

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM is made between:

SWALE BOROUGH COUNCIL whose offices are located at Swale House East Street
Sittingbourne Kent ME10 3HT ("Swale") and

MEDWAY COUNCIL whose offices are located at Civic Centre Strood Rochester
Kent ME2 4AU ("Medway") and

GRAVESHAM BOROUGH COUNCIL whose offices are located at Civic Centre Windmill
Street Gravesend Kent DA12 1AU ("Gravesham")

Insert an introduction

1. Definitions and Interpretations

- 1.1 In this memorandum of understanding and appendices and annexes to it the following terms shall unless the context otherwise requires have the following meanings:-

"the agreed proportions" means *the basis of cost distribution between the Authorities described in Appendix 4*

"the Authorities" means Swale, Medway and Gravesham

"the Building Act" means the Building Act 1984

"the building control activities" means *the activities described in Appendix 1*

"building control function" means *the statutory duty of each Authority to carry out the building control activities under the Building Act*

"the building control services"	means the building control activities and the discretionary services
"the change procedure"	means the procedure described in clause xxxx
"Commencement"	means the date on which the Authorities agree to commence the delivery of the shared service
"data"	<i>means (See 22)</i>
"the discretionary services"	means the building control activities described in Part 2 of Appendix 1
<i>"the exit arrangements"</i>	<i>means the arrangements referred to in clause 22</i>
"the Joint Committee"	means the joint committee established by the Authorities by their powers contained in Section 101 of the Local Government Act 1972 and all other enabling powers for the xxxxxxxxxxxx of the shared service <i>and having the membership described in the Joint Committee Constitution</i>
<i>"Joint Committee Constitution"</i>	<i>means the Constitution adopted by the Authorities as described in Clause 5.3</i>
"the legal representative"	means in the case of:- Swale - Mr D Milne, the Borough Solicitor

"the staff" means all of the employees employed by the Authorities on commencement and during the operation of the shared service

"the term" means the period of five years commencing on xx or as extended by agreement of the Authorities

"the termination procedure" means the procedure described in clause xxxxx

"the TUPE Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006

1.2 Unless otherwise stated any reference to clause number, paragraph number, Appendix or Annex means a clause, paragraph, Appendix or Annex to this memorandum of understanding

2. Preamble

2.1 Each of the Authorities is a local authority which:-

2.1.1 has a duty under s91 of the Building Act to provide the building control activities

2.1.2 provides additional related discretionary services to the public

2.2 The Authorities intend to establish a single shared service to provide the building control activities and additional related discretionary services to the public across their respective administrative areas

2.3 In pursuance of their intention to establish a single shared service the Authorities intend to:-

- 2.3.1 delegate their respective building control functions, so far as the law allows, to a Joint Committee to be established by them and
- 2.3.2 enter into a memorandum of agreement for *the term with agreed extension periods at the discretion and agreement of the Authorities*

3. Objectives of Memorandum of Understanding

- 3.1 The purpose of this memorandum of understanding is to set out the arrangements for the establishment of the shared service and to develop agreed heads of terms for the memorandum of agreement
- 3.2 This memorandum of understanding and each of the agreements contained in it will continue until
 - 3.2.1 it is changed in any particular case in accordance with the change procedure or
 - 3.2.2 it is replaced on commencement by the Memorandum of Agreement
 - 3.2.3 termination by the termination procedure
- 3.3 The Authorities acknowledge that it is not their intention for this memorandum of understanding to have a binding legal effect. It is a statement of their shared intention to work together in a spirit of co-operation
- 3.4 Until Commencement this memorandum of understanding will be revised and updated in accordance with the change procedure such changes to be managed and maintained by *Project Manager and the Legal Sub Team Leader*

4. Powers

- 4.1 The Authorities are authorised to discharge their respective building control functions jointly by a joint committee in accordance with:
 - 4.1.1 the powers in s101(5) of the Local Government Act 1972 and section 20 of the Local Government Act 2000 and the Local Authorities

