

TONBRIDGE & MALLING BOROUGH COUNCIL



EXECUTIVE SERVICES

Chief Executive

Julie Beilby BSc (Hons) MBA

Gibson Building
Gibson Drive
Kings Hill, West Malling
Kent ME19 4LZ
West Malling (01732) 844522

NB - This agenda contains proposals, recommendations and options. These do not represent Council policy or decisions until they have received proper consideration through the full decision making process.

Contact: Committee Services
committee.services@tmbc.gov.uk

28 October 2016

To: MEMBERS OF THE STREET SCENE AND ENVIRONMENT SERVICES
ADVISORY BOARD

(Copies to all Members of the Council)

Dear Sir/Madam

Your attendance is requested at a meeting of the Street Scene and Environment Services Advisory Board to be held in the Civic Suite, Gibson Building, Kings Hill, West Malling on Monday, 7th November, 2016 commencing at 7.30 pm

Yours faithfully

JULIE BEILBY

Chief Executive

A G E N D A

PART 1 - PUBLIC

- | | | |
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To confirm as a correct record the Notes of the meeting of the Housing and Environment Services Advisory Board held on 18 July 2016

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6. The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 29 - 34

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Matters for consideration in Private

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The Chairman to move that the press and public be excluded from the remainder of the meeting during consideration of any items the publication of which would disclose exempt information.

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Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

MEMBERSHIP

Cllr M O Davis (Chairman)
Cllr D Keeley (Vice-Chairman)

Cllr Mrs J A Anderson
Cllr M A C Balfour
Cllr V M C Branson
Cllr D J Cure
Cllr Mrs T Dean
Cllr Mrs S M Hall
Cllr S M Hammond

Cllr D Markham
Cllr L J O'Toole
Cllr S C Perry
Cllr M R Rhodes
Cllr T B Shaw
Cllr Ms S V Spence

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Apologies for absence

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Declarations of interest

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TONBRIDGE AND MALLING BOROUGH COUNCIL

STREET SCENE AND ENVIRONMENT SERVICES ADVISORY BOARD

Monday, 18th July, 2016

Present: Cllr M O Davis (Chairman), Cllr D Keeley (Vice-Chairman), Cllr Mrs J A Anderson, Cllr M A C Balfour, Cllr V M C Branson, Cllr D J Cure, Cllr Mrs S M Hall, Cllr S M Hammond, Cllr L J O'Toole, Cllr S C Perry, Cllr M R Rhodes and Cllr T B Shaw

Councillors O C Baldock, P F Bolt, Mrs B A Brown, N J Heslop, D Lettington and M Taylor were also present pursuant to Council Procedure Rule No 15.21.

Apologies for absence were received from Councillors Ms J A Atkinson and Ms S V Spence

PART 1 - PUBLIC

SSE 16/1 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

MATTERS FOR RECOMMENDATION TO THE CABINET

SSE 16/2 ENVIRONMENTAL HEALTH PERFORMANCE 2015/16

Decision Notice D160049MEM

The report of the Director of Planning, Housing and Environmental Health summarised the operational activities in relation to the Council's statutory Environmental Health functions undertaken by the Environmental Protection Team and the Food and Safety Team during 2015/16. Details were also given of proposed service improvements for 2016/17.

RECOMMENDED: That the performance information relating to activities associated with food and safety and environmental protection functions in 2015/16 be noted and the service improvements for 2016/17 set out in paragraphs 1.4.1 and 1.4.2 of the report be endorsed.

SSE 16/3 WASTE AND STREET SCENE SERVICES - CONTRACT PERFORMANCE 2015/16

Decision Notice D160050MEM

The report of the Director of Street Scene, Leisure and Technical Services provided performance information across a range of Waste and Street Scene Service functions and contracts during 2015/16.

RECOMMENDED: That the performance of the Waste and Street Scene Service contracts in 2015/16 be noted and the approach and range of performance indicators detailed in the report be endorsed.

SSE 16/4 CONTAMINATED LAND STRATEGY 2016

Decision Notice D160051MEM

The report of the Director of Planning, Housing and Environmental Health referred to the Council's first Contaminated Land Strategy which had been produced in 2001. An updated draft Strategy was presented reflecting changes introduced following the review of the relevant technical guidance and incorporating comments received from statutory consultees. During consideration of this item concern was raised regarding the process for ensuring remediation works were undertaken prior to the re-development of contaminated land.

RECOMMENDED: That

- (1) the revised Contaminated Land Inspection Strategy set out in the Annex to the report be endorsed and formally adopted as Council policy; and
- (2) the Director of Planning, Housing and Environmental Health be asked to submit a report to a future meeting of the Street Scene and Environment Services Advisory Board outlining the current process and procedures for the remediation of contaminated land.

MATTERS SUBMITTED FOR INFORMATION

SSE 16/5 WASTE AND STREET SCENE SERVICES UPDATE

The report of the Director of Street Scene, Leisure and Technical Services provided an update on a number of projects and initiatives undertaken within the Waste and Street Scene services.

SSE 16/6 REFUSE AND RECYCLING COLLECTIONS RESCHEDULING

The report of the Director of Street Scene, Leisure and Technical Services outlined a proposal to reschedule the refuse and recycling collection services to allow the efficient operation of the service in line with recent and ongoing domestic property growth.

SSE 16/7 ESTATES EXCELLENCE PROJECT IN LARKFIELD AND AYLESFORD

The report of the Director of Planning, Housing and Environmental Health summarised the outcomes of the Estates Excellence project recently delivered by the Food and Safety Team in Larkfield and Aylesford to assist small businesses with health and safety issues.

MATTERS FOR CONSIDERATION IN PRIVATE

SSE 16/8 EXCLUSION OF PRESS AND PUBLIC

There were no items considered in private.

The meeting ended at 8.30 pm

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TONBRIDGE & MALLING BOROUGH COUNCIL

STREET SCENE & ENVIRONMENT SERVICES ADVISORY BOARD

07 November 2016

**Joint Report of the Director of Street Scene, Leisure and Technical Services,
Director of Planning, Housing and Environmental Health and Director of Finance
and Transformation.**

Part 1- Public

Matters for Recommendation to Cabinet - Key Decision

1 REVIEW OF FEES AND CHARGES

Summary

This report sets out the proposed fees and charges for the provision of services in respect of food certificates, contaminated land monitoring, Private Water Supplies, pest control, stray dog redemption fees, household bulky refuse & Fridge/freezer collections, "Missed" Refuse collections and the Council's car parks from April 2017.

1.1 Introduction

1.1.1 In bringing forward the charging proposals for 2017/18 consideration has been given to a range of factors, including the Council's overall financial position, market position, trading patterns, the current rate of inflation, competing facilities and customer feedback.

1.1.2 The proposed charges for 2017/18 have also taken into account the set of guiding principles for the setting of fees and charges approved by Members of the Finance, Innovation and Property Advisory Board and reproduced below for the benefit of the Board:

- 1) Fees and charges should reflect the Council's key priorities and other corporate aims and priorities recognising there may be trade-offs as these are not mutually exclusive.
- 2) Fees and charges should have due regard to the Council's Medium Term Financial Strategy.
- 3) If there is to be a subsidy from the council tax payer to the service user this should be a conscious choice.
- 4) The Council should look to maximise income subject to market conditions, opportunities and comparable charges elsewhere, in the context of its key priorities and other corporate aims and priorities.

- 5) Fees and charges should normally be reviewed at least annually (unless fixed by statute or some other body).
- 6) Fees and charges should not be used to provide a subsidy from the council tax payer to commercial operators.
- 7) There should be consistency between charges for similar services.
- 8) Concessions for services should follow a logical pattern so as not to preclude, where appropriate, access to Council services on the grounds of ability to pay.

1.2 Condemned Food Certificates

1.2.1 This is a service available to food businesses in the borough which properly controls the safe surrender and disposal of food deemed by environmental health staff as unfit for human consumption. The service continues to reflect legislative requirements for stricter controls and is based on total cost recovery. The proposed charges, as set out below, continue to reflect this approach and to reflect the Council's Budget Strategy.

1.2.2 Recent years have seen a significant decline in the number of certificates requested. The lower income rate is reflected in the revised and estimated revenue budgets.

