

TONBRIDGE & MALLING BOROUGH COUNCIL



EXECUTIVE SERVICES

Interim Chief Executive
Adrian Stanfield LL.B (Hons)

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

To: MEMBERS OF THE COUNCIL

NB Background reports to items referred from Cabinet and Committees have been omitted from printed agenda packs.

Dear Sir/Madam

I hereby summon you to attend a meeting of the Tonbridge and Malling Borough Council which will be held in the Council Chamber, Gibson Drive, Kings Hill on **Tuesday, 9th April, 2024 at 8.15 pm.**

Information on how to observe the meeting will be published on the Council's website.

The following business is proposed to be transacted:-

1. Guidance on the Conduct of Meetings 5 - 8

PART 1 - PUBLIC

2. Apologies for absence 9 - 10
3. Declarations of interest

To declare any interests in respect of recommended items

4. Minutes 11 - 20

To confirm as a correct record the Minutes of the meeting of Council held on 20 February 2024

5. Mayor's Announcements
6. Questions from the public pursuant to Council Procedure Rule No 5.6 21 - 22

7. Questions from Members pursuant to Council Procedure Rule No 5.5 23 - 24

8. Leader's Announcements 25 - 26

Matters for Decision

9. Appointment of Chief Executive 27 - 32

This report proposes the appointment of a new Chief Executive based on the recommendations of the appointed Panel of Members. The report further proposes the continuation of a number of interim arrangements until the new Chief Executive starts at the Council.

10. Changes to the Constitution - Council Procedure Rule 5.5 - Questions from Members 33 - 38

The report recommended that Council Procedure Rule 5.5 be amended to improve the process around submitting questions to Full Council.

11. Programme of Meetings 2024-25 and 2025-26 39 - 46

The programme of meetings for the municipal year 2024/25 is attached for consideration. Management Team, Senior Officers and Cabinet Members have been consulted on the proposed dates. The draft programme for 2025/26 is also attached for consideration. Subject to any amendments identified by Members the programmes will be presented to Annual Council for endorsement.

12. Biodiversity Net Gain Monitoring 47 - 52

The report set out options for monitoring and charging biodiversity net gain

13. Housing Services Staffing 53 - 54

Recommendation GP 24/15 (9) of the General Purposes Committee of 13 March 2024 in respect of staffing in housing services

14. Feedback from Consultation Results of the Scrap Metal Dealers Policy 2024 - 2029 55 - 80

Recommendation LA 24/4 of the Licensing and Appeals Committee of 26 March 2024 – To Follow

Matters for Information

15. Minutes of Cabinet and Committees 81 - 82

To receive and note the Minutes of meetings of Cabinet and Committees as set out in the Minute Book (attached as a supplement).

16. Sealing of Documents

To authorise the Common Seal of the Council to be affixed to any Contract, Minute, Notice or other document requiring the same.

ADRIAN STANFIELD
Interim Chief Executive
Thursday, 28 March 2024

This page is intentionally left blank

GUIDANCE ON HOW MEETINGS WILL BE CONDUCTED

- (1) Most of the Borough Council meetings are livestreamed, unless there is exempt or confidential business being discussed, giving residents the opportunity to see decision making in action. These can be watched via our YouTube channel. When it is not possible to livestream meetings they are recorded and uploaded as soon as possible:

<https://www.youtube.com/channel/UCPp-IJISNgoF-ugSzxjAPfw/featured>

- (2) There are no fire drills planned during the time a meeting is being held. For the benefit of those in the meeting room, the fire alarm is a long continuous bell and the exits are via the doors used to enter the room. An officer on site will lead any evacuation.
- (3) Should you need this agenda or any of the reports in a different format, or have any other queries concerning the meeting, please contact Democratic Services on committee.services@tmbc.gov.uk in the first instance.

Attendance:

- Members of the Committee are required to attend in person and be present in the meeting room. Only these Members are able to move/ second or amend motions, and vote.
- Other Members of the Council can join via MS Teams and can take part in any discussion and ask questions, when invited to do so by the Chair, but cannot move/ second or amend motions or vote on any matters. Members participating remotely are reminded that this does not count towards their formal committee attendance.
- Occasionally, Members of the Committee are unable to attend in person and may join via MS Teams in the same way as other Members. However, they are unable to move/ second or amend motions or vote on any matters if they are not present in the meeting room. As with other Members joining via MS Teams, this does not count towards their formal committee attendance.
- Officers can participate in person or online.

- Members of the public addressing an Area Planning Committee should attend in person. However, arrangements to participate online can be considered in certain circumstances. Please contact committee.services@tmbc.gov.uk for further information.

Before formal proceedings start there will be a sound check of Members/Officers in the room. This is done as a roll call and confirms attendance of voting Members.

Ground Rules:

The meeting will operate under the following ground rules:

- Members in the Chamber should indicate to speak in the usual way and use the fixed microphones in front of them. These need to be switched on when speaking or comments will not be heard by those participating online. Please switch off microphones when not speaking.
- If there any technical issues the meeting will be adjourned to try and rectify them. If this is not possible there are a number of options that can be taken to enable the meeting to continue. These will be explained if it becomes necessary.

For those Members participating online:

- please request to speak using the 'chat or hand raised function';
- please turn off cameras and microphones when not speaking;
- please do not use the 'chat function' for other matters as comments can be seen by all;
- Members may wish to blur the background on their camera using the facility on Microsoft teams.
- Please avoid distractions and general chat if not addressing the meeting
- Please remember to turn off or silence mobile phones

Voting:

Voting may be undertaken by way of a roll call and each Member should verbally respond For, Against, Abstain. The vote will be noted and announced by the Democratic Services Officer.

Alternatively, votes may be taken by general affirmation if it seems that there is agreement amongst Members. The Chairman will announce the outcome of the vote for those participating and viewing online.

This page is intentionally left blank

Apologies for absence

This page is intentionally left blank

TONBRIDGE AND MALLING BOROUGH COUNCIL

COUNCIL MEETING

MINUTES

Tuesday, 20th February, 2024

At the meeting of the Tonbridge and Malling Borough Council held in the Civic Suite, Gibson Building, Kings Hill, West Malling on Tuesday, 20th February, 2024

Present: His Worship the Mayor (Councillor J R S Lark), the Deputy Mayor (Councillor S M Hammond), Cllr L Athwal, Cllr B Banks, Cllr K Barton, Cllr Mrs S Bell, Cllr A G Bennison, Cllr R P Betts, Cllr T Bishop, Cllr M D Boughton, Cllr P Boxall, Cllr G C Bridge, Cllr C Brown, Cllr R I B Cannon, Cllr J Clokey, Cllr M A Coffin, Cllr A Cope, Cllr S Crisp, Cllr R W Dalton, Cllr D A S Davis, Cllr D Harman, Cllr P M Hickmott, Cllr G B Hines, Cllr M A J Hood, Cllr F A Hoskins, Cllr S A Hudson, Cllr D Keers, Cllr W J Mallard, Cllr A McDermott, Cllr A Mehmet, Cllr D W King, Cllr Mrs A S Oakley, Cllr R W G Oliver, Cllr W E Palmer, Cllr B A Parry, Cllr M R Rhodes, Cllr R V Roud, Cllr K B Tanner, Cllr Mrs M Tatton, Cllr M Taylor, Cllr D Thornevell, Cllr K S Tunstall and Cllr C J Williams.

An apology for absence was received from Councillor Mrs T Dean

PART 1 - PUBLIC

C 24/1 DECLARATIONS OF INTEREST

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

However, for reasons of transparency Cllr Clokey reminded Members that in relation to agenda item 17 (Treasury Management) he was employed by one of the companies who managed the fund. As this did not represent either a Disclosable Pecuniary or Other Significant Interest there was no reason for Cllr Clokey to withdraw from the meeting.

C 24/2 MINUTES

RESOLVED: That the Minutes of the proceedings of the special, ordinary and extraordinary meetings of the Council held on 24 October and 12 December 2023 respectively be approved as a correct record and signed by the Mayor.

C 24/3 MAYOR'S ANNOUNCEMENTS

The Mayor advised of a number of engagements attended since the last meeting of Council and made particular reference to the following civic and charity events:

- School nativities and Christmas Fayres
- Borough Council Armistice Day Service at Tonbridge War Memorial
- Tonbridge Remembrance Day Parade & Service
- West Malling Remembrance Day Parade & Service
- Nuclear Veteran Presentation
- Charity Quiz at the Old Fire Station, Tonbridge
- Aylesford Jobs Fair
- Snodland Town Council's Christmas in Snodland
- Tonbridge Christmas Festival
- Tonbridge Lions Club's Seniors Party at The Angel Centre
- Opening of Babons Cancer Support

Arrangements were being finalised for future civic and charity events and the following were noted:

- Cheque Presentation – date to be confirmed
- Honorary Alderman Ceremony on 9 April 2024
- Primary Schools Debate in the Council Chamber on 18 April 2024
- Honorary Freeman Ceremony on 14 May 2024

Finally, the Mayor thanked the Deputy Mayor for attending a number of events on their behalf.

C 24/4 QUESTIONS FROM THE PUBLIC PURSUANT TO COUNCIL PROCEDURE RULE NO 5.6

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

C 24/5 QUESTIONS FROM MEMBERS PURSUANT TO COUNCIL PROCEDURE RULE NO 5.5

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

C 24/6 LEADER'S ANNOUNCEMENTS

The Leader opened by paying tribute to Tracey Crouch MP who had announced that she would not be seeking re-election to represent the Chatham and Aylesford Constituency. She had been an exceptional champion for residents across Aylesford, Ditton, Larkfield, Snodland and the smaller villages in the north of the Borough and had a national

reputation through her work on loneliness, fixed odds betting terminals and especially through her Independent Review into Football Governance.

Particular reference was made to the preservation of the Finnish Sauna at Ditton which had been granted Grade II listed status and both Tracey and the Leader of the Borough Council had been pleased to welcome the Finnish Ambassador to visit the wonderfully unique building and celebrate the connection the community had with Finland.

