

TONBRIDGE & MALLING BOROUGH COUNCIL



EXECUTIVE SERVICES

Chief Executive

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

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

29 May 2018

To: MEMBERS OF THE CABINET
(Copies to all Members of the Council)

Dear Sir/Madam

Your attendance is requested at a meeting of the Cabinet to be held in the Civic Suite, Gibson Building, Kings Hill, West Malling on Wednesday, 6th June, 2018 commencing at 7.30 pm

Yours faithfully

JULIE BEILBY

Chief Executive

A G E N D A

PART 1 - PUBLIC

- | | | |
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| 1. | Apologies for absence | 5 - 6 |
| 2. | Declarations of interest | 7 - 8 |

3. Minutes 9 - 12

To confirm as a correct record the Minutes of the meeting of the Cabinet held on 20 March 2018

4. Matters Referred from Advisory Boards 13 - 24

The notes of meetings of Advisory Boards are attached, any recommendations identified by an arrow being for determination by the Cabinet. Notices relating to any decisions already taken by Cabinet Members under the arrangements for delegated decision making have previously been circulated.

5. Matters Referred from Advisory Panels and Other Groups 25 - 34

The minutes of meetings of Advisory Panels and Other Groups are attached, any recommendations being identified by an arrow.

Matters for Recommendation to the Council

6. Review of the Constitution 35 - 48

The report updates Members on a review of the Council's constitution.

Due to their size Annexes 1 – 6 (the Constitution Parts 1 to 6) will be circulated as hard copy to Members of the Cabinet only and will also be available online as supplements to the agenda.

Executive Non-Key Decisions

7. Revenue and Capital Outturn 2017/18 49 - 70

In accordance with the Council's Financial Procedure Rules the report and accompanying information detail actual Revenue and Capital Outturn for the year ended 31 March 2018 and subsequent adjustments made in light of the Outturn position.

8. Corporate Enforcement Policy 71 - 90

The Corporate Enforcement Policy seeks to set out the broad principles which the Council will apply across its services when carrying out its regulatory activities.

9. Urgent Items 91 - 92

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

Matters for consideration in Private

10. Exclusion of Press and Public 93 - 94

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

PART 2 - PRIVATE

Executive Non-Key Decisions

11. Land at Commercial Road, Tonbridge 95 - 108

LGA 1972 Sch 12A Paragraph 3 – Financial or business affairs of any particular person

Item FIP 18/26 referred from Finance, Innovation and Property Advisory Board minutes of 23 May 2018

12. Urgent Items 109 - 110

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

MEMBERSHIP

Councillor N J Heslop, (Leader) and (Economic Regeneration)
Councillor M A Coffin, (Finance, Innovation and Property)
Councillor Mrs M F Heslop, (Community Services)
Councillor D Lettington, (Street Scene and Environment Services)
Councillor P J Montague, (Housing)
Councillor H S Rogers, (Strategic Planning and Infrastructure)

Members of the Council who are not members of the executive may attend meetings of the Cabinet. With the agreement of the Leader, any such Member may address the Cabinet on any item on the agenda but may not vote.

Apologies for absence

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Declarations of interest

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TONBRIDGE AND MALLING BOROUGH COUNCIL

CABINET

Tuesday, 20th March, 2018

Present: Cllr N J Heslop (Chairman), Cllr M A Coffin, Cllr Mrs M F Heslop, Cllr D Lettington, Cllr P J Montague and Cllr H S Rogers

Councillors Mrs J A Anderson, O C Baldock, P F Bolt, V M C Branson, D J Cure, Mrs A S Oakley, M Parry-Waller, M R Rhodes, A K Sullivan and T C Walker were also present pursuant to Access to Information Rule No 22.

PART 1 - PUBLIC

CB 18/22 DECLARATIONS OF INTEREST

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

CB 18/23 MINUTES

RESOLVED: That the Minutes of the meeting of the Cabinet held on 8 February 2018 be approved as a correct record and signed by the Chairman.

MATTERS FOR RECOMMENDATION TO THE COUNCIL

CB 18/24 GENERAL DATA PROTECTION REGULATION SOFTWARE

The joint report of the Director of Central Services and Director of Finance and Transformation explored the use of software to enable the Council to comply with new data protection legislation due to come into effect in May 2018. The requirements of the General Data Protection Regulation (GDPR) were outlined in terms of accountability, privacy by design and default and the need for protection of personal data to be embedded throughout the organisation. It was noted that the Council was required to demonstrate data governance processes and procedures in order to mitigate the risk of substantial fines by the Information Commissioners Office in the event of a data breach.

Consideration was given to a Capital Plan evaluation which had been conducted for the purchase of an automated software solution which could reduce the risks under the GDPR. Considerable discussion ensued and officers undertook to examine some of the points raised by Members before the Council meeting. Reference was made to the Member training being arranged and all Councillors were urged to attend.

RECOMMENDED: That an automated software solution for General Data Protection Regulation purposes be added to the Capital Plan, funded from the Invest to Save reserve.

***Referred to Council**

CB 18/25 PURCHASE OF TEMPORARY ACCOMMODATION

The joint report of the Director of Planning, Housing and Environmental Health and Director of Central Services set out the need for access to additional temporary accommodation in order to address both housing management and cost issues in dealing with applications under homelessness legislation. The report presented a preferred way of moving forward in the short term utilising funds from planning obligations. Consideration was given to a Capital Plan evaluation for the purchase of property for temporary accommodation purposes.

Members welcomed the proposal and expressed the wish that the accommodation should be within the Borough where possible although it was recognised that it might be necessary to look beyond the boundary to obtain best value.

RECOMMENDED: That

- (1) the sum of up to £1.6m be added to the Capital Plan for the purchase of property for temporary accommodation purposes funded from section 106 monies; and
- (2) delegated authority be granted to the Director of Planning, Housing and Environmental Health and Director of Central Services, in consultation with the Cabinet Member for Housing and Cabinet Member for Finance, Innovation and Property, to progress the purchase of property for temporary accommodation purposes as set out in the report.

***Referred to Council**

DECISIONS TAKEN IN ACCORDANCE WITH PARAGRAPH 4, PART 3 OF THE CONSTITUTION

CB 18/26 WASTE SERVICES CONTRACT RE-TENDER

Decision Notice D180023CAB

CB 18/27 CAR PARKING FEES AND CHARGES - OUTCOME OF PUBLIC CONSULTATION

Decision Notice D180024CAB

CB 18/28 LEYBOURNE LAKES COUNTRY PARK - DEVELOPMENT OPPORTUNITIES

Decision Notice D180025CAB

CB 18/29 ON-STREET PARKING FEES AND CHARGES

Decision Notice D180026CAB

CB 18/30 PARKING ACTION PLAN - PHASE 9

Decision Notice D180027CAB

MATTERS SUBMITTED FOR INFORMATION**CB 18/31 MATTERS REFERRED FROM ADVISORY BOARDS**

The notes of the meetings of the following Advisory Boards were received, any recommendations contained therein being incorporated within the decisions of the Cabinet reproduced at the annex to these Minutes.

Street Scene and Environment Services Advisory Board of 13 February 2018

Economic Regeneration Advisory Board of 21 February 2018

Planning and Transportation Advisory Board of 6 March 2018

RESOLVED: That the report be received and noted.

CB 18/32 MATTERS REFERRED FROM ADVISORY PANELS AND OTHER GROUPS

The Minutes of the meetings of the following Advisory Panels and other Groups were received, any recommendations contained therein being incorporated within the decisions of the Cabinet reproduced at the annex to these Minutes.

Parish Partnership Panel of 15 February 2018

Joint Transportation Board of 12 March 2018

RESOLVED: That the report be received and noted.

CB 18/33 STRATEGIC RISK REGISTER

The report of the Management Team presented the latest iteration of the Strategic Risk Register which had been reviewed and updated to align with the new Corporate Strategy in the autumn. It was noted that updates had been made in respect of emergency arrangements, contaminated land and the potential demise of a large partner organisation.

RESOLVED: That the report be received and noted.

CB 18/34 FAIR FUNDING REVIEW

The report of the Director of Finance and Transformation referred to the publication of a technical consultation paper entitled “Fair funding review: a review of relative needs and resources” alongside the 2018/19 Provisional Local Government Finance Settlement. An overview of the paper was given together with comments and the response submitted by the 12 March 2018 deadline with the agreement of the Leader and Cabinet Member for Finance, Innovation and Property.

RESOLVED: That the report be received and noted.

CB 18/35 BUSINESS RATES - DISCRETIONARY FUND RELIEF SCHEME POLICY

The report of the Director of Finance and Transformation gave details of changes made to the Discretionary Fund Relief Scheme Policy to ensure that the amount of relief awarded to eligible businesses was maximised.

RESOLVED: That the report be received and noted.

CB 18/36 EXCLUSION OF PRESS AND PUBLIC

The Chairman moved, it was seconded and

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

DECISIONS TAKEN IN ACCORDANCE WITH PARAGRAPH 4, PART 3 OF THE CONSTITUTION

CB 18/37 DEBTS FOR WRITE OFF

(LGA 1972 Sch 12A Paragraph 2 – Information likely to reveal information about an individual)

Decision Notice D180028CAB

The meeting ended at 8.35 pm

Agenda Item 4

The notes of meetings of Advisory Boards are attached, any recommendations identified by an arrow being for determination by the Cabinet. Notices relating to any decisions already taken by Cabinet Members under the arrangements for delegated decision making have previously been circulated.

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TONBRIDGE AND MALLING BOROUGH COUNCIL

FINANCE, INNOVATION AND PROPERTY ADVISORY BOARD

Wednesday, 23rd May, 2018

Present: Cllr M C Base (Chairman), Cllr R D Lancaster (Vice-Chairman), Cllr R P Betts, Cllr T Bishop, Cllr V M C Branson, Cllr Mrs B A Brown, Cllr T I B Cannon, Cllr D J Cure, Cllr M O Davis, Cllr Miss J L Sergison, Cllr A K Sullivan and Cllr F G Tombolis

Councillors Mrs J A Anderson, O C Baldock, M A Coffin, N J Heslop, D Lettington, M R Rhodes and H S Rogers were also present pursuant to Council Procedure Rule No 15.21.

Apologies for absence were received from Councillors J L Botten and S M King

PART 1 - PUBLIC

FIP 18/16 DECLARATIONS OF INTEREST

The following Members declared an Other Significant Interest in the item on Applications for Discretionary Rate Relief in respect of renewal applications by the organisations indicated; they withdrew from the meeting during their consideration:

Councillor R Betts (member of Tonbridge and Malling Leisure Trust Board)

Councillor M Davis (member of Tonbridge and Malling Leisure Trust Board and vice-president of Tonbridge Juddians RFC)

Councillor N Heslop (member of The Bridge Trust Board)

In the interests of transparency the following Members advised that they were social members of the organisations indicated but were not in a position of control or management: Councillor Mrs J Anderson (Hadlow Bowls Club and Hadlow Cricket Club); Councillor O Baldock and Councillor R Lancaster (Tonbridge Juddians RFC).

FIP 18/17 MINUTES

RESOLVED: That the notes of the meeting of the Finance, Innovation and Property Advisory Board held on 3 January 2018 be approved as a correct record and signed by the Chairman.

MATTERS FOR RECOMMENDATION TO THE CABINET

FIP 18/18 APPLICATIONS FOR DISCRETIONARY RATE RELIEF

Decision Notice D180029MEM

The report of the Director of Finance and Transformation gave details of new and renewal applications for discretionary rate relief and discretionary rural rate relief which were considered in accordance with the previously agreed criteria for determining such applications.

The practice of advising organisations that there could be a reduction in the level of relief awarded in the future was endorsed. It was considered that the re-applications from the Tonbridge Juddians RFC and K Sports Management Limited should be deferred to enable a review of their accounts and level of business activity. A requirement for organisations to reapply every two years was generally favoured with the exception of scout/guides groups which were regarded as “de minimis” in terms of the level of relief awarded.

