

	<p>Policy and Resources Committee</p> <p>1st December 2016</p>
<p style="text-align: right;">Title</p>	<p>North Finchley Town Centre Area Framework SPD</p>
<p style="text-align: right;">Report of</p>	<p>Cath Shaw – Commissioning Director, Growth and Development</p>
<p style="text-align: right;">Wards</p>	<p>Woodhouse and West Finchley</p>
<p style="text-align: right;">Status</p>	<p>Public</p>
<p style="text-align: right;">Urgent</p>	<p>No</p>
<p style="text-align: right;">Key</p>	<p>Yes</p>
<p style="text-align: right;">Enclosures</p>	<p>Appendix 1 - Executive Summary - High Street Revivals: North Finchley Appendix 2 - Draft Heads of Terms</p>
<p style="text-align: right;">Officer Contact Details</p>	<p>Kathryn Randall, Head of Business, Employment and Skills kathryn.randall@barnet.gov.uk</p>

<p>Summary</p>
<p>The decline of the high street is well-recognised, and in common with other localities, Barnet’s high streets face challenge from technological changes, macroeconomic forces, and changes in consumer behaviour.</p> <p>A number of reports have been published which chart the reasons for the decline of the high street, including the impact of internet shopping and high street shop closures, in the face of the competitive appeal of well-curated retail offers from shopping centres.</p> <p>In 2009, Barnet Council proposed a North Finchley Town Centre Framework which highlighted a number of proposals to address these concerns.</p> <p>While not adopted at the time, the Framework has informed a proposal by Joseph Partners; who have proposed a four-point action plan to revitalise the North Finchley High Road. This action plan involves redefining the high street area; acquiring space in order to provide a critical mass of properties to allow the active curation of consolidated retail space; identifying and implementing an appropriate usage mix in order to create a vibrant and attractive location; and intensifying usage of spaces which currently exist on the periphery</p>

of the high street to support North Finchley's ongoing prosperity.

To initiate the proposal, this report proposes that the Council as landowner enters into an exclusivity agreement (termed a "Preliminary Agreement") with Jonathan Joseph (trading as, and referred to in this Report as, Joseph Partners), to enable, in the first instance, development of a draft Supplementary Planning Document designed to provide the necessary statutory framework, and in doing so, to facilitate future redevelopment. The exclusivity period within the Preliminary Agreement will relate to the Council's land interests and not to the Council's role as Local Planning Authority.

Recommendations

- 1. That the committee authorise the Commissioning Director, Growth and Development, to prepare a draft Supplementary Planning Document (SPD) for North Finchley Town Centre Area Framework, to come back to Policy and Resources Committee for approval for consultation and (if considered appropriate) subsequent adoption.**
- 2. That the committee agree the draft Heads of Terms substantially as shown in Appendix 2, and delegate authority to the Commissioning Director, Growth and Development to finalise the detail of the draft Heads of Terms, sign the Heads of Terms and then negotiate and enter into the Preliminary Agreement envisaged by the draft Heads of Terms, in consultation with the Chairman of the Assets, Regeneration and Growth Committee.**
- 3. That the committee note that the draft Heads of Terms and then the Preliminary Agreement will include exclusivity periods (not to enter into any other agreement or arrangement with a third party) in relation to the sale or disposal of the Council's land at North Finchley High Street (exclusivity period 4 months after signing Heads of Terms, and then 2 years from signing the Preliminary Agreement, capable of extension in pre-agreed circumstances, subject to an overall longstop date to be agreed by the Commissioning Director, Growth and Development, in consultation with the Chairman of the Assets, Regeneration and Growth Committee).**

1. WHY THIS REPORT IS NEEDED

- 1.1 The decline of the high street is a well-recognised problem in the United Kingdom. Many areas struggle to adjust to the impact of new technologies, changes in consumer behaviour, and pressures from external macroeconomic conditions. In common with other high streets, Barnet's town centres face similar challenges.
- 1.2 In response, Entrepreneurial Barnet 2015 – 2020 sets out the approach towards encouraging diverse, distinctive town centres with a sustainable mix of retail, leisure, business and residential uses. As part of this approach, Barnet Council provides the Town Centre Offer, which outlines the assistance which can be provided, depending on the categorisation of the town centre as a Main, District or Local town centre. North Finchley is one of seven main

town centres within the borough. The assistance provided to main town centres includes encouraging the ownership of the town centre by our Town Teams; supporting the Night-Time economy; and offers in relation to markets and street trading. The Town Centre Offer also provides funding and project management support in relation to major projects within the town centre, such as the Burnt Oak project.

