WOMBLE BOND DICKINSON

27 July 2022

Deed of Agreement under Section 106 of the Town and Country Planning Act 1990

Land at the Former Kirklees College Site, Huddersfield

The Council of the Borough of Kirklees (1)
Trinity One LLP (2)
Darren Forshaw (3)
Garry Wilson (4) and
Tassadaq Javed (5)

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DATE

PARTIES

(1) **The Council of the Borough of Kirklees** of Civic Centre, 3 High Street, Huddersfield HD1 2TG (**the Council**);

(2) **Trinity One LLP** (LLP Regn. No. OC417699) of 43 Park Place, Leeds LS1 2RY (**the Owner**);

(3) **Darren Forshaw** of 4 Manor Gates, Bramhope, Leeds LS16 9HA (**the First Chargee**);

(4) **Garry Wilson** of Follifoot Hall, Pannal Road, Follifoot, Harrogate HG3 1DP (**the Second Chargee**); and

(5) **Tassadaq Javed** of Arthington House, Arthington Lane, Arthington, LS21 1NJ (**the Third Chargee**)

BACKGROUND

(A) Pursuant to section 1 of the 1990 Act the Council is the local planning authority for the area in which the Site is situated and by whom the Planning Obligations hereby created are enforceable.

(B) The Owner is the registered freehold proprietor with title absolute of the Site which is registered at the Land Registry under Title Number WYK883636.

(C) The First Chargee, the Second Chargee and the Third Chargee are each proprietors of a registered charge over the Owner's interest in the Site which in each case is contained in a debenture dated 26 June 2017.

(D) The Owner submitted the Application to the Council for planning permission for the Development.

(E) The Council resolved on 24 February 2022 to grant the Planning Permission subject to the prior completion of this Deed.

(F) The parties by entering into this Deed do so to create planning obligations in respect of the Site pursuant to section 106 of the 1990 Act and agree to be bound by and to observe and perform the covenants agreements conditions and stipulations hereinafter contained.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Deed the following expressions shall have the following meanings:

1990 Act	the Town and Country Planning Act 1990.
Application	the application for hybrid planning permission for the Development which was validated by the Council on 15 August 2018 under reference number 2018/92647.
Chargees	together the First Chargee, the Second Chargee and the Third Chargee.
CMP	a conservation management plan comprising a written framework for the long-term management and maintenance of the Heritage Buildings such plan to include details of:

a) a scheme for the inspection and maintenance of the Heritage Buildings during the period between the completion of the Urgent Repair Works and the letting of a building contract relating to the Restoration and Conversion Works (or such other period as may be agreed in writing by the Council) (such scheme to include details of security measures, an inspection plan, and a mechanism to ensure any further maintenance or repair works are undertaken as necessary);

b) a long-term conservation and management strategy designed to preserve and enhance the Heritage Buildings; and

c) a marketing strategy and timetable for the Disposal and/or occupation of the Heritage Buildings.

Commencement of Development — the date upon which the Development is begun by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act.

Contingent Contribution — 50% (fifty percent) of any Positive Residual Sum which (if achieved) is to be paid by the Owner to the Council as a contribution towards mitigating the impact of the Development on local facilities and infrastructure as specified in paragraph 1.3 of Schedule 5 **PROVIDED ALWAYS** that such Contingent Sum shall not exceed £325,535.00 (Index Linked).

Development — the development of the Site as a mixed use development – retail/office and 229 residential units (Use Classes C3/E(a)/B1(a) and the partial demolition of the former Kirklees College, erection of a food retail store and alterations in connection with conversion of Grade II* listed building to offices/apartments and creation of a vehicular access from Portland Street, New North Street and Trinity Street, and the erection of two buildings (residential apartments – C3 Use).

Disposal — any manner of sale of any freehold or long leasehold interest (or other such disposal in consideration solely or mainly of a premium) in the Site to a third party and for these purposes Disposal does not include any financing charges.

Dwelling — a residential unit that may be built on the Site as part of the Development and the term **Dwellings** shall be construed accordingly.

Expert — a person of at least 10 years post qualification continual and continuing experience in the subject matter of the dispute.

Heritage Buildings — together the buildings marked F1, F2 and F3 on Plan 2.

