

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

To: MEMBERS OF THE COUNCIL

Dear Sir/Madam

I hereby summon you to attend a meeting of the Tonbridge and Malling Borough Council which will be held in the Civic Suite, Gibson Building, Kings Hill, West Malling on Tuesday, 4th November, 2014 at 7.30 pm, when the following business is proposed to be transacted:-.

PART 1 - PUBLIC

1. Apologies for absence

2. Declarations of interest

To declare any interests in respect of recommended items

3. Minutes

3 - 8

To confirm as a correct record the Minutes of the meeting of Council held on 15 July 2014

4. Mayor's Announcements

5. Questions from the public pursuant to Council Procedure Rule No 5.6

6. Questions from Members pursuant to Council Procedure Rule No 5.5

7. Leader's Announcements

8. Reports, Minutes and Recommendations 9 - 10
- To receive and consider reports, minutes and recommendations from the meetings of the Cabinet and Committees set out in the Minute Book and officers' reports on any matters arising from them, and to receive questions and answers on any of those reports. Matters for recommendation to the Council are indicated below at items 9 to 13.
9. Feedback from Consultation on Good Conduct - Appendix 1 of Hackney Carriage and Private Hire Policy 11 - 22
- Item LA 14/71 referred from Licensing and Appeals Committee minutes of 16 September 2014
10. Adoption of Model Bylaws for Hackney Carriages 23 - 30
- Item LA 14/72 referred from Licensing and Appeals Committee minutes of 16 September 2014
11. Treasury Management Mid Year Review 2014/15 31 - 52
- Item CB 14/66 referred from Cabinet minutes of 8 October 2014
12. Council Tax Discounts 53 - 66
- Item CB 14/67 referred from Cabinet minutes of 8 October 2014
13. Diversion of Part of Public Footpath MU21 at Tonbridge 67 - 72
- Item AP1 14/42 referred from Area 1 Planning Committee minutes of 11 September 2014
14. Change to the Constitution 73 - 110
15. Sealing of Documents
- To authorise the Common Seal of the Council to be affixed to any Contract, Minute, Notice or other document requiring the same.

JULIE BEILBY
 Chief Executive
 Monday, 27 October 2014

TONBRIDGE AND MALLING BOROUGH COUNCIL

COUNCIL MEETING

Tuesday, 15th July, 2014

At the meeting of the Tonbridge and Malling Borough Council held at Civic Suite, Gibson Building, Kings Hill, West Malling on Tuesday, 15th July, 2014

Present: Her Worship the Mayor (Councillor Mrs S Luck), the Deputy Mayor (Councillor O C Baldock) Cllr A W Allison, Cllr Mrs J A Anderson, Cllr Ms J A Atkinson, Cllr J A L Balcombe, Cllr M A C Balfour, Cllr Mrs P Bates, Cllr Mrs J M Bellamy, Cllr T Bishop, Cllr P F Bolt, Cllr Ms V M C Branson, Cllr Mrs B A Brown, Cllr F R D Chartres, Cllr M A Coffin, Cllr D J Cure, Cllr R W Dalton, Cllr D A S Davis, Cllr M O Davis, Cllr T Edmondston-Low, Cllr Mrs C M Gale, Cllr Mrs M F Heslop, Cllr N J Heslop, Cllr Mrs E M Holland, Cllr D Keeley, Cllr Mrs F A Kemp, Cllr S M King, Cllr R D Lancaster, Cllr B J Luker, Cllr Miss A Moloney, Cllr Mrs S Murray, Cllr Mrs A S Oakley, Cllr M Parry-Waller, Cllr A G Sayer, Cllr Miss J L Sergison, Cllr Miss S O Shrubsole, Cllr Mrs E A Simpson, Cllr C P Smith, Cllr D W Smith, Cllr A K Sullivan, Cllr M Taylor, Cllr R Taylor, Cllr D J Trice and Cllr Mrs C J Woodger

Apologies for absence were received from Councillors C Brown, Miss J R L Elks, P J Homewood, S R J Jessel, M R Rhodes, T J Robins, H S Rogers and Ms S V Spence

PART 1 - PUBLIC

C 14/45 TRIBUTE TO HONORARY ALDERMAN RUSSELL DORLING

At the beginning of the meeting the Council observed a minute's silence in memory of former Mayor and Honorary Alderman, Russell Dorling, who had died on 5 July 2014.

C 14/46 DECLARATIONS OF INTEREST

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

C 14/47 MINUTES

RESOLVED: That the Minutes of the proceedings of the meeting of the Council held on 13 May 2014 be approved as a correct record and signed by the Mayor.

C 14/48 MAYOR'S ANNOUNCEMENTS

The Mayor reported that she had attended around 45 events since the Annual Council meeting and mentioned in particular the Royal Garden Party at Buckingham Palace; the "MOBOT" record attempt at Tonbridge School; the Lord Lieutenant of Kent's Civic Reception; the Snodland and Tonbridge Carnivals; Tonbridge Arts Festival; and the High Sheriff of Kent's Garden Party. The highlight, however, had been the Commonwealth Baton Relay Event at Tonbridge Castle with Dame Kelly Holmes and Lizzie Yarnold.

The Mayor had attended several school events in the run up to the end of the school year and handed out many medals to pupils. She thanked the Deputy Mayor who had also attended a number of events.

Thanks were recorded to those who had been able to attend the Civic Service on 29 June and the Mayor looked forward to seeing Members at her Garden Party at Hadlow College on 23 July. She requested support for the cricket match against Maidstone Borough Council on 17 August and asked anyone interested in playing to contact the Mayor's Office. More team members were also needed for the Dragon Boat Race in Tonbridge on 14 September.

The Mayor concluded by giving notice of some forthcoming diary dates. These included the Tonbridge Christmas Festival on 23 November, a dinner at Hadlow Manor on 28 February 2015, and events at the Oast Theatre on 24 March 2015 and Buckmore Park on a date yet to be arranged. Further details would be provided in due course.

C 14/49 QUESTIONS FROM THE PUBLIC PURSUANT TO COUNCIL PROCEDURE RULE NO 5.6

No questions were received from members of the public pursuant to Council Procedure Rule No 5.6.

C 14/50 QUESTIONS FROM MEMBERS PURSUANT TO COUNCIL PROCEDURE RULE NO 5.5

No questions were received from Members pursuant to Council Procedure Rule No 5.5.

C 14/51 LEADER'S ANNOUNCEMENTS

The Leader referred to the photograph taken earlier in the evening to mark 40 years of Tonbridge and Malling Borough Council. He also thanked the Mayor for allowing a minute's silence in memory of Honorary Alderman Russell Dorling who was highly respected among colleagues and staff alike.

The Leader commented that a glance through the weekly licensing update and the Mayor's diary gave a good indication of the hive of activity in the Borough in terms of the summer fairs and carnivals which had taken place. He highlighted three events in particular and paid tribute to the local organising committees: the Tonbridge Lions for their carnival, Snodland Town Council for its carnival and the Tonbridge Arts Festival Committee for the week long arts festival.

Members were advised of work undertaken with restaurants, pubs and clubs throughout the Borough to ensure that both the Licensing team and Police were aware of World Cup related functions, this initiative having set the standard in Kent. Likewise, the Environmental Protection team had worked on a number of high profile events, not least the recent Hop Farm festival.

The Leader commended the "Love Kent Hate Litter" campaign during June, undertaken with communities throughout the Borough and supported by the Council's own Street Scene team. In total, there had been 28 supported events, averaging one event a day during the month, and had shown significant results which would be reported to the next meeting of the Local Environmental Management Advisory Board.

Members were advised of a further example of local leadership in addressing the issue of litter which involved businesses in Snodland agreeing to sign up to a voluntary litter code aimed at reducing littering from their premises and the surrounding area. It was understood that the Town Team in Tonbridge was now working with High Street retailers and others to establish a similar code.

Six months on from the establishment of the Leisure Trust, the Leader was pleased that all the leisure facilities continued to exhibit the highest rating standards. As reported to the Leisure and Arts Advisory Board, the customer satisfaction rating for Larkfield Leisure Centre was 90 per cent, the Angel Centre 87 per cent, Tonbridge Swimming Pool 88 per cent and Poult Wood Golf Centre 78 per cent, all scores being well in excess of the industry standard of 60 per cent.

Reference was made to the Government's recent announcement on the outcome of the transport funding across the South East for 2015/16. The Leader was delighted to report that the two strategic schemes that the Council had fought hard to achieve – namely, Improvements to Junction 4 on the M20 and Tonbridge High Street – had been included against a substantially reduced overall transport budget for the South East. This built on the success of the campaign to bring forward the early construction of the A21 improvements.

Referring to the report of the recent Peer Review Challenge, the Leader placed on record his appreciation to Members and staff who had met the team. He welcomed the fact that the overall tone of the report endorsed the approach taken by the Council over the last two years. It also

reinforced the challenges faced and the Chief Executive and Management Team had been invited to bring forward options reflecting those challenges for Members to debate and consider.

The Leader indicated that this month the Council would be bidding farewell to two loyal and dedicated employees upon their individual retirements: Phil Beddoes and Neil Hewett, followed shortly after by Paul Griffin. On behalf of the Council he thanked them sincerely and wished them all a very happy retirement.

Finally, the Leader indicated that Councillor Martin Coffin had news from attending a recent RoSPA (Royal Society for the Prevention of Accidents) Awards Ceremony. The Council had received a Gold Award for the fifth consecutive year in recognition of its approach to occupational health and safety and Councillor Coffin presented the Award to the Mayor.

C 14/52 AUDIT COMMITTEE ANNUAL REPORT

Item AU 14/15 referred from Audit Committee minutes of 14 April 2014

RESOLVED: That the recommendations at Minute AU 14/15 be adopted.

C 14/53 ADOPTION OF BYELAWS TO REGULATE ACUPUNCTURE, TATTOOING, SEMI-PERMANENT SKIN COLOURING, COSMETIC PIERCING AND ELECTROLYSIS

Item LA 14/42 referred from Licensing and Appeals Committee minutes of 17 June 2014

RESOLVED: That the recommendations at Minute LA 14/42 be adopted.

C 14/54 REVIEW OF POLLING DISTRICTS AND POLLING PLACES

Item GP 14/4 referred from General Purposes Committee minutes of 23 June 2014

RESOLVED: That the recommendations at Minute GP 14/4 be adopted.

C 14/55 FREEDOM OF INFORMATION - PUBLICATION SCHEME

Item GP 14/5 referred from General Purposes Committee minutes of 23 June 2014

RESOLVED: That the recommendations at Minute GP 14/5 be adopted.

C 14/56 HUMAN RESOURCES STRATEGY UPDATE

Item GP 14/6 referred from General Purposes Committee minutes of 23 June 2014

RESOLVED: That the recommendations at Minute GP 14/6 be adopted.

C 14/57 LOCALISM ACT - PAY POLICY

Item GP 14/7 referred from General Purposes Committee minutes of 23 June 2014

RESOLVED: That the recommendations at Minute GP 14/7 be adopted.

C 14/58 CORPORATE PERFORMANCE PLAN 2012/15 - REVIEW AND UPDATE

Item CB 14/48 referred from Cabinet minutes of 25 June 2014

RESOLVED: That the recommendations at Minute CB 14/48 be adopted.

C 14/59 RISK MANAGEMENT STRATEGY

Item CB 14/49 referred from Cabinet minutes of 25 June 2014

RESOLVED: That the recommendations at Minute CB 14/49 be adopted.

C 14/60 LOCAL CODE OF CORPORATE GOVERNANCE

Item CB 14/50 referred from Cabinet minutes of 25 June 2014

RESOLVED: That the recommendations at Minute CB 14/50 be adopted.

C 14/61 TREASURY MANAGEMENT UPDATE AND ANNUAL REPORT FOR 2013/14

Item CB 14/51 referred from Cabinet minutes of 25 June 2014

RESOLVED: That the recommendations at Minute CB 14/51 be adopted.

C 14/62 DIVERSION OF RESTRICTED BYWAY MR221A, LONDON GOLF CLUB, SOUTH ASH MANOR, ASH

Item AP2 14/14 referred from Area 2 Planning Committee minutes of 16 April 2014

RESOLVED: That the recommendations at Minute AP2 14/14 be adopted.

C 14/63 CHANGES TO CONSTITUTION

The report of the Monitoring Officer set out details of amendments required to the Constitution to reflect changes in working practices associated with the letting of Council contracts. These related to circumstances requiring endorsement of the procurement process by Members, exceptions from procurement rules and reflection of the arrangement with Dartford Borough Council in rules for submission and opening of electronic tenders.

Reference was also made to a proposal to grant delegated authority to the Monitoring Officer to amend the Constitution as a consequence of changes to operational arrangements in the Council's management structure.

RESOLVED: That the Monitoring Officer be authorised to amend the Constitution to give effect to the changes outlined in the report subject to adjustment of the wording of the new rule 12.6 set out at paragraph 1.1.5 of the report.

C 14/64 URGENCY PROVISIONS

The report of the Chief Executive advised that the urgency provisions under Budget and Policy Framework Procedure Rule 4 and Overview and Scrutiny Procedure Rule 15(i) had been invoked in respect of land charges property searches litigation. The report identified the reasons for urgency and reminded Members that the call-in procedure did not apply in these circumstances.

RESOLVED: That the report be received and noted.

C 14/65 SEALING OF DOCUMENTS

RESOLVED: That authority be given for the Common Seal of the Council to be affixed to any instrument to give effect to a decision of the Council incorporated into these Minutes and proceedings.

The meeting ended at 7.59 pm

Agenda Item 8

<u>Meeting</u>	<u>Date</u>	<u>Page Nos. in Minute Book</u>	<u>Recommendations to Council</u>
Licensing and Appeals Panel	10 July	302 – 303	-
Licensing and Appeals Panels (x4)	30 July	310 – 317	-
Licensing and Appeals Panel	29 August	318 – 321	-
General Purposes Committee	1 September	322 – 324	-
Licensing and Appeals Committee	16 September	325 – 326	LA 14/71, 72
Licensing and Appeals Panels (x4)	24 September	327 – 334	-
Licensing and Appeals Panel	6 October	335 – 338	-
Audit Committee	6 October	339 – 342	-
Cabinet	8 October	343 – 346	CB 14/66, 67
Licensing and Appeals Panels (x2)	22 October	To follow	-
Area 2 Planning Committee	2 July	AP 61 – 64	-
Area 3 Planning Committee	24 July	AP 65 – 68	-
Area 1 Planning Committee	31 July	AP 69 – 71	-
Area 2 Planning Committee	13 August	AP 72 – 74	-
Area 3 Planning Committee	28 August	AP 75 – 77	-
Area 1 Planning Committee	11 September	AP 78 – 84	AP1 14/42

Area 2 Planning Committee	17 September	AP 85 – 89	-
Area 3 Planning Committee	9 October	AP 90 – 92	-
Extraordinary Area 2 Planning Committee	14 October	AP 93 – 99	-

TONBRIDGE & MALLING BOROUGH COUNCIL

LICENSING & APPEALS COMMITTEE

16 September 2014

Report of the Director of Central Services and Monitoring Officer

Part 1- Public

Matters for Recommendation to Council

1 FEEDBACK FROM CONSULTATION ON GOOD CONDUCT – APPENDIX I OF THE HACKNEY CARRIAGE AND PRIVATE HIRE POLICY

1.1 Summary

1.1.1 On 9 March 2014 Members approved, for consultation purposes, proposed changes to the existing Hackney Carriage and Private Hire licensing policy. This report asks Members to recommend to Council that the amended policy be adopted.

1.1.2 Hackney carriage and private hire vehicles have a specific role to play in an integrated transport system. They are able to provide services in situations where public transport is either not available or outside “normal” hours of operation such as in the evenings or at weekends or for those with mobility difficulties

1.1.3 The current Hackney Carriage and Private Hire Policy was approved by Full Council on the 16 April 2013 and is published covering the years 2013 – 2016.

1.1.4 Appendix “I” of the current policy “Good conduct for licensed drivers” has been rewritten to reflect the focus on the aspiration to achieve high level of customer service.

1.1.5 The proposed changes went out for public consultation for just over six weeks from the 1 April 2014 until the 16 May 2014. The proposed changes are shown in **Annex 1**.

1.1.6 The response was very disappointing with no returns received during this consultation period.

1.2 Background

1.2.1 Public safety is paramount consideration when processing prospective candidate by ensuring only fit and proper persons are licensed to be entrusted to drive members of the public safely, professionally and courteously to and from their required destinations.

1.2.2 Hackney carriages and private hire licensed drivers undertake great numbers of school contracts with Kent County Council transporting young children, people with special needs and vulnerable adults

1.2.3 The following process steps enabled development of this amended policy

Draft consultation agreed at the Licensing Committee	9 March 2014
Public Consultation	1 April 2014 until 16 May 2014
Licensing Committee agrees the policy and recommends to Full Council for adoption	16 September 2014
Full Council adopt policy	4 November 2014
New Policy comes into force	1 December 2014

1.2.4 The Consultation was made available to taxi stakeholders via:

- the Tonbridge & Malling Web Site
- available to view at Council Offices (Tonbridge and Kings Hill)
- handed out to each taxi stakeholder at reception
- handed out at Waterloo Rank

1.2.5 A copy of the feedback form is shown at **Annex 2**

1.3 Legal Implications

1.3.1 The Council is entitled (but not required) to adopt a policy for the licensing of the hackney carriage and private hire trade. Policies play an important role in ensuring consistent decision making, although a policy cannot fetter the discretion of the Council and each case must be determined on its own merits.

1.4 Financial and Value for Money Considerations

1.4.1 None arising from this report.

1.5 Risk Assessment

1.5.1 The introduction of a policy should provide a transparent and consistent basis for decision making. This in turn should reduce the risks of decisions being challenged in the Courts Recommendations

1.6 Equality Impact Assessment

1.6.1 See 'Screening for equality impacts' table at end of report

1.7 Recommendations

That the proposed changes to the Hackney Carriage and Private Hire policy, attached as **Annex 1**, be approved.

Background papers:
Nil

contact: Anthony Garnett 6151

Adrian Stanfield
Director of Central Services and Monitoring Officer

Screening for equality impacts:		
Question	Answer	Explanation of impacts
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	All applications made are decided on their own merits and on a case by case basis. Application are open to all groups in the community to apply
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	n/a	
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		

In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.

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Appendix I – Good conduct for licensed drivers

17 APPENDIX I

17.1 Code of good conduct for licensed drivers

- 17.1.1 In order to promote its licensing objectives as regards hackney carriage and private hire licensing, the Council has adopted the following Code of Good Conduct, which should be read in conjunction with the other statutory and policy requirements set out in this document.