- 1.3 Crucially, the Town Centre Offer also provides for active marketing and promotion of opportunities for developers. This is an important tool for improvements in the high street, as it allows for additional investment and development in the area, other than by the Council, which in turn supports local businesses and residents.
- 1.4 To date, a number of reviews have analysed the state of high streets within the UK, such as the Portas Review (2011), Town Centre Investment Management (2013), and the Grimsey Review (2013). These reviews outlined a number of key conclusions:
 - High streets in the UK have grown too long, diluting their impact and attractiveness.
 - High streets require a mixture of uses in order to be successful, such as the creation of community hubs in addition to retail. Retail offerings alone are unlikely to secure a high street's survival.
 - High streets suffer from barriers which prevent curation of the character of the town centre and retail offering, leaving them at a competitive disadvantage to shopping centres. These barriers include lack of control of real estate, and therefore inability to manage the quality and character of the retail mix.
- 1.5 The High Street Revivals: North Finchley proposal, created by Joseph Partners (see copy at Appendix 1), outlines an innovative approach to North Finchley designed to address these key issues by creating a curated high street, which manages the occupancy of the high street to ensure that the optimal mix of independent and brand name retailers is present in the area. This proposal is largely in line with the key recommendations presented through the 2009 area framework proposal, however also seeks to create a curated high street through a critical mass of ownership and key policies of ownership.
- 1.6 Joseph Partners proposes a four-point action plan to address the key challenges facing high streets, outlined in more detail in Appendix 1:
 - Redefine the high street by researching, consulting and defining the sustainable core of the area.
 - Establish a context for change, involving comprehensive regeneration either through acquisition, or by agreements with existing landowners.
 - Curate the occupancy of the core high street over a minimum period of 3 – 5 years, bringing in desired and needed tenants and utilising

landlord control to incorporate flexible lease terms to encourage attractive and sustainable occupancy.

- Intensify and repurpose the periphery of the town centre to provide additional housing adjacent to the town centre, integrating high-quality residential uses into the upper parts of retained shopping areas, and providing the ability to carry out significant public realm improvements.

- 1.7 North Finchley has been identified as an ideal candidate for adopting this particular approach. The 2009 North Finchley Town Centre Planning Strategy was created as a consultation document to facilitate the creation of a Town Centre Framework for North Finchley. Whilst the town centre framework was not progressed in 2009, indicators within North Finchley suggest it is beneficial to revisit the proposal in the form of a North Finchley Town Centre Area Framework Supplementary Planning Document (SPD) for the high street.
- 1.8 The 2009 North Finchley Town Centre Planning Strategy identifies three distinct character areas within North Finchley: the northern zone, which is dominated by commercial space and housing; the central zone which provides a mixture of shops and restaurants; and the southern zone which contains the Arts Depot and the North Finchley gyratory.
- 1.9 North Finchley town centre is Barnet's third largest centre in terms of commercial floorspace, and enjoys the second highest financial turnover in the town centre network. The centre is focussed along the High Road (A1000), and is linear in form. It has a variety of independent and also some well-known high street multiples and is also categorised as one of Barnet's main town centres. Within the town centre, vacancy rates have been steadily rising since 2003 and North Finchley is the only town centre in Barnet to have seen a consistent increase in vacancy rates over this time period, from 3.7% in 2003 to 12% in 2016. As such, the intervention of a proposal of this type should provide a positive direction for the high street.
- 1.10 Utilising a Town Centre Investment Management approach in North Finchley will provide refreshed retail and leisure uses in a consolidated area as well as driving forward other corporate priorities, particularly in providing additional housing within the borough.
- 1.11 To facilitate the revival of the High Road, it is proposed to create an SPD which provides the framework to progress future development proposals at North Finchley town centre and the immediately adjacent area providing an additional mechanism to support this town centre area.

2. REASONS FOR RECOMMENDATIONS

- 2.1 The challenge to high streets continue to rise with competition from new technology and increasing demands for convenience from consumers.

- 2.2 North Finchley town centre exhibits early indicators of difficulty in its high street. Within the town centre, vacancy rates have been steadily rising since 2003 and North Finchley is the only town centre in Barnet to have seen a consistent increase in vacancy rates over this time period. Permitted development rights have also had an impact on the town centre, with a total of 2,693m² of office floorspace lost to 80 residential units. As such, the intervention of a proposal of this type provides a positive direction for the high street.
- 2.3 North Finchley is a particularly long and linear High Street and retail offerings can be strengthened by consolidating the locations of these offerings and creating a curated core offering. Coupled with development of the periphery of the high street, the approach will provide a higher quality retail experience as well as additional residential space.
- 2.4 The creation of a North Finchley Town Centre Area Framework SPD will provide the scope to gather additional evidence to make recommendations on the shape of proposed developments within the town centre and support the ongoing prosperity of the North Finchley Town Centre. The creation of the SPD will allow for the framework to exist in planning terms and provide a document which can be considered during the review of the Local Plan in 2017. It will also provide for the opportunity to reassess the boundaries of the town centre and its best retail mix, and identify the requirements for employment space within the high street.
- 2.5 Joseph Partner's proposal builds on the principles of the draft North Finchley town centre framework and provides a strong vision and ambition to augment the high street in an innovative way.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 The alternative option to these recommendations is not to enter into the Preliminary Agreement with Joseph Partners, and to either self-fund or refrain from implementing a North Finchley SPD at this time.
- 3.2 Under both of these offers however, there is low confidence that the approach would be successful due to a lack of demonstrable market interest to date.

