

THIS AGREEMENT is made the 26th day of November One thousand nine hundred and ninety-nine **BETWEEN** Borough Green Parish Council, Platt Parish Council and Plaxtol Parish Council (hereinafter together called "the constituent parish councils") and Tonbridge and Malling Borough Council (hereinafter called the "Borough Council"), the constituent parish councils and the Borough Council being hereinafter together called "the constituent councils".

WHEREAS the Borough Council is the freehold owner of the site known as Basted Mill Public Open Space (hereinafter called "Basted Mill") as the same is shown edged in red on the attached plan and the constituent councils have agreed that the public open space will be managed by a joint committee of the constituent councils (hereinafter called "the joint committee") to be constituted by the constituent councils in exercise of their powers under section 102 of the Local Government Act 1972 and in manner hereinafter appearing

NOW IT IS HEREBY AGREED as follows:

Constitution of the joint committee

1. The joint committee is constituted by the constituent councils in exercise of their powers under section 102 of the Local Government Act 1972 and in accordance with the provisions of this agreement and shall exercise such functions as are delegated to it in accordance with this agreement.
2. The joint committee shall consist of eight members, appointed in accordance with the following table:
 - two by Borough Green Parish Council
 - two by Platt Parish Council
 - two by Plaxtol Parish Council
 - two by Tonbridge and Malling Borough Council.
3. (1) The members of the joint committee shall be appointed by the constituent councils at their respective annual meetings each year and a person so appointed shall hold office as a member of the joint committee until their successor is appointed. A person who is a member of the joint committee shall be eligible for reappointment at the end of their term of office.
 - (2) To be eligible for appointment to the joint committee under this clause, the person so appointed must be a member of the constituent council by whom they are appointed.
 - (3) A member of the joint committee appointed under this clause shall act at all times as the representative of the constituent council by which they are appointed.
 - (4) *The Chair can only be elected from the appointed Borough and Parish members*
Proposed change to - The chair can only be elected from the members of the joint committee (as Joint committee is already a defined term).
 - (5) *The Chair should be elected at the AGM by a simple majority of the members, and should serve until the next AGM. Agreed*
 - (6) *If a chair retires during their term of office, a new chair can be elected by simple majority from among those appointed members, to serve until the next AGM.*
Proposed change to - If a chair retires during their term of office, a new chair can be elected by simple majority from among the remaining members of the joint committee to serve until the next AGM.

4. (1) A member of the joint committee shall cease to be a member of the joint committee if-
- (i) they cease to be a member of the constituent council by whom they were appointed;
 - (ii) the constituent council by whom they were appointed passes a resolution to determine their appointment of the joint committee; or
 - (iii) they give written notice of their resignation from the joint committee to the Clerk or Chief Executive (as the case may be) of the constituent council by whom they were appointed,
- (2) In the event of a casual vacancy occurring in the membership of the joint committee, the relevant constituent council may appoint another person to be a member of the joint committee for the remainder of the term of office.
5. In addition to the eight members appointed by the constituent councils in accordance with the foregoing provisions of this agreement, the joint committee **or member councils** (*addition not agreed and should be deleted*) may co-opt any person who, in their opinion, has special interest, knowledge or experience which will enable them to make a useful contribution to the business of the joint committee:
- Provided that:
- (i) no person shall be co-opted unless their candidature for appointment has been approved by at least two of the constituent councils; *Add to the end of this sentence –‘of the joint committee’*
 - (ii) at no time shall the co-opted members of the joint committee exceed four in number;
 - (iii) a person who has been co-opted shall be a member for such period, not exceeding two years, as may be specified in the resolution of the joint committee appointing them and they shall again be eligible to be co-opted at the end of their term;
 - (iv) when counting a quorum for a meeting of the joint committee the number of co-opted members of the joint committee present shall not be included;
 - (v) in conformity with section 13(1) of the Local Government and Housing Act 1989, a co-opted member of the joint committee shall for all purposes be a non-voting member of the joint committee;
 - (vi) a co-opted member of the joint committee shall not be eligible for election as chairman or vice-chairman of the joint committee.
 - (vii) **Co-opted members may only vote on operational matters, but not financial nor the appointment of the Chair, such distinction to be decided by the Chair.** *Addition not agreed and should be deleted*
 - (viii) **A Parish may co-opt a lay member if unable to appoint two councillors, with the agreement of the joint committee.** *Addition not agreed and should be deleted*
6. (a) In so far as applicable, Parts II and VI of schedule 12 to the Local Government Act 1972 shall apply to the joint committee as if it were a parish council: Provided that the quorum for a meeting of the joint committee shall be four, comprising one representative from each of the constituent councils.

- (b) The joint committee may, with the agreement of the constituent councils, adopt standing orders and, unless and until any such standing orders have been adopted, the standing orders of the Borough Council shall apply to the joint committee *mutatis mutandis*.

