

DATED

15th June

2022

SUFFOLK COUNTY COUNCIL (1)

- and -

HB VILLAGES DEVELOPMENTS 2 LTD (2)

- and -

THE BANK OF NEW YORK MELLON (3)  
(INTERNATIONAL) LIMITED IN ITS  
CAPACITY AS DEPOSITARY OF THE  
AEW UK REAL RETURN FUND A SUB  
FUND OF THE AEW UK REAL ESTATE  
FUND

#### AGREEMENT

made pursuant to Sections 278 and 38 of the Highways Act 1980  
and any other enabling power relating to  
the development of land at Handford Road, Ipswich Suffolk

Nigel Inniss  
Head of Legal Services  
Suffolk County Council  
5 Constantine Road Ipswich  
Suffolk IP1 2DH

Ref: CRM:69172

THIS AGREEMENT is made the 15<sup>th</sup> day of June  
BETWEEN the following parties: -

2022

- (1) SUFFOLK COUNTY COUNCIL of Endeavour House 8 Russell Road Ipswich  
Suffolk IP1 2BX ("the County Council")
- (2) HB VILLAGES DEVELOPMENTS 2 LIMITED (company number 10222781) of  
Market Court, 20-24 Church Street, Altrincham, Cheshire, United Kingdom  
WA14 4DW ("the Developer")
- (3) THE BANK OF NEW YORK MELLON (INTERNATIONAL) LIMITED (company  
number 03236121) having its registered office at 1 Canada Square, London  
E14 5AL and acting in its capacity as depositary and not otherwise of the AEW  
UK Real Return Fund (company number IC000974), a sub-fund of the AEW  
UK Real Return Fund ("the Owner")

#### RECITALS AND DEFINITIONS

A. In this Agreement unless the context otherwise requires the following words shall  
have the following meanings:-

"1980 Act"	Means the Highways Act 1980 (as amended)
"Cash Deposit"	Means the cash deposit for all of the Highway Works such cash deposit to be held by the County Council should the Developer default in the execution of its obligations to carry out the Highway Works and to maintain the same in accordance with the provisions of this Agreement then the County Council will call upon the Cash Deposit to provide the full sums necessary to carry out and maintain the Highway Works]
"Cash Deposit Figure"	Means sum of £8250 (Eight-thousand two-hundred and fifty) being the cost of the Highway Works plus 10 per cent

"Certificate of Final Completion"	Means any of the certificates referred to in paragraph 2.13 of this Agreement
"CDM Regulations"	Means the Construction (Design and Management) Regulations 2015 (SI 2015/51)
"Commutated Sums"	Means the sum of £750 (Seven-hundred and fifty) which is calculated towards the cost of the County Council's future maintenance liability of the Highway Works.
"Director"	Means the County Council's Executive Director of Growth, Highways and Infrastructure or other officers of the County Council acting under his hand
"Highway Works"	Means the works detailed on the Works Drawings and as set out in Schedule 2 of this Agreement
"Plan"	Means the plan annexed hereto with number DW1974-C-AD10-B
"Site"	Means land situated at Handford Road, Ipswich Suffolk shown shaded yellow and shaded purple edged with red dashes for identification only on the attached Plan
"Substantial Completion"	Means complete to the reasonable satisfaction of the Director and so that the Highway Works can be used for the purpose and operate in the manner for which they were designed, and the "Date of Substantial Completion" and "Certificate of Substantial Completion" shall be construed accordingly
"Works Drawings"	Means the attached drawings bearing the numbers referred to in Schedule 1 or any subsequent revision of them which has been approved or requested by the Director and which relate to the Highway Works

- (A) The County Council is the Local Highway Authority (except for trunk roads) for the purposes of the 1980 Act for the area within which the Site is situated and

the Highway Works will be carried out

- (B) The Owner is the registered proprietor with title absolute of the Site in so far as it is registered at the Land Registry under Title Number SK199214
- (C) The Developer is developing the Site and other land adjoining
- (D) The County Council considers that the Highways Works as shown on the Works Drawings and detailed in Schedule 2 need to be carried out and the County Council considers that entering into this Agreement will be of benefit to the public

NOW THIS DEED WITNESSES as follows :-

**1. LEGAL EFFECT**

1.1 In this Agreement unless the context otherwise requires :-

1.1.1 Words importing the singular meaning where the context so admits include the plural meaning and vice versa; and

1.1.2 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner; and

1.1.3 "party" or "parties" means a party or parties to this Agreement; and

1.1.4 references to any party shall include the successors in title and assigns of that party; and in the case of the County Council the successors to its statutory functions;

