



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

2 March 2020

To: MEMBERS OF THE LICENSING AND APPEALS COMMITTEE
(Copies to all Members of the Council)

Dear Sir/Madam

Your attendance is requested at a meeting of the Licensing and Appeals Committee to be held in the Civic Suite, Gibson Building, Gibson Drive, Kings Hill, West Malling on Tuesday, 10th March, 2020 commencing at 7.30 pm

Yours faithfully

JULIE BEILBY

Chief Executive

A G E N D A

PART 1 - PUBLIC

- | | | |
|----|--------------------------|-------|
| 1. | Apologies for Absence | 5 - 6 |
| 2. | Declarations of Interest | 7 - 8 |

3. Minutes 9 - 10

To confirm as a correct record the Minutes of the meeting of Licensing and Appeals Committee held on 26 November 2019

Decisions to be taken under Delegated Powers

4. Sex Establishments and Sexual Entertainment Venues - Policy 11 - 56
for 2020-2023

The current Policy on Licensing Sex Shops, Sex Cinemas and Sexual Entertainment Venues was published in 2017 and has a life span of three years. The report presents an updated policy for approval for consultation purposes.

5. Air Quality Consultation for Hackney Carriage and Private Hire Vehicles 57 - 78

The motion agreed by the Council on 9 July 2019 supported climate change mitigation and production of a revised draft Climate Change Strategy including deliverable performance indicators and an aspiration for Tonbridge and Malling to be carbon neutral by 2030. The report details the approach by Licensing Services, primarily focusing on Hackney Carriage and Private Hire vehicle licences with a view to ensuring a carbon neutral licensed taxi fleet by 2030.

6. Urgent Items 79 - 80

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

7. Exclusion of Press and Public 81 - 82

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

8. Urgent Items 83 - 84

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

MEMBERSHIP

Cllr D Keers (Chairman)
Cllr C Brown (Vice-Chairman)

Cllr Mrs J A Anderson
Cllr M C Base
Cllr Mrs P A Bates
Cllr A E Clark
Cllr M A Coffin
Cllr Mrs F A Kemp
Cllr D W King

Cllr Mrs R F Lettington
Cllr H S Rogers
Cllr R V Roud
Cllr N G Stapleton
Cllr M Taylor
Cllr F G Tombolis

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Apologies for absence

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Declarations of interest

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TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS COMMITTEE

Tuesday, 26th November, 2019

Present: Cllr D Keers (Chairman), Cllr C Brown (Vice-Chairman),
Cllr Mrs J A Anderson, Cllr Mrs P A Bates, Cllr A E Clark,
Cllr M A Coffin, Cllr Mrs F A Kemp, Cllr D W King,
Cllr Mrs R F Lettington, Cllr H S Rogers, Cllr R V Roud,
Cllr N G Stapleton and Cllr M Taylor

Councillor N J Heslop was also present pursuant to Council Procedure Rule No 15.21.

An apology for absence was received from Councillor F G Tombolis

PART 1 - PUBLIC

LA 19/38 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct. However, in the interest of transparency, Councillor Rogers advised that his wife was a trustee of the Kingfisher Medway Trust which provided pleasure boat cruises and occasionally required a licence within the Borough.

LA 19/39 MINUTES

RESOLVED: That the Minutes of the meeting of the Licensing and Appeals Committee held on 18 June 2019 be approved as a correct record and signed by the Chairman.

LA 19/40 MINUTES OF PANEL

RESOLVED: That the Minutes of the meetings of the Licensing and Appeals Committee sitting as a Panel held on 7 June, 12 July, 20 September and 29 October 2019 be received and noted.

DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH PART 3 OF THE CONSTITUTION (RESPONSIBILITY FOR COUNCIL FUNCTIONS)

LA 19/41 REVIEW OF FEES AND CHARGES 2020/21 - LICENSING FEES

Following a review of the existing fee structure the report of the Director of Central Services set out details of the proposed licensing fees and charges for 2020/21 in respect of Hackney Carriage and Private Hire, Pleasure Boats and Boatmen, Scrap Metal Dealers, Animal Welfare, Street Trading Consents in Tonbridge, Sex Establishments and the

licensing of premises and practitioners providing Acupuncture, Tattooing, Ear Piercing, Semi-permanent make-up and Electrolysis.

RESOLVED: That the proposed scale of fees for licences, consents and registrations, as set out at Annex 1 to the report, be adopted with effect from 1 April 2020.

LA 19/42 EXCLUSION OF PRESS AND PUBLIC

There were no items considered in private.

The meeting ended at 8.10 pm

TONBRIDGE & MALLING BOROUGH COUNCIL

LICENSING & APPEALS COMMITTEE

10 March 2020

Report of the Director of Central Services and Deputy Chief Executive

Part 1- Public

Delegated

1 SEX ESTABLISHMENTS AND SEXUAL ENTERTAINMENT VENUES – POLICY FOR 2020 - 2023

1.1 Background

- 1.1.1 The current Policy on Licensing Sex Shops, Sex Cinemas and Sexual Entertainment Venues was published in 2017 and has a life span of three years.
- 1.1.2 Tonbridge & Malling Borough Council currently has one licensed Sex Shop called VibeZ, trading in Aylesford. There are no sexual entertainment venues currently operating within the Borough.
- 1.1.3 Since November 2005, the Licensing Act 2003 has required a wide range of regulated entertainment to be licensed by the Council acting as the Licensing Authority. This includes live and recorded music as well as dancing and dance performances.
- 1.1.4 Members will be familiar with the restrictions in the 2003 Act, which mean that any representation against a Premises licence and Club Premises Certificate can only be based on the four licensing objectives namely:
- The prevention of crime and disorder
 - The prevention of public nuisance
 - The protection of public safety
 - The protection of children from harm

Whilst licences can be subject to review procedures, they otherwise continue in force for the life of the business concerned

- 1.1.5 Sex shops and sex cinemas, in contrast, are licensed under the Local Government (Miscellaneous Provisions) Act 1982. This regime gives the Licensing Authority a wider discretion in determining whether to grant or refuse licences (including the statutory grounds for refusal), a power to set a limit on the number of premises that may be suitable for a particular locality, greater flexibility on applying licence conditions and the ability to accept representations from a

wider scope of the community. Sex shop licences are only valid for a year at a time, meaning there is scope for regular review.

- 1.1.6 These concerns were addressed by amending Schedule 3 to the 1982 Act through Section 27 of the Policing and Crime Act 2009. A new class of licensed sex establishment – Sexual Entertainment Venues – was created which required lap dancing venues and similar premises to be licensed under the more flexible 1982 Act rather than under the Licensing Act 2003.
- 1.1.7 In 2011 Tonbridge and Malling Borough Council consulted local residents and businesses on whether the Council should adopt the new powers to regulate sexual entertainment venues contained in Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.
- 1.1.8 The overwhelming view of respondents was that the Council should adopt the new provisions. Accordingly, on 23 February 2012 Council resolved to adopt the sexual entertainment licensing provisions contained in Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982. These adopted provisions came into effect on 1 June 2012.
- 1.1.9 The decision to adopt the new provision only related to relevant adult entertainment. Any other licensable activity at a venue such as alcohol sales and late night refreshment remains licensable under the Licensing Act 2003.
- 1.1.10 The provisions of Schedule 3 to the 1982 Act allow -
 - Local people to oppose an application for a sexual entertainment venue if they have legitimate concerns that it would be inappropriate given the character of an area, for example, if the area was primarily a residential area. An objection cannot however be made on purely moral or religious grounds.
 - Local authorities to decide whether or not to set a limit on the number of sex establishments of a particular type in a locality, as well as the number of sex establishment generally. The limit for a particular locality may be set as nil, but it is however unlikely that a local authority could set the limit as nil for the whole of its area without running the risk of judicial review.

1.2 Development of the Statement of Licensing Policy

- 1.2.1 The Tonbridge and Malling Borough Council's Statement of Licensing Policy was developed in close conjunction with the other local authorities in Kent. This was achieved via the mechanism of the Kent and Medway Regulatory Licensing Steering Group.
- 1.2.2 The current policy has been developed taking full account of the requirements of the legislation and guidance so as to minimise the prospect of future judicial review.

- 1.2.3 The aim of the joint working group was to promote consistency to the benefit of Licensees, potential licensees, businesses, residents and to regulatory agencies such as the police.
- 1.2.4 The policy is attached as **Appendix A** to this report. Members will note that the policy includes a Model Pool of Conditions (**Appendix B**) which, whilst not exhaustive, will, it is hoped, guide both applicants and the public regarding what would generally be expected from anyone seeking a sex establishment licence from this authority.
- 1.2.5 The policy provides that each application will be judged on its own merits but taking into account the various criteria laid out within the policy document. In this way each application will be considered as to whether it is suitable given the nature of the particular locality in question.

Consultation timetable

- 1.2.6 The proposed timetable for consultation in respect of the policy is:
- Licensing and Appeals Committee – 10th March 2020
 - Public Consultation – 23rd March 2020 – 21st June 2020
 - Licensing and Appeals Committee 15th September 2020
 - Full Council – 27th October 2020
 - New policy comes into force – 4 January 2021
- 1.2.7 A feedback form for use during the consultation is shown at **Appendix C**

1.3 Legal Implications

- 1.3.1 There is no statutory requirement to have a licensing policy for sex establishments. However, it is considered best practice and also a modern, effective policy document will ensure that the trade and public alike will have a document that fully explains the elements of the regulatory process. This will include the principles to be applied when considering applications for sex establishments, the application process itself and the grounds for objection, refusal, the hearings procedure and the grounds for appeal.
- 1.3.2 Any criteria applicable to applications for sex establishments must meet the requirements of the Provision of Services Regulations 2009. It is considered that the draft policy complies with these regulations.

1.4 Financial and Value for Money Considerations

- 1.4.1 There are no statutory fees for sex establishments or sexual entertainment venues. The level of fee is therefore at the discretion of the Licensing Authority,

subject of course to the general principle that the income generated should not exceed the costs of providing the service.

1.4.2 The current licence fee for a sexual entertainment venue is £2,000.

1.5 Risk Assessment

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

1.6 Equality Impact Assessment

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

1.7 Recommendations

1.7.1 Members are **RECOMMENDED**:

Members are RECOMMENDED to approve the draft policy for consultation.

