

Agenda Item No: 9.6 **Report No:** 128/17

Report Title: North Street Quarter – Delivery Route

Report To: Cabinet **Date:** 27th September 2017

Cabinet Member: Councillor Andy Smith

Ward(s) Affected: All Lewes Wards

Report By: Nazeya Hussain, Director of Regeneration and Planning

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1.0 Background:

- 1.1 At its meeting of 26th June 2017, Cabinet approved work on a revised delivery route for Phase 1 of the North Street Quarter scheme. This involved:
- carrying out due diligence on ‘Artisan’ as potential Development Partner for Phase 1;
 - negotiating revisions to the agreed Heads of Terms to enable this option to be progressed (pending satisfactory outcomes of the due diligence).
- 1.2 Joint landowner Santon North Street, now ‘North Street Quarter Ltd.’, is owned by MAS Real Estate Investors.

2.0 Purpose of the report

- 2.1 This report provides an update on the JV (Land Collaboration Agreement) that LDC and North Street Quarter Ltd have been negotiating in order to move forwards and appoint a Development Partner to deliver the NSQ scheme. It also updates Cabinet on progress with other work relating to the NSQ.

3.0 Officer Recommendations:

1. To note progress in respect of the Land Collaboration Agreement (LCA) between the two landowners - Lewes District Council and North Street Quarter (NSQ) Ltd.
2. That Cabinet invite the Scrutiny Committee to review the due diligence undertaken by the Council to date, and that Scrutiny Committee report back to the NSQ Members’ Oversight Board.

3. To delegate authority to the Director of Strategy, Regeneration and Planning, in consultation with the Assistant Director - Legal and Democratic Services, the Deputy Chief Executive (S151 Officer) and North Street Quarter Members' Oversight Board, to appoint Artisan as Phase 1 Development Partner, having regard to Scrutiny Committee's feedback on the due diligence work undertaken.

4.0 Reasons for Recommendations

1. To progress delivery of the strategically significant North Street Quarter (NSQ) development in Lewes. The NSQ is a £180m mixed use brownfield site that will deliver the following regeneration benefits to the area:
 - 416 new homes, of which 40% will be affordable,
 - 140,000 sq. ft. of new commercial space, including subsidised creative workspace,
 - 475 full time jobs,
 - 100 full time construction jobs,
 - a new modern health centre serving in excess of 26,000 patients,
 - strategically important flood defences, completing the defence of Lewes,
 - a new riverside promenade, new footbridge, extensive new cycle paths and footpaths, and
 - a public square hosting contemporary eateries and riverside dining.
2. To ensure that the Council maximises return on its investment into the NSQ scheme, while at the same time minimising any risks involved in its delivery.

5.0 North Street Quarter - Proposed delivery route

- 5.1 At its meeting on 7th January 2016, Cabinet approved Heads of Terms of the LCA (attached as Appendix 1) and authorised officers to negotiate and execute the LCA.
- 5.2 The agreed Heads of Terms provide adequate scope to enable Artisan to be appointed as Phase 1 Development Partner, subject to due diligence and agreement by the Council. Officers have, therefore, moved forwards to undertake the following work:
 - Firstly to negotiate the LCA with joint landowner - North Street Quarter (NSQ) Ltd., and
 - to enable the Council to be satisfied that Artisan can be appointed as Phase 1 Development Partner, to detail the information required from NSQ Ltd. and to carry out the detailed due diligence required at this stage.

Land Collaboration Agreement (LCA)

- 5.3 The LCA will be an agreement between the two landowners: Lewes District Council and NSQ Ltd. It will set out the framework within which the two partners will work together to deliver all three phases of the North Street

Quarter development. This framework includes governance arrangements, the duties and mutual obligations of the landowners and a framework for agreeing such matters as disposals, sales proceeds and equalisation.

- 5.4 The LCA is currently being negotiated and will refer to a number of matters which must be agreed by the landowners before a Development Partner is appointed. Matters currently under discussion are set out in Appendix 2 of this report. We are proposing a deadline of 31 December 2017 for the landowners to agree these matters and to draw up a Development Agreement which will stipulate how the development will be delivered.
- 5.5 The Development Agreement will be an agreement between NSQ Ltd. and a Development Partner, on terms approved by Lewes District Council.

Appointing Artisan as Development Partner

- 5.6 We are proposing that the LCA includes an 'option' for NSQ Ltd. to appoint Artisan as the Phase 1 Development Partner on terms approved by LDC. Appendix 2 identifies the information that we think NSQ Ltd. must provide by 31 December 2017 in order for the Council to consider the appointment of Artisan.
- 5.7 In addition to the information required from NSQ Ltd., the Council continues to carry out due diligence covering:
- Financial checks in respect of Artisan
 - Securing a legal opinion (from a solicitor registered in the relevant jurisdiction) on MAS Real Estate Investors, and
 - Securing a 'certificate of good standing' and 'certificate of fact' in relation to Artisan (a legal opinion will be sought when a Development Agreement is in place and if Artisan is invited to enter into this Development Agreement)
- 5.8 Under the delegation set out in Recommendation 3 of this report, any decision to appoint Artisan as Development Partner for Phase 1 will have regard to the Council's due diligence. The Council will also continue to seek advice from its financial advisors (GVA).