Service	Current Charge	Recommended Charge	Income Full Year 2017/18
For each Condemned Food Certificate issued	£135 for first hour plus £135 for each additional hour plus VAT	£140 for first hour plus £140 for each additional hour plus VAT	£140

For comparable purposes, Dartford charge £160.00 + VAT minimum charge for maximum of 2 hours. Sevenoaks District Council has not been required to issue any for a number of years. Gravesham charge £100 + £25 per hour and any part of, for officer time.

1.3 Exported Food Certificates

1.3.1 This is a service provided by the Council for food exporters who export food outside the European Union. In this instance, authorising officers of the Borough Council certify that the food products being exported have been manufactured and held under hygienic conditions in accordance with the requirements of Regulation (EC) 852/2004 and The Food Safety & Hygiene (England) Regulations 2013. The premises are subject to regular inspection by Food and Safety Officers.

- 1.3.2 The level of demand for Exported Food Certificates that was identified in last year's report has been maintained, this year 19 certificates were issued, compared with 20 last year.
- 1.3.3 Within Kent authorities that have provided details of their charges Dover charge £50.00, Maidstone charge £121.80 + VAT. Sevenoaks District Council and Gravesham Borough Council have not been required to issue any for a number of years.
- 1.3.4 It is evident that throughout the Country there is a wide variation on the fees set for providing this service. Gloucester City Council make a charge of £26.79 per certificate; Liverpool £71.00 and East Riding £70.00.

Service	Current Charge	Recommended Charge	Income Full Year 2017/18
For each Exported Food Certificate issued	£45 plus VAT per certificate	£50 plus VAT per certificate.	£1000

- 1.3.5 Having explored a range of options on charging we are proposing a modest increase in the charge for each certificate issued of £5 which is based on cost recovery.

1.4 Contaminated Land

- 1.4.1 The Environmental Protection Act 1990 Part 2A requires local authorities to implement a system for the identification and remediation of land where contamination is causing a risk to human health or the wider environment because of historic or current uses.
- 1.4.2 The Environmental Protection Team provides a contaminated land information service or assessment of risk for which it currently makes a charge of £52 per hour in responding to these requests for information.
- 1.4.3 Guidance from the Information Commissioner advises that local authorities can make a reasonable charge. We have assumed that a reasonable charge includes the hourly rate of the officer responsible for providing information, on-costs and an administration charge.
- 1.4.4 The fee has been derived based upon comparison with other Kent local authorities. Sevenoaks charge £50, Maidstone BC; Thanet DC, Swale BC and Gravesham BC currently charge between £36 and £75 per hour. There is no maximum fee under the legislation.
- 1.4.5 We propose to apply a small increase to the current charge to reflect costs in responding to these requests for information, for which there has been a reduction in the number of requests being made.

Service	Current Charge	Recommended Charge	Income Full Year 2017/18
Responding to requests for information relating to contaminated land	£52.00 per hour (1 hour minimum charge)	£55.00 per hour (1 hour minimum charge)	£2,000

1.5 Private Water Supplies

- 1.5.1 The Private Water Supplies Regulations 2009 introduced a statutory and more onerous regime for the risk assessment and sampling of private water supplies.
- 1.5.2 In a report to this Board on 28 February, 2011 it was agreed to introduce a charge to recover the cost of officer's time. In addition, owners of private water supplies and private distribution networks will be charged for the cost of sample analysis.
- 1.5.3 We have reviewed the cost of providing this service and propose to apply a small increase to £47 per hour, plus the cost of sample analysis.
- 1.5.4 The fee has been derived based upon comparison with other Kent local authorities. Tunbridge Wells BC, Sevenoaks DC (£35), Medway, Dartford and Gravesham BC currently charge between £35 and £60 per hour. These charges are subject to a maximum limit which is set out under the Private Water Supplies (PWS) Regulations 2009.
- 1.5.5 As each private water supply is very different, the officer time for each visit/ risk assessment is difficult to quantify. The projected income for the year is based upon the officer's projected workload for the year, approximately 35 hours.

Service	Current Charge	Recommended Charge	Income Full Year 2017/18
Carrying out sampling and risk assessment of private water supplies	£47.00 per hour (1 hour minimum charge) plus VAT	£50.00 per hour (1 hour minimum charge) plus VAT	£1,750

1.6 Pest Control

- 1.6.1 The Council has a statutory duty to inspect the borough for the incidence of rats and mice and to take action where an infestation is found. This function is supported by statutory powers to serve notice on owners of land to take action to destroy rats and mice and/or prevent conditions likely to provide harbourage for pests.

- 1.6.2 The pest control service was reviewed and retendered in 2012 as a joint contract with Tunbridge Wells Borough Council. The current service provides a free treatment of rats, mice, cockroaches and bedbugs to those on Council Tax support only.
- 1.6.3 In all other cases, customers may be referred to Monitor Environmental Services to carry out a charged treatment. Alternatively, customers may arrange treatment direct with their own pest control company.
- 1.6.4 Numbers of service requests from those on Council Tax support are very small, with an estimated overall cost to the Council of £2,000 per annum. Having only recently reviewed the service provision, in the interests of public health and with very small numbers of service requests, it is not considered appropriate to change this arrangement.

1.7 Stray Dog Redemption Fees

- 1.7.1 The Environmental Protection Act 1990 prescribes that a person claiming to be the owner of a dog seized as a stray by the Council shall not be entitled to the return of the dog unless all the expenses incurred by reason of its detention, and such further amount as is for the time being prescribed, are met. The Environmental Protection (Stray Dogs) Regulations 1992 set down a prescribed redemption fee of £25 and provides for local authorities to recover their other reasonable expenses, in addition to any other expenses incurred, such as kennelling costs.
- 1.7.2 Where a dog is taken to kennels we charge the owner for the other reasonable expenses, associated with the costs of providing our Dog Warden contract and admin costs. This is presently set at £55. The total fee charged by the Council is therefore £80. We recommend that the contract & administration fee be increased this year to £60 with no formal waiver or discount, but we will continue to exercise discretion to allow payment by instalments. The proposed total charge of £85 is still within the range of those of neighbouring councils as below (2016/17 prices for illustration):

Maidstone B.C.	Sevenoaks D.C.	Tun. Wells B.C.
£45 within office hours £65 out of office hours £75 after midnight (including statutory fee, but not including kennelling fees)	£85 (including statutory fee, but not including kennelling fees)	£85 within office hours £120 out of office hours (including statutory fee, but not including kennelling fees)
No return direct to owner - all dogs taken to kennels	£25 return direct	No return direct to owner – all dogs taken to kennels

- 1.7.3 At present, where the Dog Warden returns a stray dog to the owner without the need for kennelling, a charge is made at the prescribed fee of £25. This rate was introduced, after agreement by this Board, in July 2009.

Service	Current Charge	Recommended Charge	Income Full Year 2017/18 (assuming number of claimed/returned dogs remains static)
Stray Dog Redemption Fee - Return Direct to owner	£25 (Statutory fee)	£25 (Statutory fee)	£1,025
Stray Dog Redemption Fee - Kennelling required	£80 (including statutory fee, but not including kennelling fees).	£85 (including statutory fee, but not including kennelling fees).	£9,690 (£570 additional income)

- 1.7.4 It is also worth noting that the Council has just received a RSPCA Gold Award for the fifth year running in recognition of the pro-active work carried out by the Dog Warden service relating to stray dogs. Full details of the award are included in the Waste & Street Scene Services update report later on this agenda.

1.8 Household Bulky Refuse & Fridge/Freezer Collection Service

- 1.8.1 A full review of charges for this service was reported to this board in February 2016 and the revised charges came into place in April this year. Although we only have part year data since the introduction of the new charges, we are currently on

target to achieve the £40,000 savings for this service that were highlighted in the February report.

- 1.8.2 While Councils are not able to make a profit from the collection of a “prescribed” household waste (such as our bulky collection service), the legislation does allow us to recover the associated collection costs (together with reasonable administration costs). Having only carried out a full review of these charges earlier this year, it is felt that the current charges are in keeping with this principle, are within the range of neighbouring councils who tend to charge per item, with minimal scope to increase further at this time.
- 1.8.3 It is therefore proposed that there is no increase to the current charges for 2017/18 and that this be reviewed further next year when we have a full year’s data on service use and confirmed costings.