RECOMMENDED: That

- (1) consideration of the re-applications from the Tonbridge Juddians RFC and K Sports Management Limited be deferred pending receipt of their accounts and a review of the level of relief awarded;
- (2) organisations generally be asked to reapply for relief every two years with the exception of scout/guides groups;
- (3) subject to (1) and (2) above, in respect of the re-applications, discretionary rate relief and discretionary rural rate relief be awarded as set out at Annexes 3 and 4 to the report respectively, with effect from 1 April 2018 and time limited to 31 March 2020 (with the exception of scout/guides groups which shall have no time limit); and
- (4) the new applications for discretionary rate relief be determined as follows:

Ellenor, Part Unit 1e, Mereworth Business Centre, Danns Lane, Watlington – 20% discretionary rate relief be awarded, backdated to 1 April 2017 and time limited to 31 March 2020;

The Wheels on Debussy, 6 Angel Walk, Tonbridge – 100% discretionary rate relief be awarded, time limited to 31 March 2020.

FIP 18/19 FINANCIAL PLANNING AND CONTROL

Decision Notice D180030MEM

The report of the Director of Finance and Transformation provided information on the Council’s key budget areas of salaries, major income

streams and investment income for the year ended 31 March 2018. It also gave details of the variations agreed in relation to the revenue budget, summarised to provide an overall provisional budget outturn position for 2017/18 which showed a net favourable variance of £639,735, affording the opportunity to transfer £500,000 to the Property Investment Fund Reserve which would be considered by the Cabinet on 6 June. Regarding the Business Rates Retention Scheme for 2017/18 it was noted that, for the first time since the introduction of the scheme in 2013, the Council was above the baseline set.

Details were provided of variations identified through budget monitoring in respect of the first month of 2018/19 which showed a net favourable variance of £3,424. An update was also given on capital expenditure and variations agreed in relation to the capital plan for the year ended March 2018 and the month of April 2018.

Reference was made to correspondence from the Ministry of Housing, Communities and Local Government in respect of passing on local council tax support funding to parish and town councils together with the response submitted. The Leader updated the position on representations made to the Minister via the local Members of Parliament.

RECOMMENDED: That

The contents of the report be noted and endorsed.

FIP 18/20 CORPORATE DEBT RECOVERY POLICY

Decision Notice D180031MEM

The report of the Director of Finance and Transformation gave details of the outcome of a review of the Council's Corporate Debt Recovery Policy and presented for approval an updated policy containing minor changes.

RECOMMENDED: That

The revised Corporate Debt Recovery Policy set out at Annex 1 to the report be approved for publication on the Council's website.

FIP 18/21 IT STRATEGY UPDATE

Decision Notice D180032MEM

The report of the Director of Finance and Transformation presented the draft IT Strategy for 2018 – 2022 setting out aims and ambitions at a high level for this period. It was noted that the new document set out strategic objectives which would be underpinned by projects to deliver

those goals. Particular reference was made to the priorities of reviewing the business system, use of mobile devices, improvement of the website, customer service and transformation, and training for staff and Members.

Attention was drawn to a number of minor stylistic amendments made to the document following observations by the Chairman of the Advisory Board.

RECOMMENDED: That

The IT Strategy for the period 2018 to 2022, as set out at Annex 1 to the report, be approved subject to action AP4 being strengthened to include the implementation of improvements in the website development plan.

MATTERS SUBMITTED FOR INFORMATION

FIP 18/22 REVENUES AND BENEFITS UPDATE

The report gave details of recent developments in respect of council tax, business rates, council tax reduction and housing benefits. Members were pleased to note that the council tax collection rate for 2017/18 was the highest in Kent for the third year running. The performance of the Benefits Service was also above the national and Kent average in terms of processing new claims and changes in circumstances.

It was noted that whilst Universal Credit roll-out in the Borough generally remained scheduled for November 2018, a number of job centres in post code areas affecting Tonbridge and Malling were going live by the end of May. Arrangements were accordingly being made for a briefing note and training to be made available to Members and staff.

FIP 18/23 PUBLICATION OF ALLOWANCES PAID TO MEMBERS DURING 2017/18

The Advisory Board received a copy of the statement of the actual allowances paid to Members during the financial year 2017/18 which had been published in accordance with Regulation 15(3) of the Local Authorities (Members Allowance) (England) Regulations 2003.

MATTERS FOR CONSIDERATION IN PRIVATE

FIP 18/24 EXCLUSION OF PRESS AND PUBLIC

The Chairman moved, it was seconded and

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

PART 2 - PRIVATE

MATTERS FOR RECOMMENDATION TO THE CABINET

FIP 18/25 DEBTS FOR WRITE OFF

(LGA 1972 Sch 12A Paragraph 2 – Information likely to reveal information about an individual)

Decision Notice D180033MEM

The report of the Director of Finance and Transformation sought approval of the writing-off of debts considered to be irrecoverable. Details were also given of debts under £1,000 which had been written-off in accordance with Financial Procedure Rule 17.2 together with cumulative totals of debts in the current and previous financial years and information on budgeted bad debt provision.

RECOMMENDED: That

The 13 items shown in the schedule of amounts over £1,000, totalling £27,481.45 be written-off for the reasons stated within the schedule.

FIP 18/26 LAND AT COMMERCIAL ROAD, TONBRIDGE

(LGA 1972 Sch 12A Paragraph 3 – Financial or business affairs of any particular person)

Consideration was given to the report of the Director of Central Services which gave details of circumstances arising in respect of an area of Council owned land at Commercial Road, Tonbridge and analysed options available for the future.

RECOMMENDED: That

The land be retained by the Council, a basic design be commissioned and the plot sold via public auction with potential to develop.

***Referred to Cabinet**

The meeting ended at 8.56 pm

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Communities and Housing Advisory Board of 29 May 2018 – minutes to follow

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Economic Regeneration Advisory Board of 4 June 2018 – minutes to follow

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Agenda Item 5

The minutes of meetings of Advisory Panels and Other Groups are attached, any recommendations being identified by an arrow.

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TONBRIDGE AND MALLING BOROUGH COUNCIL

TONBRIDGE FORUM

Monday, 16th April, 2018

Present: Cllr N J Heslop (Chairman), Cllr C P Smith (Vice-Chairman), Cllr Mrs J A Anderson, Cllr O C Baldock, Cllr Mrs P A Bates, Cllr P F Bolt, Cllr V M C Branson and Cllr F G Tombolis.

Together with County Councillor Mr M Payne and representatives from:

Society of Friends	Tonbridge Rotary Club
Tonbridge Art Group	Tonbridge Sports Association
Tonbridge Civic Society	Tonbridge Theatre and Arts Club
Tonbridge Line Commuters	Tonbridge Town Team
Tonbridge Lions Club	University of the Third Age and
Tonbridge Music Club	Women's Institute

Councillor H S Rogers were also present pursuant to Council Procedure Rule No 15.21.

Apologies for absence were received from Councillors D J Cure, Mrs M F Heslop, R D Lancaster, M R Rhodes, Miss G E Thomas, Mr R Long, The Bridge Trust, Kent Police (Tonbridge) and Tonbridge District Scout Council

TF 18/1 MINUTES

RESOLVED: That the Minutes of the meeting held on 4 December 2017 be approved as a correct record and signed by the Chairman.

TF 18/2 UPDATE ON ANY ACTION IDENTIFIED IN THE LAST MINUTES

The following updates were provided:

TF 17/9 (5) Chairman Announcements

The Chairman advised that positive feedback had been received regarding the new round table format trialled at the last meeting. However, further feedback was requested on the frequency and number of meetings and responses were invited by the end of May. A further update would be given at the next meeting of the Tonbridge Forum.

TF 17/15 Tonbridge Music Club – Recent Activities

Tonbridge Music Club (Mrs Rena Pope) was pleased to report that since the last meeting of the Forum the future of the organisation was more secure as a new Committee Membership had been successfully

established. A number of musical events were planned for the coming year and arrangements were already in hand for Christmas 2018.

TF 18/3 QUESTION FROM THE LOCAL MEMBER FOR TRENCH WARD

In advance of the meeting Councillor Georgina Thomas had requested an update regarding the cycle path/access near the Slade School. Unfortunately due to other commitments Councillor Thomas was unable to attend the meeting to provide greater detail around the original question.

A response from Kent County Council would be progressed out of meeting and Forum Members would be advised accordingly.

TF 18/4 UPDATE ON TONBRIDGE STATION IMPROVEMENTS AND HIGH STREET REVIEW

The Senior Schemes Manager (Jamie Watson) summarised the progress on the improvements to Tonbridge Station. It was reported that significant work was being undertaken on a detailed design and this would be shared with Members and the public once finalised.

Particular reference was made to Southeastern's proposed cycle hub on Barden Road. This had resulted in design work being required on the junction with Vale roundabout. In addition, separate works were necessary to ensure that cyclists remained safe while accessing the hub and a contraflow cycle lane was proposed.

There were also plans to try and retain the kiss and drop layby outside the station, remove the right hand turn into Priory Road and provide a traffic signalled junction at Waterloo Road granting pedestrian access.

To minimise disruption to traffic it was intended to commence construction at the start of the summer holidays 2018. However, a final programme/timetable for the works had not yet been established.

With regard to the recent review of the High Street it was noted that the on-line public consultation had ended on 4 March 2018. Members were reminded that the aim of the scheme was to provide a more attractive environment for pedestrians, reduce congestion and encourage business to the town.

Unfortunately, the public responses to the consultation illustrated negative feedback towards the project and particular concerns had been expressed regarding online bus stops, the location of bus stops and their use by 'idling' buses.

Overall, there had been a variety of responses but the overwhelming view was that bus stops represented a significant challenge. In response, Kent County Council would continue to explore ways to

improve traffic flows in the town and whether there was the potential to convert the loading bay/layby into a bus stop.

Tonbridge Civic Society commented on the improved appearance of the High Street and thanked Kent County Council for the significant investment into the Town. However, they asked that consideration be given to the structure of bus stops, potential improvements to the unattractive buildings, granite steps and cobbles alongside the station.

It was noted that these buildings were owned by Network Rail and regular lobbying was undertaken by the Chairman and the Borough Council to encourage improvements to the area.

A number of points were raised by the Forum related to improved signage to divert traffic along the Bordyke and away from the High Street, the raised table in the High Street being repeatedly mistaken for a pedestrian crossing, the impact on cyclists of online bus stops and the traffic delays caused by online bus stops.

In response, Mr Watson explained that:

- The aim of the scheme was to encourage traffic away from the High Street and the County Council would review the signage again.
- The raised table in the High Street was a traffic calming feature intended to encourage drivers to consider their environment.
- Whilst the need to improve cycle facilities was recognised the current configuration of the High Street meant it might not be possible to retain all lay-bys.
- The use of appropriate materials would be considered carefully to provide an attractive environment and ensure longevity.
- Bus operators had responsibility to ensure that their timetable did not create 'idling' issues and there was ongoing engagement with service providers to resolve this issue.

Finally, it was reiterated that the County Council would give further consideration to maintaining the free flow of traffic through the town and explore options around the online bus stops. A further update would be given at the next meeting of the Forum in September.

TF 18/5 TONBRIDGE FAIRTRADE TOWN

Tonbridge Town Team (Howard Porter) and the Economic Regeneration Officer (Jeremy Whittaker) set out proposals aimed at making Tonbridge a Fairtrade town.

The benefits of becoming a Fairtrade town were outlined and included:

- A positive contribution towards sustainable development
- Positive benefit to the local community
- Increased engagement with some larger retailers
- Promotional opportunities for Tonbridge

Initial interest to the proposals had been expressed from retailers and community groups between November 2017 and January 2018, with a resolution to support Fairtrade Tonbridge passed by the Borough Council in February 2018.

Promotional activities had been undertaken during Fairtrade Fortnight in February/March 2018 and Fairtrade produce had been introduced at the monthly Tonbridge Farmers Market in March.

A number of next steps to be undertaken were set out and included:

- Continuing to work through the application process
- Encouraging more local businesses and community organisations to get involved

It was reported that a Steering Group would convene for the first time later this month (April 2018) and Borough Councillor Frixos Tombolis had agreed to act as Chairman. A final application would be submitted in 2018.

