



RHONDDA CYNON TAF

**RECORD OF DELEGATED OFFICER DECISION**

**SUBJECT: Surface Water Sewer at Dynea Road, Pontypridd**

**PURPOSE OF REPORT: The need for appropriate action to be undertaken in respect of a Letter received from Welsh Water in respect of a surface water sewer at Dynea Road, Rhydyfelin ('Surface Water Sewer').**

**DELEGATED DECISION (Date): June, 2012**

**To agree to Option 2 as outlined in the report:-**

**To divert the surface water sewer along Dynea Road – whilst this is the more expensive option, all the works would be undertaken in the highway meaning that the Council would not need to enter into the land owned by someone other than the Council.**

*D. G. Jones*

**Chief Officer Signature**

*George Jones*

**Print Name**

*4/7/2012*

**Date**

**The decision is taken in accordance with Section 15 of the Local Government Act, 2000 (Executive Functions) and in the terms set out in Section 5 of Part 3 of the Council's Constitution**

A. Morgan

CONSULTEE CABINET MEMBER SIGNATURE

4/7/2012

DATE

P. J. Lucas

OFFICER CONSULTEE SIGNATURE

4/7/12

DATE

Directorate:	
Contact Name:	
Designation:	
Tel.No.	

## REPORT

### SURFACE WATER SEWER AT DYNEA ROAD, PONTYPRIDD

#### Proposal

To consider the appropriate action to be undertaken in respect of a letter received from Welsh Water in respect of a surface water sewer at Dynea Road, Rhydyfelin ('Surface Water Sewer')

#### Information

Mr Andrew Burgess is the owner of land off Dynea Road, Pontypridd. Planning permission was granted on 21<sup>st</sup> March 2000 to Mr Burgess for the erection of a 4 bed detached house with integral garage on land at Dynea Road, Rhydyfelin. It appears from a review of the planning file that at the time the Council were not aware that a surface water sewer ran through the land on which the planning permission had been granted.

Condition 6 of the planning permission provided that "no development shall take place over or within 3 metres of the sewer crossing the site." This condition however referred to the foul water sewer that ran through the north western end of the site and not the Surface Water Sewer.

On 25<sup>th</sup> September 2000 the Council wrote to Mr Burgess advising that: -

*"...you have severed a live 225mm diameter Council owned surface water sewer, which carries surface water run off from a considerable area upstream of the breakpoint. Consequently, the sewer has to be reconnected as a matter of urgency.*

*I understand that the pipeline has been damaged at several locations within the site and that a manhole chamber, positioned at a change in gradient of the sewerline has also been dug out and disposed of.*

*The result of the removal of the pipeline is not only detrimental to the building plot but will also threaten other property with the possibility of flooding.*

*Therefore, as a matter of urgency, I shall be grateful if you will make arrangements to re-establish the pipeline and in the first instance provide all necessary drawings, details and calculations to prove adequacy of the replacement pipework and associated manholes to the Council's Area Office (Taff-Ely), Cowbridge Road, Talbot Green, Pontycul CF72 8HL.*

*No work shall be undertaken before approval of the proposals has been received in writing whereupon, officers from the area office will oversee the reconstruction as it proceeds."*

A plan showing the approximate position of the obstruction is attached.

It appears that no further action was taken by the Council following the sending of this letter.

In November 2011 Welsh Water's Solicitors Geldards wrote to the Public Health & protection department stating that

*"...as a result of the removal of the SWS [surface water sewer], the surface water flows are now discharging into the public sewer. This is because the original point of discharge for the SWS, namely the outfall to the culvert and then in the river Nant Corrwg was effectively terminated by Mr Burgess, by blocking up or digging up the manhole (reference ST09879803). Accordingly, the SWS spills further upstream and discharges into the public sewer. Unfortunately, as a result, the public sewer frequently becomes overloaded, the effect of which is that the properties downstream and situate at Hawthorn Crescent have become flooded and/or their drains have become blocked. This has led to considerable inconvenience for our client in seeking to remedy any damage caused as a result and by investigating how the situation may be resolved.*

