



To: The Growth, Economic Development Cabinet Committee

Direct Dial/Ext : 3000416687
Fax:
e-mail:
Ask for: Christine Singh
Your Ref:
Our Ref:
Date: 3 July 2015

Dear Member

**GROWTH ECONOMIC DEVELOPMENT AND COMMUNITIES CABINET COMMITTEE -
TUESDAY, 7 JULY 2015**

I find attached Item B1 Appendix – Memorandum of Understanding, for consideration at the meeting of the Growth Economic Development and Communities Cabinet Committee on Tuesday, 7 July 2015 which is missing from the printed pack of meeting papers the due to an administrative error.

Agenda No	Item
B1	<u>Tunbridge Wells Cultural Hub</u> (Pages 3 - 18)

To receive a report by the Corporate Director for Growth, Environment and Transport to consider and endorse or make recommendations to the Cabinet Member Community Services on the decision to enter into a Memorandum of Understanding subject to securing Heritage Lottery Funding.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Peter Sass', is written over a light blue horizontal line.

Peter Sass
Head of Democratic Services

This page is intentionally left blank

MEMORANDUM OF UNDERSTANDING

between

TUNBRIDGE WELLS BOROUGH COUNCIL

and

KENT COUNTY COUNCIL

CONTENTS

CLAUSE

1.	Background	1
2.	Key Objectives for the Project.....	1
3.	Principles of Collaboration	2
4.	Project Governance.....	2
5.	Roles and Responsibilities	5
6.	Escalation.....	6
7.	Intellectual Property.....	6
8.	Term and Termination	7
9.	Variation	7
10.	Charges and Liabilities	7
11.	Status.....	7
12.	Governing Law and Jurisdiction.....	8

ANNEX

ANNEX A.	THE PROJECT	9
ANNEX B.	PROJECT BOARD TERMS OF REFERENCE	11
ANNEX C.	CONTRIBUTIONS	13

THIS AGREEMENT is dated

PARTIES

The parties to this memorandum of understanding **MoU** are:

- (1) **TUNBRIDGE WELLS BOROUGH COUNCIL** of Town Hall, Royal Tunbridge Wells, Kent TN1 1RS (**TWBC**).
- (2) **KENT COUNTY COUNCIL** of County Hall, Maidstone, Kent ME14 1XQ (**KCC**).

1. BACKGROUND

- 1.1 Tunbridge Wells Borough Council and Kent County Council have agreed to work together on the project detailed in **Annex A** to this MoU (**Project**).
- 1.2 The parties wish to record the basis on which they will collaborate with each other on the Project. This MoU sets out:
 - (a) the key objectives of the Project;
 - (b) the principles of collaboration;
 - (c) the governance structures the parties will put in place; and
 - (d) the respective roles and responsibilities the parties will have during the Project.

2. KEY OBJECTIVES FOR THE PROJECT

- 2.1 The parties shall, subject to the condition as set out in clause 2.3, undertake the Project to achieve the key objectives set out in Annex A to this MoU (**Key Objectives**).
- 2.2 The parties acknowledge that the current position with regard to the Project and the contributions already made (financial and otherwise) are as detailed in the Annex A to this MoU.
- 2.3 The parties acknowledge and agree that the commencement of the Project is conditional upon both parties receiving confirmation in terms satisfactory to them that Heritage Lottery Funding for at least £3,920,000 (three million, nine hundred and twenty thousand pounds) will be made available by no later than 31 December 2018. This condition may be waived by both parties jointly. If this condition is not satisfied or waived by 31 December 2018 this MoU will cease to have effect save for clauses 3 (k) (*Joint Communications*), 6.2 (*Freedom of Information*) and 12 (*Jurisdiction*),

3. PRINCIPLES OF COLLABORATION

The parties agree to adopt the following principles when carrying out the Project (**Principles**):

- (a) collaborate and co-operate. Establish and adhere to the governance structure set out in this MoU to ensure that activities are delivered and actions taken as required;
- (b) be accountable. Take on, manage and account to each other for performance of the respective roles and responsibilities set out in this MoU;
- (c) be open. Communicate openly and share information about major concerns, issues or opportunities relating to the Project;
- (d) learn, develop and seek to achieve full potential. Share information, experience, materials and skills to learn from each other and develop effective working practices, work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;
- (e) adopt a positive outlook. Behave in a positive, proactive manner;
- (f) adhere to statutory requirements and best practice. Comply with applicable laws and standards including EU procurement rules, data protection and freedom of information legislation.
- (g) act in a timely manner. Recognise the time-critical nature of the Project and respond accordingly to requests for support;
- (h) manage stakeholders effectively;
- (i) deploy appropriate resources. Ensure sufficient and appropriately qualified resources are available and authorised to fulfil the responsibilities set out in this MoU. In particular the parties agree to make the contributions detailed in Annex C to this MoU;
- (j) act in good faith to support achievement of the Key Objectives and compliance with these Principles; and
- (k) adopt a joint approach to communication. Plan and manage communications jointly, wherever practically possible to share and agree communications before they are issued.

