Agenda Item No:	**9.4**	**Report No:**	**4/16**
Report Title:	**North Street Quarter Joint Venture Agreement**		
Report To:	**Cabinet**	**Date:**	**7th January 2016**
Cabinet Member:	**Cllr Andy Smith**		
Ward(s) Affected:	**Lewes Bridge, Lewes Castle, Lewes Priory**		
Report By:	**Director of Business, Strategy and Development**		

Contact Officer(s)-

Name(s): **Max Woodford**
Post Title(s): **Head of Regeneration & Investment**
E-mail(s): **max.woodford@lewes.gov.uk**
Tel No(s): **01273 661378**

Purpose of Report:

To agree the heads of terms of a joint venture (JV) agreement between LDC and Santon North Street Ltd, and to authorise officers to complete negotiations and sign the final JV agreement.

To authorise preparatory work in preparation for investigating and utilising compulsory purchase powers necessary in relation to those areas edged green and blue on the annexed Plan (as may be amended), such work to include (but not be restricted to) investigating all relevant third party interests required to deliver the development and appointment of external professional advisors to advice on the process and possible compensation costs.

To agree representation on the Joint Venture Board and delegate relevant decision making powers to officers sitting on the Board.

To allocate capital funding necessary to deliver the project.

Officers Recommendation(s):

1 To agree the Heads of Terms for the proposed Joint Venture Agreement between LDC and Santon North Street Ltd ('SNS') at Appendix 1.

2 To authorise the Director of Business, Strategy and Development and the Director of Corporate Services, in consultation with the leader of the council, to conclude negotiations and authorise the execution of the the final Joint Venture Agreement based on the Heads of Terms at Appendix 1 and any necessary associated documentation and collateral agreements.

3 To authorise the publication of a Voluntary Ex Ante Transparency Notice in relation to the appointment of SNS.

4 To Authorise the Chief Executive, the Director of Business, Strategy and Development; and the Director of Corporate Services (or other such officer as they put forward as substitutes) to sit on the Joint Venture Board

5 To note and agree the procurement approach outlined in this report and to waive any requirement in the council's Contract Procedure Rules which might otherwise require a different approach. Further, to authorise the LDC representatives on the JV Board to agree the procurement approach to the selection of partners nominated by SNS to deliver the development, such authorisation to include delegation for them to approve any further exceptions to the council's Contract Procedure Rules should that become necessary.

6 To authorise the Assistant Director of Corporate Services to exercise the council's powers of appropriation under section 122 of the Local Government Act 1972 so that the land at the North Street site, as identified by being edged green on the plan at Appendix 2, may be appropriated for planning purposes at such time as it comes under the council's control.

7 To authorise the Director of Business Strategy and Development and Assistant Director of Corporate Services to undertake work to investigate and prepare a case for exercising the council's compulsory purchase powers on all land at the North Street site, as identified by being edged green on the plan at Appendix 2.

8 To authorise the Director of Business Strategy and Development and Assistant Director of Corporate Services to undertake work to investigate and prepare a case for exercising the council's compulsory purchase powers on land at Springman House, North Street, Lewes, as identified by being edged blue on the plan at Appendix 2.

9 To make an allocation of £1.7m for the delivery of the project to be financed from a combination of the Unallocated Reserve and capital receipts.

Reasons for Recommendations

1 The North Street Quarter development is making good progress with the SDNPA Planning Committee resolving to grant planning permission for the scheme subject to the completion of a section 106 agreement at its meeting on 10th December 2015. The recommendations in this report enable LDC to complete the commercial negotiations and manage the delivery of a scheme that meets both the planning policy for the North Street area and the landowner's priorities set by Cabinet at its meeting on 24th April 2014.

Information

2 Background

2.1 Cabinet received a number of reports relating to the North Street development (see Appendix 3 for full list of Cabinet decisions). The report on 24 April 2014 set out the objectives that LDC as landowner wanted to achieve from the redevelopment of the site. It stated:

"the Council approves the following as its prioritised list of objectives as landowner:

Essential – a balance of:

- *Achievement of the policy target of 40% affordable housing as far as possible, to meet local needs in partnership with a Registered Provider e.g. a housing association; and*
- *Maximisation of a return on assets through a recurring revenue stream (as described above).*

Desirable

- *Up to 40,000 sq ft of commercial floor space, including a cultural quarter, leisure, retail and a health facility*
- *Extra care housing; and*
- *Improved public realm and improved connectivity with the town"*

2.2 The same Cabinet meeting also agreed to LDC entering into an Interim Agreement with Santon North Street Ltd (SNS). That agreement governs the process and apportionment of costs for submitting a planning application. It set up a shadow Joint Venture Board to mutually agree the submission of the application.

2.3 The next step in the commercial partnership between LDC and SNS is to enter into a full Joint Venture agreement for the North Street Quarter. The proposed Heads of terms of the JV agreement are attached at Appendix 1, and it is recommended that these are approved and the Director of Business, Strategy and Development and the Director of Corporate Services are authorised to conclude negotiations and authorise the execution of the final Joint Venture Agreement and any associated documentation based on the Heads of Terms.

2.4 The JV Agreement outlines the working relationship between the parties. It is not a sales or development agreement, and as such does not specify the exact return LDC will receive. Instead, it sets out a process for each party to put their land into the proposed scheme when required with vacant possession; to acquire any third party land that is necessary to complete the regeneration of the area and meet the planning policy requirements of policy SP3 in the Joint Core Strategy; appointment of a development partner to take forward elements of the scheme; and to then split any profits from the scheme.

2.5 This sharing of benefits is done through a process of 'equalization' through land ownership. This means that the percentage of the area of the combined development site each party puts in equates to the percentage of the profits they take out. This has the effect of sharing the infrastructure costs fairly across the site. Currently, LDC are putting in approximately 35% of the site and so will take approximately 35% of any profits. The methodology allows for this quantum to alter dependant upon whether either party acquires any of the third party landholdings within the scheme.