*The act of the SWS discharging into the public sewer constitutes a trespass and a nuisance, in relation to which, we believe our client is entitled to injunctive relief and/or damages, plus costs. Our client's position is reserved in all respects...*

*In terms of options to remedy the matter our client considers that there are three options. First, is the replacement of the section of the SWS. As the SWS is a land drainage pipeline, such works would have to be undertaken by you.*

*The second option would be for our client to remove the overflow arrangement from the SWS to the public sewer in the shared manholes. This would prevent the flow from the SWS entering the public sewer. This is action that our client may be forced to consider undertaking in the short term in light of the regulatory exposure that it faces associated with DG5 flooding which we have detailed below. However, this option is likely to have consequence as a result of surface water being retained in and/or overflowing from the SWS, in relation to you which you would need to facilitate appropriate arrangements.*

*The third option is for our client to enlarge the "public sewer" to accommodate the extra flows. It seems to us that this is our clients only long term remedy at the current time in view of the fact that they could unilaterally undertake such works, thereby mitigating their loss. This would be a significant, costly sewerage scheme that would take a considerable length of time to design and construct. Our client would naturally look to recover the costs of those works from RCT. The feasibility study alone for this option would be costly and involve significant sewer modelling etc...*

*Our client reserves all its rights, including the right to commence proceedings against you (without further reference to you should that prove necessary) for*

*either injunctive relief to prevent any further spill into the public sewer together with damages and costs.*

*Finally, as referred to above, you are on notice that the public sewer is now recorded on the DG5 register as it is considered to be at risk of flooding by OFWAT. Accordingly, our client faces regulatory exposure in relation to which it could face fines of millions of pounds. If this happens, our client will look to recover any such sums from you. Therefore, urgent action is required."*

### Sewer or Culverted Watercourse

There is the question of whether the obstructed pipe is a sewer or a watercourse which has been culverted (piped). A 1963 map (copy attached) appears to show a watercourse running in close proximity to the current sewer. The law provides that a natural watercourse does not become a sewer by being piped or culverted, it is a question of fact (*British Railways Board v Tonbridge and Malling District Council* (1981) 79 LGR 565).

The relevance of this is that if it is a natural watercourse that has been culverted then potentially the responsibility for its maintenance will remain with the riparian owner (Mr Burgess).

It may be possible to establish whether it is a piped watercourse by dye testing the watercourse at the point it is understood to feed into the drainage system.

If it is established that the sewer is a watercourse then we should establish who constructed the pipe. If it was the Council's predecessors under what powers did they construct it and by constructing it is there any obligation on the Council for its maintenance? It may be difficult to establish this due to the time since its construction.

### Liability

The Surface Water Sewer in question appears to drain the housing estate off Pinewood Avenue and Aronfab Crescent, Rhydyfelin which was transferred to RCT Homes Limited on 10<sup>th</sup> December 2007. The private drainage was not transferred to RCT Homes and the Transfer provides: -

*"Drainage from each of the Dwellings within the Property is to sewers which are either adopted and maintainable at the public expense, or in respect of which there are unrestricted rights free from the right of any person to cancel, restrict, curtail or determine them. There is no drainage charge or other charge payable in respect of the use of such drainage, except maintenance charges or such other costs that may be necessary to ensure continued provision of a similar service in the future.*

*Where drainage from the Dwellings forming part of the Property is to septic tanks or other similar sewerage arrangements ("Private Drainage") which are not adopted and maintained at the public expense, the Council has the*

*necessary rights on its own behalf and for any successors in title to use, inspect, maintain and repair and replace all facilities for Private Drainage (fee from the rights of any person to cancel, restrict, curtail or determine them) and to recover all or an appropriate proportion of the costs of doing so from all other parties having the use of such facilities. There is no other charge payable in respect of the use of such drainage.”*

If the drainage that has been obstructed/removed is in the ownership of the Council they will be responsible for its maintenance and repair. The Council can seek to recover the costs of any maintenance works from those properties utilising the private drainage subject to the practical difficulties referred to below.

