

Appendix A

Dated this day of

2021

FAREHAM BOROUGH COUNCIL

AND

GOSPORT BOROUGH COUNCIL

AND

PORTSMOUTH CITY COUNCIL

DEED OF DELEGATION

JOINT PROVISION OF BUILDING CONTROL SERVICES

This DEED is made the

2021

BETWEEN

FAREHAM BOROUGH COUNCIL of Civic Offices, Civic Way, Fareham, Hampshire P0167PU

and

GOSPORT BOROUGH COUNCIL of Town Hall, Gosport, Hampshire, P012 1EB and

PORTSMOUTH CITY COUNCIL of Civic Offices Guildhall Square Portsmouth P01 2PX (collectively referred to as "the Councils" and the term "Council" shall refer to any one of the Councils acting individually as the context permits)

WHEREAS

- (1) The Councils are local authorities within the meaning of the Local Government Act 1972 ("the 1972 Act").
- (2) The Councils wish to provide building control services jointly under the terms of this Deed
- (3) In exercise of the powers under sections 101,102, 103, 111 and 113 of the Local Government Act 1972, sections 19 and 20 of the Local Government Act 2000, section 1 of the Localism Act 2011 and all other relevant enabling powers, the Councils wish to commission each other to deliver the building control functions of the Councils through the Partnership and to delegate the provision of the building control functions to each other and to the Partnership to the extent and in accordance with the arrangements herein provided.

IT IS HEREBY AGREED AS FOLLOWS

1. Definitions

1.1 In this deed

- (a) "The Fareham Representative" means the Senior Officer for the time being of Fareham Borough Council having managerial responsibility for the Building Control service.
- (b) "The Gosport Representative" means the Senior Officer for the time being of Gosport Borough Council having managerial responsibility for the Building Control service.

- (c) "The Portsmouth Representative" means the Senior Officer for the time being of Portsmouth City Council having managerial responsibility for the Building Control service.
 - (d) "Head of Building Control Partnership" means the Building Control Manager designated by the Councils for the purposes of this Agreement
 - (e) "The Partnership Finance Officer" means the officer designated by the Councils for the purpose of this agreement
 - (f) "The Agreed Performance Standards" means those standards set out in the Memorandum of Understanding
 - (f) "The Memorandum of Understanding" means the document entitled Fareham, Gosport and Portsmouth Building Control Partnership – Memorandum of Understanding signed by the Councils and amended from time to time in writing between the Councils or otherwise setting out the objectives of the Partnership and the governance and joint working arrangements and as may be amended from time to time as provided therein
 - (g) "The Partnership" means those officers employed by the Councils to discharge the Building Control Functions and known as the Building Control Partnership
 - (h) "The Building Control Functions" means those functions listed in Schedule 1 hereto
 - (i) "The Officer Group" means a group comprising Head of Building Control Partnership, the Fareham Representative the Gosport Representative and the Portsmouth Representative and The Partnership Finance Officer
- 5.4 hereof
- j) "The Panel" means the group comprising one elected member from each of the Councils, and the Officer Group
 - (k) "The Building Control Service" is the performance by the Partnership of the Building Control Functions
 - (l) "Working Day" means days on which banks in the City of London are open to the public

- 1.2 In this Deed, unless the contrary intention appears:
- 1.2.1 words importing the masculine gender include the feminine gender.
 - 1.2.2 words in the singular include the plural and vice versa.
 - 1.2.3 clause headings are for ease of reference only and do not affect the construction of the deed: and
 - 1.2.4 any reference to any Act of Parliament or to any Order, regulations, Statutory instrument or the like shall be deemed to include a reference to any amended enactment or re-enactment of it.

2. Memorandum of Understanding

- 2.1 The Councils have entered into the Memorandum of Understanding which may be amended from time to time by the Councils in writing and agree that this Deed shall be construed to give effect to any such Memorandum of Understanding as may be in force from time to time.