Other points highlighted included:

- The major works at the Coldharbour roundabout in Aylesford at junction 5 of the M20 being led by Kent County Council and the importance of having the infrastructure in place to support development;
- The continuation of work alongside NHS Kent and Medway to secure appropriate medical facilities;
- The measures being taken to address anti-social behaviour caused by vehicles in and around Snodland and Larkfield which included the use of dispersal orders and Public Space Protection Orders;
- The steps taken to address misuse of Bailey Bridge car parks in Aylesford;
- The firm action being taken to address littering and flytipping which included unanimous cross party support to increase fines;
- The introduction of food waste collection from communal bin stores;
- The development of the Local Plan; and
- A Digital Inclusion Project run by Kent County Council.

The Leader also reminded of the financial support available to local businesses and residents, including the Shopfront Improvement Scheme, the Green Business Grant Scheme, the West Kent Rural Grants programme.

In closing, the Leader thanked every single colleague who had contributed to the successes of the Borough Council since May and for putting party affiliation behind them to work in the best interest of every resident.

The full Leaders Announcements were available on the Borough Council's [YouTube Channel](#).

MATTERS FOR DECISION

C 24/7 SETTING THE BUDGET 2024-25

Item CB 24/22 referred from the Cabinet of 13 February 2024.

The Mayor proposed that Council Procedure Rule No 6.4 be suspended to allow the leading speakers from each Group to exceed the time limit on speeches when debating the budget proposals. This was seconded by Cllr Boughton and supported by the Council.

In presenting the budget proposals, which had been considered by the Overview and Scrutiny Committee and the Cabinet on 25 January and 13 February 2024 respectively, the Cabinet Member for Finance and Housing highlighted the areas of budget growth and pressure, outlined the support provided to vulnerable residents, businesses and community groups during the last financial year and welcomed the better than anticipated final Local Government Finance Settlement figure as well as better than anticipated business rates receipts. She referenced the Council's new Corporate Strategy and the priorities set within it and was delighted that through this Budget, funds could be allocated in earmarked reserves towards delivery of these priorities. The Cabinet Member for Finance and Housing was pleased to advise that the Borough Council had a balanced budget for 2024/25.

It was proposed by Councillor Tanner and seconded by Councillor Boughton that the recommendations at Minute CB 24/22 be adopted. In accordance with Council Procedure Rule No 8.5 voting was recorded as follows:

Members voting for the motion:

Cllrs Banks, Bell, Bennison, Betts, Bishop, Boughton, Boxall, Bridge, Brown, Cannon, Clokey, Coffin, Dalton, Davis, Hammond, Harman, Hickmott, Hoskins, Hudson, Keers, King, Lark, Mallard, McDermott, Mehmet, Oakley, Palmer, Rhodes, Roud, Tanner, Tatton, Taylor, Thornewell, Tunstall and Williams

Total: 35

Members voting against the motion: 0

Total: 0

Members abstaining:

Cllrs Athwal, Barton, Cope, Crisp, Hines, Hood, Oliver and Parry

Total: 8

(Total number of Members eligible to vote = 43)

RESOLVED: That the recommendations at Minute CB 24/22 be approved.

C 24/8 SETTING THE COUNCIL TAX 2024-25

Item CB 24/23 referred from the Cabinet of 13 February 2024 recommended that a 3% or £6.93 per annum increase in the Borough Council's element of the Council Tax for 2024/25, representing a notional 'average' charge at Band D of £238.16 be approved.

As the billing authority, the Council was required to resolve the levels of council tax for each Band and for each area within the borough consolidating the requirements from all precepting authorities. A Council Tax Resolution incorporating all this information was presented to Members as a supplement to the agenda.

It was proposed by Councillor Tanner and seconded by Councillor Boughton that the recommendations at Minute CB 24/23 be adopted. In accordance with Council Procedure Rule No 8.5 voting was recorded as follows:

Members voting for the motion:

Cllrs Athwal, Banks, Barton, Bell, Bennison, Betts, Bishop, Boughton, Boxall, Bridge, Brown, Cannon, Clokey, Coffin, Cope, Crisp, Dalton, Davis, Hammond, Harman, Hickmott, Hines, Hood, Hoskins, Hudson, Keers, King, Lark, Mallard, McDermott, Mehmet, Oakley, Oliver, Palmer, Parry, Rhodes, Roud, Tanner, Tatton, Taylor, Thornewell, Tunstall and Williams.

Total: 43

Members voting against the motion: 0

Total: 0

Members abstaining: 0

Total: 0

(Total number of Members eligible to vote = 43)

RESOLVED: That the recommendations at Minute CB 24/23 be approved and the Council Tax Resolution 2024/25, as set out as an Annex to these Minutes, be adopted.

C 24/9 LOCAL COUNCIL TAX REDUCTION SCHEME 2024-25

Item CB 24/24 referred from Cabinet of 13 February 2024. It was proposed by Cllr Boughton and seconded by Cllr Coffin that the recommendation of Cabinet be approved.

RESOLVED: That the draft Local Council Tax Reduction Scheme 2024/25 (attached as Annex 1) be approved.

C 24/10 MEDIUM TERM FINANCIAL STRATEGY AND SAVINGS UPDATE

Item CB 23/105 referred from Cabinet of 5 December 2023. Members were reminded that the recommendations had been considered in detail by the Cabinet as part of the substantive item on Setting the Budget 2024/25. Cllr Boughton proposed, seconded by Cllr Coffin that the recommendations of Cabinet be approved.

RESOLVED: That

- (1) the latest forecast of the Medium Term Financial Strategy and the funding gap, now estimated to be £1.78m after incorporating £120k of savings into Draft Estimates, for 2024/25 (detailed in 1.5.1) be noted;
- (2) the progress with the Savings and Transformation contributions for Tranche 1, as set out in 1.5.1, be noted;
- (3) the Tranche 1 savings target be divided into two parts, with a target saving of £195k in Tranche 1a and £305k in Tranche 1b;
- (4) the Finance, Regeneration and Property Scrutiny Select Committee give consideration to potential savings for Tranche 2 onwards and how these could be implemented; and
- (5) the proposals set out in 1.6.3 in respect of the windfall sum be commended to Council for approval.

C 24/11 COUNCIL TAX PREMIUM CHANGES FOR EMPTY AND SECOND HOMES

The recommendation of Cabinet of 5 December 2023 gave due regard to the financial and value for money considerations and the summary of the perceived risks set out in the report. It was recognised that these premiums could strengthen the incentive of owners of empty properties to bring them back into use and might encourage the sale or even private rental options in support of the Borough Council priorities in respect of housing options. This view was supported by the Council.

RESOLVED: That

- (1) the amendments to Council Tax empty home premiums from 2024/25 financial year onwards, as set out in 1.3.1, be adopted; and
- (2) a Council Tax premium to second homes from 2025/26 financial year onwards, as set out in 1.4.3, be introduced.

C 24/12 SUSTAINABLE TEMPORARY ACCOMMODATION OPTIONS REPORT AND TEMPORARY ACCOMMODATION PROVISION ACTION PLAN

Consideration was given to the recommendations of the Housing and Planning Scrutiny Select Committee of 14 December 2023 in respect of sustainable temporary accommodation options. Due regard had been given to the financial and value for money considerations and the legal implications set out in the external consultants (Altair) report. It was noted that the Temporary Accommodation Portfolio Action Plan had been approved and adopted by Cabinet on 5 December 2023.

RESOLVED: That the Options Appraisal Report on Sustainable Temporary Accommodation Delivery by Altair, attached at Annex 1, be noted and endorsed.

C 24/13 LOCALISM ACT - PAY POLICY

Consideration was given to the recommendations of the General Purposes Committee of 24 January 2024 in respect of the requirements of the Localism Act 2011 and an updated Pay Policy Statement for 2024/25 as set out in Annex 1.

As there had not been many significant changes in the Borough Council's remuneration policy, apart from the introduction of the Recruitment and Retention Market Supplement Policy in October 2023, the substantive content of the updated Policy was nearly identical to the Borough Council's first Pay Policy Statement (adopted by the Council on 16 February 2012).

RESOLVED: That the Pay Policy Statement set out in Annex 1 be endorsed and adopted.

C 24/14 RISK MANAGEMENT

Consideration was given to the recommendation of the Cabinet of 13 February 2024 in respect of risk management. Due regard had been given to the views of the Audit Committee of 15 January 2024, the review undertaken by Zurich Risk Management, the financial and value for money considerations and the legal implications.

RESOLVED: That

- (1) the Risk Management Health Check be reviewed and the Management response to the recommendations made be considered and approved;
- (2) the Risk Management Strategy and accompanying Risk Management Guidance be reviewed, and subject to any

amendments required, be recommended to Full Council for adoption;

- (3) the updates to the Strategic Risk Register since the last iteration with particular emphasis on those risks categorised as RED, as well as the general positive 'direction of travel', be noted; and
- (4) the responsible owner of the implementation of the Agile software system be invited to attend a future meeting of the Audit Committee to discuss the risk.

C 24/15 TREASURY MANAGEMENT UPDATE AND TREASURY MANAGEMENT AND ANNUAL INVESTMENT STRATEGY FOR 2024/25

Consideration was given to the recommendations of Cabinet of 13 February 2024 in respect of treasury management. Due regard had been given to the views of the Audit Committee of 15 January 2024, the details of investments undertaken and return achieved in the first eight months of the current financial year, the financial and value for money considerations and the legal implications.

RESOLVED: That

- (1) the treasury management position as at 30 November 2023 be noted; and
- (2) the Treasury Management and Annual Investment Strategy for 2024/25 (presented to the Audit Committee at Annex 5) be adopted.

MATTERS FOR INFORMATION

C 24/16 STANDARDS HEARING PANEL - 8 DECEMBER 2023

The report of the Interim Chief Executive provided an update from a meeting of the Standards Hearing Panel which had met on 8 December 2023 to determine an allegation that a Borough Councillor had breached the Code of Conduct for the Borough Council.

Members noted that, having heard in person from the Independent External Investigator and the subject Member and having considered the written representations of the Independent Person, the Panel concluded that on balance of probabilities on the evidence presented that the Tonbridge and Malling Borough Council Code of Conduct had been breached. The full reasons for this decision were contained in the Decision Notice attached at Annex 1.

There was a brief discussion on the role of the Independent Person and it was hoped that the current second vacancy would be filled so that the Borough Council had 2 Independent Persons available to provide flexibility.

Reference was made to the further recommendation of the Panel (set out at 5.3 of the Decision Notice) that consideration be given to the format of private workshops/informal meetings in the future and it was suggested that clarity be provided on whether knowledge of the meeting itself should remain confidential or just the information provided or the discussions at the meeting.

