

DATED 23<sup>rd</sup> January 2014

(1) THE VALE OF GLAMORGAN COUNCIL

(2) CREST NICHOLSON OPERATIONS LIMITED

---

DEED OF VARIATION AND SUPPLEMENTAL S106 AGREEMENT

---

THIS DEED is made *23rd January* 2014

BETWEEN

- (1) **THE VALE OF GLAMORGAN COUNCIL** of Civic Offices Holton Road Barry CF63 4RU ("the Council")
- (2) **CREST NICHOLSON OPERATIONS LIMITED** (Company no. 01168311) of Crest House, Pyrcroft Road, Chertsey, Surrey KT16 9GN ("the Developer")

WHEREAS:-

1. The Council is the local planning authority for the purposes of the Town and Country Planning Act 1990 ("the Act") for the area in which the Site is situated.
2. The Developer is the freehold owner of part of the Site free from encumbrances.
3. The Council is the freehold owner of part of the Site free from encumbrances.
4. On 19<sup>th</sup> April 2010 the Council and the Developer entered into an agreement made under section 106 of the Act ("the Principal Agreement")
5. On 31 January 2013, the Developer made an application under reference 2012/01140/FUL ("the Modification Application") for a modification to the development approved under planning permission 2007/00295/FUL including changes to phasing, topography, finished floor levels and redistribution of affordable housing
6. On 11<sup>th</sup> April 2013, the Council resolved to approve the Modification Application subject to the Developer first entering into this Deed to both vary and give obligations supplemental to the Principal Agreement and to confirm that the obligations in the Principal Agreement will otherwise continue to apply to the Development as varied by this Deed
7. Without prejudice to the terms of the other covenants contained in the Principal Agreement the parties have agreed to vary the terms of the Principal Agreement as set out in this deed

8. This agreement is made under sections 106 and 106A of the Act and is supplemental to the Principal Agreement

1 **CONSTRUCTION OF THIS DEED**

- 1.1 The definitions and rules of interpretation in this clause apply in this deed and for the purposes of this Deed the following expressions shall have the following meanings:

**"Additional Administration Fee"** means the sum of £604

**"Code 3+ Energy Efficiency Standard"** means a rating of level 3+ in accordance with the energy efficiency criteria implemented by BREEAM and measured by a suitably qualified registered assessor to be independently appointed by the Developer

**"Lane Upgrading Works"** means design and construction works to upgrade the lane to the rear of Hill Terrace as shown indicatively hatched in red on the plan attached hereto at Appendix 4 including resurfacing works, improvements to the street lighting, highway drainage and the pedestrian steps and adjoining walls leading to Hill Terrace BUT for the avoidance of doubt excluding any improvements to the existing retaining walls which run along the said lane between points A to D on the plan at Appendix 4.

**"Lane Upgrading Works Scheme"** means a scheme to be approved by the Council for the Lane Upgrading Works

**"Method Statement"** means a statement that identifies the manner in which the Lane Upgrading Works are to be carried out to ensure the minimum possible disturbance to adjoining boundary walls and structures and shall include a photographic survey evidencing the condition of the adjoining boundary walls and structures and the carriageway prior to commencement of the works

**"Modification Planning Permission"** means the planning permission to be granted pursuant to the Modification Application

**"Phase"** means a phase of the Development as shown on phasing drawing BRS.2142\_11-1C attached to this Deed at Appendix 3

- 1.2 All terms and definitions contained in the Principal Agreement shall apply to this Deed unless otherwise stated herein.
- 1.3 All references in this deed to clauses in the Principal Agreement are to clauses within the Principal Agreement
- 1.4 Clause headings shall not affect the interpretation of this deed.
- 1.5 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 1.6 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 interchangeable in that manner.
- 1.7 References to any party in this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to their statutory functions
- 1.8 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 1.9 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 1.10 No provision of this deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 1.11 This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

## **2 STATUTORY PROVISION**

This Deed is made pursuant to the provisions of sections 106 and 106A of the Act, section 111 of the Local Government Act 1972, section 2 of the Local Government Act 2000 and any other enabling powers.

