

PINSENT MASONS REPORT ON PROPOSED CHANGE TO THE RETAIL QUARTER DEVELOPMENT AGREEMENT

1. BACKGROUND

- 1.1 The Development Agreement for the development of the Retail Quarter Site was entered into by the Council and Hereford Futures with Stanhope Plc on 4 November 2009. By way of a Supplemental Agreement dated 25 March 2011, the Development Agreement was varied to document the proposed phased development of the Retail Quarter Site. The phases are the currently proposed Phase One Site development and a possible future Phase Two.
- 1.2 The Development Agreement is currently in a conditionality stage, being the stage where Stanhope Plc are endeavouring to satisfy various outstanding Conditions Precedent, such as the Funding Condition, in order for the Development Agreement to become unconditional.
- 1.3 We refer you to our advice of 5 March 2012 as updated on 29 August 2012 and 25 September 2012 (copy attached for ease of reference) (the "Previous Advice") with regard to the previously proposed changes required by Stanhope's funder to the Development Agreement. By way of update these previously proposed changes were incorporated in to the documents which are referred to in the Previous Advice, and in respect of these documents:-
- 1.3.1 the Deed of Agreement was exchanged on 28 September 2012. This Agreement provides for the completion of the documents referred to at 1.3.2 below subject to all of the pre-conditions in the Development Agreement being satisfied (or waived where permitted under the Development Agreement) and the Development Agreement becoming unconditional by 28 December 2012;
- 1.3.2 the Deed of Variation, the Deed of Novation and the Phase Two Site Option Agreement have all been signed by the Council and have been released to Stanhope for completion subject to satisfaction of the pre-conditions in the Development Agreement by 28 December 2012.

2. AMENDMENT TO THE DEVELOPMENT AGREEMENT NOW PROPOSED

- 2.1 As a result of recent negotiations between Stanhope and its funder, the funder has required changes to the terms of its agreed funding deal with Stanhope.
- 2.2 The Council in the Deed of Agreement dated 28 September 2012 approved the headline terms of Stanhope's funding deal with its funder, and these headline terms are set out at Appendix 1 to the Deed of Agreement. As a result of the recent changes to the funding deal proposed by the funder, Stanhope have requested the Council's approval to the revised headline funding terms, such approval to be given by way of a letter from the Council to Stanhope and to the funder (which letter will attach the amended headline funding terms). We understand that Montagu Evans have reviewed the changes to the funding deal and that they still represent the best funding deal that is currently available in the market (see the separate Montagu Evans' report).
- 2.3 We understand that the changes to the funding deal mean that Stanhope will receive circa £3 million less from the funder, and that Stanhope have requested a "contribution" of £500,000 from the Council to this £3 million shortfall. The detail of how this £500,000 is to be made up is subject of further discussion. To document this "contribution" a further Deed of Variation to the Development Agreement needs to be entered into between the Council and Stanhope (the "Deed of Variation"). This deed will be completed once the make up of the £500,000 has been further discussed. See also at 3.2 below.

3. **PROCUREMENT AND CHALLENGE ISSUES**

- 3.1 As noted in our Previous Advice, whenever variations are proposed to a Development Agreement it is necessary to consider the public procurement issues resulting from the variation and we have issued advice to the Council in this regard.
- 3.2 As a result of our procurement advice, the Deed of Variation will include a clause which will provide that the Council's £500,000 "contribution" is subject to it not being capable of being challenged, whether on grounds of procurement or state aid, or as a result of a more general judicial review challenge.

Pinsent Masons

30 October 2012