NSQ development delivery route – timeline

- 5.9 We are proposing that the LCA identifies timeframes for decisions in relation to the delivery of the NSQ scheme. These are set out in Appendix 4 and are subject to agreement by NSQ Ltd
- 5.10 The planning permission for the scheme will expire in May 2019 if the development has not started on site by this point. The Council has been working with NSQ Ltd. to ensure that we reach agreement on the delivery timeframes, including a Development Partner, to ensure that the planning permission does not expire.

- 5.11 The next steps, following final agreement, and signing of the LCA, are that the landowners will work to agree the matters set out in Appendix 2 by 31 December 2017.

6.0 Progress with other work areas

- 6.1 The Council has commissioned its own independent cost appraisal of the NSQ scheme. This will inform its decisions about which assets it will seek to retain from the NSQ scheme in order to generate a recurring revenue stream, as well as any future decisions relating to the lending of construction finance.
- 6.2 Officers continue to work with the NHS High Weald Lewes Havens Clinical Commissioning Group, East Sussex County Council and wider health care commissioners and providers to develop a model of integrated health care services for the new Heath Hub. Work is also continuing to support prospective tenants of the new Health Hub (including GPs) to identify their requirements / specifications in terms of premises.
- 6.3 The Council is working with East Sussex Fire and Rescue (ESFR) and Sussex Police in order to progress the design and delivery of a new blue light service facility on the site of Springman House.
- 6.4 Officers are also exploring options for temporary car parking arrangements during the construction phase of the NSQ scheme.
- 6.5 Soft market testing of the 165 units of affordable housing (including Extra Care units), that will be delivered as part of the development, is being carried out with Registered Providers (RPs) in order to identify a preferred delivery route for this element of the scheme.

7.0 Financial Appraisal

- 7.1 This report recommends that authority be delegated to officers to appoint a Development Partner, subject to the outcomes of due diligence. As such, there are no significant direct financial implications associated with the recommendations, with costs to be met from existing budgets.
- 7.2 Future Cabinet meetings will be asked to consider a number of proposals in respect of progressing this development and a full financial appraisal will be given at that time.

8.0 Legal Implications

Advice has been given in earlier reports relating to the North Street Quarter. At this stage there are no additional legal implications for inclusion in this report, but the Assistant Director - Legal and Democratic Services will give an update at the meeting on 27th September 2017 if necessary.

9.0 Risk Management Implications

- 9.1 The Council is working with partners to deliver this complex development. We have identified a proposed delivery route along with an alternative route (Appendix 4).
- 9.2 Officers continue to engage with the Council's commercial and legal advisors to minimise the risks to the Council at this stage of the project. The draft LCA sets out the information that the Council requires in order to proceed. As noted in this report, the Council is undertaking due diligence in relation to the potential appointment of Artisan as Phase 1 Development Partner.

10.0 Equality Screening

- 10.1 Equality screening has been carried out for previous NSQ reports. This report raises no new equalities issues.

11.0 Appendices

Appendix 1 – Agreed Heads of Terms of LCA

Appendix 2 – Items to be agreed by landowners (LDC and NSQ Ltd) by 31 December 2017

Appendix 3 – Clause 8 of the LCA: Appointing Artisan as Development Partner

Appendix 4 – NSQ Development Delivery Route: Draft timeline

Appendix 1 – Agreed Heads of Terms of the LCA

(as agreed by Cabinet at its meeting on 7th January 2016)

The parties acknowledge that Lewes District Council are subject to the requirements of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR") to disclose information (including commercially sensitive information). In order to manage this, the parties shall use all reasonable endeavours to agree and enter into the terms of a Memorandum of Understanding as soon as reasonably practicable. The provisions of paragraph 5 of these Heads of Terms reflect the parties understanding and agreement as regards FOIA disclosure

These heads of terms are intended to explain in plain language the intended roles of the parties to be expanded upon and negotiated with a view to entering into a formal agreement. They both board and cabinet approval in respect of each of the parties.

The proposals set out in this document are presented in good faith but do not constitute a binding offer to establish any commercial or financial arrangement between any parties. The document is not intended to and shall not create any binding contract or other form of legal relation between the parties and each party is free to withdraw from negotiations without liability at any time.

