



Agenda

East Kent (Joint Arrangements) Committee

**Wednesday
19 May 2010
at 10.00 am**

**The Guildhall
Westgate
Canterbury**

Membership of the East Kent (Joint Arrangements) Committee

Councillors

Leader, Thanet District Council (Chairman)
Deputy Leader, Thanet District Council
Leader, Dover District Council (Vice Chairman)
Deputy Leader, Dover District Council
Leader, Canterbury City Council
Deputy Leader, Canterbury City Council
Leader, Kent County Council
Deputy Leader, Kent County Council
Leader, Shepway District Council
Deputy Leader, Shepway District Council

NOTES

- 1 The East Kent Joint Arrangements Committee has not authorised the recording of their meetings by members of the public or the media by any mechanical or electronic device or similar means. Recordings will not be permitted at any such meetings to which the press and public are admitted unless expressly authorised by the Committee.
- 2 The venue for the meeting is wheelchair accessible and has an induction loop to help people who are hearing impaired.
- 3 The information contained within this agenda is available in other formats, including Braille, large print, audio cassettes and other languages.
- 3 If you have any queries regarding items on this agenda, please contact Matthew Archer on 01227 862 175 or email matthew.archer@canterbury.gov.uk or write to the address below.

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A G E N D A

Page (s)

- 1 APOLOGIES FOR ABSENCE**
TO RECEIVE apologies for absence
- 2 DECLARATIONS OF INTEREST**
TO RECEIVE declaration of interests
- 3 SUBSTITUTE MEMBERS**
The Chairman to report any notifications received prior to this meeting regarding the attendance of substitutes for the named Members of this Committee.
- 4 MINUTES** 5 - 7
- 5 APPOINTMENT OF HOST AUTHORITY, DELEGATION OF POWERS FOR THE PROPOSED THANET, DOVER AND CANTERBURY SHARED SERVICES AND LOCATION OF STAFF** 8 - 17
TO CONSIDER a report of the Head of Legal and Democratic Services (Canterbury)
- 6 REVIEW OF ADMINISTRATIVE ARRANGEMENTS FOR THE EAST KENT (JOINT ARRANGEMENTS) COMMITTEE AND THE EAST KENT (JOINT SCRUTINY) COMMITTEE** 18 - 67
TO CONSIDER a report of the Head of Legal and Democratic Services (Canterbury)
- 7 ANY OTHER URGENT BUSINESS TO BE DEALT WITH IN PUBLIC**
- 8 ANY OTHER BUSINESS WHICH FALLS UNDER THE EXEMPT PROVISIONS OF THE LOCAL GOVERNMENT ACT 1972 OR THE FREEDOM OF INFORMATION ACT 2000 OR BOTH**
It will be necessary to exclude the press and public for any business under this item.
- 9 EAST KENT JOINT WASTE PROJECT** 68 - 85
TO CONSIDER a report of the Director of Environmental Services (Thanet) on behalf of East Kent Waste Management Group

TERMS OF REFERENCE of the EAST KENT (JOINT ARRANGEMENTS) COMMITTEE

1. To exercise the executive and non-executive functions of the parties in order to commission, co-ordinate, provide, procure and/or manage any shared services as are agreed from time to time by two or more of the Parties
2. To provide strategic direction to the officers advising the EKJAC
3. To exercise any of the functions or services that are determined to be a shared service in accordance with these arrangements
4. To develop work programmes and projects in relation to the functions which the parties are minded to be delegated to the EKJAC by the Parties
5. To regularly report to each of the Parties on its activities
6. To respond to reports and recommendations made by the East Kent Joint Scrutiny Committee
7. To monitor the operation of the EKJAC and of any shared service
8. To propose a budget for a shared service to the Parties and to monitor and manage any such budget once approved by them
9. To review these arrangements from time to time and make recommendations to the Parties for improvement and change and to propose (as appropriate) the creation of special purpose vehicles for the achievement of the Objectives, including companies, formal partnerships or consortia, the expansion of these arrangements to include other local authorities, the conclusion of contracts with other persons and the provision of services, supplies and works to other persons

The decisions set out in these minutes will come into force, and may then be implemented at 12 noon on the fourth working day after the publication of the decision, unless the decision is subject to call-in.

Date of publication: 26 January 2010

CANTERBURY CITY COUNCIL

EAST KENT (JOINT ARRANGEMENTS) COMMITTEE

**Minutes of a meeting held on Wednesday, 20th January, 2010
at 10.00 am in The Guildhall, Westgate, Canterbury**

Present: Councillor P Watkins, Dover District Council (Chairman)

Councillor R Bliss, Shepway District Council
Councillor J Gilbey, Canterbury City Council
Councillor A King, Kent County Council
Councillor R Latchford, Thanet District Council
Councillor J Law, Canterbury City Council
Councillor D Monk, Shepway District Council
Councillor F Scales, Dover District Council
Councillor G Cowan, Dover District Council

Officers:	Chief Executive	Canterbury City Council
	Chief Executive	Dover District Council
	Chief Executive	Shepway District Council
	Chief Executive	Thanet District Council
	Director of Corporate Services	Canterbury City Council
	Head of Legal and Democratic Services	Canterbury City Council
	Head of Policy and Improvement	Canterbury City Council
	Assistant Head of Democratic Services	Canterbury City Council
	Head of Finance and ICT	Dover District Council
	Public Policy	Kent County Council
	Director of Customer Services and Business Transformation	Thanet District Council
	Press and Media Manager	Thanet District Council

28 APOLOGIES FOR ABSENCE

Apologies received from Councillors Ezekiel and Carter.

29 DECLARATIONS OF INTEREST

No declarations were received.

30 SUBSTITUTE MEMBERS

No Substitute Members were present.

31 **MINUTES**

The minutes of the meeting held on 18 December 2009 were agreed as a correct record.

32 **MINUTES OF THE EAST KENT (JOINT SCRUTINY) COMMITTEE**

The Chairman invited Councillor Cowan, as chairman of the East Kent (Joint Scrutiny) Committee, to present the minutes. Councillor Cowan said that it was the second time the Joint Scrutiny Committee had considered the report. The first time they had rejected the recommendations on the basis of a lack of information. The committee was advised that the second meeting had been attended by the four east Kent district Chief Executives, who each offered their view on the strategic case. He said the committee also considered the supplementary report, which set out the concerns of Shepway District Council and the project team response. He said the committee had drawn attention to a number of specific concerns, which were summarised in a proposal put to the joint scrutiny committee at the end of the debate. They were: a lack of detail on actual costs; lack of detail on how savings would be achieved, concern over democratic accountability, the potential cost to exit a shared service arrangement and a concern that other options had not been considered. He said if the services included in the first tranche of the strategic case were managed in the same fashion as the existing joint projects such as housing, waste and HR, then in his view there would have been broad support. He stated that when the proposal was put to the committee, there was a 6-6 vote and that as Chair he was not afforded the opportunity of a casting vote. He said he supported the principle of joint working but also supported the concerns as set out in the proposal.

The Chairman asked Councillor Cowan whether, if the concerns were addressed during the implementation phase, with the exception of the costs of exiting the arrangements, was his view that the Joint Scrutiny Committee would have accepted the recommendations? Councillor Cowan responded that there was general support for the principle of joint working and if the questions had been addressed then the feeling of the Committee may have been different. He confirmed that he would be happy for the project to continue if the concerns were addressed as part of ongoing work.

The committee received the minutes and thanked Councillor Cowan for his contribution.

33 **EAST KENT JOINT SERVICES STRATEGIC CASE AND SUPPLEMENTARY REPORT**

It was explained to the committee by the Head of Legal and Democratic Services (Canterbury) that the strategic case was the same paper as that endorsed on 18 December, subject to the concerns of Shepway District Council being considered. He drew attention to the supplementary report, in which the project team had responded to the points raised by Shepway, insofar as they were able to do so. He said the nature of the report was that it was a strategic case and therefore there was a degree of detail to be worked up. He said it provided a framework within which decisions could be taken and offered a different approach to that used on the previous East Kent projects. The committee was asked to consider whether there was anything in the supplementary report or the Joint Scrutiny minutes that caused it to reconsider its recommendations.

In response, Councillor Bliss said that Shepway's position was as stated in the supplementary report and they had not ruled out joining the process at a later date. Councillor Gilbey said Canterbury had looked at the process and taken a view that it was part of the financial savings needed for future years. He said in his view, the process needed to be accelerated and therefore he was content to go ahead with the approach as proposed, with the safeguards described in the report. Councillor Latchford said Thanet was in a similar position to Canterbury. He said he supported the strategic case as drafted, and looked forward to moving ahead with the project. Councillor Scales said that Dover recognised that the strategic case was an ongoing piece of work and given the anticipated financial pressures in future years, he was supportive of the need to move forward with the strategic case. Councillor King said that although Kent County Council was not party to this particular agreement, he commended the principle of joint working and said that he hoped this particular proposal would reveal what could be achieved by working together. He said he was supportive of joint working across Kent, including the involvement of other public sector organisations where appropriate.

It was then proposed and duly seconded that having considered the comments in response to minute 27 (j) of the East Kent Joint Arrangements Committee, and noted the comments set out in the East Kent Joint Scrutiny minutes of 14 January 2010, the Committee agreed that the report now go forward to each council as per the recommendations (a) to (i) made on 18 December 2009.

There being no other business the meeting closed at 10.17 am

Subject:	Appointment of Host Authority, Delegation of Powers for the Proposed Thanet, Dover and Canterbury Shared Services and Location of Staff
Director/Head of Service:	Head of Legal and Democratic Services (Canterbury)
Decision Issues:	These matters are within the authority of the Committee
Decision type:	Not applicable
Classification:	This report is open to the public.
Summary:	<i>This report concerns the delegation of powers to an officer of Thanet District Council, which council it is recommended acts as the host authority for the wider shared services project between Thanet and Dover District Councils and Canterbury City Council. It makes a distinction between the employment and location of this officer and his or her team and suggest that they be located in Canterbury.</i>
To Recommend:	<ol style="list-style-type: none">1. That Thanet District Council as the host employer of the director of Shared Services be approved.2. That the Director of Shared Services when employed by Thanet District Council be delegated the powers of the Committee as set out in schedule 2 attached to this report.3. That the Director of Shared Services and associated staff be located at Canterbury City Council offices.
Next stage in process	The Director of Shared Services will begin work on developing the service business cases with the team which is presently being gathered together.

SUPPORTING INFORMATION

1. Background

As Members will recall, the potential for different types of organisation by which shared services could be provided have been examined. Each have advantages and disadvantages but two particular models have been favoured. The first is the creation of a company owned by the local authorities and performing services on their behalf. The second is the local government model of the delegation by this Committee of certain of its functions to an officer, who then develops or controls a joint service on its behalf and under its direction.

Following the uncertainty generated by a recent court case involving London Authorities Mutual Limited (commonly called “the LAML case”) and the doubt that the

wellbeing powers could be used to create such a company, the second alternative has been explored. As a result a proposal for sharing services based on it has been put to the East Kent Authorities.

Following the approval by the councils of Thanet and Dover Districts and Canterbury City of the strategic case for the wider shared services project, work is now beginning on developing the shared services described as tranche 1 in the strategic case. The first appointment that needs to be made is of the Director of Shared Services and then the small team who will surround him or her, including the transformation managers, who will be leading on developing the separate shared services. Following a selection and interview process the Director designate is in place. It is Mrs Donna Reed, presently Director of Customer Services and Business Transformation at Thanet District Council. Her appointment is subject to her formal appointment by Thanet District Council and to her being delegated the necessary powers to act by this committee.

2. **Detail**

The East Kent (Joint Arrangements) Committee operating arrangements provide as follows:

- 10.1 The EKJAC may arrange for the discharge of any of its functions by a sub-committee of the EKJAC or an officer of one of the parties. Any such sub-committee may, subject to the terms of these arrangements, and unless the EKJAC or any voting Member directs otherwise, arrange for the discharge of any of its functions by such an officer.

The EKJAC is not itself a legal entity and therefore what is described as a host authority must employ the relevant officers. It will be noted that the host authority has very little, if any control in the direction of these officers in relation to shared services. They come under the direction of the EKJAC and are answerable to it. In practice the East Kent Chief Executives Forum will carry out this role on a regular basis. The host authority is responsible for payment of salaries and to provide general line management of the Director, but they cannot instruct the Director in terms of his or her work being carried out under the EKJAC. However in respect of certain administrative matters, Thanet's constitutional arrangements will need to be followed by the Director.

The project group of officers acting on the wider shared services project have developed some criteria to identify the host and carried out an analysis against them as a basis for the EKJAC's decision to whom it should delegate its powers and for whom the Director of Shared Services should work. Those criteria and the scores given by the project group appear at Schedule 1. It must be said that there is a substantial subjective element in the selection. All of the parties are capable of being the host but despite the clear limitations on the powers and responsibilities associated with it, it may be perceived as a role carrying some significance.

On the indicative assessment by the project group, it appears that Thanet narrowly can best perform the role of host, and therefore Thanet will provide the Director and make him or her available to the EKJAC. However, the assessment also indicates that Canterbury City Council is best placed to provide the resources for support roles and (although this is not one of the criteria) is, for the time being, the administrative host authority for the EKJAC arrangements. Therefore, it is suggested that Canterbury provides the location for the Director of Shared Services and her staff.

It is to be noted as a general point with shared services that location of staff does not follow the host authority.

As the wider shared services project develops, these matters will be kept under review. This is particularly the case if, sometime after May 2011, as mentioned in the strategic case, other organisational vehicles for delivering shared services are re-examined.

In Schedule 2 to the report is a scheme of delegation to the Director of Shared Services, which contemplates the Director in turn, may delegate those powers down to her staff. It is inevitable that this scheme will be revised from time to time but is intended to form the basis upon which the Director can start work to develop the individual service business cases. The team will be peripatetic and will need space to work within each authority as well as the base in Canterbury.

3. **Relevant Committee and Council Policy Documents**

The strategic business case and relevant minutes from the three councils.

4. **Consultation planned or undertaken**

None in relation to this matter.

5. **Options available with reasons for suitability**

Members can decline to make these decisions but in doing so will require the participating councils to reconsider their approach to joint working.

6. **Reasons for supporting option recommended, with risk assessment**

This report follows logically from the approval by the participating councils of the Strategic Business case. The Director is a key appointment and she needs the necessary powers to act.

7. **Implications**

(a) Financial Implications

The participating councils are making funding available for the Director and team.

(b) Legal Implications

Both Executive and non-Executive functions have been delegated to the EKJAC and the EKJAC is making a further delegation as it is permitted to do. The Executive of each council still carries responsibility for the Executive functions carried out on its behalf.

8. **Conclusions**

The indicative assessment shows that Thanet District Council is likely to be preferred as the host authority, whilst Canterbury should be the actual location for staff. The delegated powers recommended to be delegated to the Director once formally appointed should be sufficient to develop the wider shared service organisation up to

the point that two more of the parties agree the business cases and the authorities concerned pass the necessary delegations to the EKJAC.

9. **Background Papers**

None

Contact Officer: Mark Ellender Telephone: 862 011

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Version 2
Date 7 May 2010
Time 10.41am

Application of hosting criteria based on an indicative assessment by the Project Group

Criteria	Canterbury	Dover	Thanet	Score	Comment
1. Embedded and robust current job evaluation scheme	1	2	3		Both Thanet and Dover have current schemes. Thanet's is the most established
2. Capacity of each council to accommodate staffing numbers associated with the DSS team	2	2	2		At the moment all three sites are more or less the same
3. Resource levels available at each council for relevant services needed to support the host role (legal, finance, ICT, policy, comms)	3	1	2		Canterbury employs more staff in the relevant areas than either Dover or Thanet
4. Ease for staff to access each of the three main council sites with reference to:					
a) average levels of traffic congestion	1	3	2		Given Dover's geographical position, it is the easiest site to access by car
b) public transport links	3	1	2		Canterbury is the public transport hub for East Kent
c) staff and visitor car parking capacity	3	3	3		There is adequate capacity at all three sites
Score	13	12	14		

Key:

3	Strongly able to fulfil the hosting role based on this criteria
2	Moderately able to fulfil the hosting role based on this criteria
1	Potential to fulfil hosting role, but not sufficiently highly developed at this time

* It should be noted that Dover already host the East Kent Audit Service and the East Kent Payroll and HR Service

The East Kent Joint Arrangements Committee Scheme of delegation of functions to officers

Introduction

This scheme has been adopted by the East Kent Joint Arrangements Committee and is the list of delegations to officers under section 101 of the Local Government Act 1972 (as amended), section 20 of the Local Government Act 2000 Regulation 11(4) of the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000 and all other powers enabling delegations to officers. It is adopted with the intention of giving a clear transparent and accountable decision-making process.

“The arrangements” means the operating arrangements, Terms of Reference, Committee Procedure Rules and any other minutes or documents for the time being in force by which the East Kent Joint Arrangements Committee and the East Kent Joint Scrutiny Committee are constituted and their powers defined.

“The Committee” means the East Kent (Joint Arrangements) Committee.

“The council” means Thanet District Council as host authority by whom the officers will be employed.

“The Department” means the East Kent Shared Services department under the Directorship of the Director of Shared Services.

“The Director of Shared Services” means the chief officer appointed by the council and primarily responsible for the development and delivery of such shared services as the parties decide.

“The Parties” means as the context requires any two, three or all of Canterbury City Council, Dover District Council, the District Council of Shepway and Thanet District Council.

