

BY EMAIL

Mark Harnett  
Fladgate LLP  
16 Great Queen St  
London  
WC2B 5DG

Your Ref  
Our Ref: 154623801.1\KE0592.07033

DDI +441612348228  
Fax  
E [elizabeth.nuttall@pinsentmasons.com](mailto:elizabeth.nuttall@pinsentmasons.com)

28 February 2025

Dear Sirs

**RE: SECTION 278 AGREEMENT DATED 27 FEBRUARY 2017**

**OUR CLIENT: KENT COUNTY COUNCIL ("KCC")**

**RELEVANT PARTIES: HODSON DEVELOPMENTS (ASHFORD) LIMITED, CHILMINGTON GREEN DEVELOPMENTS LIMITED, HODSON DEVELOPMENTS (CG ONE) LIMITED AND HODSON DEVELOPMENTS (CG TWO) LIMITED ("DEVELOPER")**

1. We write on behalf of KCC. We understand that you act for the Developer.
2. This is a pre-action protocol letter in respect of a proposed debt action for recovery of unpaid sums due to KCC under an agreement made under s.278 of the Highway Act 1980 dated 27th February 2017 between KCC and the Developer ("**the 2017 Deed**") (enclosed) for the construction by KCC of the A28 Works specified in the 2017 Deed comprising essentially the dualling of the A28 between the Matalan and Tank roundabouts.
3. By clause 4 of the 2017 Deed the Developer covenanted with KCC jointly and severally in the terms set out in schedule 1 to the 2017 Deed - so far as relevant to pay the Post-Contract Costs (as defined in the 2017 Deed) in the instalments and at the dates set out in Payment Table 1 of Annex 2 (sch 1 para 2). Interest was payable on overdue payments under clause 10 of the 2017 Deed. No demand was required to be issued by KCC for these sums to become due.
4. The obligations to pay the Post-Contract Costs are separate from, and independent of, the obligation to provide a Bond under the 2017 Deed and arise irrespective as to whether KCC has already incurred those costs or entered into any contract for the delivery of the works.
5. The sums due may only be used by KCC for Authorised Purposes (as defined in the 2017 Deed) namely the construction of the A28 or any forward funding of such works (clause 5.5). There are various provisions for either: (1) requiring additional payments by the Developer in the event that there are costs overruns (clause 6.3) or there is a shortfall in LEP funding (sch 1 para 3); or (2) costs turn out to be lower than anticipated (clause 6.1 and 6.2). The full terms and effect of the 2017 Deed will be referred to and relied on at trial.

Pinsent Masons LLP

3 Hardman Street Manchester M3 3AU

T +44 (0)161 234 8234 F +44 (0)161 234 8235 DX 14490 Manchester 2

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6. The Post-Contract Costs are defined in the 2017 Deed as £28,988,800 *"being the costs that are estimated to be incurred by [KCC] after the letting of the Construction Contract"*. As at today's date the sum due is £13,360,800 and this remains outstanding. The Developer is therefore in breach of the 2017 Deed. At 31st March 2025, the outstanding Post-Contract Costs will increase to total £16,229,500.
  7. In addition:
    - 7.1 further instalments totalling a further £12.6m will fall due over the following five years to make up the total of £28.988m;
    - 7.2 a further £10.2m (less £2,756,282.89 currently retained by KCC) constituting the shortfall in LEP funding will fall due on commencement of the A28 Works (sch 1 para 4); and
    - 7.3 up to a further £3,471,750 a of costs overrun are potentially payable at the completion of the A28 Works (clause 6.3).
- Those are not yet the subject of the current claim.
8. Interest is due on the above due sums from the due date of payment to today's date and continuing. A schedule of interest is attached calculated by reference to the requisite National Westminster Bank rate from time to time.
  9. We therefore require payment of £13,360,800 plus interest at £2,453,573.29<sup>1</sup> by return. The sum will increase by £2,745.37 per day thereafter until 31st March 2025.
  10. As at 31st March the sum will be £16,532,550 plus interest at £2,450,827.93 and will be increasing at £3,334.83 per day.

#### **NEXT STEPS**

11. We invite payment or your response to this claim within 14 days of this letter being 4pm on 14 March 2025.
12. In the absence of payment or a full response within 14 days of this letter we anticipate receiving instructions to commence legal proceedings, without further notice, for the total sum of £13,360,800 plus interests and costs in the High Court of Justice, Kings Bench Division. The Claim will be under Part 7.
13. Our client reserves all its rights, including the right to commence proceedings against the Developer without further reference, should that prove necessary.
14. If the Developer fails to engage, our client reserves the right to bring the court's attention to any non-compliance when giving directions for the management of the claim and when making orders for costs.

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<sup>1</sup> Correct as at 26 February 2025



Yours faithfully

Pinsent Masons LLP  
This letter is sent electronically and is therefore unsigned

**DATED** 27 February **2017**

**THE KENT COUNTY COUNCIL (1)**

**-and-**

**HODSON DEVELOPMENTS (ASHFORD) LIMITED (2)**

**and**

**CHILMINGINGTON GREEN DEVELOPMENTS LIMITED (3)**

**and**

**HODSON DEVELOPMENTS (CG ONE) LIMITED (4)**

**and**

**HODSON DEVELOPMENTS (CG TWO) LIMITED (5)**

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**DEED  
UNDER SECTION 278 HIGHWAYS ACT 1980**

**Relating to highway improvement works at A28 -  
Ashford Kent**

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Commercial and Environmental  
Governance and Law  
Kent County Council  
County Hall  
Maidstone  
ME14 1XQ  
T: 03000 415910  
W: [www.kent.gov.uk/Legal](http://www.kent.gov.uk/Legal)  
Ref: LS/21/105422/450

Engrossment – 09.02.2017

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THIS DEED OF AGREEMENT is made the 27<sup>th</sup> day of February Two Thousand and Seventeen.

**BETWEEN**

(1) **THE KENT COUNTY COUNCIL** of Sessions House, County Hall, Maidstone Kent ME14 1XQ (the "Council"); and

(2) **HODSON DEVELOPMENTS (ASHFORD) LIMITED** (Company Registration No 07468189) whose registered office is at 55 Office Suite 9, 55 Park Lane, London, W1K 1NA ("Hodson") (also known as "the First Developer"); and

(3) **CHILMINGMINGTON GREEN DEVELOPMENTS LIMITED** (Company registration number 09286703) whose registered office is at Office Suite 9 55 Park Lane London W1K 1NA (and ("the Second Developer"); and

(4) **HODSON DEVELOPMENTS (CG ONE) LIMITED** (Company registration number 10392676) whose registered office is at Office Suite 9 55 Park Lane London W1K 1NA ("the Third Developer"); and

(5) **HODSON DEVELOPMENTS (CG TWO) LIMITED** (Company registration number 10392663) whose registered office is at Office Suite 9 55 Park Lane London W1K 1NA ("the Fourth Developer"); and

It is hereby agreed and Declared between the Parties hereto as follows:

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this Deed the following expressions (arranged in alphabetical order and in certain instances incorporating in their definitions expressions defined elsewhere in this Clause) shall have the meanings set out below:-

"1980 Act" means the Highways Act 1980 (as amended)

"1990 Act" means the Town and Country Planning Act 1990 (as amended)

"A28 Works" means the strategic county highway works and being substantially in the form shown in the Jacobs scheme/Amey scheme for highway improvements on the A28 in Ashford drawing no.4300246/000/79 Rev 1 dated 26 July 2016 annexed and such other works which are necessarily ancillary thereto as may reasonably be required in relation thereto and any revisions thereof agreed in writing between the parties (but at the Council's reasonable discretion in exercise of its statutory powers under the 1980 Act);

"Account" means an interest bearing bank account in the name of the Council;

"Agreed Timetable" means the timetable agreed between the Council and SELEP for the expenditure of the LEP Funding towards the A28 Works;