4. POST-DECISION IMPLEMENTATION

- 4.1 Following approval of the recommendations, officers will progress the creation of a draft Supplementary Planning Document for North Finchley.. This would include working up a programme of timescales for the SPD.
- 4.2 The Council will enter into the heads of terms substantially in the form outlined in Appendix 2.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 The proposals in Entrepreneurial Barnet relating to town centres directly support delivery of the Corporate Plan 2015-2020, particularly the following

stated corporate priority:

- Promote responsible growth within the Borough, encouraging development and success, revitalising communities whilst protecting what residents love about the Borough.

5.1.2 Entrepreneurial Barnet 2015 – 2020 outlines Barnet's approach to supporting the local economy to grow, and developing a successful, growing suburb in a successful, growing world city.

5.1.3 Within Entrepreneurial Barnet, the Town Centre offer framework specifically outlines the Council's commitment to provide additional support to actively market and promote opportunities to developers, when dealing with main Town Centres. Creation of an SPD for North Finchley Town Centre will provide clarity around the town centre proposition for development and how to maximise the responsible growth in that high street to secure growth and employment opportunities in the face of growing challenges for high streets.

5.1.4 Additionally, the Housing Strategy 2015 – 2025 highlights the role of purpose-built private rented sector housing when located within or around town centres in addressing distinct housing needs as well as supporting labour mobility.

5.2 **Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)**

5.2.1 *Finance and Value for Money*

5.2.1.1 The adoption of the recommendations will result in no additional cost to the Council as a result of the proposal, as the cost of additional resources will be recovered from Joseph Partners through a Planning Performance Agreement (PPA), and statutory planning functions will continue to be delivered through the business as usual Re contract.

5.2.2 *Procurement*

5.2.2.1 The creation of the SPD may require the Council to seek resource support in order to develop the document. Should this additional need require consultant or third party support, the Council will follow existing procurement rules for the tendering and selection process.

5.2.3 *Staffing*

5.2.3.1 Additional staffing resource will be required to progress the recommendations towards an SPD. However, except to the extent that the cost of this resource would need to be incurred by the Council anyway (ie. in terms of planning officer/Council consultant time, if the Council (through planning officers/consultants) were working up a framework alone), this resource will be funded through the agreed terms outlined in Appendix 2 (see 6.5 and 6.6 of the draft Heads of Terms).

5.2.4 *IT, Sustainability, Social Value*

5.2.4.1 There are no anticipated implications in IT or sustainability in relation to the project outlined above.

5.2.5 *Property*

- 5.2.5.1 This report requests that the Committee approve for the Director of Resources to explore the potential to make Council land available for the development of North Finchley following creation of the SPD. Under the Preliminary Agreement the Council is under no obligation to sell any property.

5.3 **Legal and Constitutional References**

- 5.3.1 The Planning and Compulsory Purchase Act 2004 and the Town and Country Planning (Local Planning) (England) Regulations 2012 provide guidance on preparation and adoption of the Local Plan. Upon adoption, the draft SPD becomes a statutory Supplementary Planning Document that provides part of Barnet's formal planning policy framework. The Council is required under both statute and the regulations to ensure policy documents such as the SPD are up to date.

- 5.3.2 Annex A to Responsibility for Functions, the Policy and Resources Committee has the authority under para (2):

- “To be responsible for the overall strategic direction of the Council including the following specific functions/activities: Approve development of statutory Local Plan and related documents...”
- “Consider for approval and adoption....Supplementary Planning Documents and Planning Briefs”
- “If any report comes within the remit of more than one committee, to avoid the report being discussed at several committees, the report will be presented and determined at the most appropriate committee. If this is not clear, then the report will be discussed and determined by the Policy and Resources Committee.”

- 5.3.3 The costs of work on the Development Framework to be undertaken under the proposed Heads of Terms and Preliminary Agreement, apart from the statutory functions, can be recovered under a Planning Performance Agreement and/or the Preliminary Agreement.

- 5.3.4 Any landowner costs incurred by the Council in relation to the Development Framework are recoverable from the developer under the General Power of Competence, section 1 of the Localism Act 2011.

- 5.3.5 The Heads of Terms allow for an exclusivity period of:

- 4 months from the commencement date; and
- 2 years from when the parties enter into the Preliminary Agreement;

and provision to extend this, in pre-agreed circumstances with an overall longstop date to be agreed by the Council (that longstop date to be agreed by the Commissioning Director, Growth and Development, in consultation with the Chairman of the Assets, Regeneration and Growth Committee).

This exclusivity period, and the exclusivity arrangements, apply to any relevant Council land interests and not to the Council's Planning Authority role, which is unaffected.

5.3.6 The Preliminary Agreement to be entered into, once the form of this is agreed (and if, despite seeking to agree this, Council and Developer cannot reach agreement, either party can withdraw).

5.3.7 That an SPD is developed and consulted on by the Planning Authority, at Joseph Partners' cost, the Council engaging the staff/consultants.

5.3.8 Under the draft Heads of Terms, clause 7, it is only if:

- a) an SPD is drafted, agreed between Council (as a landowner) and Joseph Partners; and
- b) if the Council consider appropriate the SPD is put to Policy and Resources Committee for adoption; and
- c) the parties receive suitable legal advice that there is a reasonable case for site assembly, if necessary via compulsory purchase order;

that the other parts of the Heads of Terms would be engaged such as developing governance arrangements, and the parties using reasonable endeavours to agree forms of Site Assembly and Land Agreement.