1. Officers may only exercise the delegated powers in this scheme in accordance with
 - 1.1 Statutory or other legal requirements, including the principles of public law, the Human Rights Act 1998 (as amended), statutory guidance and statutory codes of practice.
 - 1.2 The Constitution of the council where relevant including standing orders, contract standing orders and financial regulations.
 - 1.3 The revenue and capital budgets of the Committee, subject to any variation thereof which is permitted by the council’s Financial Regulations.
 - 1.4 Consideration of any relevant policy adopted by the Committee.
2. Officers may not exercise delegated powers where –
 - 2.1 The matter is reserved to the Committee by the arrangements.
 - 2.2 The matter is a function which cannot by law be discharged by an officer.

- 2.3 The Committee or a sub-committee has determined that the matter should be discharged otherwise than by an officer.

Where an officer has delegated powers the committee or a sub-committee (as appropriate) can still exercise that power if it considers it is appropriate to do so.

3. Officers may not exercise delegated powers in a way which is contrary to the policies and plans approved by or on behalf of the Committee.
4. If for any reason it is not practical to consult a person required to be consulted in the exercise of a delegation then the person with the delegated powers must consult someone else they reasonably consider to be an appropriate substitute consultee.
5. Delegations to the Director of shared services or other identified officers may be exercised by other officers whom they authorise to act on their behalf; provided that the delegation is recorded in writing.
6. The delegated powers held by an officer may be exercised by the line manager of that officer (or by the line manager's line manager) if:
 - That post is vacant.
 - The post holder is not at work for any reason.
 - The decision is urgent and the reasons are recorded in writing.
7. The delegations in this Scheme of Delegation include the discharge of both executive and non-executive functions.
8. Any reference in this Scheme of Delegation to any enactment shall include a reference to any amendment to or re-enactment of the same.
9. Where an officer has delegated authority to discharge functions
 - by virtue of any other decision by the parties or
 - through a specific decision the committee, or a sub-committee, either before or after the adoption of this Scheme,

the absence of the delegation from this Scheme shall not prevent the exercise of the delegation.

Powers delegated to the Director of Shared Services

Business cases and delivery of services

1. To develop shared service business cases work programmes and projects in relation to the functions which all or not less than two of any of the parties are minded to delegate to the EKJAC.
2. With the assistance if necessary of the appropriate Chief Executive of any of the parties to obtain from his or her council any information required in preparing a shared service business case.
3. Once two or more of the parties have resolved a service is to be shared to implement the business case and deliver the service as defined therein. [E/C]

4. To take any action which is required as a matter of urgency in the interests of the committee, in consultation with the Chair, if time permits. [E/C]
5. To manage the Department. [E/C]

Financial

6. Acceptance of the lowest tender or bid for the carrying out of works for the committee, the purchase, leasing or hiring of goods, materials and equipment by the committee, or the supply of services to the committee, provided that budget provision is available. [E]
7. Entry into contract documentation following tender/bid acceptance (subject to the provisions of Financial Regulations and Contract Standing Orders of the council relating to the execution of contracts under seal). [E/C]
8. Authority to negotiate and agree price increases where a contract provides for price increases to be negotiated and agreed by the parties, subject to Contract Standing Orders of the council and ensuring sufficient budgetary provision exists. [E/C]
9. The assignment or novation of a contract. [E/C]
10. The approval of the appointment of or the acceptance of the tender of a sub-contractor or supplier for specialist work or material provided that this does not result in the budget provision for the works as a whole being exceeded. [E/C]
11. Virement between heads of expenditure of up to the limit specified in the council's Financial Regulations for a Director provided that such virement is in accordance with the conditions for virements in such Financial Regulations. [E/C]
12. Provision of reasonable hospitality to representatives of other authorities, visiting a department or premises under the Director's control subject to agreement by the Chief Executives of each of the parties for expenditure in excess of £500. [E]
13. To negotiate and agree variations in contracts arising out of statutory requirements subject to adequate budgetary provision being available. [E/C]

Human resources

14. To appoint all staff subject to the council's recruitment procedures. [E/C]
15. Dealing with all staffing matters which can be contained within budget. [C]
16. Granting acceleration of increments for any staff within their substantive grade for merit and ability. [C]
17. Determination of requests or recommendations for honoraria, gratuities and responsibility allowances. [C]
18. The determination of applications for paid and unpaid leave:
 - 18.1 for trade union training with special regard to the council's policies on equalities and to courses directed towards equalities issues;

- 18.2 for health and safety training;
 - 18.3 for paid leave for an employee to discharge her/his duties of the office of President of a Trade Union;
 - 18.4 for an employee to attend meetings etc with pay as a member of another local authority, or similar public body on condition that the employee only receives the difference between pay and any amount receivable under local government regulations etc. This does not include an employee attending such a body in her/his official capacity which would be as part of their official duties;
 - 18.5 for personal or domestic reasons in accordance with conditions of service;
 - 18.6 for maternity, parental and dependant's support leave;
 - 18.7 for compassionate leave where there are urgent personal or domestic reasons for needing additional paid leave in accordance with conditions of service. [C]
- 19. Determination of extensions of sickness allowance in consultation with the Head of East Kent Shared Human Resources Service. [C]
 - 20. Determination of requests for extensions of service except that of first and second tier officers. [C]
 - 21. Determination of casual or essential car users allowance or leased car or cash in lieu to officers subject to compliance with the provisions agreed by the council. [C]
 - 22. Determination of planned overtime for officers above Scale 6. [C]
 - 23. Determination of claims for payment of subsistence allowances on the basis that only claims in respect of expenditure incurred within six months of the date of the application will be met. [C]
 - 24. Determination of proposals to attend service training courses. [C]
 - 25. Determination of staff grievances and referral to the Chief Executives of the parties where resolution is not possible at departmental level. [C]
 - 26. Discipline, suspension and/or dismissal of employees up to third tier level. [C]
 - 27. Authority to assimilate staff on appointment, promotion or regrading where appropriate within the approved grade having regard to all the circumstances. [C]
 - 28. Compliance with the provisions of the Health and Safety Policy of the council. [C/E]
 - 29. To work out appropriate managerial and operational consequences and to refine as necessary the structure of the Department in order to deliver the aims, objectives and changing priorities of the Committee. [C/E]

30. To deal with redundancies and approve applications from employees for early retirement (including ill health retirements) in accordance with council policies and following referral to the council's doctor as necessary and reporting all approvals to the Committee. (C)
31. To be the Proper Officer responsible for the list of politically restricted posts within the Department. [C]

General

32. Where the Director considers that legal proceedings are needed in connection with the effective management of any service for which he or she is responsible they may, subject to consultation with the chief legal officer of the council instruct that officer to take those proceedings subject to reporting the outcome to the next committee meeting as appropriate. [C/E]
33. To take any action which the committee has the power to take in order to manage any of their service areas.
34. To publicise the services they provide. [E/C]
35. To deal with issues relating to the Commission for Local Administration relevant to the Committee.

Subject: **Review of administrative arrangements for the East Kent Joint Arrangements Committee and the East Kent Joint Scrutiny Committee**

Director/Head of Service: Head of Legal and Democratic Services (Canterbury)

Decision Issues: These matters are within the authority of the Council

Decision type: Not applicable

Classification: This report is open to the public.

Summary: *With the benefit of external advice received last year and of subsequent decisions and developments this report reviews the arrangements for the East Kent Joint Arrangements Committee and the East Kent Joint Scrutiny Committee. It proposes some amendments to those arrangements and suggests that other matters be kept under review.*

To Recommend **Recommendations to be made to each council -**

1. That the East Kent (Joint Arrangements) Committee operating arrangements be amended as follows:

(a) Paragraph 11.1 – In the table delete “and Host Authority”.

(b) Paragraph 12.1 – To add “in the event of an equality of votes the Chairman may have a second or casting vote unless his council is not participating in the shared service concerned”.

Paragraph 12.2 – To add “Any such recommendation shall be considered by each of the parties and a response made to it within three months of the date such recommendation is made”.

(c) Paragraph 14.1 – To delete “the Parties will appoint a Host Authority which is for the time being the Authority shown as the Chairman and Host Authority in the table at clause 11.1” and substitute “which until May 2012 shall be Canterbury City Council and thereafter such Administering Authority as EKJAC may from time to time appoint”.

Paragraph 14.4 – Delete “will be paid for by the

host authority” and substitute “will be paid for by the parties in equal shares”.

- (d) To add the following paragraphs and re-number the succeeding paragraphs:

“Paragraph 15. – Finance

Paragraph 15.1 – “To agree that the councils allocate sums from time to time to funds for meeting the costs of researching and creating Shared Services projects and that the Chief Executive of the Host Authority be given delegated power in consultation with the Chief Executives of the parties participating in those projects to authorise any expenditure within the allocated budget”.

- (e) Where the context so admits change “Host Authority” to “Administering Authority” throughout.

2. That the East Kent (Joint Scrutiny) Committee operating arrangements be amended as follows:

To add at the end of 11.1 “In the event of an equality of votes the chairman may have a second or casting vote unless his council is not participating in the shared service concerned”.

To add “11.3 Where two or more parties have resolved to delegate the relevant functions to the EKJAC then:

- (a) The service will thereafter be a shared service only in relation to those parties and
- (b) Those parties alone will have voting rights at the EKJSC in relation to further decisions as to how that shared service is jointly managed provided or procured.
- (c) The parties that did not delegate that shared service will not have voting rights in relation to that shared service until or unless they do delegate such service at some future date.
3. That the Head of Legal and Democratic Services at Canterbury prepare a Service Level Agreement to describe the role of the administrative host authority for the EKJAC to

be approved by the Monitoring Officers of all the parties.

- 4. That the following matters be kept under review in relation to the operating arrangements of both Committees:**

A protocol regulating the relationship between EKJSC and the individual council Overview and Scrutiny Committees.

Recruitment of a specialist officer to support the work of EKJSC.

The principle that any work carried out by staff of the councils towards achieving a shared service be reimbursed from EKJAC funds and that such funds are made available to EKJAC.

Next stage in process

1. Introduction

At its initial meeting on 25 June 2008 the East Kent Joint Arrangements Committee (EKJAC) adopted procedure rules which enshrined identical resolutions passed by all the participating councils in the East Kent joint Arrangements. The Committee also noted the terms of reference of the East Kent Joint Scrutiny Committee which was subsequently adopted by that Committee on 16 July 2008. EKJAC also approved certain administrative processes and noted others which though informal reflected the way in which proposals would become projects and would be taken through the joint and individual council decision making processes.

Amongst those decisions was one to review the arrangements after six months and to make a report.

Copies of the reports to the EKJAC dealing with the Procedure Rules and the Administrative processes are attached as Annexes 1 and 2. This report primarily deals with the Procedure Rules.

2. Background

- 2.1 This report is that belated review referred to above. With hindsight, a review after six months was not appropriate. In that time little happened in the way of substantive decisions and not enough experience was gained to make a review worthwhile. The review contemplated at the first EKJAC meeting commenced early in 2009. It was carried out by Mr Doug Bradbury, the former Chief Executive of Shrewsbury and Atcham Borough Council. He is a solicitor by way of professional background and well versed in constitutional matters. His final report dated 29 April 2009 is attached to this report as Annex 3. He has also seen and commented on this report. Those comments have been included and addressed.

Through 2009 much work went into the wider shared services proposal. The finalisation of the review was put back as elements of Mr Bradbury's review were considered in relation to that report.

Mr Bradbury detected broad satisfaction with the way the east Kent arrangements were drafted but the concern was that the shared services agenda was not being driven quickly enough. There was broad agreement that Canterbury should retain the host role for the EKJAC although differing views were expressed as to whether the chairmanship role should rotate from Canterbury.

There was general agreement amongst the Chief Executives that Canterbury had the administrative processes of the EKJAC, the East Kent Chief Executives Forum and the East Kent Chief Executives and Leaders Group well in hand and there was clear benefits to Canterbury retaining that administrative role at least for the time being. A rotation of the chair of the EKJAC was contemplated by the arrangements and it was decided to make no recommendation that the process be changed. Accordingly the chairmanship has rotated with Thanet currently taking the chair and it will rotate again to Shepway District Council in June.

Kent County Council have indicated their desire to take over the administrative and other roles as well as the chairmanship in due course. With shared services now in the course of development there appears merit in Canterbury retaining the administrative host role for another year and (see later) defining that role in a document so that it may more easily be passed on if that is the desire in May 2011. Shepway are entitled to take both the chair and the administrative host role from the 1 June but it is understood are content to leave the administrative role to Canterbury whilst taking the chair. The general view given to Mr Bradbury was that the East Kent Joint Scrutiny Committee chair and administrative support should rotate and that it is currently with Dover and will rotate to Kent County Council in June.

Turning to Mr Bradbury's conclusions, each will be addressed in turn.

2.2 Administration and chairmanship

As previously indicated the city council has taken on the administration of EKJAC for this year and that has not been rotated with the chairmanship to Thanet. Mr Bradbury recommends that should last for a minimum of three years and be backed up with the Service Level Agreement ('SLA') between Canterbury City Council and EKJAC with provision for reasonable and quantifiable financial recompense. There is no formal agreement but the councils agreed that because of the routine burden of servicing the EKJAC the East Kent Chief Executives Forum and the East Kent Leaders and Chief Executives meeting each authority should contribute a sum towards the costs of the administrative, legal and financial support required.

This has been calculated as £5,000 each. This funding in most cases was taken from the Performance Reward Grant due to be paid in respect of the Kent Agreement 2005-2008.

It is recommended that Canterbury retain the role of administering the EKJAC arrangements for a further year although the chairmanship and vice-chairmanship will rotate to the authorities previously indicated.

The resolutions passed by each authority gave delegated powers to their Chief Executive to contribute towards funding for pursuing joint service proposals. Mr Bradbury recommends that there be a realistic budget which has been described as a “fighting fund.” For ease of decision making it is suggested that the Chief Executive of the host authority under these arrangements be given the power to authorise expenditure, but in consultation with his colleagues. It is suggested that these provisions be incorporated into the operating arrangements.

To avoid confusion it is recommended that the host authority in these arrangements be renamed administering authority.

It has been taken as read that the ‘administering’ or host authority should also supply financial and legal advice but without prejudice to the involvement of the Section 151 and Monitoring Officers of the other authorities.

Mr Bradbury remains of the view that an SLA is desirable to provide for a meaningful assessment of costs incurred in acting as the administering authority. Looking to the future will a simple division of costs without an SLA be satisfactory? Accordingly a recommendation has been included to develop an SLA for the EKJAC administering host authority.

Whilst Mr Bradbury recommends that the chairmanship should remain with the administering authority. In practice we have found this year that the separation of the chairmanship from the administering authority has not presented a practical problem given the comprehensive discussions that take place before the formal meetings of EKJAC both by the Chief Executives in their Forum and by the East Kent Leaders and Chief Executives. As recommended the administration and chairmanship of the EKJSC has continued to rotate.

2.3 Scrutiny

As recommended by Mr Bradbury the EKJSC has continued as it was established. He recognised the difficulties with a protocol to limit local scrutiny and it has not been pursued. Local accountability of the joint services is of importance. When shared services of individual councils come under the control of the EKJAC the scope for the officers running those services to spend time at scrutiny committees covering the same issues is clearly present. Should that become a problem the position on such a protocol will clearly need to be reviewed.

Given the challenge that all the authorities face on resources a specialist officer resource has not been found for the EKJSC although as more services become shared, a resource to gather performance data and analyse it may be deemed helpful for all members. Mr Bradbury suggests a firmer commitment to this proposal being considered in the future might be beneficial. As to the number of meetings EKJSC has no doubt they will consider that matter when they consider this report.

A point not raised by Mr Bradbury but which merits consideration is whether scrutiny by the EKJSC should be on the same basis as participation in the business of the EKJAC. In other words, a council’s representatives can only speak or vote at the EKJAC if they are actually participating in the shared service. Logically participation at the EKJSC should be on the same basis.

As it appears more likely that services will not be shared by all participating councils, it does appear advisable that scrutiny of a shared service should only be by those members of the EKJSC whose councils have resolved to participate in that shared service. Mr Bradbury describes this as a “self evidently sensible approach.”

2.4 The key concerns

In his early paragraphs under this section Mr Bradbury draws attention to the difficulties inherent in EKJAC’s decision making processes. This was contributing to the delay of projects. After examining and then dismissing alternative solutions Mr Bradbury’s recommendation was for each authority to delegate to its Chief Executive in the terms spelled out in paragraph 4.3.8 of his report.

This was Mr Bradbury’s key recommendation and was taken to heart by the Project Team of officers when drawing up the strategic business case for the wider shared service initiative which has gone through each authority’s decision making processes. The recommendations in the business case cannot be formally incorporated as part of the working arrangements for EKJAC as they have not proved acceptable to all the constituent councils. They include a delegation of powers to the Chief Executives in consultation with the Leaders.

In practical terms the agenda for present projects is now sufficiently full with project such as housing landlord services and joint waste as well as the wider shared service agenda (although not all councils are participating) means that commissioning work on new projects is several months or perhaps a year away.

Mr Bradbury recommended doing away with the concept of business cases in development of shared service projects. At this stage that appears to take the councils beyond a point at which they feel comfortable. The business case process is not only used to justify whether a service should be shared or not, it also defines the service standard and what will not be shared. It is part of the process by which a shared service is developed. The desire to cut down on time consuming process is shared, but we are not at the point of doing away with business cases yet.

Therefore the existing arrangements should simply be consolidated with the amendments made which are identified in the recommendations to this report.

2.5 Some further details

Mr Bradbury is clearly right to say that drawing together all the arrangements and rules in a single document would be useful. It is intended that once the consolidation previously mentioned has been carried out that a single document be produced.

The issue of speaking rights was considered by EKJAC at its initial meeting and it simply resolved that the chairman of the EKJAC may invite the chairman of the EKJSC to speak or others may attend and speak to items of on the Agenda. It is not proposed to extend these rights.