Background papers:

contact: Anthony Garnett

Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982
Licensing Act 2003

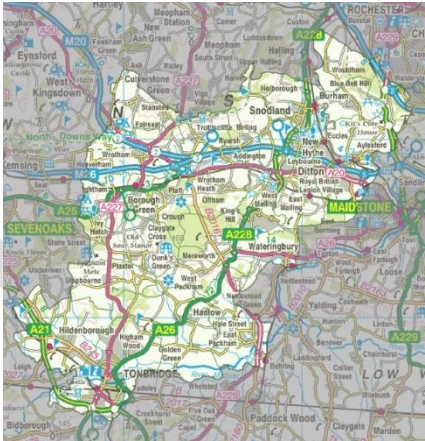
Adrian Stanfield

Director of Central Services and Deputy Chief Executive



Draft Tonbridge & Malling Borough Council's
Policy on Licensing Sex Shops, Sex Cinemas and
Sexual Entertainment Venues
2020 - 2023

1 INTRODUCTION

- 1.1 The borough of Tonbridge and Malling lies in the heart of Kent and is an area of variety and historical interest. The borough is largely rural with few large settlements; Tonbridge in the south being the largest, the remainder of the borough is dotted with villages and smaller towns. The latest population figures from the mid 2018 Mid-year population estimates show that there are 130,500 people living in the borough. This population size makes Tonbridge & Malling the 5th largest local authority district in the Kent County Council (KCC) area.
- 1.2 Industry and commerce are concentrated around Tonbridge, Aylesford, Ditton, Larkfield and Snodland. Mineral extraction has been carried out in the area for many years. Paper and packaging mills, distribution, general and light industry and many small businesses make up the industrial scene. The borough is a popular area for office location and high tech development, particularly at the Kings Hill business and residential community.
- 
- 1.3 Tonbridge & Malling has a younger age profile compared to the county average, with a greater proportion of 5 – 19 year olds than the average for the KCC area. Tonbridge & Malling also has a higher proportion of middle-aged residents, aged between 35 and 59 compared to the county average.
- 1.4 Over the past 10 years Tonbridge & Malling's population has grown by 11.6% (an additional 13,500 people). This is the 6th highest rate of growth of any Kent district. The population growth in Tonbridge & Malling is set to continue with current forecasts suggesting that between 2016 and 2037 the population of the borough will increase by a further 19%. This is the 6th highest rate of growth expected for any Kent district and a growth rate that is equal to the county average. This forecast is based on KCC's assessment of the district authority's future housing targets as at October 2018. Such targets will be subject to changes as district authorities develop their Local Development Framework.
- 1.5 95.9% of Tonbridge & Malling's population is of white ethnic origin with the remaining 4.1% being classified as of Black Minority Ethnic (BME) origin. The proportion of Tonbridge and Malling's population classified as BME is lower than the county average of 6.3%.
- 1.6 The largest ethnic group in Tonbridge & Malling is White British, with 92.4% of residents from this ethnic origin. Within the BME population the largest ethnic groups are White and Asian, Indian and other Asian (each accounting for 0.6% of all residents with the second largest groups being residents of White and Black Caribbean and Chinese Origin (each accounting for 0.4% of all residents).

2 OVERVIEW

- 2.1 The Local Government (Miscellaneous Provisions) Act 1982 (as amended by Section 27, Policing and Crime Act 2009) provides that a local authority may, by resolution, adopt schedule 3 to that Act.
- 2.2 Tonbridge and Malling Borough Council consulted local residents and businesses on whether the Council should adopt the new powers to regulate sexual entertainment venues contained in Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act') between the 1 September 2011 and 14 October 2011.
- 2.3 The overwhelming view expressed by respondents was that the Borough Council should adopt the new provisions. Accordingly, the sexual entertainment licensing provisions contained in the 1982 Act were adopted at Full Council on Thursday 23 February 2012. These provisions came into effect on 1 July 2012.
- 2.4 Premises for which a sexual entertainment venue licence is required or held (or for which the requirement has been waived under paragraph 7 of Schedule 3 to the 1982 Act) do not also require a premises licence, club premises certificate or temporary event notice in order to provide relevant entertainment. This is because such entertainment is expressly excluded from the definition of regulated entertainment found in the Licensing Act 2003. However, if the premises also carries on other licensable activities (e.g. the sale of alcohol or the provision of regulated entertainment) then this is not a provision of relevant entertainment, they will nevertheless continue to require a premises licence, club premises certificate or temporary events notice under the Licensing Act 2003 for those other activities, subject to any exceptions contained in that Act.
- 2.5 In practice this will mean that the vast majority of lap dancing clubs and similar venues will require both a sexual entertainment venue licence for the provision of relevant entertainment and a premises licence or club premises certificate for the sale of alcohol or provision of other types of regulated entertainment not covered by the definition of relevant entertainment.
- 2.6 Live music or the playing of recorded music which is integral to the provision of relevant entertainment, such as lap dancing, for which a sexual entertainment licence is required, is specifically excluded from the definition of regulated entertainment in the Licensing Act 2003. Therefore, a sexual entertainment venue will not require a premises licence or club premises certificate just because it plays recorded music for a performer to dance nor will providing entertainment facilities for the purposes of the provisions of relevant entertainment be regulated entertainment under the Licensing Act 2003.

3 POLICY

3.1 The purpose of this policy is to:

- Set out the expectations of Tonbridge and Malling Borough Council in relation to the licensing of sexual entertainment venues, sex shops and sex cinemas
- The process for making an application
- The process the Council will follow in considering and determining an application.
- Assist any persons making representations in respect of an application to make a properly directed and evidenced representation.

3.2 Notwithstanding this policy, each application will be assessed on its individual merit. Whilst this policy will set out the broad scope of the Council's expectations, it should not be seen as restricting or predetermining the outcome of any application or representation in respect of the licensing of any premises.

4 DEFINITIONS

4.1 For the purpose of this policy the following definitions (as set out in the 1982 Act) will apply:-

Sex Shop

4.2 Any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating sex articles (anything for use in connection with or for stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity) or other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity.

Sex Cinema

4.3 Any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced which are concerned primarily with the portrayal of, or primarily deal with or relate to, or are intended to stimulate or encourage sexual activity, acts of force or restraint which are associated with sexual activity or are concerned primarily with the portrayal of or primarily deal with or relate to, genital organs or urinary or excretory functions but does not include a dwelling to which the public is not admitted.

Sexual Entertainment Venue

4.4 Any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.

5 RELEVANT ENTERTAINMENT

- 5.1 Any live performance or any live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means).
- 5.2 The following forms of entertainment will therefore fall within the definition of
- 5.3 'Regulated entertainment',-
- Lap Dancing
 - Pole Dancing
 - Table Dancing
 - Strip Shows
 - Peep Shows
 - Live Sex Shows
- 5.4 However, this list is not exhaustive and Tonbridge and Malling Borough Council will judge each case on its merits. Decisions will be based on the content of the entertainment provided and not the name given to it.

6 EXEMPTIONS FROM BEING A SEXUAL ENTERTAINMENT VENUE

- 6.1 The following are not sexual entertainment venues for the purposes of this policy:-
- a) sex cinemas and sex shops
 - b) premises at which the provision of relevant entertainment is such that, at the time in question and including any relevant entertainment which is being so provided at that time
 - I. there have not been more than eleven occasions on which relevant entertainment has been provided which fall (wholly or partly) within the period of 12 months ending with that time
 - II. no such occasions has lasted for more than 24 hours and
 - III. no such occasion has begun within the period of one month beginning with the end of any previous occasion on which relevant entertainment has been so provided (whether or not that previous occasions falls within the 12 month period mentioned in subparagraph (i)).
- 6.2 Premises which fall under this exemption created for infrequent entertainment do not require a sexual entertainment licence but will instead need an appropriate authorisation under the Licensing Act 2003. For example, to cover the performance of dance.

6.3 Operators are encouraged to maintain written records of any relevant entertainment that falls within the exemption. This will enable the Licensing Authority to verify whether the venue falls within the permitted exemption.

6.4 Any records should contain information of the date, times of the event and those persons who have participated in the relevant entertainment, which includes performers, security, management and bar staff. If tickets are sold then details should be recorded of the number of tickets sold at each event.

7 NUDITY

7.1 Schedule 3 of the 1982 Act sets out the definition of a display of nudity:

- in the case of a woman, it means exposure of her nipples, pubic area, genitals or anus and
- in the case of a man it means exposure of his pubic area, genitals or anus

8 SPONTANEOUS ENTERTAINMENT

8.1 Where activities that would otherwise be considered to involve the provision of relevant entertainment take place, but are not provided for the financial gain of the organiser or entertainer, such as a spontaneous display of nudity or a lap dance by a customer or guest, the premises will not be considered a sexual entertainment venue by virtue of those circumstances alone. This is because the relevant entertainment must be provided for the financial gain of the organiser or entertainer. However, it should be noted that an organiser might be considered to have provided the entertainment where he has permitted the activity to take place, whether expressly or impliedly.

9 THE ORGANISER

9.1 Any person who is responsible for the organisation or management of the relevant entertainment at a premises at which relevant entertainment is provided. In most circumstances, this will refer to the manager of the premises, but could also refer to someone who is responsible for organising the relevant entertainment on behalf of the persons responsible for the management of the premises.

9.2 The organiser must be someone who is in a position of responsibility over the provision of the relevant entertainment and should not be interpreted to mean a member of staff who is merely employed to work during the provision of relevant entertainment. It is only necessary for one person to hold a sexual entertainment venue licence for premises, even if there is more than one person who is responsible for the organisation or management of the relevant entertainment or the premises.

10 PLANNING

- 10.1 Applicants are encouraged to ensure that the proposed activity will constitute a lawful planning use and the hours sought do not exceed those authorised by any planning permission. Where the hours authorised by the relevant planning permission are different to the licensing hours for those premises, the applicant must observe the earlier closing time. Premises operating in breach of their planning permission would be liable to enforcement action under planning law.
- 10.2 Failure to obtain planning permission (where required) is not a ground for refusal of the grant of an application under the 1982 Act and such a failure to obtain planning permission will be dealt with as part of the planning process.
- 10.3 The Borough Council will not normally consider planning matters such as 'need' in determining a licence application as this is more appropriately dealt with by the planning process.

11 EUROPEAN CONVENTION ON HUMAN RIGHTS

- 11.1 The Human Rights Act 1998 incorporates the European Convention on Human Rights (ECHR) and makes it unlawful for a local authority to act in a way which is incompatible with a convention right. The Council will have regard to the Human Rights Act when exercising its licensing functions, with particular reference to the following relevant provisions of the European Convention on Human Rights.

Article 6 – in the determination of civil rights and obligations every person is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law

Article 8 – Right to a Private Life

Article 10 – freedom of expression

Article 1 of the First Protocol – every person is entitled to the peaceful enjoyment of his or her possessions

12 LOCALITY, CHARACTER AND LAYOUT

- 12.1 Paragraphs 12 (3) (c) and 12 (3) (d) of Schedule 3 allow appropriate authorities to refuse applications on grounds related to an assessment of the relevant locality. A licence can be refused if either, at the time the application is determined the number of sex establishments or sex establishments of a particular kind, in the relevant locality is equal to or exceeds the number that the authority considers appropriate for that locality; or that a sex establishment would be inappropriate having regard to the character of the relevant locality, the use to which any premises in the vicinity are put or to the layout, character or condition of the premises in respect of which the application is made.

12.2 Schedule 3 to the 1982 Act defines 'relevant locality' as follows:

- In relation to premises the locality where they are situated.
- In relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex establishment.

12.3 Once the Borough Council has determined the relevant locality, it will seek to make an assessment of the 'character' of the relevant locality and how many, if any, sex establishments, or sex establishments of a particular kind, it considers appropriate for that relevant locality. The Council may consider a particular locality is suitable for a sex shop but is not suitable for a sexual entertainment venue or vice versa.

12.4 The Borough Council has determined not to set specific relevant localities in respect of each type of sex establishment, instead judging each application it receives on its own individual merits.

12.5 In licensing of sexual entertainment venues the Borough Council will consider the impact of such premises and their operation on the vicinity. This will include:

- The likely effects of any increased footfall or vehicular traffic
- Any advertising or displays of an erotic or pseudo-erotic nature
- The type of location (residential, commercial, industrial)
- The vicinity of establishments whose patrons are likely to be effected by the operation of the premises
- The proximity of residential premises, including any sheltered housing and accommodation for vulnerable people
- The proximity of educational establishments to the premises
- The proximity of places of worship to the premises
- Access routes to and from schools, play areas, nurseries, children's centres or similar premises in proximity to the premises
- The proximity to shopping centres
- The proximity to community facilities/halls and public buildings such as swimming pools, leisure centres, public parks, youth centres/clubs (this list is not exhaustive)
- The proximity to historic buildings and tourist attractions
- Localities where the cumulative impact of the venue, taken with other licensed premises or commercial interests, is likely to have an adverse effect on crime and disorder and public nuisance
- The nature and concerns of any objections received from residents or businesses
- Any evidence of complaints about noise and/or disturbance caused by the premises
- The proximity of other sex establishments

- 12.6 When considering an application for the grant, renewal, variation or transfer of a licence the Council will also take into account the following
- The type of activity to which the application relates
 - The duration of the proposed licence
 - The days and hours of operation of the activity
 - The layout and condition of the premises
 - The use to which other premises in the vicinity are put
 - The levels of crime and disorder in the area.
- 12.7 Sex establishments should not be functionally visible to passersby on retail thoroughfares or pedestrian routes. In more sensitive locations applicants should consider whether it would be appropriate to locate such premises at basement level or locate entrances away from retail thoroughfares or busy pedestrian routes.