Index	the Consumer Price Index as published by the Office for National Statistics or if the Consumer Price Index ceases to exist such index as the Council reasonably nominates.
Index Linked	increased in accordance with the following formula: **Amount payable** = the payment specified in this Deed x (A/B) where: **A** = the figure for the Index that applied immediately preceding the date the payment is due; and **B** = the figure for the Index that applied when that index was last published prior to the date of this Deed.
Northern Parcel	the land identified and marked "Northern Parcel" on Plan 3.
Occupation	occupation for the purposes permitted by the Planning Permission but not including occupation for the purposes of fit out, decoration, marketing, display or security operations and the terms **Occupy** and **Occupants** shall be construed accordingly.
Owner's Project	the Owner's project for the delivery of the Development pursuant to the Planning Permission and comprising: a) the partial demolition of the former Kirklees College; b) the Disposal of the Northern Parcel for development (residential); c) the Disposal of the Retail Parcel for the development of a food retail store; or the Disposal of the Heritage Buildings (as the case may be) d) the conversion of the Heritage Buildings to offices; and e) the creation of vehicular access from Portland Street, New North Road and Trinity Street.
Plan 1	drawing reference 00 032 Rev A appended hereto at Schedule 1 LLP
Plan 2	drawing reference 00 034 Rev B appended hereto at Schedule 1.
Plan 3	drawing reference SK 210720 01A appended hereto at Schedule 1.
Planning Obligations	the obligations on the part of the Owner set out in Schedule 3 and 4 and the term **Planning Obligation** shall be construed accordingly.
Planning Permission	a planning permission which may be granted by the Council pursuant to the Application.
Positive Residual Sum	any amount by which the Profit on Cost exceeds 15% (fifteen percent).
Profit on Cost	the profit of the Owner's Project expressed as a percentage of costs of the Owner's Project.
Restoration and Conversion Works	the works to convert and restore the Heritage Buildings into residential and office accommodation as approved by Listed Building Consent 2018/92687 and the Planning Permission.

Retail Parcel	the land identified and marked "Retail Parcel" on Plan 3.
Site	the land known as the former Kirklees College site shown edged red on Plan 1.
Statutory Undertaker	any company corporation board or authority at the date of this Deed authorised by statute to carry on an undertaking for the supply of telephone or television communications, electricity, gas, water, or drainage and any authorised successor to any such undertaking.
Unit	an office unit and/or a Dwelling that may be formed within a Heritage Building(s) as part of the Development and the term **Units** shall be construed accordingly.
Urgent Repair Works	the urgent works necessary to arrest the deterioration in the fabric of the Heritage Buildings which shall comprise (unless otherwise agreed in writing between the Owner and the Council): a) works to make the roofs of each of the Heritage Buildings weathertight and waterproof through temporary repairs to vulnerable areas including parapet gutter and over hips and ridges; b) works to clear downpipes and gutters of the Heritage Buildings of debris and vegetation; c) the establishing of a secure site compound around the whole of the Heritage Buildings, the erecting of protective boarding around all sensitive fabric (such as the portico columns and the statue of King Edward VII), and the provision of ongoing security monitoring; d) installing ventilation measures to the Heritage Buildings (including basements) to prevent dry rot outbreaks; and e) the repairing or boarding up (with through ventilation) of all windows so as to prevent access (including by birds) **PROVIDED ALWAYS** that the reasonable costs of carrying out the Urgent Repair Works shall not be required to exceed the sum of £400,000.00 (four hundred thousand pounds).
Viability Reappraisal	a financial appraisal for the purposes of establishing the level of Profit on Cost of the Owner's Project in respect of the Development as a whole (the format of which shall be based on the Owner's viability appraisal submitted to the Council in support of the Application on 18 December 2020 subject to necessary amendments to take account of the Owner's Project).

Working Day	any day from Monday to Friday inclusive which is not Christmas Day, Boxing Day, Good Friday, Easter Monday or a Statutory Bank Holiday.

1.2 Reference in this Deed to any enactment shall be construed as a reference to that enactment as amended extended or re-enacted or repealed by or under any other enactment and shall include all instruments orders and regulations for the time being made, issued or given under that enactment.

1.3 Words importing one gender shall be construed as importing any gender and words importing the singular shall be construed as importing the plural and vice versa.

1.4 Any words denoting natural person shall include legal persons and vice versa.

1.5 References to clauses paragraphs and schedules are references to clauses paragraphs and schedules to this Deed.

1.6 The expressions "the Owner" "the First Chargee", "the Second Chargee" and "the Third Chargee" shall include their respective successors in title and assigns.

1.7 The expression "the Council" shall include any successor authority to its statutory functions under the 1990 Act.

1.8 Where a covenant, restriction or requirement is expressed to be given by more than one party, or where a party is comprised of more than one person, liability for such covenant, restriction or requirement shall be joint and several.

1.9 Clause headings shall not affect the construction of this Deed.

1.10 Any phrase introduced by the terms 'including' 'include' 'in particular' or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. STATUTORY BASIS

2.1 This Deed is made pursuant to section 106 of the 1990 Act and binds the Site and as such is enforceable pursuant to section 106(3) of the 1990 Act against the Owner and any person claiming or deriving title to the Site (or any part or parts thereof) through or under the Owner as if that person had been an original covenanting party to this Deed.

2.2 This Deed is enforceable by the Council as local planning authority for the purposes of the 1990 Act.

2.3 To the extent that the covenants, restrictions and requirements in this Deed are not made under section 106 of the 1990 Act they are made under section 1 of the Localism Act 2011 and section 111 of the Local Government Act 1972 and all other powers so enabling.

3. CONDITION PRECEDENT

This Deed is conditional upon and does not become effective unless and until the Planning Permission is granted.

4. COVENANTS & DECLARATIONS

4.1 The Owner covenants with the Council to comply with the Planning Obligations.

4.2 The Council covenants with the Owner to comply with the obligations on its part as set out in Schedule 5 of this Deed.