Mr Bradbury identifies that no provision is made for a chairman’s casting vote. In his view it would be useful to make clear that the chairman should not have the casting vote thereby requiring a majority vote for any decision to be made. This

issue has arisen once at EKJSC and the advice given was that as there was no provision for a casting vote one did not exist. That was reinforced by the point that at the present EKJSC is not a statutory committee and therefore the provisions of paragraph 39, schedule 12 Local Government Act 1972 do not apply. Notwithstanding Mr Bradbury's recommendation which in the context of a joint committee has much to commend it, with the EKJAC it may well be that the statutory provisions apply. With EKJSC they would apply once the committee has statutory substance as it will do it under S.123 Local Government and Public Involvement and Health Act 2007 as amended. That section is in force but the necessary regulations made under it have not been made. It is suggested that nevertheless the chairman be given a casting vote by agreement at this stage. On reflection Mr Bradbury agrees with these proposals.

On other matters resources have now been supplied to EKJAC so there is a question whether sitting down time limits within the rules for individual authorities to respond to recommendations from EKJAC are necessary. In my view such time limits should exist albeit on a fairly generous basis, say within three months.

Mr Bradbury's view that additional costs brought about to individual authorities by using inhouse resources for joint services projects should in principle be reimbursable from EKJAC funds has in part been addressed by the delegation to Chief Executives previously mentioned. In practice such resources are limited and the councils have been working collaboratively to try to share officer resources between them. However burdens do not always fall equally and the matter should be kept under review.

Mr Bradbury's final two conclusions on reports being seen in advance by all appropriate professionals within each individual council and to get completed draft reports to the East Kent Forum at least two weeks before scheduled meetings of EKJAC are clearly right but perhaps do not need formal provision in the rules. Having consulted my fellow Monitoring and Chief Financial Officers the majority view is that a formal provision is unnecessary but their role in the process must not be overlooked. It is important that they have an opportunity to examine and comment upon reports before they reach their final form for the EKJAC.

3. The Administrative Processes

The original report to the EKJAC was largely descriptive of the many of the processes to be followed partly because few decisions were required to approve them and partly because a laid down framework of process was likely to inhibit rather than advance progress. That position remains. A flexible and pragmatic approach appears to be a key to success in working on shared services.

4. Relevant council documents

The four East Kent districts and the county council resolved upon the arrangements attached to this report.

5. Consultation planned or undertaken

After EKJAC and EKJSC have considered these matters each council will go through its own decision making processes.

6. Options available with reasons for suitability

Members are not obliged to adopt all or any of the recommendations. Taken as a whole with the benefit of Mr Bradbury's advice they represent reasonable adjustments to arrangements which have proved successful.

7. Reasons for supporting option recommended with risk assessment

There are no significant risks in supporting the recommendations. If members are minded to suggest other changes those should first be considered by officers before they are implemented.

8. Implications

Financial – as in the report.

Legal – none.

9. Conclusions

These amendments provide a sound basis for the EKJAC and the EKJCS to continue their work.

EAST KENT (JOINT ARRANGEMENTS) COMMITTEE

25 JUNE 2008

Subject:	Procedure Rules
Director/Head of Service:	Head of Legal and Democratic Services (Canterbury)
Decision Issues:	These matters are within the authority of the Committee
Decision type:	Not applicable
Classification:	This report is open to the public.
Summary:	<i>This report reminds Members of the operating arrangements for this committee which all the authorities have approved and which, together with the proposed committee procedure rules, will form the constitution of the committee.</i>
To Resolve:	<ol style="list-style-type: none">1. To accept the terms of reference in the Schedule to Appendix 1.2. To adopt the committee procedure rules attached as Appendix 2 to this report.3. To note the operating arrangements and terms of reference of the East Kent (Joint Scrutiny) Committee attached as Appendix 3 to this report.
Next stage in process	Once these rules are in place the Joint Committee can commence business.

SUPPORTING INFORMATION

1. Background

Appendix 1 sets out the operating arrangements for this committee which has been approved by all the parties. It also contains the terms of reference of the Joint Committee which should be formally accepted. The operating arrangements cover most issues, but there is still a need for some specific procedure rules. The proposed procedure rules appear in Appendix 2. They will be broadly familiar to members of the committee, deriving from the Executive procedure rules under which, in similar ways, all Executives work. However this Committee works under the principles of the Local Government Act 1972 as amended, making reference where needed to the changes brought about by the Local Government Act 2000.

The operating arrangements having been approved by all the constituent councils will, in the event of conflict, have priority. Within the bounds of those operating arrangements and the law, the Joint Committee can agree its own procedure.

Like much else with this new venture, these procedure rules can be kept under review and amended if necessary.

For completeness the Joint Committee is asked to note the operating arrangements and terms of reference of the East Kent (Joint Scrutiny) Committee attached as Appendix 3. That committee will need to accept them formally.

2. Relevant Council Documents

Attached as Appendices 1 and 3.

3. Consultation planned or undertaken

None.

4. Options available with reasons for suitability

These rules are based on the Executive rules in the model constitution issued by the Secretary of State. As such, they should be given due weight although amendments have been necessary to apply them to the situation of the Joint Committee.

5. Reasons for supporting option recommended, with risk assessment

The proposed rules are based on an existing model and are therefore of low risk.

6. Implications

(a) Financial Implications

None.

(b) Legal Implications

It is prudent to have established rules by which the Joint Committee will work. They provide certainty and reduce the risk of challenge either at law or by the Ombudsman.

7. Conclusions

These procedure rules supplement the operational arrangements already agreed. As such they complete framework for the Joint Committee to do business.

Contact Officer: Mark Ellender, 862 011

Appendix 1

East Kent (Joint Arrangements) Committee

Operating Arrangements

Canterbury City Council

Dover District Council

[Kent County Council]

Shepway District Council

Thanet District Council

together referred to as 'the Parties'

1. Key Principles

- 1.1 The Executive and full Council of each of the Parties has determined by resolution to establish this joint committee to become effective from 1 June 2008 for the purposes of exercising agreed functions over their 'combined administrative area'.
- 1.2 The joint committee will be established as the East Kent (Joint Arrangements) Committee (EKJAC).
- 1.3 The Parties are committed to a joint committee which provides streamlined decision making; and co-ordination of services across the combined administrative area through mutual co-operation.
- 1.4 The Parties are committed to open and transparent working and proper scrutiny and challenge of the work of the EKJAC.
- 1.5 Any new Parties to these arrangements after they become effective will have all the same rights and responsibilities under these arrangements.

2. Definitions

- 2.1 'Decisions' means those decisions of the Parties delegated from time to time to the EKJAC to discharge.
- 2.2 'A shared service' means a service delivering functions as agreed by two or more of the Parties.
- 2.3 'The combined administrative area' means the local government areas of the city and district authority Parties combined.
- 2.4 'The Parties' means the authorities listed above.
- 2.5 'Voting Member' means the appointed elected members of each of the Parties.

- 2.6 'Host Authority' means the local authority appointed by the Parties under these arrangements to lead on a specified matter or function as set out in paragraphs 14 and 19.

3. Objectives

- 3.1 The objectives of the East Kent (Joint Arrangements) Committee are to:
- (a) improve services, and secure economy, efficiency and effectiveness in their delivery across both tiers of government in the combined administrative area
 - (b) Streamline decision making where joint arrangements already exist
 - (c) Develop and agree new areas of joint working
 - (d) Enhance mutual co-operation and strategic partnering

4. Powers and Functions

- 4.1 The EKJAC is established under section 20 of the Local Government Act 2000 and Regulations 4, 11 and 12 of the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000 and sections 101(5) and section 102(1) of the Local Government Act 1972 enabling the Parties to perform the functions referred to in the Schedule in the manner set out in these arrangements.
- 4.2 The functions of the EKJAC shall be those functions or services that are delegated to it by the parties from time to time as approved by resolution of the executive and/or full Council (as appropriate) of such of the parties as are minded to participate in those joint functions and services.
- 4.3 Any delegations to the EKJAC shall be made in a common form and shall not take effect until agreed by the executive and/or full Council (as appropriate) of all those Parties participating in the services.

5. Terms of Reference

- 5.1 The terms of reference for the EKJAC are as set out in the Schedule.

6. Membership and Voting Rights

- 6.1 The EKJAC shall comprise the Leaders and Deputy Leaders of the Council of each of the Parties. The Leader of each Party may nominate two members of their Executive (who have been authorised by the respective Parties to act as substitutes) to substitute for either the Leader or Deputy Leader, as necessary.
- 6.2 Non-voting members may be co-opted onto the EKJAC from any or all of the Parties or from other public sector partner organisations as the EKJAC may unanimously decide. Co-optees may participate in the debate but may not vote.

7. Frequency of Meetings

7.1 The EKJAC will meet quarterly, but may change the frequency of meetings and call additional meetings as required.

8. Agenda Setting and Access to Meetings and Information

8.1 The agenda for the EKJAC shall be agreed by the chairman of the EKJAC following a briefing by relevant officers. Any member of the EKJAC may require that an item be placed on the agenda of the next available meeting for consideration.

8.2 There will be a standing item on the agenda of each meeting of the EKJAC for matters referred by the East Kent Joint Scrutiny Committee.

8.3 Notice of meetings and access to agendas and reports will be in accordance with The Local Authorities (Executive Arrangements) (Access to Information) (England) Amendment Regulations 2000 and 2002 or sections 100A-K and Schedule 12A of the Local Government Act 1972, as appropriate.

9. Sub-Committees

9.1 The EKJAC may establish sub-committees as it may determine by unanimous agreement of the EKJAC.

9.2 When establishing a sub-committee the EKJAC will agree the:

- (a) terms of reference for the sub-committee
- (b) size and membership of the sub-committee including co-optees
- (c) period for which the sub-committee will remain constituted
- (d) chairman of the sub-committee or will delegate this decision to the sub-committee
- (e) mechanism for hosting the sub-committee and sharing the cost amongst the relevant Parties, as appropriate

10. Delegation to Sub-Committees and Officers

10.1 The EKJAC may arrange for the discharge of any of its functions by a sub-committee of the EKJAC or an officer of one of the Parties. Any such sub-committee may, subject to the terms of these arrangements and unless the EKJAC or any Voting Member directs otherwise, arrange for the discharge of any of its functions by such an officer.

11. Meetings and Procedure

11.1 The Chairman and Vice Chairman of the EKJAC will be appointed by the EKJAC on the basis of the position being rotated annually, as follows, and repeated each five years:

	Chairman and Host Authority	Vice Chairman
Year 1	Canterbury City Council	Shepway District Council

Year 2	Thanet District Council	Dover District Council
Year 3	Shepway District Council	Kent County Council
Year 4	Dover District Council	Canterbury City Council
Year 5	Kent County Council	Thanet District Council

- 11.2 In the absence of the chairman and the vice chairman at a meeting, the meeting will elect a chairman for that meeting.
- 11.3 The quorum of the EKJAC will be five with at least one member present from four of the five Parties. If the meeting is inquorate then it shall stand deferred for seven days to meet at the same time and in the same place when the quorum shall be five drawn from any of the Parties.
- 11.4 The EKJAC may approve rules for meetings and procedure from time to time.

12. Decision Making

- 12.1 Decisions of the EKJAC will normally be made by consensus. Alternatively, a vote shall be taken where the chairman or any Voting Member requests that a vote be taken. The vote will be by way of a show of hands. A simple majority shall be required.
- 12.2 The EKJAC may recommend to the parties services and/functions which may be considered for joint working.
- 12.3 A service will only become a shared service after at least two of the parties have resolved to delegate the relevant functions to the EKJAC.
- 12.4 Where two or more parties have resolved to delegate as mentioned in 12.4, then:
- (a) The service will thereafter be a shared service only in relation to those Parties and
 - (b) Those Parties alone will have voting rights at the EKJAC in relation to further decisions as to how that shared service is jointly managed, provided or procured
 - (c) The Parties that did not delegate that shared service will not have voting rights in relation to that shared service until or unless they do delegate such service at some future date

13. Forward Plan

- 13.1 Decisions of the EKJAC which will amount to a Key Decision of any Party shall be included within the Leader of that authority's Forward Plan.

14. Host Authorities and Allocation of Roles

- 14.1 In order to achieve the objectives of the EKJAC, the Parties will appoint a Host Authority which is for the time being the Authority shown as the Chairman and Host Authority in the table at clause 11.1.

- 14.2 Staff from the Host Authority who are commissioned to provide services, advice and support to the EKJAC will continue to be employees of the relevant Host Authority.
- 14.3 Responsibility for the following support services to the EKJAC will be allocated to the Host Authority:
- (a) the provision of legal advice and services
 - (b) the provision of financial advice and services
 - (c) secretariat support and services
 - (d) communications support and services
- 14.4 The cost of the services and advice set out in this section will be paid for by the Host Authority.

15. Amendments to these Arrangements

- 15.1 These arrangements may be amended by the unanimous agreement of the EKJAC following a recommendation approved by the Executive and full Council of each of the Parties.

16. New Membership and Cessation of Membership

- 16.1 New Parties may join the joint committee provided that the Executive and full Council of the joining Party (ies) and of all the Parties to these arrangements for the time being so resolve.
- 16.2 Any of the Parties may cease to be a party to these arrangements following notice of cessation subsequent to a decision by the relevant Executive and full Council. A minimum of six months notice is required for any Party to leave the EKJAC and in any event, any notice of cessation can only be effective at the end of a municipal year. For the avoidance of doubt, where a Party wishes to withdraw from these arrangements but makes that decision and gives notice within six months of the end of the current municipal year, they may not withdraw from these arrangements until the conclusion of the subsequent municipal year.
- 16.3 On any of the Parties ceasing to be a party to these arrangements, these arrangements shall continue unless the remaining parties determine that those arrangements shall terminate. The benefits and burdens of such termination shall be agreed between the Parties and in default of such agreement shall be determined in accordance with 17.1.
- 16.4 Termination of these arrangements may occur by agreement of all the Parties.

17. Dispute Resolution

- 17.1 Any dispute between the Parties arising out of these arrangements shall be referred to a single arbitrator to be agreed between the Parties, or, where no agreement can be reached, and having regard to the nature of the dispute, by an arbitrator nominated by the chairman of the Local Government Association and will be carried

out in accordance with the provisions of the Arbitration Act 1996 as amended or modified and in force for the time being.

18. Claims and Liabilities

18.1 The purpose of these arrangements and any actions taken under them is to assist all of the Parties (or those of the Parties as are engaged in any particular shared service). The Parties therefore have agreed that:

- (a) all of the costs attributable to the provision of any shared service shall be shared between those of the Parties that are engaged in the shared service and in such proportions as they shall agree (and if not otherwise agreed then in equal shares)
- (b) where one of the Parties nominated by the EKJAC to act in respect of a shared service undertakes actions or incurs liabilities in respect of that shared service on behalf of the EKJAC then it shall be entitled to be indemnified by the other Parties engaged in that shared service for the appropriate proportion of all its costs and liabilities incurred in good faith
- (c) where one of the Parties nominated by the EKJAC to act as Host Authority undertakes actions or incurs liabilities in that respect then it shall be entitled to be indemnified by the other Parties for the appropriate proportion of all its costs and liabilities incurred in good faith
- (d) a Party carrying out actions in good faith on behalf of the EKJAC shall not (other than in the case of fraud and/or clear bad faith) be liable to claims from the other Parties (and there shall be no right of set-off against any claim for indemnity under (b) and/or (c) above) on the grounds that the actions that were taken were not the proper actions carried out properly or that the costs and liabilities incurred were not reasonably and properly incurred (as long as they were in fact incurred)

18.2 Each of the Parties shall at all times take all reasonable steps within its power to minimise and mitigate any loss for which it is seeking reimbursement from any of the other Parties.

19. Data Protection, Freedom of Information, Information Sharing & Confidentiality

19.1 Subject to the specific requirements of this clause, each of the Parties shall comply with its legal requirements under data protection legislation, freedom of information and associated legislation, and the law relating to confidentiality.

19.2 An authority will be appointed as a Host Authority for the purposes of ensuring compliance with any legislative or legal requirements relating to these issues should they arise directly in relation to the joint committee (as compared to information held by the Parties to these arrangements).

19.3 Each of the Parties shall:

- (a) treat as confidential all information relating to:
 - (i) the business and operations of the other Parties and/or

(ii) the business or affairs of any legal or natural person in relation to which or to whom confidential information is held by that Party

("Confidential Information") and

(b) not disclose the Confidential Information of any other of the Parties without the owner's prior written consent

19.4 Clause 19.3 shall not apply to the extent that:

(a) such information was in the possession of the Party making the disclosure, without obligation of confidentiality, prior to its disclosure or

(b) such information was obtained from a third party without obligation of confidentiality or

(c) such information was already in the public domain at the time of disclosure otherwise than through a breach of these arrangements or

(d) disclosure is required by law (including under Data Protection Legislation, the Freedom of Information Act 2000 and the Environmental Information Regulations 2004) or disclosure is permitted by the Human Rights Act 1998

19.5 The Parties may only disclose Confidential Information of another of the Parties to staff who need to know by reason of their work. Each of the Parties shall ensure that such staff are aware of, and comply with, these confidentiality obligations and that such information is not used other than for the purposes of the EKJAC.

19.6 If any of the Parties receives a request for information under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 then the other Parties shall (at their own expense) assist and co-operate to enable the request to be dealt with.

19.7 If a request for information is received then the Party receiving it shall copy it to the other Parties and consider when making its decisions any views of the other Parties.