C 24/17 MINUTES OF CABINET AND COMMITTEES

The Minutes of meetings of the Cabinet and Committees for the period October 2023 – January 2024, as set out in the Minute Book (Volume 1) (attached as a supplement) were received and noted.

Any recommendations to the Council from Cabinet or Committees were resolved elsewhere on the agenda.

C 24/18 SEALING OF DOCUMENTS

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

The meeting ended at 9.35 pm

This page is intentionally left blank

Agenda Item 6

Questions from the public pursuant to Council Procedure Rule No 5.6

This page is intentionally left blank

Agenda Item 7

Questions from Members pursuant to Council Procedure Rule No 5.5

This page is intentionally left blank

Leader's Announcements

This page is intentionally left blank

TONBRIDGE & MALLING BOROUGH COUNCIL

COUNCIL

09 April 2024

Report of the Leader of the Council

Part 1 - Public

Matters For Decision

1 APPOINTMENT OF THE CHIEF EXECUTIVE

Summary

This report proposes the appointment of a new Chief Executive, Damian Roberts, based on the recommendations of the appointed Panel of Members. The report further proposes the continuation of a number of interim arrangements until the new Chief Executive starts at the Council.

1.1 Introduction

1.1.1 The Council's Constitution contains Officer Employment Procedure Rules in relation to the appointment of the Chief Executive that provide:

- 1) The Full Council will approve the appointment of the Chief Executive following the recommendation of such an appointment by a Panel of Members appointed by the Council for that purpose. This Panel will include at least one member of the Executive.
- 2) The Full Council may only approve the appointment of the Chief Executive where no well-founded objection has been made by any member of the Executive.

1.1.2 At the meeting of Full Council on 12 December 2023, the formation and appointment of a Panel of Members was approved, tasked with making the recommendation of appointing a permanent Chief Executive.

1.1.3 The appointment panel consisted of the Leader of the Council, Cllr Matt Boughton the Deputy Leader, Cllr Martin Coffin and the Leader of the Opposition, Cllr Anita Oakley.

1.1.4 The recruitment and selection process took place throughout January to March 2024 led by the specialist recruitment search and selection company Gatenby Sanderson. The process was rigorous and contained multiple different interview stages and processes for candidates to undertake.

- 1.1.5 There was significant interest in the role with 23 applications received. Of these 23 applications received, 10 were 'longlisted' and interviewed. Following this stage, 5 candidates were shortlisted for the final stage interview process which included psychometric testing and a final day of interviews consisting of three separate interview panels.
- 1.1.6 The final stage interviews took place on 13 March 2024. The candidates were interviewed by three different panels. The first panel consisted of three different representatives from partner organisations. The second panel consisted of Cabinet Members and Group Leaders. The third panel was the appointed Panel of Members as set out in 1.1.3 above.

1.2 Recommendation to appoint Damian Roberts as Chief Executive

- 1.2.1 Taking into consideration the feedback from all the interview panels as well as the performance throughout the process, the appointed Panel of Members is recommending to Full Council that Damian Roberts should be the new Chief Executive (fulfilling the statutory role of Head of Paid Service) of Tonbridge and Malling Borough Council.
- 1.2.2 The panel is confident that Damian has the requisite skills, knowledge and experience to lead the Council into the future and deliver our ambitious targets. Damian will bring a wealth of experience gained in a number of senior roles in Local Government.
- 1.2.3 Damian is currently Chief Executive at Surrey Heath Borough Council. In his current role, Damian has developed a five-year Council Strategy which he took through the largest public and stakeholder engagement programme in the borough's history. He is also the lead Chief Executive across Surrey for Climate Change, Economic Development and Housing.
- 1.2.4 Damian was Chief Operating Officer, Epsom and Ewell Borough Council (2018-2021) and was responsible for the majority of the Council's staffing, revenue and front-line services. He was Strategic Director, Waverley Borough Council (2012-2018). During this time Damian led the Council's organisational and culture change programme and was responsible for the Councils operational functions and budgets.
- 1.2.5 Damian was Director of Service Transformation & Partnerships, London Borough of Croydon (2010-2012) and their Director of Transformation and ICT (2005-2010). He was Head of Strategy, Performance and Equalities, Tower Hamlets Council (2002-2005), Head of Corporate Strategy, Islington Council (1999-2002), Assistant Head of Executive Office, London Borough of Croydon (1991-1999) and a Local Government Management Trainee with them (1989-1991).

1.2.6 Damian has an MSc Degree in Business Administration (MBA) and a Post Graduate Diploma in Management.

1.3 Recommendation to appoint to the role of Returning Officer and Electoral Registration Officer

1.3.1 As well as recommending appointing Damian Roberts as the next Chief Executive, the appointed Panel of Members is further recommending to appoint Damian to the separate roles of Returning Officer and Electoral Registration Officer.

1.4 Continuation of the Interim Chief Executive and associated posts

1.4.1 If Members of Full Council accept the recommendation to appoint Damian Roberts as its next Chief Executive, then we can expect Damian to begin the role on 1 July 2024 which allows him to serve his notice period with his current employer.

1.4.2 It is important to continue the interim arrangements the Council currently has in place beyond 14 May 2024 which was agreed at the meeting of Full Council on 12 December 2023.

1.4.3 The current interim arrangements have provided a significant amount of stability and leadership for the organisation since the retirement of Julie Beilby. The current interim arrangements consist of:

- Adrian Stanfield – Interim Chief Executive
- Sharon Shelton – Interim Deputy Chief Executive
- Joy Ukadike – Interim Monitoring Officer
- Adrian Stanfield – Returning Officer and Electoral Registration Officer

1.4.4 I am further recommending the Interim appointments set out above continue until 30 June 2024 or until such time as Damian Roberts starts as Chief Executive should there be any unforeseen delays.

1.5 Legal Implications

1.5.1 The proposals outlined in this report are compliant with the council's Constitution and Pay Policy Statement.

1.5.2 This report ensures that the Council has appointed persons to the statutory posts of Head of Paid Service (Interim Chief Executive) and Monitoring Officer (Interim Monitoring Officer).

1.5.3 Pursuant to the provisions of the Local Government and Housing Act 1989, it is not possible for the Head of Paid Services to also be the Council's Monitoring Officer.

1.6 Financial and Value for Money Considerations

1.6.1 There are no additional costs associated with the continuation of the proposed interim appointments. The proposed interim appointments result in a temporary short term management saving.

1.7 Risk Assessment

1.7.1 The recommendations in this report have been made in response to operational need and therefore mitigate against risk.

1.8 Equality Impact Assessment

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

1.9 Policy Considerations

1.9.1 Pay Policy Statement

1.10 Recommendations

1.10.1 To appoint Damian Roberts as the permanent Chief Executive from 1 July 2024.

1.10.2 To appoint Damian Roberts to the separate roles of Returning Officer and Electoral Registration Officer from 1 July 2024.

1.10.3 To continue the interim appointment of Adrian Stanfield as Interim Chief Executive from 15 May 2024 to 30 June 2024 or until such time as Damian Roberts starts as Chief Executive.

1.10.4 To continue the interim appointment of Sharon Shelton, Director of Finance & Transformation as Interim Deputy Chief Executive in addition to their substantive post from 15 May 2024 to 30 June 2024 or until such time as Damian Roberts starts as Chief Executive.

1.10.5 To continue the interim appointment of Joy Ukadike, Head of Legal & Democratic Services as Interim Monitoring Officer in addition to their substantive post from 15 May 2024 to 30 June 2024 or until such time as Damian Roberts starts as Chief Executive.

1.10.6 To continue the appointment of Adrian Stanfield to the separate roles of Returning Officer and Electoral Registration Officer from 15 May 2024 to 30 June 2024 or until such time as Damian Roberts starts as Chief Executive.

contact: Mathew Brooks
Head of Human Resources
and Development

Cllr Matt Boughton
Leader, Tonbridge and Malling Borough Council
Councillor for East Peckham, West Peckham, Mereworth and Wateringbury

This page is intentionally left blank

TONBRIDGE & MALLING BOROUGH COUNCIL

COUNCIL

09 April 2024

Report of the Monitoring Officer

Part 1- Public

Matters For Decision

1 CHANGES TO THE CONSTITUTION – COUNCIL PROCEDURE RULE 5.5 – QUESTIONS FROM MEMBERS

The report recommended that Council Procedure Rule 5.5 be amended to improve the process around submitting questions to Full Council

1.1 Questions from Members

1.1.1 The rules around questions to Full Council are set out in the Council and Committee Procedure Rules in Part 4 (Rules) of the Constitution.

1.1.2 Council Procedure Rule (CPR) 5.5 of the Constitution currently provides that:

- A member of the Council may, upon giving the requisite notice, ask the Mayor, the Leader or the Chair of a committee a question on any matter in relation to which the Council has powers or duties or which affects the Borough.
- Notice of the question shall be given to the Chief Executive not later than 1100 hours on the closest working day prior to the day of the meeting. Notice may be given in writing or by electronic mail.
- The Mayor, the Leader or the Chair of a committee may invite another member of the Council or a Chief Officer to respond to the question on their behalf and the Leader may also invite another member of the executive to respond. No discussion will take place on any question, but any member may move that a matter raised by a question be referred to the executive or to the appropriate committee. Once seconded, such a motion will be voted on without discussion.

1.1.3 Following the meeting of Council on 24 October 2023 a request was received to review the current deadline for submitting questions as it was felt that late receipt did not always allow sufficient time for detailed answers to be provided.

1.1.4 This review was undertaken by the Interim Monitoring Officer, the Interim Chief Executive and the Principal Democratic Services Officer. The Leader of the Council sought feedback from all Group Leaders about the proposals.

1.1.5 The opportunity was also taken to clarify other elements of CPR 5.5 relating to the number of questions per Member per meeting, the maximum number of questions per meeting, how the questions should be answered and the introduction of supplementary questions.

1.2 Proposed Changes to CPR 5.5

1.2.1 The proposed changes to CPR 5.5 are set out in Annex 1 and for convenience are set out in red.

1.2.2 The main changes can be summarised as follows:

- Deadline for questions to be submitted is changed to 1600 hours, 10 working days before the date of the meeting. This is consistent with CPR 5.27 (Motions on Notice);
- There will be a limit of 1 question per member per meeting;
- There will be a maximum of 5 questions allowed per meeting; and
- No discussion will take place on any question although the Member asking the question will be given the opportunity to ask a supplementary question. This must be directly related to the initial question asked or the published response.