5.3.9 However, the Heads of Terms do not oblige the Council to enter into the Land Agreement and Site Assembly Agreement unless the form of those documents is agreed, and relevant Council Committee authority is obtained (Heads of Terms, clause 8.3).

5.3.10 If the Land Agreement and Site Assembly Agreement are not, by the longstop date in 5.3.5. above, agreed, and Council authority obtained to enter into them, either party may end the Preliminary Agreement.

5.3.11 Under the Land Agreement and Site Assembly Agreement (Heads of Terms, clause 8.2):

- a) The Developer would seek planning permission for the Development; and
- b) Council officers would promote the Development and seek a Council resolution for a compulsory purchase order, if necessary for site assembly, and would acquire land and pass ownership to the Developer (at the Developer's cost). Any decision to make a compulsory purchase order is entirely at Council discretion (Heads of Terms, clause 8.4); and
- c) The Council's Assets Regeneration and Growth Committee would consider whether to sell its land to the Developer at market value, after usual development conditions precedent are satisfied, including (Heads of Terms, clause 9.1) the Developer obtaining planning consent and

securing site assembly (either by purchase or confirmed compulsory purchase order) as per a) and b) above, and demonstrating that it or its Council-approved funder has access to sufficient funding for the Development. However, as mentioned in 5.3.8 above, separate Council authority would be sought, to enter into the Land Agreement and Site Assembly Agreement, once these documents are agreed with the Developer.

5.3.12 Once the Land Agreement and Site Assembly Agreement are entered into, if the conditions precedent in 5.3.11 c above are not satisfied within 2 years from those Agreements being entered into (subject to potential extension of that 2-year period in pre-agreed circumstances, with an overall longstop date to be agreed by the Commissioning Director, Growth and Development, in consultation with the Chairman of the Assets, Regeneration and Growth Committee), either Council or Developer can terminate the Land Agreement and Site Assembly Agreement (Heads of Terms, clause 8.2.11).

5.3.13 Heads of Terms, clause 10.1 – whilst there is no contractual obligation on the Developer to carry out the Development, if the Developer does not start or finish the Development by longstop dates to be agreed, the Council may terminate the various agreements and re-acquire the Council land (and, if it wishes, any other land acquired by the Developer for the Development) at the price originally paid to the Council. This gives the Council a course of action if the Development is not carried out.

5.3.14 The Heads of Terms clause 13.2; The Council enters into these agreements as landowner not local planning authority and no commitment is given by the Council as local planning authority.

5.4 Risk Management

5.4.1 The key risks to the project are outlined below:

- , The creation of the North Finchley Town Centre Area Framework SPD will provide the opportunity to assess the evidence base for the proposal for Joseph Partners and to make recommendations in relation to future developments. The risk will be further mitigated through the extensive consultation that will take place as part of the SPD project.
- *Trader resistance* – There is a risk of resistance on the part of traders who already exist within the high street. The creation of an SPD provides an opportunity for all affected parties, including traders, to engage with the process, and Joseph Partners will appoint a communications agency who will lead on this engagement and communication work.
- *Failure to proceed* – There is a missed opportunity to improve the town centre.

5.5 Equalities and Diversity

5.5.1 As part of the development of the Entrepreneurial Barnet strategy, a full

Equalities Impact Assessment (EIA) was undertaken which informed the Town Centre offering. As the development of the SPD progresses, an EIA will be undertaken and equalities implications will be kept under review.

5.6 **Consultation and Engagement**

5.6.1 The creation of a Supplementary Planning Document involves a significant aspect of consultation, both with members and with residents and businesses in Barnet. The Supplementary Planning Document will be subject to a thorough process of public consultation, in accordance with the Council's Statement of Community Involvement and including residents, traders and landowners.

5.6.2 The draft SPD will return to the Policy and Resources Committee prior to publishing for public consultation, and following the consultation will return to the Policy and Resources Committee for adoption.

5.7 **Insight**

5.7.1 Initial data for the North Finchley high street has been taken from data collected as part of the annual monitoring of the high streets. Further evidence will be collected through the SPD process and this will inform the North Finchley Town Centre Area Framework SPD and the recommendations made in this SPD.

6. **BACKGROUND PAPERS**

6.1 Entrepreneurial Barnet 2015 – 2020 outlines the council's commitment to ensuring vibrant High Streets within Barnet.

<https://www.barnet.gov.uk/dam/jcr:e326f566-5394-4a68-921c-5fee57541c9a/Entrepreneurial%20Barnet%202015-2020.pdf>

6.2 Barnet Housing Strategy 2015 – 2025

<https://www.barnet.gov.uk/dam/jcr:b49187f8-d93a-41c8-9f32-57e8f49a15ae/Approved%20Housing%20Strategy%202015%20to%202025.pdf>

APPENDIX 1

Executive Summary of the Scheme

[Appendix A has been prepared by Joseph Partners and presented to the Council.]