3. Term

- 3.1 This Deed shall commence on xxxxxxxx and shall continue unless brought to an end by either party under the provisions of Clause 10 hereof

4. Functions

- 4.1 The Councils agree that each of them and / or the Partnership shall discharge within their own administrative areas and each within the administrative boundaries of the other the Building Control Functions to the Agreed Performance Standards.
- 4.2 Each Council hereby delegates to the other and the Partnership power to exercise the Building Control Functions on its behalf and for the avoidance of doubt this includes the management of resources used in the exercise of such functions.
- 4.3 The Councils agree that for the duration of this Deed the Partnership will

undertake on their behalf the Building Control Functions together with any additional functions which shall be agreed in writing between the Councils

5. Management

- 5.1 The Head of Building Control Partnership will manage the Building Control Service and will report to and be accountable to:
- 5.1.1 the Fareham Representative in respect of the performance of the Building Control Functions in the Borough of Fareham
 - 5.1.2 the Gosport Representative in respect of the said functions in the Borough of Gosport.
 - 5.1.3 the Portsmouth Representative in respect of the performance of the Building Control function in the City of Portsmouth
- 5.2 The strategic management of the Partnership shall be undertaken by the Panel which shall meet at least twice a year.
- 5.3 The Panel's terms of reference shall be to provide strategic oversight and direction to the Partnership by: -
- identifying opportunities for improving efficiency and reducing costs.
 - reviewing management arrangements.
 - reviewing arrangements for the management of risk.
 - reviewing performance and budgets
- 5.4 The Fareham Representative, the Gosport Representative and the Portsmouth Representative shall set up the Officer Group and shall ensure that it meets at least quarterly to monitor the performance and development of the Partnership and resolve any issues arising.

6. Staff

- 6.1 Fareham Borough Council will be the employer of the staff delivering the Building Control Functions of the Partnership.
- 6.2 Any recruitment to the Partnership shall be in accordance with Fareham Borough Council's normal staff recruitment policies. Fareham Borough Council shall employ

sufficient properly trained, careful, skilled, honest, competent officers to ensure the Building Control Functions are provided at all times and in accordance with this Deed.

6.3 Fareham Borough Council will provide sufficient management and supervisory staff to ensure the staff employed in the provision of the Building Control Functions are at all times:

6.3.1 Adequately supervised and properly perform their duties in accordance with this deed.

6.3.2 Sufficiently trained and instructed with regard to all relevant policies, rules, procedures, and standards of the council forming the Partnership.

6.3.3 Sufficiently trained and instructed with regard all relevant rules and procedures concerning health & safety at work legislation and able to identify risks or potential safety hazards.

6.3.4 Sufficiently trained and instructed in the use of any specialist equipment required for the provision of the Building Control Functions and in the moving and handling of equipment and people.

6.4 Fareham Borough Council assumes full responsibility for its staff and for the actions of such staff while performing the Building Control Functions pursuant to this Deed and shall be solely responsible for their supervision, daily direction and control, payment of income including income tax, insurance contributions and levies of any kind, relating to or arising out of the employment of any person employed by Fareham Borough Council and shall fully and promptly indemnify the other Councils in respect of any liability of Fareham Borough Council in respect thereof, subject always to any other provisions within this Deed or Memorandum of Understanding approved under this deed which specifically provides to the contrary.

7. Accommodation and equipment

7.1 Suitable office accommodation sufficient for the provision of the Building Control Service will be provided by the Councils at The Depot Offices, Broadcut, Fareham, for the majority of the staff and at Gosport Town Hall and Portsmouth City Council for such visiting staff as the Head of Building Control Partnership considers appropriate or such other site as agreed in writing by the Officer Group

7.2 All assets will remain in the ownership of the Council who purchased the same unless and until transferred under the provisions of clause 11.4 and the Head of Building Control Partnership shall compile and maintain a record of all assets acquired for use by the Partnership.

8. IT services

8.1 Fareham Borough Council will provide IT systems, secure network, internet access, software, secure data / information storage, telephone and printing facilities and support to the Partnership and will ensure such systems are linked to and available to officers of the Partnership attending at Gosport Town Hall, and Portsmouth Civic Offices.

8.2 Gosport Borough Council and Portsmouth City Council will provide IT support to officers of the Partnership working at Gosport Town Hall and Portsmouth Civic Offices and all necessary support to Fareham Borough Council to maintain the availability of the IT systems provided by Fareham Borough Council to officers of the Partnership working at Gosport Borough Council and Portsmouth City Council through the link referred to above in 8.1 or otherwise.

