

DATE

MEMORANDUM OF UNDERSTANDING

between

KENT COUNTY COUNCIL (1)

and

TUNBRIDGE WELLS BOROUGH COUNCIL (2)

AND

SOUTH BOROUGH TOWN COUNCIL (3)

THIS MEMORANDUM OF UNDERSTANDING is dated

PARTIES

The parties to this memorandum of understanding ("**MoU**") are:

- (1) Kent County Council, of County Hall, Maidstone, Kent ME14 1XG ("KCC").
- (2) Tunbridge Wells Borough Council, Town Hall, Mount Pleasant Road, Tunbridge Wells, TN1 1RS ("TWBC")
- (3) Southborough Town Council 137 London Road, Southborough, Tunbridge Wells TN4 0ND ("STC")

Definitions

In this Memorandum of Understanding, the following terms have the meanings shown:

"Additional Land"	The land registered under title number K262785 shown edged [] on the Plan; and the unregistered land shown edged [] on the Plan.
"Authorised Representative"	The individual authorised by each Partner to sit on the Project Board.
"Development Agreement"	A development agreement to be entered into between the Partners pursuant to the MOU
"Implement"	means implementation by the carrying out of any material operation within the meaning of Section 56 of the Town and Country Planning Act 1990 but not including any works of site clearance nor any ground investigation diversion of services nor any erection of means of enclosure for the purposes of site security and "Implemented" and cognate expressions shall be interpreted in accordance with this definition.
"KCC Land"	The land edged [] on the Plan.
"Key Objectives"	The Key Objectives for the Project, defined in section 2 of the MoU.
"Land"	The collective term for the land contributed by KCC, TWBC and STC to the Project and defined below.
"Option Period"	5 years from the date of this MOU.
"Partner"	An individual party to this MoU.
"Partners"	The collective parties to this MoU.
"Plan"	the Plan showing the location of the Land and Additional Land and attached at Annex A.
"Principles"	The principles of collaboration between the Partners, defined in section 3 of this MoU.

"Project"	The development of the Land and any Additional Land to form a customer-focused hub outlet for cross agency services surgeries information self-help and routine advice and transactions, with access to visiting members of the public together with associated functions relevant to a town council including (for the avoidance of doubt) entertainment, sports facilities, theatre, medical centre, the town council offices, coffee shop, library ancillary to such outlet or other community uses or offices for use under B1 of the Town and Country (use Classes) Order 1987 together with retail units under A1-A5 of the Town and Country (use Classes) Order 1987 and the Residential Development.
"Project Board"	The group of Authorised Representatives who will approve the management and delivery of the Project on behalf of the Partners.
"Residential Development"	The development of the Residential Scheme.
"Residential Scheme"	A development of residential units on the Land .
"STC Land"	The land edged [] on the Plan.
"STC Option"	The option agreement relating to the STC Land dated on the date hereof and made between STC (1) and KCC (2) .
"TWBC Land"	The land edged [] on the Plan.
"TWBC Option"	The option agreements relating to the TWBC Land dated on the date hereof between TWBC (1) and KCC (2).

1. BACKGROUND

- 1.1 The Partners have agreed to work together on the Project.
- 1.2 The Partners have entered into the STC Option and the TWBC Option on or before the date of this MOU
- 1.3 This MOU is not intended to create legally binding obligations.
- 1.4 The Partners wish to record the basis on which they will collaborate with each other on the Project.
- 1.5 This MoU sets out:
 - (a) the Key Objectives of the Project;
 - (b) the Principles;
 - (c) the governance structures the Partners will put in place; and
 - (d) the respective roles and responsibilities the Partners will have during the Project.

2. KEY OBJECTIVES FOR THE PROJECT

2.1 The Partners agree the following key objectives:

- a. To work together in good faith to develop the Land and any Additional Land for the Project within five (5) years from the date here of;
- b. To minimise the up-front cost to the Partners;
- c. To deliver the Project if financially viable in terms of initial capital and on a revenue basis.

2.2 The Partners shall undertake the Project in accordance with this MOU.

2.3 The Partners acknowledge that the current position with regard to the Project and the contributions already made (financial and otherwise) are as detailed in the Schedule 2 to this MoU.