APPENDIX 2

Draft Heads of Terms

DATED

2016

JOSEPH PARTNERS

and

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BARNET

HEADS OF TERMS

in respect of a preliminary agreement for the proposed redevelopment of North Finchley
High Street in the London Borough of Barnet

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HEADS OF TERMS

DATE 2016

PARTIES

- (1) JONATHAN JOSEPH (TRADING AS JOSEPH PARTNERS) of 5 Neville Court, Abbey Road, London NW8 9DD (the "Developer")
 - (2) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BARNET of North London Business Park, Oakleigh Road South, London N11 1NP (the "Council");
- each a "Party" and together the "Parties".

RECITALS

- (A) The Developer has identified private sector retail led redevelopment schemes to regenerate a number of strategic high streets in the London Borough of Barnet by refocusing the current uses of these high streets and reducing the number of properties currently used for retail and creating new residential (including affordable) homes at either end of and above the properties where retail uses are retained in a newly regenerated high street and offering a diverse range of community uses, employment uses, retail, cafes and restaurants.
- (B) These Heads of Terms relate to the Developer's proposed scheme at North Finchley high street and the Parties (in their respective capacities as landowners) have agreed to work together on an exclusive basis in relation to this scheme (the "Scheme") including to prepare and (subject to agreeing the draft development framework) consult with owners, occupiers and residents about a development framework which will include options for the Scheme.
- (C) The Parties have agreed to work together on the basis as set out in these Heads of Terms to seek to conclude a preliminary agreement in relation to the Scheme (the "Preliminary Agreement") on the terms set out in these Heads of Terms.
- (D) In consideration for the mutual undertakings contained herein (although no reliance should be placed on the non-legally binding aspects), the Parties have agreed to enter into these Heads of Terms.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

In these Heads of Terms including the recitals the following expressions shall have the meanings respectively assigned to them as follows:

“Commencement Date”

means the date of these Heads of Terms;

“Council Land:

means [insert details];

"CPO"

means any compulsory purchase order which may be required to be made and promoted by the Council under the provisions of Section 226(1)(a) of the Town and Country Planning Act 1990 as further detailed in these Heads of Terms to the extent that such an order may be necessary in accordance with the relevant statutory tests in order to acquire any Land Interests in order to enable the Scheme to proceed;

"Development Framework"

means the development framework for the Scheme to be developed by the Parties in accordance with clause 6.1;

“Exclusivity Periods”

means an initial period from the Commencement Date until the earlier of:

- (i) the date the Parties enter into the Preliminary Agreement; and
- (ii) the date four (4) months from the Commencement Date; and

a further period of two (2) years from the date the Parties enter into the Preliminary Agreement;

“Executive Summary”

means the executive summary of the Developer's proposals for the Scheme (which remain subject to agreement by the Council) prepared by Allies & Morrison Urban Practitioners dated November 2016;

“Heads of Terms”

means these Heads of Terms;

“Information Legislation”

means together the Freedom of Information Act 2000 and the Environmental Information Regulations 2004;

"Land Agreement"

means an agreement as described in clause 8, which (subject to obtaining the necessary Council authority to do so) the Parties may enter into in accordance with clause 8;

"Land Interests"

means the freehold and/or leasehold interest in or any lease or tenancy and/or any other interest the Properties or any new right created over land at the Properties or any part thereof in each case being land or an interest the acquisition of which is required to enable the development of the Scheme as further detailed in these Heads of Terms (except for any interest held by the Council);

"Leading Counsel"

means Queen's Counsel of at least 10 years call with relevant experience and expertise in planning law as reasonably agreed between the Parties;

"Legally Binding Provisions"

means the provisions of clauses 3, 4, 6.5, 6.6, 11 and 12;

"Outline Programme"

means the outline programme for the Schemes agreed between the Parties in accordance with clause 5;

"Preliminary Agreement"

means the preliminary agreement as described in recital C and as further detailed in these Heads of Terms, which is proposed to be entered into by the Parties after the expiry of the relevant challenge period for the Council's decision to enter into the Preliminary Agreement (without a challenge to such decision being made);

"Properties"

means the land together with the buildings or structures erected thereon required for the Scheme as shown for identification purposes edged red on the relevant Site Plan;

"Scheme"

means a proposed development scheme relating to the Properties, reflecting the outline principles in Recital (A) above further detail of which is to be agreed between the Council (in its capacity as a landowner of part of the Properties) and the Developer (the Developer's outline proposals for which are set out in the Executive Summary) as part of the Preliminary Agreement;

"Site Assembly Agreement"

means an agreement as described in clause 8, which (subject to obtaining the necessary Council authority to do so) the Parties may enter into in accordance with clause 8;

"Site Assembly Costs"

means any proper and reasonable costs (including purchase price, compensation and other necessary payments to landowners or other holders of Land Interests) to be incurred by the Council and/or the Developer as set out in the Site Assembly Agreement to be further detailed in the Preliminary Agreement;

"Site Plan"

means the indicative project boundary plan [annexed hereto] or such other plans as may be agreed by the Parties;

- 1.2 The following rules of interpretation apply to these Heads of Terms:
 - 1.2.1 In these Heads of Terms unless the context otherwise requires references to the singular shall embrace the plural and vice versa. References to persons shall include bodies corporate and vice versa and references to clauses shall be references to clauses of these Heads of Terms unless otherwise provided.
 - 1.1.2 References to statutes or statutory provisions include that statute or provision as amended modified re-enacted or replaced from time to time whether before or after the date hereof and to any previous statute or statutory provision amended modified re-enacted or replaced by such statute or provision.
 - 1.1.3 The clause and Schedule headings in these Heads of Terms are inserted for convenience only and shall not affect the construction of the provisions to which they relate.

