

DRAFT MEMORANDUM OF UNDERSTANDING

DATED _____ 2018

MEMORANDUM OF UNDERSTANDING

between

TORBAY COUNCIL

and

TORQUAY UNITED AFC

PROJECTS

- 1. A NEW STADIUM/ARENA/LEISURE COMPLEX**
- 2. A NEW YOUTH CENTRE OF EXCELLENCE AND SPORTS ACADEMY**

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THIS AGREEMENT is dated _____ 2018

PARTIES

The parties to this Memorandum of Understanding (**Memorandum**) are:

- (1) **Torbay Council**, of The Town Hall, Castle Circus, Torquay TQ1 3DR (**“the Council”**)
- (2) **Torquay United Association Football Club** (Co Reg Number _____) whose registered office is _____ (**“TUAFC”**)

1. PREAMBLE

1.1 The Council and TUAFC (collectively called “the Parties”) have agreed to work together on the Projects detailed in 0 to this Memorandum (**Projects**).

1.2 For the avoidance of doubt the Parties agree that:

- (a) the Council enters this Memorandum as Local Authority and as a Landowner
- (b) the Council does not enter this Memorandum as planning authority and nothing in this Memorandum shall either expressly or impliedly suggest as such;
- (c) nothing in this Memorandum shall either expressly or impliedly warrant or suggest any pre-determination or assurance in connection with the Council as a Landowner
- (d) nothing in this Memorandum shall either expressly or impliedly warrant or suggest any pre-determination or assurance in connection with any application for planning consent either outline or detailed or otherwise;
- (e) the participation of any elected member of the Council or portfolio holder of the Executive (being the executive function of the Council) or Officers in any Projects meeting, steering group or similar in connection with or ancillary to the Projects shall be taken as pre-determination of any decision or political endorsement or assurance.

1.3 The Parties wish to record the basis on which they will collaborate with each other on the Projects. This Memorandum sets out:

- (a) the principles of collaboration;
- (b) obligations on part of the Council;

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- (c) obligations on part of TUAFC; and
- (d) the governance structures the Parties will put in place.

2. PRINCIPLES OF COLLABORATION

The Parties agree to adopt the following principles when carrying out the Projects (**Principles**):

- (a) collaborate and co-operate. Establish and adhere to the governance structure set out in this Memorandum to ensure that activities are delivered and actions taken as required;
- (b) be accountable. Take on, manage and account to each other for performance of the respective roles and responsibilities set out in this Memorandum;
- (c) be open. Communicate openly about major concerns, issues or opportunities relating to the Projects;
- (d) learn, develop and seek to achieve full potential. Share information, experience, materials and skills to learn from each other and develop effective working practices, work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;
- (e) adopt a positive outlook. Behave in a positive, proactive manner;
- (f) adhere to statutory requirements and best practice. Comply with applicable laws and standards including EU procurement rules, data protection and freedom of information legislation;
- (g) act in a timely manner and respond appropriately to requests for support;
- (h) deploy appropriate resources. Ensure sufficient and appropriately qualified resources are available and authorised to fulfil the responsibilities set out in this Memorandum;
- (i) act in good faith to support achievement of the Projects and compliance with these Principles; and
- (j) respect commercial confidentiality in relation to the management and dissemination of sensitive commercial information in relation to the Projects.

3. OBLIGATIONS ON PART OF THE COUNCIL

3.1 Recognising that the Council is committed to the delivery of sports facilities in accordance with the statements contained or referred to in the Local Plan and the Torbay Sports Facilities Strategy (2014-2021), the Council agrees:

- (a) to facilitate (through Planning Services) appropriate pre-application planning support to TUAFC commensurate with a Projects of this

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significance (subject to receipt of appropriate pre-application planning fees relating to specific sites and projects);

- (b) to work with TUAFC once they have identified sites that will contribute to the requirement of enabling development which may be within public or private ownership and control;
- (c) to work with TUAFC to agree the level of appropriate mix of tenures and house type in connection with enabling housing development.