2.4 The Partners shall cooperate with KCC in the proposed purchase of the Additional Land.

3. PRINCIPLES OF COLLABORATION

The Partners agree to adopt the following principles when carrying out the Project

- (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 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.
- (j) act in good faith to support achievement of the Key Objectives and compliance with these Principles.

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) leverage existing organisational, group and user interfaces;
- (f) provide coherent, timely and efficient decision-making; and
- (g) correspond with the key features of the Project governance arrangements set out in this MoU.

4.3 Project Board

The Project Board will provide strategic management for the Project. It will provide assurance to the Partners that the Principles are being met and that the Project is performing effectively.

5 PROJECT BOARD MEMBERS

5.1 The Project Board shall comprise three Authorised Representatives, one nominated by each Partner.

5.2 Each Partner shall have the power to appoint, remove or replace the Authorised Representatives it nominates.

5.3 Each Partner will advise the Project Board of its nominated Authorised Representative from time to time.

5.4 A Partner may nominate a substitute representative to attend and vote at a meeting in place of an Authorised Representative by notifying this in advance to the other Partners.

5.5 At the date of this agreement the Authorised Representatives are:

- (a) TWBC – Cabinet Member for Communities and Wellbeing or such person as he/she chooses to represent him.
- (b) KCC - Cabinet Member for Community Services or such person as he/she chooses to represent him.
- (c) STC – Chairman Southborough Town Council or such person as he/she chooses to represent him.

6 OPERATION OF THE PROJECT BOARD

6.1 Each Partner shall act in good faith to ensure that an Authorised Representative (or a substitute) attends each Project Board meeting.

6.2 No business shall be transacted at any meeting of the Project Board unless all three Authorised Representatives (quorum) are present in person or by audio or video conferencing at the time when the relevant business is transacted.

6.3 The members of the Project Board shall not be involved in considering planning applications at KCC or TWBC. If at any time members are or become responsible for considering planning applications they 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.

6.4 Other representatives of KCC, TWBC and STC shall be entitled to attend meetings of the Project Board at the discretion of the Authorised Representatives.

7 PROCESS FOR PROJECT BOARD MEETINGS

7.1 Project Board meetings shall be held at STC's offices or at such other locations as the Project Board may determine and will be held monthly or at such other intervals as the Partners agree.

7.2 The Project Board shall prepare minutes of every meeting of the Project Board and circulate them to all Partners and to the relevant Partners' Council and/or other

committee meetings as required. Notes of required actions and decision shall be circulated to all Partners and the relevant people/committees as soon as possible after the meetings.

7.3 Action by the Project Board shall be by simple affirmative majority vote decided on a poll of those Authorised Representatives present at a Project Board meeting. The Project Board shall have authority to determine the procedures for the calling and holding of meetings of the Project Board, for the taking and recording of decisions of the Project Board and for the taking of votes of the Project Board should that be necessary. An Authorised Representative shall be entitled to vote in all circumstances notwithstanding any interest he/she or the Partner, may have in the matter falling for consideration, but any such interest must be disclosed to the meeting.

8 PROJECT BOARD CHAIRMAN

8.1 The KCC Authorised Representative will be the chairman of the Project Board unless otherwise agreed by the Project Board. The chairman shall not have an extra or casting vote .

9 EXECUTION OF DOCUMENTS

9.1 The Partners agree that any agreement or other document to be entered into in relation to the Project shall be approved by the Project Board.

9.2 No Partner or Authorised Representative shall have authority to approve any agreement or other document on behalf of the Project Board unless it has been approved by the Project Board.

10 GENERAL MANAGEMENT

10.1 The Project Board has ultimate authority for all aspects of the business and affairs of the Project.

10.2 The Partners will delegate appropriate authority to their respective Authorised Representatives to manage the Project.

10.3 The Project Board shall have authority to:

- approve any expenditure from capital held by the Project Board or any actual or contingent liability assumed by the Project (including providing any associated security);
- authorise KCC to employ or contract with such service providers as it deems appropriate for the Project (acting reasonably) PROVIDED THAT in so doing it shall

follow open and transparent procurement procedures and comply with all applicable procurement laws;

- authorise KCC to enter into and vary such agreements as it deems necessary for the effective running of the Project.

