

## **Heads of Terms for part title number IW52369**

### **Property**

Part Title Number IW52369  
Identified in TP1 dated 12<sup>th</sup> March 2020  
Newport  
Isle of Wight

### **First Party**

Isle of Wight Council  
County Hall  
High Street  
Newport

### **First Party lawyer**

Ben Gard  
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### **Second Party**

**SCL Ltd**  
Innovation Centre,  
St Cross Business Park,  
Newport,  
Isle Of Wight, England, PO30 5WB

### **Second Party Lawyer**

Tony Holmes  
Roach Pittis  
62/66 Lugley Street  
Newport  
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PO30 5EU

## **1) Purpose of agreement**

To remove the existing covenants imposed by the Original Agreement dated 12<sup>th</sup> March 2020 entered into by the First Party over the Second Party's land and simultaneously to enter into an overage agreement in connection with use of the Second Party's land in accordance with the use permitted as contained in the Original Agreement.

### **Terms of the Proposed Overage**

An overage payment will be due to the First Party from Second Party in the event of the commencement of any development for uses exclusively prohibited by the Original Agreement evidenced by a Material Commencement (see definition below) of a planning consent.

The overage payment shall be calculated as 50% of the increase from the base value, being the value of the land before commencement of the development and the enhanced value, being the value of the land after commencement of the development

This figure is to be calculated by a jointly appointed valuer agreed between the parties, each party to have the ability to make representations to the valuer provided such representations are disclosed to the other party. The valuer's fee to be borne equally between the parties, save that should the valuer confirm that there will be no increase in the value of the land then the valuer's fee shall be borne solely by the Second Party. The valuer will have a duty of care to both parties.

In the event that either Party considers the value given by the valuer is incorrect they can request an RICS appointed expert to deliver the final figure, the party objecting to the original valuation shall bear these costs and the value given shall be deemed as the final value. In the event no such application to the RICS is made with 21 working days of the valuers written report then the value set out in the report will have deemed to be accepted by both parties.

Should both parties consider the value incorrect then the fees to be split equally.

### **Fees**

The Second Party shall be responsible for their own legal fees in connection with this Agreement and shall be responsible for the First Party's legal fees in the sum of £1,500 plus VAT.

## **2) Other matters**

The First Party shall grant such easements as is necessary for the Second Party to gain access to the unadopted road fronting the land and for the connection of services conduits which are over or under the unadopted road. In addition the first party shall also agree to covenant with the second party that it will on request execute and deliver any Deeds of Grant, Wayleave, Licence or other documentation in such form which may be required by any local authority, provider of Services/Utilities in respect of the supply, construction and maintenance of conduits, cables and drains new or situate within the unadopted road. SCL to pay IWC's costs associated with it.

An agreement was entered into by the parties on the 12<sup>th</sup> March 2020 (the option agreement) the purpose of this agreement was to encourage one party (SCL) to develop the land which is the subject of the covenants as above in a certain timescale.

The parties have agreed that this option to be nullified and replaced by an agreement that SCL will pay IWC the sum of £20,000 should development not be commenced within 2 years of this deed of variation, and a further sum of £40,000 should the development not commence on the land within a further period of 3 years.

Commencement of development to be defined as the date that material commencement has occurred (Material Commencement to be defined as in the original agreement).

### **3) Further matters**

A further agreement was reached between the parties which bound the land (IW 52369 and IW17094) to remain in a single freehold ownership. The parties have agreed that this will be removed and replaced by the following method of payment to the first party by the second party.

In the event there is a disparity in the value of an individual investment lot where an independent valuer considers it would (pro- rata) attract a higher value for the same use (all things being equal) when compared to a single investment sale (to one party) of the same units (pro- rata) on all of the land edged in blue. Then SCL will share 50% of any increase in the land value

The precise mechanism for the calculation to be agreed between the parties

Conditions: The first party wishes once the above matters have been executed that in any further matters the second party to bear all costs in connection with assessing the amount due under (3) above.

Subject to: 1. Contract

2. Formal council approval NB for the purposes of clarity, terms amended/agreed after the approval of the cabinet member report still require formal IWC approval in the form of email confirmation

3. Subsequent purchasers to be bound by the same terms if not already discharged

End