Service	Full Current Charge	Concession Charge	Income Full Year 2017/18
Household Bulky Refuse Collection (up to six items)	£50.00	£10.00	£83,000
Separate item Fridge/Freezer Collection	£25.00	£10.00	

1.9 “Missed” Refuse collection

- 1.9.1 On occasion the Waste Services team receive requests from customers to empty wheeled bins where the customer has not placed their bin out and “missed” the collection. In general, where it is the resident’s error the contractor is not obliged to return. On these occasions the team are often asked by the customer if they can pay for a “one off” return collection.
- 1.9.2 A collection charge of £15.00 to cover these circumstances was introduced in April 2015 and covers the contractor cost and includes a small administration fee. The current collection charge for 2016/17 is £16.00.
- 1.9.3 This service charge has now been in place for eighteen months and to date there have been no concerns raised by customers. Although very low numbers of requests have been made, this does allow our Waste Services staff to offer an alternative solution when discussing a “missed bin” or “bin not put out by the resident”.
- 1.9.4 It is proposed to increase this charge to £17.00 in April 2017 to cover our increased costs and a small administration fee.

Service	Current Charge	Recommended Charge	Income Full Year 2017/18
"Missed" Refuse Collection Charge	£16.00	£17.00	£612

1.10 Car Parking

- 1.10.1 A comprehensive review of parking charges was undertaken at the start of 2016, which resulted in a number of changes and new charges coming into effect in May 2016. We have reviewed the level of our current charges against the prevailing picture in nearby areas and generally against the current economic climate and have come to the conclusion that no further charges are currently appropriate.
- 1.10.2 With regard to the new parking charges in West Malling it has been agreed that there will be a review after the first full year. The review will be in liaison with the local Parish Council and Chamber of Commerce and will be reported to a future meeting of this Board.
- 1.10.3 It is the intention to replace the Council's entire stock of car parking machines in spring 2017, with a report to the next meeting of this Board. This will coincide with introduction of the new £1 coin.
- 1.10.4 It is proposed that no changes are made to parking charges this year and that these should be reviewed again in 12 months' time.

1.11 Legal Implications

- 1.11.1 The Council has lawful authority to set fees which allow recovery of its reasonable costs.

1.12 Financial and Value for Money Considerations

- 1.12.1 The increase in fees proposed is intended to ensure that the income derived covers the costs to the Council in providing a service.

1.13 Risk Assessment

- 1.13.1 A decision is required now on the proposed fee structure for these activities to ensure that the Council has timely and up-to-date arrangements in place to administer service requests when received

1.14 Equality Impact Assessment

- 1.14.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

1.15 Recommendations

1.15.1 Cabinet is **RECOMMENDED** to **APPROVE** the scale of charges for mandatory condemned food certificates, exported food certificates, contaminated land monitoring, sampling private water supplies, stray dog redemption fees, household bulky refuse & Fridge/Freezer collection, “Missed” refuse collection and car parking charges with effect from 1 April 2017 as detailed in the above report.

Background papers:

Nil

contact: Dennis Gardner
Andy Edwards
Jane Heeley

Robert Styles
Director of Street Scene, Leisure and
Technical Services

Steve Humphreys
Director of Planning, Housing and
Environmental Health

Sharon Shelton
Director of Finance & Transformation

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TONBRIDGE & MALLING BOROUGH COUNCIL

STREET SCENE and ENVIRONMENT SERVICES ADVISORY BOARD

07 November 2016

Report of the Director of Street Scene, Leisure and Technical Services

Part 1- Public

Matters for Recommendation to Cabinet – Council Decision

1 **SATURDAY HOUSEHOLD BULKY & WASTE ELECTRICAL & ELECTRONIC EQUIPMENT (WEEE) SERVICE REVIEW**

Summary

This report updates Members on the review of the Council's Bulky Refuse Collection and WEEE recycling service. The report makes recommendations for the continued provision of the services at no additional cost to the Council.

1.1 Background

1.1.1 The Council currently provides a Saturday Household Bulky collection service at 63 sites across the borough over a four-week cycle each month. A refuse freighter attends each site for an hour so that residents can dispose of bulky and additional waste. The service has been in place for many years, is extremely popular with residents at the majority of locations, and is part-funded by Kent County Council (KCC) due to the lack of a Household Waste Recycling Centre (HWRC) within the borough.

1.1.2 There have always been certain types of waste that cannot be taken by the bulky collection service, such as builders' waste, liquids, fridges & tyres. In recent years this has been extended by changes in legislation to include WEEE items, such as TVs, PC monitors, ovens, small electrical items, etc. In 2012 the Council commenced a trial service whereby a second vehicle attended each of the 63 sites at the same time as the refuse freighter to collect WEEE items for recycling. This service is also provided by our waste collection contractor, Veolia, and has to date diverted 530 tonnes of additional waste from landfill.

1.2 WEEE Collection Service

1.2.1 The WEEE service has proved very popular with residents, and also assists Veolia by enabling many items excluded by legislation from the normal Saturday Bulky service to be collected. From a monthly average of 4.75 tonnes in 2012/13, we are now collecting an average of 15.29 tonnes per month of WEEE items, diverting them from landfill or incineration. The current cost to the Council of providing the WEEE service is £19,600 per annum. In 2015/16 we were

successful in securing external funding through the Department for Business Innovations & Skills of £25,700 to pay for the WEEE service. Together with a one-off contribution of £6,000 from KCC, this meant that the service could be fully funded to 30 September 2016. Having received some further financial support from Veolia, we have been able to extend the service until 31 December 2016. Unfortunately there are currently no further external funding opportunities available, either through KCC or from other sources.

- 1.2.2 A review of the existing Saturday Bulky and WEEE services has been undertaken which included a number of options:
- cease provision of the WEEE service completely;
 - significantly reduce the number of locations visited by the Saturday Bulky service so that WEEE collections could continue at the remaining sites;
 - revise the existing service schedule in order to achieve efficiencies and make savings which could then contribute to the continuation of the WEEE service;
 - work with Veolia to identify efficiencies across the refuse, recycling & street cleansing contracts to help support the continued provision of the WEEE service.
- 1.2.3 Over the course of this summer, we have assessed usage at each collection location and reviewed the tonnage of bulky & WEEE waste collected; and the time spent at each site. It is worth noting that Veolia currently allow 30 minutes travel time between each site, regardless of the actual distance between locations, and an hour spent at every location, regardless of usage or tonnage collected. It was also identified that a number of locations could be grouped differently to maximise efficiency.
- 1.2.4 Having completed the review in partnership with Veolia, it is considered that a combination of both options 3 & 4 would achieve the aim of maintaining the WEEE service at the majority of the current Saturday Bulky locations.
- 1.2.5 Ceasing provision altogether would lead to significant dissatisfaction on the part of residents who use the service, especially in those areas where alternative options for disposal are limited. Residents can take their WEEE items to one of KCC's HWRCs, but as KCC currently have no plans for an HWRC within the borough, this option is not readily available to many of our residents.
- 1.2.6 A number of charities, such as the British Heart Foundation, will accept certain WEEE items for reuse and selling on, but the amount and types of equipment they can handle are limited. They also have limitations on the condition and age of the item, and there is no consistent approach to WEEE reuse across charities and other third sector organisations within Kent, and certainly cannot be considered a suitable alternative to the current WEEE service. However, when tendering for the

new contract, there may be opportunities to partnership with the third sector in order to deliver efficiencies and social value.

- 1.2.7 WEEE items taken to the Saturday Bulky vehicle cannot be accepted so there would be a risk of increased fly tipping or other illegal disposal of that waste. It is not considered desirable to significantly reduce the number of sites visited over the four-week cycle, as despite there being variations in usage, all of the locations are well used.
- 1.2.8 The proposed new schedule (**Annex 1**), maintains an appropriate level of service provision in each of the areas currently served. We have reduced the time spent at the lesser-used locations from 60 to 45 minutes. We have grouped the locations on each route to minimise time & fuel travelling between locations, thus reducing each driver's working day from 6 to 5 hours.
- 1.2.9 The new schedule reflects a continuation of both services at 60 of the 63 sites visited in the original four-week cycle. The three sites where there is a change are:
- Borough Green – Dene Lodge Week 2. This site is still visited in Weeks 1 & 3 of the proposed schedule. There are additional sites at the Blue Anchor, Platt, in Weeks 2 & 4.
 - Stansted/Fairseat – Village Hall Week 1. This site is still visited in Week 3.
 - Trottiscliffe – Ford Lane Week 3. There are two alternative sites at Ad-Pine on the A20 and Trottiscliffe Road opposite the golf course.
 - Local Members have been advised of the proposed re-scheduling and any comments received will be made available at the meeting.
- 1.2.10 Veolia have also identified a number of operational efficiencies which reduce their internal operating costs. They have agreed to reinvest those savings into the WEEE service provision as they see the operational benefit of diverting WEEE items away from the normal Saturday Bulky service and from potential fly tips.
- 1.2.11 A combination of the initiatives detailed above would provide sufficient funding for the WEEE service to be continued until the end of the current refuse and street cleansing contract in February 2019.
- 1.2.12 As sufficient time needs to be provided to advertise the proposed changes to the schedule, and because the current schedule has already been circulated to the public, it is intended that the new schedule be implemented from the first Saturday in February 2017.