HEADS OF TERMS (CONFIDENTIAL) **Joint Equalisation Agreement ("the Agreement")**

1. PARTIES

Santon North Street Limited ("SNS")

Lewes District Council ("LDC")

2. PROPERTY

North Street Quarter as shown edged red on the attached 'Phasing Plan' at appendix 1 which includes:

- 2.1 Santon North Street Limited land as identified at Part 1 of Schedule 1 ("the SNS Property")
 - 2.2 Lewes District Council land as identified at Part 2 of Schedule 1 ("the LDC Property")
 - 2.3 Third party freehold land as identified at Part 3 of Schedule 1 ("the Third Party land")
 - 2.4 Third party leasehold land as identified at Part 4 of Schedule 1 ("Third Party leasehold land")
- together referred to as the 'Development Property' which shall then be broken down into three separate development phases as shown on the 'Phasing Plan' at appendix 1.
- 2.5 The LDC Property and SNS Property is shown edged red on the plan at appendix 4.
 - 2.6 Reference to a 'Phase' in these heads of terms is to phase 1, 2 or 3, as applicable.

3. THE DEVELOPMENT

The development shall be defined as a residential led mixed use scheme pursuant to planning application no. SDNP/15/01146/FUL ("the Development").

4. PURPOSE AND OBJECTIVES

- 4.1 The primary objective of the Agreement is to enable the formulation of proposals for delivering regeneration, affordable housing, employment and community benefits, mitigating risk for the partners and generating a financial return. The residential led mixed use scheme which will ultimately be delivered by a third party development partner to be appointed pursuant to the terms of the Agreement. The Development shall be defined and outlined in more detail within the Agreement by way of a development report and associated plans.
- 4.2 Throughout all stages of the development and pre-development application process, SNS and LDC are to take account of and acknowledge local and commercial sensitivity to the Development and seek to manage this accordingly. In particular, freedom of information implications will be addressed within the Agreement and the parties shall work together in order to manage and minimise any adverse impact any requests for information may have on the Development (see below).
- 4.3 The above will be delivered by SNS and LDC in accordance with the Agreement and an agreed Business Plan (see below), the core objectives of which are:
 - 4.3.1 obtaining satisfactory Planning Permission provided that following disposal of any Phase of the Development, the appointed development partner shall be responsible for relevant reserved matters applications;
 - 4.3.2 acquiring the Third Party land to enable each Phase of the Development to be undertaken;
 - 4.3.3 subject to the comments at paragraph 4.4, consideration and where appropriate LDC resolving to make use of compulsory purchase powers (CPO) under the Town and Country Planning Act to acquire any Third Party and Third Party leasehold land and extinguishing any necessary rights over the entire site;
 - 4.3.4 securing satisfactory technical due diligence on the entire site to assist with the procurement process;
 - 4.3.5 the procurement and appointment of a development partner to carry out the Development;
 - 4.3.6 disposal of the Development Property following completion of each Phase of the Development;
 - 4.3.7 anything else which is consistent with, necessary for or incidental to achieving any of the above.
- 4.4 The principals of the CPO strategy are identified at Schedule 2 but a formal 'CPO Strategy' is to be agreed between the parties which shall sit outside the terms of the Agreement. The CPO Strategy is to include an agreed form CPO indemnity which is to be prepared by SNS. A contractual joint venture is proposed as there is no separate entity to be created or managed and therefore there will be no separate company filings that need to be made or tax returns to be submitted. This type of joint venture is used for "one scheme" projects and will not require the pooling of assets and therefore there will be no SDLT liability in its formation. Each party is able to retain its property interest and retain the current income and this therefore reduces the SDLT liability until the land is disposed of to the development partner.
- 4.5 The proper costs in preparing any CPO case will be covered by SNS (all such costs will form part of deductible development costs) and an appropriate CPO indemnity is to be agreed

between the parties. Any land acquired by CPO will be vested in SNS and LDC as set out in the Business Plan.

- 4.6 In the event that LDC decide not to use their CPO powers, they will request that South Downs National Park use their CPO powers. The associated costs will form part of deductible development costs.

5. CONFIDENTIALITY AND FREEDOM OF INFORMATION

- 5.1 The parties are to observe the terms of the MOU which apply to these heads of terms and the proposed Agreement.

- 5.2 Subject to clause 5.1, the agreement is confidential subject to a number of exceptions to include:

5.2.1 for all purposes of complying with the requirements of the Agreement;

5.2.2 where the information is already in the public domain;

5.2.3 where legally requisite;

5.2.4 in the case of disclosure by SNS where commercially normal or sensible to do so;

5.2.5 to financial advisors, funders, prospective development partners and financial institutions; or

5.2.6 to HM Revenue and Customs or the Rating Authority; or

5.2.7 to respective auditors; or

5.2.8 to the extent necessary to obtain professional advice in relation to the determination of any dispute; or

5.2.9 for general marketing and publicity of the Development by SNS (at SNSs absolute discretion).

6. BUSINESS PLAN

- 6.1 [DN. The Business Plan will be scheduled and marked as commercially sensitive information for the purposes of FOI.]
- 6.2 The initial agreed form Business Plan prepared by SNS and agreed with LDC shall be annexed to the Agreement. It is acknowledged by the parties that an agreed business plan is in circulation, a copy of which is attached at appendix 2.
- 6.3 The Business Plan shall be reviewed and updated every quarter during the term of the Agreement. A recommendation will be made in connection with each revision of the Business Plan via the JV Property Board and this will be submitted for approval to each of the parties.
- 6.4 The parties shall seek to agree the terms of each revised business plan and disagreement is to be referred under the dispute resolution provisions under the Agreement.
- 6.5 The parties shall adhere to and observe the terms of the Business Plan (and each agreed revision thereof) which includes expenditure limits identified within the Business Plan.

