

WESTERN RIVERSIDE WEST

REPORT ON THE PROPOSED CORPORATE AGREEMENT

1 PARTIES

- 1.1 The Corporate Agreement (the "**Agreement**") relating to Bath Western Riverside West ("**BWRW**") is being entered into by Bath and North East Somerset Council (the "**Council**") with Crest Nicholson Operations Limited as developer (the "**Developer**") guaranteed by Crest Nicholson plc (the "**Developer's Guarantor**").
- 1.2 The statutory accounts for the Crest Nicholson group companies made up to 31 October 2009 reveal a number of relevant pieces of information.
- 1.2.1 Crest Nicholson Holdings Limited ("**Holdings**"), Castle BidCo Limited and the Developer's Guarantor are primarily holdings companies. The majority of the assets and properties are held by the Developer.
- 1.2.2 The Developer had stock and work in progress of circa £630m. This comprised circa £580m of development land and work in progress and circa £50m completed buildings. They also show profits inclusive of "exceptional items" of circa £29m, but a loss exclusive of exceptional items of circa £67m.
- 1.2.3 The Developer's Guarantor is often a guarantor of bank facilities provided to other group companies. However, as there are another two parent companies into which assets could be transferred, this could reduce the strength of guarantees it gives.
- 1.2.4 Both the Developer's Guarantor and the Developer are dependent on senior bank facilities totalling £500m provided to Holdings. The accounts suggest that the directors expect to operate within the financial covenant tests of those facilities.
- 1.2.5 The group as a whole, as a residential property developer, is susceptible to the uncertainty in the market in recent years, caused by lack of mortgage finance availability and relatively low property valuations. These challenges have all been acknowledged in the latest accounts of the Developer.

2 NATURE OF THE AGREEMENT

- 2.1 The Developer is the owner of land in the Council's area, which it wishes to develop.
- 2.2 The Council, in its capacity as a local authority exercising statutory powers in the public interest (but without prejudice to its specific duties as a planning authority), considers that the development the Developer wishes to undertake would be in the public interest and wishes to facilitate that development by co-operating with the Developer in the manner set out in the Agreement.
- 2.3 The Agreement is not intended to impose upon the Developer any legal obligation to undertake the Development, but is intended to regulate the respective rights and obligations of the parties in the event that the Developer proceeds with development, and to make provision for the consequences if development is not undertaken.

3 EUROPEAN COMMISSION INFRACTION PROCEEDINGS

- 3.1 The Development became the subject of a complaint, probably by a local resident,

to the European Commission, which took the matter as far as giving formal notice to the United Kingdom of its intention to investigate the matter. The investigation was discontinued on 30 September 2010, on the basis that no binding contract had been concluded between the Council and the Developer.

- 3.2 The Agreement forms part of a suite of documents and to ensure that the Agreement and other documents could not be found to breach European procurement regulations the Council has had the country's leading procurement Counsel, Nigel Giffin QC, review and opine on these documents.
- 3.3 The four documents are:
 - 3.3.1 The Agreement;
 - 3.3.2 Section 106 agreements between the Council, Developer and certain other parties with interests in the relevant land;
 - 3.3.3 an agreement between the Develop and Somer Community Housing Trust Limited ("**Somer**"), a registered social landlord; and
 - 3.3.4 a funding agreement between the Council and Somer.
- 3.4 Whilst it is potentially necessary to consider the effect of the various documents taken together, Counsel advised that the real issue in this case is whether the Agreement amounts to a works contract. Counsel has confirmed that because the Developer will not be under any positive obligations to carry out any of the works comprising the proposed development, there will in his view be no public works contract in this case.
- 3.5 Counsel had no substantial concerns about the section 106 agreement as such. That is partly because by its very nature such an agreement ought to be, and on the face of it is, limited to matters which arise from the Council's planning functions; partly because the great bulk of the steps required by the section 106 agreement here consist of the making of financial contributions rather than the carrying out of works; and partly because most of the obligations are in any case expressed in negative form, i.e. the Developer is put under no positive obligation to take the steps in question, but merely agrees that it will not (for example) occupy more than a certain number of dwellings before such steps are taken.
- 3.6 The agreement between the Developer and Somer simply provides for the Developer to grant and Somer to take a lease of certain dwellings at a specified price, if and when they are completed to specification.
- 3.7 The funding agreement between Somer and the Council does not provide for Somer or anyone else to undertake any works .
- 3.8 Notwithstanding the positive opinion of Counsel on the proposed documents the Developer has agreed that it will jointly procure with the Council those elements of the development which are to be adopted or maintained by the Council or transferred to or at the direction of the Council. This is summarised in greater detail later in this report.

4 **DEVELOPMENT**

- 4.1 The Agreement relates to a development (the "**Development**") at BWRW of:
 - 4.1.1 a residential quarter of approximately 2,280 dwellings;

- 4.1.2 a primary school with related community infrastructure;
- 4.1.3 student accommodation comprising approximately 675 bedrooms;
- 4.1.4 convenience local retail, cafes and bars/restaurants;
- 4.1.5 an active river frontage set in a new publicly accessible parkland setting;
- 4.1.6 a residential neighbourhood designed to create a sustainable community including a commitment to eco homes, the use of 10% renewable energy, an overall ecology strategy and supporting car club;
- 4.1.7 extensive remediation, site preparation and new common infra-structure including three river crossings, associated infrastructure such as roads, footways and riverside walks, cycle ways, squares, the RTS corridor, public and private open space and supporting public art; and
- 4.1.8 possibly B1 offices to the East of Victoria Bridge Road.
- 4.2 The river crossings referred to in paragraph 4.1.7 above are at Victoria Bridge, the old gas works pedestrian bridge and the "**Destructor Bridge**", which is a new bridge with a two lane road and pedestrian pavements which will connect Upper Bristol Road and Lower Bristol Road and replace the existing single lane road bridge.
- 4.3 The land upon which the Development is being undertaken from time to time is referred to in the Agreement as the "**Site**". The Development will be undertaken in phases, "**Phase 1**" and the remainder of the Development after Phase 1 being the "**Subsequent Phases**". Each Phase will comprise a number of "**Sections**".

5 **PLANNING APPLICATIONS**

The Developer has lodged and will lodge numerous planning applications for consideration by the local planning authority. These fall into one of three categories.