2.6 As part of the Joint venture arrangements, SNS will be granted exclusivity to undertake all works and services necessary to implement and deliver the planning permission and the development. It is anticipated that SNS will not directly develop any of the site, but the development will be carried out through third party developers who will be procured by SNS via competition and will enter into commercial agreements as necessary. This process will be overseen by a Joint Venture Board that will comprise equal representation from LDC and SNS at officer level.

2.7 It is proposed that the LDC representatives on the JV board consist of the Chief Executive, the Director of Business, Strategy and Development; and the Director of Corporate Services, or other such officer as they put forward as substitutes. The board will take over from the shadow JV board once the planning permission for the scheme is finalised. It will take decisions in a number of areas, including: agreeing the final business plan and selecting development partners, Registered Providers of affordable housing and operators/tenants of key elements of the scheme (e.g. the creative workspace operator). The Board is a forum to discuss matters in connection with the joint venture and make recommendations back to the relevant parties. The members of the Board do not have powers to bind either party in relation to matters under the Agreement. However, in order to make efficient progress the LDC representatives on the board will need to be able to take certain decisions for the council at JV Board meetings to ensure the development can progress. They will do this through use of their delegated decision making powers.

2.8 The selection of SNS as a joint venture partner to undertake the development and the contractual arrangements to appoint development partners and operators of spaces will have procurement implications. The legal advice at section 4 sets out the exception to the public procurement rules which allows the council in these circumstances to appoint SNS to undertake the development through the use of the negotiated procedure without prior competition. As it will be SNS who has the exclusive right to undertake the development (in accordance with the JV Agreement) it will not be necessary to undertake further OJEU procurement processes for SNS to appoint those who it contracts to undertake the work. The parties may however, under the terms of the JV Agreement decide to run some form of competition for those undertaking the development. In addition, outside of the exclusive position of SNS, the council will need to observe the public procurement rules in so far as they may apply to any public contracts it awards directly for on-going matters (e.g. a car parking operator.

It is recommended that the council issue a voluntary ex ante transparency notice (VEAT) in OJEU before it enters the joint venture arrangements and to observe the standstill period to allow for objections to the approach taken. The Cabinet is asked to note and agree the procurement approach outlined above and to waive any requirement in the council's Contract Procedure Rules which might otherwise require a different approach. The Cabinet is also asked to authorise the LDC representatives on the JV Board to agree the procurement approach to the selection of partners nominated by SNS that can most closely deliver the priorities set out at paragraph 2.1, such authorisation to include delegation for them to approve any further exceptions to the council's Contract Procedure Rules should that become necessary.

2.9 As well as the Joint Venture Board with its commercial focus, it is recommended that Members retain an oversight of the scheme and the work of the Joint Venture through a 'North Street Member Board.' This group will receive updates on the progress of the scheme and have an advisory input into the decisions of the JV Board. Membership of the North Street Member Board will be determined by the Leader of the council, in consultation with the leader of the main opposition group.

2.10 As set out above, this agreement outlines the principles of how profits will be shared, but not what the actual income will be – that is dependent on offers from developers and issues like building costs and end values at the time of building. However, based on current figures our independent financial advisors BGVA have assessed viability of the overall development, including considering the loss of income from existing leases and car parks and the costs of securing vacant possession. BGVA have assessed the market appetite and viability of the overall scheme, should it secure planning permission and are confident that the development opportunity will be highly sought after and produce land receipts and / or income that will exceed the Council's existing value / income stream derived from these assets. This will form the basis of the valuation report to be produced prior to signing the Joint Venture arrangement.

2.11 As set out at 2.1 above, the preference is for LDC to receive a revenue stream rather than a capital lump sum. There are a number of revenue generating elements to the scheme, including commercial space, car parking and ground rents. The Joint Venture agreement will set out a process whereby the partners can agree to offset some of their capital receipt to instead take one of these elements of the scheme at their market value. The exact end uses that LDC takes on is not being decided at this stage and will be dependent on values and predicted income streams closer to development. This would be decided on a commercial basis and in negotiation with SNS by the LDC representatives to the JV board.

2.12 One step that may be necessary to deliver the completed development is to undertake a compulsory purchase order (CPO) of third party land interests on the North Street site. This may take the form of buying out leases on sites where LDC owns the freehold, buying sites within the development area that do not belong to one of the partners, or clearing title on land. LDC have the option of having CPO costs indemnified by SNS. This report seeks consent for officers to investigate and prepare the case to support the preparation of a CPO on the land identified by being edged green on the plan at Appendix 2. Any recommendation to authorise the making of a CPO in relation to this particular site would come to a future Cabinet meeting for approval.

2.13 In addition to the development site itself, it is also necessary to acquire the site at Springman House, North Street (shown bounded in blue on the plan at appendix 2) and the council may need to do so by compulsory purchase. Relocation of the fire station is referenced in the Infrastructure Position Statement, and Springman House has been identified as an appropriate site to relocate it. The relocation of the fire station is also necessary to facilitate the carrying out of re-development of the North Street site in line with policy SP3. However, attempts to purchase the site on a commercial basis have not been successful thus far, and it is therefore expedient to investigate and prepare the case for making a CPO. Any recommendation to authorise the making of a CPO in relation to this particular site would come to a future Cabinet meeting for approval.