Members fully supported the proposal especially as there was evidence that Fairtrade initiatives increased tourism, motivated staff and was a brand that was easily recognised and trusted by the public. It was also suggested that consideration be given to supporting 'Direct Trade' which was often viewed as complementary to Fairtrade certification.

In response, it was explained that once Fairtrade certification was achieved there was no reason why 'Direct Trade' could not form part of this initiative.

The community aspect of the initiative and the need to involve local workplaces and organisations was emphasised. Volunteers willing to participate were asked to contact Tonbridge Town Team for more information.

TF 18/6 KENT POLICE UPDATE

This item was WITHDRAWN from the agenda as Kent Police were unable attend for operational reasons.

TF 18/7 KENT COUNTY COUNCIL SERVICES UPDATE

The Kent County Council Community Liaison Officer (Anne Charman) reported on a number of County initiatives and consultations. A Kent County Council Services Update report setting out more details was attached to the agenda for information.

Particular reference was made to a number of key messages and these included:

- Many Council meetings were broadcast live and provided residents with the opportunity to watch how decisions were made. Meetings from the past year were available to view online at the Kent County Council website.
- The Guide to Apprenticeships and Made in Kent campaigns offered careers advice, information about different types of jobs and continued to encourage employers to register vacancies as numbers of young people registering for apprenticeships were exceeding placements.
- The deadline for applying to the Kent and Medway Business Fund, which offered zero % loans between £50,000 and £500,000 to small and medium sized businesses was 30 April 2018.
- The Combined Member Grant Scheme 2018/19 had opened on 1 April with £20,000 available to every County Councillor to fund both community and highway projects in their electoral division. Anyone interested should contact either County Councillors Michael Payne or Richard Long, although it was noted that requests for and pressures on funding were already significant.
- Everyone was encouraged to register to the Kent Public Health Observatory which provided information on public health based on data collection, analysis and interpretation.
- More than 97% of children across Kent had been allocated one of their chosen primary schools, with 97% getting their first preference. As a result, only 3% of families would be allocated a school they did not name.

Finally, all Kent County Council consultations could be viewed online at:

<http://consultations.kent.gov.uk/consult.ti>

Kent County Councillor Payne also reported on the refurbishment of Tonbridge library, the opening of the Nexus School in Upper Haysden Lane, reiterated the pressures on the recently opened Combined

Member Grant fund and encouraged everyone to use the online fault reporting tool for any problems on the roads and footways.

TF 18/8 TONBRIDGE AND MALLING BOROUGH COUNCIL SERVICES UPDATE

The Chairman (in his role as Leader of the Borough Council) provided an update on key points relevant to Tonbridge. The headline messages set out in the presentation would be available online and circulated with the Minutes. However, in summary these included:

- Keep Kent Clean and litter picks: A significant number of events had taken place in Tonbridge during March and April and all volunteers who had participated were thanked.
- Street Monitors and Flood Wardens would join forces for a big rubbish clearance at Sovereign Way Car Park on 12 May.
- Plans were in place to recruit a One You 'your home' advisor to be based at Warders Medical Centre.
- Tonbridge Area Churches were running litter picking events for young people over the 6 week summer holiday.
- External funding had been secured from developer contributions and there had been investment and improvements made to a number of facilities including Haysden Country Park, Tonbridge Racecourse Sportsground, Remembrance Gardens cycle way and Tonbridge Town Lock.
- Full time pay and display parking had been introduced around Tonbridge Castle Grounds car park to meet ongoing demand for public parking.
- Tonbridge Swimming Pool had received an industry standard QUEST award and was one of only 12 facilities who had received this rating. It was noted that both the Swimming Pool and Larkfield Leisure Centre had achieved this outstanding result and were in the top 2% nationally.
- The Borough Council had adopted a scheme in 2017 to pass on support to local businesses affected by the revaluation of business rates.
- The Borough Council was working in partnership to create a business hub for small and start-up businesses at the Castle Lodge and business engagement events had been established to help support local businesses.

- Support had been given to Tonbridge Creates to deliver a pop up shop on Tonbridge High Street at Angel Walk.

In response to a query regarding the introduction of car parking charges around Tonbridge Castle, the Chief Executive explained that these changes were to maximise the spaces available for public parking provision. The visitor spaces for those using the Castle offices were being retained.

The meeting ended at 9.00 pm

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TONBRIDGE & MALLING BOROUGH COUNCIL

CABINET

6 JUNE 2018

Report of the Director of Central Services & Monitoring Officer

Part 1 - Public

For recommendation to Council

1 REVIEW OF CONSTITUTION

Summary

This report updates Members on a review of the Council's constitution

1.1 Introduction

- 1.1.1 On 19 April 2018 the Overview & Scrutiny Committee considered a review of the Council's adopted Constitution. The report outlined proposed revisions to the Council's constitution which arose from a detailed review carried out with the aim of ensuring that all parts of the constitution are 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 has been 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 Subject to a number of further queries and amendments raised by Members of the Overview and Scrutiny Committee, it was recommended to Cabinet & Council that
- (a) the amended constitution be adopted; and
 - (b) 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
- 1.1.5 Where the proposed amendments are typographical, appropriate changes have been made to the draft Constitution appearing at **Annexes 1 to 6** of this report. The remaining queries are addressed at paragraph 1.6 below.

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 7)

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 Queries raised at Overview & Scrutiny Committee

1.6.1 A number of specific questions were raised at the meeting of the Overview & Scrutiny Committee, which Officers agreed would be considered in further detail prior to reporting to Cabinet. These are set out below.

Part 3 (Annex 3)

(i) Call-in of planning applications

1.6.2 Concerns were raised by some Members over the proposal at Page 71 to make any ward member call-in to the Area Planning Committee subject to the agreement of the relevant Area Planning Committee Chairman. In response to these concerns, the specific delegation (DPHEH 100) has been amended so that the Area Planning Committee Chairman will instead be a consultee to any determination by the Director of Planning, Housing & Environmental Health as to whether the request for call-in is supported with a reasoned justification on planning grounds. Beyond the role of consultee, the relevant Area Planning Committee Chairman will not be required to agree with the proposed call-in.

1.6.3 Members are asked to note that the time limit for making a request for call-in has also been amended, from the 28 day period within the current version of the constitution to a 21 day period within the revised version. In both cases, the period commences on the date of notification of the application (i.e. via List B) to Members. The reason for the proposed change is to align the call-in period to the statutory period for public consultation and objections from other consultees.

(ii) Number of members required to effect call-in

1.6.4 A query was raised as to whether this number was prescribed by statute, or could be locally set. It was further suggested that the number should be lowered from 5 to 3.

- 1.6.5 There is no requirement within the Local Government Act 2000 that a minimum or set number of members be required to effect a call-in. It is instead a matter for each relevant Authority to address through their Executive Arrangements.
- 1.6.6 However, the requirement for at least 5 members set out within Part 3 is inconsistent with other requirements for call-in set out elsewhere in the Constitution (i.e. within the Overview & Scrutiny Procedure Rules in Part 4) which provide that either the Chairman or 3 other members of the Overview & Scrutiny Committee may call-in a decision of the Executive. The stipulation for at least 5 Members within this Part has therefore been amended to either the Chairman or 3 other members of the Overview & Scrutiny Committee to ensure consistency.

Part 4 (Annex 4)

(i) Quorum for Council meetings

- 1.6.7 It was suggested that the quorum for Council should be one-third of the total number of members present, not one-quarter as set out in the draft.
- 1.6.8 The quorum for Council meetings is prescribed by the Local Government Act 1972 (paragraph 6 of Schedule 12), which provides that it should be one-quarter of the whole number of members of the Council.

(ii) Time limit for debating petitions at Council

- 1.6.9 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.
- 1.6.10 There is no reason in principle why petitions with over 1500 signatures could not be referred to either Council or Cabinet, depending on whether the subject matter was an executive or Council function. Nor is there any legal requirement for petitions to be considered by full Council in the first instance. Indeed, the process by which petitions are received and considered is entirely within the discretion of the Council. With this in mind, the draft petition scheme has been amended to allow for petitions with over 1500 signatures to be considered by either Council or Cabinet as appropriate.
- 1.6.11 There is similarly no legal restriction on the length of time a petition may be debated by the Council. The imposition of any time constraint and/ or the length of such a constraint is entirely within the gift of the Council. Members are therefore

invited to consider whether they wish to retain a time constraint on petition debates and if so, how long such a period should be.

Part 5 (Annex 5)

(i) Member attendance at training

- 1.6.12 Paragraph A 1.2 of Protocol A provides that any member who fails to attend licensing or planning training without reasonable excuse may not participate in the determination of planning applications or the business of the licensing authority (as the case may be) until such time as they have attended alternative training approved by the General Purposes Committee.
- 1.6.13 A query was raised at the Overview & Scrutiny Committee as to the powers of the Council to exclude members in such circumstances.
- 1.6.14 Counsel's opinion was previously sought by Kent Secretaries on various powers open to Councils in dealing with errant Members under the Code of Conduct. This included advice on removal/ suspension from Committees.
- 1.6.15 The view of Counsel was that, as a matter of principle, the sanction of removing a member from a committee of a local authority would be open to the authority. The removal decision would need to be made by the local authority itself and not by a committee of that authority. However, where the appointment of a member to a committee is the decision of one of the political groups, it was envisaged that only the leader of the relevant political group could remove the member from the committee as the power of removal from a committee yields to the political balance requirements. Accordingly, it would appear that where the committees are governed by the rules of proportionality, the most that can be done in relation to members of political groups is to make a recommendation to the relevant political group that the member be removed from a particular committee or committees. As a matter of practice, the recommendation to the relevant political group should come from the full Council, or from the committee of the Council that is responsible for dealing with the relevant issue e.g. Joint Standards Committee in relation to Code of Conduct issues. Members are asked to note that the position would therefore be different in relation to Independent Members.
- 1.6.16 Members are reminded that the Area Planning Committees are not subject to political balance rules on an individual basis. The Licensing & Appeals Committee is however subject to the political balance rules.

(ii) Use of Council logo

- 1.6.17 Protocol C provides that the Council logo shall not be downloaded, adapted, modified or used other than on the approved letterhead. In order to reflect the use of social media by members, it is proposed to amend this provision to permit the use by members of the logo on social media sites.

1.6.18 Members are also asked to note that functions of the Overview and Scrutiny Committee set out in Part 3 of the Constitution have also been expanded so as to ensure that they fully reflect the functions of the Committee as set out in the current version of the Constitution.

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

- (a) Consider whether they wish to retain a time limit on petition debates and if so, how long;
- (b) Subject to any further amendments arising out of the consideration of (a) above, **APPROVE** the proposed revisions to the constitution and **RECOMMEND** to Council 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

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

CABINET

06 June 2018

Report of the Chief Executive, Director of Finance and Transformation, Leader of the Council and Cabinet Member for Finance, Innovation and Property

Part 1- Public

Executive Non Key Decisions

1 REVENUE AND CAPITAL OUTTURN 2017/18

In accordance with the Council's Financial Procedure Rules we present a report and accompanying information detailing actual Revenue and Capital Outturn for the year ended 31 March 2018 and subsequent adjustments made in light of the Outturn position.

1.1 Introduction

1.1.1 A detailed statement of the revenue and capital outturn position for the year 2017/18 is provided in the attached booklet which has been compiled in liaison with Chief Officers, including, where appropriate, explanatory notes of variations between revised estimates and outturn. Variations between the original and revised estimates for 2017/18 were highlighted in the notes to the Annual Estimate papers presented to Members during the 2018/19 budget cycle.

1.1.2 In accordance with the Council's Constitution the Statement of Accounts which shows the outturn in the format specified by the Code of Practice on Local Authority Accounting in the United Kingdom 2017/18 will be presented to the **Audit Committee** for **approval**. The Director of Finance and Transformation will be presenting the Statement of Accounts to the Audit Committee on 23 July.