## **3 CONDITIONALITY**

With the exception of Clause 8 which shall be effective on the completion of this Deed the Clauses of this Deed shall only come into effect upon the date of the grant and issue of the Modification Planning Permission

## **4. VARIATIONS TO THE PRINCIPAL AGREEMENT**

- 4.1 Within the definition of "Affordable Housing Units" the term 'PO4' shall be deleted and replaced with '1011 Revision PF'
- 4.2 The drawing attached as Appendix 1 to the Principal Agreement (as referred to within the definition of "Affordable Housing Units" shall be removed and replaced with drawing number '1011 Revision PF' (a copy of which is attached to this Deed as Appendix 2)
- 4.3 the definition of "Application" in the Principal Agreement shall be deleted and replaced with the following definition:  
  
'the applications for full planning permission submitted to the Council and allocated reference numbers 07/00295/FUL and 2012/01140/FUL'
- 4.4 The draft Decision Notice attached at the Second Schedule of the Principal Agreement for planning application 2007/00295/FUL shall be supplemented with a copy of the draft Decision Notice for planning application 2012/01140/FUL (a copy of which is attached at Appendix 1 to this Deed)
- 4.5 The words 'within Phase 1 of the Development' shall be inserted at the beginning of paragraph 10.1(b) of Part 2 (Affordable Housing) of the Third Schedule of the Principal Agreement
- 4.6 The following clause shall be added to the Principal Agreement as clause 7.3 to Part One of the Third Schedule:-

'7.3 upon entering into any agreement under section 38 of the Highways Act or any other agreement which provides for the adoption by the Council of any highways or highway retaining structures, the Developer shall pay to the Council a commuted sum (which shall be agreed at that time) for the future maintenance of those highways or highway retaining structures'

4.7 In all other respects the Principal Agreement (as varied by this deed) shall remain in full force and effect.

## 5 COVENANTS TO THE COUNCIL

The Developer and the Council (as owner of part of the Site) covenant to observe and perform the covenants, restrictions and obligations contained in the Principal Agreement as varied by this Deed and also those contained in Clause 6 of this Deed.

## 6 SUPPLEMENTAL PLANNING OBLIGATIONS

6.1 The Developer shall construct or procure the construction of the Affordable Housing Units within Phase 2 and Phase 3 of the Development to a standard which satisfies the Welsh Housing Quality Standards 2008 or such other mandatory standards as are set by Welsh Government and in effect prior to commencement of construction and also to the minimum standards set out in the Code 3+ Energy Efficiency Standard AND for the avoidance of doubt the Welsh Housing Quality Standards 2008 shall apply to any Affordable Housing Units in respect of which the physical construction of their foundations has been commenced prior to the date on which any alternative standards come into effect

6.2 Within 28 days of the grant and issue of the Modification Planning Permission, the Developer shall submit to the Council for its approval details of the Lane Upgrading Works Scheme including the Method Statement and a schedule for its implementation and future maintenance (such approval not to be unreasonably withheld or delayed)

6.3 No more than 174 Dwellings shall be Occupied prior to the scheme approved pursuant to Clause 6.2 above being implemented in

accordance with the approved details unless otherwise agreed in writing with the Council

**7. LOCAL LAND CHARGE**

This deed shall be registered as a local land charge

**8. COUNCIL'S COSTS**

The Developer shall pay to the Council on the date of completion of this deed, the Council's reasonable and proper legal costs in the sum of £3,000 and the Additional Administration Fee together with all reasonable disbursements incurred in connection with the preparation, completion and registration of this deed

IN WITNESS whereof these presents have been duly executed as a Deed by the parties hereto the day and year first before written

THE COMMON SEAL of **THE VALE OF** )  
**GLAMORGAN COUNCIL** was hereunto affixed )  
in the presence of: )



