

## Appendix D - Development Agreement Summary

### 1 Introduction

- 1.1 Winchester City Council (“the Council”) intends to enter into a Development Agreement to bring forward the redevelopment of as site in central Winchester (“the Development”).
- 1.2 This note summarises the key terms of the Development Agreement in order to assist with understanding of the legal drafting in Appendix G - Redacted Draft Development Agreement.
- 1.3 The positions of the recommended Development Partner are set out in Appendix B - Summary of Recommended Development Partner's response to the Central Winchester Regeneration Development Brief and Appendix D(i) - Recommended Development Partner's commercial position (Exempt).
- 1.4 Having regard to the context of the project and the Council's objectives, the Development Agreement (subject to the recommended Development Partner's positions and any further amendments to finalise the detailed drafting) is in an acceptable form and presents an appropriate risk balance for the Council to proceed to contractual close.
- 1.5 The Development Agreement departs in some instances from certain commercial/contractual positions originally envisaged by the Commercial Principles Paper approved by Cabinet in December 2022 (as referred to in this note). None of those departures are materially prejudicial to the Council's interests or objectives.

### 2 Commercial Overview

- 2.1 The Developer will, subject to conditions, have the exclusive right to develop the defined site (identified in the Development Brief) in accordance with the terms of the Development Agreement. The Development Brief (as approved by Cabinet) sets out the Council's core requirements and investment objectives and will be a schedule to the Development Agreement. The Developer's approach to meeting the Development Brief (i.e. Development Delivery Plan) will also be a schedule to the Development Agreement and will include the Developer's plans for public realm and infrastructure in particular.
- 2.2 One change to the Development Brief was made by the Council during dialogue, namely the introduction of an income replacement/enhancement requirement as one of the core objectives.
- 2.3 At signing, the Development Delivery Plan will be drawn from the materials submitted by the recommended Development Partner providing a detailed starting point for a more comprehensive Development Delivery Plan (to be submitted to the Council for approval within 6 months from signing and in advance of any planning application).

### 3 Parties

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- 3.1 The Council and the recommended Development Partner will be parties to the Development Agreement, supported by a parent company guarantee from a party with the financial standing to support the obligations taken by the Developer.

### 4 Development Brief and Delivery Plans

- 4.1 **Delivery.** The Developer shall be under a general obligation to procure the carrying out of and completion of the Development.
- 4.2 **Development Brief.** The Development Agreement sets out the objectives and core requirements of the Council by reference to the Development Brief (Schedule 1 of the Development Agreement, which is also Appendix A - Central Winchester Regeneration Development Brief
- 4.3 **Delivery Plans.** At signing, the Delivery Plan for the overall scheme will be drawn from the recommended Development Partner's tender (as summarised in Appendix B - Summary of Recommended Development Partner's response to the Central Winchester Regeneration Development Brief) (Schedule 3 of the Development Agreement).
- 4.4 As soon as reasonably practicable prior to the submission of a planning application, and in any event within 6 months (unless delayed (see below)) the Developer must prepare for Council approval an updated version of the Development Delivery Plan (including the Phasing Plan). Council approval must not be unreasonably withheld or delayed, and it will be reasonable to withhold approval or seek amendment where any part of the Development Delivery Plan is not in accordance with the Development Brief or is not coherent across the proposed phases.
- 4.5 The Development Delivery Plan is to include for infrastructure and public realm, and these must be consistent with the overall plan.
- 4.6 Under the governance arrangements (see below) the Council will have opportunity to see and comment on the updated Delivery Plan and the plan is to be further updated on a not less than quarterly basis (to show progress against programme).
- 4.7 Changes to the Development Delivery Plan may be made by consent of both parties (acting reasonably) save that no change can be made which would depart from the development objectives under the Development Brief without the Council's consent in its absolute discretion.
- 4.8 The Development Delivery Plan is to expressly address income replacement/enhancement - in parallel with other development objectives.
- 4.9 **Phase Delivery Plans:** Each phase of development will be subject to a Phase Delivery Plan developed by the Developer and agreed with the Council (and describing the exit strategy and long-term public realm stewardship). Its content may generally mirror that of the Development Delivery Plan, but at the phase-specific level of detail.
- 4.10 **Exit strategies.** As part of the phase delivery process under the plans the 'exit strategy' for each phase will be agreed, including the long-term ownership of any private rental or commercial units constructed as part of the

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development works. Equally important will be the arrangements described for the long-term stewardship of public realm delivered by the scheme.