5.1 **Outline Applications**

5.1.1 Two applications for outline planning permission have been made (the "**Outline Applications**"), as follows:

- (a) for the Development described above ("**OPA1**"); and
- (b) for part of that area referred to as Phases 1-3 of BWRW Quarter on land at former Stothert and Pitt works, Midland Road Pumping Station and adjoining land, a new residential quarter including up to 1059 residential homes and apartments, local shops, restaurants, construction of roads, footways and cycle ways, associated infrastructure and facilities, accommodation, works and landscaping ("**OPA2**").

5.2 **Detailed Applications**

5.2.1 Three applications have been made for full planning permission (the "**Detailed Applications**"), as follows:

- (a) for construction of new vehicular access off Pines Way Gyratory;

- (b) for enabling works and remediation of the area adjacent to the River Avon; and
- (c) Phase 1A of BWRW Quarter on land at former Stothert and Pitt works, comprising of 299 residential homes and apartments, shops, construction of roads, footways and cycle ways, associated infrastructure and facilities, accommodation works and landscaping (the "**DPA1**").

5.2.2 A further detailed application may be required in relation to the Destructor Bridge (the "**Destructor Bridge Detailed Application**").

5.3 **Reserved Matters**

Applications will be made by the Developer for the approval of matters reserved by the Outline Permission implemented and "**Reserved Matters**" means the detailed planning permissions comprising approval of matters reserved by the Outline Permissions which are acceptable to the Developer.

6 **PROVISIONS EFFECTIVE FROM ENTRY INTO THE AGREEMENT**

6.1 **Site Assembly condition**

6.1.1 Before commencing a Phase, the Developer is to ensure that either:

- (a) contracts have been exchanged for the acquisition of any interests in the land that belong to third parties and which are required in order for that Phase of the Development to occur ("**Third Party Interests**"); or
- (b) if that is not possible, that the Council has made a compulsory purchase order (a "**CPO**") of the land.

6.1.2 The Developer is to notify the Council that this requirement has been satisfied within one month of commencing a Phase.

6.1.3 At least every six months and within one month of commencing a Phase, the Council is to provide a schedule setting out the Third Party Interests affecting the Phase and those parts of BWRW still to be developed and stating whether the Developer has entered into an acquisition contract with any of the third parties.

6.1.4 If an acquisition contract has been entered into, the Developer's Solicitors are to provide a summary to the Council and the Council's solicitors. The Developer warrants that any such summary is true, accurate and not misleading.

6.2 **Planning condition**

6.2.1 Before commencing a Section or Phase, the Developer is to agree with the Council that the "**Planning Condition**" relating to that Section or Phase has been satisfied.

6.2.2 The Planning Condition is the grant free from challenge and proceedings of either:

- (a) Outline Permission and Reserved Matters; or
- (b) Detailed Permission.

6.2.3 The Planning Condition is satisfied on the "**Free From Challenge Date**", which is the date three months and two weeks after the grant unless any legal proceedings

have been brought, in which case it is the date of the final determination of those proceedings leaving in place the Outline Permission, Reserved Matters or Detailed Permission.

6.2.4 The Developer is to provide evidence of the satisfaction of the Planning Condition not less than ten working days before commencing a Section or Phase.

6.2.5 The Developer can waive the requirement of allowing three months and two weeks to elapse after the date of grant of any Reserved Matters by serving written notice to that effect on the Council when the Planning Condition will be deemed satisfied on the date of service of such notice.

6.3 **Council Assistance**

6.3.1 The Agreement requires the Council to assist the Developer by:

- (a) maintaining a suitably experienced project team and related professional advisors;
- (b) facilitating a co-ordinated approach within the Council to the Development;
- (c) assisting in securing funding for the Development by negotiating with the Homes and Communities Agency and other sources of funding;
- (d) facilitating discussions and agreement with the local planning authority for the adoption and maintenance of the public open space and public infrastructure within BWRW;
- (e) ensuring that any agreements reached with other landowners in respect of land lying within the Bath Western Riverside contribute proportionately to the physical and social infrastructure required to serve BWRW; and
- (f) informing the Developer of the Council's intention to elect a development partner for Bath Western Riverside East prior to entering into substantive discussions with any potential partner.

6.4 **Subsequent Phases**

6.4.1 If the Developer purchases land within the Subsequent Phases the Agreement will automatically extend to that land on the basis that overage arising from Phase 1 and the Subsequent Phases will be calculated separately.

6.4.2 The parties will try to enter into an agreement supplemental to the Agreement for the Subsequent Phases, notably to reflect appropriate financial returns to the parties.

6.4.3 The Council has agreed not to discuss development proposals for the Subsequent Phases with third parties until the date three and half years after substantive commencement of Phase 1 provided that if the Developer acquires land within the Subsequent Phases before that date the Council will wait a further year in order to negotiate a supplemental agreement referred to above.

6.4.4 Even if the Developer satisfies the site assembly and planning conditions for a Section or Phase, the Developer has no obligation to commence works.

6.5 **RTS Corridor**

- 6.5.1 The parties are to cooperate in relation to the location and accommodation of the RTS Corridor in order to ensure that it becomes operational on the terms proposed by the local transport authority immediately prior to the entry of the parties into the Agreement.
- 6.5.2 These obligations include a requirement for the parties to cooperate at all times on the location of the RTS Corridor.
- 6.5.3 The Developer has further obligations to:
 - (a) ensure that the RTS Corridor is accommodated within the Phases;
 - (b) not raise an objection if the Council brings forward a CPO to enable the Council to commence construction of the RTS Corridor; and
 - (c) dedicate the RTS Corridor for public use.
- 6.5.4 The obligations on the Council include the requirement to regularly provide the Developer with the current programmes for the Bath Transportation Package and the RTS Corridor.

6.6 **Outline Planning Applications**

- 6.6.1 The Developer can only request the Council to determine OPA2 if OPA1 becomes subject to legal proceedings.
- 6.6.2 If the Developer does make such a request:
 - (a) the Developer may make modifications to OPA2 to reflect the details submitted in respect of OPA1, to reflect proceedings brought against OPA1 and further reasonable and proper modifications the latter two be subject to the approval of the "**Main Steering Group**" (a group comprising two representatives from the Council and two representatives from the Developer); and
 - (b) the Developer must simultaneously request the determination of the Destructor Bridge Detailed Application.
- 6.6.3 Within 18 months of OPA1 reaching the Free From Challenge Date, the Developer is to lodge an application in order to satisfy the Reserved Matters relating to the Destructor Bridge.
- 6.6.4 The Developer may request the Council's consent (not to be unreasonably withheld if the new application makes provisions for certain infrastructure and there are genuine justifications for revisions based upon material changes to underlying assumptions) to the submission of a further outline planning permission covering the whole of Phase 1 and Subsequent Phases if neither:
 - (a) OPA1 nor OPA2 reach the Free From Challenge Date; or
 - (b) if, having done so, the Developer can show a genuine justification for any revisions.