7. JV PROPERTY BOARD

- 7.1 The JV Property Board is to be set up once Planning Permission is obtained to discuss and put forward a recommendation for a draft 'Procurement Strategy'. The JV Property Board will be responsible for co-ordinating, overseeing and making recommendations regarding the procurement process in line with the Procurement Strategy, once agreed.
- 7.2 The JV Property Board ("Board") shall not have powers to make binding decisions on behalf of either party.
- 7.3 LDC and SNS will have equal representation and equal voting rights on the Board.
- 7.4 The Board will be made up of six members as follows:
 - 7.4.1 a chairperson and a secretary (appointed jointly between the parties) to chair and minute the meetings;
 - 7.4.2 two appointments from SNS (director level); and
 - 7.4.3 two appointments from LDC (members of corporate management team).
- 7.5 The chair at each meeting shall have a casting vote in the event of a deadlock situation between the parties.
- 7.6 The representatives of each party may substituted with representatives of the same level/standing during the life of the Board.
- 7.7 SNS acknowledge that councillors of LDC may attend Board meetings (other than meetings or those parts of the meetings that are financially sensitive to which a closed meeting shall be held) but may not participate in order to be updated on the Project.
- 7.8 Either party may convene a meeting of the Board by giving to the other not less than 10 clear working days' notice stating the proposed time, venue and objectives of the meeting but meetings will take place no less than once in every quarter.
- 7.9 An appointed member of the Board shall circulate an agenda for each meeting to both parties at least 3 clear working days prior to an arranged meeting and within 5 clear working days following a meeting of the Board minutes of the meeting shall be circulated to the parties.

- 7.10 The Board shall be a forum to discuss matters in connection with the joint venture and make recommendations back to the relevant parties. The members of the Board will not have powers to bind either party in relation to matters under the Agreement.
- 7.11 Once a recommendation is made by the Board the decision must be referred back to LDC and SNS. If the parties are unable to agree then the matter is escalated to the more senior offices of each entity and ultimately to dispute resolution.

8. CONDITION PRECEDENT: SATISFACTORY WRITTEN PLANNING PERMISSION

- 8.1 The Agreement will be conditional on obtaining satisfactory written planning permission ("the Planning Condition") which is acceptable to both parties for the Development pursuant to the joint application submitted in March 2015 under reference SDNP/15/01146/FUL ("Planning Permission"). SNS shall procure the grant of Planning Permission with the assistance of LDC.
- 8.2 The Planning Condition must be satisfied in order for the Agreement to go unconditional which shall trigger the implementation of the JV Property Board and the preparation of a Procurement Strategy and a Relocation Strategy for each Phase. At this point it is not envisaged that vacant possession and acquisition of the Third Party land will have taken place.
- 8.3 SNS shall have the ability to appeal at their own cost if leading Counsel advises in writing there is a better than 50% likelihood of success and all associated costs are a deductible costs from the proceeds of any disposal.
- 8.4 SNS to cover the costs of the Planning Application (which shall form part of the project expenditure). A set of onerous conditions are to be agreed between parties (or each party to have an approved set of onerous conditions) which will dictate whether the Planning Permission is satisfactory for the purposes of the Agreement.
- 8.5 The parties are to enter into any required infrastructure agreements (including a Section 106 Agreement, which is currently being negotiated). While SNS shall lead negotiations on any required infrastructure agreements, the terms of any such agreement will need to be agreed between SNS and LDC.
- 8.6 The target date for the grant of Planning Permission is [October] 2015 (exact date to be agreed).
- 8.7 The longstop date for satisfaction of the Planning Condition shall be 9 months from the date of the Agreement subject to extension for an appeal for non-determination or refusal, if proceedings have commenced or should a referral have been made to an expert under the dispute resolution provisions, in which case the longstop date shall be extended to 15 working days after the relevant matter has been disposed of. After this date either party may terminate the Agreement on the other by way of notice in writing.

[DN. The target date and longstop dates are to be marked as commercially sensitive and it is to be acknowledged and agreed between the parties that these will be redacted for FOIA purposes.]

9. VACANT POSSESSION AND ACQUISITION OF THIRD PARTY PROPERTY

Obtaining vacant possession and acquiring the Third Party land shall be procured on a phased basis. Development for each Phase or a part of any Phase shall not commence until the parties are satisfied that vacant possession has been achieved and any relevant Third Party land has been acquired to allow the proposed development of a Phase (or part of any Phase) to commence. This shall be covered on a phase by phase basis under the Business Plan.

