

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, 31st July, 2018 at 7.30 pm, when the following business is proposed to be transacted:-

PART 1 - PUBLIC

- | | | |
|----|---|---------|
| 1. | Apologies for absence | 5 - 6 |
| 2. | Declarations of interest | 7 - 8 |
| | To declare any interests in respect of recommended items | |
| 3. | Minutes of Annual Meeting | 9 - 20 |
| | To confirm as a correct record the Minutes of the meeting of Council held on 15 May 2018 | |
| 4. | Minutes of Extraordinary Meeting | 21 - 22 |
| | To confirm as a correct record the Minutes of the extraordinary meeting of Council held on 25 June 2018 | |
| 5. | Mayor's Announcements | 23 - 24 |
| 6. | Questions from the public pursuant to Council Procedure Rule No 5.6 | 25 - 26 |
| 7. | Questions from Members pursuant to Council Procedure Rule No 5.5 | 27 - 28 |
| 8. | Leader's Announcements | 29 - 30 |

9. Reports, Minutes and Recommendations 31 - 32

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 10 to 13.

10. Proposed Diversion of Public Footpath MR218, Stansted 33 - 42

Item AP2 18/3 referred from Area 2 Planning Committee minutes of 11 April 2018

11. Human Resources Strategy Update 43 - 58

Item GP 18/11 referred from General Purposes Committee minutes of 25 June 2018

12. Investigatory Powers Commissioner's Office Inspection Report - 59 - 92
the Regulation of Investigatory Powers Act 2000

Item GP 18/12 referred from General Purposes Committee minutes of 25 June 2018

13. Treasury Management Update and Annual Report for 2017/18

Item referred from Audit Committee minutes of 23 July 2018 – to follow

14. Review of Constitution 93 - 106

The report requests Members to approve amendments to the Council's constitution. Minute CB 18/40 also refers.

Due to their size Annexes 1 – 6 (the Constitution Parts 1 to 6) are set out as supplements to the agenda.

15. Recycling Site Collection Arrangements 107 - 110

The report identifies operational difficulties with the current collection arrangements at the Council's recycling sites and brings forward temporary additional resources to help address the issue until implementation of revised recycling site arrangements under the new Recycling Contract.

16. Appointments to Outside Bodies 111 - 112

To consider the appointment of Town Wardens of the Tonbridge Town Lands and Richard Mylls Charity for the period October 2018 to 2022.

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, 23 July 2018

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Apologies for absence

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Agenda Item 2

Declarations of interest

To declare any interests in respect of recommended items.

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TONBRIDGE AND MALLING BOROUGH COUNCIL

COUNCIL MEETING

Tuesday, 15th May, 2018

At the Statutory Annual Meeting of the Tonbridge and Malling Borough Council held at Civic Suite, Gibson Building, Kings Hill, West Malling on Tuesday, 15th May, 2018

Present: His Worship the Mayor (Councillor R W Dalton), the Deputy Mayor (Councillor Mrs P A Bates), Cllr Mrs J A Anderson, Cllr O C Baldock, Cllr M A C Balfour, Cllr M C Base, Cllr Mrs S Bell, Cllr R P Betts, Cllr T Bishop, Cllr P F Bolt, Cllr Mrs B A Brown, Cllr T I B Cannon, Cllr M A Coffin, Cllr D J Cure, Cllr D A S Davis, Cllr M O Davis, Cllr Mrs T Dean, Cllr T Edmondston-Low, Cllr S M Hammond, Cllr Mrs M F Heslop, Cllr N J Heslop, Cllr S R J Jessel, Cllr D Keeley, Cllr D Keers, Cllr Mrs F A Kemp, Cllr S M King, Cllr R D Lancaster, Cllr D Lettington, Cllr Mrs S L Luck, Cllr B J Luker, Cllr D Markham, Cllr P J Montague, Cllr Mrs A S Oakley, Cllr M Parry-Waller, Cllr S C Perry, Cllr M R Rhodes, Cllr H S Rogers, Cllr R V Roud, Cllr Miss J L Sergison, Cllr T B Shaw, Cllr Miss S O Shrubsole, Cllr C P Smith, Cllr Ms S V Spence, Cllr A K Sullivan, Cllr M Taylor, Cllr Miss G E Thomas, Cllr F G Tombolis and Cllr T C Walker

Apologies for absence were received from Councillors Mrs S M Barker, J L Botten, V M C Branson, L J O'Toole and B W Walker

PART 1 - PUBLIC

C 18/28 ELECTION OF MAYOR

It was proposed by Councillor N Heslop, seconded by Councillor Miss G Thomas and

RESOLVED: That Councillor Mrs P A Bates be elected Mayor for the ensuing municipal year.

The Mayor, having made and subscribed the statutory declaration of acceptance of office, was invested with the Badge and Chain of Office, assumed the Chair and thanked Members for her election.

C 18/29 VOTE OF THANKS TO RETIRING MAYOR

It was proposed by Councillor D Davis, seconded by Councillor N Heslop and

RESOLVED: That the Council's sincere appreciation be recorded of the excellent manner in which the retiring Mayor, Councillor R W Dalton, had

performed his duties both in the Council Chamber and throughout the Borough during the preceding year.

C 18/30 ELECTION OF DEPUTY MAYOR

It was proposed by Councillor H Rogers, seconded by Councillor N Heslop and

RESOLVED: That Councillor Mrs J A Anderson be appointed Deputy Mayor for the ensuing municipal year.

The Deputy Mayor made and subscribed the statutory declaration of acceptance of office and thanked Members for her appointment.

C 18/31 MINUTES

RESOLVED: That the Minutes of the proceedings of the meeting of the Council held on 10 April 2018 be approved as a correct record and signed by the Mayor.

C 18/32 MAYOR'S ANNOUNCEMENTS

The Mayor reported that she had appointed the Reverend Neil Durling as her Chaplain and the Civic Service would be held at Tonbridge Baptist Church on Sunday 15 July. Her nominated charity was Tree of Hope which helped the families of children and young people with a disability or illness to raise the funds needed to pay for specialist care.

The Mayor indicated that her first two engagements were opening new offices at Tonbridge and Kings Hill. Her Garden Party would be held at Hadlow College on 19 July and details would be advised in due course of further fundraising events.

C 18/33 POLITICAL BALANCE ARRANGEMENTS

The report of the Director of Central Services and Monitoring Officer set out details of political balance arrangements required to be applied to the Council's committees, sub-committees, advisory boards and panels.

RESOLVED: That the composition of all committees, sub-committees, advisory boards and panels be approved in accordance with the table set out at paragraph 1.1.4 of the report and the Monitoring Officer make any consequential amendments to the Council's Constitution in respect of political balance.

C 18/34 APPOINTMENT OF CABINET

The Leader presented details of the composition of the Cabinet.

RESOLVED: That it be noted that the Cabinet will comprise five

Members (in addition to the Leader) with the responsibilities indicated:

Councillor M Coffin - Finance, Innovation and Property and Deputy Executive Leader

Councillor Mrs M Heslop – Community Services

Councillor D Lettington – Street Scene and Environment Services

Councillor P Montague - Housing

Councillor H Rogers – Strategic Planning and Infrastructure

The Economic Regeneration portfolio to be held by the Leader

C 18/35 APPOINTMENT OF COMMITTEES

RESOLVED: That appointments to the Committees of the Council for the ensuing municipal year be made as follows:

Overview and Scrutiny Committee

(18 members)

Councillor Mrs J Anderson

Councillor M Base

Councillor P Bolt

Councillor J Botten

Councillor R Dalton

Councillor S Jessel

Councillor D Keers

Councillor Mrs F Kemp

Councillor Mrs S Luck

Councillor Mrs A Oakley

Councillor M Rhodes

Councillor Miss S Shrubsole

Councillor Ms S Spence

Councillor A Sullivan

Councillor M Taylor

Councillor Miss G Thomas

Councillor F Tombolis

Councillor T Walker

Licensing and Appeals Committee

(15 members)

Councillor Mrs J Anderson

Councillor O Baldock

Councillor Mrs S Barker

Councillor M Base

Councillor Mrs P Bates

Councillor Mrs B Brown

Councillor M Coffin

Councillor B Elks

Councillor D Keers

Councillor Mrs F Kemp

Councillor S King

Councillor H Rogers

Councillor R Roud

Councillor M Taylor

Councillor F Tombolis

General Purposes Committee

(14 members)

Councillor O Baldock

Councillor M Balfour

Councillor Mrs S Bell

Councillor P Bolt

Councillor M Coffin

Councillor Mrs M Heslop

Councillor N Heslop

Councillor B Luker

Councillor D Markham

Councillor L O'Toole

Councillor S Perry

Councillor R Roud

Councillor C Smith

Councillor M Taylor

Audit Committee

(9 members)

Councillor O Baldock	Councillor B Elks
Councillor R Betts	Councillor S Jessel
Councillor T Bishop	Councillor Mrs F Kemp
Councillor V Branson	Councillor T Walker
Councillor T Edmondston-Low	

Joint Standards Committee

(13 members + 6 parish members)

Councillor Mrs P Bates	(Parish members to be appointed from a pool of nominated representatives)
Councillor Mrs S Bell	
Councillor R Betts	
Councillor Mrs B Brown	
Councillor D Cure	
Councillor D Davis	
Councillor Mrs T Dean	
Councillor T Edmondston-Low	
Councillor D Lettington	
Councillor Miss J Sergison	
Councillor Miss S Shrubsole	
Councillor C Smith	
Councillor Miss G Thomas	

A Hearing Panel will be appointed from members of the Joint Standards Committee as necessary.

Area 1 Planning Committee

Councillor Mrs J Anderson	Councillor Mrs M Heslop
Councillor O Baldock	Councillor N Heslop
Councillor Mrs P Bates	Councillor R Lancaster
Councillor P Bolt	Councillor M Rhodes
Councillor J Botten	Councillor H Rogers
Councillor V Branson	Councillor Miss J Sergison
Councillor D Cure	Councillor C Smith
Councillor M Davis	Councillor Ms S Spence
Councillor T Edmondston-Low	Councillor Miss G Thomas
Councillor B Elks	Councillor F Tombolis

(For the Wards of Cage Green; Castle; that part of the Hadlow and East Peckham Ward within the parish of Hadlow; Higham; Hildenborough; Judd; Medway; Trench; and Vauxhall)

Area 2 Planning Committee

Councillor Mrs J Anderson	Councillor B Luker
Councillor M Balfour	Councillor P Montague
Councillor Mrs S Barker	Councillor L O'Toole
Councillor R Betts	Councillor S Perry
Councillor M Coffin	Councillor H Rogers
Councillor S Jessel	Councillor Miss J Sergison
Councillor Mrs F Kemp	Councillor T Shaw
Councillor Mrs S Luck	Councillor Miss S Shrubsole
	Councillor M Taylor

(For the Wards of Borough Green and Long Mill; Downs and Mereworth; that part of the Hadlow and East Peckham Ward outside the parish of Hadlow; Kings Hill; Wateringbury; West Malling and Leybourne; and Wrotham, Ightham and Stansted)

Area 3 Planning Committee

Councillor M Base	Councillor D Keers
Councillor Mrs S Bell	Councillor S King
Councillor T Bishop	Councillor D Lettington
Councillor Mrs B Brown	Councillor D Markham
Councillor T Cannon	Councillor Mrs A Oakley
Councillor R Dalton	Councillor M Parry-Waller
Councillor D Davis	Councillor R Roud
Councillor Mrs T Dean	Councillor A Sullivan
Councillor S Hammond	Councillor B Walker
Councillor D Keeley	Councillor T Walker

(For the Wards of Aylesford North and Walderslade; Aylesford South; Burham and Wouldham; Ditton; East Malling; Larkfield North; Larkfield South; Snodland East and Ham Hill; and Snodland West and Holborough Lakes)

C 18/36 APPOINTMENT OF CHAIRMEN AND VICE-CHAIRMEN

RESOLVED: That appointment of the Chairman and Vice-Chairman of each Committee, Board, Panel and Group for the ensuing municipal year be made as follows:

<u>COMMITTEE</u>	<u>CHAIRMAN</u>	<u>VICE-CHAIRMAN</u>
Overview and Scrutiny Committee	Councillor A Sullivan	Councillor Mrs A Oakley Councillor F Tombolis
Licensing and Appeals Committee	Councillor Mrs J Anderson	Councillor D Keers

General Purposes Committee	Councillor O Baldock	Councillor L O'Toole
Audit Committee	Councillor V Branson	Councillor R Betts
Joint Standards Committee	Councillor Miss J Sergison	Councillor D Cure Councillor D Davis
Area 1 Planning Committee	Councillor R Lancaster	Councillor V Branson
Area 2 Planning Committee	Councillor Mrs F Kemp	Councillor B Luker
Area 3 Planning Committee	Councillor M Parry Waller	Councillor M Base
Parish Partnership Panel	Councillor N Heslop	Councillor M Coffin
Tonbridge Forum	Councillor N Heslop	Councillor C Smith
Communities and Housing Advisory Board	Councillor M Rhodes	Councillor Miss G Thomas
Economic Regeneration Advisory Board	Councillor B Luker	Councillor R Betts
Finance, Innovation and Property Advisory Board	Councillor M Base	Councillor R Lancaster
Planning and Transportation Advisory Board	Councillor D Davis	Councillor J Botten
Street Scene and Environment Services Advisory Board	Councillor M Davis	Councillor O Baldock
Electoral Review Working Group	Councillor N Heslop	Councillor D Lettington
Housing Associations Liaison Panel	Councillor P Montague	
Joint Employee Consultative Committee	Councillor M Coffin	Councillor B Luker
Joint Transportation Board	Chairmanship with KCC	Councillor H Rogers

C 18/37 APPOINTMENT OF ADVISORY PANELS AND BOARDS AND OTHER MEMBER GROUPS

RESOLVED: That appointments to the Advisory Panels, Boards and other Member Groups of the Council for the ensuing municipal year be made as follows:

<u>PANEL/BOARD</u>	<u>MEMBERS</u>
Parish Partnership Panel	Councillor Mrs J Anderson Councillor Mrs S Barker Councillor R Betts Councillor T Cannon Councillor M Coffin * Councillor R Dalton Councillor N Heslop ** Councillor D Lettington Councillor B Luker Councillor D Markham Councillor R Roud Councillor T Shaw Councillor B Walker
Tonbridge Forum	Councillor Mrs J Anderson Councillor O Baldock Councillor Mrs P Bates Councillor P Bolt Councillor V Branson Councillor D Cure Councillor Mrs M Heslop Councillor N Heslop ** Councillor R Lancaster Councillor M Rhodes Councillor C Smith* Councillor Miss G Thomas Councillor F Tombolis
Communities and Housing Advisory Board	Councillor Mrs J Anderson Councillor Mrs S Barker Councillor Mrs S Bell Councillor V Branson Councillor Mrs B Brown Councillor D Cure Councillor R Dalton Councillor S Hammond Councillor D Keeley Councillor Mrs S Luck Councillor Mrs A Oakley Councillor L O'Toole Councillor M Parry-Waller

	Councillor M Rhodes** Councillor T Shaw Councillor Miss G Thomas*
Economic Regeneration Advisory Board	Councillor R Betts* Councillor T Bishop Councillor J Botten Councillor T Cannon Councillor R Dalton Councillor S Hammond Councillor R Lancaster Councillor Mrs S Luck Councillor B Luker** Councillor L O'Toole Councillor Miss J Sergison Councillor Miss S Shrubsole Councillor C Smith Councillor F Tombolis Councillor B Walker Councillor T Walker
Finance, Innovation and Property Advisory Board	Councillor M Base** Councillor Mrs S Bell Councillor R Betts Councillor T Bishop Councillor J Botten Councillor V Branson Councillor Mrs B Brown Councillor T Cannon Councillor D Cure Councillor M Davis Councillor S Jessel Councillor S King Councillor R Lancaster* Councillor Miss J Sergison Councillor A Sullivan Councillor F Tombolis
Planning and Transportation Advisory Board	Councillor M Balfour Councillor Mrs S Barker Councillor P Bolt Councillor J Botten* Councillor V Branson Councillor D Davis** Councillor M Davis Councillor T Edmondston-Low Councillor D Keers Councillor Mrs F Kemp Councillor R Lancaster Councillor M Parry-Waller

	Councillor S Perry Councillor R Roud Councillor A Sullivan Councillor M Taylor
Street Scene and Environment Services Advisory Board	Councillor Mrs J Anderson Councillor O Baldock* Councillor M Balfour Councillor M Davis ** Councillor S Hammond Councillor D Keeley Councillor D Keers Councillor D Markham Councillor Mrs A Oakley Councillor L O'Toole Councillor S Perry Councillor M Rhodes Councillor T Shaw Councillor Ms S Spence Councillor Miss G Thomas Councillor T Walker
Electoral Review Working Group	Councillor O Baldock Councillor M Balfour Councillor M Coffin Councillor Mrs T Dean Councillor N Heslop ** Councillor D Lettington* Councillor D Markham Councillor P Montague Councillor A Sullivan
Housing Associations Liaison Panel	Councillor Mrs J Anderson Councillor D Keeley Councillor P Montague** Councillor Mrs A Oakley Councillor Miss G Thomas
Joint Employee Consultative Committee	Councillor O Baldock Councillor M Balfour Councillor R Betts Councillor T Bishop Councillor P Bolt Councillor Mrs B Brown Councillor M Coffin ** Councillor D Keers Councillor B Luker *