1.3 Legal Implications

1.3.1 Article 10 of the Constitution sets out the procedure for review and revision of the Constitution. Except in specified circumstances, changes to the Constitution may only be approved by full Council after consideration of a report on the proposal from the Council's Monitoring Officer.

1.4 Financial and Value for Money Considerations

1.4.1 None

1.5 Risk Assessment

1.5.1 The changes to the Constitution proposed in this report are intended to clarify the operation of the rules relating to members asking questions.

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 Policy Considerations

1.7.1 None

1.8 Recommendations

- 1.8.1 That the changes to Council Procedure Rule 5.5, detailed in Annex 1, and summarised above be approved; and
- 1.8.2 That the Monitoring Officer be authorised to make the changes to the Constitution as detailed in Annex 1 and summarised in the report.

Background papers:

Nil

contact: Allison Parris
Principal Democratic Services
Officer

Joy Ukadike

Head of Legal and Democratic Services and Interim Monitoring Officer

Adrian Stanfield

Interim Chief Executive

This page is intentionally left blank

(Extract) COUNCIL AND COMMITTEE PROCEDURE RULES**Part 1: Council**

Questions from Members of the Council	
5.4	A member of the Council may ask the Leader or the Chair of a committee any question without notice upon an item of the report of the executive or a committee when that item is being received or under consideration by the Council. The Leader or the Chair of a committee may invite a Chief Officer to respond to the question on their behalf and the leader may also invite another member of the executive to respond.
5.5	<p>A member of the Council may, upon giving the requisite notice, ask the Leader, an Executive Member or the Chair of a Committee (except the Chair of any Scrutiny Committee), Advisory Panel or Board a question on any matter in relation to which the Council has powers or duties or which affects the Borough.</p> <p>Notice of the question shall be given to the Chief Executive and Head of Legal & Democratic Services by no later than 1600 hours 10 working days before the date of meeting. Notice may be given in writing or by email.</p>
5.5.1	There will be a limit of 1 question per member per meeting.
5.5.2	There will be a maximum limit of 5 questions per meeting.
5.5.3	<p>Each question received by the deadline will receive a written response which will be published either with the main agenda or as a supplemental paper.</p> <p>For the benefit of those participating online or observing via the Borough Councils YouTube channel, all questions and answers shall be read out at the meeting.</p>
5.5.4	No discussion will take place on any question although the Member asking the question will be given the opportunity to ask a supplementary question. This must be directly related to the initial question asked or the published response.
5.5.5	<p>The Member providing the answer to the supplementary question may respond verbally although they may invite the Leader or Deputy Leader to answer instead.</p> <p>The Member answering the supplementary question may also refer the subject of the question to the Overview and Scrutiny Committee or a relevant Scrutiny Select Committee for a report and discussion.</p>

5.5.6	Any Member may move that a matter raised by a question or supplementary question be referred to the Overview and Scrutiny Committee or a relevant Scrutiny Select Committee. Once seconded, such a motion will be voted on without discussion.
5.5.7	If the relevant Executive Member is not present then the Leader or Deputy Leader shall answer the question.
5.5.8	If the Chair of a Committee, Advisory Panel or Board is not present then the Vice-Chair of the relevant Committee, Advisory Panel or Board shall answer the question.

TONBRIDGE & MALLING BOROUGH COUNCIL

COUNCIL

09 April 2024

Report of the Interim Chief Executive

Part 1- Public

Matters For Decision

1 PROGRAMME OF MEETINGS 2024/25 AND 2025/26

The programme of meetings for the municipal year 2024/25 is attached for consideration. Management Team, Senior Officers and Cabinet Members have been consulted on the proposed dates. The draft programme for 2025/26 is also attached for consideration. Subject to any amendments identified by Members the programmes will be presented to Annual Council for endorsement.

1.1 Programme of Meetings 2024/25

1.1.1 A programme for the municipal year 2024/25 has been prepared for approval and is attached as **Annex 1**.

1.1.2 There have been a number of changes to the programme agreed in May 2023 and these are set out below:

- Cabinet of 2 July moved to Thursday 4 July 2024 to avoid the annual meeting of the Local Government Association General Assembly.
- Cabinet of 5 November moved to 12 November 2024 so that any recommendations from the Communities and Environment Scrutiny Select Committee of 6 November can be considered in a timely manner;
- Finance, Regeneration and Property Scrutiny Select Committee of 12 November moved to 19 November 2024 to accommodate the move of Cabinet;
- An additional meeting of Cabinet scheduled for 10 December 2024 so that any recommendations from the Finance, Regeneration and Property Scrutiny Select Committee of 19 November can be considered in a timely manner. This also provides Cabinet with an opportunity to address any other business before the end of the year. It is also worth noting that for the last 2

years there has been a need for an Extraordinary meeting of Cabinet in December so there is a demonstrable requirement for an additional meeting;

- Housing and Planning Scrutiny Select Committee moved from 10 December to 3 December 2024 to accommodate a scheduled additional meeting of Cabinet.

1.1.3 The programme of meetings is set out in a table format and colour coded for easier reference. Dates for Bank Holidays, Elections and other events are also included.

1.1.4 The colour coding highlights significant meetings, such as Annual and Budget Council, when a meeting is to be held in Tonbridge and when a meeting is to be held on a different day than usual.

1.2 Programme of Meetings 2025/26

1.2.1 A draft programme for the municipal year 2025/26 has been prepared for consideration and is attached as **Annex 2**. Members are invited to comment on whether there should be any changes.

1.2.2 For awareness, further consideration is required on the following points and these will be progressed by Democratic Services in liaison with Services and relevant Members:

- Clarification on the budget setting cycle, subject to confirmation of dates for the Kent County Council, Kent Police and Kent Fire and Rescue Service Budget meetings. **Provisional Borough Council programme allows for Overview and Scrutiny Committee on 23 January 2025; Cabinet on 11 February 2025 and Council on 18 February 2025 and is subject to change.**
- To provide greater flexibility around other precepting authorities setting their budgets it is proposed that in 2026 the meeting of Budget Council be moved to 24 February.
- Clarification to be sought on the school half term holiday in October 2025 and whether there is a need to move the meeting of Council currently scheduled for 21 October.

1.2.3 There are a number of other changes to the programme for 2025 as detailed below:

- Joint Transportation Board moved from 15 September to 8 September 2025 to reduce the number of meetings scheduled in one week and to alleviate pressure on Services and Members;
- Housing and Planning Scrutiny Select Committee moved from 29 September to 30 September 2025 to create a better distribution of meetings; and

- Cabinet moved from 30 September to 7 October 2025 to create a better distribution of meetings.

1.3 Legal Implications

It is the responsibility of the annual meeting of the Council to approve a programme of meetings for the coming year. However, it is considered sensible to present the programmes to this meeting to allow time for any proposed revisions to be made.

1.4 Financial and Value for Money Considerations

- 1.4.1 The use of external venues and audio/visual equipment incurs some expenditure arising from room and equipment hire.

1.5 Risk Assessment

- 1.5.1 There are a number of factors to be taken into account when preparing a programme of meetings. The aim is to allow Annual Council to approve a schedule which is fixed for the upcoming municipal year, whilst recognising the need to respond to specific and changing circumstances. If a programme was not in place the Borough Council's ability to take decisions in a timely manner could be affected.
- 1.5.2 There is a risk that the implementation of decisions and/or outcomes could be delayed if there wasn't a programme in place and a meeting couldn't be scheduled at short notice, either due to a venue or Members being unavailable.
- 1.5.3 It is much more practical for Members in terms of diary management to have a programme in place for the municipal year. This also ensures that all statutory deadlines in respect of publishing notices of meeting and agendas are met.
- 1.5.4 Members should also note that any risk related to the use of venues and equipment is managed when using Kings Hill as the Health and Safety Officer, the Head of Administration and Property and Head of IT ensure that all appropriate safety checks are undertaken.
- 1.5.5 However, there is a potential health and safety risk when using other venues and there is a requirement for appropriate safety checks and forms to be completed.
- 1.5.6 Members should note that there is a risk to the meeting programme being subject to change during 2024/25 as a consequence of a Parliamentary Election being held.

1.6 Equality Impact Assessment

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 That the Programme of Meetings for 2024/25 (as set out in Annex 1) be approved and presented to Annual Council for formal endorsement;
- 1.7.2 That the draft Programme of Meetings for 2025/26 (as set out in Annex 2) be agreed, subject to final approval at Annual Council in May 2024.

Background papers:

Nil

contact: Allison Parris
Principal Democratic Services
Officer

Adrian Stanfield
Interim Chief Executive

Timetable of Meetings 2024-25 (ADOPTED PROGRAMME WITH REVISIONS)

Annex 1

Meeting	Day	June 2024	July 2024	Aug 2024	Sept 2024	Oct 2024	Nov 2024	Dec 2024	Jan 2025	Feb 2025	March 2025	April 2025	May 2025
Council	<i>Tue</i>		9			22				18		8	13
Cabinet	<i>Tue</i>	4	4		3	1	12	10**	7	11	4	1	
Overview and Scrutiny Committee	<i>Thurs</i>	27			12		14		23			3	
Area 1 Planning Committee	<i>Thurs</i>	20		1	5	17	28		9	13	27		22
Area 2 Planning Committee	<i>Wed</i>	26		7	18	30		4	15	19		2	28
Area 3 Planning Committee	<i>Thurs</i>	6	11	15	26		7	12	30		13	10	
Audit Committee	<i>Mon</i>		22		23				13			14	
General Purposes Committee	<i>Wed</i>	12				9			22		12		
Joint Standards Committee	<i>Mon</i>	5							20				
Licensing and Appeals Committee	<i>Tue</i>	11			25		27				25		
Community and Environment	<i>Wed</i>		17		19		6			5			21
Finance, Regeneration & Property	<i>Tue</i>		23		17		19			25			27
Housing and Planning	<i>Tue</i>		16		24			3			18		20
JECC (Member) 0930	<i>Thur</i>									20			
JECC (OWG) 0930	<i>Thur</i>	6			5		14						
Joint Transportation Board	<i>Mon</i>	17			16			2			3		
Parish Partnership Panel	<i>Thurs</i>			29*			21			6*			29
Tonbridge Community Forum	<i>Mon</i>				2*		25			24*			19

Timetable of Meetings 2024-25 (ADOPTED PROGRAMME WITH REVISIONS)

Meeting	Day	June 2024	July 2024	Aug 2024	Sept 2024	Oct 2024	Nov 2024	Dec 2024	Jan 2025	Feb 2025	March 2025	April 2025	May 2025
Elections (Borough + Parish)	<i>Thur</i>												County
Bank Holidays	-			26				25/26	1			18/21	5/26

Monday	Tuesday	Wednesday	Thursday
Annual	Budget	Tonbridge based location where possible	No Member attendance (internal Management/staff meeting) – 0930 start

*meeting to be held online

** if required

Dates in red font = budget setting cycle and assumes same process is followed ie Overview and Scrutiny Committee, Cabinet, Council. SSC in November could review fees and charges.