1.1.5 where a party includes more than one person any obligations of that party can be enforced against all of them jointly and severally unless there is an express provision otherwise; and

1.1.6 the headings and contents list in this Agreement shall not form part of or affect its construction; and

1.1.7 references to clauses schedules and paragraphs are references to clauses in and schedules to this Agreement and paragraphs in schedules to this Agreement; and

1.1.8 where a party or any officer or employee is required to give its consent approval or agreement to any specific provision in this Agreement such



approval or agreement shall not be unreasonably withheld or delayed; and

1.1.9 any mention herein of any act or of any section regulation or statutory instrument shall be deemed to refer to the same source as at any time amended and where such act section regulation or statutory instrument has been replaced consolidated or re-enacted with or without amendment such mention shall be deemed to refer to the relevant provision of the updating consolidating or re-enacting act or section or regulation or statutory instrument

1.2 This Agreement and the covenants that appear hereinafter are made pursuant to Sections 38, 72 and 278 of the 1980 Act Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers to the intent that the provisions of this Agreement shall bind the Site and the parties hereto and all persons deriving title through or under them

1.3 No waiver (whether express or implied) by the County Council of any breach or default by the Developer in performance or observance of any of the covenants or obligations in this Agreement shall constitute a continuing waiver and no such waiver shall prevent the County Council from enforcing any of the covenants or from acting upon any subsequent breach or default

1.4 Any provision of this Agreement which is or may be unlawful void or unenforceable shall to the extent of such unlawfulness invalidity or unenforceability be deemed severable and shall not affect any other provision of this Agreement

1.5 This Agreement shall be governed and interpreted in accordance with the laws of England and shall be determined in the Courts of England and Wales

1.6 The Owner covenants and warrants to the County Council that they have full power to enter into this Agreement and there is no other person having a charge over or any other interest in the Site whose consent is necessary for the Owner to enter into this Agreement and to comply with the obligations set out at clauses 1.12.

1.7 The Developer covenants and undertakes with the County Council that from the date of this Agreement it will (unless otherwise agreed by the County Council) carry out and comply with the obligations set out in this Agreement

1.8 The County Council, without prejudice to its statutory powers and duties, hereby appoints the Developer to act as its agent and gives to the Developer licence (in

so far as is reasonably necessary) to enter into and upon and remain upon the public highway to carry out the construction of the Highway Works within the timescales referred to in Schedule 2 or such other period as may be agreed in writing by the Director, provided that this licence shall not extend to the Developer's successors in title or assigns unless otherwise agreed in writing by the Director prior to that successor or assignee commencing work in the public highway

- 1.9 The Developer covenants with the County Council as Highway Authority to comply with the provisions of the New Roads and Street Works Act 1991 and the Traffic Management Act 2004, and any amendments thereof
- 1.10 It is hereby agreed and declared that the provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement
- 1.11 The Developer shall be the only client for the purpose of the CDM Regulations and the Developer agrees to undertake the obligations of a client under the CDM Regulations and to use all reasonable endeavours to ensure that the Highway Works are carried out in accordance with the CDM Regulations. The Developer shall indemnify and keep the County Council indemnified against any breach of the Developer's obligations under this clause
- 1.12 The Owner hereby agrees that on the date of Substantial Completion that part of the Site upon which the Highways Works are constructed which does not currently form part of the public highway (the extent of which is specified in the Works Drawings) shall be dedicated as highway under section 38 of the 1980 Act and the County Council agrees to accept such dedication and adopt that part of the Site and the Highway Works as highway maintainable at the public expense
- 1.13 *Not Used*
- 1.14 *Not Used*
- 1.15 This Agreement is a Deed. Any financial default will be declared by the County Council and registered as a Local Land Charge under section 278(5)(c) of the 1980 Act
- 1.16 If the Highway Works have not been commenced within one (1) year from the date of this Agreement, save as this period is otherwise extended in writing by the Director at his discretion, then this Agreement shall lapse and be of no further effect (save to the extent already complied with) and the Developer agrees to



pay to the County Council any costs properly incurred by the County Council prior to the lapse of this Agreement (which have not already been paid) including but not limited to those costs set out in clause 3.5 of this Agreement