- 4.11 For these purposes “exit strategy” means how an asset might be held by the Developer, sold to an investor, leased to an occupier (direct from the Council), or howsoever dealt with as will be proposed and agreed under the Development Delivery Plan.

### **5 Financial Model and land value**

- 5.1 Prior to submission of a planning application the Developer must prepare and submit to the Council for approval its financial model.
- 5.2 This detailed model has a prescribed format under the Development Agreement and will be used to generate land values, and then regulate overage (planning and revenue/sales). It will show the Developer’s inputs for profit and development management fees (as locked in (i.e. fixed) via the final tender).
- 5.3 The Developer will update the model periodically but may not alter the logical integrity and assumptions used in the financial model without agreement.
- 5.4 The Council has rights to interrogate the financial model and call for supporting information, on an open book basis.
- 5.5 The land values generated by the model prior to planning may not change except with the agreement of the Council.
- 5.6 The Development Agreement governs how the land value is to be calculated (i.e. the land value payable to the Council), and will provide for a method of valuation that satisfies the Council’s obligation to obtain best consideration. Each valuation will be subject to special assumptions and the parties may call for an expert valuation to be carried out.

### **6 Planning**

- 6.1 The Development Agreement regulates the process by which the Developer is to secure planning consent. An application (being hybrid for the full site, with outline consent being sought for the first phase) is the responsibility of the Developer and must be made within 24 months from the date on which the Council approves the Development Delivery Plan.
- 6.2 The Developer will at its own cost undertake or procure the undertaking of all the design work required to submit the planning application. The design work must be in accordance with the Design Principles (set out in a schedule to the Development Agreement) as well as the Development Objectives laid down by the Development Brief.
- 6.3 The draft application is submitted the Council for approval prior to submission (not to be unreasonably withheld or delayed).
- 6.4 The Developer must pursue the planning application diligently and expeditiously and at its own cost and shall use reasonable endeavours to

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obtain the grant of a satisfactory planning permission within a further 18 months.

- 6.5 Provision is made for how any planning appeal will be dealt with by the Developer.
- 6.6 The Developer must also seek and enter into all necessary planning agreements with the planning authority, highways authority etc.
- 6.7 A satisfactory planning permission is one free from onerous conditions which will cover where the consent increases the development cost, makes the permission temporary or personal to the developer, makes the scheme subject to the consent of a third party.
- 6.8 The planning application process will be subject to the delay events provisions (see below).

### **7 Conditions for land draw down**

- 7.1 The Council will commit its land interests and will be responsible for securing vacant possession (including the payment of overage due to third parties under pre-existing agreements). It was agreed in dialogue that whilst the Council would retain its ability to pursue a CPO (in accordance with due process), none is likely to be required and attaching a draft CPO Indemnity Agreement would not therefore be necessary.
- 7.2 The Development Brief requires the Developer to deliver the bus solution needed to enable vacant possession of the bus station.
- 7.3 The drawdown of the Council's land is governed by the Development Agreement and will be in phases, subject to satisfaction of primary and phase conditions, and for a value established under the financial model which will satisfy the Council's duty to obtain best consideration. The valuation methodology will also cater for where the land is being transferred in return for revenue (i.e., rental income).
- 7.4 The Council and Developer must use reasonable endeavours to satisfy the primary conditions as soon as reasonably practicable and in the event the Developer fails to do so (either at all or by the long stop date) the parties may agree in writing to extend the date (see below regarding delay). The parties must act reasonably and in good faith in agreeing how to facilitate satisfaction of the primary conditions.
- 7.5 If by the primary conditions long stop date (or any agreed extension) the conditions have not been met, the parties may agree to terminate on a no-fault basis, i.e., each bearing its own costs. Where the Developer has not used reasonable endeavours that will be a Developer default event. In either case, the Developer will make no recovery of its sunk costs.
- 7.6 The draw-down of land for phase 1 is subject to the Developer satisfying these conditions:
  - 7.6.1 the Council approving the Development Delivery Plan (and Phase Delivery Plan for phase 1), the financial model and the land value generated by the financial model;

