



Homes &  
Communities  
Agency

Steve Baker  
Assistant Director  
Dacorum Borough Council  
Civic Centre  
Marlowes  
Hemel Hempstead  
Herts  
HP1 1HH

CORPORATE SUPPORT

- 8 NOV 2011

7<sup>th</sup> November 2011

Dear Steve

**HIGH BARNES, HEMEL HEMPSTEAD - LAND STABILISATION PROGRAMME  
FUNDING APPROVAL OFFER**

**1 Recitals**

- 1.1 I refer to your application, dated 18<sup>th</sup> October 2010, for funding from the Homes and Communities Agency (the **HCA**).
- 1.2 The HCA, acting on behalf of the First Secretary of State, awards grants for the purposes of land stabilisation works pursuant to section 1 of the Derelict Land Act 1982.
- 1.3 The HCA has determined that the site, as defined on drawing ref Figure 5 - LN01292 issue 00 from Hyder Consulting's Feasibility Study Report in your application, has the potential for collapse of abandoned former non-coal workings which are considered to be a significant risk to public safety and property thereby causing blight. Accordingly, the HCA has determined that Dacorum Borough Council (the **Council**) is eligible for investment under the Derelict Land Act 1982 and hereby offers to reimburse the Council 100% of the eligible costs specified in Annex 1 subject to the Council's acceptance of (and in accordance with) the terms and conditions set out below (the **Offer**).

**2 Interpretation**

- 2.1 In this Offer, unless the context otherwise requires:
  - (a) References to paragraphs and annexures are references to paragraphs and annexures to or of this Offer; a reference to this Offer includes any annexures to this Offer.
  - (b) Any headings, footnotes or preamble to the paragraphs or annexures are inserted for convenience only, have no legal effect and shall be ignored in interpreting this Offer.

- (c) Words importing persons include an individual, company, corporation, firm, partnership, unincorporated association or body of persons, and any state, or governmental or local agency of a state.
- (d) Words importing the singular include the plural (and vice versa), and words importing any gender include every gender.
- (e) A reference to any document (including this Offer) is to that document as varied, novated, ratified or replaced from time to time.
- (f) References to any statute or statutory provision shall include:
  - (i) any subordinate legislation made under it;
  - (ii) any provision which it has superseded or re-enacted (whether with or without modification); and
  - (iii) any provision superseding to or re-enacting it (whether with or without modifications).
- (g) Where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning.
- (h) The words and phrases "other", "including" and "in particular" shall not limit the generality of the words preceding or succeeding them or be construed as limiting the succeeding words to the same class as the preceding words.

### **3 Definitions**

3.1 In this Offer the following expressions shall have the following meanings:

"Application" means all documentation and correspondence from the Council to the HCA relating to the Council's application for LSP Investment for the Project.

"Approved Costs" are the costs specified in the table in Annex 1.

"Available Investment" is the amount of LSP Investment that the HCA is able to provide in respect of the Works scheduled over any given period.

"CDM Regulations" means the Construction (Design and Management) Regulations 2007 (SI 2007/320) and the Approved Code of Practice published by the Health and Safety Executive in relation to those Regulations.

"Clearing Bank" means any of Barclays Bank Plc, HBOS Plc, Lloyds TSB Bank Plc, Royal Bank of Scotland Plc and Clydesdale Bank Plc or such other recognised clearing bank within the City of London.

"External Auditor" means the external auditor appointed by the Audit Commission from time to time to audit the Council's affairs.

"Final Claim Form" means HCA's form entitled "Final Claim – Land Stabilisation Programme" (referenced English Partnerships).

"Land Stabilisation Programme" or "LSP" means the discretionary grant programme, established for the purposes of section 1 of the Derelict Land Act 1982 administered by the HCA acting on behalf of the First Secretary of State.

"LSP Investment" means the payment of a grant under the LSP in connection with the Project by the HCA to the Council.