19.8 Notwithstanding the provisions of 19.6 and 19.7 it shall be the Party receiving the request that is responsible for determining at its absolute discretion how to reply to the request.

20. Exercise of Statutory Authority

20.1 Without prejudice to these arrangements, nothing in these arrangements shall be construed as a fetter or restriction on the exercise by any of the parties of their statutory functions. The parties may continue to provide the whole or any part of a service at their own cost notwithstanding that the service is also a shared service being provided jointly.

The Schedule

TERMS OF REFERENCE of the EAST KENT (JOINT ARRANGEMENTS) COMMITTEE

1. To exercise the executive and non-executive functions of the parties in order to commission, co-ordinate, provide, procure and/or manage any shared services as are agreed from time to time by two or more of the Parties
2. To provide strategic direction to the officers advising the EKJAC
3. To exercise any of the functions or services that are determined to be a shared service in accordance with these arrangements
4. To develop work programmes and projects in relation to the functions which the parties are minded to be delegated to the EKJAC by the Parties
5. To regularly report to each of the Parties on its activities
6. To respond to reports and recommendations made by the East Kent Joint Scrutiny Committee
7. To monitor the operation of the EKJAC and of any shared service
8. To propose a budget for a shared service to the Parties and to monitor and manage any such budget once approved by them
9. To review these arrangements from time to time and make recommendations to the Parties for improvement and change and to propose (as appropriate) the creation of special purpose vehicles for the achievement of the Objectives, including companies, formal partnerships or consortia, the expansion of these arrangements to include other local authorities, the conclusion of contracts with other persons and the provision of services, supplies and works to other persons

East Kent (Joint Arrangements) Committee Procedure Rules

These Rules are made supplemental to clause 11.4 of the East Kent (Joint Arrangements) Committee operating arrangements (“operating arrangements”) and are to be read in conjunction with them. In the event of conflict the operating arrangements shall prevail. “Joint Committee” means the East Kent (Joint Arrangements) Committee. Words and phrases not otherwise defined in these Rules shall have the meanings given them in the operating arrangements.

1. The operation of the Joint Committee

1.01 Who may make decisions

The arrangements for the discharge of functions are:

- i) the Joint Committee as a whole;
- ii) a sub-committee;
- iii) an officer of one of the Parties.

1.02 Sub-delegation of functions

- (a) Where the Joint Committee are acting as a whole, they may delegate further to a sub-committee or an officer.
- (b) Even where functions have been delegated, that fact does not prevent the discharge of delegated functions by the person or body who delegated them.

1.03 The Joint Committee’s scheme of delegation

The Joint Committee’s scheme of delegation will be subject to adoption by it and may only be amended by it. It will contain any limitations or conditions.

1.04 Joint Committee meetings – frequency and venue

The Joint Committee will normally meet every three months. At other times it will meet at times agreed by the Chairman with the Chief Executive of the host authority. It will meet at the premises of the host authority.

A meeting of the Joint Committee shall be summoned by the Chief Executive of the Host Authority who will give a minimum of five working days notice (or less in the case of urgency) or any other date convenient to the Chairman subject to the requirements of legislation.

1.05 Meetings of the Joint Committee

Meetings of the Joint Committee will be held in public except in so far as the matters for decision relate to issues which can be dealt with in private in accordance with the Access to Information requirements of the Local Government Act 1972.

1.06 **Quorum**

The quorum of the Joint Committee is as provided for in paragraph 11.3 of the operating arrangements.

2. **Conduct of meetings**

2.01 **Chair**

The Chairman will preside at any meeting of the Joint Committee at which he/she is present, and in his/her absence the Vice Chairman will preside. In the absence of both the Chairman and Vice Chairman the members present shall appoint another person to preside.

2.02 **Attendance**

Members of the public (including other members of the Parties) may attend all meetings of the Joint Committee except when exempt or confidential information is being considered where the press and public, may be excluded by resolution of the Joint Committee in accordance with the Local Government Act 1972.

2.03 **Order of business**

Meetings of the Joint Committee will include the following business:

- i) consideration of the minutes of the last meeting;
- ii) apologies for absence;
- iii) declarations of interest, if any;
- iv) matters referred to the Joint Committee by the East Kent Joint Scrutiny Committee whether by call-in or otherwise;
- v) consideration of reports from any Sub-Committees of the Joint Committee;
- vi) consideration of reports from the Officers;
- vii) matters set out in the agenda for the meeting, which shall indicate which are key decisions;
- viii) advice to Leaders on the items for their Forward Plans;

2.04 **Consultation**

Reports will set out the details and outcome of consultation as appropriate. The level of consultation required will be appropriate to the nature of the matter under consideration.

2.05 **Timescales**

In considering matters in relation to budgetary issues the Joint Committee will have due regard to any appropriate timescale within which budgets have to be approved by the Parties.

2.06 **Key decisions**

Decisions of the Joint Committee which are key decisions shall only be taken provided that the matter in question is contained within each of the Parties Forward Plan or if not in all or any of the Forward Plans that decision can only be taken if any delay likely to be caused by the call-in process would seriously prejudice the interests of any of the parties or the public interest. The record of the decision and the notice by which it is made public shall state whether, in the opinion of the decision maker, the decision is an urgent one, and therefore not subject to call-in. The Chairman of EKJSC and the members of each of the parties affected by the decision must agree both that the decision proposed is reasonable in all the circumstances and to it being treated as a matter of urgency. In the absence of the Chairman of EKJSC, the consent of the Vice-Chairman shall be required. In the absence of both the Chairman and Vice-Chairman, the consent of the Head of Paid Service for that party (or his/her nominee) shall be required. Decisions taken as a matter of urgency must be reported to the next available Full Council meetings of each of the parties, together with the reasons for urgency.

2.07 **Recording of decisions**

Following a meeting of the Joint Committee at which a report has been received and at which a decision has been made, the Host Authority shall ensure that a written statement is kept which must include the following:

- (i) record of the decision;
- (ii) record of reasons for the decision;
- (iii) details of alternative options considered;
- (iv) record of any conflict of interest declared; and
- (v) any dispensation granted by Standards Committee, where appropriate.

No decision will be made either by the Joint Committee or a Sub-Committee thereof unless there is present at the meeting the Head of Paid Service of the host authority (or his representative) or the officer responsible for the particular joint service project is present or their representative and the Proper Officer for recording decisions is present which for this purpose shall be an officer of the host authority who is not the Head of Paid Service.

A written statement of the decision taken will be produced by the Proper Officer within two clear working days following the Joint Committee.

East Kent (Joint Scrutiny) Committee

Operating Arrangements

Canterbury City Council

Dover District Council

[Kent County Council]

Shepway District Council

Thanet District Council

together referred to as 'the Parties'

1. Key Principles for the Operation of the East Kent (Joint Scrutiny) Committee (EKJSC)

- 1.1 The members of the EKJSC will work together to maximise the exchange of information and views, to minimize bureaucracy and make best use of the time of members and officers of local and other authorities.
- 1.2 The guiding principle for the work of EKJSC is that it should be consensual and positive. The emphasis of the work should be on making proactive contribution to the development of policy and the discharge of EKJAC's functions. This is best achieved by an inclusive process covering members, the parties' partners, service users and officers.
- 1.3 The process of joint scrutiny will be open and transparent, designed to engage the parties, their residents and other stakeholders.

2. Objectives

- 2.1 The EKJSC is established under section 101 and 102 Local Government Act 1972 and Section 2 Local Government Act 2000 with the objective of acting as the single Scrutiny Committee for the monitoring, review and scrutiny of the East Kent (Joint Arrangements) Committee (EKJAC).

3. Terms of Reference

- 3.1 The terms of reference of the EKJSC are as set out in Schedule 1.
- 3.2 These arrangements will be reviewed regularly. No proposed amendments to these arrangements will take effect until they have been agreed and endorsed by each of the parties.

4. Call-In

- 4.1 The arrangements for the operation of call-in by the EKJSC shall be as set out in Schedule 2. The EKJSC shall have power to call-in any decision made by EKJAC, a

sub-committee of EKJAC, or any member or officer with delegated authority from EKJAC. The EKJSC will not have the power to call-in any decision of the Executive of any of the Parties.

- 4.2 Where there is a call-in by a statutory scrutiny committee of any of the Parties of any decision of the EKJAC, each of the other Parties will be notified forthwith. The call-in shall be heard by the call-in Party's statutory scrutiny committee in accordance with the call-in Party's own arrangements. Where there is more than one call-in on the same subject the parties shall endeavour to ensure that they are heard together at the same time and place.
- 4.3 The call-in procedure set out in clauses 4.1 and 4.2 above shall not apply where the decision being taken by or on behalf EKJAC is urgent. A decision will be urgent if any delay likely to be caused by the call-in process would seriously prejudice the interests of any of the Parties or the public interest. The record of the decision and notice by which it is made public shall state whether, in the opinion of the decision maker, the decision is an urgent one and therefore not subject to call-in. The Chairman and the members of each of the Parties affected by the decision must agree both that the decision proposed is reasonable in all the circumstances and to it being treated as a matter of urgency. In the absence of the Chairman, the consent of the Vice-Chairman shall be required. In the absence of both the Chairman and Vice-Chairman, the consent of the Head of Paid Service of that Party (or his/her nominee) shall be required. Decisions taken as a matter of urgency must be reported to the next available full Council meetings of each of the Parties, together with the reasons for urgency.

5. Membership and Terms of Office

- 5.1 The EKJSC will comprise three non-executive councillors from each of the Parties.
- 5.2 Each appointing Party shall appoint its three members on the basis of its overall political proportionality.
- 5.3 Members of the EKJSC shall be appointed by the Parties at their annual meetings of their respective Council and shall hold office until:
- (a) the next annual meeting of the Party that appointed them, save that the Party that appointed them may remove them from office, either individually or collectively, at an earlier date in the event of a change in political control of that Party; or
 - (b) they resign from office; or
 - (c) they are suspended from being councillors under Part III of the Local Government Act 2000 (although they may resume office at the end of the period of suspension)
- 5.4 Each Party may appoint substitutes to represent their authority in the absence of the appointed councillors. Nominated substitutes will be non-executive councillors and will be able to attend any meeting of EKJSC in order to familiarise themselves with the issues involved, but will not be able to participate in debate or vote unless they are formally acting as a substitute member.
- 5.5 Non-voting members may be co-opted onto the EKJSC from any or all of the Parties or from other public sector partner organisations as the EKJSC may unanimously decide. Co-optees may participate in the debate but may not vote.

6. Frequency of Meetings

6.1 The EKJSC will meet quarterly, but may change the frequency of meetings and call additional meetings as required.

7. Agenda Setting and Access to Meetings and Information

7.1 The agenda for the EKJSC shall be agreed by the chairman following a briefing by relevant officers. Any member of the EKJSC may require that an item be placed for consideration on the agenda of the next available meeting.

7.2 There will be a standing item on the agenda of each meeting of the EKJSC for matters referred by the EKJAC.

7.3 Notice of meetings and access to agendas and reports will be in accordance with sections 100A-K and Schedule 12A of the Local Government Act 1972.

8. Sub-Committees

8.1 The EKJSC may establish sub-committees as it may determine by unanimous agreement of the EKJSC.

8.2 When establishing a sub-committee the EKJSC will agree the:

- (a) terms of reference for the sub-committee
- (b) size and membership of the sub-committee including co-optees
- (c) period for which the sub-committee will remain constituted
- (d) chairman of the sub-committee or will delegate this decision to the sub-committee
- (e) mechanism for hosting the sub-committee and sharing the cost amongst the relevant Parties, as appropriate

9. Delegation to Sub-Committees

9.1 The EKJSC may arrange for the discharge of any of its functions by a sub-committee of the EKJSC.

10. Meetings and Procedure

10.1 The Chairman and Vice Chairman will be appointed by the EKJSC on the basis of the position being rotated annually, as follows, and repeated each five years:

	Chairman and Scrutiny Host Authority	Vice-Chairman
2008-9	Shepway	Dover
2009-10	Dover	Kent
2010-11	Kent	Canterbury
2011-12	Canterbury	Thanet
2012-13	Thanet	Shepway

10.2 The Chairman and Vice Chairman of EKJSC shall be drawn from any political group not forming part of the administration of the appointing Council.

10.3 In the absence of the chairman and the vice chairman at a meeting, the meeting will elect a chairman for that meeting.

- 10.4 The quorum of the EKJSC will be five with at least one member present from four of the five Parties.
- 10.5 The EKJSC may approve rules for meetings and procedure from time to time.
- 10.6 The EKJSC may ask organisations, individuals or groups to assist it from time to time and may ask independent professionals to advise it during the course of reviews. Such individuals or groups will not be able to vote.
- 10.7 The EKJSC may request the attendance of officers employed by the participating authorities to answer questions and give evidence to the committee. Such requests must be made via the Chief Executive of the relevant participating authority.
- 10.8 The EKJSC may invite any other person to attend its meetings to answer questions or give evidence; however, attendance by such persons cannot be mandatory.

11. Decision Making

- 11.1 Decisions of the EKJSC will normally be made by consensus. A vote shall be taken where the chairman or any Voting Member requests that a vote be taken. The vote will be by way of a show of hands. A simple majority shall be required.
- 11.2 Where a minimum number of two members express an alternative to the majority view, they will be permitted to produce a minority report.

12. Scrutiny Host Authorities and Allocation of Roles

- 12.1 In order to achieve the objectives of the EKJSC, the Parties will appoint a Scrutiny Host Authority which is for the time being the Authority shown as the Chairman and Scrutiny Host Authority in the table at clause 10.1.
- 12.2 Staff from the Scrutiny Host Authority who are commissioned to provide services, advice and support to the EKJSC will continue to be employees of the relevant Scrutiny Host Authority.
- 12.3 Responsibility for the following support services to the EKJSC will be allocated to the Scrutiny Host Authority:
 - (a) the provision of legal advice and services
 - (b) the provision of financial advice and services
 - (c) secretariat support and services
 - (d) communications support and services
 - (e) data protection, freedom of information, information sharing and confidentiality issues in accordance with clause 17
 - (f) research
- 12.4 The cost of the services and advice set out in this section will be paid for by the Scrutiny Host Authority.

13. Amendments to these Arrangements

- 13.1 These arrangements may be amended by the unanimous agreement of the EKJSC following a recommendation approved by the full Council of each of the Parties.

14. New Membership and Cessation of Membership

- 14.1 New Parties may join the EKJSC provided that they are also a party to EKJAC and the full council of the joining Party(ies) and of all the Parties to these arrangements for the time being so resolve.
- 14.2 A Party ceases to be a member of these arrangements when it ceases to be a party to EKJAC.
- 14.3 Termination of these arrangements may occur by agreement of all the Parties.

15. Claims and Liabilities

- 15.1 The purpose of these arrangements and any actions taken under them is to assist all of the Parties. The Parties therefore have agreed that:
- (a) where one of the Parties nominated by the EKJSC to act as Scrutiny Host Authority undertakes actions or incurs liabilities in that respect then it shall be entitled to be indemnified by the other Parties for the appropriate proportion of all its costs and liabilities incurred in good faith
 - (b) a Party carrying out actions in good faith on behalf of the EKJSC shall not (other than in the case of fraud and/or clear bad faith) be liable to claims from the other Parties (and there shall be no right of set-off against any claim for indemnity under (b) and/or (c) above) on the grounds that the actions that were taken were not the proper actions carried out properly or that the costs and liabilities incurred were not reasonably and properly incurred (as long as they were in fact incurred)
- 15.2 Each of the Parties shall at all times take all reasonable steps within its power to minimise and mitigate any loss for which it is seeking reimbursement from any of the other Parties.

16. Administration

- 16.1 The decisions and recommendations of the EKJSC will be communicated to EKJAC and the participating councils as soon as possible after the resolution of the committee.
- 16.2 Where working on forthcoming decisions of the EKJAC, the EKJSC will endeavour to carry out its functions as part of the EKJAC's process in order to ensure that its findings and recommendations can influence the final decision.
- 16.3 When considering items before it, the EKJSC will take account of whether an issue could more appropriately be dealt with by one of the Parties or elsewhere.

17. Data Protection, Freedom of Information, Information Sharing & Confidentiality

- 17.1 Subject to the specific requirements of this clause, each of the Parties shall comply with its legal requirements under data protection legislation, freedom of information and associated legislation, and the law relating to confidentiality.
- 17.2 A Party will be appointed as a Host Authority for the purposes of ensuring compliance with any legislative or legal requirements relating to these issues should they arise directly in relation to the EKJAC (as compared to information held by the Parties to these arrangements).

17.3 Each of the each Parties shall:

- (a) treat as confidential all information relating to:
 - (i) the business and operations of the other Parties and/or
 - (ii) the business or affairs of any legal or natural person in relation to which or to whom confidential information is held by that Party("Confidential Information") and
- (b) not disclose the Confidential Information of any other of the Parties without the owner's prior written consent

17.4 Clause 17.3 shall not apply to the extent that:

- (a) such information was in the possession of the party making the disclosure, without obligation of confidentiality, prior to its disclosure or
- (b) such information was obtained from a third party without obligation of confidentiality or
- (c) such information was already in the public domain at the time of disclosure otherwise than through a breach of these arrangements or
- (d) disclosure is required by law (including under Data Protection Legislation, the Freedom of Information Act 2000 and the Environmental Information Regulations 2004) or disclosure is permitted by the Human Rights Act 1998

17.5 The Parties may only disclose Confidential Information of another of the Parties to staff who need to know by reason of their work. Each of the Parties shall ensure that such staff are aware of, and comply with, these confidentiality obligations and that such information is not used other than for the purposes of the EKJSC.