17.2 Responsibility to the Trade

- 17.2.1 Licence holders shall endeavour to promote the image of the hackney carriage and private hire trade by:

- a) complying with this Code of Conduct
- b) complying with the Council's Hackney Carriage and Private Hire Licensing Policy
- c) behaving in a civil, orderly and responsible manner at all times.

17.3 Responsibility to Clients and high level of customer service

- a) ensure you are courteous at all times when talking to anyone, especially customers.
- b) be polite, helping customers with their baggage or shopping
- c) maintain their vehicles in a safe and satisfactory condition at all times
- d) keep their vehicles clean and suitable for hire to the public at all times
- e) attend punctually when undertaking pre-booked hiring
- f) assist, where necessary, passengers' ingress to and egress from vehicles
- g) ensure you have change with you – (a fare may well require change).

17.4 Responsibility to Residents

- a) avoid being nuisance to residents when picking up or waiting for a fare.
- b) not sound the vehicle's horn illegally
- c) keep the volume of all audio equipment and two-way radios to a minimum
- d) switch off the engine if required to wait
- e) take whatever additional action is necessary to avoid disturbance to residents in the neighbourhood

17.5 At hackney carriage ranks, in addition to the requirements above:

- a) rank in an orderly manner and proceed along the rank in order and promptly using both lanes, leaving no gaps.
- b) The hackney carriage at top of rank will take the customer to any destination within the Borough regardless of how short the journey may be.
- c) no driver to tell a customer that the minimum fare is higher than the current fare chart minimum fare.

17.6 at private hire offices:

- a) not undertake servicing or repairs of vehicles
- b) not allow volume of all audio equipment and two-way radios to unduly disturb residents of the neighbourhood
- c) take whatever additional action is necessary to avoid disturbance to residents in the neighbourhood, which might arise from the conduct of their business.

17.7 General

17.7.1 Drivers shall:

- a) pay attention to personal hygiene and dress, so as to present a professional image to the public
- b) drive with care and due consideration for other road users and pedestrians and, in particular, shall not use a hand held mobile phone whilst driving
- c) obey all Traffic Regulation Orders and directions at all time
- d) not smoke at any time when inside the vehicle
- e) not consume alcohol immediately before, or at any time whilst driving or being in charge of a hackney carriage or private hire vehicle (any amount of alcohol can affect a drivers' judgement)
- f) not drive while having misused legal or illegal drugs (any amount of drugs can affect a drivers' judgement). If a driver properly uses prescription drugs that make him drowsy he should not drive
- g) fulfil their responsibility to ensure compliance with legislation regarding the length of working hours
- h) not eat in the vehicle in the presence of customers

17.8 Disciplinary Hearings

17.8.1 Drivers should be aware of the powers the Council has to take action, by way of suspension, revocation or refusal to renew a driver's licence where:

- a) the driver has been convicted, since the grant of the licence, of an offence involving dishonesty, indecency or violence
- b) the driver has been convicted of an offence under any legislation relating to hackney carriage or private hire regulation
- c) the driver has breached any requirements of the Council's Hackney Carriage and Private Hire Licensing Policy
- d) there is a breach of condition of this code

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www.tmbc.gov.uk

Feedback Form – “Good conduct” for licensed drivers – Consultation responses – closing date 16 May 2014

1. Read through the proposed “Good Conduct” policy on pages 2-5
2. Write in the grid below any comments or changes you would like to see in the policy
3. Email comments to licensing@tmbc.gov.uk or send to Licensing Team, Tonbridge & Malling Borough Council, Gibson Building, Gibson Drive, Kings Hill, West Malling, Kent, ME19 4LZ

Respondent	Comment	Ref	Officers comments and recommendation to Licensing and Appeals Committee
Page 19			

Appendix I – Good conduct for licensed drivers

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17.3 Responsibility to Clients and high level of customer service

- a) ensure you are courteous at all times when talking to anyone, especially customers.
- b) be polite, helping customers with their baggage or shopping
- c) maintain their vehicles in a safe and satisfactory condition at all times
- d) keep their vehicles clean and suitable for hire to the public at all times
- e) attend punctually when undertaking pre-booked hiring
- f) assist, where necessary, passengers' ingress to and egress from vehicles
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17.5 At hackney carriage ranks, in addition to the requirements above:

- a) rank in an orderly manner and proceed along the rank in order and promptly using both lanes, leaving no gaps.
- b) The hackney carriage at top of rank will take the customer to any destination within the Borough regardless of how short the journey may be.
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- c) take whatever additional action is necessary to avoid disturbance to residents in the neighbourhood, which might arise from the conduct of their business.

17.7 General

17.7.1 Drivers shall:

- a) pay attention to personal hygiene and dress, so as to present a professional image to the public
- b) drive with care and due consideration for other road users and pedestrians and, in particular, shall not use a hand held mobile phone whilst driving
- c) obey all Traffic Regulation Orders and directions at all time
- d) not smoke at any time when inside the vehicle
- e) not consume alcohol immediately before, or at any time whilst driving or being in charge of a hackney carriage or private hire vehicle (any amount of alcohol can affect a drivers' judgement)
- f) not drive while having misused legal or illegal drugs (any amount of drugs can affect a drivers' judgement). If a driver properly uses prescription drugs that make him drowsy he should not drive
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- a) the driver has been convicted, since the grant of the licence, of an offence involving dishonesty, indecency or violence
- b) the driver has been convicted of an offence under any legislation relating to hackney carriage or private hire regulation
- c) the driver has breached any requirements of the Council's Hackney Carriage and Private Hire Licensing Policy
- d) there is a breach of condition of this code

TONBRIDGE & MALLING BOROUGH COUNCIL

LICENSING & APPEALS COMMITTEE

16 September 2014

Report of the Director of Central Services and Monitoring Officer

Part 1- Public

Matters for Recommendation to Council

1 ADOPTION OF THE MODEL BYELAWS FOR HACKNEY CARRIAGES

1.1 Introduction

- 1.1.1 The purpose of this report is to recommend that the Council passes a resolution to adopt a new single consolidated set of Model Byelaws for Hackney Carriages, produced by the Department of Transport (DfT), to regulate the conduct of hackney carriage drivers.
- 1.1.2 Whilst the Council has power to attach conditions to licences to regulate hackney carriage/ private hire vehicles, and private hire drivers and operators, no equivalent power exists to attach conditions to the licence of a hackney carriage driver. Therefore any regulation of hackney carriage drivers must be secured through byelaws.
- 1.1.3 The existing byelaws (which came into operation in 1971) are based upon a much older version of the model, and it is considered that the latest model set be adopted so as to bring the byelaws in line with changes in legislation and practice..
- 1.1.4 .A copy of the proposed byelaws is attached at **Annex 1**.

1.2 Background

- 1.2.1 Section 68 of the Town Police Clauses Act 1847 states that a district council may from time to time make byelaws for all or any of the purposes following.
- For regulating the conduct of the proprietors and drivers of hackney carriages plying within the prescribed distance in their several employments, and determining whether such drivers shall wear any and what badges, and for regulating the hours within which they may exercise their calling:
 - For regulating the manner in which the number of each carriage, corresponding with the number of its licence, shall be displayed:
 - For regulating the number of persons to be carried by such hackney carriages, and in what manner such number is to be shown on such carriage, and what number of horses or other animals is to draw the same, and the placing of

check strings to the carriages, and the holding of the same by the driver, and how such hackney carriages are to be furnished or provided:

- For fixing the stands for such hackney carriages, and the distance to which they may be compelled to take passengers, not exceeding the prescribed distance:
- For fixing the rates or fares, as well for time as distance, to be paid for such hackney carriages within the prescribed distance, and for securing the due publication of such fares:
- For securing the safe custody and re-delivery of any property accidentally left in hackney carriages, and fixing the charges to be made in respect thereof.

1.2.2 The DfT has produced a set of Model Byelaws as a basis for local authorities to use. Once made the Byelaws must be approved by the Secretary of State before being brought into effect. The DFT have advised that they would expect local authorities to base their byelaws on the model.

1.2.2 The procedure to be applied in the making of the Byelaws is set out in Section 236 of the Local Government Act 1972. In respect of hackney carriages, the proposed draft byelaws must be first submitted to the Department for Transport for provisional approval. Once such approval is given, the Council must then follow the making, sealing and advertising procedure in Section 236 of the 1972 Act and thereafter submit the byelaws for approval.

1.2.3 Once confirmed, the Department of Transport will agree a coming into operation date (standard time is four weeks from confirmation).

1.3 Legal Implications

1.3.1 The Council is empowered to adopt byelaws for the regulation of hackney carriage drivers pursuant to section 68 of the Town Police Clauses Act 1847 and section 171 of the Public Health Act 1875.

1.4 Financial and Value for Money Considerations

1.4.1 None arising from this report.

1.5 Risk Assessment

1.5.1 The only way the Council can effectively control hackney carriage drivers is by adopting byelaws under section 68 of the Town Police Clauses Act 1847 and section 171 of the Public Health Act 1875.

1.6 Equality Impact Assessment

1.6.1 See 'Screening for equality impacts' table at end of report

1.7 Recommendations

1.7.1 Members are asked to recommend to Council that

- (a) the Council passes a resolution to adopt model byelaws (as set out at **Annex 1**) for the regulation of Hackney Carriages in accordance section 68 of the Town Police Clauses Act 1847, and section 171 of the Public Health Act 1875;
- (b) the Director of Central Services be authorised to take all necessary steps to apply to the Department for Transport for confirmation;
- (c) the model byelaws shall come into effect from the date on which the byelaws referred to above are confirmed by the Department for Transport and the current byelaws revoked.

Background papers:

contact: Anthony Garnett 6151

None

Adrian Stanfield

Director of Central Services and Monitoring Officer

Screening for equality impacts:		
Question	Answer	Explanation of impacts
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	N/A	
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		

In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.

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BYELAWS FOR HACKNEY CARRIAGES

Made under section 68 of the Town Police Clauses Act 1847, and section 171 of the Public Health Act 1875, by the council of *[name of council]* with respect to hackney carriages in *[name of district]*.

Interpretation

1. Throughout these byelaws “the Council” means *[name of council]* and “the district” means *[name of district]*.
2. A driver of a hackney carriage shall:-
 - (i) not wilfully or negligently cause or suffer the licence plate of the Hackney Carriage to be concealed from public view while the carriage is standing or plying for hire; and
 - (ii) not cause or permit the carriage to stand or ply for hire with any such plate so defaced that any figure or material particular is illegible.
3. The driver of a hackney carriage provided with a taximeter shall:-
 - (a) when standing or plying for hire, keep the key, flag or other device fitted in pursuance of the byelaw in that behalf locked in the position in which no fare is recorded on the face of the taximeter;
 - (b) before beginning a journey for which a fare is charged for distance and time, bring the machinery of the taximeter into action by moving the said key, flag or other device so that the word “HIRED” is legible on the face of the taximeter and keep the machinery of the taximeter in action until the termination of the hiring; and
 - (c) cause the dial of the taximeter to be kept properly illuminated throughout any part of a hiring which is between half-an-hour after sunset and half-an-hour before sunrise, and also at any other time at the request of the hirer.
4. A driver of a hackney carriage shall not tamper with or permit any person to tamper with any taximeter with which the carriage is provided, with the fittings thereof, or with the seals affixed thereto.
5. The driver of a hackney carriage shall, when plying for hire in any street and not actually hired:-
 - (a) proceed with reasonable speed to one of the stands appointed by the Council;
 - (b) if a stand, at the time of his arrival, is occupied by the full number of carriages authorised to occupy it, proceed to another stand;
 - (c) on arriving at a stand not already occupied by the full number of carriages authorised to occupy it, station the carriage immediately

behind the carriage or carriages on the stand and so as to face in the same direction; and

- (d) from time to time, when any other carriage immediately in front is driven off or moved forward cause his carriage to be moved forward so as to fill the place previously occupied by the carriage driven off or moved forward.
6. A driver of a hackney carriage, when standing or plying for hire, shall not make use of the services of any other person for the purpose of importuning any person to hire such carriage.
 7. The driver of a hackney carriage shall behave in a civil and orderly manner and shall take all reasonable precautions to ensure the safety of persons conveyed in or entering or alighting from the vehicle.
 8. A driver of a hackney carriage who has agreed or has been hired to be in attendance with the carriage at an appointed time and place shall, unless delayed or prevented by some sufficient cause, punctually attend with such carriage at such appointed time and place.
 9. A driver of a hackney carriage shall not convey or permit to be conveyed in such carriage any greater number of persons than the number of persons specified on the licence plate affixed to the outside of the carriage.
 10. If a badge has been provided by the Council and delivered to the driver of a hackney carriage he shall, when standing or plying for hire, and when hired, wear that badge in such position and manner as to be plainly visible.
 11. The driver of a hackney carriage so constructed as to carry luggage shall, when requested by any person hiring or seeking to hire the carriage:-
 - (a) convey a reasonable quantity of luggage;
 - (b) afford reasonable assistance in loading and unloading; and
 - (c) afford reasonable assistance in removing it to or from the entrance of any building, station or place at which he may take up or set down such person.
 12. The driver of a hackney carriage shall be entitled to demand and take for the hire of the carriage the rate or fare prescribed by the Council, the rate or fare being calculated by distance unless the hirer expresses at the commencement of the hiring his desire to engage by time.

Provided always that where a hackney carriage furnished with a taximeter shall be hired by distance the driver thereof shall not be entitled to demand and take a fare greater than that recorded on the taximeter, save for any extra charges authorised by the Council which it may not be possible to record on the face of the taximeter.
 13. The driver of a hackney carriage bearing a statement of fares in accordance with this byelaw shall not wilfully or negligently cause or

suffer the letters or figures in the statement to be concealed or rendered illegible at any time while the carriage is plying or being used for hire.

14. The driver of a hackney carriage shall immediately after the termination of any hiring or as soon as practicable thereafter carefully search the carriage for any property which may have been accidentally left therein.

15. The driver of a hackney carriage shall, if any property accidentally left therein by any person who may have been conveyed in the carriage be found by or handed to him:-

- (a) carry it as soon as possible and in any event within 48 hours if not sooner claimed by or on behalf of its owner, to the office of the Council and leave it in the custody of the officer in charge of the office on his giving a receipt for it; and
- (b) be entitled to receive from any person to whom the property shall be re-delivered an amount equal to ten pence in the pound of its estimated value (or the fare for the distance from the place of finding to the office of the Council, whichever be the greater) but not more than twenty five pounds.

Penalties

16. Every person who shall offend against any of these byelaws shall be liable on summary conviction to a fine not exceeding Level 2 on the Standard Scale and in the case of a continuing offence to a further fine not exceeding two pounds for each day during which the offence continues after conviction therefor.

Repeal of Byelaws¹

19. The byelaws relating to hackney carriages which were made by Council² on the day of and which were confirmed by³ on the day of are hereby repealed.

¹ If there are no byelaws in force upon the subject, this should be stated and the clause struck out

² State the names in full of all local authorities whose byelaws are to be repealed

³ State the confirming authority

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TONBRIDGE & MALLING BOROUGH COUNCIL

CABINET

08 October 2014

Report of the Director of Finance and Transformation

Part 1- Public

Matters for Recommendation to Council

1 TREASURY MANAGEMENT MID-YEAR REVIEW 2014/15

A report detailing treasury management activity undertaken during the period April to August of the current financial year is to be considered by the Audit Committee on 6 October. The report also reminds Members of the parameters that define the Council's risk appetite and of the arrangements for managing the Council's investments. Cabinet are invited to recommend that Council endorse the action taken by officers in respect of treasury management activity to date, to retain the current risk parameters and note the change in management responsibility for the Council's core fund investments.

1.1 Introduction

- 1.1.1 Council adopted the 2009 CIPFA Code of Practice for Treasury Management on 18 February 2010. That Code, and subsequent updates, requires as a minimum that full Council approves an annual strategy prior to the start of the financial year, a mid-year review of that strategy (this report) and an outturn report.
- 1.1.2 Additional reports updating Members on current activity are presented to the Audit Committee and performance is also reported on a regular basis to the Finance, Innovation and Property Advisory Board. The combination of Member reporting and detailed scrutiny of activity ensures this Council complies with best practice.
- 1.1.3 The treasury management report presented to the Audit Committee on 6 October 2014 is replicated in full at **[Appendix 1]**.

1.2 2014/15 Treasury Management Performance

- 1.2.1 A gross annualised return of 0.62% was generated on investments for the period April to August. Whilst this bettered the 7 day LIBID benchmark by 27 basis points, in cash terms, investment income of £60,400 was £9,400 below our profiled budget for the same period. The shortfall against budget is attributed to the relatively poor performance achieved by our external fund manager in the early part of the year.

- 1.2.2 Historically, the Council's core funds have been managed by an external fund manager and are being used to support both revenue and capital expenditure over the next few years of our medium term financial strategy as the Council grapples with savings targets to achieve a balanced budget. The core fund balance of £13.4m (expected to reduce to circa £11m by the end of the financial year) is at a level where In-house management is practical without the need for additional staff resources. The 2014/15 Annual Investment Strategy made provision for these funds to be transferred to In-house management by the end of the financial year and thus contribute to future savings targets through reduced fund management fees. I'm pleased to report that the transfer to In-house management took place on 1 August 2014.
- 1.2.3 Following the transfer, initial core fund maturities have been reinvested in nine month term deposits (both fixed and tradable certificates of deposit) to generate yield. Other maturities as they arise will be invested in shorter duration instruments (mix of three and six month durations) to retain a degree of liquidity and take advantage of interest rate rises should they occur. Although its 'early days' there was a noticeable improvement in yield during August which will continue as the months pass such that interest earned on core funds is expected to be in-line with budget for the final eight months of the financial year.
- 1.2.4 All investments undertaken in 2014/15 complied in full with the requirements of the 2014/15 Annual Investment Strategy including prudential and treasury limits.

1.3 Review of Risk Parameters and Regulatory Changes

- 1.3.1 The 2014/15 Investment Strategy was approved by full Council in February 2014. The Strategy limits the Council's exposure to investment risks via the specification of minimum sovereign and counterparty credit ratings and associated exposure limits. The Strategy also imposes restrictions on the duration of an investment and the type of investment instrument that can be used. In conducting a mid-year review of the Strategy no change to the Council's current risk appetite is proposed.
- 1.3.2 The Audit Committee report makes reference to regulatory changes that may impact in the future on: the Council's use of Money Market Funds (used for daily cash management purposes); and bank credit ratings following the removal of sovereign support. Neither issue is expected to have any implications for our investment approach over the remainder of this financial year but the issues will need to be revisited in preparing the 2015/16 Annual Investment Strategy.