Timetable of Meetings 2025-26 PROPOSED

Annex 2

Meeting	Day	June 2025	July 2025	Aug 2025	Sept 2025	Oct 2025	Nov 2025	Dec 2025	Jan 2026	Feb 2026	March 2026	April 2026	May 2026
Council	Tue		8			21				24			12
Cabinet	Tue	3	1		2	7	11	9**	6	10	3	7	
Overview & Scrutiny Committee	Thurs	26			11		13		22			2	
Area 1 Planning Committee	Thurs	19	31		4	16	27		8	12	26		21
Area 2 Planning Committee	Wed	25		6	17	29		3	14	18		1	27
Area 3 Planning Committee	Thurs	5	10	14	25		6	11	29		12	9	
Audit Committee	Mon		21		22				12				
General Purposes Committee	Wed	11				8			21		11		
Joint Standards Committee	Mon	2							19				
Licensing and Appeals Committee	Wed	10			24		26				25		
Community and Environment	Wed		16		18		5			4			20
Finance, Regeneration & Property	Tue		22		16		18			17			26
Housing and Planning	Tue		15		30			2			17		19
JECC (Member) 0930	Thur									19			
JECC (OWG) 0930	Thur	5			4		13						
Joint Transportation Board	Mon	16			8			1			2		
Parish Partnership Panel	Thurs			28*			20			5*		28	
Tonbridge Community Forum	Mon				1*		24			23*			8

Timetable of Meetings 2025-26 PROPOSED

Meeting	Day	June 2025	July 2025	Aug 2025	Sept 2025	Oct 2025	Nov 2025	Dec 2025	Jan 2026	Feb 2026	March 2026	April 2026	May 2026
Elections (Borough + Parish)	<i>Thur</i>												
Bank Holidays	-			25				25/26	1			3/6	4/25

Monday	Tuesday	Wednesday	Thursday
Annual	Budget	Tonbridge based location where possible	No Member attendance (internal Management/staff meeting) – 0930 start

*meeting to be held online

**if required

TONBRIDGE & MALLING BOROUGH COUNCIL

COUNCIL

09 April 2024

Report of the Director of Planning, Housing and Environmental Health

Part 1- Public

Matters For Decision

1 **BIODIVERSITY NET GAIN MONITORING CHARGES**

1.1 **Background**

1.1.1 Biodiversity Net Gain (BNG) legislation is set to become mandatory on the 12th of February 2024 for major applications. TMBC will be responsible for monitoring and enforcing the relevant agreements, the proposed monitoring fees are to offset costs incurred by the local authority.

1.1.2 The Biodiversity Net Gain legislation requires developers to offset the impact of the development with 10% BNG. Once the legislation is implemented on the 12th of February 2024 it will impact major applications with immediate effect. Minor and small site applications will be affected from the legislative changes from the 2nd of April 2024. Householder developments will be exempt from BNG. A full list of developments which are exempt can be found via the GOV website (Annexe 1).

1.2 **Main Issues**

1.2.1 A 30-year monitoring period is required within the BNG legislation, this includes reporting and non-reporting years which will require a different amount of officer time and therefore the yearly charges will change. TMBC will charge the developer a one-time fee that will be required to cover the entire 30-year monitoring period. Monitoring fees are likely to be secured via a legal agreement when an application is determined.

1.2.2 TMBC have calculated the monitoring fees using the Mycelia calculator (Annexe 2) which is considered to be best practice at the current time, following research conducted around Kent authorities. The calculations have used a median of officer salaries equating to £35,847 this covers the various planning roles which will be required to monitor the BNG offset, along with a 31% overhead for the LPA, a 3% inflation rate, a 10% habitat monitoring plan fee and an additional cost of £500 to cover fees such as site visits, software subscriptions and necessary training.

1.2.3 Three variations of calculations have been undertaken to ensure that there is robust research behind the options available for TMBC to when charging for BNG monitoring, these options have been set out in the below tables alongside the

various pros and cons for each option. The figures have been calculated using an average number of applicable applications decided between the 2018-2023 financial years to enable an estimation of potential income for BNG monitoring purposes.

- 1.2.4 **Option 1:** shows a one-off cost which would apply to all proposed developments regardless of site size. The positives of using this model would ensure a higher income generation, however this would not be proportionate to the scheme size and would be seen as 'unfair' for smaller scale sites.

Option 1 – Mycelia calculator				
Officer time reporting year (hours)	Officer time non reporting year (hours)	Total monitoring fee cost per project	Total BNG monitoring cost covering 30-year period	Annual spend amount
11 Hours total	6 Hours Total	£11,856	£2,442,336	£ 81,411.20

- 1.2.5 **Option 2:** an alternative method of calculation has been undertaken using the Mycelia calculator spreadsheet, to show a breakdown of potential monitoring fees by government guideline site size rather than a single cost for all developments. The positives of using this model include a breakdown of site sizes, however due to the proposed scheme sizes not fitting in line with the national recognised definition for planning applications and therefore has a lower income generation for the monitoring costs.

Option 2 – using average number of applicable applications					
Site Size	Reporting year Officer time (hours) –	Non-Reporting Year officer time (hours)	Monitoring fee cost per project	Total BNG monitoring cost covering 30-year period	Annual spend amount
Small Sites (0 to 10ha)	8	2	£5,987	£1,347,075	£44,902.50
Medium Sites (11 to 20ha)	10	3	£7,945	£15,890	£529.67
Large Sites (20+ha)	16	6	£13,819	£27,638	£912.27
Total				£1,390,603	£46,353.43

- 1.2.6 **Option 3:** provides a projection based on adapted scheme sizes as set out by other Kent based local authorities. The small sites have been calculated using the average figure between the small to medium sites of £6966 as shown in Table 2, the large sites have been calculated using the large sites figure of £13,819 from the Mycelia calculator. This option provides a higher income generation than the

proposed scheme sizes in the government guidelines whilst also being in line with national recognised definitions for site sizes and proportionate to various schemes dealt with by TMBC, although it is noted that the monitoring fees collected would be lower than the single flat rate fee.

Option 3 – Variable fee rate based on scheme size in line with other Kent Authorities				
Development Site	Monitoring Fee cost per project	Average number of applications decided	Total BNG monitoring cost over 30-year period	Annual spend amount
Small/Medium Sites (up to 10 units or 0.5ha)	£6966	163	£1,135,458	£37,848.60
Large Sites (10+ units or 0.5ha+)	£13,819	48	£663,312	£22,110.40
Total annual transfer			£1,798,770	£59,959

1.2.7 New software will be required to enable ongoing and diligent monitoring of the BNG offset, with the costs for the software included in the monitoring fee figures. We have now appointed Verna by Mycelia as the software supplier for the BNG assessment and monitoring process.

1.2.8 The government guidelines have provided the figures for the varying site sizes, however it has been adapted by other local authorities across the country to amend the scheme size for a more proportionate impact, for example: North Yorkshire council have adapted a medium size site to start at 5ha rather than 10ha, Kent based councils TWBC and Ashford have set out an adapted site size of Small/Medium sites being up to 10 new units or 0.5ha, any large size schemes are 10+ units or over 0.5ha+. The review of site size specifications would be undertaken at the same time as any review to the monitoring fee costs.

1.3 Legal Considerations

1.3.1 Government Guidance to Local Planning Authorities (LPAs) and the Planning Practice Guidance (PPG) on BNG state that LPA's should monitor BNG to see whether the landowner is meeting their obligations and to take action if they do not. The PPG envisages that BNG Monitoring fees can be secured through s106 agreements in paragraph 028, where it states that LPAs can charge a monitoring fee through section 106 planning obligations, to cover the cost of monitoring and reporting on delivery of that section 106 agreement.

1.4 Financial and Value for Money Considerations

1.4.1 As the monitoring fee is set to be charged at a one-time cost to the developer but is set to cover the monitoring period of 30 years there is a financial implication to ensure that the charge covers the necessary costs for TMBC whilst also considering the potential increase in costs over the period due to inflation and

other increasing costs to TMBC. The costs set out in paragraph 1.2 above have been reviewed by the Council's finance team.

- 1.4.2 As set out in this report BNG monitoring fees are likely to be secured utilising the S106 and Unilateral Undertakings process currently undertaken for securing contributions to mitigate the impacts of development. This will ensure the fees are paid at a set point in the development. The creation of a standardised S106 agreement which will be available to download from the website is currently being drafted and will assist in identifying the monitoring fee at the early stages of drafting.
- 1.4.3 The above Options 1-3 set out a rudimentary annual income projection based on the average number of applicable applications decided within a 5-year period between 2018 – 2023.
- 1.4.4 Any monitoring fee income is ringfenced to offset the costs of monitoring BNG activity. The additional staffing requirements, alongside other expected costs are yet to be confirmed, this report sets out the income fee structure only. The long-term impact on the MTFS is yet to be evaluated.

1.5 Risk Assessment

- 1.5.1 There is a risk of TMBC undercharging for the monitoring services it is expected to provide, therefore we have been in contact with other local councils and utilised the information provided alongside the BNG calculator available to provide as accurate a figure as possible at this stage.
- 1.5.2 Due to increasing costs and inflation, there is a further risk of undercharging, as monitoring fees are required to cover the 30-year period. An attempt to consider these factors has been made using the fee calculators with a base rate of inflation. The fees would also be subject to regular review once the monitoring system has started and passed any preliminary stages.