(Arrangements for the Discharge of Functions) (England) Regulations
2000 and

4.1.2 the articles of their respective constitutions

5. Joint Committee and Joint Committee Constitution

5.1 The purpose of the joint committee shall be to:-

5.1.1 oversee, monitor, manage and develop the joint arrangement to ensure the successful establishment of the shared service

5.1.2 ensure the enhancement and improvement of the building control activities offered

5.1.3 improve and sustain performance standards and competitiveness

5.1.4 *provide governance of the partnership*

5.2 The Authorities will:-

5.2.1 develop *and adopt* a joint committee constitution for the operation of the joint committee (of which indicative headings of content are set out in Appendix 2)

5.2.2 develop procedure rules, financial regulations and standing orders

5.2.3 use their best endeavours to agree the content of the joint committee constitution, procedure rules, financial regulations and standing orders by the *date of Commencement*

5.3 The Authorities will:-

5.3.1 establish the joint committee and

5.3.2 delegate their respective building control functions to the joint committee

5.3.3 authorise the joint committee to discharge their respective building control functions with effect on and from commencement

5.4 The Authorities will:-

5.4.1 develop and agree a budget of the estimated expenditure of the joint committee for the period from commencement until 31 March 2008

5.4.2 agree the date or dates for payment of the respective contributions for the period until 31 March 2008 and each Authority shall pay its contribution by the due date

6. Financial Arrangements

6.1 Pre-commencement

6.1.1 Until *Commencement* each Authority will:-

6.1.1.1 *bear its own staffing costs incurred in establishing the shared service and the Joint Committee*

6.1.1.2 contribute to the *other* costs and expenses of establishing the shared service and the Joint Committee in the agreed proportions

6.1.2 *arrangements for expenditure/recovery of expenditure*

6.2 Post-commencement

6.2.1 *The memorandum of agreement and the Joint Committee Constitution shall contain provision for the financial arrangements agreed by the Authorities for the support of the shared service including provision for business planning , budgets, sharing of costs, losses and liabilities and utilisation of profits*

6.2.2 *The memorandum of agreement shall contain provision for the accounting and auditing procedures which will apply to the shared service*

7. Lead Authority and support services

7.1 The Authorities shall agree:-

7.1.1 the appointment of Medway as lead authority which on and from Commencement will have the functions and responsibilities described in the Joint Committee Constitution/*memorandum of agreement*

7.1.2 *arrangements for the provision by them of the support services to the partnership*

8. Business Plan and Action Plan

Pre-Commencement

8.1 The Authorities will develop and complete a business plan and an action plan for the delivery of the shared service for the period from Commencement until the 31 March 2008 next following for adoption by the joint committee

8.2 The Authorities will use their best endeavours to agree the business plan and action plan referred to in 8.1 by 30 June 2007

9. Management of Staff

Pre-Commencement

9.1 The Authorities agree:-

9.1.1 the joint arrangements will result in the transfer of an undertaking for the purposes of the TUPE Regulations

9.1.2 the lead authority will be the employer of all the employees of the Authorities engaged in the provision of shared services with effect on and from Commencement

9.1.3 to comply with all information consultation and others requirements contained in the TUPE Regulations

9.1.4 to comply with the Code of Practice for staffing management at Annex 1 of this memorandum of understanding

10. Location and satellite offices and other facilities

10.1 The Authorities agree that on and from commencement:-

10.1.1 staff will be located at the Lead Authority's principal offices at Medway

10.1.2 facilities for satellite offices will be provided in each of the areas of

Gravesend and Swale for provision of building control services to the public

10.2 *The Authorities agree that on and from Commencement IT equipment etc. will be transferred to the partnership and be maintained by the partnership as required, an asset register of equipment transferred will be provided by each Authority*

11. Risks and Responsibilities

The Authorities shall work together and individually in the spirit of trust, fairness and mutual co-operation for the benefit of the partnership within the scope of their agreed roles, expertise and responsibilities and obligations as stated in the memorandum of agreement