9.1 Vacant possession

- 9.1.1 LDC and SNS shall use all reasonable endeavours to obtain vacant possession of the whole of the Development Property from the date of the Agreement provided that vacant possession may be acquired separately for each Phase.
- 9.1.2 Notwithstanding the provisions of clause 9.1.1, LDC shall use all reasonable endeavours to obtain vacant possession of the LDC property and LDC acknowledge that this includes seeking to terminate or acquire the leasehold interests scheduled to the Agreement at appendix 3.
- 9.1.3 Vacant possession shall mean the delivery of a relevant Phase free from third party rights of occupation.
- 9.1.4 The Agreement shall provide for three separate target dates for vacant possession in line with each Phase of the Development subject to a proviso and acknowledgement by the parties, that as part of the disposal strategy for each Phase.

9.2 Third party property

- 9.2.1 SNS shall seek to acquire the Third Party land in line with the target dates discussed above for vacant possession. As above, this shall be subject to a proviso and acknowledgement by the parties, that as part of the disposal strategy for each Phase.
- 9.2.2 LDC shall fund the acquisition and termination of any leasehold interests derived out of the LDC Property.
- 9.2.3 SNS may require LDC to consider the use of its compulsory purchase order powers in order to acquire the third party property, in accordance with the provisions of Schedule 2.

10. PARTIES OBLIGATIONS

The parties' respective obligations under the Agreement shall be broken down into three headings:

10.1 Joint Obligations

- 10.1.1 both parties shall deduce title to the other of their respective land interests and to the development partner, when required;
- 10.1.2 mutual cooperation, disclosure and to act promptly and diligently in connection with their obligations under the Agreement;
- 10.1.3 observation of the following (once formalised and in agreed form):
 - 10.1.3.1.1.1 the Business Plan;
 - 10.1.3.1.1.2 the CPO Strategy;
 - 10.1.3.1.1.3 the Procurement Strategy; and
 - 10.1.3.1.1.4 the Relocation Strategy;
- 10.1.4 procure the grant of Planning Permission in form as would be deemed satisfactory and free from onerous conditions (in the agreed form) this includes an obligation to enter into infrastructure agreements;

- 10.1.5 insure their respective interests until responsibility for insurance passes to the development partner.

10.2 Santon North Street Obligations

- 10.2.1 provide an initial Business Plan and update this twice yearly (as discussed above);
- 10.2.2 provide and update a phase appraisal and financial appraisal on a quarterly basis in relation to the Development and provide copies to LDC;
- 10.2.3 not dispose of the SNS Property except in accordance with the terms of the Agreement (which includes restrictions on the registers of each parties titles);
- 10.2.4 carry out the procurement process to appoint a development partner for the delivery of the Development in accordance with the agreed Phasing Plan;
- 10.2.5 preparation of a draft Disposal Strategy;
- 10.2.6 to fund all the costs in connection with the Planning Permission up to the appointment of a development partner;
- 10.2.7 to fund the appointment of the Development Partner which forms part of a deductible development cost.

10.3 Lewes District Council Obligations

- 10.3.1 give due regard to secure the use by LDC of CPO powers (subject to the terms discussed above);
- 10.3.2 not to dispose of the LDC Property except in accordance with the terms of the Agreement (which includes restrictions on the registers of each parties titles);
- 10.3.3 not to grant any new tenancies or rights in respect of the LDC Property which cannot be terminated upon 3 months' notice by LDC provided that LDC shall notify SNS in writing on the grant of any such tenancies;
- 10.3.4 preparation of the CPO Strategy.

11. DISPOSAL STRATEGY AND PROCUREMENT OF DEVELOPMENT PARTNER

- 11.1 The parties shall carry out a joint procurement process and submit proposals to the Board in line with the disposal strategy for each phased disposal, as set out in the agreed Business Plan.
- 11.2 The proposal shall include (but not be limited to):
 - 11.2.1 the aims of the appointment of the development partner and whether this is in line with the Business Plan;
 - 11.2.2 a full programme for carrying out and completing each Phase of the Development within the development period;
 - 11.2.3 a detailed timeline for completion of each Phase of the Development within the development period;
 - 11.2.4 full details of the recommended professional team; and

- 11.2.5 financial appraisal detailing estimated costing for each Phase of the Development.
- 11.3 The appointment of a development partner shall be agreed between the parties by way of a procurement scoring system as detailed in the agreed Business Plan. Any dispute as to the appointment of the development partner shall be referred to dispute resolution under the Agreement, to be determined by an appointed expert.
- 11.4 Once agreed, the parties must use all reasonable endeavours to agree the terms of the development agreement and enter into the Agreement to enable the development partner to commence the Development.
- 11.5 The parties shall have the ability to acquire the freehold interest in any income producing asset created from the development as can be agreed by the parties in lieu of receiving a land value. However, any such arrangements/disposals:
- 11.5.1 shall be subject to recommendation through the Board and shall be sanctioned by both parties;
- 11.5.2 shall not be disposed of other than at market value.
- 11.5.3 These provisions shall not apply to the car park which will dealt with separately.