"Material Variation" means any:

- (a) increase or decrease in Approved Costs;
- (b) change to the works specification set out in the Application which for the avoidance of doubt shall include any change of mine investigation and/or infill materials including their sources, types, quantities and method of preparation or use;
- (c) changes to the following obligatory Project milestones:
  - (i) completion of the mine investigation and surface reinstatement at the Site on or before 3<sup>rd</sup> June 2013.
  - (ii) abandonment of any part of the Project due to premature or natural collapse of a mine or mines the subject of the Project.

"Methodology" means the HCA's document entitled "Land Stabilisation Programme: Methodology for Assessment of Funding Applications" (Version 1.1 - March 2006), a copy of which has been provided to the Council.

"Project" means the investigation of voids and unstable land beneath High Barns, Pond Road and East Green as identified on the drawing ref Figure 5 - LN01292 - 00.

"Site" means the areas identified on drawing ref Figure 5 - LN01292 - 00.

"Termination Costs" means the reasonable costs paid or incurred by the Council in respect of the termination of contracts for carrying out the Project.

PROVIDED always that the Termination Costs shall not include any amount as may be payable by the Council to the contractor and consultants in respect of:

- (i) loss of profit of the contractor and/or the consultant;
- (ii) any indirect or consequential losses suffered by the contractor and/or the consultant;
- (iii) any liabilities incurred by the contractor and/or the consultants as a consequence of the termination of the contracts in respect of which the contractor or the consultants has the benefit of insurance (whether taken out in accordance with the relevant contract or otherwise) to the extent that the amount of any losses is recoverable under such insurance, save where the contractor or consultants has any rights of subrogation against the Council.

"Total LSP Investment" means the aggregate amount of LSP Investment paid for the purposes of or in connection with the Project calculated by aggregating the total sums paid or reimbursed to the Council (whether or not under this Offer) for the purposes of or in connection with the Project.

"Working Days" means any day other than a Saturday or a Sunday or a public or bank holiday in England.

"Works" means all of the works to be carried out or procured by the Council for the purposes of the Project, the broad scope of which is described in the works specification set out in the Application.

#### **4 LSP Investment**

- 4.1 The HCA has determined that the Site is, or is likely to become, derelict, neglected or unsightly by reason of actual or apprehended collapse of the surface due to the presence of discontinued non-coal underground mine workings. As such, it appears to the HCA, acting within its absolute discretion, that steps should be taken for the purpose of reclaiming or improving the Site, or for the purpose of enabling the Site to be brought into use, and that the HCA may provide LSP Investment to the Council.
- 4.2 It is acknowledged that (as at the date of this Offer) the acceptance of this Offer by the Council means the Council is to comply with the provisions of this Offer in relation to the LSP Investment.
- 4.3 In accordance with and subject to the terms and conditions of this Offer, the HCA agrees to reimburse the Council in accordance with paragraph 9 the Approved Costs specified in the table in Annex 1 incurred by the Council in respect of the corresponding item described in Annex 1 for the purposes of the Project. The provisions of Annex 1 shall prevail over the Application to the extent of any conflict between them.
- 4.4 The Council acknowledges and agrees that:
- (a) for the purposes of this Offer the Total LSP Investment for the Project shall be the total Approved Costs set out in Annex 1. HCA has not approved any contingency sums and any expenditure over and above these amounts will be borne by the Council;
  - (b) the LSP Investment for each individual item described in Annex 1 is capped at the level of the Approved Costs specified for each such item; and
  - (c) the Council, as the employer under the contract(s) for the Works and its appointed consultants, is fully responsible for receiving, expending and accounting for all amounts received or expended with respect to the Project and/or the Works and for complying with the terms of any contract(s) for the Works and diligently paying any sums due and payable under such contract(s).
- 4.5 Subject to paragraph 8.2 the Council shall be entirely responsible for:
- (a) any costs overrun incurred with respect to each of the individual items described in Annex 1 that exceeds the individual ascribed value of Approved Costs for each such item; and/or

- (b) any costs greater than the total Approved Costs described in Annex 1; and/or
- (c) any costs properly incurred with respect to the Project that do not directly relate to the Works.