Joint Transportation Board

Councillor D Davis
 Councillor Mrs F Kemp
 Councillor R Lancaster
 Councillor D Lettington
 Councillor M Parry-Waller
 Councillor H Rogers*
 Councillor M Taylor

Chairmanship with KCC,
 Vice-Chairmanship with TMBC
 in 2018/19

** Denotes Chairman

* Denotes Vice-Chairman

C 18/38 APPOINTMENT TO OUTSIDE BODIES

RESOLVED: That appointments to serve on outside bodies for the ensuing municipal year be made as follows:

<u>NAME OF BODY</u>	<u>REPRESENTATIVE(S)</u>
Kent County Playing Fields Association	Councillor Mrs M Heslop
Age UK Sevenoaks and Tonbridge	Councillor D Cure Councillor Ms S Spence
Age Concern (Malling)	Councillor B Luker
Citizens Advice in North and West Kent	Vacancy
Maidstone and District Care Committee for Chest, Heart and Stroke	Councillor S Hammond
West Kent Relate	Councillor Ms S Spence
Action with Communities in Rural Kent	Councillor R Dalton Councillor Miss J Sergison
Maidstone Mediation Scheme	Councillor Mrs B Brown
Kent Downs AONB Joint Advisory Committee	Councillor H Rogers
Basted Mill Public Open Space Joint Committee	Councillor R Betts Councillor S Perry
Snodland Partnership	Councillor Mrs S Bell Councillor D Keeley Councillor D Lettington

South East England Councils (Leaders' Forum)	Councillor N Heslop (Substitute: Councillor M Coffin)
Youth and Community Centres/Project Management Committees	Councillor Mrs M Heslop
LGA General Assembly	Councillor N Heslop (Substitute: Councillor M Coffin)
West Kent Partnership	Councillor B Luker
Parking and Traffic Regulations Outside London Adjudication Joint Committee	Councillor D Davis (Deputy: Councillor J Botten)
Rochester Airport Consultative Committee	Councillor A Sullivan
Rochester Airport Delivery Board	Councillor B Luker
Kent and Medway Police and Crime Panel	Councillor N Heslop
Kent Flood Risk Management Board	Councillor H Rogers
Tonbridge and Malling Leisure Trust	Councillor R Betts Councillor M Davis
Upper Medway Internal Drainage Board	Councillor O Baldock Councillor H Rogers Mr D Aikman Mr J Cannon
Lower Medway Internal Drainage Board	Councillor D Davis
Haysden Country Park User Panel <i>3 year appointment (2016/17-18/19)</i>	Councillor P Bolt Councillor D Cure
Leybourne Lakes Country Park User Panel <i>3 year appointment (2016/17-18/19)</i>	Councillor T Bishop Councillor B Luker
West Kent Health & Wellbeing Elected Members' Forum	Councillor P Montague
Dry Hill Road Disabled Persons Trust	Councillor V Branson

C 18/39 SCHEME OF DELEGATIONS

Members were invited to confirm the Scheme of Delegations in compliance with the Constitution.

RESOLVED: That

- (1) those parts of the Scheme of Delegations set out in Part 3 of the Constitution which are for the Council to approve be confirmed;
- (2) the Leader's recommendations for decision making by individual executive Members set out in Part 3 of the Constitution be adopted; and
- (3) the current scheme of delegation to officers in respect of executive functions set out in Part 3 of the Constitution be re-adopted.

C 18/40 PROGRAMME OF MEETINGS 2018/19

The programme of Council, Cabinet, Committee and Advisory Board and Panel meetings for the ensuing year and to May 2020 was presented for approval.

RESOLVED: That the programme of meetings be approved.

C 18/41 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 8.17 pm

TONBRIDGE AND MALLING BOROUGH COUNCIL

COUNCIL MEETING

Monday, 25th June, 2018

At the extraordinary meeting of the Tonbridge and Malling Borough Council held at Civic Suite, Gibson Building, Kings Hill, West Malling on Monday, 25th June, 2018

Present: Her Worship the Mayor (Councillor Mrs P A Bates), the Deputy Mayor (Councillor Mrs J A Anderson), Cllr O C Baldock, Cllr Mrs S M Barker, Cllr M C Base, Cllr R P Betts, Cllr P F Bolt, Cllr T I B Cannon, Cllr M A Coffin, Cllr D J Cure, Cllr D A S Davis, Cllr Mrs M F Heslop, Cllr N J Heslop, Cllr S R J Jessel, Cllr Mrs F A Kemp, Cllr D Lettington, Cllr Mrs S L Luck, Cllr B J Luker, Cllr P J Montague, Cllr Mrs A S Oakley, Cllr L J O'Toole, Cllr M Parry-Waller, Cllr M R Rhodes, Cllr H S Rogers, Cllr R V Roud, Cllr Miss J L Sergison, Cllr Miss S O Shrubsole, Cllr C P Smith, Cllr A K Sullivan, Cllr M Taylor, Cllr Miss G E Thomas and Cllr T C Walker

Apologies for absence were received from Councillors M A C Balfour, Mrs S Bell, T Bishop, V M C Branson, Mrs B A Brown, R W Dalton, M O Davis, S M Hammond, D Keers, R D Lancaster, D Markham, S C Perry, T B Shaw, Ms S V Spence, F G Tombolis and B W Walker

PART 1 - PUBLIC

C 18/42 DECLARATIONS OF INTEREST

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

C 18/43 EXCLUSION OF PRESS AND PUBLIC

The Mayor moved, it was seconded and

RESOLVED: That as public discussion would disclose exempt information the following matter be considered in private.

PART 2 - PRIVATE**C 18/44 APPOINTMENT OF NEW DIRECTOR OF PLANNING, HOUSING AND ENVIRONMENTAL HEALTH**

(LGA 1972 Sch 12A Paragraph 1 – Information relating to an individual)

The report of the Chief Executive set out details of the arrangements to be made for the appointment to the vacancy created by the forthcoming retirement of the Director of Planning, Housing and Environmental Health.

RESOLVED: That a Panel of Members composed of Councillors O Baldock, M Coffin, P Montague, Mrs A Oakley and H Rogers be appointed to make the appointment to fill the vacancy in the post of Director of Planning, Housing and Environmental Health.

C 18/45 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 8.16 pm
having commenced at 8.12 pm

Mayor's Announcements

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Agenda Item 6

Questions from the public pursuant to Council Procedure Rule No 5.6

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Agenda Item 7

Questions from Members pursuant to Council Procedure Rule No 5.5

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Leader's Announcements

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Agenda Item 9

Meeting	Page Nos in Minute Book	Recommendations to Council
5 April: Area 1 Planning Committee - Minute Numbers: AP1 18/7 – 12	5 – 8	
6 April: Licensing and Appeals Panels (4) - Minute Numbers: LA 18/22 – 33	9 – 18	
10 April: Council - Minute Numbers: C 18/15 – 27	19 – 24	
11 April: Area 2 Planning Committee - Minute Numbers: AP2 18/1 – 9	25 – 28	AP2 18/3
19 April: Overview and Scrutiny Committee - Minute Numbers: OS 18/8 – 12	29 – 30	
27 April: Licensing and Appeals Panel - Minute Numbers: LA 18/34 – 36	31 – 32	
15 May: Annual Council - Minute Numbers: C 18/28 – 41	33 – 44	
17 May: Licensing and Appeals Panel - Minute Numbers: LA 18/37 – 39	45 – 46	
21 May: Licensing and Appeals Committee - Minute Numbers: LA 18/40 – 45	47 – 48	
24 May: Overview and Scrutiny Committee - Minute Numbers: OS 18/13 – 18	49 – 52	
30 May: Area 2 Planning Committee - Minute Numbers: AP2 18/10 – 20	53 – 58	
6 June: Cabinet - Minute Numbers: CB 18/38 – 46	59 – 62	CB 18/40 See separate agenda item on Constitution
Cabinet Decision Notices - D180029MEM – D180033MEM - D180034MEM – D180037MEM - D180038MEM – D180040MEM - D180041MEM - D180042CAB – D180044CAB	63 – 86	

8 June: Licensing and Appeals Panels (3) - Minute Numbers: LA 18/46 – 54 -	87 – 92	
15 June: Licensing and Appeals Panel - Minute Numbers: LA 18/55 – 57	93 – 94	
19 June: Licensing and Appeals Committee - Minute Numbers: LA 18/58 – 63	95 – 96	
21 June: Overview and Scrutiny Committee - Minute Numbers: OS 18/19 – 23	97 – 100	
22 June: Licensing and Appeals Panels (3) - Minute Numbers: LA 18/64 – 72	101 – 106	
25 June: General Purposes Committee - Minute Numbers: GP 18/9 – 16	107 – 110	GP 18/11 and 12
25 June: Extraordinary Council - Minute Numbers: C 18/42 – 45	111 – 112	
4 July: Area 2 Planning Committee - Minute Numbers: AP2 18/21 – 27	113 – 114	
23 July: Audit Committee - Minute Numbers: AU 18/28 –	115 – 116	To follow

Item AP2 18/3 referred from Area 2 Planning Committee minutes of 11 April 2018

AP2 18/3 PROPOSED DIVERSION OF PUBLIC FOOTPATH MR218, STANSTED

Consideration was given to a request by Kent County Council for Tonbridge and Malling Borough Council to make an order under Section 257 of the Town and Country Planning Act 1990 to divert a public right of way (MR218 at Stansted) to enable development to take place.

Details of the length of footpath to be diverted and the proposed new route were illustrated in Appendix A to the report. An extract from the Definitive Map was attached at Appendix B to show the path in context with the rest of the public rights of way network.

Consultation had been carried out as required by the Act and it was reported that local County and Borough Councillors had raised no objection. Kent County Council was satisfied that all the legal tests had been met in that the Borough Council had granted planning permission under Part III of the Town and Country Planning Act 1990 for development and that this section of MR218 would be adversely affected by the development.

RECOMMENDED: That an Order to divert public footpath MR218 at Stansted, as shown in Appendix A to the report, be made under Section 257 of the Town and Country Planning Act 1990 in order for development to be carried out.

***Referred to Council**

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Application to divert part of public footpath MR218 at Stansted under section 257 of the Town & Country Planning Act 1990

A report by the Director of Central Services to Tonbridge & Malling Borough Council's Area Committee on 11 April 2018.

Recommendation: I recommend that the applicant be informed that an Order to divert part of public footpath MR218 is made in order to allow development to take place.

Local Member: Mr Harry Rayner

Unrestricted item

Introduction

1. Section 257 of the Town & Country Planning Act 1990 provides that a diversion of a public right of way may be pursued when necessary to allow development to take place for which planning permission has been obtained.
2. An application has been made by the landowners, Mr and Mrs Higgins, of *Buzzards* (formerly known as *The Barn*), Hatham Green Lane, Stansted, to divert part of public footpath MR218. Planning permission has been approved, reference 16/03754/FL, for the construction of a garage which would block the current alignment of the footpath.
3. It is necessary to divert part of the path in order for the development to take place (as is required by the Town & Country Planning Act 1990). The diversion of the footpath to the boundary will enable the development to take place. The footpath will be fenced to a width of 2.5 metres.
4. The length of footpath MR218 to be diverted is shown by a solid black line between points A–B on the plan at **Appendix A**. The proposed new route is shown by bold black dashes between the points A-C-B. An extract from the Definitive Map can be found at **Appendix B** to show the path in context with the rest of the public rights of way network.

Procedure

5. Tonbridge & Malling Borough Council may make an Order under Section 257 of the Town and Country Planning Act 1990 to divert a Public Right of Way to enable development to take place.

Consultations

6. Consultations have been carried out as required by the Act and no objections have been received. However, two suggestions were made by the Ramblers' representative, and were supported by the Parish Council for improvement. Firstly that the path could run south-south-east from point C and through the boundary to meet up with the path much further south, thereby decreasing the angle at the corner; secondly, that the corner at point C should be amended slightly to create two 45 degree angles rather than one 90 degree angle. The first suggestion was not a viable option as it would involve a different landowner who did not want to make any changes. The applicant did agree to the second suggestion whereby the path turns 1.5 metres before the boundary, runs for approximately 1.0 metre and then turns again to continue on its proposed alignment to point B.

View of Members

7. County Member Mr Harry Rayner and Borough Councillors Martin Coffin and Robin Betts have been consulted. No responses have been received.

Discussion

Legal Tests – Town and Country Planning Act 1990

8. 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."

9. 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".

10. 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.

11. 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.

12. 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”.

The Case – Town & Country Planning Act 1990

13. An application has been received to divert part of public footpath MR218 to allow for the construction of a garage which would block the current alignment of the path. Planning consent has been granted, reference 16/03754/FL. As a consequence the diversion of this part of public footpath MR218 is necessary in order for development to be carried out.

14. There is no negative effect on the public rights and enjoyment of the highway. The new route (as shown in **Appendix A**, between Points A-C-D-B) will run alongside the garden boundary, enabling the landowner to fence the path to a width of 2.5 metres. The surface of the pathway will be grass.

Conclusion

15. 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 & Country Planning Act 1990 for the development, and that this section of MR218 would be adversely affected by the development.

Recommendation

13. An Order should be made under Section 257 of the Town and Country Planning Act 1990 to divert public footpath MR218 at Stansted, shown in **Appendix A** to this report, in order for development to be carried out.

The case file is available for viewing on request at the PROW & Access Service, Invicta House, County Hall, Maidstone, Kent, ME14 1XX. Please contact the Case Officer for further details.

List of appendices

Appendix A - Plan of proposal

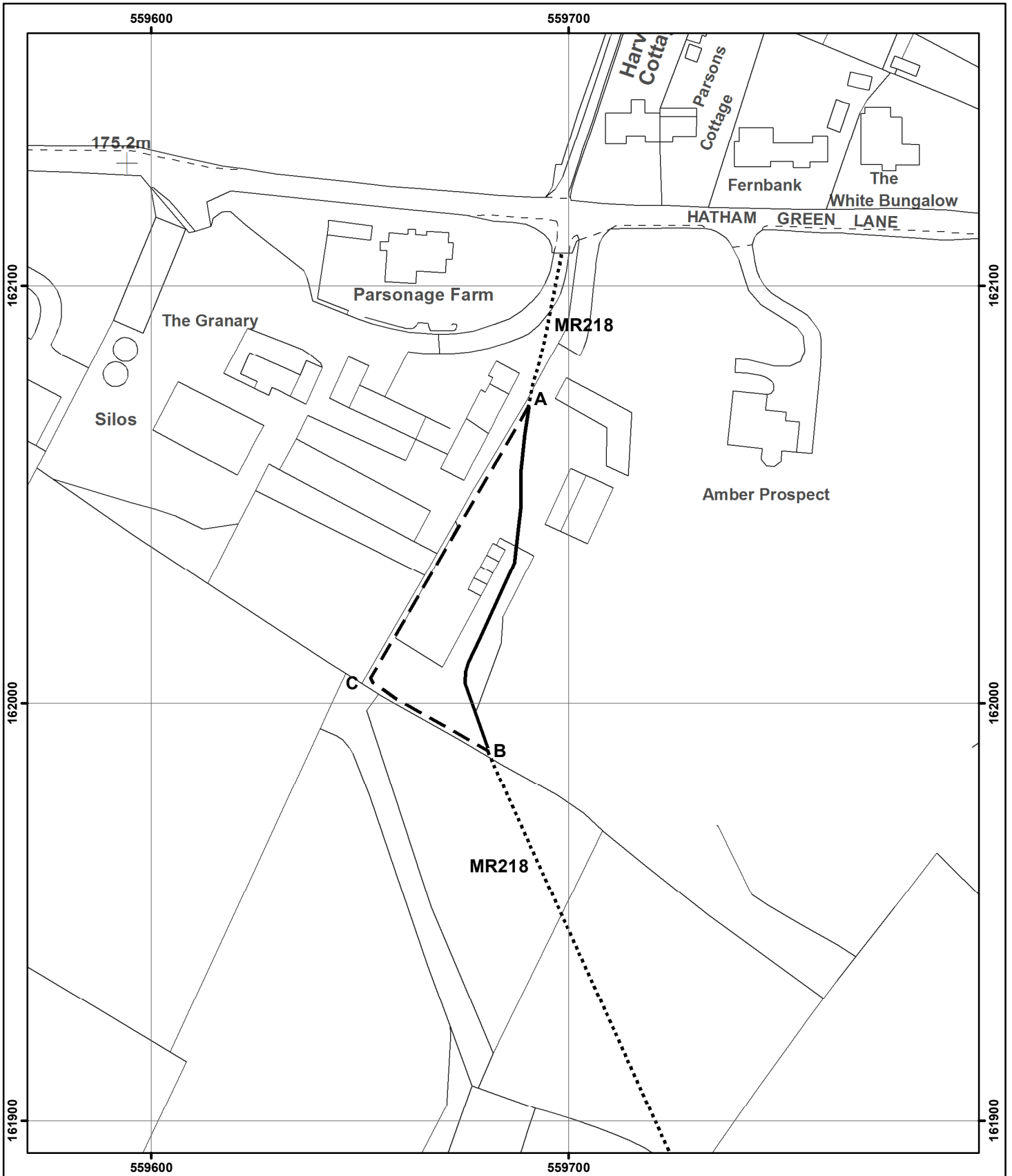
Appendix B - Extract from the Definitive Map, sheet 024 (TQ56SE)

Case reference:

PROW/MR218/0055/TMBC

Kent County Council Contact Officer:

Mrs Maria McLauchlan –
Tel: 03000 413420 or Email: maria.mclauchlan@kent.gov.uk



Key

- Route to be deleted
- Route to be Added
- Unaffected Routes

Town & Country Planning Act 1990
 The Tonbridge & Malling Borough Council (Public Footpath MR218 (part), Stansted) Public Path Diversion Order 2017