3.2 For the avoidance of doubt nothing in this Memorandum shall commit the Council to underwrite any risk in the delivery of the Projects.

4. OBLIGATIONS OF PART OF TUAFC

4.1 TUAFC agrees:

- (a) to develop and ultimately deliver the Projects in accordance with Local Plan and associated policies;
- (b) to enter into pre-application dialogue at an early stage with the Local Planning Authority and in any event within six months of the date of this Memorandum;
- (c) to identify sites that will contribute to the requirement of enabling development which may be within public or private ownership and control;
- (d) use reasonable endeavours to explore and identify financial and investment models in order to deliver the Projects from both state and private sources;
- (e) to work with the Council to agree the level of appropriate mix of tenures and house type in connection with any enabling housing development.

5. PROJECTS GOVERNANCE

5.1 Overview

The governance structure defined below provides a structure for the development and delivery of the Projects.

5.2 Guiding principles

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The following guiding principles are agreed. The Projects' governance will:

- (a) provide strategic oversight and direction;
- (b) be based on clearly defined roles and responsibilities at organisation, group and, where necessary, individual level;
- (c) align decision-making authority with the criticality of the decisions required;
- (d) be aligned with Projects scope and each emerging Projects stage (and may therefore require changes over time);
- (e) leverage existing organisational, group and user interfaces;
- (f) provide coherent, timely and efficient decision-making; and
- (g) correspond with the key features of the Projects governance arrangements set out in this Memorandum.

5.3 Sponsors' board

- (a) The **Sponsors' Board** provides overall strategic oversight and direction to the Projects. This group will consist of:

The Elected Mayor/Leader of Torbay Council or Representative and the Director of Place or Representative

Clarke Osborne, Chairman, TUAFC or such additional or other representative that may be agreed by the Parties

Projects board

- (b) The Projects Board will provide strategic management at Projects and work stream level. It will provide assurance to the Sponsors' Board that the key objectives of the Projects are being met and that the Projects is performing within the boundaries (if any) set by the Sponsors' Board.
- (c) The Projects Board consists of representatives from each of the Parties. The Projects Board shall have responsibility for the creation and execution of the Projects plan and deliverables, and therefore it can draw technical, commercial, legal, financial and communications resources as appropriate into the Projects Board. The core Projects Board members are :-

_____, Director of Asset Management, Investment and Housing, TDA or Representative

_____, Assistant Director of Planning and Transport, Torbay Council or Representative

Chris Lewis, appointed Property Development Manager, TUAFC

George Edwards, appointed Director, TUAFC

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The Projects Board shall meet as and when necessary with at least quarterly meetings as the Projects gain traction. The Projects Board may co-opt other members or advisors to advise on specific matters as required and by agreement not to be unreasonably withheld or delayed.

5.4 Reporting

Projects reporting shall be undertaken at two levels:

- (a) **Projects Board:** Minutes and actions will be recorded for each Projects Board meeting. Any additional reporting requirement shall be at the discretion of the Projects Board.
- (b) **Organisational:** The Projects Board members shall be responsible for drafting reports into their respective sponsoring organisation as required for review by the Projects Board before being issued.

6. ESCALATION

- 6.1 If any of the Parties has any issues, concerns or complaints about the Projects, or any matter in this Memorandum, that party shall notify the other Parties and the Parties shall then seek to resolve the issue by a process of consultation.
- 6.2 If the issue cannot be resolved within a reasonable period of time, the matter shall be escalated to the Project Board, which shall decide on the appropriate course of action to take. If the matter cannot be resolved by the Projects Board within 14 days, the matter may be escalated to the Sponsors' Board for resolution.
- 6.3 If either of the Parties receives any formal inquiry, complaint, claim or threat of action from a third party (including, but not limited to, claims made by a supplier or requests for information made under the Freedom of Information Act 2000) in relation to the Projects, the matter shall be promptly referred to the Projects Board (or its nominated representatives). No action shall be taken in response to any such inquiry, complaint, claim or action, to the extent that such response would adversely affect the Projects, without the prior approval of the Projects Board (or its nominated representatives) acting reasonably so as to ensure compliance with any statutory provision.