4. PROJECT GOVERNANCE

4.1 Overview

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

4.2 Guiding Principles

The following guiding principles are agreed. The Project's governance will:

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

4.3 **Project Board**

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

Tunbridge Wells Borough Council:

Cabinet Member for Tourism, Leisure and Economic Development

Chief Executive

Deputy Chief Executive

Head of Communities and Wellbeing

Advisors to the Project Board:

Finance Director

Museum Manager

Development surveyor

Legal representative

Kent County Council:

Cabinet Member for Community Services

KCC Member of Tunbridge Wells Local Area Board

Corporate Director, Growth, Environment and Transport

Director of Property and Infrastructure Support

Advisors to the Project Board:

Finance Business Partner – Growth, Environment and Transport

Projects and Operations Manager

Legal representative

Libraries representative

Community Learning and Skills representative

- (b) The Project Board shall be managed in accordance with the terms of reference set out in Annex B to this MoU.

4.4 **Project Group**

- (a) The Project Group will provide strategic management at project and work stream level. It will provide assurance to the Project Board that the Key Objectives are being met and that the Project is performing within the boundaries set by the Project Board.
- (b) The Project Group consists of representatives from each of the parties. The Project Group shall have responsibility for the creation and execution of the project plan and deliverables, and therefore it can draw technical, commercial, legal and communications resources as appropriate into the Project Group. The core Project Group members include *(and/or equivalent roles as required)*:

Head of Communities and Wellbeing, TWBC

Museum Manager, TWBC

Development Surveyor, Property and Estates Team, TWBC

Project Manager, Business Delivery Unit, TWBC

Operations Manager, Libraries, Registration and Archives, KCC

Asset Collaboration Team Manager, Property and Infrastructure Support, KCC

Head of Adult Learning, KCC

Operations Manager, Gateway, KCC

Arts and Culture Manager, Arts and Culture Service, KCC

Projects and Operations Manager, KCC

The Project Group shall meet monthly.

4.5 **Reporting**

Project reporting shall be undertaken at three levels:

- (a) **Project Board:** Reporting shall take place during the Project Board meetings with intermediate reporting by exception.
- (b) **Project Group:** Minutes and actions will be recorded for each Project Group meeting. Any additional reporting requirement shall be at the discretion of the Project Group.

- (c) **Organisational:** the Project Group members shall be responsible for drafting reports into their respective sponsoring organisation as required for review by the Project Group before being issued.

5. ROLES AND RESPONSIBILITIES

5.1 The parties shall undertake the following roles and responsibilities to deliver the Project:

Activity	Tunbridge Wells Borough Council	Kent County Council
Project Board	Lead	Assure
Project Group	Lead	Assure
Vision delivery	Lead	Assure
Operations delivery	Lead	Assure
Communications	Lead	Assure
HLF phase 1&2 delivery	Lead	Assure
Financial oversight	Lead	Assure
Legal	Lead	Assure
Procurement	Lead	Assure
Project build delivery	Lead	Assure
Evaluation	Lead	Assure

5.2 For the purpose of the table above:

Lead: the party that has principal responsibility for undertaking the particular task, and that will be authorised to determine how to undertake the task. The Lead must act in compliance with the Objectives and Principles at all times, and consult with the other party in advance if they are identified as having a role to Assure the relevant activity;

Assure: the party that will defer to the Lead on a particular task, but will have the opportunity to review and provide input to the Lead before they take a final decision on any activity. All assurance must be provided in a timely manner. Any derogations raised must be limited to raising issues that relate to specific needs that have not been adequately addressed by the Lead and/or concerns regarding compliance with the Key Objectives and Principles.

- 5.3 Within 3 months of the date of this MoU the party with the lead role for any aspect of the Project shall develop a delivery plan for that part of the Project which shall identify the following:
- (a) the key milestones for the delivery the Key Objectives;
 - (b) what employees (other than employees identified in this MoU) will be required to work on the project;
 - (c) whether any staff will need to be seconded from one party to the other;
 - (d) what staff will require access to the premises of the other party;

Each delivery plan must be approved by the Project Group prior to being implemented.