[Redacted signature]

Debbie Marles/Victoria Davidson  
Head/Operational Manager, Legal Services

Authorised Signatory

EXECUTED AS A DEED by **CREST NICHOLSON**  
**OPERATIONS LIMITED**  
acting by a Director and its Secretary/Two Directors

[Redacted signature]

Director:

Director /Secretary:  
[Redacted signature]



**Appendix 1**

Form of Notice of Planning Permission to the Modification Application

2012/01140/FUL

**THE VALE OF GLAMORGAN COUNCIL**

Town and Country Planning Act 1990  
Town and Country Planning (General Development Procedure) Order 1995

**FULL PLANNING PERMISSION**

Agent:  
Pegasus Planning Group,  
Mr. Jim Tarzey,  
First Floor South Wing,  
Equinox North Great Park Road,  
Almondsbury,  
Bristol.  
BS32 4QL

Applicant:  
Crest Nicholson Operation Ltd.,  
c/o Agent

**Modification to development approved under Planning Permission No.  
2007/00295/FUL including changes to phasing, topography, finished floor  
levels, and redistribution of affordable housing. at Land at Penarth Heights**

The Council in pursuance of its powers under the above mentioned Act and Order hereby **GRANTS PERMISSION** for the carrying out of the proposed development as described above and in accordance with the application and plans registered by the Council on 31 January 2013 subject to the following condition(s):

1. The development hereby permitted shall be begun before the expiration of five years from the date of this permission.

Reason:

To comply with the requirements of Section 91 of the Town and Country Planning Act 1990.

2. Each new dwelling hereby permitted shall be constructed to achieve a minimum Code for Sustainable Homes Level 3 and achieve a minimum of 1 credit under category 'Ene1 - Dwelling Emission Rate' in accordance with the requirements of Code for Sustainable Homes: Technical Guide November 2010. The development shall be carried out entirely in accordance with the approved assessment and certification.

Reason:

To ensure the development attains the sustainable building standards required by Planning Policy Wales and TAN22 - Planning for Sustainable Buildings.

3. Within one month of this consent being issued an 'Interim Certificate' will be submitted to the Local Planning Authority, certifying that a minimum Code for Sustainable Homes Level 3 and a minimum of 1 credit under 'Ene1 - Dwelling Emission Rate', has been achieved for that individual dwelling or

2012/01140/FUL

house type in accordance with the requirements of the Code for Sustainable Homes: Technical Guide November 2010.

Reason:

To ensure the development attains the sustainable building standards required by Planning Policy Wales and TAN22 - Planning for Sustainable Buildings.

4. Prior to the occupation of the individual dwelling hereby permitted, a Code for Sustainable Homes 'Final Certificate' shall be submitted to the Local Planning Authority certifying that a minimum Code for Sustainable Homes Level 3 and a minimum of 1 credit under 'Ene1 - Dwelling Emission Rate', has been achieved for that dwelling in accordance with the requirements of the Code for Sustainable Homes: Technical Guide November 2010.

Reason:

To ensure the completed development attains the sustainable building standards required by Planning Policy Wales and TAN22 - Planning for Sustainable Buildings.

5. This consent shall relate to the plans received on 18 October 2012 other than where amended by plans received on 31 January 2013 and as listed in the letter dated 20 January 2013 received from Pegasus Group, and on 28 March 2013 as listed in the email from Jim Tarzey of the Pegasus Group.

Reason:

To ensure a satisfactory form of development and for the avoidance of doubt as to the approved plans.

6. Notwithstanding the submitted landscaping details further details of a landscaping scheme including details for Plots 273 to 289 inclusive shall be submitted to and approved in writing by the Local Planning Authority.

Reason:

No details of landscaping have been submitted for these plots and landscaping is required to safeguard local visual amenities, and to ensure compliance with the terms of Policy ENV27 of the Unitary Development Plan.