2.14 In addition or in place of CPO, the council may need to use its powers under section 122 of the Local Government Act 1972 to appropriate the land for planning purposes. Section 237 of the Town and Country Planning Act 1990 provides that where land is held for planning purposes and work is done in accordance with planning permission, third party rights are overridden. Thus an effect of appropriation for planning purposes is to remove the ability of a third party (with the benefit of any such right) obtaining an injunction to prevent the development; it therefore protects the council and developers from the risk of the development process being stopped once it has started. The rights of third parties whose private interests may be affected by development are protected to the extent that they have a right to compensation against the local authority in relation to the right overridden. The council however will be indemnified against any such claims by SNS or its nominee developers. The council will opt for the most efficient mechanism to reduce risk of problems arising from other interests in the land, depending on the outcome of negotiations and more detailed examinations of title. However, it is recommended that both processes, i.e. CPO and appropriation, be authorised across both areas shown in the plan at appendix 2.

2.15 Delivery of the project requires an allocation of funding to cover both project costs and the costs associated with achieving vacant possession. This is set out in section 3, below, and is expected to require a total allocation of £1.7m. The costs linked to buying back leases are based on existing use valuations, but more detailed valuations based on the fact the sites may need to be bought under a CPO will be undertaken following this report. It is not expected to be the case, but if the costs do come in as higher than the amounts shown below, then a further Cabinet authorisation will be sought.

3. Financial Appraisal

3.1 The Council's existing land interests form 3 distinct elements:

Freehold land	0.5 acres	Recycling centre and Rifle club.	
18-25 North Street	1,85 acres	industrial/commercial on	long leases
Brook Street Car Park	0.6 acres	car park	

3.2 The Council is going to contribute circa 3 acres to the joint venture arrangement of which 60% of its land interest is currently let out on long leases without break clauses, the majority of which have another 50 years until lease expiry. These tenancies are producing an income stream of circa £45,000 p.a. for the Council. These units all suffered severe flood damage in 2000 and their rental and capital value will always be held back until flood prevention measures are put in place to prevent them flooding again.

3.3 The Brook Street car park generated gross receipts of circa £61,000 to the Council in 2014/2015. The Council therefore receives a total income stream of circa £105,000 p.a. from its existing landholdings at North Street. The Council appointed Oakley Chartered Surveyors to assess the likely cost of acquiring the leasehold interests and a parcel of third party land. In addition we have to factor in an estimated cost of compensation and relocation for leaseholders.

3.4 Therefore, for the Council to merge its land interests into the joint venture arrangement with vacant possession, it will eventually have to forgo an annual income stream of circa £45,000 on its current commercial investment, circa £61,000 gross income from the Brook Street car park and have to pay circa £1,400,000 in capital costs.

The total estimated cost is summarised below:

Cost	£
Capital costs	1,400,000
Loss of current rental income during build (2 years)	90,000
Loss of Car Park income during build (2 years)	122,000
Total Delivery costs	***1,612,000***
Legal advice and valuations	35,000
Total Project costs	***35,000***
Total	**1,647,000**

3.5 By allowing for a contingency, total funding of £1.7m will be needed for this project. The current projected balance held in the Unallocated Reserve at 31 March 2018 is £2m, and £3m is currently retained as capital receipts generated from the sale of General Fund property assets. A combination of these sources can be used to finance this project on an interim basis. Reserves can then be replenished from:

- the Council's entitlement to a share of the land receipts from the sale of all the development parcels together with an entitlement to receive overage from the eventual sale of the private residential units.
- new income streams. The Council has the ability to "trade" its share of the land receipt for income producing assets instead at its own choosing. The intention would be to select those assets that will be able to generate a long term secure income stream from the Council.
- 'New Homes Bonus'. This grant scheme currently forms part of the Government's funding arrangements for local authorities rewards the Council with a grant of £1,200 pa for 6 years for each new home built. Assuming that this scheme remains in place and unchanged following the Government's spending review, the total grant receivable as a result of this development would be in the region of £2.9m.

3.6 BGVA have assessed the market appetite and viability of the overall scheme, should it secure planning permission and are confident that the development opportunity will be highly sought after and produce land receipts and / or income that will exceed the Council's existing value / income stream derived from these assets.

3.7 At current council tax amounts, the annual additional council tax income to the Council would be in the region of £80,000. The development will generate business rates from an expected 139,000 square feet of commercial space. Under the Business Rates Retention mechanism, the Council will benefit from a share of this business rates growth.

4. Legal Implications

4.1 Compulsory Purchase

Compulsory purchase is a measure of last resort and may only be exercised where there is a compelling case in the public interest.

Before making a compulsory purchase order (CPO), the council must demonstrate that it has taken reasonable steps to acquire all of the land and rights included in the Order by agreement. In the case of Springman House, attempts were made to acquire the site by commercial agreement (see paragraph 2.13 above) but these proved unsuccessful. That said, the council should, before and during the process of making a CPO in respect of Springman House, continue to explore with the legal owners any options for acquiring the site other than doing so compulsorily.

The council may make a CPO only if permitted by Act of Parliament and where the provisions of that legislation match the purpose the council wishes to achieve in making the order.

In relation to Springman House, the most relevant CPO enabling power is section 226(1)(b) of the Town & Country Planning Act 1990. This permits the council to acquire compulsorily any land in its area in circumstances where it thinks that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land.

The statutory phrase "or in relation to the land" is important in the context of Springman House. The scheme of development, redevelopment or improvement for which the land needs to be acquired does not necessarily have to be taking place on that land so long as its acquisition can be shown to be essential to the successful implementation of the scheme. Thus, in its statement of reasons for the Order, the council would seek to demonstrate that acquiring Springman House was necessary to enable the fire station to relocate there, which in turn frees up the vacated fire station site for re-development.

The procedure for making a CPO is governed by the Acquisition of Land Act 1981 and associated regulations. Once made, the Order requires authorisation by the Secretary of State (a process known as "confirmation"), who must consider all relevant objections before deciding whether to accept or reject the Order. Objections may be heard by way of public inquiry.

This report seeks authority to carry out preparatory work to establish the case for making a CPO on the North Street and Springman House sites. Approval to make one or both CPOs would require additional resolutions of Cabinet on the basis of further reports from officers, once the outcome of preparatory work is known.