In the present case the obstruction/removal of the Surface Water Sewer is causing the surface water to discharge into the public sewer. It therefore appears that Welsh Water have a prima facie case against the Council in respect of this and any damage it causes.

### Mr Burgess

As has been mentioned the obstruction was caused by Mr Burgess when constructing his property. This was identified in the letter dated 25<sup>th</sup> September 2000 referred to above. Unfortunately as no legal action was taken against Mr Burgess to remedy the problem within 6 years of the Council being aware of the issue the Council are now statute barred from seeking to recover any costs or take any legal action against Mr Burgess unless it can be established that the time limit does not apply due to the ongoing nature of the problem (Limitation Act 1980).

The reason for this is that the Limitation Act 1980 provides that in a case such as this the cause of action accrues from the date of the damage but where the facts relevant to the cause of action are not known at the date of its occurrence, an alternative three-year limitation period runs from the earliest date on which the claimant first had both the knowledge required for bringing an action for damages in respect of the relevant damage and a right to bring such an action, if that period expires later than the normal six-year limitation period.

### Works

The Council's Land Drainage team have looked into the works required to remove the obstruction and allow the surface water to drain. Two options have been identified (copies of estimated costing are attached).

Option 1 is to enter onto the land owned by Mr Burges to construct a new surface water sewer. The total estimated cost for this is £42,824. The disadvantage of this would be that we would be required to enter into the land of Mr Burgess which will involve the paying of compensation and any third party fees in arranging this despite the fact that the obstruction was caused by

Mr Burgess. Also any further works required to the surface water sewer may require access to Mr Burgess' land.

Option 2 is to divert the surface water sewer along Dynea Road. The total estimated costs for this is £52,817 however whilst this option is more expensive all the works will be undertaken in the highway meaning that the Council would not need to enter into the land of Mr Burgess.

Should the Council undertake the works detailed in Option 1 or Option 2 above negotiations could take place with Welsh Water seeking their agreement to the adoption of the sewer as part of their network although there is no guarantee that such negotiations would be successful.

### Recovery of Expenses

As mentioned above the Council's expenses for undertaking the works should be recoverable from those properties that use the surface water drain. There is a difficulty in the present case as the Council does not have any records to show exactly which properties do drain to the surface water sewer. Also we would need to apportion the cost of the works between each of the properties and seek to obtain the funds from each of them (where in private ownership and RCT Homes where owned by them). This would be a lengthy and time consuming process. It may also be necessary to place a charge on the properties if the apportioned amount cannot be paid.

### Risk

As mentioned in the report above it does appear that Welsh Water have a prima facie case against the Council but there may be a defence available to the Council if it can be established that the Surface Water Sewer is a piped watercourse and it may be possible to bring Mr Burgess into the litigation if it can be established that the limitation period does not apply. However due to the relevant amount of the costs in undertaking the works compared with the costs of defending litigation instituted by Welsh Water it may be worth incurring the expenditure to resolve the matter.

### Options

It appears the Council have the following options: -

- i) Do nothing – should the Council decide to not take any action at this stage there is a risk that Welsh Water would issue proceedings. The Council would need to establish that they are not responsible for the Surface Water Sewer. If unsuccessful it is likely that the costs paid by the Council will be far in excess of the works required to rectify the issue.
- ii) Undertake Option 1 – works on Mr Burgess' land
- iii) Underake Option 2 – works in the highway

