

THIS AGREEMENT is made *23<sup>rd</sup> February 2018* BETWEEN  
**Taylor Wimpey Developments Limited** (Company Number 00643420) whose registered office is at Gate House Turnpike Road High Wycombe Buckinghamshire HP12 3NR ("Taylor Wimpey")  
**Hallam Land Management Limited** (Company Number 00643420) whose registered office is at Banner Cross Hall, Sheffield S11 9PD ("Hallam")  
**Persimmon Homes Limited** (Company Number 4108747) whose registered office is at Persimmon House, Fulford, York YO1 4RE ("Persimmon")  
**Devon County Council** of County Hall, Topsham Road, Exeter EX2 4QD ("Council")

WHEREAS

- 1) The Council is the local highway authority
- 2) The Developers are the registered proprietors under Title Numbers DN640317, DN612663 DN351615 and DN612520 of land at Cranbrook which is shown for the purpose of identification only by red edging on annexed drawings **10301-110-103H** and **10301-110-102G** which includes the site of the proposed public highway shown coloured **green, grey and brown** and all other land required for the Works hereinafter referred to and is desirous of making up the proposed public highway so that the same shall become highway maintainable at public expense [and **for the avoidance of doubt** hedges between plots and adoptable highway are not adoptable and will not be maintainable by the Local Highway Authority]
- 3) The Developers have requested that when the Works hereinafter referred to for the making up of the proposed public highway have been executed and maintained as hereinafter appearing the Council shall undertake the maintenance of the proposed public highway as highway maintainable at the public expense which the Council has agreed to do upon the terms and conditions hereinafter appearing

THIS Agreement is made in pursuance of Section 38 of the Highways Act 1980 in respect of the land upon which the proposed public highway is to be constructed, Section 33 of the Local Government (Miscellaneous Provisions) Act 1982, Section 111 of the Local Government Act 1972 and with all other enabling powers; and it is hereby agreed and declared by and between the parties hereto as follows

## **1 Interpretation**

IN this Agreement where the context so admits:

**CHP Mains** means service pipes ducts inspection points and associated infrastructure relating to the Combined Heat and Power plant serving the Development to be laid in or under the Works

**Developers** means Taylor Wimpey, Hallam and Persimmon

**Development** means the phase 3 Enabling Works for the East Devon New Community at Cranbrook

**Drawings** means annexed drawings **10301-110-103H** and **10301-110-102G** signed by or on behalf of the parties hereto and any amended such drawing signed by the Proper Officer

**Final Certificate** means the certificate to be issued on satisfactory completion of the Works in accordance with Clause 11

**Maintenance Period** means the period between the issue of the Part 2 Certificate and the Final Certificate ending on the later of:

- 3 years from the date of this Agreement or
- 12 months from the date of issue of the Part 2 Certificate

**Part 1 Certificate** means the certificate to be issued on satisfactory completion of the Part 1 Works in accordance with Clause 7

**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 9

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

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

**Roads** unless otherwise required means the carriageways and footways of the proposed highway hereinbefore referred to including any off-site highway drainage shown on the Drawings and includes any footpaths, street lighting, verges, service strips, service margins, vehicular crossings, road surface water drainage system and all other things ancillary thereto but excluding any hedges between the road or roads and the Development

**Specification** means the edition of the publication entitled Highways in Residential and Commercial Estates Design Guide 1996 as amended and current at the date of commencement of the Works

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

**Works** means the works specified in the Schedule for making up of the Roads excluding any drainage which is or is intended to be the subject of an agreement under Section 104 of the Water Industry Act 1991

**Working Days** means any Monday, Tuesday, Wednesday, Thursday or Friday and for the avoidance of doubt excludes any public or bank holiday

## **2 Developers Liability**

- a) THE Developers shall carry out and complete the Works at the Developers 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 by **31<sup>st</sup> December 2018 or such other date as may be agreed with the Council**
- b) THE Developers will pay the Council's reasonable legal costs relating to the preparation and completion of this Agreement and any subsequent variation of it together with the legal costs

associated with drainage rights in accordance with Clause 12 and the issue of certificates in accordance with Clauses 7, 9 and 11