10.2 Each of the Partners irrevocably and unconditionally agrees to ratify all actions and decisions of the Project Board properly performed within the scope of this authority.

11 Reporting

11.1 Project reporting shall be undertaken as follows:

Project Board: Minutes and actions will be recorded for each Project Board meeting. Any additional reporting requirement shall be at the discretion of the Project Board.

Organisational: the Project Board members shall be responsible for drafting reports to their respective Partners (Cabinet and/or Council) as required for review and/or approval as necessary.

12 ROLES AND RESPONSIBILITIES

12.1 The Partners shall undertake the following roles and responsibilities to deliver the Project: (TO complete)

Activity	Kent County Council	Tunbridge Wells Borough Council	Southborough Town Council
Project Board	Lead	Assure	Assure
Vision delivery	Lead (subject to full approval by the Project Board)	Assure	Assure
Operations delivery	Lead (subject to full approval by the Project Board)	Assure	Assure
Communications	Lead (subject to full approval by the Project Board)	Assure	Assure
Financial oversight	Lead (subject to full approval by the Project Board)	Assure	Assure

Legal	Lead (subject to full approval by the Project Board)	Assure	Assure
Procurement	Lead (subject to full approval by the Project Board)	Assure	Assure
Project build delivery	Lead (subject to full approval by the Project Board)	Assure	Assure
Evaluation	Lead (subject to full approval by the Project Board)	Assure	Assure

12.2 For the purpose of the table above:

"Lead": the Partner which has principal responsibility for undertaking the particular task, and is authorised by the Project Board to determine how to undertake the task. The Lead must act in compliance with the Key Objectives and Principles at all times, and consult with the other Partners in advance if they are identified as having a role to Assure the relevant activity;

"Assure": the Partner which will have the opportunity to review and provide input to the Lead before they take a final decision on any activity and where a unanimous decision is required, veto such 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.

12.3 Within 3 months of the date of this MoU the Partner 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:

- 12.3.1 the key milestones for the delivery the Key Objectives;
- 12.3.2 what employees (other than employees identified in this MoU) will be required to work on the Project;
- 12.3.3 whether any staff will need to be seconded from one Partner to the other;
- 12.3.4 what staff will require access to the premises of the other Partner;

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

13 ESCALATION AND EXPERT DETERMINATION

- 13.1 If either Partner has any issues, concerns or complaints about the Project, or any matter in this MoU, that Partner shall notify the other Partners and the Partners shall then seek to resolve the issue through the Project Board. If the issue cannot be resolved within a reasonable period of time, the matter shall be escalated to be determined by an Expert in accordance with the provisions of this Clause 13..
- 13.2 The Partners shall agree on the appointment of an independent Expert and shall use reasonable endeavours to agree with the identity of the Expert the terms of his appointment.
- 13.3 Each Partner shall be entitled to make representations to the Expert and will provide (or procure that others provide) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision.
- 13.4 The Expert is required to prepare a written decision and give notice (including a copy) of the decision to the parties within a maximum of one month of the matter being referred to the Expert.
- 13.5 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:
- 13.5.1 either party may apply to discharge the Expert and to appoint a replacement Expert with the required expertise; and
- 13.5.2 this clause shall apply to the new Expert as if he were the first Expert appointed.
- 13.6 All matters under this clause must be conducted, and the Expert's decision shall be written, in the English language.
- 13.7 To the extent not provided for by this clause, the Expert may in his reasonable discretion determine such other procedures to assist with the conduct of the determination as he considers just or appropriate including (to the extent he considers necessary) instructing professional advisers to assist him in reaching his determination.
- 13.8 Each party shall with reasonable promptness supply each other with all information and give each other access to all documentation and personnel and/or things as the other party may reasonably require to make a submission under this clause.
- 13.9 The Expert shall act as an expert and not as an arbitrator.
- 13.10 Each party shall bear its own costs in relation to the reference to the Expert
- 13.11 All matters concerning the process and result of the determination by the Expert shall be kept confidential among the parties and the Expert.
- 13.12 Each party shall act reasonably and co-operate to give effect to the provisions of this clause and otherwise do nothing to hinder or prevent the Expert from reaching his determination.