12. EQUALISATION

- 12.1 The interests of the parties shall be valued for equalisation purposes in accordance with an agreed land holding split, which is to be finalised and agreed between the parties but at present is anticipated as:
- 12.1.1 LDC: 35% [to be confirmed by survey and agreed between the parties]
- 12.1.2 SNS: 65% [to be confirmed by survey and agreed between the parties]
- 12.2 On the disposal of the whole or any part of the Development Property, sums due to LDC and SNS shall be subject to equalisation which shall be calculated by way of reference to the above percentages.
- 12.3 All sums due to SNS and LDC (prior to the equalisation calculation) shall be subject to deduction of:
- 12.3.1 all properly expended project expenditure/application costs to the grant of outline planning consent for the Development;
- 12.3.2 interest on all costs incurred by SNS from the date of the Agreement up to the first disposal at 1% over the Bank of England base rate;
- 12.3.3 all disposal costs including legal and associated fees;
- 12.3.4 the SNS project management fee as detailed at clause 12.5 below.

[DN: A worked example of the equalisation calculation for the Development shall be annexed to the Agreement and marked confidential for FOIA purposes].

13. DURATION

It is anticipated that the term of the Agreement shall be 10 years from the date of exchange of the Agreement broken down in accordance with Schedule 3.

14. TERMINATION

14.1 In the event that the Planning Condition has not been satisfied within 9 months of the date of the Agreement (subject to extension of time in the event of judicial review and/or third party challenge and prior to the date the Agreement goes unconditional) then either party may terminate the Agreement by way of notice on the other.

14.2 The development agreement entered into for each Phase (or part of a Phase) of the Development shall address termination provisions on non-commencement of the relevant Phase (or part thereof). It is agreed that LDC shall have the ability to terminate the Agreement in the event of not being able to secure a S123 / S233 Report confirming it is receiving best consideration. In the event that LDC have to terminate for this reason then they will not be liable for its proportion of the costs as set out in the current Interim Agreement. In the event of dispute, the matter can be the subject of third party determination.

15. DISPOSAL

15.1 The Disposal Strategy will include full details of the how the respective land interests will be disposed of as part of the development of each Phase. It is however anticipated that the disposals will be structured as follows:

15.1.1 the freehold interest in each Phase shall be transferred to a newco estate management company after the disposal of a long leasehold interest to the Development Partner (this shall be a joint obligation of both parties);

15.1.2 once a development partner is appointed the parties shall transfer their interests in the relevant Phase (or part thereof) to the development partner by way of the grant of a building lease;

15.1.3 on completion of the relevant Phase (or part thereof) the parties shall dispose of their relevant interests by way of a freehold transfer or the grant of a long lease. This is to be discussed and addressed further under the Disposal Strategy.

15.2 The precise basis on which land will be disposed of as above will depend on a range of factors to be discussed and agreed between the parties and addressed within the Disposal Strategy. In particular on whether the parties wish to effect complete disposal of their respective land interests prior to or following development in return for a capital sum, or to lease them and generate a revenue receipt, or a combination of the two.

16. DEFAULT

16.1 If there is a breach by LDC or SNS of any of their respective obligations under the Agreement which:

16.1.1 is material and/or persistent having regard to all relevant circumstances; and

16.1.2 which, where capable of remedy, is not remedied within a reasonable time, or

16.1.3 if there is an insolvency event, or

16.1.4 SNS is the subject of a change of control;

Then the non-defaulting partner shall have the option to wind up the joint venture.

16.2 Should paragraph 16.1.6 apply, any on-site works which have commenced shall continue until they are complete. The benefit of any site investigations and due diligence will be provided for the benefit of both parties, so that this is available to each of them whether or not the joint venture proceeds or is terminated.

16.3 Default following commencement of a Phase will be covered under the relevant development agreement.

17. MISCELLANEOUS

17.1 Partnership

The Agreement will expressly specify that it does not create a partnership between the parties.

17.2 Non merger

The Agreement will not merge on the date the Agreement becomes unconditional

17.3 Charging and Land Registry

The LDC Property will not be capable of being charged to secure the obligations under the Agreement but the LDC and SNS will procure that suitable entries are made on the register of their respective titles to ensure that if either party unlawfully disposes of its land interest, its obligations would be enforceable against that party's successor in title by way of deed of covenant. This will be supported by way of an appropriate restriction.

17.4 VAT

SNS have opted to tax in respect of the SNS Property.

17.5 Assignment

The partners will not assign the benefit of the Interim Agreement or the Agreement which will be personal to the individual partners.

SNS will not affect a change of control during the subsistence of the Agreement.

17.6 Dispute Resolution

If following a recommendation from the Board the parties cannot reach an agreement on any matter in connection with any matter under the Agreement then:

17.6.1 the matter shall be escalated to the most senior offices of each party for determination;

17.6.2 if the matter cannot be resolved once escalated pursuant to clause 17.6.1 then the matter shall be referred for determination by a suitably qualified independent expert whose determination shall be binding (except in the case of manifest error).

Clause 17.6.1 and 17.6.2 will not apply in the event of a dispute which is so significant that it requires one of the parties to seek an immediate injunction.