- 4.6 The Council shall notify the HCA in writing within twenty one Working Days of becoming aware that its expenditure for any item described within Annex 1 is less than the individual ascribed value of the Approved Costs for the item in question.
- 4.7 The Council undertakes to the HCA that it will at all times keep HCA and its appointed representatives informed by written notice of any other grant, financial contribution or sum received with respect to the Project (including the receipt of monies paid, under the terms of any insurance policy held either by the Council or by any owner or occupier of land wholly or partly within the Site, in connection with the presence or effects of the mines in respect of which the Application was made). Such written notice must be given no later than five Working Days after any such event occurs. Upon receipt of such notice, the HCA may revise the amount of the LSP Investment to be paid and/or reclaim all or any part of the LSP Investment already paid to the Council if any other grant, financial contribution or sum is received or realised by the Council with respect to the Project. Such revised or reclaimed amounts will be calculated by the HCA on the basis of the costs to the Council of carrying out the Project, taking into account the other grant, financial contribution or sum. Where the revised LSP Investment amount is less than the total of any LSP Investment already paid to the Council with respect to the Project, the Council shall refund the difference to the HCA within 30 Working Days of receiving written notice from the HCA that repayment is required.

## **5 Limitations on availability of the LSP Investment**

- 5.1 The Council acknowledges and accepts that in line with the Methodology that the LSP Investment is not given automatically and that the HCA reserves the right to impose such terms and conditions as it considers appropriate. The Council further acknowledges and accepts that any Available Investment is derived from the HCA's budget provided the Council complies with the requirements of paragraph 6.
- 5.2 The HCA accepts no liability in respect of any delay in the payment of claims made by the Council for reimbursement of Approved Costs except to the extent that such liability is caused by the negligence of the HCA.

## **6 Implementation of the Works**

- 6.1 The Council shall implement the Project and the Works in accordance with Annex 1, Annex 2 and paragraph 8.
- 6.2 The Council shall continue to demonstrate to the reasonable satisfaction of the HCA or its appointed representatives that work on the Project will be completed within budget and programme specified in Annex 2.
- 6.3 The Council shall demonstrate to the reasonable satisfaction of the HCA or its appointed representatives that it has a suitable structure and project leader in place to ensure the delivery of the Project. This shall include demonstrating with respect to the Project that the Council will use reasonable endeavours to:

- 6.3.1 ensure that the Site is adequately maintained while under its direct or indirect control;
- 6.3.2 conform to the requirements of all relevant European Union law including that governing public works and state aid;
- 6.3.3 obtain, maintain and comply with the requirements of all consents, permits, permissions, licences, authorisations and the like necessary for carrying out the Project, submitting copies of the same to the HCA upon request;
- 6.3.4 have responsibility for and management control of the Project for the purposes of the Health and Safety at Work Act 1974;
- 6.3.5 adopt, implement and comply with suitable and appropriate measures for monitoring, reporting and managing progress, risks and costs, as well as change control and early warning procedures.
- 6.4 The Council shall exercise, and contractually oblige any contractor, consultant and other party retained by the Council in connection with the Project to exercise the degree of skill and care reasonably to be expected with respect to projects similar in scope and complexity to the Project and shall ensure that, once completed, the Project satisfies the description of best value as defined in Appendix 8 of the Methodology.
- 6.5 the HCA declares and the Council accepts as a condition of this Offer that, for the purposes of the CDM Regulations:
  - 6.5.1 the HCA is not initiating, managing or carrying out the Project (whether alone, with the Council or with any third party); and
  - 6.5.2 insofar as the CDM Regulations may provide that both the Council and the HCA are clients in relation to the Project, the Council hereby elects to be treated as the only client pursuant to regulation 8 of the CDM Regulations and the HCA hereby consents to that election.
- 6.6 HCA and any other professional consultant that the HCA wishes to nominate shall have the right to inspect and/or audit the Project at any time prior to, during or after its implementation.