- 1.17 Where, in accordance with clause 1.16 above the Director, at his discretion, agrees in writing to an extension to the period of one (1) year after which this Agreement shall lapse, this Agreement shall lapse at the end of such period as agreed in writing by the Director
- 1.18 Where the Agreement has lapsed in accordance with clauses 1.16 or 1.17, the County Council may release to the Developer the Cash Deposit and interest applied at the Bank of England Base Rate minus 2 basis points, compounding annually at financial year end on receipt of a written request. If for any period, the Bank of England Base Rate is at or below 0.02% then no interest shall be payable for that period by any party to this agreement. For the avoidance of doubt nothing in this clause requires the County Council to repay those sums payable under clause 3.5 of this Agreement save for any Commuted Sums not spent or committed

## **2 HIGHWAY WORKS**

- 2.1 All works and activities to be carried out under the terms of this Agreement (including for the avoidance of doubt such works as are of a preparatory ancillary or of a maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Developer and at no cost to the County Council
- 2.2 No work on the Highway Works shall commence and no contract or contracts in respect of the construction of the Highway Works shall be let until full details of the Highway Works have been submitted to the Director and the Director has given his written approval to the Highway Works and for the avoidance of doubt this Agreement does not constitute the written approval required under this clause
- 2.3 The Developer shall provide all relevant notices to the County Council under the New Roads and Street Works Act 1991 and Traffic Management Act 2004, and any amendments thereof
- 2.4 Insofar as the County Council as Highway Authority is required by any legislation regulation direction or code of practice (including in particular but without prejudice to the generality of the foregoing the New Roads and Street Works Act 1991) to serve a notice or notices in respect of the Highway Works on

undertakers or other persons the Developer shall comply with such requirement on behalf of the County Council before the Highway Works commence and shall thereafter assume on behalf of the County Council such responsibilities as follow on therefrom in particular during the construction of the Highway Works

- 2.5 The Developer shall give due consideration to adjoining owners and occupiers at all times and shall organise activities relating to the Highway Works in such a manner as to cause the least practicable disruption
- 2.6 The Developer shall display and maintain prominent notices around the perimeter of the Site to warn the public of the dangers of entering the Site. However the display of such notices shall not relieve the Developer of any of his obligations and liabilities under this Agreement, the Control of Pollution Act 1974 or the Environment Protection Act 1990, or any amendments thereof
- 2.7 The Developer shall take or procure the taking of all necessary steps to avoid creating a nuisance from noise and from dust and as far as practicable the Highway Works are to be carried out in such a way that noise and dust are kept to a minimum
- 2.8 When the Highway Works are being executed the Developer shall institute at his own expense measures previously approved in writing by the Director to maintain the safe flow of traffic on the highways in the vicinity of the Site
- 2.9 No Highway Works within or affecting existing public highways will be permitted within the morning and evening peak periods i.e. 7.30 - 9.30 a.m. and 4.30 - 6.30 p.m. Monday to Friday except as agreed in writing by the Director
- 2.10 When the Highway Works are being carried out the Developer shall provide all watching and lighting as required and shall maintain all lights, guards, fencing and warning signs when and where necessary and undertake such further measures as may be reasonably required by the Director
- 2.11 Representatives of the County Council may enter upon the land on which the Highway Works are being carried out at any reasonable time to ascertain whether the terms of the Agreement are being or have been complied with
- 2.12 On Substantial Completion of the Highway Works :-
  - 2.12.1 the Developer shall clear away and remove from the Site all constructional plant and temporary works of every kind and leave the Site in a safe, neat and tidy condition to the satisfaction of the Director



2.12.2 the Developer shall provide the County Council with 6 paper copies of the 'as constructed' drawings and a pdf thereof

2.12.3 the Director may issue a Certificate of Substantial Completion to the Developer

2.13 The Developer shall maintain the Highway Works for a period of eighteen (18) months (unless the Director agrees in writing a lesser period) from the issue of the related Certificate of Substantial Completion and prior to the expiration of this period the Developer shall reinstate and make good any damage or defect which may have arisen from any cause whatsoever or be discovered during the said period of eighteen (18) months (including any defect in or damage to the surface water drainage system) so as to place the highway and the Highway Works in a condition satisfactory to the Director. After the expiration of the period of eighteen (18) months and after any defects have been made good to the satisfaction of the Director he may issue at the written request of the Developer the Certificate of Final Completion in respect of the Highways Works

### **3 FINANCE**

3.1 Where the Developer has provided a Cash Deposit, then after the issue of the Certificate of Substantial Completion the County Council may approve the release of up to 75% of the Cash Deposit Figure and upon the issue of the Certificate of Final Completion the County Council shall release to the Developer the remainder of the Cash Deposit and interest applied at the Bank of England Base Rate minus 2 basis points, compounding annually at financial year end on receipt of a written request. If for any period, the Bank of England Base Rate is at or below 0.02% then no interest shall be payable for that period by any party to this agreement.