17.6 If any of the Parties receives a request for information under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 then the other Parties shall (at their own expense) assist and co-operate to enable the request to be dealt with.

17.7 If a request for information is received then the Party receiving it shall copy it to the other Parties and consider when making its decisions any views of the other Parties.

17.8 Notwithstanding the provisions of 17.6 and 17.7 it shall be the Party receiving the request that is responsible for determining at its absolute discretion how to reply to the request.

18. Exercise of Statutory Authority

18.1 Without prejudice to these arrangements, nothing in these arrangements shall be construed as a fetter or restriction on the exercise by any of the parties of their statutory functions.

Schedule 1

TERMS OF REFERENCE of the EAST KENT (JOINT SCRUTINY) COMMITTEE

1. Monitor review and scrutinise the actions and decision of the EKJAC.
2. Make recommendations for reconsideration of any decisions made or actions taken and to make recommendations for improvement and/or changes in responsibilities and functions of the EKJAC.
3. Prepare reports and recommendations to the parties on the performance and delivery of the shared services provided by the EKJAC.
4. Propose an annual budget for the EKJSC in accordance with the requirements of the parties.
5. Prepare an annual report to the parties on the performance of these arrangements.
6. Facilitate the exchange of information about the work of the EKJSC and to share information and outcomes from reviews.

Schedule 2

ARRANGEMENTS FOR THE OPERATION OF CALL-IN by the EKJSC

1. When a decision is made by EKJAC, a sub-committee of EKJAC or an individual member with delegated authority from EKJAC, or a key decision is made by an officer with delegated authority from EKJAC, the decision shall be published, including where possible by electronic means, and shall be available at the main offices of each of the Parties normally within two days of being made. The Chairman of the EKJSC (and all other members of each of the Parties) will be sent copies of the records of all such decisions within the same timescale, by the person responsible for publishing the decision.
2. That notice will bear the date on which it is published and will specify that the decision will come into force, and may then be implemented at 12.00 noon, on the fourth working day after the publication of the decision, unless it is called-in.
3. By 10.00 am on the fourth working day after publication of the decision, the proper officer of the Scrutiny Host Authority shall call-in a decision for scrutiny by the EKJSC if so requested by any member of the EKJSC, and shall then notify the decision maker of the call-in. A meeting of the EKJSC shall then be held within 15 working days of the decision to call-in. Reasons for calling-in a decision should be given and recorded in the agenda.
4. If, having considered the decision, the EKJSC is still concerned about it, then it may refer it back to the decision making person or body for reconsideration, setting out in writing the nature of its concerns or refer the matter to the full Council of all or any of the Parties. If referred to the decision maker they shall then reconsider within a further 10 working days, amending the decision or not, before adopting a final decision.
5. If, following an objection to the decision, the EKJSC does not meet in the period set out above, or does meet but does not refer the matter back to the decision making person or body, the decision shall take effect on the date of the EKJSC meeting, or the expiry of that further 10 working day period, whichever is the earlier.
6. If the matter was referred to full Council of any of the Parties and the Council does not object to a decision which has been made, then no further action is necessary and the decision will be effective in accordance with the provision below. However, if the Council does object, it has no locus to make decisions in respect of an executive decision unless it is contrary to the policy framework, or contrary to or not wholly consistent with the budget. Unless that is the case, the Council will refer any decision to which it objects back to the decision maker, together with Council's views on the decision. That decision maker shall choose whether to amend the decision or not before reaching a final decision and implementing it. Where the decision was taken by EKJAC as a whole or a committee of it, a meeting will be convened to reconsider within 10 working days of the Council request. Where the decision was made by an individual, the individual will reconsider within 10 working days of the Council request.

7. If the Council of any of the Parties to whom the matter has been referred does not meet, or if it does but does not refer the decision back to the decision maker, the decision will become effective on the date of the Council meeting or expiry of the period in which the Council meeting should have been held, whichever is the earlier.

EAST KENT (JOINT ARRANGEMENTS) COMMITTEE

25 JUNE 2008

Subject: **Administrative processes - East Kent (Joint Arrangements) Committee and the East Kent (Joint Scrutiny) Committee**

Director/Head of Service: Head of Legal and Democratic Services (Canterbury)

Decision Issues: These matters are within the authority of the Joint Committee

Decision type: Not applicable

Classification: This report is open to the public.

Summary: *This report outlines the administrative processes for these two Committees and asks for certain decisions to be made.*

- To Resolve:**
1. **That the operational arrangements of the East Kent Joint Arrangements Committee and the East Kent Joint Scrutiny Committee be reviewed by officers of the respective host authorities in six months and a report made.**
 2. **The Committee may by invitation of the Chairman invite the Chairman of the East Kent Joint Scrutiny Committee or other persons to attend and speak to items on its Agenda.**
 3. **That the dates for the Joint Committee Meetings set out in Appendix 1 be accepted and meetings set according to these arrangements.**
 4. **The Committee adopt the arrangements in Appendix 3 of the report for recommending items to the Leaders of the respective Councils for inclusion on their Forward Plans.**

Next stage in process **The East Kent Joint Arrangements Committee will commence work on the basis of these administrative arrangements.**

SUPPORTING INFORMATION

1. **Introduction**

This paper outlines the administrative processes for the East Kent (Joint Arrangements) Committee (EKJAC) and the East Kent (Joint Scrutiny) Committee (EKJSC). Members of EKJAC may wish to consider how to engage with EKJSC at the earliest opportunity.

2. **Detail**

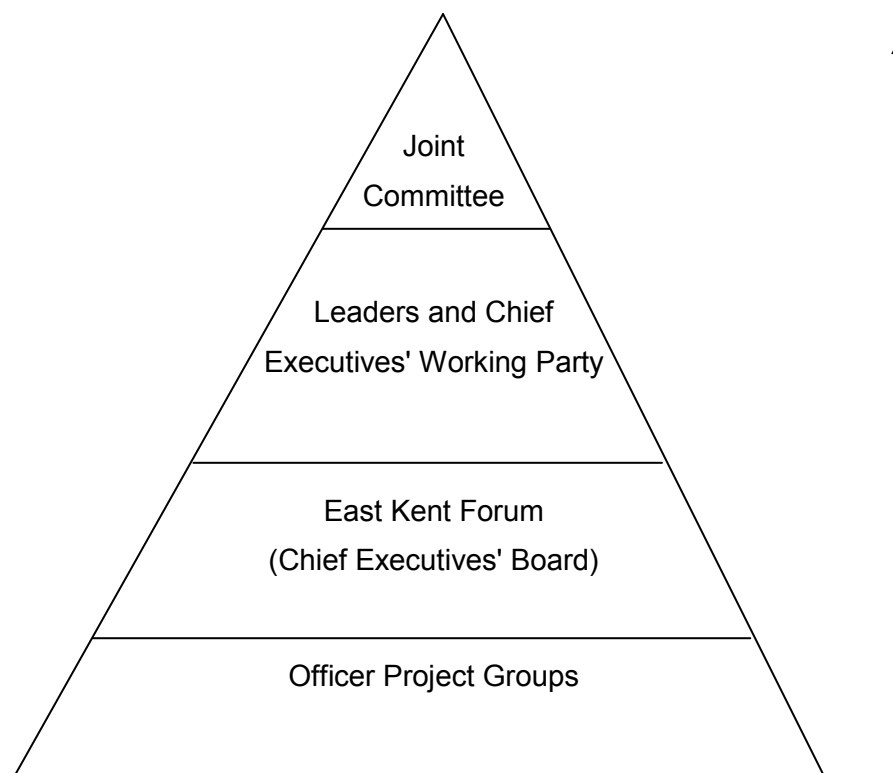
The terms of reference of the two Committees are contained in the previous report. Some liaison between the Committees is desirable particularly as the guiding principle for EKJSC is that its work should be consensual and positive.

The East Kent Chief Executives meeting which is the principal advisory body to the Committees has been called the 'East Kent Forum' and that title has been retained.

The two committees provide the governance framework and to work up and examine the business cases for each service. In relation to Joint Scrutiny the law does not contemplate a Joint Scrutiny Committee in this form, but by agreement the parties have created one for the purpose of making these joint arrangements more coherent and to provide a focus of scrutiny activity.

The next step is to identify the programme for joint service provision. When that is done each project within the programme should have an officer team and lead officer assigned to it. It is envisaged that decision making for EKJAC follows a pyramidal structure with officer project groups forming the base of the pyramid feeding up to a board composed of the Chief Executives of each subscribing authority or their nominees. Above them the leaders and chief executives meeting as a working party will review the work done and either pass back down the pyramid for further work or approve for formal submission to the joint committee which sits at the top of the pyramid.

As previously indicated council and/or cabinet approvals to delegate will be required before services become shared. The pyramid is shown below with the Joint Committee which sits at the apex; please also see later section "Reporting and Consideration of Reports". Whilst EKJAC will meet in public the other meetings will not.



The administration burdens on the two host authorities and the joint committee system itself must be kept under review. It is suggested that next December/January is a good time to make a first assessment.

3. The practicalities of doing business

Time/Venue

The East Kent (Joint Arrangements) Committee meets at 10.30am in the Guildhall, Canterbury.

Proposed meeting dates

EKJAC	EKJSC
<ul style="list-style-type: none"> • 25 June 2008 • 10 September 2008 • 3 December 2008 • 11 March 2009 	<ul style="list-style-type: none"> • 2 July 2008 (it is assumed that following this first meeting a fortnight will elapse following EKJAC to allow for call in) • 24 September 2008 • 17 December 2008 • 25 March 2009

Officer support

Democratic Services, Legal and Finance officer support will be from Canterbury City Council for the first year. In practice, the Legal and Financial officer support will be a co-ordinating role ensuring that the project groups working on the detail of the proposals are producing robust and well resourced material. There should be liaison between these officers and those advising EKJSC to avoid conflicting advice.

Preparation and consideration of draft reports

1. Officers prepare reports for circulation at the appropriate meeting of the East Kent Forum (EKF). Prior to this the officer project groups with their nominated lead officers will have worked up the proposals with any input from the respective council's own Management Teams.
2. The EKF debate the reports and recommend any amendments.
3. Amendments will be reported back to the report author by the respective Chief Executive, with supporting notes provided by the EKF administrator

The joint committee meeting arrangements

4. The Access to Information Act 1985 provisions apply where 'key' decisions are taken or will be taken within 28 days and an officer is present.
5. Where meetings are open every report must be available for inspection ie there can be no oral reports.

6. Notification must be given to the Joint Scrutiny Committee Chairman if Key matters are to be decided that are not included in the relevant Forward Plan. Public notice to be given and the five clear day rule must be observed.
7. Urgent matters need consent from the Joint Scrutiny Committee Chairman or Vice-Chairman if the five day clear rule cannot be observed and Key decisions are to be made. See the report on the Joint Committee's Procedure Rules elsewhere on this agenda.
8. Final reports to be submitted to the Democratic Services Officer at Canterbury City Council, 10 working days before the date of the meeting.
9. Notice of the meeting given, agenda collated and dispatched to members and the DS team at each authority no later than five working days prior to the meeting. DS teams to receive agenda, reports and notice electronically and post public notice of meeting in accordance with their own practices.
10. A meeting of the EK Leaders and Chief Executives will take place at 8.30am on the date of the meeting, which will provide an opportunity for an informal briefing.
11. A public meeting takes place at 10.30am.
12. The approved minutes are issued by close of business on the Friday following the meeting. These need to include reasons, show alternative options and any interests declared.

(Note – for practical reasons the Chairman, the host Chief Executive, Legal and Finance officers only approve the minutes and any comments be taken at the next meeting.)
13. Rules on background documents are the same as for the Local Government Act 1972 as amended by the 1985 Act. There are rules relating to Key decisions taken by individual Executive members but these will not apply to the workings of this Committee.

Call-in arrangements EKJC

14. Notification of a call-in (which should be received by 10am on the following Thursday) would be received by the Shepway District Council Democratic Services team. Decision suspended pending completion of the call-in process.
15. (Note – it is assumed that there will be a standard pro-forma with set criteria that Members of the Scrutiny Committee would need to complete)
16. SDC issue the relevant notices and invitations to attend a meeting at 10.30am at SDC on the dates stated in the committee deadlines.
17. Meeting held (generally two weeks after the date of the EKJAC) and recommendations for consideration referred back to the joint committee. Once it is known an EKJSC call-in meeting is to take place provisional dates would need to be found for an EKJAC reconsideration meeting.

18. EKJAC to reconvene to consider recommendations and make final decision.

By individual authorities

19. Because decisions of the Joint Committee remain the responsibility of individual authorities and their Executives, decisions may also be called in by members of each council. (Because of practical concerns (see below) it may be this should be discouraged and members directed to their council members on EKJSC to voice concerns and suggest call-ins.)
20. Notification of call-in would be received by the individual council's Democratic Services team. SDC Democratic Services would be notified by them and a notice posted both at their offices and at the offices of the authority making the call-in of a meeting. CCC must also be notified as the host authority of EKJAC. It could be held at SDC's offices by the call-in council's Scrutiny Committee at the rising of EKJSC. This would allow project officers or relevant members to be at the same place on the same day which should ensure their attendance and avoid diary clashes. However the legislation states that the call in relates to functions which are the "responsibility" of the Executive. Thus it is that only the officers or relevant Executive members of the authority making the call in that can be compelled to attend; other officers or members could only be invited to do so. It may be more convenient for such meetings to take place at the at the call in authority's premises although it would have to be expected that, for example, the project officer from another authority may not attend.

In order to make scrutiny arrangements work in a way which is most beneficial to all concerned a further inter authority protocol may be required, which can be considered as part of the review previously mentioned.

21. The meeting would be held and the recommendations would be to the "decision maker" under the legislation and therefore it does appear EKJAC will need to reconvene to consider them before such decisions are implemented.

Committee deadlines and Committee report template

See attached sheets as Appendix 1 and Appendix 2.

Forward plan

For the suggested method by which items get into the respective council's Forward Plans, see Appendix 3.

Speaking Rights

Members are not obliged to do so but may wish to consider the question of speaking rights, both of fellow Councillors and members of the public. The nature of the work of the Committee and the point at which decisions are taken about Joint Services means the individual Councils maintain their relationship with their own populations.

Individual Councils will make the decision on whether or not a service of theirs becomes shared. Apart from any consultation that EKJSC may carry out, individual authorities may wish to consult or be advised by EKJAC to do so. Thus there is no compelling case for public speaking rights at the Committee. The same reasoning applies to members of the individual Councils although the Joint Committee may wish

to extend invitations for particular purposes. There may also be other individuals whom the committee may wish to hear from.

It would be anticipated that the chairs of EKJAC and EKJSC could each address the other's Committee by invitation.

A recommendation has been included to reflect these points, but it is entirely up to members to consider whether they wish to accept it.

4. Relevant Council Documents

The four East Kent District Councils joint working protocol. They and the County Council have also signed up to the Kent Commitment to be applied to this Joint Committee on the current two tier arrangements.

5. Consultation planned or undertaken

Each Council has gone through its own processes to establish the two Joint Committees.

6. Options available with reasons for suitability

To some extent Member options are limited because the operational arrangements outlined in this report follow the decisions each of the Councils has already made. Nevertheless when and where to meet are within the control of EKJAC and, to an extent, how it relates to other members, the public and other bodies. What is proposed in this report is an appropriate start to this new venture, but a pragmatic approach will be the key to success. All these arrangements must be kept under review.

7. Reasons for supporting option recommended, with risk assessment

The recommendations are consistent with the decisions which the Councils have already taken and any risk associated with them is unlikely to seriously inhibit the working of the Committee.

8. Implications

Financial implications – the host authorities carry the burdens of staffing and resourcing these Committees.

Legal implications – whatever operational arrangements the Joint Committee adopts it must ensure all decisions are properly made and based on material considerations.

9. Conclusions

These arrangements provide a sound basis upon which EKJAC can commence work.

10. Background Papers (other than published works)

E-mail exchange with Counsel.

Contact Officer: Mark Ellender Telephone: 01227 862 011

Appendix 1

EAST KENT JOINT COMMITTEE REPORT DEADLINES

Joint Committee date	Reports to CCC for inclusion in EKF agenda	EKF meeting - considers draft reports	Deadline for final reports to CCC	Agenda for joint committee dispatched	Consideration by the Leaders/CE	Deadline for call-in (10am)	Date reserved for call-in
25-Jun-08	30-May-08	04-Jun-08	11-Jun-08	17-Jun-08	25-Jun-08	03-Jul-08	09-Jul-08
10-Sep-08	08-Aug-08	13-Aug-08	27-Aug-08	02-Sep-08	10-Sep-08	18-Sep-08	18-Sep-08
03-Dec-08	07-Nov-08	12-Nov-08	19-Nov-08	25-Nov-08	03-Dec-08	11-Dec-08	17-Dec-08
11-Mar-09	30-Jan-09	04-Feb-09	25-Feb-09	3-Mar-09	11-Mar-09	17-Mar-09	25-Mar-09

Dover would like to see a new column three inserted. This would be a date for CCC to despatch the agenda and all items to the Management Teams of the individual Councils. This date would need to fall on the Friday preceding the meeting of the EKF. The despatch would have to be by noon on that Friday at the latest.

The above would mean that the dates in the existing column two would need to come forward – say by two days. Therefore, in the case of the first meeting the date would need to come back to 28 May.

It also occurs to us that we need some sort of safety valve so as to recirculate if any fundamental changes are required by a Management Team.

COMMITTEE

DATE

Subject: **Heading of Report**

Director/Head of Service: (Insert Title)

Decision Issues: These matters are within the authority of the Council/Executive/Committee/Board
(delete as appropriate)

Decision type: Key/Non-key * *(delete as appropriate)*

(If Key decision involved indicate the date when the issue first appeared in the List of Forthcoming Decisions. In addition, indicate if it has been considered by the relevant Area Member Panel and/or the Overview and Scrutiny Committee).