## **7 Completion of the Works**

- 7.1 Subject to paragraph 8.2, the Council undertakes and covenants with the HCA that:
  - 7.1.1 completion of the Works relating to the stabilisation and remediation of mine workings beneath High Barns, Hemel Hempstead, as certified by the Council or its appointed representative to the HCA on or before 10<sup>th</sup> May 2013; and
  - 7.1.2 completion of any investigation and surface reinstatement at the Site on or before 3<sup>rd</sup> June 2013.
- 7.2 Without prejudice to paragraph 7.1:
  - 7.2.1 The Council shall notify the HCA or its appointed representatives of the date on which the Works are expected to be completed and shall further notify the HCA forthwith upon the completion of the Works.

7.2.2 If any Works remain to be completed at the time of submission of the Final Claim Form pursuant to paragraph 9.6, in the interests of ensuring the timely completion of such Works the Council shall provide to the HCA or its appointed representative a detailed method statement specifying by when and how the Council shall procure that any remaining obligations or requirements to fully implement the Project are carried out and completed, and within that method statement the Council shall specify how retained sums are to be repaid, management contracts surrendered or suspended, and the monitoring and reporting arrangements to be put in place with respect to all such matters.

7.3 A copy of any and all applications prepared by or on behalf of the Council in connection with completion of the Works shall be provided to the HCA or its appointed representative within five Working Days of the preparation of each such application.

7.4 True and complete copies of any and all certificates and notices related to completion of the Works served on the Council by the contractor, consultant or any competent regulatory authority or other third party shall be provided to the HCA or its appointed representative within 30 Working Days of receipt by the Council.

## **8 Variations to the Works and/or Approved Costs**

8.1 Save in the event of an emergency or in mitigation of any risk of increased cost or delay and provided the mitigation is properly assessed by the Council's Project Manager at the time as being urgent, allowable, not causing delay to the Project milestones set out in paragraph 7.1 and best value, in the absence of the HCA's approval under paragraph 8.2, the Council shall not consent to, permit, instruct or initiate any Material Variation to the Works and/or the Approved Costs.

8.2 In the event that the Council wishes to make a Material Variation to the Works and/ or the Approved Costs it shall submit a written request for such variation, including full particulars of and the detailed reasons for the variation, to the HCA or its appointed representative for approval. In response to such a request the HCA may:

8.2.1 refuse the request;

8.2.2 provide the Council with written approval of all or part of the request, subject to any terms and conditions that the HCA deems fit to impose, in the form of an amendment to Annex 1 and/or Annex 2 (such amended Annex 1 and/or Annex 2 being itself subject to the terms and conditions of this Offer); or

8.2.3 require the Council to resubmit the request in the form of a new application for grant under the LSP.

## **9 Claims for payment**

9.1 The Council shall, when returning the acceptance of this Offer, submit to the HCA a quarterly profile of the claims for payment to be submitted to the HCA by the Council in relation to the Project.

9.2 The Council shall submit claims for reimbursement of Approved Costs to the HCA quarterly on the basis of gross expenditure and in accordance with the profile submitted pursuant to paragraph 9.1.