2. COMMENCEMENT AND DURATION

These Heads of Terms shall take effect on the Commencement Date.

3. BINDING AND NON-BINDING PROVISIONS OF THESE HEADS OF TERMS

- 3.1 Subject to clause 3.4, the Legally Binding Provisions shall be legally binding from the Commencement Date.
- 3.2 Subject to the provisions of clause 3.1 no other provision of these Heads of Terms is legally binding in any way.
- 3.3 The Legally Binding Provisions of these Heads of Terms are subject to English law and subject to the jurisdiction of the High Court in England & Wales.
- 3.4 In the event that a legal challenge is made in respect of these Heads of Terms and/or in relation to any exclusivity created by these Heads of Terms, then the Developer shall not be entitled to, and shall not take any action to recover, any damages from the Council in respect of any breach of the Legally Binding Provisions.

4. EXCLUSIVITY

- 4.1 The Council shall grant to the Developer exclusivity (meaning that the Council will not sell or grant another long-term interest in the Council Land for the purpose of the Scheme or a similar scheme) for the Exclusivity Periods.

4.2 The Preliminary Agreement shall set out how the Exclusivity Periods may be extended in certain agreed circumstances, subject to an ultimate longstop date to be agreed between the Parties.

5. OUTLINE PROGRAMME FOR THE SCHEME

5.1 The Preliminary Agreement shall set out the Outline Programme for the Scheme and the Parties shall review the Outline Programme on a regular basis taking into account developments and progress with the Scheme and shall use reasonable endeavours to adhere to the same.

5.2 Prior to the Parties entering into the Preliminary Agreement the Developer shall provide reasonable evidence that he is able to fund preparation and finalisation of the Development Framework.

6. DEVELOPMENT FRAMEWORK

6.1 The Parties shall be jointly responsible for the preparation of the Development Framework for the Scheme (including seeking to agree the Scheme content between the Parties) and the Parties shall work together to consult appropriately with owners, occupiers and residents in relation to the Development Framework.

6.2 The purpose of the Development Framework shall be to establish:

6.2.1 whether there is a case for obtaining planning permission for the Scheme; and

6.2.2 a design framework in relation to the Scheme.

6.3 In preparing the Development Framework the Parties shall have regard to the fact that it may be necessary for the Council to consider (subject to clause 8.4 below) whether there may be a need to seek a CPO in relation to the Properties if this is necessary to enable delivery of the Scheme through the acquisition, redevelopment and regeneration of the Properties so as to rationalise existing retail and other uses and increase the residential offering.

6.4 The Parties anticipate that, for the Scheme to proceed it will be necessary for the Development Framework to be adopted as supplementary or other planning guidance by the Council as the local planning authority and the Preliminary Agreement will set out the procedure for reviewing and establishing the steps to be taken in this respect. For the avoidance of doubt the local planning authority's discretion shall not be fettered in terms of its ability to require changes to the draft Development Framework prior to its adoption.

6.5 The Developer shall meet the reasonable costs incurred by the Council in preparing the Development Framework as landowner rather than as the local planning authority and the Preliminary Agreement shall contain an agreed process for the Developer to approve such costs in accordance with the principles set out in clause 13.3 below, on the basis that once an approved cost is incurred it will be paid by the Developer.

6.6 In addition to meeting the reasonable costs incurred by the Council in preparing the Development Framework as landowner and subject to the local planning authority entering into a planning performance agreement in accordance with clause 6.9, the

Developer shall as part of the planning performance agreement agree to meet the planning authority's planning officer and other reasonable costs relating to the Development Framework and other supporting activities to be further detailed in the planning performance agreement. For the avoidance of doubt the local planning authority may proceed with the steps set out in clause 6.4 above, regardless of whether the Parties have agreed the content of the draft Development Framework.

- 6.7 The local planning authority shall employ the consultants required in connection with preparing, consulting on, and finalising the Development Framework, such consultants to be selected and appointed in accordance with the Council's internal procedures/standing orders and where applicable the Public Contract Regulations 2015. The Council shall use reasonable endeavours to procure that the planning authority consults with the Developer on the proposed selection and evaluation criteria for any consultants. The Developer recognises that the ultimate decision as to selection of consultants shall be with the Council as local planning authority.
- 6.8 The Developer shall (under these Heads of Terms and/or under the planning performance agreement referred to in clause 6.9) be responsible for any fees incurred by such consultants provided that the Council requires such fees to be met by the Developer and that such fees form part of a budget approved by the Developer in accordance with clause 13.3.
- 6.9 The Council shall if reasonably requested by the Developer support the Developer in seeking to procure that the local planning authority enters into a planning performance agreement with the Developer on terms to be agreed in relation to work on the Development Framework and any planning application for the Scheme to include (as far as permissible) activities in connection with the Development Framework (as far as within Council powers to recover them), support in respect of any public consultation and any pre-application studies or reports required.