Classification: *Please select one of the following options and delete the others*

This report is open to the public.

This report includes an annex containing confidential information and may be discussed without the press and public present.

This report is confidential.

REASON: *(for the justification for making any report or part of report confidential please see the FOI exemption guidance on PAPA giving a list of exemptions and the public interest test. Full reasons must be given. If in doubt please consult the Committee Administrator in the first instance)*

Summary: *[italics]*

**To Recommend/
Resolve/Consider:** **[bold]**

Next stage in process

SUPPORTING INFORMATION

1. **Introduction**

(text)

2. **Detail**

[text]

3. **Relevant Council Policy/Strategies/Budgetary Documents**

[text]

4. **Consultation planned or undertaken**

[text]

5. **Options available with reasons for suitability**

[text]

6. **Reasons for supporting option recommended, with risk assessment**

[text]

7. **Implications**

(a) Financial Implications

(b) Legal Implications

Other implications

(c) Staffing/resource

(d) Property Portfolio

(e) Environmental/Sustainability

(f) Planning/Building Regulations

(g) Human Rights issues

(h) Crime and Disorder

(i) Biodiversity

(j) Safeguarding Children

(k) Energy efficiency

8. **Conclusions**

[text]

Contact Officer: [name] **Telephone:** [number]

ANNEX CONTAINING CONFIDENTIAL INFORMATION

(see page xy)(to be placed at back of Agenda)

#Filename, Version #, Date #, Time #

Report to East Kent (Joint Arrangements) Committee (EKJAC)

Re. Administrative arrangements

EKJAC

EKJAC will develop a work programme but will not have its own Forward Plan as such. The Forward Plan remains the responsibility of each individual Leader. As progress reports are presented to EKJAC it will be asked to give guidance to the Leaders on what are key decisions which should be reflected in their Forward Plans and, to ensure consistency, it is expected that guidance will be followed. We shall need interim arrangements given the three month gap between meetings. It is suggested the East Kent Forum advise the Chair of EKJAC of a forthcoming item and then guidance is issued in the Chair's name to the Leaders. In case time does not allow for advice from the East Kent Forum then the Chair will take advice from the Chief Finance Officer and lawyer advising EKJAC and issue guidance accordingly.

Report to East Kent (Joint Arrangements) Committee (EKJAC)

Re. Administrative arrangements

1. Introduction

- 1.1 On behalf of the EKJAC Mark Ellender, Head of Legal and Democratic Services with Canterbury City Council, commissioned a review of the administrative arrangements established in 2008 in relation to the EKJAC and the East Kent Joint Scrutiny Committee (EKJSC). It was also made clear that any other relevant comments which occur as a result of the review may also be included in the report
- 1.2 SOLACE Enterprises Limited were approached to put forward nominees to undertake the review and as a result Douglas Bradbury, an Associate Consultant with SOLACE Enterprises Limited and a former local authority Chief Executive, was appointed to undertake the review.

2. The review

- 2.1 An initial desk top study of the following documentation took place:-

- (1) The Kent Commitment.
- (2) The East Kent Joint Working Protocol.
- (3) Note of a Joint Management Team meeting held on 20 May 2008 between the Management Teams of the four district councils.
- (4) The report sent in standard form to each of the Executives/ Cabinets of the parties entitled 'Establishment of joint committees for discharge of functions and for scrutiny'.
- (5) Report to the EKJAC 25 June 2008 re administrative processes for the two committees.
- (6) Report to the EKJAC 25 June 2008 – procedure rules.
- (7) Report to the EKJAC 25 June 2008 – proposal for future development of a shared service programme.
- (8) Report to the EKJAC 3 December 2008 regarding allocation of funding.
- (9) EKJAC procedure notes prepared by Democratic Services Officers.

2.2 There then followed a briefing by Mark Ellender, accompanied by Matthew Archer. At this briefing it was agreed that Matthew Archer would set up a series of meetings between Douglas Bradbury and relevant Council nominees.

2.3 One to one meeting then took place between Douglas Bradbury and the following:-

- Councillor John Gilbey, Chairman of EKJAC.
- Dave Randall, Dover DC.
- Harvey Rudd, Dover DC.
- Nadeem Aziz, Dover DC.
- John Bunnett, Thanet DC.
- Lorraine Burley, Shepway DC.
- Councillor Kevin Mills, Vice Chair of EKJSC.
- Councillor Tim Prater, Chair of EKJSC.
- Alistair Stewart, Shepway DC.
- Keith Carr, Shepway DC.
- Jeremy Chambers, Shepway DC.

2.4 A telephone conference also took place with Wendy Head, of Shepway DC.

2.5 Subsequently Matthew Archer and Mark Ellender of Canterbury CC also provided their views.

2.6 A desk top review also took place of:

- The Agenda, reports and minutes of the meetings of the EKJAC held on 25th June 2008, 3rd December 2008 and 8th April 2009 and the EKJSC held on 9th July 2008, 22nd December 2008 and 28th April 2009.
- Minutes of the East Kent (Joint Scrutiny) Committee Waste Management Working Sub Group held on 9th September 2008, 3rd December 2008, 15th January and 9th February 2009.
- A sample of the agenda, minutes and reports of various meetings of the East Kent Chief Executives Form when joint arrangement matters had been discussed.

3. Summary of the views expressed

3.1 Generally

3.1.1 There was a consensus that there has not really been a thorough test of the arrangements which would ascertain how well the detailed arrangements might work “under pressure” as :-

- There had been too few meetings (only 2 of each committee) at the time of interviews which lead to this report.

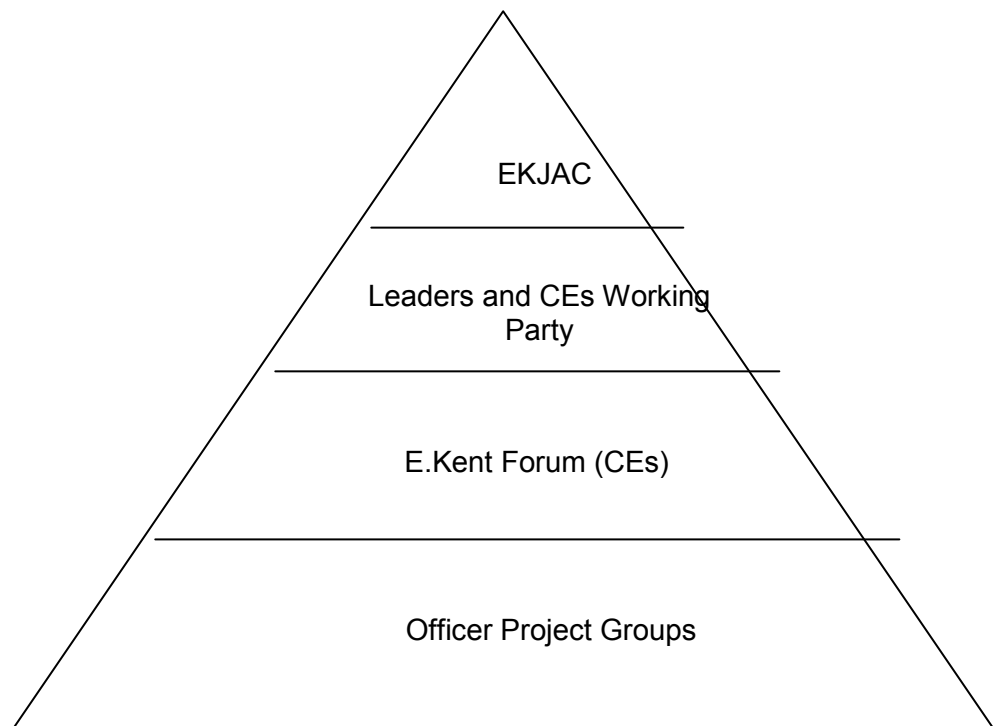
- The issues discussed so far have been relatively none contentious matters. (although it is understood that subsequently the EKJSC at its meeting on 28th April 2009 decided to seek further information before deciding whether or not it would approve certain decisions made by the EKJAC on 8th April 2009 in relation to HR services).

3.1.2 The overwhelming view was that the arrangements were clear, familiar and well drafted.

3.1.3 There are however some significant concerns but they do not relate so much to details of the current administrative arrangements but rather as to how they do or do not drive the Joint Arrangements agenda forward quickly enough. The concerns are widely shared, although expressed in different ways, and relate in the main to the aspiration that there might be more streamlined arrangements with less need to have recourse back to individual authorities. These issues are considered in greater depth later in this report.

3.2 The Pyramid.

3.2.1 The pyramid system for considering issues was discussed i.e.



3.2.2 This was thought to work well in practice and by the time reports get to the EKJAC there is a far measure of consensus and the Committee itself is seen by some as a 'rubber stamping' body. The view was also expressed that greater progress has been made in relation to Joint Arrangements in the less than 12 months of the EKJAC's existence than for a much lengthier period beforehand - whether or not this is coincidental may be debatable.

3.2.3 There was a strong view from one authority that it was essential to use the pyramid process and that taking reports in the first instance to a sub group of the EKJSC was wrong in principle and practice.

3.2.4 The Chief Executives' Forum is seen as a particularly effective group in resolving problems and it was also commented that it might be useful to provide more delegated authority to this group.

3.3 Rotation of Administration and Chairmanship.

3.3.1 EKJAC.

- It is understood that the initial arrangements for Canterbury City Council to take on the administrative arrangements and chairmanship of the EKJAC for the first year is to be extended for a further year, with each authority agreeing to put £5K forward to assist with the costs. A general, but not unanimous view, was that Canterbury City Council should take on the administrative arrangements for a longer period. Reasons for this are:
 - Greater stability through accumulation of experience and expertise.
 - Canterbury City Council also administers the CE's forum and this provides a synergy.

- In addition a view was expressed that the authority providing administrative services should also lead in providing financial and legal advice. (N.B. This view seems complementary to a view also expressed - see later - regarding the involvement of section 151 and Monitoring Officers)

- No consensus on whether or not the position of Chairman should rotate, although some views favoured rotation in the interests of spreading accountability and being more democratic; other views were that efficiency suggested the chairman should come from the administering authority.

3.3.2 EKJSC .

There was much more support for scrutiny administration and chairmanship rotating. It was considered very important by some that there should be rotation annually and that administration and chairmanship should be with same authority and never with the authority administering and holding chairmanship of the EKJAC.

3.4 Scrutiny

A wide range of views were expressed i.e.

(note – some of the views overlap)

- a) That Scrutiny was a waste of time in relation to consideration of Joint Arrangements.

- b) Another view was that scrutiny hasn't added much value to the process so far in relation to joint services although it was accepted that at its first two meetings the EKJSC had not had a lot to "get its teeth into."

- c) Legislative change may require, or give opportunities, in due course for changing the current arrangements.
- d) There was considerable support for having a Joint Scrutiny Committee even though each authority still has the right to scrutinise and 'call in' decisions.
- e) A protocol to limit local Scrutiny was a non starter. (note: - in June 2008 it was suggested that scrutiny might be revisited at the time of this review).
- f) The Joint Scrutiny Committee should have attached to it a dedicated officer resource to undertake research etc.
- g) There should be more meetings of the Scrutiny Committee than the ones programmed in for the fortnight after the EKJAC meeting, to enable there to be more in depth study of proposals before they were signed off finally.
- h) Rather than just having meetings a couple of weeks after the EKJAC meeting to review that committee's decisions there should be a greater pro activity to consider selective items before they went to EKJAC i.e. some selective pre scrutiny.
- i) All officer working papers, including discarded options, should be made available to the EKJSC.
- j) There should be a specialist independent (i.e. from outside Kent) resource available to assist the EKJSC.
- k) There should be a separate identity, and possibly a separate website, for the EKJSC to make work on Joint Arrangements accessible to a wider public.

3.5 The key concerns re. the EKJAC

The views expressed can be summarised as follows-

(note – again some of the views overlap)

- a) That the number of "hoops to go through" to obtain a decision are too great and what is needed is a greater empowerment of the EKJAC to take decisions without the need to refer matters back to the respective councils so often.
- b) A lot of work can be done in relation to particular services before there is any solid indication from some authorities that they wish to proceed, even in principle, to have a particular service provided jointly. Therefore a mechanism is needed to get a level of pre commitment earlier than has been the case e.g. for HR and Payroll Services.
- c) When there is a request for funding in relation to a particular project it is imperative that all authorities who may wish to participate recognise that they must make a commitment to fund explorative work from the outset.

- d) There must be consistency in how different projects are progressed. It was pointed out that a detailed business case was asked for in relation to HR and Payroll services but in relation to Housing matters are progressing in a more piecemeal basis. On the other hand there was a view that after a “first business” case has been considered it might be possible, if the savings or other advantages of joint working were very clear, to then “fast track” further consideration regarding this particular service compared to a more measured approach where savings or advantages were not so clearly apparent.
- e) Before the EKJAC commission any significant work all potential participating authorities should have made an in principle decision that they want to be on board.
- f) A different approach is needed if work on joint services is to proceed in a meaningful and reasonably quick way and one approach may be to convene joint Cabinet meetings, or even joint Council meetings to consider recommendations from the EKJAC – followed immediately by individual decision making meetings of each individual body.
- g) Any reports going to the EKJAC should be seen by each individual authority’s Section 151 Officer and Monitoring Officer before consideration by the EKJAC.
- h) A more responsive body than the current EKJAC is required.
- i) Matters are not turning out as originally envisaged as it was thought that there would be more discussions and a greater degree of commitment within individual authorities before matters went to EKJAC.
- j) Difficulties are not due to the current ‘constitutional’ arrangements but in ‘cutting a deal’ in relation to political and practical issues.
- k) The lawyers have been over cautious and this is reflected in a more long winded process than is needed and as a consequence progress will be much slower or even frustrated completely. Although it was also pointed out that under the current arrangements Chief Executives in particular have “challenged” submissions made and asked for more detail on most projects and this illustrates the need for a rather more “cautious” approach.
- l) Reports in relation to particular services must be signed off by all professional disciplines and not just the subject specialist for the particular service under consideration. This view was also supported as it would remove the need, which has arisen up to now, of various last minute amendments to EKJAC recommendations.
- m) That final draft reports (or as near as possible to “final draft”) reports should be submitted to the Chief Executives’ Forum 2 weeks before the EKJAC meeting date – and that the timetable already provides for this to be done.

4. Conclusions

4.1 Conclusions - Administration & chairmanship

4.1.1 The idea of Canterbury City Council taking on administration of the EKJAC for say the first few years is sound. It should last for a minimum of 3 years and be backed up with a service level agreement between Canterbury City Council and EKJAC with provision for reasonable and quantifiable financial recompense.

4.1.2 The “administering” authority should also “lead” on financial and legal advice (subject to what is said below regarding earlier involvement of section 151 and Monitoring Officers).

4.1.3 From a practical point of view the chairmanship should remain with the administering authority.

4.1.4 Administration and chairmanship of the Joint Scrutiny Committee should continue to rotate, apart from not being taken on by the authority administering EKJAC.

4.2 Conclusions - Scrutiny

4.2.1 If the EKJAC continues in its present format then the EKJSC should continue as at present.

4.2.2 A protocol to limit local scrutiny is not likely to have any practical advantages and therefore should not be pursued further.

4.2.3 Depending on resource availability, some specialist officer resource should be put at the disposal of the EKJSC.

4.2.4 The various views regarding number of meetings, what should be considered at meetings and a separate identity for the EKJSC should be considered by that Committee itself.

4.3 Conclusions - The key concerns

4.3.1 The difficulties are understood of an autonomous local authority voluntarily delegating control of any of its services to a body which it does not itself control, even more so in relation to front line services such as waste collection compared to support services. Before any service can actually be delegated each Authority must be satisfied politically that it wishes for the period of delegation to relinquish control and before consideration can be given to such a crucial decision there are a number of obstacles to be overcome.

4.3.2 However currently the arrangements are such that the EKJAC doesn't have

powers to move forward on the more sensitive service areas without regular recourse back to individual authorities. Even if it had the powers it doesn't have realistic financial resources. It is perhaps notable that once a decision has been made to go ahead with joint arrangements in relation to specific services the EKJAC does have a very wide range of powers and would have adequate budgetary provision.

4.3.3 The difficulties before even getting to the point where a business and political decision can be taken is perhaps illustrated by some of the things that have or have not happened in the past few months e.g.

- On 3rd December 2008 the EKJAC recommended each authority to agree the principle of a holding fund to enable the EKJAC to agree the funding of projects without the need of a referral back to the constituent authorities. As at 1st April 2009 there is no holding fund, although it is understood the CE's are considering recycling some grant monies available to their authorities to provide a fund for the EKJAC.
- The same meeting on 3rd December 2008 recommended to each authority that they delegate to the EKJAC funds to pay for further work regarding housing matters. It is understood that as at 1st April 2009 one authority has still not agreed to make the requisite funds available.
- Each authority was also recommended on 3rd December 2008 to contribute £10K to develop the HR/Payroll project. It is understood that only 3 authorities committed to this before 1st April 2009.

4.3.4 These examples and the lack of real authority (and concomitant budget) within EKJAC do not augur well for reasonably rapid progress on entry into more joint arrangements.

4.3.5 In order to provide this authority there must be some mechanism for each Council to delegate meaningful powers and budget to the EKJAC or perhaps to the Chief Executives who are accountable to the EKJAC. This will, however, require each authority to consider the services which it might have delivered jointly in some depth and with a willingness to delegate all that it is necessary to do, short of "pressing the button", to enable entry into legally binding Joint Arrangements.