4.2 Public Procurement

The sale, purchase or lease of land and the buildings on them by the Council is not in itself subject to the European public procurement regime and the Public Contracts Regulations 2015 (the Regulations). However sometimes the conditions attached to a land disposal (via sale or lease) may create a public contract governed by the procurement regime.

The Regulations allow the negotiated procedure without advertisement to be used to award a works or services contract (and therefore a direct award of the contract to be made without issuing an OJEU notice or running a tender process) were the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons:

(i) competition is absent for technical reasons;

(ii) the protection of exclusive rights, including intellectual property rights;

The exceptions set out in points (i) and (ii) shall only apply when no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement.

The exclusive rights argument is often used where a developer owns all or most of the land to be developed and, by virtue of its land ownership, it is argued that as land owner they should be regarded as having an "exclusive right" to carry out the development required, or that it would otherwise be impractical to tender the works/services.

It is unlikely in this case that the land transaction exclusion can be confidently relied upon, because the Council is seeking to exercise control over the whole development and will be receiving direct economic benefit beyond simple overage. However it is considered that the Council can use the “exclusive rights” exemption which would allow the negotiated procedure without advertisement to be used to award a works or services contract directly to SNS.

In summary this is because:-

(a) Santon’s land cannot be acquired under a CPO;

(b) The development cannot be built elsewhere; and

(c) Santon will not agree to anyone else constructing the development.

It is still possible for the parties to agree that certain sub-appointments will be undertaken through appropriate forms of competition and even OJEU competitions run by the joint venture partner on behalf of the Council. This will be discussed at the JV Board to ensure value for money is achieved.

The council can reduce risk of a claim to have the contract set aside after it has entered into it by issuing a notice in OJEU in advance (a Voluntary Ex Ante Transparency Notice “VEAT”) which sets out a short description of the arrangements and the justification for not going through an OJEU procurement. An economic operator wishing to challenge this must do so within 10 days from the publication of the notice otherwise they lose the right to have the contract set aside if they have not issued proceedings before it is entered into. There is still the potential for a claim in damages to be made if in fact the contract should have been awarded through a procurement process, but this must be made within 30 days of when the party making the claim first knew of the grounds which give rise to the claim.

It is recommended that the council issue a VEAT before it enters the JV Agreement and also has a collateral agreement with SNS to agree the course of action should a challenge be made to the arrangements or for damages.

4.3 Land Disposal Powers and State Aid

The council has power to dispose of land or an interest in land under either the section 123 of the Local Government Act 1972 or (if held for planning purposes) under section 233 Town and Country Planning Act 1990, but it may not do so otherwise than by a short tenancy, for consideration less than the best that can reasonably be obtained without the Secretary of State’s consent.

With regard to State Aid, the council should either be looking at meeting the European Commission's guidelines for the sale of land or demonstrating that it is State aid compliant through one of the other routes available to it.

The Commission’s Land Communication describes the procedures that allow Member States to handle sales of land and buildings in a way that automatically precludes the existence of State aid. It requires the sale of land for "market value" through (i) an open and unconditional bidding process or (ii) an expert valuation.

If the two situations outlined are not possible in this process, then in order to assess whether a sale of land by the Council (and indeed the overall JV arrangements) confers State aid upon a private sector partner, the Market Economy Vendor Principle (“MEVP”) should be applied.

MEVP requires an assessment of whether the public body in question is behaving as a rational entity acting under market economy conditions. It requires a comparison against a hypothetical private sector seller in comparable circumstances to those of the public authority.

The council will have benefit of expert independent valuation and commercial advice to confirm that the land disposal and overall JV arrangements meets the requirements of the land disposal provisions and is also state aid compliant.

4.4 Other Relevant Considerations

General Consideration of Council’s Fiduciary Duty - in deciding whether to and how to exercise its powers in relation to this proposal Cabinet must consider the council’s fiduciary duty to conduct its administration in a fair and business-like manner, with due regard to the interest of council tax payers who might be directly affected by the project as well as those across the wider district. Balancing the benefits and disbenefits is a matter for the Council's discretion.

Best Value (Local Government Act 1999) – the council is required to make arrangements to secure continuous improvement in the way its functions are exercised, having regard to economy, efficiency and effectiveness. The Statement of Community Involvement set out details of consultations which have taken place and the Act requires the Council to carry out appropriate consultation as implementation of the project progresses

Public Services (Social Value) Act 2012 – the council must consider how its intended procurement , and the way in which such procurement is carried out, might improve the economic, social and environmental well-being of the area. Here, the provision of new housing, flood defences, workspaces and sustainability measures are part of the improvement.

5. Risk Management Implications

5.1 the following risks will arise if the recommendations are not implemented, and I propose to mitigate these risks in the following ways:

Risk	Likelihood	Impact	Mitigation
Economic risk: Failure to complete the JV would leave the existing businesses susceptible to flooding which could remove the entire creative cluster from the town. That risk would remain in perpetuity, limiting the ability of businesses to invest in their premises or find insurance.	High	High	The only way to mitigate this risk is by executing the JV and completing the development

5.2 The following risks will arise if the recommendations are implemented, and I propose to mitigate these risks in the following ways:

Risk	Likelihood	Impact	Mitigation
The scheme proves to be unviable	Low	Medium	As set out elsewhere, the viability has been looked at closely and will continue to be monitored. LDC is not exposed to planning costs unless it decides to pull out of the development unreasonably.
Financial risk to LDC – i.e. the scheme returns less than the existing income from the site.	Low	High	As set out elsewhere, the viability has been looked at closely and will continue to be monitored. Existing land values reflect the flood blighted nature of the area.