### **3 Declaration**

THE Developers declare and warrant to the Council that they have and will throughout the duration of this Agreement maintain full right liberty and consent to carry out such works as may be necessary to connect the Roads to existing highway maintainable at the public expense

### **4 Statutory Undertakers – Connections to Existing Services**

THE Developers will before connecting the Roads with any highway 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 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 the Statutory Undertaker in consequence of the proposal to make such connection

### **5 Indemnity**

THE Developers indemnify the Council in respect of all actions, claims, demands, expenses and proceedings arising out of or relating to or incidental to the carrying out of the Works other than those arising out of or in consequence of any act neglect default or liability of the Council and against any lawful claim under the Land Compensation Act 1973 or the Noise Insulation Regulations 1975 and any statutory modification or re-enactment thereof arising out of the use of the Works

### **6 Access to the Site**

- a) THE Developers will during the carrying out of the Works give and allow the Proper Officer and any other officer of the Council access to every part of the Works and the respective sites thereof for the purpose of inspecting the same and all materials used or intended to be used therein and the Developers shall if requested open up for inspection any portion of the Works or which may be covered up and should the Developers decline to comply with such a request the Council may itself open up the Works or 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 Developers
- b) If any inspection carried out under sub-clause a) of this clause reveals defects in the Works the Developers shall carry out remedial works to the satisfaction of the Council
- c) The Council will inspect any remedial works carried out under sub-clause b) of this clause within 5 Working Days of receipt of a written request from the Developers to do so
- d) Following any inspection under sub-clause c) of this clause the Council shall within 5 Working Days of its inspection notify the Developers 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

- e) Upon practical completion of the Works the Developers shall in each case notify the Council in writing of their completion and within 14 days of receipt of such notice the Council shall carry out a final inspection of the Works
- f) In the event of the final inspection revealing any defect or defects in the Works the provisions of sub-clause d) of this clause shall apply as if they related to a final inspection

#### **7 Part 1 Certificate**

ON completion of the Part 1 Works or any part of them to the satisfaction of the Proper Officer in all respects the Proper Officer shall issue the Part 1 Certificate to the Developers in relation to such part(s)

#### **8 Occupation of Buildings**

NO dwelling erected by the Developers or on their behalf fronting, adjoining or abutting on to the Roads 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 Developers have 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

#### **9 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 Developers and from the date thereof

- a) the Maintenance Period shall commence to run
- b) the Roads shall become highway and remain forever open for use by the public
- c) the Developers will 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 the Roads shall become highway maintainable at the public expense

#### **10 Obligations During the Maintenance Period**

DURING the Maintenance Period

- a) the Developers shall at their own expense maintain the Works including all grassed and planted areas and carry out such routine maintenance as may be necessary to facilitate use by vehicles and pedestrians

- b) the Council shall at its own expense undertake routine maintenance of and be responsible for energy costs of street lights and illuminated traffic signs

#### **11 Final Certificate**

PRIOR to the expiration of the Maintenance Period(s) the Developers 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(s) (including any defect in or damage to the road surface water drainage system) of which they have been notified in writing by the Proper Officer so that the Works comply with the Specification

AND THEN PROVIDED THAT

- a) the Developers have paid to the Council all amounts due to the Council under this Agreement and
- b) any necessary reinstatement or other Works have been completed to the satisfaction in all respects of the Proper Officer and
- c) the Developers have delivered to the Proper Officer drawings showing the Works as constructed and
- d) the Road connects directly to a highway maintainable at public expense
- e) the public sewers have been adopted by the relevant local water authority

the Proper Officer will issue the Final Certificate to the Developers

#### **12 Grants of Rights of Drainage**

On completion of this agreement the Developers will without cost to the Council execute or procure the execution by all necessary parties any deeds the Council reasonably require to secure to the Council full drainage rights in respect of such parts of the surface water drainage system of the Roads as are situate outside the limits of the Roads and the Council will 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 further drainage rights are reasonably required the Developers will at their own cost obtain those rights prior to any further certificates being issued in accordance with Clauses 7, 9 and 11. **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 11

