works and the Highway Works the Developer shall forthwith at their own expense reinstate and make good any defect or damage which may have arisen from any cause whatsoever or be discovered during the maintenance period of which they have been notified in writing by the Proper Officer so that the Works or (as the case may be) the Highway Works comply with the Specification **and then provided that:**

- 13.1 the Developer has paid to the Council all amounts due to it under this Agreement and
- 13.2 any necessary reinstatement or other works have been completed to the satisfaction in all respects of the Proper Officer
- 13.3 the Developer has delivered to the Proper Officer drawings showing the works as constructed one set being a CAD (dwg.) file or such other format as agreed in writing by the Proper Officer

the Proper Officer shall issue the Final Certificate to the Developer in respect of the Works or (as the case may be) the Highway Works

**15. Grants of Rights of Drainage**

Prior to completion of this Agreement the Developer shall without cost to the Council execute or procure the execution by all necessary parties of such deeds as are in the opinion of the Council necessary to secure to the Council full drainage rights in respect of such parts of the surface water drainage system of the Road or Roads as are situate outside the limits of the Road or Roads and the Council shall not be liable for the payment of compensation or legal or any other costs or fees arising on account of the execution of any such deeds. If after completion of this Agreement the Council find that further drainage rights are reasonably required the Developer will at their own cost obtain those rights prior to any further certificates being issued in accordance with Clauses 10 and 13. For the avoidance of doubt the Council will not be

responsible for the drainage system until the issue of the Final Certificate in accordance with Clause 13

## 16 Procedure for Inspection and Issue of Certificates

Following receipt of a written application from the Developer for the issue of a Part 1 or Part 2 Certificate or Final Certificate pursuant to this Agreement the Proper Officer shall inspect the Works and where necessary provide the Developer with a definitive list in writing of any remedial Works required to be carried out before the issue of that Certificate. Any such remedial Works shall be subject to the same inspection procedure detailed herein until such time as they shall be completed to the reasonable satisfaction of the Proper Officer who shall issue the relevant Certificate

## 17. Adoption

17.1 Upon the issue of the Final Certificate the Road or Roads shall become highway or highways maintainable at the public expense

17.2 For the avoidance of doubt any hedges between the public highway and the Developer's adjacent development shall remain the responsibility of the Developer and its successors in title and the Developer and its successors in title shall ensure that such hedges are cut and maintained at all times in the future in a condition which will not cause any obstruction to the public highway and in the event that the Developer and its successors in title default in maintaining such hedges the Council shall be entitled to carry out such maintenance and recover the costs of doing so from the Developer or its successors in title

## 18. Inspection Fee

18.1 Within 7 days of the completion of this Agreement the Developer shall pay to the Council <sup>fifty</sup> ~~thirty~~ <sup>£50,000</sup> ~~five thousand pounds (£35,000)~~ in respect of the costs incurred by the Council in inspecting the Works and the Highway Works

18.2 Receipt by the Council of the payment of such sum shall not create any contractual relationship between the Council and the Developer nor absolve the Developer from any liability or obligation imposed upon them by the terms of this Agreement or by statute or at common law and the Council will not be liable for any loss damage or injury which the Developer may sustain by reason of insufficient or faulty inspection of the Works or the Highway Works by the Council

## 19. Determination by the Council

If the Developer fails to perform or observe any of the conditions stipulations or obligations on their part contained herein or if a receiving order in bankruptcy is made against them or if the Developer is being wound up or if the Developer enters into a composition or scheme of arrangement (otherwise than for the purpose of amalgamation or reconstruction) the Council may without prejudice to any of its rights claims or remedies against the Developer in respect of such non-performance or non-observance determine this Agreement (except for Clause 18 and 19) by notice in writing signed by the Proper Officer and delivered to the Developer or sent by post to the address stated in this Agreement