7. No dwelling on the development hereby approved shall be brought into beneficial use until such time as the parking area(s) serving that dwelling, including all associated access and turning areas, have been laid out in full accordance with the details hereby approved and the parking, access and turning areas shall thereafter be so retained at all times to serve the development hereby approved.

2012/01140/FUL

Reason:

To ensure the provision on site of parking and turning facilities to serve the development in the interests of highway safety, and to ensure compliance with the terms of Policies TRAN10 and ENV27 of the Unitary Development Plan.

8. The implemented drainage scheme for the site should ensure that all foul and surface water discharges separately from the site and at no time shall land drainage and surface water run-off discharge, either directly or indirectly, into the public sewerage system.

Reason:

To prevent hydraulic overloading of the public sewerage system, pollution of the environment and to protect the health and safety of existing residents and ensure no detriment to the environment and to comply with the terms of Policies ENV29 and ENV27 of the Unitary Development Plan.

9. Full details of secure parking on site for bicycles shall be submitted to and approved in writing by the Local Planning Authority and the approved scheme of parking for bicycles shall be fully implemented on site prior to the first beneficial occupation of the dwelling(s) to which the parking relates.

Reason:

To ensure that satisfactory parking for bicycles is provided on site to serve the development, and to ensure compliance with the terms of Policies ENV27, HOUS8 and TRAN9 of the Unitary Development Plan.

10. Notwithstanding the submitted plans and prior to their construction on site full engineering details, including structural calculations, cross sections, of all retaining works and embankments and samples of the materials for their external finish, shall be submitted to and approved in writing by the Local Planning Authority and the development shall thereafter be carried out in accordance with the approved details unless the Local Planning Authority gives prior written consent to any variation.

Reason:

In the interests of the visual amenities of the area and to meet the requirements of Policies ENV27 and HOUS8 of the Unitary Development Plan.

11. Prior to their installation on site details of all means of external lighting for the site shall be submitted to and approved in writing by the Local Planning Authority and the approved means of lighting shall be fully implemented on site prior to the first beneficial occupation of that part of the development

2012/01140/FUL

which it serves unless the Local Planning Authority gives written consent to any variation.

Reason:

In the interests of safety, visual amenity and ecology in the area and to meet the requirements of Policies ENV16, ENV27 and HOUS8 of the Unitary Development Plan.

12. Prior to the construction of any roads or paths on the site full engineering details, including sections, details of drainage and materials for the surface finish and samples of such, shall be submitted to and approved in writing by the Local Planning Authority and the development shall thereafter be carried out in accordance with the approved details unless the Local Planning Authority gives prior written consent to any variation.

Reason:

To ensure the provision of an acceptable and safe highway layout and to meet the requirements of Policies HOUS8 and ENV27 of the Unitary Development Plan.

13. Notwithstanding the submitted details and within one month of the date of this consent details of the route for heavy construction vehicles, and means of defining and controlling such traffic routes, shall be submitted to the Local Planning Authority for their written consent. The development shall thereafter be carried out in accordance with the approved details.

Reason:

To ensure that highway safety and residential amenity in the area is not adversely affected and to meet the requirements of Policies TRAN10 and ENV27 of the Unitary Development Plan.

14. Operational hours of work for construction shall be Monday to Friday 08.00 -18.00 hours, Saturday 08.00 - 13.00 hours and there shall be no working on Sundays and Bank Holidays unless the Local Planning Authority give prior written approval to any variation.

Reason:

To safeguard the amenities of nearby occupiers and to meet the requirements of Policy ENV29 of the Unitary Development Plan.

15. The method of gas protection for residential units on the site as required in the Geotechnical Remediation Statement submitted with application 2007/00295/FUL and as approved in respect of that application shall be undertaken on the site and the residential units shall thereafter be constructed with the gas mitigation measures as approved unless the Local Planning Authority gives written consent to any variation.