#### **13 Procedure for Inspection and Issue of Certificates**

WITHIN 14 days of receipt of written application from the Developers for the issue of a Part 1 Certificate pursuant to this Agreement and within 28 days of written application from the Developers for the issue of a Part 2 Certificate or Final Certificate pursuant to this Agreement the Proper Officer shall inspect the Works and where necessary provide the Developers 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 they shall be completed

to the reasonable satisfaction of the Proper Officer who within 28 days thereafter shall issue the relevant Certificate

**14 Adoption and CHP Mains**

- a) UPON the issue of the Final Certificate the Roads shall become highway maintainable at public expense
- b) It is hereby agreed and declared that provided the Works have been constructed in accordance with this Agreement the presence of the CHP Mains shall not impair hinder or prevent the adoption of the Roads as highway maintainable at public expense **provided that** the CHP Mains have been laid in accordance with an agreed method and construction and that the Council have inspected the installation and are satisfied with it and (for the avoidance of doubt) it is further agreed and declared that the CHP Mains shall not be adopted as part of the Roads
- c) For the avoidance of doubt any hedges between the public highway and the Developers adjacent development shall remain the responsibility of the Developers and successors in title and the Developers and 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 Developers and their 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 Developers or successors in title **provided that** upon transfer of any such hedges to a public body or third party such responsibility shall pass to the public body or third party

**15 Inspection Fee**

- a) Prior to the commencement of the Works the Developers will pay the Council fifty-eight thousand, six hundred and eighty-five pounds and thirty-four pence (**£58,685.34**) in respect of the costs incurred by the Council in inspecting the Works (such fee to include the reasonable anticipated costs of inspecting the CHP Mains to the extent it affects the Roads)
- b) RECEIPT by the Council of the payment of the sums shall not create any contractual relationship between the Council and the Developers nor absolve the Developers 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 Developers may sustain due to insufficient or faulty inspection of the Works by the Council

**16 Determination by the Council**

IF the Developers fail 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 Developers are wound up or if the Developers enter 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 Developers in respect of such non-performance or non-

observance determine this Agreement (except Clause 17, 18 and 19) by notice in writing signed by the Proper Officer and delivered to the Developers or sent by post to the address stated in this Agreement

**17 Power to Execute Works in Default**

WITHOUT prejudice to Clauses 2 and 16 if the Developers fails to execute or complete the Works in accordance with the Developers obligations hereunder the Council shall after not less than 28 days notice in writing to the Developers 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 Developers

**18 Defective or Dangerous Works**

UNTIL the Roads become highway maintainable at the public expense pursuant to this Agreement the Developers will keep 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 arise occur or become manifest to the Proper Officer and the Proper Officer may by notice require the Developers to make good any portion of the Works which they reasonably consider to be defective damaged or dangerous and require the making good or reconstruction of the same by the Developers

Without prejudice to Clauses 2 and 16 if the Developers fail to reconstruct or make good the same in accordance with the requirements of the Proper Officer the Council shall after not less than 7 days notice in writing to the Developers (except in case of emergency) be entitled to reconstruct and make good the portion of the Works which is defective damaged or dangerous by its own employees, contractors or otherwise and to recover the cost as certified by the Proper Officer from the Developers

**19 Part or Parts**

NOTWITHSTANDING anything hereinbefore contained the Developers 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 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

**20 Assignment**

THIS Agreement may not be assigned by the Developers 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

## **21 Dispute Resolution**

- 21.1 Any dispute arising out of the provisions of this Agreement shall be referred to a person having appropriate qualifications and experience in such matters ("Expert") appointed jointly by the parties to the dispute ("relevant parties") or in default by a person nominated by the President for the time being of the Royal Institution of Chartered Surveyors on the application of any of the parties
- 21.2 The decision of the Expert shall be final and binding upon the relevant parties and the following provision shall apply:
- 21.2.1 the charges and expenses of the Expert shall be borne equally between the relevant parties unless the Expert shall otherwise direct
  - 21.2.2 the Expert shall give the relevant parties an opportunity to make representations and counter representations to him before making his decision
  - 21.2.3 the Expert shall be entitled to obtain opinions from others if he so wishes
  - 21.2.4 the Expert shall make his decision within the range of any representations made by the relevant parties themselves
  - 21.2.5 the Expert shall comply with any time limit or other directions agreed by the relevant parties on or before his appointment