"Authorised Purposes" means the construction of the A28 Works or the repayment by the Council for any forward funding of such works;

"Borrowing Costs" means the interest at the prevailing rate on the capital costs of constructing the A28 Works should the Council need to borrow money from a third party in order to forward -fund the A28 Works;

**"Commencement"** means the date upon which a material operation as defined in section 56(4) of the 1990 Act shall be carried out in respect of the Development and the terms "Commence" and "Commencement" shall be construed accordingly;

**"Construction Contract"** means the contract to be let by the Council for the construction of the A28 Works;

**"Costs Overrun"** means any cost item of the A28 Works which exceeds the total cost estimates contained in the Allen Dadswell Report dated July 2014 Revision A;

**"Costs Overrun Notice"** means a Notice served on the Developer by the Council specifying any Costs Overrun that has been reasonably and properly incurred by the Council (and which is not due to the Council's manifest negligence) on the A28 Works beyond the estimated costing of the project set out in Annex 2;

**"Developer's Appointee"** means the individual jointly appointed by the Developer to co-ordinate performance of their obligations;

**"Development"** means the development of the Development Site pursuant to the Planning Permission;

**"Development Site"** means land benefited by the A28 Works shown edged red on Plan 1

**"Dispute Resolution Procedure"** means the procedure specified Schedule 2 to this Deed;

**"Force Majeure Event"** means fire, flood, storm, tempest, earthquake, war, terrorism, civil unrest, lock-outs, the unavailability of construction materials, rebellion, revolution, nationalisation, military or usurped power confiscation, requisition, destruction or damage to property by or under the Order of any Government or Public or Local Authority or in position of Government Sanction Embargo or similar action, law, Judgment, Order, Decree, embargo, blockade, labour dispute, boycott interruption or failure of utility services failure of transportation of any personnel equipment, machinery, supply or material required for the construction breach of contract by any contractor or sub-contractor or any other matter or cause beyond the immediate control of the Council;

**"LEP Funding"** means £10.2m (ten million two hundred thousand pounds) from the South East Local Enterprise Partnership;

**"Notify"** means a written notice from the Council to the Developer's Appointee (or the Developer) of its intention to request Tenders for performance of the A28 Works;

**"Party"** means any of the two parties to this agreement but not their successors in title and the expression Parties shall be construed accordingly;

**"Payment Tables"** means the tables setting out the money due from the Developer and which appear Annex 1 and Annex 2 to this Deed;

**"Planning Permission"** means the outline Planning Permission granted by Ashford Borough Council under reference number 12/00400/AS or any amendment thereto or substitution therefor or planning permission granted pursuant to any subsequent planning application which has the effect of varying amending duplicating or in substitution for the planning permission granted pursuant to the Planning Permission or whole or partial substitution therefor;

**"Post Contract Costs"** means £28,988,800 (twenty eight million nine hundred and eighty eight thousand eight hundred pounds being the costs that are estimated to be incurred by the Council after the letting of the Construction Contract;

**"Pre-Contract Costs (Advance Design Costs)"** means £303,050.00 (three hundred and three thousand and fifty pounds) being the outstanding unpaid costs incurred by the Council before the Construction Contract is let;

**"Programme"** means in respect of the A28 Works the programme and details prepared by appropriately qualified engineers to include all designs, materials, documents, drawings, specifications, tender documents and Stage 1 and Stage 2 Safety Audit specifications together with the programme for the A28 Works incorporating a statement of the overall sequence in which the elements of the A28 Works are to be carried out together with an estimate of the amount of time to be spent by the Council in carrying out and completing the A28 Works;

**"Provide a Bond"** means to deliver to the Council an executed dated legal instrument from a Surety for the total amount contained in line 11 of the Developer's Payment Table 1 in Annex 2 that instrument being in the form set out at Annex 3 and to be drawn down in the manner also set out at Annex 3 as appropriate and "Provide a Bond" and all like uses of the term shall be construed accordingly and "Bond" and all like terms shall be construed accordingly also;

**"SELEP"** means the South East Local Enterprise Partnership;

**"Surety"** means such bank or other financial institution being a provider of commercial bonds as may be nominated by the Developer or any of them and approved in writing by the Council's Corporate Director of Finance and Procurement for the purpose of the Developer Providing a Bond;

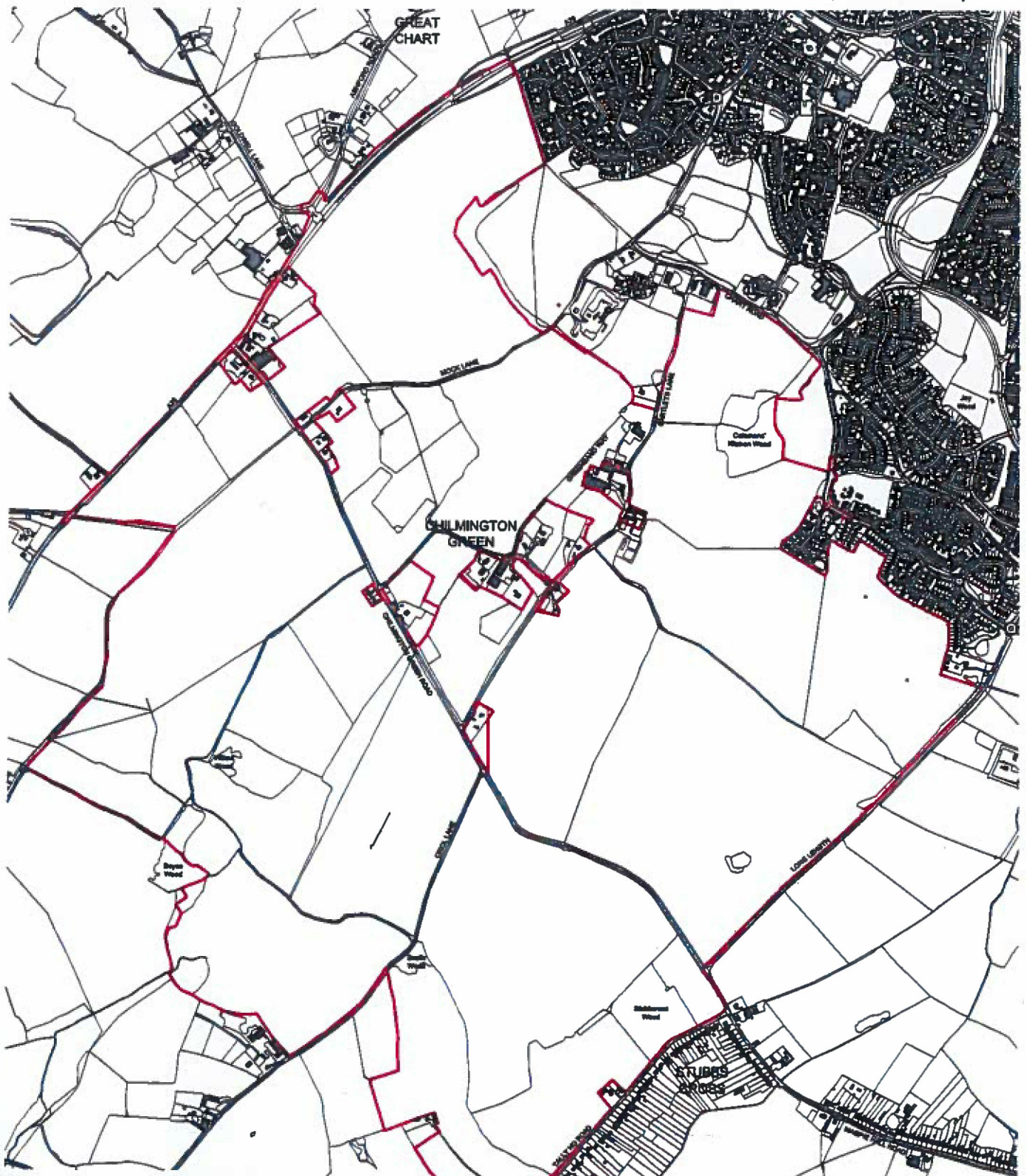
- 1.2 Reference in this Deed to any clause sub-clause paragraph schedule drawing or plan without further designation shall be a reference to the clause sub-clause paragraph schedule drawing or plan of (or in the case of a drawing or plan annexed to) this Deed so numbered.
- 1.3 Reference to any statute or order shall include any statutory extension modification or re-enactment thereof and any order regulation or bye-law made thereunder.
- 1.4 Words importing the singular number only shall include the plural number and vice versa and words importing any particular gender shall include masculine feminine and neuter genders.
- 1.5 The headings in this Deed and the front cover are for convenience only and shall not be deemed to be part thereof or be taken into consideration in the interpretation or construction thereof.