3.2 The Developer shall be insured or procure that its contractor undertaking the Highway Works is insured from the date of this Agreement and throughout the period of construction of the Highway Works within the timescales referred to in Schedule 2 (or any other period as agreed by the Director) for public liability risks in the sum of at least ten million pounds (£10,000,000.00) in respect of any single claim, and shall produce these insurance policies to the Director on demand

3.3 The Developer shall on the date of this Agreement pay to the County Council the Cash Deposit in the sum of the Cash Deposit Figure for the Highway Works

3.4 Should the Developer default in the execution of his obligations to carry out and

maintain the Highway Works then the County Council may itself carry out and maintain the Highway Works having first called upon the Cash Deposit for the full cost to be expended in so doing

3.5 The Developer shall pay to the County Council:-

3.5.1 the legal costs of the County Council in connection with this Agreement prior to sealing of this Agreement; and

3.5.2 interest at four per cent above the Bank of England Base Rate on any sum due to the County Council under this Agreement from the date on which it is due until the date it is paid, and

3.5.3 the inspection/checking fees required by the County Council in connection with the Highways Works in the sum of £1500 (One-thousand five hundred) prior to sealing of this Agreement;

3.5.4 the Commuted Sums prior to the sealing of this Agreement

**4 LIMITATION OF LIABILITY**

- 4.1 The Bank Of New York Mellon (International) Limited (the "Depositary") and any party succeeding it acts solely in its capacity as depositary of the AEW UK Real Return Fund, a sub-fund of the AEW UK Real Estate Fund (the "Fund") and as such any liability on its part pursuant to this Agreement is limited to the extent that the Depositary has recourse to the assets held by it for the time being for the Fund save to the extent that the Depositary has limited its rights of recourse to the assets by reason of its own acts or omissions. Notwithstanding any provisions of this Agreement the Depositary shall have no obligation to meet any claim or liability under this Agreement except to the extent that it can properly meet this claim or liability out of the assets of the Fund save to the extent that the Depositary has limited its rights of recourse to the assets by reason of its own acts or omissions.

In WITNESS whereof this Agreement has been executed and delivered as a Deed on the date first written above

The COMMON SEAL of  
SUFFOLK COUNTY COUNCIL  
was hereunto affixed  
in the presence of

)  
)  
)  
)



A Duly Authorised Officer

Executed as a Deed by HB VILLAGES DEVELOPMENTS 2 LTD  
acting by Two directors or a Director and its Secretary

Director:

Director/Secretary:

EXECUTED as a deed by **THE BANK  
OF NEW YORK MELLON  
(INTERNATIONAL) LIMITED** acting as  
depository for the AEW UK Real Return  
Fund acting by [a director]/[its attorney  
]

IF ATTORNEY THEN WRITE NAME OF  
COMPANY IN ADDITION TO  
SIGNATURE

THE BANK OF NEW YORK MELLON  
(INTERNATIONAL) LIMITED

~~DIRECTOR~~/ATTORNEY SIGNATURE

Date of Power of Attorney – 03.11.2021

in the presence of:

Witness signature

Name (in BLOCK  
CAPITALS)