1.6 Equality Impact Assessment

- 1.6.1 N/A

1.7 Policy Considerations

- 1.7.1 The BNG monitoring and charges in this report will support climate change mitigation and adaptation goals into the medium term. Effective monitoring over the 30-year period is essential to ensuring the establishment and flourishing of habitats, and realising the co-benefits of BNG for green infrastructure, carbon sequestration, and ecosystems.
- 1.7.2 Effective and appropriately resourced BNG monitoring will support use of BNG as a delivery mechanism in response to TMBC's 2019 declaration of a biodiversity emergency and Green Infrastructure strategy.

1.8 Recommendations

- 1.8.1 The proposed fees have been calculated as best practice at the current time, these figures will be subject to review once the monitoring has been started to ensure that the costs are proportionate and in-line with the on-going costs of monitoring the BNG offset.
- 1.8.2 **Recommendation 1:** With the above information taken into consideration it is proposed that the BNG monitoring fees adopted by TMBC are as shown in Option 3. This will ensure a proportionate approach based on development size in line with the current schemes that have been considered in the past 5 years.
- 1.8.3 **Recommendation 2:** The income generated via BNG monitoring costs will be held in a separately identifiable cost centre in the Council's Accounts, consideration to be given on how to best utilise it to offset staffing and other costs over the relevant monitoring period.

Background papers:

contact: Chelsea Honey-
Bradfield

Annexe 1 - [Mycelia Monitoring Calculator Tool](#)

Annexe 2 - [GOV guidance on exempt developments](#)

Eleanor Hoyle

Director of Planning, Housing and Environmental Health

This page is intentionally left blank

ESTABLISHMENT REPORT – HOUSING SERVICES

Item GP 24/15 (9) referred from General Purposes Committee of 13 March 2024

(Reasons: LGA 1972 – Sch 12A Paragraph 1 and 2 - Information relating to an individual and information which is likely to reveal the identity of an individual).

The report set out for Members' approval a number of establishment changes recommended by Management Team. Members noted that, in accordance with adopted conventions, all of the savings/costs referred to in the report reflected the salary at the top of the scale/grade plus associated on costs.

***RECOMMENDED:** That

- (9) it be commended to Council that
- (i) the Housing Solutions Officers (DV0785 and DV0788), Accommodation Officer (DV0786), Homelessness Prevention Officers (DV0789 and DV0790) and Housing Allocations Assistant (DV0791), be permanently established with effect from 1 May 2024; and
 - (ii) the funding for these posts be provided from the annual Homelessness Prevention Grant Allocations commencing in 2024/25, and it be noted that should future grant allocations cease to provide sufficient funding, a review of resourcing would need to be undertaken.

***Recommended to Council**

This page is intentionally left blank

Agenda Item 14

Recommendations of Licensing and Appeals Committee of 26 March 2024 to follow

This page is intentionally left blank

TONBRIDGE & MALLING BOROUGH COUNCIL

LICENSING & APPEALS COMMITTEE

26 March 2024

Report of the Interim Chief Executive

Part 1- Public

Matters for Recommendation to Council

1 FEEDBACK FROM CONSULTATION RESULTS OF THE SCRAP METAL DEALERS POLICY 2024 – 2029

1.1 Background

1.1.1 On the 27 September 2023 Members approved, for consultation purposes, proposed changes to the existing Scrap Metal Dealers 2019 – 2024 policy. This report asks Members to recommend to Council that the amended policy be adopted.

1.1.2 Tonbridge & Malling Borough Council currently has two site licences and seven Mobile Scrap Metal licences.

1.1.3 Metal theft over recent years has had a significant impact on communities, business, and local authorities. Metal thefts has been on the rise which is why the Scrap Metal Dealers Act 2013 was introduced in October 2013 and came into force in December 2013. It was a way to try and combat desecration of churches and historic buildings, inspection covers, and road signage being stolen.

1.1.4 The Act defines a ‘scrap metal dealer’ as a person who carries on the business which consists wholly or in part of the buying and selling of scrap metal, whether the metal is sold in the form it was bought, or carries on a business as a motor salvage operator. This does not include manufacturing operations that sell metal as a by-product of the processes being used in that operations. This includes the business of collection scrap metal, i.e., door to door collectors.

1.1.5 This policy outlines the requirements of the Scrap Metal Dealers Act 2013. This policy aims to give guidance to new applicants, existing licence holders, consultees, and members of the public as to how the Council will administer and enforce the requirements of the Act.

1.2 Consultation

1.2.1 A copy of the Policy on Scrap Metal Dealers 2024 – 2029 is shown at **Annex 1**.

1.2.2 The following process steps that enabled the development of this policy are:

Draft consultation agreed at the Licensing Committee	27 September 2023
Public Consultation	9 October 2023 – 30 November 2023
Licensing Committee agrees the policy and recommends to Full Council for adoption	26 March 2024
Full Council adopt policy	9 April 2024
New Policy comes into force	22 April 2024

1.2.3 The Consultation was made available to the following stakeholders:

- Existence licence holders
- The Chief Officer of Police for Kent and British Transport Police
- the Fire and Rescue authority for Kent
- Tonbridge and Malling Borough Council's Environmental Protection Team
- Environment Agency
- Trading Standards
- Existing licence holders
- Relevant trade associations

1.2.4 Results of consultation

1.2.5 There were no representations received during the consultation period, which is very disappointing, especially receiving no responses back from existing licence holders.

1.3 Legal Implications

1.3.1 The licensing of Scrap Metal Dealers Site or Mobile licences is governed by the Scrap Metal Dealers Act 2013.

1.4 Financial and Value for Money Considerations

1.4.1 There are no statutory fees for Scrap Metal Dealers Site or Mobile licences. The level of fee is therefore at the discretion of the Licensing Authority,

1.4.2 The current fees for a Scrap Metal Site licence is £440 and for a Mobile Collectors Licence is £330.

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 Policy Considerations

1.7.1 Crime & Disorder Reduction and Community

1.8 Recommendations

1.8.1 That the proposed changes to the Scrap Metal Dealers 2024 – 2029 policy, attached as Annex 1, be approved.

Background papers:

Scrap Metal Dealers Act 2013
Guidance for the Scrap Metal Dealers Act 2013,
updated on the 2 March 2023

contact: Anthony Garnett
Katie Shipman

Adrian Stanfield
Interim Chief Executive

This page is intentionally left blank

Scrap Metal Dealers Policy

2024 – 2029

All applications will be considered on their merits, as well as against the relevant policy and statutory framework.

Contents

Content	Page Number
Introduction	3
Consultation	3
Background	5
Types of Licence	6
Suitability	7
Supply of Information by Authority	8
Register of Licences	8
Display of Licence	9
Verification of Supplier's Identity	9
Payment for Scrap Metal	9
Records –	10
Right of Entry & Inspection	11
Application Procedure	12
Revocation and Imposing Conditions	13
Closure of Unlicensed Sites	14
Enforcement	15

INTRODUCTION

Metal theft over recent years has had a significant impact on communities, business, and local authorities. Metal thefts has been on the rise which is why the Scrap Metal Dealers Act 2013 was introduced in October 2013 and came into force in December 2013. It was a way to try and combat desecration of churches and historic buildings, inspection covers, and road signage being stolen.

This policy outlines the requirements of the Scrap Metal Dealers Act 2013. This policy aims to give guidance to new applicants, existing licence holders, consultees, and members of the public as to how the Council will administer and enforce the requirements of the Act.

1 CONSULTATION

- 1.1 The Scrap Metal Dealers Policy will be kept under review and where any significant amendments are considered necessary these will only be made after consultations have taken place in accordance. Amendments required due to a change in legislation that do not impact on the aims and objectives of the Policy will be made with the approval of the Licensing Officer for the policy to remain legislatively current.
- 1.2 Proper weight, in accordance with the Guidance, has been given to the views of all those consulted. Those consulted in the preparation of this Policy included:
 - the Chief Officer of Police for Kent/British Transport Police
 - the Fire and Rescue authority for Kent
 - Tonbridge and Malling Borough Council's Environmental Protection Team
 - Environment Agency
 - Trading Standards
 - Existing licence holders
 - Relevant trade associations

1.3 The Scrap Metal Dealers Policy

1.3.1 The following process steps enabled development of this policy.

Draft consultation agreed at the Licensing Committee	27 September 2023
Public Consultation	1 October 2023 – 30 November 2023
Licensing Committee agrees the policy and recommends to Full Council for adoption	26 March 2024
Full Council adopt policy	9 April 2024
New Policy comes into force	22 April 2024

2 BACKGROUND

- 2.1 The Scrap Metal Dealers Act 2013 came into effect on 1 October 2013. It repeals all previous legislation and creates a revised regulatory regime for scrap metal recycling and vehicle dismantling industries.
- 2.2 The Act defines a 'scrap metal dealer' as a person who carries on the business which consists wholly or in part of the buying and selling of scrap metal, whether the metal is sold in the form it was bought. Or carries on a business as a motor salvage operator. This does not include manufacturing operations that sell metal as a by-product of the processes being used in that operations. This includes the business of collection scrap metal, i.e., door to door collectors.
- 2.3 The definition of scrap metal dealers is wide and may include skip hire firms, and tradesman such as plumbers and builders who sell scrap metal resulting from their businesses.
- 2.4 In these circumstances, each business will be considered on its own merits, but consideration will be given to the amount of metal sold and how incidental the sale is to the main business. So, in most cases for plumbers, electricians, and builders etc. the sale of metal will be incidental and should not require a licence. However, skips sited at demolition sites, or at engineering manufacturing sites or plumbers' yards, it is likely the skip will contain a significant amount of metal, so the skip hire company will require a licence.
- 2.5 The Act identifies the local authority as the principal regulator and gives them power to regulate these industries by ability to refuse licences to unsuitable applicants and the power to revoke those licences held by licence holders who become unsuitable.
- 2.6 The Act states that scrap metal includes.
 - Any old, waste, or discarded metal or metallic material
 - Any product, article or assembly which is made from or contains metal and is broken, worn out or regarded by its last holder as having reached the end of its useful life.

This definition does include platinum and other rare metals now being used in catalytic converters in vehicle exhausts.

2.7 The following is not considered to be scrap metal:

- Gold
- Silver
- Any alloy of which 2% or more by weight is attributable to gold or silver.

2.8 A dealer also includes someone carrying on the business as a motor salvage operator. This is defined as a business that:

- Wholly or in part recovers salvageable parts from motor vehicles for re-use or re-sale, and then sells the rest of the vehicle for scrap.
- Wholly or mainly buys or sells motor vehicles for the purpose of salvaging parts from them or repairing them and re-selling them.