- 9.3 All claims for reimbursement of Approved Costs submitted by the Council shall be accompanied by documentary evidence substantiating the claim. No reimbursement of Approved Costs shall be made by the HCA until it is satisfied (acting reasonably) that such payment will be in relation to expenditure properly incurred by the Council with respect, exclusively, to the Works.
- 9.4 All reimbursements to be made by the HCA to the Council shall be based on actual Approved Costs incurred. The HCA reserves the right to adjust subsequent payments to reflect any amendments or corrections to each claim submitted by the Council.
- 9.5 Without prejudice to paragraph 5.2, the HCA shall reimburse the Council such Approved Costs as are reimbursable in full in accordance with this paragraph 9 until the value of such payments in respect of costs arising from the contractor's contract equals a sum equivalent to the total payments due minus the retention of 5% of the costs arising from the contractor's contract. Thereafter, only those claims that relate in whole or part to costs other than those arising under the contractor's contract will be paid in full. Payment of the remaining amount of reimbursable Approved Costs will be withheld until the HCA receives a signed copy of the audited Final Claim Form from the Council's External Auditor in accordance with paragraph 9.6.
- 9.6 Without prejudice to paragraph 9, the final claim with respect to the retention of 5% of the costs arising out of the contractor's contract shall be made by the Council using the Final Claim Form. The Council shall submit the Final Claim Form to the Council's External Auditor as soon as possible after Practical Completion. The Council shall provide the HCA with a signed copy of the completed Final Claim Form when it submits the original to the External Auditor and, subject to any Material Variation agreed pursuant to paragraph 8.2, in any event no later than 10<sup>th</sup> May 2014.
- 9.7 The HCA accepts no liability in respect of loss attributable to any delay in the payment of claims made by the Council for reimbursement of the Approved Costs except to the extent that such liability is caused by the negligence of the HCA.
- 9.8 The Council shall account to the HCA for the full amount of any sums received by the Council from any contractor, consultant or other third party retained by the Council for the purposes of carrying out the Project.
- 9.9 Any overpayment of LSP Investment relative to the respective Approved Costs specified for each individual item described in Annex 1 must be repaid to the HCA on demand or immediately that the Council becomes aware of such overpayment, whichever first occurs. This includes circumstances where either an incorrect value of the LSP Investment has been released or where the LSP Investment has been released in error before the applicable terms of this Offer have been complied with by the Council.
- 9.10 Following its receipt of the signed copy of the audited Final Claim Form the HCA shall calculate and notify the Council of the Total LSP Investment.

## **10 External Auditor**

- 10.1 If the findings of any audit conducted by the HCA differ from the External Auditor's own calculations and opinions on the relevant matter then the Council and the HCA hereby agree to appoint jointly an independent expert auditor to resolve the differences and issue a decision which shall be final and binding on the Council and the HCA (save in the event of manifest error). The costs of the independent expert auditor shall be borne equally by the Council and the HCA and not at the behest of that auditor.



## **11 Consequences of breach of any terms or conditions**

- 11.1 If the Council commits a Material Breach as set out in paragraph 11.2, the HCA may, in its absolute discretion:
- 11.1.1 require the Council to remedy the Material Breach (if remediable) within 30 Working Days of notification of such by the HCA, in failure of which the HCA may apply paragraph 11.1.2; or
- 11.1.2 withdraw the LSP Investment with immediate effect;
- and/or exercise any and all rights available to the HCA in both law and equity.
- 11.2 Material Breach for the purposes of paragraph 11.1 is:
- 11.2.1 if any information or statement made in connection with the Application, in a claim for reimbursement of Approved Costs, in a request for variation to the Approved Costs or Works under paragraph 8 or in any other way provided in connection with the Project or the terms and conditions of the LSP Investment is found to be materially incorrect, incomplete or misleading; and/or
- 11.2.2 if any audit report or certificate by the External Auditor, or any audit report or investigation commissioned by the HCA with respect to the Project, contains a seriously qualified opinion or is for any other reason not satisfactory; and/or
- 11.2.3 if any audit report or investigation commissioned by the HCA with respect to the Project considers that there is unsatisfactory progress towards completing the Project; and/or
- 11.2.4 if completion of the Works relating to the stabilisation of mine workings beneath High Barns, Hemel Hempstead as certified by the Council or its appointed representative to the HCA has not occurred on or before 10<sup>th</sup> May 2013; and completion of any investigation and surface reinstatement at the Site has not occurred on or before 3<sup>rd</sup> June 2013 and no extension to these deadlines has been approved by the HCA pursuant to paragraph 8.2; and/or
- 11.2.5 if at any time the Council, its contractors or consultants acts fraudulently or negligently in relation to the Project or the terms and conditions of this Offer; and/or
- 11.2.6 if the HCA becomes aware of any actions by the Council, its contractors or consultants that may have a detrimental effect on the LSP or which may bring the reputation of the LSP and/ or the HCA into disrepute; and/or
- 11.2.7 if the HCA considers that there is a material change in the nature, implementation, scale, costs or timing of the Project such that the Project no longer complies with the description of Works (or any amendment to the Works approved pursuant to paragraph 8); and/or
- 11.2.8 if the Works progress unsatisfactorily in the HCA's reasonable opinion so that the successful delivery of the Project is at risk.
- 11.3 The HCA will seek to assist and advise the Council should the Council encounter any difficulties in meeting its obligations under this Offer. Prior to taking steps to enforce the terms and conditions of this Offer, the HCA will, whenever possible in the circumstances, inform the Council in writing of the particulars of its concerns and of any actual or prospective breach of the term or condition concerned.