5. EXCLUSIONS & RELEASE

5.1 No party shall be bound by the terms of this Deed or be liable for the breach of any Planning Obligation:

5.1.1 after it has parted with its interest in the Site or the part in respect of which such breach occurs (but without prejudice to liability for any subsisting breach prior to parting with such interest) **PROVIDED ALWAYS** that the obligations contained in both paragraph 1 and paragraph 2 of Schedule 4 of this Deed (relating to the approval or determination of the Viability Reappraisal and to the payment of any Contingent Contribution) shall also remain enforceable against the current Owner (as at the date of this Deed) notwithstanding any Disposal by the said current Owner of the whole of its interest in the Site prior to the date on which such obligations fall to be performed;

5.1.2 if it is a Statutory Undertaker which has an interest in any part of the Site for the purposes of its undertaking;

5.1.3 if that party is an owner or occupier of an individual Dwelling; or

5.1.4 if that party is an owner or occupier of the Retail Land by reason of a Disposal being effected from the Owner (here meaning Trinity One LLP only) of such Retail Land.

5.2 If the Planning Permission expires before the Commencement of Development or is at any time modified (without the consent of the Owner) or revoked this Deed shall determine and cease to have effect.

5.3 No obligation in this Deed shall be binding on or enforceable against any chargee or mortgagee from time to time who shall have the benefit of a charge or mortgage of or on any part of the Site (or any receiver appointed by such chargee or mortgagee) unless and until such charge, mortgagee or receiver (or any person appointed by them) has taken or entered into possession of the Site or part thereof in which case it will also be bound by the covenants, restrictions and obligations in this Deed as if it were a person deriving title from an original covenanting party.

5.4 In the event that an application is made pursuant to Section 73 of the 1990 Act for an amendment to the Planning Permission and planning permission is granted in respect of that application then references to "Planning Permission" in this Deed shall be deemed to also refer to the new planning permission granted pursuant to section 73 of the 1990 Act and this Deed shall apply to and remain in full force in respect of both the Planning Permission and that new planning permission without the need for a further agreement to be entered into pursuant to Section 106 of the 1990 Act **PROVIDED ALWAYS** that nothing in this clause 5.4 shall fetter the Council's power to require such a further agreement to be entered into prior to the grant of any planning permission pursuant to section 73 of the 1990 Act .

6. REGISTRATION

6.1 This Deed is a local land charge and may be registered as such by the Council.

6.2 Following either:

6.2.1 the performance and satisfaction of all the Planning Obligations contained in this Deed; or

6.2.2 the determination of this Deed in accordance with Clause 5.2;

the Council shall upon the written request of the Owner as soon as reasonably practicable effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

7. NON-FETTER & WAIVER

7.1 Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions.

7.2 No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants, terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

7.3 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted before or after the date of this Deed.

8. VAT

All payments given in accordance with this Deed shall be exclusive of any value added tax properly payable.

9. SEVERANCE

If any provision in this Deed shall in whole or in part be held to be invalid, illegal or unenforceable under any enactment or rule of law such provisions shall to the extent required be severed from this Deed and shall not affect the validity or enforceability of the remaining provisions of this Deed.

10. CHANGE OF OWNERSHIP

The Owner agrees with the Council to give written notice to the Council within 20 Working Days of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site purchased by reference to a plan **PROVIDED THAT** this obligation shall not apply to a sale or disposal of an individual Dwelling or to the disposal of part of the Site to a Statutory Undertaker for the purposes of its undertaking.

11. NOTIFICATION

11.1 Any notice, request, demand or other written communication to be given or served under this Deed must be in writing and must be:

11.1.1 delivered by hand; or

11.1.2 sent by pre-paid first class post or other next working day delivery service.

11.2 Any notice, request, demand or other written communication to be given or served under this Deed must be sent to the relevant party as follows:

11.2.1 to the Council at Legal Services High Street Buildings High Street Huddersfield HD1 2ND; and

11.2.2 to the Owner and to the Chargees at their respective addresses provided on the first page of this Deed.

11.3 Any notice, request, demand or other written communication given or served in accordance with Clause 11.1 or Clause 11.2 will be deemed to have been received:

11.3.1 if delivered by hand, on signature of a delivery receipt provided that if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day; or

11.3.2 if sent by pre-paid first class post or other next working day delivery service, on the Working Day after posting.

11.4 A notice, request, demand or other written communication given under this deed shall not be validly given if sent by e-mail.

11.5 This Clause 11 does not apply to the service of any proceedings or other documents in any legal action.

12. DISPUTE RESOLUTION

12.1 Where the agreement, approval, consent or expression of satisfaction is required by any party under the terms of this Deed such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed.

12.2 Any dispute or disagreement arising under this Deed which has been identified by notice in writing by one party to the other(s) and which has not been resolved within 20 Working Days (or such lesser period as may be agreed) of the date of receipt by the other party(s) of such written notice may be referred at the instance of any party for determination by an Expert whose decision (except in cases of manifest error or fraud) shall be final and binding on the parties.