Equality Screening

6 See Appendix 5

Background Papers

7 None

Appendices

8	Appendix 1	Proposed Heads of Terms of the Joint Venture Agreement
	Appendix 2	Plan of the North Street Quarter Site
	Appendix 3	North Street Development, Summary of Cabinet Decisions to Date
	Appendix 4	Letter from BGVA
	Appendix 5	Equality Analysis Report

Appendix 1 Proposed Heads of Terms of the Joint Venture Agreement

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 are subject to 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 3.

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 reasonable and 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. Again, an appropriate CPO indemnity is to be agreed between the parties and any land acquired by CPO will be vested in SNS and LDC as set out in the Business Plan.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 The initial agreed form Business Plan prepared by SNS and agreed with LDC shall be annexed to the Agreement. The Business Plan will be scheduled and marked as commercially sensitive information for the purposes of FOI. .

6.2 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.

6.3 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.

6.4 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 not 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 it is agreed by the JV Property Board and 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 2.

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 the Business Plan;

10.1.3.2 the CPO Strategy;

10.1.3.3 the Procurement Strategy; and

10.1.3.4 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 Limited 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 a 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 a 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.

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;

[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 long leasehold transfer. 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 no 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.

SCHEDULE 1: OWNERSHIP

Part 1: SNS Registered Titles

Title number	Freehold/leasehold	Registered proprietor
ESX92487	F	Santon North Street Limited (incorporated in Isle of Man) of 25 Athol Street, Douglas IM1 1LB
ESX94873	F	Santon North Street Limited (incorporated in Isle of Man) of 25 Athol Street, Douglas IM1 1LB
ESX262932	F	Santon North Street Limited (incorporated in Isle of Man) of 25 Athol Street, Douglas IM1 1LB
ESX241839	F	Santon North Street Limited (incorporated in Isle of Man) of 25 Athol Street, Douglas IM1 1LB
ESX248787	F	Santon North Street Limited (incorporated in Isle of Man) of 25 Athol Street, Douglas IM1 1LB

Part 2: LDC Registered Titles

ESX290031	F	Lewes District Council of Lewes House, High Street, Lewes, East Sussex BN7 2LX
SX91932	F	Lewes District Council of Town Hall, Lewes, East Sussex
SX131648	F	Lewes District Council of Town Hall, Lewes, East Sussex
ESX286501	F	Lewes District Council of Legal Services Lewes House, 32 High Street, Lewes, East Sussex BN7 2LX
ESX288224	F	Lewes District Council of Lewes House, High Street, Lewes, East Sussex BN7 2LX

Part 3: Third Party Registered Titles

ESX93819	F	Lewes Riverside Limited (Co. Regna. No. 6242124) 32 North Street, Lewes, East Sussex BN7 2PH
ESX222415	F	Cross Stone Securities (Co. Regn. No. 04223762) of The Old Mill, The Warren, Crowborough TN6 1UB
ESX298397	F	South Eastern Power Networks Plc (Co. Regn. No 3043097) of Newington House, 237 Southwark Bridge Road, London SE1 6NP
ESX279320	F	John Gosnell & Company Limited (Co. Regn. No 278523)

		of Phoenix Place North Street, Lewes, East Sussex BN7 2QG
SX92102	F	The County Council For The Administrative County of East Sussex of Pelham House, St Andrews Lane, Lewes, E Sussex
SX131400	F	The County Council For The Administrative County of East Sussex of Pelham House, St Andrews Lane, Lewes, Sussex
SX146135	F	The County Council For The Administrative County of East Sussex of Pelham House, St Andrews Lane, Lewes, E Sussex
ESX117391	F	East Sussex County Council of Pelham House, St Andrews Lane, Lewes, E Sussex BN7 1UN
ESX270004	F	East Sussex Fire Authority of Headquarters 24 King Henry's Road, Lewes, E Sussex BN7 1BZ
ESX27407	F	Cross Stone Securities Limited (Co. Regn. No. 04223762) of The Old Mill, The Warren, Crowborough TN6 1UB
ESX293305	F	Lewes Town Council of Town Hall, High Street, Lewes, East Sussex BN7 2QS the trustee of the Charity known as Town Brook Charity.

Part 4: Third Party Leasehold Registered Titles granted out of the LDC Property

SX99472	L Term expires: 11 February 2067	Matan Co Limited of 13/17 New Burlington Place, London W1 *Matan Co.Limited (Co. Regn. No. 00736487) of New Burlington House, 1075 Finchley Road, London NW11 0PU
ESX313105	L Term expires: 23 June 2017	Energy Technology and Control Limited (Co. Regn. No. 02277937) of 25 North Street, Lewes, East Sussex BN7 2PE
ESX96555	L Lease 1 & 2 Term expires: 30 November 2066	Restall Brown & Clennell Limited (Co. Regn. No. 84976) of Adelaide Wharf, 120 Queensbridge Road, London, E2 8PD *Name & registered address changed to Fallowfield Brown Services Ltd of 43 Houndean Rise, Lewes, East Sussex, BN7 1EQ
SX86978	L Term expires: 31 March 2057	Restall Brown & Clennell Limited (Co. Regn. No. 84976) of Adelaide Wharf, 120 Queensbridge Road, London, E2 8PD

		*Name & registered address changed to Fallowfield Brown Services Ltd of 43 Houndean Rise, Lewes, East Sussex, BN7 1EQ
SX115108	L Term expires: 24 March 2066	Restall Brown & Clennell Limited (Co. Regn. No. 84976) of Cosgrove Hall, Milton Keynes, MK19 7JB. *Name& registered office changed to Fallowfield Brown Services Ltd of 43 Houndean Rise, Lewes, East Sussex, BN7 1EQ
ESX102510	L Term expires: 26 October 2065	Restall Brown & Clennell Limited (Co. Regn. No. 84976) of Adelaide Wharf, 120 Queensbridge Road, London, E2 8PD *Name & registered address changed to Fallowfield Brown Services Ltd of 43 Houndean Rise, Lewes, East Sussex, BN7 1EQ
SX86515	L Term expires: 13 February 2066	Andrew Brown, Martin Andrew Lunn and Gary Hugh Burgess of 19 North Street, Lewes, East Sussex BN7 2PF
SX88809	L Term expires: 31 January 2066	ATS Euromaster Limited (Co. Regn. No. 04303731) of Vantage Point, 20 Upper Portland Street, Aston, Birmingham B6 5TW
SX86224	L Term expires: 31 January 2066	Cross Stone Securities Limited (Co. Regn. No. 04223762) of The Old Mill, The Warren, Crowborough TN6 1UB