- 11.4 The HCA may temporarily suspend the LSP Investment to the Council whilst investigations are carried out into any matter that might result in the HCA exercising its rights under paragraph 11.1, including where the Council is unable to demonstrate that any improvements or remedial measures required under paragraph 11.1.1 are being implemented adequately or at all.
- 11.5 The HCA shall pay to the Council the Termination Costs in the event of the termination of this Agreement.
- 11.6 The Council shall repay any amount required (of any Approved Costs which the HCA have reimbursed to the Council if the reimbursement was based on information or statements which are found to be materially incorrect, incomplete or misleading) to be repaid within 30 Working Days of receiving the demand for repayment from the HCA so that the HCA has reimbursed the correct and accurate amount.

## **12 Limitation of liability**

- 12.1 The Council acknowledges and agrees that this Offer sets out the terms upon which the HCA is willing to provide LSP Investment in relation to the Project and that the HCA has no further duties or obligations with respect to the Project or the Works whether as a consequence of the execution of this Offer by the Council or otherwise.
- 12.2 Save for the HCA review of the Project for the sole purpose of considering eligibility for funding and compliance with the Methodology, the HCA has not inspected, approved or reviewed any other documentation related to the Project. Any failure or omission by the HCA to inspect, review or disapprove any documentation related to the Project shall not place any duty or liability upon the HCA under or in connection with the Project and no approvals, consents, proposals, comments, inspections or testings made by the HCA or anyone acting on its behalf with regard to any part or parts of the Project or the carrying out of the Project shall in any way affect or diminish the responsibility of the Council or anyone acting or retained on its behalf with respect to the carrying out of the Project.
- 12.3 The Council acknowledges and agrees that the HCA has no legal responsibility for any aspect of the Project and/or the Works (including, without limitation, scheme, design, related investigations, implementation and supervision, and health and safety). The involvement of the HCA in vetting applications for grant under the LSP and associated preliminary and detailed designs is solely for the purpose of ensuring that grant under the LSP is used for its intended purpose. The HCA's approval of any aspect of a scheme or design does not imply that the HCA accepts that the design, materials or workmanship are correct or suitable for purpose in all or any respect.
- 12.4 The HCA accepts no liability in respect of any loss or damage attributable to or arising directly or indirectly as a result of:
  - 12.4.1 any suspension, reduction or cancellation of the LSP;
  - 12.4.2 the HCA having insufficient funds to meet payment at the time of the Council requesting payment of the LSP Investment;
  - 12.4.3 any matter arising in connection with the development, design, planning, construction, operation, management and/or administration of the Project; or
  - 12.4.4 the Council complying with the terms and conditions of this Offer.

12.5 The Council shall hold harmless the HCA from and against all and any liabilities, howsoever arising, as a consequence of, arising from or in connection with the condition of the Site at any time, the Project or any breach of the terms and conditions of this Offer.

12.6 Paragraph 12.5 shall survive the termination of this Offer.

### **13 Supply of Information**

13.1 The Council shall keep full records of all matters relating to the Project.

13.2 The Council shall within ten Working Days of request deliver up to the HCA a copy of any data, documentation, reports or other information in writing or electronic format relevant to, connected with or arising from the Project including but not limited to any final and/or draft investigation results and reports, drawings, specifications, plans, approvals, audits or reviews.

13.3 Notwithstanding the HCA's general rights to require delivery of information under this Offer the Council shall supply the HCA with a copy of the results of all surveys and/ or investigations of the Site as soon as is reasonably practicable after completion of the same.

13.4 The Council is responsible for ensuring that all information provided by it or on their behalf in connection with the Project and the Site is and remains true, accurate and not misleading.