2012/01140/FUL

Reason:

To safeguard the health and amenities of the occupiers of the units and to meet the requirements of Policy ENV29 of the Unitary Development Plan.

16. Noise levels at the boundaries of the site with the nearest noise sensitive areas and mitigation measures for the control of noise and dust during construction works and details of wheel washing facilities, shall be installed and operated on site for the duration of development works as agreed in respect of planning application 2007/00295/FUL unless the Local Planning Authority gives written consent to any variation.

Reason:

To ensure that the amenities of occupiers in the vicinity of the site are safeguarded and to meet the requirements of Policy ENV29 of the Unitary Development Plan.

17. Prior to the first beneficial use of any phase of the site, oil interceptors shall have been installed in accordance with details which shall have been submitted to and approved in writing by the Local Planning Authority.

Reason:

To prevent contamination and to meet the requirements of Policy ENV29 of the Unitary Development Plan.

18. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason:

To ensure satisfactory maintenance of the landscaped area to ensure compliance with Policy ENV27 of the Unitary Development Plan.

19. The development shall be undertaken in accordance with the approved details for dust suppression and wheel washing as approved in respect of planning application 2007/00295/FUL unless the Local Planning Authority gives written consent to any variation and such facilities and methods shall be used on site for the duration of the construction works hereby approved.

Reason:

2012/01140/FUL

To ensure that the construction of the development is undertaken in a neighbourly manner and in the interests of the protection of amenity, highway safety and the environment and to ensure compliance with the terms of Policies ENV27 - Design of New Developments and ENV29 - of the Unitary Development Plan.

20. Only inert, non contaminated materials shall be retained or deposited on the site as part of the ground reprofiling works.

Reason:

To prevent pollution and to safeguard the amenities of occupiers and users of the site and to meet the requirements of Policy ENV29 of the Unitary Development Plan.

21. Notwithstanding the requirements of Condition Nos. 2, 3 and 4, the block referred to as Block F shall be constructed in accordance with the approved plans.

Reason:

To ensure a satisfactory standard of development.

Reason for Granting Planning Permission

The decision to recommend planning permission has been taken in accordance with Section 38 of The Planning and Compulsory Purchase Act 2004, which requires that, in determining a planning application the determination must be in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan comprises the Vale of Glamorgan Adopted Unitary Development Plan 1996-2011.

**NOTE:**

2012/01140/FUL

1. Please note that a legal agreement/planning obligation has been entered into in respect of the site referred to in this planning consent. Should you require clarification of any particular aspect of the legal agreement/planning obligation please do not hesitate to contact the Local Planning Authority.
2. In accordance with the advice of the National Assembly for Wales regarding development of contaminated land I am giving you notice that the responsibility for safe development and secure occupancy of a site rests with the developer. Whilst the Council has determined the application on the information available to it, this does not necessarily mean that the land is free from contamination.
3. You should note that the site may constitute a breeding or resting place (roost) for bats, both of which are protected by law through UK legislation under the Wildlife and Countryside Act (1981) (as amended) and through European legislation under the Habitats Directive (EC Directive 92/43/EC), enacted in the UK through the Conservation Regulations (1994) (as amended). This legislation makes it an absolute offence to either damage or destroy a breeding or resting place (roost), to obstruct access to a roost site used by bats for protection and shelter, (whether bats are present at the time or not) or to intentionally or recklessly disturb a bat/bats within a roost. It is recommended that a full bat survey of the building/ site (including trees) be conducted by a licensed bat surveyor to ascertain presence or absence of bats/bat roosts. In the event that the survey reveals the presence of bats/roosts, further advice must be sought from the Natural resources Wales on 0845 1306229 or the Council's Ecology Section on 01446 704627.
4. Where the work involves the creation of, or alteration to, an access to a highway the applicant must ensure that all works comply with the appropriate standards of the Council as Highway Authority. For details of the relevant standards contact the Visible Services Division, The Vale of Glamorgan Council, The Alps, Wenvoe, Nr. Cardiff. CF5 6AA. Telephone 02920 673051.