1.2 Overall Revenue Position

1.2.1 Members are to be advised that overall, the revenue outturn is within budget to the sum of £639,735 affording the opportunity to transfer £500,000 to the Property Investment Fund Reserve as detailed below. After taking into account this transfer, there is a favourable variance of £139,735 and a contribution to the General Revenue Reserve of £697,835 compared with the Revised Estimate figure of £558,100.

1.2.2 The favourable variance can, amongst other things, be attributed to the fact that for the first time since the introduction of the Business Rates Retention Scheme the Council is above the baseline set; overall housing benefit payments,

recoupments and contribution to the bad debt provision lower than budgeted; and management savings on the salary bill. Offset by, amongst other things, the contribution to the Property Investment Fund reserve and lower than budgeted performance in our major operational income streams.

1.2.3 We have as part of the closedown process undertaken a review of the specific earmarked reserves held by the Council. As a result of this review and in liaison with Management Team Cabinet is asked to note and endorse that:

- The sum of £500,000 is added to the Property Investment Fund Reserve to supplement future property fund investments to generate a better rate of return / increased investment income than might otherwise be achieved.

1.2.4 As mentioned above, measured against the Revised Estimate the outturn position is within budget to the sum of £139,735. The principal reasons for the favourable variance is given in the table below and a more detailed analysis of the outturn position is to be found in the attached Revenue and Capital Outturn Booklet.

Description	Revised Estimate 2017/18 £	Provisional Outturn 2017/18 £	Variation £
Property Investment Fund Reserve	0	500,000	500,000
Kent Business Rates Pool Growth Fund*	0	60,543	60,543
Building Control Partnership	46,000	85,053	39,053
Major Income Streams	(5,286,600)	(5,254,416)	32,184
Leisure Development	81,050	55,572	(25,478)
Payments to Principals / Ticket Refunds	363,000	335,298	(27,702)
Housing Benefits	198,750	67,823	(130,927)
Salary Monitoring Statement	9,228,500	9,055,600	(172,900)
Business Rates Retention Scheme	(1,988,317)	(2,326,598)	(338,281)
Other Net Changes	6,453,547	6,377,320	(76,227)
Total	9,095,930	8,956,195	(139,735)

*final figure subject to confirmation from business rates pool lead authority

1.2.5 **[Annex 1]** provides details of Service specific issues in respect of the revenue outturn for 2017/18.

1.3 Capital Plan

1.3.1 A draft outturn position was presented to the Finance, Innovation and Property Advisory Board on 23 May 2018 which showed actual net expenditure of £1,094,000 against a budget provision of £1,885,000.

1.3.2 Factors that contributed to the net underspend are given below.

- Capital renewals budgets totalling £1,121,000 with actual capital renewals expenditure totalling £659,000. Capital renewals provisions reflect predictions as to when assets will need to be replaced. Underspend can

largely be attributed to a lower than anticipated spend on capital renewals at our leisure facilities, in large part due to the replacement of fitness equipment at Larkfield Leisure Centre moving to 2018/19; and in respect of information technology.

- The very nature of capital expenditure and funding can see the rescheduling, reprofiling and review of future budget provision. Scheme budget provisions that are to be rescheduled, reprofiled or subject to review include the Virtual Desktop Infrastructure Project – in year underspend £80,000; Revenues and Benefits IT Digital Solution – in year underspend £65,000; and Racecourse Sportsground Riverside Revetment Works – in year underspend £28,000.

1.3.3 **[Annex 2]** provides details of Service specific issues in respect of the capital outturn for 2017/18.

1.4 Treasury Management and Investment Strategy Review

1.4.1 The Council adopted the December 2009 edition of the Chartered Institute of Public Finance and Accountancy Treasury Management Code of Practice and Cross-Sectoral Guidance Notes on 18 February 2010 and due regard has also been given to subsequent revisions to the Code. The Code requires an annual review report of the previous year to be presented and endorsed by Members. A copy of the annual review report for the year 2017/18 is attached at **[Annex 3]** and supersedes the update provided to the Audit Committee on 3 April 2018 which was recommended to Cabinet under minute AU 18/19.

1.4.2 As this is a **technical document**, if Members have any questions, could we please ask that you contact **Michael Withey on extension 6103** in advance of the meeting.

1.5 Balances and Reserves

1.5.1 **[Annex 4]** Table 1 shows the movement on the Special Projects Reserve.

1.5.2 **[Annex 4]** Table 2 details the movement on Other Earmarked Reserves.

1.5.3 **[Annex 4]** Table 3 gives details of some revenue adjustments agreed by the Director of Finance and Transformation during the closedown process.

1.5.4 The Council is required to have regard to the level of its balances and reserves before making decisions concerning its finances. The Council's General Fund working balance is set at £1,250,000 and this sum is considered appropriate for an authority of our size and scale. The position in respect of the Council's General Revenue Reserve is given below.

General Revenue Reserve		
	£	£
Balance at 1 April 2017		5,948,858
Contribution to / (from) Reserve		697,835
Balance at 31 March 2018		6,646,693

1.5.5 The Medium Term Financial Strategy anticipated a General Revenue Reserve balance at 31 March 2018 of £6,507,000.

1.6 Audit Committee

1.6.1 As mentioned earlier, a copy of the Statement of Accounts for 2017/18 is to be presented to the Audit Committee for approval on 23 July. The Accounts reflect the revenue and capital outturn position as detailed in this report and accompanying information, together with the subsequent adjustments as appropriate.

1.7 Legal Implications

1.7.1 There are a number of legislative requirements to consider as we move through the closedown process, and prepare and publish the Statement of Accounts.

1.8 Financial and Value for Money Considerations

1.8.1 The favourable variance of circa £640,000 affording the opportunity to transfer £500,000 to the Property Investment Fund Reserve to generate a better rate of return / increased investment income than might otherwise be achieved is clearly welcome.

1.8.2 However, this should not be confused with the latest projected 'funding gap' and, in turn, savings target of £1 million, which remains unchanged. Why is that? The favourable outturn position is in large part as a result of one-off better than budgeted performance rather than ongoing 'savings' and as a result does not contribute towards the savings target identified when setting the 2018/19 Budget.

1.9 Risk Assessment

1.9.1 The compilation and presentation of the revenue and capital outturn forms part of the closedown process, leading to the preparation and publication of the Statement of Accounts which is a statutory document. Failure to prepare and publish the Accounts within the statutory timescale and in accordance with the Regulations could adversely affect the Council.

1.10 Equality Impact Assessment

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

1.11 Recommendations

1.11.1 Cabinet is requested to:

- 1) Note and endorse the Revenue and Capital Outturn for the year 2017/18.
- 2) Note and endorse the action taken following a review of specific earmarked reserves set out at paragraph 1.2.3.
- 3) Note and endorse the Treasury Management and Investment Strategy Review 2017/18 [**Annex 3**].

Background papers:

Nil

contact: Sharon Shelton
Neil Lawley

Julie Beilby
Chief Executive

Sharon Shelton
Director of Finance and Transformation

Nicolas Heslop
Leader of the Council

Martin Coffin
Cabinet Member for Finance, Innovation and Property
and Deputy Executive Leader

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Revenue Outturn 2017/18 - Service Specific Issues

Corporate Services

The Outturn is £43,507 (£3,531,500 - £3,575,007) more than the 2017/18 Revised Estimate. The principal reasons for this are as follows:-

- a) Salaries, Recruitment Costs and Partnership Receipts (CS 2 / CS 7) – Net management savings on the salary bill £172,900.
- b) Council Offices (CS 3) – Building repairs expenditure is £45,243 less than estimated largely due to lower than anticipated expenditure on cyclical and routine servicing, together with deferral of expenditure to 2018/19.
- c) Council Offices (CS 3) – Reversal of prior year impairment of £18,667 following revaluation.
- d) Management and administration recharges are £23,662 less than estimated in part due to management savings on the salary bill.
- e) Depreciation charged to Service Budgets is £50,392 less than estimated largely due to lower than anticipated expenditure on IT infrastructure and renewal of IT equipment.
- f) Recharges to Service Budgets are £511,551 less than estimated.
- g) The balance of £157,180 is spread throughout the remaining Corporate Services budgets.

Chief Executive

The Outturn is £62,615 (£701,950 - £639,335) less than the 2017/18 Revised Estimate. The principal reasons for this are as follows:-

- a) Electoral Registration (CE 3) – Postage costs are £10,401 less than budgeted.
- b) Conduct of Elections (CE 4) – Residual balances in respect of contributions from other bodies net of costs amounting to £10,981 transferred to an earmarked reserve.
- c) Management and administration recharges are £30,539 less than estimated in part due to management savings on the salary bill.
- d) The balance of £10,694 is spread throughout the remaining Chief Executive budgets.

Director of Central Services

The Outturn is £63,876 (£105,050 - £41,174) less than the 2017/18 Revised Estimate. The principal reasons for this are as follows:-

- a) Community Safety (CEN 3) – Contribution to Community Safety Staffing is £17,875 less than estimated following withdrawal of third party funding.
- b) Local Land Charges (CEN 4) – Final instalment of New Burdens Grant of £19,963 following settlement of litigation claim.
- c) Local Land Charges (CEN 4) – Fee income (net) from search fees of £13,212 less than estimated reflecting current demand.
- d) Land Review (CEN 8) – Further work and associated additional expenditure of £13,416 in respect of the review and sale of Council owned assets in Tonbridge. Costs met from an earmarked reserve.
- e) Licences: Fee Paying (CEN 10) – Income from licence fees is £25,891 more than estimated largely due to an increase in the number of taxi and private hire vehicle licences.
- f) Management and administration recharges are £48,143 less than estimated in part due to management savings on the salary bill.
- g) The balance of £14,382 is spread throughout the remaining Director of Central Services budgets.

Director of Finance and Transformation

The outturn is £249,173 (£1,557,200 - £1,308,027) less than the 2017/18 Revised Estimate. The principal reasons for this are as follows:-

- a) Housing Benefits (FT 3) – Reflects actual level of benefit payments, recouplements and contribution to the bad debts provision with an overall decrease of £130,927 when compared with the revised estimate. The decrease in part is due to increased use of temporary accommodation provided by registered social landlords, which attract full subsidy from the DWP.
- b) Local Revenue & NNDR Collection (FT 4) – Summons costs recovered in the year are £12,866 more than estimated.
- c) Treasury Management & Banking Arrangements (FT 6) – Interest on investments and cash flow is £15,722 more than estimated as a result of higher than expected balances available for investment.
- d) Management and administration recharges are £78,505 less than estimated in part due to management savings on the salary bill.

- e) The balance of £11,153 is spread throughout the remaining Director of Finance and Transformation budgets.

Director of Planning, Housing and Environmental Health

The outturn is £127,482 (£3,181,650 - £3,054,168) less than the 2017/18 Revised Estimate. The principal reasons for this are as follows:-

- a) Development Management (PHEH 2) – Planning application fee income is £34,838 less than estimated reflecting the current volatility of the development environment.
- b) Building Control (PHEH 4) – Building Control Partnership costs are £39,053 more than estimated largely due to the use of agency staff to cover vacancies partly offset by lower staffing costs.
- c) Building Control (PHEH 4) – Building regulations fee income is £16,374 more than estimated due to higher than anticipated demand for building control services.
- d) Preparation of Local Development Framework (PHEH 5) – Expenditure on LDF is £41,464 more than estimated as work on the new Local Plan is progressed. Costs met from an earmarked reserve.
- e) Planning Policy (PHEH 6) – Government grant is £30,485 more than estimated following grants awarded under the New Burdens Doctrine and transferred to an earmarked reserve for future use.
- f) Private Sector Housing Renewal (PHEH 13) – Actual spend net of associated government grant in respect of Disabled Facilities and Housing Assistance Grants, together with repayments of grants by householders, is £24,437 lower than anticipated.
- g) Management and administration recharges are £161,103 less than estimated in part due to management savings on the salary bill.
- h) The balance of £10,438 is spread throughout the remaining Director of Planning, Housing and Environmental Health budgets.