12. Risk Management

The Authorities recognise the risks involved in the partnership and shall before Commencement and during the term undertake Risk Management together and individually which during the term shall be in accordance with the memorandum of agreement in order to analyse and manage such risks in the most effective way

13. Memorandum of Agreement

13.1 The Authorities will:

13.1.1 develop and agree a memorandum of agreement which will set out the parties agreed terms for their participation in the shared service of which indicative headings are set out in Appendix 3

13.1.2 use their best endeavours to agree the content of the memorandum of agreement by *30 June 2007*

14. Marketing

14.1 The Authorities will develop a joint marketing strategy for the shared services which will incorporate:-

14.1.1 a public relations policy

14.1.2 a publicity strategy

14.1.3 agreed logos and branding material

14.1.4 a website for the shared services

15. Property

15.1 *An asset register of property provided for the use of the partnership by the Authorities shall be maintained during the term*

15.2 *The Authorities will agree the terms of the provision of property to the partnership whether by licence lease or other appropriate arrangements*

16. Procurement

16.1 *The Authorities agree that the lead authority shall carry out the procurement of commodities for use by the shared service subject to the terms of the memorandum of agreement and in accordance with the contract procedure rules contained in the lead authority's constitution and all relevant legislation*

16.2 *The lead authority shall be reimbursed for the cost of procurement in the agreed proportions*

17. Additional Authorities

The memorandum of agreement shall provide for additional local authorities to join the partnership after Commencement subject to the agreement of the Joint Committee and following suitable due diligence

18. Change procedure

18.1 This memorandum of understanding may not be varied except by a *change order* in writing signed by a legal representative of all of the Authorities

18.2 All variations authorised under 18.1 will be incorporated into the memorandum of understanding

19. Dispute resolution

19.1 The Authorities will use their best endeavours to negotiate in good faith and settle expeditiously any dispute that may arise out of or relate to this memorandum of understanding *or the memorandum of agreement* or any breach of it *or them*. If any such dispute cannot be settled amicably through ordinary negotiations by their respective representatives the dispute may be referred *to a partnering advisor* appointed between the parties

19.2 The *partnering advisor* will act in accordance with the protocol contained in Appendix 5. The parties agree that the decision of the *partnering advisor* (which will be given in writing stating reasons) will be final and binding on the Authorities

19.3 Each Authority will provide the *partnering advisor* to whom a reference is made under this clause 19 with such information as he or she may reasonably require for the purposes of his or her determination. If either

Authority claims any such information to be confidential to it then provided in the opinion of the *partnering advisor* that Authority has properly claimed the same as confidential the partnering advisor will not disclose the same to any third party

19.4 The costs of the *appointment of the partnering advisor* (including the costs of any technical expert appointed by him or her) will be borne by the parties *in the agreed proportions*

20. Withdrawal of Authority

20.1 *If an Authority wishes to withdraw from the partnership it shall give at least 12 months written notice to the Joint Committee of its intention to withdraw*

20.2 *On receipt of notice for withdrawal the Authorities shall agree the exit arrangements applying to the withdrawal*

21. Termination

21.1 *The Authorities may until Commencement terminate this memorandum of understanding by mutual agreement*

21.2 *The memorandum of agreement shall terminate:-*

21.2.1 *on expiry of the term or*

21.2.2 *by mutual agreement of all of the Authorities remaining in the partnership*

21.2.3 *in the event of breach as described in the memorandum of agreement*

22. Exit arrangements

22.1 *The memorandum of agreement shall contain agreement by the Authorities for the arrangements for the matters set out in 22.2 which will apply*

22.1.1 *in the event of termination of the memorandum of agreement on the happening of one of the events described in clause 21 and*

22.1.2 *the withdrawal of an Authority as described in clause 20*

22.2 *The arrangements shall include agreement for:-*

22.2.1 *the ownership and distribution between the Authorities of IT equipment and other property and equipment*