12.3 The following provisions and terms of appointment shall apply to such disputes or disagreements:-

12.3.1 the Expert shall be agreed between the parties or, in default of agreement within 10 Working Days of receipt of the notice in Clause 12.2 above, shall be appointed or identified by the following persons:

(a) in the case of disputes relating to land or valuation matters the President of the Royal Institution of Chartered Surveyors;

(b) in the case of disputes relating to planning or design matters the President of the Royal Town Planning Institute; or

(c) in the case of any other dispute the President of the Bar Council.

12.3.2 the Expert shall act as an expert and not as an arbitrator

12.3.3 the Expert shall be required to give notice of their appointment to each of the parties (**Expert's Notice**) and thereafter:

(a) the persons calling for the determination shall make written submissions to the Expert and the other parties within 20 Working Days of receipt of the Expert's Notice;

(b) the other parties shall have 20 Working Days from the receipt of such written submission (or such extended period as the Expert shall allow) to respond;

(c) the Expert shall disregard any representations made out of this time; and

(d) the Expert may request further information or documentation and the parties shall comply with any requests by the Expert for further information or documentation within a reasonable time;

(e) to the extent not provided for by this clause the Expert may in their reasonable discretion determine such other procedures to assist with the conduct of the determination as they consider just or appropriate including (to the extent considered necessary) instructing professional advisers to assist them in reaching their determination

12.3.4 the Expert shall make his decision within 20 Working Days of the close of the period for submissions of written representations;

12.3.5 the Expert's decision shall be in writing and shall give reasons for the decision; and

12.3.6 each party shall bear its own costs and the Expert's costs will be payable in the determination of the Expert.

12.4 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause then:

12.4.1 either party may apply to the relevant body as per Clause 12.3.1 to discharge the Expert and appoint a replacement Expert with the required expertise; and

12.4.2 Clause 12.3 shall apply to the new Expert as if they were the first Expert appointed.

13. INDEXATION

In the event that the Index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index or in the event the Index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owner in writing.

14. THIRD PARTY RIGHTS

No person who is not a party to this Deed may enforce any terms hereof pursuant to the Contracts (Rights of Third Parties) Act 1999 **PROVIDED THAT** this clause shall not affect any right of action of any person to whom this Deed has been lawfully assigned or becomes vested in law including successors in title to the Site.

15. COSTS

The Council acknowledges that the Owner has prior to the date hereof paid the reasonable legal costs of the Council incurred in the preparation, negotiation and completion of this Deed.

16. JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

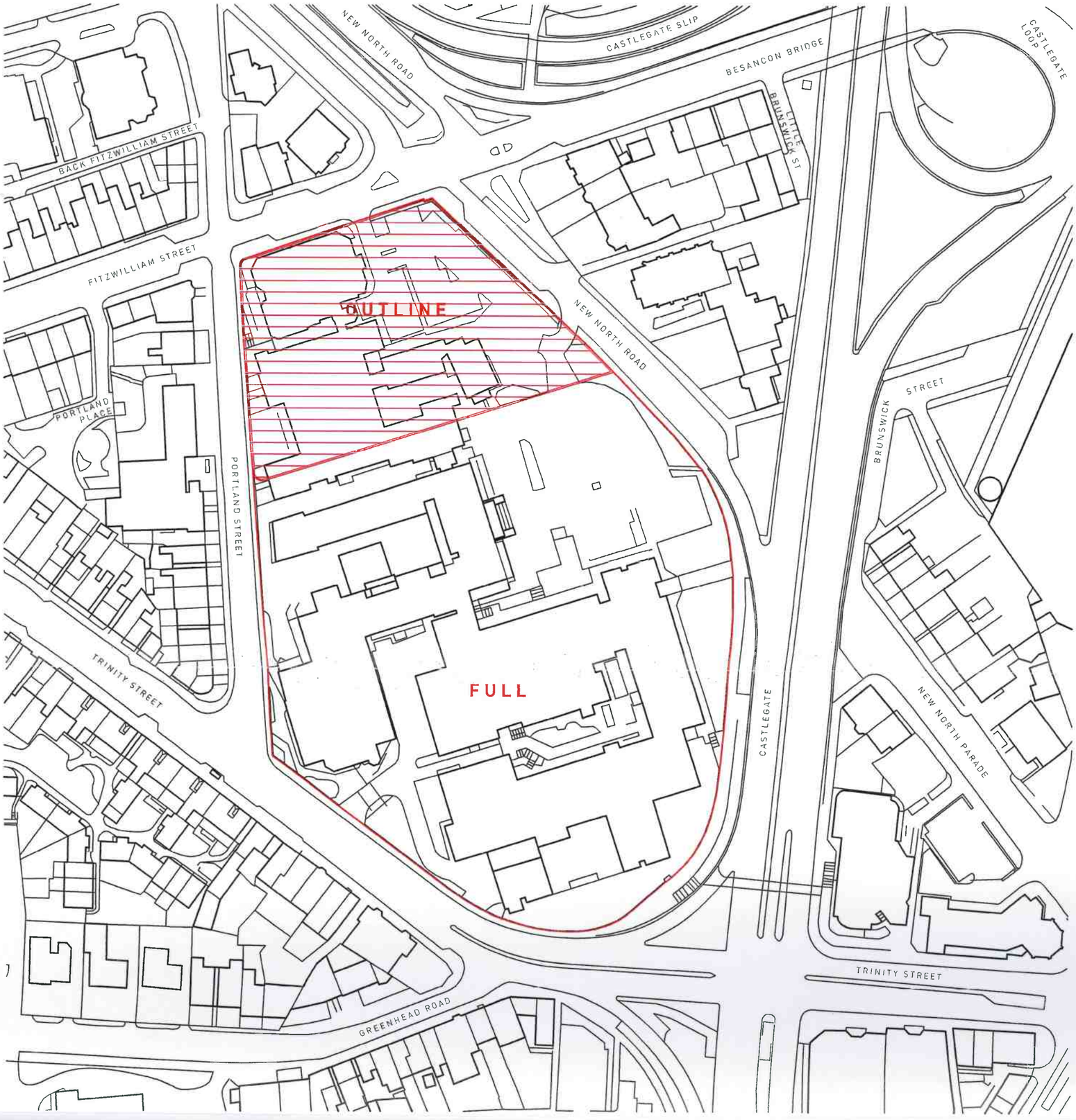
17. CHARGEES' CONSENT

The Chargees each acknowledge and declare that this Deed has been entered into by the Owner with their consent and that the Site shall be bound by the obligations contained in this Deed and that their respective security over the Site shall take effect subject to this Deed **PROVIDED THAT** the Chargees shall each otherwise have no liability under this Deed unless that Chargee(s) takes possession of the Site (or part thereof) in which case it/they too will be bound by the obligations as if they were a person deriving title from the Owner.

THE PARTIES HEREBY WITNESS that this document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

SCHEDULE 1

(Plans 1 - 3)



0145140

0 10 20 30 40 50 60m

Scale 1:1250

Contractor must verify all dimensions on site before commencing any work or shop drawings. If this drawing exceeds the quantities taken in any way the Architects are to be informed