

<b>Report on Development Agreement</b>	
<b>Party 1</b>	North Hertfordshire District Council ("NHDC")
<b>Party 2</b>	Hitchin Town Hall Limited (company number 07974116)
<b>Land affected by the Development</b>	The Agreement regulates the whole of the new site shown edged red on the Site Plan. This includes the land owned by the Council (title number HD488762), the land owned by the Trust (HD506432) and the land on which 14 Brand Street is currently located which HTH Limited will acquire prior to the Development (part of title number HD512543).
<b>Nature of the Development</b>	<p>The Development is described as being the demolition of 14 Brand Street (including Party Wall Act works) and the refurbishment improvement and integration of the existing building and the 14 Brand Street land to deliver enhanced community facilities and a new museum facility.</p> <p>The works must be carried out in accordance with the existing planning permissions and the plans, specifications and other documents drawn up by the Architect to give effect to the main hall retention scheme outlined in the Feasibility Study and further detailed in:</p> <ul style="list-style-type: none"> <li>• the Stage C design report</li> <li>• the mechanical and engineering Stage C design report</li> <li>• the architectural restoration specification clauses</li> <li>• the Design and Access Statement, and</li> <li>• the Stage D cost plan</li> </ul> <p>NHDC has the right to agree with the Architect that the design should be amended subject to the following restrictions:</p> <ul style="list-style-type: none"> <li>• any amendments must be in accordance with the planning permissions, building regulation consents and any other statutory consents.</li> <li>• The floor space to be leased to HTH Limited cannot be varied by more than 2%</li> <li>• NHDC must notify HTH Limited of any variations within 10 working days and must provide copies of the revised plans and specifications.</li> <li>• The variations must not deviate from the "HTH Limited Requirements"</li> </ul> <p>The HTH Limited Requirements set out those aspects of the Development that NHDC has committed to HTH Limited that it will deliver, irrespective of how else the development may change.</p> <p>NHDC must consult with HTH Limited over any proposed amendments to the design and HTH Limited must act reasonably in responding to any such consultation.</p>
<b>Prior to the Development</b>	<p><u>14 Brand Street – Option Agreement</u></p> <p>On or before the day that the Agreement is signed, HTH Limited must sign the Option Agreement in respect of 14 Brand Street. The Option</p>

gives HTH Limited the contractual ability to purchase the property from the current owner for a price of £200,000 at any point before 30 June 2013. The Option Agreement will be attached to the Development Agreement but as it is essentially a contract between HTH Limited and the current owner, it is not reported on as part of this report.

#### Appointment of the Architect

On the day that the Agreement is signed, NHDC must appoint the Architect to proceed with the Development.

#### Procurement of Building Contractor

After the Agreement is signed, NHDC must begin the process of procuring a building contractor. This will be done under the guidance and advice of the Architect. There is no contractual date by which the Council must begin the procurement process, but the Building Contractor must be appointed before 30 June 2013.

NHDC must use reasonable endeavours to procure a building contractor who will deliver the Development within the budget. For the purpose of the Agreement the budget is specified as £3,930,102 which is the estimated cost of the development not including the cost of acquiring 14 Brand Street. The Council must also use its reasonable endeavours to procure a building contractor who will provide collateral warranties to FBE Limited (HTH Limited's funder). Such warranties will give FBE Limited the ability to directly enforce some of the clauses in the Building Contract on the Building Contractor after completion of the Development.

If NHDC cannot secure a building contractor who will deliver the Development within budget, then it will be entitled to terminate the Agreement. See the section below entitled *Default and Termination*.

#### Making the Agreement 'Effective'

Once NHDC has secured a building contractor that meets its requirements, it will serve a notice on HTH Limited confirming that the Agreement is to become 'effective' and confirming the Effective Date (which will be the next working day after the notice is served). This process will trigger the next stage of obligations under the Agreement.

#### Purchase of 14 Brand Street

On or before the Effective Date HTH Limited must purchase 14 Brand Street under the terms of the Option Agreement. The terms on which it will acquire the property are set out in a draft Transfer Deed named a 'TP1'. This document will be annexed to the Development Agreement and HTH Limited cannot agree any changes to the document without the consent of the Council and the Trust.