Functions of the joint committee

7. It shall be the function of the joint committee to undertake the management of Basted Mill on behalf of the Borough Council. *Propose adding an annex with a map of the site*
8. In the discharge of its functions, the joint committee shall have regard to the following broad objectives:
- (a) to maintain public access to Basted Mill; and
- (b) to maintain Basted Mill in such manner as to preserve and enhance its nature conservation value.

Officers of the Joint committee

9. The joint committee shall appoint a clerk and may appoint such other officers as may be agreed by the constituent councils. Any person appointed as an officer of the joint committee may be a member or officer of one of the constituent councils and section 112 of the Local Government Act 1972 shall apply to the joint committee as if it were a parish council.
10. For contractual and legal purposes, any officer of the joint committee shall, unless the joint committee otherwise resolves, be an officer of the **member councils** (*agreed*) and seconded by that council to the joint committee for the purposes of their duties with the joint committee: Provided that the joint committee shall not resolve that in officer of the joint committee shall be an employee of any other constituent council without the consent of that council.

(i) The appointed clerk shall be reimbursed by their own Council, and such remuneration charged to the joint committee at an agreed rate, together with other establishment costs"

Proposed change to - The appointed clerk shall be reimbursed by their own Council, and such remuneration charged to the joint committee at an agreed rate, voted by the committee

Preparation of Management Plans and Work Programmes

11. No later than 30 July 2000 the joint committee shall devise a management plan for Basted Mill and shall review the same every three years.
12. The management plan shall be submitted by the joint committee for approval by the constituent councils. In the event that one of the constituent parish councils fails or refuses to approve the management plan the Borough Council may, after taking into account any representations made by the constituent parish councils in respect thereof; approve the management plan and may approve the management plan with or without modifications. The same procedure shall apply to each review of the management plan.
13. Each year the joint committee shall produce a work programme for the following year which shall identify the work to be done during that year to give effect to the management plan.

14. Each work programme shall:
- (a) identify the non-financial resources necessary to carry out the programme and how these are to be obtained;
 - (b) identify the financial resources necessary to carry out the programme and to administer the joint committee;
 - (c) specify any funding which the joint committee has procured for carrying out the work; whether in the form of monies unspent from a previous year, gifts, grant aid, sponsorship, or otherwise.

Funding of Work Programmes

15. (a) No later than 30 July in each year the joint committee shall submit to the Borough Council -
- (i) its work programme; and
 - (ii) a statement of its proposed administrative expenses, for the following financial year.
- (b) No later than 30 September the Borough Council shall notify the joint committee the amount of the financial contribution which the Borough Council is prepared to make to the joint committee for the forthcoming financial year.
16. No later than 30 November in each year the joint committee shall submit to each of the constituent parish councils a statement specifying:
- (a) the cost of the works specified in the work programme;
 - (b) a statement of its proposed administrative expenses;
 - (c) the amount of any grant aid or sponsorship procured by the joint committee;
 - (d) the amount of any financial contribution which the Borough Council is prepared to make to the joint committee;
 - (e) the difference between the costs referred to in paragraphs (a) and (b) above and the total income referred to in paragraphs (c) and (d) above (hereinafter called "the balance");
 - (f) (i) the amount which each of the constituent Parish Councils contribute to the joint committee to make up the balance, which shall be apportioned between them in proportion to the Council Tax Base (Band D equivalents) as determined by the Borough Council in any year;
(ii) in the event that such Council Tax Base ceases to be produced, the balance shall be apportioned in such other manner as the constituent parish councils shall agree.
 - (g) As the sole Landowner TMBC to indemnify the Member Councils against unexpected excessive costs that: *Not agreed and should be deleted*
 - (i) Are not covered by insurance
Not agreed and should be deleted

(ii) Exceed the Annual Combined contributions of all 3 Member Parishes after normal annual running costs have been deducted.

Not agreed and should be deleted

(iii) That would lower prudent reserves below the agreed level

Not agreed and should be deleted

Proposed addition – ‘Where any cost, claim or expense arises out of negligence or default of one (or more) of the constituent councils, that council (or those councils as the case may be) shall indemnify the others against any such cost, claim or expense’.

(The reason for this addition is it ensures all parties are covered equally. Occupier’s liability (for example) applies to all occupiers – as the committee exists it means the committee becomes an occupier for those purposes. Therefore it would be the responsibility of each constituent council to obtain their own insurance accordingly).

17. The Borough Council shall pay the amount of its financial contribution to the clerk of the joint committee no later than 30 April in each year.
18. Each of the constituent parish councils shall pay the amount of its proportion of the balance, if any, to the clerk of the joint committee no later than 30 April in each year.
19. (a) In the event that one of the constituent parish councils fails to pay the amount of its proportion of the balance by the due date the joint committee may, but shall not be obliged, to borrow an equivalent sum from one of the other constituent councils or from some other source.

(b) In the event that the joint committee takes out a such a loan, the constituent parish council so failing shall reimburse the joint committee the full cost of the loan including, without prejudice to said generality, any interest, fees or other expenditure incurred.