13 WAIVERS

- 13.1 The Borough Council may waive the need for a sex entertainment venue licence under certain circumstances.
- 13.2 An applicant can apply for a waiver either as part of the application for a licence or separately. The Borough Council may grant a waiver if they consider that to require a licence would be unreasonable or inappropriate. . The waiver may last for such a period that the Borough Council think fit, but can be terminated by the Council at any time with 28 days notice.
- 13.3 The Borough Council will consider waiver applications on an individual basis.

14 APPLICATION PROCESS

- 14.1 The Borough Council may impose restrictions on the licence or to place conditions on the licence. Where such restrictions or conditions are applied, the Borough Council will ensure that they are necessary, reasonable and proportionate to achieve the objectives of any primary legislation, in particular the 1982 Act and any subsequent, relevant legislation.
- 14.2 The Borough Council will consider
- The locality, character and layout of the premises including access
 - The times of operation
 - The suitability of the applicant
 - The cumulative impact of the premises when taken together with other licensed premises in the locality.
 - The management procedure in place to ensure the premises is operated in a way conducive to the area.

The above list is not exclusive, and the Borough Council may consider other factors where relevant to the particular application

- 14.3 Applications for licences for sex shops, sex cinemas and sex entertainment venues must be made on the prescribed form and accompanied by:
- i. The relevant fee;
 - ii. A site plan of radius of $\frac{1}{4}$ of a mile (scale 1:500) clearly showing the locality in which the proposed sexual entertainment venue will be situated. The plan should clearly identify the proposed sexual entertainment venue marking the site/premises boundary with a red line and define other types of businesses and residential properties around the site as listed at 12.5;
 - iii. A plan of the premises (scale 1:100) showing the part(s) of the premises that it is proposed to licence as a sexual entertainment venue. All areas requiring to be licensed should be outlined in red on the plan. If a part of the premises is within a licensed premises under the Licensing Act 2003 which will have a dual purpose then the plan should show the site where facilities for the public are shared such as toilets and bar
- 14.4 The plan of the premises must show the position of all CCTV cameras. All such cameras must be approved by Kent Police and be operated in accordance with the CCTV code of practice.
- 14.5 Plans may be considered in other scales with prior agreement with the Borough Council.
- 14.6 Applicants must give public notice of the application by publishing an advertisement in a local newspaper that is circulated in the area of Tonbridge and Malling no later than 7 days after the date the application is made.
- 14.7 Applicants must display a notice of the application on or near the premises in a place where it can be conveniently read by members of the public. The notice must be displayed for a period of 21 days beginning with the date the application was made.
- 14.8 All notices should be in the form prescribed (**Appendix B**) and identify the premises or, if the application relates to a vehicle, vessel or stall, specify where it will be used as a sex establishment.
- 14.9 The applicant must serve the application on Chief Officer of Police at Tonbridge Station no later than 7 days after the date of application.
- 14.10 In determining an application the Borough Council shall have regard to all relevant considerations, including any comments made by:
- Police
 - Fire Authority

- Planning and Building Control
- KCC Safeguarding Children Board
- UK Border Agency
- Environmental Health (Environmental Protection and Food and Safety)
- Councillors
- Interested Parties (local residents/businesses)

14.11 Officers from any of these authorities may inspect the premises to ensure that the required technical standards are met.

14.12 The Borough Council will not determine an application for the grant of a licence, unless, the applicant allows an authorised officer a reasonable opportunity to enter the proposed sex establishment to make such examination and enquiries as may be necessary to determine the suitability of the applicant and the premises.

15 OBJECTIONS

15.1 Any person can object to an application.

15.2 Objections cannot be based on purely moral grounds/values or religious grounds as the legislation specifically prohibits this. Any objections on this basis will be refused or disregarded if presented with other reasons for objection.

15.3 Objections to the application must be made in writing and be received by the Borough Council within 28 days of the application being made. The objection must state in general terms the grounds of the objection.

15.4 The general terms of any objection will be provided to the applicant prior to the determination of the application. However, the Council will not without the consent of the objector reveal his/ her name or address to the applicant.

16 CONDITIONS

16.1 The Borough Council may attach conditions to a licence. To assist applicants the Licensing Authority has formulated a pool of conditions (appendix A) in respect of each type of licensed premises. However this list is not exhaustive and is merely to give an indication of what may be considered in respect of any individual application.

16.2 Some of the conditions will be placed on the particular type of establishment as mandatory conditions and others may be applied only where a perceived necessity exists and in a manner that is both proportionate and reasonable to promote a safe and well managed venue. Each case will be dealt with on its individual merits.

16.3 Whilst conditions or restrictions may be imposed in relation to any matter (other than any matter in relation to which requirements or prohibitions are or could be imposed by or under the Regulatory Reform (Fire Safety) Order 2005) it is likely that the conditions or restrictions will be attached in respect of the following areas:

- Hours of opening and closing
- Visibility of the interior of the premises
- Displays or advertisements
- Any change to the type of premises
- Minimum distance between audience and performers
- The control of access to changing room facilities
- The control of private viewings

17 HEARINGS

17.1 Under paragraph 10 (19) of Schedule 3, before refusing an application, renewal or application to transfer a licence all applicants will be given the opportunity to appear before and be heard by the Licensing & Appeals Panel that is responsible for determining the application.

17.2 Whilst Schedule 3 does not make explicit provision for objectors to be heard, the Council believes it right to offer an oral hearing to objectors. This does, however remain within their discretionary powers. Although a local authority is under a duty to consider any objection made within 28 days of the application, it has discretion to hear later objections provided the applicant is given the opportunity to deal with those objections.

17.3 Persons making written objections will also be informed of the date and time of the Licensing & Appeals Panel hearing where they will be invited to address the committee and ask questions relating to the application.

17.4 All objectors and applicants are reminded that they can if they wish be legally represented at their own expense at the hearing. Alternatively they may if they wish ask a Councillor to represent them.

17.5 All parties may use witnesses and supporting documentation however, copies of documents and details of witnesses must be submitted to the Borough Council for consideration prior to the hearing and in exceptional circumstances with approval of all parties at the hearing.

17.6 The Licensing & Appeals Panel will consider all the evidence presented to it during the hearing and members may ask questions of officers, applicant and objectors. After the evidence has been presented all parties will be asked to leave to allow for the Licensing Sub-Committee to come to a decision on the application.

17.7 When a decision is reached the Licensing & Appeals Panel will inform the applicant and relevant parties of their decision and the reasons for coming to that particular decision.

- 17.8 The decision of the Licensing & Appeals Panel will be confirmed, in writing, to the parties within 5 working days of the meeting at which the application was considered giving reasons for the decision.

18 REFUSAL OF A LICENCE

- 18.1 Paragraph 12 of Schedule 3 sets out the grounds for refusing an application for the grant, renewal or transfer of a licence. A licence must not be granted:

- To a person under the age of 18
- To a person who is for the time being disqualified due to the person having had a previous licence revoked in the area of the appropriate authority within the
- last 12 months
- To a person other than a body corporate who is not resident in an European Economic Area (EEA) State or was not so resident throughout the period of six months immediately preceding the date when the application was made or
- To a body corporate which is not incorporated in an EEA State or
- To a person who has within a period of 12 months immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

- 18.2 A licence may be refused where

- The applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason.
- If the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself.
- The number of sex establishments or of sex establishments of a particular kind, in the relevant locality at the time the application is determined is or exceeds the number which the authority considers is appropriate for that locality.
- That the grant or renewal of the licence would be inappropriate, having regard to the character of the relevant locality or to the use to which any premises in the vicinity are put or to the layout, character of the premises, vehicle, vessel or stall in respect of which the application is made.

18.3 In making any determination to refuse an application, renewal or transfer the local authority will give consideration to:

a) **Unsuitability of applicant**

In determining the suitability or otherwise of an applicant the local authority may consider

- previous experience of the applicant
- any evidence of the operation of any existing/previous licence held by the applicant, including any licence held in any other local authority area
- any report about the applicant and management of the premises received from objectors
- any previous convictions and in particular those that have been imposed in respect of offences involving violence, dishonesty, or a breach of the requirements of the legislation covering the type of establishment in respect of which the application is made.

b) **Business carried out on behalf of a person who would be refused**

The Borough Council takes a serious view of any application that seeks to subvert the underlying principals of the Act. Where it is considered that the applicant is effectively operating the business on behalf of a person who would, for whatever reason be refused or disqualified from the grant of a licence due to the mandatory or discretionary grounds for refusal there will be a presumption towards refusal unless overwhelming reasons are accepted for the contrary decision to be made.

c) **The application exceeds the limit set on the number of the specific type sex establishment in an area**

Tonbridge and Malling Borough Council has not set a limit on the number of establishments of a specific type that will be permitted within any particular locality. In deciding whether to allow the application the authority will have consideration to:

- Any nuisance associated with the premises or the activities undertaken thereon
- The possibility of children or other vulnerable persons being harmed or exploited by the provision of sexual entertainment or the operation of sex shops or sex cinemas
- The potential of the activities associated with the operation of the premises being a source of crime and disorder, being associated with crime or being used to support crime.
- Any other reason including the existence of a police caution, representations from the police or by other enforcement agencies in relation to crime and disorder.

This list is not exhaustive

d) **The grant of the licence would be inappropriate**

In deciding whether the grant of a licence is appropriate the Borough Council will consider the type of area in which it is intended to site the premises and the hours during which it is intended to operate. The Council is also likely to consider:

- The proximity to other premises/ establishments (please see list at 12.5)
- Whether the area is predominantly residential rather than commercial in nature and premises may cause disturbance to local community.
- Whether management systems are suitable to ensure the safety of performers, customers and staff.

Again, this list is not exhaustive

19 DURATION OF LICENCES

19.1 Licences for sex establishments will be granted for up to one year.

20 RENEWAL OF LICENCE

20.1 It will be the applicant's responsibility to apply for the renewal of the licence in good time (not less than 6 weeks) prior to the expiry of the existing licence. In the event that no application is made prior to the expiry of the existing licence the licence shall cease to remain in force, and a new application will be required.

21 APPEALS

21.1 Section 27 of Schedule 3 to the 1982 Act permits appeals against the decision of the Council in relation to sexual entertainment venues. Appeals will be heard in the first instance by the Magistrates Court. An appeal must be made to the Magistrates Court within 21 days of notification of the decision of the Licensing & Appeals Panel.

21.2 An appeal can be made in the following circumstances:-

- By an applicant for the grant, renewal or transfer of a licence whose application is refused
- By an applicant for the variation of terms, conditions or restrictions on or subject to which the licence is held whose application is refused
- The holder of any such licence who is aggrieved by any term, condition or restriction on or subject to which the licence is held
- The holder of any such licence whose licence is revoked

21.3 There is no right of appeal for objectors.

21.4 There is no right of appeal against refusal on the ground that there are sufficient sex establishments in the locality or that to grant would be inappropriate having regard to the character of the locality, use of premises in the vicinity and the layout, character, condition and location of the premises.