before the work is initiated. Only figured dimensions to be taken from this drawing. Do not scale off this drawing. Drawings based on Ordnance Survey and / or existing record drawings - design and drawing content subject to Site Survey, Structural Survey, Site Investigations, Planning and Statutory Requirements and Approvals. Authorised reproduction from Ordnance Survey Map with permission of the Controller of Her Majesty's Stationery Office. Crown Copyright reserved. Enjoy Design Ltd.

Rev.	Des.	By	Date	Ch.	
A	Outline & full planning boundary revised in accordance with latest masterplan	RG	22Jul20	--	

APPROVAL

Status:

Client: Trinity One LLP

Job No. 16,047

Project: Trinity One, Huddersfield

Title: Planning Submission - Site Location Plan

Date:	Scale:	Checked By:
Apr 18	1/1250@A3	RG
Drawing No:	**Drawn By:**	**Revision:**
00 032	JNS	A

ENJOY DESIGN

The Old Brewery
High Court
Leeds
LS2 7ES
Tel: 0113 242 3622
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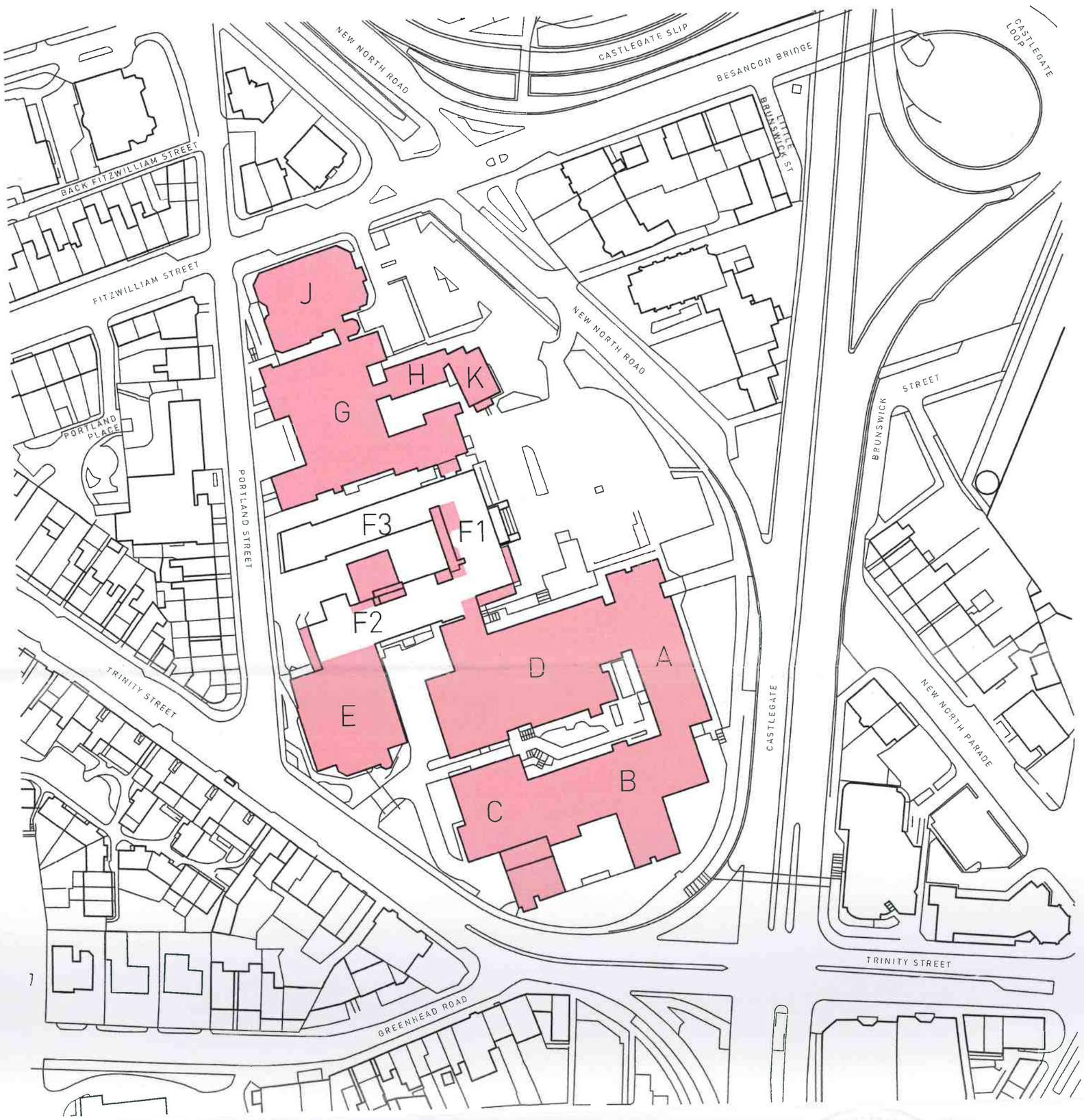