1.4 Legal Implications

- 1.4.1 Under Section 151 of the Local Government Act 1972, the Section 151 Officer has statutory duties in relation to the financial administration and stewardship of the authority, including securing effective arrangements for treasury management.

1.4.2 This annual review report fulfils the requirements of The Chartered Institute of Public Finance & Accountancy's Code of Practice on Treasury Management 2009.

1.5 Financial and Value for Money Considerations

1.5.1 As outlined above.

1.6 Risk Assessment

1.6.1 The application of best practice, including the regular reporting and scrutiny of treasury management activity as identified by the CIPFA Code, is considered to be the most effective way of mitigating the risks associated with treasury management.

1.7 Equality Impact Assessment

1.7.1 See 'Screening for equality impacts' table at end of report.

1.8 Recommendations

1.8.1 Subject to any comments from the Audit Committee, Cabinet is invited to **RECOMMEND** that Council:

- 1) Endorse the action taken by officers in respect of treasury management activity for the period April to August 2014.
- 2) Note the transfer of responsibility for core fund investments to In-house management took effect on 1 August 2014.
- 3) Retain the existing parameters intended to limit the Council's exposure to investment risks.

Background papers:

contact: Michael Withey

Nil

Sharon Shelton

Director of Finance and Transformation

Screening for equality impacts:		
Question	Answer	Explanation of impacts
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	N/A

Screening for equality impacts:		
Question	Answer	Explanation of impacts
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	No	N/A
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		N/A

In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.

TONBRIDGE & MALLING BOROUGH COUNCIL**AUDIT COMMITTEE****06 October 2014****Report of the Director of Finance & Transformation****Part 1- Public****Matters for Recommendation to Cabinet – Council Decision****1 TREASURY MANAGEMENT MID-YEAR REVIEW 2014/15**

This report provides an update on treasury management activity undertaken during the period April to August of the current financial year. Members are reminded of the parameters that define the Council's risk appetite and of the arrangements for managing the Council's investments. Members are invited to endorse the action taken by officers in respect of treasury management activity to date, to retain the current risk parameters and note the change in management responsibility for the Council's core fund investments.

1.1 Introduction

1.1.1 The Chartered Institute of Public Finance and Accountancy's (CIPFA) Code of Practice on Treasury Management (revised November 2009) was adopted by this Council on 18 February 2010.

1.1.2 The primary requirements of the 2009 Code and its subsequent revisions are as follows:

- Creation and maintenance of a Treasury Management Policy Statement which sets out the policies and objectives of the Council's treasury management activities.
- Creation and maintenance of Treasury Management Practices which set out the manner in which the Council will seek to achieve those policies and objectives.
- Receipt by the full Council of an annual Treasury Management Strategy Statement - including the Annual Investment Strategy - for the year ahead, a Mid-year Review Report (this report) and an Annual Report (stewardship report) covering activities during the previous year.
- Delegation by the Council of responsibilities for implementing and monitoring treasury management policies and practices and for the execution and administration of treasury management decisions.
- Delegation by the Council of the role of scrutiny of treasury management strategy and policies to a specific named body. For this Council the delegated body is the Audit Committee.

1.1.3 This mid-year report has been prepared in compliance with CIPFA's Code of Practice, and covers the following:

- An economic update and revised interest rate forecast.
- Investment performance for April to August of the 2014/15 financial year.
- The current investment portfolio and associated management arrangements.
- Borrowing.
- Compliance with Treasury and Prudential Limits for 2014/15.
- A review of the risk parameters contained in the 2014/15 Annual Investment Strategy.

1.2 Economic Background

1.2.1 The strong growth experienced in the UK throughout 2013 has continued in the first two quarters of 2014 (0.8% in Q1 and Q2 of 2014 which equates to an annual rate of 3.2%). Strong growth is expected to continue throughout 2014 as forward surveys for the services and construction sectors are very encouraging and business investment is improving. However, sustained economic recovery in the longer term will require a rebalancing away from dependence on consumer expenditure and the housing market towards manufactured goods and exports.

1.2.2 Most economic forecasters are expecting growth to peak in 2014 and then to ease off a little, though still remaining strong, in 2015 and 2016. The sharp fall in inflation (CPI) down to 1.5% in May, the lowest rate since 2009, is also encouraging. Forward indications are that inflation is likely to fall further in 2014 to something near 1%. Overall, markets are expecting that the Bank of England Monetary Policy Committee (MPC) will be cautious in raising the Bank Rate as it will want to protect heavily indebted consumers from too early an increase at a time when inflationary pressures are weak. A first increase in Bank Rate is expected in Q1 or Q2 of 2015 and increases after that are expected to be at a slow pace and ultimately rise to a lower level than that prevailing before 2008.

1.2.3 The UK's major trading partner, the Eurozone, is facing increasing threats from weak or negative growth and from deflation. The European Central Bank (ECB) took limited action in June to loosen monetary policy in order to promote growth. In August, the inflation rate fell further, to reach a low of 0.3%. However, this is an average for all Eurozone countries and includes some countries with negative rates of inflation. In September the ECB took further action to cut its benchmark rate (the equivalent of our Bank Rate) to only 0.05% and started a programme of corporate debt purchases. The ECB has not yet embarked (it may never) on a programme of full quantitative easing (purchase of sovereign debt).

1.2.4 In the US the Federal Reserve continued to reduce its programme of asset purchases. Complete cessation of the programme is a precursor to rising interest rates in America. Asset purchases have now fallen from \$85bn per month in December 2013 to \$25bn in July 2014. Providing strong growth continues the programme is expected to come to an end in October 2014.

1.3 Interest Rate Forecast

1.3.1 The Council's treasury advisor, Capita Asset Services, has provided the following forecast:

Rate	Now	Dec-14	Mar-15	Jun-15	Sep-15	Dec-15	Mar-16	Jun-16	Sep-16	Dec-16
	%	%	%	%	%	%	%	%	%	%
Bank Rate	0.50	0.50	0.75	0.75	1.00	1.00	1.25	1.25	1.50	1.75
3 mth LIBID	0.50	0.60	0.80	0.80	1.10	1.10	1.30	1.40	1.60	1.90
6 mth LIBID	0.60	0.80	0.90	1.00	1.15	1.20	1.40	1.50	1.80	2.00
12 mth LIBID	0.80	1.00	1.00	1.20	1.30	1.40	1.70	1.80	2.10	2.20
25yr PWLB	4.00	4.10	4.20	4.30	4.40	4.50	4.60	4.70	4.80	4.80

Downside risks to the forecast include:

- UK strong economic growth is currently dependent on consumer spending and an unsustainable boom in the housing market. The boost from these sources is likely to fade after 2014.
- A weak rebalancing of UK growth to exporting and business investment causing a weakening of overall economic growth beyond 2014.
- Weak growth or recession in the UK's main trading partners - the EU and US, inhibiting economic recovery in the UK.
- A resurgence of the Eurozone sovereign debt crisis caused by ongoing deterioration in government debt to GDP ratios to the point where financial markets lose confidence in the financial viability of one or more countries and in the ability of the ECB and Eurozone governments to deal with the issues.
- Recapitalising of European banks requiring more government financial support.
- Lack of support by populaces in Eurozone countries for austerity programmes, especially in countries with very high unemployment rates.
- Monetary policy action failing to stimulate sustainable growth in western economies especially the Eurozone but also Japan.
- There are also increasing concerns that the reluctance of western economies to raise interest rates significantly for some years, plus the significant QE measures which remain in place has created potentially unstable flows of liquidity searching for yield and therefore heightened the potential for an increase in risks in order to get higher returns (a return of the environment which led to the 2008 financial crisis).

1.4 Investment Portfolio

1.4.1 The Annual Investment Strategy for the 2014/15 financial year was approved by Council on 18 February 2014. The Strategy outlines the Council's investment priorities as follows:

- Security of Capital,
- Liquidity.

- 1.4.2 In addition the Council aims to achieve the optimum return (yield) on investments commensurate with the proper levels of security and liquidity. In particular, for 2014/15 the Council will 'avoid locking into longer term deals while investment rates are down at historically low levels unless attractive rates are available with counterparties of particularly high creditworthiness which make longer term deals worthwhile'. The Council has adopted Capita's recommended creditworthiness approach which incorporates the credit ratings from each of the three main rating agencies and includes sovereign credit ratings and a market view of risk using credit default swap data.
- 1.4.3 A full list of investments held on 31 August 2014 and our internal lending list in operation on that date are shown in **[Annexes 1 and 2]** of this report.
- 1.4.4 As illustrated above, investment rates available in the market are at an historical low point. The average level of cash flow funds available for investment purposes to the end of August 2014 was £10.0m. These funds were available on a temporary basis and the amount mainly dependent on the timing of precept payments, receipt of grants and progress on the capital programme. The Authority holds £13.4m of core cash balances for investment purposes. These funds are for the most part available to invest for more than one year, albeit some funds will need to be recalled towards the end of the financial year to top-up our daily cash balances. Responsibility for the management of core funds transferred from the Council's external fund manager to In-house management on 1 August 2014.
- 1.4.5 At the end of August 2014 funds invested and interest earned is set out in the table below:

	Funds invested at 31 August 2014	Average duration to maturity	Weighted average rate of return	Interest earned to 31 August 2014	Gross annualised return	7 day LIBID benchmark
	£m	Years	%	£	%	%
In-house cash flow	8.2	0.15	0.73	27,600	0.66	0.35
Externally managed core funds to 31 July	-	0.78 [1]	0.61 [1]	25,500	0.57	0.35
In-house managed core funds from 1 August	13.4	0.82	0.71	7,300	0.64	0.35
Total	21.6	0.57	0.72	60,400	0.62	0.35

[1] Figures shown for comparative purposes represent the values applicable to the externally managed portfolio on 31 July, the day before transfer to In-house management.

- 1.4.6 Interest earned of £60,400, whilst 27 basis points better than benchmark, is £9,400 below budget expectations. The shortfall against budget is attributed to the relatively poor performance achieved by the external fund manager in the early part of the year.
- 1.4.7 **Cash Flow Funds.** Our daily cash flow balances for the year ahead are modelled at the start of the financial year. That cash flow model is then updated daily and reviewed on a regular basis. The majority of our cash flow surpluses are invested overnight in bank deposit accounts and money market funds to ensure sufficient short term liquidity to meet payment obligations. When cash surpluses permit fixed term investments are undertaken to take advantage of the higher yields available.
- 1.4.8 The Council participates in Capita's benchmarking service which enables the Council to gauge its in-house performance against Capita's other local authority clients. An extract from the latest benchmarking data is provided in the form of a scatter graph at **[Annex 3]**. The graph shows the return (vertical scale) vs. the credit / duration risk (horizontal scale) associated with an authority's investments. At 30 June 2014 our return (purple diamond) was the highest of the other Kent benchmarking group authorities and above the average for all other local authorities. Our return also outperformed that anticipated by the model based on our exposure to credit / duration risk.
- 1.4.9 **Core Funds.** Historically, these funds have been managed by an external fund manager and are being used to support both revenue and capital expenditure over the next few years of our medium term financial strategy as the Council grapples with savings targets to achieve a balanced budget. The core fund balance of £13.4m (expected to reduce to circa £11m by the end of the financial year) is at a level where In-house management is practical without the need for additional staff resources. The 2014/15 Annual Investment Strategy (considered by Audit Committee in January 2014) made provision for these funds to be transferred to In-house management by the end of the financial year and thus contribute to future savings targets through reduced fund management fees. I'm pleased to report that the transfer to In-house management took place on 1 August 2014.
- 1.4.10 On 1 August all tradable instruments (Gilts, Treasury Bills and Certificates of Deposit) which comprised the lion's share (£12.6m) of the core fund were transferred to the Council's custody account with King & Shaxon and the cash balance (£0.8m) transferred to the Council's bank account. With the exception of the Gilts (£2.2m, maturing 2018) the fund manager's preference for short duration instruments, typically three months in duration, explains the poor performance referred to at paragraph 1.4.6. One benefit of their approach will be that by mid-October all of the investments (other than the Gilts) will have been replenished by the In-house team.

1.4.11 Following the transfer, initial core fund maturities have been reinvested in nine month term deposits (both fixed and tradable certificates of deposit) to generate yield. Other maturities as they arise will be invested in shorter duration instruments (mix of three and six month durations) to retain a degree of liquidity and take advantage of interest rate rises should they occur. Although its 'early days' the table at paragraph 1.4.5 demonstrates an improvement in core fund yield during August. The improvement in yield will continue as the months pass such that interest earned on core funds is expected to be in-line with budget for the final eight months of the financial year.

1.4.12 To accommodate the transfer the number of counterparties on our lending list **[Annex 2]** was expanded and investment limits attributable to cash flow and core fund activities separately identified. The two funds, whilst managed by the same staff, are treated as separate identities. The approach has ensured the simplicity of our daily cash flow management and associated staff cover arrangements can be perpetuated. The expanded lending list will help ensure the diversity of the combined portfolios can be maintained in the future.

1.5 Borrowing

1.5.1 It is a statutory duty for the Council to determine and keep under review the 'Affordable Borrowing Limits' by way of the Prudential Indicators (affordability limits) set out in the approved 2014/15 Investment Strategy. The Authority is debt free and uses a combination of reserves and revenue contributions to finance the Capital Plan. Borrowing on a temporary basis using overdraft facilities may be required from time to time to meet liquidity needs. No borrowing was undertaken in the period April 2014 to August 2014.

1.6 Compliance with the Annual Investment Strategy

1.6.1 During the financial year to date the Council has operated within the treasury limits and prudential indicators set out in the 2014/15 Investment Strategy and in compliance with the Council's Treasury Management Practices. The Prudential and Treasury Indicators can be found at **[Annex 4]** to this report.

1.6.2 Throughout April to August 2014 all of the requirements contained in the 2014/15 Annual Investment Strategy intended to limit the Council's exposure to investment risks (minimum sovereign and counterparty credit rating; durational limits; exposure limits in respect of counterparties, groups of related counterparty and sovereigns; and specified and non-specified investment limits) have been complied with.

1.7 Review of risk parameters

1.7.1 Members will recall the detailed consideration that was given to the 2014/15 Annual Investment Strategy at the January 2014 meeting of the Audit Committee. The strategy includes the detailed parameters that aim to limit the Council's exposure to investment risks by requiring investments to be placed with highly

credit rated institutions and that those investments are diversified across a range of counterparties. More specifically the 2014/15 Investment Strategy requires:

- Counterparties must be regulated by a Sovereign rated AA- or better as recognised by each of the three main rating agencies (Fitch, Moody's or Standard & Poor's).
- Whilst 100% of funds can be invested in the UK, exposure to non-UK banks is limited to no more than 20% of funds per Sovereign.
- Exposure to individual counterparties / groups of related counterparty must not exceed 20% of funds (25% of funds for part state owned UK Banks).
- In selecting suitable counterparties the Council has adopted Capita's credit worthiness methodology. The methodology combines the output from all three credit rating agencies including credit watches / outlooks and credit default swap data to assign a durational band to a financial institution (100 days, 6 months, 12 months, 5 years etc.). At the time of placing an investment the financial institution must be assigned a durational band of at least 100 days. This broadly equates to a minimum long term credit rating of Fitch A (high) and a short term credit rating of Fitch F1 (strong).
- The duration of an investment in a foreign bank must not exceed Capita's recommendation. For UK financial institutions Capita's duration recommendation can be enhanced by up to three months subject to the combined duration (Capita recommendation plus the enhancement) not exceeding 12 months.
- Money Market funds should be rated Fitch AAmmf or equivalent and exposure limited to no more than 20% per fund.
- Enhanced Money Funds should be rated AAA and exposure limited to no more than 10% per fund and 20% to all such funds.

1.7.2 The 2014/15 Strategy also limits the type of instrument (e.g. term deposits, floating rate notes etc.) that can be used and establishes a maximum investment duration (2 years other than Gilts). Given our overriding investment priorities of security of capital and liquidity the Council does not invest in equities.

1.7.3 In preparing this report our risk parameters have been reviewed and no changes are proposed.

1.8 Money market fund regulatory changes

1.8.1 Money market funds (MMFs) form a critical component in our daily cash flow management. They provide the same day access to cash as a traditional bank deposit account; allow surplus cash to be placed in a AAA credit rated product; and ensure our peak monthly cash balances are disbursed across a range of counterparties. The current yield on a typical fund used by the Council is 0.4% and falls roughly mid-way between the average yield from our bank deposit accounts at 0.6% and that offered by the UK Debt Management Office at 0.25%.

1.8.2 Regulatory changes affecting funds traded in the US have recently been introduced by the Securities and Exchange Commission. Whilst these regulations do not affect funds domiciled in Europe (the ones we use) regulatory reform in

Europe is in progress. The exact nature of the reform and when it will be enacted is unclear at the present time. Any change, however, will involve a 'bedding-in period' to allow MMFs to adapt to the new requirements. Any impact on our cash management operation is unlikely before next financial year.

1.9 Credit rating agencies approach to sovereign support for banks

- 1.9.1 The main rating agencies (Fitch, Moody's and Standard & Poor's) have historically provided some institutions with an uplift to their credit ratings to reflect sovereign support. Due to the evolving regulatory regime, these support levels are going to be removed by the rating agencies and this process may commence as early as this calendar year. The actual timing of the changes is still subject to discussion but it has already prompted a change in the way Capita assesses creditworthiness.
- 1.9.2 It is important to stress that the change in approach by the rating agencies does not reflect a change in the underlying status of an institution or the credit environment in which they operate, merely the implied level of support that has been built into ratings through the financial crisis. The eventual removal of Government support will only take place when the regulatory environment has ensured that financial institutions are much stronger and less prone to failure in a crisis should one occur in the future.
- 1.9.3 Both Fitch and Moody's provide 'standalone' credit ratings for financial institutions. For Fitch, it is the viability rating, while Moody's has the financial strength rating. Due to the removal of sovereign support from institution assessments, both agencies have suggested that in the future these will be the same as their long term ratings. As a result, Capita see no merit in monitoring both long term and 'standalone' ratings.
- 1.9.4 Furthermore, Fitch has already begun reassessing its support ratings, with a clear expectation that these will be lowered to 5, which is defined as 'A bank for which there is a possibility of external support, but it cannot be relied upon.' With all institutions likely to drop to these levels, Capita see little to no differentiation to be had from continuing to include support ratings in their methodology.
- 1.9.5 As a result of these rating agency changes, the credit element of Capita's methodology now focus solely on the short and long term ratings of an institution. Rating watch and outlook information continues to feature in Capita's assessment where it relates to these categories as does the use of credit default swap data. The change in Capita's methodology was introduced in June of this year and had little impact on their credit worthiness assessments (no banks were removed from the list of suggested counterparties, a few were added and a few had their recommended investment duration increased by one band).
- 1.9.6 Credit ratings play a key role in our approach to risk management. Whilst the changes outlined above are unlikely to impact on the number of counterparties on our internal lending list during the remainder of this financial year this is an issue

we will need to revisit when we consider the Annual Investment Strategy for 2015/16.