DRAFT

TONBRIDGE AND MALLING BOROUGH COUNCIL

STANDARD TERMS, CONDITIONS & RESTRICTIONS RELATING TO SEX ESTABLISHMENTS

These terms, conditions and restrictions apply to the licences for sex establishments granted, renewed or transferred by the Council under the provisions of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.

Definitions

Save where the context otherwise requires, the following expressions shall have the following meanings:-

- i) “Sex Establishments”, “Sex Cinema”, “Sex Shop”, “Sex Article”, “Sexual Entertainment Venues” and “relevant entertainment and nudity” shall have the meanings ascribed to them in the Third Schedule of the Local Government (Miscellaneous Provisions) 1982 as amended.
- ii) “Premises” means a building or part of a building and any forecourt, yard or place of storage used in connection with a building or part of building, which is subject of a licence for a sex establishment granted under the Third Schedule.
- iii) “Approval of the Council” or “Consent of the Council” means the approval or consent of the Council in writing.
- iv) “Approved” means approved by the Council in writing.
- v) “The Council” means the Tonbridge and Malling Borough Council.

General

The following terms, conditions and restrictions are applicable to all sex establishment licences. In the event of a conflict between these and any special conditions contained in a licence relating to a sex establishment the special condition shall apply.

The grant of a licence for a sex establishment shall not be deemed to convey any approval or consent which may be required under any other enactment by law or regulation other than the Third Schedule to the Local Government (Miscellaneous Provisions) Act 1982 as amended.

Sex Shops

Times of Opening

Condition 1

Except with the previous consent of the Council the premises shall not open to the public before 9.00am and shall not be kept open after 6.00pm

Except with the previous consent of the Council, the sex establishment shall not open on Sundays or any other Bank Holidays or any Public Holidays.

A notice displaying the times when the premises are open or closed shall be displayed on the entrance to the premises in a form and manner approved by the Council.

Conduct and Management of Premises

Condition 2

Where the Licensee is a body corporate or an unincorporated body, any change of director, company secretary or other person responsible for the management of the body is to be notified in writing to the Council within 14 days of such change and such written details as the Council may require in respect of any new director, secretary or manager, are to be furnished within 14 days of a request in writing from the Council.

Condition 3

The Licensee or some responsible person nominated by him in writing for the purpose of managing a sex establishment in his absence and whom details (including photographs) have been supplied to and approved in writing by the Council, shall be in charge of and upon the premises during the whole time they are open to the public.

Condition 4

The holder of the licence shall keep exhibited in a suitable place within the shop premises, so that it can be easily seen by premises users, a copy of the licence and any conditions and regulations made and they shall be readily available for inspection by any of the following officers:-

- a) Duly authorised officer of the Tonbridge and Malling Borough Council
- b) Police Officer, and
- c) Officer of the Fire Authority

Condition 5

The name of the person responsible for the management of the sex establishment being either the Licensee or a manager approved by the Council, shall be prominently displayed within the sex establishment throughout the period during which he is responsible for its conduct.

Condition 6

The Licensee shall retain control over all portions of the premises and shall not let, licence or part with possession of any part of the premises.

Condition 7

The Licensee shall maintain good order in the premises at all times and shall ensure that persons entering or leaving the licensed premises conduct themselves in an orderly manner and do not in any way cause annoyance to residents and persons passing by.

Condition 8

No person under the age of 25 shall be permitted entry to the premises and no person under the age of 18 or be employed in the business of sex establishments.

Condition 9

The Licensee shall ensure that the public are not admitted to any part or parts of the premises other than those which have been approved by the Council.

Condition 10

The Licensee shall ensure that no part of the premises shall be used by prostitutes (Male or Female) for soliciting or for any immoral purpose.

Condition 11

Neither the Licensee nor any employee or other person shall seek to obtain custom for the sex establishment by means of the personal solicitation outside or in the vicinity of the premises.

Condition 12

The Licensee shall ensure that during the hours the sex establishment is open for business, every employee wears an identifying badge, of a type approved by the Council, indicating his name and that he is an employee.

Condition 13

No refreshment of any kind shall be provided nor any consumed on the licensed premises other than for any bona fide staff in a part of the premises not open to the public.

Use of the Premises

Condition 14

The sex shop shall be conducted primarily for the purpose of the sale of goods for retail and change of use of any portion of the premises from that licensed by the Council, shall not be made until the consent of the Council has been obtained thereto.

Condition 15

No change from a sex cinema or sexual entertainment venue to a sex shop or from a sex shop to a sex cinema or sexual entertainment venue shall be effected without the consent of the Council and neither sex articles nor other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity shall be sold, hired, exchanged, loaned or demonstrated in a sex cinema or sexual entertainment venue.

Goods available in sex establishments

Condition 16

All sex articles and other things displayed for sale, hire, exchange or loan within the sex shop, shall be clearly marked to be shown to the persons who are inside the sex shop the respective charge being charged.

Condition 17

All printed matter for sale, hire, exchange or loan shall be available for inspection prior to purchase, and a notice to this effect is to be prominently displayed within the sex establishment.

Condition 18

No film or video shall be exhibited, sold or supplied unless it has been passed by the British Board of Film Classification or such other authority performing a similar scrutinising function as may be notified to the licensee by the Council and bears a certificate to that effect and is a reproduction authorised by the owner of the copyright of the film or video so certified.

- a) The screen of any equipment used should be no more than 12 inches and placed in such a position so as not to be visible to the public outside the premises.
- b) The screen shall be placed in such a position approved by the Council.
- c) Only videos of clips of other videos for advertising purposes shall be shown and no individual clip shall be shown for longer than three minutes.
- d) No film or video will be shown in its entirety.
- e) Films will not be shown at the customer's request.
- f) All trailers shown are to be approved by the British Board of Film Classification
- g) A warning notice will be placed on the screen stating "For staff use only" or "No customers allowed to operate".

External Appearances

Condition 19

No advertisement, words, letter, model, sign, placard, board, notice, device, representation, drawing, writing or any other matter or thing (whether illuminated or not) shall be exhibited so as to be visible from the outside of the premises except:- (i) Any notice of a size and in the form approved by the Council which is required to be displayed so as to be visible from outside the premises by law, or by any condition of a licence by a Council.

Such display, advertisement, word, letter, model, sign, placard, notice, device, representation, drawing, writing or any matter or thing as shall have been approved by the Council.

No merchandise shall be displayed in any window which can be seen by any person walking pass the external parameter of the building.

Condition 20

A prominent clear notice shall be displayed at each entrance to the premises advising customers that no person under 25 will be admitted and they may be asked to produce evidence of their age.

Suggested notice 'PERSONS UNDER 25 CANNOT BE ADMITTED TO THESE PREMISES'

Condition 21

The entrance doors to the premises shall be obscured, screened or arranged so as to effectively prevent the interior of the premises being seen by passers by.

The obscuration, screening or other arrangements shall be to the satisfaction of and approved by the Council.

Condition 22

- (a) The windows of the licensed premises fronting the pavement shall not be as obscured other than with the consent of the Council, but shall have suspended behind them, in a position and attitude approved by the Council, such opaque blinds or screen or such other arrangements as approved by the Council.
- (b) This condition shall not be construed as lessening any obligation of the Licensee under Licence Condition 21.
- (c) Any such special precautions as may be necessary shall be taken to maintain the screening of the shop window during any cleaning process.

State, Condition and Layout of the Premises

Condition 23

The premises shall be maintained in good repair and condition throughout, including the front fascia of the shop and entrance to the satisfaction of the Council.

Condition 24

Lighting in all parts of the premises shall be to a level approved by the Council and shall be in operation continuously during the hours when the sex establishment is open to the public.

Condition 25

The number, size and position of all doors or openings provided for the purpose of the ingress and egress of the public shall be approved by the Council and shall comply with the following requirements:-

- (i) All such doors or openings approved by the Council shall be clearly indicated on the inside by the word "Exit" or "Fire Exit".
- (ii) Doors and openings that lead to parts of the premises to which the public are not permitted to have access, shall have notices placed over them marked "Private – no access to the public".
- (iii) Save in the case of emergency no access shall be permitted through the premises adjoining or adjacent.

Condition 26

The external door/doors to the sex establishment shall be fitted with a device to provide for their automatic closure and such device shall be maintained in good working order.

Condition 27

Alterations or additions either internal or external, whether permanent or temporary to the structure, lighting or layout of the premises, shall be made except with the prior approval of the Council.

Condition 28

All parts of the premises shall be kept in a clean and wholesome condition to the complete satisfaction of the Council.

Safety

Condition 29

The Licensee shall take all reasonable precautions for the safety of the public and employees.

Condition 31

The Council reserves the right after grant, renewal or transfer of this licence at any time to dispense with or modify or relax any of these terms, conditions and restrictions and to make such additional terms, conditions and restrictions as they may deem requisite to meet the circumstances of any particular case.

Condition 32

The licence may be revoked by the Council if at any time the holder is convicted of any offence of using the licensed premises, or other premises for which a similar licence has been granted other than in accordance with the terms, conditions or restrictions of the licence or is convicted of any offence under any enactment defined in Paragraph 1 of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.

Sex Cinemas

Film Categories

Condition 1

The categories U, PG, 12, 15, 18 and restricted 18 have the following effect:

- U—Universal - suitable for all
- PG — Parental Guidance — some scenes may be unsuitable for young children
- 12 — Passed only for persons of 12 years and over
- 15 — Passed only for persons of 15 years and over
- 18 — Passed only for persons of 18 years and over
- Restricted 18 - Passed only for persons of 18 or over who are members (or their guests) of a properly constituted club.

Unclassified Films

Condition 2

The licensee must notify the Council in writing no later than twenty-eight days prior to exhibiting any other film that has not been classified as specified in the film categories. Such a film may only be exhibited if the Council's gives written consent prior to the event and must comply in accordance with the terms of any such consent given.

Restricted Films

Condition 3

Films restricted 18 (R18) may be shown at the premises only with the Council's prior written consent and in accordance with the terms of any such consent.

Persons Under 18

Condition 4

No person appearing to be under the age of 18 shall be admitted to any part of the programme and the licensee shall display in a conspicuous position at each entrance to the premises a notice in clear letters in the following terms:

PERSONS UNDER 18 CANNOT BE ADMITTED TO THIS CINEMA FOR ANY PART OF THE PROGRAMME

Condition 5

No persons under 18 years of age shall be employed in any capacity at the premises in an area operating as sex cinema club.

Advertising

Condition 6

No advertisement displayed at the premises where a film is to be exhibited shall depict any scene or incident from a film that has been classified by the British Board of Film Classification, Board of Film Censors or approved for exhibition by the Licensing Authority.

Condition 7

The licensee shall display in a conspicuous position, to the satisfaction of the Council at each entrance to the premises, during the whole time the public are admitted to the premises and so as to be easily seen and read by the public, a timetable of the films on exhibition.

Condition 8

When the programme includes a film restricted 18, the licensee shall display in a conspicuous position at each entrance to the premises a notice in clear letters in the following terms:

CINEMA CLUB — MEMBERS AND GUESTS ONLY. PERSONS UNDER 18 CANNOT BE ADMITTED TO THIS CINEMA FOR ANY PART OF THE PROGRAMME.

Condition 9

The entrance doors to the premises shall be obscured, screened or arranged so as to effectively prevent the interior of the premises being seen by passers by.

The obscuration, screening or other arrangements shall be to the satisfaction of and approved by the Council.

Restricted 18

Condition 10

A register of all members and all visitors books of their guests shall be available for immediate inspection by authorised officer of the Council during any performance or at any other reasonable time.

Condition 11

Tickets shall in no circumstances be sold to persons other than to members.