7. ESTABLISHING THE CASE FOR SITE ASSEMBLY

- 7.1 Once the Development Framework has in accordance with clauses 6.1 to 6.3 been:
- 7.1.1 worked up by the planning authority and agreed by the Parties (at their respective discretions);
- 7.1.2 consulted on locally in accordance with clause 6.1; and
- 7.1.3 (if required) adopted by the local planning authority as supplementary or other appropriate planning guidance

the Parties shall jointly instruct (at the Developer's cost) Leading Counsel to provide advice on the Scheme and on the chances of obtaining a CPO confirmation in relation to the Properties insofar as it may prove not possible to achieve site assembly by private treaty within a reasonable period of time.

- 7.2 The specific advice to be requested from Leading Counsel, which shall be required in order to meet the requirements of clause 8, shall be further detailed in the Preliminary Agreement.

8. SITE ASSEMBLY AGREEMENT AND LAND AGREEMENT

- 8.1 Subject to the:
- 8.1.1 case for site assembly having been established in accordance with clauses 7.1 and 7.2; and
 - 8.1.2 the case for planning having been established via the Development Framework in accordance with clauses 6.1 to 6.3; and
 - 8.1.3 the Developer procuring that a funder with a suitable combination of financial resources and funding/access to funding (as reasonably approved by the Council) to fund the carrying out of the Scheme, enters into the Site Assembly Agreement and the Land Agreement in addition to the Developer so as provide committed funding to enable the Developer to comply with its obligations under the Site Assembly Agreement and the Land Agreement.

(in each case) to the Parties' reasonable satisfaction, then the Parties will use reasonable endeavours to agree the form of a Site Assembly Agreement and a Land Agreement in relation to the Properties (reflecting clauses 8.2 and 9) as soon as is reasonably practicable.

- 8.2 The Site Assembly Agreement and the Land Agreement shall include the following provisions:
- 8.2.1 The Developer shall be required to seek a satisfactory planning consent for the Scheme;
 - 8.2.2 Subject to clause 8.4 the relevant Council officers shall promote the Scheme within the Council and if necessary, seek resolution(s) from the relevant committee of the Council as required in relation to site assembly and (as required) CPO in relation to the Properties;
 - 8.2.3 Subject to planning consent being obtained, the Council and/or the Developer (as appropriate) shall seek to ascertain ownership of all relevant Land Interests and shall progress discussions with owners of such Land Interests to acquire their Land Interests. The Developer shall where appropriate (either itself or through the Council) acquire Land Interests which become available, when it is appropriate to do so;
 - 8.2.4 The Developer shall be responsible for the Site Assembly Costs and shall provide a form of security for the Site Assembly Costs to the Council in a form acceptable to the Council (acting reasonably and without delay);
 - 8.2.5 Prior to the Council acquiring any Land Interests, the Developer shall demonstrate to the Council's reasonable satisfaction that the Developer has secured the funding required to carry out the Scheme;
 - 8.2.6 Subject to demonstrating that satisfactory planning, site assembly and funding are in place, in accordance with clauses 8.2.1 to 8.2.5, the Council shall sell to the Developer the Council Land at its open market value (as agreed between the Parties or (failing agreement being reached) ascertained by an independent third party acting as an expert or arbitrator (such third party's identity, capacity and terms of reference to be set out in the Land Agreement, and the reasonable costs of such appointment being met by the Developer)).

- 8.2.7 The Council shall as part of the Site Assembly Agreement and the Land Agreement be entitled to an overage or share of the profits in relation to the Scheme on terms to be agreed between the Parties.
- 8.2.8 If the Scheme is carried out, it shall be done in accordance with a design framework agreed between the Council and the Developer.
- 8.2.9 The Parties will work together to develop appropriate governance arrangements for the Scheme, to be included in the Site Assembly Agreement and Land Agreement, with a view to ensuring long-term Council and community influence over the town centre offer at North Finchley as part of the Scheme.
- 8.2.10 The Developer shall give the Council an option to purchase some of the residential units created as part of the Development at market value on terms to be agreed between the Parties.
- 8.2.11 There shall be a an initial two (2) year longstop date to satisfy all conditions precedent to the Site Assembly Agreement with an entitlement for the Developer to extend this date in agreed circumstances subject to an overall long stop date to be agreed between the Parties.
- 8.3 Once the Site Assembly Agreement and the Land Agreement are substantially agreed between the Parties, the relevant officers of the Council shall as soon as reasonably practicable recommend these documents for approval of the Council (or of the relevant Council committee as appropriate) and (subject to that authority being obtained) the Parties will (after expiry of the relevant challenge period for such authority being granted, without a successful challenge being made), enter into the Site Assembly Agreement and the Land Agreement in the agreed form.
- 8.4 Notwithstanding any other provisions of these Heads of Terms, the question of whether the Council resolves to make a CPO shall be and remain at the absolute discretion of the Council.

