

Heads of terms for agreements to deliver the Sturry Relief Road

These Heads of Terms are not intended to create legally binding obligations and are subject to contract and the completion of relevant Section 106 Agreements. For the avoidance of doubt any Section 106 obligations entered into pursuant to these Heads of Terms will be enforceable only against those parties assuming these obligations under the Section 106 Agreements

Authorities and agreement

- 1 Barbara Cooper is Corporate Director for Growth Environment and Transport for The Kent County Council (“KCC”) and has agreed these heads of terms**
- 2 Colin Carmichael is the Chief Executive for Canterbury City Council (“City Council”) and has agreed these heads of terms**
(together “Councils”)
- 3 Environ Design (Sturry) Ltd has control of the Sturry Site pursuant to an option/promotion Agreement and its Director James Brett has agreed these heads of terms**
- 4 Somerlee Homes Ltd has control of the Broad Oak Site pursuant to an Option Agreement and its Director Charles Wimborne has agreed these heads of terms**
- 5 Hillreed Developments Ltd have control of the Hersden Site pursuant to an option agreement and its Director David Huggett has agreed these heads of terms**
(together “Developers”)

Definitions

In this document the following terms will have the following meaning:

“Broad Oak Site”	means part of the land forming site 2 in Policy SP3 in the Draft Local Plan
“the Contributing Sites”	means the Sturry Site, the Broad Oak Site and the

	Hersden Site
“Costs Cap”	means the sum of £29.6m which for the avoidance of doubt includes the SELEP Funding
“Draft Local Plan”	means The Canterbury District Local Plan Publication Draft June 2014 (including any proposed modifications)
“Herne Bay Golf Course section 106 agreement”	means an agreement dated 24 September 2015 made between (1) Newmaquinn Properties Ltd (2) Newmaquinn Developments Ltd (3) Redrow Homes Limited (4) Canterbury City Council and (5) Kent County Council in respect of the development permitted under reference CA/15/00844
“Hersden Site”	means the land forming site 8 in Policy SP3 in the Draft Local Plan
“SELEP Funding”	means funding allocated by SELEP for the design and construction of the Sturry Relief Road in the sum of £5.9m
“the Plan”	means drawing FIGURE 1 annexed hereto
“SELEP”	means South East Local Enterprise Partnership
“Sturry Relief Road”	shall mean the highway including all related ancillary works to be constructed as shown on the Plan and which is made up of the Sturry Relief Road KCC Portion and the Sturry Relief Road Developer's Portion
“Sturry Relief Road Developer's Portion”	shall mean that length of the Sturry Relief Road shown with a broken blue line on the Plan
“Sturry Relief Road KCC Portion”	shall mean that length of the Sturry Relief Road shown with a solid red line on the Plan
“Sturry Site”	means part of the land forming site 2 in Policy SP3 in the Draft Local Plan

Background

1. The City Council, in its Draft Local Plan is proposing to allocate land for housing, employment and other uses at various sites including the Sturry Site, the Broad Oak

Site and the Hersden Site subject to a range of requirements, conditions and obligations under section 106 of the Town and Country Planning Act 1990.

2. The City Council identifies a key requirement for these allocations as the provision of a relief road (the Sturry Relief Road) to reduce traffic from the village of Sturry, as set out in draft Policy T14 of the Draft Local Plan. The proposed route of the Sturry Relief Road is identified on the Local Plan Proposals Map under draft Policy T14.
3. KCC has made a bid to SELEP for £5.9m of funding towards the Sturry Relief Road.
4. The City Council, as Local Planning Authority, and the County Council, as the Highway Authority, considers that the provision of the Sturry Relief Road is essential to the delivery of development of the Sturry Sites. This requirement is also evidenced in the transport modelling which has been undertaken.
5. KCC have made it clear that it would not support the future development of the Contributing Sites based upon the highways impact of the sites without the provision of a Sturry Relief Road which is to be provided at no cost to KCC beyond the provision of the SELEP Funding.
6. These heads of terms have been drawn up
 - (i) to set out a mechanism for developing an agreed, coherent approach to delivering phased housing development across the Contributing Sites;
 - (ii) to establish core principles about cost apportionment in certain foreseeable situations;
 - (iii) to entrench the 'nil cost' principle as regards KCC's work on the Sturry Relief Road; and
 - (iv) to give some assurance to the Inspector at the Local Plan Examination in Public as to deliverability of the necessary supporting infrastructure.