Membership

Condition 12

The club rules must be submitted to the Council 14 days before the club commences operation and notice of all rule changes shall be given to the Council within 14 days of the change.

Condition 13

Membership shall be open to persons of both sexes of not less than 18 years of age

Condition 14

Applications for membership, including both name and address, shall be in writing, signed by the applicant and if deemed necessary such applicant shall provide satisfactory references and proof of age.

Condition 15

No persons shall be admitted to membership until the expiration of at least 24 hours after such written application has been approved by the management of the club.

Condition 16

New members shall be supplied with a personal copy of the club rules before being admitted to membership and be given a copy of any rule changes within 14 days of the change.

Condition 17

An annual subscription shall be fixed for the club and shall run for 12 months from the date of registration. Membership may be renewed annually at the subscription for the time being in force, but the management may refuse to renew any membership without assigning reason for such refusal.

Condition 18

Members shall be entitled on any day to bring no more than one guest to accompany the member, and the name of the guest shall be entered in the visitors book and counter signed by the member.

Condition 19

Tickets shall be sold only to members on the production of a membership card, and members shall if required sign and acknowledgement for the ticket or tickets issued.

Condition 20

Membership cards shall be personal to the member and carry a photograph of the holder.

Condition 21

Neither membership tickets nor guest tickets shall be transferable.

Condition 22

Guests may be asked for proof of identity, or of age, or any particulars of any guest shall be produced by any member of guest if demanded by the management.

Condition 23

Members shall undertake to behave in a proper and orderly manner. Any member or guest acting in a manner which is offensive, or a nuisance or annoyance to others may be refused admission or expelled from the premises. A member may also be deprived of membership.

Sale of Sex Articles

Condition 24

Neither sex articles nor other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity shall be displayed, sold, hired, exchanged, loaned or demonstrated in a sex cinema.

Display of Tariff and Charges

Condition 25

There shall be prominently and legibly displayed a comprehensive tariff of all charges and prices which shall be illuminated and placed in such a position that it can easily and conveniently be read by persons before entering the premises. No employee shall stand in such a position as to obscure the notice.

Conduct and Management of Premises

Condition 26

The name of the person responsible for the management of the sex establishment being either the Licensee or a manager approved by the Council, shall be prominently displayed within the sex establishment throughout the period during which he is responsible for its conduct.

Condition 27

A notice showing the name of the person responsible for the management of the sex cinema on that day to be prominently displayed within the sex cinema throughout the period during which he is responsible for its conduct.

Condition 28

The Licensee shall ensure that no part of the premises shall be used by prostitutes (Male or Female) for soliciting or for any immoral purpose.

Condition 29

Neither the Licensee nor any employee or other person shall seek to obtain custom for the sex establishment by means of the personal solicitation outside or in the vicinity of the premises.

Condition 30

The Licensee shall ensure that during the hours the sex establishment is open for business, every employee wears an identifying badge, of a type approved by the Council, indicating his name and that he is an employee.

Condition 31

The Licensee or some responsible person nominated by him in writing for the purpose of managing a sex establishment in his absence and whom details (including photographs) have been supplied to and approved in writing by the Council, shall be in charge of and upon the premises during the whole time they are open to the public.

Condition 32

All parts of the premises shall be kept in a clean and wholesome condition to the complete satisfaction of the Council.

Internal access to cinema

Condition 33

Windows and openings within the premises where films are shown should have blinds of a type and size that covers windows and openings which render the interior of the cinema where films are being shown invisible to passers by and/or other areas within the building that are open to the public for other activities.

Condition 34

The licensee shall ensure that no noise shall emanate from the cinema that can be heard from within another area of the building or from outside.

Security

Condition 35

A member of staff to remain in the vicinity of the entrance to the cinema to prevent under 18's or non-members from illegal entry.

Use of Premises

Condition 36

No change from a sex shop or sexual entertainment venue to a sex cinema or from a sex cinema to a sex shop or sexual entertainment venue shall be effected without the consent of the Council.

Safety

Condition 37

The Licensee shall take all reasonable precautions for the safety of the public and employees.

Sexual Entertainment Venue

Times of Opening

Condition 1

The premises shall not open unless otherwise permitted:

[TIMES WILL BE SPECIFIED FOR EACH LICENCE]

Conduct and Management of Premises

Condition 2

The name of the person responsible for the management of the sex establishment being either the Licensee or a manager approved by the Council, shall be prominently displayed within the sex establishment throughout the period during which he is responsible for its conduct.

Condition 3

The licensee or the responsible person shall maintain a daily register to be kept on the premises and produced to an authorised officer on request. The register to be completed each day within 30 minutes of the Sex Entertainment Venue opening for business and will record the name and contact details of any person who is to be responsible for managing the Sex Entertainment Venue in the absence of the licensee and details of all staff employed at the premises including performers.

Condition 4

A notice showing the name of the person responsible for the management of the sex entertainment venue on that day to be prominently displayed within the sex establishment throughout the period during which he is responsible for its conduct.

Condition 5

Where the licensee is a body corporate or an unincorporated body any change of director, company secretary or other person responsible for the management of the body is to be notified in writing to the Council within 14 days of such change.

Condition 6

The licensee shall ensure that no part of the building or its boundary is used by prostitutes (male or female) for the purposes of soliciting or any other immoral

purposes. Neither the licensee nor any employee or other person shall seek to obtain custom by means of personal solicitation outside or in the vicinity of the premises.

Condition 7

The licensee shall ensure that the public are not admitted to any part or parts of the premises other than those that have been approved by the Council.

Condition 8

Licensee shall maintain good order on the premises and in particular shall ensure that no

- lewd conduct
- indecent behaviour
- unlawful possession and/or supply of controlled drugs
- conduct likely to cause a breach of the peace on the premises
- offers of any sexual or indecent service for reward
- any acts of violence against person or property and/or the attempt or threat of such acts

takes place on the premises or in its immediate vicinity

Condition 9

A management operation manual detailing all aspects of procedure when the premises is operating relevant entertainment shall be produced and approved by the Licensing Authority. This document shall be on going and under constant review.

Condition 10

All members of staff (except performers) shall be easily identifiable. If required by the Council or Kent Police in writing the licensee shall ensure that during the hours the premises are open for relevant entertainment staff will wear a badge of a type/format approved by the Council indicating their name and that they are an employee or person working in the premises.

Age Restriction

Condition 11

No person under the age of 18 shall be admitted to the premises or employed in the business of the sex establishment.

Condition 12

A prominent clear notice shall be displayed at each entrance to the premises advising customers that no person under 18 will be admitted and they may be asked to produce evidence of their age.

PERSONS UNDER 18 CANNOT BE ADMITTED TO THESE PREMISES

Advertising

Condition 13

No display, advertisement, word, letter, model, sign, light, placard, board, notice, device, representation, drawing, writing or any matter or thing (where illuminated or not) shall be exhibited so as to be visible from outside the premises without approval by the Council.

Condition 14

The licence holder shall not display outside the premises, or on any advertising material, photographs or other images that indicate and suggest striptease or similar dancing takes place on the premises and which may be offensive.

Condition 15

The premises should not advertise by means of cruising vehicles or use of any other form of solicitation to invite people into the premises.

External and Internal access to an area holding relevant entertainment

Condition 16

The entrances to the premises shall be of a material or covered with a material that will render the interior of the premises invisible to passers by.

Condition 17

Windows and openings within the premises other than entrances will have curtains / blinds of a type and size that covers windows and openings which render the interior of the premises where relevant entertainment is taking place invisible to passers by and/or other areas within the building that are open to the public for other activities.

Condition 18

Windows will remain closed whilst the premises or part of that premises is being used for relevant entertainment.

Layout of the premises

Condition 19

No fastening of any description shall be fitted upon any booth or cubicle within the premises.

Condition 20

All dance booths or cubicles are to be equipped with a panic alarm for safety.

Condition 21

Any changes to layout of the premises must be informed to the licensing authority in writing submitting plans. Alteration must not take place without prior written consent by the Licensing Authority

Condition 22

The licensee shall ensure that noise from the premises or vibration be transmitted through the structure of the premises does not give rise to a nuisance to the occupiers of premises in the vicinity of the venue.

Condition 23

The external doors to the premises shall be fitted with a device to provide for their automatic closure and such devices shall be maintained in good working order.

Condition 24

Doors and openings which lead to parts of the premises to which the public are not permitted to have access shall have notices placed over them marked 'private' and remain closed other than for the purposes of the ingress and egress of management, staff and performers.

Entertainers/Performers

Condition 25

An appropriate room shall be set aside to provide a changing and rest area for entertainers. Arrangements shall be made to ensure that there is restricted public access to this room which shall be maintained at all times whilst the licensable activities are taking place and until such time as all performers using the dressing room have finished.

Condition 26

At all times during the performance, performers shall have direct access to a dressing room without passing through or in close proximity to the audience.

Condition 27

On leaving the premises performers, who wish to be, shall be escorted by a staff member to their vehicle or other safe location

Condition 28

Performers shall be aged not less than 18 years old.

Condition 29

Only the performers shall provide the entertainment, no audience participation shall be permitted.

Condition 30

No performance shall include a sex act with any other performer, persons in the audience or with the use of any object or animal.

Condition 31

In the event of the relevant entertainment being performed for private viewing, the patron shall be informed of the duration and price of the relevant entertainment and the details shall be specified in a clearly visible notice in each area designed for private relevant entertainment.

Condition 32

Any person who can be observed from the outside of the premises must be properly and decently dressed. Scantily clad individuals shall not exhibit in the entranceway or in an area of the premises open to the public that is not designated area for relevant entertainment.

Condition 33

All performers shall be aware of the management operation that will include a written policy on the conduct of performers.

Condition 34

Photography or videoing of performances should not be allowed.

Condition 35

There shall be routine checking of employment records and evidence that all prospective staff and performers have the right to work in the UK.

Condition 36

Performers should not be permitted to arrange contacts or liaisons, exchange telephone numbers or other means of making contact while on the premises
Staffing

Condition 37

During any lap dancing performance, or private dance, performers may not:

- Touch customers in any way
- Performer must not be within 30cms (12") from any part of a patron
- Climb onto furniture provided for patrons
- Simulate sex acts
- Use sex articles

Sale of Goods

Condition 38

Neither sex articles nor other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity shall be displayed, sold, hired, exchanged, loaned or demonstrated in a Sex Entertainment Venue.

Display of Tariff and Charges

Condition 39

There shall be prominently and legibly displayed a comprehensive tariff of all charges and prices which shall be illuminated and placed in such a position that it can easily and conveniently be read by persons before entering the premises. No employee shall stand in such a position as to obscure the notice.

Condition 40

Where a charge is to be made for the company of a hostess or other companion this shall be identified on the tariff of charges to the satisfaction of the Council.

Condition 41

No order shall be accepted unless the customer has been provided with a copy of the said tariff and has been given sufficient time and opportunity to read it.

Condition 42

No charge shall be made to the customer for any drink provided for the hostess or companion unless that customer has specifically ordered it having first been made aware of the cost.

Use of Premises

Condition 43

No change from a sex shop or sexual entertainment venue to a sex cinema or from a sex cinema to a sex shop or sexual entertainment venue shall be effected without the consent of the Council.

Pool of Possible Additional Conditions

Age Restriction

Condition a

All members of staff at the premises shall seek credible photographic proof of age evidence from any person who appears to be under the age of 25 years and who is seeking access to the premises. Such credible evidence, which shall include a photograph of the customer, will either be a passport, photographic driving licence, or proof of age card carrying a 'PASS' logo.

Security

Condition b

Door supervisors, registered in accordance with the Security Industry Authority (SIA) shall be on duty at all times when relevant entertainment is taking place.