Created by:

MMcL

Checked by:

TMBC

Date:

16/10/2017

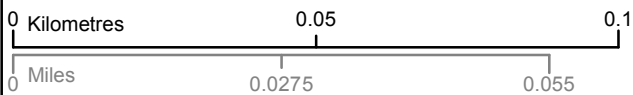
Reference:

PROW/MR218/0055/TMBC

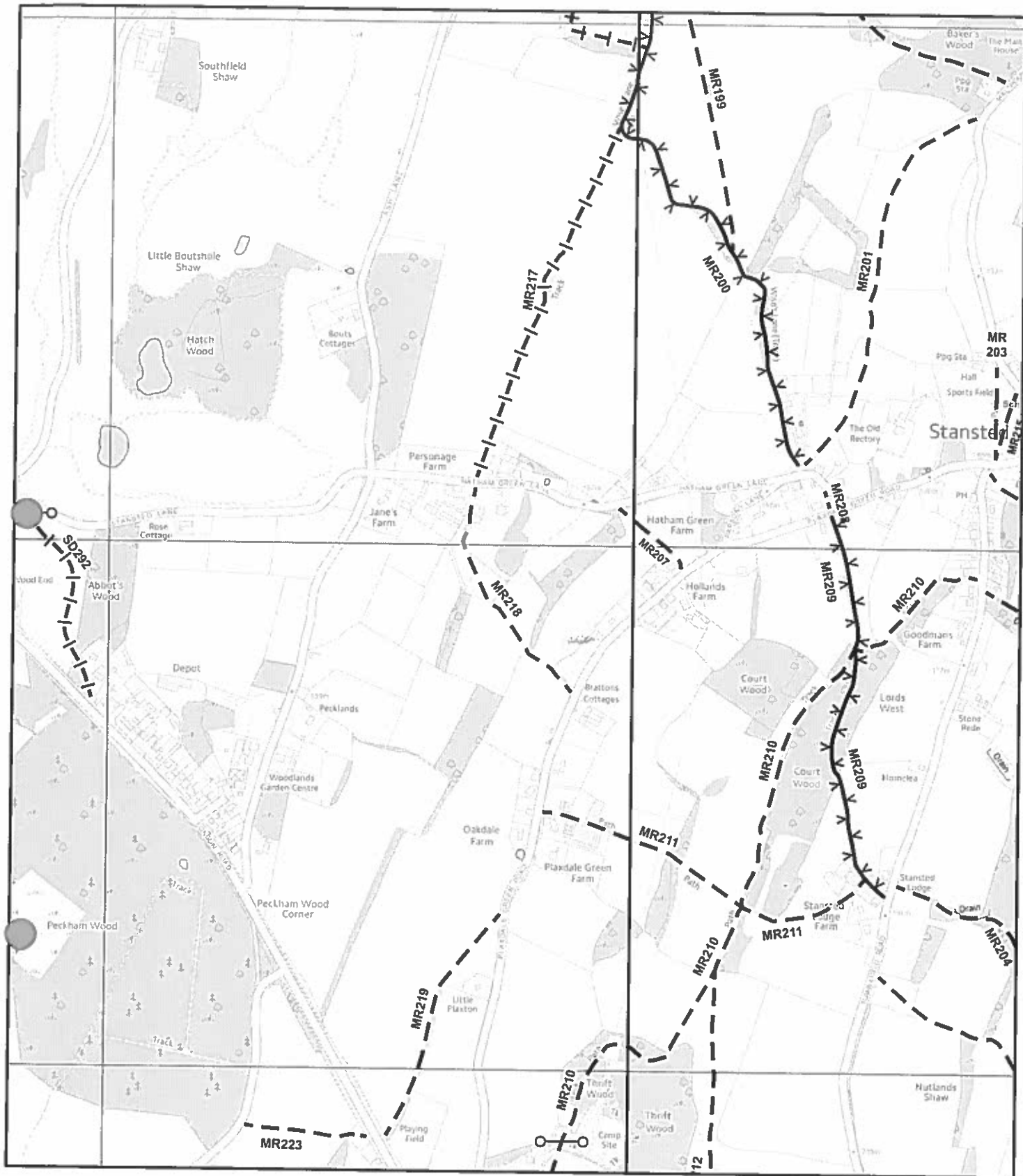
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- Footpath
- |- Bridleway
- ∨-∨ Restricted Byway
- ↗ Byway Open to All Traffic
- Point path number or status changes
- Boundary of area covered by 1:2500 scale Network Map
- ▨ Area covered by 1:2500 scale Network Map

**EXTRACT OF THE WORKING COPY OF THE
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FOR THE COUNTY OF KENT**

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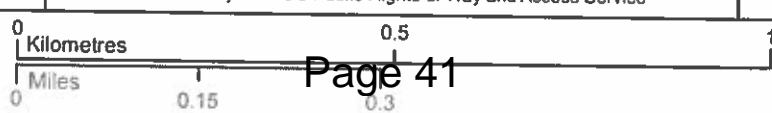
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Issue Date:	18/08/2017
Reference:	PROW/MR218/ 0055/TMBC

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Item GP 18/11 referred from General Purposes Committee minutes of 25 June 2018

GP 18/11 HUMAN RESOURCES STRATEGY UPDATE

The report of the Director of Central Services reminded Members that the Human Resources Strategy (HR Strategy) provided an overview of the Council's approach to managing its employees and that it was updated annually to identify "improvement priorities". The updated HR Strategy, set out at Annex 1 to the report, listed progress against the improvement priorities identified for April 2017 to March 2018, identified actions to be implemented between April 2018 and March 2019 and reported the outcome of equality monitoring of staffing issues in 2017/18 required under the Equality Act 2010.

RECOMMENDED: That the outcomes of the equality monitoring set out in Section 4 of the HR Strategy be noted and the actions listed in Section 5 of the strategy (Workforce Development Plan April 2018 – March 2019) be commended for adoption by the Council.

***Referred to Council**

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TONBRIDGE & MALLING BOROUGH COUNCIL

GENERAL PURPOSES COMMITTEE

25 June 2018

Report of the Director of Central Services

Part 1- Public

Matters for Recommendation to Council

1 HUMAN RESOURCES STRATEGY UPDATE

The Human Resources Strategy (HR Strategy) provides an overview of the Council's approach to managing its employees. It is updated annually to identify "improvement priorities", such as changes to the Council's personnel policies.

The updated Hr Strategy attached as Annex 1 to this report advises the Committee on progress in achieving the improvement priorities in the Human Resources Strategy (HR Strategy) for April 2017 – March 2018, and identifies actions to be implemented in the period April 2018 – March 2019. The updated Strategy in Annex 1 also contains the statutory equality monitoring required by the Equality Act 2010.

1.1 Overview of updates to the HR Strategy

1.1.1 Section 3 of the updated HR Strategy lists progress against the improvement priorities identified in 2017/18. The Committee will note that the majority of the identified actions have been achieved.

1.1.2 Section 4 of the HR Strategy reports the outcomes of equality monitoring of staffing issues in 2017/18. The Council's Management Team have not discerned evidence of discrimination against any of the protected characteristic groupings listed in the Equality Act 2010.

1.1.3 Section 5 of the HR Strategy advises the Committee of the improvement priorities that have been so far identified for 2018/19. This section is referred to as The Workforce Development Plan (WDP) because periodically various external agencies, government departments etc. request information about the Council's WDP.

1.2 Legal Implications

1.2.1 The reporting of the outcomes of the Council's HR equalities monitoring is a statutory requirement of the Equalities Act 2010.

1.3 Financial and Value for Money Considerations

1.3.1 All of the actions listed in Section 5 of the attached Annex will be resourced from existing budgets.

1.4 Risk Assessment

1.4.1 The Workforce Development Plan in Section 5 of the HR Strategy complies with one of the recommended requirements of the Annual Governance Statement (part of the statement of accounts).

1.5 Recommendations

1.5.1 The Committee is commended to note the outcomes of the equality monitoring as reported in Section 4 of the HR Strategy and to recommend the actions listed in Section 5 to Council.

Background papers:

contact: Delia Gordon

Nil

Adrian Stanfield
Director of Central Services

HUMAN RESOURCES STRATEGY (incorporating the Pay and Workforce Strategy)

1 The Council's Vision

The Council's vision for the next two years is:

To be a financially sustainable Council that delivers good value services, provides clear leadership and, with our partners, addresses the needs of the Borough.

2 Human Resource Strategy

The Human Resources Strategy is about recognising and developing the crucial contribution of every employee. This is prompted by the expectation/aspiration that all employees will:

- be customer focused
- be corporately aware
- demonstrate a “can do” approach to work
- appreciate the Council as a good employer
- consider themselves as colleagues in a joint endeavour to achieve the corporate vision.

Working with partners, external service providers, and other authorities, the Council will give ongoing consideration to the further development of the Strategy. The Strategy will be updated annually and will identify improvement priorities for the year ahead. The annual update will also report on the achievement of the improvement priorities identified the previous year.

Four key “building blocks” are used to inform and direct human resource activities. These are:

- Leadership and Management
- Effective Recruitment and Retention
- Communication and Team Working
- Workforce Development.

The Sections below provide an overview of the Council's current approaches to developing these “building blocks”.

Leadership and Management Development

We want managers and supervisors throughout Tonbridge & Malling Borough Council to meet their responsibilities to their colleagues by providing leadership, direction, purpose and support.

- Managers and supervisors will be expected to proactively seek out opportunities for service transformation and to set standards.
- All managers and supervisors will contribute to developing an organisational climate that encourages innovation, by encouraging their staff to engage positively in service transformation and in developing new ways of working.
- Corporate working will be promoted throughout the Council.
- All managers and supervisors will be expected to behave in accordance with the Council's Supervisory and Management Capability Checklists.
- Up to date advice, training and support on Council policies and procedures for dealing with a range of employee relations issues will ensure consistency of management style.
- New managers and supervisors will be equipped for their role by participating in appropriate training and development activities.
- Throughout their careers with the Council managers and supervisors will have opportunities to attend training and development events that reflect their responsibilities.

Effective Recruitment & Retention

We want an employment package that attracts and retains capable people who are committed to delivering excellent services to the community.

- We will balance internal progression with external recruitment so that the Council continuously reinvigorates its talent pool, and that appropriate succession planning ensures an appropriately skilled workforce for the future.
- We will endeavour to attract suitable applicants by clear job descriptions, person specifications and advertisements.
- There will be a fair and consistent recruitment and selection framework that supports diversity within the workforce and that is regularly inspected by our internal audit team. Our workforce broadly reflects the ethnic and gender distribution of the residents of the borough.
- We will offer employees a fair and competitive rate for the job that reflects the principles of equal pay. We will ensure equal status for part-time staff. In 2017/18 of a workforce of 274 permanent employees, 103 were employed on a part time basis.

- Wherever possible, we will offer employees flexible working opportunities that reflect the diversity of the workforce and facilitate a healthy Work Life Balance.
- We will ensure that working environments are safe and healthy. The Council is currently accredited with the ROSPA Gold Award.
- We will foster a supportive management ethos that recognises and values everyone's contribution.
- We will offer employees suitable training and development opportunities.

Communication and Team Working

We want to create a climate of trust, honesty and involvement. We recognise the need for open and honest two-way communication.

- We will maintain a system of annual individual appraisals and regular team briefings across the organisation.
- We will maintain a constructive relationship with accredited employee representatives and the Trade Union (Unison). There is an effective Joint Employee Consultative Committee which provides an opportunity for elected members, managers and employees to debate staffing issues.
- We will honour the Council's commitment to trust, honesty and involvement by working through employee relations issues according to the procedures specified in the Grievance, Disciplinary, Capability, Anti-Bullying and Harassment and Confidential Reporting Codes of Practice/Procedures.
- We will ensure that corporate information is easily accessible and will continue to develop the use of information technology for this purpose. All employees can access relevant corporate policies and e-learning modules on the Council's intranet.
- We will encourage development of a culture of corporate and co-operative working across the Council.
- We will encourage employees to influence the shape of future service delivery in an environment that embraces transformation and partnership working.

Workforce Development

We want employees to know how their contribution fits into the bigger picture, and to have the skills, knowledge and information they need to do their job effectively. We want them to feel committed to the Council and to enjoy coming to work.

- We will provide new employees with information about their job and employment package.
- Every new employee will undergo a customised induction process.
- All employee's will have an annual performance appraisal which will review their performance over the past year, set personal objectives for the year ahead, and identify any training and development needs.
- All employees will have access to training and development activities that are linked with their individual objectives as well as those of the service to which they belong.
- We will deal firmly and fairly with poor performance.
- On return from absence due to sickness, all employee's will engage in a return to work interview with their line manager that will attempt to identify any organisational factors which may have contributed towards their illness.

3 Achievement of Improvement Priorities for the period April 2017 to March 2018

Action	Progress
<p><u><i>Developing leadership capacity</i></u></p> <p>i) Provide structured development opportunities that enhance management capacity and enable succession planning that takes account of the anticipated departure of many senior staff over the next 5 years.</p>	<p>The Housing Services Improvement Manager has undertaken a short course entitled "Effective Performance Management and Analysis". The Engineering Manager has completed the "IOSH Managing Safety course". The Health Team Leader has completed an "Introduction to Management" course.</p> <p>Many other opportunities have been taken to develop managerial capacity through project work, work shadowing and the re-distribution of duties when colleagues flexibly retire.</p>

<p><u><i>Developing the skills and capacity of the workforce</i></u></p> <p>i) Support the development of appropriate officers in skill sets required to meet current legislation/service requirements.</p>	<ul style="list-style-type: none"> ➤ There have been 296 instances of employees undertaking off the job seminars, workshops or short courses, and, in addition, 124 e-learning courses were completed. ➤ One of the trainee Planning Officers has completed further units in the BA Urban and Environmental Planning.
<p><u><i>Organisational development</i></u></p> <p>i) Continue to re-align the Council's Establishment with its re-defined priorities.</p> <p>ii) Continue to develop the knowledge base of elected Members in response to changes in legislation, Government initiatives etc.</p>	<ul style="list-style-type: none"> ➤ 55 adjustments to job roles, changes in working patterns, and job re-grades have been agreed at the meetings of the General Purposes Committee in June, and October 2017 and February 2018. ➤ Officers have provided Member briefings on a range of topics such as planning (including the Local Plan), housing and, licensing, at Committee and Advisory Board meetings.
<p><u><i>Resourcing, recruitment and retention</i></u></p> <p>i) Provide work placements to local schools.</p> <p>ii) Explore opportunities for providing apprenticeship placements.</p>	<ul style="list-style-type: none"> ➤ Numerous work placement opportunities have been provided for Year 10 and 11 students. ➤ In the absence of any applicants for the Council's Customer Services apprenticeships, when 2 junior posts became available in Financial Services these were advertised as providing apprenticeship opportunities at the established pay rate (as opposed to apprenticeship pay rates) for the roles. There were 3 applicants

<p>iii) In response to an increase in “hard to fill “ posts given a lack of supply in certain professions re-structure Personnel Services to facilitate the recruitment of an HR Advisor with expertise in this field.</p>	<p>for these posts, unfortunately none of whom were suitable. The Council has also attempted to provide Higher Level Apprenticeships in planning but unfortunately the Institute for Apprenticeships has surprisingly not yet approved the national framework for the delivery of this programme. The Council continues to consider whether or not vacancies for posts provide suitable apprenticeship opportunities, and will promote such opportunities when they arise.</p> <p>➤ The re-structure of Personnel Services was approved at the meeting of this Committee in January 2018 and a suitable appointment has subsequently been made.</p>
<p><u>Pay and Reward</u></p> <p>The Council continues to adhere to the public sector pay restraint set by The Government.</p>	<p>The Council awarded a 2% pay settlement for 2018/19.</p>

4 Equalities Monitoring 2017/18

In accordance with Equality legislation, the Authority is legally obliged to consider how our activities as an employer affect people who share different protected characteristics.

The information included in the tables below shows the outcomes of this monitoring for the period 2017/18. For the sake of comparison, a percentage analysis of the demographic profile of the Borough according to gender, ethnicity and disability is shown in Table 10 and a breakdown of the race, disability, gender and age distributions of the workforce in Tables 11 & 12.

In accordance with commitments made in the Equality Impact Assessment of the Flexible Working Policy the outcomes of the monitoring of the return rates from maternity leave and applications for flexible working are included in Tables 8 & 9.

Table 1 – Analysis of applications for jobs

Total Applicants	559
Male	222
Female	337
Disabled	21
Ethnic Minority	79

Shortlisted	71
Male	31
Female	40
Disabled	5
Ethnic Minority	8

Appointed	20
Male	7
Female	13
Disabled	4
Ethnic Minority	3

Table 2 – Analysis of Promotions

Promotions	8
Male	5
Female	3
Disabled	0
Ethnic Minority	0

Table 3 – Analysis of Disciplinary Hearings

Hearings	4
Male	4
Female	0
Disabled	0
Ethnic Minority	0

Table 4 – Analysis of Capability Hearings

Hearings	7
Male	2
Female	5
Disabled	0
Ethnic Minority	0

Table 5 – Analysis of Grievance Hearings

Cases	3
Male	2
Female	1
Disabled	0
Ethnic Minority	0

Table 6 – Instances of staff within the Council receiving training for which a direct cost has been incurred.