22.2.2 *access to and ownership of data*

22.2.3 *responsibility for employment of staff*

23. Miscellaneous

23.1 Nothing in this memorandum of understanding shall create a legal partnership between the Authorities and save as specifically provided for in it no party shall be or hold itself out to be or permit itself to be held out as:-

23.1.1 the agent of the other of

23.1.2 entitled to pledge the credit of the other or

23.1.3 entitled to incur any obligation or make any promise or representation on behalf of the other

Confidentiality; FOI; Data Protection; Boiler plate e.g. Notices; 3rd parties;

ANNEX 1 (See 9.1.5)
STAFF MANAGEMENT
CODE OF PRACTICE

APPENDIX 1 (See definitions)

THE BUILDING CONTROL ACTIVITIES

THE STATUTORY SERVICES

PART 1

1. The passing or rejection of deposited plans.
2. Site inspections in connection with deposited plans.
3. Site inspections in connection with a Building Notice.
4. Consideration of plans for work reverting to a local authority from an approved inspector.
5. Applications for regularisation of work carried out without approval.

PART 2

THE DISCRETIONARY SERVICES

1. Dealing with dangerous structures.
2. Administration of approved inspector regulations.
3. Issuing conditions relating to the control of demolitions.
4. Street naming and numbering.
5. Providing advice to other Council departments regarding the suitability for issuing grant payments.
6. Carrying out audits in relation to fire, energy, access for disabled people or public safety issues.
7. Administration/safety at sports grounds.
8. Providing advice/enforcement of fire safety in respect of registered premises.
9. Providing information as part of local land charge searches.
10. Monitoring of planning conditions.

11. The enforcement of local acts.
12. Providing a service under the CONDM regulations.
13. The administration of overlapping duties with other council services.
14. Carrying out duties required by statute of LA's only.
15. Work to satisfy Citizens Charter or Quality management requirements.
16. Responding to Ombudsmen requirements etc.
17. The preparation of committee reports and liaison with Councillors.
18. Responding to the requirements of the Audit Commission.
19. Liaison with statutory bodies and utility companies.
20. The enforcement of those national and local acts relating to the building regulations that approved inspectors cannot undertake.
21. Inspections carried out to identify unauthorised building work.
22. The provision of general advice to the public and other Council departments on matters relating to the building regulations.
23. Giving general advice on Council matters relating to the need to apply for building/ planning consents.
24. Carrying out the building control function in relation to work for disabled persons.
25. Giving general pre-application building regulation advice.

APPENDIX 2

(See 5.2.1)

JOINT COMMITTEE CONSTITUTION INDICATIVE

CONTENT HEADINGS

1. Title and legal powers to constitute.
2. Key principles.
3. Definitions.
4. Objectives.
5. Functions.
6. Membership, voting rights and meeting procedures.
7. Appointments and conditions of appointment.
8. Voting rights and voting procedures.
9. Amendments to this constitution.
10. Budgetary arrangements/delegated funds.
11. Capital expenditure/costs.
12. Cessation of membership.
13. Exit arrangements.
14. Conduct and expenses of members.
15. Delegation to sub-committees and officers.
16. Dispute resolution.
17. Liabilities of joint committee members.
18. Meetings and chairing of meetings.
19. Press and public relations.
20. Procedures at meetings.
21. Rolling business plan and annual action plan.
22. Scrutiny arrangement.
23. Secretary
24. Senior officer group/project officers.
25. Urgent matters.

APPENDIX 3 (See 13.1)

MEMORANDUM OF AGREEMENT

INDICATIVE HEADS OF TERMS

1.1 Interpretation

Defines the main terms of the agreement.

1.2 Commencement and duration

States when the agreement begins and ends subject to any early termination or withdrawal. Also notes that certain clauses will continue to have effect after the end of the agreement.

1.3 Powers

Lists the legislation that enables the parties to enter into this agreement.