Director of Street Scene, Leisure and Technical Services

The outturn is £118,571 (£7,469,400 - £7,350,829) less than the 2017/18 Revised Estimate. The principal reasons for this are as follows:-

- a) Refuse Collection (SSLTS 2) – Vale Rise Depot Recharge is £14,713 less than estimated as works to depot access was organised by Veolia.

- b) Refuse Collection and Recycling (SSLTS 2 / 3) – Refuse, Recycling and Green Waste Collection contract payments are £15,369 more than estimated due to higher than anticipated demand for ad hoc work.
- c) Haysden Country Park (SSLTS 16) – Maintenance of grounds is £12,421 more than estimated largely due to works to increase car parking space and path works.
- d) Countryside / Woodland Management (SSLTS 21) – trees health and safety expenditure is £19,676 more than estimated due to urgent health and safety works identified in tree survey.
- e) Cemetery (SSLTS 27) – Income is £11,912 less than estimated due to lower than anticipated demand for services.
- f) Youth & Play Development / Sports Development / Events Development / Leisure Marketing/Promotion (SSLTS 28 to SSLTS 31) – Supplies and services expenditure net of income is £25,478 less than estimated.
- g) Parking (SSLTS 32) – Payments to principals are £27,702 less than estimated believed to reflect growth in home delivery of groceries.
- h) Parking (SSLTS 33 / 35) – Income from short/long stay parking, season tickets, residents parking permits and penalty charge notices is £23,864 less than estimated.
- i) Management and administration recharges are £73,359 less than estimated in part due to management savings on the salary bill.
- j) Building repairs expenditure is £14,942 more than estimated in part due to higher than anticipated cost of works to Angel Centre changing room.
- k) Depreciation and impairment charged to Service Budgets is £30,077 less than estimated in part due to the replacement of fitness equipment at Larkfield Leisure Centre moving to 2018/19.
- l) Revenue Expenditure funded from Capital under Statute is £46,939 less than estimated largely due to underspend on Community Group Funding, Car Park Action Plan and Drainage Improvement Programme Capital Plan provisions.
- m) The balance of £23,965 is spread throughout the remaining Director of Street Scene, Leisure and Technical Services budgets.

Capital Outturn 2017/18 - Service Specific Issues

Planning, Housing and Environmental Health Services

- a) Housing Assistance Grants (CP3). Actual spend net of repayments of grants by householders is £6,000 compared to budget provision of £30,000.

Street Scene, Leisure and Technical Services

- a) Racecourse Sportsground Riverside Revetment Works (CP5). Actual net spend £4,000 compared to budget provision of £32,000. Works to be retendered in 2018/19.
- b) Car Parking Action Plan (CP7). Actual spend £4,000 compared to budget provision of £28,000. Balance to be rolled forward to fund further work in 2018/19.
- c) Capital renewals budgets (CP9) totalling £935,000 with actual capital renewals expenditure totalling £576,000. Underspend can largely be attributed to a lower than anticipated spend on renewal of vehicles, plant and equipment at our leisure facilities, in large part due to the replacement of fitness equipment at Larkfield Leisure Centre moving to 2018/19.

Corporate Services

- a) General IT Developments (CP11). Actual spend £1,000 compared to budget provision of £30,000.
- b) Council Chamber Conference System (CP11). Actual spend £68,000 compared to budget provision of £95,000. Balance of funding to be used to upgrade meeting room projection equipment.
- c) Virtual Desktop Infrastructure (CP11). Actual spend £120,000 compared to budget provision of £200,000. Balance to be rolled forward to fund further work in 2018/19.
- d) Revenues and Benefits IT Digital Solution (CP11). No spend compared to budget provision of £65,000. Project to be progressed in 2018/19.
- e) Capital renewals budgets (CP12) totalling £185,000 with actual capital renewals expenditure totalling £79,000. Underspend can largely be attributed to a lower than anticipated spend on renewal of IT equipment.

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Tonbridge and Malling Borough Council

Treasury Management Annual Report 2017/18

1.1 Introduction

1.1.1 This Council is required by regulations issued under the Local Government Act 2003 to produce an annual treasury management review of activity and the actual prudential and treasury indicators for 2017/18. This report meets the requirements of both the CIPFA Code of Practice on Treasury Management (the Code) and the CIPFA Prudential Code for Capital Finance in Local Authorities (the Prudential Code).

1.1.2 During 2017/18 the minimum reporting requirements were that full Council should receive the following reports:

- an annual treasury strategy in advance of the year;
- a mid-year treasury update; and
- an annual review following the end of the year describing the activity compared to the strategy (this report).

In addition, treasury management updates have been presented to each meeting of the Audit Committee throughout the 2017/18 financial year. Treasury performance was also considered at the Finance, Innovation and Property Advisory Board through the regular Financial Planning and Control reports.

1.1.3 Changes in the regulatory environment place a much greater onus on Members for the review and scrutiny of treasury management policy and activities. This report is important in that respect, as it provides details of the outturn position for treasury activities and highlights compliance with the Council's policies previously approved by Members.

1.1.4 This Council also confirms that it has complied with the requirement under the Code to give prior scrutiny to all of the above treasury management reports by the Audit Committee before they were reported to full Council.

1.2 The Economy and Interest Rates

1.2.1 Bank of England forecasts following the June 2016 referendum anticipated a significant slowing of UK GDP growth. The Bank responded in August 2016 by cutting Bank Rate from 0.5% to 0.25% and making available over £100bn of cheap financing to the banking sector. Both measures were intended to stimulate growth in the economy. The forecasts now appear to have been overdone with the UK economy returning a G7 leading growth rate of 1.8% in 2016 followed by the same in 2017.

1.2.2 During 2017 there was a major shift in expectations in financial markets in terms of how soon Bank Rate would start on a rising trend. After the UK economy surprised on the upside with strong growth in the second half of 2016, growth did weaken in the first half of 2017. The main reason for this was the sharp

increase in inflation caused by the devaluation of sterling after the referendum resulting in higher import costs. This caused a reduction in consumer disposable income as inflation exceeded average wage increases. Consequently, the services sector of the economy, accounting for around 75% of GDP, saw weaker growth as consumers responded by reducing expenditure.

- 1.2.3 The September 2017 MPC meeting provided a shock to the markets with the tone in the minutes pointing to a Bank Rate increase in the near future. The November MPC quarterly Inflation Report meeting duly delivered withdrawing the 0.25% emergency rate cut implemented in 2016. The minutes from that meeting were viewed as dovish with little pressure to raise rates in the near term. In particular, GDP growth forecasts were again weak with little evidence of wage increase pressures despite remarkably low unemployment. The MPC forecast that CPI would peak at about 3.1% and chose to look through that breaching its 2% target as this was a one-off result of the devaluation of sterling following the referendum. The inflation forecast showed that the MPC expected inflation to come back to target (2%) over the next three years.
- 1.2.4 GDP growth in the second half of 2017 however came in stronger than expected and the start of 2018 saw evidence that wages were increasing at a faster pace. The February 2018 MPC meeting minutes revealed another sharp hardening in MPC warnings focusing on a reduction in spare capacity in the economy, weak increases in productivity, higher GDP growth forecasts and a shift in their time horizon focusing on a two year time frame to manage inflation. This resulted in Markets anticipating a Bank Rate rise as early as May 2018.

1.3 Treasury Position at 31 March 2018

- 1.3.1 At the beginning and the end of 2017/18 the Council's debt and investment position was as follows:

	31 March 2017 £m	Rate / Return %	Average duration Days	31 March 2018 £m	Rate / Return %	Average duration Days
Variable rate debt:						
Overdraft	0.0	-	-	0.0	-	-
Total debt	0.0	-	-	0.0	-	-
Fixed rate investments:						
Cash flow surpluses	-	-	-	-	-	-
Core cash	17.0	0.69	118	13.0	0.80	118
Variable rate investments:						
Cash flow surpluses	6.1	0.50	61	6.4	0.47	3
Core cash	7.0	0.65	114	7.0	0.60	50
Sub-total	30.1	0.64	105	26.4	0.67	72
Long term investment						
Property Funds	-	-	-	3.0	3.73	-
Total investments	30.1	0.64	-	29.4	1.47	-

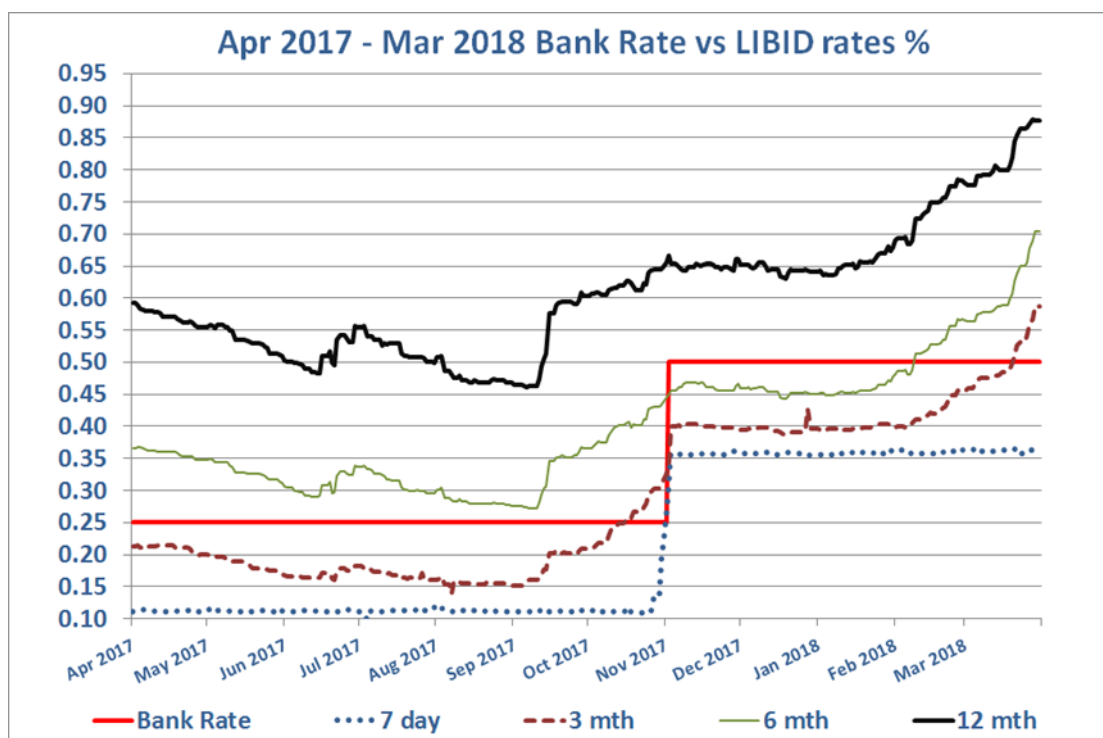
- 1.3.2 The modest fall in investment balances reflects use of the capital reserve (£1m) to finance capital expenditure offset by a rise in other reserves and balances reflecting savings against budget at outturn.

1.4 The Strategy for 2017/18

- 1.4.1 The expectation for interest rates within the treasury management strategy for 2017/18 anticipated that Bank Rate would not start rising from 0.25% until quarter 2, 2019 and then only increase once more before March 2020. Continued uncertainty in the aftermath of the 2008 financial crisis promoted a cautious approach, whereby investments would continue to be dominated by low counterparty risk considerations, resulting in relatively low returns.

1.5 Investment Rates in 2017/18

- 1.5.1 Rates offered by Banks for deposits continued at depressed levels at the start of 2017/18 due, in part, to a large tranche of cheap financing made available under the Bank of England's Term Funding Scheme. This facility ended in February 2018. Since mid-2017 investment rates for 3 months and longer began a rising trend in expectation of Bank Rate rising. Bank Rate was increased from 0.25% to 0.5% in November 2017. Further increases are expected over the next few years.



1.6 Investment Outturn for 2017/18

- 1.6.1 The Council's investment policy sets out the approach for choosing investment counter-parties and is based on credit ratings provided by the three main credit rating agencies. This is supplemented by additional market information including credit rating outlooks and credit default swap data (CDS). The

2017/18 Annual Investment Strategy was approved by Council in February 2017 and was subjected to a mid-year review in September 2017. In undertaking the review, no changes were made to the Council's minimum counter-party credit requirement (Fitch A-, F1 unless UK state owned) or counter-party exposure limits (maximum of 20% of funds for non-UK state owned financial institutions). Subject to a number of constraints, discretion to extend investment duration by up to six months over the Council's external treasury advisor's suggested duration was also retained.