However, only vehicles without a certificate of destruction, or are capable of being driven without repair, with or without a valid MOT are likely to be classes as second-hand goods. Other vehicles are likely to be considered scrap. These aspects will be considered when the Council determines whether or not a scrap metal dealer licence is required. It should also help prevent any motor salvage operators attempting to circumvent the legislation and its requirements.

2.9 The Act is not intended to include second hand goods. Jewellers or businesses trading in second hand gold, silver and products are not included in this legislation.

3 TYPES OF LICENCE

3.1 A licence is required to carry on the business as a scrap metal dealer. A licence is granted for three years. Trading in scrap metal without a licence is a criminal offence.

3.2 There are two types of licences specified within the Act: Site licence and Collector's licence.

3.3 **Site licence** – all sites operating as a scrap metal business must be licensed. Each site must have a named site manager. A site licence allows the licence holder to transport scrap to and from the site from any local authority area.

3.4 A site under the Act is defined as any premises used in the course of carrying on a business as a scrap metal dealer (whether or not metal is kept there). This means a dealer will require a licence for an office, even if they do not operate a metal store or yard from those premises.

- 3.5 **Collectors licence** – this allows the licence holder to collect scrap within the area of the issuing local authority. This licence does not permit the holder to operate a scrap metal site, nor does it allow collection outside the area of the issuing authority. If a person collects scrap from many local authority areas, a collector's licence will be required from each local authority where he/she collects scrap.

A dealer can only hold **ONE** type of licence in any one local authority.

- 3.6 Holding a site or collectors' licence does not exempt the licensee from requiring any other licence or permit to operate their scrap metal business.

4 SUITABILITY OF APPLICANT

- 4.1 The Council must determine if an applicant is a suitable person to carry on the business as a scrap metal dealer.
- 4.2 The Council may have regard to any information which it considers to be relevant, this may include:
- Whether the applicant or site manager has been convicted or any relevant offence
 - Whether the application or site manager has been the subject of any relevant enforcement action
 - Whether there has been any refusal of an application of the issue or renewal of a scrap metal licence, and the reasons for refusal.
 - Whether there has been any refusal of an application for a relevant environmental permit or registration, and the reasons for the refusal.
 - If there has been any previous revocation of a scrap metal licence and the responses for the revocation.
 - Whether the applicant has demonstrated there will be adequate procedures in place to ensure compliance with the Act.

Making an application

The rules for completing a tax check changed on 4 April 2022 in England and Wales, and will change on 2 October 2023 in Scotland and Northern Ireland.

The new rules mean if you're an individual, company or any type of partnership you must complete a tax check if you're:

- renewing a licence
- applying for the same type of licence you previously held, that stopped being valid less than a year ago
- applying for the same type of licence you already hold with another licensing authority

You will not need to complete a tax check and you should follow the [confirm your tax responsibilities guidance](#) if you have:

- never held a licence of the same type before
- had a licence of the same type that stopped being valid a year or more before making this application

Further details can be found using the following web link.

[Complete a tax check for a taxi, private hire or scrap metal licence - GOV.UK \(www.gov.uk\)](#)

4.3 When establishing the applicant's suitability, the Council may consult with the following agencies:

- Kent Police
- Her Majesty's Revenue and Customs
- Environment Agency
- The Council's Environmental Protection Team
- Trading Standards

4.4 Relevant offences or relevant enforcement action are those listed under the Scrap Metal Dealers Act 2013 (Prescribed relevant offences and relevant enforcement action) Regulations 2013

4.5 Scrap metal dealers application can be downloaded from the Councils website at

[Scrap metal dealer's licence application – Tonbridge and Malling Borough Council \(tmbc.gov.uk\)](#)

5 SUPPLY OF INFORMATION BY THE LOCAL AUTHORITY

5.1 Information supplied to the authority in relation to an application for, or relating to a scrap metal licence must be provided when requested relating to a licence to:

- Any other local authority
- Environment Agency
- An officer of a police force

This does not limit any other power the authority has to supply that information.

6 REGISTER OF LICENCES

6.1 The Environmental Agency will maintain a register for scrap metal licences issued by all local authorities which in England. The register will include.

- Name of the authority that issued the licence.
- Name of the licence holder
- Any trading name of the licence holder
- Address of the site listed on the licence.
- Type of licence
- Expiry date of licence

The register will be open for inspection by members of the public.

6.2 The Council are required to update the register on a regular basis.

7 DISPLAY OF LICENCES

7.1 Once granted, a copy of the site licence must be displayed at each site identified on the licence; in a prominent place which is accessible to members of the public.

- 7.2 A copy of a collector's licence must be displayed on any vehicle that is being used during a dealer's business. It must be displayed in a prominent position so that it can be easily read from the outside of the vehicle.

8 VERIFICATION OF SUPPLIERS IDENTITY

- 8.1 Before receiving scrap metal, the dealer must verify a person's full name and address, by reference to documents or data from a reliable and independent source.
- 8.2 If suitable verification is not obtained the scrap metal dealer, or site manager, or person who has been delegated responsibility by the dealer or site manager for verifying the name and address, shall be guilty of an offence.

9 PAYMENT FOR SCRAP METAL

- 9.1 A scrap metal dealer must only pay for scrap metal by either:
- Cheque (which is not transferable under Section 81A of the Bills of Exchange Act 1882)
 - Electronic transfer of funds (authorised by a credit and debit card)

Cash payments and payments in kind with goods and services for scrap metal are not permitted.

10 RECORDS

- 10.1 Scrap metal dealers must keep three types of records:
- Receipt of Metal –
 - Disposal of Metal
 - Supplementary
- 10.2 Receipt of Metal – if metal is received during the dealer's business the following must be recorded:

- Description of the metal, including its type (types if mixed), form, condition, weight, and any marks identifying previous owners or other distinguishing features
- Date and time of receipt
- Registration mark of the vehicle it was delivered by.
- Full name and address of the person delivering it.
- Full name of the person making payment on the behalf of the dealer.

10.3 Disposal of Metal – Disposal under the Act covers metal:

- Whether or not it is in the same form when it was purchased
- Whether or not it is to another person
- Whether or not it is despatched from a site

10.4 Disposal records must be kept and include:

- Date and time of disposal
- If to another person, their full name and address
- If payment is received for the metal (sale or exchange) the price or other consideration received.

10.5 If disposal is during business conducted under a collectors licence the dealer must record:

- Date and time of disposal
- If to another person, their full name and address

10.6 Supplementary – The information collected during receipt and disposal must be recorded in such a manner that allows the information and the metal to which it relates to be easier identified.

10.7 The records of receipt must be kept for a period of three years beginning on the day of receipt of disposal.

10.8 If suitable records for the receipt or disposal of scrap metal are not kept then the scrap metal dealer or site manager, or person who has been delegated responsibility by the dealer or site manager for keeping records shall be guilty of an offence.

- 10.9 A dealer or site manager may have a defence if they can prove arrangements had been made to ensure the requirement to keep records was fulfilled, or they took all reasonable steps to ensure those arrangements were complied with.

11 RIGHTS OF ENTRY AND INSPECTION

- 11.1 An authorised officer of the Council may enter and inspect a licensed site at any reasonable time, with or without notice to the site manager.
- 11.2 Entry to the site is reasonably required for the purpose of ascertaining whether the provisions of the Act are being complied with or investigating offences under it and in either case the giving of the notice would defeat the purpose.
- 11.3 Sections 11.1 and 11.2 do not apply to residential premises for mobile collectors and site licences.
- 11.4 An authorised officer of the Council is not entitled to use force to enter a premises, but may ask a justice of the peace to issue a warrant authorising entry, if they are satisfied there are reasonable grounds for entry to the premises for the purpose of:
- Securing compliance with the provisions of the Act
 - Ascertaining whether those provisions are being complied with
- 11.5 Premises under this section include licensed sites or premises that are not licensed, but there are reasonable grounds for believing the premises are being used as a scrap metal dealing business.
- 11.6 An authorised officer of the Council may use reasonable force in the exercise of the powers under a warrant obtained under section 11.4.
- 11.7 An authorised officer of the council may require:
- Production of and inspect any records kept in respect of receipt and disposal of metal.
 - Require production of and inspect any records in respect of receipt and disposal of metal and take copies or extracts from any such record.
- 11.8 An authorised officer of the Council must produce evidence of their identity and evidence of their authority to exercise these powers, if requested by the owner occupier or other person in charge of the premises.

12 APPLICATION PROCEDURE

- 12.1 An application form must be completed and submitted with the fee, and a basic disclosure of criminal convictions, a disclosure will be valid for three months from the date of issue.
- 12.2 A licence once granted will be valid for three years.
- 12.3 A renewal application must be received before the expiry of the current licence.
- 12.4 If a licence application is refused, the licence expires when no appeal is possible, or an appeal is determined or withdrawn.
- 12.5 A licence may be varied from one type to another i.e., site licence to collector's licence.
- 12.6 A variation licence must be made to reflect changes to the name of the licensee, site manager or sites on a site licence or name of the licensee on a collector's licence.
- 12.7 A variation cannot be used to transfer the licence to another person only amend the name of the licence holder.
- 12.8 When in receipt of a renewal application, which is subsequently withdrawn, the licence expires at the end of the day on which the application was withdrawn.
- 12.9 Tonbridge and Malling Borough Council may request additional information is provided for the consideration of the application. Failure to provide such information may result in the application being refused.
- 12.10 If Tonbridge and Malling Borough Council proposes to refuse an application, revoke or to vary a licence by imposing conditions, a notice will be issued to the licence holder setting out the Council's proposals and the reasons for the decisions. The notice will indicate details of the Licensing and Appeals panel hearing date, where the applicant or licence holder can either make written or oral representation about the proposal or inform the council that the application or licence holder wishes to do so.
- 12.11 This time must not be less than 14 days beginning on the day the notice was given to the applicant or licence holder. Tonbridge and Malling Council will stipulate a time of 21 days for representations or intentions to be received.
- 12.12 If a notification is received that the applicant or licence holder wishes to make representation, the Council must allow a reasonable period for them to make

their representation. The Council will allow 14 days for written representations to be received from the date the application becomes contested, or the Council receives notification of the applicant having a relevant offence. The applicant or licensee may wish to make an oral representation; if this is the case the person must notify the Council within the 14-day time. If this time lapses, without a written representation, or a request for an oral representation being received, the Council may refuse, revoke, or vary the licence.