14 INTELLECTUAL PROPERTY

14.1 The Partners intend that any intellectual property rights created in the course of the Project shall vest in the Partner whose employee created them

14.2 Where any intellectual property right vests in either Partner in accordance with the intention set out above, that Partner shall grant an irrevocable licence to the other Partner to use that intellectual property for the purposes of the Project.

15 TERM AND TERMINATION

15.1 This MOU shall commence on the date of signature by all Partners, and, subject to clause 15.2, shall expire on the earlier of practical completion of the Project and the expiry of the Option Period.

15.2 If the development of the Project has been Implemented within five (5) years from the date hereof then this MOU shall not terminate until the Project has reached practical completion or until a unanimous decision of the Project Board is reached that the delivery of the whole of the Project is no longer viable or prudent.

16 VARIATION

16.1 This MoU, including the Schedule and Annexes, may only be varied with the unanimous agreement of the Partners in writing.

17 CHARGES AND LIABILITIES

17.1 Except as otherwise provided, the Partners shall each bear their own costs and expenses incurred in complying with their obligations under this MoU.

17.2 The Partners agree to share the costs and expenses arising in respect of the Project between them in accordance with the Financial Contributions set out in Schedule 2.

17.3 The Partners shall remain liable for any losses or liabilities incurred due to their own or their employees' actions and neither Partner intends that the other Partner shall be liable for any loss it suffers as a result of this MoU.

18 STATUS

18.1 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.

18.2 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.

19 GOVERNING LAW AND JURISDICTION

19.1 This MoU shall be governed by and construed in accordance with English law.

Signed for and on behalf of KCC

Signature:
Name:
Position:
.....

Signed for and on behalf of TWBC

Signature:
Name:
Position:
.....

Signed for an on behalf of STC

Signature
Name
Position

SCHEDULE 1 THE PROJECT

1. PROJECT OVERVIEW AND DEVELOPMENT AGREEMENT

1.1 The STC Option and the TWBC Option have been entered into simultaneously with completion of this MOU and KCC has agreed to contribute the KCC Land in order that KCC shall deliver the Project.

1.2 The Partners intend that KCC shall, on behalf of the Partners and in collaboration with them, develop the following proposals:

- a. a comprehensive business plan to be agreed by the Project Board for both the capital and operational element of the Project ;
- b. an arrangement by which KCC, STC and TWBC share in the proportions referred to in paragraph 2.2 of Schedule 2 any economic return from the development of the Land and Additional Land, however obtained;
 - the concept, design, layout, specification and any planning application in respect of the Project which will include a theatre
 - library facilities
 - council offices
 - sports pavilion;
 - café;
 - medical facility (subject to feasibility);
- c. the concept, design and layout of the enabling Residential Development together with an agreed plan for bringing the Residential Development forward in terms of a planning application and marketing strategy
- d. considering fully the implications of SDLT and VAT;
- e. options for the future operation of the Project, including the possibility of a not for profit organisation to operate it.

1.3 The Partners agree that the proposals contained in paragraph 1.2, of this Schedule 1 , the Project Principles (where appropriate) and Schedule 2 (Financial Issues) shall be developed in accordance with this MOU with a view reaching agreement so that the

Development Agreement can be drafted negotiated and exchanged as soon as practicable.

2. PROJECT PRINCIPLES

2.1 The STC Option and the TWBC Option have been entered into simultaneously with completion of this MOU and KCC has the ability to call for the transfer of the STC Land and the TWBC Land to be transferred to KCC. The STC Land and the TWBC Land may only be used for the Project.

2.2 The Partners intend that the Land will be developed as the Project.

2.3 The Partners agree that the Residential Development is the enabling development and it is intended that the proceeds of sale from the Residential Development shall pay for the costs of the rest of the Project.