- 1.6.2 **Cash flow investment.** In 2017/18 cash flow surpluses averaged £14.8m and earned an average rate of return of 0.47%. The average 7-day LIBID rate, used to compare performance, was 0.21%. Cash flow surpluses arise from the timing difference between the receipt of monies (from council tax, business rates, grants, etc.) and its subsequent payment (to precepting authorities, housing benefit recipients, suppliers, staff, etc.). Cash flow surpluses are required to meet regular payment obligations and as a consequence are invested in bank deposit accounts and money market funds which allow next day access. The opportunity to invest for longer durations and generate additional yield is taken when cash flow surpluses permit.
- 1.6.3 **Core cash investment.** In 2017/18 core cash averaged £21.9 and earned an average rate of return of 0.67%. The 3-month LIBID rate used as a comparator was 0.29%. Core cash comprises the authority's revenue and capital reserves. Unlike cash flow, core cash is not required to meet regular payment obligations and is available to invest for longer durations including durations exceeding one year. This added flexibility allows core cash to generate a better return relative to cash flow surpluses.
- 1.6.4 **Long term Investment.** The availability of cash balances over the longer term (10 years) and the suitability of different types of long term investment (equities, bonds and commercial property) was explored in the report to Audit Committee, January 2017. Of the alternatives, investment in property funds was considered best suited to meet the Council's more immediate funding need: a sustainable, stable income stream.
- 1.6.5 £2m of the Council's existing cash balances was identified for long term investment and applied to investment in property funds. A further £1m anticipated from the disposal of existing property assets has also been applied now, bringing the total investment in property funds during 2017/18 to £3m. Additional property fund investments are expected over time as funds become available from asset disposals and other windfalls.
- 1.6.6 In 2017/18 investment in property funds averaged £2m and earned an average rate of return of 3.73% excluding capital appreciation. In addition to the income stream the underlying value of each property fund investment showed steady growth. Subject to economic performance, the sale value of units is expected to exceed the purchase price some time during the 2018/19 financial year.

1.6.7 **Summary.** Investment performance for the financial year as a whole is summarised in the table below:

	2017/18 Average Balance £m	Return %	2017/18 Interest/ Dividends Earned £	2017/18 Revised Estimate £	Variance Better (worse) £
Cash flow surpluses	14.8	0.47	69,357	52,000	17,357
Core cash	21.9	0.67	147,722	144,000	3,722
Long term investment	2.0	3.73	74,643	80,000	(5,357)
		Total	291,722	276,000	15,722

1.6.8 The performance of the Authority's investments bettered the revised estimates by £15,722 (£165,722 when compared to the 2017/18 original estimates).

1.6.9 In finalising the Council's revised estimates, autumn 2017, the income estimate for cash flow was retained at its original level of £52,000, the return from core cash was increased from £74,000 to 144,000 and a new estimate to reflect income from property funds of £80,000 was introduced.

1.6.10 The significant increase in income from core cash reflected a combination of: higher than expected balances due to a delay by the Valuation Office in resolving outstanding business rate appeals; extending investment duration (higher proportion of 12 month deposits) and; managing cash flow and core cash balances in a more innovative way. Rather than opt for shorter duration cash flow investments as the financial year progressed (9 month investments at the start of the financial year, 6 months investments in the middle, 3 month investment towards the end) excess cash flow was transferred to core cash to take advantage of longer duration investments. Cash flow balances were then topped up towards the end of the financial year from available core cash maturities.

1.6.11 The improved performance for cash flow surpluses relative to the revised estimate (£69,357 actual vs £52,000 estimate) reflects the rapid improvement in money market fund returns following the Bank Rate rise November 2017.

1.7 Compliance with the Annual Investment Strategy

1.7.1 The Annual Investment Strategy aims to limit the Council's exposure to investment risks by prescribing: minimum counter-party credit criteria; maximum

exposure limits in respect of sovereigns, counter-parties and group of related counter-party; the type of investment instrument that can be used; and investment duration limits. Throughout the period April 2017 to March 2018 the requirements set out in the Annual Investment Strategy for 2017/18, as approved by Council in February 2017, were complied with. No liquidity issues were experienced resulting in nil borrowing throughout 2017/18.

1.8 MiFID II.

- 1.8.1 The Financial Conduct Authority (FCA) implementation of the European Union's second Markets in Financial Instruments Directive (MiFID II) commenced on 3 January 2018. The directive impacts on the way local authorities access financial services provided by banks, advisors, brokers and fund managers.
- 1.8.2 Under MiFID II, all local authorities are by default classified as 'retail clients' i.e. the same as a private individual. Those authorities that meet certain quantitative and qualitative criteria are able to opt-up to professional status. Professional status is considered vital to ensure the Council is able maintain adequate market access to ensure diversification, liquidity and yield can continue to be managed effectively.
- 1.8.3 Thirteen opt-up applications were submitted (autumn 2017) to the Council's money market funds, property funds, brokers and some banks / building societies. In response, twelve institutions classified the Council's treasury operation as 'elective professional'. The thirteenth application was sent to a building society and has yet to be determined.

1.9 Treasury and Prudential Codes of Practice

- 1.9.1 Updated Treasury Management and Prudential codes of practice were published by CIPFA on 21 December 2017. Whilst the codes apply to the 2018/19 financial year, given the timing of their release, CIPFA's Treasury and Capital Management Panel recommend the requirements of both Codes be 'implemented as soon as possible' and acknowledge that they may not be 'fully implemented until' the '2019/20 financial year'.
- 1.9.2 The Codes have been updated to address concerns arising from the Localism Act 2011 (commercialism agenda). The focus of both updates is to ensure the risks associated with investment in '**non-financial assets** which are held primarily for financial returns' are properly evaluated, reported, subject to scrutiny and managed over time. Non-financial assets will include the purchase of property to rent, shares and loans in subsidiaries or other outsourcing structures such as IT or building services providers.
- 1.9.3 The updated Codes will require amendment to the Council's Treasury Management Practices and Capital Strategy. Progress to ensure full compliance will be reported to Audit Committee during 2018.

Prudential and Treasury Indicators

1 Prudential Indicators	2016/17 Actual £'000	2017/18 Original £'000	2017/18 Actual £'000
Capital expenditure	1,632	3,128	1,834
Ratio of financing costs to net revenue stream	-2.33%	-1.10%	-2.46%
Net borrowing requirement:			
Brought forward 1 April	nil	nil	nil
Carried forward 31 March	nil	nil	nil
In year borrowing requirement	nil	nil	nil
Capital financing requirement as at 31 March	nil	nil	nil
Annual change in capital financing requirement	nil	nil	nil
Incremental impact of capital investment decisions:			
Increase in Council Tax (Band D) per annum	£0.10	£0.48	£0.48

2 Treasury Management Indicators	2016/17 Actual £'000	2017/18 Original £'000	2017/18 Actual £'000
Authorised limit for external debt:			
Borrowing	nil	5,000	nil
Other long term liabilities	nil	nil	nil
Total	nil	5,000	nil
Operational boundary for external debt:			
Borrowing	nil	2,000	nil
Other long term liabilities	nil	nil	nil
Total	nil	2,000	nil
Actual external debt	nil	nil	nil
Upper limit for fixed rate exposure over one year at year end	nil	0 – 60%	nil
Upper limit for variable rate exposure under one year at the year end	13,098 (43.5%)	40 – 100%	13,434 (45.6%)
Upper limit for total principal sums invested for over 364 days	nil (0%)	60%	3,000 (10.2%)

3 Maturity structure of new fixed rate borrowing during 2017/18	Upper limit %	Lower limit %
Under 12 months	100	nil
Over 12 months	nil	nil

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TABLE 1

Special Projects Reserve	2017/18		
	Revised £	Outturn £	Variance £
Contribution to/(from) in Year			
Community Housing Fund	17,650	17,718	68
Waste & Street Scene Initiatives	12,500	7,414	(5,086)
Borough Signage	(2,050)	(3,394)	(1,344)
Housing Survey	(24,000)	(39,015)	(15,015)
Repossessions Prevention Fund	(2,000)	(3,123)	(1,123)
Social Housing Fraud Initiative	(1,900)	-	1,900
Movement in Year	200	(20,400)	(20,600)

TABLE 2

Other Earmarked Reserves	2017/18		
	Revised £	Outturn £	Variance £
Contribution to/(from) in Year			
Community Development	-	5,949	5,949
Election Expenses	25,000	35,981	10,981
Homelessness Reduction	159,150	179,576	20,426
Housing & Welfare Reform	53,200	53,200	0
Local Development Framework	15,000	1,897	(13,103)
Tonbridge & Malling Leisure Trust	100,000	100,000	0
Asset Review	-	(13,416)	(13,416)
Business Rates Retention Scheme	(200,000)	(139,457)	60,543
Economic Development	(17,600)	(15,649)	1,951
Housing Assistance	(10,000)	0	10,000
Invest to Save	(218,400)	(138,226)	80,174
Planning Inquiries	(6,950)	(6,953)	(3)
Public Health	(6,450)	14,754	21,204
Supporting People	(53,200)	(53,200)	0
Transformation	(10,000)	60,000	70,000
Movement in Year	(170,250)	84,456	254,706

TABLE 3

Revenue Adjustments	2017/18		
	Revised £	Outturn £	Variance £
Expenditure / (Receipts) in Year			
Rechargeable Works Admin.	-	787	787
Miscellaneous Cash	-	104	104
Re-issue Write Back Payment	-	100	100
Movement in Year	-	991	991

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TONBRIDGE & MALLING BOROUGH COUNCIL

CABINET

06 June 2018

Report of the Director of Central Services and Monitoring Officer

Part 1- Public

Executive Non Key Decisions

1 CORPORATE ENFORCEMENT POLICY

1.1 Background

1.1.1 A recent audit of risk management procedures identified a need for the Council to adopt a Corporate Enforcement Policy. The policy seeks to set out the broad principles which the Council will apply across its services when carrying out its regulatory activities (in addition to complying with all necessary statutory provisions). The policy in particular identifies how enforcement will be prioritised towards higher risk (or higher community impact) activities and sets out the Council's general approach to regulation. The draft policy is at **Annex 1**.

1.1.2 The policy adopts a proportionate and risk-based approach, where lower-impact or lower-risk activities are first addressed through advice and assistance (which may be escalated if compliance is not achieved) through to formal notice, penalty notice or prosecution/ other legal action for higher risk or higher impact activities. By taking this approach, the policy aligns with national guidance on local authority enforcement and with the Council's vision of providing good value for money services and strong local leadership, by the use of targeted enforcement.

1.1.3 Whilst many services already operate a service-specific policy (for example, Planning Enforcement, Licensing) a number of services do not. For those services, the policy will provide a starting point for officers in guiding their enforcement activities and ensuring the right measures are used in the right circumstances. Where services have their own policy, the corporate policy will underpin their enforcement activities.

1.2 Legal Implications

1.2.1 Whilst there is no legal requirement for the authority to have such a policy, it is generally seen as good practice to publicise the general approach to regulation which the Council seeks to adopt. This is also in line with the transparency agenda and national guidance regarding regulatory activities. The policy operates in addition to all existing legal requirements upon the Council in its regulatory activities.

- 1.2.2 The policy will assist in providing reasoned justification for why a particular approach has been taken in a particular case, or where the Council has decided not to take action. This may be valuable in defending the Council's stance on a particular issue (whether in the courts or otherwise). Furthermore, by detailing the approach the Council will take to costs recovery in the courts, this will provide a valuable evidence base to present to a bench in order to justify the costs we seek to recover and it is hoped that this will enhance the Council's costs recovery.

1.3 Financial and Value for Money Considerations

- 1.3.1 There are no particular financial or value for money considerations for the adoption of this policy. By stating the Council's basis of cost recovery for court proceedings there may be a slight uplift (particularly in the Magistrates' Court) in cost recovery when the Council takes legal action.