## **22 Developers**

Where the expression "Developers" comprises 2 or more persons or bodies the covenants and agreements expressed herein will be deemed to have been jointly and severally made or given with the intention that they shall be jointly and severally binding and if necessary that they shall be jointly and severally enforceable

## **23 Interest**

If the Developers fail 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

## **24 Refund of Advance Payments Code Deposits**

Pursuant to its powers under sub-section 3 of Section 221 of the Highways Act 1980 the Council shall refund to the Developers as soon as practicable after the date of this Agreement any sum deposited with the Council under Section 219 of the Highways Act 1980 in respect of buildings to be built on the Roads together with any applicable interest calculated from the date the Deposit was received to date of repayment & will be higher of either 0% or 1% below Barclays base lending rate (or if such payment was made by a third party the refund shall be made to the person making the payment under Section 219 of the Highways Act 1980)

## **25 Enforcement**

A person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 ("Act") to enforce any of its terms but for the avoidance of doubt it is further agreed that the exclusion of the application of the Act shall not prevent all or any future successors in title to any of the parties to this Deed from being able to benefit from or to enforce any of the obligations in this Deed

### **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

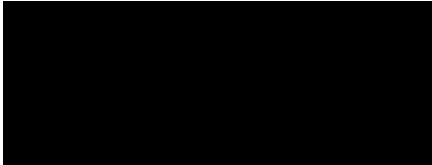
### **The Schedule - Part 2**

- 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

IN WITNESS whereof the parties hereto have caused their respective common seals to be affixed to this deed the day and year first before written

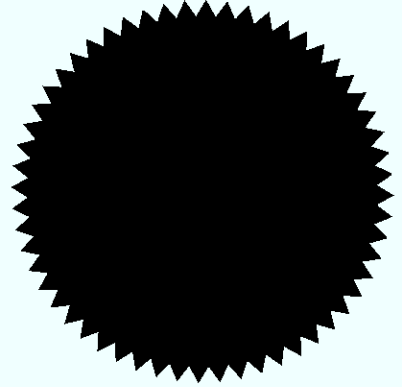
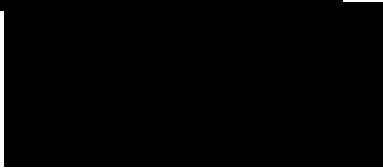
Executed as a deed by affixing the  
Common Seal of  
**HALLAM LAND MANAGEMENT LIMITED**  
In the presence of:

Director



Director

Director/Secretary



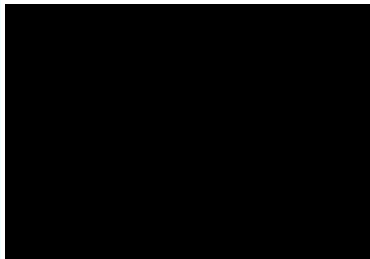
EXECUTED as a DEED by )  
**Taylor Wimpey Developments Limited** )  
acting by its attorneys )  
in the presence of )

EXECUTED as a DEED by )  
**Hallam Land Management Limited** )  
acting by two directors or a )  
director and the Secretary )

Director

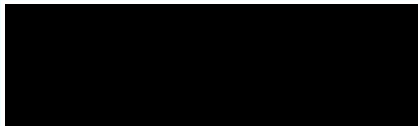
Director/Secretary

EXECUTED as a DEED by )  
**Taylor Wimpey Developments Limited** )  
acting by its attorneys both )  
in the presence of )



