

DATED

13th July 2016

MEMORANDUM OF UNDERSTANDING

between

THANET DISTRICT COUNCIL

and

CANTERBURY CITY COUNCIL

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CONTENTS

CLAUSE

1.	Background.....	1
2.	Key objectives for the project.....	1
3.	Principles of collaboration.....	2
4.	Project governance.....	3
5.	Roles and responsibilities.....	4
6.	Escalation	5
7.	Intellectual property	6
8.	Term and termination and extension	6
9.	Variation	6
10.	Charges and liabilities	6
11.	Status.....	7
12.	Governing law and jurisdiction.....	7

ANNEX

ANNEX A.	THE PROJECT	9
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THIS AGREEMENT is dated [DATE]

PARTIES

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

- (1) Thanet District Council of Cecil Street, Margate (**Authority One**).
- (2) Canterbury City Council of Military Road, Canterbury (**Authority Two**).

1. BACKGROUND

- 1.1 Authority One and Authority Two have agreed to work together on the Strategic Access Management and Monitoring project as detailed in Annex A to this MoU.
- 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 Thanet Coast and Sandwich Bay Special Protection Area (SPA) is designated along the coastline of both the Thanet and Canterbury districts. Canterbury and Thanet have undertaken Strategic Access Management and Monitoring Strategies (SAMMs) to address the identified impact of additional recreation pressure on the SPA arising from new development. Both Councils agree to provide mitigation against the recreational pressure on the coastline that will result from new development proposed in their Local Plans.
- 2.2 The parties shall undertake the Project to achieve the key objectives as set out in Annex A to this MoU.
- 2.3 The Thanet Coast Project currently operates a wardening scheme in Thanet, which, is being formalised as Thanet's SPA mitigation and this scheme will continue. The objective of this MoU is to extend the operation of the Thanet Coast Project to cover the Canterbury section of the SPA. The key objective of this MoU is: **'To mitigate against the potential significant effects on the disturbance of over-wintering birds in the Canterbury section of the**

Thanet Coast SPA and Ramsar as a result of increased recreational pressure from new development'.

- 2.4 The parties acknowledge that the current position with regard to the Project is as detailed in Annex A to this MoU, this Annex maybe subject to modification as the result of any review of the Strategic Access Management and monitoring documents.
- 2.5 The agreement establishes co-operation between Canterbury City Council and Thanet District Council with the aim of ensuring that the public services they have to perform are provided with a view to achieving the objectives they have in common.
- 2.6 The agreement is governed only by considerations relating to the public interest.

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 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) ensure that the parties support each other with any information needed to enable either party to make the necessary decisions in accordance with the Project;
- d) be aligned with the scope of the Project as set out in Annex A (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 Management Group

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

Authority One:

Strategic Planning Manager
Strategic Planning Officer
Thanet Coast Officer

Authority Two:

Senior Environment Officer
Planning Policy Manager
Planning Policy Planning Officer

- b) The Project Management Group will provide strategic management at Project and workstream level. It consists of representatives from each of the parties. The Project Management 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 Group and it will regularly update and accept input from Natural England as appropriate.

The Project Management Group shall meet every three months, or as agreed between the parties. The purpose of the meetings shall be to ensure that the mitigation measures are appropriate for both authorities and that there is equal input into any necessary reviews or modifications to the mitigation model or the management plan.

4.4 Reporting

- a) Authority One and Authority Two shall have separate reporting mechanisms to their own authority.

A report will be prepared on an annual basis (as outlined in the Service Level Agreement) which will include results of any monitoring and recommendations for any review for agreement by both authorities and a financial summary.

5. ROLES AND RESPONSIBILITIES

- 5.1 The parties shall undertake the following roles and responsibilities to deliver the Project (these are explained in detail in Annex A):

Activity	Authority One	Authority Two
Wardening	Lead	Assure
Co-ordination	Lead	Assure
Education and Enforcement	Lead	Assure
Monitoring	Lead	Assure
Management of S106	Joint	Joint

monies		
Project Management and Co-ordination Group	Joint	Joint

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.

Joint: the parties take equal or own responsibility for the management and decision making.

5.3 Within an agreed timeframe 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 of the Key Objectives (Annex A);
- 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;

Each delivery plan must be approved by the Project Management 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.

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

Management 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 Management Group (or its nominated representatives).

7. INTELLECTUAL PROPERTY

7.1 The parties intend that any intellectual property rights created in the course of the Project shall vest jointly in the parties.

8. TERM AND TERMINATION

8.1 This MoU shall commence on the date of signature by both parties, and shall expire on 31 December 2031.

9. VARIATION

This MoU, including the Annexes, may only be varied by written agreement of all members of the Project Management Group.

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 by means of Section 106 funding from new residential developments as outlined in the respective SAMMs.

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.

10.4 The SAMM project will be managed by Authority One.

10.5 Each Authority will manage their own s106 monies.

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. SERVICE LEVEL AGREEMENT

- 12.1 A Service Level Agreement will be drawn up between the two authorities and will set out the detail and mechanisms regarding the following:
- a) The collection and holding of funds
 - b) The payments of funds between authorities including repayment or non-payment
 - c) Reporting mechanisms on how monies are spent within each authority area
 - d) Operation of the project if the developments funding the project are not delivered

13. 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 Thanet
District Council

Signature:
Name:
Position:
Date:

Signed for and on behalf of Canterbury
City Council

Signature:
Name:
Position:
Date:

CONTACT POINTS

Authority One

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

Authority Two

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

Annex A. The Project

Strategic Access Management and Monitoring Project overview

Most of the Thanet coastline is designated under European laws for its important habitats or birds. These designations are the Thanet Coast Special Area of Conservation (SAC), Sandwich Bay Special Area of Conservation (SAC), Thanet Coast and Sandwich Bay Special Protection Area (SPA) and a RAMSAR site.