6.7 **Defending Proceedings**

- 6.7.1 Where the Developer considers that amendment or resubmission of an application is more likely to achieve satisfaction of the Planning Condition rather than

defending proceedings which is to be subject to Main Steering Group approval which is to be given where planning counsel advises that this is more likely to be successful.

6.7.2 Where defending certain types of proceeding is more likely to result in success than failure, the parties agree to cooperate in order to dispose of the proceedings and each is responsible for their own costs.

6.8 **Reserved Matters**

6.8.1 The Developer is to notify the Council of all material design meetings relating to such reserved matters applications for each section of Phase 1 and to allow the Council to attend and participate.

6.8.2 The Developer is to provide a copy of the grant of a reserved matter to the Council within ten working days of receipt of the grant by the Developer.

6.8.3 Within 20 working days of receipt of a grant, the Developer is to notify the Council whether it is acceptable to the Developer, acting reasonably.

6.8.4 If a refusal is received or if the grant of a reserved matter is not acceptable to the Developer, the Developer can lodge an appeal, subject to the approval of the Main Steering Group which shall be given where planning counsel advises that this is more likely to be successful.

6.8.5 The provisions summarised in paragraphs 6.7.1 and 6.7.2 apply equally to Reserved Matter applications.

6.9 **Detailed Permissions**

6.9.1 The same provisions summarised in paragraph 6.8 apply equally to Detailed Applications.

6.9.2 The Developer cannot make any further applications for detailed planning permission relating to the Development other than those summarised in paragraph 5.2 above except that, where Outline Permission has been obtained, the Developer can request the Council's consent to submit further detailed planning applications where it is not possible to rely upon Reserved Matters. Such consent is not to be unreasonably withheld having regard to the scale and nature of the development permitted and provision for certain infrastructure.

6.10 **Planning Agreements**

6.11 The Agreement is to be held in escrow until the simultaneous exchange of a planning agreement (the "**Planning Agreement**") to facilitate the grant of Outline Permission for OPA1 and Detailed Permission for DPA1.

6.12 The Developer is to enter into any further planning agreements required in a form approved by the parties which shall include relevant provisions from the planning agreement for OPA1.

6.12.1 The Developer can require, at its own cost, that the Council enter into any such further planning agreements as landowner and without liability unless the Developer indemnifies the Council for any such liability.

6.13 **Occupation of Land Owned by the Council or the Developer**

Neither party require the consent of the other to enter into lettings and licences of land within BWRW provided that:

- 6.13.1 details of the proposed lettings and licences are provided to the other party;
- 6.13.2 the term expires or can be terminated prior to the commencement of the Development; and
- 6.13.3 the security of tenure provisions of the Landlord and Tenant Act 1954 are excluded.

6.14 **Acquisitions by Private Treaty**

- 6.14.1 The Developer is to seek the consent of the Council of the heads of terms for the acquisition of any Third Party Interests and the Developer is to warrant to the Council that the heads of terms will allow the implementation of the Development.
- 6.14.2 The Council is deemed to have approved any heads of terms received from the Developer for the acquisition of Third Party Interests not acquired at the date of the Agreement but any material changes to the heads of terms are to be approved by the Council.
- 6.14.3 The price paid by the Developer for the acquisition of a Third Party Interest is to reflect:
 - (a) the costs of demolition, remediation and site preparation;
 - (b) a proportionate share of the cost of the new common infrastructure forming part of the Development and outside BWRW; and
 - (c) a due and fair proportion of the costs of the Development prior to the date of the Agreement.

6.15 **Compulsory Purchase Orders**

- 6.15.1 The Developer can request that the Council consider making a CPO when:
 - (a) the Developer has failed to purchase or extinguish a Third Party Interest; and
 - (b) when both parties agree that the remaining Phases are likely to be financially viable.
- 6.15.2 The Council, acting in a reasonable and proper manner, and taking into account the reasonable and proper representations of the Developer, is to consider whether to use its compulsory purchase powers.
- 6.15.3 If the Council does decide to exercise its CPO powers, it shall:
 - (a) with the assistance of the Developer, draw up a register of the Third Party Interests that need to be acquired;
 - (b) proceed to make the CPO;
 - (c) use all reasonable endeavours to obtain confirmation from the Secretary of State of the CPO as soon as possible, including, with the prior written

consent of the Developer, providing any undertakings that are reasonably required;

- (d) lead the case at any public inquiry; and
- (e) consult the Developer and take into account the Developer's reasonable and proper representations.

6.15.4 The parties shall agree a budget for the CPO, which can be updated by agreement between the parties, and the Council shall notify the Developer in writing of any material variation to the budget figures.

6.15.5 An agent will be jointly appointed by the parties (the "**Selected Agent**") at the expense of the Developer in order to negotiate any private treaty in relation to Third Party Interests and to negotiate CPO compensation payable.

6.15.6 If the CPO is confirmed by the Secretary of state or upheld by the High Court with modifications, each party must notify the other whether it reasonably considers that such modification is satisfactory within 20 working days of receipt of the confirmation or order.

6.15.7 All costs, fees and liabilities which the Council occurs in relation to a CPO requested by the Developer are defined as "**CPO Costs**" and a non-exhaustive list of such costs is set out in a schedule to the Agreement.

6.16 **CPO not confirmed**

6.16.1 If the Secretary of State does not confirm the CPO as a whole then the parties at the Developer's cost are to seek the advice of counsel for the Council as to whether in his opinion a better than 50% chance of an application for judicial review ultimately succeeding and leaving in place a CPO which will be to the reasonable satisfaction of each party ("**Positive Advice**") and if not ("**Negative Advice**").

6.16.2 If Positive Advice is given, the Council shall apply for judicial review and the proper cost of the application will be a CPO Cost.

6.16.3 If Negative Advice is given:

- (a) the parties may decide to make an application for judicial review nonetheless and the costs incurred by the Council will be a CPO Cost; or
- (b) the Council may apply for judicial review, even if contrary to the Developer's requirements. Only if the application is successful will the Council's costs be CPO Costs and included within the CPO Indemnity (described below in paragraph 6.21).