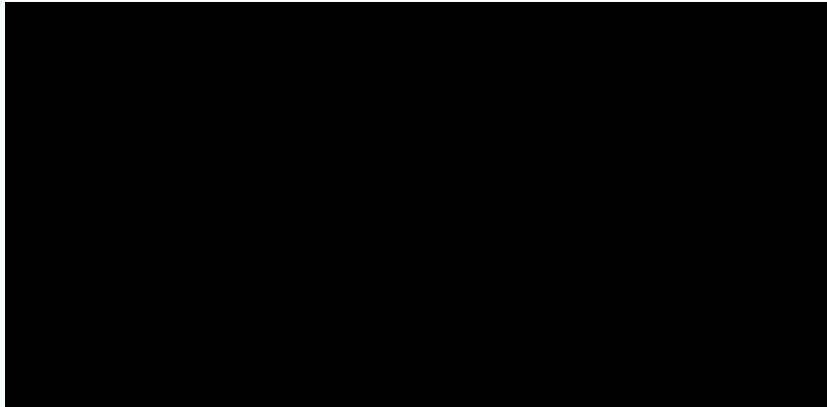
DIANA CURKINGS

JAMES BAU



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

EXECUTED as a DEED by )  
Persimmon Homes Limited )  
acting by its attorneys )  
in the presence of )



Persimmon Homes S. West  
Persimmon House  
Mallard Road  
Sowton Ind. Estate  
Exeter  
EX2 7LD

Executed as a DEED by )  
affixing THE COMMON )  
SEAL of The Council )  
in the presence of )

document number \_\_\_\_\_

reference IMR/B14786

EXECUTED as a DEED by )  
**Persimmon Homes Limited** )  
acting by its attorneys )  
in the presence of )

Executed as a DEED by )  
affixing THE COMMON )  
SEAL of **The Council** )  
in the presence of )