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- 7.6.2 securing planning;
  - 7.6.3 demonstrating the viability of the overall scheme (not just phase 1);
  - 7.6.4 funding for the phase being in place;
  - 7.6.5 a satisfactory valuation;
  - 7.6.6 satisfactory consultation in relation to phase 1;
  - 7.6.7 approval of the associated public realm and infrastructure;
  - 7.6.8 all necessary statutory consents in place;
  - 7.6.9 evidence satisfactory to the Council of the implementation of the Social and Economic Value Protocol and Sustainability Protocol;
  - 7.6.10 satisfaction of any other phase specific conditions, e.g. pre-lets.
- 7.7 In addition, both parties must agree, acting reasonably, that vacant possession has been secured in relation to phase 1. The Council is responsible for securing vacant possession.
- 7.8 The Development Agreement allows for certain conditions to be waived.
- 7.9 The Developer may notify the Council that it proposes to waive all or any of the planning condition, the development viability condition and/or the primary condition related to necessary statutory consents. The Council may, in its absolute discretion, refuse.
- 7.10 The Council may seek to waive the condition in relation to statutory consents only the Council is able to secure; the Developer may, in its absolute discretion refuse.
- 7.11 Either party may propose waiver of the vacant possession condition; the other party may, in its absolute discretion refuse.
- 7.12 The conditions for transfer of subsequent phases are the same, save that in relation to planning it is the reserved matters that are to be satisfied and the phase delivery plan needing approval. The waiver position is likewise the same.
- 7.13 The Phase Delivery Plan in relation to each subsequent phase is submitted by the Developer for Council approval which cannot be unreasonably withheld or delayed. The Council will be acting reasonably in withholding approval or requiring amendments where all/part of the Phase Delivery Plan in relation to a subsequent phase is not in accordance with the Development Objectives; and/or the Phase Delivery Plan is in any material respect inconsistent with the Development Delivery Plan.

## **8 Land transfer approach**

- 8.1 The process for the transfer of the land will be:

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- 8.1.1 on satisfaction of conditions, the grant of a short-term building lease in relation to the phase;
- 8.1.2 on practical completion, the grant of a long lease for that phase.
- 8.2 All Bidders were comfortable with a leasehold approach and were not pressing for freehold transfers to be considered.
- 8.3 The Building Lease and Long Lease may be granted to a consortium member of the Developer (i.e. for tax and funding purposes and where agreed by the Council).
- 8.4 The Building Lease sets the long stop date for completion (see below).
- 8.5 On grant of the Building Lease, the Council is entitled to receive payments for the value of land transferred, except where an income generating asset is being developed (in which case the revenue (i.e. rent) to the Council will become payable at a later date).
- 8.6 Land value payments will be ascertained via the financial model and the amount due will be at or above the threshold set by the model at planning stage. Overage (planning and revenue/sales) will also be due under a detailed method set out in the Development Agreement.

### **9 Leases summary**

- 9.1 The Building Lease, granted when conditions have been satisfied will set out:
  - 9.1.1 The parties - being the Council as Landlord and the Developer or, with the agreement of the Council, a member of the Developer consortium;
  - 9.1.2 Details (by reference to a plan) of the part of the overall site covered, plus any rights of access or other rights;
  - 9.1.3 The lease term - being 125 years but with an early break/termination right where the works not commenced or completed by the relevant long stop dates;
  - 9.1.4 The lease being contracted out of the 1954 Act (i.e. no security of tenure);
  - 9.1.5 The payment of the land value (in accordance with the Development Agreement);
  - 9.1.6 The tenant being responsible for all outgoings, repairs (if relevant) and insurances;
  - 9.1.7 Prohibition of any assignment, underletting or alterations - other than the permitted works;
  - 9.1.8 Permission for charging - but on phase specific terms depending on how the scheme is being funded;
  - 9.1.9 Use - to be solely for the carrying out of the works;