6.16.4 If after proceedings no satisfactory CPO is left in place, the parties can consult about whether to take further steps in order to obtain the CPO.

6.17 **Third Party Challenge to a CPO**

6.17.1 If a third party challenges the CPO then:

- (a) the Council shall as soon as reasonably practicable notify the Developer and deliver copies of any documents received;

- (b) the parties shall, at the request and cost of the Developer, seek written counsel's advice as to whether there is a better than 50% chance of the challenge being successfully defended by the Council;
- (c) if counsel's opinion is that there is a better than 50% chance of a successful defence and the Developer requests that the Council pursue such course of action, the reasonable and proper costs of the defence will be a CPO Cost;
- (d) if counsel's opinion is that there is a less than 50% chance of a successful defence, the Council may elect to lodge a defence but only if a satisfactory CPO is obtained will the costs form part of the CPO Costs and be included within the CPO indemnity.

6.17.2 If a CPO is not left in place, the Council and the Developer shall consult as to whether to take further steps and neither party has to take further steps.

6.18 **Blight and Purchase Notices**

6.18.1 If a blight or purchase notice in respect of land within the Site is served on the Council then the Council shall deliver a copy to the Developer and the Developer will consult with the Council concerning the implications of the notice.

6.18.2 The Council shall investigate the grounds for service of the notice and the value of the interest that is the subject of the notice and the Selected Agent shall also consider the value of the interest and the other compensation which may be payable to the owner of the interest.

6.18.3 The Council shall decide whether to serve a counter notice or response notice, having due and proper regard to the reasonable representations of the Developer and the opinions of counsel, if the Developer requests that the latter's opinion is obtained.

6.18.4 If the Council accepts a blight or purchase notice with the agreement of the Developer or on the advice of counsel that there are no grounds for service of a counter notice, the Selected Agent will be jointly appointed to negotiate the compensation payable.

6.18.5 Any compensation, Council's costs and the cost of acquiring the land that is the subject of the notice will be CPO Costs.

6.18.6 The Developer can require the land so acquired to be transferred to the Developer for £1 on written request.

6.18.7 The Council retains the discretion not to serve a counter-notice or a response notice and, if so, the Council bears the costs incurred as a result of the notice unless the land is subsequently requested by the Developer for the Development, in which case the costs are CPO Costs and subject to the CPO Indemnity.

6.19 **Hardship**

6.19.1 If the Council receives a claim for hardship from any owner or occupier of the Site, the costs set out in a schedule to the Agreement shall be CPO Costs.

6.19.2 If the Council accepts a claim for hardship in contravention of the strategy agreed between the parties the Council is entitled to payment pursuant to the CPO Indemnity for any costs and expenses which are incurred provided that the Council

keeps the Developer regularly informed, takes account of the Developer's reasonable comments and the Selected Agent negotiates any compensation payable.

6.20 **Additional Land**

If the Council is required to purchase any additional land not forming part of the land required for the Development then the land acquired shall be transferred to the Developer and the costs incurred shall be CPO Costs, unless the Council elects that the land in question shall be acquired at its own expense and retained by it.

6.21 **CPO Indemnity**

6.21.1 The Developer shall indemnify the Council against all CPO Costs incurred by the Council in relation to any CPO requested by the Developer (the "**CPO Indemnity**").

6.21.2 The Council will set up an interest bearing bank account in its sole name into which the Developer will pay CPO Costs already due for payment or due within the following three months. The Council is entitled to draw monies from the account to pay CPO Costs and to reimburse itself of CPO Costs.

6.21.3 The Developer is not precluded from settling CPO Costs directly with third parties.

6.22 **Road Closures and Highways Agreements**

6.22.1 The Developer shall use all reasonable endeavours to obtain any road closure orders required as part of the Development as soon as reasonably practicable and the Council shall at the Developer's cost provide such assistance as may reasonably and properly be necessary.

6.22.2 The Council as landowner shall promptly enter into any such highways agreements or statutory agreements as are required by the Developer at the request and cost of the Developer and the Developer shall indemnify the Council in respect of any liability arising from the works governed by the relevant agreement.

6.23 **Registered Social Landlords**

6.23.1 The Developer is to use reasonable endeavours to negotiate terms with the Registered Social Landlords ("**RSL**") listed in the Agreement. If negotiations are unsuccessful, the Developer may negotiate with any other RSL with the prior approval of the Council, such approval not be unreasonably withheld.

6.23.2 The Developer's Solicitors are to supply to the Council a true and accurate summary of the conditions and financial terms of proposed agreements with RSL within ten working days prior to exchanging or varying agreements.

6.23.3 The Developer shall keep the Council advised of the progress of satisfying the conditions of the agreements and shall not vary the financial terms or terminate any of the agreements without first informing the Council.

6.24 **Alienation**

6.24.1 The Developer cannot enter into any joint venture, dispose of any of the land owned by the Developer or assign, hold on trust, charge or otherwise dispose of its interest under the Agreement except in accordance with specified conditions.

6.24.2 The Council cannot assign, hold on trust, charge or otherwise dispose of land owned by the Council or its interest under the Agreement except as stated in the Agreement although the Council may charge or dispose of the Waste Transfer Site six months after the Submission Date unless an agreement supplemental to this Agreement has been entered into by the parties covering the Waste transfer Site.

6.24.3 Where the Council's approval is required in paragraph 6.25.2, 6.27.2 and 6.28.1 below, the Council is to respond within 20 working days of receipt of written request and to act reasonably having regard to various considerations which are set out in the Agreement. However, there is no deemed consent if the Council fails to supply approval within the requisite period.

6.25 **Joint Ventures**

6.25.1 The Developer may undertake the Development with a joint venture partner introduced solely for funding purposes.

6.25.2 Should the Developer wish to undertake the Development with a joint venture partner introduced other than solely for funding purposes, the Council's approval must be obtained which is deemed if that party is the Homes and Communities Agency or its successor entity.

6.25.3 In any joint venture, the Developer must retain an economic interest of at least 50% and the development management role of the whole of the Development.

6.25.4 The Developer and Council shall novate the Agreement to any authorised new joint venture vehicle or joint venture party, subject to the Guarantor's guarantee being restated in favour of the Council.

6.26 **Disposal of the Developer's Unbuilt Land**

6.26.1 The "**Developer's Unbuilt Land**" is land owned by the Developer (less the land it purchased from Landscape if that party exercises a pre-existing pre-emption agreement) upon which the Developer has not commenced construction.