The terms of the TP1 are still being finalised between HTH Limited and the current owner. The draft document contains such rights easements and covenants as would usually be included in a land transfer of this nature. Provision has been made for the fact that the current owner is to retain the adjacent land. There are therefore rights of access and services granted in favour of the 14 Brand Street land. It is anticipated that the current owner will require some covenants to be included on the 14 Brand Street land but at the time of writing the

	<p>detail of the covenants is unknown. Officers will ensure that any proposed covenants do not restrict or prevent the Development.</p>
<p><b>During the Development - Key obligations on NHDC</b></p>	<p><u>The Development process</u>  No later than 10 working days after the Effective Date, NHDC must commence the Development. The terms on which the Development is to be carried out are set out in Schedule 2 of the Agreement. In summary the Agreement states that:</p> <ul style="list-style-type: none"> <li>• NHDC must obtain any outstanding statutory consents such as building regulations approval or discharge of planning conditions.</li> <li>• The work must be carried out in accordance with all consents and codes of practice, in a good and workmanlike manner, using suitable materials and so that on completion the Development is fit for its intended purpose.</li> <li>• NHDC shall be the 'client' for the purpose of the Construction (Design and Management) Regulations 2007 and shall be responsible for ensuring compliance with the regulations.</li> <li>• NHDC shall be responsible for insurance of the site during the works.</li> </ul> <p>The Agreement requires NHDC to use its reasonable endeavours to complete the Development by the Longstop Date. This has yet to be agreed and will be finalised by Officers under the delegated authority sought in the Council Report.</p> <p><u>Involvement of HTH Limited in the Development process</u>  Generally the views of HTH Limited will be taken on board through the Liaison Process set out in the Agreement. However the Agreement permits HTH Limited some specific involvement in the Development process as follows:</p> <ul style="list-style-type: none"> <li>• HTH Limited may access the site at any time during the Development in order to inspect progress. HTH Limited must not give any instructions or directions to the building team and should instead feedback any comments to NHDC through the Liaison Process.</li> <li>• HTH Limited may attend the Architect's inspection of the Development for the purpose of issuing the Certificate of Practical Completion. HTH Limited must not make representations to the Architect directly but again, should feedback comments to NHDC through the Liaison Process.</li> <li>• Following formal completion of the Development, HTH Limited and the Council shall jointly compile a list of any snagging defects that need to be remedied under the Building Contract.</li> </ul> <p><u>Fit out of the Café</u>  NHDC must endeavour to ensure that under the terms of the Building</p>

	<p>Contract, HTH Limited is given access to the site at least 8 weeks before the end of the Development in order to fit out the Café. Details of the proposed fit out works must be submitted to NHDC for approval and the Council must not unreasonably withhold or delay that approval.</p> <p><u>Amendments to the Lease and Management Agreement</u> The Development Agreement acknowledges that the Lease, Lease plans and Management Agreement have been drafted on the basis of the parties assumption of the final Development. It may be necessary to amend the documents if there are any variations to the layout of the final build, or the operational arrangements are different to those envisaged. NHDC and HTH Limited must attempt to agree any variations to the documentation during the Development period so that the documents can be completed at the end of the Development.</p>
<b>During the Development - Key obligations on HTH Limited</b>	<p><u>Licence to demolish 14 Brand Street</u> During the Development, 14 Brand Street will belong to HTH Limited. Therefore, under the terms of the Agreement, HTH Limited gives permission to NHDC to enter onto the land, demolish the building and carry out the Development.</p> <p><u>Fit out of the Café</u> As soon as reasonably practicable after the Agreement is signed, HTH Limited must submit to NHDC plans and specifications for the fit out works to the Café. Once these have been approved by NHDC and a time slot has been allocated for HTH Limited to access the site, HTH Limited must begin the fit out works at its own cost using £60,000 of its funding. The Agreement sets out the detail of how the works must be completed and in summary states:</p> <ul style="list-style-type: none"> <li>• Hitchin Town Hall Limited must obtain all relevant consents for the works.</li> <li>• The works must be carried out in accordance with the consents, in a good and workmanlike manner, using good and suitable materials, and to the reasonable satisfaction of the Council.</li> <li>• If any damage to the building is caused by virtue of the works then HTH Limited must make good such damage at its own cost.</li> <li>• HTH Limited must not obstruct or interfere with the remainder of the Development whilst carrying out the works.</li> </ul>
<b>On completion of the Development</b>	<p><u>Payment of the Building Contractor</u> NHDC will be responsible for making any interim payments due to the Building Contractor during the course of the Development. Once the Certificate of Practical Completion has been issued to confirm the Development is complete, HTH Limited must pay its contribution of £490,000 to the Building Contractor. Any other sums due will be met by NHDC.</p> <p><u>Transfer of 14 Brand Street to the Trust</u> Within 10 working days of the issue of the Certificate of Practical Completion, HTH Limited must transfer the 14 Brand Street land to the</p>