## **2. RECITALS**

- 2.1 The First Developer Second Developer Third Developer and Fourth Developer shall hereinafter be referred to as the Developer and shall be joint and severally liable for the covenants in this Deed .
- 2.2 The Developer has applied to the Borough Council for Planning Permission to carry out the Development.
- 2.3 The Council is the highway authority under the 1980 Act for the area in which the A28 Works are to be carried out.
- 2.4 The Council has secured an Offer of LEP Funding which must be spent before 31 March 2021 and subject to the completion and observance of the terms of this Deed it can as a result build the A28 Works at nil cost.
- 2.5 The parties hereto have agreed to enter into this Deed for the purpose of securing payments by the Developer towards the cost of the A28 Works at no cost to the Council to



PLAN 1.



0m 100m

THE COMMON SEAL OF THE KENT COUNTY COUNCIL WAS HEREUNTO AFFIXED IN THE PRESENCE OF:

Chilmington Green

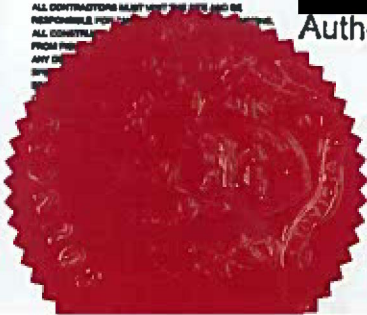
NOTES  
DO NOT SCALE FROM THIS DRAWING.  
ALL CONTRACTORS MUST VIEW THE SITE AND BE RESPONSIBLE FOR THE ACCURACY OF THE DATA.  
ALL CONSTRUCTION FROM THE DATE OF THE DRAWING.  
ANY CHANGES TO THE DRAWING MUST BE APPROVED BY THE DESIGNER.

Authorised Signatory

Chilmington Green Consortium

jtp

23-25 Great Sutton Street, London, EC1V 0DN T: +44 (0)20 7617 1760 F: +44 (0)20 7617 1761 W: www.jtp.co.uk			
John Thompson & Partners			
Chilmington Green, Ashford	00122 PLH.CG ECC	Drawn by	CSM
Scale 1:10,000		Date	03/11/2016
Boundary Plan		File	P1







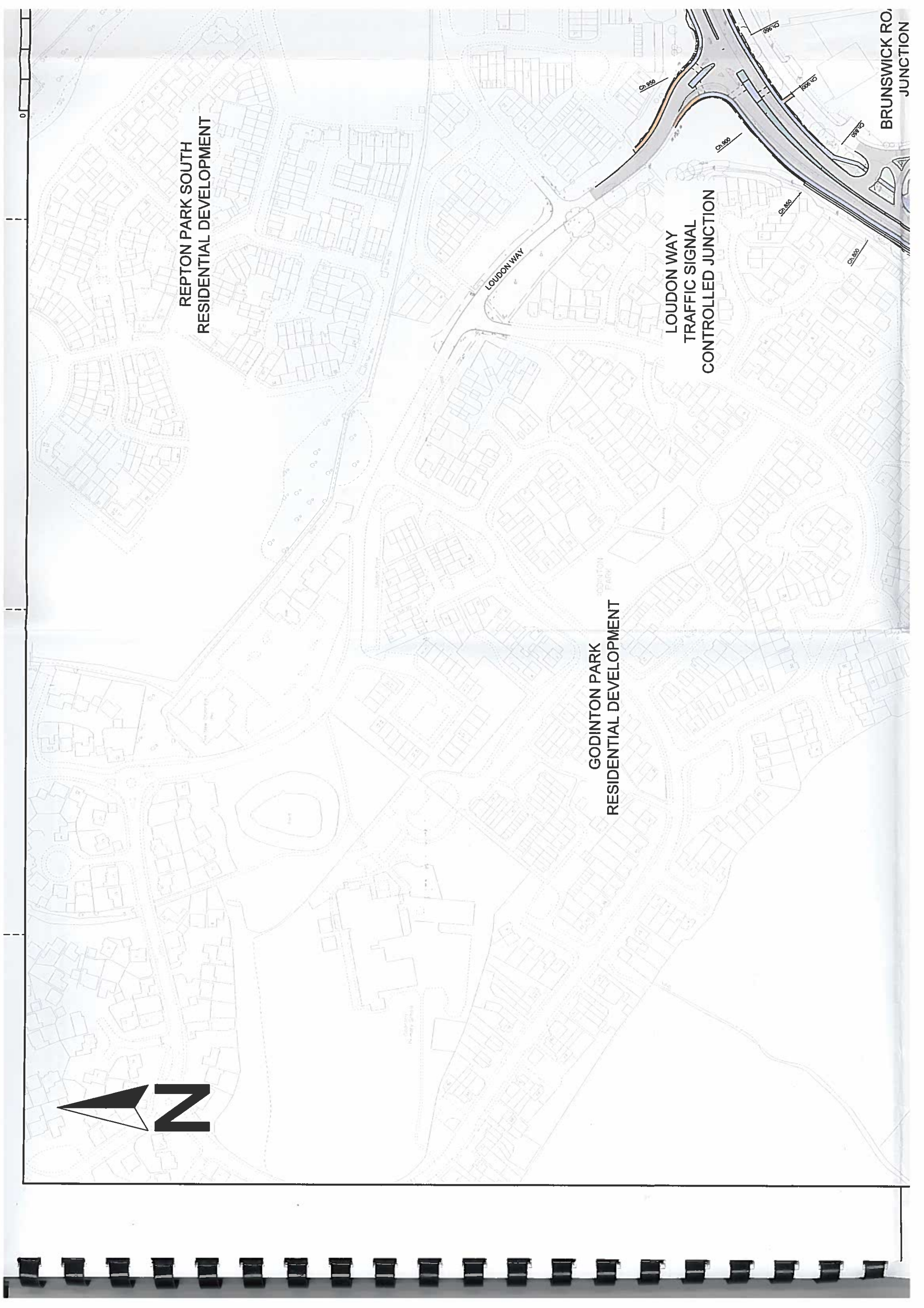
REPTON PARK SOUTH  
RESIDENTIAL DEVELOPMENT

LOUDON WAY

GODINTON PARK  
RESIDENTIAL DEVELOPMENT

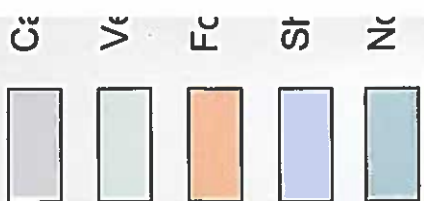
LOUDON WAY  
TRAFFIC SIGNAL  
CONTROLLED JUNCTION

BRUNSWICK ROAD  
JUNCTION





KEY



THE  
COU  
AFFI  
D&F  
Auth

MAIDSTONE EAST LINE  
(Swanley to Ashford)