SCHEDULE 2: CPO PROVISIONS

1. If SNS (acting reasonably) does not consider that it will be possible to acquire the Third Party Property or the Third Party leasehold property on reasonable terms by private treaty, it may notify LDC and request that LDC consider the use of its CPO powers to acquire the Third Party Property or the Third Party leasehold property by a specified target date. LDC shall give due regard as to whether it is appropriate to use its CPO powers in this regard and shall notify SNS with [30] working days as to whether it approves the request (approval not to be unreasonably withheld or delayed).

2. If LDC approves the use of its CPO powers, LDC shall as soon as reasonably practicable seek internal approval to make the CPO, pass the relevant CPO resolution and subsequently make the relevant CPO. LDC shall then seek to take possession of the relevant Third Party Property or the Third Party leasehold property by way of a General Vesting Declaration (**"GVD"**) following service of notice from SNS on LDC of the required acquisition date. SNS and LDC may (by agreement) negotiate the acquisition of the Third Party Property or the Third Party leasehold property subject to the CPO prior to the making of a GVD.

3. If the CPO is declined by the Secretary of State then SNS may instruct counsel to advise on the merits of a challenge. If the prospects of success are greater than [50]% then LDC shall pass the relevant resolution and pursue the challenge.

4. If a third party applies to court to challenge the CPO then SNS may instruct counsel to advice on the merits of resisting the challenge and if the prospects of success are greater than [50]% then LDC shall take action to contest the challenge (unless otherwise directed by SNS).

5. The parties shall prepare and review (not more than at 2 monthly intervals) a "Property Cost Estimate", estimating the level of compensation that will be payable. This is to be prepared at the request of either party, immediately prior to making the CPO and in all cases, no later than 2 months after the service of a trigger notice to acquire property by way of a GVD.

6. SNS/LDC shall appoint a surveyor to negotiate settlement of any compensation payable pursuant to CPO action. LDC shall not make any compensation payments without the agreement of SNS and if the parties cannot agree on the payment of compensation then either party may refer the matter for determination by an expert. However if LDC have taken possession and compensation has not been agreed within [6] months of the date of possession then LDC shall refer the matter to the Lands Tribunal for determination. SNS may by way of notice on LDC take over conduct of any referral to the Lands Tribunal but any key decisions will require LDCs approval (not to be unreasonably withheld or delayed).

7. Once compensation is agreed, SNS shall pay the agreed sum to LDC within [15] working days prior to the proposed payment date, to be held in a separate account. This shall be paid within [5] working days by LDC and if it is not paid to the relevant third party within [30] days then SNS may require repayment.

8. The parties shall agree a monthly budget for payment of LDC expenses in connection with any CPO action and this shall be paid within [10] working days of agreement.

9. All Third Party Property or the Third Party leasehold property acquired pursuant to the CPO action shall be held on trust for SNS.

10. If LDC is served with a blight notice in respect of any of the Third Party Property or the Third Party leasehold property then it shall supply a copy (together with all correspondence) to

SNS. The parties shall seek to agree the course of action in relation to any such blight notice and any disagreement shall be referred to leading council. Any compensation payable shall be determined as with CPO action, discussed above.

SCHEDULE 3: DURATION

The parties anticipate the following timings through to completion of the Development:

1. Circa 9 months to obtain a satisfactory Planning Permission for the Development with appropriate extensions of time (in the event of judicial review and third party challenge) to deal with any required appeal.

2. The Business Plan shall address the timescales for the first disposal but it is envisaged this shall be circa 6 months from the date of the grant of satisfactory Planning Permission.