	<p>Trust for a purchase price of £0. The terms of the Transfer are set out in Schedule 1 to the Development Agreement, and in a draft deed of transfer named a 'TR1' which will be annexed to the Agreement. Both Schedule 1 and the TR1 contain standard provisions which are usual for a land transfer of this nature.</p> <p><u>Completion of the Lease and Community Use &amp; Management Agreement</u></p> <p>Provided all of the "Lease pre-conditions" have been satisfied, NHDC will grant the Lease and CU&amp;MA to HTH Limited 10 working days after the Practical Completion Date. The Lease pre-conditions are:</p> <ul style="list-style-type: none"> <li>• HTH Limited must have advertised at least once for members to join HTH Limited in accordance with its articles of association. There must also have been at least one AGM since the advertisement process which would give new members an opportunity to become a director of the company.</li> <li>• HTH Limited must have paid its contribution of £490,000 to the building contractor.</li> <li>• The 14 Brand Street land must have been transferred to the Trust.</li> </ul> <p>The grant of the lease will be in accordance with Schedule 3 of the Development Agreement. The schedule contains standard provisions which are usual for an agreement to lease of this nature.</p>
<p><b>Default and Termination</b></p>	<p><u>Automatic</u></p> <p>The Agreement will terminate immediately if NHDC has not served notice on HTH Limited to confirm that it has appointed the Building Contractor before 30 June 2013. This is because HTH Limited's ability to buy 14 Brand Street under the terms of the Option Agreement is only valid until this date.</p> <p><u>Over Budget</u></p> <p>NHDC may terminate the Agreement at any time before the appointment of the Building Contractor if it becomes aware that the cost of the Development will exceed the budget of £3,930,102.</p> <p>If at any time after the appointment of the Building Contract NHDC becomes aware that the cost of the Development will exceed the budget, it cannot terminate the Agreement. NHDC's only course of action in these circumstances will be to amend the detail of the Development to bring it on budget.</p> <p><u>Breach of the Agreement</u></p> <p>HTH Limited may terminate the Agreement at any time if NHDC is in material breach of its obligations relating to the development process. These are the obligations set out in Schedule 2 of the Agreement and summarised in this report under <i>The Development process</i>.</p> <p>NHDC may terminate the Agreement at any time if HTH Limited is in material breach of any of its obligations in the Agreement. However before NHDC can terminate, it must serve at least 56 days notice on HTH Limited and Futurebuilders Limited explaining the nature of the</p>

	<p>breach. There then has to be a period to allow HTH Limited or Futurebuilders to remedy the breach. This notice period has been included as a requirement of Futurebuilders Limited. The wording of the relevant clauses has not yet been finalised and will be one of the matters concluded through delegated authority.</p>
<b>Alienation</b>	<p><u>Assignment (ie. transferring the Agreement to another party)</u> The Agreement cannot be assigned and so (subject to the rights of Futurebuilders Limited) HTH Limited will remain the contracting party for the duration of the Agreement.</p> <p><u>Charging (ie. using the lease as security for a loan)</u> The Agreement may be charged to Futurebuilders Limited provided that NHDC approve the terms of the charge. NHDC cannot unreasonably withhold or delay such approval.</p>
<b>Staffing issues</b>	<p>Please see Part 2 report.</p>
<b>Failure of the HTH to comply with the terms of the Development Agreement</b>	<p><u>Indemnity</u> The Agreement contains an indemnity from Hitchin Town Hall Limited in favour of NHDC against all expenses, costs, claims, damage and loss arising from any breach of HTH Limited's obligations in the Agreement.</p> <p><u>Interest</u> If HTH Limited fail to make the final payment to the Building Contractor when it falls due, then it shall be liable to the Council for interest and damages arising from the failure.</p> <p><u>Termination of the Agreement</u> As is noted above, subject to certain notice provisions, NHDC may terminate the Agreement if HTH Limited is in material breach of any of its obligations.</p> <p><u>Contractual remedies</u> If HTH Limited breaches the terms of the Agreement then NHDC would be able to apply to court for any of the usual remedies available for breach of contract, such as damages or specific performance.</p>
<b>Any other material terms</b>	<p><u>Actions against the Architect and Building Contractor</u> If it is necessary to enforce the terms of the contract with the Architect or Building Contractor in order to complete the Development, then NHDC must do so at its own expense.</p> <p><u>Freedom of Information</u> The Agreement sets out the obligations of the parties in relation to any Freedom of Information requests. In particular the Agreement regulates the position in the event that either party is of the view that information should not be disclosed in response to an FOI request.</p>