7. INTELLECTUAL PROPERTY

- 7.1 The Parties intend that any intellectual property rights created in the course of the Projects shall vest in the party whose employee created them (or jointly in the case of any intellectual property rights created jointly by employees of both Parties).

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- 7.2 Where any intellectual property right vests in one or more of the Parties in accordance with the intention set out in clause 7.1 above, that party shall grant an irrevocable licence to the other Parties to use that intellectual property for the purposes of the Projects.

8. TERM AND TERMINATION

- 8.1 This Memorandum shall commence on the date of signature by all Parties and shall expire on completion of the Projects or within three years of the date of this agreement, whichever is the sooner.

9. VARIATION

This Memorandum, including the Annexes, may only be varied by written agreement of the Sponsor's Board.

10. CHARGES AND LIABILITIES

- 10.1 The Parties shall each bear their own costs and expenses incurred in complying with their obligations under this Memorandum.
- 10.2 Neither party intends that the other party shall be liable for any loss it suffers as a result of this Memorandum.

11. STATUS

- 11.1 This Memorandum is not intended to be legally binding, and no legal obligations or legal rights shall arise between the Parties from this Memorandum. The Parties enter into the Memorandum in good faith and intending to honour all their obligations.
- 11.2 Nothing in this Memorandum is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute any of the Parties as the agent of the other Parties nor authorise either of the Parties to make or enter into any commitments for or on behalf of the other Parties.

12. GOVERNING LAW AND JURISDICTION

This Memorandum shall be governed by and construed in accordance with English law and, without affecting the escalation procedure set out in clause 6, each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

Signed for and on behalf of;
Torbay Council

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Signature:

Name:

Kevin Mowat

Position:

Assistant Director for Business Services

Date:

Signature:

Name:

Gordon Oliver

Position:

Elected Mayor of Torbay

Date:

Signed for and on behalf of
TUAFC

Signature:

Name:

Position:

Date:

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Annex A. The Projects

Projects overview

The Projects are:

- 1) the construction and completion of a football stadium and event arena with and initial capacity of circa 10,000 for football and circa 20,000 for concerts and events using the football pitch. Together with supporting development in hospitality and leisure.
- 2) The construction and completion of a Centre of Excellence providing facilities for the playing, training and teaching of youth sports (primarily football) together with supporting development including student accommodation.

It is acknowledged that to facilitate delivery of the Projects there will be enabling development consisting of a mix of leisure, commercial and housing uses all to be delivered with regard to the Council's Local Plan and other relevant policies and appropriate strategies.

The Parties envisage that enabling housing will be delivered within the borough of Torbay. Such sites may be within the ownership or control of the Council or private individuals and entities.

Projects Objectives

- to deliver a Stadium/Event Arena and Centre of Excellence for Youth Sports as outlined above;
- to provide such enabling development as is appropriate and proportionate to the delivery the Projects and ancillary facilities;
- to provide a stadium for Torquay United Football Club;
- the Parties envisage that the Projects will be available to the residents of and visitors to Torbay for a range of sports, recreational activities and uses to promote and maintain general wellbeing;
- to consider the delivery of community sports, recreational activities and activities promoting and maintaining general wellbeing through the Council's existing delivery partners or such other partner;

The existing position

Through an independent and sequential assessment of potential sites within the borough of Torbay the Parties will identify various appropriate sites for the Stadium/Event Arena and Centre of Excellence for Youth Sports.

The Council owns several development sites throughout the borough that may offer opportunity for redevelopment. Each of these sites once identified by the Council, along with other identified sites will be evaluated by TUAFC and appropriate feasibility reports produced.