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- 9.1.10 A Council right to forfeit the lease for breach of covenant, including termination of the development agreement.
- 9.2 Upon completion, the Council will grant the long lease (in place of the building lease), setting out:
  - 9.2.1 The parties - being the Council as Landlord and the Developer or (with the agreement of the Council one of the consortium members);
  - 9.2.2 Details (by reference to a plan) of the part of the overall site covered, plus any rights of access or other rights;
  - 9.2.3 The lease term - 250 years;
  - 9.2.4 Rent - where applicable;
  - 9.2.5 The tenant being responsible for all outgoings etc.;
  - 9.2.6 Assignment, charging and underletting to be permitted (subject to certain landlord consent rights/conditions);
  - 9.2.7 Tenant to have full repair and insurance obligations including the obligation to rebuild/reinstate the premises where damaged/destroyed by any insured risks;
  - 9.2.8 Alterations - permitted but subject to conditions;
  - 9.2.9 Use to be according to planning and a change of use subject to certain Council consent rights;
  - 9.2.10 Forfeiture for tenant insolvency or breach of covenant
- 9.3 Further particulars for these will be based on the agreed phase-specific proposals (including whether the building is to be an income generating asset of the Council).

### **10 Development costs**

- 10.1 The Developer is responsible for carrying out and funding all pre-development activities and for sourcing third party funding. The exceptions being the Council undertaking certain demolition works (Friarsgate medical centre), the payment of overage under pre-existing agreements, any holding costs prior to grant of the Building Leases(s), and any residual land assembly that the Council has agreed to fund or in respect of statutory consents that only the Council may obtain.
- 10.2 Development finance is anticipated to be sourced externally or from the Developer's own resources. All Bidders explained their funding strategy and that was discussed in dialogue and is part of their final tenders.
- 10.3 All financial arrangements will need to comply with the "subsidy control" regime replacing State aid, and the Council's land must be drawn down on terms which satisfy its statutory duty to obtain best consideration.

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### 11 Professional Team

- 11.1 The Developer will be responsible for providing or procuring the provision of its professional team in support of planning, design, and other disciplines, as well as the building contractor(s) and wider supply chain delivering each phase. The principal members of the professional team identified during the procurement process will be named in the Development Agreement. Subsequent appointments of key professionals will be subject to the Council's approval (not to be unreasonably withheld or delayed).

### 12 Long Stop Dates and Delay

- 12.1 The Development Agreement contains a number of long stop dates, being dates by which certain events must have occurred (and where failure entitles the Council to terminate the agreement). These are:

- 12.1.1 Updated Development Delivery Plan - 6 months from signing;
- 12.1.2 Planning Application - 24 months from approval of the Development Delivery Plan;
- 12.1.3 Planning consent - 42 months from approval of the Development Delivery Plan (but with agreed extension where there is a planning appeal, a call-in, or the planning discharge date has not occurred (i.e., the consent is not yet capable of being implemented because e.g., a planning agreement has not yet been obtained)).
- 12.1.4 Satisfaction of conditions for phase 1 - 48 months from approval of the Development Delivery Plan;
- 12.1.5 Start on site - 3 months from grant of the Building Lease;
- 12.1.6 Completion - this will be positioned in the Building Lease as a function of the construction contract and typically 2.5x the programmed build period;
- 12.1.7 Satisfaction of conditions for draw down of subsequent phases - the date falling 24 months after the relevant conditions applicable to the preceding Phase have been satisfied;
- 12.1.8 Project Long stop - 6 years from satisfaction of phase 1 conditions and assumes 2-3 phases.