CRAIG KENNY

Address

CLO RNY MELLON, CAPITAL HOUSE,  
2 FESTIVAL SQUARE, EDINBURGH, EH3 9SU



Schedule 1  
Works Drawings

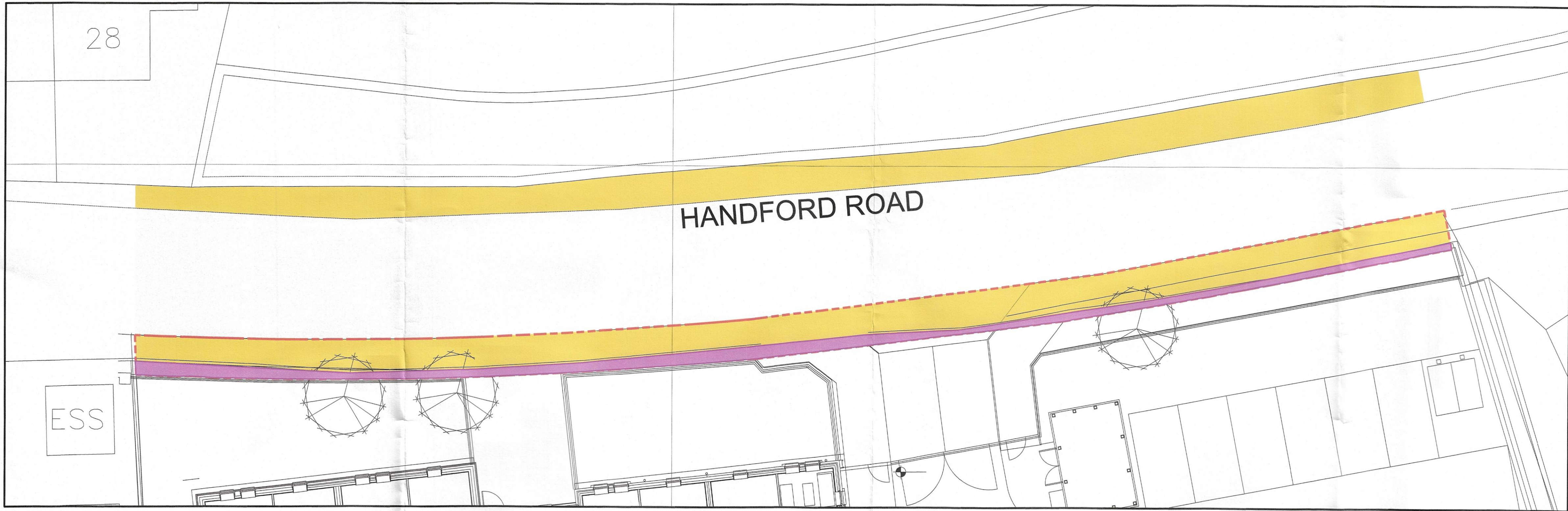
DW1974-C-AD10-B  
DW1974-C-AD02-D

Schedule 2

Removal of 2 existing dropped kerbs fronting the development site on Handford Road, Ipswich. Installation of 1 new dropped kerb and associated works including footway re-instatement, footway widening and dedication and re-location of existing street lighting.

The highway works are to be commenced within 12 months of the signing of this agreement and substantially completed within a 2-week period.

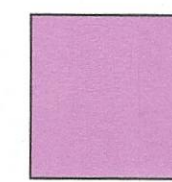




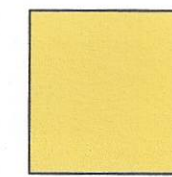
Proposed Site Entrance Works (Section S278 Plan)  
(Scale 1:125 at A1)

Site Entrance Adoptable Spec

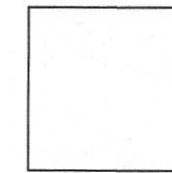
Section 278 Works Boundary



Land to be dedicated to SCC.



Existing Footpath within Public Highway



Existing Carriageway within Public Highway

Note: Refer to Architect's drawing for details of street lighting



Site Location Plan

GENERAL NOTES

Do not scale this drawing.  
Contractor to check all dimensions and report all errors and omissions to the Engineer.

B.	Amendments made in accordance with SCC comments.	RM	CJC	13.04.22
A.	Amendments made in accordance with SCC comments.	RM	CJC	01.04.22
Rev	Detail	By	Auth	Date
Revisions				

**DW Consulting Engineers LLP**

Marsland House, Marsland Road  
Sale, Cheshire, M33 3AQ  
Tel: 0161 959 4144  
web: www.dwllp.com