9. LAND ACQUISITION AND LAND AGREEMENT

- 9.1 Subject to the:
- 9.1.1 the Developer securing a satisfactory planning consent in relation to the Scheme;
- 9.1.2 the Land Interests having been acquired or secured under the terms of the Site Assembly Agreement;
- 9.1.3 the Developer demonstrating that it has sufficient funding to carry out the Scheme; and
- 9.1.4 the Parties satisfying any other conditions precedent to enable the Scheme to proceed:
- (a) the Developer shall:
- (i) acquire from the Council any Land Interests; and

- (ii) pay all Site Assembly Costs and other compensation and costs (including reasonable costs of the Council) in connection with the Council implementing the Site Assembly Agreement;
- (b) the Council shall pursuant to the Land Agreement sell to the Developer the Council Land at its open market value (as agreed or determined in accordance with clause 8.2.6.)

10. TERMINATION

10.1 In the event that the Developer has not commenced substantial works relating to the Scheme by an agreed longstop date, or completed the Scheme by a later agreed longstop date, to be agreed, then the Council may on written notice to the Developer:

10.1.1 terminate the exclusivity and the various agreements described above; and

10.1.2 may at its option require the Developer to transfer any land acquired by the Developer relating to the Scheme, or (if the Council so elects) only the Council Land, to the Council or as directed by the Council at the price paid for such land by the Developer (subject to this not exceeding the open market value of those properties).

10.2 In the event that either Party commits a material breach of these Heads of Terms the other Party may on written notice terminate these Heads of Terms and such termination shall take effect from the date fourteen (14) days after the service of such written notice unless the Party in default remedies such breach to the reasonable satisfaction of the other Party.

11. CONFIDENTIALITY

11.1 It is intended that these Heads of Terms shall be fully disclosed by the Council to the public in connection with the approval of the Council (or relevant Council committee) to enter into these Heads of Terms and the Preliminary Agreement. The Preliminary Agreement shall also be fully disclosed to the public, including the Executive Summary. However, any other elements of the Developer's design proposals shall remain confidential and shall not be disclosed to any third party, other than appointed advisers in respect of the Scheme or as required by the Information Legislation, or otherwise as necessary to enable preparation and agreement of the Development Framework.

11.2 Where a request is received by the Council under the Information Legislation in connection with the design of the Scheme it shall consult with the Developer and shall have regard to any representations made by the Developer (including on the use of any exemptions under the Information Legislation) provided always that the final decision of whether to release any information shall rest with the Council.

11.3 Neither Party shall make, or permit any person to make, any public announcement concerning the Scheme, without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed) except as required by law or any competent authority.

12. NO PARTNERSHIP OR AGENCY

12.1 Nothing in these Heads of Terms or in any document referred to in it shall be deemed to constitute a partnership or agency relationship between the Parties or any other person.

12.2 Save as expressly provided in these Heads of Terms, the execution, completion and implementation of these Heads of Terms shall not confer on either Party or any other person any power to bind or impose any obligations on the other Party.

13. GENERAL

13.1 Any notice served under or in connection with these Heads of Terms must be in writing and shall be deemed to be validly served if served either personally or by sending it through the post in a registered letter addressed to the last known registered office of the party to whom the notice is addressed.

13.2 The Council enters into these Heads of Terms, and shall enter into the Preliminary Agreement, Site Assembly Agreement, and Land Agreement, in its capacity as a landowner and not in its capacity as local planning authority or otherwise as a statutory authority, and no commitment is given by the Council in its capacity as local planning authority or otherwise as a statutory authority.

13.3 The Developer will pay the Council's reasonable and evidenced out of pocket costs (including reasonable and justified internal officer costs) in connection with finalising and entering into:

13.3.1 these Heads of Terms; and

13.3.2 the Preliminary Agreement; and

13.3.3 subject to clauses 6.6 to 6.9 the local planning authority's costs in connection with the preparation of Development Framework; and

13.3.4 the Site Assembly Agreement and Land Agreement and of complying with the Council's obligations under clauses 6, 7, 8 and 9 of these Heads of Terms, and of agreed provisions of the Site Assembly Agreement and Land Agreement;

subject to the prior approval by the Developer of a budget to be provided and updated by the Council on a monthly basis, such approvals not to be unreasonably withheld or delayed. For the avoidance of doubt the Council will not be obliged to take any action to the extent that it does not have Developer's approval to a budget for the relevant costs.

13.4 Unless expressly stated nothing in these Heads of Terms creates any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999.

13.5 No amendment or modification of these Heads of Terms shall be valid or binding on any Party unless the same is made in writing, refers expressly to these Heads of Terms and is signed by its duly authorised representative.

13.6 These Heads of Terms shall be governed by and construed in accordance with the law of England and Wales.

SIGNED by the duly authorised representatives of the Parties:

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Signed for and on behalf of the Mayor and Burgesses of the London Borough of Barnet

.....

Signed by Jonathan Joseph trading as Joseph Partners

Dated 2016

Annex 1

Indicative Project Boundary Plan