6.26.2 The Developer can dispose of the Developer's Unbuilt Land after 31 December 2011 for open market value but cannot reserve overage or retain any immaterial part of the land in order to frustrate the Agreement subject to a right of pre-emption in favour of the Council.

6.26.3 A deed of novation shall be entered into by the Council, the Developer and the purchaser such that the Developer remains liable for its obligations under the Agreement in respect of land it retains and the purchaser becomes liable for the obligations under the Agreement in respect of the Developer's Unbuilt Land. This includes the overage arrangements agreed between the Council and Crest.

6.27 **Disposal of part of the Developer's Land**

6.27.1 The Developer may elect to make the following categories of disposals without the disponent being made subject to the overage arrangements agreed between the Council and the Developer ("**Surplus Proceeds**"):

(a) individual open market value residential and commercial unit sales and lettings;

(b) land, rights and easements required under the terms of planning agreements or statutory agreements;

- (c) sales of residential units to RSLs;
- (d) sales of land to owner-occupiers for the future provision of commercial uses;
- (e) the grant of overriding leases for structural purposes and the completion of partition transfers under joint venture arrangements (provided in both cases the land remains subject to the Surplus Proceeds regime);
- (f) land required for the provision of student accommodation and/or sheltered housing disposed of to a body or organisation providing the residential service; and
- (g) land required for ancillary purposes as common parts by management companies.

6.27.2 The Developer may in addition to the disposals referred to in paragraphs 6.27.1 and 6.27.3 make disposals for residential development of the land upon which the greater of 25% or 200 of the consented open market dwellings are to be built to third parties or joint venture vehicles approved by the Council without the disponent being made subject to the Surplus Proceeds, subject to:

- (a) the disposals are to be at open market value and to incorporate overage provisions in favour of the Developer agreed between the Developer and the Council and binding on the disponent;
- (b) there are to be no more than four individual disposals;
- (c) each disponent is to provide a deed of covenant to the Council in the form set out in the Agreement, whereupon the Developer is released from its obligations other than in respect of work being carried out by the Council on the land disposed.

6.27.3 The Developer may in addition to the disposals referred to in paragraphs 6.27.1 and 6.27.2 make disposals for commercial development of the land upon which represents up to 10% of the aggregate gross internal floor area of all buildings consented to be built subject to the provisions of paragraphs (a) to (c) above.

6.28 **Dealing with the Agreement**

6.28.1 The Developer may assign by way of security its benefit in the Agreement to a mortgagee approved by the Council subject to the mortgagee being a bank or other finance company providing finance at arm's length for the purpose of the Development.

6.28.2 At the request and cost of the mortgagee, the Council will enter into a deed of priority in relation to the rights of the Council allowing the mortgagee to step into the role of the Developer, such deed to be agreed between the Council and mortgagee, both acting reasonably.

6.29 **Joint Procurement of Council Destined Works**

6.29.1 The "**Council Destined Works**" are those elements of the works comprising the Development (the "**Works**") which are to be adopted or maintained by the Council including new conduits under adoptable roads, but excluding utility and sewer diversions, remediation works.

- 6.29.2 A committee called the "**Procurement Steering Group**" will be responsible for making decisions on the procurement of Council Destined Works by majority vote where the Developer and the Council have two members with one vote each.
- 6.29.3 Procurement is to be subject to the "restricted procedure" under the Public Contracts Regulations 2006 (the "**Public Procurement Rules**") and also subject to the internal standing orders of the Council relating to procurement proceedings.
- 6.29.4 The Developer is to submit a procurement strategy for the Council Destined Works to the Procurement Steering Group for approval.
- 6.29.5 In respect of each contract with a building contractor or consultant (each a "**Contract**"), the Developer is to submit certain information and documentation to the Procurement Steering Group including each Contract for approval. The Developer is to amend such documentation as reasonably required by the Procurement Steering Group prior to sending it to the parties invited to tender.
- 6.29.6 An "**Evaluation Panel**" consisting of at least four members in total and an equal number of representatives of the Council and the Developer shall evaluate tenders received in accordance with an agreed methodology, which varies depending on whether the Contract is subject to the Public Procurement Rules or not.
- 6.29.7 The Developer is to pay all reasonable and proper costs incurred by the Council in relation to the procurement of Council Destined Works including those of Council employees involved in the procurement process.
- 6.29.8 The Developer will provide to the Procurement Steering Group copies of any correspondence with parties invited to tender or other interested third parties and will also supply progress reports during the procurement process.
- 6.30 **Contracts**
- 6.30.1 The form of each Contract shall be first approved by the Council and each Contract must contain provisions such that:
- (a) the Council is party to the Contract and able to enforce jointly and severally with the Developer any of the Developer's benefits or rights under the Contract;
 - (b) the Council has no liability whatsoever to the building contractor or consultant;
 - (c) the Council is entitled to assume all of the obligations and responsibilities of the Developer in the event of a termination of the Agreement but is then liable for all future liability arising under the Contract;
 - (d) the Developer has sole authority to instruct the building contractor or consultant, subject to the Council's rights in paragraph 6.30.1(c); and
 - (e) the Developer and the Council shall both receive all notices, invoices and other documentation required from the building contractor or consultant under the Contract.
- 6.30.2 The parties are to appoint the building contractor or consultant and to enter into the Contract as soon as reasonably practicable and having regard to the timetable for the Development (the "**Programme**").

- 6.30.3 The Developer is to provide certified copies of each Contract to the Council's project manager.
- 6.30.4 The Contract cannot be materially varied or terminated without the prior written consent of the Council and, if terminated, a substitute building contractor or consultant is to be appointed as soon as reasonably practicable.
- 6.30.5 The Developer is to enforce the terms of each Contract.
- 6.30.6 If the Council exercises its rights in paragraph 6.30.1(c), the Developer will permit access onto its land to those parties who reasonably require access, subject to such parties complying with the reasonable requirements of the Developer.

6.31 **CDM Regulations**

- 6.31.1 The Developer is entirely responsible for the safety of any design and of all site operations and methods of construction relating to Council Destined Works.
- 6.31.2 The Developer is to comply or procure compliance with the CDM Regulations in respect of Council Destined Works.
- 6.31.3 The Council is to supply the Developer with any information within its possession in order to assist the Developer's CDM obligations upon reasonable request by the Council.