Condition c

An adequate number of door supervisors shall be on duty on the premises whilst relevant entertainment takes place. There shall be at least one door supervisor on each entrance, in each separate part of the premises and on the door to the dressing room.

Condition d

CCTV to be installed to a standard agreed by police to cover all public areas, including all access and egress points in accordance with CCTV Code of Practice. Maintained and serviced on a regular basis and records to be kept. The system to have an incorporated recording facility and recordings to be stored for one calendar month. The CCTV system to be fully operational throughout the hours that the premises are open for licensable activity. Access of the recordings to be made available at any reasonable time to Police and Local Authority officers upon request. Staff will be fully trained in the CCTV system and there will be at least one member of staff on duty during trading hours who is able to provide a recording of any incident in a format that can be taken away to be viewed.

Entertainers/Performers

Condition e

Whilst dancers are performing there shall be a minimum distance of one metre between the dancer and the seated customers and prominent, clear notices shall be displayed at each table stating this requirement

Condition f

There shall be no physical contact between customers and the dancers at any time except for the placing of money or tokens in a garter or into the hands of the dancer at the beginning or conclusion of a performance.

Staffing

Condition g

All staff employed to work at any premises licensed as a sex establishment shall be required to provide an enhanced criminal records bureau disclosure to the Licensing Authority in which the premises is located.

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Appendix C

Feedback Form - Draft 'Licensing Sex Shops, Sex Cinemas and Sexual Entertainment Venues Policy'

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

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TONBRIDGE & MALLING BOROUGH COUNCIL

LICENSING & APPEALS COMMITTEE

10 March 2020

Report of the Director of Central Services and Deputy Chief Executive

Part 1- Public

Delegated

1 AIR QUALITY CONSULTATION FOR HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES

1.1 Background

- 1.1.1 Members will be familiar with the motion agreed by full Council on 9 July 2019 to declare its recognition of global climate change and biodiversity emergencies. As part of that motion, Members agreed to ensure Tonbridge and Malling Borough Council has policies that support climate change mitigation, and to bring forward a revised draft Climate Change Strategy by May 2020 including deliverable performance indicators and an aspiration for Tonbridge and Malling to be carbon neutral by 2030.
- 1.1.2 This report details the approach by Licensing Services, primary focusing on Hackney Carriage and Private Hire vehicle licences with a view to ensuring a carbon neutral licensed taxi fleet by 2030.

Ultra-low emission vehicles (ULEV)

- 1.1.3 The Government has set up “The Office for Low Emission Vehicles (OLEV)”, a team working across government to support the early market for ultra-low emission vehicles (ULEV). OLEV is part of the Department for Transport and the Department for Business, Energy & Industrial Strategy.
- 1.1.4 Ultra Low Emission Vehicles (ULEVs) Ultra low emission vehicle (ULEV) is the term used to describe any vehicle that:
- uses low carbon technologies
 - emits less than 75g of CO₂/km from the tailpipe
 - is capable of operating in zero tailpipe emission mode for a range of at least ten miles.

- 1.1.5 ULEVs range from pure electric vehicles and fuel cell electric vehicles, to plug-in hybrids and extended range electric vehicles. These are also the thresholds for the government's consumer incentive scheme, the Plug-in Car Grant (PiCG).
- 1.1.6 Most ULEVs on the road today use alternative fuels such as electricity and hydrogen to drive an electric motor, with batteries commonly used as an energy storage device. In most instances these batteries are charged by being plugged into a dedicated chargepoint or directly into the mains, whereas hydrogen vehicles can be refuelled at specific refuelling stations in a similar way to refuelling a petrol or diesel vehicle.

Current position - TMBC Hackney Carriage and Private Hire fleet

- 1.1.7 For the purposes of this report I am using a snapshot taken on the 13 January 2020 from the Licensing database showing the status of "issued" for any Hackney Carriage and Private Hire Vehicle.

- 163 Hackney Carriage vehicles
- 425 Private hire vehicles

- 1.1.8 The size of the fleet has grown in the last five years, reflecting the trading environment. There is no cap on numbers for Hackney Carriage vehicles (the Council is empowered to restrict numbers should it choose*); however we do impose restrictions on the age of a vehicle that can be licensed (No older than six years since first registered in order to be licensed for the first time, and no older than ten years for all vehicles).

*subject to being satisfied that there is no significant unmet demand

- 1.1.9 Tonbridge & Malling Borough Council publishes two lists on the council website in respect to wheelchair accessible vehicles:
- 1.1.10 A "designated vehicles list" of all wheelchair accessible vehicles will be maintained in accordance with section 167 of the Equalities Act 2010.

"designated vehicles" – where a person can use a Hackney Carriage or Private Hire Vehicle without getting out of a wheelchair (Ramp etc.)

TMBC has 4 Hackney Carriages and 124 Private Hire Vehicles that are "designated vehicles"

"voluntary list" – where a Hackney Carriage or Private Hire Vehicle that are accessible to passengers in wheelchairs, who are able to transfer from their wheelchair into a seat within the vehicle and the wheelchair can be folded down and placed in the vehicle.

TMBC has 124 Hackney Carriages and 293 Private Hire Vehicles that are "voluntary"

1.1.11 Vehicle ages are calculated from the date of the vehicle's first registration with the DVLA under the Vehicle and Excise Registration Act 1994.

1.1.12 A breakdown of the numbers of vehicles licensed by TMBC over the last 5 years is set out in the table below.

	Dec-15	Dec-16	Dec-17	Dec-18	Dec-19
Hackney Carriage Vehicles	194	211	204	184	163
Private Hire Vehicles	305	340	398	441	425
Total licensed vehicles	499	551	602	625	588

Type of vehicles currently licensed

1.1.13 Taking a snapshot on the 13 January 2020 of the top 25 make and models licensed, we had the following make up in the TMBC licensed fleet:-

	Make	Model	Number	% of fleet
1	Mercedes	E220	49	8.33%
2	Skoda	Octavia	48	8.16%
3	Volkswagen	Passat	39	6.63%
4	Toyota	Avensis	31	5.27%
5	Skoda	Superb	31	5.27%
6	Toyota	Auris	24	4.08%
7	Ford	Tourneo	24	4.08%
8	Renault	Trafic	23	3.91%
9	Ford	Mondeo	22	3.74%
10	Vauxhall	Vivaro	19	3.23%
11	Dacia	Logan	15	2.55%
12	Mercedes	Vito	14	2.38%
13	Ford	Galaxy	13	2.21%
14	Volkswagen	Touran	12	2.04%
15	Toyota	Prius	12	2.04%

	Make	Model	Number	% of fleet
16	Vauxhall	Insignia	12	2.04%
17	Vauxhall	Zafira	11	1.87%
18	Skoda	Rapid	8	1.36%
19	Vauxhall	Astra	8	1.36%
20	Toyota	Verso	8	1.36%
21	Seat	Alhambra	7	1.19%
22	Seat	Toledo	6	1.02%
23	Ford	Focus	6	1.02%
24	Vauxhall	Transporter	5	0.85%
25	Ford	Transit	4	0.68%
	Other		137	23.3%
Total			588	100.00%

Breakdown of current taxi and private hire fleet by fuel

	Hackney Carriage	Private Hire	Total fleet
Diesel	141	396	534
Hybrid Electric	20	18	38
Petrol	1	8	11
Electric Diesel	1	1	2
Electricity	0	2	3
Totals	163	425	588

Euro emissions status

1.1.14 The table below is reproduced from the standards set out by the European Commission, and acts as a guide to show how the different Euro emissions categories are applied to new vehicle models approved after a specific date.

1.1.15 As a general rule, every car sold up to a year after the dates below should conform to the appropriate standards. However some cars bought after the implementation date may still have the previous Euro standard.

1.1.16 This table is used by some towns and cities to ban entry, or charge an emissions levy. So, for example, the Ultra-Low Emission Zone (ULEZ) within central London imposes a charge based upon the emissions from the vehicle rather than the age. In respect of cars, the minimum emission standards are Euro 4 (petrol) and Euro 6 (diesel). In practice this means:-

- Petrol cars that meet the ULEZ standards are generally those first registered with the DVLA after 2005, although cars that meet the standards have been available since 2001;
- Diesel cars that meet the standards are generally those first registered with the DVLA after September 2015

Car registered from	Emissions	Euro definitions
1 January 1993	Euro 1	<p>Euro 1 (EC93)</p> <p>Applies to all new cars registered from 1 January 1993</p> <p>Benefits: The Euro 1 standard heralded the introduction of catalytic converters and unleaded petrol for all cars.</p> <p>Euro 1 emissions limits (petrol)CO: 2.72g/kmHC + NOx: 0.97g/km</p> <p>Euro 1 emissions limits (diesel)CO: 2.72g/kmHC + NOx: 0.97g/kmPM: 0.14g/km</p>
1 January 1997	Euro 2	<p>Euro 2 (EC96)</p> <p>Applies to all new cars registered from 1 January 1997</p> <p>Benefits: Euro 2 standards introduced different emissions limits for petrol and diesel engines and reduced the acceptable levels of all four major emissions across the board.</p> <p>Euro 2 emissions limits (petrol) CO: 2. 20g/kmHC + NOx: 0.50g/km</p> <p>Euro 2 emissions limits (diesel) CO: 1.00g/kmHC + NOx: 0.70g/kmPM: 0.08g/km</p>

Car registered from	Emissions	Euro definitions
1 January 2001	Euro 3	<p>Euro 3 (EC2000)</p> <p>Applies to all new cars registered from 1 January 2001</p> <p>Benefits: Introduced separate limits for hydrocarbons and nitrogen oxide emissions for petrol engines, and a separate nitrogen oxide limit for diesel engines.</p> <p>Euro 3 emissions limits (petrol) CO: 2.30g/kmHC: 0.20g/kmNOx: 0.15g/km</p> <p>Euro 3 emissions limits (diesel) CO: 0.64g/kmHC: 0.56g/kmNOx: 0.50g/kmPM: 0.05g/km</p>
1 January 2006	Euro 4	<p>Euro 4 (EC2005)</p> <p>Applies to all new cars registered from 1 January 2006</p> <p>Benefits: Significant reduction in the permissible limits for particulates and nitrogen oxides in diesel engines. Some new diesel-engined cars gained diesel particulate filters (DPFs) that trap 99% of particulates.</p> <p>Euro 4 emissions limits (petrol) CO: 1.00g/kmHC: 0.10g/kmNOx: 0.08g/km</p> <p>Euro 4 emissions limits (diesel) CO: 0.50g/kmHC + NOx: 0.30g/kmNOx: 0.25g/kmPM: 0.025g/km</p>
1 January 2011	Euro 5	<p>Euro 5</p> <p>Applies to all new cars registered from 1 January 2011</p> <p>Benefits: Heralded the introduction of diesel particulate filters (DPFs) for all diesel cars. A particulates limit was also introduced for direct-injection petrol engines.</p> <p>An additional limit on the number of particles emitted by diesel engines was also introduced for cars registered from 1 January 2013.</p> <p>Euro 5 emissions limits (petrol) CO: 1.00g/kmHC: 0.10g/kmNOx: 0.06g/kmPM: 0.005g/km</p> <p>Euro 5 emissions limits (diesel) CO: 0.50g/kmHC + NOx: 0.23g/kmNOx: 0.18g/kmPM: 0.005g/kmPM: 6.0×10^{-11}/km</p>