1.4 Risk Assessment

- 1.4.1 The lack of a Corporate Enforcement Policy was highlighted as a risk item through the recent audit of the Council's risk management procedures.

1.5 Equality Impact Assessment

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

1.6 Policy Considerations

- 1.6.1 Community
1.6.2 Crime & Disorder Reduction

1.7 Recommendations

- 1.7.1 It is recommended that Cabinet **ADOPTS** the Corporate Enforcement Policy attached at **Annex 1** to this report.
- 1.7.2 It is also recommended that Cabinet **DELEGATES** any amendments to this policy (to the extent they are necessitated by changes in legislation or national policy) to the Director of Central Services and Monitoring Officer.

Background papers:

contact: Kevin Toogood

Nil

Adrian Stanfield
Director of Central Services and Monitoring Officer

Tonbridge & Malling Borough Council

Corporate Enforcement Policy



1. INTRODUCTION

- 1.1 Economic regeneration is one of the key priorities of Tonbridge and Malling Borough Council. We are committed to supporting our businesses and wider community through co-ordinated regulatory delivery and by providing appropriate advice and guidance. However, there are occasions where organisations or individuals may come into conflict with the regulatory framework and on such occasions the Council may need to take appropriate action to deal with these issues.
- 1.2 This document sets out our Enforcement Policy and outlines what residents, businesses, consumers and workers can expect from the Council in performing its regulatory enforcement functions. In certain circumstances individual services such as Licensing, Planning, Street Scene & Leisure may have more detailed service specific enforcement policies which are published separately. Where no service specific policy is in place, the relevant service will apply the principles of this Policy.
- 1.3 The Council will apply the principles of the Regulators' Code¹ to promote an efficient and effective approach to regulatory inspection and enforcement, improving the outcome of regulation without imposing unnecessary burdens on businesses or individuals.
- 1.4 This policy also sets out the approach to be followed by authorised officers when making decisions in respect of the Council's compliance and enforcement activities. The Council is committed to ensuring that all authorised officers will abide by this policy, in addition to any relevant service enforcement policies.
- 1.5 Where any conflict arises between this Corporate Enforcement Policy and any service-specific policy in place, the provisions of the service-specific policy will apply. Any conflict between this Policy, any service-specific policy and any statutory or other legal requirement will be resolved in favour of the legal requirement.

Legislative Framework

- 1.6 The Council must have regard to the provisions of the Regulators' Code when exercising specified functions under the Legislative and Regulatory Reform (Regulatory Functions) Order 2007 (as amended). The specified regulatory functions include powers and duties relating to the following:
- a) Anti-social behaviour
 - b) Waste and Street Scene

¹ See Appendix B

- c) Environmental Protection
- d) Food safety
- e) Health and Safety
- f) Housing
- g) Licensing
- h) Public Health

1.7 In relation to Town & Country Planning, the enforcement regime is governed by the Town & Country Planning Act 1990. The Council's policy in relation to such enforcement is addressed in the Council's Planning Enforcement Plan.

2. AIMS AND OBJECTIVES

2.1 The policy reflects the Council's Corporate Strategy. In particular, valuing our environment and encouraging sustainable growth, promoting fairness and focussing on good value for money for the businesses and residents of the Borough in order to deliver good value services, strong leadership and address the needs of the borough.

2.2 The vision for Tonbridge and Malling is achieved by the Council working in partnership with key public sector organisations, residents, businesses, community and voluntary groups throughout the borough.

2.3 We will work with those we regulate and seek to promote compliance e.g. through advisory activities, intelligence-led checks and proportionate responses to regulatory breaches.

2.4 Whilst we will provide support, advice and guidance to those endeavouring to comply we will deal firmly with those that deliberately or persistently fail to comply.

3. PRINCIPLES OF GOOD REGULATION

3.1 The Council will ensure that the allocation of regulatory efforts and resources will be targeted so resources are focused on those least likely to comply and where risk is highest. This supports the Council's vision of providing strong local leadership.

3.2 The following principles will be applied in respect of any advice given:

- a) Advice given will distinguish between statutory requirements and advice or guidance aimed at improvement above minimum standards;

- b) Response to requests for advice on non-compliance will be provided without directly triggering enforcement action and will seek primarily to provide the advice and guidance necessary to help ensure compliance;
- c) Information and advice will be provided in plain language on the rules that we apply;
- d) We will provide information and advice in a way that enables individuals and businesses to clearly understand what is required by law.

Fair Enforcement

3.3 The Council is committed to fair and objective enforcement ensuring that all its policies are applied in a non-discriminatory manner and in a way which seeks to enhance good community relations.

3.4 The Regulators' Code states principles that we will have regard to:

- Regulators should carry out their activities in a way that supports those they regulate to comply and grow;
- We will choose proportionate approaches when dealing with those we regulate and consider if similar outcomes can be achieved by less burdensome means. When we design policies and operational procedures we will consider how we can minimise the costs of compliance for those we regulate to encourage and promote compliance;
- Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views; Before changing policies and procedures we will consider the impact on those we regulate and we will clearly explain what the non-compliant item or activity is, the advice given, actions required or decisions taken and the reasons for this;
- Appeal mechanisms and complaints procedures will be clearly explained and publicised;
- Regulators should base their regulatory activities on risk;
- Risk priorities will be based on evidence and resources allocated appropriately. Intervention types will vary according to the risk level and we will recognise the compliance record of those we regulate, including earned recognition and external quality assurance schemes. We participate in the Primary Authority partnership approach which seeks to provide consistent advice that has been agreed with a single regulator;
- Regulators should share information about compliance and risk: Where it is legal to do so, we will work with other internal and external regulators to help target resources and minimise duplication;
- Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply. We will provide advice and guidance in a clear, accessible and concise format to help those we regulate understand and meet their responsibilities;

- Regulators should ensure that their approach to their regulatory activities is transparent. We will publish service standards that provide clear information on how we will communicate with those we regulate, how we can be contacted and our approach to compliance checks.

What is Enforcement?

3.5 There are 3 broad stages to any enforcement action taken by the Council.

These are:

- Investigation
- Assessment
- Action

Investigation

3.6 Where the Council becomes aware of activities suspected to be in breach of relevant legislation, the first step will be to carry out investigations to ascertain whether, and to what extent, activities are being carried out in breach of the relevant controls. The nature of those investigations will be specific to the circumstances and may or may not be protracted. Where necessary, the Council may also appoint external consultants to assist in the investigation and in evidence gathering.

Assessment

3.7 Once the Council has obtained sufficient information, it will assess the information obtained to reach a view on whether there has in fact been a breach of any legislative provision and, if so, what action if any it might be appropriate to take. This may be done in consultation with the Council's in-house legal team or external legal support where necessary.

Action

3.8 Following assessment of the issues, the Council may have a range of options in terms of the action it can take. These are set out in the "enforcement options" section below.

3.9 The nature of the Council's investigations may require that details are kept confidential. However, where possible and appropriate we will advise relevant parties of the current status of an investigation at appropriate stages.

4. ENFORCEMENT OPTIONS

- 4.1 There are a range of options open to officers involved in regulation. In the first instance we will seek to provide information, advice and guidance, unless breaches are severe with potentially serious consequences or otherwise require immediate action to be taken. Targeted and proportionate enforcement measures help to deliver the good value for money services and strong local leadership envisaged in the Council's Corporate Strategy.
- 4.2 When considering formal enforcement action the officer will discuss the circumstances with those suspected of a breach and take these into account when deciding on the best approach. This will not apply where immediate action is required to prevent or to respond to a serious breach or where to do so is likely to defeat the purpose of the proposed enforcement action.
- 4.3 The officer will give clear reasons for any formal enforcement action to the person or business against which action is being taken at the time the action is taken. The reasons will be confirmed in writing at the earliest opportunity. The complaints and relevant appeals procedure for redress will also be explained at the same time.
- 4.4 Businesses may enter into a contractual partnership arrangement (either individually or as part of a trade association) with a local authority- which may be TMBC or another authority- for the purposes of obtaining tailored advice on matters such as environmental health and trading standards. This is known as the "Primary Authority" scheme. Sole traders or businesses with only one outlet/ premises, can access an informal (i.e. non-contractual) version of this scheme, which is known as "Home Authority". If a business has a Primary Authority (or Home Authority scheme), the Council will contact the Primary or Home Authority before enforcement action is taken, unless immediate action is required because of imminent danger to health, safety or the environment. Officers will abide by LBRO guidance concerning the Primary Authority scheme.
- 4.5 The methods of enforcement selected will be calculated to produce the highest reasonable standards of compliance within the least time. In taking action to ensure compliance, officers will consider the following when deciding on the most appropriate enforcement method:
- a) The seriousness of the breach
 - b) The different options for remedying the breach
 - c) The degree of risk
 - d) The circumstances of each case and the likelihood of recurrence
 - e) Previous history of the offender
 - f) Age and circumstances of the offender
 - g) Date of the offence
 - h) Likelihood of achieving a satisfactory outcome
 - i) Precedent effect
 - j) General attitude of the offender

- k) Legal imperatives, e.g. statutory requirement to serve a notice
- l) Relevant guidance
- m) Sufficiency of admissible evidence
- n) Public Interest
- o) Prevalence of the offence locally or nationally

4.6 A variety of enforcement options are set out below which could be used at any stage - they are not sequential.

Advice

4.7 In the first instance, consideration will be given to whether advice regarding a breach or potential breach of legislation is appropriate. When advice is given it will normally be put in writing unless the breach is very minor or the matter is rectified on the spot.

Referral to Mediation Service

4.8 In appropriate cases officers may consider a referral to the Mediation Service. An impartial, and confidential service that provides a process for those in dispute to reach agreement on a range of issues such as noise, rubbish, pets, damage to property, harassment, boundaries, fences and shared areas.

Warning Letter

4.9 In certain circumstances it may be appropriate to issue a warning letter bringing alleged offences to the attention of the person responsible for the alleged breach indicating ways to avoid commission of similar offences in the future. A warning letter will set out what should be done to rectify the breach and to prevent re-occurrence. If a similar breach is identified in the future, this letter will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such a letter cannot be cited in court as a previous conviction but it may be presented in evidence.

4.10 A warning letter might be given, for example, for low community impact/ low risk "technical" breaches, where more formal action is not considered to be appropriate. If a warning letter is to be issued, it is essential that sufficient admissible evidence is available to substantiate the offence.

Voluntary Undertakings

4.11 The Council may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. The Council will take any failure to honour voluntary undertakings very seriously and enforcement action is likely to result.

Fixed Penalty Notice

4.12 Fixed Penalty Notices (FPNs) can now be issued for a variety of different offences. They are an effective enforcement tool as they allow officers time to focus on more detailed and complex cases. The FPN provides the offender with an opportunity to pay a financial penalty as an alternative to being prosecuted. If a fixed penalty is not paid, the Council may commence criminal proceedings or take other enforcement action in respect of the breach.

4.13 FPNs may be issued when an officer believes that an offence has been committed. The officer must therefore have adequate evidence to support a prosecution if the FPN is not paid. Normally FPNs would not be issued where the breach is more serious or recurrent e.g. the offender has already received a FPN for the same offence in the same year.

Orders and Statutory Notices

4.14 Subject to the specific rules governing the use of different notices and orders, these are generally used where there is a clear breach of the law, where the degree of risk or environmental impact or harm from the situation is significant and where a remedy needs to be secured within a set period of time. In some instances the service of a notice will be mandatory, for example, abatement notices under the Environmental Protection Act 1990. In some instances, the serving of orders and notices will be discretionary, such as Public Space Protection Orders under the Anti-Social Behaviour Crime & Policing Act 2014

Seizure of Property, Documents and Equipment

4.15 Officers will on occasion require evidence for their investigation and, where necessary, will use their statutory powers to enter upon land, seize property, documents or equipment. Where premises are searched this will be subject to the conditions in the Notice of Powers required by PACE. Occupier(s) will be given a notice summarising their rights together with the powers of the officer.