1.3 Legal Implications

- 1.3.1 The continued service for the separate collection of WEEE items for recycling will assist this Council in demonstrating compliance with current waste legislation.

1.4 Financial and Value for Money Considerations

1.4.1 The proposals brought in this report will maintain a service to the public at no additional cost to the Council.

1.5 Risk Assessment

1.5.1 None

1.6 Equality Impact Assessment

1.6.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

1.7 Recommendations

1.7.1 It is **RECOMMENDED** to Cabinet that:

- i) the revised schedule for the collection of bulky refuse and WEEE from locations across the Borough be approved.
- ii) the revised arrangements commence in February 2017 for a period of 2 years.
- iii) the bulky refuse and WEEE Service be reviewed further as part of the retender of the Council's Refuse & Street Cleansing Contract.

Background papers:

Nil

contact: David Campbell-
Lenaghan
Dennis Gardner

Robert Styles

Director of Street Scene, Leisure and Technical Services

	ROUTE 1	ROUTE 2	ROUTE 3	ROUTE 4	ROUTE 5
WEEK 1	IGTHAM FEN POND ROAD 08.00-09.00 HILDENBOROUGH RIDING PARK 09.15-10.15 TONBRIDGE SOUTH, LODGE OAK LANE 10.30-11.30	WOULDHAM KNOWLE ROAD 08.00-09.00 BURHAM, ROCHESTER ROAD 09.15-10.15 ECCLES BULL LANE 10.30-11.30	EAST MALLING TWISDEN ROAD 08.00-09.00 RYARSH ROUGHETTS ROAD 09.15-10.15 ADDINGTON A20 - AD-PINE 10.30-11.30	WROTHAM HIGH STREET 08.00-08.45 BOROUGH GREEN DENE LODGE 09.00-10.00 TONBRIDGE NORTH DENBEIGH DRIVE 10.30-11.30	DITTON KILN BARN ROAD 08.00-08.45 AYLESFORD TEAPOT LANE 09.00-10.00 WATERINGBURY FIELDS LANE 10.30-11.30
WEEK 2	TONBRIDGE NORTH LOWER CASTLE FIELD CAR PARK 08.00-09.00 HADLOW VILLAGE HALL 09.15-10.15 TONBRIDGE NORTH, LONGMEAD SPORTS GROUND 10.30-11.30	BLUE BELL HILL MAIDSTONE ROAD 08.00-08.45 OFFHAM VILLAGE HALL 09.15-10.15 KINGS HILL CRISPIN WAY 10.30-11.30	LEYBOURNE LITTLE MARKET ROW 08.00-09.00 MEREWORTH BEAUFIGHTER ROAD 09.15-10.15 EAST PECKHAM PIPPIN ROAD 10.30-11.30	SNODLAND SALTINGS ROAD 08.00-09.00 ST MARY'S PLATT BLUE ANCHOR 09.30-10.15 WEST PECKHAM VILLAGE HALL 10.30-11.30	WALDESLADE LOWER ROBIN HOOD LANE 08.00-08.45 ROYAL BRITISH LEGION VILLAGE ADMIRAL MOORE DRIVE 09.15-10.15 EAST MALLING NEW ROAD 10.30-11.30
WEEK 3	MEREWORTH/WEST PECKHAM, THE STREET 8.00a.m. - 9.00a.m. GOLDEN GREEN VICTORIA ROAD 9.15a.m. - 10.15a.m. TONBRIDGE SOUTH, SCOTT ROAD 10.30a.m. - 11.30a.m.	SNODLAND ST BENEDICTS ROAD 08.00-09.00 LARKFIELD NEW HYTHE LANE 09.15-10.15 OFFHAM VILLAGE HALL 10.30-11.30	DITTON KILN BARN ROAD 08.00-09.00 LARKFIELD WILLOW ROAD 09.15-10.15 ADDINGTON TROTTSCLIFFE ROAD 10.30-11.30	ECCLES BULL LANE 08.00-08.45 RYARSH ROUGHETTS ROAD 09.15-10.15 WROTHAM WEST STREET 10.30-11.30	BOROUGH GREEN DENE LODGE 08.00-09.00 WEST MALLING VILLAGE HALL 09.15-10.15 WATERINGBURY FIELDS LANE 10.30-11.30
WEEK 4	SHIPBOURNE/PLAXTOL, UPPER GREEN ROAD 08.00-09.00 TONBRIDGE NORTH, HIGHAM LANE 09.15-10.15 HILDENBOROUGH, FARM LANE 10.30-11.30	SNODLAND SALTINGS ROAD 08.00-09.00 LEYBOURNE LITTLE MARKET ROW 09.15-10.15 ST MARY'S PLATT BLUE ANCHOR 10.30-11.30	STANSTED/FAIRSEAT MALHOUSE ROAD 08.00-08.45 BIRLING VILLAGE HALL 09.15-10.15 EAST MALLING HOWARD ROAD 10.30-11.30	EAST PECKHAM PIPPIN ROAD 08.00-09.00 HADLOW VILLAGE HALL 09.15-10.15 TONBRIDGE SOUTH ALDERS MEADOW 10.30-11.30	WEST MALLING VILLAGE HALL 08.00-09.00 MEREWORTH BEAUFIGHTER ROAD 09.15-10.15 KINGS HILL CRISPIN WAY 10.30-11.30

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TONBRIDGE & MALLING BOROUGH COUNCIL

STREET SCENE & ENVIRONMENT ADVISORY BOARD

07 November 2016

Report of the Director of Street Scene, Leisure and Technical Services

Part 1- Public

Matters for Recommendation to Cabinet - Non-Key Decision (Decision may be taken by the Cabinet Member)

1 THE UNAUTHORISED DEPOSIT OF WASTE (FIXED PENALTIES) REGULATIONS 2016

Summary

The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 came into force on 9th May 2016 and amended the Environment Protection Act 1990 (inserting S33ZA) whereby a fly tipping offence can be dealt with by means of a Fixed Penalty Notice (FPN).

1.1 Background

- 1.1.1 The aim of the new Regulations is to provide an efficient tool for tackling smaller scale and/or lower impact fly-tipping incidents. Enforcement options were previously limited to warnings, formal cautions or prosecutions.
- 1.1.2 Fly tipping is a very serious offence that can have far reaching consequences. In addition to the obvious visual blight on an area, it can be a hazard to road users, children and others in the community. It can make people feel less safe in the area and encourage further deposits and other anti-social activity.
- 1.1.3 Fly tipping is a difficult offence to prove. Most fly tips occur in remote locations and often at night, so Officers are usually limited to trying to find evidence within the waste and tracing its source. Even if the source is identifiable, often the waste carrier cannot always be tracked down, so successful enforcement action is rare and investigations can take a long time and utilise significant resource.
- 1.1.4 Although this Council has taken a number of successful prosecutions for waste offences, including fly tipping, we receive only a small amount of our costs back through the Courts system. For example, in 2015/16 we only managed to recoup investigative and clearance costs of £380, less than could be achieved through the service of one of the new FPNs.

- 1.1.5 Even when cases are successfully prosecuted in court, if the offender has limited income, only a proportion of costs (and sometimes none) will be awarded and the fines imposed are received by the CPS. This makes it more beneficial to the Council to serve FPNs for smaller offences as the penalty is received directly and provides some remuneration to partially offset the costs of dealing with the issue.
- 1.1.6 The following proposals have been developed in close liaison with Legal Services and have been informed by their considered advice on the new Regulations. They are also consistent with the existing Waste & Street Scene Enforcement Policy.