Client  
**HB Villages**

Project  
Handford Road  
Ipswich

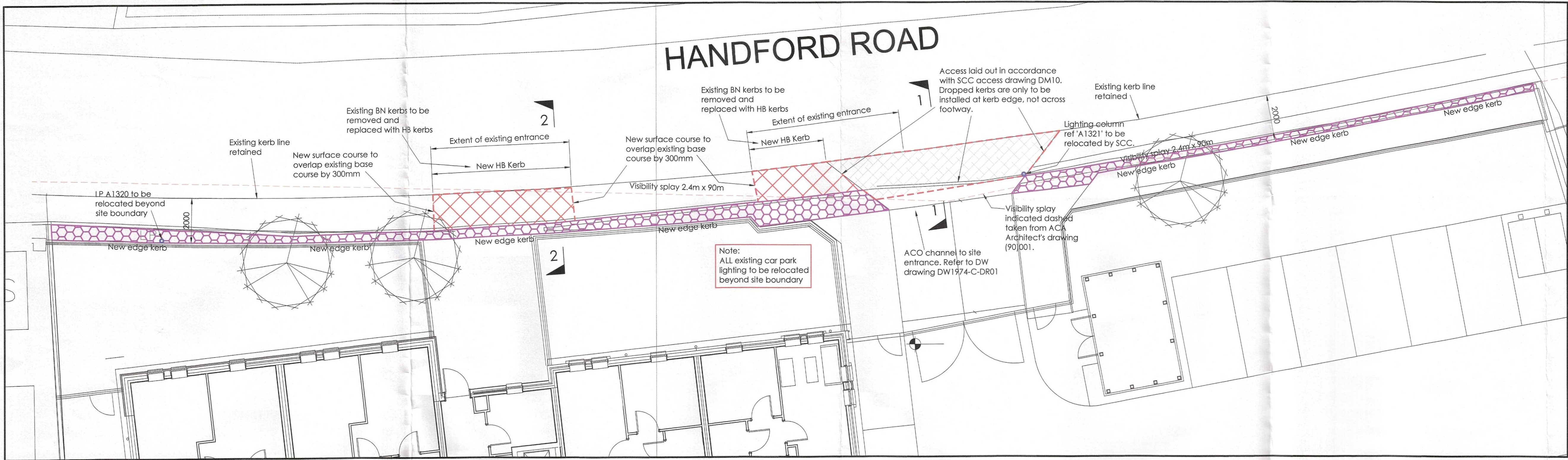
Drawing Title  
S278 Plan

Drawing Status  
Preliminary

Project No.	Discipline	Drawing No.
DW1974	C	AD10
Scale	Sheet Size	Revision
	A1	B
Date	Drawn	Checked
Oct'21	RM	CJC