18. NON FETTER

Save as otherwise expressly provided, it is the intention that the obligations of the parties under these heads of terms and proposed agreements are obligations of the parties in their capacity as contracting counterparties. Nothing in them shall operate as an obligation upon, or in any other way prejudice, fetter or constrain the parties in any other capacity nor shall the exercise by either party of their duties, obligations, powers (or rights in the discharge of its functions as a statutory authority in the case of LDC) lead to any liability under the heads of terms or agreements (howsoever arising) on the part of one party to the other.

Appendix 2 – Items to be agreed by landowners (LDC and NSQ Ltd) by 31 December 2017

<i>Financial Model</i>	The Parties are to agree the Financial Model (subject to s123 best value and consideration) to be annexed to this Agreement.
<i>Business Plan</i>	The Parties are to agree the Business Plan to be annexed to this Agreement.
<i>Funding Strategy</i>	The Parties are to: <ul style="list-style-type: none"> • identify and agree sources of funding; • confirm what security is required and the priorities; and • consider and draft accordingly regarding the impact of external funding on the waterfall of the distribution of proceeds and any internal funding from NSQ to Artisan Real Estate Investors Limited to fund construction will rank the same as NSQL's money and will rank behind external funders.
<i>Returns</i>	The Parties are to each: <ul style="list-style-type: none"> • agree their form of return including any assets which form part of such return; and • agree how the returns are to be taken
<i>CPO</i>	The Parties to agree drafting in relation to: <ul style="list-style-type: none"> • CPO if the land interests cannot be acquired by private treaty; • appropriation; and • the form and term of the CPO indemnity agreement.
<i>Project Expenditure</i>	Both Parties to agree: <ul style="list-style-type: none"> • whether costs are being apportioned across all Phases; and • funding of the Infrastructure.
<i>Implementation of Planning Permission</i>	The Parties to agree whether this Agreement should include any controls on the implementation of the Planning Permission.
<i>Appointment of Development Partners</i>	Drafting to be agreed by the Parties regarding the appointment of Development Partners (including compliance with Public Contracts Regulations 2015 (if applicable)) and consideration to be had regarding the appointment of third party Development Partners and (if approved by LDC) Artisan.
<i>Appointment of Artisan Real Estate Investors Limited, registered in the Isle of Man under company number 004313V as a Development Partner for Phase 1</i>	If LDC approves the appointment of Artisan Real Estate Investors Limited for Phase 1 then the Parties shall agree any required amendments to this Agreement.

<i>Development Manager services and fee to be provided by Artisan Real Estate Investors Limited if it is appointed as Development Partner for Phase 1 and as Development Manager</i>	<p>The Parties to agree the Development Manager services to be provided, fee and terms of appointment if Artisan Real Estate Investors Limited is appointed as Development Partner for Phase 1.</p>
<i>Details of guarantor for Artisan Real Estate Investors Limited's obligations as Development Partner</i>	<p>If LDC approves the appointment of Artisan Real Estate Investors Limited as Development Partner for Phase 1 and the identity of the guarantor which is put forward by Artisan Real Estate Investors Limited then the Parties shall agree:</p> <ul style="list-style-type: none"> • any required amendments to this Agreement (and form of Development Agreement); and • the form of security.
<i>Grant of a Development Agreement, enforcement of terms and interaction with property interests</i>	<p>The Parties to agree:</p> <ul style="list-style-type: none"> • the triggers for the grant of the Development Agreement (for example vacant possession, assessment of viability of the Phase, an approved phase proposal which has been prepared by NSQL); • when title is deducted by the relevant Landowner; • which parties are to be a party to the Development Agreement depending on land interests; and • enforcement of the Development Partner's obligations in the Development Agreement, particularly enforcement by LDC and NSQL of Artisan Real Estate Investors Limited's obligations if appointed as Development Partner for Phase 1 and enforcement by NSQL of other Development Partner's obligations.