1.10 Legal Implications

- 1.10.1 Under Section 151 of the Local Government Act 1972, the Section 151 Officer has statutory duties in relation to the financial administration and stewardship of the authority, including securing effective arrangements for treasury management.
- 1.10.2 This annual review report fulfils the requirements of The Chartered Institute of Public Finance & Accountancy's Code of Practice on Treasury Management 2009.

1.11 Financial and Value for Money Considerations

- 1.11.1 The Bank Rate has remained at a historic low of 0.5% for over 5 years. Capita, our treasury advisors, in common with other market forecasts, anticipate an interest rate rise sometime during the final months of the current 2014/15 financial year.
- 1.11.2 Investment income is £9,400 below budget at the end of August. The shortfall is attributed to the relatively poor performance achieved by our external fund manager in the early part of the year. Core funds were transferred to In-house management at the beginning of August and investment income for the remainder of the financial year is expected to be broadly in-line with budget.
- 1.11.3 Investment performance is monitored against relevant benchmarks and compared to other local authorities using benchmarking data provided by Capita.

1.12 Risk Assessment

- 1.12.1 The application of best practice, including the regular reporting and scrutiny of treasury management activity, as identified by the CIPFA Code is considered to be the most effective way of mitigating the risks associated with treasury management.

1.13 Equality Impact Assessment

- 1.13.1 See 'Screening for equality impacts' table at the end of this report.

1.14 Recommendations

- 1.14.1 Members are invited to **RECOMMEND** that Cabinet:
- 1) Endorse the action taken by officers in respect of treasury management activity for the period April to August 2014.
 - 2) Note the transfer of responsibility for core fund investments to In-house management took effect on 1 August 2014.

- 3) Retain the existing parameters intended to limit the Council's exposure to investment risks.

Background papers:

contact: Mike Withey

Nil

Sharon Shelton
Director of Finance & Transformation

Screening for equality impacts:		
Question	Answer	Explanation of impacts
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	N/A
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	No	N/A
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		N/A

Investment Summary as at 31 August 2014

Counterparty	Sovereign	Fitch Credit rating				Capita Credit Worthiness/ Suggested Duration Limit	Investment type (Specified/Non-specified) [Statement date to Maturity]	Investment from	Maturity Date	Principal sum invested £	Return (coupon / yield at purchase) %	% of total investments	Instrument type	Core Funds £	Cash Flow £	Non-specified Investments £
		Long Term	Short Term	Viability	Support											
Bank of Scotland	UK	A	F1	a-	1	1 year	Specified	11/04/2014	13/04/2015	1,000,000	0.95%		Fixed deposit		1,000,000	
Bank of Scotland Total										1,000,000		4.61%				
Barclays Bank	UK	A	F1	a	1	6 months	Specified	29/08/2014	29/05/2015	1,000,000	0.80%		Fixed deposit	1,000,000		
Barclays Bank Total										1,000,000		4.61%				
BNP Paribas MMF	Luxembourg	AAA	mmf (Eq)	-	-	5 years	Specified	29/08/2014	01/09/2014	990,000	0.45%		Call - MMF		990,000	
BNP Paribas MMF Total										990,000		4.56%				
Handelsbanken	Sweden	AA-	F1+	aa-	1	12 months	Specified	29/08/2014	01/09/2014	2,100,000	0.55%		Call		2,100,000	
Handelsbanken Bank Total										2,100,000		9.68%				
ING Bank	Netherlands	A+	F1+	a	1	6 months	Specified	14/07/2014	14/10/2014	2,600,000	0.54%		CDs	2,600,000		
ING Bank Total										2,600,000		11.98%				
Insight Liquidity Plus EMF	Ireland	AAA	f/S1 (S&P)	-	-	5 years	Specified	18/02/2014	01/09/2014	1,050,000	0.80%		Call - EMF		1,050,000	
Insight Liquidity Funds Total										1,050,000		4.84%				
Lloyds Bank	UK	A	F1	a-	1	1 year	Specified	11/04/2014	13/04/2015	1,000,000	0.95%		Fixed deposit		1,000,000	
Lloyds Bank Total										1,000,000		4.61%				
NatWest Bank	UK	A	F1	bbb	1	1 year	Specified	29/08/2014	01/09/2014	10,000	0.25%		Call		10,000	
National Westminster Bank Total										10,000		0.05%				
Nationwide Building Society	UK	A	F1	a	1	6 months	Specified	29/08/2014	29/05/2015	1,000,000	0.80%		Fixed deposit	1,000,000		
Nationwide Building Society Total										1,000,000		4.61%				
Nordea Bank (Finland)	Finland	AA-	F1+	aa-	1	12 months	Specified	14/07/2014	14/10/2014	2,600,000	0.52%		CDs	2,600,000		
Nordea Bank (Finland) Total										2,600,000		11.98%				
Santander UK Plc	UK	A	F1	a	1	6 months	Specified	29/08/2014	01/09/2014	4,170,000	0.80%		Call	2,070,000	2,100,000	
Santander UK Plc Total										4,170,000		19.22%				
Standard Chartered Bank	UK	AA-	F1+	aa-	1	6 months	Specified	04/06/2014	04/09/2014	1,400,000	0.50%		CDs	1,400,000		
Standard Chartered Bank Total										1,400,000		6.45%				
UK Treasury Gilt	UK	AA+	-	-	-	5 years	Non-specified	29/05/2013	22/07/2018	2,281,000	1.16%		UK Gilt	2,281,000		2,281,000
UK Treasury Bill	UK	AA+	-	-	-	5 years	Specified	16/06/2014	15/09/2014	499,000	0.27%		UK Bill	499,000		
UK Treasury Total										2,780,000		12.81%				
Total invested										21,700,000		100.00%		13,450,000	8,250,000	2,281,000

Number of investments	14	Average investment value £	1,550,000
Number of counter parties	13	Average investment per counter party £	1,669,000
Group exposures (UK Nationalised) - max 25% for core funds or £2.6m cash flow.			
RBS + National Westminster excluding RBS managed Global Treasury Fund	0	0.00%	10,000
Bank of Scotland + Lloyds	0	0.00%	2,000,000

Total non-specified investments should be less than 60% of Core Funds	16.96%
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Tonbridge and Malling Borough Council Internal Lending List

Checked against Capita Duration Matrix dated 29/08/14										
Minimum investment criteria is Capita Green (100 days) Duration Band (entry point broadly equates to Fitch A, F1, bbb-, 1 unless UK nationalised / semi-nationalised).										
Counterparty	Sovereign	Sovereign Rating [1]	Fitch Long Term	Fitch Short Term	Fitch Viability	Fitch Support	Exposure Limits			Capita Duration [2]
							Cash Flow	Core Fund	Combined	
Nordea Bank	Finland	AAA	AA-	F1+	aa-	1	£2.1m	£2.6m	£4.7m	12 months
Deutsche Bank	Germany	AAA	A+	F1+	a	1	£2.1m	£2.6m	£4.7m	6 months
ING Bank	Netherlands	AA+	A+	F1+	a	1	£2.1m	£2.6m	£4.7m	6 months
Svenska Handelsbanken AB	Sweden	AAA	AA-	F1+	aa-	1	£2.1m	£2.6m	£4.7m	12 months
Barclays Bank	UK	AA+	A	F1	a	1	£2.1m	£2.6m	£4.7m	6 months
HSBC Bank plc	UK	AA+	AA-	F1+	a+	1	£2.1m	£2.6m	£4.7m	12 months
Santander UK plc	UK	AA+	A	F1	a	1	£2.1m	£2.6m	£4.7m	6 months
Standard Chartered Bank	UK	AA+	AA-	F1+	aa-	1	£2.1m	£2.6m	£4.7m	6 months
Nationwide Building Society	UK	AA+	A	F1	a	1	£2.1m	£2.6m	£4.7m	6 months
Bank of Scotland plc [3] Group limit with BOS and Lloyds of £2.6m	UK	AA+	A	F1	a-	1	£2.6m	£3.3m	£5.9m	12 Months
Lloyds Bank plc [3] Group limit with BOS and Lloyds of £2.6m	UK	AA+	A	F1	a-	1	£2.6m	£3.3m	£5.9m	12 Months
National Westminster Bank plc [3] Group limit with Nat West and RBS of £2.6m	UK	AA+	A	F1	bbb	1	£2.6m	£3.3m	£5.9m	12 Months
The Royal Bank of Scotland plc [3] Group limit with Nat West and RBS of £2.6m	UK	AA+	A	F1	bbb	1	£2.6m	£3.3m	£5.9m	12 Months
UK Debt Management Office inc Treasury Bills	UK	AA+	N/A	N/A	N/A	N/A	No limit	No limit	No limit	N/A
UK Treasury - Sovereign Bonds (Gilts)	UK	AA+	N/A	N/A	N/A	N/A	N/A	£6.7m	£6.7m	N/A
UK Local Authorities	UK	AA+	N/A	N/A	N/A	N/A	£2.1m	£2.6m	£4.7m	N/A

[1] Reflects the lowest of the three rating agencies views (Fitch, Moody's and Standard and Poor's). Strategy requires sovereigns to be rated at least AA-.

[2] All deposits overnight unless otherwise approved by the Director of Finance and Transformation AND Chief Financial Services Officer. If other than overnight duration must not exceed Capita's recommendation (Capita + 3 months for UK Entities up to a maximum of 12 months).

[3] UK nationalised / semi-nationalised.

Tonbridge and Malling Borough Council Internal Lending List

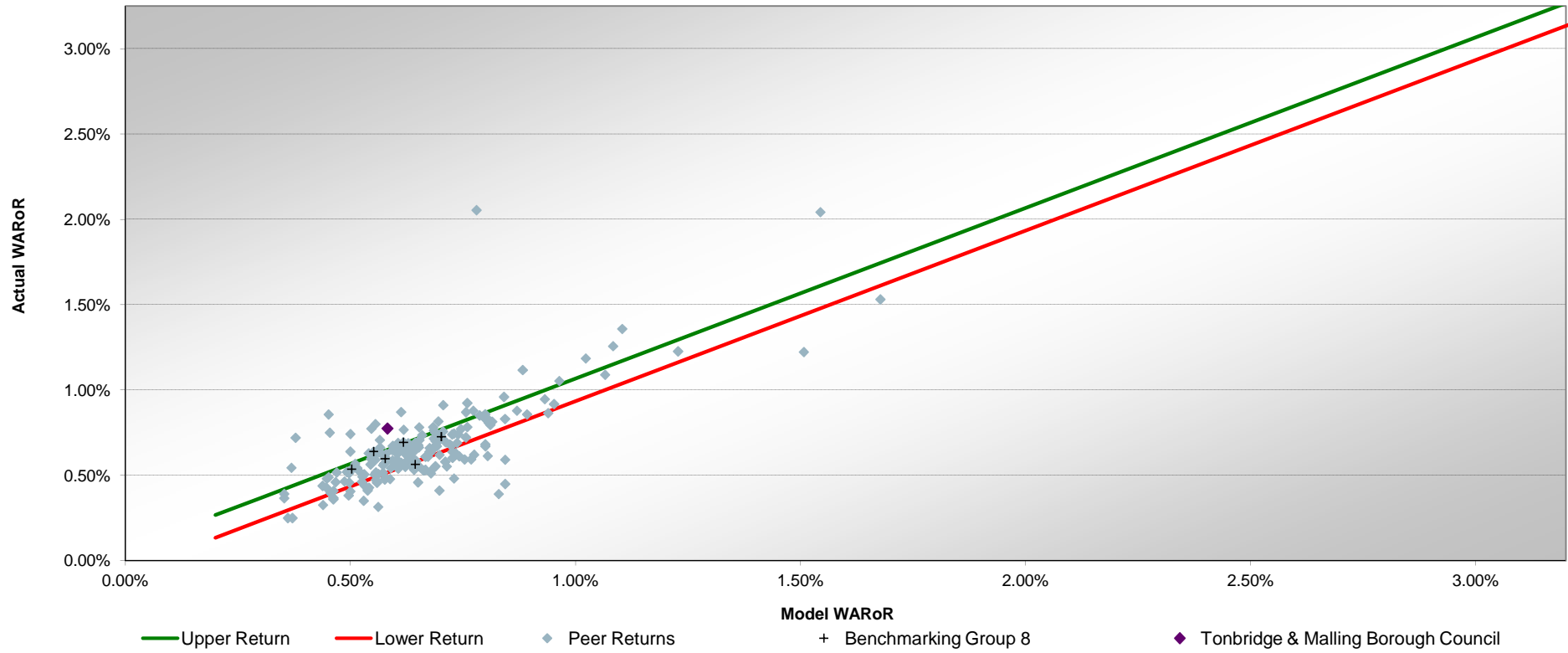
Money Market Funds						
Minimum investment criteria one of AAA-mf, AAAMmf or AAAm.						
Fund Name	Moody	Fitch	S&P	Exposure Limit		
				Cash Flow	Core Fund	Combined
Blackrock	AAA-mf	-	AAAam	£2.1m	£2.6m	£4.7m
BNP Paribas	-	-	AAAam	£2.1m	£2.6m	£4.7m
Goldman Sachs	AAA-mf	AAAMmf	AAAam	£2.1m	£2.6m	£4.7m
Deutsche Fund	AAA-mf	-	AAAam	£2.1m	£2.6m	£4.7m
Ignis	-	AAAMmf	AAAam	£2.1m	£2.6m	£4.7m
Morgan Stanley	AAA-mf	AAAMmf	AAAam	£2.1m	£2.6m	£4.7m
Prime Rate	AAA-mf	AAAMmf	AAAam	£2.1m	£2.6m	£4.7m
Insight	-	AAAMmf	AAAam	£1.05m	£1.3m	£2.35m

Enhanced Cash Funds						
Minimum investment criteria AAA.						
Fund Name	Moody	Fitch	S&P	Exposure Limit		
				Cash Flow	Core Fund	Combined
Insight Liquidity Plus	-	-	AAAf /S1	£1.05m	£1.3m	£2.35m

Approved by Director of Finance & Transformation 1st September 2014	No Change
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Tonbridge & Malling Borough Council

Population Returns against Model Returns



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	Actual WARoR	Model WARoR	Difference	Lower Bound	Upper Bound	Performance
Tonbridge & Malling Borough Council	0.77%	0.58%	0.19%	0.52%	0.65%	Above

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Prudential and Treasury Indicators

1 Prudential Indicators	2013/14 Actual £'000	2014/15 Estimate £'000	2015/16 Estimate £'000
Capital expenditure	1,744	3,348	2,638
Ratio of financing costs to net revenue stream	-1.41%	-1.42%	-1.27%
Net borrowing requirement			
Brought forward 1 April	nil	nil	nil
Carried forward 31 March	nil	nil	nil
In year borrowing requirement	nil	nil	nil
Capital financing requirement as at 31 March	nil	Nil	nil
Annual change in capital financing requirement	nil	Nil	nil
Incremental impact of capital investment decisions:			
Increase in Council Tax (Band D) per annum	£(0.23)	£0.30	£0.57 [1]

2 Treasury Management Indicators	2013/14 Actual £'000	2014/15 Estimate £'000	2015/16 Estimate £'000
Authorised limit for external debt			
Borrowing	nil	5,000	5,000
Other long term liabilities	nil	nil	nil
Total	nil	5,000	5,000
Operational boundary for external debt			
Borrowing`	nil	2,000	2,000
Other long term liabilities	nil	Nil	Nil
Total	nil	2,000	2,000
Actual external debt	nil	nil	nil
Upper limit for fixed rate exposure over one year at year end	nil	0 – 60%	0 – 60%
Upper limit for variable rate exposure under one year at the year end	16,309 (86.1%)	40 – 100%	40 – 100%
Upper limit for total principal sums invested for over 364 days	2,234 (11.8%)	60%	60%

3 Maturity structure of new fixed rate borrowing during 2014/15	Upper limit %	Lower limit %
Under 12 months	100	nil
Over 12 months	nil	nil

[1] Subject to the outcome of the 2014/15 Capital Plan Review to be reported as part of the forthcoming estimates cycle.

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TONBRIDGE & MALLING BOROUGH COUNCIL

FINANCE, INNOVATION and PROPERTY ADVISORY BOARD

24 September 2014

Report of the Director of Finance and Transformation

Part 1- Public

Matters for Recommendation to Cabinet - Council Decision

1 COUNCIL TAX DISCOUNTS

A report seeking the views of Members as to whether there should be any change to certain council tax discounts with effect from 1 April 2015.

1.1 Consultation

- 1.1.1 In my report to your Board of 23 July 2014 **[Annex 1]** Members' guidance was sought on which council tax discounts might be amended and whether a premium should be charged on long term empty properties.
- 1.1.2 Although there is no legal requirement to do so, it was requested that views be obtained from the main Registered Social Landlords (RSL) and landlords who are members of the Council's landlord forum in order to ascertain any unintended consequences from the suggested changes to the council tax discounts. Information was, therefore, placed on the Council's website in line with the guidance provided by Members below and emails sent to landlords to request their views **[Decision D140088MEM]**.
- for the financial year 2015/16 and beyond, the Council is minded to reduce the period of the vacant and unfurnished properties discount to two months and to reduce the discount for uninhabitable properties and those undergoing repair from the current rate of 100%, for example to 50%;
 - the Council is minded to charge a premium of 50% on properties empty for longer than two years.
- 1.1.3 There were just twelve responses to the consultation in total, and these are shown at **[Annex 2]**.
- 1.1.4 Members will note that four responses support Members' initial view the discount for vacant and substantially unfurnished properties be reduced to two months, with half the responses suggesting the discount remain unchanged at three months. Just two responses suggested a period of discount lower than two months.

1.1.5 Seven of the respondents have suggested the current 100% discount awarded to 'uninhabitable properties' and those undergoing repair should remain the same, with the other five supporting Members' initial view that there should be a reduction in the discount to 50%.