6.32 **Notices**

Notices served in respect of the Agreement must be in writing and in accordance with the service provisions set out in the Agreement.

6.33 **Disputes**

- 6.33.1 If a dispute arises between the Council and the Developer, the Agreement sets out a dispute procedure that is to be followed (the "**Dispute Procedure**"). In addition, the Chief Executive of the Council and the Chairman of the Developer shall meet and use all reasonable endeavours to resolve the issue in dispute.
- 6.33.2 The Guarantor is not entitled to refer any matter to determination and is excluded from any reference to the "parties" in this paragraph.
- 6.33.3 Any dispute referred to an expert is to be determined by an independent person with at least ten years professional qualification and a specialist in the subject matter of the dispute (the "**Expert**").
- 6.33.4 The Expert is to act as expert and not as arbitrator and his decision is final and binding on the parties except in cases of manifest error or fraud.
- 6.33.5 The Expert is to be agreed between the parties or, failing such agreement, nominated by:
- (a) the president or another duly authorised officer of the Royal Institution of Chartered Surveyors, if the dispute is in relation to the Development; or
 - (b) the president or vice-president of the Bar Council, if the dispute is in relation to planning issues or contractual breaches;

upon the application of either party at any time.

- 6.33.6 The Expert shall consider all written representations on behalf of a party to the dispute and any counter-representation but shall not be bound by them.
- 6.33.7 The Developer is also entitled to submit, and the Expert shall consider, representations and counter-representations of any party providing funding to the Development.
- 6.33.8 The parties shall use all reasonable endeavours to procure that the Expert gives his decision within at least 20 working days of his appointment.
- 6.33.9 All costs in relation to the appointment and work of the Expert shall be shared between the parties in such proportions as the Expert shall determine or in the absence of determination in equal proportions.

6.34 **Indemnity**

6.34.1 The Developer is responsible for any of the following matters arising directly or indirectly in relation to the Works and the Development:

- (a) the damage to or loss of any property;
- (b) any breach of the consents or other statutory obligations required for the Works;
- (c) the infringement of the rights of any third party caused by the Works;
- (d) any nuisance or disturbance suffered by any third party caused by the Works;
- (e) any claims made against the Council under parts I and II of the Land Compensation Act 1973; and
- (f) any other claims made against the Council as a result of the Developer breaching any obligations under the Agreement or the Planning Agreement.

6.34.2 The Developer shall indemnify the Council (as landowner only) against any claims made against the Council (and proper costs incurred by it) in relation to the above matters provided that:

- (a) the Developer is promptly notified of any claim;
- (b) the Developer is kept fully informed in a timely manner; and
- (c) the Council takes into account all reasonable and proper representations made by the Developer in relation to any claim.

6.35 **Good Faith**

6.35.1 The Developer will not bring any claim against the Council if an action brought by a third party results in the Agreement or any planning agreement or permission being set aside or held to be invalid by any court or authority.

6.35.2 The Developer shall apply to the Land Registry to enter two restrictions on the title to its land:

- (a) first, no disposition can be registered unless pre-emption procedures and a deed of novation has been entered into in respect of the Developer's Unbuilt Land; and
- (b) secondly, no disposition can be registered in respect of land upon which the Council Destined Works are to occur unless a direct deed of covenant has been provided or need not be provided.

6.35.3 The Council is to apply to the Land Registry to enter a restriction on its title to the Waste Transfer Site to protect the Developer's right to call for a transfer of parts of the Waste Transfer Site to facilitate access and service connections to enable development and sale elsewhere on the site.

6.36 **Termination**

6.36.1 The Council can terminate the Agreement by notice in writing:

- (a) with immediate effect if the Developer does not substantively commence Phase 1 by 31 December 2011;
- (b) after one month where the Developer has failed to substantively continue with the Development in accordance with the Programme; or
- (c) with immediate effect if the Developer fails to remedy a material breach of its obligations within a reasonable period after receiving notice of the breach from the Council.

6.36.2 If the Developer commits a series of breaches which it fails to remedy within a reasonable period upon notice from the Council, such that the combined effect of those breaches amounts to a material breach, the Council can serve further notice on the Developer and the parties then have three months to negotiate, each acting reasonably, to resolve the issues arising from the breaches. If the issues are not resolved to the Council's satisfaction, the matter can be referred for Expert determination and if the Expert considers that the Developer remains in material breach of its obligations then the Council can by written notice terminate the Agreement with immediate effect.

6.36.3 Any termination notice by the Council shall also be served on a mortgagee and a mortgagee is entitled within 40 working days of the Council's notice to enter into a deed of covenant, either directly or via a nominee approved by the Council, whereby the mortgagee covenants with the Council to comply with the outstanding obligations of the Developer.

6.36.4 The Council must specify whether it requires the Developer to continue to enforce the Contracts or whether the Council will take over the Contracts.

6.36.5 The maximum overage payable to the Council upon termination of the Agreement shall be £1m.

6.37 **Council's Costs**

6.37.1 The Developer shall pay to the Council:

- (a) as a contribution towards the Council's costs incurred to the date of the Agreement in relation to the Development: £235,000 on 29 March in each of the years 2015 to 2018 (inclusive), giving a total payment of £940,000; and

- (b) as a contribution towards the Council's ongoing costs: £80,000 on 1 December in each of the years 2011 to 2017 (inclusive), giving a total payment of £560,000.

6.37.2 If the Developer fails to continue with the Development in accordance with the Programme for more than nine months, commits a material breach or series of breaches that are material the Developer shall pay all the sums payable under the above two paragraphs that remain unpaid.

6.38 **Interest**

All sums payable pursuant to the Agreement which are not paid on the due date are to incur interest at a rate of 4% per annum above the base rate from time to time of The Royal Bank of Scotland plc from the due date up until the date of actual payment.

6.39 **Meetings and Consultation**

6.39.1 The parties intend there to be an open sharing of all information between them in relation to the Development other than in relation to the internal arrangements of the parties.

6.39.2 The terms of reference of the Main Steering Group shall be reviewed and agreed by the parties annually and the Developer shall organise a meeting of the Main Steering Group at least every month to review all matters relating to the Development.

6.39.3 Consultation and communication with the wider community regarding the Development shall be undertaken in accordance with a consultation strategy that will be agreed between the parties.

6.39.4 The Developer and the Council shall agree a programme of liaison and consultation with such stakeholders as the Council and Developer shall reasonably agree (the "**Consultation Groups**").