Simple Caution

4.16 The Council may issue a caution where there is sufficient evidence to prosecute but where the public interest is not best served by issuing proceedings. A caution can only be administered where the offender consents to the caution and admits the offence. It will be formally recorded and may be cited in subsequent court proceedings.

Prosecution

4.17 The Council will exercise its discretion when considering whether to initiate a prosecution. When deciding whether to prosecute, the Council will apply the Code for Crown Prosecutors, issued by the Crown Prosecution Service² and the decision whether or not to prosecute will be taken by the Council's legal team. In particular, the Council will consider whether there is a reasonable prospect of a

² See Appendix B

conviction, bearing in mind any statutory defence available to the defendant, and any other factors which may preclude a successful conviction. Where the circumstances warrant it, prosecution without prior warning may occur.

- 4.18 Once the Council has issued criminal proceedings for breach of a statutory notice, it is unlikely that the Council will withdraw proceedings simply because the offender subsequently complies or “regularises” the breach. This is because the criminal process is not a mechanism for securing compliance with statutory notices. Rather, the Court will need to consider whether any late attempt to comply mitigates the offence.

Costs

- 4.19 Investigations and enforcement activity arising from non-compliance is often very costly to Local Authorities. In all circumstances the Council will seek to recover its costs during civil and criminal proceedings including (but not necessarily limited to) prosecutions and food condemnation orders. Such costs may include the costs of investigation and enforcement, in addition to any legal costs. The Council will take all appropriate action to secure costs awarded by the Courts if such costs are not paid in a timely fashion, for example by way of charging order or by instructing bailiffs. A summary of the basis upon which the Council will seek its legal costs is set out at Appendix D. The Council will also seek to recover any barristers’ fees in full where external counsel has been appointed.

Proceeds of Crime

- 4.20 Where possible the Council will work with Accredited Financial Investigators and make use of the provisions of the Proceeds of Crime Act 2002.

Data Sharing

- 4.21 To facilitate the prevention, detection and investigation of crime, intelligence and information may be shared and exchanged with other Council departments, other Local Authorities or other agencies such as Police Forces, UK Border Agency, HM Revenue and Customs, Clean Kent, Kent Fire & Rescue Service, the Food Standards Agency, the Health and Safety Executive, Public Health England and others. Such sharing of data will comply with the provisions of data protection legislation.

Forfeiture

- 4.22 In some circumstances the legislation permits officers to seize goods and apply to the court for them to be made subject to a forfeiture order. The Council will exercise this power in appropriate cases e.g. seizure of noise making equipment.

Injunction

4.23 An injunction may be sought where the circumstances of any case cause a significant problem or threat to health and the normal process of law (statutory notices, prosecution etc.) is likely to be ineffective. Depending on the circumstances, the Council might not necessarily take other enforcement action before seeking an injunction.

Civil Injunctions for Anti-Social Behaviour

4.24 The Council has the power to apply to the magistrates' court for a civil injunction under the Anti-Social Behaviour, Crime & Policing Act 2014. Civil injunctions should be considered wherever it is thought that they will be a successful remedy for tackling anti-social behaviour and where other methods may be less effective. This does not necessarily mean that other methods have to be tried first.

Publication of Sentencing Outcomes

4.25 Deterrence is an important part of the Council's enforcement activities. To that end, the Council will consider publishing details of successful prosecutions in all cases. It is also important in maintaining transparency that the general public are kept informed of action which the Council takes.

4.26 When deciding whether to publish details of a prosecution, the Council will take into account the social need in making the information public. This will include factors such as:

- the significance of the offence committed;
- the effect of the offence in the local community;
- the frequency of such offences;
- whether the offence itself has attracted publicity

4.27 Where applicable, the Council will have to balance the public interest in publication with the data rights of the offender.

Arrangements for Monitoring and Review of Decisions Taken on Enforcement Action

4.28 Reviews of how the Enforcement Policy is practically applied and the outcomes of enforcement action undertaken will be carried out within Services. The results will be considered at team briefings.

5. ADMINISTRATION

Confidentiality

5.1 The Council will ensure that the identity of persons contacting us, and any information supplied by them, is not revealed to a third party except:-

- a) where the law requires e.g. under Freedom of Information or Environmental Information Regulations;
- b) where the case goes to court or tribunal; or
- c) with the prior written agreement of the person supplying the information.

5.2 Persons wishing to remain anonymous may do so and information supplied in connection with breaches of legislation will be investigated where possible and feasible to do so. Where we are required to reveal the identity of a person who has contacted us we will inform the person accordingly.

Complaints

5.3 The Council will respond to complaints about the service it provides in accordance with the Council's Complaints Procedure which is available at:

<http://www.tmbc.gov.uk/services/council-and-democracy/complaints/complaints-procedure>

Implementation

5.4 Responsibility for implementation of this policy rests with the enforcement officers in the relevant departments. When the officer takes the view that enforcement action is required this will be discussed with their line manager and, if necessary, Head of Service who will decide on the appropriate action to be taken. This discussion should be recorded on the case file. Implementation will then be monitored by the relevant service head.

5.5 The Council's Scheme of Delegation specifies the extent to which enforcement powers are delegated to officers. Whilst delegation may often be to officers, in certain circumstances the decision to take enforcement action lies with the relevant Council Committee.

The list of officer delegated powers is available at:

<http://www.tmbc.gov.uk/services/council-and-democracy/councillors-democracy-and-elections/council-constitution>

Review of Policy

5.4 This policy will be reviewed and updated as required by legislation, guidance or other circumstances which may impact on the principles set out in this document.

APPENDIX A

Conflicts of Interest and Undue Influence

The enforcement role of the Council is an impartial one. However, the possibility of a real or perceived conflict of interest or undue influence arising remains.

Conflict of Interest

There may be circumstances short of a criminal offence which could give rise to a conflict of interest between a Council officer and a member of the public, for example:-

- Where the member of the public is socially acquainted with or related to the officer. Under these circumstances it would be difficult for the officer to act in an impartial manner and it would be unreasonable for the Council to expect this.
- Where an employee receives a request from a Councillor, Council employee or an Agency who they have close working contact with and the request for advice or assistance falls outside the normal remit for the service.

Undue Influence

Undue influence arises where a party exercises a dominant influence over the mind of another so that person is unable to exercise a free and independent will in the matter. For example, when an employee is undertaking regulatory activities where the business concerned involves a Councillor or a more senior Council employee, they should ask whether, if this were publicly known, it might be perceived as affecting the judgement or actions of the advisor.

Where an employee believes there is potential for a conflict of interest or undue influence to arise then the matter should be referred to their line manager for appropriate action/advice.

APPENDIX B

Relevant Requirements and Legislation Considered in the Preparation of this Policy

1. Principles of Good Regulation

The Legislative and Regulatory Reform Act 2006, Part 2

<http://www.legislation.gov.uk/ukpga/2006/51/contents>

This requires the Council to have regard to the Principles of Good Regulation when exercising a specified regulatory function. We will exercise our regulatory activities in a way which is:

- A.** Proportionate – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence,
- B.** Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures,
- C.** Consistent – our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities,
- D.** Transparent – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return, and
- E.** Targeted – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

2. Regulators' Code, Statutory Code of Practice for Regulators, April 2014

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf

The Council has had regard to the Regulators' Code in the preparation of this policy. In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

3. Enforcement Concordat (Cabinet Office 1998); Enforcement Concordat: Good Practice Guide for England and Wales; (Department of Trade and Industry, June 2003)

<http://webarchive.nationalarchives.gov.uk/+/http://www.berr.gov.uk/files/file10150.pdf>

Tonbridge & Malling Borough Council has adopted the Enforcement Concordat and the Principles of Good Enforcement, which are: Standards, Openness, Helpfulness, Complaints, Proportionality and Consistency.

4. Human Rights Act 1998

Tonbridge & Malling Borough Council is a public authority for the purposes of the Human Rights Act 1998. We therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

5. Data Protection

Where there is a need for Tonbridge & Malling Borough Council to share enforcement information with other agencies, we will follow the provisions of data protection legislation.

6. Crown Prosecution Service: The Code for Crown Prosecutors, January 2013

http://www.cps.gov.uk/publications/docs/code_2013_accessible_english.pdf

When deciding whether to prosecute, Tonbridge & Malling Borough Council has regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions. The Code is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. The Code sets out two tests that must be satisfied commonly referred to as the 'Evidential Test' and the 'Public Interest Test':

A. Evidential Test - *Is there enough evidence against the defendant?*

When deciding whether there is enough evidence to prosecute, Tonbridge & Malling Borough Council will consider what evidence can be used in court and is reliable. We must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each alleged offender.

B. Public Interest Test - *Is it in the public interest for the case to be brought to court?*

Tonbridge & Malling Borough Council will balance factors for and against prosecution carefully and fairly, considering each case on its merits.

7. Regulatory Enforcement and Sanctions Act 2008, Part 2

<http://www.legislation.gov.uk/ukpga/2008/13/section/11>

This established the Primary Authority scheme. We will comply with the requirements of the Act when we are considering taking enforcement action against any business or organisation that has a registered Primary Authority partnership. The Act also provides for the publication of a list of enforcement priorities for local authorities. We will have regard to any list of enforcement priorities published by the Better Regulation Delivery Office.

8. Food Law Code of Practice

<http://food.gov.uk/enforcement/enforcework/foodlawcop/>

9. HSE'S Enforcement Policy Statement

<http://www.hse.gov.uk/enforce/enforcepolicy.htm>

10. National Local Authority Enforcement Code

<http://www.hse.gov.uk/lau/la-enforcement-code.htm>

11. HELA's Guidance to Local Authorities on Targeting Interventions (LAC 67-2 (rev 4.1))

<http://www.hse.gov.uk/lau/lacs/67-2.htm>

This sets out the requirements for risk rating and frequency of interventions for enforcement of health and safety legislation.

12. HELA's Incident Selection Criteria Guidance (22-13 (rev 1), 2012)

<http://www.hse.gov.uk/lau/lacs/22-13.htm>

This provides a common proportionate, transparent and targeted approach to accident and incident selection and investigation.

13. Primary Authority Guidance (BRDO, September 2013)

<https://primaryauthorityregister.info/par/images/documents/pa-guidance.pdf>

14. Home Office: Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers: Statutory guidance for frontline professionals

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/352562/ASB_Guidance_v8_July2014_final_2_.pdf

APPENDIX C

Conduct of Investigations

All investigations will be carried out under the following legislation and in accordance with any associated guidance or codes of practice, in so far as they relate to the Council.

- a) *The Police and Criminal Evidence Act 1984*
- b) *The Criminal Procedure and Investigations Act 1996*
- c) *The Regulation of Investigatory Powers Act 2000*
- d) *The Criminal Justice and Police Act 2001*
- e) *The Human Rights Act 1998*

These Acts and associated guidance control how evidence is collected and used and give a range of protections to the public and potential defendants.

Our authorised officers will also comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice.

Appendix D

Basis of Cost Recovery in Legal Proceedings

1. Civil Proceedings

The Council has adopted the HM Courts and Tribunals Service guideline hourly rates National Band 1 (April 2010) for the calculation of costs to be recovered in civil proceedings. These costs are calculated based on the level of experience of the lawyer conducting the case. These are as follows³:

Band A £217 per hour
Band B £192 per hour
Band C £161 per hour
Band D £118 per hour

2. Criminal Proceedings

The criminal courts award costs on the basis of a “just and reasonable” test. The Council will benchmark the legal costs it seeks to recover in criminal proceedings against the average hourly rates of Crown Prosecutors (September 2009), which are:

Lawyers: £69 per hour
Paralegals £51 per hour
Support staff: £44 per hour

The costs sought may differ based upon the length and complexity of the case and whether proceedings are carried out in the Magistrates’ or Crown Court.

³ Band A: lawyers over 8 years’ experience, Band B: lawyers over 4 years’ experience, Band C: lawyers 0-4 years’ experience, Band D: legal trainees & paralegal staff

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Agenda Item 9

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

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Agenda Item 10

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

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

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Agenda Item 12

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

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