## Hawthorn Crescent - Dynea Road Drainage Improvements

### Option 1 (as Designed by Arup) - Hawthorn Crescent - Dynea Lane - "As Designed" Works Estimate

ITEM	DESCRIPTION	QUANTITY	UNIT	RATE (£)	EXTENSION (£)
<b>A General Items</b>					
	Traffic and Pedestrian Control Measures - Dynea Road	1	sum	£ 2,500	£ 2,500
	Misc General Items - insurance, H&S File, As Con Survey	1	sum	£ 1,000	£ 1,000
<b>B Ground Investigation</b>					
	Trail Hole to establish depth of existing 900dia culvert	1	nr	£ 500	£ 500
<b>I Pipework</b>					
	300dia, depth 1.5m - 2m	52.73	m	£ 125	£ 6,591
<b>K Pipework Manholes &amp; Ancillaries</b>					
	MH PCC 1800dia, depth 2m -2.5m	1	nr	£ 2,700	£ 2,700
	MH PCC - 1200dia, depth 1.5m - 2m	1	nr	£ 1,500	£ 1,500
	Breaking up and permanent reinstatement of highway pipe bore 300-900	36	m	£ 150	£ 5,400
	Breaking up and permanent reinstatement of footpaths pipe bore 300-900	7	m	£ 30	£ 210
	Breaking up and permanent reinstatement of residential garden pipe bore 300-900	8	m	£ 50	£ 400
	Connection to existing MH, 300dia	1	nr	£ 750	£ 500
	Crossing - Gas, 300dia	1	nr	£ 150	£ 150
	Crossing - Water Main, 300dia	2	nr	£ 200	£ 400
					£ -
					£ -
					£ -
<b>L Pipework Support &amp; Protection</b>					
	Class B - 300dia	52.73	m	£ 25	£ 1,318
					£ -
<b>Measured Works Sub Total</b>					<b>£ 23,170</b>
<b>General Items</b>					
Method Related Charges @ 30% of measured work					£ 6,951
					£ 30,120
<b>Contingency/risk at 20%</b>					£ 6,024
<b>Estimate Total</b>					<b>£ 36,144</b>
<b><u>Non Works Costs</u></b>					
Detailed Design/Drawing/Tender Document prep					£ 2,500
Supervision					£ 2,000
Topo survey (for control only if ARUP stations cannot be located)					£ 300
Licence to undertake works in garden (incl third party fees)					£ 1,500
Streetwork licence fee (new apparatus) IF REQUIRED					£ 380
Sub Total					<b>£ 6,680</b>
<b>TOTAL PROJECT ESTIMATE</b>					<b>£ 42,824</b>



## Hawthorn Crescent - Dynea Road Drainage Improvements

### Option 2 (alternative proposal by RCT tying into MH on Dynea Rd) - Hawthorn Crescent - Dynea Lane - "As Designed" Works Estimate

ITEM	DESCRIPTION	QUANTITY	UNIT	RATE (£)	EXTENSION (£)
<b>A</b>	<b>General Items</b>				
	Traffic and Pedestrian Control Measures - Dynea Road	1	sum	£ 3,000	£ 3,000
	Misc General Items - Insurance, H&S File, As Con Survey	1	sum	£ 1,000	£ 1,000
<b>B</b>	<b>Ground Investigation</b>				
	Trail Hole to establish depth of existing 900dia culvert	1	nr	£ 500	£ 500
<b>I</b>	<b>Pipework</b>				
	300dia, depth 1.5m - 2m	67.73	m	£ 150	£ 10,160
<b>K</b>	<b>Pipework Manholes &amp; Ancillaries</b>				
	MH PCC 1800dia, depth 2m - 2.5m	1	nr	£ 2,700	£ 2,700
	MH PCC - 1200dia, depth 1.5m - 2m	1	nr	£ 1,500	£ 1,500
	Breaking up and permanent reinstatement of highway pipe bore 300-900	67.73	m	£ 115	£ 7,789
	Connection to existing dual MH, 300dia	1	nr	£ 750	£ 750
	Crossing - Water Main, 300dia	2	nr	£ 200	£ 400
				£	-
<b>L</b>	<b>Pipework Support &amp; Protection</b>				
	Class B - 300dia	67.73	m	£ 25	£ 1,693
				£	-