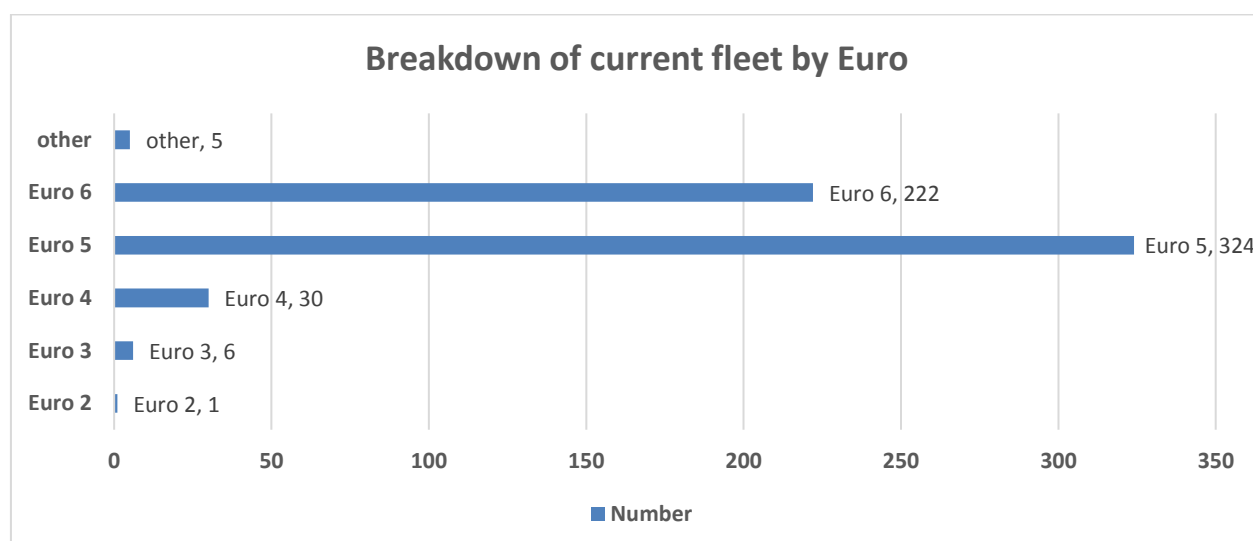
Car registered from	Emissions	Euro definitions
1 September 2015 *	Euro 6	<p>Euro 6</p> <p>Applies to all new cars registered from 1 September 2015</p> <p>Benefits: A 67% reduction in the permissible levels of nitrogen oxides in diesels and the introduction of a particle number limit for petrols.</p> <p>Car makers are using two methods to meet these strict diesel limits. The first is selective catalytic reduction, which involves a liquid that converts nitrogen oxide into water and nitrogen being squirted into the car's exhaust.</p> <p>Alternatively, an exhaust gas recirculation system is fitted, which replaces some of the exhaust gas with intake air to reduce the amount of nitrogen that can be turned into NOx.</p> <p>Euro 6 emissions limits (petrol) CO: 1.00g/kmHC: 0.10g/kmNOx: 0.06g/kmPM: 0.005g/kmPM: 6.0x10⁻¹¹/km</p> <p>Euro 6 emissions limits (diesel) CO: 0.50g/kmHC + NOx: 0.17g/kmNOx: 0.08g/kmPM: 0.005g/kmPM: 6.0x10⁻¹¹/km</p>

Euro definitions taken from <https://www.whatcar.com/advice/owning/euro-1-to-euro-6-how-clean-is-my-car/n1190>

Current fleet – Euro emissions breakdown

1.1.17 Using the current number of Hackney Carriage and Private Hire Vehicles licensed as of December 2019 the Euro emissions breakdown would be as follows:

		Hackney Carriage		Private Hire		Total Fleet	
		Number	%	Number	%	Number	%
Euro 1							
Euro 2	Petrol			1	0.24%	1	0.17%
Euro 3	Diesel			5	1.18%	5	0.85%
	Petrol			1	0.24%	1	0.17%
Euro 4	Diesel	15	9.20%	14	3.29%	29	4.93%
	Hybrid Electric	1	0.61%		0.00%	1	0.17%
Euro 5	Diesel	90	55.21%	207	48.71%	297	50.51%
	Hybrid Electric	10	6.13%	10	2.35%	20	3.40%
	Petrol	1	0.61%	3	0.71%	4	0.68%
	Electric Diesel	1	0.61%	1	0.24%	2	0.34%
	Electricity		0.00%	1	0.24%	1	0.17%
Euro 6	Petrol		0.00%	3	0.71%	3	0.51%
	Diesel	36	22.09%	165	38.82%	201	34.18%
	Hybrid Electric	9	5.52%	8	1.88%	17	2.89%
	Electricity			1	0.24%	1	0.17%
To be determined				5	1.18%	5	0.85%
Total		163	100%	425	100%	588	100%



Current fleet – Year when vehicle is 10 years

1.1.18 This table shows the date when each of our current vehicles in the taxi and private hire fleet reaches 10 years of age, and will no longer be allowed to operate within TMBC. The vehicles age is calculated from the date of registration shown on the log book.

Hackney Carriage Vehicles

Euro	Hackney Carriage	other	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
2	Petrol												
3	Diesel												
3	Petrol												
4	Diesel		2	11	1							1	
4	Hybrid Electric									1			
5	Diesel		3		10	16	18	26	15	1		1	
5	Hybrid Electric		1		2	2	2	1	2				
5	Petrol							1					
5	Electric Diesel							1					
5	Electricity												
6	Petrol												
6	Diesel		2					1	6	13	5	9	
6	Hybrid Electric								2	5		2	
6	Electricity												
	other												
	Totals		8	11	13	18	20	30	25	20	5	13	

Private Hire Vehicles

Euro	Private Hire	other	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
2	Petrol	1											
3	Diesel	5											
3	Petrol	1											
4	Diesel		6	7		1							
4	Hybrid Electric												
5	Diesel		4		12	32	60	49	47	2	1		
5	Hybrid Electric						2	2	5			1	
5	Petrol						1	2					
5	Electric Diesel								1				
5	Electricity							1					
6	Petrol		1						1			1	
6	Diesel		27		1		1		29	43	34	30	
6	Hybrid Electric								1	3	1	3	
6	Electricity			1									
	other	5											
	Totals	12	38	8	13	33	64	54	84	48	36	35	

Total fleet (Hackney Carriage and Private Hire) – Year when vehicle is 10 years

	Other	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
Hackney		8	11	13	18	20	30	25	20	5	13	0
Private Hire	12	38	8	13	33	64	54	84	48	36	35	0
Total	12	46	19	26	51	84	84	109	68	41	48	0

Fuel type - – Year when vehicle is 10 years

	Other	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
Diesel	5	44	18	24	49	79	76	97	59	40	41	
Hybrid Electric		1		2	2	4	3	10	9	1	6	
Petrol	2	1				1	3	1			1	
Electric Diesel							1	1				
Electricity			1				1					
Other	5											
Total	12	46	19	26	51	84	84	109	68	41	48	0

Local Authorities using Euro emissions as criteria for licensing a vehicle

1.1.19 Different Local Authorities have started to introduce Euro emission levels for their licensed Hackney Carriage & private hire fleets, to improve air quality within their areas. These include Transport for London; Northampton; Bristol City Council; Cornwall Council; Derby and Birmingham City Council (see **Annex 1**).

Types of classification for reduced emission vehicles

1.1.20 Definitions of Taxis converted to liquid petroleum gas (LPG); Zero emission capable (ZEC) and Ultra Low Emission Vehicle (ULEV) are shown at **Annex 2**

How can TMBC licensing implement change to help achieve carbon neutral by 2030?

1.1.21 There are a number of options open for TMBC to consider in order to deliver a carbon neutral position by 2030. However whatever criteria we choose will potentially have an impact on fee income.

Option 1 - No change

1.1.22 When first licensed, **all** vehicles must be less than six years old from the date of first registration. Exemption may apply under the Limousine and Special Event Vehicles.

Vehicle	Age Criteria
Licensing a vehicle for the first time	All vehicles must be less than six years old (including wheelchair accessible vehicles but excluding Limousines and Special Event Vehicles) from the date of first registration.
Re-licensing a Saloon, estate, hatchback, or multi-passenger vehicle	Ten years from the date of first registration
Re-licensing a wheelchair accessible vehicle (where a person can stay in a wheelchair and be loaded into a Hackney Carriage or Private Hire Vehicle)	Fifteen years from the date of first registration
Limousines and Special Event Vehicles	There will be no age restriction on licensing limousines and Special Event Vehicles

Option 2 – Restrict type of vehicle by emissions level over the next ten years

Proposed Changes	Date
Remove the “no age” restriction on Limousines (2 vehicles) and Special Event Vehicles (0 vehicles) and restrict existing licensed vehicles in this category to maximum of 15 years from the date of first registration	Sep 2020
All new vehicles to be licensed, must be: <ul style="list-style-type: none"> • Euro 6 diesel engine, • Euro 4 petrol engine (or a newer Euro standard) And no older than 6 years of age at the time of licensing.	Jan 2021
Allow any Taxis converted to liquid petroleum gas (LPG) maximum operating licence will be 15 years	Jan 2021

Proposed Changes	Date
All new and renewals vehicles to be licensed, must be Ultra Low Emission Vehicle (ULEV) <ul style="list-style-type: none"> • Petrol Hybrid Euro 5 • Petrol Euro 6 • Diesel Euro 6 	Jan 2025
All renewals vehicles to be licensed, must be Ultra Low Emission Vehicle (ULEV) Petrol Hybrid Euro 5 or converted to liquid petroleum gas (LPG)	Jan 2028
All new and renewal vehicles must be : <ul style="list-style-type: none"> • Zero emission capable (ZEC), or • Ultra Low Emission Vehicle (ULEV) 	Jan 2030

Option 1 – No change

1.1.23 I have taken the current fee levels agreed for 2021 and added a 3 percent increase year for the purposes of this illustration.

Fee levels £

	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
% Increase		3%	3%	3%	3%	3%	3%	3%	3%	3%	3%
Hackney Carriage	245	252	260	268	276	284	293	301	310	320	245
Hackney Carriage	225	232	239	246	253	261	269	277	285	294	225
Private Hire	235	242	249	257	264	272	281	289	298	307	235
Private Hire (Renewal)	225	232	239	246	253	261	269	277	285	294	225

Note – Numbers rounded up for illustration

Projected Income levels

1.1.24 I have used the average new and renewal applications over the last 12 months for this illustration.

	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
% Increase		3%	3%	3%	3%	3%	3%	3%	3%	3%	3%
Hackney Carriage	7,350	7,571	7,798	8,032	8,272	8,521	8,776	9,040	9,311	9,590	7,350
Hackney Carriage	31,500	32,445	33,418	34,421	35,454	36,517	37,613	38,741	39,903	41,100	31,500
Private Hire	23,500	24,205	24,931	25,679	26,449	27,243	28,060	28,902	29,769	30,662	23,500
Private Hire (Renewal)	84,825	87,370	89,991	92,691	95,471	98,335	101,285	104,324	107,454	110,677	84,825
Total	147,175	151,590	156,138	160,822	165,647	170,616	175,735	181,007	186,437	192,030	147,175

Option 2 – Restrict type of vehicle by emissions level over the next ten years

Proposed Changes	Date	Revenue risk £
Remove the “no age” restriction on Limousines and Special Event Vehicles and restrict existing licensed vehicles in this category to maximum of 15 years from the date of first registration	Sep 2020	675

- We have 3 Limousines and 0 special events car with an annual fee revenue as a Private Hire of (£225 * 3 = £675).