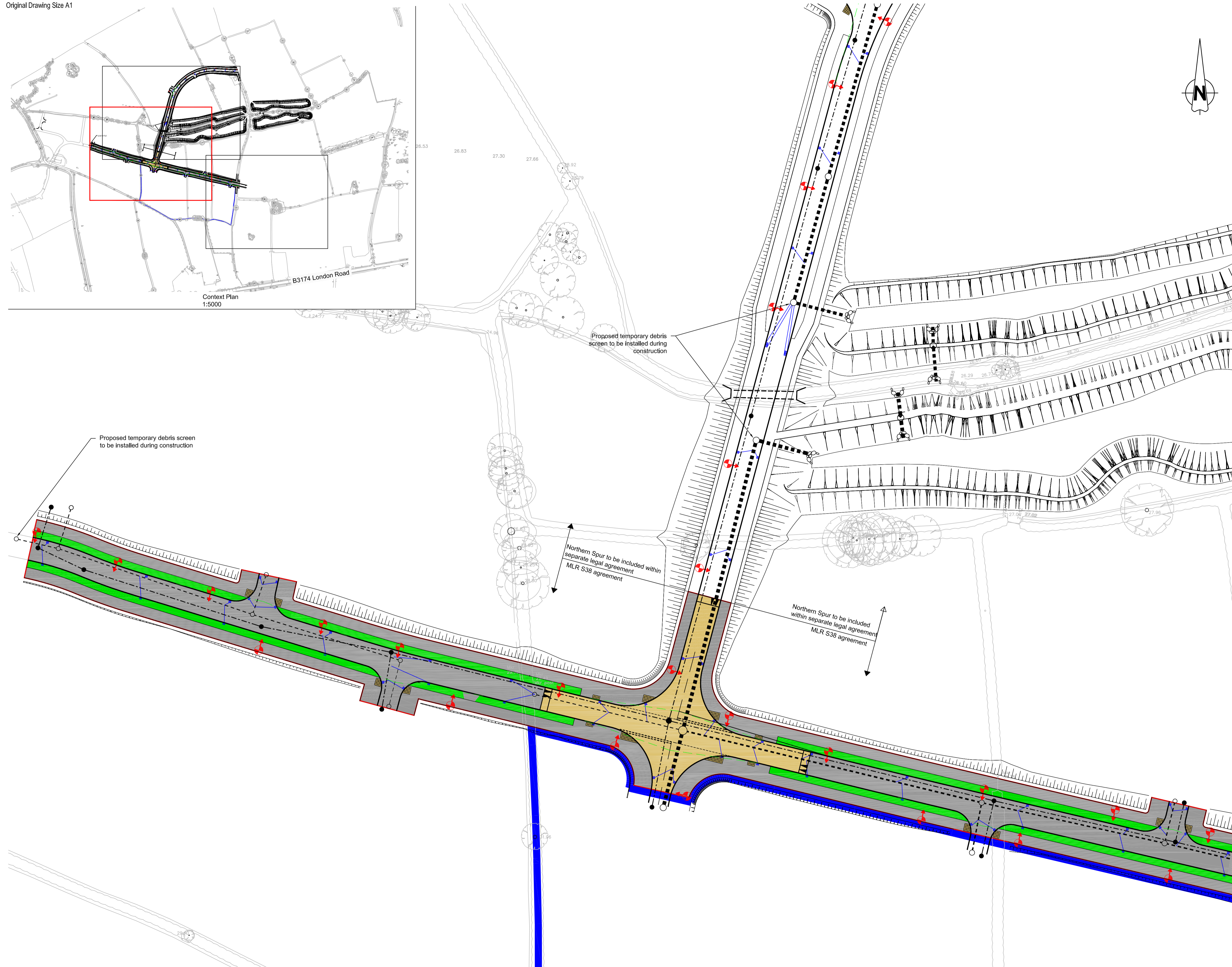


**A Duly Authorised Officer**



document number 48771

reference IMR/B14786



**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

- NOTES:**
1. Do not scale from this drawing.
  2. All dimensions are in metres unless otherwise stated.
  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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- KEY:**
- Proposed areas to be overlaid / constructed in bituminous material
  - New roads and footways constructed in block paving
  - New verges and landscaping areas
  - Proposed Tactile Paving
  - Extent of proposed highway to be adopted
  - Proposed Street Lighting
  - Storm Sewer
  - Foul Sewer
  - Build parcel

H	Boundary extents amended	GG	DS	DS	12.02.18
G	S38 boundary amended	GG	DS	DS	08.02.18
F	Road and lighting arrangement amended	GG	DS	DS	07.02.18
E	Agreement separation	GG	MSM	DS	31.10.17
D	Indicative lighting removed	MSM	RH	PAB	14.10.16
C	Drainage Updated	MSM	RH	PAB	26.09.16
B	Drainage Updated	MSM	RH	PAB	12.07.16
A	Drainage Updated	MSM	RH	PAB	16.05.16
-	First Issue	MSM	RH	PAB	12.02.16

**Brookbanks**  
 6150 Knights Court, Solihull Parkway, Birmingham B37 7WY  
 Tel (0121) 329 4330 Fax (0121) 329 4331  
 www.brookbanks.com