Total	White	Non White	Male	Female	Disabled
172	165	4	61	111	6

Table 7 – Applications for changes to working patterns and flexible working, and success rates

Nature of the request	Requests	Requests granted
Flexible retirement	8	8
Reduction/increase in working hours or change in working pattern	23	23

Table 8 – Return rates from maternity leave

Category	Number
Number of employees on maternity leave in 17/18	2
Number still on maternity leave in 2018/19	1
Number of employees who left the Council's employment on or shortly after returning from maternity leave	0
Number who returned to employment with the Council in 17/18	1

Table 9 – Demographic analysis of the Borough

Equality Characteristic	Percentage
Male	48

Female	52
White	96
Ethnic Minority	4
Permanently sick or disabled	3

Table 10 – Gender, disability and race distribution of the workforce

In March 2017 there were 274 employees, of which 103 were part time.

Equality Characteristic	Headcount
Gender	Male – 94 Female - 180
Disability	Employees who consider themselves to be disabled – 5
Ethnicity	White – 227 Black – 2 Asian or Asian Black – 3 Other Asian – 0 Mixed - 1

Note – any discrepancies in the totals above are due to employees not disclosing personal information.

Table 11 – Age distribution of the workforce

Age range	Number of employees
Up to 19	1
20 - 25	13
26 - 35	34
36 - 45	62
46 - 55	97
56 - 65	55
Over 65	12

5 Workforce Development Plan April 2018 – March 2019

Developing leadership capacity

- Continue with the provision of structured development opportunities that enhance our management capacity and enable succession planning that takes account of the potential departure of many experienced staff over the next five years.

Developing the skills and capacity of the workforce

- Continue to support the ongoing professional development of staff, and to equip them with the knowledge and skills required to deliver services, to respond to changes introduced by the Government, and to the Council's transformational agenda. Specific areas of need will be identified during the 2018/19 performance appraisal process.
- Continue to equip staff with the digital skills required to support changes in the way we work.
- Continue to equip staff with the knowledge and skills required to support the Council's Emergency Plan.

Organisational Development

- Consider the impact on the Council's policies of any proposals from the Government to amend existing employment legislation, and re-align the Council's HR policies with the timetable for any proposed amendments.
- Continue to provide briefings for Members on legislative change etc. at Committee meetings and Advisory Boards, and, where appropriate commission dedicated training sessions on cross cutting corporate issues such as safeguarding children and vulnerable adults.

Resourcing, recruitment & retention

- Continue to re-align the Council's Establishment to address shifting requirements for service delivery.
- Continue to explore options with other Councils for shared service delivery.
- Continue to explore alternative service delivery models.
- Develop a bespoke recruitment strategy on a case by case basis for hard to fill posts.
- Continue to ensure that work placements are provided to local schools.
- Explore opportunities for offering apprenticeships within the Council.
- Identify roles for new recruits to the Council in the Council's Emergency Plan.

Pay and Reward

- Track the benefits package offered by our competitors for staff and keep the Council's package under review (ongoing).
- Review the Pay Policy Statement (by March 2019).

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Item GP 18/12 referred from General Purposes Committee minutes of 25 June 2018

**GP 18/12 INVESTIGATORY POWERS COMMISSIONER'S OFFICE
INSPECTION REPORT - THE REGULATION OF INVESTIGATORY
POWERS ACT 2000**

The Director of Central Services advised that, in order to ensure that public authorities carried out covert activities in a lawful manner, the Investigatory Powers Commissioner's Office (IPCO) conducted regular reviews of the Council's policies and procedures. Annex 1 to the report set out details of a recent, telephone-based, review undertaken by the Assistant Surveillance Commissioner, His Honour Brian Barker. The Assistant Surveillance Commissioner's report had recommended a number of minor amendments to the Corporate Surveillance Guidance, the inclusion of advice on the use of social media and recognised the need to update officers and provide training as a priority.

RECOMMENDED: That

- (1) the Inspection report of the Assistant Surveillance Commissioner be noted; and
- (2) the revised Corporate Surveillance Guidance, set out in Annex 2 to the report, be commended for adoption by the Council.

***Referred to Council**

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TONBRIDGE & MALLING BOROUGH COUNCIL

GENERAL PURPOSES COMMITTEE

25 June 2018

Report of the Director of Central Services

Part 1- Public

Matters for recommendation to Council

1 INVESTIGATORY POWERS COMMISSIONER'S OFFICE –INSPECTION REPORT- THE REGULATION OF INVESTIGATORY POWERS ACT 2000

1.1 Introduction

1.1.1 In order to ensure that public authorities carry out covert activities in a lawful manner, the Investigatory Powers Commissioner's Office (IPCO) conducts regular reviews of our policies and procedures. IPCO took over the powers and duties of the former Office of Surveillance Commissioners (OSC). On 1 February 2018 His Honour Brian Barker, Assistant Surveillance Commissioner, carried out a telephone- based review of our surveillance practices. Following that telephone discussion, he concluded that a written report could be presented without the need for him to visit our offices. A copy of his report is attached at Annex 1.

1.1.2 The Assistant Surveillance Commissioner noted that the Council does not utilise the powers vested under RIPA frequently, preferring to use overt methods. There had been no uses of directed surveillance since the last inspection in 2014. Regardless of this he recognised that the Council do take their responsibilities under the legislation seriously. He did, however, note that there were a number of opportunities which the Council could take to ensure enforcement officers remained aware of the need for authorisation in specified circumstances, and promote access to resources for those officers. He therefore made a number of recommendations as follows:

- Minor amendments to the Corporate Surveillance Guidance;
- Inclusion on advice on use of social media;
- Updating of officers is a priority and a further training session in the court of the year (this is being arranged with Act Now training- a specialist provider of RIPA training)

1.1.3 The amendments recommended, including specific advice in the Corporate Guidance regarding social media, have been incorporated into the amended Corporate Surveillance Guidance which is attached as Annex 2.

- 1.1.4 In addition, whilst not making a formal recommendation, the Assistant Surveillance Commissioner suggested that a dedicated intranet resource could be set up, containing the corporate guidance, and the former OSC's procedures and guidance document. The intranet resource is now live, and relevant surveillance materials are being added to that page so that enforcement officers and those involved in authorisation have relevant materials easily available.
- 1.1.5 It was also proposed by the Assistant Surveillance Commissioner that information concerning RIPA should be given to new Members as part of induction training.

1.2 Financial and Value for Money Considerations

- 1.2.1 The operation of the surveillance policy has negligible financial impact upon the Council.

1.3 Risk Assessment

- 1.3.1 Authorisations under RIPA provide lawful authority for the Council to carry out covert surveillance, subject to the approval of a Magistrate. Failure to comply with the requirements of the Act may render the enforcement activity unlawful, and lead to the exclusion of evidence obtained through surveillance.

1.4 Policy Considerations

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

2. Recommendation

- 2.1 That the Committee notes the Inspection report of the Assistant Surveillance Commissioner;
- 2.2 That the Committee RECOMMEND to Council that the revised guidance at Annex 2 be approved.

Background papers:

None

contact: Adrian Stanfield
Director of Central Services

The Rt. Hon Lord Justice Fulford
Investigatory Powers Commissioner,
PO Box 29105
London SW1V 1ZU

February 2nd, 2018.

**INSPECTION REPORT
REGULATION OF INVESTIGATORY POWERS ACT, PART II
TONBRIDGE AND WEST MALLING BOROUGH COUNCIL**

Inspector: His Honour Brian Barker CBE, Q.C.
Assistant Surveillance Commissioner.

Introduction

1. The Borough Council serves a population of about 127,000, covering an area of approximately 93 square miles in the mid west of Kent from the North Downs at Burnham in the north to the town of Tonbridge in the south. The area is mainly agricultural with remnants of the hop industry and has a number of ancient sites and buildings of historical interest
2. The Council operates on a leader and Cabinet basis. It has 54 councillors representing 24 wards; a number of those wards are within Tonbridge. The Mayor, Cllr Roger Dalton, is the first citizen and is elected annually. The office holder carries out civic and ceremonial duties and chairs full council meetings and acts as ambassador to promote the Council's name at home and elsewhere. There are 27 Parish Councils within the Borough representing their communities and providing services for them.
3. The Chief Executive, Julie Beilby, is supported by a senior team of four Directors namely of Financial Services, of Planning Housing and Environmental Health, of Central Services, and of Street Scene, Leisure and Technical Services.
4. The address for correspondence is Gibson Building, Gibson Drive, Kings Hill, West Malling, Kent ME19 4LZ.
5. The last inspection was conducted by Kevin Davis, Surveillance Inspector, on November 27th 2014. There had been two uses of directed surveillance since the previous inspection, both of high standard, but none since the enactment of the Protection of Freedoms Act 2012. He noted the preference for the use of overt methods to drive the enforcement agenda and concluded that appropriate training and sound policies and procedures were in place.

6. There have been no subsequent applications. The reasons follow a familiar pattern. Benefit fraud investigation work has gone to the DWP and residual minor fraud investigations are dealt with by a team shared with Gravesham Borough Council. Following the 2012 legislation the number of potential offences meeting the custodial threshold decreased substantially and there has been a shift in policy to the use of overt investigation.
7. Based on the information provided and on a helpful and detailed phone conversation with Kevin Toogood, Principal Litigation Solicitor and Coordinating Officer, it is my view that it is sufficient to present a written report without the necessity of a visit.

Previous Recommendations:

8. None specified.

Central Records and Forms:

9. Mr. Toogood holds the computerized Central Record on a secure drive and the produced compliant records since the last inspection confirm the lack of applications. He has access to the current forms and has available the *Home Office Guides*. He will add the *Office of Surveillance Commissioners Procedures and Guidance 2016*.

RIPA Policy and Structure:

10. The "*Corporate Surveillance Guidance*" was last reviewed in December 2013. It is a clear and helpful guide for officers to requirements and procedure containing seventeen pages (including Communications Data) with two appendices.
11. Although balanced and solid, it is due for a review and update and there are a few areas where some changes and additions would add to its value and breadth. It would be useful in the initial summary provided at 1.1 to have reference to the *Home office Codes of Practice* (current edition is 2014), and this would be convenient position to add a reference, with link, to the *Office of Surveillance Commissioners' Procedures and Guidance 2016*.
12. Additionally in this 'Summary' section the two principal rules can be set out for maximum impact. Namely that it is the policy of the Borough Council that covert surveillance under the *RIPA* will only be considered as a last resort (I appreciate that there are later references at 4.1, 7.3 and

Appendix 2, point 1.) Second, although clear at the conclusion of the document, underlining the importance of initial consultation with the Senior Responsible Officer/Director of Central Services at the earliest opportunity if such action is contemplated.

13. It is pleasing to see in 'Background' (1.2) that the interaction with Article 8 of the Human Rights Act 1988 is clearly explained, and that any officer will have undertaken appropriate training before conducting *RIPA* investigations
14. An informative, and not often seen, section is 2.2 'Confidential Material; and an impressive chapter 'Identifying Direct Surveillance' is at 4 which gets the important points across through a series of every day questions and answers.
15. The definition for *Covert Human Intelligence Sources* is dealt with at section 5, although it is made clear that it the policy of the Borough Council not to use a *CHIS*, and if there is any potential for a person to become a *CHIS* then guidance should be sought from the Chief Executive or the Director of Central Services. Although aware of their legal responsibilities, the team recognize they do not have the experience or expertise to authorize the use of a *CHIS* and should such situation and should a situation arise would pass matters over to local Kent Police with whom there is a good working relationship.
16. The roles and responsibilities of the Senior Responsible Officer and the Co-ordinating Officer are helpfully listed at 7.1 – although Mr Toogood's name needs to be substituted for that of his predecessor.
17. Authorisation, properly, receives quality coverage at 7.2 through to 7.4. It would be convenient for the reader to add after the first sentence the names and contact details of the deputed Authorising Officers: the Chief Executive and the four Directors.
18. I notice that the second sentence of section 7.3 'Who can give Authorisations?' makes the point that an authority to undertake surveillance will only be given by the Chief Executive or in her absence by a member of the management team. I understand that this is a hold over reflecting the practice of a previous Chief Executive. It seems to me that this places an unnecessary burden on the busy Chief Executive and this a responsibility properly residing in the deputed Authorising Officer, or if necessary in the Director of Central Services. It is, however, the task of the Chief Executive to handle any of those rare cases involving juveniles (mentioned at 7.5.2[b]) or which are in the sensitive or confidential category.
19. The topics of the Authorising Officer exercising his/her mind independently and not operating in 'rubber stamp' mode, and the careful

consideration necessary in addressing collateral intrusion are both clearly addressed in section 7.4.

20. The necessary procedure for obtaining approval from the local Magistrates' Court brought about by the 2012 legislation is dealt with in section 7.5. Which type of officer should attend in support has been a subject of debate, but the preferred practice is for the Authorising Officer to attend if possible to field any questions from the Bench as he/she will have come to an independent judgment in conducting the authorization process. (see para. 292 on of *OSC Procedures and Guidance 2016*).
21. The care needed when other agencies have been instructed on behalf of the Council to undertake actions under *RIPA*, or when other agencies wish to use the Borough Council's resources or premises for their own actions is properly noted in section 9.
22. Two other updating points. Oral applications mentioned at part 10.1.(a) were abolished by the Protection of Freedoms Act 2012 and all applications now require judicial approval. Under 'Records' at section 11 any new application placed in the central register must be accompanied by an URN
23. A useful summary of the steps necessary for an Investigating Officer to take is covered in a page and a half as the second appendix, and this is designed to provide a succinct overview and 'check list.' It would be worthwhile to review points 6 and 7 on initial authorization, and also point 8 which is the job of the Co-ordinating Officer.
24. The single clear deficiency within the document is the lack of guidance regarding the use of social media. This area has been a particular concern of the Commissioner in the recent past and reference is made at *para. 289 of the OSC Procedures and Guidance 2016*
25. This topic, however, has not been missed and I understand was the subject of the training by the Kent Police officers from the Community Safety Partnership just prior to the last inspection. This led to the production of a short and separate Guidance reference document circulated to all investigative officers, and provided to me within the papers.
26. A further aspect to be incorporated dealing with the almost inevitable interrogation of social media and personal accounts occurs during an investigation, is the necessity for an officer to be aware and to avoid the possibility of slipping inadvertently into a *RIPA* situation without authorization having been considered. A combination of the above points should form the basis of a separate subject inserted into the Corporate Guidance, perhaps between existing parts 5 and 6.

see recommendation

Training:

27. There has been no formalized training since November 2014, although Kevin Toogood has recently contacted a specialist officer from the local Kent Police in order to arrange a refresher session; and a full updating session, possibly in collaboration with a neighbouring authority, is on the agenda for later this year.
28. The need for raising and maintaining awareness of *RIPA* and its scope is appreciated and news and changes are distributed to those affected when they arise. The intranet is a useful tool in this regard and Mr Toogood was attracted by the idea of a dedicated *RIPA* page where an outline of the purposes and the extent of the Act, as well as the Corporate Guidance and other reference sources could be found in one place, or easily accessed through links.

see recommendation

Councillors:

29. The last report of any activity was made to the General Purposes Committee in 2014 focusing on the last Inspection Report. The recent Annual reviews of corporate governance to the Executive have not included *RIPA* because of the lack of information to note, but the advantage of that vehicle to include a 'non-usage' section so as to trigger awareness among the elected members should be taken.
30. Newly elected members receive a wide ranging induction package and *RIPA* will be part of the induction for the next batch of members.

CCTV:

31. A jointly owned system with Tunbridge Wells Borough Council was instated in 1997 covering a number of towns, and expenditure is now met in full by the two Authorities. The last authorized request for use by the police was in 2011. The control rooms at Tunbridge Wells and Sevenoaks are managed Sharon Wright who won a national award in 2016 for her outstanding work. Accepted protocols and policies are in place and an independent audit of the facility dated March 2107 was highly complementary in all areas.
32. Consideration, however, is being given to the future of the system due to financial constraints and the likely closing of the Tunbridge Wells Town Hall and the moving of that authority to a new civic centre.

Conclusions:

33. Mr. Toogood is comparatively new in post and readily accepts that other more pressing issues have taken priority. Nevertheless, there is a close working relationship with the experienced Mr Stanfield the Senior Responsible Officer as well as continuing support from the Chief Executive. He recognizes that lack of use both in investigation and supervision can lead to 'rustiness' and already has taken steps to improve knowledge and understanding. Despite the unlikelihood of use, it is still important that investigative officers should be in a position to 'recognise a CHIS situation when they see one' and this requirement should be borne in mind in future training.
34. I note a clear desire that the Borough Council takes its responsibilities under the legislation seriously and to have sound working systems and guidance in place despite the move away from covert investigation. There can be confidence that with immanent 'brushing up', should the need for use arise in the future, surveillance will be performed in a compliant and effective manner.

Recommendations:

35. *(i) minor amendments to the Corporate Surveillance Guidance*
(ii) inclusion of advice on use of social media
(iii) updating of officers as a priority and a further training session in the course of the year

Brian Barker
Assistant Surveillance Commissioner.



CORPORATE SURVEILLANCE GUIDANCE

THE REGULATION OF INVESTIGATORY POWERS ACT 2000

CORPORATE SURVEILLANCE GUIDANCE

THE REGULATION OF INVESTIGATORY POWERS ACT 2000

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1. INTRODUCTION

1.1 Summary

The Regulation of Investigatory Powers Act 2000 ('RIPA') brought into force the regulation of covert investigation by a number of bodies, including local authorities. RIPA regulates a number of investigative procedures, the most of recent of which is the access to communications data. This document is intended to provide officers with guidance on the use of covert surveillance, Covert Human Intelligence Sources ('Sources') and the obtaining and disclosure of communications data under RIPA. Officers must take into account the Home Office Codes of Practice issued under RIPA a copy of RIPA is available at this link: <http://www.legislation.gov.uk/ukpga/2000/23/contents> (RIPA and the Codes of Practice may be found at www.security.homeoffice.gov.uk)- [and on the intranet here: [insert link](#)]

The Home Office Code of Practice is available here: <https://www.gov.uk/government/publications/covert-surveillance-and-covert-human-intelligence-sources-codes-of-practice> [and on the intranet here: [insert link](#)]

Regard should also be had to the Office of Surveillance Commissioners' Procedures and Guidance 2016 [[link here](#)].