Resolution of disputes and arbitration

20. (1) This clause shall apply to any dispute, difference or question arising between the constituent councils with respect to any matter or thing arising out of; or relating to, this agreement (in this clause called "a difference").

(2) In the first instance, the constituent councils will use their best endeavours in good faith to resolve a difference by agreement between themselves. Where the constituent councils cannot resolve the difference then the following provisions of this clause shall have effect.

(3) The difference shall be, and is hereby, referred to the arbitration and final decision of a person to be agreed between the constituent councils or, failing agreement between the constituent councils, a person to be appointed on the request of the Borough Council by the Chairman of the Kent Association of Local Authorities.

Proposed amendment for consideration - As a matter of general principle, the parties need to decide whether arbitration is to be the chosen route: arbitration is a rather formal process and often more costly than, say, expert determination. Contractual disputes of this nature are rarely complex (unlike, say an international arbitration on a major procurement) and other forms of ADR, which can be done simply on the papers without need for an arbitration hearing, would be quicker and cheaper for all parties.

Arbitration is governed by a set of legal rules (under the Arbitration Act 1996) and procedural rules dependent upon the chosen "seat" of arbitration (such as the London Court of International Arbitration), although in the instant case I assume the parties would opt for what is known as "ad hoc" arbitration. If the parties are satisfied that arbitration is the procedure they wish to adopt, then this clause will in any event need a thorough review and consideration by the parties as to matters such as qualifications and selection of arbitrator, number of arbitrators, chairperson/umpire etc.

Once the parties have agreed on the chosen route for dispute resolution, TMBC legal can provide some drafting. TMBCs legal view is that it would be preferable for all parties if the chosen route were to be binding expert determination on the following basic principles:

- *a single expert, to be agreed by the parties as relevant to the matter in dispute or in absence of agreement by the President of the relevant professional body (Law Society, RICS etc);*
- *Decision to be binding, costs to be determined by the expert or otherwise shared equally;*
- *Determination to be on the papers, with written representations to be made by each party to the dispute within a fixed period;*
- *The expert's decision to be issued within a fixed period*

This is a standard and well-known dispute resolution process, which is frequently adopted in much larger and more complex matters than those at issue here.

(4) The Arbitrator shall be entitled to make such decision or award as they think just and equitable having regard to all the circumstances then existing.

(5) In default of agreement between the constituent councils, the costs of any arbitration shall apportioned between the constituent councils by the Arbitrator in such proportions as they in their absolute discretion thinks fit

(6) Any award or decision of such Arbitrator shall be final and binding on the constituent councils.

Cessation of membership and dissolution of the Joint Committee

21. Any one of the constituent parish councils may cease to be a constituent council by giving not less than twelve months' notice to the other constituent councils, such notice to expire on 31 March in any year and thereafter the expression "constituent parish councils" shall be construed accordingly.

22. If the constituent councils (or a majority of them) so agree:

(i) the joint committee shall be wound up and any remaining **material** (*Not agreed and should be deleted*) assets shall be transferred to, and belong to, the Borough Council.

(ii) **Any remaining financial assets should be returned to the Councils in the proportions contributed.** (*Not agreed and should be deleted*)

Transitory provisions

Proposed amendment to – 'Transitional provisions'

23. Notwithstanding the provisions of clause 3, the first members of the joint committee may be appointed by the constituent councils at an ordinary meeting of the *proposed to ad – 'relevant'* council and the constituent parish councils shall send notice of the persons so appointed to the Chief Executive of the Borough Council, who shall convene the first meeting of the joint committee.

IN WITNESS whereof this agreement is signed sealed and delivered by two members of each of the said Borough Green Parish Council, Platt Parish Council and Plaxtol Parish Council and the Tonbridge and Malling Borough Council has caused its common seal to be hereunto affixed to this deed the day and year first before written.

Signed, sealed and delivered as a deed by #]
and # on behalf of the above named Borough]
Green Parish Council and pursuant to a]
resolution of the said council passed on 4]
October 1999 in the presence of:]

[REDACTED]
[REDACTED]

[REDACTED]

Clerk to the Parish Council

Signed; sealed and delivered as a deed by]
[REDACTED] and [REDACTED]]
[REDACTED] behalf of the]
above named Platt Parish Council and]
pursuant to a resolution of the said council in]
the presence of:]

[REDACTED]
[REDACTED]

[REDACTED]

Clerk to the Parish Council

Signed, sealed and delivered as a deed by]
[REDACTED] and [REDACTED] on behalf]
of the above named Piaxtol Parish Council]
and pursuant to a resolution of the said]
council passed on 10 May 1999 in the]
presence of]

[REDACTED]
[REDACTED]

[REDACTED]

Clerk to the Parish Council

Executed as a deed and the Common Seal of]
Tonbridge and Malling Borough Council]
affixed in the presence of]

[REDACTED]

[REDACTED]

Chief Solicitor