DEMOLITION KEY:

Existing Building to be demolished

0 10 20 30 40 50 60m

Scale 1:250

Contractor must verify all dimensions on site before commencing any work or shop drawings. If this drawing exceeds the **quantities** taken in any way the Architects are to be informed before the work is initiated. Only figured dimensions to be taken from this drawing. Do not scale off this drawing. Drawings based on Ordnance Survey and / or existing record drawings - design and drawing content subject to Site Survey, Structural Survey, Site Investigations, Planning and Statutory Requirements and Approvals. Authorised reproduction from Ordnance Survey Map with permission of the Controller of Her Majesty's Stationery Office. Crown Copyright reserved. Enjoy Design Ltd.

Rev.	Des.	By	Date	Ch.
B	updated to retain bldgs 2&3	RG	22Jul20	RG
A	updated to latest proposals	JNS	12Jul18	RG

APPROVAL

Status:

Client: Trinity One LLP

Job No. 16,047

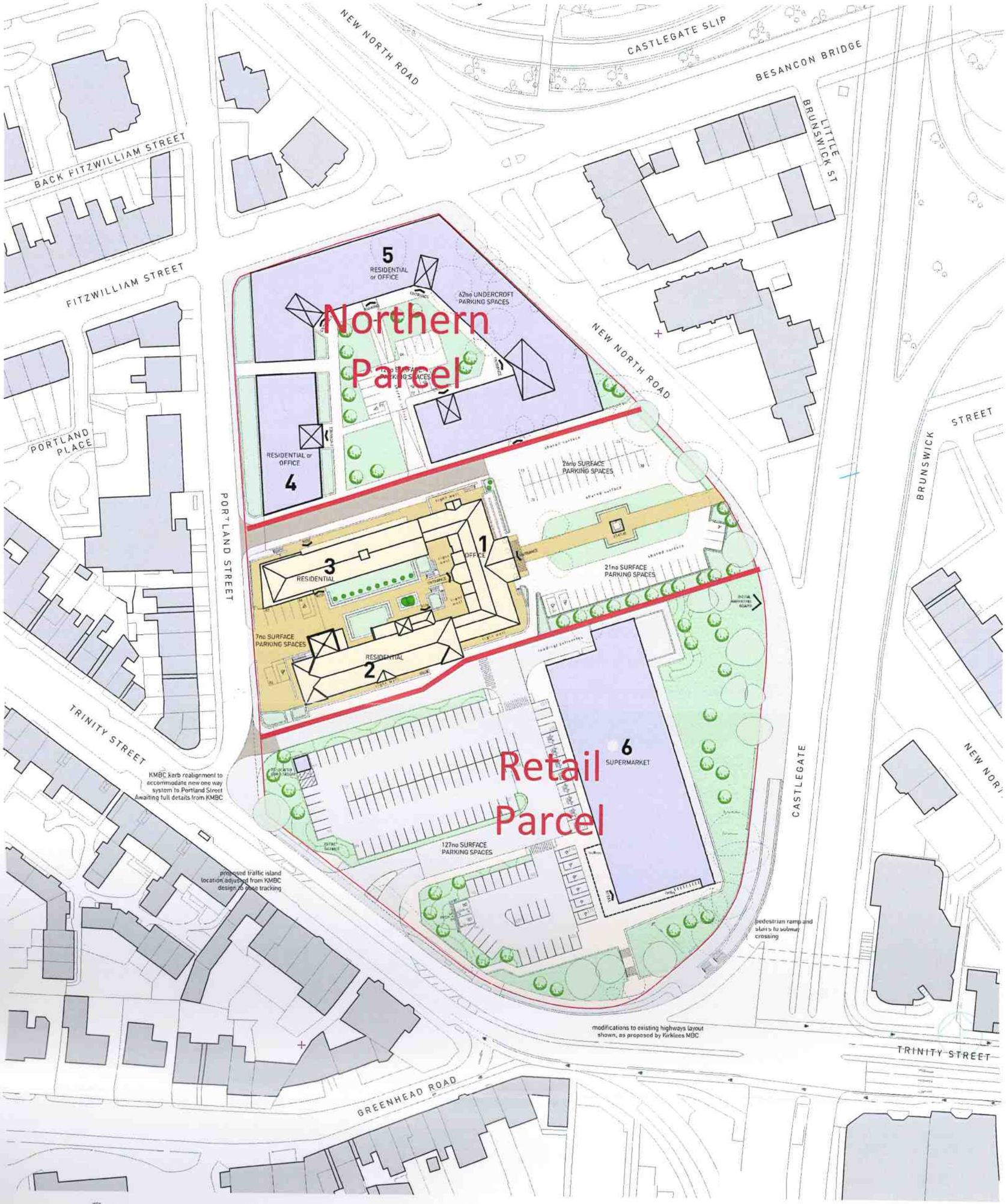
Project: Trinity One, Huddersfield

Title: Buildings to be **Demo**lished

Date:	Scale:	Checked By:
Apr 18	1/1250@A3	RG
Drawing No:	Drawn By:	Revision:
00 034	JNS	B

ENJOY DESIGN

The Old Brewery
High Court
Leeds
LS2 7ES
Tel: 0113 242 3622
www.enjoy-design.co.uk



KEY:
Proposed New Buildings
Existing Listed Buildings (to be retained and redeveloped)

0 10 20 30 40 50m
Scale 1:1000

Contractor must verify all dimensions on site before commencing any work or shop drawings. If this drawing exceeds the quantities taken in any way the Architects are to be informed before the work is initiated. Only figured dimensions to be taken from this drawing. Do not scale off this drawing. Drawings based on Ordnance Survey and / or existing record drawings - design and drawing content subject to Site Survey, Structural Survey, Site Investigations, Planning and Statutory Requirements and Approvals. Authorised reproduction from Ordnance Survey Map with permission of the Controller of Her Majesty's Stationery Office. Crown Copyright reserved. Enjoy Design Ltd.

Rev.	Des.	By	Date	Ch.
Y	Landscap coordinat			
X	Latest sup			
W	Landscap			
V	Proposals			
T	walkway 8 omitted			
S	minor upd bldgs 2 and 3; digital marketing board shown	JNS	11Jul18	RG
R	route from eastern footpath improved as KMBC request; latest Bldg1 design shown.	JNS	02Jul18	RG

APPROVAL
Status:

Client: Trinity One LLP
Job No. 16,047
Project: TRINITY ONE HUDDERSFIELD
Title: Proposed Site Plan
Date: Nov16
Scale: 1/1000@A3
Checked By: RG
Drawing No: 00 001
Drawn By: JNS
Revision: Y

SK-210/20-01A

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High Court
Leeds
LS2 7ES
Tel: 0113 242 3622
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SCHEDULE 2

(Not Used)

SCHEDULE 3

(Protection of Heritage Assets)

1. URGENT REPAIR WORKS

1.1 The Owner shall procure that the Urgent Repair Works are completed not later than the date being nine (9) calendar months following the date of the Planning Permission.

1.2 As soon as is reasonably practicable after the completion of the Urgent Repair Works the Owner shall notify the Council in writing that such works have been completed.

1.3 Not later than 1 (one) calendar month following receipt of the notification referred to in paragraph 3 of this Schedule the Council shall inspect the Urgent Repair Works and if the Urgent Repair Works have been completed to the Council's reasonable satisfaction the Council shall notify the Owner in writing thereof.

1.4 If upon notification by the Owner pursuant to paragraph 3 of this Schedule the Urgent Repair Works have not been carried out to the Council's reasonable satisfaction the Council shall provide written notice to the Owner specifying the measures necessary to satisfactorily complete the Urgent Repair Works and the Owner shall within such period as specified by the Council carry out such measures and shall notify the Council pursuant to paragraph 3 of this Schedule (such procedure being repeated as often as is necessary until such time as the Council confirms satisfactory completion thereof).

2. CONSERVATION MANAGEMENT PLAN

2.1 Prior to the completion of the Urgent Repair Works the Owner shall submit a draft CMP for the written approval of the Council (such approval not to be unreasonably withheld or delayed).