### **14 Communications**

14.1 The HCA does not seek in any way to obstruct the Council's disclosure duties and recognises the obligations imposed on the Council under both the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. Further, in the interests of achieving best value, the HCA recognises the benefit of sharing all material pertaining to the Project with the Council. Insofar as and to the extent that the Council is required by law to disclose information, all such material that the HCA provides to the Council shall not be confidential unless stated otherwise in writing. In circumstances where the HCA wishes to keep material confidential, the issue will be discussed with the Council and the HCA to agree the basis upon which the Council shall lawfully maintain confidentiality (if at all) before providing all or part of such material.

14.2 The HCA may make public the details of the Project and any information provided to the HCA by the Council in connection with the Project in whatever manner it deems appropriate:

14.2.1 as required by law or any financial and/or accounting regulations or requirements; and

14.2.2 for the purposes of the promotion of the LSP or to publicise the HCA's activities.

14.3 The Council shall display prominently on the Site, temporary and, where requested by the HCA, permanent signs approved by the HCA indicating the nature of the Project and the role of the HCA.

## 15 Service of Notices

15.1 Subject to any express delivery and service requirements under this Offer to the contrary any notice or other document to be given or sent under or in connection with this Offer shall be in writing and sent by the Permitted Method to the Notified Address.

15.2 In this paragraph 15 the expression Permitted Method means:

15.2.1 personal delivery;

15.2.2 pre-paid post;

15.2.3 fax transmission; or

15.2.4 email.

15.3 Any such notice or document shall be deemed to have been served:

15.3.1 if personally delivered, when left at the Notified Address;

15.3.2 if posted, upon the earlier of (i) actual receipt and (ii) four Working Days after the envelope containing the notice is mailed;

15.3.3 if transmitted by fax, on confirmed completion of the transmission; or

15.3.4 if sent by email, on receipt of an automated delivery receipt or confirmation of receipt from the recipient provided such notice or document is properly addressed and sent in full to the Notified Address.

15.4 The Notified Address(es) of the HCA and the Council for the purposes of this paragraph 15 is/are as set out below:

Party	Address	Fax number	Email	Attention of
HCA	Maple House 149 Tottenham Court Road London W1T 7BN	0207 874 5840	<a href="mailto:gareth.blacker@hca.gsx.gov.uk">gareth.blacker@hca.gsx.gov.uk</a>	Gareth Blacker
			<a href="mailto:richard.boyle@hca.gsx.gov.uk">richard.boyle@hca.gsx.gov.uk</a>	Richard Boyle
Dacorum Borough Council	Civic Centre Marlowes Hemel Hempstead Herts HP1 1HH	01442 228746	<a href="mailto:steve.baker@dacorum.gov.uk">steve.baker@dacorum.gov.uk</a>	Steve Baker

or such other Notified Address as either of the HCA or the Council may, by written notice to the other, substitute for its Notified Address set out above, but without prejudice to the effectiveness of any notice already given in accordance with this paragraph 15.

- 15.5 An email shall not be treated as received by either the HCA or the Council if it is rejected by computer virus protection arrangements.

## **16 Entire Agreement**

- 16.1 This Offer contains the whole agreement between the HCA and the Council relating to the matters dealt with in this Offer to the exclusion of any terms implied by law which may be excluded by contract and supersedes any previous written or oral agreement between the HCA and the Council in relation to the matters dealt with in this Offer.
- 16.2 This Offer may only be varied by letter or memorandum signed by or on behalf of both the HCA and the Council and referring to this paragraph.
- 16.3 So far as is permitted by law and except in the case of fraud, each of the HCA and the Council agrees and acknowledges that its only right and remedy in relation to any representation, warranty or undertaking made or given in connection with this Offer shall be for breach of the terms of this Offer to the exclusion of all other risks and remedies.