A28 TEMPLER WAY  
To Drovers Roundabout

A292 CHART ROAD  
To Ashford Town Centre

TANK  
ROUNDAABOUT

Controlled Crossing

Access to Geerings  
Business Centre

Left turn into Hilton Road only

Retaining Wall

Acoustic Barrier

REPTON PARK NORTH  
RESIDENTIAL DEVELOPMENT

CHANNEL TUNNEL RAIL LINK  
HIGH SPEED 1 (HS1)

SIR HENRY BRACKENBURY ROAD

HILTON ROAD

BRACKENBURY ROAD

ON PARK SOUTH  
TIAL DEVELOPMENT

WAY  
IGNAL  
JUNCTION







CHANNEL TUNNEL RAIL LINK  
HIGH SPEED 1 (HS1)

REPTON PARK NORTH  
RESIDENTIAL DEVELOPMENT

A28 TEMPLER WAY  
To Drovers Roundabout

MAIDSTONE EAST LINE  
(Swanley to Ashford)

SIR HENRY BRACKENBURY ROAD

A292 CHART ROAD  
To Ashford Town Centre

TANK  
ROUNDAABOUT

HILTON ROAD

BRINSWICK ROAD

# KEY

- Cariageway Improvement
- Verge / Earthworks / Landscaping
- Footway
- Shared Unsegregated Footway
- Non Pedestrian Hardstanding



THE COMMON SEAL OF THE KENT  
COUNTY COUNCIL WAS HEREUNTO  
AFFIXED IN THE PRESENCE OF:-  
*D.J. Burrage Denise J. Burrage*  
Authorised Signatory

Retaining Wall

Acoustic Barrier

Controlled Crossing

Access to Geerings  
Business Centre

Left turn into Hilton Road only

Ch. 1500

Ch. 1450

Ch. 1350

Ch. 1300

Ch. 1250

Ch. 1200

Ch. 1150

Ch. 1100

Ch. 1050

Ch. 1100

Ch. 1200

Ch. 1250

Ch. 1300

Ch. 1350

Ch. 1400

Ch. 1450

Ch. 1500

Ch. 1550

Ch. 1600

Ch. 1650

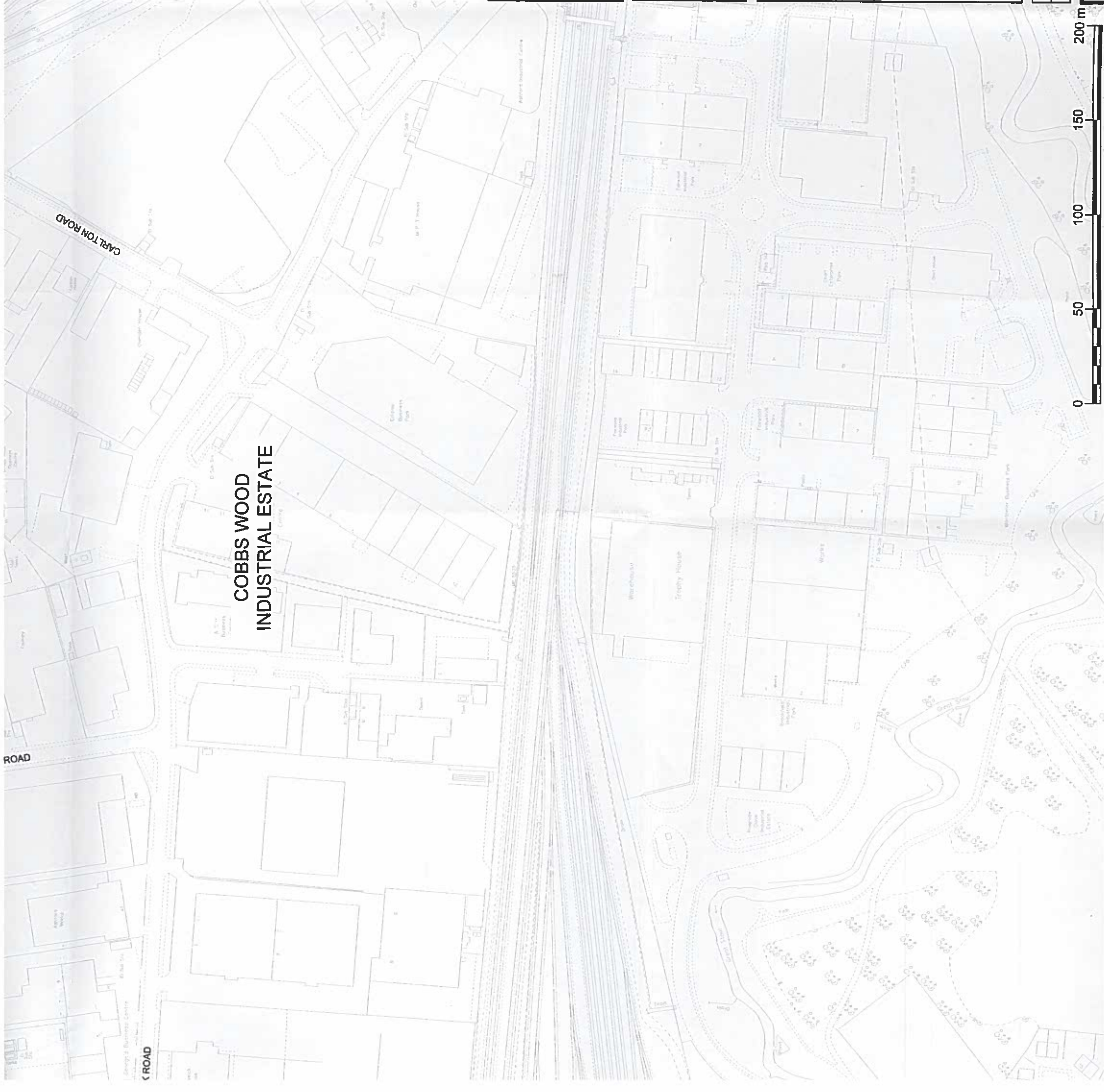
Ch. 1700

Ch. 1750

Ch. 1800

Ch. 1850





1	Footway connection from Beaver Lane removed	VMS	VMS	26.07.16
Rev	Revision details	Chkd	Appd	Date

Drawn: TMW	Preliminary
Design: RBF	For comment
Chkd: BDB	For tender
Appd: DBB	For construction
Date: 20 November 2015	As constructed
	Other



Project Name  
**A28 CHART ROAD, ASHFORD  
IMPROVEMENT SCHEME**

Drawing Title  
**Scheme Plan**

Original Drawing Size : A1	Dimensions : m
Scale : 1:2000	Copyright © Amey

Drawing No	Rev
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BRUNSWICK ROAD  
JUNCTION

BRUNSWICK ROAD

Household Waste  
Recycling Centre

CHART LEACON  
RAILWAY BRIDGE

Bombardier

BROOKFIELD

National Cycle Route 18

LEACON ROAD

Retaining Wall

New Bridge

Acoustic Barrier

Retaining Wall

BEAVER LANE

Matalan

BROOKFIELD ROAD

Existing Bridge  
to be retained

Access to Nos.2 & 3  
Chart Leacon Cottages

Chart Leacon  
Cottages

Controlled Crossing

Acoustic Barrier

Access to No.1 Chart  
Leacon Cottages

MATALAN  
ROUNDBABOUT

Left in/Left out  
access to school

Wyvern School

SOUTH EASTERN MAIN LINE (London Charing Cross to Dover)

A28 GREAT CHART BYPASS  
To Tenterden



enable the Council to carry out the A28 Works which the Council is satisfied will be of benefit to the strategic highway network and are of benefit to the public.

### **3. STATUTORY PROVISIONS**

The several covenants given under Clause 4 and Schedule 1 are given pursuant to Section 278 of the 1980 Act by the Developer and the covenants on the part of the Developer shall be covenants to which the provisions of Section 278 of the 1980 Act shall apply as regards any expenses recoverable by the Council.