1.1.6 In respect of whether a premium of 50% should be charged on properties that have been empty for longer than two years, seven responses support Members' initial view. Two responses suggested a premium of 25% be charged, with three responses suggesting no premium be applied.

1.2 Financial Considerations

1.2.1 My report of 23 July also set out the financial implications of amending the level of discounts. I have remodelled the impact of the proposed changes using the current financial year's charges as follows:

1) Vacant and substantially unfurnished properties

If Members were inclined to reduce the period of no charge from three months to two months, the additional income generated would be in the region of **£375,000** and a reduction of the period to one month would generate additional income of circa **£400,000** (August 2014 figures). It is important to note that any additional income would have to be shared with the precepting authorities; our share being approximately 15%.

2) Uninhabitable properties and properties undergoing repair

If Members reduced the current 100% discount to 75%, the additional income generated would be in the order of **£35,000**. A reduction of the discount to 50% would produce additional income of around **£70,000** (August 2014 figures). As above, any additional income would have to be shared with the precepting authorities.

3) Properties that have been empty for longer than two years

If Members decided to charge a 50% premium on long-term empty properties, additional income, to be shared with the precepting authorities, would amount to some **£50,000** (August 2014 figures).

1.2.2 The maximum potential income that would be generated, for Tonbridge and Malling, from the above would be in the order of **£80,000** at August 2014 figures ($[\pounds400,000 + \pounds70,000 + \pounds50,000] \times 15\%$).

1.2.3 However, as Members will recall from previous reports, Kent County Council has offered to share with districts 25% of the additional revenue accruing to the County from the above changes. **Therefore, in addition to the £80,000 mentioned above, we could receive, approximately, an extra £90,000; giving a total of £170,000.**

1.2.4 This is not an insignificant figure and Members will be very aware of the Council's budget position and the requirement, because of reductions in the level of Government grant, to make ever greater budget savings. In addition, I anticipate that the Government will continue at least in the short term to restrict the amount by which the council tax can be increased each year without the need for a referendum to be held.

1.3 Non-financial considerations

1.3.1 The amount of long term empty properties in the Borough impacts on the Council's key corporate priorities and has a detrimental effect on residents who live next to them.

1.3.2 Therefore, reducing the level of discount and applying a premium on long term empty properties would seem to be an option to encourage owners of these properties to bring them back into use.

1.3.3 Local authorities that have applied a premium have seen a reduction in the amount of properties that have been empty for longer than two years. For example, when Gravesham Borough Council implemented the additional charge on 1 April 2013, approximately 80 properties were eligible to pay it. Current figures show that approximately 50 properties are now eligible, suggesting that the owners have been encouraged to bring their properties back into use to avoid paying extra council tax. Although the amount of income raised by applying the premium will have reduced, the properties that have been brought back into use will have increased the amount of 'new homes bonus' payable to the Council.

1.3.4 Members should note that there are currently two statutory exemptions from the premium; namely unoccupied annexes and properties left empty by a member of the armed forces. Although the Government's intention to implement a premium was not to penalise owners of property that are genuinely on the market for sale or rent, there is currently no exemption that can be applied for these circumstances.

1.3.5 Although amending the levels of discount is financially favourable to the Council, I feel I should make Members aware of the extra administrative burden this would place on the Revenues team.

1.3.6 The local authorities that have reduced the discount for vacant and substantially unfurnished properties to one month and below have reported an increased level of disputes over periods of liability (for example, between landlord and tenant) and a difficulty in collecting small amounts of council tax owed by landlords when their properties are empty.

1.3.7 That being said, the collection rates have not been adversely affected and the number of complaints and appeals received are still relatively low compared to the period prior to the discounts being amended.

1.4 Legal Implications

- 1.4.1 Section 11A(4) of the Local Government Finance Act 1992 (the Act) states that an English billing authority may determine that the council tax discounts applicable where there is no resident of a dwelling shall be replaced by a lower discount or no discount at all.
- 1.4.2 Section 11B of the Act (inserted by the Local Government Finance Act 2012) makes provision for an empty homes premium to be charged in relation to such classes of long term empty dwelling as billing authorities choose, subject to exceptions prescribed by the Secretary of State.

1.5 Financial and Value for Money Considerations

- 1.5.1 Any decision to change the value of discounts and/or to charge a premium will have an impact on the Council's finances.

1.6 Risk Assessment

- 1.6.1 A decision to decrease the value of discounts and/or to charge a premium, will have a negative financial effect on those liable to pay council tax, either through charging them when previously no charge was due or increasing the amount they are liable to pay.

1.7 Equality Impact Assessment

- 1.7.1 See 'Screening for equality impacts' table at end of report

1.8 Recommendations

- 1.8.1 Members are **REQUESTED** to consider the options below and make an appropriate **RECOMMENDATION** to Cabinet.
- a) Whether to retain the current period of three months 100% discount for vacant and unfurnished properties or to reduce the period to two months or lower with effect from 1 April 2015.
 - b) Whether to retain the current period of twelve months 100% discount for uninhabitable properties and those undergoing repair or to reduce the percentage to an amount below 100%, for example 50%, with effect from 1 April 2015.
 - c) Whether to charge a premium of 50% on properties that have been empty for longer than two years with effect from 1 April 2015.

Background papers:

Nil

contact: Glen Pritchard
01732 876146
glen.pritchard@tmbc.gov.uk

Sharon Shelton
 Director of Finance and Transformation

Screening for equality impacts:		
Question	Answer	Explanation of impacts
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	The recommendation is ultimately to encourage more empty properties back into use to offset the shortfall in available properties therefore no one group in the community is affected in particular.
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	Yes	It makes a positive contribution to bringing empty properties back into use for the benefit of everyone in the community.
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		N/A

In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.

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TONBRIDGE & MALLING BOROUGH COUNCIL
FINANCE, INNOVATION and PROPERTY ADVISORY BOARD

23 July 2014

Report of the Director of Finance and Transformation

Part 1- Public

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

1 COUNCIL TAX DISCOUNTS

A report seeking the views of Members as to whether there should be any change to certain council tax discounts with effect from 1 April 2015.

1.1 Introduction

- 1.1.1 Councils have the power to amend the level of certain discounts that may be granted to those liable to pay council tax. In addition, the Council may resolve, in the case of domestic properties that have been unoccupied for longer than two years, to charge a council tax premium (in effect a reverse discount).
- 1.1.2 This Council resolved in 2012 that the value of some discounts should be reduced but that the value of others should not be changed. Furthermore, the Council determined that no premium should be charged in respect of properties unoccupied for longer than two years.
- 1.1.3 Those determinations were made as part of the decision-making process in respect of the introduction of our local council tax reduction scheme. Last October the Council reviewed the operation of our council tax reduction scheme. As part of that review, your Board recommended to Cabinet that no changes be made to the current discounts in preparation for the financial year 2014/15 but the possibility of further amendments be considered in due course [**Decision FIP 13/049**]. That recommendation was approved by Cabinet on 9 October 2013 [**Decision D130130CAB**].
- 1.1.4 This report takes forward Cabinet's wish that further amendments be considered in due course.

1.2 Discounts – the current position

- 1.2.1 There are four areas in which Members have discretion. These are:

- 1) **Second-homes and long-term empty properties.** Such properties used to benefit from a 10% discount. However, Members resolved to remove the discount with effect from April 2013. There is no scope to make further amendments.
- 2) **Vacant and substantially unfurnished properties.** Until April 2013, no council tax was charged for the first six months during which the property was vacant and substantially unfurnished. Members determined that the six month period should be reduced to three months as from April 2013.
- 3) **Uninhabitable properties and properties undergoing repair.** Such properties have attracted a 100% discount for a period of one year. Members have not previously chosen to reduce the level of discount but may, if they wish, reduce it to 0%. It is not possible to amend the period for which a discount is given.
- 4) **Properties that have been empty for longer than two years.** These properties are subject to the full council tax charge. However, the Council may resolve to levy a premium of up to 50% in such cases.

1.3 Discounts – options for change – financial considerations

1.3.1 In my report to your Board of 9 October last year, I set out the financial implications of amending the level of discounts. Those were:

1) **Vacant and substantially unfurnished properties**

If Members were inclined to reduce the period of no charge from three months to two months, the additional income generated would be in the region of £41,000 and a reduction of the period to one month would generate additional income of circa £98,000 (October 2013 figures). It is important to note that any additional income would have to be shared with the precepting authorities; our share being approximately 15%.

2) **Uninhabitable properties and properties undergoing repair**

If Members reduced the discount to 75%, the additional income generated would be in the order of £25,000. A reduction of the discount to 50% would produce additional income of around £49,000 (October 2013 figures). In other words, each 1% reduction in the discount rate would produce additional income of about £1,000. As I stated above, any additional income would have to be shared with the precepting authorities.

3) **Properties that have been empty for longer than two years**

If Members decided to charge a 50% premium on long-term empty properties, additional income, to be shared with the precepting authorities, would amount to some £82,000 (October 2013 figure).

- 1.3.2 The maximum, potential income that would be generated, for Tonbridge and Malling, from the above equates to about just over £34,000 at October 2013 figures ($[\pounds 98,000 + \pounds 49,000 + \pounds 82,000] \times 15\%$). However, Kent County Council has offered to share with districts 25% of the additional revenue accruing to the County from changes to discounts. Therefore, in addition to the £34,000 mentioned above, we could receive, approximately, an extra £42,000; giving a total of £76,000.
- 1.3.3 Although this might not seem a significant figure in terms of the Council's overall budget, Members will be very aware of the Council's budget position and the requirement, because of reductions in the level of Government grant, to make ever greater budget savings. In addition, I anticipate that the Government will continue to restrict the amount by which the council tax can be increased each year.

1.4 Non-financial considerations

- 1.4.1 There are, of course, reasons why Members might not wish to alter the council tax discounts or might not wish to change them in such a way as to produce the maximum financial gain. For instance, in the case of landlords, there will almost inevitably be a period of vacancy between lets, either to find new tenants and/or to redecorate the property. Therefore members might consider that a shortening of the period for which a 100% discount is given to one month might be too severe. In the case of uninhabitable properties or those undergoing repair, if Members decided to reduce the discount to less than 25%, then there would be an advantage in the taxpayer saying that the property was occupied by one person as a 25% single occupancy discount could then be claimed.

1.5 Neighbouring authorities

- 1.5.1 I have asked our neighbouring authorities what decisions they have made in respect of discounts and their responses are shown in the following table:

Authority	Vacant & Unfurnished discount – period at 100%	Uninhabitable/Undergoing repair discount (%) over 12 months	Premium %
Ashford	6 weeks	100	50
Canterbury	None	100	0
Dartford	3 months	100	50
Dover	None	100	0
Gravesham	1 month	100	50
Maidstone	1 month	100	50
Medway	3 months	100	0
Sevenoaks	3 months	100	50
Shepway	None	0	50
Swale	3 months	100	0
Thanet	None	100	0
Tunbridge Wells	1 month as from April 2015 (previously 2 months)	25% as from April 2015 (previously 50%)	50
Tonbridge and Malling	3 months	100	0

1.5.2 As can be seen from the above:

- 1) **in respect of those properties that are vacant and unfurnished:** four other authorities give no discount; three – from April next year – will give a discount for one month; one will give a discount for six weeks; and four will give a discount for three months. Thus the authorities giving a discount of three months are in the minority.
- 2) **in respect of properties that are uninhabitable or undergoing repair,** we are in line with the majority of Kent authorities in allowing a 100% discount for twelve months.

- 3) **in respect of properties empty for longer than two years**, there is an even split between those other authorities charging a 50% premium and those not charging a premium.

1.6 The way forward

- 1.6.1 When I reported on this subject in October last year, Members did not consider that they wished to amend discounts in respect of the year 2014/15 but wished to reconsider the issue for future years. Now appears to be an appropriate time to do so if Members do wish to make changes for the years 2015/16 onwards.
- 1.6.2 In the light of the foregoing information, I should be grateful if Members would give me guidance as to which discounts they might wish to amend and whether they are minded to charge a premium for properties empty for longer than two years.
- 1.6.3 In the light of Members' guidance, I can then refine my calculations as to the financial impact of those changes and present my findings to your Board in September for decision by Cabinet in October. By taking my findings to your Board in September, this will allow me time to 'consult' our residents via the website on any amendments to the discounts proposed by Members. The results of that 'consultation' will be available to inform Member's decision-making in September/October.

1.7 Legal Implications

- 1.7.1 None at this stage

1.8 Financial and Value for Money Considerations

- 1.8.1 None at this stage but ultimately any decision made has an effect on the Council's budget.

1.9 Risk Assessment

- 1.9.1 None at this stage but in due course a decision to decrease the value of discounts and/or to charge a premium, will have a negative financial effect on those liable to pay council tax, either through charging them when previously no charge was due or increasing the amount they are liable to pay.

1.10 Equality Impact Assessment

- 1.10.1 See 'Screening for equality impacts' table at end of report

1.11 Recommendations

1.11.1 Members' guidance is **REQUESTED** as to :

- 1) those discounts that they believe should be amended and the extent to which they should be amended for the financial year 2015/16 and beyond; and
- 2) whether the Council should charge a premium on properties that have been empty for longer than two years and, if so, the percentage premium to be charged for the financial year 2015/16 and beyond .

1.11.2 Subject to the above, the Director of Finance & Transformation be **AUTHORISED** to place relevant information on the Council's website seeking comments prior to the next meeting of this Advisory Board.

The Director of Finance & Transformation 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: Paul Griffin
email:
paul.griffin@tmbs.gov.uk

Sharon Shelton
Director of Finance and Transformation

Screening for equality impacts:		
Question	Answer	Explanation of impacts
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	Report merely seeks guidance from Members as to how they might wish to amend discounts for future years.
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	No	Report merely seeks guidance from Members as to how they might wish to amend discounts for future years.
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		Not applicable.

In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.

Question 1 For the financial year 2015/2016 and beyond, the Council is minded to reduce the period during which vacant and uninhabited properties are not charged council tax from three months to two months			Question 2 For the financial Year 2015/2016 and beyond, the Council is minded to reduce the discount for uninhabitable properties, and those undergoing major repair. The discount is currently 100% but it could be reduced, for example to 50%		Question 3 For the financial year 2015/2016 and beyond, the Council is minded to charge a premium of 50% on properties that have been empty for longer than two years.		Are you a resident, a private landlord or a registered social landlord?	Any other comments	
Option chosen	If not two months how many months?	Reasons	What option: A = 50%, B= reduced but not to 50% and C = Stay at 100%	Reason for picking that option	Do you agree that a premium should be charged and at what rate?	Why should no premium be charged?	Are you:		
1	remain at three months	N/A	I think that 3 Months is reasonable	C	If there is work going on I do not feel that it is fair to penalise people for that.	Yes at 50%	N/A	A resident of Tonbridge and Malling	N/A
2	reduced to two months	N/A	N/A	C	You say you would like empty homes brought back into use. Allowing 100% discount enables people to do the work required to bring unusable properties back into use.	No	Doing so would open the system to abuse and encourage fraud. You would then have inaccurate records at to which properties are empty and which are not.	A resident of Tonbridge and Malling	N/A
3	shorter than two months	1	N/A	A	N/A	Yes at 50%	N/A	A resident of Tonbridge and Malling	N/A
4	reduced to two months	N/A	N/A	A	N/A	Yes at 50%	N/A	A resident of Tonbridge and Malling	N/A
5	reduced to two months	N/A	N/A	A	N/A	Yes at 50%	N/A	A resident of Tonbridge and Malling	N/A
6	remain at three months	N/A	As a RSL we sometimes have difficulties filling voids due to lack of interest within the area.	C	To reduce the % would have a negative impact on KPI's. Any major works are likely to benefit the new tenant and keep stock in better condition.	Yes at 25%	N/A	A registered social landlord	N/A
7	remain at three months	N/A	because I thought/believed that Council Tax pays for services used? Surely a vacant property uses no services? Most landlords would not choose to have long voids - surely they are either undertaking lengthy (and probably expensive) maintenance or actively seeking tenants. If there is a 3 month void for some reason I would imagine expenses are already running high	C	for the same reasons as stated above	Yes at 50%	N/A	A private landlord within Tonbridge and Malling	N/A
8	remain at three months	N/A	because there are genuine reasons why a property may be empty for that period	C	for reasons given at point 1	No	I would request that the owner be given the option to claim relief from this premium in the event that extenuating reasons can be shown. so look at situations on a case by case basis	A private landlord within Tonbridge and Malling	N/A
9	reduced to two months	N/A	N/A	A	N/A	Yes at 50%	N/A	A resident of Tonbridge and Malling	Anything that encourages empty buildings to be brought into use is a good idea. Please do try to keep the free period for landlords as we normally have short void periods. Thank you

10	remain at three months	N/A	It can take longer than 3 months to refurbish and then re-let properties at the end of long term lets, where there have been nightmare/destructive Tenants, or where Tenants leave/disappear unexpectedly without notice. Given the relatively low number of these instances the grace period should remain at, or increase to 6 months as the financial effect on Landlords is very considerable at a difficult time; whereas the potential gain to the council (after the administration costs of re-assigning the liability) would probably have minimal impact.	C	If a property is uninhabited then the burden on local services is negligible. If it is necessary to spend a lot of money on bringing it back into use then the owner already has considerable expense and the effect of CT liability is likely to be a huge burden; whereas the overall gain to the council is likely to be relatively minor.	No	If a property owner chooses to keep a property empty for whatever reason, AND are paying 100% council tax, then that should be their choice. There are probably very good reasons for their choice, and as the empty property is causing any burden on local services, the Council is already benefiting indirectly. I would suggest long term empty property CT rate should be reduced by 25/50% to reflect this.	A private landlord within Tonbridge and Malling	Private Landlords are generally very good and conscientious (despite the media scare stories) and deserve SUPPORT from the LA, rather than further burdens that will seriously affect the individual Landlords, and provide marginal overall benefit to the Council after the additional administrative costs.
11	shorter than two months	1	0	A	N/A	Yes at 50%	N/A	A resident of Tonbridge and Malling	N/A
12	remain at three months	N/A	If you are refurbishing a property then this is not an unreasonable time. The more run down houses that get back to habitable status the better. You shouldn't penalise people who have the vision to get off their sofa and do something positive	C	If the property is empty then there are no inhabitants using public services. Obviously you cannot leave a property empty indefinitely, but a bit refurb will take three months.	Yes at 25%	N/A	A resident of Tonbridge and Malling	This all looks like a ruse to raise more cash.