9. Financial provisions

9.1 Financial arrangements arising from the exercising of the Building Control Functions will be as set out in Schedule 2

10. Review / Variation

10.1 The Councils may agree at any time to vary this Deed or associated Memorandum of Understanding provided always that each Council agrees to the proposed variation and such variation is executed jointly in writing and in accordance with each Councils Constitution by the Fareham Representative, the Gosport Representative and the Portsmouth Representative collectively on behalf of the Councils.

10.2 The Councils agree to review the operation of this Deed and associated Memorandum of Understanding regularly and in any event not less than every three years. Such review to be carried out by the Officer Group and reported to the Panel for recommendation to the Councils accordingly under their normal decision-

making functions.

11. Termination

- 11.1 Any Council may bring this Deed to an end by giving to the other Councils not less than 12 months' notice in writing expiring on 31 March in any year.
- 11.2 Notwithstanding 11.1 above, this Deed may be terminated at any time if the Councils unanimously agree to terminate this Deed.
- 11.3 Within four weeks of such notice being given pursuant to clause 11.1, the Officer Group shall meet to agree the steps necessary to place each Council in a position to continue the performance of the Building Control Functions to the Agreed Performance Standards after the termination of this Deed. The Representative of the Council giving notice shall make a written report setting out the steps agreed at the meeting of the Officer Group referred to above to the next scheduled meeting of the Panel, or if that would not be within 4 weeks of the meeting referred to above, shall convene a special meeting of the Panel within that time for that purpose.
- 11.4 During the period between the giving of notice under this paragraph and the termination of the agreement all Representatives/Senior Officers shall ensure that any information reasonably requested of their respective Councils by the other Councils is supplied promptly and in any event within 10 Working Days. Each Council shall provide all reasonable assistance to the other Councils to enable the other Councils to be in a position to continue the performance of the Building Control Functions to the Agreed Performance Standards.
12. On termination of this Deed the assets used in the provision of the Building Control Service will be apportioned between the Councils in the same proportion as the income and costs of the provision of the Building Control Service have been apportioned under the provisions of Schedule 2 to this Deed in the last financial year of the Deed. Unless otherwise provided the following provisions shall also apply;
- 12.1.1 The Councils will return all documents pertaining to outstanding work in the area of each of the other Councils reasonably required to enable them to deliver their Building Control Functions.

12.1.2 If an agreement under clause 11.5 cannot be reached any of the Councils may refer the matter direct to adjudication under the provisions of clause 15.

13. Insurance

13.1 Adequate insurance shall be effected and maintained by each Council in respect of their individual and collective liability arising from the discharge of the functions referred to in this Agreement and for a period of fifteen years after it ends PROVIDED that

12.1.1 Fareham Borough Council will maintain an Employers Liability policy for such staff as may provide advice, support and assistance to the Partnership throughout the term of this Agreement sufficient to cover all its own posts working with and to support the Partnership

12.1.2 (i) Sufficient Public Liability insurance shall be maintained by each of the

Councils relating to the Building Control Functions and

(ii) Each Council shall maintain such insurance as it considers necessary to accord with good risk management practice in respect of financial loss arising from the performance of the Building Control Functions.

13 Limitation of Liability & Indemnities etc.

13.1 Save as otherwise specifically provided for in this Deed, no provision of this Deed shall be construed as making one Council liable for any part of any and all acts or omissions of any other Council and each Council (the "Indemnifying Council") hereby indemnifies the others (the "Indemnified Councils") against all actions proceedings cost claims and demands made against any Indemnified Council arising from any act, omission or other default of the Indemnifying Council and whether arising before or after the date of this Deed.

13.2 During the period of this Deed and for a reasonable period after its termination the Fareham Borough Council shall hold Professional Indemnity insurance to a minimum value of £5 million, the Councils shall each bear the cost of indemnifying the other Councils against any actions proceedings

costs claims or demands made by any third party against the Councils and due to any actual or alleged act or omission (including negligent or deliberate acts or omissions) of the Councils in carrying out the delegated functions.