1.2 The Proposed Penalty

- 1.2.1 Some local authorities have previously resorted to using the littering FPN of around £80 for small fly tips to avoid the administrative burden and investigative costs of producing a case for prosecution. This was deemed to be a practicable solution but was not a proportionate penalty for such a serious crime.
- 1.2.2 The courts recognise the significance of fly tipping as a crime and can levy hefty sentences of up to £50,000 in Magistrates' Court and/or a 6 month custodial sentence or an unlimited fine and/or up to 5 years custody in Crown Court. This is compared to a maximum of £2,500 for a littering fine in Magistrates' Court.
- 1.2.3 The new regulations allow for the level of FPN to be set between £150 and £400. The existing legislation allows FPNs for littering to be set between £50 and £80. Our FPNs for littering have been set at the maximum of £80. In line with this, we feel it is appropriate to issue FPNs for fly tipping at the maximum level of £400. Other local authorities around the country, including Dartford BC, have also set the penalty at £400. Other Kent authorities are yet to set their level of fine, but have suggested through the Kent Resource Partnership that a consistent approach across Kent would be beneficial.
- 1.2.4 It is also proposed that no early payment discount is made available for these FPNs, despite a 40% discount currently being available for other FPN offences. This is purposeful; to distinguish fly tipping from lower level environmental crimes such as littering and dog fouling. It also reflects the level of resource and clearance & disposal costs associated with even minor fly tipping offences.

1.3 When the FPN will be offered

- 1.3.1 Unlike FPNs for littering and fouling which can be issued face-to-face at the time of the offence, FPNs for fly tipping will only be offered once the authorised officer has considered the case in detail, taking into account a number of elements including the offender's history, the impact on the environment and the community, and the motivation for the offence.
- 1.3.2 Guidance on when to issue the FPNs has been produced for officers, to ensure a consistent approach to decision making and for transparency.

1.4 Review of Current FPN Process

1.4.1 The process of determining our position for Fly Tipping FPNs prompted a review of the procedures for other waste-related FPNs currently issued.

1.4.2 To consolidate our more rigorous approach to fly tipping offences, it is also suggested that the current early repayment reductions for the following waste Duty of Care offences be removed as non-compliance with these requirements can be indicative of, and facilitate, the illegal deposit of waste:

- Failure to produce waste transfer notes as evidence of legitimate deposit of waste (s34 Environment Protection Act) is a technical offence often used when there is insufficient evidence linking an individual to the actual fly tip of waste;
- Failure to produce authority to transport waste (S5/5B Control of Pollution Amendment Act 1989). It costs £154 to register as a waste carrier and this accountability helps authorities identify the person who removed waste if it is later tipped.

1.4.3 For both offences we currently issue FPNs of £300 that are reduced to £180 if paid within 10 days. For consistency of approach towards tackling fly tipping, it is proposed that this reduction be removed.

1.4.4 We also currently have an appeal process in place for all FPNs (littering, dog fouling and waste Duty of Care offences) so that individuals can dispute the service of an FPN.

1.4.5 We do not intend for there to be an appeal process for fly tipping FPNs due to the severity of the offence and as significant resources will be invested to gather sufficient evidence and satisfy the burden of proof before a fly tipping FPN is served. Therefore if a person wishes to decline the opportunity to settle the matter outside of court, we should proceed with prosecution in all cases.

1.4.6 We have evaluated the appeal process for all offences where we can issue FPNs and it is recommended that we remove the appeal mechanism completely for several reasons:

- It is not standard practice for Local Authorities to provide a formal means of appeal for Fixed Penalty Notices. Defra guidance mentions the appeal process but it is not a requirement. Sufficient evidence should be collected before an FPN is served to meet the burden of proof and render the majority of appeals obsolete;
- In practise, most persons accused of an offence use their right to appeal to challenge the validity of the evidence we have gathered even if they do not dispute the actual offence.

- An appeal can be a lengthy process that involves the review of a case by a Solicitor, Street Scene Manager and the Director of Street Scene, Leisure & Technical Services. This is resource intensive and unnecessary when there is a complaints procedure already in place that could deal with genuine issues such as mistaken identity or mitigating circumstances. Disputes over the evidence gathered are most appropriately and expediently dealt with by the investigating officer or in court if they are unjustified.
- The covering letter sent with all FPNs contains contact details of the investigating officer and encourages the person accused to contact us if there is any query regarding the offence. Therefore individuals have a means of redress if there is an error in the service of an FPN. Additionally, all cases would be reviewed by the investigating officer and SSM before a prosecution case was compiled so there is already a mechanism to avoid us pursuing cases that are not robust.

1.5 Legal Implications

- 1.5.1 The proposals outlined above have been developed in close liaison with Legal Services and have been informed by their considered advice on the new Regulations. They are also consistent with the existing Waste & Street Scene Enforcement Policy.
- 1.5.2 It is not anticipated that the use of FPNs would affect the case load for our legal team- prosecutions for fly tipping will continue to be pursued wherever it is appropriate. It is intended that the FPN will be used as a more effective enforcement tool for the less serious cases where we would currently issue warnings and ask offenders to pay our clear up and disposal costs.
- 1.5.3 If the FPN is unpaid, we would seek to prosecute and publicise successful cases as a deterrent to further offences and to maintain our usual high payment rates.
- 1.5.4 In practice, a fly tipping investigation normally necessitates some communication with the offender and allows for an officer to assess their attitude towards the offence. As a result, FPNs are unlikely to be offered to an individual who we feel is unlikely to pay it, or if the alleged offender disputes the process or outcome of the investigation

1.6 Financial and Value for Money Considerations

- 1.6.1 The issuing of FPNs in certain cases for fly tipping offences will ensure that when paid the income comes direct to the Council. This can then be used to offset some of the costs of clearance and investigation. The adoption of the maximum level of fine and the removal of the early-payment reduction for related waste offences reflects the seriousness of these offences and the sentencing guidelines for them.

1.7 Risk Assessment

- 1.7.1 The failure to provide effective and efficient enforcement could result in criticism from residents and impinges directly on their view of the Council and their satisfaction with services delivered.

1.8 Equality Impact Assessment

- 1.8.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

1.9 Recommendations

- 1.9.1 It is **RECOMMENDED** to Cabinet that, with immediate effect, it:
- 1.9.2 **APPROVES** that delegated authority be granted to the Director of Street Scene, Leisure & Technical Services under the Environmental Protection Act 1990 as amended by the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 to make appropriate arrangements for the issue of FPNs for fly tips;
- 1.9.3 **SUPPORTS** the penalty charge of £400 for unauthorised deposits of waste with no early payment reduction and no appeal process;
- 1.9.4 **SUPPORTS** the removal of early payment reductions for Duty of Care offences often associated with fly tipping;
- 1.9.5 **AGREES** to the cessation of the appeal process for all offences where FPNs are served.

The Director of Street Scene, Leisure and Technical Services confirms that the proposals contained in the recommendation(s), if approved, will fall within the Council's Budget and Policy Framework.

Background papers:

Nil

contact: David Campbell-
Lenaghan
Dennis Gardner

Robert Styles

Director of Street Scene, Leisure and Technical Services

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TONBRIDGE & MALLING BOROUGH COUNCIL

STREET SCENE and ENVIRONMENT SERVICES ADVISORY BOARD

07 November 2016

Report of the Director of Street Scene, Leisure & Technical Services

Part 1- Public

Matters for Information

1. WASTE & STREET SCENE SERVICES UPDATE

Summary

This report provides an update on a number of projects and initiatives within Waste & Street Scene services.

1.1 Dog Warden Service – RSPCA Gold Award

1.1.1 For the fifth year running, TMBC has been awarded the Community Animal Welfare Footprints Gold Award for Stray Dog Services from the Royal Society for the Protection of Animals (RSPCA). The award reflects both the Council's commitment to dog welfare over and above the statutory requirements, as well as its Dog Warden, Lorraine Baseden's personal and professional commitment and dedication in her role and the promotion of responsible dog ownership.

1.1.2 There are three categories in the Stray Dog Services Award, bronze, silver and gold. The Council won the Gold Award by showing that, as well as maintaining high standards of service for dealing with stray dogs, the service it provides goes beyond the call of duty by offering an out-of-hours collection service in addition to the provision of kennelling services, by micro-chipping stray dogs before they are returned to their owners or re-homed and by running pro-active initiatives to encourage responsible dog ownership.