### **4. DEVELOPER'S COVENANTS**

The Developer hereby covenants jointly and severally with the Council in the terms set out in Schedule 1 to this Deed.

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

The Council hereby covenants with the Developer as follows:

- 5.1 That subject only to compliance by the Developer with its Covenant to Provide a Bond under paragraphs 4 and 7 of Schedule 1 to this Deed it will let a Construction Contract no later than 2020 in accordance with the Programme subject to no Force Majeure Event occurring and in the event of a Force Majeure Event occurring the Council shall on the cessation or resolution of the Force Majeure Event carry out and complete the A28 Works as expeditiously as possible thereafter and in accordance with the Programme, but with an extension commensurate to the duration of the Force Majeure Event;
- 5.2 that it will give the Developer's Appointee or the Developer not less than two (2) months prior written notice of its intention to commence the A28 Works and the season and year of its proposed start and finish dates for the A28 Works and will thereafter diligently proceed with the A28 Works provided always that should it decide to accelerate the A28 Works beyond the timescale set out in the Programme the Developer shall not be responsible for any additional contributions or any earlier payments than covenanted for in Annex 1;
- 5.3 that it will use reasonable endeavours to secure any necessary order required in connection with the carrying out of the A28 Works including any necessary authorisations or permissions or consents required in connection therewith
- 5.4 where no Construction Contract has been let or proceeded with and completed for the A28 Works within 60 months from the date of Provision of a Bond in respect of the Post Contract Costs the Bond shall be automatically discharged and certification by the Corporate Director of Finance and Procurement at the Council that nothing is owed under them shall be forthwith provided to the bondsmen and the Developer;
- 5.5 not to use or apply the Developer's contributions or any part thereof other than towards the Authorised Purposes;
- 5.6 the Council shall use its reasonable endeavours to minimise the total costs of the A28 Works and the Borrowing Costs and in particular shall investigate the availability of low-interest borrowings from the Public Works Loans Board and other available sources of funding and finance and shall not agree to any contract claims or claims for compensation under Part 1 of the Land Compensation Act 1973 in excess of £10,000 without first having consulted with and given the Developer a reasonable opportunity to comment on the amount and justification of any such claims and having taken into account the Developer's responses to any such consultation

- 5.7 The Council using its engineer's and its Corporate Director of Finance and Procurement's certificates will keep the Developer and the Developer's Appointee regularly informed as to progress and the certified cost of the A 28 Works including the Borrowing Costs and any accrued interest with a periodical written update not less than annually on the anniversary of the date of this Agreement and using an open book – accounting basis of the actual costs. of the A28 Works its actual Costs of Borrowing and all or any available sources of funding and finance for the A28 Works;
- 5.8 Following the letting of the Construction Contract the Council will issue a statement to the Developer's Appointee or the Developer confirming the award of the contract for the A28 Works to the successful contractor and confirm the amount of the contract sum;
- 5.9 The Council will review the costs of the A28 Works and the related Payment Table in consultation with the Developer on both of the occurrences referred to in Sub- Clauses 6.1 to 6.3 below
- 5.10 The Council shall not call on the Bond unless it shall first have served the Developer with 21 days prior Notice of their intention to do so
- 5.11 The Council shall in the event the sum payable in respect of the Post Contract Costs is paid within 21 days of service of the Notice not call on the Bond but in the event the sum payable in respect of the Post Contract Costs remains outstanding the Council shall call on the Bond.

## 6. DECLARATIONS

It is hereby agreed and declared between the Parties as follows:

- 6.1 Should it be found that on Practical Completion of the A28 Works the costs of the A28 Works including Borrowing Costs were less than those used to formulate the Payment Tables then the Council shall forthwith inform the Developer and reformulate the amounts at that time owing under this Deed using the same payment dates and giving credit to the Developer for any previous overpayments by them and accrued interest .
- 6.2 Should it be found that on the date of seven years (7) from Practical Completion of the A28 Works that the actual costs of the A28 Works including Borrowing Costs were less than those used to formulate the Payment Tables then the Council shall forthwith inform the Developer and reformulate the amounts at that time owing under this Deed using the same payment dates and giving credit to the Developer for any previous overpayments by them and any accrued interest over the remainder of the repayment period.
- 6.3 Should it be found at any time post tender period that the costs of the A28 Works including the Borrowing Costs are more than those used to formulate the Payment Tables but giving credit to the Developer for any previous overpayments by them and any accrued interest then the Council may serve the Developer or the Developer's Appointee with a Costs Overrun Notice PROVIDED ALWAYS THAT the aggregate amount of all such Costs Overrun Notices shall not exceed £3,471,750 (Three Million Four Hundred and Seventy One Thousand Seven Hundred and Fifty Pounds).

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

The Council agrees that upon practical completion of the A28 Works any land dedicated under a Section 38 Agreement shall subject to observance of all the terms of that Agreement be adopted using its powers under Section 38 of the Highways Act 1980 and shall thereafter be highway maintainable at the public expense.

## **8. RELEASE OF BOND**

Upon receipt of any payment due under this Deed which has been secured by a Bond, the amount secured by the Bond shall be immediately and automatically reduced by a corresponding amount and the Surety shall to that extent be immediately and automatically released from its liability under this Deed and the Bond to that extent without the need for any act or Deed on the part of the relevant Developer or its Surety, and the Council shall confirm the release to the Provider of the Bond to the extent of the payment received within 21 days of receipt.

## **9. NOTICES**

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

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

For the purposes of this Deed in the event of any delay in the making of any payment required to be made by a Developer to the Council under this Deed simple interest shall be payable thereon calculated on a daily basis at the rate of three (3) per cent per annum above the National Westminster Bank plc base lending rate from time to time in force from the due date to the date of actual payment. for which purpose a sum shall be taken as due not later than the day before the payment is due in accordance with the payment table as set out in Annex 2 to this Deed the sum due shall bear interest from the due date until the date of payment and the Developer hereby covenants with the Council to pay any interest accrued at the same time and to the same recipient as the sum on which it has accrued is paid.

## **11. NO ASSIGNMENT**

The Developer shall not have the right to assign or transfer the benefit of this Deed or any part thereof save to any other funder of the Developer and only with the Council's prior approval and the Council shall not be obliged to require performance of this Deed by any person other than the Developer.

## **12. MISCELLANEOUS PROVISIONS**

- 12.1. It is not intended that any person who is not a party to this Deed shall be able to enforce any of its provisions under the Contracts (Rights of Third Parties) Act 1999.
- 12.2. the construction programme shall not exceed 60 months from the date on which the Developer shall have provided their Bond
- 12.3. On final completion of the A28 Works as evidenced by its Engineers Certificate of Final Completion the Council will provide evidence on an open book accounting basis of the actual costs of the A28 Works its actual Costs of Borrowing and all or any available sources of funding and finance for the A28 Works