Measured Works Sub Total £ 29,492

**General Items**  
Method Related Charges @ 30% of measured work £ 8,848

**Contingency/risk**  
at 20% £ 7,668

**Estimate Total** **£ 46,007**

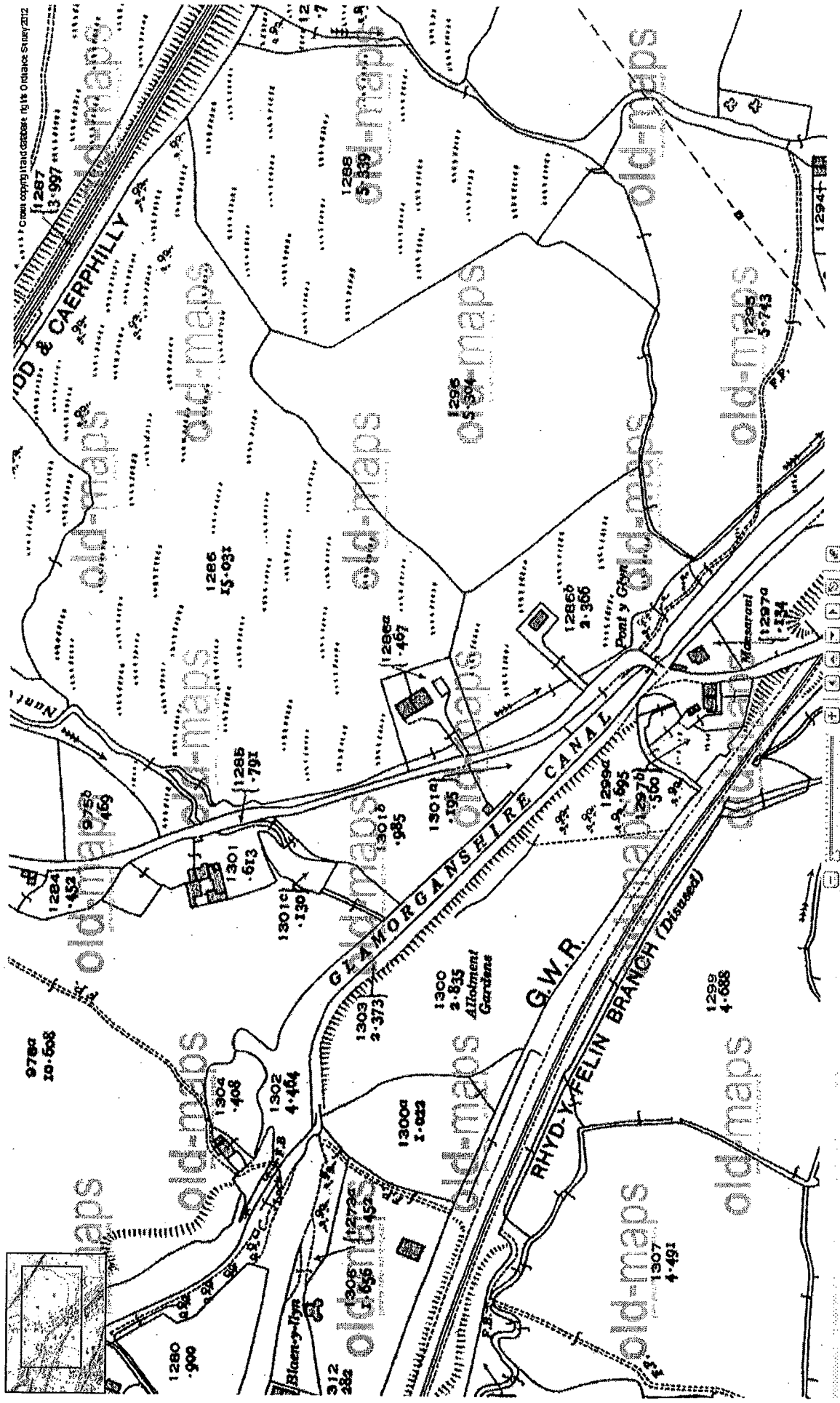
**Non Works Costs**

Detailed Design/Drawing/Tender Document prep £ 3,000  
Supervision £ 2,500

Topo survey (for control only if ARUP stations cannot be located) £ 300  
Streetwork licence fee (new apparatus) IF REQUIRED £ 380