4.3.6 Before turning to a preferred solution some consideration might be given to alternatives to the EKJAC i.e.

(a) Cut the top off the Pyramid by abolishing EKJAC (and EKJSC) and instead have all relevant matters referred by the Leaders and CEs Working Party back to individual Cabinets (and where necessary Councils). This may have the advantage of flexibility and confidential consideration of inter authority differences but it would conversely reduce potential public involvement and would in practice hardly expedite matters in overall terms. or

(b) The alternative suggested by one officer during the round of consultations is

novel i.e. Joint Cabinet (and where necessary joint Council) meetings to consider proposals from the Leaders and CEs Working Party followed immediately by individual executive meetings of each Cabinet (or Council). This may be worth trying on particular issues but doesn't seem to present a better overall alternative than an amended role for the EKJAC. or

4.3.7 However the clear balance of opinion seemed to favour retaining the current model and empowering it by a greater degree of delegation and resourcing.

4.3.8 Under current arrangements a business case is supposed to be worked up for each set of potential joint services before a project plan can be initiated. One way of expediting matters would be to remove this requirement and in its place build upon the perceived strength of the Chief Executive's Forum arrangements (see 3.2.4) and for each individual authority to **delegate to its Chief Executive, in consultation with its Leader, authority to do what ever they consider necessary in terms of commissioning work to enable the EKJAC to recommend each Authority whether or not to 'press the button'**. Crucially this will require each Leader to decide what level of debate and detail is required within his own authority before the Chief Executives can commission whatever work they considers necessary. This in itself may require some introductory work being done by the Chief Executives jointly (probably via the Officer Project Groups) to give some advice to their leaders. However it must be accepted that this would be far from being a detailed assessment or a business case for the services in question.

4.3.9 Rather than delegate to Chief Executives it would be possible to delegate straight to the EKJAC but this would provide more scope for reference back to individual authorities, potential prevarication and delays due to scrutiny or political opposition.

4.3.10 The important objective is to have sorted out all technical, practical, logistical, legal and financial considerations before a political decision is made whether or not to "press the button".

4.3.11 In terms of a budget to enable Chief Executives to commission work there must be something approaching an act of faith if the Gordian knot of going backwards and forwards between the EKJAC and individual authorities is to be severed. This budget would have to be realistic in quantum terms.

4.3.12 How a realistic budget can be provided by each authority so soon after the commencement of the financial year will no doubt be difficult to achieve, however it is encouraging that the detailed business care regarding HR and payroll is forecasting healthy savings and part or the whole of a reasonable budget might be set against such savings.

4.4 Conclusions - Some further details

Whilst the overwhelming view that the current arrangements are clear and well drafted the following minor issues are brought forward as possible improvements-

a) To understand the current arrangements it is necessary to look at three different

documents which are reports to the EKJAC and as such contain details other than the arrangements, rules, etc. Putting the arrangements, rules etc. in a single document would be useful (i.e. in effect a constitution for both the EKJAC and the EKJSC).

- b) It is not clear whether or not either Committee has decided on speaking rights for fellow councillors and/or members of the public. This should be clarified.
- c) There doesn't appear any provision for a Chairman's casting vote. Conversely there is no provision to the contrary. It might be useful to make it clear that the Chairmen should not have a casting vote, thereby requiring a majority vote for any decision to be made.
- d) If it is decided not to pursue further the suggestion in this report regarding greater powers and resources for the EKJAC then consideration might be given to setting down time limits in the rules for individual authorities to respond to recommendations from the EKJAC (and this may include encouraging special cabinet meetings to assist with compliance) – although there will be no way of enforcing legal compliance with either time limits or special meetings.
- e) Any reasonable, additional costs brought about to individual authorities by using “in house” resources in working on Joint Services projects should in principle be reimbursable from EKJAC funds – although it is realised that this may provide resourcing difficulties.
- f) All reports to EKJAC should be seen in advance by all appropriate professionals, including individual Section 151 and Monitoring Officers and not just the lead officer and specialists.
- g) Greater efforts should be made to get completed draft reports to the EK Forum at least 2 weeks before scheduled meetings of the EKJAC.

Douglas Bradbury

29th April 2009

CONFIDENTIAL

Subject: **East Kent Joint Waste Project**

Director/Head of Service: Mark Seed
(on behalf of East Kent Waste Management Group)

Decision Issues: These matters are within the authority of the East Kent Joint Arrangements Committee (EKJAC).

Decision type: Non Key

Classification: **This report is Confidential and that the public and press be excluded from the meeting for this item as it contains exempt information as defined in Paragraph 3 of Schedule 12A of the Local Government Act 1972 (as amended).**

Summary: Canterbury City Council, Dover District Council, Kent County Council, the District Council of Shepway and Thanet District Council are continuing to work together on joint waste collection and disposal.

Since this was last reported in November the tendering process has identified an alternative recycling and waste collection method (the "Alternate NOM") which will :-

- Save £2.96m in annual costs. An increase of £276k over earlier projections
- Extend the provision of wheeled bins for recycling but with the additional costs being covered by extra project savings
- Allow the extension of a wide range of recycling opportunities to as many properties as possible in East Kent
- Provide a dedicated food waste collection to approaching 100% of properties
- Improve recycling rates across the area
- Enable those authorities that chose to do so to charge for green waste collection.

These benefits are in addition to the existing benefits from the project:

- Gaining agreement to collect waste using the same method across East Kent with enhanced recycling performance and roll out to the maximum number of households at no extra cost
- Annual enabling payments to districts to compensate for lost income and increased costs are guaranteed to 2020 and containerisation costs are accommodated
- Risks of market fluctuations in recyclate values and future landfill tax

risers and tonnage risks are borne by KCC

- Additional collection savings generated by service and contractual efficiencies are to be retained by Districts
- A financial reward system will be in place to recognise improved waste diversion over and above that anticipated by the model

This report recommends adoption of the "Alternate NOM" and considers how the extra costs and savings are shared between the partners and the timescales for the rest of the project.

**To
Recommend:**

To determine:

1. That EKJAC agrees the proposal to use the Alternate NOM as the base model to be priced by tenderers in the procurement for the waste collection, disposal and cleansing services for Dover, Shepway and KCC.
2. That the Alternate NOM is used in the future for the development of services in Canterbury and Thanet.
3. That the required additional future funding to complete the current procurement process is met initially by KCC, with the part contributions to these costs by the districts being deducted from their Enabling Payments once these commence
4. That delegated authority is given to the Chief Executive of Dover District Council in consultation with the Chief Executives of Kent, Shepway, Canterbury and Thanet councils to determine the formula to share the outstanding and future project development costs of completing the first phase of procurement in the East Kent Joint Waste project, but if he considers there is difficulty in reaching a consensus he may refer it to this Committee for decision.
5. That KCC will provide capital funding for additional containerisation up to the figures set out in the table under paragraph 2.6 for each district. KCC will deal with any revenue fluctuations that arise from the borrowing of these funds.

To recommend to the partner authorities that they seek authority to agree:

6. That net disposal savings generated by the new service arrangements set out in Appendix 1 are retained by KCC, and that they limit the sums payable to the districts to the enabling payments for each authority set out in the table under paragraph 2.7 plus the alternate view payments to Canterbury and Thanet set out in paragraph 2.10.
7. That provided the overall waste diversion increases in East Kent then KCC will share 50% of the savings with the East Kent

districts. This will be allocated according to a formula based on the improvement in their individual waste diversion tonnage multiplied by the market value of the material being diverted, or as otherwise agreed.

Next stage in process **Approval is sought in each of the partner authorities to the amendments to the distribution of savings as set out in the report and shown within recommendations 6 and 7 above.**

SUPPORTING INFORMATION

1. Introduction

- 1.1 The procurement process currently underway for waste collection, processing and haulage and cleansing services for Dover, Shepway and KCC has brought forward alternative proposals from each of the tenderers under the competitive dialogue process. As intended this has sought to challenge the tenderers to come forward with proposals that improve on the Nominal Operating Model (NOM), and this was explicitly indicated in the report to EKJAC on 25th November 2009. This eventuality was anticipated in the drafting of the original Memorandum of Understanding (MoU) that has been agreed by the partner authorities, and allows variations to be made to the operating model without requiring further Cabinet or Council decisions by each partner.
- 1.2 As a result of this process there has developed an alternative NOM that has significant advantages over the original proposal, from a service viewpoint, and a smaller advantage on costs. It is considered appropriate that consideration be given to removing the NOM from the pricing models available to tenderers as this is very unlikely to be the chosen option by any of the constituent authorities in the current tendering process.
- 1.3 As this has an impact on the overall business case and the calculation of project benefits and enabling payments, it is appropriate that these are reflected in the current report based upon the information gained through the tender process.
- 1.4 The revisions to the base figures for the business case and the assessment of potential collection savings have led Council Section 151 Officers to review the way in which the benefits of the project are shared between partners. This represents a shift away from the disaggregation principles set out in the MOU and the report to EKJAC in November and section 2 of the report provides more details of the proposed change. The primary aim has been to simplify the way that savings are shared and to direct benefits in a way that reflects the different risks being taken faced by the partners.
- 1.5 In addition, the complexities of the tender process and the need to ensure that the risk of challenges to this are reduced to the minimum has led to increased project development costs that will exceed the original funding pot. The current estimate of the additional costs involved in seeing the project through to completion is set out below. KCC have agreed to temporarily underwrite the outstanding and future costs of the project through its first phase to complete the current procurement, with the districts part share of this funding being deducted from Enabling Payments once these commence.
- 1.6 In this context the risks associated with complex procurements in waste are increasingly the source of potential challenges by unsuccessful tenderers. Additional advice has been procured from the legal firm Eversheds and this has affected the procurement timetable and the new timetable proposals are attached for reference at Appendix 3.

2. Detail

Alternate NOM

2.1 The competitive dialogue process has produced the following collection model which has been termed the Alternate NOM:

- a) Alternate Weekly Collection (AWC) of residual and food waste (segregated)
- b) AWC of recyclables and food waste (segregated) plus
- c) Fortnightly collection of garden waste (free or charged)

The main collections a) and b) will be done using a “one-pass” vehicle that has a split back and a separate pod for food waste. A standard household will have a wheeled bin for residual waste, a wheeled bin for cans, plastic, bottles and other dry recyclables, and a box for paper and card. For food waste a small kitchen caddy will be provided, with a larger bin for the storage of the food waste outside the house prior to collection. If a chargeable green waste service is in force then a separate wheeled bin is provided.

- 2.2 In terms of service delivery this will deliver the same range of materials collection as the original NOM (with an increased level of recycling) but means that the service can be delivered to more than the original 60% of households which were calculated for the NOM. The aim would be to deliver the basic service indicated above to as near as possible 100% of suitable properties.
- 2.3 The primary service impact of the adoption of the Alternate NOM is that the green garden waste will be collected separately from food waste (in the NOM these were done together). This not only reduces the processing costs for the green waste, but allows an authority to choose whether to retain (or levy) a charge for its collection. As it was not legal to charge whilst food was included in the green waste stream in the original NOM, this change potentially retains income that would otherwise have had to be lost. This allows each authority to make its own choices about how it handles green waste charging in the future. However, there may well be some legitimate concerns about differences of approach across common boundary areas, and a common approach across East Kent would clearly be preferable.

Business case revision

- 2.4 Additional cost modelling work has been undertaken to compare the NOM with the Alternate NOM and this is set out in the table below. All the financial figures in the document are annual based on an average of costs and income over the period of the 6 years from 2013 to 2019, covering the period when the new arrangements are operating across all partners. Annual figures are provided for the sake of clarity. Please note that the figures used for the NOM reflect the costs and waste quantities that have been produced during the tendering process, and these reflect a reduction in waste volumes that were not factored into the original NOM. The intention is to provide as fair a comparison of costs as possible. The table below shows that there are increased net costs of delivering the Alternate NOM of £396k as this enhanced service will cost more to deliver, and there are additional containerisation requirements of £125k that will impact on the project. The net cost to Council Tax payers can be offset by continuing to charge for green waste in the areas where this already occurs. Further detail on the sources of these additional costs, service and financial implications for individual districts is provided in paragraphs 2.5-2.11 below and in the Appendices.

Description	£k pa
Additional disposal savings arising from Alternate NOM	-276
Additional cost of collection (covered by enabling payments)	340
Additional annual cost of containerisation	125
Increased alternative view costs	202
Total increased cost per annum of moving to alternate NOM	396
Green waste income retained by moving to Alternate NOM	-435
Net saving per annum of moving to Alternate NOM	-39

- 2.5 In developing the new proposals consideration has been given to the nature of containment provided to households to deal with increased quantities of dry recyclables. The original model was based on a mixture of boxes and bags to undertake these collections, but based on new tonnage estimates it is considered that these would be limiting on capacity. The revised thinking on this issue is to provide wheeled bins for dry recycling as indicated in paragraph 2.1 above.
- 2.6 This leads to an overall increase in initial containerisation costs for the project, though downstream the impact of bag replacement costs would be significant. The Alternate NOM makes the need for enhanced containment more necessary due to higher levels of waste diversion, but is not an absolute requirement of this system. The figures in the table represent the capital limits that will be payable to each district for the purchase of containers. The revenue implications of this capital and fluctuations in the cost of servicing the debt will be borne by KCC.

Description	Revised NOM	Alternate NOM	Difference
Containerisation by District			
Dover	£1,369k	£1,990k	£ 621k
Shepway	£ 447k	£1,384k	£ 937k
Canterbury	£ 202k	£400k	£ 198k
Thanet	£1,149k	£645k	-£504k
Total	£3,167k	£4,419k	£1,252k

(Note – the reduced figure for Thanet reflects the previous investment in wheeled bins for recycling collections. The figure for Canterbury is based on them funding additional bins based on the savings from the reduction in the distribution of recycling bags. Container costs are based on current average market prices. These can be subject to variation so care would be required in the procurement of these to ensure that sufficient capital was available to cover all the costs of the partners.)

Enabling Payments

- 2.7 Changing the nature of the collection system has positive and negative impacts on costs to the

collection authority. The enabling payments were based on attempting to make collection changes cost neutral for the districts and the table of revised payments is set out below comparing the NOM to the Alternate NOM. A more detailed breakdown of the figures for the Alternate NOM is set out in Appendix 5.

Description	Revised NOM £	Alternate NOM £	Difference £
Breakdown of Enabling Payment			
Additional Service Costs	581,528	930,711	349,183
End Market Recycling Income	394,948	385,985	-8,963
Garden Waste Income	435,355	0	-435,355
Total	1,411,831	1,316,696	-95,135
Enabling Payment by District			
Dover	110,762	226,785	116,023
Shepway	520,052	316,243	-203,809
Canterbury	533,731	462,692	-71,039
Thanet	247,286	310,976	63,690
Total	1,411,831	1,316,696	-95,135

(Note – the Enabling Payments do not include or replace current payments made by KCC to the districts covering recycling/ green waste credits, tipping away payments or recycling support costs. These can be adjusted by other processes but are not being removed as a result of the East Kent Joint Waste Project.)

- 2.8 The overall cost of the enabling payment has increased by £340k pa on current estimates which is primarily driven by the increased costs of collecting the waste (staffing levels for one-pass vehicles servicing food pods will be higher). However, this is more than offset by the ability for districts to retain current garden waste income streams. The enabling payments above are based on figures that are currently available through the tendering process, but as indicated in the November EKJAC report these will be subject to reassessment based on the final tender submissions. Details of the split of enabling payments from 2011 to 2019 are shown in Appendix 5, with the average figure from 2013 to 2019 being used for the above table.
- 2.9 The impact of a move to the adoption of the Alternate NOM in comparison to the Revised NOM is set out in Appendix 1. This aims to set out the overall picture of project benefits. This shows both disposal and collection savings under the Revised NOM based on current waste tonnages, and the Alternate NOM which is again based on current waste tonnages. This allows a fair comparison to be made for the impact of the Alternate NOM that reflects waste tonnages as they stand now. Appendix 2 provides

figures comparing these 2 models showing more details of enabling and containerisation payments.

2.10 The table in Appendix 1 contains figures for the Alternate NOM that are explained below:

- The Gross Disposal Saving of £2,960 pa is based on the figures set out in Appendix 4 which calculate forward projections of costs of moving to the Alternate NOM from 2013 to 2019. These costs are averaged over this period.
- The enabling payment of £1,316 pa is based on the figures set out in the table at 2.7 above and shown in more detail over the period from 2011 to 2019 in Appendix 5.
- The Alternate View Enhancements figures for Canterbury (£260k) and Thanet (£131k) are based upon a principle agreed in the original EKJAC report, which reflected the possibility of these districts seeking market prices for their collected recycling as opposed to delivering to a location specified by KCC. These compensating figures have increased from the original model due to the impact of recycling income projections in the Alternate NOM.
- The Joint contract district collection saving of £218k pa is an aggregate figure across the 4 authorities which reflects a contribution towards the overall net savings total within the project. Additional collection savings made on top of this by the districts through initiatives such as inter-authority collaboration, or further service efficiencies, will be retained by them.
- The annual containerisation repayment costs of £463k are based on the details set out in the table under paragraph 2.6 above and include the additional costs of the Alternate NOM

Appendix 1 also indicates a change to the treatment of the net disposal savings that has been discussed and agreed between Section 151 officers. This reflects a re-assessment of the collection savings which can be achieved compared with those presumed in the original model (which amounted to £1.5 million pa). This has now been reduced to £218k pa to take account of the fact that savings being achieved through the procurement process were in essence being double counted and that the discussions with bidders are indicating that savings from consolidating depot facilities are unlikely to be realised. The new proposal is that net disposal savings arising from the new arrangements as set out in Appendix 1 are retained by KCC.