All forms are available online on the Home Office website as follows: -
<http://security.homeoffice.gov.uk/ripa/publication-search/ripa-forms/>

[link no longer available- [link to intranet pages???](#)]

It is the policy of TMBC that use of covert surveillance, where available, is a measure of last resort to be considered only when all other avenues have been exhausted.

If you are considering the use of directed surveillance, or Covert Human Intelligence Sources please contact the Director of Central Services at the earliest possible opportunity for advice.

1.2 Background

The Human Rights Act 1998 requires the Council, and organisations working on its behalf, pursuant to Article 8 of the European Convention, to respect the private and family life of citizens, his home and his correspondence. The European Convention did not, however, make this an absolute right, but a qualified right. Accordingly, in certain circumstances, the Council may interfere in the citizen's right mentioned above, if such interference is:

- (a) in accordance with the law
- (b) necessary (as defined in this document); and
- (c) proportionate (as defined in this document)

RIPA provides a statutory mechanism for authorising certain types of surveillance. It seeks to ensure that any interference with an individual's right under Article 8 of the European Convention is necessary and proportionate. In doing so, RIPA seeks to ensure both the public interest and the human rights of individuals are suitably balanced.

If the correct procedures are not followed, evidence may be disallowed by the courts, a complaint of maladministration could be made to the Ombudsman, and/or the council could be ordered to pay compensation. It is essential, therefore, that all involved with RIPA comply with this document and any further guidance that may be issued, from time to time, by the Director of Central Services.

Each officer of the Council with responsibilities for the conduct of investigations, shall, before carrying out any investigation involving RIPA, undertake appropriate training to ensure that investigations and operations that he/she carries out will be conducted lawfully.

1.3 Review

RIPA and this document are important for the effective and efficient operation of the Council's actions with regard to surveillance. This document will, therefore be kept under review by the Director of Central Services. Authorising Officers must bring any suggestions for continuous improvement of this document to the attention of the Director of Central Services at the earliest possible opportunity.

1.4 Scope

RIPA covers the authorisation of directed surveillance, the authorisation of sources and the authorisation of the obtaining of communications data. Communications data includes information relating to the use of a postal service or telecommunications system but does not include the contents of the communication itself, contents of e-mails or interaction with websites. An authorisation under RIPA will provide lawful authority for the investigating officer to carry out surveillance.

In terms of monitoring e-mails and internet usage, it is important to recognise the interplay and overlap with the Council's e-mail and internet policies and guidance, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 and the Data Protection Act 1998. RIPA forms should be used where **relevant** and they will only be relevant where the **criteria** listed on the forms are fully met.

2. GENERAL

2.1 Definition of Surveillance

'Surveillance' includes:

- a) monitoring, observing or listening to persons, their movements, their conversations or their other activities or communication;
- b) recording anything monitored, observed or listened to in the course of surveillance; and
- c) surveillance by or with the assistance of a surveillance device.

Surveillance includes the interception of postal and telephone communications where the sender or recipient consents to the reading of or listening to or recording of the communication. This is a form of directed surveillance.

2.2 Confidential Material

Particular care should be taken in cases where the subject of the investigation or operation might reasonably expect a high degree of privacy, or where confidential information is involved. Confidential information consists of matters subject to legal privilege, confidential personal information or confidential journalistic material.

Applications in which the surveillance is likely to result in the acquisition of confidential material will only be considered in exceptional and compelling circumstances with full regard to the proportionality issues this raises.

The Authorising Officer shall give the fullest consideration to any cases where the subject of the surveillance might reasonably expect a high degree of privacy, for instance in his or her home.

Where a likely consequence of surveillance would result in the acquisition of confidential material, the investigating officer must seek authority from the Chief Executive, or, in her absence, the Director of Central Services.

3. DIRECTED AND INTRUSIVE SURVEILLANCE

3.1 Directed Surveillance

Directed surveillance is surveillance which is covert, but not intrusive, and undertaken:

- a) for the purposes of a specific investigation or specific operation;
- b) in such a manner as is likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purposes of the investigation or operation); and
- c) otherwise than by way of an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable for an authorisation under RIPA to be sought for the carrying out of the surveillance.

3.2 Intrusive Surveillance

That surveillance becomes intrusive if the covert surveillance:

- a) is carried out in relation to anything taking place on any residential premises or in any private vehicle; and
- b) involves the presence of an individual on the premises or in the vehicle or is carried out by means of a surveillance device.

RIPA further defines intrusive and directed surveillance as surveillance which:-

- a) is carried out by means of a surveillance device in relation to anything taking place on any residential premises or in any private vehicle; but
- b) is carried out without that device being present on the premises or in the vehicle, is not intrusive unless the device is such that it consistently provides information of the same quality and detail as might be expected to be obtained from a device actually present on the premises or in the vehicle

Therefore directed surveillance turns into intrusive surveillance if it is carried out involving anything that occurs on residential premises or any private vehicle and involves the presence of someone on the premises or in the vehicle or is carried out by means of a surveillance device.

If the device is not on the premises or in the vehicle, it is only intrusive surveillance if it consistently produces information of the same quality as if it were.

Where surveillance is carried out by a device designed or adapted principally for the purpose of providing information about the location of a vehicle, the activity is directed surveillance.

Commercial premises and vehicles are therefore excluded from intrusive surveillance.

Currently, local authorities are **not** authorised to carry out intrusive surveillance.

4. IDENTIFYING DIRECTED SURVEILLANCE

Ask yourself the following questions:

4.1 Is the surveillance covert?

Covert surveillance is any surveillance that is carried out in a manner calculated to ensure that the persons subject to the surveillance are unaware that it is or may be taking place.

If your activities are not hidden from the subjects of your investigation, you are not within the RIPA framework at all. In many cases, Officers will be behaving in the same way as a normal member of the public (eg in the case of most test purchases), and/or will be going about Council business openly (eg a market inspector walking through markets).

Similarly, surveillance will be overt if the subject has been told it will happen (eg where a noisemaker is warned (preferably in writing) that noise will be recorded if the noise continues, or where an entertainment licence is issued subject to conditions, and the licensee is told that officers may visit without notice or identifying themselves to the owner/proprietor to check that conditions are being met.

It should be noted that if the same outcome can be achieved by overt means then those means need to be fully explored in the first instance. Covert surveillance must only be undertaken when there is no less invasive way of achieving the outcome.

4.2 Is the surveillance for the purposes of a specific investigation or a specific operation?

Although, the provisions of the Act do not normally cover the use of overt CCTV surveillance systems, since members of the public are aware that such systems are in use, there may be occasions when public authorities use overt CCTV systems for the purposes of a specific investigation or operation. For example, if the CCTV cameras are targeting a particular known offender. In such cases, authorisation for directed surveillance may be necessary.

4.3 Is the surveillance in such a manner that is likely to result in the obtaining of private information about a person?

Private information includes any information relating to a person's private or family life. The concept of private information should be broadly interpreted to include an individual's private or personal relationship with others. It includes an individual's business and family relationships. Family life itself should be treated as extending beyond the formal relationships created by marriage.

4.4 Is the surveillance otherwise than by way of an immediate response to events or circumstances where it is not reasonably practicable to get authorisation?

Directed surveillance does not include covert surveillance carried out by way of an immediate response to events or circumstances which, by their very nature, could not have been foreseen. For example, a police officer would not require an authorisation to conceal himself and observe a suspicious person that he came across in the course of a patrol.

However, if as a result of that immediate response, you undertake a specific investigation you will need authorisation.

5. COVERT HUMAN INTELLIGENCE SOURCES

5.1 Definition

A person is a source if:

- a) he establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within paragraph (b) or (c);
- b) he covertly uses such a relationship to obtain information or to provide access to any information to another person; or
- c) he covertly discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship.

A source may include those referred to as agents, informants and officers working undercover.

A purpose is covert, in relation to the establishment or maintenance of a personal or other relationship, if and only if, the relationship is conducted in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the purpose.

A relationship is used covertly, and information obtained is disclosed covertly, if and only if it is used or disclosed in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the use or disclosure in question.

The use of a source involves inducing, asking or assisting a person to engage in the conduct of a source, or to obtain information by means of the conduct of such a source.

This covers the use of professional witnesses to obtain information and evidence. For example, it will include professional witnesses retained by the Council to pose as tenants to obtain information and evidence against alleged nuisance perpetrators.

Carrying out test purchases will not require the purchaser to establish a relationship with the supplier with the covert purpose of obtaining information and, therefore, the purchaser will not normally be a CHIS. For example, authorisation would not normally be required for test purchases carried out in the ordinary course of business (eg walking into a shop and purchasing a product over the counter). By contrast, developing a relationship with a person in the shop, to obtain information about any breaches of legislation will require authorisation as a CHIS. Similarly, using mobile hidden recording devices or CCTV cameras to record what is going on in the shop will require authorisation as directed surveillance.

The Code of Practice states that the provisions of RIPA are not intended to apply in circumstances where members of the public volunteer information to the police or other authorities, as part of their normal civic duties, or to contact numbers set up to receive information (such as Crimestoppers, Customs Confidential, the Anti Terrorist Hotline, or the Security Service Public Telephone Number). Members of the public acting in this way would not generally be regarded as sources.

If there is an allegation of a noise nuisance a request to the complainant to keep a diary of times and dates that the nuisance takes place would not constitute use of a CHIS.

However, if a public volunteer was asked to obtain further information such as additional details of lifestyle, vehicle registrations etc then that person could become a CHIS.

Although an authorisation under RIPA will provide lawful authority for the use of a source it is the policy of this Council that the use of a CHIS is not permitted. If there is any doubt that there is the potential for a person to become a CHIS then guidance should be sought from the Chief Executive, Director of Central Services or Chief Internal Auditor before any action is taken.

5A. SOCIAL MEDIA

5A.1 Guidelines for the use of Social Media in Conducting Investigations

These Guidelines apply to all forms of social media including but not limited to Facebook, Twitter and LinkedIn:

For Facebook and Twitter, officers are to use their real name, but the account set up using their own TMBC email addresses. Personal facebook accounts must not be used.

These profiles are to be "overt" and "sterile": overt, in that there is no attempt to disguise the fact that the profile is the officer in question and identified with a TMBC email address; and sterile, in that *no content* is to be entered onto that profile. You must not make friend requests or use messaging or chat features. In twitter, you must not "follow", tweet, re-tweet or message.

All security settings must be engaged at the most secure setting.

Only information available on the public profile of a target or known associate may be accessed. No attempt must be made to access any private information such as that only viewable by "friends".

We do not consider that a single or occasional visit to a public profile or page amounts to directed surveillance. It is the electronic equivalent to a "drive past". However, officers must consider whether an operation will require continuous systematic monitoring of a profile. In this instance, a Directed Surveillance Authorisation (DSA) may be required.

Officers need to maintain awareness that a program of continuous or regular monitoring of a profile or social media account may amount to Directed Surveillance requiring a DSA. Targeted monitoring to "keep an eye" on a person of interest should be avoided. Advice should be sought at the earliest possible opportunity if there are concerns that proposed social media-based investigation might become Directed Surveillance.

In line with our existing policy, a DSA will only be considered in the event that all overt methods have been exhausted.

6. COMMUNICATIONS DATA

6.1 Definition

This covers any conduct in relation to a postal service or telecommunications system for obtaining communications data and the disclosure to any person of such data. For these purposes, communications data includes information relating to the use of a postal service or telecommunications system but does not include the contents of the communication itself, content of emails or interaction with websites.

Communications data includes subscribers details, names and addresses and telephone numbers of those contacted, billing addresses, account information, web addresses visited etc.

Two types of data (Customer Data or Service Data) are available to local authorities and, when making an application for obtaining or disclosing such data, the applicant must specify exactly which type of information is required from within each of the subscriber data and service use data.

a) Customer data – (Subscriber data, RIPA s21(4))

Customer data is the most basic. It is data about users of communication services.

This data includes:

- Name of subscriber
- Addresses for billing, delivery, installation
- Contact telephone number(s)
- Abstract personal records provided by the subscriber (e.g. demographic information)
- Subscribers' account information – bill payment arrangements, including bank, credit/debit card details
- Other services the customer subscribes to.

b) Service data – (Service Use data, RIPA s21(4)(b))

This relates to the use of the service provider's services by the customer, and includes:

- The periods during which the customer used the service(s)
- Information about the provision and use of forwarding and re-direction services by postal and telecommunications service providers
- 'Activity', including itemised records of telephone calls (numbers called), internet connections, dates and times/duration of calls, text messages sent
- Information about the connection, disconnection and reconnection of services
- Information about the provision of conference calling, call messaging, call waiting and call barring telecommunications services

- Records of postal items, such as records of registered, recorded or special delivery postal items, records of parcel consignment, delivery and collection
- 'Top-up' details for prepay mobile phones – credit/debit card, voucher/e-top up details

A third type of data (traffic data) is not accessible to local authorities.

7. MANAGEMENT / AUTHORISATION PROCEDURE

7.1 Management Structure

The Senior Responsible Officer for RIPA compliance is Adrian Stanfield, Director of Central Services and Monitoring Officer. This officer is responsible for

- the integrity of the process in place within Tonbridge and Malling Borough Council to authorise directed surveillance and the use of a CHIS
- compliance with RIPA
- engagement with the Office of the Surveillance Commissioner and inspectors when they conduct their inspections, and
- where necessary, overseeing the implementation of any post-inspection action plans recommended or approved by a Commissioner.
- ensuring all authorising officers are of an appropriate standard in light of any recommendations in the inspection reports prepared by the Office of Surveillance Commissioners.

Day to day responsibility for RIPA compliance will fall to ~~Cliff Cochrane, Senior Legal Officer~~ Kevin Toogood, Principal Solicitor (Litigation) & RIPA ~~Monitoring Co-ordinating~~ Officer. He will be responsible for

- maintenance of the Central Record of Authorisations
- collation of RIPA authorisations, reviews, renewals and cancellations
- oversight of the RIPA process/ RIPA training
- raising RIPA awareness within the Council

7.2 Authorisations

Authorisation is required for the use of directed surveillance, for the conduct and use of sources and for the conduct in relation to a postal service or telecommunication system and the disclosure to any person of such data.

Any officer who undertakes investigations on behalf of the Council shall seek authorisation in writing for any directed surveillance or for the conduct and use of any source.

Any officer wishing to engage in conduct in relation to a postal service and telecommunication system for obtaining communications data and the disclosure to

any person of such data must also seek authorisation, the procedure and procedure of which differs slightly and is outlined in paragraph 7.6.

7.3 Who can give Authorisations?

By law, the 'Authorising Officer' for local authority purposes is any Director, Head of Service, service manager or equivalent.

The use of RIPA is seen as a last resort when all other forms of investigation have been undertaken. Therefore the number of applications made by officers of this Council will be minimal. Except in cases involving juveniles, or cases which are sensitive or confidential, ~~a~~An authority to undertake surveillance will only be given by the Director of Central Services, Director of Finance and Transformation, Director of Planning, Housing and Environmental Health or Director of Street Scene, Leisure & Technical Services, the Chief Executive] and should be sought from the member of Management Team responsible for the service concerned with the RIPA application. ~~In her absence the authority can be given by the Member of Management Team responsible for the service concerned with the RIPA application.~~

For cases involving juveniles, or cases which are sensitive or confidential, authorisation may only be given by the Chief Executive (see 7.5.2 below).

It will be the responsibility of Authorising Officers who have been duly certified to ensure their relevant members of staff are also suitably trained as 'applicants' so as to avoid common mistakes appearing on forms for RIPA authorisations.

Training will be given, or approved by the Director of Central Services, before Authorising Officers are certified to sign any RIPA forms. A certificate of training will be provided to the individual and a central register of all those individuals who have undergone training or a one-to-one meeting with the Director of Central Services on such matters, will be kept by the Director of Central Services.

Authorising Officers will also ensure that staff who report to them follow this guidance document and do not undertake or carry out any form of surveillance without first obtaining the relevant authorisations in compliance with this document.

Authorising Officers must also ensure that, when sending copies of any forms to the Director of Central Services, the same are sent in sealed envelopes and marked 'Strictly Private and Confidential'.

Any equipment to be used in any approved surveillance must be properly controlled, recorded and maintained for audit purposes.

Contact details for the Authorising Officers:

Chief Executive, Julie Beilby ext 6002

Director of Central Services, Adrian Stanfield ext 6346

Director of Finance and Transformation, Sharon Shelton ext 6092

Director of Planning, Housing and Environmental Health, Steve Humphrey ext 6256

Director of Street Scene, Leisure and Technical Services, Robert Styles ext 6160

7.4 Grounds for Authorisation – the 'necessary & proportionate' test

An Authorising Officer has a number of obligations within the provisions of the Act, which must be met before carrying out any form of surveillance.