6.39.5 The Developer shall procure that space is made available at a location agreed between the parties for the display of information to be open to the public at reasonable hours.

6.39.6 The Developer shall on reasonable request from the Council and from time to time make presentations to the Consultation Groups and to the local community.

6.39.7 Prior to the Developer commencing each Section, the parties are to agree a design and consultation programme and shall cooperate to agree a mutually acceptable design at the Main Steering Group.

6.40 **Title to Council Land, Third Party Interests and New Council Land**

6.40.1 "**Council Land**" is land owned by the Council at the date of the Agreement or other land acquired by the Council within BWRW under its CPO powers and includes land North of the River Avon, land South of the River Avon and the Waste Transfer Site.

6.40.2 The Developer shall deduce title to the land upon which the Council Destined Works are to be situated, including the RTS Corridor, (the "**New Council Land**") no later than two months before a transfer of the land or the grant of a long lease to the Council.

6.41 **Matters affecting Council Land, Third Party Interests and New Council Land**

Any transfer of or grant out of Council Land, the Third Party Interests or New Council Land shall be made subject to and with the benefit of matters listed in the Agreement, which include:

- 6.41.1 all local land charges, whether registered or not;
- 6.41.2 all notices served and orders or requirements made by any public or competent authority;
- 6.41.3 any matters arising under any enactment relating to town and country planning;
- 6.41.4 all existing rights and easements and quasi-easements;
- 6.41.5 any unregistered interests which override registered dispositions;
- 6.41.6 the matters contained in the title registers of the land; and
- 6.41.7 all matters disclosed or reasonably and properly expected to be disclosed by searches and enquiries by the Developer or the Council (as applicable), or which a prudent buyer ought to make.

7 **PROVISIONS EFFECTIVE UPON SUBSTANTIVE IMPLEMENTATION OF THE DEVELOPMENT BY THE DEVELOPER**

7.1 **Implementation of CPO**

- 7.1.1 The parties will work together to agree the proposed structure and budget of any CPO which has been confirmed.
- 7.1.2 The Developer shall give notice to the Council if it wishes the Council to make a general vesting declaration and/or issue notices to treat with notices of entry and the Council shall do so.
- 7.1.3 If the Council makes a general vesting declaration or serves a notice to treat otherwise than at request of the Council, the Council shall not be entitled to any payment or indemnity pursuant to the CPO Indemnity.
- 7.1.4 On the vesting date or the expiry of the notice of entry, the Council will take possession of the relevant interest and, if prevented from doing so, shall take all reasonable steps to secure possession through any lawful procedure and shall keep the Developer informed.

7.2 **Programme for the Development**

- 7.2.1 Prior to commencing substantive implementation of the Development and from time to time thereafter, the Developer shall submit updated Programmes to the Council for approval, together with a full explanation of proposed changes.
- 7.2.2 The Council may within 20 working days of receipt of the updates submit comments as to why the proposed changes are not approved.
- 7.2.3 The Programme can be extended in the event of certain market failures (defined in the Agreement) or if an event occurs that constitutes a force majeure.

7.2.4 Where the Developer wishes to rely on the existence of adverse market conditions, which are such that a reasonable developer of a similar scheme to the Development would consider adjusting its development programme, the Developer must notify the Council in writing and provide evidence to show that the test has been satisfied.

7.2.5 The Developer is to obtain the Council's approval for the estate management regime to apply to those areas of the public realm which will not be adopted by the Council and which will be maintained at the expense of the owners of residential units and other properties on the Development.

7.3 **Practical Completion of the Council Destined Works**

7.3.1 An independent agent shall be appointed by the Developer (the "**Employer's Representative**") to monitor and certify the Council Destined Works.

7.3.2 The Developer shall procure that:

(a) the Employer's Representative gives the Council not less than 15 working days prior notice of its intention to inspect any of the Council Destined Works for the purposes of issuing a certificate of practical completion; and

(b) the Council has all reasonable facilities to inspect the relevant Works.

7.3.3 The Council may accompany the Employer's Representative on each inspection.

7.3.4 The Council can serve notice within five working days of the relevant inspection of any defects which are outstanding and which amount to more than minor works which may be the subject of a snagging list ("**Snagging Works**") and the Council can reasonably require the works to be completed prior to practical completion.

7.3.5 The Developer shall bring such works to the attention of the Employer's Representative but this does not fetter the freedom of the Employer's Representative to issue a certificate of practical completion.

7.3.6 The Developer is to procure that a copy of any certificate of practical completion is served on the Council within five working days of its issue.

7.3.7 The Developer shall procure the carrying out of any Snagging Works as soon as reasonably practicable, notwithstanding the issue of a certificate of practical completion.

7.3.8 If following the determination of a dispute it is considered that any outstanding works should have been completed prior to the issue of a certificate of practical completion, the Developer shall procure that the works are undertaken as soon as reasonably practicable.

7.4 **Defects Liability**

7.4.1 The Employer's Representative is to give the Council not less than seven working days notice of an intention to inspect the Council Destined Works to issue a certificate that any such defects have been made good and the Council can be represented at the inspection if it so desires.

7.4.2 The Developer is to procure that a copy of any such certificate in relation to making good defects is served on the Council within five working days of its issue.

7.5 **Site Visits and Inspections**

- 7.5.1 At least once every three months the Developer is to inform the Council of the progress of the Works and is to send copies of the minutes of all meetings convened to consider the progress of the Works.
- 7.5.2 The Council and other consultants may at reasonable times enter the site of the Development to view the progress of the Works, provided that they:
- (a) give reasonable notice to the Developer;
 - (b) are accompanied by a representative of the Developer, if the Developer reasonably so requires;
 - (c) report to the site office before any inspection;
 - (d) do not interfere with the Development or attempt to issue any instructions to any person employed in connection with the Development; and
 - (e) make any representations which they wish to make as soon as reasonably practicable.
- 7.5.3 The Developer shall give due and proper consideration to any such representations.

7.6 **Transfer of other Council Land**

- 7.6.1 On commencement of Works in any Phase the Developer can serve notice on the Council for the transfer of the Council Land (other than the Waste Transfer Site) comprised within that Phase for £1 within 20 working days from the date of service of the Developer's notice (the "**Completion Date**").
- 7.6.2 The Developer may include any parts of the Waste Transfer Site within the notice if reasonably and properly required to enable the Development and subsequent sale of the dwellings to occur but any such transfers shall allow operations to continue effectively at the Waste Transfer Site.
- 7.6.3 The Council agrees to notify the Developer of its intention to sell the Waste Transfer Site before marketing the property.
- 7.6.4 The Council is to cooperate in good faith with the Developer regarding the future location of new gas infrastructure including gas governors and shall make available for nominal value such land and rights within BWRW as may be reasonably required for the siting of such infrastructure.