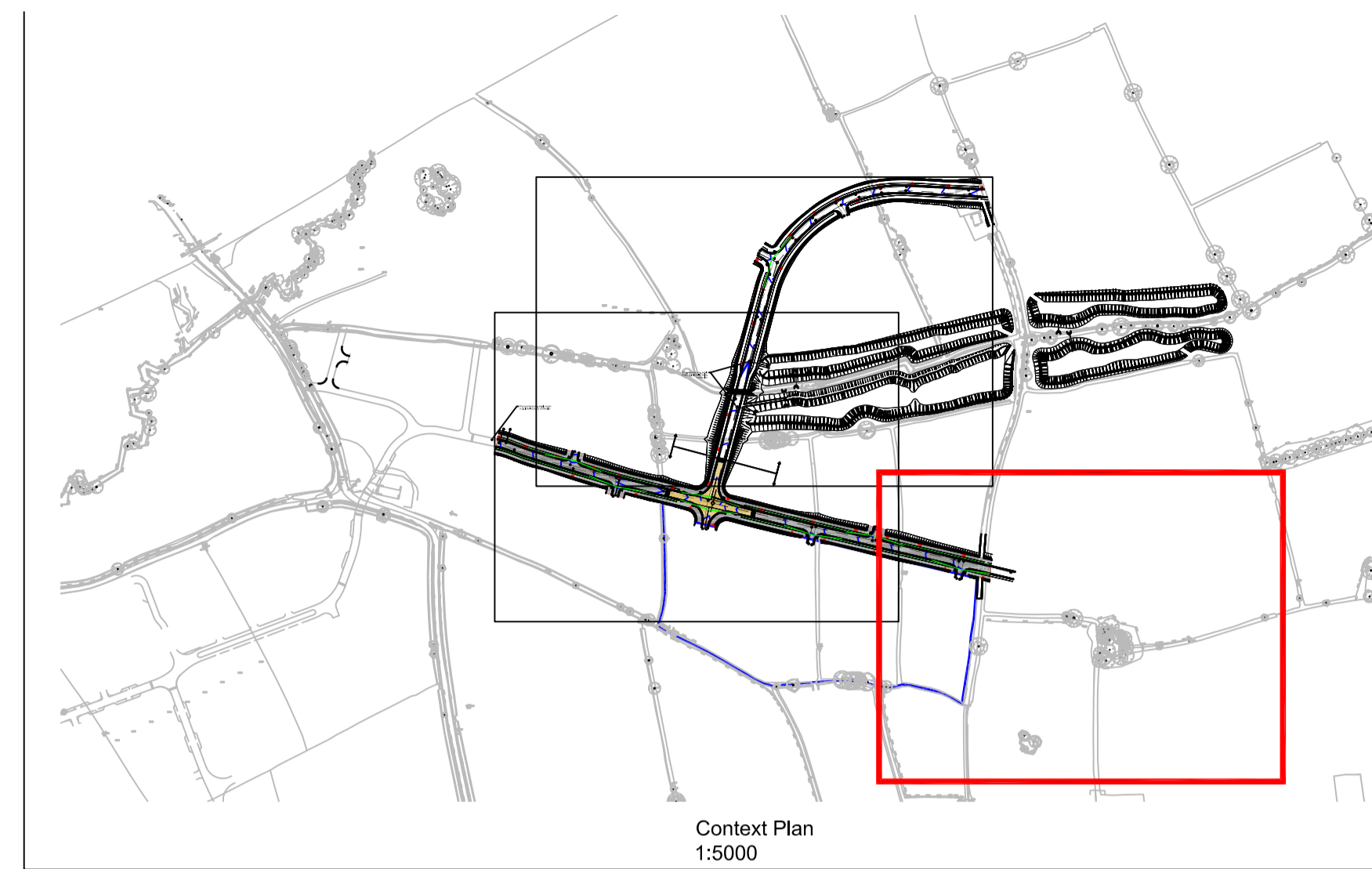
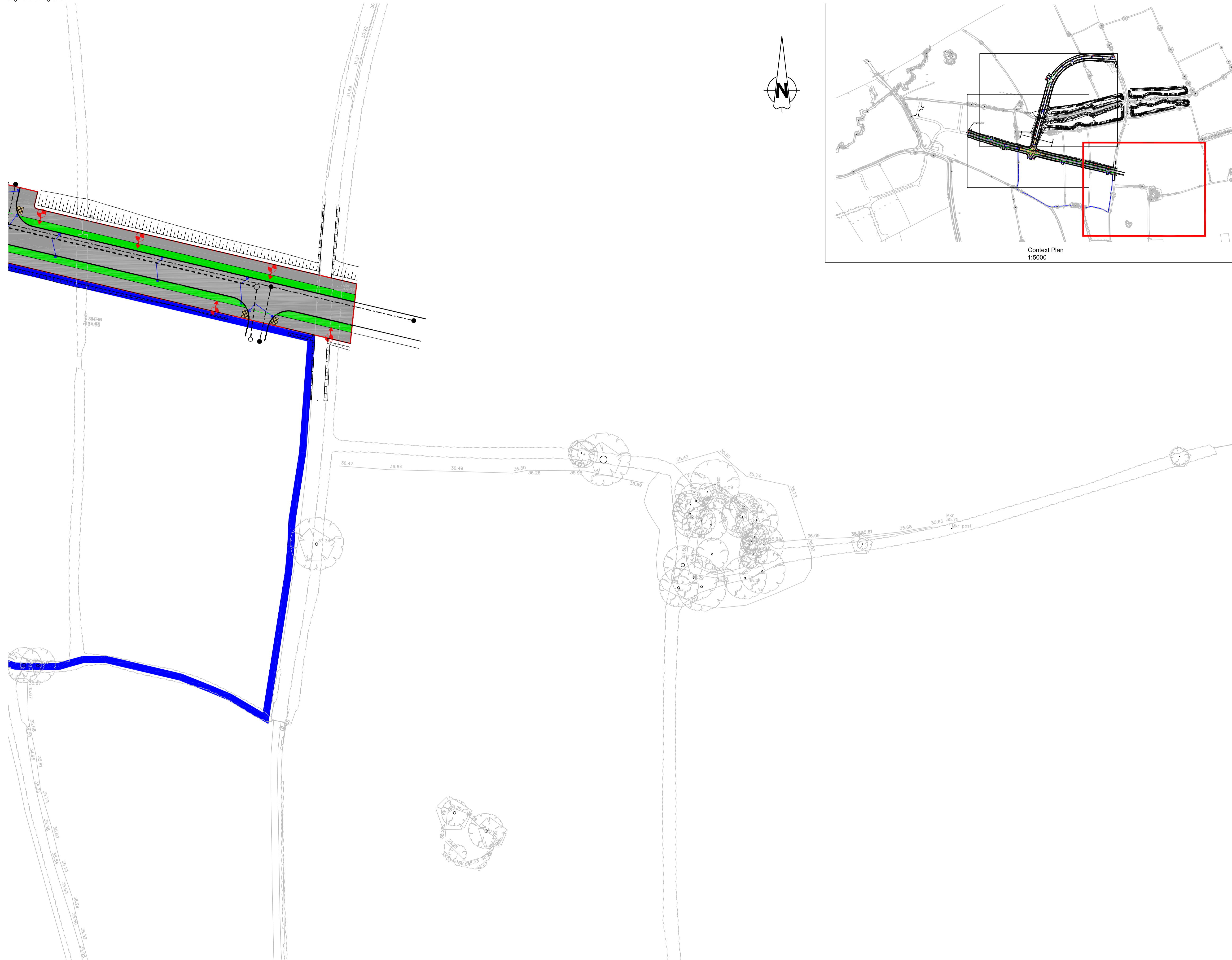
**Hallam Land Management**