An Authorising Officer shall not grant an authorisation for the carrying out of directed surveillance, or for the use of a source or for the obtaining or disclosing of communications data unless he believes:

- a) that an authorisation is necessary and
- b) the authorised investigation is proportionate to what is sought to be achieved by carrying it out

For local authority investigations, authorisation is “**necessary**” in the circumstances of the particular case only if it is for the purpose of

- (i) preventing or detecting crime* (Directed Surveillance);
- (ii) preventing or detecting crime or preventing disorder (CHIS)

*Authorising Officers within local authorities are restricted from authorising the carrying out of Directed Surveillance unless it is for the purpose of preventing or detecting a criminal offence and meets the following additional conditions –

- the criminal offence which is sought to be prevented or detected is punishable, on summary conviction or on indictment, by a maximum term of at least 6 months imprisonment; or
- would constitute an offence under sections 146, 147 or 147A of the Licensing Act 2003 or section 7 of the Children and Young Persons Act 1933. These offences all relate to the sale of tobacco or alcohol to underage children.

Conduct is not deemed “**proportionate**” if the pursuance of the legitimate aim listed above will not justify the interference if the means used to achieve the aim are excessive in the circumstances. Any conduct must meet the objective in question and must not be arbitrary or unfair nor must the impact on any individuals or group be too severe. The conduct must also be the least invasive method of achieving the end and the risk of intrusion into the privacy of persons other than those who are directly the subjects of the investigation must be assessed and taken into account (see Collateral Intrusion below).

Careful consideration needs to be made by authorising officers of all of these points. Such consideration needs to be demonstrated on the authorisation form in the relevant parts. Authorising Officers must exercise their minds every time they are asked to sign a form. They must never sign or rubber stamp the form without thinking about their personal and the Council’s responsibilities. Any boxes not needed on the form/s must be clearly marked as being ‘not applicable’ or a line put through the same. Great care must also be taken to ensure accurate information is used and inserted in the correct boxes. Reasons for any refusal of an application must also be kept on the form and retained for future audits.

Authorising officers should not be responsible for authorising investigations or operations in which they are directly involved.

Collateral Intrusion

Before authorising investigative procedures, the Authorising Officer shall also take into account the risk of intrusion into the privacy of persons other than those who are directly the subjects of the investigation or operation (collateral intrusion). The investigating officer shall take measures, wherever practicable, to avoid or minimise

unnecessary intrusion into the lives of those not directly connected with the investigation or operation.

An application for an authorisation shall include an assessment of the risk of any collateral intrusion. The Authorising Officer shall take this into account, when considering the proportionality of the surveillance.

Where an operation unexpectedly interferes with the privacy of individuals who were not the subject of surveillance or covered by the authorisation in some other way, the investigating officer should immediately inform the Authorising Officer.

7.5 Approval of Magistrate

7.5.1 An internal authorisation for Directed Surveillance or the deployment of a CHIS will not take effect until such time (if any) as a Magistrate has made an order approving it. An approval is also required for the renewal of an authorisation to use either of these techniques.

The approval of a Magistrate can only be given if the Magistrate is satisfied that

- a) There were reasonable grounds for the authorising officer approving the application to believe that the Directed Surveillance or deployment of a CHIS was necessary and proportionate and that there remain reasonable grounds for believing so;
- b) The authorising officer was of the correct seniority within the organisation i.e. a Director, Head of Service, Service Manager or equivalent.
- c) The granting of the authorisation was for the prescribed purpose i.e. preventing or detecting a criminal offence (and satisfies the Serious Offence Test for Directed Surveillance (see paragraph 7.4 above))
- d) Any other conditions set out in any order under Part 2 of RIPA are satisfied (none at present).

7.5.2 In addition to the above, where the authorisation is for the deployment of a CHIS, the Magistrate must be satisfied that:

- a) The provisions of section 29(5) of RIPA have been complied with. This requires the Borough Council to ensure that there are officers in place to carry out roles relating to the handling and management of the CHIS as well as the keeping of records (as per the Regulation of Investigatory Powers (Source Records) Regulations 2000 (SI 2000/2725)).
- b) Where the CHIS is under 16 or 18 years of age, the requirements of the Regulation of Investigatory Powers (Juveniles) Order 2000 (SI 2000/2793) have been satisfied. This sets out rules about parental consent, meetings, risk assessments and the duration of the authorisation. Note that the authorisation of such persons to act as a CHIS must come from the Chief Executive.
- c) Where the application is for the renewal of a CHIS authorisation, a review has been carried out by the Borough Council and the magistrate has considered the results of the review.

It is best practice, as set out in paragraph 292 of the OSC Procedures and Guidance 2016, that the Authorising Officer is not required to apply in person however the Investigating Officer may be required to should attend the Magistrates' Court to support the application and field any questions from the bench. There is no need to give notice to either the subject of the authorisation or their legal representatives.

7.6 Special Procedure for Authorisation of and Issuing of Notices in respect of Communications Data

7.6.1 The Act provides two different ways of authorising access to communications data; through an authorisation under Section 22(3) and by a notice under Section 22(4). An authorisation would allow the authority to collect or retrieve the data itself. A notice is given to a postal or telecommunications operator and requires that operator to collect or retrieve the data and provide it to the authority serving the notice. An Authorising Officer (known as the 'Designated Person') decides whether or not an authorisation should be granted or a notice given.

7.6.2 In order to illustrate, a Section 22(3) authorisation may be appropriate where:

- the postal or telecommunications operator is not capable of collecting or retrieving the communications data;
- it is believed the investigation may be prejudiced if the postal or telecommunications operator is asked to collect the data itself;
- there is a prior agreement in place between the authority and the postal or telecommunications operator as to the appropriate mechanisms for the disclosure of data.

7.6.3 Applications for the obtaining and disclosure of communications data may only be made by officers of the Council. Reference should be made to the process map at Appendix 1 for guidance as to the process to be followed.

7.6.4 Notices and, where appropriate, authorisations for communications data must be channelled through single points of contact ("SPoCs") in the authority. The SPoC for Tonbridge and Malling Borough Council is David Buckley (Chief Internal Auditor). The SPoC is able to advise authorising officers as to whether an authorisation or notice is appropriate.

7.6.5 The SPoC:

- a) where appropriate, assesses whether access to the communications data is reasonably practical for the postal or telecommunications operator;
- b) advises applicants and authorising officers on the practicalities of accessing different types of communications data from different postal or telecommunications operators;
- c) provides safeguards for authentication;
- d) assesses the cost and resource implications to both the authorisation and postal or telecommunications operator.

7.6.6 Applications to obtain communications data should be made on the standard form and submitted in the first instance to the SpOC, and if appropriate will forward the application to the Designated Person for either the authorisation of conduct or the issuing of a notice.

- 7.6.7 An internal authorisation or notice to obtain communications data will not take effect until such time (if any) as a Magistrate has made an order approving it. An approval is also required for the renewal of an authorisation or notice.

The approval of a Magistrate can only be given if the Magistrate is satisfied that

- a) There were reasonable grounds for the Designated Person to believe that obtaining communications data was necessary and proportionate and that there remain reasonable grounds for believing so;
 - b) The Designated Person was of the correct seniority within the organisation i.e. a Director, Head of Service, Service Manager or equivalent;
 - c) The granting or renewal of the application was for the prescribed type of communications data to be acquired for the prescribed purpose (i.e. subscriber and service use data) to be acquired only for the purpose of preventing or detecting crime or preventing disorder);
 - d) Any other conditions set out in any order under Chapter 2 of Part 1 of RIPA are satisfied (none at present).
- 7.6.8 If approved by a Magistrate, the Designated Person will return the authorisation or notice to the SPoC who will then liaise with the postal / telecommunications company. The disclosure of data under a notice will only be made to the Designated Person or to the Council's SPoC.
- 7.6.9 Communications data, and all copies, extracts and summaries of it must be handled and stored securely. The requirements of the Data Protection Act 1998 and the principles of the Criminal Procedure and Investigations Act 1996 must be strictly followed.

7.7 Standard Forms

Other than urgent grants or renewals for which oral authorisations are acceptable, authorisations must be in writing.

Standard forms for seeking directed surveillance and source authorisations are available online from the Home Office website as follows: -

<http://security.homeoffice.gov.uk/ripa/publication-search/ripa-forms/>

8. ACTIVITIES BY OTHER PUBLIC AUTHORITIES

- 8.1 The investigating officer shall make enquiries of other public authorities e.g. the police or DWP whether they are carrying out similar activities if he considers that there is such a possibility in order to ensure that there is no conflict between the activities of this Council and those other public authorities.

9. JOINT INVESTIGATIONS

- 9.1 When some other agency has been instructed on behalf of the Council to undertake any action under RIPA, this document and the forms in it must be used (as per normal procedure) and the agency advised or kept informed, as necessary, of the various requirements. They must be made aware explicitly what they are authorised to do.

When some other agency (eg police, Her Majesties Revenues & Customs, The Department for Work and Pensions etc):

- (a) wish to use the Borough Council's resources (eg CCTV surveillance systems), that agency must use its own RIPA procedures and, before any officer agrees to allow the Council's resources to be used for the other agency's purposes, he must obtain a copy of that agency's RIPA form for the record and/or relevant extracts from the same which are sufficient for the purposes of protecting the Council and the use of its resources
- (b) wish to use the Council's premises for their own RIPA action, the officer should, normally, co-operate with the same, unless there are security or other good operational or managerial reasons as to why the Council's premises should not be used for the agency's activities. In such cases, the Council's own RIPA forms should not be used as the Council is only assisting and not being involved in the RIPA activity of the external agency.

In terms of (a), if the police or other agency wish to use the Council's resources for general surveillance, as opposed to specific RIPA authorisations, an appropriate letter requesting the proposed use, remit, duration, details of who will be undertaking the general surveillance and the purpose of it must be obtained from the police or other agency before any Council resources are made available for the proposed use.

10. DURATION, RENEWALS AND CANCELLATION OF AUTHORISATIONS

10.1 Duration

Authorisations must be reviewed in the time stated and cancelled once no longer needed.

An authorisation, once judicially approved will expire after a period of seventy-two hours, beginning with the time when the grant of the authorisation or, as the case may be, its latest renewal takes effect;

In the case of a CHIS, 12 months from the grant of authorisation

- ~~a) 72 hours if granted or renewed orally beginning with the time of the grant or last renewal, or~~
- ~~c) a written authorisation will cease to have effect at the end of three months from the date of grant or latest renewal for directed surveillance. In the case of a CHIS the written authorisation will cease to have effect (unless renewed) at the end of a period of 12 months beginning with on the day on which it took effect (1 month in the case of juveniles)~~
- ~~d) one month from the date of written notice or authorisation for communications data, or earlier if cancelled under Section 23(8) of the Act.~~

However, whether the surveillance is carried out/conducted or not in the relevant period, does not mean that the authorisation is spent. Authorisations do not expire, they have to be reviewed, or cancelled if no longer required.

10.2 Reviews

The Authorising Officer shall undertake regular reviews of authorisations to assess the need for the surveillance to continue. The results of a review should be recorded on the central record of authorisations. Where the surveillance provides access to confidential information or involves collateral intrusion the officer should conduct frequent reviews.

Standard review forms for directed surveillance are attached at Appendix 5.

10.3 Renewals

Authorisations may be renewed more than once, if necessary, and the renewal should be kept/recorded as part of the central record of authorisations. **Please note that renewals require the approval of a Magistrate (see paragraph 7.5).**

Authorisations can be renewed in writing shortly before the maximum period has expired. An authorisation cannot be renewed after it has expired. The authorising officer must consider the matter afresh, including taking into account the benefits of the surveillance to date and any collateral intrusion that has occurred. The renewal will begin on the day when the authorisation would have expired.

The Authorising Officer who granted or last renewed the authorisation must cancel it if he is satisfied that the investigative procedure no longer meets the criteria upon which it was authorised.

Standard renewal forms for the authorisation of directed surveillance are available from the Home Office website as follows: -

<http://security.homeoffice.gov.uk/ripa/publication-search/ripa-forms/>

10.4 Cancellations

An Authorising Officer shall cancel a notice or authorisation as soon as it is no longer necessary, or the conduct is no longer proportionate to what is sought to be achieved. The duty to cancel a notice falls on the authorising officer who issued it.

In the case of a notice issued in respect of communications data, the relevant postal or telecommunications operator will be informed of the cancellation.

Standard cancellation forms for the authorisation of directed surveillance are available from the Home Office website as follows: -

<http://security.homeoffice.gov.uk/ripa/publication-search/ripa-forms/>

11. RECORDS

The Council must keep a detailed record of all authorisations, reviews, renewals, cancellations and rejections in departments and a central register of all such forms will be maintained by the Director of Central Services. Each new application placed in the central register will be given a Unique Reference Number (URN).

In relation to communications data, the designated SpOC will retain the forms and the Director of Central Services will have access to such forms as and when required.

11.1 Central record of all Authorisations

The Director of Central Services shall hold and monitor a centrally retrievable record of all authorisations. The Authorising Officer must notify and forward to the Director of Central Services whenever a notice or authorisation is granted, renewed or cancelled to ensure that the records are regularly updated. The record will be made available to the relevant Commissioner or an Inspector from the Office of Surveillance Commissioners. These records will be retained for a period of at least three years from the ending of the authorisation. A record will be kept of the dates on which the authorisation notice is started and cancelled.

11.2 Central record of Authorisations and Notices

Authorising Officers must forward details of each form to the Director of Central Services for the central record, within 1 week of the authorisation, review, renewal, cancellation or rejection. The Director of Central Services will monitor the same and give appropriate guidance, from time to time, or amend this document as necessary. The record shall contain the following information:

- a) the type of authorisation or notice
- b) the date the authorisation or notice was given;
- c) name and rank/grade of the authorising officer;
- d) the unique reference number (URN) of the investigation or operation;
- e) the title of the investigation or operation, including a brief description and names of subjects, if known;
- f) whether the urgency provisions were used, and if so why;
- g) if the authorisation or notice is renewed, when it was renewed and who authorised the renewal, including the name and rank/grade of the authorising officer;
- h) whether the investigation or operation is likely to result in obtaining confidential information;
- i) the date the authorisation or notice was cancelled.

11.3 Records maintained in the Service

The Relevant Manager shall maintain the following documentation, which need not form part of the centrally retrievable record:

- a) a copy of the application and a copy of the authorisation or notice together with any supplementary documentation and notification of the approval given by the authorising officer;
- b) a record of the period over which the surveillance has taken place;
- c) the frequency of reviews prescribed by the authorising officer;
- d) a record of the result of each review of the authorisation or notice;
- e) a copy of any renewal of an authorisation or notice, together with the supporting documentation submitted when the renewal was requested;
- f) the date and time when any instruction was given by the authorising officer.
- g) the unique reference number for the authorisation (URN)

Each form must have a URN. The authorising officers will issue the relevant URN to applicants. The cross-referencing of each URN takes place within the form for audit purposes. Rejected forms will also have URN's.

12. RETENTION AND DESTRUCTION

- 12.1 Material obtained from properly authorised surveillance or a source may be used in other investigations. Arrangements shall be in place for the handling, storage and destruction of material obtained through the use of covert surveillance, a source or the obtaining or disclosure of communications data. Authorising Officers must ensure compliance with the appropriate data protection requirements and any relevant Corporate Procedures relating to the handling and storage of material.
- 12.2 Where the product of surveillance could be relevant to pending or future proceedings, it should be retained in accordance with established disclosure requirements for a suitable period and subject to review.

13. CONSEQUENCES OF IGNORING RIPA

- 13.1 RIPA states that if authorisation confers entitlement to engage in a certain conduct and the conduct is in accordance with the authorisation, **then it shall be lawful for all purposes.**

Where there is interference with the right to respect for private and family life guaranteed under Article 8 of the European Convention on Human Rights, and where there is no other source of lawful authority, the consequence of not obtaining an authorisation under RIPA may be that the action is unlawful by virtue of section 6 of the Human Rights Act 1998.