2.2 Following the Council's written approval of the CMP the Owner shall at all times implement the approved CMP and shall thereafter manage and maintain the Heritage Building in accordance with the approved CMP (unless otherwise agreed in writing by the Council).

SCHEDULE 4

(Viability Reappraisal)

1. VIABILITY REAPPRAISAL

1.1 (Subject only to paragraph 1.2 below) prior to the Disposal by the current Owner (as at the date of this Deed) of the whole of its interest in the Site the Owner shall submit a draft Viability Reappraisal to the Council.

1.2 (In the event only that the Owner retains an interest in the Site and/or carries out the Development of the Northern Parcel pursuant to the Planning Permission) prior to the later of:

1.2.1 The first Occupation of 85% (eighty five percent) of the Dwellings comprised in the Northern Parcel; or

1.2.2 The first Occupation of 85% (eighty five percent) of the Units comprised in the Heritage Buildings

the Owner shall submit a draft Viability Reappraisal to the Council.

1.3 Within eight weeks of receiving the draft Viability Reappraisal pursuant to paragraph 1.1 or 1.2 above the Council shall:

1.3.1 agree the draft Viability Reappraisal; or

1.3.2 discuss with and provide to the Owner any comments which it has on the draft Viability Reappraisal.

1.4 If the Council (in accordance with paragraph 1.3.2) above provides comments on the draft Viability Reappraisal then the Owner and the Council shall each use their reasonable endeavours to agree the Viability Reappraisal within 20 Working Days of receipt of notice in writing from the Council of such comments and if they do not agree it within the said 20 Working Days (or such longer period as may be agreed between the Owner and the Council) then either the Council or the Owner may refer the matter to be determined in accordance with Clause 12 of this Deed.

2. CONTINGENT CONTRIBUTION

2.1 In the event that a Viability Reappraisal approved pursuant to paragraph 1.3.1 above (or determined pursuant to paragraph 1.4 above) demonstrates a Positive Residual Sum then the Owner shall pay the Contingent Contribution to the Council within 2 months of either the Viability Reappraisal being approved by the Council pursuant to paragraph 1.3.1 above or determined pursuant to paragraph 1.4 above, as the case may be.

SCHEDULE 5

(Council's Covenants)

1. RECEIPT OF FINANCIAL PAYMENTS

1.1 The Council shall issue separate receipts on request for any sum paid to the Council under this Deed.

1.2 The Council shall place all sums received under this Deed in an interest bearing account or in separate accounts as the Council shall at its discretion decide.

1.3 The Council may apply the Contingent Contribution (if applicable) towards the following purposes:

1.3.1 the provision of new or improved educational facilities at Spring Grove J I & N School in order to help mitigate the impact of residents of the Development on local schools (up to a maximum sum of £291,469.00 (two hundred and ninety one thousand four hundred and sixty nine pounds (Index Linked); and/or

1.3.2 the provision of new or improved public open space within the vicinity of the Development in order to help mitigate the impact of residents of the Development on existing public open space (up to a maximum of the full amount of the Contingent Contribution);

1.3.3 the promotion of sustainable travel measures to new occupants of the Development in accordance with policy LP20 of the Kirklees Local Plan (up to a maximum sum of £60,000.00 (sixty thousand pounds) (Index Linked)); and/or

1.3.4 the funding of further works to sustain or enhance the conservation of the Heritage Buildings.

1.4 In the event that any part of the Contingent Contribution has not been expended within 5 (five) years of the date of payment then the sum or sums not expended plus interest accrued will be repaid to the Owner or its nominee.

2. PERFORMANCE

2.1 Upon the reasonable written request of the Owner after all of the Planning Obligations have been performed the Council will issue written confirmation thereof and will thereafter cancel all relevant entries in the register of local land charges.

3. APPROVALS & INSPECTIONS

3.1 Wherever this Deed requires the approval agreement inspection determination or consent of the Council such approval agreement determination or consent shall be provided in writing and will not be unreasonably withheld or delayed.

Executed as a deed by affixing the common seal of **THE COUNCIL OF THE BOROUGH OF KIRKLEES** in the presence of:

014940

....

~~Service Director: Legal and Governance and Commissioning~~ / Authorised Signatory (delete as appropriate) DEBORAH JANE WILKES

.....

Print Name

Executed as a deed by **TRINITY ONE LLP** acting by:

.....

Member

.....

Member

Executed as a deed by **DARREN FORSHAW** in the presence of:

Signature

Shanna Leigh Lombard

(Full name of witness)

.....

(Signature of witness)

Endless LLP, 3
Whitehall Quay
Leeds, LS1 4BF

Address

Personal Assistant

Occupation

Executed as a deed by **GARRY WILSON** .....
in the presence of:

ADAM KEASEY Signature

(Full name of witness)

..

(Signature of witness)

3 WHITEHALL QUAY

LEEDS

LS1 4BF

Address

ACCOUNTANT

Occupation

Executed as a deed by **TASSADAQ JAVED** ...
in the presence of:

Chloe-helen Scott Signature

(Full name of witness)

.....

(Signature of witness)

Platform Building

Leeds

LS1 4JB

Address

Trainee Solicitor

Occupation