12.4. Any disputes under this Agreement shall be determined in accordance with the Dispute Resolution Provisions

## **SCHEDULE 1**

### **Developer's Covenants**

1. The Developer hereby covenants with the Council to pay that part of the Pre-Contract Costs (Advance Design Costs) at the dates and times set out in line 1 of Payment Table 1 of Annex 1.
2. The Developer hereby covenants with the Council to pay the Post-Contract Costs in the instalments and at the dates and times set out in Payment Table 1 of Annex 2.
3. The Developer hereby covenants to pay the shortfall of the costs of the A28 Works being the reduction in the amount of the LEP Funding in the event that part or all of the LEP Funding is withdrawn by SELEP for any reason including a failure to deliver the scheme in accordance with the Agreed Timetable to allow the A28 Works to be carried out at nil cost to the Council.
4. Any additional funding required to pay the shortfall of the costs of the A28 Works pursuant to clause 3 of this Schedule over and above the sums shown in Payment Table 1 in Annex 2 being the Post Contract Costs to complete the A28 Works at nil cost to the Council payable pursuant to clause 2 of this Schedule will before the Construction Contract is let be paid by the Developer to the Council and the Council shall send to the Developer a revised payment schedule in substitution of Payment Table 1 of Annex 2 in these circumstances or in the event the Council is able to increase its forward funding provide an amended Bond under clause 7 of this Schedule to reflect the increased funding and borrowing costs over and above that already set out in Payment Table 1 in Annex 2 to this Deed.
5. In the event the Council does not increase its forward funding the Developer shall pay the sums required in respect of the additional funding required over and above the sums shown in Payment Table 1 in Annex 2 pursuant to Clause 4 of this Schedule.
6. The Developer covenants to indemnify the Council against any demand from SELEP to repay any part of the LEP Funding expended by the Council prior to the Construction Contract being let in the event the LEP Funding is withdrawn or reduced for any reason including a failure to deliver the scheme in accordance with the Agreed Timetable.
7. The Developer hereby covenants with the Council to Provide a Bond for the Post Contract Costs as set out in line 11 of the Payment Table 1 of Annex 2 within six weeks of notification by the Council under Clause 5.2 of this Deed.
8. The Developer covenants upon receipt of a Costs Overrun Notice by the Council to pay the amount specified in that Notice within 3 months to a maximum cumulative total amount of £3,471,750 (Three Million Four Hundred and Seventy One Thousand Seven Hundred and Fifty Pounds).

## **SCHEDULE 2**

### **Dispute Resolution Procedure**

1. Wherever in this Deed the consent agreement or approval of any Party is required, it shall not be unreasonably withheld or delayed but without implying any fetter on the statutory powers and reasonable discretions of the Council as highway authority.
2. In the event of any dispute between the Parties including any dispute as to reasonableness, BUT FOR THE AVOIDANCE OF ALL DOUBT EXCLUDING any question relating to the amount including interest or the due date for payment of an amount of money covenanted by a Developer for payment of the Council under this Deed any Party may invite any other Party to resolve the dispute by mediation in such manner as the Parties may agree.
3. In the event of a dispute between the Parties including a dispute as to any test of reasonableness the Parties agree that the matter in dispute may on the application of both or all parties in dispute and following the exhaustion of all dialogue between Principals or Senior Officers of the Disputing Parties be referred to a Surveyor acting as an expert (hereinafter referred to as the "Expert") (being either a member of the Planning Division of the Royal Institution of Chartered Surveyors or a Fellow of the Institution of Civil Engineers (as appropriate) with not less than ten years relevant experience whose identity will be agreed between the Parties or in default of agreement appointed by or on behalf of the President for the time being of either the Royal Institution of Chartered Surveyors or the Institution of Civil Engineers on the application of any Party and in the case of the Council being a disputing Party the reference to the Expert will explicitly be on terms that require the expert to have special regard inter alia to:-
  - (i) the Council's duties as a public body and as a Highway Authority under the 1980 Act; and
  - (ii) the benefit to the public of securing the Developer funding for highways improvements to the A28.
4. The procedure to be followed in any dispute resolution shall be that written submissions shall be exchanged between the parties and served upon the person appointed within 21 days of the appointment of that person with any response to be exchanged between the parties and served upon the person appointed within 14 days of the date that the first submissions were served upon the person appointed. (time in all cases being of the essence).
5. Any determination by the Expert shall as part of their appointment to be made in writing giving reasons and delivered to the Parties within 28 days of the last date for submission of responses.
6. The finding of the person appointed including any finding in respect of costs shall be final and binding upon all parties and costs shall be at the discretion of the person appointed.

**Annex 1 – Pre-Contract Costs - Advance Design Costs**

Payment Table 1		
	Amount	Due Date
1	£303,050.00	15 March 2017



**Annex 2 – Post - Contract Costs**

<b>PAYMENT TABLE Post - Contract 278 Contributions</b>		
<b>PAYMENT TABLE 1 Hodson Post - Contract 278 Contributions</b>		
<b>Line</b>	<b>Column 1 Amount</b>	<b>Column 2 – Due Date</b>
1	£4,754,800	
2	£2,868,700	31/03/2021
3	£2,868,700	31/03/2022
4	£2,868,600	31/03/2023
5	£2,868,700	31/03/2024
6	£2,868,700	31/03/2025
7	£2,868,600	31/03/2026
8	£2,868,700	31/03/2027
9	£2,330,400	31/03/2028
10	£1,822,900	31/03/2029
11	<b>TOTAL £28,988,800</b>	31/03/2030

**Annex 3**

**DEED SECURING AN  
ON-DEMAND BOND TO PAY THE COUNTY COUNCIL**

Executed as a deed on this ..... Day of..... 20.....

BY THIS BOND

Reference Number:.....

We, [.....]

whose registered office is situated at

("the Issuer")

are bound to

**THE KENT COUNTY COUNCIL** of County Hall Maidstone Kent ME14 1XQ ("the County Council")

as set out in this Deed.

**WHEREAS**

1. The Owners of land at Chilmington Green, Ashford Road, Great Chart, Kent ('the Site') have planning permission issued by Ashford Borough Council as local planning authority pursuant to application number 12/00400/AS to develop the Site for a mixed-use development including up to 5,750 dwellings;
2. The Developer of the Site being Hodson Developments (Ashford) Limited Chilmington Green Developments Limited Hodson Developments (CG ONE) Limited and Hodson Developments (CG Two) Limited have entered into an agreement under s.278 Highways Act 1980 dated [DATE] to secure contributions towards the cost of improvement works to the A28 which are to be carried out by the Council
3. The s.278 Agreement requires the Owner to provide an on demand bond for the full cost of the A28 Improvement Works this being the full amount of the Owner's liability under the terms of the s.278 Agreement.
4. The payments include the following payments to be made in respect of the post Contract Costs:  
  
Post Contract Costs  
comprising the sum of:  
  
(i) £28,988,800 (twenty eight million nine hundred and eighty eight thousand and eight hundred pounds
5. the County Council requires the Issuer of this Bond to bind itself as a principal unconditionally to make the payment(s) specified in this Deed immediately and in full, if so demanded, in order to secure that the County Council can construct and provide the relevant improvement works to the A28 as required by the Section 278 Agreement.

6. this Deed comprises an on-demand Bond comprising the recitals to this Deed and Clauses 1 to 9 inclusive;

7. this Bond is an 'on-demand' bond and it is not guaranteeing performance of any other party's obligations to the County Council;

8. the Issuer accordingly agrees that its liability to pay the County Council on demand under this Bond is assumed as a principal, independently and without regard to whether any other party is also liable to make the monetary payments in question, and without proof of default by any other party;

9. the Issuer further agrees that the Section 106 Agreement and Section 278 Agreement does not form part of this Bond, which contains freestanding obligations and is not to be construed by reference to the Section 106 Agreement and Section 278 Agreement;

10. the Issuer and the County Council agree that this Deed comprises the entire agreement between the parties for the purpose of this Bond to the exclusion of any representations or separate agreements made by either party;

NOW THIS DEED WITNESSES as follows:

#### Commencement and Expiry of the Bond

1. This Bond has been executed by the Issuer and then delivered to the County Council for sealing, and is effective immediately from the date of sealing by the County Council. It shall expire at 24.00hrs on [DATE], unless terminated sooner by the County Council giving notice in writing to the Issuer. Upon expiry, this Bond shall, without prejudice to any accrued liability to pay or payments previously made, become null and void, such that no Demand under clause 2 shall be effective if received after expiry.

#### The Issuer's promise to pay

2. The Issuer irrevocably and unconditionally promises to the County Council, as primary obligor, to immediately pay to the County Council upon written Demand signed on behalf of the County Council and received at its registered address before the date of expiry of this Bond, any amount or amounts demanded not exceeding, in aggregate, the total value of the payments towards the A28 Improvement Works as defined at recital 4 above.