Summary

Question 1

For the financial year 2015/2016 and beyond, the Council is minded to reduce the period during which vacant and unfurnished properties are not charging council tax from three months to two months

Keep at three months	6
Reduce to two months	4
Less than two months	2

Question 2

For the financial Year 2015/2016 and beyond, the Council is minded to reduce the discount for uninhabitable properties, and those undergoing major repair. The discount is currently 100% but it could be reduced, for example to 50%

Reduce to 50%	5
Reduced but not to 50%	0
Stay at 100%	7

Question 3

For the Financial year 2015/2016, the Council is minded to charge a premium of 50% on properties that have been empty for longer than two years.

Charge a premium of 50%	7
Charge a premium of 25%	2
No premium	3

TONBRIDGE & MALLING BOROUGH COUNCIL

AREA 1 PLANNING COMMITTEE

11 September 2014

Report of the Director of Central Services

Part 1- Public

Matters for Recommendation to Council

1 DIVERSION OF PART OF PUBLIC FOOTPATH MU21 AT TONBRIDGE

1.1 Background to the application

1.1.1 An application has been received to divert part of Public Footpath MU21 at Tonbridge. The application has been made by Tonbridge School, to whom planning consent has been granted under reference TM/13/03834/FL for the construction of a replacement car park and associated landscaping. The proposed development directly affects the current alignment of Public Footpath MU21, and a diversion is therefore required in order to enable the proposed development to take place.

1.1.2 The administrative procedures relating to applications to divert public rights of way affected by development are dealt with by Kent County Council, acting on behalf of the Borough Council. However, the Borough Council is responsible (in its capacity as the Authority that granted the planning permission) for making and confirming any Public Path Diversion Order which relates to development.

1.1.3 The County Council has undertaken a consultation on the proposed diversion and the responses are set out below.

1.2 Views of consultees

1.2.1 County Members: Mr. R. Long and Mr. C. Smith were consulted but no responses were received.

1.2.2 Borough Council: Cllr. O. Baldock and Cllr. Ms. V. Branson were consulted. Cllr. Baldock confirmed that he had no objection to the proposed diversion.

1.2.3 User groups: The Ramblers' Association and the Open Spaces Society were consulted. The Ramblers' Association made representations to the original width of 1.2 metres for the new path proposed by the applicant and, as a result of this, the applicant has agreed to provide a width of 1.8 metres (of which 1.2 metres will be surfaced).

1.2.4 Statutory undertakers: No objections have been received.

1.3 Legal tests – Town and Country Planning Act 1990

- 1.3.1 Section 257 of the Town and Country Planning Act 1990 (“the 1990 Act”) states that ‘*a competent authority may by Order authorise the stopping up or diversion of any footpath, bridleway or restricted byway if it is satisfied that it is necessary to do so in order for development to be carried out in accordance with planning permission granted under Part III of the Town and Country Planning Act 1990*’.
- 1.3.2 To satisfy the test there must be conflict between the development and the right of way. Section 55 of the 1990 Act defines development as ‘*the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of a material change in the use of any buildings or other land*’.
- 1.3.3 Although the above is the only test, the Secretary of State has discretionary powers to balance the need for development against the effect on the public rights and enjoyment of the highway. The planning authority must therefore act in a quasi-judicial manner to consider the relevant merits of any application.
- 1.3.4 In addition consideration should be given to the case of *Vasiliou v. Secretary of State and Others [1991]* where the Court of Appeal held that the effect an Order would have on those entitled to the rights which would be extinguished had to be taken into account.
- 1.3.5 Circular 1/09, published by DEFRA, contains the following advice to planning authorities: ‘*The local planning authority should not question the merits of the planning permission when considering whether to make or confirm an order, but nor should they make an order purely on the grounds that planning permission has been granted. That planning permission has been granted does not mean that the public right of way will therefore automatically be diverted or stopped up. Having granted planning permission for a development affecting a right of way however, an authority must have good reasons to justify a decision either not to make or not to confirm an order. The disadvantages or loss likely to arise as a result of the stopping up or diversion of the way to members of the public generally or to persons whose properties adjoin or are near the existing highway should be weighed against the advantages of the proposed order*’.

1.4 Discussion

- 1.4.1 The reason for the application to divert part of Public Footpath MU21 at Tonbridge is to enable development to take place. Consent for the development was granted on 17th March 2014 as a result of planning application TM/13/03834/FL. The proposed diversion is shown on the plan at **Appendix A** to this report.
- 1.4.2 The land over which Public Footpath MU21 currently runs will be developed for the purpose of providing a car park, part of which involves the construction of a number of parking spaces over the existing line of the footpath. The car park is required in response to a growing demand for use of the school’s sports centre by members of the public and community groups, as well as additional parking to

compensate for that lost due to the construction of new tennis/netball courts (which are the subject of a separate planning consent).

- 1.4.3 Retaining the path on its current alignment would bisect the proposed car park and, because it would be extremely undesirable on safety grounds to have a Public Footpath running across the car park, would prevent the applicant from constructing the car park in accordance with the planning consent. Therefore, the proposed diversion is required in order to enable development to be carried out.
- 1.4.4 The length of Public Footpath MU21 to be diverted starts approximately 33 metres south of its junction with London Road and runs for approximately 88 metres towards the sports centre access road, as shown between points A and C on the plan at Appendix A. The proposed diversion will run along the edge of the new car park, commencing at point A and running in a generally south-south-westerly through east-south-easterly direction for approximately 107 metres to rejoin the existing line of Public Footpath MU21 at point C. The new path will have a recorded width of 1.8 metres, of which 1.2 metres will be hard-surfaced with tarmac and the remaining 0.6 metres will be grass. There will be no structures across the route, but a section of the path (between points B and C, where it immediately abuts the car parking spaces) will be fenced on one side with post and rail fencing in order to prevent encroachment by vehicles.
- 1.4.5 It is not considered that the proposed diversion would have any negative impact upon the public right of way. The proposed new route is marginally longer than the existing route (by 19 metres) but is not considered that it would unduly inconvenience walkers.
- 1.4.6 Overall, it is considered that there will not be a negative effect on the local public rights of way network as a result of the diversion.
- 1.4.7 An assessment under the Equality Act 2010 has been undertaken and there will be no adverse impact on the use of the affected path as a result of the diversion.
- 1.4.8 Kent County Council is satisfied that the legal tests are met in all respects, in that the Borough Council has granted planning consent under Part III of the Town and Country Planning Act 1990 for the development of the site, and that Public Footpath MU21 would be adversely affected by such development.

1.5 Financial and Value for Money Considerations

- 1.5.1 The costs incurred by the Kent County Council will be recovered from Tonbridge School and there will be no cost to the Borough Council.

1.6 Risk Assessment

- 1.6.1 A risk assessment has been undertaken and it is not considered that the proposed diversion would have any adverse effects. The proposed diversion route will be considerably safer for public use than if the existing alignment is retained.

1.7 Equality Impact Assessment

1.7.1 See 'Screening for equality impacts' table at end of report

1.8 Recommendations

1.8.1 Members are asked to **RECOMMEND** to Council that approval be given to:

- 1) the making of an order under section 257 of the Town and Country Planning Act 1990 to divert part of Public Footpath MU21 at Tonbridge (as shown at Appendix A to this report) in order to enable the proposed development to be carried out;
- 2) the confirmation of the Order, if unopposed; or
- 3) referral of the Order to the Planning Inspectorate if any objections are sustained.

Background papers:

contact: Cliff Cochrane

Nil

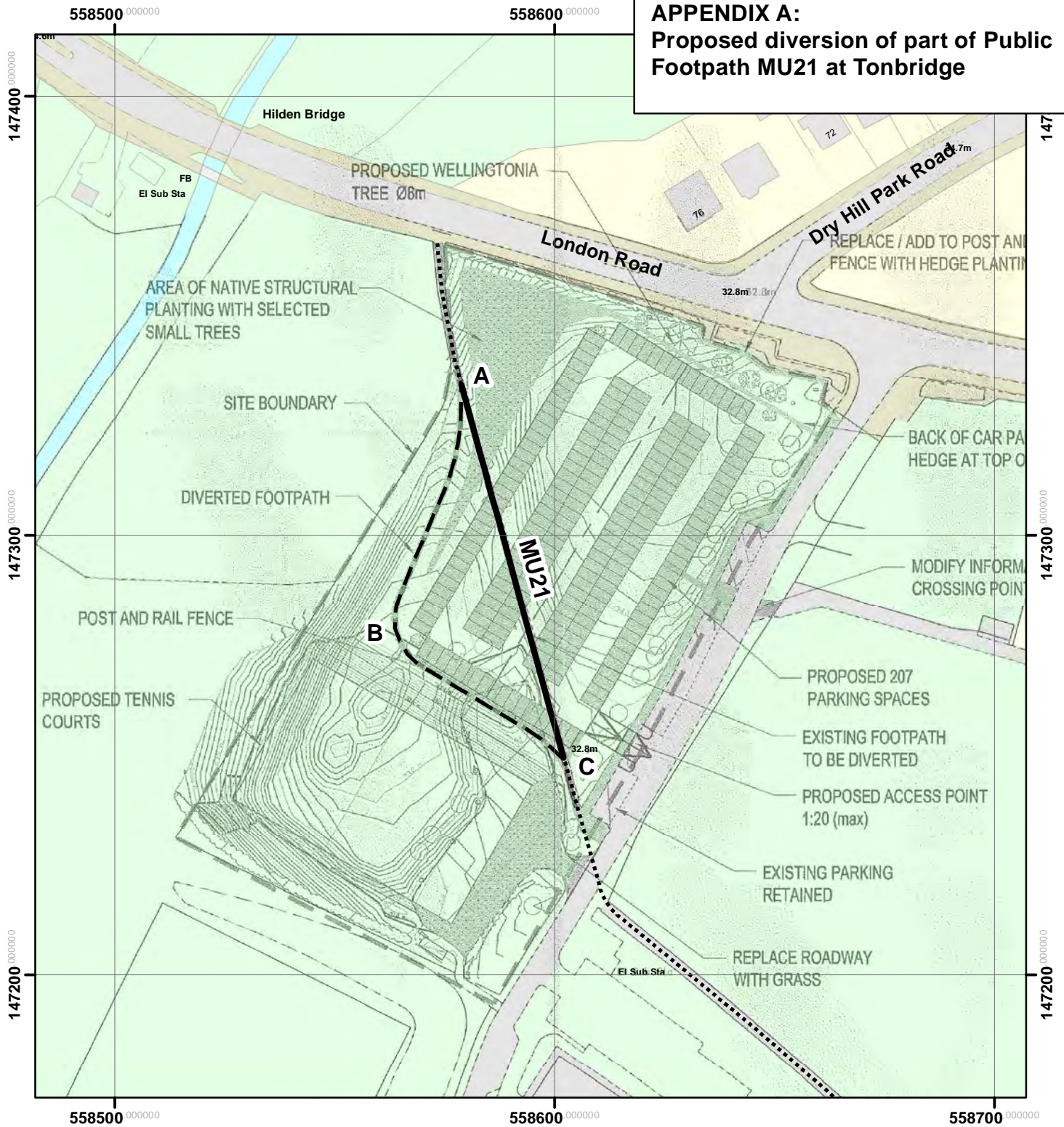
Adrian Stanfield

Director of Central Services




Screening for equality impacts:		
Question	Answer	Explanation of impacts
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	N/A	N/A
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	N/A	N/A
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		

In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.

APPENDIX A:
Proposed diversion of part of Public Footpath MU21 at Tonbridge



Key

-  Route to be diverted
-  New length of Public Footpath
-  Unaffected routes

Town and Country Planning Act 1990
The Tonbridge and Malling Borough Council
Public Footpath MU21 (part) Tonbridge
Public Path Diversion Order 2014
DRAFT PLAN

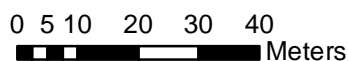
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TONBRIDGE & MALLING BOROUGH COUNCIL

COUNCIL

4 November 2014

Report of the Monitoring Officer

Part 1- Public

Matters For Decision

1 CHANGE TO THE CONSTITUTION

This report deals with a change to the Constitution to reflect the Openness of Local Government Bodies Regulations 2014.

1.1 Background

- 1.1.1 The Openness of Local Government Bodies Regulations 2014 came into force on 6 August 2014 and provide for members of the public to report and commentate on public meetings of local government bodies in England. In this context “reporting” means filming, photographing or making an audio recording of proceedings or using other means for enabling people not present to see or hear proceedings at a meeting as it takes place or later. This allows for reporting via social media such as tweeting and blogging.
- 1.1.2 A person attending a public meeting of a council for the purpose of reporting on the meeting must, so far as practicable, be afforded reasonable facilities for doing so. However a council is not required to permit oral reporting or commentary during a meeting as this would be disruptive to the good order of the meeting.
- 1.1.3 The new regulations also provide that where the public are excluded from a meeting for the purpose of considering matters containing confidential or exempt information, the council may prevent any person from reporting on the meeting using methods which can be used without that person’s presence at the meeting and which enable people not present at the meeting to see or hear the proceedings as they take place or later.
- 1.1.4 A further provision of the new regulations is to require a written record of certain decisions taken by officers under delegated powers, together with background papers, to be made available for public inspection.
- 1.1.5 The Department for Communities and Local Government has produced a guide for the press and public on attending and reporting meetings of local government, a copy of which is attached as an **Annex**.

1.2 Amendment of the Constitution

1.2.1 In the light of the new regulations it will be necessary to amend Council and Committee Procedure Rules 10.2 and 10.3 which read as follows:

- *10.2 - Unless previously authorised by the Council, or as provided for in rule 10.3, no member, officer or member of the press or public shall be permitted to take photographs of any proceedings of the Council or its committees or sub-committees, nor shall they be permitted to make audio or video recordings of proceedings or make live commentaries on them.*
- *10.3 - When the Council is transacting business of a ceremonial nature, the Council's official photographer may, with the consent of the Mayor, take photographs of those proceedings.*

1.2.2 It is suggested that for clarity the restrictions permitted under the regulations in relation to live oral commentary and reporting of proceedings taken in private should be included in the procedure rules as follows:

- Rule 10.2 - No oral reporting or commentary during a meeting shall be permitted if the person reporting or providing the commentary is present at the meeting.
- Rule 10.3 - If the public are excluded from a meeting in circumstances where it is likely that confidential or exempt information would be disclosed, no person shall report on the meeting by methods which can be used without that person's presence at the meeting, and which enable persons not present to see or hear the proceedings at the meeting as it takes place or later.

1.3 Legal Implications

1.3.1 The Openness of Local Government Bodies Regulations 2014 amend the Public Bodies (Admission to Meetings) Act 1960, the Local Government Act 1972 and the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 to allow entry to meetings of specified local government bodies for the purposes of reporting and to allow the results of the reporting to be published or disseminated. "Reporting" includes filming and providing commentary on proceedings and allows for the use of a wide range of methods including social media. The Regulations also provide for the making of a written record of certain decisions taken by officers and the publication of that record.

1.4 Financial and Value for Money Considerations

1.4.1 None.

1.5 Risk Assessment

- 1.5.1 If the changes are not made to the Constitution, the current practice will be contrary to the new regulations.

1.6 Equality Impact Assessment

- 1.6.1 See 'Screening for equality impacts' table at end of report

1.7 Recommendations

- 1.7.1 RECOMMENDED: That the Monitoring Officer be authorised to amend the Constitution to give effect to the changes set out at paragraph 1.2.2.

Background papers:

contact: Claire Fox

Nil

Adrian Stanfield
Monitoring Officer

Screening for equality impacts:		
Question	Answer	Explanation of impacts
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	The decision will not adversely impact any group.
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	N/A	
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		

In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.

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Department for
Communities and
Local Government

Open and accountable local government

A guide for the press and public on attending and reporting meetings of local government

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About this Guide

The national rulesⁱ have been changed to make councils, including parish and town councilsⁱⁱ, and other local government bodies such as fire and rescue authorities, more transparent and accountable to their local communities. A full list of bodies to which the rules apply is at **annex A**.

This plain English Guideⁱⁱⁱ gives practical information about what these new rules mean for members of the public attending meetings of local government bodies, including meetings of a body's committees, sub-committees and any joint committees involving two or more bodies. The Guide also covers meetings of any council's executive (i.e. the council's cabinet^{iv}), including any committees and sub-committees of the executive.

In particular, this Guide gives practical information about how members of the public can use modern technology and communication tools to report on meetings they are attending, and about how to access information on decisions taken by a body's officers or individual members. This Guide will also help the public to know when they can attend meetings of local government bodies, and what documents and information are available to them. It should also help councillors and officers to comply with the new rules.

As the Guide explains, different rules apply to different meetings, particularly meetings of a parish council or parish meeting, and the meetings of a council's executive, its committees or sub-committees.

- **Part 1** focuses on the use of various communication tools for reporting the proceedings of any meeting of a local government body which is open to the public.
- **Part 2** explains how the public can access meetings of a council's executive, its committees and sub-committees, and records of executive decisions taken by individual members or officers.
- **Part 3** explains how the public can access all other meetings of a local government body, other than parish and town councils, and records of certain other decisions taken by officers.
- **Part 4** explains how the public can access meetings of parish and town councils, parish meetings and the Council of the Isles of Scilly, and records of certain decisions taken by those councils' officers.
- **Part 5** focuses on other rights that the public have to access information.

This Guide now replaces the Guide titled "Your council – going to its meetings, seeing how it works" that the department issued in June 2013.

All footnotes are listed at the end of the Guide.

Part 1 Your rights to attend and report meetings

This part of the Guide applies to all the local government bodies listed at annex A.

Why are there new national rules?

We now live in a modern, digital world where the use of modern communication methods such as filming, tweeting and blogging should be embraced for enhancing the openness and transparency of local government bodies. This will ensure we have strong, 21st century, local democracy where local government bodies are genuinely accountable to the local people whom they serve and to the local taxpayers who help fund them.

Who do these rules help?

These rules help any members of the press and public who want to know about, view or report the work of local government bodies. The “press” is defined in the widest terms – including traditional print media, filming crews, hyper-local journalists and bloggers.

The new national rules^v have increased your rights to film, audio-record, take photographs, and use social media such as tweeting and blogging to report the proceedings of all such meetings that are open to the public.

Are all meetings of a local government body open to the public?

All meetings must be open to the public except in limited defined circumstances where the national rules require or allow the meeting to be closed to the public – see Part 2 for the rules for a council’s executive, Part 3 for the rules for other local government bodies, other than parish and town councils, and Part 4 for the rules for parish and town councils.

Can I film or audio-record the meeting?