13.3 All claims or potential claims received by a Council will be notified to the other within two working days.

13.4 Each Council will afford all reasonable assistance to the other Council and its insurers in defending any claim.

14 Complaints

14.1 Complaints relating to the manner in which the Councils undertake the Building Control Functions shall be referred to the Head of Building Control Partnership who will carry out, or arrange the carrying out of, an investigation of such complaint in accordance with the complaints procedure of the relevant Council which may result in the escalation of the complaint through the complaints process of the relevant Council

14.2 A record shall be maintained of all complaints made concerning the activities of the Partnership of the conduct of any matter undertaken by the Partnership, together with details of steps taken to resolve or otherwise deal with the complaint.

15 Disputes & Adjudication

15.1 If any difference or disagreement arises between the parties as to any matter under this Deed it shall be referred to the Officer Group and the Chief Executives of all the Councils who shall, acting in good faith, endeavor to resolve it by negotiation within a period which they consider to be reasonable (but not exceeding 20 Working Days).

15.2 If any dispute which arises out of this Deed cannot be resolved after referral in accordance with clause 15.1, the dispute shall be referred to, and finally resolved by, arbitration under the rules of the Chartered Institute of Arbitrators which rules are deemed to be incorporated by reference under and pursuant to this clause.

15.3 Save for an award relating to the Budget or other financial matters affecting the

carrying out of the Building Control Functions (which the Councils hereby agree to accept without recourse to further action) if any of the Councils remain dissatisfied with the outcome of any dispute determined in accordance with clause 15.2, it may serve notice to terminate this deed pursuant to clause 11.1.

16 Access to Information

16.1 The Partnership shall keep and maintain adequate and comprehensive records relating to the carrying out of the Building Control Functions.

16.2 In carrying out the requirements of clause 16.1 above the Partnership shall have regard to the policies and procedures of each of the Councils relating to Access to Information, Freedom of Information, Environmental Information Regulations and Data Protection including compliance with the GDPR (as applied in UK domestic law) and Data Protection Act 2018 requirements of the Councils.

16.3 The Partnership and each Council shall provide each other Council all reasonable assistance it may need in order to comply with its statutory duties obligations and responsibilities and other best practice or good practice in relation to Access to information, Freedom of Information, Environmental Information Regulations and Data Protection

17 Miscellaneous provisions

17.1 Any notice to be served under this Agreement on a Council shall be in writing and sent by recorded delivery post or delivered by hand. In the case of service on Fareham Borough Council it shall be addressed to the Chief Executive Officer (or to the officer who is the Council's Head of the Paid Service) at the Civic Offices above, in the case of service on Gosport Borough Council it shall be addressed to the Chief Executive (or to the officer who is the Council's Head of the Paid Service) at the Town Hall above and in the case of Portsmouth City Council on the Chief Executive at the Civic Offices.

17.2 Reference in this deed to any statutory provisions shall include reference to any statutory modifications or re enactment

IN WITNESS WHEREOF the parties hereto have executed this Agreement as a deed by affixing their respective Common Seals the day and year first above written

Schedule 1

**SCOPE OF FAREHAM (FBC) GOSPORT(GBC) AND PORTSMOUTH(PCC)
BUILDING CONTROL SERVICES**

	FBC	GBC	PCC
1.0 Statutory services open to competition			
• Fee earning -Building Regulation application, plan examination and site inspection	√	√	√
• Non-fee earning Disabled exempt Building Regulation applications	√	√	√
2.0 Non fee-earning Statutory services not open to competition			
• Building Regulation enforcement, including all enforcement relating to the services set out below	√	√	√
• Administering Initial Notices	√	√	√
• Dangerous structure services	√	√	√
• Demolitions	√	√	√
• Road naming and numbering (1)	√	√	X
• Applications for relaxing or dispensing with Building Regulations	√	√	√
• Regularisation applications	√	√	√
•			
• Competent Person submissions	√	√	√
3.0 Non fee earning Ancillary Services			
• Land Charge search Building Regulation enquiries	√	√	√
• Licensing consultations/ inspections	√	√	√
• General advice on building matters	√	√	√
• Pre-submission Building Regulations advice	√	√	√
• Access Officer for the disabled	√	√	X
• Energy rating service	√	√	X