## **17 Miscellaneous**

- 17.1 Any sum to be paid by the Council to the HCA under the terms of this Offer is, unless otherwise stated, payable on demand and if not paid when due will attract interest from the date on which such sum became due and payable until the date the HCA receives the sum in cleared funds at a rate equal to 3% above the base rate of Barclays Bank Plc from time to time or any alternative Clearing Bank nominated by the HCA and notified to the Council, or alternatively the HCA may enable the Council on service of written notice to set off any such sum due and payable against any further payments of LSP Investment or other monies which the HCA is to or may pay to the Council.
- 17.2 All provisions of this Offer shall, so far as they are capable of being performed or observed, continue in full force and effect notwithstanding completion of the Project except in respect of those matters then already performed.
- 17.3 For the purposes of the Contracts (Rights of Third Parties) Act 1999, this Offer is only enforceable by the HCA and/or the Council.
- 17.4 Each of the provisions of this Offer is severable from the others. If at any time one or more of such provisions becomes illegal, invalid or unenforceable, then the validity and enforceability of the remaining provisions of this Offer shall not be affected.
- 17.5 This Offer may be entered into in any number of counterparts, all of which taken together shall constitute one and the same instrument. The Council and the HCA may enter into this Offer by executing a counterpart.
- 17.6 This Offer does not create and shall not in any circumstances create or be deemed to create a partnership between the HCA and the Council.
- 17.7 This Offer shall be treated as being personal to the Council and HCA and neither the Council nor the HCA shall be entitled to assign or deal with its interest in this Offer otherwise than by way of an assignment/novation of this Offer to any statutory successor-in-title. In such circumstances the assignee shall be required to enter into a direct deed of covenant with either the Council or the HCA (as the case may be) covenanting to comply with the terms of this Offer as if it was an original party to this Offer.

**18 Governing Law**

This Offer shall be governed by and construed in accordance with English law and the HCA and the Council irrevocably submit to the exclusive jurisdiction of the English Courts.

**19 Response**

If the Council wishes to accept this Offer, this Offer should be signed and returned to the Homes & Communities Agency, 7th Floor, Maple House, 149 Tottenham Court Road, London, W1T 7BN within 4 weeks of the date of this Offer. For the avoidance of doubt, this Offer shall only be capable of acceptance after such date with the prior written approval of the HCA (acting in its absolute discretion).

Yours sincerely



**Gareth Blacker**  
Head of Land and Development



Homes &  
Communities  
Agency

**HCA Funding Offer Acceptance – High Barns, Hemel Hempstead**

Signed:

*S. Baker*

On behalf of:

Dacorum Borough Council

Name:

STEVEN BAKER

Position:

ASSISTANT DIRECTOR (LEGAL, DEMOCRATIC & REGULATORY)

Date:

28 November 2011



# Annex 1 - Approved Costs (based on the Hyder Consulting Application Breakdown)

	£	£	£
<b>Works</b>			
Treatment cost advanced works	197,000		
Treatment cost	1,433,000	1,630,000	1,630,000
<b>Level Surveys</b>	3,900	3,900	1,633,900
<b>Professional Fees</b>			
Geo-technical consultant fees	369,949	369,949	2,003,849
<b>Other</b>			
Insurance payments	5,500		
Compensation payments	15,000		
Rent of land - site compound	20,000		
Road closure/diversion	1,000	41,500	2,045,349
<b>Total LSP Grant Assistance</b>			<b>2,045,349</b>



## **Annex 2 - Scope of investigation and treatment of former mine workings at High Barns, Hemel Hempstead**

The definition of the site boundary needs to be more accurately determined and this will be undertaken by a design phase investigation and a limited grouting trial.

On completion of the above design phase investigation and once a site compound, security and a property monitoring regime has been established, the treatment will consist of planned and progressive treatment boreholes working across the site (utilising inclined holes where necessary and appropriate) on a worst first basis to fill open voids. This will be followed by compaction grouting in collapsed ground. Validation of the work will consist of grout acceptance tests and/or dynamic probing to prove the degree of infill/ground stiffness. Grout emplacement and quality will be tested via selective coring. Treatment data from the works will be electronically recorded and plotted in order to provide a 3D validation model if required.

The Council will employ a geo-technical consultant to oversee the works on site. The estimated completion date is 10<sup>th</sup> May 2013.