Please note that this consent is specific to the plans and particulars approved as part of the application. Any departure from the approved plans will constitute unauthorised development and may be liable to enforcement action. You (or any subsequent developer) should advise the Council of any actual or proposed variations from the approved plans immediately so that you can be advised how to best resolve the matter.

In addition, any conditions that the Council has imposed on this consent will be listed above and should be read carefully. It is your (or any subsequent developers) responsibility to ensure that the terms of all conditions are met in full at the appropriate time (as outlined in the specific condition).



\* DRAFT \* DRAFT \* DRAFT \* DRAFT \* DRAFT \* DRAFT \* DRAFT \* DRAFT \*  
DRAFT \* DRAFT \*

2012/01140/FUL

The commencement of development without firstly meeting in full the terms of any conditions that require the submission of details prior to the commencement of development will constitute unauthorised development. This will necessitate the submission of a further application to retain the unauthorised development and may render you liable to formal enforcement action.

Failure on the part of the developer to observe the requirements of any other conditions could result in the Council pursuing formal enforcement action in the form of a Breach of Condition Notice.

Dated: DRAFT

\_\_\_\_\_  
Director of Development Services

**IT IS IMPORTANT THAT YOU SHOULD READ THE NOTES  
ATTACHED TO THIS FORM.**

**Appendix 2**

Drawing number 1011 Revision PF (updated Affordable Housing layout)



[illegible]

| KEY   |       |     |
|---|-------|-----|
| 3-bed house type:   |       | Max |
|  | HA01  | 2   |
|  | HA02  | 24  |
| 3-bed house type:   |       |     |
|  | HA03  | 11  |
|  | HA04  | 13  |
|  | HA05  | 8   |
| 4-bed house type:   |       |     |
|  | HA06  | 7   |
| Apartment Block C:  |       |     |
|  | 1-bed | 8   |
|  | 2-bed | 4   |

PRELIMINARY ISSUE



**SITE PLAN - AFFORDABLE UNIT TYPES** SCALE 1:1000 @ A1

**Note:**  
This drawing is to be read in conjunction with planning approved drawing P05.

**architecture519**

Studio 12, 48 The Cuts, Leeds, LS2 7E  
Tel: 0113 213 5558 Fax: 0113 213 5051  
E-mail: Leeds@architecture519.com  
Website: www.architecture519.com