• Party Wall Act third Surveyor	√	√	√
• Public sewer enquiry service	√	√	√
• Safety at Sports Grounds • Member of Safety Advisory group	√	√	√
4.0 Service features			
ISO 9000 Quality Assurance registration	√	√	√
• Computerised application system	Ocella	Ocella	Ocella

(1) Gosport Borough Council and Fareham Borough Council charge for the administrative functions associated with Road naming and numbering

Schedule 2 FINANCIAL

PROVISIONS

1. Financial Records

- 1.1. Full audit trail and detailed analysis of all financial transactions will be maintained by each Council and made available to the other Council's upon request. The full financial status of the Building Control Service will be subject to audit as set out in the Memorandum of Understanding.
- 1.2. Gosport Borough Council and Portsmouth City Council will raise a monthly payment and detailed analysis to Fareham Borough Council for the gross income that they have received. On a monthly basis a detailed schedule of expenditure and invoice will be sent to Fareham Borough Council for payment.
- 1.3. Fareham Borough Council will raise a quarterly invoice for non fee-earning work carried out by the Partnership for Gosport Borough Council and Portsmouth City Council.
- 1.4. Fareham Borough Council will produce a trading account at the end of each monthly accounting period, showing the current position including the distribution of non-fee earning expenditure to be shared between the Councils.
- 1.5. Information in respect of income, costs and recharges will be provided within 10 Working Days of each Fareham Borough Council accounting period. The trading account will be provided within 15 Working Days of each Fareham Borough Council accounting period. Draft figures may be used where the accounting periods of the authorities differ.

2. Share of Income and Expenditure

- 2.1. Income arising from Fee Earning work will be allocated in accordance with the administrative boundaries of Fareham Borough Council, Gosport Borough Council and Portsmouth City Council. The analysis of income received will be generated from the Ocella system(s).
- 2.2. Income arising from other fees and charges payable by each Council will be allocated in accordance with the administrative boundaries of Fareham Borough Council, Gosport Borough Council and Portsmouth City Council.
- 2.3. The allocation of costs within the fee earning account will be in the same proportion as the actual income generated within the Fareham Borough Council, Gosport Borough Council and Portsmouth City Council administrative boundaries. The basis will be reviewed if there is any material change in the ratio of fee-earning work.

- 2.4. The apportionment of the non fee-earning expenditure will be based on the fee-earning income percentage over a 3-year rolling period which will be reviewed annually by The Officer Group following consultation with The Panel to determine if the approach is still appropriate.
- 2.5. The Partnership will hold a Downturn Reserve of an initial sum of £150,000 which will be used by The Officer Group following consultation with The Panel to offset loss of income or contribute towards redundancy costs should there be a need as a result of economic conditions. Other measures will be explored before the reserve is called upon.
- 2.6. The basis of contribution from each Council will be by the same formula as used in 2.4 of this schedule.
- 2.7. An annual adjustment of the Downturn Reserve will be determined by The Partnership Finance Officer to account for operational costs and inflation.
- 2.8. The level of the Downturn Reserve will be reviewed, as a minimum every 3-years, by The Officer Group following consultation with The Panel.

3. Estimates

- 3.1. Draft estimates for the Building Control Service compiled by the Head of Building Control Partnership and finance officers of all three Councils are to be presented to the Panel prior to approval by each Council.
- 3.2. It is the responsibility of the Head of Building Control Partnership to ensure that actual expenditure, including support service costs, keeps within the approved estimates, and that income levels are monitored. Any significant variations in either income or expenditure are reported to the Panel. Changes to the Partnership Scheme of charges for Fee Earning activities set out in paragraph 1 of Schedule 1 will be presented to the Panel for review prior to implementation. The level of fees and charges for the next financial year will be compiled by the Head of Building Control Partnership and finance officers of all the Councils and presented to the Panel for consideration as part of the budget setting process.

INCOME

4. External Fees and Charges

- 4.1. Billing for external fees and charges will be through the Fareham Borough Council debtor system, based on information from the Ocella system.
- 4.2. All billing, including the raising of debtors and debt collection issues will be performed by Fareham Borough Council.