3. A Demand shall constitute conclusive proof for the purpose of clause 2 above that the quantum demanded is due to the County Council under this Bond.

4. For the avoidance of doubt, Clause 2 above shall allow the County Council to make more than one Demand, and to:

(a) require in a Demand immediate payment of the amount of the payment owing after the due date as set out in the table at Clause 4 of the recitals

5. Payments shall be deemed not to have been made for the purpose of clause 2 above unless the amounts demanded have been received in cleared funds by the County Council in the following bank account:

National Westminster Bank Plc  
Maidstone Branch  
Account Number: 001 00013  
Sort Code: 60-60-08

or such other bank account as the County Council shall notify in writing at the time when it makes the Demand.

6. Upon receipt of any payment due under the Section 278 Agreement which is guaranteed under this Bond the amount secured under the Bond shall be automatically reduced by the corresponding amount and the Issuer shall be released from the relevant part of the liability of the Bond without the need for any act or deed on the part of the Owner.

**Rights of third parties, assignment or transfer**

7. This Bond is personal to the County Council and is not transferable or assignable, except that if the County Council should be dissolved and/or its functions as highways authority transferred to a successor body by or under any enactment, the rights of the County Council under this Bond may be transferred or assigned to its successor body.

8. Save as set out in Clause 6 above, this Deed is not intended to confer rights on third parties for the purpose of the Contracts (Rights of Third Parties) Act 1999.

**Governing law and jurisdiction**

9. This Deed and any disputes or claims relating to it shall be governed by and determined in accordance with the law of England for all purposes. The courts of England shall have exclusive jurisdiction to try any claim arising out of or in connection with this Deed, its subject-matter or formation (including any non-contractual claims)

**IN WITNESS WHEREOF**, we being duly authorised by the Issuer for the purpose have executed and delivered this Deed this.....day of the month of ..... in the year 20 .....

**THE COMMON SEAL of**  
was hereunto affixed in the  
presence of:-

Director:

Director/Secretary:

PRINT NAME:

Signature:

WITNESS NAME:

Signature:

**[SEAL]**



AND we the County Council have caused to be affixed our [Common Seal] this  
.....day of the month of ..... in the year 20 .....

in the presence of:

NAME.....

Signature:

NAME.....

Signature

[SEAL]

**DEED OF COVENANT**

Executed as a deed on this ..... day of..... 20.....

**BETWEEN:**

**THE KENT COUNTY COUNCIL of County Hall Maidstone Kent ME14 1XQ ("the County Council")**

**AND**

[.....]

**whose registered office is situated at**

**("the Issuer")**

**WHEREAS:**

A. The Issuer has executed and delivered an on-demand Bond to the Council with reference number [.....] ('the Bond'),

in consideration for which the County Council has made promises that are fully and comprehensively evidenced in this Deed;

B. The parties hereto agree that this Deed comprises the entire agreement between the parties to the exclusion of any other representations or promises whatsoever;

C. The parties hereto agree that this Deed falls to be interpreted in the light of the Bond, and that terms used in the Bond shall have the same meaning for the purpose of this Deed as they do in the Bond;

D. It is agreed that references below to clause numbers are to the corresponding clauses in this Deed of Covenant unless otherwise stated;

**NOW THIS DEED WITNESSES as follows:**

County Council's covenants in respect of its enforcement of the Bond

1. If the County Council has received in cleared funds one or more payments towards the Contribution from any person other than the Issuer (which shall only be deemed to be made for that purpose if the paying party has so notified the County Council in writing) ('Relevant Payments'), then the County Council agrees that the maximum liability of the Issuer enforceable under the Bond shall forthwith be automatically reduced to the difference between the Contribution and the sum of any such Relevant Payments ('the Maximum Liability').

2. Where clause 1 above applies:

- (a) the County Council shall not thereafter present or enforce any Demand so as to require the Issuer to pay it more than the Maximum Liability from time to time applying;
- (b) the County Council shall notify to the Issuer receipt of any Relevant Payments, and the amounts of the same, in writing within 14 calendar days from receipt;

3. If a Demand is presented for the purpose of the Bond in breach of clause 2(a), it is agreed that the Issuer remains bound to make the payment immediately without questioning its liability to pay.

#### Commencement and termination

4. This Deed commences at the date on which it is executed by both parties, but clauses 1 to 3 inclusive are conditional upon, and shall be of no effect until, due execution of the Bond by both the Issuer and the County Council.

#### Rights of third parties, assignment or transfer

5. The County Council's Covenants at clauses 3 to 5 inclusive are personal to the Issuer and are not transferable or assignable. This Deed is not intended to confer rights on third parties for the purpose of the Contracts (Rights of Third Parties) Act 1999.

#### Governing law and jurisdiction

6. This Deed and any disputes or claims relating to it shall be governed by and determined in accordance with the law of England for all purposes. The courts of England shall have exclusive jurisdiction to try any claim arising out of or in connection with this Deed, its subject-matter or formation (including any non-contractual claims).

IN WITNESS WHEREOF, we being duly authorised by the Issuer for the purpose have executed and delivered this Deed this.....day of the month of ..... in the year 20 ..... :

THE COMMON SEAL of  
was hereunto affixed in the  
presence of:-

Director

Director/Secretary

[SEAL]

**AND the County Council have duly affixed**

**THE COMMON SEAL** of the County Council  
in the  
presence of:-

**Name:**

**Signature:**

**Name:**

**Signature**  
**[SEAL]**

**Drawdown letter**

To: The Manager

Fax Number: (01622)  
Direct Dial/Ext: (01622)  
E-mail address: @kent.gov.uk  
Ask for:  
Your Ref:  
Our Ref: LS/21/ /  
Date:

**FORM OF DEMAND**

Dear Sir

**BOND NO** [number of performance bond]  
**DATED** [ date ]  
**ON BEHALF OF** [ name ] ("the Developer")

We refer to the above Bond signed by you. This is a demand as referred to in the Bond. Terms defined in the Bond shall have the same meaning in this demand.

We hereby certify that an amount equal to £[amount of this demand in figures and words] is due from the Developer under the Section 278 Agreement dated [ date ] and is unpaid and we are entitled to claim that amount under this Bond.

/or

We hereby certify that an amount equal to £[amount of this demand in figures and words] is due owing to the Developer being insolvent, bankrupt or in liquidation or similar situation, and we are entitled to claim that amount under this Bond.]

Therefore, we hereby demand payment from you no later than five (5) business days after receipt by you of this demand in the sum of £[amount of this demand in figures and words] under the Bond.

Payment should be made to the following account:-

Account Name	The Kent County Council
Account Bank	National Westminster Bank Plc Maidstone Branch PO Box 4 Maidstone Kent ME14 1XU
Sort Code	60-60-08
Account No.	00100013

This demand is governed by English Law.

Yours faithfully

Duly Authorised Signatory for and on behalf of Kent County Council



IN WITNESS WHEREOF this Deed has been duly executed as a deed and delivered on the date first before written.

THE COMMON SEAL of THE KENT  
COUNTY COUNCIL was hereunto  
affixed in the presence of:-



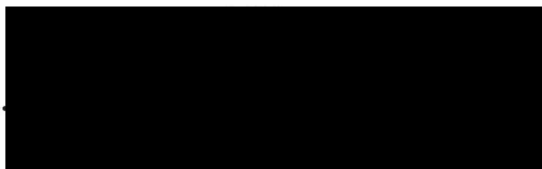
157-2017

DJ Buring Denise J Buring

Authorised Signatory

EXECUTED AS A DEED by affixing the  
Common seal of HODSON DEVELOPMENTS (ASHFORD) LIMITED  
in the  
presence of:

Director .....



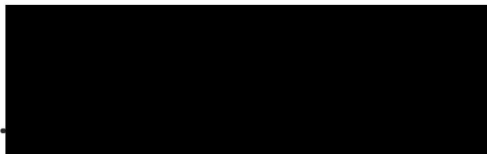
Director/Secretary ...