1.2 KCC Waste Disposal Strategy – Consultation Questionnaire

1.2.1 Members may be aware that Kent County Council, as Waste Disposal Authority, is currently reviewing its Waste Disposal strategy. Officers, and our then Cabinet Member for Street Scene and Environmental Services, have received updates on this process through the Kent Resource Partnership.

1.2.2 Full details of the draft strategy and consultation process were publicised and made available on KCC's website:

1.2.3 The deadline for this part of the consultation process was 2 October 2016, although we are advised that there will be further opportunities to comment at the next stage in spring 2017. Officers discussed the key areas of TMBC's response

in consultation with the Cabinet Member for Street Scene and Environment and our Kent Resource Partnership Member, and included the following.

- Highlighting potential opportunities for partnership working to develop efficiencies in collection systems to compliment disposal systems.
- To acknowledge lack of Household Waste Recycling Centres (HWRC) within the borough and give proper consideration during the review and evaluation of sites across Kent.
- To explore opportunities to accept additional materials at disposal facilities to assist in reducing potential fly tipping.
- To continue to work with districts through the Kent Resource Partnership to ensure that accurate, timely and meaningful information is provided regarding disposal data to assist in raising public awareness of waste & recycling services.

1.2.4 A copy of TMBC's response to the consultation questionnaire can be made available to Members on request.

1.3 Oil Bank Recycling

1.3.1 Members may be aware that, for many years, the Council has provided facilities for residents to dispose of their own used motor engine oil. The used oil was then treated by a specialist company to make it suitable for re-use.

1.3.2 Two specially designed oil banks were located at the Three Elms Petrol Station, Golden Green and the Parkfoot Petrol Station, West Malling via long-standing arrangements with the business owners.

1.3.3 Although the costs of having the banks emptied on a regular basis over the years had been fairly minimal, in recent months the costs had significantly increased and were considered prohibitively expensive. In addition, the banks were beginning to show signs of excessive wear and tear and it was therefore decided to remove them before they required costly replacement.

1.3.4 In consultation with the two business owners and the Waste Disposal Authority information was provided to the public about the planned removal of the banks. The information, displayed on signs at the two sites and on the Council's website, also identified alternative disposal points operated by the County Council i.e. the Household Waste Recycling Centres at Dunbrik, Sevenoaks, Tovil in Maidstone and North Farm, Tunbridge Wells.

1.3.5 The oil banks were removed for safe disposal by a specialist contractor in early October.

1.3.6 The facilities operated by the County Council are for the use of residents only and not for commercial operators e.g. local vehicle repairers / garages etc.

1.4 National Litter Strategy – TMBC Input to Defra Project Group

1.4.1 Members may be aware that the Government is currently looking at the problems associated with littering and is working with a number of groups and organisations to produce a National Litter Strategy.

1.4.2 This borough council has a good track record regarding its own litter campaigns, raising public awareness and involving the local community in a range of projects and initiatives. Regular updates of our litter campaigns have been reported to this board and Members will have been personally involved in many of these initiatives over the years.

1.4.3 Following a submission to the Local Government Association last year highlighting a number of the borough council's litter awareness and local community initiatives, Officers were contacted by Defra earlier this year. The Head of Waste & Street Scene was invited to give a presentation to Defra's Litter Strategy Community Engagement Project Group in October 2016.

1.4.4 It was pleasing to note that the Defra Project Group was particularly interested and impressed with the range of initiatives introduced and our engagement with the local community on:

- The Voluntary Litter Code (initially developed in Larkfield by local resident and neighbourhood watch coordinator, Stuart Olsson).
- Street Monitors Scheme
- LitterGram (our recent work in developing the Council Portal and our case study with LitterGram)
- Snodland Goes Cleaner Project
- “Bash the Trash” and “Bag & Flag” events

1.5 Waste Services Contract – Preparation for 2019

1.5.1 Members may be aware that our main Waste Services Contract is due to expire in February 2019 and officers are currently working with colleagues to explore a number of options for the future delivery of these services.

1.5.2 An internal Officer Project Group has been set up involving colleagues across services, including Waste & Street Scene, Health & Safety, Legal and Financial Services.

1.5.3 Through the Kent Resource Partnership West Kent Officer Group, officers are also exploring partnership opportunities to develop more consistent and cost

effective collection and disposal systems. Some modelling of the potential options is already underway and the accompanying cost illustrations will be a key factor in this process.

- 1.5.4 There is an ever growing list of considerations and a significant amount of preparatory work involved in taking this project forward. One of the key elements is potential partnership working and it is essential that is explored and determined at an early stage.
- 1.5.5 It is intended that a fuller report, with partnership and service delivery options, some guiding principles, an outline timetable and the key decisions on this process be brought to the next meeting of this board in February 2017.

1.6 Borough Council Recycling Sites

- 1.6.1 This report advises Members that the Council has received requests from the respective landowners, to remove its recycling banks from the current sites at Quarry Hill Road, Borough Green and Hadlow College campus, Hadlow.
- 1.6.2 Officers are currently working with the landowners, Crest Nicholson and Hadlow College respectively, and the local Parish Councils to identify and evaluate options for the relocation of these recycling facilities.

1.7 1.7 Refuse and Recycling Collections Rescheduling

- 1.7.1 Members will recall that a report was brought to the 6 June 2016 Board advising of plans by the Council's contractor, Veolia, to reschedule the collection services in some parts of the borough in order to accommodate both recent and planned domestic property growth between now and the end of the contract (end of February 2019).
- 1.7.2 This work is ongoing and we are still advised that there are no plans to change the refuse and recycling weeks of the areas being reviewed but that there may be some need to change collection days for a small proportion of properties..
- 1.7.3 Once the rescheduled round(s) are agreed there will be a period of time to allow for communications with residents where day changes are to be introduced. We would anticipate a period of approximately six weeks to enable us to properly prepare and deliver the information to residents.
- 1.7.4 Assuming that the rescheduled rounds are agreed by the end of this calendar year implementation of the changes are expected to occur in the early Spring 2017.
- 1.7.5

1.8 Legal Implications

1.8.1 The Council has a statutory duty to provide refuse and recycling collection services. The proposed arrangements ensure that the Council complies with that duty.

1.9 Financial and Value for Money Considerations

1.9.1 There are no specific costs associated with this update. Any additional costs or efficiency savings arising from the initiatives or services in this report will be subject to further reports to Members.

1.10 Risk Assessment

1.10.1 Careful planning, good communication with residents and coordinated arrangements for collections, help to ensure minimal disruption and effective delivery of these high profile services.

Background papers:

Nil

contacts:

Dennis Gardner
David Campbell-Lenaghan
Lesley Letts

Robert Styles

Director of Street Scene, Leisure and Technical Services

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TONBRIDGE & MALLING BOROUGH COUNCIL

STREET SCENE and ENVIRONMENT SERVICES ADVISORY BOARD

07 November 2016

Report of the Director of Street Scene, Leisure and Technical Services

Part 1- Public

Matters for Information

1 CONTAMINATED LAND

Summary

Following discussion on the Council's Contaminated Land Strategy at a last meeting of the Board, this report provides detailed overview of the way in which the Council delivers its contaminated land function in line with both legislative requirements and statutory guidance.

1.1 Background

- 1.1.1 Land can be affected by contamination in the form of substances in the soil and/or water, buildings, or other material on a site. Such sites are more likely to be those which have been previously developed for commercial or industrial use, although sites where there has been a history of mining or agricultural uses can also present a potential risk of contamination. It is also possible for contamination to migrate onto previously uncontaminated land in certain circumstances.
- 1.1.2 Additionally, some areas may be affected by the natural or background occurrence of potentially hazardous substances, such as radon, methane or elevated concentrations of certain metallic elements.
- 1.1.3 As many developments are proposed on land that fall into one of the above categories, it is essential to ensure that any such contamination is adequately dealt with upon a change of land use, thereby ensuring the land is made suitable for its new use and presents no danger to the health and safety of people who come into contact with it.
- 1.1.4 District Councils are responsible for addressing contaminated land issues within two separate regimes:
- the Contaminated Land Regime (under Part IIA of the Environment Protection Act 1990); and,
 - the Planning Regime (through the grant of planning permissions and the imposition of planning conditions thereon, under the Town & Country Planning Act 1990).

It is through the Planning Regime that the officer activity is most regularly focussed.