**20. Power to Execute Highway Works in Default**

If the Developer fails to execute the Highway Works in accordance with any previously agreed Programme of Works (unless prevented from doing so by matters beyond the control of the Developer when the period for completion of the Highway Works or the relevant part of them shall be extended by such reasonable period as shall be appropriate to the circumstances of delay) or if work shall (without the prior agreement of the Council) cease for more than one month or if the Developer shall go into voluntary or compulsory liquidation or if interim works are required in the interests of public safety then the Council may under Sections 278 and 296 of the Highways Act 1980 and after service of notice carry out any works it deems necessary in order to meet the requirements of this Agreement (if necessary entering onto the adjoining land for the purpose) and may then recover the reasonable and proper cost of those works from the Developer who shall reimburse the Council on demand

**21. Power to Execute Works in Default:**

WITHOUT prejudice to Clauses 2 and 17 hereof if the Developer fails to execute or complete the Works in accordance with the Developer's obligations hereunder the Council shall after not less than twenty-eight days' notice in writing to the Developer be entitled to execute or complete the Works in default by its own employees or by contract or otherwise and to recover the cost as certified by the Proper Officer from the Developer

**22. Defective or Dangerous Works**

22.1 UNTIL the Road or Roads become a highway maintainable at the public expense pursuant to this Agreement the Developer shall keep it or them and the several parts thereof in a reasonable state of repair having regard to the progress of the building works abutting on such several parts thereof and shall reinstate and make good any defects in or damage to the Works which shall or may appear to the Proper Officer to arise occur or become manifest and the Proper Officer may by notice require the Developer to make good any portion of the Works which he reasonably

considers to be defective damaged or dangerous and require the making good or reconstruction of the same by the Developer

22.2 Without prejudice to Clauses 2 and 17 hereof if the Developer fails to reconstruct or make good the same in accordance with the requirements of the Proper Officer the Council shall after not less than seven days' notice in writing to the Developer (except in case of emergency) be entitled to reconstruct and make good the portion of the Works which are defective damaged or dangerous by its own employees or by contractors or otherwise and to recover the cost as certified by the Proper Officer from the Developer

**23. Assignment**

This Agreement may not be assigned by the Developer without the consent of the Council which consent shall not be unreasonably withheld provided that the Council may require bonding as a condition of such an assignment

**24. Arbitration**

In the event of any dispute arising out of this Agreement the same shall be referred to a sole arbitrator to be agreed between the parties or failing agreement to be appointed 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 re-enactment or modification thereof

**25. Indemnity**

The Developer shall indemnify and keep indemnified the Council against any actions costs claims demands expenses and proceedings arising out of the undertaking of any of the Works or Highway Works which are due to any acts or defaults of the Developer or its contractor whether directly or indirectly during the course of their construction or during the ensuing maintenance period other than those arising out of or in consequence of any act neglect default or liability of the Council or its servants

**26. Land Compensation Act 1973**

The Developer shall indemnify the Council in respect of all claims pursuant to the Land Compensation Act 1973 (or any statutory modification or re-enactment of it) arising from the carrying out of the Highway Works and prior to the commencement of the Highway Works shall carry out such surveys as may be necessary to define the levels of physical factors as specified in the said Act

**27 Part or Parts**

Notwithstanding anything hereinbefore contained the Developer may from time to time during the currency of this Agreement apply to the Proper Officer for the Part 1 Certificate or Part 2 Certificate in respect of any part of the Roads (being the whole width of the road between points to be defined in the application) and if the Proper Officer is satisfied that the part so defined is in all respects suitable to be treated as a separate road for the purpose of construction and adoption in accordance with the several provisions contained in this Agreement then they shall issue a separate Part 1 Certificate or Part 2 Certificate as the case may be in respect of that part and thereafter the same proceedings may be taken in respect of the said part of the Roads as if the said part were the subject of a separate Agreement under which the terms of this Agreement applied to the said part separately from the remainder of the Roads the liability of the Surety shall where appropriate be reduced as may be agreed by the Proper Officer with the Developer