Sturry Relief Road

7. In establishing a mechanism to provide the Sturry Relief Road the Developers (or their successors as applicable) and KCC and the City Council will agree to enter into all necessary legal agreements on the following basis:
 - (a) Subject to the Costs Cap, all costs in connection to the Sturry Relief Road incurred by KCC will be borne by the Developers (save for those costs which

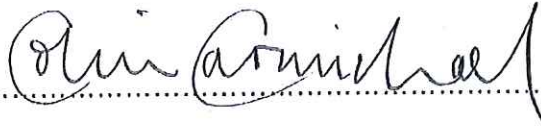
are secured through SELEP Funding and through the Herne Bay Golf Course section 106 agreement (which provided the sum of £250,000 towards the outline design and feasibility study)). Such costs will be funded by the Contributing Sites in the proportions as indicatively set out in the Schedule hereto *or as otherwise agreed between the parties hereto*. Such costs shall include but are not limited to: design costs, construction costs, professional fees including legal and surveyor's fees, costs associated with the making of the planning application and costs associated with compulsory purchase.

- (b) Each of the Developers will pay the amounts as set out in the Schedule hereto into an escrow bank account controlled by KCC. Such deposits shall be made no less frequently than quarterly. The Developers will report to KCC quarterly on the number of completions in the previous quarter and will pay contributions based on the number of completions in the previous quarter.
- (c) If by 1 April 2020 (or such other date agreed by the parties) the escrow account does not hold the sum equal to the current estimate of £23.7million (or such lesser amount as KCC require to complete the works following detailed costing), the Developers (at their election) will provide one or a combination of the following measures:
 - a. A bond to cover any shortfall based on a proportionate contribution
 - b. Coverage through Section 106 contributions of the debt and borrowing costs KCC will incur to forward fund the construction of the Sturry Relief Road
 - c. Advanced payment of the balance of their proportionate contribution
- (d) The Developers are to provide KCC with annual reviews of both the build-out and projected build out for the coming 12 months
- (e) The Developers will indemnify KCC for any SELEP Funding money that KCC is required to pay back to SELEP subject to a maximum cap of six hundred thousand pounds.
- (f) Environ Design (Sturry) Ltd will agree to safeguarding provisions to ensure that the Sturry Link Road can be built and is built at no greater expense or difficulty due to act or omissions of the Developers i.e. the Developers will make available land within their control to KCC for construction purposes and

will not use any land required for the Sturry Relief Road, or any land in the immediate vicinity of such land, for any purpose which would compromise the provision of the Sturry Relief Road, or add to the costs or time likely to be taken to construct the road.

- (g) Environ Design (Sturry) Ltd / Somerlee Homes Ltd will take reasonable steps to novate for use by KCC all traffic surveys, traffic modelling, topographical survey, and all ecological and environmental survey data necessary for construction of the Sturry Relief Road
8. The Sturry Relief Road Developer's Portion will be constructed by the developer of the Sturry Site to an adoptable standard (as defined in the Highways Act 1980) and all necessary agreements for the dedication and transfer of the land will have been secured before KCC is obliged to construct the Sturry Relief Road KCC Portion
9. KCC will use reasonable endeavours to secure Planning Permission for the Sturry Relief Road and deliver the Sturry Relief Road KCC Portion with the Developers indemnifying KCC against the cost of acquiring land or rights necessary to construct and operate the Sturry Relief Road subject to the Costs Cap
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10. Subject to the timing of granting of planning permissions for the developments there may need to be provision in the Section 106 Agreement for indexation of costs, subject to an agreed cap; any increased amounts to cover indexation to be payable through Section 106 contributions.
- 11 The Developers' contribution towards the delivery of the Sturry Relief Road as referred to within these Heads of Terms will be taken into account by the City Council, in accordance with the National Planning Policy Guidance, in a viability assessment should one be submitted in support of any subsequent planning applications.

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Signed by Barbara Cooper on behalf of The Kent County Council



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Signed by Colin Carmichael on behalf of Canterbury City Council

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Signed by James Brett on behalf of Environ Design (Sturry) Ltd

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Signed by Charles Wimborne on behalf of Somerlee Homes Ltd

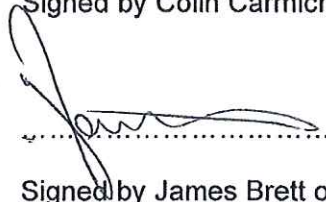
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Signed by David Huggett on behalf of Hillreed Developments Ltd

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Signed by Barbara Cooper on behalf of The Kent County Council

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Signed by Colin Carmichael on behalf of Canterbury City Council

A handwritten signature in black ink, appearing to read 'Colin Carmichael', written over a horizontal dotted line.

Signed by James Brett on behalf of Environ Design (Sturry) Ltd

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P.P.



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