3. Circa seven years to completion of the final Phase of the Development prior to the final disposal.

Appendix 1

Phasing plan

Appendix 2

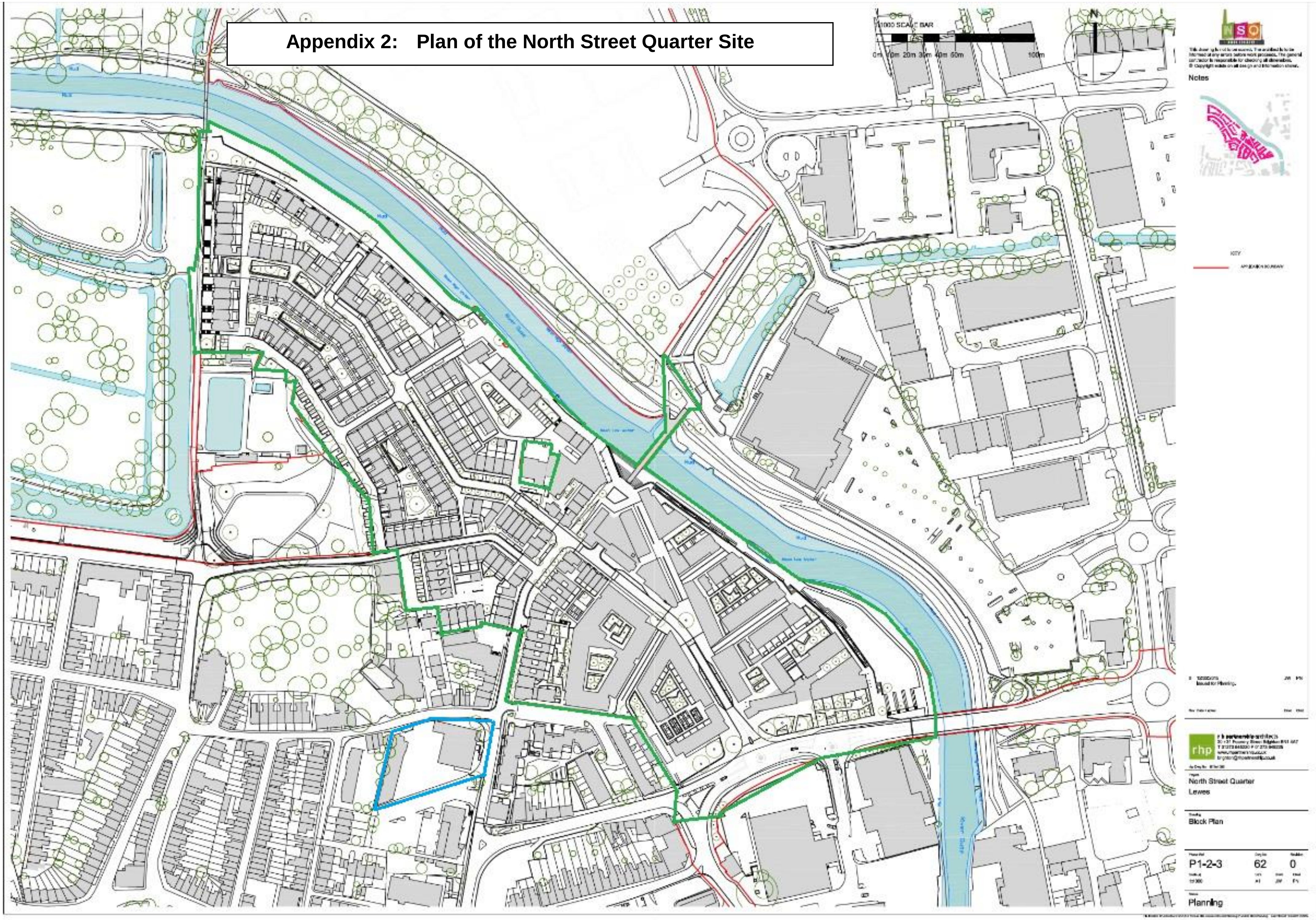
LDC tenancy schedule

[LDC to provide most up to date schedule to review with DLAP]

Appendix 3

LDC and SNS Property

Appendix 2: Plan of the North Street Quarter Site



Appendix 3 - North Street Development, Summary of Cabinet Decisions to Date

01/10/2012	Cabinet Report	Agreement to undertake a feasibility study about the possible disposal of Council land for the inclusion of wider redevelopment scheme for North Street.
23/04/2013	Cabinet Report	Consideration of results of initial options assessment for LDC landholdings at North Street setting out a range of options. Resolved to consider option of entering a Joint Venture arrangement with Santon Group.
30/09/2013	Cabinet Report	Approval to enter into a JV with Santon, subject to planning permission and satisfactory Heads of Terms Agreement for a housing led mixed use development scheme and inclusion of Brook Street car park providing that new parking facilities replace the existing number of spaces currently on site. Agreement to use of CPO powers as required for land assembly subject to future Cabinet approval.
24/04/2014	Cabinet Report	Endorsement of the Masterplan for North Street.
24/04/2014	Cabinet Report	Agreement of Council's landowner prioritised objectives Lewes North Street Development including: Essential 1: Achievement of policy target of 40% affordable hosing as far as possible in partnership with a Registered Provider 2: Maximisation of a return through a recurring revenue stream Desirable: 3:Up to 40,000 sq ft of commercial floor space including cultural quarter, retail and a health facility 4: Extra care housing; and 5: Improved public realm and improved connectivity with the town Entering a reimbursement agreement and Interim Agreement with Santon Approved submission of a joint application with Santon to South Downs National Park Authorise officers if and when the SDNP determines that planning permission should be granted, to sign a S106 agreement on behalf of the Council as landowner providing such agreement secures the Councils priorities.

Appendix 4 - Letter from BGVA

65 Gresham Street
London
EC2V 7NQ
T: +44 (0)20 7911 24 68
F: +44 (0)20 7911 25 60

gva.co.uk

20th November 2015

Max Woodford
Head of Regeneration and Investment
Lewes District Council
Southover House
Lewes
BN7 1AB

Direct Dial: 020 7911 2153
Mobile: 07774 995668
Email lakis.pavlou@gva.co.uk

Dear Mr Woodford

North Street Quarter, Lewes

We have been providing development consultancy advice to Lewes District Council on the North Street Quarter project over the past 18 months and in particular, in the last 6 months advice on merging the Council's land interests with those of Santon, to bring forward the comprehensive redevelopment of the North Street Quarter. It has been decided that the best way to achieve this would be through a contractual joint venture arrangement.

The merger of the land interests is the only way in which a scheme can come forward that will provide a comprehensive solution to the site constraints that will deliver the benefits being sought. The Council would not be in a position to bring forward a scheme on its own, using its own land interests due to the cost of the infrastructure works that would be required. Likewise, Santon would not be in a position to progress their own piecemeal scheme.

By agreeing to enter into a contractual joint venture arrangement, the Council have been able to secure a number of additional benefits that would not otherwise be the case. The level of affordable housing to be provided is typically negotiated with the Planning Authority, but the Council were able to insist that the scheme should deliver 40% affordable housing as part of the JV negotiations. Other benefits that the Council has been able to secure include the delivery of the cultural quarter, commercial, leisure, retail space, health facility, extra care housing & improved public realm. It would not have been possible to secure the delivery of these items without being able to merge the land interests.