<i>Form of Development Agreement</i>	<p>The Parties to agree the form of Development Agreement including;</p> <ul style="list-style-type: none"> • the development obligations; • extent of approvals of detailed design by each Party; • procurement of contractors and professional team and level of approval by each Party as to the identity of the contractors, sub-contractors and professional team; • form and content of warranties; • requirements for funders; • land interest granted to the Development Partner in order to carry out the Development and long term disposals (and timing); • appropriate termination and step in rights; and • dispute resolution and boiler plate clauses. <p>The Parties recognise that the Development Agreements for Phase 1 may differ from that for Phases 2 and 3 if Artisan Real Estate Investors Limited is appointed as Development Partner for Phase 1.</p> <p>If Artisan is appointed as a Development Partner the Parties to discuss and agree whether if Artisan Real Estate Investors Limited becomes insolvent or breaches the terms of the Development Agreement whether this gives LDC a right to terminate this Agreement.</p> <p>The Parties also to agree the following:</p> <ul style="list-style-type: none"> • whether there will be one party who owns all of the land within a Phase; • if there is to be one owner of land within a Phase, which Party is anticipated to be the owner of each Phase; and • ownership and management of the Common Parts.
<i>Long stop dates if the relevant Phase is not drawn down</i>	<p>The Parties to agree long stop dates for the commencement of development of each Phase and if such date expires then each Party has a right to terminate the whole Agreement. The Parties to agree whether the right to terminate the Agreement can apply just in relation to a particular Phase.</p>
<i>Non-delivery</i>	<p>If a Development Agreement is not entered into for Phase 1 by 31 December 2017 or if start on site of Phase 1 does not occur by 1 March 2018, then the interests of both parties will be jointly marketed for a value at least equal to that previously agreed by the parties. If not sold, the land remains in their respective ownerships.</p> <p>To be agreed by the Parties on what basis is the value to be determined (subject to best value and consideration).</p>
<i>Estate Management Company</i>	<p>The Parties to agree who is on the board and the identity of the shareholders of the estate management company.</p>
<i>Historic Expenditure</i>	<p>Costs incurred in respect of the Development by both LDC and NQSL prior to the date of this Agreement to be agreed by the Parties.</p>

Other	<ul style="list-style-type: none"> • Land held by third parties but needed to deliver the Development under the s106 Agreement • s106 Agreement obligations (<i>a strategy, including allocation of responsibility, for meeting the S106 obligations</i>) • Planning Permission Conditions (<i>a strategy, including allocation of responsibility, for discharging the outstanding conditions</i>) • Appointment of a monitoring surveyor • Appointment of a Development Manager and services (if Artisan is not appointed)
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Appendix 3 – Clause 8 of the LCA: Appointing Artisan as Development Partner (by 31 December 2017)

8 Appointment of Artisan as Development Partner

- 8.1 [NSQ Ltd. has proposed that Artisan Real Estate Investors Limited, registered in the Isle of Man under company number 004313V, is appointed as a Development Partner for Phase 1.
- 8.2 In order for LDC to confirm whether or not Artisan Real Estate Investors Limited is an acceptable Development Partner it must satisfy itself of the company's capability and financial standing to deliver Phase 1 of the Development.
- 8.3 NSQ Ltd. shall provide such information relating to Artisan Real Estate Investors Limited as reasonably requested by LDC, as soon as practicable following such requests, such information to include (without limitation):
 - 8.3.1 three years audited accounts and other evidence of financial capacity to provide the equity funding required for the Development;
 - 8.3.2 two case studies of past projects of a similar size and scope to the Development to include: mix of uses, large scale residential and infrastructure, supported by two written references from clients and/or lenders, with contract value and performance rating, including Health & Safety with full contact details for clients for LDC to contact them independently;
 - 8.3.3 details of any convictions, bankruptcy, insolvency of organisation, director, partners, shareholders including details of any matters pending;
 - 8.3.4 roles and CV's of the Artisan project team, including identification of project team manager (lead) and second lead;
 - 8.3.5 details of the proposed funding for Phase 1 construction cost;
 - 8.3.6 the identity of the proposed guarantor and audited accounts for such proposed guarantor for the three completed financial years of accounting prior to the date of this Agreement, together with and/or such other evidence which reasonably demonstrates that the proposed guarantor is of such financial standing and covenant strength to be able to comply with and discharge obligations that will be binding on Artisan Real Estate Investors Limited;
 - 8.3.7 updated Business Plan (including indicative programme and rationale);
 - 8.3.8 updated Financial Model; and
 - 8.3.9 a risk register identifying:
 - 8.3.9.1 risk type;
 - 8.3.9.2 probability;
 - 8.3.9.3 impact on cost/programme/quality;
 - 8.3.9.4 mitigation measures; and
 - 8.3.9.5 residual risk levels.
- 8.4 NSQ Ltd. shall use reasonable endeavours to provide all information requested by LDC concerning Artisan Real Estate Investors Limited and any proposed guarantor by as soon as reasonably practicable and in any event by 31 December 2017.

- 8.5 If the information requested by LDC regarding Artisan Real Estate Investors Limited and its proposed guarantor is:
- 8.5.1 not provided;
 - 8.5.2 is incomplete; or
 - 8.5.3 insufficient to permit LDC [acting properly and reasonably) to confirm whether Artisan Real Estate Investors Limited is an acceptable Development Partner for Phase 1,
- by 31 December 2017 then Artisan Real Estate Investors Limited is deemed not to be an acceptable Development Partner for Phase 1.
- 8.6 If LDC reviews the information requested by it and provided by NSQ Ltd. regarding Artisan Real Estate Investors Limited and the proposed guarantor and is of the opinion that Artisan Real Estate Investors Limited is not acceptable as a Development Partner of Phase 1 then the Parties agree to work together to identify a third party Developer Partner of Phase 1, the terms of how the third party Developer Partner is identified and appointed by the Parties is to form part of the variation of this Agreement referred to in clause 7.

Appendix 4 – NSQ Development Delivery Route: Draft timeline