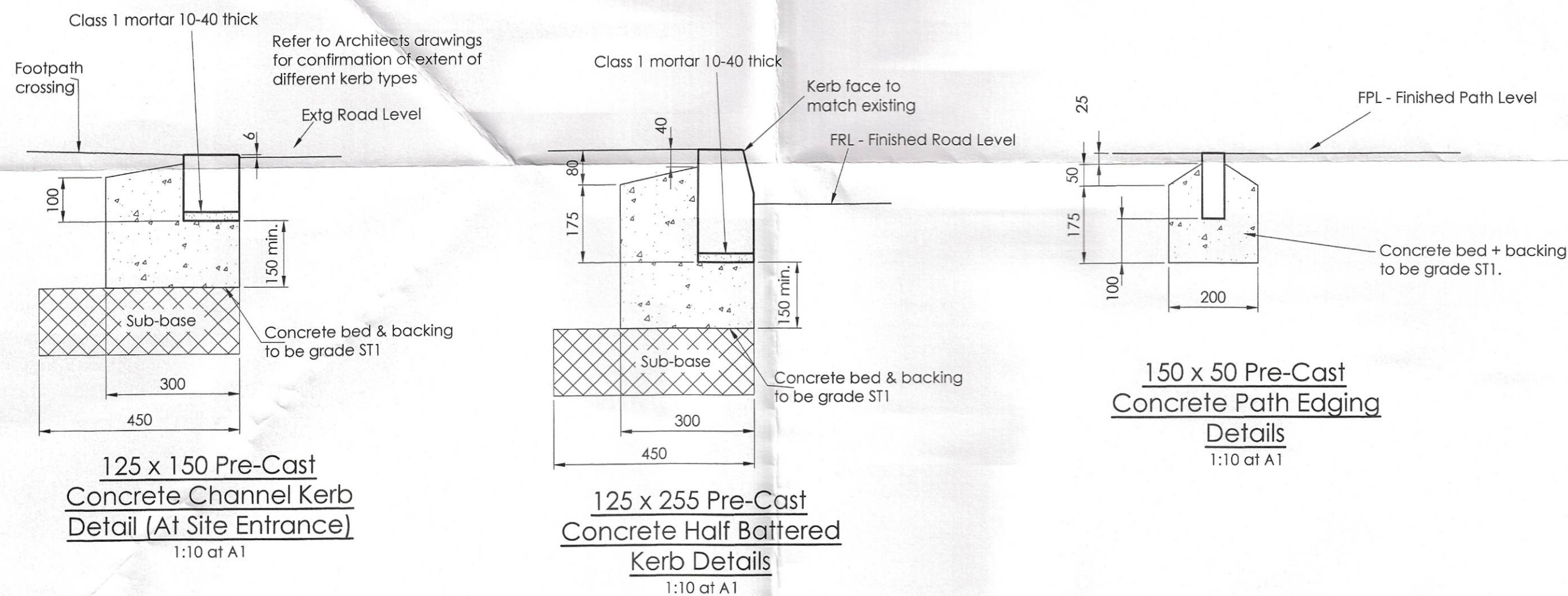
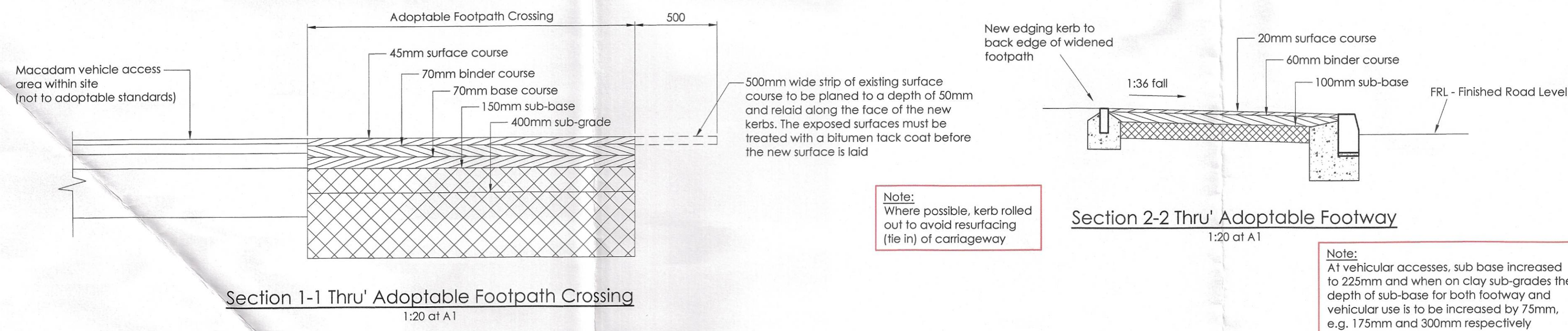
© This drawing may not be copied without prior written permission