Proposed Changes	Date	Revenue risk £
<p>All new vehicles to be licensed, must be:</p> <ul style="list-style-type: none"> • Euro 6 diesel engine, • Euro 4 petrol engine (or a newer Euro standard) <p>And no older than 6 years of age at the time of licensing.</p>	Jan 2021	11,592

1.1.25 There are 8 Hackney Carriage Vehicles and 38 Private Hire Vehicles that will have to replace their vehicle during 2021. Risk is they do not replace their vehicle with new restriction would be:

- 46 vehicles at a fee of £252 which is a potential risk of £11,592

1.1.26 It is anticipated that there will be some fall out, however it is hoped the majority of vehicle proprietors will licence a vehicle.

Note: Any vehicle proprietors who is licensing a Euro 4 petrol engine will only be able to licence this vehicle until 2025, unless it meets the criteria for vehicles being licenced after January 2025.

Proposed Changes	Date	Revenue risk £
<p>All new and renewals vehicles to be licensed, must be Ultra Low Emission Vehicle (ULEV)</p> <ul style="list-style-type: none"> • Petrol Hybrid Euro 5 • Petrol Euro 6 • Diesel Euro 6 	Jan 2025	37,845

1.1.27 In addition to the vehicles reaching 10 years of age by January 2025, the following vehicles will have to be replaced:

43 Hackney Carriage Vehicles (Euro 5 Diesel) $43 * £261 = £11,223$
 1 Hackney Carriage Vehicle * (Euro 5 Petrol) $1 * £261 = £261$
 99 Private Hire Vehicles * (Euro 5 Diesel) $99 * £261 = £25,839$
 2 Private Hire Vehicles * (Euro 5 Petrol) $2 * £261 = £522$

Note: Any vehicle proprietors who is licensing a vehicle from January 2025 may only be able to licence this vehicle until January 2028, unless it meets the criteria for vehicles being licenced after January 2028.

Proposed Changes	Date	Revenue risk £
All renewals vehicles to be licensed, must be Ultra Low Emission Vehicle (ULEV) <ul style="list-style-type: none"> Petrol Hybrid Euro 5 or converted to liquid petroleum gas (LPG) 	Jan 2028	22,800

1.1.28 In addition to the vehicles reaching 10 years of age by January 2028, the following vehicles will have to be replaced:

14 Hackney Carriage Vehicle * (Euro 6 Diesel) $14 * £285 = £3,990$
 1 Hackney Carriage Vehicle * (Euro 4 Diesel) $1 * £285 = £285$
 1 Private Hire Vehicles * (Euro 4 Diesel) $1 * £285 = £285$
 64 Private Hire Vehicles * (Euro 6 Diesel) $64 * £285 = £18,240$

Note: Any vehicle proprietors who is licensing a vehicle from January 2028 may only be able to licence this vehicle until January 2030, unless it meets the criteria for vehicles being licenced after January 2030.

1.2 Legal Implications

1.2.1 There is no statutory requirement to have a specific level of emissions from licensed taxi and private hire vehicles.

1.3 Financial and Value for Money Considerations

1.3.1 The cost implications in respect to fee income are shown throughout the report.

1.4 Risk Assessment

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

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 Recommendations

1.6.1 Members are **RECOMMENDED:**

- 1) To approve the consultation for emission levels for taxi and private hire vehicles over the next ten years, subject to prior approval of the overall TMBC climate change strategy by Council.

Background papers:

contact: Anthony Garnett

Adrian Stanfield

Director of Central Services and Deputy Chief Executive

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Annex 1

Local Authorities using Euro emissions as criteria for licensing a vehicle

Different Local Authorities have started to introduce Euro emission levels for their licensed Hackney Carriage & private hire fleets, to improve air quality within their areas.

Transport for London

Date	Hackney Carriage Vehicles	Private Hire Vehicles
1 Jan 18	All new vehicles, or vehicles new to licensing must as a minimum meet Euro 6 standards for emissions.	Private Hire vehicles being licensed for the first time, must have a Euro 6 petrol or diesel engine, or a Euro 4 petrol-hybrid engine
8 Apr 19	Ultra Low Emission Zone (ULEZ) launched	
1 Nov 19	Maximum operating age 15 years Euro 2, 3, 4 and 5 diesel taxis	
1 Nov 19	Maximum operating age 15 years No Euro 6 diesel will be relicensed once it is 14 years or older	
1 Nov 19	Zero emission capable (ZEC) taxis Maximum operating age 15 years No ZEC will be relicensed once it is 14 years or older	
1 Nov 19	Taxis converted to liquid petroleum gas (LPG) before to 1 November 2019 LPG taxis - Maximum operating will be 20 years Will not be relicensed once it is 19 years or older	
1 Nov 19	Taxis converted to liquid petroleum gas (LPG) from the 1 November 2019 LPG taxis - Maximum operating will be 14 years Will not be relicensed once it is 14 years or older	
1 Nov 20	Age limit reduced to 14 years Euro 2, 3, 4 and 5 diesel taxis	
1 Nov 20		All new (less than 18 months old will need to have to be zero emission capable). All PHV's over 18 months old will need a Euro 6 engine when licensed for the first time
1 Nov 21	Age limit reduced to 13 years Euro 2, 3, 4 and 5 diesel taxis	
1 Nov 22	Age limit reduced to 12 years Euro 2, 3, 4 and 5 diesel taxis	
1 Jan 23		All PHV's (of any age) will need to be zero emission capable when licensed for the first time.

Northampton

Date	Hackney Carriage Vehicles	Private Hire Vehicles
3 May 18	All new registrations (i.e. vehicles which have not previously been licensed by the Council) ULEV Petrol Hybrid Euro 5 + Petrol Euro 5 + (Any vehicle registered from 1st Sept 2009 onwards) Diesel Euro 6 + (Any vehicle registered from 1st Sept 2014 onwards) (will not apply to existing proprietors whose vehicle is taken off the road due to unforeseen circumstances. Existing licensed vehicles that need to be replaced must be either an equivalent, or an improved euro standard)	
31 Dec 20	All licence renewals (i.e. renewal of a licence for a vehicle which was previously granted by the Council)	

Date	Hackney Carriage Vehicles	Private Hire Vehicles
	ULEV Petrol Hybrid Euro 5+ Petrol Euro 5 + Diesel Euro 6 + (including vehicles adapted with a retrofit to an agreed approved standard & hackneys only may apply for departure from policy)	
31 Dec 25	All licence renewals (i.e. renewal of a licence for a vehicle which was previously granted by the Council) ULEV Petrol Hybrid Euro 5+ Petrol Euro 6 + Diesel Euro 6 +	
31 Dec 28	All licence renewals (i.e. renewal of a licence for a vehicle which was previously granted by the Council) ULEV Petrol Hybrid Euro 5+	

Bristol

Date	Hackney Carriage Vehicles	Private Hire Vehicles
19 Dec 17	Vehicles presented for licensing on the first occasion shall be EURO 6 or higher standard and less than three and a half years old from the date of registration	
19 Dec 17	Any licence granted shall be renewed annually until the vehicle has reached eight years provided that the vehicle remains continuously licensed	
19 Dec 17	Any Electric LEVC (London Electric Vehicle Company) produced purpose built Hackney Carriage vehicle can be licensed until 15 years from the date of first registration.	

Cornwall Council

Date	Hackney Carriage Vehicles	Private Hire Vehicles
1 Apr 20	From 01 April 2020 all applications for the grant of a vehicle licence must have at least a Euro 6 diesel engine, a Euro 4 petrol engine (or a newer Euro standard) and be no older than 10 years of age at the time of licensing.	
1 Jan 21	From 01 January 2021 Vehicle proprietor(s), partnerships or companies who collectively have 5 or more vehicles licensed with the Council will be required to have at least one vehicle licensed at all times that is an electric or zero emission capable (ZEC) Hybrid vehicle.	
1 Jul 24	The Council will continue to renew existing vehicle licences until 01 July 2024. After this date all vehicles must have at least a Euro 6 diesel engine, a Euro 4 petrol engine (or a newer Euro standard) and be no older than 10 years of age at the time of licensing.	

Date	Hackney Carriage Vehicles	Private Hire Vehicles
1 Jan 20	<ol style="list-style-type: none"> 1. All Hackney Carriage vehicles will be required to be a minimum of Euro 6* Diesel or ZEC ULEV**. 2. No Euro 6 Diesel vehicle will ordinarily be licensed as a hackney carriage if it is over the age of TEN (10) years. 3. No ZEC ULEV vehicle will ordinarily be licensed as a hackney carriage if it is over the age of TWELVE (12) years. 	<ol style="list-style-type: none"> 1. Only Private Hire vehicles FOUR (4) years of age and under from the date of first DVLA registration will be considered for first licensing or as a replacement vehicle. 2. Private Hire vehicles over the age of TEN (10) years from the date of first DVLA registration will ordinarily be REFUSED a licence UNLESS the vehicle is in exceptionally good road-worthy condition and approved for use following an Exceptional Condition Vehicle Check carried out by an authorised officer. 3. All Private Hire Vehicles will be subject to SIX (6) monthly inspections carried out by an approved Derby City Council testing station.
1 Jan 25	<ol style="list-style-type: none"> 1. No ZEC ULEV vehicle will ordinarily be licensed as a hackney carriage if it is over the age of TEN (10) years. 2. Euro 6 diesel relates to the engine AND vehicle both being manufactured after September 2015. 3. ZEC ULEV definition – emit up to 50g/km CO2 with a minimum of 30 mile emission range. A ZEC Hackney Carriage MUST be petrol if an internal combustion engine is used. 	
1 Jan 25	From 01/01/2025, any vehicle being licensed for the first time as a Hackney Carriage or Private Hire vehicle will be required to be a Zero Emission Capable Ultra Low Emission Vehicle (ZEC ULEV).	
1 Jan 30	From 01/01/2030, no vehicle shall be licensed as a Hackney Carriage or Private Hire vehicle unless it is a ZEC ULEV	

Birmingham City Council

Date	Hackney Carriage Vehicles	Private Hire Vehicles
1 Jan 20	From 1 January 2020 we will apply a maximum age limit to taxi and private hire vehicles. Taxis will not be relicensed after they are 15 years old and private hire vehicles will not be licensed after they are 12 years old.	
	If your vehicle is older than its age limit on 1 January 2020 you will be able to use it until the date that its licence expires in 2020, but if your vehicle does not meet the Clean Air Zone (CAZ) emission standard you will not be exempt from paying the daily CAZ charge (£8) if you enter the CAZ area.	
	<p>If you own a TX model taxi, you will be eligible to apply for it to be retrofitted with an LPG engine, depending on its condition.</p> <p>If your vehicle is suitable you will receive £5,000 towards the cost. The cost of the conversion depends on the particular model but is likely to be up to £12,500 in total.</p>	
	<p>Once converted, your vehicle can be licensed until 31 December 2025 even if it means that it will be more than 15 years old by then.</p> <p>A vehicle that is converted to LPG under this scheme will comply with the CAZ emission standard and will not pay the CAZ daily charge.</p>	

Annex 2

Types of classification for reduced emission vehicles

Type	Definition	Comment
LPG	Taxis converted to liquid petroleum gas (LPG)	
ZEC	Zero emission capable (ZEC)	<p>There are three types of ZEC vehicles</p> <ul style="list-style-type: none">• 100% pure electric vehicles are powered by a battery which drives the electric motor. They have no exhaust emissions. Battery electric vehicles typically have a range of around 80 miles but some can achieve up to 300 miles.• Plug-in hybrid and range-extended electric vehicles also have a conventional diesel or petrol engine, meaning they have a longer range than with a battery alone• Hydrogen fuel cell electric vehicles have a fuel cell which uses hydrogen to produce electricity and power the vehicle's wheels. They typically have a range of around 300 miles
ULEV	Ultra Low Emission Vehicle (ULEV)	(<75g/km and 10km zero emission capability)

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Agenda Item 6

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 7

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 8

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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