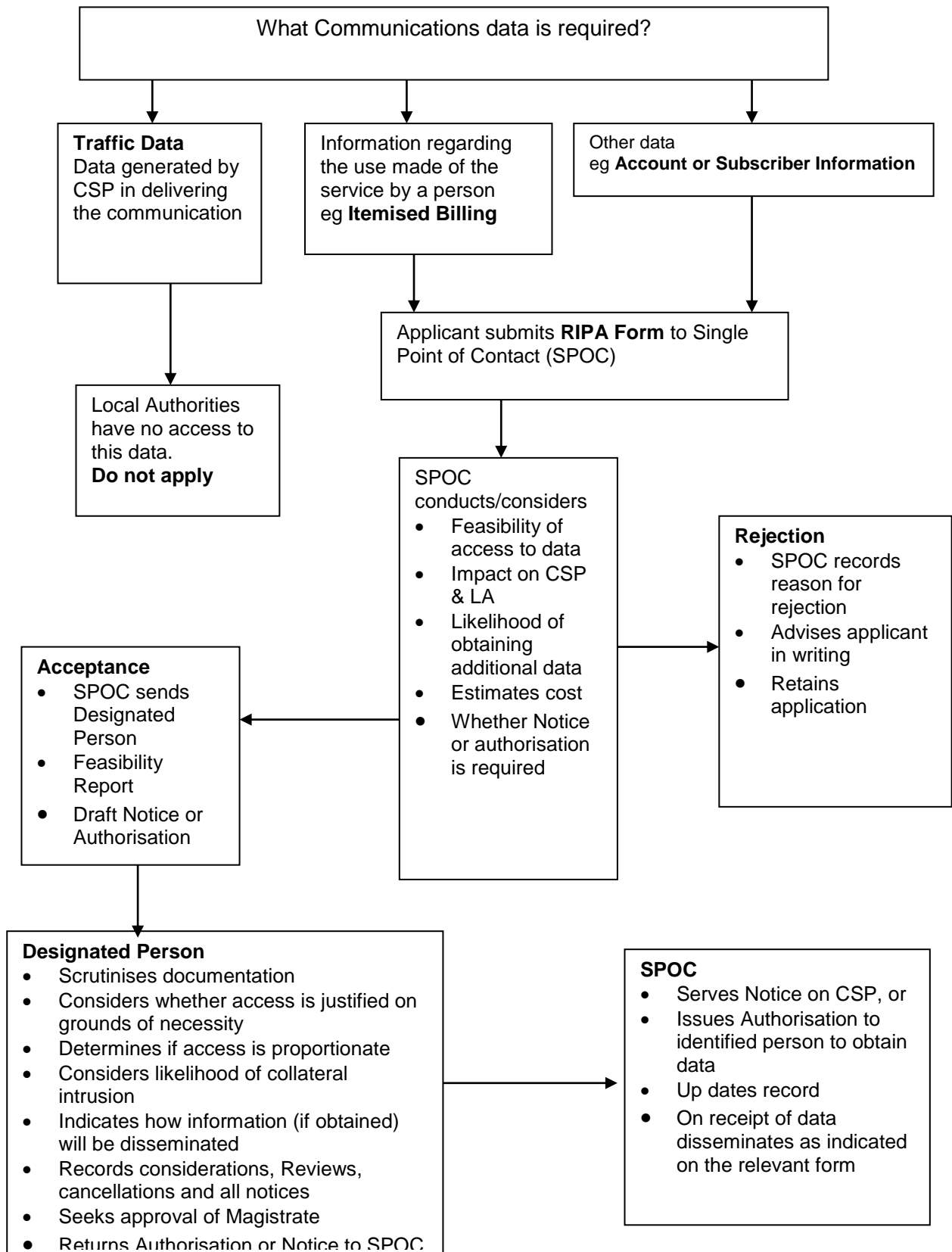
Officers shall seek an authorisation where the directed surveillance, the use of a source or the obtaining or disclosure of communications data is likely to interfere with a person's Article 8 rights to privacy by obtaining private information about that person, whether or not that person is the subject of the investigation or operation. Obtaining an authorisation will ensure that the action is carried out in accordance with law and subject to stringent safeguards against abuse.

14. SCRUTINY OF INVESTIGATORY BODIES

- 14.1 The Office of Surveillance Commissioners (OSC) has been established under RIPA to facilitate independent scrutiny of the use of RIPA powers by the investigatory bodies that are subject to it. The Commissioners will inspect Councils to ensure compliance with RIPA and can audit/review the Council's policies and procedures, and individual authorisations. Further detail can be found at www.surveillancecommissioners.gov.uk
- 14.2 There is also a statutory complaints system welcomed by the Council. The Investigatory Powers Tribunal has been established under RIPA to deal with complaints from members of the public about the use or conduct by public authorities of these powers. The Tribunal is separate from the OSC. The Council welcomes this external scrutiny. It expects its officers to co-operate fully with these statutory bodies and to bring forward any proposals for improvement that may follow on from an inspection report or a Tribunal hearing.

**IF IN DOUBT ADVICE MUST BE SOUGHT FROM
THE DIRECTOR OF CENTRAL SERVICES**

Process Map for Accessing Communications Data



Specific Guidance to Investigators

1. Before authorisation for surveillance can be sought the Investigating Officer must have exhausted all possible means of obtaining the evidence that is required.
2. When the Investigating Officer feels that surveillance is the only option available they should discuss the case with the Investigation Manager. If in the opinion of the Investigation Manager surveillance is the only option left he will authorise the Investigating Officer to reconnoitre the area in which the surveillance is to take place. (The vernacular term for this is 'a drive by', but any reconnaissance must be far more thorough than simply driving past to 'have a look').
3. The fact that permission for reconnaissance has been given must be recorded on the case notes.
4. During the reconnaissance the Investigating Officer should be:
 - a) looking for the best vantage points to set up the observation post taking into account 'ten to two' vision of the subject, ease of following, etc.
 - b) making careful and detailed notes concerning Collateral Intrusion and how this can be avoided and minimised.
 - c) checking if material of a confidential nature may be obtained and how this can be avoided.
 - d) as best practice the Investigating Officer should draw a plan of the area, marking all the relevant details.
5. The Investigating Officer will then complete an Application for Directed Surveillance form.
6. This form is then to be checked by either the Chief Internal Auditor or the Investigation Manager, who will then pass the form to the ~~Chief Executive or Chief Finance Officer~~ relevant service Director (or Chief Executive where required) for authorisation.
7. The ~~Chief Executive or Chief Finance Officer~~ relevant Director (or Chief Executive where required) will apply the Surveillance Code of Practice and determine if authorisation should be given.
8. Once authorisation has been given the ~~Investigation Manager~~ Co-ordinating Officer will log this fact on the Control Matrix. There after the ~~Investigation Manager~~ Co-ordinating Officer will maintain the Matrix and apply the required controls.
9. A copy of the authorisation and all the accompanying paperwork will be sent, in a secure manner, to the Council's Director of Central Services. An application will then be made to the Magistrates Court for approval of the authorisation.
10. If approved by the Magistrates Court, the Director of Central Services will notify the Investigating Officer and Authorising Officer and provide a copy of the approval for their records. This will be recorded on the Control Matrix by the Co-ordinating Officer.
11. The Investigating Officer will conduct the surveillance in accordance with all legislation and codes of practice they are required to follow.

12. On starting the surveillance the Investigating Officer will make a note in their QB50 (or equivalent notebook) that they are starting surveillance. They will then keep a record of the surveillance – they will follow the points set out in the pneumonic-mnemonic ADVOKATE¹ and the requirements of R v Turnbull². At the end of the surveillance they will make a note in their QB50 that the surveillance has ended.
13. At the earliest opportunity the Investigating Officer will have their surveillance record signed by the Investigation Manager who will ensure the various requirements have been met.
14. The surveillance record will be kept as evidence.
15. If a renewal of the authorisation is required the Investigating Officer will discuss the matter with the Investigation Manager. If in the opinion of Investigation Manager a renewal is justified then a Renewal Application form will be completed and processed – note that the authorisation of a renewal application will also require the approval of the Magistrates Court before it comes into effect.
16. If the need for surveillance ends before the expiry date either by the Investigating Officer reporting this fact, or if this is the opinion of the Investigation Manager when reviewing the operation, then a cancellation form must be completed.
17. Once an operation has been cancelled surveillance must cease. If, for any reason, there is a need to commence surveillance again then fresh authorisation must be sought.
18. ALL details and evidence obtained must be retained in line with current legislation. Needless to say evidence that disproves an allegation must be treated with the same regard as that which does prove the allegation.

¹ Amount of time, Distance, Visibility, Obstructions, Known or seen before, Any reason to remember, Timelapse between first and subsquence description, Errors between 1st description and actual appearance

² [1977] QB 224

TONBRIDGE & MALLING BOROUGH COUNCIL

COUNCIL

31 JULY 2018

Report of the Director of Central Services & Monitoring Officer

Part 1 - Public

For decision

1 REVIEW OF CONSTITUTION

Summary

This report requests members to approve amendments to the Council's constitution

1.1 Introduction

- 1.1.1 On 19 April 2018 the Overview & Scrutiny Committee approved amendments to the Council's adopted Constitution. The proposed revisions arose from a detailed review, which had been carried out with the aim of ensuring that all parts of the constitution were up-to-date and fit for purpose.
- 1.1.2 The review also provided an opportunity to re-examine the format of the Constitution in order to avoid duplication and present its contents in a more usable and understandable way to those who read it, including not only Members but also members of the public who may wish to participate in Council business e.g. by attending meetings, making representations etc.
- 1.1.3 The review was carried out by or in consultation with a number of officers across the Council, including the 3 Statutory Officers (Head of Paid Service, Monitoring Officer and Chief Financial Officer), Management Team, Committee Services, Legal Services and any Officer to whom powers are delegated through the Constitution.
- 1.1.4 The proposed revisions have also been considered by Cabinet at its meeting on 6 June 2018, which recommended to Council as follows
- (1) the overall time limit for debate of petitions be removed, subject to a five minute limit on speeches by individual Members and two petitioners, and specific reference be made to the ability of both executive and non-executive Members to speak at Cabinet meetings when petitions are debated;
 - (2) the proposed revisions to the Constitution arising from the questions raised by the Overview and Scrutiny Committee, as set out in section 1.6 of the report, be approved;

(3) subject to (1) above, the amended Constitution at Annexes 1 to 6 of the report be adopted; and

(4) authority be delegated to the Director of Central Services and Monitoring Officer to make any further changes to the formatting of the Constitution as he considers appropriate.

1.1.5 The amendments arising in respect of (1) above are explained in detail at paragraph 1.6 of this report.

1.1.6 Some further changes have been made to the draft constitution since the meeting of Cabinet. These relate to the following parts –

Part 3 – the delegation to the Director of Planning, Housing and Environmental Health at DPHEH 100 has been amended so as to exclude prior notifications made to the Council with respect to the felling, topping or lopping of trees, from the call-in provisions. This change has been made to ensure that the Council is able to respond to such notifications within the statutory 6 week deadline, as a failure to do so will mean that the proposed works will be lawful by default.

Part 4 – the Access to Information Procedure Rules have been updated to address some minor numbering/ formatting issues, and also to make provision for non-executive members to speak at meetings of the Executive when a petition is under consideration. Amendments have also been made to the Executive Procedure Rules in this regard.

The Council & Committee Procedure Rules and the Petition Scheme have been updated to reflect the recommendation of Cabinet.

Part 5 – the Officers' Code of Conduct has been updated to take account of the implementation of the General Data Protection Regulation (GDPR).

The above amendments are shown as tracked changes on the drafts at Annexes 1 to 6.

1.2 Legal requirements

1.2.1 Section 9P of the Local Government Act 2000 requires that the Borough Council shall prepare and keep up-to-date a constitution containing

- A copy of its standing orders/ procedure rules;
- A copy of its code of conduct for members;
- Any information directed by the Secretary of State;
- Any other information considered appropriate by the local authority;

- In the case of a local authority operating the committee system, the constitution must also contain a statement as to whether it has an overview and scrutiny committee.

1.2.2 A local authority's constitution must be made available at its principal office to members of the public to inspect, and on request for a reasonable fee as determined by the local authority.

1.2.3 A Constitution Direction was issued by the Secretary of State in December 2000 that required around 80 matters to be included within constitutions, including members' allowances schemes, details of procedures for meetings and details of joint arrangements with other local authorities. A copy of that Direction is attached as **Annex 7**.

1.2.4 The Constitution sets out how the Council operates, how decisions are made and the procedures that are followed to ensure business is carried out in a lawful, transparent and accountable manner. Some of the content of the Constitution is required by law, the remainder is for the Council itself to determine. However, if the Constitution does not follow the law, the law prevails.

1.3 The Constitution of Tonbridge & Malling Borough Council

1.3.1 The present Constitution of Tonbridge & Malling Borough Council took effect on 1 January 2002. It has been modified on numerous occasions since e.g. when there have been legislative changes or changes in personnel/ departmental responsibility. However, a fundamental 'root and branch' review of the Constitution has not previously been undertaken.

1.3.2 The Monitoring Officer has a duty to monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect. He also has delegated authority to make any necessary amendments to the Constitution to give effect to any decision of Council, Cabinet or a Committee, or consequential upon changes to operational arrangements. Any other amendments to the Constitution may only be approved by full Council.

1.3.3 The present Constitution consists of 7 main parts. These are as follows

Part 1 – Summary and Explanation

This part provides a short summary of the Constitution and how the Council operates.

Part 2 – Articles of the Constitution

This part sets out the 16 Articles of the Constitution, which deal with a variety of matters including the composition of the Council, the Executive and the Overview & Scrutiny Committee. It also sets out how decisions are made and how the Constitution may be reviewed.

Part 3 – Responsibility for Functions

This part sets out the division of responsibilities between the Executive and Full Council, the portfolios of Cabinet Members, the terms of reference for Committees & Advisory Boards and the powers delegated to Officers.

Part 4 – Procedure Rules

This part sets out 9 sets of detailed rules governing how the Council operates e.g. Council and Committee Procedure Rules, Financial Procedure Rules, together with the adopted Petition Scheme.

Part 5 – Codes and Protocols

This part comprises the Members' Code of Conduct and associated protocols, the Officers' Code of Conduct and 3 protocols (Member/ Officer Relations, Responding to external consultations and Overview & Scrutiny Co-operation).

Part 6 – Scheme of Members' Allowances

This part contains the Scheme of Members' Allowances and is reviewed annually to reflect any changes agreed by full Council.

Part 7 – Management Structure

This part sets out the structure of the Council's Management Team, together with a breakdown of service responsibilities within each Directorate.

1.4 Scope of review

1.4.1 As stated above, the review has been carried out by, or in consultation with, a number of officers across the Council. The review has sought to look at a number of key questions, such as

- What works well?
- What could be improved?
- Does it facilitate the efficient conduct of Council business?
- Is the structure right?
- Are decisions taken at the right level?
- Is the constitution sufficiently public facing?
- Is it up to date? i.e. new legislation, proper officer functions?

1.4.2 A copy of each revised Part of the Constitution is attached to the report as **Annexes 1 to 6** respectively and should be read in conjunction with the following summary of key changes that are proposed.

1.4.3 Further amendments to the formatting of the document may be required prior to producing a final version, in order to ensure that the constitution is accessible to the public and Members alike. It was therefore proposed (and agreed by the Overview & Scrutiny Committee) that authority be delegated to the Director of Central Services to make any further amendments to the formatting of the constitution as he considers appropriate.

1.4.4 Members are asked to note that the review has not sought to re-evaluate the model of governance in operation at Tonbridge & Malling Borough Council.

1.5 Summary of key revisions

Part 1 – Summary and Explanation (Annex 1)

1.5.1 The changes proposed to this Part are minor, with only limited updating required.

Part 2 - Articles of the Constitution (Annex 2)

1.5.2 In order to avoid repetition across other Parts of the Constitution, and to address any inconsistencies, the Articles have been amended and reduced in number from 16 to 11. This has led to the proposed deletion from this Part of the Articles relating to the roles of the Overview and Scrutiny Committee, Regulatory Committees, the Standards Committee, the Area Committees and Officers as all of these are set out in Part 3 of the Constitution.

1.5.3 Other drafting changes made to this Part include:

- The purpose of the Constitution has been updated to reflect the vision set out in the Corporate Strategy 2017-2019.
- The list of Plans and Strategies required to be adopted by Full Council has been updated (Article 4.01). A number of the policies listed in the existing version of the constitution have been repealed or superseded so it is appropriate to review the list to reflect these changes.
- The Policies which the Council can decide as a matter of local choice should be approved by full Council has similarly been reviewed to ensure it is up to date.
- The legal position in relation to the appointment of the Leader and Cabinet has been updated (Article 6)

Part 3 - Responsibility for Functions (Annex 3)

1.5.4 This part has been extensively reviewed and updated, with the aim of ensuring that:

- All relevant information concerning the composition, terms of reference and functions of Boards & Committees can be found in one place, rather than in several Parts of the Constitution;
- The Boards and Committees are listed in alphabetical order, to make it easier for the reader to locate the information they require;
- Wherever possible the scheme of delegation has been simplified by reference to generic powers rather than specifying particular sections of legislation. For example, The Director of Central Services is authorised to exercise all functions of the Council in relation to Hackney Carriage and Private Hire licensing. Rather than specifying the legislation or specific sections thereof (which may, in time be amended or repealed), it is suggested that the constitution instead refers to broader responsibilities of the Council. This will obviate the need to update the constitution each and every time a new piece of legislation is introduced/ amended which relates to the specific service area in question and avoid situations arising where the Council is unable to act in a prompt and efficient manner simply because the constitution is silent on whether or not the authority to act fell within a specific Director's responsibilities.

Part 4 – Procedure Rules (Annex 4)

- 1.5.5 Council Procedure Rules - minor updating has taken place in order to remove any ambiguity between the operation of the Procedure Rules and the Petition Scheme. Some minor updating has also taken place in relation to the rules for public speaking in respect of planning applications.
- 1.5.6 Access to Information Procedure Rules – this section has been updated to ensure consistency with the provisions of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.
- 1.5.7 Budget & Policy Framework Procedure Rules – no changes are proposed.
- 1.5.8 Executive Procedure Rules – no changes are proposed.
- 1.5.9 Overview & Scrutiny Procedure Rules – no changes are proposed.
- 1.5.10 Contract Procedure Rules – this section has been updated to ensure compliance with the requirements of the Public Contracts Regulations 2015 and the Concession Contracts Regulations 2016. Minor updating has also taken place to clarify officer delegations and a rule has also been inserted to allow the suspension of CPR on the authority of the Chief Executive and Monitoring Officer

where it is urgent and in the best interests of the Council which must be reported to the next meeting of the Executive. This insertion was to cover increased partnership working to ensure that due process can be followed when deadlines may become more challenging due to each partner having to follow their own administrative processes. The requirement for members to attend tender opening has also been deleted as tenders are usually returned electronically and there is an electronic record to show that due process has been followed.