- 12.2 **Delay.** These dates may extend but only where there is a Delay Event. That is defined as follows:

- 12.2.1 any action (e.g., judicial review) taken by third parties to instigate a challenge in relation to the Agreement or the Development where the result of such challenge may prejudice the Developer's rights under the Agreement;
- 12.2.2 any delay in the Council discharging its obligations under this Agreement (including in relation to the Delivery Plan) to the extent that the same adversely impacts on the Developer's ability to comply with its obligations under this Agreement (e.g., a



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Council failure to do something it is obliged to do under the DA, such as vacant possession or giving an approval in a timely manner);

- 12.2.3 the exercise by the Council of any rights granted to it by the Agreement to the extent that the same adversely impacts on the carrying out of the Development other than the proper exercise of a discretion which is expressed to be absolute (e.g., not agreeing to change the Development Brief);
- 12.2.4 a Force Majeure Event (being very narrowly defined - e.g., war, act of terrorism, nuclear contamination);
- 12.2.5 an event defined by the relevant building contract<sup>1</sup> for which the contractor shall be entitled to an extension of time except to the extent that it arises as a result of a default by the Developer under the terms of the relevant building contract (e.g., where the construction contract properly allows the contractor an extension of time and therefore only applicable once the works commence (or are due to));
- 12.2.6 any delay in obtaining any consents which is not due to the failure or omission or act of the Developer (e.g., a stopping up order);
- 12.2.7 the execution of work by the Council or by persons employed or otherwise engaged by the Council which adversely impacts on the carrying out of the Development (e.g., where WCC is carrying out works at or near the site);
- 12.2.8 delay to the Works as a result of a find of unforeseeable Antiquities or contamination (provided the Developer has complied with its obligations to carry out surveys and notify the Council); and
- 12.2.9 any delays or extensions agreed as part of the outcome of a Review (where the parties need to review the scheme, for example to get planning or address viability, and that review necessarily impacts the programme).

### 13 Consultation etc.

- 13.1 The Developer is under a general obligation to carry out ongoing engagement and communication with stakeholders, under an agreed Community and Stakeholder Engagement Plan (amplified in the Delivery Plan and drawing from the detailed submission in the final tender of the preferred bidder). The Development Agreement provides for:

- Regular public consultation events;

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<sup>1</sup> Any Building Contract entered into must contain as a minimum the provisions of one of the construction industry standard forms with such amendments as shall be agreed by the Contractor, the Council and the Developer.

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- Engagement with key adviser and interest groups prior to planning submission;
- Meeting with key stakeholders in the wider community;
- Briefings to the media;
- Creation of a website;
- Updates to members and MPs;
- An event to showcase the approved planning consent.

The recommended Development Partner more detailed proposals for such consultation are set out in Appendix B - Summary of Recommended Development Partner's response to the Central Winchester Regeneration Development Brief.

### 14 Governance

- 14.1 The Development Agreement will regulate the engagement between the Council and Developer throughout the life of the Development.

### 15 Variations

- 15.1 No amendment or variation of the Development Agreement itself will be valid or binding unless agreed by the Council, made in writing, and executed by both parties.

### 16 Reviews

- 16.1 The agreement allows for a review of the scheme at the instigation of either party and where for example, the conditions for draw down of land cannot be met (e.g., where planning is refused, or the scheme as a whole is not viable<sup>2</sup>).
- 16.2 In a review the parties may look at:
- 16.2.1 reducing development costs including negotiating the reduction of any supply chain overhead and Contractor's profit margin and seeking to renegotiate the level of any costs payable to the local planning authority;
  - 16.2.2 changing the programme for the Development including accelerating or deferring the commencement of a Phase and/or changing the Delivery Plan;
  - 16.2.3 applying income from another phase;

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<sup>2</sup> Viable meaning that the scheme as a whole will satisfy the land values and developer profit set by the financial model. NB Developer profit hurdle is taken from the final tender as a fixed percentage.

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- 16.2.4 utilising any unspent contingency including any related financing costs where the contingency is no longer required;
- 16.2.5 at the Council's discretion the availability and application of grant;
- 16.2.6 consideration of the land use mix detailed in the Development Delivery Plan, but subject always to the Development Objectives; and
- 16.2.7 only after the options listed above have been considered:
  - reducing the level of Developer Profit or Development Management Fee;
  - only in respect of a review where the viability condition is not satisfied but not otherwise, and only after all other options including those listed above have been considered, shall the parties discuss in good faith any reduction to the land value.
- 16.3 Save for where the Council in its absolute discretion approves otherwise in writing, in no circumstances shall the Development Objectives be amended as part of a review.