Yes, councils and other local government bodies are required to allow any member of the public to take photographs, film and audio-record the proceedings, and report on all public meetings. While no prior permission is required to carry out this activity, it is advisable that any person wishing to film or audio-record a public meeting let their local government staff know so that all necessary arrangements can be made for the public meeting. This is important because the rules require local government bodies only to provide reasonable facilities for any member of the public to report on meetings.

There is no legal requirement for councils to webcast their meetings, but where councils and other local government bodies webcast any of their public meetings, they should, as a matter of good practice, notify the public.

Do I need to have advance permission to report the meeting?

No. Whilst we would encourage people to contact staff in advance if they want to film or record, equally, we would discourage any system which “vetted” journalists or restricted reporting to “approved” journalists. Councils should support freedom of the press within the law and not seek to restrict those who may write critical comments.

Can I film or audio-record a private meeting^{vi}?

The rules on the use of communication methods, such as filming and audio-recording, only require local government bodies to allow the reporting of meetings open to the public. The relevant council or local government body may not allow you to film or audio-record its private meetings. You may also not be allowed to leave recording equipment in the room where a private meeting is held for the purpose of reporting on the meeting.

Can I tweet or blog a council or local government body meeting?

Yes, the new rules^{vii} allow for reporting of meetings via social media of any kind. Therefore bloggers, tweeters, and for example, Facebook, YouTube users and individuals with their own website, should be able to report meetings. You should ask your council for details of the facilities they are providing for reporting.

If I am a councillor, can I tweet or blog during council meetings?

The national rules do not prevent councillors from tweeting and blogging at meetings, so they should be able to do so provided it is not disruptive and does not detract from the proper conduct of the meeting. Whilst councillors are expected to comply with their body’s code of conduct, this should not prevent councillors from tweeting or blogging when appropriate.

What sort of facilities will my council or local government body provide?

Councils or local government bodies are required to provide “reasonable facilities” to facilitate reporting. This should include space to view and hear the meeting, seats, and ideally a desk. Councils and local government bodies should use their common sense to determine the range of reasonable facilities they can actively provide to support the free press in all its forms.

To facilitate public scrutiny and public reporting, local authorities should not conduct their meetings in foreign languages.

Will I be allowed to film, tweet, blog or audio-record the meetings of other bodies not listed in annex A?

The Government message is that all public bodies should adopt maximum openness and transparency. This is also essential for bodies or groups making decisions for their local area because they are expected to be open and transparent in their decision-making. While the new national rules do not apply to some local groups such as neighbourhood forums and Local Enterprise Partnerships, such groups are encouraged, when having public meetings, to embrace the use of modern technology and should allow the same filming, audio-recording, taking of photographs, tweeting and blogging as applied to local government bodies, particularly if they are in receipt of public funds. This will give local people the opportunity to see how decisions are being made that affect their community.

Are there any limits to what I can say in a tweet or video I publish?

The law of the land applies – including the law of defamation and the law on public order offences (see the Crown Prosecution Service guidance on social media^{viii}).

Freedom of speech within the law should also be exercised with personal and social responsibility – showing respect and tolerance towards the views of others.

Are there other limits that I should be aware of?

The council or local government body should consider adopting a policy on the filming of members of the public, and ensure that they protect children, the vulnerable and other members of the public who actively object to being filmed, without undermining the broader transparency of the meeting.

Will I be able to provide commentary during the meeting?

Any person can provide written commentary during a meeting, as well as oral commentary outside or after the meeting. The new rules do not permit oral commentary to be provided during a meeting as this would be disruptive to the good order of the meeting.

Can I be asked to leave a meeting because I'm taking photographs, filming or audio-recording the meeting or using social media?

Generally, people attending public meetings must be readily able to film, audio-record, take photographs or use social media. Councils and other local government bodies must take steps to ensure this is the case. However, those undertaking these activities must not act in a disruptive manner, which could result in being excluded from the meeting.

What is disruptive behaviour?

Essentially, this could be any action or activity which disrupts the conduct of meetings or impedes other members of the public being able to see, hear or film etc the proceedings. Examples can include:

- moving to areas outside the areas designated for the public^{ix} without the consent of the Chairman,
- excessive noise in recording or setting up or re-siting equipment during the debate/discussion,
- intrusive lighting and use of flash photography; and
- asking for people to repeat statements for the purposes of recording.

You may be excluded from a meeting if you act in a disruptive manner.

Can I leave recording equipment in a public meeting room and record without being present?

There is no legal prohibition, however, under the national rules, the local government body may require any such recording to stop if at any stage the meeting becomes a private meeting.

But the local authority says reporting is a breach of its Standing Orders?

It is a legal duty for the local government body to follow the new provisions. If a local government body's existing Standing Orders are not fully in line with the new legislation, in the short-term, we recommend they simply waive the relevant provisions of those old Standing Orders which could be taken to inhibit the new reporting rules, and then take steps to update formally its Standing Orders.

Part 2 Access to meetings and documents of a council's executive

This Part explains how the public can access meetings of a council's executive, its committees and sub-committees, and records of executive decisions taken by individual members or officers. A council's executive (i.e. the council's cabinet) is its main decision making body consisting of an elected mayor or leader and a number of councillors. This Part applies to councils with either a leader and cabinet or elected mayor and cabinet. It does not apply to councils operating the committee system or other local government bodies listed in Annex A.

What are the national rules for access to meetings and documents of a council's executive?

The national rules are principally provided by the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 which introduced significantly greater transparency and openness into the meetings of a council's executive, its committees and sub-committees. The rules also strengthen the rights of councillors to access information about items to be discussed at a public or private meeting of their council's executive.

Who can make an executive decision in my council?

The decision maker can be the executive, its committees and sub-committees, joint committees, joint sub-committees, individual councillors, and officers who have delegated responsibility from the executive to make executive decisions. Your council may have local rules^x that will explain who may make a decision.

Attending the meetings of your council's executive

How will I know about a forthcoming public meeting of my council's executive?

Your council must give a notice of the meeting at least 5 clear days before it takes place. The details of the meeting must be published at your council's offices and on its website where practicable. The agenda must be published with any background papers. No item can be considered if the item is not available for inspection by the public with 5 clear days' notice.

Where an item is added to the agenda within 5 days before the meeting is scheduled to take place, a revised agenda, public report and background papers must be published as soon as the item is added to the agenda. In some circumstances, the whole or part of a

report may not be available for public inspection because it contains either confidential or exempt information. In this case, the report should bear the phrase 'not for publication' and state that it contains confidential information or set out the description of the exempt information.

Can I obtain a copy of the agenda and other relevant papers for a public meeting of my council's executive?

Yes, your council must provide you with a copy of the agenda, and other relevant papers once you have made payment of postage and/or copying charge. There are also additional legal rights to access information, outlined in Part 5 of this Guide.

Can a council's executive choose to meet in private?

All meetings of an executive including meetings of its committees or sub-committees must be open to the public, except in limited defined circumstances where the national rules require or allow the meeting to be closed to the public.

The rules require a meeting of an executive to be closed to the public in two specific circumstances:

- If the presence of the public is likely to result in the council breaching a legal obligation to third parties about the keeping of confidential information; or
- a lawful power is used to exclude the public in order to maintain orderly conduct or prevent misbehaviour at a meeting.

In addition, a meeting can also be closed to the public where the executive so decides (by passing a resolution of its members) because exempt information would otherwise be likely to be disclosed. It is open to the executive if it chooses to consider in public matters involving exempt information. There is no over-riding legal requirement forcing councils to discuss exempt information in private.

What is confidential information?

Confidential information means:

- information provided to the council by a Government department on terms which forbid the disclosure of the information to the public; and
- information which is prohibited from being disclosed by any enactment or by a court order.

What is exempt information?

The descriptions of exempt information are set out in Schedule 12A to the Local Government Act 1972. The descriptions are listed at **Annex B** of this Guide.

Can I be asked to leave a public meeting?

Yes. As a member of the public you can be asked to leave a meeting so that the executive, its committees or sub-committees can discuss matters in private, but only in the limited circumstances that are already explained.

How will I know about a private meeting of my council's executive?

Prior to holding a private meeting, your council must have published on its website and at its offices at least 28 clear days' notice of its intention to consider a matter in private and the reasons for the private meeting. This is to ensure that members of the public have reasonable opportunity to make representations as to why the proposed private meeting should not be held in private.

At least 5 clear days before the meeting, your council must confirm its intention to go ahead with the private meeting through another notice on its website and at its offices. This second notice has to include details of any representations received and the council's response to them.

Can a private meeting of my council's executive be held if 28 days' notice is not given to the public?

A private meeting can only be held without 28 days' notice after the agreement of the Chairman of the Overview and Scrutiny Committee has been obtained that the meeting is urgent and cannot reasonably be delayed. In the absence of the Overview and Scrutiny Committee Chairman, the permission of the Council Chairman (or, in their absence, the Vice Chairman) must be obtained. If this agreement is granted the council must publish a notice about why the meeting is urgent and cannot be deferred. This notice must be available at its offices and on their website. If agreement is not given then the meeting must either be held in public, or the council must comply with the 28 day notice requirements.

Can I attend an executive's pre-briefing meeting with local authority officers?

No. The rules apply only to when councillors meet as a decision making body to exercise their statutory executive responsibilities. The rules do not apply to political groups' meetings or to informal briefing meetings for councillors.

Recording of decisions of public meetings

If I am not at the meeting, how will I know of any decisions made?

The fact that you are unable to attend a public meeting of your council's executive, its committees or sub-committees does not mean you cannot find out about the decisions made there. The national rules require a council to keep records of any executive decisions^{xi} made as soon as reasonably practicable after any public meeting. The written records must reflect the following information:

- Details of the decision and the date it was made;
- reasons for the decision;
- any other options considered and why those options were rejected;
- details of any conflict of interest of an executive member of the decision-making body; and
- a note of dispensation granted by the Head of Paid Service in respect of any declared conflict of interest.

You can then inspect the records and any reports considered at the meeting at your council's offices and on the council's website if it has one. All of these documents can be inspected for six years beginning from the date of the meeting apart from background papers which can be inspected for four years beginning from the date of the meeting. These records may be kept in electronic format.

Apart from information about meetings, are there other means of knowing about decisions likely to be made by a council's executive, its committees and sub-committees?

Yes. The national rules require a council to publish its intention to make a key decision^{xii} in a document at least 28 clear days prior to when the decision is intended to be made. The notice has to include details of the individual or executive body that will make the decision, the matter that is subject to a decision, other documents to be considered, and where these other documents are available. This notice document must be available at the council's offices and on its website before the decision is made.

This allows you to have sufficient knowledge in advance of those decisions that will be of genuine concern to you and your local communities.

Can a key decision of a council's executive^{xiii} be made without giving the 28 days' notice?

Yes, provided the following requirements are met:-

- the relevant Overview and Scrutiny Committee Chairman is informed in advance and in writing (or all the members of the Overview and Scrutiny Committee) about what the decision is concerning;
- a notice about the key decision to be made is made available for inspection at the council's offices and published on the website; and
- 5 clear days elapse following the day a notice is published about the key decision to be made.

If there is a case of special urgency, for example an urgent decision on a negotiation, expenditure or contract, the decision must only be made if the agreement of the Overview and Scrutiny Committee Chairman is received. In the absence of the Overview and Scrutiny Committee Chairman, the permission of the Council Chairman (or in their absence the Vice Chairman) must be obtained. If agreement is given, a notice explaining why the decision is urgent and cannot reasonably be deferred, must be published and should be available at the council's offices and on its website as soon as reasonably practicable.

Can 28 days' notice of a key decision also provide 28 days' notice required for a council executive's private meeting?

It is up to your council to decide whether the 28 day key decision document should contain the details required for a private meeting notice. Where there is an intention to make a key decision at a private meeting, your council must comply fully with all the national rules.

Can my council's executive make key decisions and not follow the national rules?

No. Councils must comply with all the national rules since they are prescribed by law. Should a decision be made without applying the key decision rules because the council thinks that the decision is not a key decision, but subsequently the Overview and Scrutiny Committee decides the decision is a key decision, the executive may be asked to submit a report to the full council.

Executive decisions by an individual member or officer

Can an individual member or an officer of a council's executive take decisions on matters that are the executive's responsibility?

Yes, where the rules of your council allow this. Decision makers can be individual councillors, and officers who have delegated responsibility from the executive to make executive decisions.

How will I know about an executive decision taken by a member or officer?

When a member or officer takes a decision on matters that are the responsibility of the council's executive, this must be recorded in writing. The form of the written record is for the council to decide, but the following should be included:

- details of the decision and the date it was made;
- reasons for the decision;
- any other options considered and why those options were rejected;
- details of any conflict of interest declared by any executive member consulted in relation to the decision; and
- a note of dispensation granted in respect of any declared conflict of interest.

Are all decisions made by councils' officers to be so recorded?

No. The requirement to record decisions extends only to "executive decisions". Executive decisions can sometimes be defined in your council's rules. Decisions which are taken by officers under specific delegations from a meeting of their council's executive are clearly executive decisions. However, many administrative and operational decisions officers take on how they go about their day to day work will be delegated within the council's rules and are not in this "executive decisions" category; as such they do not need to be recorded.

The decisions that should be not recorded might include the following examples:

- Decisions to allocate social carers to particular individuals, or for example, to provide walking aids;
- decisions to allocate a social housing unit to an applicant or to send someone to carry out repairs;
- decisions to review the benefit claims of an individual applicant and
- decisions to allocate market stalls to individual traders.

Where officers have been empowered to act on behalf of their council's executive, examples of decisions that should be recorded could include:

- Decisions about awarding contracts above specified individual or total values;
- decisions to exercise powers of Compulsory Purchase;
- decisions on disposal of and/ or provision of allotment land and green spaces;
- awarding of Discretionary Rate Relief
- the opening hours of local libraries; and
- the holding of car boot sales/markets on council-owned land.

This is not intended to be an exhaustive list, rather a series of examples to illustrate that, in the interests of maximum transparency, these Regulations require more than just key decisions to be recorded.

Ultimately it is for local decision makers to decide what information should be recorded on the basis of the national rules.

How can I see any records of decisions taken by executive members or officers?

Once a record of executive decisions taken by an executive member or officer has been made, you should be able to inspect the record at the council's offices and on its website as soon as reasonably practicable.

However you will not be able to see some of the information if it is considered to be either confidential or exempt information.

Can I ask for a copy of any records of executive decisions?

Yes. You can ask for a copy of any documents relating to executive decisions and your council should supply the information once you have paid for the postage, copying or any other necessary charge for transmission which will be determined by your council. There are also additional legal rights to access information, outlined in Part 5 of this Guide.

Your rights as a councillor

If I am a councillor, do I have any right to access meeting documents?

As a councillor, you can inspect any document that contains material to be discussed at least 5 days before a public meeting is held. In case of a private meeting or decision made by an individual executive member or officer, you can inspect the document within 24 hours of the conclusion of the meeting or the decision being made.

In addition, if you are a member of an overview and scrutiny committee, you can ask for any document that contains business transacted at a meeting of the executive, its committees or sub-committees or officer of the authority. The executive must provide the

document within 10 days after it (the executive) receives the request. In an instance where the executive cannot release the whole or part of the document, the executive must provide you with a written explanation.

What other rights do councillors have to inspect documents of their councils?

In addition to the rights conferred on councillors by these Regulations in relation to executive decision making, councillors also have statutory rights to inspect documents of the council and its committees under Part 5A of the Local Government Act 1972. Councillors may also request information held by their council under the Freedom of Information Act 2000 (or the Environmental Information Regulations 2004 in relation to environmental information). Councillors may have rights under the common law to inspect such documents held by their council as are reasonably necessary for them to perform their duties.

What happens if documents relating to executive decisions are not made public?

It is a criminal offence if, without a reasonable excuse, a person who has in his or her custody a document^{xiv}, which the national rules require to be made available to the public, refuses to supply the whole or part of the document or intentionally obstructs any other person/s from disclosing such a document.

If a person is found guilty of such a criminal offence, he/she can be fined up to £200^{xv}.

Part 3 Access to non-executive meetings and documents of a local government body, other than parish and town councils

This Part explains how the public can access all meetings (other than those of a council's executive) of a council or other local government body, other than parish and town councils. These meetings include those of a body's committees, sub-committees and any joint committees involving two or more local government bodies. It also explains how to access the records of certain non-executive decisions taken by the officers of local government bodies, other than parish and town councils.

Attending the meetings

How will I know about a forthcoming meeting of my council or local government body which will be open to the public?

Your council or local government body must give a notice of the meeting at least 5 clear days before a public meeting is held. The details of the meeting, such as the time and place, must be published at your council or local government body's offices. The notice may also be published on the body's website where practicable. You can also inspect the agenda and any background papers at least 5 clear days before the meeting.

Where an item is added to the agenda within 5 days before the meeting is scheduled to take place, a revised agenda and background papers must be published as soon as the item is added to the agenda.

An item that is not on the agenda can only be considered in special circumstances if the chairman is of the opinion that the item should be considered at the meeting as a matter of urgency. Any such special circumstances should be specified in the minutes.

How can I obtain a copy of the agenda and other relevant papers for a public meeting?

If you are representing a newspaper, your council or local government body must provide you with a copy of the agenda and any background upon payment of postage and/or copying charge. Councils and local government bodies are encouraged to provide a similar service to other members of the public upon request and payment of postage and/or copying charge.

In some circumstances, the whole or part of a report may not be available for public inspection if it contains either confidential or exempt information. In this case, the report should bear the phrase 'not for publication' and state that it contains confidential information or set out the description of the exempt information.

There are also additional legal rights to access information, outlined in Part 5 of this Guide.

Can a meeting be held in private?

The rules require a meeting of a council or local government body to be closed to the public in two circumstances:

- If the presence of the public is likely to result in the council or local government body breaching a legal obligation to third parties about the keeping of confidential information; and
- if the council or local government body decides (by passing a resolution of its members) because exempt information would otherwise be likely to be disclosed. It is open to the council or local government body if it chooses to consider in public matters involving exempt information. There is no over-riding legal requirement compelling the body to discuss exempt information in a private meeting.

The rules do not prevent the chairman from excluding any member of the public in order to maintain orderly conduct or prevent genuine misbehaviour at a meeting.

What is confidential information?

Confidential information means:

- information provided to the council or local government body by a Government department on terms which forbid the disclosure of the information to the public; and
- information which is prohibited from being disclosed by any enactment or by a court order.

What is exempt information?

The descriptions of exempt information are set out in Schedule 12A to the Local Government Act 1972. The descriptions are listed at **Annex B** of this Guide.