Under EU Directive 2009/147/EC dated 30 November 2009 on the conservation of wild birds (“the Birds Directive”) member states are under a duty to protect and manage wild bird species.

The Thanet Coast and Sandwich Bay Special Protection Area (SPA) was classified on 28th July 1994 for its important numbers of Turnstone, European Golden Plover and large numbers of migratory birds. The SPA covers an area of coastline from Sandwich Bay to Whitstable Harbour within the administrative districts of Thanet District Council and Canterbury City Council.

The European Directives and their requirements to classify or designate, and then protect, restore and maintain SPAs are all taken forward into domestic legislation through the Conservation and Species Regulations 2010 (Habitats Regulations).

Part 6 of the Habitats Regulations relates to the assessment of plans or projects for their effects upon European sites, their interest features and conservation objectives, and provides a process by which consideration of potential effects and the decisions made with regard to whether plans or projects can proceed. Local Planning Authorities are ‘competent authorities’ to which the requirements of the Habitats Regulations apply.

Thanet District Council and Canterbury City Council have agreed to work together to put in place a strategic access management and monitoring (SAMM) programme for the SPA for the purposes of ensuring effective avoidance of any significant effects of new development on the SPA and compliance with the requirements of the Habitats Regulations, and to finance this by means of a tariff levied in respect of new housing developments that could have an impact on the SPA. A scheme is already being operated by Thanet District Council (under the Thanet Coast Project) for the Thanet section of coastline – this will be extended to provide a comprehensive mitigation scheme for the coastal areas within Thanet District Council and Canterbury City Council and will be funded by tariffs collected by both authorities.

The Key Objective

To mitigate against the potential significant effects on the disturbance of over-wintering birds as a result of increased recreational pressure resulting from new development’

The Mitigation Model for Canterbury’s Coastline

The proposed mitigation comprises wardening, co-ordination, education and enforcement and monitoring.

(a) Warden

- A warden post employed by TDC with experience in the sector and the authority to enforce legal orders and local byelaws;
- Responsible to a co-ordinating role/organisation;
- Required for the peak period of time when Turnstones are present i.e. October to April;
- The full-time presence during the winter months will enable the role to cover the ~~Thanet and~~ Canterbury coastline within the SPA.

Responsibilities will include:

- Enforcement of legal orders and byelaws relating to the SPA;
- Development and management of Volunteer Schemes;
- Management of bird survey counts;
- Education and awareness role, to reduce the risk of disturbance, promote voluntary codes of conduct, improve signage and interpretation, and oversee access management and other minor works relating to the protection of the SPA;
- The warden will be required to work in liaison with the relevant local authority(ies), other relevant organisations (e.g. SBBOT, TCP, KWT, NE, RSPB), visitors and the local community.

(b) Co-ordination role

- Based in the same organisation as the warden(s);
- Responsible to the client local authority (and a small steering group comprising TDC, CCC, NE and others);
- Activities, preparation of plans and operating the Volunteer Scheme are all year round tasks needed to operate the mitigation scheme, so this role is required to a greater or lesser extent all year round to manage staff, volunteers and activities, and act as a main liaison point for the mitigation scheme;
- Half-time for October to April and quarter-time for May to September.

Responsibilities include:

- Management of warden;
- Planning, developing, resourcing and co-ordinating all mitigation activities and works relating to the SPA e.g. the Coastal Dogs Project;
- Development and management of education and engagement activities;
- Liaison role at a senior level with the client;
- Management of Volunteer Scheme when warden not in post;
- Continuity of project from May to September.

Overall Costs: To include salary and related costs, and capital costs of items including PC plus other equipment, plus costs of running a Volunteer Scheme and community engagement.

(c) Education and Enforcement

- Interpretation programme - to include interpretive signage at intervals throughout the period;
- Review of all information signage along the coastal strip;
- Leaflets and web presence;

- Interpretive display at focal points plus mobile displays;
- Amendments/extensions to existing Dog Control Order sites and associated (and improved) signage; legal costs and advertising.

Costs: To include capital costs and charges for legal orders.

Monitoring

(a) Bird surveys

The mitigation model assumes that annual bird surveys will take place.

There are 21 survey sectors of 2km length for the whole SPA. **The Canterbury section of the SPA comprises 9 survey sectors x 4 visits each.** The tariff calculations assume the staff are hosted by one of local authorities, and includes the use of volunteers i.e. it also assumes the development of the volunteer scheme. This would include reporting.

(b) Visitor Surveys

The mitigation model assumes that visitor surveys of **all the Canterbury** sections of the SPA will be necessary in order to monitor the effects of the impact of new development. Surveys will take place during the Local Plan period of each Authority in year two (2016/ 17), year six (2020/21), year eleven (2025/26) and year sixteen (2031/31) in order to assess the change in visitor numbers This will comprise surveys at **all 4** survey sites x 2 visits to each site, plus a report each time.

Management of visitors - on-site

- Minor works to modify access and path routing throughout the period;
- Zoning - to comprise physical works and signage;
- Minor works to protect and/or provide Turnstone refuges.