6. ESCALATION

- 6.1 If either party has any issues, concerns, or complaints about the Project, or any matter in this MoU, that party shall notify the other party and the parties shall then seek to resolve the issue by a process of consultation. If the issue cannot be resolved within a reasonable period of time the matter shall be escalated to the Project Group, which shall decide on the appropriate course of action to take. If the matter cannot be resolved by the Project Group within 10 working days, the matter may be escalated to the Project Board for resolution.
- 6.2 If either party receives any formal inquiry, complaint, claim or threat of action from a third party (including, but not limited to, claims made by a supplier or requests for information made under the Freedom of Information Act 2000) in relation to the Project, the matter shall be promptly referred to the Project Group (or its nominated representatives). No action shall be taken in response to any such inquiry, complaint, claim or action, to the extent that such response would adversely affect the Project, without the prior approval of the Project Group (or its nominated representatives).

7. INTELLECTUAL PROPERTY

- 7.1 The parties intend that notwithstanding any secondment any intellectual property rights created in the course of the Project shall vest in the party whose employee created them (or in the case of any intellectual property rights created jointly by employees of both parties in the party that is lead party noted in clause 5 above for the part of the project that the intellectual property right relates to).
- 7.2 Where any intellectual property right vests in either party in accordance with the intention set out in clause 7.1 above, that party shall grant an irrevocable licence to the other party to use that intellectual property for the purposes of the Project.

8. TERM AND TERMINATION

- 8.1 This MoU shall commence on the date of signature by both parties, and shall expire on completion of the Project.
- 8.2 Either party may terminate this MoU by giving at least six months' notice in writing to the other party at any time.

9. VARIATION

This MoU, including the Annexes, may only be varied by written agreement of the Project Board.

10. CHARGES AND LIABILITIES

- 10.1 Except as otherwise provided, the parties shall each bear their own costs and expenses incurred in complying with their obligations under this MoU.
- 10.2 The parties agree to share the costs and expenses arising in respect of the Project between them in accordance with the Contributions Schedule set out in Annex C to this MoU.
- 10.3 Both parties shall remain liable for any losses or liabilities incurred due to their own or their employee's actions and neither party intends that the other party shall be liable for any loss it suffers as a result of this MoU.

11. STATUS

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

12. GOVERNING LAW AND JURISDICTION

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

SIGNED for and on behalf of
TUNBRIDGE WELLS BOROUGH
COUNCIL

Signature:
Name:
Position:

**SIGNED for and on behalf of KENT
COUNTY COUNCIL**

Signature:
Name:
Position:

**CONTACT POINTS
Tunbridge Wells Borough Council**

Name:
Office address:
.....
Tel No:
E-mail Address:

Kent County Council

Name:
Office Address:
.....
Tel No:
E-mail Address:

Annex A. The Project

Project overview

Kent County Council and Tunbridge Wells Borough Council are looking to deliver a joint Cultural and Learning Hub on the current Library, Museum, and Adult Education buildings within the heart of Tunbridge Wells.

The Hub will incorporate a range of related services to include the library, adult education centre, museum, Gateway, art gallery, theatre box office, information centre, creative artistic spaces, and a café.

The Hub is likely to deliver significant benefits in terms of enjoyment, learning, promoting the cultural life of the town and the development of skills and confidence of residents. The Councils are also motivated in the development of the plan by the potential financial benefits for the local and regional economy.

Both authorities recognise the importance of culture and arts in driving regeneration and prosperity and this is reflected in our various plans and strategies including the Tunbridge Wells Cultural Strategy and Five Year Plan. The South East LEP also explicitly recognises the importance of the creative, cultural and media sectors to the Kent and South East economy.

The Key Objectives

The project has a number of wide ranging objectives, which can be summarised as follows:

1. Provide a central focus for culture and learning in Tunbridge Wells, increase the attractiveness of the existing offer, provide a suitable environment in which to continue to preserve and share local history and art and reach a wider user base stretching beyond Tunbridge Wells and the Weald;
2. Improve service delivery whilst providing a more cost effective service through delivering more for less and increasing the potential to attract greater levels of income, and
3. Drive greater economic prosperity in the town.

The existing position and contributions already made

Tunbridge Wells Borough Council and Kent County Council have agreed a governance structure for taking the project forward and each authority has agreed to invest an initial contribution of £55,000 each, in order to progress the project.

These start-up funds have or will, be used towards the following work streams:

1. Economic Impact Assessment,
2. Feasibility study
3. Valuation of current KCC premises for agreeing financials

4. HLF round 1 application including design brief to RIBA stage 1 as required by HLF to accompany the R1 application

Annex B. Project Board Terms of Reference

REMIT:

The following set out the responsibilities of Project Board:

1. set and vary the budget and business plan;
2. approve all designs and final requirements of the partners within the Hub;
3. employ or contract with such service providers as it deems appropriate for the project; in so doing it shall follow open and transparent procurement procedures and comply with all applicable procurement laws;
4. ensure the effective running of the project.