### 17 Exit and termination

- 17.1 The Development Agreement provides for a natural expiry on completion of the overall development.
- 17.2 **Developer default.** In addition, terms provide for early termination in the event of Developer default. These cover:
  - 17.2.1 failure to comply with any material term or obligation in the Agreement;
  - 17.2.2 failure to pay the Council where due;
  - 17.2.3 failure to achieve a long stop date by the relevant date;
  - 17.2.4 failure to implement the works required to deliver the infrastructure and public realm in respect of a phase;
  - 17.2.5 where the Developer has been granted a Building Lease in relation to a phase, a forfeiture of that Building Lease due to a default by the Developer under its terms;
  - 17.2.6 abandonment;
  - 17.2.7 an insolvency event (including insolvency of the guarantor);
  - 17.2.8 ceasing to carry on the whole of its business or disposing of all of its assets (other than on the terms of this Agreement); or
  - 17.2.9 any assignment or change of control which has not been agreed by the Council.

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- 17.3 **Council default.** The Developer may terminate for any act or omission on the part of the Council which constitutes any of the following:
- 17.3.1 failure to comply with any material term or obligation in the Agreement (which would include, in particular, a refusal to grant the Building Lease or Long Lease where the conditions for these have been met); or
  - 17.3.2 failure to satisfy any of the phase conditions for which the Council has sole or primary responsibility under the Development Agreement by the relevant long stop date.
- 17.4 **Notice and opportunity to remedy.** Termination will be by notice and where a default is capable of remedy, the defaulting party will have a time limited opportunity to remedy.
- 17.5 **Funder rights.** Where third part debt has been secured, the funder will have the normal rights of step-in to remedy the default.
- 17.6 **Consequences of termination.** Where due to a Developer default, in the period prior to any draw down of land, the Council will retain payments made by the Developer (if any) and recover its abortive costs (but not indirect losses), including reasonable costs of re-procurement. The Developer is not reimbursed any of its sunk costs.
- 17.7 After grant of the Building Lease for phase 1, and subject to a funder's right of step-in to remedy, the Council will retain all payments made by the Developer (including for land value) and may (**but is not obliged to**) take a novation of the building contract, should it wish to do so, and decide whether to bring in another developer to complete the scheme; the Developer pays the Council's losses (but not indirect losses).
- 17.8 Where a Long Lease has been granted for a completed phase, that Long Lease will not terminate for default under the Development Agreement<sup>3</sup>. Otherwise, the consequences are the same as above in respect of subsequent phases.
- 17.9 Where due to a Council default, the Agreement provides for repayment to the Developer of all payments made, recovery of abortive sunk costs on an indemnity basis (but not indirect losses); any long lease granted will be unaffected.
- 17.10 **Indemnity.** The Developer indemnifies the Council against:
- 17.10.1 death or personal injury;
  - 17.10.2 loss of or damage to property including property belonging to the relevant Council or for which the relevant Council is responsible; and
  - 17.10.3 third party actions, claims, losses, demands, costs, charges and expenses;

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<sup>3</sup> The Long Lease will be capable of forfeiture for breach under its terms.

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arising due to any breach, performance or non-performance of the Development Agreement by the Developer to the extent that the same is not the direct result of any acts omissions or breach on the part of the Council.

### **18 Disputes**

18.1 Disputes are to be resolved by means of escalation and then arbitration/mediation. The parties may refer certain matters for expert determination.

### **19 Tax**

19.1 The parties are to use their reasonable endeavours to minimise the adverse effect of any tax liabilities, including SDLT and VAT.

### **20 Insurance**

20.1 The Development Agreement prescribes the insurances that the Developer is required to take out or procure for the scheme. In dialogue all Bidders referenced that the current insurances market is volatile and that obtaining certain insurances is either not possible or only at extreme cost. This will not impact on the core insurance requirements under the Development Agreement but may have bearing on, in particular, the levels of PI insurance available for professionals and certain aspects of insurance for construction activity.