East Devon New Community  
 Phase 3 Enabling Works

Phase 3  
 Section 38 - Adoption Plan  
 Sheet 2 of 3

Status	Approval	Date	Feb' 2016
Drawn	MSM	Checked	RH
Scale	1:500	Number	10301-110-103
Scale	1:500	Rev	H

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.



**Construction Design and Management (CDM) Key Residual Risks**  
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  - Gully and connection
  - Build parcel

G	Boundary extents amended	GG	DS	DS	12.02.18
F	S38 boundary amended	GG	DS	DS	08.02.18
E	Road and lighting arrangement amended	GG	DS	DS	07.02.18
D	Lighting column position updated	GG	DS	DS	22.11.17
C	Agreement separation	GG	MSM	DS	31.10.17
B	Drainage Updated	MSM	RH	PAB	12.07.16
A	Drainage Updated	MSM	RH	PAB	16.05.16
-	First Issue	MSM	RH	PAB	12.02.16

**Brookbanks**  
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 Tel (0121) 329 4330 Fax (0121) 329 4331  
 www.brookbanks.com

**Hallam Land Management**

**East Devon New Community  
 Phase 3 Enabling Works**

**Phase 3  
 Section 38 - Adoption Plan  
 Sheet 1 of 3**

Status	Approval	Status Date	Feb' 2016
Drawn	MSM	Checked	RH
Date		Date	12.02.2016
Scale	1:500	Number	10301-110-102
Rev		Rev	G

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