2.4 KCC agree that any overage that it is entitled to in respect of any part or parts of the STC Land shall be waived.

2.5 The Partners agree to use reasonable endeavours to maximise the market value of the Residential Development.

2.6 The overall contributions of the Partners shall be considered to be based on the total land area contributed by each Partner. The contributions are detailed in Schedule 2 (Financial Contributions).

2.7 The Project Board shall authorise KCC to procure surveys, valuations and other professional services on behalf of the Partners in order to submit planning applications.

2.8 Any planning application and all plans and drawings must be approved by the Project Board prior to their submission to the local planning authority.

2.9 Following the completion of the development the following terms shall apply and the Development Agreement shall provide that :

- d. STC will have the option to purchase the completed Project excluding the sports pavilion and Yew tree Road car park from KCC for £1 subject to a new lease being granted to KCC of the library building for 99 years at a peppercorn rent. The lease will contain provision for KCC to contribute to the Project service charge at an appropriate level.

- e. TWBC will have the option to purchase the Yew Tree Road car park (forming part of the TWBC Land) for £1 or will be granted a long term lease of the same at a peppercorn rent

- f. KCC will have the option to retain the completed sports pavilion within its separate ownership or (if the freehold is transferred to STC) KCC will be granted a long lease at a peppercorn rent.

- g. Any tenants within the scheme will be responsible for a fair proportion of the overall service charge and the maintenance and up keep of their property. Commercial tenants and tenants not being one of the Partners will be required to pay an appropriate commercial rent. Commercial income received from the Project development is to be used in support and maintenance of the overall scheme.

SCHEDULE 2 FINANCIAL ISSUES

1 CONTRIBUTIONS

1.1 Each of the Partners has provided [Twenty Five Thousand Pounds (£25,000)] towards the enabling costs of the Project (the "**Contributions**").

1.2 If the Partners agree to contribute any further sum to the enabling costs of the Project then such sum shall be added to any existing sum and treated as that Partner's Contribution of the purposes of priority recovery of costs pursuant to paragraph 2.

1.3 Capital costs for the Project will be met by an enabling Residential Development. The Development Agreement will provide that the Residential Development shall be sold and the proceeds of sale will be held by KCC on trust for STC and TWBC in a KCC escrow account and overseen by the Project Board. Funds will be released in the following order:

- secure the purchase of the Additional Land (and repay any funds provided by the Partners in order to acquire the Additional Land);
- procure the construction for the Project;
- fund the relocation of STC's maintenance staff and equipment storage facility including the cost of any new facility and the refurbishment of it;
- repay the Contributions to the Partners.
- repay to each Partner any capital contributions made to the Project including the capital contributions set out in section 4.1 below
- distribute to each Partner any surplus funds from the sale of the Residential Development and/or Project based on the percentages set out in paragraph 2.2 below following completion of the Project..

1.4 All capital contributions made by a Partner shall be credited to the capital balance of the Project.

2 RETURN OF CONTRIBUTIONS AND LOANS

2.1 Within one month of the date of practical completion of the Project, the Project Board shall have discretion to determine when to distribute any capital surplus balance or any of the Contributions.

2.2 Any surplus of capital remaining after the scheme is complete shall be redistributed to Partners based on the following percentages which is based on the proportions of the Land contributed to the Project.

Partner	Profit Percentage (%)
Kent CC	15.59
TWBC	14.54
STC	69.87

3 SHARING OF COSTS

All costs and expenses incurred in respect of the Project prior to the sale of the Residential Development shall be agreed by the Project Board and shall be born 33.3% KCC; 33.3% STC; 33.3% TWBC. The Partners have, at the date of this agreement, each contributed £25k. It is anticipated that a further £70k will be required from each Partner.

4 FINANCE

KCC will provide monthly updates to the Project Board on the state of the funding, including remaining funds and funds committed.

5 MISCELLANEOUS

- 5.1 Where possible the three Partners will work in partnership with Kent Highways Services to ensure the successful delivery of the improvements to Yew Tree Road.
- 5.2 The Partners will agree and prepare a business plan prior to the opening of the Project detailing the future management proposals.

ANNEX A - Plan

ANNEX B - Deed of Mutual Covenants and Easements