- 1.5.11 Financial Procedure Rules – this section has been updated to comply with the Accounts and Audit Regulations (England) 2015. In addition new provisions have been inserted to cover issues such as granting emergency funding under statutory provisions, Partnership Working and the use of Corporate Credit cards.
- 1.5.12 Officer Employment Procedure Rules – no changes proposed. These rules were last updated on 14 July 2015 to reflect changes to the procedure for dismissal of statutory officers as required by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.
- 1.5.13 Petition Scheme – the scheme has been updated to clarify the position in relation to electronic petitions and also to align the provisions relating to speaking rights at full Council with those set out in the Council and Committee Procedure Rules. Some minor updating has also taken place. Members are asked to note that the statutory requirement for the Council to have a Petition Scheme in place has now been repealed. However, it is considered appropriate to retain a scheme in order to provide a framework for the public to raise issues of local concern.

Part 5 - Codes and Protocols (Annex 5)

- 1.5.14 Protocol C (Use of Council Resources by Members) has been updated and extended to include new sections relating to Data Protection & Freedom of Information, Use of the Council Logo, Information Security and Social Media.
- 1.5.15 The Members' Planning Code of Good Practice has been updated in a number of respects. These include
- The Code has generally been updated to ensure it reflects current best practice advice e.g. LGA/ Planning Advisory Service guide 'Probity in Planning';
 - The sections on Declaration of Interests and Pre-determination have been brought up to date;
 - The section on Site Inspections has been updated to bring it into line with the revised procedure.
- 1.5.16 The Members' Licensing Code of Good Practice has been reviewed, with the sections on Declarations of Interest and Pre-determination having been brought up to date.

Part 6 – Scheme of Members’ Allowances (Annex 6)

- 1.5.17 No changes are proposed to this section, which is updated annually in line with the decision taken by full Council.

Part 7 – Management Structure

- 1.5.18 It is proposed to remove this section, as it duplicates information contained within Part 3 of the Constitution.

1.6 Petitions – speaking time

- 1.6.1 At the meeting of the Overview & Scrutiny Committee, a motion was proposed to remove the 15 minute time limit on debating petitions at full Council. The motion was defeated at the Committee, but the Leader agreed that Cabinet would give the issue further consideration when the revised constitution was submitted to it for approval. It was also agreed that further consideration would be given to the possibility for petitions to be debated in the first instance by Boards/ Committees instead of full Council, as it appeared unsatisfactory for Council to consider petitions relating to subject matters that fell within the responsibility of another decision making body e.g. Cabinet.
- 1.6.2 Since the process for receiving and considering petitions was at the discretion of the Council, the draft petition scheme has been amended to allow for petitions with over 1500 signatures to be considered by either Council or Cabinet depending on whether the subject matter was an executive or Council function. Cabinet endorsed this course of action and agreed that there should be no time limit on the overall debate of petitions, subject to a five minute limit on speeches by individual Members and the two petitioners whether at Council or Cabinet, with specific permission for non-executive Members to speak at Cabinet meetings during the debate on petitions.

1.7 Financial and Value for Money Considerations

- 1.7.1 None arising from this report.

1.8 Risk Assessment

- 1.8.1 As set out above.

1.9 Equality Impact Assessment

- 1.9.1 None arising from this report.

1.10 Recommendation

- 1.10.1 Members are requested to **RESOLVE** that
- (i) the amended constitution at **Annexes 1 to 6** be adopted; and

- (ii) authority be delegated to the Director of Central Services & Monitoring Officer to make any further changes to the formatting of the constitution as he considers appropriate.

contact: Adrian Stanfield

Background Papers:
Nil

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The Local Government Act 2000 (Constitutions) (England) Direction 2000

The Secretary of State for the Environment, Transport and the Regions, in the exercise of his powers under sections 37(1)(a) and 48(7) of the Local Government Act 2000 (c.22) (the Act) and all other powers enabling him in that behalf, hereby directs all local authorities in England to which Part II of the Act applies as follows:

Miscellaneous and interpretation

1. In the direction:

"constitution" has the meaning given by section 37(1) of the Act,

"overview and scrutiny committee":

- a. in the case of a local authority which is operating executive arrangements has the meaning given by section 21(1) of the Act; or
- b. in the case of a local authority which is operating alternative arrangements means any committee or sub-committee appointed by the authority in accordance with regulations made under section 32(1)(b) of the Act to review or scrutinise decisions made, or other action taken, in connection with the discharge of functions of the authority.

2. In complying with this direction a local authority must have regard to any guidance issued for the time being by the Secretary of State under section 38 of the Act.

The constitution

3. The constitution prepared and kept up to date in accordance with section 37(1) of the Act by a local authority which is operating executive arrangements or, as the case may be, alternative arrangements must include:

- a. a summary and explanation of the purpose and content of the constitution;
- b. a description of the composition of the council, the scheme of ordinary elections for members of the council and their terms of office;
- c. a description of the principal roles and functions of the members of the council under executive arrangements or, as the case may be, alternative arrangements including the rights and duties of those members;
- d. the scheme of allowances for members of the authority drawn up in accordance with regulations made under section 18 of the Local Government and Housing Act 1989 (c.42);
- e. a description of the rights and responsibilities of inhabitants of the authority's area including:
 - i. their rights to vote in elections for the return of members of the authority;
 - ii. their rights to access to information about the authority's activities;
 - iii. their rights of access to meetings of the council, its committees and sub-committees and any joint committees established with any other authority; and
 - iv. their rights of access to meetings of the executive and committees of the executive,
- f. a description of the roles of the authority itself under executive arrangements or, as the case may be, alternative arrangements including:
 - i. the functions which may be exercised only by the authority itself or which may to some extent be exercised only by the authority itself (including, in the case of a local authority operating executive arrangements any plans and strategies which are subject to approval or adoption by the authority itself by virtue of regulation 5 of, and paragraph 1 of Schedule 4 to, the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (S.I. 2000/2853)); and
 - ii. any rules governing the conduct and proceedings of meetings of the authority itself whether specified in the authority's standing orders or otherwise,
- g. a description of the roles and functions of the chairman of the council (including a chairman entitled to the style of mayor);
- h. a description of the functions of the local authority executive which, for the time being, are exercisable by individual members of the local authority executive stating as respects each function, the name of the member by whom it is exercisable;
- i. a description of the functions of the local authority executive which, for the time being, are exercisable by the executive collectively or a committee of the executive, stating as respects each function, the membership of the body by who it is exercisable;
- j. a description of those powers of the executive which for the time being are exercisable by an officer of the local authority stating the title of the officer by whom each of the powers so specified is for the time being exercisable, other than any power exercisable by the officer for a specified period not exceeding six months;
- k. a description of the arrangements for the operation of overview and scrutiny committees including:

- i. the terms of reference and membership of those committees and any rules governing the exercise of their functions; and
- ii. any rules governing the conduct and proceedings of meetings of those committees whether specified in the authority's standing orders or otherwise'
- l. in the case of a local authority which is operating executive arrangements, a description of the roles of the executive, committees of the executive and members of the executive including:
 - i. the roles, functions, rights, responsibilities and duties of members of the executive;
 - ii. in the case of a local authority which is operating executive arrangements which include a leader and cabinet form of executive, any rules governing the election of the executive leader;
 - iii. any rules governing the appointment of members of the executive;
 - iv. any provisions in the local authority's executive arrangements with respect to the quorum, proceedings and location of meetings of the executive;
 - v. any provisions in the local authority's executive arrangements with respect to the quorum, proceedings and location of meetings of any committees of the executive;
 - vi. any provisions in the local authority's executive arrangements with respect to the appointment of committees of the executive; and
 - vii. in the case of a local authority which is operating executive arrangements which include a mayor and council manager form of executive, any roles of committees appointed by the elected mayor to advise the executive in accordance with paragraphs 3(14) and (15) of Schedule 1 to the Act,
- m. in the case of a local authority which is operating executive arrangements which include a mayor and council manager form of executive, a description of the roles, functions, rights, responsibilities and duties of the deputy mayor appointed in accordance with paragraph 3(3) of Schedule 1 to the Act;
- n. a description of the roles of any committees or sub-committees appointed by the authority in accordance with section 101 of the Local Government Act 1972 (c.70) including:
 - i. the membership, terms of reference and functions of such committees or sub-committees; and
 - ii. any rules governing the conduct and proceedings of meetings of those committees or sub-committees whether specified in the authority's standing orders or otherwise,
- o. a description of those powers of the council which for the time being are exercisable by an officer of the local authority stating the title of the officer by whom each of the powers so specified is for the time being exercisable, other than any power exercisable by the officer for a specified period not exceeding six months;
- p. a description of the roles of the local authority's Standards Committee and any parish council sub-committee of the Standards Committee appointed in accordance with sections 53 or 55 of the Act including:
 - i. the membership, terms of reference and functions of that committee or sub-committee; and
 - ii. any rules governing the conduct and proceedings of meetings of that committee or sub-committee whether specified in the authority's standing orders or otherwise;
- q. a description of the roles of any area committees appointed by the authority to exercise functions in accordance with regulations 16A of the Local Government (Committees and Political Groups) Regulations 1990 (SI 1990/1553) or, as the case may be, section 18 of the Act and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000 (SI 2000/2851) including:
 - i. the membership, terms of reference and functions of such committees; and
 - ii. any rules governing the conduct and proceedings of meetings of those committees whether specified in the authority's standing orders or otherwise,
- r. a description of any joint arrangements made with any other local authorities under section 101(5) of the Local Government Act 1972 including:
 - i. the terms of those arrangements;
 - ii. the membership, terms of reference and functions of any joint committees established under those arrangements; and
 - iii. any rules governing the conduct and proceedings of meetings of those joint committees whether specified in the authority's standing orders or otherwise,
- s. a description of any arrangements made with another local authority for the discharge of functions by that other local authority or the executive of that other local authority in accordance with section 101(1)(b) of the Local Government Act 1972 or, as the case may be, Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000;
- t. a description of the roles of officers of the local authority including:
 - i. the management structure for officers of the authority;
 - ii. any arrangements made under section 101 of the Local Government Act 1972 or, as the case may be, section 14, 15 or 16 of the Act for the discharge of functions by officers of the authority;
 - iii. the roles and functions of the head of paid service, monitoring officer and chief finance officer;
 - iv. the code of conduct for local government employees issued by the Secretary of State in accordance with section 82 of the Act;

- v. any rules governing the recruitment, appointment, dismissal and disciplinary action for officers of the authority;
 - vi. any protocol established by the authority in respect of relationships between members of the authority and officers of the authority;
 - u. a description of the arrangements the authority has in place for access of the public, members of the authority and officers of the authority to meetings of the authority, committees and sub-committees of the authority, joint committees established with any other local authority, the executive and committees of the executive.
 - v. a description of the arrangements the authority has in place for access of the public, members of the authority and officers of the authority to information about the decisions made or to be made by in respect of local authority's functions and activities.
 - w. a register stating
 - i. the name and address of every member of the local authority executive for the time being and the ward or division (if any) which he represents; and
 - ii. the name of every member of each committee of the local authority's executive for the time being.
 - x. a description of the rules and procedures for the management of its financial, contractual and legal affairs including:
 - i. procedures for auditing of the local authority;
 - ii. the local authority's financial rules or regulations or such equivalent provisions as the local authority may have in place whether specified in the authority's standing orders or otherwise;
 - iii. rules, regulations and procedures in respect of contracts and procurement including authentication of documents whether specified in the authority's standing orders or otherwise; and
 - iv. rules and procedures in respect of legal proceedings brought by and against the local authority, and
 - y. a description of the register of interests of members and co-opted members of the authority required under section 81 of the Act, together with the procedures for publicising, maintaining and updating that register.
 - z. a description of the rules and procedures for review and revision of the authority's constitution and executive arrangements or, as the case may be, alternative arrangements.
4. This direction shall have effect from 19th December 2000.

Signed by authority of the Secretary of State
for the Environment, Transport and the Regions

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TONBRIDGE & MALLING BOROUGH COUNCIL

COUNCIL

31 July 2018

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

Part 1- Public

For decision

1 RECYCLING SITE COLLECTION ARRANGEMENTS

Summary

This report identifies operational difficulties with the current collection arrangements at the Council's recycling sites, and brings forward temporary additional resources to help address the issue until the implementation of revised recycling site arrangements under the new Recycling Contract.

1.1 Background

- 1.1.1 In partnership with Tunbridge Wells Borough Council, this Council jointly owns and operates two recycling vehicles for the collection of glass and cans from around 100 recycling sites across the two authorities. The vehicles are operated under contract with Veolia, who provide the drivers and recycling bank servicing schedule.
- 1.1.2 The income from the sale of materials is offset against the operating and servicing charges and the net costs are shared equally between authorities. Both Councils then claim their separate recycling credit payments for the materials recycled.
- 1.1.3 When the vehicles were purchased in January 2008 and February 2009 they were initially costed on an eight year life and provision was made for their replacement within the capital renewals budgets for 2015/16 and 2016/17 respectively.
- 1.1.4 At the November 2015 meeting of the Housing and Environmental Advisory Board it was agreed that in recognition of the Council's overall financial position the life of the Council's two recycling vehicles be extended to the end of the existing Waste Services contract in February 2019. The risks associated with the approach were noted by the Board and it was recognised that if there were significant problems with one or both of the vehicles temporary arrangements to service the Council's recycling sites should be progressed.

1.2 Current Position

- 1.2.2 The growing unreliability of the existing vehicles has led to problems in delivering the required service over recent months, which is understandable as the vehicles

are now 10 years and 9 years old respectively. Despite taking a number of actions including the hire of an additional vehicle from Veolia, the manual cleansing of recyclate left on the ground at the recycling sites and additional weekend collections, it is clear that more action is required. The additional Veolia vehicle is only available on limited occasions and cannot be guaranteed.

- 1.2.3 The Council is receiving a growing number of complaints from residents, Parish Councils and Members who quite rightly expect the recycling sites to be emptied to meet demand. It is worthy of note that demand for the sites continues to grow reflecting the public's growing commitment to recycling, and it is important that this enthusiasm be encouraged.

1.3 Proposal

- 1.3.1 Having considered a number of options including increasing the number of banks at each site, it is proposed to engage another vehicle to undertake additional collections at the recycling sites to help address the problems. The availability of suitable vehicles to undertake the operation is extremely limited, but a local company, (Lucy & Martin Recycling Company) has recently been identified who could assist. It is the intention to commission the company to undertake additional collections to supplement existing arrangements up until new recycling site arrangements have been implemented through the new Waste Contract. It is anticipated that this will be in 12 months' time. Subject to Council approval the company has confirmed that it could commence the new arrangement approximately one month from placement of an order by TMBC.

1.4 Legal Implications

- 1.4.1 The Council currently has contractual arrangements with Veolia to operate the existing service and has a partnership agreement with Tunbridge Wells Borough Council to provide this service across the two authorities.

1.5 Financial and Value for Money Considerations

- 1.5.1 Whilst the Council has saved money by not replacing the two existing recycling vehicles, it is now recognised that additional financial resource is required. The proposed temporary arrangement will cost £30k and it is the intention that this additional expenditure be met by a supplementary estimate, which will be reflected in the revised revenue budget later in the year.
- 1.5.2 Despite significant research no other company has been identified which can supply a suitable vehicle to meet the Council's needs and timescale, and subject to Member approval, an exemption from standing orders will be sought from the Council's Statutory Officers to appoint the company.

1.6 Risk Assessment

- 1.6.1 There is a clear risk that if temporary arrangements to service the recycling sites are not progressed, the level of service will continue to suffer and the Council will receive a growing number of complaints. The potential risk of the scenario currently facing the service was recognised when the original decision to extend the life of the existing vehicles was made in 2015.

1.7 Equality Impact Assessment

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

1.9 Policy Considerations

1.9.1 Asset Management

1.9.2 Procurement

1.10 Recommendations

It is RECOMMENDED that the temporary arrangements outlined in the report to improve the collection arrangements at the Council's recycling sites be agreed, with funding from a supplementary revenue budget.

Background papers:

contact: Darren Lanes

Nil

Robert Styles

Director of Street Scene, Leisure and Technical Services

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TONBRIDGE & MALLING BOROUGH COUNCIL

COUNCIL

31 July 2018

Report of the Director of Central Services

Part 1- Public

Matters For Decision

1 APPOINTMENTS TO OUTSIDE BODIES

To consider the appointment of Town Wardens of the Tonbridge Town Lands and Richard Mylls Charity for the period October 2018 to 2022.

1.1 Introduction

1.1.1 The period of office of Miss J Browne and Mr E Prescott as Town Wardens expires in October 2018. The Clerk to the Town Wardens advises that Mr Prescott is willing to serve in this capacity for a further term but regrettably Miss Browne no longer feels able to continue as a Town Warden.

1.1.2 The terms of the Town Wardens and Richard Mylls Charity require the income of the Charity to be applied for the benefit of the inhabitants of the former Urban District of Tonbridge and it is necessary for persons appointed as Town Wardens to be residents or have extensive knowledge of this area. They may be, but need not be, a member of the Council. The Town Wardens have put forward for the Council's consideration the suggestion that Mrs Diane Huntingford, currently the Chair of the Tonbridge Civic Society, be appointed as a replacement for Miss Browne.

1.2 Legal Implications

1.2.1 None.

1.3 Financial and Value for Money Considerations

1.3.1 Not applicable.

1.4 Risk Assessment

1.4.1 Not applicable.

1.5 Equality Impact Assessment

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

1.7 Recommendations

- 1.7.1 RECOMMENDED that consideration be given to the reappointment of Mr E Prescott and the appointment of Mrs D Huntingford as Town Wardens for the period October 2018 to October 2022.

Background papers:

contact: Claire Fox

Letter dated 8 May 2018 from Clerk to the Town Wardens

Adrian Stanfield
Director of Central Services

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.

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