1.2 The Contaminated Land Regime

- 1.2.1 This is defined in the Environmental Protection Act (Part IIA), which is reproduced in **[Annex 1]**, together with a relevant section of the Statutory Guidance published by DEFRA in April 2012. It is generally proactive work, which involves inspection and research into historical land use of sites across the Borough. This includes the use of site prioritisation software as the primary tool to collate, view, explore, query, analyse and evaluate the various data sets such as historical mapping. These data sets are continually updated when new information becomes available. In addition new data sets can be added in order to assess potentially contaminated sites
- 1.2.2 It is under this regime that the Council develops its Contaminated Land Strategy, as was presented to and endorsed by Members at the July Advisory Board meeting.
- 1.2.3 Only land where unacceptable risks in relation to its current usage are clearly identified after a detailed risk assessment has been undertaken (in accordance with the Statutory Guidance), should be considered as meeting the test for the Part IIA definition of contaminated land. Current strategic inspection has not identified any site within the Borough likely to meet the Part IIA definition.

1.3 The Planning Regime

- 1.3.1 Contaminated Land is also a material consideration in the Planning process although in this regime risks have to be assessed in relation to the proposed future use of land rather than its existing use, which is the criterion of Part IIA.
- 1.3.2 To avoid confusion with the statutory definition of contaminated land under Part IIA, the Planning regime uses the term “land affected by contamination” which is intended to cover cases where the actual or suspected presence of substances in, on or under the land may cause risks to people, human activities, or the environment regardless of whether or not the land meets the statutory definition of Part IIA.
- 1.3.3 The role of the planning system is to manage future development and land use. Potential or actual known contamination is a material planning consideration which the authority must take into account in its decision making process. The development phase is generally the most practical time to deal with such issues. Planning guidance places the responsibility on owners and developers to establish the extent of any potentially harmful materials on their sites.
- 1.3.4 The ultimate responsibility for securing a safe development rests with the developer and/or landowner.

- 1.3.5 A failure by them to adequately address land contamination could cause harm to human health, property and the wider environment. It could also:
- limit or prevent subsequent development;
 - result in difficulties with the conveyancing process; and
 - result in future liabilities for remediation by the landowner under the Environmental Protection Act 1990.
- 1.3.6 The NPPF published in March 2012 replaced previous national planning policy (including Planning Policy Statement 23: Planning and Pollution Control (PPS23)). The NPPF does not form part of the statutory development plan, but it is an important material consideration in planning decision making. It has a primary focus of helping to achieve “sustainable development”. In this context, “sustainable development” means development which is in accordance with the Policies of the NPPF.
- 1.3.7 Section 11 of the NPPF sets out the Government’s policy on conserving and enhancing the natural environment and makes a number of statements in connection with land contamination. The key paragraphs are reproduced in **[Annex 1]**.
- 1.3.8 It is an important point here that the NPPF places an emphasis on encouraging the effective use of land by re-using land that has been previously developed (brownfield land), provided that it is not of high environmental value and firmly places the responsibility for ensuring a safe development on the developer or landowner.
- 1.3.9 National Planning Practice Guidance (NPPG) is now available online for land contamination issues. Planning policy guidance states that contamination is more likely to arise in former industrial areas but cannot be ruled out in other locations including in the countryside (e.g. by inappropriate spreading of materials such as sludges, or as a result of contamination being moved from its original source). In addition, some areas may be affected by the natural or background occurrence of potentially hazardous substances, such as radon, methane or elevated concentrations of metallic elements.
- 1.3.10 The NPPF states that a specific investigation can establish whether there is contamination at a particular site, but the possibility should always be considered particularly when the development proposed involves a sensitive use such as housing with gardens, schools or nurseries.
- 1.3.11 It is through the application of the principles of the NPPF and NPPG that the Council requires landowners or developers to carry out preliminary investigations into the extent of contamination on sites proposed for sensitive developments also some employment and leisure use land as a basis for an initial risk assessment, which will determine whether a remediation strategy is required.

1.4 Overall Roles and Responsibilities under the Planning regime

- 1.4.1 **The Local Planning Authority (LPA):** It is the responsibility of the LPA to regulate and manage new development throughout the Borough. Planning applications can be made by the submission of an outline application followed by reserved matters or in one step as a full application. As discussed, this role is carried out with close liaison with the Environmental Protection Team to ensure relevant matters including potentially contaminated land are addressed.
- 1.4.2 As an integral part of the planning process the Environmental Protection Team will consider the potential implications of any land contamination on the health of those who will occupy or use the land after it has been developed. For example, in the case of a housing development, this will be the future residents. In situations where land is potentially contaminated this will include the recommendation to impose planning conditions which place the onus on developers to investigate potential contamination and provide mitigation where contamination is positively identified. Should the risk be deemed high or uncertain at the planning application stage, the relevant risk assessments will be requested upfront if not already provided.
- 1.4.3 The imposition of conditions will take into account and be largely informed by the information submitted at the application stage and information held on the Council's database of potentially contaminated land sites. Officers have developed a series of sequential planning conditions intended to appropriately deal with contaminated land matters. The tranche of conditions is reproduced at **[Annex 2]** for Members' information. They effectively adopt a sequential approach to ensure:
- all potential contaminants are identified via desktop studies which should then inform whether any intrusive site investigation works are required;
 - the results of any necessary site investigation works undertaken (including all intrusive investigations) are submitted to the LPA;
 - a proposed scheme of remediation is developed and approved, this must include details of how the developer intends to deal with any unsuspected/unforeseen contamination;
 - a verification report that scientifically and technically demonstrates the effectiveness and completion of the remediation scheme at above and below ground level is submitted to the LPA for its own records and
 - Suitable monitoring and maintenance is developed to include monitoring the long term effectiveness of the approved remediation strategy where applicable.
- 1.4.4 Where conditions are imposed, the developer is required to submit to the LPA, for formal approval, details at each stage of the process before that part of the

condition can be discharged. This is done in close liaison with the Environmental Protection Team and the Environment Agency (where applicable) to ensure the details are suitable/appropriate.

- 1.4.5 **The Developer:** The developer is responsible for ensuring that any proposed development is safe and suitable for its intended use. If there is a reason to believe land contamination could be present on site, the developer should ensure that they carry out adequate investigations and risk assessments to ensure that any associated risks are fully understood and can be remediated to an acceptable level.
- 1.4.6 In order to fulfil this obligation the developer may be required to undertake an adequate investigation of the site to determine:
- whether the proposed site is already affected by contamination, through the source-pathway-receptor pollutant linkage;
 - whether the development proposed will create new linkages; and
 - what action is needed to break these linkages and avoid new ones, deal with any unacceptable risks and enable the safe development and future occupancy of the site and neighbouring land.
- 1.4.7 Once a site has been investigated and unacceptable risks have been identified it is the developer's responsibility to undertake the necessary remediation.
- 1.4.8 The developer is liable if, due to their actions or omissions, on completion of the development the land is capable of being classified as "Contaminated" under Part IIA.
- 1.4.9 **The Environment Agency (EA):** The EA will consider the potential implications of land contamination on controlled waters (groundwater or surface water bodies).
- 1.4.10 The EA is also statutory consultee in the planning process. The LPA will consult with the EA when considering proposals for a development on land that may be affected by contamination and falls within ground water vulnerability areas. This may result in the EA:
- making recommendations for site investigation, risk assessment or remedial works;
 - giving advice on work required before discharging a planning condition; and
 - advising the LPA on flooding, ecological assessment and groundwater vulnerability issues.
- 1.4.11 The EA also has a role under Part IIA, which is to provide the LPA with advice and guidance. It acts as the enforcing authority for any contaminated land subsequently designated as a Special Site under Part IIA Section 78B (1).

1.4.12 The EA also carries out a regulatory role, issuing consents and licences for various activities that may have an impact on the environment (this may apply to certain remediation works). It is the developer's responsibility to apply to the EA and secure consent before carrying out potentially environmentally sensitive activities on site.

1.4.13 The EA may advise the LPA on specific sites, such as those where the risk to watercourses is significant. However the responsibility for granting planning permission and ensuring compliance with planning conditions and obligations remains with the LPA.

1.5 Verification of the Councils approach to the Planning regime

1.5.1 On occasion some issues have been raised about the potential weaknesses of the planning regime outlined within this report. These concerns have been focussed on whether or not the Council should (or could) take a more active and proactive role in ensuring planning conditions relating to contaminated land are properly observed.