Customers will be encouraged to make payments to Fareham Borough Council, although all Councils can accept any Building Control Service income. Gosport Borough Council and Portsmouth City Council will forward the monies and detail of any income received at Gosport Borough Council and Portsmouth City Council as set out in 1.2 above. The reconciliation of all income will be maintained at Fareham Borough Council.

5. Internal Charges made for Fee Earning Work

- 5.1. Where the fees and charges for fee-earning work are to be charged to Fareham Borough Council, an invoice will be raised through the internal billing system.
- 5.2. Where the cost is payable by Gosport Borough Council or Portsmouth City Council, Fareham Borough Council will raise a sundry debtor.
- 5.3. These charges must be made within 15 Working Days of the end of each accounting period in respect of work for Fareham Borough Council and on commencement of the relevant work for Gosport Borough Council or Portsmouth City Council. The information from Gosport Borough Council and Portsmouth City Council must be included in the income analysis sent to Fareham Borough Council.

6. Internal Charges made for Other Services

- 6.1. Work carried out for other services will be charged at cost. The charges will be generated by the formula determined in 2.4 of this schedule
- 6.2. It is anticipated that all three Councils will continue to use the Partnership for non-fee earning work as detailed in Schedule 1. Any material change to the volume of time spent in these services will be reviewed, and any necessary steps taken to ensure that there is no detrimental effect.
- 6.3. Charges to Gosport Borough Council and Portsmouth City Council will be charged to a holding account within Fareham Borough Council which will be cleared by raising an invoice, with payment made each month.
- 6.4. Each Council within the Partnership will continue to be responsible for the cost of

non-fee earning work carried out for or on behalf of its individual Council and should ensure that satisfactory budgetary provision is made to cover the cost of these works. The costs of the non-fee earning work (which is net of income received as referred to in paragraph 2.2 above) will be monitored throughout the year and any potential overspend will be highlighted by the officer representing that Council on the Officer Group. The officer, working with its Council, will arrange to cover the cost of the non-fee earning works from the budget of that Council including any overspend and the other Council's that form the Partnership will take no responsibility or expected to

take any responsibility for the costs of the non-fee earning work including any overspend. In subsequent years the Council in which the overspend has occurred will make arrangements to have sufficient budget in place to ensure that the full extent of non-fee earning works are covered in their budget. FOR THE AVOIDANCE OF DOUBT each Council is responsible for the cost of non-fee earning work undertaken by the Partnership in respect of their administrative area and shall make payment of such costs in accordance with the provisions of this Agreement.

EXPENDITURE

7. Employees

- 7.1. Employees will continue to be paid by their employer. This may be reviewed subject to any future change to the legal status of the Partnership.
- 7.2. The analysis of staff time will be determined in accordance with the formula set out in paragraph 2.4 of this schedule.
- 7.3. The distribution of costs in relation to material costs that have not been anticipated e.g. severance payments will be agreed between the Councils if they arise.
8. Supplies & Services
- 8.1. The supplies and services costs relating to fee earning work will be shared between the Councils as set out in this schedule.
- 8.2. Where possible purchase orders for the Partnership should be raised through Fareham Borough Council.
9. Internal Recharges made to the Partnership
- 9.1. The costs of internal recharges relating to fee earning work will be shared between the Councils as set out in this schedule.
- 9.2. Internal recharges to the Building Control Service from the Councils are based on their respective recharge processes. The detailed analysis will be maintained by the Councils and the actual charges will be monitored. Any significant variations will

need to be justified and approved by the Head of Building Control Partnership and the Panel.

9.3. Any support services provided to the Partnership that are no longer required by the Partnership will reduce their costs on a phased basis, as agreed by the Officer Group to avoid any detrimental effect to the finances of the Council affected.

10. Statement of Accounts

10.1 Fareham Borough Council will produce a year end statement of the Partnership's trading account which will be presented to the Panel.

The Common Seal of FAREHAM
BOROUGH COUNCIL was affixed
to this deed in the presence of:

Authorised Signatory

The Common Seal of GOSPORT
BOROUGH COUNCIL was affixed
to this deed in the presence of:

Authorised Signatory

The COMMON SEAL of
PORTSMOUTH CITY COUNCIL
was hereunto affixed in pursuance of
a resolution of the Council passed at
a meeting duly convened and held: -

Authorised Signatory