Sub Total **£ 6,180**

**TOTAL PROJECT ESTIMATE** **£ 52,187**



© Crown Copyright 1997 Ordnance Survey

1287  
13-997

1286  
13-031

1285  
13-073

1284  
13-115

1283  
13-157

1282  
13-199

1281  
13-241

1280  
13-283

1279  
13-325

1278  
13-367

1277  
13-409

1276  
13-451

1275  
13-493

1274  
13-535

1273  
13-577

1272  
13-619

1271  
13-661

1270  
13-703

1269  
13-745

1268  
13-787

1267  
13-829

1266  
13-871

1265  
13-913

1264  
13-955

1263  
14-000

1262  
14-045

1261  
14-090

1260  
14-135

1259  
14-180

1258  
14-225

1257  
14-270

1256  
14-315

1255  
14-360

1254  
14-405

1253  
14-450

1252  
14-495

1251  
14-540

1250  
14-585

1249  
14-630

1248  
14-675

1247  
14-720

1246  
14-765

1245  
14-810

1244  
14-855

1243  
14-900

1242  
14-945

1241  
14-990

1240  
15-035

1239  
15-080

1238  
15-125

1237  
15-170

1236  
15-215

1235  
15-260

1234  
15-305

1233  
15-350

1232  
15-395

1231  
15-440

1230  
15-485

1229  
15-530

1228  
15-575

1227  
15-620

1226  
15-665

1225  
15-710

1224  
15-755

1223  
15-800

1222  
15-845

1221  
15-890

1220  
15-935

1219  
15-980

1218  
16-025

1217  
16-070

1216  
16-115

1215  
16-160

1214  
16-205

1213  
16-250

1212  
16-295

1211  
16-340

1210  
16-385

1209  
16-430

1208  
16-475

1207  
16-520

1206  
16-565

1205  
16-610

1204  
16-655

1203  
16-700

1202  
16-745

1201  
16-790

1200  
16-835

1199  
16-880

1198  
16-925

1197  
16-970

1196  
17-015

1195  
17-060

1194  
17-105

1193  
17-150

1192  
17-195

1191  
17-240

1190  
17-285

1189  
17-330

1188  
17-375

1187  
17-420

1186  
17-465

1185  
17-510

1184  
17-555

1183  
17-600

1182  
17-645

1181  
17-690

1180  
17-735

1179  