1.4 Principles and key objectives

Describes what the parties are hoping to achieve by entering into the agreement, how the relationship between the parties should be conducted and the principles that govern that relationship.

1.5 Indemnities

Describes the details of the indemnities to be provided to each of the Councils.

1.6 Lead partner

States that one authority agrees to act in the capacity of "agent" to the other parties.

This means that one authority takes the lead in, for example, contracting with the private sector for the provision of support services.

1.7 Duties of lead partner

Defines the functions and duties of the managing agent in relation to the award of any contract on behalf of the partnership. It would also detail the obligations, for example when authorities are entitled to be informed and when consulted on procedural steps.

1.8 Duties of other authorities (the Principals)

Details how the parties should be acting in their relationship with the lead partner.

1.9 Assets

Describes how the assets will be dealt with where such assets require transfer to the lead partner in order to carry out the Services in partnership.

1.10 Transfer of employees

Details how employees will be transferred and the date upon which the transfer will take place and terms and conditions of employment.

1.11 Provision of support services

States that the lead partner will provide support services to include financial, human resources, IT, legal, purchasing and audit services.

1.12 Insurance

Details the insurances to be in place by the Authorities. Details relating to the policies and related premiums will be included as an insurance schedule.

1.13 Claims handling

Ensures that there are procedures in place for any responses required to claims made against the Councils. Details as to a claims handling procedure/protocol to be followed by the Councils in such an event shall be included in an appropriate schedule.

1.14 Complaints

Ensures that complaints are dealt with systematically and to the same standards. Details of a complaints procedure shall be included in a schedule.

1.15 Dispute resolution

Details as to how disputes are to be resolved must be included in the memorandum of agreement. Reference will be made to an agreed independent party to whom the Councils may refer where agreement cannot be reached.

1.16 Reporting and monitoring

Details the reporting requirements and how such information is to be provided by the partners,

1.17 Provision of accommodation

Ensures that details as to the provision of any office accommodation is set out.

1.18 Liability for negligence prior to the Commencement Date

Describes how the liabilities of the Councils will be managed prior to and after the Commencement Date.

1.19 Decision making

Defines different categories of decisions and actions and who will be responsible for each.

1.20 Key representatives

States that the parties should engage key representative(s), for example Directors of the Partnership and what the functions of the key representative(s) are.

1.21 Change control procedure

Ensures that there are procedures in place for any changes required by the Councils.

1.22 Financial commitments of the parties

Details how the project will be financed, and who will pay for the completion of any contracts or detail relating to working arrangements, how under-spend and over-spend will be dealt with etc.

1.23 Intellectual property

Ensures that all parties will retain any intellectual property rights in its material but they will grant licences to the other parties for the purposes of the project.

1.24 Data Protection and information sharing

Ensures that any data is only shared lawfully and providing details of how information may be used.

1.25 Maintenance of records

Describes the obligations in respect of the maintenance of records both in the provision of the Services and in respect of any records created under the Data Protection Act 1998.

1.26 Liability of the parties

Describes the financial and legal responsibility that the managing agent will take, and how any losses or claims will be managed between the parties. It may also cover insurance.

1.27 Termination

Lists events when the whole agreement may end, in addition to other rights and remedies in the agreement.

1.28 Withdrawal

Provides that the parties are allowed to withdraw from the agreement but only at certain times specified in the agreement.

1.29 Additional partners

Describes the circumstances and procedure to be followed when additional local authorities intend to join the partnership.

1.30 Disaster recovery

Ensures that plans as agreed between the Councils are in place in relation to disaster recovery.

1.31 Boiler plate clauses

The whole agreement will need to be supported by a number of boiler-plate clauses, for example; notices, governing law, severance etc.

1.32 Schedules

The agreement would be supported by schedules providing detailed arrangements.

APPENDIX 4
THE AGREED PROPORTIONS

APPENDIX 5
PARTNERING ADVISOR
PROTOCOL FOR DISPUTE RESOLUTION

MOU/3
SLM/SMC
21.11.2006