The Council's existing land interests form 3 distinct elements:

Freehold land	0.5 acres	Recycling centre and Rifle club.
18-25 North Street	1,85 acres	industrial/commercial properties let out on long leases
Brook Street Car Park	0.6 acres	car park

The Council is going to contribute circa 3 acres to the joint venture arrangement of which 60% of its land interest is currently let out on long leases without break clauses, the majority of which have another 50 years until lease expiry. These tenancies are only producing an income stream of circa £45,000 p.a. for the Council. These units all suffered severe flood damage in 2000 and their rental and capital value will always be held back until flood prevention measures are put in place to prevent them flooding again.

The Brook Street car park generated gross receipts of circa £61,000 to the Council in the last financial year. The Council therefore receives an income stream of circa £105,000 p.a. from its existing landholdings at North Street.

The Council will be responsible for securing its land interests into the joint venture arrangement with vacant possession, so it will eventually have to forgo an income stream of circa £45,000 p.a. on its commercial investment, circa £61,000 gross income from the Brook Street car park and have to acquire vacant possession of its interests.

In return, the Council will receive an entitlement to a share of the land receipts from the sale of all the development parcels together with an entitlement to receive overage from the eventual sale of the private residential units. The Council has the ability to "trade" its share of the land receipt for income producing assets instead at its own choosing. The intention would be to select those assets that will be able to generate a long term secure income stream from the Council such as ground rents, commercial investments and housing. The Council will also benefit from a share of the income to be derived from the new car park forming part of the scheme.

We have assessed the market appetite and viability of the overall scheme, should it secure planning permission and are confident that the development opportunity will be highly sought after and produce land receipts and / or income that will exceed the Council's existing value / income stream derived from these assets. This will form the basis of the S123 report to be produced prior to signing the joint venture arrangement.

Please note the contents of this letter do not constitute a Royal Institution of Chartered Surveyors (RICS) Valuation Standards (Red Book) Valuation, and should not be treated as such. The advice in this letter is only for the benefit of Lewes District Council and could be treated as exempt information in terms of how it is reported within the Council as well as under any request under the Freedom of Information Act or other similar Acts. Lewes District Council would need to consider if it would be materially detrimental to both the applicant's and the Council's commercial interests if this letter was to be released.

Yours Sincerely

Lakis Pavlou

Consultant

For and on behalf of GVA

Appendix 5: Equality Analysis Report

Title:	**North Street Quarter Joint Venture Agreement**
EA Lead :	**Max Woodford**
EA Team:	**Regeneration & Investment**
Date Commenced:	**2nd November 2015**
Target Completion Date:	**25th November 2015**
Reason for assessment:	**Key Decision**

Context and Scope

1. What are the main purposes and aims of the service/project/decision?

To ensure the future strategic planning of Lewes town, delivering new homes (40% affordable) and workspaces in line with the policy SP3. It also works to ensure the future financial health of LDC so it is able to continue to deliver services.

2. What effect does it have on how other organisations operate and what commitments of resources are involved?

It will require relocation of some groups from flood threatened property, but it does this in a planned manner rather than if they were to be flooded out the next time the site floods.

3. How does it relate to the demographics and needs of the local community?

It acknowledges the fact that LDC cannot meet its objectively assessed housing need, and proposes a viable and deliverable project to deliver housing to try and close that shortfall. It delivers 40% affordable housing in a mix of types, as well as local priority housing.

4. How does it relate to the local and national political context?

See 3, above.

5. Is there any obvious impact on particular equality groups?

	Race (includes ethnic or national origins, colour, & nationality)			Disability (includes mental & physical)			Gender (includes gender reassignment)			Pregnancy (includes maternity & paternity)			Sexual Orientation (includes heterosexual, homosexual & bisexual)			Religion & Belief (includes all faiths, beliefs & agnostic)			Age (includes all age groups)		
Impact	Positive	Negative	None	Positive	Negative	None	Positive	Negative	None	Positive	Negative	None	Positive	Negative	None	Positive	Negative	None	Positive	Negative	None
Tick if relevant			x			x			x			x			x			x			x

6. How does it help to us meet our general duties under the Equality Act 2010?

It has no negative impact on any equality groups.

7. What is the scope of this analysis?

Focus is on the strategic and planning benefits of the scheme, and the fact it has no disproportionate impact on any equality groups.

Information gathering and research

8. What existing information and data was obtained and considered in the assessment?

See the statement of Community Involvement Submitted with the planning application.

9. What gaps in information were identified and what action was undertaken/is planned to address them?

See the statement of Community Involvement Submitted with the planning application.

10. What communities and groups have been involved and what consultation has taken place as part of this assessment?

See the statement of Community Involvement Submitted with the planning application.

Analysis and assessment

11. What were the main findings, trends and themes from the research and consulation undertaken?

The need for new and affordable homes, the need to flood defend business and community groups in the area and the need for good riverside access.

12. What positive outcomes were identified?

Provision of all of 11, above.

13. What negative outcomes were identified?

Disturbance to existing community groups, though condition of existing buildings and the liklihood of future flooding means this would eventually happen anyway

Action planning

14. The following specific actions have been identified:

Issue Identified	Action Required	Lead Officer	Required Resources	Target Date	Measure of Success
Need for ongoing monitoring to ensure project does not raise equalities issues.	Ongoing monitoring	Max Woodford	Officer Time	Completion of development	No Equalities issues identified.

Summary Statement

Between 02/11/15 and 25/11/15 Equality Analysis was undertaken by Max Woodford on the North Street Quarter Joint Venture Agreement. Due regard was given to the general equalities duties and to the likely impact of the project on people with protected characteristics, as set out in the Equality Act 2010.

The assessment identified: *(*delete as appropriate)*

*No major changes are required. The EA demonstrates the project is robust, there is little potential for discrimination or adverse outcomes, and opportunities to promote equality have been taken.

Approval

Director/Head of Service	Max Woodford
Signed	
Dated	25/11/15