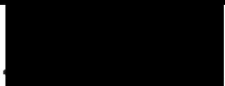
EXECUTED AS A DEED by affixing the  
Common seal of CHILMINGMINGTON GREEN DEVELOPMENTS LIMITED

in the  
presence of:

Director .....



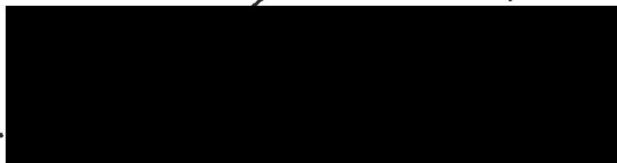
Director/Secretary .....



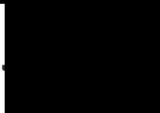
EXECUTED AS A DEED by affixing the  
Common seal of HODSON DEVELOPMENTS (CG ONE) LIMITED

in the  
presence of:

Director .....



Director/Secretary ...



**EXECUTED AS A DEED by affixing the  
Common seal of HODSON DEVELOPMENTS (CG TWO) LIMITED**

**in the  
presence**

**Director**

**Director/Secretary**

A28 - S278	Payment 1Due 31/03/2021	Payment 2Due 31/03/2022	Payment 3Due 31/03/2023	Payment 4Due 31/03/2024	Payment 5Due 30/03/2025
Principal Sum	£4,754,800.00	£2,868,700.00	£2,868,700.00	£2,868,600.00	£2,868,700.00
Late Payment Interest on Principal Sum	£1,159,050.89	£607,692.83	£458,854.46	£227,975.11	
Total Due					
	Daily Interest£977.01	Daily Interest£589.46	Daily Interest£589.46	Daily Interest£589.44	Daily Interest£589.46

Totals Due	
Payments 1-4 Principal Sums	£13,360,800.00
Late Payment on Payments 1-4	£2,453,573.29
Daily Interest on Payments 1-4	£2,745.37
Payment 5 Principal Sum	£2,868,700.00
Daily Interest on Payment 5	£589.46

NatWest Bank plc			
2023	2nd	Feb	4.00%
	23rd	Mar	4.25%

2020	11 Mar	0.25
	19 Mar	0.1
2021	16 Dec	0.25
2022	3 Feb	0.5
	17 Mar	0.75
	5 May	1
	16 Jun	1.25
	4 Aug	1.75
	22 Sep	2.25
	3 Nov	3
	15 Dec	3.5
2023	2 Feb	4
	23 Mar	4.25
	11 May	4.5
	22 Jun	5
	3 Aug	5.25
2024	1 Aug	5
	7 Nov	4.75
2025	6 Feb	4.5



AD-HOC INTEREST CALCULATION

Date of Preparation 25/02/20204

BOE Variable Contract Interest Rate 3.00% above BOE

Payment 1	£4,754,800.00	Payment 1 Due Date - 31 March 2021
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From Date	To Date	No of days (both days incl)	Interest Rate%	Interest £
01/04/2021	15/12/2021	259	3.10	£104,592.57
16/12/2021	02/02/2022	49	3.25	£20,745.26
03/02/2022	16/03/2022	42	3.50	£19,149.47
17/03/2022	04/05/2022	49	3.75	£23,936.84
05/05/2022	15/06/2022	42	4.00	£21,885.11
16/06/2022	03/08/2022	49	4.25	£27,128.41
04/08/2022	21/09/2022	49	4.75	£30,319.99
22/09/2022	02/11/2022	42	4.25	£23,252.93
03/11/2022	14/12/2022	42	6.00	£32,827.66
15/12/2022	01/02/2023	49	6.50	£41,490.52
02/02/2023	22/03/2023	49	7.00	£44,682.09
23/03/2023	10/05/2023	49	7.25	£46,277.88
11/05/2023	21/06/2023	42	7.50	£41,034.58
22/06/2023	02/08/2023	42	8.00	£43,770.21
03/08/2023	31/07/2024	364	8.25	£391,196.28
01/08/2024	06/11/2024	98	8.00	£102,130.50
07/11/2024	05/02/2025	91	7.75	£91,871.85
06/02/2025	31/03/2025	54	7.50	£52,758.74
TOTAL		1461		£1,159,050.89

Daily Interest at 7.5% =  
£977.01

AD-HOC INTEREST CALCULATION

Date of Preparation 25/02/2025

BOE Variable Contract Interest Rate 3.00% above BOE

Payment 2	£2,868,700.00	Payment 1 Due Date - 31 March 2022
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From Date	To Date	No of days (both days incl)	Interest Rate%	Interest £
01/04/2022	04/05/2022	34	3.75	£10,020.80
05/05/2022	15/06/2022	42	4.00	£13,203.88
16/06/2022	03/08/2022	49	4.25	£16,367.31
04/08/2022	21/09/2022	49	4.75	£18,292.87
22/09/2022	02/11/2022	42	4.25	£14,029.12
03/11/2022	14/12/2022	42	6.00	£19,805.82
15/12/2022	01/02/2023	49	6.50	£25,032.35
02/02/2023	22/03/2023	49	7.00	£26,957.92
23/03/2023	10/05/2023	49	7.25	£27,920.70
11/05/2023	21/06/2023	42	7.50	£24,757.27
22/06/2023	02/08/2023	42	8.00	£26,407.76
03/08/2023	31/07/2024	364	8.25	£236,019.35
01/08/2024	06/11/2024	98	8.00	£61,618.10
07/11/2024	05/02/2025	91	7.75	£55,428.79
06/02/2025	31/03/2025	54	7.50	£31,830.78
TOTAL		1096		£607,692.83

Daily Interest at 7.5% =  
£589.46

AD-HOC INTEREST CALCULATION

Date of Preparation 25/02/2025

BOE Variable Contract Interest Rate 3.00% above BOE

Payment 2	£2,868,700.00	Payment 1 Due Date - 31 March 2023
-----------	---------------	------------------------------------

From Date	To Date	No of days (both days incl)	Interest Rate%	Interest £
01/04/2023	10/05/2023	40	7.25	£22,792.41
11/05/2023	21/06/2023	42	7.50	£24,757.27
22/06/2023	02/08/2023	42	8.00	£26,407.76
03/08/2023	31/07/2024	364	8.25	£236,019.35
01/08/2024	06/11/2024	98	8.00	£61,618.10
07/11/2024	05/02/2025	91	7.75	£55,428.79
06/02/2025	31/03/2025	54	7.50	£31,830.78
TOTAL		731		£458,854.46

Daily Interest at 7.5% =  
£589.46

AD-HOC INTEREST CALCULATION

Date of Preparation 25/02/2025

BOE Variable Contract Interest Rate 3.00% above BOE

Payment 2	£2,868,600.00	Payment 1 Due Date - 31 March 2024
-----------	---------------	------------------------------------

From Date	To Date	No of days (both days incl)	Interest Rate%	Interest £
01/04/2024	31/07/2024	122	8.25	£79,102.63
01/08/2024	06/11/2024	98	8.00	£61,615.96
07/11/2024	05/02/2025	91	7.75	£55,426.85
06/02/2025	31/03/2025	54	7.50	£31,829.67
TOTAL		365		£227,975.11

Daily Interest at 7.5% =  
£589.44



AD-HOC INTEREST CALCULATION

Date of Preparation 25/02/2025

BOE Variable Contract Interest Rate 3.00% above BOE

Payment 2	£2,868,700.00	Payment 1 Due Date - 31 March 2025
-----------	---------------	------------------------------------

From Date	To Date	No of days (both days incl)	Interest Rate%	Interest £
01/04/2025	01/04/2025	1	7.50	£589.46
		1		
		1		
		1		
TOTAL		4		£589.46

Daily Interest at 7.5% =  
£589.46