2.11 Any additional disposal savings, resulting from an aggregate increase in recycling performance (from that used in the final Alt NOM model that delivers £2.96m average savings per annum from 2013 to 2020) will result in a payment per tonne to the Districts collectively. This will be shared across the four Districts in accordance with an agreed formula based on the increased waste tonnage they have diverted, multiplied by the recycling market value of the material which is current under the contract. This represents a departure from the disaggregation principles set out in Appendix III of the original MOU that formed part of the EKJAC report in November. This change takes account of the concerns about the levels of collection savings likely to be achieved, and also the impact of the revised waste tonnage figures on the overall business case. The new method for allocating savings represents a significant simplification over the original method of calculation, which was potentially open to disagreement about base case and future costs. The new arrangements also associate benefits with the risks being faced by the partners, in that disposal risks lie with KCC and collection risks lie with the districts. However, the new system does provide for some incentive for KCC to support collection efficiencies and for districts to strive to improve waste diversion.

Project Development Funding

- 2.12 Due to complexities of delivering the project from its inception and the extended nature of the procurement process, which takes advantage of the competitive dialogue process, the external costs of supporting the project (legal and technical) will exceed the available budget by time of contract award at the end of the first phase of the project. The original project budget was funded from a combination of contributions from the original 5 partners, together with money from the Kent Waste Partnership and Improvement and Efficiency South East, as set out in the previous EKJAC report. The project spend at the end of 2009/10 was £444k for consultancy support, which had exceeded the original project budget by £94k. It is anticipated that during 2010/11 that this support will incur a further £80k of costs. In addition, external legal work by Eversheds associated with the current procurement is anticipated to cost at least £75k. This amounts to £200- 250k of additional project costs.
- 2.13 After consideration by the project team it is proposed that any funding shortfall on the project development is met by KCC temporarily for the remainder of its first phase (primarily the completion of the current procurement process). However, this is with the explicit understanding that districts are still responsible for a share of these costs, but that it would be more sensible for these to be met from the savings on the project once these are being delivered. As these savings are primarily in the form of avoided disposal costs to KCC then these additional project costs will be deducted from Enabling Payments once these commence.
- 2.14 Setting aside the external project funding from outside the East Kent partnership, the original share of costs was 50% from KCC with the districts meeting the remaining 50% between them based on population. This will be slightly complicated as there are current costs being accrued as part of the procurement process that Thanet and Canterbury would have to meet in any future procurement project, so these need to be shared on a 3 way rather than 5 way basis, with the detailed formula to be approved by the East Kent Chief Executive's Forum. This is subject to further discussion, but at present approval is being sought on the principle of meeting the project funding shortfall from future delivery savings. KCC have now taken over the arrangement with Waste Consulting to provide technical support for the remainder of the project under a revised letter of engagement.
- 2.15 There may be some concern that the work in developing the original NOM is being wasted, but this was agreed early in the project as a way of demonstrating that the overall approach could work financially. The subsequent procurement work that has been required has refined this original model, as was planned, both extending the benefits and scope of the new services and improving the cost model.

Project Timescales and Risk

- 2.16 To some degree the issue of project risk is one of the causes for the need to deal with additional project delivery costs. The possibility of challenge by unsuccessful tenderers in waste procurement projects was very uncommon previously, but recent cases in other authorities have indicated that the chances of this are increasing. Added to this are the greater inherent risks in a joint waste procurement between authorities, particularly with the addition of disposal services to collection services.
- 2.17 This has led recently to a reassessment of project risks, particularly taking the advice of Eversheds, who are a leading law firm in the waste contract business. On this basis this has led to a revision of project timescales as set out in Appendix 3. This has not changed the anticipated contract commencement date for Dover, Shepway and KCC of 1st October, but due to vehicle delivery

timescales the introduction of the new service proposals will take longer than planned originally. This would imply some local choice about the timing of the roll-outs based upon minimum times to achieve these, with an understanding of the need to deliver new services and savings as soon as possible.

3. **Relevant Council Policy/Strategies/Budgetary Documents**

- 3.1 These are the same as for the previous report to EKJAC on 25th November 2009, but the financial positions of councils and the choices they are having to make are even more stark following the development of revised Medium Term Financial Strategies over the last few months.

4. **Consultation planned or undertaken**

- 4.1 No additional consultation is proposed as a result of the proposals set out in this report. Shepway and Dover are currently undertaking a community wide consultation to determine priorities for the development of recycling and waste services, which has already resulted in over 1000 responses.

5. **Options available with reasons for suitability**

- 5.1 The proposal to use the Alternate NOM as the new base case for service delivery across East Kent reflects all the advantages that led to the choice of the NOM in the EKJAC report on 25th November 2009, with the addition of improved levels of service (particularly weekly food waste collection), wider roll-out, and improved containment. The Alternate NOM saves an additional £39k annually in comparison to the Revised NOM, even when the capital funding costs of £125k associated with the provision of wheeled bins is factored in, provided that current green waste charges are retained.
- 5.2 There is a potential downside in that the proposals do not automatically include a free green waste service that would have been a specific result of adding food waste into this stream. However, the choice of whether to charge for green waste services lies with each district to make a decision on this. The benefit is that such a choice is not forced by the proposals themselves but can be made flexibly based on other considerations. As indicated previously there may be concerns about different approaches being taken by neighbouring authorities. It is possible to consider that a charge for green waste collection should be considered as contrary to the original conception of the project to reduce the costs of waste management to Council Tax payers. However, green waste charges are not part of Council Tax, and are an additional charge which a local authority can choose to make, in the same way that charges for use of leisure centres are made. The retention of charges allows the project to deliver a wider range of services, especially picking up properties that would not benefit from a green waste service.
- 5.3 The proposals in relation to the sharing of savings reflect a move away from the originally approved disaggregation principles in the original MOU. There are cost and risk drivers that make the new arrangements more appropriate now, as well as representing a much more simple system that will do much to reduce any potential disagreement about figures in the future.

6. **Reasons for supporting option recommended, with risk assessment**

- 6.1 The cost modelling for the updated NOM and the Alternate NOM has been refined by the tender process that has taken place since the agreement to the original EKJAC report in November. The modelling is based on "live" prices submitted as part of the tender process and waste tonnages that reflect both the current reductions in overall waste volumes, and refinements to the quantities of waste likely to be diverted into the recycling stream. As such the current costs and savings estimates are even more robust than those presented in the previous report.

- 6.2 This gives assurance that the benefits and savings will be delivered. The Alternate NOM provides the benefits set out in paragraphs 2.1 to 2.3 over the original NOM, and can be demonstrated to be workable as it arises from proposals from several contractors within the tender process in a cost effective way.
- 6.3 The figures provided in the report for the enabling payments are based upon costs as they stand at present. The final figures for Dover and Shepway are still dependant on the current procurement process, and the figures for Canterbury and Thanet would be dependant on the costs that arise from the set up of the new service configurations in 2013, but both would be fixed for the period of the contracts. There are some risks that the future figures could be significantly different in the future and would affect the overall cost modelling. However, the current projections are based on robust figures arising from the procurement process at present and these are the best guide to future costs that are available at the moment.
- 6.4 The move away from an automatically free green waste service is of some concern, but the Alternate NOM preserves the status quo in each of the districts.
- 6.5 The old NOM is very unlikely to be the chosen result by any of the parties to the current procurement process and to continue with the large amount of work to assess cost and quality proposals from each of the remaining tenderers does not represent a good use of valuable project support time, or of the contractors' own time.
- 6.6 On this basis it is proposed that the Alternate NOM replaces the NOM as the basis for service delivery. This still does not mean that the tenderers will not provide even further benefits in final tender proposals, but these will then be assessed against the Alternate NOM rather than the NOM.

7. Implications

(a) Financial Implications

See sections 2.1 to 2.11 above.

(b) Legal Implications

No further legal implications arising from these proposals.

(c) Staffing/resource

Project development costs have exceeded original estimates. Additional costs are likely to be in the order of £200-250k to end of the first phase of procurement in 2010.

(d) Property Portfolio

No additional implication on top of those set out in the EKJAC report of 25th November 2009.

(e) Environmental/Sustainability

As (d) above but the proposals will increase the level of waste diversion from landfill and lead to a higher level of recycling.

(f) Planning/Building Regulations

As (d) above.

(g) Human Rights issues

The proposals are consistent with Human Rights legislation.

(h) Crime and Disorder

No significant implications.

(i) Biodiversity

No significant implications.

(j) Safeguarding Children

No significant implications.

(k) Energy efficiency

The proposals present a more optimum use of vehicles with a consequent impact on fuel use.

8. Conclusions

- The proposals set out the reasons for replacing the NOM with the Alternate NOM as the basis of service delivery in the current tender and from 2013 across East Kent.
- There will be improved levels of service (particularly weekly food waste collection), wider roll-out, and improved containment at no increased net cost. It does not impact on the principle of making the changes to collection systems cost neutral to the districts.
- The distribution of disposal savings is proposed to change based on discussions between Section 151 Officers, reflecting the retention by KCC of net disposal savings and collection savings by districts. The proposals include an incentive for districts to increase levels of waste diversion, and represent a considerable simplification over the previous disaggregation principles set out in the MOU.
- Project development costs have been high due to the complexities of the processes involved and concerns about procurement risk, but a mechanism for funding these costs has been set out in the report.
- Project risk has been addressed and has led to the revised timetable set out in Appendix 3.

9. Background Papers

Appendix 1 – Financial details

Appendix 2 – Procurement Timetable

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Comparative costs – Updated NOM to Alternate NOM

£k (annual averages for project period)	Updated NOM	Alternate NOM
Gross Disposal Savings	2,685	2,960
Enabling Payments	(1,412)	(1,316)
Alternative View Enhancements: Thanet	0	(131)
Alternative View Enhancements: Canterbury	(189)	(260)
Revised WCA Funding Before Collection Savings	(1,601)	(1,707)
Net Benefit before Agreed Collection Savings	1,084	1,253
Joint Contract District Collection Savings	218	218
Adjusted Total Net Savings before Containerisation	1,302	1,471
Containerisation Costs (annual revenue cost)	(333)	(463)
Adjusted Total Net Savings	969	1,008

Risk Issues

- Annual enabling payments to districts to compensate for lost income and increased costs of the Alt NOM are guaranteed at fixed sums to 2020 and containerisation costs are accommodated
- Risk of capital borrowing fluctuation to be borne by KCC
- Risks of market fluctuations in recyclate values, future unspecified landfill tax rises and tonnage risks are borne by KCC
- Additional collection savings generated by service and contractual efficiencies are to be retained by Districts
- A financial reward system will be in place to recognise improved waste diversion over and above that anticipated by the model

Project Comparison Table

Authority

Alternate NOM

Revised NOM

Financial Impact

Financial Impact

Canterbury
City Council

Existing Budget **maintained**.
£462k Enabling Payment to fund expansion of services.
£400k* Containerisation Funding.

Existing Budget **maintained**
£534k Enabling Funding to expand services.
£202k Containerisation Funding.

Dover
District
Council

Existing Budget **reduced by £375k** round saving.
£227k Enabling Funding consisting of £96k end market income and
£131k to expand services.
£1,990k Containerisation Funding

Existing Budget **reduced by £375k** Round saving.
£111k Enabling Funding to replace lost income and
£1,369k Containerisation Funding

Shepway
District
Council

Existing Budget reduced by **£584k** round saving.
£316k Enabling Funding to consisting of £185k to replace lost income
from recycle and £ 131k to expand services.
£1,384k Containerisation Funding

Existing Budget **reduced by £584k** Round saving.
£447k Enabling Funding to replace lost income and expand services.
£447k Containerisation Funding

Thanet
District
Council

Existing Budget **maintained**.
£311k Enabling Funding to expand services.
£645k Containerisation Funding

Existing Budget **maintained** plus
£247k Enabling Funding.
£1,149k Containerisation Funding to expand services

Kent County
Council

Generates avoided disposal benefit of **£2.96mn**. Requires enabling
Funding of **£1.316mn**
Containerisation Funding of **£4.42mn**.

Generates avoided disposal benefit of **£2.68mn**. Requires enabling
funding of **£1.41mn**.
Containerisation Funding of **£3.17mn**.

Note: * Assumes Canterbury funds containerisation of recyclables in wheeled bins from existing expenditure on Recycling sacks. Payback period 7 years.

Procurement Timetable

Event	Date
Issue Invitation to Participate (ITPD)	7 April 2010
Receive Deadline 1 ITPD Responses	23 April 2010
Receive Deadline 2 ITPD Responses	30 April 2010
Initial Dialogue Meetings	10 May 2010 - 28 May 2010
Further Dialogue Meetings	24 May 2010 - 4 June 2010
Issue Invitation to submit a Final Tender	11 June 2010
Receive Call for Final Tender (CFT) Submissions	18 June 2010
Conclude Evaluation of CFT Submissions	9 July 2010
Cabinet Select Preferred Bidder	28 July 2010
Award Contract	7 August 2010*
Mobilisation period	8 August 2010 - 30 September 2010
Contract Commencement	2 October 2010

Documents Required for Submission by Tenderers

No	Document	Return Date
1	Commentary Table	Deadline 1
2	Output Specification	Deadline 2
3	Service Delivery Plans	Deadline 2
4	Payment Mechanism Commentary	Deadline 1
5	Performance Management System Commentary	Deadline 1
6	Waste Law List	Deadline 2
7	Commercially Sensitive Information	Deadline 2
8	Waste Acceptance Protocol	Deadline 1
9	Reporting Proformas	To be issued by the Partnership during dialogue.
10	Maintenance Plan	Deadline 2
11	Alt. Nom and Optional Bid Proformas	Deadline 1
12	Bring Bank Sites	To be discussed during dialogue.
13	Audit Trail	To be discussed during dialogue.
14	Quality Service Management Plan	Deadline 2
15	Environmental Statement	Deadline 2

Appendix 4

Calculation of Gross Disposal Savings

Alt Nom Funding View Residual Cost	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19	Average 2013-2019
Old	9,959,117	10,595,429	11,325,732	12,067,453	12,408,906	12,761,344	13,124,937	13,499,252	
New	9,116,292	9,719,259	8,962,387	9,558,260	9,830,094	10,110,727	10,400,313	10,698,524	
Total	(842,826)	(876,170)	(2,363,344)	(2,509,194)	(2,578,812)	(2,650,617)	(2,724,624)	(2,800,728)	(2,604,553)
Recycling Cost - Excl Credits									
Old	1,838,685	1,917,064	1,048,552	1,074,775	1,101,669	1,129,243	1,157,503	1,186,460	
New	1,609,958	1,683,841	(653,681)	(670,330)	(686,989)	(704,215)	(722,018)	(740,120)	
Total	(228,728)	(233,223)	(1,702,233)	(1,745,106)	(1,788,658)	(1,833,458)	(1,879,521)	(1,926,580)	(1,812,593)
Garden (Change to New Contractor Rate)									
Old	734,285	749,001	767,856	787,142	806,927	827,177	847,953	869,167	
New	735,538	750,234	781,797	801,437	821,428	842,123	863,355	884,955	
Total	1,253	1,233	13,941	14,295	14,502	14,946	15,402	15,788	14,812
Food									
Old	0	0	0	0	0	0	0	0	
New	574,640	586,148	1,354,004	1,388,014	1,422,752	1,458,438	1,495,083	1,532,486	
Total	574,640	586,148	1,354,004	1,388,014	1,422,752	1,458,438	1,495,083	1,532,486	1,441,796
Garden and Food Total									
Old	734,285	749,001	767,856	787,142	806,927	827,177	847,953	869,167	
New	1,310,178	1,336,381	2,135,801	2,189,452	2,244,181	2,300,561	2,358,438	2,417,441	
Total	575,893	587,381	1,367,945	1,402,309	1,437,254	1,473,384	1,510,485	1,548,274	1,456,609
Disposal Savings	(495,660)	(522,012)	(2,697,633)	(2,851,990)	(2,930,216)	(3,010,691)	(3,093,660)	(3,179,034)	(2,960,537)

Calculation of Enabling Payments

Alt Nom Funding View	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19	Average 2013- 2019
Dover	120,000	122,400	124,848	127,345	129,892	132,490	135,139	137,842	131,259
Canterbury	0	0	440,092	448,894	457,872	467,029	476,370	485,897	462,692
Shepway	120,000	122,400	124,848	127,345	129,892	132,490	135,139	137,842	131,259
Thanet	0	0	195,462	199,371	203,359	207,426	211,575	215,806	205,500
Additional Services	240,000	244,800	885,250	902,955	921,014	939,434	958,223	977,387	930,711
Dover	95,525	95,525	95,525	95,525	95,525	95,525	95,525	95,525	95,525
Canterbury	0	0	0	0	0	0	0	0	0
Shepway	184,984	184,984	184,984	184,984	184,984	184,984	184,984	184,984	184,984
Thanet	0	0	105,476	105,476	105,476	105,476	105,476	105,476	105,476
Total Income	280,509	280,509	385,985	385,985	385,985	385,985	385,985	385,985	385,985
Dover	215,525	217,925	220,373	222,870	225,417	228,015	230,665	233,368	226,785
Canterbury	0	0	440,092	448,894	457,872	467,029	476,370	485,897	462,692
Shepway	304,984	307,384	309,832	312,329	314,876	317,474	320,123	322,826	316,243
Thanet	0	0	300,938	304,847	308,835	312,902	317,051	321,282	310,976
Sub Total New Services + Income	520,509	525,309	1,271,235	1,288,940	1,306,999	1,325,420	1,344,208	1,363,373	1,316,696

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