**28. Dedication**

Immediately prior to commencement of the Highway Works the Developer shall confirm that the land shown shaded pink on the Dedication Land Drawing is dedicated (insofar as it is not already so dedicated) to the public in perpetuity to form part of the highway maintainable at public expense (subject always to the provisions of this Agreement obliging the Developer to undertake the Highway Works and to maintain the same throughout the Maintenance Period) without the need for any further deed of dedication

**29. Consents & Approvals**

Where under this Agreement the consent or approval of any party is required that consent or approval shall not be unreasonably withheld or delayed

**30. Notice**

Any notice required to be served under this Agreement shall be in writing and shall be validly served if delivered to the relevant party or if sent by registered or recorded delivery post (and by facsimile in the case of emergency) as set out below:

- 30.1 in the case of the Council to the Head of Planning, Transportation & Environment, Devon County Council County Hall, Topsham Road, Exeter EX2 4QD
- 30.2 in the case of the Developer to the address shown in this Agreement

**31. Supplemental Drawings etc**

All subsequent drawings specifications licences agreements letters and documents relating to any matter contained or referred to in this Agreement shall be signed by or on behalf of the parties to

this Agreement as appropriate and shall be deemed to be supplemental to this Agreement and the stipulations and conditions contained in this Agreement shall apply to all such drawings specifications licences agreements letters and documents as if the same were incorporated in and formed part of this Agreement unless the parties specifically agree otherwise

**32. Costs**

On completion of this Agreement the Developer shall pay the Council's reasonable costs relating to the preparation and completion of this Agreement together with the legal costs associated with Clauses 10 and 13 (issuing of certificates) and Clause 14 (drainage rights)

**33. Interest**

If the Developer fails to pay any sum payable to the Council under this Agreement on the date when such payment falls due then the Council shall have the right to charge interest on such unpaid sum at the rate of 4% above base rate of Barclays Bank plc or any rate substituted therefor

IN WITNESS whereof the parties hereto have executed this Agreement as a Deed the day and year first before written

## THE SCHEDULE

### The Schedule - Part 1

- 1 All highway drainage
- 2 All other drainage contained within the highway
- 3 All kerb foundations and where appropriate kerbs including lowering at vehicle crossings and pram-ramps
- 4 Carriageway sub-base road base and any supporting structures thereto
- 5 Carriageway base course surfacing where appropriate
- 6 Demarcation of sight lines and clearance of vision splays
- 7 Footpaths to formation level

### The Schedule - Part 2

- 8 All outstanding kerbing not completed in Part 1
- 9 Pedestrian ways
- 10 Carriageway wearing course and/or carriageway base course
- 11 Vision splays and verges
- 12 Street lighting and street furniture
- 13 Street name plates
- 14 Road markings
- 15 All other Works described in the Specification and generally shown in accordance with but not limited to the Drawings

### The Works and Highway Works -Part 3

The construction of a roundabout, drainage, street lighting and associated works as shown on the Drawings and all other associated works reasonably required by the Proper Officer

EXECUTED as a DEED by )  
TAYLOR WIMPEY DEVELOPMENTS )  
LIMITED acting by its attorneys )  
DIANA CUMMING and JAMES BAU )  
both )  
in the presence of )



Gary Chapman  
Taylor Wimpey UK Limited  
730 Waterside Drive  
Aztec West  
Almondsbury  
Bristol  
BS32 4UE

EXECUTED as a DEED by )  
HALLAM LAND MANAGEMENT )  
LIMITED acting by two directors or a )  
director and the Secretary )

Director

Director/Secretary

EXECUTED as a DEED by )  
PERSIMMON HOMES )  
LIMITED acting by its attorneys )  
in the presence of )

THE COMMON SEAL of )  
DEVON COUNTY COUNCIL was hereunto )  
affixed )  
in the presence of )



A ~~Duly~~ Authorised Officer

~~Assistant County Solicitor~~  
Document No... 50337 .....