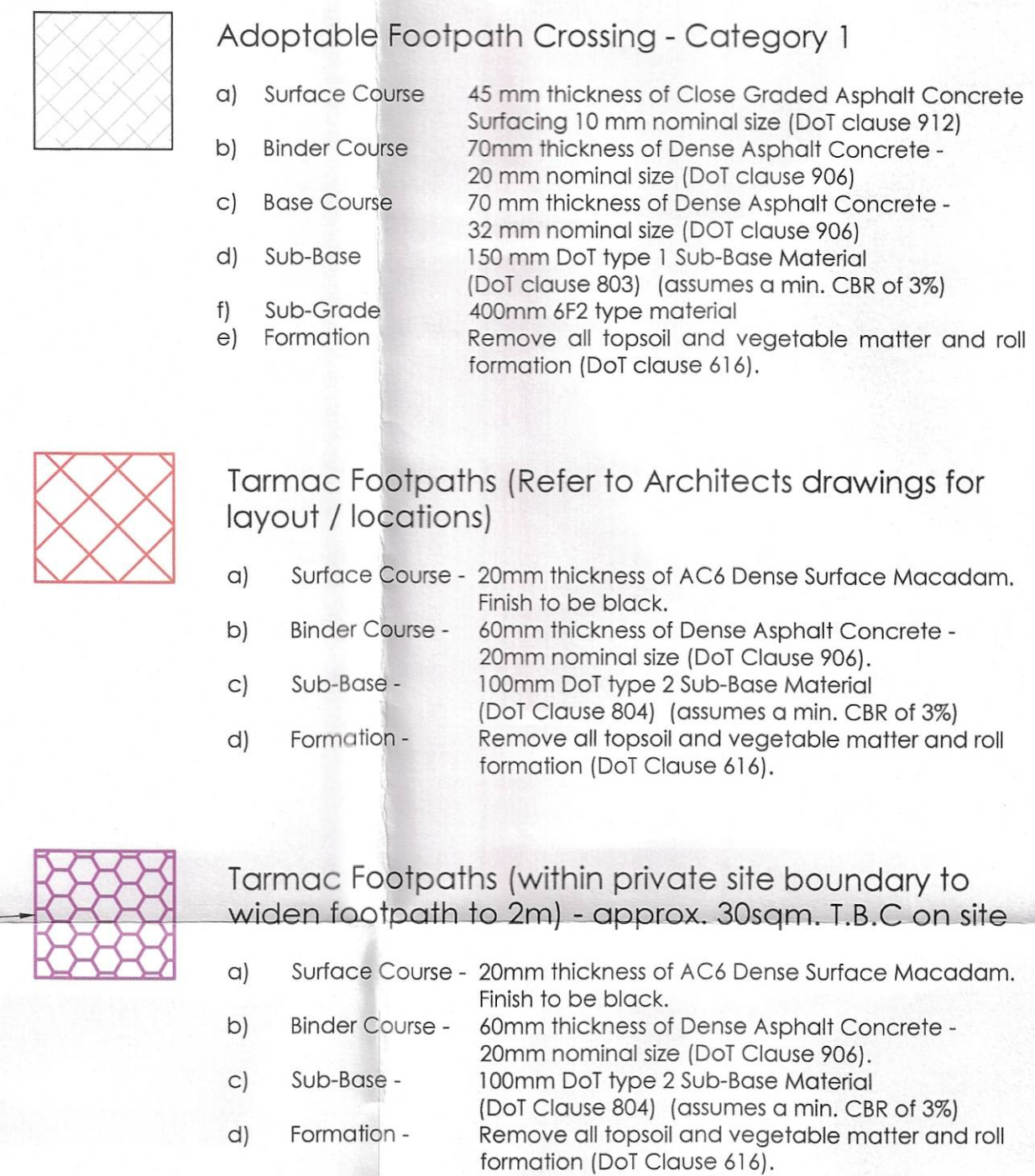
**Proposed Site Entrance Works (Section S278)**

(Scale 1:100 at A1)



**Site Entrance Adoptable Spec**

**Section 278 Works Boundary**



Note: Refer to Architect's drawing for details of street lighting

**GENERAL NOTES**

Do not scale this drawing.  
Contractor to check all dimensions and report all errors and omissions to the Engineer.

- All external setting out, levels & falls are to be taken from the Architects drawings.
- All construction specifications are based upon a min CBR = 2% UNO.
- Construction thickness are based upon suitable sub-grade being found at the 'formation' depth (i.e. underside of the DOT Type 1 material). Should suitable sub-grade not be found at this depth, all loose material / soft spots must be removed down to a suitable material, proof rolled and then brought back up to level in compacted layers of 6F1 material.
- For location of drop kerbs from car park for pedestrian access refer to architects drawings.
- Any works required to existing entrance to be strictly in accordance with Local Authority Highways requirements and Approval.
- All trees, hedges and undergrowth within the boundaries of the new road shall be taken down, grubbed up and removed from site. Particular care must be taken to ensure all tree stumps and roots are removed and any holes filled with an acceptable material and compacted in layers not exceeding 225mm in loose depth to the same relative density as the surrounding soil.

D	Amendments made in accordance with SCC comments.	RM	CJC	30.03.22
C	Amendments made in accordance with SCC comments.	RM	CJC	03.02.22
B	Amendments made in accordance with SCC comments.	RM	CJC	06.10.21
A	Tactile paving omitted as requested by Highways.	RM	CJC	18.08.21
Rev	Detail	By	Auth	Date
Revisions				

**DW Consulting Engineers LLP**

Marland House, Marland Road  
Sale, Cheshire, M33 3AQ  
Tel: 0161 969 4144  
web: www.dwlpl.com

**Client**  
**HB Villages**

**Project**  
Handford Road  
Ipswich

**Drawing Title**  
Site Entrance  
Adoptable Works

**Drawing Status**  
Preliminary

Project No.	DW1974	Discipline	C	Drawing No.	AD02
Scale	1:100 1:10	Sheet Size	A1	Revision	
Date	Jul'21	Drawn	RM	Checked	CJC
				Auth	D