7.7 **Transfer and Grant of New Council Land**

- 7.7.1 After practical completion of Council Destined Works, the Council can serve notice on the Developer requiring the Developer to transfer or grant a long leasehold of not less than 999 years of the New Council Land covered by the relevant practical completion certificate to the Council.
- 7.7.2 Upon service of such notice:
- (a) the Developer must within ten working days submit to the Council for its approval plans of the land it proposes to transfer and details of any Snagging Works to be undertaken; and

- (b) the parties become bound to complete the sale and purchase of the New Council Land at the price or rent of a peppercorn.

7.8 **Funding**

7.8.1 The Council will provide funding ("**Funding**") to the Developer to pay for actual amounts incurred on the Council Destined Works ("**Qualifying Expenditure**").

7.8.2 Funding consists of "**First Tier Funding**" and "**Second Tier Funding**". The First Tier Maximum Sum is £3,700,000 and the Second Tier Maximum Sum is £1,800,000 plus notional interest whilst such sum is held by the Council.

7.8.3 Funding will only be payable if:

- (a) the Agreement remains in force and the Developer is not in breach of its obligations whereby the Council could serve a termination notice pursuant to 6.36 above;
- (b) the claim relates to Council Destined Works;
- (c) the relevant Contract has been entered into; and
- (d) the claim is submitted prior to the tenth anniversary of the date of the Agreement (the "**Longstop Date**").

7.8.4 The Developer cannot make any claim for Second Tier Funding to be used to pay for Council Destined Works other than to the Destructor Bridge ("**Non-Bridge Funding**") unless the Council has the benefit of a valid bank guarantee covering the value of the Funding plus cover for a further £100,000 in respect of interest.

7.8.5 The Developer may not make any claim for Second Tier Funding for the Destructor Bridge unless the Developer has entered into a fully bonded highways agreement for the construction of the Destructor Bridge.

7.8.6 The Council shall pay Funding to the Developer within 20 working days of receipt of a Claim from the Developer and each claim must:

- (a) be submitted in writing and accompanied by the evidence stated in the Agreement;
- (b) relate only to Qualifying Expenditure for which the Developer has not submitted any other claim; and
- (c) not be for an amount which (if paid) would make the amount of Funding exceed the relevant Maximum Sum.

7.8.7 Any claim submitted other than those relating to the Destructor Bridge shall be deemed to be a claim for First Tier Funding unless:

- (a) the Developer expressly states otherwise; and
- (b) the First Tier Maximum Sum is reached,

in which case the claim shall be deemed to be a claim for Second Tier Funding until the Second Tier Maximum Sum is reached.

- 7.8.8 The Funding shall only be used by the Developer for Qualifying Expenditure. If the Council determines that any Funding has not be so used, the Developer will immediately on written demand repay the Funding plus interest.
- 7.8.9 The Developer will maintain full and accurate accounts for the Council Destined Works.
- 7.8.10 The Developer will allow the Council to inspect the Council Destined Works and to inspect, audit and take copies of all invoices and other accounting records which relate to the Funding provided that the Council does not impede the progress of the Council Destined Works and complies with any reasonable safety procedures.
- 7.8.11 If the Developer does not substantively comply with the Programme for a continuous period of more than nine months, the Developer shall pay back to the Council one third of the First Tier Funding up to a maximum sum of £1,000,000 plus interest which shall be used in the future for the Development.
- 7.8.12 The Council can call upon any bank guarantee if the Developer fails to substantively complete construction of the Destructor Bridge before permitting the occupation of more than 650 residential units and, where this is the case, the Council shall be repaid all Non-Bridge Funding plus interest.
- 7.8.13 The Council is to assist the Developer in negotiations with the Homes and Communities Agency and other sources of funding to assist in making the Development viable or more viable and will make available such additional funding upon receipt and the parties have acknowledged that separate agreements may be required to be entered into with such funding parties.

7.9 **Overage**

- 7.9.1 In respect of Phase 1 the Council will be entitled to a third of development profit after a Developer's priority profit on sale proceeds. The calculation of development profit available for distribution can be shown as follows:

$$(Sale\ Proceeds + (Total\ Income \times Multiplier)) - (Development\ Expenditure + (priority\ profit \times Sale\ Proceeds))$$

"Sale Proceeds" means the proceeds of a sale by the Developer in respect of units that have been sold or other disposals permitted by the Agreement.

"Total Income" means the aggregate of the yearly rent in respect of units that have been let subject to occupational leases ("**Let Units**").

"Multiplier" means the multiple calculated by dividing 100 by the annual investment yield available in the open market for the units that have sold and the Let Units generating the Total Income. So, for example, where the yield is 5% the multiplier is 20.

"Development Expenditure" means development costs less receipts which is defined in great detail in the Agreement.

- 7.9.2 The Developer is to provide the Council detailed financial and other information in relation to each Phase of the Development from the commencement of that Phase up until (in respect of Phase 1):

- (a) the date upon which 500 residential units in Phase 1 have been sold or let ("**Mid-Phase Date**"); and

- (b) the date upon which all of the residential units in Phase 1 have been sold or let.

The Mid-Phase Date might not arise in the event that the Developer sells Developer's Unbuilt Land. Overage would become payable by both the Developer and the party who purchases Developer's Unbuilt Land were there such a sale.

7.9.3 In respect of Phase 1 overage is payable to the Council 15 working days after the above dates or when the quantum of overage is agreed and overage paid to the Council is to be used in the following order of priority for reimbursement:

- (a) any funding paid by the Council to a RSL;
- (b) the sum of £2,000,000 less any sums paid to the Council pursuant to paragraph 6.37 above; and
- (c) sums paid by the Council in respect of First Tier Funding.

7.9.4 In the event that the Subsequent Phases are developed the Council might recover overage lost on Phase 1 due to the inclusion of decommissioning costs relating to gas holders as development costs. Otherwise the overage payable in respect of the Subsequent Phases will be linked to the Council's investment in the development and the developer's priority return will be tied to the planning implemented.

Berwin Leighton Paisner LLP

GLBR/19754/3

22 November 2010