### **21 Assignment and change of control**

21.1 The Developer may assign, novate or otherwise transfer its rights and obligations to an entity which is associated with it (i.e. a member of its corporate group) and in each case, this will be subject to the Council's consent (not to be unreasonably withheld or delayed).

21.2 Assignment to a third party will be subject to the Council's consent (in its absolute discretion).

21.3 The Council will not be acting unreasonably where:

21.3.1 The Council refuses consent because the proposed assignee is not of similar financial standing to the Developer or otherwise has financial standing that is satisfactory to the Council.

21.3.2 The Council delays consent because they require the assignee to enter a deed of covenant/guarantee simultaneous to the assignment.

21.4 The Developer may assign the Development Agreement by way of security to a funder with the Council's consent. The Council must not unreasonably withhold or delay consent.

21.5 No change of control (i.e. ownership of the Developer) may occur without the prior written consent of the Council (not to be unreasonably withheld or delayed).

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- 21.6 The position of the recommended Development Partner is set out in Appendix D(i) - Recommended Development Partner's commercial position (Exempt).

### 22 Other matters

- 22.1 **Confidentiality and FOI/EIR.** The agreement governs the way in which matters are to be kept confidential and how any freedom of information request is to be dealt with.
- 22.2 **Open book.** The agreement provides for an open book approach.
- 22.3 **Anti-corruption.** The agreement provides for termination where this occurs (as a Developer default).
- 22.4 **Data Protection.** This is provided for.
- 22.5 **Modern Slavery.** This is provided for.
- 22.6 **Non-fetter.** The agreement expressly states that nothing under the agreement fetters the discretion of the Council when acting in a statutory capacity (e.g. as planning authority).
- 22.7 **Press releases/Marketing.** The Developer must not issue any public release/communication in relation to the Development without the prior written consent of the Council. There is no requirement for consent to be reasonable. The Developer must not adopt the Council's branding in relation to any public release/communication without the Council's prior written consent, such consent not to be unreasonably withheld.

### 23 Council approvals and consents (summary)

- 23.1 The Development Agreement makes provision for certain Council approvals and consents<sup>4</sup>. These may be summarised as follows:
- 23.1.1 Approval of the updated Delivery Plan (including phasing) acting reasonably;
- 23.1.2 Approval of each Phase Delivery Plan, acting reasonably;
- 23.1.3 Approval (within each plan) of the plans for public realm and infrastructure;
- 23.1.4 Approval of the planning application acting reasonably;<sup>5</sup>
- 23.1.5 Certain approvals in relation to taking and the conduct of any planning appeal;

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<sup>4</sup> Where the agreement refers to the Council giving an approval or consent, the exercise of that is for the Council to determine - it does not (for example) mean "the Council", i.e. a decision that must be made by full Council or the Cabinet. The decision/approval may be delegated as the Council sees fit.

<sup>5</sup> In the case of the Delivery Plan and planning application the test is whether these satisfy the Development Brief and a refusal otherwise would likely be unreasonable.

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- 23.1.6 The Council must be acting reasonably in agreeing the phase site Consideration Thresholds or assumptions used in the financial model;
- 23.1.7 Assignment by the Developer requires Council consent (acting reasonably where intra-group);
- 23.1.8 Draw down of land by way of grant of a Building Lease to the Developer is subject to the satisfaction of conditions (see above) and the Council has an ability to dispute whether a condition has been met;
- 23.1.9 Any amendment to the Delivery Plan by the Developer will require unanimous consent of the parties. Any changes must be in accordance with the Development Objectives (unless the Council provides consent for such departure);
- 23.1.10 In a review, no change may be made to the Development Objectives without Council consent;
- 23.1.11 The Developer's professional team is specified at signing and then in relation to each subsequent phase, the professional team appointed by the Developer or Contractor in consultation with, and subject to the prior approval of, the Council, such approval not to be unreasonably withheld or delayed;
- 23.1.12 The Developer must obtain the Council's approval in relation to the form of Building Contract and the procurement process (not to be unreasonably withheld or delayed).

**END**