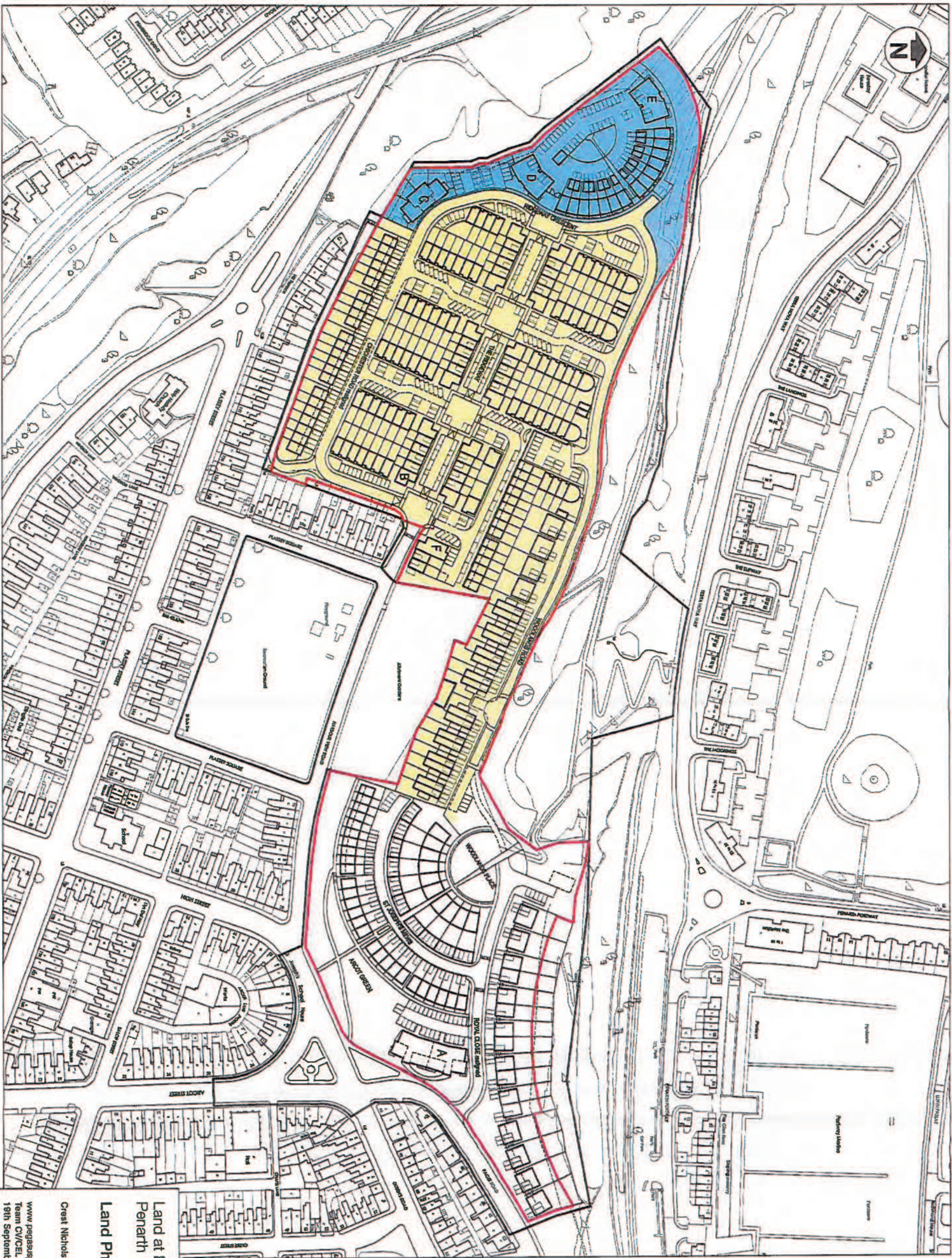
|                                   |             |             |             |
|-----------------------------------|-------------|-------------|-------------|
| Client                            |             |             |             |
| Crest Nicholson (South West)      |             |             |             |
| Project Name:                     |             | Date:       | Scale @ A1: |
| Penarth Heights                   |             | 31.07.12    | 1:1000@A1   |
| Drawing Title:                    |             | Drawing:    | Revision:   |
| Site Plan - Affordable Unit Types |             | KD          | LG          |
| Drawing Status:                   | Project No: | Drawing No: | Revision:   |
| Preliminary                       | 2032        | 1011        | PF          |



**Appendix 3**

Phasing Plan (Drawing number BRS.2142\_11-1C)





**KEY**

Phase 2

Phase 3

T 01454 625945 | F 01454 618074 | www.pegasuspg.co.uk |  
 © Copyright Pegasus Planning Group. All rights reserved. Ordnance Survey Copyright Licence number 100042093 | Phone: 01454 625945  
 Pegasus Urban Design is part of Pegasus Planning Group. Drawing prepared for planning. Any queries to be reported to Pegasus for clarification.

**Land at Penarth Heights,  
 Penarth**

**Land Phasing Plan**

Crest Nicholson (South West) Ltd

www.pegasuspg.co.uk  
 Team CV/CEL  
 18th September 2012  
 1:2000 @A3

**BRS.2142\_11-1c**

**Pegasus**  
 Planning Group



**Appendix 4**

Lane Upgrading Works Location Plan