17-780

1178  
17-825

1177  
17-870

1176  
17-915

1175  
17-960

1174  
18-005

1173  
18-050

1172  
18-095

1171  
18-140

1170  
18-185

1169  
18-230

1168  
18-275

1167  
18-320

1166  
18-365

1165  
18-410

1164  
18-455

1163  
18-500

1162  
18-545

1161  
18-590

1160  
18-635

1159  
18-680

1158  
18-725

1157  
18-770

1156  
18-815

1155  
18-860

1154  
18-905

1153  
18-950

1152  
19-000

1151  
19-045

1150  
19-090

1149  
19-135

1148  
19-180

1147  
19-225

1146  
19-270

1145  
19-315

1144  
19-360

1143  
19-405

1142  
19-450

1141  
19-495

1140  
19-540

1139  
19-585

1138  
19-630

1137  
19-675

1136  
19-720

1135  
19-765

1134  
19-810

1133  
19-855

1132  
19-900

1131  
19-945

1130  
19-990

1129  
20-035

1128  
20-080

1127  
20-125

1126  
20-170

1125  
20-215

1124  
20-260

1123  
20-305

1122  
20-350

1121  
20-395

1120  
20-440

1119  
20-485

1118  
20-530

1117  
20-575

1116  
20-620

1115  
20-665

1114  
20-710

1113  
20-755

1112  
20-800

1111  
20-845

1110  
20-890

1109  
20-935

1108  
20-980

1107  
21-025

1106  
21-070

1105  
21-115

1104  
21-160

1103  
21-205

1102  
21-250

1101  
21-295

1100  
21-340

1099  
21-385

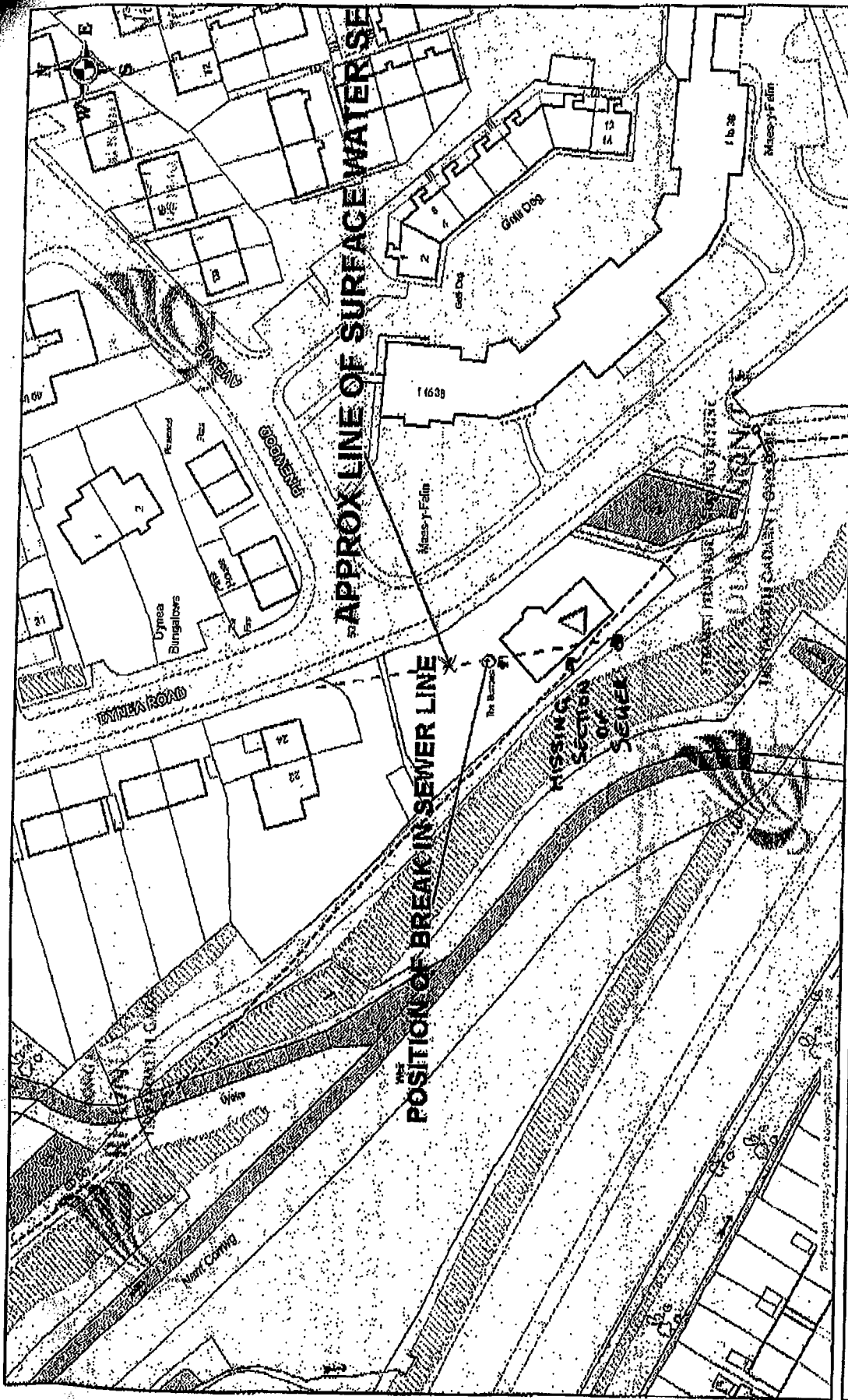
1098  
21-430

1097  
21-475

1096  
21-520

1095  
21-565

1094  
21-610



THE BURROMS DYNEA RD CF37 5DP

Scale 1/952  
 Centre = 309918 E 187827 N  
 Date 29/3/2010



TRADING NAME: RHOONDA CYNON TAF  
 RHOONDA CYNON TAF  
 TRANSPORT, CABLES & SERVICES LTD

Reproduced from the Ordnance Survey Mapping with the permission of Her Majesty's Stationery Office (C) Crown Copyright.  
 Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings.  
 Rhonda Cynon Taf CBC Licence No. 100029458