DECISION-MAKING:

5. Decisions by the Project Board shall be agreed by consensus.

MEETINGS:

6. The Project Board shall meet regularly during the existence of this Memorandum of Understanding to carry out its duties.
7. The Project Board shall comprise a minimum quorum of three Authorised Representatives nominated by each authority.
8. Project Board meetings shall be held at KCC or TWBC's offices or at such other location as the Authorised Representatives may determine and will be held monthly or at such other intervals as the members of the Project Board agree.
9. The Authorised Representatives shall not be involved in considering planning applications at KCC or TWBC (and if responsible for those involved in considering planning applications shall ensure that suitable arrangements are in place to ensure probity and that no challenge on that basis can successfully be made to any planning permission granted).
10. An Authorised Representative may nominate a substitute representative to attend a meeting in their place by notifying the other Authority in advance.
11. Other representatives of KCC and TWBC shall be entitled to attend meetings of the Project Board at the discretion of the Authorised Representatives.
12. The Project Board shall require minutes to be made of all meetings of the Project Board and these shall be evidence of the proceedings. Minutes of the Project Board's

actions and decisions shall be circulated in a timely manner to the Authorised Representatives.

13. Authorised Representatives shall declare any interests which could be prejudicial to the Project Board, prior to any Project Board meeting.
14. The appointment of the chairman shall be made by consensus of the Authorised Representatives. If the chairman is not present at any Project Board meeting the Authorised Representatives may appoint one of their number present to act as chairman for the purpose of the meeting.

Annex C. Contributions

REVENUE – PRE BUILD

The pre-build revenue funds for the project are as follows:

15. The Authorities have hitherto contributed an initial £55,000 (fifty five thousand pounds) each of revenue funding towards the initial project implementation stage. These funds are currently held centrally by TWBC and regularly reported on to KCC.
16. Moving forward the pre-build revenue contributions for the project will be split 50/50.

CAPITAL

The capital sums that have been agreed for the project are as follows:

17. The total estimated cost of the project currently stands at £11,200,000 (eleven million, two hundred thousand pounds).
18. TWBC will make a primary investment of £4,000,000 (four million pounds), subject to TWBC approval process.
19. KCC will make a capped investment of £1,600,000 (one million six hundred thousand pounds) from the sale of the Library and Community Learning and Skills Centre sites being sold to TWBC for £2,000,000 (two million pounds)¹. In addition to this, KCC will also contribute £400,000 (four hundred thousand pounds) from developer contributions. This brings KCC's total capped capital investment to £2,000,000 (two million pounds). Detailed terms of the sale are to be agreed.
20. TWBC and KCC will jointly work together to secure a Heritage Lottery Fund investment currently anticipated to be £3,900,000 (three million, nine hundred thousand pounds).
21. TWBC and KCC will jointly work together to secure Arts Council funding currently anticipated to be £750,000 (seven hundred and fifty thousand).
22. TWBC will be wholly accountable for the delivery of £550,000 (five hundred fifty thousand pounds) worth of capital fundraising.

¹ This represents a discount on the current valuation price of between £2.4M and £2.9M, which effectively means that KCC is making an additional in kind contribution of between £400k and £900k to the project.

23. Both Authorities will work in partnership to secure funding to meet any capital shortfall from a wide range of sources including Business Rates Pool, CIL and joint bids to third party organisations.
24. TWBC will however be wholly accountable for any capital shortfall and overspend on the project including any shortfall in HLF capital contribution.

REVENUE - POST BUILD

The post-build revenue funding for the project will work as follows:

25. TWBC and KCC will agree a long term solution based upon revenue costs in line with the revenue proposal agreed at the 10 October 2014 Project Board whereby KCC committed to a fixed annual grant of £481,932 for the first five years of the Hub's operation subject to points 26-30 below.
26. TWBC will cover all income risk to the facility for future years.
27. TWBC will agree a long term peppercorn lease to KCC for the library and shared space area.
28. TWBC to be wholly responsible for agreeing and entering into a commercial lease and service charge with Community Learning and Skills.
29. TWBC will be wholly accountable for the delivery of the remaining income and service revenue costs.
30. TWBC and KCC will work in partnership to mitigate Library disaggregation costs, in order to deliver the £481,932.

OTHER REVENUE

31. Both parties will act in good faith to mitigate costs to the project from stamp duty land tax, VAT and any other such associated costs by considering the most appropriate delivery models.
32. TWBC will assist KCC with the interim re-provision of the Library and Community Learning and Skills service ensuring costs are kept to a minimum.
33. TWBC may in future consider the option of making the facility a trust, in which case this will be agreed in tandem with KCC and any services impacted but which could be working under a future service delivery model.