1.5.2 In this respect the practice employed by the Council is common with many other authorities and reflects the proper duty and responsibility imposed by National Planning Policy and Guidance. In particular the approach through planning conditions holds the developer to account in a staged way to properly identify the extent of any contamination, propose a method of treatment and mitigation and verify that such a method has been followed. Of course if at any stage in the compliance with planning conditions the analysis of the developer's actions or proposed way forward is considered to be inappropriate or unsatisfactory the Council may seek enforcement action as a remedy.

1.5.3 This approach in the context of the planning process may sometimes be characterised as the Council working at arms-length rather than at close quarters with developers. However, that is how the regime is required to be delivered. The Council has had occasion to seek Counsel's opinion on this way of working and concluded that the general approach adopted by the Council in that case was sound.

1.5.4 The most current example of the planning process addressing Contaminated Land is at the Peter's Village development near Wouldham, where the planning conditions that have been applied are providing a good platform for the phased approach to determining the extent of Contamination, mitigation works and verification. That is involving close working of our officers with the developers agents, which of course is helpful in all parties achieving a good outcome.

1.6 Legal Implications

1.6.1 Failure to comply with this duty may result in court proceedings being brought against the Council.

1.7 Financial and Value for Money Considerations

1.7.1 Not applicable.

1.8 Risk Assessment

1.8.1 Through both the Part IIA Contaminated Land Strategy and the Planning regime sites are evaluated following the principles of risk assessment.

Background papers:

Nil

contact: Jane Heeley
Crispin Kennard

Steve Humphrey
Director of Planning, Housing and Environmental Health

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CONTAMINATED LAND**1. The Contaminated Land Regime – Environmental Protection Act 1990, Part IIA**

1.1 Under the Contaminated Land regime, (Part IIA) “contaminated land” is defined in Section 78A(2) as ‘any land which appears to the local authority...to be in such a condition, by reason of substances in, on or under the land, that either significant harm is being caused or there is a significant possibility of such harm being caused; or significant pollution of controlled waters is being or is likely to be caused’

1.3 Section 78B(1) of Part IIA states: ‘Every local authority shall cause its area to be inspected from time to time for the purpose - (a) of identifying contaminated land; and (b) of enabling the authority to decide whether any such land is land which is required to be designated as a special site’.

1.4 Section 78B(2) of Part IIA states: ‘In performing its functions under subsection (1) above a local authority shall act in accordance with any guidance issued for the purpose by the Secretary of State.....’

2. Contaminated Land – Statutory Guidance

2.1 In line with the requirements of Section 78B(2), The Environmental Protection Act 1990: Part IIA Contaminated Land Statutory Guidance (Statutory Guidance), is the most recent guidance issued by DEFRA in April 2012.

2.2 Section 2.2 of the Statutory Guidance states;

‘This guidance recognises that there are two broad types of “inspection” likely to be carried out by local authorities: (a) strategic inspection, for example collecting information to make a broad assessment of land within an authority’s area and then identifying priority land for more detailed consideration; and (b) carrying out the detailed inspection of particular land to obtain information on ground conditions and carrying out the risk assessments which support decisions under the Part IIA regime relevant to that land. This Guidance refers to the former as “strategic inspection” and the latter as “detailed inspection”’.

3. National Planning Policy Framework

3.1 Paragraph 109:

“The Planning system should contribute to and enhance the local environment by:...remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate”.

Paragraph 120:

“To prevent unacceptable risks from pollution and land instability, planning policies and decisions should ensure that new development is appropriate for its location. The effects (including cumulative effects) of pollution on health, the natural environment or general amenity, and the potential sensitivity of the area or proposed development to adverse effects from pollution, should be taken into account. Where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.”

3.3 Paragraph 121:

“Planning policies and decisions should also ensure that:

- *the site is suitable for its new use taking account of ground conditions and land instability, including from natural hazards or former activities such as mining, pollution arising from previous uses and any proposals for mitigation including land remediation or impacts on the natural environment arising from that remediation;*
- *after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990; and*
- *adequate site investigation information, prepared by a competent person, is presented.”*

Standard Contamination 1 (no phasing) (Site Characterisation)

No development shall be commenced until the following have been submitted to and approved by the Local Planning Authority:

(a) a contaminated land desktop study identifying all previous site uses, potential contaminants associated with those uses including a survey of the condition of any existing building(s), a conceptual model of the site indicating sources, pathways and receptors and any potentially unacceptable risks arising from contamination at the site;

(b) based on the findings of the desktop study, proposals for a site investigation scheme that will provide information for an assessment of the risk to all receptors that may be affected including those off site. The site investigation scheme should also include details of any site clearance, ground investigations or site survey work that may be required to allow for intrusive investigations to be undertaken.

If, in seeking to comply with the terms of this condition, reliance is made on studies or assessments prepared as part of the substantive application for planning permission, these documents should be clearly identified and cross-referenced in the submission of the details pursuant to this condition.

Reason: In the interests of amenity, public safety and human health and in accordance with the National Planning Policy Framework 2012 (paragraph 121).

Standard Contamination 2 (no phasing) (Submission of Remediation Scheme & Implementation):

No development shall take place other than as required as part of any relevant approved site investigation works until the following have been submitted to and approved by the Local Planning Authority:

a) results of the site investigations (including any necessary intrusive investigations) and a risk assessment of the degree and nature of any contamination on site and the impact on human health, controlled waters and the wider environment. These results shall include a detailed remediation method statement informed by the site investigation results and associated risk assessment, which details how the site will be made suitable for its approved end use through removal or mitigation measures. The method statement must include details of all works to be undertaken, proposed remediation objectives, remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site cannot be determined as Contaminated Land as defined under Part 2A of the Environmental Protection Act 1990 (or as otherwise amended).

The submitted scheme shall include details of arrangements for responding to any discovery of unforeseen contamination during the undertaking hereby permitted. Such arrangements shall include a requirement to notify the Local Planning Authority

in writing of the presence of any such unforeseen contamination along with a timetable of works to be undertaken to make the site suitable for its approved end use.

(b) prior to the commencement of the development the relevant approved remediation scheme shall be carried out as approved. The Local Planning Authority should be given a minimum of two weeks written notification of the commencement of the remediation scheme works.

Reason: In the interests of amenity, public safety and human health and in accordance with the National Planning Policy Framework 2012 (paragraph 121).

Standard Contamination 3 (no phasing) (Verification):

Following completion of the approved remediation method statement, and prior to the first occupation of the development, a relevant verification report that scientifically and technically demonstrates the effectiveness and completion of the remediation scheme at above and below ground level shall be submitted for the information of the Local Planning Authority.

The report shall be undertaken in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'. Where it is identified that further remediation works are necessary, details and a timetable of those works shall be submitted to the Local Planning Authority for written approval and shall be fully implemented as approved.

Thereafter, no works shall take place such as to prejudice the effectiveness of the approved scheme of remediation.

Reason: In the interests of amenity, public safety and human health and in accordance with the National Planning Policy Framework 2012 (paragraph 121).

Standard Contamination 4 (no phasing) (Monitoring; where applicable):

A monitoring and maintenance scheme to including monitoring the long term effectiveness of the approved remediation strategy over a period of [IN] years and the provision of regular reports on the same must be prepared for submission to the Local Planning Authority for information purposes.

Following completion of the measures identified in that scheme and when the remediation objectives have been achieved, reports that demonstrate the effectiveness of the monitoring and maintenance carried out must be produced and submitted to the Local Planning Authority for information purposes.

Standard Contamination 5 (no phasing) (Unforeseen Contamination):

If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted a remediation strategy to the local planning authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the local planning authority. The remediation strategy shall be implemented as approved.

Reason: In the interests of amenity and public safety and in accordance with the National Planning Policy Framework 2012 (paragraph 121).

Notes:

1. A similar condition is applied to phased development, i.e. when a site is developed in progressive stages.
2. Informatives are also applied on certain planning permissions, relating to matters specific matters pertinent to a particular application, such as competent persons, discovery of potential contamination during development, gas and vapour permeable membranes.

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Agenda Item 9

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

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Agenda Item 10

The Chairman to move that the press and public be excluded from the remainder of the meeting during consideration of any items the publication of which would disclose exempt information.

**ANY REPORTS APPEARING AFTER THIS PAGE CONTAIN EXEMPT
INFORMATION**

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Agenda Item 11

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

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