Can I be asked to leave a public meeting?

Yes. As a member of the public you can be asked to leave a meeting so that the council or local government body, its committees or sub-committees can discuss matters in private, but only in the limited circumstances that are already explained. The rules do not prevent the chairman from excluding any member of the public in order to maintain orderly conduct or prevent genuine disruption at a meeting.

How will I know about a private meeting of my council or local government body?

The rules do not require your council or local government body to notify the public if a meeting will be held in private. However, where part of a public meeting will be held in private, it should be explained when the public is notified of the meeting.

Can I attend a pre-briefing meeting with local authority officers?

No. The rules do not apply to political groups' meetings or to informal briefing meetings for councillors.

Recording of decisions of public meetings

If I am not at the meeting, how will I know of any decisions made?

The fact that you are unable to attend a public meeting of your council or local government body, its committees or sub-committees does not mean you cannot find out about the decisions made there. The national rules require the council or local government body to make the following documents available for inspection after a public meeting:

- a copy of the minutes;
- a summary of the proceedings, where applicable;
- a copy of the agenda;
- a copy of any report for the meeting as relates to any item during which the meeting was open to the public; and
- a copy of a list of the background papers for any report for the meeting.

You can then inspect the records and any reports considered at the meeting at your council or local government body's offices and on the council or local government body's website if it has one. All of these documents can be inspected for six years, apart from background papers which can be inspected for four years beginning from the date of the meeting.

Decisions by officers

Can an officer take decisions on matters that are the council or local government body's responsibility?

Yes, where the council or local government body's rules^{xvi} allow this.

How will I know about decisions made by officers?

The new national rules require the recording of certain decisions^{xvii} taken by officers acting under powers delegated to them by a council or local government body, its committees or sub-committees or a joint committee. The written record must be available for inspection at the council or local government body's offices and on the website if it has one^{xviii}, as soon as reasonably practicable, and should include:

- The decision taken and the date the decision was taken;
- the reason/s for the decision;
- any alternative options considered and rejected; and
- any other background documents.

Where a decision is taken under a specific express authorisation, the names of any member of the council or local government body who has declared a conflict of interest must be recorded.

The relevant council or local government body must retain and make the written record of their officers' decisions available for inspection for six years beginning from the date of the meeting. The background papers should also be available for inspection for four years beginning from the date of the meeting. These may be kept in electronic format.

Can I see all decisions made by my council or local government body's officers?

No. The requirement to record applies to all decisions taken by officers whilst acting under a specific express authorisation and to only three categories of decision taken whilst acting under a general authorisation. These categories cover decisions to "grant a permission or licence"; that "affect the rights of an individual" (i.e. to change an individual's legal rights)^{xix}; or to "award a contract or incur expenditure which, in either case, materially affects^{xx} that relevant local government body's financial position".

Officers take many administrative and operational decisions about how they go about their day to day work within the council's or local body's rules. These decisions will not need to be recorded.

You will not be able to inspect some recorded decisions if the whole or part of the records contains confidential or exempt information.

Examples of decisions that should be recorded could include:

- Decisions about awarding contracts above specified individual or total values (the values will vary according to the relevant council or local government body);
- a decision to carry out major road works;
- determination of licencing applications, building control decisions and notices; and
- decisions to give listed building consents.

Where decisions are already required to be published by other legislation, they do not need to be recorded again provided the record published includes the date the decision was taken and the reasons for the decision.

Decisions that do not need to be recorded might include the following examples:

- Routine administrative and organisational decisions such as giving permission to a local society to use the authority's premises;
- decisions on operational matters such as day to day variations in services;
- decisions to give business relief to individual traders;
- decisions to review the benefit claims of an individual applicant; and
- decisions taken in response to requests under the Data Protection Act 1998 or the Freedom of Information Act 2000.

These are a few selected examples and not an exhaustive list. It is for the council or local government body to decide what information should be recorded on the basis of the national rules.

Can I ask for a copy of any records of decisions taken by an officer of my council or local government body?

Yes. You can ask for a copy of any documents relating to decisions taken by an officer acting under specific or general delegated powers once you have paid for the postage, copying or any other necessary charge for transmission which will be determined by your council or local government body.

There are also additional legal rights to access information, outlined in Part 5 of this Guide.

What happens if documents relating to decisions are not made public?

It is a criminal offence if, without reasonable excuse, a person with custody of a document^{xxi} (which is required by the national rules to be made available to the public),

refuses to supply the whole or part of the document, or intentionally obstructs any other person/s from disclosing such a document.

If a person is found guilty of such a criminal offence, he/she may be fined up to £200^{xxii}.

Part 4 Access to meetings and documents of parish and town councils

As a member of the public, you have the right to attend the annual parish and town meeting, as well as the meetings of parish and town councils^{xxiii}, and of the Council of the Isles of Scilly. This Part explains how the public can access meetings of these councils and records of certain decisions taken by those council's officers.

Attending meetings of parish councils and the Council of the Isles of Scilly

How will I know about a forthcoming meeting of a parish or town council or the Council of the Isles of Scilly which is open to the public?

Parish and town councils and the Council of the Isles of Scilly must give notice of their meeting at least 3 clear days before it takes place. Where a parish meeting^{xxiv} is called, at least 7 clear days' notice must be given.

Notice of the meeting specifying the business to be discussed must be placed in a central conspicuous place within the parish or area at least 3 clear days before the meeting. These councils are also encouraged to place copies of the agenda, meeting papers and notice of meetings at offices and on their website, if they have these facilities.

Can a parish or town council or the Council of the Isles of Scilly choose to meet in private?

All meetings of these councils must be open to the public, except in limited defined circumstances. These councils can only decide, by resolution, to meet in private when discussing confidential business or for other special reasons where publicity would be prejudicial to the public interest.

What is confidential information and publicity prejudicial to the public interest?

Though not an exhaustive list, we expect this to cover matters such as discussing the conduct of employees, negotiations of contracts or terms of tender, or the early stages of a legal dispute.

Can I be asked to leave a public meeting?

Yes. As a member so the public you can be asked to leave a meeting so that the council can discuss matters in private, but only in the limited circumstances described above. The rules also do not prevent the chairman from excluding any member of the public in order to maintain orderly conduct or prevent genuine disruption at a meeting.

Recording of decisions of public meetings

If I am not at the meeting, how will I know of any decisions made?

The fact that you are unable to attend a public meeting of your parish and town council, its committees or sub-committees does not mean you cannot find out about the decisions made there. The national rules require the parish and town councils to make a copy of the minutes available for inspection after a public meeting.

You can inspect the minutes at your council's offices and on the council website if it has one.

Decisions by officers

Can an officer take decisions on matters that are the parish or town council's responsibility?

Yes, where the parish or town council's rules allow this.

Are there means of knowing about decisions made by individuals?

Yes. The rules require the recording of certain decisions^{xxv} taken by officers acting under powers delegated to them by a parish or town council, its committees or sub-committees or a joint committee. The written record should include:

- The decision taken and the date the decision was taken;
- the reason/s for the decision;
- any alternative options considered and rejected; and
- any other background documents.

You can see these records of decisions made by officers along with any other background papers because they have to be available for inspection at the council's offices and on its website as soon as is reasonably practicable after the decisions are made^{xxvi}.

The relevant parish or town council must retain and make the written record of their officers' decisions available for inspection for six years beginning from the date of the meeting. The background papers should also be available for inspection for four years beginning from the date of the meeting. These may be kept in electronic format.

Can I see all decisions made by my parish or town council's officers?

No. The requirement to record applies to all decisions taken by officers whilst acting under a specific express authorisation, and only to three categories of decision taken whilst acting under a general authorisation. These categories cover decisions to “grant a permission or licence”; that “affect the rights of an individual”(i.e. to change an individual's legal rights)^{xxvii}; or to “award a contract or incur expenditure which, in either case, materially affects^{xxviii} that relevant local government body's financial position”.

Officers take many administrative and operational decisions on how they go about their day to day work within the council's rules. These decisions will not need to be recorded.

You will not be able to inspect some recorded decisions if the whole or part of the records contains confidential information or any other information, which its publicity would be prejudicial to the public interest.

Examples of decisions that should be recorded could include:

- Decisions about awarding contracts above specified individual/total values (the values will vary according to the relevant parish or town council); and
- decision to renew a lease to an Allotment Association.

Where decisions are already required to be published by other legislation, they do not need to be recorded again provided the record published has the date the decision was taken and the reasons for the decision.

Decisions that do not need to be recorded might include the following examples:

- Routine administrative and organisational decisions such as the purchase of office supplies or repairs;
- a decision to sign an allotment tenancy agreement;
- decisions to allocate burial plots; and
- decisions to book rooms or sports grounds; and decisions to approve works undertaken by a contractor.

These are a few selected examples and not an exhaustive list. It is for the council to decide what information should be recorded on the basis of the national rules.

Can I ask for a copy of any records of decisions taken by an officer of my parish or town council?

Yes. You can ask for a copy of any documents relating to decisions taken by an officer acting under specific or general delegated powers once you have paid for the postage,

copying or any other necessary charge for transmission which will be determined by your parish or town council.

There are also additional legal rights to access information, outlined in Part 5 of this Guide.

What happens if documents relating to decisions are not made public?

It is a criminal offence if, without reasonable excuse, a person with custody of a document^{xxix} which is required by the national rules to be made available to the public, refuses to supply the whole or part of the document, or intentionally obstructs any other person/s from disclosing such a document.

If a person is found guilty of such a criminal offence, he/she may be fined up to £200^{xxx}.

Part 5 Your other rights of access to information

Are there other rights I can exercise?

The Local Government Transparency Code sets out the minimum datasets that your local authority should publish. These include spending transactions valued over £500, salaries of senior staff, organisational charts, contracts and the location of public land and assets. The Code applies to local authorities, including parish councils with annual income or expenditure (whichever is the higher) over £200,000^{xxxi}. Local authorities with annual income or expenditure of above £6.5m will soon be statutorily required to comply with Part 2 of the Code when the relevant regulations are in place. You can obtain further information on this from:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/308185/Local_Government_Transparency_Code_2014_Final.pdf

You can inspect a council's detailed financial accounts, ledgers and records under section 15 of the Audit Commission Act 1998. In addition, the Accounts and Audit (England) Regulations 2011^{xxxii} cover checking not just the accounts, but also "all books, deeds, contracts, bills, vouchers and receipts related to them". More information on this right is available at: <https://www.gov.uk/government/policies/making-local-councils-more-transparent-and-accountable-to-local-people/supporting-pages/peoples-rights-to-see-council-accounts>

Also, you have the right to request information held by your council by submitting a Freedom of Information Act request to your council (a similar regime exists in relation to environmental information under the Environmental Information Regulations 2004). Information on the Freedom of Information Act and data protection is available on the Information Commissioner's Office website at: <http://ico.org.uk/>

You have certain rights to re-use for your own purposes documents held by the council under the Re-use of Public Sector Information Regulations 2005. These Regulations provide that any request for re-use must be in writing, and where possible and appropriate the council must make the document concerned available for re-use by electronic means. More information is available at:

<http://www.legislation.gov.uk/ukxi/2005/1515/introduction/made>

Where can I find the legislation relating to access to local government bodies' and council's executive meetings and information?

The relevant legislation about access to local government body meetings and information is in Section 40 of the Local Audit and Accountability Act 2014. The relevant provisions are available at the following link:

<http://www.legislation.gov.uk/ukpga/2014/2/section/40>

The detailed provisions on how any person can report on the meetings of a local government body are in The Openness of Local Government Bodies Regulations 2014 which can be found at:

<http://www.legislation.gov.uk/id/uksi/2014/2095>

The legislation relating to access to information regarding decisions made by council executives, and their committees, sub-committees and joint committees is Part 1A of the Local Government Act 2000 – see sections 9G and 9GA. This part was inserted as a result of amendments made by the Localism Act 2011 and the relevant provisions are available at the following link:

<http://www.legislation.gov.uk/ukpga/2011/20/schedule/2/part/1>

The detailed provisions on the rights to attend meetings and obtain information of an executive are in the secondary legislation made under the 2000 Act, that is the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 which can be found at:

<http://www.legislation.gov.uk/uksi/2012/2089/contents/made>

The legislation relating to access to meetings and documents of a council and other local government bodies can be found in Part VA of the Local Government Act 1972, available at the following link:

<http://www.legislation.gov.uk/ukpga/1972/70/part/VA>

The legislation relating to access to meetings of a parish or town council can be found at section 1 the Public Bodies (Admission to Meetings) Act 1960, available at the following link:

<http://www.legislation.gov.uk/ukpga/Eliz2/8-9/67/section/1>

Annex A – Description of the local government bodies that are covered by the new rules

- (a) a district council,
- (b) a county council in England,
- (c) a London borough council,
- (d) the London Assembly (Greater London Authority),
- (e) the Common Council of the City of London in its capacity as a local authority or police authority,
- (f) the London Fire and Emergency Planning Authority,
- (g) Transport for London,
- (h) a joint authority established under Part 4 of the Local Government Act 1985,
- (i) an economic prosperity board,
- (j) a combined authority,
- (k) a fire and rescue authority in England constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies,
- (l) a National Park Authority for a National Park in England,
- (m) the Broads Authority,
- (n) the Council of the Isles of Scilly,
- (o) a parish council, and
- (p) a parish meeting.

The new national rules also apply to the committees, sub-committees and joint committees of these local government bodies.

Annex B – Descriptions of Exempt Information

The exempt information set out at Schedule 12A to the Local Government Act 1972 Act is as follows:

1. Information relating to any individual.
2. Information which is likely to reveal the identity of an individual.
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
6. Information which reveals that the authority proposes—
 - a. to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
 - b. to make an order or direction under any enactment.
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

The qualifications to the list of exempt information are as follows:

A. Information falling within number 3 above is not exempt information by virtue of that paragraph if it is required to be registered under--

[the Companies Acts (as defined in section 2 of the Companies Act 2006)];
the Friendly Societies Act 1974;
the Friendly Societies Act 1992;
the *Industrial and Provident Societies Acts 1965* [Co-operative and Community Benefit Societies and Credit Unions Acts 1965] to 1978;
the Building Societies Act 1986; or
[(f) the Charities Act 2011.

B. Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992.

C. Information which—

falls within any of numbers 1 to 7 above; and
is not prevented from being exempt by virtue of number A or B above,

is exempt information if, and so long as, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

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- ⁱ The new national rules are in The Openness of Local Government Bodies Regulations 2014 (S.I. 2014/...) and The Local Authorities (Executive Arrangements)(Meetings and Access to Information)(England) Regulations 2012 (S.I. 2012/2089).
- ⁱⁱ A parish or town council may also be called a city, community, neighbourhood or village council. Any reference to parish council in this Guide also refers to these bodies.
- ⁱⁱⁱ The Guide should not be taken as providing any definitive interpretation of the statutory requirements on councils, members, officers, or of public rights: those wishing to address such issues should seek their own legal advice.
- ^{iv} A council's cabinet is its main decision making body, consisting of an elected mayor or leader and a number of councillors.
- ^v Part 2 of the Openness of Local Government Bodies Regulations 2014 (S.I. 2014/...)
- ^{vi} "Private meeting" is a meeting or part of a meeting during which the public are excluded for limited and certain circumstances described in the Local Government Act 1972 and the Local Authorities (Executive Arrangements)(Meetings and Access to Information)(England) Regulations 2012
- ^{vii} Regulation 4 of The Openness of Local Government Bodies Regulations 2014
- ^{viii} http://www.cps.gov.uk/legal/a_to_c/communications_sent_via_social_media/
- ^{ix} Any area designated for the public should be appropriate for filming, audio-recording and photographing.
- ^x Each council has its own rules for doing business - its constitution and standing orders- which must be in line with any national rules.
- ^{xi} [An "executive decision" means a decision made or to be made by a decision maker in connection with the discharge of a function which is the responsibility of the executive of a local authority.](#)
- ^{xii} ["key decision" means an executive decision which, is likely—
to result in the relevant local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority's budget for the service or function to which the decision relates; or
to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the relevant local authority.](#)
- ^{xiii} All references to 'a council executive' should be construed to include the executive's committees and sub-committees, joint committees, and joint sub-committees.
- ^{xiv} A document can be the written record of executive decisions made by an executive member or officer or any other background papers.
- ^{xv} This fine could change to reflect any future changes in legislation and/or national policy.
- ^{xvi} Each council or local government has its own rules for doing business - its constitution and standing orders- which must be in line with any national rules.
- ^{xvii} Regulation 7(2) of the 2014 regulations.
- ^{xviii} If a local government body does not have offices or a website, other appropriate means should be used to allow you to access these documents, such as publishing the information on a website of another local authority body in the area.
- ^{xix} These decisions do not include decisions taken pursuant to an existing framework of rights.
- ^{xx} As the financial position of bodies affected by these rules varies, what constitutes the material threshold is a judgement that should be made by individual bodies.
- ^{xxi} A document can be the written record of decisions made by an officer, or any background papers.
- ^{xxii} This fine could change to reflect any future changes in legislation and/or national policy.
- ^{xxiii} A parish or town council may also be called a city, community, neighbourhood or village council. Any reference to parish council in this Guide also refers to these bodies.
- ^{xxiv} A parish meeting is a meeting for all of the local government electors of the parish. This can be in the case of an annual meeting in an area where there is a separate parish council, or any meeting of local government electors where there is no separate parish council.
- ^{xxv} Regulation 7(2) of the 2014 regulations.
- ^{xxvi} If a parish or town council does not have offices or a website, other appropriate means should be used to make the papers accessible to the public, such as publishing the information on the website of the local principal authority.
- ^{xxvii} These decisions do not include decisions taken pursuant to an existing framework of rights.
- ^{xxviii} As the financial position of bodies affected by these rules varies, what constitutes the 'material threshold' is a judgement that would be made by individual bodies.
- ^{xxix} A document can be the written record of decisions made by an officer, or any background papers.
- ^{xxx} This fine could change to reflect any future changes in legislation and/or national policy.

^{xxxi} The government has recently consulted on a new transparency code for certain authorities with a turnover not exceeding £25,000 pa, which will act as a substitute for routine external audit. The draft code is available at: <https://www.gov.uk/government/consultations/draft-transparency-code-for-parish-councils>

^{xxxii} Under the new Audit framework, this right is restated in Section 26 of the Local Audit and Accountability Act 2014. The Government will be consulting shortly on draft regulations in relation to the new arrangements. Some changes are proposed to the framework for exercising public rights, but broadly the aim is to simplify and clarify arrangements. The intention is for the regulations to be in place for the accounting period 2015-16.

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