- 12.13 Where there is a representation a hearing will be arranged, and the case will be presented before the Licensing and Appeals panel, the applicant or licence holder will be invited to attend. The Council will give at least ten working days' notice of the date and time of the hearing to the applicant or licence holder. Any decisions made at this hearing will be given to the application or licence holder in writing outlining the decision and the reasons.
- 12.14 An applicant or licence holder may appeal to the magistrate's court against a refusal of an application or a variation. Any appeal must be lodged with the magistrate's courts within 21 days of receipt of the decision notice.

13 REVOCATION AND IMPOSING CONDITIONS

- 13.1 The Council may revoke a scrap metal licence if it is satisfied the licence holder does not carry on a scrap metal business at any of the sites named on the licence.
- 13.2 The Council may revoke a scrap metal licence if it is satisfied the site manager named on the licence does not act as a site manager at any of the named sites on the licence.
- 13.3 The Council may revoke a scrap metal licence if it is no longer satisfied the licence holder is no longer a suitable person to carry on the business.
- 13.4 If the licence holder or site manager named on a licence is convicted of a relevant offence the Council may impose one or both of the following conditions
- The dealer must not receive scrap metal except between the hours of 9am and 5pm on any day.
 - All Scrap metal must be kept in the form in which it was received for a specified period not exceeding 72 hours, beginning with the time it was received.
- 13.5 A revocation or variation only comes into effect when no appeal under the Act is possible or when such appeal has been determined or withdrawn.

- 13.6 If the Council considers the licence should not continue without the addition of one or more conditions in section 13.4 the licence holder will be given notice that until the revocation comes into effect the licence is subject to one or both conditions or that a variation comes into immediate effect.

14 CLOSURE OF UNLICENSED SITES

- 14.1 If an authorised officer of the council is satisfied premises are being used by a scrap metal dealer during their business and premises are unlicensed, they may issue a closure notice. A copy of this notice will be given to the person who appears to be the site manager and any person who appears to be in charge, manager or other officer of the business.
- 14.2 A copy of this notice may also be given to any person who has an interest in the business, a person who occupies part of the premises, or where the closure may impede a person's access to other parts of the premises.
- 14.3 After a period of seven days, the authorised officer of the Council may apply to a justice of the peace for a closure order. The Court must be satisfied the premises will continue to be used by a scrap metal dealer, or there is a reasonable likelihood that the premises will be. A closure order will close the premises immediately and the premises will remain closed to the public until the Council makes a termination of the closure order by certificate. The scrap metal dealer must cease their business immediately. It will require the defendant to pay a sum into the court, which will not be released until the person has complied with the requirements of the order.
- 14.4 Such an order may have a condition relating to the admission of people into the premises or may include a provision the court considers appropriate.
- 14.5 A copy of the order must be placed on the premises in a prominent position by the Council.
- 14.6 Once the requirements of the order have been complied with and the Council is satisfied the need for the order has ceased, a certificate may be made. This ceases the order and the sum of money paid into the court is released.
- 14.7 A copy of the certificate must be given to any person the closure order was made against and a copy must also be given to the court and placed on the premises. A copy must also be given to anyone who requests one.
- 14.8 Anyone issued with a closure order may complain to a justice of the peace. The Court may discharge the order, if it is satisfied there is no longer a need for the closure order. The Council may be required by the Court to attend and answer the complaint made.

- 14.9 Appeals may be made to the Crown Court against closure order, decisions not to make a closure order, a discharge order or the decision not to make a discharge order. Any appeal must be lodged within 21 days beginning on the day on which the order or decision was made.
- 14.10 A person is guilty of an offence if they allow the premises to open in contravention of a closure order.
- 14.11 An authorised officer of the Council may enter the premises at any reasonable time to ensure compliance with the order. They may use reasonable force if necessary.
- 14.12 An authorised officer of the Council must produce evidence of their identity or evidence of their authority to exercise the powers under the Act if requested to do so.

15 ENFORCEMENT

- 15.1 It is the policy of Tonbridge and Malling Borough Council to ensure that scrap metal dealers are licensed correctly and carry out their trade in accordance with both the relevant law and the conditions (if any) attached to the licences.
- 15.2 Any enforcement action has regard for the Regulators' Compliance Code and the regulatory principles set out in the Legislative & Regulatory Reform Act 2006. The Council will seek to adopt a positive and proactive approach towards ensuring compliance.
- 15.3 All enforcement action, be it verbal warnings, the issue of written warnings, appearance before the Licensing and Appeals committee or prosecution, will primarily be based upon the seriousness of the breach and the possible consequences arising out of it. Enforcement action will not, therefore, constitute a punitive response to minor technical contraventions of legislation.
- 15.4 Authorised officers, when making enforcement decisions, will abide by this policy. Any departure from the policy must be exceptional, capable of justification, be fully considered and be endorsed by the Head of Service for Licensing, Community Safety and Customer Services or above before the decision is taken (unless it is considered that there is significant risk to the public in delaying the decision).
- 15.5 Officers will be authorised by the Head of Service for Licensing, Community Safety and Customer Services to take enforcement actions relevant and appropriate to their level of competence. Competency will be assessed individually by reference to qualifications and experience.

- 15.6 Achieving and maintaining a consistency of approach to making all decisions that concern Scrap Metal licensing and enforcement action, including prosecution, is of paramount importance. To achieve and maintain consistency, it is vital that the policy guidelines are always considered and followed where appropriate.
- 15.7 Enforcement decisions must always be consistent, balanced, and proportionate and relate to common standards which ensure that the public is adequately protected. In reaching any decision many criteria must be considered including the: -
- seriousness of any offences.
 - consequence of non-compliance.
 - likely effectiveness of the various enforcement options.
 - the economic consequences of enforcement
 - danger to the public.
- 15.8 Having considered all relevant information and evidence, the choices for action are:
- take no action.
 - take informal action.
 - revoke a licence.
 - vary a licence by way of including conditions on the licence.
 - use simple cautions.
 - prosecute.
 - a combination of any of the above.
- 15.9 The decision to prosecute is a very significant one as it may impact on the licence holder's future employability. Prosecution will, in general, be restricted to those circumstances where the law is blatantly disregarded, legitimate requirements of the Council are not followed and / or the public is put at serious risk. Such circumstances are, however, in a minority. It is important that the criteria on which a decision to prosecute is made provide common standards which ensure a consistent approach.
- 15.10 The circumstances which are likely to warrant prosecution may be characterised by one or more of the following: -
- where there is a blatant disregard for the law, particularly where the economic advantages of breaking the law are substantial and the law-abiding are placed at a disadvantage to those who disregard it.
 - where there have been repeated breaches of legal requirements.
 - where a particular type of offence is prevalent.

- where a particular contravention has caused serious public alarm.

15.11 When circumstances have been identified which may warrant a prosecution, all relevant evidence and information must be considered, to enable a consistent, fair, and objective decision to be made.

15.12 Before referring a matter to the Legal Section for possible prosecution, the Head of Service for Licensing, Community Safety and Customer Services must be satisfied that there is relevant, admissible, substantial, and reliable evidence that an offence has been committed by an identifiable person or company. There must be a realistic prospect of conviction; a bare prima facie case is not enough. With insufficient evidence to prosecute, the issue of a simple caution is not an alternative.

15.13 In addition to being satisfied that there is sufficient evidence to provide realistic prospect of conviction, it must be established that it is in the public interest to prosecute. The Code for Crown Prosecutors, issued by the Crown Prosecution Service, provides guidance which will be considered, including relevant public interest criteria.

15.14 When a decision is being taken on whether to prosecute, the factors to be considered may include: -

- the seriousness of the alleged offence.
- the risk or harm to the public.
- identifiable victims.
- disregard of safety for financial reward.
- the previous history of the party concerned.
- offences following a history of similar offences.
- failure to respond positively to past warnings.
- the credibility of any important witnesses and their willingness to cooperate.
- the willingness of the party to put right the loss or harm that has occurred,
- whether a prosecution would have a significant positive impact on maintaining community confidence.
- whether other action, such as issuing a simple caution in accordance with the Home Office Circular 016. /2008 would be more appropriate or effective.

15.15 This list is not exhaustive, and regard will be had to the matters set out in the Code for Crown Prosecutors.

15.16 A simple caution may be used as an alternative to a prosecution in certain circumstances.

15.17 The purposes of the simple caution are: -

- to deal quickly and simply with less serious offences where the offender has admitted the offence.
- to divert offenders where appropriate from appearing in the criminal Courts.
- to reduce the chances of re-offending
- To safeguard the suspected offender's interests, the following conditions should be fulfilled before a caution is administered: -
- there must be evidence of the suspected offender's guilt sufficient to give a realistic prospect of conviction.
- the suspected offender must have made a clear and reliable admission of the offence.
- the suspected offender must understand the significance of a simple caution and give informed consent to being cautioned.
- A simple caution must be appropriate to the offence and the offender.

15.18 If there is insufficient evidence to consider taking a prosecution, then by implication, the above criteria is not satisfied for the use of a simple caution. A simple caution should not be used where the suspected offender does not make a clear and reliable admission of the offence. (It should be noted that there is no legal obligation for any person to accept the offer of a simple caution and no pressure should be applied to the person to accept a caution).

15.19 Where a person declines the offer of a simple caution, it will be necessary to consider taking alternative enforcement action. Whilst this will usually mean prosecution, this is not necessarily inevitable. For example, it may be considered that a written warning would be appropriate.

15.20 Following the completion of an investigation into a complaint or any enforcement activity, the licence holder will be informed of the action intended to be taken.

15.21 Any written documentation issued or sent will: -

- contain all the information necessary to understand the offence and what needs to be done to rectify it. Where works are required, the period allowed for them to be completed will be indicated.
- indicate the legislation or conditions contravened and measures which will enable compliance with the legal requirements and point out, where appropriate, that other means of achieving the same effect may be chosen.
- clearly indicate any recommendations of good practice under an appropriate heading, to show that they are not a legal requirement.

15.22 There is a clear distinction between legal requirements and matters which are recommended as good practice. Recommendations in all enforcement action, even if only giving verbal advice, is vitally important.

Agenda Item 15

To receive and note the Minutes of meetings of Cabinet and Committees as set out in the Minute Book (attached as a supplement).

This page is intentionally left blank